

North Yorkshire Joint minerals and Waste Plan (Draft)

Answers to Inspector's Questions

General

1. North Yorkshire County Council, the North York Moors National Park and the City of York spent many years preparing a draft joint Minerals and Waste Plan for North Yorkshire (NYJWMP), which was intended to provide a compromise between the interests of the fracking companies and the concerns of residents. It provided modest protection for residents. The petrochemical industry objected to all of these protections.
2. In March/April 2018 an inspector conducted an “Examination in Public” (EIP) of the NYJWMP and on 13th April provisionally concluded:
 - There could be a separate section in the NYJWMP which deals with mineral extraction by fracking.
 - The plan could use a different definition of hydraulic fracturing from the definition in the Infrastructure Act. The importance of this point is that, if the Infrastructure Act definition had been used in the plan, this might not have covered as many as 50% of high volume hydraulic fracturing cases, and could have resulted in allowing fracking to take place in the AONBs and National Parks.
 - Areas identified in district and borough plan as areas of local landscape value must be taken into account when applications to frack are considered;
 - There could be a 3.5 km zone outside National Parks and AONB's where a statement in regard to impact on landscape could be required;
 - A bond or guarantee could be required for surface restoration but not to cover well integrity after operations cease. This was because most of the participants (including County) thought that para 144 of the NPPF forbids bonds and guarantees for well integrity “except in exceptional circumstances”, and such exceptional circumstances could not be applied to fracking as a general rule.
 - There could be a limit on density of surface structures
 - The inspector ruled (subject to receipt of further info) that a 500m buffer zone between houses and fracking surface structures was sound.
 - There could be a safeguarding zone to protect potash deposits from contamination by fracking fluids or gases.

- It should be stated that there were changes to the wording on many of the above issues to allow for greater “flexibility”
3. It should be noted that the developers would not agree to a separate section of the plan dealing with hydraulic fracturing; they wanted to redefine “high volume hydraulic fracturing” in a way which would have permitted fracking in the National Park and the AONB; **they wanted no limit to the density of drill pads (not even the limits prescribed in the Plan)**, no separation zone outside the AONB/National Park, no residential buffer and they were not even prepared to accept a safeguarding zone to protect the potash deposits of a new potash mine. They did not put forward any compromises or counter proposals except to suggest that all the above issues should be dealt with “on a case by case basis” in accordance with “national policy.”

The Select Committee

4. The House of Commons Select Committee (the Committee) published a report on Planning Guidance on Fracking on 5th July 2018 under reference no. HC 767, **(Exhibit 1)** which reviewed the MWS of 17th May 2018.
5. The Committee’s Report disputes many of the requirements, policies and proposals in MW18. This suggests that MW18 is fundamentally flawed and cannot therefore legally stand. For example:
6. Whereas the statement in MWS 18 that shale gas extraction is of national importance, and suggests that Mineral Planning Authorities are not giving it sufficient weight, para. 52 of the committee report states: ***“we are content that Mineral Planning Authorities are currently finding an appropriate balance between national and local policy guidance in the determination of fracking applications.”***
7. MW18 states: ***“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”***
8. The Committee do not agree. Para. 19 of their report states: ***“The Infrastructure Act 2015 definition of fracking does not reflect the technologies on the ground nor the public understanding of fracking, leading to a lack of understanding among key stakeholders and significant concerns about loopholes in the current regulatory regime. We therefore believe that the Infrastructure Act 2015 definition is unsuitable in the planning context and recommend that it should not be liquid or volume based. While we welcome the Government’s intention to unify the definitions of fracking used in the Infrastructure Act 2015 and the National Planning Guidance due to the resultant lack of clarity and uncertainty in***

using multiple definitions, we are highly concerned at the Government's suggestion that the Infrastructure Act 2015 definition will replace the current definition in a revised National Planning Guidance. We call on the Government to amend the Infrastructure Act definition to ensure public confidence that every development which artificially fractures rock is subject to the appropriate permitting and regulatory regime."

