

**Planning Act 2008 (as amended) and the Infrastructure Planning
(Examination Procedure) Rules 2010 (as amended)**

**TR030002: Application by York Potash Limited for an Order Granting
Development Consent for the York Potash Harbour Facilities**

Examining Authority’s First Round of Questions

27 July 2015

Contents

Notes	1
Compulsory Acquisition and Funding	3
Development Consent Order.....	6
Environmental Statement General.....	14
EIA Process and Methodology	15
Project Need, Project Description, Alternatives and Route Selection.....	16
Safety and Environmental Management	18
Hydrology, Hydrogeology, Marine Sediment and Water quality, Coastal protection and Flood defence.....	19
Terrestrial Ecology	24
Traffic and Transport	28
Noise and Vibration	29
Landscape and Visual Impact Assessment	30
Habitat Regulations Assessment	32
Water Framework Directive (WFD)	43

Notes

1. Apart from the questions on Compulsory Acquisition and Funding, the draft Development Consent Order, Environmental Statement General and Habitat Regulations Assessment, the questions below have been organised under their most relevant chapter heading in the Environmental Statement. Chapter headings have been omitted where there are no relevant questions.
2. References used within this document match references given to documents as listed in Document Library published on the project web page.
3. As s104 of PA2008 requires proposals to be assessed in relation to designated National Policy Statements, please reference answers to

relevant paragraphs in the National Policy Statement for Ports (January 2012) wherever appropriate.

4. Questions under different headings may overlap. Some cross-references have been inserted. In making responses a composite answer to several questions may be provided whether or not there is a specific cross-reference provided that it is made clear which questions are covered in order to avoid duplication.
5. Where it seems helpful references have been included to the documents in the Examination Library.

Compulsory Acquisition and Funding (CA)

CA 1.1

To: **The Applicant**

The need for the rights proposed to be subject to compulsory acquisition

The Explanatory Memorandum (APP-004) states that the power to deviate laterally the by up to 20 metres between works areas is needed to give the Applicant sufficient scope to take into account matters which it may not be possible to identify before construction commences.

The Documentation states that further surveys or studies would be required prior to construction of the development to refine the choice of conveyor route and the nature of quay construction. Please;

- a) Provide a more detailed description of these surveys/studies; and
- b) Show how these are secured through the draft DCO.
- c) Please indicate what mechanisms exist in the DCO to control the choice and implementation of only one out of the pairs of alternatives.
- d) Provide a specific justification for the extent of lateral deviation proposed in relation to each work area as the justification for particular extents must vary from work to work rather than a universal justification being applicable.

CA 1.2

To: **The Applicant**

The need for the land proposed to be subject to compulsory acquisition

Given the options for conveyor routings and quay construction,

- a) how can you justify the proposed powers of compulsory acquisition over land that will not be required as implied by the phraseology 'as may be required for the purposes of the authorised development' in articles 29 and 30 of the draft DCO?
- b) do you intend to confirm the actual extent of your requirements during the Examination?

CA 1.3

To: **The Applicant**

Crown land

Part 4 of the Book of Reference (APP-009) lists the following as owner of the Crown interest in respect of certain plots:

- The Queen's Most Excellent Majesty in Right of her Crown

The letter from the Crown estate dated 15 December 2014 does not give an unqualified consent as it requires insertion of an Article in the draft DCO that consent must be sought. Article 36 of the draft Order provides the wording requested, but this appears still to leave consent to be sought. Please provide a progress report on negotiations with the owner of the interest, with an estimate of the timescale for securing unqualified written consent from them under s135 of the PA2008 (as amended).

State whether there are any envisaged impediments to the securing of such consent.

CA 1.4

To: **The Applicant**

s127 and s138 including Protective Provisions

The Book of Reference (APP-009) includes a number of Statutory Undertakers with interests in plots.

Provide a progress report on negotiations with each of the Statutory Undertakers listed in the Book of Reference, with an estimate of the timescale for securing agreement from them under s127 of the PA2008 (as amended).

State whether there are any envisaged impediments to the securing of such agreements.

The Explanatory Memorandum (APP-004) states that the Schedules 7-11 contain the latest drafts of protective provisions for Network Rail, National Grid Electricity and Tees Port authority and other enterprises in relation to protection of pipelines and assets over-bridged or over-sailed. State whether it is intended that all of the Statutory Undertakers will be subject to Protective Provisions to be included in Schedules (currently 7-11) of the draft Development Consent Order, bearing in mind the Relevant Representation from Northern Powergrid (Northeast) Limited (RR-011) and the additional submission from Northumbrian Water Group Limited (AS-002).

Please set out the extent to which s138 of the PA2008 (as amended) applies to each of the Statutory Undertakers listed. *[see also DCO 1.12]*

CA 1.5

To: **The Applicant**

Company structures

Provide a group structure showing and explaining the interrelationships between York Potash Limited and Sirius Minerals plc and any others subsidiaries of the latter.

Please explain any links to Cleveland Potash.

CA 1.6

To: **The Applicant**

Funding Statement

Provide the Audited Accounts for the latest financial year (31 March 2015) as and when these are available for all companies that may become or be related to the Undertaker for the DCO scheme. If they are not immediately available, please indicate when they will be.

CA 1.7

To: **The Applicant**

The guarantee

Which company or entity would issue the guarantee, or alternative form of security as referred to in Article 23 of the draft DCO? Is that company registered in the United Kingdom?

On whose authority would such a guarantee or alternative form of security be issued and is that authority yet to be given?

State whether thinking on the nature of the guarantee has developed since the draft DCO and Explanatory Memorandum (APP-004) were drafted. What satisfaction can the applicant provide that the entity issuing the guarantee is capable of meeting the liabilities that may arise under it?

CA 1.8

To: **Redcar & Cleveland Borough Council**

To: **Hartlepool Borough Council**

To: **The Applicant**

The guarantee or alternative form of security

The draft DCO requires that an alternative form of security is approved by the Secretary of State. The explanation for requiring the Secretary of State to undertake this, as opposed, to the relevant local authorities is provided in the Statement of Funding in that it is based on the Hornsea One Offshore Wind Farm Order 2014.

State and justify whether you would prefer to be the body approving an alternative form of security relating to that part of the project lying within your area. Do you consider that you (or the Secretary of State) should be involved in approval of a guarantee?

Development Consent Order (DCO) (APP-003)

DCO 1.1

To: **The Applicant**

Article 2: Definition of "Authorised development".

This definition currently includes "any other development authorised by this Order within the meaning of section 32 of the PA 2008".

What is meant by this? Should any "other development" be included in Schedule 1 or should this definition refer simply to the Town & Country Planning Act 1990 (TCPA1990) unless one of the specific extensions referred to in s32(3) is relevant?

DCO 1.2

To: **The Applicant**

Article 2: Definition of "commence".

As a number of Requirements in Schedule 2 refer to preventing works from "commencement", please provide a definition of "commence" to be inserted into Article 2? Is the use of the term "commence" consistent across all requirements where it is used? Are any works that would fall within the definition of "development" intended to be able to proceed ahead of the point at which "commence" is referred to in any of these Requirements?

DCO 1.3

To: **The Applicant**

Article 2: Definition of "maintain".

The definition of "maintain" includes 'to alter', decommission', demolish' and 'improve'. The ExA recognises that the definition is conditioned by the phrase '... unless that activity would result in a significant environmental effect not assessed in the environmental statement'. Nevertheless, can inclusion of these terms and particularly 'alter' and 'improve' be justified within the normal meaning of 'maintain'?

The Environmental Statement does not include reference to any demolition or removal works, other than the potential removal of the overhead conveyor. Is the reason that no decommissioning and removal of the quays is referred to because it is assumed that there would be other uses for these quays in addition to or on cessation of use for export of Polyhalite?

How have the environmental impacts of the decommissioning and demolition provided for by this definition been assessed?

DCO 1.4

To: **The Applicant**

Jurisdiction of Harbour Authority

Article 2, Article 7 and Article 8

The Article 2 definition of “Undertaker” and Article 8 (consent to transfer benefit of order) provides that (in the whole of this order) “undertaker” includes those to whom the benefit of the order has been transferred. Article 7 provides for benefit solely to be for the undertaker subject to Article 8.

Please explain these provisions more fully and how this relates to the role of the Tees Port Harbour Authority, protective provisions for whom are contained within draft Schedule 11 but in relation to which there are Relevant Representations from the Authority (RR-002), Trinity House (RR-001) and the Marine & Coastguard Agency (MCA) (RR-008).

DCO 1.5

To: **The Applicant**

Article 13: Defence to proceedings in respect of statutory nuisance

The wording of the Article appears to cover noise both during construction and use of the proposed development, but the Explanatory Memorandum (APP-004) appears only to justify the provision with regard to construction or maintenance.

Please clarify with regard to Chapter 14 of the Environmental Statement.

DCO 1.6

To: **The Applicant**

Procedure in relation to certain approvals

The provisions of Article 37 are explained in the Explanatory Memorandum (APP-004). Please provide a fuller explanation of the extent of flexibility intended and its justification.

DCO 1.7

To: **Redcar & Cleveland Borough Council**

Article 10-13: Streets

Is the Council satisfied that these provisions sufficiently safeguard the interests of the highway/street authority?

