



Claim Form (CPR Part 8)

In the High Court of Justice
Chancery Division



Claim no.

Fee Account no.

Help with Fees -
Ref no. (if appli-
cable)

H W F -

BL-2023-000606

Claimant

Cleveland Potash Limited

Boulby Mine

Loftus

Saltburn By The Sea

Cleveland TS13 4UZ

SEAL

Defendant(s)

Secretary of State for Business, Energy and Industrial Strategy

Does your claim include any issues under the Human Rights Act 1998? ☐ Yes ☒ No

Details of claim (see also overleaf)

In the matter of an application under the Mines (Working Facilities and Support) Act 1966

See attached details of claim.

Defendant's
name and
address

Secretary of State for Business
1 Victoria Street
London
SW1H 0ET
United Kingdom

£

Court fee	569.00
Legal representative's costs	
Issue date	

For further details of the courts www.gov.uk/find-court-tribunal.

When corresponding with the Court, please address forms or letters to the Manager and always quote the claim number.

Claim no.	
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Details of claim (continued)

Herbert Smith Freehills LLP
Exchange House
Primrose Street
London
EC2A 2EG
28 London
2162/8118/31052269

Claimant's or claimant's legal representative's address to which documents should be sent if different from overleaf. If you are prepared to accept service by DX, fax or e-mail, please add details.

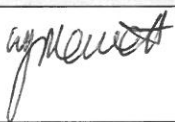
Statement of Truth

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

☒ I **believe** that the facts stated in these particulars of claim are true.

☒ **The Claimant believes** that the facts stated in these particulars of claim are true. I **am authorised** by the claimant to sign this statement.

Signature



☒ Claimant

☐ Litigation friend (where claimant is a child or a Protected Party)

☐ Claimant's legal representative (as defined by CPR 2.3(1))

Date

Day

21

Month

April

Year

2023

Full name

Malcolm John Mewett

Name of claimant's legal representative's firm

Herbert Smith Freehills LLP

If signing on behalf of firm or company give position or office held

General Manager / Vice President

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IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Claim No: BL-2023-000606

In the Matter of an Application under the Mines (Working Facilities and Support) Act 1966

Between

CLEVELAND POTASH LIMITED

Applicant

and

SECRETARY OF STATE FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY

Referee

DETAILS OF CLAIM

1. The Applicant applies to the court for the grant of rights under the Mines (Working Facilities and Support) Act 1966 ('the 1966 Act') and a declaration as to the ownership of the mines and minerals in respect of some of the parcels of land in respect of which it seeks those rights.
2. The relief sought by the Applicant is for leases to be granted for a term of 50 years on such terms and conditions, including rent, as the court deems fit. The declaration as to ownership relates to the claims of Mrs Drummond for ownership of the mines and minerals pursuant to:
 - a. a reservation reserving to her 'the mines beds and quarries of ironstone and iron ore and other metals within and under the property...' (hereinafter "the Imperfect Reservation"); and

- b. her claim to mines and minerals pursuant to manorial rights.
- c. her claim to mines and minerals in respect of a reservation of the same for area

