



Conservation Council SA

The Joinery
Level 1, 111 Franklin Street
Adelaide, SA, 5000

(08) 8223 5155

general@conservationsa.org.au
www.conservationsa.org.au

ABN: 22 020 026 644

Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: economics.sen@aph.gov.au

3rd April 2018

Dear Committee,

RE: Submission to inquiry into the selection process for a National Radioactive Waste Management Facility in South Australia

Conservation SA is an independent, non-profit and strictly non-party political organisation representing around 60 of South Australia's environment and conservation organisations and their 90,000 members. Conservation SA is grateful for the opportunity to provide comment to the Senate Inquiry into the selection process for a national radioactive waste management facility in South Australia.

We welcome the inquiry into "The appropriateness and thoroughness of the site selection process for a national radioactive waste management facility at Kimba and Hawker in South Australia, noting the Government has stated that it will not impose such a facility on an unwilling community". Each of the Terms of Reference are addressed in turn below.

Please contact me if you have any questions about these comments.

Yours sincerely,

Craig Wilkins
Chief Executive

a) The financial compensation offered to applicants for the acquisition of land under the Nominations of Land Guidelines

There are several areas of concern regarding the financial compensation offered to applicants and the circumstances under which they may nominate land.

While Section 8.1(a)ii of the Nomination Process: Guidelines and Nomination Form November 2016 states that a site may be nominated if a lease of the land has been granted by or on behalf of the Crown, this is inconsistent with the ARPANSA code requirement that 'there are no land ownership rights or controls that compromise retention of long-term control over the facility (ARPANSA code for disposal of solid radioactive waste section 3.1.29).

In the case of the site nomination of Wallerberdina Station, the pastoral lease is held by an absentee landlord. It is of deep concern that this person can receive financial gain for the siting of a radioactive waste facility which will impact the local community that he is not part of.

One landholder nominating "their" land forces their entire community to go through, at a minimum, Phase 1: Nominations, site assessment and shortlist identification, and possibly Phase 2: Technical assessment, site characterisation studies and preferred site identification.

In the case of Wallerberdina Station, the community has been enduring this process for what will be 3 years in April 2018.

Inconsistent information has been provided about the financial compensation available. For example, the website www.radioactivewaste.gov.au/site-selection-process/nominating-site states that "A property owner whose land becomes the final chosen site for the facility will be paid **four times** the value of the land", whereas the Nomination Process: Guidelines and Nomination Form, November 2016 (pg 10, section 5.4) states that compensation will be offered at "a premium of **three (3)** times the value established under 5.4(a)(1)".

b) How the need for 'broad community support' has played and will continue to play a part in the process, including:

- i) The definition of 'broad community support', and**
- ii) How 'broad community support' has been or will be determined for each process advancement stage.**

Section 6(b) of the Nomination Process: Guidelines and Nomination Form states that "It would be beneficial if the interested landholder obtains evidence, such as statements of support from the community. The project team does not expect the entire community to be supportive but **sites that do not demonstrate broad support will not be progressed.**"

Section 7(a) of the guidelines states that "Community support is a key consideration for a nomination to progress. A facility will not be established where there is not broad community support."

To date, there is no definition of the boundaries of "community", what proportion of a community must support the proposal to be regarded as "broad" or how it will be gauged.

It is a fundamental flaw of the guidelines and the process that these critical parameters have not been defined. They should have been clear before Phase 1 began.

An Australian Electoral Commission (AEC) poll in Kimba asked "Do you support a nomination for a site being progressed to Phase 2 for further consultation for a National Radioactive Low/Intermediate Level Waste

Management Facility?” The poll had a 57% yes response. Following this, a media release¹ from the Minister for Resources Matt Canavan dated 27 June 2017 stated that “we now know that across the community there is broad support for continuing this conversation, and that is what we will do”.

Despite the lack of definition of “broad”, the controversial and divisive nature of this process requires a significantly higher threshold. It is important to note that the 57% of people polled agreed to further consultation, and does not indicate support for the facility.

Further, in an article in The Australian² on 30 January 2018, Minister Canavan claimed “majority support so far in the communities around Wallerberdina Station and Kimba”. This is demonstrably untrue. His comments are made with no evidence to support his claim.

The Minister consistently denies division in the communities and claims “broad community consent”, despite this being undefined, unproven and clearly untrue³. We have seen many media articles⁴ relating to the division and opposition in both communities and Conservation SA has received many calls from the community distressed about these issues. It is essential that broad community consent be urgently defined to improve certainty and clarity. Otherwise, any degree of community support, even well below 50%, could potentially be used to justify continuing the process if it suited the agenda of the proponent.

