

**DATED** 19<sup>TH</sup> October **2015**

**NORTH YORKSHIRE COUNTY COUNCIL (1)**

and

**YORK POTASH LIMITED (2)**

and

**BARCLAYS BANK PLC (3)**

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**PLANNING AGREEMENT**

Pursuant to Section 106 Town and Country Planning Act 1990  
relating to land at Doves Nest Farm, Scarborough, North Yorkshire

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**Eversheds  
1 Wood St  
London  
EC2V 7WS  
Tel:0207 919 4500**

**THIS AGREEMENT** is made the **15<sup>TH</sup>** day of **OCTOBER** Two  
Thousand and Fifteen

**BETWEEN:**

1. **NORTH YORKSHIRE COUNTY COUNCIL** County Hall, Northallerton,  
North Yorkshire, DL7 8AD ("the County Council"); and
2. **YORK POTASH LIMITED** (Company Registration Number 07251600)  
whose registered office is situate at 3<sup>rd</sup> Floor Greener House, 68  
Haymarket, London, SW1Y 4RF ("YPL")
3. **BARCLAYS BANK PLC** (Company Registration Number 01026167)  
whose registered office is situate at 1 Churchill Place, London E14  
5HP ("the Mortgagee")

**RECITALS:**

- A. The County Council is a local planning authority and is the highway authority for the purposes of Section 106 of the 1990 Act
- B. YPL is the registered proprietor of the freehold interest in the Obligation Land registered at HM Land Registry under title number NYK403401 and is seeking to carry out the Development on inter alia the Obligation Land
- C. The Mortgagee is the proprietor of a legal charge dated 9 December 2013 over the Obligation Land
- A. The parties hereto have entered into this Agreement so that in the event of the North York Moors National Park Authority ('NYMNP') and Redcar and Cleveland Borough Council ('RCBC') issuing the Planning Permissions pursuant to the Application and the Development proceeds the Development will be regulated as hereinafter provided

**OPERATIVE PROVISIONS:**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following expressions shall have the following meanings:

- "1990 Act" the Town & Country Planning Act 1990
- "Application" the application submitted to the NYMNP and RCBC allocated reference numbers NYM/2014/0676/MEIA and R/2014/0627/FFM respectively applying for the winning and working of polyhalite by underground methods including the construction of a minehead at Dove's Nest Farm involving access, maintenance and ventilation shafts, the landforming of associated spoil, the construction of buildings, access roads, car parking and helicopter landing site, attenuation ponds, landscaping, restoration and aftercare and associated works. In addition, the construction of an underground tunnel between Doves Nest Farm and land at Wilton that links to the mine below ground, comprising 1 no. shaft at Doves Nest Farm, 3 no. intermediate access shaft sites, each with associated landforming of associated spoil, the construction of buildings, access roads and car parking, landscaping, restoration and aftercare, and the construction of a tunnel portal at Wilton comprising buildings, landforming of spoil and associated works
- "Commencement of Construction" the earliest date on which any of the material operations (as defined by Section 56(4) of the 1990 Act) pursuant to the implementation of the Development is begun save that irrespective of the provisions of Section 56(4) of the 1990 Act none of the following operations shall constitute a material operation for the purposes of constituting Commencement of Construction
- i. trial holes or other operations to establish the ground conditions, site survey work, or works of remediation
  - ii archaeological investigations
  - iii any works of demolition or site clearance (but not including soil stripping other than in item iv below)
  - iv minor soil stripping for the purposes of the

|                              |  |
|------------------------------|--|
|                              | <ul style="list-style-type: none"> <li>v creation of the temporary access and laydown areas and preparation of drill pads</li> <li>vi any structural planting or landscaping works</li> <li>vii ecological or nature conservation works associated with the Development</li> <li>viii construction of boundary fencing or hoardings</li> <li>ix construction of access or highway works (including drainage and media)</li> <li>x any other preparatory works agreed in writing with NYMNP or RCBC according to the administrative area within which the preparatory works concerned are to be undertaken</li> </ul> |
|                              | and Commence and Commenced shall be construed accordingly  |
| "Commercial Production Date" | the date being the end of the Construction Period  |
| "Construction Period"        | the period of time from the Commencement of Construction to the date 12 months following the removal of the temporary winding towers at Dove's Nest Farm   |
| "Defined Routes"             | the routes shown on Plan B and any other routes reasonably requested by the County Council to be included  |
| "Development"                | the development described in the Application and to be carried out pursuant to the Planning Permissions  |
| "HGV Routing Scheme"         | a scheme to be submitted to the County Council in accordance with paragraph 7.1 of Schedule 1 to control the routing and timing of construction traffic to include enforcement measures and penalties and to include the routing and timing of indivisible abnormal loads  |
| "Index Linked"               | means adjusted in accordance with clause 2.20  |
| "Mayfield Junction Works"    | means the highway works to be carried out to improve Mayfield Junction to be the subject of an agreement between YPL and the County Council pursuant to Section 278 of the Highways Act 1980   |
| "Mine"                       | the mine which is to be developed as part of the Development   |

|                            |   |
|----------------------------|---|
| "NYCC STEM Contribution"   | the sum of Eighty Thousand pounds (£80,000) Index Linked payable pursuant to paragraph 3.2 of Schedule 1  |
| "NYBEP Contribution"       | the sum of three hundred and seventy five thousand pounds (£375,000) Index Linked payable for pursuant to paragraph 3.4 of Schedule 1   |
| "NYMNPA"                   | North York Moors National Park Authority  |
| "NYMNPA Agreement"         | the agreement under section 106 of the Act between inter alia NYMNPA and YPL relating to the NYMNPA Permission  |
| "NYMNPA Permission"        | the permission issued by NYMNPA pursuant to the application for inter alia the Mine under reference NYM/2014/0676/MEIA  |
| "Obligation Land"          | the land shown edged red on Plan A  |
| "Operational Period"       | the period commencing at the end of the Post Construction Period and lasting for the operational life of the mine   |
| "Plan A"                   | the plan marked as such and attached hereto   |
| "Plan B"                   | the series plans marked attached hereto comprising drawing numbers PB1110-SEI-NYTA-002 Rev 0, PB1110-SEI-NYTA-003 Rev 0 and PB1110-SEI-NYTA-004 Rev 0   |
| "Planning Permissions"     | the planning permissions granted by NYMNPA and RCBC pursuant to the Application   |
| "Post Construction Period" | the period of time equal in length to the Construction Period commencing immediately following the end of the Construction Period   |
| "Preparatory Works"        | any of the following: <ul style="list-style-type: none"> <li>i. trial holes or other operations to establish the ground conditions, site survey work, or works of remediation</li> <li>ii. archaeological investigations</li> <li>iii. any works of demolition or site clearance</li> <li>iv. any structural planting or landscaping works</li> <li>v. ecological or nature conservation works associated with the development hereby permitted</li> <li>vi. construction of boundary fencing or hoardings</li> <li>vii. construction of access or highway works</li> </ul> |



