Minerals and Waste Joint Plan – Authorities response and potential additional main modifications in response to the 'Talk Fracking' judgement, the quashing of NPPF 209a and publication of Written Ministerial Statement HCWS1586

1.0 The Inspector's request

1.1 The Inspector has sought views on the implications for the MWJP of:

i) the judgment in the High Court in the case of *Claire Stephenson v Secretary of State for Housing and Communities and Local Government* [2019] EWHC 519 (Admin), relating to a challenge to paragraph 209(a) of the National Planning Policy Framework July 2018, which deals with on-shore oil and gas development;
ii) the subsequent Order of 14 May 2019 quashing the adoption of NPPF 209a, and;
iii) the publication on 23 May 2019 of a further Written Ministerial Statement relating to planning for hydrocarbon development

1.2 Specifically, the Inspector has introduced her request for further submissions as follows:

> *Of note is the element of the judgement which discusses the Written Ministerial Statement (WMS) of September 2015 and how the government transferred its provisions across to paragraph 209(a) without considering updated scientific evidence including evidence of ground level emissions and fugitive emissions. Although the public consultation on the draft revised Framework invited comment on the proposed oil and gas provision, scientific evidence submitted by consultees was not taken into account. The WMS of 17 May 2018 is also mentioned.*
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> *Although the North Yorkshire, City of York and North York Moors National Park Minerals and Waste Joint Plan is being examined against the March 2012 National Planning Policy Framework, as the September 2015 and May 2018 WMSs are material considerations for the examination, this judgement may impact on how I approach certain aspects of the Plan's hydrocarbon provisions.*
>
> *I am interested in the weight I should give to the WMSs following the judgement. Does the judgement highlight uncertainties in the scientific evidence on emissions or anything else, which would justify a precautionary approach being reflected in Plan policies e.g. 500m buffer zone? If so, should there be a commitment to specifically review any relevant precautionary Plan provisions within 5 years of adoption, to allow experience of operations to be taken into account, setting out what that review would entail and building on the statutory obligation under regulation 10A of The Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2017? Bearing in mind that relevant future planning applications will be assessed against Plan policies, the revised Framework and the WMSs, the implications of the judgement require careful consideration.*
>
> *Consequently, I am inviting comment on the judgement and order from the Mineral Planning Authorities and any interested parties who so wish to comment. For the avoidance of doubt, this consultation is not limited to matters I raise in the previous paragraph. Any legal opinion the parties wish to proffer would be welcomed. If any*

parties submit that I should consider scientific or other evidence as a consequence of this judgment, that evidence should be included with their representations and the relevant sections of the evidence clearly identified.

1.3 The Inspector has also indicated that she would like to receive views on the implications of the most recent Ministerial Statement (HCWS1586 23 May 2019) relating to planning for hydrocarbon development.

1.4 The joint response of the Authorities to this request is provided below. This has been prepared having had regard to the responses received from other interested parties.

2.0 General introduction

2.1 The Authorities have expressed the view in previous submissions to the EiP that the hydrocarbons policies in the MWJP, particularly those relating to unconventional hydrocarbons, represent a precautionary approach, reflecting a number of prevailing uncertainties about the implications of such development. This uncertainty arises through a lack of clarity on the precise nature of the 'development model' that industry may seek to follow in exploiting unconventional hydrocarbons in the Joint Plan area, as well as the scale, duration, distribution and specific nature of individual and cumulative impacts on the environment and local communities that may occur.

2.2 This precautionary approach also reflects the highly constrained nature of the Joint Plan area, which includes a wide range of important environmental and cultural assets, dispersed rural communities, a relatively sparse network of main roads in some areas and an important tourism and visitor economy that depends on the maintenance of a high quality local environment.

2.3 The precautionary approach is reflected in the hydrocarbons policies in the Plan through the use of a comprehensive range of policy criteria to: ensure that potential adverse impacts from hydrocarbons development can be adequately identified, assessed and managed through the planning process; to provide a balanced approach to the delivery of sustainable development, and to provide a basis to resist proposals which would give rise to unacceptable adverse impacts.

2.4 Key examples of the precautionary approach to hydrocarbons policies include those which: provide protection from impacts from shale gas development regardless of the volume of fracture fluid used: give protection to a broad range of designated areas in relation to unconventional hydrocarbons development, including the historic character and setting of York and it's heritage assets; require particularly strong scrutiny of hydrocarbon proposals within 500m of residential buildings and other sensitive receptors, and; and also require additional scrutiny of hydrocarbon proposals within a 3.5km visual sensitivity zone around National Parks and AONBs. The Authorities maintain the view that a precautionary approach is appropriate and that the policies in the MWJP represent a justifiable and effective response to the need to ensure that any hydrocarbon development takes place in a way which reflects a reasonable balance across all the main elements of sustainability – social, environmental and economic. The approach is supported by statements in WMS2015 and WMS2018 which indicate that exploration and testing of shale gas '…*must*

and can be done whilst maintaining the very highest safety and environmental standards..' (WMS2015) and that Government's objective is to create a UK model which is '…*the world's most environmentally robust onshore shale gas sector..*' (WMS2018).

