



Peter Robottom
National Infrastructure Directorate
The Planning Inspectorate
(via e-mail only)

Our ref: NA/2015/112276/02-L01
Your ref: TR030002

Date: 21 August 2015

Dear Mr Robottom

**PROPOSED YORK POTASH HARBOUR FACILITIES
RESPONSE TO EXAMINING AUTHORITY'S WRITTEN QUESTIONS (ExQ – Deadline I)
STATEMENT OF COMMON GROUND BETWEEN YORK POTASH LIMITED AND
ENVIRONMENT AGENCY**

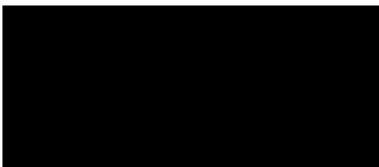
Thank you for forwarding the Examining Authority's written questions on 27 July 2015.

The Environment Agency's responses to the relevant written questions are attached to this letter. I also attach the Statement of Common Ground between York Potash Limited and the Environment Agency. At this time we do not have any further Written Representations to make in respect to the proposals.

Please note that the Environment Agency reserves the right to make further comments on this application throughout the examination process and to modify its present advice or opinion in view of any additional information that may come to our attention.

I can also confirm that the Environment Agency wish to attend the 'Issue specific hearing', on the draft DCO, on Friday 25 September 2015.

Yours sincerely



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Environment Agency Responses to the Examining Authority's First Round of Questions 27 July 2015

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?

We are satisfied that the article provides sufficient provisions for our interests in that it retains the requirement for an Environmental Permit under the Environmental Permitting (England and Wales) Regulations 2010. The Environment Agency is of the opinion that a project of this type and nature should be capable of being adequately regulated under the Environmental Permitting Regulations (EPR) and at this point we are not aware of anything that would preclude the granting of an Environmental Permit. However, this opinion is subject to change based on the outcome of the submission and determination of the relevant EPR application.

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 ?

The Environment Agency agrees that since Phase 2 could be significantly in the future, there should 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 and indeed changes which may have taken place due to the passage of time. This is consistent with the approach taken to other multi-phased developments.

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.*

We have confirmed with the applicant the likely consents required in relation to the works. The Environment Agency however is of the opinion that a project of this type and nature should be capable of being adequately regulated under the Environmental Permitting Regulations (EPR) and at this point we are not aware of anything that would preclude the granting of an Environmental Permit. However, this opinion is subject to change based on the outcome of the submission and determination of the relevant EPR application.

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?*

We have confirmed with the applicant the likely consents required in relation to the works. We are satisfied that the DCO provides sufficient provisions for our interests in that it retains the requirement for an Environmental Permits under the Environmental Permitting (England and Wales) Regulations 2010. The Environment Agency is of the opinion that a project of this type and nature should be capable of being adequately regulated under the Environmental Permitting Regulations (EPR) and at this point we are not aware of anything that would preclude the granting of an Environmental Permit. However, this opinion is subject to change based on the outcome of the submission and determination of the relevant EPR application.

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.

We note that the Environment Agency has been asked to respond at Deadline 2 whether further data is required.

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.

We note that the Environment Agency has been asked to respond at Deadline 2 regarding concerns with the applicants approach.

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?

The Environment Agency wish to comment on an element of this question as part of the proposed enhancements relate to the compensation for the loss of the intertidal habitat along the river frontage. There will be direct loss of up to 3.6ha of intertidal habitat as a result of the proposed scheme which would represent a long term, irreversible change.

Intertidal mudflats are a key marine habitat and have high abundance of species. They are highly productive areas which support large numbers of fish and are important nursery areas for fish. The habitat is currently considered to be of low value but in recovery with the potential to improve. On the Tees however, areas of mudflat are fragmented and this area is seen as an important resource.

As noted in our Statement of Common Ground with York Potash Limited it has been agreed that at least 8ha of good quality habitat needs to be delivered in order to fully offset the potential biodiversity impact of the Harbour facilities proposals.