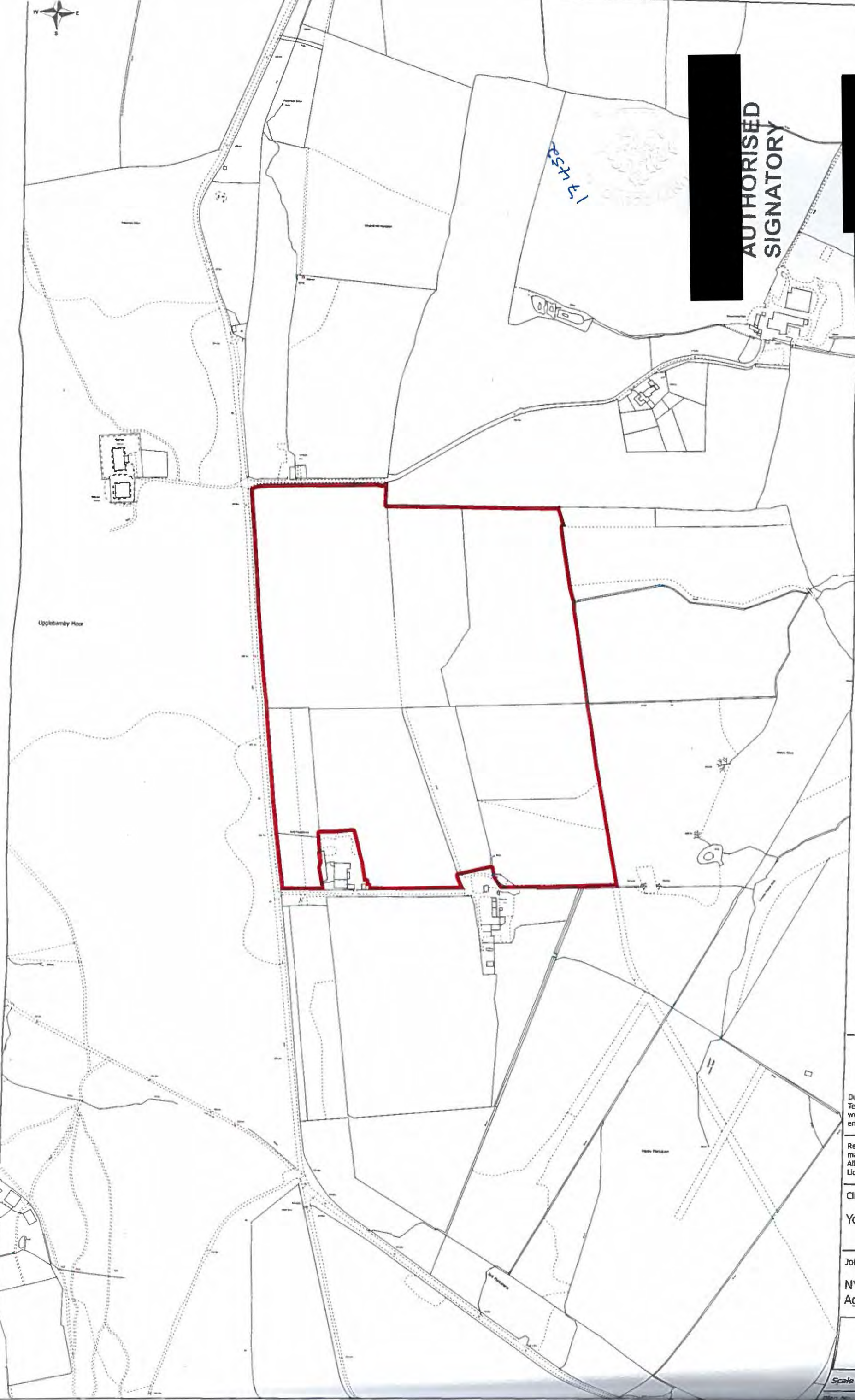
Notes:  
Extent of title NYK403401

**AUTHORISED  
SIGNATORY**



1743461

Upplebendy Moor



Dunn, Isla Road, Perth, PH2 7HF  
Tel: 01738 621121 Fax: 01738 630904  
www.bellingram.co.uk  
enquiries@bellingram.co.uk

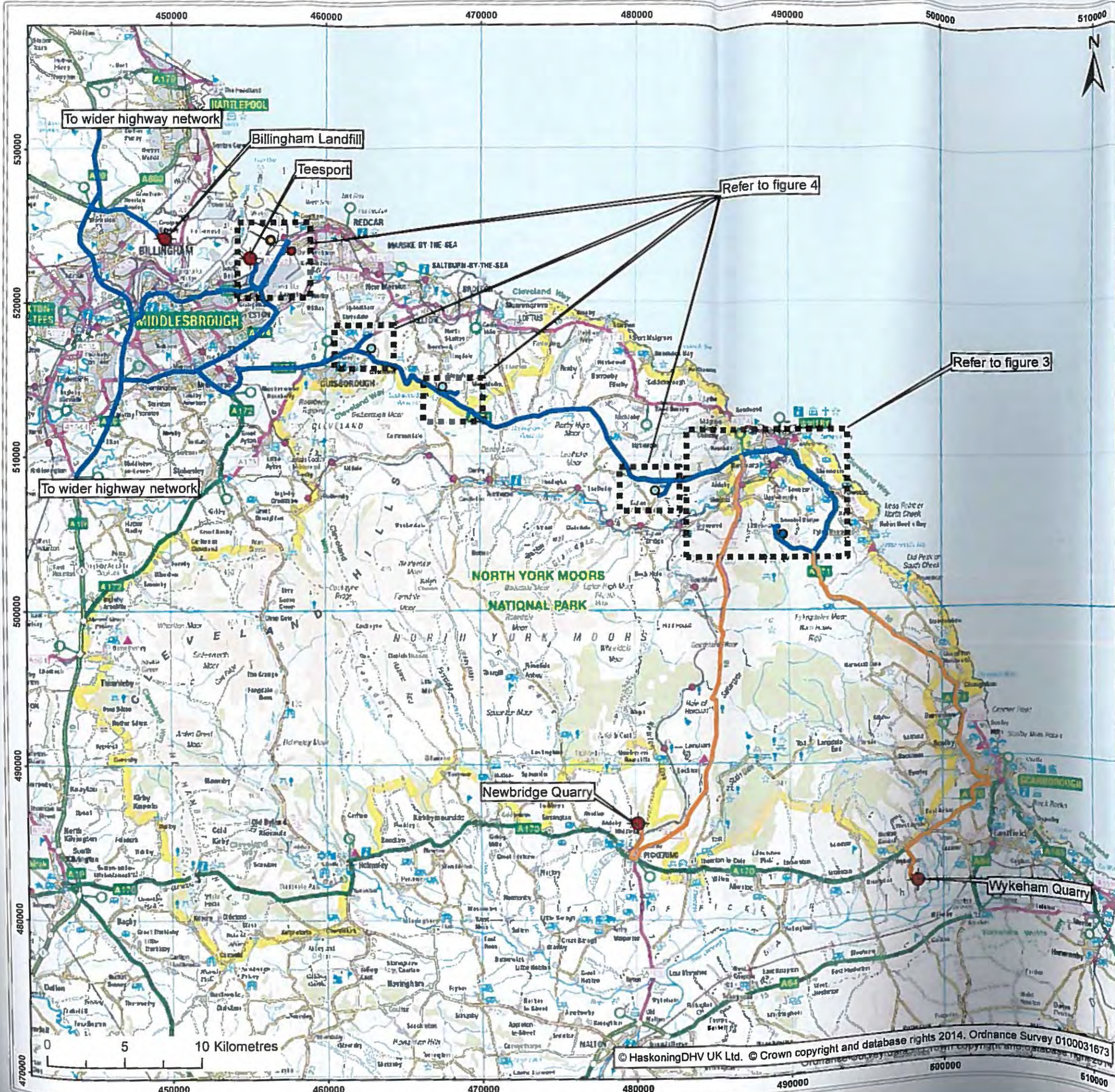
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Client  
York Potash Ltd

