

OVERVIEW OF INPUT TO GOVERNMENT ON THE IMPLEMENTATION FRAMEWORK

Briefing Paper 7, May 2007



Introduction

NuLeAF has welcomed the opportunity to contribute to the development of proposals for the implementation framework for a geological repository. It considers that a framework that maximises the potential for success will be based on concepts that empower and incentivise local authority participants and local communities.

To this end, NuLeAF considers that the implementation framework should be built on the concepts of:

- willingness to participate
- partnership
- support packages
- right of withdrawal
- a step-wise process of decision-making

NuLeAF has contributed through the submission and discussion of four Briefing Papers:

- 'Proposals for Siting Partnerships', Briefing Paper 3, January 2007
- 'Initial Invitations and Local Decision-Making about Participation', Briefing Paper 4, February 2007.
- 'Funding Participation and Enhancing Community Well-Being', Briefing Paper 5, March 2007
- 'Siting, Planning Requirements and Rights of Withdrawal', Briefing Paper 6, April 2007.

These papers have sought to provide a local government perspective on how the concepts of willingness to participate, partnership, support packages and rights of withdrawal can be made to work in practice. Proposals in the Briefing Papers were informed by research on international best practice¹, discussion in the NuLeAF Steering

¹ Enviro, 'The Implementation of a National Radioactive Waste Management Programme in the UK: Implications for Local Communities and Local Authorities', report for NuLeAF, June 06.

Group², a programme of regional seminars³ and review of draft Briefing Papers by a NuLeAF Officer Working Group.

This overview provides a summary of key points from the four Briefing Papers, and a clarification of proposals where required as a result of subsequent developments, including the publication of CoRWM's report⁴ to Government and the Government MRWS workshop held on 25 April 07.

Local Decision-Making in the Siting Process

NuLeAF has proposed that the implementation framework should make it clear that local government will be responsible for major local decisions within the siting process.

The basis for this position has been underlined by the White Paper⁵ on strong and prosperous communities:

Local government is a vital part of our democracy ... It provides leadership for local areas and communities; democratic accountability for a wide range of public services; and is key to effective partnership working at local level.

By major local decisions, we mean:

- the initial decision about participation;
- whether to exercise a right of withdrawal;
- the local acceptability of proposals for funding participation and community packages;
- the local acceptability of a site/s that is proposed for field investigations;
- the local acceptability of a site that is proposed for detailed characterisation or development as a repository; and
- whether to accept an increased inventory of wastes in the repository should new nuclear power stations be built.

NuLeAF has also highlighted that:

- Local authority decision-making must be informed by partnership working and community engagement. In other words, the decisions of representative democratic bodies should be informed by the findings of participative democratic initiatives.
- Potential participating or participating areas may cross local authority boundaries or have two-tier local government. For such cases, the implementation framework should set out the Government's expectation that local negotiations will take place so that agreement can be reached about how the relevant local authorities will take

² NuLeAF, 'Implementing Policy on the Long Term Management of Radioactive Wastes', Policy Statement 1, June 06.

³ NuLeAF, 'Managing the Nuclear Legacy: Issues for Local Government', Regional Seminars Report, December 2006.

⁴ CoRWM, 'Implementing a Partnership Approach to Radioactive Waste Management', Document 2146, April 07.

⁵ DCLG, 'Strong and Prosperous Communities', Cm 6939-1, October 2006.

major local decisions, including about whether to participate in the siting process.

By local authorities, we mean Councils at District, County or Unitary levels. Parish or Town Councils have an important part to play in participative processes, but should not be responsible for the major local decisions outlined above.

The Invitation Process and Willingness to Participate

There should be a pre-invitation period between the announcement of Government policy on the implementation framework and the issue of invitations to participate in the siting process.

This period should be used to:

- Raise awareness and understanding of the siting process
- Encourage exploratory discussions about possible participation
- Enable initial discussions and agreements to be reached between Government and those local authorities that wish to put the issue of potential participation to local communities
- Undertake local preparations for the receipt of invitations

The pre-invitation period must allow sufficient time for agreement to be reached about a Pre-Participation Package to cover the costs of local activities leading up to a decision about participation. It is anticipated that Government would not want to conclude such an agreement until local agreement had been reached about: (a) the local process for decision-making about whether to participate; and (b) the local processes for community engagement and assessment which will inform the decision about participation.

