

# THE YORK POTASH HARBOUR FACILITIES ORDER 201X

## Statement Of Reasons



<b>Regulation Number:</b>	<b>5(2)(h)</b>
<b>Document Ref:</b>	<b>5.1</b>
<b>Author:</b>	<b>Marrons Shakespeares</b>
<b>Date:</b>	<b>March 2015</b>
<b>Status:</b>	<b>Submission</b>





# **The York Potash Harbour Facilities Order 201X**

The Infrastructure Planning  
(Applications: Prescribed Forms and Procedure) Regulations 2009

## **STATEMENT OF REASONS**

Pursuant to Regulation 5(2)(h)

### **DOCUMENT 5.1**



**1 Meridian South  
Meridian Business Park  
Leicester  
LE19 1WY**

## CONTENTS PAGE

1. Introduction	2
2. Summary	3
3. Scope of acquisition and purpose in seeking to acquire land/rights	4
4. Justification for seeking Compulsory Acquisition powers	18
5. Other information of interest to those affected by the DCO	32
<b>Appendix 1 - Classes of Rights</b>	<b>33</b>

## **1. Introduction**

- 1.1 This statement of reasons relates to an application made by York Potash Limited (“the Applicant”) to the Planning Inspectorate under Section 37 of the Planning Act 2008 for a Development Consent Order (“DCO”) to authorise the construction and operation of Harbour facilities at Bran Sands, Teesside which will be linked by conveyor to a material handling facility located within the Wilton International complex (“the Application”).
- 1.2 This statement has been prepared in compliance with the requirements of Regulation 5(2)(h) of the Infrastructure Planning (Application: Prescribed Forms and Procedure) Regulations 2009 and in accordance with the Department for Communities and Local Government Guidance “Planning Act 2008: Guidance related to procedures for compulsory acquisition of land” (September 2013) (the CLG Guidance).
- 1.3 This statement is required to support the Application because the DCO would authorise the compulsory acquisition rights over land by the creation of new rights. The land proposed to be the subject of compulsory acquisition is referred to in this statement as the “Order Land”.
- 1.4 This statement forms part of a suite of Application documents. It should be read alongside and is informed by those documents. In particular, whilst considering this Statement of Reasons, the following application documents should also be considered:-
- 1.4.1 The Funding Statement (Document 5.2);
- 1.4.2 The Land Plans showing the land over which it is anticipated rights will be interfered with/suspended/extinguished, the land over which

new rights are to be created and land which is to be used temporarily. (Documents 2.1A-N); and

1.4.3 The Book of Reference (Document 5.3).

## 2. Summary

2.1 This statement explains why it is necessary and justifiable for the DCO to contain compulsory acquisition powers which relate to the Order Land.

2.2 The following areas are addressed in this statement:-

2.2.1 **Section 3** contains the following:-

a) A description of the land over which it is proposed to exercise compulsory powers of acquisition and its location.

b) The Applicant's purpose in seeking to acquire rights over land including brief details of the wider scheme for which development consent is sought.

2.2.2 **Section 4** sets out the justification for seeking powers of compulsory acquisition including reference to how regard has been given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights together with details of the rationale behind the development.

2.2.3 **Section 5** contains any other information which may be of interest to persons who are or may be affected by the DCO.

### **3. Scope of acquisition and purpose in seeking to acquire rights**

3.1 A full description of the application site can be found in Section 4 of the Planning Statement (Document 7.1) accompanying the Application.

3.2 The proposed harbour forms part of the York Potash Project which involves the creation of a mine for the winning and working of polyhalite together with the necessary infrastructure required for the subsequent distribution of the polyhalite. The project principally comprises the following:

- a) The mine (with minehead to be located at Doves Nest Farm near Whitby).
- b) A mineral transport system, being a 36.5km long tunnel with conveyor to transport the polyhalite from the mine to the Wilton facility at Teesside.
- c) A materials handling facility (“MHF”) at Wilton.
- d) A harbour facility (a quay, berth pocket and ship loading facilities on the River Tees) linked to the materials handling facility by a conveyor system.

3.3 The DCO will, amongst other things, authorise the construction and operation of, in summary:-

- A quay structure on the River Tees at Bran Sands to facilitate the mooring of vessels in the estuary directly adjacent to the onshore harbour facility and allow ship loader access;

- Dredging of the berth area to form a berth pocket;
- Dredging of the river channel to give access to the berth pocket;
- The construction of ship loaders on the quay structure to load the polyhalite onto ships for onward transportation;
- The erection of surge bins for the ship loading flow management of the polyhalite;
- A conveyor system to transport the polyhalite connecting the harbour with the MHF within the Wilton International complex; and
- Ancillary infrastructure.

3.4 The Land Plans and Book of Reference demonstrate that, due to the industrialised nature and history of the Wilton International Complex and Bran Sands area, there are numerous unknown third party rights over the land. The way in which these rights have historically been granted has been such that there are also many rights which are known to exist, some of which have been exercised and some of which have not. Every effort has been made to ascertain what rights exist and/or have been exercised and what interests will be affected by the authorised development. The Applicant is in discussions with the parties who are known to have assets within the Order Land to agree protective provisions with those parties along with any necessary agreements.

