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Ms E Ord
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Monday 9th July 2018

Dear Ms Ord,

RE: MWJP examination: Consultation on HCLG Select Committee on Planning Guidance on fracking— Report

I am writing to you in respect of your request for a brief statement on how the published report of 5th July entitled, 'Select Committee on planning guidance on fracking', impacts the current drafting of the Joint Minerals and Waste Plan, specifically, you ask for comments on;

- Whether the Report affects the Plan, and if so how;
- Whether the Plan should be modified and if so how to reflect the Report.

In our view, whilst the Select Committee has produced a wide-ranging report, it is not Government policy, and therefore should not be given any weight in the current drafting of the Joint Minerals and Waste Plan until such time as the Government formally responds and policy is clarified.

The Select Committee review has taken place alongside the Government's own proposals for planning reform on shale gas development and the onshore oil and gas industry fully intends to respond to the Government's planned consultations.

However, we do not support the Committee's recommendations opposing Government proposals on permitted development rights and national planning. The report fails to address a main concern of both the industry and local communities, which is the fact that planning applications for even the simplest of wells now take up to 18 months to conclude and that many of the professional planning officer recommendations are ignored.

The report also questions a number of the current definitions within statute but fails to give any land-use planning reason why they should be changed. As a result, the report fails to consider one of the key reasons why there are so many delays in the planning process, which is that many of the

issues raised during the review of a planning application are, in fact, the responsibility of other regulators.

We have appended a copy of our evidence given to a hearing of the Select Committee on Monday 30th April 2018, which I am sure you will find helpful.

Yours sincerely



Ken Cronin
UKOOG CEO

Enclosures:

1. Evidence submitted by UKOOG to the HCLG Select Committee



1. ABOUT UNITED KINGDOM ONSHORE OIL AND GAS (UKOOG)

- 1.1. UKOOG is the representative body of the onshore oil and gas industry. We welcome this inquiry by the Housing, Communities and Local Government Select Committee as it comes at an important moment for our industry. This document has been approved by UKOOG's council of members. Individual companies will also be making submissions.
- 1.2. The industry recognises the challenges planning officers and councils face and acknowledge not all applications will be supported by officers. The industry also recognises that it needs to ensure that all applications are submitted correctly and acknowledges that it needs to continually improve and apply best practice. UKOOG strives to ensure best practice across the board is employed to ensure that our members supply adequate information for all planning applications.

2. EXECUTIVE SUMMARY

- 2.1. Onshore oil and gas is a nationally strategic energy sector given the high level of projected energy imports and the need to create jobs. Although it has been in existence for over a hundred years, the industry has now reached a critical stage in evaluating both shale gas predominantly in Northern England and Kimmeridge oil predominantly in Southern England.
- 2.2. Many of our existing wells are in Areas of Outstanding Natural Beauty, close to ecological designations and local communities. We have proved over the years that we can work safely and have due regard to environmentally sensitive areas to ensure we pose no danger to our neighbours be they human, flora and fauna.
- 2.3. There is strong Government support for the development of onshore hydrocarbons set out in national policy (appendix 1).
- 2.4. We believe that the planning process is not functioning as it is intended to do, and its current utilisation is restricting to our industry, local people and is causing large expense for all concerned including local councils.
- 2.5. DCLG data shows that between October 2015 and September 2017 of the 82 onshore oil and gas planning decisions only 26 were made within 13 weeks (32%).¹
- 2.6. The experience of the most recent planning applications for shale gas exploration wells has shown a period between validation of a planning application to presentation to a planning committee ranging from 34 weeks to 54 weeks. A number of these applications were for simple data gathering exploration wells with no hydraulic fracturing involved, all of which received environmental permits from the Environment Agency.
- 2.7. In the last 2 years planning officers determining 16 planning applications² have made recommendations to approve 13 and reject 3 applications. Council members have rejected 11 and approved 5 applications.

¹ <https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics>

² Includes all onshore oil and gas, for applications for new sites, approval of conditions or plans for restoration

- 2.8. Lengthy planning processes and decisions are not confined to the onshore oil and gas industry
- 2.9. The majority of planning issues such as noise, lighting or transport are not unique to oil and gas. Statutory timescales are the same for all sectors. UKOOG sees no reason for onshore oil and gas therefore to be treated any differently or as a specific sector. Planning Guidance, legislation and development plan policies should be adequate as long as they are properly understood and applied. While there are many similarities between the onshore oil and gas industry and other sectors with respect to planning related issues, few sectors have as many regulatory regimes to traverse at the same time.
- 2.10. The planning system was created with flexibility and discretion in mind however, we believe that flexibility is being gamed and manipulated to elongate timescales and to create the threat of legal challenge.
- 2.11. The overall processes involved in oil and gas exploration and extraction are not well understood by many outside the industry and planning officers/officials. This leads to lengthy decision times and a lack of robust decision making.
- 2.12. With five separate regulators involved in the overall regulatory approval process for an onshore oil and gas well in practice there is a perception of significant overlap, borne from confusion around who regulates cross-cutting aspects of the regulatory framework by the planning committee members and large parts of the general public. There is a need to ensure that the role of the regulators and the planning system are more defined. There should be no new barriers to local decision making, particularly for exploration sites that have very low environmental impacts.
- 2.13. The planning inspectorate is coming under significant pressure. According to DCLG statistics,³ in the year 2016/17, 11,789 s78 planning appeals were received. The timely and fair determination of applications and associated appeals for communities and applicants alike is important for all industries. The onshore oil and gas industry is a very small part of these statistics. However, given the time taken to get to the appeal stage, it is concerning that a number of onshore oil and gas applications are taking many months to get a planning inspector appointed. The position with respect to shale gas applications is becoming quicker following the written ministerial statement in 2015, but the impact of the planning appeal system across the whole sector needs to be addressed.
- 2.14. The need to improve the effectiveness and efficiency of the town and country planning system is key for all stakeholders. The consideration of additional resources to support current processes and clarification of guidance (as identified in section 9) is we believe both necessary and required to ensure this happens.
- 2.15. There is a potential need for larger production sites and the associated infrastructure to be determined at a national level given their strategic importance for the UK.
- 2.16. However, consideration must be given to the fact that when compared to most onshore energy production, onshore oil and gas sites are relatively small in terms of land use and the regulatory regime outside of planning is significantly more comprehensive and complex.