It is not yet clear whether the pre-invitation period should also include the local application of 'sub-surface' criteria to rule out areas that are not suitable for repository development. If in principle the application of these criteria could rule out all of a local authority's area, then they should be applied in an open and transparent way prior to receipt of official invitations to participate. If not, the application of the criteria may be better viewed as part of the initial, desk-based area investigation stage to help identify a list of potential sites. In the latter case, formal decisions about participation and the setting up of a local Siting Partnership should take place prior to the application of the 'sub-surface' criteria.

On the issue of formal invitations to participate in the siting process:

- Government should give advance warning of when invitations will be issued
- Government should send invitations to local authority Chief Executives
- Publicity should accompany the invitations
- Government should set a target date for responses

Developing the Implementation Framework: Overview of Input to Government
NuLeAF Briefing Paper 7, 2 May 07, p3

Given the awareness raising activities in the pre-invitation period, the publicity that will accompany the issue of invitations, and the decision-making role of local authorities, NuLeAF does not consider it appropriate to issue invitations to any other bodies, including Parish and Town Councils.

It is NuLeAF's expectation that all local authorities in receipt of an invitation will reply formally to Government. For areas where no local interest in participation has been stimulated through awareness raising and publicity, it is anticipated that after discussion within the local authority, a response will be sent declining the invitation to participate. For areas where local interest has been stimulated, leading to agreements about arrangements for local decision-making, local engagement and funding, it is anticipated that the following steps will be undertaken by the local authority/ies concerned:

- The organisation of engagement with local communities
- Review of the findings of local engagement
- Discussion with Government about the issues raised through local engagement
- Review of the Government's response
- Assessment of the pros and cons of participation
- Formal decision-making about participation

On the Government assessment of positive responses, it is proposed that the implementation framework outline how these will be assessed, including the factors that will be taken into account in reaching decisions about whether to accept an offer to participate in the siting process.

It is important that sufficient time is allowed for all the pre and post-invitation steps outlined above. Although target dates for completion of these steps should be identified, there must be flexibility to enable effective discussion and decision-making processes to be undertaken.

The Nature of Partnerships

NuLeAF welcomes the Government's commitment to partnership working. It considers that the concept of partnership is important in two main ways. First, to express the spirit of the relationships that should be developed between national and local bodies within a siting process. Second, to inform the establishment of formal Siting Partnerships (SPs) of local community interests in those areas where decisions have been taken to participate in the siting process.

The local authority/ies that have taken the decisions to participate should take the lead in establishing the local SP. This must be done in a way that inspires local confidence. This will require transparent and consistent procedures for recruitment and appointment. SP members should be identified and recruited locally. Confidence is

likely to be enhanced if the local authority/ies commissions independent advice about who should be invited to become members ('social mapping').

The implementation framework should make clear that Government expects that the relevant local authority/ies will be effectively represented within the partnership so that its views can be expressed, local political realities are recognised and there are no surprises when proposals are presented for local authority decision.

The implementation framework should also define the following:

- the mission of a Siting Partnership
- a set of principles to guide the work of a Siting Partnership
- the core elements of the role of a Siting Partnership

NuLeAF considers that the mission of a SP is to ensure that:

- (a) all the questions and concerns of potential host communities within its area and other affected communities about repository siting, construction, operation, closure and post-closure are addressed and resolved as far as reasonably practicable; and*
- (b) the well-being of host communities is enhanced.*

The principles developed and used by CoRWM provide a model that could be adopted in the implementation framework to guide the work of SPs.

