

Culture and Communities Committee

10.00am, Tuesday 4 October 2022

Fields in Trust Dedications, Ravelston Park and Orchard Brae Park

Executive/routine
Ward:
Council Commitments

Executive
Inverleith

1. Recommendations

- 1.1 It is recommended that the Culture and Communities Committee:
 - 1.1.1 Supports the proposal to offer Orchard Brae Park to Fields in Trust as replacement for lost ground in Ravelston Park;
 - 1.1.2 Approves the launch of a public consultation to seek feedback on this proposal; and
 - 1.1.3 Notes the updated Minute of Agreement.

Paul Lawrence

Executive Director of Place

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Report

Fields in Trust Dedications, Ravelston Park and Orchard Brae Park

2. Executive Summary

- 2.1 Ravelston Park is dedicated under a Fields in Trust protection agreement. A community asset transfer has been agreed for an area of the park and the pavilion and therefore written consent is required from Fields in Trust to allow the transfer to be finalised. This report details the process involved.

3. Background

- 3.1 As Ravelston Park is protected by a Fields in Trust Minute of Agreement, written consent is required to release the land from protection before the planning application can be approved.

4. Main report

- 4.1 To mark the Queens Diamond Jubilee in 2012, the City of Edinburgh Council entered into a legal agreement (known as a Minute of Agreement) with the charity Fields in Trust to protect in perpetuity twenty-two of the city's parks from non-ancillary development. Ravelston Park was one of the sites.
- 4.2 Fields in Trust recognise that circumstances can change and for this reason the Minute of Agreement has a degree of flexibility. If a landowner wishes to dispose of the land or an area of the land, written consent may be granted through a "Field Change Request". An alternative area of land must be offered as a replacement, it must be no less than is being released, should serve the same community and should be of higher quality. Full details of the Fields in Trust disposal policy can be found [here](#).
- 4.3 In 2018, the Blackhall Community Trust submitted an asset transfer request to the City of Edinburgh Council under Part 5 of the Community Empowerment (Scotland) Act 2015. The request was for the purchase of an area of Ravelston Park including the pavilion to develop a nursery and community hub.

- 4.4 Council officers have identified Orchard Brae Park as a suitable site to offer in exchange for the area within Ravelston Park.
- 4.5 Fields in Trust have recently updated the Minute of Agreement document and the new version will be used for Orchard Brae and for future dedications. The changes have been made to clarify the document and reduce the number of occasions where a landowner is required to seek consent.

5. Next Steps

- 5.1 Should Committee agree with this recommendation, a 12-week public consultation exercise will be carried out to seek feedback on the proposals. If the results show support, the Fields Change Request will commence.

6. Financial impact

- 6.1 This proposal will have no financial impact.

