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*Supporting the nuclear policy development, town & country planning, sustainability assessment and stakeholder engagement needs of the UK's Nuclear Industry, Local and Central Government*

### **IMPLEMENTING RADIOACTIVE WASTE MANAGEMENT**

# **SITING and PLANNING in PARTNERSHIP**

## **An Assessment for the Nuclear Legacy Advisory Forum**

**APRIL 2007**

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## **IMPLEMENTING RADIOACTIVE WASTE MANAGEMENT: SITING and PLANNING in PARTNERSHIP**

**An Assessment for NuLeAF  
April 2007**

**Prepared by: John Hetherington, B.A. M.R.T.P.I**

Hetherington Nuclear Consulting  
under Contract to the Nuclear Legacy Advisory Forum (NuLeAF)  
The Local Government Association's Special Interest Group  
on Radioactive Waste Management and Nuclear Decommissioning

For and on behalf of

Hetherington Nuclear Consulting

Approved for Issue

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## 1. Introduction

1.1 The UK Government and devolved administrations are developing an Implementation Framework which will set out: "... how potential suitable sites would be identified and assessed" as well as "... the key decision-making points and how possible withdrawal at such points could be managed."<sup>1</sup>

1.2 Government recognises that "Development and construction of a geological disposal facility will take several decades ... In developing and implementing geological disposal, regard will be paid to consultation and legislative requirements, including strategic environmental assessment, environmental permitting and planning law."<sup>2</sup> The Nuclear Legacy Advisory Forum (NuLeAF), for whom this Report has been prepared, has welcomed the Government's recognition that an approach focused through Siting Partnerships needs to mesh creatively with the UK planning system.

1.3 NuLeAF has commissioned this Report to underpin the preparation of its own series of Briefing Papers [BP], particularly BP6 covering the issue of how a new siting process, based on community willingness to participate through Siting Partnerships, can be integrated with the UK planning system. It will also set out its thinking on how a "right to withdraw" can be coordinated with key steps in the planning process.

1.4 This Report also aims to inform ongoing discussion between Government and NuLeAF on these issues. It proposes an outline Partnership Agreement to enable communities "expressing a willingness to participate" to engage with a staged siting process, necessarily bringing together: scientific investigation, safety regulation, planning policy and development control, partnership informed decision making and eventual construction and operation of the waste management facility.

1.5 This Report first summarises NuLeAF's current thinking, based on European and UK experience<sup>3</sup>, discussion at a series of regional seminars<sup>4</sup> and feedback from member authorities. It makes frequent reference to the Briefing Papers (based on NuLeAF's earlier Policy Statements) which have already been prepared:

- Proposals for Siting Partnerships (Briefing Paper 3)<sup>5</sup>
- Initial Invitations and Local Decision-Making about Participation (Briefing Paper 4)<sup>6</sup>
- Funding Participation and Enhancing Community Well-Being (Briefing Paper 5)<sup>7</sup>
- Siting, Planning Requirements and Rights of Withdrawal (Briefing Paper 6)<sup>8</sup>

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<sup>1</sup> UK Government and Devolved Administrations, 'Response to the Report and Recommendations from the Committee of Radioactive Waste Management', DEFRA, 25 October 2006:

<http://www.defra.gov.uk/environment/radioactivity/waste/pdf/corwm-govresponse.pdf>

<sup>2</sup> Ibid – page 8

<sup>3</sup> NuLeAF Briefing Paper 2, 'Proposals for Siting Partnerships', October 06. This reviews a major European study on partnership working in siting radioactive waste management facilities (COWAM's 'Roadmap for Local Committee Construction', draft, June 2006) and studies of UK experience of local strategic partnerships by the Comptroller and Auditor General, the ODPM, and I&DeA.

<sup>4</sup> NuLeAF, 'Managing the Nuclear Legacy – Issues for Local Government', Regional Seminars Report, December 06.

<sup>5</sup> NuLeAF Briefing Paper 3 - Developing the Implementation Framework: Proposals for Siting Partnerships, January 07

<sup>6</sup> NuLeAF Briefing Paper 4 - Developing the Implementation Framework: Initial Invitations and Local Decision-making about Participation, February 2007

<sup>7</sup> NuLeAF Briefing Paper 5 - Funding Participation and Enhancing Community Well-Being, March 2007

## 2. Context

2.1 This Report focuses mainly on the later period of implementation, after communities expressing a 'willingness to participate' have been identified (covered in BP4) and the 'Siting Partnerships' have been formed (covered in BP3). It addresses how a siting process coordinated through Siting Partnerships could work in practice; working alongside the UK planning system on the one hand, and the NDA and its implementing Contractor (the applicant) on the other. It also addresses the issue of how and when the "Right of Withdrawal" could be exercised, not covered in depth in these earlier papers. The Local Authorities involved in partnership initiation will also be Planning Authorities<sup>9</sup>.

2.2 In June 2006 NuLeAF developed its first policy response to the Government Consultation on the CoRWM Recommendations<sup>10</sup>. It was informed by an important Study on Implementation Issues commissioned by NuLeAF from consultants<sup>11</sup>.

2.3 Briefing Paper 3 (BP3) explains the importance of the concept of "partnership", which is at the heart of the CoRWM recommendations. BP3 defines the mission of a Siting Partnership, setting out a set of principles to guide the work of a Siting Partnership, the core elements of its role, its decision-making responsibilities and national arrangements for funding. These key roles described in BP3 require to be interwoven with the policy and regulatory roles of the UK Planning system. This will involve a range of national, regional and local bodies operating within or alongside the lengthy siting process, focused through the Siting Partnerships.

2.4 Of particular relevance, BP 3 proposes that "The implementation framework must contain a commitment on the part of Government that Siting Partnerships (and local/national decision-makers) will be allowed sufficient time at each step to undertake their roles. For Siting Partnerships, many steps will involve various combinations of scrutiny, research<sup>12</sup>, public information, community engagement and advisory roles, as well as providing input to planning policy and commenting on specific siting proposals. Some steps will involve consideration of whether to recommend continued participation in, or withdrawal from, the siting process."

2.5 BP3 also proposed that the implementation framework should set out Government expectations. In particular, it is proposed that a Siting Partnership will appoint full time staff to provide appropriate project management and organisational support. They will need to collaborate closely with the NDA's implementing contractor and planning officers advising the Local Authorities.

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<sup>8</sup> NuLeAF Briefing Paper 6 - Siting, Planning Requirements and Rights of Withdrawal – April 2007

<sup>9</sup> BP3 notes that, "For areas that cross Local Authority boundaries or have two tier local government, NuLeAF recommends that the implementation framework set out the Government's expectation that local negotiations will take place so that agreement is reached about how local authorities will take decisions about Partnership recommendations as the siting process progresses." This will be particularly important where Minerals and Waste Planning Authorities are at County Level and other Local Development Frameworks are at District Level.

<sup>10</sup> NuLeAF, 'Implementing Policy on the Long Term Management of Radioactive Wastes', Policy Statement 1, June 06

<sup>11</sup> See Enviro, 'The Implementation of a National Radioactive Waste Management Programme in the UK: Implications for Local Communities and Local Authorities', report for NuLeAF, June 06

<sup>12</sup> Including review of science cases developed for NDA and its implementing contractor

2.6 Briefing Paper 4 addresses the issue of “invitations and local decision making about participation”. NuLeAF’s initial view on the issue and response to invitations to participate was outlined in NuLeAF’s June 2006 Policy Statement. This stated that:

Invitations to participate in a siting process for the development of a new facility should be sent to the local authorities in the areas of interest. On receipt of the invitations, the local authorities should initiate widespread discussions to identify community views about participation. A decision to participate in the siting process should be based on an expressed willingness to do so on the part of directly affected communities. The decision whether to participate should be taken by the relevant local authority (unitary areas) or local authorities (two-tier areas), after engagement with local and neighbouring communities.

2.7 BP4 expanded on the details of that policy, particularly on steps prior to the issue of a formal invitation to participate and the issue of how the decision to participate would be taken by the relevant local authority/ies after engagement with local communities, potential partners, and neighbouring authorities.

2.8 Briefing Paper 5 (BP5) develops NuLeAF’s approach on ‘Funding Participation and Enhancing Community Well-Being’. BP5 comments that “NuLeAF welcomes the Government’s commitment to exploring what might be included in any Participation and Benefits Packages.” NuLeAF’s initial view on Participation and Benefits Packages was outlined in its policy statement in June 2006. This stated that:

In order to empower and incentivise local authorities and communities, support packages should be available.

These packages should include:

- Financial support to meet the costs of effective participation in the siting process. For example, covering the costs of local partnerships, and their scrutiny, research and consultation roles.
- Benefits to compensate for impacts to the area. Packages of benefits would be negotiated within an agreed national framework, with an emphasis on contributing to the sustainable development of the affected area and the well-being of local communities and their descendents. It is envisaged that the benefits would start to become available once facility development was underway.

2.9 BP5 makes detailed proposals about the purposes and rationale for support packages, including both Participation and Benefits Packages. It also makes proposals concerning the scale, timing and geographic scope of a Benefits Package and how the packages will be defined and funded.

2.10 On scope, BP5 proposes that Participation Packages should meet the costs incurred through three main periods of local activity: pre-invitation to participate, post-invitation/pre-decision to participate, and post-decision to participate (establishing and running Siting Partnerships). These stages are relevant to the approach adopted in this Report.

### **3. The Scope of this Report**

3.1 The following extracts from Policy Statement 1, alongside those quoted above on which BPs 3 to 5 were based, summarise the position then adopted in relation to topics now taken forward in this Report:

#### **Step Wise Decision Making Process**

NuLeAF believes that the process for siting long-term radioactive waste management facilities should involve clearly defined decision milestones that are integrated with evolving planning and regulatory processes, including requirements for sustainability appraisal and strategic environmental assessment.

During the course of a siting process it may be necessary to review, amend or develop Local Development Frameworks (LDFs) or Regional Spatial Strategies (RSSs). In order to clarify what is required of the developer in the siting process, the Government should issue a Planning Policy Statement specific to long-term radioactive waste management facilities. Further work is required on: the integration of potential siting processes with planning and regulatory requirements; the need for development of LDFs or RSSs; and the preparation of a Planning Policy Statement.

#### **Rights of Withdrawal**

The siting process must include a right of withdrawal on the part of participating communities. A decision to withdraw would be made by the relevant local authority/ies, following engagement with local communities, and in the light of material evidence that set out the case for withdrawal.

The implementing body would respect the decision of the local authority/ies to withdraw and would remove the affected area from the siting process. It is envisaged that the decision to participate and the right of withdrawal would be set out in a formal agreement between the implementing body and the relevant local authority/ies.

#### **Agreement Models**

This might take the form, for example, of a Partnership Agreement. This would specify the sort of conditions under which a right of withdrawal could be exercised (for example, if evidence became available that the proposed site was unlikely to be acceptable on environmental or safety grounds). The formal agreement should also identify the milestone beyond which a right of withdrawal would no longer be available. This might, for example, be when full planning permission is granted for the development of the facility.

3.2 This Report, therefore:

- analyses the context provided by the proposed interlinked step wise process based on a "willingness to participate" and "siting partnership" approach, referencing relevant conclusions of BP3 & BP4, while touching on issues of planning gain in the context of funding for affected communities (BP5),
- reviews the policy and planning control regimes operating across the UK<sup>13</sup>

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<sup>13</sup> This Paper does not separately identify the differences with the Scottish Planning System



and suggests how they should dovetail with the Siting Partnerships approach set out in BP3,

- suggests how the policy development and development control processes within the UK planning system, as they presently operate but may evolve<sup>14</sup>, should interface with geological repository siting,
- proposes the roles local government planners (as well as Local Authority nuclear issues specialists) should play,
- Reviews and proposes how 'Rights of Withdrawal' should be exercised, assessing the implications for and timing of the Planning process, and
- Proposes a format for a Model Partnership Agreement which should reflect all the key roles, including those required of the UK planning system in the context of Radioactive Waste.

3.3 The Report concludes by drawing together the key issues requiring resolution and thus needing further discussion with CoRWM, the NDA and Government before Government finalises its approach.

3.4 Appendix 1 develops a provisional Partnership Agreement. Figure 1 shows diagrammatically the links between the proposed siting process and UK Planning and Environmental Assessment procedures. Figure 2 sets the role of the planning system within the wider perspective of the overall process steps required, focused on the key role of the Siting Partnerships<sup>15</sup>.

## 4 The UK Planning System

### The UK Planning System

4.1 The Planning System as currently operative in the UK forms the basis for the following summary of the main features of applicable planning law and process. However there are significant variations in Wales and Scotland. Planning is concerned with the spatial allocation and use of land. It focuses on the location and quality of social, economic and environmental change. It operates at all the different possible scales of activity, from large-scale national or regional strategies to the more localised design and organisation of towns, villages and neighbourhoods<sup>16</sup>.

4.2 The Planning system operates under statute<sup>17</sup> and is a devolved function<sup>18</sup>. Planning operates through two interlinked processes – policy setting and control of

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<sup>14</sup> Barker Final Report – Planning (Dec 2006): <http://www.communities.gov.uk/index.asp?id=1504875>

<sup>15</sup> The various steps covered in the full Figure 2 should not be taken as representing the views of NuLeAF, but the Figure has been prepared to illustrate the wide range of interlinking processes of discussion, agreement and decision likely to be necessary to secure implementation.

<sup>16</sup> Source – Royal Town Planning Institute summary of the role and purpose of spatial planning – RTPI Website: [http://www.rtpi.org.uk/what\\_planning\\_does/](http://www.rtpi.org.uk/what_planning_does/)

<sup>17</sup> Legislation is relatively up to date – Planning and Compensation Act 2004: <http://www.opsi.gov.uk/acts/acts2004/20040005.htm>

<sup>18</sup> The Planning and Compensation Act applies to Wales (with specific Welsh provisions in Part 6) – including provision for a Welsh Spatial Plan. In Scotland a new Planning Act was recently adopted (December 2006), the 'Planning etc. (Scotland) Act 2006, Act of the Scottish Parliament 17':

[http://www.opsi.gov.uk/legislation/scotland/acts2006/asp\\_20060017\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/acts2006/asp_20060017_en.pdf)

specific developments. Formally adopted policy is the predominant “material consideration” in determining a planning application, thus the system is “plan-led”. The applicable Planning Acts are supported by Government Guidance and Circulars covering a variety of topics. In England, under the term Planning Policy Statements (PPS)<sup>19</sup>, they are gradually replacing the previous non-statutory Planning Policy Guidance (PPG) notes. The PPS provide a first tier of policy<sup>20</sup>. Under the new system in England (coming into force since 2004), the primary focus of plan making is regional and local. The Regional Spatial Strategy replaces the former regional plans system (Regional Planning Guidance – RPG) and looks at a range of regional issues and priorities and how these impact spatially in the region. The Local Development Framework (LDF) is the most important aspect of the new system. The LDF is a series of documents that outline the local planning strategy<sup>21</sup> - which for waste issues (including radioactive waste) take the form described at 4.3. They include information on specific sites earmarked for development or conservation. They also include sustainable development and environmental assessments for the area, as well setting out the long-term vision. Taken as a whole, the Local Development Framework (LDF) defines the local authority's policy on how and when land will be developed. A Statement included as part of the plan must set out how the community was involved in the planning process. A Siting Partnership would likely become the key focus for community engagement on radioactive waste issues in areas that have expressed a “willingness to participate”.

