

Finding a way to implement an immediate ban on Fracking and Fracking Licences in Northern Ireland

There is a [public perception in Northern Ireland that there is a policy ban on fracking](#). However, Minerals and Petroleum Branch (MPB) officials from the Department for the Economy (DfE) are actively pursuing the implementation of fracking, clearly on *their* own wishful interpretation that there is some policy to support fracking in Northern Ireland, which there is not. The lack of a clear policy on fracking in Northern Ireland is leading civil servants to make up their own interpretation.

The scientific evidence of serious health and environmental harm from fracking already irrefutably exists and no acceptable mitigation of the impacts from fracking has been implemented anywhere in the world.

Fracking should only be allowed if it is proved that there would be no adverse effects on the environment or public health and the community impacted fully consents following a full public consultation exercise. Ultimately, our politicians have the power and the responsibility to create the policy which all government departments and officials must adhere to.

It is now clear that the only way to prevent fracking from taking place in Northern Ireland is through a genuinely constructive political initiative at the Executive and Assembly level at this critical window where there are no active petroleum licences in Northern Ireland.

With the added urgency of an imminent rubber-stamping, predetermined report on fracking put out to tender for two current petroleum licence application decisions, immediate action is required on:

1. An Executive decision to refuse to grant the current petroleum license applications, given that DfE Minister Dodds has already agreed that this decision would be brought to the Executive.
2. An Executive decision to halt the current commissioning of a biased report with a predetermined outcome, one without any prior SEA and one which financially exposes the Assembly if its conclusions are used by Tamboran to initiate judicial review proceedings as happened previously in 2014.
3. An Emergency Motion to be tabled in the Assembly calling on a moratorium on the granting of petroleum licences as was already agreed in the Assembly in 2011, awaiting the enactment of legislation to ban fracking in Northern Ireland.
4. The implementation of an immediate fracking ban in Northern Ireland.

1. Policy Context

There is a [public perception](#) in Northern Ireland that there is a policy ban on fracking from the anti-fracking [Motion](#) passed in the Assembly in 2011 and from the wording of the [Strategic Planning Policy Statement](#) (SPPS) (section 6.157) which states:

*“in relation to unconventional hydrocarbon extraction there should be a presumption against their exploitation **until** there is sufficient and robust evidence on all environmental impact”.*

Environment Minister Mark H. Durkan, on 28th September 2015, at the launch of the SPPS went further when [he stated](#):

*“Significantly for the first time, no to fracking is actually enshrined in policy unless there is sufficient and robust evidence **of its safety** on all environmental impacts. I believe this is a sensible and reasonable approach”.*

However, Minerals and Petroleum Branch (MPB) officials from the Department for the Economy (DfE) are actively pursuing the implementation of fracking, clearly on the understanding that there is a policy to support fracking once the [report](#) (which does not once mention the word “safety” anywhere in the terms of reference) on fracking being advertised has been commissioned and completed, irrespective of the conclusions of that report. DfE Minister Dodds has concurred with her officials that this report will not consider the policy option of banning fracking as she wrote on September 2nd that the [“Department is not considering the suspension of petroleum licensing at this time”](#). The DfE even wrote in January 2020:

[“The legislative framework is such that, without proper assessment of the issues raised in the public consultation, there are no legal grounds for the Department to reject the applications. Such an action would leave the Department open to legal challenge”](#)

This logic explains the attempts that have been made by DfE officials to remove the actual fracking ban in the Draft Local Development Plan (LDP) of Fermanagh & Omagh District Council, despite an unanimous vote to the contrary on the matter by councillors in February.

There is currently a ban on fracking in the Fermanagh and Omagh District Council (FODC) [Draft Local Development Plan](#) (LDP) **“until it is proved that there would be no adverse effects on the environment or public health”**; and this scientific [evidence](#) of serious health harm from fracking already irrefutably exists.

However, the Minerals and Petroleum branch (MPB) of the [Department for Economy \(DfE\)](#) [has already ruled in writing](#) that it is *“by no means the case”* that there are *“actual”* adverse environmental and health impacts from fracking in Northern Ireland and that fracking can be mitigated *“to an acceptable level”*. This decision will be formally notified to Minister Dodds recommending approval of licences for Tamboran and EHA to frack Northern Ireland, once the formality of a £75,000 predetermined, box-ticking [report](#) into fracking at the development stage - a report which has a specific objective of *“informing a recommendation as to whether or not to grant the licences”* - is completed. This is a clear waste of public funds which the lessons from the recent [RHI scandal](#) should have taught us. It is unacceptable to propose to commission a

