

Claimant
G N Barrett
First Witness Statement
GNB1
8 June 2023

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Claim No. BL-2023-000606

BETWEEN:

CLEVELAND POTASH LIMITED

Applicant

-and-

SECRETARY OF STATE
FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY

Respondent

WITNESS STATEMENT OF GEOFFREY NOEL BARRETT

I, **GEOFFREY NOEL BARRETT** of Post Cottage, Ugthorpe, Whitby, North Yorkshire YO21 2BQ
WILL SAY as follows:

1. I am a Solicitor instructed (through my service company, Noel Barrett Solicitor Limited) alongside Herbert Smith Freehills LLP to advise the Applicant in respect of its mineral rights and I have been acting for the Applicant in respect of those matters since 1997.
2. Save where I indicate to the contrary, the facts and matters contained in this witness statement are within my own knowledge. Where any information is not within my personal knowledge, I have identified the source of my information or the basis for my belief. For the avoidance of doubt, nothing in this witness statement is intended to waive any applicable privilege.
3. I refer in this statement to various documents which are exhibited to this statement in an Exhibit marked "**GNB1**". Page references hereafter are to the contents of GNB1 save where otherwise specified.
4. I am authorised by the Applicant to make this statement on its behalf pursuant to CPR Practice Direction 49E paragraph 13.7(1) in support of its claim 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.

5. On 7 June 2022, the Applicant made an application under section 4 of the 1966 Act requesting the Secretary of State for Business, Energy and Industrial Strategy ("**BEIS**") refer the application to the High Court. On 11 April 2023, BEIS filed a reference in the Chancery Division on behalf of the Applicant. On 21 April 2023, the Applicant issued the current claim.
6. The Applicant wishes to amend the Details of Claim in accordance with the draft Amended Details of Claim exhibited at pages 1 to 7 of GNB 1. The amendments are intended to correct some typographical errors and to describe more accurately Mrs Drummond's claim to ownership of, or interest in, the mines and minerals in areas 5 and 67.
7. The Applicant is the owner and operator of Boulby Mine, which is a deep potash and salt mine on the English north-east coast. It produces fertilisers for the home and international markets and is the only producer of polyhalite based fertilisers in the world. Polyhalite is a particular form of potash (a common term for potassium compounds). 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 on 23 April 2010 by the Crown Estate for a term which expires in 2035 (as with previous Crown Estate leases the Applicant expects this to be renewed).
8. I exhibit at GNB1 page 8 a plan (the "**Plan**") providing an overview of the location of the Claimant's mine, and which illustrates the areas under which it has already secured adequate rights through private negotiation (shown hatched and cross hatched) and the areas under which it is currently seeking rights.
9. As required by the Practice Direction, I set out in this witness statement details of all persons known to the Claimant to be interested in, or affected by, the application. The table below identifies all persons save for those interested in area 5. The Claimant intends to give notice of the application to each of the persons identified in the table using the form of letter at GNB1 pages 10 and 11.

	Interested Party	Address	Area(s) on the Plan	Interest
1.	Classic Lodges Limited	First Floor, 9 Haymarket Square, Edinburgh EH3 8RY; Blenheim House, Foxhole Road, Ackhurst Park, Chorley, Lancashire PR7 1NY	A (part)	Registered proprietor of title numbers CE163776 (part area A)
2.	The Hon. Mrs Ferelith Drummond	Churchill House, Croscombe, Wells, Somerset BA5 3RW	A (part); B (part); C (part); O (part); Q (part); V (part); 5 (part); 67	Claims ownership of the mines and minerals in certain areas pursuant to a reservation to her of " <i>the mine beds and quarries of ironstone and iron ore and other metals within and under the property</i> " and claims mines and minerals pursuant to manorial rights.
3.	Mrs Jean Moralee	Cowbar Manor Farm, Staithes, Saltburn, Cleveland TS13 5DA	O (part)	Registered proprietor of title number CE178823 and other

				unregistered land within area O.
4.	The Crown Estate	1 St James's Market, London SW1Y 4AH	Offshore Lease Area	Owner of the Offshore Lease Area, and which has granted exclusive rights under a lease to the Applicant to extract polyhalite reserves in that area.
5.	North York Moors National Park Authority	The Old Vicarage, Bondgate, Helmsley, York, North Yorkshire YO62 5BP	N/A	Local planning authority.