2.5 As part of this precautionary approach, the Authorities have also indicated their commitment to keep the hydrocarbons policies under close review and have identified a range of matters in MWJP paragraph 4.11 that could initiate an early review of this element of the Plan, notwithstanding the recently introduced statutory obligation to complete a review every five years. This commitment reflects and responds to the prevailing uncertainty outlined above and to the evolving nature of the evidence base, and national policy position, relating to unconventional hydrocarbons in general and to shale gas in particular. This will allow the policies to be refined in the light of emerging evidence and practice to ensure that justified and effective policy coverage remains in place.

3.0 Context

3.1 National planning policy for hydrocarbons development generally, and shale gas in particular, has evolved over the period of preparation of the Plan. NPPF2012 remains the main statement of national planning policy of relevance to preparation of the Plan, under the transitional arrangements for examination of local plans.[1] Paragraph 143 states that, in preparing Local Plans, local planning authorities should '*identify and include policies for extraction of minerals resources of local and national importance in their area…'.*

3.2 Minerals of local and national importance are identified in the NPPF2012 Glossary as comprising '*Minerals which are necessary to meet society's needs, including …oil and gas (including hydrocarbons).*

3.3 Authorities should set out criteria against which planning applications will be assessed "*to ensure that that permitted operations do not have unacceptable effects on the natural and historic environment or human health…; and take into account the cumulative effects of multiple impacts from individual sites*" (Paragraph 143).

3.4 In determining planning applications, minerals planning authorities are required to '*give great weight to the benefits of minerals extraction, including to the economy*' (Paragraph 144).

3.5 Minerals planning authorities are also advised, when planning for on-shore oil and gas development, including unconventional hydrocarbons, to '*clearly distinguish between the three phases of development (exploration, appraisal and production) and address constraints on production and processing within areas that are licensed for oil and gas exploration or production*.' (Paragraph 147).

3.6 The Written Ministerial Statement on Shale Gas and Oil Policy (16 September 2015 - WMS2015) and the Written Ministerial Statement on Energy Policy (17 May 2018 - WMS2018) in combination set out the Government's position that there are potentially substantial benefits in the safe, sustainable and timely exploration and development of shale gas and oil resources and that gas has a key part to play in meeting objectives for the safe, secure and affordable supplies of energy that are consistent with carbon budgets defined in

[1] NPPF2019, Annex 1, paragraph 214.

the Climate Change Act 2008 and international obligations. In summary the main benefits identified are:

- Security of energy supply;
- Economic benefits including productivity and growth, jobs, balance of trade;
- As a transitional fuel during a transition towards lower carbon sources of energy supply.

3.7 Thus WMS2015 advised that "exploring and developing our shale gas and oil resources could potentially bring substantial benefits and help meet our objectives for secure energy supplies, economic growth and lower carbon emissions". It stated that the government "remains fully committed to the development and deployment of renewable technologies for heat and electricity generation and to driving up energy efficiency, but we need gas – the cleanest of all fossil fuels – to support our climate change target while we do that and help us reduce the use of high-carbon coal". It recorded that "since 2004 the UK has been a net importer of gas" and stated that "developing home-grown shale resources could reduce our (and wider European) dependency on imports and improve our energy resilience. There are also potential economic benefits in building a new industry for the country and for communities". This "must be done whilst maintaining the very highest safety and environmental standards".

3.8 WMS2018 reiterated the government's view that "there are potentially substantial benefits from the safe and sustainable exploration and development of our onshore shale gas resources." It recorded 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". It repeated that the UK had become a net importer of gas and whilst "our current import mix…provides us with stable and secure supplies…we believe it is right to utilise our domestic gas resources to the maximum extent". Further, "we also believe that the further development of onshore gas resources has the potential to deliver substantial economic benefits to the UK economy and for local communities". In guidance on planning it was stated that "shale gas development is of national importance" and "the government expects Mineral Planning Authorities to give great weight to the benefits of minerals extraction, including to the economy".

3.9 The revised NPPF, published originally in 2018 (NPPF), sought to carry forward aspects of policy from these earlier WMSs in stating, in paragraph 209a, that MPAs should 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. Paragraphs 148-9 confirm that the planning system should support the transition to a low carbon future in a changing climate and help to shape places in ways that contribute to radical reductions in greenhouse gas emissions.

3.10 Following the judgement in the *Stephenson* case and subsequent Court Order, NPPF paragraph 209a was quashed. The Authorities note that it is the last of the three benefits identified in the bullet points in paragraph 3.6 above (ie the role of shale gas in a transition to a low carbon economy) that was of most relevance to the judgment.

