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Dear Sirs,

PLANNING ACT 2008 APPLICATION FOR THE PROPOSED YORK POTASH HARBOUR FACILITIES ORDER

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to the report of the Examining Authority, Peter Robottom MA(Oxon) DipTP MRTPI MCMI, who conducted an examination into the application made by York Potash Limited (“the applicant”) on 27 March 2015 for the York Potash Harbour Facilities Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”).
2. The examination of the application began on 21 July 2015 and was completed on 21 January 2016. The examination was conducted on the basis of written evidence submitted to the Examining Authority and by hearings held in Redcar between 24 September 2015 and 24 November 2015.
3. The Order would grant development consent for a harbour facility at Bran Sands on the south bank of the River Tees to enable the mooring of vessels for the bulk shipping of polyhalite (a natural fertiliser). The scheme includes the construction and operation of a quay structure; the dredging of the approach channel and a berth pocket; and the construction of ship loaders and surge bins on the quay. The Order would also grant development consent for associated development comprising a conveyor system to transport the polyhalite from a Materials Handling Facility (“MHF”) within the Wilton International chemicals complex to the harbour and enhancement works within the Bran Sands lagoon. The proposals in the Order form part of the wider York Potash Project (“YPP”) which includes a new polyhalite mine near Whitby and an underground conveyor system to transport the mined polyhalite to the MHF; all of these other elements of the YPP have already been granted planning permission.
4. Enclosed with this letter is a copy of the Examining Authority's report. The proposed development is described in section 2 of the report. The Examining Authority's findings are set out in sections 4 to 9 of the report, and his overall conclusions and recommendations are in section 10 of the report.

Summary of the Examining Authority's recommendations

5. The Examining Authority recommended that the Order be made in the form set out in Appendix D to his report.

Summary of Secretary of State's decision

6. **The Secretary of State has decided under section 114 of the 2008 Act to make an Order granting development consent for the proposals in this application, subject to the modifications detailed later in this letter.** This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("the 2009 Regulations").

Secretary of State's consideration

7. The Secretary of State's consideration of the Examining Authority's report is set out in the following paragraphs. Where not stated in this letter, the Secretary of State can be taken to agree with the Examining Authority's conclusions as detailed in the report. Unless otherwise stated, all paragraph references are to the Examining Authority's report ("ER") and references to requirements are to those in Schedule 2 to the Order, as set out in Appendix D to the ER.

Changes to the application

8. The Secretary of State notes that the changes made to the application by the applicant during the examination have led to a more fully detailed and designed scheme with greater safeguards in place to protect assets and secure mitigation. He agrees with the Examining Authority that in substance the scheme is materially unchanged by those changes (ER 2.2.1-9). He agrees also that, taking into account the further changes to the Order recommended by the Examining Authority and discussed later in this letter, the scheme has not changed to the point where it is a different application. He is therefore satisfied that it is within the powers of section 114 of the 2008 Act for him to make the Order in the form recommended (ER 3.12).

Legal and policy context

9. The Secretary of State notes that, under section 104 of the 2008 Act, he must decide this application in accordance with the National Policy Statement ("NPS") for Ports, which is the designated NPS for this application, subject to certain exceptions which are not relevant in this case. He must also have regard among other things to any appropriate marine policy document and any Local Impact Report submitted within the statutory timetable (ER 3.2). In other respects, he agrees with the Examining Authority's assessment of the legislation and policy at the international, national and local levels that are relevant and important matters to be taken into account in deciding this application (ER 3.3-3.11). The Secretary of State confirms that, in considering this application, he has had regard to the legislation and policy referred to by the Examining Authority.

Findings and conclusions on policy issues

10. The Secretary of State agrees with the Examining Authority that, taking into account the positive socio-economic benefits of the scheme compared with its limited and manageable environmental impacts, the proposals in the Order are in conformity with the development plan and constitute sustainable development in relation to the National Planning Policy Framework (ER4.4.1-9). He agrees also that in relation to the NPS for Ports the presumption in favour of additional port development is met and that no reasonable alternative to the proposals in the Order has been identified (ER 4.6.1-10). With regard to the Development Consent Obligation (“DCOb”) made between the applicant and Redcar and Cleveland Borough Council (“RCBC”), the Secretary of State is satisfied that all the provisions of the DCOb are related to the development and are in varying degrees necessary to make the proposed development acceptable. He has, therefore, taken into account the DCOb (revised as referred to at paragraph 55 below) and given it due weight in deciding this application (ER 4.6.16-23, 9.6.1-4).

