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Date: 18 December 2024
Our ref: 50303/24/HS/AW/33312339v1
Your ref: 20049353 Anglo American

Dear Rammiel

H2 Teesside Examination: Deadline 5 Submission

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 H2 Teesside DCO Examination (20049353).

Following the publication of materials at Deadline 4, including the Examining Authority's Second Written Questions, Anglo American is submitting the following as part of the Deadline 5 submissions:

- Written responses to the Examining Authority's Second Written Questions, as directed to Anglo American and Interested Parties;
- At Appendix 1, the submission of Anglo American's preferred Protective Provisions for the Examining Authority's consideration, as invited under Written Question 2.9.12.
- Comments on the dDCO and materials published following Deadline 4;
- Confirmation that Anglo American wish to participate at the Second Compulsory Acquisition Hearing (CAH2) on 13th January 2025, with respect to its land interests and the Applicant's proposals; and
- Confirmation that Anglo American wish to participate at Issue Specific Hearing 4 (ISH4) on 15th January 2025, with respect to the H2 Teesside draft DCO (dDCO).

Examination

At Deadline 4 (20th November 2024), Anglo American submitted written summaries of oral submissions made at the Compulsory Acquisition Hearing on 13th November 2024, and the Second Issue Specific Hearing on 14th November 2024 (REP4-031). These representations stated Anglo American's ongoing concerns regarding the proposed compulsory acquisition of its land interests which benefit from the consented York Potash DCO 2016 (as amended 2022) to deliver the Woodsmith Project, and the implications that powers sought in the dDCO has on that Project. It was noted that

Anglo American had received a draft Side Agreement from the Applicant on 13th November 2024, the date of the Compulsory Acquisition Hearing. Anglo American did not have the opportunity to review the draft agreement in advance of the Compulsory Acquisition Hearing, but having now done so would note that whilst it represents a helpful framework for the coexistence of respective projects, there are significant points of interface that will need dedicated engagement between the parties to resolve. Anglo American is now in dialogue with the Applicant, with regular meetings taking place. Anglo American welcomes this increased engagement and has submitted to the Applicant its proposed revisions as included at Appendix 1 for the Examining Authority's consideration, as invited under Question 2.9.12.

The increased engagement with the Applicant is welcomed by Anglo American, but until such time as the parties have agreed the terms on which the H2 Teesside project can be delivered such that it does not adversely affect the delivery and operation of the pre-consented Woodsmith Project, Anglo American necessarily maintains its objection to the H2 Teesside DCO. These are detailed below, along with responses to the Examining Authority's Second Written Questions, and an update on the status of issues raised at the Second Issue Specific Hearing. Anglo American's participation at January's Hearings is formally requested at the end of this letter to ensure the resolution of these identified issues as the Examination moves to its final stages.

Examining Authority's Second Written Questions

In response to the Examining Authority's Second Written Questions (PD-015), Anglo American wishes to respond to the question posed to Anglo American directly, and two relevant questions posed to Interested Parties.

Questions to Interested Parties

Protective Provisions – Q2.9.11/12

Question 2.9.12 invites Interested Parties to submit a copy of their preferred Protective Provisions for the ExA's consideration. Anglo American's preferred Protective Provisions are provided at Appendix 1. These were provided to the Applicant on 10th December 2024.

As above, regular meetings between Anglo American and the Applicant have been taking place to bring an understanding of the interfaces between the two schemes. However, in the absence of the Applicant providing clear design proposals upon which to base sensible interface solutions, Anglo American's concerns regarding the potential impact on the York Potash DCO, and hence its objections to this Examination, are maintained. For that reason, the Protective Provisions are necessarily framed to ensure that the proposed dDCO powers are not used such that they will conflict with the York Potash DCO and adversely affect the implementation of the Woodsmith Project.

Concerns remain regarding the Applicant's proposed tunnelling under the River Tees, the selected shaft location in this area, and the impact of the Applicant's proposal on the quayside area at Redcar Bulk Terminal. (These key interfaces were explained at the Compulsory Acquisition Hearing and summarised in the resulting submission at Deadline 4 (REP4-031)). Anglo American remains concerned that without an appreciation of the detailed design for these works, impacts upon its consented York Potash DCO and associated operations remain unclear.

