

Appeal Decision Notice

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Decision by Richard Dent, a reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2017-1
- Site address: Land at Cromarty Firth Industrial Park, Invergordon, IV18 0LE
- Appeal by Combined Power and Heat (Highlands) Limited against the decision by The Highland Council
- Application for planning permission ref. 08/00455/FULRC dated 9 May 2008 refused by notice dated 24 August 2009
- The development proposed: residual waste to energy combined heat and power plant with ancillary development
- Application drawings: see Schedule 1
- Dates of public local inquiry and hearing: 6 – 15 June & 31 July – 2 August 2012

Date of appeal decision: 29 November 2012

Decision

I allow the appeal and grant planning permission subject to the 16 conditions listed in Schedule 2 at the end of this decision notice. Attention is drawn to the 7 advisory notes listed in Schedule 2 following the conditions.

Background

1. Following the refusal of planning permission on 24 August 2009 an appeal against the decision was submitted to the Scottish Ministers. The reporter appointed to determine the appeal granted planning permission in a notice dated 11 May 2010. The decision to approve the proposal was the subject of an appeal to the Court of Session, dated 16 June 2010, by the Ross Estates Company. That legal challenge was successful and the decision of the reporter was quashed on 21 January 2011. Subsequently, a further letter of appointment was issued authorising the re-determination of the appeal.

2. A pre-examination meeting took place on 28 April 2011 when it was agreed that changes in circumstances since undertaking the environmental impact assessment to support the application justified the updating of the environmental statement. Having taken account of the comments of the statutory consultees and interested parties, a procedure notice dated 8 July 2011 was issued requiring specified sections of the environmental statement to be updated.

3. The updated environmental statement was submitted by the appellant during December 2011 and formally advertised on 27 January 2012. A number of comments were received including detailed submissions from those who, along with the appellant, have become to be regarded as “the main parties” in the appeal process. In addition to the appellant, the main parties, all of which oppose the proposal, are The Highland Council, the Ross Estates Company and the ICARE Trust. ICARE is an organisation representing a number of community councils and other community groups in Invergordon and the surrounding area.

4. The council considered the updated environmental statement to be deficient, not in accordance with the regulations and directives, and not satisfying the requirements of the procedure notice. Similarly, Ross Estates Company also believed the updated environmental statement to be deficient and, in turn, contended that the failure to comply with the regulations and European Union directive precluded the Scottish Ministers from granting planning permission. ICARE was of the opinion that a number of sections of the updated environmental statement required further re-assessment. The appellant responded to these comments.

5. I consider these arguments below as a preliminary procedural matter.

6. A second pre-examination meeting took place on 27 March 2012 when it was decided to hold three public inquiry sessions on:

- the development as currently envisaged;
- policy and legislative context;
- traffic implications.

7. Having considered the representations of parties, I subsequently decided to hold a further inquiry session on:

- air quality and human health.

8. Additionally, hearing sessions were arranged to consider:

- economic impact;
- suggested conditions.

Preliminary procedural matters

9. As indicated above, the adequacy of the updated environmental statement was challenged by the main objecting parties.

10. The Town and Country Planning (Environmental Impact Assessment)(Scotland) Regulations 2011, specify the information to be contained within an environmental statement. Regulation 2(1) indicates that an environmental statement should include such information referred to in Part 1 of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to

compile. Part 2 of Schedule 4 refers to information that “at least” must be included in the environmental statement.

11. I have considered the updated environmental statement against the requirements of Part 2 of Schedule 4 taking into account the submissions of the various main parties, including the response of the appellant. The updated environmental statement contains a description of the development, and recognises that measures envisaged to avoid, reduce and, if possible, remedy significant adverse effects must also be described. The statement also asserts that mitigation and, if appropriate, monitoring proposed for the development has been described clearly. I note that various chapters, including, for example, landscaping, noise and vibration and ecology, contain sub-sections dealing with mitigation.

12. Data is included to identify and assess the main effects the development is likely to have on the environment. These include the effects on air quality and human health, landscape and visual impacts, traffic and noise and vibration.

13. The main alternatives studied by the appellant are identified along with a site selection summary table. A non-technical summary is provided. I am of the opinion that, overall, the requirements of Regulation 2(1) are fulfilled in respect of the information to be provided under Part 2 of Schedule 4.

14. In respect of Part 1 of Schedule 4, I consider that the information provided in the updated environmental statement also fulfils the requirement of Regulation 2(1) insofar as is required to assess the environmental effects of the development.

15. I recognise that those objecting to the development challenged certain conclusions of the updated environmental statement and the various inquiry and hearing sessions were arranged in order to explore these matters further.

16. “Environmental information” is also defined in Regulation 2(1). In terms of that definition, the environmental information associated with this appeal includes the original environmental statement, the updated environmental statement, representations made by those bodies required by the Regulations to be invited to make representations, representations duly made by other persons about the environmental effects of the development and the environmental information provided at the inquiry and hearing sessions.

17. In terms of Regulation (3) I am able to confirm that all the foregoing environmental information referred to above has been taken into consideration in the re-determination of the appeal.

Reasoning

18. This appeal requires to be re-determined in accordance with the provisions of the development plan, a process allowing consideration of the various environmental impacts of the development. Material considerations, including national waste policy, must also be taken into account.

19. The development plan comprises the Highland wide Local Development Plan (HwLDP), adopted March 2012, and the Ross and Cromarty East Local Plan, adopted February 2007, insofar as elements of the latter document remain extant following the adoption of the local development plan.

Highland wide Local Development Plan: Policy 70

20. I agree with parties that Policy 70, Waste Management Facilities, of the HwLDP is important, indeed, as expressed by Ross Estates Company, it is the key policy. The supporting text indicates that new waste management infrastructure is expected to be required in the HwLDP area to manage all waste, not just municipal waste, in line with guidance in the Scottish Government's Zero Waste Plan and Scottish Planning Policy (SPP). The text further explains that the council's approach is for locally based solutions delivered on an incremental basis. The infrastructure might comprise, among other methods, energy-from-waste technology.

21. Insofar as the supporting text refers to the possibility of an energy-from-waste plant, I conclude that there is no development plan objection in principle to this method of waste disposal. Accordingly, the nature of the proposal is not fundamentally at odds with the terms of Policy 70.

22. The policy states that the council will support waste management facility proposals at four preferred sites and the supporting text explains that the "indicative locations have been selected to take account of proximity to treatment facilities wherever possible". The proposals map of the HwLDP contains symbols for four new waste management sites in Caithness, the Isle of Skye, Fort William and Inverness. Policy 70 identifies the four preferred sites as the Glen Nevis Business Park, which is at Fort William, the former landfill site at Portree, Isle of Skye, Seater landfill site, Caithness, and the former Longman landfill site, Inverness.

23. In Policy 70, the reference to the preferred site in Inverness includes a cross reference to Policy 5, Former Longman Landfill Site. Policy 5 explains that a range of uses is favoured including waste management and other renewable uses with energy-from-waste one such possibility.

24. It is self-apparent that the appeal site is not one of the preferred sites identified in Policy 70 or shown in the proposals map. However, the lack of preferred site status does not rule out the possible location of waste management facilities on another site. Policy 70 states that, subject to certain criteria, such facilities will also be acceptable where they are located on existing or allocated industrial land, specifically Class 5, General Industrial, and Class 6, Storage or Distribution.

25. The appeal site is designated for mixed industrial uses as part of the Cromarty Firth Industrial Park under the provisions of Chapter 22 of the Ross and Cromarty East Local Plan. The Retention Schedule of the HwLDP confirms that Chapter 22 remains in force.

26. To be acceptable on industrial land at other than the preferred locations, proposals must be assessed against seven specified criteria.

1. Conformity with the Plan's Spatial Strategy in terms of the origin of existing and future waste generation

27. The HwLDP Glossary indicates that the spatial strategy “should encapsulate the headline changes that the Plan seeks to achieve and provide locational guidance for new development.” The wider spatial strategy is set out in Chapter 4 and seeks to support the growth of all communities across Highland subject to there being sufficient or planned infrastructure and facilities to support sustainable development. The strategy identifies a housing land requirement for over 33,000 dwellings in the periods between 2011-21 and 2021-31. Of this total, the housing land requirement shown for Inverness is 15,841 dwellings with a requirement of 3,283 dwellings for East Ross.

28. The more detailed spatial strategy for the Inner Moray Firth identifies two growth corridors – Inverness to Nairn to the south and Dingwall to Tain to the north. Three major housing expansions are allocated in the southern corridor and four in the northern corridor. As indicated above, a waste facility is shown in the proximity of Inverness.

29. The text explains that the Inner Moray Firth will become a more efficient “engine” for the wider Highland economy. Growth and population, especially in the A96 and Easter Ross corridors will continue. Inverness will build on growth and opportunities as the major service and administrative centre. Infrastructure constraints will be resolved although there is no reference in the text to waste management. Regeneration and renewal will include major regeneration areas such as the former Longman infill site. The Inner Moray Firth Spatial Strategy is illustrated in Figure 3.

30. The plan explains that Inverness has a major role to play in delivering the vision for the Inner Moray Firth. Figure 4, Spatial Strategy for Inverness, shows expansion sites, future expansion sites and regeneration sites, including the former Longman infill site.

31. The council believes the development of the appeal site as proposed would not accord with the spatial strategy as a waste facility is indicated in the HwLDP in or around Inverness. Additionally, argues the council, a waste facility annotation initially shown at Invergordon has been removed from the plan. I acknowledge that a waste facility is shown the proximity of Inverness and, indeed, is indicated to be one of four “preferred” sites. As the appeal site is not identified as a preferred site, it is clear that a waste facility annotation should not be shown at Invergordon on the proposals map. However, subject to the specified criteria, Policy 70 provides for the possibility of waste facility sites other than the preferred sites. Accordingly, I believe that neither the waste facility symbol at Inverness nor the lack of a waste facility notation at Invergordon rules out the use of the appeal site as a waste facility.

32. Ross Estates Company refers to the emphasis the HwLDP places on development in the southern growth corridor pointing out also that the National Planning Framework for Scotland 2 recognises “The A96 corridor between Inverness and Nairn is the main focus of

growth in the Inner Moray Firth.” Ross Estates Company has also calculated the “centroid” of population to support the A96 corridor argument. I consider this thread of the argument below in my assessment of the minimisation of the transport of waste from its source. ICARE also draws attention to Inverness and the A96 corridor being the largest centre of population where further expansion is part of the spatial strategy.

33. The appellant recognises the level of growth proposed along the A96 corridor but also points to the second growth corridor to the north of the Cromarty Firth, within which the appeal site is located. Development in this corridor, argues the appellant, is also integral to the spatial strategy.

34. I consider it undeniable that the concentration of development between Inverness and Nairn, especially in respect of the number of proposed houses, gives the A96 corridor prominence within the wider spatial strategy of the HwLDP. Significantly, as pointed out by Ross Estates Company, this is acknowledged in the National Planning Framework 2. Nevertheless, the Dingwall to Tain corridor will also experience significant growth, including four major housing expansions. As claimed by the appellant, I believe this northern growth corridor, whilst clearly smaller in scale than the A96 corridor, to be integral to the spatial strategy. Indeed, the HwLDP relates to the role of the Inner Moray Firth, as an entity, within the wider Highland economy. Growth and population, especially in both the A96 and Easter Ross corridors will continue, states the plan. In my opinion, this further emphasises the comprehensive nature of the spatial strategy to encompass both growth corridors.

35. The spatial strategy requires sufficient or planned infrastructure and facilities to support sustainable development. I consider it reasonable to regard waste management facilities as part of this infrastructure. I recognise that the waste facility symbol for the Inner Moray Firth spatial strategy is shown in Figure 3 to be at Inverness but this must be considered against the indication in Policy 70 that waste management facilities will also be acceptable at other than the preferred locations. There is no geographical guidance in respect of sites at other than the preferred locations.

36. On the foregoing basis, I conclude that the construction of a waste management facility on the appeal site would not offend the spatial strategy of the HwLDP. Being within the area subject to the Inner Moray Firth spatial strategy, albeit within the smaller of the two growth corridors, I consider that the site conforms to the strategy in terms of the origin of existing and future waste generation. Whether or not the site would minimise the transport of waste from its source is a matter I consider below.

2. Conformity with other waste policies – the Zero Waste Plan (including the National Need and Capacity information), Scottish Planning Policy, Planning Advice Note 63, Waste Management Planning and, where relevant, the Council’s Municipal Strategy

Zero Waste Plan

37. Annex B of the Zero Waste Plan is clear in stating that the planning system has a crucial role in delivering waste management facilities for all waste. More facilities will be

required to collect, sort, reuse, recycle and process waste. There will also be opportunities to harness heat and power generated from waste recovery processes.

38. Insofar as Policy 70 is concerned, it is necessary to relate the proposal to the guidance in the Zero Waste Plan relating to need and proximity and the identification of potential waste management sites.

- *Need and proximity*

39. Annex B indicates the Scottish Government considers there will be a need for waste management facilities to meet the requirements detailed in the Zero Waste Plan which are by 2025 to:

- recycle at least 70% of Scotland's total annual waste arisings;
- treat unsorted waste materials prior to incineration or landfill; and
- landfill a maximum of 5% of Scotland's waste arisings.

40. The Zero Waste Plan points out that waste management facilities should be considered strategically and recognises that the achievement of a sustainable strategy may involve crossing planning boundaries.

41. The policy approach is said to provide a high level framework for local discussions about waste management infrastructure in the context of meeting need and achieving proximity. The Zero Waste Plan is not prescriptive in respect of either the precise mix of technologies and facilities required to meet the targets or in offering a timetable.

42. Annex B, Table 1 sets out the national shortfall in the operational capacity of waste management infrastructure required to meet the Zero Waste Plan targets in 2025. The allocated capacity should not be treated as a limit and, although the table presents several groupings, authorities can work in a number of arrangements both spatially and operationally. The Scottish Environment Protection Agency (SEPA) will update Table 1 annually with the current table of regional waste management infrastructure capacity dated December 2011. Additional capacity needed to manage unsorted waste in Highland is shown to be 70,000 tonnes.

43. It is expected that the capacity needed will reduce as 1), improved resource efficiency will reduce the level of waste arisings, 2), existing infrastructure will become more efficient and 3), new infrastructure will be provided. The Zero Waste Plan does not attempt to determine the exact contribution of each element but states that the planning system should recognise that the market will be the key to infrastructure delivery. Planning permission does not itself guarantee construction and commissioning. This explains why the figures in Table 1 to determine need are linked to operational infrastructure and not to planning permissions granted.

44. Insofar as need is concerned, the appellant emphasises that the identified additional capacity of 70,000 tonnes in Highland is not a cap. The proposed plant would have a capacity of 100,000 tonnes per annum comprising two streams of 50,000 tonnes each.

This would provide flexibility and, the appellant argues, it would be for the operator to decide how to determine activity within the plant. In land use terms, however, a plant with 100,000 tonnes capacity is the issue at stake, this being the capacity indicated in the environmental statement.

