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Peter Robottom  
National Infrastructure Directorate  
The Planning Inspectorate  
(via e-mail only)

Your ref: TR030002  
Our reference: DCO/2014/00002

05 November 2015

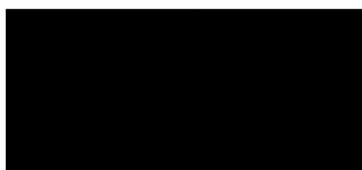
Dear Mr Robottom,

**PROPOSED YORK POTASH HARBOUR FACILITIES  
RESPONSE TO EXAMINING AUTHORITY'S WRITTEN QUESTIONS (ExQ – Deadline  
4)**

The Marine Management Organisation (MMO) is an interested party for the examination of Development Consent Order (DCO) applications for Nationally Significant Infrastructure Projects (NSIP) in the marine area. The MMO received the Examining Authority's written questions on 16 October 2015.

The MMO's responses to the relevant written questions are presented within Appendix 1 attached to this letter.

Please note that the MMO reserves the right to make further comments on this application throughout the examination process and to modify its present advice or opinion in view of any additional information that may come to our attention.



Adam Chumbley  
Marine management Organisation

CC:  
Jayne Griffiths – MMO  
Joe Wilson – MMO  
Morag Thomson – Eversheds  
Matt Simpson – Royal Haskoning



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## Appendix 1 MMO Response to the Examining Authority's written questions

(2)	Question to	Question	MMO Response
Panel Ref.			
DCO 2.1	Applicant Marine Management Organisation (MMO)	The ExA notes that the MMO still considers that the definition of "maintain" is too wide. Please consider whether the words used to amplify its meaning might be further restricted. In addition, is the definition of "commencement" now included appropriate for the works included within the Deemed Marine Licence (DML) or should there be an exclusion of DML works or a separate definition included for works within the DML?	The MMO are now happy that the wording within the definition of maintain is suitable for the DML. The inclusion of the works to maintain having to be already assessed in the ES provides the MMO with assurance that no extra licensable activities could be included in the maintain definition. The MMO is content with the definition of commencement including the omission of pre-construction surveys and monitoring.
DCO 2.6	Applicant, Redcar and Cleveland Borough Council (RCBC), Natural England (NE) Marine Management Organisation (MMO)	Are RCBC, NE and the MMO satisfied that the new Requirements 3(3) and 3(4) are adequate to address the concerns raised previously raised regarding the potential need for surveys to establish the baseline prior to commencement of Phase 2 of the development?	The MMO has discussed with NE regarding this question and are satisfied.
DCO 2.8	IPs (in particular the	If the 'marine management mitigation plan' is not the same as the MMMP, should	The MMO has discussed this with NE and agreed wording as follows:



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	MMO and NE)	Requirement 9 also include reference to the MMMP and should the minimum information to be provided within the MMMP also be secured via this or a separate requirement, to provide clarity on the mitigation required (via the Governance Tracker)?	<p><b>9.—</b> 1) No phase of the authorised development is to commence until written ecological management plans for any ecological mitigation or enhancement measures included in the environmental statement for that phase (including a marine mammal mitigation plan but not including the lagoon habitat enhancement works which are licensed under the deemed marine licence in Schedule 5) drafted in accordance with the principles set out in the outline ecological management plan (Document 6.11) and incorporating the mitigation identified in the governance tracker (Document 6.8A) have been submitted to and approved by Redcar and Cleveland Borough Council and the MMO in consultation with Natural England and Environment Agency.</p> <p>(2) The ecological management plans must be implemented as approved, but may be subject to alteration by prior approval of Redcar and Cleveland Borough Council and, when changes to any ecological enhancement or mitigation works are proposed below MHWS, the MMO, in consultation with Natural England and the Environment Agency.</p> <p>(3) Prior to the decommissioning phase of the authorised works, terrestrial ecological surveys are to be undertaken to verify whether any protected species could be impacted by the decommissioning phase, and to identify the requirement for mitigation to be implemented in order to avoid any impacts. The scope of terrestrial ecological surveys will be agreed with the local planning authority in consultation with Natural England prior to any ecological surveys being undertaken and the scope of mitigation agreed following the survey. The agreed mitigation shall then be carried out in accordance with an agreed timetable.</p>
DCO 2.9	Applicant, RCBC Marine Management Organisation (MMO)	There does not appear to be provision included for appeals against refusal of approval under requirements or conditions as would typically be found within a DCO. Should such provisions be inserted? Most, but not all, approvals are referred to as being in writing. Should not this always be the case? Most requirements, provisions and conditions are phrased in terms of 'must' or 'shall' but some are phrased in lesser terms. Should not "shall" be avoided in favour of "will" or "must", and terms necessitating strict	The MMO consider a decision on appeals would be for the applicant to consider. The MMO would expect all approvals to be issued in writing. The MMO would expect all conditions in the DML to include "must" or "will"

