

Matter 8 Written Statement – RSPB

Dear Ian

I'm emailing to confirm that the RSPB wishes to rely on its letter to Somerset County Council dated [11 April 2014](#) as its submission to the forthcoming Examination.

We have looked at the proposed amendments by SCC to the draft Minerals Plan and wish to withdraw our objections to the paragraphs highlighted in yellow in the attached [11 April](#) letter. This is because of the proposed amendments ref 46 and 47 respectively.

Yours sincerely

Richard Archer

Somerset & Severn Wetlands Conservation Officer

Guy Robinson
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11 April 2014

Dear Guy

Pre-submission Somerset Minerals Local Plan

Introduction

Thank you for seeking the RSPB's views on the Pre-submission Somerset Minerals Plan ('the Plan'). Our main interest in the Plan relates to its effectiveness in regulating the impacts and site restoration plans of the Somerset peat industry, particularly in relation to:

- The internationally designated Somerset Levels & Moors Special Protection Area (SPA) and Ramsar site, and functionally-linked areas in the Brue Valley;
- Other European and UK BAP priority habitats and species in the Brue Valley;
- European priority habitats and species at peat procurement sites in NW Europe;
- Its ongoing contribution to climate change effects in Somerset.

Our comments on non-peat aspects of the Plan are included in an appendix.

We have made detailed representations at various stages of the Plan development since 2009. However, we retain fundamental reservations about aspects of the Plan, especially the draft peat chapter and the accompanying Habitats Regulations Assessment (HRA). These concerns relate to the following issues which we expand on below:

- The Plan's interpretation of national peat policy regarding time extensions on existing peat sites;
- The lack of robust data on existing peat reserves, stockpiled material and annual sales;
- The lack of robust ecological data on functionally related land outside the SPA/Ramsar site;
- The lack of a key diagram or similar which a.) clearly identifies those individual peat sites outside the designated area which would be included in proposed 'time swaps' with the European site (where under the Reg 63 review process your authority might seek to trade

peat permissions within the Natura 2000 site for time extensions to existing peat sites outside the designated site), and b.) provides adequate details of the proposed time swaps;

- The lack of an ‘afteruse zonation map’. Such a map should set out spatially the proposed peat site restoration and afteruse zones within the Plan, and build on previous Somerset minerals plans which included this strategic approach. Such a zonation map must be included in the Plan in order to ensure strategic planning of the creation of priority wetland habitats, to minimise conflict between competing adjacent land uses, and to prevent the establishment of inappropriate land uses which may harm the SPA/Ramsar site and functionally-linked areas;
- The lack of a key diagram or similar which would a.) identify those individual peat sites outside the designated area which would be included within the scope of SMP6 for generating ‘significant net environmental benefit’, and b.) provide adequate detail of the proposed benefits in relation to their contribution to the wider wetland network in the Brue Valley and in particular to the functionally-linked habitats which support the SPA/Ramsar site;
- The unsoundness of the HRA’s conclusions with regard to the impacts of the Plan’s proposed approach to peat on the SPA and Ramsar site, and the proposed deferment of the full Reg 61 impact assessment to a lower tier plan which currently does not exist;
- The workability of SMP6 given:
 - The lack of robust peat data (see above);
 - SCC’s poor track record in enforcing a high standard of restoration and afteruse conditions on peat permissions;
 - The lack of progress in completing the Regulation 63 review of peat permissions within the European site;
 - Concerns over SCC’s capacity to police and enforce a ‘no net increase’ in the volume of peat extracted under proposed policy SMP6;
- SCC’s proposed approach to offsetting.

We conclude that the Plan as currently set out, and the accompanying HRA, is likely to be unsound on the issue of peat.

National peat policy on time extensions

We believe it is important to recognise that any proposed time extension on an existing peat site would require a new planning permission since time conditions on mineral permissions cannot be treated like ordinary S.73 conditions under the Town & County Planning Act.

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Chat Moss

The Plan's interpretation of time extensions in the NPPF depends heavily on what was said by the Inspector and Secretary of State (SoS) at Chat Moss. Both stressed a requirement for the appellant to demonstrate a **compelling need for peat** if further consideration was to be given to time extensions on existing sites. It is clear from national policy statements that government does not foresee any need for further indigenous peat extraction to meet anticipated demand to 2030. We feel that the comments by the Secretary of State and the Inspector are therefore inconsistent with government policy on peat.

