



Special Planning Committee 30 June 2015 Members Update Sheet

Planning Application NYM/2014/0676/MEIA

1. Director of Planning's Report: Corrections and clarifications

Paragraph 4.2.6 Twelfth bullet point should read 'A groundwater discharge borehole close to the main entrance, which is needed to dispose of water entering into the mine shafts and tunnels from water bearing strata during construction;'

Paragraph 8.3.7 Reference in brackets at the end of the penultimate sentence should read '(see paragraph 8.5.5 of this report)'

Paragraph 8.9.1 First sentence should read 'RCBC considered the York Potash mine and MTS straddling application at a meeting of the Regulatory Committee on 23 April 2015.'

Paragraph 8.10.1 First sentence should read 'As stated in paragraph 8.5.6'

Paragraph 15.12.17 The final part of the second sentence should read '....and, in the case of the Abbey Headland in particular, officers do not agree that the effects of albeit distant views of the construction winding towers over a period of five years would not constitute harm.'

Paragraph 15.12.19 The final part of the second sentence should read '...and officers do not agree with the applicant's assessment that this would not alter the asset's primary setting.'

A revised Plan 'Location of MTS site at Lady Cross Plantation' is attached (Annex A) which shows the correct site boundary as amended in the applicant's Supplementary Environmental Information.

Appendix L Section 106 Contributions – CIL Compliance Assessment. An amended version of this Appendix is attached which includes an explanatory footnote regarding use of the term 'CIL compliant'. (Annex B)

Page 1 The list of local authorities should read 'Redcar and Cleveland Borough, Scarborough Borough'; the application area does not extend into Ryedale District.

2. Third party representations received after publication of Director of Planning's report

A list of third party representations received since publication of the Director of Planning's report is attached together with updated summary statistics. (Annex C)

3. Information provided directly to Members

It is recorded that Members have received the following direct communications:

- i. 'The York Potash Project: Our planning case in summary' June 2015 – this documents sets out the applicant's case in support of the proposed development;
- ii. An open letter from Campaign for National Parks supported by 29 organisations – this letter sets out their opposition to the proposed development.
- iii. A letter and leaflet outlining the purposes and work of the North Yorkshire Moors Association;
- iv. A letter entitled 'Economic Snapshot for Whitby' from Wynne Jones,
Chair: Whitby Community Culture and Arts Forum
Committee: Whitby Tourist Association

4. Consultation responses received after publication of Director of Planning's report

- 1) A further consultation response from the North Yorkshire Moors Railway (NYMR) was received on 17 June 2015 which expresses surprise that the Railway does not feature in the AFW Tourism commentary, either as a visitor attraction or a transport provider. NYMR confirms that as well as being a tourist attraction, the railway plays a significant role transporting leisure visitors through the National Park to and from Whitby. Since the report indicates that the negative impact to tourism could be considerably higher than previously suggested, NYMR suggests the level of S106 tourism payments should be increased accordingly (and these additional funds should be focused through local agencies including NYMNP). NYMR also believes that a provision of £4.5m to cover the cost of infrastructure works to the Esk Valley Railway line should be made a specific condition of any planning approval. (Members are asked to note that a Rail Infrastructure contribution of up to £4.5m is included in the proposed NYCC S106 agreement.)
- 2) A letter has been received from Ward Hadaway on behalf of Cleveland Potash Ltd. The letter confirms, following discussions with York Potash, that Cleveland Potash's previous objection to the tunnel is withdrawn. The letter confirms that the wider objections to the proposed mine sent to the Authority in December 2014 still stand.

