

CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL

PROMOTER'S COMMENTS ON PROPOSED AMENDMENTS

We are instructed by the City of Edinburgh Council ("the Council") to respond to the list of proposed amendments submitted by members of various groups of objectors in response to the Committee's invitation of 20 May 2014.

As a preliminary matter, the Council notes that while its own proposal to introduce an amendment to the Bill (now superseded by the amendment formally lodged by Alison McInnes MSP on 28 May) was intimated to objectors by way of the Council's letter to the Committee of 31 January 2014, no notice whatsoever of any of the objectors' amendments was given to the Council. Consequently, the Council has had extremely limited opportunity to consider the objectors' proposals. Despite the Committee's Consideration Stage Report at paragraph 46 again inviting positive dialogue between the parties, these amendment proposals were apparently submitted at a very late stage and without even a courtesy email to the Council to advise that they had been submitted.

On a number of occasions during the Consideration Stage evidence sessions, when asked by the Council witnesses regarding any suggested mitigation measures the objectors generally declined to take up this opportunity for constructive engagement, instead stating that they would not propose any mitigation measure short of the withdrawal of the Bill and the abandonment of the related project.

The Council also wishes to note that none of the fourteen requested amendments contain any wording (even in draft form) which might conceivably be added to the draft Bill to give effect to the respective requests. Many of the requested amendments would, if taken forward by a member of the Private Bill Committee, require significant and highly complex drafting in order to be effective. With a few exceptions, the requested amendments concern (to a greater or lesser extent) the design of the proposed new Portobello High School. The Private Bill is of course not a works Bill, and as such neither authorises nor even refers to the construction of a new school building and the associated works. To include amendments relating to any of the re-design suggestions, amendments would of

necessity have to define the proposed project and its various elements, which are not presently authorised by, and so do not appear in, the Bill.

The very late stage at which these amendments have been requested allows little or no opportunity for proper consideration. The Council hopes the Committee will recognise that many of the requests for amendment would, if pursued, inevitably impose very specific and potentially quite significant obligations on the Council, and in particular would potentially add substantial costs and time delay to the project. Consequently, were any members minded to prepare an amendment in respect of any of the objectors' requests, the Council would be grateful for the opportunity to consider and comment on the precise terms of the amendment, and its potential effect on the Council, before the amendment was lodged.

In particular, those requests relating to the design of the project (3, 11, 12 and 14) would require changes to the proposals that have not been assessed for feasibility or cost, have not been consulted on and have not been (and, if included in the Bill, would not be) subject to planning approval. Such an amendment would essentially turn the Bill into a works Bill, but without triggering the enhanced consultation requirements that must be followed prior to the introduction of works Bills in order to establish the potential impact of the works on, among other things, environmental matters and the amenity of the surrounding area. It would therefore be inappropriate to include such proposals in the Bill, and it is inappropriate for the objectors to have introduced such proposals at this extremely late stage of the proceedings.

Before turning to each of the individual amendment requests, the Council would finally note that, despite the Committee reiterating throughout the various evidence sessions that its role was not to deal with matters which were properly the responsibility of the Planning Authority, the objectors once again appear determined to comment upon aspects of the school project which are within the purview of, and have been fully considered and covered as part of, the planning process.

Individual requests for amendment

Turning to the individual amendment requests, the Council would make the following comments.

1. The first proposal was included in Jennifer Peters' submission to the Committee of 6 May 2014
http://www.scottish.parliament.uk/S4_City_of_Edinburgh_Council_Portobello_Park_Bill_Committee/EPP_Grp2_re_mitigation.pdf), and dealt with in the Council's response of 15 May
http://www.scottish.parliament.uk/S4_City_of_Edinburgh_Council_Portobello_Park_Bill_Committee/EPP_Council_to_Conv_re_grp2_comments_on_Mitigation.pdf

2. The road safety audit question was dealt with extensively in oral and written evidence, and the Council has made clear that an appropriate road safety audit will be instructed at the appropriate stage of the project. In any event, the suggestion is too lacking in specification for any suitable amendment to be framed. "Road safety audit" is not a term defined in legislation, and there are many types and levels of road safety audit. It is not clear whether "confirmation" would mean the instruction or conclusion of an audit, nor is it clear who it is that would have to be satisfied by the audit. "Commencement" and "construction" would also have to be defined, by reference to a project which does not currently feature in the Bill. In any event, the operative provision of the Bill cannot be subject to a road safety audit as the operative provision empowers the Council to appropriate the Park. The road safety audit will not be instructed until the contractor has been appointed and the detailed design stage can be progressed, and neither event will occur until and unless the Park can be appropriated.

3. The premise of the amendment is flawed – the land required for the car park would be land "required for educational purposes", and would be appropriated as such. Furthermore, the Bill cannot be "amended to reflect that any car parking spaces are provided below ground" as it currently contains no reference to a car park and so there is no provision to amend. The Bill would have to be amended to define the entire project in order to then specify that a particular part of the project should take a particular form.