It is not clear how Traditional Owners who have connection to the nominated land but do not live in the area of the proposed site, or not on the electoral roll, would be included in the consultation process. Given the significant connection that Aboriginal people have to country, the voice of Aboriginal people must be prioritised.

The April 2016 Department Of Industry, Science And Innovation National Radioactive Waste Management Facility Community Sentiment Survey Wave 2 Report Of Findings undertaken by ORIMA Research⁵ claimed that 65% of the general population of the Barndioota community were not opposed to the process continuing. The Flinders Local Action Group undertook their own survey⁶ of their community and the results analysed by a statistician. Their finding was that 84% of the community was opposed, and only 16% in favour of the process continuing.

It is good that the draft ARPANSA Code (section 2.8) recognises the importance of community consent and social license, however in relation to the current federal plan, confidence in the decision-making process has been eroded by the flawed and divisive consultation, lack of definition and geographic definition of the community and stakeholders which, in the case of the Flinders community, almost 3 years into the process, has not been finalised.

The inclusion of the ‘essential’ nature of local Aboriginal engagement with the siting process is welcome but should be broad and respectful with a right to veto before the proposal progresses. Consultation should

¹ <http://minister.industry.gov.au/ministers/canavan/media-releases/kimba-sites-proceed-consideration-national-radioactive-waste>
² www.theaustralian.com.au/national-affairs/state-politics/jay-weatherill-changes-mind-on-nuclear-dump-ahead-of-election/news-story/a11667e1cfcb443812ef0052bfc6fbef

³ <https://www.youtube.com/watch?v=CFtIVBCIXHA>

⁴ <https://www.theguardian.com/environment/2017/apr/04/whod-want-to-dump-australias-nuclear-waste-here-well-this-guy>

<https://www.smh.com.au/politics/federal/sleepless-nights-tears-and-stress-communities-fight-turnbull-governments-nuclear-waste-dump-plans-20160301-gn78vi.html>

<http://www.abc.net.au/news/2018-02-17/barndioota-nuclear-waste-site-planning-outrages-locals/9456052>

<https://www.sbs.com.au/nitv/nitv-news/article/2016/05/06/adnyamathanha-people-gear-save-their-land-nuclear-waste-dump>

⁵ <https://prod-radioactivewaste.industry.slicedtech.com.au/sites/prod.radioactivewaste/files/files/NRWMF%20Community%20Sentiment%20Surveys%20Report.pdf>

⁶ https://d3n8a8pro7vhmx.cloudfront.net/conservationsa/pages/454/attachments/original/1522717805/FLAG_survey.pdf?1522717805

include Traditional Owners who do not live in the area and should commence prior to a nomination being formally accepted by the Minister.

Effective and ongoing communication and consultation ideally requires constancy of staff. The community of the Flinders Ranges, for example, have expressed their frustration with staff turnover. Once they have articulated their position to ANSTO or DIIS staff and developed a relationship over time, the staff member will move on and be replaced by another person. The community members must then begin again and repeat steps they have been through before. The federal department has been clearly deficient in relation to stakeholder engagement and communication.

c) How any need for Indigenous support has played and will continue to play a part in the process, including how Indigenous support has been or will be determined for each process advancement stage;

While the Adnyamathanha community of the Flinders Ranges has been actively involved in the process, the Barngarla community of the Eyre Peninsula has not been consulted at all. The Barndioota site in the Flinders Ranges is adjacent to an Indigenous Protected Area, and is the site of Australia's first registered songline. The indigenous presence of the Adnyamathanha people in the Flinders Ranges has necessitated their involvement and objection from the start.

The Barngarla people do not have the same presence in the Kimba region. This can be attributed to the impacts of colonisation and not to their disengagement.

Traditional Owners should be fully engaged from the start of the process, and given right of veto.

While the Radioactive Waste Management Act gives some powers to indigenous groups, there are several clauses that removes their effect⁷.

These include:

- Section 5(4) which does not invalidate a nomination even if there is no proof that Aboriginal owners were consulted, advised, given the opportunity to express their view or consent
- Section 8(4) which does not invalidate a nomination even if there is no proof that the nominator had the authority to act on behalf of the native title holders

This is contrary to the UN Declaration on the Rights of Indigenous Peoples, which Australia endorsed in 2009. The Declaration has a specific provision promoting effective measures to be taken by the State, in regards to hazardous materials on Indigenous land.

