



The Planning
Inspectorate

Report to Somerset County Council

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an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 9th January 2013

PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)

SECTION 20

REPORT ON THE EXAMINATION INTO SOMERSET WASTE CORE STRATEGY

LOCAL PLAN

Document submitted for examination on 14 March 2012

Examination hearings held between 17 and 31 July 2012

File Ref: PINS/G3300/429/5

Abbreviations Used in this Report

| | |
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| CD | Core Document |
| CHP | Combined Heat and Power |
| C+I | Commercial and Industrial |
| CS | Somerset Waste Core Strategy Local Plan |
| DPD | Development Plan Document |
| EA | Environment Agency |
| HAW | Higher Activity Radioactive Waste |
| HRA | Habitats Regulations Assessment |
| HRC | Household Recycling Centre |
| LP | Local Plan |
| LLW | Low Level Radioactive Waste |
| LLWR | Low Level Waste Repository |
| MM | Main Modification |
| MSW | Municipal Solid Waste |
| MWDS | Minerals and Waste Development Scheme |
| NDA | Nuclear Decommissioning Authority |
| The Framework | National Planning Policy Framework |
| PAS | Planning Advisory Service |
| PPG | Planning Policy Guidance |
| PPS | Planning Policy Statement |
| RS | Regional Strategy |
| SA | Sustainability Appraisal |
| SCI | Statement of Community Involvement |
| SCS | Sustainable Community Strategy |
| SWP | Somerset Waste Partnership |
| VLLW | Very Low Level Radioactive Waste |

Non-Technical Summary

This report concludes that the Somerset County Council Waste Core Strategy Local Plan provides an appropriate basis for waste planning in the County over the next 15 years providing a number of modifications are made to the Plan. The Council has specifically requested that I recommend any modifications necessary to enable them to adopt the Plan. All of the modifications to address this were proposed by the Council, and I have recommended their inclusion after full consideration of the representations from other parties on these issues.

The modifications can be summarised as follows:

- The inclusion of supporting text and a policy to give effect to the central theme of the Framework which is the presumption in favour of sustainable development **(MM1 & MM2)** ;
- Changes to policy WCS3 and supporting text to remove the number of treatment facilities that may be required and emphasise that it is the residual waste treatment capacity that is important as the context for the further local plans that will be prepared **(MM5)**;
- Significant revision of policy WCS5 and the supporting text to ensure that the vision, plan objectives and strategy are achieved by the key delivery policy **(MM8 to MM13 inclusive)**
- The deletion of the final sentence of policy DM9 and other clarifications of the policy and text to allow radioactive waste to be imported to the County from elsewhere in certain circumstances and thus ensure that the CS is consistent with national policy in this regard **(MM21 to MM26 inclusive and MM29 and MM30)**
- Additional text to confirm and clarify that proposals for the disposal of lower activity low level radioactive waste will be assessed against policies WCS4, DM3 and DM7 in particular **(MM7, MM27 and MM28)**; and
- Other changes necessary in order to ensure that the CS is both based on a strategy, strategic objectives and implementation policies that meet the objectively assessed development and infrastructure requirements for the plan period and consistent with national policy **(MM1 to MM30 inclusive but excluding those already specifically referenced)**.

Introduction

1. This report contains my assessment of the Somerset Waste Core Strategy Local Plan (CS) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the preparation of the CS has complied with the duty to co-operate, in recognition that there is no scope to remedy any failure in this regard. It then considers whether the CS is sound and whether it is compliant with the legal requirements. The National Planning Policy Framework (the Framework) (paragraph 182) makes clear that to be sound, a Local Plan should be positively prepared; justified; effective and consistent with national policy. Although the formal title of the submitted CS is the Somerset Waste Core Strategy Development Plan Document I refer to it throughout this report as a Local Plan to ensure alignment with current national policy descriptions in the Framework.
2. The starting point for the examination is the assumption that the Council has submitted what it considers to be a sound plan. The basis for my examination is the submitted draft plan (14 March 2012)¹ which is the same as the document published for consultation on 31 October 2011.
3. My report deals with the main modifications that are needed to make the CS sound and legally compliant and they are identified in bold in the report (**MM**). In accordance with section 20(7C) of the 2004 Act the Council requested² that I should make any modifications needed to rectify matters that make the CS unsound/not legally compliant and thus incapable of being adopted. These main modifications are set out in the Appendix.
4. The main modifications that go to soundness have been subject to public consultation and, where necessary, Sustainability Appraisal (SA). The latter document has been endorsed by Natural England as an adequate review of potentially significant effects on the natural environment that are likely to arise from the proposed main modifications and I see no reason to disagree with that assessment. A further 20 representations were received and I have taken all of these consultation responses into account in writing this report.

Assessment of Duty to Co-operate

5. Section s20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on them by section 33A of the 2004 Act in relation to the preparation of the CS.
6. The duty came into effect on 15 November 2011 on the Localism Act coming into force. Although no transitional arrangements were put in place, the Council had, of course, already published the draft of the CS for pre-submission consultation. The CS was then submitted prior to the publication of the Framework which itself provides further guidance on how local planning authorities might discharge the duty³. Further information has also been made available on the Planning Advisory Service (PAS) web site which is hosted by the Local Government Association and reports in the technical press

¹ SD1

² ED44

³ ED18 paragraph 178 to 181

of local plan examinations in progress are also providing indications of the evolving manner in which the duty is being interpreted by all concerned.

7. There is no doubt that the provision of infrastructure for waste management is included among the strategic priorities to which the duty particularly relates⁴. The PAS guidance is framed in the context of the forthcoming abolition of regional strategies and encourages cross boundary working at that level. However, the management of waste, and particularly the management of radioactive wastes which is an important issue for the soundness of the CS, can give rise to concerns for waste management authorities beyond the particular region (in this case, the south west).
8. The Council has set out in some detail⁵ the steps it has taken to comply with the duty. In general terms representors have not sought to dispute that the duty has been discharged⁶. The concerns raised relate more to the extent to which the outcome of the engagement has been incorporated into the CS; this goes to the 'effective' test of soundness as it may impact upon deliverability of the strategy.
9. I do have certain reservations regarding the extent to which the Council has sought to engage meaningfully with those waste planning authorities for whom there may be spatial planning implications arising from the wording of submitted policy DM9. I address this more fully under Issue 4. However, the effect of **MM30** is to mitigate these implications. In those circumstances and given the uncertain context in which the CS was prepared and submitted I conclude that the duty to cooperate has been discharged.

