

**From:** JONES, Victoria <Victoria.Jones@cheshirewestandchester.gov.uk>  
**Sent:** 14 July 2016 15:23  
**To:** Tracey Williams; Keuper Gas Storage Project  
**Cc:** 'Ian Graves'; HOLMES, Steven  
**Subject:** Development Consent Order for the Keuper Gas Storage Project  
**Attachments:** Section 106 Agreement as at 14th July 2016.docx

**Importance:** High

Dear Sirs

As requested by the Inspector please see attached the latest working draft of the Section 106 Agreement that has been circulated to the Applicant with the Council's amendments and comments by way of tracked changes. It is of importance to the Council that there is consistency between the Development Consent Order and the Section 106 Agreement for clarity and ease of reference which is why a number of changes are proposed to the draft as it stands. A phasing plan outlining the various stages of the development is also considered necessary. The Council are confident that further in depth discussions can take place between the Applicant and Cheshire West Council at the forthcoming Issue Specific Hearing in order to achieve a final version of the Agreement.

Yours faithfully,

Victoria Jones (Solicitor)  
Environment Team  
Cheshire West and Chester Borough Council

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**TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING ACT 2008**

**DEED OF DEVELOPMENT CONSENT OBLIGATIONS PURSUANT TO SECTION 106 OF THE  
TOWN AND COUNTRY PLANNING ACT 1990 AND SECTION 174 OF THE PLANNING ACT  
2008**

**LEGAL AGREEMENT**

**BETWEEN:**

- (1) CHESHIRE WEST AND CHESTER BOROUGH COUNCIL
- (2) CHESHIRE EAST COUNCIL
- (3) KEUPER GAS STORAGE LIMITED
- (4) INEOS ENTERPRISES GROUP LIMITED
- (5) INOVYN ENTERPRISES LIMITED

**IN RESPECT OF:**

DEVELOPMENT OF 19 UNDERGROUND CAVITIES FOR THE STORAGE OF NATURAL GAS AND  
CONSTRUCTION OF A GAS PROCESSING PLANT, ON LAND ADJACENT TO HOLFORD  
BRINEFIELD, NORTHWICH, CHESHIRE

**PLANNING INSPECTORATE APPLICATION REFERENCE: EN030002**

Zyda Law  
60 Cygnet Court  
Timothy's Bridge Road  
Stratford upon Avon  
CV37 9DE

T: 01789 413 949  
www.zydalaw.com

THIS DEED is made on            day of            2016

**BETWEEN:**

- (1) **CHESHIRE WEST AND CHESTER BOROUGH COUNCIL** of HQ, Nicholas Street, Chester, CH1 2NP ("**CWACC**");
- (2) **CHESHIRE EAST COUNCIL** of Westfields, Middlewich Road, Sandbach, CW11 1HZ ("**CEC**");
- (3) **KEUPER GAS STORAGE LIMITED** (company number 08850140) whose registered office is at Runcorn Site HQ, South Parade, PO Box 9, Runcorn, Cheshire, WA7 4JE ("**KGSL**");
- (4) **INEOS ENTERPRISES GROUP LIMITED** (company number 04687714) whose registered office is at Runcorn Site HQ, South Parade, PO Box 9, Runcorn, Cheshire, WA7 4JE ("**IEGL**"); and
- (5) **INOVYN ENTERPRISES LIMITED** (company number 04651437) whose registered office is at Runcorn Site HQ, South Parade, Runcorn, Cheshire, WA7 4JE ("**IEL**").

