

CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL

PROMOTER'S MEMORANDUM

INTRODUCTION

1. This document relates to the City of Edinburgh Council (Portobello Park) Bill (“the Bill”) introduced in the Scottish Parliament on 25 April 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 29–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 objective of the Bill is to address the legal obstacle which is currently preventing the new Portobello High School being built on Portobello Park (“the Park”). In September 2012 the Inner House of the Court of Session decided that the Council could not appropriate the Park, as it is inalienable common good land.

4. The purpose of the Bill is to remove this obstacle by reclassifying the Park as alienable common good land for the purposes of Part VI of the Local Government (Scotland) Act 1973 (“the 1973 Act”). Section 73(1) of the 1973 Act, read with section 75(1), allows for such land that is vested in an authority for one purpose to be appropriated for another purpose. However, the change is limited so that it only permits the appropriation of the Park for the purposes of the Council’s education authority functions.

5. This change allows the Council to use the Park as the site for a new Portobello High School (though the Bill does not itself authorise the construction of the school, which remains subject to statutory planning control).

Background

6. The existing Portobello High School needs to be replaced as a matter of urgency. The school has a capacity of 1,400, making it the largest school in Edinburgh in terms of pupil numbers. It occupies a restricted 2.79 hectare site that has no full-size playing fields, meaning pupils have to be bussed to nearby facilities. The central feature of the current school building is a nine-storey tower built in the 1960s which is outdated, in poor condition and not suited to modern teaching requirements.

7. Essential repair works totalling £1.5m have been identified for the 2013/14 financial year in order to keep the school fully operational, and further costs may be necessary in future years until a new replacement school is built.

8. There is a pressing need for a new school to be built on the best available site at the earliest opportunity. In 2006 an extensive and exhaustive assessment was undertaken to identify any potential sites for a new school in or around the school catchment area. Three potential sites were short-listed and taken forward as the subject of a full statutory consultation. Following the conclusion of this statutory consultation, in December 2006 the Council agreed that, taking all factors into account, the Park would be the best location for the new high school. The Council approved the project to build the new school on the Park on 18 December 2008.

9. In order to progress the project, the Council proposed to appropriate the Park by moving it from the Council's Services for Communities Department to its Children and Families Department. This would change the function for which the land was held and the use to which it was put, with the Park being used as the site of the new school, though title to the land would remain in the Council's name.

10. The Council's proposal was challenged in the Court of Session, and in September 2012 the Inner House of the Court of Session decided that the Council could not appropriate the Park due to its status as inalienable common good land.

11. The Park forms part of an area of land purchased by the Council's predecessors, the Lord Provost, Magistrates and Council of the City of Edinburgh, from Sir James Miller in 1898. The disposition provided that the land, which also included what is now Portobello Golf Course, was to be "used exclusively as a public park and recreation ground for behoof of the community". The disposition also contained a condition against building on the Park, other than buildings consistent with the use of the land as a public park or recreation ground. These conditions, together with the historical background to the Council's acquisition of the Park and the public's subsequent use of it, mean that the land has inalienable common good status.

12. Section 73(1) of the 1973 Act confers on local authorities a power to "appropriate for the purpose of any functions, whether statutory or otherwise, land vested in them for the purpose of any other such function". Section 75(1) of the 1973 Act allows local authorities to use section 73(1) to appropriate "land forming part of the common good of an authority with respect to which no question arises as to the right of the authority to alienate" (i.e. common good land which has alienable status).

13. The Inner House decided that this power to appropriate did not extend to common good land where the authority's right to alienate is in question (i.e. inalienable common good land, such as the Park). In addition, although section 75(2) of the 1973 Act provides for the disposal of inalienable common good land with consent of the courts, no such procedure is provided that would permit appropriation. The Inner House therefore concluded that the Council could not appropriate the Park.

14. The Council remains of the view that locating the new Portobello High School on the Park is by far the best option for the new school in or around the catchment area, and as such it continues to be the Council's preferred option. The funding for the project is in place, full planning permission was granted in 2011 and a preferred contractor has been identified at a very competitive tender price.

