

THE INFRASTRUCTURE PLANNING (APPLICATIONS: PRESCRIBED FORMS AND PROCEDURE) REGULATIONS 2009

**Preesall Underground Gas Storage Facility,
Lancashire**

EXPLANATORY MEMORANDUM

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1 INTRODUCTION

Halite Energy Group Limited is making an application (the "**Application**") to the Infrastructure Planning Commission (the "**IPC**") for a development consent order to authorise the construction and operation of an underground gas storage facility and associated development, including a brine pipeline and gas interconnector pipeline, in Preesall, Lancashire (the "**Project**", which is more particularly described at Schedule 1 of the draft development consent order which accompanies the Application and is entitled The Preesall (Underground Gas Storage Facility) Development Consent Order 201[•] (the "**Order**").

2 NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT

2.1 Under sections 14(1)(c), 17(2) and 17(4) of the Planning Act 2008 (the "**2008 Act**"), an underground gas storage facility in England having a capacity of at least 43 million standard cubic metres or a maximum flow rate of at least 4.5 million standard cubic metres per day constitutes a nationally significant infrastructure project ("**NSIP**").

2.2 The proposed underground gas storage facility is an NSIP because it has a working capacity of up to 600 million standard cubic metres.

2.3 Although the Project is an NSIP because it consists of an underground gas storage facility (under section 14(1)(c) of the 2008 Act), it is not an NSIP which consists of the construction of a pipeline by a gas transporter (under section 14(1)(f) of the 2008 Act) or construction of a pipeline by someone other than a gas transporter (under section 14(1)(g) of the 2008 Act). This is because, for the purposes of section 20 of the 2008 Act, the undertaker does not hold a licence under section 7 of the Gas Act 1986, and is therefore not a gas transporter, and none of the pipelines in the project exceed 40 kilometres in length (though the brine pipeline does exceed 800 millimetres in diameter by 100 millimetres). Similarly, for the purposes of section 21(1)(a) of the 2008 Act, the Project does not comprise a cross-country pipeline, defined in section 66(1) of the Pipe-lines Act 1962 as a pipeline exceeding, or intending to exceed, 16.093 kilometres. The brine pipeline is intended to be approximately 7.4 kilometres; the gas interconnector pipeline approximately 12.4 kilometres.

2.4 Section 31 of the 2008 Act provides that a development consent order is required to the extent that a development is or forms part of an NSIP.

2.5 Accordingly, Halite Energy Group Limited (defined as the “**undertaker**” in the Order) has made the Application to the IPC under section 37 of the 2008 Act in order to secure development consent for the Project. The Order is part of the Application.

3 **POWERS OF COMPULSORY ACQUISITION**

In addition, the Order seeks (1) powers of compulsory acquisition for land that is required for, facilitates or is incidental to the Project under section 122 of the 2008 Act and (2) the power to override any existing easements and rights over the application site under sections 120(3) and (4) and paragraphs 2 and 3 of Schedule 5 of the 2008 Act. Justification for these powers is set out more particularly in the Statement of Reasons (document reference 7.1), which accompanies the Application.

4 **STATUTORY INSTRUMENT**

The Order seeks to apply and modify certain statutory provisions as set out below in this explanatory memorandum under section 120(5) of the 2008 Act. Accordingly, under section 117(4) of the 2008 Act, the Order is set out in the form of a statutory instrument.

5 **EXPLANATORY MEMORANDUM**

5.1 As required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, this explanatory memorandum accompanies the Application. It explains the purpose and effect of provisions in the draft Order, including in particular any divergences from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the “**DCO Model Provisions**”).

5.2 The Order follows the DCO Model Provisions but, where appropriate for the circumstances of the Project, there are certain divergences from these. Page 3 of the IPC’s Advice Note Thirteen issued in September 2011 confirms that this approach is acceptable because the DCO Model Provisions are intended as a guide for applicants in drafting orders, rather than a rigid structure. Certain of these divergences reflect wording from the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (the “**TWA Model Provisions**”) and Orders made under the Transport and Works Act 1992. Where appropriate, this explanatory memorandum sets out the rationale for including such wording in the context of the 2008 Act. Regard has also been had to comments which the Infrastructure Planning Commission has made in relation to Halite’s draft Order and the draft development consent orders submitted to it in relation to other applications (including the Rookery South (Resource Recovery Facility Order) 2011 (the “**Rookery South DCO**”).

6 **OPEN SPACE**

- 6.1 The IPC's Advice Note 13 requires an explanatory memorandum to confirm the stage reached in any proceedings under sections 131 and 132 of the 2008 Act. Under these sections, a development consent order is subject to special parliamentary procedure to the extent that it authorises the compulsory acquisition of land, or a right over land, forming part of open space, unless the Secretary of State is satisfied that certain statutory criteria under those sections are met and issues a certificate to that effect.
- 6.2 Some of the pipelines or cables forming part of the authorised development run under parts of three small areas within the Order limits which constitute open space (the King George's Memorial Field (Playing Field), Kneps Farm Holiday Park and the Marine Parade area). However, it is not envisaged that special parliamentary procedure will be relevant to the draft Order. This is because the undertaker is of the view that no replacement land is necessary for the authorised development: (a) no *land* forming part of open space is being compulsorily acquired under the Order, save in relation to an area which falls below the 200 sqm threshold in Section 131(5)(a) for the observation platform within Work No. 16J and (b) the *rights* compulsorily acquired to enable maintenance and related access, and for the pipelines and cables to remain installed underground, will leave the open space no less advantageous under section 132(3) after they have been taken.
- 6.3 Powers under article 23 (*temporary use of land for carrying out the authorised development*) are being sought for the construction of elements of the authorised development where works such as pipelines or cables are to be installed in subsoil but, after construction, the land is to be reinstated with the works remaining underground. This includes those pipelines or cables running under the three areas of open space. The exercise of such temporary use powers does not give rise to requirements under sections 131 or 132 of the 2008 Act.
- 6.4 Accordingly, an application is being made to the Secretary of State at the Department for Communities and Local Government, prior to submission of the Application, to issue a certificate that no exchange land is necessary for the Project.

7 **PREAMBLE TO THE ORDER**

The preamble to the Order may be modified as necessary prior to the making of the Order to reflect where the appropriate decision-making powers for the Application lie at that time.

PART I OF THE ORDER - PRELIMINARY

Part I of the Order contains preliminary provisions.

Article 1	<i>(Citation and commencement)</i> provides for the commencement and citation of the Order.
Article 2	<p><i>(Interpretation)</i> follows article 1 of the DCO Model Provisions and would provide for the interpretation of words and phrases used in the Order.</p> <p>Amongst other things, "maintenance" is defined as including "maintain, inspect, repair, adjust, alter, remove, clear, refurbish, reconstruct, decommission, demolish, replace or improve". This is slightly different to the approach used in Article 1 of Schedule 2 of the DCO Model Provisions, in that it extends the definition of "maintain" to include "clear, refurbish, decommission, demolish and improve". However, there is precedent for this in the definition of "maintain" in the TWA Model Provisions and the Rookery South DCO. These additions are included in the draft Order, as permitted by section 120(5)(c) of the 2008 Act, to give full effect to the power to maintain the authorised development under article 4 (<i>maintenance of authorised development</i>).</p> <p>Further, it is clarified at paragraph 3 of article 2 that the lengths referred to in the documents mentioned in the Order, such as the works plan, land plan and other drawings are approximate as well as to lengths referred to in the Order itself. This is to ensure consistency between interpretation of the Order and the documents to which it refers.</p> <p>Article 2(2) provides that apart from the definition of the undertaker, the definitions in paragraph 1 shall not apply to Schedule 7 (<i>deemed consent under Part 4 of the Marine and Coastal Access Act 2009</i>). As a self-contained licence agreed with the Marine Management Organisation prior to submission of the Application, Schedule 7 has its own set of definitions. This is because the licence is likely to be distributed to contractors and agents, who could find significant cross-references to another document unduly complex. Further, if the licence is varied, the draft Order will become increasingly remote, making cross-reference</p>

	to it more burdensome.
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9 **PART II OF THE ORDER - WORKS PROVISIONS**

9.1 **Principal powers**

Articles 3 to 6 of the Order contain provisions for the principal powers needed for the authorised development.