Assessment of Soundness

Preamble

10. The CS sets out:
 - a vision for sustainable waste management in Somerset;
 - 10 plan objectives;
 - five strategic policies dealing with waste prevention (WCS1), recycling and reuse (WCS2), other-recovery-from-waste facilities (WCS3), waste disposal (WCS4) and the location of strategic waste sites (WCS5); and
 - nine development management policies.
11. The Council has stated that none of the policies in the Somerset Waste Local Plan 2001 to 2011 have been saved⁷. With other development plans adopted by the district and borough councils in Somerset, the CS will therefore provide the framework within which planning applications for waste development will

⁴ ED18 paragraphs 156 and 178

⁵ ED6

⁶ See for example Cumbria County Council-ED21 paragraphs 20 to 22

⁷ RL1b

be assessed. The Minerals and Waste Development Scheme (MWDS)⁸ indicates that the Council will also prepare a waste site allocations local plan during 2013 and it is therefore important that the CS also provides an appropriate context for this further plan.

12. In document ED3a the Council sets out in some detail the position with the Regional Strategy. In short, the draft RS for the South West Region has not been adopted and has not progressed beyond the Proposed Changes document of 2008. It will not now be adopted. It does nevertheless represent a material consideration to which considerable weight should be attached given the stage towards adoption reached.
13. As noted above (paragraph 6), the final version of the Framework was published on 27 March 2012, after the submission of the CS for examination. Views were sought on the implications, if any, for the CS⁹ but no representations were received. It should be noted that paragraph 182 of the Framework introduces an additional test of soundness, 'positively prepared', that would not have been known to the Council when it undertook the preparation of the CS. Nevertheless, I must assess the soundness of the CS against this test.
14. By way of **MM1 and MM2** (which I recommend) the Council proposes to introduce, without material alteration to its wording, the model policy on the presumption in favour of sustainable development and supporting text to give effect to the central theme of the Framework. Importantly, *PPS10 Planning for Sustainable Waste Management* was not replaced by the Framework and remains national planning policy on waste management until the new National Waste Management Plan is published in the future.

Main Issues

15. Taking account of all the representations, written evidence and the discussions that took place at the examination hearings I have identified five main issues upon which the soundness of the CS depends.

Issue 1 – Whether the CS is based on objectively assessed development and infrastructure requirements.

16. There is a wealth of advice in PPS10 and its Companion Guide on the approach waste planning authorities should take when assessing the waste facility capacity for which provision should be made in their development plans. Underlying this however is the requirement and assumption that the RS will apportion by waste planning authority area the tonnages of waste requiring management¹⁰. However, as pointed out above (paragraph 12), the South West RS has not been adopted and thus there is no formal apportionment on which the CS can rely.
17. The 2008 version of the RS does contain indicative allocations for 2010, 2013 and, for reference only, 2020¹¹. However, these allocations appear to be

⁸ RL3

⁹ ED9

¹⁰ NE38 paragraph 9

¹¹ ED13, Tables 1 and 2 on pages 211-213

based on work published in 2004. In any event, it is made clear in the RS that waste data is something that should be kept under very regular review and the period covered is too short for the purposes of the CS.

18. Typically, waste planning authorities have reliable and robust data on the municipal solid waste (MSW) stream, some information on hazardous waste management from the Environment Agency (EA) records and poor data on all other waste streams including commercial and industrial (C+I) waste and construction and demolition wastes. Somerset is no exception to this widely found position.
19. The Council has taken a proactive approach to plugging the data gaps through its own research and the use of published data available from the EA and other sources such as a survey of C+I wastes commissioned by the Department for Environment, Food and Rural Affairs in 2010. All this information has been drawn together in Waste Topic Paper 1¹² which itself was subject to several iterations and informed by consultation with key stakeholders¹³.
20. However, the only capacity gap identified for which the CS needs to make provision is for facilities to treat the residual MSW and C+I waste remaining after reuse and recycling initiatives have been employed. Underpinning this is an assumption that existing waste processing routes for recyclates and hazardous waste arisings will remain available and that the approaches set out in the CS to increase the reuse and recycling of construction and demolition waste will succeed to the extent that no additional landfill for this purpose needs to be identified in the CS.
21. While there has been very little adverse comment on either the approach or the findings of this process in the representations on the submitted CS, some adjoining and more far flung authorities have argued that it should not be assumed that facilities now available will be so in the future or that capacity coming forward through the waste plans in those areas will be for other than local needs. Against this contractors working within the County do not envisage any difficulties in this regard¹⁴.
22. Given the uncertainties inherent in the data it is more important that the strategy enables the facilities necessary to achieve net self sufficiency in provision to come forward than to seek to quantify that requirement precisely. On the basis of the evidence before me and the discussion held during the examination hearings in response to my particular questions¹⁵, I have no reason to conclude other than that the CS has been positively prepared on an objective assessment of waste management infrastructure requirements.
23. Included in this conclusion is the Council's assessment of requirements for radioactive wastes set out in Waste Topic Paper 6¹⁶. Here, at issue is not the quantum to be dealt with but the way the Council proposes to do so. I return to this matter under Issue 5.

¹² SD8a

¹³ See for example ED23 paragraphs 9 and 10

¹⁴ See for example ED23 paragraph 8 and ED2 paragraph 65

¹⁵ ED7 and ED36

¹⁶ SD8f

Issue 2 – Whether the Vision, Strategic Objectives and Spatial Strategy are justified by the evidence base.