3.11 In the *Stephenson* case, the Court found that the Secretary of State had conducted an unlawful consultation on that policy, because he did not conscientiously consider the results of an exercise which a reasonable reader would have regarded as inviting comments on the substance of that policy (see paragraphs 57-8). The Secretary of State had also unlawfully failed to take into account objections to the draft policy which became paragraph 209(a)(see paragraphs 67-8). Those objections in particular contained scientific material (in what was known as the Mobbs report) which alleged flaws in the consideration of climate change effects of shale gas development in the MacKay & Stone report, as relied upon by government to produce policy in the WMS2015 (and paragraph 209(a)) that shale gas could serve the bridge the transition to a low carbon future. The objections disputing its scientific basis had not been considered, particularly when the consultation exercise had suggested that they would be.

3.12 The Court went on to hold that "in individual decisions on plans or applications the in principle support for unconventional hydrocarbon extraction, provided by paragraph 209(a) of the Framework, will have to be considered alongside any objections and evidence produced relating to the impact of shale gas extraction on climate change" (paragraph 73). It accepted a submission by the Secretary of State that "in the context of individual decisions by plan-makers or decision takers it would be open to depart from the in principle support for fracking provided by paragraph 209(a) on the basis of the requirement, for instance in paragraphs 148 and 149 of the Framework in particular, for the planning system to take decisions which support reductions in greenhouse gas emissions and plan proactively for climate change….[i]t would be open for the Claimant and other participants to place before the decision-maker material like the Mobbs report which supported the contention that shale gas extraction would have a deleterious impact on greenhouse gas emissions, and these could be weighed against the in principle support contained in paragraph 209(a) of the Framework" (see paragraph 71).

3.13 Other related elements of NPPF2018 remain in place, including the following:

Para. 204a – Planning policies should provide for the extraction of minerals of local and national importance …. (the NPPF Glossary indicates that these include oil and gas including conventional and unconventional hydrocarbons);

Para. 205 –When determining planning applications, give great weight to the benefits of minerals extraction, including to the economy;

Para. 209b 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).

3.14 The Authorities also note that NPPF para. 148 states that the planning system should support the transition to a low carbon future in a changing climate, (and) shape places in ways that contribute to radical reductions in greenhouse gas emissions.

3.15 A further Written Ministerial Statement of 23 May 2019 (WMS2019), issued following the quashing of NPPF 209a, confirms that WMS2015 and WMS2018, relating to shale gas and oil policy and to energy policy respectively, remain extant and should be afforded appropriate weight in preparing development plans and in determining planning applications.

3.16 The Authorities also note the findings of the Court in *R (on the application of John Paul Andrews) v. Secretary of State for Communities and Local Government and Secretary of State for Business, Energy and Industrial Strategy* [2018] EWHC 3775 (Admin), which confirmed that "Section 19 of the 2004 Act states that when a development plan document is prepared the planning authority must have regard (inter alia) to national policies and guidance issued by the Secretary of State. It is well established in a number of authorities that national policy is a matter to which planning authorities are directed to have regard. They are not bound by national policy. National policy is not mandatory in the sense that its contents must be adhered to in the formulation of local policies". Further, "because planning authorities are not bound by national policy (see, e.g., Hopkins in the Supreme Court and West Berkshire District Council in the Court of Appeal), it is legally permissible for a planning authority promoting a development plan to justify taking a different approach, for example, for reasons which they consider are applicable within their administrative area" (see paragraphs 9 and 10). Thus the Authorities are not bound to follow policy set out in the NPPF and the WMSs where there is a justification, on planning grounds, for an alternative approach; and the weight to be given to policy and guidance as material considerations is a matter for the plan-maker and decision-maker.

3.17 Taking into the position outlined above, and bearing in mind the submissions received from other parties in response to the Inspector's consultation on the implications of the judgement for the MWJP, the Authorities consider that the weight to be afforded to certain elements of WMS2015 and WMS2018 should now be reconsidered and where, appropriate, adjusted accordingly. The Authorities' approach to this is discussed in more detail below.

4.0 Weight to be attached to the WMSs of 2015, 2018 and 2019, emerging evidence and implications for the Plan

a) Security of supply

4.1 Representations from other parties present differing views on the contribution of UK shale gas to ensuring security of supply. In summary these include:

- The view that recent Government publications (eg the Gas Security of Supply – a strategic assessment and review (2017)) and other evidence support the position that supply is already secured, without the need for indigenous shale gas, through the availability of other sources of supply including pipelines from elsewhere, the existence of LNG import terminals and increased use of renewables. They also point to other factors such as falling demand for gas, and national commitments to a net zero target for carbon by 2050. As a result, it is argued that little or no weight should be attached to security of supply benefits referred to in extant national planning policy documents, including WMSs 2015 and 2018.

