The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

The York Potash Harbour Facilities Order 201X

Examining Authority's Report of Findings and Conclusions

and

Recommendation to the
Secretary of State for Transport

Examining Authority

Peter Robottom MA(Oxon) DipTP MRTPI MCMI

20 April 2016

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The Planning Inspectorate

ERRATA SHEET – The York Potash Harbour Facilities Order 201x – Ref TR030002

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport, dated 20 April 2016

Corrections agreed by the Examining Authority prior to a decision being made

Page No.	Paragraph	Error	Correction
7	1.4.1	"Middlesb**o**rough"	"Middlesbrough"
12	2.1.5	"… sewage disposal work of …"	"… sewage disposal work**s** of …"
24	3.6.11	"license"	"licen**c**e"
30	4.1.3	"Habitats Regulation Assessment"	"Habitats Regulation**s** Assessment"
30	4.1.3	"licencing"	"licen**s**ing"
33	4.4.6	"While it is recognised that the could be …."	"While it is recognised that the**re** could be …."
40	4.6.22	"…. Phase 2 levels would be relate to …."	"…. Phase 2 levels would be relate**d** to …."
51	5.3.13	"Requirement 6"	"Requirement **9**"
54	5.4.5	"… which would is defined …"	"… which ~~**would**~~ is defined …"
56	5.5.6	"maters"	"mat**t**ers"
61	5.8.4	"… but as it loss …."	"… but as it**s** loss …."
68	5.11.2	"… and in relation works …"	"… and in relation **to** works …"
68	5.11.3	"…. an application MMO for a licence, a FDC wavier is …"	"…. an application **to** MMO for a licence, a FDC wa**iv**er is …"
78	5.16.1	"NPs"	"NP**S**"
81	5.17.3	(2nd bullet) "… nor that the …"	"… nor that **of** the …"

Page No.	Paragraph	Error	Correction
106	8.2.14	"… does seek modify …"	"… does seek **to** modify …"
112	8.4.16	"… and reserves rights …"	"… and reserve**d** rights …"
117	8.6.5	"… to these area within …"	"… to these area**s** within …"
121	8.7.1	"Middlesb**o**rough"	"Middlesbrough"
124	8.7.11	"… line of site under …"	"… line of **sight** under …"
126	8.7.21	"(MALP)"	"(MA**H**P)"
129	8.7.29	"As referred to in paragraph 8.7.29 below, …"	"As referred to in paragraph 8.7.**32** below, …"
133	8.7.42	"… otherwise affect to complex."	"… otherwise affect **the** complex."
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153	8.9.27	"licenced"	"licen**s**ed"
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162	9.7.5	"Requirement 9", solely in the final instance.	"Requirement **10**"
171	10.1.15	"… may safety conclude …"	"… may safe**l**y conclude …"

Examining Authority's findings and conclusions and recommendation in respect of The York Potash Harbour Facilities Order 201X

File Ref TR030002

The application, dated 27 March 2015, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 27 March 2015.

The applicant is York Potash Limited (YPL).

The application was accepted for examination on 21 April 2015.

The examination of the application began on 21 July 2015 and was completed on 21 January 2016.

The development proposed comprises a harbour facility at Bran Sands, Teesside on the south bank of the River Tees for the bulk shipping of polyhalite. The harbour facilities are proposed to be served by a conveyor system to transfer the finished material product to the site from a Materials Handling Facility that has been granted planning permission by Redcar & Cleveland Borough Council (RCBC) within the Wilton chemicals complex. The scheme includes facilities to enable the bulk loading of vessels including a new quay with ship loading facilities and berthing area.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.

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1 INTRODUCTION

1.1 INTRODUCTION

1.1.1 This application is a re-submission of an earlier application made on 19 December 2014 that was withdrawn on 14 January 2015 to enable clarification of certain aspects of the proposals and improvement of the application documentation.

1.1.2 The re-submitted application was received on 27 March 2015. It was lodged because the Order scheme proposes construction of a nationally significant infrastructure project (NSIP), being a harbour facility that meets the criteria set out in s24 of the Planning Act 2008 (PA2008). The facility is described in chapter 3 of the accompanying Environmental Statement (ES) (Document 6.4) [APP-191] as being designed for a throughput of 13 million tonnes of bulk materials per annum. The criterion in s24(3)(c) to constitute a NSIP is that the capacity for bulk cargo must exceed 5 million tonnes per annum.

1.1.3 Having carefully considered the application and supporting documentation, the application was accepted for examination by the Secretary of State on 21 April, all necessary statutory requirements being deemed met [PD-003]. The application was regarded as being of a satisfactory standard supported by the requisite supporting documents in order to identify the proposed works and assess environmental, social and economic implications as required by s55(3)(f) and s55(5A) of the PA2008.

1.1.4 The application forms part of the wider York Potash Project (YPP) which comprises the development of a new underground mine for the winning and working of polyhalite (a form of potash and a natural fertiliser) and its handling and transportation to national and international markets. The wider project comprised a cross boundary planning application in respect of the mine (including a minehead at Doves Nest Farm, south of Whitby) and a Mineral Transport System (including 3 ventilation/construction shafts) submitted to the North York Moors National Park Authority (NYMNPA) and Redcar & Cleveland Borough Council (RCBC). It also included an application for a Materials Handling Facility (MHF) which was submitted to RCBC. The Marine Management Organisation had previously granted a marine licence for extraction of potash from beneath the North Sea in January 2013. This licence is valid until 2037 (Document 7.3) [APP-019].

1.1.5 During the course of the Examination, the planning applications made under the Town & Country Planning Act 1990 (TCPA1990) were granted approval and approval was also given to some further applications for ancillary development. The development subject of this application for a DCO is the only part of the wider project that has not yet been consented in principle. The development proposed in the draft DCO comprises a harbour facility at Bran Sands, Teesside on the south bank of the River Tees for the bulk shipping of polyhalite. The harbour facilities are proposed to be served by a conveyor system to

transfer the finished material product to the site from the MHF. The MHF has been granted planning permission by RCBC within the Wilton chemicals complex. The scheme includes facilities to enable the bulk loading of vessels including a new quay with ship loading facilities and berthing area. The entire site, apart from the most northerly extent of proposed dredging within the River Tees which is within the area of Stockton-on-Tees Borough Council, is situated within the administrative area of RCBC.

1.1.6 The applicant gave notice of acceptance of the application with certificates under s58(2) and s59 being received by the Planning Inspectorate on 10 June 2015, thereby enabling the appointment of an Examining Authority (ExA).

1.1.7 The Order works comprise development that requires an Environmental Impact Assessment under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 as amended by the Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2012 (the EIA Regulations). It was therefore accompanied by an Environmental Statement (ES) (Document 6.4) [APP-188] together with a non-technical summary (Document 6.7) [APP-186 and APP-187]. Various technical appendices provide supporting information for the assessment provided in the main ES (Document 6.5) [APP-185] and, as required by the EIA Regulations, there is a Cumulative Impact Assessment both of the various effects relating to the harbour project itself and also of the wider YPP and any other relevant projects (Document 6.6) [APP-129].

1.1.8 The application was also accompanied by a Habitats Regulation Assessment (HRA) report (Document 6.3) [APP-127 and APP-128] as required under the Conservation of Natural Habitats and Species Regulations 2010 (as amended).

1.2 APPOINTMENT OF EXAMINING AUTHORITY

1.2.1 I, Peter Robottom, was appointed as ExA on 10 June 2015.

1.3 THE EXAMINATION AND PROCEDURAL DECISIONS

1.3.1 On 19 June 2015, I issued an invitation to a Preliminary Meeting [PD-004]. The ExA's letter enclosed a preliminary timetable for the Examination and my initial assessment of principal issues as annexes in accordance with the requirements of the PA2008 and Examination Guidance published by the Department of Communities and Local Government (DCLG) in March 2015.

1.3.2 The Preliminary Meeting was held at the Redcar Leisure and Community Heart on 21 July 2015 [EV-001]. By letter of 27 July 2015 the formal timetable for the Examination was circulated and notice given of the publication of the ExA's first round of questions [PD-005 and PD-006].

1.3.3 An Open Floor Hearing (OFH) was held on 24 September 2015 followed by a Compulsory Acquisition Hearing (CAH), with an Issue Specific Hearing (ISH) on the wording of the DCO on the following day, 25 September 2015. All hearings were held at the Redcar Leisure and Community Heart.

1.3.4 By letter dated 16 October 2015, I gave notice of a variation to the timetable with the intention of completing the Examination during 2015 [PD-007]. On the same date the ExA's second round of questions were published [PD-008] with the expectation that any outstanding matters would be able to be resolved at a final CAH and a further ISH into the DCO wording that was held at Redcar Leisure and Community Heart on 24 November 2015. The following day the ExA's Report on the Implications for European Sites (RIES) [PD-009] and an ExA version of the draft DCO [PD-010] were published for comment with responses sought during December. The responses sought included responding to some specific further questions that had been raised during these hearings [PD-011].

1.3.5 Late comments raising certain new issues and continuing argument over issues discussed at the hearings required issue of a Rule 17 request on 6 January 2016 [PD-012] so that the Examination could not be closed until the statutory deadline of 21 January 2016 [PD-013]. A full timetable of the Examination is set out as Appendix A to this Report.

1.4 SITE VISITS

1.4.1 Before and during the Examination I undertook a number of unaccompanied site visits to the vicinity of the application site. This included viewing the point at which the proposed overhead conveyor system would cross the A1085 just to the west of the roundabout junction that provides access into the Wilton chemicals complex and into the Redcar Bulk Terminal and Redcar steel works site. I also visited the western edge of Dormanstown from which the proposed conveyor system would be visible and I travelled by train on a number of occasions on the line between Middlesborough, Redcar Central and Saltburn-on Sea. The latter trips enabled me to gain further views of the point at which the proposed conveyor system would enter the Bran Sands site and of its proposed crossing over both the public Network Rail line and the privately owned and operated hot metal line and associated roadway of Tata Steel and related companies. I was able to witness the movement of mineral trains serving the existing Boulby Potash mine operated by Cleveland Potash.

1.4.2 I also undertook unaccompanied visits to the sites of the three proposed ventilation/construction shafts of the proposed Mineral Transport System at Tocketts Lythe near Guisborough, Lockwood Beck and Ladycross Plantation and to the proposed minehead at Doves Nest Farm near Sneaton, south of Whitby. This enabled me to assess any potential issues of cumulative visual impact whether during

construction or operation of the wider YPP scheme. In addition I made an unaccompanied site visit to the historic port of Whitby.

1.4.3 As the site for the proposed port itself and the greater part of the proposed overhead conveyor system is situated on privately owned land only accessible through security-controlled entry arrangements, an accompanied site visit was undertaken on 23 September 2015 commencing at the Sembcorp Wilton International Visitor Centre within the Wilton chemicals complex. From there, after receiving safety training, accompanied by representatives of the applicant and a number of Interested Parties (IPs) including commercial interests and RCBC, the itinerary took in a more detailed look at the prospective relationship between the western edge of Dormanstown and the overhead conveyor system, the crossing point over the A1085, and the proposed temporary construction access from the roundabout that serves the security gates and Dormanstown. Within the secure sites, the crossing points over the highway and rail lines were viewed together with the Northumbrian Water (NWL) sewage treatment works and its outfall into Dabholm Gut, the NWL jetty and the river frontage where the new quays would be constructed. We were also able to view the Bran Sands lagoon where ecological mitigation works are proposed, existing pipeline corridors and related infrastructure together with both of the proposed alternative southern and northern conveyor corridors.

1.4.4 The itinerary for the accompanied site visit has reference [EV-003].

1.5 OTHER CONSENTS REQUIRED

1.5.1 The answer to my question EC 1.10 stated that Natural England do not anticipate that any protected species will be impacted by the proposed development and that consequently letters of 'no impediment' to the grant of protected species licences are not required [REP1-015]. This is confirmed in the Statement of Common Ground with Natural England [REP1-051].

1.5.2 The applicant's answer also indicated that an environmental permit[1] will be required for works within the Bran Sands landfill site and that an environmental permit will be required to discharge of water into the River Tees during the habitat enhancement works in the Bran Sands lagoon. Discussions with the Environment Agency (EA) had not indicated that there are any known impediments to the grant of such permits [REP1-028].

1.5.3 Deposit of dredged material is governed by the Deemed Marine Licence (DML) which is set out as Schedule 5 to the draft DCO. During the Examination the applicant confirmed that contaminated dredgings that cannot be disposed of at sea nor used on site would be deposited in existing landfill sites licensed for receipt of such material.

[1] Or a variation of the existing permit currently held by ICI

Consequently, no further permits should be required in relation to the disposal of this material.

1.6 REQUESTS TO BECOME OR WITHDRAW FROM BEING AN INTERESTED PARTY (S102A, S102B AND S102ZA).

1.6.1 There were no specific requests made to be added to the list of 20 Interested Parties (IPs) that made Relevant Representations, nor were there any express requests to withdraw from such status by any of these bodies or persons nor from those who have the status of statutory consultees. The ExA exercised discretion to accept representations from Ms Gill Christie and Northumbria Water Ltd that were not made in accordance with the Infrastructure Planning (Interested Parties) Regulations. The latter body already had status as an IP by virtue of being an Affected Person (AP) in relation to the compulsory acquisition powers sought in the draft Order and it is also a statutory consultee.

1.6.2 Ms Christie was thereafter treated as if she was an IP. I exercised the fullest discretion available to me to accept written and oral submissions from IPs and others throughout the Examination, including accepting representations from Network Rail Infrastructure Limited and Sembcorp Utilities (UK) Limited at the Preliminary Meeting.

1.7 OBLIGATION GIVEN TO SUPPORT APPLICATION

1.7.1 The application was accompanied by the heads of terms of an intended planning obligation between the land owners, YPL and RCBC (Document 7.4) [APP-033].

1.7.2 Prior to the close of the Examination a completed signed and sealed planning obligation was submitted [REP4-062]. This secures off-site mitigation measures.

1.8 STRUCTURE OF REPORT

1.8.1 The following Section 2 more fully describes the application proposals and the minor alterations and clarifications that were made during the course of the Examination. Section 3 addresses the legal and policy framework within which the application has to be considered and section 4 how this relates to the issues identified during the Examination.

1.8.2 In section 5, I give substantive consideration to the environmental and other issues that are engaged by the application, although as the key ecological issues arise in relation to the potential for likely significant effects (LSE) on the Teesmouth and Cleveland Coast Special Protection Area (SPA) and Ramsar site, this issue is more fully addressed in section 6 in respect of the Habitats Regulations Assessment. Again while safety and security will be addressed in section 5, the concerns of statutory undertakers and commercial interests in relation to their assets within and adjacent to the

application site will be given further consideration in section 8 as they have land interests that are subject to or potentially affected by the compulsory acquisition (CA) provisions that are contained within the DCO. The appropriateness of including CA powers in the alternative will be considered in that section after concluding on the planning balance in section 7.

1.8.3 Finally, in section 9 I give detailed consideration to the wording of the DCO, including how it has evolved over the course of the Examination period, before a summary of my conclusions and recommendations in section 10.

2 MAIN FEATURES OF THE PROPOSAL AND SITE

2.1 THE APPLICATION AS MADE

2.1.1 The applicant, YPL, is a wholly owned subsidiary of Sirius Minerals Plc. The latter is a fertiliser development company listed on the London Stock Exchange's AIM market. The Company's 2015 annual Report [REP1-030] states that Sirius Minerals is primarily focussed on the development of what it describes as the world's largest and highest grade polyhalite deposit which is located in the United Kingdom, namely the YPP. Polyhalite, also known as POLY4[2] the company's trademarked product, is described as a unique multi-nutrient fertiliser that can be used to increase balanced fertilization around the world. While the company expresses a commitment to developing a portfolio of products and continuing to review opportunities around the globe that fit the company's long-term strategy to become a leading global fertiliser producer[3], the annual report indicates that activities are focussed through YPL whose activity is described as resource evaluation and exploration. A separate subsidiary company of Sirius Minerals Plc, York Potash Processing & Ports Limited, holds options to purchase land.

2.1.2 The covering letter accompanying the application describes the application as seeking consent for:

(1) the construction and operation of a quay structure for the export of polyhalite on the River Tees at Bran Sands to facilitate the mooring of vessels in the estuary directly adjacent to an onshore harbour facility and allow ship loader access;

(2) dredging of the approach channel and berth pocket;

(3) the construction of ship loaders on the quay to load the mineral product onto ships;

(4) the erection of surge bins for management of the flow of polyhalite during ship loading;

(5) a conveyor system to transport the polyhalite connecting the Materials Handling Facility (MHF) within the Wilton International chemicals complex to the harbour; and

(6) ancillary infrastructure.

2.1.3 The development is described more fully in Schedule 1 of the draft DCO (Documents 4.1) [APP-003] and shown on the Works Plans 2.2A-F [APP-051 to APP-057] as submitted.

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[2] 14% Potassium, 19% Sulphur, 6% Magnesium and 17% Calcium
[3] Overseas subsidiaries are indicated on the corporate structure diagram, although the 2015 annual report indicates that most of these are not currently operating [REP1-029]

2.1.4 The order land extends to an area of approximately 92.4 hectares from the Wilton International chemicals complex north-westwards to Bran Sands on the south bank of the River Tees. The majority of the area is undeveloped and not in use although it is criss-crossed by infrastructure including roads, railway lines and pipelines.

2.1.5 A rectangular area within the outer limits is excluded from the Order land. This comprises the sewage disposal work of NWL and part of the area of the former Bran Sands landfill site. This was formerly operated by ICI, but the use ceased in 2007 when the waste facility was capped and the surface re-profiled. A narrow featureless strip of land adjoining the foreshore separates the River Tees from the Bran Sands lagoon that occupies a significant part of the application site. A jetty that has been used by NWL for sludge disposal operations occupies a discrete western portion of the river frontage adjoining the inlet known as Dabholm Gut. A pipe corridor runs along the south western boundary of the application site. This land is leased to Sembcorp Utilities UK Limited and is broadly the proposed alternative Southern conveyor corridor. The Northern alternative conveyor corridor occupies a strip of land along the north side of the lagoon, tip and sewage disposal works before turning south to reach the pipeline corridor in the vicinity of the Network Rail railway line.

2.1.6 The strip of the application site that links up the site to the MHF is crossed by a number of infrastructure corridors including the public Network Rail railway line, the access road bridge and hot metal railway serving the Redcar Bulk Terminal (RBT) and Redcar steel works site, national grid power lines, several minor access roads serving parts of the Wilton Industrial Estate and the Bran Sands area and the main A1085 road. The small area within the Wilton International chemicals site is largely undeveloped mainly flat featureless scrubland, although a coal yard operated by M & G Fuels is also crossed. A railway line that previously served part of the chemicals site forms the eastern boundary of the MHF site. It would remain available for potential use.

2.1.7 To the north, the Order land is adjoined by the RBT, which fronts the River Tees downstream of the site and has been used for coal and iron-ore imports, and the Redcar Steel works that until its closure in Autumn 2015 was most recently operated by Sahaviriya Steel Industries UK (SSI). To the south, across the Dabholm Gut inlet, lies the main operational area of Teesport which is one of the largest deep-water ports in the United Kingdom and includes roll-on/roll-off facilities and the Tees Dock Bulk Terminal operated by Cleveland Potash for the distribution of potash (primarily in the form of muriate of potash containing chlorine rather than polyhalite) and salt. Approximately 250 m east of that part of the application site that would be occupied by the proposed conveyor system linking to the MHF is the edge of the residential area of Redcar known as Dormanstown.

2.1.8 Work No 1 consists of dredging the approach channel and berth pocket within the River Tees including demolition of the existing NWL jetty.

Work No 2 comprises the construction of a new quay in two phases either by means of solid construction or open construction[4]. Erection of ship loaders and surge bins are included within this work, as is modification of an existing pipe between the River Tees and Bran Sands lagoon and provision of an additional connecting pipe for flow control between the areas of Works Nos 1and 3.

2.1.9 Work No 3 comprises lagoon enhancement works within the Bran Sands lagoon and Work No 4 comprises construction of a linking conveyor system from the MHF. This would run either along what is called the southern corridor adjacent to Dabholm Gut or along the northern corridor which involves two right angle turns to take the conveyor around the NWL sewage treatment works and thence along the boundary of the Redcar Steelworks site and that of the RBT to the bank of the River Tees. Work No 5 comprises various ancillary works to provide transfer towers, roadways, foundations, fencing and similar works, largely of an intended permanent nature. Works Nos 6B and 9 provide for the construction of substations, a general services building and related car parking and sewage disposal facilities. Works Nos 6A, 7, 8, 10 and 11 relate to temporary construction compounds and Work No 12 to the provision of a temporary construction access to the roundabout on the A1085 that serves the security gates in order to bypass that which serves the Wilton Complex (which will be the permanent access to the harbour facilities). This would avoid the headroom restrictions of the access beneath the A1085 within the secure site.

2.1.10 I did question the division between the works stated within Schedule 1 as being integral and those titled as 'Associated Development', but in an answer to the first ExA schedule of questions[5], the applicant justified the distinction between Works Nos 1and 2 that describe the works necessary to create the new harbour facilities and so bring the works within the definition of a NSIP and the remainder of the works which are specified as being associated development. They rightly point out that the conveyor system in Work No 4 is only one way in which material could be transported to the quayside so it should not be regarded as integral. Otherwise the remainder of the works cited in Work No 3 and Works Nos 5-12 are akin to the general types of associated development listed in Annex A to the DCLG Guidance dated April 2013.

2.1.11 Some of the specified works refer explicitly to the inclusion of ancillary development, but there is a further provision at the end of Schedule 1 that would authorise further ancillary development within the Order limits but excluding the lagoon area provided that these works would not give rise to any significant environmental effects that have not been assessed in the ES.

[4] Both forms of construction are fully considered in the ES.
[5] Answer to question DCO 1.13 [REP-028]

2.1.12 Because some of the works proposed in the draft DCO involve activities below mean high water spring tide, Schedule 5 to the draft DCO comprises a draft Deemed Marine Licence (DML) to regulate those activities.

2.1.13 The Location Plan (Document 3.1) is [APP-062]. As submitted, the Land Plans comprise [APP-036 to APP-050], the Works Plans [APP-051 to APP-057], Layout Plans and Elevational Drawings [APP-076 to APP-122], Conveyor Plans [APP-063 to APP-071] and Access Plans [APP-058 to APP-061] and [APP-075]. An ease of reference A3 bundle of drawings was also provided at [APP-072 to APP-074].

2.2 THE APPLICATION AT THE CLOSE OF EXAMINATION

2.2.1 During the Examination, the applicant proposed a number of amendments to the application drawings and more particularly to the wording of the draft DCO and its schedules including to the requirements in Schedule 2, the Deemed Marine Licence in Schedule 5 and the various schedules of Protective Provisions to safeguard the interests of statutory undertakers and commercial enterprises with assets in or adjacent to the Order land.

2.2.2 Having regard to the tests in the PA2008 (as amended) and in the Examination Guidance issued by the DCLG, I do not consider that any of the amendments amount to changes that required formal procedures to be undertaken. The amendments were essentially to 'tie down' the proposed development more closely by restricting limits of deviation in respect of certain aspects of the proposed works, and to provide greater certainty as to the process for approval of details and securing mitigation or to more fully detail Protective Provisions.

2.2.3 In essence all the amendments arose as a consequence of representations from IPs or in response to matters that I had raised. In all instances, all participants were made fully aware of the amendments and given opportunity to comment. The amendments were all published on the Examination website so that there was full opportunity for new participants to become involved. However, there is no obvious reason why there would have been any likelihood of new participants. This is because all the amendments made were designed to limit the potential adverse effects of the DCO as originally submitted and to avoid the inclusion of wider powers for compulsory acquisition than necessary to implement one of the alternative conveyor routeings.

2.2.4 The most notable amendments include those in response to the ExA's first round of questions to provide amended drawings for permanent compounds A and C showing the location of permanent screen fences to provide ornithological mitigation relied on to reach the conclusion in the applicant's HRA that adverse effects on the integrity of the Teesmouth and Cleveland Coast SPA and Ramsar site can be excluded. An Outline Construction Environmental Management Plan (CEMP) and Ecological Management Plan (EMP) were submitted at this stage, but

both these documents simply add detail to the mitigation measures intended and demonstrate how the measures would be delivered in practice, as does the subsequent provision of a draft Mitigation and Monitoring Strategy (MMS) and incorporation of certification of the Governance Tracker within the DCO.

2.2.5 The first revision of the draft DCO that was submitted on 7 September 2015 introduces a definition of Phase 1 (280 m length) and Phase 2 (extended to 486 m length) for the quay works and also defines the two alternative conveyor corridors, these latter definitions enabling effect to be given to restrictions on the exercise of the Compulsory Acquisition Powers introduced into Article 24 and Schedule 3. These require notice to be given of which conveyor corridor would be utilised and for the power to exercise compulsory acquisition powers over land or rights only required for the other corridor to lapse. The limits to deviation in relation to Works Nos 1-3 are also removed to define the scheme works more precisely. There are significant amendments to Article 30 relating to the temporary use of land, but while these clarify that such occupation may be for maintenance as well as construction purposes, various time limitations are imposed together with clarification of compensation provisions. Otherwise the provision of Constructability Notes, the additions to schedules of Protective Provisions, amendments to requirements in Schedule 2 and conditions in the DML in Schedule 5 are all designed to respond to consultees, to provide safeguards and limitations including further mitigation.

2.2.6 Following the September hearings, the DCO was further amended to remove the limit to deviation in respect of Work No 4 so that the envelope for the overhead conveyor system is precisely defined. A definition of the pipeline corridor was also introduced into the draft DCO and restrictions on the kind of works that may be undertaken within that corridor inserted as Article 6(3)(b) in order to address concerns of owners of assets within that corridor. A definition of a materials management plan is also introduced together with a requirement for use of barge transport to remove contaminated silt to a licensed disposal site as condition 36(6) of the DML in Schedule 5 in order that any contaminated material removed is safely handled and removed for disposal. As with previous amendments these changes are intended to limit the potential effects of the DCO scheme.

2.2.7 In the context of responding to the ExA's Second Schedule of questions, amended Land Plans were submitted to demarcate the areas required as to whether the southern or northern conveyor corridors would be utilised [REP4-015], [REP4-017] and [REP4-018] together with amended drawings of the conveyor routes [REP4-046 to REP4-051] and ground layout plans [REP4-038 to REP4-045] for both routes. These incorporate minor revisions in the light of receipt of more detailed information on the routings of underground pipelines, in particular in relation to the CATS gas pipeline in order to ensure that the conveyor alignments would enable footings for supports to be clear of these underground assets. A revised layout for temporary construction compound D was submitted for similar reasons [REP4-

052]. Plans of the pipeline corridor were also submitted to relate to the restrictions referred to above in Article 6(3)(b) [REP4 -033] The revisions to the draft DCO provided at that time and in relation to the hearings held on 24 November incorporated substantial revisions to the Protective Provisions in Schedules 9 and 10 for the protection of pipelines and assets over-sailed in order to respond to concerns of asset owners. A detailed plan was also provided of the intended access arrangements around the nearest legs of the RBT conveyor system should the northern conveyor corridor be utilised [REP4-037]. All these amended or additional details and provisions are within the Order land and intended to safeguard the interests of land or asset owners that might otherwise have been affected.

2.2.8 Finally, in the versions of the draft DCO submitted shortly before the close of the Examination in the light of discussion at the November hearing and ongoing negotiations with asset owners, certification of a plan of the Wilton complex was introduced into Article 38 in order to give effect to Protective Provisions in Schedule 9 to safeguard access to that complex during construction. This plan had been provided by pipeline operators as Annex 2 to their response to the ExA's Second Schedule of questions [REP4-002, REP4-004 and REP4-012]. The texts of Schedules 9 and 10 were further amended to address additional points arising from negotiations with asset operators. These amendments were accompanied by a revised plan of proposed access arrangements around the nearest RBT conveyor supports that had been agreed between the applicant and RBT and Tata Steel [REP6-022]. There were further changes to requirements in Schedule 2 to meet a request from Historic England and to conditions in the DML in Schedule 5. These included extending the licence period to 20 years. While this might seem like an extension of the provisions of the draft DCO, it is simply to ensure consistency in relation to the phasing provisions elsewhere within the draft DCO and is not opposed by the Marine Management Organisation (MMO). Lastly, the lagoon area was added to those parts of the site to which the restrictions of Article 6(3)(b) would apply.

2.2.9 As with earlier amendments all these amendments aim to govern more tightly the way in which construction would be controlled or provide safeguards for asset owners while ensuring internal consistency within the provisions of the draft DCO. I am therefore satisfied that the amendments to the draft DCO and related documentation leave the proposed Harbour Facilities scheme in substance materially unchanged from the original submission, but more fully detailed and defined and with greater safeguards in place to protect assets and secure mitigation.

2.3 RELEVANT PLANNING HISTORY

2.3.1 The previous planning history of the site and adjacent areas includes many applications for pipelines and other infra-structure as well as applications relating to the now closed Bran Sands landfill site and the NWL sewage treatment plant that occupies a rectangular area

surrounded by the Order land. These applications are set out in Appendix 2 of the Planning Statement included within the application documents (Document 7.1) [APP-018]. Save to the extent that some identify elements of infrastructure to which protective provisions are proposed to apply and some of which were subject to arguments in relation to risk assessment, none relate directly to the DCO application.

2.3.2 The only NSIP proposal previously affecting the application site as a whole is the earlier version of the current proposal that was withdrawn as indicated in paragraph 1.1.1 of this report. The route of the proposed electricity connector to Teesside to serve Dogger Bank A & B off-shore windfarms was considered potentially to affect assets of IPs seeking protective provisions in relation to the works contained within this DCO. The conclusions of the Secretary of State for Energy and Climate Change on those protective provisions in approving the making of that DCO were regarded as relevant considerations in respect of the current harbour scheme.

3 LEGAL AND POLICY CONTEXT

3.1.1 The applicant addressed the legal and policy context for the harbour scheme in the Planning Statement which was included within the application documents (Document 7.1) [APP-018] and in the ES (Document 6.4) [APP-188] and HRA (Document 6.3) [APP-127 and APP-128]. These latter documents are more fully described in paragraphs 1.1.7 and 1.1.8 of this report.

3.1.2 The great majority of the application site is within the area of RCBC and only one Local Impact Report (LIR) was submitted from that authority [REP1-046]. RCBC also agreed Statements of Common Ground (SoCGs) with the applicant [REP1-048 and REP1-050]. There were also a number of SoCGs that set out the legal powers under which a number of statutory consultees made their representations, namely Highways England (HE), the Environment Agency (EA) and Natural England (NE) [REP1-049, REP1-051 and REP1-052].

3.2 PLANNING ACT 2008

3.2.1 As the National Policy Statement (NPS) for Ports has effect, this application for a Port that constitutes a NSIP under s24(3)(c) of the PA2008 has to be determined under the provisions of s104.

3.2.2 Under s104 the Secretary of State (SoS) must have regard to any relevant NPS and any appropriate marine policy document, any LIR submitted within the statutory timetable, any other prescribed matters and any other matters which the SoS considers to be important and relevant. The SoS must decide the application in accordance with any relevant NPS unless to do so would involve breach of international obligations or be unlawful under other statutes or he concludes that the adverse impacts would outweigh the benefits of the DCO scheme.

3.2.3 This report sets out the ExA's findings, conclusions and recommendations taking these matters fully into account and applying the approach set out in s104 of the PA2008.

3.3 NATIONAL POLICY STATEMENTS

3.3.1 The NPS for Ports produced by the Department for Transport was designated on 26 January 2012 [The Ports NPS] and is the designated NPS for this application. The features of the Ports NPS that are particularly relevant to this application are set out in paragraphs 4.6.1 – 4.6.11 of this report where I assess the conformity of the principle of the DCO scheme with the provisions of this NPS.

3.3.2 The National Networks NPS [National Networks NPS] (NN NPS) may also be important and relevant. It was designated on 14 January 2015. The particular points of potential relevance are set out in paragraphs 4.6.12 – 4.6.13 of this report where I comment on the compatibility of the DCO scheme with that NPS.

3.4 MARINE AND COASTAL ACCESS ACT 2009

3.4.1 The Marine and Coastal Access Act 2009 (MCA) introduced the production of marine plans and designation of Marine Conservation Zones (MCZ) in United Kingdom (UK) waters as well as establishing the Marine Management Organisation (MMO).

UK Marine Policy Statement

3.4.2 The UK Marine Policy Statement (MPS) was prepared and adopted for the purposes of s44 of the MCA and was published on 18 March 2011 by all the UK administrations as part of a new system of marine planning being introduced across UK seas. The MPS is referred to in the applicant's Planning Statement (Document 7.1) [APP-018].

3.4.3 The MPS is the framework for preparing Marine Plans and taking decisions affecting the marine environment. It contributes to the achievement of sustainable development in the UK marine area. The UK marine area includes the territorial seas and offshore area adjacent to the UK. It includes any area submerged by seawater at mean high water spring tide, as well as the tidal extent (at mean high water spring tide) of rivers, estuaries and creeks.[6]

3.4.4 The MPS is the framework for marine planning systems within the UK. It provides the high level policy context, within which national and sub-national Marine Plans will be developed, implemented, monitored and amended and will ensure appropriate consistency in marine planning across the UK marine area. The MPS also sets the direction for marine licensing and other relevant authorisation systems.

3.4.5 The MPS has provided the overarching policy context for the ExA's consideration of the application works within the marine area and the provisions of the DML. It should be noted, however, that the Relevant Representation from the MMO [RR-015] does not explicitly refer to the MPS but simply addresses ecological, dredging and other operational issues engaged by the DCO application and the adjustments sought in the wording of the Order including to the DML and its conditions that comprise Schedule 5 to the draft Order.

3.5 EUROPEAN REQUIREMENTS AND RELATED UK REGULATIONS

Habitats Directive (Council Directive 92/43/EEC)

3.5.1 The Habitats Directive (together with the Council Directive 79/409/EEC on the conservation of wild birds (Birds Directive)) forms the cornerstone of Europe's nature conservation policy. It has two key features, namely the Natura 2000 network of protected sites and a strict system of species protection. The directive protects over 1000

[6] see Marine and Coastal Access Act 2009 s.42(3) and (4)

animals and plant species and over 200 habitat types which are of European importance.

Wild Birds Directive (Council Directive 2009/147/EC)

3.5.2 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union. The directive recognises that habitat loss and degradation are the most serious threats to the conservation of wild birds. It therefore places great emphasis on the protection of habitats for endangered as well as migratory species. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.

3.5.3 The Birds Directive bans activities that directly threaten birds, such as the deliberate killing or capture of birds, but it also requires Member States to take the requisite measures to maintain the population of species of wild birds at a level which corresponds, in particular, to ecological, scientific, and cultural requirements while taking account of economic and recreational requirements.

3.5.4 These directives are relevant to this application because there are a number of European Sites on which LSE cannot be excluded, in particular the Teesmouth and Cleveland Coast SPA. This issue is considered in the accompanying ES and HRA already referred to and is referred to in representations from statutory consultees.

The Ramsar Convention (the Convention on Wetlands of International Importance, especially as Waterfowl Habitat)

3.5.5 The UK is bound by the terms of the Convention on Wetlands of International Importance 1971 (the Ramsar Convention), resulting in the designation of Ramsar sites in the UK, which are wetlands of international importance.

3.5.6 The Ramsar Convention is an intergovernmental treaty that provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. Under the 'three pillars' of the Convention, the Contracting Parties commit to:

- work towards the wise use of all their wetlands;
- designate suitable wetlands for the list of Wetlands of International Importance (the "Ramsar List") and ensure their effective management;
- co-operate internationally on transboundary wetlands, shared wetland systems and shared species.

3.5.7 The Convention is relevant to this application due to the proximity to the harbour facility to the Teesmouth and Cleveland Coast Ramsar.

Conservation and Species Regulations 2010 (as amended) the Habitats Regulations

Conservation of Habitats and Species (Amendment) Regulations 2012

3.5.8 The Conservation of Habitats and Species Regulations 2010 replaced The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) in England and Wales. The Conservation of Habitats and Species Regulations 2010 (which are the principal means by which the Habitats Directive is transposed in England and Wales) update the legislation and consolidated all the many amendments which have been made to the regulations since they were first made in 1994.

3.5.9 The Conservation of Habitats and Species Regulations 2010 apply in the terrestrial environment and in territorial waters out to 12 nautical miles.

3.5.10 The Conservation of Habitats and Species (Amendment) Regulations 2012 came into force on 16 August 2012. These Regulations amend the Habitats Regulations. They place new duties on public bodies to take measures to preserve, maintain and re-establish habitat for wild birds. They also make a number of further amendments to the Habitats Regulations to ensure certain provisions of Directive 92/43/EEC (the Habitats Directive) and Directive 2009/147/EC (the Wild Birds Directive) are transposed clearly.

3.5.11 These regulations are of relevance to this application because of the proximity of the harbour facility to European sites[7]. As mentioned above, the applicant has provided a HRA Report [APP-127 and APP-128]. I consider the applicant's assessment in section 6 of the report.

Marine Strategy Framework Directive (Council Directive 2008/56/EC)

3.5.12 The purpose of the Marine Strategy Framework Directive (MSFD) is to achieve Good Environmental Status (GES) of the EU's marine waters by 2020 and to protect the resource base upon which marine-related economic and social activities depend. In order to achieve GES in a coherent and strategic manner, the MSFD established four European Marine Regions, based on geographical and environmental criteria. The North East Atlantic Marine Region is divided into four sub-regions, with UK waters lying in two of these (the Greater North Sea and the Celtic Seas). Each Member State is required to develop a marine strategy for their waters, in coordination with other countries within the same marine region or sub-region. The aims of a marine strategy

[7]The term European Sites in this context are sites defined as 'European sites and European marine sites' under the Habitats Regulations (Regulation 8) and sites treated as European sites as a matter of Government policy (NPPF, paragraph 118) and includes: Special Areas of Conservation (SACs), candidate SACs and possible SACs; Special Protection Areas (SPAs), potential SPAs; Sites of Community Importance (SCIs); listed or proposed Ramsar sites; and any sites identified as compensatory measures for adverse effects on any of the above.

are to protect and conserve the marine environment, prevent its deterioration, and, where practicable, restore marine ecosystems in areas where they have been adversely affected.

Water Framework Directive (Council Directive 2000/60/EC)

3.5.13 On 23 October 2000, the "Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy" or, in short, the EU Water Framework Directive (the WFD) was adopted.

3.5.14 The Directive was published in the Official Journal (OJ L 327) on 22 December 2000 and entered into force the same day. Some amendments have been introduced into the Directive since 2000[8].

3.5.15 Twelve "Water notes" which intend to give an introduction and overview of key aspects of the implementation of the Water Framework Directive are available to download.[9]

3.5.16 The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 transposed the WFD into law in England and Wales (the WFD Regulations).

3.5.17 The WFD requires Member States to identify 'river basin districts' – the area of land and sea made up of one or more neighbouring river basins with their associated coastal waters and groundwater. Environmental objectives for the district must be proposed, together with a programme of measures to achieve them, contained within River Basin Management Plans (RBMP).

3.5.18 The harbour facility application is located within the catchment area of the Northumbria RBMP. The Directive is of relevance to the application because it involves works within the tidal area of the River Tees and discharge or interchange of waters between Bran Sands Lagoon and the estuary during construction and potentially during operation. It is addressed in the ES and in comments from statutory consultees.

3.6 OTHER LEGAL AND POLICY PROVISIONS

UNITED NATIONS ENVIRONMENT PROGRAMME CONVENTION ON BIOLOGICAL DIVERSITY 1992 AND THE NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006

3.6.1 The Natural Environment and Rural Communities Act (NERC) includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with this,

[8] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:02000L0060-20090625:EN:NOT
[9] http://ec.europa.eu/environment/water/participation/notes_en.htm

regard must be given to the United Nations Environment Programme Convention on Biological Diversity of 1992.

3.6.2 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA has had regard to the UN Convention in its consideration of the likely impacts of the proposed development and appropriate objectives and mechanisms for mitigation and compensation. In particular the ExA finds that compliance with the UK provisions on environmental impact assessment and transboundary matters, referred to below, satisfies, with regard to impacts on biodiversity, the requirements of Article 14.

3.6.3 These matters of biodiversity, the biological environment and ecology and landscape matters are considered in section 5 of my report in relation to the environmental impact assessment undertaken and in section 6 in respect of HRA.

THE NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949

3.6.4 The Act provides the framework for the establishment of National Parks and AONBs. It also establishes powers to declare National Nature Reserves, to notify Sites of Special Scientific Interest (SSSIs) and for local authorities to establish Local Nature Reserves.

3.6.5 A National Park has statutory protection in order to conserve and enhance the natural beauty of its landscape. National Parks are designated for their landscape qualities. The purpose of designating a National Park is to conserve and enhance their natural beauty; including landform, geology, plants, animals, landscape features and the rich pattern of human settlement over the ages.

3.6.6 Section 5 of the Act requires that -

(1) The provisions of this Part of this Act shall have effect for the purpose—

(a) of conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas specified in the next following subsection; and

(b) of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public.

3.6.7 Following the Sandford Committee's Review of National Parks, s11A (2) of the Act, an amendment in the Environment Act 1995, now requires that -

3.6.8 In exercising or performing any functions in relation to, or so as to affect, land in a National Park, any relevant authority shall have regard to the purposes specified in subsection (1) of section five of this Act and, if it appears that there is a conflict between those purposes, shall attach greater weight to the purpose of conserving and

enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park.

3.6.9 Although the application site is well outside the boundary of the North York Moors National Park or any other area designated with regard to natural beauty under this Act and subsequent amending legislation, Natural England at one stage in their representations as a statutory consultee did suggest that there could be cumulative visual impact in relation to the landscape of the North Yorks National Park. This is because the minehead of the overall YPP and one of the construction/ventilation shafts of the MTS are within the national park.

THE WILDLIFE AND COUNTRYSIDE ACT 1981 (AS AMENDED) AND THE COUNTRYSIDE AND RIGHTS OF WAY ACT 2000

3.6.10 The Wildlife and Countryside Act 1981 is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs). These sites are identified for their flora, fauna, geological or physiographical features by the countryside conservation bodies (in England: Natural England). The Act also contains measures for the protection and management of SSSIs.

3.6.11 The Act is divided into four parts: Part l relating to the protection of wildlife, Part ll relating to designation of SSSIs and other designations, Part lll on public rights of way and Part lV on miscellaneous provisions. If a species protected under Part l is likely to be affected by development, a protected species license will be required from Natural England.

3.6.12 The Countryside and Rights of Way Act 2000 brought in improved provisions for the protection and management of SSSIs.

3.6.13 These Acts have relevance to consideration of impacts on SSSIs and on protected species and habitats. Thus, in relation to this application it requires consideration of possible LSE on a number of SSSIs and other protected sites in addition to the European Sites referred to above.

3.6.14 These matters, including the possible effects on protected species are considered in the ES as well as in comments from statutory consultees. They are addressed in section 5 of this report.

3.7 MADE DEVELOPMENT CONSENT ORDERS

3.7.1 Although the applicant drew attention to the drafting of aspects of the DCO as being consistent with that in various made DCOs, none of these appear to be sufficiently relevant to the circumstances of this application to warrant particular reference, particularly given the iterations of the wording of the draft DCO that took place over the course of the Examination.

3.7.2 I referred parties to the Protective Provisions relating to the electricity connector in the DCO for the Dogger Bank A & B Offshore Windfarm development as potentially important and relevant as they involved IPs seeking to protect assets which are involved in the operation of the Wilton chemicals complex, as this was a significant issue in relation to this application. However, the circumstances which could give rise to potential effects are somewhat different in relation to that DCO and in the latter part of the Examination, the Protective Provisions relating to pipeline operators and those with assets over-sailed were subject to considerable negotiation between the affected parties and the applicant. For the most part the outcome of those negotiations is of greater relevance than the nature of the previously agreed Protective Provisions, albeit that disagreement remained over certain matters. The detail of the disputed points concerning Protective Provisions is covered in paragraphs 8.7.29 – 8.7.94 of this report.

3.8 TRANSBOUNDARY EFFECTS

3.8.1 The SoS undertook a screening exercise in relation to possible transboundary effects. This is set out in Document OD-002.

3.8.2 Under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (EIA Regulations) and on the basis of the information available from the applicant, the Secretary of State was not of the view that the proposed development is likely to have significant effects on the environment in another European Economic Area (EEA) State.

3.8.3 In reaching this view the Secretary of State applied the precautionary approach (as explained in the Planning Inspectorate Advice Note 12 Transboundary Impacts Consultation). Consultation under Regulation 24 of the EIA Regulations was therefore not considered necessary.

3.8.4 The ExA has had regard to the ongoing duty of the Secretary of State under Regulation 24 to have regard to transboundary matters throughout the Examination.

3.8.5 The ExA is also satisfied that with regard to Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, that there are no transboundary biodiversity matters needing to be addressed and there are no matters outstanding in relation to transboundary effects that would argue against the Order being confirmed.

3.9 NATIONAL PLANNING POLICY FRAMEWORK

3.9.1 Paragraph 3 of the National Planning Policy Framework (NPPF) indicates that the NPPF does not contain specific policies for NSIPs for which particular considerations apply as set out in the PA2008 and relevant NPS and in relation to any other matters that are considered important and relevant (which may include the NPPF).

3.9.2 The NPPF may therefore be important and relevant. The NPPF stresses that the purpose of the planning system is to contribute to the achievement of sustainable development. In paragraph 7 it states that there are three dimensions to sustainable development, namely economic, social and environmental and that all three roles have to be addressed. Contributing to a strong, responsive and competitive economy and strong vibrant communities are regarded as important as protecting and enhancing our natural, built and historic environment and helping moves towards a low-carbon economy and mitigating and adapting to climate change.

3.9.3 The presumption in favour of sustainable development referred to in paragraph 14 is stated to mean approving development proposals that accord with the development plan. Where a development plan is absent or out of date it means granting permission unless any adverse effects of doing so would outweigh the benefits when assessed against the policies of the framework taken as a whole or specific policies in the framework indicate that development should be restricted. This is a broadly comparable approach to that required under s104 of the PA2008.

3.10 LOCAL IMPACT REPORT

3.10.1 S104 of the PA2008 states that in deciding the application the Secretary of State must have regard to any Local Impact Report (LIR) within the meaning of s60(3).

3.10.2 There is a requirement under s60(2) of PA2008 to give notice in writing to each local authority falling under s56A in order to invite them to submit Local Impact Reports. This notice was given by the ExA as part of the Rule 8 letter dated 27 July 2015 [PD-005].

3.10.3 The only Local Impact Report was submitted by RCBC [REP1-046].

3.10.4 The LIR cites the Redcar and Cleveland Local Development Framework Core Strategy and Development Policies DPD (July 2007) together with the Tees Valley Joint Minerals and Waste Core Strategy and Policies and Sites DPD (2011) as being the development plan for area although acknowledging that the weight to be afforded to its policies is dependent on consistency with the NPPF as the development plan pre-dates the NPPF. No inconsistencies have been cited by any party to the Examination.

3.10.5 The principal matters raised in the LIR include the consistency of the port proposal with Policy CS10 as that policy supports the continued development of Teesport. It also refers to the inherent sustainability of the overall YPP. Attention to the benefit to the local economy is flagged up under this policy and in relation to Policies MWC1 and MWC10, the last of which also prioritises the use on non-road based transport for minerals. The landscape impact is assessed in relation to Policy CS22 concluding that the chief concern is in respect of the overhead conveyor crossing of the A1085, a point of concern in

relation to structural integrity of the conveyor bridge as well as appearance. Heritage matters are considered in respect of Policies CS25, DP9, DP10 and DP11, and ecology, drainage and flood risk and environmental protection are also considered, the last in relation to Policy DP2. Finally, contamination and other risks are considered.

3.10.6 The overall conclusion is that the development proposals would have a variety of impacts, not all of which are adverse and significant. For those that are, the EIA process has identified mitigation measures where possible. The only continuing concern at that time was over the conveyor bridge over the A1085, but the positive benefits, including economic benefits in terms of long-term job creation and in terms of biodiversity enhancements, were also flagged up.

3.10.7 These matters are considered further at section 4.3 of this report.

3.11 THE DEVELOPMENT PLAN

3.11.1 As referred to above the relevant development plan is the Redcar and Cleveland Local Development Framework Core Strategy and Development Policies DPD (July 2007) and the Tees Valley Joint Minerals and Waste Core Strategy and Policies and Sites DPD (2011). As detailed in the SoCG with RCBC (Planning) [REP1-048], there are also relevant saved policies from the Redcar & Cleveland Local Plan 1999 concerning the Cleveland Way and cycle routes. The MPS will also be relevant in relation to those works that would be undertaken below mean high water (spring tide) level.

3.11.2 There are no statements within the Ports NPS on the relevance of the development plan, though s104 of the PA2008 requires consideration of appropriate marine policy documents as well as relevant NPS. Nevertheless, I consider that the development plan is an important and relevant matter and the LIR has drawn attention to key elements of it.

3.12 THE SECRETARY OF STATE'S POWERS TO MAKE A DCO

3.12.1 As ExA, I am aware of the need to consider whether changes to the application meant that the application had changed to the point where it was a different application and thus whether the Secretary of State would have power under s114 of the PA2008 to make the DCO having regard to the development consent applied for.

3.12.2 I have had regard to paragraphs 109-115 of the current guidance on the examination of applications for development consent[10]. In summary, the ExA cannot see any reason why the DCO that I recommend at Appendix D could not be made within the powers of s114. In my judgement, this would remain the case were the SoS to

[10] Planning Act 2008: Guidance for the examination of applications for development consent, March 2015 (DCLG)

conclude that one of the alternative conveyor corridors should be excluded from the Order. Detailed consideration of this issue will be given in sections 5 and 8 of this report.

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY ISSUES

4.1 MAIN ISSUES IN THE EXAMINATION

4.1.1 In my Rule 6 letter [PD-004] I set out my preliminary identification of the Principal Issues needing to be addressed in the Examination of the draft DCO.

4.1.2 These are as follows:

Visual issues

- The visual impact of the proposed conveyor bridge over A1085 – whether there are any realistic alternatives to provision of such a bridge and, if not, the appropriateness of the proposed design.
- Any other visual issues including in relation to Dormanstown or cumulative landscape effects with the wider Yorkshire Potash Project.

Biodiversity, Ecology and Natural Environment – including Habitats Regulation Assessment

- Adequacy of baseline assessments and adequacy of proposed monitoring of effects including in relation to the intent for a phased development.
- Ensuring that all necessary mitigation measures including on-going requirements are secured through the wording of the DCO/DML, as appropriate.
- Ensuring that there will be no adverse effects on the integrity of European Sites after taking account of the intended mitigation measures, in view of the sites' conservation objectives.

Noise and Air Quality

- Construction, maintenance, operational and decommissioning noise effects.
- Construction, maintenance, operational and decommissioning air quality effects

Transportation and Traffic

- Means and effects of transporting construction materials and personnel to the site
- Whether the proposed conveyor bridge from the proposed MHF precludes or prejudices use of other means of transport of polyhalite or other bulk materials to the proposed wharves, including use of rail.

Compulsory Acquisition

- The need for the rights proposed to be subject to compulsory acquisition.
- Whether there are sufficient protective provisions to safeguard the interests of statutory undertakers or other enterprises whose activities might be affected.

The Wording of the DCO including the Deemed Marine Licence, Protective Provisions and Requirements

- Whether the wide limits of deviation can be justified in relation to all aspects of the proposed works, in particular the standard application in respects of all boundaries between works.
- Whether wording throughout sufficiently safeguards the interests of statutory undertakers, the bodies responsible for navigation in the Tees Estuary and those of other enterprises whose activities may be affected.

Relationship to permitting or other licencing requirements

- Ensuring that there is no harm to human health or to ecology through works on or adjacent to the Bran Sands waste disposal site or in the disposal of contaminated silt from capital dredging.

4.1.3 No further issues were identified at the Preliminary Meeting, though the issue of an alternative to an overhead crossing of the A1085 was flagged up as being an issue that could bear directly on Protective Provisions sought by affected asset owners. It was accepted that the great majority of these issues could be examined through written questions, particularly those relating to biodiversity, ecology and the natural environment – including Habitats Regulation Assessment, noise and air quality and the relationship to permitting or other licencing requirements as statutory consultees, including the local planning authority, indicated in their relevant representations that they were largely content with the DCO proposals but required certain additional details and assurances that necessary mitigation would be secured.

4.1.4 Oral hearings were therefore only scheduled in relation to the proposed compulsory acquisition powers sought, as these would bring in the extensive Protective Provisions in relation to safeguarding underground pipelines and other assets over-sailed, and in relation to the detailed wording of the draft DCO, as this would enable the detailed wording of requirements and conditions proposed in the DML to be discussed so as to ensure that necessary safeguards are in place and mitigation is secured.

4.1.5 The visual issues identified would be primarily addressed during site visits coupled with further probing by way of written questions.

4.2 ISSUES ARISING FROM WRITTEN SUBMISSIONS

4.2.1 As referred to above, the issues arising from the initial Relevant Representations and additional submissions made up to the Preliminary Meeting formed the basis for identifying principal issues and the manner in which they could most appropriately be examined. Subsequent written representations and responses to the ExA's questions did not materially change the nature of the issues needing to be examined, though they did reveal that the most contentious aspect of transport issues was the maintenance of road access to the Wilton chemicals complex and along lines of communications proposed to be over-sailed, both road and rail during construction and, in the case of the hot-metal rail line, during operation. This aspect became primarily an issue for the discussion and written exchanges concerning Protective Provisions, as the local highway authority, Highways England and Network Rail were essentially satisfied with the proposals embodied in the draft DCO and related documentation.

4.3 ISSUES ARISING IN THE LOCAL IMPACT REPORT

4.3.1 While in their LIR [REP1-046], RCBC cited their main concern as regarding the proposed overhead crossing of the A1085, particularly in relation to its visual impact, this matter was the subject of ongoing dialogue between the applicant and RCBC throughout the Examination. RCBC did not put forward evidence to support their initial preference for an underground crossing. However, the conclusions of studies put in by the applicant to demonstrate that such an approach could not be pursued while meeting their operational requirements and safeguarding the assets of all potentially affected pipeline operators [REP1-032], were not accepted by Tata Steel and SSI UK who continued to champion an underground approach to avoid an overhead crossing of the hot metal rail line[11]. Nevertheless, while at one point during the Examination proposing a design competition, RCBC subsequently accepted that the detailing of an appropriate gateway feature crossing of the A1085 by the proposed overhead conveyor system could simply be addressed by an appropriately worded requirement. This issue will be considered further in sections 5, 8 and 9 of this report.

4.3.2 The other matters addressed in the LIR concerning potentially adverse impacts on wider visual aspects, ecology, archaeology and heritage issues, environmental protection against noise nuisance, contamination and other risks to human health, risks associated with ground gas or to controlled waters and in relation to transport issues were regarded as of limited concern in the light of measures already devised by the applicant or safeguards and mitigation that would be achieved under the planning agreement with the Council or in the various construction and ecological management plans that would be

[11] The ES contained an earlier study into transport options between the MHF and quays at Bran Sands [APP-193]

secured through the DCO and the requirements that would be imposed under Schedule 2. These matters will be further assessed in sections 5 and 6 of this report.

4.3.3 Having regard to the measures that the applicant would be taking as part of the wider YPP, the LIR sees a positive impact in the DCO proposal in terms of the prospective net benefit to the local economy.

4.4 CONFORMITY WITH THE DEVELOPMENT PLAN POLICIES

4.4.1 As the DCO proposals could conflict with a number of environmental policies of the Redcar and Cleveland Local Development Framework (July 2007) and the Tees Valley Joint Minerals and Waste Core Strategy and Policies and Sites DPD (2011), but draw support from those relating to economic development and mineral operations, a balance has to be struck in judging overall conformity with the development plan, just as it would have to be in relation to the policies of the NPPF if there were no relevant policies in a development plan. The issues are detailed in the SoCG [REP1-048] as well as in the LIR.

4.4.2 I agree with the description of the existing landscape and visual character that is contained in the SoCG[12], namely that area around the site is flat low-lying reclaimed estuarial land occupied by large scale industrial complexes with non-industrial areas dissected by infrastructure corridors so that there is an overall urban character despite pockets of regenerating grassland or scrub. Any possible distant views, such as from the Eston Hills to the south, are dominated by the presence of large scale industrial development. The perceptual landscape character is overwhelmingly industrial with the presence of significant visual detractors and industrial noise and smells.

4.4.3 Thus, I agree with the Council that issues concerning policies CS22 and CS23 concerning protecting and enhancing the Borough's landscape and green infrastructure can be addressed through the mitigation measures, including off-site planting, that are secured in the Planning Agreement with the Council [REP4-062] and that the issue of the design of the conveyor bridge in relation to Policy CS20 can be addressed through proposed Requirement 2(3).

4.4.4 Similarly, any issues in relation to Policies CS25 and DP9-DP11 in relation to the built and historic environment can be addressed through proposed Requirement 10. The Council further accepts that although the site of the quays is in flood zone 3, it is 'water compatible' development, and as the overhead conveyor system within flood zones 1, 2 and 3 would be set above prospective flood level and the quay structures would have negligible significance in relation to increased flood risk elsewhere along the estuary, there is no objection on grounds of drainage or flooding. With regard to the

[12] Page 8

impact of the proposals on surrounding areas including on residential amenity in relation to Policy DP2 and on DP6 on pollution control, the Council is satisfied that threshold noise levels at sensitive receptors would not be exceeded and that construction activities could be controlled or mitigated through the proposed Construction Environmental Management Plan (CEMP). On the basis of information in the ES, the Council is satisfied that the CEMP and a Materials Management Plan would also address any issues of potential contamination including any risk to controlled waters. Such safeguards would be governed by provisions in the DCO including its requirements and conditions in the DML.

4.4.5 With regard to transport impacts on the local road network, although the RCBC Planning Statement raises some issues, the separate Transport SoCG [REP1-050], states that traffic flows and junction assessments in the ES are agreed, the construction and operational access arrangements are agreed and that the traffic impact associated with the development during the construction and operational phases would not have a material adverse impact on the operational capacity of existing junctions on the local highway network within the borough. Requirements including provision of a Construction Traffic Management Plan (CTMP) were also agreed and overall it was stated that no transport/traffic matters remained unresolved. The SoCG with Highways England [REP1-049] similarly concluded that it was agreed that the traffic impact associated with the development proposals during both construction and operational phases would not have a material adverse impact on the operation of the Strategic Road Network (A19, A174 and A1053) whether on its own or cumulatively with the wider YPP and the Dogger Bank Offshore Wind Farm development. Mitigation and Requirements were also agreed.

4.4.6 In contrast to the very limited environmental concerns flagged up in relation to development plan policies and the way in which it is anticipated that these would be mitigated or regulated, the Council identifies clear support for the DCO scheme under Policy CS10 that supports development for port-related activity along the Tees. Support is also found in Policies MWC1 and MWC10 that aim to deliver sustainable use of minerals resources including by safeguarding the necessary infrastructure to facilitate movement of minerals other than by road transport, i.e. by rail or through port facilities along the Tees. While it is recognised that the could be some impacts on local businesses in terms of competition for particular work-skills, the whole YPP is seen as having potential to deliver significant economic benefits for Redcar and Cleveland residents and businesses by creating long-term sustainable employment, training and supply chain opportunities.

4.4.7 The Economic Impact Report for the overall YPP [APP-024] indicates an anticipated peak construction employment of 1,670 with a further

9,720 indirect or induced jobs[13], while in operation there would be 1,040 long-term jobs with a further 1,100 indirect and induced jobs. The investment would be £1.4 billion to achieve the Phase one output of 6.5 million metric tonnes per year with around a further £300 million to raise this to the Phase 2 output of 13 million metric tonnes per year. All but 125,000 tonnes of the Phase 1 output would be anticipated as being exported and all but 175,000 tonnes of the Phase 2 output, thereby meeting the thrust of Policy MWC10 as very little of the mineral output would be likely to travel onwards from the MHF by road. The volume of exports at full production is anticipated as generating £1.2 billion of exports annually thereby reducing the UK's annual trade deficit by around 4%[14].

4.4.8 The Council describes the port alone is being a small but essential element of the YPP. During its construction there would be an average of some 122 construction workers, peaking at 173. These figures are anticipated as resulting in a further 413 indirect or induced jobs in the sub-region. In operation after completion of Phase 1, the port would employ 26 workers and after Phase 2 is in operation this would rise to 34. Permanent indirect and induced employment would be 143 rising to 195. The ES for the port itself highlights the extent of unemployment and deprivation in the Teesside area so that the employment benefits would be significant[15].

4.4.9 Having regard to the positive socio-economic benefits as opposed to the limited and manageable environmental impacts, I am satisfied that the port proposal embodied in the DCO is in conformity with the development plan. This means that it would also constitute sustainable development in relation to the NPPF.

4.5 THE PRINCIPLE OF THE DEVELOPMENT

4.5.1 As the Ports NPS has been designated and is in effect, the principle of the development does, however, fall to be assessed in relation to its conformity with that NPS and not simply with the development plan and NPPF, even if these are regarded as important and relevant matters which support the DCO scheme.

4.6 CONFORMITY WITH NPSS, MPS AND OTHER KEY POLICY STATEMENTS

National Policy Statement for Ports (January 2012)

4.6.1 As set out in earlier in paragraph 1.1.2 of this report, the DCO scheme clearly exceeds the threshold in s24(3)(c) of the PA2008 to constitute a NSIP since Phase 1 of the port development is designed to have a capacity of 6.5 million metric tonnes of bulk cargo per year and after

[13] This is a figure for one year jobs, with average indirect jobs per year during construction of 1,400.
[14] The investment figures are taken from Document 7.3 Appendix 2a [APP-021]
[15] APP-248 ES Section 19: Socio-Economics

Phase 2 to have a capacity of 13 million metric tonnes. The NPS for Ports is therefore applicable.

4.6.2 In the NPS for Ports, the government policy for ports is set out in section 3.3. In summary it is to encourage sustainable port development to cater for long-term forecast growth in volumes of imports and exports by sea with a competitive and efficient ports industry capable of meeting needs cost effectively and in a timely manner thereby contributing to long-term economic growth and prosperity. It is to allow judgements about when and where new developments might be proposed on the basis of commercial factors by the port industry or port developers operating in a free market environment. At the same time all proposed developments must satisfy relevant legal, environmental and social constraints and objectives including those arising from EU directives.

4.6.3 To meet requirements of sustainable development, new port infrastructure should contribute to local employment, ensure competition and security of supply, preserve, protect and where possible improve marine and terrestrial biodiversity, minimise greenhouse gas emissions, be well designed, adapted to climate change, minimise use of greenfield land, provide high standards of environmental protection including of heritage assets and enhance access to jobs and services including for the most disadvantaged. The government wishes to see port development as an engine for economic growth and to assist in lowering transport costs.

4.6.4 Section 3.4 assesses forecast demand, separately considering container traffic, Ro-Ro traffic and non-unitised traffic or bulk cargo. The last is only forecast to increase by 4% over the period from 2007-2030 from 411m to 429m tonnes, but the proposed port facility is intended to cater for export of a newly mined material that was not being exploited in 2007. Paragraph 3.4.7 stresses that forecasts do not change its policy that it is for each port to take its own commercial view. The purpose of national forecasts is to set the context in terms of overall capacity need alongside competition and resilience considerations. Although most recent developments and approvals have been in or near existing deep-water ports at estuarine locations the government policy is not to dictate where port development should occur. Competition between ports is welcomed[16] and the value of spare capacity is referred to in terms of helping to assure resilience of our national infrastructure[17]. Thus, a compelling need for substantial additional port capacity is asserted and a comment made that new port development must not be ruled out, including because of the local and regional economic benefits that can be brought about by such development.

[16] Section 3.4.13
[17] Section 3.4.15

4.6.5 In summary, in section 3.5 as well as catering for long-term forecast demand, it is stated that there should be a sufficiently wide range of facilities at a variety of locations to match existing and expected trade taking account of inland transport; to ensure effective competition and resilience and to take account of the potential contribution that port developments might make to regional and local economies. The starting point is therefore a presumption in favour of granting consent to applications for port development. This application for a DCO has to be considered within this favourable context.

4.6.6 The presumption in favour has nevertheless to be considered against the specific and generic assessment policies set out in the following sections 4 and 5 of the NPS, those of any other relevant NPS and the further considerations specified in s104 of the PA2008. For the most part the assessment of benefits and impacts will be considered in the following section 5 of this report where the assessment criteria of this NPS will be considered alongside any further considerations arising from the Marine Policy Statement (MPS), the ES that accompanied the application and representations from IPs.

4.6.7 However, the consideration of alternatives fits most conveniently at this point as in section 4.9 of the NPS, it is stated that from a policy perspective the NPS does not contain any general requirement to consider alternatives or to establish whether the project represents the best option. Nevertheless, as applicants are required to state factual information within an ES concerning the main alternatives considered, the NPS sets out a framework for consideration of alternatives.

4.6.8 The Non-Technical Summary of the ES [APP-186] states that two alternative ports were considered for the export of the polyhalite from the Doves Nest Farm mine, namely Hull and Whitby. Hull was rejected because the MTS would have had to be about twice as long as to reach Teesside and, because bulk cargo handling in that locality is concentrated at Immingham on the south bank of the River Humber, a crossing of that river would also have been required. With regard to Whitby, this port was regarded as too small to accommodate the facilities required to export the planned volumes of polyhalite and the harbour far too small to handle 85,000 tonnes[18] bulk carriers envisaged for worldwide distribution of the fertiliser, as opposed to the current use of the port for fishing trawlers and leisure craft. As noted at paragraph 1.4.2 earlier in this report, I made an unaccompanied site visit to the historic port of Whitby and noted its wealth of heritage assets, including those related to Captain James Cook, clustering round the narrow harbour and also the restricted surface transport access to the waterside, even if use of rail for conveyance of the polyhalite to the port could be contrived. Consequently, I concur with the conclusion that use of Whitby would not be feasible and I also

[18] Deadweight tonnage

agree that the choice of Teesside rather than Hull/Humberside is rational and appropriate as the location for the proposed port development.

4.6.9 At Teesside consideration was given to whether existing or consented berths in Teesport could be utilised. However, following discussions with PD Ports, it was concluded that quays or wharves within the existing Teesport area and the improved facilities that are consented would not be available or would not be suitable. The Northern Gateway Container Terminal that has not yet been constructed is intended for container transhipment that would not be an economic method for transporting polyhalite. No 1 Quay within Tees Dock is intended for another use by PD Ports and the Queen Elizabeth II Berth is not capable of expansion to the scale required to handle bulk carriers of the size needed for a transhipment of 13 million metric tonnes annually.

4.6.10 Having regard to these conclusions, I accept that the choice of Bran Sands as the location for new harbour facilities (whether seen as a new port or as an extension of Teesport), fully complies with the overall policy stance of the NPS for Ports on the acceptability in principle of the proposed new port facilities. Whether the closure of the Redcar Steel works shortly before the end of the Examination may alter the future use of the Redcar Bulk Terminal (RBT) that adjoins the Bran Sands site was not subject of any comment by its owners before the end of the Examination. On the contrary, they continued to negotiate with the applicant on ensuring that the operation of its coal stacking yards and conveyor systems would not be adversely affected should the northern polyhalite conveyor corridor ultimately be selected. Consequently, in relation to this Examination and the DCO that is for consideration, I conclude that no reasonable alternative to the scheme that is embodied in the DCO has been flagged up. Thus, I conclude that the principle of the DCO scheme is in accordance with the Ports NPS.

4.6.11 Technical feasibility will be addressed in sections 5 and 8 of this report where appropriate in relation to the impacts being considered, and financial viability will be considered in section 8 as part of the funding issue that needs to be assured in relation to the powers of compulsory acquisition that are sought.

National Policy Statement on National Networks (January 2015)

4.6.12 This NPS is of relevance to the DCO proposal. In relation to need, in addition to anticipated growth in demand for travel, it suggests that there is also a need for development of national networks to support national and local economic growth and regeneration, to improve resilience and for linkage to ports. The conclusion of the transport assessments for the DCO scheme, as recorded in the SoCG with both RCBC as local highway authority and Highways England as set out in paragraph 4.4.5 above, is that the port proposal would not give rise to

any impacts on the strategic highway network that would require improvements to be undertaken. Similarly, the detailed design of the MHF and the proposed linking overhead conveyor system leaves existing rail infrastructure unaffected and potentially available for future use if required. This was confirmed by the applicant in an answer to the first schedule of ExA questions[19].

4.6.13 Having regard to these considerations, although not directly supporting the DCO proposal, I consider that the transport arrangements for the proposed port are compatible with the National Networks NPS.

