

REVIEW OF THE SITING PROCESS FOR A GEOLOGICAL DISPOSAL FACILITY

Briefing Paper M October 2013

Introduction

The Department of Energy and Climate Change (DECC), Welsh Government and the Northern Ireland Department of the Environment are reviewing the Managing Radioactive Waste Safely (MRWS) siting process for a geological disposal facility (GDF). This review is prompted by the withdrawal from the MRWS process in January 2013 of Cumbria County Council, and the immediate termination by Government of proposed GDF site identification and assessment work in West Cumbria. Further details about Cumbria County Council's decision, and the decisions by the borough councils for Allerdale and Copeland favouring GDF site identification and assessment work in West Cumbria can be found at: www.westcumbriamrws.org.uk.

To assist its review, DECC issued a public consultation paper on 12 September 2013ⁱ. This consultation paper is informed by views submitted to DECC between May and June this year following its 'Call for Evidence', and by other views obtained through direct engagement with stakeholders and international bodies. NuLeAF itself responded to this 'Call for Evidence' by letter dated 10 June 2013ⁱⁱ.

The consultation document outlines a number of ways in which government thinks the MRWS siting process could be improved. Key proposals include:

- in two tier areas, give decision making powers to district level authorities, with county level authorities playing a prominent role in a newly proposed Consultative Partnership. Unitary authorities in other parts of England, and in Wales and Northern Ireland, would have decision making powers for their areas;
- prepare a geological report and a socio-economic assessment for any area potentially interested to learn more about the costs and benefits of GDF development. These studies would be provided free of any obligation to continue local enquiries;
- provide greater clarity on the scope of a community benefits package and release some funds early and before GDF construction; and
- bring the development consent process for a GDF, and ancillary planning permissions required to facilitate GDF preparatory work, within the regime for 'Nationally Significant Infrastructure Projects'(NSIP) under the Planning Act 2008. Government intends to publish for public consultation in 2014 a draft National Policy Statement specifically for a GDF, if its consultation proposals are supported.

The remainder of this Briefing Paper reports further on the above matters and other relevant points from the consultation paper.

Raising National Awareness

DECC propose to conduct a 'national public awareness and engagement programme' to run for up to 12 months before formally seeking to implement a revised GDF siting process. Government considers (Consultation Document p23) this will help ensure greater general public awareness and understanding "...leading to a more balanced and well informed debate on GDF across the country." It is argued this will also provide any new volunteer community with time to consider the issues it wishes to explore in the 'Learning' phase (see below) of a new GDF siting process.

In its response to the 'Call for Evidence' NuLeAF recommended "...DECC first consider a renewed information campaign to a) explain any changes to MRWS policy and b) remake the case for geological disposal, so that a receptive environment can be created before proactively encouraging new interest in MRWS...".

The Offer

DECC say (CD p24) "As part of this national public awareness and engagement programme, the UK Government would set out clearly the 'offer' to any community that may be interested in a hosting a GDF, together with easy-to-access, public domain, information about geological disposal and the basic geology in their area..." including "...an open and transparent assessment of what the implementation of a GDF might mean for any community, setting out the process a community would follow if it wished to become involved in the siting process."

A More Continuous Process

As with the current MRWS siting process, DECC say (CD p25) that "the community's position will be **protected through an on-going Right of Withdrawal**" **but unlike the current MRWS process this** will be without "...artificial decision points...". This is a reference to the current requirement for a formal 'Expression of Interest' to enter the MRWS process and the formal 'Decision to Participate' before commencing site identification and assessment work. It was around the latter decision point that Cumbria CC withdrew from MRWS earlier this year.

A local decision by the 'representative authority' would still be needed to enter what DECC describes as a 'Learning phase' and decisions would be needed locally to enter what is now described as a 'Focusing phase' (more on these terms below) but, as now, the pace of progression would be for the decision making authority to decide on behalf of its potential host community.

In its response to the 'Call for Evidence' NuLeAF recommended DECC consult on the staged approach to MRWS implementation. NuLeAF would welcome member views on DECC's proposals.

Representative Authority

As indicated above, DECC (CD p26) propose changes to decision making processes in English two tier areas. To meet expectations about 'credible' levels of local support the MRWS White Paper has until now been interpreted as requiring decisions from both first and second tier authorities to agree to progress MRWS. It is proposed that joint decisions no

longer be required and that the power to exercise (or not) the 'Right of Withdrawal' should be for "...the relevant District Council in England."

