

The City of Edinburgh Council

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The New Portobello High School

Item number	8.2
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Executive summary

The New Portobello High School

Summary

At its meeting of 14 March 2013 Council formally resolved to introduce a Private Bill to the Scottish Parliament seeking to address the legal impediment which currently prevents the new Portobello High School being built on Portobello Park. This resolution was formally confirmed by Council on 30 May 2013.

The City of Edinburgh Council (Portobello Park) Bill ('the Bill') was introduced in the Scottish Parliament on 25 April 2013 and the City of Edinburgh Council (Portobello Park) Bill Committee ('the Bill Committee') was appointed to consider matters, including any admissible objections, relating to the Bill at Preliminary and Consideration Stages.

The Bill Committee published their Preliminary Stage Report on 4 December 2013 in which they recommended to the Parliament that the general principles of the Bill be agreed to and that it proceed as a Private Bill.

The Preliminary Stage Report was considered by the Scottish Parliament on 9 January 2014. There was unanimous, cross-party support for the general principles of the Bill and it will now proceed as a Private Bill through the Consideration Stage. This will involve detailed consideration of the Bill, including all remaining objections and any proposed amendments. It will be followed by the Final Stage at which the Parliament considers any further amendments to the Bill and decides whether to pass or reject it.

The purpose of this report is to provide an update on progress with the Bill; to respond to points raised in the Preliminary Stage Report which require consideration by the Council and to consider the implications of the timescales within which the Private Bill process may now be concluded and any actions required as a consequence. An update is also provided on the bid for the former Scottish Power site at Baileyfield as a fall-back site option and the process to renew the existing planning permission.

Recommendations

It is recommended that Council:

- notes the contents of this report and the progress made;
- approves that, on completion of the works in connection with the same, the area of open space which would remain on Portobello Park would be (with the approval of Fields in Trust) dedicated as a Field in Trust;

- approves that a written undertaking is now given by the Council to Fields in Trust agreeing to the above-mentioned dedication, and also that dedication previously approved by Council on 14 March 2013 in respect of the area of open space which would remain on the existing combined Portobello High School and St John's RC Primary School site (after making provision for the necessary increase of the site allocated to St John's RC Primary School), and seeking Fields in Trust's agreement to the same, and delegates authority to the Director of Children and Families to take all necessary steps in connection with this; and
- approves the proposed variation to the contract sum in the potential contract with Balfour Beatty as set out in this report.

Measures of success

The measure of success from the overall process will be the approval of the Private Bill by the Scottish Parliament which would remove the existing legal barrier to the use of Portobello Park as the site of a new Portobello High School, and so allow the new school to be built there.

Financial impact

The project to build a new Portobello High School is included in the Capital Investment Programme, the project budget being £41.5m. The projected project costs to the point of concluding the Private Bill process are approximately £3.2m leaving an estimated balance of £38.3m available.

The estimated capital costs to completion have been reassessed for all options to deliver a new Portobello High School with the following key conclusions:

- To deliver the Council's preferred option on Portobello Park the estimated costs to complete are £33.6m (including an allowance of £1m for the new area of open space which would be created on the existing school site thus also not realising any capital receipt) leaving a balance of £4.7m.
- To deliver the first of the proposed fall-back options to build the new school on Baileyfield the estimated costs to complete would be £43.2m leaving a funding deficit of £4.9m.
- To deliver the remaining proposed fall-back option of a phased build on the existing site (but extended to include the area occupied by St John's RC Primary School) the estimated costs to complete would be £47m leaving a funding deficit of £8.7m.

Based on the most recent assessment there is now insufficient funding available in the remaining existing project budget in the Capital Investment Programme to deliver either of the fall-back options. Were a fall-back option to be required rather than the preferred option of building on Portobello Park, the estimated additional cost associated with the fall-back options (when compared with the cost to complete the build of the new school

on Portobello Park) has risen to be between £9.6m for Baileyfield and £13.4m for a phased build on the existing school site. The main reasons for the additional cost are the necessity to undertake entirely new design, planning and procurement processes together with the additional construction cost inflation which arises due to both of these fall-back options having a completion date which is far later than that for the preferred option of building on Portobello Park.