The Declaration reads: "States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of Indigenous peoples without their free, prior and informed consent."⁸ The emphasis on the consent of Indigenous peoples is clear.

In October 2017 then Premier of South Australia Jay Weatherill wrote to Prime Minister Turnbull explaining the SA government's decision after the Royal Commission into a High Level Radioactive waste facility in SA "to commit to provide a local Aboriginal community with a final right of veto over any future facility proposed on their lands" and then recommended "that the Commonwealth government now consider adopting a similar policy position as part of the NRWMA process". This would be in line with the UN declaration on the Rights of Indigenous Peoples.

⁷ <https://d3n8a8pro7vhmx.cloudfront.net/foe/pages/199/attachments/original/1489231658/NRWMA-Report-FINAL-March-2017.pdf>

⁸ 1 UN Declaration on the Rights of Indigenous Peoples, art. 29(2): http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

The Adnyamanthanha Traditional Lands Association (ATLA) has voiced its opposition to the siting of the facility on its land. On Saturday 24 March 2018 the ATLA AGM passed this statement:

“The Adnyamathanha Traditional Lands Association remains totally opposed to the nuclear waste dump at Wallerberdina. This is our land, our culture and we must have veto over this toxic waste being dumped in our country. Udneyus come and go but we will be here forever. We say NO to the waste dump, for our grandchildren and their grandchildren and many generations to come.”

Given this, there should be no siting of a NRWMF on their land, and this conclusion should have been reached at the beginning of the process rather than subjecting the traditional owners of the land to unnecessary stress and division.

d) Whether and/or how the Government’s ‘community benefit program’ payments affect broad community and Indigenous community sentiment;

The Nomination Process: Guidelines and Nomination Form, November 2016, pg 11, section 7(c) states that “in recognition of any short term disruption that a detailed assessment may involve, the local community will also be provided with up to \$2 million for local projects that create lasting economic or social benefits”.

The Barndioota Community has expressed concern and frustration about the lack of accountability regarding the payments. There has been some concern that some of the funding awarded went to private enterprises which benefited the businesses rather than the community. There has been concern about the high costs of contractors chosen by the government and the shoddiness of the work done.

Once a site is selected, the community will receive a one off payment of \$10 million. There is a lack of clarity about how this money can and will be allocated. Further, there is a misconception amongst some community members about the possible financial and employment benefits that will result from the establishment of a NRWMF. This lack of clarity appears to be geared toward increasing the perceived benefits to community members.

e) Whether wider (Eyre Peninsular or state-wide) community views should be taken into consideration and, if so, how this is occurring or should be occurring;

Conservation SA believes that as the proposal is for a national radioactive waste facility, this is a national issue and hence national views should be taken into account. We acknowledge however, that the local communities will be most impacted and their voice is key.

If a site is selected, all the communities along the transport route(s) will be affected. These communities should be aware of being on the transport route and given the opportunity to have their say.

At a Barndioota Consultative Committee meeting in October 2017⁹ there was a discussion on Defining Community with Professor Peta Ashworth. This was two and a half years after Barndioota was named the preferred site.

At a Hawker Community Development Board meeting in October 2017 a Quorn resident was told that he was not entitled to ask a question as he was not part of the affected community. Up until that point Quorn had been included and the incident was the cause of great concern to Quorn residents who feared they would be excluded from a process that would greatly impact their community.

⁹ http://www.radioactivewaste.gov.au/sites/prod.radioactivewaste/files/files/BCC%20Notes%20-%2010%20October%202017_0.pdf

The definition of community and its boundaries should have been finalised before Phase 1 of the process, and not continue for, at this stage, almost three years.

f) Any other related matters

Justification

The current proposal for which site selection is already underway has not been justified. No adequate case has been made for the establishment of a National Radioactive Waste Management Facility. The failure of the proponent to consider and review other management options means that justification of the proposal and the site selection process cannot be proven.

It is of deep concern that a site selection process has commenced prior to an investigation of the need for a site. Conservation SA believes that there is a strong case for extended interim storage at ANSTO's Lucas Heights reactor, particularly for the intermediate level waste created and already stored there. We believe that the best way to ensure responsible management and disposal of Australia's most hazardous waste would begin with a thorough investigation into the full range of disposal options available. Such an investigation has never been undertaken, despite the federal government's attempts to find a disposal site for several decades.