24. The Council's vision is very much in tune with national waste policy objectives as embodied within the waste hierarchy¹⁷. In principle, the 10 objectives are also consistent with national waste and other policy and capable of delivering the vision.
25. The Council has explained with extensive references to core documents how the strategy was developed and the alternatives that were put before the local community¹⁸. The nature of the responses to consultation and the lack of any clear consensus¹⁹ tend to support the view that the local community considered that real alternatives had been put forward for consideration.
26. Consistent with the approach to the identification of the capacity gap (paragraph 20) is the Council's view that there is no requirement for individual authorities to be self sufficient in terms of waste infrastructure and that transporting waste to existing infrastructure to deliver the best environmental solution should not be considered a barrier²⁰.
27. This position is taken from the Government Review of Waste Policy in England 2011²¹ which the Council accepted during the examination hearings did not have the status of national policy. The full paragraph also reveals the context to be the duty to cooperate across boundaries which, as I have noted above (paragraph 8), has caused some concern with regard to the reliance of the Council on capacity outside the County.
28. Moreover, this approach does not appear to be consistent with what is national waste policy. One of the key planning objectives of PPS10 is that all planning authorities should prepare and deliver planning strategies that, paraphrasing, ensure communities take more responsibility for the waste they produce and meet their needs through sufficient and timely provision of waste management facilities²². This is commonly known as providing for net self sufficiency in capacity.
29. However, having criticised the approach that appears to underpin the CS in this respect, it seems to me that the actual strategy developed is not necessarily inconsistent with national policy. In essence any waste management proposal, other than landfill, that is of a strategic scale will be located within the four zones shown on the key diagram. All other proposals will be subject to criteria-based policies.
30. The four zones themselves emerged through a familiar and well established methodology which is clearly documented in the evidence base²³. In basing each zone on one of the County's principal urban areas the outcome is not inconsistent with the RS insofar as it remains material.

¹⁷ See SD1 page 9

¹⁸ ED2 and ED24

¹⁹ CD2a

²⁰ See as one example ED23 paragraph 13

²¹ NE13 paragraph 263

²² NE38 paragraph 3 second bullet

²³ SD8b Waste Topic Paper 2

31. To conclude on this Issue there is no evidence before me to indicate that the vision, strategic objectives and spatial strategy themselves are other than consistent with national policy and justified by a robust evidence base. Whether the spatial strategy will be delivered by the policies put forward is addressed next.

Issue 3 – Whether the strategic and development management policies will ensure the effective delivery of the spatial strategy.

32. As a result of the examination hearings I am much clearer about what the Council is trying to achieve. In summary this is:
- the direction of strategic scale facilities to sites within the four identified zones;
 - this direction is applicable to any strategic scale facility proposal, not only those that may contribute towards the MSW and C+I waste capacity gap identified²⁴;
 - any non-strategic scale waste management facility may be developed anywhere in the County subject to compliance with any particular criteria in the relevant strategic policy and with the development management policies set out in the CS.

As submitted, I do not consider that the CS achieves this for the reasons set out below.

33. The identified 'need' is, at some 197,000 tonnes annual capacity, quite modest. Planning permission is already in place for a thermal treatment facility²⁵ which could, if implemented in full, provide some 23% of the required 'other recovery' capacity although it is noteworthy that this would not be located in any of the four identified zones and nor is it strictly strategic in scale.
34. The Somerset Waste Partnership (SWP) explained during the examination hearings the challenge that it faces in deciding how to manage the MSW component of this tonnage in future. The choices facing the SWP are well set out in the evidence base²⁶ and no decisions have yet been taken as to whether the residual waste will be managed at a facility within Somerset, at one in an adjoining area or some mix of the two. Mr Read also explained that the approach to waste collection ensured high quality segregated material capable of being processed at key installations providing capacity for the national market. He therefore saw no need for additional processing capacity within Somerset for the needs of the SWP but confirmed that the policies would not prohibit the development of such a facility if the market brought forward such a proposal.
35. While the current uncertainty continues regarding the route that the SWP will ultimately follow it is important for consistency with national policy in PPS10²⁷

²⁴ SD1 Table 4

²⁵ SD8a Appendix 2

²⁶ RL4a and RL4b

²⁷ NE38a paragraphs 7.8 to 7.12 and 7.14

that sites are identified in the forthcoming waste sites allocation local plan to enable the required capacity to come forward within Somerset. For the same reasons, sites capable of providing the identified C+I waste capacity should also be allocated in that local plan. Since it is the capacity that is to be provided that is key to strategy delivery the final part of policy WCS3 is unhelpful in indicating possible site numbers. Rather, it will be for the Council to demonstrate that the sites which it ultimately identifies are capable of providing that capacity. **MM5** is therefore recommended.

36. In the light of the clarifications given during the examination hearings, it is also important that the waste sites allocation local plan identifies sites for other strategic scale waste management facilities such as recycling or processing uses. In this context **MM3** is helpful and therefore recommended.
37. As the CS itself says²⁸, a strategic site should be central to the delivery of the strategy, well located to the source of the waste and with good access to the strategic transport network and capable of promoting the co-location of complementary activities including users of any energy that might be produced from the waste management process. This is consistent with PPS10²⁹ and Plan Objectives B, C and D. It follows therefore that to be effective in delivery, one of the soundness tests³⁰, the CS must ensure that the strategic sites that are yet to be identified are developed, if not first, then in preference to other sites. This is particularly important to the effective delivery of Objective D in the context of a limited amount of waste arising locally.
38. As submitted the CS does not do this. The only policy that can is policy WCS5 but this fails to establish a hierarchy (allocated sites first, then other sites within the four zones, then sites elsewhere) against which strategic scale proposals will be judged or clear criteria to indicate when proposals not in accord with that hierarchy may nevertheless be permitted. In this context the revised wording of submitted CS paragraph 9.13 agreed with Viridor³¹ (...there remains scope for sites outside the zones to be allocated as strategic in the waste sites allocations local plan...) is wholly unacceptable as it would undermine the strategy that the Council is pursuing; this requires strategic sites to be located only within the four zones.
39. The proposals to address this issue for soundness have attracted the majority of the adverse comment during the further consultation. In particular the proposed wording of the new paragraph 9.12 (**MM10**) has caused considerable disquiet to some residents in the area around Castle Cary where the Dimmer waste management facility is located. While some support most of the revised wording of policy WCS5 in **MM13** (others do not), there is almost universal concern that the inclusion of tier 3 will inevitably lead to further development at what some consider to be an unsuitable location for the reasons identified in the representations.
40. It is consistent with national policy³² that existing waste management sites can

²⁸ SD1 paragraph 9.7

²⁹ NE38 paragraph 16 and NE38a paragraphs 7.13 to 7.17

³⁰ ED18 paragraph 182

³¹ ED39

³² NE38a paragraphs 7.29 to 7.35

provide suitable locations for facilities that are required in the future. **MM13** acknowledges this, as it should in the absence of any evidence to the contrary, but now places this support at the third level of the sequence inherent in the CS strategy where such a site is outside any of the four zones identified in the CS. Criteria (a) to (c) set out the strict tests that anyone seeking to develop a tier 3 site must pass in order for planning permission to be secured. Dimmer is not located within any of the four zones identified in the CS and is therefore a tier 3 site.