**RECITALS:**

- A CWACC is the local planning authority and the local highway authority for the purposes of the 1990 Act for the area within which the Project is situated.
- B CEC is the local planning authority and local highway authority for the purposes of the 1990 Act for the area within Cheshire East Council's boundary that is affected by the Highways Routing Obligation.
- C KGSL submitted the Application on 24 November 2015 to the Planning Inspectorate for development consent to construct and operate the ~~obtain authorisation in the form of the DCO for the~~ Project and the Application was accepted for examination by the Planning Inspectorate under section 55 of the 2008 Act on 22 December 2015. The Secretary of State is responsible for determining the Application.
- D KGSL has a leasehold interest of more than 15 years unexpired of part of the DCO S.106 Site registered at HM Land Registry under title number            as shown edged red on. IEGL is the owner of a long leasehold interest in part of the S.106 Site registered at HM Land Registry under title number            as shown edged red on. IEL is the freehold owner of the entire S.106 Site registered at HM Land Registry under title numbers CH507364, CH506147 and CH509074.

**Comment [JV1]:** Not a defined term therefore capitalization not necessary

**Comment [JV2]:** Details of the lease including the date and name of the parties will need to be provided

~~E It is intended that KGSL will be the undertaker for the purposes of the Development Consent Order. KGSL intends to construct and operate the Project as authorised by the Development Consent Order.~~

~~E CWACC, CEC, IEL, IEGL and KGSL have agreed to enter into this Deed in order to secure the development consent obligations contained in this Deed. Agreement as a development consent obligation under the 1990 Act and 2008 Act in connection with the Application for the DCO in order to secure the planning obligations contained in this Agreement.~~

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. Definitions and Interpretation**

**1.1. Definitions**

In this Deed where the context so requires or admits the following expressions shall have the following meanings unless otherwise stated:

**'1972 Act'** means the Local Government Act 1972.

**'1990 Act'** means the Town and Country Planning Act 1990.

**'1999 Act'** means the Contracts (Rights of Third Parties) Act 1999.

**'2008 Act'** means the Planning Act 2008.

**'Application'** means the application for ~~at the d~~Development consent order ~~CO under section 37 of the 2008 Act~~ to authorise the Project on the Application Site ~~made under section 37 of the 2008 Act by KGSL to the Planning Inspectorate to which it and~~ allocated reference number EN030002.

**'Application Site'** means the land at Holford Brinefields, Northwich, Cheshire which is subject ~~of to~~ the Development Consent Order ~~CO~~ described in Schedule 1 and shown for identification purposes only edged red on Plan 1 annexed to this Deed against which this Deed may be enforced.

**'Approved Route'** means the highlighted routes as shown for identification purposes only by solid bold coloured lines on the Routing Plan annexed to this Deed at Appendix 3 or such other route as may be approved by CWAC in consultation with CEC from time to time.

**'Development Consent Order'** means the development consent order to be made under the 2008 Act pursuant to the Application ~~in the form proposed by KGSL in the course of the examination of the Application and annexed to this Agreement at Annex 4.~~

**'Decommissioning Notice'** means written notice from KGSL to CWAC and CEC that the operational life of the Project has come to an end.

**'HGV'** means Heavy Goods Vehicle.

**Comment [JV3]:** HGV needs to be defined in more detail both in the Section 106 Agreement and the Development Consent Order

**'HGV Routing Obligation'** means the HGV Routing Obligation detailed at Schedule 3 to this Deed Agreement.

**'Implementation'** means the carrying out of any material operation as defined in within the meaning of section 155 of the 2008 Act on the Application Site of the works authorised by the DCO comprised in the Project as specified in Schedule 1 to the DCO save that for the avoidance of doubt the carrying out of demolition work, the laying, removal or diversion of services, the temporary diversion of highways, site preparation (including clearance), investigation works, archaeological investigations, environmental site investigations, investigations for the purpose of assessing ground and geological conditions, remedial work in respect of any contamination or other adverse ground conditions, the erection of fencing or hoardings, the provision of security measures or lighting, the erection of temporary buildings or structures associated with the Project, the provision of construction compounds, piling works or works and operations to enable any of the foregoing to take place shall not constitute a material operation and consequently shall not individually or together constitute implementation for the purposes of this Agreement and the words "Implement" and "Implemented" shall be construed accordingly.

