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GDF siting process consultation
Department of Energy and Climate Change
Room M07
55 Whitehall
London
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1st December 2013

Dear Sir,

Government Consultation Paper “Review of the Siting Process for a Geological Disposal Facility”, September 2013

Thank you very much for the opportunity to respond to DECC’s consultation paper above.

I write on behalf of the Cumbria Association of Local Councils. The Association is a membership body and represents over 90% of the 266 town and parish councils and parish meetings in Cumbria. This response was presented in draft to CALC’s Executive Committee, was circulated to all our member councils for comment and was discussed at our Annual General Meeting earlier this month. This response was finally signed off by our Executive Committee.

We recognise this is a consultation about a new national process (MRWS 2) but our comments have inevitably been shaped by our experience of the earlier process in West Cumbria. We learned a number of lessons from our involvement as a representative body on behalf of Cumbria’s town and parish councils and we believe it is important that these lessons, good and not so good, should be used to inform MRWS 2. Government also needs to understand that there is a high degree of cynicism in Cumbria about the MRWS 2 proposals which seem to many parish councils and others to have been framed with the intention of removing from decision-making bodies which said no to proceeding under the earlier process.

Before commenting on the particular questions posed in the consultation paper, we would like to make a number of key points which we believe, based on our earlier experience, are critical in the words of the consultation paper “to help communities engage in it with more confidence”. These are:

1. The absolute priority must be safety. We are dealing here with one of the world’s most dangerous materials. We take the view that no compromises must be made in the

search for an underground site which meets stringent independent tests as to geological suitability. In this regard geological suitability must take precedence over voluntarism. Further, we heard arguments during the earlier process in West Cumbria that engineered solutions could compensate for less suitable geology but the arguments we have heard to date in favour of such an approach are not convincing and would harm considerably public confidence in the process.

2. The principles of localism and subsidiarity are used to justify the proposal that in two tier areas the representative authority should be the district council. We would argue that an equally important principle is that decision making should take place at the appropriate level given the impact of a geological disposal facility (GDF) both on the local communities most directly affected (and represented by local town and parish councils) and over a wider area. It is inconceivable that the building of a GDF would not have an impact over an area larger than a district council. If the localism and subsidiarity principles are as important as the consultation paper claims, then DECC should put in place an engagement package to encourage town and parish council involvement such that the most local tier of local government is capable of decision-making.
3. The 2008 White Paper envisaged that the host community would be the area within which the GDF facility would be located. Based on the consultation paper's own arguments we see no justifiable reason for relegating the role of the affected town and parish councils to little more than involvement in a consultative body. We argue below that the views of local town and parish councils, as the tier of local government closest to local people, must be given due weight both in any decision to enter the process and in any decision to exercise the right of withdrawal.
4. The proposed GDF is a major project of national significance and its impact, with the associated economic and social benefits and dis-benefits, will be felt across a wide area. That being the case it seems inconceivable that in two tier areas county councils, as the strategic level authority and the statutory waste disposal authority, would under the proposals be relegated to involvement through a consultative partnership. In two tier areas either county councils should be the representative authority or, as was the case under MRWS 1, both levels of local government should have a stake in decision-making. If government is looking for credible support in a two tier area then what under MRWS 1 was described as "the three green lights" should not be lightly discarded.
5. To engender public confidence the whole process needs to be underpinned by legislation subject to scrutiny by Parliament.

With these key points in mind, we set out below our response to the particular questions posed in the consultation paper.

Question 1: Do you agree that a test of public support should be taken before the representative authority loses the Right of Withdrawal? If so, what do you think would be the most appropriate means of testing public support, and when should it take place? If you do not agree with the need for such a test please explain why.

Yes, a test of public support is required. The most appropriate means would be a referendum held on the day of a parliamentary or local election when polling stations are already set up. It should take place when the two reports referred to at paragraph 2.50 have been received. The reports should be given wide publicity and only when government is satisfied that there is a wide

understanding of the proposals should arrangements for a referendum begin. It most certainly needs to be held before the representative authority signalled its wish to move to the focusing stage. It would act as a mandate to take that step.

