

Independent Examination of the Copeland Local Plan 2021-2038

Response to Inspector's Matters, Issues and Questions

Matter 8-Energy and Nuclear Development

Submitted on behalf of the Nuclear Decommissioning Authority

Respondent ID - 68.2

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Appendices

Appendix 1 Sellafield Site Boundary Plan



1. Introduction

- 1.1 The following statement responds to the questions raised of relevance to the Nuclear Decommissioning Authority (NDA). The responses are below the stipulated 2,000 word limit – excluding this introduction and the repeat of the text for each question itself.

2. Question 8.7 - Do the criteria in Policy NU1PU provide clear and effective guidance for the consideration of nuclear development? Is the policy justified, effective and consistent with national policy?

- 2.1 It is agreed that criteria 'a' and 'b' do provide clear and effective guidance for the consideration of nuclear development. However, the remaining policy text is considered to be neither justified, effective or consistent with national policy. It is assumed that given there is only reference to "national policy" that this questions relates to national government policy and not simply national planning policy.
- 2.2 Proposed minor modification MILP146 (new paragraph 10.9.2) proposes to include a sentence stating that development by Sellafield Ltd within the Sellafield site boundary will be exempt from this requirement as "existing provisions are already in place". The addition of paragraph 10.9.2, whilst helpful to an extent, does not adequately explain why Sellafield Ltd are exempt for development inside the defined site boundary but are not exempt for development outside of the boundary or adjacent to it. Similarly, it is unclear what requirement Sellafield are exempt from - is it the need to make a proportionate and meaningful contribution to the local economic, social and environmental strategies/priorities? and the need to produce a Social Impact Strategy ? and / or through S106 contributions where these are required to mitigate any negative impacts and make the proposal acceptable ?
- 2.3 The NDA, therefore, repeat their previous representations that the final paragraph of the policy be amended. The NDA are concerned that the policy refers to the requirement for all nuclear sector-related development to make a proportionate and meaningful contribution to local economic, social and environmental strategies/priorities. It is considered that this element of the policy's text is unclear in terms of what is being sought and how this would be measured and assessed.
- 2.4 The phrase 'proportionate and meaningful contribution' is considered to be ambiguous and could be interpreted in such a way that the developer is expected to provide a monetary contribution to satisfy this policy requirement. While a monetary sum may be required where reasonable, necessary and directly related to the development, this is already appropriately addressed at Policy DS5PU (Planning Obligations). Paragraph 57 of the NPPF states that planning obligations must only be sought where they are necessary, reasonable and directly related to the development, for example those obligations which are covered by policy DS5PU of the Local Plan. Requiring nuclear sector development to therefore "make a proportionate and meaningful contribution to local economic, social and environmental strategies/priorities", i.e. those over and above what is required through the planning system, is therefore contrary to the NPPF.
- 2.5 In conclusion, the policy (as worded) seems to be requiring benefits to be secured which are not proposed as a means of pursuing any proper planning purpose, but rather for the purpose of providing general benefits to the community. Such "community benefits" if required and taken into account by the council in a decision to grant planning permission would not be lawful if they are not material planning considerations as it would exceed the tests set out in paragraph 57 of the NPPF and Regulation 122 of the CIL Regulations.



- 2.6 For these reasons, the wording of this policy requirement is deemed imprecise and unjustified. It therefore fails the test of soundness and should be modified in such a way that it serves a clear purpose and is sufficiently precise and unambiguous.

3. Question 8.8 - Is Policy NU2PU justified, effective and consistent with national policy?

3.1 The NDA have no comments to make in relation to Policy NU2PU.

4. Question 8.9 - Do the criteria in Policy NU3PU provide clear and effective guidance for the consideration of nuclear energy sector and associated development?

- 4.1 The NDA welcome the proposed modification (MALP73) to broaden the range and type of projects covered by the policy.
- 4.2 However concerns remain with regard to criteria 'a'. The proposed amendment in regard to criteria 'a' does not respond to the representations made by the NDA which sought to add clarification that NDA land be treated on a par to employment land.
- 4.3 As currently worded criteria 'a' directs development towards either designated employment sites, suitable sites within settlement boundaries or if not within these areas to be justified through an "exceptional need case". The NDA are of the view that the "need" has already been established through the NDA Strategy (2021) which is a national Government policy document and subject to extensive consultation prior to being published.
- 4.4 As written the policy has the potential to add delay or further constraint to the NDA's ability to deliver its decommissioning and clean-up mission, making best use of NDA land in order to do this. The NDA Strategy (2021) is Government policy and sets out how the NDA are required to ensure that the Site Licence Companies (SLCs) have the land and property they need to complete their mission. It also describes the NDA's role in helping promote opportunities for reuse of their land to stimulate progress in decommissioning and the release of land to support other government priorities such as national infrastructure projects.
- 4.5 The policy should also recognise that the siting of infrastructure to support nuclear development (transports links, security, construction logistics) should be sited to enhance the attractiveness of the area to future developers. This applies regardless of whether the future development is nuclear or not, for example, a new rail head, or lay down areas in the identified development areas outside of the Sellafield site would benefit Sellafield Ltd now and would also benefit the development of the Clean Energy Park.
- 4.6 It is therefore requested that criterion 'a' be redrafted to include reference to the NDA mission and NDA land and also set out the precise assessment criteria to be adopted when considering proposals subject to the "exceptional need case" to ensure a clear and consistent approach to decision-taking.

5. Question 8.10 - Is the Policy NU3PU justified, effective and consistent with national policy? Are the suggested Main Modifications (MA-LP72-76) necessary in the interests of soundness?

