

IN THE MATTERS OF THE INFRASTRUCTURE ACT 2015 (s.50), THE PETROLEUM ACT 1998 (s.4B) AND THE PLANNING AND COMPULSORY PURCHASE ACT 2004 (s38)

Re: Proposed development for the appraisal of subsurface hydrocarbons at land east of the Mill Yard, Burniston Mill, Coastal Road, Burniston, Scarborough

OPINION

Introduction and Summary

1. I am instructed by Friends of the Earth to provide an opinion concerning the application by Europa Oil and Gas Limited (“**Europa**”) for planning permission for four phases of subsurface hydrocarbon appraisal in Burniston, North Yorkshire, which includes a “proppant squeeze and flow testing”. I am asked if this application concerns ‘fracking’, and if so, what the planning implications are, given the moratorium on fracking in England.

2. For the reasons given in detail below, my opinion is:
 - 2.1 Care must be taken with the language, as the term ‘fracking’ can cover a number of different processes encompassing both high and low volume hydraulic fracturing.

 - 2.2 The moratorium on ‘fracking’ in England is limited to a specific sub-set of fracking, defined via section 50 of the Infrastructure Act 2015 to be a particular technique of high-volume hydraulic fracturing: “the injection of—(a) more than 1,000 cubic metres of fluid at each stage, or expected stage, of the hydraulic fracturing, or (b) more than 10,000 cubic metres of fluid in total”. Based on the volumes of fluid described in Europa’s Environmental Statement, the proposed proppant squeeze falls outside of this definition and so is not caught by the moratorium.

 - 2.3 However, and crucially, **the proppant squeeze is hydraulic fracturing for planning purposes**. The specific narrow definition of a type of high-

volume hydraulic fracturing, used for the moratorium, is not the definition used in the key relevant planning policy. Both the National Planning Practice Guidance and the Minerals and Waste Joint Plan adopted by North Yorkshire Council (“NYC”) apply a general definition of “hydraulic fracturing” which captures the proppant squeeze.

- 2.4 Therefore, for planning purposes, NYC must refuse permission for the proposed development if it does not comply with policies M16, M17 and M18, unless material considerations, taken into account in the overall planning balance, indicate that permission should otherwise be granted.
- 2.5 The bright line distinction drawn between the proppant squeeze and ‘fracking’ in supporting documentation for Europa’s planning application for the proposed development at Burniston, and in public communications around the application, undermines effective public engagement with and scrutiny of the environmental impacts of the proposal, including seismicity risks.
- 2.6 Very great care needs to be taken with the 2024 letter from Minister for Energy, Michael Shanks MP, because it is inaccurate as regards the definition of fracking for planning purposes and inconsistent on that point with a recent formal written statement made by the Minister to Parliament. It is also unclear whether the Minister is aware of the correct position in national planning policy that a proppant squeeze is hydraulic fracturing for planning purposes.

REASONS

Factual Background

The Planning Application

3. In February 2025, Europa submitted a planning application to North Yorkshire County Council (“NYC”), as the relevant Mineral Planning Authority (“MPA”), for the construction of a wellsite and operation of a drilling rig for the appraisal of subsurface hydrocarbons, well testing and retention of equipment at Land east of

The Mill Yard, Burniston Mill, Coastal Road, Burniston, Scarborough (NY/2025/0030/ENV).¹

4. The purpose of the proposed development is to determine whether it will be commercially viable to extract gas from the site in the future. If planning permission is granted, the development will involve four phases: (1) site construction, (2) drilling, (3) proppant squeeze and flow testing, and (4) wellsite decommissioning, restoration and aftercare.² As the Planning Statement accompanying the application explains:

“Europa is submitting an application to NYC to construct and drill a new wellsite in order to appraise the gas reserves from the reservoir, followed by well abandonment, decommissioning and site restoration. Following the drilling phase, Europa will undertake a proppant squeeze operation to enable the gas to be flowed for the purposes of testing the volume and quality of the gas. Europa is seeking a temporary 3-year planning permission. If drilling and subsequent testing does not prove that gas volumes are commercially viable, it is likely that decommissioning and site restoration would take effect sooner.”³