**Comment [JV4]:** Use "Commencement" rather than "Implementation" as per the draft DCO

**Comment [JV5]:** Commencement Date/Implementation Date needs to be defined both in the DCO and the Section 106 Agreement

**'Local Liaison Group'** means the advisory group to be established by the Owners, pursuant to Schedule 3 of this Deed which shall be established for the purposes of promoting and encouraging consultation with the local community about the delivery of the Project in accordance with the Development Consent Order and the terms of the section 106 agreement.

**'Obstruction'** means any temporary or permanent authorised or unauthorised interference with the use by an HGV on a Relevant Journey which prevents access to the Approved Route.

**'Order'** means the Development Consent Order DCO in the form as may ultimately be made by the Secretary of State if he is minded to issue development consent pursuant to the Application.

**'Owners'** means collectively together IEL, IEGL and KGSL.

**'Parties'** means CWAC, CEC, KGSL, IEGL and IEL who are the parties to this Agreement Deed.

**'Plan 1'** means the plan numbered 13-03-01/HOL/24/415 Rev B1 annexed to this Deed Agreement at Annex 1.

**'Plan 2'** means the plan numbered 13-03-01/HOL/24/400 Rev B1 annexed to this Deed Agreement at Annex 2.

**'Project'** means the authorised project as defined in and to be authorised by the Development Consent Order ~~Nationally Significant Infrastructure Project~~ described in further detail in Schedule 2 of this Deed.

**'Relevant Journey'** means an HGV journey to or from the Project in connection with the construction and operation of the Project.

**'Requirement'** means a requirement imposed by the ~~d~~Development consent order ~~€€~~ pursuant to section 120(1) of the 2008 Act and contained in Schedule 2 of the Development Consent Order ~~€€~~.

**'Routing Plan'** means the plan numbered 13-03-01/HOL/24/405 Rev B1 entitled "Routing Plan" annexed to this Deed Agreement at Annex 3 and shall include any amendments to that routing plan approved in writing by CWAC and CEC.

**'S.106 Site'** means that part of the Application Site shown for identification purposes only edged red on Plan 2 annexed to this Deed against which this Deed may be enforced.

**'Secretary of State'** means (1) the Secretary of State for Energy and Climate Change; or (2) any other minister for the time being entitled to exercise the powers conferred by any of sections of the 2008 Act.

**'Working Day'** means any day apart from Saturday, Sunday and any statutory bank holiday on which clearing banks are open in England for the transaction of ordinary business.

## 1.2. Interpretation

- (a) All references to CWAC and CEC shall include the any successors to CWAC's and CEC's statutory functions as in relation to the functions of local planning authority and local highway authority.
- (b) The expression 'Owners' shall include references to their successors in title and assigns and any persons corporate or otherwise claiming through or under it an interest or estate in any part or parts of the Application Site S.106 Site as if such persons had also been original covenanting parties in respect of the interest or estate for the time being held by them.
- (c) References to any rRecital, cClause, sSchedule, pParagraph or sAppendix (or any part of them) shall unless the context otherwise requires be references to a recital, clause, schedule, paragraph or appendix (or any part of them) of this Deed.

- (d) Titles and headings to the clauses and paragraphs in this Deed and its schedules and appendices are for convenience only and shall not be construed in or affect the interpretation of this Deed.
- (e) References to a particular statute or statutory instrument include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it.
- (f) References in this Deed Agreement to particular provisions in the Development Consent Orders DCO shall also refer to identical provisions in the Order (including any amendments made by the Secretary of State to those provisions).
- (g) Unless the context otherwise requires references to the singular shall include the plural and vice versa.
- (h) Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- (i) Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enhanced against all of them jointly and severally unless there is an express provision otherwise.