7. Stakeholder/Community Impact

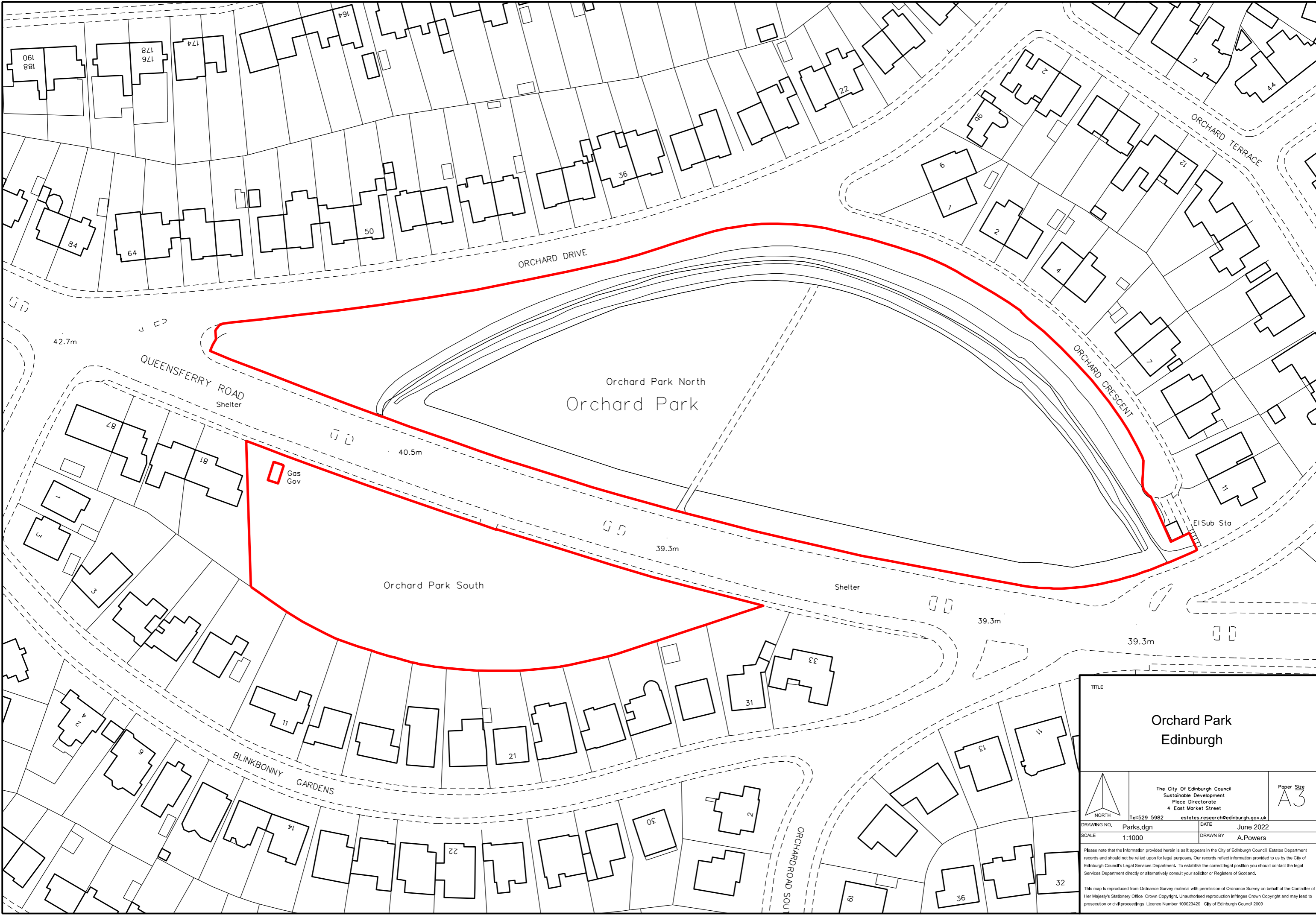
- 7.1 If the report recommendations are approved, a 12-week public consultation will be launched to assess public appetite for the proposal.


8. Background reading/external references

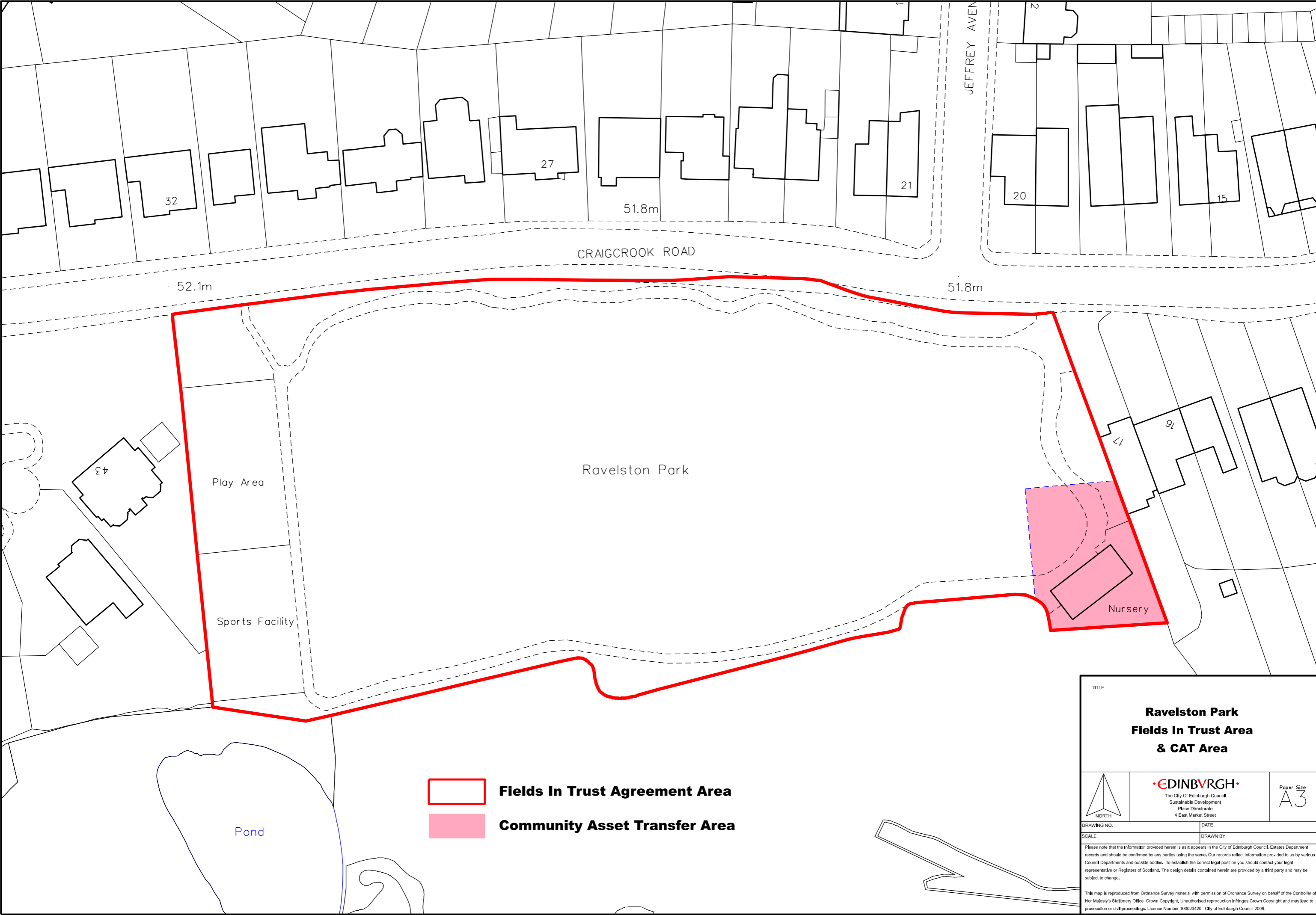
- 8.1 Proposed Sale – Ravelston Park Pavilion, Craigcrook Road, Edinburgh EH4 3RU, report to Finance and Resource Committee, [7 March 2019](#).
- 8.2 [Public Consultation on the sale of common good land to Blackhall Community Trust](#).
- 8.3 Fields in Trust Protected Public Parks and Greenspaces, report to Culture and Communities Committee, [1 February 2022](#).



