

**Decision Session – Executive Member for
Environment**

22 October 2018

Report of the Assistant Director for Planning & Public Protection

Government Consultations on:

i) Permitted Development rights for Shale Gas Exploration;

ii) Inclusion of Shale Gas Production Projects in the Nationally Significant Infrastructure Project Regime.

Summary

1. On 17 May 2018 the Government published a Written Ministerial Statement on Energy Policy (WMS2018). That Statement reaffirmed the Government's position that there are substantial benefits to be gained from the safe and sustainable exploration and development of our onshore shale gas resources; that shale gas is of national importance, and; that further measures were under consideration to support a planning decision-making regime that facilitates timely decisions on proposals for such development, in line with previous pre-2017 election national government manifesto commitments. WMS2018 also reiterated a commitment to ensuring that such development is robustly regulated and that local communities are fully involved in decisions which affect them.
2. Specifically, WMS2018 set out an intention by Government to consult on whether:
 - a) 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.
3. Separate consultations addressing these matters were published by the Ministry of Housing, Communities and Local Government and the Department for Business, Energy and Industrial Strategy respectively on 19

July 2018. The closing date for responses to each consultation is 25 October 2018.

4. The main implication of both measures is that proposals for these forms of development, currently involving submission of a planning application for determination by the relevant minerals planning authority, would no longer require this. The consultation does set out exceptions to this including Areas of Outstanding Natural Beauty, National Parks and Sites of Special Scientific Interest (see paragraph 34 for the full list).
5. Currently applications for these forms of development require the submission of a planning application for determination by the relevant minerals planning authority. 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 then have the opportunity to challenge any decision made by the Local Planning Authority through the appeals process.
6. The Analysis section of this report contains more information about the consultations, as well as a proposed response to the specific matters on which views are sought.
7. The Executive Member will be aware that these consultations are 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 17th May 2018 and the 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, this is due to be made shortly. The Inspector will then decide whether a further hearing session is required.
8. Although the Government consultations on Permitted Development Rights for Shale Gas Exploration and Inclusion of Shale Gas Production Projects in the Nationally Significant Infrastructure Project Regime overlap with the concluding stages of MWJP preparation, the government consultations relate to matters of development management process rather than policy and therefore are not considered to give rise to any significant direct implications for the content of the MWJP policies. However, it should be noted that the overall scope of influence of the policies on development decisions would be reduced if the proposals set out in the government

consultations are implemented, as the policies could no longer be directly applied to some forms of shale gas development.

Recommendations

The Executive Member is asked to:

- 1) note the Government consultations on:
 - i) Permitted development rights for shale gas exploration;
 - ii) Inclusion of shale gas production projects in the *Nationally Significant Infrastructure Projects* (NSIP) regime.

Reason: To allow officers to respond to the Government consultations prior to the deadline of 25th October 2018.

- 2) 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 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 25th October 2018.

Background

9. 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.
10. The MWJP includes relevant policies to these government consultations. 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 the Schedule of Additional Changes and Draft Main Modifications to the Publication Draft can be found in Annex A to this the report. 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

The above policies have been amended through the Examination hearing sessions to date. 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 who will then write her Inspectors Report. Following receipt of the Inspectors report the Councils will then decide on whether they want to adopt the Plan.

11. 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 has appointed Inspector Elizabeth Ord LLB (Hons) LLM MA DipTUS to conduct the examination into the North Yorkshire County Council, City of York and North York Moors National Park Authority minerals and waste joint plan. The Examination in Public on the MWJP started in February 2018 with public hearing sessions with the Inspector in February, March and April 2018. Following the hearing sessions on 17th 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. This is due to be made shortly. The Inspector will then decide whether a further hearing session is required.

Consultation

12. This report doesn't require any formal consultation. We are seeking views through the Executive Member Decision Session for the Environment to the Government's consultation on:
 - i) Permitted Development rights for Shale Gas Exploration;
 - ii) Inclusion of Shale Gas Production Projects in the Nationally Significant Infrastructure Project Regime.

Options

13. 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 and Department for Business, Energy and Industrial Strategy as relevant;

- 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 and Department for Business, Energy and Industrial Strategy as relevant, 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 and agree to their submission to the Ministry of Housing, Communities and Local Government and Department for Business, Energy and Industrial Strategy as relevant and request that further work is undertaken. It should be noted that the closing date for the current consultation is the 25th October 2018.

