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Our Ref: AJMCVAJMC\BAL0169.1\MZM  
 Your Ref:  
 Date: 7 October 2011

Dear Sir

**The Highland Wide Local Development Plan  
 Proposed Development Plan Examination – DPEA Ref: LDP – 270-3  
 Ross Estates Company (Balnagown Estate) (“Objector”) – Objector Ref: 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 the letter dated 16 September 2011, from Morag Smith, Development Plan Assistant, containing notice under Regulation 22 of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008, that you seek further information from the Objector regarding Issues 71, 84 and 90 of the proposed Highland Wide Local Development Plan (“HWLDP”). In her e-mail of 22 September 2011, Ms Smith confirmed that you have granted parties an opportunity to comment on the information received from the other named parties in relation to this matter.

The Objector stands by the terms of the letters dated 24 June 2011, 23 August 2011 and 30 September 2011, in relation to issues 71, 84 and 90 of the HWLDP (the “Objector’s Letters”) and incorporates the terms of these letters herewith.

The Objector has received copies of responses lodged with the DPEA by the following parties:-

- The Highland Council; and
- SEPA.

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The Objector has fully examined the terms of each response, and has a number of comments to make in respect of each.

#### 1. Response by the Highland Council

We note the comments by the Highland Council in relation to the Zero Waste (Scotland) Regulations. The Objector questions the dependency of the HWLDP's integration of the Zero Waste Plan on the Regulatory Impact Assessment in relation to the Zero Waste (Scotland) Regulations. We stand by the Objector's comments regarding the timing of the integration of the Zero Waste Plan (and other regulatory and policy changes) into the HWLDP, in the Objector's Letters, and incorporate the terms of each herewith. We note in particular that the Zero Waste Regulations are due to be laid before the Scottish Parliament in late 2011.

With regard to the comments of the Council in relation to Issue 84 and Figure 3, we are in agreement that the waste facility symbol shown in Figure 3 in respect of Invergordon should be deleted.

#### 2. Response by SEPA

We note the reference to the Objector's letter of 24 June 2011 in which we referred to Section 2.4 of SEPA's Thermal Treatment of Waste Guidelines 2009 (the "2009 Guidelines"). Such comments were written on the basis of the now superseded 2009 Guidelines. We note that the latest version of the 2009 Guidelines, which integrates the Zero Waste Plan and Revised Annex B of the Zero Waste Plan, refers to two documents: one relating to development planning (LUPS 6) and the other relating to development management (LUPS 5). Whilst these documents give a clear primacy to the Zero Waste Plan (including Revised Annex B thereof), it would have been helpful for SEPA, as the author, to explain in what way this guidance is relevant to the present Development Plan Examination. The Objector stands by the terms of its submissions contained in Paragraph 1 of Annex 1 of the Letter of 24 June 2011.

We refer to the statement on page 2 of SEPA's Response that *"it is unclear how this conclusion is arrived at"* in response to our submission in the Objector's letter dated 24 June 2011, that the redefinition of "residual waste" under the Zero Waste (Scotland) Regulations 2011 *"means that 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."*

Given that the Zero Waste (Scotland) Regulations are to be laid before the Scottish Parliament in late 2010, and will therefore will come into force within the lifetime of the HWLDP, we contend that they are therefore of direct relevance to the HWLDP and should be taken into account. In doing so, and in adopting the redefinition of "residual waste", this significantly alters and extends the potential network of waste management facilities that must be put in place by planning authorities. The inevitable conclusion therefore is that the new definition will require the assessment of a network of waste facilities.



We refer to the statement on page 2 of SEPA's Response that *"it unclear what changes these Regulations will introduce which would inform the Development Plan Spatial Policy. These Regulations will control the operation of waste management sites rather than the location of waste management sites."* This sentence underplays the step change that will be introduced by the change in the definition of *"residual waste" under the Zero Waste (Scotland) Regulations*. The alteration in the definition of *"residual waste"* will require that only waste that is not recyclable is handled by an Energy from Waste Facility ("EfW"). In essence this means that only waste that has been rejected by a material recovery facility or unsorted waste that has undergone pre-treatment can be handled by an EfW. This will necessitate a network of upstream waste management facilities. This is of direct relevance to the Spatial Strategy for Waste Infrastructure.

SEPA have also stated that they *"will limit waste utilised in energy from waste plants to residual waste, but this limitation was sought previously by SEPA through requests for planning conditions, so in effect achieving the same end."* Planning authorities have a wide discretion to impose planning conditions. The pending Zero Waste (Scotland) Regulations will place a legislative requirement to impose such a restriction on the types of waste that can be handled by an EfW. This legislation will place a much more restrictive cap on waste that can be handled by an EfW than the previous 25% cap on municipal waste.

We maintain that only following the integration of these significant regulatory and policy changes into the HWLDP will the proposed Plan be appropriate and sufficient.

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

Copies of this letter have been e-mailed to SEPA and the Highland Council.

Yours faithfully



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