



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

Keuper Gas Storage Project

**Examining Authority's Report of Findings, Conclusions
and
Recommendation to the**

Secretary of State for Business, Energy and Industrial Strategy

Examining Authority

Jonathan Green

15 December 2016

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Examining Authority's findings and conclusions and recommendation in respect of the Keuper Gas Storage Project

File Ref EN 030002

The application, dated 24 November 2015, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 24 November 2016. The Applicant is Keuper Gas Storage Limited.

The application was accepted for examination on 22 December 2015.

The examination of the application began on 16 March 2016 and was completed on 16 September 2016.

The proposed development comprises the construction of an underground gas storage facility at the Holford Brinefield in Cheshire. This would be made up of 19 underground gas storage cavities constructed through solution mining and other associated development.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should make the Order in the form attached subject to prior signing of a s106 agreement.

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The Planning
Inspectorate

ERRATA SHEET – Keuper Gas Storage Project - Ref. EN030002

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Business, Energy and Industrial Strategy dated 15 December 2016

Corrections agreed by the Examining Authority prior to a decision being made

Page No.	Paragraph	Error	Correction
1		The receipt date of the application is given as '24 November 2016'	Replace '2016' with '2015'

1 INTRODUCTION

- 1.1.1 This application for a development consent order (DCO) for the Keuper Gas Storage Project was submitted by Keuper Gas Storage Limited (the Applicant) on 24 November 2015 [APP-001].¹ The application was formally accepted for examination on 22 December 2015 under the provisions of section 55 of the Planning Act 2008 (as amended) (PA 2008) [PD-001]. On the same day I, an Examining Inspector with the Planning Inspectorate, was appointed as Examining Authority (ExA) by the Secretary of State to carry out the acceptance and subsequent examination of the application [PD-004].
- 1.1.2 The application is for the construction, operation and maintenance of an underground gas storage facility with the capacity to store a working gas volume of approximately 500 million standard cubic metres (mcm) of natural gas with an import and export capability of up to 34mcm per day. This would comprise 19 underground gas storage cavities within a depth range of 450m and 850m below ground level to be formed by solution mining of brine. The main development of the gas storage cavities would be located in the Holford Brinefield in Cheshire, England. As such the proposed development meets the definitions of an underground gas storage facility in s17(2) and 17(4) of PA 2008 and qualifies as a Nationally Significant Infrastructure Project (NSIP) as defined in s14(1)(c) of PA 2008.
- 1.1.3 The application also seeks consent for associated development which is ancillary to the construction, operation and maintenance of the underground gas storage facility. This includes 19 gated access wellhead compounds each connecting the well head to the underground cavity. These compounds would contain equipment required during drilling, solution mining, gas conversion and gas storage. Pipelines would be required on the site for the transport of water, brine, nitrogen and natural gas with connections to existing water, brine and gas networks. A solution mining compound would act as the collecting and processing point for brine during the solution mining phase of the project. A gas marshalling compound and gas processing plant would manage the flows of gas in and out of the underground storage facility. A 132kV to 33kV substation would be required to provide power for the operations. This would be linked to the existing 132kV infrastructure requiring one new pylon to be erected.

¹ References such as APP-001, PD-001 are to documents listed in the Examination Library set out in Appendix B.

- 1.1.4 Brine from solution mining would be transported through an existing pipeline owned by INOVYN Enterprises Limited (IEL), an associate company of the Applicant, to IEL's plant at Runcorn. The existing pipeline would be strengthened by the installation of a new pumping tank and surge vessel at the existing works at Lostock and by the refurbishment and recommissioning of the Whitley pumping station. The brine pipeline would be extended at Runcorn to allow any excess brine not required by IEL or its customers to be discharged into the Manchester Ship Canal (MSC). This would require the construction of a pipeline bridge and walkway over the Weaver Navigation and the installation of a buried pipeline in the Telford Wall which separates the Weaver Navigation from the MSC. All the works required are listed separately in the draft DCO submitted with the application [APP-123] and have been subject to some amendments for clarification purposes during the course of the Examination. The draft DCO includes provision for compulsory acquisition (CA).
- 1.1.5 The application is Environmental Impact Assessment (EIA) development as defined by Regulation 2(1) of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended). It was accompanied by an Environmental Statement (ES) which in my view complies with these Regulations [APP-179]. The ES was compiled following consultation on an earlier Scoping Report and takes into account the views of the Secretary of State set out in a Scoping Opinion published in April 2014. Annex C of the ES sets out how the Applicant has addressed comments raised in the Secretary of State's Scoping Opinion [APP-180]. Chapters 5, 16 and 20 of the ES provide a description of the proposed development and associated development. The location of each of the main elements can be seen in Figures 1.1, 1.2 and 5.3 of the ES. The ES was supplemented by other environmental information during the course of the Examination in response to questions and representations from other parties. An 'Environmental Statement clarifications and errata' document was submitted by the Applicant towards the close of the Examination [REP7-012 to REP7-014].
- 1.1.6 The application has been examined under the provisions of PA 2008 and The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended). The accepted application was advertised by the Applicant and 22 Relevant Representations (RR) were received from Interested Parties (IP) [RR-001 to RR-022]. In addition I accepted four late representations all submitted prior to the Preliminary Meeting (PM) [AS-001 to AS-004].
- 1.1.7 On 22 February 2016 I gave notice of the PM to be held in Crewe, Cheshire on 16 March 2016 and issued an assessment of principal issues that I expected to consider during the Examination and a draft timetable for the Examination [PD-005]. On 23 March 2016 I issued the timetable for the Examination, my first set of written questions

and requests for information [PD-006 and PD-007]. A second round of questions was issued later in the Examination [PD-010].

- 1.1.8 Local Impact Reports (LIR) were submitted by Cheshire West and Chester Council (CWAC) and Halton Borough Council (HBC) [REP2-034 and REP2-037].
- 1.1.9 A first issue specific hearing (ISH) on the draft DCO was held immediately following the PM on 16 March 2016. Two further ISH to discuss the local environmental impact of the project and the draft DCO were held on 25-26 May 2016 and 28 July 2016. A compulsory acquisition hearing (CAH) was held on 23 May 2016. There was no request for an open floor hearing and one was not held.
- 1.1.10 I carried out an accompanied site visit (ASV) on 24 May 2016 during which I visited the proposed site for the underground gas storage cavities and associated development, the neighbouring gas storage facility, the Whitley pumping station and the Runcorn works where the pipeline bridge across the Weaver Navigation and pipeline to the MSC would be installed. I also made unaccompanied site visits to public locations from which the application sites are visible. A list of events in the Examination is set out in Appendix A.
- 1.1.11 In addition to the DCO the proposed development may require a number of separate permits or licences. These include:
- Mitigation licences in respect of European Protected Species and badgers;
 - Flood Defence Consents²;
 - Hazardous Substance Consents; and
 - A Gas Transporter licence.
- 1.1.12 The Applicant would be required to notify the Health and Safety Executive (HSE) of the drilling of boreholes and the construction and use of a major accident hazard pipeline. It would also need to sign a connection agreement with National Grid (NG) covering the flow of gas in and out of the National Transmission System (NTS). Discussions with the relevant licencing and permitting authorities and with NG have not identified any major obstacles to the Applicant obtaining the necessary licences, consents and agreements.
- 1.1.13 Following discussions, the Environment Agency (EA) confirmed their view that gas storage operations do not require an Environmental

² Subsequent to the submission of the application for development consent, Flood Defence Consents have been replaced by Environmental Permits under the Environmental Permitting (England and Wales) Amendment (no 2) Regulations 2016).

Permit (EP) as the dehydration and decompression activities associated with the gas processing plant do not constitute gas refining activities as defined under the Environmental Permitting Regime 2010(EPR) [REP2-015]. The Applicant has also confirmed that it has entered into a heads of terms agreement with its associated company IEL which states that IEL will use its brine and water infrastructure to support the Applicant [APP-177]. Water required for the development would be obtained using existing water abstraction licences held by IEL and any discharge of brine into the MSC would be covered by the existing EP [EPR/DP3424GK] held for this purpose by IEL [APP-177].

- 1.1.14 There is one European site as defined in Regulation 3 of the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations) within 10km of the proposed development namely the West Midland Mosses Special Area of Conservation (SAC). There are also two Ramsar sites in the vicinity, the Midland Meres and Mosses Phase 1 Ramsar site and the Midland Meres and Mosses Phase 2 Ramsar site. A Habitats Regulations Screening Assessment confirmed the Applicant's view that there were no likely significant effects (LSE) on these sites either alone or in combination with other plans or projects [APP-205]. This finding was also accepted by Natural England (NE) [RR-011]. On this basis and on the basis of the assessment provided I did not consider it necessary to prepare a Report on the Implications for European Sites (RIES). This is considered further in Chapter 6 of this Report.
- 1.1.15 In accordance with sections 83(1)(b)(i) and (ii) of PA 2008, this report sets out my findings and conclusions in respect of the application and my recommendation to the Secretary of State on the decision to be made on the application.

2 MAIN FEATURES OF THE PROPOSAL AND SITE

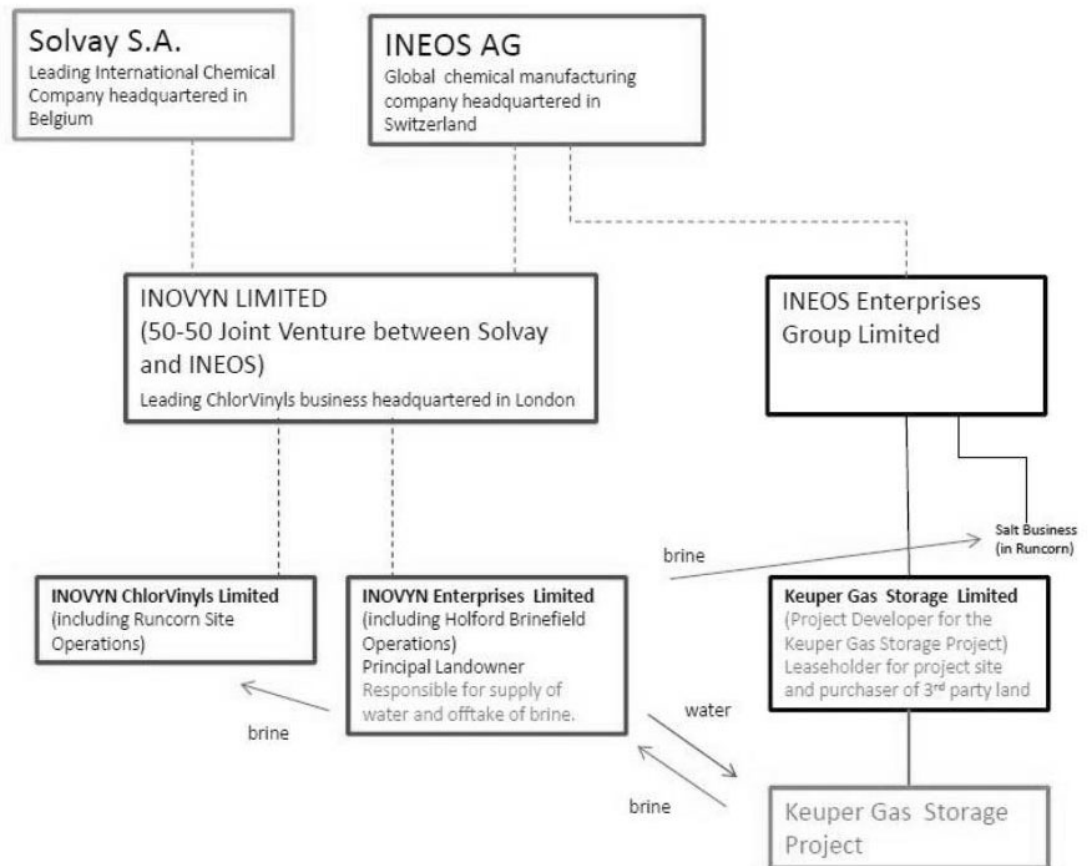
2.1 THE APPLICANT AND THE APPLICATION SITE

2.1.1 The Applicant is a special purpose vehicle incorporated to promote the construction, operation and eventual decommissioning of the proposed development. Information on the Applicant, the application site and the proposed development is presented in summary form in the Project Overview [APP-186]. Further detail is set out in the ES [APP-179].

2.1.2 The Applicant is a wholly owned subsidiary of INEOS Enterprises Group Limited (IEGL) part of the INEOS group of companies which manufactures petrochemicals, speciality chemicals and oil products worldwide. IEL is a partner company to the Applicant. IEL is part of a recently formed joint venture between INEOS AG with headquarters in Switzerland and Solvay SA an international chemical manufacturer based in Belgium. IEL has an established track record in solution mining of salt in the Holford Brinefield and, with other business partners, in development of underground gas storage. The proposed development would be the third such development in the area undertaken by IEL.

2.1.3 IEL is the principal landowner for much of the site required for the proposed development. IEL would be responsible for the supply of water to the development and the offtake of brine which would be supplied to other associated companies based at Runcorn through existing pipelines. The links between the various companies involved are shown in Figure 2.1.

Figure 2.1: Overview of corporate relationships.



Source: Project Overview - Figure 3.1 [APP-186]

- 2.1.4 Three separate locations which would be affected by the development are considered in the ES. The area where the underground gas storage cavities would be created - the main assessment area (MAA), the Whitley pumping station (the Whitley site) and the Runcorn outfall (the Runcorn site).
- 2.1.5 The MAA is an area of open Cheshire countryside principally used for dairy farming. It consists of grassland fields separated by a network of hedgerows, some small areas of woodland and a large number of ponds. The Puddinglake Brook crosses the site. The MAA is relatively flat with hedgerows limiting views across the site. The A530 runs to the west of the MAA and there are four public rights of way (PROW) that cross or run alongside the MAA. Drakelow Hall moat and fishponds is a scheduled monument (SM) which lies within the MAA but is excluded from the order limits for the development. There are 13 farmhouses or other dwellings in or near to the MAA (ES figure 9.1). The village of Byley lies immediately to the south east and the village of Lach Dennis to the north of the MAA. The town of Northwich is some 5km to the north-west (ES figures 5.1 and 5.2).

- 2.1.6 The MAA lies within the Holford Brinefield, an area from which brine has been extracted for many years. There are two existing gas storage facilities in the immediate vicinity. Stublach Gas Storage to the north of the MAA is in the final phase of development and Holford Gas Storage, part of which lies within the MAA on land leased from IEL, which is in full operation.
- 2.1.7 The Whitley site is the location of an existing but out of service pumping station connected to a pipeline that was used for excess brine not required by customers and sent for discharge at Runcorn. It is located on Marsh Lane a small rural lane around 1km to the west of Lower Whitley in Cheshire. It is adjacent to Newholme Farm and Marsh Lane Farm is situated approximately 150m to the north-west (ES figures 16.1 and 16.2).
- 2.1.8 The Runcorn site is the location for the proposed construction of a new brine discharge outfall to allow brine not sold to customers to be discharged into the MSC. This would replace an existing discharge point into the Weaver Navigation which in this location runs alongside the MSC. The site is heavily industrialised. The proposed development would involve the building of a pipeline bridge to transport brine across the Weaver Navigation then through a pipeline buried in the Telford Wall, which separates the Weaver Navigation from the MSC, before discharging into the MSC. The Mersey estuary lies to the North and West of the MSC and the Weaver Navigation (ES figures 20.1 and 20.2).
- 2.1.9 In addition to the three assessment areas, work would also be required at the existing brine purification plant at Lostock owned and operated by IEL. This would involve the installation of an additional pumping tank and surge vessel within the footprint of the existing business. This was considered by the Applicant to constitute minor works and was unlikely to have any significant direct or indirect effects on the environment but was referenced in the ES for completeness. I accept that assessment.

2.2 THE NSIP AND ASSOCIATED DEVELOPMENT

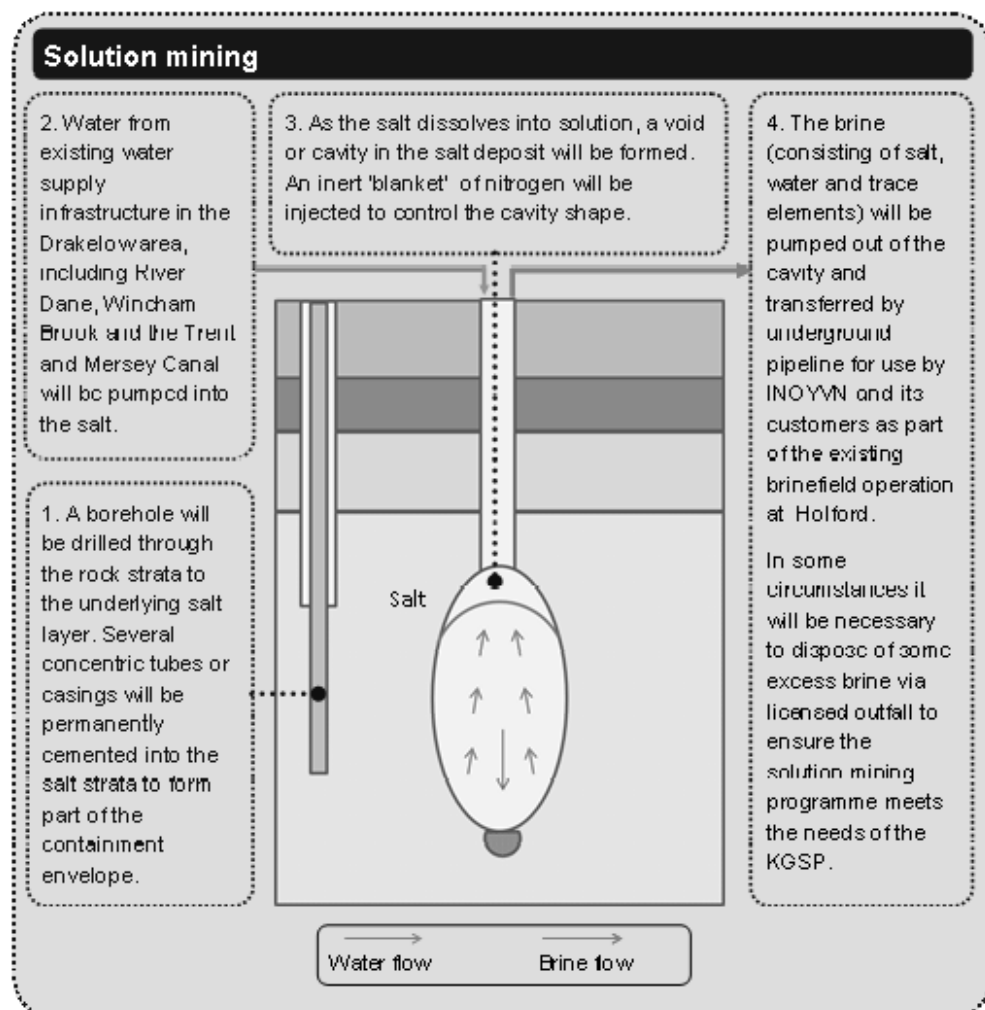
- 2.2.1 The end objective of the proposed development is the creation of 19 underground cavities at the MAA which would be used for the storage of natural gas. As noted above this constitutes an NSIP. In order to create and subsequently operate the storage cavities a considerable amount of other work is required which is categorised in the application as associated development.
- 2.2.2 The MAA lies above salt deposits, known as the Northwich Halite Member, which lies between 320m and 500m below the ordnance datum level (bod) and has a thickness of between 240m and 300m.

It is composed of halite (rock salt) with thin interbeds and one thicker interbed of mudstone, also known as marl.

2.2.3 Solution mining of the salt deposit and the extraction of brine forms the first stage in the proposed development. This creates a cavity which can then, with additional engineering, be used for the storage of gas in a way which allows it to be injected into the cavity at times when demand on the national gas network is low and withdrawn when demand is high. The 19 cavities, each approximately 100m by 100m in profile would be located within the halite layer and spread across the MAA taking account of known geological features and the need to maintain a minimum separation between cavities to ensure stability.

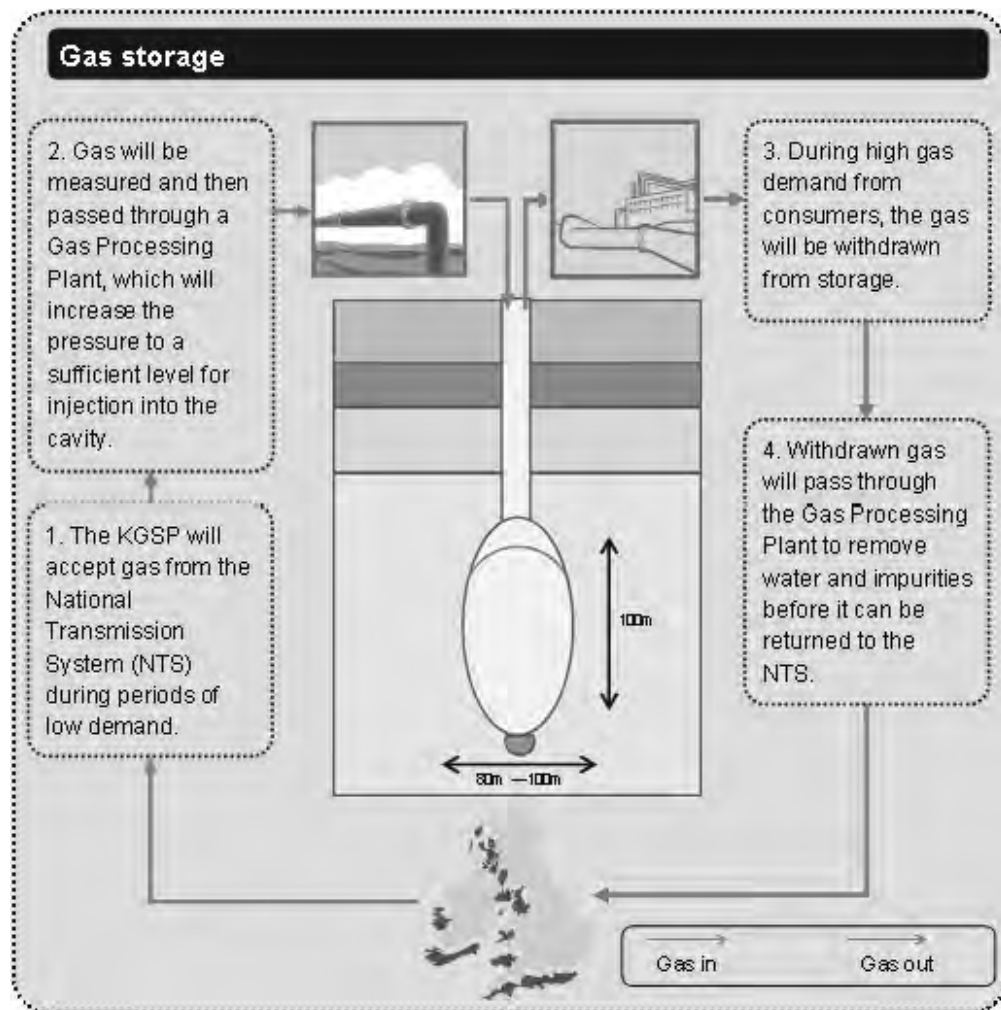
2.2.4 The process of cavity creation through solution mining and the use of the cavities for gas storage are illustrated in Figures 2.2 and 2.3 taken from the ES.

Figure 2.2: Solution Mining



Source: ES Chapter 5 - paragraph 5.5.35[APP-179]

Figure 2.3: Gas storage



Source: ES Chapter 5 - paragraph 5.6.17 [APP-179]

2.2.5 A road network would be established across the MAA linking the 19 wellheads and other facilities. A new site entrance would be constructed providing access from the existing A530 access to the Holford Gas Storage site. Separate infrastructure would be required for the solution mining and gas storage activities.

- 2.2.6 For solution mining, underground pipework for water, brine and nitrogen would be laid to each of the 19 wellheads and connected to a solution mining compound (SMC) which would contain pumping and degassing equipment, control equipment and nitrogen storage and distribution equipment. The SMC would be a single storey structure of up to 4m high with one nitrogen vent of up to 9m high. Each wellhead would be about 2m high and have its own pumping and control equipment surrounded by security fencing. A new connection would be made to an existing 33kV overhead line to supply the SMC and wellheads.
- 2.2.7 For gas storage, the cavities created by solution mining would be pressure tested and the wellheads converted for gas storage. As described in the Project Overview, this is likely to require some 24 hour working over a period of a few weeks at each location with a mobile rig 25 - 30m high to install new tubing. A specialist rig 45 - 50m high would be required for less than two weeks at each location to remove the de-brining casing. The gas wellheads installed would be less than 4m high surrounded by security fencing.
- 2.2.8 A network of gas pipelines would be installed and a gas processing plant (GPP) constructed. This would enable gas to be transferred between the cavities and the NTS through a new connection compound linking into the NTS at the north-west boundary of the MAA. The GPP would include a range of equipment including compressors, cooling and heating equipment and drying towers. The maximum height of equipment at the GPP would be 10m apart from an emergency cold vent 25m high.
- 2.2.9 Two gas marshalling compounds (GMC) would be constructed to connect the individual cavities to the GPP. These would be single storey buildings. The GPP would have a new electrical supply taken from the existing 132kV overhead line with a new electrical connection compound with associated switchgear and transformers. This would require one new pylon and approximately 1km of overhead and buried 33kV line connecting the GPP to the new sub-station. A ground plan showing the main elements in the proposed development is shown in Figure 5.3 in the ES.
- 2.2.10 The work would take place in phases. In the first phase infrastructure - principally water and brine pipelines and the SMC would be constructed for eight wellheads. Drilling to begin the creation of the first eight cavities would take place with each well taking four to five weeks to drill. Drilling would at times be a 24 hour activity but would not be continuous throughout the four to five week period. Drilling would be undertaken with a rotary drill and a vertical derrick 20 - 30m high. Solution mining (also a 24 hour activity) to create the storage cavities would begin and would last for two to three years at each location depending on the demand for brine.

- 2.2.11 While the first eight cavities are being solution mined work would begin on preparation for the second phase of solution mining with a further 6 wellheads being connected and drilled. At the same time work would begin on construction of the gas pipelines for the eight phase one wells, the GPP and the NTS connection. The third phase would begin with completion of solution mining of the first eight wells and solution mining would start on the six wells drilled in phase two. The eight first phase cavities would then be converted to gas storage and import of gas from the NTS would begin. Work would begin on infrastructure work and drilling for the final five wells. As solution mining of each well is completed final preparation for the use of the cavities to gas storage and connection to the gas infrastructure would take place.
- 2.2.12 As part of the development at the MAA it is proposed that 166 precise level points should be installed across the whole of the MAA [REP2-005 and APP-116 - APP-119]. These are metal posts driven 3.5m into the ground to allow monitoring of any ground movement [APP-120].
- 2.2.13 The full programme of work at the MAA from initial work on-site to the creation of the last of the gas storage cavities could take up to ten years. Once in operation the gas storage cavities could be in operation for up to 50 years before being decommissioned. An indicative programme of work is shown in Figure 5.4 in the ES. Bearing in mind that it is only the gas storage cavities that meet the definition of an NSIP, all of the other works at the MAA required for their construction and operation are classed as associated development.
- 2.2.14 The ES also considers the associated development work required at the Whitley and Runcorn sites. This work is required to provide improved facilities for the discharge of any brine that is not required for commercial purposes. The Applicant's aim is to find commercial uses for the brine but accepts that it is not possible to control market conditions for the extracted brine. Therefore it is necessary for the Project to make provision for disposal of brine to ensure that it can continue to operate in the event of adverse market factors. A brine network already exists for this purpose with discharge into the Weaver Navigation and MSC but the intention is to reinforce this with a new discharge point in the MSC.
- 2.2.15 This would require reinstatement of the pumping station building at the Whitley site with renewal of the electrical connection and the installation of new pumping equipment and an outdoor surge vessel. The operation of this site would be required for the whole of the solution mining phase of operations at the MAA. A summary of the features of the site and the proposed development is set out in figures 16.2 and 16.3 in the ES.

2.2.16 At the Runcorn site the existing brine pipeline would be extended to cross the Weaver Navigation. This would involve the construction of a new pipeline bridge approximately 20m high across the Weaver Navigation to the Telford Wall which separates the Weaver Navigation from the MSC. The pipeline would be buried in a shallow trench along 400m of the Telford Wall leading to a pipe diffuser at the entry into the MSC (ES figures 20.2 and 20.3).

2.3 THE APPLICATION AT THE CLOSE OF EXAMINATION

2.3.1 A number of clarifications of plans submitted with the application were provided during the course of the Examination. The only change to the application was a request to move the location of two level points in response to a representation from the landowner [AS-008 and AS-009]. I sought views on these changes [PD-011]. No comments were received and I accepted the changes as not being material [PD-013].

2.4 RELEVANT PLANNING HISTORY

2.4.1 The Applicant's associated company IEL has been involved with the development of two other underground gas storage projects which adjoin or overlap with the MAA. These are Holford Gas Storage Limited (HGSL) and Stublach Gas Storage Project (SGSP). Both of these projects predate the operation of PA 2008.

2.4.2 The application for the HGSL development was originally refused by Cheshire County Council (CCC) on the grounds that the scale and extent of the proposed development would be inappropriate in the open countryside [REP2-034]. The appeal against this decision was initially rejected by the Inspector but was allowed by the Secretary of State on the grounds that the need for the development of gas storage provided sufficient justification for the project and there would only be limited harm to the open countryside once mitigation measures were taken into account. The HGSL site is now in full gas storage operation.

2.4.3 Application to develop the SGSP of 28 cavities was submitted in 2005 and permission was granted in 2006. The first two phases of development have been completed but the final phase of eight cavities has still to be developed [REP4-010].

2.4.4 In 2007 King Street Energy Limited applied for permission to develop 10 gas storage cavities on a site to the north of and not adjacent to the MAA. Brine from this development would be discharged into the Mersey Estuary and not used for commercial purposes. This was rejected by the local planning authority on the basis of its failure to make beneficial use of the salt and minimise production of mineral waste. Permission was granted on appeal on the grounds that the

treatment of brine as waste was justifiable in the context of the immediate need for gas storage facilities. Initial development in terms of drainage and site roads has taken place but the development remains uncompleted.

3 LEGAL AND POLICY CONTEXT

3.1.1 A Policy Statement was submitted as part of the application [APP-187]. This set out the adopted and emerging national and local planning policies, energy and other policy frameworks material to the proposed development. LIRs were submitted by CWAC and HBC identifying likely impacts in their respective areas and citing relevant local policies [REP2-034 and REP2-037]. I have taken these LIRs into account in my consideration of issues in the following chapters of this report.

3.2 PLANNING ACT 2008

3.2.1 The proposed development of a gas storage facility with the capacity to store a working gas volume of approximately 500mcm of natural gas with an import and export capability of up to 34mcm per day is an NSIP as defined in section 14(1)(c), section 17(2) and section 17(4) of PA 2008.

3.2.2 The proposed development also includes the provision of a system of pipes to convey water, brine, nitrogen and natural gas within the MAA and for brine disposal at the Runcorn site. These meet the definition of an NSIP in section 14(1)(g) and section 21(1) of PA 2008 and details are set out in a Pipelines Statement submitted in accordance with regulation 6(4) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) (APFP Regulations) [APP-185]. Although the proposed development includes sufficient pipe-lines to qualify as a cross country pipe-line, this element is ancillary to the gas storage element of the development and has been considered on that basis.

3.2.3 National Policy Statements (NPS) in respect of this type of development have been designated and the Secretary of State must therefore, subject to certain exceptions, decide the application in accordance with the relevant NPS as specified in section 104(3) of PA 2008. Under section 104(2) the Secretary of State must have regard to any relevant NPS, any LIR and any prescribed matters including the Infrastructure Planning (Decisions) Regulations 2010(the Decisions regulations).

3.2.4 The Overarching NPS for Energy (EN-1) published in July 2011 sets out the Government's policy for delivery of major energy infrastructure.³ It was accompanied by five technology specific NPS

³ Overarching National Policy Statement for Energy (EN-1). Department for Energy and Climate Change July 2011. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/37046/1938-overarching-nps-for-energy-en1.pdf

for the energy sector. The NPS for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4) is relevant to this application.⁴

- 3.2.5 EN-1 states that the UK *"needs all the types of energy infrastructure covered by the NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions."* That includes gas storage facilities such as the proposed development. It also states that applications for development consent should be assessed *"on the basis that the Government has demonstrated that there is a need for those types of infrastructure."*
- 3.2.6 EN-1 sets out assessment principles and generic issues which should be taken into account in considering proposed energy sector developments. It acknowledges that other matters such as local development plans may also need to be taken into account but states that in the case of any conflict between these other documents and the NPS, the NPS prevails for the purpose of decision taking. It states *"Given the level and urgency for infrastructure of the types covered in the Energy NPSs ... the IPC should start with a presumption in favour of granting consent to energy NSIPs. That presumption applies unless more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused."*
- 3.2.7 In its assessment of gas infrastructure EN-4 states that *"Great Britain needs a diverse mix of gas storage and supply infrastructure ... to respond effectively in future to the large daily and seasonal changes in demand and to provide endurance capacity during a cold winter."* That includes 'medium-range storage' such as is provided from gas stored in cavities in salt strata deep underground. This allows companies to respond to changing market conditions on a day to day and week to week basis. The NPS recognises that the appropriate portfolio of supply sources, including storage, are commercial decisions for market participants but the strong expectation is that market participants will wish to bring forward proposals for additional gas supply infrastructure including gas storage.
- 3.2.8 EN-4 identifies a number of features of underground gas storage to which particular attention should be given in assessing any proposal. These include:

4

National Policy Statement for Gas Supply and Gas and Oil Pipelines (EN-4). Department for Energy and Climate Change July 2011.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/47857/1941-nps-gas-supply-oil-en4.pdf

- The application of the Control of Major Accident Hazards (COMAH) Regulations 1999 (now replaced by the Control of Major Accident Hazards (COMAH) Regulations 2015);
- The provision of a detailed geological assessment to demonstrate the suitability of the geology at the site for the type of underground gas storage proposed;
- Noise and vibration associated with gas storage; and
- The impact of abstraction of water for solution mining and the proposals for disposal of brine.

UK Marine Policy Statement

3.2.9 The brine outfall at the Runcorn site is located within the North West Future (Marine) Plan Area. This plan has not yet been produced in draft or final form and the Applicant has therefore had regard to the UK Marine Policy Statement (MPS). This was prepared and adopted in 2011 by all the UK administrations as part of a new system of marine planning being introduced across UK seas to facilitate and support the formulation of Marine Plans.

3.2.10 The Applicant's Policy Statement sets out how the requirements of the MPS have been taken into account in its assessment of the impact of the brine outfall at Runcorn and identifies where these have been addressed in the ES.

3.3 EUROPEAN REQUIREMENTS AND RELATED UK REGULATIONS

Habitats Directive (Council Directive 92/43/EEC)

3.3.1 The Habitats Directive forms the cornerstone of Europe's nature conservation policy. The objective of the Habitats Directive is to protect biodiversity through the conservation of natural habitats and species of wild fauna and flora. It is built around two pillars: the Natura 2000 network of protected sites and the strict system of species protection. The directive protects over 1000 animals and plant species and over 200 habitat types which are of European importance.

Birds Directive (Council Directive 2009/147/EC)

3.3.2 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union. It replaced the earlier Council Directive 79/409/EEC on the conservation of wild birds. The directive recognises that habitat loss and degradation are the most serious threats to the conservation of wild birds. It therefore places great emphasis on the protection of habitats for endangered as well as migratory species. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.

- 3.3.3 The Birds Directive bans activities that directly threaten birds, such as the deliberate killing or capture of birds, the destruction of their nests and taking of their eggs, and associated activities such as trading in live or dead birds. It requires Member States to take the requisite measures to maintain the population of species of wild birds at a level which corresponds, in particular, to ecological, scientific, and cultural requirements while taking account of economic and recreational requirements.

Conservation of Habitats and Species Regulations 2010 (as amended). The Habitats Regulations

Conservation of Habitats and Species (Amendment) Regulations 2012

- 3.3.4 The Conservation of Habitats and Species Regulations 2010 - the Habitats Regulations - replaced The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) in England and Wales and are the principal means by which the Habitats Directive is transposed in England and Wales. The Directive lays down rules for the protection, management and exploitation of such habitats and species. The Habitats Regulations apply in the terrestrial environment and in territorial waters out to 12 nautical miles. They update the legislation and consolidate all the many amendments which have been made to the regulations since they were first made in 1994.
- 3.3.5 The Conservation of Habitats and Species (Amendment) Regulations 2012 came into force on 16 August 2012. These Regulations amend the Habitats Regulations. They place new duties on public bodies to take measures to preserve, maintain and re-establish habitat for wild birds. They also make a number of further amendments to the Habitats Regulations to ensure certain provisions in the Habitats Directive (The Birds Directive) are transposed clearly.
- 3.3.6 The ES identifies a number of Special Areas of Conservation (SAC), SPAs and other protected areas which are classified as European sites for the purposes of the Habitats Regulations. The ES also identifies a number of protected species that could be affected by the proposed development. A Habitats Regulations Screening Assessment was included as part of the application documentation and subsequently updated [APP-178] and [APP-205]. This is considered further in Chapter 6 of this report.

The Water Framework Directive (Council Directive 2000/60/EC)

- 3.3.7 The Water Framework Directive (WFD) establishes a framework for the protection of inland surface waters (rivers and lakes), transitional waters (estuaries), coastal waters and groundwater. Under the terms

of the Directive, Member States are required to establish river basin districts and corresponding river basin management plans outlining how the environmental objectives outlined in Article 4 of the Directive are to be met.

- 3.3.8 In determining an application for a DCO, the Secretary of State must be satisfied that the Applicant has had regard to relevant river basin management plans and that the proposed development is compliant with the terms of the WFD and its daughter directives.
- 3.3.9 Regulation 5(2)(l) of the APFP Regulations requires an application for an NSIP to be accompanied by *"where applicable, a plan with accompanying information identifying-... ..(iii) water bodies in a river basin management plan, together with an assessment of any effects on such sites, features, habitats or bodies likely to be caused by the proposed development"*.
- 3.3.10 Puddinglake Brook and the River Mersey are identified in the ES in Figures 5.2 and Figure 25.1 respectively. The effects on the relevant water bodies are discussed in the ES (Chapters 7 and 25).
- 3.3.11 The Environment Agency was satisfied with the conclusion of 'no deterioration' for relevant surface and groundwater bodies [REP5-015].

3.4 OTHER LEGAL AND POLICY PROVISIONS

United Nations Environment Programme Convention on Biological Diversity 1992

- 3.4.1 The UK Government ratified the Convention on Biological Diversity in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs (DEFRA) which promotes the integration of biodiversity into policies, projects and programmes within Government and beyond. This is of relevance in respect of ecology and landscape matters which are considered in Chapter 5
- 3.4.2 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, I have had regard to this Convention in considering the likely impacts of the proposed development and appropriate objectives and mechanisms for mitigation and compensation. I find that compliance with the UK provisions on environmental impact assessment and transboundary matters, referred to below, satisfies the requirements of Article 14, with regard to impacts on biodiversity.

Transboundary effects

- 3.4.3 The Secretary of State undertook a screening exercise to determine whether the proposed development would result in any likely significant effects on the environment in another European Economic Area (EEA) State. This is set out in the Transboundary Screening Matrix dated 14 April 2016 [OD-002] which was published after the acceptance of the application for examination.
- 3.4.4 Under Regulation 24 of the EIA Regulations and on the basis of the information available from the Applicant, the Secretary of State is of the view that the proposed development is not likely to have significant effects on the environment in another EEA State.
- 3.4.5 In reaching this view the Secretary of State applied the precautionary approach (as explained in the Planning Inspectorate Advice Note 12 Transboundary Impacts Consultation). Consultation under Regulation 24 of the EIA Regulations was therefore not considered necessary.
- 3.4.6 I have had regard to the ongoing duty of the Secretary of State under Regulation 24 to have regard to transboundary matters throughout the Examination. I do not consider that any new information has come to light during the Examination that would prompt the need to reconsider the Secretary of State's transboundary screening opinion.
- 3.4.7 I am also satisfied that with regard to Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, there are no transboundary biodiversity matters that need to be addressed and there are no matters outstanding in relation to transboundary effects that would argue against the DCO being made.

The Wildlife and Countryside Act 1981 (as amended)

- 3.4.8 The Wildlife and Countryside Act 1981 is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs). These sites are identified for their flora, fauna, geological or physiographical features by the countryside conservation bodies (in England NE). The Act also contains measures for the protection and management of SSSIs.
- 3.4.9 The Act is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III on PROWs and Part IV on miscellaneous provisions. If a species protected under Part I is likely to be affected by development, a protected species licence would be required from NE.

- 3.4.10 This has relevance to consideration of impacts on those SSSIs, protected species and habitats identified in the ES.

The Protection of Badgers Act 1992

- 3.4.11 The Protection of Badgers Act 1992 was put in place to protect the welfare of badgers in the UK and protect them from persecution. Evidence on badger activity at the MAA was provided in a confidential annex to the ES (APP-184, Annex F).

The Hedgerow Regulations 1997

- 3.4.12 The Hedgerow Regulations 1997 set out criteria for the protection of 'important' hedgerows. 'Important' hedgerows include those that have existed for 30 years or more and those which possess features of archaeological, conservation or landscape interest. The MAA contains a substantial network of hedgerows a number of which have been identified as 'important'.

3.5 NATIONAL PLANNING POLICY FRAMEWORK

- 3.5.1 The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied. The Framework does not contain specific policies for NSIPs for which particular considerations apply but many of the provisions of the NPPF mirror those in the NPS. Applications for NSIPs are determined in accordance with the decision-making framework set out in PA 2008 and relevant NPS for major infrastructure, as well as any other matters that are considered both important and relevant (which may include the NPPF). The NPPF has been considered by the Applicant in its Policy Statement. I have taken the NPPF and the relevant NPS into account in reaching my findings and conclusions.

3.6 LOCAL DEVELOPMENT PLANS

- 3.6.1 As set out in its Policy Statement, the Applicant has taken into account the relevant local development plans. These include:
- The Cheshire Replacement Minerals Local Plan;
 - CWAC Local Plan;
 - Cheshire East Council (CEC) Local Plan; and
 - HBC Planning Policy Framework.
- 3.6.2 NPS EN-1 (para 4.1.5) notes that these documents may be important in taking decisions on energy NSIPs but that in the event of a conflict between these documents and an NPS, *"the NPS prevails for purpose of ... decision making given the national significance of the infrastructure."*

3.7 LOCAL IMPACT REPORTS

- 3.7.1 S104 of PA 2008 which applies to this application states that in deciding the application the Secretary of State must have regard to any LIR within the meaning of s60(3).
- 3.7.2 There is a requirement under s.60(2) of PA 2008 to give notice in writing to each local authority falling under s.56A inviting them to submit LIRs. This notice was given on 23 March 2016 [PD-006]
- 3.7.3 LIRs were submitted by CWAC and HBC [REP2-034 and REP2-037]. CWAC was concerned with the impacts of the development at the MAA and the Whitley site, HBC was concerned with impacts at the Runcorn site.
- 3.7.4 The issues raised in the LIRs are considered in Chapters 4 and 5 of this Report.

3.8 THE SECRETARY OF STATE'S POWERS TO MAKE A DCO

- 3.8.1 In carrying out this Examination I was aware of the need to consider whether changes to the application during the course of the Examination meant that the application had changed to the point where it was a different application and whether the Secretary of State would therefore have power under s.114 of PA 2008 to make a DCO having regard to the development consent applied for.
- 3.8.2 The basis on which changes can be made are set out in the Guidance on examination published by the Secretary of State for Communities and Local Government.⁵ The view expressed by the Government during the passage of the Localism Act that s.114(1) places the responsibility for making a DCO on the decision-maker, and does not limit the terms in which it can be made.
- 3.8.3 As noted above the only change to the application was a request to move the location of two level points in response to a representation from the landowner [AS-001, AS-008 and AS-009]. I sought views on these changes [PD-011]. No comments were received. In exercising his powers the Secretary of State may wish to take into account the view expressed in my letter of 3 August 2016 that these changes were not material and should be accepted for consideration in the Examination as part of the proposed development [PD-013].

⁵ <https://www.gov.uk/government/publications/planning-act-2008-examination-of-applications-for-development-consent>

4 PRINCIPAL ISSUES

4.1 MAIN ISSUES IN THE EXAMINATION

My initial assessment of the principal issues based on my consideration of the application documents and RRs received was circulated prior to the Preliminary Meeting [PD-005]. The issues are in alphabetic order and should not be taken to imply an order of importance.

Compulsory Acquisition, including issues related to:

- The requirement for the powers sought
- The need to establish a compelling case in the public interest
- Financial arrangements
- Protective provisions

Design, Layout and Visibility, including issues related to:

- The proposed design for gas storage and associated development at the main assessment area and other locations
- Use of agricultural land
- Landscape and visual impact
- Landscaping and screening

Development Consent Order (DCO), including issues related to:

- The description of the development and definitions used
- Powers acquired through the DCO
- Requirements
- Protective provisions

Economic and Social impacts, including issues related to:

- The impact on the local economy
- The impact on local services and facilities
- The impact on housing and employment

Environmental Impact Assessment, including issues related to:

- Approach to assessment
- Cumulative effects
- Mitigation measures

Environmental Issues, including issues related to:

- Airborne emissions and air quality
- Flooding
- Groundwater
- Marine environment

- Noise, lighting, dust and vibration, radio interference
- Contaminated land

Geology

- Baseline geological survey information
- Proximity to other schemes
- Stability of the geological structures
- Potential for subsidence
- Potential for gas migration
- Effects on groundwater

Habitats, Ecology and Nature Conservation, including issues related to:

- The impact on European and other protected sites and species
- Impacts on habitats and on biodiversity

Health and Safety

- Design of wells/storage cavities
- COMAH regulation
- Required permits
- Interaction with neighbouring facilities

Historic Assets and Archaeological Remains, including issues related to:

- Impact on heritage assets and historic landscapes
- Impact on archaeological remains

Transport and Traffic, including issues related to:

- Construction traffic movement and routeing
- Road safety

4.2 ISSUES ARISING IN LOCAL IMPACT REPORTS AND WRITTEN REPRESENTATIONS

4.2.1 The principal matters raised in the LIRs from CWAC and HBC [REP2-034 and REP2-037] concern:

- Impact on land and surface water quality, including impacts from the disturbance of contaminated land;
- Impacts on cultural heritage;
- Socio-economic effects;
- Impact on habitats and species at the development sites and over a wider area;
- Disturbance from noise during both the construction and operational periods;

- Landscape and visual impacts; and
- Transport and highways impacts.

- 4.2.2 CWAC's Written Representation (WR) also set out concerns about the extent to which alternative locations for elements of the project had been considered, the assessment of waste and the cumulative impact with the neighbouring Stublach facility where the timing of work on the two projects could overlap [REP2-032].
- 4.2.3 A number of submissions were received from individuals whose farmland and homes would be affected by the proposed development [RR-003, -004, -005, -012, -016 and REP2-043, -044, -045, -050, -051, -052 and -053]. These set out concerns about the temporary or permanent loss of land to accommodate the development and the detrimental effect this could have on their dairy farming businesses. There was also concern about the noise and disturbance from the development and the impact this would have on quality of life. More general concerns were raised about whether the need for the project had been established and whether due consideration had been given to alternatives and to the socio-economic impact of the development on the agricultural community.
- 4.2.4 A WR was received from the Canal & River Trust (C&RT) [REP2-029]. The Trust is the owner and navigation authority for the River Weaver Navigation and the Weston Canal and has a part interest in the Telford Wall which separates the Weaver Navigation from the MSC. These assets would be affected by the proposed brine pipeline to the MSC outfall. The C&RT is a statutory consultee (as successor to the British Waterways Board). The C&RT did not oppose the principle of the development but was concerned that any works affecting its assets should be carried out in accordance with the Code of Practice for Works affecting the C&RT. The C&RT was also concerned about the granting of CA powers in relation to any of its assets and with the establishment of adequate protective provisions. The C&RT provided its own draft of protective provisions based on the provisions included in the Knottingley Power Plant Order 2015.
- 4.2.5 A submission was received from Peel Ports Group on behalf of the Manchester Ship Canal Company Limited [REP2-049]. This confirmed that the method of installation of the discharge outfall into the MSC and the flow and discharge velocity would have to be agreed with the MSC Company and would require an engineering licence.
- 4.2.6 NE's WR [REP2-047 and -048] confirmed that on the basis of the shadow Habitat Regulations Assessment (HRA) submitted [APP-178] there would be no likely significant effects on any of the European or international designated sites alone or in combination with other projects. Taking into account proposed mitigation measures it was NE's view that the ES provided sufficient evidence that the

development would not damage or destroy the notified features of nationally protected sites.