One could seek to interpret the Secretary of State's comments as not precluding new planning permissions on existing peat sites for reasons other than peat extraction, eg net biodiversity gain, but the SoS clearly does not say this. In his letter dated November 2012 he simply says that:

*The Framework does not preclude planning permission for **continued peat extraction** on sites that have already been worked for peat. Careful consideration needs to be given to each site looking at the implications for climate change and biodiversity in particular.*

The SoS at Chat Moss referred to 'continued peat extraction' in his decision letter and this, by implication, clearly means extraction for the purposes of selling commercial peat. We believe therefore that the Plan cannot rely on the Chat Moss case to support time extensions on existing sites for non-peat extraction reasons.

Further, we disagree with the Chat Moss Inspector's 'common sense' interpretation that site extensions should only relate to physical extensions in the NPPF. Given the clear direction from government that there is no need for additional peat reserves, it follows that any time extension (which, by implication, would be likely to lead to a net increase in peat extraction) would be contrary to government policy.

We note the statements in the peat chapter at paras 8.15 and 8.16, which we believe are erroneously attributed to the Chat Moss Inspector.

Further government guidance

Government has yet to fully clarify the position of the NPPF regarding potential time extensions on existing peat sites. CLG has recently withdrawn its proposed guidance on the matter, pending further consideration of key policy issues. We welcome this, given the likely policy conflicts between the draft online guidance, which sought to support time extensions under certain circumstances, and other policy guidance, including that in the Natural Environment White Paper, which suggests that time extensions on existing peat sites do not accord with government policy to phase out indigenous peat production by 2030.

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The current national demand situation

The latest available Defra peat monitoring report (2012) shows a continued decline in the use of peat in the UK. Growing media sales fell by 12% between 2011 – 2012, from 4.47 to 3.95 million cubic metres, with the peat proportion falling from 58.2% to 51.2%. Retail bagged peat fell by 14%, over this period and horticultural use fell by 7%.

Further, B&Q, the UK's largest garden retailer, has recently switched its bedding plant production away from peat, showing that peat can be replaced at the commercial scale. Across the UK, its garden centres will sell around 80 million plants in the next few months based on growing media which is 95% to 99% peat free. This is a major step forward: peat is now shown to be unnecessary at significant volume in a key horticultural sector, with clear implications for wider change by industry and gardeners. This initiative challenges industry claims that wide scale peat use is essential for horticulture, and even that its extraction for gardening can be justified. Looking at the facts, B&Q found that peat use causes serious environmental problems, and has decided to end its use by adopting alternative materials.

Conclusion on time extension policy

Given the lack of clarity from government regarding time extensions and the continuing decline in peat sales nationally, we strongly recommend that you do not adopt the principle of time extensions within the current Plan, but seek to review this position once there is a clear government policy, using the plan review process to update any peat policy. In the meantime, therefore, we must **OBJECT** to the Plan supporting the principle of time extensions for peat permissions in Somerset.

The 'Somerset question'

We note the lack of conclusion within the Plan regarding this. It is clear to us that there is no question of Somerset having a special case for continuing peat extraction. The RSPB strongly rejects the argument that the peat industry in Somerset should be treated differently from the rest of the UK. Continued extraction in Somerset exacerbates greenhouse gas emissions, encourages further imports of peat for milling from other parts of Europe, and frustrates the move from peat to non-peat media. We therefore **OBJECT** to the lack of a similar conclusion in the Plan given the clear direction of government policy on this environmentally damaging and unsustainable industry.

Data on existing peat stocks & sales

We welcome and **SUPPORT** the statement at para 8.19 that your estimates of current reserves indicate that stocks already exceed the requirements for the predicted demand for the plan period.

We further welcome and **SUPPORT** the statement that time extensions will therefore not be granted on the basis of the need for peat (para 8.19). We are concerned at the lack of data from the peat industry on permitted reserves, and note that any revised figures from them may leave the door open to a challenge to your authority to permit time extensions on existing sites on the basis of

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'need'. It is therefore important that the principle of time extensions is not adopted in the Plan (see above), pending clarity by government.

We are concerned at the lack of independently-verifiable data from the MPA, and seek clarification from you as to why your authority does not seek to access annual sales data from the British Geological Society's annual yearbook minerals report, or via tax returns through HM Revenues & Customs.

