City of Edinburgh Council
(Portobello Park) Bill Committee

1st Report, 2013 (Session 4)

Preliminary Stage Report

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City of Edinburgh Council (Portobello Park) Bill Committee
1st Report, 2013 (Session 4)

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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
INTRODUCTION AND BACKGROUND

The City of Edinburgh Council (Portobello Park) Bill

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

2. Following the introduction of the Bill, there was a 60 day objection period which concluded on 24 June 2013, by which time 66 admissible objections to the Bill had been lodged. The Committee also received a significant number of written submissions on the general principles of the Bill.

Private Bills

3. Standing Orders Rule 9A.1.1 defines a Private Bill as: “a Bill introduced for the purpose of obtaining for an individual person, body corporate or unincorporated association of persons (“the promoter”) particular powers or benefits in excess of or in conflict with the general law, and includes a bill relating to the estate, property, status or style, or otherwise relating to the personal affairs, of the promoter”.

4. Private Bills differ from Public Bills in that they involve measures sought in the private interests of the promoter, to which others may object, also in a private capacity. The role of the Parliament remains to legislate but, because of the nature of the issues, it is also to arbitrate between competing private interests. That calls for procedures that are both parliamentary and quasi-judicial in character.

5. The Parliament, therefore, has a role in assessing objections lodged in relation to the Bill.
Preliminary Stage

6. At Preliminary Stage, the Committee has three broad functions, as set out in Rule 9A.8, namely—

- To consider and report on the general principles of the Bill.
- To consider and report on whether the Bill should proceed as a Private Bill, that is to say—
  - Does the Bill conform to the definition of a Private Bill in Rule 9A.1.1?
  - Do the accompanying documents to the Bill satisfy the criteria that are set out in the Standing Orders and are they adequate to allow proper scrutiny of the Bill?
- To give preliminary consideration to all objections and reject any objection where the objector’s interests are, in the Committee’s opinion, not clearly adversely affected by the Private Bill.

Objectives of the Bill

7. 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.”

8. 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).”

9. 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

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1 Promoter’s Memorandum, paragraph 3
The Bill and accompanying documents (Explanatory Notes (which include the Promoter’s Statement and Promoter’s Memorandum) can be viewed at: http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62502.aspx
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.

Approach

10. The Committee held six meetings during Preliminary Stage on the following dates: 19 June, 11 and 25 September, 9 October, and 13 and 27 November 2013.

11. On 4 October 2013, the Committee undertook a fact-finding visit to the proposed site of the new school in Portobello 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.

12. At its meeting on 11 September 2013, the Committee took oral evidence from the promoter’s representatives, namely: Billy MacIntyre (Head of Resources, Children and Families), Iain Strachan, (Principal Solicitor, Legal, Risk and Compliance), and John Baker (Senior Project Manager, Services for Communities) and from Charles Livingstone, an Associate at Brodies LLP, agents for the Council. The Committee also took evidence at that meeting from Andrew Ferguson (Solicitor and author of Common Good Law).

13. At its meeting on 9 October 2013, the Committee took oral evidence from Portobello Park Action Group (PPAG): Stephen Hawkins, Alison Connelly and Jennifer Peters, with legal representation from Roy Martin QC. The Committee also took evidence at that meeting from Portobello For A New School (PFANS), represented by Sean Watters (Chair), Tom Ballantine (also Chair of Portobello High School Parent Council) and Rosemary Moffat (PFANS supporter).

14. As part of its role at Preliminary Stage, the Committee was required to consider all admissible objections to the Bill and to reject any objection which, in its opinion, did not demonstrate that the objector’s interests would be clearly adversely affected by the Bill. The Committee considered all objections at its meeting on 25 September 2013 and, following consideration of each objection, rejected seven of the 66 admissible objections. Further detail is provided later in this report.

Background to the proposal to build the new school on Portobello Park

15. Portobello Park forms part of an area of land purchased by the Council from Sir James Miller in 1898 on the condition that it “be used exclusively as a public park and recreation ground for behoof of the local community”. Part of that land is currently occupied by a golf course, while the rest forms a public park (which is the part of land defined in the Bill as “the Park”). The Feu Disposition also contained a condition against building on the land purchased, other than buildings consistent with the use of the land as a public park or recreation ground.

16. In the Explanatory Notes accompanying the Bill, the promoter stated that—

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1a Post-publication note: The report, when first published, incorrectly stated that the land was gifted to the Council.
“These conditions, together with the historical background to the Council’s acquisition of the Park and the public’s subsequent use of it, mean that the land has inalienable common good status.”

17. The proposal for a new high school in Portobello has been under consideration for many years, with various options for the site having been considered by the Council. Details are provided below of the history of the proposal to build on the Park.

18. The proposal dates back to January 2006, when the Council announced its intention to build the new school on that site. The announcement was followed by a lengthy series of legal opinions obtained by PPAG and the Council regarding the legality of whether the Council could in fact build on the site.

19. In April 2006, the Council was advised by PPAG that it was of the view that the Park was common good land, to which the Council responded that there was no legal impediment to building on the Park. In November 2008, the Council indicated that legal opinion advised that it did not require to seek the court’s permission; in January 2010, senior counsel for PPAG gave an opinion which did not accord with that of the Council.

20. In February 2010, PPAG wrote to the Council proposing a joint action in the courts to resolve the legal issues, which was declined by the Council. In March 2010, PPAG confirmed its intention to raise an action against the Council, asking the court to declare that the proposed construction would be unlawful. In February 2011, the Council was granted planning permission and in April confirmed that it had counsel’s opinion that there was no requirement for the court’s consent.

21. In July 2011, PPAG’s petition was lodged with the Court of Session. In March 2012, Lady Dorrian issued an opinion dismissing the petition on a technical ground that the action had been raised too long after the relevant decision of the Council.

22. In April 2012, the Council decided to appropriate the land for the proposed new school in terms of section 20 of the Local Government in Scotland Act 2003, to advance the well-being of the area and persons within that area and to enter into a construction contract conditional on the legal challenge being resolved.

23. On appeal, in September 2012, the Inner House of the Court of Session issued a judgement in favour of PPAG on the basis that existing statutory processes for disposal of common good land did not extend to appropriation of inalienable common good land in respect of a different function of a Council. Both parties proceeded on the basis that the Park was inalienable common good land.

24. While the Committee appreciates that the proposals detailed in the Bill relate solely to the development of the Park for the school, it notes concerns

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Explanatory Notes, paragraph 7

Available at: http://www.scotcourts.gov.uk/opinions/2012CSIH69.html
that there had been an apparent chequered history to possible development of the Portobello Park and adjacent golf course site extending back beyond the date of the current proposal, details of which were provided, in particular, in the objection lodged by PPAG.\(^5\)

**Alternative sites**

25. As part of the process of being informed about the background to the Bill, the Committee noted that the Promoter’s Memorandum referred to the Council’s consideration of all available options for the site of the new school and to the most recent review,\(^6\) details which had been included in a report to the Council on 22 November 2012. In particular, the Committee noted the information presented in relation to the two “fall back” sites in the event that the Portobello Park option did not proceed and the reasons for the selection of the Park over the other two options (Baileyfield and the site of the existing high school and St James primary school).

26. Further explanation for the selection was given in oral evidence by the promoter on 11 September 2013 of the history of the analysis of the sites, criteria such as central location in the catchment area, safe and convenient access routes, ownership, and required size of site.

27. The Committee does not feel that it is appropriate for it to take a view on issues which were for the Council to reach a position on and, for that reason, did not explore the detail of the review or the options appraisal.

**Background to the law on common good land**

28. Before exploring the issues pertinent to the Bill itself, the Committee recognised that it was key to consideration of the Bill for members to be well informed about the background and issues relating to the law on common good land. To this end, the Committee received detailed and informative written evidence which set out the background to and history of the common law concept of common good land, both alienable and inalienable. The Committee is particularly grateful to Andrew Ferguson, Professor Robert Rennie and Roderick McGeoch for their contributions in this regard.

**History of common good**

29. It is generally recognised that the concept of common good is complex and its history dates back to medieval times and the creation of burghs. With the establishment of settlement areas, administrative and judicial infrastructures were required, resulting in trade and consequent customs and duties which became part of a central general fund – “the common good”.

30. In the early to mid-nineteenth century reform of municipal authorities created powers to levy rates and taxes. This new income was used for specific purposes rather than the general purposes of the burgh and, as such, was not viewed as part of the common good. At the same time, the Industrial Revolution created wealth for some individuals, which allowed benefactors to provide land for the

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\(^5\) PPAG objection, section 7  
\(^6\) Promoter’s Memorandum, paragraph 14
recreation of local residents of burghs, and such donations often had specific provision that they were used for the inhabitants of the burgh.

31. Such factors can lead to a plethora of uncertainties when it comes to the interpretation of the status of common good land. As Andrew Ferguson stated—

“The result of centuries of grants of land, and its dedication for various purposes, meant that the question of whether land located within a former burgh is common good land or not can be a complex mix of historical fact and legal interpretation.”