No adjustment has, at this point, been made to the project budget in the Capital Investment Programme for a new Portobello High School. However, in light of the future construction inflation risk a sum of £6.204m has been reserved in the roll-forward Capital Investment Programme as 'Wave three inflation contingency'.

Loans Charges

The report outlines three options to build a new Portobello High School.

The first option (preferred option to build on Portobello Park) estimates total capital expenditure of £36.8m. If this expenditure were to be funded fully by borrowing, the overall loan charges associated with this expenditure over a 20 year period would be a principal amount of £36.8m and interest of £23.435m, resulting in a total cost of £60.235m based on a loans fund interest rate of 5%. The annual loan charges would be £3.012m.

The second option (to build on Baileyfield) estimates total capital expenditure of £46.4m. If this expenditure were to be funded fully by borrowing, the overall loan charges associated with this expenditure over a 20 year period would be a principal amount of £46.4m and interest of £29.549m, resulting in a total cost of £75.949m based on a loans fund interest rate of 5%. The annual loan charges would be £3.797m.

The third option (a phased build on the existing site) estimates total capital expenditure of £50.2m. If this expenditure were to be funded fully by borrowing, the overall loan charges associated with this expenditure over a 20 year period would be a principal amount of £50.2m and interest of £31.969m, resulting in a total cost of £82.169m based on a loans fund interest rate of 5%. The annual loan charges would be £4.108m.

The loan charges outlined for option 1 are provided for within the current long term financial plan. Options 2 and 3 represent fall-back options which estimate current funding deficits of £4.9m and £8.7m respectively. If one of these options becomes the required solution, additional resources would have to be made available to fund the associated additional loan charges.

It should be noted that the Council's Capital Investment Programme is funded through a combination of General Capital Grant from the Scottish Government, developers and third party contributions, capital receipts and borrowing. The borrowing required is carried out in line with the Council's approved Treasury Management Strategy and is provided for on an overall programme basis rather than for individual capital projects. The loan charge estimates above are based on the assumption of borrowing in full for this capital project.

Equalities impact

There are no negative equality or human rights impacts arising from this report.

Sustainability impact

An environmental impact assessment was carried out in securing planning consent for the project to deliver a new Portobello High School on Portobello Park.

Consultation and engagement

The introduction of the Private Bill followed an extensive consultation process, the details of which are contained in the report to Council of 14 March 2013.

Background reading / external references

The reports to Council on [25 October 2012](#) and [22 November 2012](#) relating to the delivery of a new Portobello High School and a new St John's RC Primary School.

The report to Council on [14 March 2013](#) which confirmed the outcome of the consultation process undertaken in connection with the then proposed Private Bill. This report also requested that the Council formally resolve, as required by statute, to promote a Private Bill in the Scottish Parliament to reclassify Portobello Park as alienable common good land for the purposes of appropriating it for the Council's education authority functions. This request was approved by Council.

The report to Council on [30 May 2013](#) which sought and received the formal confirmation of the resolution passed by Council on 14 March 2013 to promote the Private Bill as required by statute.

Detailed information regarding the [consultation process](#) and [The City of Edinburgh Council \(Portobello Park\) Bill](#) is available on the Council website. The Bill itself, together with its accompanying documents, can be accessed on the [Scottish Parliament website](#).

There have been many previous reports on this matter to the City of Edinburgh Council and the Education, Children and Families Committee. The detail of all previous papers, together with a history of the project and the associated legal challenge, was provided in the [report](#) to Council on 25 October 2012.