		adherence be used throughout?	
DCO 2.10	Applicant Marine Management Organisation (MMO)	Would replacement of 'unnecessarily' by 'unreasonably' be more appropriate in paragraph 17? There does not appear to be a provision precluding the presence of two piling boats at any one time as sought in representations?	The MMO would agree that "unnecessarily" would more appropriately be altered to "unreasonably" The MMO has discussed the piling boats condition with the applicant and this will be amended in the next version of the DCO.
DCO 2.12	The Applicant, Tees Port Authority and MMO	Paragraph 3 controls the location of the quay with reference to the parameters in Article 4, but is there a need to refer to the provisions of the DML?	The MMO confirm that although paragraph 3 stipulates the dimensions of the proposed works, a reference should be included that these dimensions are within the boundary limits attached to schedule 6 – Quay limits of the DML.
DCO 2.13	All IPs (in particular the MMO, NE and RCBC)	The Applicant provided at DL1 a diagram showing the hierarchy of plans identified in the draft DCO and DML to deliver the mitigation identified in the Environmental Statement (ES) and the Habitat Regulations Assessment(HRA) Report <b>[REP1-031]</b> . Please consider whether all plans identified in the DCO/DML have been identified on the diagram – if not, what is missing? Please also consider whether the wording in the requirements/articles/conditions, referred to as being the mechanism to deliver the plans identified in the diagram, is sufficient and does actually require the delivery of these plans?	The MMO has discussed this with NE and agree that the lagoon monitoring plan is not referenced. Wording and delivery of the plans noted are as previous comments.
DCO 2.14	To: The Applicant, Environment Agency(EA), RCBC and MMO	Are the local planning authority and MMO satisfied that there is sufficient clarity as to the responsible body with regard to enforcement of the various requirement, provisions and conditions? For example is there a need to define 'land' generally in relation to the DCO and not just in Article	The MMO, are satisfied that the boundaries are defined with the changes as proposed in this document. Article 16 does define land appropriately as it contains the wording above mean high water springs. It is the recommendation of the MMO that land is defined at the start of the DCO as the ground above MHWS.

		16? The points raised in question Ec 2.1 may also be relevant.	
DCO 2.16	The MMO in consultation with the Applicant	The MMO confirmed at DL3 [REP3-001] that all activities relating to works below MHWS should be included in the DML, which would include the lagoon. Please can the MMO clarify whether they are seeking amendments to the DML to include works/activities in the lagoon and whether work no. 3 (lagoon habitat enhancement) in Schedule 1 of the DCO should be amended [REP3-003 and REP3-004]?	The MMO is content that the works as described in Article 7( to include wording as set out below in question HRA 2.4) of DML that include method statements, detail of the lagoon enhancement and timetables are sufficient and represent those works as listed in schedule 1 of the DCO.
DCO 2.17	RCBC, MMO and the Applicant	Is there a need for insertion of an article to bring any physical works undertaken below MLW that will project above sea level within the jurisdiction of Redcar and Cleveland Borough Council as local planning authority under the principle of accretion?	The MMO does not feel an article is required. The area below low water is outside of local authority jurisdiction. The MMO would as standard consult the local authority on any works within the intertidal area and MMO has expertise in licensing works that project above sea level or impact seascape.
EC 2.1	The Applicant The MMO & NE	As discussed at the hearing on 25 September 2015, please rationalise the content of the various ecological Management and related plans covering the Bran Sands Lagoon enhancement and protection of marine mammals so that the primary responsibilities of NE and the MMO above and below high water are clearly distinguished and related documents are referred to in the appropriate place within the requirements in Schedule 2 or the deemed marine licence in Schedule 5 and elsewhere in the DCO.	<p>The MMO has discussed this question with NE and agree with the comments as follows.</p> <p>As described in the question above DCO 2.8, the primary responsibility sits with RCBC and MMO in consultation with NE and other relevant bodies. The Brans Sands Lagoon Enhancement plan sits with the MMO along with the monitoring plan. The wider EMP sits with RCBC. There is an overlap between the MMO and RCBC between MLW and MHWS and so there is a need for the Competent Authorities to consult each other along with Natural England, EA.</p> <p>The MMO would consult with RCBC as standard on any proposed activities within the intertidal area due to the overlap within legislative boundaries.</p>

