

CABINET

Meeting date: 30 January 2013

**From: Cabinet Member for Transport & Environment
Corporate Director – Environment**

MANAGING RADIOACTIVE WASTE SAFELY: DECISION ABOUT PARTICIPATION IN STAGE 4

PART A - RECOMMENDATION OF CABINET MEMBER

1.0 EXECUTIVE SUMMARY

- 1.1. *After more than three years of work, the West Cumbria Managing Radioactive Waste Safely (MRWS) Partnership's Final Report was published in August 2012. The Executive Summary is attached at Appendix 1 and the full Report is annexed at Appendix 2. The Report has been submitted to the three local authorities (Allerdale Borough Council, Copeland Borough Council and Cumbria County Council) as a key piece of evidence to support their consideration of whether or not to participate in the next Stage of the MRWS process.*
- 1.2. *The Managing Radioactive Waste Safely White Paper Cm7386 ("the White Paper") is appended to this Report as Appendix 3. The White Paper makes it clear (page 51) that community engagement may raise issues requiring further discussion with Government prior to a Decision about Participation. In October, the three local authorities wrote to DECC requesting a three month pause in the process to allow for further discussion around a number of key issues, including the right of withdrawal and the process for agreeing community benefits. This letter, and DECC's reply (which provides a number of assurances on the concerns raised by the local authorities), a further letter from the County Council and a final letter from Ed Davey (Secretary of State at DECC) are attached at Appendix 4.*
- 1.3. *The decision the Cabinet now needs to take is whether or not to participate in the next Stage of the MRWS process (Stage 4), which involves desk-based studies in participating areas. Participation in this Stage would not constitute a binding commitment to host a deep geological disposal facility.*
- 1.4. *The three local authorities have committed to work together on this decision (the "decision about participation" or DaP) and have agreed to take into account the final Report of the Partnership and the views of*

the general public and stakeholders, including whether there is 'net support' for entering the next Stage of the process.

2.0 STRATEGIC PLANNING AND EQUALITY IMPLICATIONS

- 2.1. *County Council policy supports deep geological disposal of higher activity radioactive wastes, subject to monitoring and retrievability of wastes should circumstances require it.*
- 2.2. *Cabinet, on behalf of the County Council, has made an Expression of Interest for the Copeland and Allerdale areas in the Government's Managing Radioactive Waste Safely (MRWS) process.*
- 2.3. *County Council policy supports engagement with districts about the Government's implementation framework to site a geological disposal facility.*
- 2.4. *This issue relates to the 2011-14 Council's 'high quality and sustainable environment' objective.*
- 2.5. *Cabinet must consider how its decisions impact on equality. The potential equality impact of a decision to participate in Stage 4 has been assessed and the assessment is appended as Appendix 5.*

3.0 RECOMMENDATION

- 3.1. *Cabinet is recommended to consider the options set out in this report and to decide whether or not the County Council wishes to participate in the next stage of the MRWS process (Stage 4 of the stages in the White Paper) in the respect of the areas of Allerdale, Copeland or both.*

Tim Knowles, Cabinet Member for Transport & Environment

PART B – ADVICE OF CORPORATE DIRECTOR - ENVIRONMENT

4.0 BACKGROUND

- 4.1. The West Cumbria MRWS Partnership was set up to "make recommendations to Allerdale BC, Copeland BC and Cumbria CC on whether or not they should participate in the geological disposal facility siting process, without commitment to eventually host a facility". The three Councils are the Decision Making Bodies defined in the White Paper. The White Paper sets out the UK Government's framework for managing higher activity radioactive waste in the long term through geological disposal coupled with safe and secure interim storage and on-going research and development to support an optimal programme of implementation. As a result of the White Paper the West Cumbria communities, through their Councils, expressed an interest in opening up, without commitment, discussions with Government on the possibility of hosting a geological disposal facility at some point in the future.

