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**Date:** 20 November 2024  
**Our ref:** 50303/24/HS/AA/33169936v1  
**Your ref:** 20049353 Anglo American

Dear Rammiel

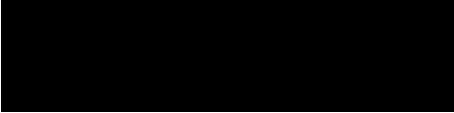
## **H2 Teesside Examination: Deadline 4 Submissions**

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'), registered as an Interested Party for the above application (20049353).

Following the Compulsory Acquisition Hearing ("CAH1") and Second Issue Specific Hearing ("ISH2") on the 13<sup>th</sup> and 14<sup>th</sup> November 2024, Anglo American is submitting the following as part of the Deadline 4 submissions (20<sup>th</sup> November 2024):

- Written summaries of its oral submissions made at the Compulsory Acquisition Hearing on 13<sup>th</sup> November 2024. These are provided at Annex 1 of this letter; and,
- Written summaries of its oral submissions made at the Second Issue Specific Hearing on 14<sup>th</sup> November 2024. These are provided at Annex 2 of this letter.

Yours faithfully

  
**Hugh Scanlon**  
Senior Director  
BA (Hons) MPhil MRTPI

## **ANNEX 1: Written summary of oral submissions made at the Compulsory Acquisition Hearing on 13<sup>th</sup> November 2024 – Deadline 4 submission**

Anglo American Woodsmith Limited, Anglo American Woodsmith (Teesside) Limited and Anglo American Crop Nutrients Limited (together “Anglo American”) virtually attended the Compulsory Acquisition Hearing (“CAH1”) with respect to the H2 Teesside DCO application on Wednesday 13<sup>th</sup> November 2024. Anglo American was represented by Eversheds International. A summary of Anglo American’s oral submissions, together with summary slides prepared for the CAH1, is set out below:

- 1 A plan showing the dDCO Order Limits overlaid on a plan of Anglo American land interests and the York Potash Harbour Facilities Order 2016 demonstrates the extensive impact that the Application proposals have on Anglo American’s consented Nationally Significant Infrastructure Project. The three main points of interface are (i) Bran Sands Frontage; (ii) Eastern edge of Bran Sands; (iii) Redcar Bulk Terminal. The impact is such that should the H2 Teesside dDCO not include appropriate protective provisions for the protection of Anglo American’s consented operations in the area, and also appropriate agreements made to regulate the delivery of either project at the points of interface, the Application proposals potentially jeopardise the successful delivery of the York Potash project.
- 2 Anglo American strongly objects to the compulsory acquisition of its land interests that benefit from development consent to deliver a nationally important scheme for the mining and export of polyhalite (York Potash DCO 2016). It is pointed out by the Applicant’s Counsel that protective provisions for the protection of operational land (such as Anglo American owned land) adds to the compelling public interest case in favour of the dDCO including compulsory powers over third party land. However, the Applicant has not included any provisions for the protection of Anglo American in the dDCO. Further, Anglo American has not received draft Protective Provisions, nor Side Agreement terms for the regulation of the interface of the York Potash DCO project, and the proposed development, Anglo American is naturally concerned about its ability to deliver its project and is concerned about there being little to no engagement by the Applicant to date to agree such terms. This being the case, Anglo American does not agree that the Applicant has made its case that the proposed compulsory acquisition powers are justified, and in the public interest.
- 3 Interface 1 (Bran Sands Frontage):**
  - a At Bran Sands Frontage, the dDCO seeks extensive powers to compulsorily acquire land and rights in land, as well as rights to take temporary possession. Anglo American understand that the area under the Tees, proposed for compulsory acquisition of new rights, is intended to be the site of micro-tunnelling to accommodate a H2 pipeline below the river Tees. Anglo American submits that the area identified is substantially in excess of that required and as such the full extent of the powers sought are not justified. Anglo American’s operations at the Bran Sands Frontage include the essential development of the frontage for the export of polyhalite. In the absence of provisions to protect Anglo American land interests in this area from the compulsory powers sought in the dDCO, Anglo American submits that the Applicant has not satisfied the test that the powers are in the public interest.
  - b In addition, the dDCO seeks powers for the permanent acquisition of an area of Anglo American owned land for the construction of a shaft, as well as temporary possession of land

for construction purposes. The proposals potentially inhibit Anglo American access to the frontage, therefore preventing it from implementing its own consented NSIP. In addition, the extent of the compulsory acquisition sought, and H2T construction operations in the area risk putting Anglo American in breach of its liabilities under the existing Environmental Permit which covers the whole of the lagoon area.

- c Matters relating to the Environmental Permit will be further discussed in the Issue Specific Hearing on 14th November 2024.
- d Anglo American has an existing easement with the Crown Estate at the Bran Sands frontage. The dDCO seeks powers to compulsorily acquire new rights in that area which, in absence of suitable arrangements to manage project interface, risk preventing Anglo American continuing the existing dredging arrangements with Crown Estate. Anglo American require clarity on how their existing operations, and management of dredge pockets, might be affected.