4.3 A particular type of LDF – the Minerals and Waste Development Framework (MWDF) - covers minerals and waste policy. In two tier areas minerals and waste matters are the responsibility of the County Planning Authority.<sup>22,23</sup> The policies developed at regional, county and local level are subject to independent examination in public and are subject to intervention and possible determination by the Secretary of State. Generally, although the policy at both levels is “spatial” that it is to say concerned with the allocation and use of land, typical policy is criteria based – setting out a series of criteria against which proposals for specific development will be judged through the development control system.

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<sup>19</sup>A list of current Planning Policy Statements is found on the DCLG website at:

<http://www.communities.gov.uk/index.asp?id=1143803>. The most relevant to this paper are PPS10 – Planning for Sustainable Waste Management, PPS11 - Regional Spatial Strategies, and PPS12 – Local Development Frameworks.

<sup>20</sup>The Government's White Paper: Policy for the Long Term Management of Solid Low Level Radioactive Waste in the United Kingdom, was published on 26 March 2007. It indicates that, “The NDA's Strategy and Annual Plans will provide guidance for national, regional and local planning authorities as necessary in the preparation of planning strategies and their appraisal. They will also form the basis for the NDA's contractors moving forward to apply for the planning and regulatory approvals required for any necessary facilities.” This implies a key role for the NDA in framing planning policy, and would be a significant power if applied to higher activity wastes and repository siting.

<sup>21</sup>The key documents required initially are:

- a Core Strategy that sets out the overall strategy and vision of the plan;
- Site Allocation Policies that identify proposed sites for developments;
- Generic Development Control Policies that explain the types of policies that would be used in considering planning applications;
- Preferred Options Maps that show the sites that are identified in the Site Allocations Document and are intended as the basis for the Proposals Map Development Plan Document which will be prepared later.
- Statement of Community Involvement

<sup>22</sup>The ODPM (DC LG) White Paper published on 26 October 2006, ‘Strong and Prosperous Communities’, provided further encouragement to the creation of a single tier local government system in England. See:

<http://www.communities.gov.uk/index.asp?id=1503999>

<sup>23</sup> Also see - Invitation to all councils in England: to submit proposals for unitary status; to pioneer, as pathfinders, new two-tier models: [http://www.communities.gov.uk/pub/93/InvitationtocouncilsinEngland\\_id1504093.pdf](http://www.communities.gov.uk/pub/93/InvitationtocouncilsinEngland_id1504093.pdf)

4.4 To give a flavour of the content and timescale for preparing and obtaining approval for these type of documents, a Minerals and Waste Development Framework may be cited as most relevant to the issue of radioactive waste management. It consists of four elements – a Core Strategy, Site Allocation Policies, Generic Development Control Policies and a Proposals Map. They can include Area Action plans and / or Supplementary Planning Documents. They must incorporate Sustainability Appraisal (SA) and Strategic Environmental Assessment (SEA). In addition, how the Council intends and has involved the community will be set out in a Statement of Community Engagement. An Annual Monitoring Report must also be completed. They will be subject to examination for and by the Secretary of State. An example of an up to date timetable for the process is set out below<sup>24</sup>.

- Commence preparation, June 2005.
- Ongoing consultations with stakeholders – during 2006
- Preferred Options Pre-submission consultation, March / April 2007.
- Preferred Options submitted to Secretary of State, July 2007.
- Submitted Preferred Options consultation July/August 2007.
- Pre-examination meeting November 2007.
- Public Examination January 2008.
- Inspector's Report July 2008.
- Adoption and Publication, September 2008.

4.5 This implies a start to adoption time of just over 3 years<sup>25</sup>. The proposed "planned" approach set out in this Report implies several passes through this process – though it is expected that use of an Area Action Plan and then a Supplementary Planning Document could provide for a speedier process – as they would sit within the main MWDF. However, the Public Examination would likely produce significant public interest. The advantage is that each step is then "banked" in the progression towards eventual repository development as being in conformity with an up to date policy Framework.

4.6 The Planning Process triggers the requirement, originating under European Law, to prepare both Strategic Environmental Assessment (SEA)<sup>26</sup> and project specific Environmental Assessment (EA)<sup>27</sup>. SEA is required where alternative methods and sites need to be compared – and is applied at the spatial planning stage. However, SEA also applies in respect of government policy, or where developers are selecting between optional courses of action, such as the NDA optioneering between radioactive waste facility sites. The requirement is on both developer and planning authority to agree the scoping of the SEA or EA, with exchange of scoping documents a feature of the process for handling most major development proposals. In addition, Sustainability Appraisal

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<sup>24</sup> Cumbria County Council, Minerals and Waste Development Scheme March 2006:  
<http://www.cumbria.gov.uk/elibrary/Content/Internet/538/755/1929/1982/3879710558.pdf>

<sup>25</sup> Barker proposes 18-24 months – see page 11

<sup>26</sup> For SEA Guidance see: <http://www.communities.gov.uk/index.asp?id=1143275>

<sup>27</sup> For EA Guidance see: <http://www.communities.gov.uk/index.asp?id=1143248>

(SA) is also a requirement for spatial plans.<sup>28</sup>

4.7 The National Siting Process, as proposed by CoRWM<sup>29</sup>, has been reviewed in respect of its interface with this UK planning system, in two short but informative Technical Notes produced by Nirex<sup>30</sup>. They also link the radioactive waste siting process with SEA / EIA requirements. These two Notes have helped inform the approach adopted in this Report. Figure 1 (see page 51) links the main features of the UK Planning System, the legal requirements in respect of SEA and EA and the roles of the Siting Partnerships alongside the NDA working through its Implementing Contractor for Higher Activity Radioactive Waste.

- 4.8 The two Nirex Notes point to a number of important recommendations, that:
- 1 A helpful output from the Managing Radioactive Waste Safely (MRWS) process would be a national Planning Policy Statement (PPS) covering radioactive waste
  - 2 Enabling statements should be included in Regional Spatial Strategies (RSSs).
  - 3 Provision for local investigations and the radioactive waste management facility should be included in the LDF or MWDF – as a key Development Plan Document.
  - 4 A Specific Supplementary Planning Document (SPD) may be useful to set out policy for the local facility, particularly in two tier areas
  - 5 The whole approach should be based on a “partnership agreement” between the NDA and the “local community” – under which the NDA’s Contractor would produce Environmental Reports and Statements (at key stages) in support of planning applications and a Statement of Community Involvement (reflecting the partnership process).

4.9 Broadly speaking, these steps are appropriate and could be endorsed by NuLeAF as the key components of the interface with the Planning and Environmental Regulation Systems. Their approach provides the organising framework for this Report.

### **Future Changes to the Planning System**

4.10 The UK Planning System is, however, likely to undergo further change in the handling of major infrastructure projects / large applications and investigations during the timescale of a Repository Project (25 - 40 years) and other changes are expected much sooner.

4.11 The particular issues arising from the recent Barker Review of the Planning System<sup>31</sup> – which proposes significant streamlining of the planning system would clearly

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<sup>28</sup> SA is mandatory under the Planning and Compulsory Purchase Act 2004, and aims to integrate social, environmental and economic considerations in the preparation of spatial plans, and incorporates the requirements of the SEA Directive, see <http://www.communities.gov.uk/index.asp?id=1164579>

<sup>29</sup> CoRWM Implementation Report

<sup>30</sup> Source - Nirex Technical Notes 515154 & 515158 covering respectively, “Implementation of a Long-Term Radioactive Waste Management Facility within the current planning system” (September 2006) and a “Note on how the Decision Making on Long-Term Radioactive Waste Management can be structured using Strategic and Environmental Assessment Processes” (October 2006).

<sup>31</sup> Barker Final Report – Planning (Dec 2006): <http://www.communities.gov.uk/index.asp?id=1504875>

be applicable to a national Radioactive Waste Facility as a "Large Application"<sup>32</sup> or "Major Infrastructure Project (MIP)"<sup>33</sup>. Careful discussion on how local communities, local planning authorities and Siting Partnerships will be able to exercise full influence on outcomes will need to be considered; and integrated carefully by government into the Implementation Framework.

4.12 Barker proposes significant change to the Planning Systems in England and Wales which will thus need to be managed with care – perhaps absorbing the lessons for other major developments. The recommendations, relevant to Major Infrastructure Projects / Large Applications (including Radioactive Waste Disposal) are:

- the need for a more streamlined planning system, including a simplified legislative structure
- substantial rationalisation of national planning guidance to provide a clearer and more transparent national policy framework
- a radical overhaul of the planning system for major infrastructure projects, including transport, waste and energy. To improve speed and certainty Ministers should, following full consultation, set out for example "statements of strategic objectives"<sup>34</sup> – providing a stronger steer than the present PPS system. Decisions on individual applications would then be taken by a new expert independent Planning Commission
- making ministerial decision-making subject to a timetable
- introducing mediation to resolve disputes more efficiently prior to appeal
- implementing a better resourced appeals system
- Consolidating the many planning statutes and statutory instruments (this would involve simplifying the documentation used in the existing system to make planning law more accessible rather than introducing substantive reform)
- devolving planning decisions to "the most effective level of government", principally by moving more strategic decision-making roles to regional and national levels and ensuring proposals involving only local issues remain at that level. (This, however, appears contrary to the Siting Partnership approach recommended for radioactive waste facility siting.)
- improving and expanding the content of national and regional planning policy to settle strategic issues (implying that strategic issues would not need to be revisited every time a proposal is assessed and would focus local decision-making for specific proposals exclusively on local issues).

4.13 The report refers to "the high costs placed on developers, businesses and

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<sup>32</sup> Being reviewed across government under the ATLAS project.

<sup>33</sup> This term is used in providing Inquiries Procedure Rules for major infrastructure projects – introduced in the The Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, see: <http://www.communities.gov.uk/index.asp?id=1143703>

<sup>34</sup> Barker offers 3 options:

- Assessments of Need – by Government - for major transport infrastructure & sectors such as energy, strategic waste and water - to provide a framework for decision-making on individual projects
- Statements of Strategic Objectives - These would be similar to assessments but would be spatially specific, providing a clearer spatial framework to aid decision-making for major infrastructure. They would also assess the impact of the different options needed and so go beyond mere expressions of need.
- A National Spatial Strategy - a broader and fully integrated national spatial strategy

communities when the planning system is unnecessarily slow, unpredictable, expensive and bureaucratic". The report recommends streamlining of planning policies and processes to improve speed, transparency and efficiency. These include:

- improving local plan-making processes so plans can be drawn up in 18-24 months not the current 36-42
- a more risk-based and proportionate approach to regulation, with significant reduction in the paperwork required to support applications
- greater certainty of timescales with new, individually tailored delivery agreements between planning authorities and developers
- faster processing of appeals: from 2008/09 all appeals should take place within six months, and the use of a new Planning Mediation Service to resolve disputes outside of appeal proceedings, and
- a significant reduction in the number of cases suffering delays due to Ministerial call-in, with 50% fewer call-ins from 2007

4.14 While much of the Barker Report appears helpful and may be supported by Local Government<sup>35</sup>, it does raise significant issues from a local perspective in relation to the radioactive waste siting process, and for the continuing role of local planning decision making more generally.

### **Planning and Community Benefit**

4.15 As noted in BP5, the NDA has been given powers under the Energy Act to support socio-economic and environmental regeneration in the vicinity of its sites – and this would likely apply to radioactive waste facilities<sup>36</sup>, given Nirex's incorporation into the NDA. It is possible that the NDA's powers under the Energy Act could provide a basis for 'Community Benefits' (as proposed by CoRWM) to be made available in respect of the "compensatory aspects" of repository development on a local community. However, NuLeAF in BP5 makes the point that "benefits" should be in addition to other socio-economic support, and independent of the NDA as Implementor. In addition, it remains unclear how engagement / Partnership costs and the likely substantial Planning Authority costs would be adequately covered. One approach to the latter may be to include a specific provision in a future Planning Fees assessment<sup>37</sup>. The Implementation Framework needs to set out how all these concerns would be addressed.

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<sup>35</sup> At the time of writing Local Government has not finalised its views on the Barker recommendations. The Planning Officers Society has issued a response: [http://www.planningofficers.org.uk/documents/Barker\\_Response\\_180107.doc](http://www.planningofficers.org.uk/documents/Barker_Response_180107.doc)

<sup>36</sup> See the NDA's Socio-Economic Strategy, October

2006: [http://www.nda.gov.uk/documents/nda\\_socio\\_economic\\_policy\\_draft\\_for\\_consultation\\_2006.pdf](http://www.nda.gov.uk/documents/nda_socio_economic_policy_draft_for_consultation_2006.pdf)

This notes: "The Energy Act 2004 requires the NDA to consider the socio-economic impacts of its activities on local communities. These obligations are described in section 7- (1) (e) of the Energy Act 2004, which states: "the NDA shall have the [supplemental] function, to the extent that it considers it appropriate to do so, of – giving encouragement and other support to activities that benefit the social or economic life of communities living near designated installations, designated sites or designated facilities or that produce other environmental benefits for such communities". In addition, The NDA's function is underwritten in section 10 (2) of the Energy Act 2004 which states:- "The powers of the NDA include, in particular, power to make grants or loans to persons undertaking activities that benefit the social or economic life of communities living near designated installations, designated sites or designated facilities or that produce other environmental benefits for such communities;" "

<sup>37</sup> Planning fees are regularly updated by Statutory Instrument: See SI 2005 No 843:

<http://www.opsi.gov.uk/si/si2005/20050843.htm>

4.16 If the full range of “benefits” – both for process and long-term support are to be channelled through the NDA, then the NDA’s budget for all types of support must be ring fenced and at a scale sufficient to encourage ‘willingness to participate’ and informed participation throughout the decades long process. Treasury needs to be fully aware of the implications if benefits are not actually available on the basis assumed at the point an area volunteers. The principles for this would need to be covered by the Implementation Framework, with provision to agree levels established in the NDA’s Lifetime Plan for Implementing Radioactive Waste Management – covering both long term storage and disposal – following consultation with NuLeAF and potential areas expressing an interest.

4.17 That said, more traditional planning based mechanisms could have a continuing role<sup>38</sup>. “Section 106 Agreements” and “Unilateral Undertakings” are types of Planning Obligation authorised by Section 106 of the Town and Country Planning Act 1990 (as amended by Planning and Compensation Act 1991 Section 12). A planning obligation is a legal agreement between the planning authority and the applicant/developer and any others that may have an interest in the land<sup>39</sup>. In the context of the NDA’s role on Radioactive Waste Management – as Implementer / Developer they would also be involved in entering into relevant planning obligations. NuLeAF has already indicated that the NDA’s Energy Act powers and its need to, where appropriate, meet its “planning obligations” should not be confused or conflated.