- 4.2. The White Paper sets out Government's expectation that the Decision Making Bodies take the lead role in initiating the discussions with potential local partners and organising community engagement. In establishing the MRWS Partnership the Decision Making Bodies assumed this role. The White Paper also states Government's requirement to be satisfied that a Decision to Participate is credible. The word 'credible' in its use here and by the Partnership refers specifically to paragraph 6.22 of the MRWS White paper, which states: "Credibility might be demonstrated on the basis of a local consultation process applying established local good practice. Credible local support would be expected amongst organisations likely to form a Community Siting Partnership (i.e. during Stage 4) should a decision to participate be taken, as well as among the local community."
- 4.3. The MRWS Partnership was Cumbria's collective response to the requirements of the MRWS White Paper. The Partnership met on a six weekly cycle for three years to gather information about safety and design of a geological disposal facility for higher activity wastes and how that might impact on a host community and wider community. It has consulted the public in West Cumbria, and the rest of Cumbria three times, including an 18 week public consultation on its draft final Report, and surveyed opinion in West Cumbria by telephone on four occasions.
- 4.4. The MRWS White Paper explains that the Decision to Participate should be accompanied by a report setting out the approach taken to engagement, the outcomes of that engagement and making clear the basis of the decision. It also notes, "*Not every resident in a potential Host Community will favour a Decision to Participate in the siting process. Government is not expecting, or seeking, a particular threshold of support but is keen to see evidence of appropriate community engagement and meaningful feedback on any concerns of those affected*". The MRWS Partnership Final Report details the work it has done over its three year existence on public and stakeholder engagement, carrying out three rounds of engagement in order to inform people, seek their input, and give feedback on how that engagement changed its work and opinions. Appendix 1 contains the MRWS Partnership Report's Executive Summary. This explains how the MRWS Partnership undertook its three extensive rounds of engagement and that it commissioned a statistically significant opinion survey (undertaken by IPSO/MORI) the findings of which were presented to the May 2012 meeting of the Partnership.
- 4.5. The MRWS Partnership's engagement aimed to understand concerns so they could be addressed to ensure its opinions and advice were credible. The Partnership used three indicators of credibility, (explained in more detail in Chapter 14 of the Final Report):
- § Broad support for the Partnership's initial opinions
 - § Understanding and addressing concerns
 - § Net support for continuing with the process

- 4.6. The key points from the Partnership's Report are set out in an Executive Summary (Appendix 1) and relate to: Overarching Issues (Trust & Confidence); Design and Engineering; Inventory; Geology; Safety, Security, Environment & Planning; Impacts; Community Benefits; Siting Process (Stages 4 & 5).
- 4.7. The MRWS Partnership considered that, overall, most Partnership members were satisfied that the opinions and advice contained in its Final Report reflected the public and stakeholder views that it received.
- 4.8. There were three aspects where members of the Partnership's views differed (timing of strategic environmental assessments and geological surveys as well as how a community siting partnership should be constituted and operate). More details about these differences are set out in the appropriate chapters of the document, Chapter 8 (Geology) and Chapter 13 (Stages 4 and 5 of the MRWS Process). These differences are not ones of principle and are more to do with the fact that uncertainty is a key characteristic of the early stages MRWS process, which will reduce in later stages if a decision to participate is taken. Members will recall that Stage 4 would involve the NDA's delivery organisation undertaking more detailed assessments focusing on the suitability of a specific site or sites within each potential host community. These assessments would be mainly through desk-based studies, and would involve gathering information about the candidate communities and sites and evaluating them against the site selection criteria (paragraph 7.16 of the White Paper).
- 4.9. Concerns about the Right of Withdrawal (RoW) and how and when it may be exercised were a feature of many responses to the Partnership's consultation. These concerns were highlighted in the 1 October letter to DECC that triggered the deferral period. The White Paper (Page 5) describes the RoW as "an important part of the voluntarism approach intended to contribute to the development and maintenance of community confidence. Up until a late stage, when underground operations and construction are due to begin, if a community wished to withdraw then its involvement in the process would stop." Baroness Verma's letter of 19 December committed to making the RoW legally binding and to do this through primary legislation, subject to parliamentary time being available.

