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| <b>Subject:</b>           | Response to the Department for Infrastructure's 'Review of Permitted Development Rights for Mineral Exploration' |
| <b>Date:</b>              | 17 <sup>th</sup> January 2017  |
| <b>Reporting Officer:</b> | Keith Sutherland (ext. 3576)   |
| <b>Contact Officer:</b>   | Conor Campfield (ext. 2231)  |

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| <b>Is this report restricted?</b>            | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> |
| <b>Is the decision eligible for Call-in?</b> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            |

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| <b>1.0</b> | <b>Purpose of Report or Summary of main Issues</b>   |
| 1.1        | The report seeks to provide the background on review of Permitted Development Rights for Mineral Exploration and seeks members' approval for a Council response.   |
| 1.2        | The Department for Infrastructure (DfI) has consulted the Council on the review of Permitted Development Rights for Mineral Exploration as set out in Part 16 of the schedule to the Planning (General Permitted Development) Order (Northern Ireland) 2015. |
| 1.3        | The closing date for submission is the 3 <sup>rd</sup> February 2016. The proposed draft response is attached in Appendix A for consideration.   |

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| <b>2.0</b> | <b>Recommendations</b>  |
| 2.1        | Members are asked to: <ul style="list-style-type: none"><li>Consider the draft document, 'Draft Council response to DfI's Review of Permitted Development Rights of Minerals Exploration' and if appropriate approve its submission to the DfI as the Council's response to the Review. (See Appendix A).</li></ul> |
| <b>3.0</b> | <b>Main report</b>  |
|            | <b><u>Key Issues</u></b>  |
| 3.1        | Members may recall that the then Department of Environment (now DfI) had issued a 'Call for Evidence' to inform the future approach to Permitted Development Rights for Mineral Exploration as set out in Part 16 of the schedule to the Planning (General  |

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|     | <p>Permitted Development) Order (Northern Ireland) 2015. Members were consulted and Council issued a formal reply in April 2016 outlining a number of recommendations, which it thought should be incorporated into any subsequent policy review. A copy of the response is attached in Appendix B.</p>  |
| 3.2 | <p>Subsequently, the Minister for Infrastructure on 6<sup>th</sup> June 2016, responding to a motion calling for the protection of Woodburn Forest, announced in the Assembly that he intended to remove permitted development rights for petroleum (oil and gas) exploration and consult upon proposals for legislative change.</p>   |
| 3.3 | <p>The aim of this public consultation is to seek comments on the proposed removal of permitted development rights for petroleum exploration from Class A of Part 16 of the Schedule of the Planning (General Permitted Development) Order (Northern Ireland) 2015 (GPDO).</p>   |
| 3.4 | <p>In relation to petroleum exploration, 2 options have been tabled. Option 1 seeks to remove permitted development rights for the drilling of boreholes for petroleum exploration including the drilling of boreholes preparatory to petroleum exploration whilst Option 2 affords permitted development rights for the drilling of boreholes preparatory to petroleum exploration only.</p>  |
| 3.5 | <p>The public consultation also seeks views on three minor amendments in respect of permitted development rights for all mineral exploration. These include:</p> <ul style="list-style-type: none"> <li>• The introduction of a height restriction of 15 metres for any structure assembled or provided to Part 16 (permitted development rights for mineral exploration) of the Schedule to the GPDO;</li> <li>• The extension of the time period from 21 to 28 days under Article 7 to allow councils further time to fully assess whether permitted development rights under Part 16 of the Schedule of the GPDO should be removed or restricted; and</li> <li>• To bring forward a technical amendment to Part 16 of the GPDO introduce a 'relevant period' to clarify when permitted development rights come into effect and to ensure that mineral exploration is not permitted until the 'relevant period' has lapsed.</li> </ul> |
| 3.6 | <p>Council agrees with the removal of the permitted development rights for the drilling of boreholes for petroleum exploration from Class A of Part 16 of the GPDO. This will ensure that any future proposals must be subject to a planning application, which will enable councils to fully assess any potential adverse impact on local communities, landscape quality, built and natural heritage, and the water environment.</p>  |
| 3.7 | <p>Regarding the two options tabled by DfI, Council considers the latter most appropriate. It still affords permitted development rights for the drilling of boreholes for preparatory exploration such as the carrying out groundwater monitoring, seismic monitoring and the location and appraising the conditions of mines. Both the Department for the Economy and the British Geological Society support this option and it is considered that such preparatory drilling for potential petroleum exploration would normally be no more intrusive than that for non-energy minerals, which will continue to be allowed under the permitted development rules. This would bring Northern Ireland into line with England, Scotland and Wales.</p>   |
| 3.8 | <p>The introduction of a height restriction of 15 metres for any structure assembled or provided to Part 16 of the Schedule of the GPDO is welcome. Modern rigs used for the drilling of the boreholes typically range between 10 and 15 metres in height. This amendment would bring Northern Ireland into line with England, which recently changed</p>  |

