

Scrutiny Response to the 'Fracking' Referral from Council

SUMMARY

- 1.1 At the Annual Meeting of the Council on 11 June 2014, Council resolved to instruct the Corporate Scrutiny Board to investigate and report back to Council on the likely environmental impact of fracking within the city.
- 1.2 This report informs Council of the work that has been done by the Regeneration and Culture Board on this topic.

RECOMMENDATION

- 2.1 That in light of the developments detailed at Sections 4.8 and 4.9 of this report, the Regeneration and Culture Board recommends to Council Cabinet that any further review on fracking in Derby is kept on hold until the Secretary of State has clarified what is covered under the definition of "protected areas" and Scottish Government has completed the full public health impact assessment and full public consultation on unconventional oil and gas extraction that it has committed to.
- 2.2 That Council Cabinet agree that the best approach for the Council to input into policy relating to fracking at the present time (shale gas/hydrocarbon extraction) would be through the Joint Minerals Plan and consultation papers being prepared as part of the development of the Plan.

REASONS FOR RECOMMENDATION

- 3.1 It would be prudent to consider the outcomes of work being done nationally by both UK and Scottish Governments with regards to shale gas extraction or "fracking", prior to spending more time putting further resource into the exploration of the environmental impact of fracking within the city of Derby.
- 3.2 The development of the Joint Minerals Plan offers the Council an opportunity to influence and input to policy matters relating to the extraction of shale gas in a local context.

SUPPORTING INFORMATION

- 4.1 The Corporate Scrutiny and Governance Board met on 23 June 2014 and the board resolved to refer the Council motion on fracking to the Regeneration and Culture Overview and Scrutiny Board, which had taken on responsibility for issues relating to climate change within its remit, for a review to be undertaken.
- 4.2 At the meeting of the Regeneration and Culture Scrutiny Board meeting on the following day, 24 June 2014, the Board resolved to note that the Corporate Scrutiny and Governance Board had referred a motion from Council on fracking to the Board and added the fracking review to the Board's work programme.
- 4.3 The Regeneration and Culture Board received information from the council's legal and planning teams clarifying the Council's position with regards to companies wishing to undertake exploratory works within the Derby area. This information can be found under section 4 of this report. In addition, the board received a briefing on 'fracking' and the Derby and Derbyshire Joint Minerals Plan from Derbyshire County Council officers leading on the plan at its meeting of 21 October 2014.
- 4.4 At this meeting it was agreed that the best approach for the Council to input into policy relating to fracking (shale gas/hydrocarbon extraction) would be through the Joint Minerals Plan and consultation papers being prepared as part of the development of the Plan. In particular, Derbyshire County Council is currently developing a consultation paper towards a strategy for hydrocarbons, including conventional oil and gas, unconventional oil and gas, gas from coal and shale gas. The Regeneration and Culture Board will be reviewing this document and feeding in comments through Derby City Council's elected members on the Joint Advisory Group, which feeds into the development of the Joint Minerals Plan.
- 4.5 The Board received a presentation on fracking from Brian Davey of Feasta (the Foundation for the Economics of Sustainability) at the meeting of 13 January 2015 in order to further understand the issues around fracking and its environmental implications. The Board made no further recommendations.
- 4.6 The Infrastructure Bill received Royal Assent on 11 February 2015, to become the Infrastructure Act 2015. This is an Act to make provision:
- for strategic highways companies and the funding of transport services by land;
 - for the control of invasive non-native species;
 - about nationally significant infrastructure projects;
 - about town and country planning;
 - about the Homes and Communities Agency and Mayoral development corporations;
 - about the Greater London Authority so far as it exercises functions for the purposes of housing and regeneration;
 - about Her Majesty's Land Registry and local land charges;
 - to enable building regulations to provide for off-site carbon abatement measures;

- for giving members of communities the right to buy stakes in local renewable electricity generation facilities;
- *to make provision about maximising economic recovery of petroleum in the United Kingdom;*
- *to provide for a levy to be charged on holders of certain energy licences;*
- *to enable Her Majesty's Revenue and Customs to exercise functions in connection with the Extractive Industries Transparency Initiative;*
- *about onshore petroleum and geothermal energy;*
- *about renewable heat incentives;*
- about the reimbursement of persons who have paid for electricity connections; to make provision to enable the Public Works Loan Commissioners to be abolished; and for connected purposes.

4.7 More specifically and relevant to this review, 'Part 6 Energy' of the Infrastructure Act 2015 sets out legislation on the following:

- Recovery of UK petroleum
 - Maximising economic recovery of UK petroleum
 - Levy on holders of certain energy industry licences
- Petroleum and geothermal energy in deep-level land
 - Petroleum and geothermal energy: right to use deep-level land
 - Further provision about the right of use
 - Payment scheme
 - Notice scheme
 - Payment and notice schemes: supplementary provision
 - Interpretation
- Other provision about onshore petroleum
 - Advice on likely impact of onshore petroleum on the carbon budget
 - Onshore hydraulic fracturing: safeguards

4.8 Under Paragraph 60 of Part 6 of the Infrastructure Act, Section 4A, Condition 6 of the 'Onshore hydraulic fracturing: safeguards' states that "The associated hydraulic fracturing will not take place within other protected areas".

