AVISON YOUNG

Department for Business, Energy & Industrial Strategy

Department for Business, Energy and Industrial Strategy

Planning Guidance for On-site Radioactive Waste Management Options - England

Final Draft

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Contents

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For and on behalf of Avison Young Limited

1. Introduction

Overview

1.1 This document is intended as a first point of reference for Local Planning Authorities, site operators and stakeholders seeking to understand the Town and County Planning consenting process for the on-site disposal of materials on a current or former nuclear licensed site. It also offers an introduction to and guidance on planning regimes as well as related environmental permitting regimes to ensure a 'safety first' combined approach. The focus of this document is on the potential disposal of defined "*very low level*" and "*low level*" radioactive material and is supplemental to existing planning guidance on conventional waste disposal. This guidance does not apply to Higher Activity and Intermediate Level Waste.

1.2 The content of the document should not be considered as a definitive policy statement. It is intended as a general guide only and will be revised as legislation develops, new regulations are introduced; and when best practice evolves. MHCLG TO CONFIRM

1.3 The document contains a "Process Map" which explains the permitting and permissions process for **on-site disposals** this is included on Page 3.

1.4 This document represents a summary overview of the process, highlighting key pieces of legislation and regulation, identifies key aspects of the Planning process in the context of on-site disposal projects and provides case studies to illustrate the key issues related to such proposals.

1.5 The document also provides a commentary on the types of on-site disposal and the issues associated with progressing planning applications for such proposals.

1.6 Annex A provides responses to Frequently Asked Questions which have been raised during the consultation undertaken with stakeholders during the preparation of the document.

1.7 Relevant regulatory websites should be consulted for detailed advice and can be accessed via the links provided within the Glossary included in Annex B.

1.8 Annex C provides an overview of Waste Management Options for nuclear licenced sites.

1.9 This particular document focuses on matters of relevance in England; with limited reference made to guidance in Scotland and Wales. There are no current or former nuclear sites in Northern Ireland. A brief overview of key aspects of the regulatory, governance and Planning systems in Wales and Scotland is provided in Annex D.

1.10 The document has been developed through collaboration with Government departments, Devolved Administrations, relevant regulators, site operators and other stakeholders.

Purpose of the document

1.11 This document provides a reference to those seeking to understand the permitting and permissions process for the **on-site disposal** of materials present on a current or former nuclear licensed site in England.

What are On-site disposals?

1.12 There are a number of options that can be considered for former nuclear sites by operators when determining the approach to clean-up activities and the consequent storage of waste. These include:

- the transfer of radioactive waste offsite for disposal in a suitable facility elsewhere;
- disposal of radioactive waste in facilities on-site;
- leaving contaminated structures on-site; and
- infilling voids with waste.

These options are described within the **Management of radioactive waste from decommissioning of nuclear sites: Guidance on Requirements for Release from Radioactive Substances Regulation (2018).**

Status of the document

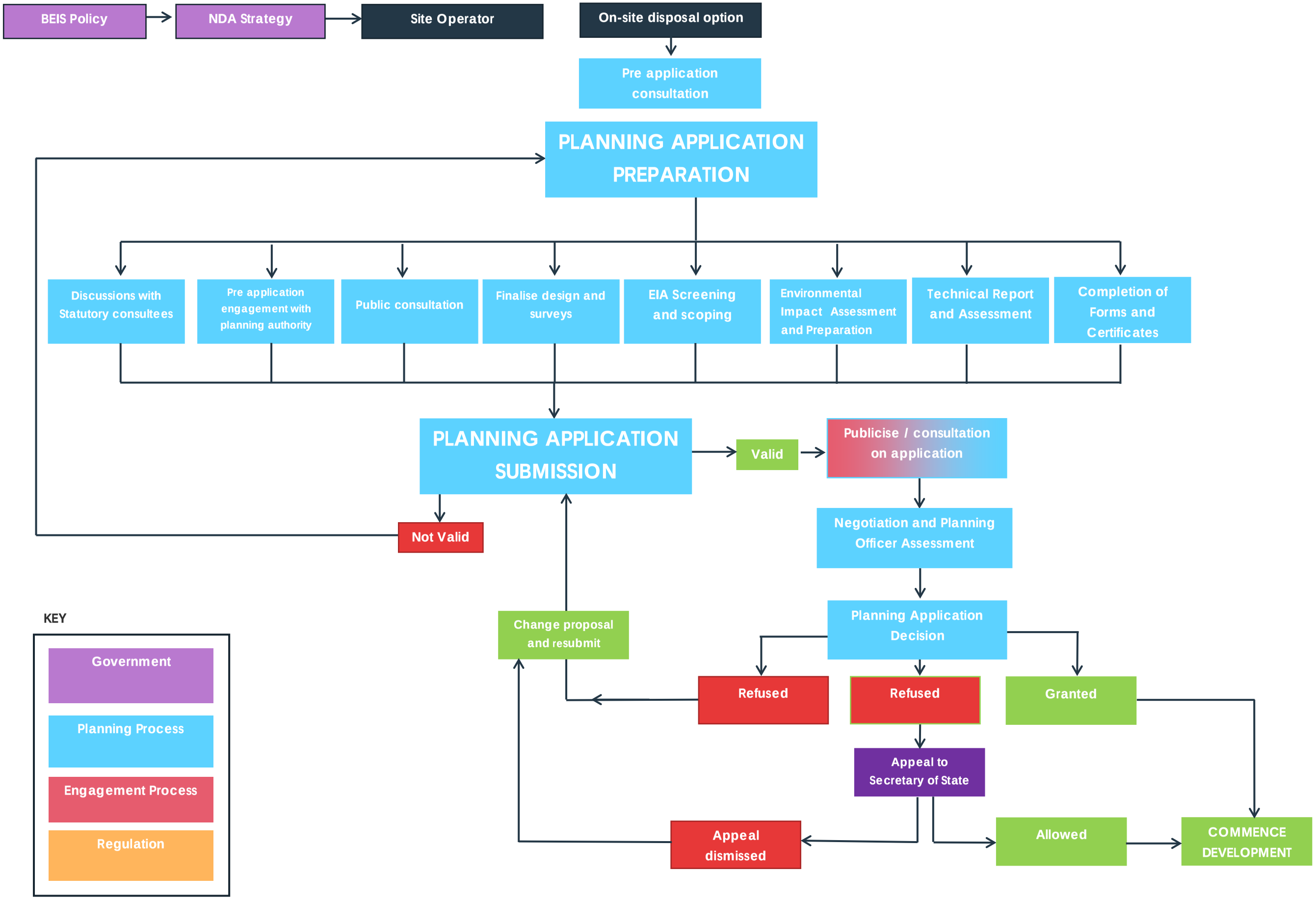
1.13 To be added – pending feedback from MHCLG.

How to use the Process Map

The interactive Process Map below explains the permitting and planning application process for on-site disposals and identifies relevant legislation, regulations and suggests appropriate actions to be considered at various stages in the consenting process.

The Process Map includes a series of hyperlinks to aid access and usability. These references are available within the Process Map by clicking the relevant colour coded box.

Relevant regulatory websites are referenced for detailed advice in Annex B.


BEIS Policy
NDA Strategy
Site Operator
On-site disposal option
Pre application consultation
PLANNING APPLICATION PREPARATION
Discussions with Statutory consultees
Pre application engagement with planning authority
Public consultation
Finalise design and surveys
EIA Screening and scoping
Environmental Impact Assessment and Preparation
Technical Report and Assessment
Completion of Forms and Certificates
PLANNING APPLICATION SUBMISSION
Valid
Not Valid
Publicise / consultation on application
Negotiation and Planning Officer Assessment
Planning Application Decision
Change proposal and resubmit
Refused
Refused
Granted
Appeal to Secretary of State
Appeal dismissed
Allowed
COMMENCE DEVELOPMENT
KEY
Government
Planning Process
Engagement Process
Regulation

2. Context

Process and Schedule of Decommissioning

2.1 Within the UK there are many nuclear establishments that have ceased operations and are, as a consequence, in the **decommissioning** phase of the facilities life cycle. It is envisaged that a significant number of those sites will be undertaking works that require regulatory and planning permission to enable on-site disposals of materials during the period 2020 to 2030.

2.2 The UK currently has 36 licensed nuclear sites, including power stations, MOD facilities, nuclear fuel processing facilities, and facilities for research, healthcare and waste processing as shown below in Figure 1.

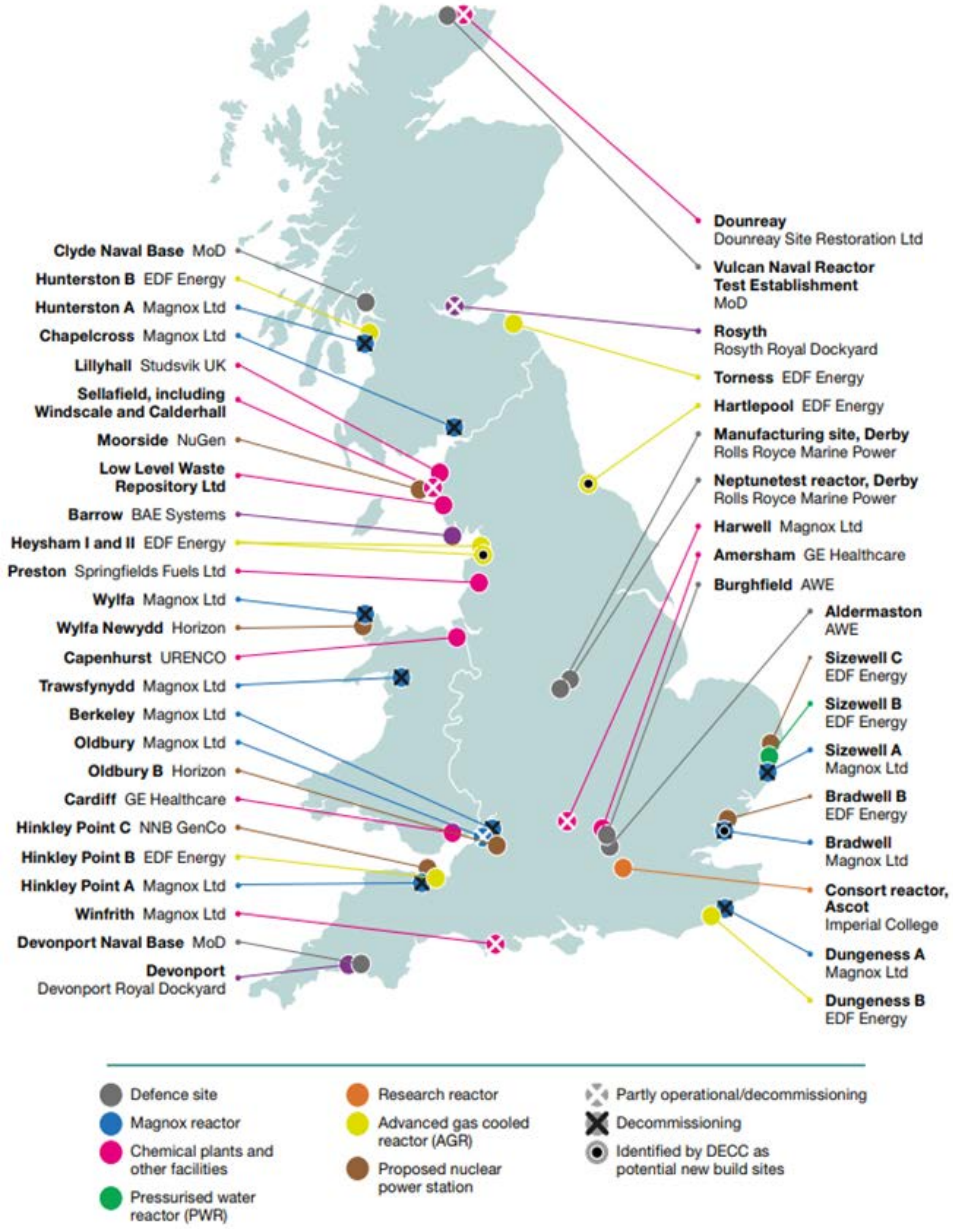


Figure 1: UK licensed nuclear sites

Typical Facility Lifecycle

2.3 Figure 2, below, illustrates the Lifecycle of a Nuclear Power Plant. In the early stages of decommissioning of a nuclear reactor, the spent fuel and higher activity wastes are removed and stored securely elsewhere, resulting in radiological hazards on the site falling by over 99%. In the final stages of decommissioning and clean-up, hazards and risks fall to levels comparable with those on non-nuclear industrial sites undergoing clean-up. The focus at this point is land remediation and the reuse of the site. It is envisaged that the majority of planning applications for on-site disposal will be received during this period.