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| <p>3.9</p> <p>3.10</p> <p>3.11</p> <p>3.12</p> <p>3.14</p> <p>3.15</p> | <p>the height restriction from 12 metres to 15 metres in April 2016.</p> <p>The extension of the time period from 21 to 28 days is considered an appropriate measure and it will allow councils more time to fully assess whether permitted development rights under Part 16 of the Schedule to the GPDO should be removed or restricted.</p> <p>The review also proposes a technical amendment to introduce a ‘relevant period’ within Part 16 of the GPDO. This provides greater clarity regarding the timeframes where a direction has or hasn’t been issued under Article 7 of the GPDO and is welcomed by Council.</p> <p>The recommended response is set out in Appendix A. In summary, the proposed amendments to the legislation are welcomed. However, Council considers if Permitted Development is to be retained, there needs to be clear guidance in relation to the information requirements to enable planning authorities to effectively consider proposals.</p> <p><b><u>Finance and Resource Implications</u></b><br/>There are no resource implications associated with this report.</p> <p><b><u>Asset and Other Implications</u></b><br/>None noted.</p> <p><b><u>Equality or Good Relations Implications</u></b><br/>There are no relevant equality or good relations implications attached to this report.</p> |
| <p><b>4.0</b></p>  | <p><b>Appendices – Documents Attached</b></p> <p>Appendix A: Response to the Review of Permitted Development Rights for Mineral Exploration<br/>Appendix B: April 2016 Call for Evidence: Permitted Development Rights for Mineral Exploration<br/>DOE</p>  |

## **Appendix A: Draft Council response to the 'Review of Permitted Development Rights for Minerals Exploration'**



**Belfast City Council**

### **MINERAL EXPLORATION**

#### **Draft response to Call for Evidence: Permitted Development Rights for Mineral Exploration**

##### **1 Background**

In recent years, there has been an increasing interest in mineral resources in NI. There is renewed interest in mineral prospecting, and new prospecting permits for precious and base metals have been issued. There is therefore a need for a balanced approach to mineral exploration.

The council recognises the need for appropriate balance in the protection of the environment, amenity and public safety and also the need to reduce the regulatory burden on the minerals and extractive industries.

Belfast City Council welcomes the review and the opportunity to comment and give evidence. The Council recognises that whilst minerals development can deliver significant economic benefits, there are also a number of potential challenges arising from this type of development, which should be considered through the planning system.

It should be recognised that the role of Planning is key in facilitating a sustainable approach to minerals development.

The Council fully supports the review of permitted development rights for mineral exploration, and the need to bring forward detailed operational guidance policies within which will provide clarity and certainty for all users of the reformed planning system.

##### **2 Response to Consultation Questions**

The Council considers that the objective of a planning authority should be to ensure that the need for specific minerals development proposals is assessed against the need to safeguard the local environments. The considerations should seek to minimise the impact on local communities, landscape quality, built and natural

heritage, and the water environment whilst ensuring restoration, after exploration has ceased.

Council agrees that permitted development rights should be removed for the drilling of boreholes for petroleum exploration, which will bring Northern Ireland in line with England, Scotland and Wales. It considers that option 2, which, still allows for the drilling of boreholes that are preparatory to potential petroleum exploration, namely groundwater and seismic monitoring and appraising the condition of mines to be afforded permitted development rights, to be the most appropriate option. Such preparatory drilling for potential petroleum exploration would normally be no more intrusive than that for non-energy minerals, which will continue to be allowed under the permitted development rules.

