

WIRRAL COUNCIL

ECONOMY & REGENERATION OVERVIEW & SCRUTINY COMMITTEE 5 SEPTEMBER 2011

PLANNING COMMITTEE 20 SEPTEMBER 2011

SUSTAINABLE COMMUNITIES OVERVIEW & SCRUTINY COMMITTEE 26 SEPTEMBER 2011

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| SUBJECT: | SHALE GAS FRACKING |
| WARD/S AFFECTED: | ALL |
| REPORT OF: | INTERIM DIRECTOR OF CORPORATE SERVICES |
| RESPONSIBLE PORTFOLIO HOLDER: | COUNCILLOR PHIL DAVIES |
| KEY DECISION? | NO |

1.0 EXECUTIVE SUMMARY

- 1.1 Following reports of exploratory works for shale gas in Lancashire, concern has been raised about environmental implications. The purpose of this report is to advise members of local and national responsibilities and regulatory roles in relation to development for gas exploration and extraction.

2.0 RECOMMENDATIONS

- 2.1 That Members note the contents of this report.

3.0 REASON FOR RECOMMENDATIONS

- 3.1 The report sets out the Local Authority's responsibility role and regulatory role in relation to gas exploration within the Borough.

4.0 BACKGROUND AND KEY ISSUES

- 4.1 The Council, at its meeting on 18th July 2011 raised concern about test drilling for shale gas deposits near Blackpool, which was followed by earthquakes on the Fylde coast.
- 4.2 It was also reported that the company IGas Energy has licenses, covering over more than 700km² between Manchester and the Mersey / Dee estuaries, to extract gas from onshore underground coal seams including locations in Liverpool and Wirral. The company has estimated that 1.95 trillion cubic feet of shale gas may lie trapped under Wirral alone.
- 4.3 Consequently the Council resolved to:

- a) state opposition to applications for shale gas or coal gas methane testing or extraction until safety and risk of adverse environmental impact has been fully addressed,
- b) prepare an officers' report for Planning Committee, the Economy and Regeneration and Sustainable Communities Overview and Scrutiny Committees to aid Members in better understanding the Council's responsibility and regulatory role, and
- c) request a study on whether there would be any adverse impact on Wirral becoming a leading area for the manufacture of low carbon technologies and development of a green economy (Council, 18th July 2011, Item 28 refers).

Extraction Process

- 4.4 Shale gas is an “unconventional” fossil fuel, which needs additional procedures to extract it beyond regular drilling. There are three main types of unconventional gas: shale gas; tight gas; and coal-bed methane. Shale and tight gas are dispersed over wider areas than conventional gas, meaning many more wells would be drilled to extract the same amount of gas as from conventional resources. Fracking is a process of creating fissures by the injection of a fluid (mainly water and sand with chemicals) into underground shale formations. Fractures would be propped open by the sand, which allows the natural gas to flow into the wellbore for collection at the surface. Rising fuel costs and recent advances in drilling technology are the main reasons for rising interest in prospecting for this type of fuel.

Responsibilities & Regulatory Controls

- 4.5 The search for land based gas in the United Kingdom is governed by the Department of Energy and Climate Change (DECC) who have responsibility for granting licenses under the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004 (No 352) and the Hydrocarbons Licensing Directive Regulations 1995.
- 4.6 The west of Wirral has been subject to licenses for the exploration of oil and natural gas for some time under the former Department of Energy with preliminary tests carried out in the 1970's and 1980's. DECC License PEDL 184 currently covers west Wirral which enables a company to pursue a range of oil and gas exploration activities, subject to necessary drilling/development consents and planning permission. Alongside conventional onshore oil and gas exploration and development, the licence covers exploration and development of coal bed methane, mine-vent gas, oil shale, shale gas and gas storage in a previous gas field.
- 4.7 There are permitted development rights for mineral exploration under Part 22 of the Town & Country Planning (General Permitted Development) Order 1995. The drilling of boreholes, seismic surveys and excavations could be carried out without a formal planning application to the Local Planning Authority, subject to a number of caveats and conditions such as land restoration and tree protection etc.

Development on land over a period exceeding 28 consecutive days would not, however, be permitted unless the Local Planning Authority has been notified of the location and nature of the intended works.