Anglo American acknowledges the Applicant's post hearing note regarding the dredge pocket, added to Applicant's Summary of Oral Submissions for Compulsory Acquisition Hearing 1 (REP4-015), which suggests that the tunnelling works proposed would be deeper than the consented dredge pocket. However, whilst this is welcomed, in the absence of detailed design (including how this would relate to the required shaft, the location of which is uncertain and has the potential to conflict with Anglo American's infrastructure in this area), concerns remain.

Question 2.9.11 invites comment on Protective Provisions as included in the draft DCO. Anglo American's Protective Provisions are yet to be included in the dDCO and as such no direct response to this question is provided. However, as above, Appendix 1 includes a copy of our client's preferred protective Provisions, as appropriate.

Order Width Explanatory Note – Q2.6.17

Anglo American also wishes to respond to the following question directed to Interested Parties:

Q2.6.17: 'At DL2, the Applicant provided a document Order Width Limit Explanatory Note [REP2-037]. Please provide any comments on this note if you have not done so at previous DLs.'

Anglo American has reviewed this Note and considers that Area 4 (River Tees Crossing) and Area 6 (Bran Sands Corridor) are of relevance to Anglo American, as identified as key interfaces at the Compulsory Acquisition Hearing and submitted at Deadline 4 (REP4-031).

The order widths as informed by the design development at these interfaces is the subject of ongoing discussions between Anglo American and the Applicant, as identified in the Explanatory Note. Negotiations on Protective Provisions are ongoing to mitigate against identified overlaps and the potential for H2 Teesside's project to prejudice the delivery of the York Potash DCO.

Whilst Anglo American welcomes the provision of some detail in this Explanatory Note and understands the complexity of these areas, Anglo American maintains its view that the pace of design development has resulted in difficulties in understanding the potential impacts on its own consented DCO. This Explanatory Note does not address these deficiencies, and a number of issues remain outstanding, which Anglo American has addressed in the submission of its preferred Protective Provisions as included at Appendix 1. Anglo American continues to seek clarity on the scope of works to take place at these interfaces to enable agreements to be consolidated.

Question to Anglo American

Anglo American was invited to respond to Question 2.9.2, regarding the interface of H2 Teesside with Anglo American's Environmental Permit for the York Potash DCO. Anglo American's response is included below.

Q2.9.2 – Environmental Permit

'Article 48 (Interface with Anglo American permit)

The ExA noted Anglo Americans oral submissions during ISH2 related to the above mentioned Article and the fact that it considers the Environmental Permit (EP) (Number FB3601GS) should be transferred to the Applicant (as noted in Annex 2 of Anglo American's Oral submissions made

at ISH2, made at DL4 [REP4-031]). These concerns and observations were also set out in Anglo-American's DL3 submissions ([REP3-012]. The Applicant in its response to DL3 submissions [REP4-013] has responded to Anglo American's concerns in this regard in Table 2-1 and the ExA would ask Anglo American for its considered response, especially in regard to whether an additional groundwater and landfill gas monitoring point would adequately address Anglo-American's concerns in this regard.'

The issue of the Environmental Permit has been the subject of ongoing discussion with the Applicant. Anglo American has reviewed the materials published at Deadline 4 relating to this issue, including the Applicant's Response to Deadline 3 submissions (REP4-013). The Applicant has suggested that a scheme for monitoring for leachate and landfill gas would be sufficient to manage these concerns. Anglo American cannot accept this proposal because it does not sufficiently mitigate the concern, which is that should the H2T works cause a breach of the Environmental Permit, all liability rests with Anglo American. There are areas of proposed works that are within the landfill permit boundary and historically filled ground that present risk of such breach. As such, before Anglo American can be in a position to agree to an increased monitoring proposal, an agreement must be reached to indemnify Anglo American in the event that any impact is caused by the Applicant's works. A scheme restricted to monitoring provides no such indemnity, providing no recourse in the event of the Applicant's works causing harm.

On the basis that Anglo American has significant liability under the Environmental Permit, it is entirely reasonable that where the proposed H2 Teesside works might cause a breach of the requirements of that permit, it should be indemnified by the Applicant. Anglo American is seeking to include provision to this effect in the Side Agreement, referred above.

Anglo American considers that without the provision of this indemnity, a transfer of the Environmental Permit is the only acceptable solution, as identified to the Examining Authority in earlier submissions.