Job title  
NYCC Section 106 Agreement

Doves Nest Farm

Scale at A3: 1:5,000



Legend:

- Potential HGV Origin/Destination
- HGV Routes
- Alternative HGV Routes
- Mine and Dove's Nest MTS
- Intermediate MTS Site
- Materials Handling Facility and MTS Portal Site
- Harbour
- Refer to figures 3 and 4 for details

17452

Client: York Potash Limited  
 Project: York Potash Project North Yorkshire Transport Assessment

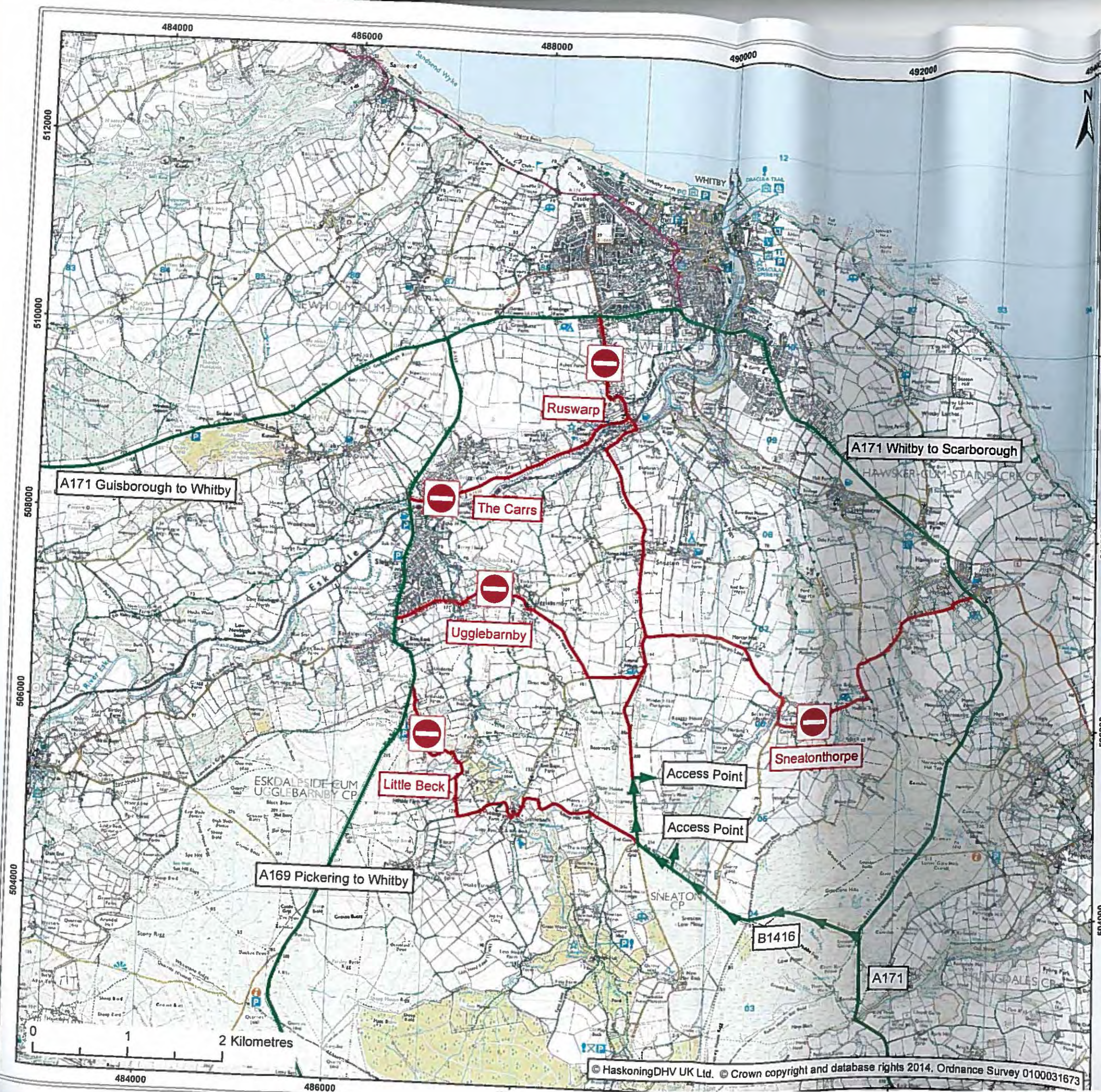
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|           |                   | Size: A3             |
|           |                   | Scale: 1:250,000     |

Co-ordinate system: British National Grid

**Royal HaskoningDHV**  
 Enhancing Society Together

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Legend:

- HGV route to and from Dove's Nest Farm
- Routes to Dove's Nest Farm to be avoided by HGV's

17457  
**AUTHORISED SIGNATORY**

|                     |  |
|---------------------|--|
| Client:             | Project:   |
| York Potash Limited | York Potash Project<br>North Yorkshire<br>Transport Assessment |