45. In any event, claims the appellant, the council accepts that there is currently a need for the treatment of more than 100,000 tonnes of residual waste in Highland, a situation that is likely to endure for some time.

46. The council is concerned about the prospect of permitting a scheme that is too large. The possibility of a plant running at only 60% of capacity would lead to pressure to allow waste from areas other than Highland to be incinerated. This would be contrary to the basis on which the environmental impact assessment was undertaken. (I shall return to this point below.) Furthermore, prices could be undercut which could lead to avoidable levels of incineration.

47. Ross Estates Company believes there is a very real danger that the granting of planning permission would undermine the planned approach to the provision of waste facilities. The facility is said by Ross Estates Company to be too large for its catchment area and account has not been taken of a proposed “autoclave” development at Longman Drive Inverness Harbour. (This is generally known as the Shore Energy proposal involving an alternative method of treating residual waste.) Additionally, no account has been taken of the proposed sharing of facilities to cover waste in both Highland and Moray areas.

48. I believe the HwLDP accords with the Zero Waste Plan insofar as Policy 70 allocates specific sites or, at least identifies “preferred” sites, for waste management facilities, and indicates that, subject to specified criteria, designated industrial land is appropriate for waste management facilities. This is proactive planning to provide facilities to deal with waste treatment within the development plan area. Insofar as Table 1 of the Zero Waste Plan identifies a need for 70,000 tonnes of additional capacity to manage unsorted waste in the HwLDP area, I consider the proposed facility on the appeal site is a positive response to the proactive approach of the plan. Although the 100,000 tonne capacity of the plant exceeds the identified capacity in Table 1, I recognise that Annex B is clear in stating that allocated capacities should not be treated as a limit.

49. I have noted council evidence that the current level of waste recycling in Highland is in the order of 34-35%. On this basis, the council believes the target of at least 70% recycling of by 2025 to be challenging but achievable. Taking into account the current recycling level, the council appears to accept that a facility with 100,000 tonne capacity would not create a problem of over-capacity at the present time. Clearly, as progress is made towards the 2025 target of 70% recycling, the need for a facility of this size would become questionable. Nevertheless, the council agrees that a two-stream facility, as is proposed, would provide a degree of flexibility in coping with a reducing level of residual waste.

50. Insofar as the Shore Energy proposal is concerned, the appellant believes there are legal issues in respect of the planning status of the site. Nonetheless, the council has stated that the proposed development benefits from permitted development rights under

Class 35(2) of the Town and Country Planning (General Permitted Development Order)(Scotland) Order 1992. A licence under the Pollution Prevention and Control (Scotland) Regulations 2000 (a PPC licence) has been issued to allow the treatment of 160,000 tonnes of unsorted non-hazardous waste annually. I have no reason not to believe that should this development proceed, the council would regard it as a lawful use of the land. However, at this time, there is no physical indication that the development is progressing. Accordingly, in terms of Annex B, the potential Shore Energy development cannot be a factor in the quantification of need and, in turn, is not reflected in Table 1.

51. The granting of planning permission at the appeal site does not alter the status of the Shore Energy development at Longman Drive. As indicated in Annex B, the market will be the key to infrastructure delivery.

52. Similarly, I do not believe that the potential of the former Longman infill site, although identified as a preferred site in the HwLDP, is a factor to be taken into account in terms of need when considering whether or not to grant planning permission for the appeal proposal. Whether or not the Longman site will become available for development at some time in the future is not of relevance. Even if early development were to be possible, until operational infrastructure has been provided at Longman, under the Zero Waste Plan the site cannot be used in the determination of need. Should, in due course, planning permission be granted for a waste treatment facility at Longman, the market would once more be the key to infrastructure delivery.

53. I note the council's arguments in respect of the source of material and pricing structures but I do not find these persuasive. Overall, therefore, in terms of need and capacity, as expressed in Table 1 of Annex B, I consider that the proposed development conforms to the Zero Waste Plan.

54. Policy 70 of the HwLDP refers to conformity with "the National Need and Capacity information". As Annex B requests local authorities to plan proactively to provide facilities to deal with waste produced within development plan areas, I believe that the reference in the policy to conformity represents a requirement for any proposal to conform to the provisions of Table 1. As explained, Table 1 sets out the national shortfall in the in the operational capacity of waste management infrastructure.

55. Annex B also refers to all waste arisings in Scotland and, at its widest, this reference might be regarded as suggesting that development plans could make provision for treating waste from all parts of the country. Indeed, Annex B points out that the achievement of a sustainable strategy may involve crossing planning boundaries within Scotland. It was agreed by parties that it would not be anticipated that waste from more distant parts of Scotland, the Borders for instance, would be treated in Highland. It is conceivable, however, that waste from Highland Council and the neighbouring Moray Council, could be the subject of a joint treatment agreement involving waste crossing the planning boundary between the two authorities.

56. The environmental statement, including the updated version of the document, assessed an energy-from-waste plant which would be focussed on waste arisings limited to

the Highland area. Indeed, the appellant has expressed a willingness to accept a condition of planning permission to this effect. I consider this condition below but, in the context of Policy 70, I believe in general terms that a single energy-from-waste facility within the spatial strategy growth corridors, where the appeal site is located, should be regarded as a locally based solution within the spatial strategy of the Inner Moray Firth. I give more specific consideration below to the concept of minimising the transport of waste in the context of the proximity principle.

57. Overall, I believe that the proposed facility conforms to the National Need and Capacity information as required as part of the second of the assessment criteria.

- *Identification of potential waste management sites*

58. The Zero Waste Plan is clear in stating that, subject to site specific considerations, waste management facilities can be considered appropriate for sites allocated in development plans for employment and industrial use. The appeal site is therefore within an appropriate allocation. The Zero Waste Plan also emphasises that allocations for adjacent sites should not compromise waste handling operations. At present, in the Ross and Cromarty Local Plan, the appeal site lies on the western periphery of the Cromarty Firth Industrial Park and I have no evidence to suggest that, under the provisions of the local plan, existing or future adjacent uses would compromise waste handling operations. Land beyond the western boundary of the industrial park is not currently allocated for development. Compatibility with the proposed use of land use allocations in the local plan is analysed in more detail below.

59. The Inner Moray Firth Local Development Plan is intended to replace the current local plan. The new local development plan is in the early stages of preparation and a Main Issues Report has recently been published. To the west of the appeal site an area of open space is shown beyond which allocation MU5 proposes retail and open space use. The council points out that allocation MU5 would be partly within the recommended buffer zone of 250 metres between thermal treatment plants and sensitive receptors. However, the council also recognises that open space and retail uses are not generally regarded as sensitive receptors. Ross Estates Company regards the land use proposals in the vicinity of the appeal site, including an element of housing, as being incompatible with an incinerator. The appellant believes that very little weight can be attached to the terms of the Main Issues Report as the initial views may well change over time.

60. As indicated, I believe that existing land uses adjacent to the appeal site would not compromise waste handling facilities. Similarly, any future developments within the Cromarty Firth Industrial Park are unlikely to give rise to any operational problems on the appeal site. As the Inner Moray Firth Local Development Plan is at an early stage of preparation I accept that the terms of the Main Issues Report could evolve over time and land use allocations may change. This severely limits the weight that can be given to the document. However, in any event, despite the opinion of Ross Estates Company, I do not think that the land use allocations shown in the Main Issues Report would compromise waste handling facilities. A buffer zone is intended and although it may partly be less than

the recommended 250 metres, the nearest uses are not shown to be sensitive receptors. The nearest land allocated for housing is not adjacent to the appeal site.

- *potential sites*

61. Potential sites for waste management facilities identified in the Zero Waste Plan include industrial and employment areas, derelict land, sites having the potential to maximise the potential for the re-use of waste heat through co-location with potential heat users, and sites accessible to railways, waterways or the trunk and principal road network junctions.

62. The appellant maintains that appeal site falls within each of these categories. I note there is no dispute amongst the main parties that site lies within an industrial and employment area. Similarly, it is agreed that the land is a derelict site having at one time been part of an aluminium smelter complex. There are conflicting opinions on whether or not the site can be regarded as having the potential for the re-use of waste heat through co-location with potential heat users.

63. The updated environmental statement explains that the appeal site is in a location where there are significant potential long-term outlets for heat and power. The anticipated annual energy use of various local customers is shown. These include the Invergordon Distillery, Balcas Bioenergy Limited, the local leisure centre, the Cromarty Firth Industrial Park and Inverbreakie Industrial Estate. A total potential of 37,142 MWh for electricity and 226,605 MWh for gas has been calculated. If energy is not utilised locally the appellant states that electricity could be supplied to the National Grid. The appellant indicates there have been only limited discussions with local energy consumers. Potential customers would have little commercial confidence at such an early stage in the process. It is for this reason, says the appellant, that the heat plan has not been developed in further detail. The granting of planning permission would be a significant step forward in the process of negotiating with potential users. Nonetheless, in the opinion of the appellant, the important consideration is that the proposal is close to potential heat users.

64. The council believes that the assessment is inadequate and it is not clear from the terms of the updated environmental statement that there is sufficient heat demand in the locality of the site. However, the council accepts that site would be suitable for the potential distribution of heat and energy.

65. ICARE is also of the opinion that the work undertaken in respect of potential heat users is inadequate. There have been no meaningful discussions with potential users and the information provided is inaccurate. For instance, the ownership of the Cromarty Industrial Estate has changed and there is no indication that the new owner would require power. The Balcas plant generates its own heat and power and has no further need. ICARE suggests the potential for supplying agricultural concerns has been exaggerated.

66. Ross Estates Company points out that there are only “potential” users and also claims no meaningful consultation has been undertaken. It is questionable whether such a large thermal heat uptake would ever be realised. Indeed, Balcas does not export any heat and discharges surplus hot water into the Cromarty Firth.

67. I accept it would be helpful if a more detailed indication of demand from local users could have been provided. However, I understand that, at this stage of the development process, uncertainty in the ability to assess demand for energy and commercial considerations restricts the level of detail that could be achieved. I note the Zero Waste Plan emphasises “potential” referring to sites that have the *potential* to maximise the *potential* for the re-use of waste heat. Parties, other than ICARE, are agreed that the consumers identified by the appellant can be regarded, for the most part, as *potential* users. I therefore accept the appellant’s claim that the proposed site can be regarded as falling within the category of potentially suitable sites. In any event, the alternative of supplying electricity to the National Grid was not questioned by parties.

- *links to transport infrastructure*

68. In terms of accessibility to railways, waterways or trunk and principal road network junctions, the appellant does not seek to rely on access to rail or to water borne transport. Noting the Zero Waste Plan guidance on potential sites I am prepared to accept that the short distance from the appeal site to the A9 trunk road points to the site being suitable in respect of proximity to the trunk road network.

69. Separately, the Zero Waste Plan requires consideration to be taken of access to the transport network and how wastes and end products are transported to and from the site, minimising unnecessary travel. I consider these aspects of the development under the following two criteria of Policy 70.

- *impact on environment*

70. As anticipated by the Zero Waste Plan, an environmental statement was required for this proposal. I have explained that the document has been updated and the assessment of the various environmental impacts taken into account as part of the appeal re-determination process. I assess individual environmental impacts as appropriate elsewhere in this document.

- *heat and power use*

71. A heat plan has been provided to support the planning application. As I have explained, the appellant has undertaken an assessment of potential heat and energy users in the locality. Despite criticisms of the process, I have accepted that there are premises nearby with, at least, the potential for a long-term demand for heat. The updated environmental statement indicates that the plant has been designed with combined heat and power capability with flexibility to adapt to differing proportions of either heat or power. I note criticism that only one of the options included in the updated environmental statement meets the provisions of the combined heat and power quality assurance level.

72. Equipment to distribute both heat and power would be accommodated within the main building. Appendix K, Combined Heat and Power, of the updated environmental statement shows in schematic form the proposed line of the heat export pipes.

73. The appellant believes that the level of detail provided in the heat plan is adequate at this stage. As I have previously indicated, the council and Ross Estates Company accept that the site is within an area where there are *potential* users of energy although ICARE does not consider this to be the case. I have already agreed that the site meets locational requirements in this respect.

74. The council makes a number of detailed criticisms of the heat plan and considers that the preliminary status of the heat plan is at odds with the guidance set out in the Thermal Treatment of Waste Guidelines, 2009 and Addendum, 2011, prepared by the SEPA. Ross Estates Company is also expresses concern in respect of the relationship of the heat plan to the Guidelines.

75. The 2011 Addendum to the Guidelines was issued to ensure alignment with the Zero Waste Plan and the Waste (Scotland) Regulations 2011. In effect, Section 2 of the 2009 Guidelines, SEPA's Role as a Planning Consultee, was superseded by SEPA's Land Use Planning System Guidance Notes 5 and 6. The guidance notes relate, respectively, to Development Plan and Development Management Consultations for Zero Waste Plan issues.

76. The 2011 Addendum states that the heat and power plan should be submitted as part of the planning application although, the Addendum adds, "a planning condition requiring submission and/or implementation of the plan will not be necessary as this will be a permitting issue for SEPA". The Addendum indicates SEPA will advise whether the proposed plan will be sufficient to allow consent for the facility. In this case SEPA advised that the heat recovery proposals are satisfactory although a detailed finalised heat plan will be required when an application is made for a permit under The Pollution Prevention and Control (Scotland) Regulations 2000. Subsequently, the Agency confirmed that the information contained in the updated environmental statement is adequate at this stage.

77. Guidance Note 6 confirms that the contents of Thermal Treatment of Waste Guidelines are a material consideration for proposed waste management facilities that include the thermal treatment of waste. Indeed, it is stated, heat recovery is a key part of decision-making when allocating sites for thermal plants. Taking account of the views of SEPA, I consider that, in land use terms, the heat and power plan submitted allows me to accept that, as expressed in Guidance Note 6, "the site has been selected to take full advantage of the opportunities to maximise energy efficiency". At this time, for the reasons previously explained, I believe it is impossible to forecast to what extent those opportunities will be reflected in the use of energy generated by the proposed development.

78. All in all, I conclude that the information provided in respect of the heat plan is acceptable in terms of the criteria of HwLDP Policy 70.

Scottish Planning Policy (SPP)

79. Waste management is dealt with in paragraphs 212-224 of SPP of which paragraphs 212-215 set out the basic principles. The guidance requires to be taken into account in the context of the Zero Waste Plan or, in the case of paragraph 214, has been replaced by the

advice in the Zero Waste Plan. As a consequence of my conclusions in respect of the Zero Waste Plan I consider that the appeal proposal conforms to SPP.

80. In respect of guidance on locations for new facilities, SPP indicates that a buffer of 250 metres may be appropriate for a thermal treatment plant. This distance can be achieved at the appeal site along the boundaries other than those with the adjacent industrial land.

81. I note that ICARE draws attention to the SPP guidance on transport and traffic: this is a matter I consider in more detail below but, in terms of specific waste management guidance, I am satisfied that the proposal conforms to SPP.