The question of what is “a suitably defined area” needs to be considered. A large area of the particular region would be appropriate allowing for substantial numbers of the population to express their view but there should then be a mechanism for disaggregation to show the result within the area of the representative authority and, most importantly, within the comparatively small geographical area most directly affected which we would refer to as the host community. Government should not allow the process to continue should the host community be shown to have voted “No”.

It cannot be right to allow a process to continue for many years without a test of community support, and only towards the end of the focusing phase when much time and energy has been expended. It is unfortunate that paragraph 2.42 is expressed in an unbalanced way. The question of community benefits is relevant to the timing of a show of public support. Government now proposes to pay over a number of years an amount into a community fund.

How much more valid is the view that it is a bribe if a community fund contains a substantial amount - which would have to be returned - when a vote takes place. An obligation to return funds places undue pressure on a local area in a referendum and the release of community benefits should, therefore, be managed in such a way that this is not required.

Question 2: Do you agree with the proposed amendments to decision making within the MRWS siting process. If not, how would you modify the proposed phased approach, or, alternatively, what different approach would you propose? Please explain your reasoning.

On a very narrow basis, the phased process has merit but within a revised siting process much more amplification is necessary. It is not helpful for government to hide behind the term flexible approach or flexibility. Respondents need to know what they are letting themselves in for at the start. “Any local body” is a very wide ranging term but it is not clear whether that local body would need to specify the particular area in which it was interested in order to have any standing. It is not clear whether a local authority itself could approach government. Presumably it could but it would be inappropriate for that authority not to specify a particular area within its boundaries. Principal local authorities should not be allowed to embark on a “fishing expedition” and should specify an area within their boundary which they believe shows reasonable prospects of finding suitable geology. The two reports are helpful but certainly the geological report as proposed is inadequate.

The process envisages that where a local body expresses an interest the government would have to obtain the representative authority’s consent to the production of reports on geology and socio-economic impacts. This is effectively the trigger for a local area’s involvement in the siting process, but the process is silent on the important question as to whether the representative authority needs to consult local people and stakeholders before giving its consent. This goes to the heart of volunteerism and CALC would wish to see an explicit requirement for prior consultation, particularly with the host community represented by local town and parish councils before there is a commitment to enter the process. This requirement for prior consultation must be in addition to, and not in substitution for, the test of public support before the representative authority loses the right of withdrawal.

The proposals for a steering group and for a consultative partnership have merit but the composition of both is mistaken and will not engender community support. There is a need for both to be independently led. The suggestion that the leader of the representative authority should chair the steering group is misguided. CALC has argued that for communities to engage in the process with confidence a nationally respected, independent minded, figure is required. It can be argued that a person of standing, with a scientific background but not necessarily outside the nuclear industry, would be appropriate to chair the consultative group. The greatest mistake would be to sideline representatives of the potential host community especially given that one of the three main functions of the steering group is to review continuously the viability and acceptability of the locality as the potential host site.

As we've made clear in our introduction it cannot be right in two tier areas that the county council as the strategic authority and the minerals and waste authority is relegated to the role of a bit player in the consultative partnership. The proposal to bring the GDF within the scope of the Planning Act 2008 recognises that this is a project of national significance. It follows, therefore, in a local context that the impact of a GDF would extend far beyond the boundaries of a single district council area, and our concern is that a district authority may not give due weight to important considerations relevant to a wider area.

Question 3: Do you agree with this approach to revising roles in the siting process set out in the White Paper? If not, what alternative approach would you propose and why?

