



Our ref:

To all Chief Planning Officers

8th July 2014

Dear Colleague,

CL- 04-14 – Clarification on the national planning policies that apply for onshore unconventional gas and oil development

The extraction of gas and oil whether by conventional or unconventional (i.e. hydraulic fracturing) methods is classed as mineral development.

In Wales the relevant national planning policies for mineral development are set out in Minerals Planning Policy Wales (MPPW). Part one of MPPW provides general guidance which is applicable to all applications for unconventional gas or oil whether it is at the exploratory, appraisal, or production (extraction) phase of development.

Stages of onshore unconventional gas and oil development

Exploration is the use of seismic surveys to provide information about geological structures and exploratory drilling to verify the presence or absence of oil or gas reserves.

Appraisal is the assessment of exploration prospects using extended well tests and additional drilling to determine if reservoir development is economically feasible.

Development and production cover the development of field infrastructure and the production of hydrocarbons from the reservoir until economically feasible reserves are depleted.

Decommissioning, restoration and aftercare refer to operations for the abandonment of wells, the removal of surface installations and the restoration of the site.

Each stage will involve slightly different processes, timescales, equipment, and vehicle movements. Therefore it is necessary to consider all these matters afresh for each planning application. Consequently it does not mean that just because it has been appropriate to grant planning permission to explore for the resource it would necessarily be appropriate to allow commercial extraction and hydraulic fracturing in the same location. Each planning application should be determined on its own merits.

Minerals Planning Policy Wales

Part One of MPPW sets out the five key principles that local planning authorities must take into account when making development management decisions. These principles are to:

- Provide mineral resources to meet society's needs and to safeguard resources from sterilisation
- Protect areas of importance to natural or built heritage
- Limit the environmental impact of mineral extraction
- Achieve a high standard of restoration and beneficial after-use
- Encourage efficient and appropriate use of minerals and the re-use and recycling of suitable materials.

Providing mineral resources to meet society's needs

MPPW identifies that the contribution that a resource could make to regional and UK demand must be taken into account, and policies which seek to meet only local needs or which rule out all forms of mineral working in an area will only rarely be acceptable.

MPPW identifies that in respect of energy minerals there is limited information about the resources that are likely to be commercially viable for extraction, and that planning authorities should therefore consider all available information on the extent of energy mineral resources.

Protect areas of importance to the natural and built heritage from inappropriate mineral development

Minerals development should not take place in National Parks and Areas of Outstanding Natural Beauty, save in exceptional circumstances. Paragraph 21 of MPPW identifies what assessment would need to take place in order to demonstrate that the development would be in the public interest.

Paragraphs 23 – 29 of MPPW provide guidance on mineral proposals within, or likely to affect Special Areas of Conservation (SACs), Special Protection Areas (SPAs), Ramsars, SSSI's, and locally designated sites.

Paragraph 30 identifies that the need to protect the quantity and quality of surface and groundwater supplies should be taken into account by local planning authorities. In doing so the local planning authority must consult Natural Resources Wales on

these complex issues, and where doubt exists, should adopt the precautionary principle in taking planning decisions.

Paragraph 31 provides guidance to local planning authorities in respect of historic buildings, landscapes, parks and gardens, conservation areas, and ancient monuments.

Paragraph 32 provides guidance in respect of consideration of agricultural land, farm water supply, surface water, and field drainage. MPPW identifies that the objective should be, wherever possible, to minimise any adverse effects on agriculture occurring as a result of mineral development.

Limit the environmental impact of mineral extraction

MPPW identifies that the following issues must be addressed to ensure that minerals proposals do not have an unacceptably adverse impact on the environment and the amenity of nearby residents.

- Access and traffic generation (including the routes to be used for minerals transportation)
- Noise (in terms of limits, type, and location)
- The control of dust, smoke and fumes
- Disposal of mineral waste
- Blasting controls (if relevant to shale or coal bed methane applications)
- Land drainage, impact on groundwater resources and the prevention of pollution of water supplies
- Visual intrusion and general landscaping
- Impact on sites of nature conservation, historic and cultural importance
- Land instability
- Promotion of the use and treatment of unstable, derelict or contaminated land
- Cumulative impact
- Restoration, aftercare, and after-use.