Marine Policy Statement (MPS) (March 2011)

4.6.14 The policy statement sets the framework and policy objectives for activities taking place within the marine environment. As with the NPPF, the MPS refers to economic and social aspects of development as well as environmental issues leading to a presumption in favour of sustainable development within the marine planning system just as for terrestrial planning. It accepts that the approach to need for ports should be as for the Ports NPS and that this need and benefits should be weighed against adverse impacts including cumulative impact. Negative impacts on shipping activity, freedom of navigation and navigational safety should be avoided. The environmental considerations to be taken account of include those arising from the Marine Strategy Framework Directive, the Water Framework Directive, the Habitats Directive and the Wild Birds Directive. In assessing proposals, the following should therefore be taken into account: marine ecology and biodiversity, air quality, noise, ecological and chemical water quality and resources, seascape, the historic environment, climate change adaption and mitigation, coastal change and flooding, marine protected areas, marine dredging and disposal, fisheries, surface water management and waste water treatment and disposal and tourism and recreation.

4.6.15 As in the case of the Ports NPS, where relevant, the assessments in relation to these topics will be considered in the following section 5, before reaching an overall conclusion on the planning balance in relation to the DCO.

The Development Consent Obligation

4.6.16 Government guidance in relation to planning obligations entered into under s106 of the TCPA1990[20] and on the use of conditions is found in paragraphs 203-206 of the NPPF. While paragraph 203 indicates that conditions (which would mean requirements in relation to DCOs under the PA2008), should be used in preference to planning obligations wherever possible, it is accepted that certain issues including the

[19] Question TT 1.7
[20] s174 of the PA2008 applies s106 to applications for DCOs.

making of payments to local planning authorities cannot be addressed by way of conditions.

4.6.17 Paragraph 204 states that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation is (a) necessary to make the development acceptable in planning terms, (b) directly related to the development and (c) fairly and reasonably related in scale and kind to the development. These tests are given statutory force by the Community Infrastructure Levy Regulations 2010[21].

4.6.18 The signed and sealed Development Consent Obligation made between the applicant and RCBC[22] dated 19 October 2015 [REP4-062] requires six sums to be paid to RCBC. The first totalling £50,000 is for environmental enhancement within the Borough of Redcar & Cleveland. The second and third contributions totalling £35,000 are to undertake enhancement to the Foxrush Farm open space, an open space that is situated between the residential area of Redcar and the MHF and the overhead conveyor system that would link the MHF to the quay in the DCO scheme. The fourth contribution of £215,000 is called the 'Gateway contribution' and is intended to fund public realm enhancements in the vicinity of Dormanstown and/or improvements along the corridor of the A1085 as a gateway to Redcar. The fifth contribution of £200,000 for onward payment to the Tees Valley Wildlife Trust is to undertake habitat enhancement works at Portrack Marsh and the sixth contribution of £50,000 for onward payment to the Tees Valley Local Nature Partnership is to fund production of the Tees Estuary Habitat Strategy.

4.6.19 In terms of the tests set for s106 obligations, I have no doubt that the first and fourth contributions are necessary to enable off-site planting and other landscaping works to mitigate any visual detriment to the outlook from Dormanstown and the visual amenity of the A1085 from the construction of the proposed overhead conveyor system linking from the MHF and in particular in relation to its crossing over the A1085. The more modest second and third contributions to fund enhancement works at Foxrush Farm are less obviously required to offset potential harm, but to the extent the DCO works may make users of the open space more aware of the neighbouring industrial area, there is still a justifiable connection to mitigating the development sought in the DCO.

4.6.20 The substantial Portrack Marsh contribution could be seen as purely an enhancement and therefore not necessary to facilitate approval of the DCO scheme. However, in relation to a potential extension of the Teesmouth and Cleveland Coast SPA and Ramsar European Sites to include areas around Dabholm Gut, a possibility which has been under

[21] Article 122(2) of The Community Infrastructure Levy Regulations SI 2010/948
[22] The Homes and Community Agency, the current owner of the site for the MHF, are also a party to the agreement.

consideration though by no means as yet a formal proposal, NE commented in response to the ExA's second round of questions that in such a context the prospective loss of inter-tidal habitat by quay construction could be seen a potential adverse consequence [REP4-009]. NE had earlier raised concern at loss of inter-tidal habitat at the scoping stage for the ES. The loss of inter-tidal habitat is also a concern to the EA because intertidal areas are a priority habitat under the Biodiversity Action Plan [RR-017]. As the Portrack Marsh contribution is for creation of up to 3 ha of high quality intertidal habitat[23], it would clearly provide necessary mitigation to future proof the DCO scheme works, should the possible extension of the European Sites be taken forward and it would also address the immediate issue raised by the EA. I am therefore satisfied that this contribution is also necessary to make the DCO scheme acceptable in planning terms.

4.6.21 Finally, the contribution to fund production of Tees Estuary Habitat Strategy is perhaps the least obviously directly necessary or related to the development. However, the monitoring provisions that are embodied in requirements which are proposed under Schedule 2 could reveal a need for action beyond that currently foreseen to maintain sufficient mitigation in relation to ecological considerations. A habitat strategy for the estuary would clearly assist in focussing any further action that might be perceived as necessary during operation of the port. I am therefore satisfied that all aspects of the planning obligation are related to the development and to a greater or lesser extent necessary to make the development acceptable.

4.6.22 As for the aspect of the final test of being fairly and reasonably related in scale to the development, the sum of all the contributions is £550,000. This compares to the £75 million stated in the Funding Statement [APP-008] as the cost of the harbour works up to phase one capacity out of the total YPP cost to this stage of £1,392 million. A portion of the additional £169 million of infrastructure costs to raise production and throughput to Phase 2 levels would be relate to the harbour works to duplicate the conveyors within the overhead system and add the second wharf. Overall the YPP costs to Phase 2 are stated to be £1,697 million. In such a context, albeit that there are also substantial planning obligations related to the permissions granted under the TCPA1990 for other components of the overall project, I consider that the Harbour Development Consent Obligation sums should be regarded as fairly and reasonably related in scale to the development.

4.6.23 As I regard the requisite tests to be met, the Development Consent Obligation dated 19 October 2015 should be taken into account by the Secretary of State and given due weight in the determination of this application for a DCO.

[23] ES 8.5.8 to 8.5.16

4.7 ENVIRONMENTAL STATEMENT UNDER THE ENVIRONMENTAL IMPACT ASSESSMENT (EIA) REGULATIONS AND HABITAT REGULATIONS ASSESSMENT

4.7.1 As already noted in paragraph 1.1.7 of this report, the application was accompanied by a comprehensive ES. The main ES and its Technical Appendices are Documents 6.4 and 6.5 and the Non-Technical Summary Document 6.7 [APP-185 to APP-261]. There is also a Cumulative Impact Statement Document 6.6 [APP-129 to APP-184] and further information concerning the overall YPP in the Project Position Statement and its appendices Document 7.3 [APP-019 to APP-032].

4.7.2 There was very little by way of comment on the adequacy of the ES. Representations from statutory consultees did flag up some points for consideration, but there were primarily concerned with ensuring that proposed mitigation would be secured. Ms Christie's initial representation [AS-001] raised matters on which she wished to comment and following further comment at the Open Floor Hearing on 24 September, Royal Haskoning DHV, advisers to the applicant, offered discussions to clarify the conclusions of the studies contained in the ES. Concerns were nevertheless pursued in representations shortly before the close of the Examination [REP7-001]. However, I do not regard any of the points raised as demonstrating any material deficiency of the ES documentation provided to support the application but rather matters for consideration as part of the Examination, including the mechanisms by which to secure safeguards and mitigation measures.

4.7.3 With regard to the additional environmental information provided by the applicant during the course of the Examination, primarily by way of clarification rather than presentation of new material, I regard this as other environmental information. It was not sought as Further Environmental Information by the ExA within the terms of Regulation 17 of the 2009 Regulations[24]. Consequently, I am satisfied that the requirements of the Regulations have been fully met. The various environmental issues covered in the ES documentation will be assessed in the following section 5 of this report against the assessment principles contained in the NPS for Ports, the MPS and the identified principal issues.

4.7.4 The application was also accompanied by a Habitats Regulations Assessment Document 6.3 [APP-127 and APP-128]. In addition, the applicant submitted a supplementary note in their response to the ExA's second written questions to provide further detail in respect to the assessment of the potential extension to the Teesmouth and Cleveland Coast SPA [REP4-014]. I am satisfied that sufficient information has been provided by the applicant to allow the Secretary

[24] The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 as amended by the Infrastructure Planning (Environmental Impact assessment) (Amendment) Regulations 2012

of State to carry out an appropriate assessment should he consider this is necessary. I consider the applicant's HRA in section 6 of this report.

5 GOOD DESIGN AND ASSESSMENT OF ENVIRONMENTAL, ECONOMIC AND SOCIAL CONSIDERATIONS

5.1 GOOD DESIGN

5.1.1 Section 4.10 of the Ports NPS points out that good design extends beyond aesthetic considerations and that functionality, including fitness for purpose and sustainability, is equally important. Good design will therefore involve production of sustainable infrastructure sensitive to place and efficient in the use of natural resources and energy in construction and operation. It is recognised that the nature of port infrastructure may well limit the extent to which the development can contribute to the enhancement of the aesthetic quality of the area.

5.1.2 Leaving aside the issue of the visual impact of the proposed overhead conveyor crossing over the A1085, little or no comment was made by IPs on the issue of the design of the proposed harbour facilities other than in relation to the protection of assets of other commercial interests. It is clear, however, that the applicant has given careful attention both to the issue of design and efficient use of resources in in construction. The Consultation Report (Document 6.1 and Appendices) [APP-123 to App-126] indicates the various options illustrated for crossing over the A1085. Document 3.10 [APP-063] indicates the attention to detail applied to conveyor typologies with the fully enclosed structure proposed where there would be crossings over other transport corridors[25]. Although the final solution in relation to the A1085 remains to be agreed with RCBC under Requirement 2(3), progress was made in discussions over the course of the Examination and RCBC stated by letter dated 10 December 2015 that their objection to the proposed bridge is withdrawn [REP6-006].

5.1.3 More generally, from the site visits it is clear to me that the proposed port infrastructure will fit comfortably into the riverscape of the Tees, given the quays and related installations opposite, the quays and conveyor systems of the RBT downstream and the warehousing and wharves of Teesport upstream of the river frontage within the application site. The loaders, surge bins and conveyors will be in scale with neighbouring infrastructure.

5.1.4 As for the efficient use of resources and energy, it was clear from probing of the applicant during the examination that the reason for inclusion of alternative options for quay construction, open piling or solid backfill, is to ensure that an optimum use of resources can be achieved at the point of construction in terms of availability of

[25] The conveyors would be covered throughout the system, the difference in approach being that at crossings the conveyors would be placed within a larger tubular structure that in addition to aesthetic considerations would facilitate maintenance operations without interfering with the transport corridors beneath.

dredging and piling plant and equipment and of materials and not simply a narrow issue of cost. As the choices have both been assessed in the ES because they have different potential effects, such as may arise from the differing extent of dredging required or volumes of fill needed, but that the extent of CA required would not be affected, I accept that it is reasonable to hold open the choice of quay construction until development is imminent, in order to pursue resource efficiency. The applicant's clear preference for the southern conveyor route, provided that it is feasible to construct, is because it would be more efficient in operational terms. This is because the overall conveyor length would be shorter and there would be a need for 2 fewer transfer towers. The applicant's case in operational terms is detailed more fully in paragraphs 8.3.7 and 8.7.80 of this report.

5.1.5 Taking all these considerations into account, and subject to consideration of safety and commercial security in relation to assets of others that may be affected which are addressed later in this report, I am satisfied that the DCO scheme complies with the assessment principles of the NPS with regard to good design.

5.2 AIR QUALITY AND EMISSIONS INCLUDING DUST AND SMOKE

5.2.1 Section 5.7 of the Ports NPS highlights that ports can contribute to local air pollution problems as a consequence of volumes of HGV movements in construction and decommissioning as well as in operation, from shipping movements or the dusty nature of cargos. The MPS requires marine planning authorities to be satisfied that air quality impacts to be taken into account[26] and this was an issue that I had identified in my principal issues in the light of initial representations.

5.2.2 Paragraph 5.7.5 of the NPS requires any ES to describe any likely significant air emissions, means of mitigation and any residual effects, distinguishing between constructional and operational stages and taking account of any likely significant emissions generated by road traffic. Predicted absolute emissions after mitigation are required to be specified together with information on existing air quality standards and changes from those levels. The ES studied the potential for fugitive dust and particulate emissions (PM_{10}) from constructional activity, emissions from road traffic during both construction and operation (PM_{10}, $PM_{2.5}$ and NO_2), emissions from vessels at both stages and the potential for fugitive dust emissions during operation having regard to the nature of the product, its storage, transmission and loading [APP-234].

5.2.3 The DCO scheme is not within an Air Quality Management Area (AQMA). Baseline and background conditions were determined from the RCBC automatic monitoring station in Dormanstown, albeit 3.7 km

[26] Paragraph 2.6.2.2

east of the scheme footprint and from Defra data provided for the relevant grid square as well as from specific monitoring undertaken. The Dormanstown concentrations in 2013 were 13.4 $\mu g.m^3$ NO_2 and 18.6 $\mu g.m^3$ PM_{10} and the Defra background ranges for the kilometre squares around the site for that year were 9.91-26.61 NO_2, 13.97-17.27 PM_{10} and 9.04-11.73 $PM_{2.5}$. For the construction year of 2015, and operational years of 2020 and 2030 reducing background levels of NO_2 were forecast, but slightly widened ranges of PM_{10} and $PM_{2.5}$ were forecast with slightly reduced lower range points but slightly increased upper range points.

5.2.4 After allowing for the mitigation that would be applied during construction, and detailed in the CEMP[27] which is secured and enforced through Requirement 6 in Schedule 2 to the draft DCO, the assessment of the impact from fugitive dust and particulates during construction concluded that there could be a slight adverse impact at some of the receptors assessed in the ES from dust soiling but a negligible effect on human health. With regard to emissions from on-site plant after mitigation, such as ensuring that diesel particulate filters are fitted and ultralow diesel fuel is used, again governed by the CEMP, the residual impacts are assessed as not significant.

5.2.5 In terms of the effect on pollution levels from construction road traffic, cumulatively with the overall YPP, only in the case of two receptors close to the heavily trafficked A19 are there assessed to be a slight adverse impact as a result of increased NO_2 concentrations and a negligible impact at a further 17 receptors. Increases of NO_2 levels at the remaining receptors identified would be imperceptible as it would be at all receptors from particulates. The highest annual mean NO_2 level predicted at 45.57 $\mu g.m^3$, is at a receptor where there is already an exceedence of the annual mean NO_2 objective. However, as all predicted levels are well below 60 $\mu g.m^3$, Defra[28] guidance is that the 1-hour mean objective is unlikely to be exceeded. The mitigation envisaged in the CTMP that is secured by Requirement 7 of Schedule 2 to the draft DCO includes designated HGV routes, car sharing and use of public transport for workers. No further measures are proposed as the assessment concludes that the impact on air quality during construction would be negligible.

5.2.6 As for emissions from vessels, during construction, the distance of dredgers from human receptors or designated ecological sites is such that a quantifiable assessment was not required.

5.2.7 During decommissioning, as only removal of above ground infrastructure including the conveyor system is anticipated, the impacts would be less than during construction and thus would also not exceed threshold values.

[27] The updated outline CEMP is Document 6.10A
[28] Defra (2009)

5.2.8 During operation of the harbour facilities emissions from onsite plant and road traffic at potentially affected receptors, even on a cumulative basis with the remainder of the YPP, are assessed as not significant. As for emissions from vessels during operation assuming use of up to 85,000 DWT bulk carriers with use of auxiliary generators while at the quayside[29], assessments were made of potential NO_2 and SO_2 concentrations in Dormanstown and Georgetown but these showed levels well below relevant objectives, so the effect on human receptors is considered not to be significant. This is not surprising as the anticipated additional 191 vessel movements per year would only represent an increase of some 1.8% over those in 2014 when the mix already included some 85,000 DWT bulk carriers. As for concentrations at designated ecological sites, the assessment indicated that the maximum increases in nutrient nitrogen and acid deposition would be below 1% of all critical loads and total NO_x and SO_2 concentrations would be below critical levels for protection of vegetation and ecosystems. Thus, the impact on designated sites is assessed as not significant and did not require consideration within the HRA.

5.2.9 Finally, with regard to the potential impact from fugitive dust and particulates during operation, the polyhalite would be pelletised in the MHF with the pellets coated with a thin layer of wax to ensure that their integrity is maintained during transport. As the product is sensitive to moisture the conveyor system is proposed to be covered throughout and not just where it would run within tubular structures, including the link from the surge bins to the shiploaders. There would be no external storage and the only exposure to air would be the discharge from the shiploaders into the hatches of the bulk-carriers. The ES therefore assesses the potential impact as not significant.

5.2.10 The only comments that RCBC made on such matters in their LIR [REP1-046] are in respect of potential for smoke or dust during construction but these indicate that the CEMP secured by Requirement 6 in Schedules 2 to the draft DCO should be effective in controlling such emissions. In their Relevant Representation, Public Health England (PHE) indicated that it was satisfied with the approach taken in preparing the EIA and had no further comment to make [RR-020].

5.2.11 I can see no reason to disagree with the assessments in relation to air quality matters in the ES or the judgement of RCBC and PHE on these matters, namely that any potential adverse effects can be mitigated through the CEMP. I consider that the assessment in the ES and use of a proposed covered conveyor system to transport pelletized polyhalite address the concerns expressed by Ms Gill in her initial representation and at the OFH. Consequently, I consider that assessment requirements of the Ports NPS and the MPS are met in relation to air quality and emissions and that there would be no likely significant

[29] Although these emissions could be avoided by linking up to quayside mains electricity as indicated in paragraph 5.4.2 of this report.

effects in relation to these matters after mitigation whether in relation to the DCO scheme alone or cumulatively with other plans or projects.

5.3 BIODIVERSITY, BIOLOGICAL ENVIRONMENT, ECOLOGY AND GEOLOGICAL CONSERVATION (INCLUDING MARINE ECOLOGY & BIODIVERSITY)

5.3.1 In section 5.1 of the Ports NPS, it highlights that dredging associated with port development may affect sediment transport which in turn can effect marine wildlife and the chemical composition of affected waters. The Ports NPS also highlights the risk of spillage, ballast discharge, erosion and noise and light on fish and behaviour patterns of marine mammals. Section 2.6.1 of the MPS flags up that development should aim to avoid harm to marine ecology, biodiversity and geological conservation interests.

5.3.2 The ES assesses matters relevant to these considerations in a number different sections, in particular in section 6 on Hydrology, hydrogeology and land quality, section 8 on Marine ecology, section 9 on Marine and coastal ornithology and section 10 on Terrestrial ecology.

5.3.3 Section 6 [APP-201] primarily addresses surface water and ground-water quality issues that will be considered in section 5.16-5.17 of this report, but it notes that geology is not considered a sensitive receptor in its own right as environmental designations and protected status are not applicable, the nearest geological SSSI being some 5.5 km distant. Much of the surface of the site comprises made ground, primarily 'slag' from neighbouring industrial processes to a maximum depth of 6.5 metres. For the most part this overlays tidal flat deposits of sand, silt and clay, with some glaciolacustrine clay and silt deposits on the conveyor route near the MHF within the site of the Wilton chemicals complex. Any potential contamination risks to human health from materials in the made ground including the Bran Sands landfill site are considered in section 5.7 of this report as well as in sections 5.16-5.17. There has been no comment in respect of geological conservation from any IP and I am satisfied that no issues are raised by the application in this respect.

5.3.4 With regard to Marine ecology, in Section 8 of the ES [APP-209], there is an assessment of benthic ecology from sediment samples taken, of epifauna from 10 sampling trawls and of the intertidal mudflat that would specifically be affected by the harbour development, the latter being given particular consideration as intertidal mudflat is a UK Biodiversity Action Plan (BAP) priority habitat. The conclusion of this last study is that the particular area of intertidal habitat affected, although containing small mussels, fucoid algae, limpets and barnacles, is for the most part permanently inundated because of water draining from Bran Sands Lagoon even at the lowest spring tides, and the 3.6 ha is of low quality with a mixture of bricks, rubble, road planings and gabions with only about 30-40% mud (1.85 ha). It is therefore regarded as of low degraded quality and thus having low

use for waterbird feeding.[30] Notwithstanding this assessment, the Development Consent Obligation [REP4-062] funds provision of 3 ha of replacement inter-tidal habitat at Portrack Marsh to mitigate concerns expressed by statutory consultees to the principle of loss of such habitat. This is in addition to the lagoon habitat enhancement works within the Bran Sands Lagoon (5.7 ha). These lagoon enhancement works comprise Works no 3 in Schedule 1 to the draft DCO and are secured by paragraphs 7 and 48 of the DML that is Schedule 5 to the draft DCO. I am satisfied that subject to this mitigation there would be no outstanding issue in respect of this matter.

5.3.5 As for designated sites for nature conservation, no part of the site of the DCO scheme is located within a designated site. However, much of the Tees estuary and adjacent areas is subject to national or international designations. The following designated sites are therefore considered in the ES:

- **Teesmouth and Cleveland Coast Special Protection Area (SPA) and Ramsar site** (1km distant). The implications for these internationally designated sites are specifically addressed in relation to the required HRA in the following section 6 of this report.
- **Tees and Hartlepool Foreshore and Wetlands SSSI** (3 km). This site comprises several coastal areas which are an integral part of the complex of wetlands, estuarine and maritime sites supporting internationally important populations of wildfowl and waders on the Tees estuary.
- **Seal Sands SSSI** (1.2 km). This area is one of the largest areas of intertidal mudflat on England's North-East coast and supports a colony of harbour seals and is also frequented by grey seals.
- **Teesmouth National Nature Reserve (NNR)** (1.3 km). This area is divided into two parts, namely North Gare and Seal Sands, the former being an area of dunes and grazing marsh which supports over-wintering birds.
- **Cowpen Marsh SSSI** (4 km). This is the largest area of saltmarsh between Lindisfarne and the Humber estuary.
- **Redcar Rocks SSSI** (5.5 km). This is designated for its geological interest.

- **Seaton Dunes and Common SSSI** (1.3 km). This contains a range of habitats important for flora, invertebrate fauna and bird life.
- **South Gare and Coatham Sands SSSI** (0.7 km). This dune and saltmarsh area supports important flora populations.

In addition, the implications for **Coatham Marsh Local Wildlife Site (LWS)**, some 1.1 km north east of the DCO site are also considered.

[30] Paragraphs 8.4.22-8.4.27

This is an area of pools and reed swamp that has survived the industrialisation and urbanisation of the Tees estuary. **The Wilton Woods LWS** is some 3.7 km south of the site. All these sites are located on Figure 8.8 in relation to the DCO site.

5.3.6 No protected species have been found within the DCO footprint, though the common seal is present within the Tees Estuary and this is a species of 'Principal Importance' as defined in s41 of the NERC2006. Juvenile ocean quahogs[31] were also found within the survey area. These are listed as Features of Conservation Interest (FOCI) under Part 5 of the MCA2009. Within MCZ the species is recommended to be protected, but no part of the ES survey area is within a MCZ. The assessment concludes that the changes in sedimentation as a consequence of capital dredging would have a potential impact of negligible significance. With regard to the underwater noise and vibration that would arise from piling operations, it is concluded in the ES that as the Tees already has many sources of anthropogenic noise, including from shipping, maintenance dredging and shoreline construction, any additional noise impact on harbour seals (or grey seals both of which are listed as vulnerable under the Habitats Directive and are highly sensitive receptors) would be responded to by movement away from the noise source. Mitigation measures are proposed including using soft start piling techniques to allow time for movement away and ensuring an 8 hour break each day in piling activities. These measures are secured by paragraphs 30-32 of the DML that is Schedule 5 to the draft DCO. After such mitigation the residual impact is assessed in the ES as minor adverse. Other potential adverse impacts during operation or decommissioning are assessed as having a low risk of probability and are therefore of negligible significance.

5.3.7 As for marine and coastal ornithology, the assessment in section 9 [APP-213] took account of potential effects on all the designated sites, with consideration of counts taken of relevant bird species in Bran Sands lagoon, in Dabholm Gut and in the River Tees frontage where the quays would be constructed. In terms of constructional impacts, the increased concentration of sediment in the river during capital dredging having regard to the intended mitigation is assessed as having low adverse significance because the effects would be limited to the length of the river between Tees Dock and the mouth of the Seaton Channel. Thus, the effect, in terms of displacement of small fish that are prey for some waterbirds, is stated in the ES to be temporary and localised. As no silt deposition is anticipated on the inter-tidal areas, the ES concludes that there would be no consequential impact from dredging on these areas.

5.3.8 The largest potential impact on bird life is anticipated from the noise of piling activities. Mitigation envisaged in the ES included possible use of

[31] Edible clams

a noise reduction curtain over the hammer piling rig during quay construction that could reduce noise levels by at least 10 dB and acoustic barriers in relation to the bored piling intended for conveyor supports. The former was subsequently agreed not necessarily to be essential and the latter, as well as acoustic screening of the quay construction area, is secured by paragraph 32 of the DML that is Schedule 5 to the draft DCO. The CEMP secured by Requirement 6 in Schedule 2 to the draft DCO also governs construction noise. The residual effect at sensitive receptors is assessed in the ES as negligible. Visual disturbance could last over a longer period than noise from piling, but the measures to mitigate noise would also for the most part mitigate visual disturbance to bird species, together with careful control of lighting to which monitoring provisions would apply. The CEMP and DML would secure these measures as detailed in the governance Tracker (Document 3.8B) [REP4-061], a document that would be certified by the SoS under Article 38 of the draft DCO. High level construction of the conveyor system would not be able to be mitigated but is of time limited duration and overall the assessment in the ES concludes that the residual impact would be of negligible significance.

5.3.9 During operation, there would be direct loss of intertidal habitat due to reclamation with the solid quay option or construction of a revetment over the re-graded intertidal habitat with the open quay option. In addition, very small areas of Dabholm Gut or Bran Sands Lagoon would be taken for Conveyor supports depending on which conveyor corridor is selected. While the extent of intertidal area that would be lost is of poor quality, as such habitat is scarce along the River Tees because of past industrialisation, the loss is regarded as proportionately more significant with the unmitigated impact regarded moderate adverse. However, the Bran Sands Lagoon habitat enhancement works comprise Works no 3 in Schedule 1 to the draft DCO and are secured by paragraphs 7 and 48 of the DML that is Schedule 5 to the draft DCO would create shallow waters with intertidal fringes providing a feeding area up to 50% larger than that lost. The flow pipes would enable interchange of waters with the river thereby enabling colonisation by invertebrates and as the enhancement works would all be undertaken in Phase one, i.e. in advance of the full loss of riverside inter-tidal habitat, the residual impact after mitigation is assessed as moderate beneficial even without taking account of the Portrack Marsh enhancement works secured under the Development Consent Obligation [REP4-062].

5.3.10 Roosting sites on the NWL jetty, particularly for cormorants, would be lost in order to implement phase 2, but the Bran Sands Lagoon habitat enhancement works involve the creation of artificial islands that would provide roosting habitats. In addition, if the open quay construction is adopted, nesting platforms would be provided beneath the quay deck. Overall, the losses and gains are assessed in the ES as neutral so that after mitigation the impact would be of negligible significance. Screen fencing of parking areas and access to operational buildings would result in the assessment of operational visual impact to be that there

would be no impact. Other potential impacts during operation or decommissioning are assessed as negligible if any.

5.3.11 Consequently, although a monitoring regime would be established, in the light of the observed concentrations of birds observed within or in the vicinity of the application site and their importance in relation to the designated sites, it is not considered in the ES that the DCO scheme would damage any of the interest features of the SSSIs and other nationally or locally designated sites.

5.3.12 With regard to terrestrial ecology, section 10 [APP-216], sets out the surveys undertaken to look for signs of both protected and invasive species. It also assesses the habitats within the DCO site. No invasive species were identified. Common pipistrelle bats were recorded as being in the general vicinity, with isolated sitings of other species, but the nearest known bat roosts are 3 km and 4 km distant. No evidence of bat roosting was found beneath the bridges within the site. These could be suitable for daytime roosts for single bats but not for maternity roosts or hibernation. No reptiles were found in surveys. The only amphibians noted, common toads, were in low numbers near permanent ponds outside the application site. No great crested newts were observed anywhere within the study area. Some limited signs of occasional visits by foraging otters were noted but no signs of holts. There were no signs of water voles or other protected species of fauna. None of the fresh water or terrestrial habitats noted within the sites is noted as BAP priority habitat, being mainly grassland with occasional scrub where not hard surfaced or water bodies.

5.3.13 Mitigation measures proposed include undertaking any ground clearance outside ground bird nesting seasons, precautionary working methods and keeping construction lighting away from bridges in addition to the Bran Sands lagoon habitat enhancement works. The constructional mitigation measures are set out in the Outline Ecological Management Plan (Document 6.11B [REP6-028] the provisions of which are secured by Requirement 6 in Schedule 2 to the draft DCO. Taking all these considerations into account, the ES assesses that there would be impact of negligible significance on terrestrial ecology whether during construction, operation or decommissioning.

5.3.14 In their relevant representations [RR-007], NE indicates that it is satisfied that, in the light of proposed mitigation measures, including the Bran Sands lagoon habitat enhancements works and other measures outlined in the ES and draft CEMP, the DCO project is unlikely to have a significant impact on the nearby Cowpen Marsh, Seal Sands, Seaton Dunes and Common, South Gare and Coatham Sands, Redcar Rocks and Tees and Hartlepool Foreshore and Wetlands SSSIs, nor on the Teesmouth NNR, as the scheme would not damage or destroy the interest features for which the affected SSSIs are notified. At that stage, amendments to the wording of the draft DCO were sought to guarantee achievement of the intended mitigation and monitoring. NE also indicate that they are satisfied that the DCO

scheme will also not be detrimental to the maintenance of European protected species at a favourable conservation status nor significantly harm any nationally protected species because agreed measures have been built into the project design. Consequently potential licences are not required. The NE position was confirmed in their written representations [REP1-015] and in their SoCG with the applicant [REP1-051].

5.3.15 The only concern expressed by EA in their Relevant Representation [RR-017] was in relation to the loss of inter-tidal habitat so that they required the securing of suggested Portrack Marsh habitat improvement works that are contained in the signed Development Consent Obligation [REP4-062] in addition to the Bran Sands habitat enhancement works. This is confirmed in their SocG with the applicant [REP1-047].

5.3.16 Initially, the MMO were not satisfied with certain aspects of the ES with regard to the effect of underwater noise on marine mammals nor the effect of such noise and sedimentation on spawning fish [RR-015]. Subsequently, the MMO indicated that it was content with responses from the applicant [REP2-019 and REP3-001]

5.3.17 Responses continued to be received throughout the Examination from NE, MMO and EA, with NE and the MMO coming to an agreed position that all matters were satisfactorily dealt with regard to securing mitigation and monitoring and EA deferring to the position of NE and MMO on ecological matters. In the light of the responses from statutory consultees and in the absence of any contrary representations either in writing or at hearings, I am satisfied that the assessment requirements of the Ports NPS and MPS have been fully met in relation to marine and terrestrial ecology. There should be no harm to biodiversity and indeed there should be a modest benefit through the compensatory habitat enhancement provisions that are being secured as mitigation. There should be no harm to the conservation interests of any nationally designated sites or any threat to the favourable conservation status of any protected species. The specific issue of HRA in relation to the nearby European sites is addressed in section 6 of this report.

5.4 CLIMATE CHANGE MITIGATION AND ADAPTATION, COASTAL CHANGE AND FLOOD RISK

5.4.1 The NPS for Ports at section 4.12 indicates that Port proposals should seek to mitigate the effects of climate change by minimising emissions of CO_2 particularly though not exclusively from inland transport as emissions from shipping in transit do not have to be considered[32]. At Section 4.13 there is also a requirement for it to be demonstrated that the port facilities would be adapted to take account of the potential

[32] Paragraph 4.12.3

consequences of climate change. As a consequence the ES has considered the emissions scenario that the independent Committee on Climate Change suggests is being followed while testing against wider estimate ranges and that safety critical installations should be assessed against a high emissions scenario having regard to EA Flood maps. The MPS contains comparable provisions at section 2.6.7.

5.4.2 The harbour facilities include provision of electricity sub-stations as recommended in the Ports NPS so that there could be supply of electricity to bulk carriers at the quayside to avoid need for them to run auxiliary generators. Thus, this extent of mitigation would be available. As for the inland transport, it is proposed that all the polyhalite for export would be delivered by conveyor from the MHF which would itself have received supplies from the mine by underground conveyor. The port would therefore fully meet the assessment test of the Ports NPS in terms of inland transport being other than by road. The applicant has pointed out that the conveyor system should be regarded only as associated development as other means of goods transport could be used, albeit not proposed. However, they have also explicitly confirmed that rail access would remain available at the MHF and, although the restrictions proposed in the DCO against rail construction within the pipeline corridor would prevent direct rail access within the DCO site in order to safeguard underground assets of other enterprises, it would appear that rail access could be contrived via the RBT[33]. Thus, I am satisfied that the assessment requirements in relation to climate change mitigation are fully met in the DCO proposal. Adaptation to climate change is considered in the following paragraphs.

5.4.3 Section 5.2 of the NPS for Ports specifically addresses the issue of flood risk pointing out that the predicted effects of climate change include milder wetter winters and continuing sea level rise, both of which are likely to increase flood risk. However, it notes that port development is water-compatible development and therefore acceptable in principle in high risk areas. Nevertheless, port proposals are required to be accompanied by a flood risk assessment (FRA) that will cover both any risks to the project and those that might be caused by the project. The residual risks need to be identified after risk reduction measures have been applied and mitigation measures detailed. Section 5.3 also requires consideration of the possible impact from or on coastal change including as a consequence of dredging activities and the MPS covers also addresses these considerations at section 2.6.8.

5.4.4 In preparing their ES and FRA, the applicant undertook extensive consultation with the EA and RCBC. According to section 17 of the ES [APP-245], they took account of the EA's Tees Tidal Flood Risk Management Strategy (2009) and the Tees Tidal Integrated Flood Risk

[33] However, such rail access is not part of the DCO proposal.

Modelling Study (2011) as well as the Redcar and Cleveland Strategic Flood Risk Assessment (SFRA). The management strategy highlights a need to improve flood defences within the Tees Estuary up to the Tees barrage, but nevertheless indicates that areas along the estuary may be at flood risk up to 5 m above OD, the highest recorded flood level being some 4 m above OD in 1953. The existing Tees dock quay is some 4.54 m above OD. Although the modelling study in comparing existing flood zones with an undefended scenario indicated that there could be a reduction in flood zones 2 and 3 particularly near the coast, the footprint of the proposed port itself would remain with flood zone 3 where there may be a 1:200 return period tidal flood risk. The applicant's FRA itself forms Appendix 17.1 to the ES [APP-246].

5.4.5 The FRA indicates that the port terminal harbour facilities in the quays and related loaders should be regarded as acceptable within flood zone 3 as 'water compatible development' and the conveyor system as 'less vulnerable development', which would is defined as acceptable in any zone outside functional flood plain[34]. The area adjoining the Bran Sands lagoon is within flood zones 2 or 3, as is the area alongside Dabholm Gut which would be followed by the southern conveyor route option. The northern conveyor route option and the more inland parts of the overall conveyor system linking back to the MHF lie within flood zone 1 as they are over 5.5 m above OD, i.e. approximately 2 m above HT level. The conveyor itself would be elevated to at least 5.25 m above the ground so would not be at risk from tidal flooding. While EA have indicated that surface water drainage design would need to have regard for the potential for tidal-locking, they are agreeable, as are RCBC, to direct discharge of surface water into the Tees estuary, as it would not exacerbate flooding elsewhere. The RCBC SFRA indicated that the Tees Estuary has sufficient capacity to allow direct discharge without attenuation or use of SuDS and also that the geology is unsuitable for SuDS. While small parts of the site are at very low risk of pluvial flooding (in a more than 1 in 1,000 year event) including part of the southern conveyor route option, the setting of the level of the conveyor at least at 5.25 m above the ground would also provide a safeguard against pluvial flooding.

5.4.6 Climate change is considered within the FRA. Even with a 20-30% increase in peak river flow from increased rainfall intensities, it is not assessed that that there would be any greater risk of pluvial flooding. With regard to risk from tidal flooding, adding the effects of climate change to a 1 in 200 year event in the modelling indicates that the current flood zone 2 may in future become flood zone 3. With the predicted sea level rise of 900 mm over the next 100 years, the 1 in 200 year tidal flood level on the Tees frontage is projected to rise from the current 4.19 m AOD to 5.07 m AOD. The quay terminal is proposed to be set at 5.6 m, i.e. above the predicted long-term flood level, although wave action could lead to over-topping. Nevertheless,

[34] Section 4.1 page 12

the quay works would provide some protection against tidal flooding of the more inland parts of the site. Adherence to the specified levels would be secured through the details requiring approval under Requirements 2 and 3 in Schedule 2 to the draft DCO and the conveyor vertical limits to deviation (Document 3.11B) that are referenced in Article 4. Overall, the ES assesses that the development would not be at significant flood risk from tidal or pluvial/surface water flooding whether in current circumstances or in the long-term having regard to the prospective implications of climate change and the increased expectancy and magnitude of flood events that are anticipated. This assessment takes increased impermeable areas of hardstanding into account.

5.4.7 Although some piers of the conveyor structure would be within the flood plain, the areas involved are so small that they would not increase risk of flooding elsewhere. The quay structures would result in a marginal increase in wave height within the Tees estuary, very localised if the open structure option is adopted. With the solid quay structure waves would be reflected towards the north shore and could be increased by 0.05 to 0.1 m, but this is not assessed as having more than a negligible impact with none of the works materially affecting coastal processes.

5.4.8 In their SoCG with the applicant [REP1-047], the EA confirms that it is satisfied that the ES/FRA followed appropriate methodology and that the findings are agreed. It refers to the training and emergency evacuation procedures that would be followed for construction workers which would be embodied in the CEMP and does not consider any further mitigation would be required to address residual risk. The RCBC LIR [REP1-046] recites the conclusions of the applicant's assessment on these issues and indicates that there is no objection.

5.4.9 In the light of the assessment undertaken by the applicant in relation to these matters and their acceptance by the relevant statutory consultees, I am satisfied that the assessment requirements of the Ports NPS and MPS are met in respects of climate change, flood risk and related matters. There should be no adverse consequences in respect of these considerations after allowing for the mitigation embodied in the design of the development or secured through the CEMP.

5.5 COMMON LAW NUISANCE, STATUTORY NUISANCE AND OTHER POTENTIAL NUISANCE NOT COVERED ELSEWHERE INCLUDING LIGHTING

5.5.1 Section 4.14 of the Ports NPS points out that s156 of the PA2008 confers statutory authority for matters authorised by a DCO so that there can be a defence in any proceedings for nuisance where any such nuisance is the inevitable consequence of what has been authorised. The local authority, nevertheless, has a duty under Part III of the Environmental Protection Act 1990 to take steps to investigate complaints of statutory nuisance including service of abatement

notices if satisfied as to its existence. Possible sources of nuisance under s79(1) should therefore be assessed. Section 5.8 of the Ports NPS reinforces the need to consider the effects of odour, artificial light, insect infestation or other potential nuisances, dust having been considered in section 5.2 of this report.

5.5.2 The application documents included a statement in relation to s79(1) of the Environmental Protection Act 1990 (EPA1990) Document 6.2 [APP-015]. This contains a summary of the matters assessed in the ES that could give rise to statutory nuisance, namely noise, vibration, emissions/air quality and lighting impact. Some of these matters were addressed in section 5.2 of this report and noise and vibration will be considered in section 5.12.

5.5.3 With regard to artificial lighting the statement draws attention to the appendix to section 20 of the ES [APP-254] that assesses the lighting impact of the scheme. As far as the impact on humans is concerned, this highlights the baseline lighting environment as the site is located within a development urban and industrial area where there is extensive bright lighting both immediately adjoining and in the wider environs. There are floodlighting masts, flare stacks, illuminated petrochemical structures, building lighting and aircraft warning lights so there are multiple direct bright light sources and a strong skyglow, as is characteristic of the wider Tees estuary industrial complex. Given the short-term nature of the construction, in such a context, lighting during the construction phase is assessed as have a negligible impact after mitigation through the measures contained in the CEMP.

5.5.4 In operation there will need to be external lighting for ship loading, along roadways, for parking areas and generally for safety and security, but harbour premises are expressly excluded from the statutory nuisances to be considered under s79(1). Elsewhere the design of the lighting would minimise potential nuisance so the impact would be of negligible significance. Overall, the document concludes that it is not anticipated that statutory nuisance should arise in respect of air quality, lighting, noise (including vibration) or any other matter whether during construction or operation.

5.5.5 Odour and potential insect infestation were not expressly covered, but given the mineral nature of the intended polyhalite throughput I consider that nuisances of this nature are unlikely to arise.

5.5.6 The RCBC LIR [REP1-046] indicates that the greatest concern in respect of these issues is in relation to construction noise, particularly from piling with threshold levels specified that should not be exceeded at Marsh House Farm, Foxrush Farm and residential properties on the junction of Broadway West and Wilton Avenue in Dormanstown. Generally, however, RCBC anticipate potential nuisance being controlled through the operation of the CEMP. Specifically, RCBC had no comments to make on the potential issue of odour. RCBC responses to First and Second ExA questions explicitly state that noise and vibration maters would be regulated via the CEMP. They did seek

additional mitigation measures in their first response. The applicant confirmed in Document 8.4 'Applicant's Responses to Other Responses to ExA Q1' [REP2-015] that the mitigation includes acoustic barriers around auger bored piled locations as sought, but that there should be no need for noise curtains over percussive rigs as may be employed in the quay construction given the distance from residential properties and the minimum 8 hour break in operations each night to avoid harm to marine mammals, a point ultimately accepted by NE and the MMO.

5.5.7 Having regard to these considerations including the mitigation that would be secured through the CEMP, I am satisfied that the DCO scheme whether during construction or operation (or decommissioning) should not give rise to nuisance, whether statutory or otherwise and that the assessment requirements of the Ports NPS are therefore met in relation to this issue. Consequently, I consider that the provisions of Article 33 of the draft DCO are acceptable in terms of defence to statutory proceedings.

5.6 FISHERIES

5.6.1 Section 3.8 of the MPS requires consideration of the potential impact on fisheries. It is indicated that the aim of the reformed Common Fisheries Policy is to attain ecological sustainability while optimising the wealth generation of marine fish resources and their long-term prospects[35].

5.6.2 This issue is considered in section 11 of the ES [APP-219]. This indicates that regard was had to guidance from the Centre for Environment, Fisheries and Aquaculture Science (Cefas) and that, as suggested in the scoping opinion, consultation was undertaken with the MMO, EA and NE as well as the North Eastern Inshore Fisheries and Conservation Authority (NEIFCA).

5.6.3 The study of records and surveys undertaken showed that some species with conservation status and/or economic importance[36] are present in the Tees estuary, particularly salmon, sea trout, Atlantic cod, whiting, poor cod, sand goby, flounder and plaice.

5.6.4 The potential impact on these and other species was assessed in relation to underwater noise from piling, dredging and shipping movements against the hearing abilities of a number of species. It is not anticipated that noise levels from potentially the worst source in impact piling would be lethal but could cause traumatic injury. However, mitigation would be available through the prohibition of piling for 3 hours either side of low water during the period 1 March to 30 November and throughout May to minimise the effect on migratory fish[37] and generally there would be an 8 hour prohibition overnight.

[35] Section 3.8.3
[36] OSPAR List of Threatened and/or Declining Species and s41 NERC2006 list of species of Principal importance
[37] Salmon and sea trout

With these measures in place the residual impact is assessed as minor adverse.

5.6.5 The effect on marine water quality from dredging operations was also considered. This would be likely to increase temporary suspended sediment in the water column which could reduce food availability or, at prolonged higher levels, clog gills leading to death or at lower levels to avoidance of the affected area. Fish larvae and juvenile fish may be more susceptible, although estuarine fish are generally regarded as being less susceptible because of tidal variations in sediment levels. Mitigation is suggested through use of enclosed grab dredging to avoid dispersal of contaminated dredgings and backhoe dredging wherever possible which generally minimises dispersal of sediments. The timetabling of much of the dredging outside the main migratory periods for salmonids is also suggested as contributing to mitigation. With active mitigation measures, including detailed operational adjustments to any other means of dredging, the impact is assessed as of negligible significance, while the direct loss of fish, fish eggs and food sources from dredging is regarded as of minor adverse significance in sub-tidal habitats. The direct loss of inter-tidal habitat from solid quay construction may represent a moderate adverse factor, notwithstanding its poor quality. Risk of oil spills during construction is regarded as unlikely and there is not anticipated as being any direct impact on fishing activity. Similarly, maintenance dredging, as is already undertaken within the Tees Estuary, and shipping movements during operation are assessed as only having impact of negligible significance.

5.6.6 Leaving aside the issue of loss of inter-tidal habitat which was addressed at paragraph 5.3.14 above and will be mitigated through the Portrack Marsh habitat enhancement works, initially the MMO were not satisfied with all aspects of the ES with regard to the effect of underwater noise and sedimentation on spawning fish [RR-015]. They wished to see acknowledgement that Atlantic herring and lemon sole spawning grounds and Atlantic herring, lemon sole, cod, whiting, European plaice, sprat, anglerfish and spurdog nursery grounds are found in the vicinity of the Tees estuary. They queried aspects of the underwater noise assessment and wished to see soft-start techniques applied to piling to allow time for movement away in addition to the other mitigation intended, all of which would need to be secured. Subsequently, the MMO indicated that it was content with responses from the applicant, which included acceptance of soft-start piling techniques [REP2-019 and REP3-001]. The use of soft-start techniques is secured through paragraphs 30-32 of the DML that is Schedule 5 to the draft DCO.

5.6.7 Responses continued to be received throughout the Examination from NE, MMO and EA with NE and the MMO coming to an agreed position that all matters were satisfactorily dealt with regard to securing mitigation and monitoring and EA deferring to the position of NE and MMO on ecological matters. In these circumstances, I consider that

the assessment requirements of the MPS are met with regard to fisheries which should not be materially affected.

5.7 HAZARDOUS SUBSTANCES AND HEALTH

5.7.1 Section 4.15 of the Ports NPS indicates a need for the HSE to assess risks associated with intended hazardous cargos. This does not apply in respect of this application with its intended throughput of polyhalite. HSE were consulted in respect of the potential impact on pipelines passing beneath the site and this matter is considered in sections 5.13-5.14 below and in section 8 of this report.

5.7.2 With regard to health effects, section 4.16 of the Ports NPS indicates in very general terms that health impacts both direct and indirect should be assessed. These issues are addressed in relation to specific topics such as air quality and noise elsewhere in this report, but Public Health England did make a relevant representation [RR-020]. They indicated that they had made comments during the pre-application stage. They state that they are satisfied with the ES and the conclusions drawn and did not wish to make further comment. RCBC in their LIR [REP1-046] cover issues related to contamination which is addressed in section 6 of the ES [APP-201]. It refers to the risk of encountering asbestos in made ground that would be a risk to construction workers and it also refers to significant gas concentrations in the adjoining landfill site, though these are not recorded in the monitoring well adjacent to the quay site. Asbestos management and other monitoring and precautionary measures will be covered in the CEMP. This will be secured by Requirement 6 in Schedule 2 to the draft DCO and RCBC confirmed either by written comment or at hearings that they are satisfied that the text of the draft DCO at the close of the Examination and of related certified documents would satisfactorily safeguard matters within their responsibilities. The EA in their SoCG with the applicant [REP1-052] indicate that there could be an impact of minor adverse significance to construction workers and of moderate adverse significance to off-site residents from migration of ground gas from the Bran Sands landfill. However, with further monitoring of the ground gas regime, as required under the Environmental Permit, so that suitable mitigation measures can be identified and implemented and the implementation of generic environmental risk mitigation, residual impacts are predicted to be of negligible significance. EA subsequently confirmed that they were satisfied with the monitoring and management requirements and conditions embodied in Schedules 2 and 5 of the draft DCO and related documents.

5.7.3 Ms Christie raised issues relating to contamination in her initial submission [AS-001], but I consider that these were addressed in the ES and consideration of the scheme by RCBC and EA. As a natural fertiliser, polyhalite is not toxic and the conveyor system would be covered throughout.

5.7.4 Consequently, having regard to the mitigation that will be secured under the CEMP and Environmental Permit, I consider that the assessment requirements of the Ports NPS have been met with regard to these matters and that there should be no adverse risks to health from hazardous substances, subject to the conclusions reached in relation to risks to the underground pipelines.

5.8 HISTORIC ENVIRONMENT

5.8.1 The Ports NPS (section 5.12) and the MPS (section 2.6.6) require the effect on the historic environment to be assessed. It is stated in these documents that the significance of heritage assets, whether designated or not, has to be considered and it is indicated that they should be conserved in a manner appropriate and proportionate to their significance. As required, the ES considered such matters in section 15 under a heading of Archaeological and Cultural Heritage [APP-238]. This included desk based baseline appraisals and a study of existing archaeological and heritage baseline studies for nearby projects including those within Teesport. The Redcar and Cleveland Historic Environment Records were a specific source of information. The study accorded significance broadly in relation to the nature of the designations of particular assets.

5.8.2 The study found that there are no World Heritage Sites, scheduled monuments, Conservation Areas, Registered Parks or Gardens or designated battlefields within the study area of a 1 km radius around the application site. The nearest scheduled monuments are about 5 km distant and the nearest Conservation Areas, Coatham 2 km to the east/north-east and Kirkleatham 1.5 km to the south-east. There are 4 listed buildings within the study area, though none are in the immediate vicinity of the application site. The nearest are at Foxrush Farmstead some 600-700 m to the south-east of the application site. Most of these heritage assets can be located on Figures 15.1 and 15.2 in the ES, although some are too distant to be shown.

5.8.3 There are sites of some non-designated monuments within the application site, though it appears that a number of those recorded are no longer extant. The most significant dating from prior to WWII is the location of a deserted medieval village called West Coatham. This would be close to the alignment of the conveyor system at the point where it would pass northwards out of the Wilton chemicals complex in the vicinity of the M&G Fuels coal yard en route from the MHF to the proposed Bran Sands quays. Adjacent to the north-east end of the phase 1 quay there is a historic 'Dolphin' mooring buoy/navigation light structure known as the seventh buoy light. This would need to be demolished to facilitate the dredging of the berth pocket and for quay construction. A wherry named 'Heckler' is reported to have sunk in the area of the berth pocket, but the whereabouts of any remaining wreckage is unknown.

5.8.4 The West Coatham remains, if any, are assessed as having low to medium historic significance, although field investigations in

November 2014 did not locate any structures. Mitigation by way of would be monitoring during construction of conveyor supports is secured by Requirement 10 in Schedule 2 to the draft DCO. The impact is assessed in the ES as negligible. As for the mooring buoy/navigation light, this is also regarded as of low significance but as it loss cannot be avoided this is regarded as a moderate adverse consequence. However, with a full building recording survey, this would be reduced to minor adverse. The ES also suggests that there could be finds in peat deposits that may be encountered during construction/dredging and that there would need to be a protocol to govern procedures should any wreck be encountered during dredging and quay construction.

5.8.5 As far as the effect on the settings of heritage assets are concerned, whether listed buildings or conservation areas, the nearest are located at Kirkleatham, Foxrush Farmstead and Marsh Farmstead. From these locations in theory there might be views of the overhead conveyor system, but it is doubtful if in such views as might be obtained past intervening vegetation, the conveyor would be much more than barely perceptible. To the extent that it may be perceptible it would be in keeping with the industrial complexes against which it would be seen. Views from more distant heritage assets would be likely to be highly obstructed or heavily blocked by intervening buildings or vegetation. The ES concludes that there would be no harm to the settings of these assets.

5.8.6 The RCBC LIR [REP1-046] recites the findings of the ES and concludes that there is very low risk of harm or loss to local heritage features apart from the Dolphin mooring bollard. It recommends mitigation to secure:

- consideration of any impact on the remains of West Coatham
- recording of the details of the Dolphin mooring bollard prior to removal
- monitoring of potential geo-archaeological and paleoenvironmental remains that might be found in peat deposits, and
- a written scheme of investigation for dealing with any shipwrecks that might be encountered.

5.8.7 A requirement to secure the mitigation perceived to be necessary was included in Schedule 2 to the draft DCO, the final version of which is Requirement 10 in the applicant's draft of 13 January 2016. The wording of this requirement in this final form takes on board the wording recommended by Historic England in their late representation [REP6-018]. The MMO requested that similar wording should be included as a condition in the DML that is Schedule 5 to the draft DCO as they would be responsible for enforcing some of the points covered [REP8-005]. This request will be considered further in section 9 of this report.

5.8.8 Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 requires the decision maker to have regard to the desirability of preserving listed buildings or their settings or their special architectural or historic features, with a similar test applying to scheduled monuments or their settings. Similarly, regard must be had to desirability of preserving or enhancing the character or appearance of conservation areas.

5.8.9 I have paid particular regard to this duty in considering these issues. Having regard to my observations on site visits as well as the written material, I am satisfied that there would be no harm to any scheduled monument or statutorily listed building or their settings nor to the character or appearance of any designated conservation area. For the most part concerns over non-designated assets are a matter of taking a precautionary approach to monitoring construction. However, with regard to the Dolphin mooring bollard, there would an adverse impact as a consequence of its loss. However, I agree that it is of low significance and appears in poor condition. Consequently, I consider that a level 1 Building Recording (or equivalent) would provide sufficient mitigation. Consequently, I consider that the assessment requirements of the Ports NPS and MPS are met in relation to the historic environment. After the mitigation that would be secured through Requirement 10 and a condition in the DML, the residual adverse impact would be very slight.

5.9 LAND USE, LANDSCAPE, SEASCAPE AND VISUAL IMPACT

5.9.1 Section 5.11 of the Ports NPS requires consideration of landscape impacts and section 5.13 land use issues such as the effect on green infrastructure and the amenities of public rights of way (PRoW) including coastal access and long distance trails. Section 2.6.5 of the MPS requires a similar approach to seascape which it takes as meaning 'landscapes with views of the coast or sea, and coasts and the adjacent marine environment with cultural, historical and archaeological links with each other'[38].

5.9.2 The ES considers these matters in section 20 [APP-250] and section 21 [APP-257]. The former has 5 technical appendices [APP-251 to APP-256]. The cumulative landscape impact of the wider YPP (and other projects) is assessed in the Cumulative Impact Statement (Document 6.6) [APP-129]. This has a number of detailed appendices dealing with landscape and visual impact [APP-149 to APP-183].

5.9.3 The ES considers the landscape character areas that might be affected by the DCO scheme, whether during construction, operation or decommissioning by the removal of the conveyor system, but concludes that the impacts would not be significant ranging from no change/negligible impact to minor adverse. As detailed in section

[38] Paragraph 2.6.5.1

4.4.2 of this report, there is an agreed description of the site and its surroundings in terms existing landscape and visual character in the SoCG between the applicant and RCBC, namely that area around the site is flat low-lying reclaimed estuarial land occupied by large scale industrial complexes with non-industrial areas dissected by infrastructure corridors so that there is an overall urban character despite pockets of regenerating grassland or scrub. Any possible distant views, such as from the Eston Hills to the south, or from Gare Sands are dominated by the presence of large scale industrial development. Consequently, I agree with the assessment that the landscape and the seascape, as defined in the MPS, would not be materially harmed as the proposed development would fit into the existing industrialised character of the relevant part of the Tees Estuary.

5.9.4 Impacts of moderate adverse significance are discerned in terms of visual impact, particularly from viewpoints adjoining the residential developments at the western end of Dormanstown where the elevated conveyor structure would only be some 100 m - 200 m distant and existing screening only adequate to block low level views. Similarly, there would be a moderate adverse impact on views from the PRoW that would be over-sailed by the southern alternative conveyor corridor and similar moderate or even major adverse impact on views for users of the Teesdale Way and cycle track alongside the A1085 as well as for users of the road. In terms of constructional impacts, these latter impacts for users of rights of way would be increased by the closures that would be involved during overhead construction work. However, in relation to Teesdale Way and related routes along the A1085 any such closures would be expected to be of brief overnight durations. PRoW 116/31/1-2 that is affected by the southern alternative corridor conveyor route comes to a dead-end at the head of Dabholm Gut and does not provide access to any publicly accessible area. The existing utility of this route as a PRoW must therefore be relatively limited.

5.9.5 In terms of mitigation, the intended off-site planting secured through the planning obligation that is fully described in section 4.6.16-4.6.23 of this report ought to enable much improved screening and enhancement of the land between the nearest housing and the conveyor system where it is within the Wilton chemicals complex. On the accompanied site visit the very poor condition of some areas of the land between the housing and the perimeter of the Wilton complex was very apparent so that localised environmental benefit ought to be achievable.

5.9.6 The planning obligation would also fund public realm enhancements along the A1085 corridor and the conveyor over-bridge is intended to provide a gateway feature to emphasis movement out of the industrial areas along the Tees Estuary into the residential areas of Redcar. Requirement 2(3) in the final draft of the DCO provides for the design to be agreed with RCBC. The design of the conveyor bridge links where existing PRoW or other routes are crossed is also such as to

minimise its apparent bulk and painting of structures to match adjoining pipework is also proposed. Finally, by installing the external structure of the conveyor bridges during phase 1 so that the second conveyor required for phase 2 can be installed internally would avoid a second round of constructional disruption.

5.9.7 The RCBC LIR [REP1-046] is largely descriptive of the content of the ES, but to the extent that a concern is expressed over a landscape or visual issue other than the A1085 road crossing, over which objection was eventually withdrawn, it is whether off-site mitigation including planting could be secured in relation to land-ownership. As far as I could ascertain through the Examination, much of the land on which such mitigation would be anticipated is either highway land, land already in the ownership of RCBC or the housing association to whom RCBC's housing stock has been transferred or of Sembcorp Utilities UK within the Wilton chemicals complex and with whom the applicant has agreements in place. The last point is significant in so far as screen planting to safeguard residential outlook from the nearest Dormanstown properties could be on either or both sides of the Wilton boundary. Thus, I would have a good degree of confidence that the off-site mitigation proposed in the Development Consent Obligation [REP4-062] to mitigate these localised visual impacts ought to be achievable. It is conceptual in nature and not reliant on any particular parcel of land.

5.9.8 In the light of the foregoing I am satisfied that the DCO scheme has met the assessment requirements of the Ports NPS and MPS and, in the light of intended mitigation, should not in itself give rise to such significant adverse visual effects as to give rise to any significant weight against the scheme.

5.9.9 Nevertheless, before moving off this issue the potential for there to be cumulative visual harm to the landscape of the North York Moors National Park (NYMNP) has to be considered, as this appeared to be the initial standpoint of NE in their Relevant Representation [RR-007]. In my questions[39], I pressed NE for clarification as it did not seem that it would be possible for there to be inter-visibility during construction (and certainly not in operation) between the port structures and the minehead and/or the MTS shaft that are within the National Park. In their answer [REP1-015], NE simply make the point that as the port is part of the wider YPP, and in their judgement the minehead and MTS shafts do have a significantly adverse effect on the landscape and natural beauty of the NP at least during construction, conceptually therefore there must be cumulative impact with the wider YPP on the landscape of the NYMNP. As the applicant agreed the point in the SoCG with NE [REP1-051], I accept that this may be technically correct. Nevertheless, as the applicant points out [REP1-028], the only other part of the wider YPP that has a visual connection with the

[39] First ExA questions LV 1.2

harbour facilities is the MHF, but as both are within the Teesside industrial landscape this does not cause any greater cumulative harm in the locality. It should be noted, moreover, that notwithstanding the comments of NE, the NYMNPA has granted planning approval for the minehead and the MTS shaft that are within the NYMNP.

5.9.10 Finally, therefore, I have assessed whether there could be any harm to the NYMNP from the port structures on an individual or actual cumulative basis with any other component of the wider YPP that has already been granted planning approval, even if that too were outside the NYMNP. I have therefore considered whether there might be locations south of Guisborough within the NYMNP from which the harbour facilities alone or in combination with the Tocketts Lythe ventilation shaft might be visible together during construction. It would seem that this is highly unlikely as a consequence of the distance to the harbour location and the presence of an intervening ridge north of Guisborough. This is illustrated in the photomontages from viewpoint No 2 at Highcliffe Nab that is contained Appendix 22.1 to the Cumulative Impact Assessment [APP-170]. In the first photomontage, the ridge wholly or substantially obscures the MHF and harbour site, while the much higher structures of the Redcar steel works and RBT are only just visible in the distance to the east. Should there be a location further east where the intervening ridge would not restrict views, the MHF and Port structures would simply sit within the context of the steel works, RBT, Wilton complex and other industrial structures along the Tees. It should be noted that the Tocketts Lythe shaft simulation only appears in the separate second photomontage, making it very unlikely that there would be a viewpoint where an observer would be able to take in both features within a single vista. This point is reinforced by the plan of Cleveland Way south of Guisborough that shows very limited stretches from which even the Tocketts Lythe shaft would be visible [APP-180].

5.9.11 My own observations during unaccompanied site visits confirm the general accuracy of these visualisations. I conclude that the harbour facilities do not add to the harm that was perceived by NE to the landscape of the NYMNP from other components of the wider YPP, nor in relation to any other potential cumulative effects that are considered in the Cumulative Impact Assessment.

5.10 MARINE DREDGING AND DISPOSAL AND NAVIGATION

5.10.1 Section 3.6 of the MPS requires consideration of the effects of dredging and the disposal of dredgings that are involved in port development because dredging is enabling development. It points out that there can be ancillary benefits from targeted disposals, though warning that dredging can give rise to ecological concerns, destabilisation of heritage assets or cause adverse effects on sedimentary regimes.

5.10.2 The ES assesses the effects of the dredging involved in section 5 [APP-198] and section 7 [APP-206]. The implications for ecology, fisheries

and the historic environment have already been assessed in sections 5.3, 5.6 and 5.8 of this report and the specific impact on water quality is covered in paragraphs 5.17.1- 5.17.6.

5.10.3 The differential extents of dredging that would be required to accompany the open quay alternative and the solid quay alternative are both assessed in the ES with volumes disaggregated as between phase 1 for a single berth and phase 2, the increase to 2 berths. These details are found in section 3 [APP-190 and APP-191]. Capital dredging for open quay construction would involve removal of 1,122,000 m^3 and solid quay construction some 814,000 m^3. Of the larger total some 750,000 m^3 would be require removal for phase 1. As the phase 1 quay is at downstream end of the river frontage and the bedrock marls are closer to the surface at the upstream end, during phase 1, dredging would mainly be within silts, sands, gravels and clays[40], but phase 2 would involve a higher proportion of mudstone.

5.10.4 Suitable non-contaminated dredged material would be used for the proposed lagoon enhancement works at Bran Sands Lagoon and for quay construction if the solid quay option is taken forward with the balance disposed of at sea in the authorised disposal area off Redcar[41], this having been agreed with the MMO. Silt dredgings which are assumed from sampling to be potentially contaminated would be disposed of at landfill sites licensed to receive such hazardous material. This was subject of clarification during the Examination. The applicant submitted two documents outlining the approach and options available for this latter disposal in response to First ExA questions [REP1-033 and REP1-034]. It was subsequently agreed that a condition should be imposed in the DML that forms schedule 5 to the draft DCO requiring transport of such material to the selected disposal site by barge to avoid any risks as might arise from road haulage. The condition is included in the applicant's final draft DCO dated 13 January 2016. All aspects of the control of dredging operations are contained in the draft DML. While the detailed text of Schedule 5 went through a number of iterations, the MMO indicated that they are content with the finalised wording with one exception concerning the question of "deemed refusal" [REP7-005]. This will be considered further in section 9 of this report. The SoCG between the applicant and the EA confirms that the EA are content with the assessments undertaken in relation to relevant matters and with the conclusions drawn [REP1-052].

5.10.5 Apart from the detailed consideration given to the wording of the DML between the MMO, the applicant and myself, with comment as

[40] Based on open quay structure Phase 1 would remove 155,000 cubic metres of silt, 300,000 of sands and gravels, 180,000 of clays and 115,00 of mudstone; Phase 226,000 cubic metres of silts, 26,000 of sands and gravels, 50,000 of clays and 270,000 of mudstone.
[41] Tees Bay C with maximum volumes assessed as 326,000 cubic metres of sands and gravels, 230,000 of clays and 385,000 of mudstone.

necessary from RCBC, NE and EA, very little comment was received from statutory or other IPs on the specific issue of dredging. Much of the dialogue involved seeking to ensure as far as possible that there would be clarity and avoidance of overlap between the responsibilities of RCBC to enforce requirements in liaison with NE in respect of areas above High Water Spring Tide level and those of the MMO to enforce conditions in respect of areas below that level. This was substantially achieved. It was agreed by the MMO that maintenance dredging did not need to be included within the DML in the DCO since that would be likely to be coordinated with that for the wider Teesport. Certain pipeline operators did raise the implications for the stability of pipelines beneath the River Tees, in case they might be affected by dredging operations, but as this is an issue related to the Protective Provisions sought by these operators more generally, it will be considered in detail in section 8 of this report.

Navigation

5.10.6 Otherwise comments relating to dredging were linked to issues concerning safe navigation within the River Tees which is also a matter that section 3.4 of the MPS requires to be assessed. The Maritime and Coastguard Agency [RR-008], Trinity House [RR-001] and PD Ports on behalf of the Tees Port Authority [RR-002] all submitted Relevant Representations. The Maritime and Coastguard Agency wished to ensure that the applicant and the Tees Port Authority would be working together and Trinity House initially simply drew attention to their statutory responsibilities, though subsequently sought insertion of references in relevant articles to offences being created by non-compliance [REP1-026].

5.10.7 The Relevant Representations of PD Ports pointed out that the new harbour facilities proposed in the draft DCO involved works and operations within their jurisdiction and that they were working with the applicant to ensure that the harbour undertaking and harbour users would be able to operate safely. To this end they sought amendments to the Protective Provisions contained in Schedule 11 to the DCO intended to provide protection for the Tees Port Authority. Their detailed concerns were followed up in written representations and in response to First ExA questions [REP1-019 and REP1-020]. Negotiations continued between the applicant and PD Teesport to agree the wording of Protective Provisions and in their response to Second ExA questions PD Teesport indicated that they were content with revised wording that had been or would be incorporated in the draft DCO [REP4-008]. It was agreed that Schedule 11 should include a reference to the harbour authority's "relevant limits of jurisdiction". This is because the jurisdiction of the harbour authority extends into a significant part of the land side of the Order land, for historic reasons. The purpose of identifying the "relevant " jurisdiction is to ensure that the protective provisions for the harbour authority will not apply in relation to activities on land which is above the level of high water unless the activities actually affect the River Tees or any function of Tees Port Authority as harbour authority. Trinity House also indicated

that it is content with the incorporation of the additional text that it had requested [REP6-001].

5.10.8 In the light of the foregoing, I am satisfied that assessment of the required dredging, disposal of dredged material and navigational effects of the DCO as required by the NPS and MPS has been satisfactorily undertaken and that no harm should arise in relation to these matters as governed by the wording contained in the final draft of the DCO dated 13 January 2016.

5.11 POLLUTION CONTROL AND OTHER ENVIRONMENTAL REGULATORY REGIMES

5.11.1 Section 4.11 of the Ports NPS requires consideration of whether the development sought in the DCO would also require separate licences or permits under other regulatory regimes. Consultation is advised with the responsible bodies or agencies such as the EA, MMO and NE. It is stated that the decision-maker should not refuse consent on the basis of impacts that are separately regulated unless there is good reason to believe that any relevant operational pollution control permits or licences or other consents required will not subsequently be granted.

5.11.2 It is clear that the required consultation has been undertaken in the preparation of the ES and at the pre-application stage as well as continuing through the Examination. At section 1.5 of this report I summarised the other consents that will be required to construct or operate the DCO scheme. They are limited in number primarily concerning permits required from the EA to discharge water into the River Tees and in relation works within the Bran Sands landfill site where the existing permit held by ICI is proposed to be transferred to the applicant on acquisition. Because use of existing landfill sites licensed to take the relevant hazardous waste are proposed for the disposal of contaminated silt dredgings, no new permits should be required in respect of this aspect of the proposed development. The EA has indicated that there are no known impediments to the issue or variation of permits known to be required [REP1-028].

5.11.3 In the SoCG between the EA and the applicant [REP1-052], it does indicate that Flood Defence Consents (FDCs) are required to undertake works within 5m of a main river. However, it goes on to state that where there is an application MMO for a licence, a FDC wavier is usually provided to the applicant. In this case the DCO contains a draft DML that is agreed by the MMO apart from the 'deemed refusal' point that will be considered in section 9 of this report. NE has confirmed that no protected species licences are anticipated as being necessary [REP1-015].