report at the public cost knowing that its conclusion will be completely ignored because the decision has already been made and published beforehand. Minister Dodds has stated that the fracking licences decision will be brought to the Executive, but that the [*“Department is not considering the suspension of petroleum licensing at this time”*](#). This is a clear admission that the [review](#) process is being undertaken on the basis that there is an ongoing pro-fracking policy in Northern Ireland, that fracking will take place no matter the conclusions and that the review is nothing more than a sham process. The only real objective of this report, therefore, is to put a price on the heads of the people of Fermanagh by investigating the economic gains from giving people more disease in a community that already has the highest rate of recorded [post traumatic stress disorder](#) (PTSD) in the world and is crippled with rising rates of cancer and multiple levels of discrimination in fair allocation of services but which is also a community that has united strongly to withhold any social licence for fracking. The MPB has also completely ignored the European Commission recommendation that [*“Before granting licenses for exploration and/or production of hydrocarbons which may lead to the use of high-volume hydraulic fracturing, Member States should prepare a strategic environmental assessment”*](#). SEAs must consider reasonable alternatives, including not proceeding with a plan, which the report is not doing.

[On September 1st](#), the Chief Executive of Fermanagh and Omagh District Council (FODC) was forced to dramatically halt the formal [public consultation removing the current ban on Fracking](#) in the Local Development Plan (LVP) at the behest of the MPB when [gagged minutes from the ‘Confidential Special Regeneration and Community Committee’ of February 24th were leaked](#), proving categorically that the council members had in fact voted unanimously against any changes to the fracking ban in the FODC area. If the FODC officials went beyond their reserved functions in removing the fracking ban, in spite of the unanimous vote to the contrary by the councillors, then this action should be independently investigated via the [Northern Ireland Audit Office](#). Additionally, no cross-border consultation was initiated as is obliged under the Espoo Convention even though the Department for the Environment ruled in 2014 that drilling by Tamboran would have a [significant impact on the Environment](#).

It is now clear that the ***only*** way to prevent fracking taking place in Northern Ireland is through a genuinely constructive political decision at the Executive and Assembly level at this critical window where [there are no active petroleum licences in Northern Ireland](#) because officials in the Minerals and Petroleum Branch have already decided in favour of fracking even before the completion of a report which is supposed to inform that decision. This requires an immediate Executive decision to halt the commissioning of a biased report (one with [no prior SEA](#)) and one which financially exposes the Assembly if its conclusions are used by Tamboran to initiate [judicial review proceedings as happened previously in 2014](#)), to ban all fracking licenses as was already agreed in the [Assembly in 2011](#) and to implement a fracking ban as proposed [here](#)..

2. Preparation of Draft Local Development Plan

The Draft Plan Strategy (DFS) for the Fermanagh and Omagh Local development plan (LDP) sets out how the area will change and grow over the period up to 2030.

The publication in October 2018 of the [Fermanagh and Omagh district Council Local development plan Draft Plan Strategy 2030](#) was the first formal stage of our local development plan and followed on from the preferred Options paper of 2016.

It takes account of the particular characteristics of the district and the views of residents, consultees and Council members on the planning framework for the district until 2030. All elected members are involved in the preparation of the draft plan Strategy through workshops, consultations and the cross-party Local Development Plan Steering group which has provided input into the development of the policies and in ensuring that they reflect the needs of the local area.

Following 650 submissions from concerned residents about fracking and public health concerns the Council set out to clarify its policy in the draft plan by including the following policy statement on unconventional hydrocarbon exploitation:

Draft Policy MIN04 - Unconventional Hydrocarbon Extraction

The Council will not permit exploitation of unconventional hydrocarbon extraction until it is proved that there would be no adverse effects on the environment or public health.

Exploratory works for unconventional hydrocarbon which do require planning permission will be considered under draft Policy MIN 01.

Policy Clarification

- 4.89.** The Council is aware of a significant and growing concern in respect to the social, public health, economic and environmental impacts that may be associated with unconventional hydrocarbon extraction, also known as hydraulic fracturing or fracking. Given the potential and actual adverse impacts on the environment and human health associated with the process, the Council's position, in the absence of government evidence, is to adopt a presumption against the granting of planning permission for the extraction of unconventional hydrocarbon.

Under this policy the exploitation of unconventional gas is prohibited unless it can be proven that public health can be protected. This policy amounted to a fracking ban because the scientific [evidence](#) of serious health harm from fracking already irrefutably exists.