DECC argue that this is the lowest practical level of local administration consistent with Government's commitment to subsidiarity under the Localism Act 2011 and is consistent with the practice applied in successful international GDF siting programmes. (In Wales it is proposed that decision making powers would rest with Welsh unitary authorities.)

District and Unitary authorities (CD p34) would be designated 'Representative Authorities' for the purpose of exercising a right of withdrawal; "...ensuring community concerns are addressed by the relevant bodies..."; and to "Take the final decision to volunteer to host a GDF, subject to the final test of community support."

DECC also say (CD p27) that "...the County Council (where one exists in the area in question) has a major and legitimate interest in the outcome of the siting process. As such, it is important that the County is represented in, and able to influence, the siting process."

In its response to the 'Call for Evidence' NuLeAF recommended "... more clarity needs to be brought to working arrangements particularly where there are two principal local authorities ('decision making bodies') representing the interests of a local area. DECC should consult on whether principal authorities in two tier areas should agree and declare how they will work in partnership in the early stages of any future MRWS process, and how they should engage with their communities and take decisions, before taking soundings within their local community about making any formal expression of interest."

NuLeAF would welcome member views on DECC's proposed change to the way local decision making for MRWS is exercised and particularly on how cooperation and confidence between local partners can be encouraged.

Demonstration of Community Support

DECC propose a new requirement – a demonstration of community support - without which development of a GDF could not proceed. This requirement would be additional to the regulatory and planning requirements for GDF development. How 'community support' is demonstrated, and at precisely what point in the GDF siting process 'community support' should be demonstrated, and over what area 'community support' should be canvassed, is not prescribed.

DECC suggest (CD p28) 'extensive opinion polling, citizens' panels, community hearings and a referendum' as possible mechanisms to gauge community support. DECC further suggest (CD p28) "With regard to timing, it can be argued that this should come before major expenditure of public funds on borehole drilling and underground investigations at a preferred site, with the Right of Withdrawal ending as the community expresses its willingness to proceed."

Forfeiting a Right of Withdrawal *before* borehole investigation would be sooner than under existing interpretation of MRWS where the relevant local authority/ies retain a 'veto' until GDF construction is consented. DECC recognise that its proposal may "...reduce[s] community confidence in the process, and forces people to decide to make a commitment prior to all the necessary information being available on the expected local impacts of development." DECC invite views on the mechanisms for and the timing of a demonstration of community support. NuLeAF would also welcome member views on this matter.

The 'Learning' Phase

Any 'local body' can indicate their interest to the UK Government in a revised GDF siting process, but (CD p28) "... the UK Government would need to contact the representative authority to explain that interest had been expressed from within the community...". Subject to the representative authority's support Government could then ask it to consent to NDA's Radioactive Waste Management Directorate (RWMD) commissioning two reports, on geology and on socio-economic impacts. These reports, commissioned at RWMD expense, are expected to take one to two years to prepare.

A geological report would be undertaken by the British Geological Survey (BGS) and incorporate the current MRWS 'unsuitability criteria' to exclude rock formations containing minerals and aquifers. Other geological information about a local area obtainable by non-intrusive techniques (e.g. aerial geophysical survey) could be included.

An independent study of the socio-economic prospects for an area and its surroundings would also be prepared, and the impact of GDF investment would be assessed. A report would include proposals for investments that could benefit an area and these proposals could inform development of a community benefits package.

Both reports would inform a decision between the representative authority, Government and RWMD about whether there were 'reasonable prospects' of an area being potentially suitable to host a GDF. DECC further propose (CD p29) "If it was agreed that they (the reports) offered 'reasonable prospects', then the UK Government and the representative authority could agree that it would be worth moving to the 'Focusing' phase of the siting process, and a formal Steering Group and Consultative Partnership to oversee the process would be formed."

The 'Focusing' Phase

DECC propose that this phase would (CD p29) "...narrow down the potentially suitable areas for both the surface and subsurface facilities...". Work would be overseen by a Steering Group made up of DECC, RWMD and the representative authority would Chair. It would be advised by a Consultative Partnership made up of local stakeholder interests. Members would be appointed by the Steering Group who would themselves be Partnership members. In two tier areas the upper tier authority would be expected to play a prominent role. As now, 'reasonable costs' (CD p30) "...would be covered by the engagement funding provided by the UK Government."

