

THE HIGHLAND COUNCIL

ROSS & CROMARTY EAST LOCAL PLAN INQUIRY

**STATEMENT OF OBSERVATION of the
DIRECTOR OF PLANNING and DEVELOPMENT**

ISSUE 4: WASTE WATER TREATMENT

1. Introduction

- 1.1 The Highland Council (THC) has undertaken to hold a Public Local Inquiry to consider objections lodged by:

Scottish Environmental Protection Agency (SEPA) [CD31/170]

Mr B. Matheson [CD31/9]

Ferintosh Community Council [CD30/78]

JIG Ltd. [CD31/410]

HGA (UK) Ltd. [CD31/434]

Mr John F Clark [CD30/76]

The Black Isle Forum [CD30/91]

in respect of General Policy 2 (GSP2) Waste Water Treatment within Chapter 5 of the Deposit Draft of the Ross and Cromarty East Local Plan and foul drainage concerns regarding allocations within Chapter 6, Paragraphs 2-3, 4-11, 13-16, 18-21, 23-24, 26-27, 29, 31, 33, 35-40, 43-45, 47, 49-50, and Appendix III.

- 1.2 It is understood that SEPA, Mr B. Matheson (represented by HGA (UK) Ltd.), Ferintosh Community Council, JIG Ltd. and HGA (UK) Ltd. all wish to appear at the Inquiry, and Mr J F Clark has made a further written submission.
- 1.3 The Black Isle Forum have either not withdrawn or rested on their original submission. This and the Council's response can be found in the 25 January 2005 Area Planning Committee report on Objections and Representations on the Deposit Draft Local Plan [CD27].
- 1.4 THC will call Alan Ogilvie as planning witness.
- 1.5 THC wishes to submit the following productions: -

[CD1] The Highland Structure Plan: Approved Plan: The Highland Council: March 2001

[CD8] Ross & Cromarty East Local Plan: Consultative Draft: The Highland Council: June 2002

[CD9] Ross & Cromarty East Local Plan: Deposit Draft: The Highland Council: October 2003

- [CD10] Ross & Cromarty East Local Plan: Statement of Publicity, Consultation and Representations: The Highland Council: October 2003
- [CD11] Ross & Cromarty East Local Plan: Proposed Modifications to the Deposit Draft (Prior to Public Local Inquiry): The Highland Council: February 2005
- [CD13] SPP1: The Planning System: Scottish Executive: November 2002
- [CD15] SPP3: Planning for Housing: Scottish Executive: February 2003
- [CD25] Ross & Cromarty Area Planning Committee Item: Representations on the Consultative Draft Local Plan: The Highland Council: 15 September 2003
- [CD26] Planning Development Europe & Tourism Committee Item: Representations on the Consultative Draft Local Plan: The Highland Council: 1 October 2003
- [CD27] Ross & Cromarty Area Planning Committee Item: Objections and Representations on the Deposit Draft Local Plan: The Highland Council: 25 January 2005
- [CD30] Letters of objection and representation to the Deposit Draft Local Plan
- [CD31] Objections to the Proposed Changes to the Deposit Draft Local Plan
- [THC-4/1] EC Directive 91/271/EEC Urban Waste Water Treatment: The Council of the European Communities: 1992
- [THC-4/2] The Urban Waste Water Treatment (Scotland) Regulations 1994
- [THC-4/3] Inverness Local Plan PLI Report, Section 4.10: Scottish Executive: March 2005
- [THC-4/4] Letter from HGA (UK) Ltd. to THC Planning Department on Mount High and its enclosures: Ross Cairns: 25th April 2005

2. Background

European and National Legislation

- 2.1 Under Article 2 (9) of EC Directive 91/271/EEC Urban Waste Water Treatment [THC-4/1] ‘appropriate treatment’ is defined as *“means treatment of urban waste water by any process and/or disposal system which after discharge allows the receiving waters to meet the relevant quality objectives and the relevant provisions of this and other Community Directives.”* In addition, in the case of the non-existence of a public sewer Article 13 (1) states that: *“Where the establishment of a collecting system is not justified either because it would produce no environmental benefit or because it would involve excessive cost, individual systems or other appropriate systems which achieve the same level of environmental protection shall be used.”*
- 2.2 The Urban Waste Water Treatment (Scotland) Regulations 1994 [THC-4/2]. Under Article 4(1) and subject to paragraph (2), every local authority are obliged to ensure that collecting systems which satisfy Schedule 2 requirements are provided within a prescribed timetable for populations of 2000 and over. However, Paragraph (1) of this article does not apply where *“the Secretary of State has certified that the establishment of a collecting system is not justified because it would involve excessive cost”* (Paragraph 2), and *“individual systems are provided and the river*

purification authority has certified that they achieve the same level of environmental protection.”

Highland Structure Plan

- 2.3 Paragraph 2.17.23 of the Highland Structure Plan [CD1] acknowledges that sewerage systems across Highland vary from individual septic tanks to small village systems with limited capacity, through to large urban systems with associated treatment works. Furthermore, Paragraph 2.17.24 recognises private systems and indicates that they will not normally be acceptable where it is financially and technically feasible to link developments to the public sewage system or where drainage conditions are adequate. Policy W11 Sewerage of the Structure Plan gives a commitment that *“Local Plans will identify the following areas in respect of sewerage constraints:*

- *poorly drained areas for septic tanks and soakaways; and*
- *a safeguard area around wastewater treatment plants and other associated structures, as advised by the North of Scotland Water Authority.”*

Previous Inquiry Results

- 2.4 The Inverness Local Plan Inquiry findings [THC-4/3] regarding connection to a public sewer as a pre-requisite of development recommend an amendment to General Policy 10 Water and Waste Water to read:

(3) “Connection to the public sewer as defined in the Sewerage (Scotland) Act 1968 will be a pre-requisite of planning permission for all development proposals in the City of Inverness and in all the Local Centres and Key Villages identified in the plan. Elsewhere, connection to the public sewer will be required, unless the applicant can demonstrate that:

- (i) connection is not feasible, for technical or economic reasons, or;*
- (ii) the receiving WWTP is at capacity and Scottish Water has no programmed investment to increase that capacity; and;*
- (iii) the proposal is not likely to result in significant environmental or health problems.*

Planning permission for developments with private waste water systems will only be allowed where proposals satisfy (i) or (ii) above, and satisfy (iii).”

