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Jonathan Leary

Zyda Law on behalf of Keuper Gas Storage Limited

Your Ref:

Our Ref: EN030002

Date: 19 March 2015

Dear Mr Leary

Planning Act 2008 (as amended) – Section 51

Proposed Application by Keuper Gas Storage Limited for an Order Granting Development Consent for the Keuper Gas Storage Project

The Planning Inspectorate's Comments on the Promoter's Pre-Application Core Draft Documents

Further to our meeting on 9 March 2015, please find attached to this letter the Planning Inspectorate's comments on the core draft documents for the Keuper Gas Storage Project.

Annex 1 – General Comments on supporting documents
Annex 2 – Consultation Report (Doc. Ref: 5.2) – received 2 March 2015
Annex 3 – Draft DCO (Doc. Ref: 2.1) – received 26 January 2015
Explanatory Memorandum (Doc. Ref: 2.3)
Statement of Reasons (Doc. Ref: 3.1)
Annex 4 – Statement of Funding (Doc. Ref: 3.3) – received 26 January 2015
Annex 5 – HRA Report (Doc. Ref: 6.1) - received 16 February 2015
Annex 6 – Drawings (Doc. Ref: 9) – received 26 January 2015

These comments are without prejudice to any decision made under section 55 of the Planning Act 2008 (as amended) or by the Secretary of State on any submitted application.

The attached comments are in addition to those made orally at the meeting of 9 March 2015, a draft note of which will be provided as soon as practicable.

Although it is recognised that the documents are in draft form and therefore incomplete; based solely on the information provided to date, and without prejudice to any decision the Secretary of State may make, unless the applicant addresses the issues identified in Annexes 1 to 6, in its current form we consider the application may be at risk of non-acceptance for the following reasons:

- The draft development consent order is not in the required statutory instrument template and does not appear to conform to advice contained within the Planning Inspectorate's Advice Note 15.
- The draft statement of reasons requires more clarity about the compulsory acquisition powers which are being sought and the purpose and justification for the powers and the funding statement require more information about the available resources for funding the acquisition and implementation of the project
- Taken together with other uncertainties in the DCO, application documents and plans about (for example) the extent of the principal development and associated development, the cumulative and in combination impacts arising in connection with the existing brine operations and the boundaries of plots identified in the book of reference the Planning Inspectorate considers that the application is not of a satisfactory standard for examination

We recommend you submit further iterations of the draft Development Consent Order and Funding Statement, along with further information in relation to the existing non DCO consents prior to the submission of your application.

Please do not hesitate to contact me if you have any queries.

Yours sincerely

Tom Carpen

Tom Carpen
Infrastructure Planning Lead

Annex 1

General Comments

Although it is noted that the submitted documents are working drafts, the applicant is encouraged to undertake a final and thorough proof read of all documents, particularly checking for punctuation and typographical errors.

A common occurrence is for the documents to confuse Town and Country Planning Act 1990 terminology with that of the Planning Act 2008.

Also, the term 'Compulsory Purchase Order' used in the Glossary should be replaced by 'Compulsory Acquisition Information'.

In addition, the applicant is encouraged to ensure that all application documents provide consistent cross referencing when referring to other application documents.

We note that many of the draft documents remain partially complete, with various appendices or sections outstanding. For example the application form is incomplete, and it is noted that the description of the development does not exactly match that in the Development Consent Order (DCO).

The draft Pipeline Statement has been prepared in accordance with Regulation 6(4) of the Infrastructure Planning (Application: Prescribed Forms and Procedures) Regulations 2009 and we note that at this stage it is not yet completed, for example the executive summary is not included.

Certain plans have been referred to in the documents but have not been provided. For example both Schedule 1 of the DCO (Work No 3) and the Pipeline Statement (starting at paragraph 2.1) mention Drawing No [13-03-01/HOL/60/145] which has not been submitted to PINS in a draft form, or it has it has been renamed.

We note that the term 'the single appointed person' has been used in the draft DCO. We would suggest that it is replaced by term 'Examining authority' and so section 83(1) which refers to the single appointed person is therefore removed. Also, section the following wording could be added: 'SoS, in accordance with s104(2) of the 2008 Act, has had regard to the relevant national policy statements, the LIR submitted by…, prescribed matters in relation to development of the description to which the application relates and those matters which the SoS thinks are both important and relevant.'

Annex 2

Draft Consultation Report

1. Please note the comments below refer to areas of compliance as well as areas for consideration. They relate solely to the draft document and not the merits of the proposal, and are provided to assist in preparation of the next iteration. The comments are made without any prejudice to any future decision made under s55 of the Planning Act 2008 (as amended).