3. Attempt to Modify the Draft Local Development Plan

Following the publication of the Draft Local Development Plan (LDP) the Minerals & Petroleum Branch & the Geological Survey of Northern Ireland (MPB/GSNI) within the [Department for the Economy \(DfE\)](#) submitted a response to Fermanagh/Omagh District Council on December 21st 2018 controversially stating:

Paragraph 4.89 states “Given the potential and actual impacts on the environment and human health associated with the process...” this suggests that such impacts are inevitable whereas this is by no means the case. Although adverse effects on the environment and human health can be associated with shale gas production there is plenty of evidence in peer-reviewed scientific literature to demonstrate how effective measures can mitigate the risks to reduce them to an acceptable level.

MPB officials argued that that the wording of the LDP on Unconventional Hydrocarbon Extraction extrapolated the policy of the [Strategic Planning Policy Statement](#) (SPPS) (section 6.157) further than was warranted by the available evidence, going on to state that it is “*by no means the case*” that there are “*actual*” adverse environmental and health impacts from fracking in Northern Ireland and that fracking can be mitigated “*to an acceptable level*”. [Affected communities like those in Pennsylvania](#) dealing with elevated cases of rare cancers may not agree.

DfE used the words “human health” rather than acknowledging the term “*public health*” referred to in the LDP. “*Public Health*” considerations relate to the prevention of disease in the population and arises out of the evidence coming out of affected communities where fracking is practiced (and outlined in greater detail in the 2015 briefing note on [‘The Ireland/Northern Ireland Joint Research Programme into Unconventional Gas Exploration and Extraction \(Fracking\) With particular interest in Public Health’](#)).

While this was clearly the view of the Minerals & Petroleum Branch & the Geological Survey of Northern Ireland (MPB/GSNI) within the Department for the Economy it was not expected that FODC would easily give up on its concerns in relation to public health without evidence - particularly without a health impact assessment of the full lifecycle of the exploitation of the shale gas basin.

However, there was huge shock when, having considered all representations, FODC proposed a number of changes to the Draft LDP. These changes were subjected to a public consultation open on July 16th and intended to continue until Friday 11 September 2020. A [schedule of the proposed changes](#) was published and included a revised Min 04 policy that was exactly in line with the advice given by the department for the Economy.

In one flush sleight-of-hand, the new proposal was to remove the policy banning fracking once a report has been completed on the impacts of fracking, no matter how bad those impacts are, with the simple words

“The Council will not permit the exploitation of unconventional hydrocarbon extraction until there is sufficient and robust evidence on all associated impacts on the environment and human health”.

It avoided considering the public concerns about future disease in the community by removing the requirement to prove there would be no adverse effects on the public health before fracking could be allowed. Once the study was completed, there would be no more automatic ban on fracking.

Proposed Changes

Draft Plan Strategy Page	Policy/ Paragraph/ Table Number etc	Summary of Issue/Justification	Proposed Change	Rep/ Issue ref
125	Additional para.	Additional policy clarification for valuable minerals.	<u>Valuable minerals refer to high value metalliferous minerals such as gold, silver, lead, copper and diamonds. Exploitation may create environmental effects which are particular to the methods of extraction or treatment of that mineral. In considering a proposal where the site is within a designated site, due weight will be given to the reason for the designation. There will not be a presumption against their exploitation in any area apart from within designated Special Countryside Areas. Exploration for such high value metalliferous minerals can usually be carried out under the current permitted development legislation. However, where planning permission is required, full consideration will be given to the potential environmental impacts and any risks posed to safety or human health.</u>	
MIN04: Unconventional Hydrocarbon Extraction				
127	Policy MIN04	Amended wording to first sentence of policy with removal of 'no adverse effects' and to reflect SPPS.	The Council will not permit exploitation of unconventional hydrocarbon extraction until <u>there is sufficient and robust evidence on all associated impacts on the environment and human health, it is proved that there would be no adverse effects on the environment or public health.</u> Exploratory works for unconventional hydrocarbon which do require planning permission will be considered under draft Policy MIN 01.	DPS/248/03
127	Para 4.89	Additional text to clarification on definition of hydraulic fracturing or fracking	<u>This process means the generation of mechanical fractures in rock below the surfaces by means of the physical process of pumping fluid at high pressure into the rock via a petroleum wellbore for the purpose of enhancing the flow of all hydrocarbons between the rock and the wellbore.</u> Delete words ' <u>and actual</u> ' from 2 nd sentence in paragraph.	DPS/006/01

4.

4. Withdrawal of the Draft Local Development Plan

On [September 1st](#), the Chief Executive of Fermanagh and Omagh District Council (FODC) was forced to dramatically halt the formal [public consultation removing the current ban on Fracking](#) in the Local Development Plan (LVP) at the behest of the MPB when [gagged minutes from the 'Confidential Special Regeneration and Community Committee' of February 24th were leaked](#), proving categorically that the council members had in fact voted unanimously against any changes to the fracking ban in the FODC area. If the FODC officials went beyond their reserved functions in removing the fracking ban, in spite of the unanimous vote to the contrary by the councillors, then this action should be independently investigated via the [Northern Ireland Audit Office](#) for a policy change to support fracking where no cross-border or transboundary consultation took place as is obliged under the Espoo Convention (discussed in section 4 below) even though the Department for the Environment ruled in 2014 that drilling would have a [significant impact on the Environment](#).

