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6 December 2006

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Dear Ms Wood

## Planning and Pollution Control

I refer to your consultation paper under the above title and the comments of the Chartered Institute follow, arranged, as requested, according to the list of questions in Chapter 6:

### Question 1 - scope

1. We acknowledge the focus of the paper and its proposals on the Environment Agency's responsibilities and understand the reasons for that, in particular that it is the Agency which permits the most polluting industry and exclusively regulates waste disposal. That focus nevertheless overlooks that local authorities permit many more industrial processes, have almost exclusive responsibility for noise control and the job of determining all sites of contaminated land and though it might be thought that local authorities, wearing their two hats, ought to be able to resolve any difficulties arising from the interaction of the two regimes they administer, that seems unfortunately not always to be the case. That has a relevance for some of your other questions and some examination of the operation of the two regimes within local authorities could have been useful.

## Question 2 – overlapping responsibilities

2. We see nothing inherent in EU legislation to bring about overlapping responsibilities. We do not think it is so much a matter of its transposition either as a matter of how, institutionally, we implement it. That is to say that it is an almost inevitable result of assigning allied responsibilities to entirely separate organisations. We caution, however, that bringing them together under the same roof is no guarantee that the same effects will not be seen, partly because even though those responsibilities may be nominally joined, the necessary expertise will remain in different professional groups and the complexity of the respective disciplines makes that practically unavoidable. Trying, moreover, to define-out these overlaps runs the real risk of creating gaps in their place and we (and we suspect the public) would prefer some overlap (which can at least be managed) to that.

## Question 3a – contaminated land

3. The remediation of contaminated land is a process familiar to us and we were part of the stakeholder group which advised the Kirby committee. While we do not accept there is, in fact, overlap here, the purposes of development control and waste licensing being distinct and both necessary, we have no objection in principle to their combination within local planning authorities in this context, provided at least that the rigour of each part is maintained. We do, however, think that the development industry rather overstates the case; we see no evidence that the inconvenience of two applications is other than minor or adversely affects either the rate or the location of housing development, nor do we believe that there are meaningful net efficiency gains to be had since, ultimately, the same questions still have to be asked and answered.

While we also query where local authorities will acquire the necessary expertise in waste regulation (or, strictly, re-acquire it since they had it before the creation of the Agency), we have to say that the present influence of planning over contaminated land is an area which concerns us with frequent reports from our members of planning authorities failing to consult them and applying unsuitable “clean-up” conditions, or sometimes no conditions at all, and often failing to verify that conditions have been met.

These omissions are, we think, a consequence of the target culture under which applications are expected to be turned-around within sometimes unrealistic timescales. This, in turn, seems to be due to a belief in government and reflected in PPS23, that all development is inherently good and to be encouraged, its environmental impacts being addressed as far as possible, as something of an afterthought. We have criticised that approach before and we believe firmly that planning has an important role in preventing pollution before it occurs.

## Question 3b – information requirements

4. Again, we think this overstates the case; there is no less overlap when applications are submitted in parallel rather than sequentially, moreover where the necessary information is gathered for one, it represents little if any more work to gather it for another, particularly as more and more this is done electronically. While parallel application might shorten the overall permitting timescale for the applicant, we see a danger that consideration of the more complicated (usually pollution) permit will come under pressure to match the shorter timescale of the other, increasing environmental risk, while it must also increase the risks to the applicant associated with refusal, that is, two applications

can be wasted if one is refused. Moreover, whereas applicants should have confidence in their technical ability, for example to apply the best available techniques to their processes, or to remove unacceptable risks from their land, it would seem sensible that they should address the greater risk, and more strategic issue, of land use first.

#### Question 3c – implications for health

5. This seems no less sensible from an applicant's standpoint when health considerations arise and the approach described in para 4.14 of the paper provides no argument against it. Whereas we think that approach is short-sighted, the information LPAs need to know so that development control can play its full part could as well be requested from applicants at this stage as requiring that a pollution permit be sought first. That can then be carried forward if the planning application is successful.

#### Question 3d – expert in-put

6. It is nonetheless true that that depends equally on timely and adequate in-put from pollution control authorities and other consultees and we have two further concerns here. One is that, again, planning targets fail to take account of the complexity of some applications and the time needed to advise on them properly; the second is that the Environment Agency especially is increasingly withdrawing from the giving of site-specific advice for staffing reasons. That does not appear to be a temporary expedient but a matter of long-term strategy. Conversely, advice from the HPA in PPC applications has often gone beyond its remit and there are signs of the same happening in the area of contaminated land. It also has to be stressed that many hold-ups occur at both planning and permitting stages because of inadequate understanding or information from applicants.

