

## Inclusion of shale gas production projects in the Nationally Significant Infrastructure Project Regime: A consultation response from CPRE

This CPRE submission has been compiled following extensive consultation within our network of local groups, all of whom have first-hand experience of how the planning system operates at a local level.

Question	Response
<p>Context and comments on the scope and background of the consultation</p>	<p><u>Context</u></p> <p>The Campaign to Protect Rural England (CPRE) welcomes the opportunity to respond to this consultation on including shale gas production in the NSIP regime. CPRE fights for a better future for the English countryside. We work locally and nationally to protect, shape and enhance a beautiful, thriving countryside for everyone to value and enjoy. As a charity with about 60,000 supporters and members, a branch in every county, over 200 district groups and more than 2,000 parish council members, we have an extensive reach across the country.</p> <p>Below we set out our answers to the questions posed in this consultation. However, we feel it is important to set out our position on the principle of shale gas production and its place within the English planning system at the start of this response.</p> <p>CPRE believes that fracking and fracking-related development should be halted unless it can be clearly demonstrated that it would:</p> <ul style="list-style-type: none"> <li>• help secure the radical reductions in carbon emissions required to comply with planning policy and meet legally binding climate change targets;</li> <li>• not lead to unacceptable cumulative harm, whether for particular landscapes or on the English countryside as a whole;</li> <li>• be carefully controlled by effective systems of regulation and democratic planning, which are adequately resourced at both local and national levels.</li> </ul> <p>Since formally adopting this position<sup>1</sup>, additional evidence has given further weight to this precautionary approach. This includes several reports from government advisory bodies indicating that fracking plays no role in a future where the UK meets its legal climate change targets<sup>2</sup>; an independent report finding that we would need about 6,100 wells to produce enough gas to replace even half of future UK gas imports, resulting in an industrialisation of our countryside<sup>3</sup>; and</p>

<sup>1</sup> [CPRE Policy Guidance Note on Shale Gas](#) (2017) (Accessed 24.10.18)

<sup>2</sup> [National Infrastructure Commission: National Infrastructure Assessment](#) (July 2018) (Accessed 24.10.18)

<sup>3</sup> [The Implications of Fracking in UK Gas Import Substitution](#) (April 2018) (Accessed 24.10.18)

	<p>evidence of additional emissions of air pollutants with impacts on local and regional air quality.<sup>4</sup></p> <p>Our particular concern with the measures announced in the Written Ministerial Statement (WMS) of May 2018 is the intention not only to ignore this evidence, but to bypass the rights of local communities to have a say in whether fracking takes place or not.</p> <p>We are not alone in these concerns. In July, the Housing, Communities and Local Government Select Committee produced a report stating that the WMS proposals ‘would result in a significant loss to local decision making, exacerbating existing mistrust between local communities and the fracking industry’. They recommended that ‘Fracking planning applications should not be brought under the Nationally Significant Infrastructure Projects regime nor acquire permitted development rights.’<sup>5</sup></p> <p>Finally, the recent publication of the Intergovernmental Panel on Climate Change (IPCC) report on ‘Global Warming of 1.5°C’ highlights the need for drastic and urgent changes to energy systems, including total net decarbonisation by 2050.<sup>6</sup> We are clear that the development of a shale gas industry in the UK is inconsistent with the need to speed up the transition to renewable energy.</p> <p>Ultimately, while we will be responding in accordance with the questions posed in this consultation, it is important that the department has our overall position on these proposals in mind.</p> <p><u>Scope of the consultation – Quality assurance</u></p> <p>CPRE are concerned that the consultation states it ‘has been carried out in accordance with the Government’s consultation principles’ yet (and as with the parallel MHCLG consultation on permitted development) an Impact Assessment (IA) was not conducted prior to this consultation. We note on p.21 (Next steps) that a full impact assessment would accompany any further consultation. We believe an IA should have accompanied this initial consultation so that costs and benefits are considered at the earliest, formative stage in decision-making.</p>
<p><b>Question 1</b></p> <p>Do you agree with the proposal to include</p>	<p><b>No.</b></p>

<sup>4</sup> [DEFRA: Potential Air Quality Impacts of Shale Gas Extraction in the UK](#) (July 2018) (Accessed 24.10.18)