LOCAL SUPPORT

- 4.10. Summary results from the first three opinion surveys are set out below.

	Favour	No opinion or D/K	Oppose	Net Support
Survey 1: All of Cumbria	50%	25%	25%	25%
Survey 2: All of Cumbria	43%	27%	30%	13%
Survey 3: All of Cumbria	48%	25%	28%	20%
Survey 3:	52%	23%	25%	27%

Allerdale				
Survey 3: Copeland	62%	20%	19%	43%
Survey 3: Rest of Cumbria	44%	26%	30%	14%

- 4.11. The results of a fourth and final statistically significant survey by IPSOS/MORI of 3000 households across Cumbria were published in May 2012. The results from this final survey of opinion of West Cumbria households are one of three key Partnership indicators for determining how to advise the decision making councils. Overall net support (the number of “yesses” minus the number of “nos” - see below) remains strong though weakened in Allerdale:

	Favour	No opinion or D/K	Oppose	Net Support
All of Cumbria	53%	14%	33%	20%
Allerdale	51%	12%	37%	14%
Copeland	68%	9%	22%	45%
Rest of Cumbria	50%	15%	35%	16%

Figures may not always total 100% due to rounding

ADDITIONAL INPUTS FOR CONSIDERATION

- 4.12. The County Council discussed the MRWS Partnership Report at its meeting on 5 September. The minutes of this meeting are attached at Appendix 6.
- 4.13. The Cumbria Association of Councils (CALC) was a member of the MRWS Partnership and as such its views were discussed and are reflected in the Partnership’s Final Report. On 20 August, CALC wrote to the Leader of the Council and to all Members to outline its own specific position regarding a potential decision about participation and have formally requested that the Cabinet consider the views of CALC as part of their consideration of a decision about participation. Subsequently, CALC wrote to DECC (22 October) and DECC responded (19 November). All of these letters are attached at Appendix 7 to this report.
- 4.14. The Lake District National Park Authority also participated in the Partnership and wrote to DECC. This letter (26 November) and DECC’s response (11 December) are attached at Appendix 8.

4.15. Since the close of the MRWS Partnership the Leader and some Members have received a large number of additional representations. The issues raised in this correspondence echo the views submitted to the Partnership during its formal consultation and are therefore reflected in the Final Report at Appendix 2. Members will have seen this correspondence as copies have been made available in the Group Offices and many of the letters were copied around the Cabinet as they arrived. A full set will also be available for Members of the Cabinet to reference on 30 January. The main issues raised in this correspondence include:

- § The impact that constructing and operating a GDF would have on Cumbria, including increased traffic, a huge amount of spoil to manage and the perceived negative impact on tourism (Chapter 11 of the MRWS Partnership Report);
- § Concerns that the Right of Withdrawal would never be honoured by Government and so this is the last opportunity for Cumbria to pull out of the process (Page 60 of the MRWS Partnership Report);
- § A belief that all of West Cumbria can already be ruled out due to a lack of suitable geology and that there are more appropriate/better sites elsewhere in the UK (Chapter 8 of the MRWS Partnership Report);
- § A belief that the NIREX enquiry had already ruled out all of West Cumbria (Chapter 8 of the MRWS Partnership Report);
- § A general lack of trust in Government (Page 53 of the MRWS Partnership Report);
- § Concerns that there is no willing host community and that any community benefits that may ultimately be offered are merely a bribe (Chapters 12 and 13 of the MRWS Partnership Report); and
- § Concern that the decision is being taken by the County Council's Cabinet and not the whole Council (Page 222 of the MRWS Partnership Report).

THE DEFERRAL PERIOD

4.16. On 1st October, the three DMBs sent a joint letter to Baroness Verma (see Appendix 4), Parliamentary Under Secretary of State at DECC requesting a three month pause and setting out a number of issues on which further discussion and clarification was required. The issues were:

- § The need to strengthen the Right of Withdrawal, to make it legally binding;
- § Further discussion around the process for negotiation of community benefits;
- § Due to uncertainties over the suitability of geology, there was a need to consider alternative radioactive waste management solutions;

- § The need for adequate engagement funding and Cumbria brand protection; and
- § The economic future of West Cumbria.