5. Updated Draft Planning Conditions

An updated set of draft Planning Conditions is attached at Annex D (Version 24). The main changes in comparison with Version 23 (Appendix M of the Director of Planning's report) are:

- i. Minor amendments to wording in the Glossary of Terms and Abbreviations;
- ii. New Condition 7 which restricts use of MTS access shafts to emergency access and maintenance and repair purposes;
- iii. Specific references to subsidence monitoring and remedial measures added to Conditions 8 and 9 (Conditions 7 and 8 in V23) in relation to the Coastal Buffer Extraction Scheme and mineral extraction close to the planning boundary, gas field buffer or mining exclusion zone;
- iv. Specific references to S106 Noise Amelioration Scheme in Conditions 14 to 20 (Conditions 13 to 19 in V23);
- v. Details of temporary boundary treatment at Lady Cross Plantation to be approved prior to commencement of development (new Condition 27);
- vi. Change of wording in Condition 32 (Condition 30 in V23) to require the Blasting and Vibration Management Plan to be submitted to the MPA for approval 'in consultation with the MOD' rather than 'in consultation and agreement with the MOD' (in line with the Authority's statutory responsibility to discharge planning conditions);
- vii. New Condition 46 requiring the submission and approval of a programme of works to mitigate the impact of the development on bats prior to commencement of site clearance works at Dove's Nest Farm;
- viii. New Condition 67 requiring the submission and approval of the final specification and configuration of generators to be employed at Dove's Nest Farm and Lady Cross Plantation prior to commencement of their use.

Version 24 has not yet been formally 'signed off' by statutory consultees who have requested conditions in the event of an approval. Members are also advised that a S106 Informative would be added as follows:

This consent is issued subject to the terms of the Agreement (under Section 106 of the 1990 Town and Country Planning Act) dated (insert) between the North York Moors National Park Authority and (insert) to (insert).

6. S106 Update -Tourism Proposal

The applicant sent a letter of clarification on 17 June 2015 which confirmed that there is no maximum cap on the S106 tourism payments to the National Park Authority. The stated levels of payments in each period are where they will commence unless the review mechanism requires them to be varied either up or down (but no lower than the floor). Therefore, during the operational period, the annual amount may rise above £250,000 if the review demonstrates an impact that would necessitate increasing the offsetting payments but it would not fall below £100,000. Officers have welcomed this confirmation.

7. North Yorkshire County Council and Redcar and Cleveland S106 agreements

NYCC: The NYCC Legal Manager confirmed on 26 June 2015 that the Council considers that the impacts of the development can be mitigated through conditions and a S106 agreement. Although not yet in a position to agree the detailed wording in the proposed final version, NYCC considers that an acceptable agreement can be reached. The key points are as follows:

- i. STEM and NYBEP contributions are agreed;
- ii. Additional definitions are required in the S106 – Commencement of Preparatory Works/Preparatory Works/ATC's/Rail Infrastructure Development Contribution;
- iii. Rail Service Contribution needs to be paid 12 months prior to Commencement of Construction;
- iv. Requirement for a Rail Infrastructure Development Contribution to cover advance design work;
- v. Rail contributions/Highway works contributions cannot be capped;
- vi. Highway works set out are all relevant and will be subject to S278 agreements;
- vii. Automatic Traffic Counters, Traffic Management Liaison Group, and Highway repair are all agreed and NYCC has provided detailed drafting;
- viii. HGV routing is agreed as per the LHA recommendation dated 30/3/15.

RCBC: The latest update (19 June 2015) is that the Council is aiming to settle final terms with some clarification on costs relating to a bridge to reinstate a circular walk at Tocketts Lythe awaited.

8. Applicant's response to Hydrogeology queries (risk of fault activation due to deep groundwater re-injection at Dove's Nest Farm)

The applicant submitted a response to the Hydrogeology queries raised in AFW's ES review on 18 June 2015. The response noted that:

- i. Modelling of the likely impacts indicated that there would be no seismic risks and the overall impacts of injection would be negligible;
- ii. The proposal had been reviewed and approved in principle (for consent under Environmental Permitting Regulations) by the Environment Agency in a meeting of 20 April 2015;
- iii. No assessment of fault activation related to deep injection was included in the ES because it is not considered to be a real risk. The injection will be achieved by low pressure flow from the surface and no additional pumping or pressurisation is required;
- iv. The proposed injection simply returns water back to the same geological formation from where most of it originated. The total water in storage within the Sherwood sandstone aquifer would remain fairly constant and the large-scale build-up of pressure of stored water is not anticipated;
- v. The mine site lies in a seismically stable area, well away from major faults and known seismic zones;
- vi. A full Hydrogeological Impact Assessment will be submitted to EA as part of the environmental permit application.

