

CONSULTATION RESPONSE

TO SCOTTISH GOVERNMENT

for

- (1) Avonbridge & Standburn Community Council, Falkirk
- (2) Bathgate Community Council, West Lothian
- (3) Bellsquarry and Adambrae Community Council, West Lothian
- (4) Bishopbriggs Community Council, East Dunbartonshire
- (5) Blackness Community Council, Falkirk
- (6) Bo'ness Community Council, Falkirk)
- (7) Bonnybridge Community Council, Falkirk
- (8) Brightons Community Council, Falkirk
- (9) Charlestown, Limekilns and Pattiesmuir Community Council, Fife
- (10) Crossford Community Council, Fife
- (11) Grangemouth (Inc. Skinflats) Community Council, Falkirk
- (12) Granton & District Community Council, Edinburgh
- (13) Kincardine Community Council, Fife
- (14) Knightsridge Community Council, West Lothian
- (15) Leith Links Community Council, Edinburgh
- (16) Polmont Community Council, Falkirk
- (17) Reddingmuirhead & Wallacestone Community Council, Falkirk
- (18) Roslin & Bilston Community Council, Mid Lothian
- (19) Shieldhill & California Community Council, Falkirk
- (20) Silverton and Overtoun Community Council, West Dunbartonshire
- (21) Southside Community Council, Edinburgh
- (22) Torrance Community Council, East Dunbartonshire
- (23) Waterside Community Council, Eastern Dunbartonshire
- (24) Woodlands and Park Community Council, Glasgow

regarding

- (i) **Environmental Report of the Strategic Environmental Assessment of Scottish Government's Preferred Policy Position on UOG**
- (ii) **Partial Business Regulatory Impact Assessment ("BRIA") of Scottish Government's Preferred Policy Position on UOG**
- (iii) **Updated policy Position Statement on UOG**

Consultation Response

This submission is made on behalf of the above named Community Councils, all hereafter referred to as “The CCS”. This consultation response is made within the period set by Scottish Government, as extended until 31 December 2018 for community councils confirmed by email sent to Ms Montinaro of Shieldhill & California Community Council dated 12 December 2018.

The CCS are 24 Community Councils, eleven of which responded to the “Talking Fracking” consultation between 31 January and 31 May 2017 and a further thirteen which have come under these representations due to the collectivizing activities of Community Councils following the “Talking Fracking” consultation. Community Councils are the most local level of statutory representation in Scotland, established under section 51 of the Local Government (Scotland) Act 1973, and help make public and governmental bodies aware of the opinions and needs of the communities they represent.

Fairness of consultation

CCS wish to point out that communities lack the resources to be able to assess the SEA properly with all its references to scientific papers and other technical documents. No financial support is given to Community Councils or communities in order that they may make an informed assessment of all the issues raised in the SEA. This is unfair because the outcome from the SEA may have serious implications for communities on which they have not been able to make informed comment. It is submitted that community bodies should be given public funding to respond to consultations like this one where there are potentially serious impacts on the communities arising from decisions on the basis of the SEA. It should also be noted that community councils comprise volunteers which meet monthly or less (some not in December) and this makes it challenging to respond to consultations in limited time frames particularly over Christmas and other holiday periods. Further signatories are anticipated in the new year and we would request Scottish Government to accept these as if they had been within the consultation time frame.

“Talking Fracking” Public Consultation

In the independent analysis of the “Talking Fracking” consultation carried out by Griesbach & Associates (October 2017)¹ (“Fracking Consultation Analysis”) the data demonstrated that 98% of the respondents were individuals (8,425) and only 2% were from organisations (186). Out of this 2% of organisations which responded, over 1/3 (63 responses) represented the mandate of residents situated in their communities, either by way of Community Councils or by other community groups. Out of these 63 responses, 39 were by Community Councils. Out of these 39 Community Councils that responded to the “Talking Fracking” consultation, 11 are represented through this response and an additional 13 have come under these representations due to the collectivizing activities of Community Councils following the “Talking Fracking” consultation. For the above reasons, we consider these representations to carry particular weight in the deliberations of Scottish Government in finalizing its policy in relation to UOG.

