

# **The York Potash Harbour Facilities Order 2016 Amendment to the Order: Application Statement**

**Non-Material Change to Schedule 2 Requirement 2  
and 5 and Article 2 (definitions)**

Anglo American Woodsmith Limited

7 February 2022

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# Appendices

- Appendix 1 Statement on Environmental Considerations, RHDHV
- Appendix 2 Regulation 6 Notice
- Appendix 3 Secretary of State Letter dated 20 January 2022 confirming consultation requirements



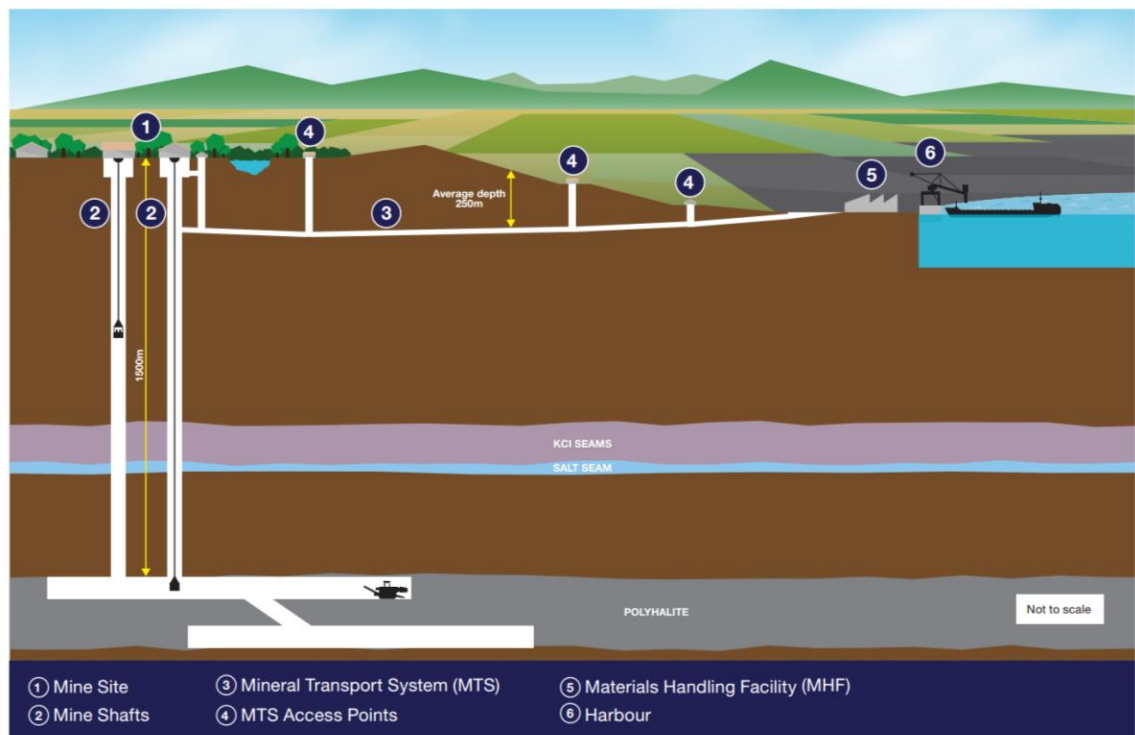


# 1.0 Introduction

## Background

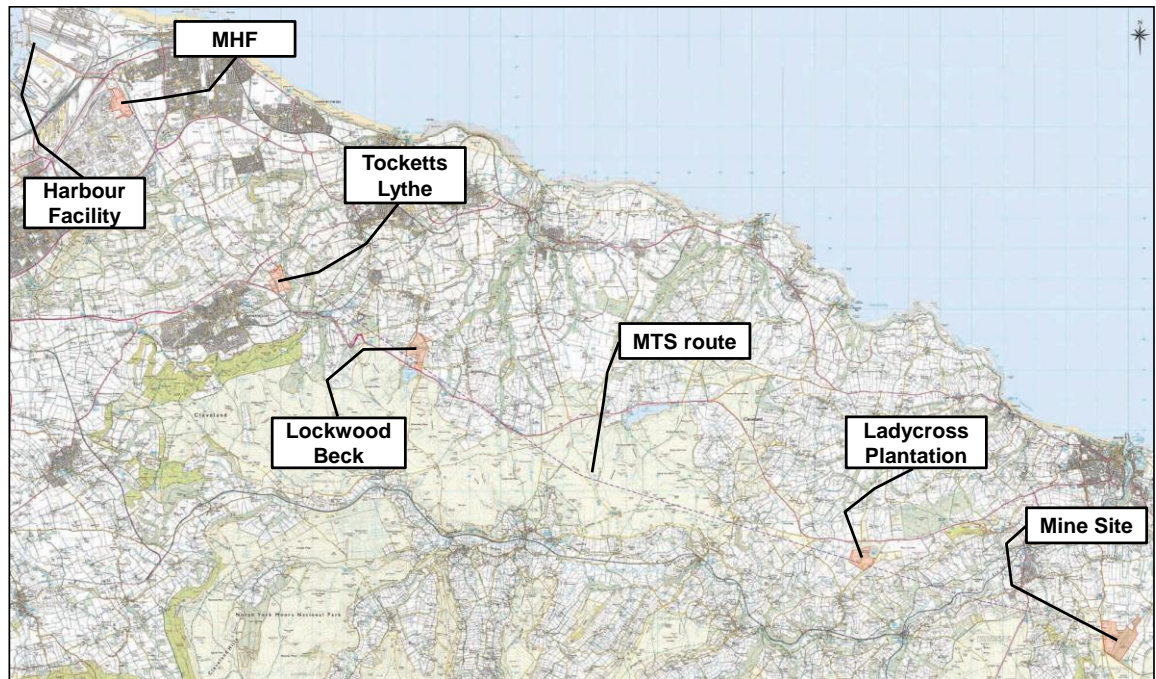
- 1.1 This application is for a non-material change to the York Potash Harbour Facilities Order 2016. The change will allow for the earlier approval of the details of the approved harbour works by the local planning authority and the delayed delivery of minor highway works to the A1085 roundabout. No changes to the nature of the approved scheme are proposed.
- 1.2 The York Potash Harbour Facilities Order (a Development Consent Order (DCO)) was approved by the Secretary of State for Transport on 20 July 2016. The DCO scheme involves the construction and operation of harbour facilities and associated development at Bran Sands, Teesside. It forms part of the wider York Potash Project (now referred to as the Woodsmith Project) which includes the development of a new mine for the winning and working of the only known UK resource of polyhalite (a form of potash and a natural fertiliser) and its ongoing handling and transport to the national and international marketplace. The harbour facilities, consented through the DCO, are required to enable the bulk export of polyhalite.
- 1.3 The DCO site covers an area of approximately 92.4 hectares, extending from the Wilton International complex north-westward to Bran Sands on the south bank of the River Tees. The site includes both the proposed harbour and the required conveyor link between the harbour and Wilton International, the latter being the site of a Materials Handling Facility for the mined polyhalite.