#### **4 Interface 2 (Eastern Bran Sands)**

- a York Potash DCO includes the power to construct and operate a conveyor for the transport of polyhalite. The dDCO seeks power to acquire new rights over this corridor. Anglo American requires appropriate arrangements for interface, in the absence of which the compulsory powers are not justified, nor is there a compelling case in the public interest.

#### **5 Interface 3 (Red Car Bulk Terminal (“RBT”))**

- a Anglo American has existing commercial arrangements in place with RBT for operations out of the Terminal. Anglo American submits that in the absence of provisions for the protection of its operations in the area, its ability to deliver its own scheme of national significance are substantially compromised.

## **ANNEX 2: Written summary of oral submissions made at Issue Specific Hearing 2 on 14<sup>th</sup> November 2024 – Deadline 4 submission**

Anglo American Woodsmith Limited, Anglo American Woodsmith (Teesside) Limited and Anglo American Crop Nutrients Limited (together “Anglo American”) virtually attended Issue Specific Hearing 2 (“ISH2”) with respect to the H2 Teesside DCO application on Thursday 14<sup>th</sup> November 2024. Anglo American was represented by Lichfields. A summary of Anglo American’s oral submissions is set out below:

### **ITEM 3: Articles and Schedules of the dDCO**

Anglo American maintains its position as being directly impacted by the H2 Teesside Project. Overlaps between H2 Teesside 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 3 (REP3-012), with ongoing concerns regarding a lack of project clarification – and that negotiations have yet to result in confirmed agreements to ensure the two projects can coexist.

With respect to the dDCO, Anglo American has concerns about: Article 48; Schedule 2 – covering the Requirements; and Schedule 3 – covering Protective Provisions. Schedule 2 is addressed under Item 4 of the Agenda.

#### **Article 48 – Environmental Permits**

As part of Anglo American’s Written Representations submitted at Deadline 2 (REP2-074), a request was made for an amendment to the dDCO to account for Anglo American’s concerns regarding compulsory acquisition of land and Environmental Permits.

As noted by the Applicant during the ISH2, Article 48 was inserted into the dDCO as part of the Applicant’s submission at Deadline 2 (REP2-005). Anglo American is not satisfied with this provision; a point which was made by Anglo American at Deadline 3 (REP3-012).

This new clause 48 would not remove Anglo American’s liability under the existing Environmental Permit, should adverse effects (e.g. contamination) be caused by activity further to the works authorised by the dDCO. Liability remains with Anglo American unless the Environmental Permit is surrendered, revoked or varied in accordance with the processes set out in The Environmental Permitting (England and Wales) Regulations 2016. To legitimately remove Anglo American’s liability under the Environmental Permit, in respect of works authorised by the dDCO, the Applicant should seek to secure the transfer of the Environmental Permit.

Anglo American has raised several queries for the Applicant in its submission at Deadline 3. During the ISH2, the Applicant noted its intent to provide a response to these queries at Deadline 4. Anglo American’s queries are set out below:

- a The EP deals 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 Anglo American activity), operate, given that the Environmental Permit 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 Environmental Permit 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?*

### **Schedule 3 – Protective Provisions**

To confirm, Anglo American now has receipt of the first draft of Protective Provisions (issued 12 November 2024; received 13 November 2024). Anglo American will review this draft and provide its comments to the Applicant in advance of Deadline 5 (18 December 2024).

In the meantime, Anglo American's position remains as per the submissions made at Deadline 2 (REP2-074) and Deadline 3 (REP3-012), in summary being:

- Schedule 3 of the dDCO which purports to amend the York Potash DCO remains blank. As it stands, 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 will be seeking confirmation that the dDCO will include sufficient and adequate protective provisions for the benefit of Anglo American.

Anglo American acknowledges that the Applicant submitted the Net Zero Teesside Protective Provisions to the Examining Authority at Deadline 1 (REP1-009), as an example, to show proposed approach and structure. Anglo American would like to reiterate that whilst helpful to show initial direction of travel, bespoke Protective Provisions will be required. A review of the draft, now received, will be that first step to understand whether the Protective Provisions proposed are sufficient and adequate.

### **ITEM 4: Schedule 2 of the dDCO – Requirements**

Anglo American maintains its comments submitted at Deadline 2 (REP2-074), with respect to Requirements 18, 22, 25, 28 and an additional proposed requirement. Anglo American also maintains with its comments submitted at Deadline 3 (REP3-012) with respect to the amended Requirement 33.

At Deadline 3, the Applicant provided initial comment in response to Anglo American's comments on Requirements 18, 22, 25 28 and the additional proposed Requirements (REP3-006).

### ***Requirement 18***

This relates to a **Construction traffic management plan**: Anglo American seeks to be included as a specified party in 18(f) such that the Applicant is required to engage with it to manage cumulative construction transport impacts – when traffic management is required.

The Applicant has suggested that Anglo American not be included in engagement on cumulative construction transport impacts, noting that this is for bp projects only. Anglo American is of the view that engagement is required and would welcome further dialogue with the Applicant on this matter.

