City of Edinburgh Council (Portobello Park) Bill Committee

1st Report, 2014 (Session 4)

Consideration Stage Report

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City of Edinburgh Council (Portobello Park) Bill Committee

Remit and membership

Remit:

To consider matters relating to the City of Edinburgh Council (Portobello Park) Bill.

Membership:

James Dornan (Deputy Convener)
Alison McInnes
Fiona McLeod
Siobhan McMahon (Convener)

Committee Clerking Team:

Clerk to the Committee:
Mary Dinsdale

Assistant Clerk
Stephen Fricker
The Committee reports to the Parliament as follows—

BACKGROUND

1. The City of Edinburgh Council (Portobello Park) Bill was introduced to the Scottish Parliament on 25 April 2013. It is a Private Bill being promoted through the Scottish Parliament by the City of Edinburgh Council (“the promoter”) under the procedures set out in Chapter 9A of the Parliament’s Standing Orders.

2. Following the introduction of the Bill¹, there was a 60-day objection period which concluded on 24 June 2013, by which time 66 admissible objections had been lodged. The City of Edinburgh Council (Portobello Park) Bill Committee, at Preliminary Stage, gave preliminary consideration to all admissible objections² lodged and rejected those where the objector’s interests were, in its opinion, not clearly adversely affected. At the start of Consideration Stage there were 59 remaining objections, all of which were whole-Bill objections.

3. During Preliminary Stage, on 4 October 2013 the Committee undertook a fact-finding visit to the proposed site of the new school in Portobello Park (“the Park”) and to the existing High School site and proposed replacement open space. The visit was informative in setting in context the location of the proposed school and visualising its impact on the Park and surrounding area.

4. Following publication of the Committee’s Preliminary Stage Report on 4 December 2013, the Parliament debated and agreed on 9 January 2014 the general principles of the Bill, and that the Bill should proceed as a Private Bill.

5. This report gives the Committee’s decisions in relation to the remaining 59 objections.

¹ City of Edinburgh Council (Portobello Park) Bill and accompanying documents. Available at: http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62502.aspx
² All admissible objections can be viewed at: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/66115.aspx
What the Bill does

6. The Promoter’s Memorandum sets out the objective of the Bill as—

“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.”

7. The Promoter’s Memorandum goes on to state that 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.

“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).”

8. Therefore, the intention is that, by removing the legal obstacle which currently prevents the building of the new Portobello High School on Portobello Park, the Bill would reclassify the Park as alienable (rather than inalienable) common good land, and allow the Council to appropriate it for the purposes of education. Further details on the objectives and background to the Bill are provided in the Committee’s Preliminary Stage Report.

9. The promoter believes that—

“The benefits of building the new school on the Park, including the improvements to the remaining open space on the site and other spaces in the area and other compensatory and mitigation measures that will accompany the project … will result in a net gain for the local community.”

Committee’s overall approach

10. The Committee was very aware of its role as quasi-judicial arbiter at Consideration Stage and of the need to comply with the principles of natural

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3 Promoter’s Memorandum, paragraph 3.
4 Promoter’s Memorandum, paragraphs 4-5.
justice, as well as of the Parliament’s obligations in terms of the European Convention on Human Rights and the Human Rights Act 1998. The procedures followed by the Committee ensured that the promoter and objectors had a fair opportunity to have their respective cases presented, through the objections themselves, unlimited supplementary written submissions and extensive oral evidence sessions. The intention was that the Committee would be in a position to assess each objection, as well as determine whether the Bill struck an appropriate balance between the private interests of individuals affected and the wider public interest.

11. Given that all the written and oral evidence provided to the Committee at this stage (and at Preliminary Stage) is available on the Parliament’s website, this report does not rehearse in detail every argument relating to each of the individual issues raised, whether in objections, supplementary written evidence, or in oral evidence. The Committee considered each objection individually and assessed it against the written and oral evidence.

12. The Committee also wishes to emphasise - as it has done throughout its consideration of the Bill - that its role is not to carry out the function of a planning authority.

13. The Committee did not take account of any issues which were not matters for its consideration at this stage, such as the Council’s procurement process, which was a matter for the Council and outwith the remit of the Committee.

ECHR issues
14. European Convention on Human Rights (ECHR) requirements were highlighted in the Committee’s Preliminary Stage report, when it was recognised that—

“The Scottish Parliament must consider the human rights implications of the Bill, given the requirement under the Scotland Act for the Parliament to legislate in a manner consistent with the European Convention on Human Rights (ECHR) ... The Parliament must be satisfied that the promoter has taken account of the requirements of ECHR law in drafting the Bill and that, on the face of it, a fair balance has been struck between the competing interests of those adversely affected by the scheme and the benefits to the wider community.”

15. ECHR Article 1, Protocol 1 states: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law”.

16. Interference with possessions may be justified under Article 1 provided that certain conditions apply, including that there is a reasonable degree of proportionality between the means selected and the ends sought to be achieved to

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ensure that a fair balance between individual and collective interests has been maintained.

17. The Committee concluded at Preliminary Stage that it was satisfied that, in terms of Article 1, Protocol 1—

“… the general compensatory measures the promoter intended – namely, by way of access to the facilities in the new school, recreational facilities, landscaping and provision of improved paths and alternative recreational land at the current school site in order to carry out the fair balance exercise – are sufficient, given the evidence on this aspect from some objectors to the whole Bill, and that a fair balance has been struck between the competing interests of those adversely affected by the scheme and the benefits to the wider community.”

18. Therefore, in considering the human rights aspects of the Bill in terms of individual objections, the Committee reached a view on whether any adverse impact on an objector outweighed the benefits that might be brought to the wider community by the enactment of the Bill (and the subsequent construction of the school) and whether the compensatory measures proposed were adequate.

Planning matters
19. Planning permission for the proposed development was granted on 23 February 2011 and renewed on 4 December 2013; therefore, planning matters had already been addressed during two planning application processes, which would have included consideration by relevant statutory bodies, such as the Scottish Environment Protection Agency and Scottish Natural Heritage.

20. The Committee, and the Parliament, have a particular role in considering Private Bills and will not replicate requirements of any other consideration of a proposal by a local authority, including as planning authority, except to the extent relevant to the consideration of the Bill in accordance with Standing Orders.

21. The Committee’s consideration of objections is in the context of Standing Orders and in determining the extent to which an adverse effect, which might also be a planning matter, would impact on an individual’s private interests and the extent to which this would be balanced by the overall benefit to the community as a result of the Bill being enacted.

Objections

22. At Preliminary Stage, the Committee gave preliminary consideration to all admissible objections lodged to the Bill, and rejected those objections where the objector’s private interests were, in the Committee’s opinion, not clearly adversely affected. Details of the Committee’s consideration of objections in that context are provided in the Committee’s Preliminary Stage Report.

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8 Scottish Parliament CECPPB Committee. Preliminary Stage Report, paragraph 152.
23. Consideration Stage has two distinct phases - consideration of objections (phase one), followed by consideration of amendments to the Bill (phase two). Once Consideration Stage has been completed, the Bill moves to Final Stage, where a decision on whether to pass or reject the Bill is taken at a meeting of the whole Parliament, after consideration of any amendments lodged at that Stage.

24. Procedures for the first phase are set out in Standing Orders Rule 9A.9. This phase involves the Committee meeting in a quasi-judicial capacity to hear evidence on the remaining objections to the Bill. The Committee’s role is to act as arbiter between the promoter and objectors.

25. At its meeting on 16 January 2014, the Committee provisionally agreed its indicative Consideration Stage timetable, subject to consideration of comments received, and its finalised timetable was agreed on 26 February 2014.

Groupings
26. Objections were provisionally “grouped” in accordance with Standing Orders Rule 9A.9.4 for the purposes of phase one proceedings, and objectors were asked for input regarding the suggested groupings and lead objectors for each group. No comments were submitted in relation to the proposed groupings, although there were a number of changes to the originally proposed lead objectors for specific groups at the request of these groups.

27. The remaining 59 objections were generally grouped using the following criteria—

- On a geographical basis – with objectors grouped who:
  - live adjacent to the Park (group 2);
  - live in the surrounding area to the north of the Park (group 4);
  - live in the surrounding area to the south and west of the Park (group 3);
  - live further from the Park – including some who live outwith Edinburgh (group 6);
- Portobello Park Action Group (PPAG) and associated objectors (group 1);
- one special interest group (golfers) (group 5).

Supplementary written evidence
28. The Committee agreed to exercise its discretion to invite all objectors to submit written evidence and to have an opportunity to provide supplementary written evidence in advance of the oral evidence sessions – although such evidence was required to be restricted to evidence which clarified, expanded on or updated the information in the original objection. Of the 59 objections remaining, six individual objectors submitted supplementary written evidence. The promoter also made written submissions which provided its response to a number of issues raised in objections.\(^9\)

\(^9\) All supplementary written evidence from objectors can be viewed at: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/71768.aspx
29. Where objectors did not provide further written evidence or respond to the Committee’s invitation for further involvement, it was assumed that objectors were content for the information provided in their original objection to stand.