15. Accordingly, and having consulted extensively on the issue, the Council has decided to seek to have the status of the Park changed from 'inalienable' to 'alienable' by an Act of the Scottish Parliament, though only insofar as permitting its appropriation for the purposes of the Council's education authority functions. This will enable the Council to appropriate the Park as the site of the new Portobello High School under sections 73(1) and 75(1) of the 1973 Act, while ensuring that it remains inalienable for all other purposes. The Park will also retain its common good status. As a result, the Council will remain subject to restrictions on the uses to which it can put the area, and will remain unable to dispose of the land without first obtaining Court consent under section 75(2) of the 1973 Act.

16. The Council has agreed that, if the Park is used as the site of the new Portobello High School, the remainder of the existing combined Portobello High School and St John's RC Primary School site (after making provision for an extension of St John's RC Primary School on that site) will be converted to open space. The Council has sought views from the community regarding the most appropriate use of this new area of open space.

ALTERNATIVE APPROACHES

Alternative approaches relating to the Park's status

17. The Inner House of the Court of Session, in its decision of September 2012, concluded that no Scottish local authority has the authority or power to appropriate inalienable common good land under the 1973 Act, the Local Government in Scotland Act 2003 or any other existing legislation.

18. The alternative options considered by the Council, in terms of either obtaining confirmation that the Park was not in fact inalienable common good land, changing its status to alienable common good land, or otherwise obtaining permission to appropriate it notwithstanding its status, were as follows:

- (a) Appealing the Inner House's decision to the Supreme Court.
- (b) Reviewing the status of the Park to establish whether it might be categorised as alienable common good or not part of the common good, and if necessary seeking a declarator to that effect from a court.

- (c) Disposing of the Park under section 75(2) of the 1973 Act, with the approval of the Sheriff Court or the Court of Session.
- (d) Applying to the Sheriff Court or the Court of Session seeking authority to appropriate the Park under section 75(2) of the 1973 Act.
- (e) Petitioning the Court of Session under the *nobile officium*.
- (f) Changing the existing legislation, in respect of which three sub-options were identified:
 - A Private Bill promoted by the Council;
 - A Government Bill revising the 1973 Act; or
 - A statutory Order made by the Scottish Ministers under existing legislation.

19. A report on these options was provided to members of the Council in advance of its meeting on 25 October 2012, and is available on the Council's website (<http://www.edinburgh.gov.uk/download/meetings/id/36933/>). An update was provided in advance of the Council's meeting of 22 November 2012, and is also available on the Council's website (<http://www.edinburgh.gov.uk/download/meetings/id/37233/>).

20. The Council considered in detail the relative strengths and weaknesses of each option, together with the relevant timescales, costs and prospects of success, and decided as follows.

Appeal to the Supreme Court

21. Having considered and taken legal advice on the Inner House's decision, the Council took the view that an appeal would be unlikely to succeed. The matters relevant to the decision had little in the way of directly relevant precedent, and the Inner House had provided clarification regarding the 1973 Act's provisions relating to appropriation, and the absence of any applicable power to appropriate inalienable common good land. It had also provided a very clear opinion that local authorities' power to advance well being would not include appropriation of the Park.

22. Accordingly, the view was taken that the limited prospects of succeeding with an appeal would not justify the time and expense such an action would involve. The Council therefore believed it would be more productive to address the consequences of the Inner House's decision.

Challenging the Park's status as inalienable common good land

23. In the course of the judicial review challenge to the Council's decision to appropriate the Park, neither the Outer House nor the Inner House was asked to consider the question of the Park's status (i.e. whether it was common good, and whether it was inalienable). However, the Council accepted that the arguments could proceed on the assumption that the Park had inalienable common good status, an approach consistent with public statements made by the Council since 2008.

24. The Council had reviewed the status of the Park in 2008 and concluded that it was likely to be inalienable common good land. However, there is a lack of clarity and certainty in the law

relating to common good, and to the question of alienability. The Council therefore considered, following the Inner House's decision of September 2012, whether to seek a declarator on the common good status of the Park from either the Sheriff Court or the Court of Session. Such a decision would resolve the matter, and a decision that the Park is not inalienable common good would have enabled the Council to appropriate it for the new Portobello High School.

25. In October and November 2012, the Council carried out a further review of the status of the Park, including fresh research of the Council's archives and an analysis of papers located there, and took legal advice on the matter. This review concluded that there would be very poor prospects of the Council obtaining a declarator that the Park is not inalienable common good land.

