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Dear Ms Smith

**Highland Wide Local Development Plan (HwLDP)
 Regulation 22: Request for Further Information
 Druum Ba Sustainable Energy Limited**

I refer to your letter of 1 November inviting further information in relation to the examination of the HwLDP.

On behalf of Druum Ba Sustainable Energy Limited, I wish to respond as follows:

Issue 68 – Renewable Energy Developments

Supplementary guidance

It is noted that the Council does not intend to re-adopt the Highland Renewable Energy Strategy and Planning Guidelines (2006) as statutory supplementary guidance. This is reasonable since the 2006 Strategy has been superseded by national policy and has failed to stand up to scrutiny at public inquiry.

Nevertheless, the second sentence of Policy 68, as drafted, remains misleading as it fails to address the development plan and then material considerations in a logical sequence to differentiate between the legal status of each. That is, the text should, at least, list those plans or policies that will fall within the definition of the development plan and then those that will fall within the definition of 'other material considerations', as set out in our submission of 2 December 2010. This distinction is critical in legal terms.

Given the Council's intention not to re-adopt the 2006 Strategy, it would be in the interests of clarity to delete any reference to it in Policy 68 or elsewhere in the HwLDP. Deletion of any reference to the 2006 Strategy, other than by way of background information, is necessary to draw a policy line under that outdated, non-statutory policy.

Moreover, the Council's intention to try to salvage unspecified parts of the 2006 Strategy will create a confusing policy template for developers in the renewable energy sector. Given the national importance of this sector, it is unfortunate that the Council is not taking this opportunity to rationalise and simplify the development plan framework, which would be in the spirit of Planning Reform.

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The fact that this salvage exercise will be managed outwith the scope of the HwLDP process, with all due respect, misses the point and risks policy uncertainty and confusion in a plan led system.

Furthermore, in the introductory chapter 22.1.1 of the HwLDP, the Council relies on the outdated 2006 Strategy to set the context for Renewable Energy Developments in the Highland Region.

The Scottish Government's ambitions and targets have moved on considerably since the 2006 Strategy was drafted. In his introduction to the '2020 Routemap for Renewable Energy in Scotland' (July 2011), the Minister acknowledges that Scotland's target is "one of the most demanding anywhere in the world."

These targets are not caps; there is a legitimate expectation that Scotland will strive to meet and, if possible, to exceed those national targets. Moreover, the wider UK renewable energy targets remain unmet and challenging (reaffirmed in the 'UK Renewable Energy Roadmap' issued by DECC in July 2011) and Scotland contributes to these.

The Council state in paragraph 22.1.1 that "The Highland area has great potential for renewable energy production and to contribute towards meeting ambitious targets set internationally, nationally and regionally." Despite this great potential, coupled with the ambition of the national targets, it is disappointing that there is no express, up to date commitment from the Council to respect and apply the national policy presumption in favour of renewable energy projects.

Furthermore any supplementary guidance to be brought forward by the Council pursuant to the HwLDP should be prepared on the same area wide geographical basis. This will ensure consistency of policy approach between the two tiers of the development plan, which will include the adopted HwLDP and any adopted supplementary guidance. It should also minimise the risk of confusion between different tiers of policy on this nationally important matter.

The timing of the HwLDP creates an opportunity for a Local Development Plan covering a very expansive geography an area of great potential of renewable energy developments to provide a clear and unambiguous policy framework to encourage developers and investment. Why does paragraph 22.1.1 not clearly state that there is a presumption in favour of renewable energy developments, subject to an assessment of the appropriateness of the proposed location? This would reflect the key principle for wind farm siting as set out in Scottish Planning Policy (SPP).

A significant constraint in meeting the Government's targets is timescales: a clear and unambiguous policy commitment to support renewable energy projects, subject to site specific environmental assessment, would save time for everyone.

Renewable energy technologies

No comment.

Community benefit and economic effects

The additional text suggested by the Council refers to the determination of applications (line 9). However, anticipated socio-economic benefits should be even greater from renewable energy projects subject to the consenting process under the Electricity Act 1989. It is suggested that the reference in line 9 should be to 'the assessment or determination of an application'.

Significant detriment/balance and weight

The weight to be attached to a material consideration is a matter for the decision maker. The application of section 25 of the Town and Country Planning (Scotland) Act 1997 creates a legal presumption in favour of the development plan unless material considerations indicate otherwise. There is always a strong presumption in favour of development that accords to the development plan although a decision maker may attach sufficient weight to a material consideration to rebut that presumption.

