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February 23, 2021  
File No.: 145682.1001

**By E-mail**  
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Attention: David R. Donnelly

Dear Mr. Donnelly:

**Re: Proposed Deep Geological Repository**

We are counsel to the Municipality of South Bruce with respect to the Municipality's participation in the site selection process being undertaken by the Nuclear Waste Management Organization (the "**NWMO**") for a proposed Deep Geological Repository and associated infrastructure (the "**Project**").

We have been provided with a copy of your letter to Municipal Council dated February 4, 2021 on behalf of Protect Our Waterways – No Nuclear Waste ("**Protect Our Waterways**"). We have been asked to respond to the points raised in your letter on behalf of the Municipality.

As you are aware, the NWMO has committed that it will not locate the Project in South Bruce unless the community is an informed and willing host for the Project. In 2012, Council passed a resolution to participate in the NWMO's site selection process and learn more about the Project. As it has moved through the site selection process over the past eight years, the Municipality, both independently and in conjunction with the NWMO, has sought out community participation in the site selection process through surveys, open houses, public meetings, workshops and regular meetings of the Community Liaison Committee ("**CLC**") as well as updates and reports to Council.

There have been a number of significant developments in the site selection process over the past 18 months that are relevant to the topics identified in your letter, including:

- November 2019 – The NWMO narrowed the number of remaining communities in the site selection process from five to three communities and announced that South Bruce will continue in the process with the objective of selecting a site in 2023.
- December 2019 to February 2020 – The Municipality undertook a project visioning exercise that included nine community workshops facilitated by AECOM to explore the community's expectations and aspirations for the Project if it were to be located in South Bruce. The workshops also aimed to understand the community's vision for a Centre of Expertise to be associated with the Project.
- January 2020 – The NWMO announced that it had secured sufficient land in South Bruce to advance the community to the next and final stage of site selection along with the Township of Ignace.

- May 2020 – A Draft Project Visioning Report prepared by AECOM based on the earlier workshops was provided to Council and released for public comment and input.
- June 2020 – Council approved a Multi-Year Funding Agreement (the “**MYFA**”) with the NWMO to cover the Municipality’s costs of participating in the site selection process (including technical studies and assessments) for a three-year period (2021, 2022 and 2023) and providing an annual community benefit payment of \$300,000.
- July 2020 – Utilizing the funds provided under the MYFA, the Municipality hired David Rushton as Project Manager and Steven Travale as a Communications/Public Relations Officer to assist the Municipality in the site selection process.
- August 2020 – Council received the final Project Visioning Report and prepared a list of 34 draft principles (the “**Draft Principles**”) to guide the Municipality’s participation in the site selection process and assist the community in making a determination of willingness. The Municipality posted the Draft Principles for public comment and input.
- October 2020 – Following the public comment period, Council adopted a resolution endorsing 36 principles (the “**Guiding Principles**”) that incorporated the 34 Draft Principles and two additional principles responsive to public input. The accompanying staff report explained that the process to evaluate the Guiding Principles will be informed through a series of reports, studies and task forces, including peer reviews done by third party independent experts.
- December 2020 – The Municipality released an Expression of Interest for the provision of a variety of professional services to assist the Municipality in the site selection process. As a result of the Expression of Interest process, the Municipality has retained a team of consultants (GHD, Redbrick Communications, MDB Insights, Tract, and Burnside and others) to provide a variety of expertise in various study areas.
- February 2021 – The Municipality and the NWMO initiated a process to undertake approximately 60 studies and inputs in South Bruce and the surrounding area to ensure the community has the information needed to make an informed decision about whether to host the Project.

With that background, we will address each of the topics raised in your letter in turn.

## **1. The Municipality’s Jurisdiction**

Your letter raises questions about the regulatory jurisdiction for the Project and the Municipality’s role in the regulatory process. These are important considerations that have framed and guided the Municipality’s participation in the site selection process.