### ***Requirement 22***

This relates to **Restoration of land temporarily used for construction**: Anglo American seeks to ensure that at points of interface between Anglo American's operations and the Proposed Scheme, it is consulted as regards scheme of restoration for land used temporarily (including remediation of contamination). Anglo American's role in such consultation will be important in the context of its liabilities under the Environmental Permit.

The Applicant has suggested that this matter can be addressed via Protective Provisions. Anglo American maintains its concern with this Requirement – until the Protective Provisions have progressed sufficiently and adequately to understand if this matter can be resolved via Protective Provisions.

### ***Requirement 25***

This relates to the need for a **Local liaison group**: Anglo American considers it important to be part of the liaison group as an interest party with significant operations in the area. Anglo American seeks to be included in the liaison group which is proposed to include other major operations in the area (being Net Zero Teesside and HyGreen Teesside) as regards matters relating to the Proposed Scheme.

At Deadline 3, the Applicant has noted Anglo American's involvement would be welcomed. If included, this would address our previous concerns with this Requirement.

However, during the ISH2, the Applicant and Examining Authority clarified that this forum is for local residents rather than corporate parties. An arising action is for Anglo American and the Applicant to discuss and agree an alternative.

### ***Requirement 28***

This relates to **Decommissioning**: Anglo American has a vested interest in ensuring that any decommissioning works do not adversely impact on its operations, and seeks to be consulted under Requirement 28 unless this is otherwise provided for in appropriate Protective Provisions.

Similar to Requirement 22, the Applicant has suggested that this matter can be addressed via Protective Provisions. Anglo American maintains its concern with this Requirement – until the Protective Provisions have progressed sufficiently and adequately to understand if this matter can be resolved via Protective Provisions.

### ***Requirement 33***

This relates to **Disapplication of requirements discharged under The Net Zero Teesside Order 2024**: Anglo American objects to the amended Requirement 33 – as it does not address its concern regarding Requirement overlaps with the Net Zero Teesside DCO. The H2T dDCO seeks powers to construct and operate a Scheme which, although connected, is separate and distinct from the Net Zero Teesside scheme. With reference to the Planning Act s120(1), the requirements included in Schedule 2 to the dDCO must be “in connection with the development for which consent is granted” - therefore it is not legitimate that any such requirement can be discharged by virtue of actions to discharge a requirement under a separate DCO.

### ***Additional Requirement***

Anglo American has proposed an additional requirement within Schedule 2 of the dDCO - to the effect that the authorised works should not be brought into use until such time as a scheme for management and mitigation of noise during operation is consistent with principles of the Environmental Statement. This is relevant particularly in the current absence of an assessment of the cumulative environmental effects of the Proposed Scheme taking Anglo American’s operations into account.

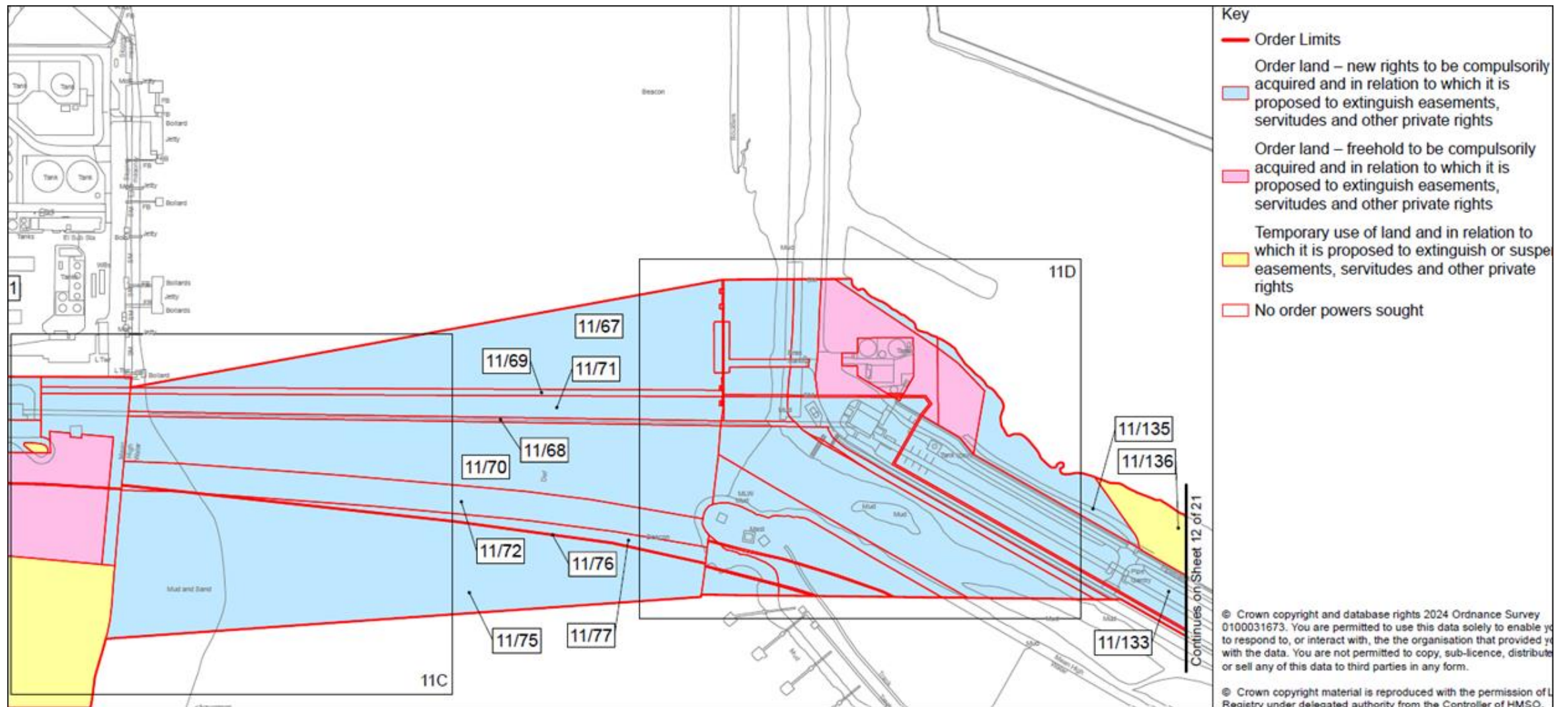
Similar to Requirement 18, Anglo American would welcome further dialogue on this matter with the Applicant.





