

Representation Form

This is the representation form for the Nottinghamshire Minerals Local Plan - Publication Version published by Nottinghamshire County Council. The Publication Version and the supporting information can be found online at www.nottinghamshire.gov.uk/minerals. You can submit your representations online via our interactive system by using this link.

The formal representation period is open from Friday 30th August 2019 to 4.30pm Friday 11 October. All representations must be received during this period.

If you wish to submit a representation to the Plan using this form, please complete all parts and then send it to us via email or post, using the addresses below. Please note:

- **All respondents need to provide their personal details.** It is not possible for representations to be anonymous. All responses will be made public.
- **Representations must be on the basis of the ‘soundness’ of the plan or its legal and Duty to Co-operate compliance.** Please read the guidance note on this for further information.
- **Part B of the form contains your representations.** Please fill in a separate Part B for each representation you wish you make. You only need to fill in Part A once.
- **If you are part of a group that share a common view,** it would be helpful for that group to send a single representation rather than multiple copies stating the same point. Please indicate how many people are represented and how it has been authorised (e.g. by means of a list with contact details for each person or by a committee vote). This holds the same weight as separately submitted representations.

If you have any queries please contact us as below or ring us on 0300 500 80 80.

Please return completed forms to:

☐ Planning Policy Team
County Hall, West Bridgford,
Nottingham, NG2 7QP

✉ planning.policy@nottscc.gov.uk

We must receive your representations before 4.30pm, Friday 11th October 2019.

Representations received after this cannot be accepted.

All of the representations received will be submitted with the Plan and will be examined by a planning inspector who will consider whether the Plan is ‘sound’ and complies with the legal requirements.


Nottinghamshire County Council’s Planning Policy Service is committed to protecting your privacy and ensuring all personal information is kept confidential and safe. View our privacy notice at www.nottinghamshire.gov.uk/privacy

Part A – Personal details

Office use only

Person No:

Rep Nos:

	1. Personal details	2. Agent details (where applicable)
Title	Mr	
First name	Magnus	
Last name	Gallie	
Address line 1	Friends of the Earth England, Wales and Northern Ireland	
Address line 2	The Avenue HQ Building 10-12 East Parade	
Address line 3	Leeds	
Postcode	LS1 2BH	
Email		
<i>For those replying on behalf of an organisation or group:</i>		
Organisation	Friends of the Earth (England Wales and Northern Ireland).	
Job title	Planner	

Part B – Your representation

Office use only

Person No:

Rep No:

Please read the guidance note before completing this section.

Name or organisation: Friends of the Earth (England Wales and Northern Ireland).

3. To which part of the Local Plan does this representation relate?

Policy		Site code		Map/Plan		Paragraph		Other	SO3
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4. Do you consider the identified part of the Local Plan to be:

Legally compliant?	Yes		No	X
Sound?	Yes		No	X
Complies with the Duty to co-operate	Yes		No	

Please tick as appropriate.

5. Please give details of why you consider the identified part of the Local Plan is not legally compliant or is unsound, or fails to comply with the duty to co-operate. Please be as precise as possible.

If you wish to support the legal compliance or soundness of the Local Plan or its compliance with the duty to co-operate, please also use this box to set out your comments.

Strategic Objective SO3 Climate change aims to encourage minerals developments to minimise their impacts on climate change by “encouraging efficient ways of working including reductions in transport and onsite machinery emissions”.

As highlighted in our previous representations, Section 19(1A) of the Planning and Compulsory Purchase Act (2004) puts an obligation on plan-making authorities to ensure that:

*“Development plan documents **must** (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority’s area contribute to the mitigation of, and adaptation to, climate change”*

We also note the NPPF wording within the environmental objective, which states, planning should:

“contribute to protecting and enhancing our natural, built and historic environment; including mitigating and adapting to climate change, including moving to a low carbon economy” (para 8c)

Para 150(b) of the same document states:

“new development should be planned for in ways that:...can help to reduce greenhouse gas emissions, such as through its location, orientation and design.”

In this context, while we welcome this objective, its wording underplays the urgency required in achieving mitigation and adaptation to climate change (i.e. it only “encouraging efficient ways of working” regarding mitigation and focusing principally on flood risk re adaptation).

In June 2019 legislation was passed committing the UK to becoming net zero carbon by 2050. The Committee on Climate Change’s Net Zero report¹ (May 2019) is clear about the need for all facets of the British economy, from transport, energy, industry, house building to infrastructure (et al), to help the country reach the 2050 net zero target. The report states that ‘most sectors will need to reduce emissions close to zero without offsetting’ (pg 11; 2019) to achieve this aim. We see no reason why mineral extraction should be omitted from these aims.

To make the objective consistent with this recent change to law (and national government policy); compliant with the amendment to the PCPA 2004 and enable delivery of sustainable development (NPPF para 35 d), alternative wording should be used to ensure aim of the objective and its accompanying wording recognise these recent legislative and policy priorities.

We would ask that the plan's policies be reframed around the need for the minerals industry as a whole to contribute to the UK achieving the net zero target by 2050. The CCC estimates that adherence to this will meet our Paris Agreement requirements to limit the increase in global average temperature to well below 2°C and to pursue efforts to limit the rise to 1.5°C. Such a commitment in the context of the approach to minerals, will require the council revisiting these policies with this critical objective in mind.

