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Our Ref: AJMC\AJMC\BAL0169.1\CAOC
 Your Ref: LDP-270-3
 Date: 23 August 2011

Dear Sirs,

**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
 The Town and Country Planning (Development Planning) (Scotland) Regulations 2008
 Scottish Planning Series: Planning Circular 1 2009: Development Planning**

We refer to our letter dated 24 June 2011 ("Letter") in relation to the Development Plan Examination ("DPE") relating to the Proposed Highland Wide Local Development Plan ("HWLDP"). We act for the Objector who stands by the terms of the Letter, the terms of which are incorporated herewith. The Letter is appended as Annex 1. We are disappointed that we have yet to receive a response from you. We also note in particular that no hearing on the matters raised in the Letter in relation to Issues 71, 84 and 90 has been offered, nor has a Further Information Notice been issued in order that you can receive the updated positions of the Council, SEPA, the Objector and other interested parties on these important policy and regulatory changes that have a direct effect on the HWLDP.

As set out in the Letter, Strutt and Parker, (the Objector's land agents) have made a number of objections to the HWLDP on behalf of the Objector, which have been put forward to you by the Highland Council (the "Planning Authority") for the purposes of 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 as contained in the HWLDP.

In relation to Planning Appeal Ref. PPA-270-2017-1 ("Planning Appeal"), the Reporter, Mr Richard Dent, issued a Procedure Notice ("PN") dated 8 July 2011 seeking *inter alia* an up-to-date statement from the Planning Authority on the status of the emerging development plan, with reference to waste management policy and guidance. This is of relevance to the

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DPE. We are instructed in the Planning Appeal by Ross Estates Company ("REC"), which company owns Balnagown Estate and land allocated in Barbaraville for housing. The PN provided an opportunity for parties to the Appeal to comment on the information received from the Planning Authority. REC lodged a response with the DPEA on 17 August 2011 ("Response"). REC refers to and stands by the terms of the Response, the terms of which are incorporated herewith. The Response is appended as Annex 2.

As set out in the Letter and the Response, our concern in relation to the DPE is that the Planning Authority's position at the commencement of the DPE is that it has submitted a proposed local development plan that does not take full and proper account of, and is thus inconsistent with, National Policy and the National Planning Framework 2 (which is now on a statutory footing). These are important statements of Policy which cannot be ignored and must be given considerable weight in the DPE. Section 16 of the Town and Country Planning (Scotland) Act 1997 ("the Act") 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 HWLDP subject to potential legal challenge.

The changes introduced by the Zero Waste Plan and Revised Annex B of the Zero Waste Plan have also not been addressed in the proposed HWLDP. More specifically the Council have not fully taken account of the Zero Waste Plan or Revised Annex B of the Zero Waste Plan and the consequent amendments to both NPF 2 and SPP. The Planning Authority have also failed to fully take account of the changes brought forward by the pending Zero Waste (Scotland) Regulations 2011. These pending Regulations will come into force within the lifetime of the HWLDP and are therefore of direct relevance.

Annex 1 of the Letter details the significant policy and regulatory changes that have occurred. You will note that these changes significantly alter the principles upon which waste strategy must be formulated. The key changes include:

- Waste strategy must be plan-led. There is a requirement to identify, in the development plan, land allocations for waste management infrastructure, either by allocating specific land for waste management infrastructure or providing a clear indication of the types of land suitable for waste infrastructure development;
- The National Waste Plan and 11 Area Waste Plans are revoked;
- The Zero Waste Plan and Revised Annex B redefine the concept of the proximity principle. This principle is 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;
- "Residual Waste" has been redefined as "*wastes which have been subject to all reasonably practicable efforts to extract recyclable material prior to incineration or co-incineration.*" This significantly alters and extends the network of waste management facilities that must be put in place by planning authorities.

Notwithstanding that the HWLDP is undergoing DPE, we consider that the changes introduced by the Zero Waste Plan and the Revised Annex B require to be addressed in the

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context of the DPE and ought not to be postponed until a later amendment. In terms of timing, it is relevant that Revised Annex B was published on 11 February 2011, over a month prior to the Committee consideration of the HWLDP. Given that the HWLDP, under the Highland Development Plan Scheme is to be used as a plan of a "strategic nature", REC considers that it would be inappropriate for changes of such strategic significance set out in the Zero Waste Plan and Revised Annex B, to be dealt with under the three site specific Local Development Plans ("LDPs") for the individual areas.

