SCCS proposed amendments to the Planning Bill: Using planning to create better, low carbon places

1. Bring Minerals Planning legislation up to date to reduce barriers to peatland restoration

a. Limit the scope of compensation for restricting peat extraction rights

Scotland's peatlands have been recognised as one of our most important carbon stores and habitats and therefore they require strict protection. The Scottish Government supports the UK Government target for retail soil supplies to be peat-free by 2020 and for commercial horticulture to end peat use by 2030. Scottish Government has also set a target to restore 250,000 hectares of peatland by 2030. Despite significantly increased understanding of the importance of protecting and restoring peatlands for carbon and wider ecosystem benefits, and policies to phase out the use of peat in horticulture with clear target end dates, peat extraction in Scotland is still being consented with extraction being allowed into the 2040s.

Although planning policy has a presumption against new commercial peat extraction permissions, permissions are lengthy and sites can apply for approvals under ROMP (Review of Old Minerals Permissions) which act as a 'loophole' to this presumption against new extraction. Schedule 8 of the Town and Country Planning Act allows planning authorities to order the discontinuance of mineral extraction if is in the interests of their districts, but using these powers could trigger a claim for compensation by the holder of the extraction rights. Schedule 10 (periodic review of minerals permissions) provides that compensation provisions are applicable where working rights to minerals extraction are restricted as a result of new conditions (except for restoration or aftercare).
This in practice has been cited as a deterrent to planning authorities considering limiting the length or size of peat extraction sites, even where that peat extraction is clearly not in local interests or in the interests of achieving national climate or biodiversity targets. For example, in March 2017, Auchencorth Moss in Midlothian had a ROMP application approved which will allow it to extract peat until 2042, having been first consented in 1986. The site will extract up to 100,000 m^3 of peat per year, accounting for at least one-fifth of Scotland's total carbon emissions from peat extraction. It is adjacent to a protected SSSI where public funds are being spent to actively restore the bog.

This amendment would clarify that any calculation of compensation for restriction of working rights for peat extraction should assume there will be no UK retail market value for horticultural peat from 2020, and no commercial demand from 2030, in line with Scottish and UK Government policy. This could give confidence to planning authorities to consider restricting extraction in strategically important areas for restoration, by providing more clarity on the scope of compensation claims. It would not result in a ban of the sale of these products, but would prevent the claim of compensation on the assumption that there will still be demand beyond time periods (well known to the industry) where Governments have clearly set out expectations for damaging products to be phased out.

Amendment 339: Special basis for compensation in respect of certain orders affecting mineral working addresses the above issues and we ask members to support it.

b. Introduce a 'Sunset Clause' for old minerals extraction sites

The Planning Bill should simplify and clarify the process for Review of Old Mineral Planning Permissions by introducing a 'sunset clause' for old peat extraction consents, setting a time for all to be re-

activated or they expire. Around 0.5 million m^3 peat is still being extracted annually in Scotland[1], largely from lowland bogs, for the horticultural peat market, removing a carbon store that takes thousands of years to form, resulting in the loss of almost all biodiversity value on the site and other ecosystem services like flood management. Old permissions are lengthy and poorly regulated, with cases of lapsed permissions where peat has continued to be extracted for years post expiry.

Lowland raised bogs are a rare and special habitat[2] found mainly in central and eastern Scotland. Over the past 100 years, the area of relatively undisturbed lowland raised bog in the UK is estimated to have diminished by around 94%[3]. Lowland peatlands in Scotland are estimated to store 71 million tonnes of carbon[4], which if released would be equivalent to 20 years of our total transport emissions[5].

The Environment Act 1995 introduced a requirement for the periodic review of mineral permissions to bring them in line with modern standards. However, only 15 sites are known to have gone through this process and there is no mechanism to enforce these statutory requirements. It tends to be developers triggering the ROMP process voluntarily when they want to renew their consent, meaning that opportunities for inactive permissions to cease are not being realised. There is no centrally available information on any sites where planning permission has ceased to have effect. Extant permissions also act as a barrier to funding restoration through mechanisms like Peatland Action.

A 2003 report for SNH struggled to draw conclusions about progress with ROMP[6] having had difficulty obtaining information. A Scottish Executive Report[7] found that the review process had been subject to considerable delay, varying significantly between planning authorities. Similarly, a 2016 IUCN review found considerable data gaps. There remain a number of sites of unknown status.

