



## York Potash Planning Application NYM/2013/0062/MEIA

### Minutes of meeting held on 29 July 2013 at 1.00pm at the North York Moors National Park Authority offices, Helmsley

#### Present:

Andy Wilson	NYMNPA	Tom Carpen	Planning Inspectorate
Chris France	NYMNPA	Laura Allen	Planning Inspectorate
Mark Hill	NYMNPA	Des O'Halloran	Natural England
Jane Davies	NYMNPA	Rachel Hoskin	Natural England
Trevor Parkin	AMEC	Meryl Leung	Environment Agency
Neil Marlborough	AMEC	Janet Horne	Redcar and Cleveland BC
Laura Hughes	Browne Jacobson	Adam Chumbley	MMO (by telephone)
Jonathan Allen	Browne Jacobson		
Gordon Cowe	York Potash		
Diane Dowdell	York Potash		
Morag Thompson	Marrons		

#### 1. Purpose of meeting

- 1.1 CF thanked everyone for attending at short notice. The purpose of the meeting was to have a strategic discussion with key partners involved in the York Potash (YP) project, following the company's request for the National Park Authority's planning decision to be deferred. The NPA understood that the deferral request followed legal advice received by the company, which it assumed was to do with Habitats Regulations Assessment (HRA) and the port proposals. CF asked York Potash to share that advice so that the concerns raised could be addressed in a collaborative manner.
- 1.2 The main Agenda items were Environmental Impact Assessment (EIA), Habitats Regulations Assessment (HRA) processes and planning policy issues. The statutory agencies needed to have a better understanding of the project as a whole, the issues that have led to the current hiatus in the planning process and the company's future plans.

#### 2. York Potash update

- 2.1 GC welcomed the opportunity to meet everyone and explained that the YP deferral request had been made because of legal advice regarding the Appropriate Assessment (AA) and port proposals and to enable the company to address issues raised in AMEC's review of the Environmental Statement (ES). The company's legal advice had been verbal and GC could not say much more about it.
- 2.2 YP had a new organisational structure, with GC reporting to Chris Fraser and other staff reporting to GC. The new team included DD as Environmental Manager (joined late May 2013) and MT (previously mainly focussed on the pipeline) who was providing legal advice on a full time basis. Since the deferral request, YP had been holding internal workshops to understand the current position and re-align separate strands within the organisation, reviewing the use of consultants and preparing work

plans to address issues raised in the AMEC reviews. YP's view was that both reviews were governed too much by opinion and not enough by fact.

- 2.3 A draft high level 'Execution Plan' would be prepared before the end of August 2013 which would cover the EIA for the mine head, pipeline and other facilities and proposals to address the Major Development Test (MDT) policy issues. It would include timescales and would form the basis for detailed discussions with the NPA and other agencies on the way forward.

### **3 Legal advice and the wider York Potash project**

- 3.1 CF welcomed the new structure and approach and noted that the main issue to be addressed was co-ordination of the wider YP project. The current difficulties were the result of the project being split up into different elements which were being dealt with separately by the company so that the project was not considered in its entirety with respect to environmental issues. The NPA's legal advice pointed to this as a central problem in relation to both EIA and HRA.
- 3.2 In order to fully understand the wider project, PINS asked for a list of all consents and licences required for the overall project both during construction and operation and the timescale for obtaining these consents. Representatives from Natural England (NE) and the Environment Agency (EA) supported this request and encouraged a 'parallel tracking' approach to the various consents required. YP had previously held a meeting with the Consents Service Unit at PINS to identify a 'route map' for obtaining non-planning consents for the NSIP (the proposed pipeline) and this could be followed up and applied to the wider project.
- 3.5 Lack of clarity about the detailed proposals for the wider project had made it impossible for environmental assessments to be carried out properly. CF noted that the NPA also needs certainty about the wider project proposals in order to weigh up the potential economic benefits properly. It is difficult to make this assessment if there are still a range of options being considered by the company.
- 3.6 GC confirmed that YP's recent work meant that proposals for the mine head, the pipeline and the drying plant and materials handling facility at Teesside were well progressed. The shaft diameter and the processing and pumping equipment for the pipeline operation had been worked up sufficiently for contractors to submit bids and the scale of production for Phase 2 was also being fixed. GC confirmed that two 66kv power cables would be needed in the pipeline trench to supply the mine and the pipeline operation. YP is discussing options for harbour facilities with PD Ports, looking at the availability of berths within the port Masterplan. Bran Sands was considered at the pre-feasibility stage but PD Ports have other options which may be more advantageous for YP. A meeting to take this forward will take place shortly.
- 3.7 GC confirmed that the company was not pursuing proposals for an NPK fertiliser blending plant on Teesside at this stage. Although there was a market in Asia for polyhalite in a powder form, most of the product would be sold in granular form. The materials handling at Teesside would therefore only consist of a drying and materials handling facilities and a granulation plant. The product would be taken by conveyor to the marine side of Teesport for export. The drying and materials handling facilities are not currently regarded as associated development in connection with the pipeline application to be submitted to PINS, but GC commented that that approach is under review. The company understood that the various consenting bodies needed more clarity about the overall project proposals. TC asked for this to include clarity on which elements needed which consents.