DCO 1.8

To: **The Northumbrian Water Limited**

To: **Environment Agency**

To: **Redcar & Cleveland Borough Council**

To: **Internal Drainage Boards (IDBs)**

Article 14 Discharge of water

Are all relevant authorities satisfied that the provisions of this article sufficiently satisfy their interests?

DCO 1.9

Articles 17-21 Tidal works and Article 31/Schedule 5 Deemed marine licence

To: **Marine Management Organisation**

To: **Teesport Harbour Authority**

To: **Trinity House**

To: **MCA**

Are the bodies responsible for maritime licences and navigational safety satisfied with these provisions, that there are no conflicts between the draft Deemed Marine Licence and the remainder of the draft DCO and that the various provisions are correctly located within articles or the deemed Marine Licence?

DCO 1.10

To: **The Applicant**

Article 30: Temporary use of land for carrying out the authorised project

The Explanatory Memorandum (APP-004) provides some justification for the provisions of this Article in relation to land required for construction purposes but also refers to permanent acquisition of land whereas in the Statement of Reasons (APP-005) and Funding Statement (APP-006) acquisition of rights only is referred to. Please provide further clarification.

DCO 1.11

To: **The Applicant**

To: **All Interested Parties seeking protective provisions in relation to pipelines of other transport links**

Article 34 Protective Provisions

In addition to statutory undertakers, Schedules 9 and 10 address concerns of pipeline users and other enterprises whose assets or linking communication or transport links are overbridged or over-sailed. Many of these interests sought protective provisions in relation to the Dogger Bank A & B DCO, the decision in respect of which is required by the Secretary of State no later than 5 August 2015 under the provisions of the PA2008.

Please explain the extent to which the position reached during the Examination of the draft Dogger Bank A & B DCO and the decision thereon in relation to Protective Provisions has been embodied in this draft DCO in so far as relevant to the interests concerned.

DCO 1.12

To: **Network Rail Infrastructure Limited**
To: **National Grid Electricity Transmission Plc**
To: **Any other affected Statutory Undertaker**
To: **The Applicant**

Article 34 and Schedules 7-11 Protection of interests

The Explanatory Memorandum (APP-004) states that the provisions for the protection of Network Rail Infrastructure Limited have been agreed. Please provide evidence of this agreement and of resolution of the CA objection from Network Rail. For the remainder of the schedules dealing with Protective Provisions, discussions are described as on-going. Please provide an update on progress to secure agreed Protective Provisions and an anticipated timetable for agreement where that has not yet been achieved, bearing in mind the desirability that the Examination should end before the statutory deadline if possible.

DCO 1.13

To: **The Applicant**

Article 38 Certification of Plans

By reference to Schedule 1, do not a significant number of additional plans not need referencing? If not, please justify.

DCO 1.13

To: **The Applicant**

Schedule 1

A number of the DCO works (**Doc 4.1**) refer to the provision of both temporary and permanent lighting. The project description provided in Chapter 3 of the ES (**Doc 6.4**) does not include a description of the proposed lighting requirements, however a description is provided in the Port Technical Lighting Assessment Report (ES Appendix 20.4 **Doc 6.5**). The Parameters Table provided in the ES (Table 3.1) does not specify any lighting dimensions to match those which have been subject to the assessment. Please can the applicant provide a revised Parameters Table (**Doc 6.9 and Doc 6.4**) to reflect the lighting dimension parameters which have been assessed in the ES? Alternatively, please can you state how this issue is otherwise addressed? Does there not need to be a Requirement in Schedule 2 to secure approval of the lighting scheme within the parameters assessed within the ES?

Parameters assessed in the LVIA

The LVIA states that the assessment has been carried out on the basis of a "worst case" scenario of conveyor and transfer tower height of 25m along the length of the conveyor, with the final section rising up to 35m above ground level to meet the surge bins (20.4.9). The Port Technical Lighting Assessment Report (Appendix 20.4) notes that the conveyor system would incline to gain a max height of approx. 25m to feed into the transfer tower (paragraph 1.15), implying that the transfer tower height is 25m. However, the Parameters Table (ES Chapter 3, Table 3-1) gives a potential transfer tower height of 30m. The draft DCO includes in Work No. 4 parallel conveyors, including transfer stations running between points A-B-C and A-B-D shown on the Works Plans. No heights are specified for the conveyors or the transfer towers in the draft DCO. Instead, the draft DCO states in Schedule 1 that Work Nos. 1-12 must be carried out in accordance with the parameters set out in the Parameters Table.

Please can the applicant clarify what height for the transfer tower has been assessed in the LVIA, given the reference to 35m in the LVIA and maximum of 30m in the Parameters Table?

The specification of which works are integral and which associated development are inconsistent with the Explanatory Memorandum and in certain instances appear not to follow guidance. For example, are not Works Nos 4 and 5 integral development? Please review and adjust as necessary.

Should not "Works No 2" preamble continue "... and illustrated in Schedule 6"? Should not all successive "Works Nos" continue "... and illustrated on drawings ..." as relevant?

Would it not be more helpful for the Parameters Table to be included within the body of the draft DCO rather than as a separate stand-alone Document?

Work No. 2 includes 'erection of surge bins' (Work No. 2(3)) and it is noted that Schedule 1 states that 'Works numbers 1-12 to be carried out in accordance with the parameters set out in the parameters table'. Whilst the Parameters Table in the ES (Table 3.1, **Doc 6.4**) specifies the maximum dimensions of the surge bins, it does not limit the number of surge bins, although only two surge bins are depicted on the Works Plans (**Doc 2.2**) (depending on the conveyor option chosen). As the development that can be authorised through the DCO will be limited by what has been assessed in the ES, the Applicant is asked to provide clarification on what number of surge bins have been assessed in the ES and how this number is secured through the DCO.

Work no.5 (**DCO Doc 4.1**) makes reference to permanent signage. However, a description of the proposed signage requirements is not provided in the project description in the ES (**Doc 6.4**). It is therefore unclear what signage

requirements have been assessed in the ES. Please can the applicant provide further information about what signage is proposed?

DCO 1.14

To: **The Applicant**

To: **Redcar & Cleveland Borough Council**

To: **Statutory consultees**

Schedule 2: Requirements – Definition of Phases 1 and 2

Do not Phases 1 and 2 need defining at the outset, together with provision of a phasing plan in order for the generality of the Requirements to be enforceable?

The phasing of the construction period is described in paragraph 3.1.86 of the ES onwards. The construction of Phase 2 of the development is predicted to be within 6 years following the completion of Phase 1 (ES paragraph 3.1.91 **Doc 6.4**). The construction of the proposed development is anticipated to commence in January 2017 (ES paragraph 3.1.91 **Doc 6.4**). Paragraph 3.1.92 of the ES confirms that both phases of the proposed development are anticipated to require a 17 month construction period. Based on the above information, is it assumed that the construction of Phase 2 will overlap with the operation of Phase 1. However, the applicant is asked to clarify how the overlapping construction and operation periods have been assessed in the ES on a worst case basis.

If Phase 2 is significantly in the future, does there not need to be a Requirement to ensure that the Environmental Statement is updated to take account of the change in the future baseline due to construction and operation of Phase 1?

Is the Council and all statutory Consultees satisfied that their interests will be sufficiently protected by these Requirements?

Requirement 6 (Construction Environmental Management Plan) (CEMP)

The applicant is requested to revise draft Requirement 6 to include a provision that the CEMP must identify and deliver the mitigation provided in the ES and a certified copy of the Governance Tracker which should be referenced in Article 38. This might be achieved by requiring a certified copy of the final CEMP within the list within Article 38 and by ensuring that every mitigation measure to be delivered through the final CEMP is listed in the in the Governance tracker, a final copy of which should also be certified under Article 38.

It is also noted that draft Requirement 6(2) allows for the CEMP to be varied subject to agreement with the LPA, but does not restrict any such variations to what has been assessed and relied upon for mitigation in the ES. The applicant is requested to also amend the wording of Requirement 6(2) to state that the CEMP may be subject to alteration by approval in writing of the local planning authority, provided that the alterations have been assessed within the ES.

The CEMP is stated to include details about temporary fencing and temporary lighting arrangements. However, the mechanism of the CEMP is being relied upon in the Governance Tracker to deliver both temporary (construction) and permanent (operational) mitigation, in relation to noise and visual disturbance to waterbird species. Please can the applicant explain why the CEMP is the appropriate mechanism for delivery of operational mitigation?

The LVIA states that mitigation relating to lighting and relevant to marine & coastal ornithology and terrestrial ecology would be secured through the Construction & Environmental Management Plan (CEMP), Requirement 6 in the DCO. However, the measures referred to in requirement 6 refer to temporary lighting, whereas chapter 9 (9.6.22) states that the mitigation principles to minimise the potential significant effects on water birds also apply in operation. Please can the applicant clarify how such operational lighting mitigation measures will be secured through the DCO and whether Requirement 6 (CEMP) is the appropriate mechanism in relation to securing and delivering operational mitigation?

Requirement 9 (Ecology)

As an outline Ecological Management Plan (EMP) has not been provided, it is unclear what specific measures the applicant intends to deliver through the EMP or what it has relied upon in assessment terms.

The applicant is requested to provide for Deadline 1 an outline EMP identifying the mitigation to be delivered through the EMP, having regard to the mitigation identified in the ES and the Governance Tracker.

