

Warrington Local Plan Consultation Submission on Behalf of INEOS Upstream Ltd June 2019

Introduction

Felsham Planning and Development is instructed to submit a representation to the Local Plan consultation on behalf of INEOS Upstream Ltd. This representation deals with polices ENV 5 – 8 covering energy minerals and site restoration.

Our clients are supportive of the positive policy approach but believe that some amendments are necessary. At the outset it is important to note:

- The planning process for onshore oil and gas is one of five regulatory processes that are required under the current policy framework set by government. As such the proposed plan should include a review of each regulatory function and identify those areas which fall outside of the planning process. PPG 012 and PPG 112 make clear that planning authorities are not responsible for matters covered by other regulatory regimes. Minerals planning authorities *should assume that these regimes will operate effectively. Whilst these issues may be put before mineral planning authorities, they should not need to carry out their own assessment as they can rely on the assessment of other regulatory bodies.* This planning policy principle has been re-confirmed in a number of legal cases including most recently. (Frack Free Balcombe Residents Association) v West Sussex CC 2014.
- Unconventional gas is a national resource for the benefit of all. National policy recognises that minerals development has certain characteristics, such as temporary use over a long period of time and adverse impacts which may require mitigation (PPG 001); that impacts will vary from site to site (PPG 013); are best assessed through the EIA process (PPG 011); and controlled through the imposition of appropriate work programmes (PPG 015). Assessments and decisions should be made, and mitigation applied, on a case-by-case basis as envisaged by national policy. PPG 018 refers to the need for *any proposed separation distance [to] be established on a site specific basis and should be effective, properly justified and reasonable.*
- The point of appraisal is to understand the potential in any given area. At the point of making an application for an appraisal well it will not be possible to supply a completed appraisal of the hydrocarbon resource field because the purpose of the appraisal well is to help to gather such information.
- National policy does not require that production is undertaken within a specific timescale.

Background

Regulation 18 of the Development Plan Regulations requires the local planning authority to collect evidence and to identify key issues. Unconventional gas is one such key issue. National Planning Policy Framework (NPPF) states that each planning authority should ensure that their local plan is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics of the area. That evidence is required to be tightly focused on supporting and justifying particular policies in the Local Plan.

The UK Government's energy policies seek to encourage the use of natural resources indigenous to the UK as part of achieving self-sufficiency in energy production and increasing security of energy and gas supplies. This covers a range of onshore hydrocarbons that include inter alia; shale, coal bed methane and oil. The Local Plan requires a policy to cover all the hydrocarbons that are potentially found in the area licenced by the Department of Energy & Climate Change (DECC) under the Petroleum Exploration & Licence (PEDL) regime and could be extracted over the plan period.

Onshore hydrocarbons are important to the UK because they are a potential long-term source of indigenous natural gas. These untapped energy resources have the potential to meet the UK's need for a secure and diverse energy supply. The Local Plan needs to recognise that there are a range of sources of this resource and policy should cover all onshore hydrocarbons, and recognise that the planning and other regulatory process provide sufficient safeguards to enable the LDP to contain a positive statement of support for the process, in line with the support given in NPPF.

Therefore, the Local Plan should address the full range of onshore hydrocarbon extraction including:

- Conventional onshore oil and gas development.

- Extraction of petroleum or hydrocarbon oils and gases by drilling and pumping.
- Capture of methane that has accumulated in mines.
- Coal bed methane and gas derived from shale reservoirs.

Onshore hydrocarbon exploration and development is incremental in nature with a phased approach to exploration, appraisal and production. The initial exploration phases, if successful, determine the strategy for the development of the PEDL area. With CBM, testing the ability of a coal seam to produce commercial volumes of gas cannot be achieved with the use of one borehole. Typically a number of boreholes will be drilled across a known isolated slab of coal within a Licence Area. These wells will then be pumped as a collective to have a uniform drainage effect on the coal. Commercial production will be determined by the volume of gas being produced when the volume of water that is being produced has reached a plateau. If the initial Pilot Test is successful additional wells are added to the initial appraisal cluster in order to scale up the production and commerciality of an area. Each well bore is expected to have a useful production life of up to 25 years.

Shale gas also requires a number of boreholes across the Licence area. These boreholes will be tested and, if commercial production is determined to be achievable, additional wells may be added to the initial cluster. Each shale wellbore is expected to have a useful production life of up to 25 years.

Similar principles apply to exploration of the other onshore hydrocarbon resources identified above. In every case there is strong regulation outside the planning process. Planning provides significant controls to monitor the land use implications. Having regard to these safeguards there is no reason for the Local Plan not to contain a positive statement of support through policy and its supporting text.

Support within the emerging Minerals Plan and future associated documents is therefore essential to enable long term onshore hydrocarbon development strategy to realise these nationally valuable resources.