26. In addition to the question of prospects, an action for declarator would have entailed significant expense for both the Council and for those opposing the declarator (and given the history of the matter, opposition could have been expected). It could also have added significant delay. If the Council's action was unsuccessful, it would find itself back in the same position but having lost perhaps six months. Even if the action was successful, a decision in the Council's favour could be appealed to the Inner House of the Court of Session and then to the Supreme Court, adding further significant delay.

Disposal of the proposed site

27. Section 75(2) of the 1973 Act permits local authorities to dispose of inalienable common good land, with the consent of the Court of Session or the Sheriff. It would therefore have been possible for the Council to apply to the Court of Session or Sheriff Court for permission to transfer ownership of the site to a Council owned company, which could then develop the site to be used for the new Portobello High School. Such a transfer would mean the site no longer formed part of the common good, and the restrictions on alienation would not apply.

28. Given the previous legal challenge, it would have been highly likely that this approach would have been challenged in court. The Council's decision to follow this procedure would likely have been challenged by way of judicial review. Any approach to the Court of Session or Sheriff Court under section 75(2) would also likely have been opposed.

29. The Council considered this option, and took legal advice in relation to it, and reached the view that it would be unlikely to succeed. The reason for this view was that it could be expected that the Court would view such a disposal as a means of circumventing the terms of the 1973 Act, which otherwise gives the Council no power to appropriate inalienable common good land. The Council therefore concluded that the limited prospects of success would not justify the time and expense such an application would involve.

30. This approach would therefore have been likely to have entailed significant cost (both for the Council and for the opponents of the proposal) and delay, without there being any certainty over the outcome.

Appropriation of the Park under section 75(2)

31. The Council also considered the possibility of applying to the Court of Session or the Sheriff for permission to appropriate the Park under section 75(2) of the 1973 Act. This would entail inviting the Court or Sheriff to adopt a purposive interpretation of section 75(2), so as to include appropriation within the meaning of the phrase “dispose of land”.

32. Given the terms of the Inner House’s judgement, however, the Council took the view that it would be very difficult to persuade the Court or Sheriff that such an interpretation should be adopted.

33. Separately from the uncertainty over prospects, this approach would also be very likely to entail similar cost and delay to the other approaches noted above.

Nobile officium

34. The Court of Session has the power to exercise the nobile officium, which is in essence the power to provide a legal remedy where one is otherwise unavailable. The remedy in this case would be an order entitling the Council to appropriate the Park for the purposes of using it as the site of the new High School, notwithstanding the terms of the 1973 Act.

35. This approach would have entailed similar levels of cost and delay as the other court-focused approaches outlined above. There would also be considerable uncertainty about whether the Court would have been willing (or, indeed, would have considered that it had the power) to exercise the nobile officium in this case, standing the terms of the Inner House’s decision. The prospects of succeeding with an application would therefore be limited.

36. In any event, the nobile officium is to a certain extent a judicial equivalent of promoting a Private Bill in the Scottish Parliament (at least in the present circumstances, where the outcome of each process would be effectively the same). In that context, and particularly given the degree of public interest in the Council’s proposals (as per the consultation results outlined below), the Private Bill process is more attractive as it is more open, transparent and participative. It entails significant consultation and notification requirements that would not be replicated in an application to the nobile officium, and it is significantly easier and cheaper for those with an interest in the proposals to object or otherwise participate in the process. The decision in question is also more suited to being made by elected and democratically accountable MSPs rather than by a court.

Other legislative routes

37. The Council considered the possibility of seeking to have appropriate legislative measures included in the Scottish Ministers’ draft Community Empowerment and Renewal Bill. The consultation paper issued in respect of that Bill included a number of questions relating to common good. However, that Bill was at an early consultation stage, and was unlikely to become law until much later than would be the case if the Council successfully promoted a Private Bill.

38. The Council also considered asking the Scottish Ministers to change existing local government legislation, either via primary legislation or by way of an order made under existing legislation, in order to provide a statutory mechanism for local authorities to appropriate inalienable common good land.

39. However, the Scottish Ministers would need to consult widely before making any changes to the existing law on common good land and/or local authority powers. Whether that was done by an Act of the Scottish Parliament or by secondary legislation, the changes would affect the law as applying throughout Scotland and not just in respect of the Park.