The applicant also provided confirmation that, despite being incorrectly labelled as diesel tanker movements, the submitted information on HGV movements included all the tanker movements that would be needed for off-site disposal of foul water, waste water from shaft sinking and waste water arising from the construction of the re-injection borehole.

The submitted information has been reviewed by AFW who comment that:

- a) If the applicant considered that the risk of fault activation was negligible it should have been 'scoped out' of the ES with an appropriate supporting rationale;
- b) A firm commitment by the applicant (backed up by a suitably worded planning condition) not to use pumping or pressurisation mitigates any potential risk;
- c) Other documentation within the ES appears to imply that the majority of the 'waste water' originates from outwith the Sherwood Sandstone and, if this is correct, the fact that additional

water would be re-injected into the aquifer necessitates some consideration of the risk of fault activation;

- d) Information provided with respect to the MTS on geological faulting suggests that some limited faulting extending to the surface may be present within the 4km radius 'influence zone' of the injection borehole;
- e) AFW notes and agrees with the points made regarding the requirement to submit a full assessment to EA as part of the environmental permit application.

AFW conclude that a statement assessing the fault activation risk is merited and should have been included in the ES. AFW accepts that the anticipated low injection pressures and limited net increase in water storage within the Sherwood Sandstone aquifer reduce the risk and it should be possible for the applicant's consultants to demonstrate that any adverse effects would not be significant in EIA terms.

Further clarification of tanker movements was sought as AFW had not been able to verify the applicant's statement that the total number required for off-site disposal of waste water from shaft sinking operations is included. YPL has provided further email communication on 29 June 2015.

Although YPL has acknowledged that its previous communication (dated 18 June) regarding the basis the off-site disposal of waste water was incorrect and has provided further comment, in consultation with AFW, officers do not consider that the latest text provides the further clarity that was required. In summary:

1. YPL has not provided a breakdown of the number of HGV movements relating to the off-site waste water and sludge requirements by type (i.e. foul drainage; waste water from shaft sinking, dirty water from the wheelwash and sludge disposal from on-site waste water treatment) throughout the construction period ;
2. Further to point 1 above, YPL has not explained the basis of the how the daily HGV contingencies relate to waste water disposals, rather than foul drainage disposals;
3. YPL's daily HGV contingency allowance can only be put into full context if the breakdown of HGV movement assumptions referred to in 1 is provided for review. However, notwithstanding this the AFW is based on total and average HGV movements during the construction period, with the daily contingencies stripped out. Therefore if off-site disposal of waste water is required it seems evident that the total (105,323) and daily average (92) number of HGV movements would increase.
4. Despite having indicated that the worst case scenario was the need to dispose of 724 m³/day, YPL is now suggesting that through maximising recycling (50%) this quantity would be 360 m³.day. Furthermore despite Arup indicating in the ES documentation that the capacity of the water disposal tankers would be 21.3 m³, YPL is now assuming that the tankers would have a capacity of 30 m³. Thereby reducing the tanker requirements from 34/day (for 724 m³/day) or disposal to 12/day. However, even if this lower rate is accepted, this still equates to 480 movements/month and this reinforces the need for the details requested in bullet 1 to be provided for officers to review, since it remains unclear how this is incorporated into the existing traffic demand numbers.

