

ITEM 5: UPDATE ON NATIONAL DEVELOPMENTS IN RADIOACTIVE WASTE MANAGEMENT

Report to RWPG, 15th November 2017

Introduction:

This paper provides a report on recent developments in NDA Strategy and operations. It covers:

- Reports from Theme Overview Groups (TOGs);
- NAO report published and Holliday Inquiry update;
- Magnox update; and
- ONR appoint new Chief Nuclear Inspector.

1. Report from Theme Overview Groups (TOG) meetings

A meeting of the **Site Decommissioning and Remediation (SDR) TOG** was held in Penrith on the 8th November and attended by NuLeAF.

The main focus of the meeting was to review the objectives that the NDA Strategy sets out for SDR (page 25 of Strategy III), namely **Decommissioning, Land Quality Management, Interim and End States**, and **Re-use of sites**. For each objective and sub-objective the level of influence of each organisation and the extent to which each of the organisations present could contribute to delivery was discussed.

There was a clear recognition in the meeting of the need to better engage with local authorities, and in particular planners and economic development officers, as the NDA mission progresses. Looking forward key areas of work of relevance to NuLeAF include:

- Proportionate Regulatory Controls
- Discussions around in situ disposal of low level radioactive waste
- Work with local authorities on the development and update of land use plans
- Application of the NDA Values Framework
- Discussions around the GDF siting process and the potential option of near surface disposal for some of the Higher Activity Waste (HAW) agenda
- Development of the Magnox Decommissioning Strategy and updating of Life Time Plans
- BEIS work on Strategy and Policy

It is hoped that this work will lead to a more structured and focussed work plan for the SDR TOG that draws on the expertise of all stakeholders in a more effective way.

NuLeAF's Executive Director also attended the **Critical Enablers (CE) TOG** in Carlisle on the 2nd November. The meeting was focussed on one issue – developing the **NDA's Transport Strategy**. The Strategy is at an early stage and the meeting consisted of an open discussion on transport issues with input invited from those external stakeholders in attendance, namely EA, SEPA, ONR and NuLeAF.

The vision of the new Transport Strategy is *'to utilise our transport assets and capabilities to develop and maintain a world-class radioactive materials transport and logistics infrastructure for the UK (and internationally), delivering all of the NDA group's Mission, achieving best taxpayer value for other domestic nuclear Missions and representing the UK on the world stage in nuclear materials transportation.'*

The hope is to deliver added value and better integration in transport matters across the NDA, including the SLCs and the current rail and sea transport businesses (Direct Rail services and International Nuclear Services). The strategy will look at rail, road and sea transport and the issues around packaging, governance, skills and the means of engaging with regulators and stakeholders.

It is hoped that a draft of the strategy will be available in early 2018. At present there are no plans for a public consultation on the Strategy but there will be more opportunities for engagement with stakeholders.

At the meeting NuLeAF raised concerns from local authorities on a number of issues, including the need for more clarity on how decisions are taken on whether to move material and the best transport mode to use; also that NDA must better consider local plan development cycles in engaging with councils on the transport of material.

2. NAO Report published and Holliday inquiry update

The **National Audit Office (NAO)** has published its report in to the Magnox PBO contract¹. This follows on from a High Court ruling in July 2016 that the NDA had wrongly decided the outcome of the procurement process. Energy Solutions, one of the incumbent contractors for the Magnox sites until 2014, unsuccessfully bid for the contract, and subsequently issued legal claims against the NDA for damages. The High Court found that, had the NDA applied its evaluation criteria correctly, the winning bidder, Cavendish Fluor Partnership (CFP), would have been excluded from the competition.

In a highly critical report, the NAO concludes that:

¹ <https://www.nao.org.uk/report/the-nuclear-decommissioning-authoritys-magnox-contract/>

'The NDA's fundamental failures in the Magnox contract procurement raise serious questions about its understanding of procurement regulations; its ability to manage large, complex procurements; and why the errors detected by the High Court judgement were not identified earlier. In light of these issues, the Department must consider whether its governance and oversight arrangements surrounding the NDA are sufficiently clear and effective in providing the scrutiny and assurance it requires to meet the standards expected in managing public money.'