³ <https://www.gov.uk/government/statistics/planning-inspectorate-statistics>

- 2.17. We believe that the government should now start evaluating what a potential national regime would look like and to ascertain whether or how onshore oil and gas fits into the current regime. This should be prescriptive at this stage; however, we believe that any national scheme needs to have certain characteristics including the need for complete local community engagement.

3. THIS INQUIRY

- 3.1. We believe that the inquiry needs to extend beyond “fracking”, as this is merely a technique used to extract hydrocarbons from geologies that do not easily give up their gas or oil. To date onshore oil and gas extraction, and the majority of associated planning applications, have not involved “fracking”. However, there are many common issues associated across onshore oil and gas operations including land use, traffic movements and impacts on the local environment and local residents such as noise and lighting that are routinely addressed by the planning system.
- 3.2. For this reason, we believe that from an onshore oil and gas perspective, development considerations should not be ‘individual technique’ driven such as the use of fracking but should be holistically reviewed across all aspects.
- 3.3. The issues outlined in this submission are similar in nature to all planning applications, particularly those that involve construction activity and other onshore energy production. **UKOOG sees no reason for onshore oil and gas therefore to be treated any differently or as a specific sector. Planning Guidance, legislation and development plan policies should be adequate as long as they are properly applied.**

4. A NATIONAL NEED

- 4.1. With gas imports set to rise steadily to c75% of our national gas requirement by 2035 with potential global environmental and national economic impacts, the UK government has promoted the need to explore for shale gas. This import dependency applies to oil as well as gas.
- 4.2. There is strong Government support for the development of onshore hydrocarbons set out in national policy: (**Appendix 1**). Government energy policy supports the development of onshore oil and gas in the UK as part of the energy mix (**PPG 124**). The national need for unconventional hydrocarbon exploration, from resources such as shale and coal seams, is recognised as “pressing” (**PPG 091**). The Written Ministerial Statement (WMS) in September 2015 gives specific support for shale gas exploration, including use of hydraulic fracturing. It states expressly that Government support should be taken into account in the plan-making process.
- 4.3. The Government has identified in its Clean Growth Strategy that clean fuels such as hydrogen could be used for transport, industry, and to heat our homes and businesses. Numerous studies have shown that the most economical way of producing hydrogen is the reformation of methane with Carbon Capture and Storage (CCS), and the Committee on Climate Change has repeatedly said that the costs of decarbonisation could be twice as high without CCS, i.e. without methane. Therefore, there is a need to secure methane feedstock from the most environmentally-sustainable source, which is British onshore shale gas.

- 4.4. The recently announced Industrial Strategy White Paper also identifies the potential for shale: *“The emerging shale gas industry offers the prospect of creating jobs, enhancing the competitiveness of downstream sectors and building up supply chains. We are considering how to implement our proposal for a Shale Environmental Regulator. We will support the development of these industries while recognising the devolved nature of planning in the devolved nations and will work with the sector to explore its potential contribution to clean growth through technologies such as carbon capture, use and storage, and the hydrogen economy.”*

5. OUR INDUSTRY

- 5.1. The industry has drilled over 2,200 wells onshore in the UK and today 300 of those wells are still operational, producing the equivalent hydrocarbons to heat around 1 million UK homes. We estimate that approximately 400 well pads developed across the UK between 2020 and 2035 could reduce our forecast gas imports by at least 50%. In contrast, there are 88,000 pylons, 9,000 municipal waste water treatment facilities (the need for which will increase in number and scale as the population grows) and 7,018 individual wind turbines that already exist in the UK. **The land use requirements of our industry are significantly less and temporary in nature.**
- 5.2. Many of our existing wells are in sensitive areas for example Areas of Outstanding Natural Beauty, close to ecological designations, local communities and in areas of very high house prices. We have proved over the years that we can work safely and have due regard to these areas to ensure we pose no danger to our neighbours be they human, flora and fauna.
- 5.3. In 2013 UKOOG introduced the community engagement charter for shale and coal bed methane operations which included a commitment to transparent public engagement and a range of potential community benefits; both these commitments are now operational.
- 5.4. The industry for shale gas and to a certain extent the oil bearing Kimmeridge Limestone in the South of England, is in what is termed the exploration phase. This phase will help determine the suitability of the rock, the flow rates of gas or oil and the quality of the gas or oil. Then and only then can operators decide whether they can move to an appraisal and/or production phase, which involves longer-term testing and potentially the commercial production of hydrocarbons.
- 5.5. The **exploration** phase typically involves: 1) The acquisition of 3D images of the geology through a ‘seismic acquisition survey’, carried out on the land’s surface, and allowable under permitted development; and 2) The drilling of a small number of core wells and possibly some underground horizontal wells. **Appraisal** typically involves drilling a larger number of wells, both horizontal and vertical, which are flow tested (or appraised). The process for shale will include using high volume hydraulic fracturing techniques. The flow test may run for an extended period of up to 12 to 18 months. **Production** will involve drilling a greater number of wells per site, possibly ranging from 10 up to 40 depending on geology on a single pad or site, although the design of production sites in the UK has yet to be determined and will be subject to the results of the earlier phases.
- 5.6. All three phases involve drilling vertically and potentially horizontally using a drill rig of up to 60 metres in height, which is temporary. A typical exploration well will take between

