The Committee will consider the following current petitions—

**PE868** Petition by Ronald M Sutherland calling for the Scottish Parliament to urge the Scottish Executive to bring forward legislation to create a right to buy for member-based community sports clubs occupying or using land and/or premises for recreational or sports purposes.

**PE873** Petition by Helene MacLean on behalf of the Scottish Post Polio Network, calling for the Scottish Parliament to urge the Scottish Executive to join the international community in recognising post-polio syndrome (PPS) and to conduct a much needed national review of neurological services to take account of the needs of PPS and all other long term neurological conditions with a view to establishing multi-disciplinary centres of excellence to assess, treat and research such conditions that affect the lives of many thousands of individuals in Scotland.

**PE989** Petition by Colin Anderson calling for the Scottish Parliament to debate the issue of nuclear power, and whether (a) new nuclear stations are necessary in Scotland given our enormous renewable energy resources, (b) funding for nuclear power would be better invested in energy saving and renewables, (c) nuclear power is sustainable in regard to its fuel supply and waste disposal (d) plans exist to consult the Scottish public on the siting of nuclear stations and waste depositories.

**PE908** Petition by Connie M Syme calling for the Scottish Parliament to urge the Scottish Executive to ensure that traffic regulation orders are applied to all disabled parking bays to ensure that they are used by registered disabled users only.

**PE909** Petition by James MacLeod, on behalf of Inverclyde Council on Disability Ltd., calling for the Scottish Parliament to urge the Scottish Executive to review the Local Authorities’ Traffic Orders (Procedure) (Scotland) Regulations to allow for speedier provision and enforcement of dropped kerbs and disabled parking bays to prevent their abuse, ensuring greater and easier access for disabled, elderly and other users.
PE947 Petition by DECIDE (Dornock Eastirggs Creca Initiative Development Enterprise) calling for the Scottish Parliament to urge the Scottish Executive to provide community groups with the right to take ownership of land where it is currently ownerless or abandoned by its owner/s for seven years.

PE956 Petition by Mary Douglas calling on the Scottish Parliament to urge the Scottish Executive to ensure the Conservation (Natural Habitats, &c.) Regulations 1994, as amended, are applied in relation to ship to ship oil transfers in Scotland.

PE982 Petition by B Linden Jarvis calling on the Scottish Parliament to consider and debate the implications of proposed ship to ship transfers of oil at anchor in the Forth Estuary, specifically focussing such consideration and debate on the likely impact of such operations upon wildlife, tourism, local authority funding of clean-up and how it may use its powers within the 12 mile tidal limits to protect the local ecology, scenery, environment and areas of special scientific interest and habitat within the Estuary.

PE959 Petition by Eddie Jackson, on behalf of Borderline Theatre Company, calling on the Scottish Parliament to urge the Scottish Executive to act urgently to ensure the continuation of Borderline Theatre Company’s innovative touring and lifelong learning programme.

PE970 Petition by Chris Bartter, on behalf of 7:84 Theatre Company, calling on the Scottish Parliament to urge the Scottish Executive to act urgently to prevent the closure of 7:84 Theatre Company.

PE829 Petition by Mrs Anne Ayres on behalf of Carntyne Winget Residents Association calling for the Scottish Parliament to consider and debate the impact of the housing stock transfer on Scottish communities.
Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

Details of principal petitioner:
Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available.

Ronald M Sutherland

Text of petition:
The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS

Petition by Ronald M Sutherland calling for the Scottish Parliament to urge the Scottish Executive to bring forward legislation to create a right to buy for member-based community sports clubs occupying or using land and/or premises for recreational or sports purposes.

Additional information:
Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition. Please note that you should limit the amount of any additional information which you may wish to provide in support of your petition to no more than 4 sides of A4.
Action taken to resolve issues of concern before submitting the petition:

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

Numerous individuals and organisations from both private and public sectors have been consulted, including MSP’s across the political spectrum, The National Playing Fields Association (Scotland), and the Scottish Sports Association Ltd. - the latter representing Scottish Governing Bodies of Sport.

Responses received have been highly supportive of this proposed Petition.

Request to speak:

Petitioners may request to appear before the Public Petitions Committee in support of their petition, although it should be noted that requests to speak will only be granted if the Convener considers that a brief statement from the petitioner would be useful in facilitating the Committee’s consideration of the petition. Due to the large volume of petitions being considered the Committee will usually only hear presentations on up to 4 new petitions at each meeting.

Please indicate below whether you wish to request to make a brief statement before the Committee when it comes to consider your petition.

Yes / No*

*Delete as appropriate
Signature of principal petitioner:
When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature ........................................

Date .......................... 31 May 2005

For advice on the content and wording of your e-petition please contact:

The Clerk to the Public Petitions Committee
The Scottish Parliament
Edinburgh
EH99 1SP
Tel: 0131 348 5186 Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk

Note
Completed e-petition forms should also be sent to petitions@scottish.parliament.uk
Petition PE821 calls for "the Scottish Parliament to urge the Scottish Executive to ensure that all planning applications for planning consent to change the usage of recreational spaces should be routinely sent to the appropriate Minister for consideration." This Petition suggests a potentially useful catch-all in situation where recreational spaces are targeted for development involving change of use. Fall-back legislation already exists with sportscotland automatically empowered object to the change of use of existing designated sports facilities.

Clearly, for numerous health, social and indeed sporting reasons, any diminution in the supply or provision of such facilities would be regarded as a retrograde move.

Many member-based community sports clubs and similar groups in Scotland do not own the either the facilities or the accommodation they use regularly or otherwise occupy for playing, training or social purposes. Frequently, the basis of tenure is informal, insecure and unreliable. In many instances, the tenure of sport and recreational facilities is unsatisfactory in terms of access and availability.

All of this instability represents a strong disincentive to physical development or long-term planning, and frequently adversely affects the capacity to obtain or attract funding.

Introduction of an additional statutory right to acquire such facilities on preferential terms would in many cases provide a significant potential platform of collateral security to offer against development loan finance, which in turn would enable grassroots sports organisations to develop and prosper. It is anticipated that such a discounted "right to buy" would apply to both public and private sectors.

It is not envisaged that any sports club, group or organisation would seek frivolously to acquire minimal or inappropriate facilities, of little or no inherent sporting development value, at any point in time.

This Petition links to the following Parliamentary Motion:

S2M-2615 Mike Watson: Protecting Land Used for Organised Sport and Other Forms of Physical Activity—That the Parliament notes with concern the continuing diminution in the number of sports pitches and open space across Scotland, despite the efforts of sportscotland and the National Playing Fields Association Scotland; believes that this will make it more difficult for the Scottish Executive to achieve its stated aim of improving the health of young people in Scotland and reducing levels of obesity; endorses the need, as expressed in the report of the Physical Activity Task Force, for all primary and secondary pupils to have a minimum of two hours each week of quality physical education, and considers that the Executive should ensure that more robust measures are introduced to the planning process to protect land used for organised sport and other forms of physical activity.
Dear Michael,

I refer to the letters of 23 February and 4 May respectively from Dr James Johnston, Clerk to the Committee and Richard Hough, Assistant Clerk to the Committee and your letter dated 8 July, concerning Petition PE 868 which has been presented to the Public Petitions Committee on behalf of Mr Ronald Sutherland. Apologies for the delay in replying.

Please see attached a memorandum setting out the Scottish Executive's views. I hope this response is helpful in clarifying my position.

PATRICIA FERGUSON
MEMORANDUM

Further response from the Scottish Executive to the Scottish Parliament Public Petitions Committee on the petition submitted by Mr Ronald Sutherland.

At its meeting on 8 February 2006, the Public Petitions Committee further considered petition PE868 by Mr Ronald Sutherland calling on the Parliament to urge the Scottish Executive to bring forward legislation to create the right to buy for member-based community sports clubs occupying or using land and/or premises for recreational or sports purposes.

The Committee considered the response’s received from the National Playing Fields Association and sportscotland and agreed to invite the views of the Executive on these responses.

Scottish Executive further response

The Executive welcomes the opportunity to offer further comments following the responses from the National Playing Fields Association and sportscotland.

We note the views of sportscotland in highlighting specific cases where offering a right to buy may be appropriate but we remain to be convinced of any pressing need for legislation specifically to give member-based community sports clubs a right-to-buy.

The research into the sustainability of local sports clubs referred to in our earlier submission has now been completed and we are considering how best to address the issues it highlighted. Of the clubs that responded to the questionnaire issued, only 208 (14.8%) raised concerns over long term access to facilities. The research also suggested that some clubs which own their own facilities are clearly constrained by the lack of money to invest in maintenance and upgrading. Giving the clubs the right to buy would therefore divert valuable resources away from the development of the sport and the facilities.

It is clear from the research that sports facilities are under pressure from housing development and other priorities for funding. However there are examples where clubs have been actively working with housing developers and planners to try and have sports facilities built into developments, or at least have some contribution by the builder to facilities in the area. In one case, a cricket club noted that its ground had been relocated by a housing developer.

As noted in our earlier response, the Executive made a commitment to pilot an extension of the land fund. In taking forward this commitment, the Scottish Executive is interested in the part that community owned assets can play in regenerating communities. Officials are currently in dialogue with the Big Lottery Fund to see how the Executive could add value to the BLF’s new £50m Growing Community Assets programme.

The new Growing Community Assets programme is designed to enable communities to acquire, develop, improve, protect, manage, enjoy, understand and sustain environmental and other assets for the benefit of the community and the wider environment. It could bring into community ownership more buildings for recreational use.
The Scottish Parliament
Public Petitions Committee – a template for e-petitions

Should you wish to submit an e-petition allowing signatures to be gathered on-line on the Public Petitions Committee e-petitioner web pages please complete the template below. Before submitting your e-petition please consult the Guidance on submission of public petitions for advice on what is and is not admissible. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

<table>
<thead>
<tr>
<th>Details of principal petitioner:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to.</td>
</tr>
<tr>
<td>Scottish Post Polio Network</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Text of petition:</th>
</tr>
</thead>
<tbody>
<tr>
<td>The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.</td>
</tr>
<tr>
<td>The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS</td>
</tr>
<tr>
<td>The petitioner requests that the Scottish Parliament.....</td>
</tr>
<tr>
<td>Petition by Scottish Post Polio Network calling for the Scottish Parliament to urge the Scottish Executive to join the international community in recognising post-polio syndrome (PPS) and to conduct a much needed national review of neurological services to take account of the needs of PPS and all other long term neurological conditions with a view to establishing multi-disciplinary centres of excellence to assess, treat and research such conditions that affect the lives of many thousands of individuals in Scotland.</td>
</tr>
</tbody>
</table>

26/04/2005
Period for gathering signatures:
Please enter the closing date for gathering signatures on your petition, which we would usually recommend is a period of between 4–6 weeks

Closing date: 20 June 2005

Additional information:
Please enter any other information relating to the issues raised in your e-petition, including the reasons why the action requested is necessary. The text entered in this field should not exceed 2 pages. However, you may wish to provide further sources/links to background information.

Part 2

"...I am sad to say that in my area (Dumbarton) there is little or no understanding or facilities catering for the needs of people like myself. Unfortunately physio's are completely in the dark ages as no help whilst doctors have no knowledge of PPS and are happy to refer you to any specialist they can think of..." (G.M. Dumbarton)

"...At first my GP thought it may be arthritis and encouraged exercise at the gym, when this made things more painful and excessively tiring it was acknowledged to be PPS. I have not gone down the route of going to a neurologist or any other specialist simply because I could not find a doctor interested in this field" (A.T. Central Scotland)

"My GP has been very good, she phoned around all the hospitals in Glasgow to see if she could find a Consultant interested in PPS – all hospitals stated that there was no such consultant interested in this condition" (A.C. Glasgow and qualified occupational therapist)

"I am in constant pain... I have been disabled with polio since 1937 and have been fiercely independent all my life and it is hard to accept that there are no agencies out there that can help me...GPs say to your face they don't know what to do so they fill you up with pain killers..." (R.P. Central Scotland)

The introduction of the polio vaccine virtually eliminated the polio virus in this country and as a consequence polio has almost gone from public consciousness. However, it has not gone away. People who caught polio in the epidemics of the 40's and 50's and before are now experiencing new problems 40 or so years after onset. Some of the late effects are (but not exclusively),

- New muscle weakness and pain
- Chronic physical and mental fatigue
- Breathing problems
- Difficulty in swallowing
- Cold intolerance

PPS has been well documented all around the world and polio survivors report very similar experiences no matter where in the world they report from. However, the majority of GPs do not recognise or acknowledge that there is a problem. Often patients are left very dissatisfied and frustrated, knowing that there is something wrong, but have to endure misdiagnosis and inappropriate treatment.

1. Scottish Post Polio Network (SPPN) therefore asks the Scottish Parliament to take the first step in recognising Post Polio Syndrome

To this end SPPN would commend the Petitions Committee look to the actions of the Irish Parliament, who as recently as November 2004 gave the Irish Post Polio Network on going funding of €300,000 to help in their work of education and advice.

There are many other excellent examples of best practice around the world, particularly in the USA (Warm Springs) and Western Australia. The core of which centres around a dedicated multi-

26/04/2005
disciplinary centre of excellence where patients can be seen, assessed and treated 'under-one roof'. SPPN remain concerned that a major block to proper recognition of PPS and therefore appropriate treatment is funding. Given that PPS is often diagnosed by excluding all other possibilities, diagnosis can be a slow journey for patients and an expensive one for the NHS.

SPPN are very aware that the Scottish Executive do not consider the incidence of PPS to be at a high enough level to warrant exclusive funding for treatment, however, they would ask the Parliament to consider the fact that there are many, many neurological conditions which exist, which exhibit similar kinds of problems as presented with PPS.

SPPN see the introduction of multi-disciplinary centres of excellence as a progressive and vital step forward in the assessment and treatment of neurological conditions in Scotland, not just for PPS. The vision of a streamlined service, geared to the needs of patients, being properly assessed and properly referred must offer a better co-ordinated and cost effective option for the NHS to consider.

2. SPPN therefore calls on the Scottish Parliament to set up a task force to look at the possibility of a root and branch review of neurological services in Scotland. Properly funded and accessed, this must only be a benefit to patients, but a cost saving to the NHS.

There are many references that interested individuals can look to, to increase their understanding of this condition. We have provided a list below which may prove and ideal starting point:

http://www.sppn.org/ - Home site of Scottish Post Polio Network

http://www.ppsg.ie/links.htm The home of Post Polio Ireland

http://www.post-polio.org - An international site

http://www.ott.zynet.co.uk/polio/Lincolnshire - A very comprehensive database

http://www.rooseveltrehab.org - An example of the American model of care

http://www.upnaway.com/~poliowa - Western Australia

http://www.postpolioinfo.com/PostPolio

**Action taken to resolve issues of concern before submitting an e-petition:**

*Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern, by for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MSPs. Details of those approached should be entered.*

Scottish Post Polio Network has undertaken an ongoing campaigning with health professionals; MPs and MSPs. SPPN have also enlisted the advice and help of a Consultant Orthopaedic Surgeon. Local MSPs have been contacted throughout Scotland asking for support for SPPN and a previous Members Motion (of the Scottish Parliament) in the name of Margo MacDonald MSP attracted 36 signatories.
Comments to stimulate on-line discussion:
Please provide at least one comment to set the scene for an on-line discussion on the petition, not exceeding 10 lines of text.

"Post Polio Syndrome (PPS) has been well documented around the world as a debilitating condition that requires careful and proper management. However, in Scotland there has been continuing resistance to even recognise PPS. This has meant that vital time has been lost which could have been used to establish proper systems of care and management of the condition. The Scottish Post Polio Network calls on the Scottish Parliament to recognise officially for the first time PPS and secondly set up a task force to undertake a root and branch review of neurological services in Scotland."

Request to speak:
Petitioners may request to appear before the Public Petitions Committee in support of their petition, although it should be noted that requests to speak will only be granted if the Convener considers that a brief statement from the petitioner would be useful in facilitating the Committee’s consideration of the petition. Due to the large volume of petitions being considered the Committee will usually only hear presentations on up to 4 new petitions at each meeting.

Please indicate below whether you wish to request to make a brief statement before the Committee when it comes to consider your petition.

Yes  
*Delete as appropriate

Signature of principal petitioner:
When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

<table>
<thead>
<tr>
<th>Signature</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Date       | 27th April 2005 |

For advice on the content and wording of your e-petition please contact:
The Clerk to the Public Petitions Committee
The Scottish Parliament
Edinburgh
EH99 1SP
Tel: 0131 348 5186 Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk

Note
Completed e-petition forms should also be sent to petitions@scottish.parliament.uk

26/04/2005
CONSIDERATION OF PETITION PE873

Many thanks for your letter of 16 May seeking comment on the issues raised in this Petition. The Petition is specifically asking that recognition be made of post polio syndrome and that a national survey to review neurological services be undertaken in Scotland. The review of neurological disease will be taken forward as part of the work of the Scottish Executive in developing the policies outlined in “Delivering for Health”. We are specifically committed to working with the NHS to review arrangements for neurosurgery in Scotland but also to assess services for long term conditions and to develop new ways of delivering service to patients suffering these conditions. Neurological problems such as multiple sclerosis, motoneurone disease and a range of other conditions which require long term support will be considered as part of that broader review. There are technical difficulties in establishing the incidence of post-polio syndrome in the population since it is not really possible to identify all those individuals who had infection without clinical symptoms.

There is little doubt that post polio syndrome is now becoming increasingly widely recognised by the medical profession. A number of individuals born before polio was all but eradicated from the Scottish population in 1957, are now experiencing neurological symptoms and these are increasingly being attributed to an early life infection with polio. Neurologists in Scotland are aware of the problem but the Scottish Post Polio Network are correct in saying that awareness within primary care would be more patchy and patients will vary in how quickly the diagnosis is made. In Scotland, we have a well developed network for developing guidelines and advice for clinicians on a range of topics and colleagues here in the health department would be happy to discuss the feasibility of developing a guide line with these groups.

Kind regards,

Yours sincerely

DR HARRY BURNS

ERS00206
Dear Dr Johnston

Consideration of Petition PE873

Thank you for your letter of 16th May seeking comments on the research issues in this Petition. Polio was eradicated in the 50s, so now post polio syndrome tends to involve an ageing group, many of whose symptoms may be compounded by the diseases of this age. Due to the limited numbers with this syndrome, their limited recognition and the multidisciplinary nature of their illness, a study of prevalence may not be an easy task and on its own would be of limited value unless undertaken as part of the national review of neurological services to be undertaken by the Scottish Executive as outlined in the CMO's letter to you.

CSO has received no application for research in PPS in recent years which may reflect the multidisciplinary nature of the clinical management of the condition, but possibly a lack of research expertise into PPS in Scotland. CSO would, however, welcome innovative research into PPS from Scottish researchers. A research epidemiological study would encompass more than just prevalence and would be more likely to provide generalisable results and, therefore, impact if the cohort of patients were of sufficient size and well defined. This would most likely require a pan UK approach and should be led by an international expert in the field, such as Robin Howard at St Thomas London. I understand that his unit already provides advice for the more complex cases referred from Scotland. A national funder or sponsor (e.g. ESRC or MRC) would be required but the CSO would be interested in collaboration on any Scottish arm within such a UK study.

As regards the fundamental effect of the polio virus long term on the spinal cord and muscle, this would require the expertise and facilities to safely research this virus and is more appropriately resourced by the UK research councils (MRC and BBSRC).

Yours sincerely

Professor Roland Jung
Chief Scientist, SEHD (CSO)
Dear Michael,

Thank you for your letter of 17 May 2006 to Andy Kerr, about the Committee's consideration of Public Petition PE873 from Helene MacLean on behalf of the Scottish Post Polio Network. I am replying as Minister with portfolio responsibility for this issue. The Committee has also had letters on this subject from the Chief Medical Officer (21 June) and the Chief Scientist (24 July).

The Petition calls for the Executive to recognise Post Polio Syndrome (PPS) and to conduct a much needed national review of neurological services to take account of the needs of PPS and all other long term neurological conditions with a view to establishing multi-disciplinary centres of excellence to assess, treat and research such conditions.

It is acknowledged that polio may have long-term side effects, which may not become apparent for many years following the onset of the illness, but the recognition of any condition is a matter for the medical profession.

The Committee has, in particular, asked for my views on the proposal for a national survey to assess the prevalence of PPS. The Chief Executive of Greater Glasgow and Clyde NHS Board wrote to the Committee on 11 January 2006 suggesting that such a survey would best be organised and funded through the Chief Scientist Office (CSO), with appropriate academic epidemiological input and peer review, and offering support from appropriate staff in his Board. Both the CMO and the Chief Scientist have drawn attention to the technical difficulties associated with determining the prevalence of the condition. The Committee will no doubt note the Chief Scientist’s suggestion that this type of study on its own is of limited value.

The CSO, the main agency through which the Executive supports medical research, does not apportion research funds to particular conditions. Applications for funding are assessed on their quality by peer and committee review and CSO would welcome research proposals for innovative studies in this area. As the Chief Scientist has also indicated, more extensive research on epidemiology in PPS, which would involve a more detailed analysis of prevalence, would require a cohort of well-defined patients of sufficient numbers, and as such would require a pan-UK study.
The Committee will wish to be aware that NHS Quality Improvement Scotland (QIS) is drafting neurological standards, with work starting towards the end of this year. These standards are intended to apply to neurological services as a whole and therefore would be relatively high level rather than condition-specific. Even so, the needs of people with PPS would come within the scope of these standards.

While the Petition calls for the development of multidisciplinary centres of excellence, the number of cases and their need to be physically near carers argues in favour of local management approaches in each Board, with co-operation between neurologists and primary care to deliver as much care as possible at home. The arrangements we are putting in place under Delivering for Health for the management of long term conditions very much support this model, and people with PPS stand to gain particularly from its implementation.

I hope the committee finds this information helpful.

LEWIS MACDONALD
Dear Michael

**Post Polio Petition 873**

You will be aware of my continuing interest in this petition.

I understand that the committee clerks have now received further responses from the Minister and the Chief Medical Officer regarding the service requirements for people living with Post Polio Syndrome.

You will recall that the Southern General in Glasgow informed the Petitions Committee of its interest and willingness to provide research and offer services as sought by the petitioners.

In light of the impending Scottish elections and the artificial truncation of work in parliament, could I ask that the Committee give priority to its recommendations on this matter as we can't be certain that the Southern General's offer will remain open indefinitely, given the number of alternative projects which might present themselves between now and the next parliament acting on the matter.

As ever, happy to discuss this with you.

Yours ever,

Margo MacDonald MSP
Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

**Details of principal petitioner:**

Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available.

Mrs Lynne Simpson

**Text of petition:**

The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS

Petition by Mrs Lynne Simpson calling for the Scottish Parliament to urge the Scottish Executive to review the provision of maternity services in rural communities to ensure that the quality and access to services are retained locally.

**Additional information:**

Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition. Please note that you should limit the amount of any additional information which you may wish to provide in support of your petition to no more than 4 sides of A4.
Action taken to resolve issues of concern before submitting the petition:

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

Mr Stewart Stevenson, MSP
Mr Alex Salmond, MP

Petitioners appearing before the Committee

The Convener of the Committee may invite petitioners to appear before the Public Petitions Committee to speak in support of their petition. Such an invitation will only be made if the Convener considers this would be useful in facilitating the Committee’s consideration of the petition. It should be noted that due to the large volume of petitions it has to consider, the Committee is not able to invite all petitioners to appear before the Committee to speak in support of their petition.

Please indicate below if you do NOT wish to make a brief statement before the Committee when it comes to consider your petition.

I do NOT wish to make a brief statement before the Committee

Signature of principal petitioner:

When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature: ..........................................................

Date: ...................................................... 12th November 2005

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:

The Clerk to the Public Petitions Committee,
The Scottish Parliament,
Edinburgh
EH99 1SP
Tel: 0131 348 5186 Fax: 0131 348 5088
12th November 2005

To the Clerk of Public Petitions Committee

In support of urging the Scottish Executive to review the provision of rural maternity services to ensure that the quality and access to services are retained locally. A petition signed by 15,300 people from Fraserburgh and the surrounding area to save the 24 hour Fraserburgh Maternity Unit, which is under threat of closure by NHS Grampian. A march and rally was organised on 1st October to show the strength of feelings against the proposed closure over 600 people came out in the pouring rain to show their support. Plans to close the excellent 24 hour unit would have a huge impact on families in our community.

The new proposals are for a midwife to be available Monday to Sunday 9am – 5pm, what is supposed to happen between the hours of 5pm-9am? When there is no on call midwife. These plans want to make hospital stays shorter and make mums and their babies return to their own homes within 6-24 hours of the birth of their baby, mums will still be in pain and forced back into the pressures of life before they have had time to bond and get to know their baby and be mentally and physically prepared to go home, this will lead to more cases of post-natal depression, as it is an extremely emotional time where pressure is added as you have to be seen to cope.

Expectant mums will be expected to travel to either Peterhead (18 miles) only if the NHS decide to keep this unit open Aberdeen (46 miles) over an hour if there is no traffic and the weather is good, to deliver their babies and possibly even further mums have already had to travel to Edinburgh for a bed space as Aberdeen are too busy. Not everyone can drive or has access to transport and the Ambulance service is already overstretched, not to mention the mums that don’t make it to hospital on time there will be an increase in roadside births with no professional assistance which could lead to unnecessary deaths. Fraserburgh is the only town in Scotland with a population over 10,000 that is over an hour away from the nearest city hospital.

At the moment mums who have to go to Aberdeen to deliver are normally transferred to the local Maternity Unit after delivery. In 2004, 117 women with their new babies returned to Fraserburgh Maternity after a delivery in Aberdeen, these 117 women obviously did not feel able to return home. Some of the reasons they have given birth in Aberdeen are because they have to have a caesarean or have to be induced perhaps there have been
complications during pregnancy or may have developed complications during labour. Therefore the reasons to go to the City Maternity are not through choice. Women are really concerned about the lack of patient centred approach at Aberdeen Maternity and there will be no continuity of care as the midwifes whom you have built up a trust with during your ante natal care will not be present at the labour. Women are gravely concerned with the cleanliness of Aberdeen maternity, the great risks to mum and new baby of MRSA, something I have personally dealt with when I had my baby at Aberdeen Maternity and would not wish on anybody especially at a time that should be so precious.

In 2004 68 babies were born at Fraserburgh Maternity. During the stay at the local Maternity unit Mums are given confidence and reassurance with their new babies in addition they receive excellent support with breastfeeding to which there is a national campaign promoting breastfeeding. Fraserburgh Maternity offers excellent support and advice when learning the sometimes very difficult task of breastfeeding. With out this support in the early days Mums will and do give up when they return home. Learning to Breast feed would be a lot harder in the short time that a Midwife would be visiting a Mum at home.

The impact the proposed closures of excellent local maternity hospitals will have on families, not being able to visit hospitals as they are too far away and don't have access to transport, if families already have children they will be restricted to visiting at certain times as they have to travel a possible two hour round trip if they have transport if not it will take 4 hours on a bus, making family bonding more difficult at what can be a very difficult time.

On behalf of the people of Fraserburgh and surrounding area I thank you for taking the time to read this and hope you will consider this petition. The people of Fraserburgh are not against NHS Grampian bringing new services to Fraserburgh they are much welcomed but we are not prepared to see our excellent maternity unit taken away in a bid for NHS Grampian to make cut backs to cover their debts, patient care must come first.

Yours sincerely

Mrs Lynne Simpson
Public petitions committee

Petition PE898

17 August 2006

Thank you for your invite on the responses from, Scottish Executive - Lewis Macdonald MSP, NHS Grampian – Richard Carey Chief Executive and The Royal College of Midwives.

I would like to clarify that the board of NHS Grampian have now met and the board unanimously backed the proposals for change in all three components – Diagnostic and treatment services, Maternity Services and Older people’s services, stating this was a package. This has now been sent to Health minister for his final approval.

These proposals by the local community health partnership of NHS Grampian were supposed to be based on the ‘public consultation process’, if 15,300 people from Fraserburgh and surrounding areas signed a petition to save the maternity unit at Fraserburgh does this not mean anything? This is more than the population of Fraserburgh. They have not listened to our community. The ‘consultation process’ should have been called a presentation of what NHS were going to provide. Public opinion hasn’t been listened too. I really feel it has been a paper exercise. Have taken every opportunity to express my concerns regarding the closure of the maternity unit with NHS Grampian and really feel that my concerns have not been fully listened too. While Richard Carey states in his letter that ‘in response to the level of public concern within Fraserburgh the CHP has made additional provision to consult with the local community. This has taken form of two public discussion groups dealing with Diagnostic and treatment services/older people services and Maternity services respectively’ – the two meetings took place in Fraserburgh – Maternity services in the afternoon and Diagnostic etc in the evening, why were the services discussed separately if it is a ‘package’ according to Mr Carey?, why was the meetings held in a small venue? Why was the maternity issue discussed in the afternoon, considering it would have been attended mainly by mums, many of which had difficulty in attending for many reasons e.g.: no access to baby sitter, had other children to pick up from school or working themselves, I attended with my daughter as did a couple of other mums. Also why was it not open to all members of the public? Why were we
only allowed to attend one of the meetings? It was by invitation and only if you had attended the first ‘consultation meeting’ and you had to choose between the two meetings. This was not fair as many members of the public were not given a chance to hear the plans or give their comments. Richard Carey then goes on to say ‘these meetings resulted in a formation of a Fraserburgh Public panel, drawn from members of the public who attended previous meetings, Local MSP, Councillors, Community Councillors, local lobby groups and NHS staff’ I must state there are no councillors or community councillors or any members of any local lobby groups on the public panel, I must also state that the meeting is poorly attended by some members and by NHS staff. It is also worth nothing as the minutes from the project group meetings are very often inaccurate.

