

# Culture and Communities Committee

10.00am, Tuesday, 1 February 2022

## Fields in Trust Protected Public Parks and Green Spaces

Executive/routine Wards Council Commitments	Executive All <a href="#">43, 44</a>
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### 1. Recommendations

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- 1.1 It is recommended that Committee:
- 1.1.1 Supports the execution of Minutes of Agreement with Fields in Trust for a further twenty-five public parks and green spaces, thereby protecting these as recreational open spaces for current and future generations;
  - 1.1.2 Instructs officers to process the Minutes of Agreement subject to the appropriateness of title restrictions; and
  - 1.1.3 Note that, as set out in paragraph 4.19, the appropriate Committee will be asked to consider any proposal for an unsympathetic development, change to Minute of Agreement terms, or land disposal, prior to formal permission being sought from Fields in Trust.

#### Paul Lawrence

Executive Director of Place

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## Fields in Trust Protected Public Parks and Green Spaces

### 2. Executive Summary

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- 2.1 The City of Edinburgh Council has an opportunity to strengthen its commitment to protect and improve its public parks by supporting the creation of Minutes of Agreement with Fields in Trust for a further 25 parks and green spaces. If approved, this will bring the total number of Edinburgh parks and green spaces protected through this mechanism to 61, serving communities who do not already have a safeguarded space close to home and ensuring that almost everyone in the city lives no more than a 10-minute walk from a park or green space which is protected for good. In making this commitment the City of Edinburgh Council will become the first local authority in Scotland to adopt such a bold vision for their public green spaces.

### 3. Background

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- 3.1 Using a Minute of Agreement, the independent charity Fields in Trust works in partnership with local authorities to protect parks and green spaces in perpetuity for current and future generations to enjoy. It is a robust yet flexible way of legally safeguarding a space, making it necessary that the owner seeks permission from Fields in Trust before unsympathetic developments can take place.
- 3.2 To date, the City of Edinburgh has registered 35 public parks with Fields in Trust (or under its previous operating name, the National Playing Fields Association) via a series of memorial or celebratory programmes: three King George V Memorial Parks (1930s-1950s); three Millennium Fields (2000); a Golden Jubilee Field (2002); twenty four Queen Elizabeth II Diamond Jubilee Fields (2011); a Centenary Field (2014); two Active Spaces (2019) and a standard protection for Wardie Playing Fields (2021). In addition, a Minute of Agreement for Redhall Park is currently being drafted.
- 3.3 In his role as President of Fields in Trust, HRH The Duke of Cambridge, accompanied by HRH The Duchess of Cambridge, visited Starbank Park on 27 May 2021 to meet park volunteers, users and officers and launch Fields in Trust's Greenspace Index, its annual barometer of publicly accessible local park and green

space provision. First launched in 2019, this third release highlights the inequities in green space provision across Britain, noting that despite their indisputable value for health, wellbeing, community and environment, some parts of the nation only have access to half the green space as others, and that areas with the least provision tend to be those with a higher incidence of deprivation.

- 3.4 The event also provided the opportunity for Edinburgh's Lord Provost to announce that the City of Edinburgh Council would seek to ensure that almost everyone in the city lives no more than a 10-minute walk from a green space which is legally protected in perpetuity, ensuring that for years to come citizens are guaranteed a lifetime of opportunity for activity, play, learning, recuperation and community.
- 3.5 At its meeting of [16 November 2021](#) Committee agreed to continue consideration of the report until the next meeting of the Culture and Communities Committee on 1 February 2022, and to clarify within the report:
  - 3.5.1 The legal protection afforded to Fields in Trust;
  - 3.5.2 Under which mechanisms Fields in Trust status can be removed by the Council;
  - 3.5.3 How residents would be advised about changes to Fields in Trust status; and
  - 3.5.4 Proposals for robust governance arrangements which could be put in place by the Council to safeguard Fields in Trust protected spaces, particularly to ensure any change or plan for land disposal aligned with policies and strategies approved by the Culture and Communities Committee.
- 3.6 Further actions requested were to:
  - 3.6.1 Agree that a draft Minute of Agreement would be shared with Elected Members prior to officers processing the agreement, and that the draft Minute detailed the process for how future changes to Fields in Trust status would be considered;
  - 3.6.2 Make the Minute of Agreement accessible on the Council's website;
  - 3.6.3 Agree that the Minute of Agreement would specify that accessibility changes were considered sympathetic development, to promote accessibility for all;
  - 3.6.4 Agree to raise with officers the possibility of adding Cavalry Park to the list of Fields in Trust protected spaces; and
  - 3.6.5 Agree to clarify if there was development in Moredun Park which would threaten Moredun Park acquiring Fields in Trust status.