41. **MM13** is therefore necessary to align CS strategy and policy delivery. However, while **MM10** and **MM13** are not inconsistent and the policy wording itself is clear, the Council will wish to review the representations made about **MM10** since these suggest that the phrasing is capable of being interpreted as implying a level of support which the policy wording does not bear. This appears to be at the heart of the concerns expressed and, for the avoidance of doubt, should be the subject of an additional modification to ensure that the wording of paragraph 9.12 and policy WCS5 are aligned.
42. I therefore recommend the changes to policy WCS5 included in **MM13**. With the above qualification regarding **MM10, MM8 to MM12** inclusive are recommended and ensure that the submitted text of submitted CS which supports policy WCS5 remains consistent with the modified policy.
43. I recommend **MM17** as necessary to ensure that policy DM5 does not inadvertently prevent waste management development at existing waste management sites. Since this is a policy that will actually be implemented by the district and borough councils, the Council will need to ensure that those bodies are clear as to which are the 'existing' waste management sites at any point in time. This would be most effectively achieved by publishing a list, updated regularly, to which they can refer. Explanatory text to this effect should be introduced by way of an additional modification.
44. Still with policy DM5, there is potentially a tension within the CS between Objective G and the strategy unless the Council is content that policy WCS5 as recommended to be changed and/or some text to be introduced by way of an additional modification makes it clear that the expansion referred to does not include a development that amounts to a strategic scale facility where the existing waste facility is outside any of the four identified zones.
45. Finally under this Issue, I recommend **MM6, MM14 to MM16 inclusive and MM18 to MM20 inclusive** as, although the changes introduced are relatively minor, they are nevertheless necessary for effective strategy delivery. **MM4** is also recommended as this implicitly confirms that contributions towards the required capacity may also come from non-strategic developments.

Issue 4 – Whether the strategy for the management of radioactive waste is consistent with national policy.

Introduction

46. Section 18 of the CS deals with radioactive waste management and 'radioactive waste' is defined in the Glossary of Terms³³ according to the

³³ SD1 Appendix C

meaning given by the Environmental Permitting (England and Wales) Regulations 2010. In short, this includes all radioactive waste and paragraph 18.1 of the CS confirms the various categories of radioactive waste addressed in the section. Policy DM9 is entitled 'radioactive waste management' and the first line indicates that the policy is permissive of the treatment and interim storage of such waste generated only at Hinkley Point. The only possible interpretation of the policy therefore is that it:

- refers to all of the specified categories of radioactive waste including Low Level Radioactive Waste (LLW) and its subset, Very Low Level Radioactive Waste (VLLW);
- that it refers only to the treatment and storage of those wastes, not their disposal;
- that it addresses only those wastes generated at Hinkley Point;
- that the licensed area at Hinkley Point is the only location where permission will be granted; and
- the management of radioactive waste arising beyond Hinkley Point will not be permitted.

47. The soundness issues for me to consider are whether this approach is consistent with national policy and whether the approach is, in any event, founded on robust evidence. I deal with these in turn.

Consistency with national policy – general principles

48. By virtue of s20(5)(a) and s19 of the 2004 Act I am required to determine whether the Council has had regard to, among other things, national policies and advice contained in guidance issued by the Secretary of State. It might be argued that this means issued by the Secretary of State who for the time being has general responsibility for policy in relation to the development and use of land. As such, policy and guidance falling within the purview of another Secretary of State, such as that relating to radioactive waste, may not come within the scope of s19 of the 2004 Act. However, PPS10 very clearly does. Although put in the context of preparing a regional strategy it says account should be taken of 'any waste management requirement identified nationally...'³⁴.
49. With the demise of the RS tier of the development plan, the CS must now be directly consistent with national policy. As stated above (paragraph 14) PPS10 remains national policy sitting alongside the Framework until replaced. The 'consistent with national policy' test of soundness should therefore be read as including consistency with the policy approach set out in PPS10.
50. The next question is whether the various strategies issued by the Nuclear Decommissioning Authority (NDA)³⁵ amount to national policy in that subject area. The relationship between and respective roles of government and the

³⁴ NE38 paragraph 7 first bullet

³⁵ ED31, ED32 and ED33

NDA are set out at various places in the evidence³⁶. In essence, government is responsible for high level policy while the NDA is the implementing organisation required to draw up strategies for safe management of Higher Activity Radioactive Waste (HAW) and LLW. The NDA explained during the examination hearings that these strategies are approved by the Secretary of State for Energy and Climate Change. Some of them explicitly state that they should be used as guidance by local planning authorities when preparing and reviewing their planning strategies for waste management³⁷. In my view the NDA strategies represent national policy for the management of these wastes for the purposes of land use planning.

Consistency with national policy – LLW and VLLW

51. My understanding is that the decommissioning of the UK's existing nuclear power plants over time will generate very large quantities of these two waste streams. The Low Level Waste Repository (LLWR) near Drigg in Cumbria does not have the capacity to accommodate these volumes and, in any event, is now engineered to provide levels of radioactive containment that exceed that normally required for LLW and VLLW deposit. Its use for these wastes is therefore not an efficient use of a scarce resource.
52. NDA strategy for these wastes is accurately summarised³⁸ although the NDA confirmed my understanding that the strategy expresses no preference between any of the disposal routes set out.
53. My first reading of the CS was that, for Somerset, policy DM9 closed off two of these routes, namely disposal at specified landfills for LLW and high volume VLLW and general disposal of low volume LLW together with MSW and C+I wastes. I believe from their representations that this was also the view of both Cumbria and Northamptonshire County Councils³⁹. However, in both its statement⁴⁰ and in more detail during the examination hearings the Council explained that this perception was wrong. In fact, insofar as planning permission might be required at all⁴¹ any applications for new or extended landfills for this purpose would be determined against policy WCS4 and the relevant development management policies. The Council also confirmed that there was no policy intention to restrict such waste to that arising only within Somerset.
54. While this was welcome clarification and confirmed that the CS was, in fact, consistent with national policy on this matter, section 8 of the submitted CS which deals with disposal simply does not give any indication that this is the Council's policy approach. While further text for clarification would normally be introduced by way of an additional modification, in this instance I asked that it be consulted upon as a main modification. Having taken into account the further representations received I recommend **MM7, MM27 and MM28**.