Title: HGV Routes  
Mine Surface Development Site

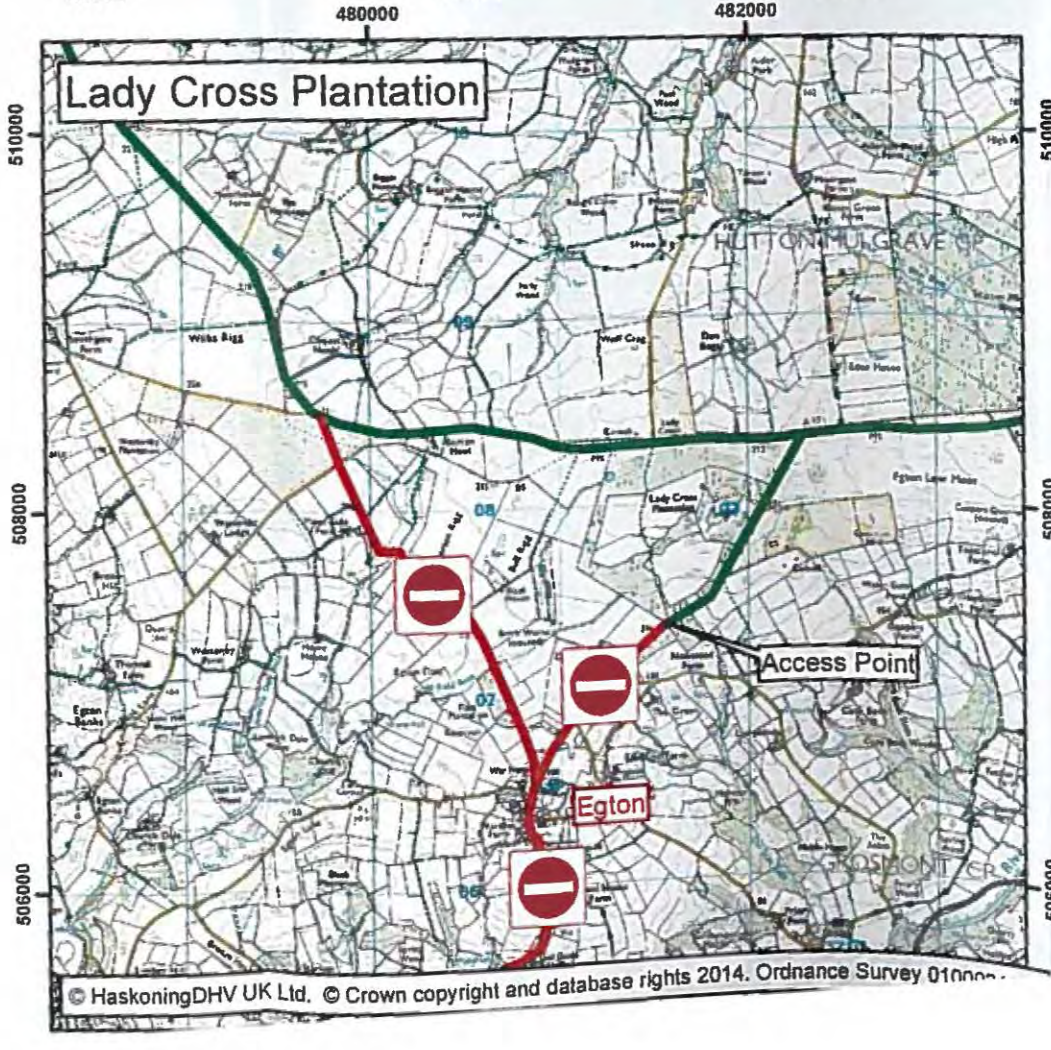
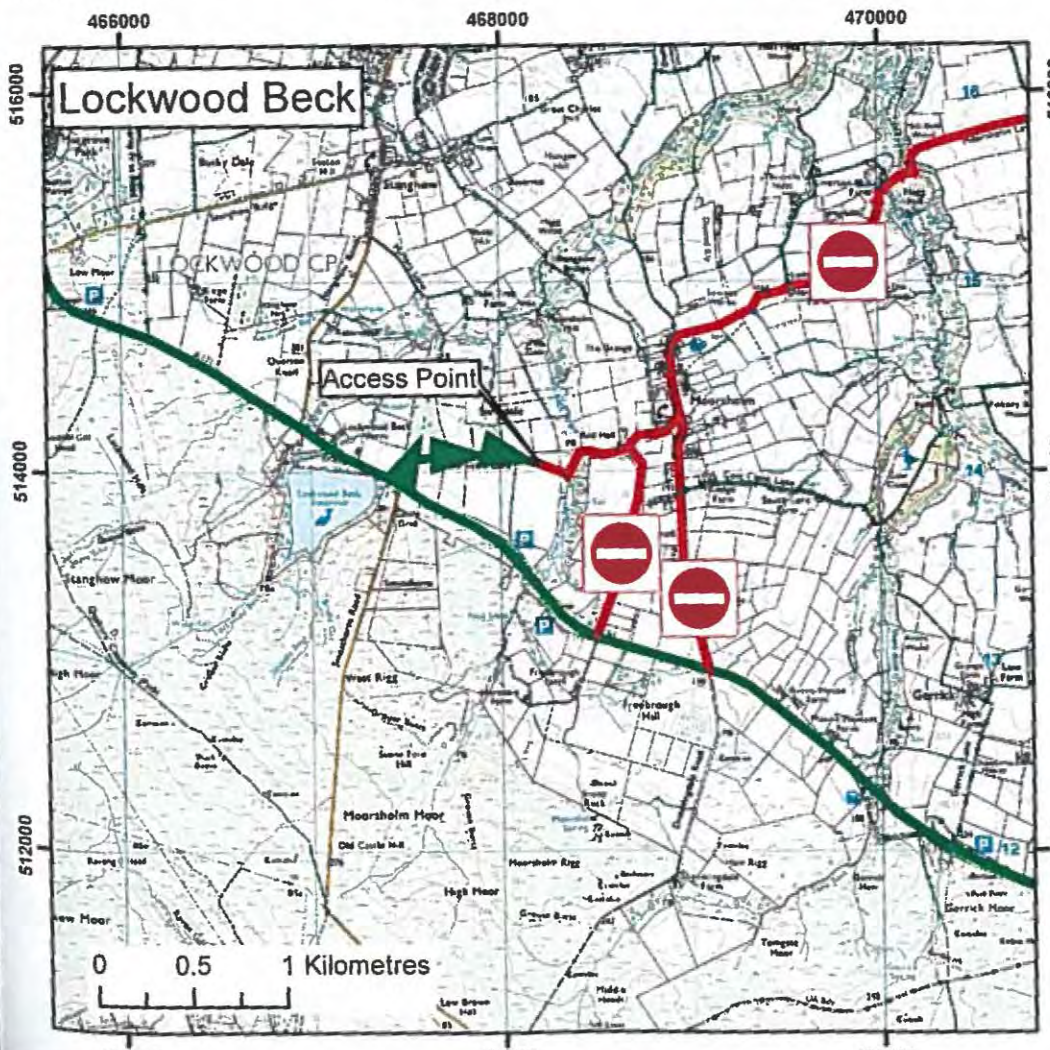
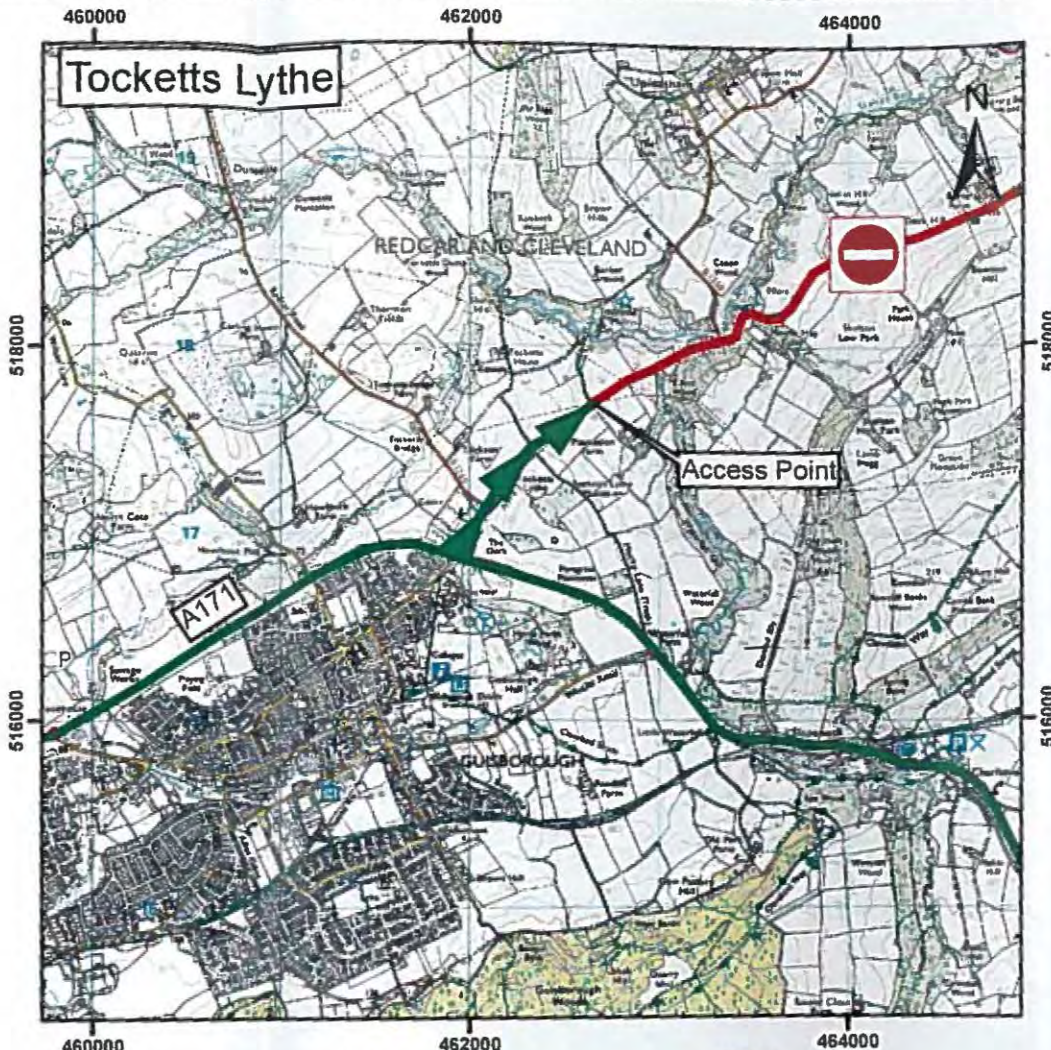
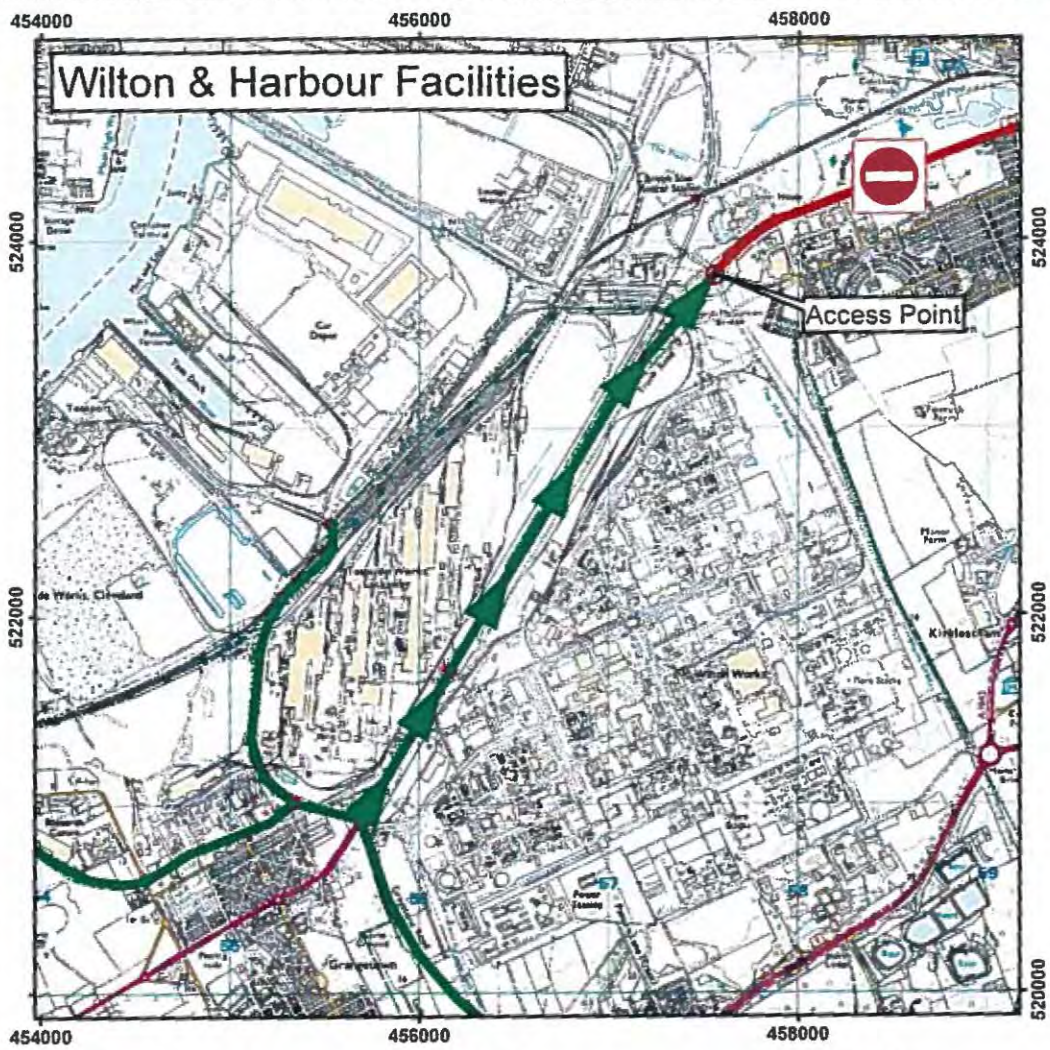
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|           |                  | Size: A3                        |
|           |                  | Scale: 1:40,000                 |