## 4. Main report

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- 4.1 Public parks and green spaces are proven to help people stay physically and mentally well; places where we can all move, breathe, run and play. They are an important tool to drive social cohesion, combat loneliness and build community.

- 4.2 Fields in Trust works in partnership with landowners to protect land through a Minute of Agreement, a legal commitment with the landowner which secures spaces in perpetuity for current and future generations to enjoy. To date, the City of Edinburgh Council has created/is creating agreements that protect 36 of its parks and green spaces.
- 4.3 Using a 10-minute walk buffer as an accepted proxy for the 20-minute neighbourhood concept, officers have determined that currently 69% of the population of Edinburgh has a park or green space within a 10-minute walk that is protected in partnership with Fields in Trust. This can be increased to 92% by protecting an additional 25 specific spaces.
- 4.4 The 25 parks and green spaces initially identified were:
- 4.4.1 Baronscourt Park;
  - 4.4.2 Bloomiehall Park;
  - 4.4.3 Buckstone Park and Woods;
  - 4.4.4 Burdiehouse Burn Valley Park;
  - 4.4.5 Buttercup Farm Park;
  - 4.4.6 Cammo Estate Park;
  - 4.4.7 Cramond Walled Garden;
  - 4.4.8 East Pilton Park;
  - 4.4.9 Fairmilehead Park;
  - 4.4.10 Gyle Park;
  - 4.4.11 Haugh Park;
  - 4.4.12 Jewel Park;
  - 4.4.13 Joppa Quarry Park;
  - 4.4.14 Kirkbrae Playing Fields;
  - 4.4.15 Moredun Park;
  - 4.4.16 Muirhouse Park;
  - 4.4.17 Newcraighall Park;
  - 4.4.18 Parkside Park (Newbridge);
  - 4.4.19 Pikes Pool (Kirkliston);
  - 4.4.20 Princes Street Gardens;
  - 4.4.21 Ratho Park (Ratho);
  - 4.4.22 Roseburn Park;
  - 4.4.23 Seafeld Recreation Ground;
  - 4.4.24 Sighthill Park; and