Summary of CCS’s Submission

In summary, having regard to the SEA Report and to these submissions:

1. CCS submit that the Scottish Government should maintain its policy ban of UOG and should then incorporate the ban on a statutory basis; and
2. that the SEA is inadequate, particularly in regard to its assessments of impacts on communities and on mental health;
3. in particular, CCS are concerned that the SEA does not consider the impact of UOG on a sense of place and identity arising out of a community’s civic and collective lived experience, which is part of a community’s cultural heritage (Environmental Assessment (Scotland) Act 2005 Schedule 3 paragraph 6(a)(xi)) or can be categorized as “social impacts”, in either case with resultant mental health impacts.

¹ Available at this [link](#), last accessed 18 December.

Q1: What are your views on the accuracy and scope of the information used to describe the SEA environmental baseline set out in the Environmental Report?

Community Impacts/Social Impacts

Para 2.18 of the SEA Report states “the social impacts identified in the responses to the “Talking Fracking” public consultation, while not captured in this SEA, are significant factors which will be considered by the Scottish Government in reaching a view on the finalised policy.” (underlining added)

It is not clear which social impacts identified in the “Talking Fracking” public consultation have not been captured in the SEA report and, furthermore, why it was felt necessary to exclude them from the SEA process. We therefore consider that the scoping of the SEA has inadequately taken into account the community/social impacts reported on through the “Talking Fracking” Consultation.

For the sake of clarity, we suggest that those “community impacts” referred to in the Fracking Consultation Analysis can be defined as impacts on “residents situated in their community”, in order to emphasise the heterogeneous nature of diverse people collectivizing in a situated specific geography, which at the same time enables a distinct and civic “identity of place” to emerge out of those relationships. To quote an academic paper considering the place-based perceptions of the effects of fracking, “people and places are mutually-reinforcing reciprocal systems and personal and collective identities are situated and shaped by both social relations and place.”²

Without clear understanding of what has been scoped out of the SEA by excluding “social impacts” (nor what is meant by the term “social impacts”), the CCS are disadvantaged in making an adequate response to this question.

CCS believe such community impacts should have been scoped within the SEA process.

It should be noted that the criteria set out for assessing environmental effects at Annex I to the SEA Directive are non exhaustive – by not explicitly mentioning “community impacts” it

² Sangaramoorthy, T., Jamison, A.M., Boyle, M.D., Payne-Sturges, D.C., Sapkota, A., Milton, D.K. and Wilson, S.M., 2016. Place-based perceptions of the impacts of fracking along the Marcellus Shale. *Social Science & Medicine*, 151, pp.27-37, available at this [link](#) last accessed 18 December 2018

does not necessarily follow that they must be excluded (see e.g. para 3.24 EU Guidance on the implementation of the SEA³).

Scottish Planning Policy 2014 (“SPP 2014”)

We suggest that “community impacts” as a baseline data set can be scoped in a SEA process through the framing provided by SPP 2014, in particular: Para 15 in relation to Outcome 1, “A Successful Sustainable Place”:

“Well-planned places promote well-being, a sense of identity and pride, and greater opportunities for social interaction. Planning therefore has an important role in promoting strong, resilient and inclusive communities.” (underlining added)

Therefore, adverse community impacts would be those which did not serve to promote these outcomes and positive community impacts would be those which did. CCS contend that this sense of place/social identity is part of a community’s “cultural heritage” and omitting to carry out an assessment from this perspective is a significant omission of valuable information. In carrying out a “place-based” assessment of the impacts of fracking along the Marcellus shale, Sangaramoorthy et al 2016⁴ conclude that “Our findings indicate that fracking contributes to a disruption in residents' sense of place and social identity, generating widespread social stress.” Jerolmack and Berman 2016⁵ note that UOG “also weakened long-standing community norms of sovereignty and reciprocity and left some residents with a profound sense of alienation from their property, neighbors, and place.” Evensen et al 2017⁶ report that UOG “may affect the future sustainability and resilience of the small, often rural communities where development occurs”. These are real and measurable “psycho-social health impacts”. Thus, a “place-based” impact on communities ought to have been properly assessed in addition to the other heads that have been considered.

