We write in response to your letter of 13 November seeking further clarification on the Fields in Trust status which has been accorded to certain of the Council's parks, including the present Portobello Golf Course, and which is proposed to confer on the park to be constructed on part of the existing Portobello High School / St John's RC Primary School site should the Bill be enacted and the new Portobello High School be constructed on Portobello Park.

As part of the many regional and national events organised to commemorate the Queen’s Diamond Jubilee in 2012, local authorities, amongst others, were given the opportunity of nominating parks, playing fields, nature reserves and open spaces for dedication by the Fields in Trust (FiT) organisation as Queen Elizabeth Fields. Conferring such a status on a park is intended to ensure its continued use and enjoyment as parkland/open space/green space in perpetuity. This is achieved by means of a legally binding agreement entered into between the landowner and the National Playing Fields Association/Fields in Trust.

The National Playing Fields Association (Operating as Fields in Trust) is incorporated by Royal Charter, and is a charitable institution founded in 1925 by King George V. More information from the Association can be found here [http://fieldsintrust.org/Default.aspx](http://fieldsintrust.org/Default.aspx)

The purpose of this scheme is to ensure that people have access to free, local outdoor space for sport, play and recreation through legal protection and improvement of playing fields and open spaces. The Queen Elizabeth II Fields Challenge was an initiative launched by FiT to mark the jubilee with a target of securing protection for additional sites, over and above the 9000 acres it already protects in the United Kingdom. The contractual protection afforded by FiT status exists apart from the planning system and other statutory protections, and would subsist notwithstanding any subsequent changes to the law (for example, any changes to legislation applying to inalienable common good land). Whereas ownership and management of a nominated site remains with the title holder (in this case, the local authority) it cannot be sold, built on or otherwise developed without the consent of the National Playing Fields Association.

A number of sites within the Council area were proposed for nomination in the initiative in 2011, which would be verified by FiT and then put to public vote for eventual dedication. Ultimately the City of Edinburgh Council was named Landowner of the Year at the inaugural Fields in Trust Awards 2012 in recognition of its having nominated more sites than any other UK landowner. For the avoidance of doubt, Portobello Park (i.e. the area to which the Bill applies) was not among those sites and does not have Fields in Trust status.

Legal agreements were signed with the National Playing Fields Association (operating as Fields in Trust) narrating the terms of the protection accorded to Portobello Golf Course and certain other sites. A copy of the relevant agreement is attached. This includes a prohibition on the use of the golf course and the other sites as anything other than public parks, playing fields or open space. It protects the sites from being sold or leased (permitting, of course,
normal operational letting of pitches, etc.) and prohibits the construction of anything unconnected with their use as parks or recreation grounds. The consent of the National Playing Fields Association would be required for any alteration of the agreement or, indeed, any change to or removal of the FiT status of any of the relevant sites.

Should the Bill be enacted and the new school be built on Portobello Park, the Council has resolved that once the existing Portobello High School was demolished and the new St John's RC Primary School constructed on the site, the remainder of the existing combined school site (about 2.16 of the total 3.46 hectares) would be converted to open space.

One of the themes arising from the consultation on the proposed public bill was a concern from those who opposed the proposal that the planned open space at an alternative site would be at risk of Council development or sale to a private developer in the future. In order to provide further reassurance to the local community on this issue, the Council resolved that, on completion, the Council would approach Fields in Trust to agree that the new area of open space be designated as a Field in Trust.

The Council has not currently proposed to approach Fields in Trust to seek similar protection for the area of open space that would remain at Portobello Park following the construction of a new school. However, if the Committee was minded to make any recommendation of the Bill's general principles conditional on such a step, that could be put to the full Council for consideration.

Yours faithfully

Gillian Tee
Director, Children and Families
20 November 2013
MINUTE OF AGREEMENT

between

THE CITY OF EDINBURGH COUNCIL, constituted under the provisions of the Local Government Etc. (Scotland) Act 1994 and having its main office at City Chambers, High Street, Edinburgh (who and whose successors are hereinafter referred to as "the Council")

and

NATIONAL PLAYING FIELDS ASSOCIATION (operating as Fields In Trust), incorporated by Royal Charter registered with the Office of the Scottish Charities Regulator as Charity Number SC040357 (and having its Head Office at 15 Crinan Street, London N1 9SQ (who and whose successors are hereinafter referred to as "FIT")

WHEREAS:

The Council is the heritable proprietor of a number of areas of open space in Edinburgh all as described in Part 1 of the Schedule annexed and signed as relative hereto ("the Subjects") and each of which is delineated in red on the plans contained within Part 3 of the schedule ("the Schedule") annexed and signed as relative hereto, (hereinafter the “Plans”), which Plans are hereby declared all to be demonstrative only and not taxative, and have agreed to nominate the Subjects to FIT to enable FIT to dedicate the said areas in accordance with and for the purpose of FIT’S Queen Elizabeth Fields Challenge only as Queen Elizabeth Fields for the use and enjoyment of the inhabitants of the relevant areas of Edinburgh in perpetuity.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:-

1. The Council grants to FIT a right to designate the Subjects as public parks, playing fields or open space, with development thereon which enhances outdoors use such as changing rooms and pavilions, in perpetuity from the last date of execution of these presents (the “dedication date”), only insofar as the Subjects are available for such designation, subject to and without prejudice to the terms of the existing leases between the Council and its tenants, which leases and the main terms of which leases are listed in Part 4 of the Schedule (the Leases).

2. The Council undertakes from the dedication date not to use the Subjects or permit the Subjects to be used other than as public parks, playing fields or open space, with development thereon which enhances outdoors use such as changing rooms and pavilions, and for the general uses detailed in Part 2 of the Schedule, except with the consent of FIT.

3. Notwithstanding Clause 6, the Council shall not have power to sell, transfer, lease, licence, excamb, or otherwise dispose of or grant any security interest over the whole or any part of the Subjects which detrimentally could affect the use of the Subjects as public parks, playing fields or open space with development thereon which enhances outdoor use, such as changing rooms and pavilions, except with the consent of the FIT (such consent not to be unreasonably withheld or a decision thereon unreasonably delayed), provided, however, that no such consent shall be required for (i) the grant of short term licences, lettings, hire arrangements or the grant of similar such occupancy rights which the Council properly considers compatible with the use of the Subjects, (ii) the grant of occupancy rights to food and drink vendors which the Council properly considers compatible with the use of the Subjects and/or (iii) the grant of such wayleaves, servitudes or other third party rights over the Subjects or part thereof as the Council considers reasonable and appropriate. In the event of the whole or any part of the Subjects being sold, with the prior consent of FIT as aforesaid, the Council shall expend the proceeds of the sale (or an equivalent sum thereto) in (i) improving the remaining part of the Subjects (if any), (ii) acquiring
new or additional recreation ground and/or (iii) for the erection of buildings and conveniences of the character described in Clause 4 below. This Clause 3 is subject also to Clause 4 below.

4. There shall not be erected on the Subjects or any part of them except with the prior written consent of the FIT any buildings or temporary structure other than residences for park-keepers, gardeners, caretakers and others employed on the said playing field and such other buildings or erections as are required for use as pavilions, dressing rooms, shelters, conveniences and others in connection with the use of the Subjects for recreation purposes including, without prejudice to the foregoing generality, the erection of cafeterias and other facilities for the sale of food and drink and playground or sports equipment or similar such installations and/or structures (such foregoing residences and other buildings and erections being hereinafter referred to as “Permitted Structures”). Declaring for the avoidance of doubt that no such consent shall be required from the FIT for (i) the erection of Permitted Structures and (ii) the erection on the Subjects of any statues, sculptures and other monuments or similar structures. Nothing in this Agreement shall restrict the Council’s ability to build or develop, or allow others to do so, any adjacent or neighbouring land belonging to it or under its control, subject to all statutory and other regulatory consents for the same being obtained.

5. The Council, in so far as it is consistent with their duties as a local authority, will have regard to any reasonable advice given by FIT as to the management and running of the Subjects.

6. (i) The Council shall without the need for any prior consent of FIT have full power to let the Subjects for the uses detailed in Part 2 of the Schedule, to fix the rates and charges, to close the Subjects or any part of them at such times as may be proper or necessary for a reasonable number of days in each year, to frame rules and regulations to enable the foregoing purposes to be effected and generally to attend to the management of the Subjects.

(ii) The Council hereby warrants that the Leases are on the terms and conditions set out in Part 4 of the Schedule.

7. All revenue and other monies received by the Council in respect of the Subjects, or an equivalent sum thereto, shall be applied towards the maintenance and improvement of the Subjects, the provision and maintenance of buildings and conveniences on the Subjects, and in payment of all outgoings and liabilities in connection with the Subjects. Surplus income in any year shall be carried to a reserve fund or otherwise dealt with in such manner as the Council shall (having regard to the said purposes for which revenue is to be applied) think proper.