Section 4B (supplementary provision to Section 4A) states that "The Secretary of State must, by regulations made by statutory instrument, specify—

(a) the descriptions of areas which are "protected groundwater source areas", and

(b) the descriptions of areas which are "other protected areas", .
for the purposes of section 4A".

4.9 Energy Minister Fergus Ewing addressed the Scottish Ministerial Parliament on 28 January 2015 giving a speech on Unconventional Oil and Gas. This speech included the announcement of a moratorium for Scotland on all planning consents for unconventional oil and gas extraction including fracking.

Mr Ewing also set out that the Scottish Government will:

- Undertake a full public consultation on unconventional oil and gas extraction
- Commission a full public health impact assessment

- Conduct further work into strengthen planning guidance
- Look at further tightening of environmental regulation.

4.10 Buffer zones around protected groundwater source protection zones (see Appendix 3), Sites of Special Scientific Interest (see Appendix 4) and the World Heritage Site could, in effect, rule out fracking in much of the city's potential shale gas area. Appendix 2 shows an area to the north east, east and south east of the city (in orange) known as the Widmerpool Trough, which has been identified by the British Geological Survey as having potential for shale gas.

Fracking response – Legal and planning policy

- 4.11 On 28 July 2014 Government indicated its support for Shale gas exploration/extraction (more accurately termed Hydrocarbon extraction). Having extended the area for exploration to the major parts of England and Scotland, the Government on that date also invited applications for new onshore licences (under the 14th Licensing round).
- 4.12 Licences may allow exploration and testing etc., although the current licences are only intended to enable initial exploration.
- 4.13 Planning permission will be required for each phase of the hydrocarbon extraction process (including exploration) from the mineral planning authority although some seismic work may have deemed consent (under Part 2 of Schedule 2 of Town and Country Planning ((General Permitted Development) Order 1995 (as amended))).
- 4.14 The current government guidance covering the planning process/regime and Hydrocarbon extraction dates from March 2014, but was updated in July to take account of concerns on impacts in the National Parks, World Heritage Sites and other areas of outstanding countryside.
- 4.15 Whilst the application for planning permission is to the mineral planning authority, the Secretary of State retains a call in power and has indicated that “to ensure the government’s intentions in respect of development concerning unconventional hydrocarbons in these areas are given appropriate effect” that for the next 12 months the department will give particular attention to recovering these appeals, that approach will then be reviewed.
- 4.16 The guidance encourages mineral planning authorities to make appropriate provision for hydrocarbons within their local mineral plans. Derby and Derbyshire County Council are currently preparing joint Minerals and Waste Plans. A consultation period has taken place on both plans.
- 4.17 Attempts to introduce ‘blanket bans’ to refuse planning permission either through the mineral plan or otherwise is not a realistic option, and would be likely to expose an authority to costs on challenge if pursued.
- 4.18 The guidance makes clear that planning applications should be assessed on a case by case basis, having regard to all material issues.

- 4.19 Specific guidance has been provided on dealing with applications for National Parks, the Broads and Areas of Outstanding Natural Beauty where great weight needs to be given to conserve the landscape and natural beauty and also to World Heritage Sites where such development would lead to substantial harm or the loss of a World Heritage Site in which case consent should be refused unless wholly exceptional circumstances apply.
- 4.20 In considering applications there is a need to have due regard to the Government's energy policy, mitigation, related policies in the National Planning Policy Framework and the ability to impose conditions to should they be required to make the development acceptable.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Service Director(s) Other(s)	Stephen Teasdale Toni Nash Liz Moore Nick 'Reilly Ann Webster Adrian Jeffs Richard Boneham
For more information contact: Background papers: List of appendices:	Clare Harrison 01332 643648 Email clare.harrison@derby.gov.uk None Appendix 1 – Implications Appendix 2 – Widmerpool Trough Potential Shale Gas Area Appendix 3 – Groundwater source protection zone Appendix 4 – Sites of Special Scientific Interest

IMPLICATIONS

Financial and Value for Money

- 1.1 None arising directly from this report. Implications may arise from future items identified for inclusion on the work programme as and when they are considered by the board and from the final recommendations resulting from topic reviews.

Legal

- 2.2 Implications may arise from future items identified for inclusion on the work programme as and when they are considered by the board and from the final recommendations resulting from topic reviews.
- 2.3 The legal position of the authority on the topic review subject can be found under section 4 of this report.

Personnel

- 3.1 None arising directly from this report. Implications may arise from future items identified for inclusion on the work programme as and when they are considered by the board and from the final recommendations resulting from topic reviews.

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- 4.1 None arising directly from this report. Implications may arise from future items identified for inclusion on the work programme as and when they are considered by the board and from the final recommendations resulting from topic reviews.

Equalities Impact

- 5.1 Effective scrutiny benefits all Derby people, but in particular people with protected characteristics where the equality impact is flagged up at an early stage.
- 5.2 Further implications may arise from future items identified for inclusion on the work programme as and when they are considered by the board and from the final recommendations resulting from topic reviews.