The applicant is requested to provide a revised draft Requirement 9, requiring the EMP to deliver mitigation which is in accordance with the principles set out in an outline EMP and to include a provision that the EMP must identify and deliver the mitigation provided in the ES and in a certified copy of the Governance Tracker.

Relationship between Requirement 9 in Schedule 2 to the draft DCO and paragraph 7 of Part 2 in the DML

Requirement 9 in Schedule 2 in the draft DCO includes reference to measures which form part of the Bran Sands Lagoon Mitigation and Monitoring Strategy (MMS). However, the wording in Requirement 9 expressly excludes the lagoon enhancement works which are to be licenced under the draft DML in Schedule 5 (Part 2, Paragraph 7). Please clarify, as paragraph 7 the draft DLM in Schedule 5 requires an ecological management plan to be in place before the lagoon enhancement works commence. It is not clear whether the ecological management plan referred to in the draft DML (Schedule 5, paragraph 7) is the same as the ecological management plan referred to in the draft DCO (Schedule 2, Requirement 9). Please can the applicant clarify? Please update the DCO so that there is no doubt as what approvals are required with cross-references as

necessary so that an integrated submission can be made to Natural England and the MMO.

Please can the applicant clarify when the lagoon enhancement works are required to be commenced (in relation to the authorised development) and how they will be maintained throughout the operation of the proposed development? Please indicate how your answer would be governed by the provisions of the draft DCO/DML.

Requirement 11 (Decommissioning)

A description of the works envisaged to be required during decommissioning is provided in Section 3.2 of the ES, which states that there are no plans to decommission the terminal, so decommissioning of the port element of the development has not been considered in the ES. However, Table 3-10 provides a summary of the decommissioning works anticipated to be required for the conveyor systems, which would involve the complete removal of site infrastructure. The surge bins and shiploaders are stated to be 'likely to be decommissioned and removed off site'.

The Applicant is asked to identify what elements of the proposed development would be decommissioned and removed from site and what is proposed to remain in situ. *[See also DCO 1.3]*

DCO 1.15

To: **The Applicant**

Schedule 4 Temporary possession

Only Works 11 and 12 are cited as occupying land for temporary possession only. Could this not apply to more of the works that appear only to be required during construction?

DCO 1.16

To: **The Applicant**

To: **Marine Management Organisation**

Schedules 5 and 6

Should Schedule 6 be included in Schedule 5?

DCO 1.17

To: **The Applicant**

Schedule 5 (Deemed Marine Licence)

Please can the applicant clarify if they intend to also limit the licensed activities in the DML to the parameters described in the Parameters Table provided in Doc 6.9 and the ES (Table 3.1, Doc 6.4)? If so, please can the DML be amended to include reference to the Parameters Table provided in Doc 6.9 and the ES (Doc 6.4)? If not, please explain how you intend to ensure that the works authorised through the DML have been assessed in the ES?

Environmental Statement General (ES)

ES Chapter 1

ES 1.1

To: **The Applicant**

Plans requested - the effect of lorry movements on national and local roads

A map to show the proposed routing for HGVs and LGVs accessing the site has been provided as Appendix A in the Outline Construction Environmental Management Plan (CEMP) (APP-205).

Provide a revised version of this plan to include the application site boundary (including all temporary works) and with annotations for all road names and crossings of other highways cited in the Environmental Statement.

ES 1.4

To: **The Applicant**

To: **Cleveland & Redcar Borough Council**

Plans requested - Public Rights of Way

State whether the apparent ending of public footpath number 116/31/1 on the Rights of Way plan at a not publicly accessible location near to Dabholm Gut is correct. If not, please supply an amended version of this plan. Please also label the Rights of Way clearly on the Rights of Way Plans as indicated in Section 21 of the ES.

Are the proposed temporary closures to be carried out under the provisions of Article 11 and, if so, is the definition of "street" in Article 2 sufficiently broad?

ES 1.5

To: **The Applicant**

Securing mitigation measures

The applicant has provided a 'Governance Tracker' (**Doc 6.8**) which signposts how each mitigation measure relied on in the ES will be secured through the DCO or by other means. However, NE in their relevant representation dated 5

June 2015 has identified some concerns with the Governance Tracker and whether it refers to the appropriate requirements when identifying how mitigation measures relied upon in the ES would be secured through the DCO and DML.

The applicant is requested to provide a revised Governance Tracker which refers to the appropriate requirements/conditions in the version of the DCO/DML submitted with the application or any updated versions to be provided. The revised Governance Tracker should also identify the mitigation measures relied upon in the applicant's HRA Report and how these would be secured and delivered through the DCO/DML. The revised Governance Tracker should clearly identify the relationship between ES/HRA mitigation and requirements and should be made a document to be certified under Article 31.

The applicant is also requested to provide a diagram showing the hierarchy of plans identified in the draft DCO and DML to deliver the mitigation identified in the ES and the HRA Report and to explain on this diagram how these plans relate to each other. *[Note – an example of a hierarchy of plans was provided in the Dogger Bank Teesside A and B examination, see Figure 4.1 in Deadline IX, Appendix 6 of the draft DCO (version 6) (REP-494 in the Document Library)]*

ES 1.6

To: **The Applicant**

Site offices

In respect of the site offices and compounds, the drawings are apparently intended to be illustrative rather than definitive. Please clarify the process by which layout and design of buildings would be secured in the DCO, with reference to the parameters assessed in the Environmental Statement. Provide (an) additional Requirement(s) as necessary.

EIA Process and Methodology (PM)

ES Chapters 2 & 4

PM 1.1

To: **The Applicant**

Cumulative Assessment

The Environmental Statement provides a plan and a description of site allocations in the surrounding area.

The proposed Dogger Bank C and D nationally significant infrastructure projects (NSIP) are referred to in documentation, but have not been included in the cumulative impacts assessment. Please explain whether the omission of the proposed Dogger Bank C and D NSIPs was intentional and why. If not, please

provide a revised cumulative assessment for the ES taking into account Dogger Bank C and D NSIPs. [See also the need to cover this point in relation to the HRA in combination assessment].

Project Need, Project Description, Alternatives and Route Selection

(PAR)

ES Chapter 3

PAR 1.1

To: **The Applicant**

Baseline year

The approach to the EIA described in ES Chapter 3 (Approach to the EIA) (**Doc 6.4**) does not provide confirmation of the baseline year adopted for the purposes of the assessment. Looking at the individual topic chapters, it is evident that data from a number of years has been used to establish the baseline. Whilst some chapters have provided confirmation of the baseline year, for example ES Chapter 13 (Air Quality) (**Doc 6.4**), this approach has not been followed in all ES chapters. Whilst it is acknowledged that baseline years may vary between environmental topics due to the availability of information, please can the applicant clarify the approach taken to defining the baseline year adopted for the purposes of the topic assessments in the ES? Where it differs between topic assessments, please explain why.

PAR 1.2

To: **The Applicant**

Alternative means of crossing the A1058

Given the Relevant Representation from Redcar & Cleveland Borough Council (RR-018), please provide a full explanation of the issues that are said to rule out routing the conveyor beneath the distributor road and other parallel transport routes.

PAR 1.3

To: **The Applicant**

Crossing the A1058

A particular design is illustrated for the conveyor bridge over the A1058, but with variant alternative designs also shown. Please justify the choice of intended design and/or indicate the scope for incorporation of alternative design approaches. At what point would the final design selection be envisaged? How would the design approval process be controlled by the DCO?

PAR 1.4

To: **Redcar & Cleveland borough Council**

Crossing the A1058

The Relevant Representation from the Council not only questions the principle of a conveyor bridge over the A1058, but objects to the design illustrated. Please describe/illustrate what the Council would regard as an appropriate design if there is to be a conveyor bridge.

PAR 1.5

To: **The Applicant**

Site office and works compounds

In respect of the site office and works compounds, mains power and phone connections would be brought into the site.

Provide a more detailed description of these works including whether the connections would be provided above or below ground and if they are, in your opinion, subject to permitted development

PAR 1.6

To: **The Applicant**

Maintenance required during the operational phase

A description of the operational phase is provided in Section 3.2 of the ES (**Doc 6.4**). Paragraphs 3.2.7-8 of the ES (**Doc 6.4**) confirms that maintenance dredging will be required as part of the development. However, the ES does not clarify whether there would be any maintenance requirements for other elements of the port infrastructure. Please can the applicant clarify what maintenance would be required during the operation of the development, how this is secured through the DCO/DML and assessed in the ES?

PAR 1.7

To: **The Applicant**

Life of the project

The project description presented in the Environmental Statement indicates some expectations of the number of years anticipated to form the 'useful life' span for the purposes of the environmental impact assessment of the long term impacts of the proposed development, though this is complicated by the expectation that quays and conveyors within the bridge structures would be constructed in two phases. Paragraph 3.1.12 of the ES (**Doc 6.4**) confirms that the height of the quay construction has taken into account predicted sea level rise over the design life of the facility. However, it is unclear what the design life of the facility is, with particular reference to paragraph 3.2.12 of the ES (**Doc 6.4**) which states that there are no plans to decommission the port facility. It is noted that in the Applicant's HRA Report Doc 6.3) in footnote (c) of the screening matrices (appendix 8.1) states that the decommissioning works would

take place in 100 years' time. However, a similar statement has not been provided in the ES.

Please provide further clarification of the anticipated operational life span for the project and demonstrate how this duration has been taken into account in the environmental assessment, including how the predicted sea level rise over the operational life has been calculated to ensure that the proposed design life can be achieved.

