

Report of the Chief Planning Officer

Report to Director of City Development

Date: 7th March 2017

Subject: Deputation to Council from Frack Free Leeds and the Knostrop Campaign

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| Are specific electoral Wards affected? Burmantofts and Richmond Hill | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Are there implications for equality and diversity and cohesion and integration? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Is the decision eligible for Call-In? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Does the report contain confidential or exempt information? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Summary of main issues

1. This report addresses the Deputation received at the 11th January 2017 meeting of the Full Council from Frack Free Leeds and the Knostrop Campaign regarding concerns expressed in relation to the treatment/transportation of 'fracking' wastewaters in Leeds and any expansion of the FCC Environmental treatment facility at Knostrop.
2. Specific requests raised by the Deputation were:
 - i) For Leeds City Council to support the Knostrop Campaign to oppose all fracking-related activity in Leeds, including the expansion of FCC Environment at Knostrop; and,
 - ii) For Leeds City Council to arrange meetings between FCC Environment Leeds, Yorkshire Water and the Environment Agency to learn more about the 'fracking' wastewater treatment process and who would be responsible should a pollution incident occur.

Recommendations

3. The Director of City Development is asked to note the contents of this report as an appropriate response to the issues raised by the Deputation.

1 Purpose of this report

- 1.1 The purpose of this report is to address the Deputation submitted by Frack Free Leeds to Full Council on 11 January 2017.
- 1.2 Frack Free Leeds requests Leeds City Council to oppose all fracking-relating activity in Leeds, including the treatment of fracking wastewater, by publically supporting the Frack Free Leeds 'Knostrop Campaign. This would require taking action to oppose any potential expansion of the wastewater treatment facility at FCC Environment Leeds. Frack Free Leeds also requests Leeds City Council to arrange formal meetings with FCC Environment Leeds, Yorkshire Water and the Environment Agency to learn more about the wastewater treatment process and who would be responsible should an incident occur.

2 Background information

- 2.1 FCC Environment at Knostrop operate a treatment facility for industrial liquid wastes. FCC Environment is an established tenant at Yorkshire Water's Knostrop Wastewater Treatment Works in Cross Green.
- 2.2 The FCC Environment site benefits from three planning permissions issued by Leeds City Council. The first planning permission permitted a two-storey treatment plant with ancillary development (ref. 90/21/00322); the second permitted the 24 hour operation of the treatment plant (ref. 21/223/96); and the third removed previous restrictions placed on vehicle routing and vehicle movements (ref. 21/116/01).
- 2.3 The waste treatment operation carried out at the FCC Environment site is regulated by the Environmental Permitting (England and Wales) Regulations 2010, which is enforced by the Environment Agency. The site benefits from two environmental permits (refs. MP32315D and BB3538DH) issued by the Environment Agency. The environmental permits enable FCC Environment to carry out the operations necessary for the storage, treatment and discharge of industrial liquid wastes. Importantly, permit ref. BB3538DH enables:
 - i) the disposal of radioactive waste on or from the premises;
 - ii) the receipt of radioactive waste for the purposes of disposal; and,
 - iii) the accumulation of radioactive waste on the premises.
- 2.4 This permit (BB3538DH), issued in 2013, is a varied permit to allow an increase in the receipt and disposal of aqueous waste from third party oil and gas extraction operations, and the accumulation of low quantities of solid material as residue in tanks, pipes and valves. It is the Council's understanding that the permits for FCC Environment at Knostrop establish a treatment capacity of 300 tonnes/m³ per day or 2,100 tonnes/m³ per week.

3 Main issues

3.1 The Department on Energy and Climate Change issued a guidance document entitled '*Onshore Oil and Gas Exploration in the UK: regulation and best practice*' in December 2015. This document is intended as a first point of reference for anyone seeking to understand the permitting and permissions process for exploratory work in onshore oil and gas development. It is important to note that the process by which hydraulic fracturing and related activities takes place is regulated as follows:

3.2 *Planning and permitting*

Department of Energy and Climate Change (DECC) – issues licences for exploration of petroleum and is also responsible for ensuring that operators address the risk of induced seismic events.