(4) The Inquiry findings regarding allocations and locations to which SEPA objects recommends that “the Council reassesses (these) allocations and locations ... in discussion with SEPA and Scottish Water, based on the principles listed above (relating to recommended amended Policy GP10), before deciding whether or not to confirm these allocations.”

The significance of these findings is explained in THC’s observations at Paragraph 3.11.9.

Consultative Draft Plan

- 2.5 The Consultative Draft **[CD 8]** of the Ross and Cromarty East Local Plan was published in May 2002. It contained four references on this general issue – two Plan-wide references in Chapter 3: Key Issues, and one in Chapter 5: General Policies, and a Landward Area reference in Chapter 6. These reflected proposals of the water authority (its water and foul drainage investment programmes) rather than policies of THC.
- 2.6 The representations received and the changes made by THC in response are detailed in **[CD 26]**. Representations were received from Scottish Water, SEPA, GH Johnston Buildings Consultants Ltd. (on behalf of Broadland Properties Ltd.), Ferintosh Community Council and Mr John F Clark.
- 2.7 Scottish Water **[CD26/158]** made representations relating to a number of Landward Areas advising that reference should be made within the Local Plan to their current Site Servicing Policy regarding developer contributions towards site servicing costs. They also advised that proceeding with some allocations and connecting to the public sewerage system would lead to an overloading of the network or Waste Water Treatment Works and would subsequently be in breach of Scottish Water's discharge consent.
- 2.8 SEPA **[CD26/238]** made representations regarding Chapter 3: Key Issues and on many of the Landward Areas within Chapter 6. They called for reference to consultation on SUDS matters where appropriate with SW and SEPA. For the Landward Areas SEPA highlighted its concerns about the Plan's encouragement of development in areas without mains drainage provision and where foul drainage problems already exist. SEPA required the Local Plan to state that allocations must take into account drainage infrastructure constraints; connection to a public sewer should be a prerequisite of development and discourage the proliferation of individual septic tanks, and the use of shared private non-sewered drainage systems. It also disputed the Plan's references to adequate servicing and drainage as insufficient.
- 2.9 For Kilcoy Landward Area, GH Johnston Building Consultants Ltd. **[CD26/250]** made representation that subject to suitable drainage arrangements capacity exists for an additional 10-12 housing units rather than 8 units as indicated within the Consultative Draft Local Plan.
- 2.10 Ferintosh Community Council (FCC) **[CD26/172]** objected to allocations at Alcaig, Corntown and Easter Kinkell. They stated that in relation to Alcaig it would not be wise to expand the village by using private individual drainage systems due to the environmental consequences of failure, and objected to the zoning unless it is made clear within the Local Plan that no such development can take place until the area has received upgraded adequate sewerage and sewage disposal facilities. They made a similar objection to Corntown highlighting that despite it being some 600 metres from south from Canon Bridge Waste Water Treatment Works, it is not served by a public drainage system. Furthermore FCC commented that some areas

in Corntown are not suitable for soakaways and the only watercourses are small ditches. They asserted that the Local Plan should make clear that no development can take place until the area is provided with adequate sewerage facilities. Again in relation to the Easter Kinkell allocation, the Community Council stated that they objected to its zoning until it was made clear within the Local Plan that no development can take place until the area is provided with adequate sewerage facilities.

- 2.11 Mr John F Clark [CD26/22] was concerned with further allocations for development in Rhicullen given the lack of mains drainage and no proposals by SW to upgrade prior to 2009.

Deposit Draft Local Plan

- 2.12 The Deposit Draft [CD 9] of the Local Plan was published in October 2003. Modification were made to Keys Issues Foul Drainage [W11] to:
- highlight the need for significant improvement and provision of waste water drainage systems across the Plan-Area to accommodate new development;
 - outline mains drainage as a prerequisite of development; and
 - possible requirement of developer contribution towards system upgrades.

Reference to the Flood Prevention and Land Drainage (Scotland) Act 1997 and PAN 61 “Planning and Sustainable Urban Drainage Systems” were inserted into Key Issues Surface Water Drainage/Flooding [NH1-4] at SEPA’s request. A new general policy, GSP2 Waste Water Treatment was inserted which stated:

“A connection to mains drainage will be a prerequisite of development in the larger settlements of Ross and Cromarty East, including where land is identified for expansion or promoted for other significant purposes. Developers may be required to contribute to create capacity or improved treatment for further development. A contribution up to the reasonable cost limit may be available from Scottish Water under their Site Servicing policy but any costs in excess of this limit, both on site and off site, will require to be funded by the developer. Development seeking septic tank drainage in areas where subsoil conditions and sensitivities from pollution exist (see Analysis Map) must demonstrate compliance with BS6297 to the satisfaction of the drainage agencies. For multiple unit development, the use and adoption of privately developed ‘package’ biological treatment plants or reed bed systems will depend upon local site conditions, together with suitable arrangements for long-term plant maintenance and refurbishment to the satisfaction of the drainage agencies [W11].”

- 2.13 In addition modifications were made to individual Landward Area policies in Chapter 6 to reflect existing foul drainage issues within these areas, and to address SEPA’s requirement for connection to a public sewer as a prerequisite of development. These individual Landward Areas were: Alcaig, Ardross, Balblair, Barbaraville, Blairninich, Corntown, Cromarty Mains, Croftnacreich, Davidston, Easter Kinkell, Ferintosh, Gorstan, Jemimaville, Kilcoy, Killen, Mount High, Newhall, Nigg, Raddery, Rhicullen/Newmore and Rosehaugh Estate.