MPPW identifies that the planning system should not conflict with or attempt to duplicate the controls better regulated by other bodies under different consent regimes.

The Welsh Government has been working with the Office for Unconventional Gas and Oil on the production of the Regulatory Roadmap, which identifies all the regulatory processes that an operator will need to satisfy before drilling for unconventional gas and oil. The roadmap can be downloaded from the following address:

<https://www.gov.uk/government/publications/regulatory-roadmap-onshore-oil-and-gas-exploration-in-the-uk-regulation-and-best-practice>

Consequently the following issues will be addressed by other regulators:

- Seismic risk – the Department of Energy and Climate Change (DECC) is responsible for controls to mitigate seismic risks.
- Well design and construction – the Health and Safety Executive is responsible for enforcement of legislation concerning well design and construction.
- Operation of surface equipment on the Well Pad – these are controlled by Natural Resources Wales and the Health and Safety Executive.
- Mining Waste – Natural Resources Wales is responsible for ensuring that extractive waste is appropriately controlled through issuing an environmental permit.
- Chemical content of fracking fluid (if it is to be used) – Operators are obliged to inform Natural Resources Wales of all chemicals that they propose to use to hydraulically fracture in order to obtain an environmental permit.
- Flaring or venting of any gas – is subject to DECC controls and is regulated by Natural Resources Wales. However planning authorities may still need to consider any issues of noise and visual impact that this process may create.
- Final disposal of water – Natural Resources Wales is responsible for issuing permits for flowback water, which may contain naturally occurring radioactive materials (NORM). This responsibility extends to ensuring that the final treatment/disposal of flowback water at suitable water treatment facilities is acceptable. Depending on the phase of development and the scale of production there may be significant volumes of water that will require transporting to and from the site. Therefore local planning authorities will need to consider access, traffic generation, and the visual impact of on site storage facilities.

Environmental Impact Assessment

Paragraph 38 of MPPW states that planning authorities must consider whether proposed development requires EIA, including development which would otherwise be permitted in accordance with the General Permitted Development Order. The Regulatory Roadmap states that applications for the exploratory and appraisal phase for unconventional gas development will fall under Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 if they exceed the applicable threshold, or if any part of the development is to be carried out in a sensitive area. An EIA is only required if the project is likely to have significant environmental effects. Schedule 3 of the 1999 regulations identifies the selection criteria for screening Schedule 2 development.

MPPW states that EIA is unlikely to be required for exploratory drilling activities. The Welsh Government continues to support this view on the basis that such exploratory drilling does not involve hydraulic fracturing, or is not located on a site that is unusually sensitive to limited disturbance occurring over the short period involved. The Regulatory Roadmap states that where an Environmental Statement is not required operators may still need to submit technical reports including ecology, noise, and archaeology.

Where it is determined that an EIA is required the Regulatory Roadmap identifies that the EIA must cover the geographical area where the impact occurs, both above and below ground. Therefore this is likely to be a larger area than just the surface development site, especially if horizontal drilling is to be used.

Achieve a high standard of restoration and beneficial after-use

MPPW states that unless mineral extraction provides satisfactory and suitable restoration planning permission should be refused. Properly worded and relevant planning conditions should be able to secure the restoration, aftercare, and after use of sites for unconventional gas development, whether this is for exploration, appraisal or production phases.

In conclusion paragraph 64 of MPPW states that where oil and gas operations can be carried out in an environmentally acceptable way and consistent with the principles of sustainable development, there is no case in land use planning terms for placing more restrictions on the development than are necessary to ensure the protection of the environment.

The guidance provided in MPPW, in conjunction with this clarification letter, should be taken into account by local planning authorities in Wales when making decisions on applications for unconventional oil and gas proposals.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'C. Sargeant', written in a cursive style.

Carl Sargeant AC/AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration