Response of Above Derwent Parish Council to DECC's Consultation on a Revised Siting Process for a GDF, adopted by the Parish Council at a meeting on 27th November 2013.

Question 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.

We agree that a test of public support should be taken, and we consider that referenda are the appropriate method. However, the consultation paper presents a false dilemma when suggesting that the test could be made either before or after intrusive investigations (but not both). We believe that more than one referendum should be held, as follows:

- Before entry into the Focusing Phase
- In the Focusing Phase, before intrusive investigations
- Before the final decision to construct a repository at a particular site

The RoW should be surrendered only after the final referendum: otherwise, the statement that "the potential host community should maintain a Right of Withdrawal throughout the siting process" (2.22) is contradicted. The suggestion that the RoW should be surrendered before intrusive investigations, at a time when so much uncertainty would remain, is completely unacceptable.

As we are proposing comparatively local (rather than national) referenda, we do not accept that the cost of three referenda is significant in relation to the development costs of a repository.

We propose that the referenda be held at county/unitary authority level, because it would not be possible to construct a repository without substantial impacts in the wider area.

In order to justify the assertion that "the potential host community would have agreed to host a GDF" (2.40; emphasis added) the final referendum must demonstrate majority support in the potential host community as defined on Page 5 of the White Paper ("a small geographically-defined area … a town or village"). While the location of the potential host community would not be clear until the end of the Focusing Phase, we propose that any parish or town failing to show majority support in any of the tests of community support should be removed from further consideration at that point.

Far from being "artificial", the three decision points listed above have potentially significant impacts on communities and there must be a mandate for taking them. For example:

- Entry into the Focusing Phase could expose communities to blight because potential purchasers of businesses and properties may be discouraged by the knowledge that the area may be the future location for a repository
- By definition, "intrusive" investigations would have significant negative impacts: dust, noise, increased traffic and visual impacts are some examples.
- The agreement to construct the repository and to surrender the RoW is the final and irreversible decision. In the words of the Final Report of the West Cumbria MRWS

Partnership, it commits "the host area to a nuclear future for many generations to come …" (P. 156).

Question 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.

We strongly disagree with several aspects of these proposals.

Paragraph 2.44 allows "any local bodies" to approach Government to express an interest. Government then seeks the views of the representative authority "on how to progress". This is an unjustly one-sided approach: it makes no provision for "local bodies" to indicate that they have concluded that a GDF could not "make a meaningful contribution to the socioeconomic welfare" (2.50) of their community. A Principal Authority is not the same as a "community"; nor, even at District Council level, is there likely to be a single homogeneous community. How is the representative authority to make a balanced judgment if it is unaware that there are communities within its area that do not wish to participate? There needs to be a mechanism whereby communities can indicate to their representative authority and to Government that they do not wish to volunteer.

In 2.43, what is meant by "progressed"? In the interests of transparency, we suggest that, at the re-launch of the process, Government publishes a date before which "Government will not open the process for requests from interested communities to begin the 'Learning' phase ….".

In 2.49, it is only "expected that the fact that the representative authority had consented to the commissioning of the reports would be made public". It should be required that it be made public. Moreover, it should be required that the representative authority should give a reasonable period of notice to the public of its intention to commission the reports. During this period of notice, it should be open to any parish or town council to signal that its community is not willing to volunteer, and the representative authority should then be required to remove that town or parish from the area that is taken into the Learning Phase.

The 'Learning' phase, which has clear parallels with Stages 2 and 3 of the process set out in the White Paper, is very much less transparent than, and inferior to, the process carried out in Cumbria, flawed though that was. The West Cumbria MRWS Partnership held meetings in public, published documents on its website and included a range of stakeholders. The proposal is to replace such a Partnership with discussions involving only three parties: the representative authority, Government and the RWMD (the developer). There is no provision for other stakeholders to influence the decisions that would be made and this is not a "more transparent" (2.2) decision-making process: it seems overwhelmingly likely to foster less public confidence, rather than more. It is, therefore, a backward step in comparison with the White Paper.