Environment Agency – ensures that environmental risks are properly managed. The operator may need a permit from the Environment Agency (EA) for groundwater extraction, handling of mining waste and naturally occurring radioactive materials, surface and groundwater discharge facilities.

Minerals Planning Authority – determines planning applications and where approved, imposes planning conditions.

3.3 *Ongoing regulation*

Health and Safety Executive (HSE) – ensures the operator manages health and safety risks appropriately and complies with the relevant health and safety legislation.

Environment Agency – ensures environmental risks are properly managed and permits are complied with.

Minerals Planning Authority – ensures operators adhere to the planning conditions.

3.4 Many of the concerns raised in the deputation relate to para. 3.3 above, namely the potential for 'fracking' waste waters to contaminate the environment at a treatment facility, via disposal. As such, the majority of the deputation refers to matters that are regulated by the Environment Agency rather than Leeds City Council. This is reinforced by para. 122 of the National Planning Policy Framework (NPPF, 2012) which advises planning authorities to focus on whether the development itself is an acceptable use of land, and the impact of the use, rather than the control of processes or emissions where these are subject to approval under pollution control regimes, and it should be assumed that those regimes will operate effectively.

3.5 Under Environment Agency regulations, and before a discharge permit is issued, 'fracking' wastewater must be treated on site or at a licenced treatment facility. The Permitting Regulations therefore require the Environment Agency to oversee and ensure the suitable treatment and management of any naturally occurring

radioactive materials (NORM) that may typically arise at a site where hydraulic fracturing takes place.

- 3.6 It is the responsibility of an operator to determine the composition of any waste (including wastewaters) generated and to appropriately assess the availability and impact of waste treatment processes and facilities. Where waste is to be managed off-site, the operator is also required to provide full details of the waste to its selected licenced waste treatment site(s). In respect of the hydraulic fracturing sites in North Yorkshire and Lancashire referred to in the Deputation, it is expected that the operators, Third Energy and Cuadrilla respectively, will carry out these responsibilities and seek the necessary permits from the Environment Agency at the appropriate time.
- 3.7 Following Environment Agency approvals, the waste treatment site operators (at the hydraulic fracturing site and, if necessary, at a waste treatment site elsewhere) are legally required to adhere to all of the conditions in the environmental permits and in their management plans. Operators must have processes in place to meet permit conditions, minimise risk (monitor, maintain and improve equipment) and react quickly should anything fail (accident and emergency plans), in order to reduce the impact on the surrounding environment. Operators are required by the permit regime to immediately report any breach of a permit limit and/ or incident to the Environment Agency.
- 3.8 Frack Free Leeds recently wrote to the Environment Agency requesting such issues to be answered. The Environment Agency's response dated 5th January 2017 (ref. RFI/2016/GE210OG) identified that FCC Environment at Knostrop have a number of monitoring and backup processes in operation, as follows:
- i) Waste materials are tested at various stages during the process to ensure they are as expected;
 - ii) Process controls are monitored by computer which logs relevant parameters (temperature, pressure, tank levels etc);
 - iii) Alarms indicate when a parameter is out of range;
 - iv) The computer system has a back-up in case of failure;
 - v) Managers can remotely access the computer system from off-site;
 - vi) The plant can also be operated manually in case of computer control failure;
 - vii) All stages of the process can be isolated to prevent contamination of already treated wastes;
 - viii) In case of power failure all valves and pumps will shut, preventing further treatment;
 - ix) The facility is fully contained and so any spillages will be retained on site and then sent through the treatment process;

- x) Final effluent is tested prior to discharge to Yorkshire Water to ensure it meets trade discharge consent limits;
- xi) Any effluent not meeting the consent limits will be re-treated;
- xii) All filter cakes are tested prior to disposal at a landfill; and,
- xiii) If landfilling is not possible, the sludge may also be incinerated at another waste site.

3.9 With respect to points X and XI above, Yorkshire Water confirmed to Leeds City Council (ref. meeting on 3 October 2016 with Councillors L. Yeadon and R. Lewis) that no relaxation of its consent to discharge to the River Aire would occur if 'fracking' wastewaters were brought into Leeds for treatment. The same high standards of discharge regulation in Leeds would therefore be maintained.