2. Overall the structure of the Consultation Report (CR) seems logical, including good use of tables. However, the applicant should ensure that the text of the Report correctly refers to all relevant appendices and tables throughout the document, and ensures that all cross referencing is correct. Tables and Figures need to be consistent in terms of numbering and naming for accuracy and ease of cross referencing. It is therefore recommended that a thorough 'sense' check is completed for all submitted hard copy documents in the final submission. It would be extremely useful for navigation if the final hard copies of the Consultation Report (and indeed all other Reports) include labelled and tabbed divider sheets between appendices.

3. We remind the applicant that the final CR must be explicit and clearly identify which consultation was carried out as part of non-statutory consultation and statutory consultation, in accordance with the DCLG Guidance on the pre-application process (Department of Communities and Local Government, 2014) and under the relevant sections of the PA 2008:
    - Section 42: duty to consult,
    - Section 43: local authorities for purposes of section 42(1)(b),
    - Section 44: categories for purposes of section 42(1)(d),
    - Section 45: timetable for consultation under s42,
    - Section 46: duty to notify Secretary of State of proposed application,
    - Section 47: duty to consult local community,
    - Section 48: duty to publicise,
    - Section 49: duty to take account of responses to consultation and publicity, and
    - Section 50: guidance about pre-application procedure.

4. It would be useful if the relevant sections of the Planning Act 2008 are used for the headings of the consultation sections to which they relate.

5. The applicant has provided Table 2.4 (paragraph 2.3, page 20) which appears to list all legislation relevant to the consultation. The applicant may wish to elaborate on how they have had regard to the legislation while cross-referencing the information within the Report.

6. Section 42 consultation
    - Please note the relevant sections of the PA 2008 are s42(1)(a) and others. Although typographical errors are common in draft documents, we would encourage that all references to these sections are reviewed so the relevant subsection is included. For example paragraph 5.19, page 40 refers to the prescribed consultation bodies under section 42(a) – which we assume to mean

section 42**(1)**(a).

- Defining consultees under section 42 of the Act (paragraph 5.18, page 40): it would assist if the applicant could provide background information on how the consultees were identified under s42(1)(a), s42(1)(aa), s42(1)(b), s42(1)(c) and s42(1)(d).
- S42(1)(b) refers to 'each local authority that is within section 43'. The definition provided in s43 of the PA 2008 includes 'A', 'B', 'C' and 'D' authorities. It is noted that Table 5.22 in paragraph 5.25, page 44 lists the local authorities, and that the applicant intends to include a map showing the site and identifying the boundaries of the relevant local authorities in paragraph 5.24, page 44, which would be very helpful. It would also be helpful if the local authorities' 'A', 'B', 'C' or 'D' status was also clearly identified throughout.

7. Section 44: Categories for purposes of section 42(1)(d)

- In paragraph 5.28, page 45, the applicant refers to persons with an interest in the land (categories 1, 2 and 3). It might assist if the applicant identified consultees defined in section 42(1)(d) of the Act. We would suggest that it might be helpful if the applicant provided definition for the Categories which include:
    - *'Category 1' Owners, tenants or occupiers of land directly affected by the NSIP proposal;*
    - *'Category 2' persons who have an interest in land or have the power to sell, convey or release the land affected by NSIP; and*
    - *'Category 3' persons who are not having any land acquired but who could be entitled to make a compensation as a result of their property being depreciated in value by the proposed development'.*
- We were unable to compare the applicant's s42 Consultee list with the Book of Reference as a copy has not been provided identifying s42(1)(d) persons.

8. Section 47 consultation

The applicant has provided information on its approach to statutory consultation, including the preparatory work ahead of the formal issuing of the Statement of Community Consultation (SoCC). The applicant mentioned that the Statement of Engagement had formed the basis of the formal SoCC (paragraph 3.3, page 24) but copy of the document was not provided.

9. In line with the Planning Inspectorate's Advice Note 6, in preparing for the submission of the application, the applicant may find it useful to complete its own version of the s55 checklist, which is used to assess whether the application can be accepted for examination.

10. The Glossary at the beginning of the CR is very helpful; however, we would suggest that the applicant makes amendments in relation to some terms listed below:
    - There is some inconsistent use of abbreviations without explanation in the first instance of their meaning.
    - We would suggest adding information that the Planning Act 2008 has been amended by the Localism Act 2011.

