

Redcar and Cleveland Borough Council's

Response to Examining Authority's First Round of Questions

The York Potash Project – Harbour Facilities Order

Development Control Order

Application Reference Number TRO30002

The proposed development is the construction and operation of Harbour facilities at Bran Sands, Teesside for the export of polyhalite bulk fertilizer, which will be linked by conveyor to a materials handling facility located within the Wilton International Complex, Redcar and Cleveland.

Sent 21.08.2015

Background (Examining Authority's First Round of Questions)

The Examining Authority released a number of written questions within their Rule 8¹ letter to Redcar and Cleveland Borough Council (RCBC).

This representation includes RCBC's response to the relevant questions².

Examiner's Questions

Question CA 1.8

To: Redcar & Cleveland Borough Council

To: Hartlepool Borough Council

To: The Applicant

The guarantee or alternative form of security

The draft DCO requires that an alternative form of security is approved by the Secretary of State. The explanation for requiring the Secretary of State to undertake this, as opposed, to the relevant local authorities is provided in the Statement of Funding in that it is based on the Hornsea One Offshore Wind Farm Order 2014.

State and justify whether you would prefer to be the body approving an alternative form of security relating to that part of the project lying within your area. Do you consider that you (or the Secretary of State) should be involved in approval of a guarantee?

The Authority's Response

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.

¹ Planning Act 2008 (as amended) – Section 89 and the Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 8 (as amended)

² Questions directed at RCBC

Question DCO 1.7

To: Redcar & Cleveland Borough Council

Article 10-13: Streets

Is the Council satisfied that these provisions sufficiently safeguard the interests of the highway/street authority?

The Authority's Response

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.

Question DCO 1.8

To: The Northumbrian Water Limited To: Environment Agency

To: Redcar & Cleveland Borough Council

To: Internal Drainage Boards (IDBs)

Article 14 Discharge of water

Are all relevant authorities satisfied that the provisions of this article sufficiently satisfy their interests?

The Authority's Response

RCBC is satisfied that the provisions of Article 14 sufficiently satisfy their interests.

DCO 1.11

To: The Applicant

To: All Interested Parties seeking protective provisions in relation to pipelines of other transport links

Article 34 Protective Provisions

In addition to statutory undertakers, Schedules 9 and 10 address concerns of pipeline users and other enterprises whose assets or linking communication or transport links are overbridged or over-sailed. Many of these interests sought protective provisions in relation to the Dogger Bank A & B DCO, the decision in

respect of which is required by the Secretary of State no later than 5 August 2015 under the provisions of the PA2008.

Please explain the extent to which the position reached during the Examination of the draft Dogger Bank A & B DCO and the decision thereon in relation to Protective Provisions has been embodied in this draft DCO in so far as relevant to the interests concerned.

The Authority's Response

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.

Question DCO 1.14

To: The Applicant

To: Redcar & Cleveland Borough Council

To: Statutory consultees

Schedule 2: Requirements – Definition of Phases 1 and 2

Do not Phases 1 and 2 need defining at the outset, together with provision of a phasing plan in order for the generality of the Requirements to be enforceable?

The phasing of the construction period is described in paragraph 3.1.86 of the ES onwards. The construction of Phase 2 of the development is predicted to be within 6 years following the completion of Phase 1 (ES paragraph 3.1.91 Doc 6.4). The construction of the proposed development is anticipated to commence in January 2017 (ES paragraph 3.1.91 Doc 6.4). Paragraph 3.1.92 of the ES confirms that both phases of the proposed development are anticipated to require a 17 month construction period. Based on the above information, is it assumed that the construction of Phase 2 will overlap with the operation of Phase 1. However, the applicant is asked to clarify how the overlapping construction and operation periods have been assessed in the ES on a worst case basis.

If Phase 2 is significantly in the future, does there not need to 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?

Is the Council and all statutory Consultees satisfied that their interests will be sufficiently protected by these Requirements?