<sup>5</sup> [House of Commons Housing, Communities and Local Government Committee Planning guidance on fracking](#) (July 2018) (Accessed 24.10.18)

<sup>6</sup> [IPCC: Global Warming of 1.5 degrees celsius](#) (October 2018) (Accessed 24.10.18)

<p>major shale gas production projects in the National Significant Infrastructure Project regime?</p>	<p>In summary, we believe this is inappropriate and unreasonable in a number of respects:</p> <ul style="list-style-type: none"> <li>• Taken together with parallel proposals to extend permitted development rights to include non-hydraulic fracturing shale gas exploration, this would deprive local authorities (mineral planning authorities in this case) of direct decision-making on major minerals development in their areas;</li> <li>• Following from the above point, it would contradict the statement in this consultation (p.6, Overview) that ‘The government recognises that the development of shale gas needs to be alongside support from local communities...’ and that ‘local communities must be fully involved in planning decisions and any shale gas application – whether decided by councils or government’. We do not believe that the NSIP regime, in its current format, offers anything like ‘full involvement’ in decision-making;</li> <li>• It cannot be rationally argued why shale gas production, in comparison with other major mineral developments, should be exempted from consideration under the Town and Country Planning Act 1990; it would be perverse and unreasonable and potentially open to challenge by aggrieved operators in the non-energy minerals sector;</li> <li>• Lack of fit with the NSIP planning process: taking the defined thresholds in operation for the current infrastructural categories which fall to be considered under NSIP, the scale of fracking production development falls short, unless whole (regional) gas fields (shale gas basins) were to be considered in aggregate (which seems highly unlikely and undesirable);</li> <li>• In more pragmatic terms, it seems unlikely that including shale gas production in the NSIP regime would actually hasten decision-making, especially if applications were to be at a scale analogous to the current thresholds (were this even possible, given the likely scattered spatial distribution and different ownerships of prospective well pad sites).</li> </ul>
<p>Question 2</p> <p>Please provide any relevant evidence to support your response to Question 1.</p>	<p><u>Loss of direct MPA (LPA) decision-making</u></p> <p>The Government has repeatedly stated the need for localism in respect of planning decisions. As recently as March 2018 the Prime Minister referred to putting local communities at the "heart of the planning process", and the former Secretary of State for Communities and Local Government, Sajid Javid, has repeatedly referred to locally made planning decisions as a “front line of democracy”.</p> <p>This consultation makes clear (Overview, p.6) that ‘local communities must be fully involved in planning decisions and any shale planning application - whether decided by councils or government’. We agree and, for this to be meaningful, this means that mineral planning authorities, where locally-elected representatives</p>

approve (or refuse) significant mineral developments (i.e. other than *de minimis* activity and PD), must retain all initial decision making responsibilities for shale gas applications in all three stages of development (exploration, appraisal and production). This echoes the conclusions of the HCLG Select Committee inquiry into Planning guidance on fracking, evidence given to the All Party Parliamentary Group (APPG) on the Impact of Shale Gas and calls by many MPs in a recent Westminster Hall debate.<sup>7</sup>

#### Local involvement in NSIP regime applications

Although opportunities exist for local involvement (councils and communities) within the NSIP regime (both at pre-application, pre-examination and examination stages), in our view these are limited and lack the ability to fully and forensically examine the proposal in an adversarial environment, such as is afforded by local public inquiries. Cross examination is a crucial and necessary element in the testing of evidence and lies at the core of a democratic planning system.

Furthermore, a comprehensive independent review<sup>8</sup> by respected planning academics (Prof. Janice Morphet and Dr Ben Clifford) for the National Infrastructure Planning Association has made clear that once schemes had been accepted into the NSIP system, there would be no need for the scheme promoter to establish the principle of development. The NSIP regime is structured around amendment of the Draft Consent Order, not its rejection. In other words, the scheme would be unlikely to be rejected although it may be modified, for example to address (mitigate or moderate) environmental or other impacts. We (and the many local councils and communities we work with) would have very serious concerns if shale gas production – at whatever scale – become a virtual *fait accompli* given the serious local impacts such developments give rise to, which cannot be fully mitigated.