Comments on Deadline 4 Materials

At the Second Issue Specific Hearing and as summarised at Deadline 4 (REP4-031), a number of concerns regarding the dDCO were raised by Anglo American regarding Schedule 2, with a significant concern being Article 48, the issue of the Environmental Permit, which is addressed above. Anglo American also raised concerns regarding Requirements 18, 22, 25, and 28, with a request for an additional requirement to be added regarding the management and mitigation of operational noise.

Anglo American has reviewed materials published at Deadline 4, including the Applicant's Response to Deadline 3 submissions (REP4-013). An update on Anglo American's position on the Requirements of the dDCO is included below.

Requirement 18

Anglo American previously sought to be included as a specified party in 18(f) of Requirement 18 such that the Applicant is required to engage with it to manage cumulative construction transport impacts – when traffic management is required. Anglo American has reviewed the Applicant's Response to Deadline 3 submissions (REP4-013) and the Applicant's Summary of Oral Submissions for Issue

Specific Hearing 2 (REP4-016). The Applicant recommended that this issue would be resolved through Protective Provisions.

High level protections are included in Anglo American's preferred Protective Provisions to apply to the construction methodology in Shared Areas (being the York Potash DCO Order Limits and land that is within the H2 Teesside Order Limits). This includes that a construction programme and traffic management scheme is provided to Anglo American by the Applicant.

Anglo American requested further engagement with the Applicant on this issue at Deadline 4. Whilst engagement with the Applicant has increased and this is welcomed by Anglo American, this aspect is yet to be discussed. However, subject to the inclusion of appropriate traffic management protections in Protective Provisions, Anglo American accepts that the requirement for it to be identified as a specified party in 18(f) of Requirement 18 will drop away.

Requirements 22, 25, and 28

Anglo American's concerns regarding Requirement 22 (restoration of land used for construction), Requirement 25 (Local Liaison Group) and Requirement 28 (decommissioning) have been addressed in the preferred Protective Provisions submitted at Appendix 1.

Requirement 22 also relates to ongoing discussions regarding the Environmental Permit, for which a preferred solution has been discussed above. Regarding Requirement 25, Anglo American is satisfied that participation in the Local Liaison Group is no longer required, subject to the agreement of Protective Provisions which provide for ongoing liaison, protections, and mitigations of potential impacts.

Additional Requirement – Operational Noise

Anglo American maintains that a Requirement in respect of the control of operational noise should be contained within Schedule 2 of the DCO. Anglo American has reviewed the Applicant's Response to Deadline 3 submissions (REP4-013) and the Applicant's Summary of Oral Submissions for Issue Specific Hearing 2 (REP4-016) regarding this issue. However, it remains concerned as to the reliance on the findings of the Environmental Statement, particularly as there is a failure to consider the cumulative impacts of operational noise, including that from Anglo American's consented infrastructure, which is in close proximity.

Anglo American maintains that a Requirement to manage the cumulative impacts of operational noise is required and as suggested, should be included to mirror the Net Zero Teesside DCO.

Anglo American therefore welcomes the Examining Authority's request at Written Question 2.9.9 that the Applicant provides on a without prejudice basis a form of wording for inclusion in the draft DCO for a Requirement relating to the control of noise.

Schedule 3

Anglo American awaits population of Schedule 3 of the dDCO which purports to amend the York Potash DCO, which is due to be submitted by the Applicant at Deadline 5. Anglo American also expects that the

Protective Provisions, once agreed, will be included in addition to existing Protective Provisions at Schedules 16-22.

Participation at Hearings, January 2025

Anglo American wishes to formally request attendance at the following hearings in January 2025:

- The Second Compulsory Acquisition Hearing (CAH2) on 13th January 2025, with respect to its land interests and the Applicant's proposals; and
- Issue Specific Hearing 4 (ISH4) on 15th January 2025, with respect to the H2 Teesside draft DCO (dDCO).

Concluding Remarks

Anglo American welcomes the increased engagement from the Applicant to enable the resolution of identified issues, but notes that engineering and design detail is yet to be confirmed, with the potential to prejudice the deliverability the York Potash DCO. As part of this ongoing dialogue, Anglo American has submitted its preferred Protective Provisions to the Applicant to enable adequate protection of its consented DCO. As invited under the Examining Authority's question 2.9.12, these preferred Protective Provisions are included at Appendix 1 of this submission.