- 2.14 Objections were received from SEPA and Ferintosh Community Council (FCC), Mr John F Clark and a representation made by Mr B Matheson and the Black Isle Forum. These responses and THC's response and reasoning are set out in [CD 27]. In summary:
- 2.15 FCC [CD30/78] supported the inclusion of a policy on drainage, but stated that foul drainage should be transferred to a public sewerage system where available, and where it is not development should not proceed until capacity is made available. Furthermore, where no public sewerage system is available they felt that demonstration of full compliance with BS 6297 should be a prerequisite of any proposed septic tank drainage system. They support the Council's proposal of not permitting any further development at Alcaig, Corntown, Easter Kinkell, Ferintosh and Newton of Kinkell unless adequate public drainage is provided. However, FCC highlighted that in relation to Paragraph 35 and Appendix III – Small Housing Groups that further development of housing in these areas could create additional drainage problems as there is no form of public drainage system afforded to them, and therefore it is likely to be drained through individual septic tanks. As a result FCC object to the inclusion of Balnabeen, Duncanston, Wester Alcaig, Drummondreach, Mid Alcaig, Dunvornie, and Balmeanach as areas for infill/expansion.
- 2.16 SEPA [CD30/170] required that a connection to mains drainage should be a prerequisite of development in larger settlements and in areas where subsoil conditions and sensitivities from pollution exist, and disputes all of the Plan's development allocations that cannot be served by existing or programmed mains drainage provision. SEPA disputed the Plan's references to adequate servicing and drainage as insufficient. They object to the proliferation of individual septic tanks, and actively discourage the use of shared private systems on enforcement and responsibility for long-term plant maintenance and refurbishment grounds. SEPA believe that those areas where there is no likelihood of a public sewerage system should be specifically identified within the Local Plan. They raised concerns that no indication of the scale of acceptable new housing development has been given.
- 2.17 Mr John F Clark [CD30/76] felt that at Rhicullen/Newmore the existing, longstanding drainage problems associated with the present housing could only be effectively remedied via an urgently required mains drainage system and no further development should be permitted until this is carried out.
- 2.18 Mr B. Matheson [CD30/9] made a representation for 4 acres of land to be zoned for housing development to the north of Mount High, an area where SEPA had concerns that the allocation appeared to imply the existence of a public system.
- 2.19 The Black Isle Forum [CD30/91] stated that waste water/sewerage disposal should be of the highest standard.
- 2.20 In response, THC inserted a new policy GSP2 with a connection to public sewer as a prerequisite of development, and stated that the use of private systems in the

absence of public drainage may be acceptable if they meet the adoption standards of the water authority, and furthermore that proliferation of septic tanks should be avoided. In addition the need to account for drainage constraints was added to the wording of paragraph 2 of Housing in Chapter 6: Landward Area, and “*can be connected to a public sewer with adequate sewage treatment (GSP2)*” to paragraph 3. Furthermore, changes were made to individual allocations to highlight foul drainage requirements.

Deposit Draft with Modifications (Proposed Changes)

- 2.21 Proposed Changes to the Deposit Draft [CD 11] were approved in January 2005. The current wording of Policy GSP2: Waste Water Treatment states:

“A connection to public sewer will be a prerequisite of development in the Main Settlements and in other locations where land is identified for significant development. Developers may be required to assess existing public drainage systems to determine the potential for further development and to make contributions to create the necessary capacity or improve sewage treatment. Where public drainage does not exist, the development and use of private systems may be acceptable if designed to a standard suitable for adoption by the water authority and arrangements are agreed for long-term plant maintenance and refurbishment. Development seeking to use individual septic tanks should be very limited in scale, located where satisfactory foul drainage can be demonstrated and located in areas where there are no existing foul drainage problems. Proliferation of septic tanks should be avoided. In considering programmes to improve provision of public drainage, Scottish Water and SEPA should weigh investment and environmental priorities against development pressures, the retention of other essential services, affordable housing needs and the aspirations of local communities. [W11].”

- 2.22 Further objections were received from JIG Ltd. [CD31/410] and HGA (UK) Ltd.[CD31/434] and a further written submission from SEPA [CD31/170], Mr B. Matheson [CD31/9] and Mr J F Clark [CD31/76].
- 2.23 SEPA are concerned that in the Deposit Draft LP the allocation at Mount High was for 2 units, and was increased at Deposit Draft with Modifications stage to 15-20 houses, with drainage to “privately developed sewage treatment plant”. They believe that this constitutes a new significant development without public drainage infrastructure to support it, in an area where severe drainage problems exist. SEPA require either a deletion of the new allocation or an amendment of the policy to state that development of and connection to a public sewer is a prerequisite of development.
- 2.24 SEPA also object to the new allocation for a tourist based development at Rhives Steading (Landward Area, Economic Development Paragraph 52), on the grounds that no reference has been made to drainage proposals other than stating provision of waste water treatment must comply with GSP2. They are also concerned that the Local Plan gives no indication or nature of likely development, which could result

- in significant scale of development with no public drainage infrastructure to deal with waste water.
- 2.25 Mr Matheson (represented by HGA (UK) Ltd.) made a further written submission relating to Policy GSP2 as a result of SEPA's objection to further housing allocation at Mount High in the absence of a public system. Mr Matheson is willing to incur additional costs of a public system if the allocation is increased to a maximum of 25 units. HGA (UK) Ltd. state that current objections are a result of cross authority foul drainage policy stance and its contradicting aims for both SW deliverables and SEPA guidance, rather than development constraints of the field or the housing need in the area.
- 2.26 Mr Clark believes that as a result of the "*ineffective functioning of some septic tanks*" effluent discharge has accumulated in adjacent low-lying waste ground at Rhicullen/Newmore, which has resulted in stagnant ponds, and adds that soil conditions at that location do not allow for sufficient percolation. Mr Clark further comments that along with the problem of odour it is also a health risk, as it occurs just 30 metres from the nearest housing. He states that this problem is becoming worse and urges the responsible authorities to carry out a site visit.
- 2.27 JIG Ltd. are concerned that the land use planning function is not being satisfied with the reworking of Policy GSP2 but rather both SEPA and SW's needs and wishes. They believe there to be a huge gap between what SEPA state as guidance and the requirements of statute. They feel that the new policy is too restrictive and does not recognise the flexibility in legislation (EC Directive 91/271/EEC Urban Waste Water Treatment and The Urban Waste Water Treatment (Scotland) Regulations 1994). JIG Ltd. dispute any differentiation between public and private systems as the legislation does not make any. They also dispute the restriction on private systems where existing foul drainage problems exist, stating that this should be a matter for SEPA and Environmental Protection Services to determine, and SEPA should develop means of enforcing.
- 2.28 HGA (UK) Ltd. object to the complete reworking of Policy GSP2 as it appears to fulfil the requirements and desires of SEPA and SW rather than national and local planning aims and the aspirations of settlements with a population of less than 2000. They insist that the EC Directive 91/271/EEC Urban Waste Water Treatment and The Urban Waste Water Treatment (Scotland) Regulations 1994 give a greater degree of flexibility in the use of private systems and the Directive is not definitive in the selection of foul water treatment solutions. HGA (UK) Ltd. believe that there are inconsistencies between what SEPA terms as guidance and the actual EC Directive requirements relating to insisting upon a connection to a public system. Under the EC Directive the need for a development to connect to the public sewer does not apply for populations under 2000. They feel that by prohibiting the use of private systems in the absence of a public sewage system and sufficient capacity, community growth, aspirations and population retention will be limited. HGA (UK) Ltd. is concerned that insisting connection to a public sewer will result in delays or deferment in development.