The introduction of a height restriction of 15 metres for any structure assembled or provided to Part 16 of the Schedule of the GPDO is welcome. Modern rigs used for the drilling of the boreholes typically range between 10 and 15 metres in height. This amendment would bring Northern Ireland into line with England, which recently changed the height restriction from 12 metres to 15 metres in April 2016.

The extension of the time period from 21 to 28 days is considered an appropriate measure and it will allow councils more time to fully assess whether permitted development rights under Part 16 of the Schedule to the GPDO should be removed or restricted.

The Council recognises that as the local Planning Authority, it has the opportunity to remove permitted development rights under Regulation 7 of the Permitted Development Order 2015. However, whilst Regulation 7 empowers the Council to issue a direction to remove the permitted development rights and to require formal consideration of the proposal through an application, there is limited guidance on this process or the application of the provisions within the regulations. Whilst the Council welcomes the proposed introduction of a technical amendment to introduce a 'relevant period' under Article 7 of the GPDO, concern still remains regarding the absence of guidance.

### **3 Other Consents**

The Council recognises that other consents may be required and these are undertaken separately by other Statutory Bodies under their own legislation such as Regulations on the following:

- *Discharge consents under the terms of The Water (NI) Order 1999, administered by NIEA Water Management Unit;*
- *Pollution Control Permits (PPC), administered by NIEA Industrial Pollution and Radiochemical Inspectorate (IPRI);*
- *Quarry Regulations, administered by the Health and Safety Executive NI (HSENI);*
- *Minerals licensing administered by DETINI*

Minerals and petroleum prospecting in Northern Ireland is permitted in accordance with specific legislation, policies and statutory rules and is the responsibility of the

Department for the Economy. Any person who wants to explore for, drill for or extract oil or gas in Northern Ireland must hold a Petroleum Licence granted by the Department of Enterprise, Trade and Investment (DETI) under the Petroleum (Production) Act (Northern Ireland) 1964.

The application and licensing process is underpinned by regulations, which, among other things, set out the arrangements for making and determining applications, permissible terms and conditions for granting a Petroleum Licence and the model clauses, which may be incorporated in a Petroleum Licence.