4.18 The Treasury and Department for Communities and Local Government published a consultation document on a ‘Planning Gain Supplement’ in December 2005. It was described as a ‘fair, efficient and transparent levy’ in the Kate Barker review of Housing Supply<sup>40</sup>. Barker proposed the Planning Gain Supplement as one method of overcoming shortcomings to the planning obligations system and challenges for infrastructure provision. A similar approach was trailed in the Eddington Report on Transport Infrastructure<sup>41</sup>. A White Paper will be published in response to Barker and Eddington in the spring of 2007<sup>42</sup>. It must be a reasonable assumption that a significant move in the direction of the Barker / Eddington recommendations is likely across the timescales envisaged for CoRWM implementation. The new approach could impact on the Radioactive Waste Management implementation process. Any implications need to be coordinated within government, including impact on the NDA’s Energy Act powers.

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<sup>38</sup> Audit Commission, ‘Securing Community Benefits through the Planning Process’, August 2006 and DCLG, ‘Changes to Planning Obligations: a Planning Gain Supplement Consultation’, December 2006. Also the ‘Government Response to the Communities and Local Government Committee’s report on the Planning-Gain Supplement’, December 2006, Cm 7005

<sup>39</sup> An obligation either requires the developer to do something or restricts what can be done with land following the granting of planning permission. Planning obligations can apply to major development schemes, and can only be used if:

- it is relevant to planning and is directly related to the proposed development
- it would make the proposed development acceptable in planning terms
- planning conditions or other procedures cannot achieve this.

<sup>40</sup> Barker Review of Housing Supply (March 2004): [http://www.hm-treasury.gov.uk/consultations\\_and\\_legislation/barker/consult\\_barker\\_index.cfm](http://www.hm-treasury.gov.uk/consultations_and_legislation/barker/consult_barker_index.cfm)

<sup>41</sup> Rod Eddington Review of Major Transport Infrastructure (Dec 2006) - [http://www.hm-treasury.gov.uk/independent\\_reviews/eddington\\_transport\\_study/eddington\\_index.cfm](http://www.hm-treasury.gov.uk/independent_reviews/eddington_transport_study/eddington_index.cfm)

<sup>42</sup> Parliamentary written statement by Ruth Kelly, Secretary of State for Communities and Local Government, on 5 December 2006 - <http://www.communities.gov.uk/index.asp?id=1504902>

4.19 This Report assumes that in the initial years the present mechanism of "Planning Obligations" continues to apply, but recognises that a move to a taxation based system, covering the gain on land value, applied to achieve 'community benefits', could be introduced. There will be a need to ensure clear definition, in this case, of the use of the NDA's Energy Act powers and any "community benefit" to be provided through a new Planning Gain supplement.

Finally, in the context of CoRWM's recommendations in favour of a partnership led approach to siting, it is important to note that comments in the Barker Review of Planning seek to apply engagement and conciliation techniques more generally within the planning system.

## **5 Developing the Planning System to facilitate the Siting of a Geological Repository**

### **Lessons Learned**

5.1 The UK's experience of siting radioactive waste facilities provides key lessons on what not to do if development of a deep geological repository for radioactive waste is to be successfully implemented in the UK. The lessons from the Nirex failure to gain planning consent for its proposed Rock Characterisation Facility [RCF] in Cumbria were well explored<sup>43</sup> in the years since the RCF application in West Cumbria was rejected. Cumbria's particular UK experience demonstrates that the planning system can rise to the challenge of managing a whole sequence of investigation works, apply resources to ensure public and stakeholder consultation and work initially well with the implementer. They showed that the scale of engagement needed can be mobilised by UK local government<sup>44</sup>. However, following a change of approach within Nirex, Cumbria's experience also demonstrated what happens when an implementer is not fully open and presses on, challenging in law each planning and environmental assessment step, and so alienating the participating communities, a situation which generated the term 'Decide-Announce-Defend'.

5.2 That said, much of that process established steps which will necessarily need to be followed in any future process to implement the CoRWM recommendations: geological review, site identification and selection, local site investigation, safety case development, siting choice, phased development, appraisal and construction, emplacement of waste, site monitoring and agreement to backfill and close, but with extended monitoring.

5.3 The primary lesson, as CoRWM recognised, is that at the heart of a successful process is the need for openness and transparency, which should lead to trust amongst

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<sup>43</sup> For example, "Nirex and Deep Disposal : the Cumbrian Experience", John Hetherington, published in "The Management of Radioactive Wastes – Issues for Local Authorities, Barker F. (ed), Thomas Telford, 1998, ISBN 0 7277 2667 6

<sup>44</sup> However, this suggested the need for financial support to future participating authorities (ibid).



all the various parties. All the accepted thinking, from international and European<sup>45</sup> work on successful process for radioactive waste siting, points to a fully participative model, based on a 'Define-Agree-Implement' approach.

5.4 In addition, there must be clear joint understanding of how siting decisions and the role of the UK planning system can be effectively coordinated and paced. The process must be fully owned throughout government and local government at the outset, and be carried forward with full commitment over many decades by the NDA and its Implementing Contractor. To ensure success, the planning and regulatory systems must be operated – at least in respect of radioactive waste management – in ways that ensure similar commitment to the Partnership and joint Agreement model that CoRWM has pioneered.

5.5 As the headline list of actions below shows, from a local government perspective, learning the lessons from UK siting history, particularly its interface with the planning system, is critical. The planning system, often after ministerial decision, has in effect consistently provided a "right of withdrawal" through the planning process, to concerned communities:

- In the 1980's – NIREX attempts at siting a Low Level Waste (LLW) and short lived Intermediate Level Waste (ILW) facility were resisted and abandoned following strong opposition.
- In 1988 "The Way Forward" reshaped the approach to a staged process of review, with public consultation to accompany the planning process
- Wrongly applied Multi Attribute Decision Analysis (MADA) techniques involved non transparent Board decisions being taken: to focus first on the "nuclear communities" near Sellafield and Dounreay, thought to be more supportive.
- The "closed" Site Selection process was thus demonstrated as flawed and subject to reasoned challenge at the RCF Inquiry
- The key role of Site Investigation and Assessment, through extensive deep borehole and other modelling, emerged as a key area for public and local government challenge
- The NIREX Science Programme became subject to intense review, through the planning system and independent 'peer review', and was seen as a material planning issue in the absence of staged regulation
- The RCF Planning Inquiry in effect became the major opportunity to seek an effective "Right of Withdrawal" for an aware local community

5.6 However, Radioactive Waste Management remains a process where diverse views will be inevitable. Local government will also be under pressure under the new approach, playing both a key role within the Siting Partnerships, whilst at the same time undertaking its statutory planning role. It must still be realistically assumed that even an open implementation process will generate local problems and conflicts – both within and across local government. Transparency and trust thus become central to future

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<sup>45</sup> See for example the general conclusions from COWAM1 - <http://www.cowam.com/> and COWAM2 - <http://www.cowam.org/> which have highlighted and developed participatory models for community involvement in future radioactive waste siting processes across Europe.

success.

### **Why apply the Plan based system?**

5.7 NuLeAF, in commissioning this report, recognises that a case needs to be made for a continuing central role for the UK planning system in the development of major projects of the nature of a radioactive waste repository.

5.8 The various Barker and Eddington Reports have addressed a number of process failings in the present planning system (described in paragraphs 4.10 – 4.14). The problem frequently arises from the range of objections received at the application stage, and the slow pace at which policy can be developed and taken through Examination in Public and then be adopted after timely Secretary of State consideration. This means many material matters of concern have not been addressed and debated at the plan making stage. Often the circumstances that make this possible in law are the lack of clear national or regional policy concerning use of affected land or a lack of clarity in criteria based policy in the LDF<sup>46</sup>.

5.9 In the planning policy system as now operated (through PPS, RSS and LDF or MWDF) this should not be the case if procedures are applied flexibly and kept up to date – perhaps using Supplementary Planning Documents (SPD) to cover radioactive waste management or investigation proposals not fully specified at the time of preparation of the LDF or MWDF.

5.10 For a radioactive waste facility siting process, it is proposed in this report that the policy principles should be reviewed and decided at each step, being fully debated by the Siting Partnership and communities concerned and 'banked' in the relevant policy document following Secretary of State approval. They would thus become determinative material planning considerations, not needing to be revisited through the Local Planning Authority's consideration of the actual application or series of applications arising. Local Planning Authorities and the Siting Partnership should have been fully involved in developing and jointly shaping the relevant policies during each investigation stage. The importance of clear public and stakeholder involvement at the plan development stages, as recognised by Barker, is vital. It is by staged engagement in plan making that communities can appreciate the implications of and influence emerging policy, rather than by waiting to challenge specific applications.

5.11 In the case of the very long staged siting process required for radioactive waste management facilities care needs to be taken in "streamlining" the planning system to contain local authority roles. An approach that defined a clear context for local plan making steps covering radioactive waste could be helpful. However, if the approach also placed siting decisions with government (for example in a "Statement of Strategic Objectives" which included specific siting proposals (see paragraph 4.12 and its related

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<sup>46</sup> 'Managing the Nuclear Legacy', Regional Seminars Report, p6 – see [http://www.nuleaf.org.uk/nuleaf/documents/Regional\\_Seminars\\_Report\\_Dec\\_06.pdf](http://www.nuleaf.org.uk/nuleaf/documents/Regional_Seminars_Report_Dec_06.pdf)

Some participants pointed to the contrast between the proposed approach to siting a geological repository (willingness to participate and partnership) and proposals to reduce local involvement in decisions about major infrastructure projects. It was argued that the contrast should be addressed and explained.

footnote) or relied on the NDA Strategy as the focus for planning policy guidance, then there could be a serious risk that the decisions would be seen as “decide-announce-defend” in the minds of the communities eventually in the frame for the development. It could also significantly impact on any “willingness to participate” emerging. Rather, each planning policy and application step needs to be developed in full consultation with the local Siting Partnership and protected from legal challenge or significant delay through later planning Inquiries, by use of measured open processes, operating through Siting Partnerships with full staged regulatory and planning input.

5.12 Any attempt to short circuit or pre-judge the siting process cannot be defended; as the science case, at each step, is central to demonstrating that alternatives have been properly assessed and that the proposed outcome – in proceeding at a particular site - provides a satisfactory basis to continue. The necessary detail to underpin robust decisions cannot be foreseen in a PPS or “statement of strategic objectives” issued at the start of a siting process. Nevertheless, more broadly based guidance on process in a draft Radioactive Waste PPS or a Barker style “Assessment of Need” would be very helpful in framing the response of planning officers and Authorities as willing participant communities are being sought.

5.13 The UK planning system, working alongside staged regulation by the Environment Agency (and other regulators) provides a readily available basis on which each process step can be legally “banked”. Aspects of Baker’s recommendations, such as the concept of the Independent Planning Commission could play a final key role in confirming the steps taken, which would have had planning support through their incorporation in RSS and LDF (MWDF) or SPD. It is thus relatively straightforward to “map” the steps – through a plan-led approach - that could deliver the agreed outcome which CoRWM has proposed and NuLeAF supports.

### **Building the Partnership Process into the Planning System**

5.14 The Partnership approach and a staged plan-led approach should dovetail. This would lead to fully informed local planning policy and development control Committee Reports and Recommendations on both investigatory works and eventually a repository application. Getting this relationship right is vital to a successful outcome.

5.15 In reviewing assumptions concerning the future planning system, this Briefing accepts that, on the basis of UK and international experience, radioactive waste is a special case, due to both the difficulty and timescales involved – far more extended than for other major developments. However, it is not evident that the arguments already advanced for changing the planning system actually change that context a great deal – since in a modern plan led system the role of Inquiries to examine issues in depth is already constrained; providing due time to cover issues in policy (e.g. through RSS, MWDF, LDF or SPD etc) in appropriate depth, is available and used. This need for adequate time to “choreograph” the steps between the NDA, Regions, Local Planning Authority and community representatives needs to be fully recognised and stated, and endorsed in the Implementation Framework and a subsequent PPS.

5.16 In following these proposed steps it will be clear that the plan-led system plays a central role in facilitating the overall process. To ensure this role is successful there would, ideally, need to be appropriate wordings included in each development plan document at exactly the relevant time. This should also be made clear in the PPS. However, it cannot be expected that the points in time at which the RSS and LDF (or their equivalent) are ready for updating (typically a five year cycle), would be perfectly synchronised with the timing of the steps in a radioactive waste siting process, or to underpin development guidance required by the NDA in shaping its programmes and proposals.

5.17 The NDA will, likely, be setting out its programmes in a "Lifetime Plan" incorporating "Near Term Work Plans" for the repository siting process, having regard to the views of the Partnerships and Local Authorities involved. These should be influential on the Regional Assembly and Local Planning Authorities in areas where "willingness to participate" is becoming evident. It will thus be important for the government through the relevant regional offices to develop a timetable jointly with the relevant Regional Assembly and Local Authorities in participating areas – to coordinate timing issues. It thus cannot be certain as yet when in the process the various PPS, RSS, MWDF etc in areas of interest would require developing/amending. However the plan-led process is designed to be flexible, which is why, at the local level, SPD's could play an important role in the process of proposing and testing policy locally, while at regional level properly consulted policy could be developed and issued, also becoming a significant material planning consideration.

5.18 Different wording would be included appropriate to the guidance needed for the various plans, with both a spatial component and a criteria based set of tests. The text or policies in, for example the NW Region RSS and Cumbria Structure Plan would be an illustration of the sort of wording to expect to see in an RSS, MWDF or LDF on repository siting, becoming more and more specific as the siting process moves forward. The Cumbria Structure Plan and emerging MWDF<sup>47</sup> provide possible early phase wordings.

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<sup>47</sup>In some areas the "old" planning documents still apply – a good example being the Cumbria and Lake District Joint Structure Plan 2006 -20016 [see <http://www.planningcumbria.org/> – which contains a policy on major projects expressly covering radioactive waste issues. However, a new Minerals and Waste Development Framework is planned for issue by summer 2007 containing specific policies on radioactive waste. See: <http://www.cumbria.gov.uk/councilmeetings/committees/documents.asp?Committee=2941&Date=30/01/2007&MeetingNo=>

## 6 Key Roles and Stages in a Partnership Siting Process

### Introduction

6.1 Figure 2 (page 51) summarises the multiplicity of roles, relationships and actions which will need to be successfully understood and coordinated if the proposed Implementation Framework is to be successful. It develops the Nirex process diagram shown in Figure 1 into a comprehensive mapping of roles and responsibilities against the steps in the process. It covers the roles of all the "actors": Government, CoRWM2, the NDA and its Implementing Contractor, the Siting Partnership, Local Government, the Regions, and Regulators.

