

By email to:

Date: 18th April 2018

Dear Sir or Madam,

National Policy Statement (NPS) for Geological Disposal infrastructure – response to consultation by the UK Government

1. Introduction

NuLeAF (the Nuclear Legacy Advisory Forum) is the Local Government Association (LGA) representative body on legacy wastes and decommissioning. We are directly supported by over 100 local authorities and national park authorities across England and Wales and speak for the wider LGA. The Local Government Association is not providing a separate response to this consultation.

Our remit encompasses all aspects of the management of the UK's nuclear waste legacy. Our primary objectives are:

- to provide a mechanism to identify, where possible, a common local government viewpoint on nuclear legacy management issues;
- to represent that viewpoint, or the range of views of its member authorities, in discussion with national bodies, including the Welsh and UK Government, the NDA and the regulators;
- to seek to influence policy and strategy for nuclear legacy management in the interests of affected communities; and
- to develop the capacity of its member authorities to engage with nuclear legacy management at a local level.

NuLeAF's **Policy Statement 3: Geological Disposal**¹ sets out our support for the development of a geological disposal facility (GDF) for the UK's Higher Activity Radioactive Wastes (HAW), with certain qualifications and while recognising that some local authorities take alternative views on HAW management.

NuLeAF was a key partner in the former Managing Radioactive Waste Safely (MRWS) process. We have been working with the UK and Welsh Governments to help shape the

¹ <http://www.nuleaf.org.uk/wp-content/uploads/2014/02/2007-01-25-Policy-Statement-3-Geological-Disposal-.pdf>

current approach to geological disposal² through engagement with DECC/BEIS, RWM Limited and other parties. Our Executive Director was a member of the Community Representation Working Group (CRWG), established by DECC (as was) to consider community engagement and implementation processes for the GDF siting process.

We welcome the recognition in the 2014 White Paper that (a) the siting process has to be based on voluntarism; (b) that all tiers of local government have a significant role to play across the entire siting process; and (c) that the GDF will only proceed if a community gives their consent in a Test of Support late in the process.

Local authorities are democratically elected bodies at the heart of every community, with responsibility for land use and waste planning, transportation, emergency planning and sustainable development. Councils also have expertise in economic development and regeneration; and skills in community engagement, outreach, education and the support of community networks. It is therefore critical that the NPS processes work within a framework of local accountability and engagement, closely involving local authorities and citizens.

NuLeAF's Radioactive Waste Planning Group (RWPG) is an expert forum for land use and waste planning officers from across England and Wales, many of whom have significant experience of working on other Nationally Significant Infrastructure Projects (NSIPs) and associated National Policy Statements (NPS) and Development Consent Orders (DCOs). This consultation response has been informed by the RWPG and our wider membership.

We believe that NuLeAF, as the representative body for local government in England and Wales, has and can continue to provide important insight and advice, and help co-ordinate and support local authorities involved in the siting process. We are independent of Government and the developer. We act for local government as a whole and not as an advocate for any individual council or community. We will continue to raise awareness of the GDF siting process among local authorities up to and following the official launch and to advise RWM and Government.

We will also be submitting responses to the parallel UK/Northern Irish and Welsh Government consultations on proposals for Working with Communities.

2. General Comments

The **Planning Act 2008** established a new development consent process for Nationally Significant Infrastructure Projects (NSIPs) based around a single Development Consent Order (DCO). This process can be applied to large scale developments in energy, transport, waste and water.

We accept the validity of the decision by the UK Government to designate the development of a GDF as an NSIP. It is of appropriate scale and significance and is a project that impacts on the management of radioactive waste at a national level.

That said, this NPS has certain distinct characteristics:

- It is non-site-specific and therefore has to focus on high level assessment principles against which development consent processes will be considered.

² <https://www.gov.uk/government/publications/implementing-geological-disposal>

- The planning aspects of the GDF siting process must be driven by the highest standards of safety and intergenerational equity, drawing on the clearest scientific, technical and geological information available. It also requires that the developer must obtain separate licenses and permits from the nuclear regulators before development can proceed.
- It must run effectively alongside the work with communities that will be essential to success.

All these factors require a bespoke approach. The unique nature of a GDF, and the commitments made to community engagement and a final Test of Support, mean that along with direct engagement with local communities there must be active and effective collaboration with local authorities throughout this process.