Anglo American maintains that it will be directly impacted by the H2 Teesside DCO, and without reaching agreement, the delivery of its consented York Potash DCO is at risk. It is hoped that as the Examination moves into its final stages, agreement can be reached to enable both projects to coexist.

Yours faithfully

[REDACTED]
Senior Director
[REDACTED]

**Annex 1: Anglo American's Preferred Protective
Provisions, as supplied to H2 Teesside
10/12/24**

FOR THE PROTECTION OF THE WOODSMITH PROJECT

1. For the protection of The Woodsmith Project the following provisions have effect, unless otherwise agreed in writing between the Parties.

Interpretation

2. The following definitions apply in this Part of this Schedule-

"AA Property Arrangements" means the Deed of Grant entered into by Redcar Bulk Terminal Limited and York Potash Processing & Ports Limited dated 6 July 2018 and the Deed of Grant entered into by Redcar Bulk Terminal Limited, York Potash Limited and York Potash Processing & Ports Limited dated 26 June 2019, and the Lease entered into between Redcar Bulk Terminal Limited; York Potash Ltd and Sirius Minerals Plc dated 10 June 2019;

"Anglo American Specified Works" means so much of the Woodsmith Project as is within the Order Limits;

"Anglo American" means the parties with the benefit of the York Potash Order (being Anglo American Woodsmith Limited and Anglo American Crop Nutrients Limited) and Anglo American Woodsmith (Teesside) Limited;

"Anglo American Apparatus" means the pipeline, cables, structures which are or are to be owned, occupied or maintained by Anglo American within the Shared Area;

"EA Permit 1" means the environmental permit for the landfill site at Bran Sands given permit number EPR/FB3601GS (formerly Waste Management Licence EAWML60092);

"EA Permit 2" means the EA Discharge Permit EPR/NB3498VD;

"expert" means a person appointed pursuant to paragraph 16(1)(b);

"H2T Apparatus" means the pipeline, cables, structures to be owned, occupied or maintained by the undertaker that is within the Shared Area;

"NWL Facility" means the Northumbrian Water Limited Bran Sands Wastewater Treatment Plant;

"Parties" means the undertaker and Anglo American;

"Plans" includes sections, drawings, specifications design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the shared area;

"Property Documents" means any leases, licences or other documents by virtue of which Anglo American has an interest in, on or over land;

"Respective Projects" means the authorised development and the Woodsmith Project;

"Secretary of State" means the Secretary of State for Energy Security and Net Zero or any successor in function;

"Shared Area" means the such land in the Order Limits that is within the York Potash Order Limits;

"Specified Works" means so much of the authorised development as is within the Shared Area;

"STDC Agreement" means a Deed of Licence and Option entered into between South Tees Development Corporation, York Potash Processing and Ports Limited and Sirius Minerals PLC dated 9 January 2019;

“Woodsmith Project” means the construction, operation, or maintenance of development authorised by the York Potash Order or by any planning permission or development consent order issued whether before or after the date of this Agreement as part of the Woodsmith Project such development comprising-

- (a) an underground mine at Sneatonthorpe for the mining of polyhalite;
- (b) a Mineral Transport System being a tunnel from the mine to Teesside;
- (c) a Material Handling Facility at Wilton International, Teesside; and
- (d) Harbour Facilities at Teesside including an overland conveyor between the Material Handling Facility and the Redcar Bulk Terminal and the harbour authorised by the York Potash Order and planning permissions; and

“York Potash Order” means the York Potash Harbour Facilities Order 2016, any amended or replacement order including York Potash Harbour Facilities (Amendment) Order 2022, and any planning permission associated with the Woodsmith Project, including in respect of such part of the Woodsmith Project comprising (d), any live planning application submitted in respect of the overland conveyor and associated infrastructure.

Consent to works in the shared area

3. (1) Where the consent or agreement of Anglo American is required under the provisions of this Part of this Schedule the undertaker must give at least 21 days written notice to Anglo American of the request for such consent or agreement and in such notice must specify the works or matter for which consent or agreement is to be requested and the Plans that will be provided with the request which must identify-

- (a) the land that will or may be affected;
- (b) which Works Nos. from the Order any powers sought to be used or works to be carried out relate to;
- (c) which of the entities which make up the undertaker is to carry out the works and the identity of the contractors carrying out the work on behalf of that entity;
- (d) the proposed programme for the power to be used or works to be carried out; and
- (e) the named point of contact for the undertaker for discussions in relation to the information supplied and the consenting process.