10. As set out in paragraphs 2, 8d and 8e of the Amended Details of Claim, the Applicant seeks a declaration in relation to the disputed ownership of the mines and minerals claimed by Mrs Drummond. Mrs Drummond's claim to ownership in area 5 is based on her alleged manorial rights and is currently subject to an application by Mrs Drummond to the Land Registry for the registration of her claimed proprietorship. I exhibit at GBN1 page 9 a plan showing the extent of area 5 overlaid on an Ordnance Survey map. The section of area 5 which is the subject of CPL's application is edged in blue.
11. Mrs Drummond's application to the Land Registry has not yet been determined. CPL's solicitors have identified a list of the owners of the freehold titles registered at HM Land Registry within the blue edged area, and I have annexed that list to this witness statement. If Mrs Drummond's Land Registry application is rejected, then the current owners of those titles will be interested in CPL's application. Accordingly, CPL intends to notify the owners set out in the annex in exactly the same way as those in paragraph 9 above.
12. It is inevitable, however, that the blue edged area will contain unregistered land. The owners of unregistered land also have a potential interest in the application. The Applicant proposes to

hand deliver notification of the application on all unregistered landowners with the unregistered landowners being provided with the documents set out at paragraph 13 hereof if a building is erected on a parcel of unregistered land. Where, however, a parcel of unregistered land is undeveloped the Applicant proposes, subject to the Court's approval, to attach only a laminated copy of the letter described at paragraph 13d. hereof to a gate or other reasonably convenient object.

13. In order to reduce the administrative burden of serving hard copies of the application (which would be over 950 pages) on all of the parties identified above as having a potential interest in the application, I propose that all interested parties be served with the following documents:
 - a. The Claim Form, the Amended Details of Claim and exhibits GNB 2 and GNB 7 of Volume B of the application.
 - b. This witness statement.
 - c. A sealed copy of the Order made by the Court.
 - d. The letter to interested parties in accordance with the draft exhibited to this statement, the said letter referring to the opportunity of perusing all of the Application documents either at the Applicant's offices during working hours or on the Applicant's website.
14. I exhibit at GNB1 pages 10 and 11 a draft form of the letter to interested parties for the Court's approval.
15. I also exhibit at GNB1 page 12 a draft form of advertisement pursuant to CPR Practice Direction 13.8(3)(a) for the Court's approval. I propose also that a copy of the advertisement be displayed at the Staithes Village Memorial Hall, Cliff Road, Staithes.
16. There are two local newspapers covering the area around Boulby Mine: the *Teesside Evening Gazette* and the *Whitby Gazette*. The Applicant therefore intends to insert a copy of the notice in the public notices section of both newspapers together with the *London Gazette*. A draft order is appended for the Court's consideration.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of Court may be brought against anyone who makes or causes to make a false statement in a document verified by a Statement of Truth without an honest belief in its truth.

Signed:

**GEOFFREY NOEL BARRETT**

Date:



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. These are~~ This is area 5 ~~and 67~~. 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 ~~these areas~~ area 5 regardless of the Court's conclusion as to the meaning and effect of the Imperfect Reservation ~~or the outcome of Mrs Drummod'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 ~~7(ii)~~ 8 b. hereof and a significant impact on the position in respect of the areas falling within the category at paragraph ~~7(iii)~~ 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 areas 5 ~~and 67~~ 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.~~

~~(3 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).

~~(4 5)~~ Further and in the alternative to ~~(3 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.

~~(5 6)~~ Further or other relief.

~~(6 7)~~ Costs.

