
STATUTORY INSTRUMENTS

2016 No. 772

The York Potash Harbour Facilities Order 2016

PART 1

PRELIMINARY

Citation

1. This Order may be cited as the York Potash Harbour Facilities Order 2016 and comes into force on 10th August 2016.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(1);

“the 1965 Act” means the Compulsory Purchase Act 1965(2);

“the 1966 Act” means the Tees and Hartlepoons Port Authority Act 1966(3);

“the 1980 Act” means the Highways Act 1980(4);

“the 1990 Act” means the Town and Country Planning Act 1990(5);

“the 1991 Act” means the New Roads and Street Works Act 1991(6);

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009(7);

“the 2009 EIA Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(8);

“address” includes any number or address used for the purposes of electronic transmission;

“area of seaward construction activity” means the area of the sea within the Order limits;

“authorised development” means the nationally significant infrastructure project and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 (meaning of development) of the 2008 Act and any works carried out under the requirements;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order ;

(1) 1961 c. 33.

(2) 1965 c. 56.

(3) 1966 c. xxv.

(4) 1980 c. 66.

(5) 1990 c. 8.

(6) 1991 c. 22.

(7) 2009 c. 23.

(8) S.I. 2009/2263, as amended by S.I. 2011/988, S.I. 2011/1043, S.I. 2012/635 and S.I. 2012/787.

“building” includes any structure or erection or any part of a building, structure or erection but, for the purposes of article 30 (temporary use of land) does not include a pipeline or its related apparatus;

“carriageway” has the same meaning as in the 1980 Act;

“clay” means dredged materials with a diameter of less than 31.25 micrometres;

“constructability notes” means the following documents certified as the constructability notes by the Secretary of State for the purposes of this Order—

N014 - Constructability Issues Rev 2 – SABIC UK

N015 - Constructability Issues Rev 2 – Huntsman

N016 - Constructability Issues Rev 2 – DEA

N021 - Constructability Issues Rev 2 – NWL

N022 - Constructability Issues Rev 4 – TATA/SSI – Hot Metal Railway

N023 - Constructability Issues Rev 4 – TATA/SSI – SSI Road

N024 - Constructability Issues Rev 1 – NWL – Access Road Bridge

N029 - Constructability Issues Rev 8 – BP CATS – Northern Route;

“conveyor route (northern)” means the route shown as the northern conveyor route on the conveyor route plans;

“conveyor route plans” means the plans certified as the conveyor route plans by the Secretary of State for the purposes of this Order;

“DML” means the marine licence set out in Schedule 5 (deemed marine licence under the 2009 Act) and deemed by article 31 (deemed marine licence) to have been granted under Part 4 (marine licensing) of the 2009 Act, by virtue of section 149A (deemed consent under a marine licence) of the 2008 Act;

“dredging” means using any device to move material (whether or not suspended in water) from one part of the sea or sea bed to another part;

“ecological mitigation works” means the mitigation measures set out in the outline ecological management plan;

“environmental statement” means the document certified by the Secretary of State as the environmental statement for the purposes of this Order;

“further environmental report” means any report produced in accordance with paragraph 3(3) of Schedule 2 (requirements);

“governance tracker” means the governance tracker certified by the Secretary of State for the purposes of this Order;

“gravel” means dredged materials with a diameter of at least 2 millimetres and less than 64 millimetres;

“the harbour master” means the harbour master appointed by the Tees Port Authority and includes the harbour master’s deputies and assistants;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“highway works plan” means the plan certified by the Secretary of State as the highway works plan for the purposes of this Order ;

“lagoon” means the area identified as Works No. 3 on the works plans;

“lagoon habitat enhancement works” means the works for habitat enhancement in the lagoon approved under the DML;

“the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

“level of high water” means the average of high water heights occurring at the time of spring tides;

“licensed activity” means any activity described in Part 2 of Schedule 5;

“licensed area” means the area within which any licensed activity takes place;

“limits of deviation” means the limits of deviation shown or referred to on the works plans;

“local planning authority” means Redcar and Cleveland Borough Council;

“maintain” includes to inspect, repair, adjust, alter, remove, clear, refurbish, demolish, replace or improve unless that activity would result in a significant environmental effect not assessed in the environmental statement and any derivative of “maintain” is to be construed accordingly;

“materials handling facility” means the facility to be located at Wilton International being the subject of planning permission reference R/2014/0626/FFM dated 19th August 2015;

“materials management plan” means a plan which sets out the measures to be adopted when excavating and handling potentially contaminated soil to minimise the risk of cross contamination;

“mitigation and monitoring strategy” means the mitigation and monitoring strategy certified by the Secretary of State for the purposes of this Order;

“MMO” means the Marine Management Organisation created under the 2009 Act or any successor to its functions;