3. The Council's Observations

The Objections

3.1 Ferintosh Community Council [CD30/78] principal objection states:

"We support the principle of the inclusion of a policy (GSP2) relating to drainage. However, we object to the wording of policy GSP2. The policy states that compliance with BS 6297 must be demonstrated where "subsoil conditions and sensitivities from pollution exist". This does not make sense. Foul drainage should be conveyed to a public sewerage system if one is available. If there is insufficient capacity then the development should not proceed until capacity is made available. If there is no public sewerage system then demonstration of full compliance with BS 6297 should be a prerequisite of any proposed septic tank drainage system and not selected ones. The wording should be changed to reflect this."

Paragraph 35: Small Housing Groups and Appendix III

"We note that Dunvornie and Balmeanach have been added to this list of "small housing groups in the countryside with further development potential" since the Consultative Draft. We note following our comments at that stage that these so-called "groups" of houses are NOT considered to be "settlements". We do, however, still find the whole development of housing in these small housing groups extremely confusing. The possible area for development is not indicated nor are the possible potential (maximum) numbers of houses. We also believe that the development of further housing in these areas could well create further drainage problems as these do not benefit from any form of public drainage system and are therefore likely to be drained via individual septic tanks. We therefore object to the inclusion of Balnabeen, Duncanston, Wester Alcaig, Drummondreach, Mid Alcaig, Dunvornie and Balmeanach as areas for infill/expansion as specified in paragraph 35 of Chapter 6 of the written statement. We would only consider withdrawing this objection if the specific maximum number of houses possible for each group was known along with the potential maximum area for development was laid out clearly in a plan and we were afforded the opportunity to comment at that stage. This would allow the public fair and reasonable knowledge of what may be developed in the area rather than a vague statement which could be interpreted in various ways and may allow what we would think as an unreasonable scale of development."

3.2 Mr J F Clark in his further written submission on Rhicullen/Newmore states:

"Due to the ineffective functioning of some septic tanks, effluent discharge has accumulated in adjacent low-lying waste ground resulting in stagnant ponding. Soil conditions here apparently do not permit sufficient percolation.

A location map of ponding area is attached – Reference 'A' refers. Apart from disgusting smells this is an obvious health risk being some only 30 metres from nearest housing. This problem is now becoming worse. A site visit here by the responsible authorities is strongly recommended.

- 3.3 SEPA's comments at Deposit Draft stage on Chapter 6: Landward Area, allocation reference 23 – Mount High stated:

"This allocation appears to imply the existing presence of a public system, when the septic tank serving existing houses was, it is understood, developed by the Forestry Commission."

- 3.3.1 SEPA's principal objection [CD31/170] to General Policy GSP2 Waste Water Treatment states:

"SEPA welcomes and supports the first sentence of the modified policy as far as it goes, unfortunately, the revised wording does not define public sewer as requested by SEPA, the wording of which was agreed by the planning authority at the recent Inverness Local Plan Public Inquiry. Unfortunately, the revised wording would allow a proliferation of non-public sewer facilities within settlements which are not defined as "Main Settlements". Either the wording needs to be amended to identify additional settlements where connection to public sewer is a prerequisite of development or specific settlement allocations need to specify that connection to public sewer is a prerequisite of development. SEPA welcomes and supports the second sentence of the modified policy. SEPA is likely to object to the third sentence as it implies non-adoption by the water authority of shared private systems. SEPA clarifies that it is opposed to shared private systems. SEPA is not opposed to separate, individual private systems, outwith the boundaries of settlements served by public sewer, provided there is not such a proliferation within an area as to give rise of unacceptable environmental impact. The sentence "Proliferation of septic tanks should be avoided" should therefore also be amended to state that proliferation of development served by private foul drainage systems within an area should be avoided. With regards to specific allocations, it is noted that since the Consultative Draft stage of this document significant elements of allocations proposed at that time have since that time been granted planning permission and some have actually been constructed. It is therefore essential that this policy, or individual allocations, now states that the allocations are those made at the Consultative Draft stage so that developers do not consider these as allocations in addition to those already given planning permission."

- 3.3.2 On Chapter 6: Landward Areas specifically relating to foul drainage concerns SEPA's principal objections state:

Paragraph 2 & 3: Housing

"SEPA considers that its concerns regarding foul drainage have not been adequately met and is likely to maintain its objection..."

Paragraph 4: Achterneed

"The revised wording is noted but given the existing pollution problems in this areas and tight grouping of the proposed development SEPA is likely to be obliged to maintain its objection unless there is a development prerequisite of connection to the Strathpeffer public sewer."

Paragraph 5 & 6: Alcaig & Arabella

“SEPA welcomes the proposed modifications to the wording of these comments. However, the need to connect to public sewer is implied by needs to be made overt.”

Paragraph 7: Ardross

“The revised wording is noted and SEPA are likely to withdraw its objection to allocations (a), (b), (c) and (e). However, with regard allocation (d) as there is a public sewer in the vicinity of the proposed development SEPA is likely to be obliged to maintain its objection unless there is a development prerequisite of connection to public sewer in this area.”

Paragraph 8: Balblair

“It is noted that the report has clarified by implication that connection to public sewer is not a prerequisite of development at this settlement. SEPA is concerned that an allocation of 10 additional houses is included within the Local Plan without reference to connection to the public sewer at Balblair.”

Paragraphs 11, 20, 24, 27 & 31: Croftnacreich, Kilcoy, Newhall, Nigg & Rosehaugh Estate

“The revised wording is noted but given the existing pollution problems in this area and scale of proposed development SEPA is likely to be obliged to maintain its objection unless there is a development prerequisite of connection to public sewer.”

Paragraph 18: Jamestown

“SEPA notes that the comment in your report on Jamestown is not included in your table and presumes this is a mistake. SEPA is likely to maintain its objection unless it is clarified that connection to the public sewer is a prerequisite of development (a public system exists).”