5.11.4 As the relevant bodies and agencies have confirmed that there are no issues outstanding in relation to the regulatory regimes they administer, the assessment requirements of the Ports NPS are clearly met.

5.12 NOISE AND VIBRATION

5.12.1 Both the Ports NPS and the MPS require consideration of noise and vibration issues. At section 5.10 the NPS the particular characteristics of development that could give rise to noise or vibration impacts are set out together with the matters that should be assessed by applicants. Their assessment is set out in section 14 of the ES [APP-236]. This includes reference to the Noise Policy Statement for England (NPSE) which indicates that there should be avoidance of significant adverse impacts on health and quality of life, mitigation of those impacts that do arise and where possible sustainable development should seek to contribute to the improvement of health and quality of life.

5.12.2 Baseline noise measurements were taken and assessments relating to construction noise made in relation to residential and ecological receptors. Threshold noise limits were set for receptors in day-time, evening and weekend and night-time periods in accordance with BS5228 Code of Practice for noise and vibration control on construction and open sites. Construction traffic noise was also taken into account. The conclusion of the studies for dredging, quay construction and piling of the foundations of both alternative conveyor routings is that the residual impacts on any receptors studied would be of negligible significance after mitigation. The mitigation measures and the implications for nuisance to human receptors and to ecological receptors including in relation to fisheries have already been set out in sections 5.5, 5.3 and 5.6 of this report respectively and will be considered further in relation to HRA in Section 6. Operational noise was regarded as likely to have negligible significance and de-commissioning noise and vibration to be likely to have a lesser impact than for construction and therefore did not need to be considered separately..

5.12.3 In their LIR [REP1-046], RCBC indicated that they were broadly satisfied with the assessments undertaken in relation to noise and accepted the methodology of BS5228 to set threshold limit values at the residential properties on the junction of Broadway West and Wilton Avenue, Dormanstown, at Marsh House Farm and Foxrush Farm as night-time 45 dB L_{Aeq}, evenings & weekends 55 dB L_{Aeq} and day-time 65 dB L_{Aeq} as tabulated on page 531 of the ES. Subsequent representations from RCBC confirmed that it was accepted that the CEMP would enable these limits to be achieved and enforced.

5.12.4 Consequently, I am satisfied that noise and vibration issues have been adequately assessed. There should be no significant harm as a consequence of such considerations in the light of the mitigation that would be secured through the CEMP under Requirement 6 in Schedule 2 of the draft DCO.

5.13 SECURITY AND SAFETY CONSIDERATIONS

5.13.1 Section 4.17 of the Ports NPS requires regard to be had to security considerations to ensure that the vulnerability of the most critical national infrastructure assets is minimised. No defence interests have been raised in relation to the DCO application and the nature of the structures and intended cargos is such that it would appear that it is not directly of interest to the Centre for the Protection of National Infrastructure in relation to such matters.

5.13.2 A number of commercial interests made representations concerning pipelines that pass through the DCO application site or are in close proximity to proposed works. They perceived risks to these pipelines, and to their operations should the flow of the substances carried by the pipelines be interrupted. I regard most of the issues as primarily matters relating to commercial considerations rather than security, notwithstanding the importance of the activities of the enterprises that were seeking improved Protective Provisions and/or modifications to the DCO scheme. Thus, these issues are touched upon further in the following sub-section and examined in depth in section 8 as they are related to the Compulsory Acquisition (CA) powers sought in the DCO

5.13.3 However, one of these objectors, CATS Management, suggested that the amount of gas transported through their pipeline from the North Sea to the Seal Sands Gas Processing site was of such importance to the national economy that this should be given special consideration. A representation from the Oil & Gas Authority confirmed the importance of this pipeline [AS-010].

5.13.4 In addition to these arguments over the commercial and economic importance of the pipeline, CATS also raised safety issues in relation to their pipeline. The possibility of considering such matters in closed session was touched upon during the CAH on 24 November 2015. However, rather than exploring the justification for such a procedure further, it was concluded during an adjournment that the essentials of the risk assessment undertaken by CATS Management could be discussed with the applicant and any differences between the parties presented to me.

5.13.5 As this issue is also central to the CATS case against the grant of CA powers in respect of the Southern alternative conveyor route, detail of the full exchanges between CATS and the applicant are set out in paragraphs 8.7.58 – 8.7.94 of this report, but in summary CATS do not regard the proposed Protective Provisions as providing sufficient mitigation and while they will reduce risk, they argue that they are not a substitute for avoidance. The potential risks are perceived to be greater than any encountered over the last 20 years that the CATS pipeline has been in existence as construction of parallel pipelines has not involved piled foundations close to the pipeline nor significant over-sailing.

5.13.6 The principle of 'The Control of Major Accident Hazards Regulations (COMAH), 2015(4) (Regulations 5(1) and 5(2))' requires the operator to demonstrate that major accident hazard risks are reduced to the level of 'as low as reasonably practicable' (ALARP). In their view the QRA demonstrates that the Southern alternative conveyor route would have a much greater inherent risk than the Northern. This is because the Southern route would be above or close to the CATS pipeline for around 2 km, whereas the on the Northern route it would only be overhead or close alongside for at most around 0.5 km. The QRA produced societal risk calculations that on a worst case, such as might arise from ignition following a full bore rupture caused by an error in plotting the pipeline position during excavations, the Southern route could cause up to 100 fatalities on an event frequency of 1:1,200 years as the impacted populations for the Southern route were identified as including (a) the applicant and their contractors, (b) the Tesco Distribution Warehouse, (c) the Car Distribution Centre, and (d) the Bran Sands Sewage Disposal Works. The population total is well in excess of the relevant[42] threshold population of 50. In contrast, with the Northern route on a similar worst case scenario, only 50 fatalities might arise on a 1:48,000 year frequency.

5.13.7 HSE Guidance 'Reducing Risks, Protecting People: HSE's decision-making process, 2001(6)' (known as R2P2) provides guidance on the tolerability of risks. The HSE Guidance in R2P2 states that an incident, particularly where there is some choice as to whether to accept the hazard or not, which has the potential for more than 50 fatalities and can occur with frequency greater than 2E-04 per year (1:5000) should be regarded as 'intolerable'. Referring to the result of the QRA, the Southern Route exceeds the 2E-4 per year threshold by a factor of four. Therefore, the risk presented by the interaction of the Southern route with the existing CATS' pipeline has been assessed as 'intolerable', using the HSE Guidance provided within R2P2. It should be noted that the QRA assumes that the proposed Protective Provisions are in place. By contrast, the results of the QRA indicate that the Northern route is significantly outside the threshold of risk tolerability, as defined in the HSE Guidance R2P2[43].

5.13.8 CATS have therefore advanced cogent arguments that the Southern route would give rise to an intolerable societal risk were it to be adopted because the Protective Provisions would only provide a level of administrative control that would be insufficient to guard against risk of human error in identifying the pipeline location in relation conveyor footings.

5.13.9 Such safety grounds were not advanced as a significant part of the case against the Southern route by the Bond Dickinson group of

[42] In R2P2 as defined in the following paragraph.
[43] THE QRA goes on to assess the potential impact on the A1085 of the Northern route but concludes that the intermittent nature of traffic and particular public transport means that the consequent risk would remain tolerable.

objectors, but this may be because the Breagh gas pipeline would not be over-sailed by the Southern conveyor route for the 2 km run from the Bran Sands Sewage disposal site to the proposed quay, but would largely run down the opposite side of the pipeline corridor, unlike the CATS pipeline. Only in the common route for both alternatives from the vicinity of the HMR and between that and Network Rail lines would the proposed conveyor directly over-sail the Breagh gas pipeline or run close to it. No comment was made by GD-Suez in relation to their gas pipeline but again that is not directly over-sailed being on the far side of the pipeline corridor through Bran Sands and, moreover, it is not currently in use.

5.13.10 The applicant disputes the conclusions of the CATS QRA and submitted their own consultants' QRA findings which are detailed in paragraphs 8.7.80 - 8.7.81. However, it is agreed between the parties that the Northern route would give rise to lesser risks than the Southern route. My understanding of the application of the COMAH Regulations is that these apply to the operation of the MAHP pipelines and that there would be no absolute requirement to choose the lowest risk available in construction near to the pipelines, provided that the risk involved is assessed as reasonable. It is not easy to form a judgement on the competing arguments of CATS and of Royal Haskoning DHV on behalf of the applicant as the full detail of the analysis in both the risk assessment studies has not been disclosed. However, in pointing to the principle of securing risk being 'as low as reasonably practicable' (ALARP) under HSE guidelines, CATS appear to me to be taking a precautionary approach. In my judgement, that would be appropriate, given the serious implications were the concerns advanced by CATS to prove justified in practice. On the arguments advanced by CATS the risk in developing the Southern alternative conveyor route would not be 'reasonable'.

5.13.11 Thus, my conclusion is that the greater safety risks associated with use of the Southern alternative conveyor route would justify withholding consent for that part of the DCO works, given that an alternative Northern conveyor route exists.

5.13.12 I have considered whether excision of one the alternative conveyor routes would result in a DCO that was materially changed from that in the original application. As such a change would result in reducing the scope of the Order, my judgement is that would it fall within the principles of natural justice that are referred to in paragraph 113 of the current guidance on the examination of applications for development consent[44]. No additional parties could be affected. Consequently, I consider that the application with the excision of the Southern alternative conveyor route could be regarded as materially

[44] Planning Act 2008: Guidance for the examination of applications for development consent, March 2015 (DCLG). This refers to Bernard Wheatcroft Ltd v Secretary of State for the Environment (1982) 43 P & CR 233 where it was held that anyone affected by amended proposals should be provided with a fair opportunity to have their views on amendments heard and properly taken into account.

unchanged and that this would be the appropriate response to the safety concerns.

5.14 COMMERCIAL, ECONOMIC AND SOCIO-ECONOMIC IMPACTS

5.14.1 Sections, 4.3, 4.4 and 5.14 of the Ports NPS require considerations of these issues. Port development is generally regarded as being likely to have positive economic benefits in terms of regeneration and employment opportunities, although the commercial impact on other commercial enterprises has to be considered. The aspects of the socio-economic considerations needing to be assessed are elaborated in section 5.14 of the Ports NPS. Section 4.6 would include consideration of any impacts upon tourism as does section 3.11 of the MPS.

5.14.2 I have already included a summary of the economic development benefits of the wider YPP and the DCO scheme itself in paragraphs 4.4.7 and 4.4.8 of this report. They are fully set out in the Economic Impact Report (Document 7.3) [APP-024]. In summary, overall the YPP is projected to generate direct employment of 1,670 during construction with a further 9,720 indirect and induced jobs and some 1,040 permanent jobs during operation over an anticipated 100 year life, with in turn some 1,100 indirect and induced jobs. The Port alone would have a peak construction employment of 173 with 413 indirect and induced jobs. In operation phase 1 would have a permanent employment of 26 rising to 34 after phase 2 with indirect and induced employment of 143 rising to 195.

5.14.3 These jobs and the opportunities for training and for local businesses in supporting the mining, processing and shipping activities would be particularly valuable given the high levels of deprivation and unemployment in the Teesside area. The need for new sources of employment and economic activity was emphasised during the course of the Examination by the closure of the adjoining Redcar steel works of SSI UK together with related coke ovens and there were also announcements of job losses in the nearby Tata steelworks.

5.14.4 The benefits to the national, regional and local economy were also highlighted in a number of supporting Relevant Representations, namely those from Victor Delstanche [RR-006], Alan Wilson [RR-013], Bryan Evans [RR-004], Anthony Sargent [RR-003], David Sidebottom [RR-005] and Mark Pickersgill [RR-014]. These strongly supportive representations come from a wide area, but the support of the local planning authority, RCBC within whose area all but a minority of the area to be dredged is located, is equally strong in terms of the economic and socio-economic benefits. These are set out in the LIR [REP1-046] and were summarised above. The RCBC LIR also commented that the overall YPP scheme would represent sustainable development because of the contribution that it would make to world food production while minimising greenhouse gas emissions.

5.14.5 Moreover, at Document 7.5, the applicant provided a letter from the Secretary of State for Business, Innovation and Skills dated 4

December 2014 which, while not commenting on the specific application(s), highlighted the fit of the overall YPP project to the Government's growth agenda and the benefit that the project would have in contributing to supporting and maintaining a vibrant UK minerals sector [APP-034].

5.14.6 Against these positive indications of support based on the overall economic and social benefit that is perceived, a number of commercial enterprises with assets that would be over-sailed by the proposed conveyor system or potentially affected by dredging operations raised concerns at risks to their operations. The risks cited were primarily during construction but some concerns were also expressed on the basis of feared reduced ability to maintain their assets or hindrance to their operations during the operation of the port as a consequence of the location of the overhead conveyor. Relevant Representations were received from Bond Dickinson highlighting these issues on behalf of Huntsman Polyurethanes [RR-009], Sabic UK Chemicals [RR-010] and DEA [RR-016]. The representations lodged by Bond Dickinson were essentially in similar terms and primarily related to the Southern alternative conveyor route as this essentially follows what is described as the Sembcorp pipeline corridor. Conversely, the relevant representation from Tata Steel (also at that time on behalf of SSI UK), while primarily expressing concern over the proposed over-sailing of the hot metal rail line and associated roadway between the Redcar Steel Works and the Tata rolling mills, also raised concerns in respect of the potential impact of the Northern alternative conveyor route on the operations of the Redcar Steel Works and the jointly owned RBT. Finally. CATS Management entered representations at a later stage expressing concern over risks to their pipeline which is in the vicinity of both alternative conveyor routes [REP1-001 and REP1-002]. Their concern is based on safety as well as commercial considerations as noted in the previous sub-section.

5.14.7 Addressing these concerns was subject of protracted discussions, whether directly between these bodies or their representatives and the applicant or at CAHs and ISHs on the DCO wording, and in repeated exchanges of written submissions throughout the Examination. It is clear that the perceived greatest risks remain in relation to the Southern alternative conveyor corridor, although selection of the Northern corridor would not remove all risks. The final version of the draft DCO put forward by the applicant on 13 January 2016 contains the fruit of the exchanges in terms of the Protective Provisions in Schedules 9 and 10 for the protection of the pipeline corridor and protected crossings and the protection of assets bridged/over-sailed and for the RBT.

5.14.8 It would only be if these Protective Provisions were deemed inadequate to reduce risk to sufficiently low levels in relation to the operation of these commercial undertakings on one or both of the alternative conveyor corridors that the commercial risks to these enterprises would need to be set against the benefits to the local, regional and national economies. This was a concern of Ms Christie in

her final comment [REP7- 001]. However, as this issue is essentially related to the compulsory acquisition/compulsory imposition of rights in respect of these affected persons, the issue will be addressed in detail in section 8 of this report. If it is assumed that the Protective Provisions will be effective for one or both of the alternative conveyor corridors, in my judgement, the assessment in relation to economic, socio-economic and commercial considerations must be strongly positive.

Public Sector Equality Duty (PSED)

5.14.9 As this duty introduced by the Equalities Act 2010 has socio-economic aspects, it is appropriate to consider it at this point in my report. York Potash Limited is not a public sector body within the meaning of the act so that the provisions of s149 do not directly apply to the DCO scheme. Nevertheless, I cannot see any reason why the intended works or operations should have a differential impact on any groups with protected characteristics such as to cause discrimination or other conduct that is prohibited under the act.

5.14.10 In making my recommendations, I have carefully considered the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

While, given the nature of the proposals, it is difficult to see how the positive objectives of the duty will be specifically advanced, none of the recommendations that I have made to amend the DCO will in any way run counter to those objectives.

5.14.11 With regard to the Examination itself, the venue for hearings was selected so as to be accessible by public as well as private transport, internally to have lift access and other facilities for those with physical disabilities and amplification with loop provision was available at all sessions. Opportunity was also facilitated for direct discussions with consultants for the applicant when concern was expressed over the volume of documentation needing to be considered by private IPs whether at the local library in Redcar or via web-links. I am satisfied therefore that no groups with protected characteristics should have in anyway been disadvantaged during the examination of the DCO and that the PSED has been complied with.

5.15 TRAFFIC AND TRANSPORT

5.15.1 Section 5.4 of the Ports NPS requires production of a Transport Assessment where there could be significant transport implications and that where appropriate the applicant should prepare a travel plan.

5.15.2 This Transport Assessment is set out in section 12 of the ES [APP-220 and in its appendices APP-221 to APP-233]. The study considered relevant links and key junctions both during construction and operation of the harbour facilities. These are illustrated in the figures contained in Appendix 12.1 [APP-221]. The peak daily HGV demand during Phase 1 construction is assessed as 66 and 36 in relation to Phase 2 construction and peak daily employee demand as being 175 during construction. The proposed CTMP would seek to ensure that the employee demand did not generate more than 70 Passenger Car Units (PCUs) in morning and evening peaks. The conclusion is that traffic increases on all links would fall below the GEART[45] screening thresholds so that the impact is assessed as minor adverse during construction. As far as the 4 junctions that were assessed, the increases in potential delay are all assessed to be very slight with impact of negligible significance.

5.15.3 The Cumulative Impact Assessment also provides a Transport Assessment in relation to the wider YPP and other potential projects at Document 6.6 [APP-129] and in particular in its appendices 6.15 APP-133 to AP-147]. Again no significant impacts are assessed as likely to arise on roads or junctions in the area that may be affected by the development of the Harbour Facilities provided that the intended mitigation is secured. This would be through the Construction Traffic Management Plan that is referred to in Appendix 12.3 to the ES [APP-225] and specified in Requirement 7 in Schedule 2 of the draft DCO. The highway works shown on the highway works plan [APP-075] would also be undertaken in advance of any other construction as specified in Requirement 5. Other mitigation measures would be secured through the planning permissions granted for other components of the YPP and related obligations that have been entered into.

5.15.4 Operationally, the polyhalite is planned to be delivered to the harbour facilities by the proposed overhead conveyor system from the MHF. It is proposed to arrive at the MTS via the proposed underground MTS from the mine. The cargo itself should not therefore generate road transport movements. Given the small number of employees that would be involved in operating the harbour facilities and the fact that these would operate on a shift basis, and that there would only be an occasional HGV visiting the site for maintenance purposes, the operational transport impact is regarded as of negligible significance. De-commissioning constructional impacts would be significantly less than during initial construction as only the conveyor system is envisaged for removal and not the quays.

5.15.5 The satisfactory outcome of the Transport Assessments is noted in the SoCGs between the applicant and RCBC as local highway authority and Highways England as strategic highway authority [REP1-050 and

[45] Guidelines for the Environmental Assessment of Road traffic (published 1993)

REP1-049]. The conclusions of these SoCG have already been reported at paragraph 4.4.5 of this report. In summary, the SoCG with RCBC concluded that requirements including provision of a CTMP were agreed and, overall, it was stated that no transport/traffic matters remained unresolved. The SoCG with Highways England concluded that it was agreed that the traffic impact associated with the development proposals during both construction and operational phases would not have a material adverse impact on the operation of the Strategic Road Network (A19, A174 and A1053) whether on its own or cumulatively with the wider YPP and the Dogger Bank Offshore Wind Farm development. Mitigation and Requirements were also agreed.

5.15.6 Despite these clear conclusions from the highway authorities most affected, a number of IPs did express concerns. At a late stage, Royal Mail [REP3-011] suggested that the construction phase could interfere with mail deliveries. This point was put to RCBC. Their response to Second ExA questions [REP4-003] was that 'Engineering colleagues have advised that they are satisfied that Requirement 7 in Schedule 2 will safeguard the interests of Royal Mail as there will be minimal impact on the network from the development'. I am therefore satisfied that no issue should arise in relation to Royal Mail operations.

5.15.7 Pipeline operators also expressed concern that access to their installations on the Wilton chemicals complex site or for any necessary maintenance works to their pipelines within the application site might be obstructed during construction works particularly in respect of the works to the A1085 roundabout that are required to create a construction access, but also in relation to the construction of the conveyor over-bridges over the A1085 and internal roadways. Again RCBC commented that 'Engineers have advised that they are satisfied that the works which require consent will be acceptable in highway terms for the duration of its operation'. At the hearings it was confirmed that it was expected that the works shown on the highway works plan [APP-075] would be able to be undertaken without any closure of the junction. As the concern was pressed on behalf of the pipeline operators, this matter is also embodied in the Protective Provisions that will be considered in detail in section 8 of this report. With those added safeguards, I am satisfied that no issue remains in connection with these access concerns.

5.15.8 Finally, North Yorkshire County Council did express concern over the possible use of rail transport to move polyhalite from the MHF [REP1-018]. This arose as a comment on the ExA's First questions. The overall response is somewhat surprising given the evident studies undertaken in relation to the cumulative impact of the wider YPP which were subject of planning applications approved by both RCBC and the NTMNPA. A supplementary response subsequently acknowledged their involvement and satisfaction with the wider assessments undertaken [AS-008].

5.15.9 Specifically, the comment about concern over the possibility of rail use to transport the output of the MHF remains surprising given the intention that only 125,000 metric tonnes of the annual phase 1 output and 175,000 metric tonnes of the annual phase 2 output would be expected to be sold in the domestic market with the remainder shipped for export via the proposed new port. My question to the applicant to clarify whether rail access would remain available and not be precluded by the positioning of the conveyor was to ensure that rail could be used should the occasion arise during the lifetime of the project and given the use of rail haulage by the operators of the Boulby Potash mine. Use of rail haulage would be consistent with government transport policy on preference for rail haulage rather than road haulage. Consequently, should rail use arise in the future and delays be increased at the level crossing in Northallerton that is referred to, it would in my view be a matter to be addressed within the overall strategy of removing level crossings wherever possible rather than being a factor to be weighed against this proposal. This is on the basis both of the applicant's current stated intentions and the thrust of government transport policy as set out in paragraph 2.40 of the National Networks NPS.

5.15.10 Overall, I am satisfied that subject to the intended mitigation no adverse considerations arise from the transport assessment of the DCO scheme.

5.16 WASTE MANAGEMENT INCLUDING WASTE IMPACTS, SURFACE WATER MANAGEMENT AND WASTE WATER TREATMENT AND DISPOSAL

5.16.1 Sections 5.5 of the Ports NPS requires assessment of waste issues including those relating to surface and waste water and section 3.10 of the MPS raises similar issues while section 5.6 of the Ports NPS relates these matters to consideration of effects on water resources. Both draw attention to the Water Framework Directive (WFD) and certain other Directives. Compliance with those Directives will be considered specifically in the following section of this report. The Ports NPs requires preparation of a Site Waste Management plan and the safeguarding of all water resources through the manner in which surface water and waste water are managed.

5.16.2 Most of these issues are assessed in section 6 of the ES [APP-201]. As well as fronting the Tees estuary, the site includes or is adjacent to a number of smaller surface water bodies including ponds, lagoons and drainage channels. The largest bodies are Dabholm Gut inlet and Bran Sands Lagoon, the latter being the sole remaining area left unreclaimed from a series of lagoons created by deposit of slag. Despite a linking pipe to the estuary, it is not defined as a WFD water body. As the lagoon is within the boundary of the Bran Sands landfill site it is regulated by the EA under Environmental Permitting Regulations, albeit that no waste disposal has taken place within the lagoon. The DCO scheme does not propose any works within the actual landfilled area.

5.16.3 The chemical status of the Tees Estuary is assessed by the EA as good apart from the presence of tributyltin which results from leaching of anti-fouling coatings on marine vessels using the estuary, although this results in an overall chemical categorisation as 'failing'. The landside works would not affect contaminated sediments and dredging was addressed earlier in section 5.10. The ecological status is classified as moderate. The non-tidal part of Dabholm Gut, into which the sewage disposal works discharges under two current discharge consents, fails the WFD chemical test because of the presence of priority hazardous substances. There are no surface water abstractions within the footprint of the application.

5.16.4 The hydrology is regarded as of high sensitivity due to the number of bird species present and the fairly poor water quality in Dabholm Gut as a reclaimed drain serving a highly industrialised area. In terms of hydrogeology, the area is regarded as being a secondary aquifer which in the tidal flats area of the main part of the site is regarded as of high vulnerability because of the risk of spillages in the absence of any overlying clays. South-east of the Network Railway line, overlying glaciolacustrine deposits provide a safeguard against pollution of the underlying aquifer. There are no abstractions from within the site and a surrounding buffer zone, nor any groundwater protection zones. Despite the groundwater being of a good quantitative status, in WFD terms the EA defines the quality as poor as a consequence of the presence of priority hazardous substances from the past industrialisation and there is also the potential for leachate contaminants from slag or the landfill.

5.16.5 Good construction practice and monitoring that would be governed by the CEMP would generally provide mitigation against most risks to the hydrogeology that may exist during construction. Piling would extend down into the Tees Mercia Mudstone and Redcar Mudstone aquifer, but as that has limited flow via fissures or fracture, any contamination that may be carried down would only have a localised effect as flows would be low. In terms of hydrology, the proposed augmented flow pipes between the Bran Sands lagoon would prevent any material change in water levels being caused by the works irrespective of whether solid or open quay construction is ultimately pursued. The overall conclusion of the ES is that the impact of the DCO scheme on surface waters and groundwater would be of negligible significance during construction. A similar assessment is made concerning operation of the harbour facilities, given proper handling practice for any hydrocarbons stored on site and the nature of polyhalite. Slightly greater risks are perceived in terms of decommissioning on the basis of intended removal of all but the quays, but the assessed impact on surface water is still only regarded as minor adverse and on groundwater it would remain negligible.

5.16.6 Appendix 3.1 to the ES sets out a comprehensive waste management strategy for the DCO scheme [APP-191] during construction, operation and de-commissioning. This includes maximisation of recycling and this would primarily be would be implemented through the CEMP

which is specified in Requirement 6 in Schedule 2 of the draft DCO. Requirement 11 would require a similar plan for decommissioning, while Requirements 2 and 3 require approval of full details of surface and foul drainage and of on-site storage.

5.16.7 The SoCG between the applicant and EA [REP1-052] confirms that EA perceived there to be a potential impact of minor adverse significance to surface waters during the operational phase given the high sensitivity of those waters. However, it notes that control measures would be implemented that would minimise any risk to surface waters as far as possible. With regard to waste management, it is stated that it agrees that the approach adopted for consideration of waste generation and the framework defined for the management of waste during the construction, operational and decommissioning phases is appropriate.

5.16.8 In the light of those conclusions I am satisfied that the application meets the assessment requirements in relation to these matters and that there should be no likely significant impacts in relation to these considerations.

5.17 WATER QUALITY (ECOLOGICAL & CHEMICAL) AND RESOURCES

5.17.1 As mentioned in the previous section of this report, section 5.6 of the Ports NPS and section 3.10 of the MPS draw particular attention to the need for compliance with the Water Framework Directive and other related Directives. While the relevant matters were generally addressed in the preceding section of this report, appendix 4.3 to the ES contains a Water Framework Directive Compliance assessment [APP-197]. The Directive requires that there must be prevention of deterioration and protection and enhancement of the status of aquatic ecosystems. Historic consequences need to be addressed with consideration given to surface waters, to modified and artificial water bodies and to groundwater.

5.17.2 The assessment catalogued all the relevant water bodies with their ecological and chemical characteristics tabulated from the Northumbrian River Basin Management Plan (RBMP). The water bodies are illustrated on Figure 1.1 in Appendix 4.3. The potential impacts on each of these water bodies is then considered along with the opportunities mitigate these potential impacts.

5.17.3 The conclusions are as follows:

- The construction of the conveyor system and temporary construction compounds have potential for impact on WFD compliance as a consequence of release of sediment laden surface water or surface water contaminated with accidental spillages from vehicles. However, the magnitude of these potential impacts would be significantly reduced by the environmental mitigation measures described in paragraph 4.1.8 of the WFD Compliance assessment. The residual impact is

therefore unlikely to cause deterioration in the hydro-morphological and biological quality elements of the Tees estuary (south bank) river water body.

- The proposed development is not likely to result in any significant groundwater impacts and will not cause deterioration in the status of the Tees Mercia Mudstone and Redcar Mudstone groundwater body, nor that the Yorkshire North coastal water body.
- The proposed quay construction and dredging does have the potential to alter a number of WFD parameters within the Tees transitional water body. While it is acknowledged that there would be a temporary deterioration in some parameters such as the physico-chemical, the main potential impacts would be controlled by design as well as conditions imposed upon dredging and piling operations. Consequently, any impacts are not assessed as being likely to be significant in the long term, particularly as the new quay is not predicted to alter hydro-morphological parameters. As a consequence the proposals are considered to be compliant.

5.17.4 The mitigation measures referred to would include the detailed design of surface water drainage discharges, constructional measures that would be controlled through the CEMP which is specified in Requirement 6 of Schedule 2 to the draft DCO and soft-start piling techniques and use of an enclosed grab to dredge contaminated silts, matters that are governed by the draft DML in Schedule 5 to the draft DCO. It is therefore concluded that the DCO works and operations should not cause deterioration in the status of any water body or prevent good status being achieved in these water bodies in future.

5.17.5 As there were a number of matters that were not clear in this assessment, I put questions to the applicant, the EA and MMO in my First schedule of ExA questions. The response from the EA confirmed that they are content with the wording proposed by the applicant to secure necessary monitoring and mitigation [REP2-017]. The MMO similarly confirmed that they are content with the applicant's responses and that monitoring and mitigation is secured [REP2-019] The applicant's responses were set out in their answers to these questions [REP1-028].

5.17.6 In the light of these responses I am satisfied that the DCO scheme would not preclude compliance with the WFD and related Directives.

5.18 SUMMARY

5.18.1 Unless it were concluded that there would be unacceptable risk to the operations of commercial enterprises whose pipelines or other assets would be over-sailed by works proposed under the DCO or to safety in respect of these pipelines, matters that will be considered in detail in section 8 of this report, socio-economic considerations strongly weigh in favour of the DCO scheme.

5.18.2 With regard to the environmental considerations that have been assessed as required by the Ports NPS and MPS, for the most part the impacts of the scheme would be either negligible or minor adverse and in all cases negative impacts would be able to be mitigated to the extent that residual impacts in no case would represent factors to weigh against the making of the DCO. The required mitigations are secured in the final text of the DCO put forward by the applicant on 13 January 2016 [REP8-007] and documents that would be certified under the DCO and in the signed and sealed Development Consent Obligation [REP4-062].

5.18.3 Consequently, in my judgement, s104(7) of the PA2008 is not applicable to the generality of the DCO scheme as the benefits of the proposed scheme would outweigh any adverse impact. Moreover, I do not perceive there to be any matters in the LIR submitted by RCBC or in the assessments required under the Ports NPS or MPS that would justify rejection of the harbour facilities as a whole that are sought in the draft DCO on planning grounds.

5.18.4 Nevertheless, I consider that the greater safety risks acknowledged to exist in relation to the Southern conveyor route in relation to the CATS gas pipeline, which is a designated MAHP, would justify withholding consent from that alternative provided that the Secretary of State considers this to be an important and relevant matter under s104(2)(d).

6 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS

6.1 INTRODUCTION

Habitats Regulations Assessment

6.1.1 This section of the report sets out the analysis, findings and conclusions relevant to Habitats Regulations Assessment (HRA) in order to assist the SoS as the competent authority in performing his duties under the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive), as transposed in the UK through The Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitats Regulations). The ExA has been mindful throughout the examination of the need to ensure that the SoS has such information as may reasonably be required to carry out his duties as CA, informed by and compliant with the NPS for Ports paragraph 4.8.1. Consent for the proposed development may only be granted if, having assessed the potential adverse effects the project could have on European sites, the competent authority considers it passes the relevant tests in these Habitats Regulations.

6.1.2 The applicant submitted a report with their DCO application to inform a HRA under Regulation 5(2)(g) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, namely Document 6.3 HRA [APP-127 and APP-128]. This included screening and integrity matrices. The applicant's HRA Report identified five European sites which may be affected by the proposed development and concluded that there is the potential for likely significant effects (LSE) on two of these sites and their features. The information in the applicant's HRA Report was determined sufficient to accept the application for examination.

6.1.3 The applicant has not identified any potential impacts on European sites in other European Economic Area States within their HRA Report. Potential transboundary effects were considered in section 3 of this report.

The Report on the Implications for European Sites

6.1.4 Under the Habitats Regulations the competent authority must, for the purposes of an appropriate assessment (AA), consult the appropriate nature conservation body and have regard to any representation made by that body within such reasonable time as the authority specifies.

6.1.5 The ExA prepared a Report on the Implications for European Sites (RIES), with support from the Planning Inspectorate Environmental Services Team, based on working matrices prepared by the Applicant. The RIES documented the information received during the examination and presented the ExA's understanding of the main facts regarding the HRA to be carried out by the SoS.

6.1.6 The purpose of the RIES [PD-009] and the consultation responses received in relation to it is to compile, document and signpost information provided within the DCO application, and the information submitted throughout the examination by both the applicant and IPs.

6.1.7 The RIES was published on PINS planning portal website and circulated to IPs, including to the relevant statutory nature conservation body (SNCB), Natural England (NE), on 25 November 2015. Consultation on the RIES was undertaken between 25 November and 16 December 2015. The RIES was accompanied by a Rule 17 letter [PD-011] which requested information from the applicant, NE, EA and the MMO on matters connected to the RIES.

6.1.8 The RIES is not updated upon receipt of consultation responses concerning the RIES nor responses received in connection to the Rule 17 request.

6.1.9 Comments on the RIES and/or responses to the Rule 17 request were received from:

- Marine Management Organisation [REP6-002]
- Natural England [REP6-004]
- Redcar and Cleveland Borough Council [REP6-007]
- Environment Agency [REP6-008]
- Historic England [REP6-018]
- Gill Christie [REP7-001]; and
- Applicant [REP6-030].

6.1.10 Redcar and Cleveland Borough Council [REP6-007] and Historic England [REP6-018] confirmed they had no comments to make on the RIES. The EA confirmed that they defer to MMO and NE's responses on the RIES [REP6-008]. The other responses are discussed in this Chapter where relevant.

6.1.11 In my view, the consultation on the RIES may be relied upon by the Secretary of State for the purposes of Regulation 61(3) of the Habitats Regulations in the event that it is concluded that an appropriate assessment is required.

6.2 PROJECT LOCATION IN RELATION TO RELEVANT EUROPEAN SITES AND THEIR QUALIFYING FEATURES/INTERESTS

6.2.1 The applicant's HRA Report (Document 6.3) [APP-127 and APP-128] submitted with the DCO application identified the following five European sites for inclusion within the assessment:

- North York Moors SAC
- North York Moors SPA
- Arnecliffe and Park Hole Woods SAC
- Teesmouth and Cleveland Coast SPA; and
- Teesmouth and Cleveland Coast Ramsar.

6.2.2 The locations of these sites are shown on Figure 5.1 in the applicant's HRA Report. The applicant has not identified any potential impacts on European sites in other European Economic Area States within their HRA Report.

6.2.3 The applicant explained and justified in their HRA Report the use of a 5 km study area around the application site to identify European sites for inclusion in the assessment. NE confirmed in response to Question HRA 1.1 of my first written questions [PD-006] that this was an appropriate study area for the applicant to use to identify all relevant European sites which may be affected by the proposed development [REP1-015].

6.2.4 The applicant's HRA Report identifies the qualifying features/interests for which each European site is designated. In response to clarification sought from NE as to whether all relevant qualifying features/interests had been assessed by the applicant [PD-008], NE confirmed that the applicant should have also considered Sandwich tern as a qualifying interest of the Teesmouth and Cleveland Coast Ramsar [REP4-009]. The applicant subsequently provided revised screening and integrity matrices for the Teesmouth and Cleveland Coast Ramsar site to incorporate this qualifying interest [REP4-014]. No other concerns were raised by other IPs regarding whether or not the correct qualifying features/interests had been identified and assessed by the applicant in relation to the other European sites considered.

Potential extension to the Teesmouth and Cleveland Coast SPA

6.2.5 Paragraph 5.2.6 of the applicant's HRA Report (Document 6.3) [APP-127 and APP-128] explains that NE had advised the applicant that a potential extension to the boundary of the Teesmouth and Cleveland Coast SPA to encompass Bran Sands Lagoon and Dabholm Gut has been proposed and would include the following additional features:

- Little tern
- Common tern; and
- Amendment to the wintering bird assemblage.

6.2.6 The applicant considered these features in their HRA Report in respect of a potential extension into Bran Sands Lagoon and Dabholm Gut.

6.2.7 Further to this, NE advised in their Written Representation [REP1-015] that progress had made in respect to the potential extension and that the intertidal frontage may also be included in the extension of the SPA, due to Common tern foraging, in addition to the extension to encompass Bran Sands Lagoon and Dabholm Gut. NE advised that I may wish to consider whether the applicant's HRA should have considered the potential extension to the SPA to include the intertidal area, in order to future proof the proposed development against any future extensions. However, NE affirmed in their response to Question HRA 2.1 of my second written questions [PD-008] that without there being a pSPA at present, there is no obligation on the applicant to

provide any information on the potential extension to the Teesmouth and Cleveland Coast SPA. NE provided a suggestion in [REP4-009] of what additional information they considered could be appropriate to provide. The applicant submitted a supplementary note in response [REP4-014].

6.2.8 In light of the above dialogue, NE subsequently confirmed in their response to the ExA's Rule 17 request that the applicant has adequately assessed all potential implications of the potential extension to the Teesmouth and Cleveland Coast SPA [REP6-004]. The MMO also confirmed that the applicant has appropriately addressed this issue [REP6-002].

6.2.9 I am content that the applicant has provided sufficient information to allow the Secretary of State to consider the implications of the proposed development on a potential extension to the Teesmouth and Cleveland Coast SPA should they consider this is necessary.

6.2.10 Taking into account the information provided in the HRA Report, the clarification sought by NE and the information provided by the applicant during the examination, I consider that the Secretary of State can conclude that all relevant European sites and their qualifying features/interests have been included in the applicant's assessment [APP-127 and APP-128 and REP4-014].

6.3 CONSERVATION OBJECTIVES

6.3.1 The conservation objectives for the Teesmouth and Cleveland Coast SPA are provided in Appendix 5.1 of the Applicant's HRA Report (Document 6.3) [APP-127 and APP-128] and NE's Written Representation provided at Deadline 1 [REP1-017].

6.3.2 The relevant Ramsar Information Sheet for the Teesmouth and Cleveland Coast Ramsar is provided in NE's Written Representation [REP1-017]. NE confirmed that Sandwich tern (passage) is a qualifying interest of this site (Response to ExA's Second Written Question HRA 2.1, [REP4-009]).

6.4 HRA AND THE PROPOSED DEVELOPMENT

6.4.1 The applicant confirmed in accordance with the requirements of Regulation 61(1)(b) of the Habitats Regulations, that the proposed development is not connected with or necessary to the management for nature conservation of any of the European sites considered in their HRA Report [REP6-030].

In-Combination assessment

6.4.2 The applicant assessed in-combination effects within their HRA Report in two ways:

- The proposed development in-combination with the other elements of the York Potash Project; and

- The proposed development in-combination with the other elements of the York Potash project and other relevant plans and projects.

6.4.3 The other elements of the overall York Potash Project are identified in paragraph 3.3 in the RIES and considered in section 8.3 in the applicant's HRA Report (Document 6.3) [APP-127 and APP-128]. The locations of these other elements of the overall York Potash Project are shown on Figure 5.1 in the applicant's HRA Report.

6.4.4 The other relevant plans and projects considered in addition to the other elements of the overall York Potash Project in the applicant's in-combination assessment are identified in paragraph 3.5 in the RIES and considered in section 8.4 of the applicant's HRA Report.

6.4.5 NE [REP1-015] and Redcar and Cleveland Borough Council [REP1-021] both confirm that they are content with the plans/projects considered by the applicant in their in-combination assessment.

6.4.6 I am satisfied that the applicant has included all relevant plans/projects in the in-combination assessment, including the other elements of the overall York Potash Project, to allow the Secretary of State to consider the potential effects of the proposed development, alone and in-combination with other plans and projects, on European sites.

6.5 ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS RESULTING FROM THE PROJECT, ALONE AND IN COMBINATION

6.5.1 As a result of their screening assessment, the applicant concluded in their HRA Report (Document 6.3) [APP-127 and APP-128] that the proposed development was not likely to give rise to significant effects, either alone or in-combination with other projects or plans, on the qualifying features of the following European sites:

- North York Moors SAC
- North York Moors SPA; and
- Arnecliffe and Park Hole Woods SAC.

6.5.2 This conclusion was reached by the applicant due to the distances of these European sites from the proposed development site and the lack of pathways for indirect effects (Tables 8.3, 8.4 8.5 in the applicant's HRA Report (Document 6.3)[APP-127 and APP-128]).

6.5.3 The conclusions of the applicant's screening assessment were not disputed by any IPs. NE confirmed in response to Question HRA 2.2 of my second written questions [REP4-009], that they agree with the applicant's conclusion that there would be no likely significant effects on North York Moors SAC, North York Moors SPA and the Arnecliffe and Park Hole Woods SAC as a result of the Harbour Facility alone, or in-combination with other plans/projects. NE noted in their SoCG with the applicant [REP1-051], their Relevant Representation [RR-007] and

Written Representation [REP1-015], that the Teesmouth and Cleveland Coast SPA and the Teesmouth and Cleveland Coast were the only the relevant designated sites of concern.

6.5.4 Taking into account the information provided during the course of the examination, in particular, by the applicant in their HRA Report and the views expressed by IPs, such as NE, I recommend that the Secretary of State can conclude that LSE on the qualifying features of the North York Moors SAC, the North York Moors SPA, and Arnecliffe and Park Hole Woods SAC can be excluded.

6.5.5 As a result of the screening assessment, the applicant concluded that the proposed development was likely to give rise to significant effects, either alone or in-combination with other projects and plans, on the qualifying features of the following European sites:

- Teesmouth and Cleveland Coast SPA; and
- Teesmouth and Cleveland Coast Ramsar.

6.5.6 The applicant considered that during the construction and operation of the development, LSE were anticipated due to the potential direct and indirect loss of habitat, potential disturbance of the qualifying features /interests due to noise and visual disturbance, potential reductions in water quality due to capital dredging and piling and the potential alteration of coastal processes which could impact on the availability of feeding resources (Section 9, applicant's HRA Report (Document 6.3) [APP-127 and APP-128]).

6.5.7 No LSEs were identified on any European sites screened into the assessment in relation to decommissioning effects, arising from the proposed development alone and in-combination with other plans and projects, as there is no potential for an effect on coastal processes, habitats or water and sediment quality, and that as the decommissioning works would take place in 100 years' time, in-combination effects cannot be reasonably foreseen (Appendix 4, Revised Appendix 8.1 to the HRA (Document 6.3), Tables 1 and 2, footnote (f) [REP4-014]). This statement is based on the decommissioning phase of the development consisting only of the removal of the overland conveyor (Appendix 4, Revised Appendix 8.1 to the HRA (Document 6.3), Tables 1 and 2, footnote (f) [REP4-014]). That the decommissioning phase related only to the overhead conveyor was confirmed by the applicant at the DCO hearing held on 24 November 2015 [REP6-030]. The wording of Requirement 11in the draft DCO, which relates to the decommissioning phase of the proposed development, was amended by the applicant in their version of the draft DCO submitted at the close of the Examination [REP8-008] to specify that decommissioning would be the removal of the overhead conveyor.

6.5.8 I am satisfied that the wording of Requirement 11, in the version of the draft DCO recommended to the Secretary of State, ensures that the extent of the decommissioning work secured in the draft DCO is

limited to removal of the overland conveyor and is consistent with the works assessed within the applicant's HRA Report. On this basis, I am satisfied that the Secretary of State can conclude no LSE on the qualifying features and interests of the Teesmouth and Cleveland Coast SPA and Teesmouth and Cleveland Coast Ramsar in relation to decommissioning effects, arising from the proposed development alone and in-combination with other plans and projects.

6.5.9 On this basis, the applicant's HRA undertook an appropriate assessment of the construction and operational effects of the proposed development, alone and in-combination with other plans and projects, on the qualifying features and interests of the Teesmouth and Cleveland Coast SPA and Teesmouth and Cleveland Coast Ramsar.

6.6 FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY OF EUROPEAN SITES

6.6.1 Sections 10 and 11 of the applicant's HRA Report provide information to inform an appropriate assessment of the construction and operational effects of the proposed development alone, and in-combination with other plans and projects, on the qualifying features/interests of the Teesmouth and Cleveland Coast SPA and the Teesmouth and Cleveland Coast Ramsar sites (Document 6.3) [APP-127 and APP-128].

6.6.2 On the basis of the information provided in the DCO application and during the course of the examination, I am content that these are the only sites where LSE may arise and an appropriate assessment may be required by the Secretary of State.

6.6.3 The applicant's HRA Report concluded that the construction and operational effects of the proposed development alone, and in-combination with other plans and projects, would not adversely affect the integrity of the Teesmouth and Cleveland Coast SPA and the Teesmouth and Cleveland Coast Ramsar sites (Document 6.3 Sections 10.4 and 11.4) [APP-127 and APP-128].

6.6.4 The applicant is relying on a number of mitigation measures to reach the conclusion of no adverse effect on site integrity for the Teesmouth and Cleveland Coast SPA and Ramsar sites in their HRA, in particular, mitigation to address the following effects:

- loss of functional land used by waterbirds
- maintaining water levels in Bran Sands Lagoon
- construction effects: noise, visual and lighting disturbance
- operational effects: noise, interruption to sightlines and overshadowing, ship wash disturbance and lighting
- changes to sediment and water quality; and
- other matters - nesting platforms for shags.

Loss of functional land used by waterbirds

6.6.5 The HRA Report acknowledges that there would be a loss of functional habitat in Dabholm Gut, the intertidal area where the port terminal is proposed to be located, and the Northumbrian Water jetty which is proposed for removal, areas which are used by SPA birds linked to the Teesmouth and Cleveland Coast SPA and Teesmouth and Cleveland Coast Ramsar. The applicant has proposed habitat creation to mitigate the loss of functional land which would be delivered through a Mitigation and Monitoring Strategy (MMS). A draft MMS was provided in Appendix 3.1 of the HRA Report (Document 6.3) [APP-127 and APP-128]. NE and the MMO provided comments on the MMS during the course of the examination and the applicant updated the draft MMS in light of issues explored [REP2-006 and REP4-060].

Maintaining water levels in Bran Sands Lagoon

6.6.6 The HRA Report (Document 6.3) [APP-127 and APP-128] acknowledges that the proposed development when in operation has the potential to affect the water exchange which currently occurs between the Tees Estuary and the Bran Sands lagoon which is a functional habitat of the Teesmouth and Cleveland Coast SPA and Teesmouth and Cleveland Coast Ramsar.

6.6.7 The MMS includes proposals to maintain the current range of water levels experienced in the lagoon. This would be through control of the water exchange between the lagoon and the Tees Estuary (section 4.4 of the MMS [REP4-060]) via the proposal to replace the existing flow control pipe (which connects Bran Sands Lagoon and the Tees Estuary) with two new control pipes (DCO works Nos 2(4) and 3(2) in Schedule 1 of the draft DCO and the Licenced Activity in paragraph 4(f) of Part 2 of the draft DML in Schedule 5 of the applicant's draft DCO [REP8-007].

6.6.8 The second of the two pipes would be used should any future monitoring of the lagoon suggest that the alteration of the water level regime in the lagoon would be beneficial (paragraph 10.3.34 of the applicant's HRA Report (Document 6.3) [APP-127 and APP-128] and the applicant's response to Question HRA 1.14 of the ExA's first written questions [REP1-028]).

Construction effects: noise, visual and lighting disturbance

6.6.9 Potential impacts during the construction of the proposed development include airborne and underwater noise, movements of plant and personnel (visual disturbance) and lighting as described paragraphs 10.3.58-10.3.76 of the applicant's HRA Report (Document 6.3) [APP-127 and APP-128]. Section 5.2 of the MMS [REP4-060] and paragraph 10.3.76 of the applicant's HRA Report proposes the use of noise attenuation barriers as mitigation for the potential impact of noise and visual disturbance during the construction phase and describes the

location of these proposed barriers which would screen the construction works.

6.6.10 Work No. 5(10) in Schedule 1 of the draft DCO secures 'temporary acoustic fencing and visual screening' [REP8-007]. Items 30 and 31 of the Governance Tracker [REP4-061] confirm that details of the temporary acoustic fencing and visual screening would be secured through the CEMP (draft DCO Requirement 6(1)(b) and 6(1)(d)) [REP8-007]). Requirement 6(1) specifies that the CEMP must be drafted in accordance with the principles set out in the Outline CEMP [REP6-027], and incorporating the mitigation identified in the Governance Tracker. Section 5.3 of the MMS [REP4-060] and paragraph 10.3.75 of the applicant's HRA Report (Document 6.3) [APP-127 and APP-128] describe the mitigation measures which would need to feature in the construction lighting design strategy to mitigate effects on SPA birds. These measures are outlined at Item 32 of the Governance Tracker and would be delivered through the CEMP and DML, secured through Requirement 6(1)(g) and Schedule 5 of the draft DCO [REP8-008]. The wording of Requirement 6 was amended during the course of the examination to ensure that it reflects the updated Governance Tracker and the updated Outline CEMP.

6.6.11 NE confirmed their agreement with the measures proposed and the delivery mechanism for construction noise, visual and lighting disturbance in response to Questions HRA 2.7 and HRA 2.5 of my second written questions [REP4-009].

Operational effects: noise, interruption to sightlines and overshadowing, ship wash disturbance and lighting

6.6.12 Paragraph 10.3.56 of the applicant's HRA Report (Document 6.3)[APP-127 and APP-128] confirms that potential disturbance during the operation of the development may arise as a result of noise, interruption to sightlines and overshadowing, ship wash disturbance and lighting. The potential impacts are described in paragraphs 10.3.77-10.3.86 of the applicant's HRA Report.

6.6.13 The MMS [REP4-060] does not include measures to mitigate indirect effects on waterbirds relating to noise and visual disturbance, arising during the operational phase of the proposed Harbour Facility. However, details are provided in the applicant's HRA Report regarding proposed measures to mitigate visual disturbance during the operational phase. The applicant confirmed in response to Question HRA 2.8 of my second written questions [REP4-014] that operational acoustic fencing is not required.

6.6.14 Paragraph 10.3.86 of the applicant's HRA Report confirms that during the operation of the development, the parking and storage areas immediately adjacent to Bran Sands Lagoon would need to be screened (for example by fencing) to minimise visual disturbance. The applicant provided revised plans during the examination for the two proposed permanent compounds showing proposed screen fencing.

These plans [REP1-039 and REP1-040] are referred to in the updated Parameters Table [Works Nos. 6B and 9, REP1-044]. Schedule 1 of the draft DCO (authorised development) specifies that Work Nos. 1-12 are to be carried out in accordance with the parameters set out in the parameters table [REP8-007].

6.6.15 In relation to the operational lighting design, paragraph 10.3.86 of the applicant's HRA Report (Document 6.3) [APP-127 and APP-128] confirms that the principles described for the construction phase lighting design, as described in paragraph 10.3.75 of the HRA Report, would be followed. Item 37 of the Governance Tracker [REP4-061] confirms that these operational mitigation measures would be delivered through the Ecological Management Plan (EMP) which is secured in Requirement 9 of the draft DCO. Requirement 9 of the draft DCO specifies that the EMP must be in accordance with the principles set out in the outline EMP [REP4-059] and incorporate the mitigation measures identified in the Governance Tracker.

6.6.16 NE suggested that the applicant should include additional wording in the EMP in respect to the protection of waterbirds from operational noise and lighting disturbance [REP4-009]. The applicant subsequently submitted an updated EMP [REP4-059]. NE confirmed in their response to my Rule 17 request that they were content that the revised EMP provided by the applicant adequately secures the mitigation measures identified in the HRA Report [REP6-004].

6.6.17 NE [REP4-009] and the MMO [REP4-010] initially identified in response to the ExA's second written questions (Question DCO 2.8) that Requirement 9 should be re-worded to give greater clarity regarding the involvement of the different statutory bodies in relation to the EMP. The applicant subsequently amended the draft DCO to take these comments into account [REP4-053 and REP4-054]. NE [REP6-004] and the MMO [REP6-002] confirm that they agree with the revised wording of the DCO provided by the applicant at Deadline 4 [REP4-053 and REP4-054]. This wording remains unchanged in the final version of the draft DCO submitted by the applicant at Deadline 8 [REP8-007].

Changes to sediment and water quality

6.6.18 Paragraph 10.3.35 of the applicant's HRA Report (Document 6.3) [APP-127 and APP-128] confirms that changes to sediment and water quality during the construction and operation of the development could affect habitat quality and prey availability. Potential impacts include suspended sediment concentration in the water column during capital dredging, sediment deposition and water quality in Bran Sands lagoon and the potential effect of dust generation from handling of polyhalite and subsequent deposition onto habitats used by waterbirds. The potential impacts during the construction and operation of the development are described in paragraphs 10.3.36 – 10.3.54 of the applicant's HRA Report.

6.6.19 To avoid contamination as a result of suspended sediment, the silts would be dredged using an enclosed grab (paragraph 103.39, HRA Report (Document 6.3) [APP-127 and APP-128]). This measure is secured in paragraph 6(3) of Part 2 of the DML (licensable activities) of Part 5 of the draft DML in Schedule 5 of the draft DCO.

Other matters - nesting platforms for shags

6.6.20 Section 5.4 in the MMS [REP4-060] and paragraph 5.4 of the applicant's HRA Report [APP-127 and APP-128] indicate that artificial nesting platforms for shags could be provided beneath the suspended deck of the quay (if the open quay structure is proposed). In response to Question HRA 1.13 of my first written questions [REP1-028] the applicant explained that the nesting platforms are an enhancement measure, not a mitigation measure, and therefore are not proposed as part of the MMS for the lagoon. This is because they are not required to ensure no adverse effect on site integrity for the Teesmouth and Cleveland Coast SPA and Ramsar sites. Conversely, NE responded to confirm that this measure should be included in the MMS as it would make a positive contribution to biodiversity, although they agreed it is not a mitigation measure (Response to Question HRA 1.13, [REP1-015]).

6.7 SECURING MITIGATION AND MONITORING THROUGH THE DCO

6.7.1 As a result of the screening assessment, the applicant concluded in their HRA Report (Document 6.3) [APP-127 and APP-128] that the proposed development was not likely to give rise to significant effects, either alone or in-combination with other projects or plans, on the qualifying features of:

- North York Moors SAC
- North York Moors SPA; and
- Arnecliffe and Park Hole Woods SAC

6.7.2 For the Teesmouth and Cleveland Coast SPA and Ramsar sites, the applicant is relying on a number of mitigation measures to reach the conclusion of no adverse effect on the integrity of these sites in their HRA. In particular, the habitat creation measures in the Bran Sands Lagoon Mitigation and Monitoring Strategy (MMS), which both the applicant and NE agree are 'mitigation'.

6.7.3 The section above provides information on the mitigation measures that the applicant has relied upon in their HRA to reach the conclusion of no adverse effect on the integrity of the Teesmouth and Cleveland Coast SPA and Teesmouth and Cleveland Coast Ramsar sites. This section considers how the mitigation measures would be secured and delivered through the DCO.

6.7.4 Table 1 in the applicant's SoCG with NE [REP1-051] confirms NE's agreement that the proposed development, when taking into account the proposed mitigation measures, would not result in an adverse effect on the integrity of the Teesmouth and Cleveland Coast SPA or

the Teesmouth and Cleveland Coast Ramsar site, either alone or in-combination with other plans and projects (see also NE's response to Question HRA 2.3 [REP4-009]).

6.7.5 However, as NE advised that this conclusion was reliant on the assumption that all mitigation measures relied upon by the applicant are fully delivered through the DCO/DML (paragraphs 6.21 and 6.24, York Potash and Natural England SoCG), consideration was given to the following during the examination:

- the adequacy of the mechanisms securing the mitigation measures; and
- the adequacy of the mechanisms securing the monitoring provisions to ensure that the mitigation measures are successful.

Adequacy of mechanisms to secure the mitigation measures

6.7.6 The applicant provided a Governance Tracker with the DCO application [APP-016] setting out how the proposed mitigation measures would be secured in the DCO/DML. This includes the measures relied on to conclude no adverse effects on the integrity of any European sites. The Governance Tracker has been subsequently updated during the course of the examination as the proposed mitigation strategy has evolved in light of discussions and representations [REP1-043 and REP4-061].

6.7.7 To deliver the mitigation measures relied upon to conclude no adverse effects on the integrity of the Teesmouth and Cleveland Coast SPA and the Teesmouth and Cleveland Coast Ramsar site, NE noted that the applicant identified the following mechanisms [REP1-015]:

- the revised MMS
- amendments to Schedule 2 in the draft DCO (in particular Requirement 9
- production of an outline ecological management plan (EMP); and
- amendments to the DML, in particular, paragraph 7.

6.7.8 NE confirmed in their response to a Rule 17 request issued with the RIES [PD-011], that the applicant has adequately incorporated all requested revisions to the DCO into the version of the draft DCO provided at Deadline 4 [REP4-053] and that the proposed mechanisms outlined by the applicant (see paragraph 6.7.7 above) are appropriate to secure the mitigation required in order to conclude no adverse effect on site integrity of the Teesmouth and Cleveland Coast SPA and Ramsar sites [REP6-004]. These revisions are carried forward into the applicant's final version of the draft DCO [REP8-007].

6.7.9 In respect to the Outline CEMP submitted with the application [APP-205], the ExA sought an update to the Table 6-1 in the CEMP because it did not reflect the final Updated Governance Tracker [REP4-061]. The applicant provided an updated Outline CEMP in their Deadline 6 submission [REP6-027] which reflects the final Governance Tracker.

These documents are both certified in the final draft DCO submitted at the close of the Examination [REP8-007].

6.7.10 I sought clarity in my Rule 17 Request that the final versions of all plans/documents relied on to reach the conclusions that there would be no adverse effects on the integrity of any European sites would be accurately reflected in the DCO/DML [PD-011]. The final versions of the Governance Tracker, the MMS, the outline CEMP and the outline EMP are accurately reflected in Article 38 of the applicant's final draft DCO as those which must be certified by the Secretary of State.

6.7.11 On the basis of the information provided in respect to the overall proposed mitigation strategy, and taking account of advice from NE and the MMO, I recommend that the Secretary of State can conclude that the mechanisms identified in the Governance Tracker are appropriate to secure and deliver through the DCO, the mitigation relied on to conclude no adverse effect on the integrity of Teesmouth and Cleveland Coast SPA and Teesmouth and Cleveland Coast Ramsar site.

Adequacy of mechanisms to secure monitoring

6.7.12 Section 6 of the MMS [REP4-060] describes the 'Monitors and Indicators of Success', and identifies the principles required to inform the pre and post construction monitoring plan that would be developed and agreed with NE, the EA, Cefas and the MMO to ensure that the mitigation measures are successful. The MMS states that responsibility for the management of the habitat enhancement scheme would rest with the applicant (Section 6.3 of the MMS).

6.7.13 NE and the MMO in their response to the ExA's second written questions identified the need for re-wording of Section 6.3 (Intervention Measures) in the original MMS [REP2-006] to reflect the obligation on the applicant to implement intervention measures to ensure that the 'indicators of success' are met (Response to Questions HRA 2.4(3) and 2.4(5) NE [REP4-009] and the MMO [REP4-010]). The amended wording for Section 6.3 agreed between the applicant and NE has been included in the version of the MMS submitted at Deadline 4 [REP4-060]).

6.7.14 NE [REP6-004] and the MMO [REP6-002] confirmed at DL6 that they are happy with the wording of Paragraph 7 and Condition 48 in the draft DML that forms Schedule 5 to the draft DCO and that the monitoring requirements set out in the MMS are appropriate. The EA confirmed in their response to Question HRA 2.4 of the ExA's second written questions that in respect to the content of the MMS, they defer to NE and the MMO [REP4-001].

6.7.15 However, the suitability of the management of the habitat enhancement scheme resting with the applicant was questioned by Gill Christie, an IP, in her comments on the RIES [REP7-001]. Whilst the mitigation identified in the MMS is to be implemented by the applicant

(as the undertaker), in the applicant's final draft DCO the draft DML includes provisions (paragraph 7 and condition 48) which require the applicant to agree with the MMO, in consultation with the NE, the EA and the LPA, a written lagoon habitat enhancement plan, which must include the details of the lagoon habitat enhancement works and the pre and post construction monitoring, in accordance with the MMS [REP8-007]. The MMS requires that where monitoring identifies that the 'indicators of success' are not being met, the applicant is required to implement intervention measures. Whilst it cannot be determined at this stage what monitoring requirements will be put in place to check that the indicators of success are met, the DML requires that the plan securing this must be in place before the lagoon habitat enhancement works commence and that the applicant (as the undertaker) must implement and comply with the plan and monitor and maintain the lagoon enhancement works.

6.7.16 On the basis of the information provided in respect to the proposed monitoring strategy, and taking account of advice from NE and the MMO, I recommend that the Secretary of State can conclude that the monitoring mechanisms identified in the MMS are appropriate and adequately secured in the DCO, to ensure that the mitigation measures relied upon to conclude no adverse effect on site integrity, of Teesmouth and Cleveland Coast SPA and Teesmouth and Cleveland Coast Ramsar site, are successful.

6.8 CONCLUSIONS

6.8.1 Taking into account the information provided during the course of the examination, in particular, by the applicant in their HRA Report and the views expressed by IPs, such as NE, EA and the MMO, I recommend that the Secretary of State may conclude that:

- LSE on the North York Moors SAC, North York Moors SPA and the Arnecliffe and Park Hole Woods SAC during the construction, operation and decommissioning of the proposed development can be excluded
- LSE on the Teesmouth and Cleveland Coast SPA and Teesmouth and Cleveland Coast Ramsar during the decommissioning of the proposed development can be excluded, having regard to the wording of Requirement 11 (decommissioning) in the version of the draft DCO recommended to the Secretary of State
- an adverse effect on the Teesmouth and Cleveland Coast SPA can be excluded, when considering the qualifying features, in view of the site's conservation objectives and having regard to the mitigation and monitoring measures secured in the version of the draft DCO recommended to the Secretary of State; and
- an adverse effect on qualifying interests on the Teesmouth and Cleveland Coast Ramsar can be excluded, when considering the qualifying interests, having regard to the mitigation and monitoring measures secured in the version of the draft DCO recommended to the Secretary of State.

7 THE EXA'S CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

7.1 THE PLANNING BALANCE

7.1.1 In section 3 of this report I set out the statutory framework and guidance under which the planning merits of the DCO scheme has to be considered. In section 4, I considered the DCO scheme against that framework and in particular assessed the consistency of the proposed Harbour facilities against the need for the development outlined in the relevant NPS and against the provisions of the NPPF and the development plan. In section 5, I went through the various environmental, economic and social considerations that the Ports NPS and MPS highlight as matters requiring assessment in order to conclude on the balance of benefits and adverse impacts. Finally, I specifically addressed the issue of HRA in section 6, as the possibility of there being likely significant effects on European sites could not be screened out.

7.1.2 At section 4.3, I noted the matters of concern raised in the LIR from RCBC, but pointed out that these issues were resolved by the close of the Examination, with support being given by the local planning authority within whose area the whole of landward development is located. In paragraph 4.4.9, I concluded that, having regard to the positive socio-economic benefits as opposed to the limited and manageable environmental impacts, the port proposal that is embodied in the DCO is in conformity with the development plan. This means that it would also constitute sustainable development in relation to the NPPF.

7.1.3 Section 4.6 of this report considers conformity with the relevant NPS, MPS and other key policy statements. I concluded in paragraph 4.6.6 in relation to the Ports NPS that the presumption in favour of additional port development is met and at paragraph 4.6.10 that no reasonable alternative has been identified. Consequently, unless the assessments of benefits and impacts were to show a materially adverse balance, I concluded that the DCO scheme is in accordance with the Ports NPS. In paragraph 4.6.13, although not directly supporting the DCO proposal, I concluded that the transport arrangements for the proposed port are compatible with the National Networks NPS.

7.1.4 In paragraphs 4.6.19-4.6.23, I assess the signed and sealed Development Consent Obligation that has been submitted by the applicant to accompany the draft DCO against the tests of the NPPF and Article 122(2) of The Community Infrastructure Levy Regulations SI 2010/948. I concluded that all the various provisions of the planning obligation are related to the development and to a greater or lesser extent necessary to make the development acceptable in terms of securing off-site mitigation that is or may be required. I also concluded that the sums secured are reasonable in scale in relation to

the DCO development. As a consequence, I consider that it should be afforded due weight in determining whether to make the DCO.

7.1.5 In the following section 5, I go through all the assessments flagged up as potential issues that could give rise to benefits or adverse impacts in the Ports NPS and MPS to the extent that they are relevant to the DCO scheme. In section 5.1, I concluded that the scheme meets the tests of good design and in section 5.2 that mitigation through the proposed CEMP would ensure that there would be no significant adverse Air Quality impacts. With regard to Biodiversity, ecology and marine ecology a significant number of mitigation measures would be necessary secured through the DCO or the Development Consent Obligation, but that provided that these monitoring and mitigation requirements are secured, again there should be no significant adverse impacts. The scheme would not damage or destroy the interest features for which the nearby SSSIs are notified and will also not be detrimental to the maintenance of European protected species at a favourable conservation status nor significantly harm any nationally protected species because agreed measures have been built into the project design.

7.1.6 With the design and mitigation measures that would be secured through the CEMP at section 5.4, I concluded that there would be no adverse consequences in relation to Flood Risk and the need to consider Climate Change adaptation. In section 5.5, I concluded that there should be no issue with regard to nuisance given the mitigation that is secured and in Section 5.6, that there should be no issues with regard to fisheries provided that mitigation and monitoring are secured. A similar conclusion is reached in section 5.7 with regard to impacts on human health from hazardous substances, provided that risks in relation to pipelines that would be over-sailed are not regarded as unacceptable, while in section 5.8, I concluded that the extremely limited adverse effect on heritage assets is able to be satisfactorily mitigated.

7.1.7 Landscape matters and visual impact were considered in section 5.9 with the conclusion that there would be no significant adverse impacts that cannot be mitigated including through off-site planting and public realm enhancement works that would be secured through the Development Consent Obligation. Section 5.10 concluded that all dredging and navigational impacts are able to be mitigated through conditions that would be imposed on the DML or through the Protective Provisions in Schedule 11 for the Protection of the Tees Port Authority. No issues are identified in section 5.11 with regard to other permits and licences that will be required and in section 5.12, I concluded that any potentially adverse impacts of noise and vibration would be able to be mitigated through the CEMP.

7.1.8 With regard to security issues, in section 5.13, I concluded that if these arise, they can be considered in the context of commercial considerations. Overall with regard to commercial, economic and socio-economic considerations, the impact would be strongly beneficial

for the reasons set out in section 5.14. Only if it were to be concluded that there would be an unacceptable risk to the operations of other commercial enterprises whose pipelines and other assets would be over-sailed would this strongly positive benefit need to be scaled back or even reversed. However, in relation to the effect on safety of those pipelines, and in particular the CATS pipeline, I concluded in section 5.13, that this issue would justify withholding consent from the Southern alternative conveyor route.

7.1.9 With regard to traffic and transport, in section 5.15, I concluded that there would be no significant adverse impact after mitigation and in section 5.16 that there are no issues that are not capable of management or mitigation with regard to waste management including in relation to water resources. Section 5.17 specifically addresses compliance with the WFD and concluded that no issue would arise after mitigation.

7.1.10 Finally in section 6 in relation to HRA, I set out that the Secretary of State may conclude that:

- LSE on the North York Moors SAC, North York Moors SPA and the Arnecliffe and Park Hole Woods SAC during the construction, operation and decommissioning of the proposed development can be excluded;
- LSE on the Teesmouth and Cleveland Coast SPA and Teesmouth and Cleveland Coast Ramsar during the decommissioning of the proposed development can be excluded, having regard to the wording of Requirement 11 (decommissioning) in the version of the draft DCO recommended to the Secretary of State;
- an adverse effect on the Teesmouth and Cleveland Coast SPA can be excluded, when considering the qualifying features, in view of the site's conservation objectives and having regard to the mitigation and monitoring measures secured in the version of the draft DCO recommended to the Secretary of State; and
- an adverse effect on qualifying interests on the Teesmouth and Cleveland Coast Ramsar can be excluded, when considering the qualifying interests, having regard to the mitigation and monitoring measures secured in the version of the draft DCO recommended to the Secretary of State.

7.1.11 From the foregoing, it will be clear that there are very few factors that would weigh against the making of the DCO. The principle of the development is in conformity with the need provisions of the Ports NPS and also with the development plan and would thereby constitute sustainable development in terms of the NPPF. With regard to the assessment tests set out in the Ports NPS and the MPS, it will be seen that I consider that in most cases either there would not be a material impact, or if there is any significant adverse impact, it would be capable of satisfactory mitigation. The detailed wording in the DCO to secure mitigation and monitoring will be considered in section 9 of this report.

