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To: Environment & Transport Cabinet Committee – 14 January 2015

Subject: Petition requesting Kent County Council to adopt a presumption against consent for exploration or extraction of fossil fuels in Kent

Summary: This report gives consideration to a petition received in August 2014 that requests Kent County Council to adopt a presumption against granting permission for the exploration or extraction of fossil fuels. This presumption should include, but not be limited to, extraction of shale gas, shale oil, coalbed methane and underground coal gasification, whether by hydraulic fracturing (fracking) or other means.

This report sets out the planning context for determining such applications in Kent and why a blanket approach is contrary to Government policy.

Recommendation: The Cabinet Committee is asked to note this report and comment on the issues raised in the petition.

1. Introduction

1.1 On 9 September 2013 a report was presented to Cabinet Members Meeting which provided an update of the latest position in Kent relating to current and future proposals for hydrocarbon exploration and exploitation. In particular it set out by way of a formal Position Statement how the County Council would consider future proposals for hydrocarbon exploration and exploitation within the wider regulatory framework governing such proposals, including those which may involve fracking. For ease of reference a copy of the Position Statement is appended. The report and Position Statement drew attention to the large amount of public concern being raised at that time over such developments, particularly those relating to unconventional hydrocarbons (i.e. shale gas and coalbed methane) where, in some cases as part of their development, this would involve fracking. Fracking employs a technique whereby a mixture of water, sand and chemicals are pumped at high pressure into fissures in the underlying geological strata in order to create small fractures along which oil and gas can flow towards a wellhead.

1.2 More recently, in recognition of the continuing public concern over fracking, last November a Members briefing was held on unconventional shale gas and coalbed methane where an explanation of the background which has led to the keen interest in the subject was given including what it is, where it is located and how it is exploited. Reference was also made to the view held in some quarters including government, as to how this mineral resource has the potential to contribute towards the country's future energy supply

1.3 The petition which was lodged in August 2014 is effectively requesting that the County Council adopt a presumption against all forms of development for exploration or

extraction of fossil fuels in Kent, irrespective of whether this involves fracking or by some other means.

1.4 The petition reads

"We the undersigned petition the council to call on Kent County Council to adopt a presumption against development consent for exploration or extraction of fossil fuels in Kent. The presumption against development should include, but not be limited to, extraction of shale gas, shale oil, coal bed methane and underground coal gasification, whether by hydraulic fracturing (fracking) or other means. Sustainable development is defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs. Development of onshore oil and gas cannot be sustainable for the reasons set out below.

Justification:

- 1) *It is not sustainable to develop new sources of fossil fuels. If climate change is to be limited to 2°C, which is necessary to avoid catastrophic impacts, 80% of proven fossil fuels reserves cannot be burnt. We note that, with one quarter of the county less than 5m above sea level, Kent is very vulnerable to the rise in sea level that will result from our changing climate.*
- 2) *All water supplies in Kent are severely stressed. Fracking requires very large quantities of clean water (almost 19 million litres per frack). There is not an adequate water supply in Kent to sustain fracking.*
- 3) *Fracking produces very large quantities of polluted water which contain radioactive elements from deep underground. Water treatment plants cannot safely dispose of this waste.*
- 4) *Water supplies can be polluted by fracking due to pollutants leaking from the shale rock, or from wells drilled through an aquifer. There are many cases of water pollution from fracking documented in the USA.*
- 5) *Kent's roads are already busy with many heavy goods vehicles. Development of onshore oil or gas extraction would require many truck movements, increasing the heavy vehicle goods traffic on Kent's major and rural roads.*
- 6) *We value the peace and amenity of Kent's countryside, and oppose onshore oil and gas development that would industrialise rural Kent. Production from onshore wells is short-lived, requiring many wells to be drilled.*
- 7) *Financial analysts, the Chancellor and the onshore oil and gas industry all accept that development of shale oil and gas in the UK will not reduce the price of gas."*

1.5 It is clear from various Ministerial Statements and in more recent comments made by Government Ministers, what Government perceives as the benefits that could potentially derive from the exploration and exploitation of onshore oil and gas reserves, particularly in helping to secure the country's mid-term future energy supply as it moves towards low carbon technologies. In July 2013 the Department for Communities and Local Government produced a Planning Practice Guidance Note for onshore oil and gas which represents a material consideration in the determination of any future planning applications the County Council may receive.

