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Dear Mr Mitchell

Draft Scottish Planning (SPP)16 : Opencast Coal

ATH Resources plc directly employs over 160 people at its two opencast mines in East Ayrshire. With net annual wages of £3.75m (gross £5.14m) entering the local economy together with many millions of pounds worth of local and national goods, services and taxes, ATH has a significant effect on the local economy. Furthermore, with annual coal sales in excess of £40million from the two ATH sites alone into a market dominated by imported coal, it is possible to perceive the social and economic importance of the industry as a whole at both national and local levels.

It is against this background that we write to express our concern regarding the anti-opencast language and tone (and, perhaps, aims) of the draft revision to NPPG16.

At our meeting in October with Coalpro, The Coal Authority, other coal producers and Mr Denham and Ms Sterling from your Department, we were given to understand that the purpose of the draft review document was not to make any significant alterations to NPPG16 (which was generally considered to be fulfilling its purpose) and, that, it was not the Department's intention to make it more difficult to gain planning consent for opencast coal mining. On examination of SPP16 it is apparent that NPPG16 has been significantly amended and that the effect of these amendments will be to make it very much more difficult to gain planning consent.

If the Departments assertions are to be believed, then we will look forward to a more balanced review of NPPG16 which seeks to set out an even-handed view of the merits and demerits of opencast coal mining and seeks to control rather than prevent the continuation of a very valuable industry.

Apart from the general negative and anti-opencast tone of the document, the greatest specific problem is the twisting of the basic principle of planning that consent should be granted unless there are good reasons for refusal, to the new and negative presumption against consent (unless there are overriding reasons for granting). For political (rather than planning) reasons this inequitable policy was adopted in England in 1997 and it has since destroyed the industry there. Unless the Scottish Executive intends the same consequence in Scotland, it must not adopt the same policy. You have stated quite clearly that it was not intended to have that effect and, if that is the case, it is a simple matter to rewrite the policy.

The importance with which we view this negative policy cannot be overstated, but there are many other areas of the draft on which we would like to comment, and these comments are set out below.

Summary

This piece is written in highly prejudicial language. In the first sentence, whilst it is noted that coal fired electricity generation continues to have an important part to play, it is indicated that this is true only if carbon emissions can be reduced. This is not the case; for many reasons coal fired generation is essential rather than merely important, and this is the case particularly if emissions can be reduced rather than only if emissions can be reduced. The underlined words should be added.

The final sentence of the first paragraph would be given balance and clarity if the phrase 'Whilst indigenous coal production has clear economic and energy security benefits,' was added at the start and the phrase 'an individual mining' replaced the 'a' after 'whether'.

The second paragraph is unacceptable as it encourages belief in the inaccurate premise that opencast coal mining is 'significantly' different from other mineral extraction in a negative

way. This simply is not supportable as, although each mining operation is different in small ways, some of these differences are positive and some negative. For example:

- Unlike stone quarrying, opencast coal mining, because only 5-10% of the material excavated is actual product (the coal), an overburden mound is necessary and these can be visually intrusive (but are not always) for a temporary period. However, unlike quarrying, because most of the material excavated is not product, an opencast coal site is progressively restored, and, on cessation of mining, the overburden mound is replaced and no void is left (as bulking accounts for around 7-12% by volume)
- Leaving no permanent visual or landscape impact.
- Large mobile plant is used in all forms of extraction, but quarries have larger, potentially dustier fixed processing plant.
- The term of opencast coal sites is much shorter (which is why the operators have to spend so much time in the planning system to maintain a steady workforce and production level).
- A higher proportion of coal than quarry products is transported by rail.
- Employment levels on opencast sites are higher than on quarries.

In the fourth paragraph it is important to not only recognise the wider benefit to society of coal extraction, but also to recognise that it can only be worked where it occurs, by including the phrase 'whilst it is clear that coal can only be extracted where it occurs' after the word 'However,'. Also, it is important to clarify in some way the concept of "unacceptable" which is predisposed to entirely subjective interpretation. Rather than try to incorporate wordy clarifications into the sentence, it would be beneficial to incorporate the word 'environmental' as it is the communities' environment which policy seeks to protect. The phrase 'unnecessary and unacceptable environmental consequences' at the end of the sentence would achieve the desired clarity.

The first sentence of the final paragraph must make the distinction between negative and positive impacts by inserting the phrase 'otherwise unacceptable' prior to the word 'impacts'.