Requirement 6 (Construction Environmental Management Plan) (CEMP)

The applicant is requested to revise draft Requirement 6 to include a provision that the CEMP must identify and deliver the mitigation provided in the ES and a certified copy of the Governance Tracker which should be referenced in Article 38. This might

be achieved by requiring a certified copy of the final CEMP within the list within Article 38 and by ensuring that every mitigation measure to be delivered through the final CEMP is listed in the in the Governance tracker, a final copy of which should also be certified under Article 38.

It is also noted that draft Requirement 6(2) allows for the CEMP to be varied subject to agreement with the LPA, but does not restrict any such variations to what has been assessed and relied upon for mitigation in the ES. The applicant is requested to also amend the wording of Requirement 6(2) to state that the CEMP may be subject to alteration by approval in writing of the local planning authority, provided that the alterations have been assessed within the ES.

The CEMP is stated to include details about temporary fencing and temporary lighting arrangements. However, the mechanism of the CEMP is being relied upon in the Governance Tracker to deliver both temporary (construction) and permanent (operational) mitigation, in relation to noise and visual disturbance to waterbird species. Please can the applicant explain why the CEMP is the appropriate mechanism for delivery of *operational* mitigation?

The LVIA states that mitigation relating to lighting and relevant to marine & coastal ornithology and terrestrial ecology would be secured through the Construction & Environmental Management Plan (CEMP), Requirement 6 in the DCO. However, the measures referred to in requirement 6 refer to temporary lighting, whereas chapter 9 (9.6.22) states that the mitigation principles to minimise the potential significant effects on water birds also apply in operation. Please can the applicant clarify how such operational lighting mitigation measures will be secured through the DCO and whether Requirement 6 (CEMP) is the appropriate mechanism in in relation to securing and delivering operational mitigation?

Requirement 9 (Ecology)

As an outline Ecological Management Plan (EMP) has not been provide, it is unclear what specific measures the applicant intends to deliver through the EMP or what it has relied upon in assessment terms.

The applicant is requested to provide for Deadline 1 an outline EMP identifying the mitigation to be delivered through the EMP, having regard to the mitigation identified in the ES and the Governance Tracker.

The applicant is requested to provide a revised draft Requirement 9, requiring the EMP to deliver mitigation which is in accordance with the principles set out in an outline EMP and to include a provision that the EMP must identify and deliver the mitigation provided in the ES and in a certified copy of the Governance Tracker.

Relationship between Requirement 9 in Schedule 2 to the draft DCO and paragraph 7 of Part 2 in the DML

Requirement 9 in Schedule 2 in the draft DCO includes reference to measures which form part of the Bran Sands Lagoon Mitigation and Monitoring Strategy (MMS). However, the wording in Requirement 9 expressly excludes the lagoon enhancement works which are to be licenced under the draft DML in Schedule 5 (Part 2,

Paragraph 7). Please clarify, as paragraph 7 the draft DLM in Schedule 5 requires an ecological management plan to be in place before the lagoon enhancement works commence. It is not clear whether the ecological management plan referred to in the draft DML (Schedule 5, paragraph 7) is the same as the ecological management plan referred to in the draft DCO (Schedule 2, Requirement 9). Please can the applicant clarify? Please update the DCO so that there is no doubt as what approvals are required with cross-references As necessary so that an integrated submission can be made to Natural England and the MMO.

Please can the applicant clarify when the lagoon enhancement works are required to be commenced (in relation to the authorised development) and how they will be maintained throughout the operation of the proposed development? Please indicate how your answer would be governed by the provisions of the draft DCO/DML.

Requirement 11 (Decommissioning)

A description of the works envisaged to be required during decommissioning is provided in Section 3.2 of the ES, which states that there are no plans to decommission the terminal, so decommissioning of the port element of the development has not been considered in the ES. However, Table 3-10 provides a summary of the decommissioning works anticipated to be required for the conveyor systems, which would involve the complete removal of site infrastructure. The surge bins and shiploaders are stated to be 'likely to be decommissioned and removed off site'.

The Applicant is asked to identify what elements of the proposed development would be decommissioned and removed from site and what is proposed to remain in situ. *[See also DCO 1.3]*

The Authority's Response

RCBC consider that in traffic terms their interests are sufficiently protected by the Requirements.