1.6 Amongst other matters the guidance sets out who are the four key regulators for hydrocarbon exploration and exploitation and these are set out in the County Council's

Position Statement. It refers amongst others to the specific role of the Minerals Planning Authority (MPA) (the MPA for Kent is Kent County Council) who are responsible for the grant or refusal of planning permission for the location of any well pads and impose conditions which it considers would be necessary to ensure that the impact on the use of the land and the local amenity is acceptable. However, where it cannot be demonstrated that such impacts would be satisfactorily mitigated the County Council would have grounds for refusing a planning application. The three remaining regulators include the Department of Energy and Climate Change who issue separate licences giving consent to drill, the Environment Agency who are responsible for ensuring water resources are adequately safeguarded and the Health and Safety Executive who have the responsibility for ensuring the appropriate design and construction of the borehole, including the well casing.

1.7 The Practice Guidance Note therefore clearly defines the specific roles of the four regulatory bodies who are each required to act on the assumption that they will operate effectively within their own separate regulatory regimes. Government is confident that with such controls in place this will ensure adequate measures can be put in place to safeguard the local environment and also protect the interests of the public.

2. Conclusion

The regulatory regime government has established together with the County Council's formal Position Statement sets out how future proposals for hydrocarbon developments will be formally considered and regulated. As the MPA, Kent County Council is statutorily required to formally consider any future applications for hydrocarbon development. In doing so each application has to be determined on its own merits having regard to National Policy, Government Guidance and the development plan along with other material considerations. Whilst the petition is requesting the County Council to adopt a blanket approach against any future hydrocarbon proposals, it is clear from government policy and guidance that it is not open to MPAs to effectively pre-judge an application by adopting a policy which sets a presumption against granting consent for any such developments, neither can it 'contract out' of its statutory duties.

3. Recommendation

The Cabinet Committee is asked to note this report and comment on the issues raised in the petition.

4. Background Documents

This report refers to the e-petition hosted on the KCC website - 'Keep Kent Frack Free' and received electronically by KCC Legal & Democratic Services (available on request).

<https://democracy.kent.gov.uk/mgEPetitionDisplay.aspx?ID=280&RPID=6997377&HPID=6997377>

5. Contact details

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Appendix 1 to Item E1

A POSITION STATEMENT BY KENT COUNTY COUNCIL ON HOW ANY FUTURE PLANNING APPLICATIONS FOR HYDROCARBON EXPLORATION WILL BE FORMALLY CONSIDERED WITHIN THE WIDER REGULATORY FRAMEWORK WHICH APPLIES TO SUCH PROPOSALS

SEPTEMBER 2013

A large amount of concern has been generated at the prospect of future proposals for onshore oil and gas, particularly those relating to unconventional hydrocarbons (i.e. Shale Gas and Coalbed Methane) which have the potential to be present in large quantities within the underlying geology in Kent. Particular concerns have been expressed over hydraulic fracking, a method used to test and exploit any hydrocarbons found present (*i.e. the pumping of a mixture of water together with other materials and chemicals into the underlying strata in order to create small fractures within which oil or gas can flow towards a wellhead platform from where it can be extracted*), and the potential adverse impacts this may have on local communities where such developments take place. As a result there has been wide media coverage over the potential for such operations to cause earth tremors resulting in damage to properties and other structures together with pollution to public water supplies.