32. He also highlighted that—

“... not all land held by local authorities in former burghs will have come to it from the burgh councils. County councils, the former district councils, regional councils and other smaller historical entities such as parish councils will conceivably have contributed to a current unitary council's overall landholding in a burgh. The only land which can be common good land is land which was previously held at some point by a burgh council.”

Alienability of common good land

33. Common good land can either be alienable or inalienable. Which category such land falls into can be difficult to establish and can involve consideration of factors such as how a former burgh came into possession of the land, or the use to which it has been put. Roderick McGeoch observed that—

“The characteristic of inalienability is effectively a legal recognition of an underlying right of the inhabitants of the former burghs to have and use certain properties for their established purposes…

“... Inalienable common good properties are therefore generally restricted to:

(a) Places of customary public resort such as parks and recreation grounds, public streets, market places and the like (which are normally held under the more ancient titles); and

(b) Administrative buildings/places necessary for the administration and social viability of the burgh, such as town halls, public halls, clock towers etc.

“... Alienable common good properties would otherwise generally consist of lands and buildings which had not (at least in more recent times) been available for use by the residents of the burgh at large.”

34. It appears to be generally held that the landmark case regarding common good land and tests for inalienability is Murray v. Forfar Magistrates 1893, involving the Market Muir in Forfar, which the magistrates proposed to lease. The court

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7 Andrew Ferguson. Written submission, paragraph 4.1
8 Andrew Ferguson. Written submission, paragraph 4.3
9 Roderick McGeoch. Written submission, paragraphs C2, C3 and C6
decided that there were three categories of inalienable common good land which could not be sold or disposed of by a burgh—

- Land which had always been used for recreational purposes by the residents of the burgh;
- Land or buildings dedicated specifically to a public use, such as burgh chambers;
- Land which had been granted for a specific municipal purpose for the inhabitants of a burgh.

Appropriation and disposal of common good land

35. Sections 73 and 75 of the Local Government (Scotland) Act 1973 ("the 1973 Act") contain provisions about land transactions and common good land. These sections are set out below—

73 Appropriation of land.

(1) Subject to Part II of the Town and Country Planning (Scotland) Act 1959 and to the following provisions of this section, a local authority may appropriate for the purpose of any function, whether statutory or otherwise, land vested in them for the purpose of any other such function.¹⁰

75 Disposal, etc., of land forming part of the common good.

(1) The provisions of this Part of this Act with respect to the appropriation or disposal of land belonging to a local authority shall apply in the case of land forming part of the common good of an authority with respect to which land no question arises as to the right of the authority to alienate.

(2) Where a local authority desire to dispose of land forming part of the common good with respect to which land a question arises as to the right of the authority to alienate, they may apply to the Court of Session or the sheriff to authorise them to dispose of the land, and the Court or sheriff may, if they think fit, authorise the authority to dispose of the land subject to such conditions, if any, as they may impose, and the authority shall be entitled to dispose of the land accordingly.

(3) The Court of Session or sheriff acting under subsection (2) above may impose a condition requiring that the local authority shall provide in substitution for the land proposed to be disposed of other land to be used for the same purpose for which the former land was used.

36. In essence, these provisions provide for powers which allow local authorities—

¹⁰ Subsections (2) and (3) are irrelevant in this context as they refer to allotments and are not relevant to the Portobello case.
(i) To dispose of\textsuperscript{11} or appropriate\textsuperscript{12} common good land where there is no doubt that it is alienable (rather than inalienable);

(ii) Where it is or may be inalienable common good land, to dispose of such land only with the consent of the court.

37. The important point here is that it seems that there is no provision in the 1973 Act for a local authority to appropriate inalienable common good land, even with the consent of the court, and therefore no power to transfer such land from one of the authority’s functions to another.

Case law involving disposal of inalienable common good land to a third party
38. All three experts who submitted written evidence referred to cases which demonstrated the type of test a court might apply to determine whether inalienable common good land should be disposed of to a third party. These included cases involving Motherwell District Council\textsuperscript{13}, Kirkcaldy District Council\textsuperscript{14} and West Dunbartonshire Council\textsuperscript{15} which, in Andrew Ferguson’s view represented: “a solid body of case law indicating that, when it comes to disposal of inalienable common good land, the interests of the inhabitants are looked at by the court as a whole and the proposed disposal judged on its merits.”\textsuperscript{16}

Appropriation vs disposal?
39. Andrew Ferguson went on to contrast the position regarding disposal to that of appropriation from one function to another, where “there is no question of the merits of the proposal being debated and decided upon by anyone. It simply cannot legally happen.”\textsuperscript{17}

40. Two cases which present circumstances similar to the Portobello Park case were those of South Lanarkshire\textsuperscript{18} and North Lanarkshire\textsuperscript{19} in the context of councils seeking to build schools on common good land. The Councils sought permission from the court to build new schools on park land forming part of the common good using a private/public partnership (PPP) arrangement, which the Councils believed amounted to disposal, and that the land would still be in community use. Andrew Ferguson commented that—

“The court held that these arrangements did not amount to a disposal in terms of the legislation. The issue of appropriation was not raised by the councils…; the court was not asked to consider the issue of appropriation; and, as there were no objectors to the proposal represented in court, no-one else raised the issue of appropriation. However, the obvious conclusion to draw is that, if the schools were not being disposed of in terms of the funding arrangement, then

\textsuperscript{11} Disposal allows the land or property to be sold or leased to a third party.

\textsuperscript{12} Appropriation allows the land or property in question to be used by the council for another purpose — for example, to transfer from one portfolio to another such as recreation to an education function.

\textsuperscript{13} Andrew Ferguson. Written submission, paragraph 7.12 (and appendix 2)

\textsuperscript{14} Andrew Ferguson. Written submission, paragraph 7.4 (and appendix 2)

\textsuperscript{15} Andrew Ferguson. Written submission, paragraph 7.5 (and appendix 2)

\textsuperscript{16} Andrew Ferguson. Written submission, paragraph 7.6

\textsuperscript{17} Andrew Ferguson. Written submission, paragraph 7.7

\textsuperscript{18} Andrew Ferguson. Written submission, paragraph 7.10 (and appendix 2)

\textsuperscript{19} Andrew Ferguson. Written submission, paragraph 7.10 (and appendix 2)
they were being appropriated by the authorities themselves for an educational purpose.”

41. This point was echoed by Professor Robert Rennie who, in his written evidence, stated that: “It cannot be denied … that there was appropriation of common good land for a different function of the local authority, in both cases, like the Portobello case, appropriation of park land for [a] school”.  

Anomalous treatment of inalienable common good land

42. All three individuals with experience in common good law invited by the Committee to provide written evidence commented on the apparently anomalous situation whereby a council can, with the approval of the court, dispose of inalienable common good land to a third party, even where that results in it being used for a quite different purpose, but the same council cannot secure its use for such a different purpose merely by appropriating the land for another of its functions.

43. Andrew Ferguson pointed out that: “In the Portobello Park case, the lack of powers in the 1973 Act to allow an appropriation for a school on inalienable common good land brought the proposal to a halt so far as the court was concerned, without any discussion of the merits of the proposal or otherwise.”

44. In providing Opinion for the Council, Gerry Moynihan QC expressed the view that there was an unintended gap in the 1973 Act and that this would be exemplified by reflection on what might have happened had the proposed use of the Park arisen between 1975 and 1996.

45. During that period (before the advent of unitary authorities), the ownership of the land as a recreational asset was the responsibility of the then City of Edinburgh District Council, while education was a function of Lothian Regional Council. The possible use of the land for educational purposes would have involved a transfer by sale or lease from the District Council to the Regional Council, which would have been a “disposal” for the purposes of section 75(2) of the 1973 Act, and an application to the court could have been made to authorise the transaction.

46. Mr Moynihan commented that—

“That can no longer be done because we now have unitary local authorities and the change of use from recreation to education is now merely an ‘appropriation’ and not a ‘disposal’. It may be thought odd that a means existed to sanction the very same scheme at a time when local government functions were divided between two Authorities but no means exists now that the functions vest in a single Authority.”

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20 Andrew Ferguson. Written submission, paragraph 7.11
21 Professor Robert Rennie. Written submission, part 5.0
22 Andrew Ferguson. Written submission, paragraph 7.12
23 Gerry Moynihan QC, Opinion for the Council, paragraph 4
Addressing the apparent legal anomaly

47. Suggestions were put forward as to how the apparent anomaly might be addressed. Roy Martin QC, representing PPAG, referred to the possibility of amending section 75 of the 1973 Act. A further suggestion put forward by Andrew Ferguson involved the abolition of the distinctions between common good and other council-owned land, which would mean that development of such land would be subject only to the existing controls, and particularly planning legislation. This might be linked to legislation which permitted a form of local inquiry which could allow for the interests of local residents to be more fully protected.

48. The Committee is sensitive to the fact that it is not a specific part of its role to address the apparent legal anomaly whereby councils are unable to appropriate inalienable common good land. Nonetheless, the Committee notes the suggestions put forward in this regard and refers further in the section on “Perceived implications of the Bill”.