Paragraph 33: Windhill

“The revised wording is noted but given the close proximity of a pumping station SEPA is obliged to maintain its objection unless there is a development prerequisite of connection to public sewer.”

Paragraph 52: Rhives Steading

“This new allocation for “tourist based development” makes no mention of drainage proposals other than “Provision of wastewater treatment must comply with Policy GSP2” and does not indicate scale or nature of likely development. SEPA is objecting to policy GSP2. SEPA has concerns regarding this development if it were to result in significant scale of development with no public drainage infrastructure to deal with the waste water.

This objection could be resolved by clarification of scale and nature of tourist based development being allocated and, if significant in scale, introduction of the statement to the policy the development of and connection to a public sewer is a prerequisite of development.”

3.4 Mr B Matheson’s representation [CD30/9] at Deposit Draft stage on Chapter 6:

Landward Area, allocation reference 23 – Mount High stated:

“I now ask that consideration be given to zone for development approximately 4 acres of land, North of Mount High. This land may be suitable in providing a proportion of sites for affordable houses as identified in the recent Resolis Housing Survey. I may be willing to donate to the community a triangle woodland adjacent to Mount High houses so that the proposed development could link with the existing settlement. The proposed site lies beside the bus route from Cromarty to Inverness and also the school bus route for both Newhall Primary and Fortrose Academy. I have received advice from Roads Depart. and Planning. I am awaiting advice from SEPA.”

- 3.5 Following the agreement of the Ross & Cromarty Area Planning Committee on the Proposed Modifications to the Deposit Draft on 25th January 2005, further objections were received from JIG Ltd., HGA (UK) Ltd. and Mr B. Matheson. These representations are set out below.

- 3.6 JIG Ltd’s objection [**CD31/410**] to General Policy GSP2 states:

This paragraph would appear to have the purpose of satisfying the needs and wishes of SEPA and Scottish Water rather than the land use planning function. This would be of great concern. We would implore the planning authority to reassess the reasoning, from its point of view, behind much of this paragraph. What is it, the planning authority, trying to achieve for community growth for instance?

Before reading our comments we would forewarn that there is a huge gap between what SEPA might state as “guidance” and the requirements of statute.

The wording of the first line is too restrictive and does not recognise the flexibility in the legislation governing the treatment of sewage (waste-water) and discharges of sewage effluent. The Urban Waste Water Treatment (Scotland)Regulations 1994 that transpose the 1992 Directive’s requirements are not so definitive for obvious reasons relating to competition law, monopolies, thwarting of community economic growth and sustainable development.

Line two is probably unnecessary and most certainly should not differentiate between public and private systems as the legislation does not. The planning authority may find that SEPA has a different view on this matter, however, its view on the basis of any “legal” need to connect to Scottish Water’s network should be checked thoroughly.

Line three imposes too much restriction on development as there is no need to design systems to “adoptable” standard particularly when the adopting authority is so reluctant to adopt. Our experience is that Scottish Water will not entertain “adoption” for less than 20 Band H houses. We also suggest that to make such a view explicit would be anti-European competition law. Long term maintenance provisions are sensible.

Line 4 should read, surely, “septic tanks or sewage treatment systems”.

Line 4 also includes a note that these systems should not be allowed where there is an existing foul drainage problem. Again this is too restrictive and should be a matter for SEPA and Environmental Protection Services to determine. For example, if a septic tank serving house Y is known to create an odour problem on a calm and balmy summer’s day, should that restrict the development of house X 200 metres down the street?

We agree that the proliferation of septic tanks should be avoided, however, SEPA Guidance wants individual systems because of “enforcement problems”. SEPA’s problems are its problem and it should develop a means of “enforcing”. We can suggest a number of means that would be similar, in fact more pro-active, to those that cover communal walls, gardens, roofs, paths, cellars, basements and so on. Line 6 is absolutely correct if it infers that SEPA should not be the anti-development agency that it would appear to be when there is no capacity in the public sewer. As long as the environment will not be compromised, private sewage treatment facilities should be regarded in no different manner than public ones. As a matter of interest, where is the logic in dictating that sewage from a development should be “forced” to the public sewer given Scottish Water’s environmental record. We would ask that the planning authority consider SEPA’s register of prosecutions. In conclusion, the proposed policy is inflexible, its wording flawed and beyond the legal framework governing sewerage provision and sewage treatment.”

3.6.1 JIG Ltd. objection to Key Issues, Paragraph 3.26 Foul Drainage [W11]:

“As comments for above on GSP2.”

3.6.2 JIG Ltd.’s objection to Landward Area references 4 (Achterneed) – 32 (Windhill):

“The comments and implied restrictions on drainage provision in all these paragraphs are in our opinion legally unsafe. They imply that there is a legal need for a development to connect to the public sewer and this is most certainly not the case for populations less than 2000 whilst it remains a grey area for populations greater than 2000. We would refer the planning authority to the Articles of the Urban Waste Water Treatment Directive 1992 and the Urban Waste Water Treatment (Scotland) Regulations 1994 to readily see that there is far more scope than is portrayed. SEPA’s local interpretation might be different thus the planning authority must seek independent legal opinion particularly as the embracing of this view will be so restrictive to the sustainable development of Highland Communities. It is our opinion that the terms of these paragraphs are legally challengeable.

Finally, given Scottish Water’s;

- *poor environmental performance;*
 - *current lack of funding;*
 - *excessive sewer impact assessment costs, and;*
 - *limited maintenance manpower;*
- and considering;*

- *the successful operation of the majority of the thousands and thousands of private systems, and;*
 - *the lack of sound science behind many of SEPA's concerns;*
- why would the planning authority wish to hinder the Highland economy by adopting the Policies and paragraphs as per the draft document?"*

3.7 HGA (UK) Ltd. [CD31/434] objection in relation to GSP2 states:

"The complete re-working of the GSP-2 statement appears to be contrary to the aims of the local plan policy namely within the Structure Plan section page 11, 2.6, 2.7 and aspirations of Community Planning in section 2.9.

The wording of GSP2 appears to have the function of fulfilling the conflicting requirements and desires of SEPA and Scottish Water rather than national and local planning aims and aspirations of small settlement communities of less than 2000 people.