In order to fulfil a Partnership's mission, it is proposed that the roles of a SP should include:

- Developing advice and recommendations for decision-making bodies
- Scrutiny of the work of the bodies involved in repository siting and development
- Obtaining specialist advice or commissioning research to inform its scrutiny role, address community concerns or identify ways of enhancing community well-being
- Provision of public information about the activities, views and recommendations of the Partnership
- Engagement or consultation with potential host communities, other affected communities and neighbouring local authorities
- Identifying and addressing divergent views within those communities
- Liaison and discussion with local bodies with remits related to the mission of the Partnership (eg Local Strategic Partnerships or Site Stakeholder Groups)
- Building the capacity of its membership to enable it to effectively carry out these roles.

NuLeAF has proposed a model that involves the close involvement of appropriate national bodies in the work of a SP, but not participation by those bodies in formal SP decision-making. This will ensure the local independence of SP decision-making, which

will contribute to the development and maintenance of local confidence. It is anticipated that the role of national bodies in a SP will be to present proposals, advice and research; participate in working groups, studies and community engagement; and assist with capacity building. The input of the NDA and regulators will be particularly important in discussions about costs and safety respectively.

The implementation framework should make it clear that:

- prior to signing of a formal Partnership agreement, there will be ample time for local discussion and negotiation to enable a shared vision to be developed about the mission, role, organisation and outputs of a SP
- a SP will be able to develop its own organisational structure, as appropriate to local circumstances and changing requirements over time
- it will be for a SP to decide exactly how to spend its funding in fulfilling its mission

Overall, the implementation framework must be sufficiently flexible to enable local circumstances to be taken fully into account in shaping the SPs that are created. This is particularly important when it comes to the definition of what is meant by local, for decisions about local representation and for taking into account local relationships between stakeholders.

Funding Participation and Enhancing Community Well-Being

NuLeAF proposes that two types of support packages be made available, with the following objectives:

- Participation Package: to empower local authorities and communities by providing resources and meeting the costs of effective participation in the siting process; and
- Benefits Package: to incentivise local authorities and communities by contributing to sustainable development of the affected area and the well-being of local communities and their descendents.

The rationale for support packages is based on a combination of:

- Principle – the provision of packages is the right thing to do; and
- Pragmatism – the provision of packages is one of the key ingredients needed to make implementation work in practice.

The implementation framework should provide a commitment that Participation Packages will meet the costs incurred through three main periods of local activity: pre-invitation to participate, post-invitation/pre-decision to participate, and post-decision to participate (establishing and running Siting Partnerships and associated local authority costs).

The implementation framework should set out principles for defining a Benefits Package. These should include that it must contribute to the sustainable development of the affected area and the well-being of local communities and their descendants. A package should include an intergenerational trust fund to enable future generations to fund projects and provision for schemes designed to compensate for any adverse impacts that may arise from the siting of a repository.

On defining the contents of a Benefits Package, this should be done at a local level by reference to:

- the principles of sustainable development and enhancing well-being;
- the principle of self-determination;
- the need for consistency with local strategic plans; and
- the need for local democratic accountability.

On the scale of a Benefits Package, this should enable local judgements to be made that the benefits of repository development are likely to outweigh the actual and perceived detriments. The implementation framework should set out how the budget for the Benefits Package will be derived. The budget should provide 'new money' and be additional to any funding available from other sources.

On timing, there should be a staged approach to the release of funding for the Benefits Package, in recognition of the length of time that it may take to site, construct and start operation of a repository.

On geographic scope, the primary focus for the bulk of the Benefits Package should be the local area containing the site. Provision should also be made for specific elements of the Benefits Package to be applied over a larger area, including, for example, improvements to public transport and transport infrastructure, and provision for compensation for any detrimental impacts on tourism and agriculture.

On the timetable for defining a Benefits Package, this should be started once the SP is properly established. Preliminary discussions and negotiations should proceed in parallel with investigations to identify a short-list of possible sites. Proposals for the package should be finalised once a preferred site has been identified.

The implementation framework should set out a Government commitment to honour a Benefits Package that has been agreed by the relevant parties. This commitment should be translated into a formal agreement between the implementation funding body and relevant local authority/ies, once proposals for the Benefits Package have been finalised and agreed. The Government should establish funding arrangements for Participation and Benefits Packages that are independent of the implementing organisation.