As a society and related to mineral extraction, we can no longer just assume a business as usual approach anymore, especially when drawing up local plans. The CCC's 2019 report states that *'This target is only credible if policy to reduce emissions ramps up significantly across all levels and departments of government'* (p16). As this plan takes us to 2036 (just 14 years before this target is meant to be reached), it's imperative the county council delivers more compliant and forward-thinking policies to tackle climate change.

A focus on policies covering those least compliant forms of mineral extraction (ie unconventional hydrocarbons) would be a start (as we have suggested changes later on to make those relevant policies sound). Our suggested amendments to the wording of strategic objective 3 are below.

6. Please set out what change(s) you consider necessary to make the identified part of the Local Plan legally compliant or sound, in respect of any legal compliance or soundness matters you have identified above. (please note that non-compliance with the duty to co-operate is incapable of modification at examination). You will need to say why each modification will make the Local Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.

(Continue on a separate sheet/expand box if necessary)

SO3: Addressing climate change

Minimise and mitigate the impact of mineral developments on climate change **[INSERT] with the aim of helping achieve compliance with the government's 2050 net zero GHG target.** encouraging **[INSERT] This will be achieved by ensuring** efficient ways of working, including reductions in transport and onsite machinery emissions. **[INSERT] The 'great weight' attached to mineral extraction should be balanced against the need for compliance with the binding 2050 target and climate change considerations within the NPPF.**

[INSERT] All minerals proposals must reduce existing and future **[INSERT] vulnerability** flood risks linked to, and aid in by **[INSERT] ensuring adequate** adaptation to climate change through good quarry design and operation, water management, location of plant and appropriate restoration, particularly for quarries in the Trent Valley flood plain. **[INSERT] Minerals proposals must** contribute to climate change adaptation by relinking fragmented habitats and creating new areas of habitat to allow the migration and dispersal of species. **[INSERT] Tree planting led restoration of minerals sites, where appropriate, would help meet the UKs net zero 2050 target (as per the CCC's recommendations) and will be encouraged².**

Please note: In your representation you should provide succinctly all the evidence and supporting information necessary to support your representation and your suggested modification(s). You should not assume that you will have a further opportunity to make submissions.

After this stage, further submissions may only be made if invited by the Inspector, based on the matters and issues he or she identifies for examination.

Part B – Your representation

Office use only

Person No:

Rep No:

Please read the guidance note before completing this section.

Name or organisation: Friends of the Earth (England Wales and Northern Ireland).

3. To which part of the Local Plan does this representation relate?

Policy		Site code		Map/Plan		Paragraph	3.2-3.6	Other	
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4. Do you consider the identified part of the Local Plan to be:

Legally compliant?	Yes		No	X
Sound?	Yes		No	X
Complies with the Duty to co-operate	Yes	X	No	

Please tick as appropriate.

5. Please give details of why you consider the identified part of the Local Plan is not legally compliant or is unsound, or fails to comply with the duty to co-operate. Please be as precise as possible.

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Exceptions to the presumption

Friends of the Earth England Wales and Northern Ireland agrees that as stated in para 3.2 *“Planning policies and decisions should actively guide development towards sustainable solutions that reflect the local character, needs and opportunities of each area.”*

With regard to the application of the NPPF presumption in favour of sustainable development, we suggest emphasis should also be given to its potential exclusions, especially for European protected sites (i.e. Para 177 of the NPPF – which states):

“The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.”

Acknowledgement of this wording would provide additional peace of mind to local residents that the presumption does not override European legislation designed to protect the most sensitive areas in the county from incompatible minerals workings – for example, hydraulic fracturing.

A missed opportunity to draw-up effective local policies

NPPF Para 12 provides additional caveats against the presumption and is also a reminder that more generally this plan is an opportunity to formulate local policies that, where adequately justified, can go beyond the broader themes presented in national policy and Planning Practice Guidance (PPG). The latter is especially pertinent given that much of OPPG is over 5 years old. NPPF Para 12 states:

“The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted.”

Since the Issues and Option stage of this plan last year, a number of mineral local plans and hydrocarbon policies have been adopted and gone through Examination in Public (EIP). These including Kirklees Local Plan (adopted),

East Riding Minerals Plan (Inspector's report published) and North Yorkshire Minerals and Waste Joint Plan NYMWJLP (post EiP but not yet adopted). These plans include policies that recognise the unique impacts of unconventional oil and gas exploration to the environment, residents and local economy.

The adopted Kirklees Local Plan Strategy provides for hydrocarbon proposals to have a net zero impact on climate change; while the NYMWJLP provides for minimum set-back distances of 500m and maximum well pad densities. East Riding Minerals Plan provides for prescriptive climate change wording that developments must adhere to. We recommend Notts CC adopts a similar approach. See policy changes proposed here and elsewhere in our response.

NCC should make more of this opportunity to introduce more tailored policies that recognise the real impacts unconventional hydrocarbon development can have on the environment, local communities (re the well-publicised moratorium on fracking at the Preston New Road site due to induced seismicity) and beyond. With climate change having local as well as global impacts, the correct response is a move away from fossil fuels rather than continuing to plan for their extraction and use. Without more effective application of national planning policy translated to address the local context, we would query the effectiveness of this plan in ensuring the environment and local communities are adequately protected against potentially long-term (both 'temporary' and long lasting) impacts of unconventional hydrocarbon extraction.

