TRANSPORT AND THE ENVIRONMENT COMMITTEE

AGENDA

25th Meeting, Session 1 (2000)

Wednesday 1 November 2000

The Committee will meet at 10.00 am in Committee Room 2, Committee Chambers, to consider the following agenda items:

1. **Item in Private:** The Committee will decide whether to take item 4 in private.

2. **Transport (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 3).

3. **Public Petitions:** The Committee will consider the following public petitions—

   Petition PE3 from Hospitalfield Area Residents’ Committee on commercial oil seed rape crushing in their area and the effect of this activity on residents’ health

   Petition PE17 from Western Isles Council on Skye Bridge discounting options for Western Isles residents

   Petition PE23 from by Save Wemyss Ancient Caves Society calling for action to be taken to repair storm damage to the access of the caves

   Petition PE27 from Skye and Kyle Against Tolls on Float Concessions for Skye Bridge

4. **Water and the Water Industry Inquiry:** The Committee will consider draft terms of reference for its inquiry into water and the water industry.

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The following papers are relevant for this meeting:

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In addition to the above papers, the Transport (Scotland) Bill and Accompanying Documents are also relevant to this meeting. Copies of the Marshalled List of Amendments will be available from the Document Supply Centre on the morning of the meeting and will be available at the start of the meeting in Committee Room 2. A list of the groupings of amendments will also be available at the start of the meeting.
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AGENDA ITEM
TE/00/25/01

Petition PE03: Hospitalfield Area Residents Committee (HARC)

Note by the Clerk

Introduction

1. This paper updates the Committee on the progress of Petition PE03, invites members to consider the current position and suggests options for further consideration. A copy of the original petition is attached, together with responses from Angus Council and SEPA. A further letter from HARC, setting out more information is also attached. Further documentation accompanying the original petitions may be obtained from the clerks.

Background

2. Petition PE03, from the Hospitalfield Area Residents Committee (HARC) relates to the activities of Seed Crushers (Scotland) Ltd. in Elliot Industrial Estate, Arbroath. (The activity of oil seed rape crushing has now ceased, with the firm going into receivership in September 1999. However, the Petitioners in their latest letter state their concern that another company purchasing the plant could resume the activity). The Petitioners allege the activity is responsible for discharges of “offensive odours”, “particulate emissions” and “noise nuisance” and call for the Scottish Parliament to “achieve a solution to this on-going environmental nuisance.” The Petition requests the following action:

   (i) The First Minister to instruct SEPA to withdraw authorisation for the activity on the site;

   (ii) An independent investigation into the actions of Angus Council in failing to comply with the Environmental Protection Act by not insisting upon an Environmental Impact Assessment being commissioned prior to this company setting up operations;

   (iii) Parliament instruct Angus Council to apply to the First Minister for permission to take nuisance action; and

   (iv) a review, by Parliament, of the process by which the situation happened.

Progress of the Petition

3. PE03 was submitted to Parliament in July 1999 and considered by the Public Petitions Committee on 31 August. It was referred to the Transport and the Environment Committee and first discussed at the Committee meeting on 8 September 1999. The Committee decided to seek further advice from SEPA and Angus Council and seek a view on health matters from the Health Committee.
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4. As a result of various legal actions, Legal Services within the Parliament advised that further consideration of the petition should be deferred. However, the situation has altered to the extent that consideration of the Petition may now resume. The Company has ceased trading and the plant is in receivership.

5. Due to the legal advice mentioned above, the Health and Community Care Committee have not yet had an opportunity to consider the petition and due to pressure of work are unlikely to do so until some time in December at the earliest.

6. Given the length of time which the petition has been active, members may wish to give further consideration to the petition now, rather than wait for a view from the Health and Community Care Committee. Any view expressed by that Committee in future can be forwarded to the petitioner at a later date.