In December 2012 the RT Honourable Edward Davey MP, Secretary of State for Energy and Climate Change (S of S E C C) issued a Written Ministerial Statement announcing the outcome of investigations following noticeable earth tremors that were generated as a result of fracking activities at a site near Blackpool. Having reviewed the evidence with the aid of independent experts, and with the aid of an authoritative review of the scientific and engineering evidence, the S of S E C C concluded that appropriate controls are available to mitigate the risks of undesirable seismic activity and that such controls would be required by his Department for all future shale gas wells. On that basis in principle he was prepared to consent to new fracking proposals for shale gas, where all necessary permissions and consents are in place. Such controls are to be enforced by his Department including the need for operators to obtain consent for a fracking plan before any consent is given to any fracking proposals.

Apart from the controls to be exercised by his Department the S of S E C C also considered that the existing regulatory framework already provides the means to ensure that the industry does apply good practice throughout its operations and that it will do so consistently. In order to reinforce this existing regulatory regime he announced further steps to ensure the work of the various regulatory bodies which includes the Environment Agency and the Health and Safety Executive is well - coordinated.

Since the Ministerial Statement issued in December 2012, the Department for Communities and Local Government (DCLG) has recently published Planning Practice Guidance for onshore oil and gas which will be a material consideration in the determination of any future applications the County Council may receive relating to such developments. Amongst other matters the guidance sets out who are the key regulators for hydrocarbon extraction and their respective roles.

These are namely:

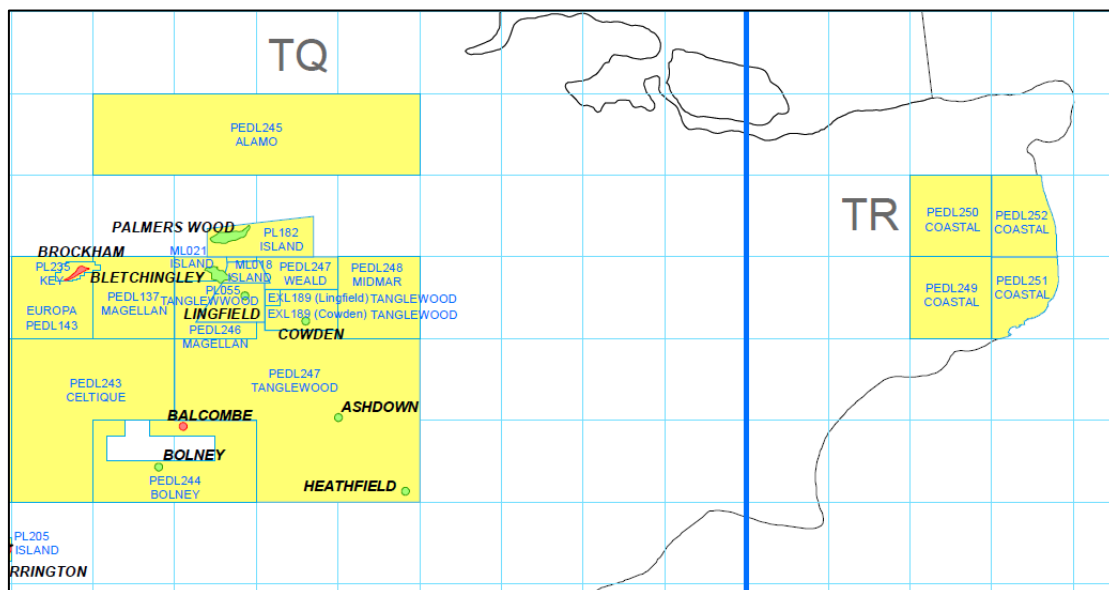
- a) **Department of Energy and Climate Change (DECC)** - who issue Petroleum Licences, give consent to drill under the Licence once other permissions and approvals are in place, and have responsibility for assessing risk of and monitoring seismic activity, as well as granting consent to flaring or venting;
- b) **Minerals Planning Authorities (MPA)** (the MPA for Kent is Kent County Council) - who grant permission for the location of any wellpads and impose conditions to ensure that the impact on the use of the land is acceptable;
- c) **Environment Agency (EA)** - who protect water resources (including groundwater aquifers), ensure appropriate treatment and disposal of mining waste, emissions to air, and suitable treatment and manage any naturally occurring radioactive materials; and
- d) **Health and Safety Executive (HSE)** - who regulate the safety aspects of all phases of extraction, and in particular has responsibility for ensuring the appropriate design and construction of a well casing for any borehole.