NHS Grampian made another attempt at a ‘formal consultation event’, for Aberdeenshire, as recommended by the Scottish Health council, following their report on the ‘informal consultation process’. Again this was by invitation only, but this time they really thought it through on how it would look good on paper – inviting members of the public to speak (including myself) providing meals, childcare, and covering any expenses or loss of earnings that would be made. I’m sure the money that has been spent on the ‘consultation process’ would be far more than the money saved by closing the maternity units. I would not mind if they actually listened to members of the public, but is this a good use of tax payer’s money? I would like to know when the Scottish Health Council submits their full report on the ‘Consultation Process’ how much of the criteria NHS Grampian actually met?

NHS Grampian say that midwives are now delivering less babies in community units and are loosening their skills, so they will stop the delivery component and allow an option of home births, therefore deskilling the midwife even more, therefore she will deliver even less babies (should their not be a good uptake on home deliver going by local feeling doesn’t seem likely) how is this then safe practice?

NHS Grampian have also failed to take into consideration the ‘high risk mums’ that are booked for Aberdeen but have delivered very quickly at Fraserburgh Maternity Unit. There has been no further information on how they plan to deal with any treatment out of hours, this is a major concern. They say that High risk mums travel to Aberdeen regularly to deliver their babies safely, but forcing low risk mothers to travel that distance then makes that mum possibly become high risk. Earlier this year our town was seriously affected with snowy blizzard conditions and our road to both Aberdeen and Peterhead both became blocked on several occasions, if there is no 24hour midwifery care what will happen in these situations? Delivery at the roadside? With no pain relief and no medical assistance!

Many mum’s who are delivering at Aberdeen Maternity Hospital, are feeling that they have been discharged very quickly after delivery and feel they are not ready to go home and their babies are not even feeding properly only to make room for the next mum as they struggle to find bed space.
NHS Grampian argue that the delivery rate is decreasing within the rural maternity units. In Fraserburgh in 2004 there were 67 deliveries and 117 women transferred after delivery in Aberdeen to Fraserburgh for post natal care. In 2005 there were 58 deliveries and because of the open and flexible service the unit provides 2889 mums used the unit, this includes ante-natal care. Demonstrating the unit is well used. So far to date 17/08/06 there have been 44 deliveries at the unit this is an increase in deliveries despite the uncertainty of the future of the unit. NHS Grampian, midwives and mums need to work together to see how we can increase deliveries, so far there has been no attempt at this time to maintain locally accessible service. For example in the Montrose community midwife led unit in 2002 had 47 deliveries and were under threat of closure but with various changes in practices implemented by midwives and the backing of mums they reached 156 deliveries in 2005, why can't Fraserburgh be given the same opportunity.

Community Maternity units – Midwife led, should play a major part of maternity services now and in the future, providing excellent care and offering women a real choice and promoting normality in birth. The Fraserburgh midwives give confidence, reassurance, excellent breast feeding support, emotional support and advice.

I really hope you can see how much our maternity unit is valued by our community.

Thank you for taking the time to read this.

Yours hopefully

Mrs Lynne Simpson
Public Petitions Committee – a template for e-petitions

Should you wish to submit an e-petition allowing signatures to be gathered online on the Public Petitions Committee e-petitioner web pages please complete the template below. Before submitting your e-petition please consult the Guidance on submission of public petitions for advice on what is and is not admissible. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

<table>
<thead>
<tr>
<th>Details of principal petitioner:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to.</td>
</tr>
<tr>
<td>Mrs Connie M Syme</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Text of petition:</th>
</tr>
</thead>
<tbody>
<tr>
<td>The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.</td>
</tr>
<tr>
<td>The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS</td>
</tr>
<tr>
<td>Petition by Connie M Syme calling for the Scottish Parliament to urge the Scottish Executive to ensure that traffic regulation orders are applied to all disabled parking bays to ensure that they are used by registered disabled users only.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Period for gathering signatures:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please enter the closing date for gathering signatures on your petition, which we would usually recommend is a period of between 4-6 weeks</td>
</tr>
<tr>
<td>Closing date:</td>
</tr>
</tbody>
</table>
Additional information:

Please enter any other information relating to the issues raised in your e-petition, including the reasons why the action requested is necessary. The text entered in this field should not exceed 2 pages. However, you may wish to provide further sources/links to background information.

Where disabled bays outlined in white are situated in a street where there are only houses, this appears to be quite adequate as neighbouring residents respect that it is essential to have a parking place for a disabled person right outside his/her house. It is an entirely different scenario where these bays are positioned in lay-bys shared by commercial/businesses and residents. In other words these lay-bys should have the same status as car parks.

On writing to The Scottish Executive for assistance, they gave the information that Local Authorities do have specific powers to make a TRO (Traffic Regulation Order) which they can raise if they so wish, but it is at their discretion. I consider there is a loop hole in the system, if disabled bays not covered by TROs are situated in lay-bys which act as car parks for commercial areas adjoining residential areas on a shared basis.

The response I received on contacting our local authority was that they could not see the problem. They did not advise me what measures they had taken to arrive at that conclusion. It is obvious from my experience that disabled bays outlined in white situated in lay-bys sharing parking with commercial/businesses and residential properties and not covered by a Traffic Regulation Order (TRO) are going to be abused by able bodied drivers as they see the white lining as only an advisory measure and know that no law covers them. If the commercial area is extremely busy and operates during day time and evenings, then this reduces the chance of a disabled driver gaining the designated disabled parking bay. From my own experience, many of the public have no regard for the disabled persons needs. On many occasions when returning with the weekly shopping, there is a vehicle not displaying the Blue Badge in the window, parked in the disabled space. It is very distressing to have to park the car well away from the house until the able bodied driver returns which could be quite a while. The shopping has to then remain in the car.

On taking this problem up with the Police, their comment was that disabled parking bays outlined in white without a Traffic Regulation Order are not covered by the law and therefore they could not take action with any unauthorised drivers abusing them. It was left to the disabled person to deal with the situation on their own.

From my own experience, it is very daunting having to tackle able bodied drivers who park in disabled parking bays and their replies can vary from anger to very abusive indeed. When requested to vacate the space as they have no Blue Badge showing. Recently that very situation happened and the police had to be involved due to the level of abuse. It is distressing enough to have uncalled for comments or even swearing from these inconsiderate drivers but I dread to think if the incident turned really ugly. Even a near neighbour expressed her view on disabled bays having to be put in the lay-by thus cutting down space for other drivers. I could have responded that perhaps she would like to change places with me, then perhaps she would have understood the need to have designated spaces for disabled people and what a difference they made.

Other disabled drivers can also use the space if it is not require by me at anytime for shopping etc so it covers extra disabled parking as in a car park. Disabled drivers usually only require to use it for a very short time so this does not cause a problem. It is purely the able bodied public who are the problem.

From observation while using supermarket car parks, they mostly deal with the needs of the disabled by installing adequate proper marked car spaces for disabled persons only and regularly check that able bodied drivers are not using them. In my opinion the Local Authority fall down on providing proper parking where commercial/business and residents have to share the allotted space and do not take into account that is the sharing of this space that is causing problems.

Having read other disabled peoples experiences, I have to agree that at times I feel like being a second class citizen and a proper nuisance. I would gladly change places with these fit and active people so that I do not need the preferential treatment but unfortunately this is not possible.
Action taken to resolve issues of concern before submitting an e-petition:

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern, by for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MSPs. Details of those approached should be entered.

Mrs Helen Eadie, MSP
Fife Councils Area Transportation Plan Team Leader (West)

Comments to stimulate on-line discussion:

Please provide at least one comment to set the scene for an on-line discussion on the petition, not exceeding 10 lines of text.

Is it right to put disabled people at risk by being left to take the law into their own hands, all because their designated parking bay which is to enable them to park as near to their home as possible, happens to be situated in a lay-by also shared by commercial businesses, but their disabled bay is not automatically covered by a Traffic Regulation Order as in car parks, which the Local Authority have the power to do. They should not be put in that position as it is stressful enough living with disabilities.

Petitioners appearing before the Committee

The Convener of the Committee may invite petitioners to appear before the Public Petitions Committee to speak in support of their petition. Such an invitation will only be made if the Convener considers this would be useful in facilitating the Committee's consideration of the petition. It should be noted that due to the large volume of petitions it has to consider, the Committee is not able to invite all petitioners to appear before the Committee to speak in support of their petition.
Please indicate below if you do **NOT** wish to make a brief statement before the Committee when it comes to consider your petition.

<table>
<thead>
<tr>
<th>I do <strong>NOT</strong> wish to make a brief statement before the Committee</th>
<th></th>
</tr>
</thead>
</table>

**Signature of principal petitioner:**

When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

<table>
<thead>
<tr>
<th>Signature</th>
<th>..................................................</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>23rd November 2005 ................................</td>
</tr>
</tbody>
</table>

For advice on the content and wording of your e-petition please contact:

The Clerk to the Public Petitions Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP  
Tel: 0131 348 5186  
Fax: 0131 348 5088  
e-mail: petitions@scottish.parliament.uk

**Note**

Completed e-petition forms should also be sent to petitions@scottish.parliament.uk
Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

**Details of principal petitioner:**

Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available.

<table>
<thead>
<tr>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>James MacLeod</td>
</tr>
</tbody>
</table>

**Text of petition:**

The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS.

Petition by James MacLeod, on behalf of Inverclyde Council on Disability Ltd, calling for the Scottish Parliament to urge the Scottish Executive to review the Local Authorities’ Traffic Orders (Procedure) (Scotland) Regulations to allow for speedier provision and enforcement of dropped kerbs and disabled parking bays to prevent their abuse, ensuring greater and easier access for disabled, elderly and other users.

**Additional information:**

Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition. Please note that you should limit the amount of any additional information which you may wish to provide in support of your petition to no more than 4 sides of A4.
Action taken to resolve issues of concern before submitting the petition:

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

Maria Eagle, Minister for the Disabled (2004)
Tavish Scott, Minister for Transport (2005)
Anne McGuire, Minister for the Disabled (2005)
Cllr Alan Blair, Leader, Inverclyde Council (2005)

Petitioners appearing before the Committee

The Convener of the Committee may invite petitioners to appear before the Public Petitions Committee to speak in support of their petition. Such an invitation will only be made if the Convener considers this would be useful in facilitating the Committee’s consideration of the petition. It should be noted that due to the large volume of petitions it has to consider, the Committee is not able to invite all petitioners to appear before the Committee to speak in support of their petition.

Please indicate below if you do NOT wish to make a brief statement before the Committee when it comes to consider your petition.

I do NOT wish to make a brief statement before the Committee

Signature of principal petitioner:

When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature ...

Date .......... 15th November 05

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:

The Clerk to the Public Petitions Committee,
The Scottish Parliament,
Edinburgh
EH99 1SP
Tel: 0131 348 5186 Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk
10 August 2006

Ms Eileen Martin
Public Petitions Committee Assistant
Parliamentary Headquarters
Edinburgh
EH99 1SP

Dear Ms Martin

Consideration of Petition PE908 & PE909

Thank you for your letters of 31 May and 19 June 2006 in connection with the above. Please find attached my submissions which I have outlined individually and trust this will be in order.

I trust that my views on the replies will be helpful to the Committee.

Yours sincerely

Connie M Syme

cens
Submissions regarding the Responses in respect of Petitions PE908 & PE909

Annexe B – Scottish Executive

As the Scottish Executive state in paragraph 3 of their reply that they along with England, do not support the use of Advisory Markings because they cannot be enforced by a Traffic Regulation Order (TRO) and are not included under the Traffic Signs Regulations and General Directions 2002 (TSRGD), then who permits the local road authorities to use their discretionary powers whether Disabled Parking Bays are covered by Traffic Regulation Orders (TROs) or not?

The Blue Badge Scheme was produced by The Scottish Executive Development Dept., Transport Division 2 and Section 16 of the Blue Badge Scheme states “Non-disabled people who park in a bay designated for Blue Badge holders are liable to a parking fine.” This booklet does it convey to the reader that there are two types of disabled bays (Yellow- covered by TROs and White- advisory) under the Blue Badge Scheme. According to the Police they have no jurisdiction over white lined disabled parking bays because they are only advisory, so who will be responsible for fixing a parking fine if non-disabled persons park in these advisory bays. This is a contradiction to the Blue Badge Scheme and certainly a wide loop hole requiring urgent review. It is worth noting that if an accident occurs within any white lined disabled parking bays, will that mean the Police will be powerless to act within the law.

According to paragraph 4: on street parking spaces are not normally for the exclusive use of an individual blue badge holder, then why does the disabled person have to have clearance on their disability so a disabled parking bay can be placed outside her/his home? Why not just add a few disabled parking bays covered by TROs in lay-bys serving both residential houses and commercial premises and acting as car park overspills as this is the purpose of a lay-by generally. If the authorities are loathed to give priority to a disabled resident outside his/her home then note what the Mobilise Organisation (under Annexe H suggests – Local Authorities to use their discretionary powers in busy commercial areas, to make disabled parking spaces subject to a TRO with a pavement-mounted plate that stipulates that the bay is restricted for use by disabled residents only. This would draw notice to other Blue Badge users that the disabled person would be returning to their home and that they could only park for a very short time.

Annexe C – Mobility and Access Committee for Scotland

I am encouraged in the support given by MACS for both a review of the traffic regulation orders to be applied to prevent the misuse of parking bays for disabled people and also to cover the obstruction of dropped kerbs. Provision of Disabled Parking Bays covered by TROs in streets and lay-bys next to commercial areas used
as car park overspills, is a necessity. Also as many drivers have a wheelchair passenger, it is very frustrating to find able bodied drivers sharing the disabled parking space thus preventing the disabled person with wheelchair getting out of the car. I have a motorised disability scooter which folds up in the boot of the car and any driver parking close to the rear of the car, cuts of the space required to get the scooter out or in. Also all Dropped Kerbs should be marked with a Double Yellow Line as this is the only exit a disabled person using either a wheelchair or scooter can use to cross roads safely. It is imperative that the disabled are protected against verbal and physical abuse by inconsiderate non-disabled persons. Urgent review of the legislation is vital.

Annexe D – Association of Chief Police Officers in Scotland

Regarding the response from the above, I am perturbed by the comment made by the writer of the letter that assurances are given that the Scottish Police Service will, wherever possible deal with selfish and inconsiderate drivers causing the abuse. I petitioned because it is the selfish and able bodied drivers causing such abuse making disabled persons in constant danger when having to tackle these other drivers and the abuse appeared to be getting out of hand. I always thought that it was better to prevent the problem than to have to deal with it. In accordance with the reply, the assurance from the Police in dealing with abuse might come too late for some brave disabled person trying to make the able bodied driver feel ashamed. The reason for my petition was to raise awareness for the protection of disabled persons so that they were not put in jeopardy when trying to get their car parked in designated parking bays in car parks, selected streets and lay-bys in commercial areas used as car parking overspills. My experiences so far have only been with inconsiderate able bodied drivers. Everyone displaying a Blue Badge has been either a disabled driver or disabled passenger and as Fife Council were quick to point out to me, that other blue badge holders could use the space designated for me, if anytime I went out. It would be helpful if a plate was put on the pavement advising that the disabled bay had been put there for a resident – again note Annexe H – Mobilise Organisation’s reply.

Annexe E - The Disability Rights Commission

I was greatly encouraged on reading the reply from the above, especially the second highlighted section “the need to eliminate harassment of disabled people". By reviewing the Traffic Regulation Orders so that Disabled Parking Bays in selected streets and lay-bys in commercial areas used as car park overspills, are protected by the Police or Traffic Wardens who have the power to prevent able bodied drivers using these designated parking bays without the disabled person being put in danger by verbal or physical abuse used against them. This is certainly covered by the second last paragraph of the reply.
Annexe F - The AA Motoring Trust

I am disappointed that the writer for the above, does not see the need for any change in the current system of Traffic Regulation Orders. It appears to me that when the policy was first formed, Council operated Car Parks coped with the amount of disabled drivers or passengers requiring spaces but since this time, the number of disabled persons able to drive and cars adapted to take on board wheel chair passengers, has increased dramatically and therefore many Local Councils have made selected streets and lay-bys in commercial areas available to meet the demand and it is these that have to be brought in line with the disabled parking spaces in cars parks so they all are covered by TROs. The same applies to drop kerbs as the number of disabled persons able to get about in motorised wheel chairs or motorised scooters has also risen dramatically over the last few years. They also wish to be independent and go out on their own safely and therefore double yellow lines are a necessity for dropped kerbs to prevent parking. Any inconsiderate driver blocking the access via dropped kerb could be then fined by Police or Traffic Wardens thus highlighting the need to keep these areas traffic free.

Annexe G - COSLA

It is interesting to note that COSLA is under the impression that Councils do require promoting TROs under the Traffic Signs Regulations and General Directions 2002. I note in the fourth paragraph the reason outlined that sheer number of requests for disabled parking bays could overwhelm staff if TROs had to be promoted each time. This perhaps could present a problem, if large numbers of people residing in quiet residential areas requested disabled bays, but to-date I’ve not heard anyone in residential only streets having problems with parking in their designated bay. Councils would be in a good position to use their own discretion regarding residential only streets. My main concern is for disabled parking bays situated in commercial areas including lay-bys used as car park overspills and not covered by TROs, when shoppers, traders and visitors, non blue badge holders, use disabled parking spaces without showing any remorse whatsoever, these are the disabled parking spaces that need to be re-assessed to provide protection against abuse to disabled persons.

Annexe H – Mobilise Organisation

The reply from the above organisation indicated that they have the best understanding of disabled persons’ problems, regarding trying to park in designated disabled parking bays which were marked out for the Blue Badge Holder’s use near their house, after proof of their disablement was cleared by their own Council. The paragraph headed: A Solution – TRO linked to residents parking and continued paragraph summed it all up. At present my disablement has not yet reached the wheelchair stage but that could change anytime and if the disabled bay marked out for me (cleared by my documents) was occupied, my husband can stop the car in the middle of the road to allow me to alight and manage the short distance to the house, while he tries to find another place to park meantime. This would present a problem if I was a wheelchair user and he had to assist me by having to push the wheelchair to the house, leaving the car in the middle of the road. On occasions so far, any blue badge holder parked
in the bay, have only occupied it for a very short space of time. However, this would cause a problem, if the car driver was the blue badge holder and occupied the bay for a long period of time. The Council had no sympathy at all when we contacted them regarding where would we park to get shopping home etc, if someone occupied the disabled parking bay outside our house for a lengthy time. Living adjacent to a commercial area which shares the parking with residents via the lay-by creates a problem but we just have to accept it, stated the Council. Throughout Scotland, I'm sure many disabled persons share similar circumstances as I do and I urge the Committee the review the Traffic Regulation Order in respect of Disabled Parking Bays especially where selected streets and lay-bys serve the purpose as car park overspills.

I agree with the Mobilise Organisations on the subject of the dropped kerbs. They are vital to wheelchair and motorised scooter users. We are at a disadvantage when crossing any road or street that does not have a Pelican Crossing to assist. Many drivers think if they are only parking for a short time, it is alright. They are putting disabled people at risk if they try to cross using a kerb which is not lowered.

Conclusions:

My conclusions are that it is now time for Traffic Regulation Orders to be brought up to the present time. There are so many disabled people trying hard to get on with their lives, getting out and about makes life so much more pleasant, instead of sitting at home. Even going shopping and visiting family and friends requires being able to park the car as near to their destination as possible and get home again.

An article in the Daily Record dated 18th July 2006, highlighted that a certain well known lady formerly a television celebrity, was caught parking in a bay for disabled people. It was during a parking investigation carried out by Radio’s 5 Live and she claimed she had not realised it was a disabled bay. Disabled Drivers Group, Mobilise said that as many as 20 per cent of disabled bays are occupied by able bodied people.

It was noted in a recent report in the Dunfermline Press dated 20th July 2006, by Fife Council that many of the disabled parking bays (white lined) have to be withdrawn during the redevelopment of the Kingsgate Shopping Centre, Dunfermline, and no alternative disabled bays in the town centre are being considered. Surely this situation highlights the need to have TROs applied to all disabled bays, making it less likely to have these few bays abused by able-bodied persons.
Dr James Johnston  
Clerk to the Public Petitions Committee  
Scottish Parliament  
Parliamentary HQ  
Edinburgh  
EH99 1SP  
29/06/06

Dear Dr Johnston

Consideration of Petition 909

Thank you for seeking my views on the responses to petition 909 I would comment as follows.

It comes as no real surprise that only two of the respondents, disabled organisations, actually support the petition. Indeed some responses, ACPOS and COSLA, failed to include any mention of the dropped kerbs issue, a point picked up in the Mobilise Organisation response “This point did not appear to be discussed at your meeting when both petitions were heard”.

Whilst I understand the Chairman’s view that both petitions should be taken together as they both concern TROs this course of action may not have been the most appropriate in hindsight. Indeed in my letter to you of 6th February I pointed out that as views were only heard from those interested in Disabled Parking Bays the issue of dropped kerbs appeared to be sidelined, as I was not given the opportunity to give evidence.

I have grave concerns that there is the possibility that this will become a bouncing ball between the Scottish Exec, which does not perceive a problem, and the Local Authorities that are already empowered to prepare and enforce Road Traffic Orders.
In our experience the majority of dropped kerbs exist in town and city centres to allow for greater access for all to the built up environment. As our organisation has experienced we cannot rely on the goodwill of motorists to keep these clear and enforcement is now the only alternative. Local Authorities already go to considerable expense to provide theses facilities and I feel that both disabled people and the Local Authorities themselves would welcome a quicker enforcement process.

● I and other disabled people find it unacceptable
  ○ That Local Authorities have powers but in the main choose not to utilise them and
  ○ The process is cumbersome and lengthy

All that is asked is that disabled people are given equality in access to their towns and communities and should not have to wait 9-12 months to have access enforced if at all.

I again ask the Committee to have the process streamlined and allow enforcement procedures to be in place at the same time as the actual kerbs are installed.

● I presume that the new Disability Equality Duty may have some bearing on how the Executive tackles legislation for disabled in future and submit that this is a great opportunity for the Executive to show commitment to the DDA 2005.

Yours sincerely

James MacLeod
Chair ICOD Ltd.
Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

Details of principal petitioner:

Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available

Mrs. Diane Huddleston
Chair

Text of petition:

The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS

Petition by DECIDE (Dornock Eastriggs Creca Initiative Development Enterprise) calling for the Scottish Parliament to urge the Scottish Executive to provide community groups with the right to take ownership of land where it is currently ownerless or abandoned by its owner/s for seven years.

Additional information:

Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition. Please note that you should limit the amount of any additional information which you may wish to provide in support of your petition to no more than 4 sides of A4.
Action taken to resolve issues of concern before submitting the petition:

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

This petition arises from attempts to acquire on behalf of the community a long term vacant plot of land within the village boundaries. The unsuccessful attempt included:

- consultations with Land Registry and local council to attempt to establish current ownership (copy of search result enclosed as Appendix 1)
- consultation with local councillor (Sean Marshall)
- consultation with several MSPs during a fact finding visit (copy of the itinerary and a letter from Derek Brownlee as Appendices 2 and 3)

Petitioners appearing before the Committee

The Convener of the Committee may invite petitioners to appear before the Public Petitions Committee to speak in support of their petition. Such an invitation will only be made if the Convener considers this would be useful in facilitating the Committee’s consideration of the petition. It should be noted that due to the large volume of petitions it has to consider, the Committee is not able to invite all petitioners to appear before the Committee to speak in support of their petition.

Please indicate below whether you request to make a brief statement before the Committee when it comes to consider your petition.

☐ I DO request to make a brief statement before the Committee

☐ I DO NOT request to make a brief statement before the Committee

Signature of principal petitioner:

When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature 

Date [9 March 2006]

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:

The Clerk to the Public Petitions Committee,
The Scottish Parliament,
Edinburgh
EH99 1SP
Tel: 0131 348 5186 Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk
Dear Dr. Johnson

CONSIDERATION OF PETITION PE947

Thank you for your letter of 2 May 2006. I attach a note in response to your letter which I hope will be helpful to the Committee.

Yours sincerely

Norman McFadyen
PETITION PE947 – COMMENTS BY QUEEN’S LORD TREASURER’S REMEMBRANCER

There seem to be three issues raised in the Petition upon which he might usefully comment – namely

- who currently has right to take ownerless land,
- whether there is a public benefit from the exercise of that right and
- how accessible to the public is information on the ownership of land.

**Who currently has right to take ownerless land?**

Where the owner of land (or his descendants) cannot be traced, title to it is taken by the Crown as ownerless land (known legally as *bona vacantia*) at Scots common law. The QLTR is the Crown’s representative in Scotland for this purpose. The Crown also takes title to land where the last registered owner was a limited company and the land has remained registered to that company after the company has been dissolved. In the case of dissolved companies, the QLTR is exercising a statutory right to claim the land as ownerless – in terms of section 654 of the Companies Act 1985.

In exercising these powers, the QLTR is acting under the direction of Scottish Ministers since *bona vacantia* matters are explicitly devolved. See Scotland Act 1998 (c.46) Schedule 5 paragraph 3(1) & (3), and Schedule 8 paragraph 1.

Where land has apparently been abandoned, it may or may not be ownerless. The QLTR deals only with abandoned land for which he is satisfied that the owner cannot be traced and which can therefore be properly treated as *bona vacantia*. The QLTR has no database of land which belongs to dissolved companies or which is ownerless. He can only deal with such land when it is brought to his attention.

**Is there a public benefit from the Crown’s exercise of its right to ownerless property?**

Before disposal, the QLTR usually has ownerless land valued by the District Valuer (DV). Since such land is not known to the QLTR until he is informed of the facts, and the informant is usually someone interested in purchase, the land identified as ownerless may be offered to that person at the DV valuation. If that valuation is not acceptable to him, the land will usually be offered for sale by competitive bid if it is marketable. Where the area of land is very small – perhaps simply a minimal correction of the line of a boundary - the DV may not be instructed – but each case is considered on its merits before a decision as to disposal and any consideration is made.

Ownerless land may be brought to the QLTR’s attention because the area constitutes a local nuisance or detracts from local amenity. The QLTR is always mindful of the need to promote the public interest – and considers the possibility of removing or alleviating the nuisance created, normally by taking title to it and then transferring title for renovation or development.

Ownerless land also comes to his attention either because the Law Society of Scotland or the Registers of Scotland have referred solicitors with title problems to him, in the hope that he might be able to help resolve their difficulties. The involvement of the QLTR very often
results in rescuing ownerless land from legal limbo, allows a sale to proceed lawfully and registration of title to take place.

The QLTR is therefore in the habit of transferring title to land, mainly to private individuals, or developers, but also, for example, to local community groups, Local authorities, GP practices, and Care homes. He therefore exercises discretion as to whether to transfer title at DV valuation, occasionally by sale on the open market or for a nominal consideration, acting in what he considers to be the public interest.

A person who has not paid a price to the registered owner for land, (very often because the registered owner cannot be found) can nevertheless use an a non domino Disposition to record a title to the land in the Registers of Scotland. The QLTR will normally be asked by the Keeper of the Registers to state in writing, before that deed is registered, whether or not he has an interest in the land. The QLTR usually -- but not invariably -- confirms that he has no interest -- but only if the Keeper will (where the area is to be registered in the Land Register) exclude that area from his title indemnity. The net effect of that approach is that the aspiring owner does not profit at the expense of the public purse (because, if the area were not excluded from indemnity, it would, immediately upon registration, be a saleable asset for which the QLTR could otherwise have received fair value). If the area is to be recorded in the Sasines Register instead, exclusion of indemnity is irrelevant, but there is a ten year delay before unchallengeable ownership can be obtained and therefore it is not meantime a saleable asset.

Very occasionally, the QLTR may formally disclaim any Crown interest in bona vacantia land -- but on the basis that potential liability from ownership is likely to far outweigh any benefit. In that case, the QLTR again has in mind the public interest in not incurring legal liability. However, as a general legal principle, so long as the QLTR does not know that he has right to claim any land as ownerless, he has no legal liability as owner for that land.

The net funds realised from sale of bona vacantia land are paid periodically by the QLTR into the Scottish Consolidated Fund.

**How accessible is information on the ownership of land?**

Title to land in Scotland is governed by the fact of registration of the title deed in the Registers of Scotland. Those records are open for public inspection.