These proposals significantly depart from the current arrangement which locates decision making within a Community Siting Partnership in which relevant local authorities participate and Government, RWMD and regulators observe and advise as requested. Throughout the proposed revised process Government would assume a more active role while RWMD (CD p33) "...should play a leading role in helping local communities engage in the siting process to understand the range of issues related to the implementation of a GDF." NuLeAF would welcome member views on these proposed changes.

Should a Steering Group identify potential surface or subsurface areas for development, then RWMD would apply for planning permission for borehole investigation. More than one area could be progressed if more than one area is engaged in the 'focusing' phase of MRWS work. As now, DECC say (CD p31) "On receipt of the relevant consents and permits, the

next 5-10 years of the 'Focusing' phase would be spent assessing the geological suitability of the subsurface rock volume(s) proposed to potentially host a GDF, and planning in detail the layout and design of both the surface and subsurface facilities."

Other roles

Regulators too (CD p34) "...should play a more prominent role, engaging with communities throughout the siting process... to explain their role...and increase public confidence in the stringent safety and environmental protection standards that a GDF will have to meet in order to obtain a nuclear site licence and environmental permits." This echoes NuLeAF's advice during the 'Call for Evidence'.

To further ensure the robustness of a new GDF siting process DECC says (p35) that it is "...exploring potential ways in which technical statements (made by bodies such as the UK Government, RWMD, or campaigning organisations) could be independently verified and peer reviewed." CoRWM, a 'pool' of independent peer reviewers, or an 'entirely new advisory body' are being considered as alternative methods to achieve this.

DECC also says (CD p33) "...it is keen to explore options for more effective engagement with NGOs and other groups, some of whom may be opposed to the implementation of geological disposal."

Geological Settings

DECC say (CD p37) "There is no 'best' or 'most suitable' generic type of geology... Although there is a large amount of information available to provide a robust understanding of the broad geology of the UK at a national and regional scale, this information and understanding is not consistent at the more detailed local level, particularly at depth." DECC therefore propose firstly to publish information on regional geology *in advance* of any 'call' for volunteers. This would help areas decide if there was a basis for engaging in discussion with Government about MRWS.

This would be followed by a more detailed report in the 'Learning Phase'. DECC say (CD p38) that this will: provide factual information; "Enable any community that was interested to access peer reviewed, information on the geology of their area from a trusted source early; provide a balanced and open appraisal of local geo-scientific factors, in relation to local socio-economic and environmental factors; and "Allow a community to know early in the siting process whether there was a reasonable chance of identifying a suitable geological volume in their area."

As now, RWMD would consider any location against its six high level site selection criteria i.e. geological setting; potential impact on people; potential impact on the natural environment and landscape; effect on local socio-economic conditions; provision of transport and infrastructure; cost, timing and ease of implementation.

In its response to the 'Call for Evidence' NuLeAF suggested "...there may be a case for reviewing the approach to successful programmes overseas where identification of geology preceded identification of volunteer communities..." and pointed to its own research that "...recommended national high level screening to identify areas of geological potential, to be followed by more focused engagement by Government with communities in areas of potential."

Planning

The MRWS White Paper is not specific about responsibility for GDF development consent. DECC now propose to clarify the position, and bring more certainty to the siting process, by giving the Planning Inspectorate responsibility under the Planning Act 2008 nationally significant infrastructure planning regime. DECC contend that GDF development is clearly an infrastructure development of national significance and point to the requirements on the developer, RWMD, (CD p43) "...to consult local communities, local authorities, statutory bodies and other relevant groups...". As indicated above, DECC say (CD p44) "...we would go further and require a demonstration of community support before development could proceed."

DECC continue (CD p44) saying "Subject to the outcome of this consultation, the UK Government will set out how it will bring a GDF within the definition of a 'Nationally Significant Infrastructure Project' in section 14(1) of the Planning Act 2008." This will also include ancillary development e.g. permissions for borehole investigations. Subject to the outcome of consultation (CD p44) "...the UK Government also proposes that it will publish a National Policy Statement, specifically for a GDF. The National Policy Statement would be subjected to an Appraisal of Sustainability (AoS) in accordance with section 5(3) of the Planning Act 2008, and the AoS would be carried out in such a way that it also satisfies the requirements of the Strategic Environmental Assessment (SEA) Directive. A separate Habitats Regulation Assessment (HRA) would be produced."

DECC further advise (CD p45) "With regard to the timing and nature of the National Policy Statement, the UK Government's preliminary view is that a 'generic' (i.e. not site specific) National Policy Statement would be developed shortly after the revised siting process is launched."