40. It was therefore not certain, and could of course not be presumed, that the Scottish Ministers would ultimately decide to promote any such legislative changes, and there would in any event be uncertainty over the timescale for any changes. It could also not be guaranteed that any changes made would include the reforms required to address the Council's difficulty in respect of the Park. These alternative legislative routes would therefore not have produced equivalent certainty to the Private Bill route, in which the Council can propose very specific legislation for the Scottish Parliament to consider and, if it thinks it appropriate, enact. The Council therefore decided that it would be preferable to pursue a Private Bill.

Conclusion on alternative approaches

41. The Council took the view that none of the alternative approaches relating to a reassessment of or change to the Park's status, or the Council's ability to appropriate it notwithstanding its status, would be likely to be as quick or as cost-effective as promoting a Private Bill in the Scottish Parliament. In addition, the Private Bill process offers greater certainty in terms of both legal effectiveness and likely timescales.

42. The Private Bill process also has the advantages, noted above, of being more open, transparent and participative. It requires significant consultation and notification of interested parties and is significantly easier and cheaper for those with an interest in the proposals to object or otherwise participate in the process. That is particularly important in the present case given the amount of public interest in the Council's proposal. The proposal is also one which can most appropriately be made by elected and democratically accountable MSPs.

Alternative sites for the new Portobello High School

43. It would also have been open to the Council to select a different site for the new Portobello High School, rather than promoting a Bill to change the status of the Park so as to allow its appropriation for that purpose.

44. The Council has considered all the available options for the site of a new Portobello High School in and around the catchment area. It did so in 2006 (as noted at paragraph 8 above) and on several occasions since, most recently in autumn 2012. The full details of this review, together with a full appraisal of all available options, was included in the report to Council on 22 November 2012 referred to at paragraph 19 above.

45. This review demonstrated that there is no other site in a good location with space to provide the same level of facilities and easy access as the Park. The Park would allow the Council to provide the best school with all of the required facilities. It would also be considerably cheaper and quicker to deliver a new school on the Park than to commence new design, planning and procurement processes for an alternative option.

46. If it were not possible to use the Park, the Council has identified two potential alternative sites for the new Portobello High School:

- (a) relocating the School to a new location on the former Scottish Power site at Baileyfield in Portobello (the Council does not currently own this site, but it is currently being marketed for sale and the Council submitted a bid on 22 January 2013); and
- (b) rebuilding the School on its existing site, extended to include the area currently occupied by St John's RC Primary School, through a phased build process to avoid the necessity for a decant.

47. These are considered to be the best fall-back options, consistent with the feedback received from the school communities, although there was no clear consensus favouring one over the other.

48. Each fall-back option has advantages and disadvantages compared to the other. Looked at purely as a site for a new secondary school, a phased build on the existing site would be the better fall-back option in the long term – it has the better location in the catchment area and better access than Baileyfield. It is also a larger site, which would allow greater flexibility in both design and site configuration.

49. However, Baileyfield has advantages over a phased re-build including: avoiding the disruption of an on-site build; being quicker to deliver; being marginally cheaper; and, importantly, not requiring St John's RC Primary School to be relocated.

50. Both options are nevertheless significantly inferior to the Park. They would take far longer to deliver and be considerably more expensive, and would very much represent a last resort.

51. The development site at Baileyfield extends to approximately three hectares, including an area being held by the seller under a 99 year lease which commenced on 4 June 2008, the interest in which is included in the sale. This area is currently subject to a short-term sub-licence, which would have to be terminated if the site was used for the new school, and is required for access to transformers situated to the rear of the Scottish Power substation fronting onto Portobello High Street. Scottish Power also has a servitude right over the area for underground cables. The substation is owned by Scottish Power Energy Networks, who would have to approve any use of this area in connection with a new school.

52. Initial investigations have identified that there are potentially significant remediation issues associated with the site. There is evidence of potential contamination sources including a disused fuel pump island, a disused filling station and disused workshops. Historical maps

indicate that until the early 1930s the site was occupied by a large clay pit, which was later infilled; this could have a significant impact on building foundations.

53. In order to fully understand the risks and potentially significant costs associated with any contamination and geotechnical conditions on the site, the Council would have to undertake a full investigation if selected as preferred bidder. This would provide recommendations regarding any works and/or measures required to rectify any issues found.

54. The Council submitted a final bid for the Baileyfield site on the closing date of 22 January 2013, subject to the following conditions:

- (a) Deduction from the purchase price of any site remediation costs identified as necessary from the detailed site survey, to be commissioned if the Council is successful.
- (b) Scottish Power confirming their consent to the area to the north of the site, which is under a 99 year lease, being used as part of the external space for a school.
- (c) The site being provided with vacant possession.