The Project is a federal undertaking under the *Constitution Act, 1867* and must comply with the licensing regime of the federal Canadian Nuclear Safety Commission (“**CNSC**”). Before the CNSC can issue a licence for the Project, the NWMO will be required to complete a federal impact assessment under the *Impact Assessment Act*. The federal impact assessment will consist of a public regulatory process that will review the Project in extensive detail and take many years to complete. Construction and operation of the Project will only proceed after the assessment and licensing processes are complete.

While the federal government holds primary regulatory authority over the Project, the Municipality can exercise its jurisdiction over the Project provided it does not displace or frustrate the purpose of federal regulation. This provides the Municipality with a limited but important role in regulating local impacts of the Project such as aspects of land use and transportation.

In addition, the Municipality has an essential role to play in determining if the community is an informed and willing host for the Project as part of the site selection process. At this time, Council has not made any determination as to whether the community is a willing host for the Project. To date, the Municipality's focus has been on assembling all the necessary information to make this important decision and ensuring that the information is made available to the public. In this regard, the Municipality has undertaken a number of initiatives as part of the site selection process to assist community members in understanding and assessing the potential impacts and benefits associated with the locating the Project in South Bruce.

As discussed in more detail below, the Municipality has recently commenced an extensive process of peer reviews and independent studies to understand the potential impacts of the Project on the community and to determine appropriate measures to address such impacts. In undertaking this work, the Municipality will not be acting in the role of regulatory authority which, as noted above, is the responsibility of the federal government and the CNSC. Rather, the objective of this work is to address the matters identified in the Guiding Principles so that community members have a comprehensive understanding of the Project when considering willingness.

The Municipality also expects that, if the Project were to be located in South Bruce, it would secure a number of benefits for the community as part of the Project as set out in the Guiding Principles. The benefits identified by the Municipality were drawn from the project visioning exercise and include:

- public access to the Teeswater River for recreational purposes (Principle 6);
- the development and funding of agricultural promotion program (Principle 13);
- the development and funding of tourism strategy (Principle 14);
- the creation of youth opportunity programs (Principle 15);
- locating the Centre of Expertise in South Bruce (Principle 19);
- the establishment of a local employment and training strategy for the Project (Principle 20);
- the establishment of a business opportunities strategy for the Project (Principle 21);
- the establishment of a local procurement strategy for the Project (Principle 22); and
- the provision of community benefit payments (Principle 23).

At the appropriate time, the Municipality will be commencing discussions with the NWMO on providing the benefits identified in the Guiding Principles.

All commitments made by the NWMO, whether in providing benefits or addressing impacts, will be secured through appropriate mechanisms and will be presented to the public for consideration in determining willingness. Further details on the process of securing these commitments will be released once developed.

## **2. Determination of Willingness**

Your letter addresses several matters related to the community's process for determining willingness.

The Municipality understands and has acknowledged the importance of an open and transparent process in determining whether the community is willing to host the Project. This is captured in Principle 9 of the Guiding Principles, which states: "*The Municipality will, in collaboration with community members,*

*develop and establish an open and transparent process that will allow the community to express its level of willingness to host the Project.”*

Council has not yet decided how willingness to host the Project will be determined. The Municipality is working with its lead consultant GHD on a process to seek community input on what mechanisms should be used to assess willingness. The community input process will be modeled on the earlier project visioning exercise adapted to be compliant with COVID-19 protocols. The Municipality is aiming to announce additional details about the willingness process in the near future.

To be clear, the purpose of the upcoming process will be to seek input on what mechanisms should be used to assess willingness, not to determine whether the community is a willing host. The eventual determination of willingness will need to be coordinated with the technical studies and peer reviews being undertaken by the Municipality, the securing of benefits from the NWMO, and the decision-making processes of other stakeholders in the site selection process. Each of these processes will provide important inputs into the community’s eventual determination of willingness.