- 4.2.7 NE sought further clarification on the extent to which best and most versatile (BMV) agricultural land might be lost as a result of the development.
- 4.2.8 NE was able to issue letters of no impediment (LONI) in respect of the impact of the development on great crested newts and badgers. Full licence applications would need to be submitted if the DCO was granted. It did not appear that bat roosts would be disturbed but if pre-construction surveys indicated the presence of bats then a licence could be required. The timing of work at the Runcorn outfall would need to be restricted to ensure that over-wintering birds were not affected by the work. Given the limited works at the Whitley site pre-construction surveys were considered appropriate. These would inform the need for any additional mitigation e.g. protected species licences/ habitat management necessary.
- 4.2.9 In its statement of common ground (SoCG) with the Applicant the Environment Agency (EA) confirmed that in its view the operation of the gas storage facility did not constitute gas refining operations and as such would not require an EP [REP2-023]. Drilling muds used during the installation of the solution mining infrastructure would be classed as 'extractive waste' and, as such, would require a Mining Waste Operations Permit for disposal. The EA was not aware of any reason why such a permit should not be granted.
- 4.2.10 Water for use in the development would be extracted by IEL under existing permits and supplied by IEL to KGSL. Discharge of brine into the MSC would be covered by the existing permit EPR/DP3424GK granted to IEL [APP-180, Annex E].
- 4.2.11 Historic England (HE) considered that the proposed development would have a limited impact on the historic environment [REP2-040]. It identified four areas of archaeological sensitivity which should be the subject of further evaluation in advance of construction. It was satisfied that the draft DCO contained an appropriate level of mitigation in relation to unexpected archaeological finds.
- 4.2.12 The HSE provided a copy of its advice to CWAC on the Applicant's request for Hazardous Substances Consent for the storage of natural gas under the Planning (Hazardous Substances) Regulations 2015 [REP2-038]. The HSE had assessed the risks to the surrounding areas from the likely activities resulting from the granting of hazardous substances consent. The HSE assumed that the requirements of the Health and Safety at Work etc Act 1974 and all relevant statutory provisions would be met at the establishment should consent be granted. On this basis the HSE concluded *that*

*the risks to the surrounding population arising from the proposed operations are so small that **there are no significant reasons, on safety grounds, for refusing Hazardous Substances Consent 16/01362/HAZ***". (HSE emphasis)

- 4.2.13 National Grid Gas (NGG) owns and operates a high pressure gas pipeline which is located within the Order limits. This forms a critical part of the gas transmission network. NGG did not object to the proposed development in principle but was concerned to ensure that adequate protective provisions were in place to safeguard NGG's existing transmission apparatus and protect NGG's statutory undertaking. It had objected to the proposal on the grounds that no settled protective provisions had been agreed. Protective provisions were agreed during the course of the Examination and NGG withdrew its objections [AS-006].
- 4.2.14 HGSL operates the HGSL Project which comprises eight underground salt cavities used for gas storage, a gas marshalling area (GMA), a GPP and associated pipework. The HGSL project commenced operation in 2011 and became fully operational in 2013. The storage cavities and the GMA are on land leased from IEL which lies within the order limits of the proposed development. They are connected by a 2.4km pipeline to the HGSL Project GPP which is located at the former RAF Cranage airfield to the east of the site. Gas is returned from the GPP through a 4.2km pipeline to the NTS compound which also lies within the order limits.
- 4.2.15 Details of the HGSL Project and HGSL's concerns were set out in its WR [REP2-041]. The layout of the HGSL Project is shown in REP2-042. A plan showing the location of the HGSL project in relation to the Applicant's proposed development was provided by the Applicant as an annex to its response to HGSL's WR [REP3-002].
- 4.2.16 HGSL argued that there was a clear potential for the construction and operation of the proposed development to negatively impact the risk profile of the HGSL Project under the COMAH Regulations. In its WR it set out a number of major accident hazards that could arise from the proximity of the two developments. These included jet fires from loss of containment and immediate ignition of pressurised gas, flash fires from delayed ignition of gas and vapour cloud explosion in a confined area. It drew attention, in particular, to the proximity of the proposed GPP to HGSL's wellhead H408, the proximity of the proposed GMC to HGSL's wellheads H405, H406 and H407 and to its GMA and the layout of the proposed gas pipelines which would be close to and in some cases cross HGSL's pipelines.
- 4.2.17 HGSL called on the Applicant to demonstrate that the inherent features of the design of the proposed development would eliminate

or mitigate the risks to at least a tolerable level. It also sought the inclusion of protective provisions.

4.2.18 The University of Manchester submitted a WR on behalf of the Jodrell Bank Observatory (JBO), the UK's primary radio astronomy facility which is operated and maintained by the University and the UK Science and Technology Facilities Council [REP2-055]. JBO benefits from regulatory protection of key frequency bands but unintentional emissions of radio signals from domestic or industrial equipment are not controlled by the spectrum allocation process.

4.2.19 JBO relies on a consultation process established under the Town and Country Planning Act 1971 to safeguard its radio frequencies and has a consultation zone within which it reviews planning applications. The proposed development lies on the western edge and, in part outside this zone. Inadequate information was available on the likely radio frequency emissions from the proposed development but JBO was concerned that high power compressor installations and other elements of the proposed plant could generate radio frequency interference at a level deemed harmful to radio astronomy. It sought assurances from the Applicant about the levels of radio frequency emissions in the key frequency bands used by JBO and demonstration either that the emissions would not be harmful to the operation of JBO or that sufficient radio frequency screening would be installed by way of mitigation.

4.3 THE PRINCIPLE OF THE DEVELOPMENT

Need for the development

4.3.1 As noted earlier the proposed development qualifies as an NSIP and consideration of the proposal is subject to the general guidance on energy projects in EN-1 and the specific guidance on gas storage projects in EN-4.

4.3.2 EN-4 reiterates the guidance that the need for this type of infrastructure has been established and sets out a number of specific issues which should be addressed in considering applications for underground natural gas storage in addition to the generic issues set out in EN-1. These include consideration of the geology of the site to determine its suitability for gas storage, the application of the COMAH Regulations, noise and vibration from the development, effects on water quality and resources and the impact of any proposals for the disposal of brine.

Consideration of alternatives

4.3.3 EN-1 does not contain any general requirement to consider alternatives or to establish whether the proposed project represents

the best option but applicants are required to include in their ES information about the main alternatives they have studied.

- 4.3.4 Chapter 15 of the ES sets out the Applicant's consideration of alternatives. The 'do nothing' option was rejected on the grounds that this would forgo the opportunity to develop additional gas storage for which a national need had been identified in EN-1 and EN-4. A ten cavity option was considered omitting cavities H510 and H512 - H519 (the cavities which would require the compulsory acquisition of land). This was rejected on the grounds that it would result in the loss of the opportunity to deliver nearly half of the additional capacity that could be developed.
- 4.3.5 The Holford Brinefield has extensive and predictable salt deposits and a proven history of gas storage. It was the Applicant's view that there were no comparable alternative locations in Cheshire and the wider North West that offered the same benefit in terms of geological conditions, existing infrastructure and access to markets for brine.
- 4.3.6 The detailed location of the elements of the project was determined principally by geological factors and the minimisation of new infrastructure. A number of proposed well heads were relocated during the early planning phase to reduce their impact on farming land use. Alternative locations were considered for the GPP. The use of electric motors or gas turbines in the GPP was evaluated and electric motors chosen as having lower emissions and noise. Alternative access points to the site from neighbouring roads were also considered.

Design evolution

- 4.3.7 A Design and Access Statement for the preferred alternative was provided as part of the application [APP-188]. This set out the context for the development in terms of its location, local planning design guidance and policies and environmental assessments in the ES. General design and access principles were set out and an indicative design response for the main elements in the development was provided for each location. Particular attention was given to the rural nature of the MAA.

Conclusion on the principle of the development

- 4.3.8 I am satisfied that the proposed development of underground storage cavities with associated development as outlined in the application would contribute to meeting the need for gas storage capacity identified in EN-1 and EN-4. Subject to my further consideration of specific impacts of the project and my consideration of the application for CA of land for part of the development I am

also satisfied that adequate consideration has been given to design and to alternatives to the development as required by EN-1.

5 ENVIRONMENTAL IMPACTS

5.1 GEOLOGY

- 5.1.1 EN-4 requires applicants to undertake a detailed geological assessment to demonstrate the suitability of the geology at the site for the type of underground storage proposed. For storage in salt cavities this should include consideration of depth below surface, salt thickness, salt purity and the presence of shale bands which could affect cavern design. Information was provided in three annexes to the ES covering a Seismic Survey Report [APP-191], a Sub-surface Safety Assessment Report [APP-192] and a Preliminary Study of Gas Cavity Design Capacity [APP-193]. These reports had been prepared for the Applicant by Geostock an engineering company specialising in underground storage. Geostock has been involved in design, construction and operation of natural gas storage projects worldwide for more than 75 years and had advised on the suitability of the neighbouring HGSL and SGSP gas storage projects.
- 5.1.2 The Seismic Survey Report drew on new seismic data for the project area combined with earlier seismic surveys of the area carried out in 2001 and 2006. It also used well data from the area showing the halite levels and other geological features. From this material the report identified the top of the salt formation as lying on an incline between 320m and 500m bod across the site. The thickness of the salt layer is between 236m and 293m. The salt layer is interrupted by two bands of marl the largest of which is known as the 30 foot marl. Below the salt formation lies the Bollin mudstone.
- 5.1.3 The survey shows the King Street fault system to the west of the proposed development and two minor faults. The Report describes the cavity locations as *"far from faults (800m from the King Street fault system...) and distant from minor faults"*
- 5.1.4 The Sub-surface Safety Assessment Report [APP-192] reviewed the geology of the site drawing on the Seismic Survey Report and on core samples from other development in the area. It considered five main areas of risk:
- Cavern structural instability [APP-192, section 5.1];
 - Gas diffuse migration through the surrounding rock [APP-192, section 5.2];
 - Well failure [APP-192, section 5.3];
 - Geologic hazards [APP-192, section 5.4]; and
 - Abandonment [APP-192, section 5.5].

Cavern structural instability

- 5.1.5 Localised rock falls may occur within cavities as leaching continues and insoluble material is displaced. These are not considered to have an impact on the cavern integrity although equipment could be damaged. Cavern roof fall or wall collapse could affect the stability of the cavern and its gas tightness and the design parameters of the cavities should be set to prevent such phenomena occurring. In particular an arched cavern roof should be engineered, a sufficient thickness of salt should be maintained between the cavern roof and the higher non-salt strata and a 10m - 15m interval should be maintained between the production casing shoe and the top of the cavern.
- 5.1.6 Complete collapse of a cavity was considered unlikely given the relatively small size of the void created within the context of the salt formation as a whole. Cavity placement rules (described below under Cavity Design) should eliminate this risk. Cavity convergence was also considered with the volume of cavities decreasing, usually imperceptibly, over their lifetime. Theoretically, this could lead to a slow process of subsidence of the overlying strata spread over a wide area. However it was considered that the salt properties identified in laboratory tests were such that creeping effects on cavity closure and subsidence were expected to be limited.

Diffusive migration

- 5.1.7 The Report stated that salt is intrinsically impervious and does not allow gas migration when it is pure. Gas migration would only occur through leakage into permeable insoluble rock layers present within the salt formation or through weakness zones at the contact between these rock layers and the salt. The marl bands which exist within the salt layers had been investigated using core samples and did not show any signs of discontinuity. Tests on a nearby exploration well showed the marl bands as being gas tight. Other wells in the area within the same geological formation have not shown any evidence of abnormal gas migration. Monitoring of operating pressures within cavities would be important to ensure that variations above or below the designed pressure levels did not lead to fracturing.
- 5.1.8 Leakage can occur if the salt layer comes into contact with groundwater - known as wet rock head. In the area of the proposed development the salt layer has been preserved over long periods of geological time demonstrating its relatively inactive hydrogeological setting. The low permeability of the 400m overlying layer has protected the salt from groundwater. Migration of gas along a fault is also a possibility however there is no major fault crossing the area of the planned cavities. The King Street fault is 800m away from the

nearest cavity and it is considered that this distance could not be covered through uncontrolled leaching.

Well failure

- 5.1.9 The Report identifies a number of ways in which well failure could occur during construction or operation of the cavities leading to escape of gas. These include loss of integrity in the well casing, mechanical failure of equipment during construction, debrining or gas storage and intervention in the wells during storage operations, for example to retrieve debrining equipment. These risks can be addressed by appropriate design such as fast closing valves and double containment measures and implementation of safety rules.

Geologic hazards

- 5.1.10 The area is not considered to be tectonically active although a number of small earthquakes with a magnitude of less than 2 have occurred within 10km of the area. The report listed eight such events in the period 1992 to 2013. As a result the site of the proposed development was considered to be in a low seismic hazard zone. There were no active faults in the vicinity and no areas which were susceptible to landslides.
- 5.1.11 In response to my first round of questions the Applicant provided a further analysis of seismic events within 20km of the site over the period 1980 to 2013 [REP2-005 section 1.6, REP2-006 Annex 1]. Apart from a cluster of events in the Stoke-on-Trent area in 1980 and 1981 there were between zero and three events a year recorded in this 20km zone. The nearest being a magnitude 1.5 event 2km to the east of the site in 1997. No seismic activity has been recorded in relation to the storage activities in the vicinity.
- 5.1.12 The Report concluded that given the very low seismic hazard and the intrinsically low vulnerability of the cavities to such hazard, earthquakes do not pose a risk to the cavities themselves. It was possible that surface equipment could be damaged by seismic activity. The provision of a downhole safety valve 50m below ground would prevent gas escape.

Cavern abandonment

- 5.1.13 Industry practice for management of cavities at the end of storage operations is based on:
- long-term protection from contamination of drinking water aquifers and the escape of brine and/or flammable product residues to the surface;
 - long-term stability of the rock mass surrounding the cavern;
 - maintenance free;

- affordability; and
- acceptability by the authorities

It is anticipated that when the gas storage cavities are decommissioned they would initially be filled with brine to maintain the stability of the cavities before being capped in a maintenance free state.

Cavity design and operation

- 5.1.14 The location of cavities would be determined to maintain a buffer distance from the salt boundaries both vertically and horizontally, from major faults and from other existing cavities. The separation distances have been derived from experience with solution mining in the area and the development of the HGSL and SGSP storage projects. Cavities would be located to ensure that the minimum pillar width between two neighbouring cavities was 1.75 times the average diameter of the neighbouring cavities (the P/D ratio). A two radius distance would be kept from cavity walls to the minor geologic faults in the area. The planned separation of the cavities nearest to the two minor faults, as shown in the Report, exceeded this minimum [REP2-005, section 1.17].
- 5.1.15 Minimum and maximum pressures and a maximum rate of pressure variation would be set for the different phases of operation. Production casing and tubing would be constructed to be gas tight and a safety valve would be installed at least 30m below surface which would automatically isolate the cavity from the surface in case of emergency. Wellheads would be designed to withstand the maximum pressure in the wells with a safety factor. Safety valves would allow for rapid shutdown.
- 5.1.16 Safety rules would be developed for the construction and operational phases of the project and an emergency plan would be developed to deal with any significant accidental release of gas. Testing and monitoring would be carried out to ensure the integrity of the wells and storage cavities. Periodic sonar surveys of the storage cavities would be carried out every five to ten years to check for any abnormal changes in the cavities. Schematics showing the design of the cavities are provided in Appendices 3, 4 and 5 of the Sub-surface Safety Assessment Report [APP-192].
- 5.1.17 Monitoring of surface levels would be carried out to detect any subsidence across the site. Precise level points would be installed across the MAA. A reference survey of these level points would be carried out before the start of leaching of the storage cavities with follow up surveys every two to five years.

- 5.1.18 The Preliminary Study of Gas Cavity Design Capacity sets out more specific detail on the layout and operating parameters for the cavities [APP-193]. Cavity locations are specified to ensure the 1.75 P/D ratio is met for the new cavities and that similar or greater distances are maintained with the existing HGSL and SGSL cavities. Engineering criteria for the new cavities are specified and maximum and minimum operating pressures set out based on industry practice and experience at the HGSL Project which has similar characteristics.
- 5.1.19 In response to my first questions the Applicant provided further detail on how the shape of the gas storage cavities would be developed during the solution mining phase [REP2-005, section 1.7]. The base of the cavity is fixed by the depth of the drilled hole and the position of the injection tube through which fresh water is introduced. Since fresh water is of lower density than brine the fresh water will rise in the cavity and does not leach significantly below the injection tubing. A nitrogen blanket is used to maintain the shape of the cavity as brine is extracted. The depth of this blanket is monitored using continuous pressure measurement and the nitrogen is topped up when necessary.
- 5.1.20 The history of solution mining worldwide and the experience gained at the Holford Brinefield makes it possible to calculate the progress of solution mining accurately and ensure that development remains within the design parameters. Sonar surveys can be used to determine that the development is in line with the calculated parameters. At each stage of solution mining the mining tubes are removed and a detailed sonar survey is carried out. The mining tubes are then reinstalled at a new shallower depth for further solution mining. The final roof shape is achieved using a reverse mining method with water injected through the outer tube and brine extracted through the inner tube. The nitrogen blanket is adjusted more frequently than in the earlier phase of the development and this allows a roof of progressively decreasing diameter to be achieved.
- 5.1.21 The Applicant also set out its view on how the main parameters of the development would be set and monitored for safety purposes [REP2-005, section 1.23, 1.24 and 1.25]. The gas storage facility would be a top tier COMAH establishment and there is a requirement to submit pre-construction and pre-operational safety reports to the HSE for acceptance. Design and construction testing parameters would be set in the pre-construction safety report and operational testing regimes would be set out in the pre-operational safety report.
- 5.1.22 It is currently best practice for salt cavity gas storage operators to conform to the requirements of the Offshore Installations and Wells (Design and Construction, etc.) Regulations 1996 (shortly to be updated). These require "*an independent and competent person to*

examine the design, construction and maintenance of a well to ensure, so far as is reasonably practicable, that there is no unplanned escape of fluids from the well and that the risks to the health and safety of persons from it or anything in it, or in strata to which it is connected, are as low as is reasonably practicable." The Applicant would follow the requirements of these regulations and appoint an independent and competent person to examine the design construction and maintenance of the wells.

- 5.1.23 The Applicant proposed that the depth and dimensions of the storage cavities and associated test and monitoring measures should be secured through the pre-construction and pre-operational safety reports and reviewed by the HSE and the independent and competent well examiner. This appeared to leave open the possibility that key parameters of the development could be set at a later date and could differ from those which have been assessed in the ES. Following discussion at the second ISH the Applicant agreed that the locations and dimensions of the cavities as set out in the ES should be specified in the DCO and that the Seismic Survey Report, the Sub-surface Safety Assessment Report and the Preliminary Study of Gas Cavity Design should be included in the list of plans and documents listed in the DCO to be certified by the Secretary of State. The DCO would require the development to be in accordance with these plans and documents.
- 5.1.24 If the DCO is granted the development would then also be subject to the pre-construction and pre-operational safety reports to be reviewed by the HSE and the independent and competent well examiner as described above.
- 5.1.25 As noted at paragraph 4.2.12 the HSE provided advice to CWAC on the Applicant's request to CWAC for Hazardous Substances Consent. The HSE advised that, on the assumption that the requirements of the Health and Safety at Work etc Act 1974 and all relevant statutory provisions will be met there were no significant reasons, on safety grounds, for refusing Hazardous Substances Consent [REP2-038]. Consent was issued by CWAC on 12 May 2016 [REP3-002, annex 1].

Conclusion on geology

- 5.1.26 I am satisfied that the information provided by the Applicant meets the requirement in EN-4 to undertake a detailed geological assessment to demonstrate the suitability of the geology at the site for the type of underground storage proposed. The depth of the salt layer and shale bands has been identified from seismic surveys and data from existing wells. The geology of the proposed development appears to be consistent with the geology of the wider area of the Holford Brinefield, including the areas already developed for gas storage adjacent to the proposed development.

- 5.1.27 A major fault has been identified 800 m from the nearest proposed cavity and two minor faults have been identified which have been taken into account in locating individual cavities. The separation proposed from these faults is based on assessment by geological specialists taking into account the stability of the salt structure and any intervening marl beds. No evidence has been presented to cast doubt on this assessment.
- 5.1.28 Construction and operating procedures have been outlined to ensure that the cavities created are gas tight. These follow well established industry practices and experience gained at the neighbouring gas storage sites. Safety devices would be installed to prevent any unplanned leakage of gas from storage and operational safety procedures would be established.
- 5.1.29 The HSE has given initial guidance that there are no significant reasons on safety grounds for refusing Hazardous Substances Consent. The development would be subject to further detailed consideration and approval by the HSE and an independent and competent expert at the pre-construction and pre-operational stages.
- 5.1.30 Subject to the inclusion in the DCO of the additional construction and operational parameters set out in paragraph 5.1.23 and the additional regulatory scrutiny that would be carried out pre-construction and pre-operation, I am satisfied that adequate account has been taken of any risks arising from the geology of the area and that the proposed development should not result in any significant geology related safety risks.

5.2 LAND AND WATER QUALITY AND FLOOD RISK

- 5.2.1 The land at the MAA is principally used for dairy and mixed arable farming. 73.7ha of land would be lost from agricultural use during construction of which 21.6ha would be lost permanently (the socio-economic implications of this agricultural land loss are considered further in section 5.11 of this report).⁶ Where land is temporarily used during construction topsoil would be stockpiled and used to return the area to agricultural land of the same quality and value as before.
- 5.2.2 The land that would be lost is classed as grade 3 in the Agricultural Land Classification (ALC). Land can be further divided into grade 3a and 3b land but this breakdown was not provided in the ES. Grade 3a land is classed as best and most versatile land (BMV) and as a

⁶ These figures were incorrectly stated in the ES and were corrected in REP3-002, section 3.2 and in the summary of corrections to the ES REP7-012

worst case it was assumed in the ES that all of the land lost would fall into this category. In reality it was argued that the 21.6ha lost would include a proportion of ALC grade 3b which would reduce the amount of BMV land lost to agriculture [REP2-005]. Further information from a study carried out in 2005 for another project nearby suggested that less than 50% of the land in the area was classed as grade 3a [REP3-007].

- 5.2.3 The magnitude of the impact on land from site clearance, excavation of foundations and other activities is classified in the ES as moderate. In the long term this would be mitigated when the plant would be decommissioned and all of the land returned to agricultural use.
- 5.2.4 There are a number of ponds across the MAA which may be the result of previous excavation of marl. Some may be of glacial origin. These ponds would not be disturbed by the development. There are also a number of in-filled ponds which can be identified from earlier maps. Any disturbance could result in soil contamination. These in-filled areas would be avoided during construction.
- 5.2.5 The Construction Environmental Management Plan (CEMP) which would be would be finalised in accordance with a requirement in the DCO would contain a soil management plan to be followed during construction. It would also set out procedures to be followed if unknown areas of land contamination are encountered during construction and for mitigation measures to be applied.
- 5.2.6 EN-4 requires an assessment of the effect of abstracting water for solution mining on groundwater resources, the natural environment and the public water supply. IEL currently abstracts water under licence from the River Dane at Middlewich, Wincham Brook near Northwich and, for top-up purposes from the Trent and Mersey canal. These licences would be used to provide water to the Applicant for use in the proposed development. The EA has confirmed that it has no objection in principle to water abstracted under these licences being used [REP2-023].
- 5.2.7 The Puddinglake Brook flows to the west across the MAA joining the River Dane at Whatcroft. The risks of water contamination during construction are identified in the ES as arising principally from spillage of fuels and other liquids or from the release of contaminated water during excavations. These could affect surface water and groundwater. Storage and handling procedures would be put in place through the CEMP to avoid and if necessary mitigate the effects of any spillage. Contaminated process water would be tankered off-site for disposal. Disposal of drilling muds would need a Mining Waste Operation permit from the EA.

- 5.2.8 Requirement 3(5)(b) of the Applicant's final version of the draft DCO [REP8-003] secures a surface and groundwater management plan to be prepared as part of the final CEMP. Requirement 12 of the DCO also relates to controls in respect of ground and surface water and pollution prevention.
- 5.2.9 No issues relating to land and water quality were identified for the Whitley site.
- 5.2.10 At the Runcorn site, which has been heavily industrialised, land would be disturbed both for the construction of the pipeline bridge across the Weston Canal and for the installation of the outfall pipeline along the Telford Wall. Mitigation measures would be required to avoid sediment runoff to the Weaver Navigation and MSC - these are secured in the draft CEMP. It is anticipated in the ES that contamination may be encountered in the soil and groundwater on the site. Geotechnical surveys would be carried out in advance of excavation. Further mitigation measures would be taken if contamination was identified. These measures and working procedures are included in the draft CEMP. During the course of the Examination the Applicant agreed to the inclusion of a requirement in the draft DCO for an investigation and assessment report to identify contamination at the Runcorn site and a written scheme to be approved by the relevant planning authority to address any issues identified.

Views of Interested Parties

- 5.2.11 NE, in its WR and response to my first questions, noted that the Applicant had not distinguished between grade 3a and 3b land and had assumed that all of the land lost permanently would be grade 3a BMV land [REP2-048]. NE considered that further information was necessary but that if the loss of BMV land was greater than 20ha this was likely to be significant.
- 5.2.12 The EA in its WR and response to my first questions [REP2-035, REP2-036] stated that it was satisfied that there was no significant risk to groundwater from the proposed development or to WFD surface and groundwater bodies and therefore to the objectives of the relevant River Basin Management Plan. It also confirmed that the flood risk associated with the Puddinglake Brook is expected to be relatively shallow affecting low-lying land adjacent to the brook [REP5-015]. It had granted Flood Defence Consent for those parts of the proposals (access road crossings, pipeline crossings), that affect Puddinglake Brook. The EA was not aware of any reason why a permit for the disposal of drilling muds should not be granted.
- 5.2.13 CWAC expressed concern in its LIR about the possible disturbance of an animal burial pit linked to the 1967 outbreak of foot and mouth

disease known to exist in the vicinity of Drakelow Hall Farm [REP2-034]. The Applicant responded that this burial pit was at Drakelow Farm, not Drakelow Hall Farm and lay to the north of the MAA as shown in Annex 2 of its response to my first questions [REP2-005 and -006]. CWAC also expressed concern about the provisions for dealing with unexpected land contamination and contamination from construction phase activities. It suggested that these should be addressed in more detail in the CEMP.

- 5.2.14 HBC expressed concern in its LIR that the proposed geotechnical survey would be limited to visual and olfactory evidence of contamination [REP2-037]. This would not necessarily guarantee the absence of contamination. HBC requested that a full contamination survey should be carried out and this should be included as a requirement in the DCO.

Conclusion on land and water quality and flood prevention

- 5.2.15 The proposed development would lead to the loss of some good and medium quality agricultural land at the MAA during construction. Some of this loss would be permanent. If all of the land lost permanently was of BMV quality, as assumed in the ES then this should be considered as a moderate adverse effect. This effect would be reversed with the return of all land to agriculture at decommissioning but that could be 50 years or more in the future. However additional information provided during the Examination relating to neighbouring farmland indicated that less than half of the land in the area should be classed as BMV. In my view, based on the information provided for the area and the land use as seen on my site visit, there is no reason to regard the land at the MAA as different from the neighbouring land and I consider it unlikely that there would be a significant loss of BMV land. On this basis I consider that the moderate adverse effect of the loss of land during construction and operation identified in the ES should be discounted and should not be considered as a negative effect of the development.
- 5.2.16 Potential adverse impacts on water quality have been identified but, in my view, these can be adequately mitigated through management procedures to be implemented through the CEMP and through the specific requirement in the DCO in respect of ground and surface water and pollution prevention for the development as a whole. WFD compliance has been considered in Section 3.3 of this report and I have taken into account the EA's assessment that there was no significant risk to groundwater from the proposed development or to WFD surface and groundwater bodies.
- 5.2.17 There is the potential for disturbance of contaminated land and groundwater at the Runcorn site. This has been raised as a concern

by HBC who suggested the need for a full investigation of land contamination in advance of any work on the development. The Applicant has proposed the inclusion in the DCO of a requirement to address this concern (Requirement 14 in the final draft DCO). With the requirements in the DCO and the procedures set out in the CEMP I am satisfied that concerns about land and water quality at the Runcorn site and the MAA can be adequately addressed and meet the requirements of the WFD.

5.3 AIR QUALITY

5.3.1 The ES identifies three potential effects of the proposed development on air quality [APP-179, paragraph 10.1.2]. These are:

- Effects on human receptors due to dust emissions during the construction phase;
- Effects on human and ecological receptors due to emissions from combustion processes during the operational phase of the project; and
- Effects on human receptors due to additional traffic generated during the construction and operational phase.

Dust emissions

5.3.2 Construction work at the MAA is expected to last for a number of years. Earthworks required would be less than 20m from the nearest residential property and are categorised as large generators of dust in accordance with the Institute of Air Quality Management (IAQM) Guidance on the assessment of dust from demolition and construction. Construction activities are categorised as medium generators of dust with concrete batching identified as a particular generator of dust. Track-out from the various locations at the MAA is a third category of activity some of which is less than 10m from residential receptors. All three categories of activity are identified as having a 'significant impact' as defined by the IAQM guidance.

5.3.3 Mitigation measures to control the generation and spread of dust are set out in the ES and incorporated in the final draft CEMP [REP7-006]. These include site planning, controls on construction traffic and site activities, the use of hard surface haul roads, damping down to suppress dust, seeding earth stockpiles and re-vegetation of new earthworks.

5.3.4 The draft CEMP was developed during the course of the Examination and the requirement for a final CEMP is incorporated into the DCO. Adherence to the draft CEMP would be a requirement in the DCO for the final CEMP which must include an Air Quality and Dust Management Plan.

- 5.3.5 Although Table 21.1 of the ES presents the reason for the exclusion of air quality and dust assessment at the Runcorn Outfall, the proximity of the works to the Mersey Estuary SPA and Ramsar site were considered in relation to the HRA, which is discussed further in Chapter 6 of this report. In EIA terms, this topic was scoped out on the basis that the CEMP would manage potential impacts during construction, including dust, and good construction practices to be adopted during the works. Paragraph 21.3.1 of the ES also notes that the anticipated duration of the construction works at the Runcorn Outfall is 4 months.
- 5.3.6 Dust is not considered to be a significant issue at the Whitley site but the provisions of the CEMP would apply at this site.

Emissions during operation

- 5.3.7 Emissions at the MAA from combustion during the operational phase would result from gas fired pre-heater boilers and glycol regeneration boilers required to keep gas at the required temperature for transfer to and from the NTS. Gas compressors would also be used. These would be electrically driven and would not produce emissions.
- 5.3.8 There would be four gas preheater boiler stacks and six glycol regeneration boiler stacks. It is expected that only four of the glycol regeneration units would be in operation at any one time. For the purposes of a worst case assessment it has been assumed that the plant would be operating 24 hours per day all year. My first written question 4.5 sought clarification as to the extent to which the Applicant adopted a worst case within the modelled parameters [PD-007]. This was clarified by the Applicant in their response to my first questions and I am satisfied that the approach to the assessment is reasonable [REP2-005].
- 5.3.9 Emissions from these boilers have been modelled using the Atmospheric Dispersion Modelling System version 5.0. This model takes into account meteorological conditions and the effects of terrain and building downwash and provides calculations of emissions concentrations that can be compared with air quality standards.
- 5.3.10 Wind data from Manchester Airport (some 18km from the MAA) have been used and buildings planned for the GMC, GPP and electrical sub-station have been included in the modelling. The flat nature of the site, (which I saw in my ASV), meant that terrain modelling was not considered necessary but an allowance was included to represent the agricultural nature of the surrounding area.
- 5.3.11 The principal airborne emissions of concern from the operation of the GPP are oxides of nitrogen (NO_x). These would be present in exhaust

gases in the proportion of approximately 95% nitric oxide (NO) and 5% nitrogen dioxide (NO₂). NO₂ is the principal concern in assessing impacts on human health. NO can oxidise in the atmosphere to create NO₂ but it is considered unduly pessimistic to assume 100% conversion. Using EA guidance it was assumed in the ES that, in the short term, 35% of NO_x occurs as NO₂ and that in the longer term the conversion rate is 70%.⁷ For effects on ecological receptors deposition of acid and nutrient nitrogen has been derived using conversion factors provided in EA Guidance.⁸

- 5.3.12 There is little baseline data available on emissions for this rural area. Baseline values have been derived from national modelling exercises to identify areas of severe concentration of pollutants with interpolation based on baseline concentrations in areas away from specific local source of emissions. In my first written questions I sought clarification as to the other significant sources of emissions in the local area that were cited in the ES but not further defined. The Applicant provided a description of these local sources which influence baseline conditions including the M6 motorway and nearby HGSL and SGSP gas storage facilities. The baseline conditions derived for the 14 sensitive human receptors in the vicinity of the MAA are well below the relevant air quality standards (AQS) for NO₂.
- 5.3.13 In the ES the predicted increase in annual NO₂ as a percentage of the AQS is less than 1% at nearly all of the sites with a maximum annual increase identified of 1.2% at Drakelow Hall Farm. Maximum increases measured over a one hour period are slightly higher with the highest increase being 2.19% of the AQS at Drakelow Farm. The predicted emissions from the operation of the plant combined with the estimated baseline level of emissions would still be well below the AQS with a maximum of 16.1% of the hourly AQS at Earnshaw House Farm and a maximum of 39.1% of the annual AQS at the same location. These increases in emissions are assessed in the ES as being small to imperceptible in magnitude and not significant.
- 5.3.14 The relevant standards and guidelines followed by the Applicant in assessing air quality impacts to sensitive ecological receptors including the Air Quality Standards Regulations 2010, air quality guidelines derived by the Centre for Ecology and Hydrology, the EA's Horizontal Guidance document H1 and the UK Air Pollution

⁷ Environment Agency (2005) Conversion ratios for NO_x and NO₂ http://www.environmentagency.gov.uk/static/documents/Business/noxno2conv2005_1233043.pdf

⁸ AQTAG06 – Technical Guidance on Detailed Modelling Approach for an Appropriate Assessment for Emissions to Air, Environment Agency, produced 06/02/04, Version 8

Information Service are set out in section 10 of the ES.⁹ In assessing the impact on ecological receptors (and in accordance with the guidance cited above) the ES has taken into account:

- European designated sites within 10 km of the project, including SACs, SPAs and Ramsar sites;
- Statutory nationally designated SSSIs within 2 km of the project; and
- Nationally and locally non-statutory sites within 2 km of the project such as National Nature Reserves, Local Nature Reserves (LNR) and Biodiversity Action Sites.

5.3.15 One SAC and three Ramsar sites were identified within 10 km of the MAA. There were no SSSIs or LNRs within 2 km but six local wildlife sites (LWS) were identified. Existing levels of acid deposition and nutrient nitrogen deposition are already above identified critical load levels at all but one of the sensitive ecological receptors identified (as shown in Table 10.13 of the ES) but the predicted additions from the operation of the plant are small.^{10 11} The increase in the annual level of acid deposition is less than 0.05% of the critical load at all of the sites and considered not to be significant. The increase in nutrient nitrogen deposition is less than 0.1% of the critical load level at the SAC and Ramsar sites and between 0.3% and 0.53% at the LNRs which are nearer the MAA. These levels are considered not to be significant in accordance with significance criteria set out in Table 10.4 of the ES.

5.3.16 As presented in Table 10.12 of the ES, the baseline mean annual and 24hr mean NO_x levels at the identified ecological receptors are below the critical levels in the case of all but one of the receptors (Shankley Mere LWS, where the critical level is exceeded for both criteria). The predicted increase in the annual levels of NO_x at the ecological receptors is also less than 1% and considered not to be significant at all but one of the sites assessed. The exception is the Boundary Farm Pond LNR where the increase in critical load is estimated at 3.41%. This is classified as significant but is below 70% of the critical level and is considered in the ES to be acceptable in accordance with the EA's Horizontal Guidance.

⁹ The EA's Horizontal Guidance H1 document was withdrawn on 1 February 2016 and was replaced by the EA and Defra's Risk assessments for specific activities: environmental permits (<https://www.gov.uk/government/collections/risk-assessments-for-specific-activities-environmental-permits>)

¹⁰ The Meadow by Trent and Mersey Canal LWS baseline / background nutrient nitrogen and acid deposition is below the critical load levels.

¹¹ A quantitative estimate of an exposure to one or more pollutants below which significant harmful effects on specified sensitive elements of the environment do not occur according to present knowledge.

- 5.3.17 There would be no operational emissions to air at the Whitley and Runcorn sites (as described in Tables 17.1 and 21.1 of the ES respectively which discuss the technical scope of the EIA at each).

Emissions from traffic

- 5.3.18 The development at the MAA is predicted to generate a daily maximum of 30 HGVs and 150 car or light vehicles arriving and leaving the site during the construction period. This is well below the level at which Highways England Design Manual for Roads and Bridges screening criteria considers that impacts on air quality may be significant and require further detailed assessment. The ES concludes that the predicted levels of road traffic generated by the development would not give rise to significant effects on air quality. The number of vehicle movements at the Whitley and Runcorn sites is also expected to be small and not to result in any significant emissions.

Views of Interested Parties

- 5.3.19 NE commented that the ES provided sufficient evidence to show that, subject to mitigation measures included in the CEMP, the scheme would not damage or destroy the notified features of the nationally protected sites [REP2-047 and -048]. The EA in its SoCG with the Applicant noted that the operational activities at the MAA did not constitute gas refining activities and, in the EA's view, they did not require an environmental permit.

Conclusions on air quality

- 5.3.20 I am satisfied that the aerial emissions from the proposed development have been adequately assessed in the ES. Construction activities at the MAA would generate significant levels of dust unless control measures are put in place. I am satisfied that the measures proposed in the draft CEMP for inclusion in the final CEMP (and adherence to the draft and final versions as a requirement in the DCO) are adequate to mitigate these adverse effects.
- 5.3.21 Emissions at the MAA during the operational phase would represent a small increase over baseline levels but total emissions would still be well below the national AQS. Since these operational activities would not require an environmental permit and would not be subject to on-going regulation it is important that the parameters of any plant constructed should match the parameters assumed in carrying out the assessment of emissions in the ES. The height and internal diameter of the emission stacks are specified in the ES and these dimensions have been included as part of the description of the development in Schedule 2 of the Applicant's final draft DCO [REP8-003]. I am also satisfied that the Applicant's inclusion of draft DCO

Requirement 23 in response to my second written question 4.2 [PD-010], relating to the implementation of an environmental management system compliant with ISO 14001 or an equivalent recognised standard would afford a sufficient degree of control over operational emissions.

- 5.3.22 No air quality issues have been identified related to traffic generated by the development.
- 5.3.23 Subject to suitable drafting of provisions in the DCO discussed in Chapter 8 I am satisfied that there should not be any significant adverse effects from the proposed development resulting from emissions to air.

5.4 ECOLOGY

- 5.4.1 The ES considered the effects of the proposed development on protected species and on habitats and associated flora and fauna with reference to the Guidelines for Ecological Impact Assessment (2006).¹² This is in line with the requirements in EN-1 and EN-4 to consider the effect of the proposed development on biodiversity. EN-4 also requires inclusion of proposals for reinstatement of pipeline routes.
- 5.4.2 An Extended Phase 1 Habitat survey and hedgerow surveys were carried out at the MAA and these are described at section 8.4 of the ES. The vast majority of the MAA consists of improved or semi-improved grasslands largely used for stock grazing with some arable fields and patches of woodland. Field boundaries are mostly well established hedgerows. 38 hedgerows (17% of the total) were identified as 'important' hedgerows under the terms of the Hedgerow Regulations 1997.
- 5.4.3 There are numerous ponds scattered across the MAA either within fields or on field boundaries. Most of these are surrounded by stock-proof fencing and many are shaded by trees or hedgerows.
- 5.4.4 The Puddinglake Brook flows from east to west across the central part of the site within steep earth banks 2m high. It is culverted beneath farm tracks and other roads. There are also a number of field drains with little water flow. The initial Extended Phase 1 Habitat survey indicated some small potential habitat suitability for otters.

¹² Prepared by the Chartered Institute for Ecological and Environmental Management (CIEEM). These guidelines were updated to a 2nd edition in January 2016, which post-dates submission of the application.

Protected and notable species at the MAA

- 5.4.5 The site provides suitable breeding and terrestrial habitat for great crested newts (GCN). 138 ponds were assessed for habitat suitability. 65 ponds were subject to full assessment and a further 60 ponds to environmental DNA sampling (eDNA, a procedure approved by NE in 2014). 13 ponds were not assessed either because they were not considered suitable habitats for GCN or were inaccessible. Full assessment identified GCN in 29 ponds and eDNA sampling identified GCN presence in a further 19 ponds. One inaccessible pond was assumed to have GCN because it was surrounded by other ponds where they had been identified.
- 5.4.6 Where ponds are clustered it is likely that GCN would move between ponds. The analysis suggested that there were ten population groups across the MAA.
- 5.4.7 Evidence of bat roosts was found in a number of trees across the MAA and an activity survey identified bats frequently using the hedgerows for commuting and foraging. Common and Pipistrelle bats were the most numerous species. Brown long-eared, Myotis sp and Noctule bats were also identified. The one tree that would be removed during construction was assessed as having a low potential to support roosts.
- 5.4.8 Two badger setts were recorded within the MAA and details were provided in a confidential annex [APP-184].
- 5.4.9 No evidence was found of otters or water voles using the Puddinglake Brook. There was also no evidence of reptiles in the area. A small number of ponds were considered as suitable habitats for the lesser silver water beetle. Some adults were found in these ponds which suggested that a breeding population was present.
- 5.4.10 Surveys of breeding birds at the MAA recorded 59 species of which 26 species were breeding. Birds were concentrated in hedgerows, woodland and scrub rather than in open fields. Species of note include barn owls (details provided in the confidential annex and updated during the course of the Examination [REP5-011, Annex 4]) and 24 species which are on either the red or amber lists of Birds of Conservation Concern (BoCC).
- 5.4.11 Surveys of wintering birds at the MAA identified 46 species of which 20 were on either the BoCC red or amber lists. Most species were recorded in small numbers with the exception of fieldfares, redwings, gulls and starlings.
- 5.4.12 The descriptions of protected and notable species within ES Chapter 8 were supported by detailed survey reports provided as technical

annexes to the ecology chapter of the ES [APP-180]. These are as follows:

- Extended Phase 1 Habitat Survey Report and Habitat Survey Map;
- Great Crested Newt Survey Report;
- Ornithological Surveys (August 2014) and Addendum – Wintering Birds Surveys November-December 2014;
- Badger and Barn Owl Survey (Confidential);
- Otter and Water Vole Survey Report;
- Bat Survey Report; and
- Lesser Silver Water Beetle Survey Report.

Protected species at the Whitley and Runcorn sites

- 5.4.13 Chapter 17 of the ES (describing the technical, spatial and temporal scope of the EIA at the Whitley site) states that ecology and nature conservation were scoped out of the assessment of this site on the basis that the removal of a very limited number of decayed trees and shrubs would result in no significant impact on ecology.
- 5.4.14 Similarly, Chapter 21 of the ES (describing the technical, spatial and temporal scope of the EIA at the Runcorn site) states the Applicant's view that any impact on the MSC and the Mersey estuary had already been taken into account at the EP application stage for the brine discharge consent. This consent had been granted by the EA and no further consideration was necessary given that the proposed development would remain within the operational limits of the consent.
- 5.4.15 During the course of the Examination the Applicant commissioned ecological surveys for both the Whitley and Runcorn sites [REP5-011, Annex 3]. These identified the possible risk to nesting birds from the clearance of trees and scrub at both sites. It also identified the presence of a barn owl roost at the Whitley site.

Potential impacts and mitigation

- 5.4.16 The main impacts on flora and fauna from the proposed development identified in the ES would come from loss of habitat, fragmentation of habitats and disturbance caused during construction.
- 5.4.17 At the MAA there would be a loss of just over 20ha of improved grassland with a larger temporary loss during construction. Over 2,000m of hedgerow would be lost during construction but most of this would be reinstated. Additional planting would result in a net

gain of 289m of hedgerow.¹³ Hedgerows identified as 'important' under the Hedgerow Regulations would be avoided as far as possible and if removed during construction would be reinstated. There would be some loss of nesting and foraging habitat for breeding birds during the phased construction but this is considered in the ES to be minimal in the context of the local area which has large expanses of similar habitat. There was a provision in the draft DCO that details of hedgerows to be removed must be submitted to and approved by the relevant planning authority before commencement of construction.

- 5.4.18 There is potential for disturbance of GCN, badgers, bats and breeding birds from construction activities. No significant impacts are expected at the MAA during the operational phase of the development. Possible effects on protected sites outside the MAA have been considered above in the assessment of air quality.
- 5.4.19 Paragraph 8.13.5 of the ES describes general enhancement measures that would promote biodiversity, including the establishment of wildflower meadows at the gas processing plant and by Drakelow Gorse woodland and the infilling of gaps in 22,000m of existing hedgerow. These are secured by Requirement 6 of the Applicant's final draft DCO [REP8-003].
- 5.4.20 Mitigation measures in respect of GCN would be subject to a licence from NE. Where construction takes place within 500m from a pond supporting GCN, amphibian fencing and pitfall trapping would be used to exclude GCN from the affected area with works carried out in the winter months to avoid the GCN breeding season. Reinstatement of terrestrial habitats would provide habitats of equivalent or greater value; ponds would be improved and special refuges for GCNs provided.
- 5.4.21 Known bat roosts within 20m of works would be resurveyed before the start of construction work and if necessary a licence would be obtained from NE. Additional bat roosts would be provided more than 20m from works and less than 100m from known existing roosts. As far as possible works would take place outside the nesting season for breeding birds. Where trenches which cross mammal pathways are left open overnight during construction, boards would be left across trenches to maintain pathways and diagonal boards provided to allow escape from trenches. Mitigation measures are set out in the draft CEMP.

¹³ This net gain was described at paragraph 8.11.8 of the ES as a 460.9m, but paragraph 8.13.1 of the ES concludes that the net gain would be 289m. In response to my first written question 2.10 [PD-007], the Applicant confirmed the correct figure to be a net gain of 289m [REP2-005].

5.4.22 At the Whitley and Runcorn sites, the Applicant accepted that the additional ecological surveys had identified possible adverse effects on wildlife during construction and that mitigation measures, principally the avoidance of work during the nesting season and the provision of barn owl boxes, should be taken. These would be implemented through provisions in the CEMP and the inclusion of the ecological surveys as annexes to the CEMP. The ecological surveys contain recommendations that the Applicant must comply with under the terms of DCO Requirement 3 for further pre-construction survey work and the presence of an Ecological Clerk of Works during vegetation clearance.

5.4.23 The potential impacts on European sites associated with works at the Runcorn site are considered further in Chapter 6 of this report.

Views of Interested Parties

5.4.24 NE indicated that it was satisfied with the survey information on protected species provided in the ES [REP2-047 and -048]. On the basis of the information available it saw no impediment to issuing a mitigation licence for the work at the MAA in respect of both GCN and badgers. It had issued LONI to that effect in March 2016. These LONI for GCN and badgers are included as annexes 1 and 2 to the Applicant's final version of the draft CEMP submitted at deadline 7 [REP7-008 and -009]. It understood that no bat roosts would be lost but if pre-construction surveys provided different information then a licence might need to be applied for. Pre-construction bat roost surveys are secured as part of the draft CEMP and the biodiversity management plan that must form part of the final CEMP.

5.4.25 At the Runcorn site the construction works should take place outside of the September to mid-May passage periods for over-wintering birds. This should be specified, along with other mitigation measures in the CEMP. NE did not consider that there were any specific issues in respect of over-wintering birds at the MAA. The Applicant included additional wording in the DCO requirement relating to the CEMP that construction operations at the Runcorn site shall take place between April and September (except for limited scrub clearance activities which shall only take place between August and September).

5.4.26 NE was concerned that there was no specific mention in the DCO of European Protected Species (EPS) and suggested the inclusion of a requirement to ensure that activities that require a protected species licence do not take place until NE has been consulted and a scheme of protection and mitigation has been submitted and approved. The Applicant agreed to include such a provision in the DCO and it appears as Requirement 21 of the Applicant's final draft version of the DCO.

- 5.4.27 CWAC accepted that the mitigation measures proposed in respect of GCN and badgers were robust and recognised that NE had issued LONIs [REP2-032]. Nonetheless CWAC considered that the mitigation measures proposed should be submitted as part of the DCO application. Further consideration should also be given to the impact of the development on other protected species.
- 5.4.28 CWAC also requested clarifications as to the identification of barn owl boxes and the assessment of impacts to barn owls at the MAA. An assessment of impacts on barn owl was provided in a confidential annex to the ES. In response to my second written questions, the Applicant explained that the barn owl boxes had been resurveyed (with the survey report included as an annex to the draft CEMP) and confirmed aspects relating to the proposed barn owl mitigation measures to be secured by the CEMP [REP5-004].
- 5.4.29 CWAC also considered that work at the Whitley site could have an impact on protected species and that further assessment was required. As described above, and in response to my first written questions and the comments made by CWAC in their WR, the Applicant commissioned additional ecological surveys at the Whitley site (as well as the Runcorn Site). These surveys, which include mitigation measures, are included as annexes 1 and 2 of the Applicant's final draft version of the CEMP.