67

3. The Applicant applied to the Secretary of State for the rights under the 1966 Act on 7 June 2022. The Application was supported by witness statements from the Applicant's Chairman and Director, Andrew John Fulton (Volume A), its in-house solicitor Geoffrey Noel Barrett (Volume B) and the minerals surveyor it has instructed Jane Louise Iwanicki (Volume C). Volumes A-C were filed with the Court by the Secretary of State when making the reference. The Applicant's case as to the rights it seeks and the reasons why the requirements of the 1966 Act are met are set out in Volumes A-C.
4. These Details of Claim summarise the Applicant's application and do not seek to replicate the detail in the Application nor to preclude the Applicant from relying upon further averments in the event that the Application is opposed by some or all of the landowners or alleged landowners.
5. The Applicant is the owner and operator of Boulby Mine. The mine became operational in 1973 and the Applicant had rights to mine salt and potash underneath a large onshore area pursuant to up to 150 different Leases ("the Onshore Leases"). The original leases were for a period of 50 years and expired in 2020 and 2021 and the Applicant is now holding over.
6. The Applicant no longer extracts any minerals from the onshore areas and, since 2018, has concentrated on extracting polyhalite and salt from under the seabed. The Applicant has a right to extract these minerals from the offshore area pursuant to a lease granted by the Crown Estate ("the Offshore Lease"). Polyhalite is used as a fertilizer or as a component in fertilizers used in agriculture. The Applicant is the only producer of polyhalite in the world.
7. The Applicant uses some of the shafts and tunnels created in the onshore areas as part of its offshore operations. In particular, the Applicant requires rights over the Onshore Lease areas illustrated in exhibit GNB 2 of Volume B. These rights are required in order allow the continuation of the Applicant's underground mine maintenance and mine

management obligations (e.g. the movement of men and machinery, mine stabilisation works, pumping of mine water to prevent flooding of the workings etc) and the transportation of polyhalite extracted from the current offshore mining area through two existing and one proposed new underground roadways. The proposed new roadway will be constructed through a salt tunnel located in Areas O, 5 and 67. The salt extracted in order to create the salt tunnel will be sold but the principal reason for constructing the salt tunnel is to create a third access road to the offshore mining area.

8. The onshore areas required by the Applicant in order to continue its offshore mining can be resolved into the following categories.
 - a. Areas where it has already acquired freehold rights to the mines and minerals. These are areas 7 and 50. The Applicant makes no application under the 1966 Act in respect of these areas.
 - b. Areas where the Applicant has already acquired freehold rights to the mines and minerals from the surface owners but where Mrs Drummond claims that she is the owner of the mines and minerals pursuant to the Imperfect Reservation. These are areas B, C, Q and V. If, as the Applicant avers, the Imperfect Reservation does not confer on Mrs Drummond any rights in respect of these areas, then the Applicant does not apply for any rights under the 1966 Act in respect of these areas because in that event it would be the relevant freehold owner. If, however, the Court decides that Mrs Drummond is the owner of the mines and minerals in these areas then the Applicant applies to the Court for rights to be granted under the 1966 Act.
 - c. Areas where the Applicant has tried unsuccessfully to negotiate rights with three owners or claimed owners who are acting in concert; namely, Classic Lodges, Mrs Moralee, and Mrs Drummond who are collectively known as the "Joint Mineral Owners" (hereinafter "the JMO") These areas are A and O. The Applicant applies to the Court for rights under the 1966 Act in respect of these areas regardless of the Court's conclusion as to the meaning and effect of the Imperfect Reservation.

- d. An area where Mrs Drummond claims ownership on the basis of manorial rights but where, should her case in that regard be rejected, the ownership of the mines and minerals is either unknown or vests with the surface owners. This is area 5. In respect of area 5 if Mrs Drummond's manorial claim is rejected then ownership will vest with the surface owners or with persons unknown. The Applicant applies to the court for rights under the 1966 Act in respect of area 5 regardless of the Court's conclusion as to the meaning and effect of the Imperfect Reservation or the outcome of Mrs Drummond's manorial claim.
 - e. Area 67 is the route of the former railway line, the southern part of which is operated and owned by the Applicant. The Applicant's title specifically excludes the mines and minerals and Mrs Drummond claims to be the owner of the mines and minerals for the entirety of Area 67 as successor in title to the party to whom the mines and minerals were originally reserved. The Applicant applies to the court for rights under the 1966 Act in respect of area 67 regardless of the Court's conclusion as to the meaning and effect of the Imperfect Reservation, and regardless of whether Mrs Drummond or persons unknown are entitled to the mines and minerals.
9. As set out in more detail in Volume B, the Applicant positively avers that the Imperfect Reservation does not confer upon Mrs Drummond any interest in the relevant mines and minerals; in essence, because the reservation only relates to ironstone, iron ore and other metals and neither potash nor salt falls within the definition of 'other metals'. The resolution of this issue will have a pivotal impact on the position in respect of the areas falling within the category described at paragraph 8 b. hereof and a significant impact on the position in respect of the areas falling within the category at paragraph 8 c. hereof. In the circumstances, and subject to any objections made to the Application, it may be prudent for the meaning and effect of Mrs Drummond's Imperfect Reservation to be determined as a preliminary issue. In any event, the Applicant seeks a declaration that Mrs Drummond has no interest in the relevant mines and minerals pursuant to the Imperfect Reservation.

