

# THE USE OF PLANNING OBLIGATIONS IN RADIOACTIVE WASTE MANAGEMENT



## Briefing Paper 6

September 2020

### 1. Introduction

NuLeAF seeks delivery of the maximum economic, social and environmental value for the communities that host nuclear decommissioning facilities and infrastructure, as set out in **Policy Statement 5** on socio-economics and **Policy Statement 7** on community benefits<sup>1</sup>.

One component of an overall package of benefits is the use of mitigation measures, delivered through the planning system, to enhance the positive impacts of development and reduce negative consequences. These are most commonly delivered through **Section 106 agreements** although the **Community Infrastructure Levy** can also be used. The Government is currently considering replacing these two mechanisms with a single Infrastructure Levy and this briefing paper will be updated once there is clarity on any changes to the framework.<sup>2</sup>

There are a number of examples of where planning obligations have delivered value to nuclear communities and NuLeAF would like to see the use of this mechanism extended where appropriate. This Briefing Paper explains the use of mitigation measures in a nuclear context, setting out:

- What Section 106 Agreements and the Community Infrastructure Levy are;
- The use of planning obligations in radioactive waste management; and
- Conclusions.

This paper has been developed with NuLeAF's Radioactive Waste Planning Group (RWPG) consisting of senior land use and waste planners from across England and Wales. NuLeAF has also developed **Briefing Paper 13**<sup>3</sup> which looks at the wider issues around Community Benefits; and **Briefing Paper 11**<sup>4</sup> covering the issues around radioactive waste management and local plans.

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<sup>1</sup> <https://www.nuleaf.org.uk/document-library/policy-statements>

<sup>2</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/907647/MH-CLG-Planning-Consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907647/MH-CLG-Planning-Consultation.pdf)

<sup>3</sup> <https://www.nuleaf.org.uk/wp-content/uploads/2020/02/Briefing-Paper-13-Community-benefits-final.pdf>

<sup>4</sup> <https://www.nuleaf.org.uk/wp-content/uploads/2020/06/BP11-2020-Radwaste-and-local-plans.pdf>

## 2. Section 106 Agreements and the Community Infrastructure Levy

Section 106 of the **Town and Country Planning Act 1990**<sup>5</sup>, amended in 2013<sup>6</sup>, provides that a developer may enter into a planning obligation enforceable by the local planning authority or other party to the agreement.

These planning obligations, commonly referred to as **Section 106 agreements** or **'developer contributions'**, can be entered into by a person with an interest in the land (e.g. a developer) and the local planning authority; or via a unilateral undertaking entered into by a person with an interest in the land, without the local planning authority. Planning obligations are legally binding and enforceable, though a unilateral undertaking cannot bind the local planning authority because they are not party to it.

Section 106 applies across England and Wales though within a different planning context. The latest guidance in each country is provided here<sup>7</sup> and here<sup>8</sup>. Planning obligations should only be sought when they meet the following test, namely that they are:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

These tests are set out in regulation 122<sup>9</sup> (as amended by the 2011 and 2019 Regulations) and as policy tests in the **National Planning Policy Framework** (para 54 to 57)<sup>10</sup>.

They can be used to secure a contribution from a developer to compensate for loss or damage created by the development, or to mitigate the impact of a development. Where compensation or mitigation is required, planning obligations should be based on a clear and up to date assessment of the impacts likely to be created by development and the nature and scale of the measures needed to address these impacts.

The guidance notes that planning obligations assist in benefitting local communities and support the provision of local infrastructure. Local communities should therefore be involved in the setting of policies for contributions expected from development.

The **Community Infrastructure Levy (CIL)**<sup>11</sup> is another tool that can be employed by local authorities to deliver the infrastructure needed to support local development. Any new development that is not a building which people normally go into (including inspecting plant and machinery) and that creates net additional 'gross internal area' of 100 square metres or more is potentially liable for CIL. The Levy only applies in areas where a local planning authority (mainly a district or unitary

<sup>5</sup> <https://www.legislation.gov.uk/ukpga/1990/8/section/106>

<sup>6</sup> <https://www.legislation.gov.uk/uksi/2013/147/contents/made>

<sup>7</sup> <https://www.gov.uk/guidance/planning-obligations>

<sup>8</sup> <https://senedd.wales/Research%20Documents/19-024/24%20-%20Web%20-%20English.pdf>

<sup>9</sup> <https://www.legislation.gov.uk/uksi/2010/948/regulation/122/made>

<sup>10</sup> <https://www.gov.uk/guidance/national-planning-policy-framework/4-decision-making#para56>

<sup>11</sup> <https://www.gov.uk/guidance/community-infrastructure-levy>

authority) has consulted on, and approved, a charging schedule which sets out its levy rates. This must be published on its website.

Charges from the CIL are based on simple formulae which relate the charge to the size and character of the development. The proceeds of the levy must be spent on new or improved infrastructure such as schools, transport and flood defences, that are 'needed to support the development of its area'.<sup>12</sup>

The Community Infrastructure Levy (CIL) has not replaced Section 106 agreements. However, S106 agreements, in terms of developer contributions, should be focused on addressing the specific mitigation required by a new development, while CIL can address the broader impacts. The balance between the use of S106 and CIL will be different depending on the nature of the area and the type of development being undertaken.