The Chief Executive of the Fermanagh and Omagh District Council, Alison McCullagh, in agreeing to halt the public consultation process to remove the effective fracking ban in the proposed changes to the LDP, at the [Council Meeting of September 1st 2020](#) stated:

"I have reviewed, obviously, the documentation and I think there is some ambiguity between the various minutes - in particular the open minute of the Special Regen and Community Committee and the confidential minute and the text as presented. What I had indicated in my earlier communications on this chair to Councillor Currie - to the Sinn Féin Group leader - to yourself, was that as a non-statutory step in the process I thought there was scope certainly for us to provide any clarity that would be needed by way of publication or other information. However I accept the proposal before us is beyond that [...]"

We will certainly be getting a full report for your consideration as to how the situation that we are currently in has arisen. [...]"

*I just wanted to make, if I may, just one very brief comment in case I misled. Councillor Gannon was referencing ambiguity. I am not suggesting there was ambiguity in the minds of members. What I am just referencing is the various records, that's all. I think we are very clear and **the reference has been made to unanimous agreement** so just to defer on that basis"*

5. Transboundary Consultation

1. Refusal to undertake Transboundary consultation represents a breach of the [United Nations Espoo Convention](#) which requires countries, under [Article 3](#), to alert and consult with neighbouring countries on "Proposed Activities" which may have cross border impacts. Both Ireland and the United Kingdom are parties to the 1991 convention. Article 3(1) states:

"For a proposed activity listed in [Appendix I](#) that is likely to cause a significant adverse transboundary impact, the Party of origin shall, for the purposes of ensuring adequate and effective consultations under [Article 5](#), notify any Party which it considers may be an affected Party as early as possible and no later than when informing its own public about that proposed activity."

2. The highly concerning rapid evolution of the proposed activity to undertake fracking in Northern Ireland on a massive scale on the basis of the Northern Ireland [Strategic Planning Policy Statement for Northern Ireland](#) (SPPS) section 6.157 now requires urgent intervention because no transboundary consultation has been initiated with any Irish State authority on the proposed activity of fracking in Northern Ireland via the petroleum licensing process and the Strategic Planning Policy Statement for Northern Ireland.

3. Minister Dodds from the Department for the Economy (DfE), on September 2nd 2020 stated

["Although the Department is not considering the suspension of petroleum licensing at this time, I can confirm that no decisions will be taken on whether or not to grant Petroleum Licences in respect of the two current applications until the outcome of the research is known. Furthermore, I have also given an undertaking to the Assembly that, due to the cross cutting nature of petroleum licensing, I intend to take these decisions to the Executive"](#).

4. However, once the [study](#) she refers to is completed, there is no more automatic ban on fracking - and a [study is already gone to tender by the Department for the Economy \(DfE\)](#) without considering public health for the sum of £75,000 in a box-ticking exercise because DfE has even gone so far as to predetermine the outcome by stating fracking can be mitigated "[to an acceptable level](#)".

5. On September 1st, 2020, due to the serious issues raised in a [briefing document](#) the entire process to modify the draft Fermanagh and Omagh District Council (FODC) Local Development Plan (LDP) removing the fracking ban in the FODC area was halted due to another unanimous motion carried by Councillors at the FODC council meeting.

The screenshot shows a web browser window with the URL <https://www.fermanaghomagh.com/services/planning/local-development-plan-draft-plan-strategy-proposed-changes-consultation>. The page has a purple header and a white main content area. A purple box at the top contains a COVID-19 notice. Below it, the breadcrumb trail is 'Home » Services » Planning'. The main heading is 'Local Development Plan Draft Plan Strategy - Proposed Changes Consultation'. A purple text block states that the consultation has been paused with immediate effect from 2nd September 2020. Below this, it says the Council will provide further information in the near future and provides a link to the 'Local Development Plan' for more information.

COVID-19: There have been some changes to Council services. For up to date information on Council services and community & business time, please follow this link: [COVID-19 \(Coronavirus\) Information, Advice & Council services](#)

Home » Services » Planning

Local Development Plan Draft Plan Strategy - Proposed Changes Consultation

The Local Development Plan Draft Plan Strategy - Proposed Changes Consultation has been paused with immediate effect from 2nd September 2020. Therefore, please do not submit comments to it at this time.

The Council will provide further information on this matter in the near future.