We do not believe that the link between the NPS and the local siting process, likely to involve several 'volunteer' communities, is adequately reflected in this draft. The NPS should clearly map out and explain how the local siting and development consent processes will interact within individual areas.

Our member local planning authorities have had considerable experience of NSIPs and the role of local authorities within these. Drawing on this, we would highlight two areas where the draft NPS needs to be strengthened:

- i. Under Section 60 of the Planning Act, local planning authorities will have the scope to prepare local impact reports on the development (1.1.3). These must be given proper weight in considerations by the Secretary of State, but local impacts reports are only prepared at a relatively late stage in the process. The emphasis therefore needs to be on the promoter to engage much more during the pre-application stage to provide local authorities with the information, time and support needed to inform the local impact reports. The NPS should make clear reference to this.
- ii. This NPS is very light on the pre-application process with regard to local authorities, mentioning only that local authorities highlight the impact on land use. The role of local authorities is much broader and the NPS should note this. It needs to set a framework for the decision maker to ascertain whether the right pre-application consultation has been undertaken to enable the Secretary of State (SoS) to accept the consultant report under Section 37 (s.37).

This NPS consultation process is being managed by BEIS, not the Ministry for Housing, Communities and Local Government (MHCLG). We have long argued that a critical weakness in the approach to radioactive waste planning issues is the disconnect between the land use planning system for conventional waste and that for radioactive waste. It is vital that, in relation to the GDF, there is effective cross-departmental working between BEIS and MHCLG at every stage.

We would also note that the progress towards the launch of the siting process since 2014 has not been in line with the timetable envisaged. We believe it is essential that Government and RWM give added momentum to the siting process from here on. Delays affect not just those communities who may wish to be considered as hosts of the GDF, but the larger number of communities which currently host NDA sites and Higher Activity Waste (HAW) stores.

3. Response to consultation questions

Draft National Policy Statement

1. Chapter 3 - Does the draft NPS provide suitable direction to the Planning Inspectorate and Secretary of State on the need for geological disposal infrastructure?

As noted above, NuLeAF supports geological disposal while believing that there is a need to consider any alternative solutions that may become available, and to recognise that some local authorities have alternative views on the best policy for Higher Activity Waste (HAW) management long term.

The section on the need for a GDF does set out:

- The recommendations of the Committee on Radioactive Waste Management (CoRWM)
- The fact that geological disposal is agreed to be the best way forward by all countries, with the exception of Scotland, and
- The support for this policy provided by the EU Spent Fuel and Radioactive Waste Directive.

However, we believe greater clarity is required. The Planning Act 2008 states that '*A national policy statement must give reasons for the policy set out in the statement*' s.5(7). The NPS states that a GDF is needed because this was previously identified (largely in the 2014 White Paper). We do not believe that this is sufficient.

To help understanding, we would suggest that additional information should be provided within Chapter 3:

- It would be useful to provide more explanation on how the multiple barrier approach would be expected to prevent harmful levels of radioactivity reaching the surface, and over what timescales.
- The NPS should illustrate the present distribution of HAW within the UK and set out the urgent need to clean up high hazard facilities at Sellafield. It should note the role played by all communities across the country that currently play host to HAW stores and that the great majority of HAW, including the most hazardous material, is currently located at Sellafield and will remain there until a GDF is constructed.
- The NPS should demonstrate in more detail why the GDF is seen as the best solution to this issue, and how this will continue to be reviewed, with other alternative solutions considered applying a Best Available Techniques (BAT) approach. A decision maker should have guidance on the scope of the issues that an applicant will need to demonstrate.
- The NDA's current work on options for the near surface disposal of some of the HAW inventory should be explained along with the likely impact of this on proposals for a GDF. Discussion of near surface disposal may lead to a degree of uncertainty among potential host communities as to what they are being asked to accept.
- More information should be provided on the current interim storage measures being taken (3.2.4). This should include the expected lifetime of current stores, as well as the impacts that interim storage has on host sites and the process by which waste will be moved from where it is now and emplaced within the GDF.

- Some potential host communities may wish to see a commitment to the retrievability of wastes. More information should be provided on why this is not viewed as appropriate.

2. Chapter 4 – Do the assessment criteria adequately address the principles that the developer, the Planning Inspectorate and the Secretary of State should take into account in an application for development consent? If not, what further information on the assessment criteria is required?

