Implementing Geological Disposal

Consultation: Working with Communities (published by BEIS, January 2018)

Response from Phil Davies, Director, Westlakes Nuclear Limited, 16 April 2018

Overview

Elements of the approach to dealing with communities described in the consultation document can be traced from the original CoRWM work (starting 2003), their recommendations to Government (voluntarism, etc, 2006), through the Managing Radioactive Waste Safely white paper (2008) and the Implementing Geological Disposal white paper (2014). The 2014 white paper describes current policy but it may constrain consideration of innovative strategies such as those described in this consultation response.

While the adherence to principles of voluntarism and community partnership over the past 15 years has been entirely appropriate, there is no assurance that the approach described in the 2018 consultation document will deliver success in terms of public acceptance or the advancement of the mission. The consultation document contains considerable pre-planned detail, making it appear somewhat prescriptive. The approach that is proposed seems almost contractual in nature. Despite this, the way forward that is proposed doesn't do enough to address the 'trip hazards' that have dogged UK efforts to find a solution for radioactive waste disposal since at least 1975, 43 years ago[1]. Arguably, the single biggest cause of failure to make progress has been lack of public trust in the developer, played out through the lobbying of scheme opponents and the need for local politicians to be cautious about the views of their electors. An out-of-balance relationship between developer and community is perpetuated in the consultation document.

A different way of working with communities is set out in this consultation response. It accepts but goes beyond principles of voluntarism and partnership as previously defined. It is intended to offer a basis for Government to work with a local community in a way that provides maximum reassurance to the community that all issues are out in the open and that their views are influential. Selected key points are:

1. The community (however defined) would obtain its own entirely independent advice on geological suitability and other matters and can thus develop its own views and opinions independently of the established organisations noted in the consultation document.

2. A 'pilot company' is proposed to help the community move towards an 'intelligent customer' position (to borrow a term from the Office of Nuclear Regulation). This company would advise the local authority or authorities on geological suitability and other matters via a steering group or the Community Partnership (assuming the Community Partnership concept is implemented in some form).

3. The pilot company would ensure that local concerns such as retrievability of waste and the final inventory (which have been addressed somewhat evasively in the past) were properly on the agenda.

4. If the project moved forward, the developed community company could continue to represent the community interest, eventually holding a percentage stake in the project itself.

5. The company would be the servant of the local community, this providing an 'arm's length' degree of separation of the project development from political pressures in local authorities.

The proposal can be taken to reflect the following illustrative and fictional community position:

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[1] https://rwm.nda.gov.uk/publication/012-options-for-radioactive-waste-management-that-have-been-considered-by-nirex-2002/?download (Section 2, discussing early UKAEA work, Flowers Report, etc).

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> *If a GDF was to be considered here, we would require a very high degree of transparency on all issues, particularly those that affect public health and safety. By securing a direct stake in the project, we would foster public trust via total transparency and be in a position to influence the direction of travel. In time, if the project moves forward, our direct involvement would earn revenue to be used for investment for socio-economic benefit.*

In simple terms this concept represents a reversal of previously-assumed relationships. In essence, if it were to proceed, the GDF project would be done *by*, not done *to* the local community.

This document represents a new proposal that is reflected in the responses to consultation questions that follow.

Responses to individual consultation questions

1 Do you agree with this approach of identifying communities? Do you have any other suggestions that we should consider?

4.5 reflects a series of opening assumptions that might not reflect the best way forward, and which condition the nature of much of rest of the consultation document. The following comments introduce some of the points that are picked up later on in this response.

> As described in **Attachment 1** to this response, the ultimate delivery body need not necessarily be RWM (as stated in the Foreword), particularly if the community acquires a direct stake in implementation, potentially together with private sector partners, as proposed. The suggested different but important role of RWM is shown in Attachment 1 to this response.

> Community investment funding is a long-standing concept, but various ways of distributing and investing for socio-economic benefit are available. The proposal here is that income would be earnt from participation within the GDF project: mechanisms for actual investment remain to be investigated.

> The 'final test of public support' is presented here as a single and digital pass / fail exercise. The role of consultation is mentioned later in the document. It might be appropriate to map out a logical sequence of public consultations through the whole process up to the last opportunity for withdrawal, aligning the final consultation to the statutory requirement within the pre-application stage of the NSIP planning process[2]. Indeed, the term 'withdrawal' may be redundant if the community is closely involved in the assessment of feasibility and acceptability throughout. A negative decision could simply be expressed as deciding not to progress any further.