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.

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.

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.

RCBC request that they are consulted when the Applicant provides an outline EMP addressing the proposed mitigation.

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 Phase1 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.

Question ES 1.4

To: The Applicant

To: Cleveland & Redcar Borough Council

Plans requested - Public Rights of Way

State whether the apparent ending of public footpath number 116/31/1 on the Rights of Way plan at a not publicly accessible location near to Dabholm Gut is correct. If not, please supply an amended version of this plan. Please also label the Rights of Way clearly on the Rights of Way Plans as indicated in Section 21 of the ES.

Are the proposed temporary closures to be carried out under the provisions of Article 11 and, if so, is the definition of "street" in Article 2 sufficiently broad?

The Authority's Response

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 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).

Question PAR 1.4

To: Redcar & Cleveland borough Council

Crossing the A1058

The Relevant Representation from the Council not only questions the principle of a conveyor bridge over the A1058, but objects to the design illustrated. Please describe/illustrate what the Council would regard as an appropriate design if there is to be a conveyor bridge.

The Authority's Response

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.

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.

NB: Reference above should be to the A1085.

Question HWF 1.3

To: The Applicant

To: Environment Agency

To: The local planning authorities

To: Marine Management Organisation

Disposal of contaminated sediments from capital dredging

Paragraph 3.1.42 of the ES (**Doc 6.4**) confirms that some of the capital dredged material would be contaminated and would require specific management. The proposed approach to waste management is described in Appendix 3.1 of the ES (**Doc 6.5**). The management of dredged material and contaminated excavated material on land is provided in Sections 5.1-5.4 of Appendix 3.1 (**Doc 6.5**). The draft

DCO (**Doc 4.1**) does not specify that a waste management strategy must be agreed in advance with the relevant body or bodies.

Do the relevant body/bodies wish to amend the requirements to provide that a waste management strategy must be agreed in advance with the relevant body/bodies?

Does the applicant have a view on whether such an amendment would be required?

The Environmental Statement refers to the expectation that contaminated sediments that cannot be disposed of at sea would be deposited at appropriate licensed disposal sites. Provide details of the particular site or sites that would/might be used and of the means of transport envisaged. How has this been taken account of in the transport assessment and how would this be secured in the DCO or via relevant licensing.

More generally, how would the alternative dredging mechanisms be secured in the Deemed Marine Licence given that options are referred to.

The Authority's Response

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.

Question TT 1.1

To: The Applicant

To: Redcar & Cleveland Borough Council

To: North Yorkshire County Council

To: Highways England

Methodology

Has the methodology for the assessment of transport and infrastructure been agreed with the Local Highways and Planning Authorities and Highways England (formerly the Highways Agency)?

The Authority's Response

RCBC can confirm that the methodology for the assessment of transport and infrastructure has been agreed with the Applicant.

Question TT 1.2

To: The Applicant

To: Highways England

To: Redcar & Cleveland Borough Council

To: North Yorkshire County Council

Formal Transport Assessment and significant effects

Are the conclusions of the Transport Assessment accepted by all relevant Highway authorities? In particular is the absence of significant cumulative effects during the construction phases for the Port and wider project accepted?

The Authority's Response

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.

Question TT 1.3

To: The Applicant

To: Redcar & Cleveland Borough Council

To: North Yorkshire County Council To: Highways England

Worst case scenario – the effect of lorry movements on national and local roads

Are all relevant highway authorities 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?

The Authority's Response

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.

Question TT 1.4

To: Redcar & Cleveland Borough Council

Consenting in relation to highway matters

Is the Council satisfied with the arrangements set out in the DCO for securing necessary approvals that are not explicitly granted with the DCO itself?

The Authority's Response

RCBC is satisfied with the arrangements set out in the DCO for securing necessary approvals that are not explicitly granted with the DCO itself.

Question NV 1.3

To: Redcar & Cleveland Borough Council

To: The Applicant

Proposed mitigation measures for operational and construction noise and vibration

Set out the nature of any requirements that you may wish to impose in relation to operational noise and state why these should not be secured through Requirements in the draft DCO. Please respond to this question working in consultation with the applicant.