Conclusions on ecology

- 5.4.30 There is the potential for an adverse impact on protected species resulting from loss of habitat, fragmentation of habitats and disturbance caused during construction. This is principally of concern at the MAA but additional surveys have also identified impacts at the Whitley and Runcorn sites. No significant effects have been identified for the operational period.
- 5.4.31 Mitigation and enhancement measures have been set out in the ES and further elaborated during the Examination. These have been included in the draft CEMP and enforced through requirements in the DCO. Hedgerow replacement is provided for in the required landscaping scheme. Any impacts on GCN, badgers, barn owls and bats would be subject to licensing by NE and I am satisfied with the LONI from NE in respect of GCN and badgers that there is no reason that a licence could not be granted. Similarly, I am satisfied that a bat mitigation licence is not thought to be required at this stage but that pre-construction bat surveys and subsequent licence applications (if necessary) would be subject to the approval of NE.
- 5.4.32 I am satisfied that, subject to the mitigation measures proposed which would be secured in the DCO, the development would not have a significant adverse impact on ecology.

5.5 MARINE ENVIRONMENT

- 5.5.1 The only element of the proposed development that the Applicant identified that could have an impact on the marine environment is the discharge of brine into the MSC. An extensive analysis of brine discharge had been carried out in 2011 as part of an application to the EA for discharge consent. This consent was granted in 2011 (permit EPR/DP3424GK) and it was considered that the findings remained valid for assessing the proposed development in the ES. The brine diffuser would be installed on the bank of the MSC just below the water surface and there would be no interference with the bed of the canal. There would be no disturbance of bottom sediments and the analysis focused solely on the effects of brine discharge, in particular on changes in salinity.
- 5.5.2 Modelling considered changes in salinity in low and medium flow conditions, low flow was taken as the worst case scenario. In these circumstances there would be a slight increase in salinity in the neighbourhood of the discharge with this declining significantly as brine mixes with the surrounding water both up and downstream.
- 5.5.3 The localised change in salinity could result in some displacement of invertebrate and fish populations with replacement by more salt tolerant species. This was not considered significant within the local and wider ecology of the area. There would be a reversion to the original populations when brine discharge ceased. The discharges were not considered to pose any barrier to migratory fish and the salinity of waters entering the Mersey Estuary would be similar to the natural salinity of the Estuary.
- 5.5.4 The EA in its SoCG with the Applicant indicated that it had no objection in principle to the discharge of brine into the MSC under the permit granted in 2011 [REP2-015]. The permit required eel and water quality monitoring to be carried out before the operation of any brine discharge and agreement of flow monitoring details with the EA.

Views of Interested Parties

- 5.5.5 As noted in Chapter 4 of this report, the method of installation of the discharge outfall into the MSC would require an engineering licence from the Manchester Ship Canal Company Ltd (Peel Ports) [REP2-049].

Conclusion on the marine environment

- 5.5.6 In the light of the information provided in the ES, the SoCG between the Applicant and the EA and the existing discharge licence, I am satisfied that the operation of the proposed development should not have any significant adverse effect on the marine environment.

5.6 LANDSCAPE AND VISUAL IMPACT

- 5.6.1 A landscape and visual impact assessment (LVIA) is included in the ES. This takes into account the requirements for assessment and mitigation set out in EN-1, EN-4, the NPPF and local plans. The assessment has been undertaken with reference to the Guidelines for Landscape and Visual Impact Assessment (GLVIA) produced by the Landscape Institute and the Institute of Environmental Management and Assessment.¹⁴
- 5.6.2 The zone of theoretical visibility for the development at the MAA described in paragraphs 14.2.5 to 14.2.6 of the ES could be up to 10km based on the 25m high emergency cold vent. However, taking into account that most structures would be less than 4m high and the screening offered by extensive vegetation, the LVIA study area of 2km from the edge of the MAA is considered in the ES to capture all significant effects.
- 5.6.3 At the national level the MAA lies within the Shropshire, Cheshire and Staffordshire Plain landscape character. At the local level there are three landscape character types that would be affected - the east Lowland Plain, Sandy Woods and River Valley. The sensitivity of each of these areas to the development is categorised as between medium and low. Three SMs, three conservation areas and 21 listed buildings are located within the 2km zone.
- 5.6.4 Sixteen residential or public access viewpoints within and around the MAA were selected and assessed for impacts during both the construction, operational and decommissioning phases of the development. During construction the main features would be the construction and laydown areas associated with the 19 wellheads including the 35m high drilling rigs, SMC, temporary mounding and excavation of soil for laying of pipelines and a temporary de-gasser unit 10m high at each wellhead. During operation of the gas storage cavities there would be 19 permanent wellheads 3m high, the GPP with vents up to 25m high, the GMCs with buildings up to 4m high and the NTS compound. There would be lighting, security fencing and road works associated with both phases.
- 5.6.5 The overall significance of the impact of the development was determined following the GLVIA methodology taking into account both the assessed magnitude of the change and the sensitivity of the landscape or location.

¹⁴ Guidelines for Landscape and Visual Impact Assessment: Landscape Institute and Institute of Environmental Management and Assessment, Third Edition 2013.

- 5.6.6 The effects on each of the landscape character areas were assessed as being not significant except for one area where a minor effect was expected during construction. The significance of the effect at each of the 16 viewpoints was expected to be greater during construction than during the operational phase. At six locations (one residential and five public access points) the significance of the effect during construction was considered to be moderate and at one location - Brownhayes Farm, located within the MAA - to be major. During the operational phase the significance of the effect was considered to be moderate at Brownhayes Farm and minor or not significant at all other locations.
- 5.6.7 Only a limited range of mitigation measures can be implemented during the construction period. These include the use of soil removed to create bunds around construction areas with associated planting, restriction on construction lighting outside of working hours and use of directional lighting. These cannot offset the impact of drilling rigs and construction equipment and the residual effects are considered to remain as described above.
- 5.6.8 Mitigation measures for the operational period include the use of good design to fit the development into the surrounding area. Buildings would be designed and use materials to match the style of local agricultural buildings. Upper elements of buildings would be coloured green to reduce their visual impact. Existing trees and hedgerows would be protected as far as possible. Removal of hedgerows would be subject to approval by the relevant planning authority as a requirement in the DCO. Hedgerows would be replaced as far as possible and extensive planting would be carried out to provide additional screening around new buildings and existing farmhouses and to fill gaps in existing hedgerows. These measures are considered to reduce the visual impact to a level at which it would not be significant. Details of proposed landscaping is set out in the draft landscaping plans provided with the application [APP-050 to APP-077], which would be secured through Requirement 6 'landscaping' in the DCO.

The Whitley and Runcorn sites

- 5.6.9 No landscape or visual impact issues have been identified for the Whitley Site.
- 5.6.10 At the Runcorn site the main impact would come from the construction of the pipeline bridge some 20m high across the Weaver Navigation. The site lies within the Mersey Valley National Character Area defined by NE. The River Mersey, its estuary and the Hale Shore and farmland are identified locally as areas of special landscape value. A 2km LVIA study area was considered in order to capture all potential significant landscape and visual effects. Given

the industrial nature of the site immediately adjacent to the pipeline bridge the main visual receptors are located to the west and south of the site. These include two national or local path networks and one isolated farm on Frodsham Marsh. Views from these locations would be against the background of the existing industrial development. The bridge would also be seen by users of the Weaver Navigation.

- 5.6.11 There would be some impact during the construction period from the presence of construction machinery and from the removal of vegetation on the Telford Wall. The main impact would be from the presence of the pipeline bridge during the solution mining phase. The effect on landscape character and on viewpoints is assessed as not significant during both construction and operation.
- 5.6.12 Measures would be taken to limit any impacts during construction. These include restricting construction lighting to normal working hours, use of directional lighting and reseeding and planting as soon as possible after pipe laying has been completed. No specific mitigation measures are proposed for the pipeline bridge but this would be removed at the end of the solution mining phase of the project. During the course of the Examination the Applicant agreed to the inclusion of a requirement for a decommissioning plan for the bridge to be included in the DCO.

Views of Interested Parties

- 5.6.13 CWAC commented on the LVIA for the MAA in its LIR. It identified some gaps in the assessment; the above ground electrical connections had not been included; views from King Street which runs adjacent to the site had not been assessed; the height of bunds had not been specified and their impact could not be assessed. But CWAC concluded that providing requirements/obligations were put in place adequate mitigation measures would be secured.
- 5.6.14 In its comments on the LIR the Applicant suggested that the detailed height of these earth bunds could be agreed with the local planning authority (LPA) as part of the CEMP development process, but in all cases would not exceed 3m and generally not exceed 2m above existing ground levels [REP3-002].
- 5.6.15 HBC in its LIR accepted that the ES adequately dealt with the landscape and visual impact of the works at Runcorn. HBC did not consider that the proposed development would have an unacceptable impact on the canal and its environs.
- 5.6.16 The C&RT in its initial representations noted that although it would be set against an industrial backdrop, the pipeline bridge would have a visual impact on the navigation corridor which is relatively open at this point, with the Mersey Estuary to the west [RR-018]. It noted

that public access on the towpath was limited in this location but views from a boat travelling along the navigation needed to be considered. The use of a light coloured frame material and simple detailing would go some way to mitigate this. The vertical positioning of the pipe within the bridge may be less intrusive positioned against the main supports rather than in the middle of the structure.

Conclusion on landscape and visual impact

- 5.6.17 The proposed development at the MAA would take place in open agricultural land but the views of individual elements would be broken up by existing hedgerows and by the proposed bunding and replanting. Temporary drilling rigs would be visible from neighbouring viewpoints as would stacks and other taller elements in the permanent buildings.
- 5.6.18 The general effect on landscape during construction has been assessed as not significant except for one area where a minor adverse effect has been identified relating to the effect of the scheme on rural character. During operation, landscape effects were assessed as not being significant.
- 5.6.19 Some moderate adverse effects and one major adverse visual effect have been identified during the construction period but the Applicant considers that these can be reduced to not significant during the operation period as the proposed landscaping mitigation establishes except at one location where the effect would be moderate.
- 5.6.20 CWAC has broadly accepted this assessment, subject to adequate mitigation measures being secured. I agree with that assessment based on reviewing the evidence presented and from my site visit when I was able to see the limited visual impact of the existing neighbouring facilities. Nonetheless there would be moderate or major adverse visual impacts at a small number of viewpoints close to the development at the MAA during the construction period after allowing for mitigation measures and a moderate adverse impact at one receptor during the operational period.
- 5.6.21 The pipeline bridge at the Runcorn site would be visible from the Weaver Navigation and from open areas of the Mersey Estuary to the south and west. It is clear from the evidence and my site visit that the bridge when viewed from a boat would impact on passing views out to the estuary but would be set in the context of a highly industrialised area dominated by existing buildings and pipework when viewed from the south and west. It would be visible to any canal traffic but this stretch of the Navigation reaches a dead end shortly beyond the location of the bridge and it does not appear that there is a significant volume of traffic. Overall I do not consider that

the pipeline bridge is likely to have a significant impact on the landscape or views in the area.

- 5.6.22 I am satisfied that, subject to the mitigation measures proposed which would be secured in the DCO, the development would not have a significant adverse landscape or visual impact at the Runcorn site.

5.7 CULTURAL HERITAGE

- 5.7.1 The ES contains an assessment of the direct impact of the proposed development at the MAA on cultural heritage assets and any impact on the setting of those assets. The assessment comprises a desk based assessment prepared in accordance with the Institute for Archaeologists (now chartered) guidelines. This assessment considers assets both within the MAA and in a 250m buffer zone around it. Cultural heritage assets nearby but outside the buffer zone are also noted.
- 5.7.2 There a number of non-designated heritage assets within the MAA and the buffer zone. These are principally farmhouses and find spots. King Street Roman Road is included in this category. There is one listed building within the buffer zone and several nearby. There is one SM in the area of the development. This is the Drakelow Hall moated site and fishponds. This does not form part of the MAA but is surrounded by it. The World War II perimeter defences of the former RAF Cranage which lie outside the MAA and buffer zone are also scheduled.
- 5.7.3 There are no confirmed Neolithic, Bronze or Iron Age sites in the area but there is some archaeological evidence from finds and crop marks which suggest there is the potential for finds from these periods to be made in the area. The site lies between two known Roman settlements at Middlewich and Northwich and the Roman road King Street runs along the western edge of the MAA. It is possible that evidence of Roman settlement may lie within the MAA.
- 5.7.4 The area became progressively settled for agriculture during the medieval periods. The principal site being the Drakelow Hall moated site and fishponds. Improvement of land involving 'marling' has led to the widespread existence of marl pits across the MAA, now usually water filled. Some pits may also have been dug for extraction of clay for brickmaking. There is evidence of ridge and furrow ploughing across much of the area and maps show progressive enclosure of land which was largely complete by the mid-18th century.
- 5.7.5 In the modern era agriculture still predominates and a number of historic hedgerows run across the MAA. The development of solution mining and gas storage has taken place on neighbouring areas. RAF

Cranage was developed during World War II on the site of three farms. This was used for training purposes and for assembly of bombers in hangers which are now used for light industrial purposes.

- 5.7.6 The Applicant considers that the principal impact on heritage assets during construction would be the removal of sections of historic hedgerows and the disturbance of ridge and furrow agricultural features. These assets are classed as being of low sensitivity. The lengths of hedgerow removed would be relatively short in relation to the total and the overall impact is not considered to be significant. The impact on the ridge and furrow patterns is assessed as minor.
- 5.7.7 The Applicant identified the potential for unknown heritage assets to be discovered during construction in four areas of archaeological sensitivity: the area to the west of Drakelow Hall moated site and fishponds SM; the area to the east of King Street; the area to the south of 'Street Field'; and 'Brick Kiln Field'. Pre-construction evaluation would be carried out to establish whether any buried remains are present. A Written Scheme of Investigation (WSI) would be agreed with HE and CWAC. An archaeological watching brief would be carried out when historic hedgerows are disturbed. High visibility fencing would be installed around the Drakelow Hall moated site and fishponds SM to avoid unintentional damage to the medieval earthworks.
- 5.7.8 There would be no direct effect from construction on the Drakelow Hall moated site and fishponds SM but the setting could be affected during the operational period. Much of the development would be screened from the site by intervening hedgerows but taller elements within the GPP and GMC would be visible. This is considered to be of minor significance. The RAF Cranage SM is further away from the MAA and the development would largely be screened from site by hedgerows. The Grade II listed building, Rosebank House, which lies within the buffer zone would also largely be screened from views of the development. Impacts on the setting of these features is therefore not considered by the Applicant to be significant.

The Whitley and Runcorn sites

- 5.7.9 No heritage assets have been identified at or in the vicinity of the Whitley site.
- 5.7.10 At the Runcorn site a buffer zone of 50m around the site of the proposed works has been considered for potential damage to historic assets and a wider area of 500m around the site has also been reviewed. No scheduled monuments, listed buildings or conservation areas lie within this wider study area. Five non-designated assets recorded in the Cheshire Historic Environment Record have been identified in the study area. These include the Telford Wall, the

Weston Canal and the MSC. Weston Point adjoining the site has been identified as an area of archaeological potential.

- 5.7.11 The area was largely undeveloped until the early 19th century when the Weaver Navigation was constructed followed by the construction of the MSC. Heavy industrial development took place throughout the 20th century with the development of the alkali works. The area is now almost totally covered by large scale industrial development.
- 5.7.12 The footings for the pipeline bridge would be placed on the site of former limekilns with the potential to disturb remains of these structures. The installation of the pipeline along the top of the Telford Wall involving the use of excavation machinery has the potential to damage the structural integrity of the Wall. Both of these activities are assessed as having the potential to have a minor significant effect.
- 5.7.13 There is also the potential for the development to disturb other unknown 19th century archaeological remains although, given the extent of disturbance from 20th century development, the effect is expected to be minor.
- 5.7.14 A targeted archaeological watching brief would be required both for the known and unknown heritage assets. This would record any evidence of limekilns and any other finds. Detailed engineering design would assess the structural integrity of the Telford Wall and provision for this would be incorporated into the CEMP. These measures are considered to mitigate any adverse effects of the development on heritage assets.

Views of Interested Parties

- 5.7.15 In its LIR CWAC noted the areas of potential archaeological significance which had been identified in and around the MAA. Landscaping would be necessary to provide additional screening to mitigate the impact on the setting of the Drakelow Hall moated site and fishponds SM. The proposed archaeological watching brief was considered to be appropriate to address concerns about archaeology in the areas of ridge and furrow farmland and other areas with archaeological potential.
- 5.7.16 The C&RT is recorded in the ES as stating that it was essential that the impact on the heritage value of the waterway corridor at the Runcorn site is fully assessed and mitigated. In its response to my first questions it indicated that it was reasonably content with the proposed archaeological watching brief [REP2-030].

Conclusion on cultural heritage

- 5.7.17 There is some potential for cultural heritage assets to be affected by the proposed development. At the MAA the main impacts would be on historic hedgerows and on the remains of ridge and furrow field systems with four areas of archaeological sensitivity identified. The Drakelow Hall moated site and fishponds SM would not be directly affected but its setting would be changed. Hedgerows would screen much of the development from the SM and the overall impact is considered to be of minor significance. At the Runcorn site the main concerns are with the discovery of archaeological remains and with possible damage to the integrity of the Telford Wall.
- 5.7.18 Overall the impact of the development on these aspects of cultural heritage is considered to be minor. I am satisfied that taking into account the proposed mitigation measures to be secured through the CEMP and in the DCO, including the proposed WSI and archaeological watching brief, there should be no significant harm to heritage assets at either the MAA or the Runcorn site.
- 5.7.19 I am satisfied that, subject to the mitigation measures proposed which would be secured in the DCO, the development would not have a significant adverse impact on cultural heritage.

5.8 NOISE AND VIBRATION

- 5.8.1 Noise and vibration were considered in the ES for both the MAA and the Whitley site. No issues relating to noise and vibration were identified for work at the Runcorn site due to the lack of sensitive human receptors and seasonal working restrictions relating to ecology.
- 5.8.2 Noise effects at the MAA during both construction and operation were reviewed in the ES. Sources of vibration were more than 100m from the nearest residential building and were therefore not considered to be significant. Noise would be generated by construction plant, drilling and other activities associated with solution mining, traffic on- and off-site and the 24 hour operation of the gas storage facility.
- 5.8.3 In order to assess a worst case scenario it was assumed that construction of the GPP, SMC, access roads and pipelines all take place at the same time. The peak level of traffic of 150 cars per day and 30 HGVs per day has been taken into account. Drilling noise has been assessed using noise levels derived from data for other similar projects. A single rig was assumed to operate on a continuous basis day and night which is the typical operating pattern for this type of development. Equipment used during the operational phase was modelled. Pumps and other equipment required during the operational period were assumed to be housed in buildings or an

acoustic enclosure but other equipment such as cooling fans might need to be located outside.

- 5.8.4 Baseline noise levels were established using five noise monitoring locations (NML) representing 13 residential buildings identified as noise sensitive receptors (NSR) in and around the MAA. These points were agreed with CWAC. BS 5228 'ABC Method' provides guidance on the threshold of significance for noise effects. Due to the low existing background noise the Category A criteria were adopted with 65dB_{L_{Aeq}} daytime, 55dB_{L_{Aeq}} evening and weekend and 45dB_{L_{Aeq}} night-time thresholds.¹⁵ Where noise levels exceed these thresholds, a significant effect is deemed to occur, although the Applicant noted that professional judgement can be applied to short term effects that would be unlikely to require mitigation.
- 5.8.5 Construction noise levels were predicted for each of the 13 NSRs on and around the MAA. The largest predicted increase in noise is due to pipeline construction. Noise from this source would exceed the 65dB_{L_{Aeq}} level at nearly all of the receptors, in two cases by more than 10dB_{L_{Aeq}}. Well head construction noise would also exceed the assessment level at six of the locations. Noise from construction traffic was not considered to be significant.
- 5.8.6 During construction the use of low noise equipment, mobile screens and careful scheduling of works would be used to reduce noise levels. It is stated in the ES that these types of mitigation can be expected to reduce noise levels by up to 10dB(A). After this degree of mitigation noise would still be 1 - 2 dB above threshold levels at two receptors but the ES notes that the effect of pipeline construction noise would be short term at any one point as the construction work moves along the route.
- 5.8.7 The impact of noise from drilling - a 24 hour activity - was assessed using the night time criterion of 45dB_{L_{Aeq}}. The unmitigated noise levels from drilling are shown to exceed these levels at all but one of the NSRs. At six NSRs the unmitigated noise level would exceed the threshold by 10 dB_{L_{Aeq}} or more.
- 5.8.8 Mitigation for night time noise during drilling would therefore be necessary to avoid significant night time noise effects arising at receptors. Mitigation measures would take the form of modification to the plant or local noise screening. This would be capable of reducing noise below the night time threshold at all but one location.

¹⁵ British Standard 5228, Code of Practice for Noise and Vibration on Construction and Open Sites: Part 1 Noise. BSI, 2009. The Applicant confirmed that its assessment had been carried out following the principles and guidance with the updated version of this standard BS 5228-1:2009+A1:2014 [REP2-005]

At one location - Stublach Dairy Farm - further screening would be necessary for a period of two months while drilling took place at two nearby wellheads.

- 5.8.9 The assessment of noise during the operation of the gas storage facility was based on BS 4142 which sets out a system of criteria based on background noise levels defined as the noise level that is exceeded for 90% of the time - dBL_{A90} .¹⁶ Based on discussions with CWAC, activities were considered to have a negligible effect if their noise levels were 10dB below the existing L_{A90} level or 25dB whichever is lower. Increments above these levels are defined for minor, moderate (5dB change) and major (10dB change) impacts. Night time noise was assessed as the worst case and background values were derived using data from the NMLs. In my first written questions and in line with EN-4, I asked the Applicant about the operational conditions assumed in the assessment (compression vs free flow). The Applicant stated that the assessment was worst case with all noise-emitting equipment running simultaneously, therefore specific operating conditions were not relevant to the assessment.
- 5.8.10 The predicted operational noise levels without mitigation at the NSRs were considered to be minor or negligible at ten of the 13 locations and moderate at three locations. After taking account of noise attenuation from buildings or acoustic enclosures it was estimated that the noise levels would be negligible at two locations and minor at the 12 others. There would be a moderate impact at one location - Brownhayes Farm - but it was argued that taking into account the absolute levels of noise involved and the context, noise would not be at a level which could cause sleep disturbance and the effect should be considered as minor. In addition to placing operational equipment in buildings or acoustic enclosures, work would be carried out during the design process to ensure that plant noise levels are no higher than predicted in the assessment, that acoustic and tonal features are designed out and that noise levels are reduced further where possible.

The Whitley site

- 5.8.11 The noise assessment for the Whitley site focused on the impact on the two neighbouring dwellings, Newholme Farm (adjacent to the site) and Marsh Lane Farm (200m distant). Noise during construction was expected to be low and short term and was not assessed. Noise during operation was compared to existing night time background noise levels of $31dBL_{A90}$. Without mitigation noise from the equipment

¹⁶ British Standard 4142, Methods for Rating and Assessing Industrial and Commercial Sound. BSI, 2014.

at the site could in a worse case be 48dB_{L_{Aeq}}, at both NSRs but after mitigation through enclosure in the building and use of low noise fans this could be reduced to 32 dB_{L_{Aeq}} at Newholme Farm and 28 dB_{L_{Aeq}} at Marsh Lane Farm. At these levels the impact was considered to be minor.

Views of Interested Parties

- 5.8.12 CWAC commented on the noise assessment in the ES in its LIR and WR. It noted that the ES had not considered the extent to which noise during construction and drilling would exceed background noise levels. It argued that drilling was not a typical construction activity and that assessment against background noise was more appropriate. It provided additional tables to show that even allowing for mitigation there would be significant exceedence of background levels. These would be at levels at which complaints were likely. It also considered that inadequate attention had been given to the overlap between the construction and operational periods in assessing the cumulative impact of the development.
- 5.8.13 The Applicant argued that pipeline installation, which was the noisiest activity, should be considered a construction activity and noted that it would only take place for one to two days in any one location [REP2-005]. The thresholds set out in BS5228 and used in the ES provided the appropriate criteria for defining the noise levels above which significant effects could occur.
- 5.8.14 The Applicant also provided further information to show the combined effect of noise from construction and operations where these two phases overlapped [REP2-006, annex 5]. In the first phase of work there would be overlap between construction of the SMC and drilling of the first boreholes but this would not add to the noise at individual NSRs. In the second phase there would be some additional noise from the combined activities of solution mining and cavity construction but this would not be above the threshold for significant effect in BS5228. In the third phase both the SMC and GPP would be in operation but further wellhead construction would be located away from these activities. Noise from construction and operational activities during this third phase and would not combine significantly at the NSRs. In the fourth phase one NSR would be located a similar distance from pipeline construction, the GPP and the SMC but the construction noise is expected to determine the overall noise level.
- 5.8.15 Further discussions took place between the Applicant and CWAC. The Applicant agreed to the inclusion of specific reference to a scheme for noise management in the draft CEMP and for the inclusion in the draft CEMP of the maximum night and day time noise levels at NSRs. It also agreed to the inclusion of specific noise limits at the six most affected NSRs during solution mining and the operation of the gas

storage facility to be included in the DCO. CWAC was satisfied that these amendments addressed its concerns [EV-018, -019].

- 5.8.16 The owners of Cross Lanes Farm, Yatehouse Green Farm, Yew Tree Farm and Higher Green Farm, adjacent to the MAA, each raised concern in their WR about the impact of noise and vibration on their places of residence both during construction and during the operational phase [REP2-044, -050, -051 and -052].

Conclusion on noise and vibration

- 5.8.17 The proposed development would add to noise in a rural area principally at the MAA particularly during the construction period. The largest increase in noise would be from pipeline construction which would exceed the threshold for significant effect. But this noise would only occur for one or two days in any one location as pipeline construction moves along its route. Mitigation measures both through design and through noise screening have been identified which should reduce the impact. These measures have been discussed between the Applicant and CWAC and agreement reached on noise limits which would be included in the CEMP and DCO. With these measures in place I am satisfied that the proposed mitigation measures in the CEMP would keep the noise levels at nearby NSRs during construction below the threshold for significant adverse effects and that acceptable limits have been specified in the DCO for noise at the nearest NSRs during the solution mining and gas storage operation.
- 5.8.18 Noise has also been identified as an issue at the Whitley site but I am satisfied that the mitigation measures proposed would result in the noise impact being of minor significance.
- 5.8.19 I am satisfied that, subject to the mitigation measures proposed which would be secured in the DCO, noise from the development would not have a significant adverse impact.

5.9 RADIO INTERFERENCE

- 5.9.1 The University of Manchester (the University) which together with the UK Science and Technology Facilities Council operates and maintains the Jodrell Bank Observatory (JBO) submitted a WR setting out its concerns about the way in which the proposed development at the MAA could have an impact on the work carried out at JBO [REP2-055]. JBO is the UK's primary radio astronomy facility. It is used by hundreds of research astronomers from the UK and around the world. It carries out world class research in modern astrophysics and forms part of an international network with other large radio telescopes in Europe and around the world. It has

recently been selected to host the headquarters of the International Square Kilometre Array, the world's major radio astronomy project.

- 5.9.2 Radio astronomy involves the study of radio energy or radio waves emitted by objects in space. These radio signals are extremely weak in comparison with man-made signals. Radio astronomy is only feasible because certain narrow bands are reserved for scientific use with transmissions in those bands protected. Radio telescopes are located away from highly populated areas and techniques continue to be developed to mitigate interference from man-made signals.
- 5.9.3 The use and protection of the radio spectrum is regulated by the International Telecommunications Union (ITU). Radio astronomy is one of 40 recognised services to which frequency allocations have been made. In the UK radio astronomy has a grant of recognised Spectrum Access from Ofcom. The most important bands for radio astronomy are between 1400 and 1427MHz but there are other protected bands at 1612 and 1665/7MHz.
- 5.9.4 No transmissions are licensed by Ofcom in the bands which are fully allocated to radio astronomy. There are also bands where there is coordinated use with other users. However electrically operated equipment, such as that proposed for installation at the MAA, produces radio emissions as an unwanted by-product. These may occur in the narrow frequency band protected for radio astronomy or across a wide range of frequencies including the protected bands. There are techniques that JBO can use for filtering out the 'noise' caused from interference but the weakness of the radio signals which are the subject of observation means this is not always possible and would in any case reduce the efficiency of the telescope. The ITU has set out recommendations on limits for harmful interference to radio astronomy in specified frequency bands in its Recommendation ITU-RA.769-2¹⁷. This is the only internationally recognised standard for interference thresholds for radio astronomy spectrum currently in force.
- 5.9.5 JBO relies on a consultation process to safeguard its radio frequencies by reviewing planning applications within a defined consultation zone. The status of JBO is recognised in the Congleton (East Cheshire) and Vale Royal Borough (now CWAC) Local Plans both of which indicate that development within the consultation zone would not be permitted which can be shown to impair the efficiency of JBO. The proposed development lies at the western edge of the consultation zone partly inside and partly outside the zone.

¹⁷ RA.769 : Protection criteria used for radio astronomical measurements. International Telecommunication Union. 2003.

- 5.9.6 Radio astronomy is not specifically referred to in the NPS but the University drew attention to paragraph 5.1.2 in EN1 which states that the decision maker should "*consider other impacts and means of mitigation where it determines that the impact is relevant and important to its decision.*"
- 5.9.7 Detailed designs for plant and machinery at the MAA have not yet been finalised but the main concern was with the high power gas processors to be installed at the GPP. These have the potential to cause radio frequency interference. It was the University's view that a commitment that equipment would be designed to comply with EMC Directive 2004/108/EC as implemented through the Electromagnetic Compatibility Regulations 2006 did not involve a proper assessment of the potential effects of the proposal nor an adequate guarantee that harmful interference would be prevented.
- 5.9.8 The Applicant agreed to enter into discussions with the University and to develop a SoCG. These discussions led to the drafting of Requirement 24 to be included in the DCO for the development of a Control of Radio Frequency Emissions Plan to be agreed by the University. This would include a scheme to ensure that total radiated power emitted from the GPP does not exceed specified limits. These limits are taken from ITU-R 769 referred to at paragraph 5.9.4 above. Subject to some suggested drafting changes, the University indicated that Requirement 24 adequately addressed its concerns [REP9-002].

Conclusions on radio interference

- 5.9.9 The JBO is a world class centre for radio astronomy. The spectrum within which most of its work takes place is protected from licensed use for other purposes but is vulnerable to interference from radio waves generated as a by-product of other legitimate activities. The University and the Applicant have agreed a set of limits on emissions at specified frequencies and a mechanism for implementation which address the University's concerns. These are included as Requirement 24 in the draft DCO.
- 5.9.10 I am satisfied that work at JBO is of national and international significance and that this could be harmed by radio emissions from the GPP. Any harm to the work at JBO would be a relevant consideration to be taken into account in considering the application. In my view the potential for such harm has been adequately addressed by the proposed requirement in the DCO.

5.10 TRAFFIC AND TRANSPORT

- 5.10.1 The transport assessment for the MAA in section 12 of the ES was carried out in accordance with Department for Transport (DfT)

"Guidance on Transport Assessment" and traffic environmental effects were assessed using the Institute of Environmental Assessment's Guidelines for the Environmental Assessment of Road Traffic.¹⁸ Traffic movements were also considered in the revised Design and Access Statement [APP-206]. The scope of the assessment was agreed with the local highways authorities and took into account national, regional and local policies. The principal issues identified were that congestion should be minimised and mitigated and that workers should be encouraged to use public transport and to share vehicles.

- 5.10.2 Access to the MAA is from the A530, King Street, on the west of the site using an existing purpose built junction constructed to current highways standards. This junction currently provides access to the SGSP site and would be shared with that project. The A530 can be reached from the south via junction 18 on the M6 using the A54 and B5309. The A530 joins the A556 to the north of the MAA.
- 5.10.3 Personal injury accident data for 2011 - 2013 list 11 accidents on the A530 in the vicinity of the MAA (including the roundabout with the A556. Six of these were classified as slight, four as serious and one as fatal. The ES concluded that there was not an undue safety concern on this section of road.
- 5.10.4 Baseline traffic data was taken from DfT and CWAC sources and allowance was made for growth from known committed developments. Given the rural location there is only limited scope for use of public transport, access by foot or by cycle. As a worst case it was assumed that all workers would arrive by car resulting in a peak level of 150 cars per day (300 movements). The maximum number of HGVs arriving at the site was expected to be 30 per day. For much of the construction period car and HGV levels would be below these peak numbers.
- 5.10.5 The addition of construction traffic to the baseline flows was estimated for ten locations on the local road network. The maximum increase in light vehicle numbers was during the evening peak hours with increases of 4.4% in the north and south flows on the A530 at the exit from the site. The maximum increase in daily flow was 2% at the same location. Analysis of HGV flows indicated an increase of 8% in the 24 hour flows at the exit from the site but very small increases elsewhere. It was assumed that half of the construction traffic would approach the site from the north and half from the south. These increases in construction traffic are well below the

¹⁸ Guidance on Transport Assessment: Department of Transport (2007). Withdrawn in October 2014. Guidelines for the Environmental Assessment of Road Traffic: Institute of Environmental Assessment (1993)

levels at which any significant effects on traffic conditions can be expected.

- 5.10.6 During the operational phase there would only be a small number of traffic movements (based on 35 staff over two to three shifts) and the effect of these on the highways network is considered to be negligible.
- 5.10.7 Due to the low predicted increases in traffic volumes in construction and operation, the IEA Rule 1 and Rule 2 threshold criteria for further detailed assessment of traffic flows; driver delay; pedestrian delay; severance, fear and intimidation; accidents and safety; pedestrian amenity and hazardous loads were not exceeded and were therefore assessed as negligible.

The Whitley and Runcorn sites

- 5.10.8 The Whitley site is on Marsh Lane, a rural lane running off the A49 which connects to junction 10 on the M56. Construction work would take place over a six month period and would generally only require light van access by ten workers - 20 car/van movements per day. Occasional HGV deliveries would be required with a maximum of two on some days. Compared with existing traffic the impact of the development on the highway network would be negligible.
- 5.10.9 Construction at the Runcorn site is also expected to be limited to a six month period. The site has good access to the primary road network and the maximum increase in construction traffic of 20 vehicles per day is not expected to have any significant impact on the road network.
- 5.10.10 The installation of the pipeline bridge could take up to a week and involve some interference with traffic on the Weaver Navigation. This would be agreed in advance with the C&RT and other authorities and is not expected to result in any significant effects.
- 5.10.11 There would be no significant effects from traffic at either of these sites during the operational phase of the development.

Views of Interested Parties

- 5.10.12 In its LIR CWAC stated that provided requirements/obligations were put in place relating to construction traffic management and routing it was satisfied that adequate mitigation measures for any effects from traffic at the MAA and the Whitley site would be secured and delivered. HBC in its LIR was satisfied that there would be no significant effects arising from traffic at the Runcorn site.
- 5.10.13 In its WR CWAC highlighted its concern that no details had been provided on the temporary laydown area at the Whitley site. Further

detail should be provided to ensure that there was an adequate amount of car/van parking for construction traffic. This was reiterated in subsequent comments from CWAC [REP4-010]. During the course of the Examination the Applicant provided an indicative laydown plan to show how vehicles could be accommodated at the site [REP5-010]. It also agreed to the inclusion of provisions in the draft CEMP to limit the number of vehicles using the Whitley site to the number that can be accommodated within the site compound with further controls on parking and the manner in which vehicles access the site [REP5-011].

- 5.10.14 The C&RT in its WR objected to the provisions in the draft DCO (originally A18) relating to closure of the Navigation. It referred to its own Code of Practice for Works Affecting the C&RT and argued that any powers relating to closure should be made expressly subject to compliance with this Code [REP2-029]. It acknowledged that the proposed powers were subject to protective provisions but that those provisions limit the effect of the Code. It argued that without the protection of the Code substantial harm could be caused to innocent parties and the Trust could suffer loss through penalty provisions in other agreements.
- 5.10.15 The C&RT put forward its own draft of protective provisions and a revised draft was agreed but the C&RT continued to express its concerns about the powers included in the articles in the draft DCO. The Applicant argued that the very limited closure of the canal was for safety reasons only and was needed to comply with the timescales dictated elsewhere in the DCO rather than the preference of the C&RT. Any work in and over, or closure of the canal would be done with full discussion and cooperation with the C&RT [REP5-010].

Conclusions on traffic and transport

- 5.10.16 I am satisfied that the analysis carried out in the ES of vehicle movements associated with the construction and operational phases of the development demonstrates that the development would not cause any significant impact on traffic flows or traffic related environmental effects at any of the three sites. Adherence to HGV routing as assessed in the ES would be secured through the s106 agreement which is discussed in section 5.14. The draft CEMP contains specific provisions to ensure that vehicles using the Whitley site are parked within the site and not on the rural lane. Closure of the Weaver Navigation for a short period to allow the construction of the pipeline bridge is necessary for safety reasons. I am satisfied that powers should be granted in the DCO to allow this to be managed efficiently subject given that the exercise of those powers is subject to the protective provisions also included in the DCO for the benefit of the C&RT.

5.11 SOCIO-ECONOMIC CHARACTERISTICS

5.11.1 The ES considers the socio-economic impact of the project from work at the MAA. No significant socio-economic effects are expected from the work at the Whitley and Runcorn sites.

5.11.2 At the MAA the principal impacts considered are:

- The employment created at the site during construction and operational phases;
- Disruption to the local community during construction; and
- Temporary or permanent loss of agricultural land.

5.11.3 It is estimated that the construction work would generate an average of 150 and a peak of 300 jobs over a seven year period. Given the similar existing infrastructure in the area and the existence of an established supply chain servicing these facilities, it is expected that the majority of this employment can be met locally. There may be some temporary migration into the area from specialist workers but this is not expected to put any significant demands on accommodation or other local resources. The increase in traffic is not expected to have any adverse effects on existing businesses. The temporary diversion of PROWs would have a short term effect on local amenity but this is not considered to be significant. There would be some benefit to the local economy from spending in the community.

5.11.4 As noted earlier in section 5.2, approximately 74ha of agricultural land would be lost during construction. 21.6ha of this is expected to be lost permanently. The land that would be lost is classed as grade 3 in the ES and not split between grades 3a and 3b. Only grade 3a land is classed as BMV. As a worst case it had been assumed in the ES that all of the land lost would fall into this category. Further information from a study carried out in 2005 for a nearby project suggested that less than 50% of the land in the area was classed as grade 3a [REP3-007].

5.11.5 In response to my first written questions the Applicant indicated that the 21.6ha permanent loss represented 0.1% of the total agricultural land areas in the local area of influence and 0.02% of agricultural land in the wider study area.

Views of Interested Parties

5.11.6 CWAC expressed concern in its LIR about the lack of sub-division of the agricultural land into grades 3a and 3b making it difficult to assess the scale of the loss of BMV land. It also expressed concern that there was no provision for remediation of agricultural land in the case of a brine spillage. The Applicant agreed to the inclusion of a

requirement on remediation of land following brine spillage as part of Requirement 6 on landscaping in the DCO [REP3-002].

- 5.11.7 NE commented on the loss of agricultural land [REP2-048]. It was not possible for it to comment in detail given the lack of a breakdown of the grade 3 ALC land. It was important to understand the extent of the loss of BMV (grade 3a) land. If this proved to be more than 20ha of BMV land NE's view was that this should be considered as significant.
- 5.11.8 Pinsent Mason submitted representation on behalf of Mr and Mrs Wildman of Cross Lanes Farm located in the southern part of the MAA. In a WR and in response to my first questions they commented on the Applicant's approach to assessing socio-economic impacts [REP2-044 and -045]. This drew attention to the lack of any reference to the impact of the loss of land on farming practices and businesses in the area and to the absence of information on the impact of work associated with the connections to the gas NTS and the National Grid.
- 5.11.9 It was argued that the development would have a major impact on the Wildman's dairy cow business. The criterion adopted in the ES for assessing the significance of effect only took into account impacts which were likely to affect a large number of businesses and/or people. This meant that a very significant effect on a small number of people can never be deemed a major impact. It was argued that this could not be correct.
- 5.11.10 The proposed access roads across the mid-section of the farm coupled with the installation of precise level points in every field would have serious consequences for the operation of the business and would continue during the operational phase. Payment of compensation, which is outside of the scope of the Examination, should not be taken into account as a mitigating factor.
- 5.11.11 An agricultural consultant's report was submitted [AS-005]. This suggested that there would be a medium term loss of 5.8 ha out of a total of 35 ha and a permanent loss of 2.7 ha. A further 14 ha would be severed from the dairy unit during construction. This would reduce the number of cows that could be stocked by 14 - 15 cows during the construction period and 7 cows permanently out of a current herd of 360 with a corresponding reduction in milk sales. While there would be some corresponding reduction in variable costs there would be no savings on overhead costs such as labour, power and machinery. It would be necessary to house cows inside during the construction period with additional feed and other costs and damage to grazing. Housing of cows throughout the year could jeopardise the valuable supermarket milk contract from which the farm currently benefits.

- 5.11.12 The Applicant disputed the assessment of the impact on the Wildman's business [REP4-008]. It did not accept that there would be severance of grazing land. Crossing points could be provided during construction works as had been the case in other similar developments in the area. There would be inconvenience but careful management should allow any additional delay in herd movements and grass damage to be minimised. It did not accept that it would be necessary for the whole herd to be kept indoors during the summer period. It was prepared to discuss phasing of the construction works of the two cavities on the Wildman's land if that would help with the management of their dairy herd.
- 5.11.13 The owners of Yatehouse Green Farm, Yew Tree Farm and Higher Green Farm also raised concerns about the impact on their farming businesses [REP2-050, -051 and -052]. A tenant farmer (on IEL owned land) also expressed concern about the impact on his farming business and lifestyle [RR-012]. The owner of Brownhayes Farm expressed concern about the blight caused by the plans for the development which had been demonstrated by his inability to sell the property [REP2-053].

Conclusions on socio-economic impacts

- 5.11.14 The ES has explored the extent of any effect of the proposed development on socio-economic characteristics in the area. There would be some small beneficial effects from the employment opportunities provided during the seven year construction period and associated spending. The scale of the project is such that it should not produce any significant distortion in the local labour or housing markets.
- 5.11.15 There would be a permanent loss of agricultural land. The assessment has been carried out on the basis that all 21.6 ha would be class 3a BMV land and NE has indicated that it would regard a loss of more than 20 ha of BMV land as significant. However other evidence submitted during the Examination suggested that perhaps less than half of land in the area fell into this category with the rest being of lower value. It is appropriate for the ES to consider a worse case but it appears to me highly likely that the actual loss of BMV land would be well below 20ha.
- 5.11.16 Concerns about the socio-economic impact of the development on the local farming community have principally been raised by the landowners whose land would be subject to CA but objections were also lodged by one tenant farmer on IEL owned land. The main concerns expressed were with the disruption to farming businesses resulting from the works which would take place at the MAA. There were additional concerns about the disruption to the private

enjoyment of their properties from noise, vibration and other disturbance.

- 5.11.17 The requests for CA and temporary possession are considered in Chapter 7. The issue of compensation is outside the scope of this Report but I have to work on the assumption that the statutory compensation provisions would be properly applied and would address the economic loss directly attributable to the CA. However I draw a distinction between monetary compensation and measures taken to mitigate an adverse effect. Mitigation as discussed elsewhere in this Report is concerned with physical measures which can be taken to offset a perceived adverse effect or reduce it to acceptable levels. These include mitigation measures such as noise insulation, landscaping, design parameters and traffic routing. Compensation does not reduce the physical manifestation of adverse effects of the proposed development.
- 5.11.18 The impact of noise and vibration has been considered in section 5.8 where I concluded, after taking account of proposed mitigation measures, that any significant adverse effects on NSRs from the proposed development would be minimised during construction and should be avoided during operation. Following mitigation there would still be an element of disturbance to the operation of the farming businesses, personal enjoyment of property and lifestyle relative to the current baseline, resulting from the proximity of the wellheads and associated infrastructure to individual properties. I will take this into account in my assessment of the pros and cons of the development as a whole.

5.12 HOLFORD GAS STORAGE LIMITED

- 5.12.1 HGSL is the operator of an existing gas storage facility with eight underground salt cavities and a maximum storage capacity of 160 mcm of natural gas.¹⁹ HGSL set out the details of its activities and concerns in its WR [REP2-041]. All of these cavities are located within the Order Limits at the MAA. The GPP would be located close to one wellhead and HGSL's NTS compound, the proposed GMC would be located close to three of HGSL's wellheads and HGSL's GMC. In some areas proposed gas pipelines would run in close proximity to and in some cases cross HGSL's gas pipelines.
- 5.12.2 HGSL is an upper tier COMAH establishment and HGSL has a statutory duty to take all measures necessary to prevent major accidents and limit their consequences to people and the

¹⁹ <http://www.hydrocarbons-technology.com/projects/holford-gas/>

environment. It is responsible for updating its safety report following any significant change. It was HGSL's view that the proposed development would be likely to impact the risk profile of its project and require an update of its safety report.

- 5.12.3 HGSL considered that during the construction period the severity of any major accident hazard (MAH) would be increased by the presence of up to 300 construction workers on site including within the harm zone for HGSL. These would not be within HGSL's control. The likelihood of a MAH would also be increased by the lifting and excavation activities during construction.
- 5.12.4 During the operational period there would also be additional personnel on site and in the vicinity of HGSL's facilities. There could be potential for 'domino impacts' with an MAH at one facility causing an MAH at the other site. Fire at an HGSL wellhead could result in damage and release of flammable material at the new GMC. Failure in one of the new gas pipelines could lead to failure in adjacent HGSL pipelines.
- 5.12.5 HGSL sought confirmation from the Applicant that the inherent features of the design of the proposed development would eliminate or mitigate the risks it had identified to at least a tolerable level of risk. It sought the inclusion of protective provisions in the DCO to ensure that the HGSL project was adequately protected.
- 5.12.6 The Applicant responded to HGSL's WR stating it was confident that the proposed underground gas storage facility would be constructed and operated without impact on the duties of HGSL under the COMAH Regulations 2015 [REP3-002]. It had held detailed pre-application discussions with the HSE to understand its regulatory requirements in respect of the proposed Project's compliance with both COMAH and Hazardous Substances regulations. Those discussions had included review of gas pipeline design and location. The Applicant was confident that all infrastructure would be constructed, installed, operated and maintained consistent and compliant with the COMAH and Planning (Hazardous Substances) Regulations 2015. In this regard it noted that it had received a Hazardous Substances Consent for the proposed Project. This had been issued after consultation with the HSE which raised no objection to the Project's proposal to store natural gas on the main development area (see paragraph 4.2.12 above).
- 5.12.7 The Applicant did not consider that it was appropriate for the draft DCO to contain protective provisions for a commercial competitor that is a non-statutory undertaker and has the benefit of protective measures contained within its lease. At the second ISH HGSL highlighted that its lease was not with the Applicant and continued to press for protective provisions [REP4-011]. The Applicant agreed to

enter into a Deed of Guarantee in respect of compliance with the terms of HGSL's lease which was from IEL [REP5-010].

- 5.12.8 Following further discussions between the Applicant and HGSL the Applicant agreed to the inclusion of protective provisions and a draft was included in the revised DCO submitted after that hearing [REP7-003]. Discussions between the parties continued with some further changes being made to the draft protective provisions but without final agreement being reached [REP8-004]. HGSL's final submission set out the remaining areas of disagreement which were principally concerned with the financial arrangements to be included in the protective provisions [REP9-001].

Conclusion on the case for protective provisions for HGSL

- 5.12.9 The HGSL gas storage facility contributes to the need for gas storage identified in EN4. Although its planning consent predates PA 2008 its size meets the definition of a gas storage NSIP in that Act. As such it should, in my view, be regarded as an important part of the national gas infrastructure whose operation should not be put at serious risk by subsequent development. Although HGSL is not a statutory undertaker that does not mean that it cannot benefit from protective provisions in a DCO. In my view it is appropriate for the operation of a nationally important facility to be protected in this way. I consider the details of that protection in section 8.4.8 below.

5.13 CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN

- 5.13.1 The proposed development is unusual for a project of this size in having an extended construction period before reaching full operational status as a gas storage facility. That period covers not only the installation of the necessary infrastructure but also the extraction of brine through solution mining over a seven to ten year period to create the 19 storage cavities. The CEMP is therefore a means of controlling the detailed implementation of a significant part of the total development.
- 5.13.2 The draft CEMP submitted with the ES set out general principles to be adopted in the final plan but did not, in my view, contain sufficiently detailed provisions [APP-183]. Following my written questions, questions at the ISH and discussions with the LPAs, the Applicant agreed to a substantial expansion of the CEMP to include specific actions to be taken at the MAA and the Whitley and Runcorn sites. These actions address particular concerns about environmental impacts from construction activities which have been discussed above.
- 5.13.3 The final draft of the CEMP and associated annexes [REP7-006 and REP7-008 to REP-011] sets out the management plans to be

included in the final CEMP and highlights detailed points that should be included in those plans in response to issues identified in the ES or raised during the Examination. It also includes additional environmental information provided during the Examination. The final draft of the CEMP incorporates a range of measures to mitigate adverse effects of the proposed development. The importance of these measures and their role in offsetting adverse effects has been set out in the earlier sections of this chapter.