30. A copy of all supplementary written evidence was provided to the promoter who was asked to provide a written submission for each group, responding to the issues raised in objections and any additional written evidence in a specific group. Lead objectors also had the opportunity to submit collated evidence on behalf of their group.

**Lead objectors**

31. Potential lead objectors were suggested after an examination of objections in a group where, for example, the suggested lead objector had covered a range of the issues raised by other objectors in the group, or was the lead signatory on an objection lodged on behalf of a number of individuals in a specific location. Lead objectors had responsibility for co-ordinating their group’s oral evidence. All six lead objectors were offered the opportunity to meet with the clerks in advance of the oral evidence sessions and all groups took up the offer with the exceptions of groups 1 and 6.

**Oral evidence sessions**

32. All six groups were represented at oral evidence sessions, which took place on 12 and 26 March, 23 April and 7 May 2014.

33. The Committee would like to thank all those who have provided evidence at phase one of Consideration Stage.

**ISSUES ALSO CONSIDERED AT PRELIMINARY STAGE**

34. The Committee previously considered a number of issues which were the subject of objections at Preliminary Stage, including—

- The role of the Parliament legislating subsequent to a Court of Session decision;
- ‘The precedent argument’ and the possible use of the Private Bill process by other councils in relation to inalienable common good land;
- Alternative sites for the school;
- The pre-introduction consultation process carried out by the promoter.

35. Also considered at Preliminary Stage were concerns about safeguards for any replacement open space and the status of the Park, should the proposed educational purpose not proceed.

36. The Committee agreed that, as these matters had been deliberated on previously, it would be appropriate to consider them separately from the objections themselves in this report.
The role of the Parliament legislating subsequent to a Court of Session decision

37. In relation to the role of the courts and that of the Parliament, at Preliminary Stage the Committee stated that the role of the courts is to interpret and apply the law as it stands. However, the Parliament has the power (within the limits of its legislative competence) to legislate as it considers appropriate, even if the effect is to change the law as determined by a court.

‘The precedent argument’ and the possible use of the Private Bill process by other councils in relation to inalienable common good land

38. In relation to ‘the precedent argument’, at Preliminary Stage the Committee accepted that it would be open to other councils seeking a similar remedy to follow the Private Bill route if they so chose, but each case would have to be considered on its own circumstances and merits. The Committee was also of the view that, in narrow legal terms, this Private Bill by definition can not set a precedent as it only makes specific application of law in narrow defined circumstances and does not itself change the general area of law relating to common good.

Alternative sites for the school

39. At Preliminary Stage, the Committee did not feel that it was appropriate for it to take a view on issues which were for the Council to reach a position on in relation to alternative options for the site for the school.

40. The Committee notes that the Baileyfield site, one of the sites which had been considered by the Council as a potential fall-back if the Bill were not to be enacted, is now no longer an option, as the Council has been informed that it is not the preferred bidder for the site. Therefore, the only remaining alternative which would be considered by the promoter would be to rebuild on the existing site of Portobello High School and St John’s RC Primary School.

Pre-introduction consultation process

41. Objectors remained very concerned about the pre-introduction consultation process carried out by the promoter. A substantial amount of oral evidence was provided at Consideration Stage from five of the six objector groups on various aspects of the promoter's handling of the process (details of which, and of the promoter's rebuttals, are provided in written submissions and the Official Reports of meetings of 26 March, 23 April and 7 May 2014).

42. Objectors were still of the view that: “misleading information was contained within the consultation materials, … and it appears that it is deemed acceptable to proceed with a private bill based on flawed consultation exercise. This is of great concern”.10

43. Reference was made by group 1 in particular to issues such as the area of distribution for leaflets during the consultation process which, it was alleged, was “skewed towards the school community”\(^{11}\) and how the proposals were made available to the rest of Edinburgh. The promoter continued to refute such allegations and believed that: “the community had more than adequate information from multiple sources in respect of the new school project or the Bill”.\(^{12}\) Another example was provided by group 6 in particular in oral evidence where alleged evidence was provided that “the City of Edinburgh Council has not conducted itself with integrity in the matter [of the consultation exercise]”.\(^{13}\)

44. In its Preliminary Stage Report, the Committee encouraged the promoter to “reflect on the “lessons learned” from each aspect of the process and the issues raised, particularly in relation to the need to ensure a balanced approach in the presentation of consultation material, early engagement with those affected and a clearer explanation of how responses to any consultation could be made earlier in the process”.\(^{14}\)

45. The promoter subsequently advised\(^{15}\) that a number of actions would be considered in relation to other consultation processes, where appropriate, including—

- using only distribution companies from an approved Council framework for the delivery of consultation materials;
- ensuring that multiple copies of response leaflets are distributed to all libraries in the city;
- for any public meetings which involve non-Council representatives, all participants should be able to provide feedback before future meetings regarding any changes they would propose to the meeting format;
- information and supporting material relating to complex proposals should be reviewed by someone unconnected with the proposal before they are finalised, to ensure they are as easy to understand as is practicable in the circumstances;
- undertaking early engagement with key stakeholders regarding the proposed approach to the consultation, to seek their views before the consultation commences.

46. The Committee does not consider that any shortcomings identified in the consultation process are sufficient to sustain any objection regarding the consultation’s adequacy. The Committee welcomes the actions proposed by the promoter for future consultation processes, but notes that continued reference to the consultation process by objectors illustrates the lack of trust, perceived or otherwise, between objectors and the promoter.

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\(^{14}\) Scottish Parliament CECPPB, *Preliminary Stage Report*, paragraph 120.

The Committee would again encourage both parties to engage in positive dialogue in moving forward.

47. The Committee continues to be of the same view on the four issues outlined at paragraph 34 as is set out in its Preliminary Stage Report.

Inalienable common good land status of the Park

48. In its Preliminary Stage Report, the Committee agreed to address concerns that the site might be used for another purpose other than the proposed educational function, should that purpose for any reason fail, by way of an amendment to the relevant section of the Bill. At phase two of Consideration Stage, therefore, it is the Committee’s intention that a member of the Committee will lodge an amendment, with a view to providing safeguards for any future use of the land and to protect its inalienable common good status in circumstances where the land is no longer used for an educational purpose.

49. The promoter advised of its proposed wording for such an amendment, the intention of which is to preserve the current status of the Park, notwithstanding any future appropriation by the Council. The promoter believes that the amendment should put beyond doubt that the inalienable common good status of the Park would be preserved in circumstances where it was no longer to be used for an educational purpose.

50. At Consideration Stage, at its meeting on 23 April 2014, the Committee received an Opinion (dated 10 April 2014) which had been provided by Roy Martin QC for PPAG. The Opinion continued to express doubt that what the Bill provided would ensure that the land would remain inalienable common good land after the school was built. Mr Martin was also of the view that the proposed amendment would not resolve the issue of the future status of the land. He concluded that—

“…the legislation proposed by the Council, even including subsection (3) of section 1, gives rise to a number of uncertainties and at the very least there must be a material risk that legislation in that form will not achieve the overall purpose of the Council which is to obtain the ability to appropriate and use the land at Portobello Park to construct and operate the school.”

51. Objector evidence also referred to historical information and events which, it was claimed, illustrated the promoter’s “previous and on-going risk approach, particularly in view of the conflicting legal opinions that remain about where we are now … there is no clarity about where we are legally”. In particular, group 1 referred to a legal opinion provided in August 2008 for the Council which “basically says that relying on the South Lanarkshire Council case as the underpinning reason for proceeding without going to court to get permission to build on common

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good land is high risk”. The promoter argued that the “joint counsel opinion that was reported to the council in December 2008 said unambiguously that there [was] no impediment to the council going ahead and appropriating the land at the park”.

52. The Committee is of the view that, while such background information may be of interest, it is aware of the considerable history attached to the proposal predating the Bill process. Such information confirms the complex nature of the legal issues and legal relationships in question. One view might be that such information would have been more relevant at Preliminary Stage but, even if it had been made available at that Stage, the Committee would still have been of the view that the most authoritative position in determining the current law is the Inner House of the Court of Session’s decision of September 2012. The Committee again notes the alternative options to a Private Bill which were considered by the promoter at Preliminary Stage.

53. The Committee notes that the matter of the proposed and any other amendments to the Bill will be considered at phase 2 of Consideration Stage.

Status of replacement open space

54. In terms of replacement open space, which would be created from the conversion of part of the existing combined site of Portobello High School and St John’s RC Primary School, objectors had a number of concerns, such as the site being outwith the local vicinity, being significantly smaller than the space which would be lost, and being located beside an existing park. They also questioned the Council’s commitment to the provision of open space and were not reassured that it would be protected by Fields in Trust status and remain as parkland in perpetuity. Objectors claimed that Fields in Trust status can much more easily be overturned than inalienable common good protection.

55. In its Preliminary Stage Report, the Committee urged the Council to “consider whether there are any other additional measures which could be taken to allay concerns about the security of the replacement open space’s future”.  