Figure 1.1 Indicative diagram of Woodsmith Project



Source: DCO application Consultation Statement Figure 2.1

Figure 1.2 Plan showing broad location of each of the major Woodsmith Project components



Source: DCO application Consultation Statement Figure 2.2

- 1.4 The DCO requires details of all component parts of Phase 1, that includes both the harbour and associated development (principally the linking conveyor), to be approved prior to commencement of development. It also requires proposed improvement works to the A1085 roundabout to be undertaken prior to the commencement of the development. This application seeks to amend the DCO to allow for the earlier approval of the harbour works and its subsequent implementation, without waiting for the conveyor details (that remain the subject of ongoing engineering optimisation and design) to be finalised. The application also seeks to link the timing of the A1085 roundabout work to when this roundabout access will be used during the construction programme. This flexibility will assist with the delivery of the project. There are no proposed changes to the substance of the project.
- 1.5 The applicant for the proposed non-material change to the DCO is York Potash Limited and Anglo American Woodsmith Limited (previously Sirius Minerals plc).
- 1.6 The purpose of this application statement is to initially explain the requirement for the proposed change to the DCO, setting out the limited amendments required to the Order. The Statement continues with an assessment of the implications arising from these changes. The application statement includes:
- A summary of the status of the Woodsmith Project, detailing how the extensive ongoing works across the wider project are progressing and how this relates to the approved DCO harbour works scheme;
  - An explanation of the limited amendment required to the DCO, that will introduce the flexibility required;
  - Consideration of the proposed change to the DCO, explaining its non-material nature within the context of guidance within the Department for Communities and Local Government (now for the Department for Levelling Up, Housing and Communities) “*Guidance on Changes to Development Consent Orders (December 2015)*”; and

- A summary of the consultation undertaken to date on the proposed amendments to the DCO, and the nature of responses received from all consultees.

## **Statement of Consultation**

- 1.7 The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) (the “2011 Regulations”) set out requirements for consultation of non-material change applications to DCOs. Regulation 7A requires that the applicant provides the Secretary of State with a statement setting out details of the steps the applicant has taken to comply with these consultation requirements. This detail is provided in Section 6.0 of this Application Statement.

## 2.0 Woodsmith Project: Progress to Date

2.1 Anglo American Plc acquired the project in March 2020 from Sirius Minerals Plc. At this time, the project underwent a name change from ‘The York Potash Project’ to ‘The Woodsmith Project’ and relevant company names were changed to reflect this. The project hereon in will be referred to as the Woodsmith Project.

2.2 The Woodsmith Project is a new state-of-the-art mine; mineral transporting infrastructure; associated processing and port infrastructure that together will enable the production of bulk volumes of POLY4 - the trademark name of the Company’s polyhalite products.

2.3 Polyhalite is a naturally occurring mineral containing major plant nutrients - potassium, sulphur, magnesium and calcium. It is a valuable multi-nutrient fertiliser and its application by the farming industry, both within the UK and overseas, will assist in maintaining and improving crop yields and harvests.

### The Woodsmith Project

2.4 In detail, the Woodsmith Project comprises four key elements, the current status of each is described below:

- 1 An underground Mine including a surface access point at Woodsmith Mine, Sneatonthorpe, approved by Redcar and Cleveland Borough Council (RCBC) for those areas of the development site within its remit, and by the North York Moors National Park Authority (‘NYMNPA’) for those elements of the project falling within the National Park. As illustrated below, there has been significant progress with the implementation of the scheme, with shaft sinking activities underway across the extensive minehead site.

Figure 2.1 Woodsmith Project: Minehead site - progress with shaft sinking activities



Source: Anglo American Plc



Figure 2.2 Woodsmith Project: Minehead site



Source: Anglo American Plc

- 2 A Mineral Transport System ('MTS') consisting of a 36.5km long tunnel containing a series of linked conveyor belts that will transport the polyhalite from Woodsmith Mine to Wilton International, Teesside, approved alongside the Mine by RCBC and the NYMNP. Works on the tunnel are also progressing well, and to date it has 'travelled' some 18km from the tunnel portal at Wilton, passing the completed ventilation and access shaft at Lockwood Beck, towards the minehead site.

Figure 2.3 Woodsmith Project: MTS Tunnel



Source: Anglo American Plc



- 3 A Materials Handling Facility ('MHF') at Wilton International, approved by RCBC. The MHF will receive the polyhalite from the underground conveyor and processes the material prior to its onward transport to the harbour. Works started early on the MHF facility, initially focused on the tunnel portal to enable the 'launching' of the tunnel boring machines. Currently, there are over 1,000 construction staff employed across the three component parts of the Woodsmith project that are already underway.

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Figure 2.4 Woodsmith Project: Wilton MHF site



Source: Anglo American Plc

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Figure 2.5 Woodsmith Project: Wilton MHF site



Source: Anglo American Plc

- 4 The Harbour facilities and associated development (the subject of this Application Statement) at Teesside, granted by Order of the Secretary of State under a DCO application ref: SI 2016 No. 772 (made on 20 July 2016, having come into force on the 10 August 2016), comprising both the new harbour facilities and a conveyor, linking this with the MHF at Wilton International. Works have yet to start on the Harbour facilities. Design details are progressing well for this last 'piece' of the Woodsmith Project of the Woodsmith Project.