- The view that the requirement for gas, even under a totally decarbonised economy (in net terms) will remain very significant and that every scenario for meeting legally binding emissions reduction targets, proposed by the Committee on Climate Change (CCC), includes demand for gas. Further, it is argued that relying on imports to meet requirements is less secure, as well as less sustainable in terms of overall emissions

(as also recognised by the CCC). It is commented that the extent to which the UK is reliant on more carbon intensive imports for future natural gas demand is almost entirely dependent on the future scale of the UK shale gas industry.

b) Authorities' comment on security of supply

4.2 There is no overall consensus on the interpretation of the evidence on the potential role of shale gas in contributing to security of supply, with a range of views being expressed. There does not appear to be a suggestion in recent Government reports that, in overall terms, there is any significant threat to security of supply of gas over the timeframe of the MWJP, taking into account other available sources which can contribute to demand. The Authorities note on the other hand that the CCC has indicated[2] that a diverse energy mix contributes to maintaining security of supply and that, in seeking to achieve net zero emissions by 2050, there will still be a significant UK requirement for gas. In their March 2016 report Onshore Petroleum: The compatibility of UK onshore petroleum with meeting the UK's carbon budgets, the CCC reported that the current evidence base suggests that well-regulated domestic production could have an emissions footprint slightly smaller than that of imported liquefied natural gas and, when taking into account CO2 emissions from combustion, both UK shale gas and imported LNG have a considerably lower greenhouse gas footprint than coal. In this respect security of supply benefits and the potential carbon benefits of shale gas as a transitional source of energy are to some extent inter-related. In the Authorities' view, there is potential for UK shale gas to to enhance security of supply by increasing diversity of indigenous sources of supply of energy. They consider that, whilst the quashing of NPPF 209a removes from the NPPF express reference to the need for MPAs to recognise the benefits of shale gas for security of supply, it would be reasonable to continue to attach some weight to potential security of supply benefits within the scope of the general statement of the benefits of minerals extraction in NPPF 2012 paragraph 144 (as reflected now in NPPF paragraph 204a). For the same reason it would be appropriate to give some weight to equivalent references to security of supply benefits set out in relevant WMSs.

c) Economic benefits

4.3 Representations from other parties also present differing views on the economic benefits of UK shale gas. In summary these include contentions that:

- The CCC, in its 2018 report, state that the design of the policy framework to reduce UK emissions must ensure it does not drive industry overseas, which would not help to reduce global emissions, and be damaging to the UK economy. Representations also refer to forecast imports from 2020 to 2050 under a 2^{o} C carbon budget as representing an offshoring in excess of £650 billion (and in excess of £300 billion under a net-zero scenario). Reference is also made to a report by UKOOG in March 2019 indicating promising findings from preliminary exploration activity for shale gas in England, which in their view lead to an increase in estimates of potentially recoverable reserves, with correspondingly greater potential economic benefits, nationally and locally.

[2] Committee on Climate Change Net Zero - The UK's contribution to stopping global warming (May 2019)

- Assumptions about future production levels are based on very limited data and there is great uncertainty over the scale of any future shale gas industry. Other evidence suggests that the scale of benefits, including economic benefits, from a UK shale gas industry have been exaggerated. Fracking businesses in the US and Canada have been experiencing financial difficulties and are unable to secure funding. A shale gas industry will be vulnerable to future global changes in gas prices.

d) Authorities' comment on economic benefits

4.4 The scale of economic benefits that would flow from development of an onshore shale gas industry will inevitably be strongly influenced by the overall scale of development and volume of commercial production, if any, that eventually takes place, as well as other factors operating at a national and international level, such as longer term supply of and demand for energy. The Authorities note that, in their publication *Updated shale gas production scenarios* (March 2019) UKOOG indicate that positive initial data from wells in Lancashire, and other early exploration work, have enabled them to increase their central estimate of well productivity and consequential economic benefits from UK shale, compared with earlier scenarios published by the Institute of Directors in 2013 and UKOOG in 2016. However, the report also notes that the projections it contains are very much preliminary ones that will need to be validated by further flow-testing, and it identifies a number of other variables such as likely capital costs and operational expenditure which cannot yet be updated. There is therefore still substantial uncertainty about the scale of economic benefits that may flow from shale gas development. The Authorities also note that there is the potential for an onshore shale gas industry to give rise to adverse impacts on other areas of the economy, such as that related to tourism, which will also be scale-dependent to some extent.