It is of particular note that the Planning Authority have acknowledged its failure to integrate these significant regulatory and policy changes in the HWLDP, and have requested in the Minute of the Planning, Environmental and Development Committee of 16 March 2011 that you facilitate a degree of integration in the course of the DPE. The Planning Authority, in its Schedule 4 Response in relation to Issue 71, has accepted the long term requirement for the full integration of the Zero Waste Plan and Revised Annex B into the Development Plan. There is therefore disagreement over the timing of such intergration which we consider should be a matter for close scrutiny at the DPE.

In its Schedule 4 Response in relation to Issue 71, the Planning Authority states:

"Nevertheless we would happy to incorporate a minor amendment to the text to note that all proposed waste management facilities should also be assessed against Annex B (specifically the data outlined in the National Need and Capacity Information table). As an alternative, it is also suggested that there is scope to revise the policy wording to state that all proposals for waste management facilities should give consideration to the aforementioned 'national waste management plan' with an explanation of the documents this encompasses provided in the Plan's glossary."

For the avoidance of doubt, we contend that these minor amendments proposed by the Planning Authority, are insufficient to reflect the strategic and fundamental nature of the changes introduced to waste strategy by the Zero Waste Plan and Revised Annex B.

We respectfully request that you seek further information from relevant parties on these significant matters and that you hold inquiry sessions in relation to Issues 71, 84 and 90 to interrogate the integration into the HWLDP of the following key documents:

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

Paragraph 81 of Planning Circular 1/2009: Development Planning states that *"Where an oral session is required, this will normally follow the hearing format rather than formal inquiry sessions. Different aspects of individual issues may be dealt with using a number of formats."*

We consider that the circumstances of this highly contentious matter are exceptional in nature. A dispute exists between the parties (particularly the Planning Authority and the Objector) on complex and technical matters, such as *inter alia* in the interpretation of the Zero Waste Plan and Revised Annex B, and the evidence for and against needs to be thoroughly tested by cross-examination to enable the Reporters to reach clear conclusions on the matters at dispute. In particular, disagreement exists as to the timescale during which the above statements of National Policy, and legislative changes must be integrated into the Development Plan. Clear conflict of professional opinion exists on this matter and we believe that it would be helpful for that evidence to be tested by way of cross-examination.

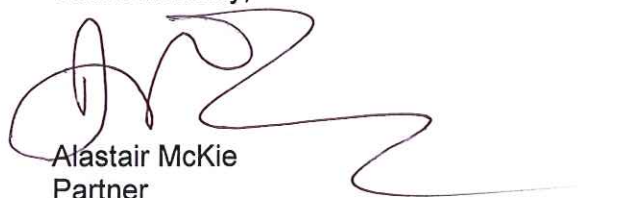
We also draw your attention to the fact that the Planning, Environment and Development Committee on Wednesday 16 March 2011 agreed with the recommendation of the Report by the Director of Planning and Development to recognise for the purposes of Figure 3 of HWLDP the legal challenge taken by REC and the subsequent ongoing Planning Appeal. This is reflected in the Schedule 4 Response by the Planning Authority in respect of Issue 84. This states at BE (229) that

"the Figure 3 waste facility symbol represents the planning permission at Invergordon for an energy from waste facility. This permission is subject to review through various legal processes. If the outcome of these processes is known before the Reporter makes his/her recommendations on the issue then the Council would accept that outcome as being the basis on which the notation is changed, deleted or retained."

We highlight for your information that the timeframe for determining the Planning Appeal has altered. In the context of the Planning Appeal the Reporter has required the Appellants, Combined Power and Heat (Highlands) Limited, to undertake a fundamental update of the Environmental Statement with statutory requirements for public consultation and publicity. It is therefore very unlikely that the Planning Appeal will be determined until oral sessions (on the Planning Appeal) have been held early in 2012. Given that the waste facility symbol detailed in Figure 3 was not an allocation but was rather representative of a planning permission that was at that time extant but has now been quashed under s.239 of the Town and Country Planning (Scotland) Act 1997, and is now subject to the ongoing Planning Appeal, we consider it appropriate for Figure 3 to be deleted.

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

Yours faithfully,



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

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