

COMMUNITY FUNDS AND THE DEVELOPMENT OF RADIOACTIVE WASTE MANAGEMENT FACILITIES



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1 Introduction

This paper is intended to inform discussion about the development of a national framework for community funds associated with the development of radioactive waste management facilities, particularly for Low Level Waste (LLW) disposal facilities¹.

It covers:

- context, including recent developments in community funds;
- the legislative basis for provision of community funds;
- justifications for providing community funds;
- the need for a national framework and a proportionate approach; and
- summary.

2 Context

Nuclear decommissioning and clean-up will give rise to very large increases in the volumes of LLW and VLLW requiring long-term management at a time when there are major concerns about the capacity and future status of the Low Level Waste Repository (LLWR) near Drigg in Cumbria. As such, there is an onus on developing and utilising additional facilities for LLW and VLLW management. NuLeAF recognises the need for such facilities and wishes to encourage member authorities to engage constructively with industry on proposals². It is important, however, that proposals are taken forward in ways that address local authority views and can inspire public confidence. In particular, NuLeAF believes that the concept of community funds should, in appropriate form, be applied to the development of new LLW disposal facilities.

This perspective is shaped by a number of recent developments:

Government Consultation on the Framework for Implementing Geological Disposal (for higher activity wastes)

¹ The national framework proposed in this paper is not intended to cover community packages linked to the development of a geological disposal facility for higher activity wastes. These are being addressed as part of the Government's Managing Radioactive Wastes Safely Programme. However, the discussion in the paper could apply, for example, to the development of intermediate Level Waste (ILW) storage facilities (see Sections 4 and 5 on justifications and a proportionate approach).

² See [NuLeAF Policy Statement 4](#) (July 2007)

The consultation document³ states that:

Any communities that are ultimately chosen to host a geological disposal facility ... will expect Government and the NDA to ensure that the project contributes to their further development and well-being. How this could be done, through the use of a benefits package, is something on which respondents are invited to comment (para 5.53)

Government ... believes that any benefits package should be developed between communities, the NDA and Government as discussions progress, taking into account affordability and value for money considerations (para 5.57)

LLWR Community Fund

Government and NDA have agreed to the establishment of the fund, recognising the contribution that the local community will provide to the nation by hosting the LLWR. The NDA has committed to contributing £10 million to the fund to be paid in two stages, and to paying £1.5 million per year, for the period of operation of vault 9 (around 10 years). The income or capital from the fund will be available to be spent on initiatives that are consistent with the NDA's socio-economic policy, including employment, education and skills, economic and social infrastructure and economic diversification⁴.

The NDA's invoking of its socio-economic policy to guide use of the Community Fund sets a precedent for use of that policy in meeting local needs and mitigating impacts that will arise from proposed waste management facilities. Up until this time, it is arguable that the policy was largely conceived as providing a framework for proposals to mitigate the impacts of a switch away from nuclear operations to decommissioning and clean-up at a site.

Magnox Electric Response to Somerset Waste Issues and Options Consultation

Magnox Electric's response included support for community benefits:

The published NDA strategy and CoRWM recommendations both acknowledge that where communities contribute to nuclear clean-up, there should be the provision of a corresponding benefit. Development and application of a 'community equity' framework that includes offsetting imports of wastes with exports, and investment of Government funds in the local community could help to encourage community participation in such schemes.⁵

Given these developments, and awareness of international and other UK precedents (see below), it seems unlikely that any proposed disposal facility for radioactive wastes will be supported by local communities without provision of an appropriate form of community fund to meet local needs and off-set impacts.

3 The Legislative Basis for Provision of Community Funds

Introduction

There are a number of pieces of legislation that can provide the basis for community funds. These include:

³ [Consultation on Implementation Framework](#) (DEFRA et al, 25 June 2007)

⁴ [NDA Socio-Economic Policy](#) (2008)

⁵ Magnox Electric letter to Somerset County Council, 11 December 2007, p7

- **The Energy Act 2004** – This requires the NDA to consider the socio-economic impacts of its activities on local communities and gives it a function of giving 'encouragement and other support to activities that benefit the social or economic life of communities' living near NDA sites. In addition, the Act gives the NDA the 'power to make grants or loans to persons undertaking activities that benefit the social or economic life of communities' near NDA sites.
- **The Town and Country Planning Act 1990** – Section 106 provides that a developer may enter into a planning obligation enforceable by the local planning authority. Planning obligations are private agreements negotiated between planning authorities and the developer that can include a commitment on the part of the developer to make payments to the authority⁶.

