



UNCLASSIFIED

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# Net Zero DCO

**RESPONSE TO DEADLINE 2 SUBMISSIONS OF NZT**

**On behalf of**

**ANGLO AMERICAN CROP NUTRIENTS LIMITED**

**(REF: 20029897)**

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## 1. INTRODUCTION

- 1.1 Relevant representations were submitted on behalf of Anglo American Woodsmith Limited and York Potash Limited on 15 December 2021 (RR-014)). The representations referred to the support, in principle, of the Net Zero Project but also objected to the granting of powers of compulsory acquisition in respect of the Anglo American land/rights and expressed concern regarding the lack of detail in available in respect of certain elements of the scheme and the consequent difficulties in understanding the potential impact of the Net Zero Project on the Woodsmith Project.
- 1.2 Written representations updating and expanding upon the relevant representations were submitted for Deadline 2 (REP2-073). The written representations also clarified that Anglo American Woodsmith Limited had changed its name to Anglo American Crop Nutrients Limited and in these representations is, along with the other relevant companies<sup>1</sup>, to be generically known as “Anglo American”.
- 1.3 These representations respond to the latest DCO submitted on behalf of NZT (REP-002) and also comment on the contents of the Compulsory Acquisition Schedule (REP2-014).

## 1. UPDATE ON DISCUSSIONS

- 2.1 The Compulsory Acquisition Schedule submitted by the Applicants at Deadline 2 (REP-014) purports to set out the state of negotiations with the various parties over whom compulsory powers are sought. The position regarding Anglo American is set out against the entry for York Potash Processing & Ports Limited (Item No 196).
- 2.2 The text does not fully reflect the current position, which is as follows:
  - a) Technical discussions between Anglo American and the Applicant have taken place for some time, as recorded in the Statement of Common Ground submitted at Deadline 1 (REP1 – 030). It was not possible to make significant progress on the necessary documentation (side agreement, property agreements and protective provisions) until more detail was available regarding the original scheme and, then also, proposed scheme changes. Lack of detail is still problematic, however a side agreement and protective provisions are now being progressed. Revised draft documents were sent to the Applicant’s solicitors on 6 June 2022 to which a response was received on 21 June 2022 and is under consideration.

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<sup>1</sup> See Table in paragraph 2.3 of REP2-073 – note that “Limited” was inadvertently omitted from the name in the third column of the first row which should read Anglo American Crop Nutrients Limited.

- b) There are currently no negotiations progressing on heads of terms with the Applicant. In February 2022 Anglo American made it clear that, whilst at that time continuing to discuss heads of terms, it wished to progress to the consideration of actual draft property agreements. Since May Anglo American have declined to continue discussions on those Heads of Terms, wishing to concentrate on the property agreements themselves. Drafts of the necessary agreements were first requested in February. The Applicant has advised that it wishes to produce the first drafts, however, as yet, no such drafts have been received, despite continued requests and there has been no meaningful dialogue between the respective property lawyers.

### **3 APPLICANT'S DRAFT DCO SUBMITTED AT DEADLINE 2**

- 3.1 The Applicant has made revisions to its draft DCO which are included in the DCO submitted at Deadline 2 (REP2-002) and explained in the Schedule of Changes to the draft DCO (REP2-004).
- 3.2 Anglo American note that a change has been made to Schedule 3 of the Draft DCO changing the location within the Anglo American DCO<sup>2</sup> where protective provisions for benefit of the Applicant (which are not yet agreed) will be inserted. Anglo American confirms that this is in response to its request for such a change.
- 3.3 However, Anglo American strongly object to another change contained within the Deadline 2 DCO, being the change made to the protective provisions included in the draft DCO for the protection of York Potash (Part 17 of Schedule 12) by way of the deletion of, what was, paragraph 193 which relates to use of CA powers.
- 3.4 As a preliminary point we would wish the ExA to be aware that, whilst the Applicant has amended only one of the paragraphs in the protective provisions in Part 17 of Schedule 12, the Applicant is aware that the remainder of Part 17 as drafted is inadequate for the purpose and unacceptable to Anglo American. Protective Provisions which are very different in substance are being exchanged and discussed between the Applicant and Anglo American and it is regrettable that one aspect of the protective provisions has been amended in isolation with no regard being paid to the protective provisions under discussion between the parties and in respect of which discussions had been making progress.
- 3.5 Anglo American strongly object to the substance of the amendment which was not agreed with Anglo American or discussed with them in advance and is in conflict with the spirit and substance of the discussions held between Anglo American and the Applicant.