Suggested Policy Approach

INEOS welcomes the positive policy approach taken by the Local Plan but believes that certain elements need to be revised and the plan could be simplified to provide one policy to deal with oil and gas.

We set out below draft supporting text and policy that we would like to see incorporated into the Local Plan. It notes that the main concerns are with the environment and residential amenity but as there are other policies dealing with such impacts, each containing assessment criteria, the oil and gas development policy of the plan does not need to list these considerations in its policy. The supporting text should provide background and justification, which links to the National Planning Policy Framework and other Government policies, and the PEDLs are mapped and safeguarded.

The suggested approach is informed by the Written Ministerial Statements (WMS) of May 2018 and May 2019 and the revised NPPF.

(a) Written Ministerial Statements

The WMS of May 2018 and May 2019 are material consideration and should be given great weight as a statement of national policy, especially given that the announcement is so recent. The WMS of May 2018 confirms its status by noting that *This Statement is a material consideration in ... decision-taking, alongside relevant policies of the existing National Planning Policy Framework (2012), in particular those on mineral planning (including conventional and unconventional hydrocarbons)*. The statement is also clear that *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*. It therefore directly applies to the draft Local Plan minerals policies and confirms the importance to the country of undertaking the activity proposed by the development.

It is *Government's view that there are potentially substantial benefits from the safe and sustainable exploration and development of our onshore shale gas resources*. The Statement notes that *This joint statement should be considered in planning decisions and plan-making in England*. This confirms that Government considers there are potentially benefits arising from shale exploration. Again, we would anticipate that draft Minerals Plan will give great weight to this strategic factor.

WMS also states that *The UK must have safe, secure and affordable supplies of energy with carbon emissions levels that are consistent with the carbon budgets defined in our Climate Change Act and our international obligations. We believe that gas has a key part to play in meeting these objectives both currently and in the future*. It also observes that *Gas still makes up around a third of our current energy usage and every scenario proposed by the Committee on Climate Change setting out how the UK could meet its legally-binding 2050 emissions reduction target includes demand for natural gas*. Furthermore it states that *The UK must have safe secure and affordable supplies of energy" and estimates that we could be importing up to 72% of our gas by 2030*. This confirms that unconventional hydrocarbons does not conflict with climate change objectives, and that it is necessary to continue to explore for and ultimately extract gas in the UK in order to provide a local and secure source of gas.

On this basis, Government believe[s] that it is right to utilise our domestic gas resources to the maximum extent and exploring further the potential for onshore gas production from shale rock formations in the UK, where it is economically efficient, and where environment impacts are robustly regulated. INEOS considers that unconventional hydrocarbons have a material benefit in the form of information to help assess the future potential for shale gas extraction in this area of the country, and that it accords with the requirement to assess environmental effects robustly.

The WMS notes that a new shale gas exploration and production sector could provide a new economic driver and that the sector could create a “new model” of the most environmentally robust onshore shale gas sector. Without developments progressing, these opportunities will not be realised.

It also sets out proposals to consult on whether certain unconventional hydrocarbons development should in fact be considered to be permitted development. This indicates that Government’s view is that this type of development is not likely to have significant enough effects to warrant express planning control.

The Secretary of State on 23rd May 2019 reiterated support for the onshore oil and gas industry in planning terms:

On the 6th of March 2019, Mr Justice Dove handed down his judgment in the case of Stephenson vs SoS MHCLG [2019] EWHC 519 (Admin). In accordance with the terms of the Court Order, paragraph 209(a) of the National Planning Policy Framework has been quashed.

For the avoidance of doubt the remainder of the National Planning Policy Framework policies and, in particular, Chapter 17 on ‘Facilitating the Sustainable Use of Minerals’ remain unchanged and extant.

For the purposes of the National Planning Policy Framework, hydrocarbon development (including unconventional oil and gas) are considered to be a mineral resource. Specific policy on the planning considerations associated with their development is set out at paragraphs 203-205 and the remainder of 209 of the National Planning Policy Framework. In particular, paragraph 204(a) of the National Planning Policy Framework states that planning policies should “provide for the extraction of mineral resources of local and national importance” with paragraph 205 stating that “[w]hen determining planning applications, great weight should be given to the benefits of mineral extraction, including to the economy”.

In addition, the Written Ministerial Statements of 16th September 2015 on ‘Shale Gas and Oil Policy’ and 17th May 2018 on ‘Planning and Energy Policy’ also remain unchanged and extant. The Written Ministerial Statements sit alongside the National Planning Policy Framework. Planning Practice Guidance is also unaffected by the ruling.

This suite of policies and guidance remain material considerations in plan making and decision taking for hydrocarbon development and they should be afforded appropriate weighting as determined by the decision maker.