7.1.12 Only in relation to safety or commercial considerations is there the possibility of materially adverse impacts arising, if it were to be concluded that the Protective Provisions intended to reduce risks to pipelines and other assets that would be over-sailed would not be effective in reducing any risks to acceptable proportions. As these matters are related to compulsory acquisition of rights or imposition of rights they will be considered in detail in the next section, as will the financial viability of the DCO scheme. However, on the assumption that the Protective Provisions would serve their intended purpose for at least one of the alternative conveyor routes, overall economic and socio-economic considerations would weigh very strongly in favour of the DCO scheme.

7.1.13 Nevertheless, if the Protective provisions may not be sufficient to reduce safety risks to a 'reasonable' or 'tolerable' level in relation to one of the alternative conveyor routes, the Southern route being subject to sustained opposition, there is a case for removing that Southern alternative conveyor route from the Order scheme. That is my own conclusion and recommendation in order to follow a precautionary approach.

7.1.14 Overall, however, as there are strong economic and socio-economic benefits and any adverse impacts appear capable of mitigation in relation to the generality of the Order scheme and at least in relation to one of the alternative conveyor route options, I consider that the planning case for making the DCO as a whole has been made.

8 COMPULSORY ACQUISITION AND RELATED MATTERS

8.1 THE REQUEST FOR COMPULSORY ACQUISITION POWERS

8.1.1 The application form in answer to question 13 states that the DCO includes compulsory acquisition of land, or interests in land or rights over land. The Statement of Reasons is Document 5.1 [APP-005], the Funding Statement is Document 5.2 [APP-008] and the Book of Reference submitted with the application is Document 5.3 [APP-009]. The originally submitted Land Plans are Documents 2.1 [APP-36 to APP-050].

8.1.2 The Statement of Reasons makes clear that the compulsory acquisition sought is compulsory acquisition of rights over land and creation of new rights in the Order land rather than the outright acquisition of land.

8.1.3 A full description of the Order land over which CA powers are sought is set out in sections 2.1.4 - 2.16 of this report. In summary, the Order land extends to an area of approximately 92.4 hectares from the Wilton International chemicals complex north-westwards to Bran Sands on the south bank of the River Tees. The majority of the area is undeveloped and not in use although it is criss-crossed by infrastructure including roads, railway lines and pipelines. The Land Plans show land over which rights would be interfered with, suspended or extinguished, land over which new rights would be created and land which would be used temporarily.

8.1.4 In response to concerns that inclusion of alternatives for quay construction and alternative routings for the conveyor system along what are described as the Southern alternative conveyor route or the Northern alternative conveyor route could result in compulsory acquisition powers being granted in relation to more land than would actually be required to undertake the DCO scheme, the applicant confirmed that the alternative methods for quay construction would not involve differences in the extent of compulsory acquisition required.

8.1.5 However, the applicant accepted that once the alternative conveyor route is selected, as would be required by Article 24 (1) as a pre-requisite to any use of CA powers, it would be appropriate for CA powers contained in the DCO to lapse in relation to land that would only have been required for the other alternative conveyor route. Consequently, in the context of responding to the ExA's Second Schedule of questions, amended Land Plans were submitted to demarcate the areas required as to whether the southern or northern conveyor routes would be utilised [REP4-014, REP4-016 and REP4-017] together with amended drawings of the conveyor routes [REP4-046 to REP4-051] and ground layout plans [REP4-038 to REP4-045] for both routes. These incorporate minor revisions in the light of receipt of more detailed information on the routing of the CATS gas

pipeline in order to ensure that the conveyor alignments would enable footings for supports to be clear of this underground asset. The text of the first revision of the draft DCO that was submitted on 7 September 2015 [REP2-003] had previously introduced definitions of the two alternative conveyor routes. These definitions enable effect to be given to restrictions on the exercise of the Compulsory Acquisition Powers that had been introduced into Article 24 and Schedule 3. These require notice to be given to the local planning authority of which conveyor route would be utilised and for the power to exercise compulsory acquisition powers over land or rights only required for the other route to lapse. Should the Secretary of State not accept my recommendation to grant CA powers only in relation to the Northern alternative conveyor route, it would be desirable to insert a requirement into Article 24 also to notify land interests in respect of which CA powers would lapse.

8.1.6 An updated Book of Reference was submitted to accompany these changes (Document 5.3A) [REP4-058]. A further updated Book of Reference was submitted prior to the close of the Examination (Document 5.3B) [REP6-026]. The changes post submission do not involve additional land but merely clarification and refinement of the land over which CA of rights or temporary use would be required depending on which conveyor route is selected.

8.2 THE PURPOSES FOR WHICH THE LAND IS REQUIRED

8.2.1 The Statement of Reasons summarises the purpose for which CA is sought as the construction and operation of:

- 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 polyhalite into 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 MHF within the Wilton International complex with the harbour, and
- ancillary infrastructure.

8.2.2 The Book of Reference details the individual plots concerned as illustrated on the land plans and specifies the interests sought and the new rights proposed to be created. The works are more fully described in paragraphs 2.1.8 to 2.1.11 of this report. Works Nos 3-12, including Work No 4 (the construction and operation of the proposed conveyor system), are described as associated development. After questioning the distinction between the integral development as described in the first 5 bullet points in the preceding paragraph and the remainder of the proposed works during the Examination, I accept that distinction is correctly drawn.

8.2.3 In relation to all of the plots for which CA is sought, this is to remove existing easements, servitudes and other private rights in relation to all plots. It was clarified during the Examination in the exchanges over Protective Provisions that it is not intended to interfere with existing known rights but to enable extinguishment of unknown rights which may subsist as a consequence of the long industrial history of the site and its surroundings. This is enshrined in the final draft of the Protective Provisions.

8.2.4 In all cases it was proposed to acquire new rights in the specified plots. The classes of rights sought are set out at the beginning of the Book of Reference and as an Appendix to the Statement of Reasons. In summary these are as follows:

- Class 1: Dredging and River Works (Works No 1) - surveying & investigation; capital and maintenance dredging, demolition of existing Northumbrian Water Limited jetty;
- Class 2: Quay Rights (Works No 2) - surveying and investigation, construction (in phases) of quays by solid or open quay methods together with provision of ship-loaders, modification of flow pipe connecting the Tees estuary and Bran Sands lagoon and provision of an additional flow control pipe, provision of surge bins and subsequent maintenance of any part;
- Class 3: Lagoon Rights (Works No 3) - surveying, carrying out habitat enhancement works and subsequent maintenance by placing capital and maintenance dredged material to create shallows, inter-tidal margins and islands and works in relation to flow control pipes as in Class 2;
- Class 4: Conveyor Rights (Elevated) (Works No 4) - installation and subsequent maintenance parallel belt conveyors within a single elevated conveyor bridge on supports to be located between points A-B-C or points A-B-D on the Works Plans (Documents 2.2A-2.2F);
- Class 5: Ground Level Works (Works No 5) - surveying and installation of transfer towers and supports for the overhead conveyor bridge and subsequent maintenance together with all necessary works to surface and foul water disposal infrastructure, signage, lighting, security fencing and control and acoustic fencing during construction;
- Class 6: Temporary Site Compounds (Works Nos 6A, 7, 8. 10 and 11) - surveying and laying out of temporary works compounds including provision of offices, storage, car parking, a sub-station and/or fabrication areas and portable cabins;
- Class 7 (a & b): Permanent Site Compounds (Works Nos 6B and 9) - surveying and provision of a car parking and a substation and a general services building, car parking and a sub-station and ancillary infrastructure including a below ground storage tank for waste water and associated infrastructure;
- Class 8: Temporary Works (Highways) (Works No 12) - surveying and works within and outside the highway to create a new west arm access at the A1085/West Coatham Lane roundabout;

- Class 9 : Access - right of access over all the Order land (save parcels 52, 53, 54a and 59a which are only subject to temporary rights) for the purpose of accessing any part of the authorised development;
- Class 10: Restrictive covenants - not to alter levels of land so as the render access to the conveyor or its supports impracticable or otherwise adversely affect these structures within the land over which rights 4 and 5 are granted.

Temporary Possession

8.2.5 Temporary possession is sought in respect of 4 plots (parcels 52, 53, 54a and 59a) irrespective of which conveyor route is utilised. If the southern conveyor route is utilised, temporary possession would also only be sought in respect of parcels 8b and 8c. This would be secured in the DCO by Schedules 3 and 4.

Crown Land

8.2.6 Crown land, namely land held by The Queen's most Excellent Majesty in right of Her Crown c/o The Crown Estate is involved in respect of parcels 1, 2, 3, 6 and 10. The Book of Reference makes clear that CA is not sought of the Crown interests in these parcels. However, it may be appropriate to amend Article 24 and Schedule 3 to make sure that Crown interests are excluded from the power granted. This point will be addressed later in the report.

8.2.7 In relation to s135(2) of the PA2008, the Crown Estate wrote to the applicant on 15 December 2014 (Document 7.6) [APP-035] giving their consent to inclusion of Crown land within the Order scheme. The consent was, however, subject to a condition that the Order includes an article in effect requiring the applicant to seek consent again before entering Crown land. The applicant included such a provision which is Article 36 in the draft DCO dated 13 January 2016.

8.2.8 In the ExA's First questions[46], I asked the applicant to justify this approach rather than seeking an unfettered consent. The response of the applicant [REP1-028] is that a similar situation arose in relation to the Dogger Bank Teesside A and B Offshore Wind Farm Order on which the Secretary of State for Energy & Climate Change's decision letter was issued on 4 August 2015. The Dogger Bank Order contains as Article 41 a provision in similar terms to Article 36 of this draft DCO. In the Dogger Bank case, the Crown Estate had sent a letter dated 23 June 2015 in substance in similar terms to that of 15 December 2014 in relation to this draft DCO that satisfied the Secretary of State. In essence, provided that that there are no material changes to the draft DCO, consent will be given to the powers sought. Arrangements are in place with the Crown Estate to obtain the

[46] Question CA 1.3

confirmatory consent as required under Article 36. There are no known impediments to securing such consent.

8.2.9 While the position is not as clear cut as would have been desired, I am satisfied that the substance of s135(2) has been met and that there is precedent for the solution adopted in the draft DCO. A conditional s135(2) consent has been given and interests held by the Crown are excluded from the BoR and thus from the CA authorised by article 24.

Statutory Undertakers

8.2.10 In my questions, I also sought clarification with regard to position in relation to CA affecting statutory undertakers[47]. In response, the applicant [REP1-028] suggested that only Northumbrian Water Limited (NWL) of statutory undertakers that may be affected had made a representation and that Northern Powergrid (Northeast) Limited, who had also made a representation, had subsequently indicated to the applicant that they did not now believe they had any operational assets that might be prejudicially affected.

8.2.11 In my view the position is not quite as straight-forward as this. Although there are protective provisions to safeguard the interests of Network Rail Infrastructure Limited, National Grid Electricity and the Tees Port Authority as schedules to the submitted draft DCO, Relevant Representations were made by the Port Authority [RR-002], National Grid [RR-012], Northern Power Grid (Northeast) Limited [RR-011] and the EA [RR-017] as these bodies were not at that stage wholly satisfied with the provisions of the draft DCO and related documentation. In addition, I accepted submissions from Northumbrian Water Limited [AS-002] and Network Rail Infrastructure Limited [AS-003], which again at the outset of the Examination did not indicate acceptance of all the provisions of the draft DCO. While by the close of the Examination, following refinement of Protective Provisions and certain agreements being entered into, all but Network Rail Infrastructure Limited had withdrawn objections, I will address the position of these statutory undertakers in relation to the relevant parcels of land later in this section of the report. This will include a recommendation in relation to s127 of the PA2008 in respect of the outstanding objection from Network Rail Infrastructure Limited.

8.2.12 With regard to s138, the applicant argued that this provision of the PA2008 does not apply to any statutory undertakers as it is not proposed to extinguish any statutory undertaker's rights or remove any statutory undertaker equipment. Article 24(2) and Article 25 authorise extinguishment and interference with all rights, including SU rights, so the safeguard for statutory undertakers is provided for through the Protective provisions included in the final draft DCO and separate agreements concluded with a number of undertakers. No

[47] Question CA 1.4 and DCO 1.12

objections were outstanding from undertakers in relation to such matters at the close of the Examination.

Other matters

8.2.13 Article 28 of the draft DCO seeks to incorporate the provisions of the Compulsory Purchase (General Vesting Declarations) Act 1981 with modifications. Article 33 applies the provisions of s158 of the Act relating to the statutory authority and Article 25 provides power to override easements and other rights.

8.2.14 Section 120(5)(a) of the PA2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO. As the draft DCO does seek modify statutory provision including in relation to the Compulsory Acquisition of Rights under Article 24 and Schedule 3, in accordance with the requirements of s117(4) of the PA2008, the draft DCO is in the form of a statutory instrument.

8.3 THE REQUIREMENTS OF THE PLANNING ACT 2008

8.3.1 Compulsory acquisition powers can only be granted if the conditions set out in sections 122 and 123 of the PA2008 are met.

8.3.2 Section122(2) requires that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.[48]

8.3.3 Section 122(3) requires that there must be a compelling case in the public interest which means that the public benefit derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, compulsory acquisition must be justified in its own right. But this does not mean that the compulsory acquisition proposal can be considered in isolation from the wide consideration of the merits of the project. There must be a need for the project to be carried out and there must be consistency and coherency in the decision-making process.

8.3.4 Section 123 requires that one of three conditions is met by the proposal[49]. The ExA is satisfied that the condition in s123(2) is met

[48] Guidance related to procedures for compulsory acquisition DCLG September 2013

[49] (1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that one of the conditions in subsections (2) to (4) is met.
(2) The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.
(3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.
(4) The condition is that the prescribed procedure has been followed in relation to the land.

because the application for the DCO included a request for compulsory acquisition of land to be authorised.

8.3.5 A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers –

- all reasonable alternatives to compulsory acquisition must be explored
- the Applicant must have a clear idea of how it intends to use the land and to demonstrate funds are available; and
- the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

8.3.6 During the Examination, although the applicant accepted a tightening of the limits to deviation between various works, these did not alter the overall boundaries of the application and did not therefore alter the extent of CA sought. However, the applicant did accept that in order that greater land than would be necessary to implement the DCO scheme should not be subject to CA, once the choice of use of either the Southern or Northern Conveyor routes is made, then the CA provisions relating to land that would only be required for the conveyor route that would not be used should lapse. The changes to Schedule 3 to the draft DCO and the related Land Plans and updated Book of Reference were introduced during the Examination shortly after the first hearings [REP3-004, REP4-015 to REP4-032 and REP4-58]. A final update to the Book of Reference was submitted shortly before the close of the Examination (Document 5.3B) [REP6-026].

8.3.7 The inclusion of alternative parcels of land for CA is not a typical provision in a DCO or other Compulsory Purchase Order, but I accept that it could be lawful. The applicant argues that it can be justified by the nature of Protective Provisions sought by owners of pipelines and other assets that would be over-sailed because these provisions would reduce the risk of private loss, but might result in the applicant's preferred conveyor route being demonstrated not to be feasible. The clear operational preference of the applicant is for use of the Southern conveyor route that would essentially straddle or parallel what became defined as part of the 'pipeline corridor' for some 2 km [REP4-033 to REP4-036]. However, the greatest concern from the asset owners is over the effectiveness of the Protective Provisions is in relation to this route. The Northern conveyor route is not without objection and would involve additional transfer towers at changes in direction for the conveyor system. This would add operational complexity with greater risk both of operational failure and product degradation. Most particularly, in relation to CA, the Northern conveyor route would involve more land because access to the proposed quays for maintenance and operational purposes would still be required along the Southern route even if the conveyor were to follow the Northern route.

8.3.8 Thus, if the Northern conveyor route is used parcels 8a, 9, 10, 23 and 24, a total of 76,192 m^2, would need to be subject to CA in addition to the land for which CA powers are sought for the Southern route; and parcels 8b and 8c, together totalling 46,494 m^2, which with the Southern conveyor route would only be required for temporary use, would instead need to be subject to CA.

8.3.9 Conversely, only parcel 11a with an area of just 180 m^2 would be able to be relinquished if the Northern conveyor route were to be used rather than the Southern.

8.3.10 I will address the objections raised in relation to the respective routes later in this section and conclude on the adequacy of the Protective Provisions offered to various asset owners with interests in the Order land.

8.3.11 Irrespective of those conclusions, it is clear that what the applicant put forward in terms of removing land not required after the choice of conveyor corridor is made would represent a reduction in CA sought. This reduction was flagged up in first revision of the draft DCO that was submitted on 7 September 2015 as this introduced a definition of the two alternative conveyor corridors, these latter definitions enabling effect to be given to restrictions on the exercise of the Compulsory Acquisition Powers introduced into Article 24. These provisions require notice to be given of which conveyor corridor would be utilised and for the power to exercise compulsory acquisition powers over land or rights only required for the other corridor to lapse [REP2-003]. In the context of responding to the ExA's Second Schedule of questions, amended Land Plans were submitted to demarcate the areas required as to whether the southern or northern conveyor corridors would be utilised [REP4-016, REP4-017 and REP4-018] The updated Book of Reference at that time was [REP4-058].

8.3.12 Under, The Infrastructure Planning (Compulsory Acquisition) Regulations 2010, these potential reductions do not give rise to a need for further advertisement or other action as less rather than more land would be subject to CA provisions. The applicant's approach would also be consistent with the advice of paragraphs 109-115 of current guidance on the examination of applications for development consent[50].

8.4 HOW THE EXA EXAMINED THE CASE FOR COMPULSORY ACQUISITION

8.4.1 As I judged from the Relevant Representations lodged and additional submissions accepted, particularly those from enterprises with assets over-sailed, that the issue of Protective Provisions in relation to the CA sought would potentially be most controversial, I scheduled a CA

[50] Planning Act 2008: Guidance for the examination of applications for development consent, March 2015 (DCLG)

Hearing (CAH) close to the start of the Examination[51] followed by an Issue-Specific Hearing (ISH) on the wording of the DCO including Requirements, DML Conditions and Protective Provisions, together with provision for a second CAH and ISH towards the end of the Examination[52]. In both my schedules of ExA questions I also sought updates from the applicants and objectors on progress made towards reaching agreed schedules of Protective Provisions. At the Hearings Bond Dickinson representing three of the enterprises with assets within the 'Pipeline Corridor', Huntsman Polyurethanes UK Limited [RR-009], SABIC UK Petrochemicals Limited [RR-010] and DEA UK SNS Limited [RR-016], were able to express their concerns, as were CATS Management who entered the Examination at the written representation stage [REP1-001 and REP1-002].

8.4.2 Others making representations on matters that could be construed to relate to the CA sought, such as the EA [RR-017], Network Rail Infrastructure Limited [AS-003], PD Tees Port [RR-002], Northumbrian Water Limited [AS-002], Sembcorp Utilities (UK) Limited (Sembcorp) [AS-004], ICI [AS-007] and Tata Steel UK Limited[53] [RR-019] pursued their cases purely by way of written representations.

8.4.3 Written Exchanges between the applicant and a number of bodies seeking either changes to the DCO and its CA provisions or enhancements to Protective Provisions continued right up until the end of the Examination.

The Applicant's case

8.4.4 The Land Plans and Book of Reference demonstrate that due to the industrialised nature of the Wilton International complex and the Bran Sands area, there are numerous unknown third party rights over land. While the applicant has been in discussion with parties known to have assets within the DCO application site in order to agree Protective Provisions, there may be other rights in existence whether exercised or not.

8.4.5 With regard to parcels 7-8, 11, 11a, 12-13, 15-20 and 22-24, the applicant has an agreement with the current freehold land owner, ICI Chemicals and Polymers Limited, to acquire that freehold, but because of the existence of unknown rights and the need to create new rights, there is still a need to seek powers for CA for the acquisition of rights, but not for the freehold. According to the Statement of Reasons, at the time of the application, the applicant was also in advanced negotiations for a deed of grant in relation to the leasehold interest held by Sembcorp Utilities (UK) Limited in respect of parcels required for the erection and maintenance of the proposed conveyor and for access rights. Negotiations were also in hand to agree Protective

[51] 24 and 25 September 2015
[52] 24 November 2015
[53] Initially also on behalf of SSI UK Limited and later also on behalf of RBT

Provisions with the owners of infrastructure that would be crossed, e.g. Network Rail, National Grid Electricity and pipeline operators, but irrespective of such agreements, the applicant requires rights to install, maintain and remove relevant parts of the DCO scheme. In addition, temporary use is required of a small number of parcels of land for purposes specified in Schedule 4 to the draft DCO.

8.4.6 The specific purpose for the interests sought in respect of each parcel of land is detailed in the Book of Reference and summarised in the Statement of Reasons. The rights sought for each parcel or group of parcels are specified in accordance with guidance in order to minimise the extent of CA required. The rights within each parcel would only be applicable to the areas of relevant Works as indicated on the Works Plans. In addition, the applicant seeks restrictive covenants to protect the proposed conveyor and the footings of its supports.

8.4.7 The applicant has met the s122 in so far as the land in respect of which CA of rights is sought is required for the development to which the Development Consent sought relates or is to facilitate or is incidental to that development. The use for each parcel is specified. The applicant is not seeking compulsorily to acquire any freeholds but only to acquire new rights and to extinguish any unknown rights, but not any existing third party rights which are known. This is secured by the Protective Provisions within the final draft of the Order. Wherever possible temporary use only is sought.

8.4.8 No land to which s122(2)(c) relates is within the Order boundaries.

8.4.9 In terms of s122(3), the Secretary of State has to be satisfied that there is a compelling case in the public interest in that the public benefits to be derived from compulsory acquisition would outweigh the private loss by those against whom rights are to be acquired, extinguished or imposed.

8.4.10 This compelling case in the public interest is based on the strategic need for the harbour facilities in accordance with the policy objectives of the Ports NPS. Specifically, operationally it is to provide the harbour facilities for the wider YPP as it will enable the export of the bulk of the output of the proposed mine, namely at phase 1 all but 125,000 metric tonnes of polyhalite out of an intended output of 6.5 m metric tonnes and at phase 2 all but 175,000 metric tonnes out of an intended output of 13 million metric tonnes. The primary markets are expected to be in the USA, Brazil, China, Central America, Africa and Europe with demand for potassium based fertilisers projected to rise by 60% by 2050 to meet nutrient deficiencies and feeding a growing population. No other means but bulk shipping is feasible to transport such volumes of such a material. Thus, provision of sufficient appropriately located port capacity is essential to the sustainable growth of the UK economy.

8.4.11 The policy need as set out in the Ports NPS has already been detailed in section 4 of this report. The economic benefit is very substantial

with the export value at full production calculated as being some £1.2 billion per year. This would result in a 4% reduction in the UK trade deficit with about 4% of world potassium based fertilisers being supplied. The Port alone would generate at least 122 jobs during construction and some 34 jobs once fully in operation. The wider YPP will generate over 1,000 long-term jobs and there would also be indirect and induced jobs during construction and operation as detailed in paragraphs 4.4.7-4.4.8 of this report. There would also be revenue benefits to local regional and national economies through taxation and payments into community funds. Moreover, the Ports NPS closely aligns need and demand in suggesting that curtailing port growth would be strongly against the public interest[54].

8.4.12 DCLG guidance goes on to require that the proposed interference with land is for a legitimate purpose and is necessary and proportionate. The delivery of the development cannot be guaranteed without relying on powers of compulsory acquisition to secure the rights necessary and extinguish any unknown rights that might inhibit development. The rights sought in respect of each parcel are proportionate in terms of being the minimum necessary to secure the objectives of the DCO, with temporary use only sought wherever possible and the minimum extent of the application site defined that would accommodate the development sought.

8.4.13 The applicant has sought to use and explore all alternatives to the use of compulsory acquisition powers. As already indicated every effort is being made to secure land and rights by agreement, but because of the existence of unknown rights and the lack of final agreement with certain interests, compulsory powers are required. At paragraphs 4.6.8-9 of this report the alternatives considered as locations for ports are detailed together with the alternative possibilities for wharves within the Tees Estuary. At the time of the application and Examination there was no realistic alternative available but for use of the Bran Sands frontage to the estuary. Alternatives with regard to the routing of the conveyor system were explored with the option of going beneath the A1085 seriously considered and alternative Southern or Northern conveyor routes defined at Bran Sands. The choice will be made based on the matters set out in the Explanatory Memorandum (document 4.2) [APP-004]. However, whichever, route is selected there is a need for compulsory acquisition in relation to that route.

8.4.14 Finally, the process of seeking compulsory powers in parallel with negotiating agreements is in accordance with paragraphs 25 and 25 of DCLG guidance. Moreover, because of the unknown interest, CA would still be required notwithstanding completion of agreements with all known interests. The application for CA also provides a fall-back should negotiation of agreements with known interests fail, albeit that

[54] Paragraph 3.4.16

it is not intended extinguish any rights that are known because of the Protective Provisions contained within the final draft of the DCO. In addition, exercise of a General Vesting Declaration would allow the acquisition of rights from multiple owners in one process which would be an efficient way to progress the scheme within the required timescale to accompany development of the mine and related MTS and MHF facilities. Thus, CA is essential in order that the delivery of the harbour facilities and the economic and social benefits of the wider YPP are not frustrated.

Availability and Adequacy of Funds

8.4.15 The Applicant's case in relation to the availability of sufficient funds to cover the cost of acquisition and compensation as might arise under the CA powers sought is set out in the Funding Statement (Document 5.2) [APP-008]. This document reiterates the fact that an agreement is in place with the major freeholder in the application site and refers to the applicant being at an advanced state of discussion with another principal freeholder and that it is only the compulsory acquisition of rights and imposition of covenants that is being sought compulsorily.

8.4.16 The details of the company structure are set out at paragraph 2.1.1 of this report. It is stated that to avoid any concerns over the relationship between Sirius Minerals Plc and York Potash Limited both companies are defined as the undertakers in the DCO[55]. It is estimated that the total cost of acquiring the land and rights to construct the harbour facilities will be in the order of £15 million. This is based on the agreements already reached by negotiation advised by suitably qualified members of the RICS. It is not anticipated that there would be any need for blight provisions as no land affected is in residential or agricultural use and the only qualifying interest would be in relation to parcel No 60 that is occupied by M & G Solid Fuels LLP on lease from Sembcorp Utilities (UK) Limited. The lease is however relatively recent and was entered into in full knowledge of the DCO proposal and reserves rights for the scheme.

8.4.17 The harbour facilities relative to Phase 1 would require expenditure of £75 million out of a total of £1,392 million on the overall YPP. To achieve Phase 2, a portion of the additional £169 million identified for infrastructure out of the total additional expenditure of £305 million to raise the overall total to £1,697 million would be for works to create the second quay and install the second conveyor within the conveyor bridge at the port[56].

8.4.18 The operations of Sirius Minerals plc have been funded by raising capital through the equity capital markets. This has involved a mixture of issuing ordinary shares, warrants, convertible securities and options

[55] Article 2 Interpretation
[56] These costs are derived from the York Potash Project Pre-Feasibility Study amended by replacement of a pipeline by the proposed MTS to move the polyhalite from the mine to the MTF.

over Sirius' ordinary shares through share placings, warrant issues and other equity facilities. At the date of the application, these means had raised some £130 million, thereby demonstrating investor confidence, notwithstanding the inevitable accounting losses by the company during the development stage. YPL will continue to be funded by intra-company arrangements with Sirius or other members of the Sirius Group.

8.4.19 Sirius is pursuing the usual sources of funding for a project of this nature. Likely future funding structures would combine a number of elements including debt, equity and more bespoke funding sources including securing strategic equity partners. The options being pursued under a "Financing Plan" are tabulated in the Funding Statement, but it is anticipated that the source of funds would be 30-40% equity and mezzanine finance and 60-70% senior debt in the form of bonds or similar instruments. The directors have experience in raising capital of the magnitude necessary in relation to mining ventures. For the harbour itself, senior debt instruments are likely to provide the substantial source of funding as equity and mezzanine finance would have been utilised in the initial construction phases of the mine and MTS. The business case for the YPP is well understood and two global fund managers are already significant shareholders in Sirius as the long-term returns on investment will be attractive. Thus, adequate funding for any compulsory acquisition is likely to be available, as required by the guidance.

8.4.20 In order to provide certainty that compensation would be available to meet liabilities arising under the Order, Article 23 of the draft DCO provides for a guarantee or alternative form of security to be provided prior to exercising the CA powers sought and for that to be in place for 20 years. The Article is in a similar form to that accepted as Article 14 in the Hornsea One Off Shore Wind Farm Order 2014, though during the Examination of this draft DCO, it was accepted that RCBC rather than the Secretary of State should be responsible for agreeing any alternative form of security as the overwhelming majority of the CA powers sought are within its administrative area.

The Objectors cases

8.4.21 None of those making representations on the draft Order who can be construed to have made objections to the CA provisions raise objections to the principle of the Order scheme or to the fact that the draft Order contains CA provisions. Rather a number raised specific points of objection to particular aspects of the proposed works and operations and/or to one or other of the alternative conveyor routes in relation to their assets or rights within the Order land. I will address these objections in respect of the relevant parcels later in this section of my report after concluding on the overall case for including CA powers within the DCO.

8.5 THE EXA CONSIDERATION OF OVERALL CA ISSUES

s123 test

8.5.1 The application included a statement that CA provisions were included in the draft DCO.

S122(2) test

8.5.2 The Statement of Reasons and Book of Reference provide a clear indication of the intended use of every parcel in relation to which CA powers or temporary use is sought.

s123(3) test - The public benefit

8.5.3 Having considered the case put forward by the applicant which was not contested in principle by affected persons, I am satisfied that there is a compelling case in the public interest for the development sought which would be facilitated by the CA provisions within the draft DCO. This is summarised in paragraphs 8.4.9-10 above. The public benefit is based on the policy backing from the Ports NPS, the economic benefits to the local, regional and national economies, including a significant improvement to the balance of payments through the Potash exports that would be facilitated through the wider YPP. These exports would also help worldwide food security and agricultural sustainability. There would also be clear socio-economic benefit in the jobs that would be created in an area with above average unemployment and significant deprivation.

8.5.4 Objectors to alternative conveyor corridors do suggest that these benefits could be offset were the pipelines beneath the application site to be put out of action through constructional activity or maintenance were to be precluded. These objections will be considered in detail later in this section of my report and I will conclude on this test having considered the objections in detail.

Alternatives

8.5.5 DCLG Guidance[57] states (para 8) that 'The promoter should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored…'.

8.5.6 I considered the availability of alternatives to the scheme in detail in paragraphs 4.6.8-10 of this report in the light of the considerations set out in the ES. I am satisfied that at the time of the application and Examination there was no realistic available alternative to use of the Bran Sands frontage of the Tees Estuary for the construction of the

[57] Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land, September 2013 (DCLG).

required quays and that quays of the size sought are of the scale required to handle the intended throughput of polyhalite.

8.5.7 The situation with regard to the conveyor system is less clear-cut as the applicant has stated that it should only be regarded as associated development as there could be other means by which the bulk cargo could be delivered to the quayside. Nevertheless, given the provisions of the Ports NPS, National Networks NPS and development plan policies, use of road haulage for the very heavy volumes of material to be transported would be clearly inappropriate and not represent sustainable development. While rail access to the MHF is not precluded by the DCO scheme, direct rail access would not be available to the quays within the DCO application site, including as a result of explicit protection being provided for the 'pipeline corridor' within the proposed terms of the DCO. In my judgement, therefore, there is no reasonable alternative to the provision of the proposed conveyor system along one or other of alternative Southern or Northern routes for the movement of the polyhalite from the MHF to the quays. A larger site would be required to enable further consideration to be given to direct rail access, whereas the application site has been kept to the minimum necessary to create the required harbour facilities.

8.5.8 With regard to the rights sought to facilitate other elements of associated development, I am satisfied that these are required to undertake necessary mitigation or to effect the construction of the harbour facilities. Wherever possible temporary occupation is proposed rather than CA, but for the most part I accept that permanent rights are required to facilitate ongoing access, maintenance and, in terms of the conveyor system, de-commissioning in the long-term.

8.5.9 The applicant has been seeking to acquire necessary land and rights by agreement and has secured agreement with the main freeholders concerned. I accept that CA powers are, nevertheless, required in order to extinguish unknown rights and impose new rights and covenants in a timely manner so that the deliverability of the project is not jeopardised. The General Vesting procedure would also facilitate timely and efficient assembly of the necessary rights in view of the complexity of the interests involved. I also accept that the applicant is seeking to minimise the extent of CA by only seeking powers in relation to the extinguishment and creation of rights as opposed to outright acquisition of land.

Funding availability

8.5.10 While the funding to implement the DCO scheme and indeed for the implementation of the planning permissions granted for the wider YPP had not been secured by the time of the Examination, a clear indication has been given as to how the funding would be obtained. The provisions of Article 23 of the draft DCO would require a guarantee or other form of security to be in place before CA powers could be exercised with precedent for the wording provided in the made Hornsea Offshore Wind Farm Order. I am satisfied therefore that

funding should be available to meet compensation requirements if the CA powers are activated within the 5 years in which notice to treat may be served under the provisions of Article 27.

8.6 THE CASES IN RELATION TO SPECIFIC PARCELS OF LAND WHERE OBJECTIONS/REPRESENTATIONS ARE RESOLVED

Tees Port Authority (Parcels 1, 2, 3, 6, 8 including 8a, 8b* and 8c*[58], 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21a, 22, 23, 24 and 37a)

8.6.1 Rights in relation to this area of the Tees estuary and adjoining land are required to enable capital and maintenance dredging and the construction of the quays, conveyor system, lagoon enhancement works and ancillary development.

Grounds of objection

8.6.2 Initially, PD Teesport were concerned that the terms of the draft DCO did not sufficiently safeguard their interests as the Tees Port Authority so that there could be danger to navigation [RR-002, REP1-019 and REP1-020]. However, dialogue continued between the Port Authority and the applicant. This resulted in the Port Authority being able to state that their concerns had been addressed following amendments made and to be made to the Protective Provisions for the protection of the Tees Port Authority that are contained in Schedule 11 to the draft DCO [REP4-008]. The Protective Provisions referred to are carried forward into the final applicant's draft DCO dated 13 January 2016.

ExA's conclusions

8.6.3 As Protective Provisions that satisfy the Tees Port Authority have now been included within the draft DCO, I consider that there are no grounds to withhold the CA powers sought in relation to parcels in which the Tees Port Authority has interests. The Protective Provisions ensure that the new quays would be constructed and operated as integral parts of the Tees Port, but that landside operations would not have to be subject to Port Authority supervision although within the limits of the Port jurisdiction provided that they do not affect the operations of the Port Authority.

8.6.4 Temporary use of plots 8b and 8c for a necessary construction compound would also be justifiable should the Southern conveyor option be selected because the parcels are essentially unused grassland proximate to the Bran Sands section of the conveyor system and temporary use would minimise interference with interests in this land.

[58] * denotes parcels that are or may be subject to temporary use only rather than CA

Northumbrian Water Limited (Parcels 1, 3, 8 including 8a, 8b* and 8c*, 11, 11a, 12, 13, 15, 16, 17, 18, 19, 20, 21a, 22, 23, 24, 35, 37, 38, 39, 40, 41, 42, 43, 44, 47, 48, 49, 50, 57, 58, 59, 59a* and 60)

8.6.5 Rights in relation to these area within the Tees Estuary including the existing NWL sludge jetty and adjoining land including land within the pipeline corridor and the Bran Sands Sewage treatment works are required to undertake capital and maintenance dredging and the construction of the quays, conveyor system, lagoon enhancement works and ancillary development.

Grounds of objection

8.6.6 Although, NWL indicated that they were working closely with the applicant, their initial standpoint was that of objection in so far as agreement had not been reached with the applicant [AS-002]. They required certainty that their assets would remain accessible and protected at all times, specifically the jetty, pumping station and effluent pipework running along the 'pipeline corridor' which they noted would be paralleled by the Southern alternative conveyor route, although the Northern alternative could also affect existing pipelines.

8.6.7 Negotiations between NWL and the applicant continued throughout the Examination with an update being provided in response to the ExA's second schedule of questions [REP4-011]. This indicated that they expected to reach agreement including on the acceptability of the Southern conveyor route while noting the intended demolition of the jetty. Finally, at the close of the Examination, NWL wrote to state that agreement had been reached, duly signed and sealed and that all previous objections to the Order were withdrawn [REP9-001].

ExA's conclusions

8.6.8 In view of the withdrawal of all objections, I consider that the CA powers sought should be granted in relation to the NWL interests in these parcels. There is also no reason why temporary use of parcel 59a as a contractor's compound and, if the Southern conveyor route is retained and selected also of parcels 8b and 8c for a contractor's compound, should not be agreed.

ICI Chemicals and Polymers Limited[59] (ICI) (Parcels 7, 8 including 8a, 8b* and 8c*, 10, 11, 11a, 12, 13, 15, 16, 17, 18, 19, 20, 21a, 22, 23, 24, 35, 37a, 38, 39, 40, 41, 42, 43, 44, 47, 48, 49, 50, 57, 58, 59, 59a* and 60)

8.6.9 Rights in these parcels of land within the Bran Sands lagoon, and the pipe corridor are required to undertake the construction of the quays,

[59] Taken to include interests of Imperial Chemical Industries Limited who have the same registered address.

conveyor system, lagoon enhancement works and ancillary development.

Grounds of objection

8.6.10 In their written representations [REP1-011 and AS-007], ICI objected to the CA provisions on the basis that the applicant has an option to purchase the freehold and that by only seeking to acquire rights, the applicant was seeking to avoid paying the full value for the site. As terms are agreed for acquisition of the freehold there can be no justification for granting CA powers.

8.6.11 The response of the applicant was that they still intended to acquire the freehold but as that is not strictly necessary to undertake the DCO scheme, they cannot make a compelling case for acquiring the freehold under CA powers. However, CA of rights is necessary to address the issue of unknown rights that could be incompatible with the DCO scheme, but that existing known rights would not be interfered with but that existing known rights would not be interfered with under the Protective Provisions in the draft DCO. Subsequently, ICI wrote to say that its representation is withdrawn [EV-005].

ExA's conclusions

8.6.12 In view of the withdrawal of the objection, I consider that the CA powers sought should be granted in relation to the ICI interests in these parcels. There is also no reason why temporary use of parcel 59a as a contractor's compound and, if the Southern conveyor route is retained and selected also of parcels 8b and 8c as a contractor's compound, should not be agreed.

Northern Powergrid (Northeast) Limited (NPG) (Parcel 37 and 37a)

Grounds of objection

8.6.13 NPG made a Relevant Representation [RR-011] on the basis that no Protective Provisions are included in the draft DCO to safeguard their assets and operations. The applicant's Statement of Reasons indicated that NPG were considering whether any of their assets are actually affected by the DCO scheme and the CA powers sought. The only NPG interests identified in the Book of Reference are a caution dated 3 August 2015 against part of Network Rail's first registration of title in respect of parcel 37 and certain rights in parcel 37a. Acquisition of rights and the imposition of rights are required in relation to these plots to facilitate the crossing of the conveyor bridge over the Network Rail lines. The applicant stated in response to my question CA 1.4 on the import of s138 of the PA2008, that it is not intended to extinguish or adversely affect any assets of statutory undertakers. This is secured by the Protective Provisions in the draft Order.

8.6.14 During the Examination NPG wrote to state that negotiations had been taken forward and terms had been agreed that would safeguard their

interests as a pre-condition to withdrawing their representation [REP5-003]. Subsequently, prior to the close of the Examination NPG wrote withdrawing their representation after contractual documentation had been completed [REP8-001].

ExA's conclusions

8.6.15 No evidence has been placed before me that any interests of NPG would be affected by the CA provisions contained within the draft DCO. However, if there are any such interests, they will be safeguarded by the agreement concluded between NPG and the applicant. Consequently, I consider that the CA powers sought should be granted in relation to any interests that may be held by NPG within the application site.

National Grid Electricity Transmission Plc (National Grid)[60]

8.6.16 The representation of National Grid points out that the overhead conveyor would pass below 275,000 kv overhead transmission lines and that some modifications to the initial Protective Provisions were being negotiated together with a separate agreement that would safeguard their interests [REP1-013]. A successful outcome of negotiations was anticipated. Subsequently, the Representation was withdrawn [REP4-007]

ExA's conclusions

8.6.17 The representation has been withdrawn, and I conclude that the powers sought should be granted. The agreed Protective Provisions for the Protection of National Grid Electricity are set out in Schedule 8 to the draft DCO.

The Environment Agency (EA)

8.6.18 The EA is a statutory Undertaker and did raise certain issues in its Relevant Representation [RR-017]. Their position was detailed in the SoCG with the applicant and in their answers to the First Schedule of ExA questions [REP1-047 and REP2-017]

8.6.19 From these submissions it is clear that the primary concern of the EA is in securing mitigation for the inter-tidal habitat that would be lost including the mitigation which will be achieved through the Portrack Marsh habitat enhancement scheme. No matters relevant to their role as a statutory undertaker were raised and no land interests of EA are noted in the Book of Reference.

[60] The Book of Reference does not identify the parcels crossed by National Grid Power lines but only those with recorded interests of National Grid Gas. The parcels crossed by the National Grid power lines are probably 37a, 38, 41, 42, 43 and 44. Rights would be required for the construction, operation and ultimate de-commissioning of the conveyor bridge across these plots.

ExA's conclusions

8.6.20 In the light of the nature of the EA representations and the absence of a recorded land interest, no issue exists in respect of the CA powers sought in relation to the EA and the powers sought should be granted for the generality of the Order scheme.

Sembcorp Utilities (UK) Limited (Sembcorp) (Parcels 11, 12, 13, 15, 16, 17, 18, 19, 20, 21a, 26, 27, 28, 35, 36, 38, 39, 40, 41, 42, 43, 44, 47, 48, 49, 50, 54, 55, 56, 57, 58, 59, 59a and 60)

8.6.21 Rights are required in the leased area that Sembcorp holds in the pipeline corridor and within their freehold of the Wilton International chemicals complex where the conveyor bridge would link to the MHF in order to construct the conveyor system. The MHF facility has already been granted planning permission within the Wilton complex on land owned by the Homes and Communities Agency.

Representation made

8.6.22 The only representation made by Sembcorp was at the outset of the Examination [AS-004]. It simply gives the background that Sembcorp is a major industrial energy and integrated utilities and services provider to the process industry on Teesside. It is the owner of 687 ha of the 810 ha Wilton International site and also holds a lease of the 'pipeline corridor' through the Bran Sands site. It points out that the conveyor route is above its freehold within the Wilton site and at least partly above its leasehold interest at Bran Sands which is also affected by the quay development. It states that it has executed agreements with YPL and is very supportive of the DCO application. However, it notes that some of the companies with manufacturing or other operations on the Wilton site have raised concerns in relation to the breadth of the rights sought and the Protective Provisions proposed in relation to their assets within the 'pipeline corridor'. It hopes that the issues can be mutually resolved.

8.6.23 During the Examination, the applicant drew attention to the agreement with Sembcorp and pointed out that it would be bound by the terms of the Sembcorp lease of the pipeline corridor but that the Protective Provisions in the draft DCO, as augmented during the course of the Examination, would provide a higher level of safeguards for the assets of pipeline operators through the corridor than they currently enjoy by virtue of the lease provisions alone.

ExA's conclusions

8.6.24 Sembcorp are not themselves raising any objection to the CA powers sought. Consequently, I consider that the CA powers sought should be granted in relation to the Sembcorp interests in these parcels. There is also no reason why temporary use of parcel 59a as a contractor's compound should not be agreed.

8.7 THE CASES IN RELATION TO SPECIFIC PARCELS OF LAND WHERE OBJECTIONS/REPRESENTATIONS ARE NOT RESOLVED

Network Rail Infrastructure Limited (Network Rail) (Parcels 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 37a)

8.7.1 Rights are required in relation to these parcels in order to facilitate construction, maintenance and ultimate de-commissioning of the conveyor bridge over the Middlesborough to Redcar/Saltburn railway line and to extinguish any unknown interests in these parcels that might inhibit the development sought.

8.7.2 Network Rail submitted an initial representation [AS-003][61] in which it was stated that Network Rail objects to the inclusion of any CA powers over its land interests and that it will be necessary for the promoter to enter into an asset protection agreement and for an easement to be granted for the conveyor bridge. However, it noted that the draft DCO contained agreed Protective Provisions that would safeguard its operational infrastructure. It requires these provisions to be included in the final DCO. In response to my first written questions Network Rail confirmed that the Protective Provisions are agreed and that they do not object to the wording of the draft DCO [REP1-014] and so did not intend to be heard at the hearings on 24 September 2015. It should be noted that minor changes had been made to these Protective Provisions in the first iteration of the draft DCO dated 7 September [REP2-003]. No further communications were received from Network Rail.

8.7.3 Subsequently, the applicant, YPL, stressed that the physical works are agreed with Network Rail and that they had confirmed in writing that the agreed Protective Provisions would safeguard their operational infrastructure. What is not agreed are the commercial agreements with Network Rail for the necessary rights to over-sail the railway. For this reason, CA powers need to be maintained in relation to the land interests of Network Rail so that they cannot obstruct the implementation of the harbour facilities, if agreement on commercial terms cannot be reached. For this reason a minor alteration to the agreed Protective Provisions was put forward in the 6 November 2015 iteration of the draft DCO so that these provisions do not exclude the application of CA powers to secure rights to over-sail the railway [REP4-054]. The Protective Provisions in this form are carried forward into the applicant's final draft DCO dated 13 January 2016 as Schedule 7.

[61] The reference in the representation to interfacing with the railway in two places does not appear to be correct unless referring to the sidings that diverge from the main line in the vicinity of the proposed conveyor bridge as the second wholly separate railway line that is crossed by the proposed conveyor bridge is not part of the public rail network but is the privately operated 'Hot-metal' line that runs between the two steel works.

ExA's conclusions

8.7.4 From the limited submissions made in relation to the CA powers sought in respect of Network Rail Land, it seems clear to me that the operational needs of Network Rail have been fully safeguarded in the terms of the Protective Provisions that are set out in Schedule 7 to the draft DCO in its final form. The only matter at issue is the commercial terms for the right to over-sail the railway.

8.7.5 S106(c) of the PA2008 indicates that representations may be disregarded if the SoS considers that the representation relates to compensation for compulsory acquisition of land or an interest in land or right over land. It seems to me that, having agreed that the Protective Provisions set out in Schedule 7 are acceptably worded in order to safeguard their operational infrastructure, the outstanding point at issue with the applicant is essentially one that relates to the compensation that will be payable for the right to over-sail the railway, although NR may also be objecting as a matter of policy. If commercial terms cannot be agreed there is provision for compensation to be determined by reference to the Upper Tribunal (Lands Chamber) as is made clear in the DCLG Guidance related to procedures for the compulsory acquisition of land.

8.7.6 If the commercial agreements with Network Rail have not been concluded by the time that the Secretary of State comes to determine the Order, I am therefore satisfied that power should be included within the DCO to allow the promoter to exercise CA to create the rights necessary to over-sail the railway line. Without such rights the development sought in the DCO could not proceed. Schedule 7 should therefore be included within the DCO as set out in the final version submitted by the applicant dated 13 January 2016.

8.7.7 I recognise that because objection has not been withdrawn, the provisions of s127 of the PA2008 are applicable as Network Rail is a statutory undertaker. Under s127(5) an order granting development consent may only include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land only to the extent that the SoS is satisfied that the right can be purchased without any serious detriment to the carrying on of the undertaking. Given the acceptance by Network Rail that the Protective Provisions will safeguard their operational infrastructure, I am satisfied that the right to over-sail the railway line can be purchased without any detriment to the carrying on of the undertaking.

Tata Steel UK Limited (Tata) (Parcels 9, 10, 37a, 38, 39, 40, 41, 42, 43, 44, 49, 50, 53 and 54a), Sahaviriya Steel Industries UK Limited (SSI)[62] (Parcels 10, 37a, 38, 39, 40, 41, 42, 43, 44, 49, 50, 52, 53 and 54a) and Redcar Bulk Terminal (RBT) (Parcels 9 and 37a)

8.7.8 These representations can be taken together because the initial Relevant Representation from Tata Steel [RR-019] also referred to the interests of SSI and pointed out that the RBT was jointly and equally owned by Tata and SSI. The concerns raised were over:

- retention of access via an oversize roadway that serves their Universal Beam Mill at Lackenby, which would be over-sailed by the proposed conveyor bridge;
- safety in relation to the operation of the Hot Metal Rail route (HMR) between the Redcar Steel works and the Lackenby Mill, which would also be over-sailed, and
- unimpeded operation of the RBT.

8.7.9 The representation was essentially a holding comment seeking to ensure that the business requirements of these enterprises are taken into account.

8.7.10 The concerns over the consequences of over-sailing the internal roadway and the HMR would apply to both alternative conveyor routes, as would any issue concerning navigation within the Tees Estuary in relation to the proposed new quays. However, the particular point concerning landside development potentially impeding RBT operations only applies to the Northern conveyor route[63]. The rights sought in relation to these parcels are to enable construction of the conveyor system by one or other or both of the alternative conveyor routes.

Grounds of objection

8.7.11 The subsequent written representation was explicitly stated to be on behalf of Tata Steel, SSI and RBT [REP1-025]. The points of particular concern are, firstly, that the proposed conveyor bridge would pass over the HMR close to 'Bridge 20', which itself is passing over the Sembcorp 'pipeline corridor' and the Breagh gas pipeline with high voltage cables and data cables nearby. Should a derailment occur on the HMR, which carries molten iron from the Redcar blast furnace to Lackenby Steel Mill, recovery would only be possible by crane on Bridge 20 but such use would be limited by the overhead conveyor. There could therefore be expensive operational disruption and a span of the conveyor system might need to be removed to effect recovery. The torpedo wagons weigh up to 750 tonnes when laden with 46 tonnes axle loading which is significantly greater than the 25 tonnes

[62] In liquidation
[63] Parcel 9 in particular

permitted on Network Rail tracks. Trains have operated approximately every 20 minutes in each direction. There is no signalling but the trains rely on line of site under radio control at low speeds (circa 10 mph). If a laden torpedo is de-railed it needs to be recovered before the molten metal solidified, i.e. within 48 hours. Failure to prevent solidifying would incur a cost of £8 m. In 2014 alone there were 12 derailments, 5 of laden torpedoes.

8.7.12 On bridges, jacking to get a torpedo back on the tracks would not be possible and, because of damage caused by pulling a torpedo clear when off the tracks, this would only be contemplated were a hot metal break-out threatened over the Sembcorp chemical pipelines. While the proposed clearance of 8.75 m over the HMR would be sufficient, it could inhibit crane operation at a location where there would already be restrictions on crane outriggers because of the location of the Breagh gas pipeline beneath the northern HMR bridge span. For all these reasons Tata/SSI sought a conveyor route that avoids crossing the HMR or one that would pass beneath it.

8.7.13 Secondly, the proposed conveyor bridge would pass over what is described as the 'Blue Main Route' in the vicinity of 'Bridge 22'. The route links the off-site South Bank coke works, the two steel works and the RBT and carries road, rail freight and services over the Sembcorp corridor. The route including 'Bridge 22' provides an unrestricted height route from Teesport to the Steel House roundabout on the A1085, but if the overhead conveyor is constructed there would be in future a height restriction of 8.24 m from the port into the Redcar, Wilton and Lackenby sites. The route conveys coal, coke and slag products between the various sites and to Hanson/Tarmac plant adjoining the South Bank coke works with up to 30 large trucks in use on a 24/7 basis, while the rail freight line could also provide an emergency alternative to the HMR[64].

8.7.14 With regard to the concerns in relation to the operation of the RBT, use of a strip of land within the SSI/RBT holding for conveyor supports was argued to give rise to operational difficulties because there is a need to move plant around the supports for the conveyors on the RBT site and, because the steelworks are top-tier COMAH site, there would need to be secure fencing between YPL occupied land and the RBT/SSI site. Buffer areas would sterilise stocking areas or potential development land. Thus, at least initially, the representation sought sole adoption of the Southern alternative conveyor route.

8.7.15 In addition, concerns were expressed over the implications for navigation in the Tees Estuary from dredging and use of the additional quays in relation to vessels using the Redcar Port which can handle bulk carriers of up to 180,000 DWT tonnes with 17 m draught. Issues

[64] During the Examination it was pointed out that to perform this role a section of track would need to be (re)laid within the Redcar steelworks site.

over restrictions on maintenance of the two bridges if over-sailed by the YPL conveyors were also raised and potential disruption if construction and subsequent maintenance could not take place during planned SSI shut-downs.

8.7.16 Tata/SSI did not attend the hearings on 24 and 25 September and made a late submission in lieu of comments at the hearings. It was acknowledged that this was a consequence of the difficulties of SSI. Steel-making at the Redcar site was subsequently suspended and SSI UK put into liquidation during the Examination [REP3-012]. However, it was suggested that these difficulties did not remove the concerns expressed, but made it even more important that the assets of SSI were not diminished in value.

8.7.17 The submission sought corrections to the Book of Reference, which were duly made by the applicant, to show Tata and SSI rights in the Sembcorp pipeline corridor, but it also continued to maintain that retention of two alternative conveyor corridors subject to CA provisions was improper because the applicant had a clear preference for one of the routes so there could not be a compelling case in the public interest for both. The submission also flagged up that during September 2015, the applicant had illustrated two partial tunnel options that would have taken a tunnel beneath the A1085, Breagh Gas pipeline and HMR to emerge via a portal or vertical shaft between the HMR and 'Blue Main Route' bridge. Tata/SSI argued that they would consider this to be feasible without disturbance to the piled foundations of the HMR, notwithstanding the applicant suggesting that the options were only shown to demonstrate the problems. Without prejudice to the objections in principle to over-sailing the HMR and use of the Northern corridor, suggested amendments were put forward to the Protective Provisions in Schedules 9 and 10 and to the related constructability notes.

8.7.18 A copy of the winding-up Order for SSI dated 2 October 2015 was submitted by the Official receiver [REP5-002]. In comments on the ExA's draft DCO [REP6-015], Tata/RBT point out that progress had been made towards agreeing Protective Provisions and on arrangements for fencing and access in relation to the strip of land that would be required for the footings of the overhead conveyor if the Northern alternative route is pursued, these being shown on a drawing numbered Document 3.16 [initially REP4-038, but replaced by REP6-022 to meet RBT security and access concerns]. The strip might be required for future maintenance works, but not for general access as YPL undertook to take this via the Southern conveyor route, irrespective of which conveyor route is selected. Nevertheless, at that stage some further adjustment to the wording of Schedule 10B was sought to ensure that the RBT interests were fully protected. At [REP7-004], Tata/RBT confirmed that the text and drawing are now all agreed.

Response of applicant

8.7.19 YPL submitted constructability notes in their response to the written representations of Tata/SSI [REP2-007 and REP2-010]. They incorporated reference to these notes as requested in an amended version of the Protective Provisions for assets bridged/over-sailed that are set out in Schedule 10 to the draft DCO. These indicate that it should be possible to construct the conveyor bridge during very short duration possessions that would be possible during normal annual cycles as the conveyor bridge structures would be assembled alongside and lifted into place with subsequent fitting out of conveyors being able to be undertaken within the tubular structure. No particular inhibitions on maintenance is envisaged whether to assets over-sailed or to the new conveyor bridge as the problems would be no greater, and because of the ample clearance somewhat less, than existing where road bridges cross railway lines.

8.7.20 With regard to the concern over the possible derailment of a (laden) torpedo at the critical point where it would be below the proposed new conveyor bridge but over the bridge across the Sembcorp pipeline corridor, YPL point out that the length of track affected would be very short and that therefore the risk of such an incident at the critical point would be very slight. This is particularly so as the HMR bridge over the Sembcorp corridor carries straight sections of track without any switches so there would be limited cause for potential derailment at this point. As the land on either side of the track is heavily constrained irrespective of the DCO proposal, a pull-back away from the actual point of any derailment might be required in any event.

8.7.21 In answer the Question PAR 1.2 in the ExA's First Schedule of Questions, the applicant pointed out that the rationale for adopting an overhead conveyor system was set out in the 'Option Study Report: Conveying polyhalite from Wilton to Bran sands, March 2015' that was submitted as Appendix 3.2 to the ES (document 6.5) [APP-193]. A further study was put in to the Examination, 'Conveyance of polyhalite from Wilton to Bran Sands, Teesside - Options Study Supplementary Report' [REP1-032]. This confirms that an underground tunnels as proposed between the minehead and MTS would not be feasible because of the existence of three underground gas pipelines between 1 km and 2.5 km from the MHF, 2 of which, CATS and Breagh, are designated by HSE as Major Accident Hazard Pipelines (MALP) and must not be disturbed by tunnelling beneath them. Much of the approach to the proposed quay would also be in close proximately to the landfill site and indeed the only area available in which to create a portal with a shallow enough exit for high capacity conveyors would be within the licensed area, albeit within the lagoon area rather than tipped cells. This would add additional health, safety and environmental risks. YPL further argued that it would not be feasible to lift the necessary volumes of polyhalite via a vertical shaft or a portal of the nature shown between the HMR and 'Blue Main Route' bridges.

8.7.22 Shipping Notes were also submitted to demonstrate that material problems to shipping movements should not arise during dredging or operation of the proposed new quays [REP2-012 to REP2-014].

8.7.23 Discussions continued with Tata/RBT to refine the provisions of Schedules 9 and 10 and Constructability Notes, but it proved impossible to engage with the Official Receiver in respect of the interests of SSI, SSI no longer being represented by the legal advisers to Tata/RBT. While the willingness of parties to engage meaningfully was disputed on both sides at times during the Examination, YPL maintain that difficulties encountered initially and the inability to engage with SSI towards the close of the Examination make it essential that CA provisions are maintained in relation to all these interests. This is notwithstanding the agreement with Tata/RBT over the wording of Protective Provisions, particularly those in Schedule 10, to safeguard the interests of Tata and RBT, including agreement with the revised drawing of access arrangements around the RBT conveyor supports.

ExA's conclusions

8.7.24 The in principle objections from SSI were clearly not withdrawn prior to the close of the application via the Official Receiver and although those from Tata/RBT were not pursued during the latter part of the Examination, they too appear to lie on the table. With regard to the overhead crossing of the HMR, I was not persuaded that there is a serious risk to the interruption of its use, were that use to be resumed in future, from the construction and operation of the overhead conveyor bridge. As noted by YPL, there is no obvious reason why any derailment should take place at precisely the critical point of being on the bridge over the Breagh gas pipeline but under the conveyor bridge. It also seems to me that with the gas pipeline below and other constraints, use of cranes without first pulling any de-railed torpedo back off the bridge over the pipeline corridor would in any event be constrained. Moreover, as recorded in the note of the Preliminary Meeting [EV-001] any proposal to place the conveyor underground below the HMR would be of concern to DEA UK[65] and they would be likely to object to it. This supports the arguments of YPL that undergrounding is not feasible, a point ultimately accepted by RCBC in relation to the A1085. In my experience also, tunnelling beneath rail lines is typically regarded as giving rise to greater risk to rail safety than the construction of over-bridges, as was argued by YPL.

8.7.25 As steel making has ceased at the former SSI Redcar Steel Works, there does not seem to be any remaining short-term issue of fitting in construction over the HMR during planned annual closures. The action of the Liquidator to close both the coking plants makes a resumption

[65] Now Ineos. The DEA answers to the First Schedule of ExA questions confirm objection to an underground conveyor route beneath the HMR with the reasons given in section 7 of their Written Representations [REP1-003 and REP1-004]

of steel making on the Redcar site in a currently foreseeable period that might span construction within the terms of the draft DCO extremely unlikely. But my conclusions in the preceding paragraph cover that eventuality in the absence of evidence to the contrary during the Examination. As for the 'Blue Main Route' height limitation, no evidence was given of likely abnormal loads needing a greater height than 8.24 m on the route between Teesport and the two steel works and RBT, bearing in mind that the height that would remain available would be very substantially greater than the standard minimum clearance over highways that is normally sought of 5.03 m.

8.7.26 The shipping notes were not disputed. Consequently, I am satisfied that the dredging, quay construction and operation should not interfere with shipping operations serving RBT to any material extent. I note that PD Ports are satisfied that the Protective Provisions in Schedule 10 in the final draft DCO fully meet the requirements of the Tees Port Authority.

8.7.27 Finally, there is the issue of whether CA powers can be justified in relation to the Northern alternative conveyor route prior to route selection when the applicant has a clear operational preference for the Southern alternative. In my judgement, such an approach can be justified as there are strongly held objections to use of the Southern alternative conveyor route. I address these objections in detail later in this section of my report, but I have already concluded in relation to safety considerations in sections 5 and 7, that the Southern alternative route should be removed from the Order.

8.7.28 Taking all these considerations into account, I consider that the extent of CA powers sought in the draft DCO dated 13 January 2016 and updated Book of Reference in relation to the interests of Tata, the Liquidators of SSI and RBT should be granted subject to the excision of provisions relating to the Southern alternative conveyor route and subject to the Protective Provisions in Schedules 9 and 10 including the relevant Constructability Notes and the related drawing Document 3.16 (Revised) that have been agreed with Tata/RBT.

Huntsman Polyurethanes UK Limited (Parcels 11, 12, 13, 15, 16, 17, 18, 19 and 20), Sabic UK Petrochemicals Limited (Parcels 8, 8a, 8b, 8c, 11, 12, 13, 15, 16, 17, 18, 19, 20, 22, 23, 24 and 61) and (RWE) DEA UK SNS Limited[66] (Parcels 2, 11, 12, 13, 15, 16, 17, 18, 19, 20, 30, 31, 32, 34, 35, 37a, 38, 39, 40, 41, 42, 43, 44, 47, 48, 49, 50, 53, 55, 57, 58, 59, 59a and 60)

8.7.29 The objections of these undertakings with assets running through the Sembcorp 'pipeline corridor' can also be taken together as for the most part the representations of Bond Dickinson were identical in relation to their interests, though DEA/Ineos have interests in a

[66] Subsequently Ineos UK SNS Limited (INEOS) and parcel numbers cited include entries in the name of Ineos companies.

separate Gas pipeline under the Tees Estuary and consequently raised concerns over dredging in its vicinity (Parcel 2). Their Gas pipeline also comes in from the North Sea Breagh Gas Field south of the Redcar Steel works at Coatham Sands and follows an alignment between the HMR and the A1085 before running broadly parallel to other pipelines within the Sembcorp pipeline corridor through the Bran Sands site. As referred to in paragraph 8.7.29 below, Ineos also has a separate chemicals pipeline which, while broadly parallel to the gas pipeline for much of its route, continues beneath the A1085 to the east within Sembcorp land. The routes can be identified on the Land Plans. As a consequence DEA/Ineos has concerns wider than those of Huntsman and Sabic. The accurate routes of the Gas Pipelines in critical parts of the 'pipeline corridor' are shown on slightly revised updated Conveyor Route Plans [REP4-046 to REP4-051][67], the full lengths of the conveyor routes in relation to the gas pipelines being shown in the original application documents [APP-088 to APP-102]. The 'pipeline corridor defined for the purposes of the Protective Provisions and certain exclusions in the draft DCO are shown on the Pipeline Corridor Plans [REP4-033 to REP4-036].

8.7.30 The rights required in relation to these parcels are primarily to effect construction of the overhead conveyor system by either route. Access rights to the quays would still be required along the Southern route even if the Northern alternative is selected for construction of the conveyor itself. Rights over a limited number of the parcels would also be required to undertake the proposed lagoon habitat enhancement works and to construct the quays and dredge the berth pockets and approach channel.

Grounds of Objection

8.7.31 Bond Dickinson lodged Relevant Representations on behalf of these companies [RR-009 , RR-010 and RR-016]. In these, it is pointed out that Huntsman manufacture aniline and mononitrobenzene on the Wilton site and that their facilities are linked to ship loading and unloading berths on the north bank of the Tees via pipelines that they own through the application site and which pass through tunnels under the Tees. They do not object in principle to the development but consider that the CA powers are too widely drawn and limits to deviation too wide. They are also concerned over constructional issues related to their infrastructure and possible threats to their access requirements through road closures and impedance to their shipping. Consequently, they seek improved protective provisions. Similar concerns are raised in relation to Sabic's operations which involve production of ethylene and low density polyethylene on the Wilton

[67] In addition to the DEA/Ineos Breagh Gas Pipeline, these drawings also show the CATS Management Gas Pipeline that will be considered later in this section of my report and a GD Suez Gas Pipeline. The last was constructed to carry gas from Seal Sands to a gas-powered power station within the Wilton chemicals site. It is not currently in use. Nevertheless, the conveyor proposals and Protective Provisions in the draft DCO would cover this pipeline as well as others in relation to which representations have been made.

site, again linked by pipeline to ship berths on the north bank of the Tees.

8.7.32 In relation to DEA/Ineos, it is pointed out that together with Sterling Resources they own a 20" gas pipeline bringing in gas from the Breagh Gas Field in the North Sea to the Teesside Gas Processing Plant (TGPP) at Seal Sands on the north bank of the Tees and a 3" return pipe carrying mono ethylene glycol for injection into the pipeline at the Breagh platform. There is also a related fibre-optic control cable. The concerns are broadly similar to those of Huntsman and Sabic in that constructional issues need to be resolved in detail, that unfettered access needs to be maintained and that there needs to be indemnity in respect of any damage, loss or expense caused by the DCO works. Consequently, again improved Protective Provisions are sought.

8.7.33 These concerns were expanded upon in written representations and responses to the First Schedule of ExA questions [REP1-003 to REP1-009 and REP1-022 to REP1-024]. These answers and representations are in identical terms from Bond Dickinson on behalf of all three parties [REP1-003 and REP1-004]. In essence, it is argued that the Protective Provisions do not provide the level of safeguard sought or agreed in the Dogger Bank A & B Offshore Wind Farm DCO, particularly in relation to ensuring that vehicular access would remain available at all times, but the representations note that discussions were ongoing with revised Protective Provisions anticipated as the parties do not object in principle the making of the Order. Nevertheless, in the absence of agreement, the parties maintained objection on the following summarised grounds:

- adverse impacts would outweigh benefits because interruption of the pipeline links that carry feedstock for cracking operations and other operations on the Wilton site and exports in reverse could cause a shutdown of operations on the Wilton site that would cost in excess of £100 million and put jobs at risk not just within the operations of these parties but also of suppliers;
- it has not been demonstrated in relation to the proposed CA that the land is required or meets the public interest test, bearing in mind the need to test a worst-case scenario in relation existing operations that could be harmed as opposed to partially speculative benefits of the Order scheme;
- the potential adverse effect of dredging on Tunnel No 2 and DEA sub-river assets and on navigation within the estuary, particularly in relation to the need to cater for increased numbers of Gas tankers in future as feedstock is switched to Ethane;
- inclusion of southern conveyor route in the Order. The objectors have a strong preference for this alternative to be excised from the Order in view of the greater potential for conflict with pipelines or other apparatus on this route;
- access concerns in relation to temporary works to the A1085 roundabout in relation to access to DEA apparatus and to the Wilton complex;

- various detailed points on the wording of the Order including the wide limits to deviation, the ancillary powers, the potential for CA to extinguish their rights to maintain or remove their apparatus and a number of detailed points concerning requirements, and
- inadequate provisions in relation to the proposed guarantee, particularly in relation to indemnities for interruption of activities together with a large number of other points on the Protective Provisions offered at that time.

8.7.34 These points were pressed at the CAH on 24 September 2015 and in response to the ExA's Second schedule of questions, Bond Dickinson put forward near identical further representations [REP4-002, REP4-004 and REP4-012]. These detailed remaining points at issue, including definitional matters such as the definitions of 'apparatus' and the extent of the 'pipeline corridor', continuing concerns over access including to the Wilton complex and the provisions in relation to indemnity insurance. A revised Schedule 9 as sought by the objectors was appended.

8.7.35 Following further responses from the applicant Bond Dickinson again submitted identical representations on behalf of these parties, with it being noted that DEA UK SNS Limited had changed its name to INEOS UK SNS Limited with effect from 30 November 2015 [REP6-009, REP6-010, REP6-011 and REP6-012, REP6-013 and REP6-014]. In these representations amendments were still sought to increase the extent of the defined 'pipeline corridor' while curtailing the extent of ancillary development under Article 6(1). A continuing strong preference for exclusion of the Southern alternative conveyor route was expressed as that route is regarded as carrying greater risks given coincidence of the conveyor route with pipeline assets over a greater length.

8.7.36 In respect to the Protective Provisions in Schedule 9, the following were flagged up as still outstanding points of dispute:

- the need to cover planned pipelines;
- the definitions of 'affected assets' and 'apparatus';
- the extent of the 'pipeline corridor';
- the scope and process of the pipeline survey and recovery of costs;
- the extent of applicability of minimum clearance;
- inclusion of Paragraph 25(9) regarding replacement of assets;
- the mechanisms for disputing the quantum of insurance; and
- inclusion of parties whose material is being carried through pipelines in the indemnity provisions.