8. The Council shall be bound to use reasonable endeavours to maintain (or procure another does so) the Subjects, and the buildings, walls, fences and conveniences erected on it, in good condition for recreation purposes. The Council shall if requested prepare an annual report as to the state and use of the Subjects and send a copy by 31 December in each year to FIT.

9. The Council undertakes from the dedication date not to grant any real burdens, servitudes or other conditions, which could affect the use of the Subjects as public parks, playing fields or open space with development on site which enhances outdoors use such as changing rooms and pavilions without the consent of FIT;

10. The Council undertakes from the dedication date to attach or erect, as appropriate, and to allow the remaining in place of, a plaque or plaques within the Subjects, to be provided by FIT, reflecting FIT’s interest in the Subjects, and giving recognition of financial support where required by FIT.
11. It shall be competent for the FIT at any time on the request of the Council to waive and discharge the whole or any of the terms, obligations, conditions and others contained in this Agreement.

12. FIT undertakes that it will:-

12.1. not unreasonably withhold or delay consent (where the same is required in terms of the foregoing clauses hereof) to the erection of any buildings or other structures upon the Subjects, except in the case of any buildings which could detrimentally affect the use of the Subjects as public parks, playing fields or open space with development on site which enhances outdoor use, such as changing rooms and pavilions, subject to the Council giving due regard to FIT’s duties to perform its charitable objects.

12.2. notify the Council without unreasonable delay of any concerns or matters of advice to which it requires the Council to have regard.

13. Any powers, duties and functions given to the FITA under the terms of this Agreement shall also be exercisable by the Scottish Committee of the FIT on the FIT’s behalf.

14. Each party to this Agreement shall bear its own legal fees and outlays in respect of this transaction.

15. For the avoidance of doubt, the FIT hereby record their acceptance of and consent to the uses of, and grant of any rights in respect of, the Subjects as at the last date of execution hereof.

16. The FIT shall not be entitled to assign, transfer or otherwise deal with its rights and obligations under this Minute of Agreement, other than to assign them to a successor organisation which replaces or substitutes it and has the same objectives to promote the use of parks as areas of public recreation.
17. In the event of the Council disposing of its interest in all or any part of the Subjects, the Council will bind their successors in title to the Subjects (or the relevant part thereof) to enter into a Minute of Agreement with FIT or their successors in the same terms mutatis mutandis, and containing this undertaking, in the event of the Council disposing of their heritable interest in the Subjects (or the relevant part thereof): IN WITNESS WHEREOF these presents consisting of this and the preceding three pages and the Schedule annexed hereto are executed as follows:-

Subscribed for and on behalf of the said
THE CITY OF EDINBURGH COUNCIL
at on the day of 2012 by

............
.
one of its Proper Officers in the presence of:

Witness ............
Name ............................................ Proper Officer
Address ............
.
........................................
........................................

Subscribed for and on behalf of the said
NATIONAL PLAYING FIELDS ASSOCIATION (Operating as Fields in Trust)
at on the day of 2012 by

...................(signature)

..................( Print Name)

..................( Print Address)
.
one of its Trustees, and
...................(signature)

...................( Print Name)

..................

...................( Print Address)

One of its trustees

in the presence of: ..................(signature) Witness

..................( Print Name)

..................

..................( Print Address)
Schedule

This is the Schedule referred to in the foregoing Minute of Agreement entered into between The City of Edinburgh Council and National Playing Fields Association.

Part 1

1. **Hermitage of Braid**
   
   ALL and WHOLE those subjects known as Hermitage of Braid, Edinburgh being shown delineated in red on Hermitage of Braid Plan.

2. **Blackford Hill**
   
   ALL and WHOLE those subjects known as Blackford Hill, Edinburgh being shown delineated in red on Blackford Hill Plan.

3. **Portobello Golf Course**
   
   ALL and WHOLE those subjects known as Portobello Golf Course, Edinburgh being shown delineated in red on the Portobello Golf Course Plan.

4. **Easter Craiglockhart Hill**
   
   ALL and WHOLE those subjects known as Easter Craiglockhart Hill, Edinburgh being shown delineated in red on the Easter Craiglockhart Hill Plan.
Part 2

1. **Hermitage of Braid**

The subjects outlined in red on the Hermitage of Braid Plan shall be used as a nature reserve for informal recreation and for the enjoyment and study of nature or for any other local objects (subject always that any such use for local objects does not in the reasonable opinion of FIT materially detrimentally affect the informal recreational use of the said subjects).