6.2 The stage that the Managing Radioactive Waste Safely process has now reached is critical, as it will set the tone through which all the key relationships and process steps noted in Figure 2 can be taken forward through a broad commitment to adopt a 'Define-Agree-Implement' mind set in the future UK process.

6.3 During the remaining stages of the 'MRWS3' process (as described in Figure 2) it will be essential to establish in particular the role that the UK planning system will play alongside the role of the NDA as the implementer. By early 2008 a formal decision on the approach to Implementation, including the format of the 'willingness to participate' process, will likely be in place.

6.4 However, even before the Implementation Process is finalised by Government (in the period following the publication of the Consultation), in those areas where there is high awareness, or expressions of interest have been given in response to the October 2006 Invitation, it will be helpful to 'gear up' the community awareness raising process. In areas already having a "nuclear industry" presence, this could be through the NDA's Site Stakeholder Groups, working alongside LSP's<sup>48</sup>, as well as through more general information, leafleting and media briefings produced by Local Government working with the NDA. It will also be important to establish or confirm effective cooperation with the other local authorities and partnerships in any likely candidate area – ideally leading to joint responses on the Consultation. In areas not having any significant awareness of the issues, CoRWM2, NuLeAF, the NDA and Government should mount a clear and jointly agreed awareness raising campaign, ensuring as far as possible that there is a 'level playing field' well before formally seeking areas 'willing to participate'.

6.5 In addition, the Implementation Framework should make clear that the formal request to volunteer would not be issued to Local Authorities until sufficient time had been allowed to properly develop the conditions by which an informed decision could be taken.

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<sup>48</sup> In most areas likely to be "willing to participate" a wide variety of partnerships (in which local government will be involved) will exist and have a variety of views and interests related to radioactive waste and nuclear issues. NuLeAF has already proposed (See BP 4) that a "mapping" of community interests should be undertaken prior to the formation of a Siting Partnership. The local SSG (in areas with operational nuclear facilities) and in other areas, Local Strategic Partnerships for example, would likely have a key role framing the development of a Partnership Agreement (as set out in Section 9ff).

6.6 Once the draft Implementation Framework is issued, but before Siting Partnerships are formed, there will be an important direct role for both NuLeAF and interested Local Authorities (working together in two tier areas) to begin bringing their communities further up to date on the general issues, the processes involved and any local siting and development implications (i.e. that some areas within a local area or some types of repository design / access may not be feasible in their areas). The NDA and its Implementing Contractor will need to have issued all necessary briefing information – after full participation with NuLeAF and other interested parties.

6.7 Subsequent paragraphs in this section fill out and explain the thinking behind each major Phase and Stage of Implementation set out in Figure 2, which broadly defines the widely supported step-wise process and covers:

- 1 A '**Screening, Invites and Responses**' phase – comprising 'willingness to participate' and 'partnership establishment' stages
- 2 An '**Investigation of Siting Partnership Areas**' phase, to narrow down to preferred sites, then undertake local investigation of the preferred site, leading to the decision to implement or withdraw, and
- 3 A long '**Implementation**' phase during which the 'repository construction' begins and 'in-situ investigation' is undertaken.

It sets out how the various components of the whole siting and construction process could work, involving the Siting Partnership, and coordinating the planning process with the continuing project development and planning submission role of the NDA through its Implementing Contractor (as the likely applicant for the necessary consents).

6.8 It needs to be fully recognised that the pace of the phases and stages in different areas could vary and that at times areas 'willing to participate' will be waiting for decisions from other areas. Timetables and break points – as incorporated in Lifetime Plans – with the approach covered in clauses in the Partnership Agreements, will need to be carefully negotiated to build in commitments to jointly programme the time taken.

6.9 The roles set out in Figure 2, and headlined below, set out clearly the requirement on all parties to coordinate plan development (RSS, LDF (or MWDF) supported by SEA, EA, SA (alongside phased regulation by the Environment Agency, Nuclear Installations Inspectorate, etc) with application submissions, and relevant partnership activities as a steady progression of steps is taken forward, as follows:

### **Screening, Invites and Response Phase**

#### Phase Summary

6.10 Figure 2 sets out how the various aspects necessary prior to or during the "Screening, Invites and Response" Phase could be managed in relation to the varied partners' roles. The principal steps are:

- The CoRWM recommendations on method choice need to be formally affirmed, by providing SEA of the method recommended.
- This then should be underpinned by government in a PPS defining the process

- steps (The PPS would have been subject to prior consultation on a draft.)
- The NDA (as Implementer) to demonstrate, with full stakeholder engagement, a clear in principle assessment that the UK can safely accommodate a deep radioactive waste facility in the context of suitable UK geologies, identifying potential host rock environments – geological screening. (The geological screening step – which would include peer review of the science base by CoRWM’s successor and others.)
  - The Regulators will need to “stage regulate”, ensuring that the screening assessment is appropriate in defining any constraints on future siting – based on likely parameters within the NDA’s “reference” repository concept.
  - Invitations to participate issued to LA’s in areas with appropriate geology
  - LA’s engage communities and review willingness to participate, developing an outline local Siting Partnership Agreement based on the national model
  - In addition, as planning authority, LA’s will engage with their Regional Planning colleagues to incorporate Radioactive Waste Policy coverage and then consult on LDF or MWDF coverage for the process involved in identifying suitable sites within the areas which have expressed a ‘willingness to participate’.
  - Review of the general geological conditions in the area would be undertaken and results embedded in an Area Science Report for consideration by the developing Partnership and Local Authorities. It is possible that some preliminary borehole type of investigation would be needed, with applications determined against criteria in the PPS, RSS and LDF (or equivalent). Science Reports would underpin phased regulation across the areas likely to declare their willingness to participate
  - If doubts are generated by this work for any area, then it could be decided by the LA’s not to proceed to the signing of the Siting Partnership Agreement.
  - Alternatively, the Partnership Agreement would be signed (which would have covered the points at which RoW could be exercised) and the partnership would commence its work, shaping the NDAs (and Implementing Contractor’s) work programme for full area evaluation, which would have been enabled through the by then adopted RSS and LDF (or equivalent).

The following additional points are relevant to this Stage:

### Geological Screening

6.11 BP4 states, “NuLeAF recommends that an initial screening of the UK should be undertaken nationally to rule out those areas that would not be suitable for siting a geological repository.” It also says, “NuLeAF considers that it would be useful to distinguish between (a) initial screening criteria and (b) siting criteria for use in identifying potential sites within areas where decisions have been taken to participate. NuLeAF recommends that, as a minimum, the initial screening process should seek to rule out those areas that contain geological formations that are not suitable for repository development.”

6.12 The geological pre-screen – as proposed by NuLeAF – will require prior agreement – involving NuLeAF and CoRWM2 – to define the detailed approach to be

adopted. This should cover both developing geological criteria for use in defining suitable geologies and developing other screening criteria for use in assessing, later in the process, on a common basis, the relative suitability of areas where there is a "willingness to participate".

6.13 As regards the initial geological screening process, it is suggested that this needs to be more in depth than that used in the early Nirex / British Geological Survey (BGS) work<sup>49</sup>, for example addressing the varieties of "basement under sedimentary cover" geologies – which was a major area of challenge in the Nirex RCF Inquiry. The same issue has arisen in Sweden where there is concern that the hydrogeology in the "volunteer communities", which are "outflow" areas, are less appropriate than other areas of stable "inflow" groundwater characteristics<sup>50</sup> which did not volunteer. SEA of the screening would thus be required to contain future challenge.

6.14 It is conceivable that in order to produce a fully informed appraisal some investigatory works could need planning consent from the relevant Minerals and Waste Planning Authority. This could involve Local Authority areas not hitherto involved in the issues. NuLeAF would need to work with the NDA and its Implementing Contractor in ensuring full contextual information is available.

6.15 Work between NuLeAF and the NDA, also involving CoRWM's successor body should produce joint work to define both the initial screening criteria and subsequently develop the more comprehensive screening criteria needed to discriminate between potential sites.<sup>51</sup>

#### Willingness to Participate Stage

6.16 Once an area has been confirmed to have locations which might well be (geologically) suitable and is formally invited by Government to participate, information programmes and joint briefings (with full Planning Authority involvement) will need to begin in earnest. Local Government will need to provide extensive local information and undertake extensive stakeholder engagement in areas where siting appears possible. (In some areas where there already is considerable experience, such as West Cumbria, the level of community understanding and interest may already be clear, but will need to be formalised.)

6.17 Government should, by the start of the 'willingness to participate' stage, be consulting on the PPS in the light of the by then agreed Implementation Framework. Local Authorities and Local Planning Authorities will need to respond, with NuLeAF remaining in a coordinating role, retaining direct contact with Government and the NDA.

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<sup>49</sup> See Nirex Report Number: 477002 - Technical Note: Review of 1987-1991 Site Selection for an ILW/LLW Repository: [http://www.nirex.co.uk/477002/pdf/site\\_selection.pdf](http://www.nirex.co.uk/477002/pdf/site_selection.pdf)

<sup>50</sup> CARL Country Report, Sweden: Mark Elam and Göran Sundqvist, November 2005, Section for Science and Technology Studies, Göteborg University, Box 510, SE 405 30, Sweden; pages 45-48

<sup>51</sup> Some useful thinking on how spatial planning and environmental criteria can be developed and used have been discussed as part of the NDA's Prioritisation work – jointly undertaken with a range of stakeholders – see for example NDA Document number EGR29 (21/09/06).



The agreed PPS would then be issued.

6.18 The Regional and Local Planning bodies will at this time begin to incorporate (if they have not already done so) radioactive waste issues into their RSS, MWDF or LDFs. It should be borne in mind that to prepare these plans afresh would likely take 3 years – though in practice the changes could be incorporated on a single issue basis, for example, for a MWDF or LDF, in an Area Action Plan or SPD. To avoid duplication, an early task for a Siting Partnership should be to contribute to the development of the policy – both enabling and criteria based at this stage. A Development Control Policy should be included, enabling and scoping initial science investigations requiring planning consent.

#### Establish the Siting Partnership Stage

6.19 The Siting Partnerships (when forming and formed) should be in continuous dialogue with the NDA and its Contractor on the one hand and the planning authority, in an advisory capacity, on the other. In addition, representatives of the nuclear regulators (EA, NII, SEPA, Department for Transport, with OCNS available) should be fully involved in informing the Partnership and Local Planning Authority on regulatory issues as the proposals are being developed in an open and transparent manner.

6.20 The NDA and its Contractor will need to be involved in the early stages in producing Strategic Environmental (Sustainability) Assessments of both project method and the national and local site identification and selection processes. Local Government will need to be fully engaged with the Partnership throughout in varied capacities, as:

- 1 leader in forming the Siting Partnership, providing technical support and review,
- 2 formally regulating development proposals as they arise – through:
  - o Policy influence (i.e. in response to national guidance and in response to Regional Spatial Strategy (RSS) coverage of Radioactive Waste issues)
  - o Preparation of the Local Development Framework (Minerals and Waste Development Framework (MWDF) in County areas) policies enabling the Siting process – from investigation (e.g. boreholes), to local siting, to establishing policy for Repository development (and its eventual backfill and closure). An alternative or additional approach would be to develop Supplementary Planning Documents (SPDs).
  - o The Development Control process – where applications will be formally considered, and taken through the then agreed process for MIPs.
  - o By leading negotiation of local Socio-economic and environmental support alongside the Partnership, including process costs support.

6.21 It is towards the conclusion of this stage that Partnership Agreements will have been forged and a decision finalised to form the Partnership. If for any reason such an agreement cannot be secured then in effect the area would need to be ruled out of further investigation – a “de-facto” withdrawal. (More details of the process for developing a Siting Partnership Agreement are provided in the section on page 30.)

6.22 The newly formed Partnership should have available to it the results of initial

geological and planning appraisal of the area and a clearer idea of the broad implications – such as areas of search for actual potential sites.

## **Investigation of Siting Partnership Areas Phase**

### Phase Summary

6.23 Figure 2 again sets out how the various components in the “Investigation of Siting Partnership Areas” phase could work in relation to the varied partners’ roles. It is proposed that this Stage is divided into 3 sub-stages – each leading to a “go - no go” decision (i.e. Decision to Proceed or exercise Right of Withdrawal) by the Local Authority acting on the advice of the Siting Partnership and its own Planning officers – who would be fully engaged with the siting partnership. Key steps in this phase

- Government would be expected to endorse the move to investigate particular sites in more detail following the decision(s) to proceed in one or more areas.
- The NDA (as Implementer) would propose, with full stakeholder engagement, the process to determine the most appropriate locations for siting a repository in each area still willing to participate. Site investigations will go up a gear in these areas to narrow down the assessment, possibly involving significant deep geological borehole investigation and safety case modelling (including review by CoRWM and others of the science base).
- As set out in the Siting Partnership Agreement, the Local Planning Authority would engage with their Regional Planning Body to extend Radioactive Waste Policy coverage and then consult on an update to the LDF / MWDF (or use an SPD if the timing was difficult) both covering the process involved in identifying a preferred site within each volunteer area or areas.
- The Partnership would continue monitoring the NDA (and Implementing Contractor’s work) on the detailed area evaluation, which would have been enabled through the updated RSS and LDF (or equivalent)
- Review of the geological conditions in the area would be finalised and results embedded in a Science Report for consideration by the Partnership.
- The results of this work would inform the first “proceed” or “withdraw” decision.
- If proceeding, detailed borehole and geophysical investigation would then be needed, alongside refinement of the science / safety case, with applications for investigation determined against criteria in the RSS and LDF (or equivalent). The Science Report would underpin phased regulation.
- Detailed proposals would be emerging on feasible and preferred locations for sites to give access to geologically suitable host rock environments. This work would inform the framing of development proposals at one or more sites in the area, enabling planning assessments to be prepared for consideration by Partnerships.
- If doubts are generated by the work about the suitability of any of the identified sites, and the Partnership Agreement defines terms on which, for example, unsuitability would be judged, then the second RoW could be exercised.

Detailed comments on the three stages follow:

#### Area Investigation Stage

6.24 During the Area Investigation Stage the Repository Concept will be in the process of adaptation to potential host geologies and locations where they could be accessed across the UK. This will involve substantial work by the Siting Contractor, which needs to be a fully informed client able to win and command local trust across the Siting Partnership. The Contractor's search will be limited to areas where volunteer communities have come forward. It cannot, in this approach, be certain that the best of all possible sites will be found, rather that for any site to go forward it must be ultimately agreed as broadly acceptable locally through the Siting Partnership, and in terms of Regulator and Planning Authority assessments. Outline concept plans would be emerging from the NDA's Contractor for how a repository might be accommodated in any area and what the implications might be, including design concepts.

6.25 There may be a number of possible locations in any one area which has expressed its "willingness to participate" and these will each need to be subject to an appropriate level of geological review and safety case assessment. The Planning Authority will advise and should openly discuss with the Partnership (on which it should be represented) the whole range of planning issues affecting any potential locations of interest within the Siting Partnership area.