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

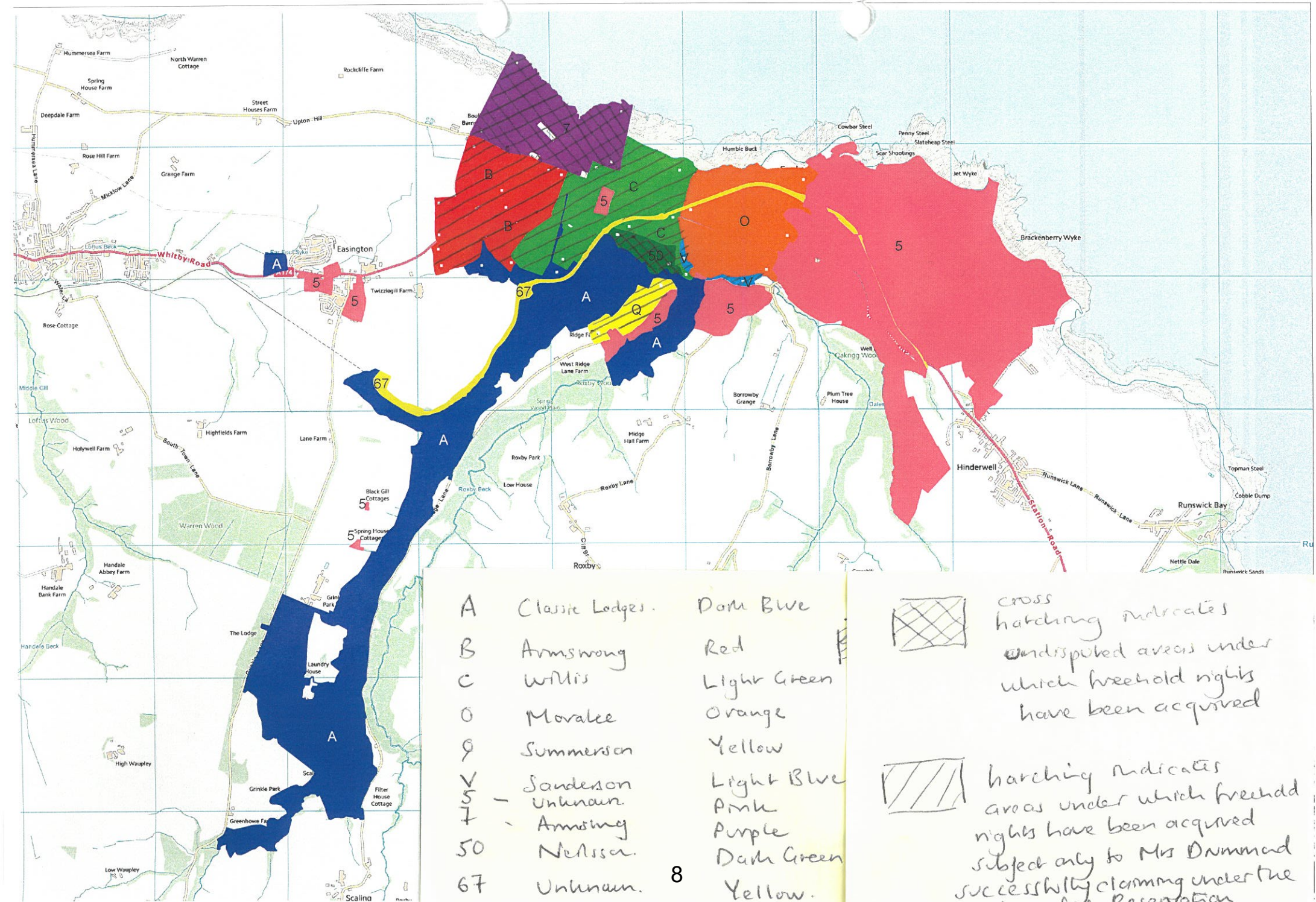
The Applicant believes that the facts stated in these Details of Claim are true. The Applicant understands that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in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