56. In response, the promoter provided details of the other possible measures which it had considered, ranging from amending the Bill, considering whether the area could be designated as inalienable common good land, whether title burdens could be imposed, or whether future use could be controlled by contractual methods. The Council had concluded that none of these measures would provide the required protection at this stage. The Council’s preferred solution was the designation of the land as Fields in Trust status, which involved the Council entering into a legal commitment with the National Playing Fields Association that the land would be used as open space in perpetuity, although no formal dedication could be made until the area of open space had been constructed.

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21 Scottish Parliament CECPPB Committee, Preliminary Stage Report, paragraph 135.
22 Promoter. Written submission, 31 January 2014.
57. In supplementary written evidence, Alison Connelly (50)\(^{23}\) did not accept the promoter’s reasoning regarding the possibility of not amending the Bill to include a commitment to provide the replacement open space and questioned the conclusion “that such an amendment is inadmissible”. In addition, she questioned the long term security of Fields in Trust status, with that body being “a charitable trust, with little statutory impact”.\(^{24}\)

58. The Committee is satisfied that the promoter has considered additional measures regarding the future security of the replacement open space and is content that, while such status could be overridden by statutory provision, the Fields in Trust status provides a satisfactory additional safeguard for the future of the site.

Remaining open space at the Park

59. The Committee also stated in its Preliminary Stage Report that it would welcome the promoter’s consideration of protection that might be given to the area of open space remaining at the Park following the school’s construction. The Committee welcomes the promoter’s confirmation\(^{25}\) that the intention is that the area will be reinstated as, and will remain, open space after construction. The Council had approved the dedication of the space as Fields in Trust (after the school had been constructed and the open space reinstated).

CONSIDERATION OF OBJECTIONS

60. As indicated earlier in the report, under Rule 9A.9.4 of Standing Orders, where a Private Bill Committee considers that two or more objections are the same or similar, it may group those objections together and choose one or more objectors to give evidence in relation to those objections. Although the grounds of objection are the same or similar in many of the objections, the Committee nonetheless chose to divide objections into six groups on the basis of potential different impacts.

61. In terms of Rule 9A.9.2, objectors are invited to give evidence and such evidence may be given orally or in writing (or both). The Committee gave each objector the opportunity to provide further written evidence in relation to their objection and also to be represented by lead objectors and others at oral evidence sessions. In addition, each group had the opportunity to provide collated written evidence in advance of their oral evidence session.

62. Each objection was given due consideration on its own merits and circumstances. However, the Committee wishes to highlight that there are nonetheless a number of clear themes and issues of a similar nature which recur throughout the objections and groups.

\(^{23}\) Numbers in brackets denote the number of the objection.
\(^{24}\) Alison Connelly (50). Supplementary written evidence, 6 February 2014.
\(^{25}\) Promoter. Written submission, 31 January 2014.
Overview of issues raised in objections

63. In addition to the issues which were also considered at Preliminary Stage and which are covered earlier in this report at paragraphs 34 – 59, an overview is provided below of the main issues raised in objections. Commentary on these issues is provided in relation to the first group where it arises, and is not repeated where it applies to later groups. However, where an issue has been viewed from a different perspective in a later group, the Committee has taken this into account.

Use of the Park

64. Objectors had concerns about the loss of amenity and green space, which they believed would impact on a variety of recreational activities. It was argued that the Park continued to be well used for a broad range of purposes but that its condition had deteriorated due to lack of maintenance by the Council. The mental and physical wellbeing to be derived from such space was also emphasised.

65. The promoter contended that recreational activities could continue with part of the Park being retained as open space. It was argued that, given the existing provision of open space in the area, and the promoter's plans to add new areas of open space, those living in the vicinity of the Park would continue to enjoy the health and social benefits of community open space.

Road safety, traffic and congestion issues

66. The Committee received detailed and extensive written and oral evidence regarding road safety, traffic and congestion issues which, it was argued by objectors, would be exacerbated if the development of the school proceeded.

67. The promoter referred to the detailed Transport Impact Assessment and related documentation such as the Design and Access Statement which had been submitted as part of the planning process and risk mitigation measures which would be put in place.

Visual impact

68. Objectors were concerned about the visual impact of the proposed development, including loss of views, the height of the building and overshadowing houses opposite, the height of fencing and lighting.

69. The promoter advised that the visual impact had been taken into account as part of the planning process and relevant documentation, such as the Design and Access Statement, had been made available to the Committee.

Environmental issues

70. Various environmental issues were identified by objectors, including noise pollution, operational disturbances and loss of wildlife and biodiversity. Objectors maintained that the Council had not adequately addressed these concerns.

71. The promoter referred to the report to the Development Management Sub Committee of 4 December 2013 where mitigation measures to issues such as

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noise, the hours of use of the pitches, and ecology and nature conservation were detailed. Certain of these issues were the subject of conditions in planning consent.

**Impact on character of area and reduction in property value**

72. Some objectors were concerned that the new school would adversely impact on the character of the neighbourhood and result in a possible reduction in property values.

73. The promoter acknowledged that the proposal would alter the residential character of the area, but argued that the proposals had been “sensitively designed in order to negate any detrimental impact on residential amenity”. 27

**Impact on the golf course**

74. Grounds of objection included: endangerment to pupil safety when crossing the course from golf balls being hit over school fences; drainage and flooding issues; an increase in car parking and car use; and the possibility of a case being made for the Fields in Trust status of the golf course being given up in favour of development. As this matter relates primarily to the issues raised in detail by one objection, the promoter's views on these issues are set out under group 5 consideration.

**Groups of objections**

75. The Committee heard oral evidence from groups of objectors and the promoter as follows (based on the chronological order in which oral evidence hearings took place):

**Group 5**

76. The Committee took oral evidence from group 5 and the promoter on 12 March 2014.

77. Group 5 consists of one objection (17) from Portobello Golf Course Golfers – Oula Jones and 76 others.

78. Grounds of objection included that pupil safety would be endangered by pupils crossing the course and by golf balls being hit over school fences. In addition, golfers' play might be interrupted and there was a possibility of increased vandalism. 28 The promoter commented on mitigation measures proposed, such as fencing and planting along the boundary to act as a barrier between the school and the golf course. It was also noted that “as a result of a concern that was raised during the original planning consultation process”, an entrance originally proposed for the north side of the school grounds had been removed. 29 In relation to pupils' behaviour, the promoter countered that: “The school is proud of the

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27 Promoter. Written submission to the Committee meeting on 26 March 2014 in response to groups 2 and 4.
responsible behaviour and good citizenship shown by its pupils and it will deal swiftly and firmly with any issues that arise regarding the golf course”.  

79. Objectors also had concerns that drainage and flooding issues would be exacerbated. The promoter indicated that such issues had been considered as part of the design development process and detailed information had been submitted as part of the planning application process.

80. Objectors argued that there would be an increase in car parking and car use, inconveniencing members’ access to the clubhouse. The promoter contended that plans for the school included 117 car parking spaces for staff and visitors, so there should be no need for school users to park elsewhere. It was confirmed that there was no intention to expand the school on to the golf course for parking or any other purpose.

81. Objectors feared that a case might be made for the Fields in Trust status of the golf course to be given up in favour of development. The promoter referred to previous assurances regarding that status and indicated that:—

“…when the council first approved the Park as the site of the new school in December 2006, that was subject to assurances that no housing would be built on the remaining green space at the golf course or the Park. Subsequent reports to the council in December 2008 and March 2010 reaffirmed that the funding strategy for the new school did not rely on any housing being developed on the golf course.”  

82. Roy Martin QC commented in his opinion of 10 April 2014, in relation to the area of land subject to the Bill, that—

“The remainder of the overall area of land at what is known locally as Portobello Park, and which is primarily a golf course, is not the subject of the Bill and the status of the remaining land will not be affected by the Bill.”

83. **While appreciating the objectors’ concerns, the Committee is satisfied that the golf course does not form part of the area to which the Bill applies, that mitigation measures have been proposed by the promoter as part of the planning process to protect both users of the course and the school, and that reassurances have been given by the Council regarding the future status of the golf course.**

84. **The Committee therefore rejects this objection.**

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32 Roy Martin QC. Opinion, 10 April 2014, paragraph 2.
Groups 2 and 4

85. The Committee took oral evidence from groups 2 and 4 and the promoter on 26 March 2014.

Group 2

86. Group 2 consists of 19 objections from residents in streets and roads adjacent to the Park.

87. The Committee felt that this group of objectors might be more likely to be particularly adversely affected by the development, in view of the proximity to the Park and issues such as loss of views.

John Kelly (1)
Scott Macpherson and Susannah Fraser (8)
Elizabeth R Manshouri and 4 others (9)
D and M Costello (10)
Gary F Gowans (15)
Ian, Sheila and Morven Robertson (25)
Ian Ross (29)
Richard Forbes and Karen Maxwell (30)
Trevor Laffin and 10 others (31)
Christians Estate and Hope Lane residents – Elaine Goodlet and 106 others (32)
Sandria J Gillon (37)
Rhona and Colm Fitzgerald (41)
Ron and Lynn Sylvester (42)
Mrs R Sutherland (43)
Duddingston Crescent residents – Jennifer Peters and 33 others (46)
Hazel Thomas (48)
Robert D Sutherland (49)
Park Avenue residents (K Gillon and 114 others) (54)
Pauline, George, Sara and Emma MacDonald (55)

88. One supplementary written submission was received for group 2 at Consideration Stage from Duddingston Crescent Residents (46).