## 2. Statutory Powers

2.1. This Deed is made pursuant to Section 106 of the 1990 Act, Section 174 of the 2008 Act, Section 111 of the 1972 Act and all other powers so enabling and the covenants contained in the schedules are development consent obligations (to the extent that they are capable of being so) for the purposes of Section 106 of the Act and Section 174 of the 2008 Act and are enforceable by CWAC as the local planning authority and the local highway authority in respect of the area within which the Project is situated and are enforceable by CEC as the local planning authority and the local highway authority in respect of the area within Cheshire East Council's boundary that is affected by the HGV Routing Obligation and as a party to this Deed, given by the Owners to CWCC and CEC:

- (a) ~~Are planning obligations for the purposes of Section 106 of the 1990 Act;~~
- (b) ~~Relate to the Application Site;~~
- (c) ~~Are entered into by the Owners so as to bind their freehold interests in the S.106 Site;~~
- (d) ~~Are enforceable by CWCC and CEC.~~

~~2.2. The covenants given by the Owners to CWCC and CEC in Clause 4 and the covenants given by CWCC and CEC to the Owners in Clauses 5 and 6 are made and are enforceable pursuant to Section 111 of the 1972 Act.~~

2.2. Nothing in this ~~Deed~~ shall prejudice or affect the powers, duties and obligations of CWACC and CEC in the exercise of their statutory functions.

2.3. The Interpretation Act 1978 shall apply to this Deed.

**3. Conditionality commencement**

3.1. ~~This Deed is e obligations in this Agreement are~~ conditional upon:

3.1.1. ~~t~~The Development Consent Order having been duly made; and

3.1.2. the Implementation of the Order by the Owners or a person authorised by them

save for the provisions of clauses 3, 17 which shall come into effect immediately upon the completion of this Deed-

**Comment [JV6]:** Further clauses will need to be added once the draft has been finalized.

**4. Covenants by the Owners**

4.1. The Owners covenant with CWACC and CEC that they will fully observe and perform the development consent obligations covenants on their part contained in Schedule 3 of this Deed and where otherwise contained in this Deed Agreement.

**5. Covenants by CWACC**

5.1. CWACC covenants with the Owners that it will fully observe and perform the obligations covenants on its part contained in Schedule 4 of this Deed and where otherwise contained in this Deed Agreement.

**6. Covenants by CEC**

6.1. CEC covenants with the Owners that it will fully observe and perform the obligations covenants on its part contained in Schedule 5 of this Deed and where otherwise contained in this Deed Agreement.

**7. Release and Lapse**

7.1. No person shall be liable for a breach of any of its obligations under this Deed Agreement or obligations relating to any part of the S.106 Site after it shall have parted with all of its interests in the S.106 Site or the part in respect of which the breach arises (as the case may be) save in either case for antecedent breaches.

**Comment [JV7]:** Why is there a distinction being made between the Application Site and the S.106 Site and why have two plans been provided?

7.2. It is further agreed that this Deed Agreement shall lapse and be of no further effect if:



- 7.2.1. ~~t~~The Development Consent Order shall ~~expire~~lapse without having been Implemented; or
- 7.2.2. The Development Consent Order shall be varied or revoked otherwise than with the consent of the Owners; or
- 7.2.3. The Development Consent Order shall be cancelled or revoked; or
- 7.2.4. The Development Consent Order is quashed following judicial review proceedings a successful legal challenge.
- 7.3. Nothing in this Deed Agreement shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission or consent (other than the Order) granted (whether or not on appeal or by any other means) after the date of this Deed Agreement.
- ~~7.4. Further changes to this Agreement shall be made at the Owners' cost.~~

## **8. Compliance**

- 8.1. Following the performance, discharge or other fulfilment of the obligations (or any of them) of the Owners pursuant to the terms of this Deed Agreement, CWACC and CEC will, upon written request by the Owners, certify compliance with the particular obligation and if required by the Owners, will execute a deed of release from the relevant obligation of this Deed Agreement and will apply to the appropriate Registrar of Local Land Charges for a note thereof to be entered on the Local Land Charges Register the cost of which to be borne by the Owners.

