

Meeting:	NuLeAF Steering Group, 25 January 2011
Agenda Item:	7
Subject:	Community Benefits and Radioactive Waste Management
Author:	Fred Barker
Purpose:	To report on developments to take into account in revising NuLeAF's Briefing Paper 16

Introduction

This report provides:

- a high level summary of the contents of NuLeAF Briefing Paper 16 (BP16);
- an overview of the developments that need to be taken into account in revising BP16; and
- a question about whether to make representations to Government about the need for a strategic approach to community benefits.

Recommendation

That the Steering Group:

- 1 endorse the proposed approach to revising BP16; and
- 2 decide whether representations should be made to Government about the need for a strategic approach to community benefits.

Contribution to Achieving Strategic Objectives

This report is intended to contribute to the achievement of the following NuLeAF 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 Briefing Paper 16

At its meeting on 20 October, the NuLeAF Steering Group agreed that Briefing Paper 16 (BP16) should be revised in the light of recent developments.

BP 16 was published in May 2009. It explains that the previous Government had made it clear that it would not adopt a strategic approach to Community Funds to encourage provision of radioactive waste management facilities offering a multi-site and/or multi-customer service, and that the question of fund provision should be considered on a case by case basis as a normal part of the planning process. The paper pointed out that such an approach would be consistent with well documented national and local policy approaches to the use of planning obligations for non-radioactive waste developments, and the approaches taken to the Copeland and Dounreay Community Funds. In the light of this, the paper covered: the basic principles of planning obligations; the extent of the use of planning obligations; local authority policies and approaches to planning obligations; the use of S106 with regard to developments for radioactive waste management; and the potential impact of the Community Infrastructure Levy (CIL). The paper is available on the NuLeAF website at [BP16](#).

2 Overview of the developments to take into account in revising BP16

These developments include:

- **Introduction of the Community Infrastructure Levy (CIL) and review by the new Government:** on 18 November, the Government announced that the CIL will be retained but reformed to increase flexibility (see Annex A). It also published a new guide to the purpose of the CIL and how it is intended to operate (available at [CIL Overview](#)).
- **Statutory restrictions on the use of planning obligations:** as part of the introduction of the CIL the previous Government introduced new statutory restrictions upon the use of planning obligations (see Annex B). In its 18 November announcement the Coalition Government confirmed that there would be no further significant changes to planning obligations. It is not clear, however, what will happen to the previous Government's proposals for a new policy document on planning obligations which was intended to explain the new restrictions and form an Annex to a new Development Management Planning Policy Statement.
- **Current examples of the use of planning obligations:** the impact of the statutory restrictions can perhaps be gauged through looking at recent examples of S106 agreements. This may include the establishment of a S106 agreement in association with the proposed spent fuel dry store at Sizewell B. Another example is the agreement associated with permission for an Energy from Waste Plant in Cardiff (see Annex C).
- **Ministerial consideration of the need for financial incentives associated with controversial waste facilities.** See, for example, 'Ministers ponder incentives for households near planned incinerators' (Local.Gov.co.uk, 5 October 2010). Further

proposals are made in a report by the Associate Parliamentary Sustainable Resource Group (available at [Incentivising Community Buy-In](#)).

- **Community Benefits and New Nuclear Build:** Somerset authorities have made demands for further consideration of mitigation measures and the community benefits that should be associated with the proposed nuclear power station at Hinkley Point (see Annex D). Recent press reports suggest that those authorities consider that an approach similar to the Shetland Isles Community Fund should be put in place – see the article at [Burden of Hinkley C nuclear power station | This Is Somerset](#). It is hoped to take a verbal update at the Steering Group meeting.
- **International benchmarking:** a new report is available on the international benchmarking of community benefits associated with radioactive waste management facilities (see Annex E).

In the light of these developments it is anticipated that BP 16 will be revised to take account of: the transposition of the planning obligation policy tests into legislation; evidence for a more restrictive use of S106 in the light of that transposition; the Sizewell B spent fuel example; the case being made for community benefits in association with the proposed Hinkley Point C development; and Government reform of the CIL.

3 Question about whether to make representations to Government

In the light of the Coalition Government's apparent willingness to consider 'incentive schemes' for waste management infrastructure, the question arises of whether it would be worth making representations to the new Government to encourage it to adopt a strategic approach to Community Funds with the aim of encouraging provision of radioactive waste management facilities offering a multi-site and/or multi-customer service.