# Interface 1: Bran Sands Frontage

## Location and manner of land interest



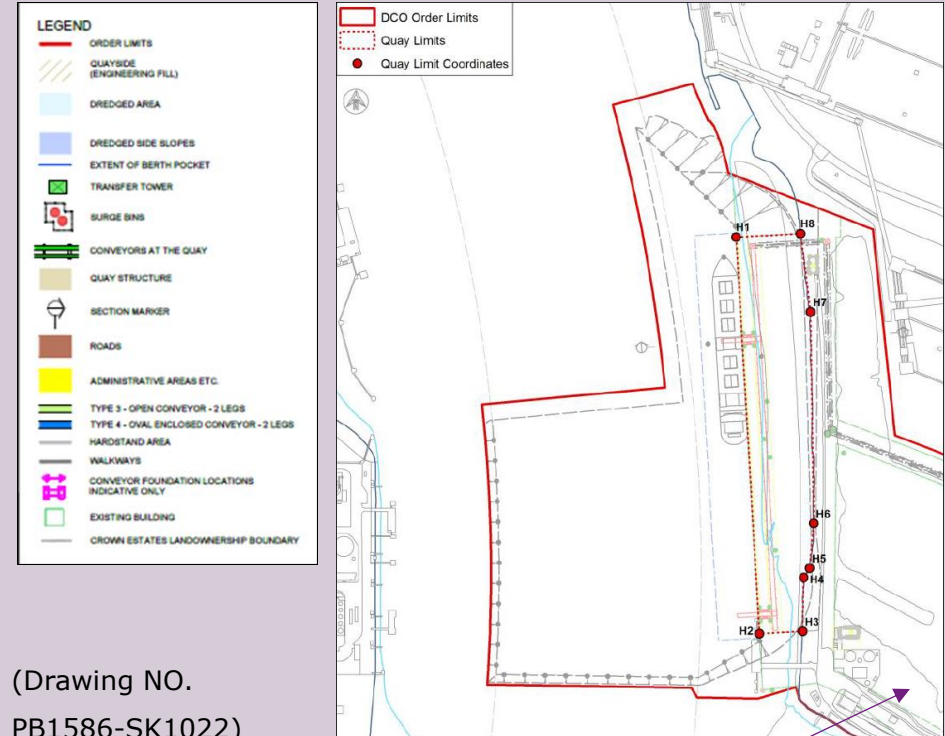
# AA's objections/ concerns regarding CA/TP

AA objection/ concerns	Images
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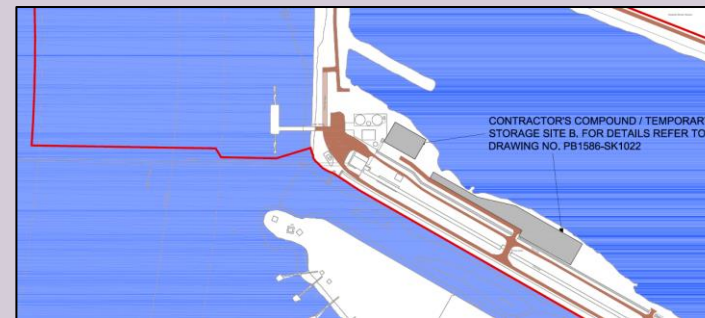
- Freehold Ownership and all land within consented YP DCO. No approach has been made by H2 to acquire rights whether this be leasehold or other (easement etc).
- Access to frontage (road impact). H2 are looking to compulsory acquire rights over the main access to the frontage, as well as area of full acquisition and temporary possession. This is AA's main access to the frontage which is essential to maintain at all times.
- Contractors' storage and temp storage area in the same area as compulsory acquisition of rights and temporary possession sought under H2T dDCO.
- Land all within Environmental Permit boundary (lagoon side).
- Dredge Pocket impacts need to be better understood (Tees side). No detail to date.
- DCO Habitat development requirements in lagoon.
- Completion of YP DCO compromised by H2T proposals in absence of appropriate protections.



