

THE YORK POTASH HARBOUR FACILITIES ORDER 201X

Applicant's Responses to Other Parties Responses to Examining Authority's First Questions



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York Potash Limited

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YORKPOTASH
A Sirius Minerals Project



THE YORK POTASH HARBOUR FACILITIES DEVELOPMENT CONSENT ORDER 201X

APPLICANT'S RESPONSE TO OTHER PARTIES RESPONSES TO THE EXAMINING AUTHORITY'S FIRST QUESTIONS

Other Party Response	Applicant's Response
Network Rail	
<p>Response to DCO 1.12:</p> <p><i>As stated in Network Rail's representation to this DCO application dated 9 July 2015, Network Rail was in contact with the promoter prior to the submission of the application and the form of protective provisions to be included in the draft Order were agreed. For the avoidance of doubt, Network Rail confirms that the protective provisions contained in the draft Order for its benefit are agreed by Network Rail and it does not object to the current drafting of the DCO. Its position is reserved in respect of any amendments to the draft DCO which may affect Network Rail property or interests, at which point, if required, additional written representations would be made.</i></p>	<p>The further confirmation that the protective provisions are agreed is noted albeit the ExA will note that an amendment has been made to the protective provisions to safeguard the ability of the Applicant to cross the railway by compulsory acquisition of the necessary rights in the absence of agreement. This is explained in the revised Explanatory Memorandum (Document 4.2A). The Applicant continues to press Network Rail for progress towards the removal of its holding objection.</p> <p>NR is yet to respond to questions TT1.6 and TT1.7.</p>
MMO	
<p>Response to DCO 1.9:</p> <p><i>MMO are content that the provisions do not contradict but would like the Examining Authority (ExA) to note that the MMO would defer to Trinity House (TH) and the Maritime and Coastguard Agency (MCA) regarding any navigational/markings requirements.</i></p> <p><i>Under the Marine and Coastal Access Act 2009 (MCAA) the MMO have greater powers than those under the 2008 Planning Act regarding any activities being undertaken below Mean High Water</i></p>	<p>The DCO has been drafted to reflect the jurisdiction of the MMO.</p>

<p><i>Springs (MHWS). For this reason the MMO would request that any conditions relating to works below MHWS are located within the deemed marine licence (DML).</i></p>	
<p>Response to DCO 1.14:</p> <p><i>MMO consider that if considerable time occurs between phases 1 and 2 then an addendum to the ES should be undertaken to reflect any changes in baseline against potential impacts of the works.</i></p>	<p>The only aspects of phase 2 which should logically be considered as requiring reassessment should phase 2 be delayed are the extended quay and dredging area. The ES assumed that phase 2 would commence within 6 years of the completion of phase 1. This is reflected in the DML (Schedule 5 paragraph 9). Accordingly, an additional requirement has been added to Schedule 2 of the DCO providing that in the event of phase 2 not having commenced within 6 years of completion of phase 1 then if the local planning authority so require the undertaker will reassess the baseline conditions relating to items (a) and (b) of phase 2 as defined in the Order (the extended quay and dredging). In the event of there being changes to the baseline which will materially affect the assessment contained in the ES then a reassessment of the environmental impact in respect of the those items will be undertaken and submitted to the local planning authority and any additional mitigation agreed with the local planning authority and implemented.</p>
<p>Response to DCO 1.16:</p> <p><i>MMO considers that schedule 5 should contain schedule 6. The DML should clearly define the boundaries of the marine works.</i></p>	<p>Please see the Applicant's response to Q1 DCO 1.16.</p> <p>The DML is clearly linked to Schedule 6 because it refers to the "quay limits" which are defined by reference to Schedule 6.</p>
<p>Response to SEM 1.2:</p> <p><i>"Under the MCAA the MMO have greater powers than those under the 2008 Planning Act regarding any activities being undertaken</i></p>	<p>See response to DCO 1.9 above.</p>

<p><i>below Mean High Water Springs (MHWS). For this reason the MMO would request that any conditions relating to works below MHWS are located within the DML. This drafting alteration may allay the concerns of TH, MCA and the Tees Port Authority; although the MMO would defer to both TH and MCA on any safety of shipping concerns."</i></p>	
<p>Response to HWF 1.1:</p> <p><i>"MMO wish to note that a pipe below MHWS would require a marine licence and, should consent for the pipeline be part of the applicants current application, then consideration should have been detailed within their current ES. Any pipeline consent being sought now should be included within the DML, if any part of the structure falls below MHWS. It should be noted that the MMO licence the physical structure but do not licence the water flowing out of the pipe."</i></p>	<p>The pipes / control structures would be constructed within the existing embankment between the lagoon and the Tees estuary and would not result in any direct impact beyond that associated with the construction of the terminal itself (i.e. the footprint of the pipe construction is within that required for the terminal). On the lagoon side of the embankment, the pipes / control structure would extend through the embankment above bed level of the lagoon.</p> <p>For the avoidance of doubt additional wording has been added to Schedule 5 Part 2 (licensed activities) to expressly refer to the pipes concerned as requested by Natural England.</p>
<p>Response to HWF 1.3:</p> <p><i>MMO note the methods for dredging already expressed in the DML for the prevention of release of contaminants. MMO have no comments on the material that is disposed of above MHWS. MMO has discussed with the applicant the need for a condition detailing that only material from the uncontaminated layer/depth can be disposed of to sea; and await the applicant's proposals to secure this via the DML.</i></p>	<p>The appropriate amendment has been made to the draft DCO (see Schedule 5 paragraph 36(5)).</p>