<p>Article 3</p>	<p><i>(Development consent etc. granted by the Order)</i> is based on article 2 of the DCO Model provisions and would grant development consent for the authorised development within the Order limits. The authorised development means the development under sections 14(1)(c), 17(2) and 17(4) of the 2008 Act and associated development under 115 of the 2008 Act. Schedule 1 (<i>authorised development</i>) describes the authorised development. The Project does not involve any ancillary works, i.e. there are no works for which consent is sought but which are not development within the meaning of Section 32 of the 2008 Act and which are not the subject of a separate provision in the draft Order.</p> <p>The authorised development is to be carried out in accordance with the requirements set out in Schedule 9 (<i>requirements</i>).</p> <p>Paragraph (b) of the article provides for consent to use the authorised development for the purpose for which it is designed. Section 157(2) of the 2008 Act expressly allows authorisation for use of a “building” for the purpose for which it is designed. However, underground gas storage facilities comprise caverns not buildings. It is appropriate to include paragraph (b) because section 142 of the 2008 Act envisages the authorisation of the use of underground gas storage facilities. Moreover, Sections 120(3) and (4) and item 7 of Part 1 of Schedule 5 of the 2008 Act permit a draft Order to make particular provision for the <i>use</i> of underground gas storage facilities.</p>
<p>Article 4</p>	<p><i>(Maintenance of authorised development)</i> would make provision for the maintenance of the authorised development. It slightly broadens the provisions in article 3 of DCO Model Provisions to include altering the position of apparatus and works of</p>

	<p>decommissioning and demolition within the Order limits, insofar as this is expedient for the purposes of the construction and operation of the authorised development. Such wording mirrors the agreed position at article 5 of the Rookery South DCO and article 4(3)(a) of the TWA Model Provisions. Additionally, this article deviates from the DCO Model Provisions in clarifying that the undertaker may enter on any land within the Order limits if such entrance is reasonably required for the purpose of maintaining the authorised development. All of these additions are permitted under section 120(5)(c) of the 2008 Act because they are necessary and expedient to give full effect to the power to maintain the authorised development under this article.</p>
<p>Article 5</p>	<p><i>(Limits of deviation)</i> would make provision for the works authorised by the Order to be deviate laterally from the lines or situations shown on the works plan. It follows the wording of article 5 of Schedule 2 of the DCO Model Provisions. No vertical <i>limits of deviation</i> are proposed but the authorised development will be <i>vertically restricted</i> as follows:</p> <p>The creation of the salt caverns is vertically restricted in the description of Work No. 1A in Schedule 1 (<i>authorised development</i>) of the Order. This clarifies that the caverns can only be constructed to any extent downwards beneath 220 metres below the ground surface and within the Preesall halite deposit. Cavern construction is further constrained by the recommendations for the safe design of such salt caverns developed by Professor Rheinhard Rokhar, incorporated as Requirement 6 in Schedule 9 (<i>requirements</i>) of the Order. These are the appropriate vertical constraints on Work No. 1A which reflect the particular requirements of the development, namely the proposed formation of operational caverns by means of solution mining within the salt body.</p> <p>Work Nos. 9 (gas manifold), 10 (wash water pipeline), 11 and 12 (brine outlet pipeline), 13 (brine discharge pipeline), 14 (twin 11kv power and control cables), 16A-16L (the brine discharge pipeline), 17A-17C and 18 (the 132kv electrical circuits), 19 (electrical control cables) and 20A-20H (the NTS interconnector gas pipeline) are vertically restricted in their descriptions in Schedule 1 (<i>authorised development</i>) of the Order.</p>

	<p>These restrictions clarify the upper and lower extents below ground surface in which the underground elements of these works can be placed.</p> <p>Above-ground development will be carried out in accordance with the approved development plans submitted with the application and listed in the definitions paragraph of Schedule 9 (<i>requirements</i>). These plans include above ordnance data.</p>
Article 6	<p><i>(Defence to proceedings in respect of statutory nuisance)</i> follows article 7 of the DCO Model Provisions and would provide that no one shall be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out or maintenance of the authorised development and for which notice has been given under section 60 or consent obtained under section 61 or 65 of the Control of Pollution Act 1974 or which is unavoidable.</p>

9.2 **Benefit of Order**

Articles 7 and 8 of the Order contain provisions in relation to the benefit and transfer of the benefit of the Order.

Article 7	<p><i>(Benefit of Order)</i> follows article 4 of the DCO Model Provisions and would, subject to article 8 of the Order, grant only Halite Energy Group Limited the benefit of the Order.</p>
Article 8	<p><i>(Transfer of benefit of Order)</i> follows article 5 of the DCO Model Provisions and would provide for the permanent or temporary transfer of the benefit of the Order, subject to the consent of the Secretary of State and the transferee being subject to the same restrictions, liabilities and obligations placed upon Halite Energy Group under the Order.</p>

9.3 **Streets**

Articles 9 to 17 of the Order contain provisions relating to streets.

Article 9	<p><i>(Street Works)</i> follows article 8 of the DCO Model Provisions and would confer authority on the</p>
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	<p>undertaker to interfere with and execute works in or under certain streets, which are specified in Schedule 2 (<i>streets subject to street works</i>) and within the Order limits, for the purposes of the authorised development. This power is predominantly necessary to allow tunnelling and boring under streets to install the gas and brine pipelines and electricity cables required for the Project.</p> <p>The authority given by this article is a statutory right for the purposes of sections 48(3) (<i>streets, street works and undertakers</i>) and 51(1) (<i>prohibition of unauthorised street works</i>) of the New Roads and Street Works Act 1991.</p> <p>Article 9(1)(e) includes the right to demolish, remove, replace and relocate a bus shelter and other bus stop infrastructure because this is needed for the works to relocate the existing bus stops and shelters sited on Hall Gate Lane comprised in Work No. 6 at Schedule 1 (<i>authorised development</i>) of the Order. Article 9(1)(f) includes the right to provide or improve sight lines required by the highway authority. This is because the highway authority has indicated that it has particular requirements in this regard. These additional provisions may be included in the Order because they make provision for carrying out civil engineering or other works related to the authorised development, as permitted by Sections 120(3) and (4) together with item 15 of part 1 of Schedule 5 of the 2008 Act. They are also necessary and expedient to give full effect to the power to carry out the development authorised under article 3 of the draft Order (<i>development consent etc. granted by the Order</i>), as permitted under Section 120(5) of the 2008 Act.</p>
Article 10	<p>(<i>Power to alter layout, etc., of streets</i>) is based on article 6 of Schedule 2 of the TWA Model Provisions and would allow for the layout of the existing streets specified in Schedule 3 (the A588/Hall Gate Lane and Back Lane) to be altered via widening and the creation of junctions to ensure that these are appropriately configured to merge with the new private access road comprised in Work Nos. 6 and 7 in Schedule 1 (<i>authorised development</i>) of the Order.</p> <p>Paragraph 2 of the article confers a broader power to alter the layout of any street within the Order limits for</p>