The New Portobello High School

1. Background

- 1.1 The existing Portobello High School needs to be replaced as a matter of priority on the best available site at the earliest opportunity.
- 1.2 The approved location for the new Portobello High School on part of Portobello Park remains by far the best option in, or around, the catchment area for the new school and is the Council's preferred option. The funding and planning permission for the project is in place and a preferred contractor identified at a very competitive tender price.
- 1.3 A court judgment in 2012 established that there is a legal impediment to using Portobello Park as the site of the new school. The Court of Session decided that the Council could not appropriate the land at Portobello Park as it was inalienable common good land and existing legislation does not provide for the appropriation of inalienable common good land. The Court of Session clarified that, although the Local Government (Scotland) Act 1973 provided for the *disposal* of inalienable common good land with the consent of the Court, no such procedure was set out for *appropriation* regardless of the purpose of such appropriation.
- 1.4 The reclassification of Portobello Park as alienable common good to allow appropriation to proceed may be achieved by an Act of the Scottish Parliament. At its meeting of 14 March 2013 Council formally resolved to introduce a Private Bill to the Scottish Parliament seeking to address the legal impediment which currently prevents the new Portobello High School being built on Portobello Park. This resolution was formally confirmed by Council on 30 May 2013.
- 1.5 The City of Edinburgh Council (Portobello Park) Bill ('the Bill') was introduced in the Scottish Parliament on 25 April 2013 and the City of Edinburgh Council (Portobello Park) Bill Committee ('the Bill Committee') was appointed to consider matters, including any admissible objections, relating to the Bill at the Preliminary and Consideration stages.
- 1.6 The Bill Committee published their Preliminary Stage Report on 4 December 2013 in which they recommended to the Parliament that the general principles of the Bill be agreed to and that it proceed as a Private Bill.

- 1.7 The Preliminary Stage Report was considered by the Scottish Parliament on 9 January 2014. There was unanimous, cross-party support for the general principles of the Bill and it will now proceed as a Private Bill through the Consideration Stage. This will involve detailed consideration of the Bill, including all remaining objections and any proposed amendments. It will be followed by the Final Stage at which the Parliament considers any further amendments to the Bill and decides whether to pass or reject it.
- 1.8 The purpose of this report is to provide an update on progress with the Bill; to respond to points raised in the Preliminary Stage Report which require consideration by the Council and to consider the implications of the timescales within which the Private Bill process may now be concluded and any actions required as a consequence. An update is also provided on the bid for the former Scottish Power site at Baileyfield as a fall-back site option and the process to renew the existing planning permission.

2. Main report

Preliminary Stage

- 2.1 During the Preliminary Stage the Bill Committee has three broad functions:
- 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 - does the Bill conform to the definition of a Private Bill, do the accompanying documents to the Bill satisfy the criteria set out in the Parliament's Standing Orders and are those documents adequate to allow proper scrutiny of the Bill; and
 - 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.
- 2.2 During the Preliminary Stage the Bill Committee considered oral and written evidence from representatives of the Council, Portobello Park Action Group (PPAG), Portobello For A New School (PFANS) and a number of experts in the area of common good. The Bill Committee also undertook a fact-finding visit to the proposed site of the new school in Portobello Park and to the existing High School on which the Council would provide replacement open space.
- 2.3 The Preliminary Stage Report was published on 4 December 2013 in which the Bill Committee recommended to the Parliament that the general principles of the Bill be agreed to and that the Bill proceed as a Private Bill. The Report also advised that, of the 66 admissible objections to the Bill lodged during the 60-day objection period, seven had been rejected.
- 2.4 The Preliminary Stage Report was considered by the Scottish Parliament on 9 January 2014. There was unanimous, cross-party support for the general

principles of the Bill and it will now proceed as a Private Bill through the Consideration Stage. This will involve detailed consideration of the Bill, including all remaining objections and any proposed amendments. It will be followed by the Final Stage at which the Parliament considers any further amendments to the Bill and decides whether to pass or reject it.

Preliminary Stage Report

- 2.5 The full Preliminary Stage Report can be found on the [Parliament website](#). There are a number of points made within the Report which require consideration by the Council. These are outlined below together with the proposed responses.

