



## **Keuper Gas Storage Project**

Written Summary of Applicant's  
submissions in relation to  
representations made by the Canal  
& River Trust

**August 2016**

Application Reference No:  
EN030002

# **KEUPER GAS STORAGE PROJECT**

## **WRITTEN SUMMARY OF APPLICANT'S SUBMISSIONS IN RELATION TO REPRESENTATIONS MADE BY THE CANAL & RIVER TRUST**

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<b>Author:</b>	<b>Zyda Law 60 Cygnet Court Stratford upon Avon Warwickshire CV37 9NW</b>
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**Written summary of Applicant's submissions at the Issue Specific Hearing on 28<sup>th</sup> July 2016 in relation to representations made by the Canal & River Trust ("the CRT")**

- 1 There was a discussion of the CRT's letter of 25<sup>th</sup> July 2016 and of its submissions generally in respect of the draft DCO during the examination process. The CRT's submissions may be summarised as concerns about the grant of powers of compulsory purchase in respect of CRT land and about the grant of "compulsory powers" to enter or carry out works on CRT land, or to discharge into the waterway.
- 2 The Applicant pointed out that there are no proposals to exercise powers of compulsory purchase over any CRT land. Further, the Applicant stated that it does not accept that any of the powers in articles 16-19 can be characterised as powers of compulsory purchase of land or rights over land.
- 3 This is significant, as, where land or rights over land are proposed to be acquired compulsorily, the Secretary of State must be satisfied that there is a compelling case in the public interest for such acquisition. To the extent that the test applies in this case, the Applicant submits that it is satisfied. The Applicant submits, however, that the test does not apply in respect of articles 16-19.
- 4 Those articles grant powers to undertake activities on land. They do not grant any proprietary rights, such as easements. The CRT does not lose any part of its title, nor are any rights carved out of it. The reason for the requirement of a compelling case in the public interest when considering the compulsory acquisition of rights is that a party will lose something by force. That is not the case here.
- 5 As such, the Applicant submits that, while the Secretary of State must be satisfied that the powers in articles 16-19 are appropriate, the higher threshold of a compelling case in the public interest does not apply.
- 6 The Applicant acknowledges that an option agreement is in place between its parent company and the CRT that grants some of the rights necessary to construct, use and maintain the authorised development. It does not accept, however, that this private agreement provides all of the powers necessary to do so. The example was provided of the potential requirement to carry out protective works to the Telford Wall during decommissioning, which would be authorised by article 17 of the DCO. The Applicant considers that the Protective Provisions provide the CRT with a high degree of protection. As such, to the extent that the CRT maintains any objection to the making of the Order, the Applicant submits that it should not be upheld.
- 7 In order to assist in the consideration of this matter, the Applicant has set out in the table below an analysis of the powers contained in articles 16-20 of the draft DCO, the limitations on those powers, and the degree to which their exercise is restricted by the Protective Provisions in Part 3 of Schedule 9.

Article	Summary of Power	Restrictions on Power	Protective Provisions (“PPs”)
16	<p>To use any watercourse or public sewer for drainage of water (including power to lay down pipes and make connections).</p> <p>To make openings into and connections with watercourses, public sewers or drains within the Order limits.</p>	<p>Must not discharge into any watercourse, public sewer or drain without the consent of the person to whom it belongs. Such consent may be given subject to conditions.</p> <p>Must not make an opening in any public sewer or drain except in accordance with plans approved by the person to whom it belongs.</p> <p>Must not damage or interfere with the bed or banks of any watercourse forming part of a main river.</p> <p>Must take reasonable steps to ensure that water discharged is as free as may be practicable from gravel, soil or other solid disturbance, oil or matter in suspension.</p>	<p>Other than for surface water discharge, PP26(4) prohibits the discharge of water into the waterway other than with the consent of the CRT.</p> <p>PP25(1) provides that the following conditions may be imposed on any consent to discharge under article 16:</p> <ul style="list-style-type: none"> <li>(a) requiring the payment of such charges as are typically charged by the owner of the relevant waterway;</li> <li>(b) specifying the maximum volume of water which may be discharged in any period; and</li> <li>(c) authorising the CRT on giving reasonable notice (except in an emergency, when the CRT may require immediate suspension) to require the undertaker to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement.</li> </ul>