³⁶ See for example ED29, page 14 Box 2, ED31 page 6 and ED28 paragraphs 5.6 and 5.7

³⁷ See 'UK Strategy for the management of Solid Low Level Radioactive Waste from the Nuclear Industry' paragraph 3.1.1 (NDA August 2010) referenced in ED28 paragraph 5.7

³⁸ SD8f section 3.4 and TD5 paragraph 1.2

³⁹ See SD7 R11 and R32 and ED26

⁴⁰ ED25 paragraph 3

⁴¹ See ED27 for a helpful position statement from the EA

Consistency with national policy - HAW

55. The case made by and on behalf of Magnox Limited is set out in its statement⁴² and was developed during the examination hearing. Put simply, Magnox Limited argues that it is in accordance with NDA strategy for the company to explore options across its estate for the treatment and interim storage of HAW pending its transfer for geological disposal. The optimum outcome will be based on an environmental, safety and cost effectiveness assessment and may include material transfer within the estate to particular facilities. In short, the optimum solution may not be for each site within the estate to be provided with treatment and interim storage facilities but for a limited number to be provided at the most suitable locations within the estate.
56. The final sentence of submitted policy DM9 excludes the possibility of importing any HAW to Hinkley Point. This is a planning consideration that would need to be fed into the assessment process and would inevitably skew that assessment against any facility being developed at Hinkley Point. The corollary is that other sites within the estate are more likely to be selected for any facility that will be required. Magnox argue that this is not consistent with national policy.
57. I agree with this analysis. NDA Strategy II⁴³ is effective from April 2011 and, in respect of HAW, is summarised in the introduction to the Integrated Waste Management Strategy Development Programme⁴⁴. This includes the following statements:
- site specific retrieval, treatment, conditioning and packaging of HAW followed by interim storage pending final disposal in the geological disposal facility arguably results in a suboptimal estate-wide approach because economies of scale and opportunities for shared best practice and avoidance of repeat work are missed;
 - better application of the waste hierarchy is needed;
 - more treatment options should be considered; and
 - greater integration across the estate in particular by sharing treatment and interim storage assets and capabilities where appropriate should be explored.
58. As Magnox emphasised during the examination hearings, it has made no decisions yet regarding its response to the NDA strategy and a site specific solution for Hinkley Point as the optimal option could be an outcome of the process. However, the CS as submitted effectively excludes the possibility of Hinkley Point being considered as part of the Magnox response to this strategy because it prevents HAW from outside Hinkley Point being managed within the licensed area. The CS would therefore perpetuate what the strategy recognises as a suboptimal approach and cannot therefore be consistent with national policy in this regard.

⁴² ED28

⁴³ ED31

⁴⁴ ED33 page 3

59. Furthermore, the implication of the Council's approach is that other parts of the Magnox estate are now more likely to be considered as the company investigates options for greater integration in facility provision. There is no evidence that the Council has sought to engage with those local authorities who may not have appreciated the potential effect on them of policy DM9. This raises the duty to cooperate matter referred to above (paragraph 9).

The evidence base for the approach

60. During the examination hearings the Council cited what amount to three discrete reasons for the approach it has taken. The first, that there is a lack of clarity in national policy and no statutory requirement for local planning authorities to keep all options open, has largely been addressed in the earlier part of the discussion of this Issue where I set out the reasons why I disagree with this view. I turn now to consider whether there is any substantive evidence for what is the departure from national policy that I have identified.
61. The second reason can be summarised as there being a lack of response from industry regarding either a need for flexibility in facility provision or a need in the particular area.
62. I do not believe this assertion can be supported by the evidence. As part of its statement⁴⁵ Magnox provided the response it made in December 2007 to the Council's issues and options consultation. That response, particularly what is said in reply to question 8b in relation to intermediate level waste, does not seem to me materially different in any significant respect to the case that Magnox has put before the examination.
63. The final reason is that the approach is supported by the local community and the local authority, West Somerset District Council, within whose area Hinkley Point is located.
64. Radioactive waste has to a large degree been treated by the Council as a discrete topic. From the evidence submitted it appears that the only information provided by the Council to inform the consultations that it has carried out was that in the issues and options paper in 2007⁴⁶ and the issues and options II document in 2011⁴⁷. The Council suggests that it was this second consultation that most influenced its policy approach⁴⁸. What is said in CD2a about the topic is therefore important since the more detailed information contained in SD8f and TD5 was not available until after the consultation had taken place.
65. I have some sympathy for the view expressed by Magnox during the examination hearings that the text of CD2a is somewhat leading. First, the reference to the desirability of treating and disposing of radioactive wastes as close to the point of generation as possible is followed by one noting that 'radioactive waste is classified as a dangerous good' with tight controls over its transport. Although this is then followed by a reference to the limited number of facilities in the UK licensed to accept radioactive waste, the whole passage

⁴⁵ ED28a

⁴⁶ CD1a page 12

⁴⁷ CD2a pages 41 to 44

⁴⁸ ED25 paragraphs 9 and 10

could be read as giving a certain steer.