3.5 In respect of parcels 7, 8, 11, 11a, 12, 13, 15, 16, 17, 18, 19, 20, 22, 23 and 24 on the Land Plans the Applicant has an agreement in place with the freehold owner, however, for the reasons explained



at paragraphs 4.42 - 4.49 below the Applicant is seeking the compulsory powers to create new rights over these plots. In addition there are unknown third party rights over all of the Order Land. The Applicant's approach in seeking compulsory powers to create new rights also applies to these parcels of land.

- 3.6 Sembcorp Utilities (UK) Limited ("Sembcorp") has a leasehold interest in parcels 11, 12, 13, 15, 16, 17, 18, 19 and 20. The Applicant is in advanced negotiations with Sembcorp in respect of their leasehold interest over those parcels and is seeking to secure a Deed of Grant for the erection and maintenance of the conveyor and access rights.
- 3.7 As explained in the Consultation Report (Document 6.1) (see paragraph 7.11) the Applicant is in discussions with the numerous owners of apparatus situated within the Order Land, principally along a pipeline corridor running from the Wilton International complex to the River Tees. As mentioned above, the Applicant is also in discussion with the owners of infrastructure which the conveyor system crosses, such as Network Rail, National Grid Electricity and the owners of pipelines which run from Wilton to the harbour. Protective provisions have been included in the draft DCO in this regard.
- 3.8 In respect of the parcels shown tinted blue on the Land Plans the Applicant is seeking to create new rights to carry out, access, erect, construct, operate, use, install, keep, inspect, maintain, adjust, alter, repair, renew, remove and/or replace the relevant parts of the authorised development.
- 3.9 There are some areas of land which are proposed to be used temporarily only. These parcels are shown shaded yellow on the

Land Plans. The purpose for which this land is proposed to be used is described in Schedule 4 of the DCO.

- 3.10 A detailed description of the land and purpose for which the interest in each parcel is required is contained in the Book of Reference and summarised in the table below (see table after paragraph 3.14 below).
- 3.11 The Applicant is seeking specific rights over each parcel of land. These have been categorised into classes of rights relating to the Works. The purpose of this is to ensure that only those rights which are required for the delivery of the authorised development are sought in respect of each parcel of land, in accordance with guidance and thereby minimising the compulsory powers of acquisition sought. The rights sought on each parcel of land apply only to the area of works shown on the Works Plans (Documents 2.2A-2.2F). For example, Class 6 rights are sought over parcel 8, but only in respect of the land required for Works 6A, 7 and 8.
- 3.12 Importantly, with regard to the conveyor route, where there are alternative routes, only the rights required along the route selected will be acquired. Please see Appendix 1, Class 4 in this regard.
- 3.13 In addition, the Applicant is seeking restrictive covenants over the land required for the erection of the conveyor and the installation of the conveyor footings and supports to protect the structure and its foundations. These are set out as Class 10 and comprise covenants for the benefit of the quay and the remainder of the Order Land. These restrictive covenants prevent certain activities over the parts of the Order Land in which the conveyor will be erected and its footings and support foundations will be installed. The Applicant considers that these restrictive covenants are appropriate and are required to protect the conveyor and its foundations and are only

sought where appropriate (for example, they are not sought over public highway or over the railway owned by Network Rail).

3.14 The classes are as described in **Appendix 1** to this Statement.

Table of Rights Sought

Number of land shown on Land Plans	Class/Classes of Rights Sought	Purpose for which rights may be acquired
1	1, 2, 4 and 9	<ul style="list-style-type: none"> <li>• Dredging;</li> <li>• Demolition of the existing jetty;</li> <li>• Construction, operation, use and maintenance of the quay;</li> <li>• Installation, maintenance and use of ship loaders; and</li> <li>• Construction, operation, use and maintenance of the conveyor system</li> </ul> <p>And to obtain access for such purposes</p>
2, 3	1 and 9	<ul style="list-style-type: none"> <li>• Dredging; and</li> <li>• Demolition of the existing jetty</li> </ul> <p>And to obtain access for such purposes</p>

6 and 7	1 and 9	Dredging and to obtain access for such purposes.
8	1, 2, 3, 4, 5, 6, 7a, 9 and 10	<ul style="list-style-type: none"> <li>• Dredging;</li> <li>• Construction, operation, use and maintenance of the quay;</li> <li>• Extension and/or modification the pipe between the lagoon and the Tees estuary and provision of an additional pipe for flow control;</li> <li>• Installation, maintenance and use of ship loaders, surge bins, transfer towers;</li> <li>• Construction, operation, use and maintenance of the conveyor system;</li> <li>• Installation, maintenance and replacement and/or repair of support foundations for the conveyor;</li> <li>• Carrying out and maintenance of the lagoon enhancement works;</li> <li>• Installation, operation, use and maintenance of services, signage, lighting, acoustic fencing, security fencing and gating, CCTV;</li> </ul>

		<ul style="list-style-type: none"> <li>• Creation and use of temporary compounds; and</li> <li>• Construction, use and maintenance of a permanent compound</li> </ul> <p>And to obtain access for such purposes and to impose requirements for the protection of the conveyor structure and footings</p>
9	4, 5, 9 and 10	<ul style="list-style-type: none"> <li>• Construction, operation, use and maintenance of the conveyor system, installation</li> <li>• Maintenance and replacement and/or repair of support foundations for the conveyor; and</li> <li>• Installation, use and maintenance of services, signage, lighting, acoustic fencing, CCTV;</li> </ul> <p>And to obtain access for such purposes and to impose requirements for the protection of the conveyor structure and footings</p>
10 and 11a	4, 5, 9 and 10	<ul style="list-style-type: none"> <li>• Construction, operation, use and maintenance of the conveyor system</li> <li>• Installation, maintenance and replacement and/or</li> </ul>