Some old title deeds may be vague, particularly as to boundaries, and title deeds often cover a larger area than the piece of ground being investigated, but solicitors and if necessary professional title deed searchers are experts in identifying the last registered owner of the particular area. The problems arise in actually tracing that owner in order to negotiate a price for sale -- or in finding, in the case of large organisations, the solicitors or Estates departments who have the authority to conduct such negotiations.

As explained above, the QLTR has no database of land which belongs to dissolved companies or missing persons. However since he was aware that knowledge of his right to deal in ownerless ground was not well publicised, he has taken steps in the past two years to publicise that right more widely
There is now information about ownerless property and how the QLTR deals with it on the Crown Office website (www.copfs.gov.uk). Members of his department have given a series of talks to the legal profession in various parts of Scotland, explaining the principles and procedural intricacies of the Crown's right to *bona vacantia*. As indicated above, the QLTR's functions are well known to the Registers of Scotland and the Law Society, both of which refer enquirers to his department for information and help.

**COMMENTS ON THE ISSUES RAISED IN COMMITTEE PROCEEDINGS ON 19 APRIL 2006**

There seem to the QLTR to be various issues raised in the Committee's discussion of 19 April on which he might usefully comment. These issues arise out of the circumstances surrounding the particular problem which gave impetus to the decision to lodge the Petition.

**Perceived failure to establish ownership of a particular area of land**

The QLTR has no record of the petitioner having approached his department for help in dealing with apparently abandoned land. As explained above, however, the QLTR deals only with abandoned land which is also ownerless (ie whose owners cannot reasonably be traced).

From the information in Appendix 1 to the Petition, it appears to the QLTR that the land in question may not be ownerless. This office has been in touch with the Petitioner and as a result of additional information which she has provided and additional information copied to this office by Registers of Scotland, who have also been in correspondence with the Petitioner, the QLTR is actively pursuing enquiries as to ownership - with the aim of putting the Petitioner and the true owner, if identified, in contact with one another.

**Community group's arguable duty to attempt to take ownership of abandoned or ownerless land**

The right to ownerless land rests with the Crown. Scots common law already makes provision for the Crown to take title to such land - to rescue it, as it were, from legal limbo.

**Derelict land reverts to the Crown**

The legal position has been explained above. Derelict or abandoned land is not necessarily ownerless land. It is ownerless land to which the Crown can lay claim as *bona vacantia*. Many cleared or derelict sites, especially in the west of Scotland, come to the Crown because they are still owned by dissolved companies - and the legal effect of dissolution is to make such company sites ownerless.

**The a non domino Disposition**

As explained, the QLTR does consent to the registering of this sort of writ, provided that the Keeper excludes his indemnity from the area being conveyed if it is being entered on the Land Register. That means that the Keeper does not guarantee that the title is a valid title or that the person presenting the writ is truly the owner. If this writ remains unchallenged, then at the expiry of 10 years from the date of its first registration, the restriction on indemnity will
be removed, and the person in whose favour the Disposition was taken will be treated as truly the owner. A similar result occurs where the writ had been recorded in the Sasines Register.

However, in this case, the Petitioner mentioned that there was competition for the acquisition of the area in question, and that being so, it is unlikely that such a title deed would remain unchallenged for 10 years. In addition, the true owner may also challenge it within the 10 year period.

**Competing interests in the particular area of ground**

Where there are competing interests in the ownership of a particular area, then an *a non domino* Disposition is of little use. Where ground is ownerless, and there are competing interests to purchase, the QLTR will sell by competitive tender.

To date the QLTR has dealt with no applications to buy from him in terms of the Land Reform (Scotland) Act 2003.

**Comment on proposal that a Community group should have the first claim to ownerless ground**

Insofar as ownerless ground is concerned, the QLTR currently has the right to ownership.

As indicated above, he disposes of that ground usually for a price set by the DV. However, each case is considered on its merits. Depending upon the status of the applicant to purchase and the use to which the ground is to be put, the QLTR is willing to consider disposal at less than DV valuation.

While it is not for the QLTR to determine what Scottish Executive policy should be, it is not clear to him that there is a need to provide for the right to ownership which the Petitioner seeks.

The QLTR also wishes to stress, however, that it is not clear that the ground in question is ownerless ground and therefore is ground with which he would expect to deal.
Dr James Johnston  
Clerk to the Public Petitions Committee  
Scottish Parliament  
TG.01  
Parliamentary Headquarters  
EDINBURGH  
EH99 1SP  
Our ref:  
Your ref:  
21 July 2006

SCOTTISH PARLIAMENT PUBLIC PETITIONS COMMITTEE: CONSIDERATION PE947

Thank you for your letter of 2 May concerning the Petition by the DECIDE community group.

As Keeper of the Registers of Scotland I am responsible for the compilation and maintenance of the land and property registers in Scotland. All the registers for which I am responsible are public. I should perhaps make it clear that I do not have policy responsibility for any other matters and the wider comments I make in this letter are borne from my experience in operating the registers that fall within my control.

In my opinion, the proposal contained within the Petition is unnecessary. Scots property law has existing, long-established mechanisms which allow not only community groups but the general public to obtain good title to land which is apparently ownerless. I will outline these mechanisms and describe how they relate to the processes of the property registers. Further, I consider that if the proposal were to be made law it would have the potential to disrupt or cut across the operation of the existing mechanisms, to the disadvantage of Scottish property law as a whole.

Background: the General Register of Sasines and the Land Register of Scotland

Information on property in Scotland is held in the General Register of Sasines and the Land Register of Scotland. The General Register of Sasines has been in operation since 1617 and is a chronological register of property deeds. It is not map-based and attracts no guarantee of title.

The Land Register, which is a modern, map-based register of title, was opened in 1981, in accordance with the provisions of the Land Registration (Scotland) Act 1979. Generally/
Generally speaking, title to a given property enters the Land Register when it is sold or leased. The title sheet for each property includes a description of the property by reference to a title plan based on the Ordnance Survey Map, identifies the current proprietor(s) and any heritable creditors and narrates the title conditions. On first registration of a property in the Land Register, my staff carry out a detailed examination of prior title and, provided that the title is good (as is usual), a title sheet is created and the accuracy of the registered title is indemnified (guaranteed). The indemnity that I provide (in effect, a State indemnity) protects property owners and others against loss in certain circumstances.

When a property is registered in the Land Register, deeds affecting that property can no longer be recorded in the General Register of Sasines.

Since the Land Register is map-based, it is an easy task to establish whether a property is registered or not, and thus to discover the identity of the proprietor(s). Unfortunately, the same cannot be said of the General Register of Sasines. Many properties recorded in the General Register of Sasines are known not by postal addresses or recognisable names but only by vague or difficult descriptions contained in old deeds, which can make the task of searching the register for the title to a property problematic. The problem will eventually disappear, as the General Register of Sasines is being progressively superseded by the Land Register. When the Land Register is finally complete and the General Register of Sasines thereby becomes obsolete, it will be quick and easy for anyone to obtain details of the ownership of every property in Scotland. However, while the role of the General Register of Sasines is diminishing (with approaching fifty per cent of titles now on the Land Register) – its relevance will continue for the foreseeable future.

Abandoned or ownerless land

The petitioner asks the Scottish Executive to provide community groups with a right to take ownership of land where it is currently ownerless or abandoned by its owners for 7 years.

I consider that there are difficulties with the idea of “abandoned land”. It is not a term which has meaning in Scots law and I am concerned that it is open to subjective interpretation. People living in the vicinity of a disused plot of land whose owner has been absent for years may well conclude that the land is abandoned. However, abandoned land is not necessarily ownerless land. There may still be an owner in existence, and the owner might regard the land as an asset of continuing importance. It could be that the owner, if consulted, would not agree that the land was abandoned.

Land could be said to be ownerless where there is no apparent title to it. Examples where this could arise – where a title dates back to before the Register of Sasines and has not subsequently been recorded; or where two (or more) neighbouring Sasine titles have indistinct boundaries leading to a very small area that does not appear to fall within either (or any) title.

Even/
Even where an owner has died or become defunct, it may be that other parties will have succeeded to the owner’s right to the property. If that is not the case, and the land is genuinely ownerless, title to it may be taken by the Crown, represented in Scotland by the Queen's and Lord Treasurer's Remembrancer (QLTR).

Dispositions a non domino

Where someone seeks to gain ownership of an abandoned or ownerless property, they will typically wish to register a deed known as a Disposition a non domino in one of the property registers. This was referred to by Ms Baillie in the discussion of the Petition on 19 April. The Latin phrase a non domino, meaning ‘from one who is not the owner’, indicates that the grantor of the deed does not have an established right to the property. A Disposition a non domino can be a useful mechanism for making good a lack of title in which there cannot otherwise be certainty. It may be used, for example, when property has been in the same family for generations and transfers, or other rights or interests, have been effected by deeds which were never recorded and have been lost. Indeed, in situations like that, deeds may never have been created. It is also sometimes used to regularise boundary problems, or where a proprietor of land seeks to acquire an adjoining strip of waste land but cannot identify an owner. Once the title is registered, section 1 of the Prescription and Limitation (Scotland) Act 1973 becomes relevant. If the new proprietor goes on to possess the property for 10 years openly, peaceably and without judicial interruption, at the end of the 10 years the proprietor’s right to the property is exempt from challenge.

While I will accept registration of a legitimate Disposition a non domino, I will not indemnify the resulting title in the Land Register. This allows the possibility of a challenge to the a non domino title within the 10 year period.

Where a property that appears to be abandoned or ownerless has not yet been registered in the Land Register, it occasionally proves difficult for people to establish who (if anyone) owns it. As I described earlier, there can be problems in searching for property information and identifying properties conclusively in the General Register of Sasines, especially where the information dates back several decades or even centuries. Solicitors and professional searching companies may be able to help. Additionally, the QLTR may be willing in certain situations to assist someone to gain a title to ownerless land.

Unfortunately, there is scope for misuse of Dispositions a non domino. People sometimes try to use them to gain control of property that belongs to others. An important reason for the existence of the property registers is that they provide security of tenure to property owners. In recognition of that, and to preclude the possibility of owners being put to the trouble and expense of court actions to have their rights restored, my policy is to reject applications for registration of speculative Dispositions a non domino. In these circumstances I may advise the applicants that they should approach the property owners if they still wish to obtain title.

I acknowledge that community groups such as DECIDE may have justifiable cause for seeking to acquire title to land which appears to be abandoned or unoccupied. However,
However, I would suggest that, wherever a proprietor can be identified and traced, the appropriate course of action would be for the community group to obtain a title from that proprietor.

While I do not have responsibility for advising on human rights, the Committee may wish to consider whether there could be human rights implications arising from the DECIDE proposal. Article 1 of Protocol 1 of the European Convention of Human Rights states that “every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law.” Rule 2 requires that where a deprivation of property occurs, compensation is paid. The European Court has held that if a statute fails to provide for compensation, then there is not a fair balance between the various interests.

The role of the QLTR

The role of the QLTR is another of the existing mechanisms to which I referred earlier. Since you are seeking the QLTR’s views on the Petition I will simply say that I recognise the role of the QLTR as a key role in Scots property law as regard to ownerless land. My staff and the QLTR’s staff liaise with each other as and when the need arises.

Community Right to Buy

The Register of Community Interests in Land was established by the Land Reform (Scotland) Act 2003 to allow a rural community body to register an interest in acquiring land. The effect of a registration is to give the community body a first option to buy when the landowner next takes action to sell/transfer the land. Applications by community bodies, as defined in the Act, must be made on the appropriate statutory form, copies of which are available from the Scottish Executive Environment and Rural Affairs Department. The procedure is potentially advantageous to many community bodies.

The DECIDE case: the ground in Eastriggs

The Appendices to the Petition include a copy letter of 21 September 2005, sent by a member of my staff, Ms Dallas, to a Mr Archer in Annan, enclosing photocopies of parts of relevant General Register of Sasine records known as Search Sheets. This was in response to an enquiry from Mr Archer to the Registers of Scotland’s Glasgow Customer Services Centre about the ownership of ground in Eastriggs.

Ms Dallas established that the ground was not registered in the Land Register. She therefore conducted a search of the Sasine Search Sheets, with inconclusive results. However, the copy Search Sheets which Ms Dallas sent to Mr Archer were intended to show him that there were possible lines of further enquiry that he could follow up.

I have taken note that, in the Petition, Mrs Huddleston points out that DECIDE’s consultation with the Land Register to attempt to establish ownership of the ground was unsuccessful.

It/
It may be that no further investigation was undertaken by Mr Archer or DECIDE. In order further to assist their enquiries, we have undertaken further research into the ownership of the land at Eastriggs.

We will write separately to DECIDE, c/o Mrs Huddleston, to provide the results of our further research.

The potential effect of the DECIDE proposal

As I have explained, there are existing mechanisms in Scots law which appropriately address the problem of such property. I do not consider there to be a need to change or add to them.

I am concerned that the DECIDE proposal has the potential to disrupt or cut across the operation of the existing mechanisms; it would introduce a novel procedure which differs considerably in purpose. People would be unsure of the route to follow when seeking to take title to ownerless property and of the eventual outcome. Confusion would result as to the appropriate route to follow regarding title to apparently ownerless property, leading to the possibility of court actions to resolve competing claims.

I do not see a ready means of reconciling the proposal with the existing mechanisms.

As I have mentioned, there are also possible human rights implications to consider, as well as the effect on existing statutory provisions, particularly the provisions of the Prescription and Limitation (Scotland) Act 1973.

I hope that my comments are helpful to the Committee.

JAMES MELDRUM
Keeper of the Registers of Scotland
and Chief Executive
Dear Dr. Johnston,

CONSIDERATION OF PETITION PE947

The Society's Rural Affairs and Conveyancing Committees have considered this Petition and have the following comments to make:-

1. The Committees had considerable difficulty over how land could be considered "ownerless or abandoned". The underlying rights of the Crown mean that if there is no effective owner or land, it will fall to the Queen's and Lord Treasurer's Remembrancer, an officer of the Crown who then can dispose of the land on behalf of the Crown.

2. The general law of prescription contained in the Prescription and Limitation (Scotland) Act 1973 provides that a title to an interest in land may be exempt from challenge in certain circumstances. In order to be exempt from challenge, possession of a general interest in land must be by any person, or by any person and his or her successors, for a continuous period of 10 years openly, peaceably and without any judicial interruption. The possession must be founded on and follow the recording of a Deed, sufficient in respect of its terms to constitute in favour of the person having possession of the interest, a title to that interest in the particular land, or in land of a description which includes that particular land, or registration of that interest in favour of that person in the Land Register of Scotland where the Keeper of the Registers has excluded indemnity. Possession may, and often does, follow a Disposition *a non domino* (from someone who is not the owner) to enable completion of title to land where no properly registered proprietor can be traced.

There will have to be the usual checks and searches into the current title of any land affectedly an *a non domino* Disposition and appropriate evidence has to be submitted to the Land Register regarding the former and current use of the land in question.

3. The suggestion that a person could have some form of right to take title to land which is considered to be under-utilised or "ownerless" may well fall foul of the Human Rights Act 1998. There is jurisprudence from the European Court of Human Rights on the issue of prescriptive acquisition of titles to land: in particular, the recent case of *J.A. Pye (Oxford*
Limited) v United Kingdom (Case No. 44302/02). That case would appear to preclude any extension of current rights of prescription.

I hope these comments are helpful and that the petitioners will be able to obtain appropriate advice on this issue to satisfy their needs.

Yours sincerely,

Michael P. Clancy
Director
Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

Details of principal petitioner:
Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available

RS MARY DOUGLAS

Text of petition:
The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.
The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS

Petition by Mary Douglas calling on the Scottish Parliament to urge the Scottish Executive to ensure the Conservation (Natural Habitats, &c.) Regulations 1994, as amended, are applied in relation to ship to ship oil transfers in Scotland.

Additional information:
Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition. Please note that you should limit the amount of any additional information which you may wish to provide in support of your petition to no more than 4 sides of A4.
Action taken to resolve issues of concern before submitting the petition:
Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

Approached Fife Council, local Councillors, MP's, MSP's, Scottish Parliament Ministers, Secretary of State for Scotland, Forth Ports, various environmental organisations and the Marine & Coastguard Agency.

Petitioners appearing before the Committee
The Convener of the Committee may invite petitioners to appear before the Public Petitions Committee to speak in support of their petition. Such an invitation will only be made if the Convener considers this would be useful in facilitating the Committee's consideration of the petition. It should be noted that due to the large volume of petitions it has to consider, the Committee is not able to invite all petitioners to appear before the Committee to speak in support of their petition.

Please indicate below whether you request to make a brief statement before the Committee when it comes to consider your petition.

I DO request to make a brief statement before the Committee

I DO NOT request to make a brief statement before the Committee

Signature of principal petitioner:
When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature:

Date: 3rd April 2006

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:

The Clerk to the Public Petitions Committee,
The Scottish Parliament,
Edinburgh
EH99 1SP
Tel: 0131 348 5186 Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk
Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

Details of principal petitioner:

Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available.

B Linden Jarvis

Text of petition:

The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS.

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed ship to ship transfers of oil at anchor in the Forth Estuary, specifically focussing such consideration and debate on the likely impact of such operations upon wildlife, tourism, local authority funding of clean-up and how it may use its powers within the 12 mile tidal limits to protect the local ecology, scenery, environment and areas of special scientific interest and habitat within the Estuary.

Additional information:

Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition. Please note that you should limit the amount of any additional information which you may wish to provide in support of your petition to no more than 4 sides of A4.
Action taken to resolve issues of concern before submitting the petition:

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

Assistance has been sought from and representations made to Douglas Alexander MP, Scottish Natural Heritage, Her Majesty Queen Elizabeth II, The Princess Royal, RSPB, SEPA, David Cameron MP, Orkney Harbours, Scottish Executive, Forth Ports PLC, The Scotsman, The Glasgow Herald, Sunday Herald, BBC Scotland, various institutional shareholders of Forth Ports PLC.

Petitioners appearing before the Committee

The Convener of the Committee may invite petitioners to appear before the Public Petitions Committee to speak in support of their petition. Such an invitation will only be made if the Convener considers this would be useful in facilitating the Committee's consideration of the petition. It should be noted that due to the large volume of petitions it has to consider, the Committee is not able to invite all petitioners to appear before the Committee to speak in support of their petition.

Please indicate below whether you request to make a brief statement before the Committee when it comes to consider your petition.

I DO request to make a brief statement before the Committee  
I DO NOT request to make a brief statement before the Committee  

Signature of principal petitioner:

When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature

Date 14-6-06

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:

The Clerk to the Public Petitions Committee,
The Scottish Parliament,
Edinburgh
EH99 1SP
Tel: 0131 348 5186 Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk
29th June, 2005.

Dr. James Johnston,
Clerk to the Public Petitions Committee,
The Scottish Parliament,
SG 01,
Parliamentary Headquarters,
EDINBURGH
EH99 1SP

Dear Dr. Johnston,

CONSIDERATION OF PETITION PE956

Thank you for your letter of 15th May regarding Petition PE956. The questions which you raise are currently undergoing an independent assessment as part of our overall assessment of potential Ship to Ship Transfer operations in the Firth of Forth. As such it would be premature for us to comment on the issues which were raised until this assessment has been properly concluded and communicated. In this event, we may not be able to meet your deadline for response of 14th August.

Yours sincerely,

Charles G. Hammond
GROUP CHIEF EXECUTIVE
PETITION PE956

Petition by Mary Douglas calling on the Scottish Parliament to urge the Scottish Executive to ensure the Conservation (Natural Habitats, &c.) Regulations 1994, as amended, are applied in relation to ship to ship oil transfers in Scotland

MARITIME AND COASTGUARD AGENCY RESPONSE


- It is our understanding that the petition has been prompted by the proposal that ship-to-ship transfers be carried out in the Firth of Forth. In the case of the Firth of Forth, it is our understanding that Forth Ports plc – as a competent authority under the Habitats Regulations – must have regard to the requirements of the Habitats Directive insofar as they may be affected by the exercise of Forth Ports plc’s functions and that it has powers to regulate, and if necessary, prevent, ship to ship transfers.

SUPPORTING INFORMATION

1. The term "ship-to-ship transfer" is used to describe the transfer of oil, carried as cargo, from one tanker to another. Ship-to-ship transfer is an internationally recognised practice, which takes place worldwide. There are voluntary industry guidelines issued under the aegis of the International Chamber of Shipping and the Oil Companies International Marine Forum, which set out the procedures to be followed when carrying out ship-to-ship transfers. Domestically, ship-to-ship transfer operations have a very good record, both in respect of safety and in respect of the environment.

2. Although ship-to-ship transfers have been taking place in UK waters for a number of years, this has become a high profile issue in recent years because of the increase in the scale of Russian oil exports. The oil is shipped out of the Baltic and North Russian ports in small tankers because large tankers cannot negotiate the shallow waters of the Baltic Sea and some of the approaches to the Northern Maritime Corridor ports, but the economics of the trade dictate that the oil should then be transferred into large tankers for the long voyage to its eventual destination in the Americas or the Far East.
Benefits associated with ship-to-ship transfers

3. Ship-to-ship transfer operations can provide a substantial economic benefit to the locality in which they are carried out – the most prominent example in the UK being Scapa Flow in the Orkney Islands. The UK Government’s concern is to ensure that such operations are regulated and managed appropriately, so that they are carried out safely and with minimum risk to the environment.

Contingency plans for dealing with oil spillages

4. Oil spill contingency plans are designed to ensure that trained personnel, and the necessary equipment for responding to a spill, are close at hand.

5. The legislation which governs oil spill contingency plans is the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998 (“the OPRC Regulations”). These Regulations are drafted in terms of the MCA as decision-maker in the matter of approving oil spill contingency plans, or revisions to it, for harbour authorities and operators of oil handling facilities.

6. If a major change occurs which could affect the validity or effectiveness of a plan to a material extent, then the harbour authority or operator must submit to the MCA a new plan, or amendments to an existing plan, within three months of the major change becoming known to the harbour authority or operator.

7. The OPRC Regulations do not permit the MCA to reject an oil spill contingency plan submitted to it. It must either approve the plan or, if the plan is not compatible with the National Contingency Plan or is not appropriate for dealing with oil pollution incidents which may occur in the area in which the harbour authority or operator has jurisdiction or exercises responsibility, it may, after consultation with the harbour authority or operator, direct that the plan be altered. It is the duty of the harbour authority or operator to alter the plan if so directed by the MCA. Failure to maintain the plan (with any directed alterations) or failure to implement the approved plan in the event of an oil pollution incident is a criminal offence.

The Firth of Forth proposal and the assessment carried out by the MCA

8. Forth Ports has submitted to the MCA an oil spill contingency plan to cover ship-to-ship oil transfer operations in the Firth of Forth and a set of proposed revisions to the Clearwater Forth overarching oil spill contingency plan (“the OSCPs”).
9. During informal consultations with interested parties, the question of whether the MCA was required to conduct an appropriate assessment of the OSCPs under the Habitats Directive, as implemented by the Habitats Regulations, was raised. Although it was not considered by the MCA that the OSCPs were likely to have a significant effect on relevant nature conservation sites in this case, nonetheless it was considered appropriate in this case, as a matter of good policy, for there to be a formal assessment of whether the OSCPs would adversely affect the integrity of relevant nature conservation sites.

10. As part of that assessment a public consultation was held to assess the implications for relevant nature conservation sites of Forth Ports' OSCPs. The subject had generated very strong interest on local economic, environmental and public health grounds, and it was decided to seek consultees' views to help establish whether the OSCPs would adversely affect the integrity of those nature conservation sites. This was announced by the Secretary of State for Transport on 21 November 2005.

11. The public consultation commenced on 16 February 2006 and closed twelve weeks later, on 11 May.

12. On 14 July, the MCA announced its intention to approve the submitted oil spill contingency plan covering ship-to-ship transfers in the Firth of Forth and the amendments to the overarching Clearwater Forth contingency plan, subject to a number of specified changes to each of the two plans. Concurrently, the assessment, a letter to Forth Ports, a responses consultation table and a summary analysis of consultee responses was posted on the MCA website. The web address of these documents is as follows:

Compatibility of ship to ship transfers with duty to protect the environment and natural habitats

13. It is the role of Forth Ports plc, in its capacity as the harbour authority, to decide whether to permit ship-to-ship transfers. There is provision to regulate (and if necessary, prevent) ship to ship transfers in the Firth of Forth. These functions are vested in Forth Ports, which has power under byelaws enacted under local legislation to regulate whether vessels can anchor to transfer cargo.

14. Forth Ports plc, in its capacity as a harbour authority, is moreover under a duty to have regard to the conservation of the natural beauty of the countryside and of flora, fauna and geological or physiographical features of special interest when formulating or considering any proposals relating to its functions under any enactment. It must also take into account any effects which the proposals may
have on the natural beauty of the countryside, flora or fauna. This duty is set out in section 48A of the Harbours Act 1964 and applies to all harbour authorities.

15. Any final decision taken by the MCA in respect of the submitted plans could not discharge Forth Ports plc from its duties under regulation 3 of the Habitats Regulations, as the competent authority for the purposes of the Habitats Directive in respect of ship-to-ship oil transfers in the Firth of Forth or any other applicable duty in respect of the environment.

16. Additionally, under regulation 44 of the Habitats Regulations, there is provision to license activities that could disturb a European Protected Species, or damage or destroy breeding sites or resting places. As this is for a devolved purpose, it is the responsibility of the Scottish Executive to determine whether a licence would be required for ship-to-ship transfers in the Firth of Forth.
Dr James Johnston  
Clerk to the Public Petitions Committee  
TG.01  
Parliamentary Headquarters  
Edinburgh  
EH99 1SP

Dear Dr Johnston,

Title: Consideration of petition PE956

Thank you for your letter of 15 May 2006 inviting Scottish Natural Heritage’s (SNH’s) views on the above petition, which relates to proposals for ship-to-ship oil transfers in the Firth of Forth. The petition concerns the application of the Conservation (Natural Habitats, &c.) Regulations 1994 (‘Habitats Regulations’), as amended, to the proposals.

The Habitats Regulations implement Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Flora and Fauna (‘Habitats Directive’) in Scotland. The Regulations place a statutory duty on competent authorities to meet the requirements of this Directive. At present, there is no specific domestic legislation which sets out how the requirements of the Habitats Directive should be applied to ship-to-ship oil transfers, but Habitats Regulations 3.3 and 3.4 impose general duties on competent authorities.

Regulation 3(3) states that:

In relation to marine areas any competent authority having functions relevant to marine conservation shall exercise those functions so as to secure compliance with the requirements of the Habitats Directive.

Regulation 3(4) states that:

...every competent authority in the exercise of any of their functions, shall have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions.

Article 6(3) of the Habitats Directive states that:

Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site... the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.
In SNH’s view, both the proposed ship-to-ship project and the related oil spill contingency plans fall within the definition of plan or project in the meaning of the Habitats Directive, and should be subject to the provisions of Article 6(3).

In commenting on the non-statutory Environmental Statement for the ship-to-ship proposals, and more recently on the Maritime and Coastguard Agency’s (MCA’s) consultation on the related oil spill contingency plans, SNH has consistently sought to ensure that the competent authorities responsible for considering the ship-to-ship proposals are aware of the requirements of the Habitats Regulations and comply with them. Those competent authorities are: (i) Forth Ports, who as harbour authority are responsible for overall approval of the ship-to-ship proposals; and, (ii) the Maritime & Coastguard Agency (MCA), who are responsible for approval of the related oil spill contingency plans.

In particular, we have argued for:

- **appropriate assessments** to be carried out by Forth Ports on the implications of the ship-to-ship proposals for the European sites in the Forth, in view of each site’s conservation objectives. Those sites are: the Firth of Forth Special Protection Area (SPA); the Forth Islands SPA, and; the Isle of May Special Area of Conservation (SAC). The appropriate assessments must consider any impact on the qualifying interests of a site (the species for which a site has been designated), both within the site boundary itself and, where appropriate, outwith the boundary in the surrounding area.

- an appropriate assessment to be carried out by the MCA on the implications of the oil spill contingency plans for those European sites.

Forth Ports and the MCA both recognise their roles as competent authorities. At time of writing, we are in the process of considering additional material provided to us by Forth Ports, which will inform the appropriate assessments which they will undertake. We will provide them with our advice shortly. It will then be for Forth Ports as competent authority, drawing on our advice, to reach a judgement as to whether or not it can be ascertained that the ship-to-ship proposals will not adversely affect the integrity of one or more of the European sites. If they cannot conclude that there will not be an adverse effect, then they cannot agree to the proposals unless they believe there to be no alternatives and imperative reasons of overriding public interest. In the event of a negative assessment, and should Forth Ports still wish to proceed, they are required to give Scottish Ministers 21 days notice.