We strongly disagree with the proposal (2.53) that the Leader of the representative authority should Chair the Steering Group because it introduces the possibility of a real or perceived conflict of interest. We propose that the Chair should be an independent figure of national standing.

We strongly disagree with the proposal (2.56) that the representative authority, the Government and RWMD should be members of the Consultative Partnership. One factor that undermined public

confidence in the West Cumbria MRWS Partnership was that the DMBs were members of it. Many considered that the Partnership was the DMBs advising themselves. These three parties should be excluded from membership of the Consultative Partnership. However, the Consultative Partnership should have the power to summon members of the Steering Group to appear before them to hold them to account.

We strongly disagree with the proposal to relegate the County Council to a mere consultee in areas with two tiers of Principal Authority. It is acknowledged in the White Paper that one meaning of "community" is "wider local interests". It is inconceivable that a GDF could be built without significant impacts on highways and other strategic assets that are the responsibility of County Councils. Moreover, it is illogical that, in Wales and many parts of England (where unitary authorities exist), formal decisions are made at County level whilst in two-tier areas, the County is excluded from decision making.

While the statement in 2.29 that "District Councils have full-time staff" is correct, it does not follow that District Councils have "the full-time staff or resources required to manage a process or project on the scale of the development of a GDF" (2.28) and we see no evidence that they are equipped to "guide UK Government and RWMD […] on the execution of the Focusing phase" (2.53). It is more likely that a County Council or unitary authority could. Therefore, we are not persuaded that District Councils are the lowest practical level of government that could provide such guidance. The County/Unitary Council should be a member of the Steering Group, but not of the Consultative Partnership; the District Council (where one exists) should be a member of the Consultative Partnership, but not of the Steering Group.

The argument used to dismiss Parish Councils in 2.28 is specious and the implication of 2.29 that some councillors occupy their seats by a process that is not democratic is insulting. There is a defined procedure when a vacancy arises on a Parish Council: it must be advertised and parishioners have the right to petition for an election. Should they not choose to use their democratic right the Parish Council, as a last resort, may co-opt. The General Power of Competence is available only to Parish Councils with a minimum % of councillors who are elected. The requirement is that at least two thirds must have been elected, not that all must have been. Moreover, co-opted members are accountable to the public in the same way as elected ones: they are subject to an electoral process after a maximum of four years.

The argument that Parish Councils do not have the resources "to manage a process or project on the scale of a GDF" is not a reason to exclude them from all decision making. We agree that Parish Councils are not the lowest practical level to make the decisions required in managing such a project. We contend that they are the lowest practical level that could decide to volunteer (or not) the area within their parish boundary and to hold the Right of Withdrawal on behalf of the community they represent. A Parish Council no more requires full-time staff and resources to make those decisions than does an individual who takes part in the test of community support. Vesting the RoW in the hands of the parish or town council is the only way that can give confidence to the public that "the potential host community should maintain a Right of Withdrawal throughout the siting process" (2.22; emphasis added).

Another issue that undermined public confidence in the process in Cumbria was that only members of the District Council Executives and the County Council Cabinet made the decisions on whether to proceed to Stage 4. Yet the public has no direct influence over the membership of these bodies:

their members are not "directly elected" to those positions. Where formal decisions are to be made by representative authorities, they should only be made by full Council meetings, as envisaged in the White Paper.

We think that, far from being a weakness in the process set out in the White Paper, the provision for multiple decision-making points was one of its strengths. The so-called "more continuous" process envisaged in this consultation is likely to be seen as a "slippery slope" from the beginning of the Learning Phase. It is likely to foster less public confidence, rather than more.

Question 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?

We support, in principle, the proposal for a "national public awareness and engagement programme" (2.13) and the statement in 2.47 that there "would be no initial limit to the number of communities that might consent to the commissioning of these reports ….". The Government's commitment to this will be judged by results. Should the outcome be that only Allerdale andCopeland District Councils come forward, the revised process will inspire derision rather than trust and the public perception that Government is simply moving the goalposts because the result in Cumbria was inconvenient will be perceived to have been vindicated.

In paragraphs 2.78 and 2.79, there is confusion about the role of the "member who would also act as the channel for exchange of information" (2.78) and the Chair, through whom "the Steering Group would engage directly with the Consultative Partnership" (2.79). The proposals appear muddled and not properly thought through.

We do not think that the fact that the Steering Group is free to determine the membership of the Consultative Partnership (2.54) will inspire public trust and confidence. The fact that the three parties who comprise the Steering Group are a subset of those comprising the Consultative Partnership further obscures the relationship between these groups and is likely to lead to the public perception that the Consultative Partnership is merely a puppet that must be kept under control by the Steering Group.

The peer reviewing envisaged in 2.84 and 2.85 is, in principle, welcome. However, in order to secure public confidence, it is essential that Government (or any other group who are members of the Steering Group) has no role in appointing any of the reviewers.

Paragraphs 2.84 and 2.85 provide no commitment by Government to fund peer reviews. If potential "host communities must have access to the information and advice they need" (3.2), they must have access to a reasonable amount of funding.

Question 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?

We do not. We are still convinced that the search for a repository site should begin by a national study to identify the areas with the most promising geology before engaging with communities. Whilst it is true that "there is no 'best' or 'most suitable' generic type of geology" (3.9), it does not follow that all kinds of geology are equally promising. While it may be true that "screening at the national level carries the risk of not identifying areas which are potentially suitable at the local scale"

(3.9), that risk would surely be much increased by starting the search with criteria that have no relevance to geology. The consultation paper says that "initial screening has limited usefulness". This may or may not be true, but it nevertheless has more usefulness than the fact that a District Council has volunteered: that has no geological or hydrogeological significance whatsoever.

While the proposal to provide more geological information at launch (3.14, 3.15) is interesting, the proposed material appears to be at a very high level and it is difficult to see how members of the public would be able to interpret its implications for the prospects of finding a GDF site in their area.

It is not clear what geological information would be provided by the BGS during the Learning Phase. Paragraph 3.16 states that "RWMD would commission BGS to carry out an assessment of the known geological information on the area …" and refers to 2.50. However, 2.50 states that "This includes the application of the current unsuitability criteria, complemented (if necessary) by new aerial geophysical investigations". The result of the "application of the current unsuitability criteria" in Cumbria certainly did not "provide sufficient information to make an early judgment on whether there are 'reasonable prospects' of any particular geological setting being suitable for a GDF" (3.19). Nor was it intended to, because its aim was to eliminate unsuitable areas, and not to identify potentially suitable ones. We are not persuaded that "new aerial geophysical investigations" (which, in any case, would be carried out only "if necessary") can bridge the gap between eliminating obviously unsuitable areas and supplying "sufficient information to make an early judgment on whether there are 'reasonable prospects' of any particular geological setting being suitable for a GDF" . It needs to be made much clearer what additional information would be provided by the BGS. At the end of Stage 3 of the MRWS process in Cumbria, there were many who felt that there was insufficient information about geology. We are not persuaded that a community would know significantly more on completion of the proposed Learning Phase.

We are concerned when we read (3.9) that "the engineered elements can be tailored …". The public needs to be confident that Government understands that sound geology is not a luxury. We need to be confident that the developers of a repository will not attempt to engineer their way out of problems posed by unsuitable geology, given that the White Paper asserts that some of the waste will remain hazardous for "hundreds of thousands of years".

Question 5. Do you agree with this proposed approach to planning for a GDF? If not, what alternative approach would you propose and why?

