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To interested parties, statutory parties  
and other persons invited to the  
preliminary meeting

Your Ref:

Our Ref: TR030002

Date: 25 November 2015

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Dear Sir/Madam

## **The Planning Act 2008 (as amended) and the Infrastructure Planning (Examination Procedure) Rules 2010 – Rules 8(3) and 17**

### **Application by York Potash Ltd for an Order Granting Development Consent for the York Potash Harbour Facilities Order**

#### **Publication of the Report on the Implications for European Sites, publication of the draft Development Consent Order, and a request for information.**

The examination timetable issued on 16 October 2015 (at item 14) provides for the Examining Authority (the ExA) to publish a Report on the Implications for European Sites (RIES) and a Draft Development Consent Order for the above application on 25 November 2015.

#### **The Report on Implications for European Sites**

The RIES has now been published and can be accessed from the following link:

<http://infrastructure.planningportal.gov.uk/document/3537723>

It has been published on the York Potash Harbour Facilities project page, within the National Infrastructure section of the Planning Portal website, under the 'Documents' tab.

The RIES compiles, records, and signposts information about the potential effects of the York Potash Harbour Facilities application proposal on European Sites. It draws together information provided within the application and information submitted throughout the examination, up to and including timetable Deadline 5 (20 November 2015).

You are asked to confirm whether you consider the ExA's understanding of the information provided, up to Deadline 5 and as presented in the RIES, to be clear and conclusive. If not, you are asked to identify those points that are not clear or conclusive, or where there is not agreement, and to explain your outstanding matters

or concerns. Further advice about how the RIES is prepared and is used can be found in [The Planning Inspectorate's Advice Note 10](#) available from this link.

In accordance with the examination timetable, you are requested to submit any comments you may have on the RIES, by **Wednesday 16 December 2015 (Deadline 6)**.

If you have any questions about the role of the RIES, or the process for responding to it that are not resolved in The Planning Inspectorate's Advice Note 10, please telephone the Planning Inspectorate's Customer Services on 0303 444 5000, and ask to speak to Robert Ranger.

### **The ExA's draft Development Consent Order**

Further to item 14 of the examination timetable, the ExA has also published a consultation draft Development Consent Order (DCO), including a deemed marine licence (DML) on Wednesday 25 November 2015.

In accordance with the examination timetable, you are requested to submit any comments you may have on the draft DCO, by **Wednesday 16 December 2015 (Deadline 6)**.

### **Request for information**

#### *Matters in connection with the RIES*

Preparation of the RIES has identified a number of matters in respect of which the existing evidence available to the ExA is not completely clear. Whilst these are all recorded within the body of the RIES itself, for ease of consideration and response, they have been extracted and recorded in **Annex A** to this letter.

These matters are likely to be of particular interest to the applicant, and Natural England (referred to below as NE), the Marine Management Organisation (referred to as MMO) and the Environment Agency, from whom specific responses are sought at Deadline 6, within the body of their RIES consultation response. Any other interested party may also respond.

Please consider and respond to the matters summarised in **Annex A** by **Wednesday 16 December 2015**. Any comments on responses to this request for information must be submitted by **Wednesday 30 December 2015**.

#### *Protective Provisions*

Further to submissions at the hearings held on 24 November 2015, the ExA notes that discussions between the applicant and other parties on the appropriate drafting of Schedules 9 and 10 of the Draft DCO are ongoing.

The applicant is asked to submit:

- Their final proposed drafting of Schedules 9 and 10.
- Statements of common ground on the subject of the drafting of schedules 9

and 10 only, between themselves and each of the parties proposed to have the benefit of the provisions within those schedules and setting out where wording is agreed and/or where it is not.

Please consider and respond to this request by **Wednesday 16 December 2015**. Any comments on responses to this request for information must be submitted by **Wednesday 30 December 2015**.

*Risk assessment of the interaction of the proposed development with the CATS pipeline*

In written submissions to the compulsory acquisition hearing on 24 November 2015, the CATS parties set out a summary of the findings of a risk assessment that has been undertaken. That risk assessment has been shared with the applicant, and submissions for the applicant were that the findings of that risk assessment are not accepted by them.