We remain committed to the safe and sustainable exploration and development of our onshore shale gas resources.

In summary, the text of the Local Plan should take account of the following points made in the two recent WMS, which show consistency in Government policy approach and should then be reflected in the drafting of policy:

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

(b) Publication of new NPPF

Paragraph 209 states that minerals planning authorities should:

- a) *recognise the benefits of on-shore oil and gas development, including unconventional hydrocarbons, for the security of energy supplies and supporting the transition to a low-carbon economy; and put in place policies to facilitate their exploration and extraction;*
- b) *when planning for on-shore oil and gas development, clearly distinguish between, and plan positively for, the three phases of development (exploration, appraisal and production), whilst ensuring appropriate monitoring and site restoration is provided for;*

(c) Suggested Revisions to Policy

INEOS welcomes the positive statement in support of oil and gas given in policy ENV5. This reflects the approach of the two WMS and NPPF. UKOOG has commented on the criteria of policy ENV5 and policies ENV 6 and ENV8. INEOS supports these comments.

We note that UKOOG has questioned the statement in ENV5 3(a) referring to *a full appraisal programme for the oil and gas field*. In our view it is unclear what this statement means and there needs to be flexibility to allow an operator to plan its own appraisal programme in the knowledge that any impacts arising will be fully addressed by the implementation of development planning policy.

INEOS is also not comfortable with ENV 5 3 (b) and the reference to the *most suitable location*. It is not clear what this means and it is open to misinterpretation.

Policy ENV 5 3(a) and 3(b) make an otherwise good policy unsound because they do not provide the clarity and certainty NPPF requires from development plan policy.

Finally, we note the reference in policy ENV8 to air and water quality. These are matters covered by the Environment Agency. As noted above, planning policy should not seek to take over matters covered by other regulatory bodies.

Whilst INEOS supports the positive approach to hydrocarbons of the draft Warrington Local Plan we believe that changes would be helpful. Having regard to practice elsewhere, we believe that there should be a single policy dealing with oil and gas. This should be simple and positively worded and recognise that the policy is supported by other policies in the Local Plan, which provide the details for necessary assessment of impacts. INEOS' suggested revised and consolidated policy is as follows:

Oil and Gas Development***Exploration***

1. *Proposals for hydrocarbon exploration will be supported provided they do not give rise to any unacceptable impacts on the environment and residential amenity.*

Appraisal

2. *Where hydrocarbons are discovered, proposals to appraise, drill and test the resource will be permitted provided that they are consistent with an overall scheme for the appraisal and delineation of the resource and do not give rise to any unacceptable impacts on the environment and residential amenity.*

Extraction

3. *Proposals for the extraction of hydrocarbons will be supported provided they are consistent with an overall scheme for enabling the full development of the resource and do not give rise to unacceptable impacts on the environment and residential amenity.*
4. *Where proposals for hydrocarbon development coincide with areas containing other underground mineral resources evidence must be provided to demonstrate that their potential for future exploitation will not be unreasonably affected.*

Restoration

5. *All applications for hydrocarbon development will be accompanied with details of how the site will be restored once the development is no longer required.*

This suggested policy is positively worded. It notes that the main concerns are with the environment and residential amenity but as there are other policies dealing with such impacts, each containing assessment criteria, the oil and gas development policy of the plan does not need to list these considerations in its policy. The supporting text should provide background and justification, which links to the National Planning Policy Framework and other Government policies, and the PEDLs are mapped and safeguarded.

This approach to policy wording will ensure that the policy is in accordance with Government Guidance, in particular the WMS of May 2018 and May 2019 and NPPF.

In support of this policy approach, we suggest that the following supporting text should also be included within the Minerals Plan:

The UK Government's energy policies seek to encourage the use of natural resources indigenous to the UK as part of achieving self-sufficiency in energy production and increasing security of energy and gas supplies. On-shore hydrocarbon extraction is comprehensively regulated. The Department of Energy and Climate Change has awarded a Petroleum, Exploration and Development Licence (PEDL) for an area within the Council's area.

Onshore hydrocarbons provide an opportunity to extract a nationally important natural energy resource without the environmental impact normally associated with minerals extraction.

The extraction of CBM and shale gas will be incremental and involve more than one exploration and production site. Due to advanced drilling techniques, these sites can be up to 1km apart.

Exploration and development rights granted through a PEDL create land use rights across the licence area, subject to obtaining necessary site specific consents. Safeguarding is important because rights create a land use consideration that may be a material factor in assessing other land use proposals in the area. It is a potential land use consideration that others using the planning service need to take into account.

The PEDL licence does not create automatic development rights and the effects may not apply equally across the PEDL area. Due to the nature of the resource and the location, it is important that it is safeguarded where it is present. It is important that the extent of the PEDL is identified in the Plan and its consequences explained.