

## UKOOG response to Inspector's Supplementary Questions Nottinghamshire Minerals Local Plan

### Matter 3 – Minerals Provision Policies

#### UKOOG Response:

UKOOG responds to the Inspector's supplementary questions in respect of Matter 3 – Minerals Provision Policies questions 44 to 49.

The response is made by UKOOG, the trade body for the onshore oil and gas industry and has been agreed by the main PEDL holders (INEOS, IGas Energy PLC and Egdon Resources PLC) that are impacted by the Plan; the response should be read in conjunction with previous representations made to the Plan by both UKOOG and PEDL holders.

#### Overarching Comment:

Having reviewed the questions and the responses made by other participants to previous questions we would like to set the current local plan in the context of the overall framework that governs onshore oil and gas regulation.

The oil and gas industry is heavily regulated and requires a range of licences, permits and consents from the Oil and Gas Authority (OGA), the Health and Safety Executive (HSE), the Environment Agency (EA), and the Mineral Planning Authority (MPA). In relation to the role of the MPA, the National Planning Policy Framework (NPPF) (2019) says that the focus should be on whether the proposed development is an acceptable use of the land, rather than the control of processes or emissions where these are subject to separate pollution control regimes. Planning decisions should assume that these regimes will operate effectively.

For example, the following areas identified by other participants are covered by other regulators:

- Water resource management (managed by environmental permit through the EA)
- Seismicity (managed through hydraulic fracturing plans via the OGA and hydraulic fracturing consents via Secretary of State for Business, Energy & Industrial Strategy (BEIS))
- Water and land pollution (EA and HSE)
- Radiation (managed through environmental permits through the EA)
- Flood Management (through EA)
- Presence of coal mines (covered through hydraulic fracturing plan governed by OGA with advice from the Coal Authority)

Paragraph 183 of the National Planning Policy Framework June 2019 (Framework) and Paragraph 112 ID: 27-120-20140306 of the Planning Policy Guidance (Minerals) are very

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clear about the different roles that MPAs and regulatory bodies have and that MPAs should assume that those regulatory regimes will operate effectively.

A recent example of this was set out in our previous response to Matter 3 of the Inspectors Matters, Issues and Questions (question 40). We referred to the Inspector's decision for the Wressle oil development (Appendix 5 ) and specifically to part of paragraph 27:

*'I am entitled to assume that other regulatory regimes will operate effectively and that it is not necessary for me to carry out my own assessment because I can rely on the assessment of the other regulatory bodies. There is no evidence that other regimes are incapable of operating effectively and adequately regulating the development.'*

A further example is set out in a recent officer report to Surrey County Councils Planning Committee for a proposal by UKOG to drill and explore for (conventional) oil and gas at Loxley, Dunsfold<sup>1</sup>. The officer advises:

*'The oil and gas industry is heavily regulated by a number of agencies including the MPA. However, the risk of earthquakes is not a matter for the MPA to resolve as part of the consideration of this application. Paragraph 112 of the Minerals Chapter of the NPPG states that a number of issues exist which are covered by other regulatory regimes and MPA's should assume that these regimes will operate effectively. Whilst these issues may be put before MPAs, they should not need to carry out their own assessment as they can rely on the assessment of other regulatory bodies.'*

Finally, UKOOG have previously responded on issues with respect to climate change. The advice from the Committee on Climate Change (CCC) stipulates that there is a recognised demand for oil and gas to 2050 and beyond, and also that 'industry' (including oil and gas production) should not be 'offshored' in order to achieve that target. Failure to develop onshore oil and gas at the expense of increased imports would therefore breach the CCC's requirements.

UKOOG Responses to supplementary questions:

44. Should the policy include detailed criteria for assessment of environmental impacts for each stage of development?

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<https://mycouncil.surreycc.gov.uk/documents/g7517/Public%20reports%20pack%20Thursday%2021-May-2020%2010.30%20Planning%20and%20Regulatory%20Committee.pdf?T=10>

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No. The policy should not include detailed criterion for potential environmental impacts for each stage of development.

UKOOG shares the view of the County Council that Policy MP12 remains in line with the requirements set out within the NPPF (as updated in June 2019). The policy plans positively for all forms of oil and gas development in accordance with paragraph 209(b) of the NPPF – albeit they are prepared to delete para 4.104 of the Justification. The policy is consistent with other mineral policies. Proposals must be assessed against all the relevant policies of the Plan. Policy SP1 requires all proposals for mineral developments to demonstrate that they have prioritised the avoidance of adverse social, economic and environmental impacts of the proposed development. Paragraph 3.10 to the Justification sets out the reliance on Development Management policies. This is similarly the case with Policies SP2, 3, 4, and 5.