	<p>the purposes of constructing and maintaining the authorised development. However, this must be with the consent of the street authority, not to be unreasonably withheld.</p> <p>This is a provision which falls under item 15 of Part 1 of Schedule 5 of the 2008 Act, namely the carrying out of civil engineering or other works and may be included in the draft Order under Section 120(3) of the 2008 Act. This provision is also necessary and expedient under Section 120(5)(c) of the 2008 Act to give full effect to article 3 (<i>development consent etc. granted by the Order</i>) which authorises the new access roads comprised in Work Nos. 6 and 7 in Schedule 1 (<i>authorised development</i>) of the Order.</p>
Article 11	<p>(<i>Maintenance of new and altered streets</i>) is based on article 10 of the TWA Model Provisions and creates a mechanism for those parts of streets <i>altered or diverted</i> under article 10 (<i>power to alter layout, etc., of streets</i>) of the Order) to be adopted for maintenance at public expense, if they are completed to the reasonable satisfaction of the local highway authority and after a set maintenance period. This provision is necessary to facilitate adoption of the proposed widened elements of the A588/Hall Gate Lane and Back Lane, and new junctions, which will have been necessary to appropriately configure existing public highway to interface with the new private access road comprised in Work Nos. 6 and 7 in Schedule 1 (<i>authorised development</i>) of the Order. This provision may therefore be included as an incidental provision to the consent for the authorised development at article 3 of the draft Order (<i>development consent etc. granted by the Order</i>) under section 120(5)(d) of the 2008 Act.</p> <p>Separately, at some later time and beyond the scope of the draft Order, the undertaker may seek adoption of those parts of Work Nos. 6 and 7 forming the private access road leading from existing public highway to the outside of the main site under section 38 of the Highways Act 1980, if the highway authority deems this appropriate.</p> <p>As per the TWA Model Provision, further incidental provision is made for the undertaker to have a defence against claims for loss or damage resulting from failure</p>

	to maintain any street under this article if he can prove that he took all care reasonably necessary in the circumstances to ensure that the relevant part of the street was not dangerous to traffic. The article sets out factors which a court can take into account in considering this defence. No offence is created.
Article 12	<i>(Temporary stopping up of streets)</i> follows article 11 of the DCO Model Provisions and would provide for the temporary stopping up of streets subject to the consent of the relevant local highway authority, which may attach reasonable conditions to that consent or, in the separate case of the temporary stopping up of those streets listed in Schedule 4 (<i>streets to be temporarily stopped up</i>) of this Order, following consultation with the local highway authority. Paragraph (1)(a) of the article clarifies that both a class of traffic as well as traffic generally can be diverted under this power and is designed to reduce inconvenience to the public where possible. The article provides for the temporary stopping up of <i>rights of way</i> in addition to provision made in Article 11 of the DCO Model provisions in relation to <i>streets</i> . This provision is necessary and expedient under section 120(5)(c) of the 2008 Act to give full effect to article 3 (<i>development consent etc. granted by the Order</i>) because the footpaths listed at Schedule 4 need to be temporarily stopped up, primarily to allow installation of the pipelines listed in Schedule 1 (<i>authorised development</i>) across these. Further, the draft Order may make provision for the stopping up of highways under sections 120(3) and 120(4) and item 17 of Part 2 of Schedule 5 of the 2008 Act. The rights of way to which this article refers are as much highways for the purposes of item 17, being another form of public highway, as the streets to which article 11 of the DCO Model Provisions refers and on which this article is based.
Article 13	<i>(Access to works)</i> follows article 12 of the DCO Model Provisions and would confer upon the undertaker powers for the purposes of the authorised development to provide or improve access at the locations specified in Schedule 5 (<i>access to works</i>). Similar powers are conferred in relation to any other location within the Order limits reasonably required for the authorised development, so long as the relevant planning authority approves following consultation with

	the highway authority.
Article 14	<i>(Agreements with street authorities)</i> follows article 13 of the DCO Model Provisions and would authorise street authorities and the undertaker to enter into agreements with respect to the construction of new streets; the improvement of existing streets; the stopping up, alteration or diversion of streets; and street works listed in the Order. Paragraph (b) clarifies that an agreement may relate to strengthening, improving, repairing or reconstructing streets under the powers conferred by the Order. As permitted by section 120(5)(d) of the 2008 Act, this additional provision supplements the power in paragraph (a) for an agreement to be entered into for the construction of a street and article 4 of the Order (<i>maintenance of the authorised development</i>), which would allow for such streets to be repaired.
Article 15	<i>(Discharge of water)</i> follows article 14 of the DCO Model Provisions and would enable the undertaker to discharge water into any watercourse, public sewer or drain in connection with the carrying out and maintenance of the authorised development with the approval and superintendence (if provided) of the authority to which the watercourse, public sewer or drain belongs (such approval not to be unreasonably withheld) and subject to certain other conditions. Reference to section 85 of the Water Resources Act 1991 has, however, been deleted. This is because this section has been repealed by, inter alia, paragraph 8(a) of Schedule 26 of the Environmental Permitting (England and Wales) Regulations 2010 (the " Environmental Permitting Regulations "). Instead, paragraph 7 of the article is updated to refer to the successor regime under the Environmental Permitting Regulations. This approach was accepted by the IPC in the submitted draft Network Rail (Ipswich Chord) Order and at article 14(7) of the Rookery South DCO.
Article 16	<i>(Protective work to buildings)</i> follows article 15 of the DCO Model Provisions and would confer upon the undertaker the right at its own expense to carry out protective works to buildings within the Order limits, before or during construction of the authorised development, in the vicinity of the building, and for up to five years after that part of the authorised

	development opens for use. Save in the case of emergency, there are requirements for prior notice to owners and occupiers. Provision is also made for owners and occupiers to serve counter-notices questioning the necessity of such protective works, with recourse to arbitration and provision for compensation.
Article 17	<i>(Authority to survey and investigate the land)</i> follows article 16 of the DCO Model Provisions and would confer upon the undertaker power to survey and investigate land and to make trial holes after notifying the owners and occupiers of the land. Trial holes cannot be made on public highway without the consent of the highway authority or on a private street without the consent of the street authority, not to be unreasonably withheld. There is also provision for compensation payments.

10 **PART III OF THE ORDER - ACQUISITION AND POSSESSION OF LAND**

10.1 **Powers of acquisition**

Articles 18 to 25 of the Order contain provisions for the compulsory acquisition of land and for the temporary possession of land for the purposes of or in connection with the authorised development. They further provide for the payment of compensation.

Article 18	<i>(Compulsory acquisition of land)</i> follows article 18 of the DCO Model Provisions and would authorise the compulsory acquisition of land shown on the land plan and described in the book of reference, so far as it is required for the authorised development, to facilitate it or is incidental to it. The article further makes provision for the extinguishment of rights, trusts and incidents to which the land was previously subject. A person who suffers the loss of a private right of way under this article is entitled to compensation.
Article 19	<i>(Compulsory acquisition of rights)</i> follows article 21 of the DCO Model Provisions and would confer on the undertaker the power to acquire existing rights or create new rights in the Order land as described in the book of reference. Upon acquisition or vesting, land over which new rights are acquired shall be discharged from existing rights insofar as the existing rights are

	inconsistent with the new rights. A person who suffers the loss of a private right of way under this article shall be entitled to compensation.
Article 20	<i>(Acquisition of subsoil only)</i> is based on article 24 of the DCO Model Provisions and would authorise the undertaker to compulsorily acquire so much of, or such rights in, the subsoil of land referred to in articles 18 and 19 instead of acquiring the whole. Further, the article confirms that in taking such a subsoil interest, the undertaker would not be required to acquire an interest in any remaining part of that land. In addition to the wording of Article 24 of the DCO Model Provisions, paragraph 4 of this article clarifies for the avoidance of doubt that nothing in it would require the undertaker to acquire any estates, rights or interests in public highway. This provision is supplementary to Article 20(1) and is included under section 120(5)(d) of the 2008 Act. It was also accepted in article 21(4) of the Rookery South DCO. No particular provision is made in relation to subsoil lying more than 9 metres beneath the surface. This is because article 20 adequately addresses interests to be acquired in such subsoil and because these interests, and the levels in the subsoil to which these relate, are described in the book of reference.
Article 21	<i>(Power to override easements and other rights)</i> does not derive from the DCO Model Provisions. It closely mirrors section 237 of the Town and Country Planning Act 1990 (the " 1990 Act "). This article addresses the fact that it is not clear whether the reference to discharging "rights, trusts and incidents" in articles 18(2) and 19(2) of the draft Order, taken from the DCO Model Provisions, includes the discharge of items listed in section 237, namely easements, liberties, privileges, rights or advantages annexed to land and adversely affecting any other land, including any natural right to support or restrictions as to the user of land resulting from a contract. This lack of clarity would not be a concern for a local planning authority promoting compulsory purchase powers to facilitate a development because under section 237 it is entitled to carry out works on land which it has acquired or appropriated for planning purposes, notwithstanding any interference with the items listed in that section. However, the undertaker in this draft Order is not a local planning authority, so it is necessary to apply

section 237 in an amended form. Sections 120(3) and (4) and item 2 of Part 1 of Schedule 5 of the 2008 Act confirm that the draft Order may make such provision relating to the compulsory suspension, extinguishment or interference with interests in or rights over land. Moreover, this article is supplementary (under section 120(5)(d) of the 2008 Act) to articles 18 and 19 of the draft Order and is necessary and expedient to give full effect to the development consent in article 3 of the draft Order (as permitted by section 230(5)(c) of the 2008 Act). It was also accepted at article 17 of the Rookery South DCO.

