



PLANNING PERFORMANCE AGREEMENT
(PPA) FOR HYDRAULIC FRACTURING FOR
GAS AND OIL
USER GUIDE

1 INTRODUCTION

- 1.1 This document should be read in conjunction with the Planning Performance Agreement (PPA) for Hydraulic Fracturing for Gas and Oil Template.
- 1.2 This document, the 'User Guide', provides further detail and instruction with regards to the PPA template. It has been developed with the intention of keeping the PPA template as concise as possible, meaning any necessary background information and explanation is provided within this User Guide.
- 1.3 The User Guide contains the following sections:
 - Section 2 - Objectives and purpose of PPA process
 - Section 3 - Use of the PPA Template
 - Section 4 – Work Packages
 - Section 5 – PPA Template - Additional Guidance
 - Section 6 – Other Regulators

2 OBJECTIVES, PURPOSE AND BENEFITS OF PPA PROCESS

Government Direction

- 2.1 The Written Statement on Shale Gas and Oil issued by Amber Rudd on 16th September 2015 made clear the Government's desire to ensure that planning applications for these types of developments are dealt with quickly. It also emphasised the importance of public engagement, and the necessary involvement of other regulators:

"The Government is committed to ensuring that local communities are fully involved in planning decisions that affect them. We are also making the planning system faster and fairer for all those affected by new development. No one benefits from the uncertainty caused by delay. This is why we expect every planning application or appeal, large or small, to be dealt with as quickly as possible.

There is a clear expectation that local planning authorities should ensure that decisions on planning applications are made within statutory timeframes: 16 weeks where an application is subject to Environmental Impact Assessment. This should be supported through an upfront timeline agreed with the applicant including the anticipated decision date.

To avoid unnecessary work causing delay, when determining planning applications, local planning authorities should carefully consider which issues can be left to other

regulatory regimes, taking full account of the Government's planning guidance on this issue."

Objectives

2.2 As set out in the PPA template, the primary objectives of the PPA are:

- To establish a shared commitment to an agreed timetable to enable the assessment, consideration and determination of a planning application in due course;
- To enable engagement of the public at all stages of the planning process;
- To identify key determining issues, and agree steps to resolve them wherever possible;
- To enable engagement of all statutory consultees at the earliest opportunity and throughout the planning process;
- To ensure that all technical issues are fully addressed by the Applicant and fully understood by the MPA;
- To identify and address the detailed requirements of any planning conditions and planning obligations which would be necessary, should a planning application be deemed acceptable in principle.

NOTE: This agreement does not give a guarantee of planning permission. It relates to the process of considering development proposals and not the decision itself.

2.3 The guiding principle of the PPA is one of cooperation and consistency throughout the negotiation and discussion relating to the planning process, to provide a degree of certainty for the intended outcomes and to improve the quality of the project and of the planning decision.

2.4 The PPA process is essentially a project management tool to assist the MPA in handling the proposal from pre-application to post-determination.

2.5 Proposals for the phases associated with hydraulic fracturing have their own distinct set of challenges for a MPA. The level of public and media interest in proposals seen to date has been unprecedented. The Work Packages approach advocated in Section 4 and Appendix B of the PPA template is designed with these distinct

challenges in mind. See Section 4 of this User Guide for suggested Work Packages relevant to hydraulic fracturing.

Benefits

2.6 There are many benefits associated with the use of the PPA between the MPA and the Applicant. These include:

- Identification of key issues at any early stage;
- The agreement of more realistic and predictable timeframes;
- Greater accountability and transparency;
- Improved partnership working between all parties (including other regulators e.g. Environment Agency, Health and Safety Executive, etc.);
- Continuity in the team responsible for the PPA and
- Structured approach to community engagement.

3 USE OF THE PPA TEMPLATE

- 3.1 Planning applications for Hydraulic Fracturing for gas and oil (herein referred to as 'fracking') can cover multiple phases and activities. The main phases involved in fracking development are exploration, appraisal, production, and decommissioning and restoration.
- 3.2 Each phase is likely to include several distinct stages, with associated increases in activity and vehicle movements including; site establishment, delivery and removal of plant and equipment specific to that stage, drilling, and site disestablishment and restoration. In some instances, the exploration phase can be carried out without the need for hydraulic fracturing.
- 3.3 Since 2008, planning applications have come forward from developers for the exploration and appraisal phases. Only when these phases are complete would a developer apply for planning permission for production of shale gas and oil.
- 3.4 It is intended that the PPA template could be used for proposals at any stage of the process, even where hydraulic fracturing is not proposed (for example, initial exploration works).
- 3.5 Borehole drilling to monitor groundwater and seismic activity maybe be required but as of April 2016 it will be covered under permitted development rights. This type of monitoring is used to inform the location of drilling sites for any future planning applications for exploration.