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<sup>2</sup> The York Potash Harbour Facilities Order 2016



- 3.6 The amendment involves the deletion of a paragraph which prevents the Applicant exercising compulsory acquisition powers over areas where there is an overlap between the Anglo American works and the Applicant's works.
- 3.7 The explanation given in the Schedule of Changes document (REP2-004) is that  
*".....the Applicants have not yet concluded agreements with these parties for the acquisition of land or rights needed for the Proposed Development, and in the absence of those needs to maintain the ability to exercise powers in the DCO in order to be able to construct, operate and maintain it"*
- 3.8 There are several points to make:
- a) The deletion of the provision is a change of position rather than, as asserted, maintaining a position. This change has emerged in the middle of the Examination whilst discussions have been progressing. Since draft property agreements were first requested in February 2022 and have not yet been received the rationale referred to, of the absence of concluded agreements, is disingenuous.
  - b) The ability for the Applicant to use compulsory powers without agreement is particularly concerning given the wide areas over which the powers are sought and the lack of detail which will determine what land/rights within those areas will be needed<sup>3</sup>.
  - c) Crucially, the exercise of the compulsory powers over areas within which Anglo American will be constructing and operating its harbour facility would enable the Applicant to acquire land/rights which could prejudice the delivery and operation of the Anglo American NSIP.
  - d) The approach taken in discussions between Anglo American and the Applicant has been based on in-principle, and technical, co-operation aimed at ensuring that both projects can progress with the appropriate safeguards included to ensure that neither project was prevented or unacceptably prejudiced by the other.
  - e) The deletion of, what was, paragraph 193 of Part 17 of Schedule 2 makes it clear that the Applicant is effectively seeking primacy of its project over the delivery and operation of the Anglo American NSIP. That is completely inappropriate. Whilst the contribution which is already being made to the regional and local economy by the Woodsmith Project is very significant, the export facility authorised by the harbour facilities NSIP is a critical part of the project and the last piece in the jigsaw required to complete the mining, transport and

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<sup>3</sup> See for example the area over which CA powers are sought along land owned by Anglo American and leased to Sembcorp Utilities UK Limited along the pipeline corridor – as explained in the Deadline 2 submissions on behalf of Sembcorp at paras 55-72 (REP2-98)



bulk export of the polyhalite. As previously advised construction of the harbour facilities is due to commence within the next 12 months.

- 3.9 Information on the entirety of the Woodsmith Project was included in the Written Representations submitted on behalf of Anglo American at Deadline 2 (REP2 – 073)<sup>4</sup>. The project will make the UK a major global supplier of multi-nutrient fertilizers and help to secure a domestic supply of a nationally important mineral. In doing so the project will generate very large exports and make a significant and long-lasting contribution to the regional and national economy. It will also create thousands of jobs (already there are 1,300 persons working on the project). Having commenced construction in 2017, by the end of 2020 the project had already made a contribution of £750m to the regional economies of Yorkshire and the North-East.
- 3.10 When the Woodsmith Project moves into production these benefits will be even more significant. At the time of the planning application for the new mine located in the North Yorks Moors National Park these benefits were forecasted to include:
- 1040 direct jobs and 1,100 indirect jobs
  - Annual contribution to the UK GDP of £1billion per annum (measured as Gross Value Added)
  - Exports of £1.2 billion per annum, representing a 4% reduction in the UK's trade deficit.
- 3.11 The importance of the Woodsmith Project both regionally and nationally is widely recognized<sup>5</sup> and has been the rationale for the grant of the necessary planning permissions within the North York Moors National Park and also the approval of the Anglo American DCO.
- 3.12 The Anglo American DCO included powers of compulsory acquisition based on having met the test of there being a compelling case in the public interest, contained in Section 122 of the Planning Act 2008. It would therefore be perverse for another NSIP promoter to assert that it had a compelling case in the public interest to acquire compulsory acquisition powers over land/rights which could frustrate the delivery of the Anglo American DCO.
- 3.10 Anglo American's position is therefore that it strongly objects to compulsory powers sought in respect of the Anglo American interests both in terms of the principle of such rights being granted over land/rights required to deliver another NSIP and also in respect of the wide scope of powers sought in the absence of adequate detail of the scheme.

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<sup>4</sup> The Woodsmith Project in its entirety is explained in Section 3 of the Written Representations submitted on behalf of Anglo American (REP2-073)

<sup>5</sup> See for example response on behalf of Sembcorp Utilities UK Limited to EXA First WQ GEN 1.3.8 ii) item 2) (REP2 – 099)



- 3.11 Anglo American reserves its position in respect of other provisions within the draft DCO submitted at Deadline 2. Discussions are progressing on the appropriate form of protective provisions, however, if agreement cannot be reached then Anglo American will submit the form of protective provisions it feels appropriate in time for consideration during the course of the Examination.