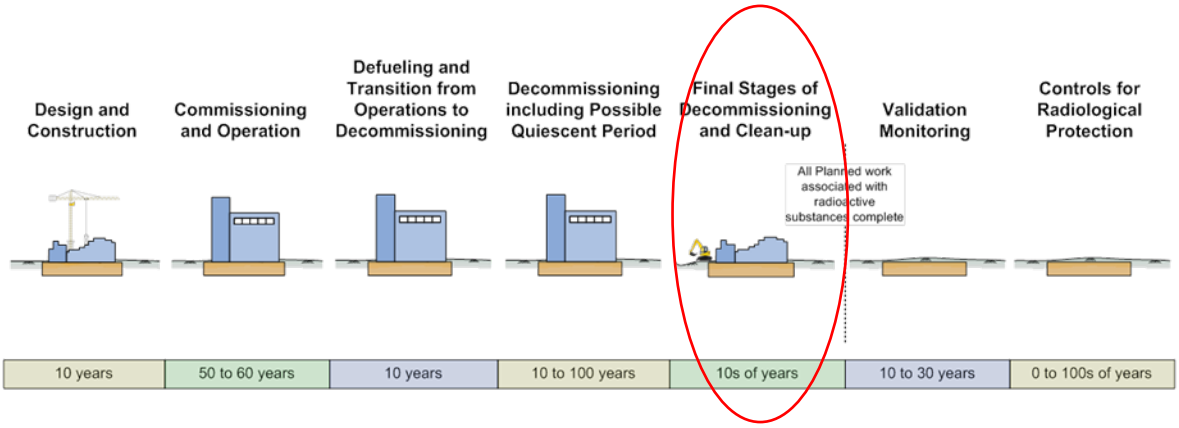


Figure 2: Lifecycle of a nuclear power plant NDA to PROVIDE HIGHER –RES IMAGE

2.4 During the final stages of decommissioning, as buildings are demolished, large amounts of waste are generated. Most of the waste volume is conventional waste, in the form of rubble, concrete, brick, soil, drains and pipelines. However, a small percentage is classified as radioactive; mostly **Low Level Waste (LLW)** and **Very Low Level Waste (VLLW).** Although the proportion of waste that is radioactive is small, the amounts are nevertheless significant, typically thousands of cubic metres. LLW and VLLW are the lowest categories of radioactive waste and they are currently accepted by some conventional landfill sites, subject to permitting by the Environment Agency.

2.5 On-site disposal only applies to these lower level wastes and not to Higher Activity and Intermediate Level Waste. Definitions of Low Level Waste and Very Low Level Waste are set out below.

- **Low Level Waste (LLW)**: waste with a radioactive content not exceeding 4 Gigabecquerels per tonne of alpha activity, or 12 Gigabecquerels per tonne of beta/gamma activity.
- **Very Low Level Waste (VLLW)**: a sub-category of LLW, comprising waste that can be safely disposed of alongside municipal, commercial or industrial waste, or can be disposed of to specified landfill sites, subject to limits on radioactivity content.

2.6 Under some circumstances, the best available waste management option may be to leave lightly contaminated structures in-situ ("**in-situ disposal**") or to use lightly contaminated rubble to fill voids or to undertake landscaping on site ("**disposal for a purpose**"), or it may be appropriate to construct barriers around lightly contaminated material ("**engineered disposal facilities**"). Collectively, these types of disposal and methods of waste management are referred to as "on-site disposal".

2.7 On-site disposal has the potential to further reduce risks of accidents associated with excavation as well as reducing environmental impacts such as lorry traffic, dust, noise, pollution and carbon dioxide emissions. The UK Government [and Devolved Administrations (to be confirmed)] therefore support the use of disposal for a purpose and in-situ disposal on nuclear and former nuclear sites subject to environmental permits and planning permission (where required).

2.8 LEAVE BLANK FOR REFERENCE TO POLICY PAPER

2.9 The **Environment Agency** regulates radioactive waste management on nuclear and former nuclear sites in England. The relevant legislation (**Environmental Permitting Regulations (England and Wales) 2016**) allows for on-site disposal subject to an Environmental Permit being granted. As part of the environmental permitting process, the site operator must demonstrate that it is safe to dispose of the material on site and that the environmental and social benefits of doing so outweigh the benefits of excavating and removing this material to a disposal facility elsewhere. Once an environmental permit has been granted, the disposal will remain subject to regulation by the Environment Agency until the land can be released for unrestricted use, which may be several decades later.

2.10 Planning permission is required for works which would constitute **development** on a site, and disposal of waste on-site would likely fall into that category.

2.11 Summary details on the environmental regulators in Scotland (The Scottish Environment Protection Agency (SEPA)) and Wales (Natural Resources Wales) are contained in Annex D.

Waste Plans

2.12 In England, each local waste planning authority is required to develop a "Waste Plan", which sets out local policies on recycling, waste transport and waste disposal. Some of these Plans include explicit policies on radioactive waste from current or former nuclear sites but others (at present) do not. In the cases where policies on radioactive waste have been developed, these do not always address the question of on-site disposal.

Disposal and Waste Management Options

2.13 Radioactive waste management should take account of a range of possible **site end states** and opportunities to optimise site clean-up. As such, the site operator may consider disposing of waste

on-site if there is a case to do so. For example, in some circumstances it might be necessary or appropriate to remove all low and very low level waste from a site which is being decommissioned. However, there may also be instances where it is the best overall solution to dispose of some waste on the site if, for example, the impact risk of excavating and transporting the waste would be greater.

2.14 There are several waste management options that can be considered by site operators when they are determining the most sustainable approach to decommissioning a nuclear site. These are described in the **Management of radioactive waste from decommissioning of nuclear sites: Guidance on Requirements for Release from Radioactive Substances Regulation (2018)**. There is, effectively, a hierarchy of radioactive waste disposal options, since more hazardous radioactive wastes require solutions providing greater levels of protection to people and the environment. The options for radioactive waste disposal are shown below in Figure 3. The diagram is taken from the **Management of radioactive waste from decommissioning of nuclear sites: Guidance on Requirements for Release from Radioactive Substances Regulation (2018)**.

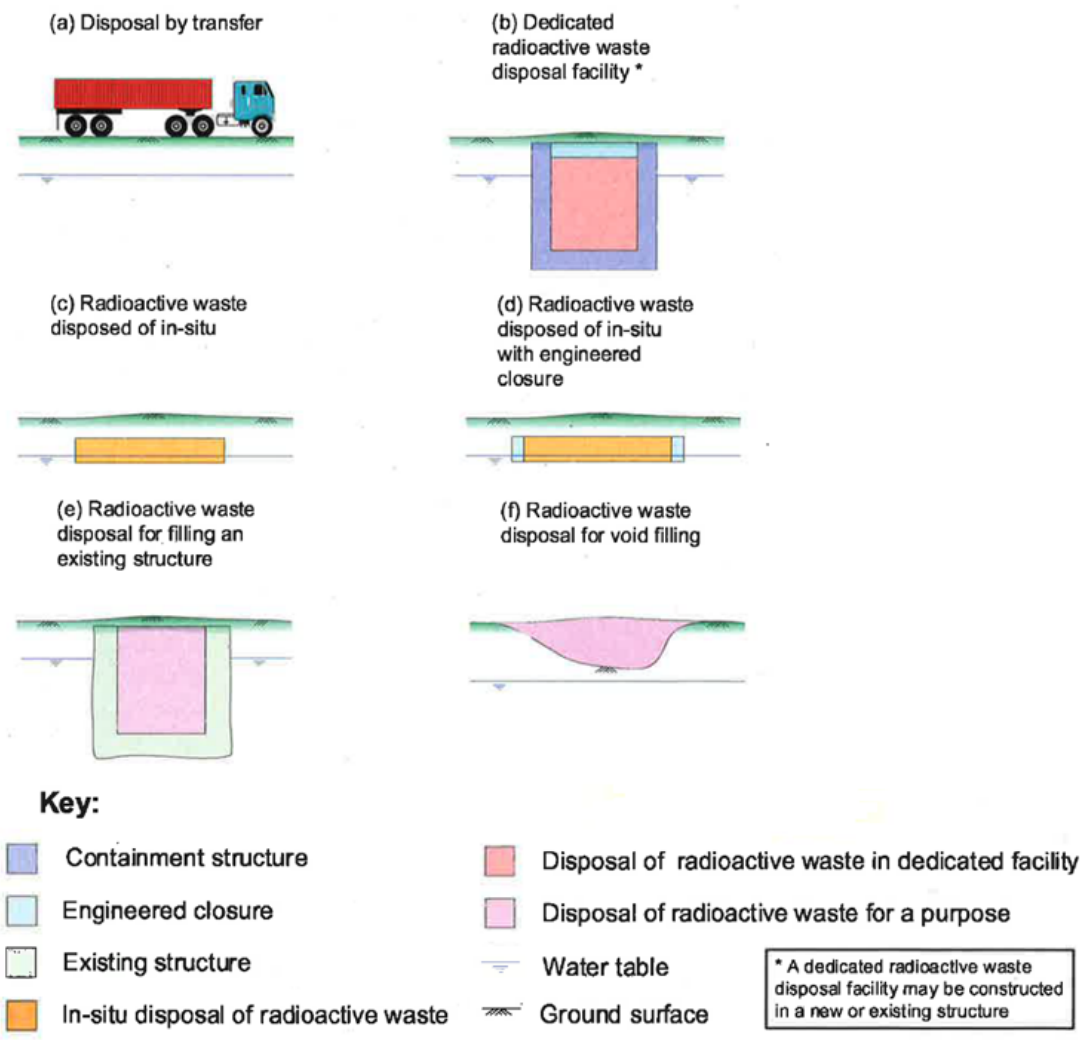


Figure 3: Radioactive waste disposal options NDA TO PROVIDE HIGHER RES IMAGE

2.15 In summary, On-site disposal can be divided into three separate categories:

- **In-situ disposal:** Defined as, leaving existing structures in place. This option might be considered in situations where the risk to workers or to the environment might be greater if the structure were to be removed.

- **Disposal for a purpose:** For example, using lightly contaminated rubble to fill voids or existing structures, landscape features such as mounding, screening bunds etc. This type of disposal could be an option where otherwise new material would need to be brought to a site to fill the structure or void.

- **Engineered Disposal on-site:** An on-site engineered facility where solid radioactive waste is permanently emplaced solely for the purpose of disposing of that waste. *The proposed guidance does not cover planning applications concerning this type of disposal.*

2.16 All three of the above options would require the operator to apply for an environmental permit to dispose of radioactive waste on-site and the Environment Agency would need to be satisfied that the disposal was safe before granting the permit. Under environmental regulations, site operators are required to produce a Waste Management Plan which must also demonstrate that the operator has taken measures to ensure that the process of disposing of waste on-site will not cause any secondary waste to be created, or create any residual contamination.

Benefits of On-Site Disposal

2.17 On-site disposal should comply with international and domestic safety standards and legislation and provides an opportunity to optimise the **decommissioning** process through:

- reduced need for waste transfer offsite to dedicated waste storage facilities, the current inventory as at April 2019 to total a volume of LLW: 1.48million m3, VLLW: 2.83million m3) (data from the UK Radioactive Waste Inventory (2019);
- reduced pressure on limited waste disposal facilities;
- reduced risk of accidents to workers;
- reduced lorry traffic;
- reduced risk of traffic accidents;
- reduced nitrogen oxide pollution and other pollutants generated by traffic;
- earlier re-use of sites;
- reduced remediation costs;
- avoids creating voids that then need in-filling with new material.

