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# Net Zero DCO

**RESPONSE TO SECOND WRITTEN QUESTIONS AND UPDATE**

On behalf of

**ANGLO AMERICAN CROP NUTRIENTS LIMITED**

**(REF: 20029897)**

**DEADLINE 6**

**23 AUGUST 2022**

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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 is, along with the other relevant companies, to be generically known as “Anglo American”.
- 1.3 Further representations (REP3-016) were submitted in response to the draft DCO submitted on behalf of NZT at Deadline 2 (REP2-002) and included comments on the contents of the Compulsory Acquisition Schedule (REP2-014).
- 1.4 These submissions:
  - provide an update on the continuing discussions between the Applicant and Anglo American; and
  - respond to the Second Written Questions posed by the Examining Authority (PD-016)

## 2. UPDATE ON DISCUSSIONS

- 2.1 The Applicant and Anglo American have progressed discussions on a side agreement and protective provisions and a large measure of agreement has been reached. Meaningful dialogue between respective property lawyers has also commenced.
- 2.2 It is hoped, and expected, that all outstanding matters can be resolved, however, if that does not prove to be the case and it is not possible to reach full agreement Anglo American will supply to the Examining Authority the protective provisions which it believes would be appropriate for inclusion with the DCO within the timescale of the Examination.

### 3 RESPONSE TO SECOND WRITTEN QUESTIONS (PD-016)

**GEN.2.3 – The SoCG between the Applicants and Anglo American plc [REP1-030] includes a plan at Appendix A1 providing a comparison of Net Zero Teesside (NZT) DCO Order Limits and American Overlapping interests. In their response to ExQ1 GEN.1.39 [REP2-073], Anglo American provided some details regarding the current stage of construction of the Woodsmith Project and the Non-Material Change application to the York Potash Harbour Facilities Order 2016.**

**i) Can Anglo American provide any updates to these matters, including an anticipated construction start date for the harbour.**

a) The construction of the remainder of the Woodsmith Project is proceeding apace, as described in REP2-073. The last piece of the project, the harbour, is programmed to commence construction in late 2022 or Q1 2023.

b) Notwithstanding the lack of any objection to the application for a non-material change submitted on 9 February 2022 (which only deals with a revised phasing for approval of details for Phase 1 of the harbour) the Department of Transport are still unable to provide any indication as to when a decision will be made on the application or any reason for any delay.

**ii) Are the Applicants aware of any implications for the current programme of construction of Proposed Development?**

Question addressed to the Applicants

**iii) In respect of Appendix A1, due to its size the key is difficult to read and therefore the Applicants are asked to reproduce the key separate from the plan.**

a) It is understood that an updated plan and separate key is to be provided by the Applicants.



**BIO.2.8 - In referring to York Potash construction works, the HRA Report Table 7.1 (page 72) [REP3-002] states that that the project is expected to be constructed in the next 1-2 years which is before any works on the Proposed Development begin. Please clarify the current timings for construction of the two projects.**

- a) The overall anticipated construction period for the harbour and conveyor is three years (Phase 1 being 19 months and Phase 2 17 months). However, Phase 2 of the works (an extended quay and additional conveyor capacity) will not necessarily follow straight after the completion of Phase 1. Requirement 3 (3) of the York Potash DCO simply stipulates that if Phase 2 does not commence within six years of the completion of Phase 1 then further environmental assessment may be required.
- b) Accordingly, it has always been considered possible that elements of both the Woodsmith Project and the NZT project would be under construction at the same time. Certainly, both projects will be in operation at the same time. It is for this reason that Anglo American have sought as many details as possible of the proposed works and have engaged in, and applied significant resources to, technical discussions with the Applicant.
- c) The side agreement and protective provisions currently under discussion are principally aimed at providing the appropriate safeguards to ensure the two projects can be delivered and operated together. They deal specifically with the interfaces between the projects and include detailed mechanisms to ensure that the projects can be constructed and operated in a co-operative and compatible manner. If difficulties are encountered the provisions under discussion ensure there are routes to resolve those difficulties. The protective provisions currently in the Draft DCO (REP5-002) fall very far short of securing that position. Discussions on the side agreement and protective provisions have progressed well and at this stage Anglo American confident that agreement will be reached and an agreed set of protective provisions will be submitted to the Examining Authority.