Analysis

- 14. Officers consider that the most appropriate option is for the Executive Member for Environment to endorse the views set out in the 'Suggested Authority response' sections set out in the report below and agree to their submission to the Ministry of Housing, Communities and Local Government and Department for Business, Energy and Industrial Strategy as relevant. The response reflects the policies set out in the JMWP and the additional evidence put forward through the examination relating specifically to the protection of York's Historic Character and setting and the 500m buffer zone.
- 15. Below is a summary of the specific questions asked in each consultation and the suggested officer response.

Consultation on Permitted Development Rights for Shale Gas Exploration

- 16. Permitted development rights are in effect a national grant of planning permission in principle, the scope of which are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015.
- 17. Permitted development rights are already established for the temporary use of land for certain forms of minerals exploration development. This includes the making of excavations, the carrying out of seismic surveys

and, in some cases, where the scale and duration of development would be limited, the drilling of exploratory boreholes. The drilling of boreholes for petroleum exploration purposes is specifically excluded from the scope of the existing rights applying in all areas. The introduction of a permitted development right for non-hydraulic fracturing shale exploration development, outside the scope of the existing rights, would require new secondary legislation.

18. The consultation seeks views on a number of specific matters:
19. The consultation indicates that it would be necessary to tightly define in legislation what development is permitted, but that it is intended that rights would only apply to *'...shale gas exploration, and for non-hydraulic fracturing operations to take core samples for testing purposes. We consider that it would not be appropriate for it to allow for the injection of any fluids for the purposes of hydraulic fracturing. The right would not apply to all onshore oil and gas exploration and/or extraction operations.'*
20. The consultation therefore proposes the following definition of development that would be regarded as permitted development:

' Boring for natural gas in shale or other strata encased in shale for the purposes of searching for natural gas and associated liquids, with a testing period not exceeding 96 hours per section test'.

Question 1

- a) Do you agree with this definition to limit a permitted development right to non-hydraulic fracturing shale gas exploration? Suggested response - No
- b) If No, what definition would be appropriate?

21. **Suggested Authority response** – A specific concern is that the definition proposed to apply for the purposes of a new permitted development right does not directly state that hydraulic fracturing is excluded from the scope of the right. Whilst it is clear from the text of the consultation that this is the intention, it is considered that, if a new right is introduced, this exclusion should be specifically stated in the definition itself for the avoidance of doubt.
22. Related to this concern is the potential for different interpretation of the term 'hydraulic fracturing' and how this could impact on the scope of any

new permitted development right. Specifically, it is not clear whether the Government intends that only exploratory drilling involving ‘associated hydraulic fracturing’ as defined through the Infrastructure Act 2015 would be excluded from the scope of a new right. The Infrastructure Act, as subsequently clarified by Government, defines associated hydraulic fracturing as fracturing which involves the injection of more than 1,000 cubic metres of fluid at any fracturing stage or more than 10,000 cubic metres of fluid in total. However, at this very early stage in the development of any shale gas industry in England, it is not yet known whether fluid injection volumes in excess of this threshold are likely to be typical.

23. The draft Minerals and Waste Joint Plan for North Yorkshire, York and the National Park sets out a wider definition of hydraulic fracturing which does not utilise a minimum volume threshold, with such an approach being in line with current national Planning Practice Guidance. This latter approach reflects the view of the Joint Plan authorities that significant land use planning impacts can arise where volumes of fracture fluid below the Infrastructure Act definition are used. This approach has been subject of initial support by the Inspector undertaking the Examination in Public of the Joint Plan, which has not yet concluded. It is considered essential that any new permitted development right for non-hydraulic fracturing shale gas exploration should clearly state that hydraulic fracturing at any volume is excluded.

Question 2

Should non-hydraulic fracturing shale gas exploration development be granted planning permission through a permitted development right? Suggested Response - No

24. The consultation emphasises that the purpose of such a right would be to speed up decision making and to help avoid the uncertainty caused by delay. It also clarifies that any development permitted in this way would still be required to receive the appropriate consents from the three oil and gas regulators (Environment Agency, Health and Safety Executive and Oil and Gas Authority). Whilst Public Health England is not a regulator for oil and gas development, it is envisaged that the relevant regulators (including planning authorities) would also have due regard to the advice of that organisation.
25. Government is proposing through the consultation that a new permitted development right would not apply in National Parks or in other sensitive

designations including Areas of Outstanding Natural Beauty, Sites of Special Scientific Interest, Scheduled Monuments, Conservation areas and Protected groundwater source areas.