2. **Blackford Hill**

The subjects outlined in red on the Blackford Hill Plan shall be used as a nature reserve for informal recreation and for the enjoyment and study of nature or for any other local objects (subject always that any such use for local objects does not in the reasonable opinion of FIT materially detrimentally affect the informal recreational use of the said subjects).

3. **Portobello Golf Course**

The subjects outlined in red on the Portobello Golf Course Plan shall be used as a golf course and for other games and (subject to the subjects being primarily used for the purpose of a golf course including, without prejudice to the foregoing generality, use for allotments and other community food growing activities) for any other local objects (subject always that any such use as allotments or for local objects does not in the reasonable opinion of FIT materially detrimentally affect the recreational use of the said subjects).

4. **Easter Craiglockhart Hill**

The subjects outlined in red on the Easter Craiglockhart Hill Plan shall be used as a nature reserve for informal recreation and for the enjoyment and study of nature or for any other local objects (subject always that any such use for local objects does not in the reasonable opinion of FIT materially detrimentally affect the informal recreational use of the said subjects).
PART 3

Plans
PART 4

Leases
## Leases Granted on Proposed Jubilee Parks

<table>
<thead>
<tr>
<th>Park</th>
<th>Details of Lease</th>
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<tbody>
<tr>
<td>1 Easter Drylaw Park</td>
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</tr>
<tr>
<td>2 Ravelston Park</td>
<td>Ravelston Park Pavilion 17 Keith Crescent, EH4 3NH Tenant: Blackhall Nursery</td>
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<tr>
<td></td>
<td>Lease from 01/11/10 – 31/10/13 Rent £500 p.a.</td>
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<tr>
<td>3 Ravelston Woods</td>
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<td>4 Starbank Park</td>
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<td>5 Victoria Park</td>
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<td>6 Figgate Park</td>
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<td>7 Lochend Park</td>
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<td>8 Rosefield Park</td>
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<td>9 Braidburn Valley Park</td>
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<tr>
<td>10 Hermitage of Braid</td>
<td>Warden’s House within Hermitage of Braid Mansion House, 69 (1) Braid Road EH10</td>
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<tr>
<td></td>
<td>6JF Service tenancy Lease 12/06/09 – 01/06/13 Rent £2,520 p.a.</td>
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<tr>
<td></td>
<td>Hermitage of Braid Lodge House 69 (2) Braid Road, EH10 6JF Secure Tenant</td>
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<td>(retired staff)</td>
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<tr>
<td>11 Blackford Hill</td>
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<td>12 Morgan Playing Fields</td>
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<td>13 Morningside Park</td>
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<td>14 Seven Acre Park</td>
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<td>15 Colinton Mains Park</td>
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<td>16 Easter Craiglockhart Hill</td>
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<td>17 Hailes Quarry Park</td>
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<td>18 Harrison Park</td>
<td></td>
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<tr>
<td>19 Saughton Park and Gardens</td>
<td>Catering Stance 172 (11) Balgreen Road, EH11 3AU Tenant: Elizabeth Moncrieff</td>
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<tr>
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<td>Lease from 01/09/12 – 31/08/13 Rent £12,500 p.a.</td>
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<tr>
<td>20 Ferry Glen</td>
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<tr>
<td>21 St Margaret's Park</td>
<td>Dower House / Gibson Lodge 29 Corstophine High Street, EH12 7SZ Tenant:</td>
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<tr>
<td></td>
<td>Corstophine Trust Lease from 04/03/91 – 15/05/15 Rent £750 p.a.</td>
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<tr>
<td></td>
<td>St Margaret’s Park Clubroom 31/1 Corstophine High Street, EH12 7SU Tenant: 10th</td>
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<td></td>
<td>Haymarket Scout Group</td>
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<td>Location</td>
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<tr>
<td>22</td>
<td>Union Park</td>
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<td>23</td>
<td>Montgomery Street Park</td>
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<tr>
<td>24</td>
<td>Pilrig Park</td>
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</tbody>
</table>
MINUTE OF AGREEMENT

between

THE CITY OF EDINBURGH COUNCIL

and

NATIONAL PLAYING FIELDS ASSOCIATION (OPERATING AS FIELDS IN TRUST)

SUBJECTS: 22 Sites in Edinburgh

ACTING HEAD OF LEGAL, RISK AND COMPLIANCE

THE CITY OF EDINBURGH COUNCIL

4 EAST MARKET STREET

EDINBURGH

EH8 8BG