**CA2.10- Could Anglo American provide comments on the Applicants' post-hearing submission [Appendix 1, section 1.3 REP5-026] regarding a justification for corridor widths.**

- a) Further discussions have taken place between Anglo American and the Applicants since Appendix 1 was submitted, which have been productive. Agreement has been reached that, in respect of Works No 2a, (the buried gas pipeline) the permanent easement figure can be reduced from the 7m figure referred to in paragraph 1.3.4 on page 8 of Appendix 1 REP5-026 and this will be reflected in the property agreements to be entered into.
- b) In respect of Works 5c and 6 (the above ground water pipes and CO2 pipes) the Applicant has confirmed that the permanent easement widths sought will be OD (the outside diameter of the pipe), which is acceptable to Anglo American.
- c) Provided the property agreements are concluded as specified above (and discussions are now progressing), the position will be acceptable to Anglo American.

**CA2.13 - Do any APs have any concerns that they have not yet raised about the legitimacy, proportionality or necessity of the CA or TP powers sought by the Applicant that would affect land that they own or have an interest in?**

No concerns over and above the concerns raised in previous representations.

**CA2.16 - The Applicants' Written Summary of Oral Submissions for CAH2 [Item 7, REP5-026] confirms the statutory undertakers to whom standard protective provisions set out in Parts 1 and 3 of Schedule 12 of the dDCO would apply to, and bespoke protective provisions at Parts 10, 11, 13, 25 and 26 which apply to statutory undertakers who are listed in the Book of Reference. Are any APs aware of any additional statutory undertakers to whom protective provisions should apply?**

Anglo American is not aware of any additional statutory undertakers, but it has not investigated the position.



**DCO 2.7 The Applicants' Comments on D3 Submissions and Updates to Previous Submissions [REP4-025] refer to Anglo American's D3 submission [REP3-016]. Paragraph 2.2.4 explains that the "mirror" protection in the York Potash Order has been deleted on the basis that it serves no purpose following the expiry of Anglo American's powers of compulsory acquisition under Article 27 of the York Potash Order. Additionally, paragraph 2.2.7 states that following the expiry of Anglo American's compulsory acquisition powers, the Applicants' position is that the retention of paragraph 193 of Part 17 of Schedule 12 of the DCO would in effect, give Anglo American a veto over the exercise of compulsory acquisition powers over the shared land in circumstances where there is no need for a reciprocal safeguard for the benefit of the Applicants. Consequently, the Applicants' position is that the deletion of paragraph is both reasonable and necessary.**

**Anglo American is asked to specifically comment on these provisions and to confirm whether or not they are acceptable.**

- a) There have been three different explanations provided to Anglo American by the Applicant for the deletion of, what was paragraph 193 in draft DCO REP2-002, in respect of the exercise of compulsory acquisition powers.
  - in an e mail dated 9 June 2022 Anglo American were advised that the paragraph was being deleted because it had been included in error
  - in the Schedule of Changes document (REP2-004) it was said that it had been deleted because the Applicants have not yet concluded agreements with the relevant parties
  - in the Applicants' Comments on D3 Submissions and Updates to Previous Submissions (REP4-025) the reason for deletion was said to be due to the expiry of Anglo American's compulsory acquisition powers under its DCO.
- b) It appears from the submissions in REP4-025 that the Applicant is now advancing only the explanation that it does not need to include the paragraph which protects the delivery of the Woodsmith Project since it needs no such protection from Anglo American.
- c) Anglo American devoted very significant time and financial and other resources to acquire the necessary interests in land to demonstrate to its Examining Authority that it could be confident

in the ability to deliver the scheme. It has also been important in respect of investment decisions to ensure that Anglo American is not reliant on any additional acquisition to deliver the scheme. Indeed, due to the extensive agreements reached, and land and rights acquired the compulsory powers of acquisition sought and included in the York Potash Order were very limited and it has not been necessary to use them.