As Section 4 accepts, the development of a GDF will have significant impacts on the environment, economy and communities. There must be clear principles to guide the design, environmental impacts and mitigation, health, safety and security aspects of the development.

We note the Assessment Principles in Table 1 (page 29) and in general accept these cover the required areas. One area where there is a lack of clarity is in relation to any additional uses that may be associated with a GDF. The NPS appears to assume that there would be a single use. However, it is not clear whether the GDF might also incorporate a (re)packaging operation, for example, or indeed, whether it may include facilities such as a combined heat and power (CHP) plant. Such uses would affect the assessment criteria. It would also be helpful if this NPS were to state whether or not there is a relationship with the overarching National Policy Statement on Energy (EN-1).

The draft NPS does not provide enough information for a decision maker to understand the scope of reasonable alternatives for this project and associated works. The NPS must be clearer on the extent to which the promoter needs to consider alternative locations in its assessment of reasonable alternatives. This is challenging in this context given that the White Paper is clear that only communities that choose to enter the siting process and approve it through the Test of Support can be potential hosts for a GDF.

Greater clarity is also needed as to what alternatives would be considered if only one community enters the siting process or chooses to accept the development through the Test of Support.

The Environmental Impact Assessment (EIA), Appraisal of Sustainability (AoS) and the Habitats Regulations Assessment (HRA), along with the associated Health Impact Assessment (HIA) must be given significant weight and be used to help guide the development in ways that apply the mitigation hierarchy of avoid, design out, minimise and as a last resort compensate for adverse environmental impacts.

Regarding the Habitats Regulations Assessment (HRA), we note the statement that if a GDF development might have an adverse impact on a European site, that development consent could still be granted where there are:

- No feasible alternatives
- Imperative reasons
- Adequate and timely compensation measures in place.

While we accept that this complies with the requirements of HRA, we feel that it is highly unlikely in reality that there would be no feasible alternatives. There is scope for locating the headworks a significant distance from the underground operations, greatly reducing the need to impact on protected sites.

We agree with the proposed criteria for 'good design' of the facilities (4.5) and that the design should not just observe regulatory requirements but be '*attractive, durable and adaptable*'(4.5.5) and underpinned by sustainable development principles. Any facilities developed should seek not just to '*minimise adverse impacts*'(4.5.7) but aim to be exemplars of good design and best practice. This should be stated.

Given the long time over which the GDF will operate, we welcome the clear statement on climate change adaptation (4.6). Given the nature of the facility, it is right that the consequences of high impact, low likelihood scenarios are considered fully and that a risk averse approach is adopted. (4.6.10).

We do not feel it is appropriate for the section on climate change adaptation to include a further statement on the potential role of new nuclear generation on current greenhouse gas mitigation targets. (4.6.2). The Government's view on this is set out earlier on the NPS and thus does not require stating again. It is important to be clear on the distinction between mitigation and adaptation measures.

Management of surface water also needs further definition. The NPS is rightly focused on flood risk, coastal change and water quality but the management of surface water should be listed. Para.4.7.9 relates to pollution but it should also include linkages to wider flood risk and coastal management strategies. There might be scope for the project – through use of rock for defence measures for example – to support wider mitigation measures.

3. Chapter 5 – Does the draft NPS appropriately cover the impacts of geological disposal infrastructure and potential options to mitigate those impacts? Please provide reasons to support your answer.

We believe that this section addresses many of the likely impacts of geological disposal infrastructure and sets out reasonable options to mitigate against them. We welcome the statement of the need to take account of the links between different impacts, e.g. between transport, air quality and noise (5.1.2).

One area that is not properly addressed is the management of material (rock and soil) generated from construction of the surface facilities and the underground vaults. This is likely to be significant, involving the movement of vast amounts of material, and requiring significant noise and dust mitigation. There is also the need to consider the allocation of potentially significant areas for stockpiling of material and the risk of land contamination from stockpiled material. These are all relevant factors in this respect and a statement should be included.

Minerals and Waste Planning Authorities will need to consider the impact of any GDF schemes in their waste management policies from both within and outside their area. It would be helpful if developers were required to consider in their Site Waste Management Plans whether they consider the waste produced during construction - where this cannot be re-used or retained on site - can be accommodated within the host authority or whether they will be relying on waste management facilities from a neighbouring authority. Consideration should also be given to the impact and control of sourcing and transporting the construction materials needed.