three and five months to drill depending on the geology. Traffic movements associated with site construction, moving equipment, chemicals and sand on site and waste products off site vary for each phase. However, once all drilling activity has been completed the wells are capped using an 8ft high pipe with valves, often called a “Christmas tree”, which will not be observed by most. Planning consents and conditions ensure that appropriate mitigation measures are in place during site construction, drilling and production testing phases in the early part of the process. None of these issues are unique to oil and gas development.

- 5.7. We have now started the exploration phase for shale gas which has included extensive 3D seismic surveying across the East Midlands, Yorkshire and the North West and 5 wells across 4 sites have been drilled or are under construction. There are a further 2 wells with planning permission and planning applications have been submitted for determination to mineral planning authorities (MPA) for a further 10 wells across 6 sites. This exploration and appraisal phase will determine where the gas is, the qualities of the shale, and what a potential production pad scenario might look like. In terms of the Kimmeridge Limestone and other oil sites in Southern England there are a total of 6 sites either in the planning process or soon to be operational in addition to the existing sites.

6. INDUSTRY AND REGULATORY PROCESS

- 6.1. The planning system is one of five separate regulatory processes that the industry has to satisfy. The other regulatory systems are operated by the Environment Agency (EA), The Health and Safety Executive (HSE), The Oil and Gas Authority (OGA) and The Department for Business, Energy and Industrial Strategy (BEIS). **While there are many similarities between the onshore oil and gas industry and other sectors with respect to planning related issues, few sectors have as many regulatory regimes to traverse at the same time before any on the ground operations can commence.**
- 6.2. This regulatory process involves monitoring our sites before, during and after operations as part of the environmental permitting process regulated by the EA under the Environmental Permitting Regulations (England and Wales) 2016 and under the Infrastructure Act 2015 administered by the Secretary of State for BEIS.
- 6.3. The EA will also seek adherence to a variety of legislation and regulation as part of issuing environmental permits including:
 - The Water Resources Act 1991
 - The Hazardous Waste Regulations (England and Wales) 2005 and Special Waste Regulations (1996)
- 6.4. In all we believe that the industry needs to adhere to 17 EU directives where appropriate.
- 6.5. Our well designs are reviewed by an Independent Well Examiner, under a scheme required by the HSE through the Offshore Installations and Wells (Design and Construction Etc) Regulations 1996 (DCR). The HSE also ensure adherence to other regulations including but not limited to:
 - The Borehole Sites & Operations Regulations 1995 (BSOR)
 - The Dangerous Substances and Explosive Atmosphere Regulations 2012 (DESEAR)
 - The Provision and Use of Work Equipment Regulations 1998 (PUWER)

- Health and Safety at Work Act
- 6.6. The OGA is involved throughout the process. At the beginning, as part of the licencing process, the OGA will assess the operational and financial competence of an operator. They will also review the plans where appropriate put in place for seismicity and fracture growth through the approval of a hydraulic fracturing plan as governed by the Infrastructure Act 2015. The OGA will also give final well consent. This also involves very close liaison with other regulators.
 - 6.7. In addition, operators may need to seek approval and or guidance from the Coal Authority through the Coal Industry Act 1994 and the British Geological Survey (BGS) through the Mining Industry Act 1926.
 - 6.8. Operators also have to apply guidelines produced by Oil and Gas UK and UKOOG which are referenced by the regulators.
 - 6.9. **These regulatory systems in practice give the perception of a significant overlap with the planning system; created by confusion about who regulates and decides on which aspect; and this leads to the need for greater clarity in government guidance.**
 - 6.10. One of the most misunderstood aspects of our industry is how we choose our sites and the limited amount of land we will use for each site. Based on a national average for England, at least 30% of land will not be available for shale gas pad/site development due to one or more limiting factors contained within the Infrastructure Act 2015. For example, approximately 28% of the land area in England is covered by environmental designations such as SSSI, AONB and/or a National Park. When choosing sites, the industry takes into account a number of items as outlined in appendix 3.

7. RECENT PLANNING EXPERIENCE

- 7.1. Currently, the largest barrier to the development of the onshore oil and gas industry is the lack of pace and consistency of decision making within the UK's planning system, and how the industry, local communities and government engage with it.
- 7.2. **In the last five years we have seen a significant negative shift in the efficiency of the planning system. Decisions on drilling single exploration wells that used to take typically 3 months often through delegated powers are now taking up to 18 months at a local level.** There are many reasons for this, and as we will show, this is not just pertinent to our industry.
- 7.3. The industry's desire to build a good working relationship with local planning officers to enable the local planning authority to determine the application in accordance with the officer's recommendation has been sorely tested over the last few years. Many of our planning applications are in areas where we have operated for many decades without issue. In addition, there has been a significant increase and improvement in community engagement.
- 7.4. The industry recognises the challenges planning officers and councils face and acknowledge not all applications will be supported by officers. The industry also recognises that it needs to ensure that all applications are submitted correctly and acknowledges that it needs to

continually improve and apply best practice. UKOOG strives to ensure best practice across the board is employed to ensure that our members supply adequate information for all planning applications.