89. Grounds of objection included: loss of amenity; use of the park; replacement open space; impact on health and wellbeing; traffic and road safety issues; detrimental effect on character of the area; reduction in property value; visual impact – including loss of views, design and height of the building, floodlighting and loss of light; environmental impact – including noise, pollution, litter and vandalism, loss of trees and wildlife, and impact on the golf course.

90. Concerns also related to a number of issues which had been subject to the Committee’s consideration at Preliminary Stage, including: the role of the Parliament legislating subsequent to a Court of Session ruling; ‘the precedent argument’; the consultation process and alternative sites. These issues are dealt with at paragraphs 34 – 59 of this report.
Loss of amenity and use of the Park

91. Many objectors in group 2 live adjacent to or opposite the Park and expressed concerns about the loss of amenity and green space which would impact on a variety of recreational activities, including walking, jogging, football and dog walking. Christians Estate and Hope Lane residents (32) indicated that it would severely impact their amenity: “being “sandwiched” between the railway on one side and the busy A1 Milton road on the other, the Christians estate – which is mainly comprised of flats with very little private garden space – has always regarded Portobello Park as a means of retreat and recreation”. Another objector (8), who lives adjacent to the Park, commented that: “With no real turfed area of our own, we consider the park an important area because it is openly accessible for people like us”.

92. The group argued that the Park continued to be well used for a diverse range of activities but that its condition had deteriorated due to lack of maintenance by the Council.

93. The promoter contended that recreational activities could continue, with most of the Park being retained as open space with two all-weather pitches, woodland, improved public pathways or new cycle paths, and a landscaped open area. New paths and easier access for those with limited mobility or young children and the new all-weather pitches would “bring life back to the park”. The promoter could “envisage no regular activity that is currently undertaken at the park that would not be possible on the replacement facilities. There should therefore be no discernible loss of amenity for any particular recreational or leisure activity”.

94. Objectors argued that: “although there are other parks in Portobello, parts of the community … will no longer benefit from being within a 400m walking distance of accessible green space of at least 500m², which is an objective that is identified in the council’s open space strategy of September 2010”. The promoter, at the meeting on 26 March 2014, referred to a map identifying open space which, it was argued, demonstrated that there was a large amount of green space in the area. The promoter also referred to the standards set out in the Council’s Open Space Strategy, which had two elements – houses should be within 800m walking distance of “a significant accessible green space of at least 2 hectares” and secondly, should be within “400m walking distance of a significant accessible green space of at least 500m²”.

95. The promoter also contended that “the vast majority of dwellings in the area are already within 800m of a good-quality area of open space of more than 2 hectares…. Those areas are Joppa Park, Jewel Park, Bingham Park and Figgate

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36 Available at: http://www.scottish.parliament.uk/S4_City_of_Edinburgh_Council_Portobello_Park_Bill_Committee/Walking_Distance_from_Open_Space_Map.pdf
Park” and “certain streets in the Christians area … are within a 400m walk of a local area of open space”.  

Replacement open space

96. Objectors noted that the Council had previously considered a paper at its meeting on 11 March 2010 which confirmed “the obvious replacement site as the site of the existing Portobello high school, but … that site is not in the right location to mitigate the loss of Portobello park and that, with an estimated 2010 value of £3.9 million, it would not be an efficient use of council assets”. The promoter was questioned on what had changed between March 2010 and the period just before the Private Bill consultation, when the “subsequent offer of a park on the existing school site reappeared”. The promoter responded that it had reviewed its 2010 opinion in the face of public opinion and had since determined that the “availability of that space will be a beneficial asset to the community”.

97. The Committee acknowledges that the loss of the Park would represent a degree of loss of amenity and green space for objectors who use the Park for various activities, particularly for those who are residents in the immediate vicinity. However, the Committee notes that there are other areas of open space and parks in Portobello (as referred to in paragraph 95), and that the promoter plans compensatory measures in terms of replacement open space and recreational facilities which, as recognised by the Committee at Preliminary Stage, would go some way to balancing the immediate loss of amenity. The Committee would encourage constructive communication between both parties on this matter in going forward in developing proposals for the replacement open space.

Road safety, traffic and congestion issues

98. The majority of objections (12 of the 19 in this group) expressed serious concerns about road safety, traffic and congestion issues which would result from the development.

99. Objection 32, from the Christians and Hope Lane residents, stated that Hope Lane was the general access road for 300 properties in the Christians estate, contending that it was five metres wide, with parking on one side and no space for two-way traffic, leading to congestion and accident potential with the anticipated increase in numbers of pedestrians and cyclists.

100. In oral evidence to the Committee on 26 March 2014, Ian Ross (29) expanded on some of the evidence submitted in a number of objections. He expressed the view that, of primary concern were conditions on the A199, a strategic transport route and four-lane carriageway but effectively single carriageway each way at morning and evening peak hours when bus lanes were operational, causing congestion and queuing traffic. It was contended that evasive action by drivers included use of the bus lane and use of “rat runs”. The development of the school, with direct vehicular access and pedestrian access on

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to Milton Road would, it was argued, generate significant additional car and pedestrian trips.

101. Evidence referred to the number of accidents that had occurred on a particular stretch of Milton Road which, it was argued, showed that the “accident rate was already twice the average rate for this type of road.”\(^{41}\) It was argued that the new school would “generate additional traffic … which will inevitably cause additional conflicts…”. Reference was made to how these issues had been raised with the Council. It had been put to the Council that it should undertake a traffic simulation model which would demonstrate whether Milton Road and the surrounding road network would operate safely as a result of the increased traffic.

102. Local residents had subsequently commissioned their own road safety report which recommended that a Stage 1 Road Safety Audit and traffic modelling exercise should be undertaken.\(^{42}\)

103. The promoter countered that road safety and traffic issues had been considered as part of the planning process, in terms of both the original application and the renewal process. A full traffic impact assessment had been carried out by AECOM, a professional traffic consultant, and mitigation measures at the existing school site and at the Park had been incorporated into the Council’s final plans. The promoter confirmed that “the majority of issues that were raised in the [objectors’ independent road safety] assessment were identified and considered by the traffic consultant … and the mitigation measures that AECOM proposed were independently assessed by the Council’s transportation department and approved as part of the planning consent”.\(^{43}\)

104. The promoter accepted that a road safety audit would be required as part of the design development process but that, while this was planned before the construction phase, it would be premature to carry out an audit at this stage, stating that—

“The correct time to carry out an audit is after the main contractor has been appointed… The purpose of road safety audits is to ensure that operational road safety experience is applied during the design process and implemented in the construction process in order to ensure that the number and severity of accidents is kept to a minimum both during the construction phase and once the development is operational.”\(^{44}\)

105. Objectors were of a contrary view about the timing of a Stage 1 Road Safety Audit and argued that: “It is common practice that that is done at preliminary design stage—it is certainly not done at construction stage—so that any measures that are required are incorporated into the scheme”.\(^{45}\)

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106. In its written response to issues raised by groups 2 and 4 on this matter, the promoter provided further evidence in support of its processes and detailed risk mitigation measures which would be put in place.

107. The promoter referred to the documentation which had been submitted with the planning application, including the Design and Access statement, the Transport Assessment and the Pre-Application Consultation Assessment. It was emphasised that the transport assessment had met all relevant statutory requirements, had been submitted as part of the planning application and reviewed and approved by the Council’s Development Management Sub-Committee. The promoter’s overall conclusion had been that no road safety issues had been identified which had not been or could not be addressed.

108. Further written evidence was subsequently provided by Group 2 relating to a response they had received from Transport Scotland on a number of road safety, traffic and congestion issues. Transport Scotland had confirmed that they had been consulted by the Council on the Environmental Impact Assessment process but that “given the nature, scale and location of the proposed development … was not formally consulted on the planning application”. Transport Scotland was satisfied that the proposed development would not give rise to any significant traffic or associated environmental impacts on the trunk road network, for which Transport Scotland had responsibility, and that that conclusion was “based on a review of the Environmental Statement rather than the Transport Assessment Report”. Responsibility for the impact on the local road network remained with the Council as the local roads authority. The Committee is satisfied that the level of consultation with Transport Scotland was appropriate.

109. While noting the grounds of objection in relation to road safety, traffic and congestion issues, the Committee is satisfied that the promoter has confirmed that it has followed due process in complying with appropriate processes for road transport and safety in terms of the statutory and other requirements to which local authorities are subject. Relevant procedures would require to continue to be followed in the future in terms of exercises including the road safety audit and implementation of any further mitigation measures required.