Draft policy SMP6: Peat & associated text

The RSPB understands the direction of this draft policy and shares the objective of landscape scale restoration of peat sites for greater environmental benefit. Indeed, the RSPB's commitment to work with peat producers in the Avalon Marshes led to the development of the Ham Wall wetland reserve. We remain, with others, frustrated at the lack of ambition on the part of the peat industry to assist in the greater landscape scale vision and the development of green tourism opportunities which this would provide.

We recognise and share the desire to see better restoration and afteruse conditions on 'legacy sites', ie. those sites where restoration and afteruse conditions drawn up at the time of planning consent are now inadequate.

However, we have fundamental reservations about this policy and associated text. We **OBJECT** to SMP6 in its entirety and wish to see it removed on the grounds summarised below:

1. We **OBJECT** to the proposal at para 8.22 that it may be possible to allow a 'small additional area' to be worked as part of a net-gain environmental package. It is absolutely clear from the NPPF that no permission should be given for extensions to existing sites;
2. We do not agree that there are any 'exceptional circumstances' when grant 'planning permission for peat extraction on an existing site' is acceptable (para 8.21). The SoS at Chat Moss referred to 'continued peat extraction' in his decision letter and this, by implication, clearly means extraction for the purposes of selling commercial peat. We are not aware of any government policy which currently would allow new planning permissions for peat removal on an existing site to facilitate other measures;
3. Read on its own, it is not clear that SMP6 only refers to possible time extensions and not to spatial extensions of existing sites;
4. Policy SMP6 does not provide an adequate definition of 'significant net environmental benefit':
 - a. 'Managing water levels' is too vague an objective, and is not necessarily compatible with nature conservation;
 - b. As worded there is a danger that all schemes proposed under SMP6 could be carried out solely for flood relief purposes on such sites: this is a very different driver to nature conservation, and it is not at all clear how water management/flood resilience might or might not benefit priority habitats and species;

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- c. Further, 'water management' and 'flood resilience' may not lead to sustainable outcomes - we are aware of at least one draft flood relief scheme in the Brue which seeks to provide flood relief for maize grown on peat soils: in our view, it is totally inappropriate to seek to develop a flood relief scheme on an existing peat site for this purpose;
- d. Existing ROMP and Habitats Regulations mechanisms provide the means to set appropriate afteruse and restoration standards both within the SPA/Ramsar site, and outside it; it is critical that these mechanisms are not short circuited or undermined;
- e. In principle we welcome the intention to ensure there would be no net gain in extracted peat under this policy. However, we do not accept that your authority has the long-term ability to adequately monitor and police such permissions, and therefore to ensure that there is no net gain arising from such permissions;
- f. Policy SMP6b remains too loose – there would need to be a guarantee that any removed peat is not taken off site, stockpiled and/or sold commercially.

We wish to see a replacement peat policy to SMP6, with the following rewording:

“Permission for further peat extraction will not be granted under any circumstance.”

We welcome recognition at para 8.23 of the carbon impacts of peat extraction. However, in their current form these statements only refer to proposed future permissions which accord with the draft policy SMP6. We therefore **OBJECT** to this paragraph, which would be much more productively focussed on addressing the carbon impacts of current permissions as they stand.

Afteruse of peat sites

In our view, the priority for peat void restoration in the Brue Valley must be for priority wetland habitats and species, including reedbeds. We therefore welcome and **SUPPORT** para 10.17 which states that the main afteruse for peat sites will be nature conservation.

As stated above, we **OBJECT** to any afteruse which has the primary objective of flood relief or the unspecified objective of 'water management'. It is unclear from this paragraph which other schemes, apart from those promoting nature conservation, would be granted planning permission, so we remain unsure about the final sentence of this paragraph, which seems to us to confuse things. In particular, we would not be happy with the promotion of additional fishing lakes in close proximity to core nature conservation areas, or the prioritisation of the creation of fishing lakes over nature conservation on sites where the creation and/or use of priority wetland habitats would be constrained because of issues around disturbance, inappropriate habitat management and the introduction of predatory or non-native fish species. We therefore must **OBJECT** to this sentence as it currently stands, and strongly recommend that the Plan includes an 'afteruse zonation map' setting out the proposed restoration zones by priority afteruse, in order to optimise nature conservation in a way which minimises possible conflicts.

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Similarly, para 18.14 is not entirely adequate in that it should recognise specifically the potential impacts of other afteruses on designated wetland sites, especially the SPA/Ramsar site and SSSIs, not just 'the local environment' We therefore **OBJECT** to this paragraph as it currently stands.

