

THE YORK POTASH HARBOUR FACILITIES ORDER 201X

Applicant's Comments on the Examining Authority's Draft Development Consent Order



Document 8.8

York Potash Limited

16 December 2015

YORKPOTASH
A Sirius Minerals Project



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APPLICANT'S COMMENTS ON THE EXAMINING AUTHORITY'S DRAFT DEVELOPMENT CONSENT ORDER

This table sets out the Applicant's comment or response to amendments or comments made by the ExA in the Draft DCO issued on 25 November 2015. It does not contain responses to typographical (e.g. commas, spacing etc.) amendments.

ExA's Amendment	Applicant's Comment
<p>Contents:</p> <p>SCHEDULE 9 — FOR THE PROTECTION OF THE PIPELINE CORRIDOR AND PROTECTED CROSSINGS</p>	<p>Noted and agreed; this was discussed at the DCO Hearing on 24 November 2015.</p>
<p>Definition of "constructability notes" in article 2: N029 - Constructability Issues Rev 4 – BP CATS – Northern Route N030 – Constructability Issues Rev 3 – BP CATS – Southern Route <i>[Comments inserted to refer to updated revisions once the notes are agreed with BP Cats]</i></p>	<p>The revisions are now: N029 - Constructability Issues Rev 8 – BP CATS – Northern Route N030 – Constructability Issues Rev 7 – BP CATS – Southern Route The updated notes were provided electronically to the ExA on 7 December. Hard copies accompany this submission at Appendix 1.</p>
<p>4.—(1) The authorised development must be carried out in accordance the limits set in Schedule 5 (3) and Schedule 11 (3) and with the parameters shown on the parameters table and in carrying out the authorised development the undertaker may—</p>	<p>The Applicant does not believe that the words inserted by the ExA are necessary or desirable. Article 3(1) makes it clear that the development consent for the authorised development is subject to, inter alia, the protective provisions. Many of the protective provisions contain restrictions, limits or other constraints on the authorised development and there is no logic in identifying only two of those restrictions and referring to them in article 4.</p>
<p>In article 6, addition to paragraph (3)(b) as follows:</p> <p>(3) Nothing in this article authorises— (a) any works that would give rise to any significant environmental effects not assessed in the environmental statement; and</p>	<p>This was discussed and agreed at the DCO hearing on 24 November and the Applicant is content with this addition subject to the expression "lagoon area" being replaced with either "lagoon" (which is defined in article 2 as</p>

<p>(b) the construction of railway lines, buildings, sheds, offices, workshops, depots, electrical substation, container handling equipment or weighbridges within the pipeline corridor <u>or within the lagoon area</u>.</p>	<p>Works No. 3) or "Works No. 3" itself. The Applicant has amended this to "lagoon" in the revised draft DCO which accompanies this submission (Document 4.1D).</p>
<p>Comment against article 25(4)(c) "<i>The wording of this provision may require amendment in the light of further discussions between the applicant and owners of assets in the pipeline corridor.</i>"</p>	<p>Article 25(4)(c) was added in response to comments made by Bond Dickinson at the first DCO Hearing on 24 September 2015. Since that date discussions on the protective provisions relating to Bond Dickinson's clients have progressed and the position is better covered by the amendments to Schedule 9 that have been agreed with Bond Dickinson. Bond Dickinson have confirmed their agreement to the removal of this sub-paragraph.</p>
<p>New document added to article 38(1):</p> <p>(q) drawing numbers PB1586-SK1026 Rev E (Document 3.5A) and PB1586-SK 1027 Rev G (Document 3.5B) showing locations of screen fencing</p>	<p>This was discussed at the DCO Hearing on 24 November. The Applicant is content for these drawings to be added to the certified documents.</p> <p>In addition, the Applicant notes that the Wilton Complex plan (referred to in Schedule 9) should be added to this article – please see the schedule in Document 8.10 relating to the Applicant's further changes to the draft DCO.</p>
<p>Amendment to Schedule 1 (Authorised Development)</p>	
<p>Comment against Works No 5 (9) in Schedule 1 "<i>Reference may need amendment if drawing is amended in the light of further discussions.</i>"</p>	<p>Following discussions with RBT, the Applicant has prepared a revised drawing (Document 3.16) and this drawing accompanies this submission. The Applicant understands following those discussions with RBT that the plan is likely to be acceptable but awaits formal confirmation.</p>
<p>Amendments to Schedule 2 (Requirements)</p>	
<p>In requirement 6, references to the governance tracker have been amended to Document 6.8B.</p>	<p>This was discussed and agreed at the DCO Hearing on 24 November.</p> <p>The Applicant agrees with the amendment and has also noticed that the Outline Ecological Management Plan referred to an outdated version of the governance tracker and a previous version of the Mitigation and Monitoring Strategy. These references have been amended and a revised Outline EMP accompanies this submission (Document 6.11B).</p>