6.26 It will depend on the number of areas which have expressed a "willingness to participate" as to whether a step should be introduced at the end of this Area Investigation Stage to compare the merits of sites across the 'willing to participate' areas as well as within them. A 'level playing field' approach suggests this might be helpful.

6.27 The reality, in cost terms, is that only a small number of locations emerging from this process would be both acceptable in safety case and planning terms, and thus justify full intrusive investigation through extensive borehole and safety case modelling. It might be envisaged that this stage will conclude with a national review of candidate sites and the development of proposals for more detailed investigation of between 1 to 3 specific locations nationally.

6.28 Government and the NDA may be advised to endorse the selected options to go forward for full Local Investigation. National SEA would be part of this process. This approach may well cause disappointment in some areas – where effectively they do not want to withdraw and may argue that the preferred site in their area should be retained. Ways to handle this issue would need to be agreed in advance in the Partnership Agreement.

#### Sites Investigation Stage

6.29 The Contractor would embed the steps so far achieved in its Near Term and Annual work plans, and prepare planning applications as required. Strategic and/or Environmental Impact Assessment of potential field investigation / drilling locations

would be developed on the basis of Scoping Assessments. The process would lead, over time, in the areas still involved, to the development of full Science Reports for consideration by the Partnership alongside safety cases submitted by the NDA. The work would be subject to staged regulation.

6.30 The stage would be covered in planning terms by updated coverage, as necessary, in the RSS where spatial as well as criteria policy would identify potential siting locations within any region. Similarly the MWDF/ LDF and / or SPD would identify preferred areas for further investigation, following due process, in which the views of the Siting Partnership would be material. This policy base would then be a positive material planning consideration in handling, for example, any contentious borehole applications. The principle of investigation in each location could be incorporated in the MWDF / LDF in an Area Specific Action Plan, added to the MWDF 'bundle'.

6.31 The local Siting Partnership(s) would be active over a number of years during this stage as identified areas were investigated by boreholes, the results embedded in safety cases, specific site plans for a repository / repositories developed and assessed for suitability in environmental and conventional planning terms<sup>52</sup>.

6.32 A national overview "decision analysis" process would be necessary if more than one local Siting Partnership were still involved with a range of technically satisfactory sites available. It would need to cover all attributes of the sites and compare them using appropriate stakeholder and decision analysis techniques, including the values and weights thus implied. The results would inform specific decisions to proceed or withdraw in participating areas.

#### Decision to Proceed and Construct Stage

6.33 Following any decisions to withdraw, a particular proposal or all proposals might fail. In the latter case the process would begin again. If a proposed site meets technical and science criteria, then the model would see full planning proposals being developed by the NDA's Contractor and taken, to the Siting Partnership, for review and recommendation. It is in this stage that the Partnership would be at its most active – with careful development of roles between the Partnership and the Planning Authorities. All aspects would need to be clearly defined in a multi step process:

- Full Science Reports would be available from field investigation, with regulators assessments available on a "staged" basis
- An indicative development proposal in the form of a "draft" planning application (with indicative details) would be made available to Local Authority nuclear issues and planning staff for provisional assessment and advice to the Partnership and Planning Authorities
- The proposed benefits package would have been discussed and agreed [See NuLeAF's BP5 for its scope.]
- This would lead to a full discussion by the Partnership with the opportunity

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<sup>52</sup> The original Nirex process covered this stage in West Cumbria from 1992 to 1996.

- available to recommend continuation or to exercise of the right to withdraw
- If the Local Authorities accepted a recommendation to proceed from the Partnership then formal policy would be adopted through an SPD with full consultation.
- Subsequently a full planning application would be submitted and processed against a full chain of policy – through PPS, RSS, LDF and SPD.
- If refused at this point (perhaps against officer / Partnership recommendation) then “call in” and reference to the then applicable Inquiry process would follow.

6.34 In such a case the right to appeal would remain with the NDA and its Contractor. An alternative scenario is that the application would be “called in” or the Authority might consider that the issues are now of such national significance that it should call for a full Inquiry (already available under the present streamlined Planning Inquiry Procedures Rules). It may in any case be wise to hold a full confirmatory Inquiry, able to review the processes to date, to reduce the risk of judicial review. If the Barker recommendations are implemented the Application(s) could be referred to an Inquiry Commission. There may be a role (as for the THORP Planning Consent in 1977) to embed conditions in a Special Development Order adopted by Parliament after full debate.

## **Implementation Phase**

### Construction and In-situ Review

6.35 The beginning of the ‘Construction and in-situ review’ Stage, following grant of Planning Consent does not, of course conclude the process. Government would need to confirm future processes and there would be process lessons to learn, for example through parliamentary review. The NDA and its contractor would be moving to deliver a cost effective and timely programme, defined in the NDA’s Strategy, and Lifetime and Near Term strategy documents. As Construction begins, additional confirmatory evidence should be forthcoming, with further Science Reports and Regulatory response being produced. The previous Nirex approach proposed a “Rock Characterisation Facility” phase – though it is not part of the current concept. The role of in-situ investigation will thus need to be fully defined before the siting process is commenced.

6.36 The arrangements for the Siting Partnership should remain in place, with a continuing role to scrutinise and engage with the NDA and its Contractor, as the proposals are implemented. However, there may be a need to review the relationship with any Site Stakeholder Group operating in the same area.

### Authorisation to Operate

6.37 It is conceivable that the science and safety case emerging does not bear out the forecasts on which the decision to proceed was taken, and it must be recognised that there may be a point at which construction is delayed or radically redesigned. Or that, despite the use of phased regulation, Regulatory consent is withheld for emplacement of radioactive waste in the facility. However, it should be clear in the Siting Partnership

Agreement that any decision not to proceed would be based on clear regulatory advice.

6.38 The Planning Authority would be active in monitoring development and conditions, and would continue to report to and consult with the Siting Partnership. Local Government generally would be keeping progress under review.

## **7. The Role of Local Authority Planners during the Siting Process**

7.1 At the NuLeAF Regional Seminars<sup>53</sup> “participants called for guidance to planners about how a siting process based on ‘willingness to participate’ and ‘partnership’ can be integrated with planning requirements. Some participants considered that Regional Spatial Strategies and Local Development Plans should be amended to include reference to repository siting once a clear willingness to participate had been established. It was pointed out that reference to potential sites in local plans could provide some protection against other uses. Some participants thought that Government should provide guidance on the scope and timing of reference to potential repository development in local plans. Others were not sure that the RSS/LDP route should be followed given the unique nature of a geological repository”.

7.2 However, for the reasons developed earlier, this Report recommends a staged plan-based approach. It proposes that significant responsibility should rest on the planning staff in any “siting” area. The steps in which they would be involved would include:

- The inclusion of enabling policy in the RSS (at the earlier stages when general investigation is being undertaken – the area investigation stage, and at the sites investigation stage as site options are being narrowed down to a preferred or small number of preferred sites).
- That each major step is marked also by the development of similar (derived) policy in an LDF (or MWDF) – with specific allocations of areas for investigation identified following developer review and planning, environmental and safety case assessment.
- Responding to programmes of site investigation, including assessing developer proposals for substantial schemes of deep and shallow borehole investigation across their siting areas
- That, when the preferred site emerges, after due consideration of all issues including the preparation of a draft application, formal policy concerning the site is developed and adopted as part of the Planning Authority’s consideration.
- Review of that policy and its adoption as a Supplementary Planning Document, would provide the basis for the Councils’ “go, no-go” decision in principle alongside the Partnership’s Report, which would be a significant material consideration when determining the application at the next step. This approach would provide the opportunity for an Independent Inspector’s Assessment of the planning policy supporting facility development in the area.
- As discussed above, the full submission of the application for development of the

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<sup>53</sup> NuLeAF, ‘Managing the Nuclear Legacy – Issues for Local Government’, Regional Seminars Report, December 06.

- site - for repository construction and in-situ verification - would then follow, leading to full Report.
- In the event of an Inquiry, full case papers would be prepared and submitted with evidence given by relevant officers. [But note the alternate options suggested above - such as "call in", reference to an Inquiry Commission, etc - and the need to ensure that any process provides no grounds for legal challenge.]

7.3 It is clear from experience in areas, such as west Cumbria, where the nuclear issues agenda is substantial, that there is a need for specialist staff support on nuclear policy issues and related planning control. There is a debate still to be had concerning the way relationships between members and staff involved in the "nuclear issues" roles of Local Authorities (i.e. those likely to serve on or support the Siting Partnership) and staff and members involved in the Development Control & Regulation Committee<sup>54</sup> should maintain communication. Both will need to be kept fully involved and informed.

7.4 On the one hand, the nuclear issues officers and the members on the likely advisory sub Committee to Cabinet / Executive will be framing general Council policy on nuclear issues, including issues related to the benefits package and assisting in partnership formation. Such arrangements will likely need to be set up in areas where involvement on nuclear issues is not already significant. The interest and reporting will be, for example, whether to express a "willingness to participate", or whether an NDA Contractor idea is appropriate - so as to exercise influence in the siting partnership.

7.5 On the other hand, the officers and members involved in the Planning Policy making / Development Control process will be formally engaging with the developer in terms of planning and environmental law as it then stands. The policy views of the Council will be an important "material consideration" in any applications, and the policy positions adopted (i.e. established in RSS and developed in an LDF, MWDF or SPD) will be determinative.

7.6 During the Area Investigation Stage, advice will be based on criteria to be established through the Regional Spatial Strategy which will also be developed in more detail through policies in the relevant Local Development Framework (or MWDF). In some cases, to ensure a timely policy framework, a dedicated SPD would be prepared. Environmental Assessment of each potential host site will need to be undertaken by the Contractor working to a Scoping Report drafted by the Local Planning Authority and endorsed by the Partnership. It would need to bring together present and intergenerational safety and wider issues such as site integrity, accessibility and harm to local amenity.

7.7 The EA (and SEPA) should be providing input to the Contractor (and the Partnership) through a process of staged regulation – reviewing the Contractors safety case development, site by site. Not all sites will go on to be subject to a specific planning application, but it is important to the process that the scope of investigation

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<sup>54</sup> names vary locally.

covers all issues likely to be material to a future repository planning application.

7.8 During the Sites Investigation Stage planning applications would be submitted to enable detailed investigation, over a number of years, of the local hydro-geological or other relevant conditions required for detailed safety case development. Planning officers would be active in consenting and monitoring the development and ensuring conditions are followed. They would continue to report to and consult with the Siting Partnership, and report back to the relevant Committees. Again there would be staged regulation by the EA (and SEPA) and full involvement of the Planning Authority in agreeing - through the Siting Partnership – the locations of borehole sites.

7.9 At the Decision to Proceed and Construct Stage, all evidence would be available, including safety cases and planning assessment of the particular proposal. It would be expected that in such a case the Planning Authority would be minded to approve the proposal. However, it is conceivable that the Planning Committee might not back the application, noted above.

7.10 During the Implementation Phase, planning officers would be active in monitoring the development and ensuring conditions are followed. They would continue to report to and consult with the Siting Partnership, and reporting back to the relevant Committees. Regular liaison with the Regulators on the relevant planning implications of their safety assessments will be required. Local Government generally would be keeping progress under review.

## **8. Rights of withdrawal**

### **Lessons from European Experience**

8.1 There is experience relevant to 'rights of withdrawal' in the process being followed in Sweden during their siting process. The approach took the form of "conditions" attached to decisions by Osthhammer and Oskarshamn, the two municipalities which agreed by Council vote to participate in radioactive waste siting investigations, following a general screening process. This was reviewed for CARL<sup>55</sup> in an English language report published as the Swedish Country Report<sup>56</sup>. However, in the Swedish case, these conditions were proposed by the "volunteering" municipalities and were not matters negotiated during the formation of an embryo 'Siting Partnership' as proposed for the UK in this report. This Swedish stage when these were put forward was somewhat similar to the proposed 'Establish the Siting Partnership' Stage described above, which has similarly led, following the signing of the Agreements, to an 'Area Investigation' Stage.

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<sup>55</sup> CARL - <http://www.carl-research.org/> CARL is an independent, self-supporting consortium of organisations from countries that have experience with stakeholder involvement in radioactive waste management. The project unites four types of partners (Citizen stakeholders, Agencies responsible for radioactive waste management, social science Research organizations and Licensing and regulatory authorities) in four countries: Belgium, Slovenia, Sweden and the UK

<sup>56</sup> CARL Country Report, Sweden: Mark Elam and Göran Sundqvist, November 2005, Section for Science and Technology Studies, Göteborg University, Box 510 ,SE 405 30, Sweden; pages 45-48



8.2 The municipal council in Oskarshamn voted to allow SKB<sup>57</sup> to carry out a site investigation in March 2002. The 13 conditions they set down in framing their agreement were far more detailed and challenging than those set down by Östhammar, the previous November. The Oskarshamn conditions covered (edited):

- Disposal only of spent fuel deriving from Swedish nuclear power plants
- SKB and the government authorities must deepen dialogue with citizens over issues of safety and radiation protection.
- The Regulators (SKI, SSI) must remain highly observant of SKB's work and keep the municipality regularly informed
- The connection between safety analyses and the specific criteria for choosing one particular site must be clarified further by SKB
- The demands that SKI and SSI during the course of the site investigation make a systematic summary of the relevant documentation.
- The municipality requires a decision from government as to the acceptability of their position that: Oskarshamn will only say yes to an encapsulation plant on condition that this facility will not be commissioned before a site for a deep repository has been subject to government review and decision.
- the question of which alternatives (methods and sites) should be dealt with in a comprehensive fashion through the EIA<sup>58</sup> process.
- The long-term responsibility for a deep repository must be clarified further.

8.3 However, while relevant, the approach adopted – a conditional decision to participate by a Local Authority, at the start of the process – is not that suggested below as the basis for a UK right of withdrawal, nor is it scoping a Partnership Agreement of the sort proposed. Nevertheless, the development of such lists of outstanding issues may have a part to play in the initial negotiations within communities who are considering expressing a willingness to participate during that Stage. Something like them, but adapted to UK circumstances should form part of the Siting Partnership Agreement – such as a list of circumstances in which the Right of Withdrawal could be available. They would need to cover process, siting, planning and licensing and community response issues. Suggestions are included in Appendix 1 – The Partnership Agreement.

### **Exercising the Right of Withdrawal or reaching the Decision to Implement**

8.4 It is proposed that in the UK context, the focus should be on the development, over an extended period, (see NuLeAF BP3) of a 'Partnership Agreement' which should clearly set out the basis in which the Siting Partnership would endorse or reject each major step. It would need to define how consensus would be developed, if possible, and on what basis recommendations to the Local Authorities would be made – voting individually, by body represented or some combination.