26. **Suggested Authority response** – a balance needs to be struck between timely decision making and the need for appropriate scrutiny of development proposals at a local level. This is particularly the case for forms of development which have the potential to give rise to adverse impact on local communities, or be proposed in environmentally sensitive locations. A view on the principle of introducing the proposed new permitted development right can only be given in the context of the specific scope and limitations that would be applied, which are considered in more detail in the following sections.
27. Whilst Government's intention not to apply a new permitted development right in sensitive designations is welcomed and supported, it is necessary to consider the wider implications of the measures proposed through the consultation in the event that that position is not maintained.
28. There are several policies in the JWMP that make reference to the need to protect the historic character and setting of the City of York in determining whether development is appropriate in a particular location. The Joint Plan policies which specifically refer to York Green Belt and the Historic Character and Setting can be found in Annex A to this report, these policies are:

M01: Broad geographical approach to supply of aggregates

M16: Key spatial principles for hydrocarbon development

D05: Minerals and Waste Development in the Green Belt

D06: Landscape

29. At the Examination in Public hearings relating to policies for hydrocarbons development, the Inspector asked for additional evidence to justify the inclusion of "Areas which Protect the Historic Character and Setting of York" ("Areas") within the protection afforded by Policy M16(b)(i).

Paragraph 5.129 of the Joint Plan provides further explanation of the reference to the Areas in the policy.

"Although the City of York is not protected in the same way as National Parks and AONBs, the historic character and setting of the City is a key reason for having designated the York Green Belt, one of only six cities

in England where this reason applies, and the historic City as a whole does not benefit from any other specific national policy protection. The relatively flat and low-lying landscape around York allows for long distance views of the Minster and other landmark buildings which are integral to the setting of the City...”

Paragraph 9.62 also states that:

“Evidence produced by City of York Council in 2013 identifies six principal defining characteristics which are strategically important to the historic character and setting of York, that set York apart from other similar cities in England These characteristics are:

- The City’s strong urban form, townscape, layout of streets and squares, building plots, alleyways, arterial routes, and parks and gardens;
- The City’s compactness;
- The City’s landmark monuments, in particular the City Walls and Bars, the Minster, churches, guildhalls, Clifford’s Tower, the main railway station and other structures associated and chocolate manufacturing heritage;
- The City’s architectural character, this rich diversity of age and construction displays variety and order and is accompanied by a wealth of detail in windows and door openings; bay rhythms; chimneys and roofscapes; brick; stone; timber; ranges; gables; ironwork; passageways; and rear yards and gardens;
- The City’s archaeological complexity: the extensive and internationally important archaeological deposits beneath the City;
- The City’s landscape and setting within its rural hinterland and the open green strays and river corridors and Ings, which penetrate into the heart of the urban area, breaking up the City’s built form.

The work which the City of York has carried out in relation to its Green Belt protection as well as the special character and setting of the historic city has informed the inclusion of the Areas within the protection afforded by Policy M16.

30. The rationale for introducing a permitted development right for exploratory drilling for shale gas but not other forms of hydrocarbons is not clear, other than to address Government's perceived concern about the speed of decision making on shale gas proposals. In terms of the potential for impacts on the environment and local amenity, there is no expectation that exploratory drilling for shale gas would give rise to lesser potential for impacts than exploratory drilling for other forms of hydrocarbons. It is correspondingly unclear why the former form of development should benefit from additional flexibility through a permitted development right.
31. Furthermore, drilling to explore for shale gas in York is likely to require drilling to a greater depth than for conventional gas resources as the shale is at a greater depth and therefore may be expected to take longer, with correspondingly greater potential for longer duration impacts as a result of factors such as visual intrusion, noise and traffic movements. A related concern is the potential for harmful impacts to arise, through the use of permitted development rights to bring forward incrementally more development in a given area, but without the ability for proper consideration to be given to the cumulative impacts of such development through the full planning process.
32. It is considered that these factors undermine the rationale for introducing the proposed new permitted development right. The essential role of permitted development rights is to give deemed consent for forms of development which are not likely to give rise to significant land use planning concerns and therefore require a lesser degree of scrutiny and public involvement. Extending permitted development rights to exploratory drilling activity, potentially taking many months, typically involving 24 hour operations and requiring use of substantial items of plant and equipment and associated vehicle movements, would not be in the best interests of ensuring delivery of sustainable development through the planning system, in line with established national planning policy, or help with the Government's stated intention of ensuring that there is public confidence in the development of the shale gas industry.
33. This view is consistent with the recent findings of the Housing, Communities and Local Government Committee Inquiry on Planning guidance which recommended, in its July 2018 report, that: *Shale gas development of any type should not be classed as permitted development.*