Planning Advice Note 63 (PAN 63)

82. The appellant believes that PAN 63 should be given little weight as the document dates from 2002 and, more recently, the Zero Waste Plan has provided comprehensive guidance. In various respects, including the assessment of suitable sites, there is clearly a close relationship between the two documents but I agree with the appellant that the Zero Waste Plan provides a current comprehensive statement of Scottish Government policy. I see nothing in PAN 63 to suggest that the proposal does not conform to its terms although, as previously indicated, I shall return to a detailed consideration of transport and traffic matters.

The Council's Municipal Waste Strategy

83. The supporting text for Policy 70 explains that the council's Waste Management Strategy was updated in 2009, a joint report having been prepared by Highland and Moray Councils. That report identified, as an option, a single, central energy-from-waste facility for all Highland and Moray residual waste. However, the policy explains that the chosen approach was for locally based solutions.

84. Despite the reference to the Waste Management Strategy in Policy 70, the council has explained that the strategy has been through a series of iterations since 2008. A further recent report to the council has indicated that various issues require to be considered before there is a further review of the strategy. Accordingly, says the council, the current proposal cannot be assessed against the strategy which must be regarded as relatively obsolete. The appellant agrees and asserts that very little weight can be attached to the strategy. On the other hand, Ross Estates Company draws attention to the commitment in the strategy to localised solutions.

85. Overall, I accept the contention that little weight should be attached to the council's Waste Management Strategy. Nevertheless, the strategy appears to have had some influence in framing Policy 70 insofar as the council chose locally based solutions for waste management. I consider that this approach reflects the Zero Waste Plan in terms of proximity and minimising unnecessary travel. On the other hand, a strategic assessment of waste management might, in some instances, point to benefits in waste crossing planning boundaries for treatment. An agreement between Highland and Moray councils may well represent such an example. I do not regard the implementation of a policy founded on

locally based solutions as necessarily being in conflict with a parallel strategic approach which, in terms of wider benefits, might require waste crossing a planning boundary. Efficiencies to be derived from this practice could in some cases outweigh the benefits of proximity through using entirely local solutions.

86. I have previously found that the proposed development, which is located within the growth corridors of the spatial strategy, represents a local solution in respect of the treatment of waste in the Inner Moray Firth area. Insofar as the council's Waste Management Strategy remains relevant, I consider the proposal conforms to its terms.

3. *Minimisation of transport of waste from source*

87. At present, Highland Council transports its waste to a variety of locations including, for the most part, landfill in the central belt as well as incineration in Shetland and Dundee. The appellant believes, quite simply, that the location of the appeal site within the Inner Moray Firth area, where the bulk of waste in Highland is produced, would represent a vastly superior situation by comparison with the current practice. Further, argues the appellant, the Zero Waste Plan does not require all waste facilities to be located in or immediately adjacent to the main conurbations they serve.

88. At this stage, states the appellant, there is no indication how the end products of the process, including fly ash and bottom ash, are to be treated. Currently there are no treatment facilities in Highland. However, it is claimed, experience has shown that local businesses are likely to be established, especially to recycle bottom ash. These matters, it is suggested, could be competently addressed by means of a planning condition.

89. The council points out that the "centre of gravity" for waste arisings in the Inner Moray Firth area is within the Inverness/Nairn corridor, a situation which is emphasised by the projected growth patterns in the HwLDP. The appeal site is 40km (25 miles) north of the main source of arisings and the transport of waste to Invergordon would lead to an additional 400,000km (250,000 miles) of travel by heavy goods vehicles annually.

90. Ross Estates Company has mathematically calculated the "centroid" of population in the Inner Moray Firth area. The centroid is to the north-east of North Kessock, some 35km (22 miles) by road from the appeal site and 9km (5.7 miles) from the Longman landfill site. Ross Estates Company calculates that this would involve some 4 million kilometres (2.4 million miles) of additional travel over the life of the plant were it to be located at Invergordon. The planned growth in the A96 corridor would be likely to move the centroid to the south-east and would increase the distance to be travelled to Invergordon. On this basis, Ross Estates Company believes the HwLDP, in identifying the Longman site as the preferred location, is consistent with the proximity principle whereas the development of the appeal site would be in direct conflict with the principle.

91. ICARE endorses the argument that the most appropriate location for waste treatment in terms of minimising transport would be Inverness.

92. It is clear to me that a change from the current pattern of processing to treatment within the Inner Moray Firth area would lead to a very significant reduction in the transport of waste. I accept that a treatment site in Inverness, including the former Longman landfill site, would represent the optimum location in terms of transportation. However, even at a site in Inverness, some waste within the Inner Moray Firth area would require to be transported some distance.

93. SPP explains that the proximity principle requires waste to be dealt with as close as possible to where it is produced. This statement must be taken in the context of Annex B insofar as need for and proximity of waste management facilities should be considered strategically as the achievement of a sustainable strategy may involve crossing planning boundaries. As I have indicated previously, it appears to me that there is a requirement to balance both strategic and local considerations. The terms of Annex B suggest to me recognition that, in some cases, it may not be necessary to provide waste treatment at the closest possible point to the arisings. Wider or strategic assessment may point to a different solution.

94. I have previously accepted that the development of the appeal site would conform, in a wider sense, to the provisions of the HwLDP spatial strategy for the Inner Moray Firth. Whilst I have also agreed that a waste treatment site in Inverness would provide the optimum location in terms of transportation, I also recognise that the Zero Waste Plan offers some scope for transporting waste further than the minimum possible distance. Equally, although the Longman former landfill site at Inverness is identified in as being “preferred” in Policy 70 of the HwLDP, it is possible to consider proposals for other sites. The plan does not stipulate that, geographically, potential alternatives should be in Inverness referring only to existing or allocated industrial land.

95. All in all, whilst I accept the appeal site cannot be regarded as being the optimum in terms of minimising the transport of waste from its source, I do not believe the location at Invergordon is such as to rule out the development under the provisions of the HwLDP and the Zero Waste Plan.

4. Suitability of the local road network and of the site access to accommodate the nature and volume of traffic likely to be generated by the proposed development

96. The site lies close to the entrance to the Cromarty Firth Industrial Park, the access to which is of a high standard. No evidence has been provided to suggest that suitable direct access to the site itself could not be achieved.

97. The updated environmental statement identifies three potential routes to link the site with the local road network. It is accepted by the appellant that routes 2 and 3, via Invergordon town centre and Saltburn Road respectively, are unsuitable for heavy goods vehicles.

98. Route 1 provides access via the C1063 to and from the A9 trunk road at the Tomich junction without the need to pass through the central part of Invergordon. Tomich junction is a staggered crossroads with short central lanes, known as “ghost islands”, in both

directions to assist right-turning traffic. The central part of the carriageway to the east and west of the junction has been treated with a red surfacing material, tapered away from the right turn ghost islands. A deceleration lane facilitates southbound traffic turning left from the A9 towards Invergordon. Traffic approaching the appeal site from Inverness would turn right at the Tomich junction onto the C1063.

99. Road safety concern in respect of the Tomich junction is the only transport issue raised by the council. Although the trunk road is the responsibility Transport Scotland, the council has long considered the junction substandard and, indeed, dangerous. The design standard, as set out in the Design Manual for Roads and Bridges, for a right-turning ghost island is 90 metres but, in order to safely accommodate heavy goods vehicles of 16.5 metres length, the council considers the turning lane should ideally be 96.5 metres. The existing turning lane is 15.6 metres in length with virtually no deceleration provision and the lack of ability to store a heavy goods vehicle. The stagger distance between the two side roads is 35 metres compared with a minimum standard of 100 metres for a “left-right” junction of this type.

100. The council commissioned a video survey which, it is claimed, illustrates the variety of circumstances potentially leading to incidents or near accidents. In the opinion of the council, this survey endorses the findings of the video survey previously undertaken on behalf of Transport Scotland (described in more detail below).

101. The council also draws attention to Transport Assessment and Implementation: A Guide. Although the most direct indicator of safety is the number of recorded accidents, for smaller developments, such as the appeal proposal, the Guide states that it is usually not possible to predict impacts on the number of accidents by considering accident data. In such a situation, it is necessary to look for design factors likely to lead to conflict between different users. In this case, says the council, the sub-standard design of the junction is likely to lead to such conflict. In turn, concentration on the accident records is neither conclusive nor, indeed, the correct approach for what is agreed to be a “smaller” development. It is the opinion of the council that the appellant’s transport assessment is deficient in its lack of detailed consideration of the Tomich junction.

102. Ross Estates Company is concerned that the updated environmental statement claims there are no operational or capacity issues associated with the route to the appeal site via the Tomich junction. The traffic assessment contains factually incorrect and misleading information, particularly in respect of the ability of route 1 to accommodate heavy goods vehicles. The Tomich junction is substandard and yet it must be regarded as the strategic access to be used by the majority of heavy goods vehicles generated by the proposal.

103. The safety of the junction is already highly questionable and the increase in traffic associated by the waste treatment plant would be quite unacceptable claims Ross Estates Company. A recent traffic survey has shown that some 63 vehicles in the largest category (known as OGV2) undertook a right turn from the A9 towards Invergordon over a period of 10 hours. The anticipated increase resulting from the development would be 36 OGV2s over nine hours each day, a rise of over 50%. Should bottom ash produced by the

incineration process be removed separately, a further 12 vehicles a day would make the turn. It is contended by Ross Estates Company that the traffic generated by the appeal site would increase the number of incidents at the junction and that each incident should be regarded as a near accident or near miss.

104. Ross Estates Company believes this issue alone more than justifies the refusal of the appeal proposal.

105. ICARE is also concerned about the Tomich junction. Accounts of experiences by drivers demonstrate the dangerous nature of the junction. Traffic generated by the reopening of the major industrial complex at Nigg has already exacerbated the problem. In addition to heavy goods vehicles, the prospect of other traffic associated with the proposal is a further anxiety. ICARE believes the wider local network would be subject to extra traffic and has particular potential for conflict with children and parents walking and cycling to school.

106. At the request of the council, Transport Scotland, the roads authority for the trunk road network, commissioned a video survey of the Tomich junction. The survey was conducted over two weeks in June 2011 when cameras monitored the junction on both the A9 approaches. Transport Scotland acknowledges that the distance between the junctions with the two local roads is very close and, as a result, both deceleration and turning length within the ghost island is compromised. Red surfacing has been laid in the centre of the A9 on the trunk road approaches to make both junctions more conspicuous.

107. The survey revealed that right-turning vehicle incidents when approaching from the south predominantly involved heavy goods vehicles having difficulty exiting the trunk road. As a result, there were instances of north-bound through traffic experiencing delay. However, it is stated in the accompanying report, delays did not appear to be significant. Drivers adjusted their behaviour to slow down or stop and wait for vehicles to turn right. The survey identified a significant number of timber goods vehicles towing trailers not readily fitting into the right turn lanes. It is recognised by Transport Scotland that it is not unusual for abnormal loads to use this route. In particular, wind turbine components arriving by sea are often routed through the port at Invergordon.

108. During the first week of the survey a total of 454 incidents were identified whilst there were 204 incidents in the second week. Heavy goods vehicles were involved in 350 of the 658 incidents occurring throughout the survey. Incidents involving "lane discipline/travelling through the Tomich deceleration lane" accounted for 573 of the 658 incidents. During the first week, 421 incidents (92.5%) involved traffic travelling from the south to Invergordon. This movement involved 181 incidents (88.7%) during the second week.

109. Transport Scotland, when initially consulted on the appeal proposal in 2008, advised that in the event of planning permission being granted a comprehensive travel plan should be submitted for approval. No comments were made by Transport Scotland on the updated environmental statement. During May 2012, Transport Scotland provided a further written statement concurring with the view of the appellant that the predicted flows to and from the

development would not be significant in the context of the traffic using the A9 at Tomich. It was also agreed that there is significant spare capacity at the junction.

110. Analysis of the accident record confirms that this is not significant by comparison with sites across the entire trunk road network states Transport Scotland. Any increase in risk from the development would not warrant refusal of the proposal. Work suggested by the council would involve considerable costs and to apply a planning condition requiring these improvements would be disproportionate and inappropriate in the context of the proposal. Accordingly, Transport Scotland concludes that mitigation is not a requirement to be applied as a condition of any grant of planning permission.

111. Transport Scotland further indicates that following a recent assessment of the trunk road network safety performance, the junction at Tomich was not identified for any further investigation. Two personal injury accidents were recorded between 1 January 2009 and 31 December 2011.

112. The appellant accepts that the Tomich junction does not meet the standards set out in the Design Manual for Roads and Bridges but contends that there is not an issue regarding the capacity of the junction to accommodate the level of traffic generated by the proposal. The dispute centres on safety and, in this respect, the appellant suggests the opinion of Transport Scotland is particularly significant. Should Transport Scotland have considered that the proposal would give rise to a material safety issue, an objection to the planning application would have been made.

113. Although the appellant is content for the proposal to be assessed on the basis of four OGV2s an hour, in terms of experience gained elsewhere, it could be anticipated that only 15 vehicles a day would be in the largest category. The remaining smaller vehicles would be better able to negotiate the Tomich junction. In respect of concerns expressed about additional traffic required to transport bottom ash, the updated environmental statement assumed the lack of proposed ash treatment facilities on-site would lead to use of empty waste delivery vehicles being used to remove ash from the site, a process known as back-loading. At present, the appellant explains, there are no definitive proposals for the disposal of ash. However, if necessary, a planning condition could be applied to enable the planning authority to consider additional traffic impact should this be necessary once a scheme for the treatment and/or disposal of ash is prepared.

114. Despite criticism of the transport assessment contained in the updated environmental statement, the appellant believes adequate information is available to assess the impact of the proposal on the safety of the Tomich junction. Whilst all junctions involve potential for vehicle conflict and can therefore be a focus of accidents, Tomich junction does not display abnormal, unusual or high accident statistics. Indeed, the appellant asserts, the accidents that have occurred have not been attributable to the operation of the junction. On this basis, it is not correct to suggest that "incidents" represent near accidents or near misses. Many such incidents simply involve traffic slowing down to turn right from the A9 to Invergordon. This should not be regarded as a near accident and it is not correct to suggest, argues the appellant, that an increase in incidents would be associated with an increase in accidents.

115. The appellant does not consider there is a need to mitigate the traffic impact of the proposal on Tomich junction. However, if thought necessary, a straightforward mitigation measure would be to replace some of the broken white lines that currently bound the central red sections of the carriageway with double white lines. The double white lines would be applied to the northern side of the western section of red surface and to the southern side of the eastern section. The intention of this suggestion would be to improve lane discipline in the proximity of the ghost islands. Should it be decided that mitigation is required, the appellant believes a suspensive condition could be applied to any planning permission.

116. The council contends the suggested mitigation would be inappropriate as the Tomich junction simply does not meet the criteria contained in the Design Manual for Roads and Bridges. In any event, it is unlikely that the suggested double white lines would bring about any significant improvement to the operation of the junction and may even lead to additional traffic queuing on the main carriageway. Ross Estates Company is also of the opinion that the proposed mitigation would not be beneficial and the only meaningful solution to the problems at Tomich would be the reconstruction of the junction.