For some readers, in 4.6 the term 'search' could be confused initially with the idea of a national 'search', particularly given the use of the term 'wide Search Area' in 1.11. The aim of avoiding being too prescriptive on how expressions of potential interest may be obtained and handled is supported. However, the lack of discussion about how potential locations might emerge leaves this natural question hanging. If and when areas of potential interest may emerge from 'interested parties' (perhaps councils, smaller community groupings, companies or individuals), the way this plays into the 'search' by RWM should be made clearer. It might be better to use a simple term such as 'area for study' rather than 'search area'.

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[2] The opportunities for the public to have their say in the context of existing process is noted in the Ministerial Foreword, but this point gets lost in the main consultation document. Although the document is intentionally narrow in scope, it would be helpful (for communities, at least) if the whole range of potential public inputs could be set out in an integrated manner. In addition, once these are considered together, the appropriateness and need for a specific 'final test' (an additional exercise) can be assessed.

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4.7 increases the risk of reader confusion between 'siting' and 'searching'. The whole exercise should be considered to be a 'siting process' (eg 1.1, Figure 3, etc). (Aside: Figure 3 description is for 'the overall siting process' whereas it actually illustrates the whole project lifecycle).

The challenges of defining areas and communities are explored at length and with repetition in 4.8 to 4.21. Nevertheless, there's still an overall lack of clarity on what is being consulted upon. In 4.17 the proposed use of electoral wards is clear, and this could assist in providing an appropriate level of 'granularity'. However, wards have hard boundaries, so the application of this approach would be likely to create resentment in adjacent excluded wards. The proposed scope of the 'search area' is also clear and reasonable (but see earlier comments about potential confusion about the term 'search'). A problem arises in 4.18 where the boundary of the Potential Host Community seems to become restricted to the boundary of the 'search area'. At this stage such narrowing down of the Potential Host Community may prove problematic. This is because the community that considers that it should have a say and potentially share in any socio-economic benefits might be considerably larger than the one within the 'search area' as it is defined. It could be 'county wide' for example. In such a case a narrow focus on the community of the search area may be considered divisive. A consequence might be the unnecessary creation of a wider constituency of hostility and objection to the project.

This is an issue where the prescriptive nature of the consultation wording may prove unhelpful if translated into policy. The linkage of the Potential Host Community and final test of public support in 4.10 is well intentioned but risks disenfranchising people who may consider they have a valid stake. This is why it is suggested that a wider view needs to be taken of stakeholders and communities. At the same time, it is acknowledged that the community that is most directly involved with the GDF development does deserve the majority of the attention. The use of a 'final test of public support' for the Potential Host Community (as defined) may exacerbate the disenfranchisement problem. It is suggested here that rather than have a make-or-break final 'test', a process of periodic wide open public consultations should be run up until time of the NSIP pre-application. This approach is used for nuclear new build, events being held across a wide geographical area. It offers the opportunity for those outside the most obvious host community area to learn about project proposals as they develop and to make their views known. (See also the previous footnote).

2 Do you agree with the approach of formative engagement? Do you support the use of a formative engagement team to carry out information gathering activities? Are there any other approaches we should consider?

Broadly, yes. In the present model it would be more straightforward to say 'RWM' than 'delivery body' unless it is expected that RWM might change its name or function at some point in this early period. See later for proposals about project delivery. It's too early to try to define the 'team' (while it's recognised that the parties 'could form part' in 4.31).

(The term 'formative engagement' might be considered unnecessarily obscure by many readers. What's wrong with 'early-stage engagement'?).

With respect to 4.27 (etc), the fixed assumption of having a Community Partnership is questioned (see Attachment 1 and later discussion). It is possible that an interested party might seek more direct negotiations with HMG. Independent facilitation (as foreseen in 4.32) need not necessarily be used. All such topics should be covered less prescriptively if and when translated into policy.

- Early engagement between an interested party and HMG.
- The interested party and HMG decide if, when and how to make the expression of interest public.
- A grouping is established to develop and manage the proposal (this could be a 'steering group', as discussed in this response).

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In the model proposed in this response, a 'pilot' community company would be set up, as illustrated in Attachment 1. This would allow the community to have its own resources dedicated to the tasks of understanding and reporting on feasibility, with access to its own independent advice on potential geological suitability and other matters. The use of pilot company, reporting to the community, would greatly assist in achieving transparency, all of which should help to engender public trust.