³ Available at this [link](#) last accessed 18 December 2018

⁴ Sangaramoorthy, T., Jamison, A.M., Boyle, M.D., Payne-Sturges, D.C., Sapkota, A., Milton, D.K. and Wilson, S.M., 2016. Place-based perceptions of the impacts of fracking along the Marcellus Shale. *Social Science & Medicine*, 151, pp.27-37.

⁵ Jerolmack, C. and Berman, N., 2016. Fracking communities. *Public Culture*, 28(2 (79)), pp.193-214.

⁶ Evensen, Darrick, Richard Stedman, and Benjamin Brown-Steiner. "Resilient but Not Sustainable? Public Perceptions of Shale Gas Development via Hydraulic Fracturing." *Ecology and Society* 22, no. 1 (2017).

Q2: What are your views on the predicted environmental effects as set out in the Environmental Report?

(1) Air Quality

The statement at paragraph 13.16 of the SEA Report, that “Scotland has seen strong declines in emissions of most pollutants between 1990 and 2013: SO₂ by 87%, NO_x by 67%, PM₁₀ by 53% and PM_{2.5} by 56% (UK)”, is made without contextualizing the importance of ensuring a sufficiency of monitoring stations at locations appropriate for measuring the exposure to residents in their lived places and communities.

The data for paragraphs 13.16 is lifted from the Scottish Parliament Briefing *Air Quality in Scotland* (May 2016), which provides further detail in particular in relation to PM_{2.5} as follows:

“UK data suggests that PM_{2.5} has followed a similar trend to PM₁₀ (Figure 4), although fine particles concentration data in Scotland is currently limited with data being available for just 10 monitoring stations measuring this pollutant in 2015, in comparison to 60 for PM₁₀. It is possible that the trend in fine PM has been underestimated, particularly in areas of high traffic... PM_{2.5} is often cited as the air pollutant of greatest concern in terms of health impacts as the particles are small enough to enter the blood stream which has been linked to increased incidence of heart attacks.” (underlining mine)

As noted at para 5.19 of the SEA Report, “the general rule is that the lower the size (μ), the more dangerous the pollutant is because smaller particles can penetrate and lodge more deeply into the lungs.”

In addition, the section entitled “key areas of uncertainty” for air emissions makes no reference to the uncertainty due to the lack of monitoring stations for PM_{2.5}. This omission should be taken into account when finalizing the Policy Statement.

Due to both the lack of data around PM_{2.5} and the seriousness of the consequences in comparison to PM₁₀, we are concerned that the SEA Report has not differentiated between these particulates sufficiently in its conclusions. We submit that PM₁₀ and PM_{2.5} should

have been separately categorized, and the impact assessment of “negligible” reviewed separately for each of PM10 and PM2.5 in light of these differences in seriousness and certainty.

AQEG Report

It is not clear whether the July 2018 Report by the Air Quality Expert Group (AQEG) has been taken into account. AQEG is an expert committee of Defra and its July 2018 report emphasizes that “it is currently challenging to assess regional and local scale impacts. This is particularly important, because shale gas extraction activities are expected to be clustered.” (pg. 10). This again underlines the uncertainty highlighted above.

Community Impacts

Paragraph 5.53 of the SEA states “the scale and extent of emissions on local air quality from a single pilot is judged to be negligible.” From the perspective of any community impacted, the impact may not be negligible from their perspective. “Experiences with fracking are localized and often tied to individual and collective sense of place” (Sangaramoorthy (2016) *op. cit*). We believe that, by carrying out an SEA with the additional head of “place based community impacts” as suggested above, a more accurate understanding of the interaction between environmental and psycho-social impacts would be derived, providing a more useful perspective that communities would be in a better position to understand and respond to.

