



**CUMBRIA MINERALS & WASTE DEVELOPMENT FRAMEWORK**

**EXAMINATION OF MINERALS & WASTE CORE STRATEGY & GENERIC DEVELOPMENT  
CONTROL POLICIES DPD'S**

**WRITTEN REPRESENTATION ON SCHEDULE OF MATTERS & ISSUES FOR EXAMINATION**

**SITA UK LTD  
OCTOBER 2008**

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## 1. INTRODUCTION

1.1 This written submission has been prepared on behalf of our client SITA UK LTD, as conclusive evidence to demonstrate that the Submission Draft Core Strategy Development Plan Document is *unsound*. This evidence addresses the Matters & Issues identified for Examination, demonstrating:

- Which particular part of the DPD is unsound?
- Which soundness test(s), set out in paragraphs 4.23-4.24 of PPS12, does it fail?
- Why does it fail and how can the DPD be made sound?
- What is the precise change / wording that is being sought?

1.2 The reference numbers after each document, for example (ND7), relate to the numbering system given to all documents in the Core Document List for Examination (09 October 08).

1.3 This response is prepared having particular regard to:

- The 'Cumbria Minerals and Waste Development Framework Recommended Changes to the Core Strategy' (*Response to the Inspector's Request for Further Information*);
- Cumbria County Council's response to the Inspector's request for further information (as set out in Annex C of the Guidance Notes for participants).

2. KEY ISSUE:

**6. Radioactive Waste. Are the policies covering radioactive waste soundly based and consistent with the latest national and regional policy and policies of other relevant authorities and bodies concerned with the disposal and storage of radioactive wastes**

***ix. Does Core Strategy Policy 12 set out a sound and appropriate approach to the process of selecting a site for the disposal of low level radioactive waste; and should it allow alternative sites to be considered?***

**Which particular part of the DPD is unsound?**

2.1 Policy 12 and its reasoned justification (paragraphs 8.18-8.23) are unsound as it effectively allocates the LLW Repository near Drigg and precludes alternative sites coming forward through the plan, whilst at the same time preventing the consideration of non-allocated sites against the policies of the Core Strategy. Sita UK Ltd considers that Policy 12 and its reasoned justification fail four of the tests of soundness identified within PPS12 for the reasons set out below:

- Fails to conform with national and regional policy (Test iv);
- Fails to reflect the 'spatial vision' within the submitted Core Strategy (Test vi);
- Fails to address cross boundary issues relating to the disposal of LLW (Test vi);
- Fails to consider reasonable alternatives to the Drigg facility (Test vii);
- Fails to provide the flexibility to deal with changing circumstances (Test ix).

**Which soundness test(s), set out in paragraphs 4.23-4.24 of PPS12, does it fail?**

**Conformity**

*iv. "It is a spatial plan which is consistent with national planning policy and in general conformity with regional spatial strategy for the region, or in London, the spatial development strategy and it has properly had regard to any other plans, policies and strategies relating to the area or to adjoining areas".*

### **Coherence, consistency and effectiveness**

vi. *“the strategies / policies / allocations in the plan are coherent and consistent within and between development plan documents prepared by the authority and by neighbouring authorities, where cross boundary issues are relevant”.*

vii. *“the strategies / policies / allocations represent the most appropriate in all the circumstances, having considered the relevant alternatives, and they are founded on a robust and credible evidence base”*

ix. *“the plan is reasonably flexible to enable it to deal with changing circumstances”.*

- 2.2 This written submission provides conclusive evidence that Policy 12 and its reasoned justification (paragraphs 8.18-8.23) fail the above tests of soundness and must be amended to ensure *conformity* with national planning policy. Set out below are the reasons why this aspect of the Submitted Draft Core Strategy is considered to fail this test and how the document should be amended to ensure that it can be considered to be *sound*.

