

North Yorkshire Minerals and Waste Joint Plan

Friends of the Earth

**Response to Inspector's request for comments on the materiality of Energy Policy Written
Statement HCWS690, dated 17 May 2018**

June 2018

1. Friends of the Earth England, Wales and Northern Ireland (FOEEWNI) have been asked to respond to a request from the Inspector as to the Energy Policy Written Statement HCWS690 as issued by the Secretaries of State for BEIS and MHCLG on 17th May 2018. The Inspector has asked all parties to comment on the relevance of the statement, in particular those points directly pertinent to plan-making and how they might influence local policy formation going forward in the context of the North Yorkshire Minerals and Waste Joint Plan (NYMWJP); notwithstanding the Examination in Public stage having finished in April 2018.
2. FOEEWNI sets out its response below, focusing on those statements of the WMS relevant to plan-making and that are potentially relevant to the draft policies of the NYMWJP.

Support for Shale Gas

3. The WMS reiterates Government support for shale gas development.

“Shale gas development is of national importance. The Government expects Mineral Planning Authorities to give great weight to the benefits of mineral extraction, including to the economy. This includes shale gas exploration and extraction.”

4. FOE's view is that such weighting to the benefits of mineral extraction was a key consideration during the EiP earlier this year - principally as an underlying assumption within the National Planning Policy Framework (NPPF) and accompanying Planning Practice Guidance (PPG); both of which were core examination documents.
5. Rather than add any additional weight, the wording of the WMS seems to re-emphasise the great weight already stated in existing national policy. As such, the WMS presents no material

change to the “great weight” already apportioned to the benefits of mineral extraction for plan-making purposes. There is no further need to reevaluate this part of the WMS in any further detail going forward. Our view is that the context in which the inspector both discussed various policy matters with the key parties (re Joint Councils, Industry and interested parties) and considered modifications to make the policies ‘sound’ has not changed.

Reiteration of Policy/Guidance confirming nature of mineral resources, need for site specific assessment and avoidance of undue sterilization.

6. The WMS reiterates guidance contained in the NPPF and PPG to the effect that:

Mineral Plans should reflect that minerals resources can only be worked where they are found, and applications must be assessed on a site by site basis and having regard to their context. Plans should not set restrictions or thresholds across their plan area that limit shale development without proper justification.

Consistent with this Planning Practice Guidance, policies should avoid undue sterilisation of mineral resources (including shale gas).

7. Again, there is nothing new. As discussed at the hearings, the key policies relevant to hydrocarbon development have been specifically drafted (and main modifications brought forward in response to the Inspector’s queries) in order to allow for decisions to be made on a site by site basis (i.e. to ensure that the Plan has sufficient flexibility). In particular, the 500m zone designated within draft Policy M17 has been specially designed to allow assessment on a site by site basis; it simply sets out an appropriate environmental standard against which applications will be assessed. In this year’s earlier EiP hearings, the Inspector indicated that she was satisfied that the policy provided suitable flexibility and did not represent a “ban” (despite industry objections and misinterpretation) **and** specifically addressed the question of whether the policy would sterilise the shale gas mineral resource, concluding that it would not. She also commented that (1) a precautionary approach was justified given the novel type of development, local concerns and (2) the provisions for review which were contained within the plan. On this basis she indicated that she was happy that the policy met the statutory tests. Without wishing to repeat material already well-rehearsed, this is because applicants that are able to “demonstrate a high level of protection will be provided” will still be able to obtain permission for applications for fracking exploration within the 500m set-back distance – they

will just need to be able to show “a high level of protection”, something for which there is a great deal of support in Government Policy including the 2015 WMS.

8. In light of the above points, we submit the draft NYMWJP is in accordance with the requirements of the WMS (which does not represent a material departure) and that further intervention is not required.

Statement regarding definitions of hydrocarbon, natural gas and associated hydraulic fracturing

9. The WMS indicates that MPAs should recognize both the definitions of hydrocarbon, natural gas and associated hydraulic fracturing set out in legislation and related guidance in the PPG.

We expect Mineral Planning Authorities to recognise the fact that Parliament has set out in statute the relevant definitions of hydrocarbon, natural gas and associated hydraulic fracturing. In addition, these matters are described in Planning Practice Guidance, which Plans must have due regard to.

10. This touches on an area that was given detailed consideration at the hearings, but does not significantly change the policy context of that consideration.
11. As explained by the Authorities, the definitions used in the Plan are based principally upon those in the Planning Practice Guidance. This is an appropriate source, being expressly recognized in the WMS.
12. The PPG definitions are different from those contained in legislation but they do not conflict with the legislation and their interrelation has been given detailed consideration. The approach of the Authorities, which was justified during the Examination hearings, was to recognize the existence of the legislation which establishes the hydraulic fracturing consent regime but to ensure that aspects of the local policy framework captures all volumes of hydraulic fracturing; and not just those falling within the statutory definition of associated hydraulic fracturing (i.e. if volumes exceeded fluid amounts of 1,000m³ at any stage or 10,000m³ overall). This is entirely appropriate, the HFC regime is directed at a different problem and does not preclude (and the WMS does not suggest it does preclude) MPAs from taking the view that it is appropriate for lower volume fracturing operations to be subject to

(sufficiently flexible and justified) policy tests at the planning stage. This is why the Plan uses a definition of hydraulic fracturing which aligns with that contained in the current PPG. This was justified by reference to the Authorities case that hydraulic fracturing presents particular risks which need to be addressed.

13. Overall, we consider that the current draft policies of the NYMWJP are in accordance with national policy and nothing in new WMS justifies departure from the position taken at the hearings. No further work is required going forward.

14. We trust you will take our comments on board and can provide answers to any further queries if required.

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