For their part, the MCA have recently announced the conclusions of their public consultation which aimed to “assess the implications of Forth Ports’ revised and amplified plan for designated nature conservation sites in the Firth of Forth (in view of their conservation objectives) with a view to ascertaining whether the plan will adversely affect the integrity of the sites concerned.” The MCA have requested that a number of changes be made to the plans. They have, however, concluded that the oil spill contingency plans “will not have any adverse effects on the integrity of the relevant nature conservation sites, or on relevant species such as seals and seabirds outside those sites.” SNH is currently considering whether it wishes to make further comment to MCA in light of this conclusion.

**European Protected Species**

The Wildlife and Countryside Act 1981 (as amended) and The Nature Conservation (Scotland) Act 2004 provide full protection for certain animal and plant species. Some of
these species are further protected as ‘European Protected Species’ under the Habitats Regulations (Regulations 39 and 43 of The Conservation (Natural Habitats &c.) Regulations 1994 and Regulations 10 and 13 of The Conservation (Natural Habitats &c.) Amendment (Scotland) Regulations 2004). These Regulations mean that it is illegal to:

- Deliberately or recklessly kill, injure, disturb or capture/take European Protected Species of animal or deliberately or recklessly harass any cetacean.
- Damage or destroy the breeding sites or resting places of such animals

Where it is proposed to carry out works which will affect European Protected Species or their shelter/breeding places, whether or not they are present in these refuges, a licence is required from the licensing authority (in this case, the Scottish Executive).

In SNH’s view, the only European Protected Species which may be affected by the ship-to-ship oil transfer proposals are cetaceans, i.e. whales, dolphins and porpoises. Through our comments on the Environment Statement we have requested that further information be sought which will allow an assessment to be made of the extent to which cetaceans are present in the Forth and may be affected by the ship-to-ship proposals. This will clarify whether or not a licence will be required, and inform the Scottish Executive’s consideration of any licence application, should one be required.

I hope that this letter has clarified the steps which SNH has taken to date to help ensure, as the petitioner requests, that the Habitats Regulations are properly applied to the ship-to-ship proposals.

Yours sincerely,

Iain Rennick
Area Manager,
Forth & Borders
Dr. J. Johnston,  
Clerk to the Public Petitions Committee,  
The Scottish Parliament,  
Parliamentary Headquarters,  
EDINBURGH,  
EH99 1SP.

Direct Line: 01592 413999  
Email: douglas.sinclair@fife.gov.uk  
Your Ref:  
Our Ref: DS/EAL/J7.6  
25th May, 2006

Dear Dr. Johnston,

CONSIDERATION OF PETITION PE 956-
PROPOSED SHIP TO SHIP OIL TRANSFERS FIRTH OF FORTH


In general terms, this Council is supportive of the petition undertaken by Mrs. Douglas as it is a matter of public record that Fife Council is against ship to ship oil transfers in the Firth of Forth. Fife Council registered its opposition to these proposals at the meeting of its Environment and Development Committee in March, 2005, when members voted unanimously against this undertaking. This decision was subsequently ratified at the full meeting of Fife Council in April, 2005.

Further measures agreed by Fife Council included submitting a resolution to the North Sea Commission in June, 2005, calling for a European strategy to deal with the threat from STS oil transfer operations in inshore waters. The Council also agreed to lobby representatives at all levels including MEPs, MPs and MSPs to invite support for the Council's position. In addition, Fife Council has joined with other maritime local authorities in the Firth of Forth including East Lothian and City of Edinburgh Councils who have voiced similar objections to this proposal.

Maritime and Coastguard Agency Consultation

As a stakeholder in the Cleanwater Forth Oil Spill Contingency Scheme, Fife Council was consulted by the Maritime and Coastguard Agency (MCA), on behalf of the Minister for Transport, concerning proposed transfer Ship by Ship (STS) of crude oil and other hydrocarbons by Melbourne Marine Services in the Firth of Forth.

Fife Council was also invited to comment on the revised and amplified oil spill contingency plans submitted to the MCA by Forth Ports plc and Briggs Environmental
Services Ltd. (BESL) on behalf of Melbourne Marine Services and on supporting information from Forth Ports and Scottish Natural Heritage.

Fife Council submitted a detailed reply on 9th May, 2006, to the MCA consultation highlighting technical and safety concerns this Council has in relation to the revised and amplified oil spill contingency plans forwarded to the MCA by Forth Ports plc and BESL, on behalf of Melbourne Marine Services, and on supporting information from Forth Ports and Scottish Natural Heritage. (Copy attached)

Legal Position

Fife Council has also sought the Opinion of Counsel to establish the legality of the proposals being taken forward, particularly in view of the European Court Justice Ruling on 20th October, 2005, which found against the United Kingdom for failing to transpose the EU Habitats Directive 92/43/EEC correctly into UK law to ensure the protection of sensitive coastal and marine habitats such as the Firth of Forth.

The Opinion, by R. Douglas Armstrong QC, confirms that the MCA, in deciding whether or not to approve the BESL STS OSCP along with any amendments to the Clearwater Forth Oil Spill Contingency Plan that would allow STS to go ahead, faces legal difficulties. The Council has, therefore, called on the MCA to either refuse to determine the proposed amendments to the plan or determine that they are not appropriate without recommending any amendment.

Fife Council has also reserved all rights competent to it to challenge any decision of the MCA in appropriate legal proceedings and nothing in its response to the consultation shall be held to waive or modify such rights as the Council may have in relation to this matter.

Fife Council believes that the absence of formal planning controls for a strategic venture of this magnitude is a completely untenable position and is calling for its refusal as it should not be approved in law.

It is also concerning that the final version of the Marine Pollution, The Merchant Shipping (Ship to Ship Transfers) Regulations 1999, still remain only in draft form. However, given the vast scale of the proposed STS activity in the Firth of Forth, Fife Council is of the view that the proposed regulations lack robustness and that associated safeguards would still prove insufficient.

Contingency Plans - Assessing the Risk

Having considered in detail the oil spill contingency plans, environmental impact and risk assessments and supporting documents supplied as part of the ministerial consultation, Fife Council is not persuaded that the proposed STS oil transfer activity is intrinsically safe at a location so close inshore and that further potential for marine accidents and consequential spills could arise particularly during mooring, transfer and unmooring phases.

The potential for an oil spill is significantly increased from existing levels and the effects of such a spillage, particularly a persistent Group IV substance such as Russian Export Blend Crude Oil would have a devastating effect on our tourism and fishing industries.
The damage to Fife's sensitive coastal habitats and wildlife would be incalculable and long lasting.

**Risks versus Reward**

Fife does not anticipate any economic benefit from the proposed STS operations and notes that even a minor spill could cost the Council millions of pounds in clean-up costs as well as extensive loss of revenue to Fife's fragile coastal economy before national or internationally agreed levels of compensation were awarded.

Given the concerns about potential damage to vulnerable environmental and vital economic interests along the Fife Coastline from an unforeseen oil spill and a lack of binding assurances concerning appropriate safeguards and preventive/mitigatory measures by the operators and statutory agencies Fife Council remains opposed to this proposal.

Fife Council has, therefore, recommended, in the strongest terms, that the MCA determine that the proposed amendments are not appropriate for dealing with oil pollution incidents which may occur in the area in which the harbour authority or operator has jurisdiction or exercises responsibility. Indeed, Fife Council considers that the MCA is legally bound to do so in order to properly comply with the Habitats Directive 1994 regulations.

I trust the foregoing adequately explains the Council's position on this issue but please do not hesitate to contact me should you have any queries.

Yours sincerely,

Douglas Sinclair,
Chief Executive.
FIFE COUNCIL RESPONSE TO MCA CONSULTATION ON PROPOSED SHIP TO SHIP TRANSFERS OF OIL IN FIRTH OF FORTH

1. INTRODUCTION

1.1 As a stakeholder in the Clearwater Forth Oil Spill Contingency Scheme Fife Council has been consulted by the Maritime and Coastguard Agency (MCA), on behalf of the Minister for Transport, concerning a proposal by Melbourne Marine Services to conduct Ship to Ship (STS) transfer of crude oil and other hydrocarbons in the Firth of Forth.

1.2 Fife Council has been invited to comment on the revised and amplified oil spill contingency plans submitted to the Maritime and Coastguard Agency (MCA) by Forth Ports plc and Briggs Environmental Services Ltd (BESL) on behalf of Melbourne Marine Services and on supporting information from Forth Ports and Scottish Natural Heritage.

1.3 A technical reply was submitted by Fife Council on 29th April 2005 to the MCA, copied to Forth Ports, following an earlier consultation by Aquatera, Environmental Consultants for Melbourne Marine Services, concerning proposed STS activities in the Firth of Forth.

1.4 This current report forms Fife Council’s updated reply to technical and safety issues identified in the following documents provided by the MCA in the latest consultation package:

- STS OSCP for Oil Transfer Operations in the Firth of Forth - BESL Nov. 2005
- Revised Clearwater Forth Oil Spill Contingency Plan – Forth Ports plc Nov. 2005
- Assessment of Oil Spill Risk from STS Operations - Aquatera Nov. 2005 Revision 3
- Environmental Impact Assessment of STS Operations - Aquatera Nov. 2005 Revision 2
- Scottish Natural Heritage’s detailed comments - Nov./Dec. 2005

2. BACKGROUND

2.1 Fife Council has already registered its opposition to these proposals at the meeting of its Environment and Development Committee in March 2005 when members voted unanimously against this undertaking. This decision was subsequently ratified at the full meeting of Fife Council in April 2005.

2.2 Further measures agreed by Fife council included the submission of a Resolution to the North Sea Commission in June 2005 calling for a European strategy to deal with the threat from STS oil transfer operations in inshore waters. The council also agreed to lobby representatives at all levels including MEPs, MPs and MSPs to invite support for the council’s position.
2.3 Fife Council has also joined with other maritime local authorities in the Firth of Forth including East Lothian and City of Edinburgh Councils who have voiced similar objections to this proposal.

3. LEGAL POSITION

3.1 Fife Council also agreed to seek the Opinion of Counsel to establish the legality of the proposals being taken forward, particularly in view of the European Court Justice Ruling on 20th October 2005 which found against the United Kingdom for failing to transpose the EU Habitats Directive 92/43/EEC correctly into UK law.

3.2 The Opinion, by R. Douglas Armstrong QC, confirms that the MCA, in deciding whether or not to approve BESL STS OSCP along with any amendments to the Cleanwater Forth Oil Spill Contingency Plan that would allow STS to go ahead, faces legal difficulties.

3.3 These difficulties can be broken down into four parts:

(a) The case of European Commission v UK holds that there is no proper transposition of the Habitats Directive into UK law. This has far wider implications for the UK government than the approval of ship to ship transfer operations. It is understood that the 1994 regulations are to be amended in September this year.

(b) However, in the specific context of ship to ship transfer, the lack of any proper regulatory framework requiring the proper assessment of plans and projects under the Directive makes it even clearer that there is no provision in terms of the domestic legislation for such an assessment to be carried out in advance of a plan proceeding, and for that plan to be halted if it is found to contravene the Habitats Directive. The Council has commented elsewhere in this response on the inadequacy of the current draft STS regulations. Unless and until a proper legal framework exists, both importing the Directive and allowing refusal of any plan or project which might breach it, the MCA perils itself in coming to a decision on these proposals which allows them to proceed.

(c) Notwithstanding the current lack of a legal framework, Counsel considered what current regulations the MCA should have regard to if it did decide to proceed to a decision. He considered that the MCA would have to have regard not just to the Merchant Shipping (Oil Pollution Preparedness Response and Co-operation Convention) Regulations 1998, but also the Conservation (Natural Habitats, Etc) Regulations 1994 (“the 1994 Regulations”). It seems clear, from case law such as R (On the application of Friends of the Earth) -v- Environment Agency [2004] Env. L.R. 31, that the proposals would constitute a ‘plan’ for the purposes of the regulations. If the MCA fails to have proper regard to the 1994 Regulations, then it renders itself open to challenge on a separate ground.
(d) In the Council's view, it is difficult to see how the MCA could justify agreeing to a planned operation the consequences of which, in the event of an oil spill, would be disastrous for the marine environment in the Firth of Forth. Recent European case law, such as Waddenzee, 127/02, supports this view. This goes far beyond an assessment of contingency measures which assume the underlying acceptability of such proposals.

3.4 The Council calls on the MCA therefore to either refuse to determine the proposed amendments to the plan or determine that they are not appropriate without recommending any amendment. The Council reserves all rights competent to it to challenge any decision of the MCA in appropriate legal proceedings and nothing in this response shall be held to waive or modify such rights as the Council may have in relation to this matter.

4. **SCOPE OFSTS CONSULTATION**

4.1 Fife Council has informed the MCA of its dissatisfaction with the scope and nature of the consultation and has expressed these concerns separately in writing on 21 March 2006. It is our view that the consultation is neither fair nor transparent as respondents are constrained to commenting on the adequacy of the oil spill contingency plans and not the underlying principle of whether ship to ship oil transfers should be taking place at all in the Firth of Forth.

4.2 Fife Council therefore reserves its rights to found upon this point in future proceedings but will, nevertheless, participate in the ongoing consultation believing that it must avail itself of every opportunity to make representations against these proposals.

5. **MELBOURNE MARINE SERVICES STS OIL SPILL CONTINGENCY PLAN FOR OIL TRANSFER OPERATIONS IN THE FIRTH OF FORTH – BESL FEBRUARY 2006**

5.1 Fife Council’s comments/observations on the STS Oil Spill Contingency Plan prepared by BESL on behalf of Melbourne Marine Services are listed below:

5.2 **Scope and Purpose of the Plan**

Para. 2- It is concerning that the Merchant Shipping (Ship to ship Transfers) Regulations 1999 remain in draft form. The lack of an effective regulatory framework inevitably means that that those engaged in STS activities lack proper accountability. It will also prove difficult to apply strict liability in the event of any breach of the draft regulations.

5.3 **Phase One/Three- The Approach/Transfer/Post-Transfer Phases**

The proposed mooring/unmooring arrangements assume the availability of tugs to assist with manoeuvring operations. However, MMS currently propose that tugs would only be on station for berthing/un-berthing operations. What provision exists for tugs to provide emergency handling of STS vessels if they become
separated for any reason, break free from their anchors, or drift without power as has happened elsewhere in the Forth in recent years?

The availability of tugs for emergency manoeuvres is further compromised if one takes into account that they could be locked in at their home base of Leith Docks at Low Water. MMS have consistently failed to provide assurances on how they would overcome these problems. MMS have also declined to confirm transit times for tug deployment, particularly from Leith at Low Water, or from other working areas upriver to the M1/M2 anchorages?

This is unsatisfactory and at complete variance with operational arrangements for hydrocarbons transfers of ships at permanent facilities elsewhere in the Firth of Forth such as the Hound Point Marine Terminal and Braefoot Bay Marine Terminal where dedicated tugs are in constant attendance, able to intervene immediately in the event of developing problems.

This implies that Fife Council and other stakeholders will require to accept reduced vessel handling and control capability which in turn must lead to lower safety standards at the proposed STS anchorages to those in force at permanent marine installations in the Forth.

5.4 Vessel Design

Fife Council is reassured to some extent that vessels involved will be double hulled but seeks further assurances that vessels involved will be subject to inspection by independent certifying bodies such as Lloyds' or Det Norske Veritas (DNV) to ensure they comply with relevant standards set by IMO/MCA/FP for safety, maintenance and seaworthiness applicable to other vessels visiting port facilities in the Forth.

5.5 Proposed Vessels and Oil Types

Para. 3.2 Location and Brief Description of STS Transfer states that STS operations will involve Ultra Large Crude Carriers (ULCCs). However, in Para 3.3.1 ULCCs are omitted from the list of vessels potentially involved. As ULCC displacement can exceed 500000 m$^3$ as well as having greater stopping distances than other tanker classes, does this indicate a higher degree of risk?

5.6 Hoses

Fife Council considers that the scenario for hose failure involving the loss of 137 m$^3$ in a three minute period should be viewed as the most probable spill quantity released and not the more conservative 12 m$^3$ estimated by MMS. However, Fife Council would contend that this scenario falls considerably short of a worst case event when even a minor collision between two STS vessels could result in a spillage involving several hundred, if not thousands of tonnes of crude oil.

5.7 Third Party Collision

Fife Council acknowledges that control of shipping movements in the Firth of Forth is exceptionally well managed under the auspices of Forth and Tay
Navigation Service. Nevertheless, the possibility of a catastrophic tanker collision involving a third party ship with STS vessels cannot be discounted, particularly in foggy conditions, leading to major environmental impact on both aquatic and terrestrial habitats, from any subsequent spillage.

5.8 Groundings

The risk assessment modelling for accidental grounding scenarios undertaken by Aquatera needs to be subject to independent evaluation by MCA or other competent authority.

5.9 Anchor Dragging

Risk assessment modelling for accidental anchor dragging scenarios undertaken by Aquatera also needs to be subject to independent analysis by MCA or other competent authority. Fife Council is concerned that Transco may not have been adequately consulted on the threat to the National Transmission 42" gas pipeline running slightly east of the proposed moorings.

5.10 Operational Spillage

There is an inconsistency here with MMS claiming that operational spills tend to be small, the majority under 1 m³, as a result of hose ruptures, failure of connections or tank overflow. In Para. 3.3.2 Hoses- they concede that the most likely spillage will be in the order of 12 m³.

5.11 Shipping Accident Spillage

However unlikely, the possibility of a shipping accident related spillage has to be considered including the loss of the entire cargo. Fife Council is unable to find the Risk Assessment Section 3.8 in the plan and therefore views with considerable scepticism, the claim by MMS that it has considered the likelihood of such occurrence.

Similarly, MMS has failed to properly evaluate the impact of such spills. In determining the likelihood and potential size of any oil spill Aquatera has leaned toward extremely cautious estimates of quantities involved. Fife Council feels spill modelling should have been based on the possibility of much larger spills of between 1000 and 60000 m³ which are more in line with credible estimates suggested by international guidance sources such as IP/IECA.

However, even these figures do not represent the worst case scenarios as the capacity of a single VLCC could exceed 300000 m³-MMS insist potentially larger spills (1000-60000 m³) are not credible STS occurrences. Fife Council's view is that all tanker operations including STS activities increase risk of large scale spills especially in worst case scenarios such as collisions/groundings with the consequential loss of tank/vessel integrity.

5.12 Fire or Explosion
Fife Council is not persuaded that the different risk level suggested by MMS for STS vessels from fire or explosion is as high as 1 incident per 312/385 year period when they have already conceded in the previous paragraph that, typically, accidents of this nature occur once in every 100 years of tanker operations. In any event the completely random and unpredictable nature of such events means that such an occurrence could happen tomorrow.

We are extremely concerned by the lack of dedicated firefighting equipment for STS operations, both land based systems and on-board tugs, that is available at permanent facilities such as HPMT and BBMT.

We are aware that Lothian and Borders Fire Brigade has accepted the lead role with a trained cadre of firefighters for firefighting operations at sea. However, this response arrangement would take time to implement and is not an adequate substitute for firefighting tugs which can immediately bring waterborne systems including remotely operated foam/water cannons to bear on any fire outbreak on board a STS vessel.

MMS has a duty to set clear expectations and define responsibilities for front line responders at the local level, to ensure that they can deal with the full range of emergencies from minor incidents through to catastrophic events.

5.13 Table 3.1 Potential Oil Spill Causes from STS operations

Fife Council wishes to query, when describing weather operating parameters, why the wind speed upper limit is referred to in this table as 27> knots but elsewhere as 35> mph. The same value should be used throughout to avoid confusion.

It is also unclear who will be responsible for suspending STS operations when weather maxima are exceeded. During prolonged periods of severe weather we believe that those responsible for this decision will be under considerable commercial pressure to continue /resume operating.

An independent authority such as HM Coastguard should be able to request the suspension of STS activities when upper weather limits are exceeded.

Fife Council remains unconvinced at the adequacy of mitigation measures to prevent oil impacting along the Fife coast in the event of a potential oil spill arising from one of the causes described.

5.14 Table 3.2 Oil Spill Frequency During STS Operations

Fife Council requests that these data be subject to independent analysis.

5.15 Table 3.3 Synoptic Overview of Past, Present and Future Oil Spill Risks in Firth of Forth

Fife Council queries the comparison of possible future levels of risks with those that applied in 1998, the previous peak in oil activity. As STS operations were never previously conducted in the Firth of Forth this is an invalid comparison. We
suggest therefore, that the percentage increase of 33% to existing risk from STS is the figure which we should be concerned about.

5.16 Spill Probability Conclusion

Despite assurances from MMS and Captain R. Baker, Chief Harbourmaster, Forth Ports plc., both verbal and written, that a stand-by vessel would be constantly on-station to initiate immediate pollution response at the STS moorings, Para. 4 states that this craft will only be on-site at the commencement and completion of loading and moored at Burntisland Harbour for quick response at all other times.

Fife Council remains unconvinced that MMS and its contractors are adequately prepared and willing to commit sufficient resources to ensure a speedy, responsive and effective containment and recovery operation in the event of an oil spill.

Risk modelling of individual hydrocarbon product specifications is welcomed as the degree of impact on either the aquatic or land environment will vary depending on the properties and characteristics of the particular substance involved. It is acknowledged that time scales involved with spill diffusion will also vary. The admission that a substance such as a Group IV Russian Export Blend Crude Oil, a particularly heavy and persistent oil, could come ashore very rapidly (slightly over 2 hours) given the right combination of wind direction/ speed and tide state is a matter for serious concern.

5.17 Oil Spill Modelling

The revised accident scenarios, scale and frequency postulated by Aquatera do not appear to have been subject to independent analysis and verification by the permitting authority. Local Authorities are dependent on expert advice from bodies such as the Maritime and Coastguard Agency to assess the likely probability or scale of such occurrences.

Trajectory modelling of oil spills is another area where LAs have no expertise and again would have to rely on the MCA or other agencies to provide accurate predictions of where, when and in what quantity oil afloat was likely to come ashore possibly through the use of deterministic modelling programmes such as the Oil Spill Indication Survey(OSIS).

Stochastic modelling examples have also illustrated the potential impact on other areas of sensitivity in the Forth at potential risk on environmental, biological, recreational and commercial grounds. MCA should provide independent verification of Deterministic/Stochastic Spill Models by Aquatera as described in the Risk Assessment.

5.18 Receiving Environment

This section fails to refer to the Blue Flag beaches at Aberdour, Burntisland and Elie and other designated bathing waters at High Amenity beaches at Kinghorn, Leven and Largo Bay.
The Fife coastline forming the northern shore of the River Forth and Firth of Forth extends 90 km from Kincardine to Fife Ness. The Fife coastline and inshore waters of the Firth of Forth contain many areas of environmental sensitivity including designated coastal nature conservation sites. These include National/Local Nature Reserves, SSSIs, Wildlife Sites, SWT Reserves and a Special Area of Conservation.

The Firth of Forth has RAMSAR status and is also designated as a Special Protection Area. The Isle of May and Bass Rock have also recently been listed at Marine Extreme High Risk Areas (MEHRAs). In addition there are EC designated shellfish growing areas and inshore fisheries in Fife’s coastal waters mainly around the East Neuk area.

5.19 Mechanical Containment and Recovery

MMS openly acknowledges that depending upon the category of hydrocarbon product and its spreading and thinning characteristics that there are few coastal sites along the Fife Coastline where containment and recovery measures can be employed. Similarly, it concedes that little in the way of large scale protection will be possible to protect the extensive sensitive areas within the Firth of Forth.

This is a wholly unacceptable admission by MMS as Fife Council would hold any persons/organisation causing pollution to be entirely responsible for its clean-up and the restoration of any coastline affected to its original condition.

5.20 Containment

There is a further reference in this para. to the BESL pollution response vessel not being constantly on station as promised but only being present during initial start-up and topping-off operations and at all other times being on stand-by at a close by harbour which presumably refers to Burntisland. Again Fife Council finds this arrangement completely unacceptable for rapid and effective response to any spills that might arise.

5.21 Figure 4-1 Single Vessel Side Sweep system

Fife Council notes that the response vessel will only be equipped with a 10 tonne deck tank recovery tank which we believe offers insufficient capacity for waste oil recovered following any spill. Returning to base to empty the tank would also allow further diffusion of any oil spilled to take place thereby exacerbating the problem.

We would dispute the description in the last para. of the Firth of Forth as an enclosed and confined waterway and would therefore question the efficacy of the containment/recovery strategy outlined.

5.22 Recovery

We remain concerned that as the main STS transfers are likely to involve Group IV Russian Export Blend Crude Oil that equipment to contain and recover
significant quantities of this highly persistent oil in the event of a spill is not available in sufficient quantity in the Firth of Forth to enable rapid and efficient recovery.

5.23 Waste Disposal

We would question the assumption that Shanks and McEwen can dispose of oiled materials in any quantity. The MCA will be able to confirm that this issue continues to tax the minds of emergency planning officers, waste management officers and pollution control specialists alike. In the absence of a detailed national waste management strategy, claims such as this do not provide local authorities whose coastline has been impacted by any spill with any reassurance in this regard.

5.24 Final Disposal

The absence of a policy for the acceptance of oiled solids into landfill and the assumption of approval by SEPA, along with the real possibility of this being regarded as Special Waste, makes this proposed disposal arrangement highly suspect and is an area requiring further consideration by all parties.

5.25 Containment and Recovery

Step 6- Waste Disposal - Query the assumption that the local authorities will be responsible for the disposal of oil and oily waste.

5.26 Appendix G- Additional Consultation( MMS Responses to SNH Consultation Comments)

Page 64- General Overview

Fife Council wishes to challenge the assertion by MMS that the Firth of Forth is only one of a number of estuarial locations around the UK containing controlled harbour areas within which the MCA would prefer ship to ship oil transfers to take place. It is inferred by MMS that STS activities would be welcome at these other locations.

This is a misrepresentation of the current situation as Fife Council has ascertained that only in Scapa Flow would there be active support for the type of STS operations planned for the Forth of Forth. All other local authority areas canvassed by Fife Council have expressed their complete opposition to STS on a swinging anchor basis as too high risk an activity to tolerate in sensitive inshore waters.

Page 65- STS Extending Existing Port Operations

Again MMS distorts the reality of existing oil transfer operations at fixed installations in the Firth of Forth which have fire and safety facilities and pollution control resources immediately available. MMS differentiate between STS activities alongside jetties (which Fife Council has not opposed) and STS in
coastal waters (which Fife Council is opposed to) but then imply that these are comparable activities.

Fife Council maintains that these are distinct operations with different levels of associated risk with the former method posing a lesser threat.

There is a much reduced risk when vessels are tied alongside a jetty where evacuation arrangements, firefighting, emergency shutdown and pollution response measures can be brought to bear than at a free floating anchorage. Additionally, there are recovery systems in place at the permanent facilities situated around the Firth of Forth to capture harmful emissions. MMS has failed to give assurances that technical solutions have been found for effective vapour recovery/balancing during STS operations.

Para. 2- MMS suggest that of the 37 million m³ of oil and hydrocarbon products exported from the Firth of Forth each year that 24 million m³ of crude oil is transferred in open water. This is also disingenuous as the bulk of existing transfers occur at the HPMT involving Forties blend crude, a light oil which, if spilled into the aquatic environment, would cause much less damage than Group IV REBCO heavy fuel oil which will form the bulk of the proposed STS transfers.

There is the further consideration that the permanent installations involved where hydrocarbons transfers take place provide considerable revenue to the local authorities concerned through business rates, the provision of permanent local jobs and enjoy a successful environmentally responsible reputation. In any Risk v Reward equation local communities derive considerable benefits, both direct and indirect, from the presence of the oil majors at the permanent installations which would not be the case with transient STS operations.

MMS also claims that where existing equipment within the Forth is unsuitable for recovery and handling of particular materials, that provision has been made for new equipment to be purchased. Fife Council has seen no evidence of any such purchases and contends that the existing counter-pollution resources available under the auspices of the Clearwater Forth plan is unsuited to the recovery of heavy fuel oil types such as REBCO.

Page 66 - Overall Approach to Environmental Studies

Para 2- MMS claim that the proposed STS operations present only limited alterations to the oil handling activities in the Firth of Forth. Given the enormous scale of this undertaking the size of vessels involved and the substantial risk to the fragile but diverse marine and coastal environments in the Firth of Forth, Fife Council does not accept that this undertaking falls within the description of only "limited alterations".

Fife Council also challenges the claim that "ship-to-ship operations in themselves are no more risky than existing oil transfer operations further up river". In its own risk assessment of this proposed undertaking MMS has accepted that there will be a 33% overall increase in risk.

Page 68 – MMS repeat the assertion that there are only small material differences between risks presented by existing oil transfers and proposed STS
operations which again Fife Council would dispute. There is also a suggestion that specialised equipment necessary for dealing with a fuel/oil spill will be made available but to date Fife Council has seen no evidence of such provision.

Page 70 – Environmental Impact Assessment and Oil Spill Risk Assessment

Para 3- MMS repeat the claim that STS operations are no riskier than jetty-based operations. There is a total lack of consistency here as this view differs from the conclusions in their earlier risk assessment which accepts an increased risk from STS activities. Neither does Fife Council accept the claim that the proposed moorings in the Firth of Forth make any vessels involved less exposed to shipping risks such as collision and grounding than permanent operational bases in the Forth.