9. In the same vein, although in regard to a different context para. 82 of the Committee's Report states: *"Furthermore , we note that the Government has not provided any justification or evidence for why fracking has been singled out to be included in a national planning regime in contrast to general mineral applications."*

10. MW 18 states: *".....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."*

11. Paras. 58 and 59 of the Committee's report disputes this statement as follows:

"58. When we asked the government to clarify the meaning of the WMS section.....particularly in regard to what was meant by "proper justification", we were told "we cannot legally-certainly not as a planning-minister comment on any actual case.....I am sorry we cannot give you more detail.....again I am not going to set generalisations." We were disappointed with the minister's refusal to answer questions. Claiming that the Minister cannot respond to our questions because he cannot answer hypothetical cases or comment on specific cases is incongruous given that the questions referred directly to a Government statement on fracking planning policy.

59. There is a contradiction between the spirit of the Localism Act 2011 and the 2018 MWS on fracking planning policy which could unreasonably restrict Local Plans. Mineral Planning Authorities are best placed to understand their local area and weigh up what requirements should be in place for fracking developments. We note that local plans are already subject to scrutiny at national level from the Planning Inspectorate. Given that the English planning system is plan-led, Mineral Planning Authorities should be free to adapt their Local Plans as they see fit as long as they do not arbitrarily restrict fracking developments. It is essential that Mineral Planning Authorities have the right to put conditions in their Local Plans which can be justified having proper regard to the circumstances."

12. This suggests a much lower "bar" than seems to be required by MWS. The fact that the minister could not suggest an example of a "proper justification" suggests that the "bar" the Secretary of State intends to apply in regard to MWS 18 is so high as to be virtually insurmountable.

13. MW 18 also gives notice of forthcoming consultations on making fracking exploration permitted development and on “the criteria required to trigger the inclusion of shale production projects into NSIP”. It should be noted that the text in regard to consultation on referrals to NSIP assumes that this will happen, whereas the text concerning consultation in regard to Permitted Development makes no such assumptions. This completely undercuts the work of the Committee which was originally tasked to consider both these issues.
14. The Committee recommends that fracking exploration should not be given permitted development rights. In regard to referrals to NSIP, the Committee’s report states:

“82. There is little to be gained from bringing fracking planning applications at any stage under the NSIP regime; there is limited evidence that it would expedite the application process and such a move is likely to exacerbate existing mistrust between local communities and the fracking industry. We are particularly concerned that, if the NSIP regime were adopted, there would be no relationship between fracking applications and Local Plans in communities. Furthermore, we note that the Government has not provided any justification or evidence for why fracking has been singled out to be included in a national planning regime in contrast to general mineral applications.

83. Fracking applications should not be brought under the NSIP regime. While we note that the NSIP regime does provide opportunities for consultation with Mineral Planning Authorities and local communities, such a move could be perceived as a significant loss to local decision-making. Mineral Planning Authorities are best placed to understand their local area and consider how fracking can best take place in their local communities.

84. Despite our recommendation above and the overwhelming evidence we received, if NSIP were to be used for fracking applications, it is essential that a National Policy Statement is prepared as a matter of urgency that would include suitable measures to restrict inappropriate proliferation of well-pads and unacceptable impacts on landscapes. We consider that the JWMP offers an appropriate template for such guidance. While we note that the Government stated that the issue of cumulative impact would be addressed on a case by case basis as part of the NSIP examination process, the National Policy Statement should ensure that it is considered automatically as part of every determination. Every decision should also be consistent with Local Plans”

The Andrews Case

15. The MWS was the subject of judicial review in the case of *R(oao Andrews) v SSBEIS on 5th November 2018* (*The Andrews Case*). A copy of the solicitor’s note of the judgement and of Counsel’s summary the outcome of the case is attached (**Exhibit 2**). Following the decision in this case, the joint

authorities have revised the fracking section in the draft plan to take into account the MWS of 19th May 2018 in the context of the Andrews case.