The National Radioactive Waste Management Act 2012 (NRWM Act) "provides for the establishment of a national radioactive waste management facility on a site selected from voluntarily nominated land". The Act needs to be overhauled so as to examine the full suite of options to ensure the best possible radioactive waste disposal outcome.

Nomination Process

The Nomination Process: Guidelines and Nomination Form, November 2016, pg 10, section 6(c) states that "The project team will conduct the following activities in partnership with the nominator: (i) **Perform a desktop review of the site's characteristics against the key Objectives** and provide the analysis to the potential nominator". Where are these desktop reviews? If they exist, they should have been made public right from the beginning of the process.

Section A3 of the guidelines say that "The Department will undertake a desktop review of available data sources in relation to the Objectives and Criteria when evaluating the nominated sites". These desktop reviews do not appear to be publicly available and hence the rationale for accepting the site nominations at Barndioota and Kimba is unknown. This is a matter of national interest and the information should be freely available.

The Barndioota site in the Flinders Ranges is known to be a flood zone and subject to seismic activity. Any site nominated must be rejected on this basis before the nomination is formally accepted by the Minister and community consultation commences.

Impacts on Community

Section 7(d) of the guidelines states that "In addition, once the facility is operational, the Act requires a National Repository Capital Contribution Fund with a minimum of \$10 million to be held in the fund and used for the purposes of providing enhanced public services and/or infrastructure in the relevant State and Territory. These Funds may be drawn upon once the facility is operational." We are concerned that \$10 million will be far less than the cost of having a disposal facility in any area. Loss of tourism income and jobs and impacts on export agriculture need to be accounted for, as well as the tangible and intangible losses to Aboriginal culture. At a rally against the facility in South Australia in December 2017, Hawker GP Dr Susi Andersson told those present that "the purported benefits of this dump, if realised, will equal only 1% of jobs in tourism and just 2% of one year of tourism income for the Flinders Ranges and outback. Any

drop in tourism will wipe out any possible economic benefit". South Australian Tourism Commission figures on the value of tourism in the Flinders Ranges can be found on their website¹⁰.

Section A5 of the guidelines states that "At the site identification phase, there will be a focus on ensuring that any potential site will have minimal negative impact on nearby communities, while at the same time ensuring that they benefit from the placement of the facility". How will negative impacts and any benefits be gauged? Will communities' perspectives be taken into account? How will intangible losses be accounted for? How will "nearby communities" be defined and will that include all communities along the transport route?

Conservation SA strongly urges the Economics Reference Committee to hold extensive and inclusive regional hearings in the affected communities as well as a Canberra hearing to capture national perspectives on this significant national issue. We request and would welcome the opportunity to speak at one of these hearings.

Assessment

The Nomination Process: Guidelines and Nomination Form, November 2016, pg 18, section A.8 lists a number of objectives and criteria. Measures should be in place to ensure that any site nomination is not formally accepted if these objectives are not met. Further, the method and findings of any assessment of a site against these objectives and criteria should be freely and publicly available. There should be no need to have to justify the obvious through a protracted, divisive and expensive process. For example, the Flinders Ranges is an iconic tourism area, of high cultural and archaeological significance, a flood zone and subject to seismic activity. Kimba is a prime export agricultural region and the reputational cost of a radioactive waste facility in the area could be significant. Transportation vast distances from Lucas Heights increases the risk to more members of the public along the transport route.

ARPANSA Code

The ARPANSA Code for the Management of Solid Radioactive Waste (1992) is currently being updated. While an updated code is welcome, it is a cause of some concern that it is occurring at the same time as an extremely divisive site selection process. It would be far more responsible to update the code, and then commence a site selection process in line with the new code.

Further, it is also of concern that the current site selection process proposes interim storage of intermediate level waste (ILW). Presumably the updated code would apply to the disposal of the ILW. Minimising transportation obviously minimises risk. It is concerning that the new code may allow for the government to try to permanently dispose the ILW at the site selected under the current process for permanent disposal of low level waste (LLW) and interim storage of the LLW. The affected communities of the Flinders Ranges and the Eyre Peninsula in SA have been voicing this concern for some time.

The ARPANSA code for the disposal of solid radioactive waste should be finalised before any site selection process begins. The current site selection process should be halted until this code is finalised and the Senate Inquiry has finalised its report. The Code is extensive in its scope and directly related to site selection issues related to the current federal radioactive waste plan.