As drafted, all of the considerations listed in Policy 68 are on an equal footing which does not reflect the importance attached to renewable energy development by the Government. The starting point for any determination should be a clear presumption in favour of renewable energy projects, subject to the appropriateness of the proposed location for the development.

Whether or not a location is appropriate will be determined by an analysis and assessment of the land use and environmental characteristics of the site and its surrounding area, including those specified in Schedule 9 to the Electricity Act 1989.

The proper purpose of Policy 68 should be to inform prospective developers of the land use and environmental issues that should be addressed in any application for renewable energy development. It is then for the decision maker to decide which of those issues, or any other site specific issues, are relevant to consideration of the appropriateness of a proposed site.

The decision maker should then assess all of those issues to identify any significant adverse impacts and consider what weight he will attach to any such adverse impacts that cannot be addressed by design changes, operational constraints or mitigation measures.

This is the critical stage in the balancing exercise – does the weight to be attached to those remaining adverse impacts outweigh the strong policy presumption in favour of renewable energy development?

The national policy presumption is not expressly addressed in the proposed Policy 68, which creates a risk for the future application of an important local development plan policy in an area of great potential for renewable energy development.

Renewable Energy Generation Targets:

The first criterion in Policy 68 is the '*contribution of the proposed development towards meeting renewable energy generation targets*', a criterion listed in SPP.

Although there are clear national targets for renewable energy generation, it would be inappropriate for SPP or any other national policy statement to impose local targets on a local authority area.

Achieving or exceeding the Scottish Government's renewable energy targets depends not just on government policy and the regulatory system. It relies on the private sector bringing forward development proposals. As the Scottish Government cannot predict the market, it is prudent to have local area flexibility underpinning national targets. It follows that local authority areas, particularly those with 'great potential for renewable energy generation' should be open to the prospect of maximising renewable energy development on the basis that 'every little helps'.

The importance of setting targets and objectives with effective performance management is recognised through the public sector as it underpins best value audits, yet there are no renewable energy targets within the proposed HwLDP.

How will the Council assess a proposed development's contribution to 'renewable energy targets'? Which targets are to be applied and how is performance to be monitored and audited?

The Council is preparing a *Highland Wide* LDP which would be the relevant policy framework in which to set out a strategic overview including renewable energy targets for the Highland Wide Area. Especially since the HwLDP will be underpinned by a suite of local area LDPs and, as well as the Draft On Shore Wind Energy Supplementary Guidance, further supplementary guidance for further sub-areas of Highland. The overarching HwLDP should therefore set strategic targets.

The targets in the Draft 'On Shore Wind Energy Supplementary Guidance' are those which were contained within the 2006 Strategy. The 2006 targets reflect the targets set by the Scottish Government in 2005: that is, 18% of Scottish electricity demand by 2010 and 40% by 2020. Since then the Scottish Government's target has increased from 40% to 100% of electricity consumption with no corresponding increase in the Highland targets.

Given the ambition and scale of the national targets, the importance of clear, ambitious and unambiguous local authority targets cannot be overstated.

The Council's targets are:

- 1280MW by 2010
- 2180MW by 2015

At August 2011, the installed capacity was 1160MW.

The current sum of 'operational' and 'approved or under construction' is 1743MW, which includes the Dumnaglass and Corriemollie wind farms, both of which have grid connection dates post 2015. So the likely operational capacity by 2015 is 1622MW.

If the Council are to meet their 2015 target (based on the superseded 40% national target), a further 558MW needs to be approved, built and connected to the grid by 2015.

Proposed projects in planning process, "submitted but not determined" amount to 943MW, of which

- 263 MW are already subject to objection by the Council or SNH; and
- 116MW have grid connection dates post 2015, if consent is granted.

The remaining 564MW would only be achieved by a 100% approval rate in coming months. However, of that 564MW, 167MW is proposed in areas designated as being given 'significant protection' in the Draft 'On Shore Wind Energy Supplementary Guidance'.

The Council continues to rely on targets set in 2006 and based on the 2005 national targets. Despite that, they failed to meet their target for 2010 and it is unlikely that the 2015 target will be met.

This suggests an urgent need for a step change in the Council's targets and approach to support the Scottish Government in its ambition for renewable energy development. The proposed HwLDP and Policy 68 shows no sign of such a step change. Overall there will be a confused policy framework that raises the bar for renewable energy development in the Highland area, despite the words of support in introductory text.

Yours sincerely



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Partner, for and on behalf of Dundas & Wilson CS LLP