## 3.0 **Need for Amendment to the DCO**

### **Current Requirements of the DCO**

- 3.1 The DCO authorises the development of York Potash Harbour Facilities that comprise both the nationally significant infrastructure project (i.e. the quay on the River Tees, along with quayside ship loaders, surge bins, and transfer towers etc), and Associated Development (i.e. works to the existing lagoon, the provision of parallel conveyors to link the quay to the MHF, and various parking, small scale offices, stores etc.). The implementation of the DCO is to be delivered in two phases: The first, Phase 1 is defined as 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 whilst the second, Phase 2 is defined as that part of the development to be completed in order to facilitate the movement of 13 million tonnes per annum. (See Part 1, Interpretation (2) of the Order).
- 3.2 Amongst other components, Phase 1 is defined to include the construction of a quay on the Tees and the installation of a conveyor system and transfer towers, whilst Phase 2 includes the construction of a larger quay and the provision of a second conveyor to be installed within the conveyor housing that accommodates the Phase 1 conveyor.
- 3.3 Requirement 2 of the DCO (See Schedule 2) requires that *“No part of phase 1 is to commence until written a written scheme setting out all the component parts of phase 1 has been submitted and approved by the local planning authority”*. Also relevant to this application, Requirement 5 requires that no phase of the development is to commence until the approved highway works have been undertaken, to the satisfaction of the local highway authority.

### **Harbour Facilities: Progress to Date**

- 3.4 Whilst the design details of the harbour are progressing well, consideration is still being given to the detailed development options for the conveyor.
- 3.5 The harbour works are, by their nature, complex and the construction of this aspect of the project is most likely to be a lengthy process. The implementation of the harbour works is a considerable undertaking, with a protracted build-out programme.
- 3.6 Reflecting both the status of the conveyor design works and the extended programme for the construction of the harbour works, the Applicant is now seeking to progress with obtaining approval for the details of the harbour element of Phase 1. This will enable a swifter start of the DCO scheme and allow works to progress with the quay first, without having to wait until all the details of the conveyor have been completed, submitted and subsequently approved.
- 3.7 To enable this change to the sequencing of approval of details, a non-material change to the DCO is required. It is noted that this amendment does not involve any change to the sequence of construction: the construction of the harbour prior to the overhead conveyor remains within the scope of the current DCO and no amendment or change is required to the DCO to enable this to occur. It is the sequence of approval of details, not the sequence of construction which gives rise to the need to change the DCO.



## Highway Works

3.8 As above, Requirement 5 of Schedule 2 of the DCO stipulates that the highway works (as shown on the highway works plan) must be carried out prior to the commencement of any development. The works are limited in nature and comprise improvements to the western 'arm' of the A1085 roundabout. The carriageway is to be widened, and a new 'splitter island' is to be provided, along with the carrying out of reconstruction and resurfacing works to the highway. The access will then be used to enable construction traffic to enter the eastern part of the site, to facilitate the construction of the conveyor, as it passes over the A1085. Other construction traffic (i.e. for the rest of the conveyor route and harbour facilities) will use existing access arrangements, also via the A1085 roundabout using the southern arm, via the existing entrance into the Wilton Estate. Following security checks, construction vehicles for the harbour and all development to the west of the railway previously serving the Redcar steelworks will use the internal access road (passing under the railway) and west to the harbour.

Figure 3.1 Woodsmith Project: Improvements to the A1085 roundabout

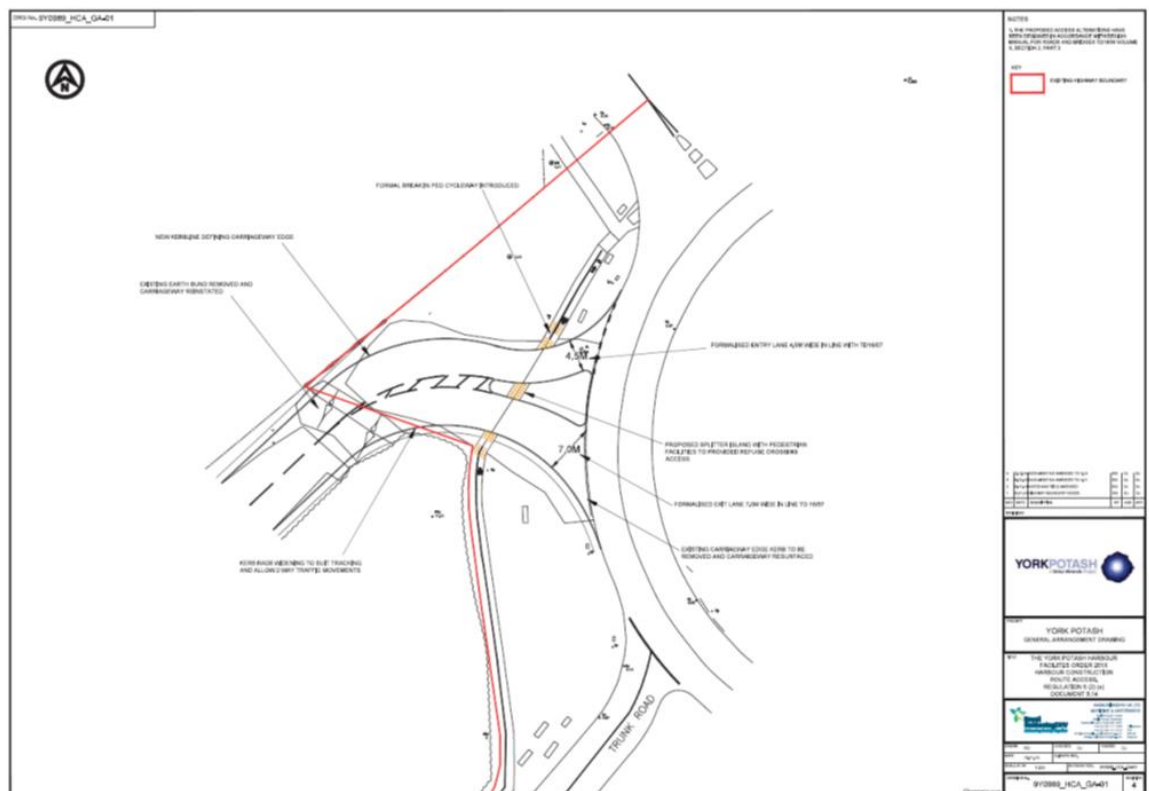
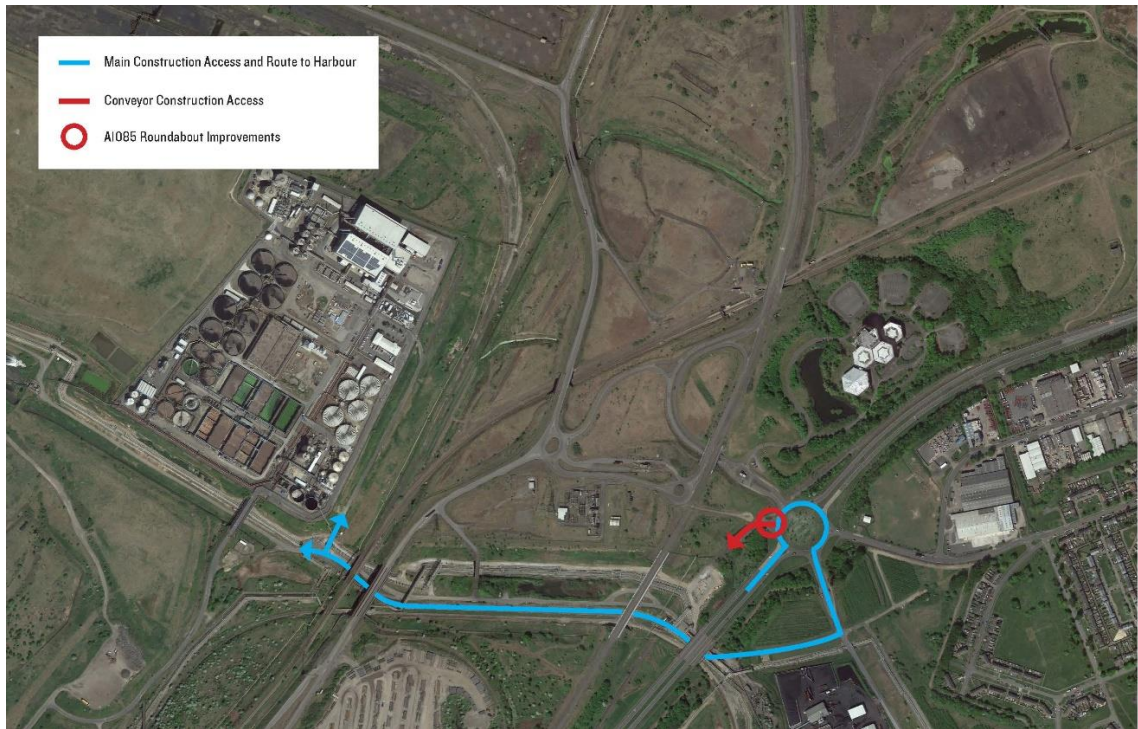