- 7.5. The industry requires a system where rules are understood and applied consistently and that the process is completed within statutory timescales as has been the case in the past. This is important we believe not only for our own industry, in terms of providing an adequate foundation from which to invest, but also in terms of local communities and the local councils. A long drawn out process is not in anyone's interest and is very costly.
- 7.6. As a consequence of the delays in the decision-making process or decisions having been taken to refuse applications (often contrary to officer recommendation), we have had to resort to using the appeals process with some success demonstrating that officer recommendations were correct. In a similar fashion our opponents have used the court process to challenge decisions. Again, this type of activity is common across many sectors.
- 7.7. In the last 2 years planning officers in determining 16 planning applications⁴ have made recommendations to approve 134 and reject 3 of them. Council members have rejected 11 and approved 5 applications.
- 7.8. DCLG data shows that between October 2015 and September 2017 of the 82 onshore oil and gas decisions only 26 have been made within 13 weeks (32%).⁵ The experience of the most recent 5 planning applications for shale gas wells have shown a period between validation of a planning application to presentation to a planning committee ranging from 34 weeks to 54 weeks. These timescales are well beyond that sought by Government.
- 7.9. It should be noted that the quicker end of this range was prompted by appeals under non-determination. None of these timescales include the pre-application discussions, community engagement or validation activity that happens prior to submission or the lengthy period after decision to discharge planning conditions.
- 7.10. The aim should be to achieve planning decisions within statutory timescales – effectively, decisions being made on time – and to take account of the fact that, unlike many other types of application, there is a much wider regulatory process for onshore oil and gas. Planning decisions should not take longer than the actual development under consideration, which in many cases they are.
- 7.11. There are many aspects to the overall planning journey for onshore oil and gas operators from potential screening and scoping opinions through to the validation of the planning application and the agreement of planning conditions. In our experience each stage can and has added to the length of time required to traverse the planning process.
- 7.12. The charts in appendix 2 provide evidence of the length of time taken for many onshore oil and gas applications. They also show, however, that certain stages of the application can be processed on time. *NB: not every application is subject to every stage – for example, only applications needing an environmental impact assessment (EIA) go through the scoping phase, and if an operator agrees upfront to do an EIA, there is no need for the screening phase. The charts therefore only include the relevant applications.*

⁴ Includes all onshore oil and gas for applications for new sites, approval of conditions or plans for restoration

⁵ <https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics>

- 7.13. Planning conditions are set by the MPA and are specified in the planning application decision. It can sometimes take a significant period – several months – for the details submitted to meet the requirements of planning conditions to be approved. One recent example is that of Europa Oil and Gas’s site in Surrey, which received planning permission by appeal in 2015. One of the planning conditions was approval by the local council of a Traffic Management Scheme; this has been under review by the council and statutory consultees since 7th February 2016. The plan has been modified 11 times in response to consultations over a period of 1 year and 9 months. The Condition was finally presented to the planning committee at the August 2017 meeting with a recommendation by planning officers to approve. The planning committee elected to defer against advice. The plan was presented again at the September 2017 meeting with a recommendation by planning officers to approve. The decision was to defer again against advice. In November 2017 Europa again were forced to go for appeal this time on the grounds of non-determination of the planning condition.
- 7.14. In another example in Lancashire the planning conditions set out by the planning inspector were subsequently put out for consultation by the local council adding 3 months to the process. The schemes and programmes should not, in keeping with other development, be subject to further public consultation adding unnecessary delays to a process which has been subject to extensive public consultation previously
- 7.15. The charts in appendix 2 show how the planning application stage has tended to take up to a year – around four times longer than the statutory timescale. Additional time has been taken up with delays to screening and scoping requests over the defined statutory period. A well-managed, timely, flexible and proportionate planning process would reduce the length of the application process overall by at least six months, and in some cases by at least a year. To give a few practical examples:
- Third Energy’s KM8 hydraulic fracturing application was approved on **27 May 2016**. The planning determination took 43 weeks, compared with a statutory timeframe of 16 weeks. If the 16-week timescale had been adhered to, the application would have been granted on 18 November 2015. In addition, the scoping for the Environmental Impact Assessment took 76 days, compared with a statutory timeframe of 35 days. If the statutory timeframe for scoping had also been adhered to, the application would have been granted on **8 October 2015 – a full 7 ½ months earlier**.
 - Cuadrilla’s Preston New Road application was determined by the MPA on **29 June 2015**. The application was validated on 5 June 2014. Had the statutory 16-week period been followed, the application would have been determined on **31 October 2014 – 8 months earlier**.
 - The IGas Springs Road application was approved on **15 November 2016**. It took 54 weeks from validation on 30 October 2015. Had the statutory 16-week period been followed, the application would have been approved on **19 February 2016 – 9 months earlier**.
- 7.16. Alongside lengthening timescales, the industry has now started to use the planning appeal process, either because of questions around an original decision by the local MPA or because of the length of time taken to make a decision (non-determination). **This is an increasing and worrying trend which has been seen in other sectors within the energy industry.**

- 7.17. For example, data from DCLG databases with respect to onshore wind generation over 10MW since 2000 shows that 60% of applications submitted were rejected by local councils, whereas only 27% were granted (13% of applications were withdrawn). Of those refusals 57% were subsequently appealed and of those 56% obtained planning permission on appeal.
- 7.18. It is clear that the planning inspectorate is coming under significant pressure. According to DCLG statistics,⁶ in the year 2016/17, 11,789 s78 planning appeals were received. The timely and fair determination of applications and associated appeals for communities and applicants alike is important for all industries. The onshore oil and gas industry is a very small part of these statistics. However, given the time taken to get to the appeal stage it is concerning that a number of onshore oil and gas applications are taking many months to get a planning inspector appointed. The position with respect to shale gas applications is becoming quicker following the written ministerial statement in 2015, but the impact of the planning system is across the whole sector needs to be addressed.
- 7.19. **More funding is required both nationally and locally in order to make the process more efficient.**
- 7.20. In addition, we have also seen a number of judicial reviews challenging decisions made either by local planning authorities or by the Secretary of State. Of note to date none of these have been successful.

