

Net Zero DCO

JOINT STATEMENT BETWEEN

**THE APPLICANTS AND ANGLO AMERICAN CROP NUTRIENTS
LIMITED (REF: 20029897)**

DEADLINE 12

1 NOVEMBER 2022

1. As set out in previous submissions the Applicants and Anglo American have been progressing a side agreement. Good progress is being made however the agreement (which is to include agreed forms of property agreements) is not yet completed and it has therefore been agreed that the Applicant and Anglo American would make a joint submission to the Examination in respect of the protective provisions to be included in the NZT Order, which have been developed to reflect the progress that has been made.
2. The protective provisions concerned are those for the benefit of NZT to be incorporated into the York Potash Order (Sch 3 NZT DCO) and those for the benefit of Anglo American in the NZT Order (Sch 12 Part 17).
3. The position between the Parties in respect of the versions of the protective provisions included in the Applicant's draft DCO submitted at Deadline 12
 - a. is that the version of the protective provisions included for the benefit of NZT in Schedule 3 of the Applicant's DCO are agreed in their entirety
 - b. the version of the protective provisions included for the benefit of Anglo American in Schedule 12 Part 17 are agreed between the Parties, save for one matter discussed below.
4. Both sets of protective provisions, including, in particular, those related to indemnities, have been developed alongside the wider suite of agreements between the Parties, and so can be considered to be unique and bespoke to the negotiations between the Parties.
5. The one matter not agreed between the Parties is in relation to whether or not the protective provisions for the benefit of Anglo American should include a provision requiring Anglo American's consent to the Applicants' use of land related compulsory powers in the DCO.
6. The Applicants' position is that no such provision should be included (acknowledging that they were included in the Deadline 8 DCO, in error), for the reasons set out in its Deadline 4 submission - Applicants' Responses to Deadline 3 Submissions July 2022 [REP4-025].
7. Anglo American's position is that such a provision should be included, as it was in the first draft DCO (APP-05) and also the draft DCO submitted at Deadline 8 REP8-003, for the reasons set out in
 - a. the response by Anglo American to the Deadline 2 submissions of the Applicant (REP3 – 16) See paragraphs 3.1 – 3.10; and
 - b. the response by Anglo American to ExQ2, DCO2.7 (REP6-126).
8. On this basis Anglo American considers that paragraphs (j) to (s) in the 'Regulation of Powers Over the Shared Area' paragraph within the Schedule 12 Protective Provisions, highlighted in yellow below, should be reinstated with the relevant paragraph reading as in the extract below:

—(1) The undertaker must not exercise the powers granted under the Order so as to hinder or prevent the construction, operation or maintenance of the Anglo American Specified Works without the prior written consent of Anglo American.

(2) The undertaker must not exercise the powers under any of the articles of the Order specified in sub-paragraph (3) below over or in respect of the Shared Area otherwise than with the prior written consent of Anglo American.

(3) The articles referred to in sub-paragraph (2) above are—

- (a) article 10 (power to alter layout etc. of streets);
- (b) article 11 (street works);
- (c) article 12 (construction and maintenance of new or altered means of access);
- (d) article 13 (temporary stopping up of streets, public rights of way and access land);
- (e) article 14 (access to works);
- (f) article 16 (traffic regulation);
- (g) article 17 (discharge of water);
- (h) article 18 (felling or lopping of trees and removal of hedgerows);
- (i) article 19 (protective work to buildings);
- (j) article 20 (authority to survey and investigate the land);
- (k) article 22 (compulsory acquisition of land);
- (l) article 23 (power to override easements and other rights);
- (m) article 25 (compulsory acquisition of rights etc.);
- (n) article 26 (private rights);
- (o) article 28 (acquisition of subsoil and airspace only);
- (p) article 30 (rights under or over streets);
- (q) article 31 (temporary use of land for carrying out the authorised development);
- (r) article 32 (temporary use of land for maintaining the authorised development); and
- (s) article 33 (statutory undertakers).

(4) In the event that Anglo American withholds its consent pursuant to sub-paragraph 0 above it must notify the undertaker in writing of the reasons for withholding such consent and (if applicable) the time period during which such consent will be withheld.

(5) Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker must not appropriate or acquire or take permanent or temporary possession of any land interest held by Anglo American in any plots shown on the land plans, or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right in such land.

9. Whilst the Parties anticipate that agreement will be reached on this matter in the context of the wider suite of documents being discussed, in the absence of this, and prior to any update that may be able to be provided to the Secretary of State during the Recommendation and Decision periods; the Parties are content that this is a matter for the Secretary of State to determine, on the basis of those previous submissions.