FURTHER SUBMISSION BY SCOTHEDGE TO THE LOCAL GOVERNMENT AND REGENERATION COMMITTEE OF THE SCOTTISH PARLIAMENT ON THE ‘HIGH HEDGES (SCOTLAND) BILL.

Following the conclusion of evidence to the Committee Scothedge offers the following comments and clarifications.

1. General

1. Scothedge was surprised that, with the exception of our submission, no further evidence was sought regarding the effect of ‘high hedges’ on people. We would have expected some professional input from the ‘caring disciplines’ and perhaps someone to comment on the effect on the value of property alongside the environmental lobbyists and tree officers. This is a problem which impacts on people and their property much more than on trees and wildlife. Outside observers could have been left with the impression of hedge victims unreasonably attacking the environment.

2. We saw the committee and witnesses struggle to find some sort of definition of a rogue hedge. For Scothedge this was a return to the fruitless attempts of previous administrations. Far from avoiding complexity, attempts to define the problem in terms of size, species and arrangements of plants are actually the cause of that complexity. The approach should be to develop legislation which requires the maintaining of vegetation such that it never ‘adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have’. We advocate a robust process of assessing that reasonable expectation but with no one excluded from the process by some arbitrary ‘up front’ definition.

2. The Definition Issue

1. Everyone seeks the silver bullet and everyone can formulate ‘the correct definition’, but in reality, that is merely the definition that would work for them. Scothedge again urges the committee to avoid a definition based on size, arrangement and species of trees and instead focus on the effects of such trees. Parliament has a responsibility to the wider community and any legislation which is designed to exclude members of that community is unsound.

2. Excluding deciduous species or grossly inappropriate single trees from the remedial process would effectively afford legal protection to some of the worst examples and offer a legal loophole to those who would happily and maliciously continue to abuse their vulnerable neighbours. It was suggested by some that the planting of substitute legal species could only be a long term strategy but in some cases this has already happened, both in England and in Scotland, with some Scottish growers assuming that the English evergreen definition will apply here. Also ‘instant unreasonable trees and hedges’ are readily available, by using mature trees from garden centres and online suppliers. It has always been a tenet of Scothedge that we would question a solution which deliberately makes matters worse for any sufferers.

3. There was much discussion regarding ‘barrier to light’ and we saw how the need to assess it adds complexity and cost to the analysis. We have explained previously that it is only one of the many detrimental effects of a poorly maintained hedge or tree. It should be judged alongside the other effects so that authorities come to a balanced assessment as to whether the total effect of the tree or hedge ‘adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have’.

If ‘barrier to light’ remains the sole criterion for defining the detrimental effects of the tree or hedge we fear that strict interpretation by tree officers or lawyers could mean that the number of cases resolved by the legislation could be considerably less than the 50% currently anticipated.

4. We also disagree with the notion expressed by the Minister that, regarding cases not covered by the proposals, it would however ‘create an environment where some people would want to address their issues’. From our case experience the opposite would be true, with unscrupulous and uncaring growers claiming some sort of victory and seeing the legislation as a vindication of their position.

5. Scothedge felt a strong sense of ‘déjà vu’ whilst watching the deliberations around the hedge definition. We are not alone in our belief that this is an inefficient approach and previous Government Ministers involved had come to agree that the issue to be addressed should be ‘nuisance vegetation’ rather than a narrowly defined selection of species.

3. Statistics

Throughout the evidence taking statistics were quoted, particularly with regard to the potential effectiveness of the different definitions. Scothedge are the source for many of these numbers so we offer the following clarifications.

1. ‘90% clear up rate’ – this figure relates to the number of cases which would ‘capitulate’ once legislation is enacted. It compares the number of ‘initial enquiries’ quoted by various local authorities in England (data sourced from the Policy Memo) with the number of cases which were eventually brought to those authorities for remediation. It is therefore an estimate of the percentage of people who ‘do the right thing’ once they realise that their position could be illegal. However ‘capitulation’ is only effective in cases which are covered by the definition. In Scotland, with the bill as proposed, the ‘clear up rate’ will be no more than 50% of the cases currently identified.

Scothedge does not believe (as quoted) that the current proposals will resolve over 90% of cases!

2. ‘Percentage of cases covered by the present definition’ - Using the Scothedge case files, the results of several public consultations and the case load of MSPs we estimate that the current legislation would cover around half of the current cases. Inclusion of deciduous species would capture an additional 20% and provision for single trees would cover the outstanding 30%. Of course no one can be sure of the outcome once legislation is enacted but Scothedge has shown in
its initial submission that even if the widest definition were to double the number of cases, the average local authority would still have to deal with less than four actionable cases per year. This evidence comes from Scotland and no claims or comparisons can be made with England because there is simply no data available there. The only evidence from England is that their legislation works in its truncated form but there is no evidence or data to support the speculation that widening the definition would cause an overwhelming escalation in the number of cases either side of the border.

3. Regarding the Isle of Man, statistically the data is insignificant based on population comparisons. We felt that there was confusion about which cases were just enquiries and how many actually required local authority action. One case did go beyond this and on to appeal, and we have addressed this in our original submission. The compelling evidence from the Isle of Man is that their legislation works. We would be happy to comment on any additional data if this has been passed to the committee.