Potential Disadvantages

2.18 An on-site disposal may need to remain under environmental permit for years or decades. This could have implications for the future use of relatively small parts of the former nuclear licensed

site. For example, parts of the site where contaminated rubble has been used for infilling voids might not be suitable for development without future remediation.

2.19 Local communities may also have a negative perception of on-site disposal due to a lack of awareness of the detail of such proposals. Such proposals, therefore, require considered engagement with relevant stakeholders and local communities to assure them that any retained materials on-site do not pose an ongoing risk to health and safety.

3. Roles and Responsibilities

Overview

3.1 The consenting process required to enable on-site disposal is complex and as a consequence it involves engagement with a number of key authorities and stakeholders including; site operators, regulators, environmental agencies (including the Health and Safety Executive) and planning authorities.

3.2 In general terms, operators identify credible waste management options and environmental regulators confirm whether an option is safe for people and the environment. Planning authorities assess whether the impact on land use matters is appropriate and proportionate.

Role of Government

3.3 The **Department for Business, Energy and Industrial Strategy** (BEIS) is a ministerial department of Government that has the role of setting policy for nuclear energy, including the development, operation and **decommissioning** of nuclear sites.

3.4 The **Ministry of Housing, Communities and Local Government** (MHCLG) is the Government department for housing, communities and local government in England. The department has a broad remit including local government and housing policy – it is also responsible for the Town and Country Planning system.

3.5 Government has recently consulted on proposals to amend the regulatory framework for the final stages of nuclear decommissioning and clean-up. Under these proposals, the nuclear licence could be ended earlier than is currently the case. After consideration of the responses to the **consultation**, the Government set out its intention to introduce legislation to amend the Nuclear Installations Act 1965. If approved by Parliament, this legislation would allow the nuclear site operator to apply to the **Office for Nuclear Regulation (ONR)** to exit the nuclear licensing regime once they can show that ONR's requirements have been met. After the end of **the nuclear site licence,** health and safety regulation of sites would be controlled by the Health and Safety Executive (HSE) and the Environment Agency would continue to regulate environmental matters.

3.6 The Energy Act 2004 included the adoption of a process that formally identified land and infrastructure associated with nuclear activities on a site by site basis. This was encapsulated within a site specific document and was published in the form of a **Designating Directive**. The Secretary of State has the ability to revoke the Designating Directive of a site if it is satisfied that the **Nuclear Decommissioning Authority (NDA)** has discharged all of its relevant decommissioning and clean up responsibilities for the installation or site.

Nuclear Decommissioning Authority (NDA)

3.7 In 2005 the **Nuclear Decommissioning Authority** (NDA) was established as a non-departmental public body (NDPB) under the **Energy Act (2004)** to ensure that the UK's nuclear legacy sites are decommissioned and cleaned up safely, securely, cost-effectively and in ways that protect people and the environment.

3.8 The NDA's sponsoring department is the **Department for Business, Energy and Industrial Strategy** with additional obligations to Scottish and Welsh ministers for matters affecting Scotland and Wales.

Regulators (Nuclear and Environmental)

3.9 The **Office for Nuclear Regulation** (ONR) is responsible for regulation of nuclear safety and security across the UK. Its mission is to provide efficient and effective regulation of the nuclear industry, holding it to account on behalf of the public.

3.10 Government has set out its intention to introduce legislation to amend the Nuclear Installations Act 1965, so that the ONR can end the nuclear site licence earlier than currently. The site would remain under regulation by the **Environment Agency** and **HSE** would take over responsibility for regulating health and safety of work on the site.

3.11 Amongst its other responsibilities, the **Environment Agency** is responsible for regulating the disposal of radioactive waste. In the final stages of decommissioning and clean-up of a former nuclear site, this entails ensuring that the operator develops a suitable Waste Management Plan in consultation with the local community and that any disposals are permitted and that permit conditions are complied with.

3.12 In the final stages of decommissioning and clean-up, hazards and risks fall to levels comparable to those on non-nuclear industrial sites and the focus is on waste management and land remediation. At this point the proposed changes to the regulatory regime would allow ONR to end the nuclear licence once satisfied that nuclear safety and security matters have been resolved and to pass responsibility for regulation of work activities to the Health and Safety Executive (HSE). The sites will continue to be regulated by the Environment Agency until they can be released for unrestricted use, which may be years or decades after the end of the nuclear licence. Subject to planning permission and the conditions of the environmental permit, it may be possible to re-use the sites while they remain under environmental regulation. It is therefore anticipated that such proposals will lead to the earlier reuse of former nuclear sites.

3.13 The Environment Agency will only authorise disposal of radioactive waste on a site when they are satisfied the operator has developed an optimised waste management plan, and has satisfied the agencies that the final condition of the site, and the work to be done to reach that condition, are safe for people and the environment.

Site Operators

3.14 The site operator manages and operates a site in a manner that is compliant with the licence conditions, planning permissions and associated conditions of the environmental permit.

3.15 The site operator must be able to demonstrate to the Environment Agency that any radioactive contamination on the site or off-site that is a result of the site's operations, is controlled as radioactive material. The operator is required to provide to the Environment Agency a site wide **Environmental Safety Case** and a **Waste Management Plan** to ensure that waste is managed appropriately.

3.16 The site operators will identify credible radioactive waste management options in line with their strategy to decommission and clean-up the site at the end of operations. Whatever management option is chosen, operators must make sure that the condition of the site meets standards for protection of people and the environment, now and into the future. If necessary, the site operator will also apply for planning permission for on-site disposal.

Local Planning Authorities

3.17 The **National Planning Policy Framework (NPPF)** defines a local planning authority as, 'the public authority whose duty it is to carry out specific planning functions for a particular area'. The responsibilities of the local planning authority include:

- *Producing a Local Plan*. A Plan for the future development of a local area, drawn up by the local planning authority in consultation with the community. In legislation this is described as the development plan document adopted under the **Planning and Compulsory Purchase Act 2004 (as amended by the Housing and Planning Act) 2016**. A local plan can consist of either strategic or non-strategic policies, or a combination of the two.

- *Determining planning applications*. Decisions about straight-forward applications will be made under powers delegated to planning officers. More significant or contentious applications will be decided by a planning committee, made up of local councillors. In determining planning applications the local planning authority will consult with the local community, statutory consultees and non-statutory consultees.

- *Enforcement.* Acting proportionately in response to suspected breaches of planning control.

3.18 For all waste related proposals it is the local waste planning authority which has this duty, including production of a Waste Local Plan. In two-tier authority areas the waste planning authority will be the County Council, with other planning applications being dealt with by the District, Borough or City Council as local planning authority. In single-tier (unitary) areas all

planning applications and local plan policy, including waste, will be dealt with by the same local planning authority.

4. Planning Permission for On-site Disposal

Overview

4.1 An application for planning permission is assessed by the local planning authority. In England this is in accordance with the policies in their **Local Plan** and national planning policy as set by the **National Planning Policy Framework** (NPPF) , **National Planning Practice Guidance** (NPPG) and **National Planning Policy for Waste** (NPPW).

4.2 For waste related proposals this will be the waste planning authority which is also responsible for preparing a separate Waste Local Plan. Waste planning policies will cover strategic issues such as waste management capacity; transport issues, pollution etc. They may include specific reference to radioactive waste from former nuclear sites, and in some cases guidance on **in-situ disposal.** However, currently some Local Plans do not contain any specific policy on these issues.

4.3 Once a planning application is submitted, as well as notifying statutory consultees the local planning authority will carry out public consultation (typically erection of a site notice, newspaper advertisement and, where appropriate, notifying neighbouring residents by letter). This will be in addition to any public consultation/community engagement that has been carried out by the operator prior to submission. Usually information relating to the planning application will also be available on the Council's website

4.4 Local planning authorities will determine the application based on an assessment of national planning policy; development plan policy (including both the Waste Local Plan and the relevant Local Plan for that area); responses from statutory consultees; responses from public consultation and any other material planning considerations. Applications should be determined in accordance with the Development Plan unless there are material planning considerations that indicate otherwise.

4.5 The appointed planning officer will make a recommendation on the application and either determine it under delegated powers or report it to a Planning Committee comprised of elected local councillors for determination.

4.6 Members of the public wishing to comment on an application will usually have the opportunity to speak at the local planning authority Planning Committee. The Planning Committee is not obliged to follow the Planning Officer's recommendation although they are required to give sound planning reasons for making a decision that is contrary to the Officer recommendation.

4.7 Councillors must only take into account material planning considerations. Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid material planning reasons.

4.8 Where objections are raised on grounds of safety or environmental harm (including matters that are the responsibility of the Waste Planning Authority), for example impact on heritage assets, nature conservation and climate change, Government guidance is clear that the focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes regulated by the **Environment Agency**). Planning decisions should assume these regimes will operate effectively. Equally, where a planning decision has been made on a particular **development,** the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.

4.9 This document focuses on matters of relevance in England; with limited reference made to guidance in Scotland and Wales. There are no current or former nuclear sites in Northern Ireland. A brief overview of key aspects of the regulatory, governance and Planning systems in Wales and Scotland is provided in Annex D.

Planning Policy

4.10 Section 38(6) of the **Planning and Compulsory Purchase Act 2004** requires the determination of planning applications to be made in accordance with the local planning authority's development plan unless material considerations indicate otherwise.

4.11 The **National Planning Policy Framework** (NPPF) was published in 2019. The introduction to the document confirms that a presumption in favour of sustainable development is a material consideration in planning decisions and that this presumption is at the heart of the NPPF.

4.12 Sustainable development is defined as having three dimensions: an economic role (i.e. supporting growth and innovation and identifying development requirements including the provision of infrastructure), a social role (i.e. supporting strong and vibrant communities and creating a high quality built environment) and an environmental role (i.e. protecting and enhancing our natural, built and historic environment; minimising waste and pollution and moving to a low carbon economy).

4.13 In terms of decision-taking and sustainable development, the NPPF confirms that development proposals which accord with the development plan should be approved and, where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse impacts associated with the development outweigh the benefits, or specific policies within the NPPF suggest otherwise.

4.14 The NPPF does not provide detailed guidance on waste. The **National Planning Policy for Waste** (NPPW) was published in 2014 and sets out a concise series of waste planning policies. The document describes the Government's ambition to work towards a more sustainable and efficient approach to resource use and management. The following key principles are relevant:

- consider the likely impact on the local environment and on amenity in terms of water quality, land instability; landscape and visual impacts, nature conservation and potential land use conflict among other criteria;
- ensure that waste management facilities are well-designed so that they contribute positively to the character and quality of the area; and
- work on the assumption that the relevant pollution control regime will be properly applied and enforced.

On-site disposal and Planning Permission

4.15 Under most circumstances, leaving lightly contaminated waste in-situ, or re-using lightly contaminated rubble for filling voids or landscaping requires planning permission as well as an environmental permit under **Environmental Permitting Guidance Radioactive Substances Regulation For the Environmental Permitting (England and Wales) Regulations 2010**.

4.16 Proposals for some end re-use of a site will also require planning permission. These are separate processes but can be progressed in tandem. The Environment Agency is responsible for considering applications for environmental permits, while the local authority is responsible for considering applications for planning permission. Some uses may not require planning permission such as agricultural use.

4.17 Disposals of non-radioactive waste are also regulated and may also require planning approval but are not the subject of this document.

Defining "Development"

4.18 Planning permission is required for works carried out that meet the statutory definitions of **development** which are set out in Section 55 of the **Town and Country Planning Act 1990** (applicable in England and Wales) (1990 Act).

4.19 Development is defined as:

"the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land".

4.20 Building operations' includes (a) demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder.

4.21 There is limited guidance in the 1990 Act as to the scope of "engineering operations". In practice, this category of development, for example, applies to activities altering the profile of land by excavation, embanking or tipping, or alternatively those which change the character of the

surface of land by the laying down of hardstanding. The normally accepted criterion is that "engineering operations" are those which are normally undertaken or supervised by persons carrying on business as an engineer.

4.22 The term "other operations" is generally regarded as any operation which affects the physical characteristics of the land, and does not fit comfortably within building, mining or engineering operations definitions. This may include the tipping of soil and other materials.