Is the Council satisfied that the CEMP will address construction noise and vibration issues?

The Authority's Response

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.

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 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.

Question LVA 1.5

To: The Applicant

To: The LPA

Mitigation

The Governance Tracker refers to requirement 2 in the draft DCO as being the mechanism to secure and deliver the mitigation identified in the LVIA. However, requirement 2 in the DCO, which refers to various mitigation measures at a general level, does not refer back to the specific landscape and visual impacts mitigation in chapter 20 of the ES. Furthermore requirement 2 refers only to phase 1 of the development. As requirement 3 in the draft DCO refers to phase 2 of the development, it is unclear why the Governance Tracker does not also refer to requirement 3 as well, to secure mitigation in relation to phase 2 of the development.

Please can the applicant clarify whether the Governance Tracker should refer to both Requirements 2 and 3 in the draft DCO as securing the mitigation identified in the LVIA?

Please can the LPA confirm whether they are satisfied that the wording in Requirements 2 and 3 are appropriate to secure the identified mitigation in the LVIA?

The Authority's Response

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).

RCBC would, therefore, suggest that the wording of Requirements 2 and 3 is changed to better relate them to the proposed mitigation measures.

Question LVA 1.6

To: The Applicant

To: The LPA

Mitigation

The LVIA includes reference to offsite planting as proposed mitigation (20.5.30; 20.5.42; 20.7; Table 20-9; 20.9.2; 20.10.2; 20.11.6). However, it is not clear what significant effects the offsite planting is seeking to mitigate (or which receptors will benefit) and what the residual effects post mitigation would be. It is noted that the draft DCO does not include reference to planting as part of the draft requirements, so

it is unclear whether this mitigation forms part of the DCO application or would be delivered through another mechanism.

Please can the applicant clarify if offsite planting is to be provided as part of the draft DCO? If planting is included in the draft DCO can the applicant please refer the ExA to a plan that identifies the location of the planting, and provide a response that identifies which receptors and effects the planting will mitigate?

If the applicant is relying on this mitigation, but it would not be delivered through the draft DCO, please can the applicant explain how it would be otherwise secured and delivered, if it is not already in place?

If the applicant is relying on mitigation provided through off-site planting, please can the applicant clarify whether they are proposing to provide a maintenance programme for this planting and, if so, whether this would be secured and delivered through the draft DCO or through another mechanism?

The Authority's Response

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?

Question HRA 1.6

To: LPA and Natural England

In combination assessment

Please can the LPA and Natural England confirm whether they agree that the applicant has identified all the relevant 'other plans and projects' for consideration in the applicant's HRA.

The Authority's Response

RCBC are not aware of any other plans and projects at this time for consideration in the applicant's HRA.

Response to Examining Authority's First Round of Questions - Addendum

Background

This Representation includes RCBC's response to questions that have not directly been asked of them, but given their implications has considered it necessary to submit a response.

Question PAR 1.2

To: The Applicant

Alternative means of crossing the A1058

Given the Relevant Representation from Redcar & Cleveland Borough Council (RR-018), please provide a full explanation of the issues that are said to rule out routing the conveyor beneath the distributor road and other parallel transport routes.

The Authority's Response

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.

Fairhurst, acting on behalf of RCBC has reviewed the Options Study Supplementary Report³ 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.

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.

NB: Reference above should be to the A1085

³ Nathaniel Lichfield & Partners: Conveyance of Polyhalite from Wilton to Bran Sands, Teesside Options Study Supplementary Report: 14 August 2015

Question PAR 1.3

To: The Applicant

Crossing the A1058

A particular design is illustrated for the conveyor bridge over the A1058, but with variant alternative designs also shown. Please justify the choice of intended design and/or indicate the scope for incorporation of alternative design approaches. At what point would the final design selection be envisaged? How would the design approval process be controlled by the DCO?

The Authority's Response

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.

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.

NB: Reference above should be to the A1085.