We would suggest that the planning authority must re-examine the stance taken by SEPA in its presumptions against development in small settlements unless connection to the public sewer is made and also Scottish Water's approach to no provision of growth within its improvement programmes.

We consider this now limiting community aspirations and limiting development in these small settlements and making aims of the council in delivering the Structure plan policy unachievable.

Our objection to this GSP2 is made only to smaller populated areas and not for SEPA policy for populations larger than 2000 people.

We would urge caution in the adoption of the latest draft of GSP2 as there appears to be significant difference in what SEPA term as guidance within the planning process and the actual requirements of the EC directives in terms of insistence on connection to public system for smaller settlements.

The EC Directive 91/271/EC urban Waste Water Treatment/The Urban Waste Water Treatment (Scotland) Regulations 1994, appears to have been difficult for SEPA to embrace and regulate for populations less than 2000 people. We assume that this is due to the lack of references to such population equivalents in the Directives.

It appears that SEPA have had to modify its understanding of this Directive to force Scottish Water to act on years of neglect and lack of upgrading to our larger highland catchments.

For the smaller catchments Scottish Water apparently would not seek to improve their system unless a "business case sense" calculation revealed profitability in providing either a first-time connection or improvement, unfortunately this has become an issue within this and other local plans.

This lends to developers considering private systems, however SEPA generally objects to such alternatives.

This “poker game” situation has made SEPA object to remote private systems within settlement boundaries unless connection is made to the public sewer, forcing Scottish Water to “show its hand”. This cross authority politics is making the review of local plan issues difficult and we would not be surprised if both authorities have already objected to the modified wording of GSP2, again playing this “game of poker”.

This was not the aim of the European Commission nor was the Directives drafted to resist member states Economic Growth, Community Sustainability and retention of / growth of populations in the rural sectors of the EC.

Indeed the above Directive has a degree of flexibility in the use of private systems and is certainly not definitive in the selection of foul treatment solutions.

Article 3 of the Directive actually states ...”Where the establishment of a collection system is not justified either because it would provide no environmental benefit or because it would involve excessive cost, individual systems or other appropriate systems which achieve the same level of environmental protection shall be used.”

The above directive’s policy is to improve wastewater to areas where population and or economic activity are sufficiently concentrated. The above Directive sets a timetable for improvement with only reference to agglomeration levels of lower than 2000 population is in terms of direct discharges to fresh-water and estuaries where they are required to have appropriate treatment.

Article 2 (9) states “appropriate treatment” means treatment of urban wastewater by any process and or disposal system, which after discharge allows the receiving water to meet relevant quality objectives and relevant provisions of this and other community directives.

There is no reference to the presumption of remote or private systems.

The use of private systems and the technology contained within such systems provide in many cases higher quality standard than public system.

It appears also that maintenance issues are the one of the reasons SEPA objects to applications received by the planning authority offering remote private systems.

This stance basically indicates that private individuals are not to be trusted with maintenance and neglect will set in, yet SEPA does not want to increase its enforcement arm or offer any pro-active alternatives, hence it is limiting community growth, aspirations and population retention.

We accept that proliferation of septic tank systems and discharge to the adjacent

burn, as was previously the norm in the rural belt is no longer a sustainable environmental foul treatment solution, however the use of modern environmental techniques such as bio-filtration by either reed bed, peat filtration, willow coppicing, sand filtration, membrane and biological treatment technologies allow for discharge standards in some cases significantly better quality standard than those being applied via consent renewals and upgrades by Scottish Water.

We would offer that where there is no capacity in the public sewer, SEPA should permit the use of private sewage treatment facilities in line with the EC Directive and this should not be regarded as inferior to public treatment.

As to why SEPA insist that sewage from a development should be made to the public sewer is unusual when you consider Scottish Water's environmental record.

In many cases this will result in a delay or deferment in the development whilst waiting for Scottish Water to upgrade.

The recent refusal of a new Waste Water Treatment Works in Invergordon was partly due to a lack of adequate growth provision, this should be applauded and it was the local community stance in this matter that ensured that the case officer presented the aspirations of the community and the councils aims rather than non-statute guidance from stakeholders such as SEPA and Scottish Water who separately have their own agenda in conforming to these new EC Directives.

It is obvious that the apparent lack of growth provision is primarily due to the cost implications of providing a plant larger in size and catering for future development at the outset.

For Scottish Water to indicate in correspondence to consultants and developers that all local plan allocations are speculative until detailed consent stage indicates a blinkered re-active rather than pro-active view of the economic aspirations of the Highlands and an apparent disregard for the basis in which a local plan is founded.

If Scottish Water was to study the land allocations within local plans and development of such allocations over a 10-year period they would quickly understand that 90% of allocations reach fruition and the population growth figures are within 10% of those indicated within such plans.

Attracting further growth and prosperity in the rural highlands will be difficult if one is limited in scope for building in the open countryside and then cannot build within the settlement boundary because of cross authority politics and non-statute guidance from both authorities.

We would removal this objection on the total re-working of this statement to include for the facility to provide individual or private systems for single or multiple developments in populations less than 2000 in line with the EC Directive.

The planning authority should require assurances that within the new plan

structure or re-worked GSP2, that SEPA would be asked to cease presumption against private systems within the settlement boundaries, as is current practice and also Scottish Waster makes provision for growth at the outset to match the aims of this local plan.

The current standoff between the two authorities and lack of clarity as to what is guidance and what is statute is currently occurring significant additional costs to both public and private sector clients in making planning consent applications.

It is also developing inconsistency in planning officer's determination of applications leaving them open to direct criticism by both the public and local members.

- 3.7.1 HGA (UK) Ltd.'s representation on Chapter 3: Key Issues, Paragraph 3.26, Infrastructure – Foul Drainage [W11]:

“See response to GSP2.”

- 3.7.2 HGA (UK) Ltd.'s representation on Chapter 6: Landward Area – Reference 4, All Small Settlements from Achterneed to Reference 32 Windhill, and References 36 to 39, 43 & 44 and 48, 49 and 52:

“All comments and presumptions against development on drainage provision in all these paragraphs are not in the spirit of the EC Directives and in terms of aims of the local plan policy in its aims within the Structure Plan section page 11, 2.6, 2.7 and aspirations of Community Planning in section 2.9.

This is now limiting community aspirations and limiting development in these small settlements and making the aims of the council in delivering the Structure plan policy unachievable.