Submissions were also made that certain elements of the report were inappropriate for publication. Except in the most exceptional circumstances, submissions to the examination must be published for inspection by the public.

In order to consider this matter, the ExA asks that the applicant and the CATS parties reach agreement on the appropriate redaction to the report to allow the differing positions of the parties to be understood and examined, and to jointly submit a Statement of Difference explaining where those positions differ.

Please consider and respond to this request by **Wednesday 16 December 2015**. Any comments on responses to this request for information must be submitted by **Wednesday 30 December 2015**.

Yours faithfully,

*Peter Robottom*

Peter Robottom  
Examining Inspector  
Encs.

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.

## ANNEX A

### York Potash Harbour Facilities Order Summary of matters arising from the RIES where existing evidence is unclear or inconclusive

The following matters were identified during the drafting of the RIES as being matters in respect of which the existing evidence held by the ExA is not fully clear or conclusive.

All documentary evidence referred to below is cited using document reference numbers in the latest [examination document library](#) available from this link.

To the extent that the matters identified below relate to the adequacy of security provided in the draft DCO/DML for measures to prevent or mitigate effects on European Sites, persons responding to the RIES consultation are requested to cross-refer to the consultation draft DCO/DML published on Wednesday 25 November 2015. Requests for changes to DCO/DML drafting made in response to the RIES should also be submitted as a response to the draft DCO/DML consultation.

All responses to the RIES consultation, to the matters identified in this Annex and to the draft DCO/DML consultation should be submitted by Deadline 6, **Wednesday 16 December 2015**.

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#### **Questions addressed to the Applicant:**

- **Paragraph 2.1 of the RIES** – Please can the applicant confirm, in accordance with the requirements of Regulation 61(1)(b) of the Habitats Regulations<sup>1</sup>, that the proposed Harbour Facility development is not connected with or necessary to the management for nature conservation of any of the European sites considered in the applicant's Habitats Regulation Assessment Report [APP-127 and APP-128]?
- **Paragraph 3.12 of the RIES (and Integrity Matrices 1 and 2 (footnote b) of Annex 2 of the RIES)** – Please can the applicant clarify what is meant by "*those parts of the authorised development to be decommissioned*" in the revised wording in Requirement 11 of the draft DCO provided at Deadline 4 [REP4-053 and REP4-054] in response to the ExA's Second Written Question 2.10 [REP4-014]? Please can the applicant clarify how this wording reflects the statement in the applicant's HRA that only the overland conveyor would be removed during decommissioning of the proposed Harbour Facility? The applicant's screening matrices provided at Deadline 4 [Appendix 4, REP4-014] have screened out potential effects on European sites from the decommissioning of the Harbour Facility, on the basis that only the overland conveyor would be decommissioned, so there would be no effect on coastal processes, habitats or water and sediment quality. Requirement 11 of the draft DCO provided at Deadline 4 [REP4-053 and REP4-054] requires the undertaker (defined in Article 2(1) of the draft DCO) to submit a decommissioning plan to the local authority for approval prior to the decommissioning phase of the authorised development. Requirement 11 limits the scope of the

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<sup>1</sup> The Conservation of Habitats and Species Regulations 2010 (as amended) ('the Habitats Regulations')

decommissioning plan to only include *“those parts of the authorised development to be decommissioned”*. As the draft DCO provided at Deadline 4 does not specify what parts of the authorised development would be decommissioned, it is unclear on what basis the applicant has stated that only the overland conveyor would be removed during decommissioning of the proposed Harbour Facility, which the applicant has relied upon to screen out potential decommissioning effects on the European sites.