For more information on the draft plan strategy visit [Local Development Plan](#)

6. What is of most concern is that, as was highlighted in submissions to Petroleum Licence Applications PLA1/16 and PLA2/16 on July 5th 2019, the underpinning regulations for petroleum licensing, the [Petroleum Production Regulations \(Northern Ireland\) 1987](#) or the

[Hydrocarbons licensing Directive Regulations \(Northern Ireland\) 2010](#) do not include any other obligation on the licensee to obtain any further development consent for the actual process of fracking which would be subject to public consultation. There may be development consent required for other aspects related to fracking, such as for pumping of chemicals into the wells, roads and pipelines etc, but the actual development consent itself for fracking is contained entirely in the Petroleum Licences. In fact, in the case of the [Petroleum Licence PL1/10 awarded to Infrastrata plc in March 2011](#) all other related activities were even considered exempted development (known as 'Permitted Development' in Northern Ireland) and so Petroleum Licence PL1/10 was all that was needed for Infrastrata to commence drilling at Woodburn Forest in County Antrim in May 2016. In summary, once Petroleum Licences are awarded there is a right obtained by applicants to both undertake the exploration and production development of fracking.

7. Furthermore, DfE officials have put pressure on the Fermanagh and Omagh District Council in Northern Ireland to remove the fracking ban in the draft LDP because this is the last policy hurdle for the DfE to overturn in order to allow fracking to commence in the Fermanagh and Omagh district of Northern Ireland bordering 4 southern counties, because DfE has already predetermined the outcome of the study by stating the adverse effects on public health and the environment of fracking can be mitigated against to an "acceptable" level. For information, the local councils in Northern Ireland are answerable to the Department for Infrastructure (DfI) and not the DfE for the implementation of Local Development Plans. Yet, DfE officials from the [Minerals and Petroleum Branch](#) involved in according fracking licences are, clearly, in a breach of public trust, deliberately undermining the work of elected representatives and unethically attempting to push through changes to the FODC LDP in direct contravention to what was unanimously agreed to by the elected councillors at the February 24th 2020 meeting of the Confidential Special Regeneration and Community Committee. It begs the question if the same officials from the DfE are having the same approach towards all other local Councils.

8. In reply to the Espoo 'Friends of the Irish Environment' complaint on July 11th 2019 DfE had replied that transboundary issues would be taken on board at the permitting stage which, in any case, is the stage we are at now.

9. It must be noted however that Espoo refers to "*proposed activities*" which may have cross-border impacts (not "*projects*") and Espoo applies at the SEA level - not the project EIA level and it is quite clear from the issues outlined here that fracking is clearly an activity that is being actively pushed and proposed with all the might of the DfE Minerals and Petroleum Branch with no regard for the outcome of public or transboundary consultation.

10. It is now quite clear that a political decision of the Northern Ireland Executive (once the outcome of the £75,000 report is concluded and irrespective of the outcome of that report) using section 6.157 of the Strategic Planning Policy Statement for Northern Ireland (completed in 2015 with an SEA which did not include any transboundary consultation) is all that is required for fracking to begin in Northern Ireland.

11. On the face of it, a clear contravention of the Espoo Convention is now taking place in Northern Ireland because the only stage left in the process to allow the proposed activity of

fracking to take place in Northern Ireland for the two fracking applications from Tamboran and EHA is a political decision in the Northern Ireland Executive with no prior Transboundary Consultation on the massive adverse environmental and health impacts with the neighbouring country which banned fracking in 2017 on environmental and health grounds and which has a clear government policy in the current Programme for Government against the importation of fracked gas?

12. Onshore gas exploration and production by both fracking and conventional means in Northern Ireland are likely to have significant adverse environmental and public health consequences south of the border. These include, but are not limited to, impacts on shared water bodies, EU-protected habitat areas, air and public health. It impacts on the fight against global warming due to the island being the one integrated Single Electricity Market (SEM) thought fossil fuel lock-in and the inability of the renewable sector to compete.

13. The need for cross-border public consultation is demonstrated by the opposing legal status of fracked gas in the two jurisdictions. The "[*Prohibition of Onshore Hydraulic Fracturing Act 2017*](#)" makes the "*taking*", or "*storing*" of fracked gas "*situated in Ireland*" illegal and postdates the SPPS which was published in 2015.

14. In January 2014 the European Commission responded to calls for urgent action and produced a [recommendation](#) inviting member states to follow minimum principles when applying or adapting their legislation applicable to hydrocarbons exploration or production using high volume hydraulic fracturing. The principles are expected to be made effective by the EU Member States within 6 months of their publication. Member States are also invited to inform the Commission annually about measures taken. In order to comply with this recommendation the both governments should commit to carrying out a Strategic Environmental Assessments **prior** to licensing.