- Some words seem to be missing: 'Committee' (JNCC), 'sites' (RIGS), 'Consultation' (SoCC),
- Some acronyms are repeated: BMV, NPPF,
- It is not clear why the word 'now' is included in reference to Institute of Ecology and Environmental Management (IEEM).

11. It is noted that the Consultation Report is currently in its draft form and incomplete. We would encourage the applicant to provide the documents listed below in its finalised version of the Report. Amongst other things, the applicant should ensure that it provides in the appendices:
    - Copies of the s48 notices, including the front page of newspapers used to place the notices (so that the date is clearly legible):
        - Copies of notices within these papers, and
        - Copies of the Statement of Community Consultation (SoCC) advertisement including the original date as it appears on the newspaper.
    - A copy of the original SoCC.
    - Copies of consultation correspondence and responses from local planning authorities who were consulted and responded with regards to the content of the SoCC (at both non-statutory and statutory consultation stages).
    - Original copies of any press releases and media coverage.
    - Copies of correspondence and/or leaflets sent to persons for the purpose of s47.
    - A copy of any letters sent to s42 consultees.
    - A copy of the s46 notification letter along with a copy of the acknowledgement letter issued by the Inspectorate.
    - A complete list of consultees identified and consulted by the applicant for the purpose of statutory consultation under s42.
    - Copies of material from exhibition events (posters, photos of display boards etc).
    - Copies of extracts from the project website during consultation (to demonstrate that the site was functioning at the time).
    - Copies of consultation feedback forms.

12. Other issues:
    - It appears that the applicant did not consult the Ambulance Trust (this reason for this apparent discrepancy should be made clear in the CR, along with any other potential omissions).
    - Precise dates are often important and should be double checked. For example 'January 2014' should read 'January 2015' in Table 3.11, page 27.
    - Paragraph numbering in Chapters 7 and 8 appears incorrect.
    - We would advise to replace the word 'Commission' (for example in paragraph 5.16, page 39) with the term 'Secretary of State' when referring to the notification under s46 of the PA 2008. The 'Commission' (Infrastructure Planning Commission) was abolished by the Localism Act 2011.

Annex 3

Draft Development Consent Order, Explanatory Memorandum and Statement of Reasons:

Unless reference is made to the Planning Act, section references are to Advice Note 15: Drafting Development Consent Orders.

General

1. The DCO must be in the SI template (section 1) – so amongst other things should include a preamble. DCOs should adopt the preferred language and style of the consenting department so, for example, part 22 should be headed "Principal powers" and "order land" should be "Order land" (sections 1 and 2). "Shall" should be avoided (section 2), legislative footnotes should identify relevant amendments (section 7) and schedules should identify the operative article. The DCO should be carefully audited before submission to ensure that all internal cross references are accurate – for example the explanatory note refers to article 39 as the certification article (it is in fact article 42).

Draft articles

2. Art 2 (interpretation) - the Order land should also include any land required for or affected by the proposed development (as well as land/rights to be acquired) In which case (as it is frequently defined in other DCOs) Order land would be defined as land to be acquired or used. The definition of maintain does not limit the power to maintain to works which have been assessed (section 20.2 and good practice point). It is general practice to put substantive definitions in art 2 - query why there is no definition of "commence" in art 2.

3. Art 2 (3) – "documents" can't be approximate.

4. In art 4 (2) (maintenance) the power to enter land is a compulsory power – it is unnecessary in art 4 because art 25 (a) provides a power to enter land for the purpose of maintenance.

5. Art 6(2) (benefit of order) is novel. Which DCO powers bestow express benefits "for works" on other persons? What is meant by "does not apply"? Does this mean that the Secretary of State's consent is not required?

6. Art 8 (application/modification of legislative provisions) - what legislative provisions are likely to be applied or modified? Note that if removing certain consent requirements the regulator's consent may be required (see section 27.2 and 27.3).

7. Art 11 (temporary stopping up of streets) - schedule 4 does not provide the information required by art 11, in other words the extent of the stopping up by reference to letters/numbers on the relevant plan (note - schedules should identify the operative article).

8. Art 12 (access to works) – schedule 5 does not specify locations.

9. Art 15 (protective work to buildings) – what is the justification for including "heritage assets" – this is novel. Consider Regulation 3 of the Infrastructure Decisions Regulations – "When deciding an application which affects a listed building or its setting, the [Secretary of State] must have regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses." It's noted that para 5.7 of the statement of reasons states that there are no special considerations affecting the Order land with regard, amongst other things, to heritage assets.