8.5 The proposed process rests the final decision whether to proceed or withdraw, not in the Siting Partnership, but (as in Sweden) in democratically elected local government. The relevant Local Authorities would, both in those terms and as Planning

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<sup>57</sup> SKB - The Swedish Nuclear Fuel and Waste Management Co - the Swedish equivalent of Nirex / NDA

<sup>58</sup> This would actually be an SEA process

Authority, be faced with difficult and major decisions.

8.6 The most critical point of decision would be when, as applicants, the NDA and its Implementing Contractor seek a firm view from the Partnership(s) as to whether it/they will recommend that the relevant Local Authority(ies) accept a Partnership recommendation to back construction of the facility. The decision would be informed by regulatory and planning assessments following Area and Local Investigations,

8.7 As noted above (see 6.23 and 6.28), at the Area Investigation stage it may be that a Local Partnership wishes not to withdraw when the evidence base suggests that a scientifically acceptable site is not available. In other words a volunteer area could be “dropped” without exercising a right to withdraw. That must be right – as it would then be clear that an Authorisation or License to operate would not be forthcoming on the basis of Regulators staged assessments. The same issue also arises during the ‘Decision to Proceed and Construct’ stage. A Siting Partnership could decide to recommend to the relevant Local Authorities that they should withdraw – after hearing all the evidence. However, the Partnership Agreement should define limits on making such a recommendation if there is a strong technical consensus – for example shared by the Contractor, the NDA and the Regulator, and supported by the Planning officers’ advice, that there is no valid justification for withdrawal – and that the development is likely to be acceptable in planning and regulatory terms. The proposed Model Agreement (Appendix 1) recognises that specific procedures concerning consensus building and voting rights will need to be defined to cover such eventualities.

8.8 At the point where a Decision to Implement is on the table, there would not be a submitted planning application to determine, though it is suggested that all relevant information should be in place. However, it cannot be assumed that the overall evidence will necessarily be clear cut enough either way to prevent local objector concerns or result in a consensus view. The final Local Authorities decision may then require careful balance across the issues. In areas with more than one local authority involved in the Siting Partnership a separate Memorandum of Agreement should define the basis for joint decisions to proceed or withdraw<sup>59</sup>. This would need to be embodied in advance in the Partnership Agreement and its Local Authorities Annex<sup>60</sup>.

8.9 A number of possibilities then exist. The relevant Council(s), at the one or small number of sites remaining, would be in a position to decide whether to follow their Partnership’s recommendation – to proceed or withdraw. If the science case and the planning issues (including design) and the benefits package are all acceptable, then it

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<sup>59</sup>Examples from the Swedish experience cited in 8.2 and the Belgian Partnerships may have some relevance. CoRWM Document No. 1870 — The Nature of Partnership for the Implementation of Facilities for the Long- term Management of Radioactive Waste in the UK (referencing the Belgian LLW Partnerships work): <http://www.corwm.org.uk/pdf/1870%20-%20the%20nature%20of%20partnerships.pdf>

<sup>60</sup>See BP3 – “For areas that cross local authority boundaries or have two tier local government, NuLeAF recommends that the implementation framework set out the Government’s expectation that local negotiations will take place so that agreement is reached about how local authorities will take decisions about Partnership recommendations as the siting process progresses.” This report envisages that such an agreement will be formalised in a separate Memorandum of Agreement on joint decision making in such circumstances – to be appended to the Siting Partnership Agreement.

would be expected that the Councils(s) would agree to continue their participation, without further right of withdrawal. As discussed earlier, a positive decision could be confirmed through a Special Planning Document.

8.10 However, for the participation to be likely, the possibility of a 'willing to participate' Council being able to vote against the proposal must be real, especially if there are remaining issues of significance where the proposal fails against criteria set out in the Partnership Agreement. The Partnership Agreement will need to define the criteria carefully and it must include government and NDA signatures to ensure that the power to withdraw will be respected following the sites investigation stage, even if the developer and the Partnership (including the Regulators) were of the view that the evidence was not sufficiently convincing to justify rejecting the proposal at this stage. If the LA's rejected a Partnership Recommendation it would also mean that the NDA and its contractor would not proceed to complete and submit the facility planning application – an issue also needing to be covered in the Partnership Agreement.

8.11 The concluding step in this Phase would be to finalise and submit the planning application. The views of the Siting Partnership would be regarded as material in planning terms, but not necessarily a determinative material planning consideration. The policy framework and the results of the science case (provided they satisfy the Regulators through staged regulation) would be key material considerations and a local planning authority could not reasonably take a contrary view on the safety case contrary to this advice. Earlier comments on page 29 (6.34) set out how Appeal Processes and final decisions could be made on a planning application.

## **9. Developing the Siting Partnership Agreement**

9.1 Briefing Papers 3, 4 and 5 have identified aspects that it is proposed should be covered in formal agreements. It is suggested in this report that the parties should include Government, the NDA (and its implementing contractor) on the one hand, and the relevant Regional and Local Authorities on the other.

9.2 Appendix 1 offers, for further discussion and development, an outline agreement incorporating the primary elements identified by NuLeAF as being necessary for inclusion. (In the version included in Appendix 1 it uses in part the style and structure of the Memorandum of Agreement developed in West Cumbria to reflect the NDA's role.) It provides a model 'Introduction' and 'Approach and Principles' sections but is only partly developed for the 'Partnership agreement' itself – which would need to be adapted to reflect local circumstances and reflect full negotiation. The model assumes the Partnership is formalised (and thus signed) by Regional and Local Government bodies as well as the statutory bodies who would be represented. (It would also be cross linked with the Local Strategic Partnership(s) and any NDA Site Stakeholder Groups operational in the Partnership Area.) It would also involve a representative range of individuals and community representatives from local environmental bodies or interest groups, who would change as the focus narrows down to a particular site. This aspect of its

membership would be developed in accordance with the principles set out in BP3<sup>61</sup>, including social mapping and transparent and consistent recruitment procedures. This process would follow an open process where local authorities engage widely across their areas, build consensus that there is willingness to participate, and developed together a full draft partnership agreement covering the requirements on all partners. This would, it is suggested, conclude at the end of the process of Partnership Formation, rather than defining conditions at the outset as in the Swedish model.

9.3 It is proposed that a 'Model Partnership Agreement', along these lines, be further developed over the coming years in the following stages:

- This draft be considered by the Implementation Group and in joint discussions between NuLeAF, CoRWM, 'CORWM2' and the NDA(Nirex), as part of the formal Consultation on the Implementation Framework, and that this ongoing process be noted in the Government Consultation.
- That it then be developed further following publication of the Government's conclusions on Implementation, as a Model Framework – in the form of an extended list of topics to be covered, so that it is available for consideration as areas decide whether to express a "willingness to participate".
- That it then, as subsequently amended, be issued as a model for use by the NDA and Local Government to guide Partnership Formation – to provide a common starting point for the establishment of Siting Partnerships

9.4 The Partnership Agreement should reflect the direct involvement of the NDA and its Implementing Contractor (the "developer") and District / Borough Councils (and County Councils in two tier areas). These Councils will normally have significant responsibilities as planning authorities. In other words, LA's will be both leading partners in the Siting Partnership(s) and will act in a quasi-judicial role as planning authorities.

9.5 There should also be continual joint engagement with local community interests and wider stakeholder groupings (e.g. Local Strategic Partnerships and Regional Development Agencies) as issues are investigated and proposals brought forward for submission to the planning authority by the "developer" following agreement by the Siting Partnership, unless the RoW is operated.

9.6 It is proposed that a Partnership Agreement (based on the model) should be developed by each Siting Partnership on inception (drafted in advance by the Local Authorities as a basis for negotiation). It should, as well as other matters, set out clearly, for each phase, how the roles of the NDA, its Implementing Contractor, Government Departments, Regulators and Local Authorities will be coordinated in relation to planning procedures.

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<sup>61</sup> See BP3 pages 7-12

## 10. Summary of Proposals

10.1 This Report has summarised the recommendations in earlier NuLeAF papers on Implementation, covering the role of Siting Partnerships, the siting process itself, and the place of the UK Planning system in the overall process. It notes that changed circumstances could facing the English and Welsh planning systems from those applying at the time of the RCF Inquiry in 2005/6. Since the 1990's, when previous attempts to site a radioactive waste facility failed, the UK planning system has evolved towards a stronger "plan led" framework, with a growing emphasis on clear statements of national planning policy, the introduction of Regional Spatial planning, and a Development Framework approach to local planning. The recommendations in the Barker Report on Planning will likely confirm and extend these trends, and if adopted would go further, with the introduction of 'Assessments of Need' or 'Statements of Strategic Objectives' to be carried into regional and local spatial plans. The Inquiry system for major projects is already being streamlined in revised Inquiry Procedures Rules<sup>62</sup> designed to contain re-examination of policy. Inquiries on Major Projects could in future be referred to a Planning Commission independent of Government. The new attempt to secure a Radioactive Waste Facility in the UK will necessarily be set within this context, possibly with the NDA's Strategy being seen as a vehicle to define local planning policy.

10.2 On the other hand, all the accepted thinking on successful process for radioactive waste siting points to a fully participative model, based on a 'Define-Agree-Implement' approach. This broadly accepted implementation model places its confidence in the creation of local Siting Partnerships – where all concerned parties collaborate over an extended time frame to shape and agree proposals. Bringing together these two frameworks has been the purpose of this report. A more participatory approach is anyway a trend in the planning system – with moves towards conciliation, pre-application negotiation and public engagement being introduced. While planning remains a formal regulatory role, set within a legally constrained process, there is growing flexibility to adopt a participatory and constructive approach for major long time scale projects.

10.3 The Model, summarised in Figure 2, is based on the full involvement, on a staged basis, of the planning, operational and environmental safety regulatory regimes, working with a locally formed Siting Partnership, to play a structured role in creative partnership with the NDA and its Contractor. The model will need time to build trust between the parties involved. It could be seen as curtailing the "freedom to decide" of the developer and the democratic, planning and regulatory partners alike. It will need to involve both defensible scientific and process rigour, while recognising the human factors that the various community "actors" will bring to bear.

10.4 In detail, this report has sought to describe how the major process stages would work, embedding a regularly updated "plan led" framework, though still leading to an end point democratic decision, as well as providing national planning and regulatory endorsement for any proposed facility.

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<sup>62</sup> See also Nuclear Policy Framework and Electricity Act Inquiries Rules -

10.5 The Briefing Paper takes an optimistic tone on the willingness to follow this new model, but it does recognise that there are frequent points of risk to the process. In particular, there remain issues as to how the Right of Withdrawal can be embedded. The key suggestion is that the final Decision point occurs just before submission of a Planning Application for repository development, and is taken by the relevant Local Authorities, in their representative and policy role, having regard not only to the views of the Siting Partnership but to the whole weight of evidence then collected. That decision would then be embedded in policy by the use of a Supplementary Planning Document, and would thus be subject to public review and recommendation by a Planning Inspector. Subsequent submission of the planning application for the facility would then be set within an agreed chain of policy.

10.6 For the process to succeed, whatever decision is taken by Local Government (following recommendations from the Partnership) will need to be respected by Government. This aspect must thus be covered in the Partnership Agreement that will underpin the work of the Siting Partnerships. The mechanisms for continuation or withdrawal should be clearly set out in the Partnership Agreement to which the NDA and Government should be signatories.

10.7 Local Authorities will thus need to consider the issues and proposals developed in this report and, through NuLeAF, develop a clear policy position paper for submission to the Implementation Consultation<sup>63</sup>.

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<sup>63</sup> This should be submitted, following consultation with all English and Welsh Local Authorities and with NuLeAF's Scottish equivalent body, being set up under CoSLA auspices. It should highlight the benefits of dovetailing the Siting Partnership approach with the UK System in the ways suggested.

## Appendix 1 – Model 'Siting Partnership Agreement'

### 1 Introduction

- 1.1 The Government announced its intentions regarding the establishment of the NDA and the new arrangements for managing the nuclear industry in the 2004 White Paper 'Managing the Nuclear Legacy'. The role of the NDA, in taking forward the management of all radioactive wastes, including those addressed by CoRWM in its work, was affirmed in the Government's response to the CoRWM recommendations. CoRWM described Siting Partnerships as an "extra tool for local democracy". In the Government's further statement on Implementation [insert date] the role of Local Partnership formation within areas indicating their "willingness to participate" was confirmed.] This agreement formalises the partnership approach within [insert partnership area description].
- 1.2 This Agreement is a collaborative document, harnessing and co-ordinating the energies and resources of the respective signatories. The role of the Nuclear Decommissioning Authority through its [Managing Contractor – insert company name] in taking forward the management of Higher Activity Radioactive Waste in the United Kingdom is based on a model of "willingness to participate" by local communities, matched by a commitment to channel appropriate "community benefits" into areas where communities agree to commit to supporting the required process of site investigation, on the basis that there are opportunities to "withdraw" in agreed circumstances as set out in this Partnership Agreement. In this context it is recognised that the majority of such benefits will be available from the point that the facility becomes operational. The agreement provides an opportunity, for all those concerned with the potential impacts on and benefits for their local communities to come together in a spirit of co-operation and partnership, to jointly assess the possible implications of supporting the national requirement to secure long-term safe management of radioactive waste, within [insert partnership area description].
- 1.2 This Partnership Agreement (PA) is thus made between the Nuclear Decommissioning Authority (NDA) and its [Managing Contractor for higher activity radioactive waste – insert company name], the nuclear industry regulators [EA, NII and OCNS], the Local Authorities of [insert area description] - namely ([insert] County Council), [insert] Council and [insert] Council (the LAs), the [insert] Regional Assembly ([insert] RA), the [insert] Regional Development Agency, and the Government of the United Kingdom (inclusive of the departments and agencies to whom particular responsibilities have been devolved) acting through the Government Office for the [insert]. In addition, the Parish Council's Associations, covering [insert area description], will be signatories, but as soon as specific locations for potential sites are identified, the relevant Parish / Local Councils will be invited to become Signatories to this Agreement in their own right.
- 1.3 It defines in Section 2 how the Partnership approach [set out in the

Implementation Framework] will be applied in [insert agreement area description].

