

Your ref: TR030002

Our Ref YPOT-AFP025

**WRITTEN REPRESENTATIONS
ON BEHALF OF
ICI CHEMICALS AND POLYMERS LIMITED**

Introduction

1. These are the Written Representations of ICI Chemicals and Polymers Limited (“C&P”) in relation to the application by York Potash Ltd (“York”) for an order granting development consent for the York Potash Harbour Facilities.
2. C&P is the registered freehold proprietor of the land registered at HM Land Registry under title number CE148382 (“the Bran Sands Site”).
3. C&P’s representations relate to the proposed powers of acquisition set out in Part 5 of the draft DCO; C&P submit that there should be no powers of acquisition in relation to the Bran Sands Site as York already has a private law right to acquire the freehold of that site.

The principle of the DCO

4. C&P has no objection in principle to the grant of the proposed DCO, and accepts the desirability of the scheme proposed by York.

Compulsory acquisition of rights over the Bran Sands Site

5. Part 5 of the DCO as currently sought (and especially article 24) includes powers of acquisition which would result in rights being compulsorily created over the Bran Sands Site.

6. By proposed article 24(1), the undertaker may acquire compulsorily new rights over land, and by proposed article 24(2) all private rights which are inconsistent with the carrying out of the proposed scheme would be extinguished.
7. By proposed article 24(4), the undertaker cannot be required to take a greater right than a right which it has created over land.
8. The Bran Sands Site is located within the Tees Estuary. Part of it includes a deep water frontage to the River Tees. It is believed that this is the last available river frontage, which gives it significant value.
9. The Bran Sands Site is not currently in active use. By an Option Agreement dated 5 March 2013 (as varied) which runs until 30 March 2016, York has the right to acquire the freehold of the Bran Sands Site.
10. As stated above, C&P does not object to the principle of the DCO, nor to the proposed scheme which is to be carried out by the undertaker under the DCO.
11. The Statement of Reasons submitted by York to support its application contains at section 4 a justification for seeking compulsory acquisition powers.
12. The requirement at s. 122(3) of the Planning Act 2008 that there be a compelling case in the public interest is of course mentioned at para 4.1 of that statement.
13. Furthermore, at para 4.2 of the statement the CLG guidance is referred to which indicates that all reasonable alternatives to compulsory acquisition should first be explored, that the proposed interference with property rights should be limited to that which is necessary and proportionate, and that regard should be given to Article 1 of the First Protocol to the European Convention on Human Rights (“A1P1”) must be taken into account.
14. There is no compelling case in the public interest for the acquisition of rights over the Bran Sands Site (or indeed the compulsory acquisition of the entirety of that site) in

circumstances where York has a private right to acquire the site pursuant to the Option Agreement.

15. Furthermore it would not seem that all reasonable alternatives to rights of compulsory acquisition being granted had been explored where the parties have already reached a contractual agreement as to the acquisition of the relevant land.
16. Further, it cannot be said to be “necessary” for rights over the site to be acquired compulsorily when those rights are available to York through exercise of the Option Agreement.
17. The Option Agreement is on terms which were freely negotiated and so is clearly a reasonable alternative. It would be an unjustifiable interference with C&P’s A1P1 rights for powers to be granted by legislation to effectively undo the contract and allow York to acquire rights in the site on different terms. Indeed, for that reason, the rights would not be granted for a legitimate purpose, notwithstanding that the intended scheme does require the Bran Sands Site in order to proceed, and the scheme itself is desirable and beneficial.
18. Accordingly, no rights of compulsory acquisition should be granted over the Bran Sands Site.
19. As a separate point, it would be more disadvantageous, and more of an interference with C&P’s rights (both in private law terms and in Human Rights terms) for York to create rights over the Bran Sands Site rather than acquire the freehold of the site. If any rights of compulsory acquisition are to be granted, they should only authorise York to acquire the entirety of the site, and at a full market value.

The Compulsory Acquisition hearing

20. C&P hereby notifies the Examining Authority that it wishes to make representations at a Compulsory Acquisition hearing.

Conclusion

21. For the reasons briefly set out above, which will be set out more fully in due course and at the appropriate stage of proceedings, the DCO should be made, but should not include any powers of compulsory acquisition in relation to the Bran Sands Site.

21 August 2015