

<b>Meeting:</b>	NuLeAF Steering Group, 21 January 2014
<b>Agenda Item:</b>	6
<b>Subject:</b>	Community benefits and radioactive waste management - revision of NuLeAF's Community Benefits paper
<b>Author:</b>	Philip Matthews
<b>Purpose:</b>	To set a new basis for discussions with NDA, Government and other interested parties on the issue of community benefits.

### **Introduction:**

This paper revises NuLeAF's Briefing Paper 14 on Community Funds and Radioactive Waste facilities, published in 2008. It notes the range of community benefits funds and protocols that have been developed in comparable industries over recent years. It is proposed to use this paper as the basis for future discussion with NDA, Government and others.

### **Recommendation:**

- 1) That Steering Group agree this proposed new position on community benefits.
- 2) That NuLeAF officers forward this paper to NDA and use it as the basis for a new dialogue to develop a national community benefits framework.

### **Contribution to 2013/15 Service Plan:**

This report is in pursuance of the following tasks under the Community Funds and Socio-economic support work-stream for 2013/14 in the NuLeAF Service Plan 2013-15:

- *Review the NuLeAF paper on community benefits in light of recent developments.*
- *Continue to support and represent local authorities in the development of CBC practice with a view to maximizing community benefits through S106, CIL and other mechanisms.*
- *Continue to assist member authorities as appropriate to ensure that effective engagement arrangements exist with SLCs and NDA, either through the local SSG or direct engagement.*
- *Continue to seek a consistent approach in the setting of socio-economic criteria for PBO management competition processes at NDA sites.*

## 1. Introduction

1.1 The concept of 'community benefits' or 'community funds' is well established, both in relation to radioactive waste facilities and a range of other developments. The issue of community benefits is of great interest to NuLeAF member local authorities, and there has been an ongoing dialogue with Government and the NDA as to a suitable approach to this issue. NuLeAF has a Strategic Objective:

*'to seek to ensure that a consistent, proportionate and transparent approach can be taken to the establishment of Community Funds associated with key radioactive waste management facilities'.*

1.2 NuLeAF published a briefing paper on community benefits in 2008<sup>1</sup> and also a proposed protocol for determining community benefits around radioactive waste management facilities.

1.3 There have been a number of significant developments in the field of community benefits, and in the wider framework for local government, since the briefing paper and draft protocol were published. This paper takes stock of these developments, along with our discussions with NDA and Government. It provides a new statement of NuLeAF's view on the best way forward for community benefits and radioactive waste. This paper covers:

- The context and definition of 'community funds'
- Examples of and recent developments in community funds;
- The current legislative basis for provision of community funds;
- Justifications for community funds for radioactive waste management

1.4 It concludes with a suggested way forward that NuLeAF will explore with the NDA and nuclear industry.

## 2. Context and definition of 'community funds'

2.1 Nuclear decommissioning and clean-up will give rise to very large increases in the volume of radioactive waste. These wastes include:

- High and Intermediate level wastes, which will be stored at various locations before disposal in a planned Geological Disposal Facility (GDF); and
- Low Level Wastes (LLW) which will be disposed of at the national low level Waste Repository (LLWR) in Cumbria or, in the case of VLLW/LALLW, in landfill sites or by incineration.

2.2 NuLeAF recognises the need for effective management and disposal of legacy wastes and wishes to encourage member authorities to engage constructively with industry on proposals. It is important, however, that

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<sup>1</sup> <http://www.nuleaf.org.uk/nuleaf/DisplayArticle.asp?ID=6516>

proposals are taken forward in ways that address local authority views and can inspire public confidence.

2.3 The provision of community benefits and funds is an important part of ensuring that regional or national needs in radioactive waste management are met in a way that is seen at a local level as fair and reasonable. NDA strategy and the Committee on Radioactive Waste Management (CoRWM) both acknowledge that where communities contribute to nuclear clean-up, there should be the provision of a corresponding benefit<sup>2</sup>.