The Government also intends to put in place:

- **The Community Infrastructure Levy (CIL)** – this is to be provided by provisions in the Planning Bill, intended to increase investment in the infrastructure needed by communities⁷. It is proposed that the CIL will be levied on a developer to support infrastructure development. Draft regulations will be consulted upon in Autumn 2008, with a view to finalising them in Spring 2009.

In addition, local authority powers are available to promote or improve the economic, social or environmental well-being of their areas:

- **Local Government Act 2000** – the 'Well Being Power' within the Act is intended as a tool to encourage local authorities to innovate in the range and nature of activities that they undertake. Although the power does not enable local authorities to raise money⁸, it can be used as a power to enable them, for example, to set up development agencies and employment projects, and facilitate partnership working and community strategies⁹.

Legislative Basis for the LLWR Community Fund

The legislative basis for the Fund is set out in the unilateral undertaking provided by the NDA to Cumbria County Council (dated 18 January 2008). The accompanying letter states that:

Under the terms of the undertaking, the NDA offers to be bound, pursuant to section 106 of the Town and Country Planning Act 1990 and sections 7 and 10 of the Energy Act 2004, to set up a Community Benefit Organisation to administer a fund for the benefit of the residents of the Borough of Copeland in recognition of the national benefit derived from the future accommodation of low level radioactive waste from across the United Kingdom at the LLWR.

The provisions in the undertaking are stated to be planning obligations for the purposes of section 106 of the 1990 Act. The undertaking further states that:

In entering this planning obligation the NDA recognises that although the design of the Development has had due regard to minimising local impacts and although the total benefit from the Development in terms of contributing to meeting a national need will outweigh any residual adverse impacts of the

⁶ [Circular 05/05: Planning Obligations](#) (Department of Communities and Local Government, 2005)

⁷ [The Community Infrastructure Levy](#) (Department of Communities and Local Government, 2008)

⁸ Section 93 of the Local Government Act 2003 does, however, enable local authorities to charge users for discretionary services established using the Well Being Power.

⁹ [Evaluation of the Well Being Power](#) (Department for Communities and Local Government, 2006)

Development it is appropriate to make financial provision to meet local needs arising from the Development including assisting participation of the community in the Development and to mitigate the residual economic and other impacts that will be caused by the Development. (para 12)

The undertaking also states that the NDA's powers under Sections 7 and 10 of the Energy Act 2004 enable it to give encouragement and support to activities that benefit the social or economic life of communities living near designated sites or that produce other environmental benefits for such communities, including the power to make grants and loans.

Potential for the Wider Use of Existing Legislation

Although the NDA has made it clear that the LLWR Community Fund is based on recognition of the national role of the LLWR, there is nothing inherent in the provisions of Section 106 of the Town and Country Planning Act, or Sections 7 and 10 of the Energy Act, which restricts the provision of benefits to facilities with a national role.

Indeed, as highlighted by the Audit Commission¹⁰, Section 106 agreements have become increasingly important to the provision of public services associated with a wide range of developments:

They are essential to delivering the necessary infrastructure for creating sustainable communities. They can: ... mitigate the impact of development on communities; compensate for loss or damage created by a development; and support basic off-site infrastructure such as access roads.

The constraint arising from use of Section 106 is not that the development should fulfil a national role, but that the provision of funding should mitigate impacts or meet local needs arising from the development¹¹.

The Audit Commission went on to make a number of recommendations to help local authorities improve their performance in using S106 agreements. These include:

- Put in place detailed policy describing the developer contributions that will be expected through planning obligations
- Engage chief executives, leaders and portfolio holders to integrate potential contributions of S106 agreements with the delivery of community strategy and
- Ensure that other building blocks are in place, including the setting up of a system to deal with S106 agreements and draw on the experience of other councils.

The paper setting out Government proposals for the CIL notes that there has been some criticism of S106 agreements, in particular, for delaying the planning process and for reducing its transparency, certainty and accountability. Government has sought to address these criticisms through the provision of guidance and model agreements. It also intends to retain S106 to provide a legal underpinning for negotiated agreements between developers and local planning authorities. Subject to further consultation, it proposes that S106 agreements will focus on non-financial, technical or operational matters, the mitigation of site specific impacts, and the provision of affordable housing. The Government also intends to seek views on

¹⁰ Audit Commission, 'Securing Community Benefits through the Planning Process', August 2006.