10. Art 22 (power to override easements) does not apply section 237 (5) of the Town and Country Planning Act 1990 in full and as a consequence appears to allow Keuper Gas Storage Ltd to be absolved from liability for payment of compensation whereas under section 237 the local authority remains liable in the event that any successor in title fails to pay compensation. Note that section 126 (2) of the Planning Act prevents a DCO including provision the effect of which is to modify the application of a compensation provision, except to the extent necessary to apply the provision to the compulsory acquisition of land authorised by the DCO. Consider article 18 of The Rookery South (Resource Recovery Facility) Order 2011

11. Arts 26 to 28 (compensation) – what is the justification for including these articles in the circumstances of this DCO?

12. Art 36 (landlord and tenant) isn't a compulsory acquisition power so would be better in part 6.

13. Art 40 (trees subject to TPOs) – see section 24.

14. Art 42 (certification) – titles and numbers of plans should be provided (see section 11).

15. Art 43 (service of notices) – the Explanatory Memorandum (EM) could make clear why this article is necessary given section 229 of the Planning Act?

16. Art 44 – it is Secretary of State's policy to appoint the arbitrator in the event of dispute – see for example art 31 of the Galloper Wind Farm Order 2013 It is noted, nonetheless, that the protective provisions in part 4 do refer to the arbitration article giving power to the Secretary of State to appoint the arbitrator (described as art 35).

17. It is noted that there is no mechanism for dealing with any disagreement between the applicant and the discharging authority (section 21 and good practice points).

Authorised development

18. Comments are provided below on the drafting together with some queries which could perhaps be answered / clarified in the EM.

19. As a general point the scope of the principal development and associated

development constituting the NSIP (as defined by section 17 of the Planning Act) and the relationship with the existing underground gas storage facilities needs to be clear (for example clarification that the extension of the brine and water infrastructure belonging to the existing underground gas storage facilities does not in itself constitute an NSIP because it is an alteration (Planning Act section 17 (5) (a)). There is reference in the statement of reasons and EM to "two sets of infrastructure" comprising the main elements of "the Project". Is the new brine and water infrastructure considered integral to the creation of new underground gas storage facilities (Planning Act section 17 (2)) or associated with the underground gas storage facilities?

- In general, as noted below, the works descriptions can be simple descriptions of the development and don't need to contain statements of intent or explanation – eg "will be laid" "required for" "requiring replacement".
- Without using the words "up to" in the description of Work No 1A there is no flexibility. Is this intentional? "The cavities will be constructed" is a statement of intent – so "the cavities will be" is unnecessary.
- Work No 1A includes 19 operational cavities. However, works No 1C to 1W are also described as underground cavities (unintentional repetition?) and are identified as associated development. The cavities are the principal development are they not? Notwithstanding the above, describing the cavities' dimensions as approximate is uncertain and it would be better to use "up to" to provide flexibility. Also the works' descriptions should include a description of their location rather than a reference (eg H501). Is this a works plan reference number?
- Work No 2M etc - what does "required during the various phases mean"? Is it justification/explanation? "Various" is uncertain and "phase" is not defined in article 2. How does a "phase" relate to a "stage"?
- Work No 3 etc - "The pipes will be laid via open trench construction and will be in-filled and contoured to match the surrounding land" - better to remove "will be" so it is just a description.
- "Utilisation of water currently transported" (Work No 8) is not development (as defined in section 32) requiring development consent.
- "Utilisation of the existing 508 mm external diameter brine pipeline" (Work No 10) is not development (as defined in section 32) requiring development consent so isn't Work No 10 "up to 600 metres of new pipeline etc"? This presumably is also being dealt with by agreement or by way of a power to create, suspend or extinguish or interfere with interests in or rights over land (including rights of navigation over water) - see paragraph 2 of schedule 5 of the Planning Act.
- "Requiring …" isn't necessary.
- The description of Work No 14 is very wide and therefore uncertain – "but not limited to". What other works might be included and why can't they be identified if they have been subject to EIA?
- "Will be installed" is unnecessary in the description of Work No 9.
- Work No 11 should be clearer about the work that requires development consent i.e. is it installation of booster pumps, sump pumps, new transformer? Does roof repair and window replacement constitute development? Is "reinstatement of the electrical supply" development? "Some refurbishment... will be required" is uncertain and doesn't describe development.