#### **4. Environmental Impact Assessment and Habitats Regulations Assessment**

- 4.1 These Agenda items were covered jointly in the discussion. MT asked for views about the best approach to cumulative and in-combination environmental assessments and GC asked how the different authorities would work together assuming that there was clear information about the proposed facilities and impacts were being assessed on the basis of a 'worst-case scenario'.
- 4.2 PINS advised that based on the information to date, all elements of the wider project linked to the pipeline, would need to be covered by the EIA and HRA, namely the minehead, processing facilities and the harbour.
- 4.3 AMEC also advised that for EIA as well as HRA purposes, sufficient detailed information was needed for all parts of the project before individual applications were submitted. The differing timescales for different elements of the project had created problems as authorities were being asked to assess documents before all the necessary information on other parts of the project was available. Lack of consistency between the separate elements of the project had also caused problems. All consenting bodies and statutory consultees should have the same information – effectively one ES and one HRA for the overall project - so that each organisation is able to make its decision correctly. LH noted that, although each body was responsible for its own decision, the same statutory consultees were involved in all elements of the project.
- 4.4 MH commented that the HRA on the mine head had brought matters to a head because without having clear outline proposals for the port or sufficient detail on the options, it had not been possible to reach a clear decision.
- 4.5 YP would consider these points and, although they could not confirm whether one or a number of documents would be produced, the company understood that a more effective way of providing information about all components of the project and how they linked together was needed.
- 4.6 There was a discussion about what should be covered in 'cumulative' and 'in combination' assessments. Elements of the wider York Potash project should be included, for instance proposals for a construction camp and the Whitby Park and Ride extension. Other actual or proposed developments in the area must also be identified and assessed, for example within the National Park there are gas exploration proposals that should be considered. TC commented that PINS would require evidence of agreement between the applicant and the relevant consultees (in particular NYMNP, Redcar and Cleveland BC and NE) about what had been screened in and out of the cumulative and in combination assessments for the NSIP element (the proposed pipeline).
- 4.7 Regarding the Whitby Park & Ride extension, MH noted that the approved proposals were for a scheme that would operate on a seasonal basis during the day time only. The proposed extension to include night time use with lighting and security was very different.
- 4.8 YP is currently reviewing whether the proposed workers' camp is the best approach or whether there is sufficient existing accommodation available that could be used by construction workers. TP commented that the company must make a decision and confirm its proposals as the impacts would be different and would need to be assessed. AW noted that the construction camp was another significant development proposal within the National Park and all public sector bodies must have regard to National Park purposes and have regard to the MDT policy.

- 4.9 When considering environmental impacts, it was important that the company should involve the NPA as local planning authority in all discussions with NE and EA and the scope of further information to be provided in connection with the mine head application must be agreed with the NPA. GC accepted the point, saying that the company understood that it was important to have the 'right people in the room'. NE supported this approach which would enable the statutory consultees to do their job properly and avoid them having to act as a 'go-between'.
- 4.10 Turning to HRA, DO commented that HRA can be seen as a bureaucratic process which developers often challenge but it is well intentioned and designed to uphold an important principle of protection for the environment. It is a system established over many years with the benefit of experience of many developments. It has not been helpful that YP has challenged accepted practice at every step of the way and it is important to understand that recognising the potential for 'likely significant effects' does not mean that a development will not proceed, but is the first step in enabling mitigation to be identified that may make a proposal acceptable. NE advised that more progress was likely if the company changed its approach to the HRA process. DO also commented that clarity on the proposals was essential. NE's advice would inevitably be vague if it had to be based on options or 'worst case scenarios'.
- 4.11 JH noted that Redcar and Cleveland's perspective was that the company must look at the objectives of the EU's Habitats Directive and understand that the project as a whole must be considered. There must be sufficient information on all aspects of the project to enable the EU requirements of the EU's Habitat Directive to be satisfied – otherwise any decision made by any of the consenting authorities would be vulnerable to legal challenge.
- 4.12 LA stated that PINS expects applicants to undertake a shadow HRA and provide information to support this assessment with their application. When seeking to determine whether the application has met the statutory tests for acceptance, including the 'sufficient information' requirement to enable the competent authority to undertake an AA or determine that one is not required, PINS will consider any comments provided by the local planning authorities and statutory nature consultees as to whether in their opinion sufficient information has been provided..LA noted that the HRA must consider the Teesmouth and Cleveland Coast Ramsar site and the SPA separately to ensure that all features of both sites have been properly assessed.
- 4.13 ML noted that the EA was organised according to water catchment areas and the Newcastle office would comment on any harbour proposals whereas the Yorkshire office was dealing with the pipeline and mine head proposals. EA would also look at the proposals from the perspective of the Water Framework Directive to ensure that the proposals would not lead to a deterioration in water quality.