**Visual impact**

110. Objectors, including those living opposite the Park, contended that the “protected view” to Arthur’s Seat and views to the Firth of Forth would be impacted. In addition, they argued that the height of the building would

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46 Promoter. Written submission to meeting on 26 March 2016, section 4.
48 Group 2. Further written submission, 4 May 2014. Available at:
49 Letter dated 16 April 2014 from Transport Scotland to Jennifer Peters (Group 2). Available at:
50 Promoter’s written submission in response to Groups 2 and 4 – 26 March 2014, paragraph 5.5 – “…the Council’s planning guidelines identify key issues across the city that should be protected. The view to Arthur’s Seat across Portobello Park is protected…”

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overshadow houses in the top section of Park Avenue. The promoter advised that the visual impact had been taken into account as part of the planning process. The school building had been designed so as to not exceed the height of the existing trees, and so retain the view of Arthur’s Seat. It was argued that the school would be no higher than the closest buildings, far enough away from other buildings to avoid any overshadowing, and would not impact on daylight reaching any houses.\(^5\)

111. The height of the proposed fencing was also cited by objectors as having an adverse visual impact – “The view from Hope Lane end will be marred by the erection of fencing around the school…”\(^2\). The promoter stated that the majority of the fences would be low and integrated within boundary planting. It was argued that higher fences, such as around the goal ends of the pitches, would have a minimal visual impact due to the site having lower ground levels than Hope Lane and other adjacent streets and as a result of the planting between the golf course and the north side of the school.\(^3\)

112. Grounds of objection also included concerns about lighting, such as the proposed floodlighting for the football pitches. The promoter confirmed that the pitches would be flood-lit; however, the lighting was designed to not spill out to neighbouring houses, and planning consent was subject to hours of use being restricted to between 8am and 10pm.\(^\)4

*Noise pollution*

113. Objectors feared that the development would introduce noise to quiet residential streets - from traffic, school activities, plant, and the sport pitches.

114. The promoter referred to the report to the Development Management Sub Committee of 4 December 2013 where noise issues had been addressed and which indicated that a condition had been attached to the planning permission to restrict the pitches’ hours of use, and which was regarded as suitable to mitigate any noise impact for local residents.

115. Reference was also made to the Design and Access Statement and Environmental Impact Assessment and the promoter believed, in relation to the new football pitches, that mitigation measures proposed suitably addressed lighting and noise concerns\(^5\).

116. The Committee acknowledges that there will be a number of detrimental visual impacts and a possible increase in noise resulting from the construction of the school and its infrastructure. However, the Committee is satisfied that the promoter has considered these issues as part of the planning process, that certain conditions and mitigation measures would apply and views would be retained to a large extent. The Committee is of the view that, in this context, the benefits of the proposal to the wider

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\(^5\) Promoter. Written submission to meeting on 26 March, in response to groups 2 and 4 section 5.
\(^3\) Promoter. Written submission to meeting on 26 March, in response to groups 2 and 4 section 5.
\(^4\) Promoter. Written submission to meeting on 26 March, in response to groups 2 and 4, section 2.
\(^5\) Promoter. Written submission to meeting on 26 March, in response to groups 2 and 4, section 2.
community outweigh the potential adverse impacts on individuals’ private interests.

Impact on area and property values
117. Six objections in this group, as well as a number of objections in other groups, referred to the possible detrimental effect on property values from the resultant development. Objector (43) believed that: “The planned school buildings make no attempt to complement the existing architecture, leading to a detrimental effect on the character and amenity of the area”.

118. In its written submission on groups 2 and 4, the promoter argued that: “Claims that house prices … would be adversely affected are purely speculative. It could be equally argued that investment in a new state-of-the-art school and the accompanying improvements to the community facilities could benefit house prices, not only locally but across the catchment area.”

119. The Committee recognises that the residential character of the immediate area will be changed by the development but is not satisfied that the potential impact on individual properties would outweigh the benefits to be provided to the broader community.

120. The Committee accordingly rejects all objections in group 2.

Group 4

121. Group 4 comprises objections from areas to the north of the Park.

P K and F I Wraith (4)
Archie Burns (12)
Robert H Davis (19)
Hugh and Colin Cormack (24)
Caroline Hosking (27)
L J Connelly (36)
Sandy Sutherland (38)
Pamela Carr (39)
Stephen Carr (40)
Ursula Wright (51)
Sheila Coventry and 6 others (52)
Dr Gordon McCulloch (56)
Graham Kitchener (59)
Sigrid Nielsen (61)
Richard Wright (62)
Gillian Dunn (66)

122. One supplementary written submission was received at Consideration Stage for group 4 from Gillian Dunn (66).

123. Grounds of objection covered in this group included: loss of amenity; use of the park; impact on health and wellbeing; traffic and road safety issues; reduction

56 Promoter. Written submission to meeting on 26 March, in response to groups 2 and 4 section 2.
in property value; visual impact – including loss of views; environmental impact – including noise and light pollution, and impact on the golf course.

124. Concerns also related to a number of issues which had been subject to the Committee’s consideration at Preliminary Stage, including: the role of the Parliament legislating subsequent to a Court of Session ruling; ‘the precedent argument’; the consultation process and alternative sites. These issues are dealt with at paragraphs 34 – 59 of this report.

Impact on health and wellbeing due to loss of amenity
125. The mental and physical wellbeing to be derived from use of the Park and similar green areas was emphasised by objectors, with half of the objectors in this Group making specific reference to such benefits. It was alleged that it was “clear that the Bill will destroy most of the green space and that there is no adequate replacement for that space”.57

126. In his objection (56) and oral evidence, Dr Gordon McCulloch argued that the loss of the green space of the Park would be “bad for the health of the community”58 and listed a number of conditions which could be associated with the lack of accessibility to green space.

127. The promoter contended that the Park would be made more accessible by the introduction of “new paths added to the area of open space that will remain at the park” and that by making improvements to the paths currently around the park and the golf course it would “make it easier for those who have limited mobility or young children to use the park and boundary paths”.59

128. The promoter acknowledged the objectors’ reference to the health benefits of encouraging physical activity and argued that the provision of two pitches on the proposed school site would benefit both the school pupils and the local community.60

129. The Committee acknowledges the objectors’ views in relation to the health benefits to be derived from green and open space. However, the Committee accepts that there are other green and open spaces in the vicinity, recognises the benefits of the new sporting facilities which would encourage use by young people in particular, and welcomes the easier access which will be provided by way of new and improved paths for those with impaired mobility or with young children.

130. The Committee therefore rejects all objections in group 4.

Groups 3 and 6

131. The Committee took oral evidence from groups 3 and 6 and the promoter on 26 March and 23 April 2014.

Group 3

132. Group 3 consists of objections from areas to the south and west of the Park.

G G and I Di Ponio (3)
Pauline Cowan (5)
Jean and Charles Douglas (6)
David and Janet Kilkerr (7)
Joyce and Bill Flockhart (13)
Stephen and Fiona Coyle and Harrison and Genevieve Vernon-Coyle (14)
Alex M and Margaret M Hope (16)
Duddingston Park residents – David Connelly and 49 others (44)

133. One supplementary written submission was received at Consideration Stage for group 3 from Jean and Charles Douglas (6).

134. Grounds of objection in this group included: loss of amenity; impact on health and wellbeing; loss of views; replacement open space; traffic and road safety issues; litter; loss of trees; and impact on the golf course.

135. Concerns were again expressed on a number of issues which had been subject to the Committee’s consideration at Preliminary Stage, including: the role of the Parliament legislating subsequent to a Court of Session ruling; ‘the precedent argument’; the consultation process and alternative sites. These issues are dealt with at paragraphs 34 – 59 of this report.

Loss of amenity and green space

136. The most prevalent issue of contention in this group of objections related to loss of green space and amenity by way of use of the Park for recreational purposes, such as walking and sport.

137. Objections (6) and (13) referred to the alleged lack of maintenance of the Park. The promoter responded that there had been a period between August 2011 and early 2013 when, as a result of archaeological works, part of the Park had been disturbed but that “was fully remediated in early 2013” and that it had since been confirmed that “the maintenance regime … is exactly the same as it was before and exactly the same as the regime that applies to any other park in the city”.

138. Further detail on the promoter’s response to these issues is given under the commentary in relation to group 2 and includes reference to compensatory measures in the replacement open space to be created and the provision of funding towards improved play facilities at Magdalene Glen. The promoter again highlighted that there would be a “sizeable area of parkland” around the Park site and the golf course – meaning that green space would still be available for recreation, along with other facilities, including the all-weather surface pitches.

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62 Promoter. Written submission to meeting on 26 March, section 3.
63 Promoter. Written submission to meeting on 26 March, in response to Groups 3 and 6, para 1.7.
139. The Committee’s views on the loss of amenity and green space are set out at paragraph 97.

Traffic and road safety issues
140. On traffic and road safety issues, Bill Flockhart provided detail in his objection (13) and at the oral evidence session on 23 April of his concerns, which included an alleged general increase in traffic in the area and “haemorrhaging of an already congested traffic flow mostly in an East - West direction on Milton Road encouraging ‘rat running’”. The promoter countered by restating that a detailed traffic impact assessment had been conducted and approved.