- "Up to" is preferable to "approximately" in Work No 13 (and other work descriptions). This work description also provides construction detail limiting the way in which the development must be carried out (akin to a requirement) so "to be" isn't necessary.
- How many laydown areas are comprised within Work No 16?
- "Will be" is unnecessary in Work No 17. Does this work comprise construction of a new pipe? It is not clear from the wording "pipeline supply".
- "Will be" is unnecessary in Work No 18.
- Work No 19, as above "will be" is unnecessary.
- Works No 20 and 21 – same comments as above.
- What is meant by "A series of" in Work No 22? What is an NB Pipeline? Same comments as above.
- How long is the extension to the fibre-optic cable (Work No 24)?
- Work No 26 refers to new substation Work No 26 (should be No 25?)

Requirements

20. Requirement definitions – "the authorised project" – there are no ancillary works. It may be better to dispense with "approved development plans" as a definition because other plans (not necessarily development plans – eg landscape and ecological management strategy plan) will be relevant (and certified).

21. Requirements 2 and 3 – the relevant LPA will be approving the details so "after consultation with the relevant planning authority" is unnecessary. What is meant by "the following elements"?

22. Requirement 5 (details of cavity layout and design) – This requirement limits capacity to "aggregate maximum working capacity" compared to the authorised development description which refers to "total storage capacity". This isn't clear. "Unless the safety reports… allow otherwise" is uncertain and would need to be carefully examined to be understand whether any limiting parameters might be required.

23. Requirement 9 (implementation and maintenance of landscaping) – see section 19. It may be appropriate for the LPA to be able to approve a change to the landscaping scheme but justification should be provided for this flexibility.

24. Requirement 12 (limits on heavy goods vehicle movements) – subject to examination, the flexibility given to the LPA in this requirement to vary details could allow the traffic impacts to stray beyond parameters confining the impacts to 80 per day etc (upon which interested parties will have been consulted) and may not be acceptable (see section 19.4).

25. Requirement 14(2) (wheel cleaning facilities) - it may be appropriate for the LPA to be able to approve a change to the detail but justification should be provided for this flexibility.

26. Requirement 17 (fencing) – the definition of "commence" excludes temporary fencing (so temporary fencing can be erected without the need for any prior approval). However, this requirement stipulates that no stage of the

development shall commence until written details of all temporary fences have been approved.

27. Requirement 21 (construction hours) - subject to examination, the flexibility given to the LPA in this requirement to vary the details might allow the construction impacts to stray beyond parameters limiting hours of work (upon which interested parties will have been consulted) and may not be acceptable (see section 19.4).

28. Requirements 22 (code of construction practice) and 23 (construction worker travel plan) – same comments as above regarding flexibility.

29. Requirement 24 (wellhead compounds) – this requirement doesn't oblige the applicant to construct the compounds in accordance with the approved details. The same point applies regarding flexibility.

30. Requirement 25 (disposal of slurry) - same comments as above regarding flexibility which in this requirement could allow disposal with impacts not assessed.

31. Requirement 32 (decommissioning) – "unless otherwise agreed in writing with the relevant planning authority" would allow the LPA to dispense with the need for a decommissioning scheme altogether and may not be acceptable (see section 19 and good practice points).

Explanatory Memorandum

32. This should be used to justify approach, including demonstrating that provisions (for example arts 26 to 28) are needed, justifiable and within the powers of the Planning Act (section 15).

33. It isn't best practice now to refer to the model provisions (following repeal of section 38) although they can still provide a starting point. Justification for using specific wording from a different statutory regime (for example the Transport and Works Act) should also be provided (section 15.3).

34. Paragraph 2.1 refers to 43 million standard cubic metres; paragraph 3.2 refers to 500 standard million cubic metres. Why does paragraph 3.2 describe capacity in cubic metres and tonnes?

35. Paragraph 3.3 refers to two sets of infrastructure. Would it be clearer to use the language of section 17 and talk about operations to create underground gas storage facilities? It would also be helpful to explain further the relationship between the proposed new facility and the adjoining Holford Brinefield – in other words clarifying whether development consent is sought for alteration of an existing underground gas storage facility (section 17 (5) (a)). See comments above regarding the scope of the principal development and associated development. The EM also talks about "caverns" (see para 4.2) – is there any technical difference between a cavern and a cavity?

36. It is convention to use the term "Project" in the DCO to mean the authorised development together with ancillary works not constituting development. This

DCO is not authorising any ancillary works (although see comments above querying whether works constitute development) so it may be better to talk about "authorised development" in the EM not "Project". Also, it may be better to talk about "the Order limits"(see para 3.7) rather than Application Site.