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Para 3.4: Planning applications that accord with the policies in this Local Plan (and, where, relevant, with policies in other plans which form part of the development plan) will be approved unless material considerations indicate otherwise. **[INSERT] The presumption however does not apply in certain instances*, nor does it change the statutory status of this development plan as the starting point for decision making.**

**Such as where a project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site*

Para 3.6: All new mineral development proposals will be expected to be planned from the outset **[INSERT] with a view to minimising greenhouse gas emissions and** to avoid increased vulnerability to the range of impacts resulting from climate change and care will need to be taken to ensure any potential risks can be managed through suitable adaptation measures.

Please note: In your representation you should provide succinctly all the evidence and supporting information necessary to support your representation and your suggested modification(s). You should not assume that you will have a further opportunity to make submissions.

After this stage, further submissions may only be made if invited by the Inspector, based on the matters and issues he or she identifies for examination.

Part B – Your representation

Office use only

Person No:

Rep No:

Please read the guidance note before completing this section.

Name or organisation: Friends of the Earth (England Wales and Northern Ireland).

3. To which part of the Local Plan does this representation relate?

Policy	SP3	Site code		Map/Plan		Paragraph		Other	
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Sound?	Yes		No	X
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Please tick as appropriate.

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Friends of the Earth welcomes the inclusion of this strategic policy and note its attempt to incorporate the aims of NPPF para 20(d) - which states:

“Strategic policies should set out an overall strategy for the pattern, scale and quality of development, and make sufficient provision for:

...planning measures to address climate change mitigation and adaptation.”

However, similar to Strategic Objective 3, the policy wording of SP3 needs tightening up to ensure compliance with the NPPF, as well as legal requirements of section 19(1A) duty (Planning and Compulsory Purchase Act (2004)) which states:

“Development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority’s area contribute to the mitigation of, and adaptation to, climate change”

Sc19 1(A) wording

We would suggest more emphasis is put on the **need** for developers/operators to meet these policy and legal requirements. In the wake of climate emergencies announced by councils across the UK, a motion passed by Parliament³ and legislation to bring UK greenhouse gas emissions to net zero by 2050⁴ (enacted 27 June 2019), the imperative for the plan’s policies - when read as a whole - to adhere to wording of the section 19(1A) duty could not be clearer.

Net Zero

Linked to our comments in policy MP12 below, it is vital that this plan takes into account policy precedents (see Kirklees Local Plan) and evident shifts in the legislative and policy arena – which see the UK government committing to a net zero target and the Committee on Climate Change advising that ‘all sectors’ need to play their part in helping to reduce emissions⁵. Kirklees Local Plan policy LP42 includes a requirement for a net zero impact for minerals workings. We suggest this plan should emulate Kirklees’ approach to help ensure the county’s policies

are aligned with and go beyond UK Carbon Budgets. We recommend the Notts Minerals Plan should adopt a net zero target and set out measures necessary to achieve this. See our recommended policy amends below.

Cumulative

Our amendments below make this the policy sound by including reference cumulative climate change, re 2017 EIA regulations which require consideration of **significant “climate” effects** – including “**cumulative**... *effects of the development*. (Schedule 4 – 2017⁶). [our bold]. Neither draft policy DM8 Cumulative Impact nor its justification section makes reference to cumulative climate change and we feel such recognition is needed to satisfy the Sc. 19(1A) duty. This approach was supported at the EiP for the North Yorkshire Minerals and Waste Joint Plan following our intervention and we see no reason why such a consideration should not be included here, bearing in mind the industry’s aims to develop numerous well pads across in relevant PEDL areas across Nottinghamshire and the UK.

(N.B. An alternative option would be to tweak policy DM8 to include such a reference to cumulative climate change linked to unconventional hydrocarbon extraction).

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(Continue on a separate sheet/expand box if necessary)

Policy SP3 – Climate Change

All minerals development, including site preparation, operational practices and restoration proposals should **[INSERT] must** minimise their impact on the causes of climate change for the lifetime of the development. Where applicable development should **[INSERT] must** assist in the reduction of vulnerability and provide resilience to the impacts of climate change by:

a) Being located, designed and operated to help reduce greenhouse gas emissions, withstand unavoidable climate impacts and move towards a low-carbon economy; **[INSERT]**

b) For hydrocarbon extraction, applications should specifically address the potential for cumulative impacts of development upon climate change and, where appropriate, propose such mitigation and adaptation measures as may be available.

cb) Avoiding areas of vulnerability to climate change and flood risk. Where avoidance is not possible, impacts should be fully mitigated;

de) Developing restoration schemes which will contribute to addressing future climate change adaptation, including through biodiversity and habitat creation, carbon storage and flood alleviation.

[INSERT]

e) Proposals should demonstrate how they will have a net zero impact on climate change.

Please note: In your representation you should provide succinctly all the evidence and supporting information necessary to support your representation and your suggested modification(s). You should not assume that you will have a further opportunity to make submissions.

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Part B – Your representation

Office use only

Person No:

Rep No:

Please read the guidance note before completing this section.

Name or organisation: Friends of the Earth (England Wales and Northern Ireland).

3. To which part of the Local Plan does this representation relate?

Policy	MP12	Site code		Map/Plan		Paragraph		Other	
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4. Do you consider the identified part of the Local Plan to be:

Legally compliant?	Yes		No	X
Sound?	Yes		No	X
Complies with the Duty to co-operate	Yes		No	

Please tick as appropriate.