Permitted Development Rights

4.23 In some cases development will be permitted under national permitted development rights which allow changes to be made to buildings and use of land without needing planning permission.

4.24 The **Town and Country Planning (General Permitted Development) (England) Order 2015** (as amended) is the principal legislation. The Order sets out classes of development for which a grant of planning permission is automatically given, provided that no restrictive condition is attached or that the development is exempt from the permitted development rights.

4.25 Permitted development rights are not available where the proposed development would constitute Schedule 1 or Schedule 2 development as defined under the Environmental Impact Regulations. Development for the purposes of **decommissioning** a nuclear power station or reactor is Schedule 1 Environmental Impact Assessment Development.

Environmental Impact Assessment (EIA)

4.26 Environmental Assessment is an important process for ensuring that the likely effects of new development are fully understood and taken into account before development is allowed proceed. Where proposals for development are likely to have significant effects on the environment, applications will need to be subject to EA under the **Town and Country Planning (Environmental Impact Assessment) Regulations 2017** and an Environmental Statement (ES) prepared.

4.27 Under the **Town and Country Planning (Environmental Impact Assessment) Regulations 2017**, applicants can make a formal request to the local planning authority for an Environmental Impact Assessment (EIA) screening opinion at any time.

4.28 A screening request should include a location plan identifying the land, a brief description of the nature and purpose of the proposed development and the possible effects on the environment, and any other additional information or representation. Once a screening opinion has been made, the local planning authority will send written confirmation stating whether it requires an EIA. A decision on whether an EIA is required should be made well in advance of any planning application.

4.29 Should the local planning authority not provide a screening opinion in the required time or determine that the proposed development would require an EIA, the applicant can appeal the decision with the Secretary of State for Housing, Communities and Local Government by requesting a screening direction.

4.30 Where an EIA is required, developers are encouraged to ask the local planning authority for an opinion as to the scope and level of detail (a Scoping Opinion) that should be covered before submitting any application for planning permission. In such cases and to ensure that all the relevant environmental issues are identified and addressed, the local planning authority will consult with other relevant bodies before an opinion is given.

4.31 An EIA must cover the geographical area where the impacts occur, both above and below ground. This is likely to be a broader area than the application area.

4.32 Once compiled the environmental information should be presented in the Environmental Statement (ES) and contain:

- a description of the proposed development comprising information on the site, design, size and other relevant features of the development;
- a description of the likely significant effects of the proposed development on the environment;
- a description of any features of the proposed development, or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- a description of the reasonable alternatives studied by the developer, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment;
- a non-technical summary of the information referred to above; and
- any additional information specified in Schedule 4 relevant to the specific characteristics of the particular development or type of development and to the environmental features likely to be significantly affected.

4.33 In addition, an Environmental Statement must:

- where a scoping opinion or direction has been issued, be based on the most recent scoping opinion or direction issued (so far as the proposed development remains

materially the same as the proposed development which was subject to that opinion or direction);

- include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment; and
- be prepared, taking into account the results of any relevant UK environmental assessment, which are reasonably available to the person preparing the environmental statement, with a view to avoiding duplication of assessment.

4.34 In order to ensure the completeness and quality of the environmental statement the applicant must ensure that the environmental statement is prepared by competent experts be accompanied by a statement outlining the relevant expertise or qualifications of such experts.

4.35 In addition, projects may also require approval from the Office of Nuclear Responsibility (ONR) through the **Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations (EIADR) 1999** which requires assessment of the potential environmental impacts of projects to decommission nuclear power stations and nuclear reactors (except research installations whose maximum power does not exceed 1 kilowatt continuous thermal load).

4.36 The intention of the regulations is to make the decision making process for such projects open and transparent. EIADR require that the public and other relevant stakeholders be consulted from an early stage, regarding the environmental impacts of the options being considered for a proposed decommissioning project.

4.37 EIADR apply to decommissioning and dismantling of nuclear power stations or other nuclear reactors, including the reactors, plant associated with power production and removal of related wastes, and buildings and land contaminated as a result of the operation of the reactor. EIADR is also considered to apply to structures, systems and any associated infrastructure situated off a licensed nuclear site, that were an integral part of the normal operation of the nuclear reactor or power station, e.g. a discharge pipeline.

4.38 Consent under EIADR is a parallel process to securing planning permission and does not remove necessary permissions under other regulations.

Pre-application consultation

4.39 Applicants are encouraged to undertake a pre-application consultation with the local planning authority and waste planning authority. This consultation will be expected to address issues such as noise, ecology, archaeology, site access and visual impact.

4.40 Other consultees such as Natural England and Environment Agency provide their own pre-application consultation services. As part of the pre-application consultation, applicants are also expected to engage with the local community, in accordance with the local planning authority's community involvement requirements.

4.41 The NPPG highlights that pre-application engagement by prospective applicants offers significant potential to improve both the efficiency and effectiveness of the planning application system and improve the quality of planning applications and their likelihood of success.

Planning Performance Agreements

4.42 One measure which can improve the pre application stage is through putting in place a Planning Performance Agreement (PPA) which can assist with managing the process and agreeing any dedicated resources for progressing the application.

4.43 In early pre-application discussions, a PPA can:

- build a shared understanding of the vision and objectives for a major development and its fit into the community;
- identify the information requirements necessary to address the issues raised by a proposed development;
- set out a process for assessing this information; and
- map the process for engaging the community and involving elected members.

4.44 A PPA should give greater certainty to the planning process and help foster a collaborative approach to designing better development. PPAs have a particularly useful role in complex and sensitive. In these cases, the community and other parties, such as statutory consultees, gain from the transparent process set out in the PPA and can understand their opportunities to engage and influence the proposal.

Making the Application

4.45 An application for planning permission must be made to the local planning authority on the standard application form. The completed application form must be accompanied by a plan sufficient to identify the land concerned and by any other plans, drawings and other documentation necessary to describe the development proposal.

4.46 The case studies included within section 5 include details of the typical types of information required to be submitted with a planning application.

4.47 When an application for development is received by the local planning authority, it will be assessed on its merits against the policies of the development plan and in light of advice from statutory consultees and representations received.

4.48 Where an Environmental Statement is not required applicants may have to support a planning application with technical reports including ecology, noise and archaeology.

4.49 It is necessary to provide the local planning authority with sufficient information to be able to determine the application. This may include the submission of a Planning Statement, which may include information detailing the operations proposed, phasing, equipment, timescales and the need for the development.

4.50 The Environmental Statement (ES) is typically the key submission document and is comprised of:

- Non-technical summary: This is a summary of the contents and conclusions of the EIA. It is the part of the ES, which may be published separately for circulation on a non-statutory basis to local residents or interested parties.

- Environmental Statement: This sets out the information about the development in more detail than the non-technical summary. The ES draws together the topics that have been explored through the technical reports. It is necessary to define the "baseline" that has been adopted in order to demonstrate the effects, if any, of the development on each key issue that has been identified by scoping. Mitigation measures should be described either in relation to each item or collated in a separate section of the ES, which may also constitute the suggested environmental management and monitoring scheme to be followed during and after the development has been completed.

- Technical reports: The individual technical reports prepared for the various effects on the environment together with the data supporting the conclusions should be included with the ES. This enables the local planning authority to verify the contents of the ES by reference to the source material and to be satisfied that the EIA has been sufficiently rigorous and in accordance with the methodology agreed as part of the scoping exercise.

Determining the Application

4.51 The **Planning and Compulsory Purchase Act 2004** requires the determination of planning applications to be made in accordance with the local planning authority's development plan unless material considerations indicate otherwise.

4.52 Before the local planning authority takes a decision, it will consider the advice provided by other agencies, such as the Environment Agency (who are a statutory consultee), on important matters such as the protection of the environment and public.

4.53 The local planning authority advertises planning applications that it receives and there is an opportunity to make representations on individual proposals.

4.54 The **Town and Country Planning (Development Management Procedure) (England) Order 2015** (DMPO) provides that an application for planning permission shall not be determined by the local planning authority before the end of the period of 21 days beginning with the date when a notice was displayed or served under article 6 or 8 (or 14 days when notice was given by local advertisement). This is to allow time for members of the public and persons with an interest in the land to make representations to the local planning authority concerning the proposed development.

4.55 The DMPO provides that a decision on a planning application should be given within eight weeks from the date the valid application is received, although the period may be extended if necessary by agreement in writing between the applicant and the local planning authority. This period is extended to 13 weeks for 'major' planning applications and 16 weeks for applications accompanied by an Environmental Statement.

4.56 Great importance is attached to the timely handling of planning applications. In general, where applications are straightforward there should be no difficulty in reaching a decision within the specified period. However nuclear related proposals are sometimes perceived as complex and may require more time and detailed consideration of the issues.

4.57 The focus of the planning system is on whether the development is an acceptable use of the land, and the impacts of those uses, rather than any control processes, health and safety issues or emissions, where these are controlled by other regulators and subject to approval under other regimes. Local planning authorities should assume that these non-planning regimes will operate effectively.

4.58 If planning permission is granted, the local planning authority may monitor and inspect operations to ensure that they comply with any conditions imposed.

Called In Applications

4.59 Section 77 of the Town and Country Planning Act 1990 allows the MHCLG Secretary of State to call in a planning application for his own determination. This is what is what is referred to as a 'called-in' application. The power can be exercised at any time up to planning permission being issued by a local planning authority. In considering whether to call in a planning application, the Secretary of State is generally concerned with whether the application involves planning issues of more than local importance that warrant the decision being made by him rather than the local planning authority. Other issues which may be of relevance include the application:

- conflicting with national policies on important matters;

- having significant effects beyond their immediate locality;
- giving rise to substantial cross-boundary controversy;

4.60 However each case will be considered on its merits. Any person may ask the Secretary of State to call in an application for his own determination.

4.61 If an application is called-in it may be that the local planning authority support the application (and may have granted permission if it had not been called-in). In these cases the only opposition to the proposed development may be by local residents or special interest groups, statutory consultees or other Government Departments.

Planning Appeals process

4.62 Where a local planning authority refuses permission for the proposed development or to grant it subject to conditions, operators can appeal through the Planning Inspectorate to the Secretary of State under Section 78 of the **Town and Country Planning Act 1990**. Appeals dealt with by the Planning Inspectorate. Appeals must be made within six months of the date of the decision notice.

4.63 When the local planning authority receives and registers a planning application, the applicant will receive a letter stating the date by which it should be determined. If the appellant has not had a decision by that date and has not agreed to an extension of time with the case officer, then the appellant may appeal against non-determination.

4.64 Nearly all appeals are decided by a Planning Inspector. A small percentage of appeals are decided by the Secretary of State - these tend to be the very large or contentious proposed schemes.

4.65 Only the person who made the planning application can make an appeal. There are three procedures that an appeal can follow, written representations, a hearing or an inquiry. When making their appeal, the appellant must identify which procedure they consider to be the most appropriate and give reasons to support this. The Planning Inspectorate determine the most appropriate appeal procedure, taking account of the criteria, the views of the appellant and the local planning authority.

4.66 There are no third-party rights of appeal through the planning system against a decision of a local planning authority. However, it is possible to challenge the lawfulness of a decision via "Judicial Review". This is dealt with by the Administrative Court and can review the lawfulness of a decision, action or failure to act in relation to the exercise of a public function - in this case, a planning decision. If permission is granted to proceed, the Judicial Review will be decided by a judge at the High Court.

4.67 The High Court is therefore the only authority that can formally identify a legal error in a decision made by a Local Planning Authority, an Inspector or the Secretary of State and require that decision to be re-determined. Applications to challenge planning application and planning appeal decisions (and related costs decisions) through the Judicial Review process must be received by the Administrative Court within 42 days (6 weeks) from the date of the decision.

Planning Conditions

4.68 The imposition of conditions on a planning permission can enable many development proposals to proceed where it would otherwise be necessary to refuse permission. With regard to nuclear related development, conditions serve the additional purpose of securing the environmental acceptability of proposals during and after the period of development.

4.69 Before development and operations can begin at the site, the developer must satisfy the local planning authority that it has discharged all relevant pre-commencement planning conditions (i.e. those conditions that apply before development commences).