["3. STRATEGIC PLANNING AND ENVIRONMENTAL IMPACT ASSESSMENT](#)

[3.1. Before granting licenses for exploration and/or production of hydrocarbons which may lead to the use of high-volume hydraulic fracturing, Member States should prepare a strategic environmental assessment to prevent, manage and reduce the impacts on, and risks for, human health and the environment. This assessment should be carried out on the basis of the requirements of Directive 2001/42/EC."](#)

15. Espoo complaints concerning Northern Ireland and the UK have been successfully adjudicated on before. After official complaints lodged by the Irish eNGO, 'Friends of the Irish Environment' under its obligations to comply with the UN Espoo Convention, Northern Ireland's Causeway Coast & Glens Council , in a ground-breaking decision that has far-reaching implications was forced, on October 16th 2018, to inform the Irish Member State Department of the Environment, Communities and Local Government and Donegal County Council that there was likely to be a significant effect on the environment in the Republic of Ireland as a result of a proposed intensive pig farm development and that in accordance with Regulation 27 of the Planning (EIA) Regulations (NI) 2015 was forced to invite the Irish Member State bodies to participate in the consultation process.

16. Another transboundary consultation breach of International law against the UK was found when 'Friends of the Irish Environment' made a complaint to the UN Espoo Implementation Committee over the UK's failure to consult the public in Ireland about the

potential trans-boundary implications of the construction and operation of the proposed Hinkley Point C nuclear reactor. The Implementation Committee for the Espoo Convention on Environmental Impact Assessment in a Transboundary Context found that Britain had not met its obligations to discuss the impact of a nuclear accident with the affected public in other countries, including Ireland and the UK was then forced to meet those obligations by implementing a consultation process².

6. **Biased Report being Commissioned by the DfE on Fracking**

1. The Minerals and Petroleum branch (MPB) of the Department for the Economy (DfE) has advertised for tenders for a study “[seeking to procure research into the economic, societal and environmental impacts of future onshore petroleum exploration and production, including Unconventional Oil and Gas \(UOG\), in Northern Ireland](#)”

2. The outcome of this study is that, once completed, it would have fulfilled the condition to remove the automatic presumption against fracking in the Northern Ireland [Strategic Planning Policy Statement](#) (SPPS) (section 6.157) which states

“in relation to unconventional hydrocarbon extraction there should be a presumption against their exploitation until there is sufficient and robust evidence on all environmental impact”

3. The study also has the official objective to “*address a number of the issues identified in the 2019 consultation on two petroleum licence applications, with a view to informing a recommendation as to whether or not to grant the licences.*”

4. Minister for the Economy, Diane Dodds, wrote on September 2nd 2020 that “[no decisions will be taken on whether or not to grant Petroleum Licences in respect of the two current applications until the outcome of the research is known](#)”.

5. However, the Minerals and Petroleum branch (MPB) of the [Department for the Economy \(DfE\) has already ruled in writing](#) that it is “*by no means the case*” that there are “*actual*” adverse environmental and health impacts from fracking in Northern Ireland and that fracking can be mitigated “*to an acceptable level*”.

6. On September 3rd 2020 the MPB even supplied the supporting documentation it used to “[demonstrate how effective measures can mitigate risks and reduce them to an acceptable level: as referred to in the Department’s response to the Fermanagh and Omagh District Council’s consultation on their Draft Plan Strategy](#)”.

² https://friendsoftheirishenvironment.org/images/pdf/Hinkley_Espoo_April_finding_2016.pdf

7. This decision will be formally notified to the Minister Dodds recommending approval of licences for Tamboran and EHA to frack Northern Ireland, once the formality of the £75,000 (ex-VAT) predetermined, box-ticking [report](#) into fracking at the development stage - a report which has a specific objective of "*informing a recommendation as to whether or not to grant the licences*" - is completed. This is a clear waste of public funds which the lessons from the recent [RHI scandal](#) should have taught us. It is unacceptable to propose to commission a report at the public cost knowing that its conclusion will be completely ignored because the decision has already been made and published beforehand. The only real objective of this report is to put a price on the heads of the people of Fermanagh by investigating the economic gains from giving people more disease in a community that already has the highest rate of recorded [post traumatic stress disorder](#) (PTSD) in the world and is crippled with rising rates of cancer and multiple levels of discrimination in fair allocation of services but in a community which has united strongly to withhold any social licence for fracking. If this report is not postponed then there may be strong grounds for an independent investigation via the [Northern Ireland Audit Office](#) for commissioning a report to be used to provide advice to the Minister on whether or not she should award the 2 fracking licences when the same officials have clearly already made that decision in writing.

