

ITEM 2

Government Consultation	Consultation on inclusion of shale gas production projects in the Nationally Significant Infrastructure Project (NSIP) regime
Recommendation	That the responses set out in Appendix 1 form the Council's response to the consultation document.

Background:

The Consultation document notes that this initial consultation seeks views on the timings and criteria for major production phase shale gas projects (where 'fracking' takes place) to be included in the Nationally Significant Infrastructure Project regime under the Planning Act 2008. Responses have to be submitted by 25th October 2018.

The Consultation document states that: "The government recognises that the development of shale gas needs to be alongside support from the local communities which could potentially benefit. Local communities must be fully involved in planning decisions and any shale planning application – whether decided by councils or government. Currently, any organisation wishing to undertake a shale gas development must submit its planning applications to local Mineral Planning Authorities under the Town and Country Planning Act 1990.

The Planning Act 2008 created a planning process for Nationally Significant Infrastructure Projects in fields of development including energy, water, waste water, road and rail transport and hazardous waste disposal. For projects falling within scope of what is defined in the Planning Act 2008 as a Nationally Significant Infrastructure Project, this becomes the only route for obtaining planning consent. The Planning Act 2008 defines the type and scale of infrastructure developments considered to be nationally significant and therefore required to obtain development consent. The final decision for granting development consent rests with the relevant Secretary of State depending on the type of infrastructure project.

If the Planning Act 2008 was amended to include major shale gas production projects as a Nationally Significant Infrastructure Project, then all future shale gas production projects that met defined threshold(s) would have to apply for development consent within the Nationally Significant Infrastructure Project regime. This would only apply to production phase projects, however, and not exploration or appraisal projects for which planning applications would continue to be considered under the Town and Country Planning Act 1990 [subject to the separate proposals to make exploratory drilling permitted development].

Automatically including eligible major shale gas production projects into the Nationally Significant Infrastructure Project regime would bring such applications into a well-defined process with clear, established governance and timelines designed for larger and more complex infrastructure projects. This would bring such shale gas production projects in line with other energy projects of national significance such as the development of wind farms and gas fired generation stations. In this case, the final decision for granting or refusing development consent would rest with the

Secretary of State for the Department of Business, Energy & Industrial Strategy (BEIS).”

The Consultation document adds that: “Under the Planning Act 2008, an operator wishing to construct a Nationally Significant Infrastructure Project must submit a development consent application to the Secretary of State. As part of this process, the operator will need to have assessed any likely significant impacts of the proposed project. For such projects, where an application is accepted, the Secretary of State will appoint an ‘Examining Authority’ to examine the application in accordance with any relevant National Policy Statement. The Examining Authority will be arranged by the Planning Inspectorate and will be either a single Inspector or a panel of between two and five Inspectors.

The examination will take into account any information and have regard to any local impact report submitted by the local authority as well as representations from statutory bodies, non-governmental organisations and other interested parties including the local community. Once the examination has been concluded, the Examining Authority will reach its conclusions and make a recommendation to the Secretary of State, who will make the decision on whether to grant or to refuse consent.”

Finally, the House of Commons Housing Communities and Local Government Select Committee carried out an inquiry between January and June 2018 in respect of a number of issues relating to shale gas exploration and production. It concluded that: “There is little to be gained from bringing fracking planning applications at any stage under the NSIP regime; there is limited evidence that it would expedite the application process and such a move is likely to exacerbate existing mistrust between local communities and the fracking industry. We are particularly concerned that if the NSIP regime were adopted, there would be no relationship between fracking applications and Local Plans in communities. Furthermore, we note that the Government has not provided any justification or evidence for why fracking has been singled out to be included in a national planning regime in contrast to general mineral applications.

Fracking planning applications should not be brought under the NSIP regime. While we note that the NSIP regime does provide opportunities for consultation with Mineral Planning Authorities and local communities, such a move could be perceived as a significant loss to local decision-making. Mineral Planning Authorities are best placed to understand their local area and consider how fracking can best take place in their local communities.

Despite our recommendation above and the overwhelming evidence we received, if NSIP were to be used for fracking applications, it is essential that a National Policy Statement is prepared as a matter of urgency that would include suitable measures to restrict inappropriate proliferation of well-pads and unacceptable impacts on landscapes. We consider that the North Yorkshire Draft Joint Minerals and Waste Plan offers an appropriate template for such guidance. While we note that the Government stated that the issue of cumulative impact “would be addressed on a case by case basis as part of the NSIP examination process,” the National Policy

Statement should ensure that it is considered automatically as part of every determination. Every decision should also be consistent with Local Plans.”