- 5.13.4 The provision of a final CEMP in accordance with the draft CEMP to be approved by the relevant planning authority is a requirement in the DCO.
- 5.13.5 In my view the inclusion of detailed actions in the draft CEMP the implementation of which is a requirement in the DCO is a helpful and satisfactory way in which the environmental impacts of the long construction phase of the project and any necessary mitigation measures can be secured. Where there are environmental impacts from the subsequent operational phase of the development which need to be regulated and which are not covered by the CEMP, these are secured through separate requirements in the DCO.

5.14 SECTION 106 AGREEMENT

- 5.14.1 A draft section 106 agreement has been negotiated between the Applicant, CWAC and CEC concerning aspects of the development at the MAA which fall outside of the Order limits and cannot be the subject of requirements in the draft DCO [AS-013]. Under Schedule 2 of the agreement the Applicant and its associated companies IEL and INEOS Enterprises Group Limited (IEGL) agree to:
- The setting up of a local liaison group the details of which are to be agreed with CWAC and CEC;
 - Provide details of the written instruction and means of communicating the Routing Plan to be followed by HGVs for approval by CWAC and CEC;
 - Ensure that employees, agents, contractors and suppliers are informed of approved routes to be observed by HGVs and are instructed to follow these routes;
 - Provide a scheme for highway signage for HGVs to be approved by CWAC and CEC and not to commence development until the highway signage is in place.
- 5.14.2 These provisions ensure that there is a channel for communication with the local community as the development progresses and ensure that the HGV traffic generated by the development keeps to the routes that have been the subject of assessment in the ES.

- 5.14.3 The draft agreement also includes a provision that within seven days of the start of work on Phase 3 of the neighbouring SGSP project it would submit a timetable for approval by CWAC detailing how the works which are the subject of the DCO would cease pending completion of Phase 3 "*in order to manage and minimise the potential adverse effects of the [proposed development] being carried out concurrently with Phase 3*". It would then implement the approved plan. The phasing plan for the proposed development that would form part of the final CEMP would be implemented in full.
- 5.14.4 These provisions in respect of SGSP Phase 3 and the phasing plan in the CEMP address concerns raised by CWAC about the possible cumulative impact which may arise from the implementation of SGSP 'phase 3' (for the remaining 8 consented cavities and associated infrastructure). CWAC considered that these matters should have been assessed in the ES through the EIA but was prepared to accept an obligation in the s106 agreement to prohibit the commencement/require the temporary cessation of the proposed development where there would be overlap with the construction of SGSP in the absence of assessment in the ES [REP4-010].
- 5.14.5 The content of the s106 agreement had been largely but not fully agreed between the parties during the Examination but late in the process it was discovered that there were charges registered in favour of Bank of New York against two of the freehold titles which form part of the site as referred to in the draft s106. It was CWAC's view that the mortgagee would need to be joined as a party to the agreement. CEC which would be a party to the agreement agreed with this position [AS-016]. CWAC submitted a final draft of the s106 agreement with the additional party joined but this had not been signed by the close of the Examination [AS-013].
- 5.14.6 As an alternative the Applicant submitted a signed unilateral undertaking by itself and its two associated companies IEL and IEGL [AS-015]. This contained broadly but not exactly the same provisions in Schedule 2 as the draft s106 agreement and contained some wording in the articles which were not accepted by CWAC. The Applicant did not accept that the Bank was required to be a signatory to the planning obligation itself. In any event, given the extremely short notice of this point given to the Applicant by CWAC, in practical terms it would not have been possible to arrange for execution of the planning obligation by the Bank prior to the close of the Examination.
- 5.14.7 In a further clarification the Applicant stated that it shared CWAC and CEC's desire to enter into a s106 agreement but because of time constraints felt it better to lodge the Unilateral Undertaking before the close of the Examination so that it could attach full weight to the obligations made by the three parties to that agreement [AS-017]. The Applicant would use its best endeavours to work with the

Councils after the close of the Examination to review the execution of the draft s106 agreement and to have that lodged before the ExA reported to the Secretary of State. At that stage it would withdraw the Unilateral Undertaking.

5.14.8 CWAC in its final submission on this issue identified four points in the Unilateral Undertaking on which it did not accept the Applicant's drafting [AS-016].

- It had proposed a wider definition of HGV which would extend coverage of the definition to include other large vehicles such as cranes and drilling rigs;
- Clause 3 on conditionality was too narrow and did not allow for provisions that should come into effect on the signing of the s106 deed or before commencement of the development. There were also other clauses which had been deleted in the Unilateral Undertaking;
- Schedule 1 should be extended to include the titles to the leasehold estates over which the Bank of New York held charges and which formed part of the s106 site; and
- The wording in section 3 of Schedule 2 relating to the work at the SGSP site had been altered in ways which were not accepted by CWAC.

5.14.9 It was CWAC's view that anyone with an interest in the land which is to be the subject of a Planning Obligation must be a party to the s106 agreement. This included mortgagees and chargees otherwise they would not be bound by the terms of the agreement. CWAC drew attention to the Planning Inspectorate Procedural Guide "Planning Appeals - England which stated that "*Normally all persons with an interest in land affected by a planning obligation - including freeholder(s), holders of estate contract(s) and any mortgagees - must sign the obligation.*"

Conclusion on the s106 agreement

5.14.10 I am satisfied that the provisions in the draft s106 agreement provide additional mitigation for the effects of the proposed development which fall outside of the Order limits, that they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.

5.14.11 It is unfortunate that the agreement had not been signed by the close of the Examination. There seems every prospect that the agreement will be signed during the reporting period but that is not something I can take into account. As things stand at completion of the Examination, no significant adverse effects have been identified from traffic related to the proposed development based on the

volumes of traffic and routing plans considered in the ES. But there may be uncertainty about the extent to which traffic routing can be enforced in the absence of a signed s106 agreement. Without an agreement the interaction with SGSP which is not covered in the ES would not be addressed.

- 5.14.12 The Applicant has offered a signed Unilateral Undertaking. CWAC does not consider that this meets its requirements and is supported by CEC. The Unilateral Undertaking did not circumvent the fundamental issue that it would not be enforceable against the mortgagee unless the Bank of New York was a party.
- 5.14.13 In my view it is possible that a Unilateral Undertaking could be an adequate alternative to a signed s106 agreement. There is a difference between planning permission and the development consent which is sought in this application. The default position under s156(1) of PA 2008 is that *"the order is for the benefit of the land and all persons for the time being interested in the land" subject to s156(2) that this is subject to "any contrary provision made in the order"*. In this application the consent is solely for the benefit of the Applicant but with the possibility of transfer of the benefit with the consent of the Secretary of State.
- 5.14.14 If the Applicant defaulted on its loan from the Bank of New York and the mortgagee took possession of the land they would not be bound by the DCO but, also, would not have the benefit of the DCO. If they applied for the benefit of the DCO to be transferred to them the Secretary of State could reasonably refuse to allow this unless they entered into the s106 agreement.
- 5.14.15 However, as things stood at the close of the Examination the wording of the Unilateral Undertaking did not, as listed above, meet the requirements of CWAC and CEC. The provisions in the clauses and schedules of the Unilateral Undertaking do not exactly match those sought by the local authorities in the s106 agreement. Even if the provisions of the Unilateral Undertaking could be enforced as I have suggested it can, it would not, in my view, be an acceptable alternative if the provisions are not the same as those sought in the s106 agreement. My recommendation therefore is that the Secretary of State should require a s106 agreement to be signed by the parties before taking a decision on whether to grant the application for development consent.

5.15 THE PLANNING BALANCE

- 5.15.1 In Chapter 4 I have considered the principal issues that need to be considered in assessing the application for the proposed development. In section 4.3 I reviewed the need for the development, the consideration of alternatives and the development

of the design. I concluded that the proposed development as outlined in the application would contribute to meeting the need for gas storage capacity identified in EN-1 and EN-4 and that adequate consideration has been given to design and to alternatives to the development as required by EN-1. There is a case in principle in favour of granting a DCO for the proposed development.

5.15.2 In Chapter 5 I have considered the detail of the proposed development and its possible impact on a wide range of considerations. I have taken into account the mitigation measures proposed in the original application and the additional measures that have been agreed during the course of the Examination.

5.15.3 I have concluded that after taking into account the agreed mitigation measures that there should be no significant adverse effects from the following aspects of the proposed development which would weigh against granting the DCO:

- Geology (paragraph 5.1.30);
- Land and water quality (paragraphs 5.2.15 - 5.2.17);
- Air quality (paragraph 5.3.23);
- Ecology (paragraph 5.4.32);
- Marine environment (paragraph 5.5.6);
- Landscape and visual impact at the Runcorn and Whitley sites; (paragraph 5.6.21);
- Cultural heritage (paragraph 5.7.18);
- Noise and vibration (paragraph 5.8.17
- Radio interference (paragraph 5.9.10);
- Traffic and transport (paragraph 5.10.16);
- Socio economic characteristics - labour and housing (paragraph 5.11.14);
- HGSL case for protective provisions (paragraph 5.12.9).

5.15.4 I have concluded that there would be adverse effects from the following aspects of the proposed development which would weigh against granting the DCO:

- Visual impact of the development on a number of viewpoints at the MAA (paragraph 5.6.20);
- Socio-economic characteristics, disturbance to residents' businesses and lifestyles (paragraph 5.11.17).

5.15.5 Drawing on the guidance in EN-1 on the assessment of individual aspects of the development I consider that a high weighting should be given to the established need for the development of gas storage facilities. The assessment principles in EN-1 "*start with a presumption in favour of granting consent for energy NSIPs ... unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused.*"

- 5.15.6 EN-1 notes that all energy infrastructure is likely to have visual effects for receptors around proposed sites. In my view adequate measures have been proposed to mitigate the adverse visual effects but these cannot be totally eliminated. The remaining adverse effects after mitigation measures should, in my view, only carry limited weight.
- 5.15.7 Some disturbance to lifestyle of residents in the immediate vicinity is also, in my view, a likely consequence of any energy infrastructure project particularly when this is in a rural area. This is a significant effect for the individuals affected. Nonetheless it can, in my view, only be given limited weight in the balance against the wider public benefit of NSIP development.
- 5.15.8** On balance therefore it is my view that the established national need for additional gas storage capacity is by no means outweighed by the adverse effects that would be felt by residents in the immediate vicinity of the proposed development. I conclude that the case for the development has been made and that, subject to the signing of a s106 agreement as discussed above, development consent should be given with the inclusion of the agreed mitigation measures in the DCO.

6 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS

6.1 POLICY AND LEGISLATIVE BACKGROUND

- 6.1.1 This chapter of the report sets out the analysis, findings and conclusions relevant to HRA and will assist the Secretary of State as the competent authority in performing his duties under the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as amended) ('the Habitats Directive'), as transposed in the UK through The Conservation of Habitats and Species Regulations 2010 (as amended) ('the Habitats Regulations').
- 6.1.2 As discussed in paragraph 1.1.14 of this report, the Applicant's assessment concluded that the proposed development is not considered to have a likely significant effect (LSE) on any European sites or their features, either alone or in combination with any other plans or projects, a finding which is supported by NE.²⁰
- 6.1.3 I have been mindful throughout the Examination of the need to ensure that the Secretary of State has such information as may reasonably be required to carry out his duties as the competent authority. I have reviewed the evidence presented during the Examination concerning LSEs on European sites potentially affected by the proposed development both alone and in-combination with other plans or projects.
- 6.1.4 Consent for the proposed development may only be granted if, having assessed the potential adverse effects of the proposed development on European sites, the competent authority considers it passes the relevant tests in the Habitats Regulations.
- 6.1.5 The Secretary of State for Business, Energy and Industrial Strategy is the competent authority for the purposes of the Habitats Directive and Habitats Regulations for energy applications submitted under PA 2008.
- 6.1.6 Regulation 61 of the Habitats Regulations states that if a proposed development is likely to have a significant effect on a European site (either alone or in-combination with other plans and projects) and is

²⁰ European sites include Special Areas of Conservation (SACs), candidate SACs (cSACs) and Special Protection Areas (SPAs), which are protected under the Habitats Regulations. As a matter of policy, Government also applies the procedures of the Habitats Regulations to potential SPAs (pSPAs), Ramsar sites, and (in England) listed or proposed Ramsar sites and possible Special Areas of Conservation, and sites identified, or required, as compensatory measures for adverse effects on any of the above sites.

not directly connected with or necessary to the management of the European site; then the competent authority must undertake an appropriate assessment of the implications for that site in view of its conservation objectives. Consent for the proposed development can only be granted if, having assessed the effects the project would have on European sites, the competent authority's appropriate assessment concludes that the integrity of European sites would not be adversely affected, subject to Regulation 62 (considerations of overriding public interest).

6.2 THE APPLICANT'S ASSESSMENT

- 6.2.1 In accordance with Regulation 5(2)(g) of the APFP Regulations, the Applicant provided a 'Habitats Regulations Screening Assessment Report' as part of the DCO application (HRA Report) [APP-178].
- 6.2.2 Although the HRA Report submitted as part of the application was considered adequate for the purposes of accepting the application to proceed to examination, a number of points on the report requiring clarification were identified by the Planning Inspectorate [PD-002]. The Applicant addressed these points via the submission of a revised HRA Report which was expressly stated as superseding the application version of the report [APP-205].
- 6.2.3 I accepted the revised report alongside other documents prior to the formal commencement of the Examination [PD-005]. All subsequent references to the HRA Report during the Examination and in this Report are to this revised version.
- 6.2.4 Table 3.1 of the HRA Report sets out the European sites identified by the Applicant as having the potential to be affected by the proposed development. Three sites were identified within a 10 km area of influence of the MAA as having the potential to be affected by impacts to air quality from the gas processing plant:
- Midland Meres and Mosses Phase 1 Ramsar Site (two locations, 9km north and 8.5km southeast of the MAA);
 - Midland Meres and Mosses Phase 2 Ramsar Site (9km west of the MAA); and
 - West Midland Mosses SAC (9km west of the MAA).
- 6.2.5 Two European sites were also identified as having the potential to be affected by the proposed Runcorn Outfall through disturbance during its construction or potential effects of brine discharge once completed:
- Mersey Estuary SPA (c. 105m west of the Runcorn Outfall)
 - Mersey Estuary Ramsar Site (c. 105m west of the Runcorn Outfall)

- 6.2.6 No European sites were identified as having the potential to be affected by the proposed works at the Whitley Pumping Station.
- 6.2.7 Section 2.2 of NE's RR [RR-011] and paragraph 5.1.1 of their WR [REP2-048] confirm NE's agreement that the five European sites are those of relevance to the proposed development. This agreement is also reflected in a joint consultation response from NE and the EA contained at annex C of the HRA Report.
- 6.2.8 Section 4.4, Table 4.10 and figure 4.2 of the HRA Report presents a list of thirty-two projects that the Applicant identified as "*requiring consideration*" for the assessment of potential in-combination affects. Of these thirty-two, only one (the King Street Energy Solution mining and underground gas storage project) was screened in to the in-combination assessment. NE and the EA agreed with the project screened in and those projects screened out in their joint consultation response.
- 6.2.9 Taking into account the above agreements as to the European sites identified and those projects included as part of the in-combination effects, I am satisfied that the assessment is sufficient on both counts. Furthermore no IP, either prior to, or during the Examination, identified any other European site (or site feature) or plan or project which they considered could potentially be affected by the proposed development.

6.3 CONSIDERATION OF LIKELY SIGNIFICANT EFFECTS

- 6.3.1 Section 4.1 of the HRA Report outlines the two pathways of effect arising from the proposed development considered by the Applicant as having the potential to affect European sites:
- Emissions to air from the gas processing plant within the MAA during operation of the propose development; and
 - Effects of the proposed Runcorn Outfall in terms of brine discharge during operation of the proposed development and disturbance during the outfall's construction.
- 6.3.2 Based onto the lack of connectivity and distance between the European sites and the proposed development, the Applicant did not identify any other potential pathways of effect.
- 6.3.3 Sections 4.2 and 4.3 of the HRA Report consider the potential for LSE from these two pathways, and section 4.4 considers the potential for LSE in combination with other plans and projects identified.
- 6.3.4 Section 4.5 presents HRA Screening Matrices for the five European sites identified (as agreed by NE and the EA and described above). The provision of screening matrices accords with the approach set out in the Planning Inspectorate's *Advice Note Ten: Habitats*

Regulations Assessment relevant to nationally significant infrastructure projects.

- 6.3.5 At section 5 of the HRA Report, the Applicant concludes that LSE are not predicted for any of the qualifying features of the European sites considered during the screening process either alone or in combination with other plans or projects.
- 6.3.6 In section 3.1 of their RR, NE agreed with the conclusions of the Applicant's HRA Report stating that "*it can be excluded that the plan or project will have a significant effect on (the five European sites listed at section 2.2 of their RR), either individually or in combination with other plans or projects*". This agreement is also reflected in the joint consultation response from NE and the EA contained at annex C of the HRA Report.
- 6.3.7 In my first written questions [PD-007], I asked the Applicant and NE a number of questions in respect of the HRA Report. These related to the adequacy of the modelled assessment of the GPP and the need for qualitative assessment of construction effects at the Runcorn Outfall assessment area.
- 6.3.8 In light of the Applicant's response to these questions in clarifying the GPP modelling and the approach taken in terms of the construction dust assessment at the Runcorn Outfall [REP2-005] I am satisfied with the conclusions in the HRA Report.
- 6.3.9 NE's combined WR and response to my first written questions reaffirmed its agreement with the Applicant's conclusions of no LSE alone or in combination [REP2-048]. However, it noted that the conclusions in relation to the Mersey Estuary SPA and Ramsar sites were conditional on the following points:
- The proposed development operates within the permitted discharges set out in existing Environmental Permit EPR/DP3424GK (for the discharge of brine into the Manchester Ship Canal²¹) and that this permit remains valid;
 - The construction works at the Runcorn Outfall should be outside the period between September and Mid May (Autumn Passage, winter, and Spring Passage); and
 - Measures to minimise dust during the construction of the Runcorn Outfall would need to be implemented in accordance with the CEMP.

²¹ Environmental Permit EPR/DP3424GK was granted by the EA in 2011 to Ineos Enterprises Limited but has subsequently been varied and is now under the operation of IEL. A copy of the permit was provided at Appendix C of the Consents Management Plan [APP-177]

- 6.3.10 The brine discharge permit and how it is factored in to the assessment is discussed in the HRA Report. The SoCG between the Applicant and the EA records the in principle agreement between the parties as to the proposed development's use of the permit EPR/DP3424GK [REP2-023].
- 6.3.11 In response to my first written question and discussion at the second ISH on the subject of restricting construction works at the Runcorn Outfall, the Applicant agreed to a revision to the wording of Requirement 3 in the DCO (in relation to the CEMP). This requires the final CEMP to restrict construction operations at the Runcorn Outfall to between April and September and limits scrub clearance activities to between August and September. This revision appears in the Applicant's final draft version of the DCO [REP8-003].
- 6.3.12 The draft CEMP went through several iterations during the Examination in response to my written questions and other representations made in writing or orally at issue specific hearings by IPs. The Applicant's final version of the draft CEMP was submitted at deadline 7 of the Examination [REP7-006]. Requirement 3(5)(h) of the DCO secures an air quality and dust management plan as part of the CEMP in relation to the brine outfall construction works. I am satisfied that the content of the draft CEMP (with which the final CEMP must accord) is sufficiently detailed at section 5 to secure the necessary protection from construction effects of the Runcorn Outfall. I consider that these requirements satisfactorily secure NE's conditional agreement to the conclusion of no LSE.
- 6.3.13 Neither the EA, relevant LPAs nor other IPs raised additional matters or questioned the adequacy of the HRA Report or its conclusions in relation to LSE on European sites.
- 6.3.14 In accordance with NPS EN-1, I am content that the proposed discharges can be adequately regulated either under the pollution control framework by the relevant pollution control authorities or through provisions in the DCO.

6.4 CONCLUSIONS

- 6.4.1 Taking into account findings set out above, and in particular the views of NE as the statutory nature conservation body, I am satisfied that there is sufficient evidence to allow the Secretary of State to conclude that the proposed development is unlikely to have significant effects on any European site or their features, either alone or in combination with other plans and projects.
- 6.4.2 I am also satisfied that, where reliance is placed on embedded mitigation measures in reaching the conclusions of no LSE, these are adequately secured as follows:

- Brine discharges into the MSC would be limited to being within the approved operational limits of Environmental Permit EPR/DP3424GK (agreed as being appropriate for use for the proposed development in section 4 of the SoCG between the Applicant and the EA);
- Requirement 3(5)(h) of the DCO secures an air quality and dust management plan in relation to the brine outfall construction works (the content of which is sufficiently detailed in section 5 of the CEMP); and
- Requirement 3(8) limits the construction operations at the Runcorn outfall to between the months of April and September (with scrub clearance to be undertaken between August and September).

6.4.3 Therefore in accordance with the NPS EN-1, I am satisfied that such information has been provided, as is reasonably required, for the Secretary of State to determine that an appropriate assessment is not required. I also conclude that there are no HRA matters which would prevent the Secretary of State from making the DCO.

7 COMPULSORY ACQUISITION AND RELATED MATTERS

7.1 THE REQUEST FOR COMPULSORY ACQUISITION POWERS

- 7.1.1 The application includes provision for CA of freehold interests and private rights. A Statement of Reasons (SoR) [APP-125], Funding Statement [APP-126], Book of Reference (BoR) [APP-127] and Land Plans [APP-011 to APP-018] were provided. A first revision to the BoR was submitted with the application [APP-204] with clarifications on the list of affected persons. A further revision was submitted during the Examination with a schedule of changes [REP2-026 and REP2-028]. A final clarification for the BoR and Land Plans was issued towards the close of the Examination to align references to articles in the draft DCO with revised numbering in the final version of the DCO submitted by the Applicant [REP7-015].
- 7.1.2 CA is only proposed for land and rights at the MAA but the BoR and the Land Plans also contain details of persons in the vicinity of the MAA and the Whitley and Runcorn sites who might have a claim for compensation under the Compulsory Purchase Act 1965 or Part 1 of the Land Compensation Act 1973. There is no Crown or special category land within the Order limits.
- 7.1.3 Much of the land within the Order limits at the MAA is owned by IEL and no CA is proposed on this land. Ten out of the 19 proposed gas storage cavities, the SMC, GMC and GPP would be on this land. There are a number of short term farm business tenancies and annual grazing licences in this part of the MAA which it is intended would remain in place during the construction and operational periods. Some of this land would be subject to temporary occupation during construction and a small amount of land would be permanently lost. The Applicant does not consider that this would render any of the agricultural tenancies unviable.
- 7.1.4 The southern part of the MAA is not owned by IEL and CA is proposed to allow the development of the remaining nine cavities with associated roads and pipework. The draft DCO provides separately for the compulsory acquisition of land, the compulsory acquisition of rights and the compulsory acquisition of subsoil only. It also provides for temporary possession for carrying out and maintenance of the proposed development.
- 7.1.5 Five categories of interests and rights to be acquired or extinguished are identified in the BoR. These are shown in Table 7.1.

Table 7.1: Classification of interests and rights to be acquired and rights to be extinguished

Class	Nature of Interest / Right(s) to be acquired
A (freehold)	<p>Land to be Acquired Pursuant to Article 20 of the Order:</p> <p>All interests (Freehold of surface and subsurface)</p> <p>Private Rights to be extinguished Pursuant to Article 30 of the Order:</p> <p>All rights in surface and subsurface</p>
B (subsurface freehold only)	<p>Land to be Acquired Pursuant to Articles 20 and 23 of the Order:</p> <p>All interests in subsoil (including Freehold of subsurface minerals)</p> <p>Private Rights to be extinguished Pursuant to Article 30 of the Order:</p> <p>All rights in subsurface</p>

C (surveys)	<p>New Rights to be Acquired in the Land Pursuant to Article 22 of the Order:</p> <p>The right in, over and under that land, for the undertaker and all persons authorised on its behalf for purposes of construction, operation, maintenance and decommissioning of the Authorised Development to enter, pass and repass with or without vehicles, plant, machinery and other equipment at all times in order to:-</p> <ul style="list-style-type: none"> • Carry out soil tests, surveys, site inspections, make trial boreholes; • Install, retain, use, maintain, test, adjust, examine, repair, replace and renew level monitoring equipment and stations and to enter the land for the purpose of monitoring and inspecting said monitoring equipment and stations to a depth of 10 m;
Class	Nature of Interest / Right(s) to be acquired

C (surveys)	<p>(A) Undertake ecological surveys including but not limited to, trees, hedgerows, bats, badgers, great crested newts, otters, lesser silver water beetles, water voles, breeding birds, wintering birds and any other associated flora and fauna;</p> <p>(B) Undertake landscaping and habitat improvement works including but not limited to the planting of trees and hedgerow plants, installation, and maintenance of amphibian hibernacula, improvements to existing ponds and also including works and surveys in accordance with recommendations or licences issued by relevant regulatory bodies;]</p> <p>(C) Undertake works to decommission the Authorised Development and reinstate the land including any surveys, landscaping and habitat improvement works or works done in accordance with any decommissioning plan submitted in accordance with the requirements of the DCO.</p>
D (construction)	<p>New Rights to be Acquired in the Land Pursuant to Article 22 of the Order:</p> <p>The right in, over and under that land, for the undertaker and all persons authorised on its behalf for purposes of construction, operation, maintenance and decommissioning of the Authorised Development to enter, pass and repass with or without vehicles, plant, machinery and equipment at all times in order to:-</p>

Class	Nature of Interest / Right(s) to be acquired
	<ul style="list-style-type: none"> • Retain, drill, install, lay, construct, use (for the Solution Mining of Cavities and the extraction, transmission, injection, and removal of gas), inspect, maintain, repair, replace, renew, clean, connect to, sever connections with, make safe, examine, alter, adjust, supplement, test and support conduits, pipes, vertical wells and internal operational pipeline strings and other apparatus including monitoring equipment from the surface of the land downwards to a depth of no greater than 1000 metres;] • Retain, use, inspect, maintain, replace, repair, renew, remove, clean, connect to, sever connections with, examine, alter, adjust, supplement, test pipelines for gas transmission, Brine, water and nitrogen supply (including any additional pipelines, cables, ducts, devices, power lines or materials) and have uninterrupted access to any un-built land; • Retain, install, construct, use, inspect, maintain, repair, renew, make safe, examine and alter roadways (to the extent not yet constructed) and thereafter to enter, pass and repass, and undertake works including tarmacking, installing speedbumps, other resurfacing works, constructing and maintaining pavements, improving the road or the junction and installing non conductive poles to a height of 6 metres, electric access gates and security measures; • Retain, use, inspect, maintain, repair, renew, remove, examine, alter and adjust ground and aerial marker posts, gates, steps, stiles, special lock gates and protective concrete slabs to facilitate, inspect and maintain the pipelines or for protecting the pipelines; <p>(D) Carry out soil tests, surveys, site inspections, make trial boreholes.</p>
Class	Nature of Interest / Right(s) to be acquired

E (access road)	<p>New Rights to be Acquired in the Land pursuant to Article 22 of the Order:</p> <p>The right in, over and under that land, for the undertaker and all persons authorised on its behalf for purposes of construction, operation, maintenance and decommissioning of the Authorised Development to enter with or without vehicles, plant, machinery and equipment at all times in order to:-</p> <ul style="list-style-type: none"> • Retain, install, construct, use, inspect, maintain, repair, renew, make safe, examine and thereafter to enter, pass and repass with or without vehicles and to undertake works including tarmacking, installing traffic control measures including speedbumps, resurfacing works, and to alter or otherwise improve the road and or the junction alignment and installing non conductive poles to a height of 6 metres, electric access gates and security measures with or without vehicles; <p>(E) • Install, lay, construct, use, inspect, maintain, repair, replace, renew, clean, connect to, sever connections with, make safe, examine, alter, adjust, supplement, test and support conduits, pipes, cables, ducts, devices, power lines or materials and other apparatus including monitoring equipment;</p> <p>(F) Retain, use, inspect, maintain, repair, renew, remove, examine, alter and adjust ground and aerial marker posts, gates, steps, stiles, special lock gates and protective concrete slabs to facilitate, inspect and maintain the pipelines or for protecting the pipelines.</p>
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Source: Book of Reference (revised), Table 1 [REP7-015]

7.1.6 The land affected by Classes A - D of the proposed CA is agricultural land principally used for grazing cattle. Class E relates to the rights to the use of part of an access road to one of the houses on the MAA.

7.2 THE PURPOSES FOR WHICH THE LAND IS REQUIRED

- 7.2.1 The land and rights to be acquired under each of these headings is shown on the Land Plans numbered separately for each of the five groups of affected persons.²²
- 7.2.2 The land and rights to be permanently acquired are considered necessary for the creation of the nine below ground cavities (hatched pink on the Land Plans) and the above ground well heads (solid pink on the Land Plans). The above ground land (Class A in Table 7.1) is considered the minimum necessary to provide fenced well head compounds for solution mining and subsequent gas storage. Below ground the acquisition is considered to be the minimum area of mines and mineral winning and working rights required to create cavities by solution mining and to provide rights to use these cavities for gas storage (Class B).
- 7.2.3 The land over which temporary or permanent rights are proposed to be acquired for the purpose of construction and maintenance (hatched yellow and, in the case of the Brownhayes Access Road, brown on the Land Plans) are required to allow construction, maintenance, continuing use of access routes to the wellheads and, in the case of the Brownhayes Access, to provide general project vehicle access (Class D). They are also required for the installation and maintenance of water, brine, nitrogen and gas pipework and services. This includes provision for temporary possession of a wider construction corridor (the yellow hatched areas on the Land Plans and listed in Schedule 8 to the draft DCO). CA of the freehold of project roads is not considered necessary with the permanent easements considered to be sufficient.
- 7.2.4 It is also proposed to acquire rights (Class C) over a wider area of land (shown blue on the Land Plans) for the purpose of installing and monitoring precise level points (as described at paragraph 2.2.12), to undertake landscaping and ecological enhancement measures and environmental and other surveys required as part of the development.
- 7.2.5 No land or any rights in land belonging to statutory undertakers are proposed for CA.
- 7.2.6 The extent of the land to be acquired or over which rights would be affected is summarised in Table 7.2 In addition rights are sought over approximately 350m of the access road to Brownhayes Farm.

²² Note that the legend for each of the Land Plans HOL/24/615, 616 and 617 was updated in Annex 2 to REP7-015 to reflect the article numbers in the final draft DCO.

Table 7.2: Area of agricultural land subject to compulsory acquisition

Farm holding	Plot Nos. on Land Plans	Approximate area of main farm (excluding other land holdings and licences held by owner)	Total area of farm within Order limits and subject to Rights "C" required for survey etc	Permanent surface area acquired, Rights "A"	Temporary possession During construction, Rights "D"	Permanent Subsurface area acquired, Rights "B"
Cross Lanes Farm	1.01 to 1.19	34.46ha	33.21 ha (96%)	0.75ha (2.2%)	5.75ha (17%)	4.65ha (13.5%)
Higher Green Farm	2.01 to 2.16	51.33ha	45.54 ha (89%)	0.75ha (1.5%)	5.08ha (10%)	5.24ha (10%)
Yatehouse Green Farm	3.01 to 3.11	52.05ha	19.56 ha (38%)	0.5ha (1%)	4.09ha (8%)	3.53ha (7%)
Yew Tree Farm	4.01 to 4.06	20.57ha	15.7ha (76%)	0.25ha (1.2%)	0.83ha (4%)	1.58ha (8%)

Source: Statement of Reasons Table 5.1[APP-125]

The requirements of the Planning Act 2008

7.2.7 Sections 122 and 123 of PA 2008 allow for the inclusion in the DCO of a provision authorising CA if the Secretary of State is satisfied that certain conditions are met.

7.2.8 Section 122(2) states that the land must be:

- required for the development to which the development consent relates,
- required to facilitate or be incidental to it, or
- be replacement land given in exchange.

- 7.2.9 Guidance (the Guidance) states that the land to be taken must be no more than is reasonably required and be proportionate.²³
- 7.2.10 Section 122(3) requires that there must be a compelling case in the public interest for CA. The Guidance states that the public benefit derived from CA must outweigh the private loss that would be suffered by those whose land is acquired.
- 7.2.11 Section 123 requires that one of three conditions is met by the proposal. I am satisfied that the condition in s.123(2) is met because the application for the DCO included a request for CA of the land to be authorised.
- 7.2.12 A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers:
- all reasonable alternatives to CA must be explored
 - the Applicant must have a clear idea of how it intends to use the land and to demonstrate that funds are available; and
 - the decision maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

7.3 EXAMINATION OF THE CASE FOR COMPULSORY ACQUISITION

The Applicant's case

- 7.3.1 The Applicant is seeking CA powers in order to acquire land and rights considered necessary to construct and operate an underground gas storage facility with associated development.
- 7.3.2 It argued that the need for additional gas storage in the UK had been established in EN-1 and that this need had been further acknowledged in the House of Commons Energy and Climate Change Committee Report *UK Energy Supply: Security or Independence?* (2011). That report had argued that Government "*should aim to double the UK's current gas storage from current levels by 2020*". The proposed development would add 18.5% to the UK's existing and under-construction gas storage deliverability and 10% to gas storage volume.
- 7.3.3 Historically the UK has been self-sufficient in natural gas and has relied on flexibility in supply from offshore fields to respond to changes in demand. That flexibility is declining and there is increasing reliance on imported gas with additional exposure to price spikes and

²³ Guidance related to procedures for compulsory acquisition. DCLG February 2010

interruption of supplies. Gas storage provides a protection against such fluctuations.

- 7.3.4 New gas storage projects must be economically viable. In the Applicant's view the Holford Brinefield provides an ideal location for a gas storage project taking into account the depth of the salt layer, existing customer demand for the brine, existence of supporting infrastructure and a proven track record in developing this type of facility.
- 7.3.5 The Applicant argued that there were a number of inter-related arguments in favour of a 19 cavity development. Given the relative scarcity of suitable salt deposits, cavities need to be laid out to utilise the resource efficiently, avoiding leaving stranded islands of salt that would be uneconomic to access in future. This minimises the spread of infrastructure and associated environmental impact while maximising economic viability. Limiting the development to 10 cavities would halve its contribution to national need and limit the rate that gas could be delivered to the NTS.
- 7.3.6 The scale of the project, with 19 cavities, has been designed to make a significant contribution to the UK's gas storage capacity while ensuring that the plant's power demand can be accommodated within the capacity of the infrastructure in the area and that the overall development time is not too long.
- 7.3.7 In addition to the use of farmland for the creation of the storage cavities and associated infrastructure, the Applicant is also seeking to acquire the right to use and cross the access road to Brownhayes Farm in order to obtain access to two cavities to the south of this property. It is necessary to have a crossing point on Yatehouse Lane to link up with other elements in the infrastructure. The most efficient point for this crossing would be at the entrance to Brownhayes Farm.
- 7.3.8 The access road which is already wide enough for two-way traffic would be used in a one way direction by project vehicles as part of the circular route for the site as a whole but would be two-way for the occupants of Brownhayes Farm. The Applicant would resurface the required section of the road and maintain this during the life of the development. The access to Yatehouse Lane would be improved with a widening of the entrance to provide better sightlines. This improvement would take place on adjacent land owned by IEL.
- 7.3.9 The Applicant noted that the use of the access road would not involve the permanent acquisition of any land or involve the loss of the driveway for the owner. It argued that seeking the right to use the road was a proportionate measure and was justified in economic terms because it would cost significantly more to construct a new access road on adjoining land.

Possible alternatives to compulsory acquisition

- 7.3.10 In the SoR and the ES the Applicant has set out its reasons for the choice of the Holford Brinefield as the location for the project and its reasons for the specific layout of wellheads, pipelines and other elements of the development. The consideration given by the Applicant to alternative locations for gas storage and to alternative scale and layout of the proposed development at the MAA has been considered at paragraphs 4.3.3 to 4.3.6 and 4.3.8 above.
- 7.3.11 The proposed development of 19 cavities could not be carried out without the use of CA powers to acquire the land and rights required for the nine cavities that are not on land owned by IEL. The Applicant states in the SoR that it has given due consideration to means by which it can minimise private loss to landowners while still enabling an economically viable project. It states that wellhead locations and orientation have been selected to minimise the impact on agriculture and farm business and have been established through consultation with the affected landowners.
- 7.3.12 Siting of well heads has been chosen to satisfy cavity design requirements ensuring that minimum distances are maintained between cavities. The proposed layout seeks to make the most efficient use of salt which is at the appropriate depth and to fill in gaps between existing cavities and nearby properties.
- 7.3.13 In respect of the use of the access road to Brownhayes Farm, the Applicant has retained the option of constructing a new access road alongside the Brownhayes access on land owned by IEL [APP-082]. This would take up about 0.5ha of agricultural land which is currently let to a tenant. With this option the Applicant would still need to acquire rights to cross the Brownhayes access road and share the entrance to Yatehouse Lane [APP-125, para 6.105].

Human Rights Act 1998 considerations

- 7.3.14 A key consideration in formulating a compelling case is consideration of the potential interference with human rights which may occur if CA and temporary possession powers are granted and exercised.
- 7.3.15 The Applicant acknowledged that the DCO could engage a number of the articles of the European Convention on Human Rights which have been incorporated into UK legislation through the Human Rights Act 1998:
- Article 1 of the First Protocol (rights of those whose property is to be compulsorily acquired and whose peaceful enjoyment of their property is to be interfered with).
 - Article 6 entitles those affected by CA powers sought for the project to a fair and public hearing of their objections.
 - Article 8 protects private and family life, home and correspondence. No public authority can interfere with these interests except if it is in accordance with the law and is

necessary in the interests of national security, public safety or the economic well-being of the country.

- 7.3.16 The SoR set out the Applicant's view that there were compelling reasons that justify the use of CA powers and justification for the inclusion of temporary possession powers in the DCO and that consequently there was no infringement of Article 1. Any decision to grant such powers would be subject to judicial review and there would be no infringement of a person's right to a fair hearing. The proposed CA and temporary possession powers did not extend to residential land or buildings and, in the Applicant's view, Article 8 was not engaged. Notwithstanding this, the Applicant also stated that Article 8 was a qualified right and interference was justified in the interests of public safety or the economic well-being of the country.

Availability and adequacy of funds

- 7.3.17 The Statement of Funding set out the commercial relationship between the Applicant and its parent and associated companies as follows. The Applicant is a wholly owned subsidiary of IEGL. IEGL is of sound financial standing with a good credit status. IEGL is part of the INEOS group of companies, which comprise a global manufacturer of petrochemicals, specialty chemicals and oil products. The production network of the INEOS businesses spans 65 manufacturing facilities in 16 countries throughout the world, employs approximately 17,000 personnel and has a turnover of approximately \$54 billion.
- 7.3.18 IEL is a partner company to the Applicant. IEL has an established track record for the successful solution mining of salt and, together with its gas undertaker business partners, the development of gas storage facilities at the Holford Brinefield. IEL is also of sound financial standing with a good credit status. It is part of a recently formed joint venture between INEOS and Solvay. Solvay is an international chemical group headquartered in Brussels, Belgium, employs 26,000 people in 52 countries and had net sales of approximately €10 bn in 2014. IEL has 4,300 employees across 18 manufacturing sites in 8 countries and a turnover of approximately €3.5bn. These relationships are shown in Figure 2.1 in Chapter 2 of this Report.
- 7.3.19 It is stated in the Statement of Funding that the cost of implementing the works and of land and rights acquisition sought to be authorised by the proposed DCO would be financed from the INEOS group's resources and revenue streams and/or, where appropriate, from external sources, with any external funding being serviced from KGSL activities.
- 7.3.20 The Statement of Funding does not set out the cost of the proposed development or the payments that might be required for CA of land or rights. Nor does it provide any firm commitment that funds would be available if CA powers were granted. Following discussions the Applicant agreed to an article being included in the DCO requiring a guarantee or alternative form of security in respect of liabilities to pay

compensation to be in place before it began to exercise any of the CA powers conferred by the DCO [REP2-002].

Temporary possession

- 7.3.21 Articles 27 and 28 of the final draft DCO set out powers to take temporary possession of land to carry out the authorised development. The land which would be subject to these powers is listed in Schedule 8 of the draft DCO. Justification for the use of temporary possession powers is set out in the Statement of Reasons. The powers would be used to provide access during the construction period. Compensation is provided for through the funding arrangements described above.
- 7.3.22 The powers of temporary possession are not CA powers and accordingly the tests under sections 122 and 123 are not applicable. However, the use of the power must be justified in order to enable the proposed development to be implemented and maintained, the inevitable interference with human rights must be justified and there must be adequate compensation provisions in place for those whose land is affected.
- 7.3.23 The Human Rights Act considerations have been addressed above and I am satisfied that the temporary possession powers are needed both to facilitate implementation of the proposed development and that there are also adequate compensation provisions in place in the draft DCO.

The Objectors' case

- 7.3.24 Four separate farms would be affected by the acquisition of land and rights. These are:
- Cross Lanes Farm (Mr and Mrs Wildman) which would be the location for three underground cavities, wellheads and associated roads and pipework (Plots 1.01 - 1.19 in the BoR and on the Land Plans);
 - Higher Green Farm (Mr and Mrs Richardson) which would be the location for three underground cavities, wellheads and associated roads and pipework (Plots 2.01 - 2.16);
 - Yatehouse Green Farm (Mr and Mrs Percival) which would be the location for two underground cavities, wellheads and associated roads and pipework (Plots 3.01 - 3.11); and
 - Yew Tree Farm (Mr and Mrs Wilkinson) which would be the location for one underground cavity, wellhead and associated roads and pipework (Plots 4.01 - 4.06).
- 7.3.25 At each of these farms Class A, B, C and D, interests and rights (as shown in Table 8.1) would be subject to CA. In addition to the use of these areas of farmland, the Applicant is also seeking to acquire the right to use and cross the access road to Brownhayes Farm (Mr P O'Rourke, plot 5.01) in order to obtain access to two cavities to the

south of this property (Class E in Table 8.1). It is also necessary to have a crossing point on Yatehouse Lane.

Cross Lanes Farm

- 7.3.26 Pinsent Mason submitted a WR on behalf of Mr and Mrs Wildman of Cross Lanes Farm objecting to the proposed CA of Plots 1.01 - 1.19 [REP2-044] and submitted additional material on the impact of the development on their farm business [AS-005]. The Wildmans were represented by counsel at the CA hearing and also spoke on their own behalf [REP4-009].
- 7.3.27 In these representations it was argued that a number of gas storage projects already existed in the vicinity of the proposed development and that the need for another project in this location had not been established. It was also argued that the Applicant had not met the requirement in the DCLG Guidance to set out a clear idea of how they intend to use the land they propose to acquire. The wording in the draft DCO that land acquired compulsorily could be used "*for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the authorised development*" (emphasis added) was of particular concern and cast doubt on whether the Applicant had a clear idea of how it intended to use the land.
- 7.3.28 The Class C rights which extended across 96% of the Wildman's land were drafted in very general terms covering a wide range of activity. The precise level points to be installed across the area would create difficulty in collecting crops and hedge cutting due to the requirement to manoeuvre large machinery around these small points. The Wildmans were concerned about the potential interference that the development would cause both to their business and to the private enjoyment of their property.
- 7.3.29 It was argued that the Applicant had failed to give adequate consideration to alternative locations for the proposed development despite acknowledging that such locations existed outside Cheshire. The choice of location appeared to be driven by the local demand for brine at the INEOS plant in Runcorn. It had not been demonstrated that profits from the sale of brine were necessary to ensure the viability of the project. Solution mining was not an NSIP and profits from this activity should not be considered as a public benefit to be weighed against the private loss suffered by people whose land would be acquired.
- 7.3.30 It was argued that the Applicant had also failed to fully investigate alternative locations for individual cavities and had failed to establish that there were no alterations in design or layout that could result in a material reduction in the land required for the development or reduce the need for CA. In the absence of a robust assessment of alternative locations and layouts it was argued that the Applicant had failed to establish that there was a compelling case in the public interest for the

CA of the Wildmans property. It had also submitted inadequate information to demonstrate that there was a reasonable prospect of the requisite funds for any acquisition becoming available.

- 7.3.31 In the WR and the additional material submitted concerns were set out about the impact the proposed development would have on the Wildmans' farming business. The main business is a 360 cow dairy unit which currently benefits from a supermarket contract for its milk. This contract requires milk suppliers to farm to a high standard and demonstrate a programme of continuing improvement in areas such as animal health, dairy hygiene, environmental impact and energy efficiency.
- 7.3.32 The permanent loss of 2.7ha of land as a result of the development would reduce the number of cows that could be stocked. There would be a loss of 5.8ha during the construction phase. There would also be the severance of 14ha which would render that land useless during construction. It was argued that the construction of the wells, pipelines and access roads would make it impossible to graze the dairy herd during this period. The herd would need to be housed during this period and fed on grass silage and compound feeds. There would be significant additional costs associated with this summer housing. There was also a significant risk that this could jeopardise the continuation of the supermarket contract.

Higher Green Farm

- 7.3.33 Rostons submitted a WR on behalf of Mr Richardson of Higher Green Farm setting out concerns about the proposed acquisition of plots 2.01 - 2.16 on their property and about well heads and infrastructure that would be placed on land which they currently rent. The Richardsons farm 150 acres of owned land and a further 69.32 acres of rented land. They currently have 200 milking cows with 120 young stock.
- 7.3.34 The proposed development would cause severe disruption to their ability to operate their business and continue to farm the land. 13 acres of owned land (three wellheads and associated infrastructure) and 16.8 acres of rented land (five wellheads and associated infrastructure) would be taken from them during construction resulting in an immediate downsizing of their operations. There would also be precise level points and rights of access over adjoining land. This would make a currently profitable business unviable as costs would not drop along with income. The total of eight wellheads on their owned and rented land would result in severe disruption during construction with difficulty in moving farm machinery and animals.
- 7.3.35 After construction there would be a permanent loss of 2.6 acres of owned land and 6.35 acres of rented land with no realistic opportunity to replace this. They would not be able to re-establish their business. Financial offers made by the Applicant did not take into account the full scale of the losses that they would incur. They were also

concerned about the impact of noise and vibration from the development on their home.

Yatehouse Green Farm

- 7.3.36 Rostons submitted a WR on behalf of A E and J Percival of Yatehouse Green Farm setting out their concerns about the proposed acquisitions of plots 3.01 - 3.11 on their property. There would be two wellheads with associated infrastructure and precise level points with rights of access on adjoining land.
- 7.3.37 During construction nearly 10 acres of owned land would be taken. This would require them to downsize their farming operations, restrict growth and affect profitability. It would be difficult to move livestock during construction because of workforce movements, noise and vibration. After construction 3.1 acres of land would be permanently lost with little opportunity to find replacement in the locality. They would struggle to keep cows at the farm due to the loss of land. They were also concerned about the impact of noise and vibration from the development on their home.

Yew Tree Farm

- 7.3.38 Rostons submitted a WR on behalf of Mrs Wilkinson of Yew Tree Farm setting out concerns about the proposed acquisition of plots 4.01 - 4.06 [REP2-051]. The Wilkinsons operated a successful and profitable dairy business with 50 acres of owned land and a further 70 acres of rented land. They were concerned about their business and their property during and after the construction period. The proposed wellhead and associated roadways and pipelines would cause severe disruption to their ability to operate their business efficiently.
- 7.3.39 There would be a loss of 2.09 acres of owned land during construction and of 1.38 acres permanently with little prospect of obtaining replacement land. This would result in their having to downsize their farming operations and restrict growth and profitability. There would be considerable disruption to the business during the construction period from workforce movements and from noise and vibration. This would also affect their private residence both during construction and during the operational period. The perceived benefits of the proposed development do not outweigh the loss they would suffer.

Brownhayes farm

- 7.3.40 Rostons submitted a WR on behalf of Mr O'Rourke of Brownhayes Farm which comprises two houses with planning permission for a further two houses [REP2-053]. The submission also identified a neighbouring property with one dwelling and planning permission for another. The private access road to Brownhayes Farm is the subject of CA proposals for rights to use and cross the access road (Plot 5.01).
- 7.3.41 It was represented that the use of the access track for construction and post construction traffic would create a risk to residential users of

the track and that the design proposals were insufficient in mitigating the risk not only to the residential users but to the general public who use Yatehouse Lane.

- 7.3.42 Concern was also expressed that the existing and planned dwellings would be approximately 210m from the closest wellhead and 220m from the next nearest wellhead. This is less than the minimum 240m distance from residential properties recommended in technical guidance. The six existing and planned properties are in the inner planning zone within which planning permission should not be granted because of the risks involved.
- 7.3.43 It was stated that the proposed development had blighted Brownhayes Farm which the owner had been unable to sell with the benefit of planning permission.

