

The Office of Unconventional Gas and Oil  
Department of Energy & Climate Change,  
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3 Whitehall Place  
London,  
SW1A 2AW

Contact: Paul Jackson

My Reference:

Date: 15 December 2015

Dear Sirs

## Consultation on Surface Development Restrictions for Hydraulic Fracturing

The Howardian Hills AONB Joint Advisory Committee has been monitoring the progress of shale gas exploration operations both within the AONB and in the near vicinity for a number of years. These have ranged from 3D seismic survey to the recent application by Third Energy to conduct a test-frack at the KM8 well at Kirby Misperton, which is less than 4 miles from the AONB boundary.

The Committee has four key comments to make on the proposed Surface Development Restrictions:

- 1. We don't believe that it's appropriate to prohibit hydraulic fracturing at depths of less than 1,200m below AONBs via legislation, yet only restrict surface developments via Petroleum Exploration & Development Licence (PEDL) Licence Conditions and a Ministerial policy statement**

The mechanisms proposed for restricting/prohibiting hydraulic fracturing in AONBs and other Protected Areas have been developed in a piecemeal fashion and, if enacted in the format proposed, will result in weak and potentially temporary protection for these areas. It is unlikely that these proposals will reassure the public about the robustness of the regulatory framework for this fledgling industry, and they do not reassure the Joint Advisory Committee either.

It is a clear inconsistency that fracking at depths of less than 1,200m below AONBs is proposed to be prohibited via the Draft Onshore Hydraulic Fracturing (Protected Areas) Regulations 2015, as part of the Infrastructure Act 2015, but that surface developments will only be restricted by PEDL Licence Conditions and a Ministerial policy statement.

We don't believe that this measure will give the public any confidence in the future protection of AONBs, since it is open to amendment at any stage with minimal further consultation or scrutiny.

- 2. We feel that the Ministerial policy statement mechanism for 'restricting' surface development in existing PEDL areas is inadequate and inappropriate for protecting these nationally designated landscapes**

Although the proposals would prevent hydraulic fracturing from taking place in new wells that are drilled from the surface of AONBs through a condition on all new PEDL licences, this does not apply to existing PEDLs.

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The proposed approach for existing PEDLs is to issue a policy statement that the Secretary of State is “not minded to grant consent” for proposed hydraulic fracturing from new or existing wells drilled at the surface of the protected areas. This is not considered to provide adequate protection and runs contrary to the aims of the consultation to provide public confidence in the industry. A policy statement is not binding and the wording “not minded to” is an inadequate commitment, particularly when compared to the complete prohibition that is being proposed for new PEDLs.

As there is already an existing PEDL licence covering 50% of the Howardian Hills AONB this could potentially allow hydraulic fracturing to take place from surface developments within the AONB (subject to other consents) and is therefore contrary to the aims and objectives of the proposals.

**3. We feel that the Government should prohibit all hydraulic fracturing from surface developments within AONBs, not just ‘associated hydraulic fracturing’ (with its limits of 1,000 cubic metres/10,000 cubic metres of frack fluids)**

Paragraph 1.18 of the consultation confirms that the proposals would apply only to surface activity that is required for the carrying out of “associated hydraulic fracturing”.

This is defined in the Infrastructure Act as “hydraulic fracturing of shale or strata .... [which] involves the injection of more than 1,000 cubic metres of fluid at each stage of the hydraulic fracturing, or more than 10,000 cubic metres of fluid in total”.

The consultation does not explain the implications of this technical limit, such as how much fluid might normally be used at any one stage/in total during hydraulic fracturing operations, nor whether some methods of unconventional oil/gas production might be able to operate within these limits. Again, it is considered that this is contrary to the aims and objectives of the proposals in terms of providing confidence to the public that AONBs will be protected from hydraulic fracturing.

**4. We are concerned that these proposals do not afford any protection to the setting of AONBs and are therefore contrary to the Countryside & Rights of Way Act (2000) Duty to Have Regard to the purposes of AONBs, which relates to development within or affecting AONBs**

Paragraph 1.7 of the consultation outlines national planning policy (NPPF paragraph 116) which presumes against unconventional hydrocarbon development such as shale gas in and affecting AONBs, as it is considered to be major development. The specific wording of paragraph 1.7 implies that below-surface unconventional hydrocarbon extraction is not major development, an interpretation with which we do not agree.

This is important in terms of the regulatory planning framework in relation to sub-surface elements of unconventional hydrocarbon development, i.e. the drilling and hydraulic fracturing process itself. Legally the definition of development requiring planning permission is “the carrying out of building, mining, engineering and other operations, in, on, over or under land, or the making of any material change in the use of buildings or other land”. On this basis, lateral drilling and hydraulic fracturing below an AONB or National Park would constitute ‘development’ and would require the submission of a planning application to the Mineral Planning Authority.

As with conventional hydrocarbon extraction, this development would be considered as ‘major development’ and the presumption of refusal would apply unless there were exceptional circumstances and it was in the public interest to proceed (NPPF paragraph 116).

The list of Protected Areas as proposed in paragraph 1.21 of the consultation includes a mix of surface and sub-surface designations, as well as a mix of habitat and landscape-based designations. No attempt has been made to differentiate between the purposes of the different designations, nor the legal duties attached to each of them. For example, in SSSIs and Natura 2000 sites the specific interest is largely (but not necessarily exclusively) restricted to the designated area itself. For AONBs and National Parks however the legal protection extends to both the designated area and its setting, a factor that has been recognised in paragraph 1.7 but not then incorporated into the proposals.

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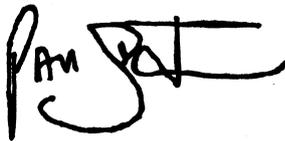
Our experience of public concern over hydraulic fracturing is not solely in relation to the surface impacts as stated in the consultation, but includes the potential associated risks such as ground water contamination, radioactive pollution and induced seismic activity. These risks could still occur under Protected Areas, including AONBs, through lateral drilling from surface developments *outside* the designated areas. Such developments on the fringes of (and therefore affecting) AONBs are likely to be treated as major developments, for which there is a presumption to refuse planning permission, but further protection should be afforded via these Restriction measures.

The AONB Committee would wish the scope of these measures to be extended to cover both the designated area and the setting of AONBs [and National Parks], in order to comply with the relevant legislation underpinning their national protection. Such a measure would still enable the exploitation of unconventional hydrocarbon resources from the periphery of these areas, but would ensure that operations were conducted at an appropriate separation distance that would provide both surface and sub-surface protection for their settings.

## **Conclusion**

The recent Comprehensive Spending Review has underlined the Government's commitment to protect spending on AONBs and National Parks, due to the significant role they play in the economic, environmental and social health of the nation. We feel that these proposals should reflect this position and therefore that the protection from hydraulic fracturing of both the designated areas of AONBs *and* their settings must be significantly stronger and more robust than is proposed by these measures. One of the principal aims of this consultation is to provide the public with confidence that this fledgling industry is being taken forward in a balanced and measured way. We don't believe that the weak protection measures proposed in the consultation document achieve this aim and would urge the Government to honour its previously stated commitments to protect AONBs. This should involve both strengthening the protection measures by enshrining them in law and also extending them to include the setting of AONBs, in line with national legislation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P B Jackson', with a stylized flourish at the end.

P B JACKSON  
AONB MANAGER