

t: [REDACTED]
e: [REDACTED]
DX: ED4 Edinburgh

FAO [REDACTED]
Scottish Government Legal Directorate

Our Ref: [REDACTED]

Your Ref:

By email only: [REDACTED]

15 March 2024

Dear Sir/Madam,

**Climate Change (Scotland) Act 2009 – Section 94A
Assessment of climate impact of Infrastructure Investment Plan**

We refer to our previous correspondence in respect of the above matter in which we are instructed on behalf of Environmental Rights Centre for Scotland and Good Law Project.

Further to the publication of the Carbon Assessment of the Infrastructure Investment Plan for Scotland 2021-22 to 2025-26 (the “Assessment”) on 17 January 2024, having decided not to raise proceedings at this stage, our clients have instructed us to point out several issues which remain in relation to the purported Assessment and supporting documentation, as outlined below.

Annual Targets

We do not understand there to be any dispute that the Scottish Ministers have a duty, in terms of the Climate Change (Scotland) Act 2009, specifically under section 94A(2), to publish an assessment of the extent to which investment in accordance with the plan is expected to contribute to the meeting of the emissions reduction targets.

We note that “emissions reduction target” is defined in section 98 of the 2009 Act as (a) an annual target, (b) an interim target, or (c) the net-zero emissions target.

Our clients wish to highlight that the purported Assessment as-revised refers to interim and net-zero emissions targets, but it fails to assess the Infrastructure Investment Plan (“IIP”) in relation to annual targets.

Taxonomy Approach

Our clients take the view that the methodology for the taxonomy approach is unclear. Put short, there is not enough detail provided in order to permit the taxonomy to be objectively useful to anyone. There is only minimal explanation as to how the impact of a project is categorised in the Assessment and no adequate reasoning for the categorisation. Without any such detail, the purported Assessment gives the impression that it is subjective and arbitrary in its approach to the categorisation.

The supporting spreadsheet entitled “Carbon Taxonomy Categorisation” also contains very little reasoning to justify the categorisation of projects.

Our clients’ view remains that the purported Assessment does not meet the Scottish Ministers’ statutory duty in section 94A(2) of the 2009 Act for the reasons outlined above. Put short, the purported Assessment appears not to be an assessment at all but, instead, appears to be a subjective view, unsupported by objective analysis of evidence.

Having drawn these issues to your attention, our clients invite the Scottish Ministers to review their position and take further steps to properly meet their statutory duty. Our clients reserve their rights to take legal action in relation to the purported Assessment and any future assessments.

Yours sincerely

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Partner
Balfour+Manson LLP