We accept that government should play a much more active role in many aspects of the process and in particular that government should not consider the "learning phase" to have been completed until two or more expressions of interest have been received in respect of different county areas. In Cumbria, government sub-contracted much of what it now sees as raising awareness to the West Cumbria Partnership and efforts to engage other parts of the country were particularly weak. We do not argue that the role proposed for the NDA is inappropriate. However, the arguments set out for the role of local government simply do not bear scrutiny. Trying to simplify the process by suggesting that in two tier areas the district authority alone should be the responsible authority makes little sense. This is illustrated by the position over our border in the unitary authority of Northumberland which stretches from the Newcastle- upon-Tyne city boundary to the Scottish Border. It covers 1,936 square miles. It is far larger than some county council areas and yet the consultation paper would have us believe that it is the best placed democratic institution to represent the interests of the community affected. In the south west the consultation paper proposal would give decision-making powers to Cornwall Council but leave the adjoining Devon County Council without an effective say, which cannot be right.

CALC would argue that there is no doubt that the community affected, the host community in the words of the 2008 White Paper, would be best represented by its parish or town council, or by a group of parish/town councillors if the proposed site crossed parish boundaries. Trust in the process, which featured prominently in the final report of the West Cumbria Partnership, will never be forthcoming if the first tier of local government closest to the proposed GDF site is dismissed as being of little consequence and incapable of playing a decision making role.

The consultation paper continues to use the term communities in a haphazard and confusing manner. While the paper preaches flexibility it is not helpful if different parties construe the term in different ways. The White Paper was quite clear that *"The Host Community will be a small geographically defined area and include the population of that area and owners of land. For example it could be a town or village"*. Box 1 (Key messages from the review) does not include

any desire to alter the definition of the host community but at paragraph 2.22 it is commented that the potential host community should maintain a right of withdrawal throughout the siting process, and then at paragraph 2.23 that the representative authority should have decision making authority for the host community. In other words, Government now seems to have taken the view that the representative authority can exercise the right of withdrawal or not but without specifying that the views of the host community, as defined in the White Paper, should be given particular weight. We argue that this is wrong and that the views of the town and parish councils within the area affected must be given first consideration by the representative authority.

The question of how the representative authority would reach decisions is not addressed. Confidence in the decision-making process is vital and the decision-making process itself was subject to considerable scrutiny in Cumbria. The 2008 White Paper expected that a decision to participate would be taken by full council. This was not the case in Cumbria because the legal advice given - which we do not dispute - was that decisions as to whether or not to proceed to the next stage could in law be taken only by a council's cabinet or executive. This served to undermine trust in the MRWS process with most people finding it hard to accept that a decision about a nationally important project with far-reaching implications for the local area had in law to be taken by a very small number of the council's elected representatives. The nonsense of such a position is underlined by the range of apparently quite routine matters that do require full council approval. Given the consultation paper's position that a proposal for a nuclear repository should command widespread local support, which must surely include a majority of the decision-making body's elected representatives, we would ask government, in the spirit of localism, to amend the relevant local authority governance regulations so that the decision-making body (or bodies) is at least free to choose itself whether decisions relating to a GDF are taken by council or cabinet.

We also call upon government to look again at the roles of local government and repeat the view we expressed in our call for evidence that local councils, the first tier of local government, must be placed within the decision-making arrangements.

Question 4: Do you agree with this proposed approach to assessing geological suitability as part of the MRWS siting process? If not, what alternative approach would you propose and why?

The proposal for some information in the pre launch stage is welcome but it is at such a high level that it may be meaningless to local bodies who wish to learn more. CALC believes that the question of the geology of the area where interest is shown must be dealt with in far greater detail than is proposed. This would mean that at the very least non intrusive investigation would be taken to the very limit during the learning phase. To leave uncertainty for many years during the focusing stage will not assist the affected area.

The decision whether to move forward to the focusing stage should not be taken until government/NDA are able to say that we have reached the limit of understanding without intrusive investigation. During this period and before the focusing stage is entered more work on the six high level site selection criteria should be undertaken. Areas can be ruled out at a much earlier stage and local bodies told that the particular area that they propose is not to be considered further.