¹¹ Where a Section 106 agreement is given weight in considering a planning application, the Secretary of State's policy tests are that the agreement should be relevant to planning, necessary to make the proposed development acceptable in planning terms, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development and reasonable in all other respects.

whether a statutory boundary should be drawn between what is covered by CIL and what is covered by S106.

Potential Use of the Community Infrastructure Levy?

At the time of writing, it is not clear whether the CIL could be used in association with the proposed development of facilities for the management of radioactive wastes.

The following extracts from the CIL report outline the nature of the Government's proposals:

- The Government believes that it is right that development itself should make more of a contribution to the infrastructure costs faced by local communities and that developers should have more certainty as to what they will be expected to contribute, this speeding up the planning system (para 20).
- These objectives can be achieved through a system of standard charges, based on a simple formula which relates the size of the contribution to some characteristic of the development (para 21).
- The infrastructure planning underpinning CIL needs to be embedded in the development plan system (para 30). The CIL should be 'plan led', supporting the delivery of aspects of an authority's development plan (para 39).
- Local authorities will need to assess and cost the infrastructure that is needed to support the development of their area. Proposals for infrastructure to be funded from the CIL should, for example, only include items that are likely to enable, facilitate or mitigate the impact of the development and have regard to the level of funding available from other sources (para 31).
- The Government believes that CIL should be levied on most types of development (para 76). It will take a criteria-based approach towards deciding whether there should be any exemptions (para 77).

If radioactive waste management facilities become an exemption, then discussion of the basis for the provision of associated community funds will continue to focus on the legislation outlined at the start of this Section.

4 Justifications for Providing Community Funds

A range of potential justifications for providing community funds are outlined below. The justifications that apply in practice will depend on the nature of the proposed facility.

Actual or Perceived Impacts

It is widely recognised in the UK and internationally that the development of radioactive waste facilities can produce significant concerns about real or perceived risks and associated stigma. These concerns can include actual or potential impacts on public health and the environment, and on the local infrastructure and economy (including transport, tourism, industry and the ability to attract investment).

There is evidence that even the perception that a facility is connected with the nuclear industry causes significant public and business concern. For example, in 2007, Studsvik UK submitted a planning application to Cumbria County Council to create a recycling facility for metals with low radioactive contamination. This proposal was opposed by around 50 local businesses and others, on the grounds of adverse economic impacts, the health and safety of the public and business employees and the deterrent posed to tourists.

Such concerns can be at their strongest when a facility is proposed for the disposal of radioactive wastes. In such cases, a perception of a 'nuclear dustbin' or 'nuclear dump' arises, often fuelled by the campaigning of opposition groups. The major protests in the UK in the 1980-90s against proposals for LLW and ILW disposal illustrate the point.

Intergenerational Impacts

Intergenerational impacts are a significant issue of concern for communities asked to host LLW disposal facilities, particularly where proposals do not accord with well-established expectations for how the wastes would be managed.

It should be noted that for communities around existing nuclear sites, these expectations are usually that the LLW will be removed from the site for disposal at the LLWR near Drigg. Such expectations will have been strengthened by assumptions in early site Lifetime Plans that LLW will be removed from the site. Potential changes to these assumptions for some categories of LLW are likely to raise concerns for local communities.

The inter-generational dimension arises because a LLW disposal facility is unlikely to be judged to achieve a state of 'no danger' as defined in the Nuclear Installations Act 1965 for a period of around 300 years. It is likely that some form of institutional control of the facility would be required for the duration of this period.

Concerns about intergenerational impacts may also arise where provision is made for the storage of ILW for periods that extend across a number of generations.

Optimisation of Use of National Facilities and Cost Savings

The development of LLW disposal facilities at or near existing nuclear sites is likely to bring two types of national benefit. The first is to reduce the amount of LLW that might otherwise be disposed of at the LLWR, thereby helping to optimise the use of that facility. The second is to enable the NDA to make lifecycle cost savings, including the avoidance of transport costs of LLW to the LLWR. Local communities will recognise that these benefits could contribute significantly to the achievement of the aspirations set out in the NDA's national strategy.

Taking Wastes from Other Sites or Sectors

Initial proposals for a radioactive waste management facility at a specific site are likely to be based on the notion that the facility will only be used for wastes from that site. There can be a number of reasons for this, including reference to the proximity principle and local community acceptability. However, other factors may create pressure for the facility to be used for wastes from other sites or sectors within the area or region. This may arise, for example, if another site is not suitable for development of a LLW disposal facility, if it is not cost-effective to develop a facility at a specific site, or if an existing disposal route closes down.