We understand that the draft Development Consent Obligation made pursuant to Section 106 of the Town and Country Planning Act 1990 is in the process of being updated. We have yet to see the updated version for comment. We understand however that the update version will include commitments to:

Make available a maximum of £200,000 to RCBC, for onward payment to the Tees Valley Wildlife Trust, for costs incurred in relation to the design, permitting, supervision and carrying out of the creation of no less than 8ha of intertidal habitat at Portrack Marsh Nature Reserve following the commencement of development. We understand that this has been agreed with the TVWT in May 2015. We consider this is acceptable in principle subject to further information that the contribution offered is sufficient to provide the habitat referred to. Discussions between YPL and the Environment Agency are continuing in that respect.

Pay £50,000 to RCBC, for onward payment to the Tees Valley Local Nature Partnership, within 28 days of the commencement of development or receipt from the Tees Valley Local Nature Partnership of the commencement of the Tees Estuary Habitat Strategy (or implementation of the Strategy), whichever is the later.

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.

The Environment Agency would defer to Natural England's response on this question.

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.

The Environment Agency considers that although temporary small scale deterioration has been identified, this does not relate to deterioration in WFD classification of benthic invertebrates or the waterbody as a whole therefore the action is compliant with WFD.

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.

We note that the Environment Agency has been asked to respond at Deadline 2 regarding the wording of requirements/conditions identified in the DCO/DML.

THE YORK POTASH HARBOUR FACILITIES ORDER 201X

STATEMENT OF COMMON GROUND

RELATING TO NATURE CONSERVATION INTERESTS, BIODIVERSITY, WATER QUALITY AND
FLOWS, LAND QUALITY, COASTAL PROTECTION AND FLOOD DEFENCE AND WATER
FRAMEWORK DIRECTIVE COMPLIANCE

BETWEEN

ROYAL HASKONINGDHV ON BEHALF OF YORK POTASH LIMITED

AND

ENVIRONMENT AGENCY

1. INTRODUCTION

- 1.1. This Statement of Common Ground (SoCG) relates to an application made by York Potash Limited (York Potash) to the Planning Inspectorate (PINS) under Section 37 of the Planning Act 2008 for a Development Consent Order (DCO), to authorise the construction and operation of Harbour facilities at Bran Sands, Teesside, which will be linked by conveyor to a Materials Handling Facility (MHF) located within the Wilton International Complex (“the Application”).
- 1.2. This SoCG has been prepared and agreed between Royal HaskoningDHV on behalf of York Potash and the Environment Agency to set out common ground and to detail any issues which remain unresolved or which are not agreed between the parties in relation to nature conservation interests, biodiversity, water quality and flows, land quality, coastal protection and flood defence and Water Framework Directive compliance.

2. BACKGROUND

2.1. The proposed Harbour facilities form part of the York Potash Project (YPP) which involves the creation of a mine for the winning and working of polyhalite together with the necessary infrastructure required for the subsequent distribution of the mineral. The project principally comprises the following:

- The mine with surface infrastructure to be located at Doves Nest Farm near Whitby.
- A Mineral Transport System (MTS), being a 36.5km long tunnel with conveyor to transport the polyhalite from the mine to the MHF at Wilton.
- A MHF at Wilton.
- Harbour facilities at Teesside linked to the MHF by a conveyor system.

2.2. The proposals for the mine, MTS and MHF and other associated works are the subject of applications to the relevant local planning authorities and minerals and waste planning authorities.

2.3. The proposed Harbour facilities, designed to export up to 13 million tonnes per annum (mtpa) of product, comprise the following elements:

- A port terminal on the southern bank of the Tees estuary (with capital dredging of an associated berth pocket and approaches, a quay and ship loaders).
- A conveyor system to transport product to the port terminal from a MHF at Wilton (the MHF was the subject of a separate planning application and was not considered in the Harbour facilities Environmental Impact Assessment (EIA), other than in the cumulative impact assessment).
- Product storage facilities adjacent to the port terminal, in the form of surge bins.
- Staff welfare facilities.

2.4. York Potash has, via Royal HaskoningDHV, engaged with the Environment Agency in relation to the application through the pre-application process. The following documents have been produced by Royal HaskoningDHV and used to support the application.