The Applicant's response to objections

- 7.3.44 The Applicant responded to the WRs submitted by or on behalf of the affected landowners [REP3-002, sections 1.8, 1.10, 1.11, 1.13 and 1.14]. In respect of the case against CA at Cross Lanes Farm, the Applicant responded that the recognised and accepted need for the proposed development was set out as Government policy in EN-1 and EN-4. It reiterated the case it had set out in the SoR.
- 7.3.45 There were limited opportunities for siting cavities both nationally and locally. The layout of the cavities had been finalised following the geological investigation. Cavity locations had been selected to meet local siting constraints, minimise the infrastructure necessary and ensure that salt available for gas storage was used efficiently to meet the national need for storage. The application documents had set out the purpose for which the land would be used and it had minimised as far as possible the extent of land to be acquired. The Applicant had offered to consider alternative layouts for the cavities and to consider the phasing of the development [REP4-008]. If the land at Cross Lanes Farm was not acquired it would be necessary to seek CA powers to acquire other land to the south of the proposed development.
- 7.3.46 It was the Applicant's view that the impact on the rights to be acquired over the Class C land (shown in blue on the Land Plans) would not be significant for agricultural activities and the farming business. The surveys that would take place were mostly required by NE, the EA or the LPA and would be occasional walk-over surveys. Any landscaping improvements would mostly be confined to the wellheads and existing hedgerows. The precise level points to be installed on this land would only require occasional on-foot surveys once installed. Level points are already installed on land in other parts of the Holford Brinefield rented by the landowner of Cross Lanes Farm.
- 7.3.47 The Applicant noted that IEL had already successfully managed the implementation of two similar gas storage projects in the area as well as over 200 brine cavities with similar infrastructure requirements.

Most of this had been on working farms which continue to be profitable.

- 7.3.48 The Applicant considered the impact on Higher Green Farm to be low and manageable. It had made alterations to the orientation of wellhead compounds in response to the landowner's request but had not made the requested change to the road layout because this would result in increased land loss and potentially damage ponds and hedgerows. It noted that the land referred to in the WR as rented was held on an annual grazing licence not a tenancy. This land already included a number of precise level points.
- 7.3.49 The Applicant considered that the impacts on Yatehouse Green Farm and Yew Tree Farm would be negligible and manageable.
- 7.3.50 In respect of the WR on behalf of Brownhayes Farm the Applicant submitted an additional drawing showing that the distances from the farm buildings to the nearest well heads were greater than suggested in the WR [REP2-012]. The minimum distance shown in this drawing is 262m. Brownhayes Farm was outside the land use planning inner zone.
- 7.3.51 The Applicant had sought to reach agreement with the affected landowners over its proposals for CA. At the close of the Examination it reported that [AS-015]:
- Cross Lanes Farm (BoR plots 1.01 - 1.19): discussions were ongoing and the Applicant remained hopeful that an agreement may be reached;
 - Higher Green Farm (BoR plots 2.01 - 2.06): discussions were ongoing and the Applicant remained hopeful that an agreement may be reached;
 - Yatehouse Green Farm (BoR plots 3.01 - 3.11): terms had been agreed for the acquisition of the relevant plots by agreement but the purchase had not been completed;
 - Yew Tree Farm (BoR plots 4.01 - 4.06): terms had been agreed for the acquisition of the relevant plots by agreement but the purchase had not been completed;
 - Brownhayes Farm (BoR plot 5.01): discussions were not progressing and the Applicant did not reasonably expect that an agreement could be reached.

7.4 CONSIDERATION OF THE CASE FOR COMPULSORY ACQUISITION

- 7.4.1 In considering the case for CA I have distinguished between the proposals in respect of farmland and the proposal for rights over the Brownhayes Farm access road.

Farmland

- 7.4.2 The proposals at each of the four farms (BoR 1.01 - 1.19, 2.10 - 2.16, 3.01 - 3.11, and 4.01 to 4.06) are determined by the same factors:
- The scale of the project with 19 cavities;
 - The geological separation of the cavities;
 - The minimisation of the connecting infrastructure
- 7.4.3 It would be possible to develop a smaller project of 10 cavities without the need for CA but the Applicant has identified the larger 19 cavity project as offering an efficient use both of natural salt resources and of existing infrastructure. The need for additional gas storage has been identified in the relevant NPSs and in other policy documents. There is no suggestion in policy that the established need would be fully met by a 10 cavity development. The opportunity to extend the development to 19 cavities through the use of CA would further contribute to meeting the national need.
- 7.4.4 It has been argued that given the existence of other gas storage facilities already operating in the vicinity and with consent for another facility already granted, there is no need for this further development in the area and that no consideration had been given to alternatives in other parts of the country. However there is no evidence that there is or would be an oversupply of gas storage in the area or that additional storage could not be accommodated within the gas infrastructure. It is not a requirement of PA 2008 that alternative locations outside of the MAA should be considered. I am satisfied that the proposed development would contribute to the national need for additional gas storage and that a 19 cavity development would provide a significantly greater contribution than one of 10 cavities.
- 7.4.5 The layout of the cavities and associated infrastructure is constrained by the geology of the salt deposits and the need to maintain a minimum separation both between cavities and from dwellings in the area. Alternative layouts have been considered and the layout of the facility has been designed to minimise the land required. Land that would only be required during the construction period would be subject to temporary possession.
- 7.4.6 I am satisfied that the farmland required for the proposed development of 19 cavities at each of the four farms and not owned by the Applicant or its associated companies is required for the proposed development and that there is a compelling case in the public interest for the farmland required, to be acquired compulsorily.

Access road

- 7.4.7 Access rights over the Brownhayes Farm access road are required to provide access from Yatehouse Lane to a number of wellheads and to facilitate the one-way system of vehicle access around the MAA (BoR plot 5.01). Rights are also required to lay pipelines and services under the road. The road would be subject to temporary possession during

the construction period. Existing rights over the access road would not be affected.

7.4.8 The Applicant has identified an alternative access route which could be constructed on land owned by IEL. This would involve loss of 0.5ha of farmland (currently rented to farmers). Part of the access road would still be required for the laying of pipelines and services and it would still be necessary to have rights to cross the access road and share the entrance to Yatehouse Lane.

7.4.9 I agree with the Applicant's view that the use of the access road rather than the development of the alternative access route is a proportionate response in that it involves the least interference with occupiers of land and does not involve any loss of existing private rights. As such, in my view, the use of CA powers to acquire rights over part of the access road meets the condition in s122(2)b - that these rights are required to facilitate the development.

7.5 CONCLUSIONS ON COMPULSORY ACQUISITION AND TEMPORARY POSSESSION

7.5.1 The development as proposed can only be achieved with the exercise of CA and temporary possession powers. NPS EN-1 and EN-4 set out the national need for the development of gas storage and I am satisfied that a development of the size proposed would contribute to meeting that need. This constitutes a compelling case in the public interest for the use of these powers. I am satisfied that adequate provision is made in the DCO to provide compensation to affected parties.

7.5.2 I have had regard to the relevant provision of the Human Rights Act concerning the individual rights interfered with and the submissions made by affected parties in this regard and am satisfied that:

- In relation to Article 1 of the First Protocol that the proposed interference with the individual's rights would be lawful, necessary, proportionate and justified in the public interest.
- In relation to Article 6 that objectors have had the opportunity to present their cases to me in writing and at the CA hearing.
- In relation to Article 8 the interference is in accordance with the law and is necessary in the interests of the economic well-being of the country.

7.5.3 The draft DCO deals with both the development itself and CA powers. The case for CA powers must be consistent with the view that I have taken about the development as a whole.

7.5.4 In the preceding section I took the view that the case for the development has been made and that development consent should be given subject to the inclusion of specific mitigation measures in the DCO. I have considered the specific requests for CA and temporary possession powers in the light of this conclusion on the development as a whole.

- 7.5.5 I am satisfied that the land comprising plots No 1.01 - 1.19, 2.01 - 2.16, 3.01 - 3.11 and 4.01 - 4.06 which is the subject of the request for CA of freehold or rights as listed in the BoR and shown on the Land Plans meets the requirements of section 122(2)a as being required for the development.
- 7.5.6 The land listed as plot No 5.01, which is an access road, is required to provide access from Yatehouse Lane to a number of wellheads and to facilitate the one-way system of vehicle access around the MAA (BoR plot 5.01). Rights are also required to lay pipelines and services under the road. An alternative route has been identified by the Applicant that does not require the CA of rights over the whole of plot 5.01. However, as discussed at paragraph 7.4.9, this alternative would result in the loss of agricultural land and additional expense. Rights would still be required for the laying of pipelines and services across the access road. In my view the use of the access road as proposed is a proportionate response in that it involves the least interference with occupiers of land and does not involve any loss of existing private rights. As such, in my view, the use of CA powers to acquire rights over part of the access road meets the condition in s122(2)b - that these rights are required to facilitate the development.
- 7.5.7 I conclude that the case has been made for the inclusion of CA and temporary possession powers in the DCO which can be exercised over the land identified in the BoR, the Land Plans and in Schedule 8 of the draft DCO.

8 DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

8.1 INTRODUCTION

8.1.1 A draft DCO was submitted with the application together with an Explanatory Memorandum [APP-123 and APP-124]. This is referred to here as the application DCO. A first revision with corrections to some of the details of the proposed works was submitted prior to the start of the Examination [APP-201]. A DCO change log was maintained throughout the Examination. A number of revised versions of the DCO were submitted during the course of the Examination. The final version was submitted for deadline 8 along with a final change log [REP8-003 and REP8-005]. This is referred to here as the final draft DCO. There were some changes in numbering of articles and requirements in the draft during the course of the Examination. In the following discussion number references are to those used in the final draft DCO unless otherwise specified.

8.1.2 In the following sections I set out the stages in the development of the final draft DCO and the extent to which I accept the provisions of that version. Where I propose changes to the final draft these are included in my recommended version of the DCO which is attached as Appendix D.

8.1.3 The main changes made to the application DCO during the Examination were to the Interpretation section in Part 1, Principal Powers in Part 2, the requirements in Schedule 2 and the Protective Provisions in Schedule 9. Some of these reflected drafting changes to reflect current practice, others of a substantive nature are discussed below. In considering the DCO I have also taken into account the additional off-site mitigation measures that would be secured through the proposed s106 agreement. A final version of this had not been agreed at the close of the Examination and my recommendation is that the Secretary of State should require a s106 agreement to be signed by the parties before taking a decision on whether to grant the application for development consent (see discussion in section 5.14).

8.2 ARTICLES

8.2.1 The articles set out in the DCO either follow the Model Provisions (which are not binding) or, if different, an explanation has been provided. Unless commented on below, I am satisfied with the use of the Model Provisions and with the explanations for variations from these Provisions.

Part 1- Interpretation

8.2.2 Article 2 was amended during the course of the Examination to include additional references to a number of key documents to be certified by the Secretary of State. These documents, with reference to versions

submitted, are referred to in more detail in Article 35 - Certification of Plans - and I will comment on their inclusion in discussing that article.

- 8.2.3 The definition of 'maintain' was amended during the Examination in response to my first questions and discussion at ISHs. The final definition is narrower in scope than the original draft and now corresponds with current practice in DCOs for NSIPs.
- 8.2.4 The distinction in the DCO between Order land and Order limits was clarified to make it clear that Order land refers only to the land identified in the BoR as subject to CA powers [REP2-026, REP2-028 and REP7-015].

Part 2 - Principal Powers

- 8.2.5 Article 9 was added during the Examination to provide for a guarantee or other form of security for compensation payment to be in place before exercise of CA or temporary possession powers, as discussed at paragraphs 7.3.17 to 7.3.20. This follows the form used in the Progress Power Gas Fired Power Station DCO and I consider this necessary to provide assurance that the financial liabilities that would be incurred in the exercise of these powers can be met.

Part 3 - Streets

- 8.2.6 Articles 10 and 11 were amended at the request of CWAC to include a provision that these powers would not be exercised without the consent of the street authority.
- 8.2.7 Article 13 on the temporary stopping up of streets was amended at my suggestion to include provision for the temporary stopping up (after consultation with the highways authority) of a rural byway crossing part of the MAA which had previously been set out in a separate article.

Part 4 - Supplemental Powers

- 8.2.8 The C&RT expressed concern that Article 16 would allow discharge of water into the Weaver Navigation and override its commercial agreement with IEL not to discharge water or other liquid into the waterway [REP2-029]. The Applicant responded that this article was a general power across the Order limits intended to cover surface water drainage from civil infrastructure at the main development area. There would be no new source of water at the Runcorn site and no new discharge was sought [REP3-002]. The protective provisions for the benefit of the C&RT contain specific prohibition on any actions that would pollute or result in deposit of materials in the waterway.
- 8.2.9 Article 17 on protective works to buildings was amended to allow for protective works to be carried out until decommissioning of the authorised development rather than just its first five years.

- 8.2.10 Article 18 giving authority to survey and investigate land was amended in line with the definitions in Article 2 so that it only applied to the Order land (that is the land subject to CA powers).
- 8.2.11 Article 19 provides for the temporary closure of the Weaver Navigation (referred to in the DCO as 'the canal'). As explained in the Explanatory Memorandum, this article is required to facilitate the construction, maintenance and use of the new brine discharge adjacent to the Runcorn site. It applies to a short section of canal which is defined in Schedule 7 and is subject to a duty to close no more of the relevant canal than is necessary in the circumstances, and if complete closure is unavoidable, a duty to keep the duration of the closure to a minimum. The undertaker is also under a duty to take reasonable steps to ensure that canal users are made aware of any temporary closure or restriction of use and to render assistance in the case of emergency.
- 8.2.12 The area of temporary closure is not likely to exceed 1.3ha (equivalent to less than 470m in length of the canal). The time required for temporary closure is not expected to exceed 5 days [REP2-005, section 12.13]. Temporary closure would be for a short period and the duties and other requirements in the article should keep any disruption to a minimum. Compensation is payable for any loss or damage resulting from the use of this power.
- 8.2.13 The C&RT objected to the powers of closure. I have considered this objection in paragraphs 5.10.14 to 5.10.16 and concluded that the powers of temporary closure are required to ensure the safe installation of the pipeline bridge which is a necessary part of the associated development forming part of the overall application.

Part 6 - Miscellaneous and General

- 8.2.14 CWAC expressed concern about the provision in Article 32 that the whole of the area covered by the development consent should be treated as operational land [REP2-032]. This covered all of the land within the Order limits much of which was farmland which was not required for the proposed development and opened up the possibility of significant uncontrolled development being permitted. CWAC suggested that the Order limits should be restricted to cover the limits of deviation shown on the works plans.
- 8.2.15 The Applicant responded with a legal analysis of the definition of operational land in the Town and Country Planning Act 1990 (the 1990 Act) [REP4-001]. It argued that Article 32 was a 'deeming' provision which meant that the Order would be treated as specific planning permission for the purposes of s264 of the 1990 Act. Land within the Order limits would only be operational land under the 1990 Act if it fulfilled the criteria in s263 of the 1990 Act that it was "*used for the purpose of carrying on (the relevant) undertaking*" and if it is "*held for that purpose*". Land within the Order limits which does not satisfy these criteria cannot be operational land and would not be made so by

Article 32 of the draft DCO. I agree with this analysis and do not propose any change to Article 32.

8.2.16 Article 35, certification of plans, was updated during the course of the Examination to include the final versions of plans and other statements that are relied on elsewhere in the DCO. These plans are all subject to certification by the Secretary of State. For convenience Table 9.1 lists each of these documents as they appear in the draft DCO with the Applicant's document reference and the Examination library reference.

Table 9.1: Documents to be certified under Article 35 of the DCO

Article number	Document title with Applicant's reference	Examination library reference
35(a)	Book of reference (document ref.:4.3)	APP-127
35(b)	Book of reference and land plans clarification and errata (document ref.: 10.14)	REP7-015
35(c)	Order limits drawings nos.: 13-03-01/HOL/24/100-107/B1	APP-003 to -010
35(d)	Land plans drawing nos.: 13-03-01/HOL/24/610-617/B1	APP-011 to -018
35(e)	Works plans drawing nos.: 13-03-01/HOL/24/500-506/B1, 13-03-01/HOL/24/509/B1, 13-03-01/HOL/24/510/B2, 13-03-01/HOL/24/511/B1, 13-03-01/HOL/24//512/B2; 13-03-01/HOL/24//513-514/B1	APP-019 to -025 APP-026 APP-194 APP-028 AS-009 APP-030 and -031
35(f)	Street works and access plan drawing no.: 13-03-01/HOL/24//413/B1	APP-033
35(g)	The environmental statement (document ref.: 6.1-6.3)	APP-179 to -181
35(h)	The environmental statement clarifications and errata (document ref.: 10.13)	REP7-012 to -014

35(i)	The elevation drawings nos.: (i) 13-03-01/HOL/24//236/B1; (ii) 13-03-01/HOL/24//270/B4, 13-03-01/HOL/24/271/B2; 13-03-01/HOL/24//272/B1; 13-03-01/HOL/24/273/B2; 13-03-01/HOL/24//274/B1; (iii) 13-03-01/HOL/24//278/B1	APP-040 REP4-008 annex 5 APP-197 APP-043 APP-198 APP-045 APP-048
35(j)	The seismic survey report (document ref.: 9.1)	APP-191
35(k)	The sub-surface safety report (document ref.: 9.2)	APP-192
35(l)	The preliminary study of gas design capacity (document ref.: 9.3)	APP-193
35(m)	The landscaping plans drawings nos.: 13-03-01/HOL/24/240-264/B1; 13-03-01/HOL/24/266-268/B1	APP-050 to -074 APP-075 to -077
35(n)	The statutory undertakers' apparatus plan drawing no.: 13-03-01/HOL/24/346/B1	APP-122
35(o)	The routing plan drawing no.: 13-03-01/HOL/24/405/B1	APP-083

8.2.17 Article 35 in the final draft DCO does not include the draft CEMP as a document to be certified although it is listed as such in the interpretations in Article 2. Adherence to the draft CEMP forms part of one of the requirements in Schedule 2 and I recommend that the draft CEMP [REP7-006] should be included in Article 35 as:

- 35(p) Construction Environmental Management Plan and annexes 1 - 4 (document ref 6.5 rev4, August 2016).

8.3 SCHEDULES

Schedule 1- The Authorised Development

8.3.1 Schedule 1 sets out the work to be authorised by the DCO. The first part covers the 19 underground gas storage cavities created by solution mining, which together comprise the NSIP, as individual work items. In the application DCO the cavities were each defined as having

a maximum width and diameter and located by individual grid references. In my view this did not adequately define the size of the underground cavities in a way which could be linked to the geological data that had been provided on the salt deposits. The Applicant agreed to add the depth range within which the cavities would be created and also a maximum drilling depth. The drilling depth is defined by reference to the well-defined geological feature known as the 30 feet marls formation which is shown in the seismic survey report [APP-191]. I am satisfied that the NSIP works as set out in the final draft DCO are now adequately defined in terms of their size and location.

- 8.3.2 The second part of the schedule sets out the associated development that is required to create and support the operation of the NSIP. This is covered by works 2 - 35 which comprise above ground works and underground pipework and cabling. Subject to some minor points of clarification these were all satisfactorily defined in the application DCO. Supplemental detail on the above-ground works is provided in Schedule 2.
- 8.3.3 The Applicant amended work No 11- the recommissioning of the Whitley pumping station - to limit its operation to a period of 10 years after the completion of the authorised development. That corresponds with the period over which solution mining, for which the pumping station is required, is expected to take place.
- 8.3.4 I am satisfied with the descriptions of the works comprising the associated development as set out in the final draft DCO.

Schedule 2 - Requirements

- 8.3.5 The requirements (R) in Schedule 2 were the subject of discussion during the course of the Examination. A considerable number of amendments were proposed and incorporated into the final draft DCO.
- 8.3.6 R2 sets out that the development must be carried out in accordance with the plans and documents certified by the Secretary of State under Article 35 and any other plans, schemes or documents approved in writing by the relevant planning authority pursuant to the requirement. At my suggestion the Applicant also included tables of parameters for each of the above ground works. These parameters are taken from the application documents and their inclusion in the DCO ensures that the dimensions of the above ground installations are consistent with the buildings and other structures that were the subject of assessment in the ES.
- 8.3.7 In the application DCO the parameters for the regeneration and water heating vents at the GPP only specified the external diameter of the vents. It was the EA's view that these activities did not require an EP [REP2-015]. Following discussion at the second ISH, the Applicant agreed to the inclusion of both external and internal diameters for these heaters. In my view this is necessary to ensure that, in the

absence of control through an EP, the emissions to air from the vents as constructed are within the parameters assessed in the ES.

- 8.3.8 R3 sets out the requirement that no part of the authorised development should commence until a CEMP has been submitted and approved by the relevant planning authority. This would require approval by CWAC for work at the MAA and the Whitley site and by HBC for work at the Runcorn site. This requirement was amended during the Examination to require that the CEMP submitted for approval should be in accordance with the draft CEMP. Construction must then be carried out in accordance with the approved CEMP.
- 8.3.9 The draft CEMP was the subject of considerable discussion during the Examination and was amended to include additional detail on procedures to be observed during the construction period. This has been reviewed in section 5.13 where I concluded that the inclusion of detailed actions in the draft CEMP is a helpful and satisfactory way in which the environmental impacts of the construction phase of the project and any necessary mitigation measures can be secured. Adherence to the provisions set out in the draft CEMP is secured through R3. As noted above at paragraph 8.2.17, I recommend that the draft CEMP should be included in the list of certified documents.
- 8.3.10 R3 ties in mitigation measures set out in the ES. The original draft only required the CEMP to reflect those mitigation measures. This was strengthened following discussion to require the inclusion of mitigation measures in accordance with those in the ES. R3 also lists a number of plans and programmes of work which must be included and sets limits on construction hours. A provision (R3(8)) was added to restrict construction to the months of April to September. This was requested by NE for the protection of over wintering birds. In addition a restriction was put on scrub clearance which could only take place between August and September in order to avoid disturbance to nesting birds on the Telford Wall. These restrictions underpin my conclusions on HRA at paragraph 6.4.2.
- 8.3.11 R4 on approval of details originally only specified wellheads under R4(a). This was extended to specify each of the above ground compounds and other structures.
- 8.3.12 R5 on control of noise during solution mining and gas operations originally only required a written scheme for noise management to be agreed with the relevant planning authority. Following discussions with CWAC, the Applicant agreed to the inclusion of reference to the maximum noise levels at sensitive receptors set out in the ES. It also agreed to the inclusion of specific day and night-time noise limits at six dwellings in the immediate vicinity of these activities. Noise during the construction period is covered separately through the CEMP.
- 8.3.13 R6 covers landscaping. A landscaping plan is required as part of the CEMP but this requirement sets specific details to be covered and also extends beyond the construction period. The original draft was

extended, following discussion with CWAC, to include a height limit on the soil bunds which form part of the development, a restriction on the import and export of topsoil from the site and provision for remedial measures in the case of brine leakage. These changes address potential adverse environmental impacts of the development identified during the Examination.

- 8.3.14 R7 and R8 are based on model provisions and, apart from minor changes for clarification, are unchanged from the application draft. R9 provides for a daily limit on the number of HGVs entering and leaving the site. This limit is in accordance with the vehicle movements assessed in the ES. The draft s106 agreement discussed in section 5.14 addresses the offsite routing of site related traffic. R10 requires internal roads at the MAA to be metalled, drained and kept clear of debris at all times. Metalled haul roads is one of the measures identified in the ES for controlling dust on site.
- 8.3.15 The application draft of the DCO included a requirement on the provision of alternative PROWs (R11 in the application draft DCO). This appeared to me to envisage extinguishment of a right and creation of an alternative and appeared to be unnecessary given the powers for the temporary stopping up of PROWs which were originally in Article 31 of the application DCO and are now included in Article 13. The Applicant agreed to delete this requirement.
- 8.3.16 R11 on fencing and other means of enclosure and R12 on ground water and surface water and pollution prevention are based on model provisions and were not changed during the Examination.
- 8.3.17 R13 on hedgerows was added by the Applicant during the Examination in response to my request for further information on hedgerows to which the Hedgerow Regulations 1997 would apply. Detailed survey work to provide this information would only be carried out at a later date and R13 requires information on hedgerows which would be removed to be submitted to and approved by the relevant planning authority before commencement of that part of the work.
- 8.3.18 R14 on land contamination was added by the Applicant following my questions about contamination at the Runcorn site and how this would be addressed in the DCO.
- 8.3.19 R15 concerning archaeology largely follows the model provision and provides for the WSI which is to be carried out at the MAA and the archaeological watching brief at the Runcorn site which were identified in the consideration of cultural heritage issues.
- 8.3.20 R16 on external lighting largely follows the model provision and was not changed during the Examination.
- 8.3.21 R17 on a restoration scheme follows the pattern adopted in the Preesall Development Consent Order (SI 2015 No. 1561). This provides for the restoration of the site at the end of its use for gas storage, potentially 50 years after the start of the authorised

development. This provision is seen as essential for the sufficient and timely restoration of the site.

- 8.3.22 R18 sets requirements for decommissioning. In response to my questions this was amended to make it clear that it applied to the whole of the proposed development and not just the MAA. It was also amended to be clear that the requirement could not be over-ridden by agreement with the relevant planning authority. R18(2) was added to require a scheme for the decommissioning of the pipeline bridge across the Weaver Navigation and the diffuser into the MSC not later than 10 years after the start of the authorised development. This reflects the plan that solution mining of brine would only last 10 years and is consistent with the 10 year life for the operation of the Whitley pumping station included in the description of Work no 11(see paragraph 8.3.3).
- 8.3.23 R19 follows the model provision on the requirement for written approval. R20 on amendments to approved details gives some flexibility to agree changes to the parameters set out in R2(3) and other plans approved by the relevant planning authority. The wording was strengthened after discussion during the Examination to require that approval for such changes should not be given except where it was demonstrated that the change did not give rise to any materially new or materially different environmental effects in comparison with those identified in the ES.
- 8.3.24 R21 was added at the request of NE and requires a final pre-construction survey to identify whether any EPS are present or likely to be affected by the development. If species are identified then protection or mitigation measures have to be submitted for approval and then implemented.
- 8.3.25 R22 on the conveyance of gas, water and brine was added at the request of CWAC. This requires that, with specified exceptions, all natural gas, water and brine required for the authorised development is conveyed by pipeline. This ensures that these products are not tankered on or off site which, if it occurred, would create additional traffic not assessed in the ES.
- 8.3.26 R23 was added in response to my second written questions relating to control over emissions in the absence of the need for an environmental permit. I am satisfied that the implementation of an environmental management system compliant with ISO 14001 or an equivalent recognised standard which would afford a sufficient degree of control over operational emissions.
- 8.3.27 R24 deals with the control of radio emissions which might affect the operation of the radio telescope at Jodrell Bank. The issues to be addressed are discussed above in section 5.9. A draft of R23 was agreed between the Applicant and the University of Manchester (Jodrell Bank) as addressing the concerns that had been raised during the Examination. This is included in the final draft DCO. Following

submission of the draft the University of Manchester submitted a number of minor drafting amendments to R23 which it considered important to ensure consistency and reduce any ambiguity within the DCO [REP9-002]. The Applicant did not comment on these changes. I have reviewed the proposed amendments and recommend that they be accepted. I have included these in my recommended DCO.

Schedules 3, 4, 5, 6, 7 and 8

- 8.3.28 Schedules 3, 4, 5 and 6 set out the streets subject to street works and alterations of layout, streets and rights of way to be temporarily stopped up and access to works as provided for in Articles 10, 11, 13 and 14 respectively. Schedule 7 sets out the section of the Weaver Navigation subject to temporary closure as set out in Article 19. Schedule 8 lists the plots within the Order land that would be subject to temporary possession under the provisions of Article 27.

8.4 PROTECTIVE PROVISIONS

- 8.4.1 Schedule 9 sets out five separate sets of protective provisions for different undertakers whose assets would or could be affected by the proposed development.

Part1

- 8.4.2 Part 1 provides protection for NG as electricity and gas undertaker. National Grid Electricity Transmission (NGET) and NGG are listed as co-insured under the provisions although NGET does not have any assets within the Order limits. NGG submitted both a RR and a WR objecting to the development [RR-007, REP2-046]. NGG did not object to the development in principle but lodged an objection on the grounds that protective provisions had not been agreed to secure NGG's rights to retain its gas transmission apparatus in situ and rights of access to inspect, maintain, renew and repair its apparatus located within the Order limits.
- 8.4.3 Following discussions the protective provisions included in the final draft DCO were agreed between the Applicant and NGG and NGG withdrew its objection [AS-006]. I am satisfied with the provisions in Part 1.²⁴

²⁴ I note that Part 1 of Schedule 9 adopts a definition of 'undertaker' which is different from the definition set out in Part 1 of the main order. The definition used in Part 1 of Schedule 9 is also used in Part 5 of this schedule. The Parts of Schedule 9 as drafted are internally consistent but having different definitions in the same Order holds the potential for confusion. In this case the drafting follows wording accepted by the Secretary of State in Part 1 of Schedule 8 in the Preesall Underground Gas Storage Facility Order 2015 and I have not proposed redrafting.

Part 2

- 8.4.4 Part 2 sets out protective provisions for operators of electronic communications code networks. These are generic provisions not specific to any one operator. No representations were received from any such operators.

Part 3

- 8.4.5 Part 3 provides protective provisions for the C&RT. The Trust as successor to the British Waterways Board is a statutory undertaker and prescribed consultee under PA 2008. It did not object in principle to the proposed development but expressed concern about the application of a number of articles in the DCO to the Trust. In particular it was concerned with Article 18 in the application DCO (now Article 19) concerning the temporary closure of, and works on or over, the canal. Any work under this provision should be subject to the provisions of the Trusts Code of Practice.
- 8.4.6 In order to protect its position the C&RT submitted a revised draft of the protective provisions set out in the application DCO. The revised draft was based on the precedent developed for another NSIP and included in the Knottingley Power Plant Order 2015 (SI 2015 No.680). A final draft based on this version was agreed between the Applicant and the C&RT [REP4-013] although the Trust reserved its position in respect of other concerns it had raised about provisions in the draft DCO. I am satisfied that these provisions provide the C&RT with adequate protection.

Part 4

- 8.4.7 Part 4 sets out protective provisions for Scottish Power Energy Networks (SPEN). These were put forward by the Applicant and discussed with SPEN. During the Examination SPEN indicated that whilst no impediment had been identified the provisions remained the subject of ongoing negotiation with both parties working together to reach agreement [REP5-017]. No further update was provided.

Part 5

- 8.4.8 Part 5 sets out protective provisions for HGSL. The case for including such provisions for HGSL, which is not a statutory undertaker, has been considered in section 5.12, where I concluded that protective provisions were appropriate. Discussions between the Applicant and HGSL on the details of the provisions continued up to the final stages of the Examination but full agreement was not reached. The remaining unresolved issues were set out in HGSL's final submission [REP9-001] and my views on these are set out below.
- 8.4.9 HGSL noted that it had been agreed that "cavities" should be included in the definition of "apparatus" in the provisions but that this did not appear in the final draft. I agree that the definition of "apparatus" in

paragraph 57 of Part 5 of Schedule 9 of the final draft DCO should be amended to include "cavities".

8.4.10 In paragraph 63 of Part 5 concerning expenses incurred by HGSL to be paid by the Applicant, HGSL proposed the inclusion of two categories of expense which were rejected by the Applicant. These were expenses incurred:

- *(a) in connection with the cost of the carrying out of any assessment of the undertaker's apparatus under the Control of Major Accident Hazards (COMAH) Regulations 2015 reasonably necessary as a consequence of the authorised works;*
- *(b) implementing any mitigation measures required as a result of any assessment referred to in sub-paragraph (a) reasonably necessary as a consequence of the authorised works.*

8.4.11 The Applicant rejected those additions on the grounds that they had not been justified and could be used by HGSL to obtain a commercial gain. It argued that these provisions would allow HGSL to propose and implement significant and potentially disproportionate control measures and pass the costs on to the Applicant, a commercial competitor which would be inappropriate in a commercial environment.

8.4.12 HGSL responded that the Applicant had not provided any evidence or confirmation from the HSE that the construction and operation of the proposed development would not negatively impact the risk profile of the HGSL project under the COMAH regulations. HGSL would need to demonstrate to the HSE that the revised risks at the HGSL site as a result of the proposed development were as low as reasonably practicable and take into consideration any mitigation measures required. Costs covered by this provision must be reasonably necessary as a consequence of the authorised works.

8.4.13 In paragraph 64 of the provisions dealing with indemnity, HGSL reiterated its position, rejected by the Applicant, that an indemnity was required to cover any third party claims. This extended beyond the cost of making good damages caused to third party property. HGSL proposed that paragraph 64(1) should read:

- *Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance, decommissioning or failure of any of the authorised works by or on behalf of the promoter or in consequence of any act or default of the promoter (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the promoter under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or property of the undertaker, or there is any interruption in any service provided by the undertaker, or the*

*undertaker becomes liable to pay any amount to any third party (including but not limited to INOVYN Enterprises), the promoter will bear and pay on demand the cost reasonably incurred by the undertaker in making good such damage, restoring the supply or paying such amount and indemnify the undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the undertaker, by reason or in consequence of any such damage or interruption or the undertaker becoming liable to any third party as aforesaid provided that at all times the undertaker shall be under an obligation to take reasonable steps to mitigate its loss.*²⁵

The Applicant did not accept the wording shown above in italics.

8.4.14 HGSL also sought an indemnity to cover any costs that it incurred as a result of any interruption to the service it provides to its customers. HGSL proposed that paragraph 64(3) should read:

- (3) Nothing in sub-paragraph (1) shall impose any liability on the promoter in any circumstances in respect of—
 - (a) any damage or interruption to the extent that it is attributable to the neglect or default of the undertaker, its officers, servants, contractors or agents;
 - (b) loss of profits, loss of use, loss of revenue, loss of contract, loss of goodwill, loss of products, loss of productivity, loss of profitability or any indirect or consequential losses of any nature whatsoever *save that the sums payable by the promoter under sub-paragraph (1) shall include a sum equivalent to the relevant costs in circumstances where*
 - (i) the undertaker is liable to make payment of the relevant costs pursuant to the terms of an agreement between the undertaker and a gas storage customer relating to the storage of gas in the undertaker's apparatus; and*
 - (ii) the existence of that agreement and the extent of the undertaker's liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the promoter*

but not otherwise.

8.4.15 HGSL proposed a consequential addition of paragraph 64(6) to define relevant costs and gas storage customer:

- *"relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by a gas storage customer as a consequence of any restriction of the use of the*

²⁵ Note that in Part 5 of Schedule 9 the undertakers is defined as HGSL and the promoter as 'the undertaker as defined in Article 2 of this Order' - i.e. the Applicant.

undertaker's apparatus as a result of the construction, maintenance or failure of any specified works or any such act or omission as mentioned in sub-paragraph (1)

- *"gas storage customer" means any person licensed to ship, transmit, distribute or supply gas under the Gas Act 1986*

The wording in italics in paragraphs 8.4.14 and 8.4.15 was not accepted by the Applicant.

8.4.16 HGSL also proposed the deletion of paragraph 65 on enactments and agreements. This refers to any enactment or agreement regulating the relations between the Applicant and HGSL. The Applicant argued that there were existing agreements between HGSL and the Applicant's associated company IEL. As agent for IEL the Applicant is required to comply with the terms of these agreements. It is not the intention of the protective provisions to modify or have an effect on these agreements and this provision sought to ensure that this was the case. HGSL argued that there was no justification for this provision since there were no existing agreements between HGSL and the Applicant and that the agreements between HGSL and another company in the INEOS group were not relevant for the purposes of the powers in the DCO.

8.4.17 In considering the disagreement between the Applicant and HGSL on specific protective provisions I start from my view set out at paragraph 5.12.9 that the HGSL facility should be regarded as an important part of the national gas infrastructure the operation of which should not be put at serious risk by subsequent development and that it should have the benefit of protective provisions. That being so, those provisions should be adequate to protect HGSL from bearing costs resulting from the construction and operation of the proposed development. The disputed text (italicised above) is concerned with such costs. In my view it is reasonable for HGSL to expect reimbursement of such costs which it would not otherwise incur. I note also that these provisions are subject to a requirement that any costs should be reasonably incurred. I recommend that the additional italicised text should be included in Part 5 of the protective provisions. I also agree with HGSL's suggestion for the deletion of paragraph 65 in the protective provisions as set out in the final draft since HGSL has made it clear that there are no agreements between the Applicant and HGSL as referred to in that draft. I have included these changes in my recommended DCO.

8.5 CONCLUSION ON THE DEVELOPMENT CONSENT ORDER

8.5.1 As set out at paragraph 5.15.8 I conclude that the case for the development has been made and that development consent should be given subject to the inclusion of specific mitigation measures in the DCO. I have also concluded that, taking into account relevant sections of PA 2008, notably s.122 and s.123, the Guidance and the Human Rights Act 1998 the case has been made that the CA and temporary

possession powers sought by the Applicant are necessary to enable the development to take place.

8.5.2 I am satisfied that, subject to specific changes I have identified, the final draft DCO contains the provisions and requirements necessary to address concerns that have been raised during the Examination. I recommend that, subject to agreement being reached on the s106 agreement, the application for the DCO should be granted in the form attached at Appendix D.

8.5.3 For the avoidance of doubt the recommended DCO is the same as the final draft DCO except for the following changes:

- Addition to Article 35
"35(p) Construction Environmental Management Plan and annexes 1 - 4 (document ref 6.5 rev4, August 2016)"
- Amend R24 as follows:
Change Control of Radio Frequency Emissions Plan to *"control of radio emissions plan"* throughout;
R24(1) after University of Manchester add *"(a Royal Charter corporation registered under number RC000797), of Oxford Road, Manchester, M13 9PL"*;
In 24(2, 24(3)(b) and 24(3)(d) change Works Number 14 to *"the gas processing plant Work No 14"*;
In 24(3)(a) and 24(4) change promoter to *"undertaker"*.
- Amend Schedule 9 Part 5 as follows:
57 in definition of "apparatus" add *"cavities,"* before pipelines 64(1) to read:
"Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance, decommissioning or failure of any of the authorised works by or on behalf of the promoter or in consequence of any act or default of the promoter (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the promoter under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or property of the undertaker, or there is any interruption in any service provided by the undertaker, or the undertaker becomes liable to pay any amount to any third party (including but not limited to INOVYN Enterprises), the promoter will bear and pay on demand the cost reasonably incurred by the undertaker in making good such damage, restoring the supply or paying such amount and indemnify the undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the undertaker, by reason or in consequence of any such damage or interruption or the undertaker becoming liable to any third party as aforesaid"

provided that at all times the undertaker shall be under an obligation to take reasonable steps to mitigate its loss."

64(3) to read:

"(3) Nothing in sub-paragraph (1) shall impose any liability on the promoter in any circumstances in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of the undertaker, its officers, servants, contractors or agents;

(b) loss of profits, loss of use, loss of revenue, loss of contract, loss of goodwill, loss of products, loss of productivity, loss of profitability or any indirect or consequential losses of any nature whatsoever save that the sums payable by the promoter under sub-paragraph (1) shall include a sum equivalent to the relevant costs in circumstances where

(i) the undertaker is liable to make payment of the relevant costs pursuant to the terms of an agreement between the undertaker and a gas storage customer relating to the storage of gas in the undertaker's apparatus; and

(ii) the existence of that agreement and the extent of the undertaker's liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the promoter

but not otherwise."

Add 64(6):

"relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by a gas storage customer as a consequence of any restriction of the use of the undertaker's apparatus as a result of the construction, maintenance or failure of any specified works or any such act or omission as mentioned in sub-paragraph (1)

"gas storage customer" means any person licensed to ship, transmit, distribute or supply gas under the Gas Act 1986"

Delete paragraph 65 and renumber remaining paragraphs.

- Amend Canal and River Trust to "*Canal & River Trust*" throughout.

9 SUMMARY OF FINDINGS AND CONCLUSIONS

9.1 SUMMARY OF FINDINGS AND CONCLUSIONS

- 9.1.1 The application is for the construction, operation and maintenance of an underground gas storage facility comprising 19 underground storage cavities with the capacity to store a working gas volume of approximately 500 million standard cubic metres (mcm) of natural gas with an import and export capability of up to 34mcm per day. The main development of the gas storage cavities would be located in the Holford Brinefield in Cheshire, England. As such the proposed development meets the definitions of an underground gas storage facility in s17(2) and 17(4) of PA 2008 and qualifies as an NSIP as defined in s14(1)(c) of PA 2008.
- 9.1.2 The application also seeks consent for associated development which is ancillary to the construction, operation and maintenance of the underground gas storage facility. There would be 19 gated access wellhead compounds at the MAA each connecting the well head to the underground cavity. These compounds would contain equipment required during drilling, solution mining, gas conversion and gas storage. Pipelines would be required within the MAA for the transport of water, brine, nitrogen and natural gas with connections to existing water, brine and gas networks. A solution mining compound would act as the collecting and processing point for brine during the solution mining phase of the project. A gas marshalling compound and gas processing plant would manage the flows of gas in and out of the underground storage facility. A 132kV to 33kV substation would be required to provide power for the operations. This would be linked to the existing 132kV infrastructure requiring one new pylon to be erected.
- 9.1.3 Brine from solution mining would be transported through an existing pipeline owned by IEL to IEL's plant at Runcorn. The existing pipeline would be strengthened by the installation of a new pumping tank and surge vessel at the existing works at Lostock and by the refurbishment and recommissioning of the Whitley pumping station. The brine pipeline would be extended at Runcorn to allow any excess brine not required by IEL or its customers to be discharged into the MSC. This would require the construction of a pipeline bridge over the Weaver Navigation and the installation of a buried pipeline in the Telford Wall which separates the Weaver Navigation from the MSC.
- 9.1.4 I have carried out this Examination of the application in accordance with the general principles and specific guidance set out in the NPPS, NPS EN-1 and EN-4. I have had regard to the LIRs submitted by CWAC and HBC and to representations received from other IPs.
- 9.1.5 I have concluded that the proposed development would contribute to meeting the need for gas storage capacity identified in EN-1 and EN-4 and that adequate consideration has been given to design and to

alternatives to the development as required by EN-1. There is a case in principle in favour of granting a DCO for the proposed development.

9.1.6 I have concluded after taking into account the agreed mitigation measures that there should be no significant adverse effects from the following aspects of the proposed development which would weigh against granting the DCO:

- Geology;
- Land and water quality;
- Air quality;
- Ecology;
- Marine environment;
- Landscape and visual impact at the Runcorn and Whitley sites;
- Cultural heritage;
- Noise and vibration;
- Radio interference;
- Traffic and transport;
- Socio economic characteristics - labour and housing;
- HGSL case for protective provisions.

9.1.7 I have concluded that there would be adverse effects from the following aspects of the proposed development which would weigh against granting the DCO:

- Visual impact of the development on a number of viewpoints at the MAA;
- Socio-economic characteristics, disturbance to residents' businesses and lifestyles.

9.1.8 In my view only limited weight can be attached to these adverse effects and it is my conclusion that on balance the established national need for additional gas storage capacity is by no means outweighed by the adverse effects that would be felt by residents and others in the immediate vicinity of the proposed development.

9.1.9 I have reviewed the possible impact of the proposed development on European sites in the light of the relevant tests in the Habitats Regulations and I am satisfied that there is sufficient evidence to allow the Secretary of State to conclude that the proposed development is unlikely to have significant effects on any European site or their features, either alone or in combination with other plans and projects. I am satisfied that such information as is reasonably required for the Secretary of State to determine that an appropriate assessment is not required has been provided. I also conclude that there are no HRA matters which would prevent the Secretary of State from making the DCO.

9.1.10 The proposed development can only be achieved with the exercise of CA and temporary possession powers. NPS EN-1 and EN-4 set out the national need for the development of gas storage and I am satisfied that a development of the size proposed would contribute to meeting

that need. This constitutes a compelling case in the public interest for the use of these powers. I am satisfied that adequate provision is made in the DCO to provide compensation to affected parties.

- 9.1.11 I have considered the individual plots of land over which compulsory acquisition or temporary possession powers are sought and have taken into account the representations received. I have concluded that the case has been made for the inclusion of CA and temporary possession powers in the DCO which can be exercised over the land identified in the BoR, the Land Plans and in Schedule 8 of the draft DCO.
- 9.1.12 I conclude that the case for the development has been made and that, subject to the signing of a s106 agreement, development consent should be given through a DCO in the form attached at appendix D.

APPENDICES

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APPENDIX A: THE EXAMINATION

APPENDIX A: EVENTS IN THE EXAMINATION

The Table below lists the main 'events' occurring during the Examination and the main procedural decisions taken by the Examining Authority (ExA).