9. Security arrangements update

Further information has been received on how a financial bond to cover reinstatement costs would be secured. Barclays Bank has provided a letter which notes that, in the event of planning permission being granted to York Potash Ltd, a performance guarantee in relation to the cost of reinstatement works will be required. The bank understands that, although the maximum aggregate liability is not yet known, it is anticipated to be substantial. The letter confirms that Barclays Bank:

- i. is able to issue performance guarantees of the type required;
- ii. is able to issue such planning bonds which have fluctuating guaranteed amounts, with its consent to any increased guaranteed amount; and
- iii. is able to issue such planning bonds which can be extended, with our consent to any new expiry date,

in each case subject to the bank's final credit and risk approvals and provided that the relevant performance guarantee is in a form acceptable to the bank.

The letter also notes that there may be a requirement for planning compensation payments to be made to the planning authority from a prefunded account, which are not covered by the bond arrangements outlined above. Such an account would be in the form of an escrow account with the NYMNP having the right to draw down from it in the event of default in payment by the Applicant. The account would be subject to the bank's normal banking terms and conditions and an appropriate mandate.

The applicant has indicated that Heads of Terms on the security provisions to be contained in the S106 agreement are being finalised based on an arrangement whereby monetary payments for restoration works would be secured by a financial bond with the amounts to be secured being reviewed on a 12 months 'in advance' basis. Officers agree that 12 months is a suitable period to base the amount of money for the physical restoration. Monies to be paid in relation to the S106 planning compensation offers would be placed in an escrow account which the applicant again suggests should be on a 12 months 'in advance' basis. However, officers consider that a 10 year forward period would be more suitable for the S106 compensation payments given their scale and potential significance and this proposal has been put to the applicant.

10. Further comments from statutory consultees following publication of Director of Planning's report

a) Local Highway Authority

A letter has been received from North Yorkshire County Council expressing concern that the comments made by the Council as the Local Highway Authority have not been given sufficient prominence in the Director of Planning's report. The full consultation response made by the LHA is attached at Annex E and a summary will be incorporated into the Presentation by planning officers. The LHA has provided six slides on Highway considerations and Pam Johnson will be available to speak to the slides if Members wish to view them.

b) Environment Agency

The Environment Agency sent an email on 25 June 2015 raising a brief point in the committee report where it felt that their views have been misrepresented in relation to the Hydrogeological Risk Assessment. EA asked that Members be updated at the committee as follows:

EA's concerns relate to page 225, paragraph 19.31, bullet point number 5, and specifically the section reading "*Weakness in the approach to the EIA in relation to hydrogeology assessment work which has been reflected in the consultation response of the EA which has requested the imposition of groundwater related conditions and specifically the need for a revised hydrogeological risk assessment to be undertaken prior to construction.*" EA do not feel this accurately reflects the position set out in their formal planning response dated 17 March 2015.

That position is best summarised by the paragraphs which read "*The Environmental Statement has demonstrated that the risks to groundwater are understood and that the mitigation strategy is acceptable. Where changes in groundwater level and/or flow have been identified, measures to mitigate these risks have been proposed. This approach is consistent with GP3, and demonstrates that the risks to groundwater posed by this development can be satisfactorily managed.*" and "*The information provided has given us a sufficient level of confidence in both the understanding of the hydro-geology and the efficacy of the mitigation measures proposed.*"

EA explained the rationale behind the condition which would require an updated Hydro-geological Risk Assessment in the sentence "*We are aware that a great deal of ground and surface water monitoring has continued since the submission of the planning application. The suggested conditions would require that any data gathered since the application was submitted, is fully accounted for and helps to update and refine the Hydro-geological Risk Assessment submitted with the application. It would be remiss for this new data to be over-looked as the development progresses*". As such EA do not feel it is representative to imply, based on the suggested condition, that the EA's view is that the HRA supporting the application is in some way not fit-for-purpose.

c) Scarborough Borough Council – Regeneration Unit

The Economic Development Manager has sent the following comments regarding Scarborough Borough Council's (SBC) response on tourism:

- i. The SBC report 'An assessment of the impact of YPL construction of the mine on tourism in Whitby' was prepared in response to a request from the NPA to respond to concerns

- expressed by the Coastal Tourism Advisory Board; it was not a response to the report of the Whitby Area Development Trust;
- ii. For the avoidance of doubt, the SBC response referred to in paragraph 6.2.16 of the Director of Planning's report is the response of the Council in its role as Local Planning Authority and stems from a report, discussion and resolution from the Council's Planning and Development Committee;
 - iii. With regard to paragraph 12.5.40 of the report, the Council agrees that the visitor economy is able to withstand relatively small fluctuation in tourism spend (e.g. the potential 3.4% reduction suggested in the applicant's Economic Impact Report) but does not consider that this same robustness would apply to a more significant reduction of 24% as NPA officers highlight was the case with the impact of foot and mouth disease (which the Council does not see as in any way see a comparable event);
 - iv. The Council concludes that that, whilst the YP development would be unlikely to impact negatively on the Whitby visitor experience, perception of what the development might be could cause potential visitors to reconsider their intention to visit. On this basis SBC requested that £600,000 was allocated specifically for the promotion of Whitby and is pleased that this is included in the S106 proposals. SBC considers that this would be sufficient to more than mitigate the perception impact identified. SBC also welcomes the proposed review mechanism.

The Economic Development Manager re-iterates the Council's strong support for the project saying it "would be a major 'game changer' providing thousands of well paid jobs both in the National Park and the surrounding economies".

d) Scarborough Environmental Health Officer

Additional comments have been received as follows:

- i. Noise control criteria including maximum noise levels for residential properties are set out in the Technical Guidance to the NPPF (and also BS5228). The Council would aim to ensure that at the very minimum this is complied with although the EHO would certainly like the noise levels from the site to be below that if at all possible;
- ii. AFW's assessment has suggested that noise levels in the applicant's acoustic report are underestimated, for example because the actual machines likely to be used on site are different from those used in the assessment. If this is a concern, it could be dealt with by a condition requiring the acoustic report to be updated and resubmitted for approval or requiring that predicted levels in the current report be used as the noise level criteria (as previously suggested);
- iii. It is understood that the majority of neighbouring property owners most likely to be affected by construction noise have agreed the proposed mitigation measures; these measures are likely to prevent any complaints;
- iv. The Council has powers under the Control of Pollution Act 1974 and Environmental Health Act 1990 to control noise during construction and operation and would use these powers to ensure any potential planning conditions are complied with. The Council would also assist in any planning enforcement considered necessary;

Subject to any further conditions imposed by the Planning Committee, the EHO continues to have no objection to the application.

11. Comments from applicant following publication of Director of Planning's report

A letter has been received with sets out the applicant's formal response to the Committee report. It is attached at Annex F together with comments from the Director of Planning.

12. Clarification of position regarding proposed removal of bat roost at Dove's Nest Farm

The proposed development will lead to the loss of a bat roost. The bats and the roost are protected under the Conservation of Habitats and Species Regulations 2010 ("the Regulations") which transpose into English law the EU Directive 92/43 EEC ("the Directive") on conservation of natural habitats and wild fauna and flora.

The NPA is required to have regard to the requirements of the Directive as well as the Regulations.

The Directive and Regulations require a system of strict protection for the protection of the bats, prohibiting deliberate disturbance of them or destruction of their breeding sites or resting places. Loss of the roost would conflict with this strict protection.

However, a licence may be granted by Natural England for the loss of the roost if it is satisfied that there are reasons of overriding public interest for doing so, that there is no satisfactory alternative and that the loss would not be detrimental to the maintenance of the population of bats at a favourable conservation status in their natural range.

The NPA can grant planning permission for the development despite the loss of the bat roosts unless it considers the grant of a licence by English Nature is unlikely.

