

Representations on the Select Committee Report on Planning Guidance for Fracking – July 2018

Following the publishing of the Select Committee Report on Planning Guidance for Fracking in July the Inspector has requested that participants in the hearings be given an opportunity to provide comments on the Statement. The inspector specifically asked

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

The responses have been split into Industry, other organisations and individuals and then respondent number order.

Respondent	Representation	Authorities response to representation
Industry		
3703 - INEOS	<p>The report should not affect the MWJP and the MWJP should not be altered to reflect the report.</p> <p>The report is only advisory in nature, The Government will be expected to produce a response to this report, and it is this government response which will have weight rather than the report itself. Some of the findings of the Select Committee appear to be at odds with the WMS 2018. Written Ministerial Statements should take precedence over Select Committee Reports.</p> <p>Made representations in relation to the 2018 WMS.</p> <p>Do not support the Report's recommendations opposing Government proposals on permitted development rights and national planning. The report does not address the fact that it takes up to 18 months to gain a decision, and the planning officer's opinion is ignored.</p> <p>The report questions current definitions, but fails to give and land-use planning reason why they should be changed. The report fails to consider that some of the issues raised during assessment of a planning application are the responsibility of other regulators.</p> <p>The Inspector should not take into account the findings of the Select Committee report because it:</p>	<p>The Select Committee Report (SCR) has been prepared following a systematic and transparent process of evidence gathering from individuals and organisations with relevant experience, expertise and views. It is therefore appropriate to regard it as forming part of the wider contextual evidence relevant to the MWJP and, correspondingly, to have regard to its content.</p> <p>However, there is nothing in the report which should affect the MWJP as currently drafted; and although aspects of the report lend general support to the approach taken in the plan (as recorded in the Authorities' response to the WMS2018), adequate justification for the approach taken by the Authorities has already been provided by the Authorities during the EiP process, having regard to existing policy and guidance. It is therefore not considered that any modifications to the Plan need to be made specifically in response to the SCR report.</p> <p>The Authorities views on the issue of definitions of hydraulic fracturing, including the land use planning justification for the approach adopted by the Authorities, are set out in detail in their response to WMS2018 and in other EiP evidence produced by the Authorities (including LPA87).</p>

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	<ul style="list-style-type: none"> • It is advisory • It contradicts current legislation and the WMS which clarifies how that legislation should be interpreted • Any reliance on the Select Committee findings which have not been debated by parliament would make the MWJP unsound because the MWJP would not be produced in accordance with current legislation or the Ministerial Statements clarifying how that legislation should be interpreted. 	<p>The Authorities also note that the Government response to the draft revised National Planning Policy Framework consultation: a summary of responses and the Government's view on the way forward, published alongside the new NPPF on 24 July 2018, states (at Section 17), in relation to comments received on draft NPPF policy on oil, gas and coal exploration and extraction, that: <i>There was limited support for the inclusion in the Framework of policies for the exploration and extraction of oil, gas and unconventional hydrocarbons (which includes shale), with most responses objecting to potential shale development as a matter of principle. However, shale gas, which plays a key role in ensuring energy security, is of national importance. The Government is committed to explore and develop our shale gas resources in a safe and sustainable way. We have therefore carried forward this policy in the Framework, <u>which would apply having regard to the policies of the Framework as a whole.</u></i> (underlined emphasis added by the Authorities). This reference confirms what a proper application of national policy and the WMS2018 requires; that Government support for hydrocarbons development, including shale gas, needs to be regarded in the context of national planning policy as a whole, the wider principles of sustainability and the need for a balanced approach across the main economic, social and environmental elements .</p>
3997 – UKOOG	<p>The report is not Government policy and should not be given any weight in the MWJP.</p> <p>UKOOG do not support the report's opposition to PD rights and national planning, and the report does not take account of the time it takes for a planning application to be approved.</p> <p>The report questions the number of current definitions but does not provide a land use planning reason why they should be changed. The report also fails to consider why there are so many delays in deciding a planning application, which is that many of the issues raised are the responsibility of other regulatory bodies.</p>	<p>The Authorities also note that the Government response to the draft revised National Planning Policy Framework consultation: a summary of responses and the Government's view on the way forward, published alongside the new NPPF on 24 July 2018, states (at Section 17), in relation to comments received on draft NPPF policy on oil, gas and coal exploration and extraction, that: <i>There was limited support for the inclusion in the Framework of policies for the exploration and extraction of oil, gas and unconventional hydrocarbons (which includes shale), with most responses objecting to potential shale development as a matter of principle. However, shale gas, which plays a key role in ensuring energy security, is of national importance. The</i></p>