Environmental Statement

2.5. An EIA was undertaken for the proposed Harbour facilities in accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009, as amended by the Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2012, and with reference to relevant guidance notes from PINS. The EIA process incorporated comments received from PINS through the Scoping Opinion (received in January 2014), following the provision of a Scoping Report prepared by Royal HaskoningDHV to PINS and for consultation by YPL.

Preliminary Environmental Report

2.6. A Preliminary Environmental Report (PER) was produced in accordance with PINS Advice Note 7. The PER presented the initial findings of the EIA undertaken by Royal HaskoningDHV on behalf of YPL. In addition to the responses received in the PINS Scoping Opinion, the EIA also

incorporated comments received through consultation under Section 42 of the Planning Act 2008.

Water Framework Directive Compliance Assessment

- 2.7. The Water Framework Directive (2000/60/EC) (WFD) establishes a legal framework to protect and restore clean water across Europe to ensure long-term, sustainable use. It applies to waters out to one nautical mile from the baseline from which territorial waters are drawn. The WFD is transposed into English and Welsh law through The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003.
- 2.8. The requirements of the WFD have been addressed as part of the application through a WFD compliance assessment.

3. HYDRODYNAMIC AND SEDIMENTARY REGIME

Baseline data

3.1. The assessment of likely effects on the hydrodynamic and sedimentary regime was informed by numerical modelling tools. The suite of modelling activities included:

- modelling of sediment plume released from construction activities;
- tidal flow modelling;
- wave modelling;
- sediment transport; and,
- bed change modelling.

Summary of effects

3.2. An assessment of the potential effects of the proposed Harbour facilities on coastal processes (comprising effects on tidal propagation, wave climate, current speeds and sediment budget of the estuarine system) has been undertaken. In summary, the results of the hydrodynamic modelling predict that:

- The proposed scheme does not have the potential to affect tidal propagation into the Tees estuary because no capital dredging seaward of the location of the proposed port terminal (i.e. towards the mouth of the estuary) would occur.
- There would be no effect on wave penetration into the Tees estuary from offshore as a result of the proposed scheme.
- No increases in wave energy over the designated intertidal area at Teesmouth would occur.
- There would be some areas of current speed increase on the shoreline adjacent to the location of the port terminal.
- There would be a localised redistribution of (existing) sediment deposition in response to predicted changes in current speed. This very small change in the overall fine sediment regime would not alter the present frequency of or methodology for maintenance dredging and no effect on sediment supply to intertidal areas throughout the estuary would occur.

Statement of Common Ground

3.3. It is agreed that the approach taken to the prediction of effects on the hydrodynamic and sedimentary regime is appropriate. There are no areas of disagreement over the findings of the assessment.

4. HYDROLOGY, HYDROGEOLOGY AND LAND QUALITY (WASTE)

Baseline data

4.1. The baseline environment was informed by:

- data collected for a desk-based Preliminary Risk Assessment (PRA);
- review of third party reports and published geological information; and,
- an initial Phase 2 intrusive site investigation.

Method of assessment

4.2. The methodology adopted for the assessment of potential impacts followed the generic EIA methodology set out in the ES. The assessment was undertaken with reference to statutory and general guidance produced by the Environment Agency (Pollution Prevention Guidance), Construction Industry Research and Information Association (CIRIA) and relevant British Standards.

Summary of potential impacts

4.3. The assessment identified a number of impacts that could arise with regard to hydrology, hydrogeology and land quality during the construction, operation and decommissioning phases of the Harbour facilities. It is concluded that potential impacts – with mitigation / appropriate controls in place – would be of negligible adverse significance (at worst), with the following exceptions:

- Potential impacts to human health associated with potential exposure to ground gas.
- Potential impact on surface waters during the operational phase.

Potential impacts to human health associated with potential exposure to ground gas

4.4. Significant ground gas concentrations have been recorded in boreholes adjacent to Bran Sands landfill. Elevated concentrations of ground gas can result in risks to construction workers who may be required to work within confined spaces, as well as off-site receptors due to migration of ground gas through preferential pathways (e.g. foundations and utility infrastructure). An impact of minor adverse significance has been predicted with regard to construction workers, and an impact of moderate adverse significance predicted with regard to off-site residents.