#### Relationship to other mineral developments under TCPA (1990)

We believe there is no case, on planning grounds, to remove shale gas development from the usual framework (under the TCPA, 1990) for local determination of mineral development, either for energy and non-energy minerals. Elsewhere, others<sup>9</sup> have made a cogent case for MPA retention of applications for unconventional hydrocarbons, in part to address the issue of ‘social licence’, which we strongly support and echo. The HCLG Select Committee also concluded that moving shale gas production to the NSIP regime ‘is likely to exacerbate existing mistrust between local communities and the fracking industry’

<sup>7</sup> [House of Commons Housing, Communities and Local Government Committee Planning guidance on fracking](#) (July 2018) (Accessed 24.10.18)

<sup>8</sup> [Infrastructure Delivery: the DCO process in context \(June 2018\)](#) (Accessed 24.10.18)

<sup>9</sup> For example, written evidence submitted by Sheffield City Council to House of Commons Housing, Communities and Local Government Committee inquiry: Planning guidance on fracking. Submission ref. PGF0088, see especially paras 6.1-6.6.

(Eighth Report, para.82). They also noted the lack of justification or evidence for adopting a partisan approach to this particular type of minerals development.

#### Lack of fit with the NSIP planning process

The Planning Inspectorate state that NSIPs are 'projects of certain types, over a certain size, which are considered by the Government to be so big and nationally important that permission to build them needs to be given at a national level...'.<sup>10</sup>

Spatial extent (at surface or underground), including power lines and pipelines, and massing of development leading to visual impact over a significant area (e.g. wind farms; other electricity generation and transmission infrastructure), is a key criterion within the current thresholds for infrastructure projects considered by the Planning Inspectorate. Data provided by UKOOG<sup>11</sup> suggests that an average shale gas production unit (1 pad containing 10 wells) will cover two hectares (2 ha: the same size as two football pitches). A recent independent estimate suggests 6 wells per pad and 3.5 ha of land take, including impact on immediately adjacent areas.<sup>12</sup> Even with this higher estimate, the area of land impacted, either directly or indirectly will fall well short of either current NSIP thresholds, for example:

- 2-40 km of (overhead) power line or (underground) pipe-line;
- large road or rail schemes (including rail freight interchanges of 60 ha and above) with attendant land take;
- airports or airport extensions handling 10 million passengers per year or more;
- large harbours;
- large dams and reservoirs.

Similarly, amendments in 2013 allowed business and commercial development to be directed into the NSIP regime with indicative area thresholds of either 40,000m<sup>2</sup> (GIA – gross internal area), 100 ha or more or 150 ha or more for the winning and working of minerals (but not including oil or gas), either at surface or underground.<sup>13</sup> Looking at precedents (*ibid.*) from two projects directed into NSIP under this legislation (the London Resort, Ebbsfleet; the International Advanced Manufacturing Park, Sunderland), criteria such as physical size (both exceeded 200,000m<sup>2</sup>), significant impact on a wider than LPA area and wider economic impacts were part of the Secretary of State's considerations. Again there seems

<sup>10</sup>[The Planning Inspectorate: Overview of the nationally significant infrastructure planning process for members of the public and others](#) (Para. 1.1) (Accessed 24.10.18)

<sup>11</sup>[UKOOG: Developing shale gas and maintaining the beauty of the British countryside](#) (Accessed 24.10.18)

<sup>12</sup>[The Implications of Fracking in UK Gas Import Substitution](#) (April 2018) (Accessed 24.10.18)

<sup>13</sup>[Barton Willmore Guidance Note: Nationally Significant Infrastructure Projects: Business and Commercial Development](#) (2017) (Accessed 24.10.18)

	<p>little comparison with the scale of development envisaged for shale gas production, even according to UKOOG.</p>
<p><b>Question 3</b></p> <p>If you consider that major shale gas production projects should be brought into the NSIP project regime, which criteria should be used to indicate a national significant project with regards to shale gas production? Please indicate from the list below:</p> <ul style="list-style-type: none"> <li>a. The total number of individual wells per well-site (or 'pad')</li> <li>b. The total number of well-sites within the development</li> <li>c. The estimated volume of recoverable gas from the site(s)</li> <li>d. The estimated production rate from the site(s), and how frequently (e.g. daily, monthly, annually or well lifetime)</li> <li>e. Whether the well-site</li> </ul>	<p>We do not consider that major shale gas production should be brought into the NSIP project regime, partly as all of the potential qualifying criteria fall short of what can be deemed 'nationally significant' or any current analogous NSIP thresholds (see our response above). We therefore think it inappropriate to respond to the list below.</p>