Health Inequality

The SEA Report makes the link between deprivation and health, and how those two factors are further linked to environmental quality (para 13.14). The SEA Report further explains the correlation between deprived areas and prospective areas for UOG, potentially worsening existing “health inequalities”. However, the SEA Report does not as its baseline consider the distribution of “health inequalities” further. In particular, it does seem to consider the evidence collated through Scottish Public Health Observatory (SPHO), in terms of a “range of indicators to give an overview of health and its wider determinants at a local level”⁷.

⁷ <https://www.scotpho.org.uk/comparative-health/profiles/online-profiles-tool>

Furthermore, it does not consider the evidence base drawn up since the 2011 Ministerial Task Force on health inequalities, to tackle the inequalities in health that would otherwise prevent Scotland from achieving the Scottish Government's overall purpose of sustainable economic growth⁸. It is suggested that baseline data on health inequalities would improve the SEA's assessment of effects on air quality, particularly in relation to effects of a pilot project where the location of such a pilot is not certain.

(2) Seismic Activity (sub-category of Human Health)

Paragraph 13.64 of the SEA Report mentions a study carried out by the Royal Society and Royal Academy of Engineering in 2012, concluding that health, safety and environmental risks associated with hydraulic fracturing, including impacts on aquifers and seismicity, can be managed effectively in the UK – “provided best practices are implemented and enforced through regulation”.

In implementing regulatory processes in accordance with such best practices, a “Traffic Light System” for assessing the safety of fracking operations has been implemented, with seismic events with a magnitude greater than 0.5 being the “red light” requiring operations to be stopped⁹.

In relation to the first shale fracturing operations being carried out in the UK since 2011, at Preston New Road by Cuadrilla in October 2018, within the first 3 weeks of operation 37 seismic events were triggered with 2 being over the “red light” threshold and one of those being on a par with the tremor in 2011 that led to the UK moratorium that was lifted following the issuing of the Royal Society/Royal Academy Report mentioned above. A third tremor led to a voluntary shutdown by Cuadrilla when operations would likely have breached the threshold¹⁰. In a peer reviewed paper by Mike Hill dated November 2018 who was involved in advising BEIS¹¹ in the original setting of the 0.5 limit¹², he states that “up until 18/10/18 there was not a single earthquake recorded in Blackpool. Post 18/10/18, 98% of all

⁸ <https://www.gov.scot/publications/report-ministerial-task-force-health-inequalities-2013/>, last accessed 18 December 2018.

⁹ See [infographic](#) from Oil & Gas Authority (2013)

¹⁰ <https://www.theguardian.com/environment/2018/nov/11/fracking-firm-boss-says-it-didnt-expect-to-cause-such-serious-quakes-lancashire>

¹¹ Department for Business Energy & Industrial Strategy

¹² “Review and analysis of the earthquakes caused by fracking the Fylde: Why Should the Safety Limit not be Altered?” (2018), Mike Hill B.Sc. (Hons) C.ENG. MIET, Expert Member of the Technical Working Group on Hydrocarbons at the EU Commission

recorded earthquakes in the British Isles are in Blackpool.” For example, on the 11 December 2018, the British Geological Society (“BGS”) recorded a seismic activity of 1.5 at Blackpool and the BGS recorded the receipt of reports from residents of “felt a slight rumble for 2 seconds” and “windows rattled”¹³

We submit that any conclusions to be drawn from the SEA Report, in relation to the Royal Society/Royal Academy Report on the safety or otherwise of fracking activities in line with “operational best practices”, should give great weight to the actual operational evidence currently being provided by the only fracking well in operation within the UK. The CCS remain greatly concerned as to whether safety can be adequately maintained by the industry in Scotland or in any other part of the UK. In line with those concerns, 12 Community Councils of the CCS added their names to the “Declaration for a Frack Free UK”¹⁴, delivered by hand to No. 10 Downing Street on 1 December 2018 (with the support of many people and communities across the rest of the UK who joined in the march to the Prime Minister’s office to deliver the letter).