<p>Requirement 6(2):</p> <p>(2) The CEMP may be subject to alteration by approval of the local planning authority provided that such alternative does not prevent the mitigation during construction referred to in the environmental statement or give rise to unassessed environmental impacts.</p>	<p>The Applicant considers that the words suggested by the ExA are unnecessary because article 37(2), which is an overarching provision, achieves the same objective.</p> <p>The Applicant also notes that "alternative" should be amended to read "alteration" and has corrected this in the revised draft DCO submitted for Deadline 6 (Document 4.1D).</p>
<p>Requirement 11:</p> <p>11. Prior to the decommissioning phase of the authorised development through removal of the overhead conveyor system, the undertaker must will submit a decommissioning plan in respect of those parts of the authorised development to be decommissioned to the local planning authority for approval. The provisions of the approved plan must be followed during the decommissioning phase.</p>	<p>This was discussed and agreed at the DCO Hearing on 24 November and the Applicant agrees that the suggested wording adds clarity that only the overhead conveyor system is to be removed in decommissioning.</p>
<p>Amendments to Schedule 5 (Deemed Marine Licence)</p>	
<p>Comment added against paragraph 9 <i>"Applicant and MMO to review licence periods specified to ensure consistency with other provisions of the draft order."</i></p>	<p>The Applicant has considered how the various timeframes contained in the draft DCO interact with each other and the Applicant's anticipated construction programme.</p> <p>As suggested in the ExA's comment, the Applicant has reviewed the licence period. The expiry of the licence is a longstop date at which the licence will fall away. The other relevant periods are: -</p> <ul style="list-style-type: none"> • The authorised development must commence within 7 years; and • Phase 2 is to commence within 6 years of the completion of phase 1. <p>The Phase 1 works will commence as part of a phased programme of works for the overall York Potash Project. Based on an April 2016 start on the wider Project (consents having been already obtained) the following dates are anticipated in respect of the harbour:</p> <ul style="list-style-type: none"> • DCO made Q3 2016; • Phase 1 to commence Q1 2019;