55. The outcome of the Council's bid has not yet been announced.

56. If the Bill is not enacted, and the Council is successful in acquiring the Baileyfield site, a statutory consultation process would be required before the Council could use Baileyfield as the preferred alternative option for a new Portobello High School.

57. The other alternative would be a phased build on the existing site, but extended to include the area currently occupied by St John's RC Primary School. This would be dependent on St John's RC Primary School relocating to another site, which would also require a statutory consultation process. This alternative would therefore depend on the outcome of that process.

58. Relocating to the Baileyfield site would cost an estimated £5.8 million more than siting the new school at the Park. The estimated opening date for a new school at Baileyfield would be August 2017, as opposed to an estimated January 2016 for the Park.

59. The rebuild of the school on the existing site using a phased build would cost an estimated £6.9 million more than siting the new school at the Park. The estimated opening date for a new school (including the time required for the statutory consultation process about St John's, as noted above) under this option would be August 2019.

60. The minimum size of site for any new (or replacement) school is prescribed in the School Premises (General Requirements and Standards) (Scotland) Regulations 1967. For a new Portobello High School with a capacity of 1,400 pupils the total site size should be 6.8 hectares, comprising two elements for which the appropriate sizes are defined separately:

- (a) A main school site, on which the actual school buildings are located, of not less than 2.8 hectares; and

- (b) An area for playing fields of not less than 4.0 hectares¹.

61. In light of the difficulties of finding a site in the local area which would extend to a full 6.8 hectares, when options for a new location were first considered in 2006 a target site size of 4.5 hectares was set. Although the Park site extends to approximately 6.4 hectares in total, the area which would be occupied by the school buildings and car park, the two all weather pitches (replacing the existing grass pitch area) and the area of retained open space would total 4.81 hectares. In comparison, the existing school site (combined with the existing St John's RC Primary School site) is approximately 3.46 hectares. The Baileyfield site is approximately 3 hectares.

Conclusion on alternative sites

62. The Council believes the Park is by far the best location in and around the school catchment area for a new Portobello High School; there is no other site in as good a location with as much space to provide the same level of facilities and such good access. This option would allow the Council to provide the best possible school with all of the required facilities, and would also be considerably cheaper and quicker to deliver than the other available options.

THE COUNCIL'S PROPOSALS FOR THE PARK IF THE BILL IS ENACTED

63. The Council acknowledges that, if the Bill is enacted and the Council proceeds with the proposal to use the Park as the site for the new school, there would be a reduction of open space at the Park. However, the Council is proposing measures to compensate for this, as follows:

- The school building, playground and car park would cover about two-fifths of the Park site (2.64 hectares). The Council proposes to create a new area of open space of 2.16 hectares on the site of the existing combined Portobello High School and St John's RC Primary School site (after making provision for increasing the site allocated for St John's RC Primary School from 0.67 hectares to 1.3 hectares). This site is located within a 12 minute walk from the Park.
- The two new all weather pitches would replace the Park's existing grass football pitch area and use about a quarter of the overall Park area (1.57 hectares). Their playing surfaces and integral lighting would make them significantly more useful than the existing grass area, as they could be available in the evenings and weekends all year round.
- About a quarter of the Park (1.62 hectares) would remain as woodland, public pathways or cycle paths. Most of the mature trees in the Park would stay and planting in many areas would either remain unchanged or be improved.

¹ The Regulations do not require that playing fields / pitches be adjacent to the school building, but simply that they are available to the school – i.e. they can be located off-site. For a new Portobello High School, regardless of the option used, the minimum playing fields requirement would be met by including such off-site provision. Many schools in Edinburgh comply with the playing fields requirement through the extensive alternative provision which is available to schools throughout the city, such as Cavalry Park, Meggetland and Kirkbrae). It should also be noted that the Regulations pre-date the introduction of synthetic playing surfaces. Full-sized all weather pitches offer significantly greater functionality and availability than grass areas of greater size.

- The old sports pavilion on the east side of the Park by Hope Lane would be removed to open up an area of land (approximately 0.6 hectares) between Hope Lane and Milton Road that would be landscaped to create a pleasant public space for play and recreation, with better paths and entrances so that it could be more easily accessed and used.