### **Why does it fail and how can the DPD be made sound?**

#### Test of Soundness iv

- 2.3 Policy 12 and the supporting text (Paragraphs 8.18 to 8.23) set the Councils position in respect of Low Level Waste (LLW). It identifies that the quantity of waste that would, in the past have been consigned to the LLW Repository near Drigg will be managed elsewhere, and that the existing capacity will last until 2019 or beyond. It appears that on this basis the Council has put forward a policy which provides for the continued role of the Repository, but no other in Cumbria.
- 2.4 Sita UK Ltd made previous representation on the Submission Draft Core Strategy (CSD1) to this effect.
- 2.5 The Council have subsequently made Recommended Post Submission Changes to the Core Strategy (ED8.1) paragraph 8.20 to include the following textual addition:

*8.20. “Wastes that do not require multi-barrier containment will continue to arise, **including substantial quantities from nuclear decommissioning** [our emphasis]. The nature of these wastes, their quantities and how much of them will require off-site*

*provision for disposal is not yet clear from the Integrated Waste Strategies. This matter will be kept under review in the MWDF Annual Monitoring Reports.”*

- 2.6 No textual change has been made to Policy 12.
- 2.7 In the Councils Response to the Inspector’s Request for Further Information (ED8), paragraph 5.43 (as set out in Annex C of the Guidance Notes for participants) they elaborate to state that *“Government policy for Low Level Wastes requires the NDA to make optimal use of the Repository near Drigg and to look for other disposal options. Core Strategy Policy 12 is consistent with this. Paragraph 8.19 (of the submission Draft Core Strategy) sets the basic approach for using capacity at LLWR only for wastes that require such an engineered facility”* and having regard to Low Level Wastes, *“...the Council... is looking at all of the management options for these wastes”*.
- 2.8 The Councils response also states within paragraph 5.46 that regarding Very Low Level Wastes or High Volume Low Activity Wastes *“There is still uncertainty about the amounts of waste that will be involved, and about what proportions can be managed on site, can be moved up the waste hierarchy, or can be “free-release” or may need off-site disposal.”* The Council state that *“Because the uncertainties are so significant, it is considered inappropriate to include a policy for such wastes.”*
- 2.9 **Sita UK Ltd strongly contest the statement provided within paragraph 5.43 of the Councils response that Policy 12 is consistent with Government policy, reaffirming our view that in not fundamentally addressing this issue, the development plan document remains to be *unsound*, despite the Councils recommended post submission changes. It is important to recognise that Very Low Level Wastes or High Volume Low Activity Wastes (having a radioactive content of not more than 40Bq/g of alpha activity) are a sub category of Low Level Waste (having a radioactive content not exceeding 4000Bq/g of alpha activity). Policy 12 specifically relates to Low Level Radioactive Waste. By this policy, not explicitly referencing disposal requirements for Very Low Level Wastes or High Volume Low Activity Wastes, or providing for alternative sites to come forward in dealing with such wastes, this policy effectively precludes against their delivery. This is despite the Councils statement in paragraph 5.46 that it is inappropriate to include a policy for such wastes, as by the nature of Policy 12, and the all encompassing definition of Low Level Wastes, they have indeed done so.**

- 2.10 Defra published the Government's Policy for the Long Term Management of the UK's Solid Low Level Radioactive Waste (LLW) in March 2007 (LD42). It states that:

*“Preparation of plans for the management of LLW must be based on an assessment of all practicable options for its long term management. Any implementation of options under this policy will be subject to satisfactory risk assessment and optimisation study, as required by the relevant bodies. The Government believes that disposal to an appropriately engineered facility, either below or above ground, with no intent to retrieve, should be the end point for LLW that remains. This position is held on the basis that new disposal facilities will be of sufficiently robust design such that risks to the public in the future will be within the post-closure risk target, and therefore that positioning final disposal to future generations is unjustified. With regard to LLW and VLLW disposal to landfill, the Government sees no reason to preclude controlled burial of radioactive waste from nuclear sites from the list of options to be considered in any options assessment, provided the necessary safety assessment can be carried out to the satisfaction of the environmental regulators. The use of centralised facilities, such as Drigg, or any similar future facility, may be the appropriate point of disposal for much LLW....Option assessments carried out to support the development of LLW management plans must consider employing the proximity principle.”*

