

Rammiel Burnie
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Date: 21 October 2024
Our ref: 50303/24/HS/TK/32983235v2
Your ref: 20049353 Anglo American

Dear Rammiel

H2 Teesside Examination: Deadline 3 Submissions

We write on behalf of our client, Anglo American Woodsmith (Teesside) Limited; Anglo American Woodsmith Limited; and Anglo American Crop Nutrients Limited (collectively 'Anglo American').

Following the publication of materials from Deadline 2, and in advance of the Compulsory Acquisition Hearing and Issue Specific Hearing 2 on 13th and 14th November 2024, Anglo American is submitting the following as part of the Deadline 3 submissions (21st October 2024):

- Confirmation that Anglo American wish to participate at the Compulsory Acquisition Hearing (CAH), with respect to its land interests and the Applicant's proposals;
- Confirmation that Anglo American wish to participate at Issue Specific Hearing 2, with respect to the H2 Teesside draft DCO ("dDCO");
- Comments on the dDCO and materials published following Deadline 2; and
- An update on negotiations to date with the Applicant to establish and agree protective provisions and other necessary agreements. Anglo American maintains its concerns regarding a lack of clarity and information, as previously identified in Written Representations submitted at Deadline 2.

Examination

Anglo American was represented at Issue Specific Hearing 1 in August 2024, with a summary of oral representations submitted for Deadline 1. At Deadline 2, Anglo American submitted Written Representations to provide detail on project overlaps and the status of negotiations.

Anglo American maintains its position as being directly impacted by the H2 Teesside DCO. Overlaps between the H2 Teesside DCO and the York Potash consented DCO remain, including the compulsory acquisition of Anglo American's land interests. Anglo American maintains its position as of Deadline 2, with ongoing concerns regarding a lack of project clarification whilst noting that negotiations have yet to result in confirmed agreements to ensure the two projects can coexist. Anglo American therefore

wishes to participate at the Compulsory Acquisition Hearing on Wednesday 13th November 2024 and Issue Specific Hearing 2 on Thursday 14th November 2024. Detail on the status of negotiations and initial comments on the H2 Teesside dDCO follow below.

H2 Teesside Draft DCO

Environmental Permit

As part of Anglo American's Written Representations submitted at Deadline 2, a request was made for an amendment to the dDCO to account for Anglo American's concerns regarding compulsory acquisition of land in relation to Environmental Permits ("EP"). Article 48 was inserted into the dDCO as part of the Applicant's submission at Deadline 2. Anglo American is not satisfied with this provision for the reasons outlined below.

The new clause 48 would not effectively avoid Anglo American's liability under the existing EP, should adverse effects (e.g. contamination) be caused by activity further to the works authorised by the dDCO, because the liability lies with AA unless the EP is surrendered, revoked or varied in accordance with the processes set out in The Environmental Permitting (England and Wales) Regulations 2016.

A DCO may seek to remove statutory consent or authorisation to the extent the consent or authorisation is listed in Part 1 of the Schedule to The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2015, and only with the consent of the 'relevant body' (i.e. the permitting body). The 2016 Regulations are listed in Part 1, however Anglo American raises the following queries for the Applicant:

- a The EP is concerned with the control of leachate and landfill gas – please could you clarify how activity of this nature from the proposed development could be distinguished from Anglo American's existing operations?
- b How does the Applicant propose that the disapplication of consent (under s.150 2008 Act) in terms of its own activity (as distinct from AA activity) operate given that the EP predates the Application?
- c Notwithstanding (b), we note that article 9 of the dDCO seeks to disapply consent for an environmental permit only in respect of flood risk activity.
 - i How does the Applicant propose that article 48 operate in the context of the EP given that article 9 does not seek to disapply the requirement for an environmental permit beyond flood risk activity?
 - ii It can be assumed that Environment Agency consent must be secured to achieve the intention of new article 48. Has this consent been sought, and how does the Applicant consider the new article 48 will operate should Environment Agency consent not be secured?

To legitimately remove AA liability under the EP in respect of works authorised by the dDCO, H2T should seek to secure the transfer of the EP.

Schedule 2 of the dDCO

Requirement 33

Anglo American also wishes to object to the amended Requirement 33 of the dDCO, which does not address its concern regarding Requirement overlaps with the Net Zero Teesside (NZZ) DCO. The H2T dDCO seeks powers to construct and operate a Scheme which, although connected, is separate and distinct from the NTZ scheme. The requirements included in Schedule 2 to the dDCO must be “*in connection with the development for which consent is granted*” (Planning Act 2008, section 120(1)) and therefore it is not legitimate that any such requirement can be discharged by virtue of actions to discharge a requirement under a separate DCO.

Anglo American maintains the comments submitted at Deadline 2 in its Written Representations as regards Requirements 18, 22, 25, 28 and additional requirement (paragraph 1.40 Written Representation).

Schedule 3

Schedule 3 which purports to amend the York Potash DCO remains blank. Anglo American continues to seek from the Applicant confirmation as to what is proposed in this Schedule.

The dDCO does not include provisions for the protection of Anglo American, notwithstanding the Applicant’s recognition of the extensive interface of the projects. Anglo American continues to seek confirmation that the dDCO will include sufficient and adequate protective provisions for the benefit of Anglo American. An update on the status of achieving required agreements is included below.

Status of Negotiations


Anglo American maintains its position as of Deadline 2 regarding the status of negotiations; acknowledging that discussions have begun, but agreement is yet to be reached. To date, this has not progressed beyond receipt of draft Heads of Terms for required land arrangements. Anglo American awaits sight of the following:

- Draft land arrangements;
- Protective Provisions;
- HoTs for a Side Agreement to provide for interface measures; and,
- Finalisation and agreement on the Statement of Common Ground.

Anglo American continues to await further detail and clarification of works to take place in identified land overlaps, noting that the Integrated Works Plans (REP2-003 Doc Ref. 2.4a) and Interrelation Report (REP2-038 Doc Ref. 8.14) uploaded as part of the Applicant’s Deadline 2 submission do not yet provide this detail. Anglo American acknowledges the Applicant’s response to its Relevant Representations submitted at Deadline 2 (Response to ExQ1 Compulsory Acquisition and Temporary Possession, REP2-024 Doc Ref. 8.11.6) noting that agreements at identified interfaces require further negotiation.

As stated in Anglo American's Written Representation submitted for Deadline 2, Anglo American acknowledges and welcomes the potential of reductions to the Order Limits as part of the Applicant's upcoming Change Request. Forthcoming amendments to the scheme may require alterations to draft or final agreements, and Anglo American maintains the right to comment as the scheme progresses.

Yours faithfully

A black rectangular redaction box covering the signature of Tabitha Knowles.

Tabitha Knowles
Associate Director
BAviation MPlan FRAeS