We strongly disagree with the proposal (3.33) that the DECC Secretary of State would "make the ultimate decision on whether to grant or refuse planning consent". There is clearly the danger of an actual or perceived conflict of interest here, and public perception is likely to be that DECC are proposing a system in which they would be able to grant planning permission to themselves. We do not understand how this would increase public trust and confidence in the siting process.

Question 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?

We do not think that the clarification will foster greater confidence in the process. While reduction of uncertainty is, in principle, welcome, the clarification reveals that Government is now firmly proposing to ignore the fact that:

"CoRWM's proposals apply only to committed wastes …a new process will be required

to examine and justify any proposals for the management of wastes arising from new build"

A community considering hosting a GDF confined to legacy waste could have reasonable confidence that they were not making an open-ended commitment. CoRWM's view in its 2006 report was that "communities are unlikely to express a willingness to participate in a siting process unless they have a clear understanding of the waste inventory they may be asked to accept". Once the Government proposes that waste from reactors not yet built can be emplaced in the GDF, the commitment does become open-ended. Why would a community have confidence that the next generation of reactors, be it a 10GW or a 16GW fleet, would be the last generation? Why would they be confident that the underground footprint of the repository would not grow indefinitely?

Recognising the concerns that potential host communities might have over uncertainties in inventory, the West Cumbria MRWS Partnership's Final Report advocates a process in which, even after surrender of the RoW, proposed changes in the inventory could be negotiated with host communities and DMBs (Inventory Principle 2, P. 79). In light of the potentially open-ended commitment referred to above, it is essential that Government commits to some form of negotiated change control arrangements, including the right of veto on the part of host communities and representative authorities. The continuing uncertainty about the treatment of Plutonium reinforces the need for a negotiated change control process.

In addition to estimates of volume, package numbers and transport movements, Government should provide predicted footprints and timescales for the operational life of the repository.

In 3.64 it is stated that "Import of radioactive waste into the UK might only be allowable …" (emphasis added). The use of "might" does not inspire confidence.

Question 7. Do you endorse the proposed approach on community benefits associated with a GDF? If not, what alternative approach would you propose and why?

It is not clear how the proposed community fund would be administered. If it was administered by the representative authority, there would clearly need to be provision for payment of benefits to affected communities outside of that authority's area. In an area with two-tier local government, there would have to be a mechanism to allow the County Council to use funds for improvements to strategic assets, such as highways. Is the County Council to apply to the District Council for a grant? How is the District Council equipped to take the strategic view required to prioritise requests for funding ? What mandate does it have to fund projects that lie entirely outside of its area? We think that a single community fund is not appropriate, and these considerations again suggest that the idea that a District Council could be the representative authority is misguided.

We note that, in the Final Report of the West Cumbria MRWS Partnership, it is stated that "it would be inappropriate for explorations about benefits to run ahead of explorations about geology and site suitability/safety" (12.11). However, Paragraph 4.13 of the consultation paper appears to be in conflict with this since it states:

"During the 'Learning phase', participating communities and their neighbouring local authorities could begin to scope projects for funding through community benefits, informed by the study on socio-economic prospects for the area."

Prior to the Focusing Phase in the proposed revised process, very little information would be available about "geology and site suitability/safety" and there is a danger that the proposed scoping of projects would be seen as an inducement or bribe to continue to the Focusing Phase.

In its Final Report, the West Cumbria MRWS Partnership stated (Principle 5) that "all reasonable steps should be taken to mitigate and/or compensate for any impacts arising from the siting process itself …" (P. 176). As community benefits would not have been paid until after the final decision to construct the GDF in the previous version of the process, it was never clear how potentially negative impacts arising during Stages 4 and 5 would have been mitigated or compensated for. It is still not clear: paragraph 4.15 points out that the funds paid into the community fund could be retrieved "if a GDF was not constructed in the community". As such monies might be retrieved if, for example, the area's geology was eventually found to be unsuitable, then it would not be prudent to spend them until it was certain that the GDF would be constructed. This may be 10 or more years after intrusive investigations had begun in the area. By that time, businesses may have failed and jobs lost.