4.17. On 19th December, Baroness Verma responded to the three local authorities. The full letter is at Appendix 4, but the key points are:

- § DECC has agreed that primary legislation should be the preferred mechanism for strengthening the RoW and will bring forward proposals, which reflect input from the DMBs, within 18 months of a decision to participate. This compares to the commitment DECC gave to the MRWS Partnership which was to agree the mechanisms to be used to put aspects of the MRWS process on a firmer legal footing by the end of Stage 4 (i.e. 5 years). In addition, DECC has agreed to roll forward the decision-making arrangements set out in the November 2011 letter from Charles Hendry (also at Appendix 4).
- § On community benefits, DECC has committed to establishing a Community Fund and agreed to make specific funding proposals covering the nature, scope, scale, timing, and governance of a fund within 18 months of any Decision to Participate and to involve the DMBs in the development of those proposals. This is again an acceleration of the commitment given to the Partnership which was to start the negotiations in Stage 4.
- § On geology, DECC has recognised that this is a key uncertainty for the community and asked NDA to look at how the geological work that would be carried out in Stage 4 could be accelerated. DECC has also committed to involving the DMBs in any work to “re-design” Stage 4.
- § DECC has also recognised that it is important to look at alternatives and committed to conducting a thorough review of the potential alternative radioactive waste management solutions, including extended interim storage. Such a review would be conducted in parallel with the MRWS process, resulting in a twin-track process that looks at taking forward the MRWS process while also considering alternative storage options.

5.0 OPTIONS

The Cabinet has the following options:

- 5.1. Decide to participate in Stage 4 in respect of both Allerdale and Copeland;
 - § Cabinet could take a Decision to Participate in stage 4 of the process for identifying a site for a geological disposal facility described in the White Paper in respect of Allerdale and Copeland, having considered and relied upon the contents of the letter to the Leader dated 19 December 2012 from the Parliamentary Under-Secretary of State, including (i) the Government’s express and unequivocal commitment

that if the County Council exercises the Right of Withdrawal (as described in the White Paper) the process will not continue in those areas even if Allerdale Borough Council or Copeland Borough Council or the Secretary of State wishes it to; (ii) the statements made by the Government in the Appendices to that letter.

§ The Partnership's Final Report acknowledges that some uncertainties remain, primarily because they relate to issues that can only be considered in detail at a later date.

§ The Partnership advises then that, should a decision to participate be taken, "...a community siting partnership uses the indicative schedule provided in the Stage 4 and 5 chapter (Chapter 13) to build its work programme and, in doing so, help reduce the range of uncertainties that exist".

§ Cabinet therefore need to consider whether they are confident that the work to be done in the next Stage will be sufficient to address any on-going uncertainties, and that sufficient evidence of support from the local community or the organisations likely to form a community siting partnership has been demonstrated. If so, then Cabinet could decide to participate.

5.2. Decide to participate in Copeland, but not Allerdale:

§ Cabinet could take a Decision to Participate in stage 4 of the process for identifying a site for a geological disposal facility described in the White Paper in respect of Copeland only, having considered and relied upon the contents of the letter to the Leader dated 19 December 2012 from the Parliamentary Under-Secretary of State, including (i) the Government's express and unequivocal commitment that if the County Council exercises the Right of Withdrawal (as described in the White Paper) the process will not continue in Copeland even if Copeland Borough Council or the Secretary of State wishes it to; (ii) the statements made by the Government in the Appendices to that letter.

§ Cabinet therefore need to consider whether they are confident that the work to be done in the next Stage will be sufficient to address any on-going uncertainties, and that sufficient evidence of support from the local community or the organisations likely to form a community siting partnership has been demonstrated in Copeland. If so, then Cabinet could decide to participate in Copeland only.