4.70 Some planning conditions may apply once development has commenced. Typically, planning conditions may be imposed to control any impact on local amenity (such as noise). There are also likely to be conditions attached to the planning permission which require the monitoring of operations and development on the site.

4.71 The local planning authority has enforcement powers under the **Town and Country Planning Act 1990** to ensure that all required conditions are met.

Planning Obligations

4.72 Planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as Section 106 agreements, are a mechanism which make a development proposal acceptable in planning terms, that would not otherwise be acceptable. They are focused on site specific mitigation of the impact of development.

4.73 Section 106 agreements are often referred to as 'developer contributions' along with highway contributions and the Community Infrastructure Levy. The common uses of planning obligations include:

- restrict the development or use of the land in any specified way
- require specified operations or activities to be carried out in, on, under or over the land
- require the land to be used in any specified way; or
- require a sum or sums to be paid to the authority on a specified date or dates or periodically.

4.74 Planning Obligations are used for three purposes and must be directly relevant to the proposed development:

- prescribe the nature of development;
- compensate for loss or damage created by a development;
- mitigate a development's impact.

4.75 A planning obligation can be subject to conditions, it can specify restrictions definitely or indefinitely, and in terms of payments the timing of these can be specified in the obligation.

4.76 If the Section 106 is not complied with, it can be enforced by injunction against the person that entered into the obligation and any subsequent owner. The legal tests for when use a Section 106 agreement can be used are set out in Regulation 122 and 123 of the Community Infrastructure Levy Regulations 2010 as amended (2019).

Environmental Permitting

4.77 Whilst this section of the Guidance document focusses on the Planning process, such proposals will also require an environmental permit. A summary overview is therefore provided below.

4.78 Current or former nuclear licensed sites are generally covered by one or more environmental permits under the **Environmental Permitting Guidance Radioactive Substances Regulation For the Environmental Permitting (England and Wales) Regulations 2016**. These permits may extend to land or structures outside the nuclear site boundary (for example, pipelines).

4.79 A site can only be released from the radioactive substances environmental permit when it is suitable for unrestricted use. The criteria are explained in the joint environment agencies' Management of radioactive waste from decommissioning of nuclear sites: Guidance on Requirements for Release from Radioactive Substances Regulation (2018) commonly referred to as the 'GRR'.

4.80 However, while under a radioactive substances environmental permit, a site may be suitable for restricted use. For example, while a permit is in place, part of a site might be suitable for open access (walking etc.) but not suitable for housing, or for other uses that involve disturbance of the ground that could expose waste or damage engineered features or infrastructure (for example, construction of buildings or wind farm foundations).

4.81 In line with any planning permission and under the conditions of the radioactive substances regulation permit, the site operator must develop plans with the local authority, local community and other stakeholders for how they intend to manage the site so that it is suitable for its next use.

4.82 The site operator needs to apply for planning permission and a variation of their environmental permit for the disposal. If the Environment Agency is satisfied that proposals for disposal are safe,

it will vary the existing radioactive substances permit. Disposals cannot go ahead until all relevant permits and authorisations and planning permission are in place.

4.83 The Environment Agency will assess whether it is safe to leave material in-situ or allow it to be deposited on site (taking account of such factors as level of radioactivity, lifetime of isotopes, chemical properties, risk of leaking to air or ground water, volatility etc.).

4.84 When specifically looking at disposal of radioactive waste for a purpose the operator should ensure that the disposal is in accordance with the requirements of the GRR as well as demonstrating that the waste has a suitable physical and chemical specification and replaces material that would otherwise be needed for that purpose. Any works must be done in accordance with relevant legislation, and should also be in accordance with good engineering standards and good practice.

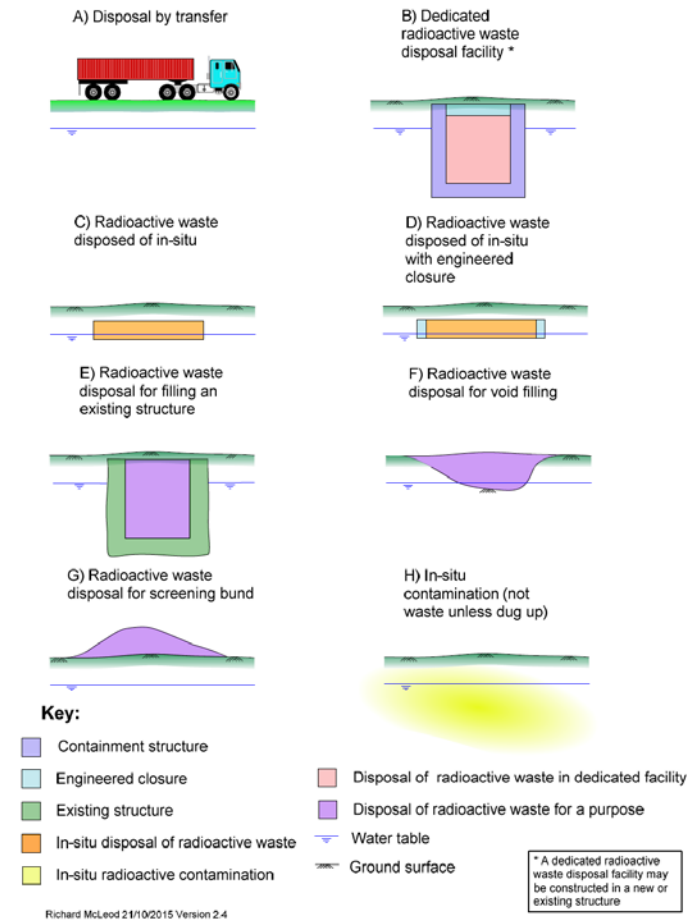
4.85 If a future developer wished, for example, to construct housing on the site, they would need to seek planning permission for this change of use and the Environment Agency would need to consider what the impact might be on the site and the conditions specified in the permit. It might be necessary for a developer to excavate residual contamination before the environmental permit could be ended.

Summary

4.86 The table below provides a summary of the on-site disposal options and their Planning and EIA requirements.

On-site disposal options Planning and EIA overview

Type of Disposal	Category	Is Planning Permission Required ?	Is an EIA Required?
C. Radioactive waste disposed of in-situ	Disposal in situ (by leaving / discarding / abandoning)	**No** - Where no physical works are required and the materials are being left in situ, then such an action would be defined as 'abandonment' and planning permission would not be required. However, the context of the proposal would need to be reviewed to confirm whether a material change of use would occur. **Yes** - Where some form of works is required, or the disposal in-situ is part of a wider project, then planning permission should be obtained for those works. In this case, the planning application should also include reference to the material that is being left in-situ.	**No** - If on the facts the material is being "abandoned" and there is no material change of use. **Yes** - If no abandonment case can be made and there is development – either through operations or a material change of use. In this instance, a formal request for a scoping opinion should be made to the local planning authority to agree the scope of an ES.
D. Radioactive waste disposed of in-situ with engineered enclosure	Disposal in situ (by burial)	**Yes** - Development comprising an engineering operation in relation to engineered enclosure.	**Yes** - the development would represent Schedule 1 development and a formal request for a scoping opinion should be made to the local planning authority to agree the scope of an ES.
E. Radioactive waste disposal for filling an existing structure – **(i) non-radioactive fill in non-radioactive existing structure;** **(ii) non-radioactive fill in a radioactive existing structure;** **(iii) radioactive fill in a radioactive existing structure**	Disposal "for a purpose"	(i) **Yes** - Development would involve engineering operations. (ii) **Yes** - Development would involve engineering operations (movement of fill and capping) and also a material change of use to that part of a site for it to be used for the final disposal of radioactive waste (existing structure only). (iii) **Yes** - Development would involve engineering operations (movement of fill and capping) and also a material change of use to that part of a site for the final disposal of radioactive waste (existing structure and fill)	**Yes -** (i), (ii) and (iii) - Decommissioning of a nuclear power station or reactor is Schedule 1 EIA Development and a formal request for a scoping opinion should be made to the LPA to agree the scope of any ES.
F. Radioactive waste disposal for void filling	Disposal "for a purpose"	**Yes -** Development would involve engineering operations and potentially a material change of use to that part of the site to be used for the final disposal of radioactive waste (existing structure only).	**Yes** Decommissioning of a nuclear power station or reactor is Schedule 1 EIA Development and a formal request for a scoping opinion should be made to the local planning authority to agree the scope of an ES.
G. Radioactive waste disposal for screening bund	Disposal "for a purpose"	**Yes -** Development comprising engineering operations and potentially a material change of use to that part of the site to be used for the final disposal of radioactive waste (existing structure only).	**Yes** - Decommissioning of a nuclear power station or reactor is Schedule 1 EIA Development and a formal request for a scoping opinion should be made to the local planning authority to agree the scope of an ES.
H. In-situ contamination	Disposal in situ (by leaving / discarding / abandoning)	**No** - Not classed as development.	**No** - EIA not required.



5. Case Studies

Overview and Commentary

5.1 In considering the wide ranging site related activities of this nature it is useful for stakeholders to ask questions, which once considered, will inform both the information required to accompany a planning application and also to aid the decision making process adopted by the local planning authority officer.

1. Is planning permission needed and if so, on what basis?
2. Is the proposed activity operational development or a material change of use?
3. When is the need for planning permission triggered?
4. Is it development requiring an EIA?
5. When does it constitute an installation?
6. Is a disposal of waste captured by environmental permitting requirements necessarily a disposal in planning terms?

5.2 The following case studies seek to create practical examples where these and other questions arise. They have been categorised and represent examples of waste disposal options including disposal for a purpose, more specifically infilling of a basement with LLW / VLLW waste as well as the in-situ disposal of a pipeline and similar infrastructure.

5.3 The intention behind the presentation of case studies is to prompt early discussions between site operators, regulators and local planning authorities and to communicate lessons learned where such activities have already taken place. It is anticipated that this information will aid early engagement working towards project design and scheduling as an integral part of the pre-application consultation process as shown within the case study process map.

5.4 Due to the complex nature of decommissioning, it is likely that site operators will be considering a number of waste management options at each site. As such, it is anticipated that projects could be grouped together within a single planning application. The benefit of this is that it reduces the number of planning applications being received by the local planning authority. However, the applicant should consider the overall merit of such an approach application and will depend on the individual aspects of each case.

5.5 In some circumstances the demolition of buildings may be covered under Permitted Development rights so a planning application will not be required. However, any subsequent development including on-site disposals may require planning permission (see summary table above).

5.6 An example as shown in the case studies below would be the demolition of a building on a current or former nuclear site being undertaken by virtue of Permitted Development rights but the subsequent on-site disposal of the rubble within the buildings foundations or within the basement of an adjacent building on-site would require planning permission to be granted as well as an environmental permit.

Disposal for a purpose (DFAP)

Definition: The use of very low level or low level contaminated rubble to fill voids or existing structures.

Example:
The photograph reproduced below shows the on-going above surface demolition of a former ponds complex at Bradwell, Essex. Completion of the work will see the retention of the below ground level void which will then be back-filled with the graded material resulting from the structures demolition.

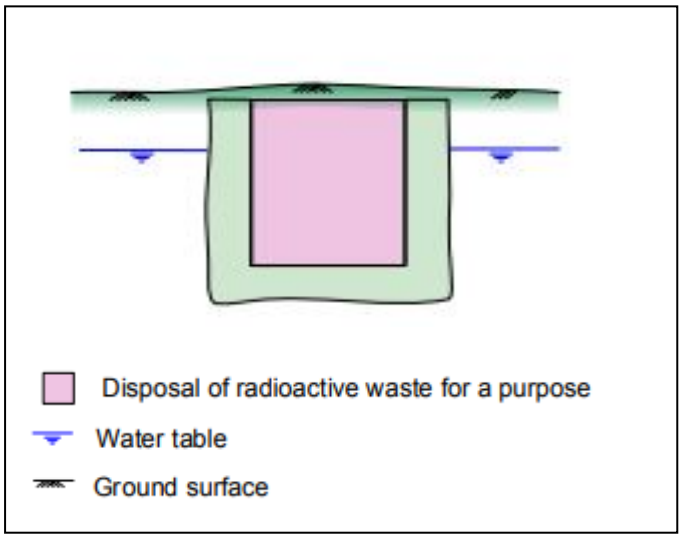


Figure 1 Graphical representation of DFAP (GRR, 2018)

Figure 2 Demolition of the ponds complex at Bradwell, Essex

1 Project overview

This form of waste management includes the on-site disposal of solid very low level or low level radioactive waste by permanent deposit where, if suitable radioactive waste were not available, other materials would have to be found to fulfil the purpose.