Potential impact on surface waters

4.5. A potential impact of minor adverse significance on surface waters was predicted associated with the on-site storage of polyhalite and hydrocarbons during operation, given the high sensitivity of the surface waters.

Mitigation measures

4.6. Mitigation measures to minimise the risk of impacts to human health from elevated concentrations of ground gas comprise:

- further monitoring of the ground gas regime so that suitable mitigation measures can be identified and implemented; and,
- implementation of the generic environmental risk mitigation identified above.

4.7. With the implementation of the above mitigation measures, the residual impacts are predicted to be of negligible significance.

4.8. Control measures would be implemented during the operational phase to minimise any risk to surface waters as far as possible.

Statement of Common Ground

4.9. It is agreed that the methodology adopted for the impact assessment is appropriate. There is agreement on the findings of the impact assessment and mitigation measures proposed.

4.10. With regard to waste management, it is agreed that the approach adopted for consideration of waste generation and the framework defined for the management of waste during the construction, operational and decommissioning phases is appropriate.

5. MARINE SEDIMENT AND WATER QUALITY

Baseline data

5.1. The baseline environment for marine sediment and water quality was informed by the following:

- Sediment quality data from samples collected as part of the EIAs for the Northern Gateway Container Terminal (NGCT) (2006) and Queen Elizabeth II (QEII) berth redevelopment (2008).
- A sediment quality survey undertaken as part of the EIA for the Harbour facilities during 2014 (the scope of the survey was agreed with Natural England, the Environment Agency, Cefas and the MMO prior to the survey being undertaken).
- Water quality monitoring data collected by the Environment Agency at various sites within the Tees estuary and tributaries as part of the Clean Seas Environmental Monitoring Programme.

Method of assessment

5.2. The assessment of impacts was undertaken in accordance with the generic impact assessment methodology presented in the ES and with regard to recognised guidelines, namely:

- Cefas Guideline Action Levels for the disposal of dredged material; and,
- Canadian Sediment Quality Guidelines (CSQG) for the Protection of Aquatic Life (Canadian Council of Ministers of the Environment (CCME)).

Summary of potential impacts

5.3. The impact assessment identified a number of impacts that could arise with regard to marine and sediment quality during the construction and operational phases of the Harbour facilities. The key impacts assessed comprise:

- re-suspension of sediment during capital dredging and piling;
- reduced water quality due to placement of dredged material within Bran Sands lagoon (as part of the habitat enhancement measures); and,
- potential for accidental spillage of oils, chemicals and polyhalite.

5.4. The sediment quality survey confirmed that the sediment overlying virgin geology that would be dredged during the construction phase is contaminated. In order to prevent the dispersion of this material during capital dredging, the use of an enclosed grab is proposed.

5.5. Potential impacts are predicted to be of minor adverse significance.

Mitigation measures

5.6. The following controls have been proposed in order to minimise impacts to marine sediment and water quality during dredging:

- limiting re-suspension of sediment during trailing suction hopper dredging can be achieved by optimising the trailing velocity, position of the suction mouth and discharge of the pump with respect to each other, and directing the flow lines of the suction stream to the actual point of excavation;
- reduction of sediment plumes during backhoe dredging can be achieved by using an experienced operator and limiting the swing of the backhoe over water; and,
- resuspension of sediment during cutter suction dredging can be reduced through optimising the cutter speed, swing velocity and suction discharge, shielding the cutter head and optimising the design of the cutter head.

5.7. Silt curtains are proposed within Bran Sands lagoon to prevent dispersion of suspended sediment during placement of dredged material required to construct the habitat enhancement. Only sediment that is deemed acceptable for disposal or an alternative use within the marine environment would be used within the habitat enhancement proposals in Bran Sands lagoon (i.e. no sediment precluded from disposal at sea due to elevated contaminant levels would be placed in Bran Sands lagoon).

5.8. With the implementation of the controls and mitigation measures outlined above, the residual impacts are predicted to be negligible.

Statement of Common Ground

5.9. It is agreed that the survey design and the methodology adopted for the impact assessment is appropriate. There is agreement on the findings of the impact assessment and mitigation measures proposed.