In its response to the 'Call for Evidence' NuLeAF suggested designation of a GDF as a Nationally Significant Infrastructure Project was an option, and that a National Policy Statement could embed commitments to a 'right of withdrawal' and 'community benefits' that presently have no legislative underpinning.

Inventory

DECC says (CD p48) that "...Government intends to clearly define a single Baseline Inventory for the purposes of geological disposal." This will comprise: Intermediate Level Radioactive Waste (ILW) arising in England and Wales; Low Level Radioactive Waste (LLW) unsuitable for disposal at the LLW repository; High Level Radioactive Waste (HLW) arising at Sellafield; ILW and spent fuels from the defence programme (excluding those covered by Scottish Higher Activity Waste Policy); spent fuels from existing reactors and other sites; uranium stocks; spent fuel and ILW from any new nuclear build programme; and spent mixed oxide fuel (MOX) and any residual plutonium not suitable for MOX fuel fabrication.

This inventory (CD p49) "...will be translated into waste volumes, waste package numbers and transport movements on a periodic basis by the NDA and made available as part of the planned information programme."

Whilst bringing clarity to the inventory, DECC also effectively set the new 'baseline' at the upper limit of what potentially could be disposed under the existing MRWS approach. In response to the 'Call for Evidence' NuLeAF recommended DECC consider "...wastes that

could be diverted from GDF disposal...with a view to minimising the 'foot print' and impacts." NuLeAF would welcome member views on DECC's proposals for the 'baseline' inventory.

Community Benefits

DECC says (CD p52) "...Government recognises the need for greater clarity about the purpose, amount, recipient bodies, delivery mechanism and timing of community benefits (and) recognises that in order to be meaningful for communities, a proportion of community benefits should be released before the start of underground operations."

DECC propose (CD p52) that under a revised GDF siting process "...Government will make clear that community benefits are additional to Engagement Funding (the funding that the UK Government provides to meet the costs of any community engaging in the siting process), and additional to any payments required of the developer, as identified by the planning process." "(It) would make clear, early in a revised siting process, the potential scale of community benefits."

Further (CD p52) "Government would also create (potentially through legislation) a community fund, into which it would begin paying during the 'Focusing' phase (and) would only be able to retrieve these funds if a GDF was not constructed in the community. The remainder of the available funds would be paid, including into the community fund, following the final decision to construct a GDF and during the early years of underground operations."

These proposals reflect comments in NuLeAF's submission to the 'Call for Evidence'.

Socio-Economic and Environmental Effects

DECC say that in the light of lessons learned in Cumbria and elsewhere it proposes that (CD p55) "...the strategy for environmental assessment and sustainability appraisal should be changed...bringing forward certain elements...and starting to address local environmental and socio-economic issues earlier in the process." In addition to AoS and HRA requirements under the proposed Nationally Significant Infrastructure Project regime, and as indicated above, "If there was mutual interest in learning more in a given area then, during the 'Learning' phase, the UK Government and RWMD would work with interested communities to develop a better understanding of the environmental and socio-economic implications..."

Should a siting process "...start[s] to focus on a relatively limited number of 'more suitable' sites, then more detailed environmental and socio-economic studies would be needed to support decisions about which of these sites to take forward...". Formal Environmental Impact Assessments "...would need to be developed at a site-specific level to support planning applications for boreholes and, subsequently, for underground operations."