This particular project example will involve the demolition of a large ponds complex which measures (185m long x 20m wide x 6m tall). Upon commencement of the demolition work in 2023 the resultant waste will be used to infill a void space below the ponds complex and be capped over to produce an operational area which will be used as laydown space for the demolition of the reactor buildings.

2 Issues and challenges

- The important distinction with this form of waste management option is that the operator is physically emplacing very low level radioactive waste within a below ground void space where the foundations are no longer supporting a building above ground which has been removed.
- The temporary storage of radioactive material would require a disposal permit from the relevant environment agency but would arguably not require planning permission at this point on the basis that this operation is deemed to be temporary storage with the disposal being at a later date when the nuclear licence is revoked.
- Where such storage is permanent then this would constitute an on-site disposal requiring both an environmental permit and planning permission.

Consideration

In the case of temporary storage the distinction must be clear from disposal and site operators should make this explicit. For example; In the case of temporary storage is the method adopted readily reversible – such as the introduction of concrete into the void?

3 Regulatory and permitting issues

- When selecting this waste management option the operator should demonstrate that the waste has a suitable physical and chemical specification and replaces material that would otherwise be needed for that purpose. Any works must be undertaken in accordance with relevant legislation, and should also be in accordance with good engineering standards and good practice.
- An operator may plan to temporarily store the material to make use of radioactive decay thereby optimising its management, to facilitate its eventual disposal. The operator must declare any such intention in the Waste Management Plan, and demonstrate why this is the optimal management option for that waste.
- The waste which is stored will be regulated by the ONR and the Envrionemnt Agency as an accumulation. It will be managed under the appropriate safety case and must comply with the relevant nuclear site licence conditions.

Consideration

If the emplacement of material is considered a disposal in permitting terms does it necessarily mean that it is considered a disposal in planning terms?

4 Planning application requirements and issues

1. **Does it need planning permission?**
   If so, on what basis?

   The demolition of the ponds complex in itself could be undertaken under permitted development rights.

   The disposal of radioactive waste for a purpose will require planning permission due to the following reasons.

   - It is operational development as it is the physical emplacement of material in an underground void.
   - Development would involve engineering operations and potentially a material change of use to that part of the site to be used for the final disposal of radioactive waste.

   Consideration:
   Would this constitute a material change of use as the site is still a nuclear licence site? Once the licence has been revoked then it will become a disposal?

2. **When does the need for planning permission become effective?**

   - It has been proposed by site operators that if the material is emplaced within a void temporarily ahead of a 'disposal' in the future then planning permission will only be required when the nuclear licence is revoked. At this point it will constitute a material change of use.

3. **Is it EIA development?**

   Decommissioning of a nuclear power station or reactor is Schedule 1 EIA Development and a formal request for a scoping opinion should be made to the local planning authority to agree the scope of an Environmental Statement.

Consideration:

The appropriateness of site operators seeking to pursue such an approach without the need for planning permission and not being linked to a wider planning application for decommissioning on a site is likely to be viewed as being undesirable by local planning authorities who are likely to prefer to see a holistic approach to proposals.

5 Lessons learnt

Site Operator

Pre application engagement with LPA

On-site disposal type: Disposal for a purpose

Description: using lightly contaminated rubble to fill a basement void which has been left in-situ.

Does this require planning permission?

Yes

Development comprising engineering operations (movement of fill and capping) and potentially a material change of use to site for the final disposal of radioactive waste (existing structure and fill)

Does this require an EIA?

Yes

Decommissioning of a nuclear power station or reactor is Schedule 1 EIA Development and a formal request for a scoping opinion should be made to the LPA to agree the scope of any ES

Assumption: The nuclear licence remains in place

Yes

Formal communication between the site operator and Office of Nuclear Regulation. Demonstrate safe management of site, compliance with safety case and the relevant licence conditions.

No

Site operator engages with the Environment Agency through the waste management plan and the site wide environmental safety case. An application is made for a permit for disposal of radioactive waste on site.

Site operator engages with the local planning authority as well as the local community at this stage as stipulated within the GRR.

KEY

Planning Process

Regulation

Preparation of planning application

Statutory consultees

- EA (flood risk, ecology & drainage)
- Highways (traffic generation, access, parking)
- Natural England (ecology, landscape)
- Parish/Town/Community Councils
- Environmental Health (noise, air quality, contamination)
- Council's Landscape Architect (visual, landscape)
- Council's Ecology Officer (ecology)
- Neighbouring land owners/occupiers
- National Park Authorities

EIA

- 16 week determination period
- Increased level of publicity and exposure
- Longer lead in time due to scoping and preparation of ES
- Can result in increased overall costs of an application
- May impact optioneering (on-site disposal isn't always the cheapest option)

Material considerations

- National and local planning policy
- Visual impact of the development on the landscape
- The fall-back position for the site in planning terms or any relevant extant planning permissions
- Impact upon ecological features and habitats
- Impact residential amenity of nearby occupiers (noise)
- Whether the risk from flooding can be acceptably managed
- Whether surface water drainage can be acceptably managed
- Impact on public health (contamination, air quality)
- Highway safety matters
- Impact on features of acknowledged heritage importance
- The loss of or harm to significant trees and hedgerows
- The need for planning obligations/community benefit

Determination of planning application by LPA

Radioactive waste disposed of in-situ

Definition:
Leaving existing structures in place. This option might be considered in situations where the risk to workers or to the environment might be greater if the structure were to be removed.

Example:
The photograph reproduced below shows the installation of a sea discharge pipeline at Winfrith, Dorset.

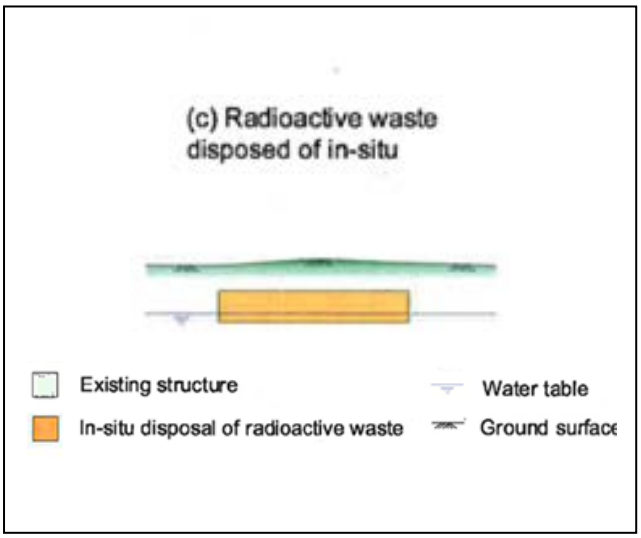


Figure 1 Graphical representation of in-situ disposal (GRR, 2018)

Figure 2 Winfrith Pipeline at installation

1 Project overview

This form of waste management includes the in-situ disposal of pipes, sub-surface structures and drains which will remain if they meet the necessary clean up targets. Ancillary metal work will be removed from sub-structures and near surface pipes and cables will also be removed.

This particular project example involves a site in the Care and Maintenance Preparations phase and would include the in-situ management of contaminated components of the radioactive effluent drainage/discharge system. This relates to sections of pipework located several metres below ground, together with the associated surface manhole chambers and associated infrastructure. This pipework would be infilled with grout, in order to eliminate water ingress and minimise the risk of possible future mobilisation of contaminants.

2 Issues and challenges

- In this option the approach to waste management is that the operator is physically leaving structures in place resulting in very low level radioactive waste being left within the ground.
- Operators' assessments of the optimised disposal option for buried waste should consider all reasonably practicable measures that could be taken to stabilise or immobilise buried radioactive waste, for example, infilling of cavities or grouting of pipes.
- Such works are typically undertaken in the Care and Maintenance Preparations phase during which all major radiological hazards will be dealt with and the site will be put in a passively safe state.
- If this form of on-site disposal is undertaken the environment agency will expect the relevant regulatory consents to be secured prior to the site entering the Care and Maintenance phase.

Consideration
Where such an option is permanent then this would constitute an on-site disposal requiring both an environmental permit and planning permission.

3 Regulatory and permitting issues

- During the Care and Maintenance Preparations phase, the structures would remain subject to control by ONR under the Nuclear Installations Act rather than under the Environmental Permitting Regulations (EPR) regime.
- The environment agency would expect the relevant regulatory consents to be secured prior to the site entering the Care and Maintenance phase.

Consideration:
Would ONR consult with the Environment Agency?

What happens when the site licence has been revoked at this point it will be subject to long term Environment Agency monitoring?

As the pipeline has a section which are buried beneath the English Channel then what Maritime permissions will be required?

4 Planning application requirements and issues

1. **Does it need planning permission?**
   If so, on what basis?

   - Where no physical works are required and the structures are just being left in situ then it is likely that this would constitute abandonment and planning permission would not be required.
   - However, the context for the proposal will need to be reviewed to establish whether a material change of use would occur.
   - Where the disposal in situ of the structures is part of a wider project, then planning permission will be required to be obtained for those works.

2. **When does the need for planning permission become effective?**

   - The established use of a site will likely include construction, operation and decommissioning.
   - A material change of use and the requirement for planning permission will only occur when the primary use of the site can no longer be defined as 'decommissioning'.
   - Should the structure remain unused for a considerable period of time then this is treated as 'abandonment' in planning terms. If abandonment has occurred then the resumption of any previous use of the structure will require planning permission.

3. **Is it EIA development?**

   - No, if the on the facts the material is being "abandoned" and there is no material change of use.
   - Yes, if no abandonment case can be made and there is development – either through operations or a material change of use. In this instance, a formal request for a scoping opinion should be made to the LPA to agree the scope of any ES.

Consideration:
The appropriateness of site operators seeking to pursue such an approach without the need for planning permission and not being linked to a wider planning application for decommissioning on a site is likely to be viewed as being undesirable by local planning authorities who are likely to prefer to see a holistic approach to proposals.

5 Lessons learnt

- The decision as to whether to leave such structures in-situ will be subject to many variables and whilst due process must be followed, consideration of stakeholders during any pre-application process or otherwise is of considerable significance.

Site Operator

Pre application engagement with LPA

On-site disposal type: In-situ Disposal

Description: Disposal of drains/ pipes in-situ

Manag

Is the pipeline permitted under RSR schedule 23?

Yes

Is the pipeline licensed under Nuclear Installations Act?

Yes

No

Formal communication between the **site operator** and **Office of Nuclear Regulation**. Demonstrate safe management of site, compliance with safety case and the relevant licence conditions.

Site operator engages with the **Environment Agency** through the waste management plan and the site wide environmental safety case. An application is made for a permit for disposal of radioactive waste on site.

Site operator engages with the **local planning authority** as well as the **local community** at this stage as stipulated within the GRR.

Would this work be classed as 'abandonment'?

Yes

Does this require planning permission?

No

Where no physical works are required and the materials are being left in situ, then such an action would be abandonment and planning permission would not be required.

Does this require an EIA?

No

No, if on the facts the material is being "abandoned" and there is no material change of use.

No

Does this require planning permission?

Yes

Where some form of works is required, or the disposal in situ is in fact part of, or indivisible from, a wider project, then planning permission should be obtained for those works. In this case, the planning application could include the material that is being

Does this require an EIA?