3.10 Taking the above information into account it is legitimate for Leeds City Council to take the view that an effective regime is in place via the Environment Agency to ensure that:

i) Waste (including wastewaters) arising at hydraulic fracturing sites and any other treatment facility elsewhere would be properly regulated and monitored; and,

ii) Operators of hydraulic fracturing sites and on and off-site waste treatment facilities have due regard and are required by law to carry out their responsibilities regarding the control of waste under the Environmental Permitting (England and Wales) Regulations 2010.

3.11 Leeds City Council is keen to reduce and, where possible, prevent the risk of pollution from industry, but in this instance, as with all other licenced waste activities, it is not considered necessary for Leeds City Council to intervene when it is the clear remit of the Environment Agency to regulate such matters on the government's behalf. In accordance with the guidance contained at para. 122 of the NPPF, Leeds City Council must also assume that the pollution prevention regimes will operate effectively.

3.12 The Deputation also raises concerns over waste transportation. It is the responsibility of a licenced waste carrier to transport wastewaters from a permitted hydraulic fracturing site to a permitted waste treatment facility. The waste to be carried is required to be assessed, classified and transported in line with the Environmental Permitting (England and Wales) Regulations 2010. For the transportation of NORM, the transporter must have adequate emergency plans and the major consignors have combined to provide emergency response through the scheme RADSAFE. In addition there is a national scheme NAIR (National arrangements for incidents involving radioactivity) available to support the police in an emergency on matters of radiation protection concern, where no radiation expert is otherwise available. The radiation protection requirements, given in the Ionising Radiations Regulations 1999 set a limit on effective dose for members of the public. Based on the average NORM concentrations in wastewaters arising at hydraulic fracturing sites, the Environment Agency have confirmed that as a result of a potential road tanker spillage, they do not expect anyone would be exposed

to the effective dose limit. On the basis of this information, it is not considered necessary for Leeds City Council to intervene on matters relating to the transportation of wastewaters.

- 3.13 The Deputation also refers to the capacity of the treatment facility at FCC Environment at Knostrop. Whilst planning permission was granted in 1991 for the treatment facility, it is the environmental permits issued by the Environment Agency which identifies the nature and volumes of liquid wastes to be treated by FCC Environment. There is no known evidence to date that would suggest FCC Environment require an increase in the capacity of their existing treatment facility. Should this be the case in the future, then any increase may require a variation to their existing environmental permits. Likewise, should the size of the treatment facility and its ancillary development increase in size/area/number then it is also likely to be the case that planning permission would be required. A planning application is a matter which Leeds City Council, as the Waste Planning Authority, would consider and decide upon.
- 3.14 To the best of our knowledge the destination of any wastewaters from the approved hydraulic fracturing sites in North Yorkshire and Lancashire have not yet been named by Third Energy or Cuadrilla. The planning applications for the sites did not, and do not have to provide this level of information for reasons of commercial confidentiality. FCC Environment at Knostrop may be a viable destination for wastewater treatment to one or both of these operators. It is also likely that other wastewater treatment locations will become available as market demand for the treatment of NORM increases. As such it is expected that other operators in the region may be in the process of applying for environmental permits to treat wastewaters containing NORM. Should such permits be granted by the Environment Agency, this will provide greater treatment capacity in the north of England over and above what is currently available.
- 3.15 Should FCC Environment seek planning permission in the future for new developments at Knostrop, then due regard would be given to a number of material planning considerations. From a planning policy perspective it is important to note that the FCC Environment site is safeguarded for waste management purposes in the Council's adopted development plan (ref. Natural Resources and Waste Local Plan, policy Waste 2). The site is also within a preferred location for waste management facilities (ref. NRWLP, policy Waste 5). FCC Environment at Knostrop is not only of local importance for its treatment offer, but also of national importance, given that a proportion of the waste currently sent to the facility derives from other regions, notably from southern England and further north. As such and given the weight of the adopted development plan, any proposed development at the site for waste treatment purposes would be supported in principle.
- 3.16 Due regard would also be had to environmental, amenity and highway considerations (refs. NRWLP policy Waste 9, UDPR saved policy GP5 and CS policy T2). Planning proposals that involve waste management are required to demonstrate that the potential impacts arising from the proposed development have been addressed in accordance with planning policy requirements and, where relevant, national guidance.

