

**Supplementary note for consideration by the Aarhus Compliance
Committee 17th March 2010**

Submitted by RoadSense

**Scope of the Public Local Inquiry into the Aberdeen Western Peripheral
Route**

1. This brief note has been introduced to supplement the initial complaint, and subsequent responses to rebuttals, prepared by Professor Anthony Hawkins on behalf of RoadSense. As the public local inquiry has now been concluded, and the outcome announced, we are in possession of new information.

2. RoadSense contends that the scope of the inquiry, as set by the Reporters acting under direction from the Scottish Government Minister, was too narrow and thus unfairly prejudiced those parties, including RoadSense, objecting to the scheme. The terms of the public local inquiry were set out orally by the Reporters at the pre-inquiry meeting held in Aberdeen in May 2008 and then shortly after by letter. Specifically, RoadSense contends that the Government Minister prohibited any meaningful discussion of possible alternative routes at the public local inquiry. It contends that this is in breach of the Aarhus Convention's aims to secure proper involvement by citizens in environmental decision making and to allow such decisions to be properly challenged. In particular we allege that this is a breach of Article 6.4 of the Convention.

3. The Reporters made it clear at the pre-inquiry meeting that the Government Ministers had decided that the public local inquiry would be into the route identified in the draft road orders. It was not to be into other routes. We refer to paragraphs 10 and 11 of the Minute of the Pre-Inquiry Meeting.

10. However, the Scottish Ministers have accepted the need in principle for the road, and they do not wish to be advised on the justification for the principle of the scheme in economic, policy or strategic terms. They consider that strategies and policies referring to the scheme are only relevant to the inquiry insofar as these set out the context for the AWPR. They have directed that they only wish to be advised on the technical aspects of the route choice, including the environmental statement and any opinions expressed on it. They wish to be advised on the technical and environmental issues associated with the scheme, together with its 3 individual components – the Northern Leg (North Kingswells to Blackdog), Southern Leg (Charleston to North Kingswells) and Fastlink (Stonehaven to Cleanhill).

11. Accordingly, the reporters do not intend to permit the presentation of evidence or questioning on the need for the scheme. Any background material which Transport

Scotland wishes to submit relating to this should be included in a written statement, lodged as an inquiry document, and not in witnesses' precognitions. Transport Scotland confirmed that much of the content of paragraph 5.2 of its outline statement of case, regarding 'issues pertaining to the scheme as a whole', could be provided in a written statement.

4. Ordinary objectors to the scheme were prohibited from identifying and promoting any alternative route alignment. Only landowners served with draft compulsory purchase orders (referred to as 'statutory objectors') were allowed to identify and promote alternative alignments. In doing so, those parties were required – at their own financial expense – to identify and serve notice on all relevant landowners, and carry out appropriate environmental surveys and assessments. For those parties that attempted to identify and promote alternative routes this proved to be an impossible burden to discharge and was, given the very limited time period available, unreasonable. The financial costs of doing so were prohibitive. Moreover, one alternative route proposed by a Statutory Objector was ruled out simply on the grounds that it did not connect to Stonehaven (to the south of Aberdeen) which, according to the Reporters, the Minister had already determined was to be the southern anchor of the route.

5. Moreover, at the public local inquiry no discussion was permitted of a no-bypass option or other forms of traffic management - nor any discussion permitted of an option to the east of the city – since the starting point for the inquiry was that the Minister had already taken the decision that in principle that there was to be a bypass to the west of the city. On the first day of the inquiry, RoadSense attempted to argue that as the chosen route crossed an area designated as a Special Area of Conservation under the EU Habitats and Species Directive, it was necessary for the Reporters to consider alternatives, including a 'no road' alternative. The Reporters refused to do so. Effectively the public inquiry came at a stage in the process when it could not be argued that all the options were open.

6. As a consequence of the restriction other evidence, in support of less environmentally damaging route options, was ruled by the Reporters as inadmissible. This included, for example, a tunnel option worked-up and promoted by a party advocating protection of the green belt (Aberdeen Greenbelt Alliance). RoadSense, who represented almost 10,000 objectors to the proposed scheme, was not allowed to present any evidence at the public local inquiry in support of a no-road solution and improved traffic management measures, nor was it allowed to identify and promote an alternative route alignment. Its scope for properly participating in the public local inquiry was therefore limited to commenting upon, and objecting to, the Scottish Minister's chosen route.

7. The impact of this restriction is rendered clear by some of the Reporters' findings and conclusions – for example they concluded that the selected route would be very damaging to the long established woodlands at Kingcausie and to nearly all of the 'Local

Landscape Character Areas' – but felt powerless to find against the scheme on these grounds as there was no alternative scheme available.

8. In conclusions, we would emphasise that the decision of the Minister to opt for a western bypass was taken without any recourse to a public inquiry at which the arguments for and against the concept could be properly tested through the presentation, and cross examination, of evidence. The public inquiry that was held between September 2008 and January 2009 was into a proposal which the Government stated had already been confirmed as a matter of policy. The Aarhus Convention requires for early public participation when all options are open, and the public inquiry should not be seen in this light.

William Walton
Chairman – RoadSense
23rd February 2010