The sentence 'In all other cases, there should be a presumption against planning permission', must be deleted for the reasons discussed under paragraph 8 below.

Paragraph 3

This draft policy document is about opencast coal extraction so, to reflect the purpose of the document and to set the scene, the first sentence should say 'Indigenous coal makes an essential contribution to electricity supply in Scotland and the UK'. The second sentence is highly questionable as it appears to inaccurately belittle the importance of coal fired generation in comparison to other energy sources. With gas too expensive (and with similar emissions to coal), wind sporadic and small and nuclear expensive and troubled, coal is currently providing base load power throughout the UK.

Paragraph 5

Both Cockerzie and Longannet have retained the option to opt back in, so may well continue into the future. Also, with reference to the final sentence, it is worth noting that Scottish opencast production cannot realistically be expected to continue to play 'a significant role in total UK supply' if the 'presumption against' is retained as a planning policy.

Paragraph 6

Coal fired generation is not just important, it is essential if the nation is to meet consumers energy demands. The word 'essential' should replace 'important'.

Paragraph 7

The point of NPPG16 was to direct mining operations away from unacceptable areas to more acceptable areas. It is inevitable that mining activity is concentrated in fewer areas, as this is a direct consequence of the policy.

Paragraph 8

This is the most fundamental problem policy in the draft document. It simply cannot be permitted that the whole of opencast coal planning be allowed to rest on the negative principle of the presumption against. If the Scottish Executive is to be believed it is not their intention “that any significant change is being made through this suggested alteration, but it may be seen to address the concerns of those who would claim the Scottish guidance is ‘weaker’ than its English equivalent”. However, the change proposed is utterly fundamental and singles out opencast coal mining above all other forms of development for a negative treatment in policy. If it is truly not intended to make ‘any significant change’, then it will be simple to ensure that aim, whilst preserving the ‘two tests’, by using a positive policy as follows:

“In applying the principles of sustainable development and environmental justice to opencast coal extraction and in order to balance the energy needs of the nation against the potential environmental impact of coal extraction, the Executive’s policy is that proposals should be permitted only where they meet the following tests:”

This phraseology accords supreme status to the two tests without utilising the fatal negative ‘presumption against’.

With regard to the first bullet point, it is important to add a sense objectively to the word acceptable by preceding it with the word ‘environmentally’. Otherwise, an objector to a proposal may simply consider that finding the proposal unacceptable to himself is sufficient justification to requiring refusal which, of course, would be contrary to the system of Environmental Assessment which is enshrined in European as well as national legislation.

In the second bullet point it is important to qualify ‘impacts’ with ‘any unacceptable’ because if a proposal does not have unacceptable impacts, under the first bullet point, it should be permitted.

Also, whilst local and community benefits should be given great weight in these circumstances, it is not reasonable to completely discount wider benefits such as economic benefits which spread from local community level through county, regional and even

national levels and may be significant in scale. The phrase should be amended to read 'local, community and other benefits'.

The third bullet point introduces very restricted categories of 'benefit' by limiting acceptable benefit to clearance of derelict land and employment, whereas it is possible for other valid benefits to arise such as the creation of areas of community woodland or leisure use, sites for nature conservation or sites for employment or infrastructure development which could be of significant benefit to the local and wider community. Therefore, to recognise that not all valid benefits are listed the phrase 'will only arise in the following circumstances' should be amended to read 'will arise in the following circumstances amongst others'.

The third bullet point also includes the statement 'It is for the planning authority to decide whether there is sufficient environmental gain to allow consent to be granted', which gives rise to two issues. The first is that once the overriding policy of clause 8 is amended from the current draft negative to the more normal planning standard positive, the statement should be amended to 'sufficient environmental disbenefit for the application to be refused'. The second is that the statement implies that the planning authority's view in this area is final and unchallengeable, and it is not, therefore, permissible for a Reporter to take a differing view and overturn a planning authority's decision; this would be a high unusual position for the Scottish Executive to promote. If this is not the intention of the statement, then the sentence is redundant and should be deleted as the entire draft document is on the subject of planning authority decision making.