- 3.17 Due regard would also be had to all representations made by members of the public on any future planning application made by FCC Environment. Where possible and reasonable to do so, planning officers will negotiate better outcomes to overcome public concern.
- 3.18 Whilst Leeds City Council opposes the current exploration licences for hydraulic fracturing in the Leeds area (ref. Full Council White Paper, 11th November 2015) it is recognised that this cannot pre-determine planning applications for hydraulic fracturing or prejudice the coming forward of fracking-related activity in Leeds. It would therefore be inappropriate for Leeds City Council to support the Frack Free Leeds Knostrop Campaign. Each planning application is considered on its own merits in order to arrive at a transparent and justified decision on the basis of material planning considerations. Prejudicing opinion on any future waste management development at the FCC Environment site would also be contrary to the requirements of Leeds' adopted development plan.
- 3.19 It has been established that the regulatory regime linked to wastewater treatment and transportation are outside of Leeds City Council's remit. Whilst the Council reserves its planning position in respect of any future expansion of the FCC Environment facility at Knostrop, it is considered appropriate in this instance for Leeds City Council to facilitate a meeting with FCC Environment, Yorkshire Water and the Environment Agency, to discuss the potential for hydraulic fracturing-relating activity taking place in Leeds.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 This report is in response to a Council Deputation and does not require any further consultation specifically in relation to the Deputation.

4.2 Equality and Diversity / Cohesion and Integration

- 4.1 The Leeds Core Strategy 2014 and the Natural Resources and Waste Local Plan 2013/15 have been subject to Equality Impact Assessment.

4.2 Council policies and Best Council Plan

- 4.2.1 Leeds' adopted development plan consists of the Core Strategy (CS, 2014, the Natural Resources and Waste Local Plan (NRWLP, 2013) and the saved policies of the Unitary Development Plan Review (UDPR, 2006).
- 4.2.2 The emerging relevant Leeds development Plan consists of the Aire Valley Leeds Area Action Plan (Publication Draft, 2016) and the Site Allocations Plan (Pre-Submission Changes, 2017).
- 4.2.3 The Leeds Best Council Plan 2015-2020 requires, amongst other matters, the Council and its partners to support economic growth and access to economic opportunities.

4.3 Resources and value for money

4.3.1 There are no resource/value for money considerations.

4.4 Legal Implications, Access to Information and Call In

4.4.1 There are no legal considerations, other than to note that the Leeds adopted development plan was prepared in accordance with national planning legislation and guidance. The same applies to the emerging Leeds development plan documents.

4.5 Risk Management

4.5.2 Town Planning as a process of managing and assessing land use change inevitably generates strong concerns from people affected by plans and decisions. Therefore, the Council needs to be responsive to deal with concerns effectively.

5 Conclusions

5.1 The Deputation raises important questions in relation to fracking-related operations. The majority of concerns raised by Frack Free Leeds relate to the pollution prevention control regime which is regulated by the Environment Agency. Leeds City Council has no control over this regime or its requirements and the NPPF advises that we must assume such regimes will operate effectively.

5.2 The FCC Environment wastewater treatment operation at Knostrop is regulated by the Environment Agency under two environmental permits. It is the duty of FCC Environment to competently manage the treatment operations within their site and carry out all necessary responsibilities required by their environmental permits, which the Environment Agency is under duty to enforce.

5.3 There is no evidence before Leeds City Council to suggest that FCC Environment wish to expand their operations at Knostrop to accept 'fracking' wastewaters from sites in North Yorkshire and/or Lancashire. However, given that there is potential for the FCC Environment facility to accept such wastewaters, it is considered appropriate for Leeds City Council to arrange a meeting with FCC Environment, Yorkshire Water and the Environment Agency for the purposes of sharing information on the potential for hydraulic fracturing-related activity taking place in Leeds.

6 Recommendations

6.1 The Director of City Development is asked to note the contents of this report as an appropriate response to the issues raised by the Deputation.

7 Background documents¹

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

7.1 Deputation from Frack Free Leeds received at the 11 January 2017 Full Council meeting.