The claim by MMS that the oil spill risk assessment deliberately focused on an assessment of incidents rather than consequences is puzzling. Fife Council has uncovered STS incidents such as the M/T Mega Borg spillage which caused a massive spillage of oil (65 000 m³) into the Gulf of Mexico off Galveston in 1990 which does not feature anywhere in the Risk Assessment case studies prepared by MMS.

Page 71 Para 6 – MMS claim that similar STS operations have already been approved in other areas of the UK equally sensitive from a wildlife and tourism standpoint and refers specifically to the Cromarty Firth, Sullom Voe and Scapa Flow. Fife Council disputes this claim as STS operations similar to those proposed in the Firth of Forth have never been permitted by the harbour authority in either the Cromarty Firth or Sullom Voe.

It is only in Scapa Flow where the Harbour Authority has additional capacity that it is willing to accept STS operations on a free floating swinging anchor under relevant conditions. There are considerable operating differences in Scapa Flow to the Firth of Forth. Firstly, there is appropriate infrastructure with assured tug cover, fire-fighting safety and pollution response resources immediate availability and no threat of tugs being locked in as at Leith.

The Harbour Authority for Scapa Flow is the local authority, Orkney Islands Council. This ensures a number of benefits to the local communities as it provides a direct revenue stream to the council, tighter control over STS operations and pollution risk. As a result STS is generally welcomed in an area where there has been a downturn in oil throughput in recent years.

6. CLEARWATER FORTH OIL SPILL CONTINGENCY PLAN – FORTH PORTS
   NOV. 2005

6.1 The following comments by Fife Council pertain to aspects of the revised Clearwater Forth Oil Spill Contingency Plan prepared by Forth Ports plc:

a. Action Checklist
Is there a potential conflict here with pollution control resources earmarked for deployment at spills at permanent facilities such as Hound Point Marine Terminal and Grangemouth Docks also assumed to be available for spills that have arisen in the course of STS transfers?

There is also concern that the bulk of existing counter-pollution resources available in the Firth of Forth, declared as assets under the CWF plan, may be of the wrong type to be of any use in interdicting a spill involving heavy oil products such as Russian Export Blend Crude which would require to be recovered principally by vacuuming techniques.

Currently the majority of equipment stockpiles maintained by different organisations are geared primarily to containing, recovering and cleaning up Forties blend crude, the primary throughput in the Forth, which being of much lighter consistency will evaporate more quickly with residual oil being more amenable to recovery by conventional skimming techniques.

Heavy fuel oils are exported from the Grangemouth refinery up river but not in the quantities proposed by Melbourne Marine Services and HFO cargoes are not loaded by ship to ship transfer method. Grangemouth Refinery underwent a change of ownership in 2005 with new owners Innoven (replacing BP but this has had no significant effect on the range and quantities of products released from this establishment or working practices for the loading of hydrocarbon cargoes, at least in the short term.

MMS have failed to confirm whether counter-pollution equipment available in the Forth under the auspices of the Clearwater Forth Oil Spill Contingency Plan or the STS Oil Spill Contingency Plan is of the correct type and specification and fit for purpose, is available in sufficient quantities, and will be provided by the owners of the equipment in the absence of binding contracts with other Port Operators or Forth Ports.

b. Response Strategy Guidelines -

The Firth of Forth enjoys international, European and national environmental sensitivity designations being both a Special Protection area and RAMSAR, and containing areas of outstanding natural beauty, SSSI, special areas of conservation and extensive vulnerable seabird and sea mammal populations.

Areas most at risk from an oil spill along the Fife shoreline in the vicinity of Largo Bay comprise Zone 1/Zone 2 near shore waters/foreshore where dispersant use should be avoided. The primary coastal defence would be deflection booming with inflatable booms deployed as necessary.

However, as there are insufficient boom stocks available locally to provide the level of protection required extensive areas of amenity beaches and environmentally sensitive coastline would be placed at risk.

The use of dispersant spraying as a counter-measure is most unlikely as consent of the Scottish Executive Environment and Rural Affairs Department (SEERAD) would need to be obtained. Approval for the use of dispersant must
be applied for, in water depths of less than 20metres and waters extending 1nm from the 20metre contour.

No indication is given of the response times for mobilisation/deployment times to the scene of the spill by Briggs Environmental Services Ltd. (BESL) as the Tier II contractor - from seaward and landward directions. As BESL is also Fife Council’s Tier II Response Contractor the local authority needs to be assured that the company has sufficient resources to implement seaborne containment/recovery and coastal protective operations simultaneously and within acceptable time scales.

Similarly, no reference is made to arrangements for storage and disposal arrangements of any oil or oiled waste recovered in the event of a spill in compliance with environmental and waste management regulations. Any oil solids recovered from the foreshore or sea will probably be treated as special waste and would require to be disposed of in a site licensed to accept hazardous waste by a carrier approved by SEPA and not be sent to landfill.

This is a logistical problem of potentially massive proportions that operators/developers consistently fail to address when preparing contingency plans. The local authority has no statutory responsibility for co-ordinating the disposal of oil waste and detailed discussions are required with SEPA in order to identify temporary, intermediate and final storage sites.

Fife Council does not accept that adequate stocks of inflatable boom are available locally. Given the enormous lengths of coastline to protect (potentially 30/40 km) where deflection/diversionary booming would be the only effective safeguard there is insufficient availability of boom stocks to provide the degree of protection required especially with a Group IV Russian Export Blend Crude oil type. Nor would there be enough time or sufficient physical resources to undertake deflection booming of sensitive coastline and estuaries on the scale required within the Firth of Forth.

There is a presumption by MMS that SEERAD will reply favourably to any request for a standing consent to carry out dispersant spraying in the deep water in the vicinity of the M1/M2 moorings but this has never been subject to process of approval.

MMS have failed to give a satisfactory response to the question of mobilisation times from seaward and landward directions under Tier I and Tier II response arrangements. Response time will only be instantaneous on board the STS vessels—any response on the sea or land would be greatly delayed. Similarly, MMS has failed to explain adequately what arrangements they have planned for containment, recovery and final disposal of oil on the water, the success of which operation would be entirely dependent on favourable weather conditions. The assurance that it would be disposed to tankers or barges is also lacking in detail.

c. Spill Assessment and H & S Guidelines-

It is suggested that in the initial stages of any spill, slick tracking would be carried out using the duty tugs. No assurance is provided that tugs will be permanently
alongside vessels during STS operations or that a pollution response vessel can deploy quickly from its operating base at Burntisland to provide a rapid response in the event of a spill.

What guarantees can Forth Ports and operators give for the availability of tugs particularly when there are likely to be competing demands for the limited number of these vessels in the Forth at primary locations such as Hound Point and Braefoot Bay?

In the event that they are not alongside during STS activities what response times would be involved in deploying tugs from Leith particularly if they are locked in or normal working areas upriver such as HPMT or BBMT to the M1/M2 anchorages? Also, what provision is there for tugs to provide emergency vessel handling in order to regain control of STS vessels if they become separated for any reason or break free from their anchors and drift without power as has happened elsewhere in the Forth in recent years.

Presumably MCA and the Harbour Authority would be responsible for enforcing safe methods of working by the operators in order to protect the health and safety of its employees and other water users including local fishermen and recreational sailors in the area perhaps through the establishment of marine exclusion zones particularly during pumping operations.

MMS claim to be able to guarantee that sufficient resources will be available to manage STS transfers. However, they have failed to provide assurances regarding the need for tugs to be available throughout all STS operations as is currently the case at permanent facilities such as Hound Point Marine Terminal. They have also failed to confirm mobilisation times for tugs. Nor is there any indication of the deployment time for the Briggs Pollution Response craft from Burntisland.

Fife Council is not persuaded that these arrangements are sufficiently robust to respond quickly to deal with any vessel handling or pollution problems that may arise. STS vessel based equipment for pollution response provides only a partial solution.

d. Equipment Resources

The presence of a support craft during the start-up and completion of STS operations is mentioned along with a Tier II response Service Level Agreement with Briggs Environmental Services Ltd. Fife Council believes this vessel should be permanently on station during STS operations if an efficient and effective response is to be mounted to unforeseen pollution events.

The Tier II response by Briggs would take time to implement and there is no detailed information on readily accessible pollution control resources to ensure immediate containment and recovery for incidents involving a more limited Tier I incident.

Fife Council acknowledges that there may be sufficient resources on board mother/daughter ships to deal with shipboard minor spills. However, it is still
unconvinced that the Pollution Support Craft can respond within an acceptable
time scale to spills. The local authority is not reassured by statements by MMS
that the support craft will be on standby during startup and completion of STS
transfers and on short notice deployment during transfer operations. The council
seeks nothing less than a constant presence during transfer operations.

e. Priority Sensitive Areas - Firth of Forth Harbour Area

The Firth of Forth Harbour Area in addition to being designated as a Special
Protection Area/RAMSAR site contains a number of Priority Protection Areas.
Largo Bay has been designated as a Group A1 location indicating acute
sensitivity on a number of counts including a nationally important bird site,
national nature reserve and a habitat of key vulnerability to oil pollution.

The outer edge of the near shore waters of the Largo Bay Priority Zone is less
than 2km from the M4/5 anchorages where the STS operations are planned to
take place.

Fife Council maintains that the planned anchorage is situated too close to fragile
coastal habitats such as the environmentally sensitive shoreline of Largo Bay.

Appendix 1 - Compensation and Legal Matters –

The experience of cleaning up oil spills in other coastal areas of the UK in recent
years confirms that the local authorities involved have encountered significant
difficulties in attempting to recover costs incurred by them or to obtain
compensation where appropriate.

If STS operations were to go ahead stakeholders, harbour area users and
coastal local authorities would need operators to demonstrate that they had
adequate insurance cover to meet all liabilities arising from an unforeseen oil
spill particularly cover for public liability.

The legal framework governing the strict liability of tanker owners for
compensating potential claimants of pollution including local authorities is
defined in the International Convention on Civil Liability for Oil Pollution Damage
1969 and the International Convention on the Establishment of an International
Fund for Compensation for Oil Pollution Damage 1971

The provisions of the Protection and Indemnity (P & I) Club as insurers of the
tanker owners, the role of the International Tanker Owners Pollution Federation
Ltd. (ITOPF) and the International Oil Pollution Compensation Fund (IOPC)
would need to apply throughout.

Presumably legal obligations on the operator would be enforced by the Harbour
Authority and MCA although STS activities would also come within the control of
other regulatory bodies such as SEPA and LA Environmental Health services.

Fife Council would also seek assurance that relevant parties had been properly
indemnified against liability, including costs and legal expenses, arising out of
the negligence of the operators, its employees, sub-contractors and agents.
The IOPC Fund is intended to offer compensation for spills involving persistent oil and Fife Council needs assurances that other sources of compensation would be available for non-persistent oil types but which could still cause massive ecological, environmental and economic damage in even the short to medium term.

Local authorities manage the response to maritime oil spills and subsequent shoreline clean-up on a purely voluntary basis under Section 138 of the Local Government Act. There is no specific central government funding for these activities with councils having to rely instead on the wholly unsatisfactory "polluter pays" principle as the basis for attempting to recover costs.

Following the response to the Erika and Prestige oil spills which involved HFO types similar to Russian Export Blend Crude Oil (REBCO) it was necessary to increase the International Oil Pollution Compensation Fund (IOPC) as there were insufficient funds to meet the total compensation claims submitted by the French and Spanish Governments and other parties.

Many of these claims involved repayment for direct costs incurred for the provision of labour and equipment in clean-up operations and indirect costs through loss of tourist revenue, and the economic impact on commercial interests such as fisheries, marine sports activities etc.

A similar event in Fife coastal waters would in all probability produce a situation, depending on the size of the spill, where costs involved would not be fully recoverable by the local authorities and others affected from insurance and compensation fund sources due to inadequate funds.

MMS has declined to comment on concerns regarding the inadequacy of funding sources to provide reliable recovery of costs for pollution clean-up or the provision of compensation to local authorities, businesses and individuals affected by the impact of any spill. Fife Council insists that these issues are properly addressed in any consideration of approval process as adherence to the "polluter pays" principle as a mechanism for cost recovery has proved to be unreliable and hopelessly ineffectual.

Fife Council reserves its rights, in the event of approval being granted, to seek recovery of all costs incurred by it in relation to the above matters by legal action against all parties involved in the approval process.

7. ENVIRONMENTAL IMPACT ASSESSMENT – AQUATERA REVISION 2 NOVEMBER 2005

7.1 The following comments by Fife Council pertain to aspects of the revised Economic Impact Assessment prepared by Aquatera Environmental Consultants on behalf of MMS:
a. Introduction of Alien Species/Discharge of Ballast Water

The major operating difference between Scapa Flow and the Firth of Forth is the requirement under Orkney Islands Council bye-laws for ships involved in STS oil transfer operations to discharge ballast water in open waters at the former location. This necessitates receiving vessels shuttling back and forward from the Flow to sea at intervals to perform this operation, considerably adding to the time required for each transfer.

We believe that as this adds significantly to operating costs, especially vessel charter times, it acts as a financial disincentive to operators such as MMS to undertake STS activities in Scapa Flow. Operating in the Firth of Forth where similar restrictions would not apply clearly offers considerable cost-savings.

We can only conclude therefore that conducting STS transfers in the Firth of Forth in preference to Scapa Flow is solely a commercially based decision designed to reduce transfer times for any vessels involved.

The possibility of foreign species being discharged into local waters causing harm to indigenous species cannot be discounted as the mother vessels arriving with ballast in the harbour area would require to discharge ballast water into the marine environment of the Firth of Forth. On current projections this would be in excess of 2million m³ per annum.

MMS have failed to give assurances that alien species will not be introduced into the waters of the Firth of Forth. Fife Council accepts that there is greater water exchange and tidal effect potential in the Firth of Forth than Scapa Flow.

However, if the discharge of ballast waters is considered to be an environmentally and ecologically unsafe practice in Orcadian coastal waters it should not regarded as any more acceptable in the shallower waters of the Firth of Forth.

b. Other Pollution Pathways

Other pathways of potential pollution not referred to in the STS OSCP and proposed CWF amendments but described in the Environmental Impact Assessment (EIA) such as increased background noise levels from pumping operations and ship engines, unauthorised bilge flushing, increased light from anchored vessel floodlights, loss of visual amenity across seascape, and odour emissions from volatile organic compounds vented from tanks need further evaluation.

c. Air Quality/Emissions to Atmosphere

It is clear from the EIA that there will be significant emissions from the STS activities which will affect local air quality and have the potential to create odours which, regardless of modelling, could be detected on shore particularly from heavy crude oil. These could include harmful vapours such as H2S and Benzene, a known carcinogen.
Previous complaints from the public concerning emissions from other establishments, such as the Hound Point and Braefoot Bay marine terminals prior to installation of vapour recovery systems, indicate these were detected at some distance from both plants and does not seem to accord with the EIA claim that odours from STS activities will be imperceptible on shore.

It is anticipated that Pollution Prevention and Control Regulations consent would be required for STS activities by SEPA and that this would determine whether or not operations will comply with the Statutory Air Quality Objectives or be refused consent. We would wish to ensure this application process is followed as a minimum.

d. Noise Pollution

The information provided within the EIA is at best simplistic and could be seen as misleading. A full noise assessment of actual operations should be provided by a suitably competent Noise Consultant detailing the noise impact of all operations. Any assessment should include frequency analysis and cover STS transfer operations as well as associated vessel activities.

We would suggest, in addition, that should MCA consider acceptance of the proposals in any shape or form that they conduct its own Environmental Impact Assessment to consider hazard consequence of the complete range of associated risks as it is not practicable for Local Authorities to carry out this exercise in-house to the level required.

MMS have not disclosed if STS proposal is to be subject of a detailed application under PPC Regulations and what further environmental impact assessment work will be required to ensure compliance with Statutory Air Quality and Noise Pollution objectives.

e. Impact on the Fife Economy

Fishing and tourism are significant elements of the local economy and the quality of the environment along the North Firth Coastal zone, including the East Neuk are a key element in the promotion of Fife as a place to live, work, play and invest. It is inevitable, therefore, that a major oil spillage would have a direct impact on these industries and indirectly affect the Fife economy as a whole.

Fife Council does not agree that STS is calculated to impact positively upon the Fife economy. Instead it views STS activity as incompatible with economic and environmental interests in the area, both along its coastline and even into the hinterland, that could suffer adversely in the event of a sizeable oil spill.

f. Job Creation/Sustainability

The economic benefits in the Firth of Forth claimed by Aquatera in (the EIA Section 6.7) from the proposed STS operations are based on the creation of a total of 15.4 FTE jobs of which 13.4 would be locally based. The report suggests that typical employment multipliers of 2.5 could be applied to the marine handling operations, based on Scottish Executive’s Economic Multipliers indices.
Whilst the application of such a multiplier is thought to be optimistic, it is suggested that this would result in a net economic benefit of £4 million to the economy in the Firth of Forth. Based on the information supplied, this is considered a reasonable estimate of the potential economic impact, if the jobs estimate is valid.

Fife Council does not dispute the direct jobs figure claimed by MMS but suggests that these would not all be created in Fife but spread across the entire region with only minimal benefit to individual local authority areas.

g. **Tourism**

In 2005, approximately 6,000 people were directly employed in tourism in Fife, which generated some £200 million spending in the local economy. North East Fife is heavily dependent on tourism as a major source of local employment in what is essentially a rural area with few alternative sources of jobs.

A major oil spill would have considerable impact on the tourism industry in Fife, since many visitors are drawn by its unspoilt environment, heritage and golf. Extensive tourism interests along its coastline would be imperiled by any spillage including the increasingly popular Fife Coastal Path, links golf courses, caravan parks and historic East Neuk fishing villages, popular with both holiday-makers and day-visitor.

There is also a significant number of hotels and guest-houses in the area providing holiday and short stay accommodation along with various visitor indoor and outdoor attractions. To the west and east of Largo Bay there are High Amenity beaches at Leven, and Earlsferry and a Blue Flag beach at Elie used by bathers and water sports participants including sailors, wind surfers, divers, water-skiers, canoeists, fishermen etc.

There has been significant investment in infrastructure to support the East Neuk economy including new pontoons for visiting yachts at Anstruther Harbour along with other regeneration measures in the area to create a sustainable economy.

The Firth of Forth has also seen a growing increase in the number of cruise liners visiting this area in recent years which brings substantial benefits to ports of call and local visitor attractions. There is also a ferry service which operates between Rosyth and Belgium with plans for development of further routes to other European destinations.

Fife Council rejects the claim by MMS that STS would not have any adverse effect on tourism interests. Apart from increased noise pollution, odour emissions and visual impact there are serious concerns over bathing water quality and the ever present threat to beaches and fragile coastal habitats from pollution.

h. **Fishing**

Although, the scale of commercial fishing in Fife has declined dramatically over the past 20 - 30 years, it still provides 60 vital jobs in the coastal villages of Fife.
primarily based on the inshore fishing fleets at St. Monans and Pittenweem. There is also an established Fish Market at Pittenweem trading in catches of cod, haddock, herring, mackerel and flatfish.

In addition, Largo Bay remains an important breeding ground for a range of shellfish including clams, prawns and lobsters supplied to restaurants in the region as well as being exported abroad.

A major oil spill would have an adverse effect on the remaining fishing industry and it is recommended that additional evaluation be undertaken to establish the effect of a major oil spill on the fishing industry and breeding grounds in the area.

1. Protecting Wildlife

There are numerous seabird and sea mammal populations at risk in the Firth of Forth particularly the Outer Forth which has been designated as a Special Protection Area. The Largo Bay and East Neuk area contains breeding grounds and wintering areas used by indigenous and migratory bird species.

Offshore islands such as the Isle of May to the east of the proposed STS anchorages contain vulnerable wildlife populations of common and grey seals along with various types of waders, wildfowl and seabirds.

Fife Council thinks it inconceivable that fish and shellfish stocks, seabird and sea mammal populations will not be placed under increased risk of pollution, injury or a worse fate through oiling, loss of habitat or diminished food supplies in the event of spill. MMS has also failed to prepare a detailed plan to ensure the care and welfare on a potentially mass scale of any wildlife at risk including their rescue, recovery and treatment in the event of a spillage.

8. CONCLUSIONS

8.1 The absence of formal planning controls for a strategic venture of this magnitude is a completely unacceptable and untenable position and we call for its refusal as it should not be approved in law.

8.2 Having studied the oil spill contingency plans, environmental impact and risk assessments and supporting documents in detail, Fife Council is not persuaded that the proposed STS oil transfer activity is intrinsically safe at a location so close inshore and that further potential for marine accidents and consequential spills could arise particularly during mooring, transfer and unmooring phases.

8.3 It is also concerning that the final version of the Marine Pollution, The Merchant Shipping (Ship to Ship Transfers) Regulations 1999, still remain only in draft form. However, given the vast scale of the proposed STS activity in the Firth of Forth, Fife Council is of the view that the proposed regulations lack robustness and that associated safeguards would still prove insufficient.

8.4 The potential for an oil spill is significantly increased from existing levels and the effects of such a spillage, particularly a persistent Group IV substance such as
Russian Export Blend Crude Oil would have a devastating effect on our tourism and fishing industries. The damage to Fife's sensitive coastal habitats and wildlife would also be incalculable and long lasting.

8.5 Fife does not anticipate any economic benefit from the proposed STS operations and notes that even a minor spill could cost the council millions of pounds in clean-up costs as well as extensive loss of revenue to Fife's fragile coastal economy before national or internationally agreed levels of compensation were awarded.

9. RECOMMENDATION

9.1 Given the concerns about potential damage to vulnerable environmental and vital economic interests along the Fife Coastline from an unforeseen oil spill and a lack of binding assurances concerning appropriate safeguards and preventive/mitigatory measures by the operators and statutory agencies Fife Council wishes to register its strong opposition to this proposal.

9.2 Fife Council recommends in the strongest terms that the MCA should either refuse the application, or determine that the proposed amendments are not appropriate for dealing with oil pollution incidents which may occur in the area in which the harbour authority or operator has jurisdiction or exercises responsibility. Indeed, Fife Council considers that the MCA is legally bound to do so in order to properly comply with the 1994 regulations.

Submitted by Dr. R. McLellan, Head of Transportation Services, in his capacity as Deputy Head of Pollution Response, following consultation with Environmental Health, Waste Management, Economic Development, Law & Administration, Emergency Planning and Transportation functions of Fife Council.

EPU/PEP/3/17
28th April, 2006
Mr Richard Hough  
Assistant Clerk to the Public Petitions Committee  
The Scottish Parliament  
EDINBURGH  
EH99 1SP

Date  1 Oct 2006

Your ref

Our ref ph. of t,hough stw.kr

Dear Mr Hough

CONSIDERATION OF PETITION PE956

I refer to your letter addressed to the Chief Executive dated 2 October 2006 inviting comments and views on issues identified and raised in the above petition to the Scottish Parliament by Mrs Mary Douglas, ‘Downalong’, 6 St James Place, Kinghorn, Fife.

On 9 August 2005 the City of Edinburgh Council initially considered the proposals to introduce Ship to Ship oil transfers in the Firth of Forth and the decision was “to oppose the proposals on the grounds that it would increase the risk of pollution in the Firth of Forth and had the potential for serious consequences should a spill occur”. Again in 2006 the Maritime and Coastguard Agency (MCA) on behalf of the Ministry of Transport re-issued revised consultation to all stakeholders and again on 23 May 2006 this Council re-affirmed its previous decision to oppose these proposals. I have enclosed with this letter a copy of the report dated 23 May 2006 which includes the detailed response provided to the MCA on the proposed ship to ship oil transfer at anchor in the Firth of Forth.

Following an approach from Fife Council, the City of Edinburgh Council on 10 October 2006 again re-emphasised its continued opposition to ship to ship transfers of oil and agreed to work jointly with Fife and East Lothian Councils on possible legal action to challenge this activity going ahead.

The City of Edinburgh Council’s opposition to this proposal centres principally on the increased potential risk of pollution in the Firth of Forth and the serious consequences for the Forth should any spill occur especially in light of the intention to transfer Russian Export Blend Crude Oil (REBCO). REBCO is known to be a heavy and persistent oil which would have very serious consequences for any environment should a spillage occur. The Firth of Forth is designated an international RAMSAR status and is also designated as a Special Protection Area. The Isle of May and the Bass Rock are listed as Marine Extreme High Risk Areas (MEHRAs) and the coastline and inshore waters of the Forth include areas of environmental sensitivity and designated coastal nature conservation sites.

GORDON GREENHILL  
HEAD OF SERVICE, COMMUNITY SAFETY  
Natalie Hoy, Acting Environmental Health Manager  
Chesser House, 500 Gorgie Road, Edinburgh EH11 3YJ  
Tel 0131 469 5925 Fax 0131 469 5933  
stephen.walker@edinburgh.gov.uk
This Council, together with other Local Authorities around the Firth of Forth are partner agencies in the Clearwater Forth response scheme which is a contingency arrangement maintained by Forth Ports plc for responding to oil and chemical pollution incidents in the Firth of Forth. Under oil spill contingency arrangements Local Authorities are expected to manage beach clean-ups following an oil spillage and as currently no direct funding is available to prepare for such an eventuality. Local Authorities around the Forth do not retain counter pollution equipment such as booms or specialised oil recovery equipment.

Although it is suggested that this operation could add an estimated eight million tonnes to the Forth Ports operation, the economic benefits from the proposed ship to ship operations to the City of Edinburgh and neighbouring authorities are viewed as negligible especially when spread across the entire Forth region. Local Authorities are, therefore, being asked to accept a large increase in risk and be expected to increase their preparedness and response commitment without receiving any direct support or benefit from this proposal. It should be stressed that small spillages would have very serious implications for coastal habitats in the Forth and could result in Local Authorities having to face substantial initial clean-up costs before agreed cost recovery commenced.

As stated earlier the City of Edinburgh Council has agreed to work jointly with Fife and East Lothian on developing a possible legal challenge to this proposal. One of the main legal questions being considered is the legality of these proposals in view of the European Court Justice Ruling which found against the United Kingdom for failing to transpose the EU Habitats Directive 92/43/EEC correctly into UK law to ensure the protection of sensitive coastal and marine habitats such as the Firth of Forth. As the MCA have now issued Forth Ports plc with a “minded to approve” letter, clarification is needed from the MCA on what they consider their duties were under the Conservation (Natural Habitats etc) Regulations 1994 and in what way they had complied with these Regulations. The MCA is seen as a “competent authority” in terms of these Regulations but it would appear that the MCA have placed responsibility for compliance under these Regulations on Forth Ports.

In addition to possible questions about the MCA proposed approval, it is not clear to what extent Forth Ports have also considered their duties under the 1994 Regulations, and how they fully intend to fulfil their general duty. Furthermore, Forth Ports will require to demonstrate a lack of bias in the approval process as clearly they have a perceived conflict of interest between acting as approval authority and beneficiary.

It should also be noted that The Merchant Shipping (Ship to Ship Transfers) Regulations 1999 still remain in draft format and this Council considers Regulation of such an activity to be essential ahead of any such transfer operation being given approval.

This Council remains firmly opposed to this proposal and I trust this reply together with the enclosed report provides your Committee with the views of this Council on the proposed Ship to Ship oil transfer in the Forth.

Yours sincerely

Stephen Walker
Acting Environmental Health Manager

Enc
Proposed Ship to Ship Transfer in Firth of Forth

Executive of the Council
23 May 2006

Purpose of report

1 To advise the Council of a further consultation by the Maritime and Coastguard Agency (MCA) on the revised and amplified oil spill contingency plan produced by Forth Ports Plc in response to proposals by Melbourne Marine Services to introduce ship to ship oil transfers in the Firth of Forth.

1.2 Members of the Executive are requested to note and approve the comments provided on this consultation.

Main report

2 Melbourne Marine Services propose to introduce ship to ship oil transfers at anchorages approximately 3.4 nautical miles south east of Methyl in the Firth of Forth which will involve Very Large Crude Carriers (VLCC) or Ultra Large Crude Carriers (ULCC) and shuttle tankers.

3 Once at anchor the mother ship would receive consignments of oils and hydrocarbon products including Russian Export Blend Crude Oil (REBCO) from a flotilla of daughter ships transporting the cargos from Russian marine terminals in the Barents Sea and the Baltic sea.

4 As a stakeholder in the Clearwater Forth Oil Spill Contingency Scheme The City of Edinburgh Council has been consulted by the MCA to assess the implications of Forth Port’s revised and amplified plan for ship-to-ship transfer of oil carried as cargo within Forth Ports’ harbour authority area which has a number of designated and sensitive nature conservation areas and sites. This consultation is therefore being conducted in line with the Cabinet Office Code of Practice on Consultation.
5 Under the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998, the MCA must consider Forth Ports proposed amendments to the Forth Oil Spill Contingency Plan and be ultimately satisfied with the proposed amendments before any permit for Ship-to-ship transfer in the Forth can be granted.