#### 4.4.25 Spylaw Park.

- 4.5 Since drafting the 16 November 2021 report, officers have identified three locations, namely Buttercup Farm Park, Kirkbrae Playing Fields and Moredun Park, which could potentially be of use for strategic asset development in the future (e.g. provision of a replacement school where the site of the existing school becomes new green space in return) and therefore cannot be supported for anything which rules out that opportunity.
- 4.6 Alternative green spaces have therefore been identified in order to ensure that almost everyone in the city lives no more than a 10-minute walk from a park or green space which is protected for good and land titles are currently being searched to determine the most suitable replacements from amongst this list (from Cavalry Park, Clermiston Park, Corstorphine Hill Nature Reserve and Inch Park).
- 4.7 Ratho Park is managed by the Parks and Greenspace service but is leased to the Council, so the support of the landowner will be sought. Should landowner agreement not be forthcoming, then an alternative green space, Ratho Station Park, will be submitted for Fields in Trust status.
- 4.8 There are four parks where relatively small parts of the park are not Council owned. These are Buckstone Park and Woods, Burdiehouse Burn Valley Park, Haugh Park and Newcraighall Park. Unless support to include these parts is forthcoming from the landowner it is likely that the relevant Fields in Trust boundaries will exclude the non-Council sections.
- 4.9 In addition to the mechanism of protection afforded by Fields in Trust, all planning applications that would result in a loss of open space (regardless of whether they are covered by a Fields in Trust Minute of Agreement) must be assessed against applicable Local Development Plan (LDP) policy: 'Open Space Protection' (Policy Env 18) as well as any other applicable LDP policies. Presently, Edinburgh is in the process of producing its next LDP - City Plan 2030 - and this also contains a corresponding open space policy called 'Protection of Open Space' (Env 23). City Plan 2030 was approved by the Council on [29 September 2021](#) and will shortly be subject to public consultation ahead of submission to the Scottish Government for Examination of the Plan.
- 4.10 For clarification, the legal protection afforded to a site under a Fields in Trust Minute of Agreement is that once covered by a Minute of Agreement, the Council is not to use the site or permit others to use it for anything other than as a public green space. Rather, the Council is required to seek approval from Fields in Trust before selling, leasing, licencing or otherwise disposing any part or structure within the site which could detrimentally affect the use of the site as public green space; erecting any buildings which could detrimentally affect the use of the site as a public green space; granting any burdens, servitude or other conditions which could affect the use of the site as a public green space.
- 4.11 Any new building, structure or facility within a green space that facilitates the use of the green space for recreation will be acceptable to Fields in Trust. For example, the following would be supported: play equipment, exercise equipment; sports

equipment; skate parks; sports pavilions; visitor centres; cafes; changing rooms; toilets; storage facilities; car parks for site users etc. The Minute of Agreement will normally reference these items, and others can be included should both parties agree their inclusion from the outset, or as part of any future amendment following a Fields Change Request.

- 4.12 Fields in Trust is presently reviewing its Minute of Agreement arrangements to clearly state that they are supportive of climate mitigation measures that protected parks and green spaces can provide. It will be amending its Fields Change Request process to support the sustainability and multifunctionality of sites so that no consents are required for the following types of measures: electric car charging points in car parks; solar power on buildings where the power generated will be used directly by the protected space; drainage works including Sustainable Drainage Systems where no easement is to be granted to a third party; planting a wildflower meadow or other biodiversity specific planting scheme which requires the removal/reduction of a sports pitch area; development or alteration in-line with urban greening or green corridor infrastructure plans; green roofs; flood protection works such as creating bunds, ditches and altering the level of the green space; and green waste compounds on less than 1% of the site for green waste collected from the site.
- 4.13 Fields Change Requests are reviewed monthly and the Fields in Trust Executive has delegated authority to respond to certain types of requests. The Fields in Trust Scotland Committee has responsibility for these decisions in Scotland. Fields in Trust reserves the right to refer any application to its full Council, which meets on a quarterly basis. Decisions are normally granted in principle subject to a number of conditions being met.
- 4.14 Unsympathetic or unacceptable development constitutes erection of buildings and facilities which do not have any clear association to the use of the site as a public green space. Any proposals for commercial premises, an indoor leisure centre, a community hall, council offices and other similar developments would need be considered in accordance with Fields in Trust's disposal policy, which requires suitable replacement land to be provided.
- 4.15 If the proposed development use is not compatible with the recreational use of the site, this will be considered in accordance with the Fields in Trust Disposal Policy, which means that replacement land would be expected to be put forward.
- 4.16 In the event of the Council disposing of its interest in all or part of the site the Council must bind its successors to a Minute of Agreement with Fields in Trust. In cases where the protection is not intended to continue following the transfer, the request for approval will be considered against the Fields in Trust Disposal Policy. The replacement land must be of equivalent or better quality than the property being disposed of, with equivalent or better facilities, of greater dimensions, in the same catchment area as the property being disposed of, and as accessible to the public as the property being disposed of. The applicant is required to address how the proposed replacement land meets with the requirements of this policy.