11. The Secretary of State agrees with the Examining Authority that the requirements of the 2009 Regulations have been fully met by the environmental statement (“ES”) and additional environmental information submitted by the applicant (ER 4.7.1-3). He confirms that, in coming to his decision to make the Order, he has taken into consideration all the environmental information in accordance with regulation 3(2) of the 2009 Regulations. For the purposes of regulation 23(2)(d)(iii) of the 2009 Regulations, the Secretary of State considers that the main measures to avoid, reduce and, if possible, offset the major adverse environmental impacts of development are those specified in the requirements, the Deemed Marine Licence (“DML”) in Schedule 5 to the Order and the DCOb.

Good design

12. The Secretary of State agrees with the Examining Authority that the applicant has given careful attention both to the issue of design and the efficient use of resources in construction and that the proposed port infrastructure would fit comfortably into the riverscape of the Tees. He is therefore satisfied that the scheme meets the tests of good design in the Ports NPS (ER 5.1.1-5).

Air quality and emissions

13. The Secretary of State has considered the Examining Authority’s assessment of the effects of the scheme on air quality at ER 5.2.1-10. He is, like the Examining Authority, satisfied that any potential adverse effects can be mitigated by the Construction Environmental Management Plan (“CEMP”) and that there would be no likely significant effects on air quality and emissions after mitigation, either in relation to the scheme or cumulatively with other plans or projects (ER 5.2.11).

Biodiversity and marine and terrestrial ecology

14. The Secretary of State has considered the Examining Authority’s assessment of these issues at ER 5.3.1-17. He notes that a significant number of necessary mitigation and monitoring measures would be secured through the requirements and the DCOb. The Secretary of State agrees with the Examining Authority that, subject to securing those measures, there should be no harm to biodiversity and a modest benefit through the habitat enhancement provisions at Bran Sands Lagoon and Portrack Marsh; there should be no

harm to the conservation interests of any nationally designated sites; and there should be no threat to the favourable conservation status of any protected species.

Climate change mitigation and adaptation, coastal change and flood risk

15. The Secretary of State agrees with the Examining Authority, for the reasons given, that there should be no adverse consequences in relation to climate change, flood risk and related matters, taking into account the mitigation embodied in the design of the development or secured through the CEMP (ER 5.4).

Common law nuisance, statutory nuisance and other potential nuisance

16. The Secretary of State agrees with the Examining Authority that, taking into account the mitigation that would be secured through the CEMP, the scheme should not give rise to nuisance whether statutory or otherwise (ER 5.5).

Fisheries

17. The Secretary of State considers that the impacts of the scheme on fisheries have been satisfactorily addressed in the applicant's ES and the further information provided during the examination of this application. He agrees with the Examining Authority that fisheries should not be materially affected by the scheme provided that the proposed mitigation and monitoring are implemented (ER 5.6).

Hazardous substances and health

18. The Secretary of State agrees with the Examining Authority that, taking into account the mitigation that would be secured under the CEMP and the Environmental Permit, there should be no adverse risks to health from hazardous substances. He notes that this assessment is subject to the Examining Authority's conclusions on the risks to the underground pipelines which are considered later in this letter (ER 5.7).

Historic environment

19. The Secretary of State notes that there would be no harm as a result of the scheme to any scheduled monument or listed building or their settings, nor to the character or appearance of any designated conservation area. In relation to other non-designated heritage assets, he agrees that, after mitigation secured by requirement 10 and a condition in the DML, the residual adverse impact of the scheme would be very slight (ER 5.8).