Paragraphs 21(1)(a) and (b) mirror section 237(1).

The definition of "authorised activity" in paragraph 21(2) mirrors the list of activities in sections 237(1) and 237 (1A) of the 1990 Act. Paragraph c of article 21(2) clarifies that "use of any land" includes the "temporary use of land". This gives full effect to the powers under articles 23 (*temporary use of land for carrying out the authorised development*) and 24 (*temporary use of land for maintaining authorised development*) of the Order, which ought to be capable of use without constraint by the interests etc, rights or restrictions described in paragraph 1 of article 21.

Article 21(3) reflects section 237(2) of the 1990 Act.

No drafting is included to reflect section 237(3), because it may be necessary to alter the apparatus of statutory undertakers using the powers of the Order and the relationship between the undertaker and statutory undertakers is provided for in the protective provisions included at Schedule 8 (*protective provisions*) of the Order.

Article 21(4) is included for clarity on timing.

Article 21(5) makes provision for compensation and reflects section 237(4) of the 1990 Act and comments of the IPC on the Rookery South DCO in relation to removal of reference to the Land Clauses Consolidation Act 1845.

Article 21(6) reflects sub-section 237(5) of the 1990 Act. It confirms that if the undertaker has acquired land and compensation is payable under paragraph 5 this article by a person deriving title from that

	<p>undertaker but the person does not pay it, then the undertaker assumes that liability. Sub-section 237(5) relates to a person deriving title from a local authority which has acquired or <i>appropriated</i> land. The undertaker cannot “appropriate” land in this way because it is not a local authority. Accordingly, no reference in this paragraph is made to “appropriation”, thus modifying the application of the compensation provision in section 237(5) to the extent necessary to apply it to the order, as permitted under section 126(6) of the 2008 Act.</p> <p>Section 237(6) is not reflected in the article because the undertaker is not a local planning authority and, as the promoter of the authorised development itself, will not have an indemnity agreement from a promoter relating to compensation liability.</p> <p>Article 21(7) mirrors the wording of section 237(7) of the 1990 Act.</p>
Article 22	<p><i>(Application of the Compulsory Purchase (Vesting Declarations) Act 1981)</i> follows article 23 of the DCO Model Provisions and would provide for the application, with modifications, of the Compulsory Purchase (Vesting Declarations) Act 1981, which makes provision for vesting procedures for land subject to compulsory purchase.</p> <p>It is noted that the Order does not contain an express provision incorporating Part I of the Compulsory Purchase Act 1965 because section 125 of the 2008 Act already applies that Part to a development consent order authorising the compulsory acquisition of land.</p>
Article 23	<p><i>(Temporary use of land for carrying out the authorised development)</i> follows article 28 of the DCO Model Provisions and confers upon the undertaker a right to enter upon and take possession of land specified in Schedule 6 (<i>land of which temporary possession may be taken</i>) to construct those elements of the authorised development listed in that Schedule. Prior notice to owners and occupiers is required and the article makes further provision for restoring land after such use and compensation. This power would be used for elements of the authorised development where works such as pipelines or cables are to be installed in subsoil but, after construction, the land is</p>

	<p>to be reinstated with the works remaining underground. Rights to retain these works and to secure access for maintenance will be secured separately under compulsory purchase powers.</p> <p>The article deviates from the DCO Model Provisions in that it clarifies at paragraph (3) that the undertaker may remain in possession of land for longer than the stated one year period to the extent that it is authorised to do so by the acquisition of rights over land or the creation of new rights over land pursuant to article 19 (<i>compulsory acquisition of rights</i>) of the draft Order. This addition may be included under section 120(5)(c) of the 2008 Act because it is necessary and expedient to give full effect to paragraph (8) of the article allowing the acquisition of rights over land of which temporary possession is taken. Otherwise, subsequent use of rights for maintenance or access, for example, taken under the book of reference, might be argued to be subject to agreement of the owners of the land under paragraph (3). This additional wording was accepted in the Rookery South DCO.</p>
Article 24	<p><i>(Temporary use of land for maintaining authorised development)</i> follows article 29 of the DCO Model Provisions and provides that the undertaker may take temporary possession of land within the Order limits reasonably required for the purpose of maintaining the authorised development and constructing such temporary works and buildings on the land as may be reasonably necessary for five years after that part of the authorised development was first opened for use. Provision is made for notice, restoration and compensation.</p> <p>Paragraph (b) of the article extends article 29 of the DCO Model Provisions to include a right to enter on any land within the Order limits for the purpose of <i>gaining access</i> where this is reasonably required to maintain the authorised development. This supplemental provision clarifies that the undertaker can secure appropriate access within the Order limits to those parts of the authorised development which need to be maintained, giving full effect to the maintenance powers granted under paragraph (1)(a).</p>

10.2 Compensation

Articles 25 to 27 of the Order contain provisions clarifying existing principles of compensation in relation to the compulsory acquisition and temporary possession of land in connection with the authorised development.

Article 25	<p><i>(Disregard of certain interests and improvements)</i> is not contained in the DCO Model Provisions but follows article 26 of the TWA Model Provisions. It would provide for disregarding certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition, where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation. It complies with section 126 of the 2008 Act. This is because it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation. The wording of this article mirrors section 4 (<i>assessment of compensation</i>) of the Acquisition of Land Act 1981 (the "1981 Act"). It is necessary to specifically apply the effect of section 4 in the draft Order. This is because the 1981 Act only applies to a compulsory purchase to which any other statutory instrument has applied its provisions (Section 1 (<i>Application of Act</i>)) and neither the 2008 Act nor the DCO Model Provisions apply Section 1 of the 1981 Act to the draft Order. Sections 120(3) and 120(5)(a) and item 36 of Part 1 of Schedule 5 allow the application in an Order of statutory provisions which relate to the payment of compensation.</p>
Article 26	<p><i>(Set-off for enhancement in value of retained land)</i> is not contained in the DCO Model Provisions but follows article 27 of the TWA Model Provisions. It would provide that in assessing the compensation payable to any person in respect of the acquisition of any land, the Lands Chamber of the Upper Tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of construction of the authorised development. It complies with section 126(2) of the 2008 Act. This is because it does not have the effect of modifying the application of an existing provision</p>

	relating to compulsory purchase compensation. The principle in this article is established in section 7 of the Land Compensation Act 1961 (<i>effect of certain actual or prospective development of adjacent land in same ownership</i>), which needs to be applied. Sections 120(3) and 5(a) and item 36 of Part 1 of Schedule 5 allow the application in an Order of statutory provisions which relate to the payment of compensation.
Article 27	<i>(No double recovery)</i> is not contained in the DCO Model Provisions but predominantly follows article 44 of the TWA Model Provisions. It would provide that compensation is not payable both under this Order and other compensation regimes for the same loss or damage. In addition to the wording of article 44, this article provides that there is not to be double recovery under two or more different provisions of this Order, precedence for which can be found in numerous Transport and Works Act Orders. The principle of equivalence, namely that a claimant in a compulsory purchase matter shall be compensated for no more and no less than his loss, is long established and no part of the compensation code conflicts with this principle. Accordingly, this article complies with section 126(2) of the 1990 Act and is a supplementary provision under section 120(5)(d) of the 2008 Act as well as a provision relating to the payment of compensation under sections 120(3) and (4) and item 36 of Part 1 of Schedule 5 of the 2008 Act.