More information is also required on the transport infrastructure impacts of a GDF during construction and operational phases. Developers should be required to demonstrate that

there is sufficient capacity within the local transport infrastructure at an early, pre-application phase. If significant new transport infrastructure is required to support the GDF then this must be included in the proposals from the outset and placed in the public domain prior to submission of any application for development consent. Transportation of radioactive waste from where it is currently stored to the GDF is another significant consideration and one that is likely to generate much public interest. This should be addressed in the text.

Across all impacts, we believe that more weight should be given not just to meeting legislative standards and to mitigation, but in encouraging the use of innovative techniques that help deliver the GDF as an exemplar of good and sustainable practice. For example:

- The material generated from a GDF development (soil and rock) could, depending on the character of the surrounding landscape, have potential to be used for innovative landscaping or the creation of new habitats or recreational facilities.
- While we welcome the statement that the Secretary of State should give air quality substantial weight. (5.2.11), we would suggest that the aim should not just be to meet existing targets but to strive for the lowest possible levels of air pollution, given the increasing evidence about the adverse health impacts of even low levels of certain pollutants.

NuLeAF believes that a GDF should deliver substantial direct and indirect socio-economic benefits for any host community (5.7), and the overall balance of effects must be significantly positive for the host community.

The NPS should ensure that demographic impacts and the needs of all minority and marginalised groups are appropriately considered for both the construction and operational phase.

The NPS is right that applicants should describe existing socio-economic conditions in consultation with those affected and show how the development's socio-economic impacts correlate with local planning policy (5.7.4). It is also right that applicants should assess any likely positive **and negative** socio-economic impacts (5.7.5).

We believe that section 5.7 should be strengthened to help maximise the employment and other gains for the host community. In 5.7.2, we believe that the developer should seek to enhance both employment *and training* - at present it simply states that they should consider the *'likely requirements for training.'*

The developer should not just *'work with local resources and organisations to ensure employment opportunities ... are effectively communicated,'* but should look to develop local skills and recruit locally wherever possible and adopt an approach to help marginalised groups and individuals gain employment. A **skills engagement strategy** for construction and operation should be proposed. Given the long lead in times for skills development, development and implementation of the strategy must commence well in advance of construction. The strategy should include local authorities, which have a significant responsibility for 16-19 education.

In considering socio-economic impacts, the document seems to focus narrowly on the positive impacts of job creation and the negative pressure on infrastructure caused by an influx of new people. We believe that a wider assessment of impacts should be

included. For example, a development such as a GDF, while creating new employment opportunities, may also result in a labour shortage for existing industries and businesses in an area. The developer should therefore be required to take this into account and consider what skills and training should be provided to enable the remaining local workforce to fill other vacancies.

We would also welcome a clear statement of the Government's commitment to the range of other support intended to boost the local economy throughout the siting process, including the substantial investment in the community selected as the site of the GDF. The developer should work with the Government and Community Partnership to ensure that an integrated approach to investment and employment is taken, to deliver the maximum benefit possible.

Appraisal of Sustainability; Habitats Regulations Assessment

4. Chapter 5 – Do you agree with the findings (of 'likely significant effects') from the Appraisal of Sustainability Report and the recommendations for enhancing the positive effects of the draft NPS? Please provide reasons to support your answer.

Given the large scale and sensitive nature of a GDF development and associated boreholes, the Appraisal of Sustainability (AoS) is of great importance. This particular AoS is challenging due to the non-site-specific nature of the planned developments, limiting the ability to determine quantitative impacts. We accept this largely qualitative assessment is all that is possible at this stage but would stress the need for a detailed quantitative appraisal of impacts and mitigations once individual sites have come forward.

As the consultation draft NPS notes, the AoS meets the requirements of the Strategic Environmental Assessment (SEA) Directive (4.2) while also appraising wider sustainable development impacts. We welcome this. The communities that could enter the siting process may currently suffer from a degraded natural environment and/or be in need of regeneration. Appraising the social, economic and environmental impacts of the potential development, in an integrated way, is the correct approach.