PAR 1.8

To: **The Applicant**

Accesses

Should a detailed Schedule of accesses and intended modifications to Rights of Way and any other highways be included in the draft DCO? Such (a) schedule(s) are commonly found in DCO. If not required, please justify.

Safety and Environmental Management (SEM)

SEM 1.1

To: **The Applicant**

To: **Health and Safety Executive**

Pipelines Safety including in relation to the Regulations of 1996

Set out the nature and outcomes of any discussions already held between the Applicant and the Health and Safety Executive (HSE) in relation to Pipelines Safety Regulations 1996 concerning the protective provisions necessary to safeguard pipelines that pass beneath or in close proximity to the application site.

SEM 1.2

To: **The Applicant**

Navigational safety

Having regard to the Relevant Representations from PD Teesport, the Tees Port Authority (RR-002), Trinity House (RR-001) and the MCA (RR-008), please indicate the intended action to allay concerns of these bodies with their wider responsibilities for the safety of shipping in the River Tees estuary, including amendments to the wording of the DCO and its Protective Provisions and Requirements intended to be included within the DCO.

Hydrology, Hydrogeology, Marine Sediment and Water quality, Coastal protection and Flood defence (WRF)

ES Chapter 6, 7 and 17

HWF 1.1

To: **The Applicant**

To: the **Environment Agency**

To: **Northumbrian water**

To: the **IDBs**

Water resource consents, permits and licences

The Mitigation section of the Environmental Statement references the need to secure consents from other bodies such as the Environment Agency and the relevant Internal Drainage Boards (IDBs).

Confirm whether a) discussions on such consents been on going and b) whether there is any known impediment to the granting of these consents.

In particular provide details of any licences or protective provisions that would be required in relation to works within or adjacent to the Bran Sands waste disposal site to ensure that there is no harm to ecological interests or human health.

HWF 1.2

To: **The Applicant**

Flood risk assessment

1.2.1.

Should the DCO contain provisions to require that the detailed design must be carried out in accordance with the Flood Risk Assessment (FRA) (APP-246)? What minimum measures have been relied on in the Environmental Statement to conclude no significant effects on flood risk?

Please provide a Table identifying where all the mitigation measures relied upon in the FRA are secured through the DCO and/or suggest additional drafting to the DCO to ensure that they are secured.

1.2.2

The Environment Agency has sought the resolution of specific matters in relation to flood risk and in relation to the CEMP in its Relevant Representation (RR-017).

Provide a response to each of the issues raised with that response considering whether any of the points raised affect the conclusions presented in the Environmental Statement.

HWF 1.3

To: **The Applicant**

To: **Environment Agency**

To: **The local planning authorities**

To: **Marine Management Organisation**

Disposal of contaminated sediments from capital dredging

Paragraph 3.1.42 of the ES (**Doc 6.4**) confirms that some of the capital dredged material would be contaminated and would require specific management. The proposed approach to waste management is described in Appendix 3.1 of the ES (**Doc 6.5**). The management of dredged material and contaminated excavated material on land is provided in Sections 5.1-5.4 of Appendix 3.1 (**Doc 6.5**). The draft DCO (**Doc 4.1**) does not specify that a waste management strategy must be agreed in advance with the relevant body or bodies.

Do the relevant body/bodies wish to amend the requirements to provide that a waste management strategy must be agreed in advance with the relevant body/bodies?

Does the applicant have a view on whether such an amendment would be required?

The Environmental Statement refers to the expectation that contaminated sediments that cannot be disposed of at sea would be deposited at appropriate licensed disposal sites. Provide details of the particular site or sites that would/might be used and of the means of transport envisaged. How has this been taken account of in the transport assessment and how would this be secured in the DCO or via relevant licensing.

More generally, how would the alternative dredging mechanisms be secured in the Deemed Marine Licence given that options are referred to.

HWF 1.4

To: **The Applicant**

Disposal of contaminated soils

Paragraph 6.5.9 of the ES (**Doc 6.4**) references the need for a materials management plan which will set out the process of dealing with contaminated soil. However, this management plan is not referenced in the draft DCO (Doc 4.1) or the Governance Tracker (**Doc 6.8**) and therefore it is unclear how this mitigation measure would be secured in the DCO. The Applicant is asked to provide at Deadline 1 an explanation of how this plan would be secured and delivered through the DCO.

HWF 1.5

To: **The Applicant**

climate change

The Environmental Statement confirms that there is potential for climate change to impact on the future baseline condition.

Show how this has been factored into the environment assessment and the DCO/DML scheme and relevant plans of the scheme.

HWF 1.6

To: **The Applicant**

To: **The Marine Management Organisation**

Sediment plume modelling data

The marine sediment and water quality assessment uses the sediment plume modelling simulations to inform the assessment of impacts on marine water quality. The Marine Management Organisation (MMO) in their relevant representation has requested that the applicant submits information relating to the validation and calibration of the sediment regime models. The applicant is requested to provide this information for Deadline 1.

The MMO are requested to review this information and provide their comments for Deadline 2. The MMO's response should identify any concerns they may have regarding the information and an explanation of the potential effect of these concerns on the sediment plume modelling simulations and assessment of impacts on the marine water quality.

HWF 1.7

To: **The Applicant**

To: **The Marine Management Organisation (MMO)**

Effect of spill of polyhalite product on the marine environment

Paragraph 7.6.12 of the ES (**Doc 6.4**) states that in the event of a spill "*the components of the polyhalite product pose no significant threat to the marine environment.*" However, no evidence has been provided by the applicant to justify this statement. The applicant is requested to provide justification for this statement for Deadline 1.

The MMO is requested at Deadline 2 to comment on the applicant's response to this question and state whether in the MMO's opinion the components of the polyhalite product pose no significant threat to the marine environment.

HWF 1.8

To: **The Applicant**
To: **The Marine Management Organisation (MMO)**

Securing dredging mitigation through the DML

1.8.1

The ES confirms that an enclosed grab dredging method would be used for the contaminated sediment above geological deposits (ES paragraphs 7.5.4. and 7.5.12, Doc 6.4). The Governance Tracker (Doc 6.8) confirms that the use of this method is secured through the MMO licence in Schedule 4 of the DML (**Doc 4.1**) (see Part 6(3)). However, it is not clear if this reference should be to the draft DML in Schedule 5 of the draft DCO. Please can the applicant at Deadline 1 clarify whether the reference to Schedule 4 in the Governance Tracker should be to Schedule 5 (DML) and whether condition 6(3) in the DML is the relevant condition to secure the use of enclosed grab dredging method to remove contaminated sediment?

1.8.2

Paragraph 7.5.20 of the ES (**Doc 6.4**) confirms that where an enclosed grab cannot be used, the use of a backhoe dredger would be the least environmentally damaging in comparison to the other options assessed. Part 6 of the MMO licence does not commit to the use of a backhoe dredger for the remainder of the dredging (**Doc 4.1**). Please can the applicant comment on whether given this statement, it would be appropriate to commit to the use of the backhoe dredging in the DML where an enclosed grab cannot be used? If so, please can the applicant provide appropriate wording to secure this commitment through the DML.

1.8.3

Please can the MMO at Deadline 2 comment on the applicant's response to this question and confirm whether the MMO is satisfied that the mechanism identified for securing this mitigation is appropriate? If not, please can the MMO identify what mechanism would be appropriate?

HWF 1.9

To: **Natural England (NE)**
To: **The Applicant**

The ES does not identify any significant impacts in relation to marine sediment and water quality and does not propose any monitoring of sediment or marine water quality (**Doc 6.4**). However, Table 7.5 (Summary of consultation responses on the scope of the sediment quality survey) record the following comment from NE *"Post dredging monitoring of Seal Sands should be taken from the same location as the baseline samples so to identify new deposits as a result of dredging activities. If dredging is found to be detrimental, additional mitigation may be required."* To which the applicant responds 'noted'.

Natural England is requested to provide at Deadline 1 a statement as to whether this mitigation is required.

The Applicant is requested to comment on NE's response at Deadline 2 and to clarify whether it is intended to conduct this monitoring as it is not evident from the ES (Doc 6.4) or the draft DCO (**Doc 4.1**) that any monitoring is proposed. If such monitoring is proposed, the applicant is requested to clarify how it would be secured and delivered through the DCO and DML.

HWF 1.10

To: The Applicant

To: The Environment Agency

Paragraphs 6.4.80-82 of the ES (**Doc 6.4**), state that it is best practice to conduct a gas risk assessment in accordance with CIRIA 665 guidance. However, the existing monitoring reports used to establish the baseline environment do not include the required data to conduct an assessment in accordance with the CIRIA 665 guidance.

The Applicant is asked to clarify at Deadline 1 why the collection of appropriate data required to conduct the assessment in accordance with the best practice guidance was not undertaken.

The EA is asked to clarify at Deadline 2 whether this data is required? If so, please identify what additional data the applicant would need to collect to undertake the assessment.

HWF 1.11

To: The Applicant

To: The Environment Agency

Monitoring and contingency plan

Although no significant impacts have been identified in the ES, paragraph 6.5.5 of the ES (**Doc 6.4**) confirms that groundwater and surface water monitoring in association with the aftercare of Bran Sands Landfill has been undertaken for a number of years and will continue to be undertaken and a contingency plan will be included in the CEMP should a departure from the baseline conditions be noted. However, it is unclear from the information provided in the ES whose responsibility it should be to undertake the monitoring and whether the existing monitoring regime is sufficient to provide the required data. It is unclear whether the monitoring would continue beyond the construction phase. The thresholds which trigger a need to enact a contingency plan have not been defined.