10.3 **Supplementary**

Articles 28 to 33 of the Order contain supplementary provisions relating to the compulsory acquisition provisions in Part III of the Order.

Article 28	<i>(Acquisition of part of certain properties)</i> follows article 26 of the DCO Model Provisions, replaces section 8(1) of the Compulsory Purchase Act 1965 and would enable the undertaker to acquire a part rather than the whole of properties subject to compulsory acquisition. Further, it contains a procedure enabling the relevant owner to require the whole to be taken, in certain circumstances, with disputes to be determined by the Lands Chamber of the Upper Tribunal.
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Article 29	<p><i>(Statutory undertakers)</i> follows article 31 of the DCO Model Provisions and would authorise the undertaker to compulsorily acquire land and/or rights over land belonging to statutory undertakers shown on the land plan and described in the book of reference. Paragraph (b) of article 31 of the DCO Model Provisions provides for the extinguishment of rights, as well as the removal or repositioning of apparatus belonging to statutory undertakers shown on the access and temporary stopping up plan and described in the book of reference. Wording additional to the DCO Model Provisions is included in paragraph (b) of article 29 to clarify that the powers under this paragraph are sought only within the Order limits and that the undertaker could need to replace, renew, alter and supplement elements of the existing apparatus, so as to divert the Electricity Northwest overhead pylons and electricity cables shown on the access and temporary stopping up plan, rather than just remove or reposition these as provided for in the DCO Model Provisions. This additional wording may be included under the Order because sections 120(3) and (4) together with item 14 of Part 1 of Chapter 5 of the 2008 Act allow particular provision relating to the removal, disposal <i>or re-siting</i> of apparatus.</p>
Article 30	<p><i>(Recovery of costs of new connections)</i> follows article 33 of the DCO Model Provisions and would provide for an owner or occupier of premises to recover from the undertaker the costs of reconnecting to public utilities/communications services if these are removed pursuant to article 29 of the Order <i>(Statutory undertakers)</i>.</p>
Article 31	<p><i>(Time limit for exercise of authority to acquire land compulsorily)</i> follows article 20 of the DCO Model Provisions and would impose a time limit of five years from the Order coming into force for the exercise of the proposed powers of acquisition and temporary possession.</p>
Article 32	<p><i>(Private rights of way)</i> follows article 22 of the DCO Model Provisions and would extinguish all private rights of way over land subject to compulsory acquisition under the Order. Private rights of way are suspended and unenforceable for so long as the undertaker under temporary possession provisions in</p>

	the Order remains in lawful possession of the relevant land. This provision can be disapplied by a notice from the undertaker or by agreement with the owner of the right of way. It also makes provision for persons suffering loss as a result of the suspension or extinguishment of such private rights of way to be entitled to compensation.
Article 33	<i>(Rights under or over streets)</i> follows article 27 of the DCO Model Provisions and provides that the undertaker may use the subsoil under and airspace over a street required for the authorised development without being required to acquire any part of the street or any easement or right in the street. Provision is made for compensation.

11 **PART IV OF THE ORDER - MISCELLANEOUS AND GENERAL**

Articles 34 to 44 of the Order contain a number of miscellaneous and general provisions.

Article 34	<i>(Application of landlord and tenant law)</i> follows article 35 of the DCO Model Provisions and would override the application of landlord and tenant law in so far as it may prejudice the operation of any agreement for leasing the whole or part of the authorised development or the right to operate the same and any agreement for the construction, maintenance, use or operation of the authorised development or any part of it entered into by the undertaker.
Article 35	<i>(Deemed consent under Part 4 of the Marine and Coastal Access Act 2009)</i> does not make reference to deemed consent under section 34 of the Coast Protection Act 1949 as per article 37 of the DCO Model Provisions. This is because that provision has been repealed by the Marine and Coastal Access Act 2009 (the " 2009 Act "). Section 149A of the 2008 Act allows provision in a development consent order for a deemed marine licence under the 2009 Act. Accordingly, article 35 of the Order would constitute deemed consent under section 65 of the 2009 Act, the successor provision to section 34 of the Coast Protection Act 1949. The form of licence in Schedule 7 (<i>deemed consent under Part 4 of the Marine and Coastal Access Act 2009</i>), setting out the scope of works and requirements, and wording of Article 35,

	have been agreed in writing with the Marine Management Organisation (“ MMO ”). Article 35 states that a licence is deemed to have been granted further to Part 4 (marine licensing) of the 2009, rather than just section 65 of the 2009 Act, so as to reflect the wording of the preamble to the standard MMO licence agreed with the MMO and section 149A of the 2008 Act.
Article 36	<i>(Operational land for the purposes of the 1990 Act)</i> follows article 35 of the DCO Model Provisions and provides that for the purposes of section 264(3)(a) of the 1990 Act, the development consent granted by the Order shall be treated as specific planning permission.
Article 37	<i>(Felling or lopping of trees)</i> follows article 39 of the DCO Model Provisions. It would enable the undertaker to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised development and danger to people using the authorised development. In the case of unnecessary damage, provision is included for the payment of compensation for loss or damage. Reference to “passengers” at paragraph (1)(b) has been removed as this is not relevant to the authorised development.
Article 38	<i>(Protections of interests)</i> follows article 50 of the DCO Model Provisions and introduces Schedule 8 (<i>provisions for protection of specified undertakers</i>) which would contain specific safeguards for statutory undertakers within the Order limits.
Article 39	<i>(Certification of plans etc)</i> follows article 41 of the DCO Model Provisions and would require the undertaker to submit copies of key documents referred to in the Order to the decision-maker for certification as true copies following the making of the Order.
Article 40	<i>(Service of notices)</i> would make provision as to the manner in which notices or other documents required or authorised to be served under the Order are to be served. The article mirrors section 229 of the 2008 Act and may be included as an incidental provision under section 120(5)(d) of the 2008 Act.
Article 41	<i>(Arbitration)</i> follows article 52 of the DCO Model Provisions and would make provision for differences

	<p>arising under any provision of the Order to be settled by arbitration. Wording additional to that of article 52 is included to exclude differences referred to the Lands Chamber of the Upper Tribunal and allows parties to agree to methods of dispute resolution other than arbitration. There is significant precedence for such additional wording in Transport and Works Act Orders and sections 120(3) and (4) together with item 37 of Part 1 of Chapter 5 of the 2008 Act allow particular provision relating to the submission of disputes to arbitration.</p>
<p>Article 42</p>	<p><i>(Requirements)</i> introduces Schedule 9 <i>(requirements)</i> which contains requirements corresponding to conditions which, under section 120(2) of the 2008 Act, could have been imposed on the grant of planning permission for the authorised development had it not fallen within the IPC regime. Such requirements may be imposed in the Order under section 120(1) of the 2008 Act.</p> <p>Paragraph (2) of the article clarifies that the requirements listed in Schedule 9 <i>(requirements)</i> are enforceable by the LPA under Part VII <i>(Enforcement)</i> of the 1990 Act as if they were conditions imposed on the grant of a planning permission under section 72 <i>(conditional grant of planning permission)</i> of the 1990 Act. This follows the approach accepted in the Rookery South DCO, by which the LPA would be the body enforcing compliance with the requirements.</p>
<p>Article 43</p>	<p><i>(Appeals relating to decisions under requirements)</i> would provide for a mechanism under which the undertaker could appeal to the Secretary of State to discharge matters under the requirements at Schedule 9 <i>(requirements)</i> if the local planning authority or highway authority (as relevant) refuse a request for approval, grant that approval or do not make a decision within 8 weeks. This article mirrors closely the wording of sub-sections 78(1) and (2) of the 1990 Act <i>(Right to appeal against planning decisions and failure to take such decisions)</i>. Paragraph 2 of the article incorporates the same procedures for appeals under this article as those relevant to appeals in existing legislation made in relation to decisions under planning conditions. The DCO Model Provisions provide for items required under requirements to be submitted to the IPC for approval. However, CLG Guidance for local</p>

	<p>authorities states that a draft Order can allow scheme promoters to appeal local authority decisions on a subsequent approval as with previous regimes. Further, the IPC has advised the undertaker to specify that approvals are to be given by the local planning authority and resulting appeals are to be made to the Secretary of State rather than the IPC. This article is included in the draft Order as a supplementary provision under section 120(5)(d) of the 2008 Act and its approach was accepted in the Rookery South DCO.</p>
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12 **SCHEDULES**

Schedules 1 to 9 of the Order contain information referred to in the articles of the Order.

