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Paul Zyda

Your Ref:

Zyda Law on behalf of
Keuper Gas Storage Limited

Our Ref: EN030002

Date: 24 September 2015

Dear Mr Zyda,

Planning Act 2008 (as amended) – Section 51

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

The Planning Inspectorate's comments on the Applicant's pre-application core draft documents

Further to your submission of a third suite of core draft DCO application documents on 1 September 2015. Please find attached to this letter the Planning Inspectorate's comments on the core draft documents for the Keuper Gas Storage Project.

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

Annex 1 – Planning Inspectorate's comments

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

Yours sincerely

Tracey Williams

Tracey Williams
Case Manager

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.

Annex 1

EN030002 - Keuper Gas Storage Project

Planning Inspectorate's comments on core draft application documents submitted in September 2015.

Consultation Report (CR)

- In your letter of 11 September 2015 you provided some narrative paragraphs which will be included in the CR to explain your approach to consultation in light of the changes to the Order Limits. The explanation seems clear; however, it will need to be supported by the evidence, for example providing us with copies of the information you are sending out. Especially as you state the following:
 - *'The reduction does not represent a very substantial change in the proposals for the KGSP. On the contrary, the proposals have not changed at all. The revised DCO Order Limits merely reflect the fact that no development is proposed in the areas that have been removed. As such, in KGSL's view, the reduction of the DCO Order Limits does not materially change the KGSP or materially change its impacts.'*
- In another paragraph you refer to *'the September 2015 Statutory consultation exercise'* which you discussed with us at the update project meeting on 15 July 2015;

[Meeting note of discussion on comments made on the second review of draft documents.](#)

- We advise that evidence in relation to the further consultation is provided in a separate Annex to the CR, such as a map showing the revised DCO Order Limits (as mentioned already), any updates from your project website, covering letter to the consultees, any responses and a list of consultees who have been consulted.
- You also state that you are actively seeking the views of Cheshire West and Chester Council on the consultation. It would be beneficial if any correspondence to that effect was included in an Appendix to the CR.

Book of Reference (BoR), v3, August 2015, compared to v2, May 2015.

- Information relating to s152 (3) alternative mechanism for compensation in regarding Category 3 persons) and 158 (a defence of statutory authority against civil or criminal actions for nuisance in respect of any of the authorised works) of the PA2008 has now been removed. But KGSL's reasoning remains.
- Also, the previous paragraph 1.18 (explaining / identifying rights within the

Land Plans) has been simplified and Table 1 has now been inserted on page 2. This provides a clear distinction between various rights to be acquired and nature of interest. The following Classes of rights are listed:

- Class A (freehold) – pursuant to Article 19 of the Order
 - Class B (subsurface freehold only) – pursuant to Articles 19 and 22
 - Class C (surveys) – pursuant to Article 21
 - Class D (construction) – pursuant to Article 21, and
 - Class E (access road) – pursuant to Article 21.
- Plot numbers appear to be fine but you should check they correspond accurately against the Plans.
 - It would assist PINS with compiling the Interested Parties mail list if you could provide an Excel spreadsheet with names and addresses for service of all Affected Persons, listed in the BoR.
 - May I refer you to Paragraph 8 of the DCLG Guidance 'Planning Act 2008: procedures for the compulsory acquisition of land' - *'The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The applicant will also need to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate.'*
 - Also a person entitled to enjoy easements or other private rights over land which the applicant proposes to extinguish, suspend or interfere with identified in Part 3 should also be recorded in Part 1 as a person within Categories 1 or 2 as set out in section 57 of the Planning Act 2008.

Statement of Reasons (SoR), revision 4 (4.2 V4), August 2015.

- Paragraph 1.3, page 7 – reference to the Statement of Funding (Doc Ref: 4.2) which will explain the relationship between various companies.
- Paragraphs 1.5 – 1.8, pages 8 – 10 provide more detailed information.
- You may wish to amend the BoR text where you refer to the deceased person. You may wish to change it to *'the estate of Mr.....'*

Statement of Funding (SoF), revision 3.1

- Schedule 1 provides an overview of the Corporate Relationship, showing the ultimate parent company ownership, as referred to in paragraph 1.3, page 7 of the Statement of Reasons. Please note that the SoF is currently reference

number **3.2** but Statement of Reasons states reference **4.2** so it would be advisable to double check the accuracy of referencing before submission.

Draft Development Consent Order (DCO)

- We understand that whilst you are still working on the draft DCO it is not on the Statutory Instrument template. Just to remind you that the submitted draft DCO will need to be completed on the SI template.
- Please note that Schedules should follow the order in which they are introduced (see paragraph 8.2 Advice Note 15) which means that the Requirements should be in Schedule 2.
- The use of “shall” should be avoided (see paragraph 2.1 of Advice Note 15).
- The power to “maintain” should be limited to the extent of works environmentally assessed (see paragraph 20 of Advice Note 15).
- Article 28 authorises compulsory acquisition of statutory undertaker land/interference with apparatus and acquisition of new rights. The Secretary of State will be unable to authorise compulsory acquisition or interference etc. (in some circumstances) unless satisfied of certain matters under sections 127 and 138 of the Planning Act 2008.
- Ideally the Statement of Reasons should identify the statutory undertakers affected (and confirm whether they are statutory undertakers for the purposes of s127), identify the plots of land affected and (to simplify) by reference to s127 and 138 make the case that:
 - (1) land can be purchased and not replaced without serious detriment to the carrying on of the undertaking,
 - (2) or a new right created without serious detriment to the undertaking, or
 - (3) extinguishment of the relevant right, or the removal of the relevant apparatus is necessary for the purpose of carrying out the development to which the order relates.
- The certification Article (34) should ideally set out titles and number of plans and documents referred to (see paragraph 11 of Advice Note 15). The phrase “any other plans or documents” should be avoided.
- Is it appropriate to include paragraph (3) (meaning of statutory undertaker) within Article 37 (appeals relating to decisions)?
- Article 40 provides protections for the Crown. However, the Book of Reference indicates that no Crown land is affected by the development.
- Schedule 1 is conventionally used to describe the project with Part 2 of