In addition to the proposals in BP5, NuLeAF considers that there is a case for providing a

limited Benefits Package for communities that participate in the siting process up to the point when a preferred site is identified, but which are not then selected to host the repository. The possibility of expending a major effort for no benefit could be a major obstacle to communities expressing a willingness to participate.

Right of Withdrawal

The Implementation Framework should set out Government support for the principle of right of withdrawal, which could be exercised by the relevant local authority/ies on the basis of material evidence that sets out the reason/s for withdrawal. The framework should make it clear that once a right of withdrawal has been exercised, the area in question would be removed from the siting process.

NuLeAF sees a right of withdrawal as being an integral part of a siting process based on willingness to participate. It will help empower local communities, ensure that their concerns are properly addressed and increase confidence in the siting process.

It is proposed that the implementation framework acknowledge that a right of withdrawal could be exercised at the end of key stages within the siting process, including:

- area investigation - if the sites proposed for field investigation are not considered acceptable
- site investigation/decision to proceed – if the site proposed for detailed characterisation/repository construction is not considered acceptable
- site characterisation/in-situ review – if the site subject to in-situ review is not found to be acceptable on environmental or safety grounds.

In the first two cases, a decision by the relevant local authority/ies to withdraw from the siting process could only be taken after thorough consideration of:

- the advice and recommendations of the SP
- the advice of national bodies, including the NDA and regulators
- conformity with the LDF, MWDF and RSS

In the first two cases, factors that may be taken into account by the local authority/ies might include:

- the extent to which the mission of the SP is being fulfilled
- the views of local communities as identified through community engagement
- the acceptability of the proposed Benefits Package
- the acceptability of the repository design concept, including its provision for the retrievability of wastes and
- the acceptability of any substantive changes to the inventory of radioactive wastes to

be emplaced in the repository.

In the third case, the right of withdrawal could be limited to circumstances where, after detailed review and discussion involving the developer, regulators, CoRWM2 and the SP, the relevant local authority/ies are not satisfied that the suitability of the site on environmental or safety grounds has been demonstrated by the underground investigations.

Planning Requirements

There are concerns in local government that changes to the planning system will be used to inappropriately 'fast-track' the development of major infrastructure projects, including a geological repository. The implementation framework should make it clear that changes to the planning system will have to work alongside a siting process for a geological repository that is built on the concepts of willingness to participate, partnership and right of withdrawal.

On utilisation of the development plan system, it is proposed that the implementation framework assert in principle that the interface between the siting process and planning should be managed through use of that system. The purpose would be to ensure that planning policy at different levels is developed to reflect progress in the siting process, as set out in national policy and informed by the recommendations of local SP. This would be advantageous as the policy adopted in plans will be the predominant "material consideration" in determining planning applications associated with investigation and characterisation of sites and for repository development. An approach that did not include appropriate local plan development could increase the risk of legal challenge or significant delay when planning applications are considered.

The proposed approach could include:

- enabling statements in Regional Spatial Strategies (RSSs), for example, setting out a commitment of national and regional stakeholders to work together to support local communities willing to participate in a siting process
- provision for potential repository siting in local Waste Plans, for example, setting out the criteria that a proposed development would have to meet to be permitted
- preparation of a Supplementary Planning Document (SPD) setting out how local policy on repository development will be applied.

As use of the development plan approach must dovetail with a siting process based on willingness to participate and partnership, plan development should be informed by the advice of the local SP, working closely with local planning teams. It is anticipated that the earliest appropriate opportunity would be taken to undertake a partial review and revision of the relevant RSS and local Waste Plan.

On the role of planning during the siting process, the implementation framework should outline the relationship between the siting process and planning during the following main stages: area investigation, sites investigation and Decision to Proceed. During area investigation, the criteria used to identify potential sites could have been outlined in appropriate local plans. The Local Planning Authority (LPA) should advise and discuss with the SP the range of planning issues affecting any potential sites within its area. During site investigations, applications for boreholes may be determined against criteria set out in the local Waste Plan. The LPA would be active in determining applications, monitoring developments and ensuring conditions are followed.

