

From: Philip Neaves [REDACTED]
Sent: 11 October 2019 12:56
To: Planning Policy
Subject: Nottinghamshire Minerals Local Plan- Publication Version
Attachments: Notts Minerals Plan representation-form October 2019.pdf; Nottinghamshire Minerals Plan Consultation Oct 2019.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Please find attached submission on behalf of INEOS Upstream Limited.

Please acknowledge receipt.

Many thanks

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Representation Form

This is the representation form for the Nottinghamshire Minerals Local Plan - Publication Version published by Nottinghamshire County Council. The Publication Version and the supporting information can be found online at www.nottinghamshire.gov.uk/minerals. You can submit your representations online via our interactive system by using this link.

The formal representation period is open from Friday 30th August 2019 to 4.30pm Friday 11 October. All representations must be received during this period.

If you wish to submit a representation to the Plan using this form, please complete all parts and then send it to us via email or post, using the addresses below. Please note:

- **All respondents need to provide their personal details.** It is not possible for representations to be anonymous. All responses will be made public.
- **Representations must be on the basis of the ‘soundness’ of the plan or its legal and Duty to Co-operate compliance.** Please read the guidance note on this for further information.
- **Part B of the form contains your representations.** Please fill in a separate Part B for each representation you wish you make. You only need to fill in Part A once.
- **If you are part of a group that share a common view,** it would be helpful for that group to send a single representation rather than multiple copies stating the same point. Please indicate how many people are represented and how it has been authorised (e.g. by means of a list with contact details for each person or by a committee vote). This holds the same weight as separately submitted representations.

If you have any queries please contact us as below or ring us on 0300 500 80 80.

Please return completed forms to:

✉ Planning Policy Team
County Hall, West Bridgford,
Nottingham, NG2 7QP

✉ planning.policy@nottscc.gov.uk

We must receive your representations before 4.30pm, Friday 11th October 2019.

Representations received after this cannot be accepted.

All of the representations received will be submitted with the Plan and will be examined by a planning inspector who will consider whether the Plan is ‘sound’ and complies with the legal requirements.

Nottinghamshire County Council’s Planning Policy Service is committed to protecting your privacy and ensuring all personal information is kept confidential and safe. View our privacy notice at www.nottinghamshire.gov.uk/privacy

Office use only

Person No:

Rep Nos:

Part A – Personal details

	1. Personal details	2. Agent details (where applicable)
Title		Mr
First name		Philip
Last name		Neaves
Address line 1	INEOS Upstream Limited	FelshamPD
Address line 2	38 Hans Crescent	████████████████████
Address line 3	London	██████████
Postcode	SW1X 0LZ	██████████
Email		
<i>For those replying on behalf of an organisation or group:</i>		
Organisation		
Job title		

Part B – Your representation

<i>Office use only</i> Person No: Rep No:

Please read the guidance note before completing this section.

Name or organisation: INEOS Upstream Ltd

3. To which part of the Local Plan does this representation relate?

Policy	MP12	Site code		Map/Plan		Paragraph		Other	
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4. Do you consider the identified part of the Local Plan to be:

Legally compliant?	Yes		No	
Sound?	Yes	X	No	
Complies with the Duty to co-operate	Yes		No	

Please tick as appropriate.

5. Please give details of why you consider the identified part of the Local Plan is not legally compliant or is unsound, or fails to comply with the duty to co-operate. Please be as precise as possible.

If you wish to support the legal compliance or soundness of the Local Plan or its compliance with the duty to co-operate, please also use this box to set out your comments.

(Continue on a separate sheet/expand box if necessary)

Please see attached supporting statement.

We are pleased to note that policy MP12 provides a simple policy that makes a positive statement in support of onshore oil and gas.

We have concerns with one element of the draft policy. There is inconsistency between the terms used in 'part 1 b' for exploration and appraisal and 'part 2 b' for commercial production. In 'part 1 b' the term 'unacceptable environmental impact' is used, but in 'part 2 b' the term 'least sensitive location' is used.