Interpretation of the Provisions of the Bill

- 2.6 In paragraphs 49 and 50 of the Preliminary Stage Report the Bill Committee observed “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”.
- 2.7 In paragraph 51 of the Preliminary Stage Report the Bill Committee referred to the prospect of amending the Bill to ensure that the site could not be used for anything other than the intended purpose in the future. In paragraph 52 the Bill Committee then “recommends that the Bill be amended at Consideration 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”.
- 2.8 As was stated in paragraph 1.10 of the report to Council of 14 March 2013, the purpose of the Private Bill is solely to permit the appropriation of the Park for the purposes of the Council’s education authority functions. Whilst it should be noted that, as referred to in paragraph 2.49 of that report, the Bill (as currently drafted) already limits the change in the site’s status so that it only permits use for educational purposes, the Council is happy to prepare whatever amendments are considered necessary to the wording of the Bill to further clarify this matter and will provide whatever further assistance the Bill Committee believes is necessary to achieve this. In this regard, Council is asked to note that in the report of 14 March 2013 Council previously delegated authority to the Director of Children and Families to take all steps necessary to complete the process of promoting the Private Bill, including the approval of any amendments to the Bill.

Consultation Process

- 2.9 In paragraph 120 of the Preliminary Stage Report the Bill 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”.

- 2.10 The Council will reflect on the lessons to be learned and how they can be applied in future consultation processes.

Replacement Open Space

- 2.11 In paragraph 133 of the Preliminary Stage Report the Bill 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”.
- 2.12 In paragraph 134 the Bill Committee states that it “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”.
- 2.13 This statement relates to the area of open space of approximately 0.6 hectares which would remain on Portobello Park at the corner of Milton Road and Hope Lane which would be landscaped to provide a public space for recreation and play. This is a very welcome suggestion and Council is recommended to approve that, on completion of the works in connection with the same, this area of open space would (with the approval of the National Playing Fields Association who operate as ‘Fields in Trust’) also be dedicated as a [Field in Trust](#).
- 2.14 In paragraph 135 the Bill Committee goes on to state (in relation to the intended replacement open space at the existing school site) that it “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”.
- 2.15 The provision of that replacement open space has already been the subject of a formal decision by Council. On 25 October 2012, Council approved that, once the existing Portobello High School is demolished, the remainder of the existing combined Portobello High School and St John’s RC Primary School site (after making provision for the necessary increase of the site allocated for St John’s RC Primary School from 0.67 hectares to 1.3 hectares) would be converted to open space. On 14 March 2013 Council then referred the question regarding the most appropriate use of this new area of open space (and for which provision of £1m has been identified within the project budget) to the Craigentiny & Duddingston

Neighbourhood Partnership for further consideration and consultation and approved that on its completion the open space would (with the agreement of Fields in Trust) also be dedicated as a Field in Trust.

- 2.16 Despite there already being a clear Council decision on this matter, and in case there should still be concerns that this area of open space will not ultimately be delivered and that the Council would renege on this commitment, the Council is keen to put its position on this matter beyond doubt. In connection with this, and as requested by the Bill Committee, the Council has considered its options to providing this reassurance, including the possible use of title conditions. Having done so, it has been concluded that the Fields in Trust option provides the best solution since it will include a legal commitment from the Council to the use of this land as open space in perpetuity and also enable the oversight of an independent third party which is committed to securing and improving open space such as this.
- 2.17 Such dedications cannot be formally concluded until the works to deliver the open spaces are completed, and available for use. However, discussions have taken place with Fields in Trust about a suitable undertaking being given now by both parties that, upon such completion, the dedications will be so formalised. As such, and to provide the further reassurance regarding the security of the new area of open space (and, indeed, the area of open space which will be retained on Portobello Park) it is recommended that Council approves this undertaking being granted by the Council as soon as possible.

Parliamentary Process

- 2.18 There are two remaining stages to the Private Bill process which are set out below; the process is summarised in a [flowchart](#) on the Parliament website.

