

Government Consultation on:

**Compulsory Community Pre-application Consultation for Shale Gas
Development.**

Summary

1. On 17 May 2018 the Government published a Written Ministerial Statement on Energy Policy (WMS2018). WMS2018 stated the Government remains fully committed to making planning decisions faster and fairer for all those affected by new development, and to ensure that local communities are fully involved in planning decisions that affect them.
2. Specifically, WMS 2018 set out an intention by Government to consult on:
 - a) That non-hydraulic fracturing shale gas exploration development should be treated as permitted development, and the circumstances in which this might be appropriate;
 - b) the criteria required to trigger the inclusion of shale gas production projects into the Nationally Significant Infrastructure Projects regime; and
 - c) the **potential to make community pre-application consultation a statutory requirement.**
3. We have previously responded to the first two consultations which were the subject of a report to the Executive Member's Decision Session on 22 October 2018. We append this for information as Annex A.
4. The consultation addressing this final matter was published by the Ministry of Housing, Communities and Local Government (MHCLG) on 31 October 2018. The closing date for responses to the consultation is 7 January 2019. This consultation seeks views on whether applicants should be required to conduct pre-application consultation with the local community prior to submitting a planning application for shale gas development. It covers the following areas:

- (1) Whether community pre-application consultation should be compulsory prior to submitting a planning application for shale gas development.
 - (2) Whether compulsory community pre-application consultation for shale gas development should follow one of the existing processes, or some other process.
 - (3) Defining what shale gas development should be subject to compulsory community pre-application consultation.
5. Currently applications for these forms of development require the submission of a planning application for determination by the relevant minerals planning authority (in this case City of York Council). These applications would then be assessed against the relevant national and local policies including the emerging York Local Plan and the Joint Minerals and Waste Plan. Applicants have the opportunity to challenge any decision made by the Local Planning Authority through the appeals process.
6. The Executive Member will be aware that this consultation is running in parallel with finalisation of the Minerals and Waste Joint Plan (MWJP) for North Yorkshire, York and the National Park, which will set out a new local planning policy framework for hydrocarbons development, including shale gas. The Examination in Public for the MWJP concluded in April 2018 but following the publication of WMS2018 on 17 May 2018 and MHCLG's Select Committee Report: Planning Guidance and Fracking on the 5th July 2018, the Inspector has asked the joint authorities to undertake consultation on both and respond to the Inspector. The joint response was sent to the Inspector on Monday 19 November 2018. The Inspector has now asked for an additional hearing session to be programmed for January 2019.

Recommendations

The Executive Member is asked to:

- 1) note the Government consultation on compulsory community pre-application consultation for shale gas development

Reason: To allow officers to respond to the Government consultations prior to the deadline of 7 January 2019.

- 2) approve Option 1: endorse the views set out in the 'Suggested Authority response' which align with the Council submitted Joint Waste and Minerals Plan sections of the report and agree to their submission to

the Ministry of Housing, Communities and Local Government and Department for Business, Energy and Industrial Strategy as relevant.

Reason: To allow officers to respond to the Government consultations prior to the deadline of 7 January 2019.

Background

Minerals and Waste Joint Plan

7. The Minerals and Waste Joint Plan (MWJP) is being produced by North Yorkshire County Council (NYCC), the City of York Council (CYC) and the North York Moors National Park Authority (NYMNP). It will contain planning policies for minerals and waste developments in the Plan area until 31 December 2030. The preparation of the MWJP has included a number of consultations to gain the views of interested parties and stakeholders which have contributed to the overall development of the plan. This has been in line with each Council's Statement of Community Involvement (SCI).
8. The Minerals and Waste Joint Plan was submitted for Examination in November 2017. All of the Examination documents can be found using the following weblink: <https://www.northyorks.gov.uk/minerals-and-waste-joint-plan-examination>. The Secretary of State appointed Inspector Elizabeth Ord LLB (Hons) LLM MA DipTUS to conduct the examination which started in February 2018 with public hearing sessions with the Inspector in February, March and April 2018.
9. The submitted MWJP includes relevant policies to these government consultations. The relevant policies include:
 - **Policy M16: Key spatial principles for hydrocarbon development**
 - **Policy M17: Other spatial and locational criteria applying to hydrocarbon development**
 - **Policy M18: Other specific criteria applying to hydrocarbon development**
 - **Policy D01: Presumption in favour of sustainable minerals and waste development**
10. The above policies have been amended through the Examination hearing sessions to date. See Annex B for a copy of the policies in the Publication Draft Minerals and Waste Joint Plan (November 2016), Addendum of Proposed Changes to Publication Draft (July 2017) and

Schedule of Additional Changes & Draft Main Modifications to the Publication Draft.