No suggestion of constructing the car park underground has been made by any objector at any stage of the Bill process and it is entirely inappropriate to suggest such significant design changes at this late stage, when those changes have not been and cannot be assessed nor consulted on for feasibility, cost or environmental

impact. From a very preliminary consideration, however, it is likely that an underground car park would require waterproof tanking and structural retention of the site (the Committee has heard evidence on the flood protection measures that have been agreed for the current project, which would almost certainly have to be revisited in order to establish whether it would be feasible to build underground). The significant redesign which would be required would result in considerable additional cost and also considerable delay to the delivery of the new school. There would also likely be a more significant impact on tree roots as a result of underground works than the existing project would entail. The ramp that would be required may take up more footprint than the current access road, due to the need to achieve suitable gradients down to the lower level, and so any benefit in terms of freeing up more of the site may actually be marginal in any event.

Those issues cannot be properly assessed and considered in the short time available, however, and if a requirement to construct an underground car park were to be included in the Bill that would remove any requirement for planning permission, and so no assessment or consultation of the impacts or any potential mitigation measures could or would take place.

4. The Council explained in its letter of 31 January ([here](#)) at section 5, why it is not logistically possible to amend the Bill so as to exclude part of the Park. In any event, such an amendment would require careful consideration of how the existing boundaries of the area to which the Bill applies should be changed, and careful redrafting of the co-ordinates set out in the Bill, which is not possible within the time available. In any event, given the design, (and, as such, use) of the areas in question is already specified in the approved planning permission, and the Council has given a clear commitment to secure Fields in Trust protection for the area in the south east corner, it is difficult to understand the actual benefit which would be achieved from such an amendment.
5. This is essentially identical to amendment request 4.
6. This has never previously been raised by any objector, and relates to no ground of any objection. It would in any event be inappropriate to make legislative provision for such a matter, and extremely difficult to define given all the intervening steps that

would have to be completed (i.e. the construction, completion and operation of the school according to specified criteria) before an obligation could even arise.

7. This is also not an appropriate matter for legislation, for the same reasons. The Council has also been very clear on its commitment in this regard.
8. As above, and in any event the Council already confirmed that this would be the case in its response of 16 May 2014 ([here](#)) to the 47 questions submitted by the Group 1 objectors following the evidence session of 7 May, in relation to question 4.
9. The Council considered whether it would be possible to include such an amendment in the Bill, in line with the recommendation in the Committee's preliminary stage report, and confirmed in its letter of 31 January 2014 (at section 4) the reasons why it would not be. That reasoning has not changed. In addition to that reasoning, any obligation to construct an area of open space on the existing school site would be subject to a significant number of conditions first being met before any such obligation could arise, including the construction of a new high school on the park, the demolition of the old high school, the provision of a new or expanded St Johns RC Primary School (which would itself be conditional on the outcome of the consultation to be carried out in relation to possible relocation of the school) and if necessary the demolition of the old primary school. Each of those conditions would have to be set out in the Bill in some detail in order for there to be certainty over the circumstances in which, and the point in time at which, any obligation on the Council would arise.
10. This is a planning matter. As the Committee has heard in oral and written evidence, the Council's Development Management Sub-Committee has already considered the matter and concluded that a condition requiring the floodlights to be turned off at 10pm will be sufficient to mitigate any adverse impact on residential amenity. In any event, the same issues arise about an amendment having to first set out the circumstances in which floodlights would be operating (e.g. by reference to the construction/operation of the school, etc.) before such an obligation could be included in the Bill.
11. This request is substantively identical to amendment request 3.

12. This raises the same issues as amendment request 3. The car park has been designed to provide the number of spaces assessed as being necessary for the school to function. Any reduction in size would have potentially significant impacts on parking space in the surrounding streets, and so this amendment would presumably be opposed by those objectors who expressed concern about just such an outcome.

13. This request is substantively identical to amendment request 9.

14. This request raises the same issues relating to design changes as amendment request 3. Furthermore, unlike the modern 3G pitches proposed for the new school, grass pitches could not be used throughout the year or in all weathers, and could not sustain the flexibility and level of use that both the school and the community would require. Leaving the pitches as grass would therefore require pupils to continue to be bussed off-site for PE on those occasions when the grass pitches could not be used, a scenario that the Council's proposal is expressly designed to avoid. While the proposal lacks sufficient specification to be sure, it presumably also envisages no floodlights being put in place, which would mean that the pitches could not be used outside daylight hours.

We trust that the above comments will be sufficient to persuade members that it would not be necessary, appropriate, or in most cases feasible to pursue the amendments requested by the objectors. However, please do not hesitate to contact us (or the Council directly) if further comment or input would be helpful in respect of these requests.

Brodies LLP on behalf of the Promoter

6 June 2014