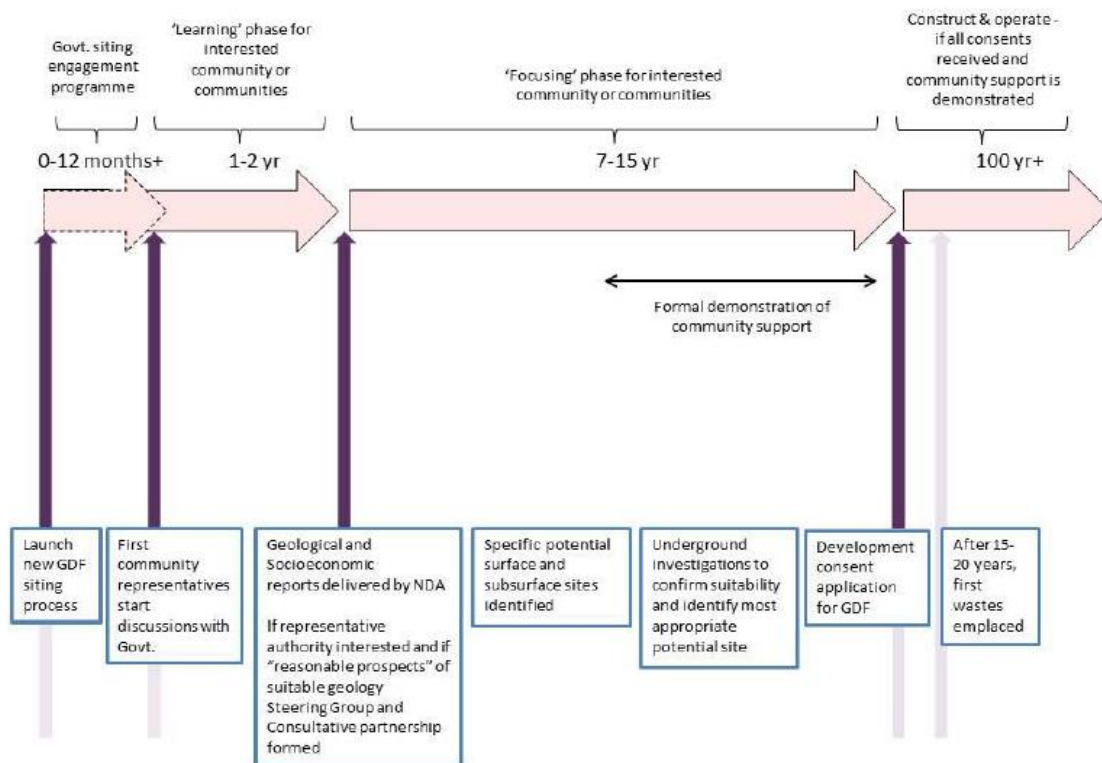
In Wales"... the Welsh Government will include socio-economic and environmental matters in its consideration of any policy change which may be necessary..." should any Welsh community wish to discuss hosting a GDF.

Timeline

DECC aim to publish a revised MRWS siting process by the Spring of 2014, following consideration of consultation responses. A 12 month public awareness campaign to build

public support for MRWS policy is then proposed before inviting potentially interested communities to begin engaging with a revised GDF siting process in 2015.

An illustrative timeline for a revised GDF siting process is set out in the consultation document at p7 and p23 (copied below) though DECC stress "...the phases will take as long as necessary so that all involved are content."



Consultation Questions & How to Respond

DECC seek responses to the following questions:

1. *Do you agree that a test of public support should be taken before the representative authority loses the Right of Withdrawal? If so, what do you think would be the most appropriate means of testing public support, and when should it take place? If you do not agree with the need for such a test, please explain why.*
2. *Do you agree with the proposed amendments to decision making within the MRWS siting process? If not, how would you modify the proposed phased approach, or, alternatively, what different approach would you propose? Please explain your reasoning.*
3. *Do you agree with this approach to revising roles in the siting process set out in the White Paper? If not, what alternative approach would you propose and why?*
4. *Do you agree with this proposed approach to assessing geological suitability as part of the MRWS siting process? If not, what alternative approach would you propose and why?*
5. *Do you agree with this proposed approach to planning for a GDF? If not, what alternative approach would you propose and why?*

6. *Do you agree with this clarification of the inventory for geological disposal – and how this will be communicated with the volunteer host community? If not, what alternative approach would you propose and why?*
7. *Do you endorse the proposed approach on community benefits associated with a GDF? If not, what alternative approach would you propose and why?*
8. *Do you agree with the proposed approach to addressing potential socio-economic and environmental effects that might come from hosting a GDF? If not, what alternative approach would you propose and why?*
9. *Do you have any other comments?*

Member views in response to these questions would be welcome by Friday 22 November to inform NuLeAF's own consultation response. These should be sent to Stewart Kemp at the address below.

The consultation closes on 5 December 2013. Responses can be submitted on-lineⁱⁱⁱ or by email to: radioactivewaste@decc.gov.uk. Welsh authorities are asked to copy their comments to: RPPmailbox@wales.gsi.gov.uk. Relevant postal addresses are provided at p58 and p59 of the consultation paper.

Local Authorities Seminar

In support of the consultation DECC are arranging a number of public deliberative events and stakeholder meetings. A specific event will be organised for local authorities in November. The precise date and venue has yet to be decided but NuLeAF will alert members when details become available.

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ⁱ [Review of the Siting Process for a Geological Disposal Facility](#), September 2013, DECC

ⁱⁱ [Call for Evidence by DECC on MRWS process](#), June 2013, NuLeAF

ⁱⁱⁱ [DECC consultation response webpage](#)