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Our previous representations to the Issues and Options consultation (2018) provided detail into how the planning impacts of hydraulic fracturing are comparatively worse compared to conventional forms of oil and gas exploration/extraction. Such disparities for fracking include:

- longer drilling timeframes;
- larger drilling rigs (60m+);
- greater numbers and frequencies of HGV/tanker movements (re carrying large amounts of water to and wastewater away from the site; as well as materials and plant to accommodate multiple stages of fracking);
- longer periods of 24-hour drilling activity due to deeper drill depths compared to conventional drilling (→ prolonged drilling, lighting, noise and HGV vehicle movements);
- greater numbers of and larger well pads⁷ required as multiple boreholes are needed to maintain flow pressure;
- heightened risks to ground water quality as fracking fluids are injected at depth into strata and with flowback rates varying between 15-70% depending on geology;
- increased climate change impacts arising from fugitive emissions; and
- heightened risk of induced seismicity (linked to the injection of large volumes of fracking fluid and interaction with fault lines) the impacts and fall-out of which have led to a moratorium on fracking at Preston New Road, Lancashire⁸.

Having considered the increased impacts hydraulic fracturing presents, we note that a number of other newly adopted and more advanced minerals plans include policies specifically worded to ensure the protection of environment and local communities. These plans include West Sussex Minerals and Waste Plan (adopted 2018); East Riding and Hull Joint Minerals Local Plan (post EIP and Inspector's report published); and the North Yorkshire Minerals and Waste Joint Plan (NYMWJP) (post EIP, awaiting Inspector's report). These include policies that:

- **NYMWJP:** a minimum set-back distance of 500m from sensitive receptors; maximum well pad densities; consideration of cumulative climate change and a local definition of hydraulic fracturing to ensure the impacts of 'non-high volume fracturing' are captured also (see next paragraph for more detail on this point).
- **East Riding and Hull Joint Minerals Plan:** includes S19(1A Duty) compliant wording on climate change mitigation/adaptation
- **West Sussex Minerals Plan:** includes specific restrictions for limiting such activity in groundwater protection zones 2 and 3.

Given these best practice policy examples above, and the moratorium of fracking activity at Preston New Road resulting from August's 2.9ML induced seismic event, it's quite surprising that draft policy MP12 fails to provide more detailed policy wording to address these issues and fails to recognise that the impacts of unconventional and conventional hydrocarbon can differ significantly. We note the justification wording defends this approach, citing: *"no justifiable reason in planning policy terms to separate shale gas from other hydrocarbon development... Separate legislation also identifies certain requirements in relation to protected groundwater areas or other protected areas"* (para 4.108). We view this approach is unsound, as it ignores fracking's exacerbated impacts compared to conventional hydrocarbon extraction and the very obvious loopholes in legislation.

Associated Hydraulic Fracturing vs non-Associated Hydraulic Fracturing

While legislation and national policy define 'protected areas' (and 'other protected areas') where hydraulic fracturing is not allowed (underneath⁹ or at the surface^{10,11}) such restrictions **only apply** to Relevant/Associated Hydraulic Fracturing (AHF) proposals. The most recent definition of AFC is provided at para 3.20 of the government's formal response to the onshore hydraulic fracturing consultation: *'any operations which use more than 1,000 cubic metres of fluid at any single stage, or expected stage or 10,000m³ in total'* (see endnote 11). The point is that the very legislative and government policy safeguards NCC rely upon to justify a very sparse approach to unconventional hydrocarbons in Policy MP12 do not provide protections for 'protected areas' from non-AHF (i.e. or smaller scale fracking) schemes. The current approach - in failing to define fracturing that encompasses both AHF and non-AHF and/or additional surface protections - potentially leaves a range of NCC's 'protected areas' exposed to non-AHF's impacts. This is despite those impacts between AHF and non-AHF being almost identical.

Policy MP12 is *unsound* (not justified) and fails to provide adequate surface protections in 'protected areas' – including SSSIs, European sites and Ramsar sites - for non-AHF schemes. An example of how this can be overcome is by way of the NYMWJP which has proposed its own definition of hydraulic fracturing¹² to cover all fluid volumes.

Local Protections

More tailored policy wording would help address the intensified planning impacts of fracking compared to conventional drilling and extraction, especially at the exploratory stages (see above and previous representations). Here, there is potential for simultaneous 24 hour drilling and hydraulic fracturing activity, frequent HGV movements (plant/rig equipment/water/waste water etc), fugitive emissions, 24 hour noise, air quality, lighting impacts – which will exist in combination at the site. These are all in addition to the increased risks of induced seismicity. While national policy calls for such planning impacts to be made 'acceptable', we propose a 500m surface buffer to ensure that local residents are more than adequately protected from impacts of these industrial operations. This policy approach originates from the NYMWJP, as advocated by the HCLG Select Committee as part of their Inquiry into fracking guidance.¹³ Their report states:

'Given that the English planning system is plan-led, Mineral Planning Authorities should be free to adapt their Local Plans as they see fit as long as they do not arbitrarily restrict fracking developments. It is essential that Mineral Planning Authorities have the right to put conditions in their Local Plans which can be justified having proper regard to local circumstances.' (pg 71 – 2018).