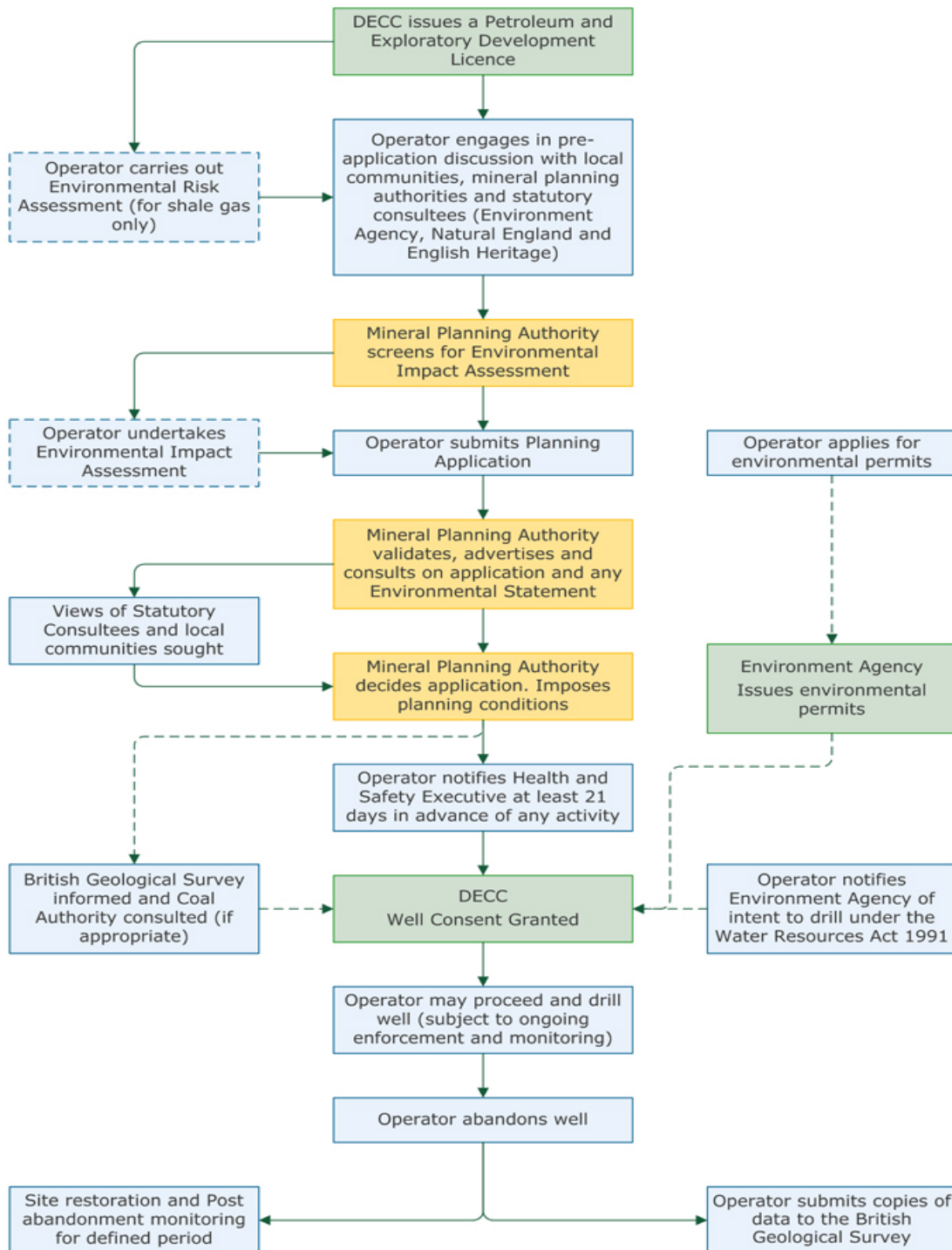
The Council would reiterate comments made in its response under the 'Call for Evidence' for Permitted Development Rights for Mineral Exploration that, if permitted development is retained for the drilling of boreholes preparatory to petroleum exploration, it should be a prerequisite that all other consents are in place prior to the Planning Authority having to make a determination as to whether or not works are permitted development.

#### **4 Recommendations**

Council would make the following recommendations that formed part of its previous response under the Call for Evidence: Permitted Development Rights for Minerals Exploration in April 2016:

- a. As the onus is on the Planning Authority to make this determination, it needs to be clear that there must be sufficient information available to make the determination. The assessment could be complex and there is limited guidance on how the notification process is managed and operated. Guidance would help to ensure that the Planning Authority could make a timely determination as to whether or not it falls within the scope of the legislation.
- b. Guidance should outline how other statutory bodies are involved in the process of mineral exploration and address the relationship between the licensing regimes and planning controls.
- c. Council would suggest that guidance outlining the process, including schematics such as a flowchart, is developed (similar to that used by Planning Authorities in England and Wales) (see below) to provide clarity for all stakeholders in the processes, as included in our previous response under the "Call for Evidence: Permitted Development Rights for Minerals Exploration".

Example: the flowchart below illustrates the process for used by Planning Authorities in England and Wales.



Example from Planning Portal: <http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-hydrocarbon-extraction/annex-b-outline-of-process-for-drilling-an-exploratory-well/>

## **Appendix B: April 2016- Council response to the “Call for Evidence: Permitted Development Rights for Minerals Exploration”**

**Belfast City Council**

### **MINERAL EXPLORATION**

#### **Draft response to Call for Evidence: Permitted Development Rights for Mineral Exploration**

#### **1 Background**

In recent years, there has been an increasing interest in mineral resources in NI. There is renewed interest in mineral prospecting, and new prospecting permits for precious and base metals. As a consequence, there is a need for a balanced approach to mineral exploration.

The council recognises the need for appropriate balance in the protection of the environment, amenity and public safety and also the need to reduce the regulatory burden on the minerals and extractive industries.

Belfast City Council welcomes the review and the opportunity to comment and give evidence. The Council recognises that whilst minerals development can deliver significant economic benefits, there is also a number of potential challenges arising from this type of development, which should be considered through the planning system.

It should be recognised that the role of Planning is key in facilitating a sustainable approach to minerals development.