66. Second, under the heading 'Somerset radioactive waste policy' there is what I consider to be a very brief and not strictly accurate summary of government policy and a paraphrasing of (then) existing Waste Local Plan policy which, again in my view, is a little misleading⁴⁹. Whilst the effect of the two policies may well be that the importation and storage of radioactive waste from other locations and facilities would not be permitted, Waste Local Plan policy W15 does not say that it would not be appropriate. Again, I consider that this may colour the information given which also does not state that national policy has evolved since the Waste Local Plan was adopted.
67. Finally and most importantly are the summary of the consultation response in 2007 and the nature of the three-part question 14. With respect to the importation of radioactive waste from outside the County, the majority view recorded was that this should not happen without a full and transparent justification (my emphasis). None of the three questions is phrased neutrally but instead ask, in effect, for confirmation of a position that has already been taken in terms of policy approach. Interestingly however, question 14 (a) asks if there is support for the view that radioactive waste should not be imported without a full and transparent justification. 85% of those responding agreed that this was the right approach⁵⁰ and yet that important caveat does not appear in policy DM9.
68. During the examination hearings the Council explained that the local community perceive the transport of radioactive waste to be inherently dangerous and thus they do not wish to see imports to the County. Nothing has been submitted to the examination to show that perception having any evidential basis and nor is there any evidence to support the assertion by West Somerset District Council that accessibility to Hinkley Point is a cause for concern.
69. Even if there were such evidence, there is an inconsistency in the logic within the CS that arises from the wording of policy DM9. The Council has already stated that LLW and VLLW may be imported into the County for disposal (paragraph 53) thus confirming that it has no concerns about some types of radioactive waste moving around Somerset. In addition, as Magnox pointed out (paragraph 59), the company would be more likely to move HAW out of the County if policy DM9 remains as submitted than if the final sentence was deleted and the option assessment process to be undertaken included Hinkley Point. There was no evidence that any such movement of HAW would be subject to planning control so the effect of the policy could be the very one that is said to be of concern to the local community and a key reason for the policy approach.

Conclusions on this Issue

70. The CS is not consistent with NDA strategy. Although there is a small measure of doubt that NDA strategy represents national policy in this context, my view on the evidence is that the CS is not consistent with national policy. Even if this assessment is wrong, there is no robust evidence to support the

⁴⁹ See SD8f section 3.5 for the actual policy wording

⁵⁰ CD2b page 105

policy of total prohibition of imports of HAW into the County. The CS does not therefore meet the 'justified' test of soundness on this Issue.

71. I therefore recommend **MM21 to MM29** (excluding **MM27** and **MM28** already addressed) which modify the text and **MM30** which changes policy DM9. These main modifications overcome the concerns that I have identified on this Issue.

Issue 5 - Whether the CS provides a robust basis to enable measurement to take place and the need for remedial action to be identified.

72. The CS identifies certain key targets which will indicate at points throughout the plan period whether or not the strategy is on course and also lists those organisations whose role in strategy delivery is important. Limited management actions are identified in the event of monitoring revealing that particular policies are ineffective but where the success of the strategy itself is brought into question the response would be a review of the CS. An extra monitoring indicator for hazardous waste is proposed by way of an additional modification to support **MM6** but no main modifications are proposed or necessary for soundness in relation to this issue.

Assessment of Legal Compliance

73. My examination of the compliance of the CS with the legal requirements is summarised in the table below. I conclude that the CS meets them all.
74. The formal position of the RS is summarised earlier (paragraph 12). The Council sets out in some detail⁵¹ how it has taken the RS into account during the preparation of the CS, how it considers the CS to be in general conformity with the RS and why, in certain respects, there are differences, primarily due to more up-to-date data becoming available. Specifically, it also explains why it did not seek a certificate of general conformity in this case⁵². Nevertheless, by virtue of s20(5) of the 2004 Act, it remains for me to determine whether or not the CS is in general conformity with the RS. In summary, the Council believes that it is and I have no evidence to the contrary.

| LEGAL REQUIREMENTS | |
|---|---|
| Minerals and Waste Development Scheme (MWDS) | The CS is identified within the approved MWDS November 2010 which sets out an expected adoption date of Autumn 2012. While there has been some minor slippage, the CS's content and timing are compliant with the MWDS. |
| Statement of Community Involvement (SCI) and relevant regulations | The SCI was adopted in November 2006 and consultation has been compliant with the requirements therein, including the consultation on the post-submission proposed 'main modification' changes (MM) |
| Sustainability Appraisal (SA) | SA has been carried out and is adequate. |

⁵¹ ED3a

⁵² ED3a paragraph 8

| | |
|---|--|
| Habitats Regulations Assessment (HRA) | The Habitats Regulations HRA has been carried out and is adequate. |
| National Policy | The CS complies with national policy except where indicated and modifications are recommended. |
| Regional Strategy (RS) | The CS is in general conformity with the RS. |
| Sustainable Community Strategy (SCS) | Satisfactory regard has been paid to the SCS. |
| 2004 Act (as amended) and 2012 Regulations. | The CS complies with the Act and the Regulations. |

Overall Conclusion and Recommendation

75. The Plan has a number of deficiencies in relation to soundness and/or legal compliance for the reasons set out above which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the Act. These deficiencies have been explored in the main issues set out above.

76. The Council has requested that I recommend main modifications to make the Plan sound and/or legally compliant and capable of adoption. I conclude that with the recommended main modifications set out in the Appendix the Somerset County Council Waste Core Strategy local plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

Brian Cook

Inspector

This report is accompanied by the Appendix containing the Main Modifications

Appendix – Main Modifications

The modifications below are expressed either in the conventional form of ~~strikethrough~~ for deletions and underlining for additions of text, or by specifying the modification in words in *italics*.