Paragraph 9

The opening sentence is phrased in unnecessarily negative and exaggerating language. It would be more accurate to state that opencast mining is "sometimes feared as an unwelcome environmental intrusion and nuisance, by some individuals living closest to where extraction is to take place". In our experience, the majority of local residents are quite indifferent to modern mining proposals as the normal range of modern environmental safeguards (regarding visual intrusion, noise, dust, traffic, blasting etc) successfully mitigate the potential negative impacts of uncontrolled mining. Of course, that majority varies in size from place to place and when a new proposal is brought forward there is often a vocal

minority which is fearful of the environmental impact of mining, but these individuals (or groups) are not always local to the development. With regard to communities rather than individuals, in our experience communities as an entity do not express opinions (except through elected members, who, of course, determine the planning applications), but could be broadly divided into 3 sets of opinion: those that are fearful of environmental impact and will register objections; those that are supportive because of jobs and other community benefits (but rarely register support); the majority who do not have strong opinions.

The remainder of paragraph 9 reflects normal practice for both operators and local authorities.

Paragraph 11

We have always considered arbitrary separation distances to be a poor approach to controlling the impact of mining operations on communities. The Environmental Assessment process is a long, complex, open and detailed analysis of environmental impact and should be relied upon by all parties to ensure that operations take place with only acceptable levels of environmental impact. To set arbitrary stand-off distances devalues the Environmental Assessment process. To an extent this is recognised in the detail of the final sentence of the paragraph, but in practice it is the headline 500m stand-off, not the detail that will be used at local level (which is similar to people's reaction to the 'presumption against'). In order to try to temper slightly any unnecessary effects of this policy, we believe it is important to make clear that the 500m stand-off should be between communities and working faces not boundaries as boundaries are often considerable distances from working faces (for example, at one of our sites, our own boundary is 700m from working faces because we are developing the bio-diversity of our non-operational farm land to enhance the restoration of the operational land once mining is complete. Within the 700m of non-operational land there are no noisy, dusty or visually intrusive activities taking place).

Also, whereas it is clear that increasing proximity will increase the severity of some potential impacts, it is an exaggeration to indicate that operations (let alone site boundaries) 'are likely' to pose a threat to communities. A more balanced and less scaremongering statement

expressing the same concerns would be 'As a general rule, working faces within 500m may give rise to unacceptable impacts on a community and are likely to be unacceptable'.

Paragraph 12

We believe that the guidance should continue to advise that communities should normally comprise more than 10 houses and a wider definition combined with an arbitrary 500m stand-off would prevent almost all future mining activity.

Paragraph 13

Again, an arbitrary distance is used to pre-judge the environmental assessment process. Apart from disagreeing with the policy in general terms we strongly object to the 5km distance as it is simply too large – at 5km the only possible negative impact to a community is transport, whereas the most likely impact is a positive one – employment. A more reasonable distance would be 3km, which East Ayrshire has successfully adopted.

In the assessment, other mineral extraction sites and landfill sites should not be singled for inclusion above other employment sites such as factories, out-of-town shops, hospital, construction projects etc. The concern raised by the research was that the Scottish Executive's current guidance was leading to a concentration of opencast coal mines, not a concentration of economic activity, which is what this draft policy is now seeking to prevent.

The policy also reinforces the requirement to ensure that 'community' is not too narrowly defined.

The penultimate sentence should be rewritten in slightly less prescriptive language using the more usual planning positive and, at the same time, should make the distinction between adverse impact and unacceptable adverse impact; 'Permission should only be granted if unacceptable adverse impacts cannot be adequately mitigated'. In this way the intention of the sentence is preserved and clarified, without losing its meaning.

Paragraph 19

We tend to aim restoration proposals toward nature conservation and community uses where possible and it appears that Government is also now encouraging farmers in that direction to some extent. Perhaps the benefits of restoring agricultural land to uses other than farming could be reflected in this policy.

Paragraph 21

To prevent the permanent sterilisation of valuable mineral reserves, Local Authority could consult the Coal Authority on surface development proposals prior to determination. More significantly, prior to designation of statutory protected areas like SSSI's or SPA's which tend to prevent minerals development over wide areas, perhaps the Coal Authority and the industry should be consulted in order to prevent the loss of valuable resources.

Paragraph 25

The suggestion that perceptions of harm, rather than a proper analysed examination of effects and impacts, could be material to determination in a dangerous and inequitable route to take and should be avoided. Apart from anything else, it would tend to make Environmental Assessment redundant and would put NIMBY attitudes at the forefront of planning decision making.