Figure 3.2 Construction Access Routes



3.9 The highway works referenced in Requirement 5, therefore, are not needed for the construction of the harbour and instead provide access to enable the construction of the overhead conveyor. There is no need, therefore, for the highway works to be in place prior to works starting on the harbour development, as currently stipulated by Requirement 5. Hence there is a need to seek a further amendment to the DCO to change Requirement 5 to ensure that the highway works are tied to the construction of the conveyor, rather than the harbour, thereby matching the delivery of the enhanced highway access to when it is needed.

## 4.0 **Proposed Amendments to the DCO**

4.1 To allow for the change to the sequence of approval of details, bringing forward the approval of the harbour works, and to ensure the required highway works are linked to the associated construction of the conveyor, it is necessary to seek amendment to Part 1, Article 2 (Interpretation) which defines the two Phases; and, Schedule 2 Requirements 2, and 5.

4.2 **Article 2 (Interpretation)** of the Order defines ‘Phase 1’ as:

*“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 750,000 cubic metres 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;*

### **Required DCO Amendment**

4.3 To allow for the required change, it is necessary to ‘split’ the definition of Phase 1 into two: the first (Phase 1a) relating to the harbour; and, the second (Phase 1b) the conveyor and its transfer towers. The definition of Phase 1a would therefore be consistent with the existing Phase 1 as above, with the exception of (f) which will be deleted. Phase 1b will be defined as installation of conveyor system and transfer towers, consistent with the current wording of (f).

4.4 **Article 2 (Interpretation)** of the Order would then read as follows:

*“phase 1a” means that part of the authorised development required (in addition to phase 1b) 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 750,000 cubic metres of material from the approach channel and berth pocket;*

*(d) lagoon habitat enhancement works;*

*(e) installation of a surge bin;*

*(f) construction of buildings and parking area;*

*(g) erection of security fencing; and*

*(h) provision of ancillary infrastructure;*

*“Phase 1b means that part of the authorised development required (in addition to phase 1a) to be completed in order to facilitate the movement of 6.5 million tonnes per annum of polyhalite comprising in summary*

*(i) the installation of conveyor system and transfer towers and*

*(ii) provision of ancillary infrastructure.”*

4.5 **Schedule 2 Requirement 2** relating to Phase 1 of the development and design approval, currently states:

*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 must include details of the following unless they have been approved by the MMO under 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 details, whether approved by the local planning authority under sub-paragraph (1) or the MMO under the provisions of Schedule 5.*

*(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.*

### **Required DCO Amendment**

4.6 To achieve a distinction between the two phases as identified in the amended interpretation section and thereby enable the early consenting of Phase 1a, it is necessary to adjust the requirement to incorporate this distinction. This can be secured through the replacement of ‘Phase 1’ with ‘Phase 1a’ in paragraphs 2 (1) and (2) (i.e. the reference to the harbour works); and the replacement of ‘Phase 1’ with ‘Phase 1b’ in paragraph 2 (3) (i.e. the reference to the conveyor as it crosses the A1085).

4.7 A further new paragraph is required to provide a mechanism for the submission and approval of full details of the conveyor and the transfer towers, other than as it crosses the A1085.

4.8 Requirement 2 would then read as follows:

*“2.— (1) No part of phase 1a is to commence until a written scheme setting out all the component parts of phase 1a has been submitted to and approved by the local planning authority. The written scheme must include details of the following unless they have been approved by the MMO under 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 1a works must be carried out in accordance with the approved details, whether approved by the local planning authority under sub-paragraph (1) or the MMO under the provisions of Schedule 5.*

*(3) No part of phase 1b is to commence until a written scheme setting out all the component parts of phase 1b has been submitted to and approved by the local planning authority. The written scheme must include details of the following unless they have been approved by the MMO under the provisions of Schedule 5 -*

*(a) the position of the conveyor system and transfer towers*

*(b) external appearance and scale of all buildings and structures including the design of the external treatment of that part of the conveyor system which crosses the A1085*

*(c) parking and storage areas*

*(d) surface and foul drainage*

*(e) site levels*

*(f) permanent fencing and other means of enclosure; and*

*(g) lighting*

*(4) The phase 1b works must be carried out in accordance with the approved details whether approved by the local planning authority under sub paragraph (3) or the MMO under the provisions of Schedule 5.*

4.9 **Schedule 2 Requirement 5** requires that the highway works must be carried out prior to the commencement of any works. It currently states:

*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.*

### **Required DCO Amendment**

4.10 To ensure the highway works are undertaken when needed (i.e. to enable the construction of the conveyor) Requirement 5 needs to be amended to acknowledge this distinction. This can be achieved with a small change to the text, with the insertion of “other than phase 1a” after “authorised development”. Requirement 5 would therefore read as follows:

*“5. No phase of the authorised development other than phase 1a 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”.*

## 5.0 **The Proposed Amendments as a Non-Material Change**

5.1 There are two options available to amend a DCO: the first is through a non-material amendment and the second is through a material amendment. The Planning Act 2008 and 2011 Regulations provide separate procedures for handling applications for non-material and material changes to DCOs, with a simpler process for the former reflecting the fact that such changes do not raise issues requiring the same level of scrutiny as material changes.