Land use, landscape, seascape and visual impact

20. The Secretary of State agrees with the Examining Authority that the landscape and seascape would not be materially harmed since the proposed development would fit into the existing industrialised character. He agrees also that the off-site planting and public realm enhancement works secured by the DCOB would be capable of mitigating the localised visual adverse impacts of the scheme. He is satisfied therefore that the residual adverse visual effects of the development would not be such as to give rise to any significant weight against the scheme (ER 5.9.1-8). The Secretary of State agrees further with the Examining Authority that the harbour facilities would not add to the harm to the landscape of the North York Moors National Park from other components of the wider YPP (ER 5.9.9-11).

Marine dredging and disposal and navigation

21. The Secretary of State agrees with the Examining Authority that the effects of dredging and disposal and the navigational effects of the scheme have been satisfactorily assessed by the applicant. He agrees that these impacts are able to be mitigated through the conditions imposed on the DML and the protective provisions in the Order for the Tees Port Authority, with the result that no harm should arise in relation to these matters (ER 5.10).

Pollution control and other environmental regulatory regimes

22. The Secretary of State notes that there are no outstanding issues in relation to any permits or licences that would be required under pollution control or other environmental regulatory regimes (ER 5.11).

Noise and vibration

23. The Secretary of State agrees with the Examining Authority that noise and vibration issues have been adequately assessed. He is satisfied that there should be no significant harm as a result of noise and vibration taking into account the mitigation that would be secured through the CEMP (ER 5.12).

Security and safety considerations

24. The Secretary of State has considered carefully the level of risk which would be involved in constructing the proposed overhead conveyor system between the MHF and the new quay in proximity to the pipelines that pass through the application site, particularly in relation to the alternative Northern and Southern conveyor routes included in the Order as applied for. He has noted in this regard that the Southern route would run for around 2 kilometres above or close to a gas pipeline owned by CATS Management Limited (“CATS”) which carries about 8% of the UK national gas demand from the North Sea, whereas the Northern route would be overhead or close to the CATS pipeline for at most around 0.5 kilometres. The Examining Authority considered that CATS had advanced cogent arguments that the Southern route would give rise to an “intolerable” societal risk (having regard to the HSE guidance “Reducing risks, protecting people”); this was on the grounds that the protective provisions in the Order would be insufficient to guard against the risk of human error in identifying the pipeline location in relation to conveyor footings (ER 5.13.3-8).

25. The Secretary of State has noted further that, while the Quantitative Risk Assessments submitted by CATS and the applicant reached different conclusions on this matter, it was nevertheless agreed between the parties that the Northern conveyor route would give rise to lesser risks than the Southern route. Given that in the worst case an accident involving the CATS pipeline could have serious implications, he supports the Examining Authority’s judgement that the risk in developing the Southern route would not be “reasonable” and that in any case the principle in HSE guidance of securing risk that is “as low as reasonably practicable” should be followed here. The Secretary of State accordingly agrees with the Examining Authority that the greater safety risks associated with the Southern route would justify withholding development consent for that part of the scheme, taking into account that an alternative exists in the form of the Northern route. He agrees also that the application with the removal of the Southern route should be regarded

as materially unchanged since this would reduce the scope of the Order and no additional parties would be affected (ER 5.13.10-12).

Commercial, economic and socio-economic impacts

26. The Secretary of State agrees with the Examining Authority that the employment benefits of the scheme and the wider YPP would be particularly valuable given the high levels of deprivation and unemployment in the Teesside area. He agrees also that the overall YPP scheme would be beneficial to the national, regional and local economy and would represent sustainable development because of the contribution that it would make to world food production while minimising greenhouse gas emissions (ER 5.14.2-5). As regards the possible adverse effects on the operation of commercial undertakings whose assets would be over-sailed by the conveyor system or affected by dredging operations which are considered later in this letter, the Secretary of State agrees with the Examining Authority that, assuming the protective provisions in the Order would be effective, the assessment in relation to economic, socio-economic and commercial considerations is strongly positive (ER 5.14.6-8). He is also satisfied that implementing the proposals in the Order would not conflict with any obligations under the public sector equality duty, and that in relation to the examination of this application that duty has been complied with (ER 5.14.9-11).