16. As the transcript of the hearing of 5th November 2018 is currently awaiting the judge's approval and is not yet available, the views expressed below have to be provisional, and based on Exhibit 2.
17. Proceedings were commenced because the wording of the Minister's Written Statement of 17th May 2018 (MWS) suggested that a restricted definition of "hydraulic fracturing" (the Infrastructure Act definition) was going to be applied by government and imposed on local mineral planning authorities, so as to prevent government regulations, restrictions and requirements on hydraulic fracturing from applying to hydraulic fracturing which uses less than a given volume of fluid. This would have exempted, for example, four of the five planned "fracks" at KM8, and made it possible to frack within the National Parks and AONB's and to use acidisation.
18. The inspector at the public examination of the draft North Yorkshire Joint Minerals Plan had decided to reconsult the parties to the examination so as to obtain their views as to the effect of the MWS on the draft Plan.
19. In response the petrochemical industry had confirmed that in their view the effect of the MWS was as outlined above.
20. The three joint mineral planning authorities had made no legal challenge.
21. Acting on Counsel's advice I commenced legal proceedings to get the MWS overturned. The main ground was that, as the MWS had made substantial changes to planning policy on fracking, the Secretary of State should have made a Strategic Environmental Assessment, and that as this had not been done, the MWS was unlawfully made.
22. During the course of the proceedings, the Government conceded that the MWS required mineral planning authorities to "recognise" the Infrastructure Act definition and did not require them to "apply" it (**Exhibit 3(b), paragraphs 9, 28 and 37 -39**). At the hearing the Judge stated that mineral planning authorities could decide whether or not to apply the definition, and the Government's legal team agreed.
23. According to my solicitor's note of the judgement (Exhibit 2), Holgate J said:

"Section 19 of the 2004 Act states that when development plan documents are prepared, planning authorities must have regard to national policy and guidance by the Secretary of State. It is well-established that national policy is a matter to which planning authorities are directed to have regard, but not mandatory in the sense that the contents must be adhered to in the formulation of local policies. National policies will not mandate planning authorities to have reference to any particular definition, in particular that contained in 1998 Act. Because authorities are not bound (for example see the West

Berkshire case), it is legally permissible to justify taking a different approach, for example for reasons authorities consider applicable in their administrative area. If they take that stance, the opinions they have adhered to can be scrutinised by the planning inspector in examination. I do not read the WMS as mandating the plan-making authorities in North Yorkshire to apply for example the definition of associated hydraulic fracturing in the 1998 Act, or the definition in the PPG. All the document does is say is that those are matters which MPA are expected to have regard.”

24. On this basis, as the MWS had not changed any previous guidance, there was nothing to adjudicate on and the application for judicial review was dismissed.
25. As Marc Willers QC says in his short opinion, this means that the draft Plan with its currently proposed definition of hydraulic fracturing can be approved by the Inspector and adopted in its present form.
26. If they had lost the case and the MWS had been overturned, the Government would have been required to carry out a full Strategic Environment Assessment, which I understand is a long and rigorous process, involving expert evidence and a full public consultation, which could have opened up fracking to a full structured public debate which, in my view, is long overdue.
27. However, all the parties now know that if the government comes up with a policy which substantially alters the existing guidance so as to remove restrictions on fracking, this could have to be referred to a Strategic Environment Assessment.
28. The Inspector of the North Yorkshire Joint Minerals and waste Plan (NYMWP) has recalled the EIP into the NYMWP in order for all parties to reassess the situation in the light of the court judgement.
29. The three joint mineral planning authorities have accordingly decided to stand firm on the definition of hydraulic fracturing in the NYJMP and to insist on the plan as previously provisionally agreed with the inspector. However, unfortunately they have substantially weakened their position in regard to one of the key issues.
30. This concerns the requirement for a 500m buffer between occupied dwellings and surface workings. This requirement could only be broken in “*exceptional circumstances.*” However the joint planning authorities have decided to remove the requirement only permitting such development “*in exceptional circumstances*” and substitute a policy requirement that surface structures can only be permitted within 500m of dwellings “*where it can be demonstrated in site specific circumstances that a high level of protection will be provided*”
31. It is not understood why this alteration has been made, bearing in mind Holgate J’s view that government guidance is not mandatory, and that nothing in the 500m buffer requirement prevents the exploitation of the shale gas asset

– bearing in mind that it is open to a developer to purchase any property which happens to be in his way (see para. 53 below).