Given the contentious nature of fracking, local communities should be able to have a say in whether this type of development takes place, particularly as concerns about the construction, location and cumulative impact of drill pads are yet to be assuaged by the Government.

34. The City of York Council is committed to listening to the local community through the planning process but any decisions must be made within the relevant regulatory and legal framework.
35. Officers consider that Government should not introduce a permitted development right for non-hydraulic fracturing shale gas exploration. Notwithstanding this view, the following comments address matters relevant to other aspects of the consultation, in the event that Government does proceed to introduce a new permitted development right.

Question 3

- a) Do you agree that a permitted development right for non-hydraulic fracturing shale gas exploration development would not apply to the following? Yes**
- b) If No, please indicate why.**
- c) Are there any other types of land where permitted development right for non-hydraulic fracturing shale gas exploration development should not apply?**

36. The consultation indicates an intention that a new permitted development right would not apply in the following areas but seeks views on this restriction and whether there are any other areas which should be excluded:

National Parks
The Broads
Areas of Outstanding Natural Beauty
World Heritage Sites
Sites of Special Scientific Interest
Scheduled monuments
Conservation Areas
Sites of archaeological interest
Safety hazard areas
Military explosive areas
Land safeguarded for aviation or defence purposes
Protected groundwater source areas

37. **Suggested Authority response** – the intention to exclude sensitive locations from the scope of a new permitted development right is welcomed but it is considered that the sensitive locations should be expanded to include protection for the historic character and setting of York. At the Examination in Public hearings relating to policies for hydrocarbons development, the Inspector asked for additional evidence to justify the inclusion of “Areas which Protect the Historic Character and Setting of York” (“Areas”) within the protection afforded by Policy M16(b)(i).

Paragraph 5.129 of the Joint Plan provides further explanation of the reference to the Areas in the policy.

“Although the City of York is not protected in the same way as National Parks and AONBs, the historic character and setting of the City is a key reason for having designated the York Green Belt, one of only six cities in England where this reason applies, and the historic City as a whole does not benefit from any other specific national policy protection. The relatively flat and low-lying landscape around York allows for long distance views of the Minster and other landmark buildings which are integral to the setting of the City...”

Paragraph 9.62 also states that:

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- The City’s compactness;
- The City’s landmark monuments, in particular the City Walls and Bars, the Minster, churches, guildhalls, Clifford’s Tower, the main railway station and other structures associated and chocolate manufacturing heritage;
- The City’s architectural character, this rich diversity of age and construction displays variety and order and is accompanied by a

wealth of detail in windows and door openings; bay rhythms; chimneys and roofscapes; brick; stone; timber; ranges; gables; ironwork; passageways; and rear yards and gardens;

- The City's archaeological complexity: the extensive and internationally important archaeological deposits beneath the City;
- The City's landscape and setting within its rural hinterland and the open green strays and river corridors and Ings, which penetrate into the heart of the urban area, breaking up the City's built form.

The work which the City of York has carried out in relation to its Green Belt protection as well as the special character and setting of the historic city has informed the inclusion of the Areas within the protection afforded by Policy M16.

38. On the basis of the above explanation York's Historic and Character Areas should also be excluded from permitted development rights.
39. There is also concern that permitted development outside but close to the boundary of these sensitive areas could nevertheless give rise to potential for significant adverse impacts on the excluded area, for example as a result of visual and landscape impact including the impact of the infrastructure left behind, noise and loss of tranquillity, and as a result of increased traffic movements. There is a risk that appropriate opportunity for proper scrutiny of the potential for such impacts would be missed should a new permitted development right be introduced.
40. On the other hand, the necessary standard development conditions and restrictions that may be required as part of a new right in order to prevent unacceptable harm, including to adjacent protected areas, would be likely to be complex whilst also lacking the flexibility that can result from consideration of a planning application via a comprehensive process of consultation and scrutiny. It is not at all clear, therefore, that the proposed measures would be successful in either facilitating early stage shale gas exploration development, or in protecting the environment from the effects of such development.