5.2 The Department for Communities and Local Government's (now the Department for Levelling Up, Housing and Communities) Document '*Planning Act 2008: Guidance on Changes to Development Consent Orders*' (December 2015) provides commentary on the likely difference between a non-material and material change to a DCO. Guidance confirms that the specific circumstances of each change must be considered on a case-by-case basis and in consultation with the Planning Inspectorate (PINS). However, the guidance does set out helpful considerations that are likely to indicate when a change to a DCO would be material:

- i **Environmental Statement:** A change should be treated as material if it would require an updated Environmental Statement (from that at the time the original Development Consent Order was made) to take account of new, or materially different, likely significant effects on the environment
- ii **Habitats and Protected Species:** A change to a Development Consent Order is likely to be material if it would invoke a need for a Habitats Regulations Assessment. Similarly, the need for a new or additional licence in respect of European Protected Species is also likely to be indicative of a material change
- iii **Compulsory Acquisition:** A change should be treated as material that would authorise the compulsory acquisition of any land, or an interest in or rights over land, that was not authorised through the existing Development Consent Order.
- iv **Impact on Business and Residents:** The potential impact of the proposed changes on local people will also be a consideration in determining whether a change is material. In some cases, these impacts may already have been identified, directly or indirectly, in terms of likely significant effects on the environment. But there may be other situations where this is not the case and where the impact of the change on local people and businesses will be sufficient to indicate that the change should be considered as material. Additional impacts might include those relating to visual amenity from changes to the size or height of buildings; impacts on the natural or historic environment; and impacts arising from additional traffic.

### **Assessment of the Proposed Changes to the Woodsmith Project DCO**

5.3 With such a limited change to the DCO proposed focussed on the sequence of approval of details and the delivery of very limited highway works to a roundabout, it is difficult to envisage that the required amendments will 'trigger' any of these four factors, and thereby suggest that the material route for the handling of this submission is more appropriate. As above, the scheme itself is not amended as a result of the required change - all that is sought is an ability to press on with obtaining approval of the details of the harbour element of Phase 1 to enable its construction without having to wait for the conveyor design, and the subsequent approval of details for the conveyor, to 'catch-up', plus the implementation of highway works linked to when the access will be required/used.

- 5.4 The previously predicted duration of construction activities is not anticipated to change as a result of this amendment. The construction of the harbour was always predicated to take the longest period of time (estimated at 17 months in the original ES) with the conveyor and associated development lasting for approximately 11 months falling within this longer construction programme. This will not change. Hence the potential for any different environmental effects arising as a result of the required changes from those originally considered at the time of the granting of the DCO are remote. It is also noted that the DCO does not require the construction of all elements of Phase 1 at the same time. Accordingly, the commencement of the construction of the harbour prior to the overhead conveyor is within the scope of the current DCO.
- 5.5 Notwithstanding this context, the author of the original (2015) Environmental Statement (ES), RHDHV, has considered the proposed changes to the DCO, and has assessed the full extent of environmental implications arising. Its statement on environmental considerations is provided as an Appendix to this Statement (Appendix 1). This assessment extends to include an assessment of the need for either a new Environmental Statement or Habitat Regulations Assessment, and a focus on the potential for different local amenity or business impacts arising.
- 5.6 In summary, RHDHV confirm that the proposed changes to the DCO do not give rise to new or materially different likely significant effects on the environment; the findings of the traffic assessment are not affected by the timing of the delivery of the improvements to the roundabout junction; the conclusions of the HRA are unaffected by the proposed change; and, there are no new (or different) impacts on local people and businesses that were not previously identified and assessed in the original Environmental Statement.
- 5.7 It is confirmed that there is no need for additional compulsory purchase powers, nor any need for additional rights over or under land as a result of the proposed change to the DCO. Hence the required change to the DCO will not authorise the compulsory acquisition of any land, or an interest in or rights over land, that was not authorised through the existing DCO. It is also noted that the Applicant now owns and controls the vast majority of the land within the Order limits (more so than at the time of the granting of the Order) that will facilitate delivery of the project.
- 5.8 With the proposed DCO changes not triggering a requirement for a new Environmental Statement or new Habitats Regulations Assessment; no new compulsory power requirements emerging; and no new business and/or residential impacts predicted, the potential for the amendments to the DCO to be considered as anything other than a non-material change appear remote. The limited nature of changes to the DCO and the focus on the consenting phasing rather than any amendments to the scheme itself, further support the adoption of the non-material amendment procedures for this application.
- 5.9 This process of review against the Department's 2015 Guidelines also highlights the very limited consequences of the change - it is a drafting change that will simply enable a swifter start on site, ensuring that the complex harbour works with its longer lead-in times and construction programme can be delivered on schedule. Consistent with this appreciation, there has been very limited interest in the proposals from those consultees that have been advised of the application during pre-application consultation. This is reviewed in detail in the next section of this Statement.



## 6.0 Consultation

6.1 The 2011 Regulations set out the process for publicising and consulting on non-material change applications. In summary, the 2011 Regulations initially require the applicant to notify the Planning Inspectorate of its intention to submit an application and at the time of submission, to publicise the application, sending notices to relevant parties. Consultee responses to this notice are sent directly to the Planning Inspectorate (acting on behalf of the Secretary of State), whilst the applicant sends confirmation that the appropriate steps have been taken to comply with consultation requirements.

### Publicising the Application (Regulation 6)

6.2 The Planning Inspectorate was informed of the intention to submit a non-material application on the York Potash Harbour Facilities Order on 31 August 2021. Following this, the applicant held an initial meeting with the Department of Transport on 21 September 2021, during which a full explanation of the required change to the DCO was provided.