The Planning and regulatory regimes are therefore separate but complementary.

Onshore extraction of hydrocarbons involves three specific stages: exploration, testing and production. Prior to undertaking any of these activities oil companies first have to obtain a Petroleum Exploration and Development Licence (PEDL) from the DECC. In addition separate planning permission is also required from the MPA for each successive stage of the development.

The current PEDL's which cover parts of Kent are shown on the map extract below.

Department of Energy and Climate Change. (November 2012). *Petroleum Act 1998: Onshore Licensing*. DECC: Graphical Data Management (EDU).



Applications for hydrocarbon extraction remain highly speculative. Of all those wells drilled in Kent since the mid 1980s none have been found to contain any reserves of hydrocarbons in sufficient quantities to merit their commercial exploitation.

It is only by drilling an exploratory well for testing are companies able to ascertain with any certainty, whether there are any exploitable reserves present. It is also the case that having regard to the successive stages through which companies have to obtain separate consents from the various regulatory bodies including planning permission, any consent at the first stage granted for an exploratory well will not automatically guarantee that future applications for further exploration, testing and commercial extraction which may or may not involve fracking, would be forthcoming. Such proposals are most likely to raise issues not considered at the initial exploratory stage and which may or may not be acceptable in planning terms or be acceptable to the other regulatory bodies responsible for issuing the necessary separate consents controlling such activities. As with any planning application for development, including those relating to onshore oil and gas, each has to be considered and determined on its own merits. In principle this would involve an assessment of the extent to which, having regard to Government Guidance, National Planning Policy and Development Plan Policies along with other material considerations, it is considered with proper controls in place, the development could proceed without having any unacceptable amenity, environmental or biodiversity impacts.

The DCLG guidance sets out the principle issues that MPAs should address, bearing in mind that not all issues will necessarily be relevant at every site to the same degree. These include:

- Noise associated with the operation
- Dust
- Air quality
- Lighting
- Visual intrusion into the local setting and the wider landscape caused by the placement of any building or structure within the application area
 - Landscape character
 - Archaeological and heritage features
 - Traffic
 - Risk of contamination to land
 - Soil resources
 - The impact on best and most versatile agricultural land
 - Flood risk
 - Land stability/subsidence
- Internationally, nationally or locally designated wildlife sites, protected habitats and species, and ecological networks
 - Nationally protected geological and geomorphological sites and features
 - Site restoration and aftercare

Consistent with the DCLG guidance the National Planning Policy Framework (NPPF) requires that local planning authorities (LPAs) should focus on whether the development itself is an acceptable use of the land, and the impact of the use, rather than the control of processes or emissions themselves where these are subject to separate approval under

pollution control regimes. LPAs are required to assume that these non-planning regimes will operate effectively when considering any application.

The UK government considers hydrocarbons remain an important part of the UK's energy mix whilst the country transitions to low carbon energy supplies, and recognises that unconventional hydrocarbons such as Shale Gas and Coalbed Methane are emerging as an alternative form of energy supply. In its' view there is a pressing need to establish - through exploratory drilling - whether or not there are sufficient recoverable quantities of unconventional hydrocarbons present to facilitate economically viable full scale production. This sentiment is echoed in the NPPF which advises when determining planning applications, that LPAs should give great weight to the benefits of mineral extraction, including the economy.

The Government's position on the potential that onshore oil and gas reserves should play towards securing the UK's future energy requirements has therefore been clearly set out, against which LPAs must have due regard in the determination of individual planning applications. However, notwithstanding government's in principle support relating to unconventional hydrocarbons, given that this is a developing area of knowledge, it is very much adopting a precautionary approach towards such developments.

Kent County Council considers that with the above regulatory framework in place, this will enable full and proper consideration to be given to any future applications relating to oil or gas developments before a decision is taken on whether or not to grant permission, in order to protect the interest of the residents of Kent.