- **Paragraphs 4.14 and 4.17 of the RIES** – Please can the applicant update the draft DCO at Requirement 6 in Schedule 2 to refer to the Governance Tracker “as certified in Article 38 of the DCO”? At present, Requirement 6 in Schedule 2 in the draft DCO provided at Deadline 4 [REP4-053 and REP4-054], in particular Requirement 6(1) and 6(1)(g) refers to a previous version of the Governance Tracker (Document 6.8A), which has been superseded. If the DCO is made by the Secretary of State, the version of the Governance Tracker that is certified will need to include the latest version of the mitigation measures required for the Harbour Facility development, which have been relied upon by the applicant to conclude no adverse effect on site integrity for the European sites.
- **Paragraphs 4.14 and 4.17 of the RIES** – Please can the applicant update the draft DCO at Requirement 6 in Schedule 2 to refer to the Outline Construction Ecological Management Plan (CEMP) “as certified in Article 38 of the DCO”? At present, Table 6-1 in the current version of the Outline CEMP [REP1-041] has not been updated to reflect the amendments made to the Updated Governance Tracker. If the DCO is granted by the Secretary of State, the version of the Outline CEMP that is certified will need to include the latest version of the mitigation measures required for the Harbour Facility development, which have been relied upon by the applicant to conclude no adverse effect on site integrity for the European sites.
- **Paragraphs 4.31 of the RIES** – Please can the applicant update the draft DCO at Requirement 9 in Schedule 2 to refer to the Outline Environmental Management Plan (EMP) “as certified in Article 38 of the DCO”? At present, the current version of the Outline EMP refers to the previous version of the Updated Governance Tracker [REP1-043]. If the DCO is granted by the Secretary of State, the version of the Outline EMP that is certified will need to include the latest version of the mitigation measures required for the Harbour Facility development, which have been relied upon by the applicant to conclude no adverse effect on site integrity for the European sites.

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#### **Questions addressed to NE and the MMO:**

- **Paragraphs 2.8 – 2.10 of the RIES** – Please can NE confirm, in accordance with the requirements of Regulation 63 of the Habitats Regulations<sup>1</sup> (review of existing decisions and consents), that they are satisfied that the applicant has assessed effects on Common tern and the implications of the possible extension to the Teesmouth and Cleveland Coast SPA?
- **Paragraph 4.24 of the RIES (and Integrity Matrices 1 and 2 (footnote c) of Annex 2 of the RIES)**– Please can NE and the MMO confirm that the amended wording provided by the applicant in Paragraph 7 of Part 2 and Condition 48 of Part 4 of Schedule 5 (the DML) of the draft DCO, in the version of the draft DCO provided at Deadline 4 [REP4-053 and REP4-054], adequately reflects the revised wording as agreed between the applicant, NE and the MMO, as documented in NE’s and MMO’s Deadline 4 representations ([REP4-009] and REP4-010] respectively)?
- **Paragraph 4.30 of the RIES (and Integrity Matrices 1 and 2 (footnote e)**

**of Annex 2 of the RIES)**– Please can NE and the MMO confirm that the amended wording provided by the applicant in Requirement 9 of Schedule 2 of the draft DCO provided at Deadline 4 [REP4-053 and REP4-054] adequately reflects the revised wording as agreed between the applicant, NE and the MMO, as documented in NE’s and MMO’s Deadline 4 representations ([REP4-009] and REP4-010] respectively)?

- **Paragraph 4.31 of the RIES (and Integrity Matrices 1 and 2 (footnote e) of Annex 2 of the RIES)** – Please can NE confirm that the wording in the new Section 3.5 (waterbird populations) in the outline Ecological Mitigation Plan provided at Deadline 4 [REP4-059], is adequate to incorporate the operational visual and lighting mitigation measures identified in the applicant’s HRA Report, as required by NE in response to the ExA’s Second Written Questions (Response to Question HRA 2.9 [REP4-009])?
  - **Paragraphs 4.35 and 4.36 of the RIES (and Integrity Matrices 1 and 2 (footnote h) of Annex 2 of the RIES)** – Please can NE confirm that the applicant has incorporated into the latest version of the draft DCO provided at Deadline 4 [REP4-053 and REP4-054] the revisions identified in NE’s Deadline 4 representation (NE’s response to ExA’s Second Written Questions DCO 2.7, DCO 2.8, HRA 2.4, HRA 2.5, HRA 2.7, HRA 2.9 and HRA 2.12)? Please can NE confirm that on that basis, NE considers that the mechanisms identified by the applicant, as recorded in paragraph 4.35 of the RIES, are appropriate to secure the mitigation in order to conclude no adverse effect on site integrity of the Teesmouth and Cleveland Coast SPA and Ramsar sites?
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