THE YORK POTASH HARBOUR FACILITIES ORDER 201X

Applicant's Submissions from Hearings on 24 and 25 September

Regulation Number 5(2)(q)

Document 8.5

York Potash Limited

2 October 2015

YORKPOTASH
A Sirius Minerals Project

Document 8.5

Applicant's Submissions from the Hearings on 24th and 25th September 2015

These submissions incorporate in one document all the submissions requested of the applicant for submission by Deadline 3, being:

- **Written submissions made in lieu of oral submissions**
- **Summaries of oral submissions; and**
- **Written responses to any questions put to the parties orally by the Ex A**

1. Open Floor Hearing (24th September 2015)

1.1 The OFH heard representations from Ms Christie in relation to environmental impacts of the scheme which were of concern to her.

1.2 The Applicant confirmed it would make available a representative from Royal HaskoningDHV, the environmental advisors to the Applicant responsible for the environmental statement, to Ms Christie to review the documentation with her and to explain the assessments that have been carried out in order to address and satisfy the statutory agencies. This work includes assessments which addressed the subject matter of Ms Christie's concerns.

1.3 The Applicant can confirm that contact has been made with Ms Christie to arrange that review.

2. Compulsory Acquisition Hearing (24th September 2015)

Latest Negotiations

2.1 The Applicant provided an update on the latest negotiations with the various parties in respect of Compulsory Acquisition ("CA"). This is summarised as follows:

2.1.1 **ICI -** The Applicant has an option agreement with ICI Chemicals & Polymers Limited ("ICI") to purchase the freehold of the vast majority of the Order Land and has entered into a further agreement with ICI whereby it has committed that it will only exercise CA powers over unknown rights in relation to that land. ICI has therefore withdrawn its objection to the DCO.

2.1.2 **National Grid** - The Applicant confirmed the ExA's understanding, following a submission by National Grid Electricity Transmission Plc ("National Grid"), that the protective provisions are now agreed with National Grid and will be incorporated in the next version of the DCO.

2.1.3 **Network Rail (NR) -** The Applicant and NR agreed some protective provisions prior to submission of the application. That was confirmed by NR in its late representation. Those protective provisions would have prevented the compulsory acquisition of rights over the NR rail line because it was anticipated that agreement would be reached with NR. It has proved very difficult to progress matters with NR and accordingly the protective provisions were amended in the second version of the DCO so as not to preclude compulsory acquisition of the rights if necessary. The only issue is the commercial arrangement between the

Applicant and NR. NR have never expressed any concerns regarding the principle, or detail, of the conveyor crossing the rail line.

In terms of s.127 (6), NR has never argued that the overhead crossing of the line by conveyor would impact on its operation at all and cannot therefore credibly argue that it would be subject to serious detriment. The Applicant agreed to provide a note in relation to s127 Planning Act 2008 to assist the ExA in the event it becomes necessary to report to the Secretary of State in relation to s127. This note is attached at **Appendix 1** to this document.

2.1.4 **Sembcorp -** The Applicant confirmed that it has now entered into a Deed of Grant with Sembcorp Utilities (UK) Limited ("Sembcorp") which grants the right to construct, operate and maintain the conveyor along the southern route.

Approach to CA

2.2 The Applicant 'set the scene' on its approach to CA and explained that this was to minimise as far as possible any CA. Indeed, as mentioned earlier, and confirmed in the Statement of Reasons (Document 5.1), the Applicant has an option agreement with the freeholder of the vast majority of the Order Land. The only CA being sought is the acquisition of rights and not land.

2.3 In relation to what is referred to as the "pipeline corridor" (running from the MHF along the southern route to the quay), the Applicant is not taking away any known rights or interests and those owners and operators will continue to operate under the same constraints as currently exist and indeed the Applicant will operate within those constraints by virtue of its lease from Sembcorp who retain ownership of the corridor.

2.4 The Applicant confirmed that, with the exception of NR (as discussed above) the only CA sought relates to the contingency for the northern conveyor route and unknown rights over the whole of the Order Land. The Applicant reiterated that the reason for the requirement to retain CA rights over the whole of the Order Land ties back to the nature of the Wilton complex and Bran Sands land which is subject to numerous rights, some of which are simply unknown and the Applicant must protect itself against those unknown rights. This was acknowledged in the hearing to be a prudent measure by Stephen Dagg on behalf of Sabic UK Petrochemicals Limited ("Sabic"), Huntsman Polyurethanes (UK) Limited ("Huntsman") and DEA UK SNS Limited ("DEA").