The Applicant is requested to provide at Deadline 1 details about the scope of the monitoring (groundwater and surface water and ground gas) and whether it would continue beyond the construction phase. If monitoring continues beyond the construction phase, the applicant is requested to clarify how this ongoing monitoring would be secured and delivered through the DCO. The Applicant is

also request to provide at Deadline 1 a description of the trigger thresholds for enacting the contingency plan.

The EA is requested to comment on the applicant's response to this question at Deadline 2 and to state whether there are any concerns with the applicant's proposed approach to monitoring and enacting the contingency plan if required.

Terrestrial Ecology and Marine and Coastal Ornithology (Ec)

ES Chapters 10 and 11

Ec 1.1

To: **The Applicant**

The need for ecological enhancement

Provide a clear schedule of the proposed ecological enhancement measures, that have been identified and assessed in the ES, including how these would be delivered and secured through the requirements/conditions in the draft DCO/DML. These measures are presumably those or include those to be referred to in the proposed s106 undertaking.

Please explain the extent to which these measures are required to provide sufficient mitigation for the DCO scheme.

Ec 1.2

To: **The Applicant**

the need for further ecological mitigation and enhancement

The Relevant Representation from the Environment Agency (RR-008) states that the Environmental Statement provides no evidence that the applicant has investigated the potential for larger scale enhancements.

Set out how you have investigated the potential for larger scale enhancements and set out the results of that investigation or explain why no such investigations have been undertaken or are not necessary.

Please provide a copy of the agreement/undertaking that would provide for off-site ecological enhancement as referred to in the Environmental Statement and Relevant Representations.

Ec 1.4

To: **The Applicant**

To: **Natural England**

Impacts on specific species and habitats – marine mammals

Please indicate how the MMMP is secured through the DCO, given that the mitigation measures outlined in the ES are considered appropriate by NE. Is a specific Requirement needed?

Ec 1.5

To: **The Applicant**

To: **Natural England**

Impacts on specific species and habitats - bats

Whilst no bat roosts have been identified within the DCO boundary, potential bat roosts have been identified in structures in the vicinity of the DCO scheme.

Confirm that potential impacts on bats feeding or roosting from disturbance during the construction phase (e.g. noise, dust) have been adequately assessed and show where this has been done.

Ec 1.6

To: **The Applicant**

Dust

Construction-related dust settling on adjacent habitats has been identified as a potential effect in the Environmental Statement and reference is made to potential impacts from dust being considered in detail in Chapter 13 of the Environmental Statement (Air Quality).

However, it is not evident that the impact of dust on all relevant habitats has been assessed.

Show where this has been done and indicate the findings from this assessment.

Ec 1.7

To: **The Applicant**

Ecological Management Plan (EMP)

The Environmental Statement confirms that the proposed ecological mitigation measures will be implemented through the Ecological Management Plan (EMP), secured through Requirement 9.

- a) Provide a copy of an initial draft of this document
- b) Set out the minimum measures relied on in the Environmental Statement to conclude no significant effects on ecological receptors; and show how the achievement these would be incorporated into the EMP for each stage and how the inclusion of such measures would be secured through Requirement 9 of the draft DCO.

- c) The Environmental Statement describes the proposed monitoring of created habitats for a minimum of five years post-construction, which is stated would form part of the EMP. Show how the inclusion of such measures may be secured through Requirement 9 of the draft DCO

Ec 1.9

To: **Natural England**

Securing enhancement

Your relevant representation confirms that you are content with the proposed enhancement measures described in the Environmental Statement. However, it then states that these measures will need to be shown to be deliverable through an appropriate legal mechanism which should be captured within the DCO. Please confirm the extent to which the enhancement measures proposed are to be regarded as mitigation.

Is Natural England satisfied that the implementation of all the ecological enhancement measures set out in the Environmental Statement are specifically and adequately secured through provisions in the draft DCO including through the Governance Tracker if this is made a certified document properly referenced in the DCO or through the proposed s106 undertaking to the extent that its provisions are to be regarded as necessary mitigation? If you are not satisfied, what do you consider to be the most appropriate ways to deliver these through the draft DCO?

Ec 1.10

To: **The Applicant**

Consents and licences

Provide the letters from the consenting bodies indicating in respect of all licences or permits that may be required that there is no known reason why these may not be granted.

Ec 1.11

To: **The Applicant**

Decommissioning

It is stated that decommissioning would not have any anticipated ecological effects.

What evidence has been used to back up this conclusion?

Ec 1.12

To: **The Applicant**

Mitigation measures during construction

Mitigation proposed to minimise the light effect on Bran Sands lagoon and Dabholm Gut (visual disturbance due to movements of construction plant, personnel and construction lighting) are described in paragraph 9.5.28 and include reference to the technical lighting assessment (Appendix 20.4 of the ES). The assessment notes that "*contractors would be required to monitor the lighting levels and spillage, and records of lighting levels would be retained on site. Where lighting levels are found to be inadequate or excessive, mitigation strategies to remedy the effects would be implemented*" (paragraph 9.5.31). However, it is not clear what these 'mitigation strategies' are or how they would be secured and delivered through the applicant's draft DCO.

The Applicant is requested to clarify what these mitigation strategies are and how they would be secured and delivered through the DCO. If the intention is to include reference in the Governance Tracker, please provide an amended version.

Ec 1.13

To: **The Applicant**

Mitigation measures during operation

Visual disturbance (movements of vehicles, personal and operational lighting) – parking and offices areas located immediately adjacent to the quay would be screened (by fencing) to minimise the potential for significant effects on the waterbirds using Bran Sands lagoon and Dabholm Gut. It is unclear whether the fencing to screen visual activities during operation is the same fencing as the acoustic noise barriers used as mitigation during construction.

The Applicant is requested to provide clarification whether the fencing to screen visual activities is the same as the fencing proposed for the noise acoustic screening? If the visual screening fencing is different to the noise acoustic screening, please can the applicant identify the location of the visual fencing and how this would be secured and delivered through the draft DCO?

If the intention is to include reference in the Governance Tracker, please provide an amended version.

Ec 1.14

To: **The Applicant**

Mitigation measures during decommissioning

A Decommissioning Plan is proposed to manage the works which would include construction phase screening, to reduce noise and visual disturbance to waterbirds (arising from the decommissioning of the overland conveyor and most likely the surge bins and shiploaders). The assessment does not identify how the proposed mitigation measures would be secured and delivered through the draft DCO.

The Applicant is requested to identify how the proposed decommissioning mitigation measures would be secured and delivered through the draft DCO. If the intention is to include reference in the Governance Tracker, please provide an amended version.

Traffic and Transport (TT)

ES Chapter 12

TT 1.1

To: **The Applicant**

To: **Redcar & Cleveland Borough Council**

To: **North Yorkshire County Council**

To: **Highways England**

Methodology

Has the methodology for the assessment of transport and infrastructure been agreed with the Local Highways and Planning Authorities and Highways England (formerly the Highways Agency)?

TT 1.2

To: **The Applicant**

To: **Highways England**

To: **Redcar & Cleveland Borough Council**

To: **North Yorkshire County Council**

Formal Transport Assessment and significant effects

Are the conclusions of the Transport Assessment accepted by all relevant Highway authorities? In particular is the absence of significant cumulative effects during the construction phases for the Port and wider project accepted?

TT 1.3

To: **The Applicant**

To: **Redcar & Cleveland Borough Council**

To: **North Yorkshire County Council**

To: **Highways England**

Worst case scenario – the effect of lorry movements on national and local roads

Are all relevant highway authorities satisfied that the cumulative impact of lorry movements on national and local roads has been adequately assessed in a worst case scenario should the phasing of different aspects of the overall scheme change so that more construction is taking place simultaneously?

TT 1.4

To: **Redcar & Cleveland Borough Council**

Consenting in relation to highway matters

Is the Council satisfied with the arrangements set out in the DCO for securing necessary approvals that are not explicitly granted with the DCO itself?

TT 1.5

To: **The Applicant**

Travel to work plans for construction workers

Please explain how the travel to work plans for construction workers would be secured through the provisions of the DCO.

TT 1.6

To: **The Applicant**

To: **Network Rail Infrastructure Ltd**

Impacts on rail infrastructure

Confirm that there will be no disruption to rail services arising from construction work on railway crossing points or in on-going operation of the conveyor bridges, whether to passenger services, freight services and in particular to specialist hot-metal movements given the Relevant Representation from Tata Steel UK Limited (RR-019) which refers to use of the hot rail route by themselves and Sahaviriya Steel Industries UK.

TT 1.7

To: **The Applicant**

To: **Network Rail Infrastructure Ltd**

Ability to use rail for export of Polyhalite or for transfer of any other materials that might pass through the proposed Port Facilities

The Boulby Potash mine is currently rail served and has begun to mine Polyhalite as well as Muralite. The proposed conveyor bridge appears to occupy land that currently or has previously been occupied by rail sidings that served the Materials Handling Facility (MHF) site. Would the DCO scheme prevent rail access to the MHF or rail access directly into the quay Area?