4 WORK PACKAGES

- 4.1 The nature of fracking proposals is such that a number of work streams, or 'Work Packages' are considered desirable to be included as part of the planning process and as such be included in a PPA for this type of development.
- 4.2 Work packages should be formally identified as part of the PPA (see Section 4 of the PPA Template).
- 4.3 A number of suggested Work Packages are detailed below.

PPA Meetings

- 4.4 The MPA and Applicant should meet regularly to review progress against the PPA and discuss any issues which might affect the delivery of the work packages and dates agreed in the PPA.
- 4.5 A meeting agenda should be circulated prior to the meeting. The Project Team should agree who has responsibility for taking minutes and action points, and these should be circulated within a reasonable timeframe following each meeting.

Public Engagement

- 4.6 Planning applications for hydraulic fracturing, regardless of the phase and activities proposed, can be highly controversial. It is therefore vital that the Applicant engages with the local community at the earliest opportunity.
- 4.7 It would be desirable for the Applicant and the MPA to agree a strategy for Public Engagement from the outset, preferably through the submission of a Statement of Community Engagement (SCE) by the Applicant. The SCE should detail who the Applicant intends to engage with, what methods they will use and when this consultation will take place. The SCE should also detail how this will be fed back to the MPA as part of on-going discussions regarding public engagement.
- 4.8 The following methods of consultation could be particularly helpful for use in fracking proposals where local communities may be anxious about the nature of development:
- Community liaison group – regular meetings between the Applicant, MPA and local representatives to discuss concerns and progress on proposals.
 - Public Exhibitions – held in the communities affected by the proposals; these should be attended by the Applicant, MPA and any technical experts as appropriate. Information boards should be used to explain the proposals and feedback forms should be made available to attendees.
 - Newsletters – regular updates to the local community on the progress of the proposals could be provided. These can be posted or emailed to reach the widest possible audience.

- Website – Provision of dedicated website where relevant information and updates can be accessed.

Member Involvement

- 4.9 Engagement with Councillors should be sought as part of the consultation process on PPA schemes. This will help Members to gain an understanding of the project and the relevant issues.
- 4.10 Those Councillors who sit on the Planning Committee and determine planning applications will need to adhere to the MPA's Code of Conduct and cannot predetermine their view on a scheme that will subsequently be the subject of a planning application.
- 4.11 Members should be made fully aware of which aspects of the proposal is the responsibility of the MPA and which fall outside their remit for determination.

Regulator Engagement

- 4.12 There are six regulatory bodies responsible for on shore oil and gas exploration and exploitation:
- Minerals Planning Authority
 - Environment Agency
 - Health and Safety Executive
 - DECC
 - Oil and Gas Authority
 - British Geological Society
- 4.13 Section 6 of this User Guide describes the roles of these regulators in the exploration and exploitation process.
- 4.14 In their 2015 Ministerial Statement, the Government encouraged local planning authorities to consider which issues could be left to other regulatory regimes.
- 4.15 It is important that engagement with the other regulators is undertaken as part of the planning process. It is expected that the MPA and Applicant should agree to formal engagement with the other regulators as part of the PPA.

Screening and Scoping

- 4.16 It is anticipated that the majority of applications for fracking will require Environmental Impact Assessment. The exceptions to this might be where borehole drilling only is proposed.
- 4.17 It would still be advisable for Applicants to submit a formal Screening request to the MPA and for the Applicant to receive a timely response as set out in the PPA.
- 4.18 Scoping requests should be made to the MPA to determine the content of the ES. The MPA should consult widely at this stage, including all relevant statutory and non-statutory consultees. MPAs should look to provide a draft scoping response to the Applicant, and allow additional information to be submitted before a formal Scoping Opinion is issued to the applicant.

Environmental Assessment

- 4.19 The ES will be informed by detailed assessment work agreed at Scoping stage. Throughout the undertaking of assessment work, the Applicant should keep the MPA informed on the progress of assessment work through the PPA process. If any issues arise which might affect the dates agreed to in the PPA, these should be brought to the attention of the MPA at the earliest opportunity.

Submission of Draft ES to MPA and Review

- 4.20 It is recommended that a draft version of the ES and supporting documentation is submitted by the Applicant to the MPA. The MPA should review the draft to ensure that they have all the relevant information to allow them and their consultees to reach a decision.
- 4.21 Feedback should be provided to the Applicant as per agreed dates, and time should be allowed for the Applicant to prepare any additional information deemed necessary by the MPA.

Submission of Planning Application and Determination

- 4.22 The Government is clear that applications for Fracking should be made within statutory timeframes; 16 weeks where an application is subject to Environmental Impact Assessment. In their Ministerial Statement, the Government commits to

identifying underperforming LPAs that repeatedly fail to determine such application within statutory timeframes.

4.23 The PPA will set out a determination date in line with the statutory timeframes and the MPA will need to commit to achieving this deadline in all but the most exceptional circumstances.

4.24 If, during the course of the determination period, the MPA feels that they might not be able to meet the deadline set out in the PPA, this should be discussed with the Applicant at the earliest opportunity and a revised date agreed as part of the PPA.