- 4.8 In its response to the House of Commons Select Committee on Energy and Climate Change 5th Report concerning shale gas, the Government on 26th July 2011 stated that 'specific consent from DECC gives DECC the opportunity to prevent the well from being drilled if it is not satisfied about any aspect of the well, including the applicant's financial capacity.' The Government also indicated that 'following the seismic tremors which took place in April and in May, DECC had discussions with the operator and agreed that a pause in hydraulic fracturing operations is appropriate so that a better understanding can be gained of the cause of the seismic events experienced in Poulton-le-Fylde. A geomechanical study is being undertaken, along with further work by the British Geological Survey and Keele University. The implications of this information will be reviewed before any decision on the resumption of these hydraulic fracture operations is made.'
- 4.9 A formal planning application to the Local Planning Authority would be required for any more permanent development associated with gas extraction, which is not covered under Permitted Development rights. Hazardous Substance Consent may also be required if stocks of gas exceed a threshold of 15 tonnes. Nationally significant applications may need to be considered by the Infrastructure Planning Commission, who would consult affected Local Planning Authorities. Significant development could also be subject to full Environment Impact Assessment.
- 4.10 Section 38 (6) of the Planning & Compulsory Purchase Act 2004 states that 'If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.'
- 4.11 Relevant Development Plan policies for assessing such applications currently include the North West of England Plan Regional Spatial Strategy (RSS, September 2008) Policy EM15, and Policy MI2 in the Unitary Development Plan (UDP, February 2000) as saved by the Secretary of State on 28 September 2007. RSS Policy EM15 places an emphasis on promoting sustainable energy production and consumption. The impact from design, siting (particularly in relation to sensitive areas and development), noise, dust, odours and traffic would also need to be assessed under the terms UDP Policy MI2.
- 4.12 In terms of the future, the Core Strategy Preferred Option 19 sets out the Council's proposed general strategic approach to minerals. While there is no specific mention of shale gas, the intention is to include criteria in future policies to cover environmental impact, design, construction, operation, restoration and aftercare of any mineral related site. No representations have been received during the consultation period regarding potential shale gas sites. The final Core Strategy policy is expected to be reported to Cabinet towards the end of the year.
- 4.13 One of the Government's objectives in National Minerals Policy MPG1 (November 2006) is to secure working practices which prevent or reduce as far as possible, impacts on the environment and human health. The gas industry is expected to fully discuss any proposals with Local Planning Authority and that planning policies are expected to be drafted to ensure that individual applications are considered on

their own merits. Matters for consideration include the need to minimise visual intrusion; control vehicular activity; drilling residue; noise and light emissions. These would also be matters for consideration in nationally significant applications under DECC National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (July 2011).

Other Controls

- 4.14 Gas storage and supply infrastructure sites are subject to stringent safety standards under the Control of Major Accident Hazards (COMAH) Regulations 1999
- 4.15 Boreholes Sites and Operations Regulations 1995 apply from the beginning of operations on site and will continue to apply during the life of the facility until the borehole is decommissioned. The Health and Safety Executive enforces these Regulations.
- 4.16 An abstraction licence may also be required from the Environment Agency under the Water Act 1991 for the use of more than 20 cubic metres of water from the environment.

Impact on low carbon technologies and developing green economy

- 4.17 If significant amounts of shale gas were to enter the market, there is a possibility that investment in more-expensive lower carbon and renewable technology could be discouraged. This point was raised by the House of Commons Select Committee on Energy and Climate Change, which concluded that the UK needs to manage this risk in order to achieve its aim of generating more electricity from renewable and other low carbon sources. The Select Committee went on to recommend that this could be done through progressive implementation of an Emissions Performance Standard (EPS) to prevent gas power stations operating as base load providers after a certain date, unless fitted with carbon capture and storage.
- 4.18 In the Government's response, published on 26th July 2011, it was indicated that gas in particular will be needed to provide vital flexibility to support an increasing amount of low carbon generation and to maintain security of supply. It was considered important that investment in gas generation is not undermined over the next few years and that sufficient certainty for investors is provided. The Government went on to conclude that it will introduce an EPS above the level of emissions of gas plant. Plants consented before the end of 2015 will be offered a guaranteed EPS for a pre-determined period. Work with stakeholders is to be undertaken to determine how this should be implemented and what the period should be, recognising that investment certainty, security of supply, and support for decarbonisation must be balanced. The future use of EPS will also be subject to review in line with the decarbonisation reporting process required under the Energy Act 2010

5.0 RELEVANT RISKS

- 5.1 There are no direct risk implications arising from this report.

6.0 OTHER OPTIONS CONSIDERED

6.1 No other options have been considered, as this report sets out responsibilities and regulatory roles in relation to development for gas exploration and extraction.

7.0 CONSULTATION

7.1 There are no implications for community consultation arising from this report. Operations or structures requiring planning permission will be subject to statutory consultation procedures.

8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

8.1 There are no direct implications arising from this report.

9.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

9.1 There are no direct resource implications: financial; IT; staffing; and assets implications arising from this report.

10.0 LEGAL IMPLICATIONS

10.1 The responsibilities and regulatory roles in relation to development for gas exploration and extraction are set out within the main body of this report.

11.0 EQUALITIES IMPLICATIONS

11.1 Equality Impact Assessment (EIA)
(a) Is an EIA required? No

12.0 CARBON REDUCTION IMPLICATIONS

12.1 There are no direct carbon reduction implications arising from this report, although conclusions on the impact of gas supply on low carbon technologies are contained within paragraphs 4.17 and 4.18.

13.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

13.1 This report identifies legislation and local, regional and national planning policy that can be relevant in the determination of planning applications for development in relation to gas exploration and extraction.

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REFERENCE MATERIAL

National Minerals Policy MPG1, November 2006 can be viewed at:

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/152993.pdf>

DECC National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4) July 2011 can be viewed at <http://www.decc.gov.uk/assets/decc/11/meeting-energy-demand/consents-planning/nps2011/1941-nps-gas-supply-oil-en4.pdf>

The House of Commons Select Committee on Energy and Climate Change 5th Report can be viewed at:

<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmenergy/1449/1449.pdf>

SUBJECT HISTORY (last 3 years)

| Council Meeting | Date |
|------------------------|----------------------------|
| Council – Item 28 | 18 th July 2011 |