The operational life of the repository, particularly now that Government proposes to emplace new-build waste, is likely to be of the order of at least 150 years. Therefore, the statement that "the remainder of the available funds would be paid […] during the early years of underground operations" (4.16) is disappointing. A longer-term commitment to the payment of community benefits is required.

Question 8. Do you agree with the proposed approach to addressing potential socioeconomic, health and transport issues?

We are not persuaded that RWMD, as the developer of the proposed GDF, is an appropriate body to carry out "focused studies on socioeconomic, health and transport issues" (4.29). The public is likely to view RWMD as being too close to Government. These studies should be carried out by independent bodies and peer reviewed.

Paragraph 4.27 mentions in passing the concerns that have been expressed about GDF construction in designated landscapes, such as National Parks. We remain convinced that such a development would be contrary to the purposes of designated areas. We are persuaded that, to select a site in a designated area without having first eliminated all other options nationally would be subject to strong legal challenge. Designated areas should be ruled strictly out of consideration from the launch of the revised process.

Question 9. Do you have any other comments?

One of the reasons given by Cumbria County Council on January 30th for not proceeding to Stage 4 was that the Right of Withdrawal was not "enshrined in statute", and we endorse that view. The current consultation paper does nothing to remedy that uncertainty and this serves only to undermine public confidence in the Government's commitment to "voluntarism".

We concur with the statement that "In an approach based on voluntarism and partnership, the community is key. The siting process must be tailored to be responsive to the interests, the concerns, the desires and the requirements of potential host communities" (4.2; emphasis added). The White Paper defines "Host Community" as:

the community in which any facility will be built. This will be a small geographically defined area and include the population of that area and the owners of the land. For example, it could be a town or village

However, the consultation paper repeatedly equates "community" with "local authority". No provision is made anywhere for a "small geographically-defined area … town or village" to avoid being forcibly volunteered by its local authority, or to withdraw from the process should it decide that hosting a repository would be contrary to its socioeconomic well-being. Without such control you do not have "voluntarism" in any sense that would be recognised as such by the public.

Paragraph 1.1 of the consultation states that UK government policy for managing higher activity radioactive waste is "through geological disposal, coupled with safe and secure interim storage …". However, recent high-profile criticism of storage facilities at Sellafield, including from the Chair of the Public Accounts Committee, shows that Government is not carrying out that part of its policy. How does Government expect communities to be confident about engaging in a siting process for a GDF? Much more investment in safe and secure interim storage is required at Sellafield if the Government wishes to be trusted by potential host communities for a GDF.

As a whole, the consultation paper sets out a version of the siting process that, far from being improved, is significantly less likely to inspire trust and confidence. In particular:

- The "more continuous" process appears to be a slippery slope
- The continuing refusal of Government to enshrine the RoW in statute undermines confidence
- The removal of County Councils from decision making in two-tier areas on the pretext of "subsidiarity" is perceived as a cynical movement of the goalposts and is regarded as tailor-made for Cumbria
- The weak arguments for excluding Parish Councils from any decision making undermine confidence that Government is committed to the statement made in Paragraph 2.22
- The removal of all local parties except the representative authority from what were Stages 2 and 3 (now the 'Learning Phase') reduces public transparency
- The proposed Consultative Partnership, whose members include and are chosen by the parties comprising the Steering Group, is unlikely to be credible as a body with any influence over decision making
- The proposal that the Steering Group be chaired by the Leader of the representative authority introduces a potential for actual or perceived conflict of interest
- The proposal that the DECC Sops should make the final decisions about planning consent introduces a potential for actual or perceived conflict of interest and may be regarded as the DECC giving itself planning permission.
- Government's continuing refusal to consider geology before seeking volunteers fosters the view that a site has been predetermined.