Interpretation of the provisions of the Bill

49. There was some dispute about whether the provisions of the Bill, as currently drafted, would provide the desired outcome of allowing the Park, once appropriated, to remain inalienable for all other purposes. Roy Martin QC, in his Opinion for PPAG, argued that—

“Once the land has been appropriated for the purpose of their education functions, the land will cease to be common good land and will be held without restriction as a part of the general landholding of the Council. ... There is no basis within the 1973 Act upon which a single area of land ... could be simultaneously alienable and inalienable.”

50. This argument was countered by Gerry Moynihan QC for the Council, who stated that—

“ ... I would observe that section 1(2) is the exact antithesis of a provision that clearly alters the pre-existing common law status of the relevant part of the land as inalienable common good land. On the contrary, section 1(2) says in terms that it confers a power of alienation “only to the extent that the alienation in question consists of the appropriation of Portobello Park for the purposes of the Council’s functions as an education authority, including for the avoidance of doubt the Council’s powers under section 17 of the 1980 Act”. Properly construed section 1 of the Bill provides that the land retains its common law status as inalienable common good land save for the limited exception of ‘appropriation’ to educational purposes.”

Clarification by amendment

51. One suggested means of ensuring that the site could not be used for anything other than the intended purpose in the future would be to amend the relevant

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24 Scottish Parliament City of Edinburgh Council (Portobello Park) (CECPP) Bill Committee. Official Report, 9 October 2013, Col 76
25 Andrew Ferguson. Written submission, paragraph 9.5 – 9.6
26 Roy Martin QC, Opinion for PPAG, paragraphs 11 and 13
27 Gerry Moynihan QC, Opinion for City of Edinburgh Council, paragraph 19
section of the Bill so that, should the education purpose fail for whatever reason, the land would then be transferred back into the common good automatically and thereafter be made inalienable again.  

52. The Committee recommends that the Bill be amended at Consideration Stage (if the Bill proceeds to that Stage), to provide safeguards for any future use of the land and to protect its inalienable common good status in circumstances where it was no longer to be used for an educational purpose.

GENERAL PRINCIPLES

53. The promoter has stated that the objective of the Bill is to remove a legal obstacle which prevents the new Portobello High School being built on Portobello Park. While the Bill itself does not authorise the building of the school on the Park (which is subject to a separate planning consent), it allows the status of the Park to be changed and the effect is intrinsically linked to that objective.

Perceived key implications of the Bill if enacted

54. The Committee felt that it was paramount to address at the outset a number of the key issues which had been raised in objections and written evidence about the impact of the Bill on the following areas—

- Whether the Scottish Parliament had a role in legislating to overturn the decision of a court on a local matter perceived by objectors as a planning issue.
- Whether the passing of the Bill would set a precedent for other local authorities in Scotland in a similar position in relation to inalienable common good land.

Implications for the planning system

55. Many objections were concerned about the Parliament’s role and the potential for interference in the local planning process.

56. In this connection, the Committee is very aware that promoters have a right to introduce private bills (which, almost by definition, deal with relatively local and specific issues), and the Parliament has an obligation to scrutinise any such bills that are introduced. The promoter has set out the case that it cannot achieve its objective via the planning process alone, and it is entitled to approach the Parliament to secure the additional changes it needs.

57. The Committee is obviously very conscious that its role is to scrutinise and reach a view on a Bill that has been referred to it, and not to take over the Council’s own role as the local planning authority.

Possible implications for precedent and legislating subsequent to a Court of Session decision

28 Gerry Moynihan QC, Opinion for City of Edinburgh Council, paragraph 23; Andrew Ferguson, written submission paragraph 7.15
58. Objectors also expressed serious concerns about the possibility of the Bill, if enacted, setting a precedent for other local authorities and inalienable common good land in Edinburgh and throughout Scotland.

59. The Committee considered carefully the implications of recommending that the Bill proceed as a Private Bill in this context.

60. Roy Martin QC, for PPAG, in relation to the question of precedent, recognised that this was: “...essentially a political consideration … [and] may be said to raise both a narrow and a broad issue”. 29

61. The “narrow” issue related to the fact that, if passed, the Bill would “demonstrate a mechanism whereby local authorities can avoid their responsibilities in respect of inalienable common good land” and holding such land for the benefit of local residents and not for the council’s own purposes. 30

62. Mr Martin stated that the broader issue regarding precedent related to—

“whether the Scottish Parliament would wish to allow private legislation to be used for the purpose of rendering lawful conduct which is not only unlawful in terms of statute but, as in this case, has been declared to be unlawful after full consideration on its merits by the Inner House of the Court of Session… It is impossible to anticipate all of the circumstances in which a public body, or even a private interest, might rely upon the example of the Bill to say that they can justify legislation which would permit them to act in a way which would otherwise be unlawful because they have a sufficiently good reason why they should be entitled to do so.” 31

63. In oral evidence to the Committee, Andrew Ferguson indicated his view that—

“...the bill will not affect other inalienable common good land. The bill will affect only Portobello; it will not have any general effect or provide anything that other councils will be able to rely on.”

64. However, he also went on to express the view that—

“Whether it will be seen as a test case and other councils will see it as the safest possible way of dealing with such an issue is another matter.” 32

65. In relation to the role of the courts and that of the Parliament, the Committee is well aware 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 legislative competence) to legislate as it considers appropriate, even if the effect is to change the law as determined by a court.

29 Opinion of Roy Martin QC for PPAG, paragraph 15
30 Opinion of Roy Martin QC for PPAG, paragraph 16
31 Opinion of Roy Martin QC for PPAG, paragraph 18
66. In relation to the precedent argument, the Committee acknowledges that there is some force in the general argument that, if one council is seen to succeed in overturning the general protections afforded to inalienable common good land by means of a private bill, this may make it more likely that other councils (or the City of Edinburgh Council, in relation to other pieces of land) may be encouraged to seek similar remedies.

67. However, the purpose of the private bill process is to obtain for a private interest (in this case, the Council) “particular powers or benefits in excess of or in conflict with the general law”. In this context, the Committee is satisfied that the Bill—

- deems the Park to be land to which section 73(1) of the Local Government (Scotland) Act 1973 can be applied, i.e. to obtain a power which was not available under the 1973 Act; and
- deals with the particular circumstances of Portobello Park and is narrowly drafted (including by the use of map references) to ensure that it only applies to the Park.

68. While the Committee accepts that it will be open to other councils to follow the private bill route if they so choose, each case would have to be considered on its own circumstances and merits.

69. The Committee is also of the view that, in narrow legal terms, this Private Bill by definition cannot set a precedent as it only makes specific application of law in these defined circumstances and does not itself change the general area of law.

70. The Committee is, therefore, content that any such precedent effect is not closely enough linked to what the Bill actually does for it to constitute a valid reason why the Bill should not proceed to the next Stage.

71. In this connection, the Committee refers again to the apparent legal anomaly in the 1973 Act and draws the attention of the Parliament and the Scottish Government to the fact that it has been suggested that a change in the general law might allow for that apparent anomaly to be addressed which would have general application throughout Scotland.

72. In his response to the Committee, who had sought information on whether the Scottish Government had any plans on the matter, the Minister for Local Government and Planning advised that—

“The Scottish Government has not reached any decisions on the subject. However, we recognise the importance of the issue and will be considering it further. That consideration will take into account the submissions to the Committee and also any relevant comments that may be made in responses to our consultation on the forthcoming Community Empowerment Bill, which will include provisions on greater transparency...”
in the management and disposal of the Common Good. I will keep the Committee informed of developments."^{33}

73. It would therefore appear that even if the Scottish Government did decide to legislate in this area, any such legislation remains some time off.

Alternative legal approaches

74. In the context of reaching a view as to whether a private bill is an appropriate mechanism to achieve the promoter’s objectives, the Committee considered the alternative legal approaches which the Council had considered. These approaches are set out in the Promoter’s Memorandum and are—

- Appealing the Inner House’s decision to the Supreme Court.
- Reviewing the status of the Park to establish whether it might be categorised as alienable common good land or not part of the common good, and if necessary seeking a declarator to that effect from a court.
- Disposing of the Park under section 75(2) of the 1973 Act, with the approval of the Sheriff Court or the Court of Session.
- Applying to the Sheriff Court or the Court of Session seeking authority to appropriate the Park under section 75(2) of the 1973 Act.
- Petitioning the Court of Session under the *nobile officium*.
- Changing the existing legislation by way of a Private Bill, a Government Bill or a statutory order.

Appealing the Inner House’s decision to the Supreme Court

75. Legal advice given to the Council was that an appeal would be unlikely to succeed, given the Inner House’s decision, and the Council took the view that an appeal would not justify the time and expense such an action would involve.

Challenging the Park’s status as inalienable common good land

76. In the course of the judicial review challenge to the Council’s decision to appropriate the Park, neither the Outer House nor the Inner House was asked to consider the question of the Park’s status (i.e. whether it was common good, and whether it was inalienable). However, the Council accepted that the arguments could proceed on the assumption that the Park had inalienable common good status. Consideration had been given to seeking a declarator on the Park’s common good status and a decision that the Park was not inalienable common good would have enabled the Council to appropriate it for the new Portobello High School. However, following further review, it was concluded that there would be “very poor prospects of the Council obtaining a declarator that the Park is not inalienable common good land”.^{34}

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33 Written submission. Minister for Local Government and Planning, 21 November 2013
34 Promoter’s Memorandum, paragraph 25
77. In addition to the uncertain likelihood of success there would have been significant expense and potential delay, with the prospect of the decision being appealed even if it had been successful.  