5. The Planning Statement opens by stating: ‘For clarity, Europa will not use the process known as High Volume Hydraulic Fracturing (commonly referred to as ‘fracking’).⁴

The moratorium on fracking

6. Following an earthquake with a magnitude of 2.9ML caused by Cuadrilla’s shale gas exploration in Lancashire on 26 August 2019, the Oil and Gas Authority (“**OGA**”) (now the North Sea Transition Authority, **NSTA**) suspended all hydraulic fracturing activity at the Preston North Road site.⁵

¹ All of the documents submitted for the purposes of the application and referred to in this Opinion are available on NYC’s planning portal and can be accessed here: <https://onlineplanningregister.northyorks.gov.uk/Register/Planning/Display/NY/2025/0030/ENV#undefined>.

² For a more detailed description of each of these phases see pages 16-18 of the Planning Statement.

³ Planning Statement, page 6.

⁴ Planning Statement, page 9.

⁵ <https://www.bbc.co.uk/news/uk-england-lancashire-49471321>.

7. On 2 November 2019, the Conservative Government announced that ‘Fracking will not be allowed to proceed in England’.⁶
8. This announcement was followed by a Written Ministerial Statement (“WMS”) made by the Secretary of State for Business, Energy and Industrial Strategy, Andrea Leadsom MP on 4 November 2019, which included the following (emphasis added):

“In parallel to their action following the 26th August 2019 event, the Oil and Gas Authority have been analysing in detail data drawn from Cuadrilla’s earlier operations that took place at Preston New Road last year. This included commissioning a series of expert reports to better understand and learn from the induced seismicity observed in 2018. The Government has recently received these reports and they are being published alongside a summary of their findings by the Oil and Gas Authority today. The Oil and Gas Authority summary report contains a number of findings and interim conclusions and highlights that the causes of seismicity are highly dependent on local geology. While we cannot draw definitive direct comparisons between this site-specific evidence and other prospective shale gas sites, the limitations of current scientific evidence mean it is difficult to predict the probability and maximum magnitude of any seismic events, either in the Fylde or in other locations.

[...]

On the basis of the current scientific evidence, Government is confirming today that it will take a presumption against issuing any further Hydraulic Fracturing Consents. This position, an effective moratorium, will be maintained until compelling new evidence is provided which addresses the concerns around the prediction and management of induced seismicity. While future applications for Hydraulic Fracturing Consent will be considered on their own merits by the Secretary of State, in accordance with the law, the shale gas industry should take the Government’s position into account when considering new developments.”⁷

⁶ <https://www.gov.uk/government/news/government-ends-support-for-fracking>.

⁷ <https://questions-statements.parliament.uk/written-statements/detail/2019-11-04/HCWS68>.

9. The moratorium was briefly lifted under the Premiership of Liz Truss in 2022, however, it was then re-instated by Prime Minister Rishi Sunak⁸ and remains in place under the current Labour Government.

The proppant squeeze

10. The proppant squeeze and flow testing phase of the development are described in the Environmental Statement that accompanies Europa’s planning application in the following terms (emphasis added):

“In order to determine the potential reserves of gas, it will be necessary to undertake a proppant squeeze. The process involves pumping a mix of gelled fluids and proppant (sand or ceramic particles) down the wellbore and out through the perforations in the steel wellbore casing at a pressure exceeding the fracture propagation pressure of the formation. **Injection pressure and pump rates high enough to propagate a fracture in the formation creates channels of communication through near wellbore formations. When the pressure is released, the proppant remains in situ, propping open the small fractures through which hydrocarbons can flow at enhanced rates.** Phase 3 is expected to take up to 17 weeks in total, comprising an initial testing of a week, followed by a proppant squeeze lasting around one week, and then potential further testing of up to fifteen weeks. The well would be flowed to determine pressure, quality and composition of the gas.”⁹

11. Further detail on the process is provided within the Planning Statement, including the following (emphasis added):

“The proppant squeeze components will comprise:

- **c.300-500m³ of fluids in total**; typically, fresh water, some salt and solid proppant make 97% or more of the treatment, with several minor chemical additives, all of which are widely used in the UK; and
- 60-80 tonnes of proppant (ceramic “beads” akin to sand grains).