The Steering Group is invited to take a view on this question.

Annex A: Announcement on 18 November 2010

Planning Reform

The Minister of State, Department for Communities and Local Government (Greg Clark): I am announcing today reforms to the community infrastructure levy. The levy came into force in April 2010 and gives local authorities in England and Wales the option to raise funds from developers undertaking new building projects in their area.

The money can be used to fund a wide range of infrastructure that is needed as a result of development. This includes: transport schemes, flood defences, schools, hospitals and other health and social care facilities, parks, green spaces and leisure centres.

The Government have decided that this tariff-based approach provides the best framework to fund new infrastructure to unlock land for growth. The community infrastructure levy is fairer, faster, more certain and more transparent than the use of the existing system of planning obligations to collect standardised contributions. Levy rates will be set in consultation with local communities and developers and will provide developers with much more certainty "up front" about how much money they will be expected to contribute.

Under the system of planning obligations only 6% of all planning permissions brought any contribution to the cost of supporting infrastructure, when even small developments can create a need for new services. The levy creates a fairer system for collecting tariff contributions, with all but the smallest building projects making a contribution towards additional infrastructure that is needed as a result of their development.

However, currently too little of the benefits of development go to those directly affected, and our ambition is to correct that. Therefore, the existing powers to set a community infrastructure levy will be reformed so communities have more control over how it works, and developers benefit from a more flexible system.

New neighbourhood funds

The Government will require charging authorities to allocate a meaningful proportion of levy revenues raised in each neighbourhood back to that neighbourhood. This will ensure that where a neighbourhood bears the brunt of a new development, it receives sufficient money to help it manage those impacts. It complements the introduction of other powerful new incentives for local authorities that will ensure that local areas benefit from development they welcome.

Local authorities will need to work closely with neighbourhoods to decide what infrastructure they require, and balance neighbourhood funding with wider infrastructure funding that supports growth. They will retain the ability to use the levy income to address the cumulative impact on infrastructure that may occur further away from the development.

More flexibility for local authorities over levy rates

The Government will include provisions in the localism Bill to limit the binding nature of the examiners' reports on levy rates. Currently, an examiner scrutinises a council's levy rates, and all changes that they request are binding, including the rates set for specific areas or types of development.

Examiners will now only be able to ensure councils do not set unreasonable charges. Councils will be required to correct charges that examiners consider to be unreasonable, but they will have more discretion on how this is done—for example, they could depart from the detail of the examiner's recommendations on the mix of charges to be applied to different classes of development or the rates to be applied in different parts of their area.

Most affordable housing and charity development will continue to be exempt from the levy.

Additional flexibilities for levy charging authorities

The Government want councils to have more control over the working of the levy. Changes to the existing regulations will therefore include:

- Freeing up payment arrangements—local authorities will be able to decide their own levy payment deadlines and whether to offer the option of paying by instalments;

- Removing the £50,000 minimum threshold so authorities can accept a payment in kind for any level of contribution;

- Minor amendments to secondary legislation to close potential loopholes and improve how the levy system works, for example, reducing burdens by scaling back information requirements on the "notice of chargeable development".

Planning obligations

The Government are confirming that there will be no significant change to the arrangements relating to planning obligations set out in the existing community infrastructure levy regulations. Planning obligations will continue to be used to mitigate the direct impacts of specific developments and to fund affordable housing; however, their use to collect standardised tariff-style contributions will be phased out in favour of the levy by 2014.

Transitional arrangements, timing and next steps

Local authorities that have decided to introduce a community infrastructure levy charge on the basis of the current legislation can now do so.

Local authorities who take steps now to adopt a charging schedule will not need to return to an earlier stage of the process when these changes take effect. And local authorities that have already adopted the levy before the reforms come into effect will be able to take advantage of the new flexibilities without having to review their charging schedules.

The Government aim to publish draft regulations for debate in Parliament in the new year. It would bring the changes into effect on 6 April 2011.