<p>17</p>	<p>To carry out protective works to any building within the Order limits.</p>	<p>Except in the case of emergency, the undertaker must serve on the owners and occupiers not less than 14 days' notice of its intention to exercise the right.</p> <p>Owner / occupier may serve a counter-notice within 10 days requiring the question of whether it is necessary or expedient to carry out the works to be referred to arbitration under article 40.</p>	<p>PP27 requires the undertaker to obtain the consent of CRT before commencing construction of "<i>any specified work or carrying out any works on Canal &amp; River Trust property whatsoever</i>".</p> <p>PP27 also contains a detailed scheme making provision for:</p> <ul style="list-style-type: none"> <li>(a) the approval of plans of the proposed works;</li> <li>(b) the right of the CRT to undertake the proposed works itself at the undertaker's cost;</li> <li>(c) the right of the CRT to specify protective works to be carried out by the undertaker; and</li> <li>(d) the payment of a capitalised sum by the undertaker to the CRT for the maintenance of any works constructed.</li> </ul> <p>PP28 prohibits the use of CRT land forming part of the waterway for the passage or siting of vehicles, plant and machinery other than with the consent of the CRT.</p>
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<p>18</p>	<p>For the purposes of the Order enter on any land within the Order land or which may be affected by the authorised development and:</p> <ul style="list-style-type: none"> <li>(a) Survey and/or investigate the land;</li> <li>(b) Make trial holes to investigate the nature of the surface layer and/or subsoil and/or remove soil samples;</li> <li>(c) Carry out ecological and archaeological investigations;</li> <li>(d) Place, leave and remove apparatus for use in connection with the survey and/or investigation and/or making of trial holes.</li> </ul>	<p>14 days' written notice must be given to every owner and occupier.</p> <p>Any person entering land under this power must, if so required on entry, produce written evidence of their authority to do so.</p> <p>No trial holes may be made:</p> <ul style="list-style-type: none"> <li>(a) In a highway without the consent of the highway authority; or</li> <li>(b) In a private street without the consent of the street authority.</li> </ul>	<p>PP26(5) prohibits the exercise of powers under article 18 without the consent of the CRT.</p> <p>PP26(4) prohibits the exercise of powers conferred by the Order so as to prevent pedestrian or vehicular access to CRT property unless it is with the consent of CRT.</p> <p>PP27 contains the prohibitions on "carrying out any works on Canal &amp; River Trust property whatsoever" without CRT's consent, as set out in more detail above in relation to article 17.</p>
<p>19</p>	<p>For the purposes of the carrying out and maintenance of the authorised development temporarily close, prohibit the use of or restrict the use of the part of the canal specified in columns (1) and (2) of Schedule 7.</p>	<p>No more of the relevant part of the canal may be closed to navigation at any time than is necessary in all the circumstances.</p> <p>If complete closure is required, all reasonable steps must be taken to ensure that the period of closure is kept to a minimum and that the minimum obstruction, delay or interference is caused.</p> <p>The undertaker must:</p>	

		<ul style="list-style-type: none"><li>(a) take such reasonable steps as are necessary to ensure that the functioning of any intake or discharge along the canal is unaffected;</li><li>(b) keep any interference with water levels or flow to a minimum reasonably necessary;</li><li>(c) take reasonable steps to ensure that persons in control of barges or other vessels or craft in the canal are made aware of any temporary closure, prohibition or restriction of use; and</li><li>(d) provide such emergency assistance as may reasonably be requested by persons in control of barges or other vessels or craft in the canal following an accident or mechanical failure, for the safety of persons on board and/or the recovery of the barge, vessel or craft to a location where it can be safely be moored and accessed.</li></ul>	
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20	To compulsorily acquire land.	Land that may be acquired is restricted to that described in the book of reference and shown on the land plans.	PP26(1) prohibits the exercise of the powers conferred by article 20 against any CRT property.
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In addition to the specific provisions set out above, the PPs also set out a detailed scheme providing for, amongst other things:

- The payment by the undertaker of the reasonable costs of a surveyor to carry out a survey of the waterway (PP29);
- The undertaker to consult with the CRT on the design and appearance of the specified works, and their environmental effects (PP30);
- The manner in which the works must be carried out (PP30);
- The undertaker to give 30 days' notice of its intention to carry out works (PP31);
- The payment by the undertaker of the CRT's costs, expenses, losses, etc., in respect of the works (PPs30, 35-37).