Question 4

What conditions and restrictions would be appropriate for a permitted development right for non-hydraulic shale gas exploration development?

Question 5

Do you have comments on the potential considerations that a developer should apply to the local planning authority for a determination, before beginning the development?

41. The consultation document acknowledges that, despite being a temporary form of development, the scale of shale gas exploration development means that any permitted development right would require specific conditions and restrictions to mitigate potential adverse impacts. Views are sought on what conditions or restrictions would be appropriate. Views are also sought on whether a requirement should be imposed to ensure that the developer seeks prior approval from the local planning authority for specified elements of the development before the work can proceed, including potentially, a requirement for public engagement. The consultation notes that this is intended to be a much less prescriptive process than that required for planning applications, as prior approval is intended to be a 'light touch' process which applies where the principle of the development is already established.
42. **Suggested Authority response** – the questions of standard development conditions and restrictions and the need for prior approval of certain matters before permitted development rights can be exercised are inter-related. There is concern that the imposition of standard conditions for relatively substantial and complex forms of development such as that being contemplated would not be an effective means of preventing unacceptable impacts in all circumstances, owing to the wide range of site-specific circumstances that could arise.
43. There is also a risk that they could, in certain circumstances, result in unnecessary burdens on developers. It is considered that such matters are most effectively assessed and resolved through a full planning application process rather than a 'light touch' prior approval system.
44. Nevertheless, without prejudice to the view that introduction of a permitted development right for shale gas exploration would not be

appropriate, it is considered that, if such a right were introduced, it should be accompanied by a requirement for prior approval of matters including:

- Size of well pad
- Height of any plant and equipment
- Duration of permitted development
- Means of access and volume of HGV movements
- Mitigation measures for noise, vibration, air quality and light intrusion
- Maintenance of a minimum separation distance from sensitive locations such as residential property
- Details of measures to be taken to screen the site and mitigate any potential impacts on ground and surface water resources, ecology, heritage assets, the landscape and air quality
- Management of waste
- Restoration of the site including confirmation of compliance with associated Environmental Permitting and Pipeline Regulations.
- Confirmation of Community payment under UKOOG Shale Community Engagement Charter, where relevant.

45. It is also considered that a standard requirement for prior notification of local residents and other relevant parties should be included, and in a way which allows a reasonable period for the receipt of representations. Such an approach could help ensure more effective public engagement in shale gas development proposals, in line with previous Government commitments to facilitate this. In the absence of adequate opportunity for public engagement in shale gas development proposals being brought forward under any new permitted development right, there is concern that public confidence in the overall planning and regulation of this form of development will be further weakened.

46. Significant concerns have been expressed by local communities about the potential effects of fracking development, within the MWJP it was considered appropriate to develop a policy which reassures residents and other sensitive receptors¹ that their amenity will be adequately protected. The preparation of the JMWP has been carried out within the parameters of the relevant regulatory and legal framework including the National Planning Policy Framework. The JMWP maintains that there is sufficient evidence to justify the adoption of a 500m separation distance from these sensitive receptors. It is considered that this approach is justified, subject to the qualifications inherent in the policy and the application of wider criteria relating to hydrocarbons development.

¹ Receptors - such as people, residential properties, nature conservation sites and designated landscapes.

47. At the MWJP Examination in Public hearing session on hydrocarbons on 13th 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 Authorities are 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.

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 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’.

48. Finally in relation to this particular matter, it is considered important that any new permitted development right is supported by effective and comprehensive standard conditions and prior notification and engagement requirements, in order to reduce the extent to which mineral planning authorities may need to rely on their powers to use ‘article 4 directions’. Such directions can be used to remove permitted development rights in instances where there is concern about the

potential impacts of development which could otherwise be carried out under such rights.

Question 6

Should a permitted development right for non-hydraulic shale gas exploration development only apply for 2 years, or be made permanent?