Consideration Stage

- 2.19 The Bill now returns to the Bill Committee for Consideration Stage which involves two phases (i) the Bill Committee meeting in a quasi-judicial capacity to hear evidence on the Bill from the promoter and/or objectors and (ii) the Bill Committee meeting in a legislative capacity to consider and dispose of amendments.
- 2.20 The first phase concludes with the Bill Committee preparing a report giving its decisions on the objections considered. The report may also indicate any areas where the Bill Committee expects the Bill to be amended during the second phase of the Consideration Stage. During the second phase, the Bill Committee considers any amendments to the Bill lodged by members of the Bill Committee. Such amendments may have been prepared by the Promoter (in this case the Council) in order to give effect to any recommendations contained in the Bill Committee's Consideration Stage report.

Final Stage

- 2.21 The Bill (as amended, if changes are made at Consideration Stage) goes to a full meeting of the Parliament where there is a further opportunity for it to be amended (and at this stage, amendments may be lodged and moved by any MSP), followed by a debate and a vote on whether or not the Bill should be passed.
- 2.22 If the Bill is passed, there is then a four-week 'standstill' period within which the Advocate General, Lord Advocate or Attorney General may refer the Bill to the Supreme Court if there are doubts about it being within the Scottish Parliament's legislative competence under the Scotland Act 1998. If they do not refer the Bill within that period it can be submitted for Royal Assent. It becomes an Act upon receiving Royal Assent.

Timescales

- 2.23 As previously reported, the timetable to progress a Private Bill through Parliament can only be estimated and is dependent on the complexities of the issues involved and the Parliamentary diary. It was initially considered feasible that the process could have been concluded by the end of February 2014 however as explained below this will not now be possible and will take longer.
- 2.24 Following the Parliament's consideration of the Preliminary Stage Report, the Bill Committee met on 16 January 2014 to consider its approach to the Consideration Stage. The outcome of this meeting has been reported on the [Parliament's website](#). The Bill Committee has agreed provisional groupings of objections and lead objectors for each group. Individual and lead objectors have the opportunity to submit supplementary written evidence (but only to clarify, expand on or update their original objection) to the Committee and each group will have the opportunity to provide oral evidence. The Bill Committee has also provided an indicative timetable for the Consideration Stage, with the next meeting of the Bill Committee being on 26 February 2014 followed by a series of meetings to hear oral evidence (at which the Council will also be able to give evidence, and question objectors, on the issues raised in the objections). The indicative timetable then suggests that the Bill Committee will agree its draft Consideration Stage Report on 4 June 2014. Consideration Stage would then conclude with a meeting of the Bill Committee on 18 June 2014 to consider and agree amendments to the Bill (it is anticipated that only one meeting will be required in relation to amendments).
- 2.25 Given this, and the dependencies referred to above, Council is asked to note that it is currently considered that Royal Assent could be achieved by 30 September 2014. This estimate is clearly also subject to the Parliament passing the Bill, a matter which cannot be, and is not, presumed. The revised estimate takes into account the mandatory nine sitting days (of Parliament) that must follow the conclusion of Consideration Stage before the full Parliament can vote on the Bill at Final Stage (it is only four sitting days if a Bill has not been amended, but amendments are very likely here). This, together with Parliament's summer

recess from 28 June to 3 August and the 4-week 'standstill' period referred to at paragraph 2.22 above lead to a revised assessment that the end of September is now a more realistic timescale for Royal Assent.

Renewal of Planning Permission

2.26 Planning permission for the new Portobello High School on Portobello Park was originally granted on 24 February 2011 and would have expired if development did not start on site by 23 February 2014. Whilst it was initially considered feasible for the Private Bill process to have been successfully concluded and Royal Assent granted before the existing planning permission expired, in order to mitigate the risk of it expiring before Royal Assent could be obtained, and thus delaying the delivery of the new school, the process to renew the planning application was initiated in 2013.

