

Mr P Grace  
Berwin Leighton Paisner  
Adelaide House  
London Bridge  
London  
EC4R 9HA

2 November 2011

Our ref: 111102\_EN030001\_891344

Dear Mr Grace,

**PROPOSED PREESALL UNDERGROUND GAS STORAGE FACILITY (the proposed development)  
DRAFT HABITATS REGULATIONS ASSESSMENT REPORT AND STATEMENT**

1. Thank you for sending the IPC the following draft documents for consideration:
  - Document 1: Preesall Underground Gas Storage Facility - Habitats Regulations Assessment - No Significant Effects Report (September 2011); and
  - Document 2: Preesall Underground Gas Storage Facility - Habitats Regulations Assessment – Draft Statement to Inform an Appropriate Assessment (October 2011).
2. This letter provides comments on both documents, which together would comprise the Habitats Regulations Assessment (HRA) Report prepared by the applicant (Halite Energy Group Limited). As we have previously explained, the IPC is not required to undertake a formal review of the applicant's draft HRA Reports at the pre-application stage. We are unable to comment on the outcome or conclusions of the assessment or the merits of the scheme and any mitigation proposed, but welcome the opportunity to raise issues relevant to our processes. It is noted that consultation with relevant bodies such as Natural England (NE) [in this case considered to be the relevant statutory nature conservation body (SNCB)] is not yet completed but still ongoing, and so our comments are made in the absence of their definitive view.
3. The following advice is not intended to be prescriptive. It is for applicants to review their work and satisfy themselves that they have complied with relevant legislation and had regard to relevant guidance. The necessary preparatory work and evidence should be assembled by the applicant to a level of detail that will enable the competent authority to meet its duties under the 2010 Habitats Regulations (as amended).

4. The comments below do not prejudice the position of the IPC at further stages of the Development Consent Order (DCO) process including determining whether 'sufficient information' as required under Regulation 5(2)(g) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 has been provided to the IPC when a DCO application is submitted.
5. Advice which the IPC provides at this stage cannot prejudice or preclude the decision of the Commissioner appointed to decide whether or not the application should be accepted.

#### General Comments

6. In determining the relevant elements/information needed to support an HRA Report, we refer you to the checklists appended to the IPC's Advice Note 10 (Habitat Regulations Assessment relevant to nationally significant infrastructure projects). The relevant checklists should be completed and submitted by applicants at the point of application.
7. Both Documents 1 and 2 of the applicant's draft HRA Report make reference to information included in other supporting documents, including the Environmental Statement (ES) and the Construction Environmental Management Plan (CEMP). When relying on information contained in other supporting documents included in the DCO application, the HRA Report should reference specific paragraphs in those documents to ensure the reader is correctly directed to the right information.

#### Pre-application Consultation

8. Developers should use the pre-application consultation process to seek assurances that all relevant European sites<sup>1</sup> have been identified and that all potential impacts are properly addressed in sufficient detail. In addition, developers should seek assurances from the consultation bodies that the methodology used to determine likely significant effects is satisfactory, and that the data is up to date and can be relied upon for the purposes of the assessment, if required. Evidence of consultation should be provided where relevant in the HRA Report.
9. It is important that all consultation comments received (including those received as a result of the applicant's section 42 consultations and the IPC's EIA scoping consultations) are considered by the applicant before an application is submitted, and that they are reflected in the DCO application where necessary. It is advised that consultation responses about the HRA from SNCBs (and any other relevant responses) are included in full within the final HRA Report to ensure that the IPC is able to judge whether the procedural requirements under Regulation 5(2)(g) have been met.

#### Selection and Screening of European sites

10. The applicant's HRA Report should clearly set out the processes used to determine the 'Zone of Influence' (ZOI) and to clearly identify the European sites falling within that Zone. There is no prescribed maximum distance from a proposed site boundary beyond which proposals can be dismissed as having no effect on a European site. If a proposal has the potential to affect a European site, screening should be undertaken, irrespective of the distance of the proposed development site from the European site. If the sites were identified through agreement with the

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<sup>1</sup> Although potential SPAs (pSPAs) and Ramsar sites are not defined as European sites under the Habitat and Species Regulations 2010, they are given equal weight under Government policy, and therefore all references in this letter to European sites include pSPAs and Ramsar sites.

SNCBs, then supporting information or correspondence should be provided and appended to the final HRA Report in order to substantiate these agreements.

11. It is unclear from both Documents 1 and 2 of the HRA Report how the ZOI was determined. In particular, Document 1 refers to a ZOI but does not provide details of the process used to determine the geographical extent of the zone, within which six selected sites have been identified and screened (paragraphs 2.1.3 and 2.1.5 of Document 2), as set out below:
  - Morecambe Bay Special Area of Conservation (SAC)
  - Liverpool Bay Special Protection Area (SPA)
  - Shell Flats candidate SAC (cSAC)
  - Lune Deep possible SAC (pSAC)
  - Morecambe Bay SPA, and
  - Morecambe Bay Ramsar site
12. From the information provided in both documents it is also unclear on what basis the six sites have been selected, and how the screening process has concluded that the proposed development would not have a likely significant effect on four of the European sites. The final HRA Report should fully explain, for each of the selected European sites, the basis of its conclusion that the proposed development either is, or is not, likely to have a significant effect on the European site.