Local communities will be acutely aware of such possibilities, particularly where a proposed facility is based on a modular design that allows further development at a later date. Magnox Electric's reference to a 'community equity' framework for considering waste imports and exports from different sites highlights that such possibilities are being actively considered within the industry.

International and UK Precedents

A review of international developments shows that it has become common practice to offer some form of community package, either to mitigate perceived or actual impacts of a proposed radioactive waste disposal facility, or in recognition of a community's willingness to host a facility perceived to be 'in the national interest'¹². Most of the facilities that have attracted a community package have had an explicit national role. Examples of facilities with a local or regional role that receive a package are at Port Hope in Canada and Barnwell in the USA.

Similar arrangements have also been made in the UK to offset community costs and impacts in other industries. A NDA review of such arrangements¹³ shows that these include:

- Project funding associated with specific developments (eg Birmingham airport and the Centrica Scottish wind farm)
- Socio-economic benefits through, for example, the Landfill Tax and Aggregates Levy Sustainability Fund
- Coalfield Regeneration Trust
- Blight compensation from the Highways Agency
- Funding for regeneration and infrastructure associated with the 2012 Olympics
- The Sullom Voe oil related Agreement.

5 The Need for a National Framework and a Proportionate Approach

Putting in place a national framework for reaching agreements about community funds would have a number of advantages, including:

- the avoidance of 'negotiating from scratch' each time a proposal is made
- the avoidance of inconsistencies between agreements in different areas
- ensuring a justified and proportionate approach
- the avoidance of delays
- greater transparency
- increased goodwill on the part of local stakeholders

The scope of a national framework requires careful discussion. It is suggested that it should:

- clarify the legislative bases for provision of community funds
- clarify the types of radioactive waste management facilities covered by the framework
- acknowledge the justifications for providing community funds
- provide guidance on what constitutes a proportionate approach
- provide guidance on the types of initiatives that can be funded
- clarify the process for initiating discussions and reaching agreement
- provide guidance on how a fund should be administered/managed.

Factors to take into account in determining what might amount to a proportionate approach are likely to include:

- the nature and size of the proposed facility
- the types of radioactive waste to be managed in the facility

¹² See for example the reviews of international experience in chapter 2 of [Study for NuLeAF](#) (Miller et al, 2006) and in [NDA Review of International Experience](#) (NDA, 2007)

¹³ [NDA Review of UK Experience](#) (NDA, 2007)

- the volume of waste that it is intended to be emplaced in the facility on an annual basis
- the total inventory of radioactivity that is likely to be emplaced in the facility
- the lifetime of the facility and duration of required institutional control
- the role that the facility will or may play in taking wastes from other sites or sectors
- the lifecycle cost savings associated with the facility
- the location of the proposed facility and the nature of its surrounds
- the nature and size of the community funds that have been agreed for other radioactive waste management facilities.

The proposed national framework for community funds should provide guidance on how these factors should be taken into account in reaching agreement on a case by case basis. One approach may be to use a relatively simple formula (for example, based on volumes of waste or percentage of lifecycle savings) to generate a rough estimate of the fund, which could then be adjusted through discussion to take into account the wider range of relevant factors.

6 Summary

This paper has outlined the case for developing a national framework for community funds associated with the development of radioactive waste management facilities. A national framework would have a number of advantages, including:

- the avoidance of 'negotiating from scratch' each time a proposal is made
- the avoidance of inconsistencies between agreements in different areas
- ensuring a justified and proportionate approach
- the avoidance of delays
- greater transparency
- increased goodwill on the part of local stakeholders

The justifications for providing community funds are likely to vary from case to case, but could include:

- the actual or perceived impacts on public health and the environment, and on the local infrastructure and economy (including transport, tourism, industry and the ability to attract investment).
- the presence of a radioactive waste management facility and associated institutional controls within the community for a period across a number of generations
- the role of the facility in the optimisation of the use of national facilities and achievement of national cost savings
- the actual or potential role that the facility will have in taking wastes from other sites or sectors
- the international and UK precedents for the provision of community funds in association with particular types of development, including radioactive waste disposal facilities
- the recognition by Government and NDA of the role of community packages in the siting of radioactive waste disposal facilities, albeit with an explicit national role.

The paper has outlined the range of factors that are likely to be relevant to determining what constitutes a proportionate approach in specific cases. The national framework should provide guidance on how these factors should be taken into account in reaching agreement on a case by case basis.