2.27 As formal renewal of the current planning consent was necessary rather than merely an extension of the original permission, the full planning process was followed. Whilst there were not any material amendments to the design proposals previously approved in February 2011, in the intervening period significant improvements were made to the compensatory measures. The following additional compensatory measures were included within the proposal to build a new Portobello High School on part of Portobello Park (but which would only be delivered in the event that this project was, ultimately, to proceed):

- (i) The remainder of the existing combined Portobello High School and St John's RC Primary School site (after making provision for the necessary increase of the site allocated for St John's RC Primary School from 0.67 hectares to 1.3 hectares) would be converted to open space.
- (ii) Regarding access to the two all weather pitches, although any required use by the school for curricular or extra-curricular activities would take precedence; at times when they were available and not otherwise already booked, the use of these pitches would be free to, and could be pre-booked by, residents of the Portobello area rather than the casual access previously proposed.

2.28 The Development Management Sub-Committee considered, and approved, the renewal of the planning application for the proposed new Portobello High School on Portobello Park on 4 December 2013.

Baileyfield

2.29 On 22 November 2012 Council approved the recommendation to submit a bid to purchase the former Scottish Power site at Baileyfield, and delegated authority to the Directors of Services for Communities and Children and Families to approve the terms of any offer to ensure best value is achieved for the Council.

- 2.30 Having been short-listed in early January 2013, the Council submitted a final bid on the closing date of 22 January 2013. The bid was entirely consistent with the parameters on which the financial implications for the Baileyfield option were reflected in the November 2012 Council report (although the details were not disclosed publicly for reasons of commercial confidentiality) and was subject to a number of conditions which were previously reported to Council.
- 2.31 During 2013 regular requests were made to the seller's agents for clarification on any decisions which had been taken on this matter however they were not in a position to clarify the position as they had not received instructions from their client. Having been pressed for a more definitive position to inform this Report, the seller's agents have now advised that the Council's bid is not the preferred option and a process is ongoing with a view to concluding a sale to another party.
- 2.32 No statutory consultation process regarding the two fall-back options approved by Council for a new Portobello High School has, as yet, been progressed as the position regarding one of these options - Baileyfield - remains undetermined. The statutory consultation process will only be progressed and, indeed, would only be necessary should the acquisition of the Baileyfield site be successful which now appears unlikely. Even were the Council to still be identified as the preferred bidder, successful acquisition would only be achieved following the completion of the detailed site survey and satisfactory negotiation of final terms regarding deductions considered necessary from the purchase price for site remediation costs.
- 2.33 In the event that the Council is not successful in purchasing the Baileyfield site the remaining fall-back option would be a phased build on the existing High School site but extended to include the area occupied by St John's RC Primary School. As this would not entail a relocation of Portobello High School to another site no statutory consultation process would be required. However, delivery of this option would be dependent on St John's RC Primary School relocating to another site which, in itself, requires a statutory consultation process and is, therefore, a key dependency.
- 2.34 No statutory consultation process regarding the options for a new St John's RC Primary School has, as yet, been progressed as one of these options is a new build on Baileyfield regarding which the position remains undetermined.
- 2.35 Council should note that, in the event that the Private Bill is approved and the new Portobello High School can be built on Portobello Park, there would no longer be any necessity to consult on options which would involve St John's RC Primary School relocating to a new site. Consultation would be undertaken regarding the preference between the following options which exist for St John's RC Primary School remaining on the existing Portobello/St John's campus:
- (i) refurbishment and partial new build on the existing site but extended to 1.3 hectares;

- (ii) new build on the existing site but extended to 1.3 hectares; or
- (iii) new build on the adjacent High School site on an area of 1.3 hectares.