Use of Reg 63 to revoke/modify existing peat permissions

It is unclear from para 8.29 whether your authority will continue to seek to address the Regulation 63 sites issue solely through the compensatory pathway or whether it may delay this indefinitely in order to seek to trade peat permissions within the Natura 2000 site for time extensions to existing peat sites outside.

Circular 6/2005 suggest that means other than compensation should be first tried in such cases, yet we believe that 'time swaps' between the SPA/Ramsar site and extant peat sites outside the designated area may lead to unacceptable damage to functionally-related habitats and, in the absence of clear guidance from government on time extensions, are not supported by national policy. Further, as with policy SMP6, we believe there is a serious capacity issue within your authority to police and enforce such agreements, making this approach very unsafe and potentially unworkable. We therefore **OBJECT** to the current wording of this paragraph and the time swap approach suggested.

It is not clear from para 8.33 how long the Reg 63 review has been going on for, nor what your authority considers to be a reasonable period for this review. We wish to see a clear statement in the Plan about the timescales for completion of the review, and **OBJECT** to a lack of information on this critical issue.

Delivery of strategic locations

Notwithstanding our comments above, and without prejudice to that position, it is clear that the Plan does not identify the locations for the proposed 'time swaps' between the SPA/Ramsar site and existing peat sites outside the designated area, nor does it identify those sites for 'significant net environmental benefit'. Resolution of these matters, especially the ongoing issue of extant peat permissions within the SPA/Ramsar site, is strategically important, and the Plan should clearly identify all the relevant sites through key diagrams supported by data on proposed time extensions, and in the case of SMP6, sites where significant net environmental benefit is proposed, the proposed benefits, and habitats and species gains in the context of the wider ecological network and conservation objectives for the SPA/Ramsar site. None of this is provided in the current draft Plan. We therefore have no option but to **OBJECT** to the lack of this strategic information which is essential to give greater clarity and certainty of outcomes, and for the Plan to be sound. Further, it would be unacceptable for this strategic process to be led in an *ad hoc* way by the peat industry, as and when it wishes to discuss a scheme with your authority.

We further **OBJECT** to policy SMP8 because of a lack of an 'afteruse zonation map' setting out the proposed restoration zones by priority afteruse within the Plan, for the reasons outlined above. It is

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critical that such a zonation map is included in the Plan in order to create certainty over the delivery of priority wetland habitats, to minimise conflict between completing adjacent land uses and to prevent harmful and inappropriate afteruse in this sensitive and internationally important area.

Monitoring

We are concerned at the stated lack of accurate and up to date information from the peat industry on permitted peat reserves, stockpiled material and annual sales. It is absolutely critical that a robust monitoring framework is in place for the Plan, and without accurate and up to date information provided through the full cooperation of the peat industry, it is difficult to see how your authority can safely implement SMP6 (para 8.36).

It is critical that the industry cooperates with your authority in providing accurate figures on:

- Current volumes of accessible permitted reserves, detailed for each extant peat permission;
- Current levels of stockpiled material by producer;
- Current and annual sales by producer over the past 10 years;
- Trends over the last 10 years and current volumes of peat imported for milling from Eire, the Baltic and other locations. As part of this information, it is important that the industry provides a breakdown of imported peat volumes from each source;
- Trends over the last 10 years and current output of non-peat alternatives in Somerset by peat producer.

The Habitats Regulations Assessment (HRA)

We believe the HRA is unsound, and that your authority cannot rely on its conclusions in order to implement SMP6 or the proposed time swaps between the SPA/Ramsar site and peat sites outside the designated area. We **OBJECT** to the HRA on the following grounds:

1. There is not an adequate baseline of ecological information on existing peat sites outside the SPA/Ramsar site. It is therefore not possible to confidently assess the impacts of potential time extensions on strategic sites, or to assess the impacts of proposed enhancement schemes (especially those whose primary purpose might be flood relief) on existing habitats and species of BAP importance, or SPA/Ramsar species for which these sites provide an important functional link;
2. The HRA does not appear to recognise the importance of non-Ramsar peat sites for Ramsar invertebrates;
3. Given the lack of identification of strategic sites in the Plan (see above), it is impossible to provide a robust assessment of effects;
4. The HRA rightly concludes that the cumulative impacts of the general policy proposals are uncertain, but then suggests that these matters should be left to a lower tier plan. We fundamentally disagree with this approach: firstly because the SMP is clearly a plan within the definition provided under The Conservation of Habitats and Species Regulations 2010,

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and is therefore subject to full examination under Regulation 61 (as many other 'higher level' plans have been in the UK); and secondly, because no lower tier plan is referred to in the Plan (eg a sites allocation document).