#### Applicant's approach to the HRA

13. As the extent of the ZOI is not provided in the draft documents, it is not clear that the HRA Report has identified all European sites which could potentially be affected by the proposed development, and which therefore should be included in the final Report.
14. The HRA Report should include maps identifying the location and extent of the European sites relative to the proposed development and, where appropriate, the locations and spatial extent of the qualifying features.
15. The IPC previously issued advice to the applicant (within its EIA Scoping Opinion for the proposed development) regarding survey work and methodologies. Details of the methodologies, process and evidence used for the HRA should be provided in the applicant's HRA Report, where necessary and relevant. For example, it is unclear from the wording in paragraph 5.2.10 of Document 2 under 'Noise Monitoring and Modelling' whether the reference to a site visit is related to an informal bird survey or to a noise monitoring exercise.
16. It is particularly important to ensure that survey work is comprehensive, relevant and up to date and that the approach to assessment is agreed with the relevant SNCB. Currently, there are a number of references in Section 6 of Document 2 (e.g. paragraph 6.3.7) to NE and the Royal Society for the Protection of Birds (RSPB) confirming an assessment of no significant effects, at which point the Report refers to information contained in Appendix 2. This confirmation is not available and, together with other statements in Document 2, make it clear that consultation with NE is ongoing. Evidence of any such agreements should be provided in the final HRA Report.
17. Furthermore, terminology used in the final HRA Report should be consistently applied and clearly defined. In this regard, some terms in Document 1 appear to be unsubstantiated, e.g. descriptions of sea water as 'highly turbid' in paragraph 5.2.1,

without providing details of measurement techniques or units. In addition, paragraph 7.2 of Document 2 makes reference to 'scoping' out activities from the impact assessment, a term which is used in relation to environmental impact assessment. 'Screening' is usually applied to HRA and likely to be more familiar to readers.

#### In combination assessment

18. The applicant's HRA Report should include evidence, and where applicable maps, identifying the locations of other plans and projects relative to the proposed development for the purpose of an in combination assessment.
19. It is unclear from the draft documents, particularly Document 1, which plans and projects were considered for the in combination assessment, and what criteria was used to identify them. It is noted that the assessment of impacts on European sites (Sections 5 and 8 of Documents 1 and 2 respectively) has not identified potential effects from other plans and projects. This appears to be inconsistent with a statement in the screening matrices in Appendix 3 of Document 1, which makes reference to the Gateway Project in the Irish Sea and notes that its potential for in combination effects is currently being assessed. The results of that assessment must be set out in the final HRA Report, and the conclusions in Document 1 may need to be reviewed/amended in the light of the findings.
20. Paragraph 4.9.1 and the screening matrix within Appendix 1 of Document 2 state that the proposed development will have no effects on the Morecambe Bay SPA and Ramsar, in combination with the Wyre Power Station project. In this regard, further information on the proposed development's in combination effect with Wyre Power Station should be included in the applicant's HRA Report to demonstrate that no European site(s) would be adversely affected by the two projects in combination.
21. The matrices in both Documents 1 and 2 refer both to 'in combination' and 'cumulative' impacts. The 2010 Habitats Regulations refer only to in combination effects and it is recommended that the statutory terminology is used consistently.
22. The applicant's final HRA Report should provide information to justify how other plans and projects were identified and considered e.g. through agreement with the Local Planning Authority (LPA). A clear justification of why it was concluded that there would be no potential significant effects in combination with these other developments should be provided.
23. The EC guidance: 'Managing Natura 2000 Sites: The provisions of Article 6 of the Habitats Directive' (see section 4.4.3) gives advice about which plans and projects should be within the scope of the in combination assessment – as at Article 6(3).

#### Potential impacts on European sites

24. It is important to ensure that the potential impacts of all elements of the proposed development on European sites are considered at the HRA screening stage.
25. The IPC notes the inclusion of the screening matrices provided in Appendix 3 of Document 1. However, Document 1 focuses on the likely impacts of the brine pipeline construction and discharge only. In this regard, it is unclear if (and/or how) other elements and activities, for example, drilling under, and abstracting water from, the Wyre Estuary have been considered or 'screened out', i.e. considered unlikely to have any significant effects.

26. Where no significant effect is anticipated this should be stated and justified within the applicant's HRA Report to provide assurance that all elements of the proposed development have been considered.
27. There are inconsistencies in Documents 1 and 2 in relation to the timing of construction works and the presence of SPA bird species. For example, paragraph 2.3.3 of Document 1 states that installation of the brine discharge pipeline within the Irish Sea would take place during June to September. Paragraph 3.3.4 states that common scoters are present within Liverpool Bay from August to May. However, the Liverpool Bay SPA 'No Significant Effects Matrix' in Document 1 states that all pipeline installation work will take place '...in the summer when the SPA bird species are absent.' The assessment of the potential effects of construction on SPA bird species in the final HRA Report should be consistent with the reported information.

### Conclusion

28. Please note that the issues highlighted and comments made above do not constitute an exhaustive review, but reflect the IPC's principal observations at this stage. It is the applicant's duty to ensure that all documents submitted with the DCO application comply with the relevant legislation and required standards.
29. Should you have any queries in relation to the above, or any other matter, please do not hesitate to contact us.

Yours sincerely



Simon Butler  
EIA and Land Rights Manager on behalf of the IPC  
On Behalf of the IPC

The IPC gives advice about applying for an order granting development consent or making representations about an application (or a proposed application). The IPC takes care to ensure that the advice we provide is accurate. This communication does not however constitute legal advice upon which you can rely and you should note that IPC lawyers are not covered by the compulsory professional indemnity insurance scheme. You should obtain your own legal advice and professional advice as required.

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