Disposal of the proposed site
78. Section 75(2) of the 1973 Act permits local authorities to dispose of inalienable common good land, with the consent of the Courts. The Council could have applied for permission to transfer ownership of the site to a Council-owned company, which could have then developed the site. This would have meant that the land was no longer part of the common good and the restrictions on alienation would not have applied.

79. Again, given the likelihood of legal challenge and the fact that “it could be expected that the Court would view such a disposal as a means of circumventing the terms of the 1973 Act,” the promoter felt that such an approach would not justify the time and expense involved.

Appropriation of the Park under section 75(2)
80. A further option considered was application to the Courts for permission to appropriate the Park under section 75(2) of the 1973 Act, which would involve the Courts adopting a purposive interpretation so as to include appropriation within the meaning of the phrase “dispose of land”.

81. The promoter took the view that this course of action would be unlikely to succeed and would involve cost and delay.

Nobile officium
82. The Court of Session has the power to exercise the nobile officium, which is in essence the power to provide a legal remedy where one is otherwise unavailable. The remedy in this case would be an order entitling the Council to appropriate the Park for the purposes of using it as the site of the new high school.

83. The promoter was of the view that—

“In any event, the nobile officium is to a certain extent a judicial equivalent of promoting a Private Bill in the Scottish Parliament (at least in the present circumstances, where the outcome of each process would be effectively the same).”

84. In oral evidence, the promoter advised that—

“the prospects of success would be highly uncertain at best and likely, on the basis of the advice received, to be low.”

Other legislative routes
85. Other legislative routes considered by the Council were—

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35 Promoter’s Memorandum, paragraph 26
36 Promoter’s Memorandum, paragraph 29
37 Promoter’s Memorandum, paragraph 36
• Possible legislative measures which might be included in the Scottish Ministers’ draft Community Empowerment and Renewal Bill. However, that Bill was at an early consultation stage, and was unlikely to become law until much later than would be the case if the Council successfully promoted a Private Bill.

• A change to existing local government legislation, either by primary legislation or by way of an order made under existing legislation, in order to provide a statutory mechanism for local authorities to appropriate inalienable common good land. This would have involved wide consultation and would have affected the law as applying throughout Scotland and not just in respect of the Park.

86. In oral evidence, the promoter referred to “potential routes” using a ministerial order – under section 57 of the Local Government in Scotland Act 2003 which enables the Scottish Ministers to make an order to overturn or supplement a piece of legislation that prevents a local authority from exercising its power to advance wellbeing - but “informal discussions … made the point that any change would be to the general law and Ministers would have to consult widely before taking such a step … [and] there was no certainty that that would be taken forward”.39

87. The promoter felt that it was not certain that the Scottish Ministers would pursue any such legislative changes, and there would in any event be uncertainty over the timescale for any changes.

Promoter’s conclusion on alternative approaches
88. The promoter concluded that none of the alternative legal approaches “would be likely to be as quick or as cost-effective as promoting a Private Bill in the Scottish Parliament. In addition, the private bill process offers greater certainty in terms of both legal effectiveness and likely timescales.”40

Evidence on legal alternatives
89. Comments from those invited to provide written evidence were largely in agreement with the conclusions reached by the promoter.

90. Andrew Ferguson echoed the promoter’s view that none of the alternatives would be likely to be as quick or effective as the private bill route and that “any form of further court action would be likely to have at the very least uncertain prospects of success, be expensive for everyone involved, and introduce a very significant time delay.”41

Review of status of the Park and seeking a declarator from a court
91. One area of contention was raised by Roderick McGeoch in relation to the possibility of the Council seeking a declarator on the common good status of the Park from the Courts, as such a decision would resolve the matter. A decision

40 Promoter’s Memorandum, paragraph 41
41 Andrew Ferguson. Written submission, paragraph 8.4
that the Park was not inalienable common good would have enabled the Council
to appropriate it for the new Portobello High School. Mr McGeoch was—

“unable to support the Council’s conclusion that the prospects of obtaining a
declarator to the effect that the land in question is not inalienable common
good land are very poor” and cautioned that, should the Bill be enacted, while
on the one hand might be viewed as expediting the desired outcome, it may
nonetheless “be considered inappropriate to be enacting provisions … dealing
with the common good status of the Park when that is not a matter upon
which the courts have passed judgment.”  

92. In supplementary written evidence, the promoter advised that, while only the
courts could determine the status of common good land, it strongly believed that
the Park was inalienable common good land. Following the conclusion of the Inner
House appeal, the Council had sought advice on the status of the land from Gerry
Moynihan QC, who had examined the historical background to the Park and had
“confirmed that it forms part of the common good. He also concluded that the
Park is inalienable. He was sufficiently confident in that conclusion that he
separately advised that he would decline to act should the Council bring a court
action arguing for a different conclusion.”  

93. In light of those views, the Council explained that it did not feel that it would have
been appropriate to pursue a court action seeking a decision that the Park was
not inalienable common good land.

Public Bill route
94. Comments were submitted on the possibility of a Scottish Government Bill, which
would have general application throughout Scotland.

95. Andrew Ferguson referred to the possibility of measures being included in the
Scottish Ministers’ draft Community Empowerment and Renewal Bill—

“I have been involved in consultation meetings regarding the Bill, and I concur
with the comments in the Promoter’s Memorandum that there is considerable
uncertainty as to whether this piece of legislation will, or even should, cover
the specific issue of appropriation of inalienable common good land. Although
the issue of common good has been raised as part of the consultation paper,
it may well be that the Scottish Ministers consider that reform of common
good law itself is a matter for separate, if related, legislation.

“However, given that at the date of writing, the Community Empowerment Bill
has still to be published for consultation,” it would appear to be in the City of
Edinburgh Council’s best interest to promote its own legislation meantime.”

42 Roderick McGeoch. Written submission, paragraphs G2 – G4
43 City of Edinburgh Council. Supplementary written submission
44 The consultation (which does not appear to specifically cover the apparent legal anomaly) was launched on 6 November 2013 and closes on 24 January 2014 and can be viewed at:
45 Andrew Ferguson. Written submission, paragraphs 8.5 and 8.6
96. Professor Robert Rennie commented in this context that—

“A Scottish Government Bill would require a policy decision and wide consultation and such legislation would be of general application throughout Scotland and not just in relation to Portobello Park. I am myself of the view that given the decision of the Inner House the current legislation will require to be examined and changed. A situation where a local authority can ask the court for consent to dispose of land but is stuck with common good land which is needed for another purpose seems to me to be bizarre.”

97. The Committee is satisfied that the Council was justified in pursuing the private bill process and none of the other possible alternatives to achieve its objective.

Consultation process

98. The Committee noted that a significant number of objections and written submissions highlighted alleged flaws in the consultation process carried out by the promoter prior to the introduction of the Bill and felt it important to explore the extent of these claims as part of its consideration at Preliminary Stage. A number of the areas of concern are referred to below.

Timescale and notification arrangements for consultation

99. Objectors commented that, although the consultation period began at the start of December, a significant number of the properties most affected did not receive the promoter’s information leaflet until well into January, in some cases more than five weeks into the consultation period and, in some instances, after the first public meeting.

100. The promoter, in its oral evidence on 11 September, recognised that “there were some difficulties with the initial distribution” and that: “In some areas, the delivery was not up to the standards that it should have achieved.” To correct this, a second leaflet drop was undertaken on 7 January 2013 in advance of the first public meeting. The distribution company was specifically asked to deliver to the areas around Portobello Park where there appeared to have been difficulties with the first delivery, although the promoter did not specify precise addresses or streets affected.

Public meetings

101. The Promoter’s Memorandum refers to the two local community groups respectively, one for and one against the proposals, having the opportunity to make a presentation at two public meetings which were held as part of the consultation process. Objectors argued that the format of the public meetings resulted in a “hostile” atmosphere with the result that the focus on the Private Bill was removed.

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46 Professor Robert Rennie. Written submission, paragraph 6.1(f)
48 PPAG objection, paragraphs 4.18–4.19
102. In contrast, the promoter explained in its oral evidence that the intention was to be open and transparent—

“It was left to their [the two groups’] discretion whether to attend the meeting. The top table comprised representatives from the council, PFANS and PPAG. The two groups were left to make whatever presentation they deemed appropriate—it was not prescribed in any way... it is fair to say that the discussion was wide ranging, covering alternative sites, the necessity for the private bill process, the rights and wrongs and the whys and wherefores, whether we were flying in the face of the Court of Session and a variety of other matters. We wanted to ensure that the process was open and participative and that nothing was off the agenda.”

103. PPAG argued that the promoter should have used the meetings to expand on the pros and cons of the alternative sites and engage in a debate on their respective merits.

 Balanced approach

104. There were claims that there was not a balanced approach taken in relation to leaflets, presentations and displays in public areas for various reasons, including lack of a proper analysis of alternatives, incorrect drawings and incorrect information on the timescale for a Private Bill.