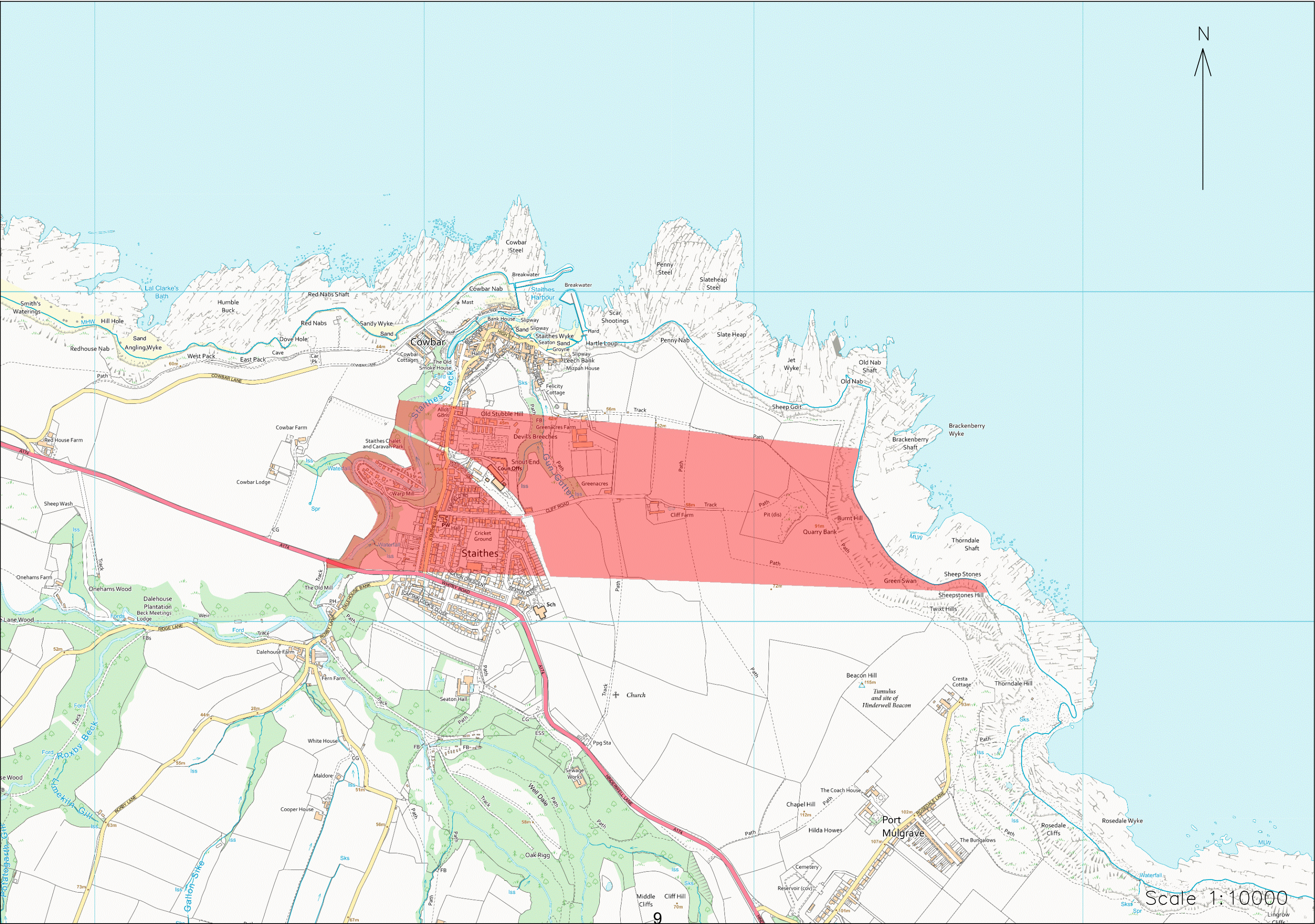
Name

Position

Signed

Dated





Scale 1:10000

**[TO BE SENT ON THE HEADED PAPER OF HERBERT SMITH FREEHILLS LLP ON BEHALF
OF CLEVELAND POTASH LIMITED]**

*[Name/The Owner and Occupier
Address]*

[Date]

Dear *[Name]* or (re unregistered land) *[Owner and Occupier]*

**Cleveland Potash Limited v Secretary of State for Business, Energy and Industrial Strategy
Claim Number BL-2023-000606**

We act for Cleveland Potash Limited, the Applicant in the above application for the grant of rights pursuant to 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.

On 7 June 2022, the Applicant made an application under section 4 of the 1966 Act requesting that the Secretary of State for Business, Energy and Industrial Strategy refer the application to the High Court. On 11 April 2023, the reference was filed in the Chancery Division and on 21 April 2023 the Applicant issued the proceedings.