As we say at the outset, safety and the suitability of geology must come first and take precedence if necessary over voluntarism. But other factors need to be taken into account in deciding whether an area should be ruled out. On the list of six is "potential impact on the

natural environment and landscape” This brings into play the National Parks and Areas of Outstanding Natural Beauty in England and Wales. The Lake District National Park Authority (LDNPA) in its response to the call for evidence said *“the question of identifying areas of National Parks for consideration is very contentious and is likely to be contrary to National Park purposes as outlined in legislation. It may be beneficial to future processes to exclude areas which are subject to National Park designation”* In CALC’s view the position should be put beyond doubt by excluding National Parks and Areas of Outstanding Natural Beauty from the area of search from the outset.

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

There can be little doubt that the construction of a GDF is an infrastructure development on a major scale and of national significance and in these circumstances the Planning Inspectorate would consider any development consent application. This would include permission for intrusive investigation if the focusing stage were reached in a particular area. CALC believes that further and better particulars are required in dealing with non intrusive investigation but do not believe any application should be within the remit of any representative authority. We agree in part with the proposal for a National Policy Statement but only if an Appraisal of Sustainability were to deal with alternatives to the government’s policy of a GDF and not simply the implications of different approaches to the siting of a GDF.

Question 6: Do you agree with this clarification of the inventory for geological disposal - and how this will be communicated with the volunteer host community? If not, what alternative approach would you propose and why?

CALC agrees that it will be helpful if local people know at the outset what type of waste and materials may be disposed of within a GDF and that it will not expand but may, given the decisions of government and scientific advancement, reduce. There remains much uncertainty as to volume and government should spell out in clear terms what it expects to be the case over a number of years.

The **form** of waste is also very important. Stable, vitrified containerised waste is very different from loose material that has simply been wrapped.

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

The language used in this section is generally misleading. Reference is made in paragraph 4.10 to “potential host communities” and again in 4.15 to “its investment in the host community”. The requirement for community benefits goes much wider than the affected community. We do not see community benefits as being in one fund and see the need for separate funds to meet the aspirations of various recipient bodies. We believe that a quite separate fund, not administered through a principal authority but by a properly constituted local body, should be available to the population within the area of the host community and that, in two tier areas, the district authority should have a fund to assist its wider social obligations and that the major fund to transform the wider area should be administered by the county council, as the strategic authority, in partnership with other local government tiers and bodies such as the local enterprise partnership.

We would expect to see a discretionary compensation scheme go beyond the compensation code given the exceptional nature of the project in what will be a largely rural setting.

Question 8: Do you agree with the proposed approach to addressing potential socio-economic and environmental effects that might come from hosting a GDF? If not, what alternative approach would you propose and why?

CALC welcomes the proposal to undertake much more work at an earlier stage than was envisaged in the White Paper. However, the information needs to be balanced. It will not be acceptable to a local body if the report they receive does not set out the dis-benefits as well as the potential gains. The full report envisaged in the learning phase should be subject to local input before it is started with the local body setting out its requirements and an opportunity given to other organisations to comment. The purpose of the final report, which must be widely distributed and open to public response, is more than simply to enable the representative authority to evaluate whether a GDF could make a meaningful contribution to the socio-economic welfare of the area. It is for the whole area to consider when a referendum is arranged giving the decision making body a mandate to move forward or abandon the idea of becoming involved.

Question 9: Do you have any other comments?

In CALC's view the revisions go some way to meeting the government's wishes to encourage communities to participate in its MRWS programme. Decision makers representing local communities are more likely to be attracted into the process if they are confident that safety rather than technical or political expediency will be the primary consideration and if they believe that the benefits for the area are likely to exceed the costs.

The project to build a GDF will only have credibility in the minds of potential interested communities if it is clear that geological and safety considerations are the primary drivers. The proposals in so far as they relate to geology do not go far enough and the cost of not undertaking work in greater detail at a very early stage, and failing to generate credibility for the site selection process in the minds of the public, will be far greater than the cost of undertaking such work.

Unless communities can be satisfied that the geology is likely to be suitable they are unlikely to be willing to address the many other complex issues associated with a GDF project.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Claxton', with a horizontal line underneath.

David Claxton, Chief Officer