32. It is feared that the proposed alteration will not provide residents with protection against violation of their residential amenities, nor will it prevent countryside areas being covered with vast networks of grids of drill pads, each two hectares in size spaced apart at distances of between one and a half and two miles in every direction (see below). This would not provide an appropriate balance between the interests of residents and the environment on the one hand and the interests of the fracking companies on the other. In these circumstances, it would seem appropriate that the joint planning authorities should carry out a Strategic Environmental Assessment before this change can be authorised.

33. The application of the IA definition

34. It is understood they have taken the view that, as Holgate J's decision turned on the principle that the planning authority does not have to apply the IA definition of "hydraulic fracturing", the joint authorities have decided not to apply it but to stick to the definition previously agreed with the inspector. This will continue to protect National Parks, AONB's, and much of the area in and around York.

35. The 500m buffer zone

36. As mentioned above, the joint authorities have decided to substantially modify the 500m buffer more than I believe was required by the inspector on 13th April 2018.

37. The relevant passages of the draft plan are:

38. Policy M17 (4)(i): *"Proposals for surface hydrocarbon development, particularly those involving hydraulic fracturing within 500m of residential buildings and other sensitive receptors, are unlikely to be consistent with this requirement and will only be permitted in exceptional circumstances"*

39. Textual para. 5.146 states:

40. *"In order to ensure that an appropriately high standard of protection can be maintained, and to help to provide clarity on the approach to be followed by MPA's, it is considered that a minimum horizontal separation distance of 500m should be maintained between the proposed development and **occupied residential property or other sensitive receptors, unless there are exceptional circumstances.** A 500m distance is considered to represent a reasonable distance taking into account the potential for a range of impacts including noise, vibration, light, pollution, visual impact and other emissions, as well as the potential for some forms of hydrocarbon development to generate disturbance during night time periods, when there is potential for a greater degree of perceived impact."*