## YPL (AA) Quay Limits (p52 of the YPL Order)



(Drawing NO. PB1586-SK1022)



# Bran Sands Freehold and Environmental Permit Boundary

## 1. Anglo American freehold (red outline)

Note: Red outline is also the Environmental Permit boundary

## 2. AA dredging easement with The Crown (pink outline).

## 3. Northumbrian Water Ltd leasehold (blue hatch)

## 4. Sembcorp pipeline leasehold (green hatch)

AA access to the frontage (F/H interest)

## 5. Bran Sands gas management (orange)

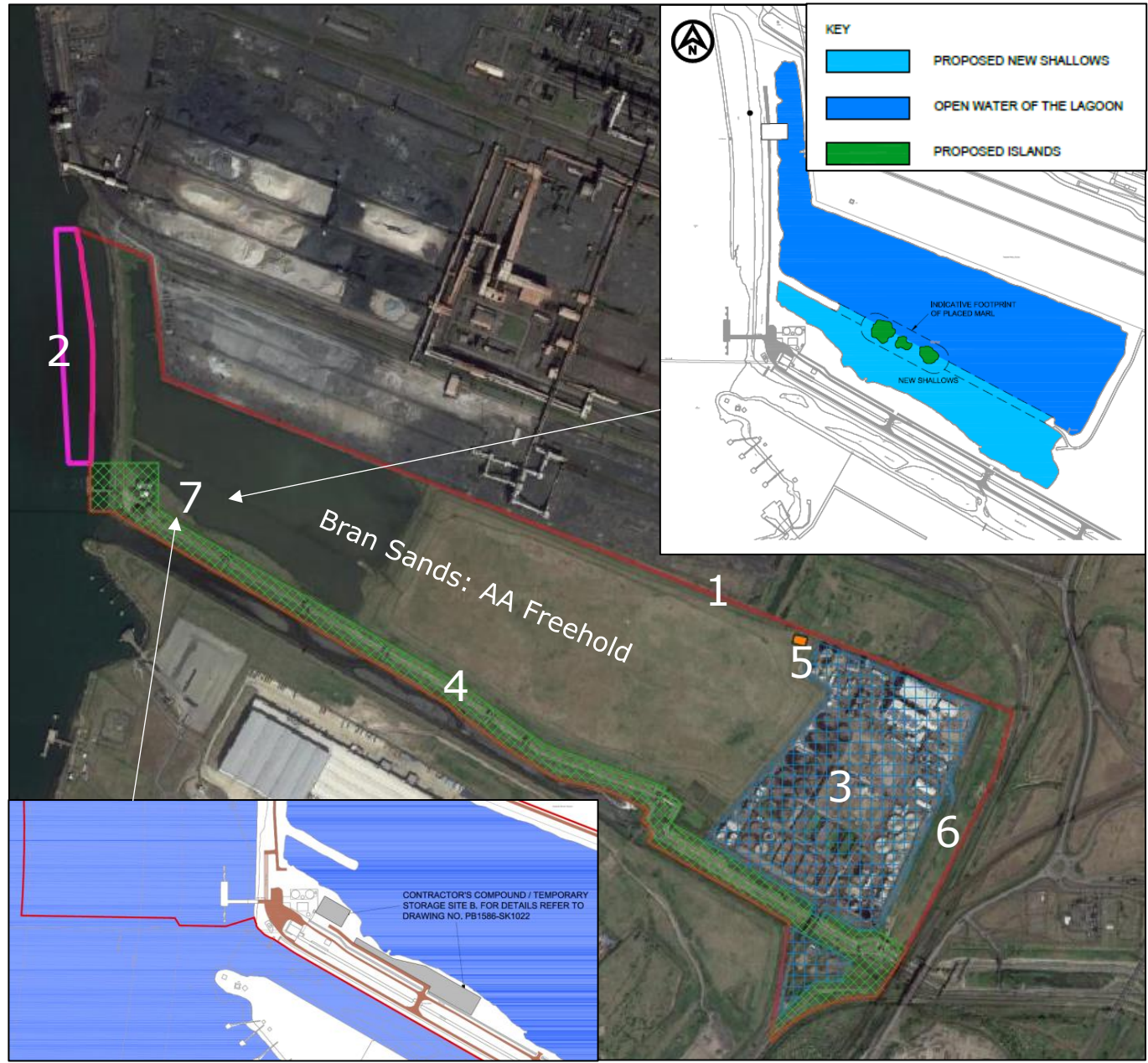
Management of gas as per Permit requirements