- 2.11 Policy 12 is prescriptive in that it only provides for future disposal at the LLW Repository near Drigg, irrespective of the future acceptance or capacity of the LLW Repository near Drigg, or the option for alternative preferable sites to come forward through the planning system. Therefore despite an acknowledgement to the Defra Report (LD42), and apparent commitment to the look at the options (set out in paragraph 8.18 of the Councils Recommended Post Submission Changes to the Core Strategy (ED8.1)), Policy 12 remains contrary to the Governments objectives identified above.
- 2.12 UK Nuclear Waste Management Ltd (UK NWM Ltd) as the ‘parent company’ with the contract to operate the LLWR facility near Drigg are contracted to undertake a strategy review (contract element 2) to identify alternative treatment and disposal options to reduce the volume of LLW and to preserve the capacity at the Repository near Drigg for the UK's future needs. This is anticipated to be made available in April 2009. UK NWM Ltd recognises that there is a need for alternative disposal options. The aim of UK NWM Ltd is to provide an alternative “fit for purpose” disposal facility in order to extend the life of the LLW Repository near Drigg through to 2070. There is thus a clear need to preserve its operational life by diverting VLLW to an alternative facility within reasonable proximity of the main source of waste at Sellafield. This strategy is supported in the

*“Policy for the Long Term Management of Solid Low Level Radioactive Waste in the United Kingdom” 26 March 2007 (LD42).*

- 2.13 Policy 12 and Paragraph 8.23 of the Post Submission Changes to the Core Strategy (ED8.1) continue to be in direct conflict with this objective, as they do not provide for such alternative disposal options for VLLW, and in doing so pre-empt the outcome the review currently being undertaken by UK NWM Ltd.

Test of Soundness vi

- 2.14 Whilst the Core Strategy is a spatial plan which reflects guidance set out in Planning Policy Statement 1: Delivering Sustainable Development (PPS1) (ND1) and Planning Policy Statement 12: Local Development Frameworks (PPS12) (ND7), it fails to reflect the approach identified within Planning Policy Statement 10: Planning for Sustainable Waste Management (PPS10) (ND5) in respect of the form of Development Plans in providing a framework within which proposals for development can be considered. PPS10 (ND5) states that authorities should identify and allocate suitable sites for waste management, and where applications come forward which are not identified on allocated sites these should be considered favorably when consistent with the policies in PPS10 (ND5), and are suitable in terms of physical and environmental constraints, the cumulative impact is not so adverse and the capacity of the highway network is acceptable. In addition unallocated development is required to accord with the Core Strategy. Policy 12 of the Core Strategy (ED8.1) effectively allocates the LLW Repository near Drigg and precludes alternative sites coming forward through the plan, whilst at the same time preventing the consideration of non-allocated sites against the policies of the Core Strategy.
- 2.15 A failure by the Council to identify appropriate facilities, or provide the flexibility within Policy 12, to deliver such facilities required by 2020 for the disposal of all sub categories of LLW, conflicts with the long term spatial vision of the Core Strategy (ED8.1) that *“facilities will be provided to manage the Low Level radioactive wastes that arise from the Sellafield / Windscale complex”*. When considering Policy 12 against the Test of Soundness vi, and specifically whether the Policy is *“coherent and consistent within and between development plan documents”*, it is clear that this Policy is *unsound* on this account. Policy 12 does not provide the flexibility required to manage all sub categories of Low Level waste arising within the Plan period.

- 2.16 The Council has a duty to ensure that additional capacity is provided to enable both flexibility and to meet the statutory requirements of the Plan. The Core Strategy, whilst not prescriptively identifying alternative sites to the Drigg facility, should not preclude them coming forward as non allocated sites through criteria based polices.
- 2.17 A further failure by the Council is in respect of cross boundary movements of wastes. Despite the Council's response to the Inspector's request for further information within paragraphs 5.21 – 5.32 (ED8), the Core Strategy (ED8.1) continues to fail to acknowledge clearly the distinctiveness of LLW and the potential role of Cumbria facilities nationally. This must be addressed to ensure compliance with Test of Soundness *vi* and to ensure *soundness* of the DPD.