		<p>repair of support foundations for the conveyor; and</p> <ul style="list-style-type: none"> <li>• Installation, use and maintenance of services, signage, lighting, CCTV;</li> </ul> <p>And to obtain access for such purposes and to impose requirements for the protection of the conveyor structure and footings</p>
11	1, 2, 3, 4, 5, 6, 7b, 9 and 10	<ul style="list-style-type: none"> <li>• Dredging;</li> <li>• Construction, operation, use and maintenance of the quay;</li> <li>• Demolition of the existing jetty;</li> <li>• Installation, maintenance and use of ship loaders, surge bins, transfer towers;</li> <li>• Construction, operation, use and maintenance of the conveyor system;</li> <li>• Installation, maintenance and replacement and/or repair of support foundations for the conveyor;</li> <li>• Installation of a below ground waste storage tank;</li> <li>• Carrying out and maintenance of the lagoon</li> </ul>

		<p>enhancement works;</p> <ul style="list-style-type: none"> <li>• Installation, use and maintenance of services, signage, lighting, acoustic fencing, security fencing and gating, CCTV;</li> <li>• Creation and use of temporary compounds; and</li> <li>• Construction, use and maintenance of a permanent compound</li> </ul> <p>And to obtain access for such purposes and to impose requirements for the protection of the conveyor structure and footings</p>
12 and 13	1, 4, 5, 9 and 10	<ul style="list-style-type: none"> <li>• Dredging;</li> <li>• Demolition of the existing jetty;</li> <li>• Construction, operation, use and maintenance of the conveyor system;</li> <li>• Installation, maintenance and replacement and/or repair of support foundations for the conveyor; and</li> <li>• Installation, use and maintenance of services, lighting, acoustic fencing, security fencing and gating, CCTV</li> </ul>

		And to obtain access for such purposes and to impose requirements for the protection of the conveyor structure and footings
15 and 16	5, 9 and 10	<ul style="list-style-type: none"> <li>• Installation, maintenance and replacement and/or repair of support foundations for the conveyor; and</li> <li>• Installation, use and maintenance of services, signage, lighting, acoustic fencing, security fencing and gating, CCTV</li> </ul> <p>And to obtain access for such purposes and to impose requirements for the protection of the conveyor footings</p>
17, 18, 19 and 20	4, 5, 9 and 10	<ul style="list-style-type: none"> <li>• Construction, operation, use and maintenance of the conveyor system;</li> <li>• Installation, maintenance and replacement and/or repair of support foundations for the conveyor; and</li> <li>• Installation, use and maintenance of services, lighting, acoustic fencing, security fencing and gating,</li> </ul>



		<p style="text-align: center;"><b>CCTV</b></p> <p>And to obtain access for such purposes and to impose requirements for the protection of the conveyor structure and footings</p>
21a, 22, 23, 24, 37a, 38, 39, 40, 41, 42, 43, 44, 49, 57, 58, 59, 60 and 62	4, 5, 9 and 10	<ul style="list-style-type: none"> <li>• Construction, operation, use and maintenance of the conveyor system;</li> <li>• Installation, maintenance and replacement and/or repair of support foundations for the conveyor; and</li> <li>• Installation, use and maintenance of services, lighting, security fencing and gating, CCTV</li> </ul> <p>And to obtain access for such purposes and to impose requirements for the protection of the conveyor structure and footings</p>
25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 54,	4, 5 and 9	<ul style="list-style-type: none"> <li>• Construction, operation, use and maintenance of the conveyor system;</li> <li>• Installation, maintenance and replacement and/or repair of support foundations for the conveyor; and</li> <li>• Installation, use and maintenance of services,</li> </ul>

		<p>CCTV</p> <p>And to obtain access for such purposes</p>
47, 48, 55 56 and 61	5 and 9	<ul style="list-style-type: none"> <li>• Installation, maintenance and replacement and/or repair of support foundations for the conveyor;</li> <li>• Installation, use and maintenance of services, CCTV</li> </ul> <p>And to obtain access for such purposes</p>
50	4, 5, 6, 9 and 10	<ul style="list-style-type: none"> <li>• Construction, operation, use and maintenance of the conveyor system;</li> <li>• Installation, maintenance and replacement and/or repair of support foundations for the conveyor;</li> <li>• Installation, use and maintenance of services, lighting, security fencing and gating, CCTV; and</li> <li>• Creation and use of a temporary compound</li> </ul> <p>And to obtain access for such purposes and to impose requirements for the protection of</p>

		the conveyor structure and footings
51	4, 5, 8, 9 and 10	<ul style="list-style-type: none"> <li>• Construction, operation, use and maintenance of the conveyor system;</li> <li>• Installation, maintenance and replacement and/or repair of support foundations for the conveyor;</li> <li>• Installation, use and maintenance of services, lighting, security fencing and gating, CCTV;</li> <li>• Laying out of the highway works;</li> <li>• Installation of new signs and markings;</li> <li>• Removing an existing earth bund; and</li> <li>• Clearing vegetation</li> </ul> <p>And to obtain access for such purposes and to impose requirements for the protection of the conveyor structure and footings</p>
52, 53, 54a	8	<ul style="list-style-type: none"> <li>• Laying out of the highway works to include a pedestrian traffic island;</li> <li>• Resurfacing the existing carriageway;</li> <li>• Installation of new signs and</li> </ul>

		markings; <ul style="list-style-type: none"> <li>• Removing an existing earth bund; and</li> <li>• Clearing vegetation</li> </ul> Including temporary access for such purposes
59a	6	<ul style="list-style-type: none"> <li>• Creation and use of a temporary compound including temporary access for such purposes</li> </ul>