Professor Emeritus David K. Smythe has confirmed to the CCS that the conclusions in his submissions to the “Talking Fracking” consultation remain standing and a copy of his submissions to this consultation have been provided to us and attached at Appendix 3. The CCS fully support Professor Smythe’s conclusions as to the inadequacy of regulation with regards to faults and seismic risks. We remind Scottish Government of the evidence provided to the Letham Moss public inquiry by Professor Smythe, that seismic activity is recorded as occurring within the PEDL 133 license area since BGS records began from the 1970s and that there is therefore a risk that future seismic activity could occur within PEDL 133 and/or be induced by fracking activities¹⁵. It should also be noted that, in the Netherlands in the Groningen gas field where many residents have suffered from extraction induced earthquakes, citizens are now filing a class action following an earlier court ruling that found that “proven that the fracking earthquakes in the area negatively affected the living enjoyment of the residents living around the Groningen gas fields.”¹⁶

¹³http://earthquakes.bgs.ac.uk/earthquakes/recent_events/20181211111946.html#page=summary

¹⁴ Frack Free United, see signatories to the letter [here](#).

¹⁵ Rebuttal Statement of Professor Smythe to the Letham Moss Public Inquiry, para 2.9.8 (Appeals PPA-240-2032 AND PPA-390-2029)

¹⁶ <https://nltimes.nl/2018/10/12/groningen-residents-massively-claiming-immaterial-damages-earthquakes>, last accessed 18 December 2018

Fracking operations & interaction with mining

Appendix 1 sets out the baseline context for environmental impacts, including “felt seismic activity”. Reference is made to the British Geological Society Report “Understanding & Monitoring Induced Seismic Activity” (2016)¹⁷ However, more recently in May 2018, Professor Emeritus Peter Styles (Keele University) has produced a report on the interaction of seismic events with pre-existing mines explaining, in essence, the greater likelihood of inducing seismic activities over the “red light” threshold where pre-existing mining has been carried out, as is the case in the study area for the SEA Report¹⁸. Consideration of this report for assessing an appropriate baseline data context for impacts of fracking on seismic activities does not seem to have been included.

(3) Public Health Impacts

CCS have been provided with a copy of Professor Andrew Watterson and Dr William Dinan’s submissions to the SEA consultation and fully support their conclusions and recommendations (appended to these submissions as Appendix 1)

CCS have also been provided with pro-bono comments from Dr Ian Fairlie on request, who raises concerns around the lack of assessment of radioactive material in relation to UOG activities. CCS fully support his conclusions and recommendations with regards to the lack of information on radioactive materials associated with fracking and append his statement to these submissions as Appendix 2. For example, paragraph 5.14 & Table 4.1 of the SEA refers to “Air pollutants associated with unconventional oil and gas”, but does not include any reference to NORM or radioactive gases that might be released into the atmosphere.

In line with Dr Fairlie’s assertion that public health seems to have been given low priority in the SEA process, CCS submit that impacts on public health have not been adequately

¹⁷ available at this [link](#), last accessed 18 December 2018.

¹⁸ “Fracking & Historic Coal Mining: Their Relationship & should they Coincide?” – Styles P. (2018) available at this [link](#) last accessed 18 December 2018

assessed in the SEA. Goldstein et al 2013¹⁹ note the lack of involvement of environmental public health officials in the assessment process in the USA and, without further information than what is publicly available, such expertise would seem to be also absent from this SEA process. LUC who prepared the SEA do not appear to have anyone with a public health expertise on their staff²⁰ who could make such an assessment.

Bharadwaj and Goldstein 2015²¹ report that more than 500 different fracking chemicals are known, some of which are endocrine disrupters and that shale gas also contains benzene, an agent associated with the development of leukemia yet there is no assessment of these environmental effects and risks.

CCS make the following additional submissions on public health, particularly mental health.