6.3 The application is in the process of being publicised with notice of the application placed in relevant newspapers. The notice (a copy of which is provided in Appendix 2), consistent with Regulation 6, details the applicant; the nature of the non-material change sought; information on where the application material can be viewed/purchased; and, clarification on how and when comments can be made on the proposals. The notice is due for publication to coincide with the submission of the application, with publication of a notice in both the Northern Echo and The Gazette (Teesside) newspapers, with the first of two notices (the second to follow a week later) to be published on the 11 February 2022.

6.4 An electronic copy of the notice has also been sent directly to the Planning Inspectorate to enable it to be placed on the National Infrastructure Planning project website, as required.

### Duty to Consult (Regulation 7)

6.5 The 2011 Regulations allow for a reduced schedule of consultees (i.e. those consulted at the time of the application submission) to be agreed with the Secretary of State. With this aim, the applicant wrote to the Secretary of State on 28 October 2021 requesting such a reduction. The applicant called for a proportionate approach to consultation, given that the proposed non-material change constitutes simply a re-phasing of the approval of details and of the carrying out of limited highway works and would not appear to affect any party over and above the undertaker.

6.6 In response and following exchange of points of clarifications, it was agreed that a reduced list of parties to be consulted was appropriate (see Secretary of State's letter dated 20 January 2022 at Appendix 3), and consistent with this, notices of the submission of the application have been sent to the following consultees:

- 1 Net Zero Teesside
- 2 Network Rail
- 3 Northumbrian Water
- 4 PD Ports
- 5 Redcar & Cleveland Council (Highway Authority)
- 6 Redcar and Cleveland Council (Planning Authority)
- 7 Redcar Bulk Terminal

- 8 Sembcorp
- 9 South Tees Development Corporation (STDC)
- 10 Tees Valley Combined Authority

6.7 Notwithstanding these actions undertaken consistent with the requirements of the 2011 Regulations, the applicant has also embarked upon non-statutory consultation with those parties that are considered most likely to have any interest in the application. The applicant has consulted directly with the following key local stakeholders.

Table 6.1 Key local stakeholders

Consultee	Meeting Type	Date of Meeting
RCBC	Teams Call	17 November 2021
South Tees Development Corporation	In Person	3 November 2021
CATS Pipeline	Teams Call	3 November 2021
Northumbrian Water	Teams Call	5 November 2021
Redcar Bulk Terminal	Zoom Call	5 November 2021
Sembcorp	In Person	21 October 2021
PD Ports	Teams Call	21 December 2021
NZT Project	Teams Call	21 December 2021

6.8 All consultees welcomed the informal approach, and no points or comments were expressed regarding the nature of the change proposed. Both RCBC and Sembcorp noted that they would consider the application again upon receipt of the formal notification of the application (now sent).

## Statement of Consultation

6.9 The above details of publicity and consultation have been provided to comply with the requirements of Regulation 7A and are intended as the applicant’s statement on the consultation undertaken for the non-material change application to the DCO.

## 7.0 Conclusions

- 7.1 This application is for a non-material change to the York Potash Harbour Facilities Order 2016, to allow for the earlier approval of the details of the proposed harbour works, and the delayed delivery of the proposed access works to the A1085 roundabout.
- 7.2 The requested change to the DCO will enable the details of the harbour scheme to be considered and approved by RCBC in advance of its consideration of the conveyor (that links the harbour to the MHF site at Wilton). The detailed design of the harbour is well advanced. The conveyor, a much simpler element of the scheme to construct, remains the subject of ongoing design work. The DCO requires the submission and approval of both elements of the scheme prior to construction. Uncoupling the two into separate Phases (Phase 1a and b) will allow the earlier consideration of the harbour works by the Council, without having to wait for the full details of the conveyor to be worked up. These details can follow once this design work on the conveyor is complete. This non-material change application, therefore, seeks an amendment to the sequencing of approval of details of the DCO scheme by the Council.
- 7.3 The proposed improvement works to the A1085 roundabout enables HGV access to that part of the site that accommodates the route of the proposed conveyor, as it crosses the A1085. The works are not needed for harbour construction traffic (that uses the southern arm of the same roundabout via an existing entrance into the Wilton site). The DCO currently requires these highway improvements works to be constructed prior to commencement of any works at the DCO site. This proposed change to the DCO seeks an amendment to link the provision of these highway works to when they are required (i.e. when construction works start on the conveyor).
- 7.4 To secure the amendment to the approval sequencing and to link the highways works to the conveyor construction, it is necessary to amend Part 1, Article 2 (Interpretation), and Schedule 2 Requirements 2 and 5 of the existing DCO. Changes to Part 1, Article 2 involve the definition of Phase 1 of the project, with the creation of a distinction between Phase 1a (i.e. the harbour) and Phase 1b (i.e. the conveyor). Following on from this, changes to Requirement 2 are sought to make the distinction between Phase 1a and 1b, to allow for their separate consideration by the Council, with commencement of development of each sub-Phase tied to the approval of details of that sub-phase. Amendments are sought to Requirement 5 to link the implementation of the A1085 highway works to the construction of the conveyor.
- 7.5 The limited nature of these changes focussed on the consent sequencing is consistent with the characteristics of a non-material change to a DCO. The changes required do not give rise to new or materially different likely significant environmental effects on the environment; they do not invoke a need for a new or additional Habitats Regulations Assessment; no new compulsory acquisition of land or interests in, or rights over land are required over and above that authorised by the existing DCO; and no new impacts on businesses or residents are predicted. The scheme is not amended as a result of the required changes - all that is sought is an ability to secure approval of details of the harbour element of Phase 1 in advance of the conveyor, and a change to the timing for the implementation of very limited highway works. The predicted duration of construction works remains as before, reflecting the more complex and lengthy work associated with the implementation of the harbour and the anticipation that the conveyor will be designed, approved and completed within this same 'window'.
- 7.6 Consistent with the nature of the proposed changes to the DCO, feedback from early informal consultation on this application with key parties has been very limited. Whilst some parties have confirmed an intent to consider the application further once formal notification has been received, to date, no concerns have been raised about the application proposals. Again, reflecting the nature of the changes sought by this application and consistent with the 2011

Regulations, a reduced schedule of formal consultees has been agreed with Secretary of State. Appropriate notices of the application have been sent to these consultees.