105. In relation to the information provided on possible alternative sites - “the best fall-back options” which were the former Scottish Power site at Baileyfield and rebuilding the school on the existing site, objectors questioned the Council’s assessment of those sites and suggested that the Council’s reasoning in support of the Park against other locations appeared to be subjective. It was claimed that all alternatives should have been detailed with the pros and cons of each provided in the consultation material generally and also in the Promoter’s Memorandum.

106. In its oral evidence, the promoter responded that—

“The purpose of the bill is not about the site of the school, it is about changing the use of the park. However, the information leaflet, in addition to identifying the purpose of the bill and the alternative legal options that we had discounted, deliberately referred to the other fallback options that the council was considering. It made it clear that we could not presume the outcome of the private bill process and that we had identified two fallback options. We sought to provide at a high level the respective pros and cons of those, albeit that the bill process is not about deciding a site for the school.”

107. It was indicated that the material also included details of costs and time to deliver the new school in the Park as opposed to the two alternative sites.

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50 PPAG supplementary written submission, 18 October 2013
51 PPAG objection, paragraphs 4.5–4.17
Methods of responding and content of the survey
108. In its objection, PPAG set out its overarching concern that: “the design of the consultation in the first place invalidated the responses. The responses were only as good as the questions that were asked and the people they were put to, and we felt that the design was compromised from the outset in as much as a consultation should not be about a yes or no. It should be about discussing the principles, but that was not the case here”.53

109. A criticism of the methods of responding was that some respondees might have been disadvantaged if they were not able to make an online response; a hard copy of the questionnaire should have been delivered with the leaflet.

110. The promoter indicated that, in addition to issuing the information leaflet, hard copies of the material were available in libraries or electronically on the Council’s website.54

Scope of the consultation area
111. It was argued by objectors that a wider consultation should have been carried out covering the whole of Edinburgh and that the boundary for the consultation closely followed the catchment area for the school, which favoured parents with children at the school over local residents.55

112. In its oral evidence the promoter argued that—

“We considered that the most important people to notify were those in the area, which we defined as not only the school catchment area but a geographical area that is set out in the council report of November 2012. It encompassed about 14,500 households in the area that we believed we needed to get to directly, because they would be most directly affected by the consequences of the bill…

"On determining who was affected, although we wanted to encourage as wide and as broad a response as possible, it was always our intention to restrict the consideration of who was in favour and who was against to those in the City of Edinburgh Council area, because the bill relates to the inalienable common good land of the city of Edinburgh.”56

Survey results and analysis
113. It was argued by objectors that there were serious flaws in the survey format and analysis of results, for example, use of the data did not represent a fair and accurate representation of the results, focussing on the total number of responses, with no information about the numbers excluded from the analysis, or the number who had responded negatively. In addition, it was argued that there was a lack of independence in managing the process.

53 Scottish Parliament CECPP Bill Committee. Official Report, 9 October 2013, Col 84
54 Scottish Parliament CECPP Bill Committee. Official Report, 11 September 2013, Col 33
55 PPAG objection, paragraph 4.32 - 4.33
114. Detailed arguments, statistics and differences in how the results of the consultation responses were interpreted were put forward by PPAG in its objection and by the Council in the Promoter’s Memorandum and in the evidence provided to the Committee on 11 September.

115. In its objection PPAG argued that—

“The Council’s use of the data from the consultation process did not represent a fair and accurate representation of the material. Reports, including those in the press, were focused on the total number of submissions, failing to provide information of the number that were excluded from the final analysis and often failing to inform that 3000 people objected. Constant references are made to “76% of the community support building the school on the park”, a completely misleading statement.”

116. In oral evidence, Alison Connelly on behalf of PPAG stated—

“… that is 76 per cent of the people from the local area who responded…not everybody responded. … 2 per cent of the whole Edinburgh population responded. I am sure that could be broken down to show what percentage of the local community responded, but it was certainly not 76 per cent.”

117. In its oral evidence, PFANS was of the view that—

“There were 10,000 responses to the consultation, which is far more than the school community of Portobello high school and the cluster primaries. The wards are broken down by intermediate geographies in the council report, and if you look at Portobello and Joppa you will see that 22 per cent of the entire population responded.”

Lessons learned and changes resulting from the consultation exercise

118. On questioning about whether there were aspects of the consultation which could be improved on, the promoter advised that they would ensure that in future there would be a “more robust” system for distribution of information and consideration would be given to earlier engagement with stakeholders and a more “discrete and focused group with which to discuss the matter”.

119. In relation to changes resulting from the consultation, the Council intended to designate the status of the proposed new open space at the existing school site to “Fields in Trust” status which was recommended as a result of concerns about safeguarding the use of that site for recreational purposes.

120. The Committee acknowledges that the Council appears to have taken a range of measures with a view to making the consultation process a meaningful exercise. However, the Committee also notes the extent of the issues raised by objectors who believed that the process was flawed on a
significant number of fronts. The Committee encourages 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.

Use of the Park

121. The Committee considered evidence in relation to the current and past use of the Park in order to reach a view on balancing the extra benefit to the community resulting from the Park being used for a new school against the loss of amenity if it was no longer used as a park. In this connection, the Committee wished to assess how much amenity value there was in the current Park.

122. The Committee heard polarised views on the use of the Park. The promoter stated that: “The Park is not well used.” This was disputed by PPAG who argued that—

“The park has been used for running, walking, exercising dogs, parties, picnics, exercising and informal games of football, cricket, rugby and rounders. Local elderly residents have told us they need this park close at hand to enable them to get out, get fresh air and keep fit. It is the only park in the area which is large enough to let a dog off the leash for a run.”

123. PPAG also stated that, following the granting of planning permission in 2011, football teams were evicted from the Park, the grass was seldom cut and the Park was neglected. It also criticised the evidence in the Council’s audit of the use of the Park, in particular on the grounds that there was no assessment of similar parks to compare with the usage of Portobello Park.

124. In oral evidence, Roy Martin QC, representing PPAG, referred to the fact that “there is clear legal authority that where land is common good land, the authority has a duty… to look after [that land] for the benefit of the community… the fact is that if this committee felt that there had been a degree of neglect here, that neglect might be said to be a breach of the council’s duty.”

125. The promoter argued that the primary activities taking place in the Park were dog walking and walking and referred to an audit carried out by the company Ironside Farrar in 2009. The promoter also stated that the removal of goalposts in the Park during the summer was normal practice, which was aimed at opening up parts of the Park at the end of the football season.

126. PFANS supported the Council’s view that the Park was not well used and that: “People use other places such as Bingham park and kids tend to play in

62 Promoter’s Memorandum, paragraph 65
63 PPAG objection, paragraph 6.4
64 PPAG objection, paragraphs 6.3 - 6.9
Brunstane primary school grounds, because that is the recognised safe play area”. It was also emphasised that the proposals would be a “huge improvement” in terms of amenity in terms of new football pitches and paths and a new park at the existing site.

127. In view of the range of opinions expressed in relation to the use of the Park, and the anecdotal and inconclusive nature of much of the available information, the Committee had difficulty making an assessment of the extent of the loss of amenity if the land was no longer used as a park. Further consideration of the use of the Park by individual objectors would obviously be considered if the Bill continues to Consideration Stage. The Committee recognises, however, that the promoter’s plans include compensatory measures in terms of recreational facilities and open space which would go some way to balancing any loss of amenity afforded by the current Park.

Replacement open space

128. As part of the compensatory measures for the loss of the Park, the promoter proposed to provide replacement open space on the location of the current Portobello High School.

129. Opponents pointed out that a replacement park was not part of the Bill, and expressed concern that it was not guaranteed, and had no security in the future. The question about what facilities people wanted to be included on the “replacement green space” was irrelevant to a consultation on a private bill, it was argued. In addition, the proposed replacement space would be adjacent to another park (Figgate Park) but a distance from the current Park. There was a concern that: “A parent who has a 10-year-old child would not want them going as far as that to a park. People who have mobility issues and want a short walk would have a long walk to get to the park first. We do not feel that the site is in the right location to replace Portobello park”.

130. The promoter advised that the replacement open space would have “Fields in Trust” status, which, it is understood, would mean that there would be “a legal agreement with the National Playing Fields Association which dedicates the areas concerned to public use and recreation and similar uses in perpetuity”. Roy Martin QC, representing PPAG, said that, while “not familiar with the Fields in Trust principle … such an arrangement would not exist within any formal legal context, statutory or otherwise. It would not, for example, be the equivalent of inalienable common good status or some other form of land burdened by a title condition, which is a much more difficult situation now, given the change in the legislation”.

68 PPAG objection, paragraph 4.16
70 Scottish Parliament CECPP Bill Committee. Official Report, 11 September 2013, Col 41
71 Scottish Parliament CECPP Bill Committee. Official Report, 9 October 2013, Col 86
131. The Council confirmed that the area of the golf course is a Fields in Trust site, but the designation did not cover the proposed school site.