6. MARINE ECOLOGY

Baseline data

6.1. The baseline environment for marine ecology was informed by the following:

- Results of a benthic survey undertaken as part of the 2006 NGCT studies.
- Results of a benthic survey undertaken in 2008 as part of the EIA for the consented QEII berth development.
- Environment Agency benthic ecological monitoring data recovered throughout the Tees estuary.
- A site-specific benthic ecological survey (the scope of which was agreed with the Environment Agency, Cefas, the MMO and Natural England).
- An underwater noise survey carried out by Subacoustech Environmental in April 2014.

Method of assessment

6.2. The ecological impact assessment was undertaken in accordance best practice and, in particular, the Guidelines for Ecological Impact Assessment – Marine and Coastal (IEEM, 2010).

Summary of potential impacts

6.3. The assessment identified that the proposed scheme has the potential to result in a number of impacts on marine ecology. The two key potential impacts comprise the direct loss of intertidal habitat due to quay construction and capital dredging, and noise and vibration disturbance to marine mammals and fish.

Direct loss of intertidal

6.4. The direct loss of up to 3.6ha of intertidal habitat as a result of the proposed scheme would represent a long term, irreversible change. The receptor is currently considered to be of low value (with the potential to improve), but the magnitude of the effect would be high. Hence a potential impact of minor adverse significance was predicted.

Generation of underwater noise during construction

6.5. The generation of underwater noise during construction works is inevitable due to piling for the construction of the port terminal and capital dredging.

Mitigation measures

6.6. Measures to mitigate the potential impact of underwater noise and vibration are set out in Section 7 (paragraph 7.11) (for resident and migratory fish). These measures would also mitigate the potential impact on other marine receptors (e.g. marine mammals).

Compensatory measures

6.7. The ES concludes that there would be an unavoidable impact on biodiversity, but that this would not represent 'significant harm' under the terms of the National Planning Policy Framework (NPPF). The Environment Agency disagrees with the conclusions drawn in the ES in

terms of the status of the intertidal habitat and considers that the intertidal area represents UK Biodiversity Action Plan (BAP) priority habitat (intertidal mudflat).

- 6.8. The Environment Agency's current position is that the impact of the proposed scheme on the intertidal habitat constitutes 'significant harm' and, therefore, following the NPPF, the Environment Agency consider that it is necessary to follow the hierarchy of 'avoid' and, if this is not possible, 'mitigate' the impact as far as possible, with 'compensation' to be provided for any shortfall. Assuming as a worst case that the solid quay structure is progressed, it is not possible to avoid or fully mitigate the potential impact (the extent of the footprint of the quay has been reduced as far as possible) and hence compensatory measures have been investigated.
- 6.9. The ES reported the outcome of initial discussions with the Tees Valley Wildlife Trust (TVWT) regarding the potential to create intertidal habitat at Portrack Marsh nature reserve. Since the submission of the DCO application, further studies have been undertaken on the measures proposed in the ES and these have confirmed the engineering feasibility of creating intertidal habitat in the Portrack Marsh Nature Reserve. Further discussions have also been held with the TVWT and it has been agreed that there is the potential to create up to 8ha of good quality intertidal habitat in the Portrack Marsh Nature Reserve.
- 6.10. In terms of providing a schedule of the proposed ecological enhancement measures, the ES (Document 6.4) provides details in paragraphs 8.5.6 to 8.5.10 and 8.5.12 to 8.5.16; which are updated below. These represent the ecological enhancement measures that have been identified and assessed, to the extent that this is relevant in this context, in the ES.
- 6.11. Further investigation by Royal HaskoningDHV's engineering team in May 2015 into the re-profiling and 'naturalising' up to 350m of river bank (and potentially a further 700m at Maze Park) (paragraph 8.5.11 of the ES (Document 6.4)) has shown that these measures would not deliver significant biodiversity benefit and would require substantial earthworks given the topography of the river banks; as such, these measures are no longer under consideration.
- 6.12. Further analysis of the potential biodiversity impact of the proposed Harbour facilities and the biodiversity gain predicted to be achieved through creation of intertidal habitat at Portrack Marsh Nature Reserve, together with the proposed habitat enhancement measures in Bran Sands lagoon (included within the DCO and detailed in the Mitigation and Monitoring Strategy (MMS) (Appendix 3.1 to Document 6.3)), has been undertaken. It was agreed that the biodiversity offsetting guidance developed by Defra (March 2012) should be applied in order to assess the net effect of the Harbour facilities proposals (which includes the Bran Sands lagoon habitat enhancement measures) and the habitat improvement measures at Portrack Marsh Nature Reserve. The outcome of the analysis is reported in York Potash Harbour Facilities: Biodiversity offsetting as compensation for loss of intertidal habitat (Royal HaskoningDHV, June 2015); but note that this assessment was undertaken based on the creation of 7ha of good quality intertidal habitat at Portrack Marsh. Accordingly, the additional 1ha of intertidal habitat sought by the Environment Agency (see paragraph 6.16 below) can be provided.
- 6.13. In addition to the above, YPL is proposing to provide a £50,000 contribution to the funding or implementation of a Tees Estuary Habitat Strategy report to identify the habitat protection and