Traffic and transport

27. The Secretary of State notes that no significant adverse impacts are assessed as likely to arise on the roads or junctions in the area that may be affected by construction of the harbour facilities, including as a result of the wider YPP and other potential projects, subject to the mitigation to be secured through the Construction Traffic Management Plan under requirement 7. As regards the operation of the scheme, he notes that any transport impacts would be of negligible significance since the polyhalite is planned to be transported to the harbour by the overhead conveyor system. The Secretary of State notes also that no issues should arise in relation to Royal Mail operations or in connection with the access concerns of the pipeline operators. He therefore agrees with the Examining Authority that subject to the proposed mitigation no adverse considerations arise from the transport assessment of the scheme (ER 5.15).

Waste management including in relation to water resources

28. The Secretary of State notes that good construction practice and monitoring, which would be governed by the CEMP, would generally provide mitigation against most risks to the hydrogeology that may exist during construction; and that the impact of the scheme on surface waters and groundwater would be of negligible significance during construction and operation, subject to the implementation of control measures. He therefore agrees with the Examining Authority that there should be no likely significant impacts in relation to these considerations (ER 5.16).

Water quality (ecological and chemical) and resources

29. The Secretary of State agrees with the Examining Authority that, taking into account the assessment in the ES of the impacts of the scheme on relevant water bodies and the mitigation measures that would be secured by the requirements and the DML, the proposals in the Order would not preclude compliance with the Water Framework Directive and other related Directives (ER 5.17).

Habitat Regulations Assessment

30. The Secretary of State has considered the Examining Authority's assessment in section 6 of the ER of the likely significant effects of the scheme, either alone or in combination with other plans and projects, on five European sites which may be affected by the proposed development. In doing so, he has taken into account the information submitted in the applicant's Habitats Regulations Assessment ("HRA") Report, the Examining Authority's Report on the Implications for European Sites ("RIES") and the responses to consultation on the RIES which was carried out during the examination of this application.

31. The Secretary of State agrees with the Examining Authority, for the reasons given, that likely significant effects can be excluded in relation to the North York Moors SAC and SPA; the Arnecliffe and Park Hole Woods SAC; and, subject to requirement 11, the Teesmouth and Cleveland Coast SPA during the decommissioning of the scheme (ER 6.5). As regards the construction and operational effects of the proposed development, he notes the conclusion of the appropriate assessment in the applicant's HRA Report that there would not be an adverse effect on the integrity of the Teesmouth and Cleveland Coast SPA and Ramsar sites, taking into account the mitigation and monitoring measures referred to at ER 6.6. He notes further Natural England's agreement with this conclusion provided that all the mitigation measures relied on by the applicant are fully delivered through the Order and the DML (ER 6.7.4-5).

32. The Secretary of State agrees with the Examining Authority that the mechanisms proposed by the applicant to secure the proposed mitigation measures and monitoring are appropriate and adequate (ER 6.7.6-16). He agrees also that on this basis adverse effects on the integrity the Teesmouth and Cleveland Coast SPA and Ramsar sites can be excluded (ER 6.8). He has therefore decided to adopt the conclusions of the applicant's HRA Report and of the Examining Authority on these matters, and considers that it is unnecessary for him to carry out a further appropriate assessment under the Conservation of Habitats and Species Regulations 2010.

Overall conclusion on the case for development consent

33. Taking into account all the above conclusions, the Secretary of State agrees with the Examining Authority that the principle of the proposed development is in conformity with the need provisions of the Ports NPS and with the development plan. He is satisfied that the assessment requirements in the NPS and the Marine Policy Statement (as appropriate) have been met. He agrees further that, subject to the consideration of compulsory acquisition matters below, the proposed development would have strong economic and socio-economic benefits and that any adverse impacts would be capable of mitigation in relation to the generality of the Order scheme. The Secretary of State therefore agrees with the Examining Authority that, having regard to section 104 of the 2008 Act, the adverse impact of the proposed development would not outweigh its benefits and that the planning case for making the Order as a whole has been made (ER 5.18, 7.1.11-14).

