



PLANNING PERFORMANCE AGREEMENT (PPA)

SHALE GAS DEVELOPMENTS

USER GUIDE

1 INTRODUCTION

- 1.1 This document should be read in conjunction with the Planning Performance Agreement (PPA) for Shale Gas Developments Template.
- 1.2 This document is a 'User Guide' which accompanies the PPA template. The PPA template is therefore as concise as possible, with background information and explanation therefore provided within this User Guide.
- 1.3 This document contains the following sections:
 - Section 2 - Objectives and purpose of PPA process
 - Section 3 - Use of the PPA Template
 - Section 4 - Methods of engagement
 - Section 5 – PPA Template - Additional Guidance
 - Section 6 – Other Regulators

2 OBJECTIVES, PURPOSE AND BENEFITS OF PPA PROCESS

Government Direction

- 2.1 The Government remains fully committed to making planning decisions faster and fairer for all those affected by new development, and to ensure that local communities are fully involved in planning decisions that affect them, including during the pre-application stage. For shale gas applications the Government expects applicants and the planning authority to formalise the pre and post application process by a Planning Performance Agreement providing certainty for all parties. It is expected that all parties stick to the timetable¹.

Role and Objectives of PPAs

- 2.2 The primary objectives of PPAs are:
- To actively manage the programme of preparing, submitting and processing a planning application to achieve a fair and timely determination;
 - To establish a shared commitment to an agreed timetable to enable the assessment, consideration and determination of a planning application;
 - To agree which resources and actions are required by whom and by when during the planning process, to ensure that all key planning issues are properly addressed;
 - To enable engagement of the public at all stages of the planning process, including before a planning application is submitted;
 - To identify key planning issues, and agree steps to address them;
 - To enable engagement of all statutory consultees at the earliest opportunity and throughout the planning process;
 - To ensure that all technical issues are fully addressed by the applicant and fully understood by the MPA;
 - To identify and address the detailed requirements of any planning conditions and planning obligations which would be necessary, should a planning application be deemed acceptable in principle.

¹ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-05-17/HCWS690>

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

- 2.3 The guiding principle of the PPA is one of cooperation and consistency throughout the negotiation and discussion relating to the planning process, to provide a degree of certainty for the intended outcomes and to improve the quality of the project and of the planning decision.
- 2.4 The PPA process is essentially a project management tool to assist the MPA in handling the proposal from pre-application to post-determination.
- 2.5 Proposals for the phases associated with shale development have their own distinct set of challenges for a MPA. The level of public and media interest in proposals seen to date has been unprecedented.

Benefits

- 2.6 There are many benefits associated with the use of the PPA between the MPA and the applicant. These include:
- Identification of key issues at any early stage, ensuring that they are addressed at the pre-application and pre-determination stages where possible, in order to minimising matters requiring subsequent approval through planning conditions;
 - The agreement of realistic and predictable timeframes, resulting in timely responses;
 - Greater accountability and transparency through ongoing discussions, including any expectations;
 - Improved partnership working between all parties (including other regulators e.g. Environment Agency, Health and Safety Executive, etc.), encouraging the teams to work together to overcome issues, with respect for others' views and interests;
 - Continuity in the team responsible for the PPA, ensuring that consolidated responses are given, so that abortive work is minimised; and
 - A structured, proactive approach to community, statutory and other stakeholder engagement which ensures that all parties are consulted in a timely manner, as necessary throughout the planning process.

Shale Brokerage Service

- 2.7 In May 2018, the Written Ministerial Statement committed to “the creation of a new planning brokerage service for shale applications to provide guidance to

developers and local authorities on the planning process to help facilitate timely decision making”.

2.8 The Brokerage service focuses exclusively on the planning process itself and has no role in the consideration or determination of planning applications, the merits of a case or the appeals process.

2.9 The service exists to provide:

- Support for those involved in decision making; and
- Clear guidance to developers and local authorities on the planning process, to help facilitate timely decision making.

Shale Support Fund

2.10 Having a PPA in place enables MPAs to bid for the full funding available² from the Government’s Shale Support Fund up to £250,000, to cover the entire planning process within a single bid. The funding is available to support MPAs in processing and determining shale planning applications in an efficient, timely and effective manner.. Given that such funding is linked to clear and measurable milestones, such as the submission or the determination of applications, it is in the interests of both the MPA and the applicant to enter into a PPA at the earliest opportunity. In such cases it may not be necessary to seek financial support from the applicant but if there is justification for, and agreement to, doing so any fees or payments agreed between the applicant and the MPA must not duplicate funding secured through the shale support fund.