8. SPECIFIC PLANNING ISSUES

- 8.1. As identified above the length of time taken to determine planning applications is the key issue. This section will identify specific areas that contribute to this.
- 8.2. We believe that the main reasons behind the delays are that planning officers are under significant pressure combined with reduced resources. They are under pressure to ensure that the process is legally robust; the significant volume of comments made on each planning application are considered; the high public interest is addressed; and the requirement to consult on new information (of which the definition is not always clear) is processed.
- 8.3. DCLG has targeted funding in the last two years at councils that are likely to have shale gas applications. It is not clear which councils have taken this funding up – however depending on uptake this type of approach may need to be extended to allow more resource at local and national level and across all onshore oil and gas applications. However, we believe that the underlying issues of efficiency of process need to be addressed. We believe that the current guidance needs to be strengthened as does the way it is interpreted.
- 8.4. In pure planning terms, the impacts of an exploratory onshore oil and gas site will not be significant provided sites are chosen sensitively. However recent industry experience has demonstrated local communities are concerned about (1) the sub-surface issues such as groundwater and seismicity and (2) health impacts. Government guidance in this area creates a demarcation between regulators stating the MPAs will need to be “satisfied” that issues handled by other regulators are adequately addressed:

⁶ <https://www.gov.uk/government/statistics/planning-inspectorate-statistics>

“There exist a number of issues which are covered by other regulatory regimes and minerals planning authorities should assume that these regimes will operate effectively. Whilst these issues may be put before minerals planning authorities, they should not need to carry out their own assessment as they rely on the assessment of other regulatory bodies. [para 112 of Planning Practice Guidance (Minerals)].

- 8.5. It should be noted that as a result of the guidance a very significant proportion of the onshore oil and gas planning applications receive positive planning recommendations from planning officers.
- 8.6. A large number of the public’s responses to planning applications relate to issues that are assessed in detail by other regulatory bodies at the appropriate time. This would imply that the general public sees the planning system as its point of interaction for all concerns despite the guidance from government. The local authorities then face significant pressure to consider the public’s responses and this is resulting in conflict between the planning officers’ recommendations on relevant planning grounds and the views of elected councillors on the local planning committees, who are trying to balance the professional planning considerations and public perspectives.
- 8.7. It is clear that clarification on guidance is required with respect to paragraph 55 of the Town and Country Planning Act. There appears to be a tension with the definition that development can be classified as “in, on, over or under” while it is also clear that given the depths of working for onshore oil and gas there is no significant impact at the surface of the development and that sub surface issues are covered by other regulators and therefore the sector should be treated as the act suggests “where the context otherwise requires”.⁷
- 8.8. As we have outlined above the regulatory system for onshore oil and gas is very comprehensive. However, we believe the process is not well understood by many outside the industry and planning officers/officials. This can be best summed up by Lord Smith who chaired the shale gas task force in 2015:

“The current regulatory oversight for any potential shale gas industry at national level does not command the public confidence that is necessary. The separation of permitting and oversight between the Department of Energy and Climate Change, the Environment Agency and the Health and Safety Executive is unwieldy and difficult for the public to navigate.”
- 8.9. UKOOG have attended various planning committee meetings over the last few years it is clear that local councillors struggle with the different roles of the five separate regulators within the regulatory system for onshore hydrocarbon exploration and development. Much time is taken up on issues that have been brought up by the general public but are outside the remit of the planning authority. This has also led to some decisions being made which have been motivated by non-planning grounds or grounds that are not material considerations. There also appears to be an overall distrust of other regulators, borne by experiences from other sectors or issues.
- 8.10. Onshore oil and gas exploration and production, as stated above, has been undertaken in the UK for many decades. However, the level of misunderstanding both among the general public and local councillors is still quite high and is subject to myths and misinformation and also potential gaming of the system to cause delay.