3.15 There are some Crown interests in the Order limits (details of which are explained in the Book of Reference and shown on the Land Plans). Section 135 of the Planning Act 2008 permits the inclusion of Crown land in a DCO but only with the consent of the relevant Crown authority. The Application therefore does not include Crown land within the Order Land (but these interests are described in the Book and Reference and shown on the Land Plans as required by Regulations 7 (1)(d) and 5 (2)(n) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009).

3.16 The Applicant has obtained the Crown's consent to the carrying out and use of the development on land owned by the Crown and in which the Crown has an interest (see Document 7.6). The consent is subject to inclusion in the DCO of an article protecting Crown rights. This article is included in the terms required by the Crown Estate in the draft DCO (see article 36).

#### **4. Justification for seeking Compulsory Acquisition powers**

4.1 Section 122 of the Planning Act provides:

*“(1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met:-*

*(2) The condition is that the land:-*

*(a) is required for the development to which the development consent relates,*

*(b) is required to facilitate or is incidental to that development, or*

*(c) is replacement land which is to be given in exchange for the order land under Section 131 or 132.*

*(3) The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily”.*

4.2 The CLG Guidance suggests a number of general considerations which the applicant for a DCO should demonstrate to the satisfaction of the Secretary of State to justify their proposed compulsory acquisition. These are:

*(i) That all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored;*

- (ii) That the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate;*
- (iii) That the applicant has a clear idea of how they intend to use the land which it is proposed to acquire;*
- (iv) That there is a reasonable prospect of the requisite funds for acquisition becoming available; and*
- (v) That the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected. In particular, regard must be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of acquisition of a dwelling, Article 8 of the Convention.<sup>1</sup>*

### **Section 122(2) Planning Act**

- 4.3 The Applicant has a clear idea of how it intends to use the land which is to be subject to the creation of new rights. Section 3 above explains why each parcel of land is required for the development and the proposed use of each parcel of land. The Applicant is not seeking the compulsory acquisition of any freehold interests, only the compulsory acquisition of the creation of new rights and the power to extinguish any unknown rights which, if they were sought to be exercised, would be inconsistent with the development. The Applicant is not seeking to extinguish existing third party rights which are known.

---

<sup>1</sup> Paragraphs 8 – 10 CLG Guidance.

4.4 In respect of the parcels shown tinted blue on the Land Plans the Applicant is seeking to create new rights to carry out, access, erect, construct, operate, use, install, keep, inspect, maintain, adjust, alter, repair, renew, remove and/or replace the relevant parts of the authorised development. The specific rights required over each of those plots are detailed in the table set out in section 3 above. The rights being sought are permanent easement rights and the Applicant considers that permanent rights are commensurate with the nature of the infrastructure to be installed.

4.5 The acquisition of rights over land is necessary to secure the delivery of the development and only the minimum rights required are being sought. For example, rights sought over each parcel of land are clearly related to the relevant “Work” proposed on that land and where temporary uses are proposed, the Applicant is only seeking powers to use those areas of land for a temporary period (during construction of the authorised development). This would minimise the interference with each area of land. The Applicant considers that the proposed creation of new rights is proportionate to the interference with any private rights.

4.6 With regard to section 122(2)(c), there is no common land or open space land in the Order limits and therefore no land is required to be given in exchange.

4.7 The Applicant therefore considers that section 122(2) is complied with.

### **Section 122(3) Planning Act**

4.8 In order to comply with the condition contained in Section 122(3), it must be shown that there is a compelling case in the public interest for the compulsory acquisition. The CLG guidance states “for this

*condition to be met, the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired".<sup>2</sup>*

4.9 In this case, the compelling case in the public interest is intrinsically linked to the strategic need for the proposed development. Defining need for a particular development is not restricted to providing an understanding of the operational requirements of a particular project, but instead encompasses number of influencing factors, as identified in the following paragraphs.

4.10 Initially, the need for a particular item of infrastructure can be taken from prevailing policy objectives. Policy at all levels establishes clear priorities for sustainable infrastructure delivery, but also sets the wider supportive context for the use of the product and the economic benefits that are directly attributable to its successful implementation. These components of the need case for development are assessed below, but initially the role of the proposed harbour facility in the wider York Potash Project (i.e. the operational need) is explained.

#### Role of Harbour Facility in the YPL Project

4.11 The proposed harbour facility will provide the infrastructure to allow the export of polyhalite, as part of the wider York Potash Project.

4.12 It is estimated that approximately 125,000 tonnes of the first 6.5Mtpa and 175,000 tonnes of the first 13Mtpa of polyhalite will be sold in the UK market. However, given the nature of the polyhalite market, it is anticipated that the majority of the product will be

---

<sup>2</sup> Paragraph 13 CLG guidance.



exported, with primary target markets located in the USA, Brazil, China, Central America, Africa and Europe. Furthermore, the world market for potassium based fertiliser is forecast to grow by approximately 60% by 2050 as demand increases to address world nutrient deficiencies and a growing global population.