Current procedures for the periodic review of mineral planning permissions (Schedule 10 of the Town and Country Planning (Scotland) Act 1997) put the onus on local authorities to publish lists of sites and review permissions every fifteen years. In the 23 years that these procedures have been in place, there has been ample opportunity for both site operators and local authorities to make use of the processes.

The new Planning Bill presents a logical opportunity to simplify this process, align planning with other areas of Government policy on peatlands, and set a clear end date for old minerals permissions by introducing a 'sunset clause'. This would mean that all companies with consents on Phase I or II lists, or any sites consented before 1982, would need to re-activate them by a fixed date or lose the consent permanently (restoration conditions would still apply). This would remove long-term uncertainty for important peatland sites and remove the burden on local authorities to instigate the process.

Amendment 338: Permissions ceasing to have effect for old minerals planning permissions addresses the above issues and we ask members to support it.

c. Automatically suspend sites lying dormant for more than 2 years

Schedule 8 (Old mineral workings and permissions) of the Town and Country Planning Act (Scotland) 1997 empowers a planning authority to assume that a minerals extraction site has permanently

[1] 2014 Mineral Extraction in Great Britain report
[2] https://scottishwildlifetrust.org.uk/2016/02/50-for-the-future-lowland-raised-bogs/
[3] http://www.gov.scot/Topics/farmingrural/SRDP/RuralPriorities/Options/LowlandRaisedBogs
[4] https://www.researchgate.net/figure/265086535_fig13_Figure-13-Distribution-of-carbon-stock-in-the-lowland-basin-peat-resource-in-Scotland
[5] Using 2016 figures: https://www.transport.gov.scot/publication/scottish-transport-statistics-no-35-2016-edition/SCT01171871341-16/#tb4
[6] Brooks, S. (2003) Commercial Peat Extraction in Scotland. Report for Scottish Natural Heritage
[7] Review of Old Minerals Permissions Research Findings, Scottish Executive Central Research Unit, 2002

ceased working when it has been dormant for 2 years, and to require the removal of machinery and restoration of the site. However, the onus is wholly on planning authorities to monitor whether sites are sitting dormant and does not prevent operators from leaving sites dormant for years then re-starting operations without the input of planning authorities.

This amendment would mean that where an operator has left a site dormant and ceased operations for two years or more, their planning permission is automatically suspended, and they need to proactively apply to the planning authority for permission to resume operations. This would put some onus on the operator to keep their permissions up to date and better enable planning authorities to become aware of dormant sites which might benefit from enhanced scrutiny.

Amendment 337: Automatic suspension of permissions for minerals sites addressed the above issue and we ask members to support it.

d. Clarify that nature conservation is an acceptable after use for minerals sites

This is a simple amendment which adds 'nature conservation' as a recognised after use of minerals sites. Currently, Schedule 3 of the Town and Country Planning (Scotland) Act 1997 sets out three potential 'uses' for land after being restored following mineral extraction: use for agriculture, forestry or amenity. Aftercare conditions are thereafter defined which relate to these three categories of use (e.g. in the case of forestry, the land is 'reasonably fit for that use')

This fails to recognise that for a number of minerals extraction sites, the most appropriate and locally desirable after use, and standard to which the developer should be required to adhere to, is for nature conservation. For example, restoration of peatland habitats for carbon storage, biodiversity and other ecosystem services. For more information on the potential for nature conservation benefits at minerals extraction sites see: **http://afterminerals.com/**

Amendment 336: Power to impose aftercare conditions addresses the above issue and we ask members to support it.

2. Ensure lifecycle carbon impacts of national and major developments are considered

It is important that decisions in housing and transport planning for example are based on comprehensive information regarding environmental impacts from infrastructure. Current practice is generally poor in terms of life-cycle considerations of energy use and contributions to climate change. Housing cannot be truly 'low carbon' for example if it is built where people have to commute long journeys by car. Scottish Government should consider how the planning system can be used to enable and support local decision-makers to explicitly weigh up the long-term costs and implications of climate change impacts of development proposals against potentially competing considerations such as shorter-term economic considerations.

Requiring that national developments (i.e. those identified in the National Planning Framework) and major developments (defined in Regulations, and would cover for example a housing development comprising of 50 or more dwellings) conduct a life-cycle GHG emissions assessment would help decision-makers make more informed judgements in weighing up project proposals and ultimately should lead to more sustainable development.

Amendment 331: Determination of application: assessment of environmental effects addresses the above issues and we ask members to support it.