Conditions and Planning Obligations

4.25 Throughout the planning process, the MPA and the Applicant should be discussing the need for any necessary Section 106 Agreements which might be associated with the planning permission should it be approved.

4.26 Both parties should also be discussing the nature and wording of any conditions which might be attached to a planning approval. The MPA should provide a draft set of conditions to the Applicant prior to the determination of the application for their comment.

4.27 It is anticipated that discussions regarding conditions and planning obligations could be held during the regular PPA meetings between the parties.

5 PPA TEMPLATE – ADDITIONAL GUIDANCE

5.1 The PPA Template includes the following sections:

- Section 1 – Introduction
- Section 2 – Project Team
- Section 3 – Objectives of the PPA
- Section 4 – Work Packages
- Section 5 – Key Dates
- Section 6 – Performance Standards
- Section 7 – Costs
- Section 8 – Agreement

5.2 Appendices to the PPA Template are:

- Appendix A – Key Dates
- Appendix B – Work Packages
- Appendix C – Work Package Proposal Form

5.3 The following paragraphs set out additional information on the above sections.

Project Team

5.4 The Project Team will comprise representatives of the Applicant and the MPA. The table provided in Section 2 of the PPA Template allows for defined roles to be set out at the outset of the PPA.

5.5 The Project Team are responsible for ensuring that the objectives of the PPA are achieved. The expectation is that there will be open lines of communication between all project team members for both parties. As advised through a defined work package, the Project Team will meet on a regular basis to review progress against the PPA and discuss issues arising.

Work Packages

5.6 Section 4 of the PPA Template allows for the Work Packages agreed at the outset of the PPA to be formally identified.

5.7 Further information about the expected content of the Work Packages is provided in Appendix B. These are meant as starting points for discussion and can be expanded upon or added to as the MPA and applicant see fit.

5.8 During the PPA process there may be a need to define new work packages. Appendix C of the PPA Template provides a Work Package Proposal Form which

sets out the information required. New work packages during the course of the PPA, including expected outcomes and key dates for delivery, should be agreed between the MPA and applicant before the Work Package is formalised as part of the PPA.

Key Dates

- 5.9 The PPA process requires that key dates are identified and agreed to by both parties. Dates should be reasonable and achievable, and should be framed in the context of Government guidance on the planning process (e.g. 16 weeks to determine an application for EIA development).
- 5.10 It is recognised that it may be necessary to amend key dates as circumstances change. This is particularly likely where EIA is involved. The PPA is an evolving document and it is allowable for timeframes to be updated throughout the process – however these should be agreed between both parties and should follow the same principles as the dates set out at the start of the process (i.e. they should be reasonable and achievable).

Performance Standards

- 5.11 The PPA should include performance standards for both the MPA and the applicant.
- 5.12 It is expected that individual MPAs will have their own performance standards which they work to on a daily basis, and that these may be entirely appropriate to carry through to the PPA process. These standards will need to be agreed by both parties to the PPA.
- 5.13 The PPA process places equal responsibility on the applicant. It is therefore expected that the applicant should agree to their own set of performance standards as part of the PPA.

Costs

- 5.14 It is expected that the applicant will contribute to the MPA's costs associated with processing a proposal using the PPA process (e.g. additional meetings with officers). The applicant should not be expected to pay for services that the MPA has a statutory duty to carry out. However, there might be a requirement for the applicant to contribute additional funds to assist the MPA given the nature of the proposal (e.g. processing of larger than normal letters of representation).
- 5.15 In some circumstances, there might be a need for the MPA to employ external consultants to assist with the application, such as where specialise expertise is required. In such circumstances, agreement will need to be reached between the

applicant and the MPA as to who is employed, the costs of this and the scope of their work.

- 5.16 Costs should be kept under review. As the proposal progresses it might be necessary to update costs. Any new costs will need to be agreed by both parties.

Agreement

- 5.17 Section 8 of the PPA Template is the agreement between the MPA and applicant. Although the PPA is not a legally binding document, it is understood that both parties have a duty to endeavour to meet the objectives and timeframes set out on the PPA.

6 OTHER REGULATORS

6.1 The MPA is one of the regulators involved in applications for hydraulic fracturing. The other regulators and their roles are detailed below:

Oil and Gas Authority (OGA)

- Responsible for issuing PEDL
- Require Environmental Risk Assessment be undertaken by the Applicant
- Assess operator competency and financial viability
- Grants consent to drill, fracture and for extended well testing.

Environment Agency (EA)

- Issue environmental permits and consents relating to groundwater, mining waste, radioactive substances, water abstraction and discharge, industrial emissions and flood risk.

Health and Safety Executive (HSE)

- Required a well examiner
- Approves well design
- Requires advance notice of intention to drill

Coal Authority (CA)

- Requires permit if drilling encroaches on coal seams

British Geological Society

- Informed of intention to drill.