enhancement opportunities and priorities in the Tees estuary, through Tees Valley Local Nature Partnership.

Statement of Common Ground

- 6.14. The Environment Agency has confirmed that the description of the baseline environment, including surveys undertaken, is appropriate.
- 6.15. The Portrack Marsh intertidal habitat creation measures (as described in Royal HaskoningDHV, June 2015) and the habitat enhancement measures proposed in Bran Sands lagoon are considered by YPL to represent sufficient compensation (i.e. offset) for the biodiversity impact arising due to the construction of the port terminal.
- 6.16. The Environment Agency's position is that at least 8ha of good quality habitat needs to be delivered (beyond that described in Royal HaskoningDHV, June 2015) in order to fully offset the potential biodiversity impact of the Harbour facilities proposals. Hence it has been confirmed through further discussion with Tees Valley Wildlife Trust that this additional 1ha of habitat can be delivered through increasing the proposed area of intertidal habitat creation at Portrack Marsh nature reserve.
- 6.17. The draft Development Consent Obligation made pursuant to Section 106 of the Town and Country Planning Act 1990, relating to the York Potash Harbour facilities, has been, and is in the process of being, updated and will be provided to the Examining Authority on the 7 September 2015. The updated version includes commitments to:
 - 6.17.1. Make available a maximum of £200,000 to RCBC, for onward payment to the Tees Valley Wildlife Trust, for costs incurred in relation to the design, permitting, supervision and carrying out of the creation of no less than 8ha of intertidal habitat at Portrack Marsh Nature Reserve following the commencement of development. The attached Technical Note *Portrack Marsh Habitat Improvement with Regulated Tidal Exchange (RTE)* (April 2015) demonstrates that an intertidal scheme of approximately 9.6ha (based on MHWS levels) could be achieved at the site at an estimated cost of £170,000 to £196,000. This was discussed and agreed with the TVWT in May 2015. This is acceptable in principle to the Environment Agency subject to it being satisfied that the contribution offered is sufficient to provide the habitat referred to. Discussions between YPL and the Environment Agency are continuing in that respect.
 - 6.17.2. Pay £50,000 to RCBC, for onward payment to the Tees Valley Local Nature Partnership, within 28 days of the commencement of development or receipt from the Tees Valley Local Nature Partnership of the commencement of the Tees Estuary Habitat Strategy (or implementation of the Strategy), whichever is the later.

7. FISHERIES AND FISHING ACTIVITY

Baseline data

7.1. The baseline environment with regard to fishing and fishing activity was informed by the following:

- Environment Agency fish count data from the Tees Barrage;
- a site specific benthic survey which involved a total of 10 benthic trawls;
- review of the OSPAR List of Threatened and/or Declining Species and Habitats;
- consultation with North Eastern Inshore Fisheries and Conservation Authority (NEIFCA); and,
- consultation with the Environment Agency regarding fish usage of the estuary.