## 6. AA DCO Conveyor alignment corridor

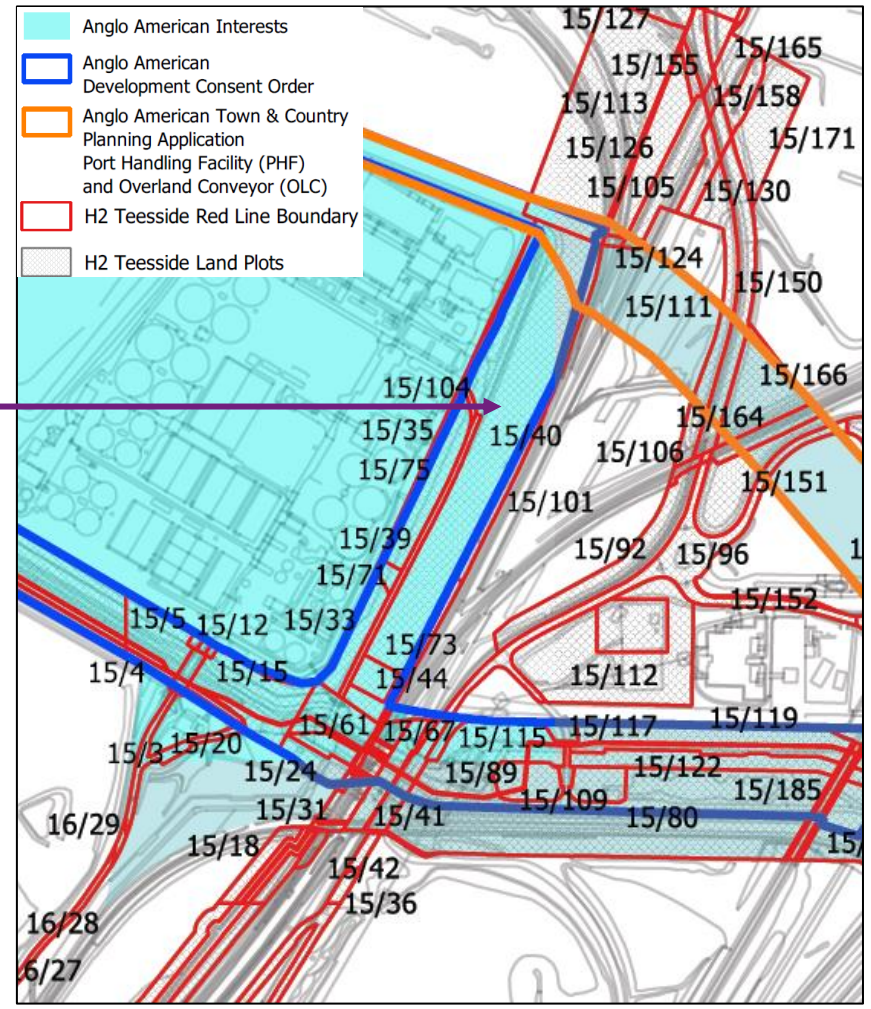
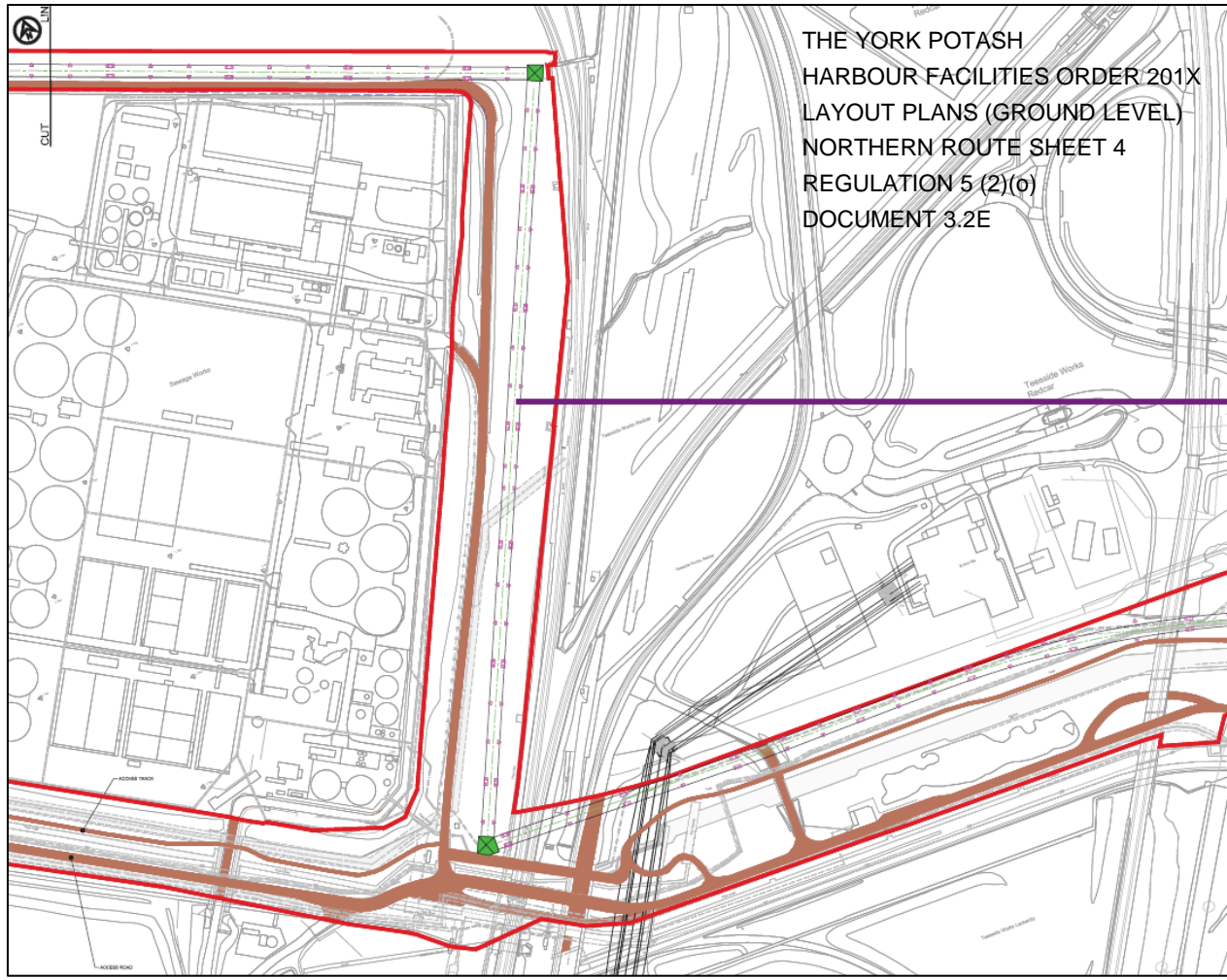
Interface already with NZT/NEP scheme and CATS Gas Pipeline