Annex B: Statutory Restrictions on the Use of Planning Obligations

CIL Regulation 122 places into law the Government policy tests on the use of planning obligations. From 6 April 2010 it has been unlawful for a planning obligation to be taken into account when determining a planning application for a development, or any part of a development, that is capable of being charged CIL if the obligation does not meet all of the following tests:

- a) Necessary to make the development acceptable in planning terms
- b) Directly related to the development
- c) Fairly and reasonably related in scale and kind to the development

The statutory tests are intended to clarify the purpose of planning obligations in the light of CIL, improve the effectiveness of their use and negotiation and provide a stronger basis to dispute planning obligation policies, or practice, that breach these criteria. This seeks to reinforce the purpose of planning obligations in seeking only essential local contributions towards the granting of planning permission, rather than more general contributions which are better suited to the use of CIL.

The new policy document for planning obligations proposed by the previous Government - [New Policy Document for Planning Obligations: Consultation - Planning, building and the environment - Department for Communities and Local Government](#) – contained a brief description on how each of the tests should be applied.

Annex C: Energy from Waste Plant, Cardiff, 9 June 2010 (Application 10/149/E)

Section 106 Contributions

In the event that planning permission is granted, the applicant has agreed to enter into an agreement to secure the following:

- (i) £182,096 towards transportation infrastructure enhancements;
- (ii) A travel plan setting out proposals and targets, together with a timetable, to limit or reduce the number of single occupancy journeys to the site, and to promote travel by sustainable modes, together with an annual report demonstrating progress in promoting sustainable transport measures;
- (iii) The establishment and support of a liaison group involving, (inter alia), the operator, the local planning authority, local members and representatives of the local community;
- (iv) The use of best endeavours to use and market the energy generated from the incineration process and to produce an annual report detailing the outcome of these endeavours for presentation to the local planning authority and also to use reasonable endeavours to market the bottom ash derived from the incineration process for use as a secondary aggregate, as indicated in paragraph 1.2 (iv) above. The annual report should also provide annual statistics of the tonnage of material handled by the EfW plant (input and output);
- (v) That only waste arising from within the South-East Wales Region will be processed by the plant; and
- (vi) That no 20 tonne (or above) bulk vehicle whatsoever shall be permitted to pass along any residential road in Splott or Adamsdown, with the exception of Newport Road, Tyndall Street, Central Link, Ocean Way and Rover Way.

It is considered that the terms of the legal agreement would comply with the tests for planning obligations laid out in Circular 13/97 and Planning Policy Wales. i.e. that they are necessary, relevant to planning, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development and reasonable in all other aspects. In addition, the Operational Manager, Transportation, has requested the financial contribution in (i) in the light of the guidance contained within section 3.2 of the "*Access Circulation and Parking Requirements*" Supplementary Planning Guidance (2006).

The full report to Planning Committee is available at:

http://www.cardiff.gov.uk/objview.asp?object_id=16993

Annex D: Outline of Somerset CC comments on mitigation measures and a Community Fund associated with Hinkley Point C

Somerset CC's response to Stage 2 consultation includes the following points:

- The proposals do not demonstrate that the essential safeguards are in place to ensure adequate mitigation (for example on town centre economies and local landscape).
- 'Resilience' has not been adequately built into mitigation and compensation proposals (including resilience of the transport infrastructure, the area's economy, and proofing against climate change).
- 'Trigger points' or penalty clauses should be built into the Section 106 agreement if planned mitigation fails to perform or it impacts dismissed at the application stage develop to become recognised problems.
- The size, scope and governance of the community fund require further definition. The fund is to compensate Somerset communities for the intangible impacts and harms of hosting the project over its lifetime. The initial fund offer of £1m is inadequate when compared with other national and international exemplars.
- It is difficult to see a strategic approach in the skills and apprenticeship offers that have been made.
- More should be proposed for EdF initiatives on energy efficiency for local homes and businesses.
- In addition to considering health impacts on the workforce, EdF should address the physical and mental health needs of surrounding communities.
- There are inadequate arrangements about how EdF will work with stakeholders to maintain and improve the County's image and economy for tourism and business investment.
- The potential detrimental impacts on small rural communities need further consideration.
- More evidence is needed of how EdF will work to create a lasting economic legacy to avoid a 'boom and bust' scenario.

Annex E: A Bergmans, 'International Benchmarking of Community Benefits related to Facilities for Radioactive Waste Management', Commissioned by EDRAM, January 2010.



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