

**CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL  
CONSIDERATION STAGE**

**Additional information provided on behalf of Portobello Park Action  
Group (objection 53)**

The Committee clerks received the following document and link from Portobello Park Action Group on 30 April 2014. The Group has requested that the information be published on the Committee's web page as they believe that a) the communications document provides evidence of the close relationship between PFANS and council officials and b) the link demonstrates the involvement of council officials in preparing the press release contained therein.

[http://www.edinburgh.gov.uk/news/article/847/council\\_to\\_pursue\\_protest\\_group\\_for\\_court\\_costs](http://www.edinburgh.gov.uk/news/article/847/council_to_pursue_protest_group_for_court_costs)

Communication 1

**From:** Tina Sutherland

**Sent:** 05 April 2012 08:52

**To:** Sean Watters

**Subject:** RE: PFANS query - looking for a little background colour  
cheers, thanks.

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**From:** Sean Watters [mailto:XXXXX]

**Sent:** Wed 04/04/2012 17:24

**To:** Tina Sutherland

**Subject:** Re: PFANS query - looking for a little background colour

Tina

PFANS is a pretty informal association of local residents. When the first plans for locating the school on the park were initially floated our self-appointed 'community leaders' tried to strangle it at birth, contacting the press, issuing statements etc. So we set up a group to be a counteracting voice, early in 2006. We were originally Portobello For New Schools to include St John's, also a wave 3 school, but the St John's school board was firmly in the grip of PPAG & XXXX so that got nowhere. So the focus became solely PHS.

The core group's been a bit fluid but has generally been about 20 people, and we have an e-mail distribution list of maybe 180? There are so many overlapping groups though that lots of things get disseminated through personal contacts and our Facebook page.

The first Chair was XXXXX (still involved though XXX children are at XXXX) who also became the PFANS rep on Portobello Community Council. XX took over the role in March 2007 and have been on the PCC ever since, although latterly as rep for Towerbank Parent Council (we decided not to continue a specific PFANS presence). XXXX nominally chair of PFANS, but most decisions are collective ones. XXX been quite to the fore because XXX used to be an architect, and a Council one at that, building schools in East Lothian so XXX had a reasonable grasp of the technical side, processes, planning etc.

There's a bit of a Portobello/Towerbank bias to the group, although Parson's Green Primary has been very active in favour of the High School and we've had contacts in most of the other primary schools (perhaps not Brunstane).

But there's a fair mix of people involved, from a former head boy of PHS (1975?) whose kids are all grown up, to people like XXX with kids at XXXX school who could benefit individually from a new school.

What we do have, is a pretty detailed knowledge of all the twists and turns of this saga, and the contorted arguments and occasional outright fabrications from PPAG .

Sean

Sent from my iPhone

On 4 Apr 2012, at 16:14, "Tina Sutherland" <XXXXXXX> wrote:

Hi

our QC is asking for a little background information about PFANs so wondered if you could help with a few notes on if you are a constituted group or not, how many folk are involved, who the key players are and why (ie Sean Watters, former Chair Towerbank PC; member of PCC etc) just so she has a better picture of where the sterling (sorry to pinch 'their' word!) is coming from.

I really don't need much but unfortunately could do with it by tomorrow morning as Solicitor has asked if she can get it by lunchtime for QC's light reading over the long weekend! Many thanks in anticipation  
Tina

Tina Sutherland, Communications Officer (Children and Families), The City of Edinburgh Council, 1/2 Waverley Court, 4 East Market Street, Edinburgh EH8 8BG. Tel: XXXXXXX

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Communication 2

**From:** sean watters []

**Sent:** 06 April 2012 15:26

**To:** XXXXXXXX

**Cc:** 30 other people plus Chief Executive;

**Subject:** FW: Portobello High School: SPECIAL MEETING  
XXX,

For March please read April. I'm dreadful with dates.