The Plan's proposed approach to offsetting

We are very concerned that your authority proposes to use its own offsetting methodology as the sole basis for assessing and implementing offsetting measures for any time extensions or 'environmental benefits' to existing peat permissions, or for that matter, other non-peat mineral schemes in the county (paras 14.8 & 14.9 and table 7 'Reclamation Checklist'). In particular, it is clearly not acceptable under The Conservation of Habitats and Species Regulations 2010 for your authority to seek to apply offsetting metrics to qualifying features within a European or Ramsar site, nor we suggest, is this appropriate to apply to existing peat sites outside the SPA or Ramsar site which may be used by SPA/Ramsar species or their assemblages. We feel obliged therefore to strongly **OBJECT** to the use of your offsetting methodology in the Plan.

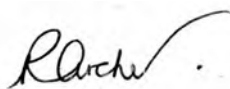
Conclusion

We remain confident that this is a time of significant change in the direction of peat planning policy in Somerset, and we welcome the partial recognition of this in the Plan. Yet the current version of the Plan contains a number of fundamental weaknesses which have not been addressed through successive Plan iterations, despite considerable input from the nature conservation NGOs. We believe the Plan in its current form fails the test set out in para 2.4, to provide a clear picture of the future and give greater certainty about peat extraction.

We have to conclude that currently this Plan is unsound and not fit for its 21st century purpose with regard to peat, and fails to conform to government policy.

We would also refer you to our joint response with the Somerset Wildlife Trust to Guy Robinson, dated 5 December 2013. This follows a request for further comment from us following the peat workshop of June 2013.

Yours sincerely



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Appendix - comments on non-peat policies and text within the Plan

Vision & plan objectives

We **SUPPORT** the draft Vision.

We **SUPPORT** Objective D, which seeks to ensure that mineral sites are restored to high environmental standards at the earliest possible opportunity.

We **SUPPORT** Objective H which seeks to protect Somerset's natural environment from adverse impacts associated with the minerals industry.

Paragraph 5.2 is inadequate in that it fails to identify internationally important nature conservation sites as well as nationally important ones. All relevant Special Protection Areas, Special Areas of Conservation and Ramsar sites should be included. Any assessment of impacts on these sites should be carried out under The Conservation of Habitats & Species Regulations 2010, in accordance with the tests set down in Regulation 61.

Aggregates

Para 6.56 and 6.58 invite the possibility of further planning applications for new permitted reserves beyond those identified in the Plan. In our view, all planned reserves within the plan period should be identified now, and there should be no need for further expansion within the Plan period.

The lack of certainty in this regard undermines the soundness of the Plan for aggregates, and also critically, the HRA with regard to potential impacts on SAC habitats and critical SAC species such as greater horseshoe bats in the Mendip Hills. We are therefore concerned that the Plan is not able to conclusively assess whether the aggregates policies and accompanying texts may or may not adversely affect greater horseshoe bats through, for example, destruction or fragmentation of feeding areas and corridors of movements between roosting sites and maternity sites. We must therefore **OBJECT** to the lack of certainty of impacts on Mendip Hills SACs sites, and therefore also to policy SMP3.

Shale gas extraction

We note that areas covered by the current round of PEDL Licences include some highly sensitive nature conservation sites and areas, including Chew Valley SPA. In addition, we note that PEDL 225 Fairfax has the potential to impact the Brue Valley, which includes part of the internationally important Somerset Levels & Moors SPA and Ramsar site.

The RSPB is not entirely assured by the wording in the Plan regarding the proposed approach to potential shale gas extraction. We expect to see the highest standards of environmental impact assessment required for any application for shale gas extraction within the county, especially where proposals may impact European and Ramsar sites. In addition we expect your authority not to grant permission for shale gas extraction where there is a risk of an adverse impact on any such site. We

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therefore **OBJECT** to the current wording within the text, which does not currently reflect the strongest commitment to the protection of these sites. We also **OBJECT** to policy SMP7 for the same reason, and want to see European and Ramsar sites specifically mentioned in the policy as the most important sensitive nature conservation receptors, requiring the most robust assessment in any shale gas application.

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