(2) Anglo American must notify the undertaker within 14 days of the receipt of the written notice under sub-paragraph(1) of-

- (a) any information it reasonably requires to be provided in addition to that proposed to be supplied by the undertaker under sub-paragraph (1);
- (b) any particular circumstances with regard to the construction or operation of the Woodsmith Project it requires to be taken into account;
- (c) the named point of contact for Anglo American for discussions in relation to the information supplied and the consenting process; and
- (d) the specific person who will be responsible for confirming or refusing the consent or agreement.

(3) Any request for consent under paragraph 5(1) or 6(2) must be accompanied by the information referred to in sub-paragraph (1) as amended or expanded in response to sub-paragraph (2).

(4) Subject to sub-paragraph (5), where conditions are included in any consent granted by Anglo American pursuant to this Part of this Schedule, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by Anglo American.

(5) Wherever in this Part of this Schedule provision is made with respect to the agreement approval or consent of Anglo American, that approval or consent must be in writing and subject to such reasonable terms and conditions as Anglo American may require including conditions requiring protective works to be carried out, but must not be unreasonably refused or delayed and for the purposes of these provisions it will be deemed to be reasonable for any consent to be refused if it would-

- (a) compromise the safety and operational viability of the Woodsmith Project;
- (b) prevent the ability of Anglo American to have uninterrupted access to the Woodsmith Project;
- (c) cause a breach of the obligations under, or conditions attached to, EA Permit 1 or EA Permit 2 or render compliance with the obligations under, or conditions attached to, EA Permit 1 or EA Permit 2-
 - (i) more difficult; and/or
 - (ii) more expensive;
- (d) make regulatory compliance more difficult or expensive; and/or
- (e) cause a breach of, or prevent compliance with, any obligations to other parties contained in any Property Documents,

provided that before Anglo American can validly refuse consent for any of the reasons set out in sub-paragraphs (a) to (e) it must first give the undertaker seven days' notice of such intention and consider any representations made in respect of such refusal by the undertaker to Anglo American within that seven day period.

(6) The seven day period referred to in the proviso to sub-paragraph (5) must be added to the period of time within which any request for agreement, approval or consent is required to be responded to pursuant to the provisions of this Part of this Schedule.

(7) In the event that-

- (a) the undertaker considers that Anglo American has unreasonably withheld its authorisation or agreement under paragraph 5(1) and/or 6(2); or
- (b) the undertaker considers that Anglo American has given its authorisation under paragraph 5(1), and/or 6(2) subject to unreasonable conditions,

the undertaker may refer the matter to dispute resolution under paragraph 16.

(8) Any notice under sub-paragraph (1) and any request for approval or consent under file provisions of this Part of this Schedule must be sent to Anglo American by recorded delivery and addressed to-

- (a) *[details to be confirmed]*; and
- (b) *[details to be confirmed]*.

(9) In the event that Anglo American does not respond in writing to a request for approval or consent or agreement within 28 days of its receipt of the postal request then the undertaker may serve upon Anglo American written notice requiring Anglo American to give their decision within a further 28 days beginning with the date upon which Anglo American received written notice from the undertaker and, subject to compliance with sub-paragraph

(10), if by the expiry of the further 28 day period Anglo American has failed to notify the undertaker of its decision Anglo American is deemed to have given its consent, approval or agreement without any terms or conditions.

(10) Any further notice given by the undertaker under sub-paragraph (9) must include a written statement that the provisions of sub-paragraph (9) apply to the relevant approval or consent or agreement.

Co-operation

4. Insofar as the Anglo American Specified Works are or may be undertaken concurrently with the Specified Works within any part of the Shared Area, the undertaker must-
- (a) co-operate with Anglo American with a view to ensuring-
 - (i) the co-ordination of programming of all activities and the carrying out of works within the Shared Area; and
 - (ii) that access for the purposes of the construction, operation and maintenance of the Woodsmith Project is maintained for Anglo American and its contractors, employees, contractors and sub-contractors; and
 - (b) use all reasonable endeavours to avoid any conflict arising from the carrying out of the Respective Projects.