Mental Health

The SEA does not properly consider the impact of the threat, and the actual production, of unconventional gas extraction, including fracking on the mental health of communities and its disruption of their sense of place and social identity. “Mental health” is not mentioned in the SEA. In particular “human health” is one of the significant effects that has to be considered under paragraph 6 of Schedule 3 of the Environmental Assessment (Scotland) Act 2005. Human health includes mental health. Sangaramoorthy et al 2016 conclude that “Our findings indicate that fracking contributes to a disruption in residents' sense of place and social identity, generating widespread social stress.” where stress is a mental health impact. The authors go on to say “that in order to have a more complete understanding of the health impacts of fracking, future work must consider the complex linkages between social disruption, environmental impacts, and health outcomes ...”. Methuen et al²² noted that farmers in coal bed methane extraction areas self reported levels of depression, anxiety and stress reactivity and that they exhibited clinically significant levels of psychological

19 Goldstein, B. D., J. Kriesky, and B. Pavliakova. 2012. Missing from the table: Role of the environmental public health community in governmental advisory commissions related to Marcellus Shale drilling. *Environmental Health Perspectives* 120(4):483-486.

20 See - <https://landuse.co.uk/what-we-do/our-people/>

21 Bharadwaj, L. and Goldstein, B.D., 2015. Shale gas development in Canada: What are the potential health effects? *Canadian Medical Association Journal*, 187(3), pp.E99-E100.

22 Morgan, M.I., Hine, D.W., Bhullar, N., Dunstan, D.A. and Bartik, W., 2016. Fracked: Coal seam gas extraction and farmers' mental health. *Journal of Environmental Psychology*, 47, pp.22-32.

morbidity. It is reasonable to assume there might be similar affects in the general community. These impacts have not been considered and assessed in the SEA.

Social impacts on communities and psychosocial stress in the longer term requires to be considered - Goldstein et al 2013 op. cit.

(4) Biodiversity, flora and fauna – (Animal and species health)

Although biodiversity, flora and fauna is assessed in Section 9 of the SEA, it is noted that paragraph 9.1 does not identify animal and species health as an environmental effect that needs to be assessed. Just as human health is impacted, so can the health of animals and other species be affected. This might include the health of domestic animals in the food chain and so impact on human health. CCS contends that there should have been a proper assessment of potential effects on the health of animals and other species; see for example Bamber and Oswald 2014²³ where the authors discuss their “findings concerning the safety of unconventional oil and gas extraction from the perspectives of public health, veterinary medicine, and food safety.”

Q3: What are your views on the ‘reasonable alternatives’ outlined in the Environmental Report? Please provide any other ‘reasonable alternatives’ which you think should be considered.

Pilot Project Alternative

Public Health Impacts

The assumed parameters for the 3 different location options for a hypothetical pilot project can be broadly categorized as “rural”, “semi urban” and “urban fringe”, as set out in more detail at Table 2.1 of the SEA Report.

23 Bamberger, M. and Oswald, R.E., 2014. Unconventional oil and gas extraction and animal health. *Environmental Science: Processes & Impacts*, 16(8), pp.1860-1865; and see Bamberger M, Oswald RE. Long-term impacts of unconventional drilling operations on human and animal health. *Journal of Environmental Science and Health, Part A*. 2015 Apr 16;50(5):447-59.

The CCS consider the risks of any pilot to far outweigh any perceived benefits from such a pilot and do not therefore consider a pilot project a reasonable alternative. The CCS fully support Dr Watterson's conclusions in relation to the risks of a pilot project in relation to public health outweighing any perceived benefit. A relevant extract of his evidence is copied below:

“Evidence indicates there is little case that can be made from a public health perspective for pilot wells. This is due to the fact that the harms associated with unconventional oil & gas extraction are often associated with cumulative exposures not just to individual substances involved in fracking and CBM but also to their combined effects over time. Our understanding of the pilot option is that its proposed scale and intensity would not yield any information useful for a public health assessment of the technology.”