1. 4 It defines in Section 3.1 the signatories' roles established in the [Planning – insert relevant Acts – or use footnote], the 2004 Energy Act [and other relevant legislation – including that covering nuclear industry and environmental regulation]. The Planning Acts give [Regional Assemblies] and Local Government planning powers - covering plan-making in Regional Spatial Strategies and Local Development Frameworks, as well as responsibilities under European Environmental Assessment Directives, and for Local Government making decisions on planning applications. The Energy Act gives the NDA a range of responsibilities which, following government decision in the light of CoRWM's recommendations, now include a requirement to take forward a UK wide siting process to secure the safe long term management of higher activity radioactive waste. The Energy Act also gives the NDA a function 7(1) "...to the extent that it considers it appropriate to do so, of - (e) giving encouragement and other support to activities that benefit the social or economic life of the communities living near designated installations, designated sites or designated facilities or that produce other environmental benefits for such communities"<sup>64</sup>. The [insert] ..DA has Economic Development Functions, relevant to this Partnership Agreement. The relevant regulators exercise statutory powers [insert relevant Acts] in respect of the discharges and operations arising from radioactive waste management, including the security of nuclear materials.
- 1.5 The responsibility for exercising these relevant powers rests with the following signatory bodies:

**The Nuclear Decommissioning Authority:** This Partnership Agreement reflects the powers and duties of the NDA in the Energy Act, including those which give it responsibility to engage stakeholders on plans and programmes [including its Strategy, and Lifetime and Annual Plans]. The Partnership will provide considered input into the NDA's Strategy and other documents concerning the siting process. In addition, Socio-Economic Plans covering the requirement to give encouragement and support to activities that benefit the social or economic life of communities living near designated nuclear sites will be produced by the NDA in consultation with the Partnership. [This is interpreted as including support to the operation of Siting Partnerships, including support for local communities within the NDA's powers under the Energy Act, whether in areas of present nuclear activity or otherwise. It is not expected<sup>65</sup> that other than

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<sup>64</sup> However, it should be noted that NuLeAF Briefing Paper 5 proposes that the NDA should not be the funding body for support packages.

<sup>65</sup> See NuLeAF BP5. p7:

Potential stages for provision of Benefits Packages are:

- Identification or preferred site (but prior to substantive underground investigation at the site) – 'good will' funding of modest elements of the package;
- Decision to proceed with repository construction - a significant but minority proportion of funding of elements of the package;
- Regulatory decision that radioactive wastes can be emplaced in the repository – release of the majority proportion of funding (but not including monies from the intergenerational trust fund)



“good will’ funding of modest elements of the package would be provided before any decision to proceed with the repository was taken and consent granted.]

**The Local Authorities within [insert area name] who are parties to this agreement :** This Partnership Agreement acknowledges the key role of democratically elected local government in community leadership, strategy development, as planning authorities, in managing socio-economic change through its economic development powers, and in respect of social services, education and other relevant powers. It is acknowledged that major local decisions’ on the siting process will be made by representative local government (themselves working in partnership). In each case, the decision would be based on advice and recommendations from the Siting Partnership. By major local decisions, it is meant those relating to the following:

- continued participation at key stages, or exercising a right of withdrawal
- the local acceptability of proposals for funding participation and for community packages
- the local acceptability of the sites within an area that are proposed for field investigations – which will be matters for the planning process
- whether to accept an increased inventory of wastes in the repository should new nuclear power stations be built?

[Include as needed, for areas that cross local authority boundaries or have two tier local government: The Implementation Framework set out the Government's expectation that local negotiations will take place so that agreement is reached about how local authorities will take decisions about Partnership recommendations as the siting process progresses. The Local Agreement covering [insert names of LA's] is embedded in this Partnership Agreement as Annex 1.]

**The [insert] Regional Assembly** will lead in ensuring coordination of the work of the Siting Partnership is coordinated with the development or updating of the relevant Regional Spatial Strategy.

**The [insert] Development Agency** will work with / through relevant sub-regional bodies focusing on economic development and regeneration in [insert area name], thus contributing to delivery of the Regional Economic Strategy and the [insert relevant Authority name] Sub-Regional Economic Strategy, having regard to and embedding any additional benefits arising from participation and any eventual facility implementation.

**The Government Office for [insert]** will lead on coordinating action arising from the Partnership Agreement across government departments.

**The Environment Agency [or SEPA], NII and OCNS** – will ensure timely and phased input on their assessment of the research being undertaken, and play a full part in the Partnership consistent with their regulatory roles

In addition, **The [insert] Parish Councils' Association** [or equivalent] will ensure Parish and Local Councils are kept informed and represent their views into the Partnership.

- 1.6 This Agreement aims to provide the necessary clarity and confidence to ensure that process of investigation and assessment required to establish whether any locations in the [insert agreement area], arising from the responsibilities of the NDA, will be appropriate locations for the development of a long-term radioactive waste facility, and whether the impacts of any waste management proposals and any planning consents required or granted, will be likely acceptable to the [Partnership Area] on the basis of deliberations by this Partnership. It also seeks to ensure that opportunities arising from the process and operation of any facility, if eventually consented, are maximised to all parties.
- 1.7 This Partnership Agreement requires the signatories to this agreement to ensure that as broad a spectrum of interests as possible are appropriately represented on the Siting Partnership and its Committees and Sub-Committees, consistent with the effectiveness of the Partnership. [Where an existing nuclear facility is operational in the Partnership Area cross representation should be agreed with the relevant Site Stakeholder Group.] It addresses [in Section 3] the steps to be taken to ensure this wide local community and stakeholder engagement.
- 1.8 The Partnership will establish a dedicated independent secretariat, supplemented by the availability of expertise across the range of signatories, with funding provided by the NDA / Government – as set out in Section 4.

## **2 Mission, Principles and Approach**

- 2.1 The Primary purpose of this Siting Partnership is to generate advice and recommendations reflecting local community interests. This Agreement expresses the spirit of the relationships that should be developed between national and local bodies within the siting process. The mission of the Siting Partnership is thus to ensure that:
  - all the questions and concerns of potential host communities within its area and other affected communities about repository siting, construction, operation, closure and post-closure are addressed and resolved as far as reasonably practicable; and
  - the well-being<sup>66</sup> of host communities is enhanced.
- 2.2 The role of national bodies in terms of input to and engagement with this Siting Partnership (including the NDA, the repository contractor and the regulators) is such that they will not participate in the Siting Partnership's formal decision-

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<sup>66</sup> CoRWM has defined 'well-being' as follows: "we mean those aspects of living that contribute to the community's identity, development and sense of positive self-image. Well-being is a broad concept and not narrowly defined in terms of financial incentives or community facilities. A community's well-being may be realised in a variety of ways through economic development, through greater control over its affairs and through an ability to define and realise its own vision for its future." [CoRWM Document 700, p134] This issue is considered further in NuLeAF Briefing Paper 5.

- making. However, their role and contribution within the Partnership will include:
- The pro-active provision of timely information and advice to the Partnership, including the presentation of proposals, advice and research findings.
  - Participation in Partnership discussions, working groups and studies.
  - Responding to Partnership requests for further information and advice.
  - Involvement in wider community engagement and consultation initiatives as organised by the Partnership.
  - Assistance with building the capacity of Partnership members to fulfil its mission and undertake its role.
- 2.3 The principles developed and used by CoRWM provide a model for the operation of the Partnership<sup>67</sup>:
- To be open and transparent
  - To uphold the public interest by taking full account of public and stakeholder views in its decision making
  - To achieve fairness with respect to procedures, communities and future generations
  - To aim for a safe and sustainable environment both now and in the future
  - To ensure an efficient, cost-effective and conclusive process.
- 2.4 In taking forward this Partnership Agreement the signatories adopt the following statement of approach:
- [To cover transparency, openness, etc, e.g. "to ensure that all issues arising during site identification, investigation, and assessment are fully presented for discussion in a timely manner and in a spirit of open partnership, subject only to the principles governing the management of commercially sensitive or security related information."]
- 2.5 All signatories agree to use their own particular powers, capacity and influence in order to ensure the success of the Partnership, as follows:
- Government co-ordination will be ensured, so far as possible, across Departments, primarily through [insert Regional Office] on all issues affecting policy coordination and planning / development issues
  - The NDA responsibility through its relationship with its Managing Contractor [insert name] to develop and prepare Lifetime and Annual Plans covering programmes of research and investigation and report on them, to provide timely inputs on regional and local planning policy via the Partnership, to submit planning applications and accompanying environmental reports, to agree and set out the value and nature of support for socio-economic and environmental development and all other relevant matters;
  - The [insert] Regional Assembly to coordinate with the NDA and Local Planning Authority(ies) through the Partnership on the inclusion of relevant and necessary policy within Regional Spatial Strategy

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<sup>67</sup> CoRWM, 'Recommendations to Government, Doc 700, p29

- Cross Local Government co-ordination to ensure timely delivery of decisions and agreed programmes [expand in two tier local government areas], covering all relevant matters including consultation with the Partnership on the development of nuclear waste management policy, LDF [and MWDF] policy formation and updating, SPD's or other formal planning documents, planning applications and SEA/EA Scoping Documents;
- The [insert] DA role in securing regional economic development, co-ordinated through the [add references to sub-regional bodies and other applicable structures].

2.6 UK and international experience across the nuclear industry has demonstrated that developing and retaining the support of local communities is important. The NDA commitment to transparency and openness, plus the development of new stakeholder engagement arrangements locally and nationally, will be supported by the signatories to this agreement. Positive steps by the NDA itself, and through its contractors, to enhance local social capital, will also make a positive contribution to this.

### **3 The Partnership Agreement**

3.1 Expansion of Roles of Signatories [see Introduction 1.4]

Section setting out more precisely the way statutory powers would be exercised and the role the partnership would play in "framing", and seeking as far as possible a common view on the proposed approach by the signatories, while respecting the requirement on all parties to act properly within the formal statutory frameworks.

#### **3.1 Statement of Mutual Obligations**

3.1.1 The NDA hereby commits itself to:

- Operating openly in respect of the role of Managing Contractor
- Taking account of Partnership Advice and justifying any departures
- Ensuring timely provision of information and programming response, etc
- Committing to a high level and expert role of representation

3.1.2 The Councils hereby commit:

- To use the Partnership as their primary focus of consultation on all planning policy and development control issues concerning the investigation steps and facility proposals, consistent with wider obligations for stakeholder engagement
- To ensure representation, as appropriate, from members and nuclear issues / planning case of officers Partnership meetings
- Work closely with the Partnership Secretariat in the provision of all relevant information
- Consistent with the NDA and its contractors fulfilling their obligations,

support the NDA in the implementation of decisions taken following consultation with, and in agreement with them, under the terms of this Partnership Agreement

- consult the NDA under the provisions of this Partnership Agreement, on timescales that give it reasonable opportunity to consider and respond, in accordance with current Government protocols;
- develop and maintain sufficient capacity and capability (both individually and collectively) to work effectively with the NDA and other Partner signatories to manage the socio-economic impacts of decisions to continue to participate;
- ensure timely delivery of decisions and agreed programmes through development and operation of appropriate mechanisms to secure cross Local Government co-ordination.

[Other relevant signatory obligations from other parties to be added locally]

3.1.3 The Government will encourage the NDA to fulfill its obligations under this agreement.

3.1.4 All signatories agree to:

- do nothing that cuts across the statutory responsibilities of the signatories;
- engage fully in dialogue with other signatories to this Partnership Agreement so as to reach as great a degree of consensus wherever possible;
- act in accordance with and, over time, improve the operation of the Partnership Agreement as a basis for delivering a common purpose approach to the investigation of possible sites for long-term radioactive waste within the Partnership Area;
- recognise the need to revise the Partnership Agreement in the light of future developments.

3.2 **Detailed Areas of Agreement** to cover [these will have been developed during Partnership Formation]:

- Organisation and procedures (to consider the role of a Chair and Executive Committee / Coordination Group, the procedures for decision-making about Partnership recommendations, the role of working groups, the link to decision-makers and the mechanisms for wider consultation and engagement).
- Information, expertise and knowledge (to consider how to draw on different types of specialist and citizens' knowledge, and develop procedures to sort, evaluate, use and share information).
- Outputs (to identify desired outputs, what is appropriate and what is feasible).
- External communications (to inform local people about its role, work and conclusions and to get feedback on what communities think).
- Training and skills (to invest in training and skills development to help members fulfill their roles eg leadership development, partnership-working

- skills, external communication and community engagement).
- Funding and resources (to identify requirements for resourcing to develop competencies, ensure meaningful participation and engagement, and obtain, evaluate, use and share information).
- Evaluation (to learn from experience and identify ways of improving the work of the Partnership)

### 3.3 **Agreement on the Partnership Structure**, for example:

- A Steering Group or Joint Coordination Group [See Section 5 below]
- A Main Group – define levels of representation by signatory body and other partners – developed from work undertaken during partnership formation
- Working Groups for each of the main issues of community concern (e.g. community packages, siting and design of the repository, safety, environmental impacts, and community engagement/information).

### 3.4 **Agreement on Ways of Working** – and how these would be managed:

- Developing advice and recommendations for decision-making bodies
- Scrutiny of the work of the bodies involved in repository siting and development
- Obtaining specialist advice or commissioning research to inform its scrutiny role, address community concerns or identify ways of enhancing community well-being
- Provision of public information about the activities, views and recommendations of the Partnership
- Engagement or consultation with potential host communities, other affected communities and neighbouring local authorities
- Identifying and addressing divergent views within those communities
- Liaison and discussion with local bodies with remits related to the mission of the Partnership (eg Local Strategic Partnerships or Site Stakeholder Groups)
- Building the capacity of its membership to enable it to effectively carry out these roles.

### 3.5 **Programming** - headline key steps anticipated in the work of the Partnership [Develop more fully as an annual rolling Annex 2 to the agreement]:

- Development of shared vision about the mission, principles and role of the Siting Partnership (see 1.2 above)
- Development of working practices and capacity building (training and skills)
- Development of proposals for Community Packages
- Development of the repository concept
- Identification of potential sites within the area of the Partnership
- Identification of a short-list of potential sites
- Field investigations and assessment at short-listed sites
- Identification of preferred site/s
- Underground investigations

- Construction of the repository
- Emplacement of wastes in the repository
- Closure of the repository

### 3.6 **Making Recommendations – Continuation or Withdrawal**

Clauses in this section should confirm that a key responsibility of the Partnership will be to make formal recommendations to the relevant Local Authorities to inform their decision to “continue” to participate or exercise the “right of withdrawal”. This should include development and agreement of a formal Report – for consideration by the Partnership and adoption as its recommendation. In reaching that decision the aspiration would be that decisions should normally be reached by consensual process (through facilitated dialogue as required), involving all participants, including the NDA and Local Authority Participants – who would be free to contribute a view defensible on their interpretation of the merits of the overall evidence. However, the Section should address clearly what would be done if this did not apply at any key point of recommendation.

- Clauses to confirm – based on national agreements – the points at which a formal step of deciding to “continue to participate” would be required or the “right to withdraw” exercised; suggested to be:
  - At the conclusion of the “area investigation” stage – to be taken having regard to a jointly considered short list of potential sites thought likely, within each partnership area, to be feasible in terms of safety case assessment and likely to be acceptable in terms of the necessary surface development and its planning implications. (The local decision may be subject to and be informed by a comparative review including SEA, of sites in other partnership areas – requiring coordination of timing of decision taking between partnership areas.) The decision may be to withdraw or to support only one or a small number of specific sites as the basis for continued participation.
  - At the conclusion of the “sites investigation” stage – to be taken having regard to detailed “field assessment” and other necessary investigation of each site going forward from the area investigation stage within each the partnership area. (To be similarly subject to national coordination in the event that a number of sites in different partnership areas continue to show technical merit)
  - The final opportunity to decide to continue or withdraw would (only if required) follow a comparative national review of the one (or more) sites across remaining partnership areas, to include comparison of benefits and impacts through SEA, taking into account all safety case information and planning impact assessments, leading to a firm proposal to proceed at a preferred site.
  - A final de-facto “opportunity to withdraw” would remain if, following in-situ investigation during construction, the site was shown not be capable of being licensed for operation due to un-envisaged site characteristics.