⁷ <https://www.legislation.gov.uk/ukpga/1990/8/section/55>

- 8.11. UKOOG recognised fairly early on that engagement with local communities was going to be key. No system will ever be perfect, but we do believe that the industry has improved local engagement considerably over the last four years. This is a learning curve for the industry as it was for wind, solar and anaerobic digestion.
- 8.12. The most recent planning application from the industry for a simple vertical cored well involved meeting 71 Parish and Town Councillors across 3 meetings in the region, 2 exhibitions where over 500 people attended, 90,000 inserts in local papers, a Facebook live Q&A session which has had 9,800 online views, and this was over and above the many other one to one meetings in the area.
- 8.13. A number of operators run community liaison groups and hold site visits which is also helping.
- 8.14. Given the strategic need for onshore oil and gas we believe it would be helpful if central government could run a public information campaign about energy in general, energy security and the critical role of gas and benefits of homegrown shale gas.**
- 8.15. We are also aware of a number of training schemes run by the Planning Advisory Service for officers and councillors. We do not have information as to the uptake of these programmes, but we believe that this is the right approach and should be fully funded by government to ensure the widest possible audience.**
- 8.16. Statutory consultees play an important role in providing information to local mineral planning authorities which UKOOG welcomes as part of the process.
- 8.17. Statutory consultees should respond within 21 days and most professional organisations appear to adhere to this timetable. However there have been a number of occasions that local district councils who have voted in the past to create a ban on shale gas extraction appear to have elongated the process by delaying their response. Planning Officers wishing to ensure the fullest response are left with no alternative but to delay the decision process until submissions have been made irrespective of the fact that they are not obligated to wait for views to be received.
- 8.18. We believe that statutory consultees should be encouraged and resourced to meet an acceptable deadline or face some form of sanction.**
- 8.19. A number of recent planning applications have suffered as a result of last minute legal interventions from NGOs, despite an already elongated consultation process. In one case the intervention came during the actual planning committee meeting and left the committee no choice but to adjourn the meeting.
- 8.20. The process is being gamed by a small minority who seek to use last minute interventions to stall the decision-making process.
- 8.21. The planning process already allows significant consultation and the right to make submissions. It would appear entirely reasonable to have a cut off at the time the planning officer submits his or her report to the committee without facing the risk of a judicial review.**

- 8.22. A number of recent planning applications have had several rounds of public consultation as “new” information has been submitted by the applicant. In one case a further consultation was required because the applicant confirmed that 3 months of emissions during site construction would be a quarter of the annual figure for emissions already given in the original planning application. Each consultation adds at least 21 days to the process.
- 8.23. What material information should be classified as “new” information is extremely difficult to define. More guidance is required potentially using worked examples on what is material new information that requires a further public consultation – the above example was clearly not material “new” information.
- 8.24. Some operators have engaged local authorities in pre-application discussions in order to make the process more efficient. These meetings by nature are at an early stage where a number of potential sites or areas may be discussed, often before any land deals have been concluded.
- 8.25. As for any industry, during the normal course of pre-application discussions, notes are taken, and site location options and plans are discussed. Often details of these meetings are disclosed under freedom of information rather than being treated as commercially confidential or policy in progress. This information is often used against the industry through social media.
- 8.26. This inhibits full discussion, which makes strategic planning far less effective for the MPA and the operator and puts into the public domain information that should be commercially sensitive until the planning application is made. It also inhibits the industry’s duty of care to landowners.
- 8.27. The problems above are compounded by the fact that a number of MPAs are taking decisions on these types of applications for the first time. The officers and committee members dealing with such applications will be a different set of individuals from one authority to another. There is little in the way of benefitting from experience. Forums to facilitate this should be supported.

9. POTENTIAL SOLUTIONS

- 9.1. Planning Practice Guidance should be edited to state categorically that the MPA should not be concerned with subsurface issues, as this is addressed technically by other regulators i.e. the EA, HSE and the OGA. It should clearly define the areas that are within the MPA’s remit, and the areas that are within the remit of national regulators and make clear that there should be no duplication. The guidance should also reinforce categorically that a lack of confidence in national regulators or a perceived lack of resource is not a valid reason to refuse applications.
- 9.2. It should not be possible for MPAs to use local minerals plans, supplementary planning guidance and other documents to restrict onshore oil and gas applications unduly compared to other sectors, given that it is a national policy to support development of these resources. Local plans should not seek to introduce definitions or limits that conflict with nationally-agreed definitions or which hamper the reasonable exercise of planning judgement in making choices about the acceptability of the location or activity.

- 9.3. The process of consultations should be improved, avoiding multiple consultations on matters which should not be interpreted as ‘new information’.
- To ensure that the consultation period for objections and representations does not extend beyond statutory periods (including the raising of last minute issues up to the Officer’s Report / Committee), a DCLG guidance note should define a cut-off date.
 - To reduce the number of repeat consultations, a guidance note should be produced by DCLG on material planning issues using worked examples. requiring re-consultation. If an issue is already able to be demonstrated to be included within the original submission or does not meet guidance it can be accepted without further consultation.
- 9.4. Pre-application discussions between the MPA, the operator and other regulators and key stakeholders should be treated as commercially confidential until such time as a planning application is made.
- 9.5. Extra funding is required to reduce the obvious pressures both at the local council level and at the planning inspectorate level
- 9.6. Training of all local councillors should be introduced across all relevant councils
- 9.7. Central government should run information campaigns on the need for energy, in particular oil and gas and also the role of the regulators

10. NATIONAL VERSUS LOCAL PLANNING

- 10.1. The suggestion that onshore oil and gas planning applications are in some shape or form brought within the Planning Act 2008 (DCO) regime for nationally significant infrastructure projects has been mooted by Government. A specific suggestion had previously been made in a consultation launched by DCLG in November 2012 that onshore oil and gas extraction above 500 tonnes per day for petroleum and 500,000 cubic metres per day for gas was brought within the new “business and commercial” category of projects being added to the regime. In its response in June 2013, DCLG confirmed that it would not be bringing onshore oil and gas within the regime at that time but stated it would keep the situation under review.
- 10.2. UKOOG believes that for exploration and appraisal sites the current planning system is the right mechanism. However, the principles and process already enshrined in guidance and law should be adhered to and updated as suggested above.
- 10.3. We also believe that this process cannot be one sided – applicants also have to play their part – the UKOOG Community Engagement Charter makes clear that onshore oil and gas operators engaging in exploring or developing unconventional reservoirs should ensure adequate engagement with local communities. We intend to review the Engagement Charter where appropriate to include all onshore oil and gas.
- 10.4. For applications which involve producing significant commercial quantities of hydrocarbons we believe in common with other sectors that some form of national planning regime is potentially beneficial.