- 4.17 Similarly, in the event of the Council seeking to remove Fields in Trust status from a green space or green spaces, an application for approval will be considered against the Fields in Trust Disposal Policy. The applicant is required to identify an alternative green space for protection and address how the proposed replacement meets with the requirements of this policy.
- 4.18 Residents are able to comment on Fields in Trust proposals as part of the public consultation exercise for those currently identified for inclusion within a Minute of Agreement. A similar consultation exercise would occur should changes to Fields in Trust status be proposed by the Council.
- 4.19 In order to ensure that robust Council governance arrangements are in place to safeguard Fields in Trust status, it is recommended that the Culture and Communities Committee and/or Finance and Resources Committee (as appropriate) consider any proposal for an unsympathetic development, change to Minute of Agreement terms, or land disposal, prior to formal permission being sought from Fields in Trust.
- 4.20 Minute of Agreement Guidance Notes and Disposal Policy, along with a template Minute of Agreement are presented in the appendices and links to external references given in Section 8. These provide more detail on the process for how future changes to Fields in Trust would be considered.
- 4.21 Finalised Fields in Trust Minutes of Agreement will be included on the Council's website.
- 4.22 Minutes of Agreement for proposed Fields in Trust sites will specify that accessibility changes will be considered sympathetic development, in order to promote accessibility for all, provided that the main purpose of the development is to benefit the relevant green space and its users.
- 4.23 Cavalry Park in Duddingston is the responsibility of the Education and Children's Services directorate. Officers have confirmed that, given its historical and continuing use for winter and summer sports, they are supportive of it gaining Fields in Trust status. It has therefore been included within the list of sites to be considered for a Minute of Agreement.
- 4.24 Moredun Park is designated open space in the current Local Development Plan, with a small section to its north west being white land (i.e. no designation). Under CityPlan 2030 this area of white land has been identified as H89 Moredun Park View - Development should accord with the Development Principles set out in Appendix D ([Appendix D \(edinburgh.gov.uk\)](#)). The Minute of Agreement with Fields in Trust will therefore exclude the area within H89 Moredun Park View.

## 5. Next Steps

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- 5.1 If Committee approve the recommendations in this report, officers will:

- 5.1.1 Continue title searches and site record investigations to ascertain suitability for including proposed parks and green spaces within Minutes of Agreement, including discussions with non-Council landowners where relevant;
- 5.1.2 Initiate a public consultation exercise for those spaces identified as suitable for Fields in Trust status; and
- 5.1.3 Formally agree Minutes of Agreement for those spaces receiving public support for Fields in Trust status, sharing details with Elected Members of the relevant Council Ward prior to officers processing the agreement.

## **6. Financial impact**

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- 6.1 Legal administration costs will be met from the Parks and Greenspace revenue budget.

## **7. Stakeholder/Community Impact**

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- 7.1 The protection in perpetuity of parks and green spaces will have a positive impact for communities and green space users, with almost all of Edinburgh's residents being within a ten-minute walk of their nearest Fields in Trust supported green space.

## **8. Background reading/external references**

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- 8.1 [Fields in Trust Protection](#)
- 8.2 [Field Change Requests | Fields in Trust](#)
- 8.3 [Field Change Request guidance notes Oct21.pdf \(fieldsintrust.org\)](#)

## **9. Appendices**

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- 9.1 Appendix 1 - Minute of Agreement Guidance Notes and Disposal Policy.
- 9.2 Appendix 2 - Template Minute of Agreement.





# Minute of Agreement

## Guidance notes

The Minute of Agreement contains a provision requiring the property to be used for a specific purpose, typically a public playing field and recreation ground. Any new building or facility within that use or ancillary to that use will be acceptable to Fields in Trust.

For example, the following would be supported by Fields in Trust:

- > Sports pavilions
- > Changing rooms
- > Toilets
- > Storage facilities
- > Car parks for the field users.

Structures such as play equipment, climbing walls and skate parks are deemed recreational and generally do not require consent as they are usually permitted within the user clause.

Unsympathetic or unacceptable development would be erection of buildings and facilities which do not have any clear association to the use of the site as a public green space. Any proposals for commercial premises, an indoor leisure centre, a community hall, council offices and other similar developments would need be considered in accordance with our Disposal Policy which requires suitable replacement land to be provided.