## **9. Local Land Charge**

- 9.1. It is hereby agreed that this Deed Agreement shall forthwith be registered as a local land charge for the purposes of the Local Land Charges Act 1975.
- 9.2. Upon the satisfaction of the terms of this Deed Agreement, CWACC and CEC shall at the request of the Owners procure that all entries in the register of local land charges relating to them shall be removed or marked as discharged as soon as is reasonably practicable.

## **10. No Fetter on Discretion**

- 10.1. Nothing in this Deed Agreement shall be taken to be or shall operate so as to fetter or prejudice CWACC and CEC's statutory rights, powers, discretions and responsibilities (save where legally permitted).

**11. Severability**

11.1. It is agreed that if any part of this Deed Agreement shall be declared unlawful or invalid by a court of competent jurisdiction then (to the extent possible) the offending provisions will be severed from the Deed Agreement and the remainder of this Deed Agreement shall continue in full force and effect.

**12. Enforceability and Successors in Title**

12.1. The provisions of this Deed Agreement which are stated to relate to the Application Site shall be enforceable by CWAC and CEC against the Owners and against any persons for the time being deriving title to the S.106 Site from the Owners but neither the Owners nor any persons deriving title to the S.106 Site shall have any liability under such provisions of this Deed Agreement (but without prejudice to the rights of CWAC and CEC in respect of any antecedent breach) in respect of any period during which the Owners (or as the case may be such other persons) no longer have a legal interest in the S.106 Site.

**13. Arbitration**

13.1. In the event of any dispute or difference arising out of this Deed Agreement other than a dispute or difference relating to a question of law or upon the interpretation of this Deed Agreement the same shall be referred to a sole arbitrator to be agreed between the parties to the dispute or difference and being a member of the Royal Institution of Chartered Surveyors or on the application of any such party appointed by the President for the time being of the Royal Institution of Chartered Surveyors and in this respect these presents shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996.

**14. Consequential variations to requirements**

14.1. If the Secretary of State makes a n amendment to the Order-change to the Order pursuant to Schedule 6 of the 2008 Act resulting in any addition, alteration or removal of any requirement contained in the Order, then CWAC and CEC, if requested so to do by any person against whom this Deed Agreement is at that time enforceable, shall enter into an agreement with such person or persons to modify or discharge the development consent planning obligations herein to the like intent as or corresponding to any such requirement before such variation or release so as to be to the like intent as or to correspond to the requirement as altered or to make the same cease to apply in the case of a requirement which is removed as the case may be and this Deed Agreement shall upon the satisfaction of Clause 3 in relation to such new requirement apply to the new requirement.

**Comment [JV8]:** Is this the correct clause reference?

15. Service of Notices

15.1. Any notice, consent or approval required to be given under this Deed Agreement shall be in writing and shall be delivered personally or sent by pre-paid first class or recorded delivery post or through any document exchange of which the intended recipient is a member.

15.2. The address for service of any such notice, consent or approval as aforesaid shall be the address given in this Deed Agreement for each of the parties hereto or such other address for service as shall have been previously notified in writing by the intended recipient to the party desiring to effect service.

15.3. A notice, consent or approval under this Deed Agreement shall be deemed to have been served as follows:

- (a) ~~i~~is personally delivered at the time of delivery; and
- (b) ~~i~~f posted at the expiration of two Working Days 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom.

~~a~~And in proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice, consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid first class or recorded delivery envelope (as appropriate).

16. VAT

16.1. All consideration set out in this Deed Agreement is exclusive of VAT.

16.2. If VAT is, or becomes, properly chargeable on any supply made pursuant to this Deed Agreement, the recipient of that supply shall pay to the supplier an amount equal to such VAT in addition to the consideration for that supply, against receipt of a valid VAT invoice. The recipient of any such supply shall pay to the supplier an amount equal to any VAT which is chargeable in respect of the supply in question on the later of:

- (a) ~~t~~he day on which the consideration for the supply is paid or given; and
- (b) ~~p~~roduction of a valid proper VAT invoice.