#### Question 3e – community confidence

7. We agree, of course, that local communities should have the opportunity to shape the planning policies which affect their lives nevertheless it is our sense that most people feel the planning system both strategically and locally is opaque and increasingly out of their control. The government's current proposals for major infrastructure projects and, for example, the greater powers to be given to the Mayor of London over the boroughs can only increase ordinary people's sense of estrangement. We know in particular of no evidence that confidence in planning is undermined by pollution controls, indeed quite the opposite and, for example, there seems to be a large body of public opinion around Heathrow airport which has it that planning considerations are riding roughshod over pollution concerns.

#### Question 4 - sequencing

8. As we have written above, we see merit from an applicant's point of view in dealing with the more strategic issue of land use first. It may nevertheless be essential for the applicant to have provided the LPA with detailed information about his intended activity so that the LPA can decide whether planning conditions need to be applied or that pollution controls will be sufficient. What is important from every perspective is that planning and pollution control authorities work together; we do not think that submitting permit applications together is a prerequisite or necessarily helps that while it could compromise the consideration of one or the other.

#### Question 5 – options for improvement

9. We are not convinced that the paper makes the best case for change in the first place; the “evidence” presented, coming from “those affected by the current arrangements”, i.e. developers and industry, is somewhat sparse in the first place, naturally emphasises perceived overlaps rather than gaps and generally lacks objectivity. The lack of analysis in the paper is unfortunate. We understand your informants’ motives to minimise costs and constraints on their activities but cannot help feeling that criteria such as “protecting the environment and human health...*at an affordable cost*” and that “consideration [be] given to pollution ...*at the right time*” could have the effect of reducing current protections. We would like to propose an additional criterion of “Maintaining a high level of protection for human health and the environment” accordingly.

#### Questions 6 and 7 – protocols or practice guidance

10. We have written that we think that what is most important is that planning and pollution control authorities should work effectively together. Our members tell us often of problems encountered with planning authorities and how difficult it can be to engage them and some better guidance to them could be helpful. We have in mind especially something to encourage them to give more weight to health and environment issues. There are already, however, the LGA’s “Working Better Together” protocols which seem to have little effect and perhaps something more formal, and in particular with the weight of government behind it, is needed.

#### Questions 8 to 11 – regulatory change

11. We nevertheless think that regulating for greater distinction in the roles of LPAs and pollution authorities throughout the waste area risks weakening the regulatory regime and we prefer the limited option in the case of construction sites of rolling-up waste licensing with the determination of planning consents within LPAs, provided, as we have said above, the rigour of each part is not compromised. As we have also said, however, it remains to be explained where local authorities will re-acquire the necessary expertise and, if that means liaising with the Environment Agency, where any real net benefit will accrue. In the case of contaminated sites – the majority – we see no reason of principle why the verified meeting of remediation objectives should not operate as conditions precedent to the further development of the land in question but it neither makes sense nor offers simplification for, as seems to be suggested, voluntary remediation to be overseen by the Environment Agency while remediation brought forward under Part 2A was overseen by the LPA, even if the Agency had the capacity for that.

#### Question 12 – local authorities as super-regulators

12. While we can see potential benefits in the transfer of limited waste management regulatory functions to LPAs, it is a big step from there to appointing local authorities as regulators for all pollution control activities and difficult to see the justification in planning terms. A number of polluting activities are also so complex or rare as to make regulating them at local level quite impractical. The department must know that and it is difficult to take this proposal seriously.

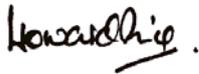
Question 13 – parallel submission of applications

13. We would not support this option being imposed; as we have explained above, it may have advantages but it also has potential disadvantages for applicants, regulators and those they serve.

Question 14 – any other options?

14. We would like to suggest four: first, that the next re-writing of PPS23 should remove some of the current ambiguity; the apparent advice that, for example, health is a material planning consideration yet LPAs should not concern themselves with it is not easy for anyone to understand and leads to the situation where LPAs deny any responsibility for it, missing important opportunities and passing the buck to pollution control authorities. Connected to that, secondly, more work could be done on the drafting of standard planning conditions related to pollution. Third, we have found it very difficult to engage the planning profession on matters which ought to be of mutual concern and it might be beneficial for the Department to sponsor some kind of occasional forum, bringing planners of various descriptions together with pollution regulators. We are aware in this respect that Defra is considering establishing some sort of stakeholder forum around land issues and the inclusion of planners there might have synergy. Fourth, we think it would be helpful to give advice to the HPA on what is, and is not, expected of them in this context.

Yours sincerely

A handwritten signature in black ink, appearing to read "Howard Price", with a stylized underline.

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