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Copeland Borough Council
The Copeland Centre,
Catherine Street, Whitehaven,
Cumbria CA28 7SJ

tel: 0845 054 8600
fax: 01946 59 83 03
email: info@copeland.gov.uk
web: www.copeland.gov.uk

Department of Energy and
Climate Change
3 Whitehall Place
London
SW1A 2HD

Submitted electronically

My Ref: JG
Date: 4 December 2013

Dear Sirs,

REVIEW OF THE SITING PROCESS FOR A GEOLOGICAL DISPOSAL FACILITY
THE CONSULTATION RESPONSE OF COPELAND BOROUGH COUNCIL, DECEMBER 2013

I am pleased to be able to provide the attached which is the response of the Borough Council to the above consultation.

Yours sincerely,

John Groves
Head of Nuclear, Energy and Planning
Tel:
Email:

REVIEW OF THE SITING PROCESS FOR A GEOLOGICAL DISPOSAL FACILITY

THE CONSULTATION RESPONSE OF COPELAND BOROUGH COUNCIL, DECEMBER 2013

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.*

Summary of key issues

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 'extensive opinion polling, citizens' panels, community hearings and a referendum' as possible mechanisms to gauge community support. DECC further suggest "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.

Summary of Council view

The Borough Council believe that there *should* be a test of public support prior to a representative authority using and/or losing the Right of Withdrawal (RoW) and that such a test should take place after the completion of the planning consent process. This would ensure that if a recommendation was made to proceed under the planning consent process then a Minister could only approve the development subject to a final test of public support. This Council is of the view that the DCO process will bring to the fore all facts about the impacts of the development and will also test the adequacy of the consultation undertaken by the promoter/developer. Only after this has been completed should a test of public support be varied out. This process will allow the community to remain confident that the RoW will remain in place until construction begins, the Planning Inspectorate would be able to consider the aspirations of the community in its own deliberations of the development consent application and the community will not have a development which is unacceptable to them imposed upon them.

There is also a view that public support should be secured *prior* to initial engagement in the process, to provide the necessary mandate to the representative authority to express an interest. Key to ensuring a meaningful understanding of what represents public support will be the definition of the

community which is being asked to provide a view. DECC should recognise within the revised process that the task of seeking agreement around defining the community in this context will require significant input from stakeholders . A significant benefit of the revised process outlined is the *intent* to inform the public on issues of geology and community benefit before a decision to progress to the focussing stage is made. However the Council has reservations as to the level of information, specifically on geology, that would be made available (see Q4 below).

Whilst a referendum provides scope for testing public support, the Council view is that it has weaknesses, again relating to the issue surrounding the definition of community. There is concern that a referendum could be dominated by a vociferous minority and would not ultimately truly reflect the views of the wider community. There would be justification for a final test of support to be determined by way of a local referendum if robust and regular independent polling and other survey methods failed to demonstrate lack of support over an agreed timescale. Local agreement would be required well in advance (and possibly as early as the 'learning phase') about both the methods to be used and the geographic area over which opinions should be canvassed and support should be measured, recognising that the impact of a GDF may not be contained within the administrative boundaries of one representative authority.

Finally the Council would remind DECC that within the West Cumbria MRWS process a substabtial programme of public and stakeholder engagement was undertaken and periodic tests of support measured. We would recommend that something similar is included as an option for local partners in the revised process.

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.*

Summary of key issues

As with the current MRWS siting process, DECC say 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 ended the 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.

The 'Learning' Phase

Any 'local body' can indicate their interest to the UK Government in a revised GDF siting process, but "… 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 "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 "…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' "…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 "…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."
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 "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."

Summary of Council view

The Borough Council view is that the adoption of learning and focusing stages is supported, although there is some concern that the transition from learning to focusing could be viewed as equivalent to the decision point to move from stage 3 to stage 4 of the former MRWS process. The approach would be highly dependent on the quality of the advocacy provided through the RWMD of the NDA and the ability to ensure that stakeholders and the wider public understand the issues. In addition there will need to be a continuous process of local public and stakeholder engagement agreed early in the learning phase and continued throughout the process in order to measure support for on-

going investigation. There should also be greater clarity over the role of the Consultative Partnership and whether the lack of any decision making power removes scope to secure community support.

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?*

Summary of key issues

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 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 of a new GDF siting process.

DECC say "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."

Representative Authority

As indicated above, DECC 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 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 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." Regulators too "…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."
To further ensure the robustness of a new GDF siting process DECC says 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 "…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."

Summary of Council view

The Council is broadly supportive of the revised roles in the siting process but has a number of areas of concern that need to be addressed. Firstly the Council believes that Government and its agencies need to take a more pro-active role in promoting the concept of, and the need for, a Geological Disposal Facility to the UK populace. Secondly in the focusing phase DECC should seek to clarify he role of local government generally and confirm that the make up and structure of the Steering Group in this stage is able to reflect local needs, as this will help to build trust and confidence in the process at the local level. DECC therefore need to confirm that the potential for local flexibility will exist in the new process as this will be key to making this phase work. There should also be a clear statement that ALL costs of local participation are fully met by Government.

The Borough Council believes that partnership working will need to be at the heart of any future siting process. Whilst this Council considers that in any new process the RoW should be held by a district authority in two-tier areas, there should be an opportunity to include a County authority (and other local community stakeholder groups including parish councils as agreed locally) in the decision making process, ie the Steering Group, of that process. Arrangements for how such a Steering Group would be constituted and function should be down to local partners to agree and these need to be agreed early in the learning phase. This Council is also concerned about the proposal to include DECC/NDA/RWMD as part of the Steering Group arrangements. This appears to provide decision making powers on 'the developer' and may appear to potentially undermine the voluntary principle underpinning the process. In any future siting partnership this Council believes that the Government and its agencies should participate through the provision of technical advice and assessments to the local partners.

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?*

Summary of key issues

Geological Settings

DECC say "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 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.

Summary of Council view

We are broadly supportive of the arrangements in the new process although the revised process to assess geological suitability raises a number of questions. There is no clear definition or explanation of what is meant by 'geological suitability' and for the communities of West Cumbria it is not clear what additional geological information would be made available from the learning phase. Similarly there is a lack of clarity as to what information would be available on geology after the focusing phase when the matter of geology may well be an important factor in the test for community support and provide the community with an assessment of the prospects of finding suitable geology within the area, before a siting decision is taken and the Right of Withdrawal relinquished. There also needs to be advice provided of the potential impact of deep drilling and the potential provision of a GDF under sensitive environmental areas such as National Parks.

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

Summary of key issues

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, "…to consult local communities, local authorities, statutory bodies and other relevant groups…". As indicated above, DECC say "…we would go further and require a demonstration of community support before development could proceed."

DECC continue 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 "…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 "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."

Summary of Council view

It is agreed that any application for a GDF should be dealt with as a NSIP., however, there is still some concern over whether boreholes should also be considered as a NSIP application or as a planning application considered by a local authority. An option is to consider an application for boreholes as a NSIP application but independent of an application for a GDF. The information gathered from this process could help inform the community as to the suitability of the geology of the area and inform their decision as to whether to move forward in the process. It is also the view of the Council that any application for associated development is also considered through the NSIPs process. It is recognised that an advantage of any boreholes/associated development application being dealt with as a NSIP is that it would avoid any confusion in public perception that if a local planning authority granted permission then the public may get confused and assume this pre-determined any decision on the suitability of a GDF.

This Council welcomes the proposal to develop a generic National Policy Statement for a Geological Disposal Facility and the opportunity that this provides to consult on sustainability assessments and embedding commitments to voluntarism, community benefits and the Right of Withdrawal.

It is also recognised that funding and resourcing the assessment of any NSIP would put a lot of pressure on Local Authorities existing resources and the cost of assessing any such DCO would need to be covered by the developer and this should be agreed in legislation. In order to expedite this process funding should be made available (via a Planning Performance Agreement (PPA) or similar) as soon as possible at the commencement of the planning process to enable local authorities to be adequately resourced to assess the impacts of the proposals, and for that system to be transparent and robust.

In addition this Council would encourage DECC to seek clarify the role of local authority's in the new process, specifically around planning. The local authority will be engaged in the Development Consent Order process providing inputs to assess the impacts of the developer's proposals. This process may need to commence fairly early in the focussing phase and local authorities will want to be sure that such a role can co-exist with their role as representative authority without any fear of conflict.