2.4 Community benefits or funds can be used to refer to a range of approaches. These include:

- **Investment of Government funds in the local community** with the aim of helping to encourage community participation in such schemes and reflecting the contribution to wider national concerns that a community plays by taking on such responsibilities.
- **Wider socio-economic support for communities** through the maximising of employment opportunities to local people, investment in infrastructure and the use of procurement policies to enhance the 'spend' with businesses in the area around a site.
- **Development and application of a 'community equity' framework.** This is a negotiated agreement that may include offsetting imports of wastes with exports.

2.5 It is the first two of these that are the focus of this paper. In the discussion below 'community benefits' or 'community funds' refers to such investment in the community.

2.6 Planning gains achieved under **Section 106** or through the **Community Infrastructure Levy** should not be seen as 'community benefits'. They are more accurately *mitigation measures*, although support provided under Section 106 agreements is also important in building local authority and community support and confidence.

2.7 Section 106 of the **Town and Country Planning Act 1990** provides that a developer may enter into a planning obligation enforceable by the local planning authority that can include a commitment on the part of the developer to make payments to the authority. Section 106 agreements have become increasingly important to the provision of public services associated with a wide range of developments. 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.

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<sup>2</sup> Cited in Magnox Electric letter to Somerset County Council, 11 December 2007, p7

### 3. Examples of and recent developments in community funds

3.1 There are many examples of community benefits being employed, both within the nuclear industry and elsewhere. Within the nuclear industry:

3.2 DECC has recently consulted on revised proposals for the development of a **Geological Disposal Facility (GDF)**. The final plans will be set out in 2014 but the issue of community benefits is addressed within the consultation. It is proposed that every community that chooses to enter into the GDF siting process will be rewarded with the allocation of resources into a community fund. The final proposals will become clear in 2014, but it is expected that these community funds will be additional to planning gain, will be significant in size, and provide for the release of some funds before construction.

3.3 NDA is also involved in **high level 'pathfinder' discussions with Cumbrian local authorities** about the approach that may be appropriate in relation to the large number of developments that are likely to affect the Sellafield site in coming years, including significant transfers of wastes and materials from other sites. These discussions are founded on a Memorandum of Agreement between the local authorities for the Copeland area, NDA and Government.<sup>3</sup>

3.4 **The New Nuclear Local Authorities Group (NNLAG)**, representing councils that are being asked to host new nuclear sites, has proposed a national framework for community benefit to mitigate against the impact on communities of construction, operation and decommissioning. The framework builds on the commitment in the National Infrastructure Plan 2011, in relation to new nuclear, namely that government should *'engage with developers and local authorities on community benefit and bring forward proposals.....for reform of the community benefit regime to provide greater certainty for all parties'*<sup>4</sup>. More information on the NNLAG framework can be found in Appendix 1.

3.5 Other funds have been provided as part of planning requirements. **LLWR Limited** provides £35,000 per annum for local community schemes with the potential for a further £30,000 from their Parent Body Organisation (PBO). This is available to communities within a 15 mile radius of the site. In addition, under Section 106 the NDA has committed to paying £1.5 million per year, following an initial endowment of £10 million, into the Copeland Community Fund<sup>5</sup>, 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

<sup>3</sup> See Annex 1 of: [http://www.wcssg.co.uk/UserFiles/File/developing-sustainable-communities-together\\_s.pdf](http://www.wcssg.co.uk/UserFiles/File/developing-sustainable-communities-together_s.pdf)

<sup>4</sup> <https://www.gov.uk/government/publications/national-infrastructure-plan-november-2011>

<sup>5</sup> <http://www.copelandcommunityfund.co.uk/about/>

economic diversification. While, as noted in 2.6, such Section 106 agreements should be considered to be *mitigation measures* rather than community benefits, such planning gains are also important in supporting the local community.

