

Opencast coal mining Moving towards more effective regulation

Summary

RSPB Scotland welcomes [the Scottish Government consultation on effective regulation of opencast coal restoration](#). This briefing summarises our response. The liquidation of two of the major mining industry operators in 2013 represents a significant regulatory failure and market failure. In order to ensure future open cast coal extraction takes place at minimal risk to Scotland's wildlife, communities and climate targets, the following measures are necessary:

- **Avoid consenting coal extraction in sensitive areas that are difficult to restore**
- **Provide a single, standardised mechanism to ensure developers pay for restoration in full**
- **Provide specialised support to Local Authorities from an independent, central resource**
- **Ensure robust monitoring and enforcement of sites using Mine Progress Plans (MPPs)**
- **Identify operators with poor restoration records at the licensing stage**
- **Transition to a low carbon economy and manage risks in a vulnerable, declining industry**

Over the last 20 years, RSPB Scotland has contributed significant voluntary input, working with operators and local authorities to try and minimise environmental damage of open cast coal mines. We have on occasion opposed individual sites, but have not questioned the integrity of the industry as a whole. We now consider that there needs to be a significant move away from the existing culture of 'light touch regulation', towards a more robust, precautionary regulation of a highly damaging industry which is in decline. Restoration of many sites has not happened as both the planning conditions and the value of restoration bonds, required to secure consents, were not adequately monitored. Some sites are within internationally designated areas for wildlife. **The funding shortfall has been estimated at £200 million, a significant regulatory and market failure, as the industry has not absorbed costs of environmental damage.**

Avoid consenting coal extraction in sensitive areas that are difficult to restore

Scottish Planning Policy (SPP) needs to be strengthened to provide more protection for the natural environment. Consents should only be granted for surface coal extraction proposals which are environmentally acceptable, and provide local or community benefits. Currently SPP states that open cast coal proposals should be environmentally acceptable or provide local benefits, which is unacceptable.

Open cast coal sites must avoid designated wildlife sites and other sensitive habitats, in particular, deep peat habitat - a significant carbon sink which takes thousands of years to form. Our experience is that where sites have been consented in sensitive areas, restoration has not been possible to the extent envisaged. For example, an extension was granted to the Grievehill site in East Ayrshire, within a designated wildlife site, on the basis that it was to be restored properly. This is now one of the sites where the bond is grossly inadequate. A Rochdale Envelope approach should be taken in future to ensure that all likely significant environmental impacts are considered as part of the application. This is now common practice in other major energy proposals and ensures that stakeholders are made aware of a reasonable 'worst-case' scenario.

Provide a single, standardised mechanism to ensure developers pay to restore environmental damage

RSPB Scotland strongly recommends that a single, standardised mechanism is introduced to fund restoration for future open cast mining, which ensures the industry pays in full without recourse to public money. This could be achieved through a 'pay as you go' ESCROW fund at Local Authority level, combined with an initial lump sum to ensure that an operator going into liquidation during the start-up phase would not leave significant liabilities. This would remove the key challenges associated with funding restoration

through bonds, where it is in the bond provider's interests to minimise the release of funds wherever possible, and Local Authorities lack capacity to monitor complex bond models.

We do not consider that the other measures proposed provide an appropriate level of assurance. It is also essential that no mechanism is introduced that embeds pressure for further extraction to ensure restoration of previous sites i.e. a 'just keep digging' approach. There must be a clear process by which sites are allowed to continue operating after insolvency, with any new operator adopting responsibility for restoration in accordance with approved plans, unlike the current situation with the transfer of Scottish Coal and ATH Resources sites, which are operating without sufficient guarantees in place. We believe that there would also be merit in establishing a publicly managed industry fund through a mandatory levy, in addition to a site based financial guarantee, to assist with legacy restoration.

Further consideration should be given in SPP to ensure restoration of **all development** that may face similar risks is securely financed, including onshore wind, landfill sites and unconventional gas.

Provide specialised support to Local Authorities from an accountable, independent, central resource

Whilst local government, as the planning authority, should retain responsibility for compliance monitoring, we support the proposal to create an Independent Compliance Unit (ICU) to provide specialist support in the determination and monitoring of opencast coal mines. Currently, Local Authorities lack the specialist knowledge (engineering, ecological and financial) for robust compliance monitoring. This input would be best delivered by a central body with the status of statutory consultee, to ensure high levels of objectivity and expertise. If this model was successful, it could cover other development types with similar issues.

Identify operators with poor restoration records via a 'fit and proper person' test at the licensing stage

RSPB Scotland strongly recommend that the restoration record of operators is considered when granting or transferring coal mining licences. This could be incorporated into the licensing function of the Coal Authority with advice provided by the ICU.

Ensure robust monitoring and enforcement of sites using Mine Progress Plans (MPPs)

We strongly support a central role for MPPs as a way of recording and formalising the phased restoration process. MPPs should provide a prediction of extraction and restoration progress against which progress is regularly monitored by qualified personnel. Clear processes are needed to detect variations from plans and ensure there are real sanctions if work deviates from the plan without permission. If operators believe that retrospective permission will always be granted, there will be little incentive to follow the MPP.

Transition to a low carbon economy and manage risks in a vulnerable, declining industry

Incredibly, the new draft SPP does not make a connection between fossil fuel extraction and the need for emissions reductions, which we consider to be incompatible with the Climate Change (Scotland) Act 2009. The UK coal industry is in decline, under pressure from global market conditions and as electricity generation moves to cleaner energy. SPP (and the National Planning Framework) should consider how to diversify the economy in areas with significant opencast mining. Although there will be a short-term role for coal and socioeconomic advantages to sourcing this locally, in addition to being vulnerable to economic pressures now, coal has no role in a sustainable, low carbon economy in the medium and long term.

A moratorium on new consents until an inquiry has established what went wrong

Incredibly, given the state of the industry, there are current planning applications for new sites and extensions. We believe there should be no new consents until outcomes of the consultation are implemented and an inquiry has taken place to establish what went wrong at a national level.

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