“Notice to Mariners” means any notice to mariners which may be issued by the Admiralty, Trinity House, the Queen’s harbourmasters, government departments or harbour and pilotage authorities advising mariners of important matters affecting navigational safety;

“Order land” means the land shown on the land plans which is within the boundary of the land required for or affected by the proposed development, and is land in respect of which rights are to be acquired and extinguished as described in the book of reference;

“the Order limits” means the limits shown on the works plans as the limits within which the authorised development and works may be carried out;

“outline ecological management plan” means the document certified as the outline ecological management plan by the Secretary of State for the purposes of this Order;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(9);

“parameters table” means the parameters table certified as the parameters table by the Secretary of State for the purposes of this Order;

“PD Teesport” means PD Teesport Limited, company number 02636007, whose registered office is at 17 – 27 Queens Square, Middlesbrough, TS2 1AH;

“phase 1” means that part of the authorised development required to be completed in order to facilitate the movement of 6.5 million tonnes per annum of polyhalite comprising in summary—

- (a) site compounds;
- (b) construction of a quay 28 metres wide and 280 metres in length including ship loader and ship loader rails;

(9) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

- (c) dredging of up to 750,000 cubic metres of material from the approach channel and berth pocket;
- (d) lagoon habitat enhancement works;
- (e) installation of a surge bin;
- (f) installation of conveyor system and transfer towers;
- (g) construction of buildings and parking area;
- (h) erection of security fencing; and
- (i) provision of ancillary infrastructure;

“phase 2” means that part of the authorised development required to be completed in order to facilitate the movement of 13 million tonnes per annum of polyhalite comprising in summary—

- (a) extension of quay to provide total quay length of 486 metres including ship loader and ship loader rails;
- (b) dredging of up to 372,000 cubic metres of material from the approach channel and berth pocket;
- (c) installation of second surge bin;
- (d) installation of second conveyor within the conveyor housing installed during phase 1; and
- (e) provision of ancillary infrastructure;

“pipeline corridor” means the corridor shown coloured yellow on the pipeline corridor plans;

“pipeline corridor plans” means the plans certified by the Secretary of State as the pipeline corridor plans for the purposes of this Order;

“protective provision” means the provisions contained in Schedules 7 to 11;

“the quay limits” means the area bounded by co-ordinates listed in Schedule 6 (quay limits);

“requirement” means, unless the contrary intention appears, the requirement set out in the relevant paragraph of Schedule 2 (requirements);

“sand” means dredged materials with a diameter of at least 62.5 micrometres and less than 2 millimetres;

“sea” means any area submerged at the level of high water and the waters of every estuary, river or channel, so far as the tide flows at level of high water;

“sea bed” means the ground under the sea;

“silt” means dredged materials with a diameter of at least 31.25 micrometres and less than 62.5 micrometres;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land), of the 2008 Act;

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the Tees Port Authority” means PD Teesport in its role as harbour authority for the River Tees;

“tidal work” (subject to paragraph 2 of Schedule 11 (for the protection of the Tees Port Authority), for the purposes of that Schedule) means so much of any work or operation authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“TY150” means the area bounded by co-ordinates (54°41.89’N, 00°57.40’W), (54°41.40’N, 00°58.69’W), (54°42.30’N, 00°59.89’W) and (54°42.59’N, 00°58.60’W);

“the undertaker” means Sirius Minerals Plc, company number 4948435, and York Potash Limited, company number 07251600, both of whose registered offices are at 3rd Floor, Greener House, 68 Haymarket, London, SW1Y 4RF;

“vertical deviation plans” means the plans certified as the vertical deviation plans by the Secretary of State for the purposes of this Order;

“vessel” means every description of vessel or water-borne structure, however propelled, moved or constructed, and includes displacement and non-displacement craft, personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over or placement in water and which is at the time in, on or over water;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or public drain;

“WGS84” means World Geodetic System 1984;

“working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(10);

“works area” means the area of land shown on the works plans within which a numbered work is to be carried out; and

“the works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) Except in the definitions of clay, gravel, sand and silt in paragraph (1), and in Schedule 5, all distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are to be taken to be measured along that work.

(4) References in this Order to numbered works are references to the works as numbered in Schedule 1 and to numbered requirements are to the numbered requirements as numbered in Schedule 2.

(5) All areas described in square metres in the book of reference are approximate.

(6) Where the term approximate precedes a figure of measurement or quantum the flexibility accorded by that word is limited by the parameters in the parameters table and does not authorise any works which would result in significant environmental effects which have not been assessed in the environmental statement.

(7) Where a function of the Secretary of State has been delegated by an agreement under section 14 of the 2009 Act to the MMO, references in this Order to the Secretary of State in relation to the carrying out of that function are to be taken to include the MMO, and any obligation in this Order to consult the MMO does not apply where the MMO is carrying out that delegated function.