Compulsory acquisition and related matters

34. The Secretary of State has considered the powers sought by the applicant to acquire compulsorily rights over land in accordance with sections 120, 122, 123, 126, 127 and 135 of the 2008 Act, the Human Rights Act 1998 and relevant guidance. He notes in this context that the applicant is not seeking any powers for the outright acquisition of land and that the

purpose of the powers would be to extinguish unknown rights rather than to interfere with existing known rights (ER 8.2.3). In considering these matters, the Secretary of State has taken into account the case of the applicant in relation to the principle of the powers sought and in response to individual objections, as set out at ER 8.4.4-20 and 8.7, and the case of the affected persons, as set out at ER 8.6 and 8.7. As regards the cases of affected parties where the objections or representations have been resolved, the Secretary of State agrees with the Examining Authority that the compulsory acquisition and temporary possession powers should be granted for the reasons given at ER 8.6.3, 8.6.4, 8.6.8, 8.6.12, 8.6.15, 8.6.17, 8.6.20 and 8.6.24.

Crown land

35. The Secretary of State notes that The Crown Estate has given consent under section 135(2) of the 2008 Act for the inclusion in the Order of provisions applying in relation to Crown land, conditional on the Order requiring the applicant to seek a further, confirmatory consent from The Crown Estate before entering Crown land or acquiring compulsorily any interest in Crown land that is held other than by the Crown. He agrees with the Examining Authority that this approach is acceptable in the circumstances described by the Examining Authority at ER 8.2.8-9. He considers, further, that it is not within the powers of the 2008 Act for the Order to authorise the creation and compulsory acquisition of new rights in Crown land because any new rights so created would in effect be held from the Crown and could be acquired only by agreement with The Crown Estate. The Secretary of State has therefore decided to make clear that Crown land is excluded from the power in article 24 of the Order for the applicant to create and acquire new rights. He considers that this clarification would not adversely affect the applicant because, as noted above, the applicant would in any event need The Crown Estate's consent (under article 36 of the Order) to enter Crown land or acquire any interest in it. Since the Examining Authority reported that there were no known impediments to securing The Crown Estate's further consent, the Secretary of State is satisfied that the amendment to article 24 would not be likely to prevent the implementation of the development authorised by the Order.

Network Rail

36. The Secretary of State agrees with the Examining Authority that, subject to the following qualification, the operational needs of Network Rail have been fully safeguarded by the protective provisions in Schedule 7 to the Order. However, he does not agree with the Examining Authority that it is appropriate to delete from those protective provisions the requirement for the applicant to obtain Network Rail's consent to acquire or use rights to over-sail the Middlesbrough to Redcar railway. He does not consider that this requirement would be likely to prevent the development proceeding as Network Rail could not unreasonably withhold its consent. He considers further that the provision is not solely concerned with ensuring that Network Rail is compensated for the acquisition of a right to over-sail its railway. In the absence of confirmation from Network Rail that its operational infrastructure would be adequately safeguarded without this consent requirement he is not persuaded that it should be omitted from the Order. Having regard to section 127(5) of the 2008 Act, he is satisfied that, with this requirement re-inserted, the right in question can be purchased without serious detriment to the carrying on of the undertaking (ER 8.7.4-7).

Tata Steel UK Limited and others

37. The Secretary of State agrees with the Examining Authority that the overhead conveyor crossing of the Hot Metal Rail line serving the (now closed) Redcar Steel Works

would not be likely to involve a serious risk of interruption to the use of the line; that the height of the conveyor bridge over the "Blue Main Route" oversized roadway would be acceptable; and that the proposed dredging and construction and operation of the quay should not interfere with shipping operations serving the Redcar Bulk Terminal. He therefore agrees with the Examining Authority that, taking into account the protective provisions in Schedules 9 and 10 to the Order, the extent of the compulsory acquisition powers sought in relation to the interests of Tata, Redcar Bulk Terminal and the Liquidators of Sahaviriya Steel Industries UK Limited should be granted, subject to the removal of the Southern conveyor route (ER 8.7.24-28).