2.5 The Applicant explained that if the southern conveyor route is constructed, the only CA relates to unknown rights. The southern route has the benefit of minimising CA. The Applicant would like to clarify that there would still be a requirement for the creation of rights by CA over plot 37a which is owned by Tata Steel (UK) Limited ("Tata"). This may not have been clearly expressed at the hearing, however, the need for CA in respect of interests held by Tata is much greater in respect of the northern route.

2.6 The Applicant explained the need to retain both options for the conveyor route and the quays and that position is set out in the note contained at **Appendix 2** to this note.

Pipeline Corridor (Sabic/Huntsman/DEA)

2.7 The Applicant advised the ExA that revised draft protective provisions had recently been received from Bond Dickinson on behalf of Sabic, Huntsman and DEA. The Applicant had not had a chance to review those protective provisions in detail but confirmed that, on an initial review, it seemed that the issues between the Applicant and the pipeline corridor parties were capable of resolution. The Applicant advised the ExA that a very positive meeting was held with these parties on 27th July 2015 and expects that discussions will continue in that positive vein. Stephen Dagg on behalf of those parties confirmed at the hearing that this was also his view.

2.8 The Applicant reminded the ExA that the written representations submitted by these parties made it clear that if and when acceptable protective provisions are agreed the objections to the CA submitted by these parties will fall away. The effect of this would be that, apart from Tata, Sahaviriya Steel Industries UK Limited ("SSI") and Redcar Bulk Terminal ("RBT") in respect of the northern route and the CATs Parties in respect of the southern route there would remain no objections in principle to the proposed CA.

2.9 The Applicant confirmed that the intention is that there will be one set of protective provisions relating to the pipeline corridor to cover all relevant pipeline owners and occupiers. There may be parts of those provisions which only relate to specific owners. The Applicant stressed that the pipelines will continue to operate under the same regime as they do now under the Sembcorp lease and the Applicant will also be required to comply with that regime – it is therefore sensible that the same protective provisions apply for the most part.

Response to Bond Dickinson's (Stephen Dagg) submissions

2.10 The Applicant reiterated that it should be remembered that all parties can coexist happily with sufficient protective provisions in which case the arguments raised by Stephen Dagg relating to private loss-v-public interest do not arise.

2.11 The Applicant repeated its position that it has done its very best to minimise the extent of CA and referred to its earlier comments.

2.12 The Applicant acknowledged the submissions made with regard to the extinguishment of rights and confirmed that there is no intention to extinguish the known rights of the pipeline owners and operators and undertook to revisit the drafting of article 25 and paragraph 3(2) of Schedule 9 in discussions with Stephen Dagg.

2.13 The Applicant submitted that the exercise the ExA was invited to undertake by Bond Dickinson (Stephen Dagg) relating to weighing up private loss v public interest was a false one. Here one is dealing with clear public benefit and pure conjecture of private loss not arising from acquisition of any land. No loss of land is involved and the conjecture relates to potential loss arising from the worst possible scenario with a complete absence of protective provisions. All of which is so far removed from reality that the exercise has no validity.

2.14 On the valid side of the equation – the public benefit – the Applicant drew attention to Section 4 of the Statement of Reasons (Document 5.1) where the Applicant explained in detail how the National Policy Statement for Ports supports the provision of a harbour. The Applicant also explains the importance of the whole York Potash Project from paragraph 4.2.5 onwards including the major development test carried out for the Mine application, the series of effects the

project would have in transforming the regional economy and making a significant contribution to the GDP, in addition to assisting in the provision of fertilizer for the world to grow the food it needs.

2.15 The Applicant made reference to the jobs which will be created by the harbour project and also the wider project.

2.16 The Applicant also advised that on Monday 21st September 2015 the project achieved "pre-qualification" status from HM Treasury for an HMT Guarantee, which acknowledges the nationally significant importance of the project.