### 3. Use of planning obligations in Radioactive Waste Management

The decommissioning of nuclear power stations and the management of legacy wastes create a range of adverse economic, social and environmental impacts on host communities.

These impacts can be mitigated through the use of **planning obligations** or recognised through the provision of **community benefits packages**. These are separate mechanisms and can be employed together, complementing each other, or in isolation. Any community benefits package will be in addition to mitigation secured through planning obligations or other relevant legal agreements.

Both planning obligations and community benefits can and have been used in relation to nuclear sites and waste management. In terms of planning obligations, current examples in the UK are:

#### i. Copeland Community Fund

The national **Low-Level Waste Repository (LLWR)** has acted as a disposal site for LLW since 1959. To extend the capacity of the site a new, engineered vault (Vault 9) was completed in 2010.

As part of the planning process, the NDA made a unilateral undertaking to Cumbria County Council, under S106, to establish a fund recognising the contribution that the local community will provide to the nation by hosting the LLWR and the '*adverse impacts and stigma caused by hosting this unique Low Level Waste Repository*'.<sup>13</sup>

The provisions in the undertaking are stated to be planning obligations for the purposes of Section 106 of the 1990 Act. The undertaking<sup>14</sup> further states that:

*In entering this planning obligation the NDA recognises that although the design of the Development has had due regard to minimising local impacts*

<sup>12</sup> [The Community Infrastructure Levy Regulations 2010, regulation 59](#)

<sup>13</sup> <https://www.nuleaf.org.uk/wp-content/uploads/2014/02/LLWR-Community-Fund-Case-Study-2-Nov-08.pdf>

<sup>14</sup> <https://cumbria.gov.uk/elibrary/Content/Internet/538/755/1929/17716/17717/3956211492.PDF>

*and although the total benefit from the Development in terms of contributing to meeting a national need will outweigh any residual adverse impacts of the Development it is appropriate to make financial provision to meet local needs arising from the Development including assisting participation of the community in the Development and to mitigate the residual economic and other impacts that will be caused by the Development. (para 12)*

A **Copeland Community Fund**<sup>15</sup> was established, with LLWR contributing an initial endowment of £10 million to the fund and providing an additional £1.5 million per year, for the period of operation of the repository. The income or capital from the fund is available to be spent on a wide range of projects supporting work and skills, health and wellbeing, infrastructure, environmental enhancement and support for young people.

It was the first agreement of its kind in the UK. The Fund is administered by a Board involving representatives of Cumbria County Council, Copeland Borough Council, NDA and LLWR along with two independent members. A staff team of 6 oversees the administration of the fund.

## **ii. Caithness and North Sutherland Fund**

As part of the remediation of the NDA's Dounreay site on the north coast of Scotland, consent was given to the construction of six LLW disposal vaults. The cost of the construction of these and the subsequent management is estimated at £110 million<sup>16</sup>.

The first vault was completed in 2014 with the aim being that all LLW will be packaged for long term storage or disposal by 2025. Once the vaults have been sealed and the surface restored, access to parts of the site will be restricted until 2300 to allow the radioactivity to decay.

As a planning condition of the site, a package of community support was agreed under a Section 75 agreement, the Scottish equivalent of a S106<sup>17</sup>. This benefits package recognises the acceptance by Highland Council of a strategically important facility at Dounreay and is intended to increase the attractiveness of Caithness & North Sutherland as a place to live, work and invest. It places a particular emphasis on achieving environment, social, culture and infrastructure improvements.

Under this agreement, an initial £1 million was made available in 2011, when construction began, with additional payments of £300,000 per annum being made for 10 years from 2014, when the facility became operational.

Funding is dispersed through the **Caithness and North Sutherland Fund**<sup>18</sup> and is overseen by a Board comprising 3 Highland Councillors along with 6 community representatives. Grants of between £1,000 and £30,000 are available.

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<sup>15</sup> <https://copelandcommunityfund.co.uk/>

<sup>16</sup> <https://www.neimagazine.com/features/featurebuilding-dounreays-llw-vaults-4435386/>

<sup>17</sup> <http://www.dounreaystakeholdergroup.org/files/downloads/download1736.pdf>

<sup>18</sup> <https://www.cnsf.org.uk/>

### iii. King's Cliffe

The **East Northants Resource Management Facility (ENREF)** is an engineered landfill located at Kings Cliffe in Northamptonshire. As part of the planning permission for the disposal of Low-Level radioactive Waste (LLW) and Naturally Occurring Radioactive Material (NORM) at the site, a Section 106 agreement was reached between the operator, Augean plc, and the local authority.

