

3 April 2018

Re: Submission to the Senate Committee Inquiring into Site Selection for the National Nuclear Waste Facility

The Environmental Defenders Office (SA) Inc (“the EDO”) is an independent community legal centre with over twenty-five years of experience specialising in environmental and planning law. EDO functions include legal advice and representation, law reform and policy work and community legal education. The EDO appreciates the opportunity to provide a submission to this Inquiry, which is seeking comment on a number of Terms of Reference. The EDO submission relates to the following terms of reference:

“The Government has stated that it will not impose such a facility on an unwilling community, with particular reference to:

.....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

.....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;

1. Broad community support

The government’s commitment that it will not impose such a facility on an unwilling community raises the question of how to determine broad community support. If this is not forth coming, then we have an unwilling community and the proposed sites cannot be supported.

Five potential sites were shortlisted and following shortlisting, the government embarked on a consultation process. There were 2 sites in South Australia, one in each of the NT, Qld and NSW. The public consultation processes in relation to the five proposed sites seem to be in compliance with best practice consultation processes, according to the government reports.

However, our clients from the two South Australian communities argue that the consultation processes have not complied with best practice from the IAP2 public participation spectrum.¹ Essential elements include wide participation, ability to participate effectively and access to and ability to understand relevant information in order to be able to make submissions in relation to the proposals. We believe the processes here fall short of these requirements.

¹ International Association for Public Participation <https://www.iap2.org/>

Additionally, the conclusions drawn from these processes, in our opinion, fall short of 'broad community support'.

What is 'broad community support'?

The criteria for moving forward with any of the proposed sites is 'broad community support'. According to the World Bank Group, broad community support is required in cases where the business activity to be financed is likely to generate potential significant adverse impacts on communities or is likely to generate potential adverse impacts on indigenous peoples. In those cases, IFC clients are required to engage in a process of Informed Consultation and Participation (ICP).²

With all of the proposed sites there was strong opposition to moving onto phase 2 of the process. The two preferred sites chosen, both in South Australia, also had strong opposition, but the strong opposition was slightly less than the other three sites. Slightly less opposition cannot amount to 'broad community support'.

We are concerned that these participation processes do not imply a predetermined outcome namely obtaining rather than seeking broad community support.

a) Barndioota site:

There were only 36 submissions received regarding this site, out of a total adult population of 1331. This is a very small number and is of concern in terms of a proper consultation process. Comparing this to the other SA site, in Kimba where there were 582 submissions out of an adult population of 833. More work would need to be done before the government could conclude that they have 'broad community support' in relation to this site.

The Phase 1 summary report also states that 65% of those surveyed were in support of progressing to stage 2. From our assessment of the raw data, this figure is incorrect. The data shows a figure of 51% of those surveyed being opposed to progressing to stage 2.³

Additionally, there was almost unanimous indigenous opposition to this site.

Recommendation 1:

An independent cultural heritage assessment be undertaken before the next stage is proceeded with. If indigenous opposition continues, this site is no longer to be considered as a potential site.

² World bank Group 'Engaging Citizens for Better Development Results' An IEG Evaluation of World bank Group Citizen Engagement, April, 2017, 4

³ Department of Industry, Science and Innovation National Radioactive Waste Management Facility, Community Sentiment Survey, Wave 2 Report of Findings, April 2016, p57

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Recommendation 2:

Revisit the consultation process to ensure effective participation from the community and consider extending it to become a nationwide consultation. The reason for the small number of submissions needs to be investigated and rectified before the 'broad community support' criteria can be said to have been achieved.

b) The Kimba site:

In the Kimba site consultation findings, the report says

"The sites received 582 submissions⁴ throughout the consultation period, of which 67 per cent were a standardised letter stating opposition to the nominations. Of the total number of submissions, only around 20 per cent were supportive of the proposal. The diverse views in the submissions largely reflected the views expressed in the community consultation processes.

A petition was received regarding the Cortlinye and Pinkawillinie⁵ nominations with 880 signatures opposing the facility.⁶"

Yet the report continues with 'there is an encouraging base of support for moving forward to the next stage (around 51 per cent)⁷ and that 'a substantial proportion of the community (42 per cent) is **strongly** opposed.'

Referring to this as an encouraging base of support in light of the rest of the Report is at best, optimistic and at worst, misleading, in that 49 percent (or more) are opposed to moving forward to the next stage.

There is inconsistency in the conclusions based on the consultation process but whichever way it is read, it cannot be stated that there is 'broad community support' in Kimba. At best there may be some community support.

Recommendation 3:

The Kimba site does not meet the Government's criteria as having 'broad community support' and needs to be abandoned as a potential national radioactive waste facility.

⁴ According to the *Phase 1 Summary Report*, p.9, the adult population of Kimba is 880 people.

⁵ These combined to be referred to as Kimba

⁶ *Phase 1 Summary Report*, p.15

⁷ Para 4.2.6

In addition we have received relevant information from the Flinders Local Action Group (FLAG), a not for profit group of concerned local residents. Between September and November 2016 FLAG undertook a community survey in two parts. The question asked was:

“Do you want a National Radioactive Waste Management Facility established at Wallerberdina Station/Barnidoota?

With the first survey 92% voted no and with the second survey 79% voted no.

2. Whether wider community views should be taken into consideration.

The process to ascertain community views is of vital importance and must be done according to best practice. The process and decision by the Federal Government is in our view of interest and importance to citizens across Australia. It should be noted that the community has no rights to challenge the merits of a decision made under the relevant legislation.

A further matter here is the safety of transport routes. This issue was raised in relation to the Sally’s flat site in NSW which is discussed in the Phase 1 Summary report from April 2016. One of the key findings was the proximity to Lucas Heights, from where the waste would be transported.⁸

The cradle to grave waste framework provides that waste be disposed of where it is produced. This minimises the risk involved in transporting waste and puts responsibility onto the manufacturer. This waste should be disposed of at or near to Lucas Heights. Failing this, an assessment of the risks of transporting the waste needs to be undertaken and all communities on these transport routes be consulted with in order for their consent to be obtained before a proposed site for the nuclear waste is chosen.

Recommendation 4:

All Australians should have the right to have a say on this issue. Furthermore communities along any transport routes need to be informed of the risks and consulted in relation to the proposed sites before any site is chosen. This is an essential part of ascertaining support for the project .

Please contact the writer should you require any clarification of the contents of this submission.

Yours faithfully



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⁸ Para 4.5.6