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707814/Shale_Prospectus.pdf

3 USE OF THE PPA TEMPLATE

- 3.1 Proposals for shale development can be complex and technical in nature and are subject to a number of regulatory consenting regimes, including the need for planning permission. The main phases involved in shale development are exploration, appraisal and production, each of which require planning permission. Proposals can include all three phases or a combination of phases, although details about production phases are unlikely to be known until the first two phases have been successfully completed. At the point at which applicants are ready to discuss the submission of an application for planning permission it is helpful to understand where in the regulatory regime the proposal is. This will help the PPA in defining and agreeing the issues that need to be considered for planning purposes and those that can be left to other regulators and the timing of pre planning application community engagement.
- 3.2 Ideally, PPAs should cover the whole planning process from pre application to post decision. A key focus of PPAs should be to set out what resources would be required, by whom and by when; how business will be conducted and to what standard; clear lines of responsibility and communications together with key milestones, so that all parties understand and agree to realistic timescales and expectations.

Confidentiality

- 3.3 All parties should approach information in relation to a planning application in an open and transparent way and should avoid relying on information that cannot be publicly disclosed.
- 3.4 Should specific security measures or protocol be required for meetings or other events, all parties will discuss and agree appropriate measures to be taken, so as to ensure public safety.

4 METHODS OF ENGAGEMENT

PPA Meetings

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

Public Engagement

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

Social Media – a good social media campaign should aim to build on and enhance traditional consultation activities rather than replace them. If done with care It helps with stakeholders engagement, can help build reputation of the applicant, maintains a consistent presence in the local community, repetition can help retention and resolution of issues, can be recycled and shared more easily.
 - Website – Provision of a dedicated website where relevant information and updates can be accessed.

Member Involvement

- 4.6 Councillors should be made aware that a PPA is to be entered into in relation to any shale gas development and the purpose of the PPA made clear.
- 4.7 The PPA should set out how Councillors will be engaged in pre-application and ongoing consultation process and how that fits in with the wider public engagement. Councillors will want to understand the proposals so that they are able to represent their constituents and the Council in an informed way.

Regulator Engagement

- 4.8 In addition to planning permission, shale developments are subject to a range of consents and regulatory controls exercised by other regulators, namely:
- The Oil and Gas Authority³
 - The Environment Agency⁴
 - The Health and Safety Executive⁵
- 4.9 These regulators (who are also consultees in the planning process) operate together as a virtual body (the Shale Environmental Regulator Group (SERG)⁶) for the environmental aspects of regulation and they will act as one, coherent, single face for local authorities and industry, helping to resolve regulatory issues on sites and sharing best practice with local authorities considering shale gas applications.
- 4.10 Other interested parties may include consultees such as:
- The Coal Authority⁷
 - Natural England⁸
 - The British Geological Survey⁹
 - Historic England¹⁰
 - Public Health England¹¹
 - Highway Authorities
 - Environmental Health
- 4.11 Section 6 of this User Guide describes the roles of regulators and other consultees. It is important that engagement with other regulators and consultees is

³ www.ogauthority.co.uk

⁴ www.gov.uk/government/organisations/environmentagency

⁵ www.hse.gov.uk/shale-gas/index.htm

⁶ <https://www.ogauthority.co.uk/news-publications/news/2018/shale-environmental-regulator-group-launched-today/>

⁷ www.gov.uk/government/organisations/the-coal-authority

⁸ www.gov.uk/government/organisations/natural-england

⁹ www.bgs.ac.uk/shalegas/

¹⁰ <https://historicengland.org.uk/>

¹¹ <https://www.gov.uk/government/organisations/public-health-england>

undertaken as part of the planning process. It is expected that the MPA and applicant should agree to formal engagement with the other regulators and consultees as part of the PPA.

Environmental Impact Assessment - Screening and Scoping

- 4.12 The PPA could include the screening and scoping processes under the Environmental Impact Assessment Regulations so that this forms part of the overall programme management function of the PPA.¹²

Environmental Assessment

- 4.13 If an Environmental Statement (ES) is required, the work required should form part of the PPA programme management function.

Submission of Draft ES to MPA and Review

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

Submission of Planning Application and Determination

- 4.16 If the PPA was entered into at the pre application stage, the planning application should contain all the relevant information necessary for the MPA to determine it. At this stage, the MPA and the applicant should be clear about what the application should contain and there should be no surprises. This should also include the advice of consultees.
- 4.17 Bearing in mind statutory timeframes for determining planning applications, the PPA should set out a realistic determination date taking into account the nature of the specific proposal. The MPA should set a target date (e.g. planning committee date) by when the the planning application will be determined.
- 4.18 If, during the course of the determination period, the MPA feels that they might not be able to meet the deadline set out in the PPA, this should be discussed with the applicant at the earliest opportunity to explore whether a revised timetable could be agreed as part of the PPA.

¹² <https://www.gov.uk/guidance/environmental-impact-assessment>

Conditions and Planning Obligations

- 4.19 Throughout the planning process, the MPA and the applicant should discuss the need for any necessary Section 106 Agreements which might be associated with the planning permission should it be approved.
- 4.20 Where possible, Draft Heads of Terms (HoTs) should be submitted with Planning Applications. It is anticipated that discussions regarding planning obligations could be held during the regular PPA meetings between the parties.
- 4.21 Both parties should also discuss the nature and wording of any conditions which might be attached to a planning approval, as early as possible in the determination process. The MPA should also provide a draft set of conditions to the applicant prior to the determination of the application for their comment.