Natural England	
<p>Response to DCO 1.14:</p> <p><i>Natural England 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.</i></p>	<p>Please see the Applicant's response to the MMO's comment on DCO 1.14.</p>
<p>Response to HWF 1.9:</p> <p><i>Following this issue being raised, the applicant produced a report from another development on the Tees, the Northern Gateway, on sediment modelling. That document highlighted that no sediment (or very little) was expected to go into Seaton Channel. Natural England's initial concern was based on the original much larger dredge (approach channel and berth pocket) which was subsequently reduced in the submitted application. Based on the Northern Gateway document referred to above, we are confident that any deposits on Seal Sands from the dredge would be minimal. In addition, now that the approach channel dredge is no longer being considered we are further satisfied that no mitigation will be required.</i></p>	<p>The Applicant agrees with Natural England's position; this response is consistent with the Applicant's response to this point.</p>
<p>Response to Ec 1.4:</p> <p><i>Natural England considers that the MMMP should be secured via a separate DCO Requirement. This would be in line with the discussions we have held with the applicant's consultants referred to in our Written Representation (5.4) and below in our answer to HRA 1.21.</i></p>	<p>The MMMP (Marine Mammal Mitigation Plan) is specifically referred to in the Outline Ecological Management Plan (Document 6.11) provided in response to the ExA's Q1. It is, therefore, secured through Requirement 9.</p>

<p>Response to Ec 1.5:</p> <p><i>Natural England is satisfied that impacts on feeding and roosting bats have been sufficiently mitigated via the lighting mitigation which is proposed in the ES and referenced in the CEMP. The detailed descriptions on the environment within this industrial area are contained in Section 10 Appendix 10.2 of the ES.</i></p>	<p>Noted.</p>
<p>Response to Ec 1.9:</p> <p>Part 1 of question <i>There are two elements to the mitigation at the proposed Port development:</i></p> <p>1. Impacts on SPA bird interest features which require mitigation:</p> <ul style="list-style-type: none"> • <i>Loss of roosting and feeding habitat due to installation of piled supports for the conveyor system within either Dabholm Gut or Bran Sands lagoon, construction of the port terminal and removal of the Northumbria Water Ltd (NWL) jetty.</i> • <i>Disturbance impacts, comprising noise, lighting and overshadowing due to the presence of the conveyor in the northern conveyor corridor (if this route is progressed), and potential fragmentation of the lagoon habitat.</i> <p><i>Natural England considers therefore that the measures at Bran Sands Lagoon are for the most part mitigation. The positive management measures will improve the quality of the site for SPA birds by creating additional feeding and roosting habitat if undertaken in line with the Mitigation and Monitoring Strategy (Appendix 3.1 of Document 6.3). In addition, including two pipes and associated flow control structures will not only enable the site to be isolated in case of any oil spills, it will also enable further</i></p>	<p>The mitigation is included in the Outline Ecological Management Plan (Document 6.11) and secured through Requirement 9.</p> <p>Please see also replacement Mitigation and Monitoring Strategy (Document 6.12).</p>

water level manipulation in the future should the underlying site conditions allow. It is essential that the monitoring parts of the proposal are fully secured alongside the requirement to amend management measures if not delivering to the Indicators of Success.

2. Compensation for loss of the intertidal habitat along the river frontage (not for SPA birds).

We consider that the low quality intertidal habitat (including BAP mudflat habitat) being lost through this proposal would be compensated for via the proposed measures on the Tees including those at Portrack being progressed by the applicant and the EA. This also includes the financial contribution to the Tees Habitat Strategy/Vision. We refer you to the EA for further detail.

Part 2 of question

We would consider these 'ecological enhancement measures' appropriate if they are improved in clarity and more specifically (see question HRA 1.21 below) in relation to Teesmouth and Cleveland Coast SPA.