We wish to object to this element of the policy, which we believe needs to change. In our view the terms used should be the same. Regardless of whether it is exploration or commercial production the tests should be equally relevant. Reference to unacceptable environmental impact should be changed to "significant unacceptable environmental impact" because as currently worded all impact can be read as unacceptable. Furthermore the term 'least sensitive location' is subjective and therefore should be replaced with the term 'Are located where they will not have a significant unacceptable environmental impact'.

6. Please set out what change(s) you consider necessary to make the identified part of the Local Plan legally compliant or sound, in respect of any legal compliance or soundness matters you have identified above. (please note that non-compliance with the duty to cooperate is incapable of modification at examination). You will need to say why each modification will make the Local Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.

(Continue on a separate sheet/expand box if necessary)

Please see attached supporting statement

We have concerns with one element of the draft policy MP12. There is inconsistency between the terms used in 'part 1 b' for exploration and appraisal and 'part 2 b' for commercial production. In 'part 1 b' the term 'unacceptable environmental impact' is used, but in 'part 2 b' the term 'least sensitive location' is used.

We wish to object to this element of the policy, which we believe needs to change. In our view the terms used should be the same. Regardless of whether it is exploration or commercial production the tests should be equally relevant. Reference to unacceptable environmental impact should be changed to "significant unacceptable environmental impact" because as currently worded all impact can be read as unacceptable. Furthermore the term 'least sensitive location' is subjective and therefore should be replaced with the term 'Are located where they will not have a significant unacceptable environmental impact'.

As noted above we are largely supportive of policy MP12. However, if it were to be suggested that policy MP12 should be significantly amended INEOS would wish to put forward revised text to the anticipated Minerals Plan Examination as set out in our earlier representations to the draft Minerals Plan

Please note: In your representation you should provide succinctly all the evidence and supporting information necessary to support your representation and your suggested modification(s). You should not assume that you will have a further opportunity to make submissions.

After this stage, further submissions may only be made if invited by the Inspector, based on the matters and issues he or she identifies for examination.

7. If your representation is seeking modification to the plan, do you consider it necessary to participate in the examination hearing session(s)?


No , I do not wish to participate in the hearing session(s)	
Yes , I wish to participate in the hearing session(s)	x

Please note that while this will provide an initial indication of your wish to participate in the hearing session(s), you may be asked at a later point to confirm your request to participate.

8. If you wish to participate in the hearing session(s), please outline why you consider this to be necessary:

The issue raised is complex and we have found it helpful when responding to other plans for the matter to be debated. This was done most recently at East Riding of Yorkshire in January 2019 where the Inspector was able to hear the points raised on each side of the argument and to understand that there was in fact little between the parties in terms of principle. In our submission this may not have been fully apparent in reviewing written submissions and this was confirmed by the conduct of the Hearing where the Inspector thanked the parties for their frankness, helpfulness and courtesy. We anticipate that policy MP12 may be subject to scrutiny and we believe that it would be helpful for all parties to be able to come together to discuss the issues.

***Please note** the Inspector will determine the most appropriate procedure to adopt to hear those who have indicated that they wish to participate in hearing session(s). You may be asked to confirm your wish to participate when the Inspector has identified the matters and issues for examination.*

Signature		Date	11.10.19
Name	Philip Neaves, FelshamPD on behalf of INEOS Upstream Ltd		

Nottinghamshire Minerals Plan Consultation

Submission on Behalf of INEOS Upstream Ltd

October 2019

1.0 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 Policy MP12 covering unconventional gas and associated development management policies.

We have previously expressed support for the overall approach the plan intends to take and we are pleased that our comments appear to have been taken into account in the wording of policy MP12. This adopts the positive approach to unconventional gas required by the Written Ministerial Statement (WMS) of 17th May 2018 and revised NPPF 2018. The subsequent WMS of 23rd May 2019 reiterated the approach to policy making that the Government requires.