The agreement acknowledges that risks to health or the environment from the disposal of LLW are low. Instead the Community Fund is intended to provide:

*'positive financial support for various social and economic projects in the community in order to counter-balance any perceived impacts of the Development together with any negative perceptions within the local community from the presence of LLW on the Land'.*

The type of projects supported through the Community Fund are defined as<sup>19</sup>:

*(a) the maintenance, repair or restoration of a building open to the public;  
(b) the provision, maintenance or improvement of a public park or other public amenity.*

*Reasonable running costs (including salaries and expenses) associated with the above could also be supported. The projects would have to be within a 10 mile radius of the site and any projects supported are not operated with a view to profit.'*

Through this, payments of £5 per tonne of radioactive waste are made into a local Community Fund<sup>20</sup>. The fund is administered by Northamptonshire County Council and supports a range of community projects.

### iv. Sizewell B

S106 has also been used in relation to the operational **Sizewell B** nuclear plant. In July 2011 the Minister for Energy granted approval for the construction of a dry fuel store for spent fuel at the site, with this being completed in 2016. Suffolk County Council's argument that construction of the store would delay site restoration and release of part of the site was accepted, and a mitigation package comprising an initial payment of £120,000 and annual payments of £20,000 for the subsequent 60 year or until the store is decommissioned was set up under an S106 Agreement.

Monies are managed by a Funding Group involving EDF, Suffolk County Council and East Suffolk Council in consultation with the Suffolk Coast and Heaths Unit. Funds are used to improve the amenity and accessibility of the Area of Outstanding Natural Beauty in which Sizewell is located, and the contribution is reviewed every 5 years against the Consumer Price Index to ensure value is not eroded.

<sup>19</sup><https://cmis.northamptonshire.gov.uk/cmis5live/Document.ashx?czJKcaeAi5tUJFL1DTL2UE4zNRBcoShgo=e02VK4fGEs6iPnU0fYTNhdVgcwrZpUsVITPqwzmZWGdUcxEJ5IAbmQ%3D%3D&rUzwRPF%2BZ3zd4E7Ikn8Lyw%3D%3D=pwRE6AGJFLDNih225F5QMaQWCTPHwdhUfCZ%2FLUQzqA2uL5jNRG4jdQ%3D%3D&mCTIbCubSFfXsDGW9IXnlG%3D%3D=hFfIUdN3100%3D&kCx1AnS9%2FpWZQ40DXFvdEw%3D%3D=hFfIUdN3100%3D&uJovDxwdjMPoYv%2BAJvYtyA%3D%3D=ctNJf55vVA%3D&FgPIIEJYlotS%2BYGoBiSolA%3D%3D=NHdURQburHA%3D&d9Qjjoag1Pd993isyOJqFvmyB7X0CSQK=ctNJf55vVA%3D&WGewmoAfeNR9xqBux0r1Q8Za60lavYmz=ctNJf55vVA%3D&WGewmoAfeNQ16B2MHuCPMRKZMwaG1PaO=ctNJf55vVA%3D>

<sup>20</sup> <https://www.makingmusic.org.uk/funding-opportunity/east-northants-resource-management-facility-fund-kings-cliffe>

## 4. Conclusions

The examples highlighted above illustrate the potential for local planning authorities to use S106 (and potentially the CIL) to address actual or perceived negative impacts resulting from nuclear waste management, and to enhance the local economy, society or environment.

With regard to new developments, for example waste stores and/or disposal, S106 and the CIL are mechanisms that local authorities may wish to consider in situations whether proposals meet the required planning tests. **NuLeAF will use our RWPG to share practice and inform thinking on how best to use developer contribution agreements within a nuclear context.**

To provide a basis and rationale for negotiation of agreements **it will be helpful for relevant Local and Waste Plans to address issues relating to impacts arising from decommissioning and radioactive waste and the need for their mitigation, perhaps outlining the potential nature of impacts in the subtext.**

Any agreement around 'developer contributions' **does not preclude the agreement of wider community benefit packages around nuclear installations, and local authorities should consider the scope for both.**

NuLeAF believes that a **clear, consistent, fair and ambitious approach is required to the provision of community benefits for nuclear decommissioning and radioactive waste management in the UK.** This should recognise the impacts (real and perceived) on communities and their role in hosting nuclear legacy on behalf of the nation, including (a) nuclear decommissioning sites (b) long term nuclear waste stores (c) radioactive waste management and disposal infrastructure such as landfill sites and (d) radioactive waste disposed of or left in-situ or on-site.

Looking forward, Government is consulting on changes to the planning system in England, with their proposals including reform of planning obligations and the CIL, replacing both with a value based flat rate charge. This will not affect any existing agreements for developer contributions but may alter the framework and scope for future agreements and funding.

The current consultation is very much focussed on simplifying the system for the development of new housing. It remains unclear how the new approach might be used in relation to radioactive waste management and it is hard to see how such a mechanism could be used in relation to, for example, a Geological Disposal Facility, an Intermediate Level Waste (ILW) store or a landfill site. **NuLeAF will respond to the consultation and seek clarification from Government on how they believe the Planning White Paper proposals could be effectively applied to nuclear decommissioning and waste management infrastructure.**