37. Para 4.2 suggests that the Planning Inspectorate has endorsed or encouraged the applicant's approach to flexibility. The need for flexibility should be fully justified – for example making clear why it is necessary (and possible within the scope of the Rochdale envelope) to leave cavity siting and detailed design approval to a later stage.

38. The EM should provide more explanation, by reference amongst other things to CLG guidance on associated development, for including works as associated development, particularly the gas processing plant (Work No 14) and office/control building (Work No 15) - in other words, confirmation that it is development for which development consent can be granted under section 115 (1) (b)).

Statement of Reasons

39. Whilst appreciating that this is still only in draft it is considered that the statement should be much clearer about the compulsory acquisition powers sought (acquisition of freehold and/or acquisition of new rights), purpose of acquisition and justification and alternatives to compulsory acquisition. Much of the information included in the statement would perhaps best sit within the EM or a planning statement.

With particular regard to the specific articles concerning Temporary closure of, and works in, the canal and Moorings (as requested in email dated 4 March 2015 from Jonathan Leary of Zyda Law):

Power to make provisions

Section 120 (3) provides a wide power to make provision for ancillary matters. It would appear that the matters covered by the proposed articles (1) authorising temporary closure and works in the canal and (2) interference with mooring rights may fall within the scope of Schedule 5 – for example (para 2) the suspension or …interference with... interests in or rights over land (including rights of navigation over water)…; (para 11) the imposition or exclusion of obligations or liability in respect of acts or omissions. However, in the Explanatory Memorandum the applicant should identify the source of the power in the Planning Act for each ancillary matter (including temporary removal of water) and explain the reason for including wording from another regime (see section 15 of Advice Note 15).

Drafting

The drafting should reflect the language and definitions used in the rest of the DCO. For example "authorised works" should be "authorised development". Note that the use of "shall" should be avoided (see section 2 of Advice Note 15).

The DCO should only authorise works that are within the scope of the EIA (see section 20 of Advice Note 15). The ExA will therefore want to know that the impacts (eg

traffic) of carrying out the proposed temporary works including construction of caissons and cofferdams, loading/unloading etc have been assessed as part of the construction impacts. The applicant should consider adding wording to the proposed article (1) to limit the extent of works that can be carried out to those that have been assessed.

Examination

It will be for the ExA to examine whether or not the proposed articles are necessary and proportionate in the circumstances of this particular project and the views of the Canal and River Trust will be important. The applicant may want to consider developing a Statement of Common Ground with the Canal and River Trust. Alternatively (depending on the Trust's views), protective provisions may be appropriate.

Annex 4

Draft Funding Statement

The funding statement should provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required.

The timing of the availability of funding is also likely to be a relevant factor. Regulation 3(2) of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 (MPP Regs) allows for 5 years within which any notice to treat must be served, though the decision maker does have discretion to make a different provision in the Order.

The applicant should be able to demonstrate that adequate funding is likely to be available to enable the promoter to carry out the Compulsory Acquisition within the statutory period following the Order being made, and that the resource implications of a possible acquisition resulting from a blight notice has also been taken into account.

The Funding Statement is, like the Statement of Reasons, an important part of an applicant's case for the grant of CA powers.

The applicant should note that the Secretary of State will have to be satisfied that funding will be available both for the carrying out of the project within the statutory period and for the payment of compensation claims, when determining whether the compelling case in the public interest test required by section 122(3) can be met and whether CA powers can be granted.

Currently the draft funding statement is very limited in the information it provides and additional detail needs to be provided on the points above. Without prejudice to any decision under section 55 of the Act, this is a key area that needs addressing prior to the submission of any application.

Annex 5

Draft Habitats Regulation Assessment

Please see below the Inspectorate's comments on the applicant's draft HRA report. Please note that the comments provided are without prejudice to any decisions taken by the Secretary of State during acceptance or the Examining Authority during examination, if the proposed development is accepted for examination.

These comments are not intended to be a detailed review of the draft HRA report and its findings, but are a high level review intended to provide helpful comments / observations as appropriate.

Please note that any reference to 'European sites' within this document is to Special Areas of Conservation (SAC), candidate SACs (cSAC), Special Protection Areas (SPA), potential SPAs (pSPA), Ramsar sites and proposed Ramsar sites.

