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Mr Trevor A Croft and Mr Malcolm Mahony
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Our Ref: AJMCAJMC\BAL0169.1\CAOC
 Your Ref: LDP-270-3
 Date: 24 June 2011

Dear Mr Croft and Mr Mahony,

**Highland Wide Local Development Plan
 Proposed Development Plan Examination- DPEA Ref. LDP-270-3
 Ross Estates Company (Balnagown Estate) ("Objector") - Objector Reference 229
 Issues 71, 84 and 90 - Waste Strategy/Policy**

We note that you have been appointed to undertake the Development Plan Examination ("DPE") relating to the Proposed Highland Wide Local Development Plan ("Proposed Plan").

We act on behalf of the Objector. Strutt and Parker, the Objector's land agents have made a number of objections to the Proposed Plan on behalf of the Objector, which are about to, or have now been put forward to you by Highland Council ("Council") for consideration by you during the DPE. Whilst the Objector stands by all of these objections, we are writing with specific reference to those objections which concern the Council's Waste Strategy and Policy.

For your information, we are also acting on behalf of the Objector in a planning appeal (following a successful legal challenge) which is being reconsidered by the DPEA in relation to a proposed incinerator in Invergordon (DPEA Ref. PPA-270-2017-1). The proposed developer (Combined Power and Heat (Highlands) Ltd), the Highland Council and SEPA are also participating in the appeal. You will note the terms of the Council's Schedule 4 Response in relation to Issue 84, which specifically refers to this appeal.

Our concern in relation to the DPE is that the Council's position at the commencement of the DPE is that it has submitted a Proposed Plan that does not take full account of, and is thus inconsistent with, National Policy and the National Planning Framework 2 (which is now on a

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statutory footing). These are important statements of policy which must be given considerable weight in the DPE.

S.16 of the Town and Country Planning (Scotland) Act 1997 requires that planning authorities, in preparing a local development plan, take account of the National Planning Framework. Failure to have fulfilled this duty renders the Proposed Plan subject to potential legal challenge.

The policy and regulatory changes affecting waste policy and which have significant implications for the Proposed Plan include:

- Publication of Scotland's Zero Waste Plan (9 June 2010) and Revised Annex B (11 February 2011);
- Amendment to SPP (11 February 2011);
- Amendment to NPF2 (11 February 2011);
- Publication of the pending Zero Waste (Scotland) Regulations 2011 and the Scottish Government Consultation Paper accompanying the pending Regulations.

A summary of the implications of these changes in policy and regulation for the purposes of the adequacy of the Proposed Plan is set out in the Appendix to this letter.

These important changes have not been addressed in the Proposed Plan, and in the preparation of the Council's response to objections (including that of the Objector). More specifically, the Council did not fully take account of the Zero Waste Plan or Revised Annex B of the Zero Waste Plan, and the consequent amendments to both NPF2 and SPP. The Council also failed to take into account the changes brought forward by the pending Zero Waste (Scotland) Regulations 2011. The pending Regulations will come into force within the lifetime of the Proposed Plan and are therefore of direct relevance.

Surprisingly no reference was made in the Report to the Planning, Environmental and Development Committee dated 8 March 2011 to the requirement for the Proposed Plan to integrate both the Zero Waste Plan and Revised Annex B. Emphasis was however drawn to the fact that the:

"Committee approved the Council's Proposed Plan last August and that no significant changes can be made at this stage without the need for publication and consultation on another Plan draft. This would add another 6 months to the Plan timetable and incur additional expenditure by the Council in terms of advertisement and printing, and divert staff from other priorities."

The Minute of the Planning, Environmental and Development Committee of 16 March 2011 notes that *"the actions taken in response, including the "Schedule 4" ...relating to Waste Management has been amended to request that the Reporter amend the HWLDP to include reference to SEPA's recently published Zero Waste Plan."*

In its Schedule 4 Response in relation to Issue 71, the Highland Council admits that neither the Zero Waste Plan nor Revised Annex B has been fully integrated into the Proposed Plan. The Council state:

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"The ZWP was launched on 9 June 2010, following a consultation exercise in 2009. As such there was not an opportunity for the HWLDP, reported to Committee in August 2010 and subsequently published in September as the Proposed Plan, to incorporate a Highland local development plan response to the national waste management plan in full. Indeed as explained below, the Council still is not in a position to respond fully...The revised version of Annex B, and Tables 1 and 2, were only published by Scottish Government very recently (Annex B on 11th February, Tables 1 & 2 on 24th February 2011). It will be necessary to review the Council's waste strategy in the light of these and other materials and to consider the implications for non-municipal waste as well. The TECS Committee has (12 August 2010) acknowledged the need to review the strategy in the light of the ZWP. However the detail of the implications of the ZWP will not be known until the Zero Waste Regulations are finalised (anticipated to be in the summer 2011 and that will inform the review of the strategy and from there identification of land use requirements - and in parallel any work required to identify needs in respect of non-municipal waste management)."

The finalised pending Zero Waste (Scotland) Regulations 2011 have now been published, allowing the process of integrating these policy and regulatory changes to commence. It is incumbent on the Council to now commence its review of its waste strategy in accordance with these policy and regulatory changes.

In its comments on the Proposed Plan, dated 2 December 2010, SEPA acknowledge the changes in waste planning and policy due to the publication of the Zero Waste Plan. SEPA refer to the fact that significant changes are likely to impact on the proximity principle, Best Practicable Environmental Option, and "need". SEPA recommended that

"the text be amended to note that all proposed waste management facilities should be assessed against the National Need and Capacity information that will be included in Annex B of the Zero Waste Plan. All waste management facilities will contribute towards delivery the national need, whilst also addressing local need..."

Shore Energy Scheme

Shore Energy, through the exercise of permitted development rights, has planning permission for, and is planning to build a waste sorting and recycling centre on a site at Longman Drive within property owned by the Inverness Harbour Trust. The plant capacity will be around 120,000 tonnes of waste per annum and the plant will be available to local authorities (including Highland and Moray Councils) and commercial users alike. The Shore Energy Scheme must be taken into account in the DPE as committed development relating to waste management infrastructure.

It has become clear during that process that, taken together, the above regulatory and policy changes which relate to waste and planning are of such significance for the purposes of your Development Plan Examination that you should be formally requesting further information under Regulation 22 of the Town and Country Planning (Development Planning) Regulations 2008.

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Paragraph 79 of Circular 1/2009 provides that

"In a limited number of cases, the appointed person may feel that they do not have all the information they need to make a proper assessment of an issue. Regulation 22 therefore allows them to, at any stage, request further representations or information from any person."

In conducting the DPE, the Reporters must primarily examine the appropriateness and sufficiency of the content of a proposed plan. We maintain that only following a detailed consideration of the above policy and regulatory changes will a proper examination of the issues that is required be achievable.

The changes noted above and detailed in Annex 1, in both regulation and policy are of such significance as to justify the issue of a Further Information Notice, in order that you can receive the updated positions of the Council, SEPA, the Objectors and other interested parties.

We reserve the Objector's right to ask for a hearing or PLI on this complex issue.

Should you require further information or clarification of any of the above, please do not hesitate to contact me.

Yours sincerely,



Alastair McKie
Partner
Head of Planning and Environment
for and on behalf of Anderson Strathern LLP

Annex 1- Regulatory and Policy Changes

1. Revised Annex B (para 2.1) places an increasing emphasis on, and stresses the benefits of, the planning system identifying *“sufficient land allocations for more sustainable waste management infrastructure for all wastes”*. Revised Annex B therefore strengthens the role of Local Development Plans in securing the objectives and targets for waste planning policy. Revised Annex B states at paragraph 4.3:

“The land-use planning system will be central to delivering this vision. Consequently, planning authorities should be mindful of the following:

- *in preparing local and strategic development plans, planning authorities should set out a locational or spatial strategy which includes waste management development. For all wastes arising in Scotland, this can be achieved either by allocating specific sites for waste management facilities, and/or indicating clearly and positively that land designated for employment, industrial or storage and distribution uses is appropriate for many waste management installations (subject to site specific considerations).”*

Paragraph 4.4 emphasises the role of local authorities in planning proactively for facilities within development plan areas, thus emphasising the importance of the role of the development plan in setting the precise mix of technologies and facilities required to meet the targets of the Zero Waste Plan.