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		<p><i>Government is committed to explore and develop our shale gas resources in a safe and sustainable way. We have therefore carried forward this policy in the Framework, <u>which would apply having regard to the policies of the Framework as a whole.</u></i> (underlined emphasis added by the Authorities). This reference confirms what a proper application of national policy and the WMS2018 requires; that Government support for hydrocarbons development, including shale gas, needs to be regarded in the context of national planning policy as a whole, the wider principles of sustainability and the need for a balanced approach across the main economic, social and environmental elements.</p>
4067 - Sirius	<p>The Select Committee report reflects on the matter of Local Plans and the relationship between their preparation and the WMS (paragraphs 54-59). An inherent contradiction between potential interpretation of the WMS and the Localism Act 2011 is identified and on the basis of evidence taken from North Yorkshire County Council following the preparation of the MWJP the report states:</p> <p><i>'Mineral Planning Authorities are best placed to understand their local area and weigh up what requirements should be in place for fracking developments. We note that Local Plans are already subject to scrutiny at national level from the Planning Inspectorate. Given that the English planning system is plan-led, Mineral Planning Authorities should be free to adapt their Local Plans as they see fit as long as they do not arbitrarily restrict fracking developments. It is essential that Mineral Planning Authorities have the right conditions in their Local Plans which can be justified having proper regard to local circumstances.'</i></p> <p>It is considered that the MWJP as submitted with the proposed Modifications agreed at the recently concluded Examination strike an appropriate balance with respect to this matter. In particular, and bearing in mind NPPF guidance and the WMS which reference mineral resources only being capable of being worked where they are found, the Potash Safeguarding Area, agreed by all parties at the Examination including fracking industry representatives, can be regarded as soundly based and justified.</p>	<p>It is agreed that modifications to the MWJP are not required in response to publication of the SCR report. It is also agreed that the report supports the use of local minerals plans to set policy subject to proper independent scrutiny. The MWJP is an appropriate local response to national planning policy and guidance.</p>

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2753 – FOE	<p data-bbox="405 268 1055 292">Submitted evidence to select committee in March 2018</p> <p data-bbox="405 331 658 355"><u>Definition of Fracking</u></p> <p data-bbox="405 363 1205 448">Support Select Committee endorsing the use of the online planning practice guidance definition. Therefore the Plan does not need to be amended</p> <p data-bbox="405 488 591 512"><u>NPPF Changes</u></p> <p data-bbox="405 520 1178 571">Welcome the Select Committee’s concern about the impact of the revised NPPF on UK climate change commitments.</p> <p data-bbox="405 611 1256 695">The new NPPF allows a transition period of 6 months if a Local Plan has been submitted, and it is likely that the MWJP will fall under this and will not require amending.</p> <p data-bbox="405 735 1218 786">If the Inspector is of the view that the new NPPF should be taken into account then FOE would like to be involved in the consultation.</p> <p data-bbox="405 826 667 850"><u>Accuracy of Guidance</u></p> <p data-bbox="405 858 1234 1034">Support concerns raised by the Select Committee about accuracy of guidance. FOE have the view that the existing hydrocarbon and development management policies provide adequate safeguards , and with the requirement for a 5 year review the Select Committee recommendations do not affect the Plan and so no amendments are required.</p> <p data-bbox="405 1074 640 1098"><u>Weight of Guidance</u></p> <p data-bbox="405 1106 1240 1190">FOE are of the view that the Inspector has taken the weighting of different guidance into account, and will do so in more detail in her final report, so the Plan does not need amending.</p> <p data-bbox="405 1230 546 1254"><u>Local Plans</u></p> <p data-bbox="405 1262 1263 1372">The hydrocarbon policies in the MWJP do not arbitrarily restrict hydrocarbon development. The contentious polices were found sound by the Inspector. The Select Committee supports the approach taken and hydrocarbon development is not sterilised in any way.</p>	<p data-bbox="1299 268 2045 421">It is agreed that modifications to the MWJP are not required in response to publication of the SCR report. The new NPPF paragraph 214 states that the policies in the previous Framework will apply for the purpose of examining plans where those plans are submitted on or before 24 January 2019.</p>