6 The MCA and the Secretary of State for Transport has been advised of the Executive’s decision of 9 August 2005 to oppose the proposal on the grounds that it increased the risk of pollution in the Firth of Forth and had the potential for serious consequences should a spill occur.

Recommendations

Members of the Executive are requested to note and approve the comments provided in response to this consultation (Appendix1).

Mark Turley
Director of Services for Communities

| Appendices | Appendix 1: Consultation response to MCA on Proposed Ship to Ship Transfers of Oil in Firth of Forth. |
| Contact/Tel | Stephen Walker Acting Head of Environmental Health 0131 469 5925 |
| Wards affected | All |
The City of Edinburgh Council Response to MCA Consultation on Proposed Ship to Ship Transfers of Oil in Firth of Forth

1. Introduction

As a stakeholder in the Clearwater Forth Oil Spill Contingency Scheme the City of Edinburgh Council has been consulted by the Maritime and Coastguard Agency (MCA), on behalf of the Minister of Transport, regarding proposals by Melbourne Marine Services to conduct ship to ship (STS) transfer of crude oil and hydrocarbons in the Firth of Forth.

The City of Edinburgh Council – Position Statement

On 9 August 2005 The City of Edinburgh Council considered the proposals by Melbourne Marine Services to introduce ship to ship transfers in the Firth of Forth and their decision was "to oppose the proposal on the grounds that it increased the risk of pollution in the Firth of Forth and had the potential for serious consequences should a spill occur".

The opposition to STS in the Firth of Forth by Edinburgh is consistent with the decisions taken by Fife and East Lothian Councils.

2. Consultation

This report is The City of Edinburgh’s reply to the consultation and is in response to the following documents provided by the MCA in the revised consultation:

- STS OSCP for Oil Transfer Operations in the Firth Of Forth – Nov 2005
- Revised Clearwater Forth Oil Spill Contingency Plan – Nov 2005
- Assessment of Oil Spill Risk from STS Operations – Revision 3, 2005
- Environmental Impact Assessment of STS Operations – Revision 2, 2005
- Scottish Natural Heritage response – Dec 2005

3. Legal Concern

It is of concern that the Merchant Shipping (STS Transfers) Regulations 1999 still remain in draft format. A proper regulatory framework must be provided as accountability in this operation is essential.

The European Court Ruling on 20 October 2005 found against the United Kingdom for failing to transpose the EU Habitats Directive 92/43/EEC correctly into UK law. The proposed introduction of STS transfer in the Firth of Forth and the lack of a current legal framework may conflict with the Habitat Directive and its transposed directives into Scottish Law. It is therefore for the MCA to have due regard to the implications of the Habitats Directive before reaching a decision on STS Transfers in the Forth.
4. Melbourne Marine Services STS Oil Spill Contingency Plan for Oil Transfer Operations – Firth of Forth

The City of Edinburgh Council's comments and observations are listed below:

1. The Approach / Transfer /Post-Transfer Phases

Availability of tugs to assist with all manoeuvring operations would seem to be only available for berthing and un-berthing operations. No dedicated provision will therefore exist should any emergency occur in the Forth during STS operations. This procedure is unacceptable and is at variance with operational arrangements for transfers such as Hound Point and Braefoot Bay Terminals where dedicated tugs are in constant attendance. Ships at anchorage must not be exposed to lesser standards of safety.

2. Vessel Design

All vessels involved with the proposed STS transfer operation in the Forth must be independently certified as meeting current safety standards set by IOM/MCA/FP for seaworthiness. All vessels are to be double hulled and all shipping documentation must be available for inspection by all Clearwater Forth Stakeholders.

Clarification is required regarding types of vessels to be involved. Para. 3.2 states that STS will involve ULCC but para. 3.3.1 only makes reference to VLCC. Does the risk therefore include use of ULCC vessels in the Forth?

3. Hoses

The suggested oil spillage involving the loss of 137 cubic meters of oil in three minutes is seen as the probable spill released rather than lowest probability. The City of Edinburgh would suggest that the oil spillage has to incorporate the worst case scenario which could involve spillage of vast quantities of oil into the Forth which would involve a Tier 3 response.

4. Third Party Collisions

Forth and Tay Navigation Service manage all ship movement in the Firth of Forth. Tanker collision is seen as a possibility which would have major environmental impact on both sea and terrestrial habitats. As mentioned earlier, the continual presence of tugs on station to intervene whilst ships are at anchor should any emergency arise is seen as fundamental to the safety of this operation.

5. Groundings and Anchor Dragging

Report on grounding incidents such as the Aframax suggests that grounding incidents account for the highest level of oil pollution in the past 26 years. The Assessment by Aquatera implies grounding occurs once in every 790 years. The permanent presence of a tug on station is therefore seen as an essential safety requirement to assist shipping should difficulties arise and prevent issues such as
grounding and anchor dragging from occurring especially, in light of the proximity of the proposed anchorage to the National Transmission gas pipeline.

6. Operational Spillages and Shipping Accidental Spillage

Operational spillages are more likely to be in the order of 12 cubic meters than the 1 cubic meter indicated by MMS.

MMS suggest the potential for larger spills (1000-60000 cu m) are not likely from STS operation. Spill modelling should therefore incorporate larger spills especially in region of 1000 to 60000 cubic meters which are evidently more in line with estimates suggested by sources such as IPBCEA.

The City of Edinburgh's view is that all tanker operations including STS activities increases risk of large scale spills especially those involving a worst case scenario resulting from collisions and/or groundings. The increased risk from spills involving loss of tanks or vessel integrity has the potential for serious consequences to the Firth of Forth.

7. Fire and Explosion

Edinburgh is concerned that the ability to tackle explosion and extinguishing procedures on board are not adequate. There appears to be a distinct lack of dedicated fire fighting equipment for STS operations compared with the land based systems and fire fighting tugs available at permanent facilities such as Hound Point and Braefoot bay.

Lothian and Borders Fire and Rescue Services has accepted the lead role for fire fighting at sea. This response would not therefore be immediate and would not be adequate should any fire occur on board any STS vessel.

Safety arrangements must therefore incorporate presence of a fire fighting tug being on station at all times to respond immediately to this type of emergency.

8. Potential Oil Spill Causes from STS Operations

Suspension of STS operations in adverse weather conditions should not be the sole responsibility of the STS Advisor and should fall to an independent authority such as the HM Coastguard.


The comparison of possible future levels of risk have been compared to those that applied in 1988 because it was shown to be a previous peak in oil activity in the Firth of Forth. The replacement for lost shipping is not appropriate and assessment of the level of risk has to reflect increase based on present shipping levels. As STS operations and cargo types are new to the Forth, there is a new and different level of risk to be considered.
10. Spill Probability Conclusion

Forth Ports and MMS have indicated that a stand-by vessel would be constantly on-station to initiate immediate pollution response at the STS anchorage. Clarification is needed as the MMS STS Transfer oil spill plan only specifies that a stand-by counter pollution vessel would be on site at the commencement and completion of loading and would at all other times be moored at Burntisland harbour to provide an early response.

The constant presence of a stand-by counter pollution vessel at the STS anchorage is a fundamental component of the oil spill plan as the potential for spillage is not restricted to the commencement and completion of loading/unloading operations. Furthermore, the proximity of the anchorage to the Fife coastline makes immediate intervention and the presence of the counter pollution vessel all the more necessary if counter pollution measures are to be effective.

The MCA must validate the spill probability date provided before STS operations are determined.

11. Oil Spill Modelling

Although not independently validated, the deterministic and stochastic modelling presented by Aquatera demonstrate the limited time period should a spill occur before oil will impact on areas of sensitivity in the Forth. The Firth of Forth is designated an international RAMSAR status and has listed Marine Extreme High Risk Areas (MEHRA's) and sites of SSSI, SPA and SPA.

The modelling demonstrates that even a small spill will have a serious impact as a large proportion of the oil will reach the Fife coastline, the Isle of May and ultimately may even reach the Bass Rock. With oil spill modelling it is important not to focus on smaller spills but to consider the devastating impact and long term environmental damage a worst case scenario will have on the entire Firth of Forth.

Spillages from The Sea Empress (72,000 tonnes) and Baxer (85,000 tonnes) would indicate that a disaster of this magnitude could result from STS in the Forth. The assessment fails to full address the impact of such a disaster on the Firth of Forth environment in the short term and in the longer term.

12. Mechanical Containment and Recovery and Waste Disposal

Mechanical containment close to the source of the spill is recognised as the only location where practical recovery may be deployed. Coastline protection especially for sensitive sites is also limited. Again in para 4.3.1 reference is made to the response vessel being on stand-by during the initial start-up and on-tapping off on completion of operations. At all other times, the vessel will be on stand-by at a close by harbour. This arrangement is not deemed acceptable for response to oil spill arrangements.
STS transfers involving highly persistent oil such as Group IV Russian Export Blend Crude raises serious concerns should spills occur in light of the limited equipment known to be available in the Firth of Forth area. Agreement is needed with all stakeholders on the recommended types, quantity and location of equipment and materials to be provided prior to any STS operation being given approval.

It is noted that the emergency response vessel is only to be equipped with a 10 tonne deck recovery tank to cope with spillage material which will limit the vessels counter pollution capability.

Para 4.4 states that Shanks and McEwan in Glasgow can dispose of oiled waste. This statement is misleading as there is no landfill site licensed in Scotland by SEPA to take hazardous waste from a large scale oil spill. Shanks and McEwan only have capacity for very small scale oily and hazardous waste. The logistics of removal of such waste is likely to be prolonged and expensive and it is therefore imperative that disposal is addressed before any STS operations commence.

MMS have indicated that permission may be possible to treat liquid oil waste at Grangemouth. Before any STS operations commence, permission must be agreed to alleviate concerns about possible rejection of oil waste at this refinery.

13. Individual Action Sheets

In light of earlier comments regarding the required presence of a stand-by counter pollution vessel on station throughout the entire STS operation, it will be necessary to revise the personnel checklists in this section of the plan.

14. Slick Tracking and Surveillance

In para 8.4 MMS have indicated that for medium to larger spills aircraft will be mobilised to undertake aerial surveillance and this will be undertaken at least twice per day. It is suggested that should STS transfers be introduced in the Firth, routine aircraft surveillance be also introduced to monitor the Firth of Forth for pollution.

15. Step 6 – Waste Disposal

Guidance notes indicate that Local Authorities are responsible for shoreline clean up and disposal of oily waste from such operations. Whilst Local Authorities do have a management role in the shoreline clean-up process, disposal should not solely rest with the Local Authority to administer and should be for MMS or the polluter to address.

16. Appendix G

Edinburgh does not contest that the Firth of Forth is an existing oil handling port but it does consider the proposed STS operation at anchorage to be a significant change in procedure and risk compared with existing port operations. The bulk of current oil operations with the Firth of Forth involve Forties blend crude which is a
light oil compared to the proposed Group IV REBCO heavy fuel oil proposed for STS transfer.

STS activities at anchor are clearly distinct from current transfer operation such as Hound Point. Transfer of crude oil at any terminal ensures the vessels are secured with the terminal providing land-based vapour recovery systems, fire fighting arrangements, emergency shutdown, evacuation procedures and counter pollution procedures which will not be available to ships at free anchorage. The claim by MMS that the proposed STS operations are no riskier than jetty based operations is therefore not accepted.

MMS have indicated that where existing equipment is unsuitable for recovery and handling of particular materials, new equipment is to be purchased which will be able to handle these materials. Counter-pollution capability and resources available under Clearwater Forth must be revised and agreed as current assets were prepared to cope principally with spills of lighter oils such as Forties blend crude and were not designed to cope with spills involving heavy oil products such as REBCO. The potential impact of any spillage is dependent on ability and capability to cope with different oils being transferred. Insufficient evidence has been provided which details the specialised equipment proposed for heavier oil products.

The statement that STS operation presents only 'limited alteration' to the oil handling operations underestimates this entire proposal. The proposed STS operation will increase shipping activity in the Forth, utilising ULCC and VLCC vessels to transfer heavier oil at free anchor in a sensitive estuary, the net result of which will increase overall risk by over 30%. This proposal is therefore viewed as a major development in the Firth of Forth which creates a whole new locus for oil spill risk and introduces oil products which will have different physical properties from those presently handled.

MMS indicate that STS has already been approved in other sensitive areas of the UK and refer to the Cromarty Firth, Sullom Voe and Scapa Flow. It should be noted that it is only in Scapa Flow where the Harbour Authority accepts STS operations similar to the proposals for the Firth of Forth. In addition, one major difference to the Forth is that the Harbour Authority for Scapa Flow is the Local Authority and not a private company, which ensures oil revenue is directly utilised for safety and effective counter-pollution measures.

17. Insurance

Under Section 138 of the Local Government Act, Local Authorities manage the response to maritime oil spills and the subsequent shoreline clean-up. No central funding is provided specifically for these activities and Local Authorities have to rely on the 'polluter pays' principal as a mechanism for recovery of costs.

Local Authorities who have experienced oil spill clean ups have encountered difficulties in attempting to recover all costs incurred from the International Oil Pollution Compensation (IOPC) fund. It is known that compensation claims by the
French and Spanish Governments and other parties following the Erica and Prestige oil spills could not be met from the IOPC fund.

If STS operations in the Forth were to proceed, Edinburgh would require an unconditional guarantee that all costs incurred by this Council in any clean up operations would be met within a reasonable time period. Operators will need to demonstrate adequate insurance cover to meet all liabilities including indirect cost losses such as tourism revenue.

18. Revised Environmental Impact Assessment – Aquatera

a) Ballast

The possibility for the introduction of foreign species being discharged into local waters in the Firth of Forth causing harm to indigenous species cannot be discounted as mother vessels arriving with ballast will require to discharge into the marine environment of the Forth.

MMS states that ballast would be subject to random analysis and that common practice is to change ballast en route to the Forth. Without any mandatory regular monitoring, MMS have failed to provide adequate assurances that alien species will not be introduced into the waters of the Firth of Forth.

b) Noise

The noise assessment lacks frequency analysis information to enable accurate assessment to be made. Further information will be required especially as the proposed STS operation has potential to run on a 24 hour basis.

c) Emissions to Atmosphere

Vapour release during transfer will occur, as no on-ship recovery plant can be utilised at present. During transfers, vapour from empty tanks will be displaced and released to atmosphere which will affect local air quality.

Previous complaints from the public concerning emissions from Hound Point and Braefoot Bay marine terminals required the installation of land-based vapour recovery systems to abate the public complaints which were received for a considerable distance from both terminals.

Purging of empty cargo tanks en route should ensure any residual vapours are liberated to atmosphere before vessels reach the Firth of Forth. Human sensitivity to odours involving sources such as mercaptans and hydrogen sulphide is high; therefore progress is needed to introduce reliable vapour recovery for moored operations in the Forth to prevent the potential for odours being detected on shore and giving rise to complaints.
c) Economic Benefits to Firth of Forth

The economic benefits in the Firth of Forth identified by Aquatera from STS operations are based on a total of 15.4 FTE jobs of which 13.4 would be based locally. It is suggested that this operation will add around 8 million tonnes to the Forth Ports operation, which would equate to a net economic benefit of some £4 million to the economy in the Firth of Forth annually. The ultimate beneficiaries remain to be identified but when spread across the entire Forth region, the result would therefore be of minimal benefit to the populations of individual local authority in the Forth area.

Local Authorities are being asked to increase their preparedness and resource commitment without receiving any direct support from this proposal. The economic benefits have to be set against the increased risks to Local Authorities and wildlife populations in the Forth.

d) Firth of Forth

The Firth of Forth has RAMSAR status and is also designated as a Special Protection Area. The Isle of May and Bass Rock are listed as Marine Extreme High Risk Areas (MEHRAs) and the coastline and inshore waters of the Forth include areas of environmental sensitivity and designated coastal nature conservation sites.

Any oil spillage in this very sensitive environment, irrespective of size, has the potential to cause harm and have serious consequences for wildlife populations in the short term and have longer term effects to the environment.

Conclusions

1. It remains a concern that The Merchant Shipping (Ship to Ship Transfers) Regulations 1999 still remain in draft format. A review of these regulations and implementation is needed to provide the rigour and safety needed before any decision can be taken on the Firth of Forth proposal.

2. The MMS OSPC fails to provide the appropriate oil response for an operation of this nature. The location of the counter pollution vessel on station during commencement and completion of loading is not acceptable. Counter pollution equipment and materials in the Forth area requires to be specified and agreed to provide an effective response capability for heavier oils such as Group IV REBCO.

3. The potential for problems to occur with STS transfer at anchor makes the presence of a support tug with fire fighting capabilities an essential safety feature for this proposal.

4. The economic benefit to the City of Edinburgh and neighbouring authorities from this proposed operation is viewed as negligible. As a direct result of any consent given, local authorities around the Forth will be require to increase
their preparedness and be ready to deploy resources to cope with spillages which could arise from this new oil transfer operation. Small spillages could result in Local Authorities having to face initial clean-up cost amounting to several million pounds before cost recovery commences.

5. The assessment and impact of the worst case scenario on the Firth of Forth is needed especially in the case of Group IV Russian Export Blend Crude Oil before any decision is taken.

6. Information on provision of new specialised equipment referred to by MMS is needed before the question counter pollution capability can be fully assessed.

7. Reference by MMS that Shanks and McEwan can receive oily waste is misleading as the site in Glasgow is licensed to only accept small quantities of oily waste and hazardous material. Waste disposal in Scotland remains a serious issue for all coastline Authorities. Agreement is also needed on the question of oil refineries accepting liquid oily waste following spillage.
Dr. J. Johnston,
Clerk to the Public Petitions Committee,
The Scottish Parliament,
Parliamentary Headquarters,
EDINBURGH EH9 1SP

Our Ref:  
Your Ref:  

Date:  29 June 2006

Dear Dr. Johnston

CONSIDERATION OF PETITION PE 956-
PROPOSED SHIP TO SHIP OIL TRANSFERS FIRTH OF FORTH

Dear Dr. Johnston,

Thank you for your letter dated 15 May 2006 inviting East Lothian Council’s views on petition PE 956 to the Scottish Parliament by Mrs. Mary Douglas, ‘Downalong’, 6, St. James Place, Kinghorn Fife KY3 9SU.

It is a matter of public record that East Lothian Council are against ship to ship oil transferences in the Firth of Forth and supportive of the Conservation (Natural Habitat, &c) Regulations 1994, being applied in relation to ship to ship oil transfers in the Firth of Forth.

The council has lobby representatives at all levels including MPs and MSPs to invite support for the council’s position. In addition East Lothian Council has banded with other local authorities surrounding the Firth of Forth including Fife and City of Edinburgh Councils who have voiced similar objections to this proposal.

Contingency Plans For Dealing With The Risk

East Lothian Council has considered the Environmental Impact Assessment, and oil spill plan and does not believe the measures detailed therein would deal adequately at containing and controlling an oil spill that could be upwards of 50–100,000 tones of persistent Group IV substances like Russian Export Blend Crude oil. This type of oil spill will have a profound detrimental impact on the environment, damaging for many years the fragile coastal habitats as well as devastating the tourism industry of the area.
The proximity of the ship-to-ship operations to the shoreline would mean any oil spill would land on the shore very quickly. Realistically the oil will be on the beaches before an adequate response could be resources and implemented.

Scotland does not have a strategy for the bulk disposal of hazardous oily waste material. If a ship-to-ship spill occurred the volume of spill persistent heavy crude oils could significantly increase in volume. Without a national facility extra pressures and expenditure of resources are place on the local authorities.

**Benefits Associated With Ship to Ship**

East Lothian Council will receive no benefit or reward from ship to ship operations in the Firth of Forth. No new jobs will be created in East Lothian as a result of ship to ship.

However, a small oil spill would significantly divert local resources to the oil spill to the detriment of the East Lothian population.

A minor spill will potentially cost millions of pounds in clean up cost, legal fees, and disposal of hazardous waste, the local economy, primarily tourism will loose potentially millions of pounds in lost revenue, before any compensations are payable.

The populace of East Lothian and Fife have repeatedly spoken out against ship-to-ship operations. There is a body of local authorities and public sector organisations that have spoken against ship-to-ship operations. If permissions are given to commence operations it is hard not to perceive the decision is commercially based, it is not in the interests of the populace, the councils or public bodies.

**Maritime and Coastguard Agency Consultation**

East Lothian Council as a stakeholder in Clearwater Forth was consulted by, and responded to, the Maritime and Coastguard Agency (MCA), on the proposed transfer Ship-to-Ship of crude oil and other hydrocarbons by Melbourne Marine Services in the Firth of Forth.

The MCA’s Consultation was limited to the technical aspects of oil spill contingency plan, and it appeared that environmental issues were not in the scope of the consultation. It would also appear that the wishes of the populace of the Firth of Forth were irrelevant to the approval of ship-to-ship operations.

**Conclusion**

East Lothian Council strongly recommends that any consideration of ship to ship in the Firth of Forth is subject to the Conservation (Natural Habitat, &c) Regulations 1994

I trust the foregoing adequately explains the council’s position on this issue but please do not hesitate to contact me should you have any queries.

Yours Sincerely,

Stephen McLachlan
For John Lindsay
Our Ref: EP/2500
Your Ref:

Dr James Johnston
Clerk to the Public Petitions Committee
TG.01
Parliamentary Headquarters
Edinburgh
EH99 1SP

1 June 2006

Dear Dr Johnston:

Consideration of Petition PE956

I refer to your letter of 15 May 2006 asking for views regarding the above petition.

West Lothian Council participates in the Forth Oil and Chemical Group, which consists of emergency planning officers from councils with shorelines on the Firth of Forth. The group forms a focal point for raising awareness of the contingency plans for responding to an oil pollution incident in the Firth of Forth that exist at national, estuary and local level. This is achieved by promoting participation in training courses and exercises associated with these plans, including the annual exercising of the Forth Ports plc Clearwater Forth contingency plan. It has been noted that the existence of ship to ship transfer carries an increased risk of oil spillage.

The emergency response arrangements place considerable emphasis on the importance of responding to environmental issues arising from an oil spill. This would be done by setting up an environmental group with the Shoreline Response Centre and would include representatives from agencies such as SNH and the RSPB. While this would not prevent damage to the environment including wildlife, it should go a considerable way to mitigating the risks and aiding recovery.

So far as potential benefits from ship to ship transfer are concerned, it is difficult to identify any benefit of significance other than a possible commercial benefit to Forth Ports Authority plc. There might be some minor local benefits to areas immediately adjacent to the transfer points e.g. hotels, taxis.
The Maritime Coastguard Agency is currently considering a request from Forth Ports plc to amend its contingency plans to include ship to ship transfer. It is recognised that ship-to-ship transfer is a lawful activity, which takes place elsewhere around the UK coastline. West Lothian recognises that the impact of any failure in the proposed ship to ship transfer operations would be unlikely to have a direct impact on its area given its location and short shoreline. However, a serious failure in STS could result in serious damage to the shoreline environment in the Firth of Forth with consequent impact on the tourism industry a major contributor to the economy in this area, and to the international and national importance of its biodiversity.

Given previous experience of media coverage of similar events, the indirect affect on West Lothian could be significant. We would wish to ensure therefore that if ship to ship transfer were to proceed, the potential impact on the environment is taken into full account.

Yours sincerely

[Signature]
Chief Executive
Marine Conservation Society
Parliamentary Submission

The Scottish Parliament Public Petitions Committee:
Consideration of Petition PE956

August 2006

The Scottish Parliament Public Petitions Committee wrote to the Marine Conservation Society on 15 May 2006 seeking our views on Petition 956. These are outlined below.

Contingency plans for dealing with oil spills
MCS recognize that oil spill contingency plans (OSCPs) are a legal, and welcome, requirement for procedures involving handling and transfer of oil in ports, harbours and other facilities. The 14 July 2006 response by the Maritime and Coastguard Agency to the draft Forth Ports plc OSCP clearly illustrates the many shortcomings in that draft and inadequate reference to sea mammals, habitats and seabirds. However, this is not our principle concern. As we made clear in our response to the original MCA consultation on the fact that legislation exists to ensure OSCPs are put in place is, so far as the proposal by Melbourne Marine Services for ship-to-ship oil transfers in the Firth of Forth, in our view 'shutting the stable door after the horse has bolted'. It is the view of MCS that a consultation should be carried out that considers whether ship-to-ship oil transfer is an activity that should even take place in the Firth of Forth at all, where there are numerous marine wildlife sites and Marine Environment High Risk Areas.

Benefits associated with ship to ship transfers
MCS can see very little public benefit accruing from the proposed ship-to-ship transfers in the Firth of Forth. Quite the contrary, there is a risk of great public disbenefit. An oil spill in the wrong place at the wrong time with the wrong tidal or weather conditions could have a devastating impact on coastal and subtidal habitats, sea mammals (including seals and cetaceans), seabirds and the local tourist and inshore fishing industries of the Firth of Forth and potentially further north and south of the Forth in the outer Firth of Tay and Berwickshire coast respectively. The potential gain of a few jobs is greatly outweighed by the potential risk to the coastal and marine environment, tourism and fishing industry in the Firth. It is the view of MCS that the only parties that stand to benefit from this operation are those that have a financial interest in the project.

Compatibility of ship-to-ship transfers with duty to protect the environment and natural habitats
Under the European ‘Habitats’ Directive, Article 6(3) (transposed into UK law by the ‘Habitats’ Regulations Regulation 48), examination of the implications of a “plan or project” for European wildlife sites is required and, if likely to have an adverse impact on a Natura 2000 site, under Article 6(4)/Regulation 49 the “plan or project”, in this case ship-to-ship oil transfers, can only go ahead if there are no alternatives and there are “imperative reasons of over-riding public interest”. An Appropriate Assessment would need to be carried out to determine whether such a plan or project should go ahead. As outlined above, MCS does not believe that the ship-to-ship operation could ever be considered “of over-riding public interest”.

Whilst ship-to-ship transfer is itself a lawful activity, MCS note that no statutory mechanism exists to reject such proposals if they are likely to affect European Marine Sites, in this case the Firth of Forth and Forth islands SPAs and Isle of May SAC. We also note that the Secretary of State for Transport is empowered by S130 of the Merchant Shipping Act 1995 to introduce regulations to

1 http://www.mcsuk.org/downloads/scotland/MCSresponse_ForthS2S.pdf
cover such transfers and that the Act specifically enables regulations to prohibit transfers, or make them subject to conditions.

MCS believe that consultation on the Oil Spill Contingency Plans does not meet the requirements of the Habitats Directive since it consults not on whether ship-to-ship oil transfers should go ahead but instead on how to deal with such an operation going awry.

Appropriate regulations therefore need to be brought in by the UK Government under the Merchant Shipping Act 1995 that would enable the possibility of proposals to be rejected outright, thus closing the current loophole of default acceptance of ship-to-ship transfers.

Environmental Concerns
The aforementioned lack of regulations governing ship-to-ship oil transfers means that the implications of the proposed operation on the marine species and habitats of the Forth are not assessed and there is no means to attach conditions to the transfer operations. MCS is concerned that, although the Firth of Forth currently sees high levels of oil tanker traffic, the proposal by Melbourne Marine Services would affect a part of the Forth currently free from oil-related activity.

We would like to draw attention to the potential impact on the qualifying features for the Isle of May SAC, namely grey seals and rocky reefs, features which are of course also present throughout the Firth of Forth beyond the SAC boundary.

Grey Seals
The grey seal (Halichoerus grypus) breeding colony on the Isle of May is the largest on Scotland’s east coast and the fourth-largest in the UK, contributing 4.5%² of annual UK pup production. Considering that the UK hosts about 40%³ of the world population (and 90% of the EU population) the Isle of May alone is potentially home to almost 1 in 50 of the world’s grey seals.

MCS is concerned that even a small-scale spill of REBCO, a dense, persistent oil, in the wrong place, at the wrong time and in the wrong weather or tidal conditions could have a devastating effect on the marine environment of the Forth. For example, grey seals give birth to their pups in late autumn and these pups are ashore on the Isle of May from October to December. Even a small spill off Methil during these months, carried eastward on an ebbing tide in relatively calm conditions could wash ashore at the pupping beaches of the Isle of May and cause damage to a year-class of pups.

Even if Isle of May seals were able to escape a spill, they could be displaced to other more developed areas of coast where they would not enjoy the same degree of isolation and relative protection.

Rocky Reefs
Rocky reefs are a secondary habitat feature for which the Isle of May SAC is designated. Often overlooked, the rich communities of seaweeds, soft-corals, demersal fish, starfish, crabs, sponges and molluscs such as octopus, will also be adversely affected by an oil spill.

MCS would have concerns about the impact of an oil spill on the condition of animal dominated reefs of the Isle of May SAC and, although not designated SACs, the reefs associated with the other Forth Islands and rocky shores. MCS would also have concerns that, if the tidal conditions were correct, a medium to large oil spill may even impact the rich rocky reefs and sea caves of the northern end of the Berwickshire and North Northumberland SAC in the vicinity of the St Abbs and Eyemouth Voluntary Marine Nature Reserve.