<p>Schedule 1</p>	<p><i>(Authorised development)</i> specifies (1) the development for which development consent is required and (2) associated development in accordance with section 115(1) of the 2008 Act and the principles set out in the document entitled "Guidance on associated development: Applications to the Infrastructure Planning Commission" published in September 2009 by the Department for Communities and Local Government (the "CLG Guidance").</p> <p>Work No. 1A is the only NSIP. This is because it relates to the carrying out of operations for the purpose of creating the actual <i>underground gas storage facility</i>, namely the caverns.</p> <p>Work Nos. 1B to 21 are listed as associated development in accordance with section 115(2)(a) of the 2008 Act and follow examples of associated development relevant to underground gas storage facilities and general examples listed in Annex A of the CLG Guidance. These examples are items integral to the NSIP but which Annex A of the CLG Guidance still lists as associated development, <i>setting these out as distinct from the NSIP itself</i>, including surface works such as pumping/compressor stations (Work Nos. 3, 4 and 15); boreholes (Work Nos. 1B and 2A-G) and pipelines to storage facilities (Work Nos. 10, 11, 12, 13 and 16A-L); vehicular and pedestrian access (Work Nos. 6, 7 and 8); grid connections to national utility networks (Work Nos. 9, 14, 17A-C, 18, 19 and 20A-H); and security measures (Work No. 5).</p>
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A list of further associated development is included at the end of the Schedule, describing minor works associated with multiple Work Nos. which relate to the overall detailed design of the Project. These items of further associated development will be necessary to construct, operate and maintain the authorised development in a satisfactory manner, to give full effect to articles 3 (development consent etc. granted by the Order) and 4 (maintenance of authorised development), as permitted under section 120(5)(c) of the 2008 Act. These include:

- Mechanical, electrical and telecommunications equipment, which are needed to operate and control the facility, including office plant and equipment. Domestic utilities services are required to service offices, other buildings and plant;
- Ramps, means of access, footpaths and bridleways are required to access the facilities as a whole and to safely access individual areas and buildings associated with the development;
- Embankments are required to provide screening or to support works. Shafts are to provide access to the storage caverns and to provide the requisite sumps for plant and pumping stations. Foundations support buildings or facilities whilst retaining walls are used to support the ground or features when situated above or below surrounding ground level whether existing or proposed;
- Works to alter the course or otherwise interfere with a watercourse are necessary where that particular watercourse is crossed by the authorised development and a temporary or permanent means of dealing with the existing flow, both during and after construction, is needed. Temporary diversions and in places permanent culverting will be required;
- Works to remove or alter the position of apparatus including mains, sewers drains and cables will be required where these items

	<p>need to be temporarily or permanently removed to allow the construction and operation of the authorised development. Examples include the possible temporary diversion of a utility pipe or cable to provide working space to allow construction of permanent works. The utility would then be repositioned after completion of the works and any operational utility service would be maintained for users;</p> <ul style="list-style-type: none">• Landscaping, ecological mitigation works and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development would provide mitigation in respect of environmental intrusion which cannot be practicably avoided but which can be mitigated;• Works for the benefit or protection of land affected by the authorised development may include landscaping works to reinstate land to its former condition including land drainage systems where appropriate. It may also include the provision of fencing to replace that temporarily removed or to provide a delineation between land ownership or usage;• Works required for the strengthening, improvement, maintenance or reconstruction of any streets may be required where existing tracks or streets are to carry increased heavy traffic or increased numbers of vehicles. Crossings of existing public and private highways are required and reinstatement of excavated trenches will be necessary;• Works to install subsidence monitoring systems and equipment where any subsidence to existing brine caverns may affect any part of the authorised development, for the purposes of Requirement 37 (ground subsidence monitoring scheme);• Other works, including working sites and demolition which may be necessary for the construction of the authorised development and which fall within the scope of the
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	<p>environmental impact assessment.</p> <p>All of the associated development listed in the Schedule can reasonably be described as not being an aim in itself, subordinate to and necessary for the Project and of a type normally brought forward with underground gas storage facilities, as required by the Guidance.</p>
Schedule 2	<i>(Streets subject to street works)</i> sets out those streets referred to in article 9 subject to street works.
Schedule 3	<i>(Streets subject to alteration of layout)</i> sets out those streets referred to in article 11 subject to alteration of layout.
Schedule 4	<i>(Streets and rights of way to be temporarily stopped up)</i> sets out those streets and rights of way referred to in article 13 to be temporarily stopped up.
Schedule 5	<i>(Access to works)</i> sets out the new accesses referred to in article 14 to be constructed as part of the authorised development.
Schedule 6	<i>(Land of which temporary possession may be taken)</i> sets out the land referred to in article 23 of which temporary possession may be taken.
Schedule 7	<i>(Deemed consent under Part 4 of the Marine and Coastal Access Act 2009)</i> sets out the works for which the relevant licence is deemed granted and requirements to which it is subject, as referred to in article 35. The MMO has confirmed in writing that it is content with the deemed marine licence incorporated into the draft Order.
Schedule 8	<i>(Provisions for protection of specified undertakers)</i> sets out protective provisions for specified statutory undertakers who have been identified as having apparatus within the Order limits. The provisions have been based on those contained in several recent Transport and Works Act Orders.
Schedule 9	<i>(Requirements)</i> contains requirements corresponding to conditions which, under section 120(2) of the 2008 Act, could have been imposed on the grant of planning permission for the authorised development had it not fallen within the IPC regime. Such requirements may be imposed in the Order under section 120(1) of the

2008 Act. The requirements set out in the DCO Model Provisions form the basis of Schedule 9, subject to the following:

- The site has a long planning history and the local planning authority, Wyre Borough Council, and Lancashire County Council, the highway authority, (the “**LPAs**”) have given consideration to the range of requirements which they would expect to be included within the Order, based on the conditions which they wished to impose in relation to previous planning applications for the scheme. These differ in certain respects from the DCO Model Provisions’ requirements.
- The specific nature of the site and the technology involved in the Project necessitate their own Requirements. For example, at the site level, the LPAs were concerned about the impact of some of the above-ground built development on the landscape and requested specific Requirements which are different to those set out in the DCO Model Provisions. Similarly, at the technology level, the Requirements set out the details for the location of the storage caverns at the site, which are of course not provided for in the DCO Model Provisions.

Discussions are on-going with the LPAs and statutory and other consultees, so further Requirements may be incorporated where appropriate. In these discussions, the undertaker will endeavour to reflect the Requirements set out in the DCO Model Provisions as far as possible in Schedule 9 to the Order.

An explanation of the Requirements in their current form and any divergences from the DCO Model Provisions can be found below:

Requirement 1 (*interpretation*) provides for the interpretation of words and phrases used in this Schedule and predominantly follows Requirement 1 of the DCO Model Provisions, save where it is necessary to define items particular to the Project such as the pipelines and cables for Requirement 39. It is also sensible to include a definition of “commencement” of

the authorised development for clarity on the triggers for discharge.

Requirement 2 (*time limits*) provides for a time limit within which the development must be begun and follows Requirement 2 of the DCO Model Provisions.

Requirement 3 (*stages of authorised development*) provides for a written scheme detailing all of the stages of the authorised development to be submitted and approved by the LPA and follows Requirement 3 of the DCO Model Provisions.