At EIP this year, the Inspector was given evidence that demonstrated how directional and lateral drilling, key components of fracking drilling methodologies, would enable access shale resources, despite the operation of the proposed 500m buffer. It is also worth noting that last year, INEOS used this drilling methodology as a means to justify their strategy to access extensive shale reserves under the North Yorkshire National Park, as they would not actually require well pads at the surface of the park's boundary¹⁴. As such, these methodologies should ensure a 500m buffer is not overly restrictive to operators.

Induced Seismicity

Induced seismicity is now also a major issue for fracking and represents a key justification for more detailed policy wording (or a separate policy). While OPPG suggests that induced seismicity is within the remit of OGA (namely the Traffic Light System or TLS), the same guidance also states quite clearly that:

*'Whilst these issues may be put before mineral planning authorities, they should not need to carry out their own assessment as they can rely on the assessment of other regulatory bodies. **However, before granting planning permission they will need to be satisfied that these issues can or will be adequately addressed by taking the advice from the relevant regulatory body.**'* (Paragraph: 112 Reference ID: 27-112-20140306 - Revision date: 06 03 2014)

We would like to draw NCC's attention to events which have taken place at the Preston New Road (PNR) fracking site in Lancashire. During the application stages, its operators (Cuadrilla) had stated that with embedded mitigation (such as seismic monitoring arrays and the TLS) the upper limit of 1.5ML would never be breached. Their original planning statement¹⁵ also stated:

The seismic events induced by hydraulic fracturing do not typically exceed magnitude 0 ML and very rarely exceed 0.5 ML. Data from the surface array will be used to mitigate the level of induced seismicity from hydraulic fracturing operations so that they are below 1.5ML.

As has clearly been demonstrated by August's 2.9ML seismic event, it's obvious the TLS and other forms of embedded mitigation have failed to mitigate the very real impacts of induced seismicity resulting from fracking in the UK. By way of comparison, it was earthquakes of 1.5 ML and 2.3ML associated Cuadrilla's Preese Hall fracking site in April and May 2011 that led to a moratorium being introduced for fracking by the then Coalition Government. Last August's 2.9ML event was significantly more powerful than this and so our concern is warranted and justified.

We consider that future risks of seismicity and the lack of effectiveness of the TLS to warrant enough concern to bring into question whether MPAs can "*be satisfied*" with the OGA's TLS mitigation. We would recommend that any oil and gas policy include caveats to this effect. We would suggest that future fracking proposals should be supported by information to demonstrate the known location of any faults and a detailed assessment of the potential for induced seismicity to occur as a result of the proposed development. This requirement would make the plan justified in light of all available evidence – including lessons learned from live fracking sites, such as PNR in Lancashire.

Climate Change

Linked to our comments to draft policy SP3 above, it seems since last year's Issues and Options consultation that other progressive fracking policies have been adopted elsewhere – namely in Kirklees. It is vital that this plan takes into account such policy precedents and evident shifts in UK legislative and policy arenas; with the UK government committing to a net zero target and the Committee on Climate Change advising that all sectors need to play their part in helping to reduce emissions¹⁶. With adopted Kirklees Local Plan policy LP42 including a requirement for a net zero impact for minerals developments, this plan should also aim higher. By seeking similar net zero requirements, the policy would ensure evident risks of fugitive emissions linked to fracking (production)¹⁷ are addressed, and NCC would be helping ensure its policies are aligned with UK Carbon Budgets (as per the Committee on Climate Change's 3 tests). We recommend the Notts Minerals Plan adopts such a target and sets out measures necessary to achieve this. See our recommended policy amendments below.

Restoration

Our amendments below include more NPPF (2019) compliant wording linked to restoration, which calls for: "*restoration and aftercare at the earliest opportunity*" – a point missing from the policy wording of draft policy DM12: 'Restoration, aftercare and after-use'. This emphasis is required for unconventional operations, especially in the context of fugitive emissions, to ensure boreholes, well heads and pads are restored in a timely manner, rather than left 'plugged' and in-stasis until the operator has raised further venture capital finance for another frack. By incorporating this optional restoration bond requirement - similar to what is proposed in the North Yorkshire Minerals and Waste Joint Plan – we feel the policy is made sound (justified). Such justification is based on the less certain funding mechanisms, namely investment/venture capital¹⁸ - which it is obvious this novel industry relies so heavily upon - and will ensure full restoration can be achieved even if a company goes into liquidation or its funders sell up. Evidence of this occurring can be found from the US, where even with government secured restoration bonds, the cost of clean-up and restoration is deemed too high and the wells are left abandoned – known as orphan wells¹⁹.

The need for a restoration bond caveat is especially pertinent for an industry where operators (i.e. the oil and gas drilling companies themselves) are bought and sold on a regular basis (see Third Energy's sale to York Energy²⁰ – a subsidiary of Alpha Energy in the US which now has ownership of the Kirby Misperton's fracking site in North Yorkshire). Such a bond is therefore justified in planning terms in light of fracking being such a speculative industry, although again it maintains flexibility in not being applicable in every instance.

Other Comments on the Introduction/Justification Section for Policy MP12

Coal Bed Methane

Para 4.100 – The information provided on coal bed methane seems limited, especially compared to the previous version of the plan which provided useful further insight. The current submission version simply states: "*coal bed methane extraction involves removing methane directly from the coal seam without mining the coal*". No other information is provided about the extraction process, and such the plan fails to provide the public with adequate enough information as to what will occur underground. As it's unlikely that non-planners would be familiar with PPG, we feel additional detail (either from PPG or wording from the previous plan) be included to enable at least some basic knowledge about the methodologies involved.