## **5. AMEC review of YP Environmental Statement**

- 5.1 YP is carrying out an evidence 'gap review' of matters raised in the AMEC ES review. YP stated that Turley's report on the Executive Summary does not represent the company's detailed response to the ES review and has been withdrawn from the YP website. YP does not agree with all the points raised by AMEC but will respond fully with its proposals to address outstanding EIA issues in the draft Plan. TP commented that, although the Turley document has been removed from the company's website, it has not been withdrawn and YP's letter to the NPA of 22 July 2013 indicates that it may still be taken into account as the company moves forward. AMEC has therefore prepared a response to the Turley review which will be placed on the NPA website.
- 5.2 GC confirmed that YP would produce a revised ES - the form that it should take was being considered as part of the current review. TP noted that it would need to be a coherent document which addressed the issues that had been raised at many stages

already. Although YP's request for a deferral had suggested that the contents of the AMEC ES review were unexpected and presented at the last minute, the detailed EIA requirements had actually been made clear on several previous occasions, in the Authority's Scoping Opinion of December 2012 and the Regulation 22 and Section 62 requests of March 2013.

- 5.3 CF had spoken to Gareth Edmunds at YP about the company's approach to communication. CF added that documents commissioned by the NPA to provide an independent review of the planning application had not been received by YP in a professional manner. It was important that publicity about professional disagreements should also be conducted in a professional manner.

## **6. Planning Policy Issues**

- 6.1 CF highlighted the importance of policy issues in the NPA's assessment of the planning application. The company should be aware that compliance with the Authority's planning policies is fundamental and there is a significant policy conflict between the YP proposals and national and local policies regarding major development in National Parks, as set out in the National Planning Policy Framework and the English National Parks and Broads Circular 2010. A national need for polyhalite has not been shown, nor has it been demonstrated that there is a need for a second potash mine within the National Park. The company is pursuing an active marketing and discounting strategy to establish a new market for the product rather than meet a pre-existing national need.
- 6.2 YP confirmed that it would be able to address the MDT issues more quickly than the environmental ones and would respond to AMEC's MDT report with further information from industry experts. GC added that he considered that the MDT report expressed a one-sided view and had not given due weight to the company's business plan for 5mtpa production, nor its sales contracts. He stressed that discussion of the issues should be based on fact rather than opinion.
- 6.3 TP rejected the view that the AMEC MDT report was un-balanced. It had not been based on pre-conceived views but was a rigorous assessment of the information provided, as required by the NPA and government policy. It was also based on advice provided by independent economic and agronomic experts.
- 6.4 AW requested more information about the YP field trials to give officers a better understanding of the benefits of polyhalite for plant growth. GC commented that there may be issues of commercial confidentiality in releasing the details but AW confirmed that the Authority was used to dealing with confidential information which would be treated securely. MH noted that it was possible that the Planning Committee would be faced with different experts saying different things and it was important for officers to have as full an understanding as possible.
- 6.5 TC confirmed that PINS would expect any planning gain in connection with the pipeline NSIP to be negotiated with the NPA as the local planning authority. MT noted that Regulation 122 would be applied rigorously in connection with an NSIP application for an underground pipeline.

## **7. Actions/Timescales**

- 7.1 YP's draft Plan would be prepared before the end of August for comments and discussion. CF noted that it was important for officers to catch up with other work and the organisation would be busy during September hosting a national landscape conference. However, once agreed with all the relevant agencies, the Plan would be posted on the NPA website so that it would be available for the public to view. GC

confirmed that the pipeline development consent application would not be submitted within the next 2-3 weeks as previously planned.

## **8. Other matters**

- 8.1 GC confirmed that YP had come to the meeting to listen to the views of the consenting and statutory agencies. The need for an integrated approach was understood and the company would now take stock and decide on the best way forward. The draft Plan would set out what the project timescales are and outline proposals for involving all relevant agencies.
- 8.2 TC asked everyone to be aware that the PINS examination process was tight and demanding for all, with limited time allowed for preparing responses to questions. All parties should make the most of the pre-application stage to resolve outstanding issues and agree Statements of Common Ground which PINS would expect to see at an early stage. YP would need to have sufficient information available about the proposed harbour facilities to complete the pre-application stage properly as the examination process would not allow for changes at a later date.
- 8.2 CF requested that there should be better communication between agencies involved in the project, with regular joint meetings but possibly fewer representatives from each organisation to keep the meetings manageable and productive. All parties were thanked for travelling to attend the meeting which finished at 3.00pm.

JD

31.07.13