5 PPA TEMPLATE – ADDITIONAL GUIDANCE

5.1 The PPA Template includes the following sections:

1. Applicant Team
2. MPA Team
3. Other Parties
4. Key Milestones
5. Performance Standards
6. Fees and Payments
7. Signatures

The Project Teams

5.2 The Project Teams will comprise representatives of the applicant and the MPA and other interested parties where applicable. The PPA Template allows for defined roles to be clearly identified.

5.3 The Project Team are responsible for ensuring that the objectives of the PPA are achieved. The expectation is that there will be open lines of communication between all project team members for both parties. It is expected that the Project Team will meet on a regular basis to review progress against the PPA and discuss any issues arising.

Key Milestones and Performance Standards

5.4 Key Milestones and Performance Standards should be identified within Sections 4 and 5 of the PPA.

5.5 The PPA process requires that Key Milestones are identified and agreed to by both parties. Milestones should be reasonable and achievable, and should be framed in the context of Government guidance. Milestones can cover Pre-application, Post-submission and Post-determination matters, including the discharge of planning conditions where applicable.

5.6 It is recognised that it may be necessary to amend key dates and milestones as circumstances change. This is particularly likely where EIA is involved. The PPA is an evolving document and it is allowable for timeframes to be updated throughout the process – however these should be agreed between both parties and should

follow the same principles as the dates set out at the start of the process (i.e. they should be reasonable and achievable).

5.7 If there is a delay to the programme in the PPA, the project team will review whether the overall determination timeframe is realistic or needs to be revised. Any changes proposed to these dates must be agreed in writing between the applicant and MPA before the PPA is formally amended.

5.8 A set of Performance Standards that applies to the MPA and the applicant, should be agreed between the MPA and the applicant as part of the PPA. Although to be defined on a case by case basis, the Performance Standards should aim to cover the following communicative principles:

- The date by which all communications (via email, telephone, letter) means will be acknowledged and/or responded to; (e.g. respond in 5 working days)
- The date by which any telephone messages (voicemail) will be returned; (e.g. respond within 48 hours)
- The date by which relevant information for discussion will be circulated by all parties; (e.g. 5 working days in advance)
- The date by which agendas for meetings will be circulated; (e.g. 1 week before)
- The date by which draft minutes/actions arising from meetings are to be circulated and agreed; (e.g. within 2 working days)and
- The date by which the MPA should issue informal feedback regarding information presented at a meeting. (e.g. within 10 working days)

Fees and Payments

5.9 For shale gas applications, MPAs can apply for Government funding to assist with shale applications, as referenced in Section 2.10 of this document¹³.

5.10 It is open to the applicants as part of the PPA to agree to pay the planning authorities costs of processing planning applications where this has involved work that involved agreeing and implementing the PPA, to the extent that this goes beyond an authority's statutory responsibilities or the costs already covered by other government funding. For example, should there be a need for the MPA to procure external independent expertise to deal with a technical issue in relation to the proposal. However, where additional funding is provided to MPAs for the

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707814/Shale_Prospectus.pdf

processing of the planning application as part of the PPA, MPAs should note that when applying for any funding under MHCLG's Shale Support Fund the additional sums requested as part of the bid must be clearly accounted for and should not duplicate the additional funding provided through the PPA.

- 5.11 Costs should be kept under review, in the knowledge that as the proposal progresses it may be necessary to update anticipated costs. Any new costs will need to be agreed by both parties.

Signatures

- 5.12 The PPA must be signed by both the MPA and the applicant. Although the PPA is not a legally binding document, it is understood that both parties have a duty to endeavour to meet the objectives and timeframes set out on the PPA. Although not necessary, other parties may also wish to enter into the PPA (for e.g. certain regulators) by agreement.

6 OTHER REGULATORS AND CONSULTEES

6.1 In addition to MPAs, there are other regulators that have a key role in shale gas proposals. As referred to in 4.9 the regulators operate as a virtual body known as SERG. It is important that they are aware of, or engaged in, the PPA process. The extent of their engagement in the PPA will depend on the particular circumstances of the proposed development but at the very minimum the SERG coordinator should be invited to participate in the PPA process.

6.2 Regulators have different roles and these are explained briefly as follows:

Oil and Gas Authority (OGA)

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

Environment Agency (EA)

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

Health and Safety Executive (HSE)

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

6.3 Other organisations with an interest or statutory consultation function include:

Coal Authority (CA)

- Permit required if drilling encroaches on coal seams.

British Geological Society (BGS)

- To be informed of intention to drill.

Natural England (NE)

- A statutory consultee for proposals requiring assessment under the Habitats Directive and for planning applications in certain circumstances;
- Issues Protected Species Licences.

Public Health England (PHE)

- Provider of advice relating to the public health impacts of shale gas extraction.

Historic England

- A statutory consultee for proposals that may affect a designated heritage asset

Highway Authority

- A statutory consultee for proposals that may materially affect a highway. This could be the local highway authority and/or Highways England depending on the circumstances.

Environmental Health

- A consultee that can advise on environmental impact such as noise and air quality.