8. The report tender advertised by DfE is misleading in asserting that there is a current active Petroleum licence in existence in Northern Ireland, held by infrastrata plc in Woodburn Forest (PL1/10).

Infrastrata plc and eCORP Oil & Gas UK Limited	PL1/10	Woodburn Forest No.1 (2016)	04/03/11	active
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On [April 28th, 2020 this licence expired](#) and there are now no active Petroleum licences anywhere in Northern Ireland. This fact clearly changes the current context, where no Company can sue the Department for the economy if the Executive decides to implement a moratorium on issuing fracking licences.

9. The statement by Minister for the Economy, Diane Dodds, on September 2nd 2020 that "[no decisions will be taken on whether or not to grant Petroleum Licences in respect of the two current applications until the outcome of the research is known](#)", seems also to be contradicted by the fact that the [assessment requirements of the research](#) being advertised by the Department refers to "*the licence holders with whom the contractor should engage*". No licence holders exist in Northern Ireland since [April 28th 2020](#).

- Output 5: Final draft Report produced with DfE/GSNI comments incorporated

Contract management and review

DfE/GSNI will work with the contractor to agree:

1. a breakdown of the working timeline to deliver a final Report within a maximum of 4-6 months of the signing of the contract
2. outputs at each stage of the timeline
3. agree fortnightly contact and meeting schedule with project group
4. lists of key stakeholders and licence holders with whom the contractor should engage
5. list of available reports, data and statistics available from DfE/GSNI.

Responsibility for the day to day management of the assignment will rest with DfE/GSNI, who will work with the contractor to ensure that the timetable is met and the outputs required, as mentioned above, are delivered.

10. The Strategic Planning Policy Statement ([SPPS](#)) (section 6.157) states: “in relation to unconventional hydrocarbon extraction there should be a presumption against their exploitation until there is sufficient and robust evidence on all environmental impact”. Environment Minister Mark H. Durkan, on 28th September 2015, at the launch of the SPPS went further when he stated: “Significantly for the first time, no to fracking is actually enshrined in policy unless there is sufficient and robust evidence [of its safety](#) on all environmental impacts. I believe this is a sensible and reasonable approach”. However there is no mention of the word “safety” anywhere in the terms of reference of the [report](#) being commissioned by DfE to allow fracking to proceed in Northern Ireland.
11. Consideration must be given to abandoning the Commissioning of this predetermined, biased report because it may financially expose the Assembly if its conclusions are used by Tamboran to initiate [judicial review proceedings as happened previously in 2014](#) and if the ultimate decision is subsequently made to ban new licences.
12. As stated above (and outlined in greater detail in the 2015 briefing note on [‘The Ireland/Northern Ireland Joint Research Programme into Unconventional Gas Exploration and Extraction \(Fracking\) With particular interest in Public Health’](#)), in January 2014 the European Commission responded to calls for urgent action and produced a [recommendation](#) inviting member states to follow minimum principles when applying or adapting their legislation applicable to hydrocarbons exploration or production using high volume hydraulic fracturing. The principles are expected to be made effective by the EU

Member States within 6 months of their publication. Member States are also invited to inform the Commission annually about measures taken. In order to comply with this recommendation both governments should commit to carrying out a Strategic Environmental Assessments prior to licensing.

[“3. STRATEGIC PLANNING AND ENVIRONMENTAL IMPACT ASSESSMENT](#)

[3.1. Before granting licenses for exploration and/or production of hydrocarbons which may lead to the use of high-volume hydraulic fracturing, Member States should prepare a strategic environmental assessment to prevent, manage and reduce the impacts on, and risks for, human health and the environment. This assessment should be carried out on the basis of the requirements of Directive 2001/42/EC.”](#)

A Petroleum Affairs Division (PAD) briefing paper was provided to the Minister of State Joe McHugh TD after his appointment in 2014. He has responsibility for the development of Natural Resources in the Republic of Ireland. PAD briefed him regarding the Commission's Recommendations and they stated:

[“It's not currently implementable in Ireland as we have a de facto moratorium in place pending the outcome of the EPA research into the potential impacts of the hydraulic fracturing”](#)

The current research programme is not a systematic or objective assessment of a government proposed policy, plan or programme. It can't be allowed to take the place of a Strategic Environmental Assessment which would evolve informing the public and allowing the public to engage in decision making that affects them and their environment. Governments on both sides of the border are avoiding the creation of plans and programmes going instead directly to project level decisions in order to avoid proper assessment under the [Strategic Environmental Assessment Directive](#) . As a result communities are blocked from participating formally in decision making that will impact directly on their right to live safely in their own homes. The current research programme is set inside this flawed process providing a platform for industry to self regulate while keeping affected communities at arm's length.