Among the report's findings are that:

- Through the 'Magnox contract', the NDA aimed to 'do the same for less' and give the contractor a stronger incentive to deliver savings for the taxpayer. HM Treasury approved the competition and contract award on the basis that the new contract would provide savings of at least 10%.
- For the procurement, the NDA Board relied on assurance reviews and legal advice that did not detect problems later identified in the High Court judgment.
- While defending the legal claims, the NDA was progressing a complex process of contract 'consolidation' with CFP. The NDA describes this contractual process as a 'truing up' between what the contractor was told to expect and what it actually found upon taking over responsibility for the sites. During consolidation, the expected costs of decommissioning the Magnox sites increased from £3.8 billion in CFP's winning bid in 2014 to £6.0 billion in 2017. The NDA attributes £0.7 billion of this increase to a revised understanding of the volume of waste and asbestos on the sites, which it says could not be quantified before work under the contract began. Another £1.0 billion of the increase was expected by the NDA when it awarded the contract, but £0.5 billion was not expected.
- Before terminating the contract, the NDA forecast 13% cost savings (£904 million) compared with the previous contracts. The NDA believes that so far, CFP has reduced costs by around £255 million relative to the old contracts.
- For the consolidation process, certain formal governance arrangements were not in place until August 2015, a month before the contractual deadline to complete the process.
- Three reviews commissioned by the NDA assurance director cited significant risks with the consolidation process from December 2015. The reviews were shared with the programme's senior responsible owner and the NDA's chief financial officer, but the NDA Board was only informed of findings from the third review.

The NAO estimate that the Magnox contract cost the taxpayer upwards of £122 million. The NDA agreed to settle legal claims with Energy Solutions and Bechtel at a cost of £97.3 million. It also spent £13.8 million on legal and external advisers. Of this, £3.2 million was spent on the competition and £8.6 million was spent on legal fees in the ensuing litigation. The NDA estimates that in-house staff time has cost £10.8 million. This excludes the cost of staff time of senior central government

officials who were heavily involved in decisions, particularly about the NDA's settlement and its decision to terminate the contract.

The **Holliday Inquiry**, commissioned by BEIS to look into the issues around the Magnox contract, published its interim findings in October 2017². This highlighted weaknesses in the procurement including overcomplexity of the scoring system for assessing bids and mistakes in the assessment of the cost elements. It sets out a range of recommendations around competition rules, and notes a number of areas that will be more fully considered in the final report.

3. Magnox update

On the 29th September **the NDA served notice of termination to Cavendish Fluor Partnership (CFP)** for the management and decommissioning of the UK's 12 Magnox nuclear sites³. The termination notice will take effect from 1st September 2017, allowing for a 24-month notice period ending on 31 August 2019. The NDA and CFP have reached agreement on the work to be performed on the sites during the contract's remaining two years, as well as the arrangements and agreed state in which the sites will be left.

In addition, Magnox announced at the NDA Stakeholder Summit (September 2017) that they were pursuing a new approach based around continuous decommissioning. In response to concerns expressed by NuLeAF members, NDA will be attending this RWPG meeting to present on and discuss proposals for the Magnox Decommissioning Strategy.

4. ONR appoint new chief nuclear inspector

The Office for Nuclear Regulation (ONR) has appointed Mark Foy as its new Chief Nuclear Inspector on a 5-year term. He is an internal appointment having previously served as the Deputy Chief Nuclear Inspector⁴. Among his challenges will be to prepare the ONR for additional inspection responsibilities that may result from changes to the UK's relationship with Euratom.

² <https://www.gov.uk/government/publications/magnox-inquiry-interim-findings>

³ <https://www.gov.uk/government/news/contract-termination-notice>

⁴ <http://news.onr.org.uk/2017/10/onr-appoints-new-chief-nuclear-inspector-2/>