7.7

The construction of the harbour and its associated facilities represents the final part of the Woodsmith Project. Once complete, polyhalite from the Project's minehead at Sneatonthorpe will be transported via the MTS tunnel to the handling facility at Wilton, and then out to the harbour via the conveyor for export to the UK and global markets. Across the Project, work is commencing at pace to deliver this nationally significant addition to UK's infrastructure. The changes sought by this application, whilst limited in nature and effect, enabling the earlier approval of the harbour scheme, will further assist with the delivery of the Woodsmith Project. It is therefore anticipated that the application for a non-material change can be both progressed and considered positively.

# **Appendix 1 Statement on Environmental Considerations, RHDHV**



**Note / Memo**

**HaskoningDHV UK Ltd.  
Industry & Buildings**

To: Anglo American  
From: Matt Simpson  
Date: 25 November 2021  
Copy:  
Our reference: 40-RHD-HB-8630-PA-TN-00001  
Classification: Project related  
Checked by: Project team

**Subject: Environmental implications of the proposed non-material change**

There is no statutory definition of ‘materiality’ when considering whether or not a change to a DCO application is material. However the Department for Communities and Local Government (DCLG, 2015)<sup>1</sup> has identified four characteristics as a starting point that could indicate a material change. These include:

- 1) Whether an update would be required to the Environmental Statement (ES).
- 2) Whether there would be a need for a Habitats Regulation Assessment (HRA) or a need for new or additional licences in respect of European Protected Species.
- 3) Whether the proposed change would entail compulsory acquisition of any land that was not authorised through the existing DCO.
- 4) Whether the changes have the potential to impact on local people and businesses.

This note (**Table 1**) presents the findings of an assessment of the full extent of the potential environmental implications arising as a result of the proposed changes to the DCO, and addresses points 1, 2 and 4 above.

*Table 1 Assessment of environmental implications of the proposed non-material change to the DCO*

Topic	Guidance	Analysis of proposed change
Environmental Statement (ES)	<p>DCLG (2015) states that “Change should be treated as material if it would require an updated ES (from that at the time the original DCO was made) to take account of new, or materially different, likely significant effects on the environment”.</p> <p>The guidance goes on to note that the changes may result in new significant effects are entirely positive. Whilst this would still give rise to a new ES, and would therefore be considered a material change to a DCO, it may be that no examination is required of the material change application in these circumstances.</p>	<p>The conclusions of all assessments reported in the ES do not rely on any assumptions regarding the sequencing of construction of the individual elements comprising either Phases 1 and 2. In terms of overall duration of the construction phase, the ES was based on an assumed programme of 17 months for the construction of Phase 1 (with the construction of the overhead conveyor predicted to have a duration of 11 months within this period) and 17 months for the construction of Phase 2. The construction of the port facility prior to the overhead conveyor is not predicted to extend the construction period (for either Phase 1 or Phase 2). The proposed change (i.e. the sequence of approval of details) is, therefore, within the scope of the ES (and DCO) and does not give rise to</p>

<sup>1</sup> Department for Communities and Local Government (2015). *Planning Act 2008: Guidance on Changes to Development Consent Orders*. December 2015.

Topic	Guidance	Analysis of proposed change
		<p><i>“new, or materially different, likely significant effects on the environment”.</i></p> <p>In response to the Department for Transport’s specific comments regarding road traffic (letter dated 16 November 2021), the assessment reported in the ES was based on identifying the worst case traffic demand for the construction phase (i.e. identifying at which point the peak traffic demand would occur based on the various construction activities). The peak traffic demand was derived based on a programme duration of 17 months, which includes the construction of the port facilities and the overhead conveyor and this situation would not be altered by the proposed change. Consequently, constructing the port facility in advance the overhead conveyor does not have the potential to generate traffic in excess of the maximum envelope assessed in the ES.</p> <p>A Construction Traffic Management Plan (CTMP) has not yet been developed or approved in accordance with the DCO. The Framework CTMP (Appendix 12.3 of the ES) sets out the principles of construction phase traffic management. The CTMP (when developed) will set out how the assessment envelope as reported in the ES will be secured, monitored and enforced. Because the CTMP is linked to the findings of the ES, the proposed change does not affect the findings of the Framework CTMP provided in Appendix 12.3 of the ES, for the reasons set out above.</p> <p>The highway works (as shown on the highway works plan) are not required as mitigation for the assessed impact on traffic as reported in the ES; these works are intended only to provide access to enable the construction of the overhead conveyor. Linking the implementation of the highway works to the construction of the overhead conveyor does not, therefore, alter the findings of the traffic impact assessment.</p> <p>In summary, there is no potential for any conclusion of the ES to be altered as a result of the proposed change.</p>
Habitats and Protected Species	A change that give rise to a need for a Habitat Regulations Assessment or a new or additional licence for a European Protected Species would indicate that the change should be considered to be material.	<p>As summarised above, the proposed change (i.e. the sequence of approval of details) does not have any potential to alter the conclusions of the ES.</p> <p>A Habitats Regulations Assessment (HRA) formed part of the application for the DCO and, the reasons summarised above, the conclusions of the</p>



Topic	Guidance	Analysis of proposed change
		<p>HRA are unaffected by the proposed change. For the same reasons, there is no requirement for a new or additional European Protected Species licence.</p>
<p>Impact on Businesses and Residents</p>	<p>Any new impacts on local people and businesses that were not previously identified may be sufficient to suggest that a change is material rather than non-material. The guidance (DCLG, 2015) states that examples <i>“might include those relating to visual amenity from changes to the size or heights of buildings, impacts on the natural or historic environment, and impacts arising from additional traffic”</i>.</p>	<p>As described above when considering the implications of the proposed change on the conclusions of the ES, the construction of the harbour facilities prior to the overhead conveyor and linking the implementation of the highway works to the construction of the overhead conveyor is within the scope of the ES. The ES assesses the potential impacts on businesses and residents (including impacts on infrastructure, the landscape and visual environment, traffic, air quality, noise and vibration, archaeology and heritage and the natural environment). The proposed change does not have any potential to alter the findings of any assessments reported in the ES (as described above) and, therefore, there are no new (or different) impacts on local people and businesses that were not previously identified and assessed.</p>



# **Appendix 2 Regulation 6 Notice**



**SECTION 153 OF THE PLANNING ACT 2008  
REGULATION 6 OF THE INFRASTRUCTURE PLANNING (CHANGES TO, AND  
REVOCATION OF, DEVELOPMENT CONSENT ORDERS) REGULATIONS 2011**

**NOTICE OF APPLICATION TO MAKE A NON MATERIAL CHANGE TO THE  
FOLLOWING DEVELOPMENT CONSENT ORDER:**

**The York Potash Harbour Facilities Order 2016  
S.I. 2016 No.772**

NOTICE IS HEREBY GIVEN THAT an application has been made by York Potash Limited and Anglo American Woodsmith Limited, both of 17 Charterhouse Street, London EC1N 6RA ("the Applicant") to the Secretary of State for Transport ("the Secretary of State") to make a non-material amendment to the above mentioned Development Consent Order ("DCO") ("the Application").