Huntsman Polyurethanes UK Limited and other pipeline operators

38. The Secretary of State has considered the concerns of the operators referred to at ER 8.7.29 about the effects of dredging and about the rights sought by the applicant to enable construction of the overhead conveyor system and access to the quay. He agrees with the Examining Authority that there should be no material harm to cross-river pipelines from dredging operations and that the Order as amended during the examination had addressed the concerns of these parties about flexibility in relation to the location of the conveyor routes and the positioning of conveyor supports. He is satisfied also that the interests of these parties would be fully protected by the protective provisions in Schedule 9 to the Order, subject to the minor amendment to the proposed definition of "pipelines" referred to at paragraph 53 below. The Secretary of State therefore agrees with the Examining Authority that a compelling case in the public interest has been made for the compulsory acquisition powers sought in relation to the interests of these parties, other than in respect of rights that would have been required for the Southern conveyor route (ER 8.7.44-57).

CATS and Amoco (UK) Exploration Company LLC

39. As noted at paragraphs 24 and 25 above, the Secretary of State agrees with the Examining Authority that development consent should not be given for the Southern conveyor route because of the greater safety risks associated with this option compared with the Northern conveyor route. He has, nevertheless, considered also the issue of whether there is a compelling case in the public interest for granting compulsory acquisition powers in respect of both alternatives for the conveyor route since, like the Examining Authority, he considers that it would in principle be acceptable to include such provision in a Development Consent Order under the 2008 Act.

40. The Secretary of State recognises that the Southern route is the applicant's preferred option and that the applicant included the Northern route in the Order as a fall-back alternative should it be established in due course that the Southern route cannot be constructed safely. However, he agrees with the Examining Authority that the judgement on this issue does not turn solely on whether the risk of private loss to the pipeline asset holders and their customers (taking into account the protective provisions in Schedule 9 to the Order) would be outweighed by the public benefit of the harbour facilities and the wider YPP referred to earlier in this letter. The Secretary of State has concluded like the Examining Authority that, although the Southern route would involve a reduced extent of compulsory acquisition and is preferred by the applicant, taking into account the availability of a lower risk alternative in the form of the Northern route over which almost all detailed concerns have been resolved, there is a compelling case in the public interest in respect of the Northern route but not the Southern route (ER 8.7.86-93).

Overall conclusions

41. The Secretary of State agrees with the Examining Authority that the requirements of the Human Rights Act 1998 have been met; that a clear indication has been given as to how the funding for the scheme would be obtained; and that funding should be available to meet compensation requirements (ER 8.9.4-15). He agrees also that the land over which compulsory acquisition of rights is sought is all required for the purposes of the proposed development and that the applicant has taken a proportionate approach (ER 8.9.16-17).

42. The Secretary of State agrees with the Examining Authority that, apart from in relation to the Southern conveyor route, a compelling case exists. In coming to this conclusion he has taken into account the strategic need for the harbour facilities to enable bulk shipping of the output of the proposed polyhalite mine, the substantial economic and socio-economic benefits of the scheme, and the provisions in the Order for compensation and for the protection of private interests (ER 8.9.19-23). He is satisfied also that there is no realistic available alternative to the location of the proposed harbour facilities or for the provision of the conveyor system (ER 8.5.6-7).

43. The Secretary of State agrees with the Examining Authority's overall conclusion that the general case for inclusion of compulsory acquisition powers in the Order has been made (ER 8.10.1).

Draft Development Consent Order and related matters

44. The Secretary of State has considered the Examining Authority's assessment of the Order in section 9 of the ER, including the changes made during the examination and those recommended by the Examining Authority. He is satisfied that, subject to the qualifications referred to in the following paragraphs, the Order set out at Appendix D to the ER is appropriate and acceptable for the purposes of the scheme. (References to article numbers in the following paragraphs are to the articles as numbered in Appendix D.)

45. In article 2(1) (interpretation) the Secretary of State is replacing the definition of "commence" with substantive provisions in article 3 (development consent, etc., granted by the Order) to make clear that certain of the works referred to in that definition may be carried out once the Order comes into force and are not subject to prior approval under the requirements or the DML. However, he does not consider that it is appropriate that this exemption should extend to site clearance or the diversion and laying of services as these operations may have impacts that should be subject to mitigation measures that would be secured through the requirements.