Paragraph 32

The final sentence seeks to determine against extension proposals without examining their merits and demerits. This is not a credible position to adopt and is probably borne from a misconception that industry deliberately brings forward small sites in the hope of gaining serial extensions over a number of years to the disbenefit of their residential neighbours. This is not the case, but may have been 30 to 40 years ago when the State controlled mining

licences and restricted their size to 25,000 tonnes in total. Modern mining is quite different, we are mining at rates more akin to 25,000 tonnes per week and will always seek consent for the largest possible reserve for reasons of security and efficiency. Nonetheless, extension opportunities very often occur at established sites for a variety of reasons such as variations in world coal prices making deeper reserves more economically viable, improved geological knowledge from actually working adjacent strata or simply further land becoming available through the passage of time and/or ownership. To extend a site it also often seems as advantageous to local authorities as it preserves a workforce using established infrastructure, transportation etc without the necessity of commencing a new operation. In some areas extensions are specifically encouraged.

Paragraph 34

This paragraph could also benefit from something of a rethink as there are benefits listed which are not really benefits and disbenefits which have a beneficial side. For example proximity can lead to negative impacts through noise, traffic etc, but also brings employment, clearance of derelict land etc – it is a matter of detail as to whether it is of overall benefit or disbenefit. Other potential benefits include energy production, educational and training benefits, employment, environmental improvements, use of local services and local/national economic benefits. The inclusion of perceived harm as a disbenefit is objectionable and contrary to any normal examination of the planning merits of a proposal.

Paragraph 36

It is unreasonable to single out opencast coal mining as the only form of development which is required to provide 'an overall benefit to those communities and environment directly concerned'. Under this policy coal (alone amongst minerals) has to provide an overall benefit (and only to locals) to gain consent when surely the test should be limited to 'acceptable impact'. Some level of impact on neighbours is inevitable in all development; the aim of planning control is to ensure that the negative impacts are acceptable either because of their scale or duration or because they are counterbalanced by positive impacts,

the balance of which is sufficient to grant consent. Requiring a bald overall local benefit is not justified elsewhere in planning.

The second bullet point regarding extensions is subject to our previous comments.

With regard to the third bullet point, if a mine is large enough to last over 10 years and sufficiently distant and low impact to gain consent, it is utterly perverse of the Executive to direct that it should not be permitted when it can provide employment and stimulate the local economy for a significant and useful period. If such a mine could be found, it should be encouraged and celebrated.

The fourth bullet point regarding cumulative impact should not include sequential working as, once restored, opencast sites should not be part of the equation.

The fifth bullet point should relate to 'national' not 'any' designation or site.

Paragraph 37

The intentions of the first paragraph appear sensible, but who is to fund the local authorities to carry out the necessary research to make a balanced and considered judgement. Their role tends to be to determine definite proposals, not conjure up alterations.

Paragraph 38

There are always significant issues because the nature conservation interest on derelict land is invariably high (because nature has been allowed to get on with it without the intervention of man) and on all other sites landscape impact is an issue. In order to bring some balance to the policy, the words after 'conservation interests' should be replaced by 'are designated at a national level'.

Paragraph 40

This policy is very negative and anti-opencast. Firstly, it is false to suppose that opencast mining adversely affects local investment. In fact the converse is likely to be true – a large opencast site will generate over £50 to £100 million over its brief life, the majority of which is spent locally. If this level of economic activity is sustained and repeated, local investment will follow in terms of provision of goods and services ranging from cleaning and security services at the lower end to provision of major transport facilities such as rail transshipment sites at the other. Also, surely it is not the role of the Scottish Executive to favour tourism and recreation above coal extraction – even if the two industries are mutually exclusive (for which there is no evidence). Furthermore, to suggest that evidence against opencast coal mining should be sought from the LEC simply aims to encourage an anti-opencast view from the outset. This paragraph should be deleted.

Paragraph 53

Bonds are widely used in Scotland, but not in England, with no apparent ill effects. Bond provision is very expensive and should be kept to a minimum where possible.

Paragraph 66

The final bullet point is unnecessarily prescriptive as it does not take into account coal that is not yet mapped, of which there is likely to be quite significant quantities. If there is no allowance made for this coal, then it will remain unworked even if its extraction is merited on environmental grounds.

Put together, the Scottish Executive's draft policy's with regard to duration of sites, cumulative working and sequential working and no extensions, make it impossible for coal producers to maintain any continuity of stability of workforce, production or investment and its new ambitions regarding stand-off distances, community size, perceptions of harm and

(most significantly) a presumption against planning consent indicate that the industry future is now limited to those sites already consented. It is therefore of the utmost importance that the Executive listens to the concerns of the industry and rethinks SPP16.

Yours sincerely

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