3 Do you agree with this approach to forming a Community Partnership? Are there other approaches we should consider?

4.37 to 4.55 are relevant. A completely different model is proposed in this response. Some key points are:

Engagement funding would be used to support the work of the pilot community company as well as other expenses incurred for the community to engage with HMG. At this stage there would be no Community Partnership, so a 'steering group' would oversee the work of the pilot company. The local authority or authorities would be represented on the steering group: its exact make-up would be determined to reflect the nature and location of the approach from the 'interested party' (4.6). One task for the company would be to explore options for the establishment of a Community Partnership or other community representation arrangement. Another task would be to investigate the business case and business model for the continuation of the community company as a vehicle for direct community involvement if or when the project develops.

In the time of Constructive Engagement[3] an increased level of funding will be required to enable the work of the (by now) community company to be sustained. This represents a form of community investment. A mechanism would need to be devised to allow some funds to be directed to socio-economic objectives (via the proposed steering group / board). However the proposed model is about earning payment derived from involvement and work done rather than using a loosely connected donation mechanism. Investigation of financial issues and mechanisms would be a task for the pilot company (see above).

It is proposed that the board of the (by now) community company be broad-based and thus meet some of the objectives intended for a Community Partnership. However, if would be entirely focused on local representation, using a wide definition of 'community', not necessarily the smallest credible 'search area'. Thus it would not include RWM / delivery body (although RWM advice would be vital). Design of the board would be a task for the pilot company (see above). Depending on location, parties represented on the board may include unions, community groups, industrial and business interests as well as local authorities and local enterprise partnerships.

With regard to 4.44 and 4.45, it is not agreed that the Community Partnership (as described) is the only way to go. The consultation document is particularly ambivalent about the role of local authorities (see 4.45 and 5.8). A case could be made for confirming the leadership position of local authorities and another contrary case could be made for making them simply stakeholders or consultees to the work of another body (say, Community Partnership). It is not clear that a Community Partnership would ever have the democratic or other credentials to represent the community interest in what is essentially a negotiation between the community and Government, leading to a de facto agreement.

For 4.52, support team functions would be covered by the community's company, suitably resourced.

For 4.53, it is proposed that periodic public consultations are used rather than setting up a Community Stakeholder Forum. The work of the working groups referred to in the consultation

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[3] The term 'Constructive Engagement' might also be considered to be somewhat less than transparent.

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document would be managed by the community company – interim outputs would be overseen by the board and be publicly consulted upon.

In summary, the definition of Community Partnership arrangement that is proposed looks premature. Locally-appropriate arrangements should evolve from early-stage work in potential candidate locations.

4 Do you agree with the approach to engaging people more widely in the community through a Community Stakeholder Forum? Are there other approaches we should consider?

No – see the response to Question 3.

5 Do you agree with the proposal for a Community Agreement and what it could potentially include?

No. The Community Partnership model is not agreed to be the only way forward and so neither is the use of a Community Agreement. It is agreed that governance arrangements need to be formalised and that there is likely to be a role for memoranda of understanding.

In the model proposed here the board structure and terms of reference would be relevant. In this concept it is assumed that the local authority (or authorities) make key decisions following receipt of recommendations from the board. See 4.86: the key role and influence of local authorities are acknowledged in the consultation document. In 5.12, however, the duties of local authorities in regard of an NSIP planning process are under-stated (see Question 8). Positioning local authorities who happen not to be 'interested parties' simply as important stakeholders (as in Table 2) would send the wrong message. It is acknowledged that for an individual case work will be needed to clarify the role of local authorities as potential 'interested parties', as representatives of the community responding to initiatives of other 'interested parties', as important players in local socio-economic development[4] and as duty holders in the NSIP planning process.

6 Do you agree with the proposed approach to the way community investment funding would be provided? Are there alternatives that we should consider?

It is agreed that the community needs to secure investment from its participation in the GDF project so long as it remains engaged in it.

Regarding 4.61, the sums of money (first mentioned in the 2014 Implementing Geological Disposal white paper) appear to be arbitrary and are unlikely to be sufficient. The proposal here is that the pilot then community company is adequately funded through the early parts of the siting process. It is anticipated that funding would be provided by HMG, probably via the relevant local authority. The financial calculation should be linked to a business case and business plan process. The 2014 white paper did not foresee the innovative scenario that is proposed in this response.