**3.6 Dounreay Communities Fund**, supported by the NDA and administered by Dounreay Site Restoration Limited, which provides grants of up to £30,000 for communities and charities in Caithness and North Sutherland. This is part of the NDA's wider commitment to supporting the economy and communities in the area, and is underpinned by a planning agreement.

3.7 There has also been agreement in relation to disposal of VLLW/LALLW at the **East Northamptonshire Resource Management Facility (ENRMF)** landfill site at Kingscliffe in Northamptonshire. DCLG supported the Examining Authority's view *'that it is appropriate for Augean's contribution of £5 per tonne of LLW to a Community Fund set up by Northamptonshire County Council to continue and be included in a section 106 agreement.'*<sup>6</sup>

3.8 A number of comparable industries have now entered into protocols or agreements on community benefits. The UK Government has supported initiatives aimed at promoting community benefits for wind power and also noted in the **Government Review of Waste Policy in England 2011** that:

*'The principle that those most impacted should benefit most should operate across all scales from street to neighbourhood to local authority. How to achieve this should be part of an ongoing dialogue between communities, local authorities, waste management companies and developers.....we will explore with the waste management industry whether such approaches could be suitable for waste infrastructure.'*<sup>7</sup>

3.9 **Renewable UK**, the trade body for the renewable energy industry, has launched a **Community Benefits Protocol**<sup>8</sup> which sets out the commitment of Renewables UK members to deliver real and tangible benefits to communities living by onshore wind farms of 5MW or above. Following the issuing of Government guidance on local community engagement and benefit funds, the level of the fund has been increased to £5,000 per MW with local people deciding how funding is spent. The total value of funds could be £150 million over coming decades.

3.10 In 2013, Scottish Renewables, the renewable energy industry body for Scotland, also launched an **Onshore Wind Community Benefit Protocol**. It outlines a number of key commitments from Scotland's onshore wind sector, including a commitment to explore the potential for greater

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<sup>6</sup> <http://infrastructure.independent.gov.uk/document/1895015>

<sup>7</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69401/pb13540-waste-policy-review110614.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69401/pb13540-waste-policy-review110614.pdf) - see paragraph 264

<sup>8</sup> <http://www.renewableuk.com/en/news/press-releases.cfm/2013-06-06-onshore-wind-industry-responds-to-new-government-guidance-on-local-community-engagement-and-benefit-funds>

community ownership and a pledge to sign up to the online **Register of Community benefits from renewables**. In support of the protocol, the Scottish Government has recently announced **Good practice principles for community benefits from onshore Renewable Energy Developments**<sup>9</sup>. Like in England, national guidance in Scotland is that all wind developments should provide community benefits packages equivalent to £5,000 per MW, index linked for the duration of the scheme. Scottish Government guidance on community benefits from offshore renewables will be published in 2014.

3.11 **The UK Onshore Oil and Gas industry**, representing the shale gas sector, announced an industry wide community benefits scheme in June 2013<sup>10</sup>. At the exploration phase each local community will receive £100,000. During production communities will receive 1% of gross revenues before costs are deducted. The industry estimates that this could amount to over £1.1Billion in a 25 year period or £5-£10 million per site. The Government also announced in January 2014 that Councils which support 'fracking' will be able to keep all business rates collected as opposed to the 50% they usually receive<sup>11</sup>. It is estimated that this could provide up to £1.7million of additional income to local authorities.

3.12 A NDA review of such arrangements<sup>12</sup> identified other examples including:

- Project funding associated with specific developments (e.g. Birmingham airport)
- 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.

