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All Heads of Planning

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Dear colleague

COMMERCIAL EXTRACTION OF PEAT

Concerns were raised about the uncertainty surrounding the status of historical peat extraction sites during consideration of the Planning Bill. The Minister for Local Government, Housing and Planning has asked me to remind planning authorities of the powers available to them to deal with the issue.

Powers were introduced in the 1990s to ensure that old mineral permissions were subject to regular review. As part of these procedures, planning authorities had to prepare a list of all dormant and active sites in their area, where permission was granted before 22 February 1982. This list was then advertised to give mineral owners an opportunity to ask for inadvertently omitted sites to be included, otherwise their planning permission ceased to have effect.

All active sites on the list were then subject to the review procedures now set out in Schedule 9 of the Town and Country Planning (Scotland) Act 1997. Dormant sites were prohibited from commencing operations until a new scheme of conditions was submitted to, and approved, by the planning authority. Further guidance on these procedures is set out in *Circular 34/1996: Environment Act 1995: Section 96 – Guidance on the Statutory Provisions and Procedures*¹.

The concerns raised in the Scottish Parliament relate to peat sites that are either classified as dormant or where no extraction has taken place for some time. In such cases, there is potential uncertainty around the future intentions of the operator and the status of the land.

The Scottish Government resisted further legislation in this area because it believes that the existing order making powers available to planning authorities are sufficient to deal with the issue. In particular, paragraph 3 of Schedule 8 to the 1997 Act enables planning authorities

¹www.gov.scot/publications/planning-circular-341996-environment-act-1995-guidance-on-statutory-procedures/

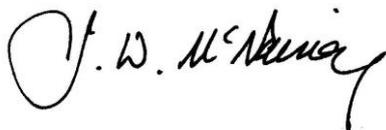
to make orders prohibiting the resumption of minerals development if no development has been carried out to any substantial extent for a period of at least 2 years and where, on the evidence available, it appears that development is unlikely to resume. The intention of these orders is to establish without doubt that minerals development has ceased, to ensure that development cannot resume without a fresh grant of planning permission and to secure the restoration of the land. Further guidance on the use of prohibition and other orders is set out in *Circular 3/1999: The Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) (Scotland) regulations 1998*².

The Scottish Government believe that existing prohibition order making powers provide the due process for extinguishing planning permissions and that wider use should be made of these powers in respect of peat sites where resumption of development is unlikely. Compensation is less of an issue with prohibition orders since the value of the mineral that cannot be worked is not taken into account when calculating the amount of compensation payable.

On a related peatland issue, you may be aware that *Protecting Scotland's Future: The Government's Programme for Scotland 2019-20*³ sets out many important priorities for tackling climate change. This includes a move towards phasing out the use of peat for horticultural purposes. Future work in this area would greatly benefit from a better understanding of the location and scale of existing planning permissions for peat extraction. I will shortly be writing separately to those Councils who might be able to assist with improving our understanding of extant consents and your assistance in this work would be greatly appreciated.

Should you wish to discuss any aspect of this letter further, please contact Ian Mitchell on 0131 244 7705 or e-mail ian.mitchell2@gov.scot.

Yours sincerely



JOHN McNAIRNEY

Chief Planner

² [Circular 3/1999: Town And Country Planning \(Compensation For Restrictions On Mineral Working And Mineral Waste Depositing\) \(Scotland\) Regulations 1998](#)

³ [Protecting Scotland's Future: The Government's Programme for Scotland 2019-20](#)