## 7. Other DCO requirements aside from Port

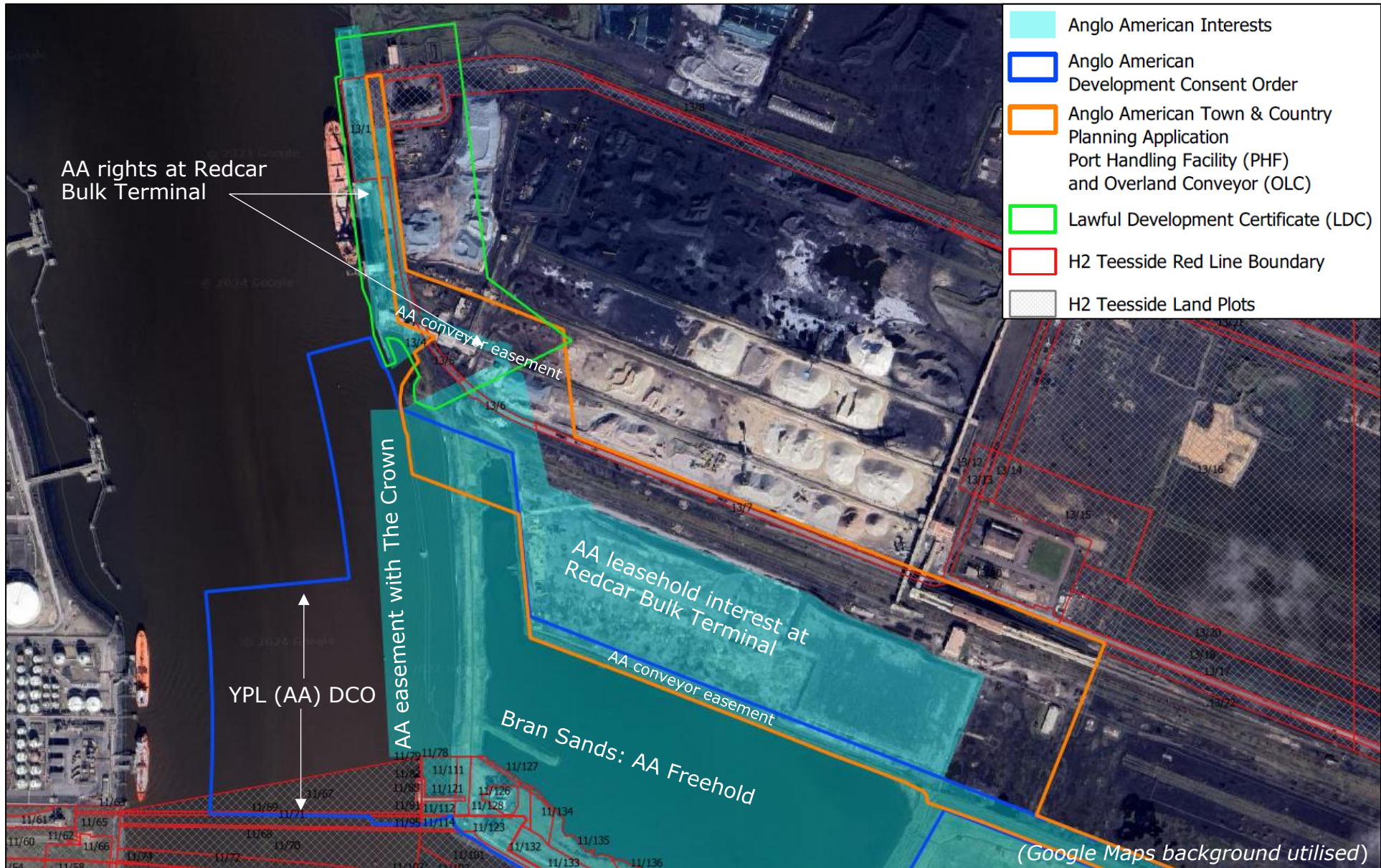
New shallows creation required (DCO habitat enhancement), DCO contractors' storage and temp storage area