The Applicant has identified you as a party may be interested in, or affected by, the Application. On 14 June 2023, a hearing took place before Master Brightwell pursuant to CPR Practice Direction 49E paragraph 13.7. We enclose, by way of service on you, a sealed copy of the Order following that hearing. We also enclose a copy of the Claim Form, the Amended Details of Claim together with the exhibits referred to in the Amended Details of Claim, copies of which are also available on the Applicant's website www.icl-uk.uk.

A copy of the Application can be viewed at the registered office of the Applicant at Boulby Mine, Loftus, Saltburn By The Sea, Cleveland TS13 4UZ, or via the website www.icl-uk.uk.

Pursuant to CPR Practice Direction 49E paragraphs 13.8 and 13.9 [and paragraph [] of the Order of Master Brightwell dated []], any person who wishes to oppose the application must, by *[date]* serve notice of objection on this firm stating:

- (a) their name and address;
- (b) the name and address of their solicitor, if any;
- (c) the grounds of the objection;
- (d) any alternative method for effecting the objects of the application that they allege may be used; and
- (e) the facts on which they rely.

We also give you notice of a further hearing of the claim at *[time]* on *[date]* at the Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL before Master Brightwell at which you may appear or be represented. If you serve notice of an objection but do not appear or are not represented at the hearing, the notice of objection will be of no effect and you will not be entitled to take any part in the proceedings unless the Court orders otherwise.

Yours sincerely,

Herbert Smith Freehills LLP

Enc.

**DRAFT FORM OF NEWSPAPER ADVERTISEMENT UNDER MINES (WORKING FACILITIES
AND SUPPORT) ACT 1966**

In the High Court of Justice (Chancery Division) Claim Number BL-2023-000606 In the Matter of an Application by CLEVELAND POTASH LIMITED and in the Matter of the Mines (Working Facilities and Support) Act 1966. An application has been made by Cleveland Potash Limited (the "Applicant"), whose registered office is Boulby Mine, Loftus, Saltburn By The Sea, Cleveland TS13 4UZ, to the Secretary of State for Business, Energy and Industrial Strategy and has been referred to the High Court pursuant to section 4 of The Mines (Working Facilities and Support) Act 1966 (the "Act") for an Order granting to the Applicant working facilities and ancillary rights at Boulby Mine, Boulby, Loftus, Saltburn By The Sea, Cleveland TS13 4UZ . And whereas the Court by an Order dated [date], ordered (inter alia) that certain notices should be advertised in certain local newspapers and that sufficient notice should be given by way of advertisement together with the aforesaid notices to every local or other authority, company or person who may be desirous of bringing before the Court any objection to the application. Notice is hereby given that the Applicant has applied to the Court for such Order to work the said minerals. And notice is hereby further given that a copy of the said application has been deposited with the Court and copies thereof may be obtained at the registered office of the Applicant or electronically via website www.icl-uk.uk. And notice is hereby further given that should the Order be made by the Court in accordance with the application, the Applicant will pay or give such sum or sums by way of compensation or consideration to such persons as the Court may determine to be entitled thereto in respect of the acquisition of the said rights. And notice is hereby further given that every local or other authority, company or person wishing to oppose the said application or to be heard in connection with it, must on or before [date], serve on the Applicant at the offices of their solicitors, Herbert Smith Freehills LLP, Exchange House, Primrose Street, London EC2A 2EG (ref: 2162/8118/31052269) a notice of objection stating: (a) their name and address; (b) the name and address of their solicitor, if any; (c) the grounds of the objection; (d) any alternative method for effecting the objects of the application that they allege may be used; and (e) the facts on which they rely. Any objector will be entitled to appear or be represented at the further hearing of the application before Master Brightwell at [Court []], The Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL at [time] on [date], and to take such part therein as the Court allows; but if the objector does not appear or is not represented, the notice of objection will be of no effect and the objector shall not be entitled to take any part in the proceedings unless the Court otherwise orders.—Dated [date] Matthew Bonye, Partner, Herbert Smith Freehills LLP, Solicitor for the Applicant.