



Meeting note

File reference	TR030002
Status	York Potash Harbour Facilities Order
Author	Final Version
Date	Stella Perrett
Meeting with	4 November 2014
Venue	Applicant and Case Team
	TQH, Board Room, 1 st Floor Hawk Wing

Attendees:

Applicant

Morag Thomson	(Marrons Shakespeares)
Laura-Beth Hutton	(Marrons Shakespeares)
James Barrie	(York Potash Ltd)
Matt Simpson	(Royal Haskoning DHV)
Hugh Scanlon	(York Potash Ltd)

The Planning Inspectorate

Tom Carpen	(IPL, chairing meeting)
Oliver Blower	(Case Manager)
Laura Allen	(Senior EIA and Land Rights Advisor)
Hannah Nelson	(EIA and Land Rights Advisor)
Sarah Green	(Lawyer)
Vicky Hodgson	(Lawyer)
Stella Perrett	(Assistant Case Officer)

Meeting Objectives	To discuss draft documents and preparation for submission.
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Circulation	Attendees
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1. Welcome and introductions

The Planning Inspectorate (Pins) outlined its openness policy and that any issues discussed and advice given would be recorded and placed on the Planning Inspectorate's website under s.51 of the Planning Act 2008 (PA 2008). Further to this, it was made clear that any advice given did not constitute legal advice upon which the applicant (or others) can rely.

The applicant gave a brief overview of the other applications related to this project: The planning applications for the mine and mineral transport system ("MTS") and for the materials handling facility ("MHF") have been submitted to the relevant local authorities on 30 September 2014. The application for the mine and MTS is a 'straddling application' that is being submitted to both the North York Moors National Park Authority (NYMNP) and Redcar and Cleveland Borough Council (RCBC). The application for the MHF has been submitted to RCBC. The statutory determination period for both applications is 16 weeks.

It is the Harbour facilities and elevated conveyors which are the subject of this DCO application.

The applicant completed their S.42 consultation in October.

PINS advised that the case team have concentrated on the main documents and have already sent comments on the Draft Habitats Regulations Assessment (HRA).

2. Draft HRA Report

The applicant confirmed that the document to be submitted at application will be an evolution of the document PINS have commented on, reflecting the addition of information from outstanding discussions in relation to the Harbour Facility.

Pins offered to review the revised HRA Report prior to submission.

Pins explained that the project description in the applicant's HRA report needed to reflect the description of the project in the draft DCO, therefore it should be clear what the impacts of the project alone (Harbour Facility) and in combination (both with the other elements of the overall scheme i.e. the mine, MTS and MHR and any other plans and projects) are. The description of the project in the ES must also reflect the description of the project in the draft DCO and should clearly identify the effects of the project alone and cumulatively with other development.

Any correspondence with key bodies such as Natural England (NE) needs to be clearly documented and a full record of correspondence will be useful for acceptance to assist PINS in establishing whether the test of 'sufficient information' under Regulation 5(2)(g) has been met.

The applicant explained that they are in on-going discussions with NE regarding proposed mitigation, however they may not have reached full agreement in time for acceptance.

Pins advised that when considering whether the acceptance test had been met, PINS would be looking to identify whether anything was missing in terms of the information required to enable the Secretary of State to undertake an appropriate assessment (AA), if required, or to enable the Secretary of State to reach a decision that an AA was not required. For example, whether any surveys are outstanding.

The applicant confirmed that the HRA includes the relevant evidence, surveys, modelling etc, and that a draft copy of the applicant's HRA report has been provided to NE as part of the s.42 consultation.

Pins enquired whether the applicant has a timetable for discussions with NE.

The applicant stated that there was no set timetable, but that there had been a meeting recently with NE, the Environment Agency and the MMO and there were a

series of mitigation scenarios which are being developed for discussion with NE, and a mitigation tracker had been developed to inform requirements in the DCO.

Pins welcomed the use of a mitigation tracker to identify how mitigation relied upon in the applicant's HRA would be secured and delivered through the draft DCO. A similar mitigation tracker in relation to mitigation identified and relied upon in the ES would also be helpful. If these trackers were appended to the HRA and ES when submitted, if accepted, it would assist the ExA when undertaking the examination.

The Applicant confirmed that the tracker related to both.

3. Draft DCO/EM

Pins raised the issue of the definition of 'Maintain', and referred the applicant to the new Advice Note 15 'Drafting Development Consent Orders', very recently added to the Planning Inspectorate's website. (Note: At 20.2: "*Particular care should also be taken when drafting a power to maintain so that it does not authorise works outside of those assessed. Neither should the power to maintain permit the construction of what is effectively a different project from that consented or its removal (although the removal and replacement of part(s) only of an authorised project may in certain circumstances be appropriate)*").

Pins also referred the applicant to the new Advice Note 15 with respect to guidance on the drafting of tailpieces. 'Open' tailpieces which allow the development consented to be subsequently varied by the local planning authority should not be used, but flexibility within the scope of the ES can be.

Pins, with respect to Article 26: Compulsory Acquisition, advised the applicant to ensure that the new and existing rights that they seek to acquire compulsorily are clearly described in the Book of Reference (BoR).