7. Fermanagh's Unique Needs and Why Fracking is not an option

Fermanagh is the most isolated, most rural, most remote and [most vulnerable area in Northern Ireland](#) with very significant economic, social and health inequalities. Spending “*half the year in the lake and the other half out of it*” the impacts of Climate Change are more obvious in Fermanagh. The terms of reference of the [report](#) being commissioned by the DfE into fracking are clearly putting a price on the heads of the people of Fermanagh in order to frack in an already-fractured community.. The evidence of serious health harm from fracking exists. Why would anyone seek to investigate economic gains from giving even more people cancer, especially in an area already crippled with cancer rates, and multiple levels of discrimination? The only real objective of this report is to put a price on the heads of the people of Fermanagh by investigating the economic gains from giving people more disease in a community that already has the highest rate of recorded [post traumatic stress disorder](#) (PTSD) in the world and is crippled with rising rates of cancer and multiple levels of

discrimination in fair allocation of services but in a community which has united strongly to withhold any social licence for fracking.

8. Conclusions on Options to Prevent Fracking taking place in Northern Ireland

Minister Dodds has stated that the fracking licences decision will be brought to the Executive, but that the “[*Department is not considering the suspension of petroleum licensing at this time*](#)”. This is a clear admission that the [review](#) process is being undertaken on the basis that fracking will take place in Northern Ireland no matter the outcome of that review process and is nothing less than a sham process .

The [Strategic Planning Policy Statement for Northern Ireland](#) (SPPS) of September 2015 laid out the policy towards fracking in section 6.157 states

“in relation to unconventional hydrocarbon extraction there should be a presumption against their exploitation until there is sufficient and robust evidence on all environmental impacts”.

Section 6.1.64 further states:

“Whilst a general presumption against the granting of planning permission for the extraction and/or processing of minerals will apply in areas protected from minerals development in the LDP, planning authorities may consider whether particular proposals should be justified as exceptions [44] to the LDP provisions.” where Footnote 44 in the SPPS states: *“Such an exception will not be applied to unconventional hydrocarbon extraction until there is sufficient and robust evidence on all environmental impacts”*

It is now quite clear that Minister Dodds has interpreted Northern Ireland Policy on Fracking as one where there is presumption of fracking being allowed because her department is not considering even the option of the suspension of fracking licensing, whilst clearly interpreting the SPPS words *“until there is sufficient and robust evidence on all environmental impacts”* as meaning that any such evidence produced by the report proposed to be commissioned into fracking will never consider an assessment or recommendation on whether or not fracking should be banned in Northern Ireland. The report is mainly only about calculating the profits that can be made from fracking in economic terms only as referred to by Minister Dodds in her letter when she wrote:

“the review is intended to ensure that the framework continues to be effective in delivering objectives one and two of the December 2019 Outcomes Delivery Plan and future Programme for Government commitments”.

This is a clearly unethical, reckless and dangerous approach towards commoditising peoples' health and lives with guaranteed environmental destruction as has happened in every single country in the world where fracking is taking place and is clearly not in the public good. In simple terms, the Minerals and Petroleum Branch of the DfE is commissioning a report which will not be allowed to lead to a change in the Northern Ireland Policy on fracking, and will not be allowed to be used to advise the Minister to refuse the 2 current fracking licence

applications by Tamboran and EHA because the decision has already been made by the MPB and published via email that fracking is acceptable in Northern Ireland.

In addition, the MSB, by taking a unilateral approach to commissioning a predetermined report on fracking, has clearly ignored the comments of the [Department of Agriculture, Environment and Rural Affairs](#) (DAERA) in July 2019 to the fracking licence applications by Tamboran and EHA, where DAERA warned the MPB that it would constitute a breach of the regulations if no Appropriate Assessments Screening Reports were carried out as per the transposed EU Habitats Directive **prior** to any licensing approval and DAERA were not consulted throughout the entire assessment process. None of this is outlined in the terms of reference of the review being commissioned on fracking.

It is now clear that the **only** way to prevent fracking taking place in Northern Ireland is through a genuinely constructive political decision at the Executive and Assembly level at this critical window where [there are no active petroleum licences in Northern Ireland](#) because officials in the Minerals and Petroleum Branch have already decided in favour of fracking even before the completion of a report which is supposed to inform that decision. This requires an immediate Executive decision to halt the commissioning of a biased report which financially exposes the Assembly if its conclusions are used by Tamboran to initiate [judicial review proceedings as happened previously in 2014](#), to ban all fracking licenses as was already agreed in the [Assembly in 2011](#) and to implement a fracking ban as proposed [here](#).

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