#### **4. The Legislative and Policy Basis for Provision of Community Funds**

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

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<sup>9</sup> <http://www.scotland.gov.uk/Resource/0043/00438782.pdf>

<sup>10</sup>

<http://www.ukoog.org.uk/elements/pdfs/UKOOG%20Onshore%20Oil%20and%20Gas%20in%20the%20UK.pdf>

<sup>11</sup> <http://www.bbc.co.uk/news/uk-politics-25705550>

<sup>12</sup> [http://www.nda.gov.uk/documents/upload/TN-17086-Managing-Radioactive-Waste-Safely-Literature-Review-of-International-Experiences-of-Partnerships-pdf-version\\_v1.pdf](http://www.nda.gov.uk/documents/upload/TN-17086-Managing-Radioactive-Waste-Safely-Literature-Review-of-International-Experiences-of-Partnerships-pdf-version_v1.pdf)

4.2 **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.

4.3 **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 authority. 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.

4.4 **The Community Infrastructure Levy (CIL)** – the CIL is another mechanism which local authorities in England and Wales can use to charge landowners and developers in their area. It is designed to be simpler and fairer than Section 106. The money raised can be used to support development by funding infrastructure that the council, local community and neighbourhoods want, for example a new health centre or improvements to parks and gardens<sup>13</sup>.

4.5 In addition, support for community benefits is included in the Government's current framework for planning and, as noted earlier, in NDA Strategy.

4.6 The **National Planning Policy Framework (NPPF)**, published in 2012, states that *'Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used when it is not possible to address unacceptable impacts through a planning condition'*. (paragraph 203).

4.7 The **NDA's Business Plan 2013-16** outlines the organisation's mission, namely to *'Deliver safe, sustainable and publically acceptable solutions to the challenge of nuclear clean up and waste management. This means never compromising on safety or security, taking full account of our social and environmental responsibilities, .....and actively engaging with stakeholders.'*

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<sup>13</sup> <https://www.gov.uk/government/policies/giving-communities-more-power-in-planning-local-development/supporting-pages/community-infrastructure-levy>

4.8 In addition, the NDA's **Socio-Economic Policy** (2008)<sup>14</sup> sets out the organisation's vision of *'support(ing) the creation of dynamic, sustainable local economies for communities living near our sites'* with this being achieved in a wide range of ways.

4.9 NuLeAF supports the commitment by NDA to further develop procurement strategies and policies and to deliver at least 20% of the external supply chain with Small and Medium Enterprises (SMEs) in line with Government support for the sector. The NDA has a huge annual spend and it is important that host communities gain the maximum possible advantage from this through local business and employment growth. This commitment should be clearly reported on an annual basis.

## 5. Justifications for community benefits and funds

5.1 There are a number of recognised justifications for community benefits, including:

- **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 impacts. 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). The decision by Cumbria County Council not to proceed to Stage 4 of the GDF siting process related in part to concerns about the lack of clarity on the scale and type of community benefits being offered to offset actual or perceived impacts.
- **Inter-generational Impacts** Intergenerational impacts are a significant issue of concern for communities asked to host radioactive waste storage and disposal facilities. As a result of decommissioning, many sites across the UK will store radioactive waste for decades. Decisions taken now thus affect future generations, and may impact on the local economy for a long time into the future.
- **Optimisation of Use of National Facilities and Cost Savings** Radioactive waste is managed on a national basis and the communities that host such nationally important facilities should have the important role they play recognised.
- Landfill sites and other facilities such as incinerators that accept VLLW/LALLW help ease capacity concerns at the LLWR, thereby helping to optimise the use of that facility. Such an approach enables NDA to make lifecycle cost savings, including the avoidance of transport costs of LLW to

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<sup>14</sup> <http://www.nda.gov.uk/documents/upload/NDA-Socio-Economic-Policy.pdf>

the LLWR. Local communities thus contribute significantly to the achievement of the aspirations set out in the NDA's national strategy.

- **Civic responsibility** As has been recognised by a range of other public and private sector organisations, it is important for organisations to play their part within the communities that host them. The need to do so is a clear requirement of the NDA as set out in strategy.