Rermit and Role of the Committee

7. The matters involved in the petition and the relevant legislation are devolved matters and within the competence of the Parliament. However, the Committee does not have the powers to undertake the first three direct actions requested by the petitioner. In addition the Committee has agreed that in relation to public petitions it would not take a view or recommend further action in respect of individual cases which have been subject to legal or court proceedings, industrial tribunals, or planning or other similar statutory procedures. However, it is competent for the Committee to review the processes involved as requested at point (iv) in the petition.

Responses

8. The responses from Angus Council and SEPA are attached.

SEPA Response

9. SEPA point out that they are unable to take enforcement action over alleged “offensive odours” unless an authorised officer witnesses, what is in their opinion, an “offensive odour”.

10. Aside from detailing their handling of the complaints from HARC, SEPA point out that under Part I of the 1990 Environmental Protection Act, the Local Authority is a statutory consultee, but the planning authority is not.

Angus Council

11. The response from Angus Council also provides information on their handling of complaints from HARC, highlighting the Councils’ inability to act on complaints of “noise nuisance” unless witnessed by appropriate officers. The Council also state that in their view, given that the regulatory powers of SEPA in this area exceed those of the council, the appropriate course of action was for the council to support the steps taken by SEPA.
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Issues

Planning permission and SEPA action
12. In their letter Angus Council emphasise that planning permission was not required to begin the activity of seed crushing since it is deemed to be a general industrial process and was therefore consistent with the classification of the previous operation of the site. However, under the Environment Act 1988, the activity does require to receive an authorisation, subject to conditions, issued by SEPA.

13. From the information submitted by the petitioners, Angus Council and SEPA it is clear that, having been granted an authorisation by SEPA, the company repeatedly failed to comply with the conditions of that authorisation and that, despite enforcement action taken by SEPA, such breaches continued to occur over a considerable period of time.

14. Consequently, an important issue arising from the petition, which is commented on in the response from Angus District Council, is whether a more stringent test should be applied before a company is able to begin the activity of oil seed rape crushing.

15. One way of achieving this would be to change the classification of the activity so that, in this case, planning permission would have been required for the principle of the new development. In their response Angus Council’s Head of Development Control does not support such an option and states that, in his view, such a change in planning law would probably not have prevented consent being granted in this case.

16. Rather than change the classification of the process, another approach might be to extend the powers of SEPA to enable them to have a more substantial influence earlier in the process. This is addressed on page 3 of the response from Angus Council:

“SEPA is the one organisation which may have the expertise to predict an outcome in circumstances such as these. However SEPA’s remit at present entails their concentrated involvement after the event when something goes wrong. The Committee may therefore wish to consider whether SEPA could effectively become more actively involved at an earlier stage or even to the point of having some veto. In short, therefore, the Head of Development Control … postulates the question that perhaps SEPA’s involvement could have been more effective and earlier in the process, all be it that such would require an adjustment of SEPA’s existing powers.”

Options

17. Scottish Executive Officials have been copied into correspondence from HARC. However, the Committee has not, to date, asked the Executive, or SEPA, for its views on the issues raised in this petition.

18. There are a number of options available to the Committee in considering how to either conclude or take forward consideration of this petition. It should be noted
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that the possible options set out below are not exhaustive. They are also proposed taking into account the fact that the Committee has an agreed work programme that will take it into 2001.

19. Whatever option is chosen, it is recommended that the Clerk write to the petitioners to inform them of those suggestions which were not within the committee’s remit and that it is not appropriate for the Committee to take a view or recommend further action in respect of individual cases.

20. Options open to the Committee include:

Option A

21. The Committee could agree to conclude the petition by writing to the petitioners and sending them copies of the information received from Angus Council and SEPA.

Option B

22. The Committee could write to the Scottish Executive to ask for their views on the adequacy of current legislation and procedures in relation to the granting of planning permission for, and the environmental regulation of, the activity of oil seed crushing; particularly whether current regulatory procedures undertaken prior to a company beginning operation could usefully be strengthened.

Option D

23. The Committee could conclude consideration of the petitions by sending the petitioners copies of the information received and undertaking to place the issue of legislative changes to the planning system, including consideration of general issues raised by this petition, (such as the possibility of an expanded role for SEPA) on the agenda when it next considers its future work programme.

