



## Meeting note

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<b>Status</b>	<b>FINAL</b>
<b>Author</b>	Patrycja Pikniczka
<b>Date</b>	21 January 2015
<b>Meeting with</b>	York Potash Limited
<b>Venue</b>	The Planning Inspectorate (Conference Room 3) Temple Quay House, Temple Quay, Bristol, BS3 1RE
<b>Attendees</b>	<b>The Planning Inspectorate</b> Simone Wilding – Head of Casework (National Infrastructure) Gideon Amos OBE – Examining Inspector Robert Ranger – Case Manager Patrycja Pikniczka – Case Officer Laura Allen – Senior EIA and Land Rights Advisor Hannah Nelson – EIA and Land Rights Advisor Sarah Green – Lawyer (TSol) Vicki Hodgeson – Lawyer (TSol)  <b>York Potash Limited</b> Morag Thomson – Marrons Shakespeares Laura Beth Hutton – Marrons Shakespeares Allan Gamble – Project Director (YPL) Terry Quaife – Project Manager - Engineering (YPL) William Woods – Land Development Manager (YPL) Hugh Scanlon – Nathaniel Litchfield & Partners Matt Simpson – RHDHV
<b>Meeting objectives</b>	To provide feedback on the application made by York Potash Limited on 19 December 2014, and discuss the forthcoming re-submission of an application.
<b>Circulation</b>	All attendees.

## **Summary of key points discussed and advice given:**

York Potash Limited (YPL) was advised about the openness policy and that any advice given will be recorded and placed on the Planning Inspectorate's (PINS) website in the form of a meeting note. PINS explained that any advice given does not constitute legal advice upon which applicants (or others) should rely on.

### ***Introductions***

PINS thanked YPL for the application submitted on 19 December 2014, which was both complete and legibly presented. PINS and YPL agreed that the purpose of the meeting was to inform the preparation of a further application that would lead to a more efficient examination.

#### *The acceptance test and preparing for an efficient examination*

PINS explained that the acceptance test is set out in subsection 3 of section 55 of the Act. The subsection provides that the Secretary of State can only accept the application if the requirements in S55(3)(a)(c)(e) and (f) are met. The test can be seen in two parts. There is an administrative check to deal with matters required in S55(3)(a),(c) and (e) and also a satisfactory standard test – the Secretary of State cannot accept the application if he does not consider that the application (including accompanying documents) is of a satisfactory standard.

### ***Key areas with opportunities for improvement***

#### *Draft Development Consent Order ('DCO')*

PINS advised that whilst a degree of flexibility is acceptable, it is essential that the draft DCO details the proposed works with clearly defined parameters to a sufficient degree to allow examination. This is explained in DCLG 'Planning Act 2008: Guidance on the pre-application process' (August 2014) particularly in paragraphs 81 and 90.

The applicant was advised that the size, position and built form of all works must be specifically defined in the draft DCO (particularly in the Schedule of works) and be sufficiently detailed to allow the Secretary of State (SoS) to make an informed and balanced decision on the benefits of the project and its impacts. PINS advised that the works should be described as fully as possible and that particularly in the case of a Rochdale Envelope application the draft DCO should fully set out the parameters of the works either in the Schedule itself or by reference to a plan or table which shows the parameters.

If a Rochdale Envelope approach is adopted, there must be a clear justification of both the reason for the uncertainty (or need for flexibility), and the degree of flexibility sought. It is unlikely to be appropriate to use it for every element of the application. For example, the size, position and built form of proposed major structures need to be clearly specified and justified within limits of deviation. The applicant was advised that the parameters for each work must be clearly defined in the draft DCO and/or shown on the accompanying Works Plan. The parameters for each work should also clearly reflect what has been described and assessed in other application documents, for example, what parameters have been assessed within the Environmental Statement (ES) and the applicant's Habitats Regulation Assessment (HRA) Report. Tools are

available to make elements of a scheme that are described using a Rochdale Envelope approach easier to examine, such as visual representations of the development showing the maximum parameters of the development assessed in the ES and photomontages showing the development in situ against the existing baseline.

In this approach, it is the worst-case-scenario that needs to be presented to enable the Examining Authority (ExA) to understand the scale and dimensions of the proposed development.

Where there are a number of different forms of development ranging in type over non-contiguous areas, the volume envelope for each work should be clearly defined on Works Plans or in the draft DCO itself, (as opposed to solely showing the areas within which works may take place). Each work should be limited by clear parameters in each dimension (maximum width, length and height) as set out in PINS Advice Note 9 Rochdale Envelope. Detailed parameters of temporary works also need to be provided in the draft DCO and Works Plans as assessed in the ES.