4. Returning to Scotland it can be seen from the evidence of the tree officers that they in turn have no hard evidence or statistics to support their claims of escalation. When pressed by the committee on the possible effects of widening the definition the responses were (for example) ‘cases will snowball’, ‘it will cause tremendous problems’ or the classic ‘I will take early retirement’. There is simply no evidence or data to back up these rather vague speculations. As we have already pointed out the real evidence is found in the Scothedge case files, in the results of several public consultations, and in the case loads of MSPs. The evidence of the tree officers has, in our opinion, also been informed by COSLA misconceptions and they simply seemed to be ‘on COSLA message’ throughout. (See section 4)

4. The Position of COSLA

During our evidence Scothedge was challenged by the Convenor regarding our written statement that COSLA continued to favour the narrow definition. We explained that this was quoted from the Policy Memorandum (section 44) and the Convenor clarified that the committee understood that ‘COSLA now have no objection to the widening of the bill’. The Convenor further advised Scothedge that they should check again with COSLA, which we have done, and we have now received a response to our enquiry.

The COSLA stated position is that they have not been asked about any widening of the definition and that they would have to consult their members if asked for an opinion by Parliament, and that this would take time. In our view it is unacceptable that COSLA were not asked earlier for their view on a wider definition and to further infer from this that they would not be comfortable with such a wider definition. The facts are that whilst they are comfortable with the bill as proposed, this is not the same as saying that they would be uncomfortable with a wider scope.

Throughout the process of this bill (and indeed throughout our campaign) Scothedge has made clear to Parliament that they favoured a wider definition. This has been our long held and widely publicised position and had been largely accepted by the previous administration. When we tried to have a wider definition included in the initial proposals of the current bill we were told that our opportunity to lobby for this would come at the committee stage.

At the very least COSLA should have been made aware of the position based on the evidence available in Scotland, including that gathered from several expensive public consultations. Scothedge considers that failure to include this evidence alongside that gathered in England shows mismanagement on behalf of those responsible for administration of this process who were well aware that Scothedge would seek to have the definition widened at the committee stage, and indeed advised us to proceed in this way.

The question is what happens now? In our view the committee should not consider the COSLA position as being against widening the definition but rather one of them not having been asked. To consult COSLA again would be costly and time consuming so we urge the committee to accept the evidence of Scothedge, the public consultations and MSPs’ constituency case loads, and advise Parliament and COSLA that that a wider definition will also ‘provide comfort that costs will not be significant and numbers will not be unmanageable’ (Section 44 Policy Memorandum).

5. Evidence from RSPB and Others

Generally these bodies were against the widening of the definition to include deciduous species and single trees. Scothedge acknowledges their concerns but believes that safeguards could easily be built into any guidelines which would allay all their concerns. It would be wrong to deny a significant group of sufferers access to the remedial process because of restrictions which have no relevance to their specific case but are imposed on behalf of conservation groups,. We particularly draw the committee’s attention to the following.

1. Using our ‘football pitch’ graphics we showed that less than 1.5% of Scotland’s domestic tree and hedge stock is the subject of dispute, even allowing for the widest definition. The remaining 98.5% is well looked after and most of it regularly trimmed and free from influence of local authorities and conservationists. We feel that, under the current proposals, it would be inappropriate for a tiny minority of problem trees and hedges to be automatically afforded protection, purely based on a notional and insignificant threat to habitat. Why should the conservation groups be given influence over the badly maintained domestic habitat when they do not have (or seek) such influence over the majority of well-maintained and often trimmed domestic trees and hedges?

2. Scothedge has already expressed its support for principles of the conservation bodies, for example regarding the limitations on trimming during the nesting season. It should be remembered that far from being ‘anti-tree’ many of our members are keen gardeners and conservationists in their own right, and it is often their desire to protect their garden
and local environment that lies behind their grievance. Scothedge would be happy to see safeguards built into any
guidelines to take full account of the concerns of the conservation groups in addition to the statutory provisions already
in place. It would be grossly unfair however to seek to protect the wider environment by using the definition to exclude
any cases from access to the remedial process. All Scothedge ask is that each case be allowed to stand on its merits.

6. The Role of the Tree Officers
We have already expressed our concerns regarding the evidence submitted by the tree officers but we have an even greater
concern that they showed little or no understanding of the suffering of high tree and hedge victims. They seemed purely
concerned about the effect on the trees and the effect on their own personal workload.
Scothedge believes that the executive decision making in any remedial process should not rest with the tree officers. Whilst
their technical input would be an important factor in any analysis, we believe that the final decision should be made by those
more qualified to appreciate the human issues rather than simply the implications for the trees. We ask the committee to
consider carefully the question of ‘who will decide?’

7. The Way Forward?
Scothedge wishes to express its gratitude to the Minister, the proposer of the bill, the committee and all the witnesses for their
input into the process. Their efforts have brought Scotland to a position where a comprehensive and cost effective solution to
the problem of nuisance vegetation is within grasp. We believe that these next steps offer the best way for the legislation to
proceed.

Parliament to pass legislation which:

1. Allows any member of the public to have access to the remedial process if they believe that plants are impacting on
their reasonable right to enjoy their property. Once it becomes known that this is the sole ground for action this will
maximise the ‘capitulation’ by those who realise that a remedial process is in place. This would all be at no significant cost to
the taxpayer.
2. Requires the development of comprehensive guidelines, based on those used in England and Wales, which deliver fair
and consistent rulings.
3. Requires that after a reasonable period (6 months to one year?), an assessment is made of the number of cases which
remain unresolved. This information to be used to develop the structure of a cost effective formal remedial process for
Scotland. This would avoid local authorities feeling that they must create structure and process on day one of the
legislation. It may well turn out that some form of central expertise, to advise councils in their decision making, is all the
additional resource required.

Scothedge remains available to assist the Parliament in any way as things progress.

Scothedge
Edinburgh
January 8th 2012