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	<p>The report concludes that it is essential that MPAs have the right to put conditions within their Local Plans that can be justified and have proper regard to local circumstances and this is what the Plan has done, so there is no need for it to be amended.</p> <p><u>Changes to the planning regime</u> The report states that fracking should not come under the NSIP regime, and FOE supports this view. No amendments to the Plan are required but FOE supports the report's recommendation in Para 83. The report also endorses the approach the MWJP has taken.</p> <p><u>Permitted development</u> FOE supports the Committee's recommendation that non-fracking drilling should not be considered PD, with the town and country planning regime (which includes a statutory requirement for local community consultation) being the favoured mechanism to assess such a development's range of impacts. FOE feels that this aspect of the report's findings on this contentious issue however has limited bearing on the soundness of the policies. No change to the wording of the policy is needed.</p> <p><u>Shale Support Fund and Planning Brokerage Service</u> Overall, FOE agrees with the recommendation for further mineral authority funding via the Shale Support Fund being made available. FOE also supports any proposed brokerage service being opened- up for members of the public, as per the report's recommendations, although accepts this would have limited bearing on the soundness of the draft NYMWJP policies and no further changes are necessary.</p>	
3684 – Frack Free Ryedale	<p>Frack Free Ryedale (FFR) note the contents of the Select Committee 1 report (SCR) however do not consider it effects the plan even though:</p> <ul style="list-style-type: none"> • Overall the SCR recommendations reinforces evidence from respondents in the examination in public (EiP) which provided proper justification as to the soundness of the proposed Minerals and Waste Joint Plan • In particular the SCR references many areas covered in the EiP 	It is agreed that modifications to the MWJP are not required in response to publication of the SCR report.

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	<p>such as:</p> <ul style="list-style-type: none"> ○ the definition of fracking and reasons why such definition should not be constrained by volumetric criteria ○ cumulative impact assessment if under NSIP ○ and how local plans and national guidance inter relate ○ many other common areas were also included in the SCR <ul style="list-style-type: none"> ● The SCR also recognises the conflicting objectives of Climate Change Commitments and the Governments proposals in relation to fracking ● The SCR recognises that NPPF and PPG all need to be properly updated to reflect both current climate change and energy policy. <p>FFR do not consider there should further modification to the plan beyond those already identified (and which have yet to be fully published)</p>	
3846 – Ryedale Liberals	<p>The report will not affect the MWJP, especially as the report identifies the MWJP as being a good example.</p> <p>The EiP dealt with concerns raised. If the Government is successful at bringing fracking under NSIPs and the use of PD rights having a sound local plan in place will be even more important to make sure specific local requirements are taken into account.</p>	It is agreed that modifications to the MWJP are not required in response to publication of the SCR report.
4158 – South Hambleton Shale Advisory Group	<p>Considerable weight should be given to the report as it was based on a wide range of evidence from industry, local planning authorities, interested organisations and the public, cogent analysis and balanced proposals.</p> <p>The MWJP was identified as a useful template by the report.</p> <p>The report does not support the use of NSIPs to decide fracking applications.</p> <p>The report does not support the use of permitted development for any form of shale gas activity.</p>	It is agreed that modifications to the MWJP are not required in response to publication of the SCR report.

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	<p>The MWJP policies should be sufficiently robust to control cumulative impact, safeguard private property and preserve sensitive landscape and its setting. The MWDF may become a test case.</p> <p>The report exposes inconsistencies in the NPPF which it states need clarification especially in terms of climate change.</p> <p>The report states there is an inconsistency between the Localism Act 2011 and the 2018 WMS, which could unreasonably restrict local plans.</p> <p>Should have regard to the Select Committee conclusions and recommendations, MPA's should determine shale gas applications and test should be undertaken to safeguard houses, settlements and the sensitive landscape.</p>	
4201 – Haxby and Wigginton Against Fracking	<p>Do not agree with the Governments intentions to make fracking well sites permitted development, and to take the decisions away from Local Authorities up to a national level.</p> <p>The MWJP includes some set back distances from homes and buffer zones around national parks and these could be ignored if the decision making is taken away from the Local Authorities. Local Authorities are best placed to know what impact the industry would have on local areas and so should make the decisions.</p>	It is agreed that modifications to the MWJP are not required in response to publication of the SCR report.
Individuals		
1363 – K Hollinrake MP	<p>Support the conclusions of the report which call for strict guidelines to control development and protect the Countryside.</p> <p>The report raises concerns regarding proposals to bring applications under the National Significant Infrastructure Projects regime (NSIP), which would contradict the principles of localism and increase mistrust between communities and the shale gas industry.</p> <p>The MWJP includes strong protection of the landscape and the report supports the approach taken, including a maximum density of well pads, clear prohibition of surface developments in AONB and National Park and buffer zones around these areas.</p>	Noted. It is agreed that modifications to the MWJP are not required in response to publication of the SCR report. It is accepted that aspects of the report tend to support the approach taken to the MWJP, however the MWJP has already been justified in the context of existing policy and guidance. Further comments on the report are contained in the Authorities' response to the WMS2018.