However, for the other compensation measures proposed, Natural England are content in principle as we have already described and note the following:

- We have been advised via email from the applicant and text within the agreed NE/YP Statement of Common Ground that 'the financial contribution is a commitment and will be included in the Development Consent Obligation'. This is the £50K towards the Tees Estuary Strategy/Vision.*
- We have also been informed that the detail and agreement of the 'offsetting measures' being undertaken at Portrack and elsewhere has yet to be finalised For example, the Tees river frontage re-profiling works detailed in the submitted documents are no longer part of the proposal.*

<p><i>We would expect the Portrack Marshes and any other measures to be captured in the s106 but that we are aware that the mudflat biodiversity offsetting/compensation is still being negotiated between the applicant, EA and TVWT and that agreement has yet to be reached - please refer to the EA on this matter. We have spoken to the EA and they are also responding to this question with further detail.</i></p>	
<p>Response to LVA 1.2:</p> <p><i>This issue is not about inter-visibility, but about the separation of the York Potash Project into separate applications under different consenting regimes. The Port development is the NSIP application part of the overall scheme to export polyhalite with the material mined and transported to Wilton dealt with via other planning applications. Therefore the Cumulative Impact Assessment (CIA) should deal with all cumulative matters including landscape. Please refer to the explanation we provided within our Relevant Representation at section 3.4. We have provided the full detail of the advice given in our responses to the Mine and MTS applications appended to the Relevant Representation. The applicant agrees that the overall scheme does impact on the landscape of the North York Moors National Park – see Table 1 of the NE/YP Statement of Common Ground.</i></p>	<p>Please see the Applicant's response to LVA 1.3 of the ExA's Q1 which is relevant to this matter.</p>
<p>Response to HRA 1.1:</p> <p><i>Natural England can confirm that an appropriate study area has identified all relevant European Sites and interest features which may be affected by this proposed development.</i></p>	<p>Noted.</p>
<p>Response to HRA 1.2:</p>	

<p><i>Natural England considered these air quality impacts as part of our responses to the North York Moors National Park Authority and subsequent agreement on their HRA which took into account any in-combination impacts of the Port development. We had outstanding concerns about air quality at the original submission of the mine and MTS applications. These concerns were resolved by the mitigation measures proposed within the Supplementary Environmental Information (SEI).</i></p> <p><i>Natural England agrees with the applicant's conclusion that there will not be any effect on air quality of the North York 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.</i></p>	<p>Noted.</p>
<p>Response to HRA 1.6:</p> <p><i>Natural England is not aware of other plans or projects for consideration in the applicant's HRA.</i></p>	<p>Noted.</p>
<p>Response to HRA 1.13:</p> <p><i>The applicant agreed at meetings and in writing that they intend to provide these platforms for nesting shags, under an open quay scenario.</i></p> <p><i>While it cannot be categorised as a mitigation measure, the provision of artificial nesting platforms for shags beneath a suspended deck structure (should that be the selected quay option) would make a positive contribution to biodiversity at a minimal cost. Shag is Amber Listed in the latest Birds of Conservation Concern. The UK holds over a third of the world population of the species, but in 2013 the index of UK breeding abundance fell to the lowest level yet recorded, 52% below the</i></p>	<p>The provision of nesting platforms is already referred to in Mitigation and Monitoring Strategy (Document 6.12), which states that such measures would be implemented should the quay design allow it (meaning that these measures could be implemented within an open quay design option).</p> <p>The Applicant would refer the ExA to the Applicant's response to HRA 1.13 on this matter.</p>

<p><i>1986 baseline (source: JNCC website). Teesside lies on the very edge of the UK breeding range, yet a few pairs have recently colonised the nearby ConocoPhillips jetties. Dark and sheltered ledges beneath quay superstructures act as proxy sea cave breeding habitats for the birds.</i></p> <p><i>Provision of nesting platforms should therefore be included within the Bran Sands Lagoon MMS. It was in the version Natural England previously agreed prior to submission.</i></p>	
<p>Response to HRA 1.18:</p> <p><i>It is Natural England's view that the applicant has relied upon the construction mitigations measures and enhancement measures in Bran Sands Lagoon. We have been clear with the applicant that we see these measures as mitigation, throughout our discussions over the last year. However, we recognise that the lagoon habitat enhancement will make improvements beyond mitigation of benefit to SPA interest features. This is to be welcomed.</i></p>	<p>The Applicant agrees with Natural England's position, which is in line with the Applicant's response to HRA 1.18.</p>
<p>Response to HRA 1.19:</p> <p><i>Natural England discussed construction impacts fully on-site with the applicant prior to submission. These discussions included the mitigation measures proposed in the HRA (which includes noise attenuation / visual barriers as well as lighting restrictions) combined with the temporary nature of the disturbance. NE is satisfied that while there would be some effects, these would not constitute an adverse effect on the integrity of the Teesmouth and Cleveland Coast SPA.</i></p>	<p>Noted.</p>
<p>Response to HRA 1.21:</p>	