9. Appendices

- 9.1 Orchard Brae Park plan.
- 9.2 Ravelston plan.
- 9.3 Revised Minute of Agreement.
- 9.4 Changes made to the Minute of Agreement since January 2022.



TITLE	
Orchard Park Edinburgh	
 NORTH	The City Of Edinburgh Council Sustainable Development Place Directorate 4 East Market Street Tel: 529 5982 estates.research@edinburgh.gov.uk
DRAWING NO. Parks.dgn	DATE June 2022
SCALE 1:1000	DRAWN BY A.Powers
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TITLE	
Ravelston Park Fields In Trust Area & CAT Area	
 NORTH	 EDINBURGH The City Of Edinburgh Council Sustainable Development Place Directorate 4 East Market Street
DRAWING NO.	DATE
SCALE	DRAWN BY
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Green Spaces for Good

Minute of Agreement

[insert Landowner's name] (1)

and

Fields in Trust (2)

[insert site name]

[Type here]

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 [that area/those areas of] listed in Part 1 of the schedule annexed and executed as relative hereto (**the Schedule**), and delineated in red on the plan(s) contained within Part 2 of the **Schedule** which plan(s) is/are indicative only of the generally recognised extent of said [playing fields] [open spaces] (**the Property**); and
- B. the Council has agreed to nominate the Property to FIT to enable FIT to dedicate it for the purposes detailed in Clause 1 of this Agreement;

NOW IT IS AGREED as follows:

1. The Council grants to FIT a right to designate the Property as a public [playing field, recreation ground, park, play space and open space, with [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 this Minute of Agreement] (**the Dedication Date**), only insofar as the Property is available for such designation but the Council declaring that to the best of the Council's knowledge and belief the Property is fully available and suitable for such dedication [,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**).)] and in recognition of such dedication, the Council warrants to the best of the Council's knowledge and belief that (i) the entirety of the freehold of the Property is owned outright by the Council (ii) there are no subsisting title conditions likely to be incompatible with such designation and (iii) [other than the existing leases DRAFTING NOTE: INCLUDE THIS WORDING IN ITALICS ONLY WHERE THERE ARE EXISTING LEASES] no third party rights (including but not limited to servitudes,

[Type here]

wayleaves and similar agreements) exist which are likely to be inconsistent with such dedication and/or in respect of which any third party consent is required relative to such dedication, and the Council will fully and effectively indemnify FIT on demand in respect of all claims, costs and liabilities relating to the dedication with effect from the Dedication Date in respect of any actions, losses, damages, liabilities, charges, claims, costs and expenses which may be paid, incurred, suffered or sustained by FIT arising out of or in connection with any inaccuracy in such warranties given by the Council in respect of the Property