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	<p>The Mineral Planning Authorities are best placed to understand the local area and how shale gas development can best take place, and can judge the impacts of fracking.</p> <p>Concerned that these proposals could allow for a range of fracking related activities without a need for planning permission if they are treated as permitted development.</p>	
3699 – Cllr P Andrews	<p>The Committee Report broadly supports the Inspectors provisional findings in the hearing sessions of the EiP on the MWJP. The Report suggests the fracking sections of the MWJP should be treated as a template for planning guidance.</p> <p>The Report disputes many of the requirements, policies and proposals in the 2018 WMS which suggests the 2018 WMS is flawed and therefore should be given very little weight. There are several points where the discrepancies occur.</p> <p><u>Importance of shale gas</u> The 2018 WMS states that shale gas is of national importance and MPAs are not giving it enough weight. The Committee Report states that MPAs are currently finding an appropriate balance between national and local policy guidance when determining fracking applications.</p> <p><u>Definitions</u> The WMS supports the use of the definitions of hydrocarbon, natural gas and associated hydraulic fracturing. The Committee Report does not support the use of the Infrastructure Act 2015 definition as it is unsuitable in the planning context and recommend that it should not be liquid or volume based. The Report suggests that the Government should amend the Infrastructure Act definition to ensure public confidence that every development which artificially fractures rock is subject to the appropriate permitting and regulatory regime.</p> <p><u>Restrictions</u> The 2018 WMS states ‘...that 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</p>	It is agreed that modifications to the MWJP are not required in response to publication of the SCR report. Further comments on the report are contained in the Authorities’ response to the WMS2018.

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	<p><i>development without proper justification.</i>’ The Committee Report has the view that the planning system is plan-led and MPAs should be free to adapt their local plans as they see fit as long as they do not arbitrarily restrict fracking developments. MPAs should have the right to include conditions in their local plans which can be justified and having proper regard to the circumstances.</p> <p><u>NSIP and Permitted Development</u> The WMS 2018 gives notice of consultations on making fracking exploration permitted development and on the criteria require to trigger the inclusion of shale production projects into NSIP.</p> <p>The Committee Report recommends that fracking exploration should not be given permitted development rights.</p> <p>The Committee Report does not support any fracking planning applications being decided under the NSIP regime, it would not speed up the process and would be seen as a significant loss to local decision making and may be increase the mistrust in local communities. MPAs are best placed to understand their local area and consider how fracking can best take place in their local communities. If NSIP were to be used for fracking applications then a National Policy Statement would be required that would include suitable measures to restrict inappropriate proliferation of well-pads and unacceptable impacts on landscapes. The NSIP should also take account of local plans.</p> <p>The Committee Report should be given greater weight than the 2018 WMS as it was written following the presentation of evidence to the Committee and the questioning of witnesses. The WMS does not appear to have undergone any similar scrutiny. Have asked for the 2018 WMS to be withdrawn, but if this does not happen then it needs to be read in light of the Committee Report and the MWJP should be approved as provisionally agreed by the Inspector in the hearings.</p>	
3857 – J Tucker	The report endorses the view of the Joint Authorities in the MWJP regarding the definition of Fracking and urges government to make the necessary changes.	It is agreed that modifications to the MWJP are not required in response to publication of the SCR report. It is accepted that aspects of the report tend to support the approach taken to the MWJP, however the MWJP has already been justified in the

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	<p>In addition the report supports the MWJP which offers an “appropriate template” on the question of cumulative impact and is very clear that consideration of Fracking under NSIP would be a bad idea.</p> <p>The MWJP does not require any modification as a result of the report.</p> <p>The report highlights in Para 8 of the conclusions regarding climate change, the inconsistency between NPPF and the 2008 Climate Change Act underlined by the Environmental Audit Committee report 2015.</p> <p>Another contradiction highlighted by the report exists between the Localism Act 2011 and the WMS which would seem to unreasonably restrict local plans.</p>	<p>context of existing policy and guidance. Further comments on the report are contained in the Authorities’ response to the WMS2018.</p>
4194 – K Bennett	<p>The Plan does not need to be modified as a result of this report, but the report is relevant to the Plan as it offers support to several elements of the Plan. The report should be read with regard to the Written Ministerial Statement 2018.</p> <p><u>Definition of hydraulic fracturing</u> The report adds weight to the argument that the Plan should use a definition of hydraulic fracturing based on the PPG, not the Infrastructure Act.</p> <p><u>Determination of fracking applications</u> The report supports retaining the decision making at a local level; it shows confidence in the ability of MPAs to make appropriate planning decisions and supports the view that their primary consideration should be local plans.</p> <p>The report points out that there is a contradiction between the Localism Act 2011 and the 2018 WMS which could restrict Local Plans. The WMS had concerns that some measures included in minerals plans might not be properly justified, but all Plans are subject to a full process of consultation and Examination in Public, and the report recognises that mineral planning authorities are best place to determine local plans.</p> <p>The report identifies the MWJP as an appropriate template.</p>	<p>It is agreed that modifications to the MWJP are not required in response to publication of the SCR report. It is accepted that aspects of the report tend to support the approach taken to the MWJP, however the MWJP has already been justified in the context of existing policy and guidance. Further comments on the report are contained in the Authorities’ response to the WMS2018.</p>