Response to Consultation

The recommended responses to the Consultation questions are set out in Appendix 1 and conclude, in line with the House of Commons Select Committee, that it is not considered that major shale gas production projects should be included in the Nationally Significant Infrastructure Project regime, primarily as the ultimate decision making process would be removed from the Council.

APPENDIX 1 – Response to consultation

Consultation questions:

Q1. Do you agree with the proposal to include major shale gas production projects in the Nationally Significant Infrastructure Project regime?

Answer:

No.

Q2. Please provide any relevant evidence to support your response to Question 1.

Answer:

The NSIP process requires people living in the vicinity of the site have to be consulted on proposed projects at the pre-application stage, and this is welcomed, and it also allows the Council and local residents etc to input into the decision making process at any subsequent Examination of the application. However, the ultimate decision is taken by the Secretary of State. The Council can see a strong argument for decisions on fracking applications remaining at a local level, i.e. by Members of the Planning Board following consideration of committee reports compiled by planning officers. This provides the most democratic method of decision making, and includes a fair and transparent process that leads to the Council's ultimate decision on any specific proposal. Objectors and supporters alike are given the opportunity to speak at Planning Board meetings and if decisions were not made at the local level this opportunity may be lost.

In addition, shale gas proposals, even at the early stages, are extremely demanding on resources, particularly professional planning, legal and support staff. The Council would continue to have a significant role in the process from the pre-application stage right through to the monitoring and enforcement of any Development Consent Order, along with the conditions attached, as well as agreeing the terms of any S106 agreement. This involvement would take up considerable time and resources with no fee being paid to the Council as the planning fee for these proposals would be paid to the Planning Inspectorate. As such, should the proposals be adopted then Councils would need to be resourced accordingly, perhaps through the continuation of the 'shale gas fund'.

Q3. 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:

- a. The number of individual wells per well-site (or 'pad')
- b. The total number of well-sites within the development

Answer:

The Consultation document states that: "since shale gas is within very low permeability rock the gas does not easily flow. Therefore, to access and produce commercial amounts of natural gas multiple horizontal wells are drilled and hydraulically fractured. The number of horizontal wells will vary depending on the

geology and gas properties, however, with multiple wells from one well-site and potentially multiple well-sites within a Petroleum Exploration and Development Licence this could provide criteria for when a production project is nationally significant.”

It is unlikely that an individual site (or pad) would be of “national significance”, irrespective of the number of wells. The point at which a multi-pad scheme would be nationally significant would differ from site to site, and there would need to be some kind of preventative measure to stop sites over a wide geographical area being bundled together as one NSIP application when they are not actually part of the same development.

c. The estimated volume of recoverable gas from the site(s)

d. The estimated production rate from the site(s), and how frequently (e.g. daily, monthly, annually or well lifetime)

Answer:

It is considered that the volume of resource/production is the best indicator as to whether a scheme is of national significance. However, there are serious concerns given the inherent uncertainty with ‘estimated’ volumes, be it recoverable volumes or production rates, which could be manipulated to be in/out of the NSIP process.

e. Whether the well-site has/will require a connection to the local and/or national gas distribution grid.

Answer:

A well site, or sites, not connected to the grid may well have greater impacts, particularly in respect to ongoing traffic movements, although these would be local impacts and should be considered as part of the normal application planning process. Connection to the grid may indicate a larger and more significant scheme, though it might just be because there is a grid connection near to the proposed development site. It is considered that this would not be a useful criteria for determining national significance.

f. Requirement for associated equipment on-site, such as (but not limited to) water treatment facilities and micro-generation plants.

Answer:

Once again, these are considered to be local impacts and should be considered as part of the normal application planning process. With regard to generation, there are plenty of natural gas sites (coal mine methane) within the region that include micro-generation 1-2MW per engine and up to three engines at some sites. These sites are clearly not nationally significant, so it is suggested that there would need to be a MW threshold set reasonably high, such as 50MW (although this would trigger the NSIP process itself anyway).

g. Whether multiple well-sites will be linked via shared infrastructure, such as gas pipelines, water pipelines, transport links, communications, etc.

Answer:

The likelihood of multiple sites all being linked under a single application are unlikely and each multiple site would have been assessed separately as part of the normal planning application process. If a proposed multiple site is to be linked to an already approved multiple site, then the required connection implications could be considered as part of the normal planning application process.

h. A combination of the above criteria – if so please specify which

i. Other – if so please specify

Answer:

No further comment.

Q4. Please provide any relevant evidence to support your response(s) to Question 3.

Answer:

As set out in Q3 above.

Q5. 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).

Answer:

It is not considered that the change should be introduced at all, for the reasons set out above. In addition, at this stage it is unknown whether there is economically recoverable shale gas available.

Q6. Please provide any relevant evidence to support your response to Question 5.

Answer:

No further comment.