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Date: 6 February 2025
Our ref: 50303/24/HS/AW/33440450v2
Your ref: 20049353 Anglo American

Dear Rammiel

H2 Teesside Examination: Deadline 7 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).

Anglo American is submitting the following as part of the Deadline 7 submissions:

- An update on negotiations;
- Comments on any submissions received at DL5, DL5A, DL6 and DL6A; and,
- At Appendix 1, Anglo American's preferred Protective Provisions for consideration by the Examining Authority (ExA).

Update on Negotiations

At Deadline 6A (22 January 2025), Anglo American submitted written summaries of oral submissions made at the Second Compulsory Acquisition Hearing (CAH2) on 13 January 2025, and the Fourth Issue Specific Hearing (ISH4) on 15 January 2025 (REP6-009). These representations set out Anglo American's ongoing concerns regarding the proposed compulsory acquisition of its land interests as they relate to the York Potash Harbour Facilities DCO 2016 (as amended 2022) and the wider delivery of the Woodsmith Project.

The position remains unchanged from our previous representations insofar as a response from the Applicant to the draft Side Agreement (as submitted to the Applicant on 4 December 2024) has yet to be provided, nor any response to Anglo American's preferred Protective Provisions (as submitted to the Applicant on 10 December 2024 and the ExA at Deadline 5 ref. REP5-069).

Whilst Anglo American welcomes the Applicant's continued engagement on these matters, in the absence of an acceptable Side Agreement or Protective Provisions, the H2 Teesside project continues to present a significant risk to the deliverability of the Woodsmith Project. Anglo American therefore

remains to be in a position where it is unable to withdraw its current objection to the H2T Teesside draft DCO.

Statement of Common Ground

The latest version of the Statement of Common Ground between H2 Teesside and Anglo American is dated 17 September 2024. In the absence of an updated version being provided by the Applicant, the representations set out in this letter more accurately reflect the current state of negotiations.

The Draft DCO

We provide our latest comments on the dDCO as they relate to issues raised in earlier representations made on behalf of Anglo American.

Schedule 3

Schedule 3 of the dDCO includes amendments to the York Potash DCO, inserting into that DCO provisions for the protection of H2 Teesside Project. Whilst Anglo American appreciates the need to include reciprocal protections in each respective DCO in order to ensure effective interface of the two projects, it is not possible for Anglo American to meaningfully comment on the acceptability of the proposed amendments to Schedule 3 at this stage. This is because there has been no response from the Applicant on the draft Side Agreement to reflect the proposed technical arrangements at points of project interface (defined as 'Shared Areas'). Until such arrangements have been agreed, the proposed Protective Provisions have the potential to frustrate project implementation. In these circumstances, Anglo American has no option but to maintain a holding objection to this particular aspect of the dDCO, reserving the right to comment further as part of future submissions at Deadline 8.

Protective Provisions

While technical meetings with the Applicant are ongoing, Anglo American maintains that the lack of progress in design development continues to create challenges in understanding how the H2 Teesside Project can be implemented without causing significant and detrimental impacts on the Woodsmith Project. The latest version of the works plans (Rev 3, REP6a-002) continue to show limited design detail at key interfaces, including the Above Ground Infrastructure proposed at Bran Sands. As stated at the CAH2, the current Protective Provisions are necessitated by this context to promote high-level safeguards for each project, but do not identify how each interface will be managed. Without the specifics of this process being secured through a Side Agreement, there remains the potential for the progressing of projects to be frustrated.

The current version of the Protective Provisions therefore remains unacceptable to Anglo American and the Applicant is invited to respond to Anglo American's preferred version which, for ease of reference, is resubmitted at Annex 1 of this letter.

Environmental Permit

At the ISH4 on 15 January 2025, and as recorded in the written summary of oral submissions submitted at Deadline 6A (REP6a-022), it was noted that it has been agreed in principle between both parties that provision will be made in an updated Side Agreement for Anglo American to be indemnified in the

event of a breach of the Environmental Permit by H2 Teesside. Again, Anglo American is yet to see the proposed detail of this within an updated draft of the Side Agreement.

At Deadline 6A the Applicant did not provide further comment on this issue except to state that all issues will be managed through Protective Provisions (REP6a-017). The indemnity in paragraph 12 of the Protective Provisions included in the dDCO do not cover any breach of the Environmental Permit caused by the H2 Teesside Works. In addition, EA Permit EPR/NB3498VD is not included in the protections. Anglo American wishes to reiterate that appropriate provision in a Side Agreement, in terms that have been agreed in discussion with the Applicant, is an essential component to resolving this issue.

Anglo American must therefore maintain its objection to the wording of Article 48 of the dDCO and the Protective Provisions as currently drafted. In the event that an acceptable Side Agreement is not agreed in the coming weeks, Anglo American will reserve the right to suggest revised wording to Article 48 in its Closing Submissions at Deadline 8.

Requirements

Operational Noise

As stated at the ISH4, Anglo American welcomes the Applicant's provision of draft wording for an additional Requirement concerning the management of Operational Noise. This insertion within the dDCO is considered to be necessary in order to provide greater certainty regarding predicted noise levels, as well as the mechanisms for managing and monitoring them.

Requirements 18, 22, 28

In the absence of agreed Protective Provisions and Side Agreement, Anglo American has no further comment to make on Requirements 18, 22 and 28 at this stage, beyond what has previously been stated as part of previous representations.

Notwithstanding the above, it noted that the latest dDCO now includes Sembcorp and CF Fertilisers as named consultees in respect of Requirement 28. As a party with similar land and operational overlaps, Anglo American requests that it is also added as a consultee for Requirement 28.

Requirements 3 and 15

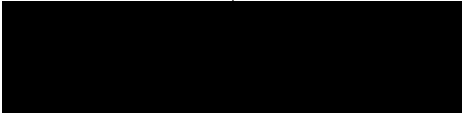

It is noted that Sembcorp has also been added as a consultee for Requirements 3 (Detailed Design) and 15 (Construction Environmental Management Plan). In the absence of detailed designs in respect of certain areas which interface with Anglo American's land interests, we request that Anglo American is also added as a consultee for Requirement 3. We similarly request that Anglo American is added as a consultee for Requirement 15 given that the Construction Environmental Management Plan will be an important document in addressing the concerns previously raised by Anglo American in respect of construction impacts.

Concluding Remarks

Whilst, for the reasons set out in this letter, Anglo American continues to object to the dDCO, it welcomes the opportunity to work with the Applicant in overcoming this through the agreement of satisfactory Protective Provisions in the H2 Teesside DCO, and the resolution of a Side Agreement to manage project interfaces.

If no further progress is made regarding these matters, we respectfully request that the ExA considers making the suggested changes to the dDCO to address the various issues raised by Anglo American as part of their representations. Any such changes would then be addressed as part of Anglo American's closing submissions at Deadline 8.

Yours faithfully



Senior Director
BA (Hons) MPhil MRTPI

**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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