Method of assessment

7.2. The assessment of impacts with regard to fisheries and fishing activity was undertaken in accordance with the generic impact assessment methodology. The principle guidance documents used to inform the assessment of potential impacts to the natural fisheries resource and fishing activity were:

- Guidance note for Environmental Impact Assessment in respect of Food and Environmental Protection (FEPA) and Coast Protection Act (CPA) requirements;
- OSPAR List of Threatened and/or Declining Species and Habitats; and,
- The Salmon and Freshwater Fisheries Act 1975 which is aimed at the protection of freshwater fish, with a particularly strong focus on salmon and trout.

7.3. An underwater noise survey was undertaken during April 2014 which enabled definition of baseline conditions for an underwater noise modelling exercise. Underwater noise modelling was undertaken using the INSPIRE model for impact piling.

7.4. In order to assess the environmental effects from impact piling and dredging activities, the following metrics were used:

- Unweighted metrics.
- The dBht (species).
- M-Weighted SELs.

7.5. Several species of fish have been identified as being of importance in the areas in and around the Tees estuary. The species of fish considered within the underwater noise study were:

- dab (this species was used as a surrogate for other flatfish e.g. flounder and plaice and European eel);
- herring (this species was used as a surrogate for sprat);
- salmon;
- sandeels or sand lances; and,
- sea trout.

Summary of potential impacts

7.6. The impact assessment identified a number of key potential impacts, comprising:

- direct uptake and loss of fish, fish eggs and food resources during dredging and port terminal construction;
- direct loss of potential spawning, nursery and feeding habitat for fish; and,
- construction noise and vibration disturbance to resident and migratory fish.

Direct uptake and loss of fish, fish eggs and food resources during dredging and quay construction

7.7. The benthic infaunal survey results show that the subtidal benthic biotope of the navigation channel is widespread and likely to be influenced by regular maintenance dredging. For the same reason, the channel is unlikely to represent an important feeding or spawning area for fish. The proposed berth pocket supports a different community to the approach channel, with a high abundance of some species (particularly *Capitella capitata*). An impact of minor adverse significance is predicted to fish species due to dredging of the approach channel.

7.8. The intertidal habitat is of poor quality; however, it is likely to represent a feeding resource for fish. The solid quay construction would result in the loss of up to 3.6ha of intertidal habitat, and a moderate adverse significance impact is predicted due to loss of potential intertidal feeding and nursery resource for fish (for the solid quay option).

Construction noise and vibration disturbance to resident and migratory fish

7.9. Based on the underwater noise modelling outputs, an impact of moderate adverse significance is anticipated to arise for fish due to underwater noise and vibration.

Mitigation measures

Direct uptake and loss of fish, fish eggs and food resources during dredging and quay construction

7.10. Mitigation measures with regard to this impact are limited and the potential impacts are unavoidable consequences of the proposed scheme. The residual impacts is therefore of minor adverse significance with regard to subtidal habitat and moderate adverse with regard to intertidal habitat (solid quay option).

Construction noise and vibration disturbance to resident and migratory fish

7.11. In order to prevent adverse impacts to adult migratory fish runs, no piling would be undertaken for 3 hours following low water from 1 March to 30 November. In addition, during May, no impact piling would take place in order to allow the migration of juvenile salmon and sea trout. These timing restrictions on piling activities were agreed with the Environment Agency prior to submission of the Harbour facilities ES. With the implementation of the above mitigation measures, a residual impact of minor adverse significance is anticipated.

Compensatory measures

- 7.12. The compensatory and habitat enhancement measures proposed for Portrack Marsh (see Section 6) and within Bran Sands lagoon (see the MMS (Appendix 3.1 to Document 6.3)) would reduce the impact associated with the loss of intertidal feeding resource for fish.

Statement of Common Ground

- 7.13. It is agreed that the methodology adopted for the impact assessment is appropriate.
- 7.14. See also paragraphs 6.15 and 6.16 above.

8. COASTAL PROTECTION AND FLOOD DEFENCE

Baseline data

8.1. The baseline environment was informed by:

- review of the RCBC's Strategic Flood Risk Assessment;
- review of Environment Agency flood zone mapping;
- review of the River Tees Catchment Flood Management Plan;
- consultation with the Environment Agency;
- consultation with RCBC drainage officers, development manager, flood risk officer and transport strategy officer;
- review of the Environment Agency's Tees Tidal Flood Risk Management Strategy; and,
- review of the Tidal Tees Integrated Flood Risk Management Study.