[...]

A pre-treatment injectivity test uses approximately 15m³–25m³ of gelled liquid. The purpose of the injectivity test is to determine the breakdown pressure, propagation pressure and carrier fluid leak-off rate, which in turn will inform the main proppant treatment. Should the pre-treatment injectivity test indicate that the main proppant

⁸ <https://www.bbc.co.uk/news/uk-politics-63402777>.

⁹ Environmental Statement, Volume I, page 19.

treatment may extend further than the design, the fluid volumes and pressures are adjusted accordingly, to ensure the design parameters are maintained... The main proppant treatment will consist of approximately 60 to 80 tonnes of ceramic proppant and approximately 300m³ to 500m³ of gelled liquid. This is pumped at a surface pressure of between 5,000 and 6,500 psi. The pumping operation takes approximately 2 hours, and the well is then shut in to allow the pressure in the formation to dissipate, prior to flowing back through the production facilities in a controlled manner.

The proppant squeeze operations would last around one week.”¹⁰

Legal Background

12. The “effective moratorium” on fracking imposed by the November 2019 WMS works by establishing “a presumption against issuing any further Hydraulic Fracturing Consents”.
13. Section 50 of the Infrastructure Act 2015 inserted sections 4A and 4B into the Petroleum Act 1998. Under section 4A of the 1998 Act, no “associated hydraulic fracturing” can take place without a “Hydraulic Fracturing Consent” having first been granted by the Secretary of State.
14. Section 4B(1) of the 1998 Act provides, with emphasis added, that:
 - “ ‘Associated hydraulic fracturing’ means hydraulic fracturing of shale or strata encased in shale which—
 - (a) is carried out in connection with the use of the relevant well to search or bore for or get petroleum, **and**
 - (b) involves, or is expected to involve, the injection of—
 - (i) **more than 1,000 cubic metres of fluid at each stage, or expected stage, of the hydraulic fracturing, or**
 - (ii) more than 10,000 cubic metres of fluid in total.”
15. For the purpose of this provision, “petroleum” includes “any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata” (section 1(a) of the Act).

¹⁰ Planning Statement, pages 17-18.

DISCUSSION

The moratorium on fracking does not apply to the proppant squeeze

16. The proppant squeeze in phase 3 of the proposed development at Burniston will use a lower volume of fluid than that specified by the definition of “associated hydraulic fracturing” in section 4B(1) of the 1998 Act. On the face of the legislation, therefore, it will not be caught by the moratorium on fracking established by the November 2019 WMS.
17. It is notable that the reason for imposing the moratorium was the occurrence of the 2.9ML seismic event at the Preston New Road site, and the evidence compiled by the OGA that highlighted the difficulty of predicting the probability and magnitude of seismic events induced by hydraulic fracturing operations, including a lack of conclusive empirical correlation between fluid volume and pressure and seismicity.¹¹ That evidence has been reinforced by more recent studies commissioned by the OGA¹² and the Government¹³. A 2020 summary of the findings of further studies commissioned by the OGA into seismicity resulting from hydraulic fracturing operations at the Preston New Road site emphasised that:
- “it is not yet possible to accurately predict the seismic response to hydraulic fracturing, if any, in relation to variables such as site characteristics, fluid volume, rate or pressure. Where induced seismicity has occurred, mitigation measures have shown only limited success, and there can only be low confidence in their effectiveness currently.”¹⁴** (emphasis added)
18. The consequences of defining hydraulic fracturing in statute by reference to a particular fluid volume threshold is a matter of public concern and political debate. An Early Day Motion tabled in Parliament on 18 June 2025 and signed by 14 Liberal Democrat and Green Party Members of Parliament proposes:

¹¹ OGA, Interim report of the scientific analysis of data gathered from Cuadrilla’s operations at Preston New Road (2019), pages 13-14.