Shale Gas

The wording of paragraphs in the Introduction/Justification sections for policy MP12 – regarding shale gas - fail to take into account recent changes in law, national policy, academia and evidence on the ground (e.g. seismic event mentioned above). When reading the current draft text, there seems to be a rigid adherence to out of date PPG wording and principles for minerals (all written in 2014), rather than any consideration of more recent developments

that justify a more tailored policy approach. While consistency to national policy is a soundness test in itself, there are exceptions to the rule, especially where newer evidence justifies a different approach.

Our text amendments (see below) include references to the removal of para 209a from the NPPF^{21,22}; the publication of recent University of Nottingham/BGS data²³ which infers much reduced volumes of gas in the Bowland Shale, as well as lessons learned from operational fracking sites in the UK (specifically events leading to the current moratorium on fracking activity at the Preston New Road).

As it stands, the introductory section for shale lacks sufficient detail and reference to the current state of play of fracking in the UK right now. With these factors included, the introduction better frames and justifies the more prescribed policy approach to fracking – as suggested in our policy amendments below.

Finally, we would point out that facilitating the delivery of mass-scale fossil fuel extraction is in direct contradiction to the climate change paragraphs of the NPPF (paras 149 and 150), as well as recently enacted legislation to make the UK net zero carbon by 2050. The ‘great weight’ which the NPPF accords to mineral exploration and extraction must be balanced against paragraphs 148-154, specifically 149 which states:

*‘Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, **and the risk of overheating from rising temperatures.**’* [our bold emphasis]

The current draft wording fails to reflect these other key climate change paragraphs of the NPPF, which with the quashing and subsequent removal of para 209(a), are also relevant when detailing the national policy context and drafting unconventional hydrocarbon policies. It is worth reiterating that with the CCC’s net zero 2050 recommendation (and government legislation enacting this target), local plans should realistically go beyond the environmental NPPF objective of moving to a low carbon economy; which is now superseded by the 2050 commitment.

Our amends to policy MP12, as well as to its introductory and justification sections are below.

6. Please set out what change(s) you consider necessary to make the identified part of the Local Plan legally compliant or sound, in respect of any legal compliance or soundness matters you have identified above. (please note that non-compliance with the duty to cooperate is incapable of modification at examination). You will need to say why each modification will make the Local Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.

N.B. FOEWNI are aware that in some instances other draft DM policies of the plan address some of our concerns to fracking (e.g. relating to transport and landscape et al). We have taken these considerations into account where applicable.

Policy MP12: Oil and Gas

[INSERT] Conventional

1. Exploration and appraisal of **[INSERT] conventional** oil and gas will be supported, provided the site and equipment:

- a. Are not located in a protected area other than in exceptional circumstances where **[INSERT] both site infrastructure and associated impacts** does not compromise the reasons for the designation and the need for development can be demonstrated; and
- b. Are located where this will not have an unacceptable environmental impact.

2. The commercial production of **[INSERT] conventional** oil and gas will be supported, provided the site and equipment:

- a. Are not located in a protected area other than in exceptional circumstances where this does not compromise the reasons for the designation and the need for development can be demonstrated; and
- b. Are located at the least sensitive location taking account of environmental, geological and technical factors.

3. Proposals at each stage must provide for the restoration and subsequent aftercare of the site, whether or not oil or gas is found.

[INSERT] Unconventional

1. Exploration and appraisal of unconventional oil and gas (including all volumes of fracking activity) will be supported, provided the site and equipment:

- a. Are not located at the surface of protected areas (including SSSIs, European Protected and Ramsar sites);
- b. Are located at the least sensitive location taking account of environmental, geological and technical factors;
- c. Avoid harm to the environment or communities. Where harm is outweighed by the need for the development, the impacts on communities and the environment including (but not limited to) noise, dust, visual intrusion, transport, and lighting, air quality, induced seismicity, historic and built environment and the water environment can be minimised, and/or mitigated to an acceptable level;
- d. Are located at least 500m away from the nearest residential property. This distance may be reduced where justified on a case by case basis;

In addition:

- e. No unacceptable impacts would arise from the on-site storage or treatment of hazardous substances and/or contaminated fluids above or below ground;
- f. Hydraulic fracturing in Groundwater Source Protection Zones 2 and 3 will not be permitted unless it can be demonstrated there will be no unacceptable impacts on groundwater. Hydraulic fracturing will not be permitted above 1,200 metres in Groundwater Protection Zone 1; and
- g. Restoration and aftercare of the site to a high-quality standard would take place at the earliest opportunity (in accordance with Policy DM12) whether or not oil or gas is found. The Mineral Planning Authority may require provision of a financial guarantee, appropriate to the scale, nature and location of the development proposed, in order to ensure that the site is restored and left in a condition suitable for beneficial use following completion of the development.
- h. Proposals involving hydraulic fracturing should be accompanied by an air quality monitoring plan and Health Impact Assessment.

2. The commercial production of unconventional oil and gas (including all volumes of fracking activity) will be supported, provided the site and equipment:

- a. they accord with (a-h) above;
- b. no unacceptable impacts would arise from the transport, by vehicle or other means, of oil/gas, water, consumables, and wastes to or from the site;
- c. Proposals will only be acceptable if they can demonstrate a net zero impact on climate change.