Method of assessment

8.2. The methodology adopted for the assessment of potential impacts followed the generic EIA methodology set out in the ES. The findings of a Flood Risk Assessment (FRA) undertaken specifically for the proposed scheme have also been used to inform the impact assessment.

Summary of potential impacts

8.3. The impact assessment identified a number of potential impacts with regard to coastal protection and flood defence, during the construction, operation and decommissioning phase of the proposed scheme. All impacts are predicted to be of negligible significance, with the exception of flood hazard to construction workers which is predicted to be of minor adverse significance.

Mitigation measures

8.4. Mitigation measures proposed with regard to the potential flood hazard to construction workers include ensuring all construction workers undergo site induction training prior to being allowed on site, and use of warning sirens and escape routes in the event of a site evacuation. With the implementation of the above mitigation, there is no residual impact. No other mitigation measures are proposed.

Statement of Common Ground

8.5. It is agreed that the methodology adopted for the impact assessment is appropriate. There is agreement on the findings of the impact assessment and mitigation measures proposed.

9. WATER FRAMEWORK DIRECTIVE

Baseline data

- 9.1. Waterbodies which potentially could be affected by the proposed scheme were identified using the Environment Agency's water body shape files and online WFD mapping system. Updates included in the draft River Basin Management Planning Round 2 consultation exercise were also used.
- 9.2. The desk-based data collection exercise was supplemented by the findings of surveys and technical studies which were also undertaken to support the EIA process. Survey and technical studies of relevance to the WFD compliance assessment included:
- ecological surveys;
 - underwater noise modelling;
 - benthic ecological monitoring;
 - hydrodynamic modelling;
 - collection of vibrocores and analysis of samples;
 - intrusive ground investigation.

Method of assessment

- 9.3. The approach to assessing whether the proposed Harbour facilities is compliant with the requirements of the WFD was set out in detail within the YPP WFD Compliance Assessment Strategy. This strategy was reviewed and accepted by the Environment Agency in July 2014.
- 9.4. The method for the Harbour facilities WFD compliance assessment followed the recommendations made by the Environment Agency's National Environmental Assessment Service (Murphy *et al.* 2012). This guidance was supplemented by the use of the Environment Agency's *Clearing the Waters: A user guide for marine dredging activities guidance*.

Summary of WFD compliance assessment

- 9.5. The preliminary compliance assessment demonstrated that the proposed scheme has potential to cause deterioration in the status of the Tees estuary (S Bank) river water body, the Tees transitional water body and the Tees Mercia Mudstone & Redcar Mudstone groundwater body. These water bodies were carried forward for further assessment.
- 9.6. A range of mitigation measures were recommended. Assuming the implementation of these mitigation measures, the WFD compliance assessment concluded that the proposed scheme would not cause deterioration of the status of any of the waterbodies that were screened into the WFD compliance assessment.

Statement of Common Ground

- 9.7. The information presented above is a summary of the agreed position between YPL and the Environment Agency with regard to the WFD compliance assessment. There are no areas of disagreement for this topic.

10. FURTHER CONSENTS TO BE OBTAINED FROM THE ENVIRONMENT AGENCY

- 10.1. Some of the proposed works fall within the area covered by the Environmental Permit for the Bran Sands landfill site. This Environmental Permit will be transferred to York Potash Ltd and there may be a requirement for the permit to be varied. Initial discussions have been held with the Environment Agency on this matter.
- 10.2. Flood Defence Consents (FDCs) are required to undertake works within 5m of a main river; however, where there is a MMO application, a FDC waiver is usually provided to the applicant.
- 10.3. An Environmental Permit will also be required for discharge of water into the Tees estuary during the construction of habitat enhancement proposals in Bran sands lagoon.

11. SIGNATURES OF ALL PARTIES

Signed on behalf of York Potash Limited

Name Sian John
Role Director, Environment
Date 20/08/15
Signature



Signed on behalf of the Environment Agency

Name Cameron Sked
Role Planning Specialist – Sustainable Places
Date 20/08/15
Signature