¹² OGA, Summary report of the scientific analysis of the data gathered from Cuadrilla’s PNR2 hydraulic fracturing operations at Preston New Road (2020).

¹³ British Geological Survey, Recent scientific advances in the understanding of induced seismicity from hydraulic fracturing of shales, Multi-Hazards and Risk Programme, Open Report OR/22/050 (2022).

¹⁴ OGA, Summary PNR2 Report (2020), page 3.

“That this House welcomes the Government’s continued commitment to the fracking moratorium, but expresses concern that current legislation defines hydraulic fracturing only by high fluid volume thresholds, excluding lower-volume techniques such as proppant squeeze which have previously caused seismic events, including at Preston New Road in Lancashire; notes that such methods, while technically outside the current definition, pose similar environmental and public safety risks; recognises the urgency of this issue, with proposals for proppant squeeze in North Yorkshire pending; and therefore calls on the Government to update planning legislation to include all forms of hydraulic fracturing within the moratorium to protect communities, meet seismic safety standards and align with the UK’s climate commitments and transition to renewable energy.”¹⁵

The proppant squeeze is nevertheless a form of fracking for planning and regulatory purposes

19. The National Planning Practice Guidance (“**NPPG**”) defines hydraulic fracturing without reference to a fluid volume threshold in the following terms:

“Hydraulic fracturing is the process of opening and/or extending existing narrow fractures or creating new ones (fractures are typically hairline in width) in gas or oil-bearing rock, which allows gas or oil to flow into wellbores to be captured.”¹⁶

20. The Minerals and Waste Joint Plan adopted by NYC in February 2022 states, within its glossary, that ‘Fracking is the fracturing of rock by injecting a pressurized liquid in order to extract oil or gas’.¹⁷ The Joint Plan makes clear that for the purposes of adopted policies concerning hydrocarbon (oil and gas) development, ‘hydraulic fracturing’ ‘includes the fracturing of rock under hydraulic pressure **regardless of the volume of fracture fluid used**’¹⁸ (emphasis added).
21. The proppant squeeze described in Europa’s planning application therefore falls within the definitions of hydraulic fracturing under national planning guidance and the relevant local development plan.

¹⁵ <https://edm.parliament.uk/early-day-motion/63895>.

¹⁶ NPPG: Minerals Paragraph: 129 Reference ID: 27-129-20140306.

¹⁷ Minerals and Waste Joint Plan, Page 216.

¹⁸ Minerals and Waste Joint Plan, Page 90.

22. Onshore hydrocarbon exploration and testing projects that involve the drilling of wells, construction and lining of boreholes, hydraulic fracturing methods and the testing of gas flows engage other environmental permitting and regulatory regimes, outside of the planning system. In brief summary, project operators are required to satisfy the Environment Agency (“EA”) that chemicals and proppant used do not pollute groundwater; the Health and Safety Executive (“HSE”) that engineering and construction processes meet the requisite standards, and the NSTA that hydraulic fracturing methods do not give rise to unacceptable seismicity risks. Depending on the nature of the project the Coal Authority and British Geological Survey may also need to be consulted.¹⁹

23. The NSTA’s Consolidated Onshore Guidance (June 2018) adopts the former OGA Hydraulic Fracture Plan (“HFP”) Guidance. This explains (emphasis added):

“A completion work programme, which includes a Hydraulic Fracture Plan, must be approved by the OGA prior to the start of any fracking operations. The programme may be submitted in advance of, or following, the grant of planning permission by the MPA. When considering whether to approve a programme, the OGA will apply policies aimed at avoiding seismic events altogether or, in the unlikely event that seismicity is induced, minimising disturbance to those living and working nearby and preventing the risk of damage to property. The Hydraulic Fracture Plan must provide detailed geological studies so that fracking operations can be located away from geological faults, provide for the monitoring of natural background seismicity long in advance of operations and include a real-time traffic light scheme incorporating the detailed operational response should an unusual seismic event be detected.”²⁰

[...]