2. The Council undertakes from the Dedication Date:
 - 2.1 not to use the Property or permit the Property to be used other than as a public [playing field, recreation ground, park, play space and open space with [detail developments on site which enhance outdoors use e.g. changing rooms and pavilions are deemed acceptable] [other] (**the Designated Use**) except with the prior written consent of FIT;

Clause 2.1 is the user clause and refers to the property being used as “a public playing field recreation ground, park, play space and open space”. Depending on the property’s current or future use, the user clause can be amended by mutual agreement. For example, it could also reference buildings or facilities if the use is ancillary to the outdoor space.

- 2.2 not to grant, allow, suffer or permit the Property to be used for any purpose outside the Designated Use including for any occasional or specific period of time without the consent of FIT save that temporary events shall not require consent with the exception of events and festivals which require closure of more than 25% of the Property for more than 21 consecutive days per event;

Clause 2.3 establishes additional protection through Fields in Trust by requiring Fields in Trust’s prior consent to any proposed disposal.

- 2.3 not to sell, transfer, further lease, otherwise dispose of or grant any security interest of the whole or any part of the Property which could detrimentally affect the use of the Property for the Designated Use except with the prior written consent of FIT; provided that granting a licence for any purpose within the Designated Use shall not require consent;
 - 2.4 not to erect on the Property, or any part of it, any buildings which could detrimentally affect the Designated Use except with the prior written consent of FIT provided that temporary structures for events shall not require consent;
 - 2.5 not to grant, allow, suffer or permit the erection of any buildings, structures or alterations on the Property that would result in the total structural and building footprint of such buildings or structures to exceed 20% of the total square footage of the Property;

[Type here]

Decisions relating to new buildings and structures, or alterations of the same, which fall within the agreed use stated in clause 2.1 are solely in the control of the landowner or its tenant(s).

- 2.6 not to grant, accept or enter into any real burden, servitude or other condition which could affect the Designated Use without the prior written consent of FIT;
- 2.7 to inform FIT without delay of any proposals, intentions or decisions to grant, allow, suffer or permit:
 - a) disposal of the whole or part of the Property
 - b) the erection of any buildings, structures or alterations on the whole or part of the Property whether inside or outside the Designated Use;
 - c) the temporary closures or uses of the whole or part of the Property;
- 2.8 to provide FIT with information in response to any reasonable request by FIT relating to the Designated Use.

Clauses 2.6, 2.7 and 2.8 support the objective of protecting the site's recreational use. Please refer to Fields in Trust's Field Change Request Guidance which is published on our website <http://www.fieldsintrust.org/field-change-request>

- 2.9 and, so far as consistent with its duties as a local authority, to have regard to any advice given by FIT on the management and running of the Property;

This clause establishes an advisory role for Fields in Trust without interfering with the management rights and responsibilities of the landowner.

- 2.10 to attach or erect, as appropriate, a plaque or plaques within the Property, to be provided by FIT, reflecting FIT's interest in the Property, and giving recognition of financial support where required by FIT. and to allow such plaque or plaques to remain in place.
- 2.11 without prejudice to Clause 2.3, in the event of the Council disposing of its interest in all or part of the Property, before title to the Property has been transferred, the Council will procure that its intended successors in title to the Property (or any part thereof) (intended successors) have entered into a Minute of Agreement with FIT or its successors in the same terms mutatis mutandis, and containing this undertaking, which Minute of Agreement shall take effect immediately upon the intended successors registering their title to the Council's interest in the Property.
- 3. FIT undertakes that:
 - 3.1 where its consent is required in terms of Clause1, such consent will not be unreasonably withheld;

[Type here]

3.2 pursuant to clause 2.3, FIT shall not unreasonably withhold consent to any disposal of the whole or any part of the of the Property provided that the Council at the request of FIT:

- a) replaces or agrees to replace the Property with a piece of freehold land approved by FIT which is of equivalent or better quality than the Property, with equivalent or better facilities than the Property, of the same or greater dimensions than the Property, in the same catchment area as the Property, and as accessible to the public as the Property (the **Replacement Site**) and applies such of the proceeds of any sale of the Property as are necessary to do so; and
- b) Enters into another minute of agreement on the same terms as this Minute of Agreement in respect of the Replacement Site.