132. The Committee notes that the terms of the “Minute of Agreement” between the Council and Fields in Trust give some protection to future use of the land based on the actings of the Council. According to the Council—

“The contractual protection afforded by FiT status exists apart from the planning system and other statutory protections, and would subsist notwithstanding any subsequent changes to the law (for example, any changes to legislation applying to inalienable common good land).”

133. The Committee welcomes the Council’s commitment to protect the proposed replacement open space at the current school site from a future change of use by giving it “Fields in Trust” status. The Committee understands that such status is in addition to statutory and planning protections. The Committee also understands that it could be overridden by contradictory statutory provision, albeit it would be a material consideration in any decision making by the Council which affected the designated land.

134. The Committee would welcome the Council’s consideration of similar protection for the area of open space that would remain at the Park following the proposed construction of the new school.

135. The Committee would also urge 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.

European Convention on Human Rights (ECHR)

136. 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) and given that the Parliament is also bound by the Human Rights Act 1998. The promoter, as a public authority, must also act in a manner consistent with the 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.

137. On introduction of the Bill, the Presiding Officer issued a statement in terms of section 31(2) of the Scotland Act 1998 that, in her opinion, the Bill was within the legislative competence of the Parliament. However, the Committee has a responsibility to satisfy itself that the “balancing of interests test” has been met in practice.

138. At both Preliminary and Consideration Stage the Committee has a role in ensuring that the Parliament legislates in an ECHR compatible manner.

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72 City of Edinburgh Council. Written submission, 20 November 2013
Article 1, Protocol 1(A1P1)

139. This Article states that—

“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.

“The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

140. The Committee considered whether these rights were engaged and, if so, whether the rights of the community in the Park are “possessions” in the context of the Article: if so, then any interference with those possessions had to be justified by the promoter.

141. While not addressing the matter as an ECHR issue, the Inner House of the Court of Session proceeded on the basis that people may have acquired rights of use in the Park for recreational purposes derived from the terms of the original bequest. The Court did not identify who those people might be. In order to take away those rights it considered that there needed to be an express statutory provision which the Court did not find in the existing relevant legislation.

142. Interference with possessions may be justified under Article 1 provided that the interference—

- Meets the test of legal certainty;
- Is justified by the general or public interest; and
- There is a reasonable degree of proportionality between the means selected and the ends sought to be achieved to ensure that a fair balance between individual and collective interests has been maintained.

143. The Committee is satisfied that the first requirement is met in that the Bill is clear in its purpose and effect.

144. On the second requirement, the Committee considered further the general social and economic reasons set out in the Promoter’s Memorandum - in particular, the promoter’s consideration of alternative options, public consultation and evaluation and to an extent there is an overlap here with areas covered earlier in the report.

145. In order to take a view on whether there was a reasonable degree of proportionality between the means selected and the ends to be achieved to ensure that a fair balance between individual and collective interests has been maintained, the Committee recognised that it might be argued that what the Bill does is to allow for a deprivation of rights of the existing users. In this regard, the promoter was of the view that: “…proportionality under article 1 of protocol 1, compensation is a legal requirement only where there is a deprivation of
possessions, whereas a restriction of the enjoyment of possessions does not necessarily require compensation.” 73

146. In its oral evidence to the Committee, the promoter indicated that it was satisfied that the Bill did not raise any human rights concerns and that any challenge to it as being outside legislative competence based on convention rights issues would be unlikely to succeed.

147. In relation to the implications under Article 1, the promoter argued that any claim would only arise when the Council appropriated the land for a different function.

148. It was also argued that the right referred to “possessions” which—

“[had] never been held in any of the case law on the European convention on human rights to include the sort of communal interests that would be in question in relation to the bill, in the sense of the community benefit that can be derived from common good land. The term “possessions” concerns things that would in ordinary terms be regarded as the possessions of identifiable individuals, such as a person’s house, money or business. The communal or community benefit that we are talking about here has never been held to be a possession.” 74

149. The promoter further argued that in relation to a local authority’s responsibilities in the context of the common good for the city of Edinburgh, these related to local residents of any one time, and this was not the sort of “possession” with which the Convention was concerned.

150. In the event that it was accepted that “possessions” were being dealt with, it would also be necessary to consider whether there was “interference” with them. The promoter was of the view that the community would still benefit from the site being used as a school and it would still be put to a communal use. In addition, interference with possessions is allowed if it is proportionate and in the public interest. Further, it was argued by the promoter that there would be a package of significant compensatory measures in the form of community use of the school buildings and sports facilities and improvements to the remaining open space at the site, as well as the replacement open space—

“If one looks at the package of proposals and considers it in the whole context, even if we got to the stage of having to have a proportionality argument, it would be difficult for any challenger to say that what the council has in mind is disproportionate.” 75

151. While noting the promoter’s views on this issue (that this is a restriction and not a deprivation of use), the Committee has also taken account of the comments of the Court and wishes to satisfy itself that, if this is considered to be a deprivation

of use, that deprivation would be proportionate and has ensured a fair balance between the individual and general public interest in compensating those affected.

152. The Committee is satisfied that, in terms of the requirements of A1P1, 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.

Article 6
153. Article 6 states that: “In the determination of his civil rights and obligations or of any criminal charges against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law…”

154. It has been suggested that overturning an existing court decision is a breach of Article 6. The Committee has commented on this in its introduction to the report.

Article 8
155. Article 8 states that—

“Everyone has the right to respect for his private and family life, his home and his correspondence.

“There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.”

156. This is a qualified right and the Committee considered whether it applied in the context of the Bill or to the wider effect of the Bill.

157. On the question of protection of “home”, the Committee is satisfied that this does not apply to property rights (which might be more properly dealt with under A1P1). Rights which have been considered in case law to be engaged under Article 8 have related to substantial airport noise, planning and control decisions, involving destruction of property and physical intrusion into homes to carry out searches. These relate to serious impacts on a “home” beyond normal environmental impact which might arise under any future development proposal and which would be more appropriate for the planning process.

158. The Committee is satisfied that the rights under Article 8 do not apply in the context of the Bill.
Conclusion on general principles

159. **The Committee recommends to the Parliament that the general principles of the Bill be agreed to.**

**SHOULD THE BILL PROCEED AS A PRIVATE BILL?**

Standing Order requirements

160. The second issue for the Committee to address in its Preliminary Stage report is whether the Bill should proceed as a Private Bill. This involves the Committee satisfying itself on two points: firstly, that the Bill conforms to the definition of a Private Bill as set out in Rule 9A.1.1 and secondly, that the Bill's accompanying documents conform to Rule 9A.2.3 and are adequate to allow proper scrutiny of the Bill (Rule 9A.8.3).

Whether the Bill conforms to the definition of a Private Bill

161. On the first of these points, the Committee has to satisfy itself that the Bill and the identity of the promoter conformed to the definition of a Private Bill set out in Rule 9A.1.1. of Standing Orders—

“A Private Bill is a Bill introduced for the purpose of obtaining for an individual, body corporate or unincorporated association of persons… particular powers or benefits in excess of or in conflict with the general law, and includes a Bill relating to the estate, property, status or style, or otherwise relating to the personal affairs of the promoter.”

162. In relation to the identity of the promoter, the City of Edinburgh Council is a local authority.

163. The Inner House of the Court of Session, in its decision of September 2012, concluded that no Scottish local authority has the authority or power to appropriate inalienable common good land under the 1973 Act, the Local Government in Scotland Act 2003 or any other existing legislation. The Bill seeks to reclassify a defined area of currently inalienable common good land as alienable common good land and thereby gives the promoter a power to appropriate that land which is not available under existing legislation. The effect of such an appropriation might be to potentially allow construction of a school on that land.

164. **The Committee is satisfied that the Bill would confer on the promoter (a body corporate) powers in excess of the general law (in this instance, the 1973 Act). As such, the Committee is satisfied that the Bill complies with the Standing Order definition of a Private Bill.**

76 These documents can be inspected on the Scottish Parliament website at: [http://www.scottish.parliament.uk/help/62502.aspx](http://www.scottish.parliament.uk/help/62502.aspx)

Hard copies of the documents are also available at the City Chambers, Portobello Library and Piershill Library. The promoter also provided a map and disposition at these locations.
Adequacy of accompanying documents

165. On the second point, the Committee was required to establish that each accompanying document meets the requirements set out in Rule 9A.2.3 and that it did so in a way that was suitable for the intended purpose.

166. The Committee had to satisfy itself that the accompanying documents lodged by the promoter conformed to the Rules, and that the information provided was adequate to allow for scrutiny of the Bill. The relevant documents in this context are the Promoter’s Memorandum, Explanatory Notes and Promoter’s Statement.

Promoter’s Memorandum

167. The Promoter’s Memorandum must set out—

- the objectives of the Bill;
- whether alternative ways of meeting those objectives were considered and, if so, why the approach taken in the Private Bill was adopted; and
- the consultation which was undertaken on those objectives and the ways of meeting them and on the detail of the Private Bill, together with a summary of the outcome of that consultation.

Objectives

168. The objectives of the Bill have already been referred to in terms of the Promoter’s Memorandum in the Introduction.

169. The Committee is content that the objectives are adequately set out in this context.

Alternative approaches to the Bill

170. In the Promoter’s Memorandum, the promoter detailed the alternative legal approaches it had considered to secure its objective of removing the legal obstacle to building the school on the Park – these are discussed in detail earlier in the report.