141. In relation to any further mitigation measures required regarding pupils’ travel over lunchtime, these would be “identified in the road safety audit, which we have already said will be instructed after the main contractor has been appointed” 64

142. The Committee’s views on traffic and road safety issues are set out at paragraph 109.

143. The Committee thus rejects all objections in group 3.

Group 6

144. Group 6 comprises objections from outlying areas of the EH15 postcode and outwith that postcode area.

J Madden (2)
Thomas H Taylor (11)
Alan and Sheila Fletcher (18)
W and A F A Fraser (22)
Jet Cameron (23)
Anne and Anthony King (28)
Anna Turtle (34)
Laura Ross (35)
Karen MacLean (63)
Beverley and Deborah Klein (65)

145. Two supplementary written submissions were received at Consideration Stage for group 6 from Alan and Sheila Fletcher (18) and Anne and Tony King (28).

146. There were ten objections marshalled in group 6, all from areas outwith the immediate vicinity of the Park. The Committee is of the view that the objectors in this group, while possibly experiencing a detrimental effect from the loss of the Park, through factors such as the loss of amenity for recreational purposes, for example, are unlikely to be impacted as clearly as those in groups such as group 2, who live opposite, or are adjacent to, the Park.

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147. Grounds of objection in group 6 included: loss of amenity for recreational purposes and associated physical and health benefits, loss of views and loss of wildlife and habitat.

148. Concerns also related to a number of issues which had been subject to the Committee’s consideration at Preliminary Stage, including: the role of the Parliament legislating subsequent to a Court of Session ruling; ‘the precedent argument’; and alternative sites. These issues are dealt with at paragraphs 34 – 59 of this report.

149. **The Committee rejects all objections in group 6.**

**Group 1**

150. Group 1 comprises Portobello Park Action Group (PPAG) and individual objections from some individual members of PPAG.

Portobello Park Action Group (53)
Diana Cairns (20)
Jack and Winifred Aitken (21)
Stephen Hawkins (47)
Alison Connelly (50)

151. One supplementary written submission for group 1 was received at Consideration Stage from Alison Connelly (50).

152. The Committee took oral evidence from group 1 and the promoter on 23 April and 7 May 2014.

153. Further written submissions, including questions from the objectors to the promoter and the promoter’s responses, were subsequently submitted by both parties, and these were taken into account by the Committee. Many of the issues had already featured in evidence previously provided to the Committee.

154. Grounds of objection included: loss of open space; use of the Park; replacement open space; impact on health and mental wellbeing; visual impact and loss of views; light pollution; traffic and road safety issues; noise pollution; operational disturbances; height of building, and environmental and sustainability issues and loss of wildlife and biodiversity.

155. Concerns were again expressed on a number of issues which had been subject to the Committee’s consideration at Preliminary Stage, including: the role of the Parliament legislating subsequent to a Court of Session ruling; ‘the precedent argument’; the consultation process and alternative sites. These issues are dealt with at paragraphs 34 - 59 of this report.

156. Objectors in group 1 provided much evidence which, it was argued, supported their views in relation to issues of clarity and trust in dealing with the Council. It was claimed that—
“Over the years, it [the Council] has said one thing and then done another. It said that if the park was common good, it would not be built on, and then it proposed to build on it. It said that a new golf course would be purchased, but it has not been. Replacement open space was promised, but the mitigation of the loss of parkland was removed because it was in the wrong place. The same site was promised again, only it was now, inexplicably, in the right place.”

157. The promoter refuted “any suggestion of impropriety on its part at any stage of the project and any suggestion of withholding information. They are completely untrue.”

158. The Committee again notes that much of the evidence from objectors has indicated a lack of confidence on their part in the Council. The Committee hopes that the promoter will take steps to forge more positive relations in moving forward and also that objectors will feel able to engage constructively with the Council.

Loss of amenity and open space and use of the Park

159. Issues relating to concerns about loss of amenity, use of the Park and access to other green spaces were also raised by other groups and some elements of these concerns are set out in the sections of the report dealing with group 2. Other issues on which there was a lack of agreement between objectors in this group and the promoter included the size of the area of open space which would remain and whether access to the expected quantity and quality of open space by households in the locality would be acceptable.

160. In relation to usage of the Park, objectors referred to the Usage and Open Space Value Assessment carried out for the Council by Ironside Farrar in 2009 and referred to a number of its findings, including to the report’s assessment of a “poorly maintained park” and maintained that the Council had “deliberately run down and neglected the Park to bolster the case for its development”. In its written submission to the Committee on 26 March 2014, the promoter re-affirmed its view that the audit had demonstrated that: “the Park was mainly used for dog walking, with very little wider recreational use. The full details can be found in the report to Council of 11 March 2010…”.

161. Detailed and conflicting evidence was provided by the promoter and objectors about the size of the area of remaining open space, with objectors arguing that there would be a loss of 3.2ha and the promoter stating that the overall loss would be only 0.48ha. The objectors felt that areas such as “plastic

70 Promoter. Written submission to meeting on 26 March 2014.
pitches are not open space".\textsuperscript{71} The promoter’s views are also set out in its submission to groups 2 and 4.\textsuperscript{72}

162. In oral evidence, objectors raised the question of eligibility for access to the football pitches, whether the scheme would be guaranteed in the future, and how Portobello would be an exception to the scheme of charges which would be applied.\textsuperscript{73} The promoter argued that eligibility would be determined by people within the local area and access would not be free in all circumstances: “There are circumstances in all schools across the city in which lower rates are charged for certain groups”.\textsuperscript{74} It was also stated that: “An exception has been applied in Portobello on the use of the pitches and access to them because of the unique situation that the school will find itself in if the bill goes ahead… To suggest that we would not implement that or manage it effectively is totally wrong”.\textsuperscript{75}

163. In a follow-up written submission\textsuperscript{76}, the promoter referred to Council decisions regarding the provision of free access to the pitches by residents of Portobello and that there was “no reason to believe that future elected members…would renege on that commitment”. The promoter also referred to its confirmation to the Committee on a number of occasions that the commitment would be implemented. The promoter had considered possible ways of guaranteeing the scheme in perpetuity, but believed that there was no unilateral action the Council could take to bind itself to that arrangement in those terms. In relation to Portobello being an exception to the charging scheme, the submission also advised that the arrangements for Portobello in this context would be noted in the Council’s most recent report on community access to schools.

164. The Committee’s views on various aspects of loss of amenity and green space are set out earlier at paragraph 97. The Committee notes objectors’ concerns about the possibility of a future change to the Council’s policy in terms of free access for local residents to the new football pitches and the terms of the promoter’s reassurances in this context.

*Replacement open space*

165. Commentary on issues raised regarding certain aspects of the replacement open space is provided at paragraphs 54 – 58 and 96 - 97.

166. In supplementary written evidence from Alison Connelly (50) and in group 1’s oral evidence\textsuperscript{77}, objectors referred to the consultation which was to be carried out in the local area on use of the replacement open space had been delegated by the Council to the Craigentinny and Duddingston neighbourhood partnership. In response to the reason why this had not been delegated to the two neighbourhood partnership “subsections”, Craigentinny and Duddingston and Portobello and Craigmillar, the promoter responded that such a format had not


\textsuperscript{72} Promoter. Written submission to meeting on 26 March 2014, in response to groups 2 and 4, section 1.


\textsuperscript{76} Promoter. Written submission, 15 May 2014.

previously been suggested or identified. Objectors highlighted that Duddingston and Craigentinny Partnership did not include the streets surrounding the Park.

Visual impact

167. In relation to the views which would exist following construction of the development, objectors were of the view that the protected view across Arthur’s Seat from Hope Lane had not been assessed and that the representation of the development provided with the Private Bill information leaflet was inaccurate. The promoter argued that various views of the Park had been presented and “the school was designed in a way that would minimise its impact on the local surroundings and maximise the views that can be preserved”.

168. Regarding the height of the building, objectors referred to the Committee’s site visit on 4 October 2013 when, it was contended that the height of the building had been described by the Council representative as: “coming up to the height of houses that were in our line of sight as we looked towards Park Avenue... that statement was incorrect. You were looking at the houses on Park Avenue, but the school building will be as high as the houses on Milton Road, so there is a full storey of a difference”. The objectors provided a drawing which, they believed, illustrated their point.

169. The promoter referred to written evidence submitted to the Committee in November 2013 which stated that: “Relative to the ten houses on Park Avenue which would face on to the western elevation ... the building in respect of the first four and part of the fifth would be lower in height, by approximately four metres. For the remainder of the fifth house and the last five houses facing the school, the school building would be approximately two to three metres higher compared to those properties, but would also be set back some 67 metres from the Park Avenue front elevations…”

170. The Committee’s views on visual impact are set out in paragraph 116.

Security and access

171. Objectors referred to the terms of guidance published by the Association of Chief Police Officers, Secured by Design, which included the need for lighting for night time use of artificial playing surfaces, which would draw local attention to them at night. The promoter advised that the document placed an emphasis on passive surveillance, which meant having spaces that are open and clearly visible. Concerns were also expressed by objectors regarding the possibility of footpaths outside the site with the intention of encouraging public access, but which could

78 Available at: http://www.scottish.parliament.uk/S4_City_of_Edinburgh_Council_Portobello_Park_Bill_Committee/EPP_Viewpoint_Assessment.pdf
82 Available at: http://www.scottish.parliament.uk/S4_City_of_Edinburgh_Council_Portobello_Park_Bill_Committee/EPP_Grp1_re_Elevations.pdf
83 Promoter. Written submission, 6 November 2013.
affect security. The promoter advised that Lothian and Borders Police had been consulted on the design of the scheme and had carried out an audit of the proposals. The promoter was of the view that: “As it is a community-based high school, it is important that it is open and that it looks open, but it is also really important that it is secure. That is how the school has been designed”. 85

172. The Committee is satisfied that measures have been taken in the design preparation with a view to addressing these security issues.