Noise and Vibration (NV)

ES Chapter 14

NV 1.1

To: **The Applicant**

Construction noise

Set out how the potential effects of noise resulting from piling have been assessed and how any mitigation required is secured through the No Markingdraft DCO and draft DML?

NV 1.2

To: **The Applicant**

Operational vibration

Confirm and justify whether or not the conveyor is expected to produce any vibration whilst in operation.

NV 1.3

To: **Redcar & Cleveland Borough Council**

To: **The Applicant**

Proposed mitigation measures for operational and construction noise and vibration

Set out the nature of any requirements that you may wish to impose in relation to operational noise and state why these should not be secured through Requirements in the draft DCO. Please respond to this question working in consultation with the applicant.

Is the Council satisfied that the CEMP will address construction noise and vibration issues?

Landscape and Visual Impact Assessment (LVIA)

ES Chapter 20

LVA 1.1

To: **The Applicant**

Landscape - Fencing

There are references both to fencing for security and visual screening purposes as well as acoustic fencing which is referred to in the Environmental Statement as one of the proposed methods to mitigate construction related noise impacts.

Clarify whether the proposed acoustic fencing has been considered as part of the Landscape and Visual Impact Assessment (LVIA) and explain the relationship between various forms of fencing both during construction and operation. [See also Ec 1.13]

LVA 1.2

To: **Natural England**

Landscape

In your Relevant Representation, concern is expressed over the cumulative landscape impact between the Port structures, those of the Material Transport system and the mine head itself. Please explain more fully how these concerns arise in relation to the Port in view of the apparent lack of inter-visibility between its structures and those of the MTS and mine head even during construction?

LVA 1.3

To: **The Applicant**

Landscape

Please comment on the expressed concern over potential cumulative landscape impact between the port and the MTS and minehead.

LVA 1.4

To: **The Applicant**

Inter-relationship of effects

Chapter 23 (Table 23-1) states that no significant inter-relationships with other environmental topics have been identified with regard to the landscape and visual environment, although the influence of lighting is considered with respect to ecology in ES chapters 8, 9, 10 and 11. However, the influence of lighting only appears to have been considered specifically in chapters 9 (Marine and coastal ornithology) and 10 (Terrestrial ecology).

Please can the applicant clarify how it has considered the influence of lighting in relation to chapters 8 (Marine ecology) and 11 (Fisheries and fishing activity in the ES)?

LVA 1.5

To: **The Applicant**

To: **The LPA**

Mitigation

The Governance Tracker refers to requirement 2 in the draft DCO as being the mechanism to secure and deliver the mitigation identified in the LVIA. However, requirement 2 in the DCO, which refers to various mitigation measures at a general level, does not refer back to the specific landscape and visual impacts mitigation in chapter 20 of the ES. Furthermore requirement 2 refers only to phase 1 of the development. As requirement 3 in the draft DCO refers to phase 2 of the development, it is unclear why the Governance Tracker does not also refer to requirement 3 as well, to secure mitigation in relation to phase 2 of the development.

Please can the applicant clarify whether the Governance Tracker should refer to both Requirements 2 and 3 in the draft DCO as securing the mitigation identified in the LVIA?

Please can the LPA confirm whether they are satisfied that the wording in Requirements 2 and 3 are appropriate to secure the identified mitigation in the LVIA?

LVA 1.6

To: **The Applicant**

To: **The LPA**

Mitigation

The LVIA includes reference to offsite planting as proposed mitigation (20.5.30; 20.5.42; 20.7; Table 20-9; 20.9.2; 20.10.2; 20.11.6). However, it is not clear what significant effects the offsite planting is seeking to mitigate (or which receptors will benefit) and what the residual effects post mitigation would be. It is noted that the draft DCO does not include reference to planting as part of the draft requirements, so it is unclear whether this mitigation forms part of the DCO application or would be delivered through another mechanism.

Please can the applicant clarify if offsite planting is to be provided as part of the draft DCO? If planting is included in the draft DCO can the applicant please refer the ExA to a plan that identifies the location of the planting, and provide a response that identifies which receptors and effects the planting will mitigate?

If the applicant is relying on this mitigation, but it would not be delivered through the draft DCO, please can the applicant explain how it would be otherwise secured and delivered, if it is not already in place?

If the applicant is relying on mitigation provided through off-site planting, please can the applicant clarify whether they are proposing to provide a maintenance programme for this planting and, if so, whether this would be secured and delivered through the draft DCO or through another mechanism.

Habitat Regulations Assessment (HRA)

HRA 1.1

To: **Natural England**

Identification of the relevant European sites and features

Please can NE confirm, as the relevant SNCB, whether they agree that the applicant has applied an appropriate study area to identify the relevant European site which may be affected by the proposed development and that the applicant has not omitted any relevant European sites or features of those sites, from their assessment? If the applicant has omitted any relevant sites or features, please can NE identify these to the ExA?

HRA 1.2

To: **The Applicant**

To: **Natural England**

Sites screened out of further consideration in the applicant's HRA

The HRA Report has concluded that whilst North York Moors SAC and SPA sites and Arnecliff & Park Hole Woods SAC are shown close to the transport routes identified on Figure 5.1, the potential emissions from road traffic during the construction and operation of the harbour development would make an insignificant contribution to the traffic flows generated by the York Potash Project (YPP) as a whole and effects would not extend into the North York Moors National Park (NYMNP) or influence the North York Moors SAC or SPA (paragraph 5.1.2). Whilst the HRA Report acknowledges that the air quality effects of the YPP are predicted to cause exceedences of Objective levels for ecology within NYMNP, prior to mitigation, these are predicted to arise due to a combination of the influence of traffic emissions and the contributions from construction phase generators at the minehead and Lockwood Beck Intermediate Shaft site and not from traffic alone. On this basis, the applicant has screened out of the HRA for the harbour facility potential effects on North York Moors SPA and SAC (paragraph 5.1.3).

Please can NE state whether they agree with the applicant's conclusion that there will not be any effect on the North Moors SAC and SPA sites from the Harbour facility project alone and in combination with the other elements of the overall YPP development, namely the Lockwood Beck Intermediate Shaft as part of the mineral transport system application?

The HRA Report also states that the Arnecliff & Park Hole Woods SAC has been screened out of further consideration (paragraph 5.1.3). However, it is not clear on what basis the applicant has screened out Arnecliff & Park Hole Woods SAC from further consideration in their HRA.

Please can the applicant clarify on what basis it has screened out Arnecliff & Park Hole Woods SAC from further consideration in their HRA?

HRA 1.3

To: **The Applicant**

Interaction between construction of Phase 2 and operation of Phase 1

The applicant's HRA has considered the effects arising during both construction and operation of the proposed development. The applicant is aware of the likelihood that operational effects attributed to Phase 1 of the development will interact concurrently with construction effects attributed to Phase 2 of the development. Can the applicant please provide evidence that the overlapping effects from phase 1 in operation and phase 2 in construction have been assessed as part of the HRA?

Please can the applicant also clarify what timeframe was used when considering construction effects on the qualifying features / criteria of the European site considered in the applicant's HRA? For example, is the construction timeframe the total duration of Phase 1 and 2? If so, what overlap is there between Phase 1 operation and Phase 2 construction?

HRA 1.4

To: **The Applicant**

In combination assessment – Dogger Bank Teesside A and B and Dogger Bank Teesside C and D

Table 8.7 records that there is potential for Dogger Bank Teesside A and B (project ID 169) to result in a LSE in combination with the harbour facility. The ExA notes that Dogger Bank Teesside A and B NSIP is due to be determined by the Secretary of State by 5 August 2015.

If Dogger Bank Teesside A and B is granted development consent, please can the applicant consider whether any amendments have been made to the route or timing of the construction of the onshore cable corridor and if so, inform the ExA as to whether any such changes have affected the assumptions on which the applicant has undertaken their in-combination assessment?

Whilst Dogger Bank Teesside A and B has been considered in the applicant's in combination assessment, it is unclear whether the proposed Dogger Bank Teesside C and D NSIP (project ID 170, as shown on Figure 6.1) has been considered in the applicant's in combination assessment as it is not listed in either Table 6.1 or Table 6.2 in the HRA Report.

Please can the applicant clarify whether the proposed Dogger Bank Teesside C and D NSIP has been considered in the in combination assessment at both the screening and integrity stages for the European site screened into the applicant's assessment? Please can the applicant refer the ExA to where this information is provided in the HRA Report?

HRA 1.5

To: **The Applicant**

In combination assessment – maintenance dredging

The 'other plans and projects' included in the in combination assessment on the effects on integrity of the Teesmouth and Cleveland Coast SPA and Ramsar sites (paragraph 11.2.1), include maintenance dredging within the Tees Estuary. Table 8.7 explains that this maintenance dredging is the existing on-going dredging, which may have an effect in combination with the capital dredging required for the proposed development.

Please can the applicant confirm whether this maintenance dredging has been assessed as part of the baseline or the in combination assessment?

Please can the applicant also clarify what effects the maintenance dredging required to maintain the berth created during Phase 1 of the development would have in combination with the capital dredging required for Phase 2 of the development?

HRA 1.6

To: **LPA and Natural England**

In combination assessment

Please can the LPA and Natural England confirm whether they agree that the applicant has identified all the relevant 'other plans and projects' for consideration in the applicant's HRA.