The Council fully supports the objective and need to undertake a review of permitted development rights for mineral exploration, and the need to bring forward detailed operational guidance policies, which will provide clarity and certainty for all users of the reformed planning system.

#### **2 Legislation Governing Mineral Permitted Development**

The current Planning (General Permitted Development) Order (Northern Ireland) 2015 (GPDO) sets out what type of development can be undertaken without requiring a planning application. Permitted development in relation to ‘mineral exploration’ and ‘development ancillary to mining operations’ are dealt with in Parts 16 and 17 of the General Permitted Development Order respectively.

The Council considers that the objective of a planning authority should be to ensure that the need for specific minerals development proposals is assessed against the need to safeguard the local environments. The considerations should seek to minimise the impact on local communities, landscape quality, built and natural heritage, and the water environment whilst ensuring restoration, after exploration has ceased.



The Council recognises that as the local Planning Authority, it has the opportunity to remove permitted development rights under Regulation 7 of the Permitted Development Order 2015. However, whilst Regulation 7 empowers the Council to issue a direction to remove the permitted development rights and require formal consideration of the proposal through a full planning application, there is limited guidance on this process or the application of the provisions within the Regulations. This concern regarding the absence of guidance is compounded by the fact that the power can only be exercised within 21 days of receipt of the notification.

### **3 Requirements of Part 16 Mineral Exploration**

Further explanation is set out in the following paragraphs on mineral exploration, which for this purpose, is granted permission by virtue of Class A of Part 16 to the schedule to the GPDO. The Regulation sets out the following limited guidance:

*The developer wishing to carry out mineral exploration must notify the planning authority of proposed works and the legislation specifies the limitations in what can be considered to be permitted:*

- *The development must be for the purpose of mineral exploration*
- *Development shall not exceed 4 months duration*
- *Development consisting of (a) Drilling a borehole, (b) Carrying out a seismic survey, (c) Making other excavations*

In addition, proposals cannot be considered as permitted where:

*a- the developer has not previously notified the council in writing giving details of the location of the proposed development, target minerals, details of plant and operations and anticipated timescale;*

*b- any operation is within an area of special scientific interest or site of archaeological interest;*

*c- any explosive charge of more than 1 kilogram is used;*

*d- any structure assembled or provided would exceed 3 metres in height where such structure would be within 3 kilometres of an airport.*

In order to carry out these assessments effectively, the Planning Authority would require significant detail to make a determination, which in the context of the limited notice period, could be very challenging.

### **4 Other Consents**

The Council recognises that other consents may be required and these are undertaken separately by other Statutory Bodies under their own legislation such as Regulations on the following:

- *Discharge consents under the terms of The Water (NI) Order 1999, administered by NIEA Water Management Unit;*
- *Pollution Control Permits (PPC), administered by NIEA Industrial Pollution and Radiochemical Inspectorate (IPRI);*
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Minerals and petroleum prospecting in Northern Ireland is permitted in accordance with specific legislation, policies and statutory rules and is the responsibility of the Department of Enterprise, Trade and Investment. Any person who wants to explore for, drill for or extract oil or gas in Northern Ireland must hold a Petroleum Licence granted by the Department of Enterprise, Trade and Investment (DETI) under the Petroleum (Production) Act (Northern Ireland) 1964.