8.7.37 A further submission was made from the parties following the response submission of the applicant's draft DCO Document 4.1D [REP7-002, REP7-007 and REP7-008]. In this submission, deletion of Article 25(4) is agreed as the point is better addressed in Schedule 9, but there remained issues regarding that Schedule:

- in relation to proposed pipelines and the commencement of work as opposed to the date of the pipeline survey, the extent of that survey and recovery of costs;
- the definition of 'affected assets' and 'apparatus';
- the extent of the pipeline corridor;
- inclusion of paragraph 25(9) regarding replacement of assets;
- the timing of expert determination re the quantum of insurance; and
- inclusion of parties owning products passing through pipelines within indemnity provisions.

8.7.38 It follows, because the position of these parties is that they maintain objection to the DCO including its CA provisions and in particular to use of the Southern alternative conveyor route unless Protective Provisions can be wholly agreed, there remains an outstanding objection that has to be determined.

Response of the applicant

8.7.39 The applicant responded to these concerns in their response to the ExA's First Schedule of questions [REP1-028], to Relevant Representations [REP1-037] and to Written Representations [REP2-007]. These responses indicate an expectation that agreement will be reached bearing in mind that paragraph 3.1of the objectors written representations states that 'subject to the proper protection of their undertakings, the objectors do not object in principle to the making of the Order'. Constructability notes were provided to indicate how construction and maintenance would be undertaken, with these notes referenced in Schedule 9 [REP2-010]. The Schedule 9 Protective Provisions were also amended in the light of comments made. It was hoped that the revised draft of the DCO containing these revisions would satisfy these parties [REP2-003].

8.7.40 With regard to the concerns in relation to Tunnel No 2 and the Breagh under river assets, following the pre-application consultation, the extent of proposed dredging was cut back so that it no longer extends over Tunnel No 2 in the application scheme. A detailed report was submitted to demonstrate that Tunnel No 2 and others assets should not be at risk [REP2-011]. Further clarification was provided in Appendix 3 to the applicant's submissions following the September hearings [REP3-005]. The revised dredging arrangement should only reduce the overburden pressure on the RWE Breagh pipeline that would be beneath the top of the dredged slope rather than a fully dredged main channel by some 6%, with the depth below the new river bed being reduced by around 1m from the existing 29.6 m to 28.6 m. The pressure reduction on Tunnel No 2 would be around 2% (and that on the CATS Management Gas Pipeline by only around 1%). Thus, adverse effects are considered unlikely. In contrast, previously approved dredging to implement the Northern Gateway Port project would reduce the level of the river bed cover over the Breagh pipeline to 25.5 m.

8.7.41 Shipping Notes were also submitted that demonstrate that neither construction nor operation should materially adversely affect shipping movements [REP2-012 to REP2-014]. The applicant also stressed that they only sought to extinguish unknown rights within the ICI and former ICI land that might be incompatible with the Order scheme, while existing rights would be retained as the Order scheme was designed to respect these rights. These assurances are secured through the Protective Provisions that are within the draft DCO. YPL undertook to consider the redrafting of Article 25 and paragraph 3(2) of Schedule 9 to ensure that this intention is made absolutely clear. A further version of the draft DCO was also submitted responding to points made on behalf of these parties at the hearings [REP3-004] and a further draft was put in at deadline 4 [REP4-054] which it was hoped met all the concerns of these parties.

8.7.42 Subsequently, the applicant pointed out that this version had been produced before YPL had seen these parties' responses to the Second Schedule of ExA questions and that they were willing to make some further adjustments which it would be hoped would meet the concerns of both these parties and CATS Management [REP5-009]. The objector's plan of the Wilton complex would be adopted but only for the purpose of the Construction Access Plan because the DCO did not otherwise affect to complex. The applicant must maintain ability to extinguish unknown rights, but in relation to potential effects on known assets, it was willing to modify definitions, including those of 'buildings' and 'pipelines', to further allay concerns. A further version of the draft DCO was therefore submitted containing additional amendments [REP6-024].

8.7.43 In Document 8.12 [REP7-012], the applicant responded to many of the points made by these parties, at this stage in some instances referring back to the applicant's Document 8.10. YPL points out that the Northern Gateway project authorised dredging within 14.6 m of Tunnel No 2 whereas the nearest dredging to the Breagh pipeline, the closest of the cross-river pipelines to works proposed in the draft DCO, is well in excess of the 25 m minimum stipulated in the Protective Provisions[68]. Some further adjustments of wording were proposed but for the most part the applicant maintains that the Protective Provisions which are now offered under Schedule 9 wholly protect the interests of these parties. The final offered draft DCO was submitted on 13 January 2013 [REP8-008]

ExA's conclusions

8.7.44 As ExA I have noted and indeed encouraged the continuing dialogue between the applicant and these parties both in formal submissions to the Examination, discussion at hearings together with meetings and

[68] There appears to be a discrepancy between the minimum dimensions from the Breagh gas pipeline in dredging quoted in Appendix 3 of REP3-005 and the dimension in REP7-012, but both distances are well in excess of 25 m.

exchanges outside the formal context of the Examination. The exchanges have substantially narrowed the points of difference and it is disappointing that all matters could not be agreed by the close of the Examination thereby enabling these objections to be withdrawn.

8.7.45 I will therefore address the points raised in turn. Dealing first general issues, in relation to the issue of dredging, I am satisfied from the evidence of the applicant that there should be no material harm to cross river pipelines from dredging operations as the definition of 'affected assets' defines 'protected crossings' as those in relation to which any works are proposed within 25 m in paragraph 2(c)[69] of Schedule 9. This should provide a sufficient minimum separation without consultation to ensure 'protected crossings' are safeguarded.

8.7.46 Again, in relation to concerns over the flexibility in relation to the limits of deviation between Works, the amendments to the draft DCO during the course of the Examination removed the limits of deviation in respect of Works Nos 1-4 as detailed in paragraphs 2.2.5 and 2.2.6 of this report. As consequence, the conveyor routes are precisely defined in locations that on currently available information should enable footings for conveyor supports to be positioned clear of underground assets. In addition, I am satisfied that the restrictions on ancillary development secured by the exclusions inserted into Article 6(3)(b), should safeguard pipeline and related apparatus from constructional activity in relation to potentially harmful ancillary development because the defined 'pipeline corridor' is broadly drawn. I do not accept the objector's argument that the 'pipeline corridor' needs to be extended to cover parcels within areas only indicated for temporary use, as these, whether for a construction compound within the Wilton complex or to undertake temporary works to the A1085 roundabout, would only authorise surface activities that should not affect underground assets, while the definition of apparatus covers above ground pipelines wherever they may be located within the application site. Neither should the 'pipeline corridor' take in areas outside the application site as no works would be authorised under the DCO in such areas.

8.7.47 Turning to detailed wording and definitional points in Schedule 9, I do consider that the objectors have some substance to their concern that there could be pipelines constructed between the date of the pipeline survey and the commencement of works that would not have the benefit of the Protective Provisions of Schedule 9. Conversely, any protection for future pipelines cannot be open ended and, as the applicant points out, any pipeline operator or prospective operator would have to comply with Sembcorp 'permit to work' provisions within the leasehold corridor. Rather than embodying the whole of the changes put forward by the objectors, their central concern could be overcome by a modification to the definition of "pipeline(s)" in

[69] The first (c) In Paragraph 2.

paragraph 2 to read "…means the apparatus located in the pipeline corridor, or in or comprising a protected crossing at the time the pipeline survey is carried out or as may be added between the date of the pipeline survey and the commencement of works, providing that any such additions were notified to the undertaker within the period specified in paragraph 3(3) of this Schedule."

8.7.48 As for recovery of costs in relation to paragraph 3(3) for checking the pipeline survey, this could simply be achieved by addition of the words "authorisation of survey details submitted by the undertaker under paragraph 3(3)," at the start of paragraph 28(a) of this Schedule. While the applicant suggests that the survey will have value to the asset owners, I do not consider that it would be justifiable to exclude response to the survey work from the generality of the cost recovery provisions which relate to broadly comparable activities.

8.7.49 With the change to the definition of pipelines suggested above, I am satisfied that the definitions of affected assets and apparatus are sufficiently widely drawn and that it is not necessary to add to the definition of the "pipeline survey". The pipelines corridor through the proposed temporary compound F within the Wilton complex is shown on the relevant conveyor route plan and the existence of this corridor is reflected in the layout shown for that compound, while the provisions of Article 30(12) would reinforce the protection afforded to the above ground pipework in areas for temporary possession. I agree with the applicant that general protection for the Wilton complex outside the application site is only necessary to ensure retention of access at all times. As confirmed by RCBC, it should be noted that the works to the A085 roundabout are anticipated as being able to be undertaken during a very brief period during which there would be no reason to close the highway because most of the works to create the temporary construction access would be undertaken off the carriageway and the access point is already defined.

8.7.50 I am also not persuaded that it is necessary to add paragraph 25(9) as set out in their deadline six response to cover replacement of assets that may be affected. The whole purpose of Schedule 9 is to preclude adverse effects on the assets of pipeline owners or operators and indemnity provisions are included against inadvertent harm arising.

8.7.51 Finally, there is the issue of the ability for the undertaker to proceed if the quantum of insurance cover is disputed in advance of expert determination and whether the indemnity provided for should be extended to owners of products that may be passing through the pipelines of asset owners or operators. I accept the point made by the objectors that the arbitration and expert determination provisions of Article 40 are time limited. Nevertheless, there are a significant number of pipeline operators and each has the power to refer the level of insurance cover to expert determination under paragraph 27 so unless the provisions of paragraph 27 were to be substantially re-caste, delay could be greater than implied by simple application of the

time periods within Article 40. The applicant has inserted in its final draft that it would be preceding at its own risk, if it carried out works ahead of any expert determination sought by a pipeline owner or a pipeline operator. Consequently, it would be explicitly clear that any liability caused lay with the undertaker. It would thus be in the interests of the undertaker to ensure that its own judgement as to the level of insurance cover was reasonable. I am not persuaded therefore that any variation to the applicant's draft of paragraph 27 is necessary.

8.7.52 As for the extension of indemnity to others, I cannot see that this is either necessary or justifiable. If the owner or operator of a pipeline would be liable for losses incurred by the owner of products being transported as a result of the actions of the undertaker, it seems clear to me that the indemnity provisions in paragraph 28(2) would require the undertaker to provide compensation to the pipeline provider in order to recompense the product owners.

8.7.53 In the light of the foregoing, subject to the very minor variations in the wording of the Protective Provisions referred to in paragraphs 8.7.47 and 8.7.48, I am satisfied that the interests of these parties would be fully protected. The Protective Provisions in Schedule 9 explicitly state in paragraph 25 that the powers that the undertaker would be granted in relation to CA can only be exercised in relation to unknown rights and that where known rights exist consent for any potentially adverse effects must be obtained. Moreover, as the applicant has argued, the Protective Provisions give a significantly greater degree of protection to the asset owners and operators of pipelines within the Semcorp leased corridor than those in the required working practices under that lease, provisions that would also govern activities of the undertaker.

8.7.54 Consequently, I consider that a compelling case exists in the public interest for the CA powers sought in relation to these interests to be granted though for the reasons given earlier in relation to societal safety risks, I am recommending that the Southern alternative conveyor route be removed from the DCO so that CA rights would not be authorised in relation to that route. In my judgement, the applicant is correct that the public benefit test does not turn on the predicted socio-economic and policy benefit of the DCO scheme and the wider YPP versus the possible losses through disruption of the pipelines through the application site because such an approach does not take account of the efficacy of the Protective Provisions. In my judgement, those provisions should ensure that any such loss would be very unlikely and any diminution of asset values should be offset by compensation. In my judgement therefore there should be a very positive public benefit.

8.7.55 Finally, the Breagh pipeline is, like the CATS pipeline, a designated MAHP, but this group of objectors has not sought to make a substantive argument against the DCO scheme on safety grounds but rather on grounds of potential financial loss to their operations and

with consequential knock effects on other enterprises and employment should their pipeline operations be harmed. In their response to my First schedule of ExA's questions the HSE did not seek to raise safety objections themselves but indicated that the safe operation of relevant pipelines is a matter for the operators concerned [REP1-010].

8.7.56 In the absence of a safety argument, and in the light of the limited points of remaining disagreement in relation to the Protective Provisions which prevented the objections of these parties being withdrawn, I was not persuaded that there would have been is a justification for excising the southern alternative conveyor corridor from the DCO in relation to the arguments advanced by this group of objectors. There is a clear operational preference of the applicant and use of that route would involve the need for CA of a lesser extent of rights in land than those required for the Northern route. That Northern alternative corridor was also subject to contrary representations seeking its deletion that I have addressed earlier in my report.

8.7.57 Nevertheless, as I have concluded that the societal risk associated with safety concerns in relation to the CATS' pipeline warrants removal of the Southern conveyor from the DCO, my conclusion that a compelling case exists to justify grant of CA powers in relation to the interests of these parties does not apply in respect of rights that would only have been required for the Southern alternative conveyor route.

CATS Management Limited/Amoco (UK) Exploration Company LLC (BP)[70] (Parcels 8b, 8c, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, and 22[71])

8.7.58 These two representations can be taken together as the initial submissions [REP1-001 and REP1-002] and subsequent comment at hearings made clear that BP were in process of disposing of their interest to companies related to CATS Management Limited, such transfer intended to be completed before the end of 2015. The CATS Management Limited representation indicates that related companies, including that which would be an agent for the future operator of the pipeline, can all be called 'CML CATS Parties' (CATS). BP notified the Examination on 16 December 2015 that BP, as the existing CATS' Operator, had recently transferred its interest in CATS from Amoco (U.K.) Exploration Company LLC to CATS North Sea Limited and that with effect from 17 December 2015, control of CATS North Sea Limited will transfer to Antin Infrastructure Partners (Antin). All previous objections representations and correspondence from or referring to Amoco (U.K.) Exploration Company LLC should be read as being from, or referring to, CATS North Sea Limited. Antin have been involved in, and approved, the terms of the submissions on behalf of CATS.

[70] Amoco (UK) Exploration Company LLC is a subsidiary of the BP Group.
[71] Mainly added in the final revised to the Book of Reference Document 5.3B [REP6-026].

8.7.59 CATS operate a 36" gas pipeline that could carry about 25% of the UK daily gas demand. It links the central North Sea to its Teesside terminal that adjoins the TGPP. In a later submission it was stated to transport some 8% of the total UK gas demand [REP6-016]. It carries gas from up to 34 gas fields and if it had to be shut down there would be serious consequences to UK gas and electricity supplies. To avoid gas having to be flared, a shut-down could also mean that oil production from some of the same fields might also need to be halted.

8.7.60 The representations state that CATS is in principle supportive of the proposed development and the potential economic benefits that it could bring in conjunction with the new potash mine. However significant safety and integrity risks are perceived if the Southern alternative conveyor corridor is utilised. As well as crossing the CATS' pipeline in two places, the southern alternative conveyor route would be directly above the CATS' pipeline for almost 2 km. Constructional concerns are very real as the pipeline operates at approximately 60 times a domestic gas pressure, but operationally there would be an ongoing concern as to the availability of access for inspection and maintenance. Dropped objects from the conveyors could also be a concern.

8.7.61 However, with inclusion of appropriate Protective Provisions, CATS indicate that they would be comfortable with the Northern alternative conveyor route, as in the original application there was a single crossing of the CATS pipeline. Detailed consultation would be required over the design of the crossing and Protective Provisions need enhancing. For example, pipeline settlement and stress analysis needs to be undertaken before any excavation adjacent to the CATS' pipeline and operational procedures need to be defined in relation to heavy lifts over the pipeline. Safety protocols also need to be established with the emergency services and the CA powers sought need to be subject CATS' statutory rights and obligations. The constructability notes drawn up by Royal Haskoning DHV need to be incorporated into the Protective Provisions, it being argued that CATS should benefit from the provisions of both Schedules 9 and 10.

8.7.62 In addition, CATS draw attention to concerns initially expressed by PD Teesport as harbour authority and consider that it is essential that marine operations are governed in a manner that there would be no threat to the CATS' pipeline where it passes under the Tees to the south-west of the application site.

8.7.63 The concerns of CATS were aired at the ISH on 25 September 2015 and followed up in submissions at the beginning of November [REP4-005 and REP4-006]. In these submissions, an amended version of the Schedule 9 Protective Provisions for the pipeline corridor and protected crossings were put forward. An error in the alignment of the CATS' pipeline was also flagged up in relation to the Northern alternative conveyor route. The correct alignment of the CATS' pipeline means that it would be over-sailed by the proposed conveyor for a length of 2-300 m as well as being close alongside for a similar distance and not

simply crossed. While seeking to agree Protective Provisions to minimise risks, CATS reserved the right to object to both alternatives if the Northern alternative route could not be amended to provide for a simple crossing of their pipeline.

8.7.64 CATS were represented at the further CAH on 24 November 2015. For this they submitted a Quantitative Risk Assessment (QRA) [AS-009]. They maintained that this justified their objection to the Southern alternative conveyor route on the basis of the fundamental 'principle of prevention' as detailed in Clause 4 of The Management of Health and Safety at Work Regulations 1999(1), and more specifically 'avoiding risks' from Schedule 1(a) General Principles of Prevention from the same document. The aim should be to reduce risk if it cannot be avoided. The Southern alternative route would involve a great number of constructional activities close to the CATS pipeline (and other Major Accident Hazard Pipelines) and the CATS pipeline being over-sailed for some 2000 m, but the Northern alternative route would only involve over-sailing for some 200 - 300 m (if it cannot be adjusted within the DCO boundary).

8.7.65 CATS do not regard the proposed Protective Provisions as providing sufficient mitigation and while they will reduce risk they are not a substitute for avoidance. The potential risks are perceived to be greater than any encountered over the last 20 years that the CATS pipeline has been in existence as construction of parallel pipelines has not involved piled foundations close to the pipeline nor significant over-sailing. The principle of 'The Control of Major Accident Hazards Regulations (COMAH), 2015(4) (Regulations 5(1) and 5(2))' requires the operator to demonstrate that major accident hazard risks are reduced to the level of 'As Low As Reasonably Practicable' (ALARP). In their view the QRA demonstrates that the Southern alternative conveyor route would have a much greater inherent risk than the Northern. This is because the Southern route would be above or close to the CATS pipeline for around 2 km, whereas the on the Northern route it would only be overhead or close alongside for at most around 0.5 km. The QRA produced societal risk calculations that on a worst case, such as might arise from ignition following a full bore rupture caused by an error in plotting the pipeline position during excavations, the Southern route could cause up to 100 fatalities on an event frequency of 1:1,200 years as the impacted populations for the Southern route were identified as including (a) the applicant and their contractors, (b) the Tesco Distribution Warehouse, (c) the Car Distribution Centre, and (d) the Bran Sands Sewerage Disposal Works. The population total is well in excess of the relevant[72] threshold population of 50. In contrast, with the Northern route on a similar worst case scenario, 50 fatalities might arise on a 1:48,000 year frequency.

[72] In R2P2 as defined in the following paragraph.

8.7.66 HSE Guidance 'Reducing Risks, Protecting People: HSE's decision-making process, 2001(6)' (known as R2P2) provides guidance on the tolerability of risks. The HSE Guidance in R2P2 states that an incident, particularly where there is some choice as to whether to accept the hazard or not, which has the potential more than 50 fatalities and can occur with frequency greater than 2E-04 per year (1:5000) should be regarded as intolerable. Referring to the result of the QRA, the Southern Route exceeds the 2E-4 per year threshold by a factor of four. Therefore, the risk presented by the interaction of the Southern route with the existing CATS' pipeline has been assessed as intolerable, using the HSE Guidance provided within R2P2. It should be noted that the QRA assumes that the proposed Protective Provisions are in place. By contrast, the results of the QRA indicate that the Northern route is significantly outside the threshold of risk tolerability, as defined in the HSE Guidance R2P2[73].

8.7.67 The CATS operator on behalf of the CATS Parties objects to the Southern route and requests that proposed development proceeds on the basis of the Northern route alone. Moreover, making reference to the principle of risk reduction and tolerability within the COMAH Regulations, consideration should be given by the applicant to reducing the interaction of the Northern route with the CATS' pipeline to demonstrate the principle of ALARP; reducing the over sail of the conveyor route across the CATS pipeline to a minimum, and ideally to a single pipeline crossing location.

8.7.68 Following the 24 November Hearing, CATS responded to the ExA's Rule 17 request and provided a statement of difference with the applicant [REP6-016]. In this it was reiterated that the CATS Parties oppose the Southern route and support the granting of the DCO for the proposed development utilising the Northern conveyor route. It was acknowledged that the level of risk was not agreed, but what was agreed is that the risk would be greater if the Southern conveyor route were to be utilised. Consequently, CATS' argue that a compelling case has not been made out to utilise the Southern conveyor route as whatever operational benefits there may be to the applicant these do not outweigh the safety and potential economic harm in relation to pipeline operations.

8.7.69 The following matters were agreed with the applicant:

- method of assessment – 'Fault Tree' analysis is appropriate;
- base input information (statistics, references used to look at probability and sources of case information) are appropriate except for the risk presented by vehicle movements in the pipeline corridor;
- base human error rate of 0.001 per opportunity; and that

[73] THE QRA goes on to assess the potential impact on the A1085 of the Northern route but concludes that the intermittent nature of traffic and particular public transport means that the consequent risk would remain tolerable.

- risk presented by the Southern route is greater than that presented by the Northern route.

8.7.70 The following areas were not agreed:

- the principle of inherent safety in design and the application of the 'Hierarchy of Control' to risk mitigation;
- intolerability of the risk presented by the Southern route;
- The level of risk mitigation that can be claimed for administrative controls (in the form of the Protective Provisions);
- the impact of over familiarisation and normalisation of risk on the human error rate for repetitive activities; and
- base input information with respect to the risk presented by vehicle movements in the pipeline corridor.

8.7.71 The Centre for Protection of National Infrastructure (CPNI) classifies the CATS pipeline as 'critical infrastructure'. Operationally as well as during construction there would be risks. The CATS pipeline is a 'Major Accident Hazard Pipeline' (MAHP) as defined by Pipelines Safety Regulations 1996. These Regulations place certain obligations on the CATS Parties, including an obligation not to permit conveyance of fluids in the pipeline unless adequate arrangements have been put in place to deal with a defect or damage affecting the pipeline. Suspected damage during construction could lead to the shutdown of the pipeline for a minimum of 8 weeks to excavate and examine and up to 22 weeks if a section had to be replaced. This could cost £25 million to £80 million without taking into account lost production to reduce pressure or actual repair costs. The strategic importance of the pipeline is highlighted in the report on the damage caused by the dragging of an anchor from an oil tanker in Tees Bay [REP6-017]. Having been notified by CATS, the Oil & Gas Authority also drew my attention to the fact that the CATS system makes an important contribution to the security of gas supplies to the UK and also provides considerable economic benefits as a result of both offshore and onshore activity [AS-010].

8.7.72 In considering the probability of an error, the Protective Provisions were assumed to be in place. Significant effort has been expended by the CATS Parties and the applicant in defining the technical details of the Protective Provisions and a brief summary is detailed below:

- initial location of pipeline to be ascertained by referring to the asset owner's drawings and to be verified by other means;
- a requirement to expose the crown of the pipeline by hand digging;
- a requirement to confirm the location of the pipeline in the presence of the asset owner;
- a requirement for excavating at the location to ensure no potentially vulnerable assets are present;
- if necessary, physical separation between the asset and pile/excavations (to be agreed with the asset owner), and

- a requirement to pre-plan the location, timing and duration of works to give the asset owner (CATS Parties) enough time to comment.

8.7.73 It is the CATS Parties' position that the Protective Provisions form a single layer of protection in the correct identification of the location of the pipeline. Because of the congested nature of the Southern corridor with adjoining above ground pipelines, construction equipment would almost certainly have to work above the pipeline giving rise to the identified 1:1,000 risk of a first error, but the concern of the CATS parties is that by assuming a similar risk of a second error by those checking against the first exaggerates the safety potential of administrative arrangements. Credit for a second check could only be given if the checking were wholly independent whereas the likelihood is that there would be group action on site.

8.7.74 CATS also maintains that the greater length of CATS pipeline subject to risk on the Southern conveyor route could lead to over-familiarisation and so increase the error risk to 1:100, although contrary arguments can be advanced. Using the Human Error Assessment and Reduction Technique (HEART), CATS assess the risk of human error to be 9 times greater for the Southern route than the Northern Route, thereby justifying the higher risk categorisation suggested. CATS also considers that impact by a vehicle causing damage cannot be excluded, though accept that this will not be a major source of hazard. CATS argue that the risk from piling foundations for an overhead conveyor is different in kind and greater than those in laying adjoining pipelines.

8.7.75 Finally, the CATS parties consider that the provisions as to indemnity in the Protective Provisions ought to be improved to match those normally accepted within the oil and gas industry.

8.7.76 Nevertheless, irrespective of the imposition of otherwise agreed Protective Provisions, CATS do not consider that use of the Southern alternative corridor is justifiable because the greater safety risk and the risks to economic interests of the oil and gas producers and the energy users they supply outweigh the unquantified operational benefits to the applicant of using the Southern as opposed to the Northern conveyor route. This point is re-iterated in the Final submission from CATS dated 30 December 2015 [REP7-003]. CATS also maintain that the Protective Provisions do not secure engineering controls that would apply with subsequent little or no human involvement but only administrative controls. They point out that, as CA is sought in respect of both alternative conveyor routes, a compelling case meeting a public benefit test has been asserted for both routes so the argument of lesser CA for the Southern route is of little weight.

8.7.77 On CATS' assessment, the risk from using the Southern route is above the HSE threshold for a tolerable risk and should not be permitted. Even on the applicant's assessment the Northern Route represents a

lower level of risk, it is less congested and does not have the same level of opposition (bearing in mind the Sabic, Huntsman and Ineos objections to the Southern route). Thus, following the principle of securing risk being 'as low as reasonably practicable' (ALARP), the Northern route must be preferred.

8.7.78 As for the indemnity issue, CATS maintains that standard oil and gas industry provisions should be incorporated in Schedule 9 because the applicant does not expressly object to these provisions, but in essence simply wishes to adhere to indemnity provisions agreed with the Bond Dickinson parties. It is unreasonable for CATS to have to operate to a higher standard under the proposed indemnity provisions in Schedule 9 than in relation to other oil and gas operations when the DCO does not confer any benefit to it. [REP9-002] re-affirms the CATS' standpoint.

Response of the applicant

8.7.79 In response to the CATS' information, the applicant submitted revised conveyor route and ground level plans correcting the alignment of the CATS' pipeline, the earlier alignment having been provided by Sembcorp [REP4-033 to REP4-036 and REP4-038 to REP4-051]. They also submitted a revised layout for temporary compound D to ensure that building did not take place over the pipeline in its correct position. Discussions on Protective Provisions were then described as ongoing with these also involving the Bond Dickinson group of objectors. Revised Constructability Notes were submitted as Appendix 2 to this submission by the applicant [REP4-014]. Subsequently, the applicant drew attention to further revisions to the Protective Provisions intended to satisfy all pipeline owners/operators and to the expectation of further minor amendments to the Constructability Notes [REP5-009]. At the CAH hearing on 24 November 2015, the applicant indicated that they did not accept all the conclusions of the QRA Report.

8.7.80 They submitted their response to my Rule 17 request with their submissions to deadline 6 [REP6-019] together with the final updated Constructability Notes in relation both to the Northern [REP6-020] and Southern [REP6-021] conveyor routes. The differences with CATS in relation to the Southern conveyor corridor are set out in Document 8.11 [REP6-032]. Having commissioned its own advice, the applicant maintains that the agreed Protective Provisions will reduce the risks associated with the Southern route through the application of engineering controls. Their suggestion is based on the principles of 'Hierarchy of Control', which is an accepted method of risk reduction when risk elimination is not appropriate. On this basis, they consider that the operational benefits of the Southern conveyor route in

requiring lesser overall length of conveyor structure[74], two less transfer towers and therefore lesser risk of breakdown or product degradation outweigh the residual higher risks in relation to the pipeline.

8.7.81 In their view, there would be multiple levels of supervision under the Protective Provisions and, as a consequence the QRA by Royal Haskoning DHV assesses the risk associated with the Southern route to be 'tolerable' and that to the Northern Route to be 'acceptable' under HSE guidance. They do not think the greater extent of piling required near the pipeline with the Southern route would cause it to become a routine task and any tendency towards complacency would be offset by increased familiarity. Hence the CATS multiplication of risk by a factor of 10 is not justifiable. They also consider that the risk from vehicles is exaggerated as it is based on a single historical incident. They flag up the key operational advantages being because the Southern route involves less infrastructure construction with a lesser overall length and fewer transfer towers. There would therefore be minimisation of product degradation or risk of breakdown and lesser CA would also be required. They point out that they have agreements in place with the major freehold and leasehold interests in the Southern route and therefore greater confidence that the desired timeline can be achieved. In turn this would provide greater confidence to funders. They do not consider that the difference in risk associated with the two routes is sufficient to influence the choice of route. The full 'Fault Tree' analysis and critique of the CATS QRA by Royal Haskoning DHV is set out as Appendix 1 to their document.

8.7.82 The applicant points out that other pipelines have been added in the 'pipeline corridor', such as the additional Sabic pipeline currently being constructed above ground. CATS chose to route its pipeline through this corridor and the existing protections offered by the deed of grant from ICI in 1991 are far less than those now provided for under the Protective Provisions.

8.7.83 The applicant's response to CATS' submissions in [REP7-012], asserts that the Northern alternative conveyor route is a sub-optimal route that is included as insurance against difficulties being encountered in relation to the Southern route which was selected because it is a direct existing infrastructure corridor. They recognise that in precisely identifying the routes of underground pipelines and other assets and, where applicable, exposing them in the manner required under the Protective Provisions and relevant Constructability Notes that are secured in the DCO, it may be ascertained that construction of an overhead conveyor along the Southern alternative route will not be feasible.

[74] The application drawings indicate that the overall conveyor length would be around 17% greater via the Northern alternative route than the Southern alternative route because of the necessary 'dog-leg' around the Bran Sands sewage disposal works.

8.7.84 The applicant considers that CATS overstate the safety risks in a real operational context. They point out that both the Breagh and GD-Suez gas pipelines are or have been also designated as MAHP, but neither owner has sought to advance the concerns put forward by CATS and in 2012 the Breagh gas pipeline was laid in a trench alongside the GD-Suez gas pipeline over a length of 2 km. The applicant does not consider that the equipment necessary to install conveyor supports will be any more intrusive than that required to install new pipelines. Otherwise the applicant re-iterates that there would be multiple levels of control and the reasons why it considers that the level of risk assessed by CATS is exaggerated in relation to the Southern route.

8.7.85 As for the indemnity issue, the applicant maintains that it is appropriate to retain a common form of indemnity provision in respect of all parties that would have benefit of Protective Provisions. They do, however, point out that the indemnity provisions include links to the level of insurance required and that the insurability of the project may be related to the level of perceived risk. They believe that the Southern route will have a tolerable level of risk and thereby be insurable. Their final submission merely confirms that, as argued throughout the Examination, their preference is for use of the Southern conveyor route for operational reasons [REP9-006].

ExA's conclusions

8.7.86 As with the Bond Dickinson group of objectors, almost complete agreement was reached over the text of Protective Provisions as set out in Schedule 9 (and also in Schedule 10). I was not persuaded that the indemnity provisions in Schedule 9 should be modified to the form sought by CATS and argued to be standard for the oil and gas industry, when the provisions included by the applicant within Schedule 9 have agreed by the Bond Dickinson group of objectors that include the operator of the Breagh gas pipeline. Provisions of this nature have been included in previously made DCOs and no comment has been made by the other gas pipeline owners that have assets beneath the site. Consequently, whether or not CA powers are granted in respect of one or both conveyor routes, I consider that the Protective Provisions in Schedule 9 as drafted should be incorporated in the DCO in the form finally put forward in the draft DCO dated 13 January 2016 subject only to the minor amendments that I recommended at paragraphs 8.7.47 and 8.7.48 above.

8.7.87 There remains, however, a fundamental difference between the applicant and the CATS parties over whether a compelling case in the public interest has been made out to justify CA of rights in respect of the Southern conveyor character because of the greater risks associated with use of the Southern route. The position of CATS in this respect is supported by Huntsman, Sabic and Ineos in relation to their interests in the 'pipeline corridor', but all four parties are willing to accept use of the Northern conveyor route notwithstanding that there would still be some risk, but a lesser risk because of the reduced length of construction in proximity to pipelines, i.e.to their assets.

8.7.88 I have already concluded that it would be in principle acceptable to include alternative provisions for CA depending on the ultimate choice of conveyor route as the applicant has included provision in post-application iterations of the draft DCO for any CA powers to lapse in relation to the conveyor route that is not selected. The applicant has put forward a rational argument that the Southern route is preferred for operational reasons and the Northern route is a fall-back alternative should the careful identification of the location of buried assets under the Protective Provisions in Schedule 9 demonstrate that footings for the conveyor on the Southern route cannot be constructed safely. Were it not for the societal risk in relation to safety concerns raised by these objectors and in relation to which I have earlier recommended that the Southern alternative conveyor corridor be removed from the DCO, the question to be answered would be whether this provides a compelling case in the public interest for inclusion of CA powers in respect of both alternatives.

8.7.89 If the determining issue was only the risk of private loss to the pipeline asset holders and their customers, notwithstanding the critical stated importance of the CATS pipeline, my judgement would come down in favour of the applicant in so far as I consider the projected public benefit of the harbour facilities as part of the wider YPP to the local, regional and national economy and policy conformity with the NPS would provide a public benefit to outweigh the risk of private loss. This is on the basis that the Protective Provisions would greatly reduce risk that private loss would arise and compensation would be payable for the CA rights acquired. In relation to operational risks of inhibiting maintenance, inspection and any necessary remedial action, I am not persuaded that these would be particularly great. At the ISH on 25 September 2015, the CATS representative acknowledged that there had been no need to replace any pipe section in the over 20 years since the CATS pipeline had been put into use in 1993[75], and that its structure was intended to last for its planned life until 2035 or beyond to tie in with the life of the offshore gas fields it serves. The applicant also drew attention to the substantial headroom that would exist beneath the conveyor bridge structure so that there would be little inhibition to the operation of cranes should that be necessary.

8.7.90 However, CATS also argued against use of the Southern route on safety grounds, particularly in relation to the constructional aspects, and in relation to this argument I concluded in sections 5 and 7 that the DCO should only be made with the removal of provision for the conveyor system utilising the Southern alternative route. If my recommendation to excise provisions relating to that route is accepted, whether or not a compelling case would exist to grant CA powers in relation to rights required to utilise the Southern conveyor route would not need to be considered.

[75] There was reference to excavations being required to examine a section of pipe close to the Seal Sands TGPP and the' Young Lady' anchor dragging incident had required examination and remediation of a sub-sea section.

8.7.91 A reduced extent of CA would be required if the Southern alternative route were still to be pursued. Parcels 8a, 9, 10, 23 and 24 would not be required and temporary occupation of parcels 8b and 8c would only be required rather than CA of rights. However, as the applicant has put forward the case that the Northern route is a viable option, it seems to me that a compelling case can be made that CA can be justified for these additional parcels as the public benefit would be greater, given the reduced safety and third party risks in using the Northern alternative.

8.7.92 My conclusion, therefore, is that a compelling case in the public interest has been made in respect of the Northern alternative conveyor route over which almost all detailed concerns have been resolved.

8.7.93 I am not convinced that a material reduction in the extent of over-sailing or close parallel running to the CATS pipeline is likely to be achievable by detailed adjustments within the DCO boundary, though no doubt this will be explored in due course under the Requirements and Protective Provisions embodied in the draft DCO . Although the in principle objection by SSI UK (now in liquidation), RBT and Tata has not been formally withdrawn, the ground on which it was made in the availability of a Southern alternative route will be removed if the Southern alternative is excised. Moreover, the physical details of the Northern alternative are now agreed with RBT and Tata and recorded in Schedule 10 in the final draft DCO and shown on drawing Document 3.16 Revision D. Consequently, I can see no reason why, if CA powers are granted in respect of the Northern alternative, any funders need to lack confidence in the ability for the applicant to achieve timely delivery of the DCO project. Moreover, the Northern alternative is acknowledged to have lower risks and thereby on the basis of the applicant's own submission to be more readily insurable.

Recommendation

8.7.94 I recommend that the CA powers sought should be granted in relation to these interests, subject to the excision of those required for the implementation of the Southern conveyor route. The changes required will be detailed fully in section 9 of this report.

8.8 TEMPORARY POSSESSION

8.8.1 Temporary possession only is sought of parcels 52, 53 and 54a in order to undertake temporary works to provide a construction access from the A1085 roundabout and plot 59a with the Wilton complex in order to provide for a temporary works compound. In addition, should the Southern alternative conveyor route be adopted parcels 8b and 8c would only be required for another temporary works compound rather than permanent rights being required. Although as referred to earlier in this report, the Bond Dickinson group of objectors sought inclusion of these areas within the defined 'pipeline corridors' within which there would be restrictions on ancillary development, there have been no

objections to the principle of the proposed temporary uses of these parcels.

8.8.2 I consider that the proposed temporary use of these parcels is justified in order to secure the development sought in the draft DCO. The works to the A1085 roundabout are a pre-requisite to the remainder of the development under the terms of Requirement 5 in Schedule 2 to the draft DCO. As for the temporary construction compounds these utilise conveniently located parcels from which to construct adjacent lengths of the proposed conveyor system. Although there are pipelines across the parcels that require protection the areas are primarily unused grassland.

8.8.3 Article 30 of the draft DCO requires reinstatement of the land at the end of temporary use and payment of compensation. The powers sought to authorise temporary use of land do represent an interference under the Human Rights Act 1998 with rights enshrined in Article 1 of the First Protocol. However, the interference is lesser than that which would arise if CA were to have been sought in relation to these parcels. Moreover, the power to take temporary possession is intentionally used to minimise the extent of CA that would otherwise be required. As compensation is payable under Articles 30 in addition to compensation that might otherwise arise from injurious affection or for other reasons, I consider that the interference with rights under Article 1 of the First Protocol in the grant of powers sought for temporary use is proportionate in so far as the public benefit of the scheme will outweigh the private losses that will be incurred.

8.8.4 Article 6, which entitles those affected by the power to take temporary possession to a fair and public hearing of their objections, is also engaged. However, the procedures laid down in the PA2008, related Regulations and guidance have provided repeated opportunities both during the pre-application process and during the course of the Examination for objections to be raised, heard and considered. I am therefore satisfied that the requirements of Article 6 have been fully met.

8.9 THE EXA'S OVERALL CA CONCLUSIONS

8.9.1 The ExA's approach to the question whether and what compulsory acquisition powers it should recommend to the Secretary of State to grant has been to seek to apply the relevant sections of the Act, notably s122 and s123, the Guidance[76], and the Human Rights Act 1998; and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.

[76] Planning Act 2008, Guidance related to procedures for compulsory acquisition (CLG, 2013)

8.9.2 The ExA understands, however, that the draft DCO deals with both the development itself and compulsory acquisition powers. The case for compulsory acquisition powers cannot properly be considered unless and until a view has been formed on the case for the development overall, and the consideration of the compulsory acquisition issues must be consistent with that view.

8.9.3 I have shown in the conclusion to the preceding section that I have reached the view that development consent should be granted for the generality of the scheme though not for the Southern alternative conveyor route. The question therefore that the ExA addresses here is the extent to which, in the light of the factors set out above, the case is made for compulsory acquisition powers necessary to enable the development to proceed.

Human Rights Act[77]1998 considerations

8.9.4 A key consideration in formulating a compelling case is a consideration of the interference with human rights which would occur if compulsory acquisition powers are granted.

8.9.5 Article 1 of the First Protocol (rights of those whose property is to be compulsorily acquired and whose peaceful enjoyment of their property is to be interfered with is engaged). This is because, although no outright compulsory acquisition of land is proposed, there is proposed compulsory acquisition of rights to implement the DCO scheme and compulsory imposition of covenant to ensure no subsequent detriment to the scheme.

8.9.6 Articles 24 and 25 make provision for compensation to be payable for the Compulsory Acquisition of Rights and Compulsory Imposition of Rights and consequential injurious affection. In my judgement, therefore, having regard to compensation that will be payable, the interference with rights under Article 1 of the First Protocol in the grant of the CA powers sought is proportionate in so far as the public benefit of the scheme will outweigh the private losses that may be incurred for the generality of the scheme and specifically in relation to the Northern alternative conveyor route.

8.9.7 Article 6, which entitles those affected by compulsory acquisition powers sought for the project to a fair and public hearing of their objections, is also engaged.

8.9.8 However, the procedures laid down in the PA2008, related Regulations and guidance have provided repeated opportunities both during the pre-application process and during the course of the Examination for objections to be raised, heard and considered. At the outset of this section of my report, I detailed the steps taken to ensure that all representations in respect of CA were thoroughly explored. Provision

[77] http://www.legislation.gov.uk/ukpga/1998/42/contents

was made for a number of hearings to allow for oral representations to be made but in the event these opportunities were taken up by a very small number of APs. Thus, I am satisfied that the requirements of Article 6 have been fully met.

8.9.9 Article 8, which relates to the right of the individual to 'respect for his private and family life, his home …' is not engaged. No dwellings are located on any of the land within the application site. Neither are any directly affected by the proposed DCO works.

Adequacy of funding

8.9.10 Paragraph 18 of the September 2013 DCLG Guidance on PA2008 procedures for the compulsory acquisition of land states that applicants should be able to demonstrate that adequate funding is likely to be available to enable the compulsory acquisition to within the statutory period of 5 years allowed under the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 for notice to treat to be served and that the resource implications for compensation have been taken into account. The required Funding Statement is Document 5.2 [APP-008].

The funding required

8.9.11 The harbour facilities relative to Phase 1 would require expenditure of £75 million out of a total of £1,392 million on the overall YPP. To achieve Phase 2, a portion of the additional £169 million identified for infrastructure out of the total additional expenditure of £305 million to raise the overall total to £1,697 million would be for works to create the second quay and install the second conveyor within the conveyor bridge to the port.

8.9.12 The estimated cost of compensation to acquire the land and rights to construct the harbour facilities is in the order of £15 million, a modest proportion of the very large sums involved in the overall YPP project.

The source of the funding

8.9.13 The operations of Sirius Minerals plc have been funded by raising capital through the equity capital markets. This has involved a mixture of issuing ordinary shares, warrants, convertible securities and options over Sirius' ordinary shares through share placings, warrant issues and other equity facilities. At the date of the application, these means had raised some £130 million, thereby demonstrating investor confidence, notwithstanding the inevitable accounting losses by the company during the development stage. YPL will continue to be funded by intra-company arrangements with Sirius or other members of the Sirius Group.

8.9.14 It is anticipated that the source of funds would be 30-40% equity and mezzanine finance and 60-70% senior debt in the form of bonds or similar instruments. The directors have experience in raising capital of the magnitude necessary in relation to mining ventures. For the

harbour itself, senior debt instruments are likely to provide the substantial source of funding as equity and mezzanine finance would have been utilised in the initial construction phases of the mine and MTS. The business case for the YPP is well understood and two global fund managers are already significant shareholders in Sirius as the long-term returns on investment will be attractive. Thus, adequate funding for any compulsory acquisition is likely to be available, as required by the guidance.

Securing the funding

8.9.15 While the funding to implement the DCO scheme and indeed for the implementation of the planning permissions granted for the wider YPP had not been secured by the time of the Examination, a clear indication has been given as to how the funding would be obtained. The provisions of Article 23 of the draft DCO would require a guarantee or other form of security to be in place before CA powers could be exercised with precedent for the wording provided in the made Hornsea Offshore Wind Farm Order. I am satisfied therefore that funding should be available to meet compensation requirements if the CA powers are activated within the 5 years in which notice to treat may be served under the provisions of Article 27.

The ExA's Recommendations on the Granting of CA powers

s122(2)

8.9.16 Section 122(2) requires that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.

8.9.17 The land in respect of which CA of rights is sought is all required for the development to which the Development Consent sought relates or is to facilitate or is incidental to that development, though rights in parcel 22a will not be required if my recommendation to excise the Southern alternative conveyor route is accepted. The use for each parcel is specified in the Book of Reference. The applicant is not seeking compulsorily to acquire any freeholds but only to acquire new rights and to extinguish any unknown rights, but not any existing third party rights which are known. Wherever possible temporary use only is sought. Thus, a proportionate approach has been taken.

8.9.18 No land to which s122(2)(c) relates is within the Order boundaries. Thus, no exchange land is required.

s122(3) - Whether there is a compelling case

8.9.19 In terms of s122(3), the Secretary of State has to be satisfied that there is a compelling case in the public interest in that the public benefits to be derived from compulsory acquisition would outweigh the

private loss by those against whom rights are to be acquired or extinguished.

8.9.20 The public benefit is based on the strategic need for the harbour facilities in accordance with the policy objectives of the Ports NPS. Specifically, operationally, it is to provide the harbour facilities for the wider YPP as it will enable the export of the bulk of the output of the proposed mine. No other means but bulk shipping is feasible to transport such volumes of such a material. Thus, provision of sufficient appropriately located port capacity is essential to the sustainable growth of the UK economy. Alternative locations for providing that capacity have been considered and the DCO proposal is a rational and reasonable choice.

8.9.21 There would be substantial economic benefits to the local, regional and national economies, including a significant improvement to the balance of payments through the potash exports that would be facilitated through the wider YPP. These exports would also help worldwide food security and agricultural sustainability. There would also be clear socio-economic benefit in the jobs that would be created in an area with above average unemployment and significant deprivation.

8.9.22 To offset this public benefit the private loss to those whose interests are being acquired must be considered. As a generality I am satisfied that the compensation provisions embodied in the draft DCO should offset the value of any rights extinguished or imposed and that the Protective Provisions in their finalised forms should mitigate the extent of potential private loss to a very significant extent. I do not accept that it is correct, as some objectors have suggested, to balance the possible losses that might be incurred were the Protective Provisions to prove ineffectual against the public economic and policy benefit that would derive from the implementation of the DCO proposals. The Protective Provisions are designed to prevent such private losses to those whose interests are subject to CA powers (and, thus, also to those whose activities might be subsequently affected should harm arise to pipeline assets) and the objectors accept that the Protective Provisions are sufficient to protect pipeline assets in relation to the Northern alternative conveyor route.

8.9.23 However, in respect of the Southern alternative conveyor route, the quartet of principal CA objectors are not satisfied that the Protective Provisions would be sufficient to provide acceptable levels of risk given that pipeline assets would be over-sailed or parallel for some 2 km within Bran Sands on that route, as opposed to around 0.5 km on the Northern alternative route. In addition, CATS parties maintain that there are real safety objections to the use of the Southern alternative conveyor route giving rise to an intolerable societal risk.

8.9.24 For these reasons I have concluded that a compelling case in the public interest only exists in relation to the Northern alternative

conveyor route, as I have recommended that the DCO should not include provision for the Southern alternative conveyor route.

s120(5)(a) and s126

8.9.25 Articles 24 and 28 and Schedule 3 do contain provisions that modify statutory provisions in respect of Compulsory Acquisition, but I am satisfied that the modifications are only such as to adapt the provisions to the circumstances of the draft DCO. Consequently, there is no reason why the Secretary of State cannot make the Order in relation to these CA provisions under s120(5). Similarly, any modifications to statutory compensation provisions in Part 5 of the draft DCO and Schedule 3 are in my judgement only such as to adapt the provisions to the circumstances of the draft DCO, thereby meeting the requirements of s126.

s127 and s138

8.9.26 Network Rail Infrastructure Limited is the only known statutory undertaker not fully to have withdrawn objection to the CA powers contained within the Order. However, the only outstanding issue is agreement of commercial terms. Network Rail has confirmed that the Protective Provisions set out in Schedule 7 fully safeguard its operational infrastructure. Consequently, I recommend that the Secretary of State can be satisfied that the right to over-sail the railway line can be purchased without any serious detriment to the carrying on of Network Rail's undertaking.

8.9.27 Antin CATS have not claimed to be a statutory undertaker nor do they appear registered as such with Ofgem. However, in the past the Amoco (U.K.) Exploration Company has been recognised as a licenced gas transporter and thus as a statutory undertaker and the CATS system has been acquired from Amoco Exploration. Should the CATS parties be regarded as a statutory undertaker, in my judgement, if my recommendation for excision of the provisions for CA of rights to implement the Southern conveyor route is accepted, thereby removing the in principle objection of CATS parties, I recommend that the Secretary of State can be satisfied that the right to construct the conveyor system on the Northern alternative route line can be purchased without any serious detriment to the carrying on of the undertaking of the CATS parties. I do not regard any issue over the formulation of the indemnity provisions in the otherwise agreed Protective Provisions in Schedule 9 as affecting that ability.

8.9.28 The provisions of s138 are not applicable as the draft DCO does not seek any powers to extinguish any statutory undertaker's rights or remove any statutory undertaker equipment.

Other matters

8.9.29 During the course of the Examination, the applicant accepted that screen fencing would be required in the two permanent compounds in order to prevent disturbance to birds using the Bran Sands Lagoon or

Dabholm Gut. Plans showing these screen fences are at [REP1-039 and REP1-040].

8.9.30 While in the overall context of the DCO proposals the additional fences indicated are of minor nature, the definition of the Classes of Rights sought in the Book of Reference and applied through Schedule 3 to the draft DCO are detailed with those for Ground Level Rights (Works No 5) even referring to temporary acoustic fencing that is also required for mitigation. Consequently, I consider that in Classes 7a for Permanent Site Compound comprising Work No 6B and 9, the words ', screen fencing' should be added after 'car parking' in (ii) and that in Class 7b for Permanent Site Compound comprising Work No 9, the words 'screen fencing be added so the final words of (ii) would read '…a general services building, car parking, screen fencing, a substation and ancillary infrastructure; and'.

8.9.31 The Secretary of State may therefore wish to seek these amendments to the Book of Reference before certifying that Document under the terms of Article 38.

Crown land

8.9.32 The DCO recommended at Appendix D makes clear that there would be no acquisition of Crown interests. The consent given by the Crown Estate under s135(2) to the inclusion of CA powers in relation to other interests in parcels of land in which there are Crown interests is conditional. A provision embodied in the draft DCO as Article 36 provides for seeking a confirmatory consent. There is precedent for such a provision and there are no known impediments to securing confirmatory consent.

8.10 OVERALL CONCLUSIONS ON THE GENERAL CASE FOR INCLUSION OF CA POWERS

8.10.1 Taking all these considerations into account, and the tests set out in the PA2008 and DCLG guidance, subject to my recommendation that provision for the Southern alternative conveyor route should be excised from the DCO, I am satisfied that the case for inclusion of CA powers within the draft DCO has been made.

9 DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

9.1 INTRODUCTION

9.1.1 The original text of the of the DCO submitted with the application is contained in Document 4.1 [APP-003] and the original Explanatory Memorandum is in Document 4.2 [APP-004].

Changes during the Examination

9.1.2 Section 2.2 of this report summarises the amendments to the application documents and to the wording of the DCO that have taken place during the course of the Examination. The wording containing in the draft of the DCO was explicitly addressed in questions contained in the First and Second Schedules of ExA questions issued on 27 July 2015 and 16 October respectively and in a Rule 17 request issued on 6 January 2016. Opportunity was given for discussion of the DCO wording at ISHs held on 25 September 2015 and 24 November 2015.

9.1.3 The applicant has put forward 5 subsequent successive versions of the draft DCO, the last Document 4.1E on 13 January 2016 [REP8-007]. This and an earlier version, Document 4.1D submitted on 16 December 2015, included responses to the draft I had published on 25 November 2015 [PD-010] in the light of matters then outstanding. Updated Explanatory Memoranda were also submitted, the most recent being Document 4.2B of 6 November 2015 [REP4-056]

9.1.4 Alongside the final version of the draft DCO submitted by the applicant on 13 January 2016, a comparative version was put in comparing the original and final versions [REP8-009].

9.1.5 The amendments made over the course of the Examination have all been to add clarifying definitions, 'tie down' limits to deviation more precisely where these are critical, update references, insert more documents and plans requiring certification by the SoS and the refine the wording of requirements in Schedule 2 and conditions and other provisions in the DML so that all mitigation and monitoring measures flagged up as necessary in the ES and HRA are fully secured. Save for one specific point that I will address below, all statutory consultees, including the EA, NE, MMO and RCBC have indicated that they are satisfied with the wording of the draft DCO in the applicant's final draft of 13 January 2016. That version also includes the latest versions of the Schedules of Protective Provisions that were successively refined during the course of the Examination. Apart from the specific points raised by the Bond Dickinson objectors and the CATS parties that I have addressed in section 8 of this report and also make formal recommendations on below, these are agreed with the affected persons whose interests these Schedules are intended to protect.

9.1.6 I have therefore based my recommended further changes in the version that I recommend should be made at Appendix D on the 13 January 2016 version submitted by the applicant [REP8-007].

The ExA's Recommended DCO

9.1.7 The version that I put forward as the ExA's recommended DCO is set out at Appendix D to this report. I will detail in this section of my report where I consider that further changes should be made to the draft DCO dated 13 January 2016 to address matters that remain in dispute or why I am satisfied that the 13 January 2016 text should stand unaltered.

9.1.8 I will also address the changes that will be required to give effect to my conclusion that the Southern alternative conveyor route should be excised from the provisions of the DCO and the CA powers not granted to facilitate its construction. Whereas detailed points remaining at issue will be addressed successively in relation to relevant parts of the DCO, I will set out the consequential amendments relating to the recommended excision of the Southern alternative conveyor route in a separate sub-section as the Secretary of State may be willing to leave open the option of either route being utilised with CA powers included for both, if he feels that greater weight should be given to the conclusions of the applicant's QRA in respect of pipeline safety and less to the ALARP principle put forward by the CATS parties.

9.2 THE STRUCTURE OF THE DCO IN RELATION TO ITS PARTS AND ARTICLES

9.2.1 Part 1 (Articles 1 and 2) contains the preliminary provisions providing for citation, commencement and interpretation. The number of definitions in Article 2 has been significantly increased during the Examination so that the import of the remaining provisions can be fully understood. Subject to the consideration of changes as may be occasioned by excision of the Southern alternative conveyor route, there were no outstanding definitional matters at the close of the Examination

9.2.2 Part 2 (Articles 3-9): This part sets out the principal powers of the Order to undertake works and thereafter maintain and operate the proposed harbour facilities. The parameters of the authorised development in Article 4 have been more closely defined during the course of the Examination with limits to horizontal deviation curtailed or removed in relation Works Nos 1-4 and the quay location as specified in Schedule 6 is tied into Article 4(2). The provisions as to the ability to transfer benefit of the Order under Articles 7 and 8 are agreed with the MMO. Article 9 makes the local planning authority and the MMO responsible for addressing clearance of requirements and conditions in the DML respectively and otherwise applies comparable controls to those that would apply under the TCPA1990 and other relevant legislation.

9.2.3 Part 3 Articles 10-13: This part contains powers in relation to streets and agreements with the highway authority. Although there was discussion of issues raised by a number of IPs, primarily relating to use of accesses that are not public highways and ensuring unrestricted access to the Wilton International chemicals complex and the Sembcorp leased pipeline corridor, these provisions are acceptable to the highway authorities and other issues were resolved in relation to Protective Provisions.

9.2.4 Part 4 (Articles 14 -22) contains supplemental powers including those in relation to the discharge of water (Article 14), to survey and investigate land (Article 16) and a number of provisions relating to tidal works or activities within the estuary. Although there were initial concerns relating to some of these provisions, particularly to ensure that the functions of the Teesport Harbour Authority would not be adversely affected, the final form of these articles and related schedules were agreed by PD Teesport, the MMO[78] and other bodies with statutory responsibilities in the maritime area.

9.2.5 Part 5 (Articles 23-30) contains powers of acquisition including temporary use of land (Article 30). Unusually, the powers do not include outright acquisition of land but only powers to acquire rights, to extinguish rights and to impose covenants. The articles make clear that compensation would be payable. While the absence of outright acquisition initially raised concern from one of the principal freeholders that was expecting to transfer its land holding to the applicant by agreement, this concern was resolved on the basis that acquisition by agreement was a separate matter and that known rights were not being extinguished under the terms of Protective Provisions that would apply to all known interests in the land. Otherwise minor adjustments to wordings were made to ensure consistency with agreed Protective Provisions.

9.2.6 Part 6 (Articles 31-40) contain miscellaneous and general provisions including the basis for the DML (Article 31) and Protective Provisions (Article 34). Article 33 provides a statutory defence to proceedings and Article 36 provision in relation to Crown Rights. Comment has already been made on the qualified nature of Article 36 in paragraph 8.2.6-9 of this report, but there is precedent in a made DCO for inclusion of similar wording. Article 38 lists the documents and plans that the SoS would need to certify. This list was updated throughout the Examination and is in an agreed form in the draft of 13 January 2016, subject to the issue of excision of the Southern alternative conveyor route. Article 40 provides for expert determination in case of disputes. This is particularly relevant in relation to Protective Provisions.

[78] Subject to one point on the DML that will be addressed in relation to Schedule 5.

9.3 SCHEDULES

SCHEDULE 1 - DESCIPTION OF AUTHORISED WORKS

9.3.1 Schedule 1 provides a description of 12 Works. These are fully detailed in section 2.1 of this report where I conclude that there is a correct division between Works Nos 1 and 2 being integral development to create the harbour itself and the remainder, including Work No 4 (the conveyor system), being Associated Development. Temporary works during construction are specified in Works Nos 6A, 7, 8, 10 and 11 while preliminary works to create a construction access to the A1085 are specified in Works No 12. Works No 3 (Lagoon habitat enhancement works) covers essential on-site mitigation measures. Limited ancillary works are also provided for at the end of the schedule, but more extensive potential ancillary development is authorised in Article 6 are subject to limitations imposed by Article 6(3)(b), a provision rightly introduced during the Examination to protect both the environment and pipeline assets.

SCHEDULES 7-11 - PROTECTIVE PROVISIONS

9.3.2 Protective Provisions have been negotiated between applicant and other parties before and during the examination. These provide protection for:

- Network Rail (Schedule 7);
- National Grid Electricity (Schedule 8);
- The Pipeline Corridor and Protected Crossings (Schedule 9);
- Assets Bridged/Over-sailed (schedule 10A);
- The Redcar Bulk Terminal (Schedule 10B), and
- The Tees Port Authority (Schedule 11)

9.3.3 The provisions of these Schedules are essentially agreed with the parties they are intended to provide protection for. The very small points remaining at issue will be addressed below.

9.3.4 Regard was had to the Protective Provisions in the Dogger Bank Offshore Wind Farm A & B DCO because a number of the same asset owners were involved in making representations in respect of that Order. However, the circumstances are not identical and the provisions of Schedules 9 and 10 are essentially tailored to the particular circumstances of this DCO. Schedule 7 and Schedule 8 are provisions found in similar form in a number of DCOs.

9.3.5 These provisions have overcome all issues relating to s127 apart from the retention of CA powers in relation to Network Rail. This point is addressed in paragraph 8.9.26 of this report. S138 does not appear to be engaged as the DCO does not seek to extinguish or modify any equipment of statutory undertakers as a consequence of the Protective Provisions contained in the DCO and other specific Agreements with undertakers. In any event there are no outstanding issues as an agreement has been entered into with Northern Powergrid (Northeast)

Limited and other undertakers not explicitly referred to who have responded in any way simply stated they had 'no comment'.

OTHER SCHEDULES

9.3.6 Schedule 2 contains requirements that will be detailed below, Schedule 3 the provisions relating to Compulsory Acquisition, Schedule 4 Land of which temporary possession may be taken and Schedule 5 the necessary Deemed Marine Licence. This will be detailed below. Schedule 6 defines the quay limits in terms of absolute coordinates. The Applicant resisted pressure to incorporate this within Schedule 5, but as it is referenced within Article 4(2) as governing Schedules 1 and 5, I do not see any particular issue in the coordinates being specified in a separate schedule.

9.4 REQUIREMENTS

9.4.1 Requirement 1 specifies that the authorised development must be begun within 7 years. While this is a longer period than is typically set, it was agreed to be reasonable by all parties given the scale of the overall YPP. Requirements 2 and 3 require approval of full details of Phases 1 and 2 including highlighting that the design of the bridge over the A1085 must be approved before any works commence. In relation to Phase 2 an agreed insertion requires baseline environmental information to be reviewed if construction does not commence within 6 years of the completion of Phase 1. Requirement 4 ties development into approved drawings and provisions in the DCO, while Requirement 5 requires provision of the temporary construction access to the A1085 ahead of any other construction.

9.4.2 Requirements 6, 7, and 8 provide for approval and compliance with a Construction Management Plan, a Construction Traffic Management Plan and flood warning and ground gas monitoring provisions as sought by RCBC and the EA. Requirement 9 contains provisions agreed with NE and the EA for approval of an Ecological Management Plan to secure mitigation and ongoing monitoring. Requirement 10 contains archaeological monitoring and recording provisions in the form sought by Historic England and agreed by RCBC. The applicant has expressed concern that there should be no duplication within the DML in view of the request of the MMO for a similar condition. I will address this point below. Finally, Requirement 11 requires approval of a de-commissioning plan in due course.

9.4.3 RCBC will have responsibility for discharge of specific requirements and ongoing monitoring and enforcement with provision made as appropriate for consultation with relevant statutory consultees. During the Examination wordings were refined in Requirements and within the DML in Schedule 5 in order to ensure as far as possible that there would be no overlap or duplication of responsibilities between the local planning authority RCBC in relation to landside works and those of the MMO for operations and approvals within the maritime area below mean high water spring tides level. Provision is made for consultation

between RCBC and MMO over appropriate matters. While there may be an element of duplication between provisions of certain requirements such as 2(2) and 3(2) with the preamble to 4, I am satisfied that the drafting of the Requirements follows the advice of the Planning Policy Guidance that embodies that which was contained in Circular 11/95 (as revised). They are clear, time related and enforceable. It is better in my view for there to be this minor element of duplication than risk the need for observance of any of these matters to be overlooked.

9.5 DEEMED MARINE LICENCE

9.5.1 Schedule 5 contains a very extensive DML. Parts 1-3 address introductory matters, licensed activities including dredging and the lagoon habitat enhancement works and enforcement. Part 4 contains 42 conditions[79]. As mentioned in relation to the Requirements above, every effort was made to ensure that as far as possible the MMO and RCBC would have discrete areas of responsibility.

9.5.2 Much of the wording was accepted by the MMO to be of a standard nature, but in the discussions at the ISH on 25 September 2015 and 24 November 2015, submissions in response to ExA questions and ongoing dialogue with the applicant and RCBC and other statutory consultees, the wording was refined to address the particular features of the DCO scheme, with certain definitions provided at my request. Time periods were also adjusted to ensure internal consistency and consistency with other provisions in the draft DCO. The final wording of the DML in the 13 January 2016 version of the draft DCO is agreed by the MMO apart from a specific point concerning deemed approval or deemed refusal if the MMO fail to respond to submissions of the applicant or their contractors in relation to clearance of conditions and the point concerning archaeology referred to above [REP7-005 and REP8-005]. These matters will be addressed below.

9.6 OTHER LEGAL AGREEMENTS

9.6.1 The applicant submitted a signed and sealed Development Consent Obligation made between the applicant and RCBC[80] dated 19 October 2015 [REP4-062]. This requires six sums to be paid to RCBC, totalling some £550,000 for off-site planting and other environmental enhancement works to mitigate visual and other effects of the DCO scheme on transport and green corridors in Redcar and the fringe area of Dormantown that might be most affected together with off-site habitat enhancement works at Portrack Marsh and production of a Tees Estuary Habitat Strategy.

[79] Paragraphs 9-50
[80] The Homes and Community Agency, the current owner of the site for the MHF, are also a party to the agreement.

9.6.2 In paragraphs 4.6.16 to 4.6.23 of this report I detailed the provisions of the obligation and assessed them against the tests set out in paragraph 204 of the NPPF which are given statutory force by the Community Infrastructure Levy Regulations 2010. The tests state that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation is (a) necessary to make the development acceptable in planning terms, (b) directly related to the development and (c) fairly and reasonably related in scale and kind to the development.

9.6.3 I am satisfied that all aspects of the planning obligation are related to the development and to a greater or lesser extent necessary to make the development acceptable. Having regard to the overall development costs of the YPP, albeit that there are also substantial planning obligations related to the permissions granted under the TCPA1990 for other components, I consider that the Development Consent Obligation sums should be regarded as fairly and reasonably related in scale to the development.

9.6.4 As I regard the requisite tests to be met, the Planning Obligation dated 19 October 2015 should be taken into account by the Secretary of State and given due weight in the determination of this application for a DCO.

9.6.5 However, there are two specific details in which the obligation is not compliant with the provisions of the TCPA1990 as amended. Firstly, s106(9)(aa) says: "if the obligation is a development consent obligation, contains a statement to that effect". The obligation does not explicitly contain such a statement. Secondly, s106(9)(d) requires the deed to identify the LPA by whom the obligation is enforceable. The 106 agreement, confirms that the obligation is enforceable by RCBC, but does not define them as the LPA. Consequently, in advance of making the Order, the SoS may wish to satisfy himself that the obligation complies with s106 (9)(aa) and (d) of the TCPA1990 by securing inclusion of a statement to the effect that it is a Development Consent Obligation enforceable by RCBC in their capacity as LPA.

9.7 POINTS REMAINING AT ISSUE - EXA RECOMMENDATIONS

The text of the draft DCO – typographical errors and consistency

9.7.1 No matters remained outstanding from the Examination in relation to the text of the main body of the DCO as in the 13 January 2016 version apart from the issue of inclusion/excision of the Southern alternative conveyor route. That will be addressed separately below.

9.7.2 However, in preparing the version of DCO to be recommended at Appendix D, I have noted a number of typographical errors and that in certain places there is inconsistency in phraseology used whereas the context appears to warrant use of similar wording. I consider that

these instances should be corrected. I do not consider that any involve matters of substance that would require further consultation.

Recommendation

9.7.3 I recommend that the following typographical errors be corrected and inconsistencies in phraseology be removed:

- in Article 8(4) amend "(3)" to "(5)";
- in Article 24(2)[81] add in reference to Schedules 7, 8 and 11;
- in Schedule 1, Works No 1 re-number the paragraphs as "(1)" and "(2)";
- in Schedule 2, Requirement 3 replace "under" after "approved" with "by the MMO pursuant to", and
- in Schedule 2, Requirement 8(2) line 1 replace "must" by "is to".

Schedule 1

9.7.4 For consistency with rights to be sought add to Works No 6B(2) "and screen fencing" and add to Works No 9(5) "including screen fencing".

Requirements (Schedule 2)

9.7.5 The outstanding issue relates to Requirement No 10. The applicant does not wish to accept the suggestion of the MMO that the Archaeological condition should also be imposed as a condition on the DML in order to avoid duplication of approvals for the same details [REP9-007]. The applicant suggests that the Requirement could be amended into a similar format to Requirement 9 that addresses the issue of whether works would be above or below mean high water spring tides level. In my judgement, it would not be appropriate to follow the same approach as for Requirement 9. That requirement has to address ecological issues which straddle the mean high water spring tides level that marks the boundary between RCBC and MMO jurisdiction, whereas in the case of archaeology there are three identified heritage assets or potential heritage assets that can be discretely located within either the landside or maritime jurisdictions. In my view therefore Requirement 9 should be amended to delete reference to the 'Seventh Buoy Light/Dolphin Mooring Bollard' and peat deposits in relation to dredging as these two items would clearly fall under the jurisdiction of the MMO. Insertion of a condition referring to these two matters in the DML would not then involve duplication.

Recommendation

9.7.6 In Requirement 10(1) of Schedule 2, delete the words ", a level 1Building Recording (or equivalent) of the 'Seventh Buoy Light/Dolphin Mooring Bollard' prior to demolition, and monitoring of dredging works

[81] Article 24(2) as would be so numbered with the amendments consequent upon excision of the Southern alternative conveyor route. It would be Article 24(5) in the 13 January 2016 version of the draft DCO.

in the harbour area in the vicinity of borehole BHP6 to identify and analyse peat deposits."

The DML (Schedule 5)

9.7.7 The outstanding issues in respect of the wording of the DML are firstly the issue of adding the archaeological condition as sought by the MMO. For the reasons given in the previous sub-section, I consider this is justified as the amended wording sought by the MMO excludes the West Coatham potential heritage asset that is clearly within the jurisdiction of RCBC.

9.7.8 The second issue is whether in condition 17(1), it is appropriate to include the final phrase 'and is deemed to have been permitted if it is neither given nor refused within three months of the specified day'. MMO argue that there ought instead to be wording that would provide for deemed refusal if no decision is given as accepted in relation to the Thames Tideway Tunnel DCO. The applicant points out that there are many matters in the DML that require clearance by the MMO and that there are provisions in 17(2) that allow the MMO to seek further information and extend the specified three month period to run from the day in which the further information is provided. This gives the MMO ample opportunity to respond and to leave the timing of response other than by way of refusal entirely open could mean that dredging or construction in the estuary missed critical windows in relation to mitigation safeguards. The MMO could always issue a refusal if it still had not reached a conclusion after the specified period.