Introduction Section: MP12

Coal bed methane

4.100. Coal bed methane extraction involves removing methane directly from the coal seam without mining the coal. The industry is most developed in the USA, whilst in the UK and Europe it remains in its infancy. **[INSERT] Coalbed methane is obtained by drilling into a coal seam, lowering the local pressure and collecting the gas that is released as a result. The gas extraction process does not detrimentally affect the physical properties of the coal or prejudice it being worked at some later date by conventional mining methods. Methane can be extracted from coal seams that would be unsuitable or uneconomic to mine. Alternatively, it can be used to remove gas before mining, helping to reduce methane hazards associated with coal mining. Unlike underground coal mining, extraction of the gas does not cause subsidence of the land surface.** Interest is however developing...

Shale gas

4.102. Vast quantities of methane exist in many shale deposits worldwide and recent technological advances have now made it economically possible to exploit them. The technology and exploitation of shale gas is most advanced in the USA where it has gone through a period of very rapid development and is now exploited on a very large scale. **[INSERT] In 2013 the BGS suggested the UK also has a significant, but largely untested potential shale gas resource: in Nottinghamshire, such potential shale gas resources are thought to exist in deeply buried shale deposits found in the far south and north of the County. Research published this year by the University of Nottingham and the British Geological Survey (BGS)²⁴ however found that these previous BGS figures estimated the UKs shale gas resource as opposed to the actual reserve. Previous estimates suggested that UK shale gas could potentially provide up to 50 years' worth of current gas demand, however the latest University of Nottingham research has found it more likely to correspond to less than 10 years of supply at current demand. It is therefore questionable whether further shale exploration/ extraction is able to meet the UK's energy needs or benefit the economy as previously thought.**

[INSERT] 4.103 Shale gas extraction involves vertical and horizontal drilling to reach the shale rock formation. A mixture of water, sand and additives is then pumped under high pressure into the bore hole to fracture the rock (a process known as 'fracking'). The gas trapped in the rock is then released and can be collected. **[INSERT] 4.104** Exploratory drilling and hydraulic fracking of this resource has slowly progressed in the UK, with operations having been banned in 2011 due to a 2.3ML seismic event at Preese Hall, Lancashire – leading to a subsequent moratorium by BEIS (then DECC). Since being lifted in 2012²⁵, further fracking operations have gained consent, with works commencing in 2017, again in Lancashire and exploratory drilling in South Yorkshire, Derbyshire and here in Nottinghamshire. Since commencing hydraulic fracturing, the Preston New Road in Lancashire scheme has led to significant instances and levels of induced seismicity, resulting in a 2.9ML quake event for residents around the site. This has again led to a

suspension of operations until further notice (instigated by the Oil and Gas Authority - OGA).

Justification

4.108. It is considered that there is no [INSERT] that there are justifiable reasons in **planning policy terms to provide more prescribed policy detail to address the exacerbated impacts of hydraulic fracturing** ~~separate shale gas from other~~ within [INSERT] **the hydrocarbon [INSERT] policies** development...

[INSERT] While separate legislation also identifies certain requirements in relation to protected groundwater areas or other protected areas³, **[INSERT] the policy framework provides additional safeguards linked matters such as groundwater, distances, restoration (et al) to ensure NCC's areas are protected from the range of impacts of fracking (both AHF and non AHF).**

Please note: In your representation you should provide succinctly all the evidence and supporting information necessary to support your representation and your suggested modification(s). You should not assume that you will have a further opportunity to make submissions.
After this stage, further submissions may only be made if invited by the Inspector, based on the matters and issues he or she identifies for examination.

Part B – Your representation

Office use only
 Person No:
 Rep No:

Please read the guidance note before completing this section.

Name or organisation: Friends of the Earth (England Wales and Northern Ireland).

3. To which part of the Local Plan does this representation relate?

Policy		Site code		Map/Plan		Paragraph		Other	X
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4. Do you consider the identified part of the Local Plan to be:

Legally compliant?	Yes		No	X
Sound?	Yes		No	X
Complies with the Duty to co-operate	Yes	X	No	

Please tick as appropriate.

5. Please give details of why you consider the identified part of the Local Plan is not legally compliant or is unsound, or fails to comply with the duty to co-operate. Please be as precise as possible.

If you wish to support the legal compliance or soundness of the Local Plan or its compliance with the duty to co-operate, please also use this box to set out your comments.

In addition to our points above, below are a couple of errors spotted when reading the draft document:

Para 5.5 – Error: refers to the 2011 EIA regulations, when 2017 regs are now in force (re legal compliance/consistency).

Para 5.58 – Error: refers to Conservation of Habitats and Protected Species Regs 2010 (which are superseded by the 2017 regs (re legal compliance/consistent)).

6. Please set out what change(s) you consider necessary to make the identified part of the Local Plan legally compliant or sound, in respect of any legal compliance or soundness matters you have identified above. (please note that non-compliance with the duty to co-operate is incapable of modification at examination). You will need to say why each modification will make the Local Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.

(Continue on a separate sheet/expand box if necessary)

Ensure the plan refers to correct regulation dates – which in both instances are 2017.