4.5 However, to the extent that economic benefits could arise from shale gas development, the Authorities consider that the weight now to be afforded to this element of WMS2015 and WMS2018 does not materially change as a result of the quashing of NPPF 209a. This aspect of national policy objective remains stated in NPPF 2012 paragraph 144 (and NPPF paragraph 205), which requires that, in determining applications, great weight be given to the benefits of minerals extraction, including to the economy. The Authorities consider that the potential for economic benefits to arise can still be afforded significant weight, as it has previously recognised in the MWJP.

e) Transitional benefits

4.6 There are substantial differences of opinion within the responses on the perceived benefits of shale gas as a transitional fuel. These include:

- Some respondents consider that indigenous onshore shale gas does not conflict with climate change objectives. Government has acknowledged that gas has a key role to play in meeting climate change objectives, and every scenario proposed by the CCC, setting out how the UK could meet legally binding 2050 emissions reduction targets, includes demand for gas. They consider that it should be a priority for the UK to meet the acknowledged demand for gas from sources with the lowest pre-combustion emissions footprint – which according to the CCCs assessment is UK shale gas. Evidence, including that produced by BEIS, suggests UK shale would offer at least a 50% pre-combustion emission saving over LNG and long-distance

pipeline and reduce the carbon footprint of the fuels the UK consumes. Coal no longer represents a large part of the UK power mix and therefore there is less of a bridge to traverse. Natural gas is pivotal to a low carbon future and shale gas produced domestically will meet carbon targets, reduce import dependency and forms part of the 'Clean Growth Plan'. The analysis contained in the Mackay and Stone report, relied on by Government to support national policy on the transitional benefits of shale gas, still stands and agrees with similar conclusions reached by the CCC, Sustainable Gas Institute and Royal Society. By contrast, it is suggested that the Mobbs report is agenda driven, poorly argued, based on out of date research, does not reflect relevant regulatory practices applicable in the UK and does not meet the required standard to justify an amendment to UK regulations or government policy.

- By contrast, other respondents consider that the climate change agenda and related matters are evolving quickly. The UK will need to ensure emissions continue to fall to arrive at net zero. The three tests set by the CCC to enable shale gas to be compatible with UK climate change commitments are unlikely to be met, irrespective of how optimistic industry's projections are. Carbon Capture and Storage will be necessary but is still in its infancy, is unproven at a large scale, yet would be needed urgently in order to deal with CO^2 emissions. WMS2015 relies solely on the Mackay and Stone report relating to the estimated carbon footprint of shale gas. Other evidence such as the Mobbs report produces very different (higher) estimates of emissions and materially affect the analysis and calculations in the Mackay and Stone report. US studies are considered to be valid evidence in all areas of the fracking debate as UK onshore Shale Gas Well Guidelines are to a large extent based on American advice, and the US is the most experienced country in the world as far as unconventional hydrocarbon development is concerned. Research is continuing and new techniques are showing the extent of methane in the atmosphere, undermining Government's reliance on the approach in the Mackay and Stone report.

f) Authorities' comment on transitional benefits

4.7 The Authorities note that the evidence on emissions from shale gas development (for example as referenced in Table 1 of the *Mobbs* report), and on the merits of shale gas as a transitional fuel, is very extensive, technical and clearly disputed. Elements of the disputes appear to relate to research and practice in the US where development models and regulatory processes may differ from those to be used in the UK. It is evident from the range of responses by other parties to the Inspector's request that substantial differences of opinion remain around interpretation of the implications of the current body of technical evidence, and that the evidence base, as well as the wider energy and climate change policy context, is evolving rapidly[3].

[3] For example a paper by R. Howarth *"Ideas and Perspectives: is shale gas a major driver of recent increase in global atmospheric methane?"* was published in the journal Biogeosciences on 14 August 2019. The Authorities note that the findings of this study are disputed by UKOOG. The government has also recently committed the UK to a legally binding target of net zero emissions by 2050 and Parliament, supported by local authorities including the City of York, has declared a "climate change emergency".

4.8 Whilst WMS2015 and WMS2018 both emphasise a beneficial role for shale gas as a transitional fuel in a move towards lower carbon sources of supply, the *Stephenson* case identified failings in the consultation process followed by Government in carrying forward this aspect of national policy in to the revised NPPF in 2018. This included the failure to properly consider the implications of evidence produced by objectors which sought to undermine evidence on carbon emissions arising from shale gas development, as relied upon by the government in producing guidance in WMS2015 (and WMS2018), aspects of which had been brought forward into NPPF paragraph 209a. The judgment draws attention to the fact that the earlier evidential justification relied on by Government (including, particularly, the *Mackay and Stone* report (2013) used to support policy contained in WMS2015) is at least disputed and that apparently contradictory evidence also exists, including that referenced in the *Mobbs* report commissioned by Talk Fracking in 2017 and submitted as part of their response to the government consultation on the revised NPPF.

4.9 The Authorities consider that the weight which should be afforded to this particular aspect of the WMSs has been affected by the judgment in *Stephenson*, which recognised how the government had not addressed evidential claims about the climate change benefits of shale gas development. The Authorities consider that as matters stand, including the substantial unresolved and ongoing technical dispute about the emissions arising from hydraulic fracturing, the weight to be afforded to this benefit should be limited following the quashing of NPPF 209a.