1. If the applicant is to rely on existing consents for the purposes of the DCO then this will need to be expressly clear. Should the situation arise that they cannot rely on existing consents, they will need to fully assess the impacts of any new consents both alone and in combination with existing permits, plans and projects. The applicant should be aware that, for example, the HRA report would need to consider any in-combination effects associated with the existing brine discharge consent, water abstraction and mining waste permits, and other plans, permits or projects if the situation arose that the existing consent(s) could not be relied upon and therefore additional consents would be required.
2. PINS notes that there is no reference to the existing brine discharge permit in the draft HRA report and it would be useful to understand the relationship of this permit to the proposed development as described in section 1.2 of the draft HRA report. In particular, this section of the draft HRA should provide a more technical description of the proposed development for which consent is sought DCO against the parameters of the existing brine discharge permit. For example, the current drafting states that the "majority of the resulting brine" [from solution mining] will be used in the chemical industry, with no description of how the HRA has taken account of the "worst case" in terms of the development that the DCO would permit / allow under the existing permit. It would also be helpful if the document extensively referred to in section 4.2.3 (footnote 1) is appended to the HRA report or is otherwise provided in the application documents and cross referred to in the HRA report.
3. The terminology around the "construction" and "operation" of the proposed development is unclear in the documentation. From the diagram in Figure 1.1 of the HRA report, it is understood that construction takes place from year 1 to year 8, with year 9 and beyond comprising the operational period. PINS understands that the first gas storage is proposed in years 5/6, which is stated as the "start of gas storage operations". Footnote e of matrices 4 and 5 of the draft HRA states that "There will be no discharge [of brine] during construction", and there is seemingly a potentially confusing overlap between the "construction" and

"operation" of the brine pipeline. The same terms are used in figure 1.1 in respect of the project as a whole (which implies that there is no brine discharge during "operation" of the proposed development when all of the cavities are complete).

4. It would be beneficial if, for clarity's sake, if the applicant could confirm whether the proposed development is directly connected with, or necessary to, the management of the European Sites screened into the HRA (pursuant to the duties of the competent authority under Regulation 61(1)(b) of the Habitats Regulations).
5. The applicant may wish to consider consulting with the relevant statutory nature conservation bodies as to the currency of the guidance cited in footnote 3 of section 2.1.1 of the draft HRA report (determination of "likely significant effects").
6. Where reliance is placed on mitigation measures in excluding likely significant effects on European Sites, an Examining Authority (ExA) would need to be satisfied that such measures can be secured through the DCO or other mechanism. For example, footnote h of matrices 4 and 5 state that "Construction will be confined to the summer months" and therefore relies on this in concluding no likely significant effects on the European sites. Similarly, section 4.3.3 states that, in respect of the gas processing plant, "it is expected that only four of the glycol regeneration units will be operational at any one time", and a summary of stack parameters are provided in table 4.2. An ExA would need to be satisfied that such parameters relied upon in the assessment are enforceable through the DCO or otherwise be satisfied as to the potential effects on European sites in their absence (i.e. the 'worst case' impact of the proposed development that the DCO would consent).
7. The draft HRA report section 2.2 (consultation) could be improved with a more descriptive account of engagement between the applicant and the SNCBs in relation to the scope, methodologies and outcomes of the HRA report (for example any agreement with the Environment Agency as to the proposed reliance on the existing brine discharge permit, and agreement with the statutory nature conservation bodies as to the plans and projects included in the in-combination assessment). The applicant is encouraged to prepare Statements of Common Ground to record such agreement and any areas where matters are unresolved. The current drafting of the HRA report at section 2.2 does not make it clear which statutory consultees have been consulted but have not provided responses.
8. In section 3 and table 3.1 of the draft HRA report, in establishing which European Sites could be affected by the proposed development, further clarification is sought in terms of the selection of relevant potentially affected sites at the Runcorn Brine outfall. As currently drafted, the HRA report simply states "There are no other European protected sites close enough to the Runcorn outfall" with no cross reference to distances to other sites or the nature of the activities resulting from the development that preclude their inclusion. For clarity, it would be useful if table 3.1 made it explicitly clear which qualifying features of the European sites are relevant and to which aspects /activities / phases of the proposed development. On a similar note, section 4.1 of the draft HRA report states that "all other impacts arising from the project" have been excluded from further assessment, and an ExA may seek clarification on the other aspects to which reference is made here.