4.13 In the context of such a large export market, and notwithstanding the clear emphasis in the National Policy Statement (“NPS”) for Ports on shipping, exporting the mined polyhalite in the volumes set out above by means other than by sea is not credible given the bulky, dry nature of the product. Ensuring the appropriate transport infrastructure is in place to allow for the export of the mined polyhalite is therefore fundamental to the delivery and success of the York Potash Project.

4.14 It is evident therefore that the proposed harbour facility is required to satisfy the distinct need to export up to 13Mtpa of polyhalite mined at Dove’s Nest Farm to the global market. As set out in the Ports NPS, the only effective means to do this is by sea, with the provision of sufficient sea port capacity identified as ‘essential’ to the sustainable growth in the UK economy.

#### Policy Need

4.15 The general need for the proposed development is initially understood in the context of national policy, which firmly establishes the principle of port development as an important part of the export strategy of the UK both now and moving into the future.

4.16 The Ports NPS was published in January 2012, and all applications for nationally significant port development must be decided in accordance with its policies.

4.17 Paragraph 3.1.4 acknowledges the importance of shipping as:

*“the only effective way to move the vast majority of freight in and out of the UK” and notes that “the provision of sufficient sea port capacity will remain an essential element in ensuring sustainable growth in the UK economy” [Applicant’s emphasis]*

4.18 Paragraph 3.3.1 states that the Government seeks to (inter alia):

*“encourage sustainable port development to cater for long-term forecast growth in volumes of imports and exports by sea with a competitive and efficient port industry capable of meeting the needs of importers and exporters cost effectively and in a timely manner, thus contributing to long-term economic growth and prosperity” [Applicant’s emphasis]; and*

*“allow judgments about when and where new developments might be proposed to be made on the basis of commercial factors by the port industry or port developers operating within a free market environment” [Applicant’s emphasis].*

4.19 Paragraph 3.4.9 acknowledges a number of port developments that have achieved consent since 2005, although explicitly identifies *“opportunities for other developers to bring forward proposals for alternative or additional developments that satisfy demand that these consented developments are not meeting”*. This paragraph emphasises that the delivery of the capacity *“needed to provide for competition, innovation, flexibility and resilience”* [Applicant’s emphasis] will be market driven.

4.20 Similarly, the need for new port development at specific locations will also be dictated by the market. Paragraph 3.4.12 states that port development “*must be responsive to changing commercial demands...with developers bringing forward applications for port developments where they consider them to be commercially viable*”.

4.21 Paragraph 3.4.16 of the NPS, which summarises the principle of further port development in the UK, states that there “*...is a compelling need for substantial additional port capacity over the next 20-30 years*” [Applicant’s emphasis].

4.22 At paragraph 3.5.1, the NPS makes clear that the need for future capacity for port development should be accepted in order to, inter alia:

- “*cater for long-term forecast growth in volumes of imports and exports by sea*”;
- “*offer a sufficiently wide range of facilities at a variety of locations to match... expected trade*”;
- “*ensure effective competition among ports and provide resilience in the national infrastructure*”; and
- “*take full account of both the potential contribution port developments might make to regional and local economies*”.

4.23 The need for the proposed development is therefore clearly referenced in the NPS.

#### Economic Need

4.24 The economic need for any particular project is a factor of the economic benefits that its implementation can deliver. The level of

benefit associated with the proposed new harbour facility at Bran Sands is significant, both as a standalone investment, and within the context of the wider York Potash Project of which the proposed new harbour forms a vital part.

- 4.25 The full extent of the predicted economic benefits of the York Potash Project is explained in detail in the Planning Statement and Major Development Test Planning Statement documents that accompany the application (see Appendices 1 and 2 of the Project Description Statement (Document 7.3)). The extent of the predicted benefits is such that the York Potash Project offers the potential to transform the regional economy and deliver positive inputs on a national scale. By way of an example, the wider York Potash Project is expected create in the region of £1.2bn of exports per annum<sup>3</sup>, representing a 33% increase on the total 2012 UK mining output and contributing to a reduction in the UK trade deficit of approximately 4%. At full production, the Project would supply approximately 4% of the world potassium based fertilizer market.
- 4.26 The anticipated economic benefits of the proposed harbour facilities alone include in the region of £79m of investment during the Phase 1 construction phase of the harbour. A further £306m is anticipated at Phase 2, albeit spread across the whole York Potash Project rather than being invested solely on the harbour facilities.
- 4.27 Approximately 122 jobs are expected to be created during the construction phase; while a further 413 indirect jobs are expected to be created through the construction supply chain. The creation of 34 direct jobs and 170 indirect jobs are expected once the proposed harbour is operating at full capacity.

---

<sup>3</sup> based on 13m tonnes per annum at the projected long-term pricing of £94/t

- 4.28 In addition to the benefits quantified above, the wider project will result in higher UK tax revenues, local payments (e.g. royalties) and increased spending in the local economies. Similarly, the wider York Potash Project is expected to contribute £500m per annum to the UK GDP in 2020, rising to £1bn per annum in 2024.