11. Following the hearing sessions on 17 May 2018 the Government published a Written Ministerial Statement on Energy Policy (WMS2018) and the Select Committee Ministry of Housing, Communities and Local Government's Select Committee Report: Planning Guidance and Fracking on the 5th July 2018 the Inspector has asked the joint authorities to undertake consultation on both and respond to the Inspector. The Joint response was sent to the Inspector on Monday 19 November. The Inspector has asked for an additional hearing session to be programmed for January 2019.
12. Once hearing sessions have concluded, the authorities will undertake a modifications consultation on these amendments. The responses to this modifications consultation will then be provided to the Inspector to inform her Inspectors Report. Following receipt of the Inspectors report, the Councils' will then decide on whether they want to adopt the Plan.

Current Application Consultation Procedure

13. Currently applications for these forms of mineral development require the submission of a planning application for determination by the relevant minerals planning authority, unless it is deemed permitted development (see below). These applications would be assessed against the relevant national and local policies including the emerging York Local Plan and the Joint Minerals and Waste Plan. Further, there would be a period of consultation (usually 21 days) within which the mineral planning authority will identify and consult a number of different groups, including the public, statutory consultees, non-statutory consultees, and any consultation required by a direction.
14. For permitted development, operators are required to notify planning authorities at least 28 days before, of their intention to undertake such permitted development works (initial investigation and of monitoring boreholes and ground radar surveys) so that local authorities are able to raise issues that are particular to the locality that may constrain permitted development rights.
15. At the moment, any planning application for exploration or for production of shale gas requires planning approval but there is currently no obligation to enter into pre-application discussions with the Local

Planning Authority or to provide any advance publicity or engagement with the community of their precise intentions.

16. Applicants may engage in pre-application discussions with the Council but this is on a voluntary basis and may not include community engagement. City of York Council currently offer a paid for, fee-based pre-application planning service, which will continue to be offered. Our guidance is informal and given without prejudice, but helps to identify any issues relevant to a development, so the applicants can consider them before proposals are finalised and a planning application is submitted. This approach gives applicants the opportunity to improve the submission and speed up the process of a planning decision.
17. Any pre-application correspondence will be made available for public inspection under the Freedom of Information Act or Environmental Information Regulations, unless the information is deemed exempt.
18. Currently, it is not a statutory requirement for applicants to undertake pre-application community consultation prior to submitting a planning application for all types of proposed development. However, there are existing processes that require community consultation at the pre-application stage. These are a) for development that would fall within the scope of the Nationally Significant Infrastructure Projects regime, and b) for more significant onshore wind development that doesn't fall within the scope of that regime. This is the responsibility of the prospective applicant for planning permission or development consent (and must be undertaken prior to the submission of an application).
19. For clarity, the statutory requirement for prospective applicants to conduct consultation with local communities (prior to undertaking onshore wind development involving more than 2 turbines, or where the hub height of any turbine exceeds 15 metres) is linked to the threshold at which onshore wind development requires screening to determine whether there is a likelihood of significant environment effects under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

Community Engagement Charter – UKOOG

20. The United Kingdom Onshore Operators Group (UKOOG) currently has a Community Engagement Charter dealing with 'Oil and Gas from Unconventional Reservoirs', to ensure greater understanding and involvement by communities in unlocking the UK's energy potential. The

aim of the charter is “to ensure open and transparent communications between industry, stakeholder groups and the communities in which we [UKOOG] operate”, with objectives to:

- Identify and proactively address local issues and concerns.
- Facilitate the sustainable development of extractive resources.
- Achieve an appropriate balance between the safe production of energy and the community’s needs.