9. Section 4.2.2 states that, in relation to the Runcorn Brine outfall, "*Construction can result in functional loss of habitat by preventing qualifying species from using areas disturbed by noise and human activity during the four month construction period*". Although there is some evidence presented in the footnotes of matrices 4 and 5 in supporting the conclusion of no likely significant effects to the qualifying features of the Mersey Estuary and Ramsar sites during construction of the pipeline outfall, further evidence may be required in terms of the extent of the habitat loss and functional loss associated with the levels of human activity as there appears to be no such evidence in support of this.
10. In respect of the use of the Air Pollution Information System (APIS), APIS provides critical load information for individual SAC and SPA features. Further justification may be required in terms of the applicant applying this process to the assessment of Ramsar site features (which are not listed on APIS).
11. The in combination assessment presented in section 4.4 does not seem to provide any technical assessment of the effects on relevant European sites against each of the effects identified in section 4.1 of the report. The applicant may also be required to demonstrate justification as to why no plans or projects in and around the Mersey estuary are considered as part of the in combination assessment.
12. There appears to be no assessment of effects during the decommissioning of the proposed development. Again the extent to which this should be considered needs to tie in with the programme and activities of decommissioning (if any) that would be consented by the DCO.
13. The figures presented in the draft HRA report are in most instances illegible at their intended scale. Further, figure 3.1 has a defined 10km radius around (presumably the gas processing plant) within which the European sites are defined, however the 'greying out' of the area with the 10 km radius makes it difficult to understand the extent of the identified (and presence of un-identified) European sites beyond this boundary.
14. The Environment Agency's Horizontal Guidance Note H1 is referred to in multiple locations in the draft HRA report as "The Environment Agency for England and Wales (2010) Horizontal Guidance Note H1: Annex F". PINS are aware that there is an updated version of the H1 Annex F guidance (most recently to version 2.2, 2011) which supersedes the 2010 guidance. The applicant refers to versions 2.1 and 2.2 of the H1 guidance in footnote 1 of table 4.4, but all other references to this document in the draft HRA report are made to the 2010 guidance, and this would benefit from clarification.
15. PINS is also of the opinion that in terms of emission to air, the effects of plans and projects which, individually, would not have significant effects on a site, may combine with the effects of other plans and projects to the point where in-combination the effects of all of these plans and projects, which would otherwise not be assessed, could be significant. However, in some NSIP examinations, applicants relying on the EA Guidance Documents identified above have not taken this approach. PINS are at present obtaining clarification from the Environment Agency and Natural England as to the correct approach in this regard with respect to Habitats Regulations Assessment. In the meantime, the applicant may wish to

consider their approach to the in combination assessment of the proposed development as presented in the draft HRA report.

Annex 6

Draft Plans

The Planning Inspectorate made the following general observations in relation to the draft plans submitted.

- The plans provided appear to comply with Regulation 5(3) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP). That is, they are no larger than A0 size, drawn to an identified scale (not smaller than 1:2500 (Key Plans excepted)) and, in the case of plans, shall show the direction of North.
- The inset location plan on plan 13-03-01/HOL/24/235 is missing the direction to north.
- The plans provided appear to comply with Regulation 5(4) of the APFP, where a plan comprises three or more separate sheets a key plan must be provided showing the relationship between the different sheets.
- Plan 13-03-01/HOL/24/104 has the revision number in the paper size field, and no paper size information is given.
- Many of the plans that state they are to scale at paper size A1 are in fact produced at A3 size. Please ensure that plans are produced at the correct size, so that the correct scale remains intact.
- Ensure plan titles are consistent throughout the documentation. An example of a discrepancy can be found on plan 13-03-01/HOL/24/277- the plan is entitled 'General arrangement of Solution Mining Compound (SMC)', however, the Register of Documents lists this as 'General arrangement of Solution Mining Compound (SMC3)'.

Land Plans

The Planning Inspectorate has been unable to undertake a detailed check of these plans, as the Book of Reference was unavailable to cross reference against. The following observations are made without prejudice.

- Key Plan (13-03-01/HOL/24/600) - While this plan does cover the area depicted on the following 7 sheets (13-03-01/HOL/24/601 – 607), it doesn't show the full area within the red line boundary.

- Sheets 1 – 7 (13-03-01/HOL/24/601 – 607) - The drawings don't appear to show individual parcels of land. The boundaries between plots should be clearly delineated and each plot separately numbered to correspond with the Book of Reference. Further guidance is given in Annexe C of the 'Planning Act 2008: procedures for the compulsory acquisition of land' document, please see the link: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236454/Planning_Act_2008_-_Guidance_related_to_procedures_for_the_compulsory_acquisition_of_land.pdf

- Sheet 2 (13-03-01/HOL/24/602) the red line boundary (limit of deviation) is not clear. Please ensure that all information given is clear and accurate.