An oil spill in the wrong place at the wrong time with the wrong tidal or weather conditions could also have a devastating impact on the local tourist and inshore fishing industries of the Firth of

1 http://www.jncc.gov.uk/protecedsites/sacselection/sac.asp?EUCode=UK0030172
2 http://www.jncc.gov.uk/protecedsites/SACSelection/species.asp?FeatureIntCode=51364
Forth and potentially further north and south of the Forth in the outer Firth of Tay and Berwickshire coast respectively.

Competency
MCS also understand that under regulation 44 of the Habitats Regulations, provision exists to licence activities that could disturb a European Protected Species, or damage or destroy breeding sites or resting places. Since nature conservation is a devolved matter, it is the responsibility of the Scottish Executive to determine whether a licence would be required for ship-to-ship transfers in the Firth of Forth.

Conclusion
MCS recommend that the proposal by Melbourne Marine Services for ship-to-ship oil transfer off Methil in Fife should be refused. Consideration of such a proposal should only take place after such time as regulations governing ship-to-ship oil transfers have been enabled by the Secretary of State for Transport under the Merchant Shipping Act 1995. Such regulations would enable an Appropriate Assessment of the proposals to be carried out in line with the European Habitats Directive and provide for the opportunity to reject ship-to-ship proposals outright.

It is within the power of the Scottish Executive to licence ship-to-ship transfers in the Firth of Forth. Therefore, MCS urge the Scottish Executive to refuse to grant a licence for an activity that MCS consider of unacceptable risk to the Forth's marine natural heritage, coastal communities and local tourist and fisheries industries.

For further information please contact:

Marine Conservation Society
The Marine Conservation Society (MCS) is the UK charity dedicated to protecting our seas, shores and wildlife. Among a range of marine conservation aims, MCS would like to see proper protection for marine species and habitats and the elimination of pollution of the marine and coastal environment, from both land-based and offshore sources.
The Public Petitions Committee wrote to RSPB Scotland on 15 May, seeking our comments on the issues raised in petition PE956 and in the Committee’s discussion.

Views were sought in particular on: oil spill contingency plans; benefits of ship-to-ship transfers; and compatibility of ship-to-ship transfers with the duty to protect the environment and natural habitats. The following comments deal briefly with the first two, but concentrate on the third, which falls most clearly within our area of expertise.

Contingency plans for dealing with oil spills

Oil spill contingency plans are legally required for oil handling facilities and harbours in the UK. The process for agreeing their content is separate from that of consenting oil facilities and is the responsibility of the Maritime & Coastguard Agency (MCA). In our response to the MCA consultation on oil spill contingency plan changes for the Firth of Forth, we distinguished between the process of agreeing these and that of consenting ship-to-ship (STS) transfers themselves. We are principally concerned about risks associated with the STS project – contingency plans, if properly drafted and implemented should reduce the impacts of an oil spill should one occur.

MCA reported on its consultation on July 14th and listed a number of changes required to be made to the draft oil spill plans. These included additional risk modelling of “worst case” spill. We do not know if these results and associated risk assessment will be made available for comment. MCA did not consider impacts of the STS project itself – only of changes to oil spill plans. However, MCA have made the consultation responses public in full, and have “encouraged Forth Ports plc to take account of those comments which are relevant to their functions.”

Benefits of ship-to-ship transfers

The benefits of ship-to-ship transfers appear to us to be primarily financial. The main driver for STS at locations in the North Sea seems to be (economy of scale) savings to be made by oil and shipping companies from transporting Baltic oil on to the Far East in large as opposed to small tankers. The service providers (specialist shipping companies and port operators) can also be expected to derive financial benefit. Projected benefits of the Firth of Forth proposal in terms of job creation are small compared with the number of existing jobs in tourism, including wildlife tourism.

4 Letter from MCA to RSPB Scotland, 1st August 2006.
STS is additionally an attractive commercial proposition because it requires no (or minimal) infrastructure, merely the identification of an anchorage. This is both cheap and unencumbered with the legal requirement for Environmental Impact Assessment in spite of the Firth of Forth project having been stated as potentially handling 8 million tonnes of oil or oil products annually.

Potential benefits should be contrasted with risks to communities and the environment around the Firth of Forth in the event of an oil spill. The risk assessment consulted on by MCA estimated that STS would increase the chance of oil spill in the whole Firth by one-third. However, an informed critique of this document suggests that the proposed STS operation could double the risk of spillage. The harbour authority has commissioned a new risk assessment, but this has not been made public, apparently because Forth Ports plc do not regard themselves as a Scottish public authority.

Compatibility of ship-to-ship transfers with duty to protect the environment and natural habitats

Environment and rural affairs

The Firth of Forth and the Firth of Forth Islands are classified as Special Protection Areas (SPAs) under the EU Birds Directive. The Conservation (Natural habitats & c.) Regulations 1994 (as amended) offer a high level of protection to "European Wildlife Sites" (EWS). However, the procedures to be followed in determining consent for "plans or projects" which might affect EWS vary according to the type of consent.

Amending regulations proposed by the Scottish Executive in response to a recent European Court of Justice decision improve procedures for assessing water abstraction projects and development plans. However, a number of consenting regimes continue to rely on a general duty (under regulation 3 of the 1994 regulations) "to have regard to the requirements of the Habitats Directive", which the Court held was inadequate for development plans and water abstraction. Consents covered only by regulation 3 include those made under harbour authority byelaws and orders under the Harbours Act 1964.

The procedures set out by Part IV of the 1994 regulations (which apply to many consents, including town and country planning, electricity, and roads) meet the requirements of the Habitats Directive regarding plans and projects. This includes "appropriate assessment" which must demonstrate "no reasonable scientific doubt as to the absence of adverse

---

5 Under regulations transposing the Environmental Impact Assessment Directive.
6 Page 5-3 of http://www.mega.gouv.fr/cdna/conventionnalstatementwri5.pdf
9 In the sense of the Environmental Information (Scotland) Regulations 2004.
11 Special Protection Areas; and Special Areas of conservation (SACs) classified under the EU Habitats Directive.
12 http://www.scotland.gov.uk/Publications/2006/06/01153548/0
impact” on European Wildlife Sites. If the assessment is “negative”, plans or projects can only be consented on the twin grounds of no alternative solutions and “imperative reasons of over-riding public interest”.

There is an argument that these procedures should be followed as a matter of policy by competent authorities exercising their general duty under regulation 3, even if not required as a matter of law. However, the powers of Scottish Ministers under part IV to prevent consent by a competent authority on the grounds of imperative reasons of over-riding public interest does not apply under the regulation 3 general duty, because it is not a requirement of the Habitats Directive, but only of the UK regulations. Therefore, should Forth Ports wish to consent STS on the grounds of imperative reasons of over-riding public interest, Scottish Ministers are unable to prohibit the project – unlike most consents on land and in spite of being legally responsible for implementing the Habitats Directive in Scotland.

This anomaly could be rectified in the medium term by consolidating the Habitats Regulations with additional amendments and by the introduction of marine legislation for Scotland, including measures for marine spatial planning.

Local government and transport

Ports policy in Scotland – with some exceptions – is devolved. Matters reserved to Westminster even within harbour areas include shipping, pollution and marine safety, which explains the involvement of both the MCA and the Department for Transport in the Firth of Forth proposal.

S48A of the Harbours Act 1964 imposes environmental duties on harbour authorities throughout the UK. This section was inserted by the Transport and Works Act 1992 and predates the Habitats Directive. If the S48A duty requires updating to reflect the requirements of the Habitats Directive, this may be possible in Scotland through the proposed Transport and Works (Scotland) Bill.

More fundamentally, there is a question of how company ports established under the Ports Act 1991, which are public limited companies retaining the statutory functions of former ports authorities, can be seen transparently to exercise their regulatory functions in the public interest, independently of duties to shareholders. The Department for Transport’s Ports Policy Review (for England, Wales and Northern Ireland) specifically asks whether the arrangements for the supervision of harbour authorities’ powers are adequate16. The Scottish Executive’s parallel consultation17 does not – though the question legitimately arises from the Firth of Forth STS proposal.

Were statutory harbour authorities in Scotland more clearly accountable to Scottish Ministers, there might be greater public certainty about the appropriateness of harbour byelaws for consenting a commercial programme of STS transfers and of harbour

17 http://www.scotland.gov.uk/Publications/2006/07/portes-policy
authorities’ status as Scottish public authorities under the Environmental Information (Scotland) Regulations 2004.

Westminster

STS transfers may be regulated by the Secretary of State for Transport, empowered by S130 of the Marine Shipping Act 1995. These powers are reserved, even within harbour areas in Scotland. STS regulations were drafted in 1999, but have not come into force. The Department for Transport intends to consult on STS regulations and bring them into force by the end of this year. However, it appears that these regulations will simply confine STS in UK territorial waters to harbour areas, without further regulating the process within them. This could be a missed opportunity missed to (i) make the consenting regime for STS consistently compliant with requirements of Habitats Directive and (ii) to introduce powers for consents to be determined in some circumstances by ministers (for example, if requested to do so by the harbour authority, or if there is a credible suggestion of a conflict of interest).

Conclusion

Forth Ports plc appear to be the competent authority to consent STS transfers in the Firth of Forth and also to be responsible for implementing the requirements of the Conservation (Natural habitats etc.) Regulations 1994. However, this responsibility hinges on a general duty found by the European Court of Justice to have been lacking with regard to other consent regimes. Forth Ports’ operation of their statutory functions with regard to STS could be said to have lacked transparency. Therefore, there is considerable public doubt as to Forth Ports’ willingness and ability to meet the requirements of the Regulations in a way which also meets the requirements of the Habitats Directive. Should the requirements of the Directive not be met, it seems that Scottish Ministers, rather than Forth Ports, would be accountable.

For further information please contact:

| Richard Evans, Sites Policy Officer or Julia Harrison, Parliamentary Officer |
| RSPB Scotland, 25 Ravelston Terrace, Edinburgh EH4 3TP |
| Tel: 0131 311 6500 Fax: 0131 311 659 |
| Email: richard.evans@rspb.org.uk or julia.harrison@rspb.org.uk |

Registered Charity Number: 207076 – AUGUST 2006

RSPB Scotland is part of the RSPB, the UK-wide charity working to secure a healthy environment for birds and wildlife, helping to create a better world for us all.

16 House of Commons Official Report 30 March 2006: column 1119W.
17 Ministerial correspondence Alistair Darling to Rhona Brankin 27 April 2006; correspondence Stephen Ladyman (Minister of State for Transport) to various constituency MPs 25 May 2006; House of Commons Official Report 24 July 2006 column 733W.
Ship-to-ship oil transfers in the Firth of Forth

- The Maritime & Coastguard Agency’s (MCA) recent approval of oil spill plans covering ship-to-ship (STS) transfers of oil in the Firth of Forth is conditional on full assessment of the project itself by Forth Ports – who now bear responsibility for UK authorities’ compliance with the EU Habitats Directive.
- The required assessment must be done in accordance with tests set out in European law but the data to meet these tests do not exist. Forth Ports are in consultation with SNH in carrying out the assessment. They wish comments from SNH quickly - but a rapid decision to consent could be in breach of EU law.
- It is not clear where responsibilities lie between UK Government, Scottish Ministers and harbour authorities in the event of a complaint being made to the European Commission – since ministers lack powers to “call in” consents in harbour areas.
- New UK regulations are likely to confine commercial ship-to-ship transfers to harbour authority areas, without regulating the process further within them! – this would miss the opportunity to clarify harbour authorities’ general duties under UK regulations with regard to European Wildlife Sites and ship-to-ship transfers.

Background
Melbourne Marine Shipping applied in 2005 to Forth Ports plc for permission to carry out an unspecified programme of commercial ship-to-ship oil transfers (STS) in the Firth of Forth. This would increase the risk of oil spill for the whole Firth and all its wildlife by creating a new focus for oil activity, affecting areas currently at low risk, including important concentrations of birds.

MCA consulted the public from February to May 2006 on oil spill plans changes to cover STS. They reported on July 14 on amendments they required to be made to the plans and on the implications of the plans for European Wildlife Sites. Changes were made and MCA gave final approval to the plans on 25 August.

The decision to consent rests with Forth Ports plc’s board and is unlikely to require confirmation by Scottish Ministers or UK Government. Forth Ports may consult on a restricted basis a revised Environmental Impact Assessment (EIA) and a new oil spill risk assessment, but it is not clear with whom or at what stage in the process.

STS is not covered by the EIA or Strategic Environmental Assessment Directives - no-one has taken a strategic approach to determine the national need for STS or how this might best be met.

Solutions
- Scottish and UK Ministers must now do everything possible to ensure that Forth Ports secure compliance with the Habitats Directive in considering STS proposals – and (in view of the high level of public interest) that they do so transparently and in consultation with the public.
- In the longer term, ensure that harbour authorities are more clearly accountable to the public for their environmental responsibilities and in carrying out their statutory functions. This could be addressed in part by: marine spatial planning elements of marine bills for the UK and Scotland; clearer transposition of the Habitats Directive to consents in harbour areas; allowing ministers similar powers to “call in” harbours decisions as those that exist for consents by local authorities or SEPA; and review of the relevant schedules of Freedom of Information Acts.

1 Letter from SoS for Transport to Deputy Minister for Environment & Rural Development April 2006; and letter from Minister of State for Transport to constituency MPs, May 2006.
2 In their capacity as harbour authority for the Firth of Forth.
For further information please contact:

Richard Evans, Sites Policy Officer / Juliet Swann, Advocacy Co-ordinator
RSPB Scotland, 25 Ravelston Terrace, Edinburgh EH4 3TP Tel: 0131 311 6500 Fax: 0131 311 6569
Email: Richard.Evans@rspb.org.uk / Juliet.Swann@rspb.org.uk
Registered Charity Number: 207076 – 20th September 2006

RSPB Scotland is part of the RSPB, the UK-wide charity working to secure a healthy environment for birds and wildlife, helping to create a better world for us all.

For information, the regulatory framework around ship-to-ship oil transfers includes the following:

The Conservation (Natural habitats &c.) Regulations 1994: Competent authorities are bound by regulation 3(4) general duty to “have regard to requirements of the Habitats Directive” and 3(3) to “secure compliance with the Habitats Directive” in relation to marine areas.


Forth Ports Byelaws: made under powers given by the Forth Ports Authority Orders (and their Confirmation Acts) 1969 & 1980. Individual transfers (eg in emergency) require the consent of the harbourmaster (byelaw 38, 39). The harbourmaster may issue Directions to mariners (eg to identify anchorages and specify ship movements in relation to these). Changes to byelaws require the confirmation of Scottish Ministers.

Environmental Impact Assessment/Strategic Environmental Assessment EU Directives: do not cover STS – so, neither do UK/Scotland regulations

Harbours Act 1964: Leaves it up to the harbour authority to determine whether they require a Harbour Revision Order (from Scottish Ministers)

Merchant Shipping Act 1995: S130 permits Secretary of State for Transport to regulate STS.


Scotland Act 1998: “Ports” devolved, “shipping” reserved. Oil pollution and safety within ports is “shipping”.

The Public Petition Committee
The Scottish Parliament
EH99 1SP Edinburgh
UK

For the attention of james.johnston@scottish.parliament.uk

Consideration of Petition PE956

Dear Mr Johnston,

Thank you for the opportunity to give the views of the North Sea Commission\(^1\) on the above petition and on the issue of ship-to-ship transfer of oil, STS.

Ship-to-ship transfer of oil, STS, is an issue of great concern to our member regions, as illustrated by the Resolution, which was adopted by the NSC General Assembly in 2005 (attached). This Resolution was subsequently endorsed by the General Assembly of the CPMR (Conference of Peripheral Maritime Regions) with the addition that it should also apply to bunkers transfers. It has then been conveyed to the relevant EU institutions.

The reasons for our concern are numerous. Pollution from oil spills is a very serious threat to coastal Regions in several ways:

- Local and Regional Authorities are the first to suffer the consequences and the first to be called on to deal with the pollution. They usually are forced to bear the costs for cleaning up after oil accidents (and other forms of sea-borne pollution affecting the coasts). Their chances of getting compensation from those causing the pollution – or from any other sources – are quite limited.
- Also, the effects of oil spills on the coastal economy – often relying on fishing and tourism, both of which depend on a clean environment – can be devastating.
- Furthermore, the damage from oil spills on the ecological systems of the coastal areas can last a long time and even be irreparable.

All these potential effects are strong factors, which affect the sustainable development of the North Sea coastal Regions negatively.

Being an international organisation, the NSC has not – for natural reasons – previously been consulted regarding STS procedures in UK waters. However, the NSC has voiced a general opinion on the need for a common strategy covering the North Sea area, when it comes to STS. This need is evident to us from the great concern about this issue expressed by many of our members.

---

\(^1\) The North Sea Commission, NSC, is the organisation of the Regional Authorities around the North Sea, with to date some 70 member Regions. The NSC was founded in 1989 to facilitate and enhance partnerships between Regions, which manage the challenges and opportunities presented by the North Sea. Furthermore, to promote the North Sea basin as a major economic entity within Europe, by encouraging joint development initiatives and political lobbying at European Union level. The NSC works through co-operation programmes, research activities, funding applications and joint policy statements, which bring positive benefits to the people of the North Sea Basin. The NSC is one of seven Commissions under the umbrella of CPMR (the Conference of Peripheral Maritime Regions).
When it comes to the details regarding STS in the Firth of Forth, we would like to refer to – and strongly support – the response provided to you by our member Region Fife Council. Fife Council has made a thorough investigation of environmental and economic as well as safety and legal aspects of STS in the Firth of Forth.

The North Sea Ministerial Meeting on Environmental Impacts of Shipping and Fisheries, “MM06”, was held in May 2006. There the Environment Ministers (in the case of the UK the Minister of State for Transport) agreed that “North Sea States will work together in the IMO to develop an international mechanism to regulate ship-to-ship transfers of oil carried as cargo, and bunkering operations, beyond the limits of States’ Territorial Seas.”

The NSC sees the need for strong public regulation of STS procedures, particularly in view of an expected increase in this activity all around the North Sea. In anticipation of the international mechanism, apparently to be promoted by the North Sea states, the NSC urges all authorities issuing permits for STS-related activities to act with the utmost prudence and be very restrictive, whenever the sustainable development of the coastal Regions is at stake. The minimum level should include an independent Environmental Impact Assessment and an adequate contingency plan covering a true “worst case” scenario.

The concerns of the North Sea Regions regarding STS are not related solely to oil spills or accidents. The health aspects of emissions near land, as well as the increasing risks of introduction and transfer of non-indigenous species via ships’ ballast water and sediments, were highlighted at the MM06.

We would therefore like to support the petition PE956 to the Scottish Parliament, to ensure that all the relevant UK and Scottish legislation is applied, when considering the issue of STS in Scotland.

Yours sincerely,

[Signature]
President of the North Sea Commission

Annex:
Political Statement on Inshore Ship to Ship transfers of crude oil products and other hydrocarbons. Adopted at the North Sea Commission Annual Business Meeting, June 17th 2005
Political Statement on Inshore Ship to Ship transfers of crude oil products and other hydrocarbons.

Adopted at the North Sea Commission Annual Business Meeting June 17th 2005

The local authorities surrounding the North Sea represented by the North Sea Commission call upon the member Governments and the European Commission to address urgently the question of inshore Ship to Ship transfers of crude oil products and other hydrocarbons. In view of the potential environmental and economic consequences of spillage, there is a need for a common strategy covering the North Sea area. This strategy must take into account the likely increasing demand for such transfers as tanker-borne crude and refined oil exports from the Baltic and Barents Sea areas increases. Such a strategy should also address the availability of alternative less hazardous methods of dealing with any transfer.
Mr J Johnston  
Public Petitions Committee  
TG.01  
Parliamentary Headquarters  
Edinburgh  
EH99 1SP

Email: james.johnston@scottish.parliament.uk

31 October 2006

Your reference
Our reference

Dear Mr Johnston

Consideration of Petitions PE956

Thank you for your letter of 15 May. Lloyd’s has no particular comment to make on the petition or the three issues identified.

Yours sincerely

Alastair Evans  
Head, Government Affairs  
Worldwide Markets
CONSIDERATION OF PETITION PE956

I write in response to Dr James Johnston's letter to Betty Morgan on 15 May requesting that comments on the issues raised in petition PE956 by Mary Douglas calling on the Scottish Parliament to urge the Scottish Executive to ensure the Conservation (Natural Habitats, &c.) Regulations 1994, as amended, are applied in relation to ship to ship oil transfers in Scotland. The Committee in particular sought views on the following and the remainder of the letter covers each in turn:

- Contingency plans for dealing with oil spillages;
- Benefits associated with ship to ship oil transfers; and
- Compatibility of ship to ship oil transfers with duty to protect the environment and natural habitats.

In view of the other organisations that the Committee has invited to comment and the transcript of the 3 May meeting we have interpreted the proposed operations in the Firth of Forth as the prime focus of the petition and our response covers these proposals.

Contingency plans for dealing with oil spillages

All matters relating to Merchant Shipping in UK waters fall under the Merchant Shipping Act 1995 (as amended). This is a reserved piece of legislation under Schedule 5 of the Scotland Act 1998.

Section 293 of the Merchant Shipping Act 1995, as amended by the Merchant Shipping and Maritime Security Act 1997 and the Marine Safety Act 2003, gives the Secretary of State (for Transport) the function of taking, or co-ordinating, measures to reduce and minimise the effects of marine pollution. It also provides the legal basis for the National Contingency Plan for Marine Pollution from Shipping and Offshore Installations.

There is a legal requirement under The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation) Regulations 1998, SI 1998 No. 1056, for all harbours and oil handling facilities in the UK over specified minimum sizes to prepare and maintain 'Oil pollution emergency plans' (Oil Spill Contingency Plans) which must be submitted to the MCA (Maritime and Coastguard Agency) for approval. The regulations also state at Regulation 4 (3)(b) that 'In preparing an oil pollution
emergency plan a harbour authority or operator shall take into account any guidance issued by the MCA.

The Guidelines subsequently issued by the MCA on the preparation of Oil Spill Contingency Plans (March 2002) states that the statutory authorities that must be consulted and involved in plan development are a) the appropriate Government Fisheries Department, b) the environmental regulator, and c) the statutory nature conservation body. In addition MCA’s guidance indicates that local authorities in whose area the facility is situated, or may have an impact on, should be consulted.

In cases where the MCA does not think that a harbour plan is compatible with the National Contingency Plan (NCP), or not appropriate for dealing with oil pollution incidents which may occur within their area, then they can direct that the plans shall be altered accordingly.

Benefits associated with ship to ship oil transfers

It has been assumed that ‘benefits’ means ‘economic benefits’.

In the case of the current proposals for the Firth of Forth, which do not appear to include much in the way of oil produced from offshore operations within the United Kingdom Continental Shelf, it is difficult to determine what financial benefits will accrue to the UK or more specifically the area of the Firth of Forth, except through income to Forth Ports plc and any jobs that are created. The Environmental Statement, ‘Environmental Impact Assessment and other linked activities for ship to ship oil cargo transfers in the Firth of Forth’, produced for Melbourne Marine Services Ltd by Aquatera Ltd includes a section (6.7) on ‘Employment and economic benefits’. The Scottish Executive is not in a position to comment on the correctness of the figures etc quoted in this section.

Compatibility of ship to ship oil transfers with duty to protect the environment and natural habitats

The Scottish Executive’s obligations under the Habitats Directive mean that we are required to consider each case on its own individual merits. The MCA’s recent consultation exercise on the Firth of Forth Ship to Ship proposals and the Scottish Executive’s response to that consultation make clear the importance that the Scottish Executive attaches to natural heritage considerations.

Scottish Ministers have taken a very close interest in the environmental implications of the proposal to undertake ship to ship transfers of crude oil in the Firth of Forth and the associated revisions being sought to the OSCP for this proposal. That close interest relates to decisions taken previously by Scottish Ministers to designate areas within the Firth of Forth as part of the UK’s contribution to the European Network of Natura 2000 sites. These sites are the Firth of Forth Special Protection Area (SPA), the Forth Islands SPA, the Imperial Dock Lock SPA and the Isle of May Special Area of Conservation (SAC). All of these sites are of international significance and their status reflects the important habitats and species found there. For example, the Firth of Forth is of major importance for a rich assemblage of breeding and migratory seabirds as well as other wild bird species during the winter such as wintering sea-ducks and divers. This rich assemblage of water birds reflects the wide range of coastal and intertidal habitats found within the SPA including salt marshes, mud and sand flats, sandbanks, sea cliffs and rocky islands. Similarly the Isle of May SAC sustains the fourth-largest breeding colony of grey seals in the UK. These areas are afforded protection under the Habitats Directive 1992 as transposed by the Conservation (Natural Habitats, &c.) Regulations 1994.

It is the Scottish Executive’s understanding that Regulation 3 of the Conservation (Natural Habitats, &c.) Regulations 1994 requires competent authorities to have regard to the requirements of the Habitats Directive when considering proposals such as those for ship to ship transfers. We understand that the MCA recognise that they are a competent authority for the purposes of approving relevant contingency plans under The Merchant Shipping (Oil Pollution Preparedness, Response and
Co-operation) Regulations 1998 and that Forth Ports have acknowledged that they are a competent authority under the Habitats Directive when exercising their functions as the harbour authority.

Much of the debate on the Firth of Forth proposal has revolved around how well domestic legislation provides for regulation of Ship to Ship transfers in accordance with the Habitats Directive. As stated earlier, the Scottish Executive understands that Regulation 3 of the Conservation (Natural Habitats, &c.) Regulations 1994, provides a general duty on the Competent Authority, Forth Ports Plc, to have regard to the requirements of the Habitats Directive for Ship to Ship transfers. Though the recent consultation on potential improvements to the Conservation (Natural Habitats, &c.) Regulations 1994 in Scotland did not propose amendments in relation to Ship to Ship transfers, the Scottish Executive will assess responses prior to laying draft amendments before Parliament that improve transposition of the Habitats Directive into domestic legislation to comply with ECJ ruling C-6/04.

Yours sincerely

DAVID MALLON
Marine Management Division
Your Ref. RN:PN/EL20/1

Date: 31 July 2006

Dear Sirs,

KIMO UK COMMENTS IN SUPPORT OF PE 956 REGARDING THE PROPOSED SHIP TO SHIP TRANSFERS OF OIL IN THE Firth OF FORTH

I am writing in my capacity as President of KIMO International and Chair of KIMO UK¹ to raise our concerns regarding the threatening proposal to undertake ship-to-ship transfers of Russian oil in the Firth of Forth by the Forth Port Authority and Melbourne Marine Ltd.

We have also sent our response by e-mail to assist you to include our comments in other documents if necessary. KIMO has no objections to our comments being made public.

Based on the documents, which we have reviewed to date, KIMO UK has serious reservations regarding the measures, which are being proposed to protect the marine environment from the impacts from the proposed ship-to-ship transfers within the designated harbour area in the Firth of Forth.

Significant deficiencies have been highlighted by Scottish Natural Heritage (SNH), Fife Council, RSPB and other organisations and individuals about the contingency planning, including technical and safety issues, risk assessments and how the environmental impacts have been assessed.

¹ KIMO UK is a constituent network of KIMO international, an organisation that consists of 112 coastal local authorities in 9 countries in Northern Europe representing over 6 million inhabitants. The organisation holds observer status in the North Sea Ministerial Conference process where we were a member of the Special Interest Group on Sustainable Shipping (IGSS). We are also observers at OSPAR and at IMO (as part of the WWF delegation). This is also an issue that has caused considerable concern to our members in KIMO Denmark.

KIMO UK meets on a quarterly basis and our concern reflects discussions and representations made at those meetings by external experts and member authorities. KIMO UK was represented at a meeting (11/12/03) with the MCA in Southampton regarding Ship-to-Ship transfers in Lyme Bay. KIMO UK also actively participated in the National Dialogues in the development (1999) and revision (2009) of the UK National Contingency Plan for Marine Pollution.
After careful consideration of the possible implications of even a small oil spill in this sensitive area KIMO UK would like to support the comments made by other maritime local authorities in the Firth of Forth and in particular those submitted to the MCA consultation by Fife Council.

KIMO UK believes that due to the increasing volumes of crude oil and other hydrocarbons being exported through the Baltic and Barents Sea’s ship-to-ship transfers of heavy oil will become increasingly common around the North Sea. Such operations represent a significant pollution threat to UK and North Sea coastal waters. It is therefore paramount that all applications to carry out ship-to-ship transfers include an Environmental Impact Assessment, have a contingency plan which covers the worst-case scenario spill, require the provision of tugs and emergency response vessels on station with the capacity to deal with a worst case scenario for the duration of the transfer and that the local authority(s) are included in the decision making process at the earliest opportunity.

KIMO UK would like to express its dissatisfaction with the scope and nature of the MCA consultation. It is our view that the consultation was neither fair nor transparent as respondents are constrained to commenting on the adequacy of the oil spill contingency plans and not the underlying principle of whether ship to ship oil transfers should be taking place at all in the Firth of Forth. It is also not acceptable that, under current procedures, the MCA cannot refuse a proposal such as this but can only request further amendments to the oil spill contingency plan.