## **6. Conclusions and recommendations**

6.1 Many billions of pounds are to be spent over the coming decades in addressing the waste and legacy impacts of the UK's nuclear industry. It is essential that the socio-economic and environmental needs of the communities that support decommissioning and waste management and storage facilities are adequately addressed, recognising the important contribution that host communities make.

6.2 NuLeAF and local authorities wish to see a clear commitment to community benefits and funds across all significant sites in the NDA estate. The approach taken should go beyond mitigation taken in response to planning requirements and:

- Provide funding for facilities and activities in local communities
- Underpin a strong commitment to supporting the socio-economic health of communities through employment policies and procurement/spending decisions
- Be separate and additional to the mitigation measures that might arise solely from a Section 106 Agreement as part of the planning process; and
- Provide flexibility so that local agreements for community benefits can reflect local circumstances and needs.

6.3 With regard to the second point, as noted earlier NuLeAF supports the commitment by NDA to further develop procurement strategies and to use its huge annual spend in ways that best benefit local people. This should be clearly reported on an annual basis.

6.4 NuLeAF also welcomes the commitment in a revised GDF siting process to reward a community through the early release of some community benefits into a community fund. This will help sustain local community confidence that its future social and economic wellbeing will be protected. It will also help encourage communities to come forward and be considered as host for such a facility, thereby assisting the Government.

6.5 Drawing on the positive examples from the nuclear industry and elsewhere, NuLeAF believes that NDA should adopt a nationwide framework for its operations and the communities around nuclear waste and legacy facilities. We believe communities around other sites, such as landfills and

incinerators accepting radioactive wastes, and sites that will act as long terms stores such wastes, should also be supported through community benefits and funds.

6.6 The NDA has stated that rather than develop a national protocol or framework for community benefits or funds, their preliminary view is that a bespoke approach may be most appropriate in each case, drawing on the lessons identified in the approach in West Cumbria, but without adopting a nationally agreed framework. The Authority also wish to conclude pathfinder discussions in Cumbria before seeking to identify the most appropriate approach for other parts of England and Wales; and argue that the number of cases where other sites may be asked to manage radioactive wastes from more than one site, customer or sector is likely to be small.

6.7 While NuLeAF recognises the diversity between different NDA sites, our view is that a community benefits framework would greatly assist NDA in developing local responses. It would:

- 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
- demonstrate equity and fairness in fund allocation between communities

6.8 As noted earlier, a range of comparable industries have recognised the benefits of adopting a clear nationwide approach to community benefits or funds. These include:

- the avoidance of 'negotiating from scratch' each time a proposal is made
- the avoidance of inconsistencies between agreements in different areas
- the avoidance of delays
- greater transparency
- increased goodwill on the part of local stakeholders and a sense among communities that they are being treated in a fair way that is justified and proportionate

6.9 It is recommended that NuLeAF officers forward this paper to NDA and use it as the basis for a new dialogue to develop a national community benefits framework.

## **Appendix 1: NNLAG Framework**

Local Authorities that are being asked to host Nuclear New Build (NNB) Power Stations on behalf of the nation recognise and welcome the potential opportunities new nuclear development can bring to an area. However, the New Nuclear Local Authorities Group (NNLAG) agrees that in view of the impacts and disturbance placed on local communities by the construction, operation and decommissioning of such projects, it is necessary that Community Benefit packages are delivered as appropriate to each of the localities affected by such development.

### Definition

Community Benefit is regarded as: "a payment in money or kind to a local community in recognition for hosting a development that, whilst delivering national benefits, imposes a particular environmental, financial or other burden upon the locality where it is sited."

### A proposed national framework

The NNB host authorities are of the view that there is a need for a national voluntary framework to be established which sets out an agreed range of parameters for Community Benefit Contribution (CBC) schemes in relation to NNBs. This will help to ensure that the implementation of any local CBC scheme is undertaken by following an agreed set of national voluntary principles, supported by industry, UK Government and the Welsh Government. Given that the first NNB application is currently at examination, it is urgent that this initiative is now taken forward.