5.3 Decide to participate in Allerdale, but not Copeland:

§ Cabinet could take a Decision to Participate in stage 4 of the process for identifying a site for a geological disposal facility described in the White Paper in respect of Allerdale only, having considered and relied upon the contents of the letter to the Leader dated 19 December 2012 from the Parliamentary Under-Secretary of State, including (i) the Government's express and unequivocal commitment that if the County Council exercises the Right of Withdrawal (as described in the White Paper) the process will not continue in Allerdale even if Allerdale

Borough Council or the Secretary of State wishes it to; (ii) the statements made by the Government in the Appendices to that letter.

§ Cabinet therefore need to consider whether they are confident that the work to be done in the next Stage will be sufficient to address any on-going uncertainties, and that sufficient evidence of support from the local community or the organisations likely to form a community siting partnership has been demonstrated in Allerdale. If so, then Cabinet could decide to participate in Allerdale only.

5.3. Decide not to participate;

§ Cabinet could decide not to participate in Stage 4, particularly if it considered that there was insufficient evidence of support from the local community or the organisations likely to form a community siting partnership in relation to both Allerdale and Copeland.

6.0 RESOURCE AND VALUE FOR MONEY IMPLICATIONS

6.1 In relation to Cabinet's consideration of the Decision to Participate there are no direct financial implications. Costs to date incurred by the Council in relation to officer time and costs of engagement have been met in accordance with the requirements of an Annual Engagement Package agreed with Department of Energy and Climate Change.

7.0 LEGAL IMPLICATIONS

7.1. The national Government framework for long term management of higher activity radioactive waste through geological disposal is set out in the White Paper.

7.2. Cumbria County Council is a decision making body in respect of Cumbria participation in the MRWS process and is responsible for decisions including continuing participation at key stages and exercising a right of withdrawal (once it has taken a decision to participate). The Council (along with Allerdale and Copeland District Councils) has completed Stage 3 of the process (Community consideration leading to Decision to Participate).

7.3. Under the Local Government Act 2000 and regulations made thereunder the decision whether to participate in Stage 4 is an executive decision that must be taken by Cabinet.

7.4. In order to proceed to Stage 4, the Cabinet should be satisfied that it has a clear basis for making the decision. Government's requirement in the White Paper is that the decision is "credible" and expects credible local support amongst organisations that would be likely to form a Community Siting Partnership should a decision to participate be taken as well as amongst the local community. Government has not set a threshold for support but would expect to see evidence of appropriate community engagement and meaningful feedback of any concerns of those affected.

- 7.5. A Decision to Participate in Stage 4 does not irrevocably commit the Council to hosting a geological disposal facility. In particular a Decision to Participate does not extinguish the Right of Withdrawal under the voluntarism process set out in the White Paper. The Right of Withdrawal can be exercised during Stage 4.
- 7.6. The Government's letter of 19 December 2012 stated that the MRWS process in West Cumbria can only continue if the relevant district council, the County Council and Government all agreed. This statement does not create a legally enforceable contract between the County Council and the Government. However, it does create a legitimate expectation, which the Secretary of State could not lawfully renege on unless there were sufficient reasons to justify his doing so, that if one of the Councils exercised the Right of Withdrawal the process set out in the White Paper would stop.
- 7.7. It is difficult to see at this stage how the Secretary of State could justify proceeding with a site in Cumbria in the face of opposition from the County Council. However the Government reserved the right in the White Paper to explore other approaches if it considered that voluntarism was not working. If the Government determines that Cumbria is the most appropriate location for a geological disposal facility it may be able to justify proceeding without the agreement of the County Council.
- 7.8. To ensure the integrity of their decision, Members must ensure that they approach the decision to participate with an open mind and do not make any decision in advance of hearing and weighing up all relevant considerations and evidence. They must ensure that they have regard to all relevant issues and do not take any irrelevant matters into account.
- 7.9. In making its decision, Cabinet must comply with the public sector equality duties. These are set out in more detail in the attached Equality Impact Assessment. It is open to Cabinet to conclude that there are no equality implications of a decision whether or not to participate in Stage 4. If Cabinet considers that its decision would have adverse effects on equality then it should consider how those effects should be mitigated.