Health and Safety

- 6.1 None arising directly from this report. Implications may arise from future items identified for inclusion on the work programme as and when they are considered by the board and from the final recommendations resulting from topic reviews.

Environmental Sustainability

- 7.1 None arising directly from this report. Implications may arise from future items

identified for inclusion on the work programme. There are potential environmental sustainability implications arising from the identified 'Fracking' review and these could arise as and when evidence is considered by the board and from the final recommendations resulting from this review.

Property and Asset Management

- 8.1 None arising directly from this report. Implications may arise from future items identified for inclusion on the work programme as and when they are considered by the board and from the final recommendations resulting from topic reviews.

Risk Management

- 9.1 None arising directly from this report. Implications may arise from future items identified for inclusion on the work programme as and when they are considered by the board and from the final recommendations resulting from topic reviews.

Corporate objectives and priorities for change

- 10.1 Our aim is to work together so that Derby and its people will enjoy a thriving sustainable economy, good health and well-being and an active cultural life. The work of this board contributes to the Council's ambitions to give people in Derby an inspiring working life by improving skills and creating jobs, and to make the city an inspiring place to live by improving the inner city. The work of the board also contributes to the Council's priority outcome of promoting good health and well-being and preventing ill health.

Appendix 2

Widmerpool Trough Potential Shale Gas Area

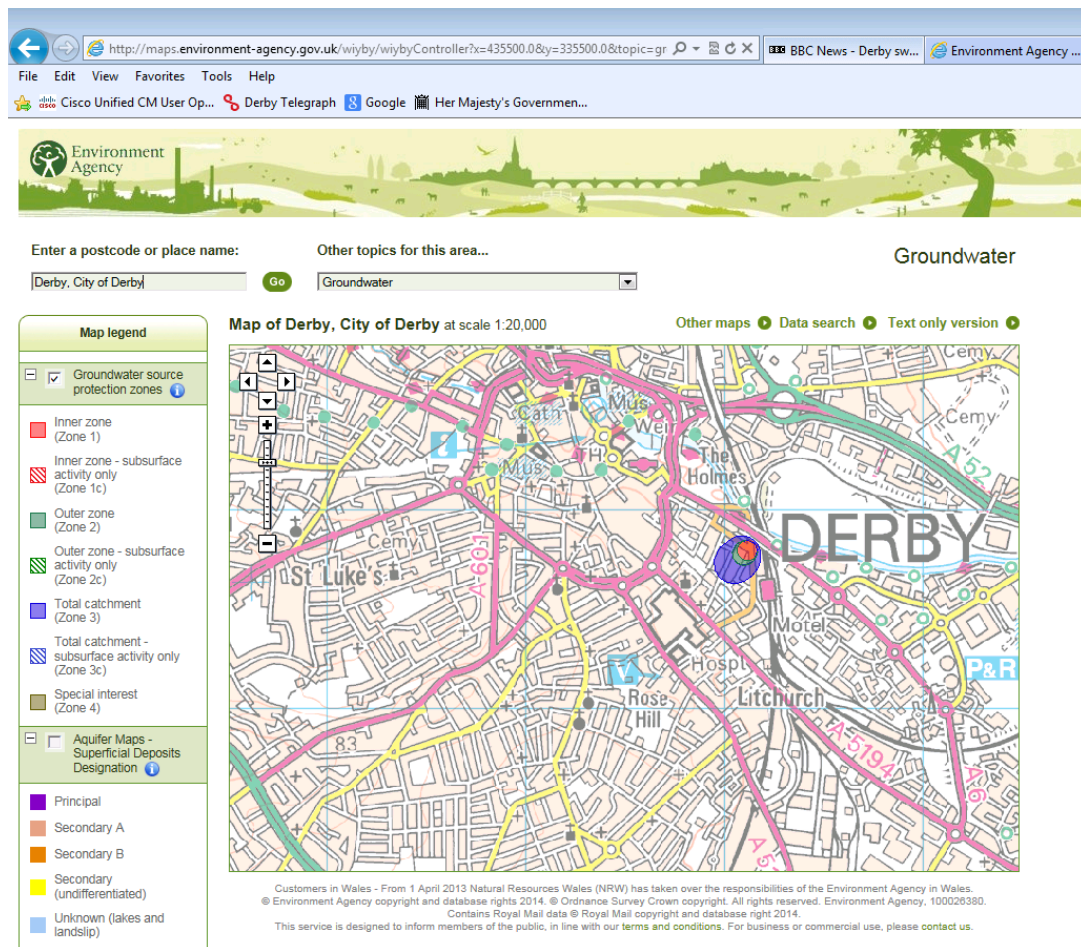
There are also two main areas of potential shale gas across the North and South of the county identified by the British Geological Survey. One area known as the Widmerpool Trough extends from Derby and Long Eaton across the River Derwent (which provides drinking water) towards Loughborough and Melton Mowbray (area coloured orange on map):



Source: <http://www.foe.co.uk/groups/nottingham/728>

Appendix 3

Groundwater source protection zone



Appendix 4

Sites of Special Scientific Interest

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