4.10 However, recognising the evolving nature of the debate and the apparent absence of a clear-cut evidential position on this issue, and taking into account extant government policy as a whole, including the factors mentioned above, the Authorities are not satisfied that the MWJP should resist shale gas development for this reason entirely as a matter of principle, or omit any form of policy to guide planning applications. The fact that there is apparently a range of evidence on the extent of emissions from shale gas development, and on the consequential benefits and adverse implications of these for local communities and for climate change, in the view of the Authorities, reinforces the justification for a cautious approach to planning for shale gas development, ensuring that its potential effects are the subject of appropriately strong scrutiny and control. This includes the justification for related proposed main modifications, addressing air quality and climate change considerations, previously put forward by the Authorities following discussion at earlier EiP hearings, including those held in January 2019. These modifications are summarised in Annex A to this response.

4.11 Further, the Authorities consider that it would be appropriate to put forward additional main modifications (ie subsequent to those contained in the main modifications schedules of January and July 2019) and summarised in Annex A, to reflect the evolving position with regard to national policy, the evidential basis for shale gas development and the need for a precautionary approach to local policy, and also to provide increased clarity on the circumstances which might lead the Authorities to initiate a review of the Plan. Their proposed additional main modifications in response to the current consultation are set out in Annex B.

4.12 UKOOG, in its response, has proposed a number of revisions to main modifications MM48 and MM97, which in their view would better reflect the relationship between the main phases of hydrocarbon development and climate change impacts. The Authorities agree

that minor revisions to the wording of one current proposed main modification would be appropriate and these are set out in Annex C. The Authorities do not understand any party to have specifically proposed any other amendments to the draft policies in response to the Inspector's questions.

5.0 Authorities' response to Inspector's questions

5.1 *I am interested in the weight I should give to the WMSs following the judgement. Does the judgement highlight uncertainties in the scientific evidence on emissions or anything else, which would justify a precautionary approach being reflected in Plan policies eg 500m buffer zone?*

Joint Authority Response

For the reasons set out above, the Authorities consider that the weight to be attached to the claimed benefits of shale gas as a transitional source of energy, as expressed in WMS2015 and WMS2018, should be limited. The Authorities also consider that the justification for a precautionary approach to shale gas development, is increased as a result of the judgment, which highlights uncertainties over the evidence base relating to emissions and the overall extent of benefits which may result from such development. The Authorities note that emissions from shale gas development may have potential to cause adverse impact on local communities, as well as on wider climate change considerations. The justification for modifications proposed by the Authorities relating to climate change and air quality impacts is similarly increased.

5.2 *If so, should there be a commitment to specifically review any relevant precautionary Plan provisions within 5 years of adoption, to allow experience of operations to be taken into account, setting out what that review would entail and building on the statutory obligation under regulation 10A of The Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2017?*

Joint Authority Response

The Authorities accept that it will be important to keep this aspect of the Plan under close review and have made reference, at MWJP paras. 4.10 and 4.11, to their intended approach to reviewing the Plan. The evolving position with regard to evidence on emissions, highlighted by the judgement, and the increased justification for a precautionary approach to policy, also supports the inclusion of additional modifications to the text of paras. 4.10 and 4.11, to clarify the intended scope and purpose of review. Text modifications to achieve this are put forward in Annex B of this response.

5.3 *I am inviting comment on the judgement and order from the Mineral Planning Authorities and any interested parties who so wish to comment. For the avoidance of doubt, this consultation is not limited to matters I raise in the previous paragraph. Any legal opinion the parties wish to proffer would be welcomed. If any parties submit that I should consider scientific or other evidence as a consequence of this judgment, that evidence should be included with their representations and the relevant sections of the evidence clearly identified.*

Joint Authority Response

In formulating this response the Authorities have had regard to key sources of evidence referred to in the judgment, and to those referred to by other parties in their own responses. The Authorities do not wish to put forward any other evidence as part of this submission.

5.6 *Views on the implications of the most recent Ministerial Statement (HCWS1586 23 May 2019) relating to planning for hydrocarbon development.*

Joint Authority Response

WMS2019 does not introduce any new national policy but serves to confirm that other elements of national policy relating to hydrocarbon development remain extant following the quashing of NPPF209a, and should be afforded appropriate weight. The Authorities have taken into account WMS2019 and other aspects of extant policy as explained above. They consider that the hydrocarbon policies in the MWJP, as well as the views expressed in this response, are in line with this requirement in that due regard has been had to extant policy and other relevant considerations in reaching a balanced view on an appropriate and justified approach.