16.3. Where a person (the "payer") has paid an amount to any other person (the "payee") on the basis that the payee was entitled to that amount under cClause 16.2 above, but the payee was not properly entitled to the whole or part of that amount under that cClause, then:

- (a) If the payee has not accounted for such amount (or such part thereof) to HM Revenue and Customs~~RC~~, the payee shall forthwith repay such amount (or such part thereof) to the payer and issue an appropriate credit note to the payer; or
- (b) If the payee has accounted for such amount (or such part thereof) to HM Revenue and Customs~~RC~~, the payee shall, if, when and to the extent that it receives repayment or credit for such amount from HM Revenue and Customs~~RC~~, repay such amount (or such part thereof) to the payer and issue an appropriate credit note to the payer.

## 17. Costs

- 17.1. The Owners agree to pay CWACC's reasonable legal costs incurred in the preparation and execution of this Deed Agreement.
- 17.2. CEC hereby acknowledge receipt of a payment of £250 (plus VAT) by the Owners as a contribution towards its legal and other costs incurred in the preparation and execution of this Deed Agreement.

## 18. Severance

- 18.1. If any provision of this Deed Agreement shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions of this Deed Agreement shall not in any way be deemed thereby to be affected or impaired.

## 19. Contracts (Rights of Third Parties) Act 1999

- 19.1. Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Deed Agreement shall be enforceable by a third party who is not a party to the Deed Agreement and for the avoidance of any doubt the terms of the Deed Agreement may be varied by agreement between the Parties without the consent of any third party being required.

## 20. Community Infrastructure Levy

- 20.1. If ~~following completion of after the date of~~ this Deed Agreement there shall be enacted any "tax" related to the grant of planning permission (whether the community infrastructure levy or otherwise) and the terms of such tax mean that any obligations under this Deed Agreement or under any condition attached to the Order change or that the Owners must pay a sum to any person (whether to HM Government or to WBC or otherwise) which would duplicate, add to or overlap with any obligation of a party under this Deed Agreement then the Parties agree that the terms of this Deed Agreement may at the election of the party affected be

Comment [JV9]: Who are WBC?

modified to such extent (if any) as is necessary to provide terms which are financially and practically no less advantageous and no more onerous than the terms of this Deed Agreement as at the date that they are entered into.

## **21. JURISDICTION**

21.1. This Deed is governed by and interpreted in accordance with the law of England and the Parties submit to the non-exclusive jurisdiction of the courts of England.

## **22. DELIVERY**

22.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

## **23. GOOD FAITH**

23.1 The Parties agree with each other to act reasonably and in good faith in the discharge of the development consent obligations contained in this Deed.

## **24. CHANGE IN OWNERSHIP/DISPOSITIONS**

24.1 The Owners agree with CWAC and CEC to give CWAC and CEC written notice within 14 (fourteen) Working Days of any change in ownership of any of its interests in the Application Site or S.106 Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's name and address (if a company or usual address if not) together with the area of the land on the Application Site or S.106 Site that has been purchased by reference to a plan.

**Comment [JV10]:** The Council will also require notification of a change in ownership at the Stublach Site

## **25. COUNCIL'S POWERS**

Nothing in this Deed shall fetter the statutory rights, powers or duties of CWAC or CEC.