Yes

Yes, if no abandonment case can be made and there is development – either through operations or a material change of use. In this instance, a formal request for a scoping opinion should be made to the

KEY

Planning Process

Regulation

Preparation of planning application

Statutory consultees

- EA (flood risk, ecology & drainage)
- Highways (traffic generation, access, parking)
- Natural England (ecology, landscape)
- Parish/Town/Community Councils
- Environmental Health (noise, air quality, contamination)
- Council's Landscape Architect (visual, landscape)
- Council's Ecology Officer (ecology)
- Neighbouring land owners/occupiers
- National Park Authorities

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- EA (flood risk, ecology & drainage)
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- Council's Landscape Architect (visual, landscape)
- Council's Ecology Officer (ecology)
- Neighbouring land owners/occupiers
- National Park Authorities

Material considerations

- National and local planning policy
- Visual impact of the development on the landscape
- The fall-back position for the site in planning terms or any relevant extant planning permissions
- Impact upon ecological features and habitats
- Impact residential amenity of nearby occupiers (noise)
- Whether the risk from flooding can be acceptably managed
- Whether surface water drainage can be acceptably managed
- Impact on public health (contamination, air quality)
- Highway safety matters
- Impact on features of acknowledged heritage importance
- The loss of or harm to significant trees and hedgerows
- The need for planning obligations/community benefit

Determination of planning application by LPA

Annex A - Frequently Asked Questions

If Low Level Waste remains on site can the site be released for reuse?
The potential to re-use a former nuclear licensed site will be determined during the decommissioning and de-licensing process and will be controlled through Planning, environmental permitting, EIA and where relevant, the NDA Strategy.

What happens if the land and the waste contained within it is physically accessed in the future either intentionally or without knowledge?
Only waste that can safely be disposed of in existing structures, voids or earth bunding would be permitted as an on-site disposal. Future alternative land uses would be controlled through the consented use and any restrictive Planning conditions that may be attached to it. This would be a matter of public record and would bind successive purchasers or other occupiers.

What quantity of waste is envisaged for potential on-site disposals?
If on-site disposal is appropriate, the material quantity will be determined through the consenting process and will reflect the particular circumstances at each location.

How will risks to people and the environment be managed?
A site wide environmental safety case will need to consider the risks to people and the environment and how these can be safely addressed. This will need to be approved by the Environmental Agency in support of the Waste Management Plan before any disposal can be authorised.

How will the views of local communities be considered and reflected during the process? Will the guidance provide an advice note on community engagement from the site operators?
Reference will be given within the suggested route-map as to the potential for public engagement. This will be at the discretion of the LPA and the site operator given the particular circumstances of the case. It is certainly acknowledged that this is an important aspect of the process that will need careful consideration both in arriving at the most appropriate final planning decision but also to ensure effective engagement with stakeholders.

At what stage will communities have the ability to comment on applications for on-site disposals?
Please refer to Process Map on page 4.

What resources will be made available to Local Authorities if the workload increases due to the increase in planning applications for in-situ disposals?

MHCLG to comment

Where will the guidance fit in the hierarchy of planning policy documents?

MHCLG to comment

What would be the status of the land following on-site disposal?
Re-use of land would be subject to the revised planning designation and any on-going environmental permitting.

How will the guidance on on-site disposal inter-play with other environmental / ecological designations?
Any such designations such as RAMSAR, CROW, NATURA 200, SSSI etc. should be material considerations in any consenting process. The effect of such designations and the degree to which they impact the planning application under consideration, will need to reflect the particular circumstances within the context of the EIA and the proposed re-use of the land or restrictions imposed upon it, through the imposition of planning conditions.

Will the document cover the potential interaction between adjoining nuclear sites that are or have been subject to more than one nuclear licence and potentially under the control of different site operators?
Environmental permitting regulations require contiguous sites to be assessed holistically. On-site disposals would be subject to discussions with site operators and planning authorities to assess site specific requirements.

Would on-site disposals be considered "Nationally Significant Infrastructure Projects?"
As at the time of issue if the annual mass of waste disposed of exceeds 100,000 tonnes in any given year, the disposal could be considered a "Nationally Signficant Infrastructure Project". With the exception of Sellafield, the proposals are for less than around 30,200 m3 of LLW/VLLW per site (total, not yearly average). If an industry standard density for waste is assumed of around 1.25 tonnes/m3, this means that these proposals are for less than 37,750 tonnes (total, not annual) per site and therefore would not qualify as Nationally Significant Infrastructure projects.

What is the situation for mixed hazardous radioactive waste?
We are not expecting applications for the disposal of mixed hazardous and radioactive waste and this guidance does not cover any such applications.

Is planning permission necessary for on-site disposal of radioactive waste on nuclear sites; particularly in cases where the radioactive waste is disposed either to fill voids on the site or to landscape the site?
See summary table within Chapter 4.

Where 'permitted development' has been granted, to what extent can radioactive waste be disposed of on-site?
Permitted development rights would not extend to on-site disposals of radioactive waste please see summary table within Chapter 4.

What arrangements are required for the transfer of knowledge from the environment agencies to the Planning Authorities about the former use of the nuclear site and any residual radioactive contamination or waste?
TO BE DISCUSSED WITH NULEAF

Annex B - Glossary and Information Sources

Designating Directive (Energy Act 2004)
The Energy Act 2004 included the adoption of a process that formally identified land and infrastructure associated with nuclear activities on a site by site basis. This was encapsulated within a site specific document and was published in the form of a Designating Directive.

Disposal for a purpose
To use lightly contaminated rubble to fill voids or existing structures. This type of disposal could be an option where otherwise new material would need to be brought in to fill the structure or void.

The Environmental Permitting (England and Wales) Regulations 2016
http://www.legislation.gov.uk/uksi/2016/1154/pdfs/uksi_20161154_en.pdf

The Environmental Authorisations (Scotland) Regulations 2018
http://www.legislation.gov.uk/sdsi/2018/9780111039014/contents

Environmental Safety Case (ESC)
An environmental safety case (ESC) is a key submission to safety and environmental regulators that sets out a range of arguments demonstrating optimisation of disposal facility design and operations, and showing that the facility will be safe both in terms of operational and post-closure impacts on humans and the environment.

Engineered disposal facility
Other types of disposal of waste on-site include the development of a facility with an engineered closure.

In-situ disposal
To leave existing structures in place. This option might be considered in situations where the risk to workers or to the environment might be greater if the structure were to be removed.

Low level radioactive waste
This waste Includes metal, soil, building rubble and organic materials, arising principally as lightly contaminated miscellaneous scrap. Wastes other than those suitable for disposal with ordinary refuse, but not exceeding 4 GBq/te (gigabecquerels) of alpha or 12 GBq/te of beta/gamma activity.

National Planning Policy Framework (NPPF) 2019
The National Planning Policy Framework sets out the Government's planning policies for England and how these should be applied1. It provides a framework within which locally-prepared plans for housing and other development can be produced.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810197/NPPF_Feb_2019_revised.pdf

National Planning Policy for Waste (NPPW) 2014

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/364759/141015_National_Planning_Policy_for_Waste.pdf

Nuclear Site Licence
The nuclear site licence granted by ONR is a legal document, issued for the full life cycle of the facility. It contains site-specific information, such as the licensee's address and the location of the site, and defines the number and type of installations permitted and the conditions for operation

Office of Nuclear Regulation (ONR)
The Office for Nuclear Regulation (ONR) regulates safety and security at licensed nuclear sites in the UK. These include the existing fleet of operating reactors, fuel cycle facilities, waste management and decommissioning sites and the defence nuclear sector.

On-site disposal
On-site disposal can be split into two separate categories:

In-situ disposal (i.e. leaving existing structures in place). This option might be considered in situations where the risk to workers or to the environment might be greater if the structure were to be removed.

Disposal for a purpose (for example, using lightly contaminated rubble to fill voids or existing structures). This type of disposal could be an option where otherwise new material would need to be brought in to fill the structure or void.

Planning and Compulsory Purchase Act 2004

http://www.legislation.gov.uk/ukpga/2004/5/pdfs/ukpga_20040005_en.pdf

Environmental Permitting Guidance Radioactive Substances Regulation For the Environmental Permitting (England and Wales) Regulations 2010
RSR delivers Government policy on management of radioactive materials and radioactive wastes and implements European Directive requirements on radiological protection of the public and security of high activity sealed sources.

https://www.gov.uk/government/publications/radioactive-substance-regulations-rsr-guidance

Management of radioactive waste from decommissioning of nuclear sites: Guidance on Requirements for Release from Radioactive Substances Regulation Version 1.0: July 2018
How to manage radioactive waste from the decommissioning of nuclear sites and prepare for release from radioactive substances regulation.

https://www.sepa.org.uk/media/365893/2018-07-17-grr-publication-v1-0.pdf

Site - Definition
The geographical extent of the relevant nuclear installation, site or facility (including all systems, facilities and associated infrastructure associated with the normal operation of that installation

Site End State
The NDA aims to identify the physical condition that a nuclear site should be left in when it has finished its business. The End State (or states) will influence the end uses that are possible on a site.

Site Licence Company
A site licensed company is the regulated entity and the statutory liability holder. It operates and manages the site in a manner that is compliant with the Licence conditions and the conditions of the environmental Permit(s). In the context of decommissioning and clean-up, the Site Licence Company manages the progress towards the delivery of the Site End state and is responsible for making the decision on the preferred waste management option. Site Licence Companies on NDA sites will therefore develop waste management options that are consistent with the Site End State described in NDA's Strategy.

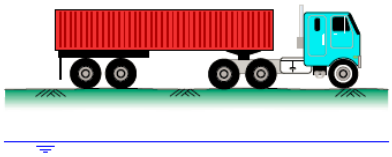
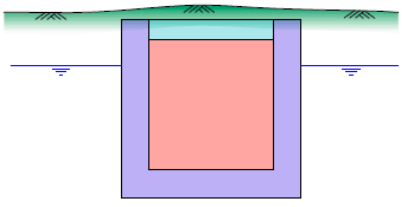
The Energy Act 2004
An act of parliament which designates to the Nuclear Decommissioning Authority (NDA) responsibilities for the decommissioning and clean-up of designated sites, installations and facilities and treatment, storage and disposal of hazardous material.

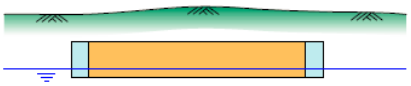
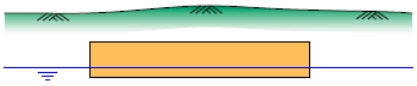
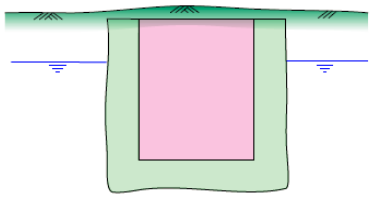
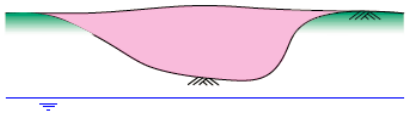
http://www.legislation.gov.uk/ukpga/2004/20/pdfs/ukpga_20040020_en.pdf

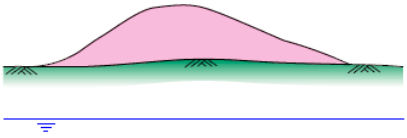
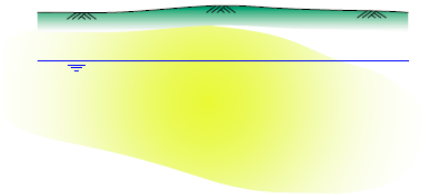
Very low level radioactive waste
A sub-category of LLW with specific activity limits. Sites that produce VLLW can dispose of the waste with regular household or industrial waste at permitted landfill facilities. The major components of VLLW from nuclear sites are building rubble, soil and steel items.

Waste Management Plan
A documented plan, prepared by the operator of a nuclear site, which provides a comprehensive description of the current intent for dealing with all radioactive substances on or adjacent to the site and demonstrates how waste management has been optimised.