The lack of transposition of the Habitats Directive into UK law has implications for the UK Government in the approval of ship to ship transfer operations in the Firth of Forth. Therefore we have particular concerns whether the decision making procedure would stand up to legal scrutiny not withstanding that the Merchant Shipping (Ship to Ship Transfers) Regulations 1999 remain in draft form. The lack of an effective regulatory framework inevitably means that that those engaged in STS activities lack proper accountability. It will also prove difficult to apply strict liability in the event of any breach of the draft regulations.

Specific Comments on the Oil Contingency Plan

A fundamental measure to prevent accidents or the release of oil during operations must be the provision of tugs and emergency response vessels on station with the capacity to deal with a worst-case scenario for the duration of the transfer. The advantage of the operations at Sullom Voe and at Scapa Flow is that these measures are very close to hand and in the case of Sullom Voe the transfers are undertaken side by side at a jetty where these measures are permanently in place. The MSS proposal is very much different and is in open water with a significant time lapse in response time. We do not believe that the plan accounts for this and the availability of tugs to assist with manoeuvring operations and the current proposal that tugs would only be on station for berthing/un-berthing operations is not acceptable. The provision for tugs to provide emergency handling of STS vessels if they become separated for any reason, break
free from their anchors, or drift without power as has happened elsewhere in the Forth in recent years is certainly not, in our view, good practice.

The availability of tugs for emergency manoeuvres is further compromised due to the operational restrictions at Leith Docks at Low Water and MMS have consistently failed to provide assurances on how they would overcome these problems. MMS have also declined to confirm transit times for tug deployment, particularly from Leith at Low Water, or from other working areas upriver to the M1/M2 anchorages?

This is wholly unsatisfactory and at complete variance with operational arrangements for hydrocarbons transfers of ships at permanent facilities elsewhere in the Firth of Forth such as the Hound Point Marine Terminal and Braefoot Bay Marine Terminal where dedicated tugs are in constant attendance, able to intervene immediately in the event of developing problems.

A general impression gained from the various documents is that the assessment of impacts is under-played. It is accepted that major spills are likely to have a serious impact, but because these are perceived as low risk (in terms of likely occurrence) they are discounted from thorough assessment. Smaller spills are considered unlikely to have a serious impact. This is erroneous and misleading.

Compensation

The experience of cleaning up oil spills in other coastal areas of the UK in recent years confirms that the local authorities involved have encountered significant difficulties in attempting to recover costs incurred by them or to obtain compensation where appropriate. KIMO UK is well aware of the liability regimes that are currently in place and where some of our members have had first hand experience of the difficulties of claiming compensation in the past. This is particularly the case when damage is hard to quantify or where the IOPC has failed to pay out for expenses in the past. Similar difficulties would arise in the Firth of Forth as the result of a spill from STS operations.

Conclusions

In reviewing all the documentation relating to the MCA consultation regarding the ship to ship proposals for the Firth of Forth, including taking into account the overwhelming evidence that there is an unacceptable risk of potential damage to this vulnerable coastal environment which has been nationally and internationally recognised with several high profile nature designations to protect it, KIMO UK believes that this proposal must not be authorised. It is therefore disappointing that the MCA have indicated that they will approve the Plan subject to some changes.

KIMO UK is of the opinion that jurisdiction on whether the proposal can proceed does not rest solely under the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998, which implement the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC, 1990). The EU Habitats Directive 92/43/EEC may have implications for the approval of ship to ship transfer operations in the Forth due to the proximity of several designated sites. The UK Transport Minister this spring acknowledged the importance of the Forth by designating several Marine Environment High Risk Areas (MEHRA's). Therefore the
Scottish Executive jurisdiction may supersede the requirements of the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998.

In addition to the obvious risks from oil pollution which should be covered by the Oil Contingency Plan but which we believe is deficient, currently no assessment that we are aware of, has been made with regard to the issue of the introduction of alien species into the Forth from the discharge of ballast water and we have asked SNH to consider this issue. We have also asked SNH to consider the threat of any introduced alien species migrating to other Scottish waters.

Article 6 para 2 of the Habitats Directive states that "Member States shall take appropriate steps to avoid (underlining is our emphasis), in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive."

Para 3 states that "Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives.

Finally Para 4 states "If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted."

There is no over riding public interest to undertake these operations in the Forth as none of the oil to be transferred is destined for Scotland or the UK. In the event of even small spills, there will be a negative impact on the environment, social and economies and well being of the estuary. There is also no absence of alternative solutions to the proposal to undertake ship to ship transfers in the Forth, as the current infrastructure at Scapa Flow in Orkney and at the Sullom Voe Terminal in Shetland can more than adequately accommodate these activities in sheltered waters with robust environmental controls.

It is our view that the Scottish Executive has the powers, should it wish to use them, to stop this proposal under COUNCIL DIRECTIVE 92/43/EEC. Now that the MCA have approved the Plan it is important that the Parliament and Executive move quickly to stop this proposal and we urge the Committee to support the petition and recommend this option to the appropriate Scottish Executive Minister.

Yours faithfully,

Councillor Angus Nicolson
Mr Richard Hough,
Assistant Clerk to the Petitions Committee,
TG.01,
Parliamentary Headquarters,
Edinburgh,
EH99 1SP.


Dear Mr Hough,

Consideration of Petition PE956.

Thank you for your letter dated 14th November, 2006, enclosing the responses from relevant organisations. The amount of time and effort that has been put into these responses is much appreciated.

The responses merely substantiated the fears of the people and justify the overwhelming expressions of horror and disbelief of Forth Ports PLC proposals to allow ship-to-ship oil transfers in the Forth.

During the summer period more and more visitors have wished to add their voices to the petition which was presented. The anger is widespread throughout Scotland that a profit making company has more control over the Firth of Forth than our own elected representatives in our own Scottish Parliament.

Forth Ports PLC has always been highly respected. No doubt respect is given in Dundee and Tilbury and no doubt the company also enjoys respect in St Petersburg (Russia), Kotka (Finland) and Helsinki; where the company has a 50 percent equity stake in Multi-link Terminals Limited; a container terminal operator in Helsinki. That respect has suffered a substantial blow with their proposals to allow Melbourne Marine Services to conduct ‘ship to ship’ oil transfers in such an environmentally rich asset of our country.

Our feelings are personal in as much as we the people give our time voluntarily to keep our beaches clean, with the blessing of our council, who provide the tools, and under the organisation of the Marine Conservation Society, we turn out four times a year to scour our beaches of litter. All over the Forth people clean up daily for the sake of the marine and bird life which is killed or maimed by litter and for Pride in Scotland.
We, the people, who give unstintingly so much of our time to this work throughout the year, have acquired knowledge which surpasses theory, of the effects of currents, wind directions, ground swells, storms et cetera on our beaches. We know just what and where oil spills, flotsam and other debris will make land and that there is no place safe along the shores of the Firth of Forth.

Our Forth is more important than a highway for the passage of ships controlled by Forth Ports PLC. It is a ‘National Treasure’ providing the people of both Fife and the Lothians with much needed income from leisure and tourist sources. Which is the more important, This vulnerable asset for the people of Scotland or profit for one privately owned company?

There has been much talk on the subject, not only by the Marine and Coastguard Agency, the Scottish Executive and Forth Ports PLC regarding the fact that Forth Ports PLC is the competent authority for the Firth of Forth. Forth Ports PLC have also acknowledged this point on many occasions. If this is so, then the question that needs answering, is why Forth ports PLC have abrogated this responsibility over to Melbourne Marine Services, who in turn have also handed responsibility for control of pumping operations over to the Master of the pumping vessel? See Aquatera Environmental Statement, Revision 2, para 7.1.7 and table 7.1.3, also Melbourne Marine Services Contingency Plan, dated November 2005 para 3.2.1.

We therefore require you, our elected Executive to listen to MSPs, MPs, MEPs, Councils, Councillors and Specialist Environmental Groups and We the people to block this proposal through use of EC (Habitats) Directive 1994 (transposed into UK law by the Habitats Regulations, Regulation No 48).

Yours sincerely,

(Mary Douglas)
(on behalf of the people)
Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

Details of principal petitioner:
Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available

Eddie Jackson

Text of petition:
The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS

Petition by Eddie Jackson, on behalf of Borderline Theatre Company, calling on the Scottish Parliament to urge the Scottish Executive to act urgently to ensure the continuation of Borderline Theatre Company’s innovative touring and lifelong learning programme.

Additional information:
Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition. Please note that you should limit the amount of any additional information which you may wish to provide in support of your petition to no more than 4 sides of A4.
Action taken to resolve issues of concern before submitting the petition:

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

Borderline has made contact and had meetings with Scottish Arts Council representatives and has written letters to local MPs and MSPs.

Petitioners appearing before the Committee

The Convener of the Committee may invite petitioners to appear before the Public Petitions Committee to speak in support of their petition. Such an invitation will only be made if the Convener considers this would be useful in facilitating the Committee's consideration of the petition. It should be noted that due to the large volume of petitions it has to consider, the Committee is not able to invite all petitioners to appear before the Committee to speak in support of their petition.

Please indicate below whether you request to make a brief statement before the Committee when it comes to consider your petition.

I DO request to make a brief statement before the Committee [ ]

I DO NOT request to make a brief statement before the Committee [ ]

Signature of principal petitioner:

When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature ..

Date .......... 26th APRIL 2006

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:

The Clerk to the Public Petitions Committee,
The Scottish Parliament,
Edinburgh
EH99 1SP
Tel: 0131 348 5186 Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk
Public Petitions Committee – a template for e-petitions

Should you wish to submit an e-petition allowing signatures to be gathered on-line on the Public Petitions Committee e-petitioner web pages please complete the template below. Before submitting your e-petition please consult the Guidance on submission of public petitions for advice on what is and is not admissible. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

<table>
<thead>
<tr>
<th>Details of principal petitioner:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to.</td>
</tr>
<tr>
<td>Chris Bartter, Chair, 7:84 Theatre Company</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Text of petition:</th>
</tr>
</thead>
<tbody>
<tr>
<td>The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.</td>
</tr>
<tr>
<td>The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS</td>
</tr>
<tr>
<td>Petition by Chris Bartter, on behalf of 7:84 Theatre Company, calling on the Scottish Parliament to urge the Scottish Executive to act urgently to prevent the closure of 7:84 Theatre Company.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Period for gathering signatures:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please enter the closing date for gathering signatures on your petition, which we would usually recommend is a period of between 4-6 weeks</td>
</tr>
<tr>
<td>Closing date: 31 May 2006</td>
</tr>
</tbody>
</table>
Additional information:

Please enter any other information relating to the issues raised in your e-petition, including the reasons why the action requested is necessary. The text entered in this field should not exceed 2 pages. However, you may wish to provide further sources/links to background information.

The petitioner hereby acknowledges and marks support for:

- the valuable contribution that this company has made and continues to make to Scottish culture;
- the unique role it plays in bringing political topics to the stage, encouraging debate, engaging communities and their elected representatives in political discourse through theatre across the country;
- the outreach work undertaken by the company that has enabled over 2300 people just in the last year to participate in producing their own work and has enabled participants, some of whom who have felt otherwise excluded by society, to get their own voice heard; and
- the opportunities presented by and support from this company for developing fresh talent in Scottish theatre, as demonstrated by the 7:84 Writers Summer School and readings.

Across Scotland, theatre companies that have enabled communities across the country to access the theatre for decades are threatened with imminent closure.

The Scottish Arts Council has decided that some will be allocated funding until March 2007, with possible access to ad hoc project funding from then on. However, 7:84 Theatre Company sees all funding cease in August and almost definite closure. With the current outlook, the company will not exist to be able to compete for ad hoc project funding in 2007.

With it will go the high profile work it has been famous and valued for, making political issues accessible and challenging through theatre which tours to remote and disadvantaged parts of Scotland. For decades it has been bringing people to the theatre that would otherwise not have the opportunity to go.

The outreach work with people across the community – largely with those whose voices are often excluded - will be lost as well. There are thousands of people who, without 7:84, would not have had such an opportunity to get their own voices heard or gain confidence through participation in theatre – over 2000 last year alone. In the future, others will not have this opportunity.

Although other companies will face funding uncertainties from March 2007, 7:84 is the only one that faces the cut in August. It has been dealt with in a different way to all other companies and it is not clear why.

Without urgent action, the closure of 7:84 will be inevitable. The demise of the company will leave a void not filled by any other in Scotland. Since it was established, it has had and continues to have a unique and vital role in Scottish life and our society will be the poorer without it.

Since the announcement, 7:84 has been inundated with messages of support. This petition has been set up to enable people across Scotland and beyond to demonstrate their support for 7:84 to be saved.
Action taken to resolve issues of concern before submitting an e-petition:

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern, by for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MSPs. Details of those approached should be entered.

There have been regular representations to and meetings sought with Scottish Arts Council over the course of the last few years.

There have been meetings and continued dialogue with Members of the Scottish Parliament.

Support for 7:84 has been demonstrated by Members in various Parliamentary motions.

A meeting has been sought with the Minister for Culture.

Comments to stimulate on-line discussion:

Please provide at least one comment to set the scene for an on-line discussion on the petition, not exceeding 10 lines of text.

Since the announcement that all funding is to be cut, 7:84 has been inundated with messages of support. This e-petition has been set up to allow people to get their comments heard in a public forum and will be presented to the Petitions Committee of the Scottish Parliament soon, with a call for the Scottish Executive and Scottish Arts Council to act immediately to save this valued company.

Thanks to all supporters for their efforts to save 7:84.

Petitioners appearing before the Committee

The Convener of the Committee may invite petitioners to appear before the Public Petitions Committee to speak in support of their petition. Such an invitation will only be made if the Convener considers this would be useful in facilitating the Committee’s consideration of the petition. It should be noted that due to the large volume of petitions it has to consider, the Committee is not able to invite all petitioners to appear before the Committee to speak in support of their petition.

Please indicate below if you do NOT wish to make a brief statement before the Committee when it comes to consider your petition.

I do NOT wish to make a brief statement before the Committee
Signature of principal petitioner:

When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature

Date

For advice on the content and wording of your e-petition please contact:

The Clerk to the Public Petitions Committee
The Scottish Parliament
Edinburgh
EH99 1SP
Tel: 0131 348 5186 Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk

Note
Completed e-petition forms should also be sent to petitions@scottish.parliament.uk
Dear Michael,

I refer to your letters of 25 May and 30 June concerning Petitions PE 959 and PE 970 respectively which have been presented to the Public Petitions Committee on behalf of the Borderline Theatre Company and 7:84 Theatre Company. As the petitions are very similar I am following the lead of the Committee, in hearing the response from the Scottish Arts Council to both petitions on 28 June, and offer my response to both petitions in one letter.

The Committee will be aware that, as Minister for Tourism, Culture and Sport, it is my responsibility to set the overall budget for the Scottish Arts Council. Earlier this year, I was delighted to announce a £7 million increase in that budget which would be used to implement the priorities set out in Scotland’s Culture, which I presented to Parliament in January.

Once the budget has been set, however, it is for the Scottish Arts Council to decide which arts organisations to fund. In taking its decisions, SAC has indicated that it will follow the set of principles established as a result of its strategic review – promoting access, excellence and sustainability. I do not become involved in decisions about funding for individual organisations nor do I comment on individual cases.
I appreciate the strength of feeling which has been generated by the change in the funding arrangements for these two companies but it would be inappropriate for me to comment, particularly as each company has launched an appeal.

I hope this response is helpful in clarifying my position.

Sincerely,

PATRICIA FERGUSON
From: Hough R (Richard)
Sent: 14 November 2006 16:30
To: McGill D (David)
Cc: Martin E (Eileen)
Subject: FW: Borderline Theatre Company

Briefing paper for MPs and MSPs...

For info. This petition is scheduled to be considered again by the committee on 13 December.

RH.

-----Original Message-----
From: Scott J (John), MSP
Sent: Tuesday, November 14, 2006 4:26 PM
To: Hough R (Richard)
Subject: FW: Borderline Theatre Company

Sorry
J

-----Original Message-----
From: Eddie Jackson [mailto:Eddie@borderlinetheatre.co.uk]
Sent: Tuesday, November 14, 2006 11:54 AM
To: Martin C (Campbell), MSP; Gordon C (Charlie), MSP; Eadie R (Helen), MSP; Baillie J (Jackie), MSP; Munro J (John), MSP; Scott J (John), MSP; McMahon M (Michael), MSP; Kane R (Rosie), MSP; White S (Sandra), MSP
Subject: Borderline Theatre Company

Ladies & Gentlemen

I attach a briefing note on our current situation in relation to the proposed ending of Scottish Arts Council funding. This also contains some information on discrepancies in statements made by the SAC.

Eddie Jackson
Producer
Borderline Theatre
North Harbour Street
Ayr
KA8 8AA

01292 281010

www.borderlinetheatre.co.uk

In response to the Scottish Arts Council's decision to cut Borderline's funding from March 2007 Borderline have raised an on-line Petition. If you have not yet added your name to Borderline's Petition please Click on <http://petitionchem.com/default.asp?sect=detail&pet=2702> to give your support to Borderline Theatre Company now!

For more information on our year long Lifelong Learning Programme including Youth Theatres, Schools, Community Productions and bespoke workshops got to www.borderlinetheatre.co.uk

<<Briefing paper for MPs and MSPs.doc>>
Borderline Theatre Company Ltd

We would like to update you on the current situation of Borderline Theatre and funding issues with the Scottish Arts Council (SAC).

We have concluded the SAC's formal appeals process and the Appeals Committee have determined that our appeal has been refused. This is despite strong evidence from Borderline that the SAC either changed their criteria or changed the weighting of their criteria which in our mind amounts to the same thing. The appeal committee agree that the SAC "appeared to change the weighting of criteria" but this seems to be of no account.

We continue to find this puzzling since that the Head of Drama recommended support for Borderline's application with an inflationary grant increase for on 1st December 2005 and the reversed of that recommendation on 14th February 2006.

Effectively the SAC changed the basis on which funding decisions were made, after undertaking a Strategic Review which was clearly undertaken after applications were received. Borderline believe it was perverse to undertake such a review after applications were invited and received. It would have been entirely appropriate to undertake such a review prior to soliciting applications and thus the criteria or priorities or aims and their relevant weighting would be transparent from the outset.

The Head of Drama states at Stage 2 of Borderline's organisational assessment as part of his recommendation for continued funding on 1st December 05 writes: "I believe that it is important to maintain a range of work, including work that is produced to acceptable standards and reaches a wide audience"

he also noted

"The number of attendances (for Borderline) is however, high and this level of attendance is not likely to be matched by other companies that are currently or may in future be funded"

On the 14th of February 06 the Head of Drama reverses his previous position as follows

"Borderline would naturally fall into the category of Audience Focussed. As shown in the officer's report the artistic achievement over recent years has not been high in comparison with other producing companies. It is recommended that the company is designated Flexible Funding. Projects. This would mean that the company could apply for one-off funding for specific projects. This is likely to result in significant changes in how the company operates. Decision authorised:
Head of Department: David Taylor Date: 14/02/05"

Members of the Petitions Committee please note the reference to "Audience Focussed". Jim Tough Deputy Director of SAC when giving evidence before your committee on 28th June 2006. Mr Tough said: "we would not penalise a company for being too audience focused. To be honest, that phrase was used in the pressure of the moment during a telephone conversation between one of our officers and a company".

See below relevant extract of Public Petitions Committee minute
"The Convener: Thank you, Mr Tough, for that interesting introduction. I would like to open up the discussion on the situation by asking you a question that has puzzled me since the two petitions were brought to us. The change in criteria that has caused the two organisations to lose their funding was based on their being too "audience focused". Can you explain what that means and what the problem is with a successful company being "audience focused"?

Jim Tough: I am delighted to have the opportunity to put that question to bed, if that is possible. The invitation to apply was against our three aims—on the artists, on audience participation and on education—so we did not move the goalposts. The Scottish Arts Council has ended up with a corporate view of our aims, and support for artists and creativity has to be central to that, but that absolutely does not abandon our commitment to audiences and to education and participation. We did not change the criteria and we would not penalise a company for being too audience focused. To be honest, that phrase was used in the pressure of the moment during a telephone conversation between one of our officers and a company, but a key concern in many of the decisions was the quality of the work."

Please note below a copy of the SAC decision grid whereby Mr Tough and two senior SAC committee members approve the Borderline funding decision and effectively they also approved the written comment by the Head of Drama on audience focus which predated any telephone conversation referred to by Mr Tough in his evidence to committee. We continue to dispute the judgement in relation to the quality of our work as we dispute the statistical basis of their conclusions, we contend the issue is about style and taste. The style of our work does not fit the new experimental orthodoxy the SAC wish to promote. This policy will effectively exclude the disenfranchised audience which Borderline's work attracts.

Extract from SAC Organisational Assessment of Borderline Theatre

**STAGE 2**

<table>
<thead>
<tr>
<th>Decision and authorisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stage 2: Head of Department recommendation within the context of the sector ecosystem</td>
</tr>
</tbody>
</table>

| CFO name: Borderline Theatre Company | REF No. (GMS): G200801028 |
| Category for support | Foundation |

The officer's report rates Borderline low overall. This is largely due to the majority artistic evaluations being competent or poor. The number of attendances is, however, high and this level attendance is not likely to be matched by other companies that are currently or may in future be funded. While the quality of work may be evaluated as unexceptional, I believe that it is important to maintain a range of work, including work that is produced to acceptable standards and reaches wide audience. There are no significant operational issues. The officer's report indicates that the marketing plans lack sufficient targeting and this is an area for development. Within standstill I recommend inflationary increases, on the basis of the Three aims being of equal value.
Stage 3: Head of Department recommendation within the context of the Corporate Synthesised scenario

CFO name: Borderline Theatre Company

REF No. (GMS): G200801028

Category for support: Flexible

Borderline would naturally fall into the category of Audience Focussed. As shown in the officer's report the artistic achievement over recent years has not been high in comparison with other producing companies. It is recommended that the company is designated Flexible Funding Projects. This would mean that the company could apply for one-off funding for specific projects. This is likely to result in significant changes in how the company operates.

Decision authorised:

Head of Department: David Taylor

Date: 01/12/05

Stage 4: Group Heads

Recommendations and authorisation

CFO name: Borderline Theatre Company

REF No. (GMS): G200801028

Category for support: Flexible

Council's review process has concluded that flexible funding will help to achieve a dynamic in the sector that allows the new artists and companies to have an opportunity to develop and present their work. A key criteria in this will always be the artistic quality, not at the expense of the audience interest, but to serve the audience with the best and most challenging work. In this context we agree with the proposal for Borderline to move onto flexible funding, but propose transitional funding which would allow the company to explore their options in these circumstance

Decision authorised:

Group Head: Jim Tough

Date: 14/02/05
**Recommendations and authorisation**

<table>
<thead>
<tr>
<th>CFO name : Borderline Theatre Company</th>
<th>REF No. (GMS) : G200801028</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Category for support</strong></td>
<td><strong>Flexible.</strong></td>
</tr>
</tbody>
</table>

Agreed as per Manager/Group Heads recommendations

**Decision authorised :**

Committee : Jennifer Waterton  
Date : 6/02/05

---

**Stage 6 : Council**

**Decision**

<table>
<thead>
<tr>
<th>CFO name : Borderline Theatre Company</th>
<th>REF No. (GMS) : G200801028</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Category for support</strong></td>
<td><strong>Flexible(Project)</strong></td>
</tr>
</tbody>
</table>

Approved flexible (project) funding as per Managers/Group Heads and Committee recommendations

| Chairman : Richard Holloway | Date : 28/02/05 |

---

Borderline's work delivers a broad and general public value that in a reasonable and rational assessment of strategic requirements for a breadth of provision should be accommodated. This new orthodoxy for touring drama which the SAC now proposes are projects that have no track record or market connection, that will replicate administration and support costs. This is unlikely to deliver VFM, it narrows the styles of theatre available and the breadth of provision. The SAC seems to be throwing out core, solid, popular work, which attracts audiences, a developed brand and positioning which attracts promoters and audiences and a valuable long-term organisational knowledge. This work which forms the mainstay of many small and medium touring venues, as evidenced by the independent research, has legitimacy with artists, venues and audiences and to replace it with pilot projects is surely perverse? Why do SAC wish to turn the touring circuit and its audience into an
experimental laboratory? This will have a detrimental effect on audience engagement with drama in most of the small and medium venues throughout Scotland.

With the SAC Appeals process now concluded the Board of management of Borderline Theatre is actively researching the options open to the company.

It is our Board's intention to find a way to continue to serve our broad based audience despite the SAC's implicit rejection of them by terminating our funding.

We will keep you informed.

EJ 14.11.06
Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

Details of principal petitioner:
Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available

Mrs Anne Ayres, Chairperson. Carntyne Winget Residents Association.

Fax & E Mail Facilities: Fax: 0141 427 6445 E Mail: ferdaltd@tiscali.com

Text of petition:
The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed agenda for change legislation for speech and Language Therapy Services and service users within the NHS

The petitioner requests that the Scottish Parliament……..

The petitioners request that the Scottish Parliament considers and debates the implications of the after-effect of the social housing transfers from local council authority ownership to Social-housing associations as landlords. This both for the tenants thereof and also effected home-owners who were previously factoried by the local authority and for which this function has been passed by title to such a social housing non-profit making authority.

Additional information:
Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition. Please note that you should limit the amount of any additional information which you may wish to provide in support of your petition to no more than 4 sides of A4.
**Action taken to resolve issues of concern before submitting the petition:**

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

Jack McConnell MSP, Paul Martin MSP, Sandra White MSP, Tom Mc Keown G.C. Councillor, Patricia Chalmers GC. Councillor, Marg Curren. MSP( Former Communities Minister).

Michael Lennon. CEO Glasgow Housing Assoc. Margaret Crawley. Manager Keystone Housing.

Paul Mc Neil. Consultants to GHA Ltd. Communities Scotland

Others in Summery: All Scottish MP’s, MSP’s, Tony Blair, HRH the Queen, Prince Charles. All local Glasgow Councillors.

Other actions in Summery: Formation of a focused Association. Developed media interest, and provided for alternative systems.

---

**Request to speak:**

All petitioners are given the opportunity to present their petition before the Public Petitions Committee. The Convener will then make a decision based on a number of factors including the content of the petition and the written information provided by the petitioner as to whether a brief statement from the petitioner would be useful in facilitating the Committee’s consideration of a petition.

Please indicate below whether you wish to request to make a brief statement before the Committee when it comes to consider your petition.

![Yes/No]

Delete as appropriate

---

**Signature of principal petitioner:**

When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures given should be appended to this form.

<table>
<thead>
<tr>
<th>Signature</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

Date .................. 16/3/2005

---

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:

The Clerk to the Public Petitions Committee,
The Scottish Parliament,
Edinburgh
EH99 1SP
Tel: 0131 348 5186    Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk
1st August 2006

Dr. James Johnston
Clerk to Public Petitions
Scottish Parliament
Parliamentary HQ.
Edinburgh
EH99 1SP

Dear Dr. Johnstone

Re: Petition PE829

I refer to your letter on the above, dated 31st May 2006 and am pleased to advise you as follows:

- GHA has retained the original consultant team (led by Hilland Ritchie Consultants) to progress the preferred mixed option for the Wingets houses in Camtyne. This involves the retention of most of the existing properties and some demolition and new build.

- GHA has also been working to obtain confirmation from the Building Research Establishment (BRE), Glasgow City Council, and Communities Scotland of the benefits of a pilot project for the retention option.

The BRE was formally approached in October 2005 to carry out a technical assessment of the recommendations on retention of the stock. The BRE reported to the consultants' team, and their Engineer's report was produced in January 2006. The BRE assessment, with some technical clarifications, was positive for both the Adams and Powerwall retention proposals.

- Communities Scotland and GCC have confirmed their support for the carrying out of a pilot project to advance our understanding of the retention option and the implications for tenants and owners.

- GHA will retain the involvement of the BRE throughout the pilot project. They have been invited to contribute to the assessment process necessary for the pilot.
• Keystone Tenant Managed Homes Ltd, the Local Housing Organisation managing GHA stock in the Carnyke area, is presently making arrangements to decant the tenants of the properties to be included in the pilot exercise to enable the pilot project to proceed.

• The Carnyke community is being kept informed of progress on the project. For example, information on the BRE assessment and the intention to continue their involvement throughout the pilot process has been transmitted in newsletter format to the community and elected members and on Keystone’s website at www.keystonetmh.org.uk.

• A procurement process is now underway, through GHA, for a pilot project to test both the Adams and the Powerwall systems. GHA anticipates that this procurement process, and the obtaining of necessary statutory consents, will be completed by November 2006.

The pilot project will allow meaningful structural, financial and technical assessments to be made as to the long-term future of the Winget properties.

It is GHA’s intention, as always, to keep the community and elected members informed of progress. Regular newsletters and updates will be provided directly to all residents by Keystone. The next significant milestone in the project will be at the conclusion of the procurement exercise.

Yours sincerely

Michael Lennon
Chief Executive