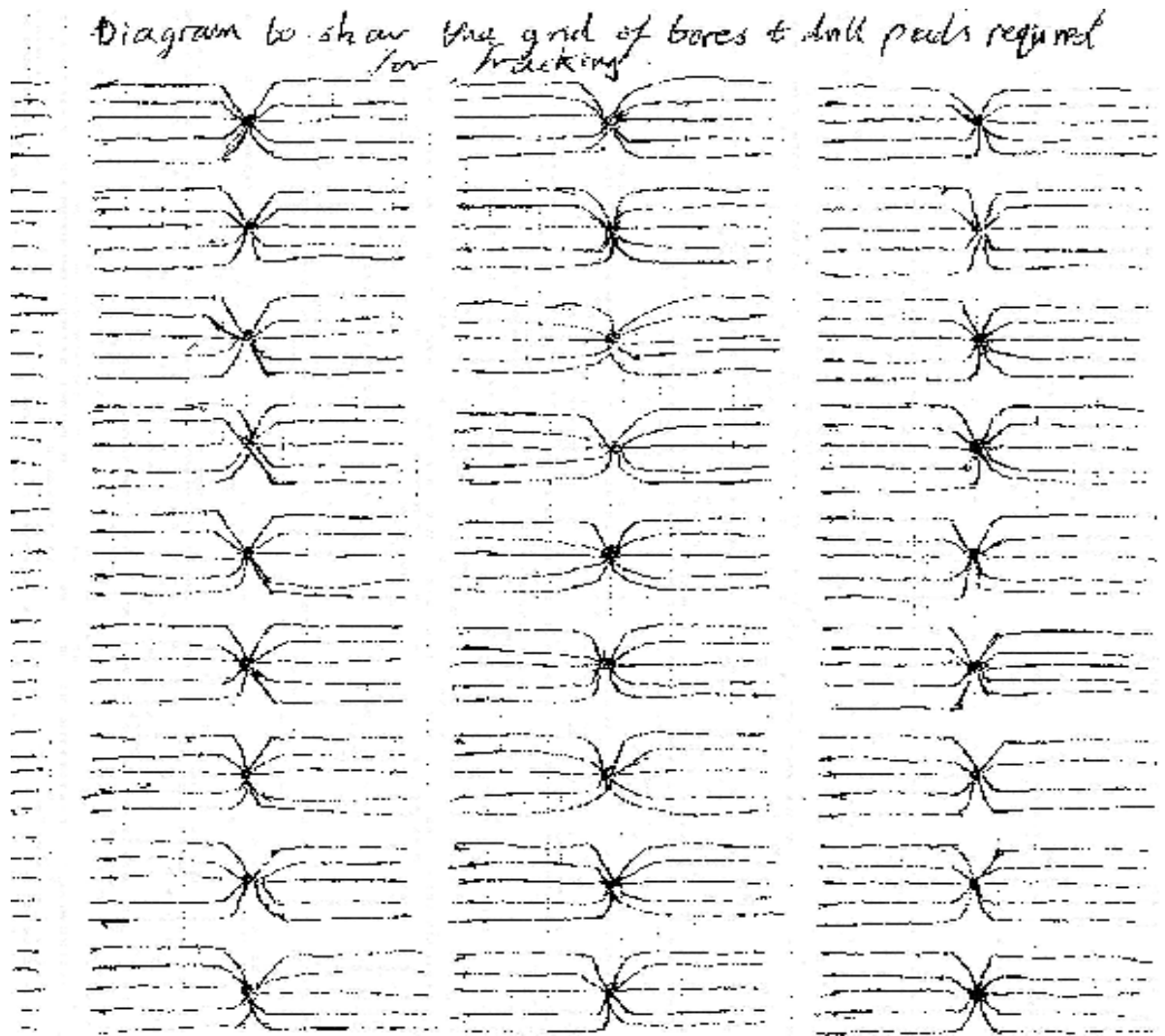
41. This has been revised as follows:
42. “ *It is proposed by the Mineral Planning Authorities (MPAs) that there be a main modification to the 500m buffer zone in Policy M17, 4) i) so that development in this zone “will only be permitted where it can be demonstrated in site specific circumstances that a **high level of protection will be provided**”.* *The policy sentence that referred to only permitting development in exceptional circumstances is proposed to be removed.*” – (Inspector’s Question No.3)
43. It will be seen that this substantially lowers the level of the bar.
44. The MWS of May 19 2018 requires MPA’s: “. *Consistent with this Planning Practice Guidance, policies should avoid undue sterilisation of mineral resources (including shale gas).*”
45. It is understood that UKOOG take the view that this 500m buffer would unduly sterilise mineral extraction. Presumably this may be because it could be difficult to set up the grid of drill pads they require (see below).
46. It will be recalled how paras 5.134 and 5.137 of the draft plan envisage grids of drill pads, each pad comprising 2 hectares in size and 10 such pads to every 100 sq.km (ie 38 sq.miles) – ie one every one and a half to two miles in every direction. It will also be recalled how at the previous EIP meeting, UKOOG were not even prepared to accept this generously worded restriction. (see attached statement)
47. It is disputed that the 500m restriction would unduly sterilise mineral extraction by restricting the proliferation of drill pads of this kind, as para 5.146 of the draft plan makes it clear that the restriction will only apply to occupied residential property. It would therefore be possible for developers to purchase properties which are in their way. This may not be an ideal protection for residents, but it would at least give many residents the opportunity of obtaining compensation for loss of amenity and property value, for which there is no provision guaranteed by law or statute.
48. It is therefore not considered necessary for the MPA to remove or downgrade the “exceptional circumstances” bar.
49. Further the view is taken that both the MWS of September 16th 2015 and the MWS of 19th May 2018 can only be construed so as to conform with the general law and statute (*The Case of Proclamations as confirmed in R(aoa) Miller v Secretary of State 2017*). Both MWS must therefore be construed so as to conform with the Strategic Environmental Assessment Directive 2001/42/EC and the Human Rights Act 1998 and the Conventions adopted under it.