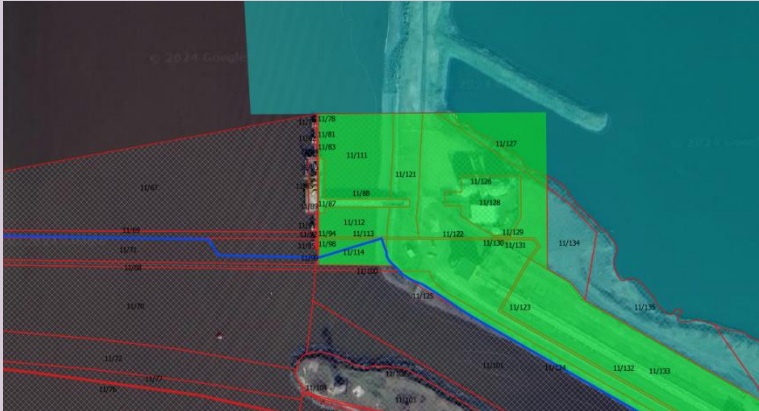
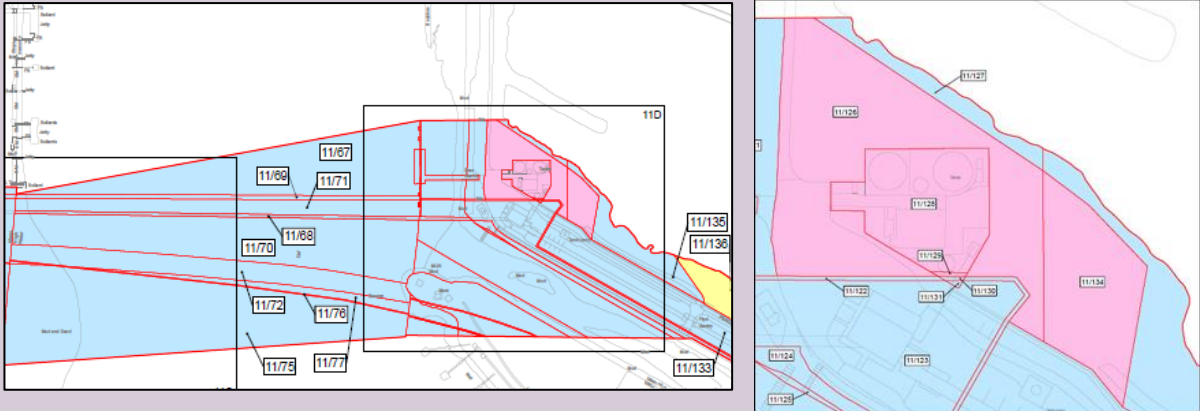
# Interface 2: Eastern Edge of Bran Sands – AA DCO Conveyor



# Interface 3: Redcar Bulk Terminal Frontage Rights



# Location and manner of land interest (cont.)

Plots subject to CA powers	Images
<p><b>Compulsion of Land (pink)</b> 11/134, 11/129, 11/128, 11/126</p> <p><b>Compulsion of Rights (blue)</b> <i>Around lagoon</i> 11/135, 11/127</p> <p><i>Jetty Land and surrounding water</i> 11/121, 11/111, 11/112, 11/123, 11/67,11/69, 11/71</p> <p><i>Jetty</i> 11/78, 11/79, 11/80, 11/81, 11/82, 11/83, 11/84, 11/85, 11/86, 11/87,11/88, 11/89, 11/90, 11/91, 11/92, 11/93, 11/94, 11/95, 11/96, 11/97, 11/98, 11/99</p>	<p><b>Compulsion of Land (pink)</b> <b>11/134</b> is AA Freehold – not Sembcorp leasehold which is shown in green below. AA have not been engaged in relation to this plot of land.</p>  <p>11/129, 11/128, 11/126: AA freehold, Sembcorp leasehold</p>
<p><b>Temporary Use of Land (yellow)</b> 11/136</p>	 <p><b>Temporary Use of Land (yellow)</b> 11/136: No approach has been made to AA to utilise this area of land which will impact AA liability under Environmental Permit.</p>