Should the Scottish Government find differently in its conclusions, the CCS consider that the SEA Report is inadequate in differentiating sufficiently between the risks as between the 3 different categories/types of settlement. The SEA Report provides only one assessment for each environmental topic area covering all 3 types of settlement (rural, semi-rural, urban fringe), whereas the distinction between each type of settlement is sufficiently distinct to warrant assessment separately.

The CCS are particularly concerned that no pilot should be considered in relation to the 2 CBM planning applications at Letham Moss, currently the subject of Planning Appeals PPA-240-2032 and PPA-390-2029 (a decision on which has been sisted pending the finalising of Planning Policy in relation to Scottish Government's preferred position on UOG). Detailed evidence was led at this planning inquiry on *inter alia* regulation issues, geological risks, impact on biodiversity, health and radiation risks.

The CCS ask that confirmation of the Scottish Government's position on this issue be set out in the final Policy Statement.

Traffic Impacts

At para 12.27 of the SEA Report, it states that “the development of a pilot project is assumed to involve the development of a single pad and an unknown number of wells. The location of

a pilot is unknown, however the development of any of the three theoretical pilot locations on infrastructure is judged to be negligible.”

From paragraph 12.9, it seems that the evidence for this conclusion is partly drawn from existing control mechanisms such as transport assessments which assess impacts on the trunk road network. However, as became clear during the Letham Moss Inquiry in 2014, significant traffic impacts on residents and communities were less related to impacts on the trunk road network, but the proportional increase in articulated lorries on the rural road network some of which were National Cycle Routes or used for national cycle events. It is not clear from the SEA Report whether, in relation to the conclusions on impacts for a Pilot Project, impacts on the ability of residents to safely access rural road networks was taken into account when assessing the effect on infrastructure as “negligible”.

Significantly Negative Impacts

In relation to a pilot project within the parameters of any of the 3 options, the SEA Report has assessed “significant negative” impacts on (1) direct water pollution and (2) physical health and safety (but no assessment on mental health as above). The nature of these risks are such that, whatever its conclusions in relation to any perceived benefits to a Pilot Project, the final policy position can only conclude that a pilot is not a reasonable alternative to the preferred policy position.

Other reasonable alternatives

A legislative ban is a reasonable alternative to a policy ban as it has different impacts, particularly in relation to reducing the risk factor of a future government overturning a policy ban.

Subject to newly devolved powers over onshore oil and gas licensing being sufficient for Scottish Government to have the relevant functions over energy, the additional benefit of a legislative ban over a policy ban should have been assessed as part of the SEA process, in order to provide Scottish Government with a wider range of options in relation to its preferred position.

Q4: What are your views on the findings of the SEA and the proposals for mitigation and monitoring of the environmental effects set out in the Environmental Report?

Falkirk Communities have been under threat and living with uncertainty for over 6 years, since the Dart Energy Application for the first commercial production of unconventional gas in the UK (Coal Bed Methane) was made to Falkirk Council back in August 2012. It has been 4 years since the Public Inquiry.

Community Councils were first effectively alerted to the significant risks to the environment and the health and safety of Scottish citizens as a consequence of CBM and other UOG operations (as opposed to being merely procedurally notified) by the activities of an alliance of residents following the CBM planning applications at Letham Moss in Falkirk in 2012. That alliance was called “Concerned Communities of Falkirk” (“CCoF”). Since then, Community Councils have stepped up to their responsibilities to make governmental bodies aware of the needs of their citizens and communities. The CCS and many other Community Councils at risk of being impacted by PEDL licenses took part in the “Talking Fracking” consultation.