50. It is submitted that the proposed amendment of Policy M17 is a significant change to the draft plan which, within the meaning of the PPG¹, is a substantial alteration and is likely to give rise to significant effects which have not otherwise been the subject of assessment so as to trigger the need to carry out further sustainability assessment in order to meet the requirements of the SEA Directive. There would need to be further consultation on the sustainability appraisal.
51. It is also claimed that, if the exceptional circumstances bar is removed, there will be fundamental contravention of Article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms in regard to the Protection of Property .
52. The protection of property gives every person the right to peaceful enjoyment of their possessions.
53. This imposes an obligation on the State not to:
- interfere with peaceful enjoyment of property;
 - deprive a person of their possessions; or
 - subject a person's possession to control.
54. The view is taken that the removal of the "exceptional circumstances" bar would constitute a disproportionate interference with the peaceful enjoyment of occupied residential property and deprive owner/occupiers of their amenities and property values.

Reasons

55. High pressure hydraulic fracturing is different from conventional hydrocarbon extraction. Conventional hydrocarbon extraction involves the drilling of boreholes down into reservoirs of gas or oil which are trapped by domes in porous sedimentary rock. The gas or oil is released by the borehole and rises of its own accord.
56. High volume hydraulic fracturing is an unconventional process of extracting hydrocarbons from rocks which are not porous. The gas or oil is trapped within the rock itself. In order to release the hydrocarbon, the rock has to be shattered by explosive force and then the cracks in the rock have to be kept open by the injection of a silica substance pumped into them in a fluid under high pressure. It will be seen that this process has a limited range, as pressure decreases with the distance of the fluid from the pumps and compressors on the surface. So, in order to maximise the extraction of the hydrocarbon from within the shale rock layer, it is necessary to have a grid of drill pads, as shown in the diagram below.

¹ Paragraph: 021 Reference ID: 11-021-20140306



57. The dots represent each drill pad, and the spidery legs represent the lateral bores which radiate like the spokes of a wheel from each drill pad. These have to be bent, like the legs of a spider, so as to ensure that the laterals which are to be fracked follow the “grain” of the rock.
58. The shale band can be several hundred feet in depth, and there can be several strata of shale at different depths. So the lateral bores shown on the diagram can be repeated many times at different depths. It is understood there are five such shale strata under KM8.
59. The questions arise: what is the distance between each drill pad and what is the size of each drill pad?
60. I attended the verbal hearings of the Examination in Public (EIP) into the North Yorkshire Joint Minerals and Waste Plan (JWMP) in March and April 2018, and am able to comment by referring to what was said and what happened there.
61. **The draft North Yorkshire Joint Minerals and Waste Plan (Para 5.134) accepts a size of two hectares for each drill pad. Para 5.137 accepts a drill**

pad density of ten drill pads to every 100 square kilometres. 100 sq.km equates to 38 sq. statute miles, which means one drill pad, each 2 hectares in area at intervals of between one and a half and two miles in every direction, if evenly spaced. So, for example, this could mean fifty two – hectare drill pads over the 200 sq.miles of the Vale of Pickering.

62. During the EIP, it was stated by a NYCC officer that this is what the industry had requested. Yet the industry representatives at the EIP declared they would not accept any restriction on the density of drill pads in the plan, but that each case should be decided “*on a case by case basis in accordance with national policy*”.

63. So what is this likely to look like on the ground? The photograph of the Jonah Gas Field from the USA gives us a very good idea.



The Jonah Gas Field Wyoming USA

64.