Regards

Sean

---

From: seanwatters

To: XXXXXXXX

CC: 30 people plus Chief Executive, Edinburgh

Subject: Portobello High School: SPECIAL MEETING

Date: Fri, 6 Apr 2012 13:00:11 +0000

Dear XXX,

### **PETITION FOR A SPECIAL MEETING OF PORTOBELLO COMMUNITY COUNCIL**

The constitution adopted by Portobello Community Council 27th June 2011 contains the following provision;

*"The COMMUNITY COUNCIL has a duty to be responsive to the community it represents. Should the COMMUNITY COUNCIL receive a common written request (petition), signed by at least 50 persons resident within the COMMUNITY COUNCIL area to convene a special meeting for a particular matter or matters to be debated, it shall call such a meeting, within 14 days of receipt of such a request and advertise it in the manner prescribed locally for special meetings called by the COMMUNITY COUNCIL."*

Today, Friday 6th March, the attached petition signed by 75 local residents was delivered to XXXXXXXX, co-Secretary of Portobello Community Council. In accordance with the terms of the constitution and the provision that *"special meetings shall require at least 10 days public notice"*, a public meeting should now be called to debate the matters set out in the petition. The meeting should be called for no later than Friday 20th March, and not before Monday 16th March.

Portobello Community Council's constitution also requires the following;

*"All meetings of the COMMUNITY COUNCIL and its committees (subject to 11(h), above) shall be open to members of the public. Proper provision is to be made for the accommodation of members of the public and the opportunity should be afforded at each meeting to permit members of the public to address the COMMUNITY COUNCIL, under the guidance of the Chairperson."*

Given the level of public interest in this matter, the Community Council's usual venue for meetings will not provide proper provision for the public to attend; the Town Hall, Community Centre, or Portobello High School may be sufficient.

If you'd like any assistance in arranging the meeting XXX happy to help.

Regards

Sean

Communication 3

**From:** sean waters [XXXXXX]

**Sent:** 09 April 2012 09:33

**To:** Tina Sutherland

**Subject:** FW: Common Good expert describes park protesters claim as 'nonsense'  
Press release we issued this morning. Hope it gets picked up.

Sean

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From: seanwatters

Subject: Common Good expert describes park protesters claim as 'nonsense'

Date: Mon, 9 Apr 2012 08:21:14 +0000

Issued 09/04/2012

**Common Good expert describes park protesters claim as 'nonsense'**

Andy Wightman, expert on the Common Good in Scotland and well known campaigner for land reform, has criticised claims by a protest group about the implications of a recent court ruling.

The Portobello Park Action Group (PPAG) has lodged an appeal after losing a legal bid to stop a new Portobello High School being built on Common Good land. After almost six years in preparation the project was due to start on site last autumn, but there are fears the legal appeal could delay completion of a new school for years.

Lady Dorrian, in the Inner House of the Court of Session, dismissed PPAG's case because of the 'considerable delay in bringing this petition' but also made clear that the case would have failed on merit.

Since launching their appeal PPAG have made several claims about Lady Dorrian's judgement that have angered local residents in favour of the school. A petition has triggered an emergency meeting of Portobello Community Council, due to be held next week, to demand that PPAG remove misleading claims from their website and ask that they drop their appeal "in the interests of the community in general and the children and young people of Portobello in particular."

Asked to comment on claims about the case, Andy Wightman made several criticisms.

On the suggestion that the ruling could lead to Common Good assets being sold across Scotland, Andy Wightman said "it is nonsense to suggest that the ruling provides a green light for selling off common good assets. Sales will be governed by existing legal precedent and the Portobello case has no bearing on them."

Regarding PPAG's statement that the ruling meant "no-one will be able to challenge decisions to appropriate or alienate common good land in law" Andy Wightman noted that decisions would still be open to challenge, that the ruling had clarified the legal situation regarding the appropriation (change of use) of Common Good land, and that "the Portobello decision has no bearing whatsoever on alienations."

Andy Wightman also said that the appeal "would turn on grounds that are extremely narrow and would be unlikely to succeed."

Sean Watters, Chair of Portobello for a New School (PFANS), commented:

"This confirms what we've been saying; PPAG's statements about the recent court case are simply wrong. They need to stop making these claims.

Most importantly they need to recognise that their appeal has little hope of success. It will only cause more delay and expense, as well as anger within the local community. We desperately need a new High School. It's time to get on and build it."