This presumption against development implies a need for a development of any size to connect to the public sewer this does not apply in terms of the EC Directives for populations less than 2000.

We would refer the planning authority to the Urban Waste Water Treatment Directive 1992 and the Urban Waste Water Treatment (Scotland) Regulations 1994 Articles and in particular Article 3 of the above Directive which states... “Where the establishment of a collection system is not justified either because it would provide no environmental benefit or because it would involve excessive costs, individual systems or other appropriate systems which achieve the same level of environmental protection shall be used.”

The above Directive has a degree of flexibility in the use of private systems are certainly not definitive in the selection of foul water treatment solutions.”

- 3.8 HGA (UK) Ltd. on behalf of Mr B Matheson [CD31/9] submitted a further written submission in relation to Chapter 6: Landward Areas, allocation reference 22

‘Mount High’ stating:

“We have been in contact with Scottish Water, SEPA and Alan Ogilvie, to try and resolve the outstanding issues and avoid inquiry reporting on this matter. The current position appears to be that SEPA have objected to this allocation because of inadequate private wastewater proposals.

We have now opened discussions with Mr Jim MacKay of SEPA to try and resolve the issue by providing an “adoptable first time supply” foul system option.

In discussion with Mr MacKay this approach would appear to be sufficient to remove their objection, but we would need to seek assurances from Scottish Water that a public system would generate enough of a “business case sense” for them to adopt.

We have also been in contact with Mr Kevin Clifton of Scottish Water regarding this issue and await a formal response although guidance was given which is indicated below.

It is obvious that for a 20 to 25 house development it would be in everyone best interests to have a public system.

It would appear that from discussion with Kevin Clifton of Scottish water that for “adopted first time supply” Scottish Water would need to apply financial balance calculation of roughly the return of revenue generated by the wastewater charges on the yearly council tax return versus the capital costs of the work and its operation costs for approximately 40 years.

Early indications from Scottish Water are that we would need to connect the nearby 13 No Forestry homes and at least another 25 units from this allocation to generate enough of a “business case sense” for adoption.

Our client would be more than willing to incur the additional cost of a public system if the allocation was increased from 15 to 20 to a maximum of 25 units. This is requested to offset the considerable difference in costs for an “adoptable standard” treatment plant and to conform to Scottish Water’s “first time supply” calculations.

Our client has already received several communications regarding these plots and as such it would appear that the field would cope with demand for at least 25 units.

The two power lines that restrict development to just short of half the field has been subject to detail costing by Scottish Hydro and can be laid underground with the cost borne by our client.

You can see that we are willing to try and resolve the objections for our client in terms of their “reasonable costs” development budget, being a small development and offer that they would be willing to sign up to an adoptable system if Scottish

Water would firstly adopt it on completion and secondly if a further 5 units were allocated to offset its substantial design and construction cost.

We would hope that SEPA, Scottish Water and the Planning Service could view this allocation by increasing the units to offset this cost and take this letter as a working basis to try and resolve this issue without the need to involve the reporter or his staff.

We suggest a meeting to openly discuss the above with SEPA, Scottish Water and the Planning department.

We are confident that you would see that there is both demand and space to sympathetically incorporate development into this field. The current objections are more to do with a cross authority foul drainage policy stance and its contradicting aims for both Scottish Water deliverables and SEPA guidance, than any developable constraints of this field or the needs demand for housing in the Resolis area."

- 3.8.1 Following a meeting held between HGA (UK) Ltd., their client Mr B. Matheson, SEPA, Scottish Water and the Planning Authority, HGA (UK) Ltd. have made a further written submission to THC [THC-4/4] which is summarised as follows.

HGA are pleased to note THC's concern that in order to meet the relative policy aims of both Scottish Water and SEPA, the development proposal sought by their client would have to be on a much larger scale than those initially indicated. However, that scale of proposal would not be supported by the planning authority.

From the meeting they have ascertained that either 40 Band D units or 20 Band H units would be the minimum accepted by the water authority for secondary basic treatment.

HGA understand from SEPA that SEPA's reservation relating to the regulation of remote private systems is due to the Procurator Fiscal not granting a warrant under the Control of Pollution Act 1974 for the prosecution of failing shared systems. This would explain SEPA's non-statute policy to actively discourage remote shared systems in the planning forum, as opposed to canvassing the Scottish Parliament for legal support from the Fiscal office.

Scottish Water indicated in the meeting that first time supply for small communities is not case driven or agreed by Scottish Water on an area basis. Any first time supply provision is agreed nationally, with SEPA indicating to Scottish Water the areas of first time supply. Scottish Water's "business case sense" calculation for the provision of a public system appears to be driven by standards indicated by SEPA. In respect of this HGA (UK) Ltd. request SEPA to provide an indication of the appropriate discharge standard for the maximum of 20 units and the location of the controlled water discharge.

Scottish Water at the meeting did not provide confirmation that the calculation for

this proposed system would make “business case sense” to allow SW to adopt it.

The use of the amended wording to policy GP10 as recommended by the Inverness PLI Reporter in relation to GSP2 of the Ross and Cromarty East Local Plan, would permit the use of a private system in the case of Mount High, but unfortunately would not change the cross authority politics between SEPA and SW which is resulting in delays.

HGA welcome the approach being promoted by the planning service and subject to SEPA accepting this stance and subsequently removing their objection, their client will remove his cross objection.

The Planning Authority’s Response

- 3.9 THC as Planning Authority wishes to respond to the objections set out in paragraphs 3.9 to 3.11.10 below. These are contained in the Annex to the Committee report of 25 January 2005 and expanded as necessary. Paragraphs 2.20 and 2.21 above already highlighted the proposed Modifications in response to the original objections.

Mr B Matheson

- 3.10 The need to identify opportunities to address affordable housing requirements in the Resolis area is recognised by the Ross and Cromarty Housing Development Forum. The policy preference is that future housing should be built in settlements. The site lies adjacent to Mount High which was originally developed as a small settlement for forestry workers. Consultation responses suggest that it is feasible to service an expansion to this settlement in the manner requested, but at a developer’s expense. It was agreed new wording would be inserted under the comments/constraints column of Mount High to highlight that expansion to the north would require a privately developed sewage treatment plant.

Ferintosh Community Council, SEPA, JIG Ltd. and HGA (UK) Ltd.