49. The consultation states that, at this stage, it is unclear the impact a permitted development right for non-hydraulic fracturing shale gas development would have or even whether such a right would be effective given the exclusions, limitations and restrictions that it may be subject to. Views are therefore sought on whether a new permitted development right should be permanent or only apply for a period of two years, to allow monitoring by Government of its success.
50. **Suggested Authority response** – the acknowledgement by Government that there is uncertainty over the potential effectiveness of a permitted development right for non-hydraulic fracturing shale exploration development is noted and reinforces concern that the potential scale, nature and sensitivity of such development is not compatible with the use of such rights. If Government is nevertheless minded to introduce a new right, then it should be for a temporary period of two years only and Government should seek further views from interested parties at the expiry of that period before determining whether it should be carried forward or revised.

Question 7

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?

51. **Suggested Authority response** – The impact of the matters raised in this consultation could affect all people and not just those people with protected characteristics.

Consultation on Inclusion of Shale Gas Production Projects in the Nationally Significant Infrastructure Project Regime (NSIP)

52. The Planning Act 2008 created a planning process for NSIP in fields of development including energy, waste, water, road and rail transport. The Act defines the type and scale of infrastructure development considered to be nationally significant. Proposals falling within the regime are dealt with by the Planning Inspectorate, rather than via a planning application to the local planning authority, with the final decision to grant development consent resting with the Secretary of State.
53. The main objective of the NSIP regime is to streamline decision making on nationally significant infrastructure projects, including those which span local authority areas and involve multiple consenting regimes. Key aspects of the regime include a presumption that there is a need for the development, if it is compatible with national policy statements and the national evidence base relevant to the infrastructure in question; a fixed timescale for decision of 12 months, and; the ability to incorporate other powers within the decision making process, for example in relation to the compulsory acquisition of land. Changes to the scope of the NSIP regime would require new secondary legislation.
54. This consultation seeks views on the following matters:

Question 1

Do you agree with the proposal to include major shale gas production projects in the Nationally Significant Infrastructure Project regime?

Question 2

Please provide any relevant evidence to support your response to Question 1.

55. The consultation indicates that inclusion of major shale gas production projects within the scope of the NSIP regime would bring such projects in line with other energy projects of national significance, such as major wind farms and gas fired generating stations. The consultation emphasises that it is only intended that production phase projects would be brought within the scope of the regime, not exploration or appraisal stage developments (which typically are of shorter duration).

56. **Suggested Authority response** – it is not considered that there is adequate justification to bring major shale gas production projects within the scope of the NSIP regime. There is no evidence at this very early stage in the development of a shale gas industry in the UK to indicate with any clarity the scale and distribution of viable resources that may exist, or the scale or specific mode of operation of any industry that may arise, particularly at production stage, if initial results of exploration activity are positive. Furthermore, it is less than clear at this stage whether there is any potential for development to come forward at a scale, or with a degree of importance, that is genuinely of national significance, particularly when compared with other minerals and mining projects not falling within the scope of the NSIP regime, despite involving production of minerals resources considered by Government to be of national and local importance.
57. It is therefore considered premature to bring such development within the scope of the NSIP regime. There is also concern that to bring such proposals within the regime would further undermine fragile public confidence in the regulatory processes applied to shale gas development, by reducing the opportunities available for local involvement in decision making and the extent to which local knowledge can inform the decision making process.
58. In this respect it is noted that the Housing, Communities and Local Government Committee Inquiry on planning guidance recommended, in its July 2018 report, that fracking planning applications at any stage should not be brought within the NSIP regime. The report notes that there is little to be gained from bringing fracking applications under the regime; limited evidence that it would expedite the application process, and; that such a move is likely to exacerbate existing mistrust between local communities and the fracking industry. The Committee also noted that there would be no relationship between applications brought under the regime and local plans in communities.

Question 3

If you consider that major shale gas production projects should be brought into the Nationally Significant Infrastructure Project regime, which criteria should be used to indicate a nationally significant project with regards to shale gas production? Please select from the list below:

- The number of individual wells per well-site (or 'pad');

- The total number of well-sites within the development;
- The estimated volume of recoverable gas from the site(s);
- The estimated production rate from the site(s), and how frequently (e.g. daily, monthly, annually or well lifetime);
- Whether the well-site has/will require a connection to the local and/or national gas distribution grid;
- Requirement for associated equipment on-site, such as (but not limited to) water treatment facilities and micro-generation plants;
- Whether multiple well-sites will be linked via shared infrastructure, such as gas pipelines, water pipelines, transport links, communications, etc;
- A combination of the above criteria;
- Other.