	<ul style="list-style-type: none"> • Phase 1 construction to be completed Q3 2021; • Phase 2 to commence Q1 2025; • Phase 2 construction to be complete Q3 2027. <p>The above dates are however only the Applicant's current best guess on likely timescale. If the programme is maintained it is apparent that the construction of Phase 2 would go beyond the licence period. The licence period is therefore inadequate in that respect. If there is any slippage on the above programme then it is clear that the licence period is woefully inadequate to accommodate that slippage. Accordingly it is suggested that the licence period should be 20 years rather than 10.</p> <p>The MMO has confirmed its agreement to a licence period of 20 years and it is understood that the MMO is separately writing to the ExA to confirm this.</p>
<p>Paragraph 14: The undertaker must ensure that the names of vessels <u>to be</u> utilised in connection with a licensed activity are provided to the MMO and agreed in writing at least 4 weeks prior to the commencement of the licensed activities such notification setting out— ...</p>	<p>The Applicant is content with this addition.</p>
<p>Paragraph 16: Comment: "A definition of 'Notice to Mariners' is required."</p>	<p>The MMO has provided a suggested definition and the Applicant suggests it be slightly varied as follows:</p> <p>"Notice to Mariners" means any notice to mariners which may be issued by the Admiralty, Trinity House, the Queen's harbourmasters, government departments or harbour and pilotage authorities advising mariners of important matters affecting navigational safety.</p>
<p>17. (1) Prior to any works commencing below the level of mean high water springs, the undertaker must submit detailed method statements to the MMO for approval for each <u>stageoperation</u> of the licensed activities at least 3 months prior to the commencement of such licensed activity and any such approval must not be unreasonably withheld or delayed and is deemed to have been permitted if it is neither given nor refused within three months of the specified day.</p>	<p>The suggested amendment to "operation" was discussed and agreed by the Applicant and the MMO at the DCO Hearing on 24 November. This amendment is included in the revised draft DCO submitted for Deadline 6 (Document 4.1D).</p>

<p>(2) The undertaker must provide the MMO with such further details as the MMO may reasonably require, <u>any</u> such request to be made within 28 days from the day on which the detailed method statement was submitted under sub-paragraph (1).</p> <p>Comment in relation to deemed approval: <i>"It is recognised that there is a disagreement between the applicant and the MMO as to whether there should a deemed approval or a deemed refusal."</i></p>	<p>The Applicant is content with this suggested amendment. This amendment is included in the revised draft DCO submitted for Deadline 6 (Document 4.1D).</p> <p>The Applicant has made previous submissions in relation to the requirement for deemed approval and would like to reiterate the importance of this. The Applicant has encountered severe delays in obtaining a response from the MMO on occasion previously and cannot be in a position whereby approval is required but a response is not forthcoming and therefore the Applicant is left dealing with a deemed refusal simply as a result of lack of engagement. The Applicant does not consider that this wording prejudices the MMO because they would still have the ability to refuse the application for approval or ask for further information should they require it. The wording merely seeks to ensure that the MMO will engage with the application.</p>
<p>18.—(1) The undertaker must only work and access the licensed area within a defined and marked out area so as to limit personnel and plant access to the <u>site-area of works nos 2 and 3.</u></p>	<p>This was discussed and agreed at the DCO Hearing on 24 November.</p>
<p>Definition requested for WSG84</p>	<p>The Applicant understands that the MMO has provided a suggested definition and the Applicant is content with that and has incorporated it within the revised draft DCO (Document 4.1D).</p>
<p>18. (3) <u>Licensed activity must not commence before</u> the written approval of the co-ordinates and plan diagrams by the MMO is required prior to the licensed activity commencing.</p>	<p>This was discussed and agreed at the DCO Hearing on 24 November.</p>
<p>Definition requested for appropriately trained personnel.</p>	<p>In light of the MMO's response to the ExA on 25 November confirming there is no definition for this term and that it can be removed, the Applicant suggests the whole of item (d) should be removed.</p>
<p>Schedule 9</p>	<p>Please see Document 8.10 (Appendix 1).</p>

Schedule 10	Please see Document 8.10.
Schedule 11 <i>Comment inserted against paragraphs 11 and 12: "The time periods in paragraphs 11 and 12 are to be reconsidered in consultation between the applicant and the Tees Port Authority so as to ensure consistency (if necessary also in consultation with the Environment Agency)"</i>	Following the discussion at the DCO Hearing on 24 November the Applicant has liaised with the Tees Port Authority in respect of this paragraph and both parties have agreed that it is not as clear as it ought to be. Accordingly, revised wording has been agreed between the Applicant and the Tees Port Authority which is reflected in the Applicant's amended draft DCO (Document 4.1D).