Regarding 4.62 (onwards), a completely different model for securing long term socio-economic benefit is proposed here. The significant community 'ownership' of the GDF project as it develops would generate profit and thus allow dividends for local investment. It is recognised that this concept is innovative and immature, and would need to be developed through the so-called formative and constructive engagement stages. Analysis of projects and investments in UK and internationally that entail a significant community stake would be relevant.

The project would be more likely to garner support and acceptance if the socio-economic benefit is felt by a wide community, not being too tightly focused on the host community at the GDF location itself. Thus benefit could be felt by people in local authority areas outside the one in which a GDF

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[4] For example, via their Sustainable Community Strategy and Local Economic Assessment.

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would be located. Broad benefit investments could include: education and training establishments; healthcare; transport; digital communications; siting of public sector establishments; and fostering business opportunities. It is assumed that any proposal would include plans for supporting and developing employment opportunities and the local supply chain. See Q10 also.

No specific proposal for the manner in which investment funding would be allocated is included in this response. It is suggested that profit from the community company would pass to a trust organisation that would have the necessary representation and mandate to make the investments. Investigating options for this would be a task for the embryonic community company.

7 Do you agree with the proposed process for the right of withdrawal? Do you have views on how else this could be decided? Are there alternatives that we should consider?

Withdrawing from what? The digital go/no-go concept of 'withdrawal' may be redundant if it is simply decided not to progress the project in a given location. The 'right of withdrawal' can unhelpfully be translated as 'the power of veto'. In the model that is proposed, from the community side it would be the local authority that would have the option to decide whether or not to proceed. There may be several reasons for not proceeding, the most compelling of which would be an indication of geological unsuitability. This isn't an issue of conscious 'withdrawal', it's just the ending of the initiative.

As exemplified by 4.74 on, the consultation document wording is somewhat prescriptive, convoluted and contractual in nature. The policy should convey the intended spirit and any definite requirements, but leave room to pick up learning as the engagement processes unfold.

The emphasis in 4.77 is out of line with the model proposed here, although it is expected that all the parties indicated there will play a part. To borrow a term from the Office of Nuclear Regulation, it is intended that the community (through its company) should aim to develop its competence and behave as an embryonic 'intelligent customer' from the start. In order to gain sufficient intelligence, the pilot, then community company would commission its own independent advice. It will have to decide how to balance conflicting opinions and advice and make its recommendations to the community. This clear separation of independent advice from the inputs of 'establishment' organisations named is a key proposal that is intended to foster local transparency and trust. By building its own competence and understanding the community becomes an authoritative party in the assessment of the project, less of a spectator.

8 Do you agree with the approach to the test of public support? Do you agree that the Community Partnership should decide how and when the test of public support should be carried out? Do you have views on how else this could be decided? Are there alternatives that we should consider?

No. See earlier comments. Periodic public consultation (if adopted) would allow the project to be adjusted to reflect feedback as the project develops. The work of a Community Stakeholder Forum and semi-detached working groups (consultation document Figure 4) would be less likely to tap into real public opinion than by using well designed consultation techniques. Stakeholder fora and similar groups tend to rely on individuals having the inclination, time and funding to participate. It's more informative to encourage the 'man and woman in the street' to discuss and challenge project proposals via consultation. 4.85 and 4.87 propose a final /make or break' test: the proposal here is to reduce the emphasis on this (or eliminate it) by securing meaningful public participation throughout. The Community Partnership (as described in the consultation document) does not necessarily exist in this proposal.

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Despite the reference in 3.13, the process set out in the consultation document seems to be disconnected from the planning process required for a nationally Significant Infrastructure Project (the GDF is an NSIP). The process, which, if successful, leads on to ministerial consent via a Development Consent Order, includes a statutory pre-application consultation[5]. It's unlikely that on its own a 'test of public support' (unless the 'test' can be defined as analysis of consultation inputs received) could substitute for a straightforward pre-application consultation. The statutory NSIP process also defines roles for local authorities (including with regard to consultation) that are under-represented in the consultation document (5.12).

9 Do you feel this process provides suitably defined roles for local authorities in the siting process? Are there alternatives that we should consider?

No. The consultation document seems ambivalent about the role of local authorities. See 4.86 and the response to Question 3. The MRWS experience from 2013, when Cumbria County Council diverged from Copeland and Allerdale Borough Council positions has been reflected in HMG positions since that time. The challenge is to follow a path that is both democratically sound and is meaningful for the most closely involved local communities. The concept of a Community Partnership, which is not democratically accountable, might not address this need.