10. As set out in Volume A, the extraction of polyhalite and salt from under the seabed is a matter of national significance and it is expedient in the public interest that the Applicant be granted such rights in respect of the onshore areas as are required in order to enable offshore mining to be continued effectively and efficiently. In short, it is expedient in the national interest for the Applicant to obtain rights in the form of leases or in some other form in respect of the onshore areas so as to enable the offshore mining to continue.
11. For reasons set out in greater detail in Volume C, there are very significant differences between the Applicant's assessment of the market value of the ancillary rights sought and the valuation advanced by the experts retained by JMO. The discrepancy is such that there is no realistic prospect of the required rights being met by a private arrangement. The negotiations have proceeded on the basis that the Applicant would acquire leasehold interests in respect of the entirety of the areas shown as A, O, 5 and 67 on GNB 2. But the stark discrepancy in valuation pertains to the reduced areas strictly necessary for the Applicant's offshore mining shown on GNB 7.¹
12. In the circumstances, the conditions which have to be met for the court to grant rights to the Applicant under the 1966 Act have been met.
13. The terms and conditions of the leases sought by the Applicant are particularised at paragraph 144 of the first witness statement of Geoffrey Noel Barrett contained within Volume B. Further, and in the alternative, the Applicant applies for the grant of leases on such terms and conditions as the court deems fit.

AND The Applicant seeks the following relief, namely a grant of:

- (1) A declaration that Mrs Drummond does not enjoy any rights to the existing mines and minerals in the onshore area shown on GNB 2 pursuant to the Imperfect Reservation.

¹ For the avoidance of doubt, JMO have not indicated any willingness to lease the smaller area of land indicated in GNB 7 on reasonable terms, their position being that a ransom price is warranted.

(2) A declaration as to whether or not Mrs Drummond enjoys any rights or ownership of the existing mines and minerals in area 5 pursuant to her alleged manorial rights, unless her rights have already been determined in that regard pursuant to her application to HM Land Registry.

(3) A declaration as to whether or not Mrs Drummond enjoys any rights or ownership of the existing mines and minerals in area 67.

(4) Leases for a period of 50 years on the terms set out at paragraph 144 of the first witness statement of Geoffrey Noel Barrett in respect of those parts of the onshore area on GNB 2 for which the Applicant does not already possess freehold ownership (the extent of this area will depend on whether the court grants the declaration sought under (1)) and which are required in order to operate the Applicant's offshore mining operation (in respect of Areas A, O, 5 and 67 the areas which are strictly necessary are shown on GNB 7).

(5) Further and in the alternative to (4) leases for such period and for such areas and on such terms and conditions as the court deems fit as are required to enable the Applicant to continue mining the offshore areas.

(6) Further or other relief.

(7) Costs.

Part 8 and PD49E of the Civil Procedure Rules 1998 apply to this claim.