The majority of the Development Management policies in Chapter 5 of the Plan apply to all forms of mineral extraction, including oil and gas. The importance of protecting local amenity is given prominence in the Plan in Policy DM1 which applies to mineral development per se. The justification for policy DM1, set out in paragraphs 5.9-5.21, is helpful guidance to enable operators to undertake the necessary environmental assessments in a proportionate manner in order to support all three stages of hydrocarbon extraction. The precise level of impacts will vary according to local conditions and the type, scale and intensity of development proposed. To set out detailed criteria for MP12 would be inconsistent with policies for other mineral types. The approach taken by the Plan to treat all mineral proposals equally and rely on the Development Management policies for the assessment of environmental impacts is sufficient without the need to set these out in Policy MP12.

Further, to secure an Environmental Permit for the operation to proceed, the developer must meet the conditions required by the EA in their onshore oil and gas sector guidance. If the operator wishes to deviate from the Permit, then they must secure a permit variation.

### 45. Should the policy recognise specific impacts that can result from hydraulic fracturing?

No.

Hydraulic fracturing is a well completion technique and occurs after activities that are common with all hydrocarbon sites such as site construction and the well(s) being drilled to the target depth (typically over 2000m below the surface).

The hydraulic fracturing process involves pumping at pressure a combination of water (c95%), sand (or other approved proppant) (c4.5%) and approved chemicals (c0.5%) into the target geological formation to create tiny hairline fractures in the rock to allow the oil or gas to flow to the surface. The chemical approval process, which must involve chemicals non-

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hazardous to groundwater, is regulated extensively by the EA with respect to the handling of chemicals at the surface, injection into the target formation and the risks posed to groundwater. Furthermore, the EA regulate fracture growth inside an agreed sub surface boundary. All of these activities are covered by Environmental Permits, which the operator will only receive once it has met the requirements of the EA. The issue around micro-seismicity is regulated by the OGA through the hydraulic fracture plan (HFP) and also by the BEIS through the Infrastructure Act 2015, and hydraulic fracturing consent (HFC). Finally, the well integrity is continuously monitored by the HSE and their strict regulations, such as the requirement to conduct regular testing to demonstrate sound well integrity.

The impacts that are within the regulatory oversight of the MPAs are those that are normally associated with all onshore oil and gas development (as well as other development) namely noise, light, landscape and visual impact and transport movement.

The assessment of these impacts and the necessary mitigation required are already covered in sufficient detail in the Development Management policies. We would also like to clarify that the conventional/unconventional description refers to the geology which the hydrocarbons are extracted from, not the process used to undertake the extraction.

Similarly, local planning authorities should not consider any sub-surface implications associated with development of unconventional or conventional formations – as this is the remit of the OGA and the EA.

46. What are the 'protected areas' as set out in parts (1) (a) and (2) (a) of Policy MP12? If these are the protected areas defined in the Onshore Hydraulic Fracturing (Protected Areas) Regulations 2016 should they be stated in the supporting text or in a footnote? What is the relevance of those areas to oil and gas exploration other than hydraulic fracturing?

The protected areas referred to in the Onshore Hydraulic Fracturing (Protected Areas) Regulations 2016 (the Regulations) are protected groundwater source areas, National Parks, the Broads, AONBs and World Heritage sites and relate to sites that require the use of hydraulic fracturing and not all onshore oil and gas sites.

However, prior to considering protected areas in more detail it should be noted there are no designated or candidate AONBs or National Parks that fall within Nottinghamshire. Therefore, the need to refer to these areas in the policy seems to be unnecessary. We have therefore considered , what else could fall within the definition of 'protected areas' and whether they are covered in the management policies outlined by the MPA or in National Policy?

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Our view is any reference to 'protected areas' if required should be guided by legislation and guidance:

- Paragraph 172 of the NPPF gives great weight to conserving and enhancing the landscape and scenic beauty of National Parks, the Broads and AONBs. The NPPF states that major development, which includes mineral development, should be refused unless there are exceptional circumstances.
- Section 11A(2) of the National Parks and Access to the Countryside Act 1949, section 17A of the Norfolk and Suffolk Broads Act 1988 and section 85 of the Countryside and Rights of Way Act 2000 require that 'in exercising or performing any functions in relation to, or so as to affect land' in National Parks and AONBs, relevant authorities 'shall have regard' to their purposes for which these areas are designated. Paragraph 39 of the Natural Environment PPG states that 'this duty is particularly important to the delivery of the statutory purposes of protected areas.'

There is no justification for including groundwater source areas as discussed by some participants. Firstly, the 2016 Regulations only apply to hydraulic fracturing; to include groundwater source areas as 'protected areas' and apply this to all forms of onshore oil and gas extraction generally within Nottinghamshire would be illogical. It would be outside the scope of the Regulations laid down by Parliament. Secondly, groundwater source areas are already covered by Environmental Permitting Regulations through environmental permits administered by the EA.