9.7.9 In my judgement, the applicant is justified in wording condition 17(1) as in the 13 January 2016 draft DCO. It is my understanding that in relation to the Thames Tideway Tunnel DCO although there may be a deemed refusal procedure embodied in the DML attached to that Order, there is also a legal agreement with the MMO that would provide a protocol for the relationship between the undertaker and the MMO in relation to those Order works. No such agreement exists in relation to this Order and I can well understand the concern of the applicant that maritime aspects of the DCO scheme could be seriously delayed by a succession of deemed refusals. A deemed approval process is not without precedent under regulatory regimes, for example under the Building Regulations, and the MMO appeared to find no difficulty in responding to deadlines set within the Examination timetable. In my judgement, the wording of condition 17(1) should stand as drafted in the 13 January 2016 draft DCO.

Recommendation

9.7.10 An additional condition be added to the DML in the following terms:

"Archaeology

51[82](a) No works shall commence until a programme of archaeological work including a Written Scheme of Investigation has been submitted to and approved by the MMO in writing. The programme must be submitted for approval at least 6 weeks prior to the commencement of works. The scheme must include a level 1 Building Recording of the ''Seventh Buoy Light/Dolphin Mooring Bollard'' prior to demolition; and monitoring of dredging works in the harbour area in the vicinity of borehole BHP6 to identify and analyse peat deposits. The scheme shall include an assessment of significance and research questions; and:

- the programme and methodology of site investigation and recording;
- the programme for post investigation assessment;
- provision to be made for analysis of the site investigation and recording;
- provision to be made for publication and dissemination of the analysis and records of the site investigation;
- provision to be made for archive deposition of the analysis and records of the site investigation, and
- nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

(b) No development shall take place other than in accordance with the Written Scheme of Investigation approved under condition (a).

(c) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (a) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured."

Protective Provisions (Schedules 7-11)

9.7.11 With regard to Schedule 7, I have already concluded that it is appropriate not to include a prohibition on the exercise of CA powers against Network Rail Infrastructure Limited in paragraphs 8.7.4 to 8.7.7 of this report, because their only outstanding objection is in relation to the commercial terms for the right to construct the conveyor over the railway. On this basis there would be no reason to amend the wording of Schedule 7 from that in the 13 January 2016 draft DCO. If the SoS should disagree with my conclusion and recommendation on this point, it would be necessary for the wording of paragraph 4 of Schedule 7 to the DCO to revert to the pre-6 November 2015 version of Schedule 7 [REP4-054].

[82] The additional condition has been numbered 51 to follow on at the end though it may be more logical to insert it earlier in the list of conditions with consequential re-numbering.

9.7.12 In relation to Schedule 9, there are issues to be addressed in relation to the representations of the Bond Dickinson group of objectors and also in relation to the objections of the CATS parties. I have addressed the outstanding points of concern from Bond Dickinson in paragraphs 8.7.46 to 8.7.52 of this report. There is no reason to repeat all my conclusions here, but I did conclude that two minor amendments to the wording would be justified, firstly to ensure that new pipelines installed prior to the commencement of work would benefit from the protective provisions provided that they were notified as planned in relation to the proposed pipeline survey and secondly to provide for reimbursement for checking the pipeline survey. I concluded that the remaining changes sought are not justified.

9.7.13 In relation to the CATS parties, the only outstanding point is whether the indemnity provisions should be changed to what are argued to be standard in the oil and gas industry from those agreed with Bond Dickinson on behalf of other pipeline owners and operators. At paragraph 8.7.86 of this report I concluded that this alteration was not justified as similar provisions to those in the 13 January 2016 draft of the DCO had been included in other DCOs and the provisions as drafted are acceptable to Ineos in relation to the Breagh gas pipeline.

Recommendation

9.7.14 I recommend that the definition of "pipeline(s)" in paragraph 2 of Schedule 9 be amended to read "…means the apparatus located in the pipeline corridor, or in or comprising a protected crossing at the time the pipeline survey is carried out or as may be added between the date of the pipeline survey and the commencement of works, providing that any such additions were notified to the undertaker within the period specified in paragraph 3(3) of this Schedule."

9.7.15 I also recommend that the words "authorisation of survey details submitted by the undertaker under paragraph 3(3)," be added at the start of paragraph 28(a) of Schedule 9.

9.8 AMENDMENTS REQUIRED TO EXCISE THE SOUTHERN ALTERNATIVE CONVEYOR ROUTE

9.8.1 If the Secretary of State accepts my conclusions that safety considerations warrant the excision of the Southern alternative conveyor route from the DCO and that a compelling case does not exist in the public interest to justify the grant CA powers for the Southern alternative conveyor route so that only the Northern alternative conveyor route should be authorised under this DCO, both in relation to a planning decision and the grant of CA powers, then the following additional amendments should be made to the DCO:

- In Article 2 deletion of "N030 - Constructability Issues Rev 7 - BP CATS - Southern Route from the definition of "constructability notes";

- In Article 2 deletion of the definition of "conveyor route (southern)";
- In Article 2 amend the definition of the Conveyor route plans to "…(Documents 3.3H-3O)";
- In Article 2 amend the definition of "the land plans" to "…(Documents 2.1, 2.1A-2.1B(i), 2.1C-2.1J(i) and 2.1K-2.1N(i))";
- In Article 2 amend the definition of "vertical deviation plans" to "vertical deviation plan" means the plan certified as the vertical deviation plan by the Secretary of State for the purposes of this Order (Document 3.11B);
- In Article 4(1)(b) and "plans" to "plan";
- In Article 24, deletion of paragraph (1) amendment of paragraph (2) so that it reads "The undertaker may create and acquire compulsorily the new rights and impose the restrictions described in part 1 of Schedule 3 excluding any interests owned by The Queen's most Excellent Majesty in right of Her Crown" and is re-numbered (1) and deletion of paragraphs (3) and (4), so that the remaining paragraphs are re-numbered (2) to (5);
- In Article 29(1) amend "book of reference" to "Part 1[83] of Schedule 3";
- In Article 38 sub-paragraph (1)(b) amend Document References to "(Documents 2.1, 2.1A-2.1B(i), 2.1C-2.1J(i) and 2.1K-2.1N(i))";
- In Article 38 sub-paragraph (1)(e) delete reference to Document 3.11A;
- In Article 38 sub-paragraph (1)(i) amend the reference of the conveyor route plans to "(Documents 3.3H-3O)";
- In Schedule 1, adjust wording to delete Works No 4(1)(b);
- In Schedule 2, Requirement 2, delete all works after "layout" in sub-paragraph (a);
- In Schedule 2, Requirement 4(c) and to read "the vertical deviation plan (Document 3.11B)";
- In Schedule 3, delete PART 1and re-number and re-title PART 2 as "PART1 RIGHTS AND RESTRICTIONS REQUIRED FOR THE CONVEYOR ROUTE (NORTHERN)", and re-number PART 3 as PART 2 together with consequential amendments wherever the existing Part 3 is referred to within the DCO;
- In Schedule 4, delete plots 8b and 8c, and
- In Schedule 5 paragraph 32, delete sub-paragraph (b), re-numbering and adjusting the wording of sub-paragraph (c).

9.8.2 The Book of Reference includes references to rights sought for both the Northern and Southern conveyor routes. Corresponding amendments would therefore also be required to the Book of Reference to delete rights only required for the Southern alternative, although only parcel 11a would cease to be subject to any CA provisions. In Class 4 Conveyor Rights the words "or points A-B-D"

[83] Part 1 being the original Part 2 re-numbered.

should be deleted. Secretary of State may therefore wish to ensure that the Book of Reference provided for certification under Article 38 is amended in this manner.

9.8.3 It should be noted that revised Works Plans have not been submitted. The Works Plans dated 27 March 2015 show both alternative conveyor routes and also contain a note that 'Any boundary between the areas of two Works Numbers may deviate laterally by 20 metres either side of the boundary.' This is not consistent with the agreed revision to Article 4(1)(c) that is included within the final version of the draft DCO. If the Secretary of State accepts the recommendation that the Southern conveyor route should be excised, it would be appropriate to seek amended Works Plans containing a corrected note. To avoid any conflict between the text of the DCO and certified plans, Works Plans with correct notes should in any event be submitted for certification under Article 38.

10 SUMMARY OF FINDINGS AND CONCLUSIONS

10.1 SUMMARY OF FINDINGS AND CONCLUSIONS

10.1.1 At paragraph 4.6.10 of this report, I conclude that unless the assessments of benefits and impacts were to show a materially adverse balance, the DCO scheme is in accordance with the Ports NPS. A similar conclusion is reached in paragraph 4.6.15 in relation to the MPS. At paragraph 4. 6.13, I conclude that the DCO scheme is compatible with the provisions of the NN NPS.

10.1.2 Earlier in paragraph 4.4.9, having had regard to the positive socio-economic benefits as opposed to the limited and manageable environmental impacts, I concluded that the generality of the harbour proposal embodied in the DCO is in conformity with the development plan. This means that it would also constitute sustainable development in relation to the NPPF. This conclusion was reached having had regard to the impacts referred to in the LIR submitted by RCBC which was largely supportive and all matters raised in representations.

10.1.3 In Sections 5, I evaluated the DCO against all the assessment tests set out in the Ports NPS and MPS reaching a conclusion in section 5.18 that unless it were concluded that there would be unacceptable risk to the operations of commercial enterprises whose pipelines or other assets would be over-sailed by works proposed under the DCO, a matter that is considered in detail in section 8 of this report, socio-economic considerations strongly weigh in favour of the DCO scheme. As for environmental considerations that have been assessed as required by the Ports NPS and MPS, for the most part the impacts of the scheme would be either negligible or only minor adverse and in all cases negative impacts would be able to be mitigated to the extent that residual impacts in no case would represent factors to weigh against the making of the DCO as a whole.

10.1.4 In that section I also concluded that I am satisfied that the DCO scheme would not preclude compliance with the WFD and related Directives. I also had regard to the navigational issues and the need to protect the marine environment, the living resources which it supports and human health and the need to prevent interference with legitimate uses of the sea when considering the DML in accordance with the Infrastructure Planning (Decisions) Regulations 2010. Similarly, I had regard to the United Nations Environmental Programme Convention on Biological Diversity on Biodiversity 1992 as required by those Regulations. Having regard to the habitat enhancement secured under the terms of the DCO and related Development Consent Obligation there should be a benefit in terms of biological diversity.

10.1.5 Consequently, at paragraph 5.18.3, I concluded that s104(7) of the PA2008 is not applicable to the generality of the DCO scheme as the benefits of the proposed scheme would outweigh any adverse impact. Moreover, I do not perceive there to be any matters in the LIR

submitted by RCBC or in the assessments required under the Ports NPS or MPS that would justify rejection of the harbour facilities as a whole that are sought in the draft DCO on planning grounds.

10.1.6 Nevertheless, at Paragraph 5.18.4, I conclude that societal safety risks in relation to the CATS pipeline would justify excision of the Southern alternative conveyor route from the provisions of the DCO if the Secretary of State considers this to be an important and relevant matter in respect of s104(2)(d) of the PA2008.

10.1.7 In section 6, I consider the particular matters that are required to be considered in relation to Habitats Regulation Assessment. I conclude that taking into account the information provided during the course of the examination, in particular by the applicant in their HRA Report and the views expressed by IPs, such as NE, EA and the MMO, I recommend that the Secretary of State may conclude that LSE on European sites can be excluded, in some instances having regard to the mitigation secured in the DCO or accompanying Development Consent Obligation. These findings are detailed in paragraph 6.8.1.

10.1.8 As a consequence of the foregoing, at paragraphs 7.1.11-7.1.13, I conclude that there are very few factors that would weigh against the making of the generality of the DCO. The principle of the development is in conformity with the need provisions of the Ports NPS and also with the development plan and would thereby constitute sustainable development in terms of the NPPF. With regard to the assessment tests set out in the Ports NPS and the MPS, I consider that in most cases either there would not be a material impact, or if there is any significant adverse impact, it would be capable of satisfactory mitigation.

10.1.9 Only in relation to safety or commercial considerations is there the possibility of materially adverse impacts arising, if it were to be concluded that the Protective Provisions intended to reduce risks to pipelines and other assets that would be over-sailed would not be effective in reducing risks to acceptable proportions. However, on the assumption that the Protective Provisions would serve their intended purpose in relation to commercial risks, overall economic and socio-economic considerations would weigh very strongly in favour of the overall DCO scheme. Nevertheless, in relation to safety considerations in respect of the Southern alternative conveyor route, I concluded in section 5.13 and in particular in paragraph 5.18.4 that on a precautionary basis, the residual societal risk, after allowing for Protective Provisions, in retaining the possibility of utilising that route would not be reasonable and therefore that Southern alternative should be excised from the Order.

10.1.10 However, as there are strong economic and socio-economic benefits and any adverse impacts appear capable of mitigation overall and at least in relation to one of the alternative conveyor route options, I consider that the planning case for making the DCO overall has been

made subject to the excision of the Southern alternative conveyor route.

10.1.11 In section 8, I consider in detail the cases against the grant of CA powers in relation to all the parcels of land detailed in the Book of Reference and in Schedule 3 to the draft DCO. In most cases, I consider that a compelling case in the public interest has been made out as the public benefit should clearly outweigh any private losses with very largely agreed Protective Provisions included the draft DCO designed prevent or minimise such losses.

10.1.12 Had the most contested point, the acceptability of the Southern conveyor route turned solely on the likely efficacy of Protective provisions to protect private interests, I would have concluded that the applicant's case should prevail and that both alternative conveyor routes should stand in the DCO with the provisions that would enable a choice to be made and subsequent lapsing of CA powers in relation to the conveyor route that is not selected. However, inclusion of two alternatives within the Order demonstrates that an alternative to the Southern route is available. The CATS parties pressed a case of there being intolerable societal safety risks in relation to the possibility of rupture of their 36" gas pipeline from the North Sea that would be over-sailed for around 2 km by the Southern route. This objection was in addition to the case argued over the need to safeguard the private interests of the CATS parties and their clients because of the critical importance of this infrastructure, given that it currently carries around 8% of the UK daily gas demand. Although the applicant argued that the Protective Provisions would reduce the societal risk in relation to the Southern alternative conveyor route to tolerable proportions, the CATS parties pressed the HSE guidance that the ALARP principle should be followed, namely risks being reduced to 'as low as reasonably practicable'. As the Northern conveyor route is available as an alternative which all accept would have lower risk, whether in relation to safety or potential loss to private interests, I concluded at paragraphs 8.7.90-8.7.92 that a compelling case in the public interest had only been made in respect of the CA of rights sought in respect of the Northern alternative conveyor route. Coupled with the residual risks to private interests, I consider that the risks in relation to the Southern route are not outweighed by the operational advantages and lesser CA required by that route and the public benefit of the harbour as part of the wider YPP because the latter benefit applies to both routes.

10.1.13 With regard to Crown Land, the DCO recommended at Appendix D makes clear that there would be no acquisition of Crown interests. The consent given by the Crown Estate under s135(2) to the inclusion of CA powers in relation to other interests in parcels of land in which there are Crown interests is conditional. A provision embodied in the draft DCO as Article 36 provides for seeking a confirmatory consent. There is precedent for such a provision and there are no known impediments to securing confirmatory consent.

10.1.14 At paragraph 9.6.5, I drew attention to additional wording that the Secretary of State may wish to ensure is added to the Development Consent Obligation to ensure strict compliance with the provisions of s106 of the TCPA1990 as amended. In addition in paragraphs, 8.9.30, 9.8.2 and 9.8.3, I drew attention to the need to ensure that related documentation that would be certified by the Secretary of State under Article 38 should be consistent with the final form in which the DCO is made.

10.1.15 Taking all these considerations into account I consider that the Secretary of State may safety conclude that the tests of s104 of the PA2008 have been met, provided that the Southern Alternative conveyor route is excised from the draft Order, but subject the necessary amendments to give effect to that conclusion and the other detailed amendments set out in Section 9, The York Potash Harbour Facilities Order 201X should be made.

10.2 RECOMMENDATION

10.2.1 For all of the above reasons and in the light of the ExA's findings and conclusions on important and relevant matters set out in the report, the ExA under the Planning Act 2008 (as amended), recommends that the Secretary of State should make The York Potash Harbour Facilities Order 201X in the form set out in Appendix D[84].

[84] In view of my conclusions and recommendation that the Southern Alternative conveyor route be excised from the provisions of the Order, the Order set out as Appendix D contains all the amendments listed in section 10 of this report including those in paragraph 9.8.1.

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APPENDICES

APPENDIX A: THE EXAMINATION

The list below contains the main events which occurred, and procedural decisions taken, during the examination.

Date	Event
21 July 2015	Preliminary Meeting
27 July 2015	Issue by ExA of: The Examining Authority's first written questions and requests for information Rule 8 Letter consisting of: (i) Examination timetable and procedure (ii) Request for Submissions of Common Ground (iii) Request for Local Impact Reports (iv) Request for Written representations and comments on relevant representations (v) Request for Notifications of wish to attend hearings (vi) Request for Notifications of wish to attend an accompanied site inspection
21 August 2015	**Deadline 1** Deadline for receipt by the ExA of: (i) Comments on relevant representations (RRs) and submissions accepted at the preliminary meeting (ii) Summaries of all RRs exceeding 1500 words (iii) Written representations (WRs) by all interested parties (iv) Summaries of all WRs exceeding 1500 words (v) Local Impact Report from any local authorities (vi) Any statements of Common Ground requested by ExA (vii) Responses to ExA's first written questions Notifications: (i) Notification by interested parties of wish to be heard at an open floor hearing (ii) Notification of wish to speak at a compulsory acquisition hearing (iii) Notification by interested parties of their intention to attend the accompanied site visit(s) (iv) Notification by statutory parties of wish to be considered an interested party

7 September 2015	**Deadline 2** Deadline for receipt by the ExA of: (i) Comments on WRs and responses to comments on RRs. (ii) Comments on LIRs. (iii) Comments on responses to ExA's first written questions. (iv) Any revised draft DCO from the applicant (v) Any draft DCO from the applicant
23 September 2015	Accompanied Site Visit
24 September 2015	Open Floor Hearing
24 September 2015	Compulsory Acquisition Hearing
25 September 2015	Issue Specific Hearing on the draft DCO
2 October 2015	**Deadline 3** Deadline for receipt by the ExA of: (i) Submissions following hearings in the week of commencing 21 September 2015: (ii) Written submissions made in lieu of oral submissions at hearings (iii) Summaries of oral submissions to the hearings (iv) Written responses to any questions put to the parties orally by the ExA at the hearings (v) Any revised draft DCO from applicant
16 October 2015	Issue by ExA of: (i) Second written questions and requests for information (ii) An amendment to the examination timetable
6 November 2015	**Deadline 4** Deadline for receipt of: (i) Responses to ExA's second written questions (ii) Comments on written submissions from hearings (iii) Any revised draft DCO from applicant
20 November 2015	**Deadline 5** Deadline for receipt of: (i) Comments on responses to ExA's second written questions
24 November 2015	Compulsory Acquisition Hearing

24 November 2015	Issue Specific Hearing on the draft DCO
25 November 2015	Issue by ExA of: (i) Report on the Implications for European Sites (RIES) (ii) Draft Development Consent Order (iii) Request for information
16 December 2015	**Deadline 6** Deadline for receipt of: (i) Comments on the RIES (ii) Comments on draft DCO (iii) Responses to the request for information of 25 November 2015 (iv) Any outstanding comments on submissions to the examination before this date
30 December 2015	**Deadline 7** Deadline for receipt of: (i) Comments on responses to the draft DCO (ii) Comments on responses to the RIES (iii) Comments on responses to the request for information of 25 November 2015 (iv) Any further submissions in relation to comments
6 January 2015	Issue by the ExA of: (i) A request for further information
13 January 2016	**Deadline 8** Deadline for receipt of: (i) Responses to the request for information of 6 January 2016
20 January 2016	**Deadline 9** Deadline for receipt of: (i) Comments on responses to the request for information of 6 January 2016
21 January 2016	Close of Examination
22 January 2016	Notification by the ExA of completion of the examination

APPENDIX B: THE EXAMINATION LIBRARY INCLUDING REPORT ON THE IMPLICATIONS FOR EUROPEAN SITES

This Examination Library relates to the York Potash Harbour Facilities Order Pipeline application.

The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document.

A unique reference is given to each document; these references are used within the Report on the Implications for European Sites and in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.

- This document contains references to documents from the point the application was submitted.

- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

TR030002– York Potash Harbour Facilities Order **Examination Library - Index**	
Category	**Reference**
Application Documents As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
Adequacy of Consultation responses	AoC-xxx
Relevant Representations	RR-xxx
Procedural Decisions and Notifications from the Examining Authority Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
Additional Submissions Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
Events and Hearings Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
Deadline 1- 21 August 2015: Deadline for receipt by the ExA of: • Comments on relevant representations (RRs) and submissions accepted at the preliminary meeting • Summaries of all RRs exceeding 1500 words • Written representations (WRs) by	REP1-xxx

all interested parties • Summaries of all WRs exceeding 1500 words • Local Impact Report from any local authorities • Any statements of Common Ground requested by ExA • Responses to ExA's first written questions • Notification of wish to speak at a Compulsory Acquisition or Open Floor hearing • Notification of wish to make oral representations at the issue specific hearing on the draft Development Consent Order (DCO) • Notification of wish to attend an accompanied site visit, or submission on the itinerary for such a visit.	
Deadline 1 – Local Impact Reports and Statements of Common Ground	REP1-xxx
Deadline 2 – 7 September 2015: *Deadline for receipt by the ExA of:* • *Comments on WRs and responses to comments on RRs* • *Comments on Local Impact Reports* • *Comments on responses to ExA's first written questions* • *Any revised draft DCO from applicant* • *Any draft Development Consent Obligation from the applicant.*	REP2-xxx
Deadline 3 – 2 October 2015: *Deadline for receipt by the ExA of:* • *Submissions following hearings in the week of commencing 21 September 2015:* • *Written submissions made in lieu of oral submissions at hearings* • *Summaries of oral submissions to the hearings* • *Written responses to any questions put to the parties orally by the ExA at the hearings* • *Any revised draft DCO from*	REP3-xx

applicant	
Deadline 4 – 6 November 2015 *Deadline for receipt by the ExA of:* • *Responses to ExA's second written questions* *Comments on written submissions from hearings* • *Any revised draft DCO from applicant*	REP4-xx
Deadline 5 – 20 November 2015 *Deadline for receipt by the ExA of:* • *Comments on responses to ExA's second written questions*	REP5-xx
Deadline 6 – 16 December 2015 *Deadline for receipt by the ExA of:* • *Comments on the RIES* • *Comments on draft DCO* • *Any outstanding comments on submissions to the examination before this date*	REP6-xx
Deadline 7 – 30 December 2015 *Deadline for receipt by the ExA of:* • *Comments on responses to the draft DCO* • *Comments on responses to the RIES* • *Any further submissions in relation to comments*	REP7-xx
Deadline 8 -13 January 2016 *Deadline for receipt by the ExA of:* • *Responses to the Examining Authority's request for information dated 6 January 2016*	REP8-xx
Deadline 9 – 20 January 2016 *Deadline for receipt by the ExA of:* • *Comments on Responses to the Examining Authority's request for information dated 6 January 2016*	REP9-xx
Other Documents Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents	OD-xxx

Application Documents – submitted 27 March 2015	
APP-001	Doc 1.1 Application Form
APP-002	Doc 1.2 Covering Letter
Draft Development Consent Order (DCO) and Explanatory Memorandum (EM)	
APP-003	Doc 4.1 DCO (including Requirements)
APP-004	Doc 4.2 Explanatory Memorandum
Compulsory Acquisition Documentation	
APP-005	Doc 5.1 Statement of Reasons
APP-006	Doc 5.2 Funding Statement Appendix 1 - Annual Report 2014
APP-007	Doc 5.2 Funding Statement Appendix 2 - Investor Presentation February 2015
APP-008	Doc 5.2 Funding Statement
APP-009	Doc 5.3 Book of Reference
Other Information including Reports and Statements	
APP-010	Doc 1.3 Newspaper Notices Report
APP-011	Doc 1.4 Document List
APP-012	Doc 1.5 Section 55 Checklist
APP-013	Doc 1.6 Issues and Document Tracker
APP-014	Doc 7.2 Summary of Proposals Document
APP-015	Doc 6.2 Section 79(1) of Environmental Protection Act 1990 Statement
APP-016	Doc 6.8 Governance Tracker
APP-017	Doc 6.9 Parameters Table
APP-018	Doc 7.1 Planning Statement
APP-019	Doc 7.3 Project Position Statement
APP-020	Doc 7.3 Appendix 1 - Mine and MTS Planning Statement
APP-021	Doc 7.3 Appendix 2a - MDT Planning Statement

APP-022	Doc 7.3 Appendix 2b - MDT Planning Statement Appendices
APP-023	Doc 7.3 Appendix 3 - Habitats Regulation Assessment Sept 2014
APP-024	Doc 7.3 Appendix 4 - Economic Impact Report
APP-025	Doc 7.3 Appendix 5 - MHF Planning Statement
APP-026	Doc 7.3 Appendix 6 - Marine Licence (offshore)
APP-027	Doc 7.3 Appendix 7 - Alternative Sites Assessment
APP-028	Doc 7.3 Appendix 7 - Appendices to Alternative Sites Assessment - Part 1
APP-029	Doc 7.3 Appendix 7 - Appendices to Alternative Sites Assessment - Part 2
APP-030	Doc 7.3 Appendix 7 - Appendices to Alternative Sites Assessment - Part 3
APP-031	Doc 7.3 Appendix 7 - Appendices to Alternative Sites Assessment - Part 4
APP-032	Doc 7.3 Appendix 7 - Appendices to Alternative Sites Assessment - Part 5
APP-033	Doc 7.4 Draft Development Consent Obligations - Heads of Terms
APP-034	Doc 7.5 Letter from Secretary of State for BIS
APP-035	Doc 7.6 The Crown Estate - Consent Letter
Plans and Drawings	
APP-036	Doc 2.1 Land Plan - Key Plan
APP-037	Doc 2.1A Land Plan - Sheet 1
APp-038	Doc 2.1B Land Plan - Sheet 2
APP-039	Doc 2.1C Land Plan - Sheet 3
APP-040	Doc 2.1D Land Plan - Inset 1
APP-041	Doc 2.1E Land Plan - Inset 2
APP-042	Doc 2.1F Land Plan - Inset 3
APP-043	Doc 2.1G Land Plan - Inset 4

APP-044	Doc 2.1H Land Plan - Inset 5
APP-045	Doc 2.1I Land Plan - Inset 6
APP-046	Doc 2.1J Land Plan - Inset 7
APP-047	Doc 2.1K Land Plan - Inset 8
APP-048	Doc 2.1L Land Plan - Inset 9
APP-049	Doc 2.1M Land Plan - Inset 10
APP-050	Doc 2.1N Land Plan - Inset 11
APP-051	Doc 2.2 Works Plan - Key Plan
APP-052	Doc 2.2A Works Plan - Sheet 1
APP-053	Doc 2.2B Works Plan - Sheet 2
APP-054	Doc 2.2C Works Plan - Sheet 3
APP-055	Doc 2.2D Works Plan - Sheet 4
APP-056	Doc 2.2E Works Plan - Sheet 5
APP-057	Doc 2.2F Works Plan - Sheet 6
APP-058	Doc 2.3 Access and Rights of Way Plan - Key Plan
APP-059	Doc 2.3A Access and Rights of Way Plan - Sheet 1
APP-060	Doc 2.3B Access and Rights of Way Plan - Sheet 2
APP-061	Doc 2.3C Access and Rights of Way Plan - Sheet 3
APP-062	Doc 3.1 Location Plan
APP-063	Doc 3.10 Conveyor Typologies
APP-064	Doc 3.11A Southern Option - Conveyor Vertical Limits of Deviation Plans - Long Section
APP-065	Doc 3.11B Northern Option - Conveyor Vertical Limits of Deviation Plans - Long Section
APP-066	Doc 3.12A Conveyor Cross Sections Location Plan - Northern Route
APP-067	Doc 3.12B Conveyor Cross Sections Northern Route - Sheet 1

APP-068	Doc 3.12C Conveyor Cross Sections Northern Route - Sheet 2
APP-069	Doc 3.12D Conveyor Cross Sections Location Plan - Southern Route
APP-070	Doc 3.12E Conveyor Cross Sections Southern Route Sheet 1
APP-071	Doc 3.12F Conveyor Cross Sections Southern Route Sheet 2
APP-072	Doc 3.13 Ease of Reference A3 Plans Bundle (Part 1)
APP-073	Doc 3.13 Ease of Reference A3 Plans Bundle (Part 2)
APP-074	Doc 3.13 Ease of Reference A3 Plans Bundle (Part 3)
APP-075	Doc 3.14 Harbour Construction Route Access
APP-076	Doc 3.2A Layout Plans (Ground Level) Northern Route - Key Plan
APP-077	Doc 3.2B Layout Plans (Ground Level) Northern Route - Sheet 1
APP-078	Doc 3.2C Layout Plans (Ground Level) Northern Route - Sheet 2
APP-079	Doc 3.2D Layout Plans (Ground Level) Northern Route - Sheet 3
APP-080	Doc 3.2E Layout Plans (Ground Level) Northern Route - Sheet 4
APP-081	Doc 3.2F Layout Plans (Ground Level) Northern Route - Sheet 5
APP-082	Doc 3.2G Layout Plans (Ground Level) Southern Route - Key Plan
APP-083	Doc 3.2H Layout Plans (Ground Level) Southern Route - Sheet 1
APP-084	Doc 3.2I Layout Plans (Ground Level) Southern Route - Sheet 2
APP-085	Doc 3.2J Layout Plans (Ground Level) Southern Route - Sheet 3
APP-086	Doc 3.2K Layout Plans (Ground Level) Southern Route - Sheet 4
APP-087	Doc 3.2L Layout Plans (Ground Level) Southern Route - Sheet 5
APP-088	Doc 3.3A Conveyor Route Southern Route - Key Plan
APP-089	Doc 3.3B Conveyor Route Plans Southern Route - Sheet 1
APP-090	Doc 3.3C Conveyor Route Plans Southern Route - Sheet 2
APP-091	Doc 3.3D Conveyor Route Plans Southern Route - Sheet 3
APP-092	Doc 3.3E Conveyor Route Plans Southern Route - Sheet 4

APP-093	Doc 3.3F Conveyor Route Plans Southern Route - Sheet 5
APP-094	Doc 3.3G Conveyor Route Plans Southern Route - Sheet 6
APP-095	Doc 3.3H Conveyor Route Plans Northern Route - Key Plan
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APP-101	Doc 3.3N Conveyor Route Plans Northern Route - Sheet 6
APP-102	Doc 3.3O Conveyor Route Plans Northern Route - Sheet 7
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APP-104	Doc 3.4B Location of Temporary Compounds - Sheet 2 of 2
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PD-009	Report on the Implications for European Sites (RIES) issued by the Examining Authority on 25 November 2015
PD-010	Examining Authority's Draft Development Consent Order issued by the Examining Authority on 25 November 2015

PD-011	Letter notifying Publication of the Report on the Implications for European Sites, publication of the draft Development Consent Order, and a request for information issued by the Examining Authority on 25 November 2015
PD-012	Rules 8(3) and 17 Letter - Request for further information from specified parties and deadline for comments
PD-013	Notification of Completion of Examining Authority's Examination
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RR-001	Trinity House
RR-002	PD Teesports
RR-003	Anthony Sargent
RR-004	Bryan Evans
RR-005	David Sidebottom
RR-006	Victor Delstanche
RR-007	Natural England
RR-008	Maritime and Coastguard Agency
RR-009	Huntsman Polyurethanes UK Limited
RR-010	SABIC UK Petrochemicals Limited
RR-011	Northern Powergrid (Northeast) Limited
RR-012	National Grid
RR-013	Alan Wilson
RR-014	Mark Pickersgill
RR-015	Marine Management Organisation
RR-016	DEA UK SNS Limited
RR-017	Environment Agency
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Additional Submissions	
Documents accepted into examination at the Preliminary Meeting	
AS-001	G Christie
AS-002	Northumbrian Water Limited
AS-003	Network Rail Infrastructure Limited
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AS-005	Anglian Water
Additional submission following Rule 8 Letter	
AS-006	York Potash Ltd - Applicant's request for clarification of Examining Authority's First Written Questions and PINS response
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AS-007	ICI Chemicals and Polymers Limited. Land Registry Plan of Bran Sands Site. Additional to submission for Deadline 1 of 21 August 2015
AS-008	North Yorksnire County Council - Additional response to the Examining Authority's First Written Questions
Additional submissions following Hearings November 2015	
AS-008a	Marine Management Organisation - answer to Examining Authority's questions in DCO Hearing of 24 November 2015
AS-009	CATS Parties - submission to Compulsory Acquisition Hearing of 24 November 2015. Explanatory note for Risk Assessment of the interaction of York Potash & CATS pipeline
AS-010	Oil and Gas Authority-Comments on CATS Pipelines System's concerns regarding the possible routes of the conveyor system. Accepted at the discretion of the Examining Authority
Deadline 1 – 21 August 2015	
REP1-001	CATS Management Limited - Written representation
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REP1-005	DEA UK SNS Limited - Covering letter to the Planning Inspectorate
REP1-006	Huntsman Polyurethanes (UK) Limited - Covering Letter
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REP1-008	Huntsman Polyurethanes (UK) Limited - Summary of Written Representation
REP1-009	Huntsman Polyurethanes (UK) Limited - Response to the ExA's First Written Questions
REP1-010	Health & Safety Executive - Response to ExA's First Questions
REP1-011	ICI Chemicals and Polymers Limited - Written representation
REP1-012	Marine Management Organisation - Written representation and Response to the ExA's First Written Questions
REP1-013	National Grid - Written representation
REP1-014	Network Rail - Response to the ExA's First Written Questions
REP1-015	Natural England - Written representation, Summary and lists of Annexes
REP1-016	Natural England - Written Representation Annex A – Designated Site Maps
REP1-017	Natural England - Written Representation Annex B – Designated site conservation objectives and citations
REP1-018	North Yorkshire County Council - Response to the ExA's First Written Questions
REP1-019	PD Teesport Limited - Written Representation and Summary
REP1-020	PD Teesport Limited (Response to the ExA's First Written Questions)
REP1-021	Redcar and Cleveland Borough Council - Response to the ExA's First Written Questions

REP1-022	SABIC UK Petrochemicals Limited - Response to ExA's First Written Questions
REP1-023	SABIC UK Petrochemicals Limited - Written representation and Summary
REP1-024	SABIC UK Petrochemicals Limited - Covering Letter to the Planning Inspectorate
REP1-025	TATA Steel UK Limited and Others - Written representation, Summary and suggested Site Visit locations
REP1-026	Trinity House - Response to the ExA's First Written Questions
REP1-027	York Potash Limited - Covering Letter and Document list
REP1-028	York Potash Limited - Response to ExA's First Written Questions
REP1-029	York Potash Limited - Company Structure Diagram. Appendix 1 of Applicant's Response to the ExA's First Written Questions
REP1-030	York Potash Limited - Annual Report and Accounts. Appendix 2 of Applicant's Response to the ExA's First Written Questions
REP1-031	York Potash Limited - Hierarchy Diagram. Appendix 3 of Applicant's Response to the ExA's First Written Questions
REP1-032	York Potash Limited - Conveyor Options Study Supplementary Report. Appendix 4 of Applicant's Response to the ExA's First Written Questions
REP1-033	York Potash Limited - Contaminated Silt Disposal. Appendix 5 of Applicant's Response to the ExA's First Written Questions
REP1-034	York Potash Limited - Treatment of Contaminated Silt. Appendix 6 of Applicant's Response to the ExA's First Written Questions
REP1-035	York Potash Limited - Biodiversity Offsetting. Appendix 7 of Applicant's Response to the ExA's First Written Questions
REP1-036	York Potash Limited - Revised Screening and Integrity Matrices. Appendix 8 of Applicant's Response to the ExA's First Written Questions
REP1-037	York Potash Limited - Applicants Response to Relevant Representations
REP1-038	York Potash Limited - Draft Development Consent Obligation
REP1-039	York Potash Limited - Permanent Compound Site A plan

REP1-040	York Potash Limited - Permanent Compound Site C plan
REP1-041	York Potash Limited - Outline Construction Environmental Management Plan
REP1-042	York Potash Limited - Outline Ecological Management Plan
REP1-043	York Potash Limited - Updated Governance Tracker
REP1-044	York Potash Limited - Update Parameters Table
REP1-045	York Potash Limited - Applicant's draft Site Visit itinerary and location maps. Late submission for Deadline 1 of 21 August 2015
Local Impact Reports	
REP1-046	Redcar and Cleveland Borough Council
Statements of Common Ground (SoCG)	
REP1-047	Environment Agency - Response to ExA's First Questions and SoCG with Applicant
REP1-048	York Potash Limited - SoCG with Redcar and Cleveland Borough Council (Planning) and 9 Appendices
REP1-049	York Potash Limited - SoCG with Highways England
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REP1-051	York Potash Limited - SoCG with Natural England
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REP2-003	York Potash Ltd - Document 4.1A Draft DCO (Tracked)
REP2-004	York Potash Ltd - Document 4.2A Draft Explanatory Memorandum (Clean)
REP2-005	York Potash Ltd - Document 4.2A Draft Explanatory Memorandum (Tracked)

REP2-006	York Potash Ltd - Document 6.12 Mitigation and Monitoring Strategy
REP2-007	York Potash Ltd - Document 8.3 Applicant's Response to Written Representations
REP2-008	York Potash Ltd - Document 8.3 Appendix 1 - Notes on INSPIRE and NPL Guidelines
REP2-009	York Potash Ltd - Document 8.3 Appendix 2 – References
REP2-010	York Potash Ltd - Document 8.3 Appendix 3 - Constructability Notes
REP2-011	York Potash Ltd - Document 8.3 Appendix 4 - No 2 Tunnel Note)
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REP2-013	York Potash Ltd - Document 8.3 Appendix 5 - Shipping Notes Part 2
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REP2-015	York Potash Ltd - Document 8.4 Applicant's Responses to Other Responses to ExA Q1
REP2-016	York Potash Ltd - Letter to the Examining Authority dated 07 09 15
REP2-017	Environment Agency - Comments on responses to the Examining Authority's First Written Questions
REP2-018	Redcar and Cleveland Borough Council - Comments on responses to the Examining Authority's First Written Questions and other comments
REP2-019	Marine Management Organisation -Comments on responses to the Examining Authority First Written Questions
REP2-020	Tata Steel UK Limited and others - Comments on responses to Examining Authority's First Written Questions and Response to Comments on Relevant Representations
Deadline 3 – 2 October 2015	
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REP3-002	York Potash Ltd - Covering Letter to the Planning Inspectorate and Document List for Deadline 3
REP3-003	York Potash Ltd - Draft Development Consent Order (Clean)
REP3-004	York Potash Ltd - Draft Development Consent Order (with Tracked Changes)
REP3-005	York Potash Ltd - Submissions from Hearings 23-25 September 2015
REP3-006	York Potash Ltd - Network Rail s127. Appendix 1 of Submissions from Hearings
REP3-007	York Potash Ltd - Submission relating to Alternatives. Appendix 2 of Submissions from Hearings
REP3-008	York Potash Ltd - Dredging Note. Appendix 3 of Submissions from Hearings
REP3-009	York Potash Ltd - Decision Notices and s106 Agreements. Appendix 4 Parts 1 and 2 of Submissions from Hearings
REP3-010	York Potash Ltd - CIL Note. Appendix 5 of Submissions from Hearings
REP3-011	Royal Mail Group - Written Representation
REP3-012	Tata Steel UK Limited and Others - In lieu of oral submissions at Hearings on 24-25 September 2015. Late submission for Deadline 3
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REP4-001	Environment Agency - Response to ExA's second questions
REP4-002	Huntsman Polyurethanes (UK) Ltd - Response to ExA's second questions
REP4-003	Redcar and Cleveland Borough Council - Response to ExA's second questions
REP4-004	SABIC UK Petrochemicals Ltd - Response to ExA's second questions
REP4-005	CATS Parties - Update on Protective Provisions
REP4-006	CATS Management - update on discussions with applicant re Northern Conveyor Route

REP4-007	National Grid Electricity Transmission Plc - Withdrawing objection
REP4-008	P D Teesport Limited - Response to ExA's second questions
REP4-009	Natural England - Response to ExA's second questions
REP4-010	Marine Management Organisation - Response to ExA's second questions
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REP4-012	DEA UK SNS Limited - Response to ExA's second questions
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REP4-014	York Potash Ltd - Response to ExA's second questions and Appendices 1-5
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REP4-016	York Potash Ltd - 2.1A Land Plan Sheet 1 - Rev v4
REP4-017	York Potash Ltd - 2.1B(i) Land Plan Sheet 2(i) (Northern Route) - Rev v4
REP4-018	York Potash Ltd - 2.1B(ii) Land Plan Sheet 2(ii) (Southern Route) - Rev v4
REP4-019	York Potash Ltd - 2.1C Land Plan Sheet 3 - Rev v4
REP4-020	York Potash Ltd -2.1D Land Plan Inset 1 - Rev v4
REP4-021	York Potash Ltd - 2.1E Land Plan Inset 2 - Rev v4
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REP4-026	York Potash Ltd - 2.1J(i) Land Plan Inset 7(i) (Northern Route) - Rev v4
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REP4-028	York Potash Ltd - 2.1K Land Plan Inset 8 - Rev v4
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REP4-030	York Potash Ltd - 2.1M Land Plan Inset 10 - Rev v4
REP4-031	York Potash Ltd - 2.1N(i Land Plan Inset 11(i) (Northern Route) - Rev v4
REP4-032	York Potash Ltd - 2.1N(ii) Land Plan Inset 11(ii) (Southern Route) - Rev v4
REP4-033	York Potash Ltd - 3.15 Pipeline Corridor Plan Key Plan - Rev v4
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REP4-038	York Potash Ltd - 3.2B Layout Plans (Ground Level) Northern Route Sheet 1 Rev G
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REP4-054	York Potash Ltd - 4.1C Draft Development Consent Order (Tracked)
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REP4-057	York Potash Ltd - 5.3A Book of Reference (Clean)
REP4-058	York Potash Ltd - 5.3A Book of Reference (Tracked)
REP4-059	York Potash Ltd - 6.11A Outline Ecological Management Plan
REP4-060	York Potash Ltd - 6.12A Mitigation and Monitoring Strategy Rev 4
REP4-061	York Potash Ltd - 6.8B Governance Tracker
REP4-062	York Potash Ltd - 7.4B Development Consent Obligation (signed)
Deadline 5 – 20 November 2015	
REP5-001	Redcar and Cleveland Borough Council - Update on discussions with the applicant
REP5-002	Sahaviriya Steel Industries UK Limited (SSI) - Winding Up Order and update on discussions with applicant
REP5-003	Northern Powergrid (Northeast) Limited - Update on discussions with applicant

REP5-004	Marine Management Organisation - Comments on responses to the Examining Authority's second round of written questions
REP5-005	Tata Steel UK Limited - Tata/RBT's Comments on Responses to the Examining Authority's second round of written questions and two Appendices
Applicant's submissions	
REP5-006	York Potash Ltd - Covering Letter to the Planning Inspectorate
REP5-007	York Potash Ltd - Hierarchy Document
REP5-008	York Potash Ltd - 1.4E- Updated document list reflecting appropriate additions
REP5-009	York Potash Ltd - 8.7- Applicant's Responses to Other Parties Responses to the Examining Authority's second round of written questions
Deadline 6 – 16 December 2015	
REP6-001	Trinity House - No further comments on the drafy Development Consent Order
REP6-002	Marine Management Organisation - Response to Examining Authority's Questions
REP6-003	Marine Management Organisation - Additional information to Response to Examining Authority's questions
REP6-004	Natural England - Response to Examining Authority's Questions on the RIES issued on 25 November 2015
REP6-005	GTC group of companies - No comments
REP6-006	Redcar & Cleveland Borough Council - Withdrawal of objection to proposed conveyor bridge
REP6-007	Redcar & Cleveland Borough Council - No comments on the draft Development Consent Order or the RIES
REP6-008	Environment Agency - Comments on the Examining Authority's draft Development Consent Order and RIES
REP6-009	INEOS UK SNS Limited (INEOS) – formerly DEA UK SNS Limited (DEA) - Comments on the Examining Authority's draft Development Consent Order

REP6-010	INEOS UK SNS Limited (INEOS) – formerly DEA UK SNS Limited (DEA) - Relating to Schedule 9 – Protective Provisions
REP6-011	SABIC UK Petrochemicals Limited - Comments on the Examining Authority's draft Development Consent Order
REP6-012	SABIC UK Petrochemicals Limited - Relating to Schedule 9 – Protective Provisions
REP6-013	Huntsman Polyurethanes (UK) Limited - Comments on the Examining Authority's draft Development Consent Order
REP6-014	Huntsman Polyurethanes (UK) Limited - Relating to Schedule 9 – Protective Provisions
REP6-015	Tata Steel UK and Redcar Bulk Terminal - Comments on the Examining Authority's draft Development Consent Order
REP6-016	CATS parties - Statement of difference
REP6-017	CATS parties - 'Young Lady' Report
REP6-018	Historic England - Comments on the RIES and the Examining Authority's draft Development Consent Order. Accepted as a late submission for Deadline 6 at the discretion of the Examining Authority
Applicant's submissions	
REP6-019	York Potash Ltd - Covering Letter and Document List
REP6-020	York Potash Ltd - Constructability Notes - BP CATS Pipeline Northern Route
REP6-021	York Potash Ltd - Constructability Notes - BP CATS Pipeline Southern Route
REP6-022	York Potash Ltd - 3.16 Access Around the RBT Conveyor
REP6-023	York Potash Ltd - 4.1D draft Development Consent Order (Clean)
REP6-024	York Potash Ltd - 4.1D draft Development Consent Order (Tracked)
REP6-025	York Potash Ltd - 5.3B Book of Reference (Clean)
REP6-026	York Potash Ltd - 5.3B Book of Reference (Tracked)
REP6-027	York Potash Ltd - 6.10A Outline Construction Environmental Management Plan

REP6-028	York Potash Ltd - 6.11B Outline Ecological Management Plan
REP6-029	York Potash Ltd - 8.8 Applicant's Comments on the Examining Authority's draft Development Consent Order
REP6-030	York Potash Ltd - 8.9 Applicant's Response to Rule 17 Letter of 25 November 2015 and Comment on the RIES
REP6-031	York Potash Ltd - 8.10 Schedule of Changes to the draft Development Consent Order
REP6-032	York Potash Ltd - 8.11 Applicant's Response to BP CATS Objection to Southern Conveyor Route
Deadline 7 – 30 December 2015	
REP7-001	Gill Christie - comments on the RIES
REP7-002	Huntsman Polyurethanes (UK) Limited - Comments on the Applicant's Schedule of Changes to the draft Development Consent Order submitted at Deadline 6
REP7-003	CATS Parties - Statement of Response to the Applicant's document 8.11 for Deadline 6
REP7-004	Tata Steel UK and Redcar Bulk Terminal - Confirmation of the Applicant's submission for Deadline 7
REP7-005	Marine Management Organisation - No further comments
REP7-006	Redcar & Cleveland Borough Council - No further comments
REP7-007	INEOS UK SNS Limited (INEOS) – formerly DEA UK SNS Limited (DEA) - Comments on the Applicant's Schedule of Changes to the draft Development Consent Order submitted at Deadline 6
REP7-008	SABIC UK Petrochemicals Limited - Comments on the Applicant's Schedule of Changes to the draft Development Consent Order submitted at Deadline 6
Applicant's submissions	
REP7-009	York Potash Ltd - Response to Tata Steel UK and Redcar Bulk Terminal's submission for Deadline 6
REP7-010	York Potash Ltd - Covering Letter and Attachment
REP7-011	York Potash Ltd - 1.4G Document List

REP7-012	York Potash Ltd - 8.12 Applicant's Responses to other parties submissions for Deadline 6
Deadline 8 -13 January 2016	
REP8-001	Northern Powergrid (Northeast) Limited - Withdrawal of representations
REP8-002	Redcar & Cleveland Borough Council
REP8-003	GTC group of companies - No comments
REP8-004	Environment Agency
REP8-005	Marine Management Organisation
Applicant's submissions	
REP8-006	York Potash Ltd - Covering email, letter and 1.4H - Document List
REP8-007	York Potash Ltd - Draft Development Consent Order (Clean)
REP8-008	York Potash Ltd - Draft Development Consent Order (Tracked)
REP8-009	York Potash Ltd - Draft Development Consent Order (Comparite with version 4.1)
REP8-010	York Potash Ltd - Draft Development Consent Order (Comparite with version 4.1C)
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REP9-001	Northumbrian Water
REP9-002	CATS Parties
REP9-003	SABIC UK Petrochemicals Limited, Huntsman Polyurethanes (UK) Limited and INEOS UK SNS Limited
REP9-004	Redcar & Cleveland Borough Council
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REP9-006	York Potash Ltd - Submission 2
Late Submission	
REP9-007	York Potash Ltd - Submission 3

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Compulsory Acquisition Hearing – 24 September 2015	
EV-004	Compulsory Acquisition Hearing Agenda
EV-005	ICI Chemicals & Polymers Limited - Withdrawal of representation submitted on 21 August 2015
EV-006	Tata Steel UK Limited - submission prior to CA Hearing
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EV-008	Audio Recording of the Compulsory Acquisition Hearing 24 September 2015
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EV-011	Development Consent Order Hearing Agenda 25 September 2015
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EV-013	National Grid - submission prior to DCO hearing
EV-014	Audio recording of DCO hearing
Compulsory Acquisition Hearing – 24 November 2015	
EV-015	Compulsory Acquisition Hearing Agenda 24 November 2015
EV-016	Audio Recording of the Compulsory Acquisition Hearing 24 November 2015

Draft Development Consent Order Hearing – 24 November 2015	
EV-017	Development Consent Order Hearing Agenda 24 November 2015
EV-017a	Examining Authority's questions at the Development Consent Order Hearing of 24 November 2015
EV-018	Audio Recording of the Development Consent Order Hearing 24 November 2015
Other Documents	
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OD-002	Transboundary Screening Matrix
OD-003	York Potash Ltd - Applicant's Newspaper Notices of Hearings on 24 November 2015

APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
ALARP	As Low As Reasonably Practicable
Antin	Antin Infrastructure Partners
AP	Affected Person
AQMA	Air Quality Management Area
BAP	Biodiversity Action Plan
BP	Amoco (UK) Exploration Company LLC
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CATS	CML CATS Parties
Cefas	Centre for Environment, Fisheries and Aquaculture Science
CEMP	Construction Environmental Management Plan
COMAH	Control of Major Accident Hazards Regulations
CPNI	Centre for Protection of National Infrastructure
CTMP	Construction Traffic Management Plan
DCLG	Department for Communities and Local Government
DCO	Development Consent Order
DML	Deemed Marine Licence
DPD	Development Plan Document
EA	Environment Agency
EEA	European Economic Area
EIA	Environmental Impact Assessment
EMP	Ecological Management Plan
EPA1990	Environmental Protection Act 1990
ES	Environmental Statement
ExA	Examining Authority
FDC	Flood Defence Consents
FOCI	Features of Conservation Interest
FRA	Flood Risk Assessment
GEART	Guidelines for the Environmental Assessment of Road Traffic
GES	Good Environmental Status
HE	Highways England
HEART	the Human Error Assessment and Reduction Technique
HMR	Hot Metal Rail
HRA	Habitats Regulations Assessement
ICI	ICI Chemicals and Polymers Limited
IP	Interested Parties
ISH	Issue Specific Hearing
LIR	Local Impact Report
LSE	Likely Significant Effects
LWS	Local Wildlife Site
MAHP	Major Accident Hazard Pipeline
MCA	Marine and Costal Access Act
MCZ	Marine Conservation Zone

Abbreviation or usage	Reference
MHF	Materials Handling Facility
MMO	Marine Management Organisation
MMS	Mitigation and Monitoring Strategy
MPS	Marine Policy Statement
MSFD	Marine Strategy Framework Directive
National Grid	National Grid Electricity Transmission Plc
NE	Natural England
NEIFCA	North Eastern Inshore Fisheries and Conservation Authority
NERC	The Natural Environment and Rural Communities Act
NNR	National Nature Reserve
NPG	Northern Powergrid (Northeast) Limited
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPSE	Noise Policy Statement for England
NSIP	Nationally Significant Infrastructure Project
NWL	Northumbrian Water
NYMNP	North York Moors National Park
NYMNPA	North York Moors National Park Authority
OFH	Open Floor Hearing
PA2008	The Planning Act 2008
PCU	Passenger Car Units
PHE	Public Health England
PRoW	Public Rights of Way
PSED	Public Sector Equalities Duty
QRA	Quantitative Risk Assessment
R2P2	'Reducing Risks, Protecting People: HSE's decision-making process' HSE, 2001
RBMP	River Basin Management Plan
RBT	Redcar Bulk Terminal
RCBC	Redcar & Cleveland Borough Council
RIES	Report on the Implications for European Sites
SAC	Special Areas of Conservation
SCI	Sites of Community Importance
Sembcorp	Sembcorp Utilities (UK) Limited
SFRA	Strategic Flood Risk Assessment
SNCB	Statutory Nature Conservation Body
SoCG	Statement of Common Ground
SoS	Secretary of State
SPA	Special Protection Area
SSI	Sahaviriya Steel Industries UK
SSSI	Sites of Special Scientific Interest
Tata	Tata Steel UK Limited
TCPA1990	Town & Country Planning Act 1990
TGPP	Teesside Gas Processing Plant
UK	United Kingdom
WFD	Water Framework Directive
YPL	York Potash Limited

Abbreviation or usage	Reference
YPP	York Potash Project

APPENDIX D: RECOMMENDED DCO

S T A T U T O R Y I N S T R U M E N T S

200[ ] No. 0000

INFRASTRUCTURE PLANNING

The York Potash Harbour Facilities Order 201[X]

Made - - - - *[**]*

Coming into force - - *[**]*

CONTENTS

PART 5
POWERS OF ACQUISITION

PART 6
MISCELLANEOUS AND GENERAL

SCHEDULES

An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**a**) for and order under sections 37, 114, 115, 120 and 122 of the Planning Act 2008(**b**) (the 2008 Act").

The development which is the subject of the application is a nationally significant infrastructure project within the terms of section 24 of the 2008 Act.

The single appointed person was appointed by the Secretary of State in accordance with Chapter 3 of Part 6 of the 2008 Act and examined the application in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**).

The single appointed person has considered the presentations made and not withdrawn and the application, together with accompanying documents, and has submitted a report to the Secretary of State in accordance with section 83 of the 2008 Act.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has decided to make an Order granting development consent for the development described in the application and consent for ancillary works with modifications which, in the opinion of the Secretary of State, do not make any substantial change to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 122 of, and paragraphs 1 to 3, 10 to 12, 14 to 17, 24, 26, 30A to 32, 32B to 34, 36, and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order.

PART 1

PRELIMINARY

Citation

1. This Order may be cited as The York Potash Harbour Facilities Order 201X and will come into force on [ ] 201X.

(**a**) S.I. 2009/2264, as amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/2654, S.I. 2012/635, S I. 2012/2732, and S.I. 2013/522.
(**b**) 2008 c29 as amended by Localism Act 2011 (c.20), the Marine and Coastal Access Act 2009 (c.23), the Growth and Infrastructure Act 2013. and the Infrastructure Act 2015 (c.7).
(**c**) S.I.2010/103, as amended by S.I.2012/635.

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**a**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**b**);

"the 1966 Act" means the Tees and Hartlepools Port Authority Act 1966(**c**);

"the 1980 Act" means the Highways Act 1980(**d**);

"the 1990 Act" means the Town and Country Planning Act 1990(**e**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**f**);

"the 2008 Act" means the Planning Act 2008;

"the 2009 Act" means the Marine and Coastal Access Act 2009(**g**);

"the 2009 EIA Regulations" means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(**h**);

"address" includes any number or address used for the purposes of electronic transmission;

"area of seaward construction activity" means the area of the sea within the Order limits;

"authorised development" means the nationally significant infrastructure project and associated development described in Schedule 1 (authorised development) and any other

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(**a**) 1961 c.33. Section 2 was repealed by article 5(1), (2) to, and paragraphs 36 and 38 of Schedule 1 to, S.I. 2009/1307. There are other amendments to the 1961 Act which are not relevant to this Order.

(**b**) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Section 11(1) and sections 30, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 62(3) and 139 of and paragraphs 27, 28(1), (2) and (3) of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 4 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by article 5 of, and paragraphs 59 and 70 of Schedule 1 to, the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009. Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 25 was also amended by Section 59(5) of, and paragraphs 4(1) and (3) of Part 2 of Schedule 11 of, the Constitutional Reform Act 2005. Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

(**c**) 1966 c.25.

(**d**) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), (3) and (4) were amended by sections 8 and 102 of, and paragraph (1) of Schedule 4 and Schedule 17to, the Local Government Act 1985 (c.51); section 1 (2A) was inserted by, and section 1(3) was amended by, section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1 (3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47 (a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) and Section 68 and Part 1 of Schedule 4 of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3), of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.

(**e**) 1990 c.8. Section 78(1)(c) was amended by section 121 and paragraphs 1 and 11 of Schedule 12 to the Localism Act 2011; Section 78(2) was amended by section 17(2) of the Planning and Compensation Act 1991 and by section 1(2) and paragraphs 1 and 8 of Schedule 1 to the Growth and Infrastructure Act 2013; Section 78(2)(aa) was amended in part by section 43(2) and (5) and by section 123(1) and (3) of the Localism Act 2011; Section 78(4A) – (4D) was inserted by section 197 and paragraphs 1 and 2 of Schedule 11 to the Planning Act 2008; Section 78(5) was amended by section 196(4) and in part by paragraphs 1 and 3 of Schedule 10 and by article 3 and paragraphs 1 and 3 of the Schedule to S.I. 2014/2773; There are other amendments to the 1990 Act which are not relevant to this Order.

(**f**) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4) and 83(3) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(**g**) 2009 c.23.

(**h**) S.I. 2009/2263, as amended by S.I. 2011/988, S.I. 2011/1043, S.I. 2012/635 and S.I. 2012/787.

development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act and any works carried out pursuant to the requirements;

"the book of reference" means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order (Document 5.B);

"building" includes any structure or erection or any part of a building, structure or erection but, for the purposes of article 30 shall not include a pipeline or its related apparatus;

"carriageway" has the same meaning as in the 1980 Act;

"clay" means dredged materials with a diameter of less than 31.25 micrometres;

"commence" means—

(a) in relation to any activities licensed by the DML begin to carry out any of those activities except for pre-construction surveys and monitoring;

(b) in any other case, begin to carry out any material operation (as defined in section 155 of the 2008 Act) in respect of or forming part of the authorised development except for operations consisting of site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, the diversion and laying of services, the erection of any temporary means of enclosure and the temporary display of site notices or advertisements;

and "commencement" must be construed accordingly;

"constructability notes" means the following documents certified as the constructability notes by the Secretary of State for the purposes of this Order—

N014 - Constructability Issues Rev 2 – SABIC UK

N015 - Constructability Issues Rev 2 – Huntsman

N016 - Constructability Issues Rev 2 – DEA

N021 - Constructability Issues Rev 2 – NWL

N022- Constructability Issues Rev 4 – TATA/SSI – Hot Metal Railway

N023 - Constructability Issues Rev 4 – TATA/SSI – SSI Road

N024 - Constructability Issues Rev 1 – NWL – Access Road Bridge

N029 - Constructability Issues Rev 8 – BP CATS – Northern Route

"conveyor route (northern)" means the route shown as the northern conveyor route on the conveyor route plans;

"conveyor route plans" means the plans certified as the conveyor route plans by the Secretary of State for the purposes of this Order (Documents 3.3H-O);

"DML" means the deemed marine licence included in Schedule 5;

"dredging" means using any device to move material (whether or not suspended in water) from one part of the sea or sea bed to another part;

"ecological mitigation works" means the mitigation measures set out in the outline ecological management plan;

"environmental statement" means the document certified by the Secretary of State as the environmental statement for the purposes of this Order (Documents 6.4 and 6.5);

"further environmental report" means any report required to assess the likely impact of phase 2(a) and (b) in the event of phases 2(a) and 2(b) not commencing within six years of the completion of phase 1 and there being changes to the baseline conditions which materially affect the assessment of the likely impacts arising from phase 2(a) and 2(b) identified in the environmental statement;

"governance tracker" means the governance tracker certified by the Secretary of State for the purposes of this Order (Document 6.8B);

"gravel" means dredged materials with a diameter of at least 2 and less than 64 millimetres;

"the harbour master" means the harbour master appointed by the Tees Port Authority and includes the harbour master's deputies and assistants;

"highway" and "highway authority" have the same meaning as in the 1980 Act;

"highway works plan" means the plan certified by the Secretary of State as the highway works plan for the purposes of this Order (Document 3.14);

"lagoon" means the area identified as Works No.3 on the works plans;

"lagoon habitat enhancement works" means the works for habitat enhancement in the lagoon approved pursuant to the deemed marine licence in Schedule 5;

"the land plans" means the plans certified as the land plans by the Secretary of State for the purposes of this Order (Documents 2.1, 2.1A-2.1B(i), 2.1C-2.1J(i) and 2.1K-2.1N(i));

"level of high water" means the level of mean high-water springs;

"licensed activity" means any activity described in Part 2 of Schedule 5;

"licensed area" means the area within which any licensed activity takes place;

"limits of deviation" means the limits of deviation shown or referred to on the works plans;

"local planning authority" means Redcar and Cleveland Borough Council;

"maintain" includes to inspect, repair, adjust, alter, remove, clear, refurbish, demolish, replace or improve unless that activity would result in a significant environmental effect not assessed in the environmental statement and any derivative of "maintain" is to be construed accordingly;

"materials handling facility" means the facility to be located at Wilton International being the subject of planning permission reference R/2014/0626/FFM dated 19 August 2015;

"materials management plan" means a plan which sets out the measures to be adopted when excavating and handling potentially contaminated soil to minimise the risk of cross contamination;

"mean high water springs" means the average of high water heights occurring at the time of spring tides;

"mitigation and monitoring strategy" means the mitigation and monitoring strategy certified by the Secretary of State for the purposes of this Order (Document 6.12A);

"MMO" means the Marine Management Organisation created under the 2009 Act or any successor to its functions;

"Notice to Mariners" means any notice to mariners which may be issued by the Admiralty, Trinity House, the Queen's harbourmasters, government departments or harbour and pilotage authorities advising mariners of important matters affecting navigational safety;

"Order land" means the land shown on the land plans which is within the boundary of the land required for or affected by the proposed development, and is land in respect of which rights are to be acquired and extinguished as described in the book of reference;

"the Order limits" means the limits shown on the works plans as the limits within which the authorised development and works may be carried out;

"outline ecological management plan" means the document certified as the outline ecological management plan by the Secretary of State for the purposes of this Order (Document 6.11B);

"owner", in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(**a**);

"parameters table" means the parameters table certified as the parameters table by the Secretary of State for the purposes of this Order (Document 6.9A);

"PD Teesport " means PD Teesport Limited, company reference number 02636007, whose registered office is situate at 17 – 27 Queens Square Middlesborough TS2 1AH;

(**a**) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

"phase 1" means that part of the authorised development required to be completed in order to facilitate the movement of 6.5 million tonnes per annum of polyhalite comprising in summary—

(a) site compounds;

(b) construction of a quay 28 metres wide and 280 metres in length including ship loader and ship loader rails;

(c) dredging of up to 750,000m^3 of material from the approach channel and berth pocket;

(d) lagoon habitat enhancement works;

(e) installation of a surge bin;

(f) installation of conveyor system and transfer towers;

(g) construction of buildings and parking area;

(h) erection of security fencing; and

(i) provision of ancillary infrastructure;

"phase 2" means that part of the authorised development required to be completed in order to facilitate the movement of 13 million tonnes per annum of polyhalite comprising in summary—

(a) extension of quay to provide total quay length of 486 metres including ship loader and ship loader rails;

(b) dredging of up to 372,000m^3 of material from the approach channel and berth pocket;

(c) installation of second surge bin;

(d) installation of second conveyor within the conveyor housing installed during phase 1; and

(e) provision of ancillary infrastructure;

"pipeline corridor" means the corridor shown coloured yellow on the pipeline corridor plans;

"pipeline corridor plans" means the plans certified by the Secretary of State as the pipeline corridor plans for the purposes of this Order (Documents 3.15A – C);

"protective provision" means the provisions contained in Schedules 7 to 11;

"the quay limits" means the area bounded by co-ordinates listed in Schedule 6 (quay limits);

"requirement" means the requirement set out in the relevant paragraph of Schedule 2;

"sand" means dredged materials with a diameter of at least 62.5 micrometres and less than 2 millimetres;

"sea" means any area submerged at mean high water spring tide and the waters of every estuary, river or channel, so far as the tide flows at mean high water spring tide;

"sea bed" means the ground under the sea;

"silt" means dredged materials with a diameter of at least 31.25 and less than 62.5 micrometres;

"statutory undertaker" means any person falling within the definition of statutory undertaker in section 127(8) of the 2008 Act;

"street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"the Tees Port Authority" means PD Teesport in its role as harbour authority for the River Tees;

"tidal work" (without prejudice to paragraph 2 of Schedule 11 to this Order) means so much of any work or operation authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;

"the tribunal" means the Lands Chamber of the Upper Tribunal;

"Trinity House" means the Corporation of Trinity House of Deptford Strond;

"TY150" means the area bounded by co-ordinates (54°41.89'N, 00°57.40'W), (54°41.40'N, 00°58.69'W), (54°42.30'N, 00°59.89'W) and (54°42.59'N, 00°58.60'W);

"the undertaker" means Sirius Minerals Plc (Company Registration Number 4948435) and York Potash Limited (Company Registration Number 07251600);

"vertical deviation plans" means the plans certified as the vertical deviation plans by the Secretary of State for the purposes of this Order (Documents 3.11A and 3.11B);

"vessel" means every description of vessel or water-borne structure, however propelled, moved or constructed, and includes displacement and non-displacement craft, personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over or placement in water and which is at the time in, on or over water;

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or public drain;

"WGS84" means World Geodetic System 1984;

"works area" means the area of land shown on the works plans within which a numbered work is to be carried out; and

"the works plans" means the plans certified as the works plans by the Secretary of State for the purposes of this Order (Documents 2.2A-F).

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development will be taken to be measured along that work.

(4) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development) and to numbered requirements are to the numbered requirements as numbered in Schedule 2 (requirements).

(5) All areas described in square metres in the book of reference are approximate.

(6) Where the term approximate preceeds a figure of measurement or quantum then the flexibility accorded by that word shall be limited by the parameters in the parameters table and must not be used to authorise any works which would result in significant environmental effects which have not been assessed in the environmental statement.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) The undertaker is granted development consent for the authorised development, to be carried out and used subject to the provisions of this Order within the Order limits and subject to the requirements and protective provisions.

(2) It does not constitute a breach of the terms of this Order, if, following the coming into force of this Order, any development, or any part of a development, is carried out or used within the Order limits under planning permission granted, on application, under the 1990 Act.

Parameters of authorised development

4.—(1) The authorised development must be carried out in accordance with the parameters shown on the parameters table and in carrying out the authorised development the undertaker may—

(a) deviate laterally from the lines or situations of the authorised development to the extent of the limits of deviation;

(b) in respect of Works No.4 deviate vertically to the extent shown on the vertical deviation plan; and

(c) in respect of any boundary between the areas of two works numbers deviate laterally by 20 metres either side of the boundary as noted on the works plans with the exception of the boundary between Works No. 1 and Works No. 2, any boundary with Works No. 3 and any boundary with Works No. 4 to which this shall not apply.

(2) Schedule 6 shall have effect for the purposes of defining the quay limits for the purposes of Schedule 1 and Schedule 5.

Maintenance of authorised development

5. Subject to the requirements and the protective provisions the undertaker may maintain the authorised development.

Provision of works

6.—(1) The undertaker may from time to time within the Order limits provide and operate the authorised development together with works ancillary to the authorised development, as may be necessary or convenient for the construction and/or operation of the authorised development, and for these purposes the undertaker may construct and maintain roads, railway lines, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and such other works and conveniences as may be necessary or expedient.

(2) Without limitation on the scope of paragraph (1) the undertaker may within the Order limits carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the authorised development, including—

(a) works for the accommodation or convenience of vessels (including but not limited to berthing heads, mooring posts, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons);

(b) works to divert, remove or replace apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines; and

(c) landscaping and other works to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works.