65. But surely, someone might say, “this could never happen in England!” So, what then do the industry say?

66. John Dewar of Third Energy told a House of Commons Committee on 19th March 2015: *“Bearing in mind we have nine existing sites in and around the area, some in Ebberston Moor and the Vale of Pickering, we do not foresee the need for more than ten more sites. And how many wells we would put on those sites – depending on the size of the site, it could be 10 or 20, and if it was a bigger site, it could be 20 to 50”*.
67. INEOS CEO Jim Ratcliffe (a billionaire who pays no tax in the UK) was quoted thus in the Liverpool Echo:
68. *“Under Mr Ratcliffe’s plans, a typical six mile, by six mile parcel of land with up to 200 wells on it could generate nearly £400m for land owners and communities over the average 15-20-year lifetime of a production site. He estimates it could be worth a total of £2.5bn in payments.”*
69. <http://www.liverpoolecho.co.uk/news/business/ineos-chlor-owner-jim-ratcliffe-7846401>
70. **If grids of fracking drill pads are required in order to maximise shale gas extraction over the entire Vale of Pickering at this density (and without the 500m residential buffer), there would have to be at least 50 drill pads, each two hectares in size, in the Vale of Pickering alone. This would completely change the character of the Vale and industrialise it.**
71. I understand that fugitive emissions are common at drilling pads, and it is obvious that for safety reasons alone, drill pads should not be situated near dwellings.
72. **This is particularly important in the case of gases which are heavier than air and which can therefore collect in hollows and on low ground. These can be dangerous if they are inflammable. Different gases have different molecular weights or vapour density. The main component of shale gas is Methane. Methane is lighter than air but has a vapour density (VD) of 0.6 (air = 1), which compares with hydrogen which has a vapour density of 0.1. Methane can mix with air and can be dangerous in high concentrations, It does not always disperse or rise into the atmosphere quickly. However, shale gas also contains smaller quantities of other gases, such as ethane (VD more than 1), propane (VD 1.6), butane (VD 2.0), ethane (VD more than 1), hexane (VD 3.0), hydrogen sulphide (VD 1.2), and heptane and pentane which are heavier than air. These can gather in hollows or low areas and can take a long time to disperse. Most of these gases are flammable and some (eg hydrogen sulphide) are poisonous.**
73. According to various studies (see Frackfree Ryedale Website – Fracking myths – Myth 8 – **Exhibit 4**) upwards of 10% of methane is lost to the atmosphere during exploration and production. One therefore has to assume that an equivalent amount of the other gases is also lost at the same time.

74. There has to be flaring – as flaring is a safety feature which gas wells are required to have.
75. Clearly, it cannot be in the interest of residential amenity to have a drill pad which can give off fugitive emissions of this kind within a short distance of one's house.
76. Another issue arises out of HGV movements. Third Energy's planning application to frack KM8 stated they expected that there would be 600 HGV movements in and out of the site. This was for only 5 fracks at a site where water could be piped in and gas piped out of the site. Imagine the number of HGV movements in and out of a site which is in full commercial production and which has no pipeline for water or gas, with 45 fracks on 10 – 50 laterals. Imagine the millions of cubic meters of water mixed with noxious or toxic chemicals to be pumped under high pressure underground.
77. On a strict calculation, a single drill pad with 10 laterals could generate 54,000 HGV movements, and one with 50 laterals could generate as much as 271,000 HGV movements or 1,800 per annum (assuming a pad life of 15 years), and then bear in mind that this is for the fracking process alone of only a single drill pad and that drilling operations will require many more HGV movements for a grid of, for example, 50 drill pads in the Vale of Pickering. It is appreciated that, in reality, there will be economies of scale, but even so the number of vehicular movements is likely to increase exponentially with the scale and intensity of the development.
78. **Extracts from a copy of the draft impacts paper of Shale Gas Extraction on the rural economy is attached (Exhibit 5). This government produced paper suggest that the impact of fracking would reduce land values. It is stated: "There could be a 7% reduction of land values within one mile of an extraction site". If this means that properties within one mile will reduce by 7%, it follows that property values will reduce exponentially the closer the property is to an extraction site.**
79. **in these circumstances, it is submitted that, if developers are allowed to develop grids of drill pads for hydraulic fracturing as described above at the density required to maximise gas extraction (ie 10 drill pads to every 38 sq. miles) without the 500 m residential buffer, this will constitute a plan or programme which triggers a Strategic Environmental Assessment under European Directive 2001/42/EC. The removal of the "exceptional circumstances" bar would facilitate such a plan or programme and cannot be lawfully sanctioned without an SEA.**
80. **Further and in the alternative, it is submitted that, as a consequence of the injury to residential amenity and house values admitted by government, the removal of the "exceptional circumstances" bar would constitute a disproportionate interference with the peaceful enjoyment of occupied residential property and deprive owner/occupiers of their amenities and property values contrary to the Human Rights Act 1998.**