- Clauses setting out a list of agreed circumstances in which the Council(s) would be able to exercise a Right of Withdrawal at each step. To include:
  - Significant concerns concerning long term risk agreed by the Regulators
  - Significant likely objections on planning grounds (on which no resolution with the developer appeared achievable)
  - Significant objections regarding the scale and form of the benefits package over which no resolution was available with the developer (e.g. reduced budget allocation by government)
 [These to be developed and expanded to incorporate clarifications]
- Clauses to set out who in the Partnership should participate in decisions to recommend to the Local Authorities on proceeding or withdrawing.
- Clauses to define whether and how voting would take place – if required
- Clauses to define any limitations on voting or matters to be properly taken into account when voting (including issues of ethics and conflicts of interest)

#### **4 Staffing and Funding Arrangements**

- Agreement on the nature of the Secretariat [including staffing levels and their contracts] – with which partner – and on what terms, how performance will be reviewed – with supplementary document (recognising that partnership working is specialized and resource intensive)
- Agree on the level of relevant staff time contributed by signatory partners – able to provide technical input and advice – to include personnel from NDA, Contractor, Local Planning Authorities and Regeneration bodies – more detail in supplementary document
- Funding arrangement principles – covering sources, scale, use, etc + Requirement to budget and give account – detail in supplementary document.<sup>68</sup>

#### **5 Common Provisions**

- 5.1 To promote an open and transparent relationship with relevant stakeholders in the Partnership area, the NDA will fund processes to ensure community views are taken into account as it develops its plans and strategies. The site contractor will be required to set up Site Stakeholder Groups funded by the NDA through the site contract, which will review performance of both the NDA and the site contractor, comment on strategies and plans and inform NDA decision-making. In addition, the NDA will give due consideration to the funding of activities and elements of work required to deliver its undertakings under this agreement.

#### **6 Review Provisions [possible example wording]**

- 6.1 A Joint Co-ordination Group, involving representatives of the NDA and all signatories, will meet whenever the need arises, and at least once every year, to

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<sup>68</sup>See NuLeAF BP5 for other options – which may place the management of participation in a separate body from the NDA]



review the work of this Partnership Agreement. The chair will be taken successively by a representative of the Partnership Agreement Signatories.

- 6.2 The review function of the Joint Co-ordination Group will be assisted by regular updates, studies of the impact on the NDA strategy and planning documents suite on the Partnership Area. Such work to be funded by the NDA. Update studies will take place at least every two years, or more frequently if the Co-ordination Group agree additional studies are necessary.
- 6.3 The Terms of Reference for the Joint Co-ordination Group will be designed to allow continuous review of the operation of this Partnership Agreement and in particular to:
- a) resolve any problems referred to the Group and to identify, consider and, if possible, resolve any problems of a general nature arising from the practical application of its provisions;
  - b) make recommendations for changes or additions to the Partnership Agreement as necessary, subject to agreement by all signatories;
  - c) consider the implications of NDA and Regulatory Body policy decisions
  - d) discuss other matters of common interest.

**Suggested Annexes:**

**Annex 1 – Local Government Memorandum of Agreement [in areas where adjacent or two tier authorities are involved in the formation and operation of the Siting Partnership]**

**Annex 2 – Programme of Work and Decision Steps [Reviewed Annually]**

## NOTES TO FIGURE 1

Terms used in the figure – organised as read in the Figure:

MRWS	Managing Radioactive Waste Safely – the government process covering the work of CoRWM and the development of an agreed Implementation Framework
NWMO	Nuclear Waste Management Organisation (the role of the NDA - incorporating Nirex – and exercised through an “Site License Contractor”
Partnership Organisation	comprising NWMO and Local Partners
Partnership Agreement	Formal Agreement defining roles and operation of partner signatory bodies
Volunteer Process	Process based on community willingness to participate – involving Local Authorities and other local community representation
EU	European Union
UK	United Kingdom

Government Guidance: Formal Guidance / Policy issued under the Planning Acts

PPS	Planning Policy Statement (issued by Government)
RSS	Regional Spatial Strategy
EIA	Environmental Impact Assessment
SEA	Strategic Environmental Assessment
SA	Sustainability Assessment
ER	Environmental Review
ES	Environmental Statement
SCI	Statement of Community Involvement
LDF	Local Development Framework (prepared by Local Planning Authority)

Supplementary Planning Documents:

Documents issued under the Planning Acts comprising a suite of “Development Plan Documents” including a Core Strategy, Action Area Plans and Proposals Maps (with an SCI), which have been subject to EA, SEA and SA

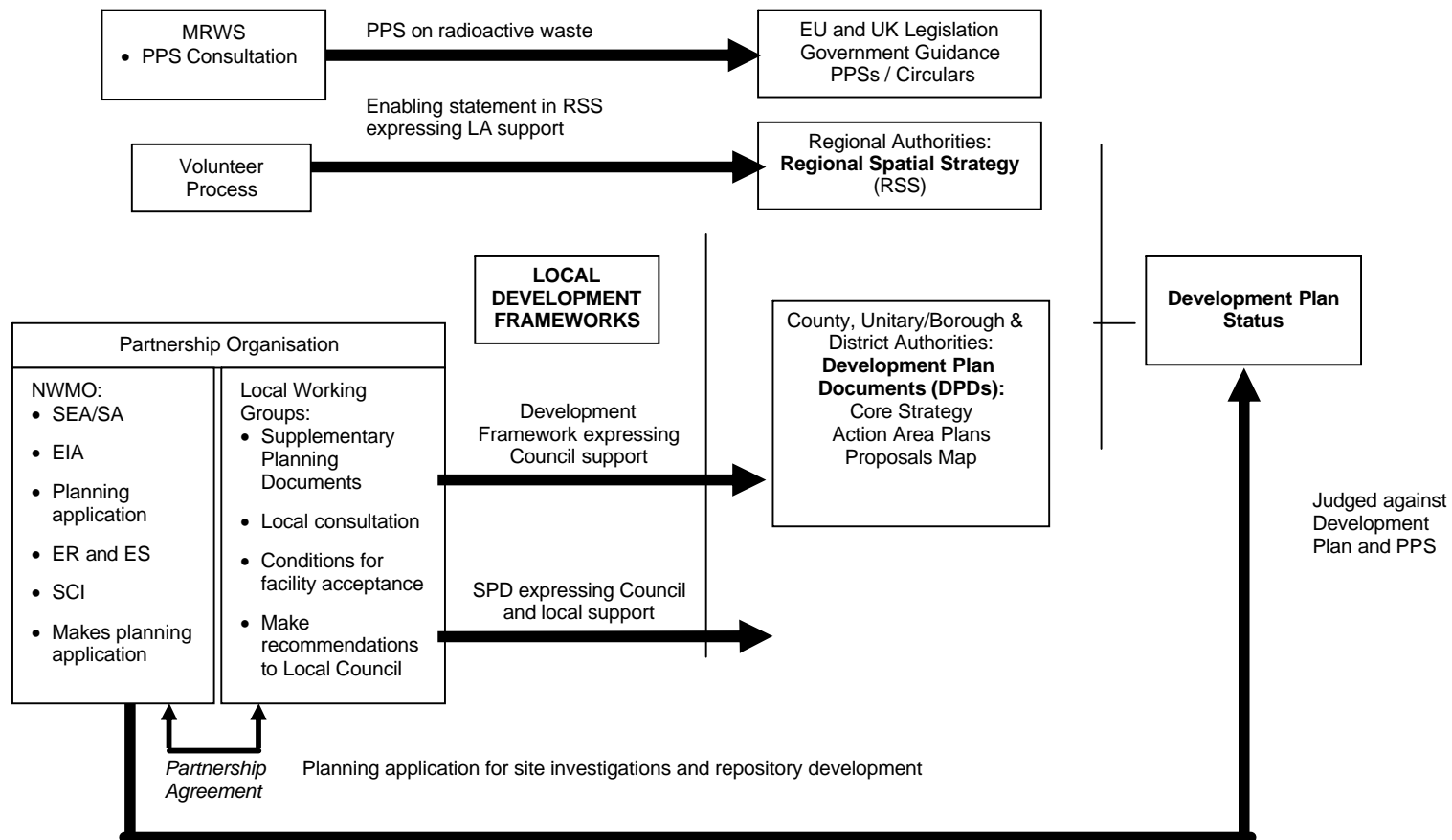
Conditions for Facility Acceptance:

Statement by the Local Partners setting out the basis on which a facility would be accepted

NDA Nuclear Decommissioning Authority

Implementing Radioactive Waste Management: Siting and Planning In Partnership, Report to NuLeAF, 13 March 2007, p50

**Figure 1: Potential links between the planning system and radioactive waste management**



**Figure 2 – SITING, PLANNING and RIGHTS OF WITHDRAWAL IN THE STEPWISE IMPLEMENTATION PROCESS**

Phase	MRWS 3	Screening, Invites and Response		Investigation of Siting Partnership Areas			Implementation
Body / Stage	Finalise	Invitation to Participate	Establish Siting Partnerships	Area Investigation	Sites Investigation	Decision to Proceed & Construct	Construction & in-situ review
<b>Government:</b>							
Policy	Implementation Framework	← Issue Invitations after screening	Signatory to P'ship Agreement→	Endorse in Statement→	Endorse in Statement→	Parliamentary Endorsement Special Develop'nt Order?→	Parliamentary Review in Committee
Planning	← Consult on need for PPS?	Consult on PPS with Volunteer Comm's	← Issue PPS – cover steps and roles	Inquiry if Boreholes etc refused – unless RoW →	Inquiry if BH's etc refused – or RoW →	Inquiry Commission [If Barker] / InPrRule Inquiry→	Issue staged Development Orders
<b>CORWM 2:</b>	Frame Process	Monitor / Review	Review & Advise	Review & Advise	Review & Advise	Review & Submit Evidence→	Review & advice ongoing
<b>NDA:</b>							
Strategy	Define Role	Scope Process	Scope Process	Endorse options	Endorse outcomes	Scope Implementation stage	Define key steps throughout (5 year)
LCBL	Scope Process	Define Steps (SLC)	Update LCBL by SLC	Update LCBL from SLC	Update LCBL from SLC	Update LCBL from SLC	Update LCBL from SLC
NTWP	Scope Vol P'ship	Set out process	Update with progress	Update with progress	Update with progress	Update with progress	Update with progress
WIG + Nat SG	Stake'der Review	Input process views	Input process views	Input process views	Input issues review	Input issues view	Input issues review
Local SG	Model Agree'm't	Use alongside LSPs	Inform / Rep on SP	Inform / Rep on SP	Inform / Rep on SP	Inform / Rep on SP	Absorb SP when decided (Sub-Ctte)?
<b>Implementor:</b>	Nirex within NDA	Nirex in NDA → SLC					
Framing	Underpin LCBL	Underpin NTWP	Propose Process	Examine options	Examine outcomes	Define Implement' step	Refine re REG / WPA / P'ship views
National Siting	Geol Review	← Advise Preferred	In feasible areas				[Revisit if showstopper]
Local Siting	Develop Process	Screening Criteria	Review sub-options	Prepare Plan Apps	Prepare Plan Apps	Prepare Full Plan Application	Prepare variations and details
Site Investigation	Scope Geological / safety approach	Prepare Concept & respond	Geol Review begins in volunteer areas	Assess Alternatives (Geol & Safety #1)	Assess Geology and Safety Case #2	Full Site Specification	Ongoing monitoring & variations
Science Case	Outline Scope	1 <sup>st</sup> Science Report→	2 <sup>nd</sup> Science Report →	3 <sup>rd</sup> SR: Review Alternate	4 <sup>th</sup> SR: Develop Case	5 <sup>th</sup> Full Science Case issued	Continual science review + Peer Rev
SEA /EA	SEA on method	EIA framing areas	SEA on sites	SEA – national options	SEA / EA (local sites)	Full EA – preferred site	EA of variations
<b>Siting Partnership:</b>							
Scoping	Initial contacts	Continue contacts	Scope work & staff*	Review / Agree Scope	Review / Agree Scope	Agree Decision Scope & App	
Formation / Op	LAs+NDA Inform	LAs+NDA Initiate	Develop Draft Agree't	Monitor and Report	Monitor and Report	Define changed structure	Monitor and Report
Review and	Respond to Gov't	Draft Agreement	Review Imp inputs	Review	Review	Review	Monitor concept and science updates
Recommend			Sign Part'ship Ag'm't→	Agree or exercise RoW	Agree or exercise RoW	Agree or exercise RoW	
<b>Local Gov'nt:</b>							
Role in Siting Partnership	Awareness Raise	Lead Process	Support with agreed staff contribution*	Liaise between P'ship, NDA & Waste Planners*	Liaise between P'ship, NDA, Waste Planners*	Liaise between P'ship, NDA & Waste Planners*	Liaise between P'ship, NDA & Waste Planners*
General Policy	Respond MRWS3	Agree roles	Agree P'ship role	Review evidence*	Review Evidence*	Review Evidence*	Review Evidence*
Participation	Model Agreement	Develop Local Agreement*	Finalise and Sign*→	Report and Endorse or decide RoW*	Report and Endorse or decide RoW*	Report and Endorse or decide RoW*	Monitor problems*
Right of Withdrawal	Develop model approach	Agree key steps	Include in Partnership Agreement	Hear P'ship views and make RoW Decision	Hear P'ship views and make RoW Decision	Hear P'ship views and make RoW Decision (Final RoW)	Further option only if site deemed unsafe after detailed 'in situ' stages
Waste Planning	Be kept informed / gear up	Develop / consult on RW MWDF	Adopt MWDF or SPD* following SP consult	Determine BH Apps / Review MWDF to sites*	Determine BH Apps / Review MWDF*: local	Review MWDF* re locality Reach view - App* and PI*	Continually involved in detailed monitoring and review of details*
<b>Region (RSS)</b>	Criteria Based Draft		Issue criteria based RSS on Radwaste	Review RSS to refer to Site(s) in Region	Review RSS to include specific site in Region		Review RSS to affirm Decision to proceed
<b>Regulators:</b>							
EA/ NII / OCNS (Staged Regs)	Regulate MRWS approach	Regulate re concept suitability (outline)	Regulate re Locations suitability	Review safety cases for local options	Review Safety cases for remaining options	Clear regulatory input provided to LPA / Inquiry	Review Staged and Final Safety cases – affirm or reject

← near start of stage . near end of stage \*Assume support for LA and Partnership staffing where directly associated with Siting Partnership, joint Review and Monitoring / Planning Inquiries