

CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL

EMAIL ON BEHALF OF THE PROMOTER TO PATRICK CAMPBELL & CO (ACTING ON BEHALF OF PORTOBELLO PARK ACTION GROUP) REGARDING OPINION OF COUNSEL DATED 26 MAY 2014

Thank you for your email forwarding Mr Martin's note.

We were not aware that you acted on behalf of Portobello Park Action Group in respect of the Bill proceedings, other than to the extent of having instructed Mr Martin to produce his earlier opinion. You had not previously intimated any involvement to us. We will nevertheless address any further correspondence with PPAG to you. Please let us know if you also act for any of the other objectors.

In relation to Mr Martin's note, we see that this is dated Monday of last week. We would therefore repeat the objection we made in respect of the delay in providing his earlier note. Given the tight timescales to which the Bill Committee are working (the deadline for suggesting amendments to Bill Committee members was 4.30pm yesterday), such delays are not conducive to meaningful engagement.

In any event, and perhaps as a result of the delay, Mr Martin's note has been overtaken by developments. Mr Martin's April opinion, our letter of 30 April and this most recent note all concerned the draft proposed amendment set out in the City of Edinburgh Council's letter to the Committee convener of 31 January 2014, which sought to address objectors' concerns about future use of Portobello Park following appropriation.

We are not sure whether you and/or Mr Martin were aware, but the minutes of the Committee's meeting of 7 May:

http://www.scottish.parliament.uk/S4_City_of_Edinburgh_Council_Portobello_Park_Bill_Committee/EPP_Minutes_7_May_14.pdf recorded that "an independent drafter had been invited to consider the promoter's proposed draft amendment and, if the view is that the draft does not achieve its proposed aim, to provide an alternative draft amendment, which would be published, along with any other admissible draft amendments, for comment." Such an alternative amendment was lodged by Alison McInnes MSP on 28 May:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62502.aspx>, which we note post-dates Mr Martin's opinion. If accepted and enacted, that amendment would re-impose restrictions on the land in the event that the Council either did not use it for educational purposes within 10 years of its appropriation, or used it for those purposes and then ceased to do so.

Given that that amendment has been lodged, the Council has refrained from asking any members of the Committee to lodge the amendment proposed in its letter of 31 January.

We would therefore suggest that the disagreement between Mr Martin and the Council/Brodies about the legal status of the land following appropriation (and we continue to disagree on that) is academic in light of an amendment to limit what the Council could in fact do with the land post-appropriation. Throughout this process the objectors' concerns have related to that practical issue, notwithstanding that Mr Martin's recent notes have declined to propose any amendments to impose whatever limitations were thought appropriate (as page 5 of his most recent note re-confirms would have been possible).

We therefore trust that Ms McInnes's proposed amendment will resolve the objectors' concerns about limiting the future use of the land, and that if not the objectors will explain to the Committee why they are not satisfied by that amendment either.

Brodies LLP
4 June 2014