21. For partners within the Group, there is a commitment to consult communities at each development stage of unconventional gas – stage 1: exploration, stage 2 – Moving into production and stage 3 – Production. However, this Charter is not currently formalised and therefore cannot be enforced.

Consultation on compulsory community pre-application consultation for shale gas development¹

22. The Government’s current consultation recognises that although “*all applications must be assessed on a case-by-case basis, applications for all phases of shale gas development are likely to fall under paragraph 2 of Schedule 2 to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. An Environmental Impact Assessment is therefore required if the project is likely to have significant environmental effects*”. Their consultation is therefore asking whether it is appropriate to follow a similar statutory community pre application consultation process to onshore wind development.
23. The Government’s consultation specifically seeks views on whether applicants should be required to conduct pre-application consultation with the local community prior to submitting a planning application for shale gas development.
24. Below is a summary of the specific questions asked in the consultation and the suggested officer response.

Question 1

Should community pre-application consultation be compulsory prior to applying for planning permission for shale gas development?

¹ <https://www.gov.uk/government/consultations/compulsory-community-pre-application-consultation-for-shale-gas-development>

Suggested Officer Response: Yes – Community pre-application consultation should be compulsory.

Question 2

By what process (if any) should prospective applicants be required to conduct community pre-application consultation prior to applying for planning permission for shale gas development?

Onshore wind development/ Nationally Significant Infrastructure Projects /Other (please specify)

Suggested Officer Response:

We consider that making statutory the requirement of pre-application consultation with the local community for all shale gas development would be of benefit to the overall application process.

The process applicants must take to consult with the community should follow a similar process required by onshore wind development, stated in the consultation document, as follows:

- Publicise the proposed application in such a manner that is likely to bring it to the attention of a majority of the persons who live at, or occupy, premises in the vicinity of the land. In doing so setting out information on how the applicant may be contacted, and the proposed timetable for the consultation (ensuring sufficient time for people to comment);
- Have regard to the advice (if any) given by the local planning authority about local good practice;
- Where proposing to go ahead with making an application for planning permission, have regard to any responses to the consultation;
- Where an application for planning permission is made, it must be accompanied by particulars of how the applicant complied with the publicising and consultation requirements, the responses received by the applicant, and how the applicant has taken account of the responses

If an alternative approach is taken, this should be in conformity with the full application consultation process undertaken by the LPA or should be in accordance with an adopted Statement of Community Involvement.

In considering who should be consulted, we understand there may be benefit in identifying a minimum area to consult. For this, we draw upon the policy M17 in the North Yorkshire, York and North York Moors Joint Minerals and Waste Plan (MWJP) wherein we have established through further evidence the justification for a 500m buffer zone around any

proposed development to take consideration of impacts on sensitive receptors. It could form a useful minimum area for consultation.

At the MWJP Examination in Public hearing session on hydrocarbons on 13 March 2018 , the Inspector requested further evidence from the Authorities to explain and justify the reference in Policy M17(4)(i) to the 500m buffer. This is set out below:

‘The purpose of the buffer is not to prescribe an absolute measure but to state a qualified guide, to the effect that proposals within 500m of sensitive receptors are “unlikely” to be consistent with ensuring a high level of protection to sensitive receptors from adverse land-use impacts. The stated policy objective of policy M17(4) is to maintain “adequate separation distances” and paragraph 5.146 (of the MWJP) recognises that this will need to be determined ultimately on a “case by case basis.” Proposals within 500m which can demonstrate that the appropriate protection of receptors can be achieved would be consistent with this policy objective. The 500m buffer identified in the policy must be seen in this context.

The Authorities consider that this approach is sound due to a combination of considerations, the main elements of which are set out below. Moreover, the PEDL coverage of the Plan area is extensive. The specific industrial processes are relatively new to this area and have generated significant local concern. The inclusion of a specific figure provides an appropriate level of guidance to developers and reassurance to local communities, particularly residents, in circumstances where experience of hydraulic fracturing within the Plan area is limited’.

The Authorities are also addressing a separate request to amend the reference to proposals within the buffer zone only being permitted “in exceptional circumstances”. This will be covered in proposed Main Modifications. The Authorities consider that the explanation of such “exceptional circumstances” provides appropriate flexibility in the application of the policy relating to the 500m buffer zone’.