This is consistent with the Government's response to the National Policy Statements that stated that further consideration is being given to the provision of community benefits. Subsequent to this, the National Infrastructure Plan 2011, in relation to new nuclear, committed the government to: *"engage with developers and local authorities on community benefit and bring forward proposals.....for reform of the community benefit regime to provide greater certainty for all parties"*.

Furthermore, a recent written statement on Energy by the Welsh Government's First Minister, Carwyn Jones, stated: "A careful balance needs to be developed between security of energy supply, community benefit and reduced emissions. We [Welsh Government] will maximize the benefits of energy infrastructure developments for communities and the wider economy in Wales...we will work with energy developers to ensure that communities share the benefits of transition to a low carbon economy in Wales".

NNLAG have taken the initiative in putting forward these proposals for CBC schemes. However, it will be imperative that agreement is reached with government and industry regarding the principle of CBC schemes.

## **The Principles**

**Principle 1: *Purpose*** - Community Benefit in relation to the UK's NNBs recognises the role communities play in hosting such developments morally, politically and practically.

**Principle 2: *Consistency*** - Community Benefit is a common and well established practice for NNBs abroad and in the UK in relation to the renewables (for example the Wind Industry Protocol), oil and gas sectors and is under consideration in respect of waste. It is therefore equitable and consistent that Community Benefit schemes should apply in relation to the UK's NNBs.

**Principle 3: *Scale*** – The size of a CBC scheme for a NNB should reflect the overall scale, nature and national significance of the development and the particular local circumstances of the host communities.

**Principle 4: *Timescale*** – A CBC scheme should provide short and long-term benefits. Payments in money or kind should also reflect the longevity of a NNB development including construction, operation and de-commissioning.

**Principle 5: *Separation*** - Community Benefit is entirely separate from the mitigation of a development's direct and indirect impacts. It is voluntary, and may be in addition to, and 'above and beyond' any Section106 agreement, Community Infrastructure Levy (CIL) payment or Community Impact Mitigation (CIM) fund agreed between the developer and host communities.

**Principle 6: *Management and distribution*** – Flexibility around the management and timing of payments in money or kind is required to ensure that appropriate mechanisms are put in place for each community.

**Principle 7: *Parameters*** – A CBC scheme for NNBs would be influenced by existing and emerging legislation and best practice guidance regarding Community Benefit and / or any local taxation benefits<sup>15</sup>.

As a result of the variety of economic, environmental and social contexts within which NNBs are proposed, it is considered vital that the CBC principles provide a consistent framework, while providing flexibility to reflect each particular local circumstance and the level of development in a given area.

Any payment via a CBC scheme is a matter to be discussed and agreed with the NNB developer and the host authorities and communities. It is likely that the scale of payments, the duration of payment and the phases for which any payment is required and agreed will vary with each development.

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<sup>15</sup> Note: In Wales the situation may be interpreted differently. Anglesey is currently working with Welsh Government (WG) on Enterprise Zone status.

## **Management of the principles**

In order to secure delivery, agreement will be sought with industry in relation to the management and monitoring of CBC schemes.

If a number of major nuclear developments occur in one area (for example a Deep Geological Disposal Facility and a new nuclear power station), negotiations for community benefit must be considered on a stand alone basis, with each proposal / negotiation considered on its own merits.

It will be important to ensure there is no potential for duplication with other schemes. For example NuLeAF's proposed protocol for nuclear waste management facilities that host waste from more than one site may need to be taken into account by host authorities and developers.

It is also suggested that the CBC principles are reviewed with all relevant parties on a regular basis and in the light of experience. Given the inherent link between the issue of local business rate retention and community benefit, it is suggested that the review period should be triggered by either a notice of a change in Government Policy or every 10 years - whichever is sooner.