If the proposed injection volumes fall below the BEIS associated hydraulic fracturing thresholds, the OGA may decide less information or monitoring is appropriate, but an HFP will always still be required.”²¹

¹⁹ Detailed guidance can be found in: Department of Energy & Climate Change, Onshore oil and gas exploration in the UK: regulation and best practice (December 2015).

²⁰ North Sea Transition Authority, Consolidated Onshore Guidance, Version 2.2, June 2018, page 6.

²¹ Consolidated Onshore Guidance, page 30.

24. The proppant squeeze is thus also a form of hydraulic fracturing for the relevant permitting and regulatory regimes, irrespective of the fact that it does not pass the necessary fluid volume threshold to require the narrower Hydraulic Fracturing Consent under the Petroleum Act 1998.

What are the implications for the proposed development at Burniston?

25. NYC as the relevant MPA, must determine Europa's planning application in accordance with the development plan unless material considerations indicate otherwise.²²
26. In accordance with the analysis presented above, policies M16, M17 and M18 of the Minerals and Waste Joint Plan, so far as these relate to the exploration of hydrocarbons involving hydraulic fracturing, will apply to the proposed development. NYC must therefore refuse permission for the proposed development if it does not comply with these policies, unless material considerations, taken into account in the overall planning balance, indicate that permission should otherwise be granted.
27. The proposed development must also comply with the relevant permitting and regulatory requirements before a proppant squeeze is conducted at the site.
28. Europa's Planning Statement and Environmental Statement both acknowledge that the proppant squeeze is a form of hydraulic fracturing giving rise to planning and regulatory implications.
29. The Planning Statement notes, at page 34, that 'Phase 3 (testing) includes a proppant squeeze which falls within the definition of 'hydraulic fracturing' at paragraph 54.124(f) [of the Minerals and Waste Joint Plan].²³ The proposed

²² Pursuant to section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004.

²³ Planning Statement, page 34.

development's compliance with policies M16, M17 and M18 is therefore addressed between pages 33 to 39 of the Statement.

30. The Environmental Statement refers to:

“... the Hydraulic Fracture Plan, which must be submitted to the North Sea Transition Authority (NSTA), the Health and Safety Executive and the Environment Agency for approval in advance of the proppant squeeze being carried out.

Any proppant squeeze would need to be approved by the NSTA and EA and undertaken under the conditions of the Environmental Permit.”²⁴

31. Notwithstanding these acknowledgments, Europa maintain that the proppant squeeze is not ‘fracking’, by confining this term to ‘large volume hydraulic fracking’²⁵ or ‘High Volume Hydraulic Fracking’.²⁶

32. The Non Technical Summary of the Environmental Statement addresses the question ‘Is this Fracking?’ directly in the following terms (emphasis added):

“The borehole is a single conventional gas well targeting conventional tight gas sands. The sands at depths of over 2.0km will require stimulating (enhanced productivity) through a proppant squeeze operation. **This operation will result in a small hydraulic fracture at depth.** Onshore proppant squeeze operations in conventional wells have been conducted safely and successfully for over 50 years in the UK. **The single borehole and the proppant squeeze operation are not to be confused with the practises of drilling multiple boreholes, horizontal drilling and multistage, large volume hydraulic fracturing associated with Shale Gas development or “fracking” (currently banned in the UK and therefore not part of this planning application). The proposal is for natural gas exploration and does not relate to fracking or Shale Gas development.**”

33. Similarly, in the FAQs section of the project's website, an answer states:

“Cloughton #2 [the proposed well] is not a shale gas development. Europa is proposing a conventional low-volume fracture in sandstones, known in the industry as a proppant squeeze. This is a proven safe

²⁴ Environmental Statement, Volume I, page 17.

²⁵ Environmental Statement, Volume IV – Non Technical Summary, page 3.

²⁶ Planning Statement, page 9.

operational technique, which has been used on wells for decades in the UK and, unlike fracking (high volume fracturing), is approved for use in the industry.”