<p><i>The SPA Review is still at the informal consultation stage and boundaries and details have yet to be confirmed. Please see section 6.2.2 of this Written Representation.</i></p> <p><i>Natural England met the applicant's consultant via telephone to discuss our comments on the DCO and in particular the deliverability of the mitigation measures previously agreed and submitted, and how to secure them. We advised measures detailed in Section 6.2.4-6.2.11 on how to secure the mitigation within the DCO requirements. In addition the applicant has confirmed that references to the Mitigation and Monitoring Strategy will be made clearer.</i></p>	<p>The Applicant would refer the ExA to the Applicant's response to Q1 HRA 1.20 and HRA 1.21.</p> <p>In light of the approach taken in the HRA (as set out in the Applicant's response to Q1 HRA 1.21) with respect to the proposed changes to the Teesmouth and Cleveland Coast SPA designation, and the provision of revised screening and integrity matrices in response to question HRA 1.20 (which include consideration of common tern), the Applicant's view is that the HRA already addresses the point made in section 6.2.3 of Natural England's Written Representation (the Applicant assumes Natural England's reference to section 6.2.2 is incorrect and should be section 6.3.3).</p>
<p>Response to HRA 1.22:</p> <p><i>Natural England is aware that Dogger Bank C & D have been recently shelved. Based on this news there will be no impacts in-combination from these projects.</i></p>	<p>Noted.</p>
<p>Environment Agency</p>	
<p>Response to DCO 1.8:</p> <p><i>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</i></p>	<p>Noted.</p>

<p><i>outcome of the submission and determination of the relevant EPR application.</i></p>	
<p>Response to DCO 1.14:</p> <p><i>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.</i></p>	<p>Please see the Applicant's response to the MMO's comment on DCO 1.14.</p>
<p>Response to HWF 1.1:</p> <p><i>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.</i></p>	<p>Noted.</p>
<p>Response to HWF 1.3:</p> <p><i>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</i></p>	<p>Noted.</p>

<p><i>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.</i></p>	
<p>Response to Ec 1.9:</p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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:</i></p> <p><i>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</i></p>	<p>The Applicant wishes to comment on one point made in the Environment Agency's response to this question. The Applicant does not agree with the Environment Agency's statement that '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'.</p> <p>The Applicant's position on this matter is set out in the response to Ec 1.1 of the ExA Q1. That response includes (at Appendix 7) a document prepared by Royal HaskoningDHV titled <i>Biodiversity offsetting as compensation for the loss of intertidal habitat</i> which assesses the nature of biodiversity offsetting requirement in light of the predicted impact of the proposed scheme by applying Defra guidance (<i>Biodiversity Offsetting Pilots - Technical Paper: the metric for the biodiversity offsetting pilot in England</i> (March, 2012)). This study was undertaken at the request of the Environment Agency.</p> <p>The proposed biodiversity offset proposals that were included in the above study incorporate creation of 7ha of intertidal habitat at Portrack Marsh nature reserve. The study concluded that the proposed biodiversity offset proposals would more than adequately compensate for the loss of intertidal area (i.e. the number of biodiversity units delivered by the proposed offset measures would be greater than the number impacted by the proposed scheme).</p> <p>The Applicant would like the ExA to note the following points that are relevant when calculating the number of biodiversity units impacted by the proposed scheme and when considering the Environment</p>

<p><i>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.</i></p> <p><i>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.</i></p>	<p>Agency's position regarding what it considers is the required level biodiversity offset provision:</p> <ul style="list-style-type: none"> • The study calculated the biodiversity units impacted by the scheme for two scenarios of intertidal habitat condition at the location of the port terminal - a potential future 'Moderate' habitat condition and a current 'Poor' condition (it is agreed with the Environment Agency that the current condition is Poor). Under both scenarios, the proposed biodiversity offset provision is more than adequate. • The Environment Agency's position in reaching its conclusion regarding the required level of biodiversity offset provision is that all the potentially impacted intertidal habitat is of 'High' distinctiveness. The Applicant disagrees with this view. The study did assign the intertidal mud as 'High' distinctiveness habitat on a very precautionary basis and in recognition of the Environment Agency's position, with hard substrata being assigned as 'Medium' distinctiveness. <p>Given the above, the Applicant's view is that the biodiversity offsetting study made precautionary assumptions regarding habitat condition and distinctiveness which informed the conclusion that the biodiversity offset provision described in the study was more than adequate.</p> <p>Notwithstanding the above, the Applicant has agreed to provide 8ha of intertidal area at Portrack Marsh nature reserve. This is secured by the Development Consent Obligation (please see draft DCOB (Document 7.4A)).</p>
<p>Response to WFD 1.3:</p> <p><i>The Environment Agency considers that although temporary small scale deterioration has been identified, this does not relate to</i></p>	<p>Noted.</p>

<p>deterioration in WFD classification of benthic invertebrates or the waterbody as a whole therefore the action is compliant with WFD.</p>	
<p>PD Ports</p>	
<p>Response to DCO 1.9:</p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p>	<p>Noted.</p> <p>Please refer to the revised draft DCO which incorporates the sanction requested.</p>

<p><i>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.</i></p>	
<p>Response to DCO 1.12:</p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>The above response has been agreed with the applicant.</i></p>	<p>The protective provisions incorporated in the second draft DCO are the latest version which was submitted to PD Ports for their comment on 24 August 2015, save for an amendment to the final paragraph relating to expert determination.</p>
<p>SABIC/Huntsman/DEA</p>	
<p>Response to DCO 1.11:</p> <p><i>The Protective Provisions in Schedule 9 are the relevant protections which are being offered to the Objectors. Schedule 9 does not replicate the Dogger Bank Protective Provisions either in the form requested by the Applicant or SABIC, or in the form granted by the Secretary of State. Apparatus is not dealt with in the same way and, in particular</i></p>	<p>Please see the Applicant's response to written representations submitted by these parties (Document 8.3).</p>

