

SUPPLEMENTARY NOTE TO THE PUBLIC PETITIONS COMMITTEE

PETITION NO PE 1357 by TESSA PACKARD

This Supplementary Note follows the recent decision in the Fallago Rig Wind Farm application, announced by Scottish Ministers on 9 November 2010.

We submit this Note because that decision illustrates the issues which are raised by the Petition.

These issues are **Notification, Inclusion** and **Accountability**

- 1 Black Mountain Farms, a group of Lammermuirs landowners, (BMF) and the Cranshaws, Ellemford and Longformacus Community Council (CELCC) were both relevant persons at the Fallago Rig Second Public Local Inquiry, and played a full part in the process, as they were entitled to do.

We believe we are entitled to professional respect and courtesy from the other parties and the decision-maker.

- 2 BMF and CELCC learned of the Fallago Rig decision from the media. Our formal representatives had not been informed by letter, email or telephone, yet North British Wind Power had released a written statement for the media some 20 minutes after the announcement was made. It was the BBC who kindly filled us in. We queried why the ECDU informed the press rather than advising parties to the inquiry. The ECDU replied:

“Thank you for your email. We have been compliant with Regulation 10 (3) of The Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2000 (<http://www.hmsa.gov.uk/legislation/scotland/ssi2000/20000320.htm#7>) which refers to publicity of opinions, determinations and decisions of section 36 applications.”

After five years of work to present the Community view, we think we are entitled to better treatment.

- 3 The Minister's Press Notice refers to The Tweed Forum as representative of the Community. To suggest that the local Community is represented through the Tweed Forum shows how out of touch both the Scottish Government and North British Wind Power are. It is disturbing that this organisation has been positioned in this way. The Tweed Forum has not represented the Community's views at any public inquiries and does not represent the interests of local people. Our collective voice has been formally represented in all public inquiries and in direct correspondence with the Scottish Government for many years. Furthermore, formal opposition to the Fallago Rig application is not limited to members of the public. East Lothian (not West Lothian, as the decision letter states) and Scottish Borders Councils, various Community Councils and Scottish Natural Heritage, the organisation that advises the Scottish Government on landscape issues, have all registered their opposition.
- 4 Statements are being made about our Community by people who have never been here which do not reflect reality. The Lammermuirs have over 200 wind turbines to date, but we are only aware of a handful of jobs that support them and have not seen the "significant boost to the local economy" that the Minister says 48 turbines at Fallago will bring. Prior to this announcement, no mention had been made by the developers or the Scottish Government of the potential for 600 jobs to be generated from *any* wind farm. The figure of seems to be in the realms of unreality. This reinforces the local view that politicians are completely out of touch with rural communities and are only interested in their political agendas.
- 5 The Scottish Government committed to "putting in place a series of conditions to protect the outstanding natural habitats and landscapes and minimise disturbance to communities." The Minister has not explained to the Community what these conditions are, or how they will protect the natural habitats in the Lammermuirs.

- 6 In his press release, the Minister expressed his delight at seeing “constructive dialogue from all parties concerned” during the application process. The only constructive dialogue which took place was among the applicants, the MoD, Ministers and the ECDU during the period after the first Inquiry and before the second. The Community was excluded from this. We are concerned that the Minister considers the Community to be so insignificant.
- 7 Community safety concerns have not been addressed by the decision-makers. The first inquiry into Fallago Rig recommended refusing consent for Fallago Rig because of the Ministry of Defence’s objections on grounds of national security. This would be compromised by degradation of Air Defence Radar caused by the turbines. There was a concern that Torness power station could be a target for terrorists. The UK Government’s Security Strategy has recently ranked terrorist attacks or major incidents as Tier 1 threats. As near neighbours of Torness, this is of great concern to us.
- 8 The MoD acknowledged that its Air Defence Radar is more badly affected by Crystal Rig wind farm than they expected, and they told us at the Public Inquiry that Fallago Rig would cause a radar black hole several kilometres across. There is no proven and tested radar solution. The MOD withdrew its objection because the developers agreed to fund a study into a mitigation scheme. The evidence promised at the inquiry has not come forward. No document has been disclosed, despite promises made at the Inquiry.
- 9 Under the s. 36 scheme, the decisionmaker is the Scottish Ministers. Following the Inquiry, BMF submitted a document containing a range of legal submissions. They made this submission, in this way, because the Reporter intimated that would be her preference, and that she did not wish to have to deal with other than the planning issues raised by the application.
- 10 The decision letter is entirely silent on these legal submissions. The submissions are not trivial, frivolous or vexatious. They go to the heart of the application, and right or wrong deserve to be considered and adjudicated upon. Ignoring them is simply a further insult and a further example of the

professional discourtesy which, unfortunately, has become the hallmark of the ECDU.

- 11 Recently, in connection with another development, we queried the new procedure introduced by the ECDU. The response was that

*“**The objecting public’s** (our emphasis) expectation of an independent PLI should also be based on the relevant legislation, and it is that legislation which we are acting upon if we follow the procedure you refer to. Of course **the objecting public** have rights and a role to play – they are consulted on the original application and further consulted on any addendum which might result from the process you refer to, and again should the application still go to PLI.”*

Whilst this statement is technically accurate, this level of condescension neatly illustrates the gulf of misunderstanding between decisionmaker and the receiving communities.

- 12 The remainder of this Petition stands as submitted. A serious issue of participation and accountability has opened up in relation to Scotland’s largest and most pervasive form of development. The consequence has been to secure effective and long lasting alienation of the public from developers and Government alike; to generate mistrust and disbelief; and to create even greater distance between Government and the population. An investigation is fully justified.

John Campbell QC

For Ms Tessa Packard

16 November 2010