34. This has the potential to be misleading. Care has to be taken with the language around, and use of the word ‘fracking’. It is very clear that the proppant squeeze **is** a form of hydraulic fracturing for the relevant planning purposes (and the relevant permitting and regulatory regimes) and so does fall within the common meaning of the term ‘fracking’. It also fails to address the more recent studies commissioned by the OGA and the Government, set out above, about the dangers and uncertainties that remain around all hydraulic fracturing, including low volume hydraulic fracturing such as a proppant squeeze.

Burniston: an illustration of the consequences of multiple definitions of ‘fracking’

35. The House of Commons Select Committee Report on ‘Planning guidance on fracking’ dated 2 July 2018 noted that ‘there is considerable public interest in whether fracking should be permitted’²⁷ but heard evidence that the discrepancy between the “volume-based” definition contained within the Infrastructure Act 2015 (and therefore the Petroleum Act 1998) and the non-volume-based definition in the NPPG was causing confusion around ‘fracking’ in the planning process.²⁸

36. The Committee concluded that:

“The Infrastructure Act 2015 definition of fracking does not reflect the technologies used on the ground nor the public understanding of fracking, leading to a lack of understanding among key stakeholders and significant concerns about loopholes in the current regulatory regime. We therefore believe that the Infrastructure Act 2015 definition is unsuitable in the planning context and recommend that it should not be liquid or volume-based. While we welcome the Government’s intention to unify the definitions of fracking used in the Infrastructure Act 2015 and the National Planning Practice Guidance due to the resultant lack of

²⁷ Housing, Communities, and Local Government Committee Report: Planning guidance on fracking, Eighth Report of Session 2017-19 (2 July 2018), page 5.

²⁸ Committee Report, page 7.

clarity and uncertainty in using multiple definitions, we are highly concerned at the Government's suggestion that the Infrastructure Act definition will replace the current definition in a revised National Planning Practice Guidance. We call on the Government to amend the Infrastructure Act definition to ensure public confidence that every development which artificially fractures rock is subject to the appropriate permitting and regulatory regime.²⁹ (all emphasis in original)

37. The relevance of this, as of yet unimplemented recommendation, is apparent from the obfuscating effect of the bright line distinction drawn by Europa in some supporting documents and public communications related to its planning application for development at Burniston.
38. Europa has carried out an Environmental Impact Assessment (“EIA”) to support its planning application and provided the Environmental Statement already referred to within this Opinion. The EIA and Environmental Statement have been produced pursuant to the provision of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017. As the Supreme Court has recently explained in *R (Finch) v Surrey County Council* [2024] UKSC 20; [2024] PTSR 988 (“**Finch**”) at §3: “The object of an EIA is to ensure that the environmental impact of a project is exposed to public debate and considered in the decision-making process”. The rationale underpinning the principle of public participation in environmental decision-making, as given effect by the Regulations was described by the Court (at §21) in the following terms:

“Two important ideas are included within this rationale. First, public participation is necessary to increase the democratic legitimacy of decisions which affect the environment. Second, the public participation requirements serve an important educational function, contributing to public awareness of environmental issues. Guaranteeing rights of public participation in decision-making and promoting education of the public in environmental matters does not guarantee that greater priority will be given to protecting the environment. But the assumption is that it is likely to have that result, or at least that it is a prerequisite. You can only care about what you know about.”

²⁹ Committee Report, pages 10-11.

39. These principles are fundamentally undermined if the information provided by the developer fails consistently to be clear that the methods of subsurface gas exploration which constitute ‘hydraulic fracturing’ and/or ‘fracking’ for the purposes the Infrastructure Act 2015 are narrower than those addressed by the planning and regulatory regimes and in emerging government policy.
40. It is also notable that the Supreme Court in *Finch* addressed the assumption, currently in paragraph 122 of the National Planning Policy Framework (“NPPF”), that separate pollution control regimes (such as those operated by the NSTA, HSE and EA) will operate effectively to control processes or emissions. The Supreme Court held that it would be a “clear legal error to regard this aspect of planning policy as a justification for limiting the scope of an EIA.” (§108). Rather, likely significant effects must be described in an environmental statement and then any mitigation which will be achieved by separate pollution control regimes identified and assessed. The courts have also recognised that this assumption can be departed from where there is clear evidence to support that approach, and that planning decision-makers must not simply “abdicate responsibility” where environmental permissions are granted.³⁰ That applies even more so where the assumption is that future permissions may be granted.