<p><i>the Schedule 9 provisions do not deal with issues of vehicular access and the closure of site roads which was a key issue for SABIC during the Dogger Bank examination and which is a major concern for the Objectors in respect of the York Potash Scheme.</i></p> <p><i>The Objectors do not consider that the draft Protective Provisions in Schedule 9 are adequate, especially when placed with their powers of compulsory acquisition (see Sections 6.10 and 6.13 of each if their respective Written Representations).</i></p> <p><i>The Objectors have met with the Applicant and have agreed to put a set of revised protective provisions to them in order to address these issues. These are not available at the date of preparation of the Objectors' Deadline 1 Submissions.</i></p> <p><i>Consideration is also being given to the terms of the Dogger Bank protections and the extent (if any) to the terms of the Dogger Bank protections and the extent (if any) to which it is appropriate that they are applied in relation to the current Application.</i></p>	
<p>Response to PAR 1.2:</p> <p><i>As stated at the Preliminary Meeting, DEA has serious concerns and reservations about the undergrounding of the conveyor beneath the A1085. These are set out in more detail in Section 7 of DEA's Written Representation. DEA is currently considering the extent to which Protective Provisions can allay its concerns in this regard.</i></p>	<p>As is apparent from the Applicant's response to the ExA's Q1, the Applicant does not view the undergrounding of the conveyor beneath the A1085 as a feasible option.</p>

Redcar and Cleveland Borough Council	
Local Impact Report	<p>The Applicant's team have reviewed the Local Impact Report and provide a response and/or update to several issues below:-</p> <p>At para 2.1 RCBC confirm that the s106 Agreement associated with Planning permission Ref R/2014/0627/FUL for the winning and working of polyhalite had not yet been completed and planning permission had not been issued. By way of update, the s106 agreement has been completed and planning permission for the development has now been formally issued and is dated 19 August 2015.</p> <p>Paras 8.15-8.17 refer to the landscape and visual assessment and questions whether or not there is a reliance on mitigation measures that would be on land outside of control of the applicant. The Applicant have responded on this issue under LVA 1.6.</p> <p>Para 8.48 suggests that <i>"The final option for the conveyor system, which will form the basis of highway technical and construction details, is still to be agreed."</i> The use of the word 'option' is misleading given its use in pre-application reports and analysis by the Applicant on a range of solutions for the conveyor to link the Mineral Handling Facility at Wilton with the Harbour Facility involving crossing the A1085. The information that informed those pre-application assessments is the subject of ongoing discussions between the Applicant and RCBC and its advisors. In respect of the DCO application under examination, the final appearance of the conveyor system is still to be agreed but the route and envelope of the conveyor remains as proposed by the Applicant within the maximum extents or parameters established by the Works Plans and parameters table.</p>
Response to CA 1.8:	

<p><i>RCBC would be prepared to accept appropriate security for proper performance of the Applicant's liabilities under the DCO or if necessary the Secretary of State's stipulations reserving the right to input into those directives if considered appropriate.</i></p>	<p>Noted.</p>
<p>Response to DCO 1.7:</p> <p><i>RCBC can confirm that prior consent of the Highway Authority is required for any street works required as referenced in the Draft Development Consent Order (Including Requirements). RCBC is satisfied that these provisions sufficiently safeguard the interests of the Highway Authority.</i></p>	<p>Noted.</p>
<p>Response to DCO 1.8:</p> <p><i>RCBC is satisfied that the provisions of Article 14 sufficiently satisfy their interests.</i></p>	<p>Noted.</p>
<p>Response to DCO 1.11:</p> <p><i>RCBC can confirm that they are satisfied with the content of schedule 10 (PROTECTIVE PROVISIONS FOR THE PROTECTION OF ASSETS BRIDGED/OVERSAILED) in the draft DCO.</i></p>	<p>Noted.</p>
<p>Response to DCO 1.14:</p> <p><i>RCBC consider that in traffic terms their interests are sufficiently protected by the Requirements.</i></p> <p><i>The Environmental Protection Team of RCBC would agree with the Inspector's recommendations for an update of the Environmental Statement, should the implementation of Phase 2 be 5 years or more after the implementation of Phase 1.</i></p>	<p>Please refer to the Applicant's response to the MMO's comment on DCO 1.14 and additional Requirement 3(3) and (4).</p>