64. The Council's proposals to use the Park as the site of the new Portobello High School also include the following improvement measures:

- improving entrances to the Park and creating better paths to give everyone better access, and especially people with pushchairs, disabilities and mobility issues;
- improving public paths down the east and west edges of Portobello Golf Course and introducing a cycle path along the eastern edge of the Golf Course and Park to fill a missing link in the Sustrans Cycle network across Edinburgh;
- keeping mature boundary trees wherever possible around the perimeter, to help preserve the look and feel of the setting for the Park's neighbours;
- ensuring that there would be no charges for people who live in the Portobello area who want to book and use the pitches when the school is not using them; and
- investing £150,000 in improving outdoor play facilities in nearby Magdalene Glen.

65. The Council believes its proposals would not only meet the needs of people who already use the Park, but would also have a very positive effect in terms of community enjoyment of the area. The Park is not well used; an audit of the usage of the Park, carried out by Ironside Farrar in 2009, demonstrated that the Park was mainly used for dog walking, with very little wider recreational use. The full details can be found in a report to Council dated 11 March 2010, available at <http://www.edinburgh.gov.uk/download/meetings/id/11484/>. The Council believes the proposed improved facilities, which would be available in all weathers and all year round, would encourage many more people to come to the Park for leisure and recreation.

CONSULTATION

66. The Council consulted between 3 December 2012 and 31 January 2013 on the proposal to allow the use of the Park as the site for a new Portobello High School. This exercise was carried out to inform the Council's decision regarding the promotion of private legislation and was in addition to earlier consultation exercises in relation to the Park, such as the pre-planning consultation process that ran from May to August 2010 and the October 2011 consultation on the appropriation of open space under the Town and Country Planning (Scotland) Act 1959.

67. The consultation process was extensive, and involved the distribution of a comprehensive information leaflet to approximately 14,500 households in the local area; a number of exhibition and roadshow events; attendance at two local community council meetings and two public meetings both of which were attended by more than 300 people. Full details of the consultation process and its outcomes are included in the report to the Council meeting of 14 March 2013 (available on the Council's website at <http://www.edinburgh.gov.uk/download/meetings/id/38495/>).

68. The consultation included roadshow events, providing opportunities for people to find out more about the proposals before submitting their views. By going out to local community venues, people who might not otherwise respond to a formal consultation were engaged in the process.

69. The consultation period allowed approximately three weeks before and three weeks after the holiday period, to ensure an adequate opportunity for interested parties to participate in the process and to share their views.

70. Information on, and engagement regarding, the proposals and the consultation process was undertaken in a number of different ways.

Information Leaflet

71. A comprehensive information leaflet was produced (a copy of which is available on the Council's website at www.edinburgh.gov.uk/downloads/file/9185/) which explained:

- What a Private Bill is and why it is required;
- That progressing with a Private Bill would not affect other parks or open spaces;
- The plans for the new Portobello High School on Portobello Park;
- How much space the school would actually take up on Portobello Park;
- The Council's plans to compensate for the loss of open space, including the planned improvements to Portobello Park and the provision of new open space;
- What the other options are for a new Portobello High School; and
- Where further information could be accessed and how to respond.

72. While responses were welcomed from anyone in the City of Edinburgh area, the Council recognised that local residents would be most directly affected and wished to ensure that they were made aware directly of the proposals and the consultation process. The information leaflet was therefore distributed to those in the wider Portobello area (defined as bounded by the sea to the North, the railway line to the South, Holyrood Park to the West and the city boundary/bypass to the East) in early December 2012. This encompassed approximately 14,500 households. To ensure maximum coverage, a second leaflet drop was undertaken in early January 2013.

Posters

73. Posters were put up in a variety of local venues promoting the consultation process. In addition to posters promoting individual roadshow events, a poster to promote the two public meetings was distributed widely in the local area in early January 2013.

Roadshows and Exhibitions

74. Both Portobello Library and Piershill Library, being the two local libraries, also held information about the Council proposals during the consultation period, and copies of the printed questionnaire could also be picked up and returned there. Information was also made available in Central Library on George IV Bridge, Edinburgh.

75. A series of 26 drop-in events took place in various local venues during December 2012 and January 2013, to give members of the public the opportunity to come along and speak to someone about the project and the Council's proposals. The venues included libraries, community centres, schools and leisure facilities, as well as two visits to the Park on 17 and 25 January 2013.