DATE	EXAMINATION EVENT
16 March 2016	<p>Preliminary Meeting and start of Examination</p> <p>First Issue Specific Hearing on the draft DCO</p>
23 March 2016	<p>Letter (Rule 8) detailing procedural decisions following Preliminary Meeting and the examination timetable was sent to interested parties</p> <p>First Written Questions</p>
13 April 2016	<p>Deadline 1</p> <ul style="list-style-type: none"> • Deadline for statutory parties to inform the Examining Authority of a wish to be considered as an interested party • Request or receipt of notification (using the prescribed form) by persons within certain categories of interests in the land of a wish to become an interested party • Optional written summaries of oral cases made at the first Issue Specific Hearing • All post hearing documents • Notification by interested parties of wish to be heard at an Open Floor Hearing • Notification of a wish to make oral representations at a Compulsory Acquisition Hearing • Notification of wish to make oral representations at the second Issue Specific Hearing on the local impact of the project and the DCO • Notification by interested parties of wish to attend any accompanied site visits

DATE	EXAMINATION EVENT
	<ul style="list-style-type: none"> • Submissions from interested parties recommending itinerary items for the Accompanied Site Visit • Comments by interested parties on the applicant's draft accompanied site visit itinerary
20 April 2016	<p>Notification by the ExA of date, time and place for:</p> <ul style="list-style-type: none"> • Issue Specific Hearing to be held on the local environmental impact of the project and the draft DCO • Any Accompanied Site Visit(s) • Any Open Floor Hearing (if requested) • Any Compulsory Acquisition Hearing (if requested)
29 April 2016	<p>Deadline 2</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on relevant representations (RRs) • Summaries of all RR's exceeding 1500 words • Written representations (WRs) by all interested parties • Summaries of all WRs exceeding 1500 words • Local Impact Report (LIR) from any local authorities • Statements of Common Ground requested by the ExA • Responses to ExA's first written questions • Comments on any other / additional submissions received prior to the preliminary meeting • Any further information requested by the ExA for this deadline

DATE	EXAMINATION EVENT
17 May 2016	<p>Deadline 3</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on WRs • Responses to comments on RRs • Comments on Local Impact Reports • Comments on Statements of Common Ground • Comments on responses to ExA's first written questions • Comments on written summaries of case put at the first issue specific hearing • Any revised DCO from the applicant • Any further information requested by the ExA for this deadline
23 May 2016	Compulsory Acquisition Hearing
24 May 2016	Accompanied Site Visit
25 May 2016	Issue Specific Hearing on the local environmental impacts of the project and the draft DCO
26 May 2016	Continuation of Issue Specific Hearing on the local environmental impacts of the project and the draft DCO
7 June 2016	<p>Deadline 4</p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> • All post hearing documents (including any revised DCO from the applicant) • Any updated Statements of Common Ground • Optional written summaries of oral cases made at the issue specific hearing and compulsory acquisition hearing

DATE	EXAMINATION EVENT
	<ul style="list-style-type: none"> • Notification by interested parties of wish to make oral representations at the third issue specific hearing on the draft Development Consent Order (DCO) and any related local impact report matters • Any further information requested by the ExA for this deadline
14 June 2016	<p>Issue by ExA of:</p> <ul style="list-style-type: none"> • ExA's second round of written questions • Further request for Statements of Common Ground • Notification by the ExA of the time and place for a further issue specific hearing on the local environmental impacts and the draft DCO
4 July 2016	<p>Rule 8(3) and Rule 17 letter issued to all interested parties and statutory parties detailing proposed changes to the original application. Comments were invited by the ExA, in determining whether this represents a material change to the application.</p>
5 July 2016	<p>Deadline 5</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Responses to ExA's second written questions and further requests for Statements of Common Ground • Comments on written summaries of case put at the second Issue Specific Hearing and the Compulsory Acquisition Hearing
14 July 2016	<p>Deadline 6</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Comments on responses to ExA's second round of written questions and further Statements of Common Ground

DATE	EXAMINATION EVENT
28 July 2016	Issue Specific Hearing on local environmental impacts of the project, the draft DCO and any other issues
1 August 2016	Rule 8(3) letter issued to all interested parties and statutory parties detailing a variation to the Examination Timetable
3 August 2016	A letter from the ExA was published confirming that changes to the original application proposed by the applicant are considered non material
5 August 2016	<p>Deadline 7</p> <p>Deadline for the receipt of:</p> <ul style="list-style-type: none"> • Optional written summary of the case put orally at the issue specific hearing on the draft DCO, local environmental issues and any other hearings held • Any revised draft DCO from the applicant • Any further information requested by the ExA for this deadline
19 August 2016	<p>Deadline 8</p> <p>Deadline for receipt of;</p> <ul style="list-style-type: none"> • Comments on written summaries of case put at the issue specific hearing on the draft DCO, local environmental issues and any other hearings held • Comments on the applicant's revised draft DCO, if submitted • Any revised DCO from the applicant
26 August 2016	<p>Deadline 9</p> <p>Deadline for the receipt of;</p> <ul style="list-style-type: none"> • Comments on the applicant's revised draft DCO
16 September 2016	Close of examination

APPENDIX B: EXAMINATION LIBRARY

Keuper Gas Storage Project

Examination Library

This Examination Library relates to the Keuper Gas Storage Gas Project application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure Planning website and a hyperlink is provided for each document. A unique reference is given to each document and these references are used in the report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- Advice under Section 51 of the Planning Act 2008 that has been issued by the Planning Inspectorate is published to the National Infrastructure Planning website, but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

EN030002 – Keuper Gas Storage Project**Examination Library - Index**

Category	Reference
<u>Application Documents</u> As submitted and amended version received before the Preliminary Meeting (PM). Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
<u>Adequacy of Consultation responses</u>	AoC-xxx
<u>Relevant Representations</u>	RR-xxx
<u>Procedural Decisions and Notifications from the Examining Authority</u> Includes Examining Authority's questions, s55 checklist, and post acceptance s51	PD-xxx
<u>Additional Submissions</u> Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
<u>Events and Hearings</u> Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
<u>Representations – by Deadline</u>	
<u>Deadline 1:</u> <ul style="list-style-type: none">• <i>Deadline for statutory parties to inform the Examining Authority of a wish to be considered as an interested party</i>• <i>Request or receipt of notification (using</i>	REP1-xxx

<p><i>the prescribed form) by persons within certain categories of interests in the land of a wish to become an interested party</i></p> <ul style="list-style-type: none"> • <i>Optional written summaries of oral cases made at the first issue specific hearing</i> • <i>All post hearing documents</i> • <i>Notification by interested parties of wish to be heard at an open floor hearing</i> • <i>Notification of a wish to make oral representations at a compulsory acquisition hearing</i> • <i>Notification of wish to make oral representations at the second issue specific hearing on the local impact of the project and the DCO</i> • <i>Notification by interested parties of wish to attend any accompanied site visits</i> <p><i>Submissions from interested parties recommending itinerary items for the accompanied site visit</i></p> <ul style="list-style-type: none"> • <i>Comments by interested parties on the applicant’s draft accompanied site visit itinerary</i> 	
<p><u>Deadline 2:</u></p> <ul style="list-style-type: none"> • <i>Deadline for receipt by the ExA of:</i> • <i>Comments on relevant representations (RRs)</i> • <i>Summaries of all RRs exceeding 1500 words</i> • <i>Written representations (WRs) by all interested parties</i> • <i>Summaries of all WRs exceeding 1500 words</i> • <i>Local Impact Report (LIR) from any local authorities</i> • <i>Statements of Common Ground requested by the ExA</i> • <i>Responses to ExA’s first written questions</i> • <i>Comments on any other / additional submissions received prior to the preliminary meeting</i> • <i>Any further information requested by the ExA for this deadline</i> 	REP2-xxx
<p><u>Deadline 3:</u></p> <p><i>Deadline for receipt by the ExA of:</i></p> <ul style="list-style-type: none"> • <i>Comments on WRs</i> • <i>Responses to comments on RRs</i> • <i>Comments on Local Impact Reports</i> • <i>Comments on Statements of Common Ground</i> • <i>Comments on responses to ExA’s first written questions</i> • <i>Comments on written summaries of case put at the first issue specific hearing</i> 	REP3-xxx

<ul style="list-style-type: none"> • Any revised DCO from the applicant • Any further information requested by the ExA for this deadline 	
<p><u>Deadline 4:</u></p> <p><i>Deadline for receipt by ExA of:</i></p> <ul style="list-style-type: none"> • All post hearing documents (including any revised DCO from the applicant) • Any updated Statements of Common Ground • Optional written summaries of oral cases made at the open-floor, issue specific hearings and compulsory acquisition hearings • Notification by interested parties of wish to make oral representations at the third issue specific hearing on the draft Development Consent Order (DCO) and any related local impact report matters • Any further information requested by the ExA for this deadline 	REP4-xxx
<p><u>Deadline 5:</u></p> <p><i>Deadline for receipt of:</i></p> <ul style="list-style-type: none"> • Responses to ExA's second written questions and any further requests for Statements of Common Ground • Comments on written summaries of case put at the second issue specific, open floor and compulsory acquisition hearings 	REP5-xxx
<p><u>Deadline 6:</u></p> <p><i>Deadline for receipt of:</i></p> <ul style="list-style-type: none"> • Responses to ExA's second written questions and any further requests for Statements of Common Ground • Comments on written summaries of case put at the second issue specific, open floor and compulsory acquisition hearings 	REP6-xxx
<p><u>Deadline 7:</u></p> <p><i>Deadline for receipt of:</i></p> <ul style="list-style-type: none"> • Optional written summary of the case put orally at the issue specific hearing on the draft DCO, local environmental issues and any other hearings held • Any revised draft DCO from the applicant • Any further information requested by the ExA for this deadline 	REP7-xxx
<p><u>Deadline 8:</u></p> <p><i>Deadline for receipt of:</i></p> <ul style="list-style-type: none"> • Comments on written summaries of case put at the issue specific hearing on the draft DCO, local environmental issues and any other hearings held 	REP8-xxx

<ul style="list-style-type: none"> • <i>Comments the applicant's revised draft DCO, if submitted</i> • <i>Any revised DCO from the applicant</i> 	
<p><u>Deadline 9:</u></p> <p><i>Deadline for the receipt of:</i></p> <ul style="list-style-type: none"> • <i>Comments on the applicant's revised draft DCO</i> 	REP9-xxx
<p><u>Other Documents</u></p> <p>Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents</p>	OD-xxx

EN030002 – Keuper Gas Storage Project

Examination Library

Application Documents

APP-001	<u>1.1 KGSP Application Form</u>
APP-002	<u>1.2 KGSP Newspaper Notices</u>
APP-003	<u>2.1.1 KGSP Plan 100 B1</u>
APP-004	<u>2.1.2 KGSP Plan 101 B1</u>
APP-005	<u>2.1.3 KGSP Plan 102 B1</u>
APP-006	<u>2.1.4 KGSP Plan 103 B1</u>
APP-007	<u>2.1.5 KGSP Plan 104 B1</u>
APP-008	<u>2.1.6 KGSP Plan 105 B1</u>
APP-009	<u>2.1.7 KGSP Plan 106 B1</u>
APP-010	<u>2.1.8 KGSP Plan 107 B1</u>
APP-011	<u>2.2.1 KGSP Plan 610 B1</u>
APP-012	<u>2.2.2 KGSP Plan 611 B1</u>
APP-013	<u>2.2.3 KGSP Plan 612 B1</u>
APP-014	<u>2.2.4 KGSP Plan 613 B1</u>
APP-015	<u>2.2.5 KGSP Plan 614 B1</u>
APP-016	<u>2.2.6 KGSP Plan 615 B1</u>
APP-017	<u>2.2.7 KGSP Plan 616 B1</u>
APP-018	<u>2.2.8 KGSP Plan 617 B1</u>
APP-019	<u>2.3.1 KGSP Plan 500 B1</u>
APP-020	<u>2.3.2 KGSP Plan 501 B1</u>
APP-021	<u>2.3.3 KGSP Plan 502 B1</u>
APP-022	<u>2.3.4 KGSP Plan 503 B1</u>
APP-023	<u>2.3.5 KGSP Plan 504 B1</u>
APP-024	<u>2.3.6 KGSP Plan 505 B1</u>
APP-025	<u>2.3.7 KGSP Plan 506 B1</u>
APP-026	<u>2.3.8 KGSP Plan 509 B1</u>
APP-027	<u>2.3.9 KGSP Plan 510 B1</u>
APP-028	<u>2.3.10 KGSP Plan 511 B1</u>
APP-029	<u>2.3.11 KGSP Plan 512 B1</u>
APP-030	<u>2.3.12 KGSP Plan 513 B1</u>
APP-031	<u>2.3.13 KGSP Plan 514 B1</u>
APP-032	<u>2.3.14 KGSP Plan 515 B1</u>
APP-033	<u>2.4 KGSP Plan 413 B1</u>
APP-034	<u>2.5.1 KGSP Plan 230 B1</u>
APP-035	<u>2.5.2 KGSP Plan 231 B1</u>
APP-036	<u>2.5.3 KGSP Plan 232 B1</u>
APP-037	<u>2.5.4 KGSP Plan 233 B1</u>
APP-038	<u>2.5.5 KGSP Plan 234 B1</u>
APP-039	<u>2.5.6 KGSP Plan 235 B1</u>
APP-040	<u>2.5.7 KGSP Plan 236 B1</u>
APP-041	<u>2.6.1 KGSP Plan 270 B1</u>
APP-042	<u>2.6.2 KGSP Plan 271 B1</u>
APP-043	<u>2.6.3 KGSP Plan 272 B1</u>
APP-044	<u>2.6.4 KGSP Plan 273 B1</u>
APP-045	<u>2.6.5 KGSP Plan 274 B1</u>

APP-046	<u>2.6.6 KGSP Plan 275 B1</u>
APP-047	<u>2.6.7 KGSP Plan 276 B1</u>
APP-048	<u>2.6.8 KGSP Plan 278 B1</u>
APP-049	<u>2.6.9 KGSP Plan 280 B1</u>
APP-050	<u>2.7.1 KGSP Plan 240 B1</u>
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APP-067	<u>2.7.18 KGSP Plan 257 B1</u>
APP-068	<u>2.7.19 KGSP Plan 258 B1</u>
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APP-070	<u>2.7.21 KGSP Plan 260 B1</u>
APP-071	<u>2.7.22 KGSP Plan 261 B1</u>
APP-072	<u>2.7.23 KGSP Plan 262 B1</u>
APP-073	<u>2.7.24 KGSP Plan 263 B1</u>
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APP-076	<u>2.7.27 KGSP Plan 267 B1</u>
APP-077	<u>2.7.28 KGSP Plan 268 B1</u>
APP-078	<u>2.7.29 KGSP Plan 400 B1</u>
APP-079	<u>2.7.30 KGSP Plan 401 B1</u>
APP-080	<u>2.7.31 KGSP Plan 402 B1</u>
APP-081	<u>2.7.32 KGSP Plan 403 B1</u>
APP-082	<u>2.7.33 KGSP Plan 404 B1</u>
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APP-087	<u>2.7.38 KGSP Plan 410 B1</u>
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APP-103	<u>2.8.14 KGSP Plan 322 B1</u>
APP-104	<u>2.8.15 KGSP Plan 323 B1</u>
APP-105	<u>2.8.16 KGSP Plan 324 B1</u>
APP-106	<u>2.8.17 KGSP Plan 325 B1</u>
APP-107	<u>2.8.18 KGSP Plan 326 B1</u>
APP-108	<u>2.8.19 KGSP Plan 327 B1</u>
APP-109	<u>2.8.20 KGSP Plan 331 B1</u>
APP-110	<u>2.8.21 KGSP Plan 334 B1</u>
APP-111	<u>2.8.22 KGSP Plan 335 B1</u>
APP-112	<u>2.8.23 KGSP Plan 336 B1</u>
APP-113	<u>2.8.24 KGSP Plan 337 B1</u>
APP-114	<u>2.8.25 KGSP Plan 338 B1</u>
APP-115	<u>2.8.26 KGSP Plan 339 B1</u>
APP-116	<u>2.8.27 KGSP Plan 340 B1</u>
APP-117	<u>2.8.28 KGSP Plan 341 B1</u>
APP-118	<u>2.8.29 KGSP Plan 342 B1</u>
APP-119	<u>2.8.30 KGSP Plan 343 B1</u>
APP-120	<u>2.8.31 KGSP Plan 344 B1</u>
APP-121	<u>2.8.32 KGSP Plan 345 B1</u>
APP-122	<u>2.8.33 KGSP Plan 346 B1</u>
APP-123	<u>3.1 KGSP Draft Development Consent Order</u>
APP-124	<u>3.2 KGSP Explanatory Memorandum</u>
APP-125	<u>4.1 KGSP Statement of Reasons</u>
APP-126	<u>4.2 KGSP Statement of Funding</u>
APP-127	<u>4.3 KGSP Book of Reference</u>
APP-128	<u>5.1 KGSP Consultation Report</u>
APP-129	<u>5.1.01 KGSP Consultation Report Annex 01</u>
APP-130	<u>5.1.02 KGSP Consultation Report Annex 02</u>
APP-131	<u>5.1.03 KGSP Consultation Report Annex 03</u>
APP-132	<u>5.1.04 KGSP Consultation Report Annex 04</u>
APP-133	<u>5.1.05 KGSP Consultation Report Annex 05</u>
APP-134	<u>5.1.06 KGSP Consultation Report Annex 06</u>
APP-135	<u>5.1.07 KGSP Consultation Report Annex 07</u>
APP-136	<u>5.1.08 KGSP Consultation Report Annex 08</u>
APP-137	<u>5.1.09 KGSP Consultation Report Annex 09</u>
APP-138	<u>5.1.10 KGSP Consultation Report Annex 10</u>
APP-139	<u>5.1.11 KGSP Consultation Report Annex 11</u>
APP-140	<u>5.1.12 KGSP Consultation Report Annex 12</u>
APP-141	<u>5.1.13 KGSP Consultation Report Annex 13</u>
APP-142	<u>5.1.14 KGSP Consultation Report Annex 14</u>
APP-143	<u>5.1.15 KGSP Consultation Report Annex 15</u>
APP-144	<u>5.1.16 KGSP Consultation Report Annex 16</u>
APP-145	<u>5.1.17 KGSP Consultation Report Annex 17</u>

APP-146	5.1.18 KGSP Consultation Report Annex 18
APP-147	5.1.19 KGSP Consultation Report Annex 19
APP-148	5.1.20 KGSP Consultation Report Annex 20
APP-149	5.1.21 KGSP Consultation Report Annex 21
APP-150	5.1.22 KGSP Consultation Report Annex 22
APP-151	5.1.23 KGSP Consultation Report Annex 23
APP-152	5.1.24 KGSP Consultation Report Annex 24
APP-153	5.1.25 KGSP Consultation Report Annex 25
APP-154	5.1.26 KGSP Consultation Report Annex 26
APP-155	5.1.27 KGSP Consultation Report Annex 27
APP-156	5.1.28 KGSP Consultation Report Annex 28
APP-157	5.1.29 KGSP Consultation Report Annex 29
APP-158	5.1.30 KGSP Consultation Report Annex 30
APP-159	5.1.31 KGSP Consultation Report Annex 31
APP-160	5.1.32 KGSP Consultation Report Annex 32
APP-161	5.1.33 KGSP Consultation Report Annex 33
APP-162	5.1.34 KGSP Consultation Report Annex 34
APP-163	5.1.35 KGSP Consultation Report Annex 35
APP-164	5.1.36 KGSP Consultation Report Annex 36
APP-165	5.1.37 KGSP Consultation Report Annex 37
APP-166	5.1.38 KGSP Consultation Report Annex 38
APP-167	5.1.39 KGSP Consultation Report Annex 39
APP-168	5.1.40 KGSP Consultation Report Annex 40
APP-169	5.1.41 KGSP Consultation Report Annex 41
APP-170	5.1.42 KGSP Consultation Report Annex 42
APP-171	5.1.43 KGSP Consultation Report Annex 43
APP-172	5.1.44 KGSP Consultation Report Annex 44
APP-173	5.1.45 KGSP Consultation Report Annex 45
APP-174	5.1.46 KGSP Consultation Report Annex 46
APP-175	5.1.47 KGSP Consultation Report Annex 47
APP-176	5.2 KGSP Flood Risk Assessment
APP-177	5.3 KGSP Consents Management Plan
APP-178	5.4 KGSP Habitat Regulations Assessment
APP-179	6.1 KGSP Environmental Statement
APP-180	6.2 KGSP ES Technical Appendices
APP-181	6.3 KGSP ES Non Technical Summary
APP-182	6.4 KGSP Environmental Impact Assessment Publicity Requirements – Statement of Compliance
APP-183	6.5 KGSP Construction Environmental Management Plan
APP-184	6.6 KGSP Ecology Annex F CONFIDENTIAL Badger and Barn Owl Survey Results
APP-185	7.1 KGSP Pipelines Statement
APP-186	8.1 KGSP Project Overview
APP-187	8.2 KGSP Policy Statement
APP-188	8.3 KGSP Design and Access Statement
APP-189	8.4 KGSP Statement of Statutory Nuisance
APP-190	8.5 KGSP Project Glossary
APP-191	9.1 KGSP Seismic Survey Report
APP-192	9.2 KGSP Sub-surface Safety Assessment Report
APP-193	9.3 KGSP Preliminary Study of Gas Cavity Design Capacity

Post Submission Changes	
APP-194	2.3.9 KGSP Plan 510 B2
APP-195	2.5.5 KGSP Plan 234 B2
APP-196	2.6.1 KGSP Plan 270 B2
APP-197	2.6.2 KGSP Plan 271 B2
APP-198	2.6.4 KGSP Plan 273 B2
APP-199	2.8.5 KGSP Plan 277 B2
APP-200	3.1 KGSP Draft DCO Rev 1 - Track Changes
APP-201	3.1 KGSP Draft DCO Rev 1
APP-202	3.3 KGSP DCO Change Log
APP-203	4.3 KGSP Book of Reference Rev 1 - Track Changes
APP-204	4.3 KGSP Book of Reference Rev 1
APP-205	5.4 KGSP HRA - Revised (supersedes the application document received on 24 November 2015)
APP-206	8.3 KGSP DAS - Revised (supersedes the application document received on 24 November 2015)
APP-207	KGSP PINS S51 Response Annex 1 Equipment Description Tables
APP-208	KGSP PINS S51 Response Annex 4 ES Technical Annex Groundsure
APP-209	KGSP PINS S51 Response Annex 5 ES Table 14.1 (Revised)
APP-210	KGSP PINS S51 Response Letter of 10 February 2016
Adequacy of Consultation Responses	
AoC-001	Cheshire East Council
AoC-002	Cheshire West and Chester Borough Council
AoC-003	Flintshire County Council
AoC-004	Halton Borough Council
AoC-005	St. Helens Council
AoC-006	Warrington Borough Council
Relevant Representations	
RR-001	Cheshire West and Chester Council
RR-002	Health and Safety Executive
RR-003	Mr Peter O'Rourke
RR-004	P J & C A Wilkinson & Son
RR-005	A E & J Percival & Son
RR-006	Historic England
RR-007	National Grid
RR-008	Halton Borough Council
RR-009	Environment Agency
RR-010	M J Richardson
RR-011	Natural England
RR-012	James Bennion
RR-013	Holford Gas Storage Limited
RR-014	Network Rail
RR-015	United Utilities Water Limited
RR-016	Colin and Jane Wildman
RR-017	Peel Ports
RR-018	Canal & River Trust

RR-019	<u>University of Manchester</u>
RR-020	<u>Public Health England</u>
RR-021	<u>Highways England</u>
RR-022	<u>SP Manweb PLC</u>
Procedural Decisions and Notifications from the Examining Authority	
PD-001	<u>Notification of Decision to Accept Application</u>
PD-002	<u>Section 51 advice following issue of acceptance decision</u>
PD-003	<u>Section 55 Acceptance of Application Checklist</u>
PD-004	<u>S61 Appointment of Examining Authority</u>
PD-005	<u>Rule 6 Cover Letter</u>
PD-006	<u>Rule 8 Letter</u>
PD-007	<u>ExA's First Written Questions</u>
PD-008	<u>Notification of Hearings and ASV</u>
PD-009	<u>Notification of Hearings and ExA's Second Written Questions</u>
PD-010	<u>ExA's Second Written Questions</u>
PD-011	<u>Rule 17 and 8(3)Letter - Changes to the Original Application</u>
PD-012	<u>Rule 8(3) Variation to timetable Letter</u>
PD-013	<u>Changes to the original application Letter</u>
PD-014	<u>Notification of Completion of Examination</u>
Additional Submissions	
AS-001	<u>Additional Pre-examination Submission from Network Rail</u>
AS-002	<u>Late Relevant Representation from Lach Dennis Parish Council</u>
AS-003	<u>Additional submission from Canal & River Trust</u>
AS-004	<u>Additional submission from Pinsent Masons on behalf of Mr and Mrs Wildman - 9 March 2016</u>
AS-005	<u>Additional submission from Pinsent Masons on behalf of Mr and Mrs Wildman (25 May 2016) - Report on impact of proposed gas storage project on farm business</u>
AS-006	<u>National Grid Gas plc - Letter regarding withdrawal of objections</u>
AS-010	<u>Canal & River Trust - Additional submission concerning Compulsory Acquisition</u>
AS-011	<u>Keuper Gas Storage Limited - Letter requesting the replacement of the '10.16 Further Responses to Written Representations' document submitted for Deadline 8 - the Examining Authority has exercised its discretion and agreed to accept this submission</u>
AS-012	<u>Keuper Gas Storage Limited - Copy of KGSL's Deadline 8 submission '10.16 Further Responses to Written Representations' with paragraph 5.2 removed - the Examining Authority has exercised its discretion and agreed to accept this submission</u>
AS-013	<u>Cheshire West and Chester Borough Council - Final draft of the Section 106 Agreement. The Examining Authority has exercised its discretion and agreed to accept this submission</u>
AS-014	<u>Cheshire West and Chester Borough Council - Update on the progress of the Section 106 Agreement. The Examining Authority has exercised its discretion and agreed to accept this submission</u>
AS-015	<u>Keuper Gas Storage Limited - Unilateral Undertaking under s106 and supporting documents. The Examining Authority has exercised its discretion and agreed to accept this submission</u>

AS-016	<u>Cheshire West and Chester Borough Council - Summary of position and comments on the applicants Unilateral Undertaking submitted on 14th September 2016. The Examining Authority has exercised its discretion and agreed to accept this submission</u>
AS-017	<u>Keuper Gas Storage Limited - Summary of position in relation to the Unilateral Undertaking (section 106 agreement). This submission was received before the close of examination. The Examining Authority has exercised its discretion and agreed to accept this as an additional submission</u>
Non Material change submitted on 30 June 2016	
AS-007	<u>Keuper Gas Storage Limited – Non Material Change Covering Letter</u>
AS-008	<u>Keuper Gas Storage Limited – Non-Material Amendment Drawing - 13-03-01-HOL-24-343-B2</u>
AS-009	<u>Keuper Gas Storage Limited – Non-Material Amendment Drawing - 13-03-01-HOL-24-512-B2</u>
Events and Hearings	
Preliminary Meeting – 16 March 2016	
EV-001	<u>Audio Recording - Preliminary Meeting (Part 1 of 2)</u>
EV-002	<u>Audio Recording - Preliminary Meeting (Part 2 of 2)</u>
EV-003	<u>Preliminary Meeting Note</u>
Issue Specific Hearing – DCO – 16 March 2016	
EV-004	<u>Audio Recording - Issue Specific Hearing</u>
Compulsory Acquisition Hearing – 23 May 2016	
EV-005	<u>Compulsory Acquisition Agenda - 23 May 2016</u>
EV-006	<u>Audio recording - Compulsory Acquisition Hearing (part 1 of 2)</u>
EV-007	<u>Audio recording - Compulsory Acquisition Hearing (part 2 of 2)</u>
Accompanied Site Visit – 24 May 2016	
EV-008	<u>Site Visit Itinerary - 24 May 2016</u>
Issue Specific Hearing - Local Environmental Impacts – 25&26 May 2016	
EV-009	<u>Issue Specific Hearing agenda - 25 and 26 May 2016</u>
EV-010	<u>Audio Recording - Issue Specific Hearing - 25 May 2016 (1 of 4)</u>
EV-011	<u>Audio Recording - Issue Specific Hearing - 25 May 2016 (2 of 4)</u>
EV-012	<u>Audio Recording - Issue Specific Hearing - 25 May 2016 (3 of 4)</u>
EV-013	<u>Audio Recording - Issue Specific Hearing - 25 May 2016 (4 of 4)</u>
EV-014	<u>Audio Recording - Issue Specific Hearing - 26 May 2016 (1of 2)</u>
EV-015	<u>Audio Recording - Issue Specific Hearing - 26 May 2016 (2 of 2)</u>
Issue Specific Hearing - Local Environmental Impacts, draft DCO and any other issues – 28 July 2016	
EV-016	<u>Issue Specific Hearing agenda - 28 July 2016</u>
EV-017	<u>Audio Recording - Issue Specific Hearing - 28 July 2016 (1 of 3)</u>
EV-018	<u>Audio Recording - Issue Specific Hearing - 28 July 2016 (2 of 3)</u>
EV-019	<u>Audio Recording - Issue Specific Hearing - 28 July 2016 (3 of 3)</u>

Representations

Deadline 1 – 13 April 2016

- Deadline for statutory parties to inform the Examining Authority of a wish to be considered as an interested party
- Request or receipt of notification (using the prescribed form) by persons within certain categories of interests in the land of a wish to become an interested party
- Optional written summaries of oral cases made at the first issue specific hearing
- All post hearing documents
- Notification by interested parties of wish to be heard at an open floor hearing
- Notification of a wish to make oral representations at a compulsory acquisition hearing
- Notification of wish to make oral representations at the second issue specific hearing on the local impact of the project and the DCO
- Notification by interested parties of wish to attend any accompanied site visits
- Submissions from interested parties recommending itinerary items for the accompanied site visit
- Comments by interested parties on the applicant's draft accompanied site visit itinerary

REP1-001	Holford Gas Storage Limited – Deadline 1 submission
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REP1-002	Mr and Mrs Wildman – Deadline 1 submission
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Deadline 2 – 29 April 2016

Deadline for receipt by the ExA of:

- Comments on relevant representations (RRs)
- Summaries of all RR's exceeding 1500 words
- Written representations (WRs) by all interested parties
- Summaries of all WRs exceeding 1500 words
- Local Impact Report (LIR) from any local authorities
- Statements of Common Ground requested by the ExA
- Responses to ExA's first written questions
- Comments on any other / additional submissions received prior to the preliminary meeting
- Any further information requested by the ExA for this deadline

REP2-001	KGSL - Deadline 2 Covering Letter
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REP2-002	KGSL - 3.1 Draft DCO (Rev 2)
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REP2-003	KGSL - 3.1 Draft DCO (Rev 2) [Tracked Changes]
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REP2-004	KGSL - 3.3 DCO Change Log (Rev 2)
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REP2-005	KGSL - 10.2 Responses to ExA's First Written Questions
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REP2-006	KGSL - 10.2 Annexes 1-10 to Response to ExA's First Written Questions
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REP2-007	KGSL - 6.5 CEMP (Rev 1)
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REP2-008	KGSL - 6.5 CEMP (Rev 1) [Tracked Changes]
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REP2-009	KGSL - CEMP Annex 1 - GCN Application Material
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REP2-010	KGSL - CEMP Annex 2 - Badger Application Material
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REP2-011	KGSL - 10.1 Responses to Relevant Representations
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REP2-012	KGSL - Response to Relevant Representations - Annex 1 (Drawing 13-03-01-HOL-24-239 B1)
REP2-013	KGSL - Response to Relevant Representations - Annex 2 (Drawings 13-03-01/HOL/60/193 P5 & 13-03-01/HOL/60/194 P5)
REP2-014	KGSL - Response to Relevant Representations - Annex 3 (Drawings 13-03-01/HOL/60/141 P5 & 13-03-01/HOL/60/144 P5)
REP2-015	KGSL - Response to Relevant Representations - Annex 4 (SoCG between KGSL & Environment Agency)
REP2-016	KGSL - Response to Relevant Representations - Annex 5 (Drawings 13-03-01/HOL/60/140 P5 & 13-03-01/HOL/60/143 P5)
REP2-017	KGSL - Response to Relevant Representations - Annex 6 (Letters of No Impediment - Draft Mitigation Licence Applications - Great Crested Newts and Badgers)
REP2-018	KGSL - Response to Relevant Representations - Annex 7 (Drawings 13-03-01/HOL/60/172 P5 & 13-03-01/HOL/60/173 P4)
REP2-019	KGSL - Response to Relevant Representations - Annex 8 (Letter from KGSL to Uniper Energy Storage Limited dated 23rd February 2016)
REP2-020	KGSL - Response to Relevant Representations - Annex 9 (Letter from KGSL to Network Rail Infrastructure Limited, dated 28th January 2016, inc drawings 13-03-01/HOL/24/700 B1, 13-03-01/HOL/24/701 B1, 13-03-01/HOL/24/702 B1 & 13-03-01/HOL/24/703 B1)
REP2-021	KGSL - Response to Relevant Representations - Annex 10 (Drawings 13-03-01/HOL/60/139 P4 & 13-03-01/HOL/60/142 P4)
REP2-022	KGSL - Response to Relevant Representations - Annex 11 (Drawing 13-03-01/HOL/24/237 B1 & 13-03-01/HOL/24/238 B1)
REP2-023	KGSL - 10.3 SoCG between KGSP and the Environment Agency
REP2-024	KGSL - 10.6 SoCG between KGSL and Manchester University
REP2-025	KGSL - 10.7 S106 Agreement between Cheshire West and Chester Council, Cheshire East Council, KGSL, INEOS Enterprises Group Ltd and INOVYN Enterprises Ltd
REP2-026	KGSL - 4.3 Book of Reference (Rev 2)
REP2-027	KGSL - 4.3 Book of Reference (Rev 2) [Tracked Changes]
REP2-028	KGSL - Schedule of Changes to Book of Reference (Rev 2)
REP2-029	Canal & River Trust - Written Representation – including summary
REP2-030	Canal & River Trust - Response to ExA’s first written questions
REP2-031	Cheshire East Council - Response to ExA’s first written questions
REP2-032	Cheshire West and Chester - Written representation
REP2-033	Cheshire West and Chester - Response to ExA’s First Written Questions
REP2-034	Cheshire West and Chester - Local Impact Report
REP2-035	Environment Agency - Written representation
REP2-036	Environment Agency - Response to ExA’s First Written Questions
REP2-037	Halton Borough Council - Local Impact Report
REP2-038	Health & Safety Executive - Response to ExA’s First Written Questions
REP2-039	Highways England - Response to ExA’s First Written Questions
REP2-040	Historic England - Written representation and Response to ExA’s First Written Questions
REP2-041	Holford Gas Storage Limited - Written Representation

REP2-042	Holford Gas Storage Limited - Annexe to Written Representation
REP2-043	Mr and Mrs Wildman - Summary of Written Representation
REP2-044	Mr and Mrs Wildman - Written Representation
REP2-045	Mr and Mrs Wildman - Response to ExA's First Written Questions
REP2-046	National Grid Gas - Written Representation and Response to ExA's First Written Questions
REP2-047	Natural England - Summary of Written Representation
REP2-048	Natural England - Written Representation and Response to ExAs First Written Questions
REP2-049	Peel Ports - Response to ExA's First Written Questions
REP2-050	Rostons on behalf of A E Percival and J Percival - Written Representation
REP2-051	Rostons on behalf of C A Wilkinson - Written Representation
REP2-052	Rostons on behalf of M J Richardson - Written Representation
REP2-053	Rostons on behalf of Mr P O'Rourke - Written Representation and response to ExA's First Written Questions
REP2-054	University of Manchester - Response to ExA's First Written Questions
REP2-055	University of Manchester - Written Representation – including annexes
<p>Deadline 3 – 17 May 2016</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on WRs • Responses to comments on RRs • Comments on Local Impact Reports • Comments on Statements of Common Ground • Comments on responses to ExA's first written questions • Comments on written summaries of case put at the first issue specific hearing • Any revised DCO from the applicant • Any further information requested by the ExA for this deadline 	
REP3-001	KGSL - Deadline 3 Covering Letter
REP3-002	KGSL - 10.8 Comments/Responses to Written Representations, Answers to Questions and Local Impact Reports
REP3-003	KGSL - 3.1 Draft DCO (Rev 3)
REP3-004	KGSL - 3.1 Draft DCO (Rev 3) [Tracked Changes]
REP3-005	KGSL - 3.3 DCO Change Log (Rev 3)
REP3-006	KGSL - Covering Letter enclosing geotechnical supporting documents originally requested under question 1.3 of the ExA's first written questions
REP3-007	KGSL - The Soil Resources and Agricultural Land Classification for the Byley Gas Storage, Brine and Water Infrastructure Project
REP3-008	KGSL - 9.1 Seismic Survey Report (supporting document) - 2D Seismic Survey Report
REP3-009	KGSL - 9.1 Seismic Survey Report (supporting document) - Cheshire Basin 2D Seismic Processing Report
REP3-010	KGSL - 9.1 Seismic Survey Report (supporting document) - 2007 Geophysical Interpretation of lines 06-05, 06-06 and 06-07

REP3-011	<u>KGSL - 9.2 Berest Brouard Safety of Salt Caverns Used for UGS 2003</u>
REP3-012	<u>KGSL - 9.2 Beutal Black Salt Deposits and Gas Cavern Storage in the UK</u>
REP3-013	<u>KGSL - 9.2 BSOR 1995 Guide (HSE L72)</u>
REP3-014	<u>KGSL - 9.2 Sub-surface Safety Assessment Report (supporting document) - Geology of Byley GK Assessment</u>
REP3-015	<u>KGSL - 9.2 Sub-surface Safety Assessment Report (supporting document) - Geotechnical Assessment Report 1</u>
REP3-016	<u>KGSL - 9.2 Sub-surface Safety Assessment Report (supporting document) - Geotechnical Assessment Report 2</u>
REP3-017	<u>KGSL - 9.2 Sub-surface Safety Assessment Report (supporting document) - Prediction of Geological Profile</u>
REP3-018	<u>KGSL - 9.2 Sub-surface Safety Assessment Report (supporting document) - Rock mechanical Investigations (Clausthal Uni)</u>
REP3-019	<u>KGSL - 9.2 Sub-surface Safety Assessment Report (supporting document) - External Well Mechanical Integrity Testing (Crotagino)</u>
REP3-020	<u>KGSL - 9.2 Sub-surface Safety Assessment Report (supporting document) - Keplinger Cavern Well Abandonment Techniques (Crotagino)</u>
REP3-021	<u>KGSL - 9.2 Sub-surface Safety Assessment Report (supporting document) - HSE Research Document: RR605 (Evans)</u>
REP3-022	<u>KGSL - 9.2 Sub-surface Safety Assessment Report (supporting document) - Fragility Functions of Gas and Oil Networks (Gehl et al)</u>
REP3-023	<u>KGSL - 9.2 Sub-surface Safety Assessment Report (supporting document) - XRD and Thin Section Results at Drakelow 2A (GKBYL20050173)</u>
REP3-024	<u>KGSL - 9.2 Sub-surface Safety Assessment Report (supporting document) - Lab Tests on Drakelow 2A Cored Samples (GKFRJ0002)</u>
REP3-025	<u>KGSL - 9.2 Sub-surface Safety Assessment Report (supporting document) - Elan Interpretation Drakelow 2A (GKFRJ0003)</u>
REP3-026	<u>KGSL - 9.2 Sub-surface Safety Assessment Report (supporting document) - Hydraulic-Hydrofrac Vol 1: In-Situ Tests</u>
REP3-027	<u>KGSL - 9.2 Sub-surface Safety Assessment Report (supporting document) - Hydraulic-Hydrofrac: Vol 2 Lab Tests</u>
REP3-028	<u>KGSL - 9.2 Sub-surface Safety Assessment Report (supporting document) - UGS Leaching Tests on Salt Cores</u>
REP3-029	<u>KGSL - 9.2 Sub-surface Safety Assessment Report (supporting document) - HSE Research Document: RR606</u>
REP3-030	<u>Holford Gas Storage Limited - Comments on the Revised Draft Development Consent Order</u>
REP3-031	<u>University of Manchester - Submission for Deadline 3</u>

Deadline 4 – 7 June 2016

Deadline for receipt by the ExA of:

- All post hearing documents (including any revised DCO from the applicant)
- Any updated Statements of Common Ground
- Optional written summaries of oral cases made at the open-floor, issue specific hearings and compulsory acquisition hearings
- Notification by interested parties of wish to make oral representations at the third issue specific hearing on the draft Development Consent Order (DCO) and any related local impact report matters
- Any further information requested by the ExA for this deadline

REP4-001	<u>KGSL - Covering Letter for Deadline 4</u>
REP4-002	<u>KGSL - 3.1 Draft DCO (Rev 4)</u>
REP4-003	<u>KGSL - 3.1 Draft DCO (Rev 4) [Tracked Changes]</u>
REP4-004	<u>KGSL - 3.3 DCO Change Log (Rev 4)</u>
REP4-005	<u>KGSL - 6.5 CEMP (Rev 2)</u>
REP4-006	<u>KGSL - 6.5 CEMP (Rev 2) [Tracked Changes]</u>
REP4-007	<u>KGSL - 10.10 Mitigation Schedule (Rev 1)</u>
REP4-008	<u>KGSL - 10.9 Applicant's Further Responses to Written Representations and Written Questions</u>
REP4-009	<u>Mr and Mrs Wildman - Oral Representations made on at the Compulsory Acquisition and Issue Specific Hearings</u>
REP4-010	<u>Cheshire West and Chester Council - Submission for Deadline 4</u>
REP4-011	<u>Holford Gas Storage Limited - Written summary of the oral submissions at the Issue Specific Hearings</u>
REP4-012	<u>University of Manchester - Summary of Representations at Issue Specific Hearing</u>
REP4-013	<u>Canal & River Trust - Deadline 4 Submission</u>

Deadline 5 – 5 July 2016

Deadline for receipt of:

- Responses to ExA's second written questions and any further requests for Statements of Common Ground
- Comments on written summaries of case put at the second issue specific, open floor and compulsory acquisition hearings

REP5-001	<u>Keuper Gas Storage Limited - Covering Letter for Deadline 5</u>
REP5-002	<u>Keuper Gas Storage Limited - Draft Statement of Common Ground with the University of Manchester (Clean version)</u>
REP5-003	<u>Keuper Gas Storage Limited - Draft Statement of Common Ground with the University of Manchester (tracked changed version)</u>
REP5-004	<u>Keuper Gas Storage Limited - Response to Examining Authority's Second Round of Written Questions</u>
REP5-005	<u>Keuper Gas Storage Limited - Draft DCO Revision 5 (Clean version)</u>
REP5-006	<u>Keuper Gas Storage Limited - Draft DCO Revision 5 (Tracked changed version)</u>
REP5-007	<u>Keuper Gas Storage Limited- Updated DCO Change Log - Revision 5</u>

REP5-008	Keuper Gas Storage Limited - Draft S106 Agreement Version 4 (Clean version)
REP5-009	Keuper Gas Storage Limited - Draft S106 Agreement Version 4 (Tracked changed version)
REP5-010	Keuper Gas Storage Limited - Comments on the written summaries of cases put forward at the second Issue Specific and Compulsory Acquisition Hearings
REP5-011	Keuper Gas Storage Limited - Updated draft CEMP (Clean version)
REP5-012	Keuper Gas Storage Limited - Updated draft CEMP (Tracked changed version)
REP5-013	Cheshire West and Chester Borough Council- Extension request to submit draft Section 106 Agreement
REP5-014	Cheshire West and Chester Borough Council - Response to Examining Authority's Second Round of Written Questions
REP5-015	Environment Agency - Response to Examining Authority's Second Round of Written Questions
REP5-016	Natural England - Response to Examining Authority's Second Round of Written Questions
REP5-017	SP Manweb PLC - Response from SP Energy Networks on behalf of SP Manweb
<p>Deadline 6 – 14 July 2016</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Comments on responses to ExA's second round of written questions and any further Statements of Common Ground • Comments on proposed changes to the original application 	
REP6-001	KGSL - Submission for Deadline 6
REP6-002	Cheshire West and Chester Borough Council - Latest working draft of the Section 106 Agreement
REP6-003	Holford Gas Storage Ltd - Submission for Deadline 6
REP6-004	Environment Agency - Comment on changes to the original application
REP6-005	Natural England - Comment on changes to the original application
REP6-006	Halton Borough Council - Late submission accepted at the discretion of the Examining Authority
<p>Deadline 7 – 5 August 2016</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Optional written summary of the case put orally at the issue specific hearing on the draft DCO, local environmental issues and any other hearings held • Any revised draft DCO from the applicant • Any further information requested by the ExA for this deadline 	

REP7-001	Keuper Gas Storage Limited - Covering Letter for Deadline 7
REP7-002	Keuper Gas Storage Limited - 10.15 Written Summary of Applicant's submissions in relation to representations made by the Canal & River Trust
REP7-003	Keuper Gas Storage Limited - 3.1 Draft Development Consent Order - Rev 6 (Clean version)
REP7-004	Keuper Gas Storage Limited - 3.1 Draft Development Consent Order - Rev 6 (Tracked changed version)
REP7-005	Keuper Gas Storage Limited - 3.3 Change Log for the DCO - Revision 6
REP7-006	Keuper Gas Storage Limited - 6.5 Construction Environmental Management Plan (CEMP) - Rev 4 (Clean version)
REP7-007	Keuper Gas Storage Limited - 6.5 Construction Environmental Management Plan (CEMP) - Rev 4 (Tracked changed version)
REP7-008	Keuper Gas Storage Limited - 6.5 CEMP - Annex 1 - Great Crested Newt Licence Application Documentation
REP7-009	Keuper Gas Storage Limited - 6.5 CEMP - Annex 2 - Badger Licence Application Documentation
REP7-010	Keuper Gas Storage Limited - 6.5 CEMP - Annex 3 - Ecological Survey Whitley and Runcorn
REP7-011	Keuper Gas Storage Limited - 6.5 CEMP - Annex 4 - Barn Owl Occupancy Check 2016
REP7-012	Keuper Gas Storage Limited - 10.13 Environmental Statement clarifications and errata (including annex 1 & 2)
REP7-013	Keuper Gas Storage Limited - 10.13 Environmental Statement clarifications and errata - Annex 3 ES Technical Annex Groundsure Report
REP7-014	Keuper Gas Storage Limited - 10.13 Environmental Statement clarifications and errata - Annex 4 ES Figures 14.4 - 14.19
REP7-015	Keuper Gas Storage Limited - 10.14 Book of Reference and Land Plans Clarifications and Errata
REP7-016	Holford Gas Storage Ltd - Submission for Deadline 7
Deadline 8 – 19 August 2016	
Deadline for receipt of:	
<ul style="list-style-type: none"> • Comments on written summaries of case put at the issue specific hearing on the draft DCO, local environmental issues and any other hearings held • Comments the applicant's revised draft DCO, if submitted • Any revised DCO from the applicant 	
REP8-001	Keuper Gas Storage Limited - Covering Letter for Deadline 8
REP8-002	Keuper Gas Storage Limited - 10.16 Applicant's Further Responses to Written Representations
REP8-003	Keuper Gas Storage Limited - 3.1 Draft Development Consent Order - Rev 7 (Clean version)
REP8-004	Keuper Gas Storage Limited - 3.1 Draft Development Consent Order - Rev 7 (Tracked changed version)

REP8-005	<u>Keuper Gas Storage Limited - 3.3 Change Log for the DCO - Revision 7</u>
Deadline 9 – 26 August 2016	
Deadline for the receipt of:	
<ul style="list-style-type: none"> • Comments on the applicant’s revised draft DCO 	
REP9-001	<u>Holford Gas Storage Ltd - Comments on the Applicant’s revised draft DCO</u>
REP9-002	<u>University of Manchester - Comments on the Applicant’s revised draft DCO</u>
Other Documents	
OD-001	<u>Certificates of Compliance with Regulation 13 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009, and s.56 & s.59 of the Planning Act 2008</u>
OD-002	<u>Regulation 24 Transboundary Screening document</u>
OD-003	<u>Copy of Rule 13(6) notice as published in the Northwich Guardian on 27 April 2016</u>

APPENDIX C: LIST OF ABBREVIATIONS

APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
ALC	Agricultural Land Classification
APFP	The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) (APFP Regulations)
AQS	Air Quality Standards
ASV	Accompanied Site Visit
BMV	Best and Most Versatile
BoCC	Birds of Conservation Concern
BOD	Below Ordnance Datum
BoR	Book of Reference
CA	Compulsory Acquisition
CCC	Cheshire County Council
CEC	Cheshire East Council
CEMP	Construction Environmental Management Plan
COMAH	Control of Major Accident Hazards
C&RT	Canal & River Trust
CWAC	Cheshire West and Cheshire Council
DCO	Development Consent Order (made or proposed to be made under the Planning Act 2008 (as amended))
EA	Environment Agency
eDNA	Environmental DNA
EEA	European Economic Area
EIA	Environmental Impact Assessment
EP	Environmental Permit
EPR	Examination Procedure Rules
EPS	European Protected Species
ES	Environmental Statement
ExA	Examining Authority
GCN	Great Crested Newt
GLVIA	Guidelines for Landscape and Visual Impact Assessment
GMA	Gas Marshalling Area
GMC	Gas Marshalling Compound
GPP	Gas Processing Plant
Ha	Hectare
HBC	Halton Borough Council
HE	Historic England
HGSL	Holford Gas Storage Limited
HGV	Heavy Goods Vehicle
HRA	Habitat Regulations Assessment
HSE	Health and Safety Executive
IAQM	Institute of Air Quality Management
IEGL	INEOS Enterprises Group Limited
IEL	INOVYN Enterprises Limited
IP	Interested Party

ISH	Issue Specific Hearing
ITU	International Telecommunications Union
JBO	Jodrell Bank Observatory
LIR	Local Impact Report
LNR	Local Nature Reserves
LONI	Letters of no impediment
LPA	Local Planning Authority
LSE	Likely significant effects
LVIA	Landscape and Visual Impact Assessment
LWS	Local Wildlife Site
MAA	Main Assessment Area
MAH	Major accident hazard
MCM	Million standard cubic metres
MHz	Megahertz
MPS	Marine Policy Statement
MSC	Manchester Ship Canal
NE	Natural England
NGG	National Grid Gas
NML	Noise monitoring locations
NO	Nitric oxide
NO ₂	Nitrogen dioxide
NO _x	Oxides of nitrogen
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
NSR	Noise Sensitive Receptors
NTS	National Transmission System
PA 2008	Planning Act 2008 (as amended)
PM	Preliminary Meeting
PROW	Public Right of Way
R	Requirement
Ramsar	The Ramsar Convention on Wetlands
RIES	Report on the Implications for European Sites
SAC	Special Area of Conservation
SM	Scheduled Monument
SMC	Solution Mining Compound
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
WFD	Water Framework Directive
WSI	Written Scheme of Investigation

APPENDIX D: RECOMMENDED DCO

2017 No.

INFRASTRUCTURE PLANNING

The Keuper Underground Gas Storage Facility Order 2017

Made - - - - 2017

Coming into force - - 2017

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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) for an Order under sections 114, 115, 120, 122 and 123 of the Planning Act 2008(b) (“the 2008 Act”).

The application was examined by a single appointed person appointed by the Secretary of State pursuant to Chapter 2 of Part 6 of the 2008 Act(c), and the examination was carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(d) (“the 2010 Rules”).

The single appointed person, having considered the application with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 83 of the 2008 Act(e), made a report and recommendation to the Secretary of State.

The Secretary of State, in accordance with section 104(2) of the 2008 Act, has had regard to the relevant national policy statements, the local impact reports submitted by Cheshire West and Chester Council and Halton Borough Council, prescribed matters in relation to development of the description to which the application relates and those matters which the Secretary of State thinks important and relevant including representations received pursuant to the 2010 Rules, and, having considered the report and recommendation of the single appointed person, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120, 122 and 123 of the 2008 Act, makes the following Order:

-
- (a) S.I. 2009/2264 amended by S.I. 2010/439, 602, S.I. 2012/635, 1659, 2654, 2732, S.I. 2013/522, 755, S.I. 2014/469, 2381 and S.I. 2015/377
- (b) 2008. C.29 The relevant provisions of the Planning Act 2008 are amended by Chapter 6 of Part 6 of, and schedule 13 to, the Localism Act 2011 (c. 20) and by sections 22-27 of the Growth and Infrastructure Act 2013 (c. 27). Transitional provisions are contained in S.I. 2013/1124.
- (c) Following the abolition of the Infrastructure Commission on 1st April 2012, a single appointed person is appointed under section 78 of the 2008 Act by direction made by the Secretary of State under section 129 of the Localism Act 2011.
- (d) S.I. 2010/103 amended by S.I. 2012/635.
- (e) section 74 of the 2008 Act is amended by the Localism Act 2011, Schedule 13 paragraph 29 and Schedule 25 Part 20.

PART 1

PRELIMINARY

Citation and Commencement

1. This Order, which may be cited as the Keuper Underground Gas Storage Facility Order 201[•], and comes into force on [•][•]201[•].