The Letter from the Minister for Energy

41. Friends of the Earth submitted an objection letter to NYC in respect of Europa’s planning application on 8 April 2025, raising, among other concerns, that the proposed development amounted to ‘fracking by the back door’ and posed seismicity risks. Europa’s response did not seek substantively to address these concerns but instead, referred Friends of the Earth to correspondence from the

³⁰ *WE Black Ltd v SSE* [1997] Env LR 1 (QBD) at 9; *Gateshead MBC v SSE* [1995] Env LR 37 (CA) at 44 and 48-50; *R (Frack Free Balcombe Residents Association) v West Sussex CC* [2014] EWHC 4108 (Admin) at §§26 and 100-101. Quoted text from *Norman v SSHCLG* [2018] EWHC 2910 (Admin) at §52. See also, more recently, *National Farmers’ Union v Herefordshire Council & others* [2025] EWHC 56 (Admin) at §81.

Minister for Energy, Michael Shanks MP, to Alison Hume MP for Scarborough, dated 9 September 2024. In his letter, the Minister wrote:

“... this Government intends to ban fracking for good. There is currently an effective moratorium on high volume hydraulic fracturing to extract shale gas (fracking) anywhere in England.

The Petroleum Act 1998 sets specific criteria to capture the activities commonly known as ‘fracking’, which involve high-volume, high-pressure fracturing to extract shale gas and how such activity is regulated.

Any proposed activities in the UK, including ‘proppant squeezes’, are not fracking as defined in the Petroleum Act. These lower volume, lower pressure activities are commonplace in other sectors such as the water industry as well as in conventional oil and gas production.”³¹

42. Very great care needs to be taken with this letter, because it is inaccurate as regards the definition of fracking for planning purposes, as set out above. It is also inconsistent with another very recent formal written statement made by the Minister to Parliament. In response to a written question to the Department for Energy Security and Net Zero, asked by Alison Hume MP this year, Minister Shanks answered on 9 June 2025:

“Proppant squeezes are not currently defined in legislation as high volume hydraulic fracturing for shale gas extraction. We are committed to banning fracking for good and any future decision on national planning policy for fracking will take into account all volumes of hydraulic fracturing.”³²

43. This answer is inconsistent with the earlier letter and is more accurate in that it recognises that a proppant squeeze falls outside of the narrow legislative definition, but that “hydraulic fracturing” is a wider concept. It is, however, unclear from this and from the Minister’s earlier letter whether he is aware of the correct position in national planning policy that a proppant squeeze is hydraulic fracturing for planning purposes, as the reference in the 9 June 2025 written answer to “future decisions on national planning policy for fracking” does not

³¹ Attachment to response to FOE_Letter from Minister for Energy - September 2024 (available on NYC’s planning portal).

³² <https://questions-statements.parliament.uk/written-questions/detail/2025-06-03/57032>.

acknowledge that current national planning policy, in the form of the NPPG, takes account of all volumes of hydraulic fracturing.³³

44. Finally, it is notable that the fact that some “lower volume, lower pressure activities” are “commonplace” is not particularly relevant to the planning assessment that must be made pursuant to the Minerals and Waste Joint Plan and the NPPG, especially in light of the OGA and Government analysis set out above.

Conclusion

45. My opinion is summarised in paragraph 2 above. Please do not hesitate to contact me if anything above requires clarification, or if I can be of further assistance.

26 June 2025

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³³ In *Mead Realisations Ltd v SSLUHC* [2024] EWHC 279 (Admin), [2024] PTSR 1093, the Court held that the NPPG is national policy of the same status as the NPPF and Written Ministerial Statements and that the NPPF and the NPPG had to be read together, with the latter capable of altering the former.