Your letter asks the Municipality to commit to a referendum with a requirement for a two-thirds majority in favour of the Project. Please note that if the Municipality were to decide to hold a referendum, it would need to comply with the legal requirements for the submission of by-laws and questions to the electorate under the *Municipal Elections Act, 1996*. Amongst other things, the *Act* requires that the by-law or question presented to the electorate be within Council’s jurisdiction and specifies conditions which must be met before a referendum can be conducted. Section 8.2 of the *Act* provides that the results of a referendum are binding where at least 50 per cent of the eligible electors in the municipality vote on the question and more than 50 per cent of the votes on the question are in favour of those results.

### **3. Peer Review and Participant Funding**

Consistent with the practice used for other large infrastructure projects, the Municipality required and has secured funding from the NWMO to undertake appropriate peer reviews and independent studies of the potential impacts on and benefits for the community associated with the Project.

In this regard, Principle 25 of the Guiding Principles states: *“The NWMO will fund the engagement of subject matter experts by the Municipality to undertake peer reviews of Project reports and independent assessments of the Project’s potential impacts on and benefits for the community as determined necessary by the Municipality.”*

As detailed above, the Municipality has secured funding from the NWMO through to 2023 to undertake peer reviews and independent studies as part of the MYFA. The Municipality has recently retained the technical experts necessary to undertake this work and is working with the NWMO on a study plan that includes over 60 separate studies and inputs. The results of this work will be presented to Council and released to the public so as to inform the community’s decision on willingness.

The Municipality’s role in the Project will not cease at the conclusion of the NWMO’s site selection process. The Municipality intends to fully participate in the impact assessment and licensing process for the Project. Principle 26 states: *“The NWMO agrees to cover the costs of the Municipality’s preparation for and participation in the Project’s regulatory approval processes, including the Canadian Nuclear Safety Commission’s licencing process and the assessment of the Project under the Impact Assessment Act (or other similar legislation), that are not otherwise covered by available participant funding.”*

The Municipality also intends to secure a role in the long-term governance of the Project if it is located in South Bruce. Principle 34 states: *“The NWMO will provide the Municipality with an ongoing and active role in the governance of the Project during the construction and operation phases of the Project.”*

Your letter requests that Protect Our Waterways be provided with participant funding to undertake its own peer reviews. The Municipality is not in a position to provide Protect Our Waterways with participant funding. We can assure you that the Municipality has hired independent and experienced consultants to undertake the planned independent studies and peer reviews. The results of this work will be shared with the public, including the members of Protect Our Waterways.

We note that your client may be eligible for participant funding as part of the impact assessment and licensing processes. Such inquiries should be directed to the Impact Assessment Agency of Canada and/or the CNSC.

#### **4. *Planning Act***

Your letter asserts that the Project is subject to the municipal planning process under the provincial *Planning Act* and that the NWMO should apply for an amendment to the South Bruce Zoning By-law.

The issue of municipal planning authority over the Project has been addressed in Principle 33, which states: “*The NWMO will comply with the Municipal Official Plan and zoning by-law and seek amendments to the Official Plan and zoning by-law as necessary to implement the Project.*”

Consistent with Principle 33, the Municipality expects that the NWMO will comply with the South Bruce Zoning By-law for all activities undertaken within the community and seek appropriate variance or amendments to the applicable zoning as needed.

However, the Municipality views the *Planning Act* process as an unsatisfactory tool for public participation in assessing willingness as part of the site selection process. A zoning by-law amendment for the use of the site as a Deep Geological Repository would not be required until a building permit for the facility is needed, which will be after the federal impact assessment process is completed and the NWMO is ready to commence construction on the Project. This timing is obviously unsuitable for use in the site selection process.

As described above, instead of relying upon the *Planning Act*, the Municipality will be designing a specific process to identify the appropriate mechanisms to determine if the community is a willing host. All stages of the process will be transparent and provide an opportunity for public participation as would be the case with any application under the *Planning Act*.

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We hope that you and your client will find this response helpful. We would be happy to answer any further questions your client may have about the Municipality's participation in the site selection process. We encourage members of Protect Our Waterways to participate in the upcoming willingness process and assist the Municipality charting a course forward on this important initiative.

Yours truly,



Patrick G. Duffy

PGD/rw

cc. Client