#### Demand as a Factor of Need

- 4.29 As detailed in in the Major Development Test Planning Statement (see Appendix 2 of the Project Position Statement (Document 7.3)), polyhalite is a naturally occurring mineral that contains the plant nutrients potassium, sulphur, magnesium and calcium, and each of its component parts have a recognised and important role in fostering plant growth. In its agricultural application, polyhalite has been shown to significantly increase the growth of a wide range of crop species, while its low chloride content has potential advantages over the more commonly used muriate of potash fertilisers, in use on crops which are sensitive to high chloride concentrations. This suggests that polyhalite is a useful general fertiliser but also that it may be particularly useful for intensive agriculture and in relatively arid climates.
- 4.30 The beneficial qualities of polyhalite and its inherent practicality, utility and application as a multi nutrient fertiliser is already established amongst the agriculture and fertiliser industry. The application of polyhalite as an agricultural product is further enhanced by virtue of its physical qualities. It granulates and compacts, handles and stores well and is compatible as a blend component, and, as such, is ideally suited to use as an agricultural product for the export market.
- 4.31 The global demand for agricultural production, as set out in the Planning Statement and the Major Development Test Planning

Statement (see Appendices 1 and 2 of the Project Description Statement (Document 7.3)), is estimated to increase by 60% in 2050 compared with the present day, as a result of the increasing world population, changing diets and the use of crops to produce biofuels. These pressures have driven steady increases in crop yields and global fertiliser consumption, which is now estimated at 173 million tonnes of fertiliser per year.

4.32 Global potash consumption is predicted to grow at an average rate of 3% per annum, to satisfy the increasing demand for food production, both from a growing population and due to a continued decline in atmospheric deposition of sulphur.

4.33 It is evident, therefore, that there is a pronounced global need and demand for polyhalite, in order to address and meet the growing global requirement for agricultural fertilisers.

#### Compelling Case in the Public Interest

4.34 In this case, the fundamental need for the development is intrinsic to and runs in parallel with the compelling case in the public interest. Indeed, as set out in the Port NPS, restricting the market-driven development of new port facilities would be to effectively accept limits on economic growth, an outcome identified by the NPS as being “*strongly against the public interest*”. Therefore, sustainable, growth-generating port developments, the nature, location and extent of which are driven by market forces, are inherently in the public interest.

4.35 This conclusion is supported by the particular characteristics of the project, most notably in respect of its predicted contribution to long-term economic growth and prosperity in the UK.

## **CLG Guidance**

### The proposed interference with land is for a legitimate purpose and is necessary and proportionate

- 4.36 The delivery of the development cannot be guaranteed without the ability to rely upon the proposed powers of compulsory acquisition and powers of temporary use. As explained in section 3 above, the Applicant considers that the rights required in respect of each parcel of land are proportionate.
- 4.37 The Order limits have been deliberately identified to extend only to land absolutely necessary to carry out, operate and maintain the proposed development and to interfere with as few interests as possible.
- 4.38 The Applicant is seeking only the minimum rights required over each parcel of land, including where appropriate seeking powers of temporary use of land instead of compulsory acquisition of rights.
- 4.39 The Applicant therefore believes that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose and that it is necessary and proportionate.

### Alternatives to Compulsory Acquisition

- 4.40 The construction, use, operation and maintenance of the development and access thereto would require the acquisition of land and rights over land not within the Applicant's control, regardless of the location of the development. The requirement to locate the development at Bran Sands is detailed in the Alternative Site Assessment submitted with the Applicant's application for planning permission for a mine and mineral transport system (see

Appendix 5 to the Project Position Statement (Document 7.3)) and briefly in paragraphs 7.12-7.23 of the Planning Statement (Document 7.1).

- 4.41 The Applicant has considered modifications to the scheme (for example the siting of the conveyor under the A1085 rather than over (see Appendix 3.2 to the Environmental Statement (Document 6.4)) but any alternative would still require the acquisition of land and/or rights outside of the Applicant's control. Furthermore, for reasons set out at paragraphs 4.43 - 4.49 below, powers of compulsory acquisition would still be sought in order to guarantee the delivery of the development.
- 4.42 In addition, the Applicant has considered potential alternative routes for the conveyor between the MHF and the quay. The proposed routes (only one of which will be constructed) represent the most suitable routes in respect of interference with existing rights and maximising operational potential. The Explanatory Memorandum (Document 4.2) explains what will determine the route of the conveyor.
- 4.43 Indeed, the Applicant has already entered into agreements in respect of some of the land and rights required. The Applicant continues to seek to acquire all rights required by agreement. As previously explained, the Applicant is not seeking the compulsory acquisition of any freehold interests, only the compulsory acquisition of the creation of new rights. The approach of seeking powers of compulsory acquisition in parallel with negotiating agreements is in accordance with paragraphs 25 and 26 of the CLG Guidance.
- 4.44 The compulsory acquisition of rights (by creating new rights) would still be required due to the unknown third party rights over the land. This cannot be avoided for reasons explained above as a result of



the historic nature of those rights that have been granted over the land at the Wilton International Complex and Bran Sands.