We are pleased to note that policy MP12 provides a simple policy that makes a positive statement in support of onshore oil and gas.

We have concerns with one element of the draft policy. There is inconsistency between the terms used in 'part 1 b' for exploration and appraisal and 'part 2 b' for commercial production. In 'part 1 b' the term 'unacceptable environmental impact' is used, but in 'part 2 b' the term 'least sensitive location' is used.

We wish to object to this element of the policy, which we believe needs to change. In our view the terms used should be the same. Regardless of whether it is exploration or commercial production the tests should be equally relevant. Reference to unacceptable environmental impact should be changed to "significant unacceptable environmental impact" because as currently worded all impact can be read as unacceptable. Furthermore the term 'least sensitive location' is subjective and therefore should be replaced with the term 'Are located where they will not have a significant unacceptable environmental impact'.

Overall, however we are pleased to note that policy MP12 takes account of the following key principles:

- 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 but that does not mean that an EIA is necessarily required (PPG 011); and impacts are best 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.

2.0 Response to Policy MP12

Having noted our support for policy MP12 we think it important to set down the reasons for our support and the factors that need to be taken into account when the policy is examined to ensure that no unnecessary or unsound amendments are proposed.

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 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 Minerals 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

We support the draft policy MP12 and note that 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 Minerals 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.
- The Government expects minerals 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).

We believe that the text as drafted adopts these principles and should not be altered if it is to remain sound and to reflect Government policy.

(b) Publication of new NPPF

Paragraph 209, as originally published, stated 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;*

Subsequently the High Court quashed paragraph 209(a) of the NPPF due to a lack of proper consultation. However the rest of the NPPF and in particular the parts that are supportive of development of this type are unaffected.

Given the nature of the Judicial Review challenge, it was a flaw in the consultation process that was carried out rather than any express or implied admission on the part of the UK Government that its position as set out in para 209 (a) was wrong, that led to the revision. As the most recent WMS of 23rd May 2019 pointed out, the remainder of the previous supportive suite of WMSs and the remainder of para 209 which urges mineral planning authorities to plan “positively” for each of the stages of onshore unconventional oil and gas development, remain in place.

Response to Policy MP12

As noted above we are largely supportive of policy MP12. However, if it were to be suggested that policy MP12 should be significantly amended INEOS would wish to put forward revised text to the anticipated Minerals Plan Examination as set out in our earlier representations to the draft Minerals Plan:

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.

3.0 Response to other draft policies

The remainder of the plan deals with key issues to be taken into account in determining applications at all stages of the process. Our comments regarding the principles that should be incorporated into policies DM1 – DM17 inclusive are as follows:

High operating standards – in terms of hours of operation, there needs to be some recognition of the possibility of 24 hour working. This can be satisfactorily accommodated depending on a particular site's characteristics.

Noise – the stated noise requirement should reflect planning conditions used elsewhere and should not raise new or more onerous constraints.

Air Quality – this references what is required by other regulatory regimes. It is important that the planning system does not introduce a more onerous test than the regulatory system primarily used to control this issue.

Surface and ground water protection – planning should not impose more onerous controls than those required by other regulatory regimes

Flaring - planning should not impose more onerous controls than those required by other regulatory regimes

Landscape and visual impacts – the requirement to agree what action is appropriate should be determined on a site by site basis. This is an activity that will inevitably have some visual impact. Whilst that impact can be mitigated it needs to be set in the context of wider benefits and the industry should not be subject to more onerous requirements than other extractive industries.

Traffic and transport – the requirement to agree what action is appropriate should be determined on a site by site basis.

Flood risk – controls should be as per normal planning conditions.

Heritage assets – controls should be as per normal planning conditions.

Nature conservation - controls should be as per normal planning conditions.