

NOTICE OF MOTION – FRACKING

To be proposed by Cllr Jackson and seconded by Cllr Brooks and Cllr Hamilton-Cox.

“Lancaster City Council notes that on 23 September 2015, this Council voted in favour of a motion that stated:

This council agrees to:

- (a) *Oppose fracking in the Lancaster district, or fracking outside our district which could affect residents within our district, and call upon the Government to reconsider its policy of encouraging fracking. (Thereafter giving 3 clear and detailed environmental reasons for this opposition – see original motion);*
- (b) *Urge the Government to scrap proposals to remove responsibility for determining fracking planning applications from local councils. (See original motion for more detail).*

Additionally, this Council further notes that:

In May this year Ministers outlined a proposal in a Written Ministerial Statement to redefine non-hydraulic fracturing shale gas exploration applications as **permitted development** and to redefine large scale shale gas production sites as **Nationally Significant Infrastructure Projects**, thus removing any local authority control and community involvement in decision-making.

That on 5 July 2018, a report by the cross-party Housing, Communities and Local Government Committee warned the Government against its proposals concluding that Mineral Planning Authorities, i.e. Lancashire County Council, were best placed to understand the local area and how fracking could best take place. And that the above report also said the Nationally Significant Infrastructure Projects regime was unlikely to speed up the application process for fracking.

Lancaster City Council believes:

- It continues to support and promote its September 2015 resolution opposing fracking;
- That moving decisions about fracking, which have huge implications for local communities, to a national level contradicts the principles of localism;
- That ‘Permitted Development’ was designed for developments with low environmental impacts and is therefore not an appropriate category for drilling with such wide-reaching implications for local communities and climate change;
- That bringing fracking applications under the Nationally Significant Infrastructure Projects regime will be harmful to local communities; and,
- That local authorities are best placed to continue to make decisions throughout the planning process for shale gas exploration drilling, appraisal and production.

Lancaster City Council resolves:

1. To respond to the forthcoming government consultation with these views.
2. To share this response with Lancashire MPs and relevant government ministers.
3. To reaffirm its policy commitment to “oppose fracking in the Lancaster district, or fracking outside our district which could affect residents within our district”.
4. To embed this policy within our Climate Change policy and the Council Plan (see resolution 23 July 2018) and so to communicate this policy to our residents, other local authorities, partner agencies and contractors.

OFFICER BRIEFING NOTE

There are two national consultations that were published on 19 July 2018 that relate to this motion.

The first is an initial consultation published by the Department for Business, Energy and Industrial Strategy (DBEIS). It asks whether respondents agree with the proposal to include major shale gas production projects in the Nationally Significant Infrastructure Projects regime.

The second is a consultation from the Ministry of Housing, Communities and Local Government (MHCLG), which seeks views on whether to introduce a permitted development right for non-fracturing shale gas exploration.

The closing date for both consultations is 25 October 2018.

DBEIS Consultation - Whether to include major shale gas production projects within the Nationally Significant Infrastructure Projects Regime

Nationally Significant Infrastructure Projects (known as NSIP) are major strategic projects that are determined outside the usual local planning decision-making system. Previous examples of NSIP include major strategic highway network construction projects (e.g. the Bay Gateway); new railway lines or rail freight interchanges; new airports; offshore windfarms and power stations.

Under the Planning Act 2008 (as amended), a developer who wishes to construct a NSIP must obtain 'development consent'. The final decision for granting development consent rests with the relevant Secretary of State. It is the only route available for obtaining planning permission for this type of major project.

Proposals for the extraction of oil or gas, including shale gas (known as fracking), are not currently determined as NSIP projects. Instead, they are projects that are determined by the Strategic Planning Authority, who in this region are Lancashire County Council.

The effect of the Government consultation proposal would be that, if accepted, the production phase (extraction) of fracking projects would become an NSIP, and Lancashire County Council would no longer be the decision-making body.

MHCLG Consultation - Whether to introduce a permitted development right for non-fracturing shale gas exploration

The exploratory phase of oil and gas extraction is important because it enables the developer to acquire geological data to establish whether hydrocarbons are present. In the case of shale gas, this exploratory phase may involve the drilling of an exploration well and conducting seismic surveys. This is followed by a testing/appraisal phase. It is usually only when these stages are completed, and the developer has received positive data, that a production (extraction) proposal will be considered.