171. In the context of considering whether the material in this connection is adequate for scrutiny, the Committee is satisfied that the Promoter’s Memorandum sets out the alternative legal approaches which were considered by the promoter in terms which are sufficiently detailed and explained.

Pre-introduction consultation

172. In the Promoter’s Memorandum, the promoter is required to set out and explain the consultation which was undertaken on the Bill’s objectives and the ways of meeting them and on the detail of the Private Bill, together with a summary of the outcome of that consultation. In the context of considering whether the accompanying documents were adequate for scrutiny, the Committee needed only to satisfy itself that the information about the consultation was sufficient for its scrutiny.
173. The Promoter’s Memorandum includes a full and detailed explanation of the steps taken to consult the local community. In summary, it explains that: “The consultation process was extensive, and involved the distribution of a comprehensive information leaflet to approximately 14,500 households in the local area; a number of exhibition and roadshow events; attendance at two local community council meetings and two public meetings”.77

174. Notwithstanding the Committee’s comments earlier in the report in relation to the evidence from the promoter and objectors, overall the Committee is satisfied that the information provided regarding the consultation process is sufficiently detailed and clear for the Committee’s purposes.

Explanatory Notes

175. The purpose of the Explanatory Notes is to summarise objectively and clearly what each provision of the Bill does and to give other information necessary or expedient to explain the effect of the Bill. They should provide a brief overview of what the Bill does, followed by a more detailed commentary on the individual provisions. They should be written in neutral terms and be as easy to read as possible, so as to be comprehensible to people with no legal or specialist knowledge.

176. The Committee is satisfied that the Explanatory Notes are fit for purpose.

Promoter’s Statement

177. The purpose of the document is to detail all the arrangements made by the promoter with regard to such matters as notification, advertising and distribution of the Bill and accompanying documents.

178. Regarding notifications, the Promoter’s Statement should—

- explain the ground rules that the promoter has used to determine affected persons;
- explain what sources of information were used to ascertain the identity of all affected persons for notification purposes;
- give details of notifications served on ‘The Owner/Occupier’ rather than on named individuals, and explain why;
- give details of the delivery methods used.

179. The Promoter’s Statement states that, as no heritable property would be acquired compulsorily or made subject to temporary possession as a result of the Bill, the Council took the view that those with an interest in heritable property affected by the Bill consisted of properties adjacent to the Park or the adjoining Golf Course, and/or property that may be affected by the process of constructing the school. The properties were identified by addresses shown on its Corporate

77 Promoter’s Memorandum, paragraph 67
Address Gazetteer system within a relevant digital boundary using the Council’s Geographic Information System.\(^{78}\)

180. The Promoter’s Statement also states that notice of the intention to introduce a Bill was given by first class Recorded Delivery post; notifications showing as undelivered were subsequently hand-delivered to the relevant properties and a signed acknowledgement of delivery was obtained from the recipient where possible. Where that was not possible the officers left the notification at the premises and provided written confirmation of delivery.\(^{79}\)

181. In relation to the details of serving notice on “owner/occupiers” rather than on named individuals, the promoter provided the following explanation—

“Given that the Bill is likely to have only a limited effect on any heritable properties other than the Park, that it will not alter or affect any individual’s heritable interest in such properties, and that there was already significant awareness of the Council’s proposal and the prospective Bill in the community (and particularly in the immediate vicinity of the Park), the Council took the view that identifying the specific individuals with interests in the identified properties would in the circumstances be a disproportionately costly and time-consuming exercise. Accordingly, the notifications were addressed to the owner/occupier of each identified property, and requested that, if the recipient was not the owner, the notification be brought to the owner’s attention promptly.”\(^{80}\)

Other issues included in the Statement

182. The Promoter’s Statement also included: details of the notification of and consent to the proposed Private Bill obtained from members of the Council as the body corporate promoting the Bill; details of the advertisement of the promoter’s intention to introduce the Private Bill; a list of the premises where the accompanying documents which are not printed and published by the Clerk might be inspected; and an undertaking to pay any costs that may be incurred by the Parliamentary corporation during the passage of the Private Bill.

183. The Committee is of the view that the Promoter’s Statement complies with Standing Order requirements.

Conclusion on accompanying documents

184. The Committee is of the view that, overall, the accompanying documents meet the criteria set down in Standing Orders and are adequate to allow for scrutiny of the Bill.

PRELIMINARY CONSIDERATION OF OBJECTIONS

185. The Committee’s third function at Preliminary Stage is in relation to the requirement to give preliminary consideration to all admissible objections lodged

\(^{78}\) Promoter’s Statement, paragraphs 2-4  
\(^{79}\) Promoter’s Statement, paragraphs 2-4  
\(^{80}\) Promoter’s Statement, paragraph 6
against the Bill and reject any objection that, in the Committee’s opinion, does not demonstrate that the objector's interests would be clearly adversely affected by the Bill.

186. The objection period began on 26 April and concluded on 24 June 2013. A total of 66 admissible objections were lodged against the Bill (an admissible objection is one that complies with Rule 9A.6.5 (is in proper form, sets out the nature of the objection, explains whether the objection lies against the whole Bill or specified provisions, and is accompanied by the relevant fee)).

187. All objections were whole-bill objections.

188. At its meeting on 25 September 2013, the Committee gave preliminary consideration to the 66 objections, ie it considered whether the objectors had shown that their interests would be clearly adversely affected by the Bill.

189. The Committee agreed an approach to consideration of objections and whether objectors' interests were clearly adversely affected. The Committee considered firstly whether there was, in principle, an adverse effect on objectors who—

a) Live in the immediate vicinity and use the Park;
b) Do not live in the immediate vicinity but still live within the City of Edinburgh boundary and use the Park;
c) Live outwith the Edinburgh area and use the Park;
d) Live in or outwith Edinburgh and do not use the Park, but who believe that it will set a precedent which could impact on common good land or parks in their local areas which they do frequent.

190. It was agreed that there could, in principle, be a clear adverse effect on objectors in categories (a), (b) and (c). Other more specific factors which were taken into account included whether the objection cited: reduction in property value, loss of income, loss of green space and impact on facility for exercise and recreation, impact on wildlife, impact on health issues, visual impact, increase in noise, increase in traffic, parking issues, impact of construction, impact on golfers. It was also agreed that objectors in category (d) would not be able, on that basis alone, to demonstrate that their interests would be clearly adversely affected by the Bill.

191. The Committee considered each objection individually and made a decision on each, having regard to any particular facts and circumstances.

192. Following consideration of each objection, the following objections were rejected under Rule 9A.8.2: 26, 33, 45, 57, 58, 60 and 64.

193. Full consideration of the remaining 59 objections will be given by the Committee at Consideration Stage (should the Bill proceed to that Stage).

194. The Committee is grateful to those objectors who engaged with the process in this way and assisted the Committee in broadening its understanding of the issues, concerns and arguments both for and against the proposal. Many of the
concerns raised by objectors have been explored by the Committee when considering the general principles of and accompanying documents to the Bill.

RECOMMENDATION

195. The Committee recommends to the Parliament that the general principles of the City of Edinburgh Council (Portobello Park) Bill be agreed to and that the Bill proceeds as a Private Bill.
ANNEXE A – ADMISSIBLE OBJECTIONS

The following have lodged objections to the City of Edinburgh Council (Portobello Park) Bill under Rule 9A.6.