Co-ordinate system: British National Grid

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- Legend:
- HGV Routes
  - HGV Route to and from MTS Intermediate Sites/Wilton Site
  - Routes to MTS Intermediate Sites/Wilton Site to be avoided by HGV's

**AUTHORISED SIGNATORY**

Client: York Potash Limited  
 Project: York Potash Project North Yorkshire Transport Assessment

Title: HGV Routes Wilton and MTS Intermediate Sites

|           |                  |                                 |              |          |                 |
|-----------|------------------|---------------------------------|--------------|----------|-----------------|
| Part: SEI | Figure: 4        | Drawing No: PB1110-SEI-NYTA-004 |              |          |                 |
| Rev: 0    | Date: 13/02/2015 | Drawn: MCP                      | Checked: SKT | Size: A3 | Scale: 1:40,000 |

Co-ordinate system: British National Grid

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 BREITON  
 PETERBOROUGH

|                                    |  |
|------------------------------------|--|
|                                    | (including drainage and media)<br>any other preparatory works agreed in writing with the mineral planning authority  |
| "Rail Infrastructure Contribution" | the sum payable pursuant to paragraph 2.1 to .2.4 of Schedule 1  |
| "Rail Service"                     | the rail services procured by the County Council pursuant to the Rail Service Contribution as detailed in paragraph 1 of Schedule 2  |
| "Rail Service Contribution"        | the sums payable pursuant to paragraphs 1.2 and 1.3 of Schedule 1  |
| "RCBC"                             | Redcar and Cleveland Borough Council   |
| "Relevant Authority"               | the NYMNP, RCBC or the County Council whichever of them is the authority having jurisdiction over the issue in question  |
| "Traffic Management Liaison Group" | a group containing representatives of the following: <ul style="list-style-type: none"> <li>• YPL</li> <li>• NYMNP</li> <li>• Scarborough Borough Council ('SBC')</li> <li>• RCBC</li> <li>• the County Council in its capacity as the Local Highway Authority</li> <li>• North Yorkshire Police Authority</li> <li>• TP Coordinator</li> <li>• Other parties which the County Council notifies to YPL and whose interests are or may be affected by the Mine</li> </ul> |

1.2 The expressions "the County Council" and "YPL" shall where the context so admits include its respective successors and assigns and in the case of the County Council the successors to their statutory functions

1.3 References in this Agreement to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force

1.4 Words in this Agreement importing the singular meaning shall where the context so admits include the plural meaning and vice versa

1.5 Words in this Agreement of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa

1.6 Where in this Agreement reference is made to a Clause or Schedule such reference (unless the context otherwise requires) is a reference to a Clause or Schedule of this Agreement

## **2 GENERAL PROVISIONS**

### **Statutory Authority**

2.1 The obligations in this Agreement are planning obligations and are made pursuant to S106 of the 1990 Act

2.2 All obligations are also entered into pursuant to Section 1 of the Localism Act 2011 and Section 111 of the Local Government Act 1972

2.3 The obligations in Schedule 1 of this agreement bind the Obligation Land and are enforceable by the County Council or in the absence of enforcement by the County Council are enforceable by NYMNPA

### **Liability**

2.4 The parties hereto agree that no person shall be liable for breach or non-performance of any covenant contained in this Agreement after he shall have parted with all interest in the Obligation Land or the part of it in respect of which such breach or non-performance occurs but without prejudice to liability for any subsisting breach prior to parting with such interest

2.5 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Obligation Land in accordance with a planning permission (other than the Planning Permissions as defined herein or any renewal thereof or any reserved matters approval with respect thereto) granted

(whether or not on appeal) after the date of this Agreement in respect of which development this Agreement will not apply

### **Contingencies**

- 2.6 The planning obligations contained in clause 3 and Schedule 1 to this Agreement shall take effect only on the Commencement of Construction with the exception only of the obligations relating to highway repair in paragraph 6.1 of Schedule 1, the Routing Scheme in paragraph 7.1 of Schedule 1, the Traffic Management Liaison Group in paragraph 4 of Schedule 1 and paragraph 9.2 of Schedule 1 relating to security, which shall take effect immediately following the issue of both of the Planning Permissions
- 2.7 In the event of either of the Planning Permissions expiring or in the event of the revocation of either the Planning Permissions prior to Commencement of Construction the obligations under this Agreement shall cease absolutely and the County Council shall procure that any entry referring to this Agreement in the Register of Local Land Charges shall be removed forthwith

### **Determination by Expert**

- 2.8 Notwithstanding any specific provision in this Agreement in the event of any dispute between YPL the Mortgagee and the County Council concerning this Agreement including any dispute as to whether or not an obligation has been performed or matter to be agreed under any of the provisions of this Agreement the matter may at the written option of any relevant party (notice of which shall be given to the other party or parties) be referred to such expert as they may agree or (in default of agreement within 20 working days of the date of giving of the notice) appointed by the Chairman for the time being of the Planning and Environment Bar Association whose appointment shall be conducted on the following terms:
- 2.8.1 The person to be appointed pursuant to Clause 2.8 shall if possible be a person having fifteen years or more relevant post-qualification

experience of the issue in dispute and projects comprising works of the scale and nature of the Development and of the particular issue in dispute

- 2.8.2 The reference to the expert shall be on terms that:
- 2.8.2.1 the expert shall afford the parties to the dispute an opportunity to make representations to him/her in writing and if he/she so directs to make submissions on one another's representation;
  - 2.8.2.2 the expert shall be able to stipulate periods of time for the making of such submissions and representations;
  - 2.8.2.3 the expert shall be bound to have regard to the said submissions and representations;
  - 2.8.2.4 the expert shall have the power to award the costs of the determination in favour of either party at the expense of the other in the event that the expert shall consider that the said other party has acted unreasonably and the extent of the costs awarded shall reflect the extent and effect of said unreasonable behaviour;
  - 2.8.2.5 the expert shall be limited in his findings to the proposals put by either party or a proposal falling between both of them; and
  - 2.8.2.6 the findings of the expert shall save in the case of manifest material error be final and binding on YPL the Mortgagee and the County Council save that the parties retain the right to refer to the Courts on a matter of law

#### **VAT**

- 2.9 In the event that the provision by YPL to the County Council or other body of any land or buildings or infrastructure or matters pursuant to this Agreement is a taxable supply for the purposes of the legislation relating to Value Added Tax in respect of which any Value Added Tax should become payable then the County Council or other body in receipt of such supply shall pay to York Potash all such Value Added

Tax upon receipt from YPL of a Value Added Tax invoice therefore and YPL shall endeavour to ensure that the timing of such invoice or invoices within any four week period shall be such as to minimise the period between settlement of the invoice and recovery of the tax

#### **Time Periods**

- 2.10 It is agreed between the parties that any of the periods specified in the Agreement may be extended by mutual agreement in writing between YPL and the County Council SAVE THAT any party to this Agreement who requires time to be of the essence in respect of any period extended shall serve notice on any other relevant party stating that time is of the essence in relation to any time period so extended taking into account at all times any statutory or other constraints which may affect the other relevant party's compliance with the amended period

#### **Approvals**

- 2.11 For the purposes of this Agreement where a party is required to make a request give confirmation approval or consent express satisfaction with agree to vary or to give notice of any matter such request confirmation approval consent expression of satisfaction agreement to vary or notice shall be deemed to have not been given or expressed unless given or expressed in writing and shall not be unreasonably withheld or delayed

#### **Notices**

- 2.12 The service of notices and communications pursuant to this Agreement shall be sent to the addressee at the address stated in this Agreement or at such other address as the addressee shall have notified to the others in writing
- 2.13 Notices and communications under this Agreement may be sent by personal delivery or by First Class Post (recorded delivery) and any notice or communication sent by First Class Post (recorded delivery) and correctly addressed shall be conclusively deemed to have been

received by the addressee on the second business day following the date of posting

**Exclusion of the Contracts (Rights of Third Parties) Act 1999**

- 2.14 Subject to and aside from in relation to clause 2.3 above, nothing herein contained or implied shall give or be construed as giving rights, privileges, powers or enforceability other than to the specific parties executing this document and their successors (if any) as defined herein and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise therefrom are expressly excluded to the intent that no third party within the meaning of that Act shall have any rights of enforcement in respect of any matter herein contained

**Void Provisions**

- 2.15 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the forgoing provisions would be to defeat the original intention of the parties