- 10.5. The current Nationally Significant Infrastructure Planning regime and National Policy Statements were developed by previous governments in order to provide more certainty around decision-making for key national infrastructure. In the energy sector, there are already National Policy Statements for:
- Renewable energy infrastructure, including onshore wind farms and biomass and waste plants of 50 MW or above;
 - Fossil fuel electricity generating infrastructure of 50 MW and above;
 - Gas supply and gas and oil pipelines;
 - Electricity networks infrastructure;
 - Nuclear power generation of 50 MW and above.
- 10.6. In other words, *generation, transmission and storage* of energy are deemed to be nationally-significant infrastructure. The key omission is *extraction* of energy. We believe that an industry which has the potential to achieve significant reductions in the UK's gas and oil imports should also be considered to be nationally-significant infrastructure.
- 10.7. Other key reasons why national planning could be appropriate for onshore oil and gas production include:
- Replacing imported gas with gas from the UK brings environmental benefits. Shale gas production has c50% lower production emissions than imported LNG, which may come from countries that lack the same environmental, health and safety, and human rights standards.
 - Although onshore oil and gas production sites, at around 2 hectares, are smaller in land-use terms than other major energy developments, they are similar in energy terms:
 - A 10 horizontal well production pad, with each horizontal producing 4 bcf of gas, would produce 40 bcf over a 20 year production life. This is equivalent to 11.7 TWh of thermal energy (or around 6 TWh of electricity assuming a gas-fired power station efficiency of 50%).
 - A 50MW biomass, waste or nuclear generator, with a load factor of 80%, would generate 7 TWh of electricity over 20 years.
 - A 50MW onshore wind farm, with a load factor of 30%, would generate 2.6 TWh of electricity over 20 years.
 - A 10-horizontal well production pad would therefore be comfortably above the equivalent threshold size for nationally significant energy infrastructure.
- 10.8. As indicated in this document, the onshore oil and gas industry with respect to shale gas is still at an early stage. The requirement now is to be able to better understand the geology, quantify the gas flows and the quality of the gas in order to make a commercial decision about future production sites.
- 10.9. In order to do this the need to improve the effectiveness and efficiency of the town and country planning system is paramount. We believe that the government should now start evaluating what a potential national regime would look like.
- 10.10. Compared to most onshore energy production, onshore oil and gas sites are small in terms of land use and the regulatory regime outside of planning is significantly more comprehensive and complex. This should also be taken into consideration.

10.11. There is not a need to be prescriptive at this stage, however we believe that any national scheme needs to have the following characteristics against the current regime:

- The same or better safeguards in terms of regulation and safety;
- Local communities and councils continue to have a say;
- A cohesiveness with the other regulatory processes;
- Faster and more consistent decision making.

APPENDIX 1: GOVERNMENT POLICY SUPPORT FOR ONSHORE HYDROCARBONS AND SHALE GAS

NPPF 142: *"Minerals are essential to support sustainable economic growth and our quality of life. It is therefore important that there is a sufficient supply of material to provide the infrastructure, buildings, energy and goods that the country needs. However, since minerals are a finite natural resource, and can only be worked where they are found, it is important to make best use of them to secure their long-term conservation."*

NPPF 143: *"In preparing Local Plans, local planning authorities should: identify and include policies for extraction of mineral resource of local and national importance in their area..."*

Minerals PPG 091: *"What are conventional and unconventional hydrocarbons? Hydrocarbon extraction covers both conventional and unconventional hydrocarbons. Conventional hydrocarbons are oil and gas where the reservoir is sandstone or limestone. Unconventional hydrocarbons refers to oil and gas which comes from sources such as shale or coal seams which act as the reservoirs. As an emerging form of energy supply, there is a pressing need to establish – through exploratory drilling – whether or not there are sufficient recoverable quantities of unconventional hydrocarbons such as shale gas and coalbed methane present to facilitate economically viable full scale production."*

Minerals PPG 124: *"Do mineral planning authorities need to assess demand for, or consider alternatives to oil and gas resources when determining planning applications? Mineral planning authorities should take account of government energy policy, which makes it clear that energy supplies should come from a variety of sources. This includes onshore oil and gas, as set out in the government's Annual Energy Statement published in October 2013."*

Written Ministerial Statement, Shale Gas and Oil, dated 16 September 2015: *"there is a national need to explore and develop our shale gas and oil resources in a safe and sustainable and timely way [...] This statement to Parliament should be taken into account in planning decisions and plan-making [...] Exploring and developing our shale gas and oil resources could potentially bring substantial benefits and help meet our objectives for secure energy supplies, economic growth and lower carbon emissions."*

Having access to clean, safe and secure supplies of natural gas for years to come is a key requirement if the UK is to successfully transition in the longer term to a low-carbon economy. The Government remains fully committed to the development and deployment of renewable technologies for heat and electricity generation and to driving up energy efficiency, but we need gas - the cleanest of all fossil fuels – to support our climate change target by providing flexibility while we do that and help us to reduce the use of high-carbon coal.