117. It is clear to me that the Tomich junction does not comply with the standards contained in the Design Manual for Roads and Bridges. The distance between the junctions with the two side roads and the two right turn lanes are all significantly less than specified in the manual. Similarly, there can be no doubt that the Tomich junction gives rise to many incidents: the video evidence and the personal accounts provided by drivers illustrate the nature of the incidents that frequently occur. In particular, I note the high percentage of incidents involving heavy goods vehicles turning right from the A9 towards Invergordon. I also note from the video surveys and personal observation of the junction that vehicles frequently cross the central red surface areas when effecting a turn.

118. I do not regard all incidents as being either “near misses” or “near accidents” despite the frequent incidents involving right-turning heavy goods vehicles. These often lead to the northbound carriageway of the A9 being impeded. As explained by Transport Scotland, following traffic has to slow or, in many cases, stop and await the completion of the right turn by the heavy goods vehicle. Indeed, this situation arose on several occasions during my visits to the junction. In no instance could the incidents I observed have been described as a near miss or near accident. The report on the video survey by Transport Scotland points out that delays appeared not to be significant and drivers adjusted their behaviour. Despite the numerous incidents that occur, I do not agree that the Tomich junction is unsafe.

119. Although the council expresses concern that accident statistics cannot be regarded as conclusive in the assessment of impact, I note the reliance of Transport Scotland on the level of personal injury accidents in assessing the need for the installation of mitigation measures. As the trunk road authority, I place much weight on the opinion of Transport Scotland, and consider the views of the authority to be persuasive.

120. The two personal injury accidents at the Tomich junction recorded between 1 January 2009 and 31 December 2011 were not attributable to the shortcomings in the design of the junction. This strengthens my opinion that the junction is not unsafe.

121. Although there is some debate about the number and size of additional vehicles generated by the proposal which would use the junction, the appellant is content for the situation to be assessed on the basis of four OGV2s an hour, representing 36 right turns from the A9 over a nine hour working day. The situation may also arise where additional vehicles are required to transport incinerated material from the site. Ross Estates Company suggests that if there was no back-loading, the removal of ash could add a further 12 vehicles a day. However, points out the appellant, in practice, the operation of the plant may involve fewer vehicles should incineration levels be less than 100,000 tonnes a year and back-loading arrangements were put in place for the removal of ash from the site.

122. Transport Scotland has stated that the predicted flows to and from the development are not significant in relation to the traffic using the stretch of the A9 at Tomich. Additionally, Transport Scotland agreed with the capacity analysis of the junction included in the transport assessment. The assessment indicated significant spare capacity. Even at the higher level of vehicle generation in the OGV2 category, although this would involve an increase by at least 50% of vehicles turning right towards Invergordon, I recognise a general acceptance that the capacity of the Tomich junction would not be exceeded.

123. I accept that the use of the Tomich junction by additional traffic, especially right-turning heavy goods vehicles, is likely to give rise to more incidents. However, in view of my belief that the junction is not unsafe and that incidents cannot be equated to near misses or near accidents, I do not consider that the potential level of additional traffic incidents justifies refusing planning permission.

124. I have noted the council's suggestions for the possible redesign of the Tomich junction involving either the construction of a roundabout or reconfiguring the junction to relocate the Invergordon side road to the west of the Tomich side road. Whilst I appreciate that these measures would be beneficial, I agree with Transport Scotland that it would not be reasonable or proportionate to the effect of the proposal to require mitigation of this scale as a condition of planning permission.

125. Although the appellant does not consider any mitigation would be required, a modest measure of mitigation has been suggested involving the provision of double white lines in an attempt to facilitate right turns from the A9. The other main parties have cast doubt on this suggestion believing the measure to be contrary to the provisions of the Traffic Signs Manual and, in any event, unlikely to provide any benefit. Insofar as I have concluded that the design of the Tomich junction does not justify refusing planning permission, I consider that, even if permissible, the mitigation suggested by the appellant is not required. In any event, I agree with those parties who argue that double white lines would be unlikely to improve the performance of the ghost islands.

126. Turning to the concern of ICARE about the impact of additional traffic in Invergordon itself, I note that the council, as roads authority, has not raised this matter as an issue.

Whilst I can appreciate the fears over the prospect of additional traffic, especially in respect of school children, I have been provided with no compelling evidence to support this perception.

127. Overall, I conclude that subject to the use of route 1, the local road network is suitable to accommodate the nature and volume of the traffic likely to be generated by the proposal.

5. Public health or safety issues

128. The appellant undertook a quantitative assessment of the potential air quality impacts arising from the operation of a residual energy-from-waste facility. The basis of the assessment was European legislation. However, for airborne particulate matter (PM), a more stringent air quality standard for the smaller PM_{2.5}, which applies to Scotland, was adopted.

129. The updated environmental statement explains that Invergordon often experiences a meteorological phenomenon known as the “haar”, a sea fog drawn inland by sea breezes. The haar is associated with a temperature inversion level and may give rise to elevated pollutant concentrations. To model the effect, an assessment was undertaken using models known as AERMOD and ADMS. The updated environmental statement also recognises that Balcas Bioenergy Ltd, a combined heat and power plant, is located some 500 metres east of the appeal site and generates significant emissions into the air. The assessment assumes the Balcas plant to be fully operational at maximum capacity.

130. By way of context, the appellant draws attention to a review published in 2009: Incineration of Waste and Reported Human Health Effects. The review was undertaken by Health Protection Scotland, a division of the National Health Service, at the request of SEPA. The purpose was to provide support for the Agency’s work in improving the regulation of thermal treatment waste facilities. The report recognises that in older studies there remains uncertainty about the health effects of incineration. However, it continues, it is important to note that the magnitude of any past health effects on population living near incinerators is likely to have been small. More recently, stricter legislative controls and improved technology have further reduced risks to public health. The report believes this assertion accords with the terms of a, then, recently published review: The Impact on Health of Emissions to Air from Municipal Waste Incinerators. In that review, the Health Protection Agency recognised that whilst it was not possible to rule out adverse health effects from modern, well-regulated waste incinerators with complete certainty, any potential damage to health of those living close by is likely to be very small, if detectable.

131. The Health Protection Agency acknowledges concerns about the possible effects on health of particles emitted by incinerators and believes any increase in particle concentrations should be assumed to be associated with some effect on health. However, states the Agency, the critical assessment of effects on health is not simply making the correct assertion that some effect is possible but in estimating the size of that effect.

132. I note the report indicates that various studies have been undertaken to provide coefficients linking PM₁₀ and PM_{2.5} particles with effects on health. However, it is stated, if

these coefficients are applied to the small increases in concentration of particles produced by incinerators, the estimated effects on health are likely to be small. This is because the coefficients themselves are small, the increase in concentration due to the incinerator is likely to be small, as is the size of the potentially exposed local population. Indeed, the report suggests, the reason why studies of the specific impacts on health of increases in local concentrations of particles produced by incinerators are not undertaken routinely is because the concentration increment is likely to be too small to allow an impact on health to be identified in the local population.

133. The updated environmental statement assesses the proposal on the basis of the worst possible situation assuming a continuous throughput of 100,000 tonnes a year with the emission level being at the maximum limit permitted by the Waste Incineration Directive. The dispersal models used gave rise to the highest concentrations, the worst-case meteorological data from weather observation stations at Kinloss and Tain range and the maximum predicted concentration at any location. The appellant believes the two data sources are the most appropriate Meteorological Office observing stations and, between them, provide comprehensive information on the most important meteorological parameters governing the atmospheric dispersion of pollutants.

134. Even if all the particles emitted were to be in the PM_{2.5} category, the appellant believes the predicted annual mean concentrations would be 0.4% of the annual mean air quality standard. A number of discrete sensitive receptor locations were also assessed. These receptors provide an indication of maximum public exposure to airborne pollutants. Predicted concentrations were substantially lower than the maximum permitted. Other receptors, particularly at greater distances from the source, would be exposed to even lower levels. Overall, predicted maximum annual mean ground level concentrations of PM_{2.5} particles have been assessed as not significant according to SEPA guidance.

135. Although the two models utilised do not specifically model haar, the meteorological data used includes meteorological observations obtained during haar conditions. Surface roughness was also taken into account using assumptions relating to different types of surface. The appellant is satisfied that the comprehensive nature of the data obtained provides an adequate basis for assessing the likely impact when haar is experienced.

136. The updated environmental statement concludes that haar conditions could have a beneficial effect in preventing emissions reaching ground level. Significant impacts on ground level concentrations are only likely to occur where the haar breaks down and an effect known as “inversion breakup fumigation” occurs for emissions trapped below the temperature inversion level. The occurrence at any one location of such events is likely to be very infrequent and probably limited to approximately half an hour in any single instance.

137. A cumulative impact assessment was undertaken to take account of the nearby Balcas facility. Once more, the appellant explains, worst-case assumptions were adopted and although combined maximum concentrations exceed air quality standards, the very small contribution from the proposed energy-from-waste plant is assessed as not being significant within the total.

138. The council does not oppose the proposal on the grounds of impact on public health. Advice was sought from the Institute of Occupational Medicine which indicated that the overall impact of the proposed energy-from-waste plant would be exceedingly small because of the strict emission limits set by the Waste Incineration Directive. For comparative purposes, it was indicated that emissions of dioxin from waste incineration are lower than dioxin produced by domestic bonfires.

139. Ross Estates Company believes the appellant has not demonstrated the proposal would not be detrimental to human health. Emphasis should be placed on the report prepared for the Scotland & Northern Ireland Forum for Environmental Research (SNIFFER) on behalf of SEPA, the Environment Agency and the Northern Ireland Environmental Agency. The report draws attention to the recognition that exposure to airborne particulate matter can give rise to significant health effects. There is no evident safe level.

140. Of particular concern are the health effects of PM_{2.5}, day-to-day changes in concentrations of which are associated with hospital admissions and mortality from respiratory and cardiovascular diseases. Long-term exposure to PM_{2.5} is associated with a shortening of life expectancy. Ross Estates Company therefore believes local concerns about the proposal are readily understandable especially as Invergordon is attempting to rid itself of many of the health effects of the industrial past of the town. The Balcas plant is already operating, and Invergordon has a higher than national level of sufferers of key health problems on which increased levels of toxic PM_{2.5} are likely to have adverse effects. SNIFFER points out that epidemiological evidence regarding the health effects of small particles has now changed focus to particles of less than 2.5µm.

141. Ross Estates Company believes it likely that an appreciable proportion of the local population has body burdens of dioxin-like substances that are associated with adverse health effects. As the updated environmental statement has not assessed these levels, the overall conclusions must be regarded as unreliable. In addition to there being no assessment of the specific local health issues, Ross Estates Company is concerned no consideration appears to have been given to the proximity to the proposed site of schools, nurseries, a community hospital and old people's homes.

142. Despite what has been stated by the appellant, Ross Estates Company claims the analysis does not represent a worst-case situation. Account should also have been taken of various other considerations.

143. Firstly, incinerator facilities in Dundee and Dumfries have encountered major problems when not operating at full load. No account has been taken of abnormal emissions and yet there is widespread concern about the problems of these other plants in Scotland, particularly the Dundee incinerator. Indications are that these plants do not operate within the terms of the issued licences and this should have not have been ignored in the appellant's assessment of air quality and health effects.

144. Secondly, no account has been taken of secondary particle formation. Although the appellant maintains that secondary particles take some time to form, Ross Estates

Company claims that formation commences immediately on the release of primary particles into the atmosphere. SNIFFER explains that secondary particles are large in number although small in mass: indeed, Ross Estates Company asserts that many trillions of secondary particles would be created. Studies have shown that ultra-fine or nanoparticles have a greater surface area in total than larger particles. This may well affect the relative toxicity and is therefore of concern in terms of human health, especially in respect of inducing inflammation and the potential to translocate into the blood circulation system. Monitoring is being introduced for PM_{2.5} particles but not for ultrafine particles. Whilst these very small particles represent about 1% of the total mass, they present the majority of the surface area that is reactive to human tissues. Although the number of monitoring stations in Scotland is very limited, research in a Swedish town has shown a high proportion of PM_{2.5} particles attributable to a modern incinerator.

145. Thirdly, a range of substances which are either dioxin-like or which exhibit dioxin-like activity have not been modelled or assessed. Dioxins are extremely persistent when ingested, the amount present in an individual being referred to as the “body burden”. The tolerable daily intake of a substance, the measure used by the updated environmental statement, is the amount of that substance which can be consumed every day without harm. Although tolerable daily intakes are regulatory public health measures designed to reduce overall hazard levels, this method of assessment does not inform directly about the distribution of body burdens of persistent organic pollutants.

146. Fourthly, the use of meteorological data from Kinross and Tain range is inappropriate, particularly in respect of consideration of the haar. Although SEPA sought further assessment of the impact of the haar, particularly in respect of the possibility of particles being trapped below the fog causing ground level concentrations, this concern has not been addressed. Data from Kinross and Tain range does not represent the meteorological conditions at the appeal site and so the emission modelling is questionable. Indeed, from available information, the possible effects of haar on particulates, which may even involve a change to the chemical and physical properties of pollution, requires the modelling process to be interpreted with great caution.

147. Fifthly, the modelling itself is inadequate, being simplistic in a number of respects. The model is hypothetical rather than fact-based and inevitably open to a degree of uncertainty. The lack of the application of a confidence envelope also renders the assessment unreliable. SNIFFER contends that model outputs are inherently uncertain and discusses the evaluation of models by means of comparing empirical data from the laboratory and *in situ* tests. Ross Estates Company believes that it is not possible to be sure that the model replicates the conditions accurately, and, in turn, it cannot be known with any degree of certainty what the effects of the appeal proposal would be on air quality and human health. Ross Estates Company points out that SEPA requested a sensitivity analysis of the model but the appellant continued to rely on the assessment being based on a “worst-case” situation.

148. Sixthly, cumulatively, the updated environmental statement is limited in its assessment.

149. ICARE associates itself with the case put by the Ross Estates Company in respect of air quality and human health. In particular, ICARE is concerned about the concentrating effects of the haar, which, when blown inland, becomes trapped within the surrounding rising land. The nature of the local terrain therefore exacerbates the potential for harm to human health. ICARE particularly endorses the concern about the reliance on meteorological data from Kinloss and Tain range.

150. ICARE believes that SEPA has not adequately audited the updated environmental statement and has not required the necessary scientific evidence to properly assess the situation.

151. ICARE examined a range of health statistics for the local population and states it is clear that in the past four years the incidence of a wide variety of diseases, including chronic heart disease, asthma and chronic obstructive pulmonary disease has worsened. Unemployment and those suffering income deprivation are higher than the Scottish average. The Mid-Highland Community Health Programme child specific data also demonstrate a worse than Scottish average situation in respect of numerous key indicators. In the light of this information, ICARE argues emissions from the proposed energy-from-waste facility should not be contemplated.