Annex A – Existing proposed main modifications to the MWJP relating to air quality and climate change

In response to matters discussed at previous EiP hearings, including the hearings in January 2019, the Authorities have already put forward a number of main modifications which address matters relating to impacts on air quality and climate change as a result of hydrocarbon development. These proposed modifications were contained in the main modifications schedules of 31 January 2019 (LPA/102) and the subsequently updated schedule of 01 July 2019.

The Authorities consider that the evolving evidential basis for emissions from shale gas development and for the carbon benefits of shale gas as a transitional source of energy, highlighted by the judgement, and through the quashing of NPPF209a, enhances the justification for these modifications, which contribute to the precautionary approach being followed in the Plan towards this form of development.

For clarity, these modifications are summarised below:

MM48 – inserts additional text into Policy M17 2), relating to the cumulative impact of hydrocarbon development, to require that: *Applications should specifically address the potential for cumulative impacts of development upon climate change and, where appropriate, propose such mitigation and adaptation measures as may be available and are consistent with Policy D11.*[4]

MM51- inserts an additional bullet point iv) into Policy M17 4) to require that: *Proposals should include measures proportionate to the development to manage waste gas emissions, including, the capture and use of the gas where practicable, to ensure there is not an unacceptable impact on local communities or public health and to make practical use of any waste gas available.*

MM54 – Insert additional text into paragraph 5.150 as part of the supporting justification for MM51 above, to clarify that: *This should include measures to manage waste gas emissions and include the capture and use of the gas as an energy source, so as to achieve a green completion where practicable.*

MM97 – Insert additional text into Policy D11 relating to the sustainable design, construction and operation of development to clarify that proposals for hydrocarbon development should be accompanied by a climate change assessment to show how account has been taken of impacts from climate change and include mitigation and adaptation measures where necessary[5].

MM99 – Inserts a new development management policy D14 relating to air quality as follows:

[4] UKOOG have proposed revisions to this main modification – see page 13 of UKOOGs response. These are considered further in Annex C to the Authorities response.

[5] UKOOG have proposed revisions to this main modification – see page 13 of UKOOGs response. These are considered further in Annex C to the Authorities response.

Proposals for minerals and waste development will be permitted provided that:

a) *there are no unacceptable impacts on the intrinsic quality of air; and*
b) *there are no unacceptable impacts on the management and protection of air quality, including any unacceptable impacts on Air Quality Management Areas.*

Annex B - Proposed Further main modifications in response to the 'Talk Fracking' judgement, quashing of NPPF 209a and publication of WMS2019

1) Revise text of MWJP para. 4.10 as follows:

National legislation and planning policy requires that development plans be ~~kept under~~ reviewed every five years from adoption. It is also possible that matters justifying a review may arise over a timeframe of less than five years. The need for review may arise as a result of factors such as a significant change in circumstances, including the availability of important new evidence, or a major change to national policy, or as a result of changing and unforeseen development pressures in an area.

2) Revise text of MWJP para. 4.11 (3rd bullet) as follows:

There are three key policy areas addressed in the Joint Plan, identifiable at this stage, which could lead to a need for review. These are:

- To respond to new issues arising out of any further exploration activity for shale gas in the area. At present there is substantial uncertainty over the extent and geographical distribution of any commercially recoverable gas and this factor, together with the very early stage of the shale gas industry in the UK as a whole, leads to a lack of clarity over the scale of development pressure the area could be facing. There is also some uncertainty over the specific development 'model' that may be followed by industry in the UK with respect to shale gas, and how this might influence the scale and nature of planning impacts that could arise. Such impacts might include those affecting a localised area only, whereas other effects, particularly those relating to carbon emissions for example, could have wider implications in terms of climate change considerations. Whilst the policies in the Joint Plan set out a comprehensive range of criteria to deal with proposals for hydrocarbon development, based on available information, and represent a precautionary approach reflecting this uncertainty, it may be practicable to develop these further in future. This could require, in due course, provision of more detailed spatial guidance on the location and scale of new development which may be acceptable, as well as updated criteria on relevant operational issues which arise. The MPAs will therefore initiate a review of these policies where this would be justified by significant new evidence emerging on relevant matters including:
    a) the scale and distribution of proposals for commercial production that could come forward following further exploration and appraisal activity;
    b) the environmental economic, amenity or public health impacts of hydrocarbon development (including impacts from carbon emissions and on climate change);
    c) the award of any further Petroleum Exploration, Production and Development Licences in the Plan area or other significant regulatory changes relevant to the development of local planning policy.
    d) where the capacity and capability of existing treatment facilities to deal with waste water arisings may be significantly challenged.