**Application of this Agreement**

- 2.16 If the NYMNPA and/or RCBC agrees pursuant to an application under Section 73 of the 1990 Act to any variation or release of any condition contained in the Planning Permission or if any such condition is varied or released following an appeal under Section 78 of the 1990 Act the covenants or provisions of this Agreement shall, if the Relevant Authority and YPL both agree, be deemed to bind the varied permission and to apply in equal terms to the new planning permission

### **No Fetter of Discretion**

- 2.17 Save as permitted by law nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the County Council in their rights powers duties and obligations under all public and private statutes bylaws and regulations which may be as fully and effectually exercised as if the County Council were not a party to this Agreement

### **Effect of any Waiver**

- 2.18 No waiver (whether express or implied) by the County Council of any breach or default by YPL in performing or observing any of the terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by YPL

### **General Requirement to Co-operate**

- 2.19 Without prejudice to its statutory duties the County Council and YPL shall all act in good faith and shall co-operate with each other to facilitate the discharge and performance of the obligations of the other contained within this Agreement within the timescales specified

### **Indexation**

- 2.20 Where payments are identified as being Index Linked in this Agreement then such sums shall be adjusted by applying the All Items Retail Prices Index as published by the Office of National Statistics (or any successor thereof) including any applicable local or regional waiting from date hereof to the date of payment

### **Interest**

- 2.21 Where any payment or part payment which the parties hereto are obliged to pay or repay pursuant to the provisions of this Agreement is not paid on the date upon which the obligation to make such a payment falls due then interest at 1% above the base rate of HSBC



Bank Plc from time to time calculated on a daily basis shall be added to the outstanding balance of the payment from the date on which the payment or part payment became due until the date of receipt of the payment or part payment

#### **The Mortgagee's Consent**

2.22 The Mortgagee consents to this Agreement being entered into with the intent that its interest in the Obligation Land will be bound by the terms of this Agreement and as if this Agreement had been executed and registered as a local land charge before execution of its legal charge

2.23 Notwithstanding clause 2.22 above the Mortgagee will not incur any liability for any breach of the obligations contained in this Agreement unless and until it becomes a mortgagee in possession of the Obligation Land or part thereof for which it appoints a receiver or administrative receiver under the charge and if the Mortgagee has become a mortgagee in possession the Mortgagee shall not incur any liability under this Agreement unless and until the Planning Permissions have been granted and such land has been used for the purposes of the Development

### **3 YPL's PLANNING OBLIGATIONS**

3.1 YPL covenants with the County Council to comply with the obligations contained in Schedule 1

3.2 YPL covenants with the County Council to pay the County Council's legal costs in connection with the preparation, negotiation and completion of this Agreement on completion of this Agreement.

### **4 THE COUNTY COUNCIL'S COVENANTS**

4.1 The County Council covenants with YPL to comply with the obligations set out in Schedule 2

## SCHEDULE 1

YPL covenants with County Council to observe and perform the following obligations:

### **1 Rail Services Contribution**

- 1.1 To pay the Rail Service Contribution to the County Council as set out in paragraphs 1.2 and 1.3 below for the purposes of establishing a new train service to increase the existing services between Middlesbrough and Whitby accepting always that the County Council has no obligation to deliver such a service and delivery can only be achieved on the basis that the service is fully funded by YPL or sources other than the County Council
- 1.2 Five hundred thousand pounds (£500,000) Index Linked payable 12 months after the Commencement of Construction and five hundred thousand pounds (£500,000) Index Linked on the first and second anniversary of the first operation of the Rail Services (comprising £1,500,000 in total plus indexation)
- 1.3 Up to a maximum of two hundred and fifty thousand pounds (£250,000) Index Linked per annum for three years upon receipt of a written demand from the County Council pursuant to paragraph 3 of Schedule 2

### **2 Rail Infrastructure Contribution**

- 2.1 To pay the Rail Infrastructure Contribution being a maximum sum of four million five hundred thousand pounds (£4,550,000) Index Linked towards the cost of infrastructure upgrades required to facilitate the Rail Services on the Middlesbrough to Whitby rail line in a manner which will avoid a negative impact on the core five train per day services of the North York Moors Historical Railway Trust (NYMR) between Pickering and Whitby such money to be paid as set out in paragraphs 2.2, 2.3 and 2.4 below
- 2.2 Seven Hundred and Fifty Thousand Pounds (£750,000) Index Linked on the Commencement of Construction

2.3 Up to a maximum of Fifty Thousand Pounds (£50,000) Index Linked six months from the date of the Planning Permission granted by the NYMNPA to reimburse the County Council for the cost of work carried out or procured by it in the appraisal of options such payment to be made within 28 days of a written demand from the County Council setting out the option appraisal carried out and itemising the monies expended on such appraisal

2.4 Up to three million seven hundred and fifty thousand (£3,750,000) Index Linked following the expiry of a period of 12 months from the Commencement of Construction and within 28 days of a written demand from the County Council setting out the infrastructure works involved and the cost of those works accepting always that the County Council has no obligation to deliver such infrastructure upgrades and delivery can only be achieved on the basis that the infrastructure upgrades are fully funded by YPL or sources other than the County Council

2.5 In the event that the Rail Infrastructure Contribution provides insufficient funds to procure an additional four services between Middlesbrough and Whitby to use its reasonable endeavours to investigate and apply for all alternative sources of funding (such as grant aid) as may be available to supplement the Rail Infrastructure Contribution

### **3 Employment and Training**

3.1 To pay the NYCC STEM Contribution of eighty thousand pounds (£80,000) Index Linked to the County Council as set out in paragraph 2.2 below to be applied towards improving the awareness of science technology engineering and maths in primary and secondary schools within North Yorkshire

3.2 Forty thousand pounds (£40,000) Index Linked payable within 28 days of the Commencement of Construction and a further forty thousand pounds (£40,000) Index Linked on the first anniversary of the Commencement of Construction

3.3 To pay the North Yorkshire Business and Education Partnership (NYBEP) Contribution of three hundred and seventy five thousand pounds (£375,000) Index Linked to the County Council as set out in paragraph 3.4 below to be used by the North Yorkshire Business and Education Partnership for the provision of science technology engineering and maths resources and activities for secondary schools and further education establishments within North Yorkshire and for no other purposes whatsoever

3.4 To pay thirty seven thousand and five hundred pounds (£37,500) Index Linked within 28 days of the Commencement of Construction and a further thirty seven thousand and five hundred pounds (£37,500) Index Linked on each anniversary of the Commencement of Construction for a period of nine years only

#### **4 Traffic Management Liaison Group**

4.1 To establish the Traffic Management Liaison Group prior to the commencement of the Preparatory Works in order to facilitate liaison between the Traffic Management Liaison Group members and other interested stakeholders in relation to the transportation aspects of the construction and operation of the Mine including monitoring the Construction Traffic Management Plan and for the lifetime of the Mine monitoring the impact of the Development on traffic and highways in particular on the Defined Routes including monitoring driver behaviour

4.2 To bear the costs of and to administer the calling of meetings of the Traffic Management Liaison Group not less than once every quarter unless otherwise agreed in writing by all members of the Traffic Management Liaison Group and on additional occasions if reasonably requested by any member of the Traffic Management Liaison Group so to do and to have a formal review of the membership and timings of meetings of the Traffic Management Liaison Group every 5 years with the first review taking place 5 years after the first meeting of the Traffic Management Liaison Group.