A licence from Natural England will only normally be applied for once planning permission has been granted, but the applicant has consulted Natural England on the likely result of an application and Natural England has advised "...Based on the information we have seen so far, a licence application for this site is likely to form part of our routine casework. Following a more robust assessment of the survey information to confirm the roost type (s), the impact assessment and appropriate mitigation strategy is expected to be relatively straightforward." Further survey is under way with a view to confirming roost type or types and therefore details of appropriate mitigation/compensation.

Overall, officers are confident that satisfactory measures can be agreed, although precise details will depend on the survey results. Taking advice from Natural England and independent bat experts into account, officers are of the view that favourable conservation status for this species can be maintained if appropriate mitigation is in place and the appropriate mitigation strategy is likely to be relatively straightforward.

Officers do not, therefore think that English Nature would be unlikely to grant a licence, and therefore this issue should not prevent planning permission being granted.

13. Draft Resolutions for decision

Draft resolutions are provided for Members to consider as follows:

A. If Members are minded **to refuse** permission for the proposed development:

That application NYM/2014/0676/MEIA (York Potash Ltd) be refused as Members consider that the policy conflict with the Development Plan and national policy is such that the proposal does not represent exceptional circumstances and is not in the public interest to approve. The potential economic benefits arising from the development and the extent of the mitigation/compensation offered through planning obligations do not outweigh the extent of harm to the National Park landscape, special qualities and the public enjoyment of them. The application should therefore be refused for the following reasons: (set out in Appendix N of the Director of Planning's report)

B. If Members are minded **to approve** the proposed development:

That York Potash Ltd application NYM/2014/0676/MEIA (York Potash Ltd) approval be delegated to the Director of Planning to issue the decision notice subject to:

- i. Refining the language of the draft Planning Conditions set out in draft V24 in consultation with relevant statutory authorities and, for the avoidance of doubt, the final version must secure all the mitigation measures relied upon in the accepted Habitats Regulations Assessment report for the North York Moors Special Area of Conservation and the North York Moors Special Protection Area;
- ii. Completion and signing of S106 Agreements between the applicant and NYMNPA/Scarborough Borough Council, North Yorkshire County Council and Redcar and Cleveland Borough Council to secure the agreed planning obligations, with the applicants meeting the full NYM officer and legal costs of drafting;
- iii. In relation to the potential for fault activation in connection with the proposed water discharge borehole at Dove's Nest Farm,:
 - a. provision of an assessment of residual effects (standalone and cumulative) which demonstrates that receptors will not be subject to significant effects and
 - b. sufficient funds to cover the reasonable costs of the NPA's consultants in connection with advising on this matter;

- iv. If one arises on the day, satisfactory resolution of any further minor matter that may arise with anything more significant to be referred to the Chair of the Authority;
- v. Officers negotiating an Extension of Time Agreement (ETA) with the applicants with a view to concluding the above matters before the end of September 2015.

This decision is based on Members concluding:

- (a) that the potential economic benefits from the proposal represents a transformational opportunity for the local and regional economy;
- (b) that the likelihood of establishing a global market for polyhalite fertiliser is such that Phase 2 production levels will be achievable, resulting in economic benefits that are significant at a national level;
- (c) that the innovative nature of the mine design and associated landscaping result in an acceptable reduction in the long term environmental impacts of the development.
- (d) [any others which may emerge]
- (e) Members attach greater weight to these benefits than the environmental impacts during the construction period and the long term harm to the Special Qualities of the National Park at the minehead site and consider that
 - (i) the proposal represents exceptional economic circumstances which outweighs the extent of the conflict with the Development Plan;
 - (ii) therefore the public interest lies in approving the application.

In reaching this decision Members have taken into account the applicant's S106 proposals as set out in the Director of Planning's report which are considered to be directly related to the development, fairly and reasonably related in scale and kind to the development and necessary to address the identified residual harmful impacts and make the development acceptable in planning terms.