HRA 1.7

To: **The Applicant**

In combination effects of direct loss of habitat

The applicant's HRA Report has identified that the MHF and the harbour facility in combination would result in a loss of habitat used by waterbirds. However, no mitigation is proposed as the loss of habitat at the MHF is described as 'very minor' (but is not quantified) and that the habitat affected (short grass sward) is present and common in the wider area and differs from the habitat lost for the harbour facility (intertidal area).

The HRA Report has concluded that the habitat enhancement proposals provided under the Bran Sands lagoon MMS are considered to outweigh the combined effect of the loss of habitat for waterbirds at the harbour facility and the MHF (paragraph 11.3.5).

Please can the applicant put the statement of 'very minor' into context, for example, what area of habitat (short grass sward) is lost and also to clarify what is meant by 'present and common in the wider area' i.e. what 'wider area' has been considered by the applicant for the availability of this habitat?

HRA 1.8

To: **The Applicant**

In combination effects on marine water quality and food resource for waterbirds during capital and maintenance dredging

When considering the potential for in combination effects from dredging activity associated with the harbour facility, the NGCT and the QEII Berth Development, it is unclear why it has been assumed by the applicant that both developments cannot happen together with the harbour facility. Therefore, the HRA has only considered the harbour facility with the NGCT or the QEII Berth development and not all three developments together.

Please can the applicant clarify the basis for this assumption, including reference to the proposed timescales for each development?

HRA 1.9

To: **The Applicant**

In combination effects from noise disturbance during the operational phase

As the HRA Report notes that the Tuned In! scheme has already been developed (paragraph 11.2.16), please can the applicant provide further information about the mitigation measures which the Tuned In! facility has secured and delivered, which the applicant is relying on to reach a conclusion of no adverse effect on site integrity for the SPA and Ramsar sites from the project in combination with the Tuned In! facility?

HRA 1.10

To: **The Applicant**

Reliance on Bran Sands Lagoon Mitigation and Monitoring Strategy (MMS)

Habitat enhancement measures in the form of the Bran Sands Lagoon Mitigation and Monitoring Strategy (MMS) are proposed and have been incorporated into the design of the development (Work No. 3). The proposed Bran Sands lagoon MMS is provided in Appendix 3.1 of the HRA Report.

The MMS (Appendix 3.1 of the HRA Report) identifies in Table 3.1 the predicted direct effect of the harbour facilities on the interest features of Teesmouth and Cleveland Coast SPA and the objective of the mitigation proposed through the MMS. The objective of the MMS is 'to provide improved feeding, roosting and loafing habitat, thereby mitigating the direct impact of the port terminal'. The ExA notes that Redshank and Red Knot are also qualifying features of the Teesmouth and Cleveland Ramsar site. Please can the applicant clarify whether the predicted effects arising from the Harbour facility (on the SPA interest features) and the mitigation proposed also relate to the qualifying criteria of the Teesmouth and Cleveland Coast Ramsar site?

The Bran Sands Lagoon MMS identifies that the purpose of the proposals is to provide mitigation for elements of the harbour facility development by providing improved feeding, roosting and loafing habitat thereby mitigating the direct impact of the port terminal and to provide habitat enhancement through the placement of dredged material in Bran Sands lagoon. However, it is not clear

whether the applicant is relying on the Bran Sands Lagoon MMS to conclude no adverse effect on site integrity.

Please can the applicant clarify whether it is relying on the Bran Sands Lagoon MMS to conclude no adverse effect on site integrity?

HRA 1.11

To: **The Applicant**

Securing and delivering the mitigation identified in the Bran Sands Lagoon MMS

The MMS stipulates that where the indicators of success are not being met, intervention measures, include the activation of the second control pipe to adjust the water levels in the lagoon may be applied. Please can the applicant clarify what these intervention measures are, how they will be secured and delivered through the MMS and how they have been assessed in the applicant's HRA?

HRA 1.12

To: **The Applicant**

Please can the applicant also clarify how any potential maintenance works in relation to the lagoon, for example, additional maintenance dredged material, have been assessed in the HRA?

HRA 1.13

To: **The Applicant**

To: **Natural England**

Provision of artificial nesting platforms

The HRA infers that artificial nesting platforms can be provided beneath the suspended deck of the quay (if the open quay structure is proposed). This design option would be of particular benefit for nesting shags. Can the applicant confirm if this option will be adopted in the final design and if so how it is secured in the draft DCO/DML?

Please can Natural England comment on whether they Bran Sands Lagoon MMS should include the provision of artificial nesting platforms?

HRA 1.14

To: **The Applicant**

Control of water exchange between the Tees Estuary and Bran Sands lagoon

Water exchange between the Tees Estuary and Bran Sands lagoon currently occurs through the pipe in the embankment (as illustrated on Figure 10-1 in the HRA Report). Whilst the applicant does not intend to actively control the water level in the lagoon, it is proposed that a second flow control structure would be constructed when the pipe is replaced. It is proposed that this second control would not be operational initially, but could be activated in the future if monitoring demonstrates that altering the water level would be acceptable (paragraph 10.3.34).

Please can the applicant clarify whether the instillation of the second control mechanism in the pipe is required to ensure the delivery of the Bran Sands Lagoon MMS? If so, how any necessary monitoring would be undertaken and what would the trigger be for activating the second control to alter the water level?

Please can the applicant also clarify what the potential implications would be for ecological receptors from altering the water level in the lagoon? Can the applicant also explain how this has been assessed in the applicant's HRA?

As the replacement of the existing pipe and the construction of the new second pipe falls between Works Nos. 1, 2 and 3 in the draft DCO, please can the applicant clarify which requirements must be met before replacement and construction of the new pipes can commence?

HRA 1.15

To: The Applicant

Barriers to provide acoustic and visual screening

Mitigation has been proposed in the form of noise attenuation barriers, likely to be 3m high boarding at ground level are proposed and would be position as described in paragraph 10.3.63 and paragraph 5.2 in Appendix 3.1 of the HRA Report. The location of the barriers is shown on Figure 9.3 in Chapter 9 of the ES (marine and coastal ornithology).

Please can the applicant confirm whether they are relying on these barriers in the HRA Report to provide visual screening to reduce movements of construction plant and personnel and construction lighting, as well as operational lighting from parking and storage areas (paragraph 10.3.86)?

It is noted that the use of the barriers to provide visual screening is not discussed in the marine and coastal ornithology assessment in the ES (section 9 of the ES). Please can the applicant explain why?

The Parameters Table (Doc 6.9) when describing the parameters for Work no.5 refers to 'temporary acoustic fencing' giving the parameters of this fencing to have a max height 3m, location shown on Plan 9 (YO989-HF -9-003, Figure 9.3, Section 9 of the ES (Document 6.4). However, Work No. 5 in the draft DCO (Schedule 1) does not refer to 'temporary acoustic fencing'.

Please can the applicant clarify how the acoustic fencing will be secured and delivered through the DCO?

The Governance Tracker, in relation to mitigation identified in the ES, identifies at number 27 (Section 9 – Marine and Coastal Ornithology) that the noise attenuation barriers would be delivered through the CEMP (draft Requirement 6), which includes 'details of all temporary fencing...including arrangements for their removal following completion of construction' (Requirement 6(1)(d) in the draft DCO). Note – Regulation 6 requires the CEMP to be drafted in accordance with the principles contained in Appendix 6.4 of the ES (Outline CEMP), which includes in Table 6.1 a summary of mitigation measures identified in the ES. This list matches the list of mitigation measures in the Governance Tracker (Doc 6.8). However, not every mitigation measure listed in Table 6.1 has been identified as being secured through the CEMP.

Please can the applicant clarify whether Table 6.1 would be used to identify the mitigation measures to be delivered through the CEMP? If so, please can the applicant revise Table 6.1 to only include the mitigation measures to be secured through the CEMP?

The HRA Report implies that the applicant is relying on this fencing to provide visual screening during both construction and operation. However, there does not appear to be reference to any permanent fencing, apart from security fencing (max 2m. height) referred to in work No. 5 in the Parameters Table (Doc 6.9) and the draft DCO (Schedule 1).

Please can the applicant clarify which fencing they are relying on to provide visual screening during both the construction and operational phase of the development and how this would be secured and delivered through the DCO?

HRA 1.16

To: **The Applicant**

A noise reduction curtain

The HRA Report (and the Governance Tracker) states that a noise reduction curtain over the hammer piling rig during the quay construction is to be investigated (paragraph 10.3.65). Please can the applicant clarify on what basis the applicant would determine whether a noise reduction curtain would be used and what reliance has been placed on the use of the noise reduction curtain when determining no adverse effect on site integrity on the European sites taken forward to AA?

HRA 1.17

To: **The Applicant**

Lighting Scheme

Measures are also described in paragraph 10.3.75 of the HRA Report to minimise the lighting effect during construction on Bran Sands lagoon and Dabholm Gut, which combined with the use of barriers to provide acoustic and visual screening between the proposed construction works and the lagoon and Dabholm Gut, no effect on population levels of waterbirds would occur.

The HRA Report that for the project alone visual disturbance due to lighting (construction and operation) affecting waterbirds that feed and roost at Bran Sands lagoon and Dabholm Gut would be mitigated by implementation of a lighting scheme.