Operational disturbances
173. Objectors argued that there would be operational disturbances for residents, for example, day to day deliveries, refuse collection, additional traffic in normally quiet streets, an increase in the number of people travelling through the streets, and littering. In addition, there would be disruption, noise, dust, additional traffic and general inconvenience for residents during the construction period.

174. The promoter advised that concerns about operational disturbances had been considered as part of the planning process, including conditions being imposed in the interests of residential amenity to restrict the hours of deliveries and collections. The design, installation and operation of any plant would be required to comply with the standard for measuring the noise rating for the acceptable level for neighbouring residential properties.

175. The Committee accepts that there would inevitably be some adverse impact from noise and operational disturbances both during and after the construction period, but is satisfied that this has been subject to the planning process, and that measures would be implemented to mitigate any such impact.

Loss of wildlife and biodiversity
176. Objectors maintained that, amongst other things, the development would lead to loss of wildlife and biodiversity and around 50 per cent of the Millennium planting would be lost and mature trees would be removed, leading to loss of habitats for birds and mammals on the park.

177. The promoter, in its written submission responding to issues raised by group 1, referred to the evidence provided in response to groups 2 and 4 on 26 March, which included a reference to the Design and Access Statement and Environmental Impact Assessment which supported the planning permission renewal. While it was confirmed that some of the Millennium planting and trees would be removed, compensation measures included additional planting and protection and improvement of remaining woodland and trees. A condition to the planning permission also required a detailed landscape and habitat management plan being approved by the planning authority, with all recommendations and mitigation measures to be implemented prior to occupation of the new school.

178. While the Committee recognises the environmental impact resulting from the development, such as loss of trees, it is satisfied that the mitigation measures, particularly in relation to the compensatory measures and the

planting of additional trees and habitat management, are proportionate responses to that loss.

179. Having taken all of the relevant submissions and additional evidence into account, the Committee rejects all objections in group 1.

CONCLUSION IN RELATION TO CONSIDERATION OF OBJECTIONS

180. The Committee has been struck by the apparently polarised positions of the parties involved with this Private Bill which has not facilitated constructive resolution of as many outstanding issues as the Committee would have hoped. The Committee hopes that any future engagement between the parties will be more productive.

181. While it is not a matter for the Committee, the Committee notes the promoter’s previous commitment regarding future consultation exercises, and encourages the promoter to ensure that, if the Bill is passed, such actions are included in the consultation process to be carried out in relation to the use of the replacement open space.

182. Having taken account of all the evidence, the Committee is satisfied that the benefits of the proposal which the Bill would allow to be taken forward, outweigh the disbenefits. The Committee notes the compensatory and mitigation measures which would be implemented as part of the planning process and is also satisfied that an appropriate balance has been struck between the private interests of those adversely affected by the proposal and its benefits to the wider community.

183. In conclusion, the Committee is satisfied that, while the Bill itself does not authorise the construction of the school in Portobello Park, by removing the legal obstacle which currently prevents it, the subsequent development which would impact on objectors’ private interests are in all the circumstances proportionate.
## ANNEXE A: ADMISSIBLE OBJECTIONS

The following tables show the admissible grouped objections to the City of Edinburgh Council (Portobello Park) Bill under Rule 9A.6.

<table>
<thead>
<tr>
<th>Group</th>
<th>Objectors</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>20 (Diana Cairns)</td>
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<tr>
<td></td>
<td>21 (Jack and Winifred Aitken)</td>
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<td></td>
<td>47 (Stephen Hawkins)</td>
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<td></td>
<td>50 (Alison Connelly)</td>
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<tr>
<td></td>
<td>53 (Portobello Park Action Group) (PPAG)</td>
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<tr>
<td>2</td>
<td>1 (John Kelly)</td>
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<tr>
<td></td>
<td>8 (Scott Macpherson and Susannah Fraser)</td>
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<td></td>
<td>9 (Elizabeth R Manshouri and 4 others)</td>
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<tr>
<td></td>
<td>10 (D&amp;M Costello)</td>
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<tr>
<td></td>
<td>15 (Gary F Gowans)</td>
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<td></td>
<td>25 (Ian, Sheila and Morven Robertson)</td>
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<td></td>
<td>29 (Ian Ross)</td>
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<td></td>
<td>30 (Richard Forbes and Karen Maxwell)</td>
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<tr>
<td></td>
<td>31 (Trevor Laffin and 10 others)</td>
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<tr>
<td></td>
<td>32 (Christians Estate and Hope Lane residents)</td>
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<tr>
<td></td>
<td>37 (Sandria Gillon)</td>
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<td></td>
<td>41 (Rhona and Colm Fitzgerald)</td>
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<td></td>
<td>42 (Ron and Lynn Sylvester)</td>
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<td></td>
<td>43 (Mrs R Sutherland)</td>
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<tr>
<td></td>
<td>46 (Duddingston Crescent residents (including Jennifer Peters))</td>
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<tr>
<td>Group</td>
<td>Objectors</td>
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<td>-------</td>
<td>---------------------------------------------------------------------------</td>
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<tr>
<td>48</td>
<td>(Hazel Thomas)</td>
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<tr>
<td>49</td>
<td>(Robert D Sutherland)</td>
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<tr>
<td>54</td>
<td>(Park Avenue residents (K Gillon and 114 others))</td>
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<tr>
<td>55</td>
<td>(Pauline, George, Sara and Emma MacDonald)</td>
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</tbody>
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<tr>
<th>Group</th>
<th>Objectors</th>
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<td>3</td>
<td>(G G and I Di Ponio)</td>
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<td>5</td>
<td>(Pauline Cowan)</td>
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<td>6</td>
<td>(Jean and Charles Douglas)</td>
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<td>7</td>
<td>(David and Janet Kilkerr)</td>
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<td>13</td>
<td>(Joyce and Bill Flockhart)</td>
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<td>14</td>
<td>(Steve and Fiona Coyle)</td>
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<tr>
<td>16</td>
<td>(Alex and Margaret Hope)</td>
</tr>
<tr>
<td>44</td>
<td>(Duddingston Park residents – David Connelly and 49 others)</td>
</tr>
<tr>
<td>Group</td>
<td>Objectors</td>
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<td>4</td>
<td>4 (PK and Fl Wraith)</td>
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<td></td>
<td>12 (Archie Burns)</td>
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<td></td>
<td>19 (Robert H Davis)</td>
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<td>24 (Hugh and Colin Cormack)</td>
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<td></td>
<td>27 (Caroline Hosking)</td>
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<td></td>
<td>36 (L J Connelly)</td>
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<td></td>
<td>38 (Sandy Sutherland)</td>
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<td></td>
<td>39 (Pamela Carr)</td>
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<td></td>
<td>40 (Stephen Carr)</td>
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<td></td>
<td>51 (Ursula Wright)</td>
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<td></td>
<td>52 (Sheila Coventry and others)</td>
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<td></td>
<td>56 (Dr Gordon McCulloch)</td>
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<td></td>
<td>59 (Graham Kitchener)</td>
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<td></td>
<td>61 (Sigrid Nielsen)</td>
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<td></td>
<td>62 (Richard Wright)</td>
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<td></td>
<td>66 (Gillian Dunn)</td>
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<thead>
<tr>
<th>Group</th>
<th>Objectors</th>
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<tbody>
<tr>
<td>5</td>
<td>17 (Portobello Golf Course golfers – Oula Jones, principal signatory)</td>
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</tbody>
</table>

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<thead>
<tr>
<th>Group</th>
<th>Objectors</th>
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<tbody>
<tr>
<td>6</td>
<td>2 (J Madden)</td>
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<tr>
<td></td>
<td>11 (Thomas H Taylor)</td>
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<tr>
<td></td>
<td>18 (Alan and Sheila Fletcher)</td>
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<tr>
<td></td>
<td>22 (Dr and Mrs Fraser)</td>
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<tr>
<td>Group</td>
<td>Objectors</td>
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<td>23</td>
<td>(Jet Cameron)</td>
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<tr>
<td>28</td>
<td>(Anne and Anthony King)</td>
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<tr>
<td>34</td>
<td>(Anna Turtle)</td>
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<tr>
<td>35</td>
<td>(Laura Ross)</td>
</tr>
<tr>
<td>63</td>
<td>(Karen MacLean)</td>
</tr>
<tr>
<td>65</td>
<td>(Beverley and Deborah Klein)</td>
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</tbody>
</table>
ANNEXE B: EXTRACT OF MINUTES OF CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL COMMITTEE

1st Meeting, 2014 (Session 4), Thursday 16 January 2014

Decision on taking business in private: The Committee agreed to take item 2 in private. It also agreed that further consideration of its approach to the scrutiny of the Bill at Consideration Stage be taken in private at its next meeting.