24. The Committee can of course take any other competent action it deems appropriate.

Recommendation

25. The Committee is asked to:

• agree that the clerk write to the petitioners to inform them of those suggestions for action which are not within the committee’s remit and that it is not appropriate for the Committee to take a view or recommend further action in respect of individual cases; and
• decide the next steps in relation to its consideration of these petitions.

Shelagh McKinlay
Clerk to the Transport and the Environment Committee
October 2000
TRANSPORT AND THE ENVIRONMENT COMMITTEE

AGENDA ITEM
TE/00/25/1

Petition PE23: Save Wemyss Ancient Caves Society

Note by the Clerk

Introduction
1. This paper updates the Committee on the progress of Petition PE23, invites members to consider the current position and suggests a possible course of action. A copy of the petition is attached, together with responses from the Scottish Executive and Fife Council. Further documentation accompanying the petition and which was previously circulated is available from the clerks.

Background
2. PE23: The Public Petitions Committee gathered substantial documentation on this prior to referral to other Committees. Historic Scotland has confirmed that the Wemyss Caves are scheduled as ancient monuments under the Ancient Monuments and Archaeological Areas Act. The wider issue of coastal defences, which is relevant to this Committee’s remit, is linked to the issue of access to and protection of the caves.

Progress of the Petitions
3. The Petition was submitted to Parliament in September 1999 and considered by the Public Petitions Committee on 2 November and 18 January 1999 and was subsequently referred to the Education, Culture and Sport Committee and to the Transport and the Environment Committee. This Committee first discussed the petition at its meeting on 1 March 2000. At that meeting the Committee agreed to defer further consideration of the petition until information requested by the Education, Culture and Sport Committee on the petition had been received from the Scottish Executive. The Committee also agreed to request information on the extent of the coastal erosion problem in Scotland from the Scottish Executive.

4. At the meeting on 23 May 2000 the Committee agreed to seek the view of Fife Council on the additional funds it had recently received from the Scottish Executive for coast protection schemes, and how this might affect the matters raised by the petitioner.

Responses
5. Responses from the Scottish Executive and Fife Council are attached.

Scottish Executive Response 28 April 2000
6. In their response of 28 April the Executive stated —

"In Scotland, coastal erosion problems tend to be localised and are essentially a local matter best resolved locally. It is therefore appropriate for each council to consider its own strategy in the light of local needs……It is Scottish Ministers’ policy to approve schemes which are technically, environmentally and economically sound and sustainable. Approved schemes are eligible for grant."
7. They further pointed out that—

“...it must be made clear that it is up to Fife Council itself to decide what areas are a priority for protection and to make a case for their protection, and for funding support. In relation to the Wemyss caves, no such case was made to the Scottish Executive so we cannot comment on their assumptions regarding the actual or assumed costs and benefits.”

Fife Council Response 17 October 2000
8. The most recent response from Fife Council states that they have recently received funds for approved schemes to protect the coastal settlements of East Wemyss, West Wemyss and Dysart. This funding does not cover the area of coastline in front of the caves. However, work to be carried out at East Wemyss under an approved scheme may provide surplus rock which can be used to give some further temporary protection in the area of the Caves.

9. In their response the Council further state that it has not been “possible to show that a scheme to protect the caves would meet the required economic criteria to receive Scottish Executive approval.” In the Council’s view a method of valuing heritage assets would require to be established before expenditure under existing coast protection schemes could be justified.

Options
10. The Committee may wish to conclude consideration of the petition by passing a copy of the most recent response from Fife Council to the Education, Culture and Sport Committee and to the petitioners.

11. The Committee can of course take any other competent action it deems appropriate.

Recommendation
12. The Committee is asked to:
• pass a copy of the most recent response from Fife Council to the Education, Culture and Sport Committee and to the petitioners; and
• take any other competent action it deems appropriate.

Shelagh McKinlay
Clerk to the Transport and the Environment Committee
27 October 2000