Regulation of works in respect of the Woodsmith Project

5. (1) The undertaker must not carry out the Specified Works without the prior written consent of Anglo American obtained pursuant to, and in accordance with, the provisions of paragraph 3.
- (2) Where under paragraph 3(5) Anglo American requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the reasonable satisfaction of Anglo American.
- (3) Nothing in paragraph 3 or this paragraph 5 precludes the undertaker from submitting at any time or from time to time, but in no case less than 48 days before commencing the execution of any Specified Work, new Plans in respect of that Specified Work in substitution of the Plans previously submitted, and the provisions of this paragraph and paragraph 3 shall apply to the new Plans.
- (4) Where there has been a reference to an expert in accordance with paragraph 16(1)(b) and the expert in determining the dispute gives approval for the works concerned, the Specified Works must be carried out in accordance with that approval and any conditions applied by the decision of the expert under paragraph 16.
- (5) The undertaker must give to Anglo American not less than 28 days' written notice of its intention to commence the construction of any of the Specified Works and, not more than 14 days after completion of their construction, must give Anglo American written notice of the completion.
- (6) The undertaker is not required to comply with sub-paragraphs (1) to (5) above in a case of emergency, (being actions required directly to prevent possible death or injury) but in that case it must give to Anglo American notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and thereafter must comply with paragraphs 3 and this paragraph 5 in so far as is reasonably practicable in the circumstances.

(7) The undertaker must at all reasonable times during construction of the Specified Works allow Anglo American and its officers, employees, servants, contractors, and agents access to the Specified Works and all reasonable facilities for inspection of the Specified Works.

(8) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from Anglo American requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Shared Area.

(9) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (8) above, Anglo American may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

(10) The undertaker must not exercise the powers conferred by the Order or undertake the Specified Works to prevent or interfere with the access by Anglo American to the Anglo American Specified Works unless first agreed in writing by Anglo American.

(11) If in consequence of the exercise of the powers conferred by the Order or the carrying out of the Specified Works the access to any of the Anglo American Specified Works is materially obstructed, the undertaker must promptly provide such alternative means of access to the Anglo American Specified Works as will enable Anglo American to construct, maintain or use the Woodsmith Project no less effectively than was possible before the obstruction.

(12) To ensure its compliance with this paragraph 5, the undertaker must before carrying out any of the Specified Works request up-to-date written confirmation from Anglo American of the location of any part of its then existing or proposed Anglo American Specified Works.

Regulation of powers in respect of the Woodsmith Project

6. (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 Woodsmith Project.

(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 closure of streets and public rights of way);
- (e) article 14 (access to works);
- (f) article 16 (traffic regulation measures);
- (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 31 (rights under or over streets);
- (q) article 32 (temporary use of land for carrying out the authorised development);
- (r) article 33 (temporary use of land for maintaining the authorised development); and
- (s) article 34 (statutory undertakers).

(4) In the event that Anglo American withholds its consent pursuant to sub-paragraph (2) 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.

Constructability Principles

- 7.** (1) The undertaker (unless otherwise agreed, or in an emergency relating to potential death or serious injury) must in respect of the Shared Areas-
- (a) carry out the works in such a way that will not prevent or interfere with the continued construction of the Anglo American Specified Works, or the maintenance or operation of the Anglo American Apparatus unless the action leading to such prevention or interference has the prior written consent of Anglo American;
 - (b) ensure that works carried out to, or placing of H2T Apparatus beneath, roads along which construction or maintenance access is required by Anglo American in respect of any Anglo American Apparatus (including the overland conveyor) will be of adequate specification to bear the loads;
 - (c) prior to the undertaker carrying out any of the Specified Works in the Shared Area, the undertaker must in respect of the Specified Work concerned-
 - (i) submit a construction programme and a construction traffic and access management plan in respect of that area to Anglo American and obtain agreement thereof from Anglo American (noting that a single construction traffic and access management plan may be completed for one or more parts 'of each Shared Area or more than one Shared Area and may be subject to review if agreed between the Parties); and
 - (ii) without prejudice to the generality of sub-paragraph (i) the plans must include such measures and construction practices or processes as are necessary to satisfactorily address the relevant issues in relation to construction

traffic and access management during construction that are set out in this paragraph 7;

- (ii) where applicable, confirm to Anglo American in writing the identity of the client for the purposes of the relevant Construction Design and Management Regulations applicable from time to time; and
- (iii) obtain the agreement of Anglo American to the location of all temporary laydown areas;

(2) update the monthly construction programme approved under sub-paragraph 7(c)(i) monthly and supply a copy of the updated programme to Anglo American every month;