For more information contact Sean Watters - XXXXXXXX

1) Andy Wightman - Writer, campaigner and researcher on land issues in Scotland. Author of "Common Good Land in Scotland", "Who Owns Scotland" and "The Poor Had No Lawyers".  
<http://www.andywightman.com/index.htm>

2) Lady Dorrian's judgement - <http://www.scotcourts.gov.uk/opinions/2012CSOH38.html>

3) Portobello Park Action Group (PPAG) - <http://www.portygreenkeepers.org.uk/>

4) Portobello For A New School (PFANS) - <http://www.facebook.com/new.phs.park>

**Andy Wightman's comments:**

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From: andy wightman  
Subject: portobello park  
Date: Sun, 8 Apr 2012 12:34:41 +0100  
To: sean watters

Sean,

Thanks for your email.

I found Lady Dorrian's ruling very useful since it clarifies the law on the question of appropriation of common good land. This had been the subject of some confusion in earlier cases. Having said that, I think the law on common good is not fit for purpose and we need a new statutory basis for how it is administered. That, however, is a debate for another day.

The implications of the ruling are clear. Councils can appropriate common good land and use it for another purpose. My best source of advice informs me, however, that in such circumstances, the common good fund should be compensated by way of equivalent land elsewhere or by of a financial transfer between the Council department appropriating the land and the common good fund.

As for PPAG's specific claim on their website, viz

[the consequences of this decision are disastrous, in that it sets a precedent and gives carte blanche to councils to take and use common good assets in any way they wish without any checks and balances being applied.](#)

This is misleading. Yes, Councils have carte blanche to use common good assets in any way they see fit. But that has always been the case since the abolition of Town Councils in 1975. even before then, it was the Town Council that had "carte blanche" to use common good in any way they saw fit. Nothing has changed in this regard. All that has happened is that the law has been clarified.

[If this judgement is allowed to stand, no-one will be able to challenge decisions to appropriate or alienate common good land in law.](#)

The second assertion is more than misleading - it is simply incorrect. If the judgement is allowed to stand then people will still be able to challenge decisions to appropriate (but they won't get far it is true so long as Lady Dorrian's ruling holds). They will also be able to challenge alienations (the removal of land from the control of the Council via sale or lease) - successfully in many cases. The Portobello decision has no bearing whatsoever on alienations.

[This means that councils, especially in these cash-strapped times, could sell off, or appropriate for other uses, common good assets, riding roughshod over local opinion, and get away with it. This is no longer an issue for Portobello but for the whole of Scotland.](#)

Councils can appropriate but as I have argued above, this has always been the case. But it is nonsense to suggest that the ruling provides a green light for selling off common good assets. Sales will be governed by existing legal precedent and the Portobello case has no bearing on them.

FoI Ref 384801 [Sean Watters] Communications 1-8

For what it is worth, I think any further appeal would turn on grounds that are extremely narrow and would be unlikely to succeed.

best wishes

Andy

Andy

Given your experience and knowledge of Common Good issues in Scotland, do you have any comment regarding Lady Dorrian's recent judgement dismissing the Portobello Park Action Group's petition? In particular the claims by the Portobello Park Action Group about the implications of the ruling?

Any thoughts would be appreciated.

Regards

Sean Watters

Communication 4

From: Billy MacIntyre Sent: Tue 10/04/2012 08:22

To: 'sean watters'

Cc: XXXX

Subject: RE: Portobello High School

No problem (XXXX, by copy of this email can you please advise reception; we'll just meet downstairs).

Billy

---

**From:** sean watters [mailto:]  
**Sent:** 10 April 2012 00:09  
**To:** Billy MacIntyre  
**Subject:** RE: Portobello High School

I could do Wednesday after 5. Waverley Court?

Sean

---

Subject: RE: Portobello High School  
Date: Mon, 9 Apr 2012 23:38:11 +0100  
From: Billy MacIntyre  
To: sean watters

Sure, what's your availability like? I'm usually working up to 7ish these days so could meet somewhere after 5 if that would help.

-----Original Message-----

From: sean watters [mailto:]  
Sent: Mon 09/04/2012 22:19  
To: Billy MacIntyre  
Subject: Portobello High School

Billy

Is there any chance of a quick chat at some point this week?

I'd like to explore the possibility of a face saving exit strategy for PPAG. It won't work with the hardcore, but if this emergency Community Council meeting does go ahead they'll try to get their support out in numbers. It'd be a chance to appeal to them directly.