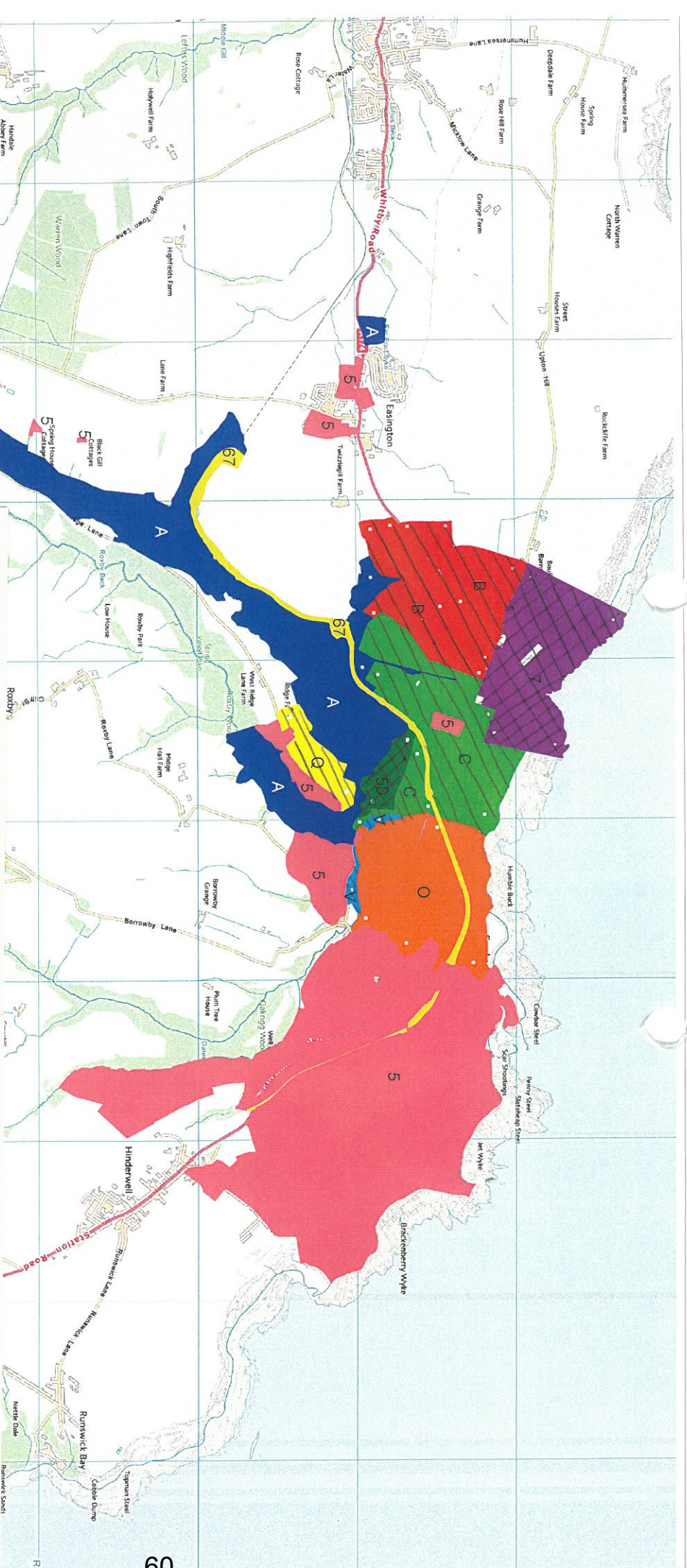
The Applicant believes that the facts stated in these Details of Claim are true. The Applicant understands that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Name

Position

Signed

Dated



- | | | |
|----|----------------|-------------|
| A | Clarke Lodges. | Dark Blue |
| B | Armstrong | Red |
| C | Wills | Light Green |
| O | Moralee | Orange |
| Q | Summers | Yellow |
| V | Sanderson | Light Blue |
| 5 | Unknown | Pink |
| 7 | Armstrong | Purple |
| 50 | Nelson. | Dark Green |
| 67 | Unknown. | Yellow. |



cross hatching indicates
undisputed areas under
which freehold rights
have been acquired



hatching indicates
areas under which freehold
rights have been acquired
subject only to the Dominant
successor claiming under the
imperfect Reservation