Interpretation

2.—(1) In this order—

“the 1961 Act” means the Land Compensation Act 1961 **(a)**

“the 1965 Act” means the Compulsory Purchase Act 1965 **(b)**

“the 1980 Act” means the Highways Act 1980 **(c)**

“the 1990 Act” means the Town and County Planning Act 1990 **(d)**

“the 1991 Act” means the New Roads and Street Works Act 1991 **(e)**

“the 2008 Act” means the Planning Act 2008

“authorised development” means the nationally significant infrastructure project and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act, and any works carried out pursuant to the requirements;

“the book of reference” means the book of reference revision 2 (document ref.: 4.3) and the book of reference and land plans clarifications and errata (document ref.:10.14) certified by the Secretary of State for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“Canal & River Trust” means the Canal & River Trust whose address is Navigation Road, Northwich, Cheshire CW8 1BH;

“carriageway” has the same meaning as in the 1980 Act;

“CEMP” means the construction environmental management plan to be submitted and approved pursuant to requirement 3 of Schedule 2;

“Cheshire West and Chester Borough Council” means the Cheshire West and Chester Borough Council whose address is HQ, Nicolas Street, Chester, CH1 2NP;

“commence” means the carrying out of a material operation, as defined in section 155 of the Planning Act 2008, comprised in or carried out for the purposes of the authorised development and the words “commencement” and “commenced” are to be construed accordingly;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“draft CEMP” means the document certified as the draft CEMP by the Secretary of State for the purposes of this Order;

“environmental statement” means the documents certified as the environmental statement (document refs.: 6.1-6.3) and the environmental statement clarifications and errata (document ref.: 10.13) by the Secretary of State for the purposes of this Order;

-
- (a) 1961 (c. 33)
 - (b) 1965 (c. 56)
 - (c) 1980 (c. 66)
 - (d) 1990 (c. 8)
 - (e) 1991 (c. 22)

“gas” has the same meaning as natural gas in section 235 (interpretation of the 2008 Act);

“Halton Borough Council” means the Halton Borough Council whose address is Municipal Buildings, Kingsway, Widnes, WA8 7QF;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of the Order;

“the landscaping plans” means the plans certified as the landscaping plans by the Secretary of State for the purposes of the Order;

“local highway authority” has the same meaning as in section 329(1) of the 1980 Act.

“maintain” includes, to the extent assessed in the environmental statement, inspect, repair, refurbish, replace and adjust the authorised development; and any derivative of “maintain” must be construed accordingly;

“main river” has the meaning in section 113(1) Water Resources Act 1991;

“Manchester Ship Canal Company Ltd” means the Manchester Ship Canal Limited (Company No.:07438096) whose registered address is Maritime Centre, Port of Liverpool, Liverpool, Merseyside L21 1LA;

“National Grid Gas” means National Grid Gas plc (Company registration number 02006000) or any successor company performing the same functions;

“Order land” means the land described as plots 1.01 to 5.01 in the book of reference as shown on the land plans;

“Order limits” means the limits shown on the works plans within which the authorised development must be carried out;

“owner” in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“relevant planning authority” means Cheshire West and Chester Borough Council in relation to land within its administrative area and Halton Borough Council in relation to land within its administrative area and any successors to their function as planning authority for the area in which the land to which the provisions of this Order apply, and “relevant planning authorities” means both of them severally;

“requirements” means the requirements set out in Schedule 2 (requirements);

“the routing plan” means the plan certified by the Secretary of State as the routing plan for the purposes of this Order;

“the statutory undertakers’ apparatus plan” means the plan certified by the Secretary of State as the statutory undertakers’ apparatus plan for the purposes of this Order;

“street works and access plan” means the plan certified as the street works and access plan by the Secretary of State for the purposes of the Order;

“statutory undertaker” means any person falling within section 127(8), of the 2008 Act and a public communications provider as defined in section 151(1) of the Communications Act 2003;

“the seismic survey report” means the document certified as the seismic survey report by the Secretary of State for the purposes of the Order;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority” has the same meaning as in Part 3 of the 1991 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

(a) 1981 (c. 67). Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34).

“undertaker” means Keuper Gas Storage Limited (company registration number 08850140) whose registered office is at Runcorn Site HQ, South Parade, PO Box 9, Runcorn, Cheshire, WA7 4JE;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

(2) All distances, directions and lengths referred to in this Order and in any document referred to in this Order are approximate and distances between points on a work comprised in the authorised development must be taken to be measured along that work.

PART 2

PRINCIPAL POWERS

Development consent for authorised development etc.

3.—(1) Subject to the provisions of this Order and to the requirements in Schedule 2 the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) In constructing the authorised development the undertaker may deviate laterally from the lines or situations shown on the works plans within the limits of the deviation relating to that work shown on those plans.

Maintenance of authorised development

4. The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

Authorisation of Use

5. Subject to the provisions of this Order and to the requirements the undertaker may operate and use the authorised development.

Benefit of Order

6. Subject to article 7 (consent to transfer benefit of Order) the provisions of this Order have effect solely for the benefit of the undertaker.

Consent to transfer benefit of Order

7.—(1) The undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations (including development consent obligations within the meaning of section 106A of the 1990 Act) as would apply under this Order if those benefits or rights were exercised by the undertaker.

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by person aggrieved by statutory nuisance)(a) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if:

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site) or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the relevant planning authority pursuant to requirement 5; or
 - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded) do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Guarantees in respect of payment of compensation

9.—(1) The undertaker must not begin to exercise the powers in articles 10 to 33 of this Order in relation to any land unless it has first put in place either—

- (a) a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security for that purpose which has been approved by the Secretary of State.

(2) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under the Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(a) 1990 (c.43). section 82 is amended by section 5 of the Noise and Statutory Nuisance Act 1993 (c.40), section 106 of and Schedule 17 to the Environment Act 1995 (c.25) and section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16). There are other amendments to this section which are not relevant to this Order.

(b) 1974 (c.40). sections 61 and 65 are amended by section 133 of and Schedule 7 to, the Environmental Protection Act 1990 (c.43); there are other amendments not relevant to this Order.

PART 3

STREETS

Street works

10.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as are within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position;
- (e) execute any works to provide or improve sight lines required by the highway authority; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c), (d) and (e);

(2) The powers conferred by paragraph (1) must not be exercised without the consent of the street authority but such consent must not be unreasonably withheld.

(3) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(4) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(5) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Power to alter layout, etc., of streets

11.—(1) The undertaker may for the purposes of carrying out the authorised development within the Order limits alter the layout of or carry out works in the street specified in column (2) of Schedule 4 (streets subject to alteration of layout) in the manner specified in relation to that street in column (3).

(2) Without prejudice to the specific powers conferred by paragraph (1) and subject to paragraphs (3) and (4) the undertaker may for the purposes of carrying out or maintenance of the authorised development alter the layout of any street within the Order limits and the layout of any street having a junction with such a street and, without limiting the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of the kerb, footpath, footway, cycle track or verge within the streets;
- (b) alter the level or increase the width of any kerb, footway, cycle track or verge; and
- (c) reduce the width of the carriageway of the street.

(3) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority but such consent must not be unreasonably withheld.

(4) Where it seeks the consent of the street authority under sub-paragraph (3) the undertaker must provide to the street authority such details of the proposed works as the street authority may reasonably require.

(5) The alteration of any street pursuant to this article must be completed to the reasonable satisfaction of the street authority.

Maintenance of altered streets

12.—(1) Where a street is altered or diverted under this Order the altered or diverted part of the street, unless otherwise agreed with the street authority, will be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

(2) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(3) For the purposes of a defence under paragraph (2), the court may, in particular, have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

Temporary prohibition or restriction of use of streets

13.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily alter, divert, prohibit the use of or restrict any street or any other right of way and may for any reasonable time—

- (a) Divert the traffic from the street or right of way; and
- (b) Subject to paragraph (3), prevent all persons from passing along the street or right of way.

(2) Without prejudice to paragraph (1) the undertaker may temporarily alter or divert the streets specified in columns (1) and (2) of Schedule 5 (streets and rights of way to be temporarily stopped up) to the extent specified, by reference to the numbers shown on the street works and access plan, and in column (3) of that Schedule.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up alteration or diversion of a street under this article if there would otherwise be no such access.

(4) The undertaker must restore to the reasonable satisfaction of the street authority any street that has been temporarily stopped up, altered or diverted under this article.

(5) The undertaker may not temporarily alter or divert—

- (a) any street or right of way specified in paragraph (2) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

(6) The undertaker, during and for the purposes of carrying out the authorised development, may for any reasonable time temporarily alter or divert the section of the public right of way (being a

restricted byway) shown between points 1 and 2 on the street works and access plan and specified in Schedule 5 (streets and rights of way to be temporarily stopped up).

(7) Without prejudice to paragraph (6) the undertaker may not temporarily alter or divert a public right of way without first consulting the local highway authority, whose consent may be subject to conditions and must not be unreasonably withheld.

(8) Any person who suffers loss by the suspension of any private right of way under this article will be entitled to compensation to be determined, in the case of dispute, under Part 1 of the 1961 Act.

Access to works

14. The undertaker may, for the purposes of the authorised development–

- (a) Form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 6 (access to works); and
- (b) With the approval of the relevant planning authority, after consultation with the highway authority, form and lay out such other means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with street authorities

15.—(1) A street authority and the undertaker may enter into agreements with respect to–

- (a) the construction of any new street authorised by this Order;
- (b) any stopping up, alteration or diversion of a street authorised by this Order; or
- (c) the carrying out in the street of any of the works referred to in article 10(1) (street works).

(2) Such an agreement may without prejudice to the generality of paragraph (1)–

- (a) make provision for the relevant authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and the relevant authority for specifying a reasonable time for completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

16.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into and connections with the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991^(a) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose.

(a) 1991 (c.56). section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

- (4) The undertaker must not make any opening into any public sewer or drain except–
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs but such approval must not be unreasonably withheld; and
 - (b) where that person has been given the opportunity to supervise the making of the opening.
- (5) The undertaker may not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.
- (6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid disturbance, oil or matter in suspension.
- (7) This article does not authorise the discharge or entry into inland fresh waters or coastal waters of any matter whose entry or discharge into these waters is prohibited by regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010(a).
- (8) In this article–
- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency or a harbour authority within the meaning of section 57 of the Harbours Act 1964(b) (interpretation), an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and
 - (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Protective work to buildings

17.—(1) Subject to the following provisions of this article the undertaker may, at its own expense, carry out protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

- (2) Protective works may be carried out–
- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
 - (b) after completion of that part of the authorised development in the vicinity of the building at any time up to the decommissioning of the authorised development under paragraph 18 of Schedule 2.
- (3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.
- (4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))–
- (a) enter the building and any land within its curtilage; and
 - (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).
- (5) Before exercising–
- (a) a right under paragraph (1) to carry out protective works to a building;
 - (b) a right under paragraph (3) to enter a building and land within its curtilage;
 - (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
 - (d) a right under paragraph (4)(b) to enter land,

(a) S.I. 2010/675

(b) 1964 (c.40); there are amendments to section 57 that are not relevant to this Order.

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise the right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph 5(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 40 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which the rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of dispute compensation).

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening, hoarding and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

18.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order land or which may be affected by the authorised development and—

- (a) survey and/or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a) make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and/or subsoil and/or to remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a) carry out ecological and archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and/or investigation of land and/or the making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days written notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required upon entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

- (4) No trial holes are to be made under this article—
- (a) in land located within the highway boundary without the consent of the highway authority; or
 - (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Temporary closure of, and works in and over, the canal

19.—(1) The undertaker may, subject to Schedule 9 (protective provisions) 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 (temporary closure of and works in and over, the canal) for the purposes specified in column (3).

(2) Without prejudice to paragraph (1) but subject to paragraphs (3), (4) and (5) the undertaker may in connection with the carrying out or maintenance of the authorised development—

- (a) temporarily close part of the canal and carry out works at any point within that relevant part of the canal as the undertaker considers necessary or expedient;
- (b) temporarily moor or anchor barges or other vessels or craft in the relevant part of the canal and may load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials;
- (c) temporarily suspend any right to moor in such manner and to such extent as may appear to the undertaker to be necessary or convenient; and
- (d) on grounds of health and safety only, temporarily close to navigation the relevant part of the canal.

(3) During the period of any closure referred to in paragraph (2) all rights of navigation and other rights relating to and any obligations of the Canal & River Trust to manage the relevant part of the canal so closed are to be suspended and unenforceable against the Canal & River Trust.

(4) The power conferred by paragraph (1) must be exercised in such a way which secures—

- (a) That no more of the relevant part of the canal is closed to navigation at any time than is necessary in the circumstances; and
- (b) that, if complete closure to navigation of the relevant part of the canal becomes necessary all reasonable steps are taken to secure that the period of closure is kept to a minimum and that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use part so closed.

(5) In exercising the powers conferred by paragraph (1) in relation to the relevant part of the canal the undertaker must—

- (a) take such reasonable steps as are necessary to ensure that the functioning of any intake or discharge along the canal is unaffected;
- (b) keep any interference with water levels or flow to a minimum reasonably necessary to carry out the authorised development;
- (c) take such reasonable steps as are necessary 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
- (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.

(6) Any person who suffers loss or damage as a result of—

- (a) the suspension of any private right of navigation or the suspension of any private right to use the towpath under this article; or
- (b) any effect of the exercise of the powers conferred by paragraph (1) on the functioning of any intake or discharge along the canal,

are to be entitled to be paid compensation for such loss and damage by the undertaker to be determined in the case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

20.—(1) The undertaker may acquire compulsorily so much of the land described in the book of reference and shown on the land plans as is required for the authorised development or to facilitate it, or is incidental to it.

(2) This article is subject to article 23 (acquisition of subsoil only) and article 27 (temporary use of land carrying out the authorised development).

Time limit for exercise of authority to acquire land compulsorily

21.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act (which makes provision for the compulsory acquisition under the Acquisition of Land Act 1981); and
- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 26 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(a).

(2) The authority conferred by article 27 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph will prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

22.—(1) The undertaker may acquire compulsorily the new rights described in the book of reference and shown on the land plans.

(2) As from the date on which a compulsory acquisition notice is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, the land over which any new rights is acquired will be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act, as substituted by article 24 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Any person who suffers loss as a result of the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions disputed compensation) of the 1961 Act.

(a) 1981 (c.66)

Acquisition of subsoil only

23.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 20 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker may not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 24 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch, or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

24.—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner is to be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner is to be required to sell only the land subject to the notice to treat must, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land is subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is to be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is to be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the addition land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is to be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Statutory authority to override easements and other rights

25.—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

(3) The interest and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(4) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152 (5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) (with any necessary modification).

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

26.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) applies as if this Order were a compulsory purchase order.

(a) 1981 (c.66). sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Section 15 was amended by section 56 and 321 of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c.17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c.50); paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and paragraph 7(2) of Schedule 19 to the Leasehold Reform, Housing and Urban Development Act 1993 (c.28) section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008 (c.17). Paragraph 2 of Schedule 3 was repealed under paragraph 40(4) of Schedule 10 to the Finance Act 1975 (c.7) and Schedule 9 to the Capital Transfer Tax Act 1984 (c.61); There are other amendments to the 1981 Act which are not relevant to this Order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, has effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there is to be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated”

(4) In that section, in subsection (2), for “(1)(b)” there is to be substituted “(1)” and after “given” there is to be inserted “and published”.

(5) In that section, for subsections (5) and (6) there is to be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease, or agreement, the unexpired term of which exceeds one month”

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there is to be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” is omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations Act) 1981 is to be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Temporary use of land for carrying out the authorised development

27.—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on that land.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 8 (land of which temporary possession may be taken) unless and to the extent that it is authorised to do so by the acquisition of rights over land or creation of new rights over land pursuant to article 21 (compulsory acquisition of rights) of this Order.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to replace a building removed under this article.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1) except that the undertaker is not precluded from—

- (a) acquiring new rights over any part of that land under article 22 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 23 (acquisition of subsoil only).

(9) Where the undertaker takes possession of land under this article, the undertaker must not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act^(a)(refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 8.

Temporary use of land for maintaining the authorised development

28.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provision of this article.

(a) Section 13 is amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15)

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provision).

(11) In this article "the maintenance period", in relation to any part of the authorised development, means the period of 50 years beginning with the date on which that part of the authorised development is first opened for the use of the underground gas storage.

Statutory undertakers

29. The undertaker may, within the Order limits—

- (a) extinguish the rights of statutory undertakers shown on the land plans and described in the book of reference; and
- (b) replace, reposition, renew, alter and supplement the apparatus belonging to statutory undertakers as shown on the statutory undertakers' apparatus plan.

Private rights

30.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (a) (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the Order land, is required for the purposes of this Order will be extinguished on the appropriation of the land by the undertaker for any of those purposes.

(3) Subject to the provisions of this article, all private rights of way over land of which the undertaker takes temporary possession under this Order will be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 29 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) is to have effect subject to—

- (a) any notice given by the undertaker before—

(a) Section 11 is amended by section 34 of, and Schedule 4 to the Acquisition of Land Act 1981 (c.67), section 3 of Schedule 1 to the Housing (Consequential Provisions) Act 1985 (c.71) and paragraph 64 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order (S.I. 2009/1307)

- (i) the completion of the acquisition of the land,
- (ii) the undertaker's appropriation of it,
- (iii) the undertaker's entry onto it, or
- (iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right of way specified in the notice; and

- (b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)–

- (a) is made with a person in or to whom the right of way is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it will be effective in respect of the persons so deriving title, whether the title was derived before or after making the agreement.

Rights under or over streets

31.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to–

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

PART 6

MISCELLANEOUS AND GENERAL

Operational land for the purposes of the 1990 Act

32. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as not being operational land for the purposes of that Act).

Felling or lopping of trees or shrubs

33.—(1) Save for trees planted in accordance with requirement 6, the undertaker may, pursuant to the requirements in Schedule 2, fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub–

- (a) from obstructing or interfering with the construction or maintenance of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

Protective provisions

34. Schedule 9 (protective provisions) to this Order has effect.

Certification of plans etc.

35.—(1) The undertaker must, as soon as reasonably practicable after the making of the Order, submit to the Secretary of State copies of—

- (a) the book of reference (document ref.: 4.3);
- (b) the book of reference and land plans clarifications and errata (document ref.:10.14);
- (c) the Order limits drawing nos.: 13-03-01/HOL/24/100-107/B1;
- (d) the land plans drawing nos.: 13-03-01/HOL/24/610-617/B1;
- (e) the works plans drawing nos.: 13-03-01/HOL/24/500-506/B1, 13-03-01/HOL/24/509/B1, 13-03-01/HOL/24/510/B2, 13-03-01/HOL/24/511/B1, 13-03-01/HOL/24/512/B2 and 13-03-01/HOL/24/513-514/B1;
- (f) the street works and access plan drawing no.:13-03-01/HOL/24/413/B1;
- (g) the environmental statement (document refs.: 6.1-6.3);
- (h) the environmental statement clarifications and errata (document ref.: 10.13);
- (i) the elevation drawing nos.:
 - (i) 13-03-01/HOL/24/236/B1;
 - (ii) 13-03-01/HOL/24/270/B4, 13-03-01/HOL/24/271/B2, 13-03-01/HOL/24/272/B1, 13-03-01/HOL/24//273/B2 and 13-03-01/HOL/24/274/B1; and
 - (iii) 13-03-01/HOL/24/278/B1;
- (j) the seismic survey report (document ref.: 9.1);
- (k) the sub-surface safety assessment report (document ref.: 9.2);
- (l) the preliminary study of gas design capacity (document ref.: 9.3);
- (m) the landscaping plans drawing nos.: 13-03-01/HOL/24/240-264/B1 and 13-03-01/HOL/24/266-268/B1;
- (n) the statutory undertakers' apparatus plan drawing no.: 13-03-01/HOL/24/346/B1 and
- (o) the routing plan drawing no.: 13-03-01/HOL/24/405/B1,
- (p) the draft CEMP and annexes 1 - 4 (document ref 6.5 rev4, August 2016)

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified under paragraph (1) is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Application of the Hedgerows Regulations 1997

36. Regulation 6 of the Hedgerows Regulations 1997(a) is to be modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

“(k) Or for carrying out development which has been authorised by a development consent pursuant to the Planning Act 2008”

Procedure in relation to certain approvals etc.

37. Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority, or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of this Order such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

Appeals relating to decisions under requirements

38.—(1) Where the relevant planning authority—

- (a) refuses an application for any consent, agreement or approval of that authority required by a requirement listed in Schedule 2 (requirements) to this Order or grants that consent, agreement or approval subject to conditions; or
- (b) does not give notice to the undertaker of its decision on an application for any consent, agreement or approval of that authority required by a requirement listed in Schedule 2 (requirements) of this Order within 16 weeks beginning with the day immediately following that on which the application is received by that authority or within such shortened or extended period as may at any time be agreed upon in writing between the undertaker and that authority,

Article 40 (arbitration) does not apply but the undertaker may by notice appeal to the Secretary of State.

(2) Any appeal to the Secretary of State under paragraph (1) must be made under Part III (control over development) of the 1990 Act as if the requirement in Schedule 2 (requirements) of this Order which is the subject of the appeal were a condition under subsection 78(1)(b) of the 1990 Act.

(3) For the purposes of the application of section 262 of the 1990 Act (meaning of “statutory undertaker”) to appeals pursuant to this article, the undertaker is deemed to be a holder of a licence under section 7 Gas Act 1986(b).

Application of landlord and tenant law.

39.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants is to prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

(a) S.I. 1997/1160. There are amendments to this Statutory Instrument which are not relevant to this Order.

(b) Section 7 is amended by section 5 Gas Act 1995 (c.45), sections 76 and 108 Utilities Act 2000 (c.27)

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Arbitration

40. Without prejudice to article 38 (appeals relating to decisions under requirements), any difference or dispute under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State

Address
Date

[Giles Scott]
Head of National Infrastructure Consents
Department of Business, Energy and Industrial Strategy

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT

Work No.1A—An underground gas storage cavity at GR, E370280.37, N369293.28 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

Work No.1B—An underground gas storage cavity at GR, E370787.74, N369459.53 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

Work No.1C—An underground gas storage cavity at GR E371332.02, N369744.22 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

Work No. 1D—An underground gas storage cavity at GR E370832.07, N369022.17 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

Work No.1E—An underground gas storage cavity at GR, E371002.50, N369237.99 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

Work No.1F—An underground gas storage cavity at GR E371300.15, N369287.26 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

Work No.1G—An underground gas storage cavity at GR E371103.31, N368976.85 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

Work No.1H—An underground gas storage cavity at GR, E370195.52, N370206.82 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

Work No. 1J—An underground gas storage cavity at GR E371075.22, N370242.38 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

Work No.1K—An underground gas storage cavity at GR E370590.41, N369240.06 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

Work No. 1L—An underground gas storage cavity at GR E370978.36, N370499.76 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

Work No.1M—An underground gas storage cavity at GR E370914.66, N368757.87 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

Work No.1N—An underground gas storage cavity at GR E371186.66, N368630.79 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

Work No. 1P—An underground gas storage cavity at GR E371368.25, N368892.81, of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

Work No.1Q—An underground gas storage cavity at GR E371605.04, N369035.91, of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

Work No.1R—An underground gas storage cavity at GR, E371578.01, N369311.02 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

Work No.1S—An underground gas storage cavity at GR E371574.94, N369612.17 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

Work No. 1T—An underground gas storage cavity at GR E371749.84, N369855.91 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

Work No.1U—An underground gas storage cavity at GR E372023.83, N369978.09 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

ASSOCIATED DEVELOPMENT

Work No.2A – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage:

Drilling equipment will include drilling rig, mud tanks, mud pumps, water/brine tanks, generators, cement silo, chemical store, fuel store, casing racks, pipe bin, collar bin, task lighting, temporary offices, security fencing, hardstanding, self-contained amenity facility and stores.

Solution mining equipment will include solution mining wellhead with isolation valves and instrumentation, brine water and nitrogen pipework manifolds, isolation and shutdown valves, instrumentation, sediment collection vessel, security fencing, hardstanding, electrical and instrument kiosks, on-demand and security lighting, power

and communication cables, sump and sump pump, access road, access gates and access platforms.

Gas conversion equipment will include gas wellhead with isolation valves and instrumentation, brine, nitrogen and gas pipework manifolds, isolation and shutdown valves, instrumentation, rig to remove downhole casing under pressure (“Snubbing” rig), security fencing, hardstanding, electrical and instrument kiosks, on demand and security lighting, power and communication cables, sump and sump pump and access platforms.

Gas storage equipment will include gas wellhead with isolation valves and instrumentation, gas and nitrogen pipework manifolds, isolation and emergency shutdown valves, instrumentation, glycol/methanol injection package (including storage vessel), operational access steelwork, security fencing, hardstanding, electrical and instrument kiosks, on-demand and security lighting, power and communication cables, sump and sump pump and access platforms.

Work No.2B – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.:2A.

Work No.2C – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.:2A.

Work No.2D – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.:2A.

Work No.2E – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.:2A.

Work No.2F – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.:2A.

Work No.2G – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.:2A.

Work No.2H – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.:2A.

Work No.2J – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.:2A.

Work No.2K – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.:2A.

Work No.2L – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.:2A.

Work No.2M – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.:2A.

Work No.2N – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.:2A.

Work No.2P – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.:2A.

Work No.2Q – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.:2A.

Work No.2R – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.:2A.

Work. No.2S – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.:2A.

Work No.2T – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.:2A.

Work No.2U – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.:2A.

Work No.3A – A buried low-pressure water pipeline 300m long and 508mm external diameter from the existing infrastructure at the Holford Gas Storage Limited former temporary solution mining compound off Drakelow Lane to the new solution mining compound (Work No.4). To be laid via open trench construction not less than 1 metre below ground in-filled and contoured to the surrounding land.

Work No.3B – A buried low-pressure brine pipeline 300m long and 508mm external diameter from the existing infrastructure at the Holford Gas Storage Limited former temporary solution mining compound off Drakelow Lane to the new solution mining compound (Work No.4). To be laid via open trench construction not less than 1 metre below ground in-filled and contoured to the surrounding land.

Work No.4 – A solution mining compound including pumphouse building, water boosting pumps, liquid nitrogen storage, vaporisation and distribution equipment, brine degassing tanks, weak brine pumps, electrical switchrooms, distributed control system, control and amenities building,

temporary construction offices and initial construction facilities including laydown areas, security fence, task lighting, sump and sump pump.

Work No.5A – A network of buried water pipework with a combined total length of 8,100m and external diameters ranging between 274mm and 508mm from the solution mining compound (Work No.4) to the wellhead locations (Work Nos. 2A to 2U). To be laid via open trench construction not less than 1 metre below ground in-filled and contoured to the surrounding land.

Work No.5B – A network of buried brine pipework with a combined total length of 10,140m and external diameters ranging between 274mm and 508mm from the solution mining compound (Work No.4) to the wellhead locations (Work Nos. 2A to 2U). To be laid via open trench construction not less than 1 metre below ground in-filled and contoured to the surrounding land.

Work No.5C – A network of two buried nitrogen pipelines (high and low pressure) with a combined total length of 16,200m and 60mm external diameter from the solution mining compound (Work No.4) to the wellhead locations (Work Nos. 2A to 2U). To be laid via open trench construction not less than 1 metre below ground in-filled and contoured to the surrounding land.

Work No.5D – A network of buried electrical power and communication cables with a combined total length of 17,000m from the solution mining compound (Work No.4) to the wellhead locations (Work Nos. 2A to 2U), the gas processing plant (Work No. 14) and the national transmission system connection compound (Work No. 12). To be laid via open trench construction not less than 1 metre below ground in-filled and contoured to the surrounding land.

Work No.6 – An internal site access road network, including drainage, culverts and bridges at watercourses, to the wellhead compounds (Work Nos.2A to 2U), gas processing plant (Work No.14), solution mining compound (Work No.4), 132kV substation compound (Work No. 25), the gas marshalling compounds (Work Nos.20 and No.21) and temporary construction laydown area (Work No. 16) at the first gas marshalling compound (Work No. 20).

Work No.7 – A site access road including drainage and culverts from the existing entrance on King Street (A530) to the gas processing plant (Work No.14), the national transmission system connection compound (Work No. 12), the office, control and maintenance building (Work No. 15) and the temporary construction laydown areas (Work No. 16).

Work No.8 – NOT USED.

Work No.9 – A new pumping tank and a new surge vessel installed within the brine purification plant at Lostock works including pipework and valving connecting into the existing pumping system.

Work No.10 – A pipebridge and walkway installed at the Runcorn site as part of the installation of 600m of 508mm external diameter brine pipeline across the Weston Canal (Weaver Navigation) and then buried within the Telford Wall, between the Manchester Ship Canal and the Weston Canal eventually discharging into the Manchester Ship Canal.

Work No.11 – Re-commissioning of the Whitley pumping station for a period of 10 years from the completion of the authorised development including the installation of the pumphouse equipment (two booster pumps, two sump pumps, pipework, electrical equipment and variable speed drives) electrical supply from the Scottish Power Energy Networks supply (Work No. 27) transformer, civil works and pipework, surge vessel, new roof, lighting and painting.

Work No.12 – A fenced compound and connection to the National Grid's gas national transmission system high pressure gas pipe adjacent to King Street (A530). Including a remotely operated valve, commissioning bypass, a pig trap, connection insulation joint, instrumentation (including gas flow metering and gas calorific value metering), filters and emergency shutdown valve telemetry plus control equipment housed within a kiosk.

Work No.13 – A buried gas pipeline 500m long and 915mm external diameter between the national transmission system connection (Work No.12) and the gas processing plant (Work

No.14). To be laid via open trench construction not less than 1.2 metre below ground and in-filled and contoured to the surrounding land.

Work No.14 – A gas processing plant including security fencing, lighting, electrical substation, instrument room, compressor house, first gas fill compressor, gas compressors, motor coolers, oil coolers, gas coolers, drying towers, air cooled condensers, regeneration heaters, water heaters building, gas manifold, metering skid, fuel gas skid, pig launcher and receiver, knock out drums and vessels, filters, flowmeters, control valves, exchangers, transformers, nitrogen package including buffer vessel, methanol / glycol recovery including pumps and storage tanks, regeneration heating vents, water heater vents, separators, emergency cold vent, surface water interceptor pit and pumps.

Work No.15 – An office, control and maintenance building and car park with 40 parking spaces located adjacent to the gas processing plant (Work No.14).

Work No.16 – Six temporary construction laydown areas including installation of cabins and provision of car parking with 260 parking spaces.

Work No.17 – A buried townswater pipeline supply 450m long and 60mm external diameter from the existing supply that runs alongside King Street (A530) to the administration building (Work No.15). To be laid via an open trench construction not less than 900mm below ground in-filled and contoured to the surrounding land.

Work No.18 – A buried sewer pipeline 450m long and 200mm external diameter routed from the administration building (Work No.15) to the existing manifold that runs alongside King Street (A530). To be laid via an open trench construction not less than 900mm below ground in-filled and contoured to the surrounding land.

Work No.19A – Two buried gas pipelines of 1140m long and 915mm (gas trading) and 219mm (first gas fill) external diameter respectively routed between the gas processing plant (Work No.14) and the gas marshalling compound (Work No.20). To be laid via open trench construction not less than 1.2metre below ground and in-filled and contoured to the surrounding land.

Work No.19B – Two buried gas pipelines of 700m long and 915mm (gas trading) and 219mm (first gas fill) external diameter respectively routed between the gas marshalling compound (Work No.20) and gas marshalling compound (Work No.21). To be laid via open trench construction not less than 1.2metre below ground and in-filled and contoured to the surrounding land.

Work No.19C – A buried gas pipeline of 340m long and between 219mm and 324mm external diameter from the gas processing plant (Work No.14) to wellhead compound (Work No. 2H). To be laid via open trench construction not less than 1.2metre below ground and in-filled and contoured to the surrounding land.

Work No.20 – A gas marshalling compound including security fencing, lighting, control kiosk, and an underground pipework manifold system with valves that have extended stems (for operation above ground) connecting gas distribution pipework (Work No.22) to seven wellhead compounds (Work Nos. 2A, 2B, 2C, 2E, 2J, 2K and 2L).

Work No.21 - A gas marshalling compound including security fencing, lighting, control kiosk, and an underground pipework manifold system with valves that have extended stems (for operation above ground) connecting gas distribution pipework (Work No.22) to eleven wellhead compounds (Work 2D, 2F, 2G, 2M, 2N, 2P, 2Q, 2R, 2S, 2T and 2U).

Work No.22 – A network of buried gas pipelines with a combined total length of 13,150m and external diameter between 219mm and 324mm from the gas marshalling compounds (Work No.20 and No.21) to the individual wellheads (Work No.2A to No.2U NB: excluding Work No.2H which is detailed in Work No. 19C above). To be laid via open trench construction not less than 1.2metre below ground in-filled and contoured to the surrounding land.

Work No.23 – An electrical compound adjacent to the solution mining compound (Work No. 4) including a brick sub-station, security fencing, lighting local transformers, associated switchgear and power factor correction equipment.

Work No.23A – A 200m long 33kV electrical supply cable routed overhead and underground from the Scottish Power Energy Networks overhead supply to the electrical compound (Work No.23).

Work No.24 – A buried fibre optic cable of up to 550 metres from the Holford Gas Storage Limited former temporary solution mining compound to the solution mining compound (Work No.4). To be laid via open trench construction not less than 1.2metre below ground in-filled and contoured to the surrounding land.

Work No.25 – A 132kV to 33kV substation compound, from the existing Scottish Power Energy Networks overhead pylon 132kV power infrastructure. The compound will include switch /control room, security fencing, lighting, a pylon, local transformers, associated switchgear and power factor correction equipment to supply the gas processing plant (Work No.14).

Work No.26 – Two 950m long 33kV electrical supply cables routed (buried and above ground) between the 132kV substation (Work No.25) and the electrical substation associated with the gas processing plant (Work No.14).

Work No.27 – An overhead 50m long 11kV electrical supply cable from the existing local Scottish Power Energy Networks overhead pole supply to the Whitley Pumping Station (Work No.11).

Work No.28A – A buried gas pipeline 570m long and 915mm external diameter between the gas marshalling compound (Work No.20) and the Holford Gas Storage Limited gas marshalling compound. To be laid via open trench construction not less than 1.2metre below ground in-filled and contoured to the surrounding land.

Work No.28B – A buried gas pipeline 1,810m long and 915mm external diameter between the gas marshalling compound (Work No.20) and the Stublach Gas Storage Project (Storengy) gas infrastructure. To be laid via open trench construction not less than 1.2metre below ground in-filled and contoured to the surrounding land.

Work No.29A – A buried water pipeline 1,650m long and 508mm external diameter connecting between the solution mining compound (Work No.4) and Stublach Gas Storage Project (Storengy) solution mining infrastructure. To be laid via open trench construction not less than 1 metre below ground in-filled and contoured to the surrounding land.

Work No.29B – A buried brine pipeline 1,650m long and 508mm external diameter connecting between the solution mining compound (Work No.4) and Stublach Gas Storage Project (Storengy) solution mining infrastructure. To be laid via open trench construction not less than 1 metre below ground in-filled and contoured to the surrounding land.

Work No.30 - Diversion of the Scottish Power Energy Networks 11kV overhead cable located to the north of Work No. 2E with a length of up to 250m including installation of two new poles.

Work No.31 – Diversion of the Scottish Power Energy Networks 33kV overhead cable located to the west of Work No.2F with a length of up to 500m including installation of three new poles.

Work No.32 – Diversion of the Scottish Power Energy Networks 11kV overhead cable located to the east of Work No. 2H with a length of up to 180m including installation of two new poles.

Work No.33 – Diversion of the Scottish Power Energy Networks 33kV overhead cable located to the east of Work No.2J with a length of up to 515m including installation of five new poles.

Work No.34 – Diversion of the Scottish Power Energy Networks 33kV overhead cable located to the west of Work No.2P with a length of up to 250m including installation of four new poles.

Work No.35 – A series of precise level points 3.5m in length driven into the ground to monitor any changing underlying ground movements.

SCHEDULE 2 REQUIREMENTS

Article 3

Time limits

1. Without prejudice the authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.

Authorised development to be carried out in accordance with certified plans and documents and with matters approved under requirements

2.—(1) The authorised development must be carried out in accordance with—

- (a) the plans and documents certified by the Secretary of State as true copies of the documents referred to in this Order;
- (b) any other plans, schemes or documents approved in writing by the relevant planning authority pursuant to the requirements; and
- (c) the parameters specified in Tables 1 – 11 below.

(2) In these tables “AOD” means above ordnance datum.

Table 1

Gas Processing plant (Work No.14)

<i>Building or structure (part of work no. 14)</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 33-34 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 33-34 metres AOD)</i>
Control room workshop	30.0	40.0	5.0	
Substation	20.0	25.0	4.0	
Instrument room (DCS)	6.0	8.0	4.0	
Compressor house (2 off)	20.0	28.0	10.0	
First gas fill compressor and cooler package	6.0	28.0	7.0	
Motor coolers (10 off)	6.0	8.0	4.0	
Gas coolers	18.0	22.0	5.0	
Drying towers (4 off)	4.0	4.0	10.0	
Air cooled condensers (2 off)	6.0	8.0	4.0	
Regeneration heaters (6 off)	12.0	6.0	5.0	
Water heater buildings (2 off)	10.0	25.0	8.0	
Transformers / VSD's (5 off)	6.0	15.0	5.0	

Glycol storage (2 off)	15.0	21.0	4.0	
Gas Preheater Boiler Vents (4 off)	0.8 (external diameter) 0.69 (internal diameter)	–	10.0	10.0
Glycol Regeneration Boiler Vents (6 off)	0.8 (external diameter) 0.22 (internal diameter)	–	10.0	10.0
Emergency cold vent	0.60(Diameter)	–	25.0	25.0

Table 2

Solution mining compound (Work Nos. 4 & 23)

<i>Building or structure (part of work no. 4 or 23)</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 37-38 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 37-38 metres AOD)</i>
Pumphouse for both weak brine and water booster pumps	12.5	65.0	4.0	
Pump switchrooms (2 off)	10.0	20.0	3.5	
Control and amenities building	10.0	14.0	3.5	
Distributed control system building	6.0	8.0	3.5	
Electrical compound / switchroom (Work No 23)	20.0	25.0	3.5	
Liquid nitrogen storage vaporisation package	8.0	16.0	3.0	
Liquid nitrogen storage compound	10.0	20.0	4.0	
Brine de-gassing tanks (2 off)	15.0	20.0	4.0	
Within concrete bund	20.0	25.0	3.5	
Nitrogen vent	0.08 (Diameter)		9.0	5.0

Table 3

Gas marshalling compounds (work Nos 20 & 21)

<i>Building or structure (Part of work no.20 or 21)</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 37-38 metres AOD for work no.20 and 40 metres AOD for work no.21)</i>	<i>Minimum height (metres above existing site level of approximately 37-38 metres AOD for work no.20 and 40 metres AOD for work no.21)</i>
Compound with security fence and building listed below:	50.0	50.0	3.0	2.4
Control kiosk	3.0	4.0	2.4	
Security lighting / camera	1.0 (diameter)		5.5	3.0

Table 4

Electrical 132kV to 33kV sub-station (Work No.25)

<i>Building or structure (Part of work no.25)</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 37-38 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 37-38 metres AOD)</i>
Compound with security fence for all equipment listed below:	50.0	80.0	3.0	2.4
Transformers (2 off)	5.0	12.0	7.0	
Isolators (5 off)	2.5	6.0	6.5	
Power correction equipment	2.5	3.0	4.0	
Control room	12.0	8.0	3.6	
Switchroom	12.0	20.0	3.6	
New 132kV pylon (1 off) (Adjacent to existing pylon)	5.0 at base Arms =14.0	5.0 at base	28.0	

Table 5

Wellhead compound—drilling phase (work Nos.2A to 2U)

<i>Building or structure (Part of work no.2A to 2U)</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 33-34 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 33-34 metres AOD)</i>
Compound for equipment listed below:	60.0	80.0	2.4	2.0

Drilling rig (vehicle mounted)	3.0	15.0	36.0
Cement silos (2 off)	2.0	2.0	6.0

Table 6

Wellhead compound—solution mining phase (work Nos.2A to 2U)

<i>Building structure Part of work no.2A to 2U</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 33-34 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 33-34 metres AOD)</i>
Compound and security fence for equipment listed below:	50.0	50.0	24.0	2.0
Solution mining wellhead	1.0	1.0	2.0	
Meter house	2.5	3.0	2.5	

Table 7

Wellhead compound—gas operation phase (Work Nos.2A to 2U)

<i>Building structure Part of work no.2A to 2U</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 33-34 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 33-34 metres AOD)</i>
Compound with security fence for equipment listed below:	50.0	50.0	3.0	2.0
Gas wellhead	1.0	1.0	4.0	
Control panel	3.0	4.0	3.0	
Glycol injection package	3.0	4.0	4.0	
Security lighting / camera	1.0 (Diameter)		5.5	3.0

Table 8

Lostock works (Work No.9)

<i>Building structure Part of work no.9)</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 30 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 30 metres AOD)</i>
Pumping tank	6.0 (Diameter)		6.0	
Surge vessel (in bund)	2.5	7.0	3.0	

Table 9**Whitley pumping station (Work No.11)**

<i>Building structure or Part of work no.11)</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 50 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 50 metres AOD)</i>
Existing pumphouse (to be refurbished)	10.0	12.0	4.0	
Surge vessel	1.5(Diameter)	3.5	2.5	
Transformer	3.0	4.0	2.5	

Table 10**Runcorn site (Work No.10)**

<i>Building structure or Part of work no.10)</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 10.5 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 10.5 metres AOD)</i>
Pipebridge with walkway	5.0	50.0	15.5	18.0
Brine discharge pipeline	0.5(Diameter)	600.0		
Diffuser pipe	0.4(Diameter)	15.0		

Table 11**National transmission system compound (Work No.12)**

<i>Building structure or Part of work no.12)</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 32metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 32 metres AOD)</i>
Compound with security fence for equipment listed below:	50.0	60.0	3.0	2.4
Pig trap area	8.0	17.0	2.4	
Control equipment kiosk	3.0	4.0	2.4	
Meter cabinet	0.6	1.5	1.5	
Security lighting/camera	1.0(Diameter)		6.0	3.0

Construction Environmental Management Plan

3.—(1) No part of the authorised development is to commence until a CEMP for that part has been submitted to and approved in writing by the relevant planning authority.

(2) The CEMP submitted under sub-paragraph (1) must be in accordance with the draft CEMP.

(3) The construction of the authorised development must be carried out in accordance with the CEMP approved under sub-paragraph (1).

(4) The CEMP must include mitigation measures in accordance with those set out in chapters 7 to 14 inclusive, 18, 19 and 22 to 25 inclusive of the environmental statement.

(5) The CEMP must incorporate the following plans and programmes–

- (a) Landscaping and visual impacts plan;
- (b) Surface and ground water management plan;
- (c) Soil management plan;
- (d) Sediment control plan;
- (e) Site waste management plan;
- (f) Biodiversity management plan;
- (g) Noise and vibration management and monitoring plan;
- (h) Air quality and dust management plan;
- (i) Archaeological management plan;
- (j) Traffic management plan;
- (k) Lighting plan; and
- (l) Construction phasing plan.

(6) Each of the plans and programmes detailed in sub-paragraph (4)(a)-(l) must incorporate the following–

- (a) responsibilities;
- (b) consent requirements;
- (c) general control measures;
- (d) specific control measures;
- (e) monitoring and measurement; and
- (f) actions to be taken in the event of an emergency.

(7) The CEMP must require adherence to working hours of 07:00 and 19:00 on Mondays to Fridays and 07:00 and 14:00 on Saturdays except for–

- (a) noisy construction operations which will take place between 08.00 and 18.00 on Mondays to Fridays and 08.00 to 14.00 on Saturdays; and
- (b) continuous construction operations, including–
 - (i) drilling;
 - (ii) weld testing or pipeline testing;
 - (iii) concrete pour;
 - (iv) commissioning; and
 - (v) solution mining.

(8) The CEMP must require that construction operations at the Runcorn site (Work No. 10) shall take place between April and September except for limited scrub clearance activities which shall take place between August and September.

Approval of details

4.—(1) No part of the authorised development may be commenced until the following details have been submitted to and approved in writing by the relevant planning authority–

- (a) details of the siting and size of–
 - (i) each wellhead compound (Work Nos. 2A – 2U);
 - (ii) the solution mining compound (Work No. 4);

- (iii) the fenced compound and connection to the national transmission system (Work No. 12);
 - (iv) the gas processing plant (Work No. 14);
 - (v) the office, control and maintenance building (Work No. 15);
 - (vi) the construction and laydown areas (Work No. 16);
 - (vii) the gas marshalling compounds (Work Nos. 20-21);
 - (viii) the electrical compound (Work No. 23); and
 - (ix) the substation compound (Work No. 25).
- (b) details of the design and external appearance of any buildings or structures to be provided;
 - (c) means of access and details of the construction of each access;
 - (d) details of the construction of the surface of each compound including the stripping and stockpiling of soils, the location and the storage of such, and the materials to be used in the construction of each compound;
 - (e) details of any fencing to be erected; and
 - (f) details of any operational lighting to include the number, height and location of any stanchions to be erected or mobile floodlighting units to be used, the number of floodlights, their lux levels, angles of luminance and extent of light distribution.

Control of noise during solution mining and gas operation

5.—(1) Operation of the authorised development must not begin until a written scheme for noise management including monitoring and attenuation of the authorised development has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme for noise management submitted in accordance with sub-paragraph (1) must require that the site-attributable noise during solution mining and gas operation shall not exceed a rating free-field noise level equivalent to the daytime and night-time background noise levels for each noise sensitive receptor detailed in Table 9.9 and Section 18.5.2 of the Environmental Statement (Document Ref. 6.1) with exception of the noise sensitive receptors set out in Table 12 below.

Table 12

<i>Receptor</i>	<i>Night-Time dB LA90</i>	<i>Maximum Permissible Daytime Operational Free-field Rating Noise Levels dBLAeq1hour (07.00 – 23.00)</i>	<i>Maximum Permissible Night-Time Operational Free-field Rating Noise Levels dBLAeq15 mins (23.00-07.00)</i>
3 – Drakelow Farm	32	34	34
4 – Halfway House	32	33	33
7 – Brownhayes Farm	30	37	37
8 – Drakelow Hall Farm	31	32	32
10 – Drakelow Gorse Farm	30	33	33
14 – Newholme Farm	31	33	33

(3) The undertaker must implement the schemes for noise management approved in accordance with sub-paragraph (1).

Landscaping

6.—(1) No part of the authorised development may be commenced until a landscape scheme has been submitted to and approved in writing by the relevant planning authority for that part. The scheme must include—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) a requirement that the height of soil bunds must not exceed 3 metres;
- (e) a requirement that topsoil and subsoil must not be imported to or exported from the site except for contaminated soil found on site that must be exported to a site permitted to accept it;
- (f) hard surfacing materials;
- (g) details of existing trees to be retained, with measures for their protection during the construction period; and
- (h) implementation timetables for all landscaping works.

(2) The landscape scheme submitted under sub-paragraph (1) must be in accordance with the landscaping plans.

(3) All landscaping must be carried out in accordance with the landscape scheme approved under requirement 6(1).

(4) All landscaping carried out in accordance with requirement 6(3) must be maintained by the undertaker for the lifetime of the authorised development.

(5) Any tree or shrub planted as part of the landscape scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

(6) In the event of a brine leakage, a soil and landscaping scheme detailing those habitats, trees, shrubs or hedgerows damaged, together with remedial measures proposed, shall within a period of three months of the leak's detection be submitted to and approved in writing by the relevant planning authority. The approved scheme shall be undertaken during the following planting season and maintained by the undertaker for the lifetime of the authorised development.

Accesses to works

7.—(1) No part of the authorised development may be commenced until written details of the siting, design and layout of any new permanent or temporary means of access to a highway for that part has been submitted to and approved in writing by the relevant planning authority.

(2) The highway accesses must be constructed in accordance with the approved details.

Construction traffic

8. At the highway access to King Street (A530) comprised in Work No.7, notices must be erected prior to the start of construction of the authorised development and maintained throughout the period of construction, indicating to drivers the required route for traffic entering and leaving the site during the period of construction as shown on the routing plan.

Limits on heavy goods vehicle movements

9.—(1) The maximum number of heavy goods vehicle movements to and from the authorised development must not exceed 80 per day (40 in and 40 out).

(2) The number of heavy goods vehicles which enter the authorised development must be recorded by the site operator. These records must be available for inspection at the site office and a copy of these records must be submitted to the relevant planning authority every six months, or within five working days of such records being requested by the relevant planning authority.

Internal roads

10. The access road comprised in Work No.: 7 must, throughout the construction and use of the authorised development, be metalled and drained and kept clear of debris along its entire length at all times.