Schedule 1 used to describe any ancillary works not being development. It is not therefore appropriate to list plans in this part of the DCO. It would be better to list the approved plans in a separate plans schedule which should be checked thoroughly to ensure that plan titles and numbers accurately reflect the actual plans.

- Requirements - tailpieces such as “unless otherwise approved” should not be drafted in a way which might allow the LPA to dispense entirely with the need for a detailed scheme or allow the development to stray outside the scope of the development assessed and examined (see paragraph 19.4 of AN16). This would appear to be the case with Requirements 18 and 10. In any event, the need for flexibility should be justified in the Explanatory Memorandum (EM).
- Please check that the definitions of “commence” and “maintain” are the same as described in the Explanatory Memorandum.
- Schedule 1
 - Conventionally in DCOs made to date “authorised project” is defined as meaning the authorised development (listed in Part 1) and any ancillary works not being development (listed in Part 2). It would not be appropriate therefore to use “authorised project” to describe authorised development and associated development. Part 1 should ideally distinguish between principal development and associated development.
- Schedule 9
 - Requirement 12 – notwithstanding this requirement, the DCO does not authorise any extinguishment or diversion of a public right of way.

Explanatory Memorandum (EM)

- “The Order seeks consent for the associated development detailed at Part 2 of the Order.” – Part 2 of Schedule 1 lists approved plans not associated development; also see below.
- See earlier comments on the DCO and suggestions for incorporating further justification in the EM.

Plans

- Land Plans - the plans which are described as Land Plans don't identify land where rights are to be extinguished. See Regulation 5(2)(i) of the APFP. This would be the plots of land which are shown in part 3 of the BoR which provides “names of all those entitled to enjoy easements or other private rights over land (including private rights of navigation over water) which it is proposed shall be extinguished, suspended or interfered with”.
- Works Plans - the legend (key) on Plans 13-3-1/HOL/24/100 to 107 should read Order limits boundary not “DCO redline boundary” because this definition has

now meaning in the Planning Act statutory framework. Plans 13-03-01/HOL/24/501 to 519 are not titled "works plans".

Land Plans – sheets: 610–617

- Plans are well laid out and colour has been used well to clearly show rights to be acquired. The plots as depicted on the land plans match up with those in the Book of Reference (BoR), including the types of rights to be acquired.
- Plan 615 – There is a green boundary surrounding Drakelow Lane; however, the legend (key) doesn't stipulate what this signifies (the lane is shown unshaded – is it outside of the order limits?)
- Plan 617
 - Plot 1.11– the BoR states that the applicant only wishes to acquire the subsurface freehold on this plot (class 'B' in Table 1), on the Land Plan (sheet 617) the plot is shaded with pink stripes on a white background. The legend (key) on this plan doesn't indicate shading for only type 'B' rights or explain what pink stripes on a white background signify. Please add this information to the legend on this plan.
 - The type of shading on plots 2.12 & 3.09 is unclear due to small size of the plots. It may be useful to add a panel showing an enlarged view of this area to better show details.

Works Plans – sheets: 500–506 & 510-515

- The Works Plans submitted to the Planning Inspectorate in September 2015 improve on previous versions, especially with regard to the level of detail and use of colour.
- It appears that the Applicant produced two set of Works Plans, one showing above ground works and one showing underground works. If this approach is to be continued with, it would be helpful to clearly state in the plan title that it depicts either above or below ground works.
- While this approach does have benefits with regard to clarity, it does make identifying how works fit together more difficult.
- An example of this can be observed on plan 504, where Work No 13 (underground pipeline) connects Work No. 12 (Connection to Gas NTS compound) and Work No 14 (gas processing plant). As Works No 12 & 14 are not shown on the 'underground' plan (504) it requires utilising both plan 504 and also plan 510 to observe the work.
- One way in which the approach used could be improved would be to have an outline on the underground plans of the above ground works. This could be done at

their maximum limits of deviation (maybe with a note to state that this is for ease of reading and that reference should be made to the over ground plan for a detailed depiction of the work.)

- Although the plans are easier to read, it is often hard to pinpoint exactly where a work begins and ends. Part of the issue is because of the difficulty in having some works depicted on two separate sheets (above / underground). It would also be of great help if, for example, pipelines could have a small identifier of the Work Number at each end of the work. Using the same colour for the label would also aid clarity.
- Work No 19 – In the BoR there are three separate works (19A, 19B & 19C) but on the Works Plans (sheets 504 & 506) these are shown as just Work No 19. Please separate these on the Works Plans so that they reflect the works as listed in the BoR.
- Work No 8 – This work appears at all the cavity sites (A1 - 1U). Should the same work appear multiple times? If these are separate works, could these 'vertical wells' be included within the works numbered 1A - 1U?

Street Works and Access Plan

- This plan (reference 13-03-01/HOL/24/413) is referenced in Schedule 4 of the draft DCO. However, it appears to reference 'point' numbers that are not included on the plan.