8.0 CONCLUSION

- 8.1. The Report sets out the process to date so that Members may now decide how they wish to proceed.

Jim Savege
Corporate Director - Environment

January 2013

APPENDICES

Appendix 1 - Executive Summary of MRWS Partnership Report
Appendix 2 – The Final Report of the MRWS Partnership
Appendix 3 – The White Paper (Cm7386)
Appendix 4 - Correspondence between CCC and DECC
Appendix 5 – Equality Impact Assessment

Appendix 6 – Record of the County Council discussion (5 September)
Appendix 7 - Correspondence from CALC
Appendix 8 – Correspondence between LDNPA and DECC

Electoral Division(s): All

* Please remove whichever option is not applicable

Executive Decision	<table border="1"><tr><td>Yes</td><td><input type="checkbox"/></td></tr></table>	Yes	<input type="checkbox"/>	
Yes	<input type="checkbox"/>			
Key Decision	<table border="1"><tr><td>Yes*</td><td><input type="checkbox"/></td></tr></table>	Yes*	<input type="checkbox"/>	
Yes*	<input type="checkbox"/>			
If a Key Decision, is the proposal published in the current Forward Plan?	<table border="1"><tr><td>Yes</td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr></table>	Yes	<input type="checkbox"/>	<input type="checkbox"/>
Yes	<input type="checkbox"/>	<input type="checkbox"/>		
Is the decision exempt from call-in on grounds of urgency?	<table border="1"><tr><td><input type="checkbox"/></td><td>No</td></tr></table>	<input type="checkbox"/>	No	
<input type="checkbox"/>	No			
If exempt from call-in, has the agreement of the Chair of the relevant Overview and Scrutiny Committee been sought or obtained?	<table border="1"><tr><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td>N/A*</td></tr></table>	<input type="checkbox"/>	<input type="checkbox"/>	N/A*
<input type="checkbox"/>	<input type="checkbox"/>	N/A*		
Has this matter been considered by Overview and Scrutiny? If so, give details below.	<table border="1"><tr><td><input type="checkbox"/></td><td>No</td></tr></table>	<input type="checkbox"/>	No	
<input type="checkbox"/>	No			
Has an environmental or sustainability impact assessment been undertaken?	<table border="1"><tr><td><input type="checkbox"/></td><td>No</td><td><input type="checkbox"/></td></tr></table>	<input type="checkbox"/>	No	<input type="checkbox"/>
<input type="checkbox"/>	No	<input type="checkbox"/>		
Has an equality impact assessment been undertaken?	<table border="1"><tr><td>Yes</td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr></table>	Yes	<input type="checkbox"/>	<input type="checkbox"/>
Yes	<input type="checkbox"/>	<input type="checkbox"/>		

N.B. *If an executive decision is made, then a decision cannot be implemented until the expiry of the eighth working day after the date of the meeting – unless the decision is urgent and exempt from call-in and the Corporate Director has obtained the necessary approvals.*

PREVIOUS RELEVANT COUNCIL OR EXECUTIVE DECISIONS

County Council policy as reflected in its agreed submission to the Consultation on Managing Radioactive Waste Safely by letter to DEFRA, 1 November 2007

County Council policy as determined by decision of the full County Council meeting on 26 June 2008

County Council policy as determined by decision of the County Cabinet meeting on 9 December 2008

County Council policy as expressed in the Minerals and Waste Development Framework, Core Strategy, adopted April 2009

County Council policy as expressed by decision of the County Cabinet meeting on 15 September 2011

CONSIDERATION BY OVERVIEW AND SCRUTINY

Not considered by Overview and Scrutiny

BACKGROUND PAPERS

None

RESPONSIBLE CABINET MEMBER

Tim Knowles, Cabinet Member for Transport & Environment

REPORT AUTHOR

Contact: Richard Griffin, Strategic Nuclear Policy Development Manager