3) Add new text after Para. 5.106 (and current MM35) as follows:

Para. 5.106 However, shale gas has the potential to be an important new source of energy for the UK and the Government is currently encouraging further exploration. In autumn 2012 the Government announced an overall strategy for gas, to ensure that the best use is made of gas power, including new sources of gas under the land, in order to deliver a range of objectives including improved security of energy supply and as part of a transition towards use of lower carbon energy sources. In 2014 the Government published online Planning Practice Guidance entitled 'Planning for hydrocarbon extraction'. It stated, amongst other matters, that "[a]s an emerging form of energy supply, there is a pressing need to establish – through exploratory drilling – whether or not there are sufficient recoverable quantities of unconventional hydrocarbons such as shale gas and coal bed methane present to facilitate economically viable full scale production". More recently, in September 2015, a Ministerial Written Statement by Government indicated that there is a national need to explore and develop shale gas in a safe, sustainable and timely way. (Main modification 35 then inserts additional text at the end of this paragraph as follows: *A further Ministerial statement on Energy Policy, published in May 2018, reaffirmed Government's view on the national importance of shale gas and their support for the principle of shale gas development, and signaled an intention to create the world's most environmentally robust onshore shale gas sector.*)

National planning policy for shale gas has continued to evolve during the later stages of preparation of the Plan. NPPF 2018 paragraph 209a indicated that MPAs should recognise the benefits of onshore oil and gas development, including unconventional hydrocarbons, for the security of energy supplies and supporting a transition to a low carbon economy; and put in place policies to facilitate their extraction. This paragraph was subsequently quashed following legal proceedings. The High Court judgment leading to the quashing of NPPF 209a made reference to the failure by Government to consider the implications of evidence produced in objection to the proposed policy, which contended that the evidence on carbon emissions from shale gas development relied upon to support the policy was flawed. Paragraph 209a had carried forward into NPPF 2018 earlier national policy, including that set out in the 2015 Written Ministerial Statement, supporting the benefits of shale gas as a transitional source of energy during a move towards a lower carbon economy. Following the removal of paragraph 209a, Government reaffirmed in a further WMS[6] that the earlier 2015 and 2018 WMSs remain extant and should be afforded appropriate weight in preparing local plans and determining planning applications; and that Government remains committed to the safe and sustainable exploration and development of onshore shale gas resources. In these circumstances, the MPAs take the view that the weight to be attached to the claimed carbon benefits of shale gas as a transitional source of fuel should be limited pending further clarification of the evidence to support this. The MPAs further take the view that the evolving national policy position and the evolving evidential basis for the claimed carbon benefits of shale gas development, justify a precautionary approach to relevant local planning policies

[6] HCWS1586 23 May 2019.

for this form of development, and reinforce the justification for their commitment to keep this matter under close review, as referenced in paragraphs. 4.10 and 4.11 of the Plan.

Annex C – Proposed revisions to existing main modifications in response to comments from third parties

The Authorities note that UKOOG, in its response, has proposed a number of revisions to main modifications MM48 and MM97.

MM48 through its current wording requires applications to address the potential for cumulative impacts of hydrocarbon development upon climate change and, where appropriate, propose such mitigation and adaptation measures as may be available and are consistent with Policy D11. The revision sought by UKOOG seeks to limit this requirement to the production phase only, and to insert additional text to state that the measures should, in addition to being consistent with D11, also be consistent with *government policy and best available techniques from the Environment Agency.*

It is agreed that it would not be appropriate to apply the requirement for assessment of cumulative impact on climate change to all the main stages of hydrocarbons development. It is at the appraisal and, particularly, the production stages where the greatest potential for such impacts are most likely to arise, and where the likely longer duration of such proposals may make such an assessment more meaningful. It is not considered necessary to make reference to consistency with Government policy but the Authorities agree that it would be helpful to indicate in the Policy that any mitigation and adaptation measures are consistent with the requirements of other relevant regulators, to minimise the potential for any conflicting requirements. The Authorities therefore propose the following revised wording for MM48:

MM48 – inserts additional text into Policy M17 2), relating to the cumulative impact of hydrocarbon development, to require that: *Applications for appraisal and production activities should specifically address the potential for cumulative impacts of development upon climate change and, where appropriate, propose such mitigation and adaptation measures as may be available and are consistent with Policy D11 and the requirements of other relevant regulators.*

Similarly, UKOOG propose that MM97 (which relates to Policy D11 Sustainable Design, Construction and Operation of Development, rather than M17 4) iii) as stated in UKOOGs response) is amended to apply the requirement for a climate change assessment to hydrocarbon production proposals rather than hydrocarbons development generally, and to insert additional wording: *as appropriate and in line with government policy and best available techniques from the Environment Agency.*

The Authorities note that the purpose of the relevant part of Policy D11 is to ensure that, in the design, construction and operation of minerals and waste development within the scope of the Policy, account is taken of the potential impacts of climate change on the development, rather than from it, and that appropriate mitigation and adaptation measures

are implemented where necessary. Such measures could potentially be relevant to all stages of hydrocarbon development and it is not considered necessary to include the revisions suggested by UKOOG.