Clause 3.2 takes account of potential future changes and guarantee flexibility in terms of specific location of a replacement site provided the specified criteria are met.

3.3 not unreasonably withhold consent to any disposals or the erection of any structures or alterations on the Property where the primary purposes is to: (a) avoid, adapt or mitigate the actual or anticipated effects of climate change; and/or (b) reduce greenhouse gas emissions, including toward a target of net zero, in each case, provided that:

- (i) the use of the Property for the Designated Use is not adversely affected;
- (ii) the structures or alterations would not result in a breach of clause 2.5; and
- (iii) the Council at the request of FIT complies with the provisions of clause 3.2;

3.4 it will notify the Council, without unreasonable delay, of any concerns or matters of advice to which it requires the Council to have regard;

3.5 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 Property in terms of this Minute of Agreement 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 take all reasonable steps to avoid obstruction or nuisance to or interference with the Property in a manner which may affect detrimentally a tenant's occupation or rights under the Leases;
- 2. for the avoidance of any doubt, the ownership of the Property shall remain with the Council and FIT does not obtain a real right of property in and to the Property or any part thereof;

[Type here]

3. any consent given by FIT under this Minute of Agreement may be granted subject to conditions.
4. at the request of FIT the Council will pay or require their solicitor to give an undertaking to pay FIT for all costs fees charges disbursements and expenses properly and reasonably incurred by FIT in relation to every application made by the Council for consent required by the provisions of this Minute of Agreement whether such consent is granted or refused or offered subject to any reasonable qualifications or conditions or whether the application is withdrawn.

When dealing with requests for changes to protected sites, Fields in Trust incurs costs both financially and in terms of resource. As a charity, Fields in Trust relies on donations to carry out its objects of protecting green spaces which makes it reasonable to seek cost reimbursement.

5. the parties shall each bear their own legal expenses in bringing this Minute of Agreement to completion, but the Council shall bear the expense of the dues of registration, the administration of registration and the costs of obtaining two extracts thereof from the Books of Council and Session, the parties hereby consenting to the registration of this Minute of Agreement for preservation and execution: **IN WITNESS WHEREOF** this Agreement consisting of this and the preceding [2] pages, together with the Schedule annexed, is executed as follows:

For and on behalf of the said []

.....
signature of authorised signatory

.....
signature of authorised signatory/witness

.....
Full name of above (print)

.....
Full name of above (print)

.....
date of signing

.....
address of witness

.....
place of signing

For and on behalf of the said **Fields in Trust**

[Type here]

.....
signature of authorised signatory

.....
signature of authorised signatory/witness

.....
Full name of above (print)

.....
Full name of above (print)

.....
date of signing

.....
address of witness

.....
place of signing

[Type here]

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

**PART 1
THE PROPERTY**

[Type here]

PART 2
THE PLANS

[Type here]

PART 3
THE LEASES

Changes made to the Minute of Agreement since January 2022

Fields in Trust has made a number of changes and amendments to their Minute of Agreement, the legal document they use with landowners to protect green spaces. These changes have been done to make the Minute of Agreement clearer and to reduce the number of occasions where a landowner is required to seek consent for activity.

It has also aligned the Minute of Agreement with other Fields in Trust legal instruments and policy.

1. A clause has been added that is supportive to changes that seek to avoid, adapt or mitigate the effects of climate change; and to reduce greenhouse gas emissions.
2. Provisions have been added for events and festivals that need Fields in Trust consent, i.e. only those that require closure of more than 25% of the Property for more than 21 consecutive days per event – historic case data shows that with this provision very few events would need to come through the consent process.
3. Temporary structures for events shall no longer require Fields in Trust consent, thereby reducing the number of requests a landowner needs to make.
4. Clarification that licences granted for purposes within the designated use do not require Fields in Trust consent.
5. Provisions have been added to make it clear that Fields in Trust may give conditional consents, for example for obtaining planning permission, signing a new Minute of Agreement, reinvesting rents, etc. – this has always been the case but is now stipulated.
6. It has been added that Fields in Trust will have to be reimbursed for their costs in connection with Fields Change Requests – this has always been the case but is now stipulated.

Changes that brought the MoA in line with legal instruments used across England and Wales:

7. A request for Fields in Trust to be informed about proposed disposals, buildings, uses of the green space in order to keep records up to date.
8. A new provision was added that where a disposal is for a purpose incompatible with the designated use, Fields in Trust may accept replacement land and partially or wholly discharge the Minute of Agreement – this addition confirms the flexibility of our protection and incorporates something that has always been Fields in Trust policy.