81. ***The Answers to the Inspector's Questions***

82. In the circumstances outlined above, the answers to the inspector's Questions are as follows:

83. Para. 4

84. It is understood that the 500m radius has been selected so as to be consistent with zones required around wind turbines. A government paper suggests that a 500 m zone is too tight to afford a sufficient degree of mitigation for residents. This must apply particularly to residential properties is situated at a lower level than the drill pad, or down wind of the prevailing wind of a drill pad.

85. **Exhibit 3 refers. This government produced paper suggest that the impact of fracking would reduce land values. It is stated: "There could be a 7% reduction of land values within one mile of an extraction site". If this means that properties within one mile will reduce by 7%, it follows that property values will reduce exponentially the closer the property is to an extraction site. It follows that 500m is far too close and the distance should be increased.**

86. Further, for the reasons set out above, I believe that the only appropriate bar which might satisfy the SEA directive and the Human Rights Act is the "exceptional circumstances" bar. See also my reply to Para. 12 -15.

87. Paras. 5 - 7

88. See above in regard to density, noise, gas emissions and traffic generation. Care should be taken to consider the overall aggregate and cumulative impacts of the entire grid of multiple drill pads on all the affected residential properties. Determination on a "site by site basis" is not sufficient to provide residents the protection they require. Please note that one issue I have not dealt with above relates to seismology – which I am sure will be covered elsewhere.

89. Para. 8

90. KM8 was a mistake and was strongly opposed. It was a majority decision of a committee which had no local representative from the Ryedale District. The decision preceded the examination of fracking policy by the MPA, following a full Scrutiny Committee Review which produced the recommendations on the fracking section of the draft plan which were subsequently included in it. The KM8 decision cannot therefore be taken as a precedent.

91. Para.9 – Pre-permission testing

92. This would open a whole new can of worms because:

- a. Once the developer has invested huge sums of money in testing, including drilling right down to the shale many thousands of feet below the surface, it will be difficult to argue against completing the fracking process. This is

what happened at KM8, where permission was given for drilling a conventional well and the permitted depth was exceeded;

- b. Pre-permission testing has no relevance to landscape impact or the impact on residential amenity or property values. It should be possible to assess these without carrying out testing;

93. Paras 12 -15

- 94. As regards the normal planning process, experience from the KM8 application suggests that developers will produce expert evidence which would support everything they want and the MPA could have difficulty in getting this fairly and properly scrutinised, with the result, that government economies would inevitably put the MPA at a disadvantage, resulting in contradictory decisions which might subsequently be regretted and be impossible to explain without setting unwelcome precedents and possibly result in public perceptions of improper conduct which, however ill-founded, could totally undermine public confidence in local democracy. A fixed zone would be fair and provide certainty to all parties. Similar considerations will apply if the “exceptional circumstances” bar is lifted.
- 95. As regards noise reduction etc., there may be little prospect of mitigation without causing other problems.
- 96. For example, in the case of KM8, the Mineral Planning Authority required extensive noise reduction works when the application to frack the drilled well was being dealt with. This is for the fracking process which takes place after drilling a well has been completed. The works required are those shown in the photographs set out below. This noise reduction barrier has been removed and will be put back when and if Third Energy gets consent from the Secretary of State to implement their planning permission. Clearly the noise likely to be generated by the fracking operation would have to be considerable to merit such enormous sound barriers. Also the sound barriers themselves will completely change the character of the landscape so as to overpower and destroy residential amenity and house values.



97.



98.



99.



100.



101.



102.

103. **Paras 16 -17**

104. I look forward to receiving this. It might be helpful if the MPA would discuss this with me, as the Claimant in the case, or my legal adviser before the hearing.

COUNCILLOR PAUL ANDREWS

2nd January 2019