To ensure that a SP and relevant local authorities/LPA are involved appropriately in a decision to proceed, the following steps are proposed:

- Preparation of safety case reports and regulatory review
- Preparation of an indicative development proposal in the form of a 'draft' planning application
- Provisional assessment by the SP and LPA
- Recommendation from the SP about whether to proceed
- Decisions by the relevant local authority/ies about whether to accept a recommendation to proceed from the Siting Partnership
- If accepted, explanation of how local planning policy is being applied (it might be appropriate to provide the explanation in the form of a Supplementary Planning Document)
- Preparation of a full planning application for determination.

Assuming that the proposed approach based on partnership and utilisation of the development plan system has been followed, and a right of withdrawal has not been exercised, it is anticipated that the planning application will be supported by the SP and LPA.

On areas of further work on siting and planning it is proposed that:

- The potential need for a Planning Policy Statement should be kept under review as the draft implementation framework and outline repository development plan is developed, discussed, reviewed and revised. It may be appropriate for a more flexible and location specific form of advice to be developed after the formation of Siting Partnerships.
- Further discussions involving Government, NuLeAF and the Planning Advisory Service take place to explore whether a Planning Process Agreement would be of value within a siting process for a geological repository.

Forms of Agreement

It is proposed that the Implementation Framework acknowledge that formal agreements

will be needed to underpin key aspects of the siting process, including Siting Partnerships, Participation and Benefits Packages and rights of withdrawal. It is proposed that the outline Siting Partnership Agreement contained in work commissioned by NuLeAF⁶ be used as the basis for review and development through discussion between Government, NDA, CoRWM2 and NuLeAF.

Key Stages and Target Dates

The Annex contains a table showing how the sequencing and timetabling of key steps – particularly in the pre-invitation, invitation and establishment of SPs periods – might work. It is proposed that this table be taken into account in development of the implementation framework.

⁶ Hetherington Nuclear Consulting, 'Implementing Radioactive Waste Management: Siting and Planning in Partnership', Report to NuLeAF, April 07

KEY STAGES AND TARGET DATES: A LOCAL AUTHORITY PERSPECTIVE (NuLeAF Discussion Note, 2 May 07)

STAGES AND TARGET DATES	STEPS	KEY POINTS/ISSUES (and references to NuLeAF Briefing Papers)
Complete MRWS 3 Target: by Spring 08?	Govt consultation on draft Implementation Framework and Outline Repository Development Plan	
	Publication of Implementation Framework by Govt and Outline Repository Development Plan by NDA	<ul style="list-style-type: none"> Needs clarity in Govt policy (see NuLeAF BP 4, p4-5)
Pre-invitation Target: by end 2008?	Geological screening at a national level	<ul style="list-style-type: none"> to rule out those areas that would clearly NOT be suitable timing of the application of the criteria (ie pre or post invitation) dependent on whether this step could rule out all of a local authority area. If in principle it could, then apply in open and transparent way pre-invitation.
	Govt undertakes national awareness-raising campaign	<ul style="list-style-type: none"> to raise awareness, develop understanding and encourage exploratory discussions about participation (BP4, p6-7)
	Initial local discussions - LAs and stakeholders get together to discuss and agree decision-making process about participation	<ul style="list-style-type: none"> how affected local authorities take decisions (BP4, p3-4) how to inform and engage with local communities (BP4, p9-10)
	Initial discussions between Govt and LAs that might participate	<ul style="list-style-type: none"> Engagement plans, timing issues and funding (BP3, p7) Agree Participation Package for activity up to point of decision about whether to participate (BP5, p8)
	Govt publish date when formal invitations to participate will be issued	
	Local preparations for receipt of invites	<ul style="list-style-type: none"> Plan community engagement (BP4, p7-8)
Invitation to participate Target: by end 2009?	Invitation issued by Government (includes guidance on scale of Benefits Package that could be negotiated, on info available to LAs and on target dates for responses)	<ul style="list-style-type: none"> Invitations sent to CEs of LAs not ruled out (BP4, p8-9)
	Community engagement programme conducted by LAs	<ul style="list-style-type: none"> Ensure clear objectives and engagement with the public, local organisations and neighbouring local authorities (BP4, p9-10)
	Discussion with Govt re early views on local conditions for participation	<ul style="list-style-type: none"> Government response likely to be taken into account in local decision-making (BP4, p10)
	Engagement result reviewed and formal decision on invite by LAs	
	Govt consider requests to participate and communicates decisions	<ul style="list-style-type: none"> Govt uses published criteria for making decisions (BP4, p10-11).