46. A further interpretation provision is being added to article 2 in connection with the Secretary of State's functions under articles 17 (tidal works not to be executed without approval of Secretary of State) and 18 (abatement of works abandoned or decayed). The effect of the new paragraph (7) is to make clear that, where a function of the Secretary of State has been delegated to the MMO by way of an agreement under section 14 of the Marine and Coastal Access Act 2009, a reference in the Order to the Secretary of State carrying out such a function includes the MMO. It makes clear also that the obligation to consult with the MMO does not apply where the MMO is carrying out such delegated functions.

47. In article 8(4) (consent to transfer benefit of Order), the Secretary of State is making the correction referred to at ER 9.7.3, but has added that the qualification in paragraph (4) should apply to paragraph (2) as well as to paragraph (5).

48. In article 9 (application and modification of legislative provisions), paragraphs (3) and (4) are being deleted since the Secretary of State does not consider that it would be appropriate to apply the appeal mechanisms under the Town and Country Planning Act 1990 to consents, agreements or approvals required under the DML. This is partly because there is no equivalent provision in the marine licensing regime and partly because this would have resulted in any such appeals being determined by the Department for Communities and Local Government. In addition, in article 9(6), the references to the General Permitted Development Order are being updated.

49. In article 24(1) (compulsory acquisition of rights), the words “excluding any interests owned by The Queen’s most Excellent Majesty in right of Her Crown” are being substituted by amendments to make clear that Crown land is excluded from the power to acquire new rights compulsorily but is subject instead to a power to acquire the required rights by consent of the relevant Crown authority (see paragraph 35 above). The extinguishment of any private rights over the Crown land in question has, however, been preserved.

50. In article 33(1)(b)(i) (defence to proceedings), the Secretary of State considers that the defence in relation to nuisance caused by the use of premises for the purposes of the authorised development should be qualified to the effect that the nuisance “cannot be reasonably avoided”.

51. In article 38 (certification of plans etc.) an additional provision is being inserted to allow for the circumstances where documents require amendment to reflect the Secretary of State’s decision.

52. In paragraph 4 of Schedule 7 (for the protection of Network Rail) the Secretary of State is reinstating a provision requiring the consent of Network Rail to the acquisition or use of rights over any property of Network Rail for the reasons given in paragraph 36 above.

53. In paragraph 2 of Schedule 9 (for the protection of the pipeline corridor and protected crossings), the Secretary of State is amending the definition of “pipelines” proposed by the Examining Authority at ER 8.7.47 to ensure that the protective provisions could apply to any additional pipeline constructed between the date of the pipeline survey and the commencement of the authorised development, not just those notified to the undertaker within 28 days of serving the pipeline survey on the owners and operators of the pipeline.

54. The Secretary of State is making a number of other minor textual amendments to the Order set out in Appendix D to the ER in the interests of clarity, consistency and precision. He considers that none of these changes, either individually or taken together, materially alter the effect of the Order.

Correspondence since the close of the Examination

55. The Secretary of State has noted the Examining Authority’s comments at ER 9.6.5 about the two respects in which he considered that the DCOB dated 19 October 2015 did not comply with section 106(9)(aa) and (d) of the Town and Country Planning Act 1990. The Secretary of State has drawn these points to the applicant’s attention and the applicant has

submitted to the Secretary of State a revised DCOB dated 27 June 2016 which addresses those points effectively.

56. The Secretary of State has received a number of representations about the proposed development since the examination closed. He does not consider that anything in the correspondence constitutes new evidence, or raises a new issue, which needs to be referred to other interested parties before he proceeds to a decision. It does not cause him to take a different view on the matters before him than he would otherwise have taken based on the Examination Authority's report.

Secretary of State's overall conclusions and decision

57. For all the reasons given in this letter, the Secretary of State agrees with the Examining Authority that the tests in section 104 of the 2008 Act have been met, subject to the exclusion of the Southern conveyor route (ER 10.1). He has therefore decided to accept the Examining Authority's recommendation at ER 10.2.1 and is today making the Order granting development consent for the proposals in this application, but subject to the modifications referred to at paragraphs 45 to 54 above.

Challenge to decision

58. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

59. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours faithfully,

Martin Woods

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The York Potash Harbour Facilities Order 2016 is being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/north-east/york-potash-harbour-facilities-order/>.

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).