<p><i>Under Requirement 11 (Decommissioning) it would be RCBC's view that it would be expected that all of the proposed development would be decommissioned and removed from the site.</i></p> <p><i>The Environmental Protection Team would agree that draft Requirement 6 shall be amended to include the provision that the CEMP shall include the mitigation identified in the Environmental Statement.</i></p> <p><i>RCBC request that they are consulted when the Applicant provides an outline EMP addressing the proposed mitigation.</i></p> <p><i>NB: RCBC is concerned as to the statement of the Inspector in this question re the update of the ES in that it could bring into question how a DCO can be granted for Phase 1 of the development, if the potential effects of Phase 2 have not been fully considered/predicted to the standards expected by the Inspector at the time of the developments determination. RCBC question what could be done by the Authority if it transpires that that it is not satisfied with the potential environmental effects of Phase 2, when permission has been granted for the whole complex and Phase1 has been invested in by the Applicant.</i></p>	
<p>Response to ES 1.4:</p> <p><i>RCBC can confirm that the termination of public footpath number 116/31/1 near Dabholm Gut (as shown in drawing number 9Y0989-HF-21-001 in Section 21 of the Environmental Statement) is correct. The path originally continued from its current point of termination in a generally north easterly direction along an area of the Tees estuary previously known as "Reeds Wall". That part of the path was extinguished by "THE TEESIDE (FOOTPATH ALONG THE OLD HIGH WATER RECLAMATION EMBANKMENT) (REEDS WALL) PUBLIC PATH STOPPING UP</i></p>	<p>Noted.</p>

<p><i>ORDER 1972". The Order was confirmed by the Secretary of State for the Environment on 20th September 1973. Ordinarily, RCBC would deal with applications for the temporary closure or diversion of a public right of way, under the provisions of the Road Traffic Regulation Act 1984 and could use that alternative, if necessary. However it would appear that the provisions of Article 11 of the draft SI/DCO and the definition of "street" in Article 2 (i.e. Section 48 of the New Roads and Streetworks Act 1991) are sufficient in this case and that a public footpath could reasonably be included in the descriptions of "any highway" in S48(1)(a) or "land laid out as a way" in S48(1)(c).</i></p>	
<p>Response to PAR 1.4:</p> <p><i>RCBC has received a Memo from the Applicant's Agent, entitled 'York Potash: Harbour DCO – Conveyor Visual Impact Design Process', dated 12.08.15, which sets out a procedure for the approval of a visual design for the proposed Mineral Transport System (MTS). RCBC has nothing against the principle of the proposed Design Process, but is not yet in a position to agree to the Memo and wishes to preserve its stance with regard to the tunnelling option, as a method to cross the A1085.</i></p> <p><i>RCBC and its consultants continue to engage with the Applicant in respect of the structure proposed over the A1085. At this stage RCBC is not able to confirm that the Applicant has set out the details of a process which is aimed at securing an agreement over the form of this part of the project prior to the closure of the Examination, until this process is confirmed RCBC remain concerned as to how the final design may be secured.</i></p> <p><i>NB: Reference above should be to the A1085.</i></p>	<p>The Applicant and its advisors have been involved in a series of discussions with RCBC and its advisors on issues associated with the proposed conveyor between the MHF and Bran Sands. These are ongoing and relate both to the design of the conveyor bridge as well as the provision of further information to explain the background to the previous rejection of options to tunnel beneath the A1085. As part of these discussions, and in response to the ExA's Q1, the means by which the detailed design of the elevations of the bridge could be secured, involving RCBC in that process, has been set out in the suggested Design Protocol dated 12 August 2015 was issued to RCBC. YPL is pleased to note that RCBC 'has nothing against' the principles promoted within that note. Please see additional Requirement 2(3).</p> <p>It remains the view of the Applicant that any agreement by RCBC to the principle and detail of the Design Protocol can remain entirely separate to the ongoing discussions on the nature of the tunnelling assessment previously undertaken. The Protocol will only be triggered in the event that the Secretary of State agrees with the Applicant's analysis that it is not possible for the mineral to be transferred underground and therefore that the DCO can be confirmed. The</p>

	<p>Design Protocol is submitted to demonstrate that a mutually agreed solution to the procurement of an acceptable design appearance of the conveyor over the A1085 can be achieved and that the application of a Requirement to secure such a design appearance would be acceptable.</p> <p>Against this background, it is the intention of the Applicant to continue the engagement with RCBC to agree any refinements to the Design Protocol that will provide the necessary comfort on the approach to securing the final design appearance of the conveyor structure over the A1085.</p>
<p>Response to HWF 1.3:</p> <p><i>Any such contaminated sediment to be deposited on land will require necessary permits or exemptions which should be sought from and issued by the Environment Agency (EA). RCBC would agree, however, that a waste management strategy must be agreed in advance of any sediment disposal. It is considered by RCBC that the EA is the appropriate authority to respond to all of the other outstanding questions raised in HWF 1.3.</i></p>	<p>Please see Applicant's response to Q1 HWF 1.3.</p>
<p>Response to TT 1.1:</p> <p><i>RCBC can confirm that the methodology for the assessment of transport and infrastructure has been agreed with the Applicant.</i></p>	<p>Noted.</p>
<p>Response to TT 1.2:</p> <p><i>RCBC accept the conclusions of the Transport Assessment. RCBC also confirm that the absence of significant cumulative effects during the construction phases for the Port and wider project are acceptable.</i></p>	<p>Noted.</p>