Please note: In your representation you should provide succinctly all the evidence and supporting information necessary to support your representation and your suggested modification(s). You should not assume that you will have a further opportunity to make submissions.
After this stage, further submissions may only be made if invited by the Inspector, based on the matters and issues he or she identifies for examination.

7. If your representation is seeking modification to the plan, do you consider it necessary to participate in the examination hearing session(s)?


No, I do not wish to participate in the hearing session(s)	
Yes, I wish to participate in the hearing session(s)	YES

Please note that while this will provide an initial indication of your wish to participate in the hearing session(s), you may be asked at a later point to confirm your request to participate.

8. If you wish to participate in the hearing session(s), please outline why you consider this to be necessary:

To provide additional reasoning and justification to our arguments and proposed changes to the plan. This will allow us to put our points across to both the Inspector and council's policy team.

***Please note** the Inspector will determine the most appropriate procedure to adopt to hear those who have indicated that they wish to participate in hearing session(s). You may be asked to confirm your wish to participate when the Inspector has identified the matters and issues for examination.*

Signature		Date	September 2019
Name	Magnus Gallie MRTPI		

¹ 'Net Zero – The UK's contribution to stopping global warming' - <https://www.theccc.org.uk/publication/net-zero-the-uks-contribution-to-stopping-global-warming/>
² See page 156 – footnote 1: ('Increasing the tree planting rate from 30,000 hectares per year in the Further Ambition scenario to 50,000 hectares per year with the Speculative option would save an additional 11 MtCO2e in 2050. By 2050 UK forest cover would be increased to 19%')
³ <https://www.parliament.uk/business/news/2019/may/mps-debate-the-environment-and-climate-change/>
⁴ <https://www.gov.uk/government/news/uk-becomes-first-major-economy-to-pass-net-zero-emissions-law>
⁵ See endnote 1
⁶ http://www.legislation.gov.uk/ukxi/2017/571/pdfs/ukxi_20170571_en.pdf
⁷ <https://www.theguardian.com/environment/2018/apr/25/uk-needs-6000-shale-gas-wells-to-fill-50-of-imports-study-says>
⁸ <https://www.ogauthority.co.uk/news-publications/news/2019/hydraulic-fracturing-at-preston-new-road-suspended/>

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- ⁹ The Onshore Hydraulic Fracturing (Protected Areas) Regulations 2016 https://www.legislation.gov.uk/ukxi/2016/384/pdfs/ukxi_20160384_en.pdf
- ¹⁰ The Petroleum Licensing (Exploration and Production) (Landward Areas) (Amendment) (England and Wales) Regulations 2016 http://www.legislation.gov.uk/ukxi/2016/1029/pdfs/ukxi_20161029_en.pdf
- ¹¹ Surface Development Restrictions to Onshore Fracturing (Government Response to consultation) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/532428/Government_Response_Surface_Restrictions_for_Hydraulic_Fracturing.pdf
- ¹² We note while last year's Fracking WMS aimed to discourage such local definitions, discussion from the NYMWJP EIP hearings (Jan-March 18 and Jan 2019) seemed to conclude such an approach is justified in light of the gaps within national policy and legislation (re surface development and non-AHF). We also note that government has **not** formally responded to the Ministry for Housing, Communities and Local Government's Select Committee findings into Fracking Guidance (that also endorsed the NYMWJP approach for local protections); despite it being almost 18 months since these sessions were originally held in 2018.
- ¹³ HCLG Select Committee Report <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/767/767.pdf>
- ¹⁴ Fracking Firm refuse to rule out fracking under the North York Moors. <https://www.yorkshirepost.co.uk/news/latest-news/exclusive-energy-firm-refused-to-rule-out-fracking-under-north-york-moors-1-8995954>
- ¹⁵ Para 4.2 – Cuadrilla's Planning Statement: <http://planningregister.lancashire.gov.uk/PlanAppDisp.aspx?recno=6586>
- ¹⁶ See endnote 1
- ¹⁷ See Committee on Climate Change's report into fracking's compatibility with UK Climate Budgets <https://www.theccc.org.uk/2016/07/07/exploitation-of-onshore-petroleum-requires-three-key-tests-to-be-met-ccc-says/>
- ¹⁸ We note the operator Cuadrilla is owned by [A.J. Lucas](#) (47%) and the Anglo-American equity firm [Riverstone Holdings](#) (45%), while Cuadrilla employees own the remaining 8%.
- ¹⁹ <https://oilprice.com/Energy/Energy-General/Youre-Footing-The-Bill-For-Bankrupt-Shale-Drillers.html#>
- ²⁰ <https://www.third-energy.com/sites/default/files/Third%20Energy%20press%20release%20250419.pdf>
- ²¹ <https://www.leighday.co.uk/LeighDay/media/LeighDay/documents/Fracking/Stephenson-v-Sec-State-for-Housing-Communities-QBD-6-3-19.docx>
- ²² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810197/NPPF_Feb_2019_revised.pdf
- ²³ <https://www.nature.com/articles/s41467-019-11653-4>
- ²⁴ University of Nottingham website: <https://www.nottingham.ac.uk/news/ukshalegas> and the Guardian: <https://www.theguardian.com/business/2019/aug/20/uk-shale-gas-reserves-may-be-six-times-less-than-claimed-study>
- ²⁵ See Ed Davey Statement (DECC) <https://www.gov.uk/government/speeches/written-ministerial-statement-by-edward-davey-exploration-for-shale-gas>