The Application seeks to make changes to the DCO which are not material. The proposed changes are:

1. Changes to the sequence of approval of details under the DCO. The changes are sought so that the Applicant may seek the approval of details of the quay element of the authorised development separately from the remainder of the authorised development. The Application seeks those amendments through the revision of the definition of "phase 1" within article 2 of the DCO so that the first phase of the quay becomes "phase 1a" with the remainder of the current definition of "phase 1" becoming "phase 1b"; and
2. An amendment to the timing of the construction of the highway works, since the highway works are not required for the construction of the quay. The Application proposes an amendment to requirement 5 contained in Schedule 2 of the DCO to allow the works to the quay to be carried out in advance of the highway works.

A copy of the Application is available to view online free of charge on the Planning Inspectorate's website: <https://infrastructure.planninginspectorate.gov.uk/projects/north-east/york-potash-harbour-facilities-order/>. It is also available to view free of charge on the Applicant's website: [REDACTED] until 22 March 2022.

For any queries in relation to the Application documents please contact the Applicant using by emailing [info@yorkpotash.co.uk](mailto:info@yorkpotash.co.uk) or calling 0330 0886583.

A free digital copy of the Application documents can also be obtained from the Applicant using the contact details above. Alternatively, a paper copy can be obtained from the Applicant for a small charge of £10.00.

Please send any representations about the application by email to the Secretary of State c/o the Planning Inspectorate at [YorkPotashHarbour@planninginspectorate.gov.uk](mailto:YorkPotashHarbour@planninginspectorate.gov.uk) or in writing to: National Infrastructure, The Planning Inspectorate, Temple Quay House, Temple Quay, Bristol, BS1 6PN. Please quote reference TR030002. To ensure submissions are dealt with promptly, please use email where possible. Due to limited numbers of staff in the Planning Inspectorate office at this time, any submissions sent by post may be subject to delay.

Representations will be made public by being published on the Planning Inspectorate's website at: <https://infrastructure.planninginspectorate.gov.uk>.

**Please note that the deadline for the receipt of representations by the Planning Inspectorate is 11:59pm on Monday 21 March 2022.**



# **Appendix 3 Secretary of State Letter dated 20 January 2022 confirming consultation requirements**







# Department for Transport

Eversheds Sutherland  
(International) LLP  
Water Court  
116-118 Canal Street  
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Dear Sirs,

Natasha Kopala  
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20 January 2022

## **THE YORK POTASH HARBOUR FACILITES ORDER - PROPOSED NON-MATERIAL CHANGE**

Thank you for your letter of 28 October 2021 (the “first letter”) which sets out proposals for a non-material change application for the consented York Potash Harbour Facilities Order 2016 (“the Order”) by York Potash Limited and Anglo American Woodsmith Limited (previously Sirius Minerals plc) (“the Applicant”). Your subsequent letter of 29 November (the “second letter”) and email of 13 January 2022 provided further information in response to questions raised in our letter of 16 November to aide us in our consideration on this matter.

It is noted that you are requesting the Secretary of State’s written consent under regulation 7(3) of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (“the 2011 Regulations”) to not consult those parties indicated in the table within the first letter and the table at Appendix 1 of that letter (“Appendix 1”), on the basis that the nature of the change sought is limited and that it would be disproportionate to consult all of the parties specified in regulation 7(2) of the 2011 Regulations.

The Secretary of State has considered the request under regulation 7(3) and agrees that it would be reasonable and propotionate to reduce the list of parties to be consulted on and notified of the application.

Following the second letter in response to our letter of 16 November 2021, the Secretary of State:

- is satisfied that National Highways do not need to be consulted.
- notes and is content with the explanation that although the Order limits include land within the administrative area of Stockton-on-Tees Borough Council (“STBC”), the land concerned is only part of the dredging pocket within the Tees Estuary which is

unaffected by the proposed changes, save for the proposed revised sequence of submission details, and is content that STBC therefore also do not need to be consulted.

- notes that you have identified Sembcorp and the South Tees Development Corporation, Network Rail, Northumbrian Water and Redcar Bulk Terminal as bodies that will be added to the list of parties to be formally consulted.
- has considered those parties within the Order limits which fall within s.57 of the Planning Act 2008 and are within the four categories as set out in your second letter, plus the further explanation set out in your email of 13 January that:
  - the category of 'unknown interests' are the same as the unknown interests in the original DCO application; and
  - in respect of the quay, your clients are only seeking to change the sequence of approvals and not the sequence of construction and therefore it is their view that it is not necessary to consult those with interests in the River Tees or those with an interest in the pipeline corridor,and agrees with your view that none of the parties in the four categories listed in a) to d) in paragraph 3 of your second letter will be affected and therefore do not need to be consulted and is satisfied that the unknown interests will be adequately addressed by the press notices.

The Secretary of State is satisfied with the reasons provided in Appendix 1 to exclude those organisations listed in the appendix from formal consultation including those organisations characterised in a) to d) of the second letter. This is subject to those parties referenced in your second letter and set out in the penultimate bullet point above being added.

Accordingly, the Secretary of State gives written consent, to the extent set out above, under regulation 7(3) of the 2011 Regulations.

In taking this decision the Secretary of State notes that whilst those parties either listed in Appendix 1 or characterised in the second letter will not be consulted directly in relation to the proposed changes, there will be a public consultation on the proposal in line with the requirements set out in regulation 6 of the 2011 Regulations, which will afford an opportunity for the public and those not directly consulted to respond.

Finally, the Secretary of State's written consent in this matter should not be taken as indicating approval for any aspects of the proposed changes to the York Potash Harbour Facilities Development Consent Order which fall to him for consideration and determination, or whether the proposed changes will ultimately be regarded as material or not.

Yours faithfully,

**Natasha Kopala**



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