Currently any developer who wishes to carry out exploratory investigations for shale gas has to apply to the Strategic Planning Authority for permission. This is Lancashire County Council.

The effect of the Government consultation proposal would be to introduce a new, national permitted development right. In other words, it would make any non-hydraulic shale gas exploration or testing operation permitted so that it would not require planning permission from the County Council.

The permitted development right being proposed via the consultation is:

"Boring for natural gas in shale or other strata encased in shale for the purposes of searching for natural gas and associated liquids, with a testing period not exceeding 96 hours per section test".

The consultation also asks other questions regarding the proposed permitted development right. For example, it asks whether respondents agree that the permitted development right would not apply in sensitive areas, including Areas of Outstanding Natural Beauty, Sites of Special Scientific Interest, Conservation Areas, Sites of Archaeological Interest and other land that is safeguarded in the national interest.

Responding to the Consultations

The City Council does not appear to have formally received a consultation request on either consultation. This is likely to be because it is not the Strategic Planning Authority responsible for decision-taking in relation to shale gas projects. Notwithstanding this, the consultation is not restricted and the Council can formally submit observations.

In respect of the proposed changes to national procedure, particularly the proposals to (i) make fracking an NSIP; and (ii) to introduce a permitted development right for the exploratory stages; the City Council is free to offer views as to whether this would be harmful to the principles of localism; whether local planning authorities are best-placed to determine such matters; and whether the permitted development regime is appropriate.

In respect of the approved Motion (September 2015) which sought to oppose fracking, the City Council is free to reiterate its' views again at a political level, but this is with one caveat. The City Council would be likely to be consulted on any individual future proposals for fracking that emerge through the NSIP process. It is incumbent on the City Council – in its' role as a local planning authority - to consider individual proposals on its own merits before deciding whether it supports or objects to a fracking proposal. The local planning authority cannot pre-determine a proposal; and to do so could result in risk of judicial challenge.

Therefore whilst Members can resolve to oppose the principles of fracking and the proposed legislative changes currently being consulted on, they must ensure that the Council remains unencumbered if it receives a formal planning consultation through the NSIP regime.

MONITORING OFFICER COMMENTS

1. *To respond to the forthcoming government consultation with these views.*
2. *To share this response with Lancashire MPs and relevant government ministers.*
3. *To reaffirm its policy commitment to “oppose fracking in the Lancaster district, or fracking outside our district which could affect residents within our district”.*
4. *To embed this policy within our Climate Change policy and the Council Plan (see resolution 23 July 2018) and so to communicate this policy to our residents, other local authorities, partner agencies and contractors.”*

Item 1 is a political statement which the authority is entitled to make

Item 2 is a political statement which the authority is entitled to make

Item 3 it is a matter entirely for the chamber to consider if a restatement is necessary. It should be noted the statement is unequivocal which impacts upon the 4th proposition.

Item 4 Requires these statements to become part of the policy framework which sets the legal parameters within which the council operate. Climate change has been incorporated into the

Council plan which is a core policy document of the authority. This suggests the incorporation of a single operational policy of opposing this method of hydro carbon extraction into the framework. This would require the council to act in opposition to any proposal. I would not advise incorporating a single issue into a framework policy.

The authority is not the decision making body for this activity and in the event that hydrocarbon extraction takes place, the local authority would be constrained by what is an opposition policy. The authority would not be empowered to engage, influence, mitigate, or obtain a benefit from any hydrocarbon extraction.

If the Council was consulted in a regulatory capacity the political commentary is part of the landscape but each proposal is must be carefully considered on its individual merits. If it is incorporated as part of our policy framework there may be a greater perception of predetermination.

The chamber may wish to accept the political position that this type hydro carbon extraction is opposed or unwelcome and to voice this and state this publically.

The chamber may wish to reflect on incorporation of this detailed single issue item into the policy framework and may conclude that the authority would benefit from a degree of flexibility. For example, a consultation response which reflects the policy to simply oppose this activity may be considered to be predetermined. The chamber may consider the provision within the wording for the opportunity to offer mitigation or an alternative approach may also be of use.

SECTION 151 OFFICER COMMENTS

The Section 151 Officer has been consulted and has no further comments.