<p>has/will require a connection to the local and/or national gas distribution grid</p> <p>f. Requirement for associated equipment on-site, such as (but not limited to) water treatment facilities and micro-generation plants</p> <p>g. Whether multiple well-sites will be linked via shared infrastructure, such as gas pipelines, water pipelines, transport links, communications, etc</p> <p>h. A combination of the above criteria – if so please specify which</p> <p>i. Other – if so please specify</p>	
<p><b>Question 4</b></p> <p>Please provide any relevant evidence to support your</p>	<p>It is far from clear that the UK shale gas resource (and more particularly the likely recoverable reserve) qualifies as ‘nationally significant’. Resource analysis by the US Energy Information Administration estimates a technically recoverable resource</p>

<p>response(s) to Question 3.</p>	<p>of 26 trillion cubic feet (tcf).<sup>14</sup> A wide range of planning and recovery-related constraints specific to the UK (e.g. existing and competing land uses, local geology) suggest about half of this resource estimate may be realisable, which would only amount to several years of UK supply. These indications, combined with our headline views on the environmental sustainability of shale gas production (mainly in relation to meeting climate change targets), underline our view that this form of development should not qualify as ‘nationally significant’ and therefore has no proper place in the NSIP regime. The recent IPCC report strongly undermines the view that there is a national need for UK shale gas.</p> <p>There is also a more pragmatic point in relation to thresholds for this form of gas development. Practice elsewhere (predominantly in North America) is for a group of multi-pad wells to proliferate around an initial site and it is likely that this would also be the case in the UK. It is difficult to envisage when, if at all, it would be appropriate for an application for an additional well pad to be considered by the Secretary of State (through the NSIP regime) rather than the local Mineral Planning Authority (via the T&amp;CP Act). In this situation, additional applications would be more effectively considered by the MPA on their own merits and taking into account any cumulative impacts.</p>
<p><b>Question 5</b></p> <p>At what stage should this change be introduced? (For example, as soon as possible, ahead of the first production site, or when a critical mass of shale gas exploration and appraisal sites has been reached).</p>	<p>Notwithstanding our in-principle objection to the inclusion of shale gas production in the NSIP regime, given the known environmental risks of exploration and extraction equipment and processes, and the impact on pollution and on climate change of the products extracted when they are burned or refined into other products, there is a strong case for not contemplating shale gas exploration and extraction until:</p> <ul style="list-style-type: none"> <li>a) the need for these resources is properly established through a National Policy Statement (NPS), though we believe, (in the light of the recent IPCC report), the case cannot be made on sustainability grounds;</li> <li>b) that need is balanced with an assessment of impacts and how they might be mitigated or avoided through an Appraisal of Sustainability/SEA of that NPS; and</li> <li>c) the NPS and its AoS/SEA is subject to consultation and Parliamentary scrutiny.</li> </ul> <p>Without such a context, each NSIP application would need to establish the need for the infrastructure in question on a case-by-case basis.</p>
<p><b>Question 6</b></p>	

<sup>14</sup> [US Energy Information Administration: Technically recoverable shale oil and shale gas resources: An assessment of 137 shale formations in 41 countries outside the United States](#) (p.6, Table 3) (2013) (Accessed 24.10.18)



<p>Please provide any relevant evidence to support your response to Question 5.</p>	<p>Recapping our responses to questions 4 and 5, we maintain there is considerable uncertainty at present as to the level of proven reserves, given that exploration and appraisal is at a very early stage. Although some resource estimates may be high, overcoming local geological conditions (e.g. the degree of faulting or existing mineworkings and potential for induced seismicity) and planning constraints will not be straightforward. We re-iterate that new evidence from the IPCC on the need for much more rapid de-carbonisation to meet the 2015 (Paris) targets of limiting global temperature rise to 1.5°C now means a switch to a new energy policy trajectory that excludes any significant production of UK shale gas. There is therefore no case to proceed with these proposals to put shale gas production into the NSIP regime.</p>
---	--