The time and effort required by residents of CCoF to bring to public attention the risks involved of UOG through the CBM public inquiry in 2014 (on behalf of a number of Community Councils which joined CCoF in supporting its Community Charter which formed part of its submissions) is to be applauded, as it was substantially due to those residents’ collective efforts which led to the decision for that inquiry being recalled to Scottish Ministers in October 2014; and it was soon after that (in January 2015) that the moratorium on UOG was issued leading to the further rounds of evidence that led to the Scottish Minister’s Preferred Policy Position, now subject to the outcome of this SEA and partial BRIA. Therefore, the views of the CCS are that the efforts of its combined citizens has been vindicated through the findings of the SEA. However, the CCS re-iterate the point at the beginning of these submissions, of the unfairness in the lack of public funding for making these important public interest interventions.

The CCS would request that the preferred policy position be settled as soon as practicable, so that the sisted Planning Appeals PPA-240-2032 and PPA-390-2029 related to coalbed methane development at Letham Moss can be re-opened and finally determined in accordance with a settled policy position of no support and refused, as can be the only logical

conclusion following the findings of the SEA. Those residents of CCoF and relevant Community Councils can then, after more than 6 years of “psycho-social stress”²⁴ through living with uncertainty since first raising concerns in 2012, finally put to rest the uncertainty over their lives and communities.

Q5: Do you have any views on the proposals contained within the Scottish Government’s preferred policy position statement? There is no need to restate views already expressed in relation to the Talking “Fracking” public consultation as these have been, and will continue to be, taken into account as we move towards finalising the Scottish Government’s policy position.

CCS applaud the Scottish Government’s approach to listening to the concerns of its citizens, particularly those in the densely populated areas within PEDL license areas.

The CCS would be grateful if, in the section entitled “The Scottish Government’s Evidence-led Approach to Unconventional Oil and Gas” whereby the history of events since the establishment of an Independent Expert Scientific Panel in 2013 is set out, any causal link with the recall of the public inquiry at Letham Moss to Scottish Ministers be set out in Scottish Government’s Final Position Statement.

In the Statement on the Preferred Policy Position in relation to the newly devolved powers on UOG Licensing, it states that “Scottish Ministers would discharge our newly devolved licensing powers in line with that adopted policy position i.e. of not supporting the development of unconventional oil and gas in Scotland.” We request, for the sake of certainty for communities and residents, that the final adopted Position Statement makes clear its timelines leading to the discharge of such powers and, for the sake of clarity, what “discharge of powers” means – i.e. the revoking of the licenses or something else.

In a letter dated 6 July 2018 from Ms Johann MacDougall on behalf of the Minister for Energy, it was confirmed that the PEDL 162 license has been extended for 1 year from July 2018 under the assumption that a finalised policy position would be reached prior to the expiry of that period, to enable a clear determination to be made by Scottish Government

²⁴ See Sangaramoorthy *op.cit*

when it next had a responsibility to consider whether or not to terminate PEDL 162. We would ask that this reasoning be included in the final adopted policy statement for the benefit of residents and communities.

Finally, subject to powers being sufficiently devolved to enable such action, we add our support to Friends of the Earth (Scotland) and their request that Scottish Government legislate to ban UOG, on the basis that the policy approach outlined in the PPP could be overturned by a future Scottish Government, which is a situation that few residents of the CCS could stomach after all the collective effort it has taken to reach this position of safety now so close to hand.

Q6: What are your views on the opportunities and challenges that each of the 3 options set out in the partial BRIA could have for businesses?

The Partial BRIA states “should a current licence holder conclude they wish to surrender their licence, the licence holder will be liable for the decommissioning and aftercare costs in relation to the work which has been undertaken and the infrastructure installed.”

The CCS would like to be certain that such decommissioning and after care costs would fall to the license holder not only where the license is surrendered but also in cases where it expires of itself and, in both cases, that Scottish Government has sufficient powers of enforcement for such decommissioning should the license holder not carry out its duties.

END

Sir Crispin Agnew QC, Westwater Advocates

Mothiur Rahman, New Economy Law, Solicitor (non-practising)

28 December 2018

Appendix 1 (Professor Watterson's Submission)
(separately attached)

Appendix 2 (Dr Ian Fairlie's Submission)
(separately attached)

Appendix 3 (Professor David Smythe's Submission)
(separately attached)