The applicant sought guidance with respect to Article 21 of the draft DCO which is broadly based on that of a similar NSIP, which included a provision for tidal works based on the model provisions. It seemed onerous and clarification was sought as to the likely reaction if it were to be deleted.

Pins confirmed that the model provisions have been revoked and no longer carry the statutory authority that they used to. The applicant was advised to consider whether the provision was appropriate for their scheme and to explain their reasons for it in the Explanatory Memorandum. If the applicant chooses to remove the provision they should be aware that they may be questioned on this during the examination.

Pins noted that Article 5 authorises development consent for the development within the order limits. **Pins** and the Applicant agreed it would be sensible to add wording relating to the use of the authorised development to this Article. On the works plan there appears to be areas within the order limits which do not form part of the specified works in schedule 1. **Pins** advised that the applicant should ensure that the purpose for all land included within the order limits is clear.

Pins advised that the applicant should also explain in the Explanatory Memorandum why it is necessary to include options for a solid quay or an open quay and what works will be carried out in phase 1 and phase 2, and why it is necessary for the project to be carried out in two phases.

Pins advised that there needs to be as much detail as possible with respect to the Deemed Marine Licence. **Pins** also noted that Requirements 10-14 are quite sparse at

present. **The Applicant** advised that it was intended that these requirements would be amended to reflect the contents of the mitigation tracker.

Action: The Planning Inspectorate will provide more detailed comments on the draft DCO, EM and BoR as soon as practicable after the meeting, and that this advice would be published at the same time as the meeting note.

4. Draft BoR

The applicant noted that Part 2 of the BoR lists the relevant bodies. The applicant enquired whether it is necessary to repeat the wording.

Pins advised that it is not a requirement in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and there is no specific guidance on this issue, it may be helpful to look at other projects' BoRs.

The applicant confirmed that other Books of Reference took varying approaches and given that it was not a requirement to repeat the wording they would prefer not to in order to keep the size of the BoR more manageable. In response to a query from **Pins the Applicant** confirmed that they have been in touch with The Crown Estate with respect to Crown Land.

5. Draft Plans

Pins noted that there are some minor issues regarding the plans, and that more clarity of the boundaries of plots is needed on some.

Action: The Planning Inspectorate will provide more detailed feedback in writing after the meeting.

Pins advised that the applicant needs to explain clearly why all of the land included within the Order limits is required.

The applicant explained that one of the Works Plans shows a compound and parking area that may not now be located in that position following S.42 consultation responses.

6. Draft Consultation Report

Pins noted that cross-referencing within the report could be clearer, and to ensure that all necessary evidence is provided with the appendices. The applicant should ensure that the list of Statutory Consultees is complete, and to make clear the reasons if they have not considered a body to be relevant. The applicant was referred to Advice Note 3 which sets out the tests for identify consultees.

Pins advised that grouping consultation responses together by issue would be helpful, and that the applicant should be mindful that the report makes clear how the applicant has had regard to all responses.

Action: Applicant will provide an updated Shapefile at least two weeks before submission of the application.

Action: The Planning Inspectorate will provide further comments on the Consultation Report as soon as practicable after the meeting.

7. Other Draft documents

The applicant described the other documents, such as Location and Layout Plans and images of the conveyors. The applicant confirmed that there will be more detailed plans within the ES. The conveyor will not be shown throughout the route, although the impact on viewpoints will be shown, for example, at specific locations where the height of the conveyor changes.

Pins advised that, should the application be accepted for examination, the ExA may ask for more visual information and/or ask questions on the presentation of the visual impact.

8. Preparation for Submission

Pins asked whether any further draft documents will be submitted.

The applicant confirmed that they may submit a revised Consultation Report following PINS comments.

The applicant asked how much information relating to the wider scheme should be included with the application submission.

Pins advised that information of the wider scheme outside of the DCO should be presented so as not to confuse what is being applied for. Pins advised the applicant to confine reference to the wider scheme to cumulative / in combination effects, and as clearly marked supporting information.

Pins requested that the applicant sends the electronic index as far as possible in advance of submission. Application documents are now normally published on the Planning Inspectorate's website on submission.

Pins enquired as to the progress of SoCGs.

The applicant hopes to include a SoCG with RCBC with the application submission. Stockton has not responded. NE will want to see the final ES first. Protective Provisions may be sufficient for Network Rail. The applicant believes that there are no Highways implications. The applicant is discussing protective provisions with the bodies they are engaging with over the next few weeks. These include those that have plant on the site. The applicant will also share the Consultation Report with those local authorities whom will be asked by PINS to confirm that they believe the consultation has been adequate.

Pins enquired as to the expected submission date, and informed the applicant that Pins will write to the relevant Local Authorities with respect to the adequacy of consultation, giving them 14 days to respond.

The applicant confirmed their intention to submit the application in mid-December

Action: The Planning Inspectorate will send the applicant a standard letter with the necessary requirements for submission.

9. AOB

Pins explained that the project will be dealt with by a new case team in the future, however the EIA advisors and Lawyer will remain the same.

Action: The Planning Inspectorate will send the applicant new contact details.

The applicant offered to come to visit the Planning Inspectorate again to give the new Case Team an overview of the project.