Please see a copy of our Disposal Policy below.

The process for seeking Fields in Trust consent is explained in the Field Change Request (FCR) guidance notes which are published on our website along with the relevant FCR forms at <https://www.fieldsintrust.org/field-change-request>.



## Policy Guidance

### Disposal of Recreational Land

Fields in Trust, established in 1925, is the only UK-wide charity legally protecting parks and green spaces for current and future generations to enjoy. We achieve this through a Deed of Dedication, or a Minute of Agreement in Scotland, working in partnership with landowners, including local authorities, voluntary organisations, charities and private landowners.

This guidance paper sets out the criteria that we expect to be met for any proposed disposal or sale of land that Fields in Trust legally protects. Fields in Trust is responsive to local change and flexible in its dealings with landowners, provided that betterment for local communities in terms of outdoor sport, recreation or play can be demonstrated. Management and control of these vital resources should, where possible, remain with the local community, through their elected representatives who are best placed to meet local need and respond to changes in community circumstances. If the disposal relates to a transfer of the land where the continued use will be for public recreation then we may not seek replacement land, although a new Deed of Dedication or Minute of Agreement will need to be entered into with the new landowner.

Wherever Fields in Trust legally protects recreational land, its prior, written consent is required if land is to be disposed of. This consent is necessary irrespective of any other legal requirements in the respective home nations such as planning permission for change of use, educational legislation, or playing field legislation

The exchange criteria apply to any means of disposal be it a freehold transfer, a leasehold transfer or otherwise. Land exchanges may be agreed, subject to the following criteria being met:

- › The quantity of land to be newly protected must be no less than that to be released. This equivalent size criterion normally applies to the replacement land being land newly brought into recreational use. In certain circumstances, land already in recreational use might be acceptable for exchange but it would need to be substantially greater in size than the land being released.
- › The quality of the land and facilities to be newly protected should be better than that being released.
- › The replacement facilities should serve the same catchment area as those being released. The definition of the catchment area will vary with the specific circumstances of each transaction and the type of facilities provided. For example, an athletics track will probably have a larger catchment area than a MUGA (multi-use games area).
- › The replacement land and facilities must have at least the same level of public access as those being released.
- › The landowner must apply as much of the proceeds from the sale as are necessary to acquire and lay-out the replacement land and/or facilities.
- › In exceptional circumstances and where replacement land is not available Fields in Trust may accept payment of a premium for the release of land in order that it can continue its work of protecting parks and green space throughout the UK.
- › Where land, within England and Wales, is owned by a charity, or is itself registered as a charity, the requirements of the 2011 Charities Acts and the Charities' (Qualified Surveyors' Reports)



## Policy Guidance

### Disposal of Recreational Land

Regulations 1992 must be followed. For example, disposal must be in the best interests of the charity and an independent survey, including a valuation, by a surveyor is required. Proceeds must be reinvested in the stated trust purposes. Guidance is available in CC28 – [“Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land”](#) available from the Charity Commission.

- › A new Deed of Dedication or Minute of Agreement protecting the replacement site(s) must be entered into. Conditions may be set relating to the future use of the land to be disposed of.
- › Fields in Trust’s own costs and professional fees must be met by the organisation requesting the disposal or exchange.

Updated January 2019

## Green Spaces for Good



### Minute of Agreement

[insert Landowners name] (1)

and

Fields in Trust (2)

[insert site name]

**MINUTE OF AGREEMENT****BETWEEN:**

(1) [ ] constituted under the provisions of the Local Government etc. (Scotland) Act 1994 and having its main office at [ ] (who and whose successors are hereinafter referred to as **the Council**);

and

(2) **FIELDS IN TRUST** incorporated by Royal Charter, registered with the Office of the Scottish Charities Regulator as charity number SC040357, and having their Head Office at 2d Woodstock Studios, 36 Woodstock Grove, London, W12 8LEQ (who and whose successors are hereinafter referred to as **FIT**).