152. The appellant points out that SEPA was involved extensively in an iterative process since the original application was submitted and, significantly, has confirmed satisfaction with the approach taken to modelling.

153. I note that SEPA first responded to a consultation on the application in a letter to the council dated 15 August 2008. The iterative process referred to by the appellant led to a series of further responses involving various matters of concern to the Agency, including air quality modelling, meteorological data, the haar, coastal modelling, air quality standards, emission limits and particle concentrations. Objections by SEPA in respect of the assessment of haar conditions were withdrawn on 11 March 2009. A further consultation response dated 26 June 2009 discusses the Balcas Bioenergy PPC permit. The Agency anticipated at that time that the emissions from Balcas would be well within the requirements of the permit. SEPA anticipated that once the plant had been operating for a period of time and emissions data had become available, the permit may be reviewed. In turn, this would give rise to the possibility of reducing the PM₁₀ limit from the plant.

154. Commenting on the updated environmental statement in a letter of 24 February 2012, SEPA indicated that the document demonstrates the proposal would not result in a significant adverse impact on the environment. The proposed facility is likely to represent the best available technology and has the proven ability to operate below statutory emission limit values. SEPA was satisfied with the air emission modelling undertaken using the Waste Incineration Directive emission limit values, worst-case operation, and worst-case meteorological values. It was recognised that the meteorological values used both the Kinloss and Tain range data in combination with coastal and surface roughness modelling information, including potential haar conditions. This information, states SEPA, determined the worst-case predicted ground level pollution concentrations and likely discharge patterns.

155. SEPA indicated satisfaction with the methods undertaken for the health effects modelling, indicating that the risks to health for worst-case exposures are well within the criteria set by bodies such as the World Health Organisation and Food Standards Agency. Ardross Community Council (subsequently represented by ICARE) specifically queried the meteorological data used but SEPA again confirmed that the data sets used were considered to be adequate.

156. Ross Estates Company submitted comments on the updated environmental statement and SEPA was requested to further respond. That response, dated 13 April 2012, confirmed the terms of the letter of 24 February: SEPA considered the updated environmental statement to be adequate at this stage and further assessment was not required.

157. In particular SEPA commented on the following matters raised by Ross Estates Company:

- The modelling procedure is acceptable without the need for re-assessment using actual background PM_{2.5} and PM₁₀ data collected *in situ* at Invergordon;
- Kinloss and Tain range data are the only official local weather station data available and are acceptable for emission modelling at this stage;
- Data has been used from a plant in Grimsby using identical technology. It is accepted procedure to assume two thirds of PM₁₀ material is emitted as PM_{2.5} and the data has been modelled according to accepted practice. The modelled predicted ground level concentration from PM_{2.5} is low compared with environmental assessment levels and air quality objectives;
- Secondary emissions generated from or by the primary emissions – which are themselves not significant – are not considered to be significant and therefore secondary emissions modelling is unnecessary.
- Abnormal, start up, shut down and emergency conditions are a requirement of a PPC application submission with strict requirements for boiler operations under the Waste Incineration Directive (which is regulated through PPC permits);
- The potential cumulative impact from transport and stack emissions is low when assessed against air quality objectives and further assessment is unnecessary. In respect of the Balcas plant, the assessment approach over-calculates the impact and represents a worst-case situation. In any event, SEPA also regulates Balcas which operates in compliance with the PPC permit.
- An assessment taking account of the body burden of dioxins is not necessary as the assessment undertaken has been carried out to acceptable standards; similarly, a further assessment is not necessary in respect of the most susceptible receptors, pregnant women and infants;
- Although it had been suggested that a level of confidence should be provided for the conclusions, the appellant has used appropriate data sets and recognised emission and health impact models. Adequate interpretation has been provided at this stage although modelling of the most up-to-date information available will be required for any PPC application.

158. I note the general acceptance of the SNIFFER report assertion that airborne particulate matter can have significant health effects and that there is no apparent safe level. On the other hand, I also note the views that in the past, health impacts from incinerators were likely to have been low and that improved regulation and technology have further reduced the impacts. I do not believe these two contentions to be mutually incompatible. It is important, however, to have regard to the scale of significance of any impact.

159. Reference has been made to problems at other incinerators including plants at Dundee, in particular, and Dumfries. I understand these plants are not comparable with the proposed facility at Invergordon in terms of age and technology. The proposed plant would utilise modern technology of the type already installed in an energy-from-waste facility at Grimsby and I have no reason to believe that it would experience problems akin to those at the other Scottish facilities to which reference has been made.

160. Insofar as the Zero Waste Plan envisages a role for energy-from-waste facilities, it is clearly not Scottish Government policy to place an embargo on any future plants of this nature. I do not consider, therefore, that the proposed development at Invergordon should be opposed, as a matter of principle, on the basis of air quality and the impact on human health.

161. More specifically, I note the modelling exercise undertaken by the appellants and the acceptance by SEPA, the regulatory authority, that the predicted impacts would not have a significant adverse effect on the environment. I also note the advice to the council was that the impact of the proposal would be exceedingly small and, on this basis, the council did not contest the appeal on the grounds of public health.

162. Although the role of SEPA as a consultee has been criticised, the appellant has drawn attention to the iterative process that has taken place. It is clear that the Agency has had a close involvement in the proposal throughout. Indeed, SEPA has also responded to matters raised by other parties, including Ross Estates Company and Ardross Community Council and I believe, overall, the role of SEPA has been helpful in the assessment of the planning application.

163. Ross Estates Company and ICARE argue the modelling process is not acceptable, particularly in view of the sources of the data - Kinloss and Tain range – and the application of the data to haer conditions. However, the appellant has explained that a worst-case situation has been applied and SEPA is quite clear that the process is acceptable “at this stage”.

164. I note that further up-to-date analysis is likely to be required at the time of any future application for a PPC licence. In turn, I accept SEPA’s indication that there is no requirement at this time for further data collection *in situ* and re-assessment of background PM₁₀ and PM_{2.5}. I am also prepared to accept SEPA’s indication that a confidence level is not necessary. Again the Agency points out that current information will be required at the time an application for a PPC licence is made.

165. Despite the belief of Ross Estates Company that further assessments are required in respect of the body burden of dioxins, rather than the tolerable daily intake method, and the impact on pregnant women and infants, SEPA is adamant that the assessment undertaken has been to accepted criteria. The updated environmental statement points out that the World Health Organisation and the UK Committee on Toxicity provide recommended tolerable daily intake levels for dioxins. Predictions in respect of the proposal indicate very low comparative intakes and this has satisfied SEPA. On the basis that the procedure undertaken by the appellant has fulfilled the recognised criteria, I do not consider there is need for the further assessments required by Ross Estates Company.

166. The appellant has stated that the process of secondary particle formation generally takes place slowly. This is confirmed in the report prepared by the Health Protection Agency. Even assuming secondary particle formation occurs after one hour, the appellant states that with a wind speed of four metres a second, the plume will have travelled almost 15 kilometres before secondary particles are formed. In any event, even if, as claimed by Ross Estates Company, secondary particle formation occurs immediately, SEPA has indicated that levels of primary particles are so low as to be insignificant. In turn, secondary particle level would be similarly low. Secondary particle modelling was not required by SEPA and I therefore accept that it is not necessary to undertake an assessment of secondary particle formation.

167. Although both Kinloss and Tain range are some distance from the appeal site, they are the closest weather stations supervised by the Meteorological Office and I do not dispute SEPA's acceptance of the data for modelling purposes. Equally, whilst the appellant explains that the weather data does not specifically include haar, I note the indication that the models utilise data including meteorological observations obtained during haar conditions and take account of atmospheric temperature inversions.

168. Terrain effects were also included in the assessment. I note SEPA withdrew objections in respect of the haar having received a description of how emissions would disperse in haar conditions along with a discussion of how this relates to the results of the modelling. SEPA believes the appellant has shown how this can effect the dispersion of the plume, particularly with regard to the impact on ground concentrations of pollutants. Overall, I am satisfied that the operation of the proposed facility during haar conditions would not constitute a significant threat to human health.

169. Ross Estates Company is concerned about lack of assessment of abnormal emissions and SEPA has explained that these events, along with start-up and shut-down arrangements, are controlled through the provisions of the PPC licence. I am satisfied that appropriate provisions for such operational matters and events should be applied through the licence procedure. I am also mindful that stricter regulation and improved technology is likely to reduce the prospect of abnormal emissions.

170. The updated environmental statement explains that the cumulative impact of the waste-to-energy plant and the existing nearby Balcas plant was undertaken on a worst-case basis. I note SEPA has indicated that the impact has been over-calculated and predicted ground level concentrations are low when compared with environmental assessment levels

and air quality objectives. I further note that SEPA states “an extremely high volume of road transport” would be required to cause an air quality impact in the area.

171. I acknowledge the concerns of those who fear a detrimental impact on air quality and a consequential effect on human health. It is clear from the statistics provided that the population locally suffers from a higher than average incidence of a number of diseases and other vulnerable groups. Nevertheless, in general terms, on the basis of the full extent of the evidence, I do not believe a modern, well-regulated energy-from-waste plant represents a significant threat to human health. Despite the various aspects of criticism directed at the assessment process, I attach considerable weight to the opinion of SEPA. I accept that the air quality impact analysis undertaken as part of the updated environmental statement has demonstrated that the operation of the facility would not constitute a significant health threat to Invergordon or to the surrounding area. Significantly, this opinion is shared by SEPA. I accept this to be the case both in respect of the facility itself and, cumulatively, when considered with the neighbouring Balcas plant. In turn, this leads me to conclude that the level of public health or safety impacts would not be of a scale to justify refusal under the provisions of Policy 70.

6. Compatibility with surrounding existing and allocated land uses

172. Ross Estates Company accepts that waste management proposals are generally acceptable on allocated industrial land and can be regarded as compatible with adjacent industrial uses. However, Ross Estates Company believes that adequate assessment has not been given to the impact of the proposal in allocated housing land at Invergordon Mains and Barbaraville. Perception or concern about harm resulting from the development could undermine the delivery of these sites and, in turn, the strategy for the area.

173. I have previously assessed surrounding existing and allocated land uses when considering the potential of the appeal site in terms of the guidance in the Zero Waste Plan. I concluded that existing land uses adjacent to the appeal site would not compromise waste handling facilities. Similarly, any future developments within the Cromarty Firth Industrial Park are unlikely to give rise to any operational problems on the appeal site. I also concluded that the land use allocations shown in the Main Issues report of the Inner Moray Firth Local Development Plan would not compromise waste handling facilities. In view of the character of the Cromarty Firth Industrial Park, I consider that the proposed energy-from-waste plant would be compatible with the existing occupants. I do not foresee any compatibility issues with surrounding future land use allocations as currently envisaged in the emerging local development plan.

174. I do not regard the housing land at Invergordon Mains or Barbaraville to fall within the category of surrounding allocated land uses. At its nearest point, Invergordon Mains is some 450 metres to the west of the appeal site, significantly further than the recommended buffer zone of 250 metres. However, even if this site were to be considered surrounding land, the proposed development would have little impact. The incinerator would be large but, in the context of the numerous existing large-scale industrial buildings in the vicinity, the structure would not be out-of-scale or unduly dominant. Indeed there would only be limited visibility of the energy-from-waste facility from the northern part of the Invergordon

Mains site. Barbaraville is some 4 kilometres to the east of the site and, visually, the incinerator structure would have insignificant impact. Whilst likely to be visible, I do not believe the chimney would have a detrimental impact. I recognise that Ross Estates Company has referred specifically to perception and concern and I can accept that developments of the nature proposed often can give rise to reactions of this nature.

175. Whether or not the housing sites at Invergordon Mains or Barbaraville are regarded as surrounding land in the context of the appeal site, I do not consider that the proposal would have a significant impact in land use terms. Similarly, I do not believe that in this instance, the perceptions and concerns expressed justify refusing planning permission.

176. There are two residential properties within the 250 metres of the appeal site but these buildings are located within an area of existing industrial character and I do not believe that the proposal would have any further significantly detrimental impact.

177. All in all, in terms of Policy 70, I conclude that the proposal is not incompatible with surrounding existing and allocated land uses.

7a. Whether the applicant has submitted sufficient information with the application to enable a full assessment to be made of the likely effects of the development, together with proposals for appropriate control, mitigation and monitoring

178. In dealing with preliminary procedural matters, I concluded that the updated environmental statement provided the information required under Parts 1 and 2 of Schedule 4 of the Town and Country Planning (Environmental Impact Assessment)(Scotland) Regulations 2011. In turn, I consider that this information is sufficient to enable a full assessment to be made of the likely effects of the development, together with proposals for appropriate control, mitigation and monitoring.

Heat and power

179. The council argues that the heat plan is inadequate but I have previously concluded that the level of information provided is adequate insofar as Policy 70 is concerned. I re-iterate this conclusion believing that the information provided in respect of supplying heat and energy, allows satisfactory land use assessment of the application.

180. In reaching this conclusion I have taken account of the criticism that little information has been provided to demonstrate how heat and power would be distributed to future customers. In this respect, the appellant has argued such detail is not required at the present time. Indeed, contends the appellant, it would not be possible to provide such information at this stage of the development.

181. I accept the views of the appellant that it would not be possible to meaningfully indicate a heat and power distribution system beyond the boundaries of the site at the present time. The proposed line of the heat export pipes within the site is shown in Appendix K of the updated environmental statement. I do not envisage any fundamental

problem in bringing forward a distribution scheme beyond the site boundaries at the appropriate time in the future.

Tourism

182. There is disagreement over the likely effect of the development in respect of socio-economic impact, particularly in terms of tourism. The appellant claims that the proposal would lead to a minor economic benefit through the creation of employment whereas other parties are concerned about a wider detrimental economic impact.

183. Tourism is accepted by all the parties as a key growth sector and, indeed, as one of the Highlands' most important industries.

184. In the past, Invergordon was essentially an industrialised port town. An aluminium smelter complex closed in 1982 leaving an unfortunate industrial legacy. Some years later, an economic initiative was undertaken to bring about regeneration. Subsequently, Invergordon has become an important destination for cruise liners with rapidly increasing numbers of vessels visiting in recent years. ICARE has indicated that during 2012, some 68 cruise ships are anticipated with almost 80,000 passengers and about 30,000 crew.

185. Typically, the time spent by a cruise ship at Invergordon permits, if required, two coach trips to be made by passengers. Destinations include Inverness and Loch Ness, the north-west Highlands and Dunrobin Castle. As an alternative, passengers may choose spend time in Invergordon itself. Indeed, the council and ICARE have pointed out that as coach trips have become more expensive, there has been an increase in the number of passengers remaining in Invergordon. Access to the town centre is straightforward as usually cruise ships are able to berth within a few minutes walking distance of High Street. This activity has had a significant economic benefit.

186. There has been much local activity to further encourage visits to the town by passengers and crew from the cruise liners. The Invergordon Tourist Alliance, an association of local businesses, has done much to instil interest in the town. A local museum, gable end murals in and around the town centre, hospitality packages offered by Invergordon Golf Club, and Saltburn Woodland Walk are examples of improved attractions for tourists.