Balfour Beatty

- 2.36 Arrangements are in place to award a very competitive contract to Balfour Beatty which would achieve the earliest date for the delivery of the new school on Portobello Park if the Bill received Royal Assent. Balfour Beatty agreed a 13 month extension of the tender acceptance period to the end of November 2012 with all other contract terms remaining unchanged. On 22 November 2012 Council approved an index linked variation to the existing base contract sum of £26,114,107 in the potential contract with Balfour Beatty which allowed the tender acceptance period to be extended to the end of February 2014.
- 2.37 It was previously considered feasible that the Private Bill process could have been concluded by the end of February 2014 however, as reported above, this is not now possible. Should the opportunity to enter into the contract with Balfour Beatty be lost, an entirely new procurement exercise would be required entailing further delay and the probability of an increased contract sum. A new procurement process would take up to nine months, the logical starting point being when the Council had achieved certainty that it may lawfully use Portobello Park as the site for the new school. On this basis it was considered appropriate to seek a further extension to the arrangement with Balfour Beatty.
- 2.38 Discussions have been held between our external cost consultants and Balfour Beatty to establish the possibility of agreeing terms for an additional period. The Council proposed a simple extension of the methodology previously agreed with Balfour Beatty with the end of the agreement period changing from 28 February 2014 to 30 September 2014. The level of inflationary uplift to the contract value which would have arisen would obviously be dependent on when any contract was awarded and the movement in the indices during the intervening period. Based on an assumed contract start date of 30 September 2014 the projected increase in costs using the latest indices is estimated to be £1.3m.
- 2.39 However, Balfour Beatty advised that an extension of the previous methodology would not be viable as, having undertaken extensive market testing, the level of uplift to the contract value arising would not reflect the real costs to them of the further extended tender acceptance period. Balfour Beatty identified several significant factors which contributed to this position including the loss of a number of the original sub-contractors who have now ceased trading meaning alternative sub-contractors would now have to be secured at additional cost, the general upturn in the construction market which has resulted in a reduction in the level of commercial discounts available from sub-contractors and an increase in costs throughout their key supply chain.
- 2.40 An alternative approach has been agreed with Balfour Beatty which, subject to Council approval, results in a revised base contract value for acceptance up to

31 March 2014 of £28,027,702 which would be subject to a further incremental increase on a monthly basis up to a maximum of £28,514,108 as shown in the following table:

Contract award by	Increment £	Contract Value £
31 March 2014		28,027,702
30 April 2014	125,000	28,152,702
31 May 2014	125,000	28,277,702
30 June 2014	75,000	28,352,702
31 July 2014	75,000	28,427,702
30 August 2014	86,406	28,514,108
30 September 2014	-	28,514,108

- 2.41 The fixed price would be established dependant upon the time of the contract award being made and, in the event that no contract is awarded, there would be no financial liability to the Council. Our external cost consultants have considered this in detail and confirmed there is a valid rationale for a departure from the existing approach based upon the change in market conditions since the receipt of tenders in 2011; that the revised proposal represents value for money in itself and that they consider it unlikely that a lower price would be achieved in the market, particularly due to recent market improvements.
- 2.42 Whilst this action would result in additional costs of up to £2.4m (relative to the base contract value assuming a contract award in September 2014), this must be considered against the additional time delay which would arise and also the additional costs which could be expected to arise in any event if we were to re-tender the contract. This would be in addition to the considerable resources and further costs required to actually undertake any re-tendering process. The other advantage is budget certainty as opposed to the uncertainty associated with re-tendering. The proposed agreement with Balfour Beatty would apply up to 30 September 2014 to allow time for the Private Bill process to be concluded and, assuming this was achieved, allow the contract to be let as soon as the Bill received Royal Assent. Council is, therefore, recommended to approve this approach.

Financial Implications

- 2.43 The project to build a new Portobello High School is included in the Capital Investment Programme, the project budget being £41.5m. The projected project costs to the point of concluding the Private Bill process (including completion of the design, planning and procurement processes associated with the preferred option of building the new school on Portobello Park) are approximately £3.2m leaving an estimated balance of £38.3m available.