- 4.45 Notwithstanding the acquisition of land and rights by agreement, the Applicant is still seeking to acquire rights compulsorily (by the creation of new rights) through the DCO to enable the delivery of the development, in the event that the voluntary acquisition of the rights is unsuccessful.
- 4.46 The Applicant is not proposing to extinguish any existing rights which are known, but requires the power to extinguish any unknown rights which, should they be sought to be exercised, would be inconsistent with the authorised development.
- 4.47 The Applicant is taking the cautious approach of seeking compulsory powers over the entire site because some of the agreements made (and currently being negotiated) are in the form of options and not immediate acquisition. The powers of compulsory acquisition will therefore provide a fall-back position in the event that the voluntary agreements fail or in the event that the party with the relevant interest refuses to grant the right upon the exercise of the option.
- 4.48 In addition, the exercise of a GVD (which would be authorised by the DCO) would allow the acquisition of rights in respect of multiple owners in one process. This may be the most efficient method of delivering all rights at the same time.
- 4.49 Crucially, the compulsory acquisition will safeguard against the risk of unknown relevant interests preventing the delivery of the development. As explained above, due to the complex nature of the rights granted over the Wilton International Complex and Bran Sands, the ability to create new rights over the land and to

extinguish any unknown rights is essential so that the delivery of the development is not frustrated.

#### Use of the land subject to compulsory acquisition

- 4.50 As explained above the Applicant has a clear idea of how it intends to use the land to be subject to the creation of new rights. This is summarised in section 3 above and explained in detail in the Book of Reference and shown on the Land Plans.

#### Funding

- 4.51 The CLG guidance requires an application for a DCO which authorises compulsory acquisition to be accompanied by a statement explaining how the compulsory acquisition will be funded. Please refer to the Funding Statement in this regard.

#### Human Rights

- 4.52 Regard has been had to the provisions of Article 1 of the First Protocol to the European Convention of Human Rights which protects the rights of everyone to the “*peaceful enjoyment of possessions except in the public interest and subject to the conditions provided for by law*”. Any interference with possessions must therefore be proportionate and in determining whether a particular measure is proportionate, a “*fair balance*” should be struck between the demands of the general interest and the protection of the individuals’ rights.
- 4.53 Whilst the beneficiaries of the interests in the Order Land will be deprived of their interest if the DCO is confirmed, this will be done in accordance with the law. The DCO is being pursued in the public interest as required by Article 1 of the First Protocol. The public

benefits associated with the proposed development are set out earlier in this statement.

- 4.54 Accordingly, the Applicant is satisfied that although the Convention rights are likely to be engaged, the proposed development does not conflict with those rights and will be proportionate because there is a compelling case in the public interest of the proposals which outweighs in this instance the impact on individual rights.

## **5. Other information of interest to those affected by the DCO**

- 5.1 Further information about the application can be found on the Applicant's website dedicated to the proposals – [www.yorkpotash.co.uk](http://www.yorkpotash.co.uk).
- 5.2 Owners and occupiers of any of the Order Land who wish to discuss matters relating to the negotiation of agreements should contact William Woods at York Potash on 01723 470 010.

## **APPENDIX 1**

### **CLASSES OF RIGHTS**

**Where a land parcel includes more than one Works area there is more than one class of rights applied for, however each class of rights only applies to that part of the land parcel which is contained within the relevant Works area as shown on the Works Plans (Document 2.2A-F).**

**Class 1: Dredging and River Works (Works No. 1)**

The right for the undertaker and all persons authorised by or on behalf of the undertaker (with or without machinery, equipment, plant, apparatus and/or vehicles) to:

- (i) Inspect and survey the land including carrying out ground investigation works;
- (ii) Carry out capital and/or maintenance dredging to the berth pocket and approach channel and carry out any improvements thereto; and
- (iii) Demolish the existing Northumbrian Water Limited jetty and associated infrastructure.

**Class 2: Quay Rights (Works No. 2)**

The right for the undertaker and all persons authorised by or on behalf of the undertaker (with or without machinery, equipment, plant, apparatus and/or vehicles) to:

- (i) Inspect and survey the land including carrying out ground investigation works;
- (ii) Construct (in phases) either: -

- a. A solid quay comprising a combi-pile wall linked by pairs of sheet piles and reclamation behind that wall including a reinforced concrete cope beam to fix waterside ship loader rails together with a piled beam to support landside ship loader rails; or
  - b. An open quay comprising suspended deck structures being a reinforced concrete deck supported by driven steel tubular piles, the erection of ship loader rails and supports for the conveyor including construction of approach bridge platforms for access and the installation of a revetment.
- (iii) Extend and/or modify the existing hydraulic connectivity (pipe) between Bran Sands lagoon and the Tees estuary and provision of an additional pipe for flow control;
- (iv) Access, operate, use, keep, inspect, maintain, adjust, alter, repair, renew, remove and/or replace the quay or any part thereof; and
- (v) Access, erect, fit out, use, keep, inspect, maintain, adjust, alter, repair, renew, remove and/or replace two surge bins (including the installation and maintenance of foundations) for the storage of the polyhalite at the location shown on the Layout Plans (Ground Level) (Document 3.2A if the northern conveyor route is taken and Document 3.2G if the southern conveyor route is taken).

### **Class 3: Lagoon Rights (Works No. 3)**

The right for the undertaker and all persons authorised by or on behalf of the undertaker (with or without machinery, equipment, plant, apparatus and/or vehicles) to:

- (i) Inspect and survey the land;
- (ii) Access the lagoon for the purpose of carrying out, altering, removing and/or maintaining habitat enhancement works as described in the Mitigation and Monitoring Strategy (see Appendix 3.1 to Document 6.3);
- (iii) Place capital and maintenance dredged material within the lagoon to create shallow water areas, intertidal margins and islands; and
- (iv) Carry out and maintain improvements to an existing flow control structure (pipe) between the lagoon and the Tees estuary and provision of an additional pipe for flow control.