The page numbers and paragraph numbering below refer to the submission local plan, and do not take account of the deletion or addition of text.

| Ref | Page | Policy/ Paragraph | Main Modification |
|-----|------|----------------------|--|
| MM1 | 23 | 4.9 (new) | <u>When considering proposals for waste management development in Somerset, the County Council will take a positive approach that reflects the presumption in favour of sustainable development introduced via the National Planning Policy Framework. This presumption is embedded in the Waste Core Strategy via policy SD1. It sets an ethos which underlies all policies in the Waste Core Strategy and the waste planning decisions taken by Somerset County Council.</u> |
| MM2 | 23 | Policy SD1 (new) | <p><u>SD1: Presumption in favour of sustainable development</u></p> <p><u>When considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. It will always work proactively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.</u></p> <p><u>Planning applications that accord with the policies in this Local Plan (and, where relevant, with polices in neighbourhood plans) will be approved without delay, unless material considerations indicate otherwise.</u></p> <p><u>Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise – taking into account whether:</u></p> <ul style="list-style-type: none"> • <u>Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or</u> • <u>Specific policies in that Framework indicate that development should be restricted.</u> |
| MM3 | 30 | 6.11. | 6.11. It would be impractical and unrealistic to plan for sufficient infrastructure in Somerset to reprocess all material streams (plastics, glass etc.). Therefore the Waste Core |

| Ref | Page | Policy/ Paragraph | Main Modification |
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| | | | Strategy does not take a prescriptive approach on this issue but encourages the development of local reprocessing capacity, assessed against relevant Development Plan policies. <u>Any development that would be considered strategic (paragraph 9.8 refers) would, in particular, be considered against policy WCS5.</u> A definition of the Development Plan is included in Appendix CB . |
| MM4 | 38 | 7.6 | There is a need to deliver 93,380 tonnes of other recovery capacity for municipal waste and 103,500 tonnes of other recovery capacity for commercial and industrial waste, as calculated in mid-2011. <u>Any development that would be considered strategic (paragraph 9.8 refers) would, in particular, be considered against policy WCS5.</u> |
| MM5 | 41 | Policy WCS3 | <p>WCS3: other recovery</p> <p>Planning permission will be granted for proposed waste management development that will maximise other recovery from waste, subject to the applicant demonstrating that the proposed development:</p> <p>a) will not undermine waste prevention in Somerset; b) a) will not treat waste that could viably be recycled or composted; c) will facilitate the recovery of energy from waste; and d) c) will, in particular, be in accordance with Development Management policies 1-9.</p> <p>Indicative requirements for residual waste treatment are approximately:</p> <p>e) d) 93,000 tonnes of residual municipal solid waste; and f) e) 103,500 tonnes of residual commercial and industrial waste.</p> <p>These requirements could be met via 1 or 2 waste treatment facilities at strategic waste sites in Somerset, subject to the County Council being satisfied that the proposed waste management development makes best use of the waste resource in economic and environmental terms. Indicative requirements will be updated via annual monitoring work.</p> |
| MM6 | 45 | 8.15 | Somerset County Council has not identified the need to plan for additional capacity for hazardous waste disposal during the plan period. <u>However, the Waste Core Strategy policies can be used in determining any application that is submitted, alongside other relevant policies in the Development Plan.</u> |
| MM7 | 44 | Para 8.16 (new) | <u>8.16. The disposal of 'lower activity' low level radioactive waste at suitable landfill sites may in certain circumstances be permitted by the Environment Agency without the need for any</u> |

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| | | | <u>further specific planning permission. Where planning permission is required, either at an existing facility or for a new site for this purpose, the proposal would be subject to policies WCS4, DM3 and DM7 in particular and other relevant policies in the Development Plan. More information on radioactive waste is included in chapter 18 and Waste Topic Paper 6: Radioactive Waste available from www.somerset.gov.uk/mineralsandwaste</u> |
| MM8 | 48 | Para 9.9 | <u>9.109. Strategic waste sites will be located in four zones (see the key diagram in Appendix E) as outlined in policy WCS5. allocated within the zones shown in the Key Diagram on page 138. Planning permission for strategic waste management proposals will be granted according to the sequential approach outlined in policy WCS5. Highest priority will be given to the sites to be allocated by the County Council in its Site Allocations Development Plan Document.</u> |
| MM9 | 48 | Para 9.13 | <u>9.113 The County Council acknowledges that the waste industry may wish to propose alternative locations. Whilst the zones represent the areas best suited for strategic waste sites in Somerset based on independent research, strategic policy WCS5 allows the waste industry to put forward a case for alternative sites to be considered. will consider as secondary preferences non-allocated sites within the zones, providing any such proposals adhere to the criteria stated in policy WCS5. Non-allocated sites within the zones are supported, acknowledging the variety of potential development opportunities in the zones and the scope for synergies with non-waste development; for example, where a significant proportion of the energy or other by-products from the treatment of waste will be used by existing or proposed neighbouring development.</u> |
| MM10 | 48 | Para 9.12 (new) | <u>9.12. The County Council also supports the consideration of existing permitted waste sites outside the zones as third tier preferences, acknowledging the important role played by existing waste management development and enabling the waste industry to put forward a case for alternative locations to be considered for future expansion; in particular, major waste sites that have existed for a significant period of time and have a proven track record of operation.</u> |
| MM11 | 48 | Para 9.13 (new) | <u>9.13. Other locations for strategic waste management will only be permitted in exceptional circumstances, subject to the applicant demonstrating that the proposal meets the criteria stated in policy WCS5 and there is an over-riding need for the development in that location; for example, where it can be demonstrated that a significant proportion of the energy or</u> |

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| | | | <u>other by-products from the treatment of waste will be used by existing or proposed neighbouring development.</u> |
| MM12 | 48 | Para 9.17 (new) | <u>9.17. The allocation of strategic waste sites in the Site Allocations Development Plan Document will be directed by the indicative capacity requirements set out in policy WCS3, the definition of strategic waste sites set out in paragraph 9.7, and the need to maintain flexibility with respect to the range of facilities required. Indicative requirements will be kept under review via annual monitoring work.</u> |
| MM13 | 49 | Policy WCS5 | <p>WCS5: location of strategic waste sites</p> <p>Strategic waste sites will be <u>allocated</u> located within the zones shown in the Key Diagram on page 138. Other locations may be permitted if the applicant demonstrates that: Planning permission for strategic waste management proposals will be granted according to the following sequence:</p> <ol style="list-style-type: none"> 1) <u>an allocated site in a zone;</u> 2) <u>an unallocated site in a zone;</u> 3) <u>an existing permitted waste management site outside the zones.</u> <p><u>In respect of tiers 2 and 3 in the above sequence, this will be subject to the applicant demonstrating that:</u></p> <ol style="list-style-type: none"> a) <u>there are no suitable tier 1 sites available if the proposal is on a tier 2 site and there are no suitable tier 1 or tier 2 sites available if the proposal is on a tier 3 site; and</u> b) <u>the site is well located to the source of the waste(s) and with good access to Somerset's strategic transport network; and</u> c) <u>the site is of sufficient area (as a guide, at least 2ha) to promote the co-location of complimentary activities and provide the potential to accommodate a range of waste management technologies.</u> <p><u>Other locations will not be permitted unless the applicant demonstrates that the proposal complies with criteria a, b and c above and there is an over-riding need for the proposed development in that location.</u></p> <p>a) the proposed development supports the delivery of the Vision of the Waste Core Strategy and is in accordance with the Plan</p> |