(3) at all times construct the Specified Works in compliance with the relevant approved construction programme and construction traffic and access management plan;

(4) notify Anglo American of any incidences which occur as a result of, or in connection with, the Specified Works which are required to be reported under the relevant 'Reporting of Injuries Diseases and Dangerous Occurrences Regulations applicable from time to time within 24 hours of the duty to report arising;

(5) provide comprehensive, as built, drawings of the Specified Works (including, for the avoidance of doubt, buried pipelines) within three months of the completion of each of the Specified Works or if required earlier such information as is available and appropriate to inform Anglo American of the layout of the H2 Specified Works and the H2 Apparatus;

(6) following the completion of each of the Specified Works unless otherwise agreed in writing by Anglo American fully reinstate the affected area (with the exception only of the retention of the permanent elements of the Specified Works) and remove all waste/surplus materials; and

(7) obtain the prior written consent of Anglo American for the use of any re-cycled aggregate material within the Shared Area.

- 8. (1) The undertaker must not do anything which will constrain the ability of Anglo American to construct and operate an overland conveyor along the route which is the subject of the STDC Agreement or do anything which will compromise the construction, operational efficiency or maintenance of that conveyor or make the construction, operation or maintenance of it materially more expensive (unless such difference in cost (including any difference attributable to delay) is agreed to be provided by the undertaker).
- 9. (1) Any spoil from the Anglo American Specified Works or the Specified Works (including contaminated material) must be dealt with in accordance with a spoil management plan to be agreed between the Parties in advance of the work by either Party generating such spoil beginning.

Interface Design Process

- 10. (1) Prior to the seeking of any consent under this Part of this Schedule, the undertaker must, unless Anglo American has brought forward works in the Shared Area before the undertaker, participate in a design and constructability review for such part of the Shared Area which shall, at a minimum (unless otherwise agreed), include the following matters-
 - (a) Front End Engineering Design (FEED) level indicative construction work-pack;
 - (b) a hazard and operability study;
 - (c) a construction hazard study; and

- (d) in respect of any part of the Shared Area which is to accommodate the overland conveyor, information to demonstrate that the relevant Specified Works account for the interface with any overland conveyor located in that part of the Shared Area.

(2) Unless otherwise agreed, the undertaker must submit the outcome of the design and constructability review referred to in sub-paragraph (1) to Anglo American for approval prior to the seeking of any consent under this Part of this Schedule.

(3) The undertaker must at all times design and construct the Specified Works in compliance with the relevant approved design and constructability review pursuant to sub-paragraph (2).

(4) The undertaker may undertake a single design and constructability review process for one or more parts of the Shared Area and any approved design and constructability review may be amended if agreed by Anglo American.

(5) In considering any request for consent or approval under this Part of this Schedule, Anglo American must not refuse consent for details that are consistent with those approved under sub-paragraph (2) unless Anglo American reasonably believes that the relevant agreed design and constructability review is materially out of date or is inapplicable due to a change in either the authorised development or the Woodsmith Project.

Design Principles

- 11.** The Specified Works must be designed in such a way (unless otherwise agreed by Anglo American) that the location and design of the Specified Works to not interfere with Anglo American's ability to operate and maintain:
- (a) the discharge facility in compliance with its obligations under EA Permit 2;
 - (b) the landfill and associated infrastructure (including but not limited to the leachate chambers and monitoring boreholes) in compliance with its obligations under EA Permit 1;
 - (c) the Anglo American owned private access road on the eastern side of the NWL Facility which is to remain open to users at all times for all purposes and specifically access to the NWL Facility; and
 - (d) Anglo American's continued right of access along Eston Triangle Area.

Maintenance and Operational Principles

- 12.** The Specified Works must be maintained and operated in such a way that (unless otherwise agreed or in an emergency):
- (a) Anglo American has unhindered access to manage the discharge facility within the NWL Facility and to empty their leachate chambers so as to be able to comply with its obligations under the EA Permits;
 - (b) Anglo American (together with NWL) has unhindered access to monitor the gas monitoring facility located within the NWL Facility so as to comply with its obligations under the EA Permits; and
 - (c) The operation of, and access to, any overland conveyor associated with the Woodsmith Project is not impaired.

Miscellaneous provisions

- 13.** (1) The undertaker and Anglo American must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part of this Schedule.