<p>Response to TT 1.3:</p> <p><i>RCBC is 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, RCBC consider that there will be minimal impact on the road network.</i></p>	<p>Noted.</p>
<p>Response to TT 1.4:</p> <p><i>RCBC is satisfied with the arrangements set out in the DCO for securing necessary approvals that are not explicitly granted with the DCO itself.</i></p>	<p>Noted.</p>
<p>Response to NV 1.3:</p> <p><i>The Environmental Protection Team of RCBC is satisfied that the majority of the CEMP addresses noise and vibration issues for both the construction and operational phases of the development. However, the Environmental Protection Team would recommend that the draft CEMP is amended to specifically include the provision for a noise curtain over the quay percussive piling rig, temporary acoustic barriers placed around the auger piling rigs and site boundary close-boarded fencing, in order to mitigate against the potential impacts of noise upon Residential Receptors.</i></p> <p><i>The Environmental Protection Team would also require clarification on what monitoring for noise and vibration will be carried out during operational and construction works to ensure that actual noise levels comply with predicted noise</i></p>	<p>The CEMP does include reference to use of barriers around static construction plant and auger piling rigs. The CEMP also refers to use of site hoardings and barriers around site compounds. These were the mitigation measures that were taken into account in the assessment of the residual impact on residential receptors in the ES (Document 6.4). The use of close-boarded fencing around the <i>whole site boundary</i> is not considered practicable given the linear nature of the proposed scheme, and is not considered necessary given the predicted residual impact of negligible significance.</p> <p>No impact is predicted at residential receptors associated with percussive piling for the quay construction during either the daytime or evening/nighttime (refer to Tables 14-19 and 14-20 of the ES (Document 6.4)). For this reason, no specific mitigation (e.g. noise curtain on the piling rig) is required for this activity (note that no percussive piling would occur for 8 hours each night in order to mitigate potential impacts on marine mammals). The potential impact</p>

<p><i>calculations. The Environmental Protection Team should also be notified of any instances of non-compliance, or of complaints from local residents, as soon as possible.</i></p>	<p>on residential receptors during the evening/night-time identified in the ES arises from construction of the conveyor, for which mitigation is identified in the CEMP (and referred to above).</p>
<p>Response to LVA 1.5:</p> <p><i>RCBC has further considered Requirements 2 and 3 (contained within Schedule 2 of the Draft Development Consent Order (DCO)) and concur with the Inspector's observations that Requirement 2 does not refer back to the specific landscape and visual impacts mitigation contained within chapter 20 (Landscape and Visual) of the Environmental Statement (ES).</i></p> <p><i>RCBC would, therefore, suggest that the wording of Requirements 2 and 3 is changed to better relate them to the proposed mitigation measures.</i></p>	<p>Please see Applicant's response to Q1 LVA 1.6</p>
<p>Response to LVA 1.6:</p> <p><i>RCBC is of the view that it would be better to comment on this question once the Applicant has responded to the Inspector's request for further clarity. RCBC would raise a query on the suggested impacts of the proposal on residential areas contained within the chapter 20 of the ES and whether there is reliance on mitigation measures that would be located on land outside the control of the Applicant. If they are located on land outside of the control of the Applicant, then can these mitigation measures be considered to reduce/offset any associated impacts?</i></p>	<p>Please refer to the Applicant's response to Q1 LVA 1.6.</p>
<p>Response to HRA 1.6:</p> <p><i>RCBC are not aware of any other plans and projects at this time for consideration in the applicant's HRA.</i></p>	<p>Noted.</p>

<p>PAR 1.2:</p> <p><i>RCBC has received a copy of the 'Options Study Supplement Report' from the Applicant's Agent, dated 14.08.15. This Supplementary Report addresses the request of the authority for a further explanation as to the rejection of the tunnel option for the path of the conveyor under the A1085 and First Round Question PAR 1.2.</i></p> <p><i>Fairhurst, acting on behalf of RCBC has reviewed the Options Study Supplementary Report and has informed the Applicant's Agent of the continued concern as to the lack of a full explanation of the issues that are said to rule out routeing the conveyor beneath the A1085.</i></p> <p><i>Besides contact with the Applicant's Agent, detailed questions have been forwarded re the content of the Supplementary Report in the form of a Technical Report. This stance obviously affects the drafting of the Planning Statement of Common Ground by the Applicant.</i></p>	<p>The Applicant and its advisors are in receipt of the Fairhurst Technical Paper dated 21 August 2015 entitled "Review of the Options Study Supplementary Report". Whilst the document acknowledges that there are clear constraints to a tunnelled solution, Fairhurst have requested further information and the Applicant has sought to provide that information.</p> <p>A meeting has been arranged with RCBC and Fairhurst for 4 September 2015 as part of the ongoing series of discussions at which these issues will be reviewed further.</p>
<p>Health and Safety Executive</p>	
<p>Response to SEM 1.1:</p> <p><i>The responsibility to ensure adequate measures are put in place to prevent damage to existing pipelines lies with the appropriate pipeline operator and persons undertaking the work that could cause such damage; it is not the role or responsibility of the Health & Safety Executive (HSE) to detail protective measures. The intent of Regulations 15 and 16 of the Pipelines Safety Regulations 1996 is to prevent damage to pipelines. HSE may sample inspect pipeline operators to review their compliance with</i></p>	<p>Noted.</p>