Response to ExA question: "If the ExA sought to recommend some of the land be taken out, for example, if only one conveyor route was granted, would the Applicant consider that to be a fundamental change to the DCO originally submitted?"

2.17 For the reasons set out in **Appendix 2**, the Applicant does believe that removing alternative conveyor routes would represent a fundamental change to the DCO. The Applicant would not have included alternative routes as part of the DCO application unless it felt it was absolutely necessary and vital for the scheme to be delivered. It has always been clear that the inclusion of alternatives would result in a more complex DCO. The fact that alternatives are retained demonstrates that the Applicant is convinced it is necessary to retain the flexibility, as explained in Appendix 2. Removing that flexibility from the DCO would result in significant changes and a materially different Order.

Response to ExA question: "Is the expectation that the freehold of the northern corridor land outside of ICI's ownership will be acquired?"

2.18 The Applicant confirmed that the intention is to compulsorily create new rights only over those areas of land and that there is no need to acquire the freehold land from RBT or Tata. On the basis that one should not seek to CA a greater interest than is needed only the CA of rights have been sought.

2.19 The Applicant also clarified that access to the quay will still be required over the southern route if the northern conveyor route is constructed.

Response to ExA question: "Are the land plots different dependent upon the quay option?"

2.20 The Applicant confirmed that the land plots are the same irrespective of which quay is to be constructed (open or solid).

2.21 The Applicant clarified that the NWL jetty is to be demolished as part of Works No. 1 and that the Applicant will step into the occupancy of the jetty as part of its arrangements with Northumbrian Water Limited. That agreement is almost finalised.

Response to ExA question: "Why are there alternative options for the quay construction, is it cost related?"

2.22 The Applicant stressed that both quay options have been assessed and are acceptable. The Applicant referred to the explanation in the Explanatory Memorandum (Document 4.2) and explained that it is not based on cost. The combination of factors are set out in paragraph 11.2 of the Explanatory Memorandum. This enables a sensible choice when the contractor is appointed and availability at the time of construction.

2.23 In response to a query by the ExA as to whether the quay construction might assist in DEA's concerns over dredging the Applicant undertook to further explain the dredging position and that explanation is contained at **Appendix 3** to this note.

Response to ExA query over reference to Cleveland in the Funding Statement

2.24 The Applicant confirmed that the reference in the Annual Report is to Cleveland USA and not Cleveland Potash.

3. Issue Specific Hearing – Development Consent Order (25th September 2015)

3.1 At the outset of the hearing ExA requested the Applicant to submit copies of the completed Section 106 Agreements and issued decision notices relating to the Project together with an update on the latest position on the Mine/MTS permission from the NYMNPA. The following documents are therefore attached at **Appendix 4** to this note:-

3.1.1 Decision Notice NYM/2014/0864/FL – Operational Park and Ride dated 12 August 2015;

3.1.2 Decision Notice 15/00195/FL – Temporary Construction Workers Village and Park and Ride dated 20 August 2015;

3.1.3 Decision Notice R/2014/0626/FFM – Material Handling Facility dated 14 August 2015;

3.1.4 Section 106 Agreement dated 13 August 2015 between the Council of the Borough of Redcar and Cleveland, the Homes and Community Agency and the York Potash Processing & Ports Limited relating to the above permission (Material Handling Facility);

3.1.5 Decision Notice R/2014/0627/FFM dated 19 August 2015 – Mine/Mineral Transport System (RCBC) permission; and

3.1.6 Section 106 Agreement dated 19 August 2015 between the Council of the Borough of Redcar and Cleveland, the Homes and Community Agency and the York Potash Processing & Ports Limited relating to the above permission (Mine/MTS).

3.2 The latest position with regard to the Mine/MTS permission relating to the NYMNPA application is that a meeting took place on Thursday 1 October with a view to finalising the s.106 agreement relating to that permission. It is anticipated that the agreement will be concluded and the planning permission issued imminently.