- d) Anglo American is not therefore reliant on compulsory powers for the delivery of its scheme. It has acquired sufficient land, and interests in land, to secure its position. The ability to deliver the Woodsmith Project is however based on the control of the land, and the interests in land, that have been acquired. The ability to exercise compulsory purchase powers and interfere with those interest, which were specifically acquired to enable the delivery of a nationally significant infrastructure project, is inappropriate. That is especially the case where there has been full co-operation from the party over whom such compulsion is sought.
- e) The Applicants state in their submissions:

*“The reciprocal protections above were intended to manage the interaction between two significant infrastructure projects, where each benefitted from statutory powers of compulsory acquisition that could be exercised over the same land. In these circumstances, the Applicants considered that the reciprocal protections provided an effective safeguard that ensured each projects could control how powers of compulsory acquisition were exercised in the shared land, and that overlapping powers of land assembly would not be at odds with each other and jeopardise the delivery of the projects.” (Para 2.2.5 REP4-025)*

It seems now that the Applicant views the reciprocity approach as only applicable if it assisted the delivery of the NZT Project. If reciprocity between the two NSIP’s is important (and it is the basis of the continuing discussions on the side agreement and protective provisions) then the Applicant would not seek to have controlling compulsory purchase powers over land owned or controlled by Anglo American since Anglo American has no such reciprocal powers. An even playing field is not being sought by the Applicant. Rather, it is a material advantage, potentially to the detriment of the delivery of the Anglo American NSIP.

It is not appropriate for a party delivering an NSIP to be disadvantaged in this way simply because it put time, effort and

resources into acquiring all the interests it needed and did not need to exercise powers of compulsory acquisition.

- f) The compulsory powers sought are wide ranging and affect substantial areas of land, with the actual land to be the subject of the exercise of powers often not being crystallised until post approval and further design stages. This leaves substantial uncertainty as to whether or not the exercise of the compulsory powers over land in which Anglo American has an interest might prejudice the delivery and/or operation of the Anglo American DCO. The importance of the Woodsmith Project and the harbour, being the last piece in the jigsaw, is set out in REP2 -073 and REP3-016.
- g) The protective provisions included in the latest DCO (REP5-002) do not protect the interests of the delivery of the Anglo American NSIP. They are substantially generic in nature and wholly fail to grapple with the areas of interaction and the uncertainty of further design iterations. The Examining Authority will appreciate this when they see the more bespoke protective provisions currently under discussion – either when they are submitted as agreed protective provisions or submitted on behalf of Anglo American if there is failure to agree.
- h) The property agreements currently under discussion will ensure that the rights needed by the Applicant over land and land interests owned by Anglo American are crystallised and secure in a manner which is compatible with the delivery and operation of the Woodsmith Project. Importantly, it has always been made clear to the Applicant by Anglo American that it would co-operate with the Applicant in entering into the necessary property agreements to enable the Applicant to deliver its project. There is no need, or justification, therefore for the Applicant to seek powers of compulsory acquisition. Unfortunately, time was wasted between February and June of this year waiting for the production of draft property agreements by the Applicant, nonetheless it is anticipated that suitable agreements will be entered into within the timescale of the Examination
- i) Anglo American is now accommodating a new neighbour and large scheme which were not anticipated at the time that it obtained its DCO. Anglo American have been neighbourly and co-operative and wish both NSIPs to move forward together in a spirit of mutual support. Giving the Applicant compulsory powers of acquisition over substantial areas of land owned or controlled by Anglo American where Anglo American has no equivalent





powers over the Applicant's interests is not ensuring reciprocity or equivalence and thus risks undermining that mutual support and co-operation.