

**PLANNING ACT 2008**

**INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010**

**TRO 30002**

**OBJECTOR REFERENCE – 10031188**

**PROPOSED YORK POTASH HARBOUR FACILITIES ORDER**

**PD Teesport Limited – Response To ExA Questions**

1. **Question DCO 1.9**

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

**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?**

PD Teesport Limited's response:

PD Teesport Limited ("PDT") is content that articles 17 to 21 are correctly located in the main Order rather than as conditions of the Marine Licence. This accords with the usual practice for harbour revision and harbour empowerment orders.

Subject to the issue of sanctions mentioned below, PDT, as the local lighthouse authority, is content as regards the provisions as to exhibiting lights etc contained in articles 19 to 21 but note that these would be subject to the powers under section 199 of the Merchant Shipping Act 1995 of Trinity House as the general lighthouse authority. However, it is also noted that article 35 of the draft Order includes a saving for Trinity House, which, amongst other matters, applies to their powers under section 199 of the 1995 act.

Articles 19 to 21 do not impose a sanction for non-compliance and are therefore not readily enforceable. Similar provisions in harbour empowerment and harbour revision orders made under the Harbours Act 1964 make non-compliance with requirements under the provisions a criminal offence punishable on summary conviction by a fine not exceeding the statutory maximum and on indictment to a fine. A defence of due diligence is also provided. See, for example, articles 11, 13, 14 and 33 of the Hinkley Point Harbour Empowerment Order 2012 and articles 11, 12, 13 and 17 of the Dover Harbour Revision Order 2012. PDT request that the order be amended to provide for similar criminal sanctions.

PDT does not consider there to be any conflict between articles 17 to 21, the conditions of the Deemed Marine Licence in Schedule 5 and the protective provisions in Schedule 11 which (unlike the conditions in Schedule 5) are imposed for the benefit of, and are enforceable by, PDT.

2. **Question DCO 1.12**

***Article 34 and Schedule 11 protective provisions for the benefit of the Teesport Authority***

**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**

Negotiations are continuing as regards the protective provisions to be included in Schedule 11 to the Order and the points at issue between the parties have been narrowed considerably.

On 10 August 2015 the applicant offered revised protective provisions to PDT and PDT responded on 11 August. There are still some outstanding issues which are set out in the representations made by PDT.

The parties hope that the outstanding issues can be resolved before the open floor hearings but, if settlement cannot be achieved, they consider that a final position between the parties will have been reached by Friday 18 September 2015, a week before the issue specific hearing on the draft DCO.

The above response has been agreed with the applicant.