<p><i>the Regulations and, if appropriate, investigate when damage has occurred to a pipeline.</i></p>	
<p>North Yorkshire County Council</p>	
<p>Response to TT 1.1:</p> <p><i>NYCC has not been directly consulted by the Applicant on the methodology for the assessment of transport and infrastructure in relation to this application. Whilst it is not anticipated that there would be any significant highways issues (subject to there being no export of product by road) NYCC would, however, welcome discussions directly with the Applicant on this issue in order to be able to identify whether there are any pertinent highway impacts within North Yorkshire as a result of this application. It is important that any assessment considers the cumulative impact of the traffic associated with the Mine and Mineral Transfer Conveyor for which the North York Moors National Park have resolved to grant planning permission.</i></p> <p><i>NYCC would have concerns, however, should there be any change to the planned scheme which would result in Potash being exported from the Mineral Transfer Facility by rail which would have the potential to impact upon freight movements on level crossing closures in Northallerton, subsequently causing an impact on the town's local highway network.</i></p>	<p>The Applicant has engaged with NYCC as requested.</p>
<p>Response to TT 1.2:</p> <p><i>NYCC would welcome the opportunity to review the Transport Assessment and discuss this with the Applicant.</i></p>	<p>The Applicant has engaged with NYCC as requested.</p>
<p>Response to TT 1.3:</p>	

<p><i>NYCC does not have sufficient information to be able to comment at the current time. NYCC could foresee a possible impact on the A171, but would welcome an indication from the Applicant as to what impact they would consider being placed on the road network. NYCC is not aware that any scoping has been carried out in relation to this issue.</i></p>	<p>The Applicant has engaged with NYCC as requested.</p>												
<p>Trinity House</p>													
<p>Response to DCO 1.9:</p> <table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">Article</th> <th style="text-align: left;">Comment</th> </tr> </thead> <tbody> <tr> <td>2 - "Interpretation"</td> <td>"Trinity House" is correctly defined.</td> </tr> <tr> <td>17 – "Tidal works not to be executed without approval of Secretary of State"</td> <td>Standard provision. Satisfactory.</td> </tr> <tr> <td>18 – "Abatement of works abandoned or decayed"</td> <td>Standard provision. Satisfactory.</td> </tr> <tr> <td>19 – "Lights on tidal works etc. during construction"</td> <td>19 (1) is the standard provision. In other recent DCOs, such as the Able Marine Energy Park DCO 2014 (SI 2014: 2935), if the undertaker fails to comply in any respect with any requirements of a direction given under this article, it is guilty of an offence. We note that no such provision exists in this Article.</td> </tr> <tr> <td>20 – "Provision against danger to navigation"</td> <td>20 (1) is the standard provision.</td> </tr> </tbody> </table>	Article	Comment	2 - "Interpretation"	"Trinity House" is correctly defined.	17 – "Tidal works not to be executed without approval of Secretary of State"	Standard provision. Satisfactory.	18 – "Abatement of works abandoned or decayed"	Standard provision. Satisfactory.	19 – "Lights on tidal works etc. during construction"	19 (1) is the standard provision. In other recent DCOs, such as the Able Marine Energy Park DCO 2014 (SI 2014: 2935), if the undertaker fails to comply in any respect with any requirements of a direction given under this article, it is guilty of an offence. We note that no such provision exists in this Article.	20 – "Provision against danger to navigation"	20 (1) is the standard provision.	<p>Noted. As requested by Trinity House, criminal sanctions have been added to the draft DCO.</p>
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<p><i>In other recent DCOs, such as SI 2014:2935, if the undertaker fails to notify the competent authority as required by this article or to comply in any respect with any requirements of a direction given under this article, it is guilty of an offence. We note that no such provision exists in this Article.</i></p> <p>21 – “Permanent lights on tidal works”</p> <p>31 – “Deemed marine licence”</p> <p>35 – “Saving for Trinity House”</p> <p>Schedule 5 Part 4 – “Conditions” Paragraph 20 (b)</p>	<p><i>21 (1) is the standard provision. In other recent DCOs, such as SI 2014:2935, if the undertaker fails to comply in any respect with any requirements of a direction given under this article, it is guilty of an offence. We note that no such provision exists in this Article.</i></p> <p><i>Standard provision. Satisfactory.</i></p> <p><i>Standard provision. Satisfactory.</i></p> <p><i>This paragraph refers to the Construction Design and Management (CDM) Regulations 2007. We understand that these regulations have been revoked by the Construction (Design and Management) Regulations 2015.</i></p> <p>The draft DCO has been amended to reflect the revised Regulations.</p>
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