The Lighting Assessment Report provided with the application has concluded that based on the distance of the proposed scheme from the designated nature conservation areas (a minimum of 0.7km), it is considered that construction and operational lighting for the scheme would have no adverse effects upon the designated sites, which includes in Table 4-3 the Teesmouth and Cleveland Coast SPA and Ramsar sites (paragraph 4.4.2). However, this statement does not appear to have considered the potential for the qualifying features of these sites to use the functionally linked land for the sites at the Bran Sands lagoon and Dabholm Gut, which is within and immediately adjacent to the proposed development area for the harbour facility.

The Governance Tracker (Doc 6.8) identifies that in relation to mitigation identified in chapter 9 of the ES (Section 9 – Marine and Coastal Ornithology) where lighting levels are found to be inadequate or excessive, mitigation strategies to remedy the effects would be implemented and delivered through the CEMP secured through Requirement 6 in the draft DCO. It is not clear from Requirement 6 what mitigation measures would be identified and used to remedy the effects on ecology from lighting levels.

Please can the applicant clarify how the lighting mitigation measures identified in the HRA Report (paragraph 5.3 of Appendix 3.1) would be secured and delivered through the draft DCO?

HRA 1.18

To: **The Applicant**

To: **Natural England**

Applicant's screening and integrity conclusions

Table 8.1 identifies the potential effects associated with the harbour facility that could affect the Teesmouth and Cleveland Coast SPA and Ramsar sites. The screening matrices for these sites identify a likely significant effect on all the qualifying features /criteria of these sites from the project alone (see Table 8.2 for the effects arising from the project alone on these features/criteria) and in combination (see Table 8.7 which identifies the other plans and projects which may result in in combination effects), during construction and operation, but not during decommissioning. Therefore, all the qualifying features /criteria of these sites have been taken forward to appropriate assessment.

The HRA Report has concluded that in the context of the Teesmouth and Cleveland Coast SPA conservation objectives (provided in Appendix 5.1), the project alone, with the measures to mitigate the impact of construction noise and visual disturbance and the habitat enhancement measures in Bran Sands lagoon, would not affect the integrity (structure and function) of the SPA. The HRA Report has concluded that in the context of the Teesmouth and Cleveland Coast Ramsar criteria (provided in Section 5.3), the project alone would not affect the integrity (structure and function) of the Ramsar site. However, it is noted that the applicant when reaching this conclusion, does not rely on measures to mitigate the impact of construction noise and visual disturbance and the habitat enhancement measures in Bran Sands lagoon.

Please can the applicant clarify whether they are relying on measures to mitigate the impact of construction noise and visual disturbance and the habitat enhancement measures in Bran Sands lagoon to conclude no adverse effect on site integrity for the Teesmouth and Cleveland Coast Ramsar?

HRA 1.19

To: **Natural England**

The Bran Sands lagoon MMS stipulates that the ES and HRA were undertaken on the assumption that construction works would not be seasonally constrained (section 5.2 in Appendix 3.1 of the HRA Report). The MMS records that Natural England advised that with the proposed mitigation measures in place, it could only be concluded that the risk of indirect impacts on waterbirds would be reduced to an insignificant level if it could be guaranteed that the construction works would avoid the wintering period. However, the MMS records that NE accepted that the potential disturbance effects would not have an adverse effect on the integrity of the Teesmouth and Cleveland Coast SPA (and Ramsar?), due to the limited period over which the disturbance would occur (3 to 4 months) in combination with the mitigation proposed.

Please can Natural England confirm whether they agree with the Applicant's statement that the potential disturbance effects arising from the development would not have an adverse effect on the integrity of the Teesmouth and Cleveland Coast SPA and Ramsar sites? If Natural England agrees with the Applicant's statement, please can Natural England state on what basis they have reached this conclusion? Please can Natural England expressly state any assumptions or mitigation relied upon in their response?

HRA 1.20

To: **The Applicant**

Screening and integrity matrices

Whilst the screening and integrity matrices provided with the applicant's HRA Report (Doc 6.3) include the qualifying features of the sites screened into the applicant's assessment, in relation to the Teesmouth and Cleveland Coast SPA,

the screening and integrity matrices do not include the species identified in the SPA review for this site. Natural England's relevant representation (dated 5 June 2015) notes that the potential for offsite impacts needs to be considered in assessing the potential effects that the proposal may have on the Teesmouth and Cleveland Coast SPA, given that whilst the harbour development is currently located outside the boundary of the SPA, it is in an area known to be used by birds and therefore has the potential to affect the SPA (paragraphs 2.3 and 2.4).

Please can the applicant provide revised screening and integrity matrices for the Teesmouth and Cleveland Coast SPA to include ringed plover, little tern and common tern as the species for which an extension to the SPA is being considered?

Whilst the footnotes in the screening and integrity matrices refer to where the information is provided in the HRA Report to support the conclusions reached by the applicant, the footnotes are not sufficiently detailed enough to enable the reader to identify the specific text which is relevant to each qualifying feature / criteria for that site. The footnotes also do not clearly identify the mitigation relied upon by the applicant to reach a conclusion of no adverse effect on site integrity (AEoI) for the qualifying features / criteria of the sites.

Please can the applicant provide revised screening and integrity matrices with more detailed footnotes identifying the specific information and mitigation measures relied upon to conclude no LSE and no AEoNo MarkingI?

HRA 1.21

To: **The Applicant**

To: the **Environment Agency**

To: **Natural England**

Absence of adverse effects – securing mitigation

Natural England's Relevant Representation (RR-007) gives a prospective view that no adverse effects are anticipated on any European Sites as a result of the proposed development provided that intended mitigation measures are implemented, subject to assessments in relation to additional species that may be affected should expected review proposals be implemented. On the assumption that such assessments do not reveal new issues needing to be addressed, can it be confirmed whether the DCO contains articles and/or Requirements that satisfactorily guarantee that the mitigation measures would be secured? If not please specify any additional mitigation measures and a means by which to secure them.

HRA 1.22

To: **Natural England**

In-combination effects

Bearing in mind the apparent absence of consideration of the cumulative impacts of Dogger Bank C & d, can Natural England confirm they are content that there would be no Likely Significant Effects/adverse effect on the integrity after mitigation measures on any European Sites for both the project alone and in-combination with other plans/projects.

Water Framework Directive (WFD)

WFD 1.1

To: **The Applicant**

To: The **Marine Management Organisation**

Data used to inform the WFD Compliance Assessment

The applicant has provided a WFD Compliance Assessment as part of their DCO application in Appendix 4.3 of the Environmental Statement. The sources of baseline data used to inform the assessment are outlined in paragraphs 1.2.8-9 of the WFD Compliance Assessment. This includes the hydraulic modelling results established to understand the effects of the development on the physical processes in the Tees Estuary.

Within their relevant representation the Marine Management Organisation (MMO) requested the submission of validation and calibration data for the modelling software used. Please can the Applicant provide this information for Deadline 1?

Please can the MMO comment on this information for Deadline 2? The MMO is asked to identify in their response any issues arising out of this information which may affect the modelling results and to explain whether these would have any implications on the applicant's WFD Compliance Assessment.

WFD 1.2

To: **The Applicant**

Detailed compliance assessment

Table 18 of the WFD Compliance Assessment assesses the potential impacts on the biological quality elements of the Tees water body. The proposed habitat enhancement works are referenced but the assessment does not provide a conclusion on whether the proposed works would affect compliance with the

WFD objectives. The Applicant is requested to provide for Deadline 1 confirmation of whether the proposed works would affect compliance with the WFD objectives.

WFD 1.3

To: **The Environment Agency**

Detailed compliance assessment

Table 18 of the WFD Compliance Assessment acknowledges that temporary small scale deterioration would occur in relation to temporary benthic habitat loss associated with the proposed capital dredging. The applicant concludes that the deterioration would only be temporary and recovery would occur and therefore this action remains compliant with the WFD objective. Given that a deterioration has been identified, the Environment Agency is asked to confirm whether they agree that the deterioration remains compliant with the WFD and consideration of the derogation tests set out in Article 4.7 of the Directive is not required.

WFD 1.4

To: **The Applicant**

Detailed compliance assessment

In respect to the Tees water body, paragraph 4.1.18 of the WFD Compliance Assessment confirms that the existing capital and maintenance dredging strategy would be updated to incorporate the proposed development to ensure its compliance is not threatened. Condition 35 of the draft DML (Doc 4.1) states that a capital dredging and disposal strategy would need to be agreed with the Marine Management Organisation. The Applicant is requested to provide at Deadline 1 clarification on how the need to update the existing dredging strategy is secured in the DCO/DML and how the strategy required as part of Condition 35 of the DML would be compatible with this.

WFD 1.5

To: **The Applicant**

To: **The Environment Agency**

To: **The Marine Management Organisation**

Detailed compliance assessment

In relation to each waterbody screened into the WFD Compliance Assessment, a number of mitigation measures are proposed to ensure any potential impacts of the proposed development would not cause deterioration in the status of the waterbody (e.g. paragraph 4.1.8). However, the WFD Compliance Assessment does not indicate how each of these measures would be secured in the DCO/DML. The Applicant is asked to provide for Deadline 1 a Table identifying how each mitigation measure proposed in the WFD Compliance Assessment would be secured and delivered through the requirements/conditions in the DCO/DML.

Please can the MMO and EA comment for Deadline 2, on whether the wording of the requirements/conditions identified in the DCO/DML to secure and deliver the mitigation measures proposed in the WFD Compliance Assessment is sufficient? If not, please identify wording that would you consider appropriate to secure and deliver the mitigation measures proposed.