Requirement 4 (*detailed design approval*) requires that the authorised development be carried out in accordance with the approved details. It follows Requirement 6 of the DCO Model Provisions, save that it requires the authorised development to be constructed in accordance with the approved *development plans* rather than the approved *details*. This is because the approved development plans listed in Requirement 1 (*interpretation*) are those approved details, unless otherwise agreed in writing with the LPA. Separately, sub-paragraph (2) of Requirement 4 clarifies that no works to the sea wall crossing and observation platform comprised in Work No. 16J of Schedule 1 (*authorised development*) can commence until details of the layout, scale, external appearance and means of access of these have been submitted and approved by the LPA. This is because these details are not contained in the approved development plans but will need to be approved. Works to the sea wall crossing and observation platform must be carried out in accordance with the approved details, unless otherwise agreed in writing with the LPA.

Requirement 5 (*external materials approval*) requires details of the external materials for any building to have been submitted to and approved by the LPA before the relevant stage of the authorised development can be commenced. This is not in the DCO Model Provisions but considered a sensible inclusion.

Requirement 6 (*details of cavern layout and design*) prevents more than 19 operational caverns being constructed within a defined "area for cavern development" shown on one of the approved

development plans and restricts the maximum working gas capacity to 600 million cubic metres. Unless the safety reports to be submitted under the Control of Major Accident Hazards Regulations 1999 allow otherwise, following examination of these by the Health and Safety Executive (the "**HSE**") and Environment Agency (including any directions made):

- the maximum cavern radius is to be approximately 50 metres;
- the thickness of the remaining salt between the cavern roof and the mudstone formation above the salt is to be no greater than the maximum radius of the cavern;
- there has to be a minimum thickness of 20% of the maximum radius of the cavern between the deepest point of the cavern and the mudstone formation below the salt layer; and
- wall to wall cavern spacing shall be equal to, but no less than three times the maximum radius of the caverns if they are of equal radius or it shall be equal to, but no less than the sum of one and a half times the maximum radius of the smaller cavern plus one and a half times the maximum radius of the larger cavern.

Requirement 6 is a bespoke requirement which relates to the particular circumstances of the authorised development and does not derive from the DCO Model Provisions. Its wording has been agreed with the HSE.

Requirement 7 (*European Protected Species*) provides that no stage of the authorised development shall commence until further survey work (if required by Natural England) 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 the authorised development or in any of the trees to be lopped or felled or buildings to be demolished during that stage of the authorised development. Requirement 7 follows Requirement 34 of the DCO Model Provisions save that it clarifies that the further survey work would be that required by Natural England, so as to avoid duplication of any existing surveys still regarded as valid by that body.

Requirement 8 (*ecological management scheme*) requires ecological management schemes to be submitted to and approved by the LPA and sets out what these must include. It follows Requirement 17 of the DCO Model Provisions, apart from additional items requested by the LPA having to be included in any ecological management schemes, namely details of working methods, means of mitigation and restoration.

Requirement 9 requires landscape schemes and programmes to be submitted to and approved by the LPA. Requirement 9 encompasses the wording of Requirement 7 of the DCO Model Provisions, but specifies further items to be included in the schemes requested by the LPAs following consultation, namely long term design objectives, management responsibilities and maintenance schedules for all relevant landscape areas and details of all proposed hard and soft landscaping works.

Requirement 10 (*implementation and maintenance of landscaping*) requires that all landscaping works must be carried out in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice. Any tree or shrub planted as part of an approved landscape scheme which is removed, dies or becomes, in the opinion of the LPA, seriously damaged or diseased within a period of 5 years after planting must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the LPA. Landscape schemes and implementation timetables approved must be followed. Requirement 10 follows Requirement 8 of the DCO Model Provisions.

Requirement 11 (*highway accesses*) follows Requirement 10 of the DCO Model Provisions, which requires submission to and approval by the LPA of details for any new means of vehicular access to a highway, or for any alteration to any such existing means of access, as well as an access management scheme. Compliance with the details and scheme is also secured by the Requirement.

Requirement 12 (*construction traffic*) follows Requirement 22(2) of the DCO Model Provisions in

requiring notices to be erected and maintained throughout the period of construction at the highway access comprised in Work No. 6 in Schedule 1 (*authorised development*), the relevant construction site exit, showing the route set out on a specified plan in the environmental statement. As the route is to be approved in the Application, it is not necessary to include Requirement 22(1) of the DCO Model Provisions in relation to the highway access comprised in Work No. 6, as that paragraph provides for a route to be submitted for approval after issue of an Order. However, the mechanism for later approvals of preferred routes from Requirement 22 of the DCO Model Provisions is incorporated into the second paragraph of Requirement 12 in relation to use of any access other than that comprised in Work No. 6, in case any other accesses are to be used for any period.

Requirement 13 (*limits on heavy goods vehicle movements*) limits the number of heavy goods vehicle movements to and from the Preesall site to 62 per day unless otherwise agreed in writing with the LPA. This is in accordance with the maximum heavy goods vehicle movements detailed in the environmental statement. The number of movements has to be recorded. This requirement is not from the DCO Model Provisions and has been developed following consultation with the LPAs.

Requirement 14 (*covered heavy goods vehicle movements*) requires all heavy commercial vehicles carrying friable bulk materials to be covered and is not from the DCO Model Provisions. It has been developed following consultation with the LPAs.

Requirement 15 (*wheel cleaning facilities*) requires that following completion of the access from the A558, wheel cleaning facilities shall be provided at a location to be agreed with the LPA. It further requires that those wheel washing facilities should remain available for use and be maintained in full working order. Moreover, the Requirement ensures that no debris from the site is deposited by vehicle wheels upon the public highway. This requirement is not from the DCO Model Provisions but has been developed following consultation with the LPAs.

Requirement 16 (*internal roads*) requires the access

road between the wheel cleaning facilities and the boundary of the Preesall site to be metalled and drained and kept clear of debris, so as to ensure the safe and effective operation of the access road. This Requirement is not from the DCO Model Provisions but has been developed following consultation with the LPAs.

Requirement 17 (*temporary access routes*) requires that upon completion of construction, all temporary access routes onto the public highway are to be closed, except for those serving the gas compressor compound, booster pump station and well head compound areas. It further requires all verges and field boundaries affected by temporary access routes to be restored in accordance with details to be agreed by the LPA and thereafter to be maintained for five years. This requirement is not from the DCO Model Provisions but has been developed following consultation with the LPAs with regard to the Lancashire County Council Environment Directorate specification, "Tree and Shrub Planting with Grass Seeding and Protective Fencing".

Requirement 18 (*fencing and other means of enclosure*) follows Requirement 13 of the DCO Model Provisions and requires submission and approval of written details of all temporary fences for the construction of a stage prior to its commencement. Construction sites required must remain securely fenced at all times during construction. Temporary fencing must be removed on completion of the authorised development. Any approved permanent fencing must be completed before the works to be enclosed are brought into use.

Requirement 19 (*ground/surface water and pollution prevention*) requires written details of the surface and foul water drainage system, following consultation with the sewerage and drainage authority, to be submitted and approved by the LPA. The Requirement further prevents any stage of the authorised development involving diversion of a stream or watercourse being commenced until a scheme and programme, including timescale, for the diversion is submitted to and approved by the LPA, after consultation with the Environment Agency. Throughout the period of construction, operation, restoration and aftercare of

the authorise development, all ditches, watercourses, 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. Pollution of watercourses is to be prevented through adequate storage for any oil, diesel oil and lubricants stored within the Order limit. All drilling mud has to be stored in a bunded area with an impermeable liner within the curtilage of the drilling compound. All drilling fluid and cuttings must be removed from each drilling compound for disposal as set out in the environmental statement. The first paragraph of this Requirement follows Requirement 14 of the DCO Model Provisions but the remaining paragraphs are not from the DCO Model Provisions. These have been developed following consultation with the LPAs to prevent pollution and in order to comply with the requirements set out in the Environmental Statement.