Question 4

Please provide any relevant evidence to support your response(s) to Question 3.

59. **Suggested Authority response** – it is considered that none of the suggested specific criteria would provide a satisfactory basis for including projects within the NSIP regime. Significantly, in most cases the criteria do not reflect the substantial variability and/or incremental change in key development parameters that may be expected during the life of a shale gas production project. Examples include the likelihood of progressive development of additional well pads and individual wells during the production stage of a licence area; variability in production rate over time, and; change in the nature of processing infrastructure that may be required during the production life of an area. It is difficult to see how such variability could adequately be accommodated within a relatively inflexible consenting process such as the NSIP regime, which is more appropriately applied for consenting large scale, permanent, fixed infrastructure. Conversely, the development management processes available through Town and Country Planning legislation are designed to provide a range of flexible options for consideration of planning proposals, including where necessary in response to proposed changes during the life of a project.

Question 5

At what stage should this change be introduced? (For example, as soon as possible, ahead of the first anticipated production site, or when a critical mass of shale gas exploration and appraisal sites has been reached?)

Question 6

Please provide any relevant evidence to support your response to Question 5.

60. The consultation seeks views on the most appropriate stage in the industry's development for major shale gas production projects to be included under the NSIP regime. It notes that large scale production sites may still be many years away, but that it is feasible that applications for the first production sites could be ready in the coming years. The consultation suggests as potential options that implementation of NSIP procedures could be as soon as possible, or that it be timed to come into effect ahead of the first anticipated production site, or when a critical mass of exploration and appraisal sites has been reached.
61. **Suggested Authority response** – for the reasons expressed in relation to questions 1 and 3 above, it is not considered that the NSIP regime should be applied to major shale gas production projects. However, if such a change is introduced, it would need further clarity in order to provide the greatest certainty to the public, developers and other interested parties on how such matters are to be determined, and to facilitate early consideration of the need for coordination of major infrastructure provision at a point in the development process where meaningful benefits from such an approach can still be achieved.

Summary

62. In summary, officers do not consider that there is sufficient public interest justification for introducing the proposed new permitted development right, or to bring shale gas production projects within the scope of the Nationally Significant Infrastructure Projects regime.
63. In both cases, a balance needs to be struck between the benefits of timely decision making and the need for appropriate scrutiny of proposals at a local level. This is particularly so in the case of forms of development

such as this, where there is a high level of national and local community interest and public concern, and where the industry is at a very early stage of establishment.

64. Previous Government statements have referred to the existence of a robust regulatory regime for on-shore shale gas as part of the justification for a positive national policy stance towards this form of development, as well as to the need for the public to be fully involved in decisions which affect them. The submission and determination of planning applications provides a well-established regulatory mechanism for giving proper and public consideration to planning issues associated with such development, whilst providing appropriate flexibility for developers to deal with changing circumstances.
65. Officers therefore have concerns about both the principle of the proposed new measures, as well as concerns about some of the detailed matters contained in the consultations, including definitions and criteria proposed to be used in association with the new measures under consideration.

Council Plan

66. 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

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 Question 7 and the answer in paragraph 51. In the main report.
- **Legal** Implementation of changes to permitted development rights and the criteria for inclusion of projects within the NSIP regime would both require new secondary legislation.
- **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

67. 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

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**Report
Approved**



Date 11/10/2018

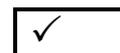
Specialist Implications Officer(s)

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:

1. Permitted development for shale gas exploration (Ministry of Housing, Communities and Local Government consultation, July 2018);
<https://www.gov.uk/government/consultations/permitted-development-for-shale-gas-exploration>
2. Inclusion of Shale Gas Production Projects in the Nationally Significant Infrastructure Project Regime (Department for Business, Energy and Industrial Strategy, July 2018).
<https://www.gov.uk/government/consultations/inclusion-of-shale-gas-production-projects-in-the-nationally-significant-infrastructure-project-nsip-regime>

Annexes

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

List of Abbreviations Used in this Report

MWJP Minerals and Waste Joint Plan

NSIP Nationally Significant Infrastructure Projects

WMS2018 Written Ministerial Statement on Energy Policy