**IN WITNESS** whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

The common seal of **CHESHIRE WEST AND CHESTER BOROUGH COUNCIL** )

wAs hereunto affixed and this document thereby executed )

aAs a deed in the presence of: )

.....  
Authorised Signatory

The common seal of **CHESHIRE EAST CHESTER COUNCIL** )

wAs hereunto affixed and this document thereby executed )

aAs a deed in the presence of: )

.....  
Authorised Signatory

Executed as a Deed by **KEUPER GAS STORAGE LIMITED** )

aActing by: )

.....  
Director

.....  
Director/Secretary

Executed as a Deed by **INEOS ENTERPRISES GROUP LIMITED** )

aActing by: )

.....  
Director

.....  
Director/Secretary

Executed as a Deed by **INOVYN ENTERPRISES LIMITED** )

aActing by: )

.....  
Director

.....  
Director/Secretary

## Schedule 1

### Application Site

1. The Land at Holford Brinefields, Northwich, Cheshire as shown for identification purposes only edged in red on Plan 1 against which his Deed shall be enforceable.

**Comment [JV11]:** Please explain why the Application Site and S106 Site have been separated and why two plans have been provided?

### S.106 Site

2. The Land as shown for identification purposes only edged in red on Plan 2 and being registered at HM Land Registry under the following title numbers Title Reference Numbers:

- 2.1 CH506147
- 2.2 CH507364
- 2.3 CH509074

against which this Deed shall be enforceable.

## Schedule 2

### The Project

1. The Project comprises of the construction and use of an underground gas storage facility under and on land situated on the Application Site. The Project is a Nationally Significant Infrastructure Project by virtue of:

**Comment [JV12]:** National Significant Infrastructure Project has not been defined in clause 1.

- Sections 14(1)(c) and 17(1) of the 2008 Act; the Project is in England and has a working capacity of at least 43 million standard cubic metres; and
- Sections 14(1)(g) and 21(1) of the 2008 Act, as the system of pipes that form part of the Project and are required to convey brine, nitrogen and natural gas are cross-country pipe-lines that would, but for s.33(1) of the Act, require authorisation under s.1(1) of the Pipe-lines Act 1962 (being in excess of 16.093 kilometres in total aggregate length), and begin and end in England.

2. The Project includes the development of 19 gas storage cavities constructed at a depth of between 450 and 850 metres below ground surface level, formed by controlled solution mining; 19 gated access wellhead compound areas, a network of water, gas, nitrogen and brine pipelines, solution mining compound, a network of power, communication and fibre optic cables, site access road network, connection to the National Transmission System TS, a gas processing plant, an office control and maintenance building, construction laydown areas, car parking spaces, sewer pipelines, two gas marshalling compounds, electrical compounds,

substation compounds and supply cables, diversion of existing overhead cables, a series of precise level points, and further works falling within the scope of the Environmental Impact Assessment.

### **Schedule 3** **Owners' Covenants**

#### **1. Local Liaison Group**

- 1.1. ~~Within 10 (ten) Working Days of the Development Consent Order being made t~~The Owners shall ~~not implement the Order until they have submitted~~ to CWACC and CEC for their written approval a scheme detailing the proposed establishment membership, terms of reference and frequency of a Local Liaison Group ~~and CWCC and CEC have approved in writing the said scheme~~ (such approval not to be unreasonably withheld or delayed).
- 1.2. The Owner's shall fully implement carry out the scheme in accordance with CWACC's and CEC's approval unless otherwise agreed in writing with CWACC and CEC until the date of the Decommissioning Notice or a date agreed in writing with CWACC and CEC for the closure of the Local Liaison Group whichever date shall be the later.
- 1.3. The Owners shall circulate copies of the minutes of the Local Liaison Group's meetings to both CWACC and CEC within 14 (fourteen) Working Days of the said meeting.

#### **2. HGV Routing Obligation**

- 2.1. ~~Within 10 (ten) Working Days of the Development Consent Order being made t~~the Owners shall submit to CWACC and CEC for their written approval (such approval not to be unreasonably withheld or delayed) details of the written instructions and means of communication of the Routing Plan the Owners propose to use to inform all KGSL employees, agents, contractors and suppliers as to the Approved Route to be observed by ~~a~~ HGV on a Relevant Journey.
- 2.2. The Owners shall inform all KGSL employees, agents, contractors and suppliers as to the Approved Route to be observed by an HGV on a Relevant Journey ~~in accordance with~~within 10 Working Days of CWACC's and CEC's written approval of the Routing Plan being given.
- 2.3. The Owners shall for the lifetime of the Project ensure that the approved HGV Routing Plan is fully implemented and complied with at all times to the satisfaction of CWAC and CEC and the Owners will maintain a comprehensive written record