<table>
<thead>
<tr>
<th>No.</th>
<th>Name(s)</th>
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<tbody>
<tr>
<td>1</td>
<td>John Kelly</td>
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<tr>
<td>2</td>
<td>J Madden</td>
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<td>3</td>
<td>G G Di Ponio and I Di Ponio</td>
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<td>4</td>
<td>P K and F I Wraith</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>8</td>
<td>Scott Macpherson and Dr Susannah Fraser</td>
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<td>9</td>
<td>Elizabeth, Mehdi, Leyla, Kasra and Keyann Manshouri</td>
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<td>10</td>
<td>D and M Costello</td>
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<td>11</td>
<td>Thomas H Taylor</td>
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<td>12</td>
<td>Archie Burns</td>
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<td>13</td>
<td>Joyce and Bill Flockhart</td>
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<td>14</td>
<td>Steven and Fiona Coyle and Harrison and Genevieve Vernon-Coyle</td>
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<td>15</td>
<td>Gary F Gowans</td>
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<tr>
<td>16</td>
<td>Alex and Margaret Hope</td>
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<td>17</td>
<td>Portobello Golf Course Golfers – Oula Jones and 76 others</td>
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<td>18</td>
<td>Alan and Sheila Fletcher</td>
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<td>19</td>
<td>Robert H Davis</td>
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<td>20</td>
<td>Diana Cairns</td>
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<td>21</td>
<td>Jack and Winifred Aitken</td>
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<td>22</td>
<td>Dr W R and Mrs A F A Fraser</td>
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<td>23</td>
<td>Jet Cameron</td>
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<td>24</td>
<td>Hugh and Colin Cormack</td>
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<td>25</td>
<td>Ian, Sheila and Morven Robertson</td>
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<td>26</td>
<td>Caroline Hosking</td>
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<td>27</td>
<td>Anne and Anthony King</td>
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<td>28</td>
<td>Ian Ross</td>
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<td>29</td>
<td>Richard Forbes and Karen Maxwell</td>
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<tr>
<td>30</td>
<td>Trevor Laffin and 10 others</td>
</tr>
<tr>
<td>31</td>
<td>Christians estate and Hope Lane residents - Elaine Goodlet and 106 others</td>
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<tr>
<td>32</td>
<td>Anna Turtle</td>
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<tr>
<td>33</td>
<td>Laura Ross</td>
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<td>34</td>
<td>L J Connelly</td>
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<td>35</td>
<td>Sandria J Gillon</td>
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<td>36</td>
<td>Sandy Sutherland</td>
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<td>37</td>
<td>Pamela Carr</td>
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<td>38</td>
<td>Stephen Carr</td>
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<td>39</td>
<td>Rhona and Colm Fitzgerald</td>
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<td>40</td>
<td>Ron and Lynn Sylvester</td>
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<tr>
<td>41</td>
<td>Mrs R Sutherland</td>
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<td>42</td>
<td>Duddingston Park residents – David Connelly and 49 others</td>
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<td>43</td>
<td>Jennifer Peters and 33 others</td>
</tr>
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<td>44</td>
<td>Stephen Hawkins</td>
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<td>45</td>
<td>Hazel Thomas</td>
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<td>46</td>
<td>Robert D Sutherland</td>
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<td>47</td>
<td>Alison Connelly</td>
</tr>
<tr>
<td>48</td>
<td>Ursula Wright</td>
</tr>
<tr>
<td>49</td>
<td>Sheila Coventry and 6 others</td>
</tr>
<tr>
<td>50</td>
<td>Portobello Park Action Group (PPAG)</td>
</tr>
<tr>
<td>51</td>
<td>Park Avenue residents – Ms K Gillon and 114 others</td>
</tr>
<tr>
<td>52</td>
<td>Pauline, George, Sara and Emma MacDonald</td>
</tr>
<tr>
<td>53</td>
<td>Dr Gordon McCulloch</td>
</tr>
<tr>
<td>54</td>
<td>Graham Kitchener</td>
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<td>55</td>
<td>Sigrid Kitchener</td>
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<td>56</td>
<td>Richard Wright</td>
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<td>57</td>
<td>Karen MacLean</td>
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<tr>
<td>58</td>
<td>Beverley and Deborah Klein</td>
</tr>
<tr>
<td>59</td>
<td>Gillian Dunn</td>
</tr>
</tbody>
</table>
The Committee gave preliminary consideration to the admissible objections at its meeting held on 25 September 2013. The objections below were rejected under Rule 9A.8.2.

<table>
<thead>
<tr>
<th></th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>26</td>
<td>Mike Cardwell</td>
</tr>
<tr>
<td>33</td>
<td>John Lapish</td>
</tr>
<tr>
<td>45</td>
<td>Julie Thomson</td>
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<td>57</td>
<td>Dr Mairianna Clyde</td>
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<td>58</td>
<td>Richard and Linda Perry</td>
</tr>
<tr>
<td>60</td>
<td>Pamela Barnes, Convener of Friends of Inverleith Park</td>
</tr>
<tr>
<td>64</td>
<td>Robert Campbell</td>
</tr>
</tbody>
</table>

Please note admissible objections can be accessed via the City of Edinburgh Council (Portobello Park) Bill Committee webpage.

http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/64604.aspx
ANNEXE B – EXTRACTS FROM THE MINUTES OF THE CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL COMMITTEE

1st Meeting, 2013 (Session 4), Wednesday 19 June 2013

Declarations: Members of the Committee were invited to declare any relevant interests. Members had no relevant interest to declare. All members also made a declaration under Rule 9A.5.4A.

Choice of Convener: The Committee chose Siobhan McMahon as Convener.

Choice of Deputy Convener: The Committee chose James Dornan as Deputy Convener.

Decision on taking business in private: The Committee agreed to take item 6 in private.

City of Edinburgh Council (Portobello Park) Bill - witness expenses: The Committee agreed to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses on the Bill.

City of Edinburgh Council (Portobello Park) Bill (in private): The Committee agreed its approach to the scrutiny of the Bill at Preliminary Stage, including a provisional timetable, and to a future site visit.

2nd Meeting, 2013 (Session 4), Wednesday 11 September 2013

Decision on taking business in private: The Committee agreed to take item 3 in private. It also agreed that preliminary consideration of objections, and its consideration of whom to invite to give further evidence, should be taken in private at its next meeting.

City of Edinburgh Council (Portobello Park) Bill: The Committee took evidence on the Bill at Preliminary Stage from—

Billy MacIntyre, Head of Resources, Children and Families, Iain Strachan, Principal Solicitor, Legal, Risk and Compliance, and John Baker, Senior Project Manager, Services for Communities, City of Edinburgh Council;

Charles Livingstone, Associate, Brodies LLP;

Andrew Ferguson, Solicitor, Author "Common Good Law".

Private Bill procedure and Preliminary Stage work programme (in private): The Committee agreed to a further indicative work programme and arrangements for a site visit.
3rd Meeting, 2013 (Session 4), Wednesday 25 September 2013

City of Edinburgh Council (Portobello Park) Bill (in private): The Committee gave preliminary consideration to the admissible objections lodged. Objections 26, 33, 45, 57, 58, 60 and 64 were rejected under Rule 9A.8.2.

City of Edinburgh Council (Portobello Park) Bill (in private): The Committee considered further its approach to the scrutiny of the Bill at Preliminary Stage and agreed to invite oral evidence from Portobello Park Action Group (PPAG) and Portobello for a New School (PFANS) at its next meeting on 9 October.

4th Meeting, 2013 (Session 4), Wednesday 9 October 2013

Decision on taking business in private: The Committee agreed to take item 3 in private. It also agreed that consideration of the key issues for its draft report, and consideration of its draft Preliminary Stage Report, will be taken in private at future meetings.

City of Edinburgh Council (Portobello Park) Bill: The Committee took evidence on the Bill at Preliminary Stage from—

Roy Martin QC, Legal Adviser;

Stephen Hawkins, Alison Connelly, and Jennifer Peters, members of Portobello Park Action Group (PPAG);

Sean Watters, Chair of Portobello For a New School (PFANS);

Tom Ballantine, Chair of Portobello High School Parent Council;

Rosemary Moffat, PFANS supporter.

City of Edinburgh Council (Portobello Park) Bill (in private): The Committee considered its next steps in the scrutiny of the Bill at Preliminary Stage and agreed to consider a paper by the Clerk at its next meeting. The Committee also agreed to write to the promoter to seek clarification on a number of issues in advance of its next meeting.

5th Meeting, 2013 (Session 4), Wednesday 13 November 2013

City of Edinburgh Council (Portobello Park) Bill (in private): The Committee considered key issues arising at Preliminary Stage and agreed to consider a draft Preliminary Stage report, in private, at its next meeting.
6th Meeting, 2013 (Session 4), Wednesday 27 November 2013

City of Edinburgh Council (Portobello Park) Bill (in private): The Committee considered a draft Preliminary Stage report. The Committee discussed and agreed minor changes and agreed that the report be published on Wednesday 4 December 2013.
ANNEXE C: ORAL AND WRITTEN EVIDENCE

Please note that all oral 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/64604.aspx

Oral Evidence

2nd Meeting, 2013 (Session 4), Wednesday 11 September 2013

Billy MacIntyre, Head of Resources, Children and Families, Iain Strachan, Principal Solicitor, Legal, Risk and Compliance, and John Baker, Senior Project Manager, Services for Communities, City of Edinburgh Council;

Charles Livingstone, Associate, Brodies LLP;

Andrew Ferguson, Solicitor, Author "Common Good Law".

4th Meeting, 2013 (Session 4), Wednesday 9 October 2013

Roy Martin QC, Legal Adviser;

Stephen Hawkins, Alison Connelly, and Jennifer Peters, members of Portobello Park Action Group (PPAG);

Sean Watters, Chair of Portobello For a New School (PFANS);

Tom Ballantine, Chair of Portobello High School Parent Council;

Rosemary Moffat, PFANS supporter.

Written Evidence

Written evidence received on the general principles of the City of Edinburgh Council (Portobello Park) Bill

Brian A Armstrong
Joan Beattie
John and Janice Bruce
Pete Cannell
City of Edinburgh Council (Bill promoter)
Eileen Cook
Agnes Cowan
Andrew C Ferguson
Anne Fernie
Bill Fraser
Sandra Gordon
Sue Hamilton
David I Harvie
Rose Harvie
Dr Jim Hastie
Janet Hilton
Fiona Huffer
Jan and Damian Killeen
Jerome Kyndt
Irena Loughton
Lawrence Marshall
Gillian McCready
Roderick J McGeoch
Helen Mulgray
Stuart and Kate Nicol
Portobello Park Action Group (PPAG)
Professor Robert Rennie
Brenda, John and George Saridakis
Sean Watters

The written submissions are available on the following webpage:
http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/66426.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.