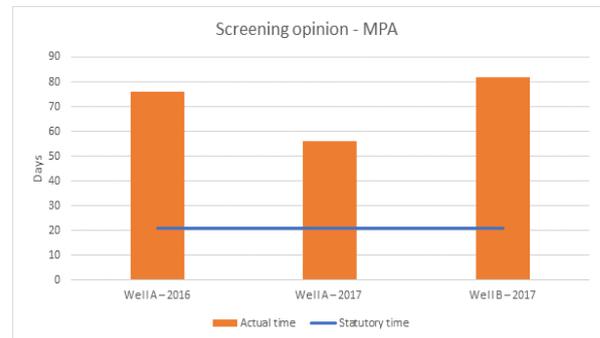
Natural gas is absolutely vital to the economy. It provides around one third of our energy supply. [...]"
"The Government therefore considers that there is a clear need to seize the opportunity now to explore and test our shale potential. [...]"

"Reports by the Royal Society and Royal Academy of Engineering, Public Health England and others have considered a wide range of evidence on hydraulic fracturing in the UK context, and concluded that risks can be managed effectively if the industry follows best practice, enforced through regulation. The Government is confident we have the right protections in place now to explore shale safely (see Annex). Planning authorities can also have confidence that the regulators will enforce safety, environmental and seismic regulation effectively. But we are not complacent. We will continuously look to strengthen and improve regulation where necessary as the industry develops."

APPENDIX 2 – TIME TAKEN FOR DIFFERENT PHASES OF PLANNING

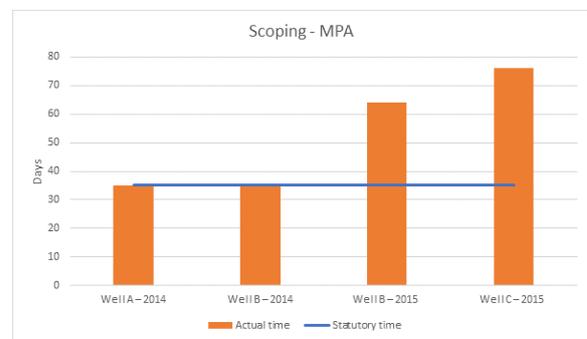
Screening Opinion

A screening opinion is given by the Mineral Planning Authority to determine whether the application falls within the thresholds for environmental impact assessment (EIA). The statutory time period is 21 days (although the screening regulations were changed to increase the time period for up to 90 days as of 16 May 2017, all the screening opinion requests referred to in the chart below were submitted before this date).



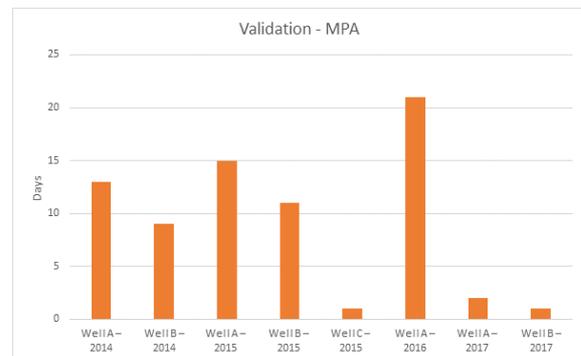
Scoping

The scoping phase determines the 'scope' of issues that need to be considered in the EIA. A scoping opinion is provided by the Mineral Planning Authority. The statutory time period is 35 days.



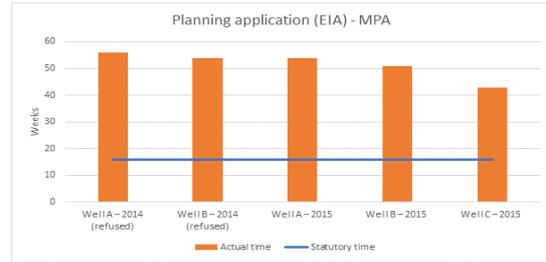
Validation

A planning application must be validated by the Mineral Planning Authority before it is considered.



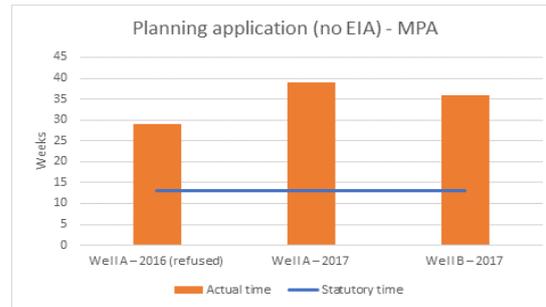
Planning Application – Environmental Impact Assessment

Planning applications are determined by the Mineral Planning Authority. The statutory period for applications that include an EIA is 16 weeks.



Planning Application – No Environmental Impact Assessment

Planning applications are determined by the Mineral Planning Authority. The statutory period for applications that do not include an EIA is 13 weeks.



APPENDIX 3 – CONSIDERATIONS FOR SITE SELECTION

- Geology – Pads will need to be close to where the hydrocarbons are and must take account of the location and level of natural underground faulting. As a part of this process existing sites will be considered. National policy recognises this in **NPPF 142**, which states that: "*minerals are a finite resource and can only be worked where they are found*".
- Protected areas – The government has introduced protections for certain areas through the Infrastructure Act 2015 and with respect to surface access. For example, the industry in the UK is not allowed to work in ground water source protection zone 1 or to drill on the surface of a national park for the purposes of high volume hydraulic fracturing. These areas would therefore be eliminated from consideration as potential sites.
- Proximity to urban areas – Just like any development, all shale gas sites need to meet the requirements of planning regulations, which includes consideration of factors such urban proximity, traffic impact, and visual impact.
- Access to water and grid connections – During the early stages, production pads need appropriate sources of water, and during production they require connection to gas or electricity consumers.
- Access and transport links – As with other construction activities, in the early stages of pad preparation, drilling and hydraulic fracturing, there are truck movements which require appropriate site access and transport linkages.