The AoS objectives and associated questions cover most key sustainability issues. There is nothing though on the democratic and participative aspects of the process, something that is particularly important in this context.

The AoS has appraised current policy and two alternatives, namely **a non-site-specific NPS that includes exclusionary criteria**, and **no NPS**. The draft NPS including exclusionary criteria is assessed to have a more positive impact than current policy (Table 2, AoS non-technical summary). However, the AoS report states that '*exclusion of these areas could also reduce the scope of community engagement and unnecessarily exclude communities in those areas from the potential socio-economic benefits of hosting a GDF.*' (AoS non-technical summary, xix). The report also states (AoS report, 6.16) that such exclusionary criteria would '*challenge the Government's ability to ensure that a GDF is located within a geologically suitable environment.*'

While we agree that suitable geology is critical to the acceptability of any GDF development, we do not believe that the exclusionary criteria used here would be detrimental to a successful siting process. Given the potential to locate the headworks a

considerable distance from the underground repository, we feel that the application of exclusionary criteria will not provide a sufficient barrier or impact significantly on the ability of interested communities to enter the process.

More fundamentally, we feel that the report is blurring the lines between the AoS, which should be an appraisal of the relative sustainability impacts of the different options, and the view of the Government. The AoS should set out an independent assessment of the impacts, and it is up to Government to accept or reject the conclusions in terms of the best option appraised, explaining their reasons for doing so. This report appears to be conflating these two aspects of the process.

5. Chapter 6 – Do you agree with the conclusions of the Appraisal of Sustainability Report? If not, please explain why.

We note that the Appraisal of Sustainability (AoS) argues that there *'are no reasonable alternatives at a strategic level to meeting the need for geological disposal'* (4.4.3).

We accept that the Appraisal of Sustainability (AoS) is of the draft National Policy Statement rather than of the GDF itself, that the NPS reflects agreed UK Government policy and that it is in line with the recommendations of CoRWM. However, it is the case that one of the UK's devolved administrations, the Scottish Government, has endorsed an alternative approach based on near surface, near site disposal. While NuLeAF's agreed policy is supportive of GDF development, we do question why the alternative approach in Scotland was not assessed as a 'reasonable alternative.'

6. Do you agree with the findings from the Habitats Regulations Assessment Report for the draft NPS? Please provide reasons to support your answer.

We note that in the Habitats Regulations Assessment (HRA) report, the Government has argued that there is an overriding public interest that means, in the context of a non-site specific NPS, it is impossible to fully rule out adverse effects on European conservation sites.

We accept that this is a technically valid position in terms of the HRA regulations. However, we believe that in reality there should be no need for a properly run GDF siting process to risk jeopardising European sites.

We do not agree with 5.29 which argues that alternatives to current policy would *'(i) not provide any additional certainty that adverse effects on European sites could be avoided or reduced, compared to the current National Policy Statement; (ii) not be feasible; and (iii) compromise the ability to ensure the successful and timely delivery of the GDF in a geologically suitable environment (and hence not fulfil the Government's policy objective on the disposal of higher activity radioactive waste).'*

Within any potential host community there should be a significant degree of flexibility about the specific location of the headworks and related infrastructure and that therefore there should be a strong commitment to avoid negative impacts on European conservation sites.

The HRA is an independent appraisal of the NPS and reasonable alternatives in terms of the impact on habitats. It should be an assessment of the best possible approach that is then used to guide policy. It is clear to us that operating an NPS with exclusionary

criteria would deliver better outcomes in terms of habitats and that it would not jeopardise the ability to locate a suitable site to an unacceptable degree.

All documents

7. Do you have any other comments on the draft NPS and the accompanying documents (Appraisal of Sustainability, Habitats Regulations Assessment)?

The draft National Policy Statement does not provide any information on the scope for a waste packaging or encapsulation plant to be developed alongside a GDF. Indeed, paragraph 1.5.8 of the draft statement is clear that *'The primary purpose of the surface facilities will be to receive waste packages from a port or the rail and road network and transfer them to the underground disposal facilities.'*

Such a development would create additional employment, but communities may take differing views as to whether they would be interested in this additional facility, as it would increase the above ground footprint of the development. We feel that the NPS should provide more clarity on this issue. If such associated development might form part of the final surface facilities, then this should be considered by the AoS and the HRA.

I hope these comments are helpful.

Yours faithfully,



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