Annex C - Waste Management Options

Potential waste management option	Advantages	Disadvantages	Criteria and Examples
Disposal by off-site transfer 	• Off-site transfer of all waste would mean that no radioactive waste would be left on the site • A period of control for the purposes of radiological protection would not be required • Waste can be transferred off-site for treatment and recycling e.g. metals • Waste can be transferred off-site for specialist disposal when this is required e.g. higher activity waste • Land would be available for any re-use	• Removal of all radioactive waste would increase general risks to workers from the excavation and transport of the waste • Off-site transfer would result in increased transport of waste and lorry movements • Decommissioning work could take longer and cost more • More radioactive waste disposal facilities would need to be built nationally	• Option available to any waste • Any waste that would compromise the safety standards specified by the regulators would need to be transferred off site to a specific facility • Where the optimum management of the waste involves off-site transfer e.g. recycling of metals or disposal to the Low Level Waste Repository
Disposal in a dedicated facility 	• A dedicated facility would have waste acceptance criteria defined to ensure good control over what waste is disposed of • Engineering design can be specifically developed for a dedicated facility and performance requirements can be designed for	• Retaining waste on site may represent a change to the lifetime plan agreed with stakeholders • A significant construction / engineering project and cost • Stakeholders may be concerned that a dedicated facility could accept waste from out with the site	• A dedicated facility could be located either on an existing site, or at a new location • Only waste that is safe to dispose of in the dedicated facility would be permitted for disposal • Only waste suitable for near-surface disposal would be permitted

Disposal of waste in situ a) with or b) without engineered closure a)  b) 	• If safe to dispose of waste in situ, it avoids the need to extract the waste from the ground • It avoids risks and impacts associated with excavating the waste • Manages the waste on the site where it was created • For large structures, it avoids the need for transport of large quantities of concrete • It avoids creating voids that then need in-filled, requiring import of clean material	• Retaining waste on site may represent a change to the lifetime plan agreed with stakeholders • Retaining waste on site may create stakeholder concerns • A period of control for the purposes of radiological protection may be required	• Only waste that is safe to dispose of in situ would be permitted for disposal • Examples range from small items such as pipes or drains, to large structures such as the concrete reactor shields or ponds • Engineered closure may include grouting up of structures such as pipes or engineering a closure cap
Radioactive waste disposal for filling a) an existing structure or b) a void a)  b) 	• Re-using waste to fill voids or structures that require backfilling • Manages the waste on the site where it was created • Replaces the need for import of clean material to in-fill the structure or void • Reduces transport of waste from the site and import of clean material • Allows opportunities for integrating the management of radioactive and non-radioactive waste	• Retaining waste on site may represent a change to the lifetime plan agreed with stakeholders • Retaining waste on site may create stakeholder concerns • Physical challenges may be encountered when filling existing structures or voids	• Only waste that is safe to dispose of in existing structures or voids would be permitted for disposal • Emplacement of waste in structures or voids may happen far in the future at some sites that plan a ‘care & maintenance’ period

Radioactive waste disposal for screening bund 	• Re-using waste for screening bund replaces the need to import clean material from elsewhere to construct any required screening bunds • Allows opportunities for integrating the management of radioactive and non-radioactive waste • Reduces transport requirements both for exporting the radioactive waste and importing clean material	• Retaining waste on site may represent a change to the lifetime plan agreed with stakeholders • Retaining waste on site may create stakeholder concerns	• Only the lowest activity waste would be considered for this purpose • Only waste that is safe to dispose of as screening bunds would be permitted
Areas of contamination left in situ 	• Leaving areas of contamination in situ avoids risks or impacts from extracting the contamination from the ground	• A period of control for the purposes of radiological protection may be required	• Sustainable remediation decision making is an international concept and ensures that more good than harm is done by the remediation • Areas of contamination would not be permitted by the environmental regulator unless it was safe to do so • Regulators can compel an operator to clean-up areas of contamination

Annex D – Scotland and Wales

Wales

Role of Government
The Department for Business, Energy and Industrial Strategy (BEIS) is a ministerial department of Government that has the role of setting policy for nuclear energy, including the development, operation and decommissioning of nuclear sites.

The Welsh Government is the devolved government for Wales. Led by the First Minister, it works across devolved areas that include key areas of public life such as health, education and the environment. Welsh Government is also responsible for the town and country planning system in Wales.

Waste Planning Policy
Planning Policy Wales, Technical Advice Note 21 (Waste), Local Development Plans, the overarching national waste strategy (Towards Zero Waste – One Wales: One Planet), and the Sector Plans, taken as a whole, comprise the overall Waste Management Plan for Wales. The Waste Management Plan provides advice on how the land use planning system should contribute towards sustainable waste management and resource efficiency, reflecting the new waste management drivers at a European Union and Wales level.

At a local level, some Local Development Plans include explicit policies on radioactive waste from current or former nuclear sites but others (at present) do not. In the cases where policies on radioactive waste have been developed, these do not always address the question of on-site disposal.

Assessing Planning Applications
An application for planning permission is assessed by the local planning authority. In Wales this is in accordance with the policies in their Local Development Plan and national planning policy, as set by Planning Policy Wales (PPW) Edition 10 (December 2018), as well as a range of supplementary Technical Advice Notes (TANs).

Planning Policy
Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the determination of planning applications to be made in accordance with the local planning authority's Development Plan unless material considerations indicate otherwise.

Planning Policy Wales (PPW) sets out the land use planning policies of the Welsh Government (WG). This contains guidance for the preparation of Local Authority development plans, development management, and sets out the WG commitment to creating sustainable developments. It is the principal and authoritative source of national planning policy. Technical Advice Notes (TANs) contain detailed guidance in specific areas.

The primary objective of PPW is to ensure that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural well-being of Wales, as required by the Planning (Wales) Act 2015 and the Well-being of Future Generations (Wales) Act 2015.

Technical Advice Notes should be taken into account by local planning authorities when they are preparing development plans and determining planning applications. They should be read alongside PPW.

The Welsh Government is in the process of preparing a National Development Framework (NDF), a development plan detailing its strategy for how and where it wants Wales to grow over the next twenty years (2020-2040). Once adopted, it will replace the current Wales Spatial Plan and will cover the period 2020-2040. Unlike the Wales Spatial Plan, the NDF will have development plan status and therefore be of greater significance.

Once published, there will be a hierarchy of development plans as follows:

- National Development Framework
- Strategic Development Plans
- Local Development Plans

The Strategic Development Plans (SDPs) and Local Development Plans (LDPs) must be consistent with the NDF.

Defining Development
Planning permission is required for works carried out that meet the statutory definitions of development, which are set out in Section 55 of the Town and Country Planning Act 1990 (applicable in England and Wales) (1990 Act).

Permitted Development Rights
The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2019 is the principal legislation. The Order sets out classes of development for which a grant of planning permission is automatically given, provided that no restrictive condition is attached or that the development is exempt from the permitted development rights.

Environmental Impact Assessment Regulations
Environmental Assessment (EA) is an important process for ensuring that the likely effects of new development are fully understood and taken into account before development is allowed to proceed. Where proposals for development are likely to have significant effects on the environment, applications will need to be subject to EA under the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 and an Environmental Statement (ES) prepared.

Called-in Applications
Section 77 of the Town and Country Planning Act 1990 allows Welsh Ministers to call in a planning application for his own determination. This is what is what is referred to as a 'called-in' application. The Town and Country Planning (Notification) (Wales) Direction 2012 and 2020 amendment and Welsh Government Circulars 07/12 and 001/2002 set out the requirements for local planning authorities to refer certain planning applications to the Welsh Ministers, to enable them to decide whether they wish to call in the application for their determination.

Planning Appeals Process
Where a local planning authority refuses planning permission for a proposed development or the grant of planning permission is subject to conditions, operators can appeal through the Planning Inspectorate to the Welsh Ministers under Section 78 of the Town and Country Planning Act 1990. The Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017 establish the procedures with regards to appeals, which are dealt with by the Planning Inspectorate and must be made within six months of the date of the decision notice.

Enforcement Powers
The local planning authority has enforcement powers under the Town and Country Planning Act 1990 to ensure that all required conditions are met. The Planning (Wales) Act 2015 has made a series of changes in an aim to modernise the planning enforcement system.

Planning Obligations
Planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as Section 106 agreements, are a mechanism which make a development proposal acceptable in planning terms, that would not otherwise be acceptable. They are focused on site specific mitigation of the impact of development. In 2008 the Planning Act was amended to make provisions for local authorities to prepare a Community Infrastructure Levy (CIL) for their own areas (if so desired). This would take the form of a charging schedule that would subsume a lot of matters that are currently secured through the use of Section 106 Legal Agreements which are the usual method for obtaining infrastructure improvements to mitigate the impacts of development proposals. It should be noted that it is not the purpose of CIL to replace Section 106 obligations.

Scotland

Role of Government
The Scottish Energy Strategy, published in December 2017, sets out the Scottish Government's vision for the future energy system in Scotland. The Scottish Government work with the NDA to implement policy for the long-term management of higher-activity waste in near-surface facilities across Scotland; including Dounreay, Hunterston A, and Chapelcross.

Scottish Ministers are accountable to the Scottish Parliament for the activities and performance of the NDA, in respect of which ministers have statutory duties and responsibilities under the Energy Act 2004. Their responsibilities, carried out in conjunction with the Secretary of State, are:

- setting the performance framework within which the NDA will operate;
- approving the NDA's Strategy and Annual Plan;
- issuing Directions and Designations;
- providing information to the Scottish Parliament about the NDA; and
- laying the NDA's Annual Accounts before the Scottish Parliament.

The Cabinet Secretary for Environment, Climate Change and Land Reform has responsibility for NDA governance and radioactive waste policy in Scotland.

The relevant environment agency
The Scottish Environmental Protection Agency (SEPA) regulates radioactive waste management on nuclear and former nuclear sites in Scotland. The relevant legislation (The Environmental Authorisations (Scotland) Regulations 2018) allows for on-site disposal subject to an Environmental Permit being granted. As part of the environmental permitting process, the site operator must demonstrate that it is safe to dispose of the material on site and that the environmental and social benefits of doing so outweigh the benefits of excavating and removing this material to a disposal facility elsewhere.

The only exception to SEPA regulation is the accumulation of radioactive wastes at licensed nuclear sites, which is regulated by the Office of Nuclear Regulation (ONR).

Preparation of Waste Local Plans
In Scotland, there are no local "Waste Plans" as in England. Instead site-specific and local and/or strategic level waste policies are set out within either the Strategic Development Plan (SDP) or Local Development Plan (LDP) for that area.

Assessing Planning applications
An application for planning permission is assessed by the local planning authority. In Scotland this is in accordance with the policies in their Local Development Plan and national planning policy.

Planning Policy
The Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

The Scottish Government sets out the purpose of the Scottish planning system and its specific land use policies in the Scottish Planning Policy (SPP). The SPP sits alongside the National Planning Framework (NPF), which provides a statutory framework for Scotland's long-term spatial development. The NPF sets out the Scottish Government's spatial development priorities for the next 20 to 30 years.

More detailed subject-specific advice and guidance is then set out in a series of Planning Advice Notes and Planning Circulars.

Defining development
Planning permission is required for works carried out that meet the statutory definitions of development as set out in Section 26 of the Town and Country Planning (Scotland) Act 1997.

Permitted development rights
The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2014 is the principal legislation. The Order sets out classes of development for which a grant of planning permission is automatically given, provided that no restrictive condition is attached or that the development is exempt from the permitted development rights.

Environmental Impact Assessment regulations
Environmental Assessment is an important process for ensuring that the likely effects of new development are fully understood and taken into account before development is allowed to proceed. Where proposals for development are likely to have significant effects on the environment, applications will be subject to EA under The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 and an Environmental Statement (ES) prepared.

Called-in Applications
Section 46 of the Town and Country Planning (Scotland) Act 1997 allows Scottish Ministers to direct that a particular planning application, or particular class of planning application, be referred to them for their decision. This is what is what is referred to as a 'called-in' application.

Planning appeals process
Where a local planning authority refuses permission for the proposed development or decides to grant it subject to conditions, objectors can appeal under Section 75B of the Town and Country Planning Act 1990 to the Scottish Ministers through the Scottish Government's Planning and Environmental Appeals Division (DEPA), which handles planning appeals on behalf of Scottish Ministers. Appeals must be made within three months of the date of the issued decision notice.

Enforcement powers
The Local Planning Authority has enforcement powers under the Town and Country Planning (Scotland) Act 1997 to ensure that all associated planning conditions are met.

Planning obligations
Developer contributions in Scotland are normally secured under the provisions of Section 75 of the Town and Country Planning (Scotland) Act 1997, commonly known as “Section 75 agreements”. These are a mechanism which makes a development proposal acceptable in planning terms that would not otherwise be acceptable. They focus on site-specific mitigation of the impact of development.

Contact Details

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