Regards

Sean

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Communication 5

From: Billy MacIntyre Sent: Thu 12/04/2012 17:51

To: 'sean watters'

Cc: XXXXXXXX

Subject: RE : Special PCC Meeting

Let me know the response you get Sean. I believe the necessity for, and legitimacy of, a meeting is now clear and unambiguous so the issue is now timing based on venue availability as you have clearly said? XXXX, any thoughts?

Billy

---

**From:** Sean Watters [mailto:]  
**Sent:** 12 April 2012 17:42  
**To:** Billy MacIntyre  
**Subject:** Fwd: Special PCC Meeting

Billy

I'm beginning to worry I'm getting the run around re. The emergency meeting.

Sean

Sent from my iPhone  
has been scanned by Netintelligence  
<http://www.netintelligence.com/email>

Communication 6

From: Billy MacIntyre Sent: Fri 13/04/2012 10:21

To: 'sean watters'

Cc:

Subject: RE : EMERGENCY MEETING – Portobello

Thanks; it's being dealt with Sean. Your email was, I believe, helpful.

Regards

Billy

---

**From:** Sean Watters [mailto:]

**Sent:** 13 April 2012 08:14

**To:** Billy MacIntyre

**Subject:** Fwd: EMERGENCY MEETING - Portobello

Billy

Just to keep you informed.

Sean

Sent from my iPhone

Begin forwarded message:

**From:** Sean Watters <XXXXXX >

**Date:** 13 April 2012 07:51:16 GMT+01:00

**To:** "[Chief Executive](#)">

**Cc:** "3 E-mail addresses at Edinburgh Council

**Subject:** EMERGENCY MEETING - Portobello

Dear Sue

You may be aware that an emergency meeting of Portobello Community Council has been triggered by local residents concerned about the continued delay of the new High School. There is huge demand for such a meeting within the community and it is vital it takes place.

Under the rules of the Community Council, notice of the meeting should have been given last Tuesday at the latest. It is Friday and yet we appear no closer to having a venue, date or time.

I am concerned that the Council is not doing enough to help and support the Community Council in what are challenging circumstances. Officers should be actively helping to identify what options are available and helping the Community Council identify a venue and time available within the next week and a half.

The only venues I can think of large enough for the numbers likely to attend would be Portobello High School itself and the Town Hall. I understand the Town Hall is all but fully booked, but may have a slot towards the end of next week.

This may not meet the requirement of the 10 day notice period but in light of their less than accurate advice in the first instance, overlooking our Standing Orders entirely, perhaps Legal Services would be willing to review their opinion of the matter and give fresh advice. In particular they may want to consider whether, given the considerable publicity that a meeting had been triggered, whether the

full 10 days is strictly necessary. Given the practical challenges I'm sure all parties are willing to be flexible.

It is clearly not easy to arrange such a large meeting at short notice but the matter is urgent.

I look forward to a prompt response from Officers in helping the Community Council resolve this matter TODAY.

Kind regards

Sean Watters

Sent from my iPhone

Communication 7

From: Billy MacIntyre Sent: Fri 13/04/2012 12:36

To: 'sean watters'

Cc:

Subject: RE : Special PCC Meeting

Thanks Sean, this is outrageous....I have passed on to those in the Council who are dealing with this.

Billy

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**From:** Sean Watters [mailto:]

**Sent:** 13 April 2012 12:27

**To:** XXX

**Cc:** 5 people

**Subject:** Re: Special PCC Meeting

XXXX

You were given leave to hold the special meeting AS SOON AS POSSIBLE after April 20th.

"given leave by Legal Services to hold the iSpecial Meeting as soon as possible after April 20th".

As soon as possible after the 20th is the 22nd. Please unbook the Community Centre and book the Town hall.

Sean

Sent from my iPhone

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This email has been scanned by Netintelligence

<http://www.netintelligence.com/email>

Communication 8

**From:** Jim Hunter

**Sent:** 13 April 2012 21 :58

**To:** XXXX

**Subject:** FW: Re Emergency Meeting - Portobello

XXX

Forwarding this to you to confirm that we have responded today as requested.