Fencing and other means of enclosure

11.—(1) No part of the authorised development may be commenced until written details of all temporary and permanent fences or other means of enclosure required for the construction and or use of that part have been submitted to and approved in writing by the relevant planning authority.

(2) Any temporary fencing must be removed on completion of construction of the authorised development.

(3) Any approved permanent fencing comprised in the authorised development must be completed before those works are brought into use.

Ground and surface water and pollution prevention

12.—(1) No part of the authorised development may be commenced until written details of the surface and foul water drainage system (including means of pollution control) for that part have, after consultation with the sewerage and drainage authority, been submitted to and approved in writing by the relevant planning authority. The surface and foul water drainage system must be constructed in accordance with the details approved under this sub-paragraph.

(2) No part of the authorised development involving the diversion of any stream or watercourse may commence until a scheme and programme for that part for its diversion has been submitted to and, after consultation with the Environment Agency, approved in writing by the relevant planning authority. The stream or watercourse must be diverted in accordance with the approved scheme and programme.

(3) Unless otherwise permitted under sub-paragraphs (1) and (2) above, throughout the period of construction, operation, decommissioning, restoration and aftercare of the authorised development, all ditches, watercourse, field drainage systems and culverts must be maintained such that the flow of water is not impaired or the drainage onto and from adjoining land rendered less effective.

(4) All oil, diesel oil and lubricants stored within the authorised development for any purpose must be stored on a base impervious to both oil and water and surrounded by an impermeable bund wall. The bunded area must be capable of containing 110% of the largest tank's capacity and all drain pipes, fill pipes and sight gauges shall be enclosed within its curtilage.

Hedgerows

13. No part of the authorised development is to commence until written details of any hedgerows to be removed during construction of that part have been submitted to and approved in writing by the relevant planning authority.

Land Contamination

14.—(1) No part of authorised development comprised in Work No. 10 may commence until a written scheme (which may be included in the CEMP) to deal with the contamination of any land, including groundwater, identified in the investigation and assessment report prepared under sub-paragraph (2) as likely to cause significant harm to persons or significant pollution of controlled waters or ground waters or the environment has been submitted to and approved by the relevant planning authority.

(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and a remediation strategy identifying the remedial measures to be taken, if required, to render the

land fit for its intended purpose, and a verification plan outlining how achieving the remedial objectives will be demonstrated.

(3) Remediation, if required, must be carried out in accordance with the scheme approved under sub-paragraph (1).

(4) A verification report demonstrating completion of any remediation works and the effectiveness of the remediation must be submitted to and approved in writing by the local planning authority.

Archaeology

15.—(1) No part of the authorised development may be commenced until for that part, a written scheme for the investigation of areas of archaeological interest has been submitted to and approved in writing by the relevant planning authority.

(2) The written scheme of investigation must identify areas where a programme of archaeological investigation is required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief carried out under the archaeological scheme must be by a suitably qualified person or body approved by the relevant planning authority. Any archaeological works or watching brief must be carried out in accordance with the approved archaeological scheme.

External lighting

16. No use of the authorised development may be commenced until written details of the permanent operational external lighting to be installed as part of Works No.:14, including measures to prevent light spillage, have been submitted to and approved by the relevant planning authority and any approved means of lighting must subsequently be installed and retained for the duration of the operation of the authorised development.

Restoration scheme

17.—(1) Upon the permanent cessation of use of the authorised development or, in any event, by not later than forty-nine years after the start of use of the authorised development, whichever is the earlier, a scheme of restoration and aftercare must be submitted for approval in writing by the relevant planning authority.

(2) The scheme must include—

- (a) any proposed future uses for the relevant authorised development site;
- (b) details of structures and buildings to be demolished and retained;
- (c) details of the means of removal of materials of demolition;
- (d) phasing of demolition and removal;
- (e) details for the remediation of ponding; and
- (f) details of restoration works and phasing thereof.

(3) The approved scheme must be implemented in full by not later than 24 months after the date of the relevant planning authority's written approval.

Decommissioning

18.—(1) Subject to sub-paragraph (2), in the event that no gas is stored within any of the cavities within a period of 10 years following the completion of all solution mining works comprising part of the authorised development, a scheme detailing the appropriate measures for decommissioning of the authorised development must be submitted to the relevant planning authority for approval.

(2) Not later than ten years after the start of use of the authorised development a scheme detailing the appropriate measures for decommissioning of the pipe bridge and diffuser forming part of Work No. 10 must be submitted to the relevant planning authority for approval.

(3) A scheme approved under sub-paragraph 17(1) or 17(2) must be implemented in full within 24 months of its approval by the relevant planning authority.

Requirement for written approval

19. Where under any of the above requirements the approval or agreement of the relevant planning authority is required that approval or agreement must be given in writing and not unreasonably withheld.

Amendments to approved details

20.—(1) With respect to the parameters specified in requirement 2 and any other plans, details or schemes which require approval by the relevant planning authority pursuant to any other requirement (the “Approved Plans, Parameters, Details or Schemes”), the undertaker may submit to the relevant planning authority for approval any amendments to the Approved Plans, Parameters, Details or Schemes and following any such approval by the relevant planning authority the Approved Plans, Parameters, Details or Schemes are to be taken to include the amendments approved pursuant to this subparagraph.

(2) Approval under sub-paragraph (1) for amendments to the parameters identified in requirement 2 above must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought does not give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

European protected species

21.—(1) No part of authorised development shall commence until final pre-construction survey work has been carried out to establish whether a European protected species is present on any of the land affected, or likely to be affected, by that part or in any of the trees and shrubs to be lopped or felled during construction of that part.

(2) Where a European protected species is shown to be present, the relevant part of the authorised development shall not begin until, after consultation with Natural England and the relevant planning authority, a scheme of protection and mitigation measures has been submitted to and approved in writing by the relevant planning authority.

(3) Unless otherwise agreed in writing by the relevant planning authority after consultation with Natural England, the undertaker shall implement the protection and mitigation measures approved under sub-paragraph (2).

(4) In this requirement European protected species has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010 (as amended).

Conveyance of gas, water and brine

22. Save for potable water, fluids used for drilling operations and waste process fluids from the gas processing plant, all natural gas, water and brine for use in, stored within or produced by the authorised development must be conveyed to and from the authorised development only by pipeline.

Environmental management system for normal operation

23. The authorised development may not be used for gas storage until the undertaker has implemented an environmental management system compliant with ISO 14001 or an equivalent recognised standard.

Control of radio emissions

24.—(1) — No part of the authorised development shall be commenced until a control of radio emissions plan has been submitted to and approved in writing by the relevant planning authority, after consultation with the University of Manchester, (a Royal Charter corporation registered under number RC000797), of Oxford Road, Manchester, M13 9PL .

(2) The control of radio emissions plan must include a scheme to ensure that the authorised development operates at all times so the total radiated power emitted from the gas processing plant, Work No 14, does not exceed the following limits, integrated across the total bandwidths in Table 13 below.

Table 13

<i>Centre Frequency in MHz</i>	<i>Bandwidth in MHz</i>	<i>in Limit from ITU-R 769 (Table 1) in dBW</i>	<i>Path loss in dB</i>	<i>Effective Isotropic Radiated Power in specified bandwidth in dBW</i>
151.525	2.95	-199	115.8	-83.2
325.3	6.6	-201	122.4	-78.6
408.05	3.9	-203	124.4	-78.6
611	6	-202	127.9	-74.1
1413.5	27	-205	135.2	-69.8
1665	10	-207	136.6	-70.4
2695	10	-207	140.8	-66.2
4995	10	-207	146.2	-60.8

(3) The control of radio emissions plan shall also include the following—

- (a) a scheme to establish and operate a liaison forum between the undertaker, the relevant planning authority and the University of Manchester, to meet at least annually to discuss and to seek, without prejudice to any enforcement powers held by the planning authority, the resolution of any issues raised by any party relating to the effect of radio emissions from the authorised development;
- (b) a scheme to secure the testing of equipment and plant prior to the commencement of operations at the gas processing plant, Work No 14, so as to ensure compliance with sub-paragraph (2);
- (c) a scheme to secure any mitigation measures which are required to ensure compliance with sub-paragraph (2); and
- (d) a scheme to secure the monitoring of radio emissions to demonstrate compliance with sub-paragraph (2) during the normal operation of equipment and plant at the gas processing plant, Work No 14, including provision for reporting to the relevant planning authority and the University of Manchester on an annual basis and on reasonable request.

(4) The undertaker must—

- (a) implement the control of radio emissions plan and associated schemes approved in accordance with sub-paragraphs (2) and (3); and
- (b) ensure that the authorised development operates at all times in accordance with the limits in sub-paragraph (2).

SCHEDULE 3

Article 10

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Subject to street works</i>
County of Cheshire, District of Cheshire West and Chester	Yatehouse Lane For the purposes of Works Nos.: 5A, 5B, 5C, 5D, 6, 19B and 22. (drawing nos. 13-03-01/HOL/24/324, 325, 326) Where crossed by the authorised development within the Order limits.
County of Cheshire District of Cheshire West and Chester	Drakelow Lane For the purposes of Work Nos.: 5A, 5B, 5C, 5D, 6, 22, 28B, 29A and 29B. (drawing nos.13-03-01/HOL/24/322, 323) Where crossed by the authorised development within the Order limits.
County of Cheshire District of Cheshire West and Chester	Rudheath RB7 For the purposes of Work Nos.:5A, 5B, 5C, 5D, 6, 22, 26, 28B, 29A and 29B. (drawing nos. 13-03-01/HOL/24/322 and 327) Where crossed by the authorised development within the Order limits.

SCHEDULE 4

Article 11

STREETS SUBJECT TO ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
County of Cheshire, District of Cheshire West and Chester	Yatehouse Lane	Formation of permanent gated highway access with visibility splay including, removal of hedgerow, altering of carriageway alignment and verge for the purpose of Work No.: 6 and optional change to bellmouth of existing access point (drawing No.: 13-03-01/HOL/24/407).
County of Cheshire, District of Cheshire West and Chester	Drakelow Lane	Formation of two new gated highway accesses with visibility splay including removal of hedgerow, altering of carriageway alignment and verge for the purpose of Work No.: 6 (drawing No.:13-03-01/HOL/24/408).

SCHEDULE 5

Article 13 and 31

STREETS AND RIGHT OF WAY TO BE TEMPORARILY STOPPED UP

<i>(1)</i> Area	<i>(2)</i> Street to be temporarily stopped up	<i>(3)</i> Extent of temporary stopping up
County of Cheshire, District of Cheshire West and Cheshire	Yatehouse Lane	For the purposes of Works Nos.:5A, 5B, 5C, 5D, 6, 19B.
		For a distance of 168m measured between points 5 and 6 on the street works and access plan (see drawing No.: 13-03-01/HOL/24/413).
		For a distance of 126m measured between points 7 and 8 on the street works and access plan (See drawing No.:13-03-01/HOL/24/413.
		For a distance of 120m measured between points 9 and 10 on the street works and access plan (see drawing No.: 13-03-01/HOL/24/413).
	Drakelow Lane	For the purposes of Work Nos.:5A, 5B, 5C, 5D, 6, 22, 28B, 29A and 29B
		For a distance of 54m measured between points 1 and 2 on the street works and access plan (see drawing No.: 13-03-01/HOL/24/413).
		For a distance of 152m measured between points 3 and 4 on the street works and access plan (see drawing No.: 13-03-01/HOL/24/413).
	Restricted Byway (RB7)	For the purposes of Work Nos.:5A, 5B, 5C, 5D, 6, 22, 26, 28B, 29A and 29B- Rudheath RB7 – temporary stopping up of 195m, as shown on drawing No.:13-03-01/HOL/24/327.

SCHEDULE 6

Article 14

ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
County of Cheshire, District of Cheshire West and Chester	<p>Holford, site private road access / egress and crossing of Yatehouse Lane formed within Work No.:6. Access to site access road from Yatehouse Lane and crossing of Yatehouse Lane and egress from the site private access road to Yatehouse Lane as shown on the streets and access plan between points 5 and 6 (see drawing No.:13-03-01/HOL/24/413).</p> <p>Holford, site private road access / egress and crossing of Drakelow Lane formed within Work No.:6. Access to private access from Drakelow Lane and crossing of Drakelow Lane and egress from the site private access road to Drakelow Lane as shown on the streets and access plan between points 3 and 4. (see drawing No.:13-03-01/HOL/24/413).</p>

SCHEDULE 7

Article 19

TEMPORARY CLOSURE AND WORKS IN THE CANAL

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Land affected</i>	<i>(3)</i> <i>Purpose of temporary closure</i>
The Borough of Halton, County of Cheshire	The area of the Weaver Navigation Canal as shown hatched in black on drawing No.:13-03-01/HOL/24/236	For the purposes of Work No.:10 as set out in Schedule 1.

SCHEDULE 8

Articles 27 & 28

LAND OF WHICH TEMPORARY POSSESSION MAYBE TAKEN

<i>(1)</i> Area	<i>(2)</i> Number of land shown on land plan	<i>(3)</i> Purpose for which temporary possession maybe taken	<i>(4)</i> Relevant part of the authorised development
District of Cheshire West and Chester County of Cheshire	1.04 to 1.19	Construction and carrying out of the authorised development, including; provision of wellhead compounds for storage of equipment; provision of pipeline, cable and site access road networks; worksite; landscaping; and access for these same purposes.	Work Nos.: 2U, 2T, 2S, 5A, 5B, 5C, 5D, 6, 22 and 35
District of Cheshire West and Chester County of Cheshire	2.04 to 2.16	Construction and carrying out of the authorised development, including; provision of wellhead compounds for storage of equipment; provision of pipeline cable and site access road networks; worksite; landscaping; and access for these same purposes.	Work Nos.: 2P, 2Q, 2R, 5A, 5B, 5C, 5D, 6, 22, 31, 34 and 35
District of Cheshire West and Chester County of Cheshire	3.03 to 3.11	Construction and carrying out of the authorised development, including; provision of wellhead compounds for storage of equipment; provision of pipeline cable and site access road networks; worksite; landscaping; and access for these same purposes.	Work Nos.: 2M, 2N, 5A, 5B, 5C, 5D, 6, 22 and 35
District of Cheshire West and Chester County of Cheshire	4.02 to 4.06	Construction and carrying out of the authorised development, including; provision	Work Nos.: 2K, 5A, 5B, 5C, 5D, 6, 22 and 35

		of wellhead compounds for storage of equipment; provision of pipeline cable and site access road networks; worksite; landscaping; and access for these same purposes.	
District of Cheshire West and Chester County of Cheshire	5.01	Construction and carrying out of the authorised development, including; provision and fit-out of gas marshalling compound; provision of pipeline, cable and site access road networks; diversion of overhead power lines; worksite; and access for these same purposes.	Work Nos.: 5A, 5B, 5C, 5D, 6, 19B and 22

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

Application

1. For the protection of the undertaker referred to in this Part of this Schedule the following provisions will, unless otherwise agreed in writing between the promoter and the undertaker, have effect.

Interpretation

2. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means a third party liability insurance effected and maintained by the promoter with a limit of indemnity of not less than £25,000,000.00 (Twenty-Five Million Pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider”, such policy shall include (but without limitation)—

- (a) National Grid Electricity Transmission Plc and National Grid Gas Plc as a Co-Insured;
- (b) a cross liabilities clause; and
- (c) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (Ten Million Pounds) per event or £20,000,000.00 (Twenty Million Pounds) in aggregate;

“acceptable security” means either—

- (a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc and National Grid Gas Plc to cover the promoter’s liability to National Grid Electricity Transmission Plc and National Grid Gas Plc to a cap of not less than £10,000,000.00 (Ten Million Pounds) per asset per event up to a total liability cap of £25,000,000.00 (Twenty-Five Million Pounds) (in a form reasonably satisfactory to the undertaker and where required by the undertaker, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc and National Grid Gas Plc to cover the promoter’s liability to National Grid Electricity Transmission Plc and National Grid Gas Plc for an amount of not less than £10,000,000.00 (Ten Million Pounds) per asset per event up to a total liability cap of £25,000,000.00 (Twenty-Five Million Pounds) (in a form reasonably satisfactory to the undertaker);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the undertaker to enable the undertaker to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply,

together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of the undertaker for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 of this order and commencement shall be construed to have the same meaning;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by the undertaker (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the promoter to submit for the undertaker’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the promoter acceptable to and which shall have been approved by the Undertaker acting reasonably

“promoter” means the undertaker as defined in article 2 of this Order;

“undertaker” means, as appropriate—

- (a) an electricity undertaker being a licence holder within the meaning of Part 1 of the Electricity Act 1989; and
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986.

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the promoter under paragraph 7(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the promoter under paragraph 7(2) or otherwise; and/or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (the undertaker’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”);

3. Except for paragraphs 4 (*apparatus in stopped up streets*), 9 (*retained apparatus: protection*), 11 (*expenses*) and 12 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the undertaker, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the promoter and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of Undertakers in stopped up streets

4.—(1) Without prejudice to the generality of any other protection afforded to the undertaker elsewhere in the Order, where any street is stopped up under the Order, if the undertaker has any apparatus in the street or accessed via that street the undertaker will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the promoter will grant to the undertaker, or will procure the granting to the statutory undertaker of, legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (*temporary prohibition or restriction of use of streets*), an undertaker will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5.—(1) The promoter, in the case of the powers conferred by article 17 (*protective work to buildings*), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of the undertaker and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of the undertaker or any interruption in the supply of electricity and/or gas, as the case may be, by the undertaker is caused, the promoter must bear and pay on demand the cost reasonably incurred by the undertaker in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to the undertaker for any loss sustained by it; and
- (b) indemnify the undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that undertaker, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the promoter with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of an undertaker or its contractors or workmen; and the undertaker will give to the promoter reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by the undertaker, save in respect of any payment required under a statutory

compensation scheme, without first consulting the promoter and giving the promoter an opportunity to make representations as to the claim or demand.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the promoter may not acquire any land interest or apparatus or override any easement and/or other interest of the undertaker otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between the undertaker and the promoter) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of the undertaker and/or affects the provisions of any enactment or agreement regulating the relations between the undertaker and the promoter in respect of any apparatus laid or erected in land belonging to or secured by the promoter, the promoter must as the undertaker reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between the undertaker and the promoter acting reasonably and which must be no less favourable on the whole to the undertaker unless otherwise agreed by the undertaker, and it will be the responsibility of the promoter to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The promoter and the undertaker agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by the undertaker and/or other enactments relied upon by the undertaker as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by the undertaker under paragraphs 9 or 10 or any other paragraph of this Part of this Schedule shall not be taken to constitute agreement under paragraph 6.

Removal of apparatus

7.—(1) If, in the exercise of the agreement reached in accordance with paragraph 6 or in any other authorised manner, the promoter acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the undertaker in question in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the promoter requires the removal of any apparatus placed in that land, it must give to the undertaker 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the undertaker reasonably needs to remove any of its apparatus) the promoter must, subject to sub-paragraph (3), afford to the undertaker to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the promoter; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the promoter, or the promoter is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or

part of such apparatus is to be constructed, the undertaker must, on receipt of a written notice to that effect from the promoter, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for the undertaker to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the promoter under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the undertaker and the promoter.

(5) The undertaker must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the promoter to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the promoter affords to or secures for the undertaker facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the promoter and the undertaker and must be no less favourable on the whole to the undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by the undertaker.

(2) If the facilities and rights to be afforded by the promoter and agreed with the undertaker under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 16 (*Arbitration*) of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the promoter to the undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Gas Undertakers

9.—(1) Not less than 56 days before the commencement of any specified works the promoter must submit to the undertaker a plan and, if reasonably required by the undertaker, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to the undertaker under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The promoter must not commence any works to which sub-paragraphs (1) and (2) apply until the undertaker has given written approval of the plan so submitted.

(4) Any approval of the undertaker required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,

(b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, the undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the promoter and the undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker will be entitled to watch and inspect the execution of those works.

(7) Where the undertaker requires any protective works to be carried out by itself or by the promoter (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to the undertakers' satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and the undertaker must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If the undertaker in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the promoter, reasonably requires the removal of any apparatus and gives written notice to the promoter of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the promoter under paragraph 7(2).

(9) Nothing in this paragraph precludes the promoter from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The promoter will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the undertaker notice as soon as is reasonably practicable and a plan of those works and must—

(a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with the undertaker's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the promoter shall implement an appropriate ground mitigation scheme save that the undertaker retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

Retained apparatus: protection of Electricity Undertakers

10.—(1) Not less than 56 days before the commencement of any authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by the promoter under paragraph 7(2) or otherwise, the promoter must submit to the undertaker a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to the undertaker under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by the undertaker's engineers;
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The promoter must not commence any works to which sub-paragraphs (2) or (3) apply until the undertaker has given written approval of the plan so submitted.

(5) Any approval of the undertaker required under sub-paragraphs (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, the undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the promoter and the undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker will be entitled to watch and inspect the execution of those works.

(8) Where the undertaker requires any protective works to be carried out by itself or by the promoter (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to the undertakers' satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and the undertaker shall give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If the undertaker in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the promoter, reasonably requires the removal of any apparatus and gives written notice to the promoter of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the promoter under paragraph 7(2).

(10) Nothing in this paragraph precludes the promoter from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The promoter will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the undertaker notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the promoter must comply with the undertaker's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

11.—(1) Subject to the following provisions of this paragraph, the promoter must pay to the undertaker on demand all charges, costs and expenses reasonably anticipated or incurred by the undertaker in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by the undertaker in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by the undertaker as a consequence of the undertaker;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); and/or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting the undertaker;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the promoter or, in default of agreement, is not determined by arbitration in accordance with article 40 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the undertaker by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the promoter.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

12.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the promoter or in consequence of any act or default of the promoter (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the promoter under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of the undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the undertaker, or the undertaker becomes liable to pay any amount to any third party, the promoter will—

- (a) bear and pay on demand the cost reasonably incurred by the undertaker in making good such damage or restoring the supply; and
- (b) indemnify the undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the undertaker, by reason or in consequence of any such damage or interruption or the undertaker becoming liable to any third party as aforesaid other than arising from any default of the undertaker.

(2) The fact that any act or thing may have been done by the undertaker on behalf of the promoter or in accordance with a plan approved by the undertaker or in accordance with any requirement of the undertaker or under its supervision will not (unless sub-paragraph (3) applies), excuse the promoter from liability under the provisions of this sub-paragraph (1) unless the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the promoter in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of the undertaker, its officers, servants, contractors or agents; and

- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by the undertaker as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (*consent to transfer benefit of order*) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11.

(4) The undertaker must give the promoter reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the promoter and considering their representations.

(5) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by the undertaker or in respect of which the undertaker has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of the undertaker’s apparatus until the following conditions are satisfied—

- (a) unless and until the undertaker is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the promoter has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and the undertaker has confirmed the same to the promoter in writing; and
- (b) unless and until the undertaker is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the promoter has procured acceptable insurance (and provided evidence to the undertaker that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and undertaker has confirmed the same in writing to the promoter.

(6) In the event that the promoter fails to comply sub-section (5) nothing in this Part of this Schedule shall prevent the undertaker from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

13. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the undertaker and the promoter, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the promoter and the undertaker in respect of any apparatus laid or erected in land belonging to the promoter on the date on which this Order is made.

Co-operation

14.—(1) Where in consequence of the proposed construction of any of the authorised works, the promoter or an undertaker requires the removal of apparatus under paragraph 7(2) or an undertaker makes requirements for the protection or alteration of apparatus under paragraphs 9(5), 9(7), 10(6) or 10(8), the promoter shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the undertaker’s undertaking and each undertaker shall use its best endeavours to co-operate with the promoter for that purpose.

(2) For the avoidance of doubt whenever the statutory undertaker’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

15. If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the promoter must provide such alternative means of access to such apparatus as will enable the undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

16. Save for differences or disputes arising under paragraph 7(2), 7(4), 8(1), 9 and 11(5) any difference or dispute arising between the promoter and the undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the promoter and the undertaker, be determined by arbitration in accordance with article 40 (*arbitration*).

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

17. For the protection of the operator referred to in this part of this Schedule, the following provisions, unless otherwise agreed in writing between the undertaker and the operator concerned, is to have effect.

18. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

“electronic communications code network” means –

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network;

19. The exercise of the powers conferred by article 29 (statutory undertakers) is subject to paragraph 23 of Schedule 2 of the Telecommunications Act 1984.

20.—(1) Subject to paragraphs 20(1) and 20(2), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or
- (b) there is any interruption in the supply of the service provided by an operator,
the undertaker must bear and pay the reasonable and proper costs incurred by the operator in making good such damage or restoring the supply as the case may be and must make

proper and reasonable compensation to an operator for any other expenses, loss, damaged, penalty or costs incurred by it.

(2) Nothing in paragraph 20(1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

21. This part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

22. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF THE CANAL & RIVER TRUST

23. The following provisions are to have effect for the protection of the Canal & River Trust, unless otherwise agreed in writing between the undertaker and the Canal & River Trust.

24. In this part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by the Canal & River Trust and approved by the undertaker for the purposes of this Order;

“Canal & River Trust” means the Canal & River Trust acting as a trustee of the Waterways Infrastructure Trust or any successor body performing the same functions which holds and waterways within the order limits;

“code of practice” means the Code of Practice for Works Affecting the Canal & River Trust April 2016 as amended from time to time;

“detriment” means any damage to the waterway or any other property of the Canal & River Trust caused by the presence of the authorised works and, without prejudice to the generality of that meaning, includes—

- (a) any effect on the stability of the Canal & River Trust property or the safe operation of any waterway;
- (b) any obstruction of, or interference with, or hindrance or damage to, navigation or to any use of the waterway (including towing paths);
- (c) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (d) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (e) the pollution of the waterway;
- (f) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
- (g) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in the Canal & River Trust network);

(h) any interference with the exercise by any person of rights over the Canal & River Trust's network;

“plans” includes sections, designs, design data, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), programmes and details of the extent, timing and duration of any proposed use and/or occupation of any Canal & River Trust property;

“specified work” means so much of Work No. 10 as is situated upon, across, under, over or within 15 metres of, or may in any way affect the waterway;

“waterway” means the canal within the order limits and includes any pond or other waterway or course situated on Canal & River Trust property, any works, services, apparatus, equipment, lands (including subsoil) or premises belonging to or under the control of the Canal & River Trust and held or used by it in connection with its statutory functions.

25.—(1) Where under this part of this schedule or anywhere else under this Order the Canal & River Trust (or the engineer) is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that the Canal & River Trust must observe the provisions of its code of practice for works affecting waterways and where the code of practice is adhered to and its provisions observed, such consent must not be unreasonably withheld. For the avoidance of doubt, any consent may be issued subject to reasonable conditions including any condition which required compliance with the code of practice or any applicable part thereof and in respect of article 16 (discharge of water), it is reasonable to impose the following conditions—

- (a) requiring the payment of such charges as are typically charged by the owner of the relevant waterway;
- (b) specifying the maximum volume of water which may be discharged in any period; and
- (c) authorising the Canal & River Trust on giving reasonable notice (except in an emergency, when the Canal & River Trust may require immediate suspension) to the undertaker 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 of the Canal & River Trust

(2) In so far as any specified work or the acquisition of rights under and/or over or use of the Canal & River Trust property is or may be subject to the code of practice, the Canal & River Trust must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from that code; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of that code and the proper implementation of the authorised development pursuant to this Order.

26.—(1) The undertaker must not exercise the powers conferred by article 20 (compulsory acquisition of land) or the powers conferred by section 11(3) of the 1965 Act against the Canal & River Trust in respect of any Canal & River Trust property.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any of the Canal & River Trust property, unless preventing such access is with the consent of the Canal & River Trust.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by article 29 (statutory undertakers) to this Order, in relation to any right of access of the Canal & River Trust to Canal & River Trust property, but such right of access may be diverted with the consent of the Canal & River Trust.

(4) The undertaker shall not exercise any power conferred by this Order to discharge water into the waterway under article 16 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Canal & River Trust, save as to surface water discharge which will not require the consent of the Canal & River Trust.

(5) The undertaker shall not exercise the powers conferred by article 18 of this Order in relation to the waterway unless such exercise is with the consent of the Canal & River Trust.

27.—(1) The undertaker must before commencing construction of any specified work or carrying out any works on Canal & River Trust property whatsoever supply to the Canal & River Trust proper and sufficient plans of that work and such further particulars available to it as the Canal & River Trust may within 14 days of the submission of the plans reasonably require for the reasonable approval (having regard to the undertaker's timetable for the construction of the authorised development) of the engineer and the specified work must not be commenced without such approval except in accordance with article 40 (arbitration).

(2) If—

- (a) at the expiry of the period of 28 days beginning on the date on which plans (and any other particulars reasonably required under sub-paragraph (1)) have been submitted to the Canal & River Trust for its consent under sub-paragraph (1); and
- (b) the engineer has not served
 - (i) notice of refusal of those plans; and
 - (ii) the grounds for refusal upon of those plans,

the undertaker may serve upon the engineer a determination notice.

(3) If—

- (a) the undertaker has served a determination notice referred to in paragraph 27 (2) and the period of 14 days from the date of service has expired; and
- (b) the engineer has not served upon the undertaker;
 - (i) notice of refusal of those plans; and
 - (ii) the grounds of refusal,

the engineer is deemed to have approved the plans as submitted.

(4) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph 27(2), the Canal & River Trust gives notice to the undertaker that the Canal & River Trust desires itself to construct any part of a specified work which in the opinion of the engineer may or will cause any detriment in respect of Canal & River Trust property or the safe operation of any waterway, then if the undertaker requires such part of such specified work to be constructed the Canal & River Trust must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision of the undertaker.

(5) When signifying his approval of the plans, the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before commencement of the construction of a specified work to prevent any detriment and such protective works (which for the avoidance of doubt may include requirements to fence any proposed works in order to separate the same from the waterways, ponds or watercourses situated on the Canal & River Trust property either on a permanent or temporary basis) as may be reasonably necessary to prevent detriment must be constructed by the undertaker, as agreed between the parties or settled by arbitration in accordance with article 40 (arbitration) and such protective works must be carried out at the expense of the undertaker with all reasonable dispatch and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

(6) The undertaker shall pay to the Canal & River Trust a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (5) above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewals of the waterway, is reduced in consequence of any such works, a capitalised sum

representing such reasonable saving shall be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

(7) In the event that the undertaker fails to complete the construction of, or part of, the specified works the Canal & River Trust may, if reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph shall state the works that are to be completed by the undertaker and lay out a timetable for the works' completion. If the undertaker fails to comply with this notice within 35 days, the Canal & River Trust may construct any of the specified works, or part of such works (together with any adjoining works) in order to complete the construction of, or part of, the specified works and the undertaker shall reimburse the Canal & River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

28. The undertaker shall not use any land or property of the Canal & River Trust forming part of the waterway for the passage or siting of vehicles, plant and machinery employed in the construction of the specified works other than—

- (a) with the consent in writing of the engineer whose consent shall not be unreasonably withheld; and
- (b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—
 - (i) for the prevention of the detriment; or
 - (ii) in order to avoid or reduce any inconvenience to the Canal & River Trust, its officers and agents and all other persons lawfully on such land or property, but nothing in this paragraph shall apply in relation to anything done in accordance with any approval given by the Canal & River Trust under paragraph 27.

29.—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the undertaker shall bear the reasonable cost of the carrying out by a qualified engineer (“the surveyor”), to be approved by the Canal & River Trust and the undertaker, of a survey including a dip-survey to measure the depth of the waterway (“the survey”) of so much of the waterway and any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the survey the undertaker shall—

- (a) on being given reasonable notice (save in case of emergency, when immediate access shall be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of the undertaker which may provide support for the waterways as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as he may reasonably require with regard to such existing works of the undertaker and to the specified works or the method of their construction.

(3) The reasonable costs of the survey shall include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Schedule shall apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.

(4) Copies of the survey shall be provided to both the Canal & River Trust and the undertaker at no cost to the Canal & River Trust.

30.—(1) Without prejudice to its obligations under the foregoing provisions of this Schedule the undertaker shall consult, collaborate and respond constructively to any approach, suggestion, proposal or initiative made by the Canal & River Trust—

- (a) the design and appearance of the specified works, including the materials to be used for their construction; and
- (b) the environmental effects of those works,

and shall have regard to such views as may be expressed by the Canal & River Trust to the extent that these accord with the requirements of the local planning authority in response to such consultation pursuant in particular to the requirements imposed on the Canal & River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 and to the interest of the Canal & River Trust in preserving and enhancing the environment of its waterways.

(2) Any specified work and any protective works to be constructed must, when commenced, be constructed—

- (a) with all reasonable dispatch (having regard to the undertaker's timetable for construction of the authorised development) in accordance with the plans approved or deemed to have been approved or settled under paragraph 3 and with any requirements made under paragraph 27(5);
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as possible;
- (d) in such a manner to ensure that no materials are discharged or deposited into any stream, watercourse, waterway, pond or any other water feature on or forming part of the Canal & River Trust property otherwise than in accordance with article 16 (discharge of water); and
- (e) in such a manner as to cause as little inconvenience as is reasonably practicable to the Canal & River Trust, its officers and agents and all other persons lawfully using the waterway, except to the extent that temporary obstruction has otherwise been agreed by the Canal & River Trust.

(3) If any damage or detriment to the waterway is caused by the carrying out of, or in consequence of the construction of a specified work or protective work, the undertaker must make good such damage and must pay to the Canal & River Trust all reasonable and proper expenses that the Canal & River Trust may incur or may be put and reasonable and proper compensation for any loss which it may sustain by reason of such damage, interference or obstruction.

(4) Nothing in this part of this schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligent act or default of the Canal & River Trust or its servants, contractors or agents or any liability on the Canal & River Trust with respect of any damage, costs, expenses or loss attributable to the negligent act or default of the undertaker or its servants, contractors or agents.

(5) Nothing in this Order shall authorise the undertaker to make or maintain any permanent work in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Canal & River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968 to maintain the waterway.

(6) Following the completion of the construction of the specified works the undertaker shall restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and the Canal & River Trust.

31.—(1) The undertaker shall give to the engineer 30 days' notice of its intention to commence the construction of any of the specified or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Canal & River Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Canal & River Trust's network.

(2) The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified works during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

32.—(1) The undertaker shall provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

(2) The Canal & River Trust, on being given reasonable notice, must afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal & River Trust under this part of this schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker shall reimburse the Canal & River Trust's reasonable costs in relation to the supply of such information.

33.—(1) The undertaker shall not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which may result in the pollution of the waterway or the deposit of materials therein and shall take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

(2) The undertaker must repay to the Canal & River Trust all reasonable and proper fees, costs, charges and expense reasonably incurred by the Canal & River Trust in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work.

34. If at any time during or after the completion of a specified work or a protective work, the Canal & River Trust gives notice to the undertaker informing it that the state of maintenance the work appears to be such waterway that the work is causing or likely to cause detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not to cause such detriment.

35.—(1) The undertaker must pay to the Canal & River Trust all reasonable and proper costs, charges, damages, expenses and losses not otherwise provided for in this part of this Schedule which may be occasioned to and reasonably incurred by the Canal & River Trust—

- (a) by reason of the existence, construction or maintenance of a specified work or protective work; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work,

and the undertaker must indemnify and keep indemnified the Canal & River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraph 35(1)(a) and (b). The fact that any act or thing may have been done by the Canal & River Trust on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervisions or in accordance with any directions or awards of an arbitrator is not (if it was done without negligence on the part of the Canal & River Trust or any person in its employ or of its contractors or agents) to relieve the undertaker from any liability under the provision of this sub-paragraph.

(2) The Canal & River Trust must give the undertaker reasonable notice of any such claim or demand and save as such conduct would be contrary to law no settlement or compromise of such a claim or demand must be made without the prior written consent of the undertaker, such consent not to be unreasonably withheld or delayed.

36. The Canal & River Trust must, on receipt of a written request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim or to be made pursuant to this part of this Schedule.

37. In the assessment of any sums payable to the Canal & River Trust under this part of this Schedule, there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by the Canal & River Trust if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining

the payment of those sums by the undertaker under this part of this Schedule or increasing the sums so payable.

38. The undertaker and the Canal & River Trust may enter into, and carry into effect, agreement for the transfer to the undertaker of –

- (a) any Canal & River Trust property shown on the works and/or land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such Canal & River Trust property; and
- (c) and rights and obligations (whether or not statutory) of the Canal & River Trust relating to any of the Canal & River Trust property or any lands, works or other property referred to in this paragraph.

39. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

40. The undertaker must repay to the Canal & River Trust in accordance with the Canal & River Trust's code of practice all reasonable fees, costs, charges and expenses reasonably incurred by the Canal & River Trust-

- (a) in constructing any part of a specified work on behalf of the undertaker or in constructing any protective works under the provisions of paragraph 27(5) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work or any protective works;
- (c) in respect of the employment or procurement of the services of any persons whom it must be reasonably necessary to appoint for inspecting, signalling, watching and lighting Canal & River Trust property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or incident arising from the construction or failure of a specified work or any protective works;
- (d) in respect of any additional temporary lighting of the Canal & River Trust property in the vicinity of the specified works or any protective works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work or protective work;
- (e) In bringing the specified works or any protective works to the notice of users of the Canal & River Trust's network.

41.—(1) If any permanent or temporary alterations or additions to the Canal & River Trust property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of the Canal & River Trust property, the continued safe operation of the waterway or the prevention of a detriment such alterations and additions may be carried out by the Canal & River Trust and if the Canal & River Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Canal & River Trust the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Canal & River Trust in maintaining, working and, when necessary, renewing any such alternations or additions.

(2) If during the construction of a specified work by the undertaker, the Canal & River Trust gives notice to the undertaker that the Canal & River Trust desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of the Canal & River Trust property or the safe operation of any waterway then, if the undertaker decided that part of the specified work is to be constructed, the Canal & River Trust shall assume construction of that part of the specified work under paragraph 27(4), pay to the Canal & River Trust all

reasonable expenses to which the Canal & River Trust may be put and compensation for any loss which it may suffer by reason of the execution by the Canal & River Trust of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 27, provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing the Canal & River Trust property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

42. Any additional expenses which the Canal & River Trust may reasonably incur in altering, reconstructing or maintaining the waterway under any powers existing at the date when this Order was made by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to the Canal & River Trust.

43.—(1) The fact that any act or thing may have been done by the Canal & River Trust on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator shall not (if it was done without negligence on the part of the Canal & River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(2) Nothing in sub-paragraph (2) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or wilful default of the Canal & River Trust, its officers, servants, contractors or agents.

44. Any difference arising between the undertaker and the Canal & River Trust under this Schedule (other than a difference as to the meaning or construction of this Schedule) shall be referred to and settled by arbitration in accordance with article 40 (arbitration) of this Order.

45. Any capitalised sum which is required to be paid under this Schedule shall be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

PART 4

FOR THE PROTECTION OF SCOTTISH POWER ENERGY NETWORKS

46. For the protection of SPEN the following provisions are, unless otherwise agreed in writing between the undertaker and SPEN, to have effect.

47. In this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable SPEN to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by SPEN;

“functions” includes powers and duties; and

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land.

“SPEN” means Scottish Power Energy Networks Holdings Limited

48. This Schedule does not apply to apparatus in respect of which the relations between the undertaker and SPEN are regulated by the provisions of Part 3 of the 1991 Act.

49. Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any apparatus otherwise than by agreement.

50.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Schedule and any right of SPEN to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of SPEN.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to SPEN written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order SPEN reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to SPEN the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, SPEN shall, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Schedule shall be constructed in such manner and in such line or situation as may be agreed between SPEN and the undertaker or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

(5) SPEN shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 40 (arbitration), and after the grant to SPEN of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to SPEN that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by SPEN, shall be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of SPEN.

(7) Nothing in sub-paragraph (6) shall authorise the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

51.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to SPEN facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and SPEN or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the arbitrator shall—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and

- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or the land for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to SPEN than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator shall make such provision for the payment of compensation by the undertaker to SPEN as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

52.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker shall submit to SPEN a plan, section and description of the works to be executed. Any submission must note the time limits imposed on SPEN under sub-paragraph (3) below.

(2) Those works shall be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by SPEN for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and SPEN shall be entitled to watch and inspect the execution of those works.

(3) Any requirements made by SPEN under sub-paragraph (2) shall be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If SPEN in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (6) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 50(2).

(5) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(6) The undertaker shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to SPEN notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and shall comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

53.—(1) Subject to the following provisions of this paragraph, the undertaker shall repay to SPEN the reasonable expenses incurred by SPEN in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new connection.

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 40 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had

been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to SPEN by virtue of subparagraph (1) shall be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to SPEN in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on SPEN any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

54.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 50(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of SPEN the undertaker is to—

- (a) bear and pay the cost reasonably incurred by SPEN in making good such damage or restoring the supply; and
- (b) make reasonable compensation to SPEN for any other expenses, loss, damages, penalty or costs incurred by SPEN, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of SPEN, its officers, servants, contractors or agents.

(3) SPEN must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

55. Nothing in this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and SPEN in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 5

FOR THE PROTECTION OF HOLFORD GAS STORAGE LIMITED

Application

56. For the protection of the undertaker referred to in this Part of this Schedule the following provisions will, unless otherwise agreed in writing between the promoter and the undertaker, have effect.

Interpretation

57. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means a third party liability insurance effected and maintained by the promoter with a limit of indemnity of not less than £10,000,000.00 (Ten Million Pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider”, such policy shall include (but without limitation)—

- (a) the undertaker as a co-insured;
- (b) a cross liabilities clause; and
- (c) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £4,000,000.00 (Four Million Pounds) per event or £4,000,000.00 (Four Million Pounds) in aggregate;

“acceptable security” means either—

- (a) a parent company guarantee from a parent company in favour of the undertaker to cover the promoter’s liability to the undertaker to a cap of not less than £10,000,000.00 (Ten Million Pounds) per asset per event up to a total liability cap of £10,000,000.00 (Ten Million Pounds) (in a form reasonably satisfactory to the undertaker and where required by the undertaker, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of the undertaker to cover the promoter’s liability to the undertaker for an amount of not less than £10,000,000.00 (Ten Million Pounds) per asset per event up to a total liability cap of £10,000,000.00 (Ten Million Pounds) (in a form reasonably satisfactory to the undertaker);

“apparatus” means cavities, pipelines, cables (electrical and datacoms), roads, compounds and equipment owned by the undertaker and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 of this order and commencement shall be construed to have the same meaning;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“in” in a context referring to apparatus in land includes a reference to apparatus under, over, across, along or upon such land;

“INOVYN Enterprises” means INOVYN Enterprises Limited (Company No. 04651437)

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus of the undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the promoter acceptable to and which shall have been approved by the undertaker acting reasonably

“promoter” means the undertaker as defined in article 2 of this Order;

“undertaker” means Holford Gas Storage Limited (Company No. SC254265).

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the promoter under paragraph 62(2) or otherwise; and/or
- (c) include any of the activities that are referred to in paragraph 13 of the Linewatch’s “Special Requirements for the safe working in close proximity to high pressure pipelines” (Revision No 16.03);

58. Except for paragraphs 59 (*apparatus in stopped up streets*), 62 (*retained apparatus*), 63 (*expenses*) and 64 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the undertaker, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the promoter and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of undertaker in stopped up streets

59.—(1) Without prejudice to the generality of any other protection afforded to the undertaker elsewhere in the Order, where any street is stopped up under the Order, if the undertaker has any apparatus in the street or accessed via that street the undertaker will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the promoter will grant to the undertaker, or will procure the granting to the statutory undertaker of, legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (*temporary prohibition or restriction of use of streets*), an undertaker will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

60. The promoter, in the case of the powers conferred by article 17 (*protective work to buildings*), must exercise those powers in accordance with paragraph 62 of this Part of this Schedule.

Acquisition of land

61.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the promoter may not acquire any land interest or apparatus or override any easement and/or other interest of the undertaker otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between the undertaker and the promoter) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of the undertaker and/or affects the provisions of any enactment or agreement regulating the relations between the undertaker and the promoter in respect of any apparatus laid or erected in land belonging to or secured by the promoter, the promoter must as the undertaker reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between the undertaker and the promoter acting reasonably and which must be no less favourable on the whole to the undertaker unless otherwise agreed by the undertaker, and it will be the responsibility of the promoter to procure and/or secure the consent and entering into of such deeds

and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Any agreement or consent granted by the undertaker under paragraphs 64 or any other paragraph of this Part of this Schedule shall not be taken to constitute agreement under paragraph 61.

Retained apparatus

62.—(1) Not less than 56 days before the commencement of any specified works the promoter must submit to the undertaker a plan in respect of those works.

(2) The plan to be submitted to the undertaker under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The promoter must not commence any works to which sub-paragraphs (1) and (2) apply until the undertaker has given written approval of the plan so submitted.

(4) Any approval of the undertaker required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, the undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the promoter and the undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker will be entitled to watch and inspect the execution of those works.

(7) Where the undertaker requires any protective works to be carried out by itself or by the promoter (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to the undertakers' satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and the undertaker must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) Nothing in this paragraph precludes the promoter from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(9) The promoter will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the undertaker notice as soon as is reasonably practicable by calling the undertaker's emergency telephone line on 02476 183900 or such other telephone number notified by the undertaker to the promoter in

writing and as soon as is reasonably practicable give to the undertaker a plan of those works and must—

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (10) at all times.

(10) At all times when carrying out any works authorised under the Order the undertaker must comply with the undertaker's policies for safe working in proximity to apparatus.

Expenses

63. Subject to the following provisions of this paragraph, the promoter must pay to the undertaker on demand all charges, costs and expenses reasonably incurred by the undertaker in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) the approval of plans;
- (b) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (c) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

Indemnity

64.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance, decommissioning or failure of any of the authorised works by or on behalf of the promoter or in consequence of any act or default of the promoter (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the promoter under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or property of the undertaker, or there is any interruption in any service provided by the undertaker, or the undertaker becomes liable to pay any amount to any third party (including but not limited to INOVYN Enterprises), the promoter will bear and pay on demand the cost reasonably incurred by the undertaker in making good such damage, restoring the supply or paying such amount and indemnify the undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the undertaker, by reason or in consequence of any such damage or interruption or the undertaker becoming liable to any third party as aforesaid provided that at all times the undertaker shall be under an obligation to take reasonable steps to mitigate its loss.

(2) The fact that any act or thing may have been done by the undertaker on behalf of the promoter or in accordance with a plan approved by the undertaker or in accordance with any requirement of the undertaker or under its supervision will not (unless sub-paragraph (3) applies), excuse the promoter from liability under the provisions of this sub-paragraph (1) unless the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the promoter in any circumstances in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of the undertaker, its officers, servants, contractors or agents;
- (b) loss of profits, loss of use, loss of revenue, loss of contract, loss of goodwill, loss of products, loss of productivity, loss of profitability or any indirect or consequential losses of any nature whatsoever save that the sums payable by the promoter under sub-paragraph (1) shall include a sum equivalent to the relevant costs in circumstances where

- (i) the undertaker is liable to make payment of the relevant costs pursuant to the terms of an agreement between the undertaker and a gas storage customer relating to the storage of gas in the undertaker's apparatus; and
- (ii) the existence of that agreement and the extent of the undertaker's liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the promoter

But not otherwise.

(4) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by the undertaker or in respect of which the undertaker has an easement, wayleave or lease for its apparatus or any other interest or to carry out any works within 15 metres of the undertaker's apparatus until the following conditions are satisfied—

- (a) unless and until the undertaker is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the promoter has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and the undertaker has confirmed the same to the promoter in writing; and
- (b) unless and until the undertaker is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the promoter has procured acceptable insurance (and provided evidence to the undertaker that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and undertaker has confirmed the same in writing to the promoter.

(5) In the event that the promoter fails to comply with sub-section (4) nothing in this Part of this Schedule shall prevent the undertaker from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

(6) "relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by a gas storage customer as a consequence of any restriction of the use of the undertaker's apparatus as a result of the construction, maintenance or failure of any specified works or any such act or omission as mentioned in sub-paragraph (1); "gas storage customer" means any person licensed to ship, transmit, distribute or supply gas under the Gas Act 1986.

Co-operation

65.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker makes requirements for the protection or alteration of apparatus under paragraphs 64(5) or 64(7), the promoter shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe, efficient and economic operation of the undertaker's apparatus and the undertaker shall use its best endeavours to co-operate with the promoter for that purpose.

(2) For the avoidance of doubt whenever the undertaker's consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

66. If in consequence of the agreement reached in accordance with paragraph 61(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the promoter must provide such alternative means of access to such apparatus as will enable the undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

67. Any difference or dispute arising between the promoter and the undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the promoter and the undertaker, be determined by arbitration in accordance with article 40 (*arbitration*).

EXPLANATORY NOTE

(This note is not part of the Order)

The Order

This Order authorises Keuper Gas Storage Limited (referred to as “the undertaker”) to construct and operate an underground gas storage facility at Holford Brinefield, Cheshire.

The Order permits the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose. The Order also makes provision in connection with the maintenance of the authorised development.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 35 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at the Planning Reception Desk, Cheshire West and Chester, HQ, Nicholas Street, Chester, CH1 2NP.