Notices in Newspapers

76. Adverts were placed in the Edinburgh Evening News to promote the proposals and the consultation process to the wider Edinburgh public. The first advert, on 7 December 2012, promoted the consultation process and gave information about where and how to find out more. The second advert, on 4 January 2013, promoted the two public meetings. A number of articles and letters relating to the consultation process were published in the Edinburgh Evening News and in other local media during the consultation period including Radio Forth; STV online; BBC online; the Edinburgh Reporter; and Portobello Reporter. This coverage, in itself, was of assistance in highlighting the consultation process.

Council Website

77. Detailed information was posted on the Council website. In addition to providing information regarding the proposed Private Bill, it also provided information regarding other relevant matters such as common good status, the alternative options for a new school and the Court of Session judgements to allow people to find out more and to help them provide an informed response.

Social Media

78. Regular tweets were issued through the Council Twitter account (which has more than 17,500 followers) to raise awareness of the consultation at key points during the process.

Community Council Meetings

79. Representatives from the project team attended the Northfield/Willowbrae Community Council meeting on 18 December 2012 and the Portobello Community Council meeting on 7 January 2013. Following a presentation on the Council proposals and the consultation process, the project team answered questions from members of the Community Councils and the general public.

Public Meetings

80. Two public meetings were held; the first in Portobello Town Hall on 9 January 2013 and the second at Meadowbank Sports Centre on 17 January 2013. Both meetings were independently chaired by Colin Mackay, the political editor of Radio Forth and Radio Clyde, and each was attended by more than 300 members of the public.

81. Following a presentation from the Council, representatives from the two local community groups in favour of (Portobello For A New School ("PFANS")) and against (Portobello Park Action Group ("PPAG")) the Council proposals each gave a presentation. This gave those on both sides of the debate the opportunity to set out their views publicly, and to explain the rationale behind these views. Those in attendance then had the opportunity to ask questions of

the Council, PFANS and PPAG. A record of both meetings, which was approved by the independent chair, is appended to the Council report mentioned at paragraph 67 above.

Means of Responding

82. There were a number of ways in which people could respond to the consultation:
- A printed questionnaire was produced, which attendees could fill in at any of the roadshows or pick up and return at the local libraries and schools;
 - An online version of the questionnaire was provided on the Council website;
 - A dedicated address was established, to which people could post responses (whether by letter or using the printed questionnaire); and
 - A dedicated email address was established, to which responses could be submitted electronically.

83. Respondents were asked to provide their name, address and postcode, in order to confirm which survey responses came from the local community, which from elsewhere in the City of Edinburgh area and which from outside the area, and to ensure that only one response per individual was recorded. This was made clear in all related public information, together with an assurance that no personal details would be published.

84. In the printed questionnaire and on the online survey respondents were asked three questions:
- Did they support the Council's proposals to change the use of Portobello Park from a public park to being the location for a new Portobello High School? (Yes/No response)
 - Did they have any reasons for their view that they would wish the Council to consider?
 - What would they like to see in the new area of open space if it was created?

Responses Received

85. During the consultation period 12,018 responses were received: 4,848 via the online survey, 2,752 by post, 81 by email, 4,167 at the local collection points and 170 at the roadshows/exhibitions.

86. Of the 12,018 responses received, a total of 2,060 were removed from consideration for one of the following reasons:
- (a) The name, address or postcode details were incomplete (891 responses);
 - (b) Duplicate responses (320 responses).
 - (c) The respondent did not live in the City of Edinburgh area, per the postcode given in the response (849 responses).

87. Of the 9,958 valid responses, 6,945 supported the proposals, 2,977 did not support the proposals and 36 expressed no opinion. Therefore, of the 9,922 valid responses received which expressed an opinion, 70% supported the Council's proposals.

88. Further analysis was undertaken to show from which areas of the City of Edinburgh area the valid responses were received and, in particular, to establish the opinion of the local respondents. 6,465 valid responses expressing an opinion (65.2% of the total) were received from the local area (being the wider Portobello area to which the information leaflets were distributed directly as explained at paragraph 72 above). Of these, 76.1% supported the Council's proposals.

89. Further details of the responses received are available in the Council report referred to at paragraph 67 above.

External Data Validation

90. PricewaterhouseCoopers ("PwC") were commissioned to undertake a level of independent validation of the data, including checking all online responses and a 10% sample of other responses to ensure that they had been properly recorded by the Council, and checking that all the excluded responses were properly excluded.