There is some justification in applying the definition of protected areas to that referred to in both paragraph 172 of the NPPF and at paragraph 39 of the Natural Environment PPG – AONBs and National Parks.

International and national sites designated for their biodiversity are already given protection both by policy DM4 of the Plan as well as the NPPF (SSSI, SAC, SPA and Ramsar). Consequently, there is no need to include these within the undefined 'protected areas'. The only other type of areas that could be considered are World Heritage Sites (of which there are none in Nottinghamshire), conservation areas, scheduled monuments and other designated heritage sites. However, these are also given protection under policy DM6 of the Plan as well as the NPPF.

In conclusion therefore, it is questionable whether parts 1(a) and 2(a) of Policy MP12 are necessary since 'protected areas' either don't occur in Nottinghamshire or are covered by Development Management policies elsewhere within the Plan. However, the retention of such could be made acceptable making reference to the DM4 and DM6'.

47. Should the policy or the supporting text state what circumstances are likely to constitute 'exceptional circumstances'?

No. The NPPF refers to exceptional circumstances needing to be demonstrated when either a decision maker, such as a local planning authority, or an applicant is proposing an alternative policy approach or form of development which is contrary to Government guidance. These include an alternative to assessing local housing need, the establishment of new and alterations to Green Belt boundaries, major development in AONBs and National Parks and bonds for the restoration of mineral operations. For the most part, examples of exceptional circumstances are not given in the NPPF. It is for the decision-maker or the applicant to determine and justify what constitutes an exceptional circumstance. This provides an appropriate degree of flexibility and avoids the need to second guess what exceptional circumstances might be.

Paragraph 172 and 173 of the NPPF state:

*172. Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Park and the Broads. The scale and extent of development within these designated areas should be limited. Planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:*

- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;*
- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and*
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.*

*173. Within areas defined as Heritage Coast (and that do not already fall within one of the designated areas mentioned in paragraph 172), planning policies and decisions should be consistent with the special character of the area and the importance of its conservation. Major development within a Heritage Coast is unlikely to be appropriate, unless it is compatible with its special character.*

48. What would be required to demonstrate the need for development and what is the justification for this requirement?

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It should be remembered that oil and gas as other minerals can only be developed where they are found.

On the presumption that parts 1(a) and 2(a) are required in respect of protected areas, the need for the development and the justification at a local level for it is likely to be an appraisal setting out alternative locations within the PEDL area, the local and national benefits arising from the development and an assessment of the environmental impacts together with the mitigation measures required to make the development satisfactory.

The justification nationally has already been made by Government in the Written Ministerial Statement of May 2019 which states *"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 following references in the NPPF are helpful:

- NPPF 203 provides that it is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs. Since minerals are a finite natural resource, and can only be worked where they are found, best use needs to be made of them to secure their long-term conservation;
- NPPF 204(a) provides that planning policies should provide for the extraction of mineral resources of local and national importance. "Mineral resources of local and national importance" are defined as minerals which are necessary to meet society's needs, including oil and gas (including conventional and unconventional hydrocarbons);
- NPPF 205 provides that, when determining planning applications, great weight should be given to the benefits of mineral extraction, including to the economy;
- NPPF 209b asks local authorities when planning for on-shore oil and gas development to 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;

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As previously stated, we also wish to note the additional comments made by the Inspector on Egdon Resources' appeal for the Wressle development regarding national energy policy (para 33)<sup>4</sup> *"...the proposed extraction of hydrocarbons is consistent with national energy policy. Furthermore, in that context a domestic supply has obvious security advantages and reduces the need for imported gas and oil"*<sup>2</sup>

49 The wording of paragraph 4.105 reflects that in the 2012 Framework (paragraph 147). The 2019 Framework does not refer to addressing constraints that apply within licensed areas. The wording of this paragraph should be reviewed.

The text at paragraph 4.105 of the Plan replicates guidance to minerals planning authorities set out in the NPPF. The point made by the Inspector is valid in that the 2012 NPPF (paragraph 147) has been quoted rather than 2019 NPPF (now paragraph 209b). However, there seems little point in substituting one paragraph of the NPPF for another when the text is simply repeating guidance, specifically for MPAs, and not for applicants, in the NPPF. It adds little to the Plan. Its removal would avoid unnecessary duplication. The wording of the paragraph should therefore be deleted.

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<sup>2</sup>file:///C:/Users/asppl/AppData/Local/Packages/Microsoft.MicrosoftEdge\_8wekyb3d8bbwe/TempState/Downloads/Appeal%20decision%203221694%20(1).pdf