- 3.11 The Highland Structure Plan [CD1] Policy G2 makes clear that adequate drainage is a requirement of any development proposals. This principal is carried forward to all development proposals. In most settlements drainage is recognised as an important development factor. It should also be recognised that the Local Plan allocations and priorities are not driven by the availability of public sewers, Scottish Water’s current investment programme or by SEPA’s environmental remit. These organisations’ priorities have to be weighed against development pressures and the aspirations of local communities and the Council to promote improved provision elsewhere. In some cases the Council would argue for first time provision of a public drainage system in the interests of sustaining a community facility or the community itself e.g. in relation to the primary schools at Easter Kinkell (Ferintosh) or Newmore. It was felt that the modified Policy GSP2 contained within the Deposit Draft with Modifications Ross and Cromarty East Local Plan should address general concerns.

- 3.11.1 Given the complexities highlighted in SEPA's comments [CD27/170] regarding Technical Standards and the need for a development prerequisite to connect to a public sewer for significant allocations where there is no likelihood of a public sewerage system and where foul drainage problems exist, THC felt it would be more appropriate to simply advise that the use of septic tank drainage will depend upon the suitability of ground conditions and that a proliferation of septic tanks should be avoided.
- 3.11.2 In relation to housing in the countryside in the Inverness Local Plan area, THC asked SEPA, prior to the production of the Consultative Draft, for a definitive list of those areas that cannot accept any more development served by septic tank/soakaway drainage. SEPA provided anecdotal evidence but no definitive mapped areas. The Ross and Cromarty East Analysis Map only includes general coverage of poorly drained areas in terms of surface water. Advances in foul drainage engineering techniques now mean that it is very rare that a potential house site cannot achieve adequate drainage. A small site close to other houses or a watercourse and with poorly drained sub-soils may present problems but these are "areas" that cannot be mapped in local plans. A larger site, even with poorly drained soils, presents drainage options in terms of reed beds, larger or mounded soakaways and septic tanks that incorporate a degree of treatment. The policy is also very general in so far as it describes the circumstances in which additional new houses would be favoured. As such, the identification of detailed constraints and placing a figure on the ultimate potential for development is not possible.
- 3.11.3 THC accepts SEPA's genuine concerns about this issue but would assert that the amended wording of Policy GSP2 on Waste Water Treatment provides a reasonable balance between environmental protection, other legitimate planning objectives and a defensible position at appeal. In addition to this, a minor Modification of Landward Area Policy 2 was agreed to address drainage infrastructure constraints.
- 3.11.4 Using the new GSP2 as background, Policy 3 in Chapter 6 was modified to state that proposals will be supported if they can be connected to a public sewer with adequate sewage treatment. Subsequently alterations were made to individual allocations to reflect this. However, if the potential proposed modifications to the General Policy on Waste Water as recommended in the Inverness PLI Reporter's report are accepted, it would be prudent to re-examine these alterations and remove any unnecessary duplication.
- 3.11.5 Key material considerations for THC in determining its allocated land have been the spare capacity of existing and programmed waste water treatment plants and of sub-soils and controlled waters to accept further septic tank/soakaway arrangements. Where possible, development has been directed to locations with spare capacity. However, other objectives and considerations also influenced the allocation of land within the Plan.
- 3.11.6 Regular contact occurs between SEPA, THC & SW in regard to SW's investment programme. Regrettably the resources available to that programme are limited. SEPA lobby SW to ensure EC Directive and other environmental regulation

compliance, and THC lobby SW to ask for the programme to also reflect social, economic and other (non-pollution) environmental objectives.

3.11.7 The 1992 EC Directive on Urban Waste Water Treatment [THC-4/1] does not prohibit the use of separate private systems for populations of less than 2000. In fact it states that individual systems or other appropriate systems may be used providing they are certified by the river purification authority and achieve the same level of environmental protection as public treatment systems.

3.11.8 In response to Ferintosh Community Council's concerns regarding housing in the countryside: these groups are excluded from the list of Small Rural Settlements in paragraphs 4-32 because of their very small scale. The criteria for identifying the groups listed is that they must comprise a small cluster of three or more existing houses sited no greater than 50 metres apart on average. The development potential is mostly limited to one or two additional houses and subject to suitable drainage and access. Additional housing must be consistent with, or enhance, the cohesiveness and visual appearance of the group. Generally this should be within the existing boundary of the group, but there may be limited opportunities for some limited extension beyond where the development will contribute to enhancing the appearance of the group as a whole (Through, for example, new edge planting) and where its rural character is not undermined. Proposals which will result in suburbanisation, ribbon and backland development, involve excessive infrastructure or loss of prime agricultural land or important areas of woodland, for example, will not be considered acceptable. It is not possible to draw a boundary for these groups on a map or indicate the maximum number of houses. Potential house sites must be considered in detail with Area Development Control Planners.

3.11.9 In light of the objections received and the inability of the Modifications made to reach a consensus, THC are prepared to accept the alternative wording recommended for Policy GP11 on Water and Waste Water by the Scottish Executive Reporter in the case of the Inverness Local Plan Public Local Inquiry Report [THC-4/3], for use in relation to Policy GSP2 – Waste Water Treatment of the Ross and Cromarty East Local Plan. , THC believe that this approach may allow for the resolution of all outstanding objections on this issue, whilst still striking a reasonable balance between environmental protection, other legitimate planning objectives and a defensible position at appeal. However, if this proposed wording were to be accepted it would result in necessary Modifications to Chapter 6: Landward Area – paragraphs 2 and 3 on Housing and also the individual housing allocations to remove reference to the need to connect to a public sewer in order to avoid duplication of the plan-wide GSP2 policy.

4. Conclusion

4.1 In summary, THC accepts SEPA's genuine concerns regarding this issue but asserts that the amended wording of Policy GSP2- Waste Water Treatment achieves the desired balance between protection, other legitimate planning objectives and a defensible position at appeal. However, THC is prepared to accept the revised

wording recommended by the Scottish Executive Reporter in the case of the same issue for the Inverness Local Plan Public Local Inquiry to potentially help reach a consensus between all parties, whilst simultaneously achieving this balance.

4.2 **Accordingly, The Council would ask that the Reporter recommends:**

(a) the further Modification of Policy GSP2 – Waste Water Treatment in line with the Inverness PLI Reporter’s recommendations (as detailed at Paragraph 2.4 of this Statement).