We have responded to the Government’s other recent consultations on Shale Gas, which also references the above information and we append to this response for information (Annex A).

Question 3

What (if any) shale gas development should be subject to compulsory community pre-application consultation?

(All shale gas development requiring a planning application/ Where an Environmental Impact Assessment is required/Other criteria or threshold (please specify))

Suggested Officer Response: All Shale Gas development requiring a planning application should be subject to compulsory community pre-application consultation.

Question 4

Do you have any views the potential impact of the matters raised in this consultation on people with protected characteristics as defined in section 149 of the Equalities Act 2010?

Suggested Officer Response:

The impact of the matters raised in this consultation could affect all people and not just those people with protected characteristics.

Options

- i) That the Executive Member for the Environment endorse the views set out in the 'Suggested Authority response' sections of the report and agree to their submission to the Ministry of Housing, Communities and Local Government;
- ii) That the Executive Member for the Environment endorse the views set out in the 'Suggested Authority response' sections of the report and agree to their submission to the Ministry of Housing, Communities and Local Government subject to amendments agreed at this meeting;
- iii) That the Executive Member for the Environment rejects the views set out in the 'Suggested Authority response' sections of the report requesting that further work is undertaken.

Options Analysis

25. In order for the Council to submit a timely response to the consultation, officers consider that the Executive Member for Environment should endorse the views set out in Option 1. For option 3, officers would seek delegated sign-off by the Director of Economy and Place in consultation with the Executive Member to allow a response to be submitted. For Options 2 and 3, it should be noted that the closing date for the current consultation is the 7th January 2019.

Council Plan

26. Under the Council Plan 2015-2019 key priorities the project will assist in the creation of a Prosperous City for All, and be a Council that listens to residents particularly by ensuring that York is a city where:

- Local businesses can thrive
- Residents have the opportunity to get good quality and well paid jobs
- Residents can access affordable homes while the greenbelt and unique character of the city is protected
- Everyone is supported to achieve their full potential
- Efficient and affordable transport links enable residents and businesses to access key services and opportunities
- Environmental Sustainability underpins everything we do
- Everyone who lives in the city can enjoy its unique heritage and range of activities.
- Visitors, businesses and residents are impressed with the quality of our city.

Implications

27. The following implications have been assessed:

- **Financial** There are no financial implications
- **Human Resources (HR)** There are no HR implications
- **One Planet Council / Equalities** Please refer to paragraph 24, Question 4 in this report.
- **Legal** There are no legal implications
- **Crime and Disorder** There are no crime and disorder implications
- **Information Technology (IT)** There are no IT implications
- **Property** There are no property implications
- **Other** None

Risk Management

28. In compliance with the Council's risk management strategy, the main risks associated are as follows:

- Risks arising from failure to comply with the laws and regulations relating to Planning and not exercising local control of developments.

Contact Details

Author:

Anna Pawson
Development Officer
Strategic Planning
Tel No. 553312

Chief Officer Responsible for the report:

Mike Slater
Assistant Director of CES
Tel No: 551448

Rachel Macefield
Forward Plan Manager
Strategic Planning
Tel No. 551356

Report
Approved

Date 23/11/18

Specialist Implications Officer(s)

Financial – Patrick Looker
Finance Manager
Tel No. 551207

Legal – Alison Hartley
Legal Services Manager
Tel No. 553487

Wards Affected: List wards or tick box to indicate all

All

For further information please contact the author of the report

Background Papers:

Ministry of Housing and Local Government Compulsory Community pre-application consultation for shale gas development consultation (October 2018): <https://www.gov.uk/government/consultations/compulsory-community-pre-application-consultation-for-shale-gas-development>

Annexes

Annex A – Responses to previous Government consultations regarding Shale Gas

Annex B – Joint Minerals and Waste Plan (JMWP) Relevant Policies

List of Abbreviations Used in this Report

MWJP	Minerals and Waste Joint Plan
WMS2018	Written Ministerial Statement on Energy Policy
MHCLG	Ministry of Housing, Communities and Local Government
SCI	Statement of Community Involvement
UKOOG	United Kingdom Onshore Operators Group
PEDL	UK Petroleum Exploration and Development Licence