**WHEREAS:**

- A. the Council is the heritable proprietor of those [areas of] [playing fields] [open spaces] [detail developments on site which enhance outdoors use e.g. changing rooms and pavilions are deemed acceptable] [other] listed in Part 1 and delineated in red on the plans contained within Part 2 of the schedule annexed and executed as relative hereto (**the Schedule**), which plans are indicative only of the generally recognised extent of said playing fields and open space (**the Subjects**); and
- B. the Council has agreed to nominate the Subjects to FIT to enable FIT to dedicate the Subjects for the use and enjoyment of the inhabitants of [ ] in perpetuity, in accordance with and for the purpose of FIT's Green Spaces for Good only.

**NOW IT IS AGREED as follows:**

1. The Council grants to FIT a right to designate the Subjects as a public [playing field] [open space] [detail developments on site which enhance outdoors use e.g. changing rooms and pavilions are deemed acceptable] [other] in perpetuity from [the last date of execution of these presents] (**the dedication date**), only insofar as the Subjects are available for such designation [,subject to and without prejudice to the terms of the existing leases between the Council and its tenants listed in Part 3 of the Schedule (**the Leases**).
2. The Council undertakes from the dedication date:
  - 2.1 not to use the Subjects or permit the Subjects to be used other than as a public [playing field] [open space] [detail developments on site which enhance outdoors use e.g. changing rooms and pavilions are deemed acceptable] [other] except with the consent of FIT;
  - 2.2 not to sell, transfer further lease, licence or otherwise dispose of or grant any security interest of the whole or any part of the Subjects which detrimentally could affect the use of the Subjects as a public [playing field] [open space] [detail developments on site which enhance outdoors use e.g. changing rooms and pavilions are deemed acceptable] [other] except with the consent of FIT;

- 2.3 not to erect on the Subjects or any part of them, any buildings which could detrimentally affect the use of the Subjects as a public [playing field] [open space] [detail developments on site which enhance outdoors use e.g. changing rooms and pavilions are deemed acceptable] [other] except with the consent of FIT;
  - 2.4 not to grant any real burden, servitude or other condition, which could affect the use of the Subjects as a public [playing field] [open space] [detail developments on site which enhance outdoors use e.g. changing rooms and pavilions are deemed acceptable] [other] detrimentally, without the consent of FIT;
  - 2.5 to, so far as consistent with its duties as a local authority, have regard to any advice given by FIT on the management and running of the Subjects;
  - 2.6 to attach or erect, as appropriate, and to allow the remaining in place of, a plaque or plaques within the Subjects, to be provided by FIT, reflecting FIT's interest in the Subjects, and giving recognition of financial support where required by FIT.
  - 2.7 In the event of the Council disposing of its interest in all or part of the Subjects, the Council will bind its successors in title to the Subjects (or any part thereof) to enter into a Minute of Agreement with FIT or its successors in the same terms *mutatis mutandis*, and containing this undertaking.
3. FIT undertakes that:
    - 3.1 where its consent is required in terms of Clause 2, such consent will not be unreasonably withheld;
    - 3.2 it will notify the Council, without unreasonable delay, of any concerns or matters of advice to which it requires the Council to have regard;
    - 3.3 any powers, duties and functions given to FIT under the terms of this Minute of Agreement shall be exercisable by the Scottish Committee of FIT on FIT's behalf;

Declarations:

It is hereby declared that:

1. the rights granted by the Council to allow FIT to dedicate the Subjects in terms of this Minute of Agreement are for the purpose of and in pursuit of FIT effecting the Green Spaces for Good only. Those rights shall be exercised by FIT in the manner least burdensome to the Council and its tenants and their successors and without prejudice to the foregoing generality, FIT shall avoid obstruction or nuisance to or interference with the Subjects in a manner which may affect detrimentally a tenant's occupation or rights under the Leases;



place of signing



**This is the Schedule referred to in the foregoing Minute of Agreement between [ ] and  
Fields in Trust**

**PART 1  
THE SUBJECTS**

**PART 2**  
**THE PLANS**

**PART 3**  
**THE LEASES**