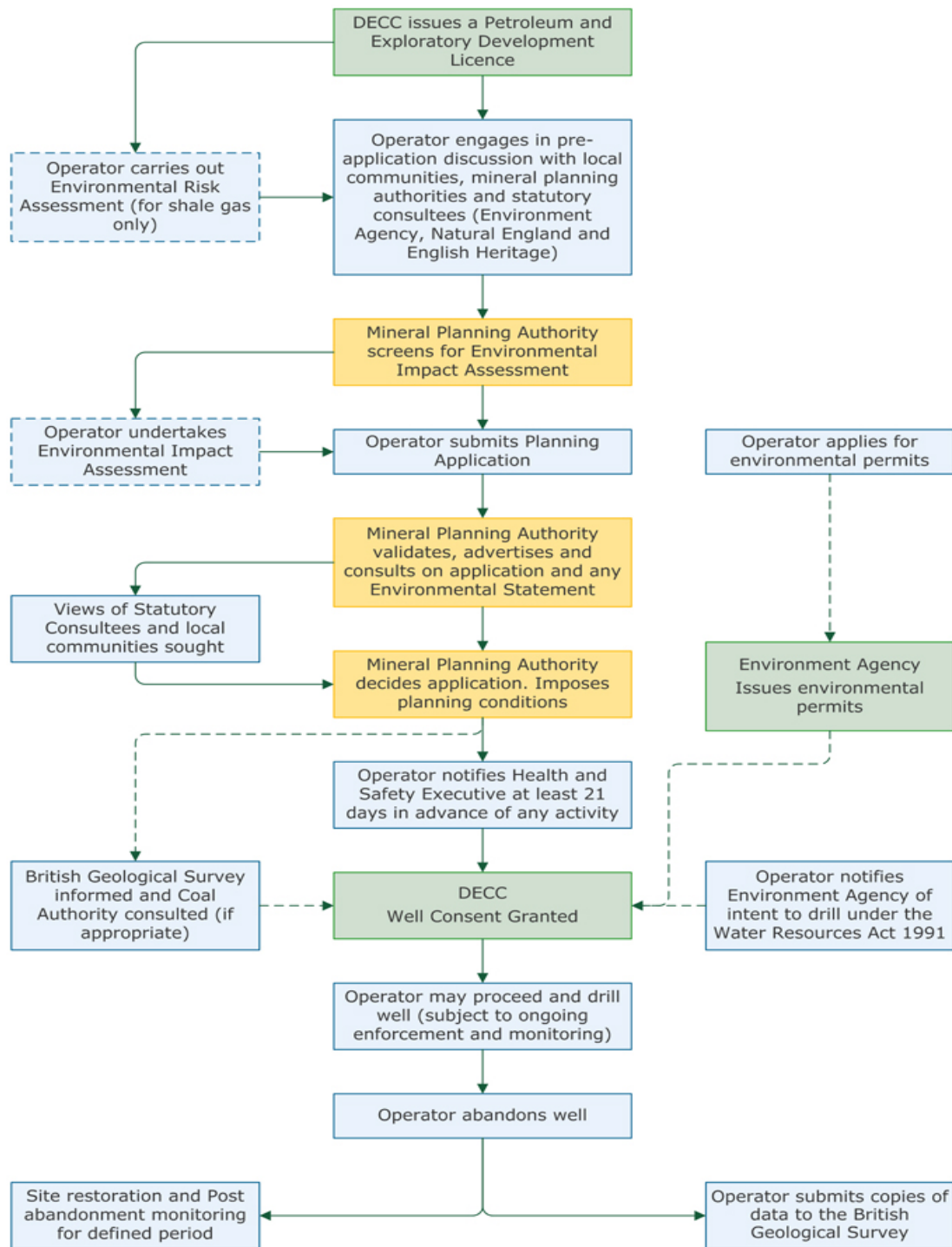
The application and licensing process is underpinned by Regulations, which among other things, set out the arrangements for making and determining applications, permissible terms and conditions for granting a Petroleum Licence and the model clauses, which may be incorporated in a Petroleum Licence.

The Council considers that, if permitted development is retained, it should be a prerequisite that all other consents are in place prior to the Planning Authority having to make a determination as to whether or not works are permitted development.

## **5 Recommendations**

- a. If permitted development rights are retained, consideration should be given to a longer notice period than the current 21 days to allow Councils to assess them properly.
- b. As the onus is on the Planning Authority to make this determination, it needs to be clear that there must be sufficient information available to make the determination. The assessment could be complex and there is limited guidance on how this notification is managed and operated. Guidance would help to ensure that the Planning Authority could make a timely determination as to whether or not it falls within the scope of the legislation.
- c. Guidance should outline how other statutory bodies are involved in the process of mineral exploration and address the relationship between the licensing regimes and planning controls.
- d. Council would suggest that guidance outlining the process, including schematics such as a flowchart, is developed, similar to that used by Planning Authorities in England and Wales (see below) to provide clarity for all stakeholders in the processes.

Example: the flowchart below illustrates the process used by Planning Authorities in England and Wales.



**Example from Planning Portal:** <http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-hydrocarbon-extraction/annex-b-outline-of-process-for-drilling-an-exploratory-well/>