### **Class 4: Conveyor Rights (Elevated) (Works No. 4)**

The right for the undertaker and all persons authorised by or on behalf of the undertaker (with or without machinery, equipment, plant, apparatus and/or vehicles) to access, erect, operate, use, install, keep, inspect, maintain, adjust, alter, repair, renew, remove and/or replace parallel belt conveyors and associated infrastructure in a single elevated conveyor bridge on supports to be located along the route between points A-B-C or points A-B-D and within the envelope shown on the Works Plans (Documents 2.2A-2.2F).

### **Class 5: Ground Level Rights (Works No. 5)**

The right for the undertaker and all persons authorised by or on behalf of the undertaker (with or without machinery, equipment, plant, apparatus and/or vehicles) to:

- (i) Inspect and survey the land including carrying out ground investigation works;
- (ii) Access, erect, operate, use, install, keep, inspect, maintain, adjust, alter, repair, renew, remove and/or replace transfer towers and support foundations for the elevated conveyor bridge (Works No. 4); and
- (iii) Install, keep, operate, use, inspect, maintain, adjust, alter, repair, renew, remove and/or replace surface and foul water disposal infrastructure, signage, lighting, security fencing and gating, a security control structure, acoustic fencing (during construction), CCTV and services.

### **Class 6: Temporary Site Compounds (Works Nos. 6A, 7, 8, 10 & 11)**

The right for the undertaker and all persons authorised by or on behalf of the undertaker (with or without machinery, equipment, plant, apparatus and/or vehicles) to:

- (i) Inspect and survey the land including carrying out ground investigation works; and
- (ii) Access, lay out, erect, use, install, keep, inspect, maintain, adjust, alter, repair, renew, remove, demolish and/or replace a temporary site compound for the provision of office facilities,



storage facilities, car parking, lighting, materials storage, equipment storage, plant storage, a substation and/or pre-assembly/fabrication areas including the erection of portable cabins and pre-prepared levelled concrete footings.

### **Class 7a: Permanent Site Compounds (Works No. 6B)**

The right for the undertaker and all persons authorised by or on behalf of the undertaker (with or without machinery, equipment, plant, apparatus and/or vehicles) to:

- (i) Inspect and survey the land including carrying out ground investigation works; and
- (ii) Access, lay out, erect, use, install, keep, inspect, maintain, adjust, alter, repair, renew, remove, demolish and/or replace a site compound for the provision of car parking and a substation.

### **Class 7b: Permanent Site Compounds (Works No. 9)**

The right for the undertaker and all persons authorised by or on behalf of the undertaker (with or without machinery, equipment, plant, apparatus and/or vehicles) to:

- (i) Inspect and survey the land including carrying out ground investigation works; and
- (ii) Access, lay out, erect, use, install, keep, inspect, maintain, adjust, alter, repair, renew, remove, demolish and/or replace a site compound for the provision of a general services building car parking, a substation and ancillary infrastructure; and

- (iii) Install, use, keep, inspect, maintain, adjust, alter, repair, renew, remove and/or replace below ground storage tank for waste water and associated infrastructure.

### **Class 8: Temporary Rights (Highways) (Works No. 12)**

The right for the undertaker and all persons authorised by or on behalf of the undertaker (with or without machinery, equipment, plant, apparatus and/or vehicles) to:

- (i) Inspect and survey the land including carrying out ground investigation works;
- (ii) Access, lay out, erect, use, install, inspect, maintain, adjust, alter, repair, renew, remove and/or demolish public highway to provide an new west access arm at the A1085/West Coatham Lane roundabout including the installation of new kerblines to formalise the entry and exit radii, highway construction, a pedestrian, traffic island, resurfacing the existing carriageway and installation of new signs and markings; and
- (iii) Access, lay out, erect, use, install, inspect, maintain, adjust, alter, repair, renew, remove and/or demolish any land not being public highway to provide an new west access arm at the A1085/West Coatham Lane roundabout including the removal of an existing earth bund, clearance of vegetation and reconstruction of the carriageway.

### **Class 9: Access**

The right for the undertaker and all persons authorised by or on behalf of the undertaker (with or without machinery, equipment, plant, apparatus and/or vehicles) over all of the Order Land (save land parcels 52, 53, 54a and 59a which are subject only to temporary rights) for the purpose of accessing any part of the authorised development.

### **Class 10: Restrictive Covenants**

The right for the benefit of the land comprising the quay and the undertaker's interest in the remainder of the Order Land and within which the conveyor will be constructed, requiring the owner and occupier(s) of the land:

- (i) Not to alter or permit or allow to be altered the then existing level of the land in such a manner as to render the access to the conveyor or its support foundations impracticable or which may damage them within that part of the land over which rights acquired pursuant to Class 4 and 5 are acquired; and
- (ii) Not to construct, place or erect or permit or allow to be constructed, placed or erected any structure, building or infrastructure or to carry out or allow to be carried out any excavation which would adversely affect the conveyor or its supports within that part of the land over which rights acquired pursuant to Class 4 and 5 are acquired.