HRA 2.4	All IPs (in particular NE, EA, the MMO):	<p>3. Are the IPs satisfied that the MMS [REP2-006] submitted by the Applicant for Deadline 2 adequately secures the relevant mitigation relied on to reach the Applicant's HRA conclusion of no adverse effect on the Teesmouth and Cleveland Coast SPA and Ramsar sites and addresses their previous concerns raised in relation to the operational monitoring and management of Bran Sands Lagoon? If not, can they explain why not?</p> <p>4. Are all IPs content that the MMS is adequately secured in the revised DCO submitted at DL3 [REP3-002 and REP3-004] under Paragraph 7 of Part 2 and Condition 48 in Part 4 of the draft DML in Schedule 5 and as a certified Plan under Article 38(h) of the draft DCO? If not, can they explain why not?</p> <p>5. Section 6.3 of the MMS provides some indication of the adjustments that could be made to the created habitats within the lagoon as intervention measures. The Applicant explains that it is not possible to definitely state what the intervention measures might be because the measures that may be required depend on analysis of the reasons the habitat enhancement proposals are deemed to be not meeting their objectives. Are the IPs satisfied that the proposed mechanisms in the MMS to adapt the strategy where the indicators of success are not being met, are sufficient? If not, what</p>	<p>The MMO has discussed with NE and agree the wording as follows:</p> <p>3. Yes subject to 5. below</p> <p>4. There is no mention of the securing of the Lagoon monitoring plan as described in 6.1 of the MMS although a Lagoon Enhancement Plan is noted. This is confusing - either the MMS should be referred to along with associated agreement with the 2 plans in the hierarchy underneath; or both plans should be secured in the Schedule and Condition 48.</p> <p>It is important that the monitoring plan is agreed as it includes both <b>pre- and post-construction</b> monitoring to inform the lagoon enhancement plan as well as describe the baseline and monitor success of the works.</p> <p>In order to assist, we suggest this re-wording we have agreed with the MMO to make this clear here:</p> <p><i>Lagoon habitat enhancement</i></p> <p><b>7.—</b>(1) The lagoon habitat enhancement works shall not commence until a written lagoon habitat enhancement plan <b>(to include details of pre- and post-construction monitoring)</b> <del>and the lagoon monitoring plan have</del> has been submitted to and approved by the MMO (following consultation with Natural England, the Environment Agency and the local planning authority).</p> <p>(2) The lagoon habitat enhancement plan must include—</p> <p>(a) <b>details of proposals for pre- and post-construction monitoring information as agreed through the lagoon monitoring plan</b></p> <p>(b) details of the enhancement of habitat in the lagoon for water birds and a construction method statement regulating the construction of those works; and</p> <p>(c) a timetable for the implementation of those works.</p> <p>(3) The lagoon habitat enhancement plan <b>(including pre- and post- construction monitoring information)</b> <del>and lagoon monitoring plan</del> must accord fully with the mitigation and monitoring strategy (Document 6.12)</p> <p>(4) The lagoon habitat enhancement plan must be implemented as approved.</p> <p><i>Lagoon Habitat Enhancement Works</i></p> <p><b>48.</b> The undertaker must implement and comply with the lagoon habitat enhancement plan <b>(including requirements for pre- and post- construction monitoring)</b> <del>and the lagoon monitoring plan</del> approved pursuant to paragraph 7 and shall monitor and maintain the lagoon habitat enhancement works in accordance</p>
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		additional mechanisms are required?	<p>with the <del>lagoon monitoring plan</del> <b>lagoon habitat enhancement plan</b> and principles outlined in the mitigation and monitoring strategy (Document 6.12) and agreed with the MMO in consultation with Natural England and, the Environment Agency and the local planning authority.</p> <p>5. NE considers that section 6.3 Intervention measures within the MMS should be re-worded. At the moment there is no obligation to ensure that the Indicators of Success are reached.</p> <p>We suggest there is a re-wording so that intervention measures 'will' rather than 'could' be implemented.</p> <p>The monitoring plan to be agreed would clarify the frequency of reporting for example can take this obligation further. The suggestions in 4. Above for the re-wording of the Paragraph 7 and Condition 48 may assist.</p>
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