Establish Siting Partnership Target: by end 2010?	Independent 'social mapping' exercise for LAs, to inform decisions on which local stakeholders should be invited to join Siting Partnership (SP)	<ul style="list-style-type: none"> • Need for transparent and consistent procedures for recruitment and appointment (BP3, p6) • National bodies, including NDA to contribute to work of SP in 'spirit of partnership', but not have formal voting rights (BP3, p7)
	Invitations to join SP issued by LAs	
	Development of shared vision about how to fulfill mission, principles and role of SP	<ul style="list-style-type: none"> • Mission, principles and role to be defined in implementation framework, but local discretion re how to fulfill (BP3, p2-4, 8)
	Development of SP organisation, working practices, and capacity building. Agreement of budget with Govt.	<ul style="list-style-type: none"> • Important to allow local discretion in organisation of SP and sufficient time to develop (BP3, p9-11) (BP5, p4 and 8)
	Sign formal SP agreement	<ul style="list-style-type: none"> • Draft agreement provided for discussion (BP6, p12) • Point at which Government hands lead role to NDA?
Siting Partnership Work Programme (first four steps running in parallel) Target: end 2030 (CoRWM Report, July 06 p183)?	SP develops proposals for Benefits Package	<ul style="list-style-type: none"> • Govt and LAs decide whether acceptable (BP5, p4-9)
	Work with appropriate LAs etc to ensure timely amendment or development of Regional Spatial Strategies, Minerals and Waste Development Framework and Local Development Frameworks	<ul style="list-style-type: none"> • Changes to planning system will have to work alongside siting process based on willingness to participate and partnership (BP6, p4-5) • Planning policy at national, regional and local levels should support and complement siting process as appropriate (BP6, p5-8)
	SP reviews proposals from NDA for repository concept and makes recommendations	<ul style="list-style-type: none"> • LAs decide whether to endorse recs. Final decision lies with national bodies.
	SP monitors, reviews and advises on: <ul style="list-style-type: none"> • identification of potential sites within area ('area investigation' - desk top studies) • identification of short-list of potential sites within SP area • field investigations of these sites • preferred site in the SP area 	<ul style="list-style-type: none"> • Right of withdrawal available at various points (BP6, p9-12)) • Use siting criteria developed through national consultation (BP4, p5-6) • LAs decide whether acceptable. May also need to develop SP arrangements/membership accordingly • Planning permissions for boreholes required (BP6, p7) • LAs decide whether to endorse.
	Monitor, review and advise on detailed site characterisation, including independent assessment of underground investigations	<ul style="list-style-type: none"> • Govt will have selected overall preferred site (across SPs that have been set up) for detailed characterisation. • Planning permission for underground investigations required • 'Goodwill' funding of elements of Benefits Package released in area with overall preferred site (BP5, p7)
Decision to implement, planning approval and construction Target: end 2040 (CoRWM Report, July 06)?	Siting Partnership agrees to recommend that repository construction proceeds	<ul style="list-style-type: none"> • LAs and national bodies decide whether acceptable. Last point at which Right of Withdrawal applies (BP6, p9-12)?
	Planning approval process	<ul style="list-style-type: none"> • Planning permission for repository construction required (BP6, p8)
	Regulatory approval to construct	<ul style="list-style-type: none"> • Release of substantial portion of Benefits Package (BP5, p7)
	Repository construction	
	Regulatory approval to emplace wastes	<ul style="list-style-type: none"> • Release of third portion of Benefits Package (BP5, p7)