Kind regards

Jim Hunter | East Neighbourhood Manager | Tel: Services for Communities | City of  
Edinburgh Council | East Neighbourhood Office, 86 Niddrie Mains Road, EDINBURGH, EH16 4DT

**From:** Jim Hunter

**Sent:** Fri 13/04/2012 21 :45

**To:** sean watters

**Subject:** Re Emergency Meeting - Portobello

Sean

I refer to your email to the Chief Executive this morning concerning additional legal advice and assistance with the Portobello Community Council holding a special meeting. As indicated in my discussions with you today and my phone call this evening I have sought that additional advice (detailed below) and also confirmed that the Portobello Town Hall is available should the PCC wish the meeting to go ahead. This is clearly not a straightforward matter and the advice below does acknowledge that the current constitution and standing orders create some conflict. However, I trust this meets your needs and I will be available on Monday should you wish to discuss further.

Model Constitution v Model Standing Orders

The Model Constitution and the Model Standing Orders do not fully square with each other. Legal Services, having now reviewed the Model Standing Orders, advise that it is clear that where a petition is lodged, a special meeting must be held within 14 days of the date of receipt. In this case, the petition was received on 6 03/05/2012

April. Therefore, the last date for holding a special meeting is 20 April. The Model Constitution requires at least 10 days notice if the special meeting is called by the PCC Chairman.

Accordingly, the Chairman, if s/he were to call the special meeting, would require to give at least 10 days' notice. If the meeting is to be held on the 20 April (i.e. within the 14-day limit), this notice requirement will not be complied with. The alternative is to breach the requirement to hold the special meeting within the 14-day period. In either event, there is a risk that the special will not be properly called. (PPAG, of course, may voice concerns over a lack of notice in this regard.)

The PCC is not helped by the Model Constitution or the Model Standing Orders, neither of which contains any provisions allowing changes to time limits either with discretion or because of urgency. Further, the documents do not cater for extensions in the event of public holidays (in this case the petition was received on Good Friday (6 April), and could not be addressed until Tuesday 10 April - the latest day by which notice should have been served).

Restrictions on debate

Further advice is for us (the Council) to assist in finding (1) a location for the debate (note: as discussed previously with yourself the Portobello Town Hall is available on 22 April), and (2) an independent chair to ensure that the debate runs smoothly (note: assumes there is someone willing to do this), and keeps to the point (the alleged factual misrepresentations in PPAG material). It is acknowledged that the debate is likely to stretch beyond the proposed subject of debate, which would risk straying into territory that is *sub iudice*. Accordingly this will require a very strong and determined chair. It is further advised that the debate does not stray into the rights and wrongs of the appropriation of common good land (the likely grounds of appeal to the Court of Session). The PCC must take full account of this because straying into additional matters connected to the appeal might well be deemed to be contempt of court. It is realised that this restriction will make the debate rather dry (and possibly frustrating for some attendees). The rules of the debate should be made very clear from the outset by the PCC.

It is further advised that the PCC should refrain from requesting any party to alter/delete material from any website over which the PCC has no control, and should not request the PPAG withdraw its appeal to the Court of Session. The CC can note views on these issues.

Council involvement

Also, given the Council's involvement in the appeal to the Court of Session, it is advised that Council officers should not attend the special meeting in an official capacity. The PCC should accept that this is a reasonable stance in the circumstances.

Jim Hunter | East Neighbourhood Manager | Tel: | Services for Communities | City of  
Edinburgh Council | East Neighbourhood Office, 86 Niddrie Mains Road, EDINBURGH, EH16 4DT

From: Sean Watters [mailto: ]

Sent: 13 April 2012 07:51

To: Chief Executive

Cc: 3 persons with Edinburgh Council E-mail addresses

Subject: EMERGENCY MEETING - Portobello

Dear Sue

You may be aware that an emergency meeting of Portobello Community Council has been triggered by local residents concerned about the continued delay of the new High School. There is huge demand for such a meeting within the community and it is vital it takes place.

Under the rules of the Community Council, notice of the meeting should have been given last Tuesday at the 03/05/2012

latest. It is Friday and yet we appear no closer to having a venue, date or time.

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It is clearly not easy to arrange such a large meeting at short notice but the matter is urgent.

I look forward to a prompt response from Officers in helping the Community Council resolve this matter TODAY.

Kind regards

Sean Watters

Sent from my iPhone

03/05/2012

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*Please note there are no relevant communications which involved the Council's Director of Corporate Governance, Mr Alastair Maclean*