(2) The undertaker must pay to Anglo American the reasonable expenses incurred by Anglo American in connection with the consenting processes under this Part of this Schedule, including the approval of plans, inspection of any Specified Works or the alteration or protection of the Anglo American Specified Works.

Indemnity

14. (1) Subject to sub-paragraphs (2) and (3), if by reason, or in consequence, of the construction, maintenance or operation of any Specified Works, or failure thereof, any damage is caused to any Anglo American Apparatus used in connection with the Anglo American Specified Works or damage is caused to any part of the Anglo American Specified Works or there is any interruption in any service provided, or the operations of Anglo American, or in the supply of any goods, by Anglo American, or Anglo American becomes liable to pay any amount to any third party as a consequence of the Specified Works, the undertaker must-

- (a) bear and pay the costs reasonably incurred by Anglo American in making good such damage or restoring the service, operations or supply; and
- (b) compensate Anglo American for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Anglo American, by reason or in consequence of any such damage or interruption or Anglo American becoming liable to any third party as aforesaid.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Anglo American, its officers, employees, servants, contractors or agents.

(3) Anglo American must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) If the undertaker becomes responsible for a claim or demand pursuant to sub-paragraph (3) it must-

- (a) keep Anglo American fully informed of the developments and material elements of the proceedings;
- (b) take account of the views of Anglo American before taking any action in relation to the claim;
- (c) not bring the name of the Anglo American on any related company into disrepute and act in an appropriate and professional manner when disputing any claim; and
- (d) not pay or settle such claims without the prior written consent of Anglo American such consent not to be unreasonably withheld or delayed.

(5) Anglo American must use its reasonable endeavours to mitigate any claim or losses in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, Anglo American must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) The undertaker shall not be liable under this paragraph in respect of any claim capable of being mitigated or minimised to the extent that Anglo American has not used its reasonable endeavours to mitigate and/or minimise that claim in accordance with sub-paragraph (5).

(7) The fact that any work or thing has been executed or done with the consent of Anglo American and in accordance with any conditions or restrictions prescribed by Anglo

American or in accordance with any plans approved by Anglo American or to its satisfaction or in accordance with any directions or award of any expert appointed pursuant to paragraph 16 does not relieve the undertaker from any liability under this paragraph.

Dispute Resolution

- 15.** (1) Article 47 (arbitration) does not apply to the provisions of this Part of this Schedule.
- 16.** (1) Any difference in relation to the provisions in this Part of this Schedule must be referred to-
- (a) a meeting of the [xxxxxxx] and/or the Managing Director of [xxxxxxx], whichever is the relevant party and the [Chief Executive Officer of Anglo American Crop Nutrients Limited] to seek agreement on the matter in dispute within 21 days from the date of a dispute first being notified in writing by one Party to the other; and
 - (b) in the absence of the difference being settled within that period, to be settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the undertaker and Anglo American or, in the absence of agreement identified by the President of the Institute of Civil Engineers, who must be sought to be appointed within 28 days of the notification of the dispute.
- (2) The fees of the expert appointed pursuant to paragraph 16(1) are to be payable by the Parties in such proportions as the expert may determine or, in the absence of such determination, equally as between the Parties.
- (3) Where appointed pursuant to paragraph 16(1), the expert must-
- (a) invite the Parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
 - (b) allow each Party an opportunity to comment on the submissions made by the other provided they are received within 21 days of the receipt of the submissions referred to in sub-paragraph (a);
 - (c) issue a decision within 42 days of receipt of the submissions submitted pursuant to sub- paragraph (a); and
 - (d) give reasons for the decision.
- (4) The expert must consider where relevant-
- (a) the development outcomes sought by the undertaker and Anglo American;
 - (b) the ability of the undertaker and Anglo American to achieve the outcomes referred to sub- paragraph (a) in a timely and cost-effective manner;
 - (c) any increased costs on any Party as a result of the matter in dispute;
 - (d) whether under this Order or the York Potash Order, the undertaker's or Anglo American's outcomes could be achieved in any alternative manner without the Specified Works being materially compromised in terms of increased cost or increased length of programme; and
 - (e) any other important and relevant considerations.
- (5) Any determination by the expert is final and binding which the Parties must comply with and is enforceable by the Parties by injunction except in the case of manifest error in which

case the difference that has been subject to expert determination may be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either Party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

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