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?*

Summary of key issues

Inventory

DECC says 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 "…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.

Summary of Council view

There appears to still be confusion over the inventory. The Council would remind DECC that the final report of the West Cumbria MRWS Partnership included a range of principles for dealing with the issues of inventory. These were broadly welcomed and should be re-considered by DECC as part of the new process. The baseline inventory in the new process now appears to be the 'upper inventory from the previous process. DECC should clearly state what they intend to include in the inventory in the new process. The upper inventory includes high level legacy wastes but also includes new build wastes and spent fuels from existing reactors. The Council view is that the principles of waste minimisation and the waste hierarchy should be applied to the inventory. The Council advocates the reuse, reduction and recycling of nuclear waste and plutonium and does not believe that any fuel that can be recycled should be included in the inventory. This will reduce the size of the inventory, reduce the footprint and impact of a GDF and potentially reduce the challenges of implementation.

The local community should be consulted on any proposed amendments in the inventory in the future. Also the Representative Authority should be involved in the final sign off an acceptable inventory list and the inventory should be monitored ensuring that all waste is clearly identified and traceable.

The Council believe that any such GDF should be used for UK waste only. But where Government enter into any arrangement to dispose of international waste even through substitution then this should only be included as part of the inventory with the agreement of local partners, and any revenue generated by the GDF through accepting such waste must be directly linked to the community benefit fund.

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

Summary of key issues

Community Benefits

DECC "…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 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 "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."

Summary of Council view

The Borough Council is largely supportive of the Governments revised approach to community benefits, including the early release of some funds. However the Council also believes that the principles and scale of any community benefit contribution should be enshrined in legislation and that any community benefit needs to be in addition to funding required for impact mitigation and infrastructure associated with the provision of a GDF. The Council expect that any benefits package would reflect local needs and demands and be flexible enough to respond to those needs. The benefits package should also be of a scale that recognises the national role that such a facility will provide and substantial enough to counterbalance any national or local negative perceptions associated with the siting of a GDF over a sustained period. Community benefits need to create a legacy for the local area well after the project is completed, with the mechanism for distribution determined by the local community. The Council also expects that agreement around community benefits should be reached early in the process and well before the Right of Withdrawal expires.

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?*

Summary of key issues

Socio-Economic and Environmental Effects

DECC say that in the light of lessons learned in Cumbria and elsewhere it proposes that "…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 Assessment of Sustainability and Habitats Regulation Assessment 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."

Summary of Council view

The Council supports the suggestion within the revised process that there should be an opportunity earlier within the process to develop a better understanding of the environmental and socio-economic implications of the proposal, including a full appraisal of the workforce and skills implications for the local community and an appreciation of associated developments that may also be expected. This information will help in determining if an area would wish to proceed to the focussing phase. From this full understanding the Council takes the view that any identified impacts should be mitigated *before* the development is implemented and included within an overarching implementation plan for the project.

9. *Do you have any other comments?*

Uncertainties
The final report of the West Cumbria MRWS Partership highlighted a range of uncertainties in the siting process. The Council would encourage DECC to re-visit these issues as part of the new process.

Role of Regulators
The Council agrees with DECC that regulators should play a more prominent role in the revised process to increase public confidence in the safety and environmental protection standards that a GDF will have to meet to obtain the necessary licences to operate.

Independent oversight – the role of CORWM or another body?
DECC say that the Committee on Radioactive Waste Management (CoRWM), a'pool' of independent peer reviewers, or an 'entirely new advisory body' are being considered as alternative methods to achieve independent oversight. In the Council's view a new body under clear independent leadership is likely to be the best way to establish credibility with the public and to signal during a national awareness programme that a revised GDF siting process represents a fresh start.

Plan B?
The Council considers that Government should clarify what its 'Plan B' proposals would look like, and how they would be consulted upon, should it not prove possible to identify a volunteer community and progress a revised a GDF siting process through the MRWS policy. This should form part of a national debate about GDF implementation during a national awareness raising programme.

Trust
The West Cumbria MRWS Partnership noted extensively the lack of trust in and between the various parties in the process. The Council believe that the new process should explicitly identify this as a key issue for the success of any local partnership arrangements.