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| | | | <p>Objectives; and</p> <p>b) the proposed development will, in particular, be in accordance with Development Management Policies 1-9; and</p> <p>c) there is an operational reason for locating a strategic site outside the identified zones (for example, where it can be demonstrated that a significant proportion of the energy or other by products from the treatment of waste will be used by existing or proposed neighbouring development).</p> |
| MM14 | 55 | DM1 box | Planning permission may <u>will</u> be granted for waste management development at locations that are well connected to the strategic transport network |
| MM15 | 59 | DM2 box | Planning permission may <u>will</u> be granted for waste management development subject to the applicant demonstrating a commitment to sustainable construction and design |
| MM16 | 68 | DM3 box | Planning permission may <u>will</u> be granted for waste management development subject to the applicant demonstrating that the proposed development will not generate |
| MM17 | 74 | DM5 (2 nd para) | Proposals for <u>non-waste</u> development on or adjacent to these sites... |
| MM18 | 78 | DM6 box | Planning permission may <u>will</u> be granted for waste management development subject to the applicant demonstrating that: |
| MM19 | 81 | DM7 box | Planning permission for waste management development may <u>will</u> be granted subject to the applicant demonstrating that: |
| MM20 | 84 | DM8 box | Planning permission for waste water storage, pumping and treatment development may <u>will</u> be granted subject to the applicant demonstrating that proposals: |
| MM21 | 86 | 18.3 | <p>18.3 Hinkley Point is the main producer of radioactive waste in Somerset, and with the proposal for a new nuclear power station being developed (Hinkley Point C) it is imperative that robust policy is in place to deal with the expected arisings, both from the existing</p> |

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| | | | facilities and the proposed development. 31 |
| MM22 | 86 | 18.4 | 18.4 The waste hierarchy and a desire to minimise "waste miles" are common principles in the management of all waste types. While they can be applied to the management of radioactive waste, they require special consideration in this context; in particular, to acknowledge the strategic role currently played by national facilities, such as those near Drigg and Sellafield in Cumbria. |
| MM23 | 86 | 18.5 | 18.5 The facility near Drigg takes low level waste for long term storage in a repository and the facility at Sellafield takes spent fuel for reprocessing. |
| MM24 | 86 | 18.3 | <u>18.3. The waste hierarchy and a desire to minimise "waste miles" are common principles in the management of all waste types. While they can be applied to the management of radioactive waste, they require special consideration in this context; in particular, to acknowledge the strategic role played by a small number of facilities that manage radioactive waste. Central government ensures there is a co-ordinated approach to radioactive waste management across England by setting appropriate national policy.</u> |
| MM25 | 86 | 18.4 | <u>18.4. Hinkley Point is the main producer of radioactive waste in Somerset. Hinkley Point A is no longer operational but has yet to be fully decommissioned. It is managed by Magnox Limited. Hinkley Point B remains operational, managed by EDF Energy. EDF is also proposing a new nuclear power station (Hinkley Point C). At the time of writing the Waste Core Strategy, permission to construct Hinkley Point C has yet to be granted. This decision will be taken by central government. There may be potential, which the Waste Core Strategy Policy DM9 is shaped to support, to treat and store radioactive waste from the different facilities on-site within common infrastructure, subject</u> |

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| | | | <u>to all necessary forms of control and the respective parties being comfortable that this is supported by a robust business case. It is imperative that robust policy is in place to deal with the expected arisings, both from the existing facilities and the proposed Hinkley Point C development.</u> ³¹ |
| MM26 | 86 | 18.5 | <u>18.5. Longer term, central government is committed to the development of a geological disposal facility (GDF). Once operational, it is expected that this facility would act as a central point for disposal of all England's higher level radioactive waste.</u> |
| MM27 | 86 | 18.6 | <u>18.6. [NEW PARA]. Much of the country's low level waste (LLW) is currently sent to the Low Level Waste Repository (LLWR) near Drigg, managed by LLWR Ltd. Making best use of the operational capacity of this highly-engineered facility is crucial. This can be achieved in various ways, including pre-compaction, diversion of combustible LLW for incineration, diversion of metals for recycling and potentially the disposal of lower activity LLW in suitably permitted landfills. The County Council will work with LLWR Ltd, the nuclear power industry and other interested parties to make best use of available capacity.</u> |
| MM28 | 86 | Para 18.7 (new) | <u>The disposal of 'lower activity' low level radioactive waste at suitable landfill sites may in certain circumstances be permitted by the Environment Agency without the need for any further specific planning permission, Where planning permission is required, either at an existing facility or for a new site for this purpose, the proposal would be subject to policies WCS4, DM3 and DM7 in particular and other relevant policies in the Development Plan. Paragraph 8.16 also refers.</u> |
| MM29 | 86 | 18.8 | <u>18.6.8. For more detailed information about radioactive waste management in Somerset, including the national approach to finding a successor site to Drigg and information about the proposed GDF,</u> please see Waste Topic Paper 6 Radioactive Waste available from www.somerset.gov.uk/mineralsandwaste |

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| MM30 | 87 | DM9 | <p><u>DM9: radioactive waste management treatment and storage</u></p> <p>Planning permission for the treatment and/or interim storage of radioactive waste generated at Hinkley Point may <u>will</u> be granted within the licensed area subject to the applicant demonstrating that the proposed development:</p> <ul style="list-style-type: none"> • is consistent with national strategy for radioactive waste management; and • <u>includes adequate measures</u> is located and designed to mitigate adverse impacts on the environment and local community or, as a last resort, proportionately compensate for or offset such impacts; and • is supported by robust economic and environmental assessments. <p>Only radioactive waste generated at Hinkley Point shall be treated or stored at Hinkley Point.</p> |