detailing any non-compliance with the Approved Route by any employees, agents, contractors and suppliers and will take sanctions against non-compliance by such employees, agents, contractors and suppliers (including the prohibition of a specified driver from accessing or egressing the Application Site on a Relevant Journey who has committed 23 breaches of the HGV Routing Obligation within a period of 365 days). The Owners shall provide a copy of the written record of non-compliance to CWAC and CEC within 10 Working Days of a request made by either CWAC or CEC in writing.

2.4. Within 10 (ten) Working Days of the Development Consent Order being made the Owners shall submit to CWAC and CEC (in their capacity as local highway authority) for their written approval a scheme for providing highway signage to direct all HGV's accessing and egressing the Application Site on a Relevant Journey to the Approved Route.~~In consultation with CWCC and CEC (in their capacity of Local Highway Authority) the Owners shall determine the need and shall provide at their own cost for the erection of highway signage to direct HGVs accessing and egressing the Application Site on a Relevant Journey to the Approved Routes.~~

2.5. The Owners shall not Implement the Project until they have provided[installed/arranged for the installation of] at their own expense the highway signage in accordance with the scheme approved by CWAC and CEC as per paragraph 2.4 above.

### 3. Notice of Commencement of Construction and Completion of Works

3.1. The Owners covenant and agree- not to Implement any new phase or carry out any development required as part of the Project contemporaneously with the construction of the final phase (last eight cavities) of the Stublach Gas Storage Project.

**Comment [JV13]:** Stublach Gas Storage Project will need to be defined in clause 1 and reference provided

3.2. The Owners covenant and agree not to:

- 3.2.1 Implement any phase of the Project; or
- 3.2.2 convert any phase of the Project to gas storage

**Comment [JV14]:** Too vague, phase needs to be defined. A Phasing/Implementation Plan will need to be submitted to the Council.

unless written notice has been provided to CWACC not less than 30 14 (thirty) Working Days days prior to such Implementation or conversion.

3.3. Where cavity reference numbers for any phase of the Project differ from those provided in the phasing drawings contained in the Application, the Owners agree not to Implement that phase of the Project unless written notice has been provided to CWAEC not less than 30 (thirty) Working- Days prior to such Implementation or conversion.

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**Schedule 4**  
**CWACC's Covenants**

**1. Acting Reasonably and Deemed Approvals**

- 1.1. Where in this Deed Agreement it is stated that CWACC's consent, approval or agreement is not to be unreasonably withheld or delayed, CWACC agrees to confirm its approval or otherwise of submitted schemes within 35 Working Days ~~days~~ of the date of receipt of such schemes, or such longer period as may be agreed in writing between the Owners and CWACC, and in the event of it failing to respond within the said 35 (thirty five) Working Days ~~days~~ that the Owners may proceed with the Implementation of the Project on the basis that such scheme has been approved by CWACC.

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**Schedule 5**  
**CEC's Covenants**

**1. Acting Reasonably and Deemed Approvals**

- 1.1. Where in this Deed Agreement it is stated that CEC's consent, approval or agreement is not to be unreasonably withheld or delayed, CEC agrees to confirm its approval or otherwise of submitted schemes within 35 Working Days days of the date of receipt of such schemes, or such longer period as may be agreed in writing between the Owners and CEC, and in the event of it failing to respond within the said 35 (thirty five) Working Days days that the Owners may proceed with the Implementation of the Project on the basis that such scheme has been approved by CEC.

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**Annex 1**

**PLAN 1**

**Application Site Plan**

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Annex 2

PLAN 2

s.106 Plan

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Annex 3

HGV Routing Plan

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