Outline of changes made in the second draft Development Consent Order

3.3 The Applicant provided an outline of the changes made to the draft DCO contained in the second version of the DCO submitted on 7 September 2015 for Deadline 2. The Applicant explained that the changes are broadly explained in paragraph 1.3 of the Explanatory Memorandum (Document 4.2A) and explained that the principal changes resulted from four matters. These were:-

3.3.1 general drafting amendments which resulted from the Applicant's answers to ExA Q1;

3.3.2 additional provisions in response to the points agreed with the MMO in relation to the deemed marine licence and consequential provisions to the Order resulting there from;

3.3.3 provisions in relation to the conveyor route being amendments to the compulsory acquisition provisions so that there should be no compulsory acquisition powers over the route which is not used and changes to the requirements to secure that position; and

3.3.4 additional protective provisions in response to discussions with third parties.

3.4 The Applicant explained that there were also two further documents amended as a result of changes to the DCO; these were the Parameters Table (Document 6.9A) and the Governance Tracker (Document 6.8A). Those changes were made to bring the documents into line with responses to the ExA Q1 and commitments made therein.

Discussion of specific points in the draft DCO

3.5 In response to a point made by the ExA in relation to Requirement 6(2) regarding whether a caveat should be inserted to ensure that any alteration to the CEMP would not prevent the delivery of mitigation identified in the Governance Tracker, the Applicant confirmed that an amendment will be made to that requirement to make this clear and clarified that the addition to article 37 (the insertion of paragraph 2) is an overarching provision and will apply to Requirement 6(2).

3.6 The Applicant also explained that one of the amendments to the second draft DCO was to clarify that the jurisdiction of PD Ports as harbour authority did not extend to the land element of the Order limits – i.e., the jurisdiction only applies to development within the river. The Applicant agreed to explain that amendment further in the Explanatory Memorandum in due course.

3.7 In response to the ExA's query with regard to whether a requirement should be inserted in the draft DCO to cover the disposal of contaminated silt, the Applicant undertook to consider this matter further. The Applicant considers that this matter should be properly dealt with in the DML (affecting only the area below mean high water springs) and has expanded condition 36 of the DML to provide that the contaminated silt be transported only by barge unless otherwise agreed.

3.8 Following a discussion in relation to the draft Development Consent Obligation, the Applicant offered to provide a note in relation to CIL compliance and that note is attached at **Appendix 5** to this note.

3.9 In response to a point made by Bond Dickinson on behalf of Sabic, Huntsman and DEA in relation to the limits of deviation currently provided by Article 4 specifically in relation to Works No. 4, the Applicant agreed to consider further whether to remove the flexibility to deviate laterally by up to 20 metres. The Applicant has removed this flexibility with regard to Works No. 4 and the elevated conveyor works are now confined to the envelope shown as Works No. 4 on the Works Plans (Document series 2.2).

3.10 With regard to the point made by Bond Dickinson in relation to Article 6, where concern was expressed regarding the impact of that article on the pipeline corridor, certain activities have been excluded from the pipeline corridor by the addition of 6 (3) (b) in the new draft DCO (Document 4.1B).

3.11 In relation to Article 11, it was agreed that the powers relating to streets would be considered further between the Applicant and Bond Dickinson and any required amendments and any required protection could be secured through the protective provisions.

3.12 With regard to the points made by Bond Dickinson on Article 30 in relation to temporary possession, the Applicant agreed to consider further the points made and make any necessary amendment to the Order. The Applicant has reviewed the article again and considers that the position is protected by Article 30(3)(a) which states that the undertaker may not remain in possession of the roundabout after the end of the period of one year beginning with the date of completion of the roundabout works. This period is required to ensure that any maintenance of those works can be undertaken. The Applicant does not intend to retain exclusive possession of the roundabout but must retain the ability to maintain works as is the normal cost of events for any highway works. This of course does not alter the fact that the roundabout is located on public highway. In addition, Requirement 5 requires that the works be done before the remainder of the authorised development is commenced.

3.13 In response to a request from the ExA for clarity in relation to the extent of dredging, the Applicant offered to provide a note of clarification in relation to Technical Note 12 which was contained at Appendix 4 to Document 8.3 (the Applicant's response to Written Representations). As mentioned above, this note is attached at **Appendix 3** to this note.

3.14 In response to comments made by the MMO in relation to the deemed marine licence, the Applicant has decided to amend the timeframe for that at paragraph 17(2) of the DML to 28 days. This change has been made in the revised draft DCO (Document 4.1B). Further minor amendments are awaited from the MMO as referred to by its representative at the hearing.