187. Ross Estates Company explains that the hinterland of Invergordon also provides many tourist attractions including the Falls of Shin where the centre has around 130,000 visitors a year, including visitors from cruise ships. Glenmorangie and Dalmore distilleries are further attractions and the company has aspirations to develop additional tourist related activities.

188. The council, ICARE and Ross Estates Company fear that the construction of the proposed energy-from-waste plant would have a significantly detrimental impact on the potential for further tourist growth. Both visually and in terms of perception, the impact on Invergordon would be severely negative and undermine the work of recent years to improve the attraction of the town and its environs. The visual impact, especially of the 65 metre

high chimney stack and a plume of emissions, would be widespread. Indeed, this is clearly demonstrated in the updated environmental statement by means of the zones of theoretical visual impact (Appendix D, figures 7 and 8). Reduced visitor numbers to the town would be inevitable and, ultimately, rather than further growth, there could be a reduction in the number of cruise ships berthing. In these circumstances, the objectors believe that alternative port locations in Scotland could prove more attractive to the cost of Invergordon.

189. A further concern was expressed about the likely impact on house prices. Although some objectors recognise that property prices are not normally a planning consideration, it was argued that a fall in prices would reflect a detrimental socio-economic impact as a result of the proposed energy-from-waste plant.

190. In simple terms, say the objectors, the construction of an incinerator is not compatible with the development of a port gateway for cruise tourists.

191. The appellant points out that the plume from the stack would not be not visible. Indeed, lack of visible emissions is often required as a condition of a PPC permit. In any event, claims the appellant, the visual impact of the development would be limited, especially from the Cromarty Firth. Many visitors would be unaware of the existence of the proposed plant, particularly as Invergordon currently has a predominantly industrial and port character.

192. In my opinion, the Cromarty Firth provides a large-scale open, landscape with relatively low hills to the north and south of the water and a more distant backdrop of mountainous terrain to the west and north-west. There are various large man-made features including the fabrication yard and jetty at Nigg, close to the entrance to the firth, and the port facilities, including storage tanks, at Invergordon. Large oil rigs are often anchored in the firth although these structures are not permanent. All in all, in my judgement, the essential landscape character of the firth has been retained, being capable of absorbing the various man-made features including Invergordon itself.

193. I have viewed Invergordon from the Black Isle on the south bank of the Cromarty Firth. The town is very apparent but within the wider landscape, the impact of the built-up area is by no means overwhelming. Clearly, the port facilities are a strong feature as are the large storage tanks along with anchored oil rigs and, regularly, cruise liners. The construction of the proposed energy-from-waste facility would have an additional visual impact, particularly the stack which would rise above the ridge in the northern part of the town. However, I do not anticipate the proposed incinerator building and stack would give rise to any significant additional adverse landscape character impacts.

194. I have noted the visibility maps in the updated environmental statement. As explained in the document, the maps identify the area over which the development could theoretically be seen. Account is taken of topography but not the screening effects of features such as buildings and trees. In practice, therefore, the updated environmental statement believes the visual impact would be somewhat less than suggested by the theoretical maps.

195. The updated environmental statement analyses the visual envelope of the proposed chimney and indicates that the greatest impact would be to the immediate north, west and east. The colour of the chimney and its relatively thin profile would minimise the visual impact. Although extensive, it is claimed views to and from the Cromarty Firth would be long and distant. From the Black Isle, the chimney would also be visible but the industrial features associated with the waterfront would remain dominant in the view. The updated environmental statement believes impacts on views from Barbaraville would be negligible.

196. Overall, I believe the updated environmental statement provides a reasonable analysis of the visual impact of the proposed stack. I conclude that in the context of the site itself and, within the wider Cromarty Firth, the visual impact would not give rise to an adverse socio-economic impact to the detriment of either existing or potential tourist activity. In reaching this conclusion I also note the impressive level of local activity that continues to take place in promoting Invergordon as a tourist destination. I do not believe that the proposed development represents a significant threat to any future achievements in this respect.

197. I have had regard to the concern emanating from the perception of the proposed incinerator on tourism but I am not persuaded that this concern is justified or well-founded. Similarly, I have noted the concern over house prices but, as previously indicated, property values are not generally a consideration for land use planning. Although it has been suggested that house prices would fall in response to a decline in the local economy, again I am not convinced that this is a valid concern in the context of the proposal.

198. Insofar as socio-economic impact is concerned, I consider that, when taken into account with the landscape character and visual assessment, an adequate level of information has been presented in the updated environmental statement.

199. All in all, under criterion 7a, I conclude that the level of information provided is as required by Policy 70.

7b. A design statement in support of the application, where the development would have more than a local landscape and visual impact

200. The appellant believes a design statement is not required and points out that no other party has raised an issue in this regard. Scottish Natural Heritage (SNH) recognised that the chimney would be visible with a height of 65 metres but, in the context of the surrounding industrial buildings and the port facilities of Invergordon, the visual impact would be small.

201. Situated on the northern periphery of Invergordon, the large incinerator building would undoubtedly be visible from various locations along the A9. Local topography shields the site from most of the town of Invergordon. As pointed out by SNH, I agree the chimney would be a particularly visible feature but I share the opinion that the setting of the proposal within an area of large industrial structures would significantly diminish the impact. Similarly, in terms of landscape character, I am of the opinion that impact would be insignificant.

202. On the foregoing basis I conclude that, despite the height of the chimney, both the visual and landscape character impacts of the proposal would be of minor significance and that a design statement is not required.

7c. Land restoration, aftercare and after-use details (including the submission of bonds)

203. Ross Estates Company argues that the large size of the structure is such that provision must be made for restoration of the site. The appellant believes that this could be best achieved through the provisions of the PPC licence. In any event, the reference to “after-use” details suggests this provision is intended to apply to landfill sites. The council agrees that the matter could be controlled through the licensing arrangements.

204. I consider this matter further below when dealing with planning conditions. However, I agree with the appellant that these provisions more appropriately apply to landfill facilities and I do not consider details of restoration, aftercare and after-use require to be provided at this part of the planning process. Accordingly, the proposal is not in conflict with Policy 70 in this respect.

7d. A justification, if applicable, as to why the sites/areas outlined above have not been pursued

205. The appellant is of the opinion that a justification is required only if the proposed site is not either one of the four identified preferred sites listed in Policy 70 or a site on existing or allocated industrial land. The council believes this interpretation to be illogical as, on that basis, no potentially acceptable application, including applications on existing or allocated industrial land, would be required to provide justification. Ross Estates Company contends that the appellant is required to set out a justification for not pursuing the Longman site but no informed assessment has been provided.

206. It is clear from Policy 70 that there are four preferred sites and that proposals for waste management facilities will also be acceptable when they are located on existing or allocated industrial land, subject to meeting specified criteria. The policy goes on to state “All proposals will be assessed against the following criteria”. This could mean, literally, all proposals, whether they are proposals on the four preferred sites, proposals located on existing or allocated industrial land and proposals located on other land. I think logic suggests that assessment against the criteria is to be undertaken in respect of proposals relating to the four preferred sites and proposals located on existing or allocated industrial land. There is no indication that any proposals on other sites would be acceptable. The emphasis on the use of industrial land reflects guidance in SPP and the Zero Waste Plan.

207. Clearly, the four preferred sites will readily meet certain of the criteria such as conformity with the spatial strategy but assessment may well be required in respect of, for example, public health or safety impacts, depending on the nature of the facility proposed. Self-apparently, locational justification would not be applicable in respect of proposals on the four preferred sites but, logically, I consider it to be required where development is proposed on other existing or allocated industrial land.

208. This leads me to conclude that it is necessary for the appellant to justify why a preferred site, in this case the former Longman landfill site, Inverness, has not been pursued.

209. The updated environmental statement indicates that the Longman site was the subject of consideration although the site is noted as having limited available space, potential ground condition restrictions and lies at a prominent location on the Kessock Bridge entrance to Inverness. The updated environmental statement also indicates that the land at the Longman site is not available. The appellant further justified not pursuing the Longman site on the basis of considerable engineering difficulties that are said to be well known and remain unresolved. Additionally, points out the appellant, Policy 5 of the HwLDP identifies a range of difficulties associated with the site.

210. The council also refers to Policy 5. Constraints to development are recognised, resulting in the land being underused although, states the supporting text, it will become more developable over time. The situation was described during the HwLDP Examination: "...the council has explained that the site suffers from multiple and complex constraints which may in themselves prevent development, or severely constrict what types of development will be feasible." The council explains that feasibility studies are currently underway to test the viability and suitability of the land for development. Access potential is also under consideration.

211. Policy 5 indicates the council favours a range of uses: amongst these are waste management and other renewable uses including energy-from-waste. Supplementary guidance will be provided "If and when the site proves suitable for development". The guiding principles will include the need to minimise landfill gas and other risks, tackle any problems of contamination and not to compromise strategic road network capacity.

212. Map 2 of the HwLDP illustrates the Longman site showing it to be a large area of land, the most northern part of which includes a modern football stadium and complex. Lying adjacent to the A9, on the periphery of Inverness, the site is clearly an important development opportunity. I consider it is appropriate for this site to be included in the HwLDP with an indication of the range of land uses, including waste management, currently favoured by the council. Equally, I believe that the HwLDP is correct to draw attention to the potential constraints. Indeed, the document casts the future of the site in some doubt by suggesting the possibility, at least, that the site may not prove suitable for development.

213. Although I note the council is undertaking feasibility work, including consideration of the access arrangements, there has been no confirmation that the site will prove suitable for development, still less, a timescale. Whilst I share the council's hope that the Longman site will ultimately be developed, I can appreciate that the current circumstances offer little encouragement to a developer who would hope to proceed expeditiously. In turn, I can understand why the appellant has not pursued this site for a waste-to-energy facility, and believe that the potential constraints - documented in the development plan - provide the justification required under Policy 70.

Policy 70 conclusions

214. All in all, my assessment of the appeal proposal against the above criteria leads me to conclude that the construction of an energy-from-waste facility and the Cromarty Industrial Park, Invergordon, would be in accordance with the provisions of Policy 70 of the HwLDP.

Other development plan policies

215. Although it has been generally recognised that Policy 70, Waste Management Facilities, is key to the consideration of the appeal proposal, other development plan policies are also relevant. In the first instance it is necessary to consider the provisions of the Highland wide Local Development Plan.

Policy 5, Former Longman Landfill Site

216. As discussed above, Policy 5 of the HwLDP deals with the former Longman infill site, a preferred location for waste management facilities in terms of Policy 70. However, I have already concluded that the proposed development at the Invergordon site would be in accordance with Policy 70. This includes conformity with the spatial strategy and a justification for not pursuing the preferred sites. I therefore conclude that the proposal does not conflict with Policy 5. In any event, it would be possible for an energy-from-waste proposal to come forward for the Longman site for consideration on its merits. As explained in the Zero Waste Plan, planning permission does not guarantee construction and commissioning: the market will be the key to infrastructure delivery.

Policy 71, Safeguarding of Waste Management Sites

217. Although the council drew attention to Policy 71, it was subsequently agreed that this policy is not relevant to the determination of the appeal. I concur.

Policy 41, Business and Industrial Land

218. This policy seeks to safeguard strategic business and industrial sites and locations from other competing uses, the Cromarty Industrial Park being identified as subject to the policy.

219. Specific and clear reference is made in Policy 70 to waste management facilities being acceptable on existing or allocated industrial land, subject to criteria. I believe this is an indication that if a waste management facility is not to be regarded as an industrial use, it is nevertheless an acceptable exception to the safeguarding objective of Policy 41. As previously explained, the Zero Waste Plan also suggests industrial and employment areas as being suitable for waste management facilities. SPP contains similar guidance.

220. Reading Policies 41 and 70 together, I do not consider, in principle, that the proposal is in conflict with the development plan.

Policy 42, Previously Used Land

221. The policy supports the re-use of brownfield land provided the land is capable of being brought into a condition suitable for the proposed development and that development accords with all other relevant policies of the plan. No evidence has been provided to suggest that the site would not be capable of being brought into a condition suitable for the energy-from-waste facility. I note that the Environmental Health Department of the council has not expressed any concerns in this respect. As also required by Policy 42, other relevant policies of the plan - in particular Policy 70 - are being assessed in the re-determination of the appeal. I therefore conclude that the proposal accords with the provisions of Policy 42.

Policy 28, Sustainable Design

222. The appellant considers that many aspects of Policy 28 relate to residential or commercial development. Remaining matters relevant to the proposal are covered by the provisions of Policy 70.

223. Ross Estates Company believes that should the proposal fail against Policy 70, it is unlikely to be supported by Policy 28. In the opinion of Ross Estates Company, the proposal does not fare well when assessed against the criteria listed in Policy 28.

224. ICARE is particularly concerned about Policy 28, drawing attention to the policy support for development promoting and enhancing the social, economic and environmental wellbeing of the people of Highland. ICARE argues that the proposal fails this test and states that assessment of the proposal against a number of the criteria listed points to the refusal of the development. I have considered these matters, and, as suggested by the appellant, I agree the assessment of the proposal under Policy 70, has provided an opportunity to assess the relevant criteria listed under Policy 28. Accessibility, air quality and socio-economic impacts are examples of matters already considered. I have not found the impact of the proposal to be in conflict with any of the Policy 70 criteria and, similarly, I do not believe that the equivalent criteria in Policy 28 warrant refusal. I have also taken account of the other criteria listed in Policy 28 but do not believe that they justify the refusal of planning permission.

225. ICARE also contends that the development would not be compatible with various principles of the Sustainable Design Guide: Supplementary Guidance. Whilst it may be argued the proposal would not enhance the character of the Highland area, I do not believe that it would detract from the wider character and therefore, at worst, it would conserve the character. I consider that, in total and in practical terms, the environmental impact of the development has been minimised. In terms of enhancing the viability of Highland communities, I have been provided with no evidence to persuade me that the impact of the development would be detrimental. In processing waste, providing the opportunity for heat and energy provision and offering a degree of employment, I consider that the development could properly be regarded as enhancing the viability of Invergordon.

226. Finally, insofar as Policy 28 is concerned, I do not believe it has been shown that the potential impacts are uncertain or that there are scientific grounds for believing severe damage could occur. Accordingly, I see no reason to apply the precautionary principle.

Policy 56, Travel

227. Ross Estates Company considers that the proposal would be contrary to Policy 56 because of the safety problems associated with the Tomich junction. I have considered this matter under Policy 70 and, although recognising the design shortcomings of the junction, I have concluded that the refusal of planning permission is not justified on this basis. I do not consider that the proposal is in conflict with Policy 56.

Policy 65, Waste Water Treatment and Policy 66, Surface Water Drainage

228. I consider that the technical requirements of these policies in respect waste water treatment and surface water drainage are capable of being controlled through conditions of planning permission.