Test of Soundness *vii*

- 2.18 In considering Policy 12 against Test of Soundness *vii* the Authority must clearly demonstrate that that they have considered relative reasonable alternatives. It is not however apparent that they have done so, only identifying the LLW Repository near Drigg as an option. Sita UK Ltd made representation to the consultation to the Submission Draft Core Strategy to this effect. As per paragraph 2.8 above the Council continues to fail to address this issue, citing 'uncertainty' as their rationale to do so. The need for additional facilities is however clear, and the Plan must provide sufficient flexibility to deliver such capacity when indeed required. Sellafield has a substantial remaining disposal requirement beyond the capacity of the Repository near Drigg and the privately operated landfill site within the Sellafield complex.

Test of Soundness *ix*

- 2.19 Policy 12 and the reasoned justification fail the test of soundness *ix* as they do not provide sufficient flexibility to deal with changing circumstances and the future need for disposal options for the sub categories of Low Level Waste arising within the Plan period. The failure to provide this flexibility is demonstrated above.

## **What is the precise change / wording that is being sought?**

### 2.20 Proposed Paragraph 8.23:

*“The policy provides for the continued role of the Repository near Drigg. UK NWM Ltd are contracted to undertake a strategy review (contract element 2) to identify alternative treatment and disposal options to reduce the volume of LLW and to preserve the capacity at the Repository near Drigg for the UK’s future needs. This remit includes seeking to maximise treatment / reduction and recycling of wastes in accordance with the waste hierarchy, however it is recognised that there is a need for alternative disposal options. The aim of UK NWM Ltd is to provide an alternative “fit for purpose” disposal facility in order to extend the life of the LLW Repository near Drigg through to 2070. There is thus a clear need to preserve its operational life by diverting VLLW to an alternative facility within reasonable proximity of the main source of waste at Sellafield. It is important to provide flexibility for legislative changes and additional capacity requirements. The Policy provides for additional sites to be considered where the identified Repository near Drigg is less suitable, unavailable or less acceptable than the alternative site proposed, or where the reserves at the facility near Drigg is identified as being required for the ‘higher end’ LLW and the alternative facility would preserve the remaining void at the Repository. In such cases, applicants will need to demonstrate that the facility accords with the key objectives of PPS10 being of the right type, in the right place and at the right time....and that they are well designed so that they contribute positively to the character and quality of the area within which they are located.”*

### 2.21 Proposed Policy 12:

*“Provision will be made for the Low Level Repository, near Drigg to continue to fulfill a role as a component of the UK’s radioactive waste management capability. To ensure that the valuable reserves at the Repository near Drigg are preserved to meet the UK’s Low Level Waste needs, applications for facilities to manage Very Low Level Waste will not be permitted unless it can be demonstrated that:*

- (i) the Repository near Drigg is no longer available or less suitable for the proposed development; or*
- (ii) the proposal would meet a requirement not provided for by the Repository near Drigg; or*

- (iii) *the proposal would meet a specific waste requirement which would help ensure the long term availability of the Repository near Drigg; and*
- (iv) *the proposed site is located according to the key objectives of PPS10”.*

### 3.0 CONCLUSION

- 3.1 When considering key issue 6ix of the Schedule of Matters and Issues for Examination (ED3) against the tests of soundness prescribed within paragraphs 4.23-4.24 of PPS12 (ND7) the following conclusions must be drawn.
- 3.2 Policy 12 and reasoned justification set out within paragraphs 8.18 – 8.23 of the Recommended Post Submission Changes to the Core Strategy (ED8.1) are fundamentally *unsound* and must be amended if the DPD is be made *sound*. It is flawed to only identify the Low Level Repository near Drigg, whilst not providing the flexibility through a criteria based policy to enable unallocated sites to be considered favourably should they meet a demonstrable need.
- 3.3 The Nuclear Decommissioning Authority (NDA) in their December 2007 submission to Cumbria County Council would appear to confirm the comments made above. The NDA commented that ***“Optimal use of the LLWR by appropriate contracting and Conditions for Acceptance linked to capacity will ensure that fit for purpose disposal solutions are also developed for candidate LLW streams that may appropriately be diverted away from the engineered disposal route offered at the LLWR, such as higher volume lower activity wastes potentially suitable for landfill or alternative waste treatment. We consider that the Cumbria County Council Minerals and Waste Development Framework should also recognise the need for additional fit for purpose disposal capacity for certain forms of LLW arising from Sellafield.”*** Sita UK Ltd understands that the NDA are to reiterate their comments to the Council prior to the Hearing.