- 5.1 For the reasons set out in response to Question 8.9, the wording of criteria 'a' as currently drafted is deemed imprecise and unjustified. It therefore fails the test of soundness and should be modified in such a way that it serves a clear purpose and is sufficiently precise and unambiguous.

6. Question 8.11 - Do the criteria in Policy NU4PU provide clear and effective guidance for the consideration of nuclear and associated development at Sellafield?

- 6.1 The proposed modifications to criteria 'a' are welcomed.
- 6.2 However, concerns remain regarding the tightness of the Sellafield site boundary. The Sellafield site is the most complex and congested nuclear site in the world. Very little spare land is available on which to build the new facilities that are needed in order to deliver the clean-up mission and to safely decommission and demolish redundant facilities. Land constraints could lead to sub-optimal solutions having to be implemented which, in turn, could result in the inefficient use of public money and could lead to the clean-up mission taking longer. Therefore, the use of land around the periphery of the site for non-nuclear support activities is essential in terms of accelerating hazard reduction activities.
- 6.3 Appendix 1 illustrates the Sellafield site and boundaries. Map 1 shows the anomalies between the different delineations of the site 'boundary'. These anomalies should be amended so that Sellafield Ltd can maximise the use of its operational land, noting that many of the areas around the periphery of the site which appear to be available cannot be developed (see map 1). Therefore, it is proposed that all of the operational land should be included within the planning boundary (see map 2) including the main site, security features and ancillary access infrastructure (including Yottenfews car park). This approach is consistent with NDA Strategy 2021.
- 6.4 The proposed amendments to criteria 'b' do not deal with the underlying issue of the lack of clarity over how an exceptional need case can be met with footnote 43 not establishing the criteria against which any development proposal would be assessed. The NDA are of the view that the exceptional "need" has already been established through the NDA Strategy (2021) which is a Government policy document having been subject to extensive consultation prior to being published. It is also noted that the footnote 43 suggests that any proposed development outside of the defined Sellafield site would be considered an exception to established planning policies. This is in apparent contradiction to Policy DS4PU which offers support to "nuclear related development" and "essential infrastructure to support energy development and other infrastructure" outside settlement boundaries provided there is a proven need for an open countryside location. Following this logic, it should follow that future development outside of the defined Sellafield site – subject to adequately demonstrating the need for an open countryside location – would comply with Policy DS4PU and should not be deemed as an exception.
- 6.5 Criterion 'b' should be redrafted to set out the precise assessment criteria to be adopted when considering proposals subject to the "exceptional need case" to ensure a clear and consistent approach to decision-taking is possible.
- 6.6 The policy also remains unclear, with Sellafield Ltd highly likely to need to use land outside the current site boundary in order to deliver its clean-up mission as useable land within the site boundary is very limited.

7. Question 8.12 - Is the Policy NU4PU justified, effective and consistent with national policy? Are the suggested Main Modifications (MA-LP77-LP81) necessary in the interests of soundness?

7.1 Whilst the NDA welcome some of the proposed modifications to the policy it is still considered that policy NU4PU in its current form is not justified or consistent with national policy. This is for the following reasons.

Criterion A

7.2 It is considered that this criterion fails the text of soundness as it is not justified. No evidence has been provided to suggest Copeland Borough Council has considered the requirement for additional land at Sellafield to achieve their clean up mission, or that alternative site boundaries have been considered as a result of the duty to co-operate process. Both the NDA and Sellafield Ltd have suggested that the boundary should include all operational land leased to Sellafield Ltd by the NDA for non- nuclear support activities which need to be located close to the site. This approach is consistent with Government Policy and the NDA Strategy (2021). The NDA and Sellafield Ltd have made representation at the various stages of consultation on what would be the most appropriate boundary for planning purposes for the site. However, Copeland Borough Council have provided no evidence to support or justify this decision. It is also contrary to paragraph 83 of the NPPF, which states the following: *"Planning policies and decisions should recognise and address the specific locational requirements of different sectors"*. For these reasons it is considered that criterion A remains unsound, and could have significant impacts on Sellafield Ltd achieving their clean up mission.

Criterion B

7.3 The NDA broadly welcome criteria B as it allows for development outside of the Sellafield site to be considered. However, there remains a level of ambiguity surrounding the meaning of a *"justifiable exceptional need case"*. The NDA are of the view that the exceptional "need" has already been established through the NDA Strategy (2021) which is a Government policy document. It is also noted that the footnote 43 suggests that any proposed development outside of the defined Sellafield site would be considered an exception to established planning policies. This is in apparent contradiction to Policy DS4PU which offers support to "nuclear related development" and "essential infrastructure to support energy development and other infrastructure" outside settlement boundaries provided there is a proven need for an open countryside location. Following this logic, it should follow that future development outside of the defined Sellafield site – subject to adequately demonstrating the need for an open countryside location – would comply with Policy DS4PU and should not be deemed as an exception. It is therefore considered that this element of the policy should be clarified in order for the criterion to be found sound.

7.4 The policy is not consistent with national policy with the NDA Strategy (2021), published after extensive consultation, setting out the need to ensure that the Site Licence Companies (SLCs) have the land and property to complete their missions. It also describes the NDA's role in helping promote opportunities for reuse of their land to stimulate progress in decommissioning and the release of land.

8. Question 8.13 - Is Policy NU5PU justified, effective and consistent with national policy?

- 8.1 The NDA agree with modification (MA-LP84) that the policy is not necessary and goes beyond what can be considered in a Prior Notification application, that Criterion 3 repeats policies elsewhere in the Local Plan and is therefore not required.

Appendix 1

Sellafield Site Boundary Plan

Map 1 - Map showing current Sellafeld Site Operational Land Boundaries (along with its various delineations)



Map 2 - Map Showing Proposed Sellafield Planning Boundary



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