(3) Nothing in this article authorises—

(a) any works that would give rise to any significant environmental effects not assessed in the environmental statement; and

(b) the construction of railway lines, buildings, sheds, offices, workshops, depots, electrical substation, container handling equipment or weighbridges within the pipeline corridor or within the lagoon.

Benefit of Order

7. Subject to article 8 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

Consent to transfer benefit of Order

8.—(1) Subject to the provisions of this Order the undertaker may, with the written consent of the Secretary of State—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order (including the DML) and such related rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related rights as may be so agreed.

(2) The powers of paragraph (1)(a) may only be exercised by the undertaker or a transferee.

(3) A lessee ('the granting lessee') may not make a grant under paragraph (1)(b)—

(a) for a longer period than the period of the grant to the granting lessee; or

(b) conferring any benefit or rights that is not conferred by the grant to the granting lessee.

(4) Where an agreement has been made in accordance with paragraph (1), references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(5) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(6) Despite anything contained in Part 4 of the 2009 Act (marine licensing), but subject to paragraph (5), the undertaker may transfer or grant relevant provisions to another person under paragraph (1) (section 72(7) and (8) of the 2009 Act do not apply to such a transfer or grant).

(7) Before seeking the Secretary of State's consent to a transfer or grant of relevant provisions under paragraph (1), the undertaker must—

(a) consult the MMO; and

(b) provide the MMO with—

(i) details of the relevant provisions proposed to be transferred or granted; and

(ii) the information that the undertaker proposes to provide under paragraph (9).

(8) Before consenting to a transfer or grant of relevant provisions under paragraph (1), the Secretary of State must consult the MMO.

(9) As soon as is reasonably practicable but in any event no later than 7 days after the coming into effect of a transfer or grant of relevant provisions to another person, the transferor or grantor must give written notice to the MMO of—

(a) the name and contact details of the other person;

(b) the date on which the transfer or grant took effect;

(c) the relevant provisions transferred or granted;

(d) the restrictions, liabilities and obligations that, pursuant to paragraph (2), apply in relation to the exercise by the other person of any benefits or rights conferred by the transfer or grant;

(e) where relevant, a plan showing the works or areas to which the transfer or grant relates; and

(f) in a case where the Secretary of State's consent is needed for the transfer or grant, a copy of the consent.

(10) In this article "relevant provisions" means any of the provisions set out in the DML.

Application and modification of legislative provisions

9.—(1) Where an application is made to the local planning authority for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

(a) sections 78 (right of appeal in relation to planning decisions) and 79 of the 1990 Act (determination of appeals); and

(b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

(3) Where an application is made to the MMO for any consent, agreement or approval required under the DML, the following provisions apply, as if the consent, agreement or approval of the MMO was required by a condition imposed on a grant of planning permission—

(a) sections 78 (right of appeal in relation to planning decisions) and 79 of the 1990 Act (determination of appeals); and

(b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(4) For the purposes of paragraph (3), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

(5) Paragraphs (1), (2), (3) and (4) above shall only apply in so far as those provisions are not inconsistent with the 2009 EIA Regulations and any orders, rules or regulations made under the 2008 Act.

(6) Article 3 of, and Part 17 in Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995(**a**) apply as if this Order were a grant of planning permission and the undertaker were a statutory undertaker in respect of the authorised development.

PART 3

STREETS

Street works

10.—(1) Subject to paragraph (5) the undertaker may, for the purposes of the authorised development, enter on any of the streets within the Order limits and may—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) tunnel or bore under the street;

(c) place apparatus in the street;

(d) maintain apparatus in the street or change its position; and

(e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) In this article "apparatus" has the same meaning as in Part 3 of the 1991 Act.

(**a**) S.I. 1995/418 as amended by S11999/293, S.I. 2003/2155 and S.I.2011/1824

(5) No works to streets within the public highway can be carried out pursuant to this article without the prior written consent of the highway authority which may attach reasonable conditions to any consent.

(6) If the highway authority which receives an application for consent under paragraph (5) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted approval.

Temporary stopping up of streets

11.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street within the Order Limits and may for any reasonable time—

(a) divert the traffic from the street; and

(b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker shall provide reasonable access for pedestrians and, where reasonably practicable, going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) Any person who suffers loss by the suspension of any private right of way under this article may be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) No stopping up alteration or diversion of any streets within the public highway pursuant to this article can be carried out without the prior written consent of the highway authority which may attach reasonable conditions to any consent.

(5) If the highway authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted approval.

Access to works

12.—(1) The undertaker may, for the purposes of the authorised development and with the prior written consent of the highway authority, form and layout such means of access to a public highway or improve existing means of access to a public highway, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If the highway authority which receives an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted approval.

(3) The consent of the highway authority is not required for the carrying out of the works to improve the existing means of access shown on the highway works plan.

Agreements with highway authority

13.—(1) A highway authority and the undertaker may enter into agreements with respect to—

(a) the strengthening, improvement, repair or reconstruction of any street required as a result of the exercise of the powers conferred by this Order;

(b) any stopping up, alteration or diversion of a street as part of or to facilitate the authorised development; or

(c) the carrying out in the street of any of the works referred to in article 10(1) (street works).

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

(a) make provision for the highway authority to carry out any function under this Order which relates to the street in question;

(b) include an agreement between the undertaker and highway authority specifying a reasonable time for the completion of the works; and

(c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

14.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) will be determined as if it were a dispute under section 106 of the Water Industry Act 1991(**a**) (right to communicate with public sewers).

(3) The undertaker may not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but can not be unreasonably withheld.

(4) The undertaker may not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker may not, in carrying out or maintaining works under the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker will take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010(**b**) (requirement for an environmental permit).

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(**c**), an internal drainage board, a joint planning board, a local authority, or a sewerage undertaker; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(**d**) have the same meaning as in that Act.

Protective work to buildings

15.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or

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(**a**) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to section 106 which are not relevant to this Order.
(**b**) S.I. 2010/675, to which there are amendments not relevant to this Order.
(**c**) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1954 Act which are not relevant to this Order.
(**d**) 1991 c.57.

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

(a) enter the building and any land within its curtilage; and

(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

(a) a right under paragraph (1) to carry out protective works to a building;

(b) a right under paragraph (3) to enter a building and land within its curtilage;

(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or

(d) a right under paragraph (4)(b) to enter land.

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice in writing of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice in writing within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 40 (arbitration and expert determination).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

(a) protective works are carried out under this article to a building; and

(b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance).

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article "protective works" in relation to a building means—

(a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and

(b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

16.—(1) The undertaker may for the purposes of this Order enter on any land above the level of mean high water springs shown within the Order limits and—

(a) survey or investigate the land;

(b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigations of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice in writing has been served on every owner, who is not the undertaker, and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

(a) must, if so required upon entering the land, produce written evidence of their authority to do so; and

(b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article—

(a) in land located within the highway boundary without the written consent of the highway authority; or

(b) in a private street without the written consent of the street authority,

but such consent can not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Nothing in this article overrides any requirement to obtain permits or consents under the Conservation of Habitats and Species Regulations 2010(**a**) or the Wildlife and Countryside Act 1981(**b**).

Tidal works not to be executed without approval of Secretary of State

17.—(1) Unless its construction has commenced within 5 years of the coming into force of this Order, no tidal work is to be constructed, altered or relaid except in accordance with plans and sections approved in writing by the Secretary of State (following consultation with the MMO) and subject to any conditions and restrictions imposed by the Secretary of State before that work is begun.

(2) If a tidal work is constructed, altered or relaid in contravention of paragraph (1) or of any condition or restriction imposed under that paragraph—

(a) the Secretary of State may by notice in writing require the undertaker at its own expense to remove the tidal work or any part of it and restore the site to its former condition; and, if on the expiration of 30 days beginning with the date when the notice is served on the undertaker it has failed to take reasonable steps to comply with the requirements of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; or

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(**a**) S.I. 2010/490, as amended by S.I. 2011/625 and S.I. 2012/1927.
(**b**) 1981 c. 69.

(b) if it appears to the Secretary of State urgently necessary so to do, the Secretary of State may remove the tidal work, or part of it, and restore the site to its former condition,

and any expenditure incurred by the Secretary of State in doing so is recoverable from the undertaker.

Abatement of works abandoned or decayed

18.—(1) Where a tidal work is abandoned, or allowed to fall into decay, the Secretary of State may by notice in writing (and following consultation with the MMO) require the undertaker at its own expense either to repair and restore that work or any part, or to remove that work and restore the site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or allowed to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion of it, in any notice under this article.

(3) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; and any expenditure incurred by the Secretary of State in doing so is recoverable from the undertaker.

Lights on tidal works etc. during construction

19.—(1) The undertaker must, at or near—

(a) a tidal work, including any temporary work; or

(b) any plant, equipment or other obstruction placed, in connection with any authorised development or any work authorised by article 6 (provision of works), within the area of seaward construction activity,

during the whole time of the construction, alteration or relaying, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State and the Tees Port Authority or, failing agreement between them, the Secretary of State may from time to time direct.

(2) Subject to article 33 (defences to proceedings) if the undertaker fails to comply in any respect with a direction given under paragraph (1) it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale and on conviction or indictment to a fine.

Provision against danger to navigation

20.—(1) In case of damage to, or destruction or decay of, a tidal work or any part of it, the undertaker must as soon as reasonably practicable notify the Tees Port Authority and must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as the Tees Port Authority may from time to time direct.

(2) Subject to article 33 (defence to proceedings) if the undertaker fails to comply in any respect with a direction given under paragraph (1) it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale and on conviction or indictment to a fine.

Permanent lights on tidal works

21.—(1) After the completion of a tidal work the undertaker must at the outer extremity of it exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as the Tees Port Authority may from time to time direct.

(2) Subject to article 33 (defence to proceedings) if the undertaker fails to comply in any respect with a direction given under paragraph (1) it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale and on conviction or indictment to a fine.

Power to charge

22. The undertaker may from time to time demand, take and recover such charges for the use of the authorised development (including the loading and unloading of goods) or the use of any other services or facilities provided in connection with the authorised development as it thinks fit.

PART 5

POWERS OF ACQUISITION

Guarantees in respect of payment of compensation

23.—(1) The undertaker must not exercise a power conferred by this Part 5 (Powers of acquisition) unless guarantees or alternative forms of security in respect of the liability of the undertaker to pay compensation under this Part are in place.

(2) The form of guarantee or security referred to in paragraph (1), and the amount guaranteed or secured, must be approved by the local planning authority; but such approval must not be unreasonably withheld.

(3) The undertaker must provide the local planning authority with such information as the local planning authority may reasonably require relating to the interests in the land affected by the exercise of the powers conferred by this Part 5 for the local planning authority to be able to determine the adequacy of the proposed guarantee or security including—

(a) the interests affected; and

(b) the undertaker's assessment, and the basis of the assessment, of the level of compensation.

(4) A guarantee or other security given in accordance with this article that guarantees or secures the undertaker's payment of compensation under this Part 5 is enforceable against the guarantor or provider of security by any person to whom such compensation is properly payable.

Compulsory acquisition of rights

24.—(1) The undertaker may create and acquire compulsorily the new rights and impose the restrictions described in part 1 of Schedule 3 excluding any interests owned by The Queen's most Excellent Majesty in right of Her Crown.

(2) Subject to the provisions of this article and to the protective provisions contained in Schedules7, 8, 9, 10 and 11, all private rights over land subject to the compulsory acquisition of rights under the Order are extinguished in so far as their continuance would be inconsistent with the carrying out and use of the authorised development.

(a) as from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under Section 11(1) of the 1965 Act(**a**) in pursuance of the right,

whichever is the earliest.

(3) Part 2 of Schedule 3 (modification of compensation and compulsory purchase enactments for the creation of new rights and restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article.

(4) Subject to section 8 of the 1965 Act as substituted by paragraph 5 of Part 3 of Schedule 3 to this Order, where the undertaker creates a new right in, on, over or under land under paragraph (1) the undertaker cannot be required to acquire a greater interest in that land.

(5) Any person who suffers loss by the extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Power to override easements and other rights

25.—(1) Any authorised activity undertaken by the undertaker which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title under it) is authorised by this Order if it is done in accordance with the terms of this Order, regardless of whether it involves—

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to the user of the land arising by virtue of a contract.

(2) In this article "authorised activity" means—

(a) the erection, construction or carrying out, or maintenance of any building or works on land;

(b) the erection, construction or maintenance or anything in, on, over or under land; or

(c) the use of any land.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(4) Nothing in this article authorises interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is—

(a) a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or

(b) a right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.

(5) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest or right is extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences.

(6) In respect of any interference, breach, extinguishment, abrogation or discharge under this article, compensation—

(a) is payable under section 7 or 10 of the 1965 Act; and

(b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where—

(i) the compensation is to be estimated in connection with a purchase under those acts; or

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(**a**) Section 11(1) was amended by Section 34(1) of, and paragraph 12(1) of Schedule 5 to the Church of England (Miscellaneous Provisions) Measure 2006 (No.1).

(ii) the injury arises from the execution of works on or use of land acquired under those acts.

(7) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

(8) Nothing in this article is to be construed as restricting the entitlement of any person to compensation.

(9) Where a person deriving title under the undertaker by whom the land in question was acquired or appropriated—

(a) is liable to pay compensation; and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

Compulsory acquisition of land – incorporation of the mineral code

26. Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981(**a**) (minerals) are incorporated in this Order subject to the following modifications—

(a) for "the acquiring authority" substitute "the undertaker";

(b) for the "undertaking" substitute "authorised development"; and

(c) paragraph 8(3) is not incorporated.

Time limit for exercise of authority to acquire land and rights compulsorily

27.—(1) After the end of the period of 5 years beginning on the day on which the Order is made—

(a) no notice to treat may be served under Part 1 of the 1965 Act; and

(b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 28 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(**b**).

(2) The authority conferred by article 30 (temporary use of land) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker remaining in possession of the land after the end of that period, if the land was entered and possession taken before the end of that period subject to the limitation in article 30(3) (temporary use of land).

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

28.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(**c**) applies as if this Order was a compulsory purchase order.

(**a**) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are no other amendments to the 1981 Act which are not relevant to this Order.

(**b**) 1981 c.66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c.17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c.50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c.28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c.51). There are amendments to the 1981 Act which are not relevant to this Order.

(**c**) 1981 c.66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c.17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c.50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c.28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied by paragraph (1) has effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there will be substituted—

"(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and

(b) published in a local newspaper circulating in the area in which the land is situated"

(4) In that section, in subsection (2), for "(1)(b)" there will be substituted "(1)" and after "given" there shall be inserted "and published".

(5) In that section, for subsections(5) and (6) there will be substituted—

"(5) For the purposes of this section, a person has a relevant interest in land if—

(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.".

(6) In section 5 (earliest date for execution of declaration) —

(a) in subsection (1), after "publication" there will be inserted "in a local newspaper circulating in the area in which the land is situated"; and

(b) subsection (2) will be omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words "(as modified by section 4 of the Acquisition of Land Act 1981)" will be omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land and rights under this Order.

Rights under or over streets

29.—(1) The undertaker may enter on and create the new rights and impose the restrictions described in the book of reference over so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) shall not apply in relation to—

(a) any existing subway or underground building; or

(b) any existing cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, may be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c.51). There are amendments to the 1981 Act which are not relevant to this Order.

(5) Compensation will not be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land

30.—(1) The undertaker may, in connection with the carrying out of the authorised development—

(a) enter into and take temporary possession of—

(i) the land specified in columns (1) and (2) of Schedule 4 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and

(ii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;

(b) remove any buildings and vegetation from that land; and

(c) construct and use temporary works (including the provision of means of access) and buildings on that land.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice in writing of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land specified in paragraph (1)(a)(i) above, after the end of the period of 1 year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 4; or

(b) in the case of land referred to in paragraph (1)(a)(ii) above, after the end of the period of one year beginning with the date of completion of the work for which temporary possession of that land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land or has otherwise acquired the land subject to temporary possession.

(4) Before giving up possession of land of which temporary possession has been taken under this article unless otherwise agreed by the owners of the land, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.

(5) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(6) Any dispute to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(7) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker shall not be precluded from acquiring new rights over and/or imposing restrictions over any part of that land under article 24 (compulsory acquisition of rights);

(9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) Subject to paragraph (12), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

(a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;

(b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and

(c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(12) Paragraph (11) shall not authorise the undertaker to take temporary possession of any building if it is for the time being occupied or is subject to observance of the protective provisions.

(13) Not less than 28 days before entering on and taking temporary possession of land under paragraph (11) the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(14) The undertaker may only remain in possession of land under paragraph (11) for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(15) Before giving up possession of land of which temporary possession has been taken under paragraph (11), the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(16) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under paragraph (11) for any loss or damage arising from the exercise in relation to the land of the provisions of paragraph (11).

(17) any dispute as to a person's entitlement to compensation under paragraph (16), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(18) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (16).

(19) Where the undertaker takes possession of land under paragraph (11), the undertaker shall not be required to acquire the land or any interest in it.

(20) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to paragraphs (11) to (15) to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(21) In this article "the maintenance period", in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that phase of the authorised development is brought into use.

PART 6

MISCELLANEOUS AND GENERAL

Deemed marine licence

31. The undertaker is deemed to be granted a licence under Part 4 (marine licences) of the 2009 Act to carry out the works described in Schedule 5, subject to the provisions set out in that Schedule, which are to be treated as licence conditions.

Operational land for purposes of the 1990 Act

32. Development consent granted by this Order within the Order limits is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defences to proceedings

33.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**a**) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(**b**); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development; or

(ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) In proceedings for an offence under any of the provisions mentioned in paragraph (3) it shall be a defence for the undertaker to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(3) The provisions referred to in paragraph (2) are—

(a) article 19 (lights on tidal works etc. during construction);

(b) article 20 (provision against danger to navigation); and

(c) article 21 (permanent lights on tidal works).

(4) If in any case the reliance on the defence provided by paragraph (2) involves the allegation that the commission of the offence was due to the act or default of another person, the undertaker shall not, without leave of the court, be entitled to rely on that defence unless, before the period of 7 clear days preceding the hearing, it has served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in its possession.

(5) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

(**a**) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(**b**) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to the 1974 Act which are not relevant to this Order.

Protection of Interests

34. Schedules 7, 8, 9, 10 and 11 to this Order have effect.

Saving for Trinity House

35. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Crown Rights

36.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee—

(a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

(i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;

(ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or

(iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or

(b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Approvals pursuant to requirements etc.

37.—(1) Where requirements, provisions of the DML or protective provisions require approval from or agreement with the local planning authority or other body then such approval or agreement must be in writing and shall not be valid if the development thereby approved would authorise development outside the parameters of the authorised development or result in a form of development which would have a materially different environmental effect than those assessed in the environmental statement or any updated environmental information supplied pursuant to the 2009 EIA Regulations.

(2) When any details, plans or other matters have been agreed or approved by the local planning authority or other body pursuant to a requirement, DML or the protective provisions then they may subsequently be amended by agreement with the body concerned provided that no amendments to those details, plans or other matters may be approved where such amendments would authorise development outside the scope of the authorised development or development which would give rise to materially different environmental effects than those assessed in the environmental statement or any updated environmental information supplied pursuant to the 2009 EIA Regulations.

Certification of plans etc

38.—(1) The undertaker, as soon as practicable after the making of this Order, must submit to the Secretary of State copies of—

(a) the book of reference (Document 5.3B);

(b) the land plans (Documents 2.1, 2.1A-2.1B(i), 2.1C-2.1J(i) and 2.1K-2.1N(i));

(c) the environmental statement (Documents 6.4 and 6.5);

(d) the works plans (Documents 2.2A – F);

(e) the vertical deviation plan (Document 3.11B);

(f) the parameters table (Document 6.9A);

(g) the highway works plan (Document 3.14);

(h) the mitigation and monitoring strategy (Document 6.12A);

(i) the conveyor route plans (Documents 3.3H – O);

(j) the governance tracker (Document 6.8B);

(k) the outline construction environmental management plan (Document 6.10A);

(l) the outline ecological management plan (Document 6.11B);

(m) the constructability notes;

(n) the pipeline corridor plans (Documents 3.15A – C);

(o) drawing number PB1586 – SK123 Revision 2 (Document 3.9B) showing the "river frontage line"; and

(p) drawing number PB1586 – SK1081 Revision D (Document 3.16) showing the access arrangements for the RBT conveyor;

(q) drawing numbers PB1586-SK1026 Revision E (Document 3.5A) and PB1586-SK1027 Revision G (Documents 3.5B) showing locations of screen fencing; and

(r) the Wilton Complex Plan (drawing number T-MIS-0065-01),

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of Notices

39.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post; and

(b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(**a**) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(**a**) 1978 c.30.

(a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of that land (describing it); and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice of other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement can be taken to be fulfilled only where—

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

(c) the notice or document is legible in all material respects; and

(d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender will provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must given notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation will be final and takes effect on a date specified by the person in the notice but that date may not be less than 7 days after the date on which the notice is given.

(9) This article may not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article "legible in all material respects" means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration and expert determination

40.—(1) Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

(2) When expressly indicated in this Order the following dispute resolution procedure will apply—

(a) Any dispute to which this subparagraph relates must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(b) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert shall be appointed within 28 days of the notification of the dispute.

(c) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(d) The expert must—

(i) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of his or her appointment;

(ii) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;

(iii) issue a decision within 42 days of receipt of the submissions under (ii); and

(iv) give reasons for his or her decision.

(e) The expert must consider where relevant—

(i) the development outcome sought by the undertaker;

(ii) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

(iii) the nature of the power sought to be exercised by the undertaker;

(iv) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;

(v) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner;

(vi) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;

(vii) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;

(viii) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and

(ix) any other important and relevant consideration.

(f) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 40(1).

Signatory text

Name
Address — Parliamentary Under Secretary of State
Date — Department

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

Nationally significant Infrastructure Project

Works No.1 - within the area described on the works plans (Document 2.2D) as Works No.1—

(1) dredging of approach channel and berth pocket; and

(2) the demolition of the existing jetty and associated infrastructure.

Works No. 2 - within the area described on the works plans (Document 2.2D) as Works No. 2—

(1) a quay (constructed within the quay limits and in two phases) being either—

(a) a quay of solid construction comprising a quay wall and reclamation behind it on the south side of the River Tees; or

(b) a quay of open construction comprising—

(i) a suspended deck supported by piles and a revetment on a re-graded slope on the south side of the River Tees; and

(ii) the erection of three approach bridge structures.

(2) erection of ship loaders and associated infrastructure including ship loader rails;

(3) erection of surge bins and transfer towers; and

(4) extension, modification or replacement of pipe and provision of an additional pipe for flow control between Works No.3 and Works No.1.

Associated Development

Works No. 3 - within the area described on the works plans (Document 2.2E) as Works No. 3—

(1) the lagoon habitat enhancement works; and

(2) extension, modification or replacement of pipe and provision of an additional pipe for flow control entering Works No.2 from the lagoon.

Works No. 4 - within the area described on the works plans (Documents 2.2A – C) as Works No. 4—

(1) Two parallel conveyors in a single housing (on supports and including transfer stations connected to the same in Works No. 5) to transfer polyhalite from the materials handling facility to the ship loaders and surge bins situate in Works No. 2 running between the points A-B-C shown on the works plans.

Works No. 5 - within the area described in the works plans (Documents 2.2A – C) as Works No.5 in connection with Works No. 1, 2, 3, 4, 6, 7, 8, 9, 10 and 11

(1) vehicular and pedestrian access;

(2) construction space;

(3) access for construction and maintenance;

(4) conveyer footings and supports connecting with Works No. 4;

(5) transfer towers connecting with Works No. 4;

(6) surface and foul water disposal arrangements;

(7) signage;

(8) lighting;

(9) security fencing and gating including the arrangements for maintaining access for owners of structures along the northern boundary of the Order Limits shown on Document 3.16;

(10) temporary acoustic fencing and visual screening;

(11) CCTV;

(12) services: and

(13) security control (to the north-east of Works No. 10).

Works No. 6A - within the area described on the works plans (Document 2.2E) as Works No. 6A—

(1) temporary material storage and preparation and plant area;

(2) temporary parking;

(3) temporary offices;

(4) temporary stores:

(5) temporary lighting; and

(6) temporary security fencing and gating.

Works No. 6B - within the area described in the works plans (Document 2.2E) as Works No. 6B—

(1) substation; and

(2) car parking and screen fencing.

Works No. 7 - within the area described on the works plans (Document 2.2E) as Works No. 7—

(1) temporary material storage and preparation and plant area;

(2) temporary parking;

(3) temporary offices;

(4) temporary stores;

(5) temporary lighting; and

(6) temporary security fencing and gating.

Works No. 8 - within the area described on the works plans (Document 2.2B) as Works No. 8—

(1) temporary material storage and preparation and plant area;

(2) temporary parking;

(3) temporary offices;

(4) temporary stores:

(5) temporary lighting; and

(6) temporary security fencing and gating.

Works No. 9 - within the area described in the works plans (Document 2.2E) as Works No. 9—

(1) general services building;

(2) parking;

(3) substation;

(4) below ground waste water storage tank; and

(5) ancillary infrastructure including screen fencing.

Works No. 10 - within the area described on the works plans (Document 2.2F) as Works No. 10—

(1) temporary material storage and preparation and plant area;

(2) temporary parking;

(3) temporary offices;

(4) temporary stores;

(5) temporary lighting; and

(6) temporary security fencing and gating.

Works No. 11 - within the area described on the works plans (Document 2.2F) as Works No. 11—

(1) temporary material storage and preparation and plant area;

(2) temporary parking;

(3) temporary offices;

(4) temporary stores;

(5) temporary lighting; and

(6) temporary security fencing and gating.

Works No. 12 - within the area described on the works plans (Document 2.2F) as Works No.12—

(1) Works to improve the western most arm of the A1085 roundabout the general arrangement of which is shown on the highway works plan including—

(a) widening the carriageway;

(b) construction of a new splitter island; and

(c) reconstruction and resurfacing works.

Works Nos. 1 – 12 - to be carried out in accordance with the parameters set out in the parameters table.

And in connection with Works Nos. 1 – 12 described above such development within the Order limits but excluding the lagoon as may be necessary or expedient for the purposes of or in connection with the construction or use of the authorised development provided that such works do not give rise to any significant environmental effects not assessed in the environmental statement.

SCHEDULE 2

Article 3

REQUIREMENTS

Time limits

1. The authorised development must be begun within 7 years of the date on which this Order comes into force.

Stages of the development and Design approval

2.—(1) No part of phase 1 is to commence until a written scheme setting out all the component parts of phase 1 has been submitted to and approved by the local planning authority. The written scheme will include details of the following unless they have been approved by the MMO pursuant to the provisions of Schedule 5 (deemed licence under the 2009 Act)—

(a) layout;

(b) details of quay structure and related infrastructure (including whether the open quay or solid quay is to be constructed);

(c) external appearance and scale of all buildings and structures;

(d) parking and storage areas;

(e) surface and foul drainage;

(f) site levels;

(g) permanent fencing and other means of enclosure; and

(h) lighting.

(2) The phase 1 works must be carried out in accordance with the approved detail.

(3) No part of phase 1 is to commence until the design of the external treatment of that part of the conveyor crossing the A1085 has been approved by the local planning authority and that part of the conveyor crossing the A1085 must be constructed in accordance with the approved details.

3.—(1) No part of phase 2 is to commence until a written scheme setting out all the component parts of phase 2 has been submitted to and approved by the local planning authority. The written scheme will include details of the following unless they have been approved by the MMO pursuant to the provisions of Schedule 5 (deemed licence under the 2009 Act)—

(a) layout;

(b) details of additional quay structure and related infrastructure

(c) external appearance and scale of all buildings and structures;

(d) parking and storage areas;

(e) surface and foul drainage;

(f) site levels;

(g) permanent fencing and other means of enclosure; and

(h) lighting.

(2) The phase 2 works must be carried out in accordance with the approved details.

(3) If the construction of phase 2(a) and (b) does not commence within six years of the completion of phase 1 then, if the local planning authority so requires, the undertaker must reassess the baseline conditions relating to phase 2(a) and (b) and, in the event of there being changes to the baseline conditions which materially affect the assessment of likely impacts arising from phase 2(a) and (b) identified in the environmental statement then the undertaker must produce a further environmental report re-assessing such impacts, submit it to the local planning authority and agree with the local planning any additional mitigation measures required

(4) If a further environmental report is required to be submitted to the local planning authority pursuant to (3) then phase 2(a) and (b) must not be carried out until either additional mitigation measures have been agreed with the local planning authority or it has been agreed with the local

planning authority that no additional measures are required. Any additional mitigation measures agreed to be carried out shall be carried out as agreed.

4. The authorised development must be carried out in accordance with the drawings listed below and in accordance with the details approved pursuant to requirements 2 and 3 and the DML—

(a) the works plans (Documents 2.2 A-F);

(b) the parameters table (Document 6.9A); and

(c) the vertical deviation plan (Document 3.11B).

Highway access

5. No phase of the authorised development is to commence until the highway works shown on the highway works plan have been carried out to the satisfaction of the local highway authority.

Construction Environmental Management Plan

6.—(1) No phase of the authorised development is to commence, including any preparatory earthworks or site levelling but excluding ecological mitigation works, until a Construction Environmental Management Plan "(CEMP)" for that phase of development, drafted in accordance with the principles set out in the outline construction environmental management plan (Document 6.10A) and incorporating the mitigation identified in the governance tracker (Document 6.8B), has been submitted to and approved by the local planning authority in consultation with Natural England. The plan will include details of the following unless they have been approved by the MMO pursuant to the provisions of Schedule 5 (deemed licence under the 2009 Act)—

(a) a stakeholder communications plan;

(b) details of the methods to control noise arising from construction activities (including temporary acoustic fencing);

(c) details of the methods to be used to control dust and other emissions from the site including a Dust Management Plan;

(d) details of all temporary fencing, temporary buildings, compound areas and parking areas including arrangements for their removal following completion of construction;

(e) details of areas to be used for the storage of plant and construction materials and waste;

(f) details of the facilities to be provided for the storage of fuel, oil and other chemicals, including measures to prevent pollution;

(g) details of any temporary lighting arrangements such detail to incorporate measures described in item 31 of the governance tracker (Document 6.8B);

(h) measures to ensure that construction vehicles do not deposit mud on the public highway;

(i) details of mitigation measures to protect biodiversity interests within the site and adjacent to it during the construction phases;

(j) advisory signage at public access points advising of possible hazards including the potential for sudden noise;

(k) asbestos management strategy (if needed); and

(l) a materials management plan.

(2) The CEMP may be subject to alteration by approval of the local planning authority provided that such alteration does not prevent the mitigation during construction referred to in the environmental statement.

(3) All construction works must be carried out in accordance with the CEMP as approved from time to time.

Construction Traffic Management Plan

7. None of the authorised development is to commence (excluding ecological mitigation or enhancement works referred to in the outline ecological management plan) until a Construction Traffic Management Plan (CTMP) drafted in accordance with the principles set out in Appendix

12.3 of the environmental statement has been submitted to and approved by the local planning authority. The provisions of the approved CTMP must be observed at all times during the construction of the authorised development.

Flood warning and ground gas monitoring

8.—(1) No building comprising part of the authorised development is to be occupied until a flood warning and evacuation plan, which must include details of expected means of evacuation or safe refuge during a tidal flood event with safe refuge areas has been submitted to and approved by the local planning authority.

(2) No phase of the authorised development is to commence until a programme for ground gas monitoring has been agreed with the local planning authority and thereafter implemented. If the monitoring in accordance with the approved scheme gives rise to the need to consider gas protection measures within buildings then these must be agreed with the local planning authority and implemented as agreed.

Ecology

9.—(1) No phase of the authorised development is to commence until written ecological management plans for any ecological mitigation or enhancement measures included in the environmental statement for that phase (including a marine mammal mitigation plan but not including the lagoon habitat enhancement works which are licensed under the deemed marine licence in Schedule 5) drafted in accordance with the principles set out in the outline ecological management plan (Document 6.11B) and incorporating the mitigation identified in the governance tracker (Document 6.8B) have been submitted to and approved by the local planning authority and the MMO in consultation with Natural England and the Environment Agency.

(2) The ecological management plans must be implemented as approved but may be subject to alteration by prior approval of the local planning authority and when changes to any ecological enhancement or mitigation works are proposed below mean high water springs also the MMO in consultation with Natural England and the Environment Agency.

(3) Prior to the decommissioning phase of the authorised development, terrestrial ecological surveys are to be undertaken to verify whether any protected species could be impacted by the decommissioning phase, and to identify the requirement for mitigation to be implemented in order to avoid any impacts. The scope of terrestrial ecological surveys will be agreed with the local planning authority in consultation with Natural England prior to any ecological surveys being undertaken and the scope of mitigation agreed following the survey. The agreed mitigation shall then be carried out in accordance with an agreed timetable.

Archaeology

10.—(1) No development shall take place until a programme of archaeological work including a written scheme of investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include for monitoring in the vicinity of the "Deserted Medieval Village of West Coatham. The scheme shall include an assessment of significance and research questions and—

(a) the programme and methodology of site investigation and recording;

(b) the programme for post investigation assessment;

(c) provision to be made for analysis of the site investigation and recording;

(d) provision to be made for publication and dissemination of the analysis and records of the site investigation;

(e) provision to be made for archive deposition of the analysis and records of the site investigation; and

(f) nomination of a competent person or persons/organisation to undertake the works set out within the written scheme of investigation.

(2) No development shall take place other than in accordance with the written scheme of investigation approved under (1) above.

(3) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the written scheme of investigation approved under (1) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Decommissioning

11. Prior to the decommissioning phase of the authorised development through the removal of the overhead conveyor system the undertaker must submit a decommissioning plan in respect of those parts of the authorised development to be decommissioned to the local planning authority for approval. The provisions of the approved plan must be followed during the decommissioning phase.

SCHEDULE 3

Article 24

COMPULSORY ACQUISITION PROVISIONS

PART 1

RIGHTS AND RESTRICTIONS REQUIRED FOR THE CONVEYOR ROUTE (NORTHERN)

Number of land shown on Land Plans	*Class/Classes of Rights Sought as described in the Book of Reference*	*Purpose for which rights may be acquired*
1	1, 2, 4 and 9	(i) dredging; (ii) demolition of the existing jetty; (iii) construction, operation, use and maintenance of the quay; (iv) installation, maintenance and use of ship loaders; and (v) construction, operation, use and maintenance of the conveyor system, and to obtain access for such purposes.
2, 3	1 and 9	(i) dredging; and (ii) demolition of the existing jetty, and to obtain access for such purposes.
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	(i) dredging; (ii) construction, operation, use and maintenance of the quay; (iii) extension and/or modification the pipe between the lagoon and the Tees estuary and provision of an additional pipe for flow control; (iv) installation, maintenance and use of ship loaders, surge bins, transfer towers; (v) construction, operation, use and maintenance of the conveyor system along the conveyor route (northern); (vi) installation, maintenance and replacement and/or repair of

Number of land shown on Land Plans	*Class/Classes of Rights Sought as described in the Book of Reference*	*Purpose for which rights may be acquired*
		support foundations for the conveyor along the conveyor route (northern); (vii) carrying out and maintenance of the lagoon habitat enhancement works; (viii) installation, operation, use and maintenance of services, signage, lighting, acoustic fencing, security fencing and gating, CCTV; (ix) creation and use of temporary compounds (Works Nos. 6A and 7); (x) construction, use and maintenance of a permanent compound (Works No. 6B), and to obtain access for such purposes and to impose requirements for the protection of the conveyor structure and footings.
8b (as shown on Document 2.1B(i) (Northern Route))	4, 5, 6, 9 and 10	(i) construction, operation, use and maintenance of the conveyor system along the conveyor route (northern); (ii) installation, maintenance and replacement and/or repair of support foundations for the conveyor along the conveyor route (northern); (iii) installation, use and maintenance of services, signage, lighting and CCTV; (iv) creation and use of temporary compound (Work No. 8), (v) and to obtain access for such purposes to impose requirements for the protection of the conveyor structure and footings.
8a and 9	4, 5, 9 and 10	(i) construction, operation, use and maintenance of the conveyor system, installation along the conveyor route (northern); (ii) maintenance and replacement and/or repair of support foundations for the conveyor along the conveyor route (northern); and

Number of land shown on Land Plans	*Class/Classes of Rights Sought as described in the Book of Reference*	*Purpose for which rights may be acquired*
		(iii) installation, use and maintenance of services, signage, lighting, acoustic fencing, CCTV, and to obtain access for such purposes and to impose requirements for the protection of the conveyor structure and footings.
8c (as shown on Document 2.1B(i) (Northern Route)) and 10	4, 5, 9 and 10	(i) construction, operation, use and maintenance of the conveyor system along the conveyor route (northern); (ii) installation, maintenance and replacement and/or repair of support foundations for the conveyor and a transfer tower along the conveyor route (northern); and (iii) installation, use and maintenance of services, signage, lighting, CCTV, and to obtain access for such purposes and to impose requirements for the protection of the conveyor structure and footings.
11	1, 2, 3, 4, 5, 6, 7b, 9 and 10	(i) dredging; (ii) construction, operation, use and maintenance of the quay; (iii) demolition of the existing jetty; (iv) installation, maintenance and use of ship loaders, surge bins, transfer towers; (v) construction, operation, use and maintenance of the conveyor system along such part of the conveyor route (northern); (vi) installation, maintenance and replacement and/or repair of support foundations for the conveyor along such part of the conveyor route (northern); (vii) installation of a below ground waste storage tank; (viii) carrying out and maintenance of part of the lagoon habitat enhancement works;

Number of land shown on Land Plans	*Class/Classes of Rights Sought as described in the Book of Reference*	*Purpose for which rights may be acquired*
		(ix) installation, use and maintenance of services, signage, lighting, acoustic fencing, security fencing and gating, CCTV; (x) creation and use of temporary compounds (Works No. 7); and (xi) construction, use and maintenance of a permanent compound (Works No. 9), and to obtain access for such purposes and to impose requirements for the protection of the conveyor structure and footings.
12 and 13	1, 4, 5 and 9	(i) dredging; (ii) demolition of the existing jetty; and (iii) installation, use and maintenance of services, lighting, acoustic fencing, security fencing and gating, CCTV, and to obtain access for such purposes.
15 and 16	5 and 9	Installation, use and maintenance of services, signage, lighting, acoustic fencing, security fencing and gating, CCTV and to obtain access for such purposes.
17, 18, 19, 20, 21a and 22	4, 5 and 9	Installation, use and maintenance of services, lighting, acoustic fencing, security fencing and gating, CCTV and to obtain access for such purposes.
23, 24, 37a, 38, 39, 40, 41, 42, 43, 44, 49, 57, 58, 59, 60 and 62	4, 5, 9 and 10	(i) construction, operation, use and maintenance of the conveyor system along the conveyor route (northern); (ii) installation, maintenance and replacement and/or repair of support foundations for the conveyor along the conveyor route (northern); (iii) installation, use and maintenance of services,

Number of land shown on Land Plans	*Class/Classes of Rights Sought as described in the Book of Reference*	*Purpose for which rights may be acquired*
		lighting, security fencing and gating, CCTV, and to obtain access for such purposes and to impose requirements for the protection of the conveyor structure and footings.
25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 54	4, 5 and 9	(i) construction, operation, use and maintenance of the conveyor system along the conveyor route (northern); (ii) installation, maintenance and replacement and/or repair of support foundations for the conveyor along the conveyor route (northern); and (iii) installation, use and maintenance of services, CCTV, and to obtain access for such purposes.
47, 48, 55 56 and 61	5 and 9	(i) installation, maintenance and replacement and/or repair of support foundations for the conveyor along the conveyor route (northern); (ii) installation, use and maintenance of services, CCTV, and to obtain access for such purposes.
50	4, 5, 6, 9 and 10	(i) construction, operation, use and maintenance of the conveyor system along the conveyor route (northern); (ii) installation, maintenance and replacement and/or repair of support foundations for the conveyor along the conveyor route (northern); (iii) installation, use and maintenance of services, lighting, security fencing and gating, CCTV; (iv) creation and use of a temporary compound (Works No. 10), and to obtain access for such purposes and to impose requirements

Number of land shown on Land Plans	*Class/Classes of Rights Sought as described in the Book of Reference*	*Purpose for which rights may be acquired*
		for the protection of the conveyor structure and footings.
51	4, 5, 8, 9 and 10	(i) construction, operation, use and maintenance of the conveyor system along such part of the conveyor route (northern); (ii) installation, maintenance and replacement and/or repair of support foundations for the conveyor along such part of the conveyor route (northern); (iii) installation, use and maintenance of services, lighting, security fencing and gating, CCTV (Works No. 12); (iv) laying out of the highway works; (v) installation of new signs and markings; (vi) removing an existing earth bund; (vii) clearing vegetation, and to obtain access for such purposes and to impose requirements for the protection of the conveyor structure and footings.
52, 53, 54a	8	(i) laying out of the highway works (Works No. 12) to include a pedestrian traffic island; (ii) resurfacing the existing carriageway; (iii) installation of new signs and markings; (iv) removing an existing earth bund; (v) clearing vegetation, including temporary access for such purposes.
59a	6	Creation and use of a temporary compound (Works No. 11) including temporary access for such purposes.

PART 2

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND RESTRICTIVE COVENANTS

Compensation enactments

1. The enactment for the time being in force with respect of compensation for the compulsory purchase of land shall apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(**a**) shall have effect subject to the modifications set out in sub-paragraph (2) and (3).

(2) In Section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

(a) for the words "land is acquired or taken" there shall be substituted the words "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for the words "acquired or taken from him" there shall be substituted the words "over which the right is exercisable or the restrictive covenant enforceable".

(3) In section 58(1) (determination of material detriment where part of house etc, proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

(a) for the word "part" in paragraphs (a) and (b) there shall be substituted the words "a right over or restrictive covenant affecting land consisting";

(b) for the word "severance" there shall be substituted the words "right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden";

(c) for the words "part proposed" there shall be substituted the words "right or restrictive covenant proposed"; and

(d) for the words " part is" there shall be substituted the words "right or restrictive covenant is".

Application of the 1965 Act

3.—(1) The 1965 Act shall have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (accordingly to the requirements of the particular context) as referring to, or as including references to—

(a) the right acquired or to be acquired; or

(b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For Section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

"7. In assessing the compensation to be paid by the acquiring authority under this Act, regard shall be had not only to the extent (if any) to which the value of the land over

(**a**) 1973 c.26.

which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act".

5. For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following section—

"8. —(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house ("the relevant land")—

(a) a question of disputed compensation in respect of the purpose of a right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal ("the tribunal"); and

(b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—

(i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or

(ii) where that land consist of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs, the York Potash Harbour Facilities Order 201X ("the Order") shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person's interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, in accordance with section 31 of the 1961 Act withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice".

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for

the purpose of exercising that right or enforcing that restrictive covenant (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) shall apply with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 4

Article 30

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) *Area*	*(2)* *Plot number shown on land plans*	*(3)* *Purpose for which temporary possession may be taken*	*(4)* *Relevant part of the authorised development*
Borough of Redcar & Cleveland	52, 53, 54a	Highway works	Works No. 12
Borough of Redcar & Cleveland	59a	Temporary contractor's compound	Works No. 11

SCHEDULE 5

Article 31

DEEMED LICENCE UNDER THE MARINE AND COASTAL ACCESS ACT 2009

PART 1

INTRODUCTORY

Addresses

1.—(1) Unless otherwise advised in writing by the MMO, the address for postal correspondence with the MMO for the purposes of this Schedule is the Marine Management Organisation, Marine Licensing Team, Lancaster House, Newcastle Business Park, Newcastle upon Tyne, NE4 7YH and where contact with the MMO District Office is required, the following contact details should be used: Neville House, Central Riverside, Bell Street, North Shields, NE30 1LJ. Tel: 0191 257 4520 email:northshields@marinemanagement.org.uk.

(2) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this Schedule is marineconsents@marinemanagement.org.uk and northshields@marinemanagement.org.uk.

Undertaker

(3) Where in this Schedule reference is made to the undertaker it includes any agent or contractor or person/s acting on the undertaker's behalf.

PART 2

LICENSED ACTIVITIES

2. For the purpose of constructing and maintaining the authorised development the licence holder may carry out the activities set out in this Part as if those activities were licensed under the 2009 Act.

Construction of the quay

3. The undertaker is permitted to construct the quay (Work No.2) within the quay limits (as described in Schedule 6) according to the following specification—

(a) the quay length will be no more than 486m;

(b) the quay width will be no more than 87m; and

(c) the deck level of the structure will be no more than +5.6m Ordnance Datum.

Open quay structure

4. The undertaker is permitted to construct the open quay structure according to the following specification—

(a) suspended deck structures comprised of a reinforced concrete deck supported by approximately 200 driven steel tubular piles in phase 1, with an additional 200 piles required for phase 2, in the order of 0.9m diameter;

(b) the area of the deck structure (quay) is to be no more than 28m wide by 280m long in phase 1, increasing up to a total of 486m long in phase 2;

(c) the quayside will consist of engineering fill to create a trafficable surface adjacent to the quay, for the full length of the quay. The width of the quayside will be 43m – 53m;

(d) two access bridges would be constructed during phase 1, allowing one to be used for the construction of phase 2 whilst maintaining the other for operational access;

(e) installation of a revetment on the re-graded slope, either to be placed on the re-graded slope prior to installation of piles, or placed following installation of the piles; and

(f) replacement of the existing pipe through the embankment between the Tees estuary and the lagoon with two new pipes of larger capacity each incorporating independently operated flow control structures.

Solid quay structure

5. The undertaker is permitted to construct the solid quay structure according to the following specification—

(a) phase 1—

(i) the combi-pile wall would consist of 120 king piles (of approximately 2m diameter) with intermediate sheet piles;

(ii) the anchor wall would consist of a length of approximately 210m of sheet piles; and

(iii) 40, 660mm diameter piles would be required for the cope beam to support the landside ship loader rails, installed between the tie rods that connect the king piles to the anchor wall.

(b) phase 2—

(i) the combi-pile wall would consist of an additional 90 king piles with intermediate sheet piles;

(ii) the anchor wall would consist of an additional plan length of approximately 200m of sheet piles; and

(iii) a further 35, 660mm diameter piles would be required for the cope beam to support the landside ship loader rails.

(c) the quayside will consist of engineering fill to create a trafficable surface adjacent to the quay, for the full length of the quay. The width of the quayside will be 65m – 87m;

(d) the footprint is to be no more than 87m wide by 280m long in Phase 1, increasing up to a total of 486m long in phase 2. Access to the quay would be directly from the reclaimed area behind the quay wall; and

(e) replacement of the existing pipe through the embankment between the Tees estuary and the lagoon with two new pipes of larger capacity each incorporating independently operated flow control structures.

Capital dredging and disposal

6.—(1) The undertaker is permitted to carry out capital dredging at the following locations—

(a) the current approach channel to a depth of 14.1m below Chart Datum (-16.95m Ordnance Datum); and

(b) the berth pocket to a depth of -16m below Chart Datum (-18.85m Ordnance Datum).

(2) The materials must be dredged in the approximate quantities according to the following table—

Dredged material type	*Open quay (m^3)*	*Solid quay (m^3)*
Silts	181,000	66,000
Sands and Gravels	326,000	196,000
Clays	230,000	194,000
Mercia Mudstone	385,000	358,000
TOTAL (MAXIMUM)	1,122,000	814,000

(3) For phases 1 and 2, the dredging of the contaminated silts will be undertaken using enclosed grabs.

(4) For phase 1 the dredging of the sands and gravels will be undertaken using a Trailing Suction Hopper Dredger (TSHD).

(5) For phases 1 and 2 the dredging of the clay and Mercia mudstone (marl) must be undertaken using a backhoe dredger, TSHD or Cutter Suction Dredger (CSD). For phase 2, dredging of sands and gravel would also be by either a backhoe dredger, TSHD or CSD.

(6) The following maximum quantities of dredged material would be disposed at Tees Bay C (TY 150)offshore dredged material disposal sites—

(a) 615,000m3 of clay and mudstone; and

(b) 326,000m3 of sand and gravel,

unless otherwise agreed with the MMO.

Lagoon habitat enhancement

7.—(1) The lagoon habitat enhancement works must not commence until a written lagoon habitat enhancement plan (to include details of pre and post construction monitoring) has been submitted to and approved by the MMO (following consultation with Natural England, the Environment Agency and the local planning authority).

(2) The lagoon habitat enhancement plan must include—

(a) details of proposals for pre and post construction monitoring;

(b) details of the enhancement of habitat in the lagoon for water birds and a construction method statement regulating the construction of those works; and

(c) a timetable for the implementation of those works.

(3) The lagoon habitat enhancement plan (including pre and post construction monitoring information) must accord with the mitigation and monitoring strategy (Document 6.12A).

(4) The lagoon habitat enhancement plan must be implemented as approved.

PART 3

ENFORCEMENT

8. Any breach of this Schedule does not constitute a breach of this Order but is subject to the enforcement regime in Chapter 3 of Part 4 of the 2009 Act as if this Schedule were a licence granted under that Act.

PART 4

CONDITIONS

General conditions

9.—(1) The conditions set out at paragraphs 10 to 50 are licence conditions attached to the deemed marine licence granted by article 31 (deemed marine licence).

(2) For such of the licensed activities that involve the construction, alteration or improvement of works in or over the sea or on or under the sea bed, the conditions apply to any person who for the time being owns, occupies or enjoys any use of the licensed activity.

(3) This licence is for 20 years from the date of coming into force of this Order whereby—

(a) the minimum construction period for phase 1 and phase 2 works is 17 months each for both forms of quay structure; and

(b) phase 2 works are to commence within 6 years of completion of phase 1.

10. The MMO must be notified by the undertaker at least 10 working days before the commencement of each phase of the licensed activity of its acceptance of the provisions of this Schedule and that the undertaker and any agents or contractors employed by it to carry out the licensed activities have knowledge of the provisions of this Schedule.

11. The undertaker must ensure that the MMO District Marine Office is notified of the timetable of works and operations at least 10 days prior to the commencement of each phase of the licensed activity.

12. The MMO must be notified by the undertaker in writing of any agents, contractors or sub-contractors that will be carrying out any licensed activity on behalf of the undertaker at least 4 weeks before the commencement of each phase of the licensed activity.

13. The undertaker must ensure that a copy of this Schedule and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or subcontractors that will be carrying out any licensed activity on behalf of the undertaker.

14. The undertaker must ensure that the names of vessels to be utilised in connection with a licensed activity are provided to the MMO and agreed in writing at least 4 weeks prior to the commencement of the licensed activities such notification setting out—

(a) the vessel type;

(b) the vessel International Maritime Organization (IMO) number; and

(c) the vessel owner or operating company.

15. The undertaker must ensure that a copy of this Schedule and any subsequent revisions or amendments has been provided to, read and understood by the master of any vessel being used to undertake any licensed activity, and that a copy of this Schedule is held on board any such vessel.

16. The undertaker must ensure that a Notice to Mariners is issued at least 10 days prior to the licensed activity commencing warning of the start date for the construction of the licensed activity and updated as appropriate.

Project wide conditions

17.—(1) Prior to any works commencing below the level of mean high water springs, the undertaker must submit detailed method statements to the MMO for approval for each operation of the licensed activities at least 3 months prior to the commencement of such licensed activity and any such approval must not be unreasonably withheld or delayed and is deemed to have been permitted if it is neither given nor refused within three months of the specified day.

(2) The undertaker must provide the MMO with such further details as the MMO may reasonably require, any such request to be made within 28 days from the day on which the detailed method statement was submitted under sub-paragraph (1).

(3) In this paragraph the "specified day" means—

(a) the day on which the MMO have received the detailed method statement covered under sub-paragraph (1); or

(b) the day on which the undertaker provides the MMO with such further particulars as have been reasonably requested by the MMO under sub-paragraph (2).

18.—(1) The undertaker must only work and access the licensed area within a defined and marked out area so as to limit personnel and plant access to the area of Works Nos. 2 and 3.

(2) Co-ordinates (in WGS84) and plan diagrams of the licensed area and access routes must be submitted to the MMO at least 4 weeks prior to the commencement of the licensed activity.

(3) Licensed activity must not commence before the written approval of the co-ordinates and plan diagrams by the MMO.

19. All construction phase activities must be carried out in accordance with the following:

(a) best practice guidance including the Environment Agency's Pollution Prevention Guidance (PPG) notes and guidance from the Construction Industry Research and Information Association (CIRIA);

(b) adherence to the Construction (Design and Management) Regulations 2015 where applicable; and

(c) adherence to the Construction Environmental Management Plan (CEMP) and an Incident / Emergency Response Plan.

20. The undertaker must ensure that any coatings and treatments used are approved by the Health and Safety Executive as suitable for use in the marine environment.

21. The undertaker must ensure that all materials used in construction of any part of the licensed activities are suitable and approved by the MMO for use within the marine environment.

22. The undertaker must ensure that during the licensed activity all wastes are stored in designated areas that are isolated from surface water drains, open water and bunded if necessary to contain any spillage.

23. The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement licensed activities are discharged into the marine environment.

24. Concrete and cement mixing and washing areas should be contained and sited at least 10 metres from any watercourse or surface water drain to minimise the risk of run off entering a watercourse.

25. The undertaker must install bunding and storage facilities to contain and prevent the release into the marine environment of fuel, oils and chemicals associated with plant, refuelling and construction equipment, ensuring that secondary containment is used with a capacity of not less than 110% of any container's storage capacity.

26. The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO Marine Pollution Response Team: 0300 200 2024 (office hours), 07770 977 825 (outside office hours) and if no response at previous numbers Defra Duty Room 0345 0818 486 MMO emergency fax (not manned 24 hours) 0191 376 2682 and dispersants@marinemanagement.org.uk or such replacement numbers or email address notified to the licence holder by the MMO in writing.

27. The undertaker must ensure that the maintenance of plant, including regular inspections, is to be carried out routinely and in accordance with the manufacturers' guidance.

28. A spill kit (including booms for potential leaks directly into the marine environment) should be kept on site at all times during the construction phase and any major spills or leakages controlled and reported to the Environment Agency and harbour master.

29. The undertaker must ensure that any equipment, temporary structures, waste and debris associated with the works are removed within 6 weeks of construction of the licensed activities.

Piling conditions

30. The undertaker must ensure adherence to JNCC's guidelines 'Statutory nature conservation agency protocol for minimising the risk of injury to marine mammals from piling noise' (JNCC, 2010) during pile driving. This would include checking for marine mammals during a pre-piling search prior to piling operations commencing, the establishment of a mitigation zone (i.e. an area within which a marine mammal could be exposed to sound levels which could cause damage) and the use of soft start techniques to allow any marine mammals time to leave the area of greatest disturbance.

31. The undertaker must ensure the implementation of a minimum of eight hours continuous break in every 24 hour period where no impact piling is carried out and shall ensure that no more than one vessel is carrying out a piling operation at any one time.

32. The undertaker must ensure that acoustic barriers are to be positioned—

(a) along the embankment between the lagoon and the construction works for the quay and,

(b) between the lagoon and the construction works for the conveyor constructed in the northern corridor.

33. The undertaker must ensure that no piling is to be undertaken for three hours following low water, nor during May and that any percussive piling is implemented using a "soft-start" procedure.

Capital dredging, disposal conditions and debris

34.—(1) The undertaker must agree a capital dredge and disposal strategy with the MMO at least 4 weeks before the commencement of any licensed activities.

(2) If any disposal or dredging activities are to take place after 1st October 2017 then—

(a) the undertaker must submit a sediment sampling plan to the MMO for approval at least six months prior to that dredging or disposal activity being carried out;

(b) the sediment sampling and analysis of the sediment must be completed by a laboratory validated by the MMO at least six weeks prior to the dredging or disposal activity being carried out; and

(c) the dredging and disposal activity must not be carried out without the consent of the MMO.

35. The undertaker must ensure that as a result of the capital dredging activities referred to in paragraph 6 no more than 941,000m^3 is disposed to site Tees Bay C (TY 150).

36.—(1) The undertaker must ensure that certified returns of quantities of dredged material deposited under this licence are submitted to the MMO by 15 February (for the months August to January inclusive) and 15 August (for the months February to July inclusive) each year.

(2) The returns must specify the full licence number and amounts deposited (in tonnes) each calendar month at each authorised deposit area.

(3) Where no deposit is made in a given period a NIL return is required.

(4) The disposal method used must also be submitted with the returns.

(5) Any contaminated sediment (largely silt) lying deeper than one metre below the surface of the seabed (excluding the underlying geological material) must not be disposed of at sea.

(6) The removal of any contaminated silt to a site licensed for the treatment and disposal of such silt must only be by means of a barge unless otherwise agreed by the MMO in consultation with the local planning authority.

37. The undertaker must ensure that any man-made material is separated from the dredged material and disposed of at a registered onshore disposal site.

38. The undertaker must ensure that should disposal of material be found to be the cause of any detrimental effects to the disposal site then disposal must cease with immediate effect.

39. If due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the dredged material other than in accordance with the capital dredge and disposal strategy agreed under condition 34 because the safety of human life or of the vessel is threatened—

(a) full details of the circumstances of the deposit must be notified to the MMO within 48 hours; and

(b) at the reasonable request of the MMO the unauthorised deposits must be removed at the undertaker's expense.

40. At least 10 days before commencement of the licensed activities, the undertaker must submit to the MMO an audit sheet covering all aspects of the construction of the licensed activities or any phase of them. The audit sheet must include details of—

(a) loading facilities;

(b) vessels;

(c) equipment;

(d) shipment routes;

(e) transport;

(f) working schedules; and

(g) all components and materials to be used in the construction of the licensed activities.

41. The audit sheet must be maintained throughout the construction of the licensed activities (or relevant phase) and must be submitted to the MMO for review at fortnightly intervals during periods of active offshore construction.

42. In the event that the MMO becomes aware that any of the materials on the audit sheet cannot be accounted for, it must require the undertaker to carry out a side-scan sonar survey to plot all obstructions across a reasonable area of search agreed by the MMO where construction works and related activities have been carried out. Any obstructions that the MMO believes to be associated with the authorised scheme must be removed at the undertaker's expense.

43. As an alternative to the completion of an audit sheet, with written approval from the MMO, the undertaker may introduce a dropped object procedure. If a dropped object procedure is introduced, any dropped objects must be reported to the MMO using the dropped object procedure form within 6 hours of the undertaker becoming aware of an incident. On receipt of the dropped object procedure form, the MMO may require relevant surveys to be carried out by the undertaker (such as side-scan sonar), and the MMO may require obstructions to be removed from the seabed at the undertaker's expense.

44. The undertaker must agree with the MMO, before commencement of works, whether the dropped object procedure or audit sheet is to be used.

45. The undertaker must at least 4 months before the completion of the construction of the authorised works submit for the written approval of the MMO a post construction maintenance schedule setting out details of the maintenance regime for that part of the authorised development below the level of mean high water springs.

46. An update to the post construction maintenance schedule must be submitted for approval every 3 years unless the MMO waives such requirement.

47. Maintenance must be carried out in accordance with the approved post construction maintenance schedule.

Lagoon Habitat Enhancement Works

48. The undertaker must implement and comply with the lagoon habitat enhancement plan (including pre and post construction monitoring) approved pursuant to paragraph 7 and must monitor and maintain the lagoon habitat enhancement works in accordance with the lagoon habitat enhancement plan and the principles outlined in the mitigation and monitoring strategy (Document 6.12A) and agreed with the MMO in consultation with Natural England, the Environment Agency and the local planning authority.

Progress of licenced authorities

49. The undertaker must keep the MMO informed of progress of the licensed authorities including—

(a) notice of commencement of construction of the licensed authorities within 24 hours of commencement having occurred;

(b) notice within 24 hours of any aids to navigation being established by the undertaker; and

(c) notice within 5 working days of completion of construction of each phase of the licensed authorities.

Decommissioning

50. No decommissioning of that part of the authorised development below the level of mean high water springs shall take place until a decommissioning plan has been submitted to the MMO no less than three months prior to the decommissioning and approval by the MMO and the MMO has advised the undertaker whether or not the works comprised in the decommissioning plan require a marine licence under the provisions of the 2009 Act and for the avoidance of doubt this

DML does not obviate the need for such license to be obtained if it is required for the decommissioning works being undertaken.

Archaeology

51. (a) No works shall commence until a programme of archaeological work including a Written Scheme of Investigation has been submitted to and approved by the MMO in writing. The programme must be submitted for approval at least 6 weeks prior to the commencement of works. The scheme must include a level 1 Building Recording of the ‘’Seventh Buoy Light/Dolphin Mooring Bollard’’ prior to demolition; and monitoring of dredging works in the harbour area in the vicinity of borehole BHP6 to identify and analyse peat deposits. The scheme shall include an assessment of significance and research questions; and:

(i) the programme and methodology of site investigation and recording;

(ii) the programme for post investigation assessment;

(iii) provision to be made for analysis of the site investigation and recording;

(iv) provision to be made for publication and dissemination of the analysis and records of the site investigation;

(v) provision to be made for archive deposition of the analysis and records of the site investigation, and

(vi) nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

(b) No development shall take place other than in accordance with the Written Scheme of Investigation approved under condition (a).

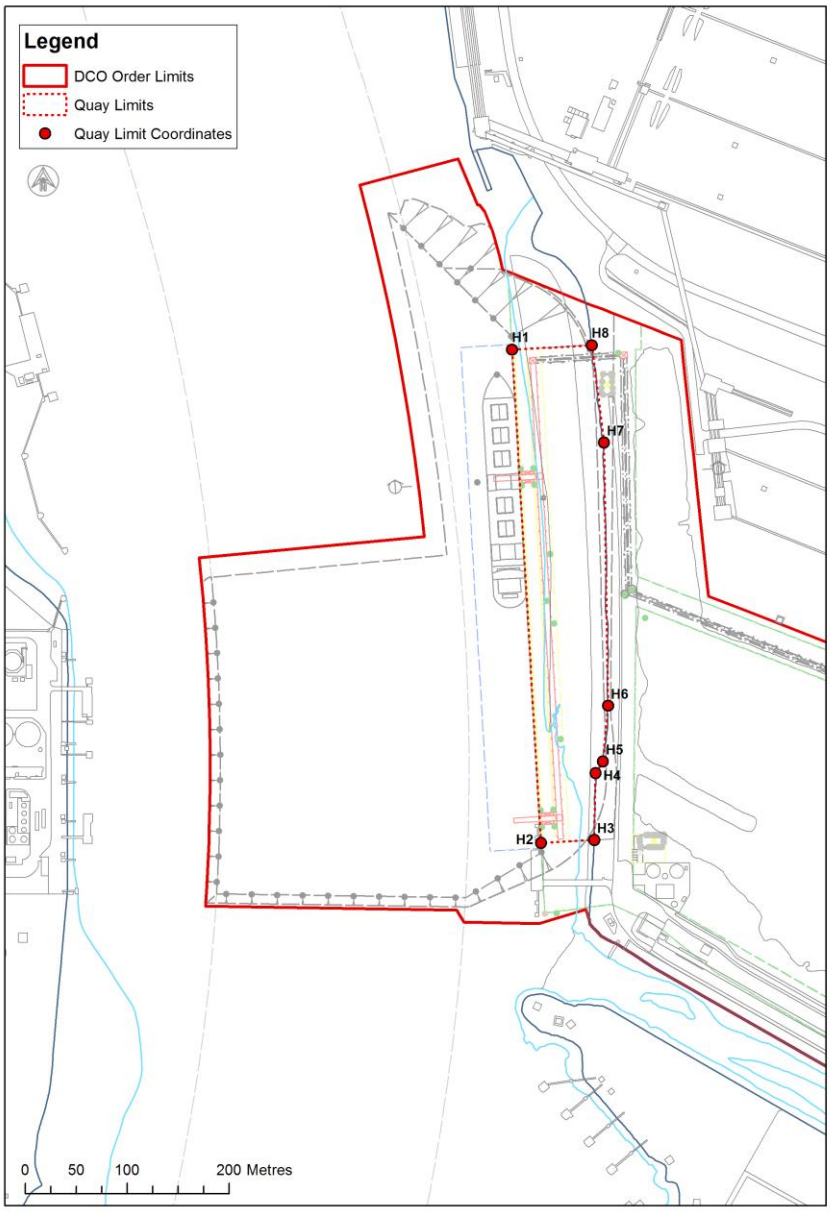
(c) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (a) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

SCHEDULE 6

Article 2

QUAY LIMITS

	British National Grid		*WGS84 DDM*	
Name	**easting**	**northing**	**Longitude**	**Latitude**
H1	454860.2626	525337.9453	-1 09.11543	54 37.21298
H2	454888.5753	524853.5247	-1 09.09457	54 36.95162
H3	454940.7694	524856.5634	-1 09.04605	54 36.95292
H4	454942.22	524922.23	-1 09.04395	54 36.98832
H5	454949.27	524933.64	-1 09.03728	54 36.99442
H6	454954.44	524988.22	-1 09.03187	54 37.02382
H7	454950.46	525246.97	-1 09.03265	54 37.16335
H8	454938.4032	525342.4282	-1 09.04278	54 37.21488


Legend
DCO Order Limits
Quay Limits
Quay Limit Coordinates
H1
H8
H7
H6
H5
H4
H3
H2
0
50
100
200 Metres

SCHEDULE 7

Article 34

FOR THE PROTECTION OF NETWORK RAIL

1. The following provisions of this Schedule shall have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 of the Railways Act l993;

"Network Rail" means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006(**a**) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail Infrastructure Limited and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail shall—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works pursuant to this Order.

4.—(1) The undertaker shall not exercise the powers conferred by articles 15 (protective work to buildings), 16 (authority to survey and investigate the land), 20 (provision against danger to

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(**a**) 2006 c.46.

navigation), 21 (permanent lights on tidal works), 22 (power to charge), 30, (temporary use of land) or section 11(3) of the 1965 Act in respect of any railway property if such powers prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(2) The undertaker shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(3) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The undertaker shall before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work shall not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker for an agreed cost.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works shall be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) shall, when commenced, be constructed—

(a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker shall, notwithstanding any such approval, make good such damage and shall pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule shall impose any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker shall—

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Schedule during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the undertaker shall pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail shall assume construction of that part of the specified work and the undertaker shall, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker shall repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall he reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution of diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised works (including the operation of tramcars using the tramway comprised in the works) where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised works) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph shall apply to EMI only to the extend that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised works giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker shall in the design and construction of the authorised works take all measures necessary to prevent EMI and shall establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

(a) the undertaker shall consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter shall continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail shall make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail shall allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail shall not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution shall be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) shall have effect subject to the sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised tramway comprised in the authorised works and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the undertaker shall immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the

circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

(a) the undertaker shall afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail shall afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and

(c) Network Rail shall make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

(a) Network Rail shall allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) shall apply to the costs and expenses reasonably incurred or losses suffered by network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 40 (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The undertaker shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it shall have first consulted Network Rail and it shall comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

15.—(1) The undertaker shall pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may he occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction or maintenance of a specified work or the failure thereof; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the undertaker shall indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail shall promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

16. Network Rail shall, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the works plans and land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part I of the Railways Act 1993.

20. The undertaker shall give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 8 (consent to transfer benefit of Order) of this Order and any such notice shall be given no later than 28 days before any such application is made and shall describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

21. The undertaker shall no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 38 (Certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

SCHEDULE 8 Article 34

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY

Application

1. For the protection of National Grid referred to in this Schedule the following provisions will, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

Interpretation

2. The terms used in this Schedule are defined in article 2 of this Order save where inconsistent with this paragraph 2—

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid or any of its entities for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Schedule includes the use and maintenance of the authorised works;

"functions" includes powers and duties;

"in" in a context referring to apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus;

"National Grid" means National Grid Electricity Transmission Plc being a licence holder within the meaning of Part 1 of the Electricity Act 1989;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

3. Except for paragraphs 7 *(retained apparatus: protection)* and 8 *(expenses)* of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of land

4.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not acquire any land interest or apparatus or override any easement and/or other interest of National Grid otherwise than by agreement.