Policy 73, Air Quality

229. Air quality matters have been considered under Policy 70. Assessment of the potential emissions have been undertaken to the satisfaction of SEPA leading me to conclude that the impact on human health would not be such as to justify the refusal of the proposal. In turn, I conclude that the proposal does not conflict with Policy 73.

Ross and Cromarty East Local Plan

230. As explained previously, some parts of the Ross and Cromarty East Local Plan, adopted 2007, remain extant. That local plan allocates the Cromarty Firth Industrial Park for mixed industrial uses. In terms of Policy 70 of the HwLDP, the proposal is therefore located on land acceptable for waste management facilities subject to specified criteria. In turn, subject to the assessment of the proposal against those criteria (which I have undertaken above), the development is not inconsistent with or contrary to the terms of the local plan.

Development plan conclusions

231. Having assessed the proposal against the development plan, I conclude that the energy-from-waste facility would not conflict with any relevant policy. In development plan terms, therefore, my assessment points to the granting of planning permission. On this basis, it is necessary to consider whether any material considerations merit the setting aside of development plan provisions in this instance.

Material considerations

232. Reference has been made to several of the material considerations in my assessment of the proposal against the terms of the development plan. Indeed, the criteria attached to

Policy 70 of the HwLDP, require the proposal to be assessed for conformity in respect of the Zero Waste Plan, Scottish Planning Policy and the Council's Municipal Waste Strategy.

National Planning Framework 2

233. National Planning Framework 2 confirms the commitment of the Scottish Government to increasing sustainable growth and takes forward the spatial aspects of that commitment by setting out a strategy for long-term development. The appellant draws attention to the statement that additional facilities for the treatment and recycling of municipal, commercial and industrial wastes are urgently required. Furthermore, the Framework states, the planning system has a crucial role to play in ensuring that installations are delivered in time to allow waste management targets to be met. Planning authorities should facilitate the provision of a network of waste management installations to enable the movement of waste to be minimised. Account should be taken of opportunities to derive energy from waste.

234. Ross Estates Company highlights the emphasis in the Framework on the importance of the A96 corridor between Inverness and Nairn. This is stated to be the main focus of growth in the Inner Moray Firth. Inverness is shown as a key node. Guidance is provided on relevant considerations on the siting of waste installations including proximity to sources of waste and the transport network. Where possible, facilities should be close to population centres.

235. The Zero Waste Plan confirms that the Framework covers the key elements of the Government's waste policy. The document therefore carries significant weight. I consider that my assessment of the proposal against the provisions of the development plan has taken account of the terms of National Planning Framework 2, including spatial and locational considerations. On becoming operational, I consider the facility at Invergordon would take its place in a network of waste management installations. Overall, the Framework does not lead me to alter my conclusion that the proposal is acceptable.

Scottish Planning Policy

236. SPP is the statement of the Scottish Government's policy on nationally important land use matters and, accordingly, significant weight must be attached to the document.

237. In my assessment of the proposal against HwLD Policy 70, I explained that the guidance in SPP requires to be taken into account in the context of the Zero Waste Plan. Indeed, paragraph 214 has been replaced by the advice in the Zero Waste Plan. In this respect, I concluded that the appeal proposal conforms to SPP.

238. Of course, SPP also covers a range of other important matters. ICARE highlights guidance in SPP in terms of requiring the location of new development to reduce the need for travel and to prioritise sustainable travel and transport opportunities; tackling climate change, particularly by reducing emissions of greenhouse gases; making the best use of the existing transport network; and providing for the safe and efficient movement of traffic. I have considered these aspects of the proposal as part of my wider assessment. Whilst I appreciate that tensions may exist between different aspects of the guidance contained in

SPP, it is often necessary to strike a balance. In my judgement, on balance, the wider aspects of the proposal do not conflict with SPP to the extent that permission should be refused.

Planning Advice Note 63, Waste Management Planning

239. Again, in my assessment of Policy 70, I have had regard to PAN 63. Whilst I note that PAN 63 remains part of the National Waste Management Plan, as constituted by the Zero Waste Plan, I agree with the appellant that the Zero Waste Plan itself provides the current Scottish Government guidance on this matter. As indicated, I have given a detailed consideration to transport and traffic matters and remain of the opinion that nothing in PAN 63 warrants the refusal of the proposal.

The Highland Council Municipal Waste Strategy

240. Once more, the Municipal Waste Strategy was considered in the assessment under Policy 70. The appellant and the council believe that little weight should be attached to the document although Ross Estates Company argues the strategy is relevant insofar as local solutions to waste management are concerned. I concluded that, where relevant, the proposal conforms to the strategy and remain of that opinion.

Local Development Plan Examination Report

241. I agree with the appellant and Ross Estates Company that the report can be a helpful guide in understanding the thinking of those involved in the preparation of the HwLDP. This is the basis on which I have utilised the report, for instance, in considering the background to the former Longman landfill site. However, I also agree with Ross Estates Company that, overall, the document is of limited relevance – the most important document is the recently adopted HwLDP itself. No part of the examination report to which I have been directed leads me to believe the proposal should be refused.

Inner Moray Firth Local Development Plan – Main Issues Report

242. The Main Issues Report of the emerging local development plan is a further document I considered as part of the assessment of the proposal under Policy 70. I concluded that at this relatively early stage of the plan preparation process the weight of the document is severely limited. Nevertheless, I analysed the land uses in the proximity of the site as part of the Policy 70 and concluded that waste-handling facilities on the appeal site would not be compromised. I remain of the opinion that the weight to be attached to the report is severely limited but, in any event, the initial land use allocations do not prejudice the proposal.

Zero Waste Plan

243. This document, along with various other publications, constitutes the National Waste Management Plan and is accordingly an important material consideration commanding significant weight. The Plan, including Annex B, has been considered in some detail as part

of the Policy 70 assessment of the proposal. Despite the concerns of the council, Ross Estates Company and ICARE, my assessment led me to the conclusion that the proposal would not be in conflict with the guidance contained in the Zero Waste Plan.

SEPA's Thermal Treatment of Waste Guidelines, 2009 and Addendum, May 2011

244. In the context of the proposal, it is significant that the 2009 Guidelines were amended by an addendum in 2011 to ensure alignment with the Zero Waste Plan. The Addendum explains that two guidance notes supersede that part of the Guidelines dealing with SEPA's role as a planning consultee. In this case, Land Use Planning System Guidance Note 6, which relates to development management consultations, is relevant.

245. My assessment of Policy 70 attached significance to the response of SEPA in respect of the heat plan. Indeed, on the basis of the Agency's comments, I concluded that, in land use terms, the information provided is acceptable. In turn, I conclude that the proposal is not in conflict with the Thermal Treatment of Waste Guidelines, 2009 and Addendum, 2011.

SEPA's planning guidance notes

246. As explained, Guidance Note 6 deals with development management. The guidance note clearly describes SEPA's planning role. The approach to various issues of the Zero Waste Plan is set out, including circumstances where SEPA can be expected to object to a proposal. It appears to me that SEPA has followed this procedure and that the guidance note has been beneficial to the development management process involving the proposal.

Statutory Consultees

247. The appellant points out that none of the statutory bodies has objected to the proposal and emphasises the significance and importance of SEPA's opinion, particularly in respect of air quality and the Thermal Treatment Guidelines insofar as these apply to the heat plan.

248. ICARE and Ross Estates Company have criticised the role of SEPA. ICARE claims that the Agency has not audited the updated environmental statement. More particularly, lack of information on haar conditions casts doubt on the assessment of the air quality impact. Ross Estates Company recognises the changing role fulfilled by SEPA since the appeal was originally determined in 2010 and acknowledges the approach of the Agency is consistent with the Zero Waste Plan. Nevertheless, states Ross Estates Company, it is difficult to comprehend how the change in the Agency's position between August 2008 and March 2009 could be justified.

249. I have noted the responses of the statutory consultees and these have been helpful in my assessment of the proposal. Although Transport Scotland did not object to the development, the council has previously expressed severe concern about the design shortcomings of Tomich junction. This issue has been the subject of detailed consideration and I have concluded that the use of the junction for access to the development would be acceptable.

250. I have previously described the iterative process that was undertaken in the months after the application was first submitted. I believe this was a positive process enabling SEPA and the appellant to take the application forward to a point at which the Agency was satisfied a PPC permit could be issued in due course. Similarly, as indicated above, the comments provided by SEPA in terms of Guidance Note 6 have been of value in assessing the land use implications of the development with respect to Zero Waste Plan issues.

251. Overall, I conclude that the responses of the statutory consultees have been of benefit to the assessment of the proposal. I believe the role of SEPA has been of assistance in understanding the relationship between land use planning and waste management regulatory regimes.

Public concern

252. The main parties agree that legitimate public concern is a material consideration. The substantial level of public concern has been made clear through the representations received and the evidence presented by ICARE. PAN 63 recognises that perceived health effects of incinerator emissions are often of public concern. PAN 63 further indicates that planning authorities should accept that PPC licensing is suitable for public health protection. Public safety is an issue for consideration by the planning authority.

253. The appellant believes that, in this case, limited weight should be given to public concern because of the evidence presented on the impact of the proposal, especially in the context of the responses of the statutory consultees.

254. I accept that public concern is a material consideration. In this instance, the principal public concerns relate to impact on health by emissions and the threat to public safety as a consequence of the traffic generated by the development. I believe these concerns have been thoroughly assessed. Irrespective of the PPC licensing requirements in terms of public health protection, I have been able to conclude that public concerns do not warrant the refusal of planning permission. Therefore, although public concern is widespread and sincere, I do not consider that the weight of the concern is such as to over-ride my conclusions.

2010 decision

255. Ross Estates Company believes that little regard should be had to the original appeal decision of 11 May 2010 this being subsequently quashed. The appellant considers that the granting of planning permission on appeal in 2010, despite being quashed, provides an indication of the acceptable nature of the development in land use terms.

256. Although I have noted the terms of the earlier decision, the approach I have undertaken in the re-determination of the appeal has been to consider the matter afresh.

Other documents

257. A number of other documents have been brought to my attention. These include the Waste (Scotland) Regulations 2012, PAN 51, Planning, Environmental Protection and Regulation, PAN 66, Annex B – Best Practice in Handling Planning Applications Affecting Trunk Roads, and Transport Assessment and Implementation: A Guide and SEPA's Online Advice on Energy from Waste.

258. Whilst these documents might be regarded as material considerations, I believe that none is of fundamental importance to my re-determination of the appeal and, both individually and collectively, they do not alter my conclusions.

Material considerations conclusions

259. Overall, material considerations do not point to the proposal being refused planning permission in the face of my conclusion that the development accords with the provisions of the development plan. In turn, this leads to my conclusion that the appeal should be allowed and planning permission granted subject to 16 conditions.

Conditions

260. Without prejudice, parties liaised to suggest conditions should the appeal be allowed. Some suggested conditions were agreed without contention whilst others were subject to differing opinions. I have considered all the suggested conditions and reached the conclusions set out below and added a further condition in respect of surface water drainage in terms of Policy 66 of the HwLDP. Some minor and non-material adjustments have been made. In all instances I have had regard to the principles set out in Circular 4/1998, The Use of Conditions in Planning Permissions, whereby conditions should only be imposed where they are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects.

Duration of planning permission

261. Section 58 of the 1997 Act (as amended) indicates that planning permission lapses on the expiration of a period of three years although it is possible to either extend or reduce this period. The appellant believes that a period of five years would be appropriate in this case to take account of time lost should there be a legal challenge. It would not be reasonable, states the appellant, to make preparations for starting the development during the course of any legal proceedings and therefore the extent of the planning permission would effectively be reduced. Ross Estates Company states that the planning permission remains in place until suspended or quashed. If not suspended, the appellant could implement the permission throughout the challenge period. However, should the permission be suspended, the time stops running.

262. I recognise it is most unlikely that a start to development would be undertaken in the face of a legal challenge. However, irrespective of the possibility of a legal challenge, I believe that a period of three years is reasonable in this instance. In reaching this

conclusion, I have taken account of the public concern over the proposal and consider that the period of planning permission should not be extended beyond three years.

263. To accord with established practice, I have included this requirement as an advisory note.

General control over the form of the development

264. Some concern was expressed about the lack of a reference to the annual capacity of waste to be permitted. However, condition 2 deals with the nature and source of waste along with the annual capacity. In any event, the updated environmental statement is clear in stating that the plant is designed to handle up to approximately 100,000 tonnes per annum. I have amended the suggested reason to make the purpose of the condition clearer.

The nature, origin and amount of waste to be treated

265. This condition is important to specify that only non-hazardous waste is acceptable. A maximum level of 100,000 tonnes per annum is also specified. This total accords with the terms of the updated environmental statement and provides the clarification and certainty required by some parties.

266. The appellant has indicated that it is intended to treat waste originating within the Highland Council area. Indeed, the updated environmental statement was prepared on this basis. Ross Estates Company believes that the condition is unenforceable and is contrary to the terms of the development plan, the Zero Waste Plan and Scottish Government policy.

267. Policy considerations have been considered as a central part of the appeal process and, in policy terms, I am satisfied that the proposal justifies the granting of planning permission. I can understand that there may be some concern over a condition limiting the input to waste originating within Highland Region. I can also accept that should waste from beyond the Highland Council area be the subject of pre-treatment at, for instance, Inverness, it may well be impossible identify the source of the waste following the pre-treatment process. However, I am prepared to accept that the maintenance of a log confirming the weight, nature and source of waste is a reasonable requirement provided the source is limited to waste originating within the Highland Council area or a pre-treatment facility within the Highland Council area.

268. This approach will ensure that the maximum level is 100,000 tonnes of non-hazardous waste per annum. Although some waste may originate beyond the area of Highland Council, perhaps following an agreement between Highland Council and Moray Council, all waste would require pre-treatment within the Highland Council area. Transport of pre-treated waste to the site would therefore be entirely contained within Highland Region. This pragmatic approach would permit the possibility of a reasonable (probably very small) degree of flexibility in the source of the waste supply for the plant whilst remaining within policy guidelines. I do not believe that this approach would significantly invalidate the terms of the updated environmental statement.

269. I also believe that it is reasonable to permit scrutiny of the log by the planning authority and that appropriate enforcement measures could be initiated if deemed necessary.

270. ICARE has requested that the log should be made available to community councils and individuals on request but I think it would be unreasonable to impose such a requirement through a planning condition. I consider the right to examine the log should be limited to the planning authority as the regulatory authority in this respect. It may be that wider access to the log could be arranged through the proposed local liaison group.

Export of heat and/or energy from the site

271. Although Ross Estates Company and ICARE believe that matters involving the export of heat and energy from the site require to be set out in more detail at this stage of the process, I have accepted that the level of detail provided is adequate. SEPA has made clear that a detailed heat plan will be required as part of any application for a PPC permit and I am therefore satisfied that the proposed condition is adequate in planning terms.