As noted in the response to Question 8, the role of the local authority as statutory consultees within the NSIP process is under-stated in the consultation document.

The proposal here is that, where available, the local authority at district / borough / city level should be the deciding body. Town or parish councils would have a role to play both in consultation activities and recommendations to the district level. It is recognised that some unitary authorities are geographically large. This makes it more difficult to achieve consensus on issues of key importance to only a part of their area and allocate investment arising from that area.

The 'pilot company then community's company' concept has been developed to help tackle this problem. The arrangement provides an important degree of arm's length separation between the company and the local authority. The company can propose solutions that might be difficult for individual councillors to decide or pronounce upon. Councillors can support or criticise the company's direction of travel, or remain silent, as they see fit. Meanwhile the company would pick up on this feedback and inputs from the public to develop its positions. Through the so-called Constructive Engagement stage, unless the local authority ends the process earlier for its own reasons, the company would provide its recommendations to the local authority (via its board) for approval or rejection.

10 Do you have any other views on the matters presented in this consultation?

Flexibility and innovation

It will be helpful if the ensuing policy were to be less prescriptive that the consultation document and leave room for innovative organisational and implementation strategies such as the one proposed here.

NSIP and other processes

It would be helpful if the alignment of community engagement with NSIP process could be mapped out more clearly in the eventual policy. It might not be possible within the policy to map out public input into all of the safety, security and environmental permitting processes. However, unless this is

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[5] https://infrastructure.planninginspectorate.gov.uk/application-process/the-process/

described somewhere, community members and wider stakeholders may only obtain a limited understanding of how they can engage. See earlier comments about over-emphasis on a 'final test'.

Equitable distribution of socio-economic investment

Socio-economic investment will need to be concentrated at and around the Host Community. However, if the arrangement is too exclusive, it risks alienating others living further away and creating opposition unnecessarily. 4.62 hints at infrastructure funding. A more coherent 'story' will be needed to explain how wider benefits will be achieved, particularly with regard to transport infrastructure. This is one way of spreading the benefits, which can also acknowledge the extra demands on transport infrastructure from the construction and operation of the GDF. In addition, the wider community (maybe up to about 30km from the GDF, see below) needs to see benefits from the project, for example in terms of enhanced education and training as well as employment and opportunities for businesses. 'Distance travelled to work' analysis might provide a starting point for the boundary of socio-economic investment linked to the GDF: the majority of UK commuters travel less than 20 to 30km[6].

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https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/commutingtoworkchangestotraveltoworkareas/2001to2011

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Attachment 1

Proposal	Possible future evolution (to illustrate a concept of community stake in the project)		
'Formative Engagement' stage	Constructive Engagement stage	Site investigations → → Construction	GDF Operation
			Owner (Links and relationships to be considered, including those with regulators and waste consignors)
Narrative			
Identifying communities and wide search area stage. Early discussions. Potential host community councils set up pilot company arrangements to investigate on behalf of the community.	Subject to business case and agreement, a community company takes over, strengthens the local understanding and engages with the public. Any available company 'profit' for local socio-economic investment.	Step change. The community company is embedded in the GDF Owner company, which in due course becomes the 'intelligent customer' Site Licensee. DCO. Dividend income for socio-economic investment.	Staged construction might overlap with staged waste emplacement. Fee/dividend income for socio-economic investment.
Developments in organisations; implementation steps			
Steering Group – a potential precursor to a Community Partnership. MOU. Steering Group oversees the activities of a Pilot Company. Pilot Company obtains its own independent advice on feasibility, business case, etc. RWM advises the pilot company. Publicity and consultation. Pilot Company reports to Steering Group. (Councils liaise with HMG).	The Pilot Company is supplanted by a more substantial community-owned company. The earlier Steering Group might develop into the Community Partnership, potentially the company board. The Community Company obtains technical / advisory support via external contracts. Publicity and consultation. In the latter stages, depending on acceptance: the future 'Owner' company is designed. Potential private sector partners are investigated and lined up.	The Owner company is formed, to include a private sector company or consortium. The community company has a percentage stake. A new Board is established to align with the nature of the Owner company. NSIP: pre-DCO publicity and consultation. Option to withdraw before construction. RWM morphs into Owner's Engineer mode. The Owner company procures an EPC contractor. Work is delivered via EPC subcontracts.	Owner company remains through operation and eventual closure. Company make-up may change. Ongoing provision of information; periodic community engagement.

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