Requirement 20 (*archaeology*) follows Requirement 16 of the DCO Model Provisions and requires a written archaeological scheme for each of the areas of archaeological interest (as identified in the Environmental Statement) to be submitted and approved by the LPA for each relevant stage of the authorised development. The archaeological scheme has to identify areas where a programme of archaeological investigation is required, and measures to be taken to protect, record or preserve any significant archaeological remains that may be found. Any archaeological works or watching brief carried out must be by a suitably qualified person or body approved by the LPA. They must also be carried out in accordance with the approved archaeological scheme.

Requirement 21 (*external lighting*) follows Requirement 21 of the DCO Model Provisions and requires written details of external lighting to be installed at construction sites to be submitted to and approved by the LPA. Approved lighting has to be installed and retained during construction.

Requirement 22 (*construction hours*) makes provision for the hours of operation for construction activities. It is based on Requirement 24 of the DCO Model Provisions, although the hours of operation do not apply to drilling and cavern washing activities. This

reflects the location of the Project and the nature of the construction works which are excepted: drilling and cavern washing activities are both continuous processes. The hours of construction have been drafted in consultation with the LPAs. No heavy goods vehicles (other than those associated with drilling and cavern washing activities) may enter or leave the Preesall site other than between 07:00 and 18:00 hours Monday to Friday and 08:00 and 13:00 hours on Saturdays (excluding public holidays). This latter requirement is not from the DCO Model Provisions but is offered to mitigate the impact of heavy goods vehicles during construction as set out in the environmental statement.

Requirement 23 (*code of construction practice*) follows Requirement 19 of the DCO Model Provisions and requires submission and approval of a code of construction practice, which, thereafter, is to be complied with.

Requirement 24 (*construction worker travel plan*) follows Requirement 33(3) of the DCO Model Provisions and requires the construction worker travel plan, submitted as part of the environmental statement, to be implemented during the construction of the authorised development unless otherwise agreed with the relevant planning authority. Requirements 33(1) and (2) of the DCO Model Provisions do not need to be reflected because those relate to a mechanism for submission of a travel plan *after* issue of an Order.

Requirement 25 (*wellhead compounds*) requires details for each wellhead compound to be submitted to and approved by the LPA. This requirement is not from the DCO Model Provisions but has been included following consultation with the LPAs.

Requirement 26 (*disposal of filtered material*) requires all filtered material resulting from the brine discharge process to be disposed of on-site. This Requirement is not from the DCO Model Provisions but, following consultation with the LPAs, has been agreed in order to ensure that filtered material is disposed of in accordance with the measures detailed in the environmental statement.

Requirement 27 (*disposal of slurry*) requires all mud and slurry arising from the authorised development to be disposed of as set out in the environmental statement, unless otherwise agreed in writing with the relevant planning authority. This Requirement is not from the DCO Model Provisions but, following consultation with the LPAs, has been agreed in order to ensure that slurry is disposed of in accordance with the measures detailed in the environmental statement.

Requirement 28 (*control of noise during construction and maintenance*) requires a scheme for the control of noise during construction and maintenance to be submitted to and approved prior to commencement of the authorised development, and sets out what the scheme must contain and how it must be implemented. Paragraphs 1 to 4 follow Requirement 23 of the DCO Model Provisions. All plant, equipment and machinery used in the construction, operation and maintenance of the authorised development must be equipped with effective silencing equipment or sound proofing equipment to the standard in the manufacturer's specification. Paragraph 5 is not derived from the DCO Model Provisions but, following consultation with the LPAs, has been developed in order to mitigate noise levels specific to the Project during hours of operation.

Requirement 29 (*control of noise during operational phase*) follows Requirement 25 of the DCO Model Provisions and requires a scheme for noise management for the use of the authorised project to be submitted to and approved by the LPA, and thereafter complied with.

Requirement 30 (*control of dust emissions*) follows Requirement 28 of the DCO Model Provisions and requires a scheme and programme of the measures for the suppression of dust to be submitted and approved, and thereafter complied with.

Requirement 31 (*protection of agricultural practice*) requires that all topsoil and subsoil mounds shall be kept free from noxious weeds throughout the development including restoration and aftercare periods. This requirement is not from the DCO Model Provisions and has been included following

consultation with the LPAs.

Requirement 32 (*soil stripping, handling and storage*) requires that prior to a stage of the development involving the stripping of soil, a scheme setting out the method, handling, storage, reinstatement and programme of the works must be submitted to and approved by the LPA. Thereafter, the scheme must be followed. This Requirement is not from the DCO Model Provisions and has been included following consultation with the LPAs.

Requirement 33 (*restoration scheme*) requires that on the 35th anniversary of the commencement of commercial operation of the authorised development, or upon the cessation of the operation of the development, whichever is earlier, a scheme of restoration and aftercare of the Preesall site must be submitted for approval and, following cessation of operation, implemented. This Requirement is not from the DCO Model Provisions and has been included following consultation with the LPAs.

Requirement 34 (*decommissioning*) requires that unless otherwise agreed in writing by the LPA, should no gas be stored within the caverns within a period of 24 months following the completion of all solution mining works, a scheme detailing the removal of the access roads and all above ground development should be submitted to the LPA for approval in writing. The approved scheme must be implemented within 12 months of approval by the LPA. A scheme and programme must be submitted for the decommissioning of caverns unused for gas storage within 3 months of: the HSE or the undertaker having determined that the caverns created by solution mining are unsuitable for gas storage; solution mining of completed caverns having ceased for a continuous period of 12 months; or solution mining of any partially constructed cavern having ceased for a continuous period of 18 months. This Requirement is not from the DCO Model Provisions and has been included following consultation with the LPAs.

Requirement 35 (*maintenance of brine discharge pipeline, the 132kv electrical circuits and NTS interconnector pipeline*) provides that save in the case of emergency (relating to safety or production

requirements), 7 days' written notice shall be given to the LPA prior to the implementation of any maintenance works of the brine discharge pipeline, the 132kv electrical circuits and NTS interconnector pipeline, setting out the extent of the maintenance works and their timing. Again save in the case of emergency (relating to safety or production requirements), or unless otherwise agreed in writing with the LPA, all maintenance works to the brine discharge pipeline, the 132kv electrical circuits and NTS interconnector pipeline must be carried out between the hours of 8:00 and 18:00 (Monday to Friday) and between 08:00 and 13.00 on Saturdays and no such maintenance work shall be carried out on a Sunday, bank holiday or public holiday. It is also confirmed that the maintenance works described have to be carried out, and the land related to such maintenance works reinstated, as expeditiously as reasonably practicable. These Requirements are not derived from the DCO Model Provisions but are offered to reduce any inconvenience caused as a result of maintenance works carried out under articles 4 (*maintenance of authorised development*) and 24 (*temporary use of land for maintaining authorised development*) of the draft Order.

Requirement 36 (*design of roads*) follows Requirement 20 of the DCO Model Provisions and requires that no stage of the authorised development consisting of the construction or alteration of a street which is a trunk road or including any traffic management and control measures on such a street can commence until written details of the design of the street have been submitted to and approved by the relevant planning authority after consultation with the Highways Agency.

Requirement 37 (*ground subsidence monitoring scheme*) is a bespoke requirement for the Project and requires submission and approval of a ground subsidence monitoring scheme, setting out how ground levels are to be monitored, the extent and timescales of any monitoring activities and any mitigation measures which may be deemed necessary in the event of subsidence being detected. The scheme must be implemented as approved.

Requirement 38 (*requirement for written approval*)

	<p>requires that any approval that is required must be given in writing. This follows Requirement 36 of the DCO Model Provisions.</p> <p>Requirement 39 (<i>amendments to approved details</i>) makes provision for any amendments approved by the LPA to be included in the approved details for the purposes of undertaking the authorised development in accordance with the details provided. This follows Requirement 37 of the DCO Model Provisions.</p> <p>Requirements in the DCO Model Provisions which are not referred to above and not reflected in Schedule 9 have been omitted because they are not relevant to the Project. For one example, it was not necessary to include Requirement 11 (public rights of way) because no permanent diversions are proposed in the draft DCO.</p>
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Berwin Leighton Paisner LLP

28 November 2011