Preliminary site contamination and pollutant remedial measures

272. Parties agree with this condition but Ross Estates Company believes a further condition should be applied requiring the plant to cease operation after 25 years, to be removed and the land to be remediated to a suitable standard. A financial guarantee must be provided to the Highland Council in the form a restoration bond, or similar financial guarantee or lump sum, by the developer to ensure suitable restoration of the site. Ross Estates Company considers a section 75 planning obligation would be the best method to guarantee this requirement. Conditions such as this are routinely applied to landfill operations.

273. ICARE supports this argument maintaining that a bond should be required for the protection of the community.

274. The appellant sees no requirement for a further condition to this effect believing that the matter could be appropriately dealt with by SEPA by means of the PPC permit.

275. The council points out that remedial conditions are routinely applied to wind farm developments but would not be normal in a case such as this. The council is therefore content for the matter to be a function of the PPC permit.

276. I am not persuaded that, in terms of remediation, the nature of the development justifies an additional condition, the conclusion of a planning obligation, or the need to lodge a bond. I accept that procedure of this nature is more applicable to wind farm or landfill proposals and, perhaps, the treatment of hazardous waste. In any event, I further note the view that this is a matter better dealt with as part of the PPC permit procedure.

Landscaping proposals

277. Although ICARE finds the condition to be satisfactory, the group requires the proposed landscaping arrangements to be submitted to all local community councils and residents groups.

278. I understand there is no statutory provision for this procedure although the proposed local liaison group could well provide an opportunity to comment on the proposals.

Water supply

279. This condition is acceptable to all parties. I understand “grey” water to be water that has been used for various domestic purposes and which can be recycled for certain purposes.

Travel plan

280. Ross Estates Company and ICARE consider the condition to be unenforceable insofar as the implementation of any agreed measures in the approved travel plan could not be guaranteed.

281. I note that PAN 75 emphasises the importance of travel plans. The advice states that in an endeavour to ensure compliance with targets, a section 75 planning obligation could be concluded incorporating “correction procedures”. The appellant has referred to legal agreements concluded between local authorities in England and developers in respect of restrictions on heavy goods vehicle movements and routeing strategy.

282. I agree with Ross Estates Company and ICARE that the important aspect of this condition is implementation of the agreed measures set out in the approved travel plan. On the face of the matter, a formal planning obligation might appear appropriate to secure implementation of a travel plan and make provision for correction procedures. However, I am concerned about a condition involving a two-stage process requiring firstly, the approval of a travel plan and, secondly, the conclusion of a planning obligation. I believe it would not be appropriate to require a planning obligation without, at this time, the terms of the travel plan being known. I therefore consider that a planning obligation should not be required as part of the condition. It will, of course, be necessary for the planning authority to be satisfied that the terms of the submitted travel plan are capable of implementation.

Transport plan

283. Ross Estates Company again argues that this condition is unenforceable but I have adopted a similar approach to that taken in respect of the travel plan and do not consider the condition should require a planning obligation. I have simplified the objectives of the transport plan by emphasising the need to protect the urban parts of Invergordon from additional traffic. Again it will be necessary for the planning authority to be satisfied that the terms of the submitted transport plan are capable of implementation.

Tomich junction mitigation

284. I have concluded that no mitigation is required at Tomich junction and therefore conditions are not required in respect of either modification of the junction or traffic management measures.

Ash treatment

285. The appellant argues that this condition reflects the multi-stage permission process and allows the planning authority to consider whether there is a need for further control. The council considers that it is necessary to be able to assess the entire process at the outset, including the disposal of ash. Should the process not be acceptable, a condition would not resolve the problem.

286. I note the updated environmental statement describes the treatment of bottom ash from its formation to storage on the site prior to transportation or further processing or recycling. Ferrous residues would be recovered. As part of the process, this aspect of the incineration would be contained within the single structure proposed. I consider that the level of information provided is adequate for an assessment of the development and have been provided with no evidence to suggest that the treatment of bottom ash could not be undertaken in a satisfactory manner. In turn, I am of the opinion that the proposed condition in respect of ash treatment is reasonable.

Environmental management plan

287. ICARE has requested the environmental management plan be made available at least two months prior to the proposed commencement of development to enable the council and other consultees including the local community councils and the residents groups reasonable time to fully assess the details of the submission.

288. I consider the procedure set out in the suggested condition is appropriate and that the planning authority should determine which agencies should be consulted.

Construction activities noise

289. ICARE considers that no construction should take place between 10pm and 7am but I believe a requirement that no audible activity should take place between these hours is reasonable.

Footway upgrading

290. Although ICARE finds the condition to be satisfactory, the proposed arrangements should be submitted to all local community councils and residents groups. Procedurally, as previously, I consider any local involvement in this matter would be best achieved through the proposed local liaison group.

Bicycle parking

291. This condition is acceptable to the main parties.

Local liaison group

292. The appellant required the detailed draft condition to be expressed in more general terms. I agree that it is not necessary for the condition to be as detailed as suggested and that it should remain the obligation of the developer to prepare and submit a scheme for the approval of the planning authority. I have brought forward the timescale for submitting the scheme to the planning authority to allow the possibility of the establishment of the liaison group prior to the start of construction.

293. Similarly, although ICARE has made a series of detailed suggestions about the composition of the liaison group, site inspection and remedial action, these are matters that should be resolved following the approval by the planning authority of a liaison scheme.

Additional conditions

294. ICARE has suggested a condition requiring the developer to make an annual financial contribution to the Invergordon Community Council, the arrangement being the subject of a section 75 obligation. This is not a matter which can be justified as a planning condition and does not meet the tests of Circular 4/1998. I therefore do not intend to impose a condition to this effect.

295. Ross Estates Company requires a condition in respect of odour management. I have been provided with no evidence to support a condition to this effect. In any event, this is a matter which would be subject to control under the PPC licence. It is not appropriate to apply a planning condition which impinges on the control applied under another regulatory regime. I therefore do not intend to impose a condition in respect of odour management.

Advisory notes

296. ICARE has requested that copies of start of development and completion of development notices be circulated to local community councils and residents groups but there is no statutory provision for this.

Richard Dent

Reporter

SCHEDULE 1**APPROVED PLANS AND DRAWINGS**

Location plan: 5493/08/N/001 (planning drawing 1)
Planning boundary plan: 5493/08/N/001 (planning drawing 2)
Proposed site layout plan: 0001
North-east elevation: 0002
North-west elevation: 0003
South-west elevation: 0004
South-east elevation: 0005
Proposed colour scheme: 3506 A (04) 201
Landscaping plan: DDUX0135

SCHEDULE 2

CONDITIONS AND ADVISORY NOTES

Conditions

- 1 Except as otherwise provided for and amended by the terms of this approval, the operator shall construct and operate the development in strict accordance with the provisions of the application, the submitted plans and the offered mitigation set out in the supporting environmental statement (May 2008) and updated environmental statement (December 2011).

Reason: *to ensure that the development is undertaken as proposed and that such mitigation measures as have been identified are put into effect.*

- 2 The approval shall permit the plant to accept a maximum of 100,000 tonnes per annum of non-hazardous waste originating within the Highland Council area although this total may include waste from pre-treatment facilities located within the Highland Council area, a proportion of which may have originated beyond the Highland Council area. To this end the operator of the waste-to-energy plant shall maintain a log record confirming the weight, nature and source address of all waste products entering the site and the date of arrival at the site. That log shall be made available to the planning authority upon request.

Reason: *to reflect the nature of the proposed operation of the development and to take account of the possibility that a pre-treatment facility in the Highland Council area may treat a proportion of waste that has crossed a planning boundary.*

- 3 Prior to the commencement of development, specific details (to be contained in a finalised heat plan) on how any heat and/or energy is to be exported from the site shall be submitted to and agreed by the planning authority in consultation with the Scottish Environment Protection Agency. The approved details shall then be implemented prior to the operation of the plant, unless otherwise agreed in writing with the planning authority.

Reason: *to ensure the plant is capable of delivering renewable energy in accordance with The Highland wide Local Development Plan policies and Scottish Government targets and to ensure that the planning authority has the opportunity to consider whether the export of heat or power would give rise to significant environmental effects.*

- 4 Prior to the commencement of development, a detailed remediation scheme shall be submitted dealing with potential contamination on the site. No construction work shall commence until such a scheme has been submitted to and approved by the planning authority, and thereafter implemented to the satisfaction of the planning authority. The scheme shall include details of:

- a) the nature, extent and type of contamination on site, identification of pollutant linkages and assessment of risk (i.e. a contaminated land risk assessment and remediation plan); once the scope and method of this assessment has been agreed by the planning authority, it shall be undertaken in accordance with the provisions of PAN 33, Development of Contaminated Land, and BS10175, Investigation of Potentially Contaminated Sites: Code of Practice;
- b) if required, a remedial strategy to treat or remove contamination, thereby ensuring that the site is fit for the uses proposed; the strategy shall include a method statement, programme of works, and proposed verification plan;
- c) should remedial action be required, submission of a validation report by the competent person employed by the developer who will validate and verify the completion of works to a satisfactory standard as agreed by the planning authority;
- d) submission, if necessary, of monitoring statements at periods to be agreed by the planning authority for such time period as is considered appropriate by the planning authority; written confirmation of the planning authority shall be required indicating that the scheme has been implemented, completed and, if appropriate, monitoring measurements satisfactorily in place, before any development hereby approved commences.

Reason: *for environmental and health and safety reasons to ensure the site is in a satisfactory condition to allow the development to commence.*

- 5 Prior to the commencement of development, a scheme of hard and soft landscape works shall be submitted to and approved by the planning authority, including:
- details of earthworks
 - position, designs, and materials and type of boundary treatment of walls, fences and gates to be erected
 - a schedule of plants to comprise species, sizes and proposed numbers and density
 - a timetable for implementation and
 - a maintenance programme.

The works shall then be carried out and maintained in accordance with the approved scheme.

Reason: *to secure a safe and attractive environment and to protect and integrate with adjoining land uses.*

- 6 The development hereby approved shall utilise water only from the public water network or any on-site “grey” water infrastructure established within the plant complex.

Reason: *for the avoidance of doubt and to safeguard the local water environment.*

- 7 Prior to the commencement of development, details of foul drainage provisions shall be agreed with the planning authority in consultation with the Scottish Environment Protection Agency and Scottish Water.

Reason: *to ensure appropriate management of foul drainage.*

- 8 Surface water shall be drained by a sustainable drainage system, details of which shall be submitted for the approval of the planning authority prior to the commencement of development.

Reason: *to ensure appropriate management of surface water drainage.*

- 9 Prior to the commencement of development, a comprehensive travel plan that sets out proposals for reducing dependency on the private car shall be submitted and approved in writing by the planning authority, in consultation with Transport Scotland Trunk Road Network Management Directive. In particular, the travel plan shall identify measures to be implemented, the system of management, monitoring, review, reporting and the duration of the plan. It will incorporate measures designed to encourage modes other than the private car.

Thereafter, the development will be undertaken and operated in accordance with the provisions of the approved travel plan.

Reason: *to reflect the requirements of Scottish Planning Policy and PAN 75, Planning for Transport, and to ensure the implementation of the approved travel plan.*

- 10 Prior to the commencement of development, a transport plan shall be submitted for the approval of the planning authority, in consultation with Transport Scotland Trunk Road Network Management Directive, to identify measures to implement control of traffic involved with the construction and operation of the plant. Key purposes and objectives of the plan shall be:

- to devise and implement routes for all heavy goods vehicles travelling to and from the site which do not pass through the centre of Invergordon, residential areas, school zones or other sensitive locations;
- restrict the movement of heavy goods vehicles associated with the development during the morning and afternoon peak hours taking account also of school starting and leaving times.

Thereafter, the development will be undertaken and operated in accordance with the provisions of the approved transport plan.

Reason: *in the interest of road safety and to minimise traffic impact on Invergordon.*

- 11 Prior to the commencement of development, a scheme (including details of any infrastructure or plant required) for the recovery, recycling and/or final disposal of ash residues from the thermal process shall be submitted to and approved by the planning authority in consultation with the Scottish Environment Protection Agency. For the avoidance of doubt, the scheme shall include details of facilities for the segregation of ferrous and non-ferrous metals from the bottom ash prior to disposal. The scheme shall thereafter be implemented in accordance with the approved details. Any changes to the approved scheme will require prior written approval of the planning authority in consultation with the Scottish Environment Protection Agency.

Reason: *to ensure that the planning authority has the opportunity to consider whether the treatment of residues would give rise to significant environmental effects.*

- 12 At least two months prior to the commencement of any work on site, a site specific environmental management plan shall be submitted for the written approval of the planning authority, in consultation with Scottish Environment Protection Agency and other agencies such as Scottish Natural Heritage as appropriate, and all work shall be carried out in accordance with the approved plan.

Reason: *to control pollution of air, land and water.*

- 13 Noise from construction activities shall not exceed the following levels:

Monday to Friday, 0700-1900: 75db LAeq (1hr)
 Monday to Friday, 1900-2200: 65db LAeq (1hr)
 Monday to Friday, 2200-0700: no audible construction noise permitted
 Saturday, 0700-1300: 75db LAeq (1hr)
 Saturday, 1300-2200: 65db LAeq (1hr)
 Saturday, 2200-0700: no audible construction noise permitted
 Sunday: no construction operations permitted

All measurements shall be taken at boundary of the nearest residential property.

Reason: *to minimise construction impact on residential properties.*

- 14 Prior to the commencement of development, details of the proposed upgraded footway between the site and Academy Road shall be submitted for the approval of planning authority and implemented to the satisfaction of the planning authority prior to the operational commissioning of the incinerator.

Reason: *in the interests of pedestrian safety.*

- 15 Prior to the operational commissioning of the incinerator, safe, secure and sheltered bicycle parking spaces shall be provided within the site on the basis of 2 spaces plus 1 space per 250m² gross floor area, or as otherwise agreed with the planning authority.

Reason: *to ensure that bicycle parking is available in accordance with the Highland Council's Roads and Transport Guidelines for New Developments or as otherwise agreed to reflect potential demand for spaces.*

- 16 At least 6 months prior to the commencement of development, the developer shall submit to the planning authority for written approval, a scheme for the establishment of a liaison group to facilitate the exchange of information with local community groups, residents and businesses, and the developer shall thereafter carry out its obligations under the approved scheme.

Reason: *to provide a forum for the exchange of information between the developer and local community groups, residents and businesses in the period prior to construction, during the construction of the incinerator and thereafter. In particular, the liaison group is intended to provide information of operations on the site likely to cause disturbance, and to ensure, for instance, that nearby funerals are not disturbed by operations on the site.*

Advisory notes

- The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period. (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)
- Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action. (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)
- Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position. (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended).)

4. **Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it. (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008.)
5. **Road Openings Permit / Road Construction Consent:** Road Openings Permit / Road Construction Consent will be required from the Highland Council as roads authority prior to the commencement of this development. Developers are advised to make a direct contact to discuss the matter.
6. **Environmental Management Plan:** The applicant should refer to the Highland Council's guidance for the Construction Environmental Management Process for Large Scale Projects for details on what the Environmental Management Plan should contain.
7. **Scottish Environment Protection Agency** holds records that may assist in meeting the requirements of certain of the conditions imposed.