Paragraph 5.4 states: *“Scottish Planning Policy (SPP) requires that all development plans must identify appropriate locations for **all** waste management facilities, allocating where possible specific sites and providing a policy framework which supports the development of these facilities... A further role, particularly for the spatial strategy and vision statements of local development plans, is to facilitate and enable the prevention, reuse, recycling and recovery of waste from **all** types of development. Supplementary guidance may be used to provide further information or detail on policies and proposals in SDPs and LDPs provided that these are specifically identified in the development plan.”*

Section 2.4 of SEPA's Thermal Treatment of Waste Guidelines 2009 further indicates that the selection of sites and consideration of reasonable alternatives is a key Strategic Environmental Assessment issue, which would imply that this issue should be dealt with through the Development Plan, not through speculative applications. This section goes on to acknowledge that *“in due course, the plan-led approach will provide more effectively for the determination of applications that explain why the proposed site is considered preferable to any other shortlisted sites”*.

The Proposed Plan requires therefore to identify specific land allocations for waste management infrastructure, or provide a clear indication of the types of land that are suitable for such development. The Proposed Plan fails to do so.

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Importantly, paragraph 167 of NPF2, which sets out the key elements of the Scottish Government's Waste Policy, has been amended by the Zero Waste Plan Revised Annex B to remove the National Waste Plan and 11 Area Waste Plans from the waste policy framework or National Waste Management Plan. These must no longer be considered as material considerations or used to inform planning decisions or waste capacity requirements. Revised Annex B also amends paragraph 214 of SPP to remove references to reliance on the National Waste Plan, Area Waste Plans and the Business Waste Framework, which have been superceded by the National Waste Management Plan. The National Waste Management Plan comprises the Zero Waste Plan (and Revised Annex B), the NPF, SPP, PAN 63, SEPA waste data sources: including Waste Data Digests and Waste Infrastructure Maps, and SEPA Thermal Treatment of Waste Guidelines 2009.

2. Revised Annex B re-defines the central issues of "Need" and "Proximity". Critically paragraph 170 of NPF2 and paragraph 214 of SPP have been amended by Revised Annex B to introduce advice on Need and Proximity as set out in Revised Annex B and supported by the annually revised data in Table 1. Table 1 sets out the national shortfall in the operational capacity of waste management infrastructure required to meet the Zero Waste Plan targets in 2025, split into groups of local authorities or development plan areas. Table 2 sets out a requirement for a 10 year rolling landfill capacity.

Paragraph 4.3 of Revised Annex B moreover states:

"need and proximity for waste management facilities should be considered strategically as the achievement of a sustainable strategy may involve waste crossing planning boundaries within Scotland."

Proximity is therefore no longer based on regional self sufficiency, and can now be looked at on a much wider basis including the possibility of shared facilities for a number of local authority areas. The issue of Proximity is different for each tier of the waste hierarchy. Paragraphs 4.5 and 4.6 of Revised Annex B emphasise the approach that should be taken in the application of the proximity principle.

Revised Annex B amends paragraph 213 of SPP to reflect the updated definitions of the proximity principle detailed in Revised Annex B. Paragraph 215 of SPP is likewise amended to allow a collaborative approach between authorities in identifying suitable locations for waste management facilities, to reflect the amended concept of the proximity principle.

3. The pending Zero Waste (Scotland) Regulations 2011 redefine "residual waste" as "wastes which have been subject to all reasonably practicable efforts to extract recyclable material prior to incineration or co-incineration." The effect of this is to introduce new controls on the materials that may be treated in energy from waste combustion plants, to ensure that they only treat waste that cannot be recycled. In practical terms this means energy from waste schemes can only accept rejects from

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material recovery facilities and unsorted waste which has undergone pre-treatment. This significantly alters the waste streams available. This means that the most appropriate location for such facilities can only be arrived at when the strategic upstream network of waste facilities, and the locations for disposal of non-recyclable materials, are known.

Paragraph 167 of NPF2, which sets out the key elements of the Scottish Government's Waste Policy, has been amended by the Zero Waste Plan Revised Annex B. Such changes include:

1. increasing the proportion of household (rather than municipal) waste recycled or composted to 40% by 2010; 50% by 2013; 60% by 2020; and 70% by 2025;
2. Increasing the proportion of all waste recycled or composted to 70% by 2025;
3. Introducing new controls on the materials that may be treated in energy from waste combustion plants, to ensure that they only treat waste that cannot be recycled. These controls will apply to all waste, and will be implemented through environmental permitting regulations rather than the planning system.