Other

The principle of justification is a key part of any radiation safety approach and requires that any decision that alters a radiation exposure situation should do more good than harm. This foundation principle has not been realised in relation to the current federal plan. The planned national facility will not remove waste from hospitals or medical clinics, is not advancing the long-term disposal of intermediate waste (only the re-located interim storage) and the claimed project benefits have not been adequately tested.

¹⁰ <http://tourism.sa.gov.au/documents/CORP/documentMedia.ashx?A=%7BB4B86B4A-670C-4935-BB76-2AC64134F604%7D&B=True>

Consideration of more than simply radiological protection issues needs to occur. Community impact and division must also be considered.

There is a distinct lack of clarity about the community benefits of a facility. There is no clear information about how many jobs will be created in the building or operational phases. There is no information about whether these jobs will be full time, part time or permanent or whether they will go to local community members.

Information from DIIS is one sided and unclear. Both the Flinders Ranges and Kimba communities have repeatedly called for a balanced public forum with speakers from both sides available to ask questions of at the same time. These requests have consistently been denied.

License applications must have sufficient detail to reasonably demonstrate safety and security issues. This is not the case with the federal proposal and approach.

The draft ARPANSA Code says that “disposal facilities “are not expected to provide complete containment and isolation of the waste forever”. Currently there are Department assurances to affected communities that imply otherwise.

There should be some role for the regulator in identifying minimum compliance standards for Best Available Technology. The risk with this being the sole domain of the proponent is that they will be driven by cost considerations. While it is not the role of a regulator to map out the full project pathway they should have a role in identifying current best international industry practise and some guidance on benchmarks.

The role of ARPANSA is significant and as the relevant regulatory authority must ensure it is clearly aware of the extent of community concern and all other relevant factors.

The three sites currently under consideration are all in South Australia. South Australia has legislation¹¹ that explicitly bans the establishment of radioactive waste management facilities. There is a lack of clarity and disclosure about how this legislation will be considered in the site selection process.

The nomination process is still open. No nominations should be accepted until the report from this Senate Inquiry has been released so as to minimise any negative impacts on communities and ensure the best possible management of Australia’s most hazardous waste.

References

<http://www.radioactivewaste.gov.au/>

DIIS, RADIOACTIVE WASTE MANAGEMENT: Nominations of Land: Guidelines November 2016,
<http://www.radioactivewaste.gov.au/site-selection-process/nominating-site>

Australian Government, National Radioactive Waste Management Act 2012 No. 29, 2012 as amended,
<http://www.comlaw.gov.au/Details/C2014C00626>

AMANDA NGO, Critique of the National Radioactive Waste Management Act 2012,
<https://d3n8a8pro7vhmx.cloudfront.net/foe/pages/199/attachments/original/1489231658/NRWMA-Report-FINAL-March-2017.pdf>

11

*[https://www.legislation.sa.gov.au/LZ/C/A/NUCLEAR%20WASTE%20STORAGE%20FACILITY%20\(PROHIBITION\)%20ACT%202000.aspx](https://www.legislation.sa.gov.au/LZ/C/A/NUCLEAR%20WASTE%20STORAGE%20FACILITY%20(PROHIBITION)%20ACT%202000.aspx)

<http://minister.industry.gov.au/ministers/canavan/media-releases/kimba-sites-proceed-consideration-national-radioactive-waste>

www.theaustralian.com.au/national-affairs/state-politics/jay-weatherill-changes-mind-on-nuclear-dump-ahead-of-election/news-story/a11667e1cfc443812ef0052bfc6fbef

<https://prod-radioactivewaste.industry.slicedtech.com.au/sites/prod.radioactivewaste/files/files/NRWMF%20Community%20Sentiment%20Surveys%20Report.pdf>

http://www.radioactivewaste.gov.au/sites/prod.radioactivewaste/files/files/BCC%20Notes%20-%2010%20October%202017_0.pdf

UN Declaration on the Rights of Indigenous Peoples, art. 29(2):

http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

<https://www.theguardian.com/environment/2017/apr/04/whod-want-to-dump-australias-nuclear-waste-here-well-this-guy>

<https://www.smh.com.au/politics/federal/sleepless-nights-tears-and-stress-communities-fight-turnbull-governments-nuclear-waste-dump-plans-20160301-gn78vi.html>

<http://www.abc.net.au/news/2018-02-17/barndioota-nuclear-waste-site-planning-outrages-locals/9456052>