(2) As a condition of agreement between the parties in paragraph 4(1), prior to the carrying out of any part of the authorised works (or such other timeframe as may be agreed between the undertaker and National Grid) that are subject to the requirements of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affects the provisions of any enactment or agreement regulating the relations

between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to or secured by the undertaker the undertaker must as National Grid reasonably requires enter into such deeds of consent, crossing agreements, variations to existing deeds of easements, agreements or such other legal interests in favour of National Grid and/or grant such new deeds of grant (upon such terms and conditions as may be agreed between the undertaker and National Grid acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid in order to verify, amend and/or replace the existing easement, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the other terms of this Schedule and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) National Grid and the undertaker agree that where there is any inconsistency or duplication between the provisions set out in this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

Removal of apparatus

5.—(1) If, in the exercise of the agreement reached in accordance with paragraph 4 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between the undertaker and National Grid.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the promoter to be removed under the provisions of this Schedule.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to or secures for National Grid; facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between National Grid and the undertaker and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under paragraph 6(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 13 (Arbitration) of this Schedule and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

7.—(1) Not less than 56 days before the commencement of any authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2) or otherwise, the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations if relevant.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes; and

(g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and on-going maintenance of the cable route;

(f) written details of the operations and maintenance regime for the cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by the undertaker's engineers; and

(h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraphs (2) or (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or 8); and

(b) must not be unreasonably withheld or delayed.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between National Grid and the undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid shall give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

(a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration

or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Schedule including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid using its own compulsory purchase powers (with the agreement of the undertaker) to acquire any necessary rights under paragraph 7(3);

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover any additional costs to be incurred in maintaining and renewing permanent protective works; and

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 40 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the promoter under this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) except where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and

(b) any authorised works and/or any other works authorised by this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Schedule including this paragraph 9(3).

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must be made without first consulting the undertaker and considering their representations.

Ground subsidence monitoring scheme in respect of National Grid's apparatus

10.—(1) Any authorised works within 100 metres of any apparatus or alternative apparatus capable of interfering with or risking damage to National Grid's apparatus must not commence until a scheme for monitoring ground subsidence (referred to in this paragraph as "the monitoring scheme") has been submitted to and approved by National Grid, such approval not to be unreasonably withheld or delayed(**a**).

(2) The ground subsidence monitoring scheme described in sub-paragraph (1) must set out—

(a) the apparatus which is to be subject to such monitoring;

(b) the extent of land to be monitored;

(c) the manner in which ground levels are to be monitored;

(d) the timescales of any monitoring activities; and

(**a**) Wording for NGET.

(e) the extent of ground subsidence which, if exceeded, will require the promoter to submit for National Grid's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (3).

(3) The monitoring scheme required by sub paragraphs (1) and (2) must be submitted within 56 days prior to the commencement of any works authorised by this Order or comprised within the authorised development to which sub-paragraph (1) applies. Any requirements of National Grid will be notified within 28 days of receipt of the monitoring scheme. Thereafter the monitoring scheme must be implemented as approved, unless otherwise agreed in writing with National Grid.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a "mitigation scheme") must be submitted to National Grid for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with National Grid save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of their apparatus and can recover any such costs in line with paragraph 8.

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any ground subsidence monitoring scheme or ground subsidence mitigation scheme approved by the local planning authority pursuant to Schedule 2 (requirements) the undertaker may submit a revised monitoring scheme or mitigation scheme to National Grid for its approval, such approval not to be unreasonably withheld or delayed; and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with National Grid.

Enactments and agreements

11. Save to the extent provided for to the contrary elsewhere in this Schedule or by agreement in writing between the undertaker and National Grid, nothing in this Schedule shall affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

12.—(1) Where in consequence of the proposed construction of any of the authorised development, National Grid or the undertaker requires the removal of apparatus under paragraph 5(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 7, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

13. If in consequence of the agreement reached in accordance with paragraph 4(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

14. Save for differences or disputes arising under paragraph 5(2), 5(4), 6(1), 7 and 9(5) any difference or dispute arising between National Grid and the undertaker under this Schedule must,

unless otherwise agreed in writing between National Grid and the undertaker, be determined by arbitration in accordance with article 40 (arbitration).

Approval of Requirements

15. The undertaker must—

(a) not without the prior approval of National Grid (such approval not to be unreasonably withheld or delayed) submit nor permit the submission of any plans, details, schemes, reports, arrangements, measures or programmes to the local planning authority pursuant to any requirement in Schedule 2 (requirements) that relate in whole or in part to any matter that affects or may affect National Grid's apparatus including any alternative apparatus and/or in respect of any protective works required in connection with the undertaker's apparatus under the terms of these protective provisions;

(b) provide National Grid with copies of such plans, details, schemes, reports, arrangements, measures or programmes prior to submission to the local planning authority and take into account and incorporate any reasonable comments of National Grid; and

(c) keep National Grid informed of the details of all material discussions and negotiations with the local planning authority relating to such plans, details, schemes, reports, arrangements, measures or programmes and give National Grid reasonable prior written notice of any meetings with the local planning authority relating to such matters and not object to National Grid and its consultants attending those meetings.

SCHEDULE 9

Article 34

FOR THE PROTECTION OF THE PIPELINE CORRIDOR AND PROTECTED CROSSINGS

Benefit of protective provisions

1.—(1) The following provisions of this Schedule shall have effect for the benefit of any owner of the protected land and any owner or operator of a pipeline within the pipeline corridor, unless otherwise agreed in writing between the undertaker and the said owner or operator.

(2) The provisions contained in paragraph 25 of this Schedule shall not apply to the interests of Northumbrian Water Limited unless otherwise agreed in writing between the undertaker and Northumbrian Water Limited.

Interpretation

2. In this Schedule—

"access roads" means the access roads within the Order limits giving access to pipelines or protected crossings;

"affected asset(s)" means—

(a) underground pipelines where relevant work(s) are to be carried out within the easement widths relating to that apparatus;

(b) apparatus on or above ground which would be physically affected by the relevant work(s);

(c) protected crossings where relevant work(s) are to be carried out within 25 metres of the protected crossing concerned; and

(d) in relation to the exercise of an identified power, any apparatus in the protected land which would be affected by the exercise of that power.

"apparatus" means the pipeline and cables within the pipeline corridor and includes—

(a) any structure existing at the time when a particular action is to be taken under this Schedule in which apparatus is or is to be lodged or which will give access to apparatus;

(b) any cathodic protection, coating or special wrapping of the apparatus; and

(c) all ancillary apparatus (whether or not comprising a pipe-line for the purposes of Section 65(2) of the Pipe-lines Act 1962) properly appurtenant to the pipelines as are described in section 65(2) of the Pipe-lines Act 1962;

"cats easement" means the easement width of the cats pipeline;

"cats pipeline" means the pipeline identified as "Gas BP Cats" on the conveyor route plans;

"cats pipeline critical construction activities" means the following authorised works—

(a) excavation works within the cats easement;

(b) piling within 10m of the cats pipeline;

(c) backfilling and compaction work within the cats easement;

(d) erection of crash mats above the cats pipeline; and

(e) all lifting above the cats pipeline.

"construction access plan" means a plan identifying how access will be maintained to pipelines, the protected crossings and the Wilton Complex during the proposed construction or maintenance work including—

(a) any restrictions on general access by owners of the protected land and operators of the pipelines, including the timing of restrictions;

(b) any alternative accesses or routes of access that may be available to the undertaker using the access roads;

(c) details of how the needs and requirements of owners of the protected land and operators of the pipelines (including their needs and requirements in relation to any major works that they have notified to the other operators of the protected land as at the date when the plan is published) have been taken into account in preparing the plan;

(d) details of how uninterrupted and unimpeded emergency access with or without vehicles will be provided at all times for owners of the protected land and operators of the pipelines; and

(e) details of how reasonable access with or without vehicles will be retained or an alternative provided for owners of the protected land and operators of the pipelines to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the pipelines and protected crossings;

"construction or maintenance works" means any works to construct, maintain, repair or decommission the authorised development;

"damage" includes all damage including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

"easement width" means in respect of each pipeline the easement width shown on the conveyor route plans as adjusted if necessary (in respect of pipelines shown on the conveyor route plans) or added to (in respect of pipelines constructed after the date of this Order) as a result of the pipeline survey;

"engineer" means an engineer appointed by an owner or operator of a pipeline for the purposes of this Order;

"major works" means works by any person requiring the closure, diversion or regulation of any roads serving the Wilton Complex;

"Northumbrian Water Limited" means the company registered at Companies House with Company Number 02366703;

"operator" means any person who is responsible for the construction, operation, use, inspection, adjustment, alteration, repair, maintenance, renewal, removal or replacement of any pipeline;

"owner" means—

(a) in relation to the pipeline corridor, any person—

(i) with an interest in a pipeline in the pipeline corridor; or

(ii) with rights in, on, under or over the pipeline corridor in respect of a pipeline;

(iii) a pipeline or proposed pipeline in, on, under or over the pipeline corridor;

(b) in relation to the access roads, any person—

(i) with an interest in the access roads; or

(ii) with private rights of way on or over the access roads;

(c) in relation to the protected crossings, any person—

(i) with an interest in the protected crossings;

(ii) with rights in relation to the protected crossings; or

(iii) with pipelines in or comprising the protected crossings; and

(d) in relation to protected land means any person falling within paragraphs (a) to (c) above.

"pipeline(s)" means the apparatus located in the pipeline corridor, or in or comprising a protected crossing at the time the pipeline survey is carried out or as may be added between the date of the pipeline survey and the commencement of works, providing that any such additions were notified to the undertaker within the period specified in paragraph 3(3) of this Schedule ;

"pipeline survey" means a survey of the pipeline corridor and the protected crossings to establish if not known:

(a) the precise location of the pipelines and the protected crossings;

(b) the specification of the pipelines and protected crossings including, where relevant, their composition, diameter, pressure and the products they are used to convey;

(c) any special requirements or conditions relating to the pipelines which differ from the requirements or conditions applying to standard pipelines of that type;

(d) the precise location of any easement widths or rights (where it is possible to establish this).

"protected crossings" means—

(a) the tunnel under the River Tees which carries pipelines known as Tunnel 2; and

(b) the apparatus under the River Tees known as the Breagh Pipeline;

"protected land" means such parts of the Order land as fall within—

(a) the access roads;

(b) the pipeline corridor; and

(c) the protected crossings;

"relevant work(s)" means a work which may have an effect on the operation, maintenance, repair, replacement and/or abandonment of and/or access to any pipeline or a protected crossing;

"specified persons" means—

(a) the following—

(i) Company Secretary, SABIC UK Petrochemicals Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF in relation to SABIC UK Petrochemicals Limited;

(ii) Operations Manager, Huntsman Polyurethanes, PO Box 99, Wilton, Redcar, TS10 4YA in relation to Huntsman Polyurethanes (UK) Limited;

(iii) Company Secretary, INEOS UK SNS Limited, 4th Floor, 90 High Holborn, London WC1V 6LJ in relation to INEOS UK SNS Limited; and

(iv) CATS Manager, CATS Terminal, Seal Sands Road, Seal Sands, Middlesbrough, Teesside TS1 1UB and Technical Director, CATS North Sea Limited, Wynyard Park House, Wynyard Avenue Wynyard Billingham TS22 STB in relation to CATS North Sea Limited

(v) or such other person as they may notify to the undertaker in writing; or

(b) where a person for whose benefit these protective provisions have effect is not mentioned in paragraph (a)—

(i) that person where the person is not an incorporated body;

(ii) the company secretary in relation to a company;

(iii) the designated partner in relation to a limited liability partnership; or

(iv) such other person as they may notify to the undertaker in writing.

"unknown rights" means rights which are:

(a) not known at the date of the Order; or

(b) identified as unknown in the book of reference,

but not including any rights relating to pipelines (or access to pipelines) where a pipeline is shown on the pipeline survey;

"Wilton Complex" means the land shown outlined in red on the Wilton Complex Plan;

"Wilton Complex Plan" means the plan entitled "Location of Wilton Complex (Plan 1)" (drawing number T-MIS-0065-01);

"works details" means the following—

(a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned and/or their location;

(b) details of any proposed temporary crossing points under paragraph 10;

(c) details of methods and locations of any piling proposed to be undertaken under paragraph 14;

(d) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 15;

(e) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 16;

(f) details of the location of any pipelines affected by the oversailing provisions in paragraph 17, including details of the proposed clearance;

(g) details of the method location and extent of any dredging, a technical assessment of the likely effect of the dredging on the protected crossings and any mitigation measures which are proposed to be put in place to prevent damage to the protected crossings;

(h) details of the undertaker and their principal contractors' management of change procedures;

(i) details of the traffic management plan, which plan shall include details of vehicle access routes for construction and operational traffic and which shall assess the risk from vehicle movements and include safeguards to address identified risks;

(j) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to the cats pipeline;

(k) details (to include a dynamic analysis undertaken by the undertaker and provided to the cats pipeline operator) of the conveyor and conveyor support structure and the measures to be undertaken to ensure vibration does not impact on the cats pipeline;

(l) details of the lifting study during the construction phase, which shall include a technical assessment of the protection of underground assets and which study shall provide for individual lift plans;

(m) details of the lifting study during the operational phase, which shall include a technical assessment of the protection of underground assets and which study shall provide for individual lift plans;

(n) details of the means by which the entirety of the cats pipeline can be properly inspected and if necessary repaired during the construction and operation of the authorised development which shall provide for an excavation to a depth of 0.6 metres below the cats pipeline and 2 metres either side of the centreline of the cats pipeline consistent with the relevant constructability notes;

(o) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators;

(p) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to the cats pipeline cathodic protection system and the proposed remedial works; and

(q) any further particulars provided pursuant to paragraph 4(2).

Pipeline survey

3.—(1) Before commencing any part of the authorised development in the pipeline corridor or which may affect a protected crossing the undertaker must:

(a) carry out and complete the pipeline survey; and

(b) comply with sub-paragraph (3) below.

(2) The pipeline survey must be undertaken by a surveyor who is a member of the Royal Institute of Chartered Surveyors with at least 10 years' experience of such surveys.

(3) When the pipeline survey has been completed the undertaker must serve a copy of the pipeline survey on the owners and operators of the pipelines and protected crossings and invite them to advise the undertaker within 28 days of receipt of the survey if they consider that the pipeline survey is incomplete or inaccurate and if so in what respect following which the undertaker will finalise its pipeline survey.

Authorisation of works details affecting pipelines or protected crossings

4.—(1) Before commencing any part of a relevant work the undertaker must submit to the owners and any operators of any affected asset the works details and obtain a written acknowledgement of receipt of those works details from the specified persons in relation to the affected asset concerned.

(2) The undertaker must as soon as reasonably practicable provide such further particulars as the owner or operator of any affected asset may, within 45 days from the receipt of the works details under paragraph 4(1), reasonably require.

5. No part of a relevant work is to be commenced until one of the following conditions has been satisfied—

(a) the works details supplied in respect of that relevant work under paragraph 3 of this Schedule have been authorised by the owner and operator of all the affected assets; or

(b) the works details supplied in respect of that relevant work under paragraph 3 of this Schedule have been authorised by an expert under paragraph 7(3); or

(c) authorisation is deemed to have been given pursuant to paragraph 7(1) below.

6.—(1) Any authorisation by the owner or operator of an affected asset required under paragraph 5(a) of this Schedule must not be unreasonably withheld but may be given subject to such reasonable conditions as the owner or operator of the affected asset may require to be made for—

(a) the continuing safety and operation or viability of the affected asset; and

(b) the requirement for the owner and operator of the affected asset to have—

(i) uninterrupted and unimpeded emergency access with or without vehicles to the affected asset at all times; and

(ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.

(2) Where the owner or operator of the cats pipeline can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the cats pipeline the owner or operator shall be entitled to withhold their authorisation until the undertaker can demonstrate to the reasonable satisfaction of the owner or operator that the authorised development shall not significantly adversely affect the safety of the cats pipeline.

(3) The authorised development shall be carried out in accordance with the works details authorised under paragraph 5 and any conditions imposed on the authorisation under paragraph 6(1).

(4) Where there has been a reference to an expert in accordance with paragraph 7(2) and the expert gives authorisation, the authorised development shall be carried out in accordance with the authorisation and conditions contained in the award of the expert under paragraph 7(3).

7.—(1) In the event that—

(a) no response has been received to the submission of the works details under paragraph 4 within 45 days of the undertaker obtaining a written acknowledgment of receipt from a specified person under paragraph 4(1) and no further particulars have been requested under paragraph 4(2); or

(b) authorisation has not been given within 30 days of the undertaker obtaining a written acknowledgment of receipt from a specified person of the further particulars supplied under paragraph 4(2),

approval of the works details shall be deemed to be given and the relevant works may commence.

(2) In the event that—

(a) the undertaker considers that the owner or operator has unreasonably withheld its authorisation under paragraph 6(1); or

(b) the undertaker considers that an owner or operator has given its authorisation under paragraph 6(1) subject to unreasonable conditions,

the undertaker may refer the matter to an expert for determination under article 40(2) and paragraph 34 of this Schedule.

(3) Where the matter is referred to an expert under paragraph 7(2) the expert shall determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 6(1).

(4) Where the undertaker considers that the owner or operator of the cats pipeline has unreasonably withheld its authorisation under paragraph 6(2) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by the secretary of the United Kingdom Onshore Pipeline Association (UKOPA) for determination under article 40(2) and paragraph 34 of this Schedule.

Notice of works

8. The undertaker will provide to the owner and operator of an affected asset a minimum of 28 days' notice prior to commencing any relevant work in order that an engineer can be made available to observe the relevant works and, when required, advise on the necessary safety precautions.

Further provisions about works

9.—(1) Before carrying out a relevant work the undertaker must—

(a) provide the owners and any operators of any affected asset with baseline data for any existing cathodic protection of the asset; and

(b) carry out a pipeline settlement and stress analysis to demonstrate any potential pipeline movement will not present an integrity risk to the affected asset.

(2) The pipelines will be located by hand digging prior to the use of mechanical excavation provided that any excavation outside of 2 metres of the centreline of a pipeline may be dug by mechanical means.

(3) The undertaker shall engage an independent construction Quality Assurance Inspector(s) to oversee cats pipeline critical construction activities during the construction phase.

10.—(1) Where temporary crossings for construction traffic are to be used, other than where the pipelines are under a carriageway of adequate standard of construction, then the crossing points shall be suitably reinforced with sleepers and/or road plates or a specially constructed reinforced concrete raft or by installing a temporary bridge over the pipeline as necessary.

(2) Details of proposed temporary crossing points referred to in sub-paragraph (1) must be notified to the owner and operator of the pipeline in accordance with paragraph 4.

11. During construction, an area equivalent to the easement widths of the pipelines (taken from the actual location of the pipelines shown on the pipeline survey) must be fenced off using some form of visual indication such as netlon fencing or "heras" type fence panels. Suitable signage warning of the danger of live pipelines must be erected at a minimum distance of every 50 metres.

12. No explosives must be used within the protected land.

13.—(1) There will be no lifting over any exposed sections of the cats pipeline or live or vulnerable plant containing hazardous substances or pressure energy.

(2) Any construction works above the buried sections of the cats pipeline will require the protection of the cats pipeline.

(3) All piling within 1.5 metres of the centreline of a pipeline must be non-percussive, save that in the case of the cats pipeline all piling within 10 metres of the centreline of the cats pipeline must be non-percussive.

14.—(1) Where piling is required within 50 metres of the centreline of a pipeline or which could have an effect on the operation or maintenance of a pipeline or access to a pipeline, details of the proposed method for and location of the piling must be provided to the owner and operator of the relevant pipeline for approval in accordance with paragraph 4.

(2) Any proposed piling operations within—

(a) 10 metres either side of the centreline of the cats pipeline will require the crown of the pipeline to be physically exposed, so its location can be confirmed with the asset operator or owner as appropriate and where within 2 metres of the centreline of the cats pipeline it shall be exposed by hand digging only; and

(b) 5 metres either side of the centreline of the cats pipeline and, in addition to the obligations in paragraph 14(2)(a), will require excavation to be carried out to a level below the depth of the pipeline, to ensure that no materials are present that could damage the pipeline if disturbed, in the presence of the asset owner or operator as appropriate.

(3) All excavations within 2 metres of the centreline of the cats pipeline must be hand dug.

15.—(1) (1) Where excavation of trenches (including excavation by dredging) adjacent to a pipeline affects its support, the pipeline must be supported in a manner approved by the owner and operator of the relevant pipeline.

(2) Where the undertaker proposes to carry out excavations which might affect above ground structures such as pipeline supports in the pipeline corridor, the undertaker must calculate the zone of influence of those excavations and provide those calculations to the owner and operator of the pipeline under paragraph 4.

16.—(1) Where a trench is excavated across or parallel to the line of a pipeline, the backfill must be adequately compacted to prevent any settlement which could subsequently cause damage to the pipeline.

(2) Proposed methods and locations of compacting must be notified to the owner and operator of the pipeline in accordance with paragraph 4.

(3) Compaction testing must be carried out once back filling is completed to establish whether the backfill has been adequately compacted as referred to in paragraph 16(1) and what further works may be necessary, and the results of such testing must be supplied to the owner and operator of the pipeline.

(4) Where it is shown by the testing under paragraph 16(3) to be necessary, the undertaker must carry out further compaction testing under paragraph 16(1) and paragraphs 16(1), (2) and (3) shall continue to apply until such time as the backfill has been adequately compacted.

(5) In the event that it is necessary to provide permanent support to a pipeline which has been exposed over the length of the excavation before backfilling and reinstatement is carried out, the undertaker shall pay to the owner or operator of the relevant pipeline a capitalised sum representing the increase of the costs (if any) which may be expected to be reasonably incurred in maintaining, working and, when necessary, renewing any such alterations or additions.

(6) In the event of a dispute as to—

(a) whether or not backfill has been adequately compacted under paragraphs 16(1) to (4); or

(b) the amount of any payment under paragraph 16(5),

the undertaker or the owner or operator of the relevant pipeline may refer the matter to an expert for determination under article 40(2).

17.—(1) A minimum clearance of 1500mm must be maintained between any part of the authorised development and any affected asset (whether that part of the authorised development is parallel to or crosses the pipeline) unless otherwise agreed with the owner and operator of the affected asset.

(2) No manholes or chambers are to be built over or round the pipelines.

Monitoring for damage to pipelines

18.—(1) When carrying out the relevant work the undertaker will monitor the relevant affected assets to establish whether damage has occurred.

(2) Where any damage occurs to an affected asset as a result of the relevant work, the undertaker shall immediately cease all work in the vicinity of the damage and shall notify the owner and operator of the affected asset to enable repairs to be carried out to the reasonable satisfaction of the owner and operator of the affected asset.

(3) If damage has occurred to an affected asset as a result of relevant work the undertaker will, at the request and election of the owner or operator of the affected asset, either—

(a) afford the owner or operator of the affected asset all reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to the owner or operator its costs incurred in doing so including the costs of testing the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or

(b) itself fully and properly repair the affected asset as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of the owner or operator of the affected asset to have effectively repaired the affected asset before any backfilling takes place.

(4) Where testing has taken place under paragraph 18(2)(b), the undertaker must (save where an owner or operator of the affected asset agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work sub-paragraphs (2) to (4) of this paragraph will apply to that damage.

(6) Pursuant to the approved assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to the cats pipeline cathodic protection system, the undertaker shall undertake any necessary remedial work.

(7) In the event that the undertaker does not carry out necessary remedial work timeously then the affected owner shall be entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

19.—(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity shall cease and the owner and operator of the pipeline must be notified immediately.

(2) Where there is leakage or escape of gas, the undertaker must immediately—

(a) remove all personnel from the immediate vicinity of the leak;

(b) inform the owner and operator of the relevant pipeline;

(c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and

(d) assist emergency services as may be requested.

Compliance with requirements, etc. applying to the protected land

20.—(1) Subject to paragraph 20(2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting owners of the protected land, the undertaker must

comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the protected land.

(2) The undertaker is not bound by any condition, requirement or regulation that is—

(a) introduced after the date on which notice of the works was given pursuant to paragraph 8 of this Schedule; or

(b) determined by the expert following a determination under article 40(2) to unreasonably—

(i) create significant engineering, technical or programming difficulties; or

(ii) materially increase the cost of carrying out the works.

(3) Paragraph 20(2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

Access for construction and maintenance

21.—(1) Before carrying out any construction or maintenance works affecting access rights over the access roads, the undertaker must prepare a draft construction access plan and publicise and consult on the draft construction access plan with owners of the protected land operators of the pipelines and any owners and occupiers of any properties within the Wilton Complex whose access to their property is likely to be affected by those works.

(2) The undertaker must take account of the responses to any consultation referred to in paragraph 21(1) before approving the construction access plan.

22.—(1) In preparing a construction access plan under paragraph 21 the undertaker must—

(a) establish the programme for major works in the pipeline corridor and the Wilton Complex and plan the construction or maintenance works to prevent or (if such conflict cannot be reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and

(b) establish where an owner of the protected land or operator of a pipeline or any owners and occupiers of any properties within the Wilton Complex whose access to their property is likely to be affected by those works has a reasonable expectation to exercise access rights over particular access roads in respect of which rights are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby that expectation can be met.

(2) Where a reference is made to expert determination under article 40(2) in relation to any disagreement about a construction access plan, in addition to the criteria set out in article 40(2)(e) the appointed expert must have regard to—

(a) whether major works were, at the date of the consultation already programmed to take place;

(b) the extent to which the authorised development can be accommodated simultaneously with the programmed major works;

(c) the usual practice in respect of conditions or requirements subject to which authorisation to close or divert the access roads is given by the owner of the access roads;

(d) the undertaker's programme in respect of the authorised development and the extent to which it is reasonable for it to carry out the authorised development at a different time;

(e) the availability (or non-availability) of other times during which the authorised development could be carried out;

(f) the programme in respect of the major works and the extent to which it is reasonable for the owner or operator to carry out the major works at a different time; and

(g) the financial consequences of the decision on the undertaker and on any owner and operator.

(3) In this paragraph, "programmed", in relation to works, means works in respect of which the owner of the access roads has been notified of the specific dates between which the works are

programmed to be carried out provided that the period covered by such dates must be length of time the works are programmed to be carried out and not a period within part of which the works are to be carried out.

23.—(1) No works affecting access rights over the access roads may commence until 30 days after a copy of the approved construction access plan is served on the owners of the protected land and operators of pipelines.

(2) Where an owner of the protected land or an operator of a pipeline refers the construction access plan to an expert for determination under article 40(2), no works affecting access rights over the access roads may commence until that determination has been provided.

(3) In carrying out construction or maintenance works the undertaker shall at all times comply with the construction access plan.

Restriction on exercising powers

24.—(1) The undertaker must not in the exercise of the powers conferred by this Order acquire, appropriate, extinguish, suspend or override any rights in the protected land if the authorised development can reasonably and practicably be carried out without such acquisition, appropriation, extinguishment, suspension or override.

(2) The undertaker must in the exercise of the powers conferred by this Order at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on owners of the protected land and operators of the pipelines, including any disruption to access and supplies of utilities and other services that are required by them in order to carry out their operations.

25.—(1) The undertaker must not exercise the powers conferred by articles 24 and 25 of this Order to acquire, appropriate, extinguish, suspend or override any rights in the protected land relating to the pipelines or access to pipelines except in relation to unknown rights.

(2) Without prejudice to paragraph 25(1) the undertaker must not exercise the identified powers—

(a) in relation to the protected land without the consent in writing of the owner; and

(b) where the exercise of powers affects a pipeline without the consent in writing of the operator of that pipeline;

(c) without consent given by an expert appointed under article 40(2); or

(d) without deemed consent pursuant to sub paragraph (7) below.

(3) Where an identified power provides for the undertaker to automatically extinguish or override a right or interest of an owner of the protected land, the restriction in paragraph 25(2) shall operate so that the said extinguishment or override of the said right or interest will not apply unless the owner of the right or interest has given its consent or consent has been given by an expert appointed under article 40(2) or is deemed to be given under sub-paragraph (7).

(4) Where a person is asked to give consent under this paragraph 25(2), the consent must not be unreasonably withheld.

(5) If the undertaker considers that consent has been unreasonably withheld, the undertaker may refer the request for consent to an expert appointed under article 40(2) for determination.

(6) If an owner of the protected land or operator of a pipeline fails to respond to a request for consent within 30 days of the undertaker obtaining a written acknowledgement of receipt of the request for consent from the specified person the undertaker may serve a further notice on that owner or operator (a "deeming notice").

(7) In the event that an owner of the protected land or operator of a pipeline fails to respond to a deeming notice within 10 working days from the date when a written acknowledgement of receipt of the deeming notice is obtained by the undertaker from the specified person, the consent of the owner of the protected land or operator of a pipeline as the case may be is deemed to be given.

(8) In this paragraph, "identified powers" means the powers conferred by the following—

(a) article 10 (street works);

(b) article 11 (temporary stopping up of streets);

(c) article 12 (access to works);

(d) article 14 (discharge of water);

(e) article 16 (authority to survey and investigate the land);

(f) article 24 (compulsory acquisition of rights) insofar as the exercise of such powers is not excluded by paragraph 24 (1) and paragraph 25(1);

(g) article 25 (power to override easements and other rights) insofar as the exercise of such powers is not excluded by paragraph 24 (1) and paragraph 25(1);

(h) article 29 (rights under or over streets); and

(i) article 30 (temporary use of land for carrying out the authorised development).

Insurance

26.—(1) Before carrying out any part of the authorised development on the protected land, the undertaker must put in place a policy of insurance with a reputable insurer against its liabilities under paragraph 28 in accordance with the terms and level of cover notified under paragraph 26(2) or, in the case of dispute, in accordance with the terms and level of cover determined by an expert under article 40(2), and evidence of that insurance must be provided on request to owners of the protected land and operators of pipelines.

(2) Not less than 30 days before carrying out any part of the authorised development on the protected land or before proposing to change the terms of the insurance policy, the undertaker must notify the owners of the protected land and operators of pipelines of details of the terms of the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.

(3) The undertaker must maintain insurance in relation to the authorised development affecting owners of the protected land and operators of pipelines during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover specified in paragraph 26(2) or at such level as may otherwise be determined by an expert under article 40(2).

27.—(1) If an owner of the protected land or operator of a pipeline has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 26—

(a) the owner of the protected land or operator of a pipeline may refer the matter to an expert for determination under article 40(2); and

(b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under article 40(2) is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs

28.—(1) The undertaker must repay to owners of the protected land and operators of the pipelines all reasonable fees, costs, charges and expenses reasonably incurred by them in relation to these protective provisions in respect of—

(a) authorisation of survey details submitted by the undertaker under paragraph 3(3), authorisation of works details submitted by the undertaker under paragraph 4 and the imposition of conditions under paragraph 6;

(b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 8;

(c) responding to the consultation on piling under paragraph 14;

(d) considering the effectiveness of any compacting which has taken place under paragraph 16, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;

(e) the repair and testing of a pipeline or protected crossing under paragraph 18;

(f) considering and responding to consultation in relation to the construction access plan under paragraph 21 and providing details of their programme for major works to the undertaker under paragraph 22;

(g) dealing with any request for consent or agreement by the undertaker under paragraph 25; and

(h) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 26,

including the reasonable costs incurred by owners and operators in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to allow the owner or operator to carry out its functions under these protective provisions.

(2) The undertaker must indemnify and keep the owners of the protected land and operators of the pipelines indemnified against all reasonable costs, charges, damages and expenses, and against consequential loss and damage, which may be occasioned or reasonably incurred by the owners and operators—

(a) by reason of the construction, operation, maintenance, repair and decommissioning of the authorised development or the failure thereof; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction, operation, maintenance, repair and decommissioning of the authorised development,

and the fact that any act or thing may have been done by the owner of protected land or operator of a pipeline on behalf of the undertaker or in accordance with plans approved by or on behalf of the owner or operator or in accordance with any requirement of the engineer appointed by the owner or operator or under his supervision will not (if it was done without negligence on the part of the owner or operator or of any person in their employ or of its contactors or agents) excuse the undertaker from any liability under the provisions of this paragraph 28(2).

(3) An owner or operator must give the undertaker reasonable notice of any claim or demand under paragraph 28(2) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(4) An owner or operator must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule.

(5) In the assessment of any sums payable to an owner or operator under this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by, or any agreement entered into by, the owner or operator if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

Further protection in relation to the exercise of powers under the Order

29. The undertaker must give written notice to the owners of the protected land and the operators of pipelines of the terms and level of cover of any guarantee or alternative form of security put in place under article 23 (Guarantees in respect of payment of compensation) and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security will come into force.

30. The undertaker must give written notice to the owners of the protected land and the operators of pipelines if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 8 (Consent to transfer benefit of Order), and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

31. The undertaker must, when requested to do so by an owner of the protected land or an operator of a pipeline, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 38 (Certification of Plans etc) in the form of a computer disc with read only memory.

32. The authorised development must be carried out in accordance with the methods and measures set out in the relevant constructability notes.

33. Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to the owners of the protected land and the operators of the pipelines.

Expert Determination

34.—(1) Any dispute under this Schedule is to be determined by the expert determination procedure as provided for in article 40(2) (arbitration and expert determination) as modified by this paragraph.

(2) In addition to the considerations set out in article 40(2)(e) the expert must consider any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations and have regard to the constructability notes.

SCHEDULE 10

Article 34

PART 1

FOR THE PROTECTION OF ASSETS BRIDGED/OVERSAILED

1. The following provisions of this part of this Schedule shall have effect, unless otherwise agreed in writing between the undertaker and the protected asset owner/s.

2. In this part of this Schedule—

"construction" includes execution, placing, alteration, reconstruction and decommissioning and "construct" and "constructed" have corresponding meanings;

“Deeds of Grant” means the deeds dated 23 September 1949 and 23 February 1954 made between Imperial Chemical Industries Limited and Dorman Long & Co Limited;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the protected asset;

"protected asset" means the assets and land identified in the annex to this part of this Schedule;

"protected asset owner" means the owner/s of a protected asset; and

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, a protected asset.

3. Where under this part of this Schedule a protected asset owner is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that the protected asset owner complies with any obligations under statute.

4.—(1) The undertaker must not in the exercise of the powers conferred by this Order—

(a) create, acquire, appropriate, extinguish or suspend any rights or covenants in respect of any protected asset if the authorised development can reasonably and practicably be carried out in accordance with the protective provisions without such creation, acquisition, appropriation, extinguishment or suspension; and

(b) without prejudice to (a) restrict the rights contained in the Deeds of Grant in so far as such rights are consistent with the construction, operation and maintenance of the authorised development in accordance with the protective provisions.

(2) The undertaker must in the exercise of the powers conferred by this Order at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on protected assets.

(3) The undertaker shall not in the exercise of the powers conferred by this Order prevent access via any existing pedestrian or vehicular access to any protected asset, unless preventing such access is with the consent of the protected asset owner and is in any event subject to exception in the case of emergency.

(4) The undertaker shall not under the powers of this Order acquire or create new rights over a protected asset other than such rights as are necessary for the construction, operation and maintenance of Works No. 4 and Works No. 5 in accordance with the protective provisions without the consent of the protected asset owner.

(5) Where the protected asset owner is asked to give its consent pursuant to this paragraph such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) Before carrying out any works on any part of the authorised development affecting a protected asset the undertaker must put in place a policy of insurance with a reputable insurer against consequential loss and damage suffered by protected asset owners, and evidence of that insurance must be provided on request to protected asset owners.

(2) Not less than 30 days before carrying out any works on any part of the authorised development affecting a protected asset or before proposing to change the terms of the insurance policy, the undertaker must notify the affected owners of details of the terms of the insurance policy that it proposes to put in place including the proposed level of the cover to the provided.

(3) The undertaker must maintain insurance in relation to works or the use of the authorised development affecting the protected asset during the operation of the authorised development at the level specified in the notice of proposed insurance.

6. If a protected asset owner notifies the undertaker that it considers that any proposed exercise by the undertaker of a power under this Order breaches these protective provisions or if there is a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 5 before such a power may be exercised—

(a) the protected asset owner may refer the matter to arbitration for determination under article 40(1) and paragraph 21 of this part of this Schedule; and

(b) in respect of an alleged breach of these protective provisions in relation to any proposed exercise by the undertaker of a power under this Order that has been referred to arbitration the undertaker must not exercise the power until that determination has been concluded

(c) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under article 40(1) is completed, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

7.—(1) The undertaker shall before commencing construction of any specified work supply to the protected asset owner proper and sufficient plans of and construction methodology for that work for the reasonable approval of the protected asset owner and the undertaker must as soon as reasonably practicable provide such further particulars as the protected asset owner may within 45 days from the receipt of the plans and construction methodology reasonably require.

(2) The specified work shall not be commenced except in accordance with such plans and construction methodology as have been approved in writing by the protected asset owner or have been deemed to be approved pursuant to sub-paragraph (3) or settled by arbitration under the provisions of article 40(1) and paragraph 21 of this part of this Schedule.

(3) The approval of the protected asset owner under sub-paragraph (1) shall not be unreasonably withheld, and in the event that—

(a) no response has been received to the submission of the plans and construction methodology within 45 days of the submission of the plans by the undertaker to the protected asset owner and no further particulars have been requested under sub-paragraph (1); or

(b) no refusal of approval has been received within 30 days of the undertaker providing to the protected asset owner the further particulars supplied under sub-paragraph (1),

approval of the plans and construction methodology shall be deemed to be given and the relevant works may commence.

(4) No refusal of the approval sought under sub-paragraph (1) shall be reasonable for the purposes of sub-paragraph (3) or determination pursuant to article 40(1) unless the protected asset owner can reasonably demonstrate that the construction of the specified work will materially affect the safe operation or structural integrity of the protected asset concerned.

(5) In the event that the undertaker considers that the protected asset owner has unreasonably withheld its authorisation under sub-paragraph (1), the undertaker may refer the matter to arbitration for determination under article 40(1) and paragraph 21 of this part of this Schedule.

8.—(1) Any specified work shall, when commenced, so far as reasonably practicable be constructed in accordance with these protective provisions and—

(a) with all reasonable dispatch in accordance with the plans and construction methodology approved or deemed to have been approved or settled under paragraph 7;

(b) under the supervision (if given) and to the reasonable satisfaction of the protected asset owner;

(c) in such manner as to avoid damage to the protected asset; and

(d) so as not to interfere with or obstruct the free, uninterrupted and safe use of any protected asset or any traffic thereon.

(2) If any damage to a protected asset or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker shall, make good such damage without unreasonable delay and shall pay to the protected asset owner all reasonable expenses incurred by the protected asset owner and compensate for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this part of this Schedule shall impose any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of the protected asset owner or its servants, contractors or agents or any liability on the protected asset owner with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

9. The undertaker shall—

(a) at all times afford reasonable facilities to the protected asset owner for access to a specified work during its construction; and

(b) supply the protected asset owner with all such information as it may reasonably require with regard to a specified work or the method of constructing it.

10.—(1) If any permanent or temporary alterations or additions to a protected asset are reasonably necessary in consequence of the construction or operation of a specified work, in order to ensure the safety of the protected asset or the continued safe operation of the protected asset, such alterations and additions may be carried out by the protected asset owner and if the undertaker shall pay to the protected asset owner the cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the protected asset owner in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) The protected asset owner shall, in respect of the capitalised sums referred to in this paragraph provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(3) If the cost of maintaining, working or renewing a protected asset is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to the protected asset owner under this paragraph.

11. The undertaker shall repay to the protected asset owner all reasonable fees, costs, charges and expenses reasonably incurred by the protected asset owner—

(a) in respect of the approval by the protected asset owner of plans submitted by the undertaker and the supervision by it of the construction of a specified work;

(b) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting the protected asset and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(c) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the protected asset owner, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution of diversion of services which may be reasonably necessary for the same reason.

12. If at any time after the completion of a specified work, not being a work vested in a protected asset owner, the protected asset owner gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects

the operation of a protected asset, the undertaker shall, on receipt of such notice and without unreasonable delay, take such steps as may be reasonably necessary (and in accordance with the protective provisions) to put that specified work in such state of maintenance as not adversely to affect the protected asset.

13. The undertaker shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any protected asset unless it shall have first consulted the protected asset owner and it shall comply with the protected asset owner's reasonable requirements for preventing conflict or confusion between such illumination or illuminated sign or signal and any signal or other light used for controlling, directing or securing the safety of traffic on the protected asset.

14. Any additional expenses which a protected asset owner may reasonably incur in altering, reconstructing or maintaining a protected asset under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that (other than in the case of emergency or an operational imperative requiring urgent action) 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to the protected asset owner.

15. The protected asset owner shall, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this part of this Schedule and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this part of this Schedule.

16. In the assessment of any sums payable to the protected asset owner under this part of this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by the protected asset owner if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this part of this Schedule or increasing the sums so payable.

17. The undertaker and the protected asset owner may (at their absolute discretion), enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any protected asset;

(b) any lands, works or other property held in connection with any such protected asset; and

(c) any rights and obligations (whether or not statutory) of the protected asset owner relating to any protected asset or any lands, works or other property referred to in this paragraph.

18. The undertaker shall give written notice to the protected asset owner if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 8 (consent to transfer benefit of Order) of this Order and any such notice shall be given no later than 28 days before any such application is made and shall describe or give (as appropriate)—

(a) the nature of the application to be made (including the identity of the parties to which it relates);

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

19. The undertaker shall no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 38 (Certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to the protected asset owner in the form of a computer disc with read only memory or such other electronic data format as the protected asset owner may reasonably request.

20.—(1) The plans and construction methodology submitted for approval pursuant to paragraph 7 of this part of this Schedule shall have regard to the principles set out in the relevant

constructability notes but a refusal of plans and/or construction methodology from a protected asset owner from whom approval is sought pursuant to paragraph 7 shall not be deemed to be unreasonable solely on the basis that the plans and construction methodology comply with the relevant constructability note.

(2) The minimum headroom clearance between the upper surface of the hot metal rail and bridge shown as MC3 on the conveyor route plans and the underside of the conveyor must be 7.850 metres.

(3) The minimum headroom clearance between the upper surface of the road and bridge shown as MC6 on the conveyor route plans and the underside of the conveyor must be 8.240 metres.

21.—(1) Any dispute under this Schedule is to be determined by arbitration as provided for in article 40(1) (arbitration and expert determination) PROVIDED THAT

(a) All parties involved in settling any difference shall have first used best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the arbitrator shall be appointed in accordance with article 40(1): and

(b) Any dispute to which this paragraph relates must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an arbitrator, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(2) Any arbitration carried out under the provisions of this Schedule shall subject to the requirements of the appointed arbitrator follow the procedure set out below:

(a) The fees of the arbitrator are payable by the parties in such proportions as the arbitrator may determine or, in the absence of such determination, equally.

(b) The arbitrator must—

(i) invite the parties to make submission to the arbitrator in writing and copied to the other party to be received by the arbitrator within 28 days of his or her appointment (or such other timescale as the arbitrator shall determine);

(ii) permit a party to comment on the submissions made by the other party within 28 days of receipt of the submission (or such other timescale as the arbitrator shall determine);

(iii) issue a decision within 42 days of receipt of the submissions under (ii); and

(iv) give reasons for his or her decision.

(c) The arbitrator must consider where relevant—

(i) the development outcome sought by the undertaker;

(ii) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

(iii) the nature of the power sought to be exercised by the undertaker;

(iv) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;

(v) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner;

(vi) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;

(vii) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;

(viii) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and

(ix) any other important and relevant consideration.

(3) The seat of the arbitration shall be England and Wales.

(4) The arbitration shall be governed by both the Arbitration Act 1996 and requirements (set out at paragraphs (b) - (e) above) as agreed between the parties. Should the parties be unable to agree on the rules for arbitration, any party may, upon giving written notice to other parties, apply to the President of the Institution of Civil Engineers for any decision on rules that may be necessary.

ANNEX

(1) *Asset*	*(2)* *Asset Owner*	*(3)* *Crossing Number/Location*
Land subject to lease in favour of M&G Fuels	M&G Solid Fuels LLP	Plot 60 on the land plans
A1085	Redcar and Cleveland Borough Council	MC1on the conveyor route plans
Hot Metal Rail and Bridge	Tata Steel UK Limited and Sahaviriya Steel Industries UK Limited	MC3 on the conveyor route plans
SSI Road and Bridge	Tata Steel UK Limited and Sahaviriya Steel Industries UK Limited	MC6 on the conveyor route plans
Land and assets owned/occupied by Tata Steel UK Limited	Tata Steel UK Limited	Plot 37a on the land plans

PART 2

FOR THE PROTECTION OF REDCAR BULK TERMINAL

22. The following provisions of this part of this Schedule shall have effect for the benefit of any owner of the Redcar Bulk Terminal.

23.—(1) The undertaker shall not commence the construction of any part of Works No.4 within the conveyor route (northern) or any part of Works No.5 which are to be situated within or above plots 9 and/or 10 identified on the land plans without first agreeing (and thereafter implementing) with the owners of the Redcar Bulk Terminal protocols to—

(a) govern access for the undertaker and the owners of the Redcar Bulk Terminal to the area shown on Document 3.16 which protocol shall have due regard to proper security and operational requirements of the Redcar Bulk Terminal and the undertaker;

(b) ensure that the construction and use of the authorised development within the said plots 9 and 10 incorporates the appropriate health, safety and security requirements of the owner or occupier of Redcar Bulk Terminal and the undertaker; and

(c) locate, protect and (to the extent required to ensure continuation of supply) replace, relocate and reconnect any services/service media within the said plots 9 and 10.

(2) In the event that the undertaker considers that the owner of the Redcar Bulk Terminal has unreasonably withheld its agreement under sub-paragraph (1), the undertaker may refer the matter to arbitration for determination under article 40(1) and paragraph 21 of Part 1 of this Schedule.

SCHEDULE 11

Article 34

PROTECTED PROVISIONS FOR THE PROTECTION OF THE TEES PORT AUTHORITY

Interpretation

1. In this Schedule—

"document" includes plans, sections and drawings;

"environmental document" means—

(a) the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental statement or other document submitted pursuant to the provisions of this Order and prepared by way of clarification or amplification of the environmental statement; and

(b) any other document containing environmental information provided by the undertaker to the Secretary of State or the Tees Port Authority for the purposes of any tidal works approval under article 17 (tidal works not to be executed without approval of Secretary of State) or this Schedule;

"the quay" means the quay comprised in the authorised development;

"relevant TPA limits of jurisdiction" means the limits of the jurisdiction of the Tees Port Authority under the Teesport Acts and Orders 1966 to 2008 but excluding any land above the level of high water which is owned or occupied by the undertaker;

"the river" means the River Tees; and

"tidal areas" means areas on under or over tidal waters and tidal land below the level of high water in the river.

General

2.—(1) The provisions of this Schedule, unless otherwise agreed in writing between the undertaker and the Tees Port Authority, have effect for the protection of the Tees Port Authority.

(2) For the purposes of this Schedule, the definition of "tidal work" is taken to include—

(a) any projection over the river by booms, cranes and similar plant or machinery, and

(b) any authorised development or operation or activity authorised by this Order which affects the river or any functions of the Tees Port Authority as harbour authority or which is carried out within the relevant TPA limits of jurisdiction.

Location of tidal works

3. Notwithstanding article 4 (parameters of authorised development), no part of Works No.2 or any other permanent tidal work authorised by this Order may be constructed in tidal waters which lie outside the line marked "river frontage line" shown on drawing number PB1586-SK123 revision 2 (Document 3.9B).

Tidal Works: consultation and approval

4.—(1) Before—

(a) submitting any plans and sections for any tidal work to the Secretary of State for approval under article 17 (tidal works not to be executed without approval of Secretary of State);

(b) seeking approval from the local planning authority for any alteration of the drawings under paragraph 4 of Schedule 2 (requirements) that affects the area below mean high water mark;

(c) commencing any construction of a tidal work where approval of the Secretary of State under article 17 is not required;

(d) commencing any maintenance of a tidal work which may affect the river or any functions of the Tees Port Authority as harbour authority or which is carried out within the relevant TPA limits of jurisdiction; or

(e) commencing any dredging operation,

the undertaker must submit to the Tees Port Authority plans and sections of the tidal work, programmes and method statements relating to the construction or maintenance of the tidal work or dredging operation or altered drawings.

(2) The undertaker must provide the Tees Port Authority with such further information relating to the plans, sections, programmes and method statements or drawings submitted under sub-paragraph (1) as the Tees Port Authority may reasonably require provided that any request for such information must be received by the undertaker within 14 days from the day on which the information is submitted under sub-paragraph (1).

(3) The undertaker must consult the Tees Port Authority, and provide the Tees Port Authority with a reasonable opportunity to comment, on the plans and sections of a tidal work submitted under sub-paragraph (1)(a) or drawings submitted under sub-paragraph (1)(b).

(4) No construction of a tidal work referred to in sub-paragraph (1)(c) may be carried out except in accordance with such plans and sections as are approved in writing by the Tees Port Authority or determined under paragraph 28.

(5) No construction or maintenance of a tidal work or dredging operation referred to in sub-paragraph (1) (a), (c), (d) or (e) may be carried out except in accordance with such programmes and method statements as are approved in writing by the Tees Port Authority or determined under paragraph 28 unless in the case of the dredging operation that operation is being carried out by the Tees Port Authority.

(6) Before submitting for approval, agreement or otherwise as provided by this Order any document specified in columns (1) and (2) of the following Table, the undertaker must submit a copy to the Tees Port Authority for approval of the matters specified in column (3) of the Table and must consult the Tees Port Authority on such parts of the remainder of each such document which may affect the river or any functions of the Tees Port Authority as harbour authority or is within the relevant TPA limits of jurisdiction .

Table 1

(1) *Document*	*(2)* *Provision of Order*	*(3)* *Provision requiring Tees Port Authority approval*
Written scheme so far as it relates to details of quay structure, conveyors and related infrastructure within Works Nos 1, 2 and 4	Schedule 2, paragraph 2	None
Construction Environmental Management Plan	Schedule 2, paragraph 6	None
Timetable of works and operations dealing with matters referred to in sub-paragraph (5)	Schedule 5, paragraph 11	The whole document
Detailed method statements dealing with matters referred to in sub-paragraph (5)	Schedule 5, paragraph 17	The whole statements
Details of work area and access	Schedule 5, paragraph 18	The work area and access

routes within the relevant TPA limits of jurisdiction		routes so far as they are in an area below mean high water level
Capital dredge and disposal strategy	Schedule 5, paragraph 34	The whole strategy

(7) No application for a document specified in the Table under the provision of the Order specified in relation to the document for which approval of the Tees Port Authority is required may be made until the Tees Port Authority has approved the document in writing or approval is given by a determination under paragraph 28.

(8) When submitting to the Secretary of State, the MMO or the local planning authority, as the case may be, any application for approval of a document specified in sub-paragraph (1) or (6) on which the Tees Port Authority has been consulted under this paragraph, the undertaker must also forward to that person or body any comments received from the Tees Port Authority in response to the consultation.

(9) Any approval of the Tees Port Authority required under this paragraph must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the Tees Port Authority may make for the protection of—

(a) traffic in, or the flow or regime of, the river;

(b) the use of the river by itself as harbour authority, licenced users under licences granted by PD Teesport under the Tees and Hartlepools Port Authority Act 1966 or other river users; or

(c) the performance of any of its functions as harbour authority connected with environmental protection.

(10) Requirements made under sub-paragraph (9) may include conditions as to—

(a) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the tidal work; and

(b) the expiry of the approval if the undertaker does not commence construction of the tidal work approved within a prescribed period.

(11) Subject to sub-paragraph (13), any approval required under this paragraph is deemed to have been given if it is neither given nor refused within—

(a) 28 days of the specified day; or

(b) where an opinion has been provided by the Environment Agency under sub-paragraph (12) within 42 days of the specified day, 7 days from the day that an opinion has been provided; or

(c) where no opinion has been provided by the Environment Agency under sub-paragraph (12) within 42 days of the specified day, 7 days from the expiry of that 42 day period,

whichever is the later.

(12) Before making a decision on any approval required under this paragraph, the Tees Port Authority must take into account any opinion on plans and sections that has been provided to it by the Environment Agency within 42 days of the specified day.

(13) An approval of the Tees Port Authority under this paragraph is not deemed to have been unreasonably withheld if approval within the period identified in sub-paragraph (11) has not been given pending the outcome of any consultation on the approval in question that the Tees Port Authority is obliged to carry out in the proper exercise of its functions as a harbour authority provided that in commencing or during the course of such consultation, the Tees Port Authority has acted with all due expedition.

(14) In this paragraph "the specified day" means, in relation to any matter for which approval is required—

(a) the day on which particulars of that matter are submitted to the Tees Port Authority under sub-paragraph (1) or (6); or

(b) the day on which the undertaker provides the Tees Port Authority with all such particulars of the matter as have been reasonably requested by the Tees Port Authority under sub-paragraph (2);

whichever is later.

(15) Whenever the undertaker provides the Secretary of State with an environmental document which relates to works which may affect the area below mean high water mark it must at the same time send a copy to the Tees Port Authority.

5. If the Secretary of State, the MMO or the local planning authority requires the alteration of any document which has previously been approved by the Tees Port Authority or upon which the Tees Port Authority have been consulted by the undertaker, the undertaker must inform the Authority.

6. On receipt of any approval or agreement by the Secretary of State, the MMO or the local planning authority (as the case may be) of any of the documents specified in paragraph 4(1) or (6) or any conditions or restrictions imposed by that body, the undertaker shall send a copy to the Tees Port Authority.

Construction of tidal works

7.—(1) The undertaker must give to the harbour master not less than 7 days prior written notice of its intention to enter upon a tidal area for any purpose relating to the construction or maintenance of the authorised development and must provide such details as the harbour master may reasonably require recording how access to the authorised development will be gained and what exclusion areas will be required for the authorised development.

(2) Where emergency or unanticipated access is required for maintenance, repair or safety operations to the authorised development and the undertaker is unable to give 7 days prior written notice to the Tees Port Authority, the undertaker may gain access to the tidal areas on giving such prior notice (if any) to the Authority as is reasonable in the circumstances.

(3) The undertaker shall, not more than 14 days after completion of the tidal works carried out as part of phase 1 and phase 2, give written notice to the harbour master of the completion of the relevant phase.

8. The undertaker shall at all reasonable times during construction of the authorised development and thereafter upon reasonable notice allow the Tees Port Authority, its employees and agents access and all reasonable facilities for inspection of any tidal work.

9. The construction, and any operations for the construction, of any tidal work approved in accordance with this Order, once commenced, must be carried out by the undertaker without unnecessary delay and to the reasonable satisfaction of the Tees Port Authority so that river traffic, the flow or regime of the river and the exercise of the Tees Port Authority's functions do not suffer more interference than is reasonably practicable, and an officer of the Tees Port Authority is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such construction operations.

Discharges, etc.

10.—(1) The undertaker must not without the consent of the Tees Port Authority—

(a) deposit in or allow to fall or be washed into the river any gravel, soil or other material; or

(b) discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise.

(2) Any consent of the Tees Port Authority under this paragraph must not be unreasonably withheld but may be given subject to such terms and conditions as the Tees Port Authority may reasonably impose.

(3) Any such consent is deemed to have been given if it is neither given nor refused within 28 days of the day on which the request for consent is submitted under sub-paragraph (1).

(4) In its application to the discharge of water into the river, article 14 (discharge of water) has effect subject to the terms of any conditions attached to a consent given under this paragraph.

11. The undertaker must not, in exercise of the powers conferred by article 14 (discharge of water), damage or interfere with the beds or banks of any watercourse forming part of the river unless such damage or interference is approved by the Tees Port Authority as a tidal work under this Order or is otherwise approved in writing by the Tees Port Authority.

Obstruction in river

12. If any pile, stump or other obstruction to navigation becomes exposed in the course of constructing any tidal work (other than a pile, stump or other obstruction on the site of a structure comprised in any permanent work), the undertaker, as soon as reasonably practicable after the receipt of notice in writing from the Tees Port Authority requiring such action, must remove it from the river or, if it is not reasonably practicable to remove it—

(a) cut the obstruction off at such level below the bed of the river as the Tees Port Authority may reasonably direct; or

(b) take such other steps to make the obstruction safe as the Tees Port Authority may reasonably require.

Removal etc. of the Tees Port Authority moorings and buoys

13. If—

(a) by reason of the construction of any tidal work it is reasonably necessary for the Tees Port Authority to incur reasonable costs in temporarily or permanently altering, removing, re-siting, repositioning or reinstating existing moorings or aids to navigation (including navigation marks or lights) owned by the Tees Port Authority, or laying down and removing substituted moorings or buoys, or carrying out dredging operations for any such purpose, not being costs which it would have incurred for any other reason; and

(b) the Tees Port Authority gives to the undertaker not less than 28 days' notice of its intention to incur such costs, and takes into account any representations which the undertaker may make in response to the notice within 14 days of the receipt of the notice,

the undertaker must pay the costs reasonably so incurred by the Tees Port Authority.

Navigational lights, buoys, etc.

14. In addition to any requirement under articles 19 (lights on tidal works etc. during construction) and 21 (permanent lights on tidal works), the undertaker, at or near every tidal work, and any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level forming part of the river), must exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the Tees Port Authority may from time to time reasonably require.

Removal of temporary works

15. On completion of the construction of any part of the authorised development, the undertaker must as soon as practicable—

(a) remove any temporary tidal work carried out only for the purposes of that part of the authorised development;

(b) remove from the river any materials, plant and equipment used for, and any debris caused by, such construction.

Protective action

16.—(1) If any tidal work—

(a) is constructed otherwise than in accordance with the requirements of this Schedule or with any condition in an approval given pursuant to paragraph 4; or

(b) during construction gives rise to sedimentation, scouring, currents or wave action which is a hazard to safe navigation or is otherwise detrimental to traffic in, or the flow or regime of, the river,

then the Tees Port Authority may by notice in writing require the undertaker at the undertaker's own expense to comply with the remedial requirements specified in the notice.

(2) The requirements that may be specified in a notice given under sub-paragraph (1) are—

(a) in the case of a tidal work to which sub-paragraph (1)(a) applies, such requirements as may be reasonably required and specified in the notice for the purpose of giving effect to the requirements of—

(i) this Schedule; or

(ii) the condition that has been breached; or

(b) in any case within sub-paragraph (1)(b), such requirements as may be reasonably required and specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required for safe navigation or by the needs of traffic in, or the flow or regime of, the river.

(3) If the undertaker does not comply with a notice under sub-paragraph (1), or is unable to do so, the Tees Port Authority may in writing require the undertaker to—

(a) remove, alter or pull down the tidal work, and where the tidal work is removed to restore the site of that work (to such extent as the Tees Port Authority reasonably requires) to its former condition; or

(b) take such other action as the Tees Port Authority may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.

(4) If the Tees Port Authority believes that any tidal work is causing an environmental impact over and above those anticipated by any environmental document, the Tees Port Authority must notify the undertaker of that environmental impact, the reasons why the Tees Port Authority believes that the environmental impact is being caused by the tidal work and is an unacceptable impact and of measures that the Tees Port Authority reasonably believes are necessary to counter or mitigate that environmental impact.

(5) The undertaker must implement the measures that the Tees Port Authority has notified to the undertaker unless within 28 days of the notification the undertaker gives the Tees Port Authority a written counter-notice—

(a) specifying such other measures as the undertaker believes are necessary to counter or mitigate the environmental impact identified, giving reasons why the undertaker believes the measures are sufficient and preferable to the measures notified under sub-paragraph (4); or

(b) that it does not believe that any unacceptable environmental impact has been caused by tidal works it has carried out so that no measures are necessary.

(6) Subject to sub-paragraph (7), the undertaker must implement any measures specified under sub-paragraph (5)(a).

(7) Where the undertaker gives the Tees Port Authority a counter-notice under sub-paragraph (5)(a) or (b) the Tees Port Authority may within 28 days (or such longer period as may be agreed

between the parties) refer the questions whether there is an unacceptable environmental impact and whether any, and if so what, measures are necessary to be carried out by the undertaker to counter or mitigate the impact to be determined under paragraph 28; and any measures so determined must be implemented by the undertaker.

Abandoned or decayed works

17.—(1) If any tidal work or any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level) is abandoned or falls into decay, the Tees Port Authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as the Tees Port Authority reasonably requires) to restore the site to its former condition.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the river, the Tees Port Authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice—

(a) to repair and restore the work or part of it; or

(b) if the undertaker so elects, to remove the tidal work and (to such extent as the Tees Port Authority reasonably requires) to restore the site to its former condition.

(3) If after such reasonable period as may be specified in a notice under this paragraph the undertaker has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, the Tees Port Authority may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.

Facilities for navigation

18.—(1) The undertaker must not in the exercise of the powers conferred by this Order interfere with any marks, lights or other navigational aids in the river without the agreement of the Tees Port Authority, and must ensure that access to such aids remains available during and following construction of any tidal works.

(2) The undertaker must provide at any tidal works, or must afford reasonable facilities at such works (including an electricity supply) for the Tees Port Authority to provide at the undertaker's cost, from time to time, such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation of users of the river in general as the Tees Port Authority may deem necessary by reason of the construction of any tidal works, and must ensure that access remains available to apparatus during and following construction of such works.

(3) The undertaker must comply with the directions of the harbour master from time to time with regard to the lighting on the tidal works or within the harbour, or the screening of such lighting, so as to ensure safe navigation on the river.

Survey of riverbed

19.—(1) Before the commencement of construction of the first tidal work, and any subsequent tidal work, to be constructed following approval under article 17 (tidal works not to be executed without approval of Secretary of State), the Tees Port Authority may, at the undertaker's reasonable expense, carry out a survey of such parts of the river within the Order limits as might be affected by sedimentation, scouring, currents or wave action that might result from the construction of such of the authorised development as would constitute tidal works if it were to be constructed, for the purposes of establishing the condition of the river at that time.

(2) The Tees Port Authority may carry out such surveys of the river within the Order limits as are reasonably required during the construction of any tidal work to ascertain the effect of that tidal work on the river and the Tees Port Authority must make available to the undertaker the results of any such survey in electronic and paper format.

(3) After completion of—

(a) the tidal work comprised in phase 1; or

(b) all the tidal works constructed under this Order,

the Tees Port Authority may, at the undertaker's reasonable expense, carry out a further survey of the parts of the river within the Order limits which were surveyed prior to the construction of that work, or as the case may be a survey of the completed tidal works as so constructed, for the purpose of establishing the condition of the river and the effect that the tidal work is, or as the case may be the tidal works are, having on navigation, the flow and the regime of the river and the exercise of the Tees Port Authority's functions.

Sedimentation, etc.: remedial action

20.—(1) This paragraph applies if any part of the river becomes subject to sedimentation, scouring, currents or wave action which—

(a) is wholly or partly caused by a tidal work during the period beginning with the commencement of the construction of that tidal work and ending with the expiration of 10 years after the date on which all the tidal works constructed under this Order are completed; and

(b) for the safety of navigation or for the protection of works in the river, should in the reasonable opinion of the Tees Port Authority be removed or made good.

(2) The undertaker must either—

(a) pay to the Tees Port Authority any additional expense to which the Tees Port Authority may reasonably be put in dredging the river to remove the sedimentation or in making good the scouring so far as (in either case) it is attributable to the tidal work; or

(b) carry out the necessary dredging at its own expense and subject to the prior approval of the Tees Port Authority, such prior approval not to be unreasonably withheld or delayed; and the reasonable expenses payable by the undertaker under this paragraph include any additional expenses accrued or incurred by the Tees Port Authority in carrying out surveys or studies in connection with the implementation of this paragraph.

Entry for survey, etc.

21.—(1) Before exercising the powers conferred by article 16 (authority to survey and investigate the land) to enter any land situated below the level of high water the undertaker must provide the harbour master with written particulars of—

(a) the location of the land (including a plan);

(b) the nature of the things proposed to be done in that land in exercise of those powers;

(c) the duration and frequency of the undertaker's intended presence on the land; and

(d) any vehicles or equipment proposed to be brought onto the land,

and such other details as the harbour master may reasonably request.

(2) The undertaker may not enter any land which is the subject of written particulars provided under sub-paragraph (1) except in accordance with such conditions as the harbour master may reasonably impose, including conditions as to the time of entry and the way in which activities are to be carried out.

Operating procedures

22.—(1) Before commencing operations at the quay the undertaker must submit to the harbour master for approval a written statement of proposed safe operating procedures for access to and egress from the marine side of the quay and the mooring of vessels at the quay and must operate the quay only in accordance with such procedure as approved, including any alteration to the procedure as the harbour master may approve from time to time.

(2) Any approval required under sub-paragraph (1) is deemed to have been given if it is neither given nor refused within 28 days of the day on which the request for consent is submitted under sub-paragraph (1).

Indemnity

23.—(1) The undertaker is responsible for and must make good to the Tees Port Authority all reasonable financial costs or losses not otherwise provided for in this Schedule which may reasonably be incurred or suffered by the Tees Port Authority by reason of—

(a) the construction, operation or maintenance of the authorised development carried out within or affecting the area within the relevant TPA limits of jurisdiction or any failure of the authorised development including in particular any expenses reasonably incurred in considering plans, inspecting tidal works, carrying out surveys or doing anything for the purposes of this Schedule;

(b) any other activity or operation authorised by this Order which affects the river or any functions of the Tees Port Authority as harbour authority or which is carried out within the relevant TPA limits of jurisdiction and, in particular, anything done in relation to a mooring or buoy under paragraph 14; or

(c) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development carried out within or affecting the area within the relevant TPA limits of jurisdiction or dealing with any failure of such development,

and the undertaker must indemnify the Tees Port Authority from and against all claims and demands arising out of or in connection with the authorised development carried out within or affecting the area within the relevant TPA limits of jurisdiction and any activity or operation authorised by this Order carried out within or affecting the area within the relevant TPA limits of jurisdiction or any such failure, act or omission.

(2) The fact that any act or thing may have been done—

(a) by the Tees Port Authority on behalf of the undertaker; or

(b) by the undertaker, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Tees Port Authority, or in a manner approved by the Tees Port Authority, or under its supervision or the supervision of its duly authorised representative,

does not (if it was done or required to be done without negligence on behalf of the Tees Port Authority or its duly authorised representative, employee, contractor or agent) excuse the undertaker from liability under the provisions of this paragraph.

(3) The Tees Port Authority must give the undertaker reasonable notice of any such claim or demand as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand is to be made without the prior consent of the undertaker.

Statutory functions

24.—(1) Any function of the undertaker or any officer of the undertaker, whether conferred by or under this Order or any other enactment, is subject to—

(a) any enactment in the Teesport Acts and Orders 1966 to 2008 or any other enactment relating to the Tees Port Authority;

(b) any byelaw, direction or other requirement made by the Tees Port Authority or the harbour master under any enactment; and

(c) any other exercise by the Tees Port Authority or the harbour master of any function conferred by or under any enactment.

(2) The Tees Port Authority must consult the undertaker before giving any general direction which directly affects the construction, operation or maintenance of the authorised development.

Savings

25.—(1) With the exception of any duty owed by the Tees Port Authority to the undertaker expressly provided for in this Schedule, nothing in this Order is to be taken as imposing on the Tees Port Authority, either directly or indirectly, any form of duty or liability to which the Tees Port Authority would not otherwise be subject.

(2) Without affecting the generality of sub-paragraph (1), the Tees Port Authority shall not be under any duty to dredge the approaches from the river channel to the quay, or the berthing pocket at the quay, to a depth greater than the depth of those waters immediately before the commencement of the authorised development.

(3) Any approval or consent given by the Tees Port Authority pursuant to this Schedule does not affect any requirement to obtain an approval or consent under or by virtue of any other statutory provision.

(4) The requirements of sections 22 (licensing of works) and 23 (licence to dredge) of the Tees and Hartlepools Port Authority Act 1966 do not apply as respects the initial construction or carrying out of the authorised development but otherwise are not affected by this Order; and accordingly sections 22 and 23 apply as regards the maintenance of the authorised works.

(5) Subject to paragraph 24(2) and sub-paragraph (4), nothing in this Order prejudices or derogates from the provisions of the Teesport Acts and Orders 1966 to 2008 or any other statutory or other rights, powers or privileges, vested in or enjoyed by the Tees Port Authority or the harbour master.

(6) Nothing in this Schedule shall require the undertaker to do anything or desist from anything if to do so would be in breach of any statutory obligations to which the undertaker is subject including but not limited to the provisions of the deemed marine licence contained in Schedule 5 of this Order.

Transfer of benefit of Order

26. Within 14 days after the date of any transfer or grant under article 8 (consent to transfer benefit of Order), the undertaker who made the transfer or grant must serve notice on the harbour master containing the name and address of the transferee or lessee, the territorial extent of the transfer or grant and, in the case of a grant, the period for which it is granted and the extent of benefits and rights granted.

Notices

27. Notwithstanding article 39 (service of notices) a notice required to be served on the Tees Port Authority under this Schedule must be served both on the company secretary and the harbour master for the time being of the Tees Port Authority in the manner provided by article 39.

Disputes

28. Any dispute arising between the undertaker and the Tees Port Authority under this Schedule is to be determined by arbitration under article 40(1) (arbitration and expert determination).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the construction and operation of a quay, associated onshore facilities and other development to be situated on the River Tees.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 38 of this Order (Certification of plans, etc.) may be inspected free of charge during working hours at the offices of Redcar & Cleveland Borough Council, Kirkleatham Street, Redcar, TS10 1RT.

S T A T U T O R Y I N S T R U M E N T S

200[ ] No. 0000

INFRASTRUCTURE PLANNING

The York Potash Harbour Facilities Order 201[X]

Made - - - -	*[**]*
Coming into force - -	*[**]*