City of Edinburgh Council (Portobello Park) Bill (in private): The Committee provisionally agreed its approach to the scrutiny of the Bill.

2nd Meeting, 2014 (Session 4), Wednesday 26 February 2014

City of Edinburgh Council (Portobello Park) Bill (in private): The Committee agreed its approach to the scrutiny of the Bill at Consideration Stage.

3rd Meeting, 2014 (Session 4), Wednesday 12 March 2014

Decision on taking business in private: The Committee agreed to take item 3 in private, and to review, in private, evidence heard at future meetings.

City of Edinburgh Council (Portobello Park) Bill: The Committee considered objections to the Bill, taking evidence from Group 5 and the promoter—

Oula Jones, Past Captain and current committee member, and Maureen Wood, Past Captain and current treasurer, Portobello Ladies' Golf Club;

Iain Strachan, Principal Solicitor, Legal, Risk and Compliance, City of Edinburgh Council;

Charles Livingstone, Associate, Brodies LLP;

Ian Alexander, Design Director, JM Architects.

City of Edinburgh Council (Portobello Park) Bill (in private): The Committee reviewed the evidence heard under item 2.

4th Meeting, 2014 (Session 4), Wednesday 26 March 2014

City of Edinburgh Council (Portobello Park) Bill: The Committee considered grouped objections to the whole Bill, taking evidence first from objector groups 2 and 4 and the promoter—

Jennifer Peters, lead objector, and Ian Ross, objector, Group 2;

Gillian Dunn, lead objector, Archie Burns, objector, Stephen Carr, objector, and Dr Gordon McCulloch, objector, Group 4;

Billy MacIntyre, Head of Resources, Children and Families, and Iain
Strachan, Principal Solicitor, Legal, Risk and Compliance, City of Edinburgh Council;

Charles Livingstone, Associate, Brodies LLP;

Brian Thomson, Managing Director, JM Architects;

and then from objector groups 3 and 6 and the promoter—

David Kilkerr, lead objector, Jean Douglas, objector, and Bill Flockhart, objector, Group 3;

Beverley Klein, lead objector, Group 6;

Billy MacIntyre, Head of Resources, Children and Families, and Iain Strachan, Principal Solicitor, Legal, Risk and Compliance, City of Edinburgh Council;

Charles Livingstone, Associate, Brodies LLP;

Brian Thomson, Managing Director, JM Architects.

5th Meeting, 2014 (Session 4), Wednesday 23 April 2014

Decision on taking business in private: The Committee agreed that its consideration of decisions on objections, key issues for a draft Consideration Stage report, and the draft report should be taken in private at future meetings.

City of Edinburgh Council (Portobello Park) Bill: The Committee considered grouped objections to the whole Bill, taking evidence first from objector groups 3 and 6 and the promoter—

David Kilkerr, lead objector, Jean Douglas, objector, and Bill Flockhart, objector, Group 3;

Beverley Klein, lead objector, Group 6;

Billy MacIntyre, Head of Resources, Children and Families, and Iain Strachan, Principal Solicitor, Legal, Risk and Compliance, City of Edinburgh Council;

Charles Livingstone, Associate, Brodies LLP;

Ian Alexander, Design Director, JM Architects;

and then from objector group 1 and the promoter—

Stephen Hawkins, Diana Cairns, and Alison Connelly, members of Portobello Park Action Group (PPAG), Group 1;
City of Edinburgh Council (Portobello Park) Bill Committee, 1st Report, 2014 (Session 4) – Annexe B

Roy Martin QC, Legal Adviser, Group 1;

Billy MacIntyre, Head of Resources, Children and Families, and Iain Strachan, Principal Solicitor, Legal, Risk and Compliance, City of Edinburgh Council;

Charles Livingstone, Associate, Brodies LLP;

Ian Alexander, Design Director, JM Architects.

6th Meeting, 2014 (Session 4), Wednesday 7 May 2014

Decision on taking business in private: The Committee agreed to take item 5 in private.

City of Edinburgh Council (Portobello Park) Bill: The Committee considered grouped objections to the whole Bill, taking further evidence from—

Stephen Hawkins, Diana Cairns, and Alison Connelly, members of Portobello Park Action Group (PPAG), Group 1;

Billy MacIntyre, Head of Resources, Children and Families, and Iain Strachan, Principal Solicitor, Legal, Risk and Compliance, City of Edinburgh Council;

Charles Livingstone, Associate, Brodies LLP;

Ian Alexander, Design Director, JM Architects.

City of Edinburgh Council (Portobello Park) Bill (in private): The Committee considered its decisions on objections to the Bill.

City of Edinburgh Council (Portobello Park) Bill (in private): The Committee considered key issues for its Consideration Stage report.

Work programme (in private): The Committee reviewed its work programme and agreed to cancel the meeting scheduled for 4 June and to reschedule its consideration of Consideration Stage amendments for Thursday 12 June (at a time to be confirmed). The Committee noted 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.

7th Meeting, 2014 (Session 4), Wednesday 21 May 2014

City of Edinburgh Council (Portobello Park) Bill (in private): The Committee considered a draft Consideration Stage report. Minor revisions were agreed to. The Committee delegated to the Convener responsibility for finalising the draft report for publication on Thursday 22 May.
ANNEXE C: ORAL AND WRITTEN EVIDENCE

Please note that all written evidence and associated written evidence is published electronically only, and can be accessed via the City of Edinburgh Council (Portobello Park) Bill Committee’s webpages at: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/71768.aspx

ORAL EVIDENCE

3rd Meeting, 2014 (Session 4), Wednesday 12 March 2014

Oula Jones, Past Captain and current committee member, and Maureen Wood, Past Captain and current treasurer, Portobello Ladies' Golf Club;

Iain Strachan, Principal Solicitor, Legal, Risk and Compliance, City of Edinburgh Council;

Charles Livingstone, Associate, Brodies LLP;

Ian Alexander, Design Director, JM Architects.

4th Meeting, 2014 (Session 4), Wednesday 26 March 2014

Jennifer Peters, lead objector, and Ian Ross, objector, Group 2;

Gillian Dunn, lead objector, Archie Burns, objector, Stephen Carr, objector, and Dr Gordon McCulloch, objector, Group 4;

Billy MacIntyre, Head of Resources, Children and Families, and Iain Strachan, Principal Solicitor, Legal, Risk and Compliance, City of Edinburgh Council;

Charles Livingstone, Associate, Brodies LLP;

Brian Thomson, Managing Director, JM Architects;

and then from objector groups 3 and 6 and the promoter—

David Kilkerr, lead objector, Jean Douglas, objector, and Bill Flockhart, objector, Group 3;

Beverley Klein, lead objector, Group 6;

Billy MacIntyre, Head of Resources, Children and Families, and Iain Strachan, Principal Solicitor, Legal, Risk and Compliance, City of Edinburgh Council;

Charles Livingstone, Associate, Brodies LLP;

Brian Thomson, Managing Director, JM Architects.
5th Meeting, 2014 (Session 4), Wednesday 23 April 2014

David Kilker, lead objector, Jean Douglas, objector, and Bill Flockhart, objector, Group 3;

Beverley Klein, lead objector, Group 6;

Billy MacIntyre, Head of Resources, Children and Families, and Iain Strachan, Principal Solicitor, Legal, Risk and Compliance, City of Edinburgh Council;

Charles Livingstone, Associate, Brodies LLP;

Ian Alexander, Design Director, JM Architects;

and then from objector group 1 and the promoter—

Stephen Hawkins, Diana Cairns, and Alison Connelly, members of Portobello Park Action Group (PPAG), Group 1;

Roy Martin QC, Legal Adviser, Group 1;

Billy MacIntyre, Head of Resources, Children and Families, and Iain Strachan, Principal Solicitor, Legal, Risk and Compliance, City of Edinburgh Council;

Charles Livingstone, Associate, Brodies LLP;

Ian Alexander, Design Director, JM Architects.

6th Meeting, 2014 (Session 4), Wednesday 7 May 2014

Stephen Hawkins, Diana Cairns, and Alison Connelly, members of Portobello Park Action Group (PPAG), Group 1;

Billy MacIntyre, Head of Resources, Children and Families, and Iain Strachan, Principal Solicitor, Legal, Risk and Compliance, City of Edinburgh Council;

Charles Livingstone, Associate, Brodies LLP;

Ian Alexander, Design Director, JM Architects.
Written Evidence

Supplementary written evidence received at consideration stage on the City of Edinburgh Council (Portobello Park) Bill

City of Edinburgh Council (Bill promoter)
Alison Connelly
Jennifer Peters
Gillian Dunn
Alan and Sheila Fletcher
Anne and Tony King
Jean and Charles Douglas

The written submissions are available on the following page:
http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/71768.aspx
Members who would like a printed copy of this *Numbered Report* to be forwarded to them should give notice at the Document Supply Centre.