2.44 Since the original assessment of delivery timescales and costs for each option to deliver the new school was undertaken in November 2012 there have been changes in a number of the key underlying assumptions as follows:

- (i) It was assumed that the Bill process would have been concluded by February 2014; this has now been revised to be by 30 September 2014 as commented on above;
- (ii) It was assumed the statutory consultation process would have been completed during 2013 however, as the position regarding Baileyfield has not yet been clarified, this could not be progressed. Although the Council is not the preferred bidder, there still remains the possibility that our bid could be accepted. For the purposes of this exercise it has been assumed that a clear outcome regarding the Baileyfield site will be reached by 31 March 2014 (but not, necessarily, the conclusion of the necessary site investigation survey). Assuming our bid was successful, any consultation process required would be initiated thereafter, being concluded and a decision made by 30 September 2014. The project to deliver either of the fall-back options has been assumed to start thereafter (obviously only if the preferred option to build on Portobello Park cannot be progressed).
- (iii) Projected construction cost inflation has changed significantly, particularly towards the end of the decade when inflation is now projected to be considerably higher than had been forecast to be the case in late 2012.
- (iv) Further detailed consideration of the timescales within which a phased build on the existing site could be undertaken has suggested that the original assumed construction period of 34 months was understated and that a period of 40 months would be more realistic.

2.45 The revised assessment of delivery timescales and costs for the preferred option of delivering on Portobello Park, and also for the two approved fall-back options, is shown in the following table.

	Portobello Park	Existing Site - Phased Build	Baileyfield
Completion date for school	July 2016	August 2020	January 2018
Opening date for school	August 2016	October 2020	February 2018
Capital costs to complete	£33.6m	£47.0m	£43.2m
Project budget remaining	£38.3m	£38.3m	£38.3m
Surplus/(deficit)	£4.7m	(£8.7m)	(£4.9m)

2.46 Based on the latest assessment shown above there is now insufficient funding remaining in the existing project budget in the Capital Investment Programme to

deliver either of the fall-back options. Were a fall-back option to have to be delivered rather than the preferred option of building on Portobello Park, the estimated additional cost associated with the fall-back options (when compared with the cost to complete the build of the new school on Portobello Park) has risen to be between £9.6m for Baileyfield and £13.4m for a phased build on the existing school site. The main reasons for the additional cost are the necessity to undertake entirely new design, planning and procurement processes together with the additional construction cost inflation which arises due to both of these fall-back options having a completion date which is far later than that for the preferred option of building on Portobello Park.

2.47 No adjustment has, at this point, been made to the project budget reflected in the Capital Investment Programme for a new Portobello High School. However, in light of the future construction inflation risk a sum of £6.204m has been reserved in the roll-forward Capital Investment Programme as 'Wave three inflation contingency'.

3. Recommendations

3.1 It is recommended that Council:

- notes the contents of this report and the progress made;
- approves that, on completion of the works in connection with the same, the area of open space which would remain on Portobello Park would be (with the approval of Fields in Trust) dedicated as a Field in Trust;
- approves that a written undertaking is now given by the Council to Fields in Trust agreeing to the above-mentioned dedication, and also that dedication previously approved by Council on 14 March 2013 in respect of the area of open space which would remain on the existing combined Portobello High School and St John's RC Primary School site (after making provision for the necessary increase of the site allocated to St John's RC Primary School), and seeking Fields in Trust's agreement to the same, and delegates authority to the Director of Children and Families to take all necessary steps in connection with this; and
- approves the proposed variation to the contract sum in the potential contract with Balfour Beatty as set out in this report.

Gillian Tee

Director of Children and Families

Links

Coalition pledges	P03 - Rebuild Portobello High School and continue progress on all other planned school developments, while providing adequate investment in the fabric of all schools
Council outcomes	C01 - Our children have the best start in life, are able to make and sustain relationships and are ready to succeed. C02 - Our children and young people are successful learners, confident individuals and responsible citizens making a positive contribution to their communities.
Single Outcome Agreement	S03 - Edinburgh's children and young people enjoy their childhood and fulfil their potential
Appendices	None