The parameters of works given in the draft DCO must mirror or be within the parameters given in the ES and the HRA Report for those works, so that it can be clearly ascertained that impacts have been properly assessed. To assist in the presentation of this information, a table format may be helpful in the ES and the HRA Report, to identify against each work described in the draft DCO, the parameters assessed in the ES and the HRA Report. PINS advised YPL that the draft DCO that accompanied the 19 December 2014 application currently lacks clarity in that there is an incomplete description of the parameters of the works for which development consent is sought. YPL should attempt to reduce the uncertainty with respect to the built form of the application as much as possible before submission.

With regard to Schedule 1 of the draft DCO (Authorised Development) either reference to clear parameters on the works plans and sections or preferably inclusion of a table of parameters for each work would clarify the extents of the authorised development and of each numbered work constituted within it.

PINS explained that where flexibility is sought through a Rochdale Envelope application, the ExA's assessment of the impacts of the proposed scheme would be the worst case, as identified and assessed within the ES.

#### *Funding Statement ('FS')*

PINS explained that the applicant must make clear in the FS the costs of the project and of the proposed compulsory acquisition (CA), and how funds for the project and CA are secured. The ExA/SoS must have confidence that compensation will be paid. There are many acceptable approaches to achieving that purpose, given the circumstances of each applicant; however the principle is the same for all.

PINS advised the applicant to have regard to the DCLG 'Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land' (September 2013 in particular paragraphs 17 and 18). The FS supplied with the application is not fully in accordance with this guidance and leaves issues to be addressed in examination.

## *Statement of Reasons ('SoR')*

PINS explained that the SoR must provide reasons for why specific interests and rights over land are sought.

The case for CA is separate from (but associated with) the case for development consent. The SoR should therefore explain why it is necessary to compulsorily acquire the land or rights over land and why the extent of CA sought is the minimum necessary having considered reasonable alternatives. To acquire land or rights compulsorily is an interference with the Human Rights of the current owner, and thus the test and standard of reasoning required to show that the interference is justified and proportionate is high and separate from the tests applied in relation to development consent. The applicant must be clear and concrete about the CA justifications. If some questions cannot yet be answered at this point in time, this needs to be clearly explained as does how this will be overcome. It is possible for an ExA to recommend that an order is made but that CA (over the scheme, elements or individual plots) is not confirmed.

PINS advised that the SoR supplied with the application sets out to make a compelling case in the public interest for the scheme, (by reference to the Planning Statement) which is an important first step, but the Planning Statement itself does not explicitly address or refer to the compelling case test. The SoR does not attempt to address this or the other CA tests in respect of each right or interest that is sought.

PINS advised the applicant to have regard to the DCLG 'Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land' (September 2013 - in particular paragraphs 31 and 32). The SoR supplied with the application is not fully in accordance with this guidance and leaves issues to be addressed in examination.

## **Points to note for information**

### *Plans*

The applicant was advised that application documents indicated that there are 11 sheets of Land Plans; however the Land Plans itself indicate '1 of 10 sheets'.

### *Consultation*

PINS explained that they had identified that two gas transporter companies were not consulted as part of YPL's statutory consultation. PINS advised that where the applicant concluded that it was unnecessary to consult such bodies, that conclusion should be set out within the relevant part of the Consultation Report ('CR').

PINS noted that the original letters to the local authorities inviting responses to consultation on the draft Statement of Community Consultation (SoCC) were not supplied. However, PINS noted that the responses from the relevant local authorities were provided with their comments on the SoCC.

PINS also suggested that justification should be provided why the project is not considered by YPL to be an 'offshore scheme' for the purposes of Regulation 4.3(d) of the (The Infrastructure Planning (Applications: Prescribed Forms and Procedure)

Regulations 2009), and that this was not likely to be a reason not to accept this application if the supplied justification was reasonable.

#### *Other matters*

The applicant asked whether further consultation must be carried out should the draft DCO limits in the proposed application be reduced in area. PINS advised that the need for further consultation in the event of a reduction of the order limits was less likely to be necessary provided that the changes did not raise significant new issues or impact upon new land interests.

PINS explained that when a new application is submitted, PINS would need to re-contact all relevant local authorities for adequacy of consultation representations.

#### **Specific decisions / follow up required?**

- The applicant intends to submit draft application documents to the Planning Inspectorate for comments including updated Schedule 1 of the draft DCO. PINS will seek to provide comments on these as quickly as practically possible as a priority.