91. PwC's report is appended to the Council report referred to at paragraph 67 above. PwC identified two responses that had been incorrectly excluded as duplicates, which were reinstated into the Council's final analysis.

Comments Received and Opinions Expressed

92. The printed questionnaire and online survey asked respondents if they had any reasons for their view that they would wish the Council to consider. While not all individuals chose to respond to this question, many thousands did. The Business Intelligence Team within the Council's Corporate Governance Department was asked to review the detailed responses to identify their key themes in relation to the proposed use of the Park as the site for the new Portobello High School.

93. All comments received (with personal details of the respondents redacted) have been published on the Council website at www.edinburgh.gov.uk/portobelloprivatebill. The main themes arising from the consultation responses (relating to common good land, green space, the placement of a new school in the catchment area and delays in building the new school) are appended to the report to Council referred to at paragraph 67 above, together with the Council's comments thereon.

Use of New Open Space

94. At a meeting of 25 October 2012 the Council approved certain measures to be undertaken in the event that the Park is ultimately used as the site of the new Portobello High School, to compensate for the loss of open space:

(a) The remainder of the existing combined Portobello High School and St John's RC Primary School site (after increasing the St John's RC Primary School site from 0.67 hectares to 1.3 hectares) will be converted to open space.

(b) At times when the proposed school's two all weather pitches were not required for use by the school or otherwise engaged, they would be free to, and could be pre-booked by, residents of the Portobello area.

95. Though these measures do not form part of the Bill, the consultation exercise did seek views from the community regarding the most appropriate use of the proposed new area of open space, and so respondents were asked on the printed questionnaire and the online survey what they would like to see in the new area.

96. The Council's Business Intelligence Team reviewed the responses to this question, and their findings are appended to the report to Council referred to at paragraph 67 above. There was strong support for a number of alternative uses. A large majority favoured the use of the land as a park, green space, social facilities or leisure facilities. A minority favoured previous proposals to sell the land and/or develop housing or shopping facilities. The Council has referred the question of the use of the proposed new area of open space (for which provision of £1m has been identified within the Council's project budget) to the Craigentiny & Duddingston Neighbourhood Partnership for further consideration and consultation with the local community. This reference is limited to considering only uses of the space as parkland or other green space and/or for social and recreational purposes.

97. One of the themes arising from the consultation was a concern that the planned open space at an alternative site would still be at risk of development or sale to a third party in the future. In order to provide further reassurance to the local community, the Council decided at its meeting of 14 March 2013 (per the report mentioned at paragraph 67 above) that the new area of open space, once created, would be designated as a Field in Trust (subject to the approval of the National Playing Fields Association, who operate as 'Fields in Trust'). The Council recently agreed to convey this status and protection on two other areas of local open space, Figgate Park and Portobello Golf Course. Being designated as a Field in Trust safeguards the continued use of such land as outdoor recreational space (per the use(s) to be agreed by the Craigentiny & Duddingston Neighbourhood Partnership as noted above) by way of a legal agreement entered into by the Council, and enables independent oversight of this by the National Playing Fields Association.

Future updates

98. Following the introduction of the Bill, the Council will keep Edinburgh residents updated on the progress of the Bill through a combination of communication updates and reports to Council. The Council also expects the process to continue to receive attention in the local media. Notices confirming the Council's intention to introduce the Bill have been displayed on lampposts surrounding Portobello Park from 26 March 2013, and will remain in place during the objection period. The Council also intends to place an advert in the next issue of the Portobello Reporter, which is expected to be published in early June and which is ordinarily distributed to 12,000 local residents.

This document relates to the City of Edinburgh Council (Portobello Park) Bill (SP Bill 29) as introduced in the Scottish Parliament on 25 April 2013

Conclusion

99. There is very strong support for the Council's proposals to change the status of the Park so as to allow it to be used as the site for a new Portobello High School. Of the valid responses that expressed an opinion, 70% supported the Council's proposals. 76.1% of the valid responses that were received from the local community and that expressed an opinion supported the Council's proposals. Accordingly, the Council resolved at a meeting of 14 March 2013 to promote the present Bill in the Scottish Parliament.

This document relates to the City of Edinburgh Council (Portobello Park) Bill (SP Bill 29) as introduced in the Scottish Parliament on 25 April 2013

CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL

PROMOTER'S MEMORANDUM

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