- 4.3 To carry out or procure a survey of the condition of the Detailed Routes and provide a copy of that survey to the Traffic Management Liaison Group and the County Council prior to the Commencement of Construction

**5 Automatic Traffic Counters**

- 5.1 To install and maintain (including to replace or renew where necessary) ATC Counters as follows:

|    | Location                           | Duration of installation   |
|----|------------------------------------|--|
| 1. | Doves Nest Farm operational access | From the commencement of use of the access until the end of the Operational Period   |
| 2. | Doves Nest Farm shaft access       | From commencement of use of the access for the Operational life of the Mine  |
| 3. | Ladycross construction access      | From the earliest date from which any material operations (as defined by Section 56(A) of the 1990 Act) is begun at the Ladycross intermediate shaft site until the Commercial Production Date |

**6 Highway Repair**

- 6.1 To undertake an inspection of highways within North Yorkshire trafficked by HGVs associated with the Development at least annually to identify any abnormal damage associated therewith and to report to the Traffic Management Liaison Group and the highway department of the County Council and to make available up to Fifty Thousand Pounds (£50,000) Index Linked per annum for the lifetime of the Mine for to pay for such reparatory works which are agreed to be necessary as a result of the impact of the HGV traffic associated with the Development or for speed enforcement or other reactive measures to facilitate the maintenance of highway BUT FOR THE AVOIDANCE OF DOUBT this paragraph 6.1 shall not preclude the County Council from

utilising the powers contained in section 59(3) of the Highways Act 1980 provided that the utilisation of those powers shall not result in the payment for any reparatory works more than once

## **7 HGV Routing**

7.1 To submit prior to the Commencement of Preparatory Works the HGV Routing Scheme for approval by the County Council and to comply with the approved HGV Routing Scheme or any approved variation thereto

7.2 In addition to any statutory duties relating to Indivisible Abnormal Load, to produce a plan for the Traffic Management Liaison Group to consider and comment upon regarding the routing and timing of any Indivisible Abnormal Load which will need to access the Obligation Land for construction or operational purposes such plan to include advance notification of at least 14 days to the NYMNPA and the County Council and such other statutory notifications as required.

## **8 Export of Materials by Road**

8.1 Not to permit any export of saleable polyhalite material by road without prior written approval from the County Council (such approval not to be unreasonably withheld or delayed) and to comply with any conditions and restrictions reasonably applied by the County Council in giving such approval

## **9 Commencement of Construction**

9.1 To notify the County Council in writing of the date of the Commencement of Construction

9.2 Not to Commence Construction until security arrangements are in place to secure the monetary contributions payable pursuant to this Agreement, the nature and type of those security arrangements to be to the satisfaction of NYMNPA

## SCHEDULE 2

The County Council covenants with YPL as follows:

### **Rail Service Contribution**

1. To use its reasonable endeavours to apply the Rail Service Contribution for the purposes of procuring additional services (from the current 4 per day) between Middlesbrough and Whitby from December 2018 (such additional services being up to 4 extra services Monday – Friday until December 2019 and thereafter up to 3 additional services and up to 4 additional services at the weekend) and for no other purpose whatsoever, providing that all costs associated with the provision of additional services are borne in full by YPL or sources other than the County Council
2. If, despite using reasonable endeavours the County Council is not able to apply the Rail Services Contribution for the provision of the Rail Services then the County Council will use reasonable endeavours to apply the contribution towards measures to support enhanced accessibility by sustainable transport means to the North York Moors National Park
3. To review the Rail Service 6 months after receipt of the final payment pursuant to paragraph 1.2 of Schedule 1 or one year after the commencement of any additional services whichever is the later to determine whether the Rail Service is self-sustaining and in the event that the County Council acting reasonably is satisfied that the Rail Service is unable to operate without continuing subsidy it shall serve a written notice on YPL requiring further subsidy up to a maximum of two hundred and fifty thousand pounds (£250,000) per annum for a maximum period of 3 years PROVIDED THAT such notice must be served before the commencement of the Operational Period after

which the obligation on YPL at paragraph 1.3 of Schedule 1 shall determine and cease absolutely

#### **Rail Infrastructure Contribution**

4. To use reasonable endeavours to seek to apply the Rail Infrastructure Contribution towards any infrastructure upgrades on the rail line between Middlesbrough and Whitby as are reasonably necessary for the provision of the Rail Services (excluding the upgrade of level crossings unless YPL agree) in a manner which will avoid a negative impact on the services of the North York Moors Historical Railway Trust (NYMR) between Pickering and Whitby and for no other purposes whatsoever PROVIDED THAT all costs associated with the provision of infrastructure upgrades are borne in full by YPL or sources other than the County Council
  
5. To serve written notice and provide evidence in so far as it is able to YPL detailing the cost of the works to the rail infrastructure to facilitate the Rail Service once a contract for those works has been let PROVIDED THAT such notice must be served before the commencement of the Operational Period after which the obligation on YPL at paragraph 2 of Schedule 1 shall determine and cease absolutely

#### **NYCC STEM Contribution**

6. To apply the NYCC STEM Contribution towards improving the awareness of science technology engineering and maths in primary and secondary schools within North Yorkshire and for no other purpose whatsoever

#### **NYBEP Contribution**

7. To liaise with the North Yorkshire Business and Education Partnership to ensure that the NYBEP Contribution is applied solely towards science technology engineering and maths resources and activities for



secondary schools and further education establishments within North Yorkshire and for no other purpose whatsoever

**Traffic Management Liaison Group**

8. To nominate representatives to attend and participate in the Traffic Management Liaison Group meetings and to cooperate with YPL in relation to reviewing the Group membership and timings of meetings in accordance with paragraph 4.2 of Schedule 1

**Mayfield Junction Works**

9. To pay to YPL within 28 days of completion by YPL of the Mayfield Junction Works all financial contributions currently held by the County Council in respect of those works together with any interest accrued thereon (completion being the issue of the provisional certificate by the County Council pursuant to the Section 278 Agreement relating to those works)
10. To repay to YPL upon written request any unexpended monies paid to the County Council pursuant to the obligations in Schedule 1 at the expiration of 10 years from the date of payment within two months of the expiry of the aforesaid 10 year period in respect of which period time shall be of the essence
11. To provide reasonable details of the expenditure of all monies paid to the County Council pursuant to the obligations in this Agreement to YPL which details shall be provided following receipt of a written request for the same from YPL provided that no more than 4 requests shall be made in any calendar year

IN WITNESS whereof the parties hereto have executed as a Deed on the date first above written

17452

THE COMMON SEAL OF NORTH  
YORKSHIRE COUNTY COUNCIL  
was hereunto affixed in the presence of: -



[Redacted signature]

Authorised Signatory

SIGNED AS A DEED on behalf of  
YORK POTASH LIMITED by two directors  
or one director and its company secretary

Director

[Handwritten signature]  
[Redacted signature]

~~Director~~ Secretary

SIGNED AS A DEED on behalf of  
BARCLAYS BANK PLC by:

[Redacted signature]

[Redacted signature]

Authorised Signatory