

Rammiel Burnie
Case Officer
The Planning Inspectorate
Room 3/OP
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN
H2Teesside@planninginspectorate.gov.uk

Date: 17 February 2025
Our ref: 50303/24/HS/AW/33477647v6
Your ref: 20049353 Anglo American

Dear Rammiel

H2 Teesside Examination: Deadline 7A 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 7A submissions:

- 1 Comments on any submissions received at DL7;
- 2 Responses to questions raised under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR);
- 3 At Annex 1, Anglo American's preferred version of Protective Provisions in response to Question 5 of the Rule 17 Questions of 10 February 2025. Supporting commentary is also provided within this letter;
- 4 At Annex 2, Anglo American's preferred form of wording for Schedule 3 of the DCO in response to Question 16 under Rule 17 of the EPR; and
- 5 At Annex 3, the Shared Area Plan (for certification pursuant to Article 44 of the DCO).

Deadline 7

Anglo American maintains its objection to the draft DCO (dDCO) as published at Deadline 7 (REP7-019) which, in summary, flagged outstanding concerns relating to:

- Schedule 3 – Amendments to the York Potash DCO;
- Article 48 – Environmental Permits;
- Requirements;
- The absence of an Operational Noise Requirement; and,

- Schedule 29 – Protective Provisions for the Protection of Anglo American.

The position set out in Anglo American's Deadline 7 response remains unchanged, noting that we have yet to receive a response to the draft Protective Provisions and Side Agreement (which were submitted to the Applicant in December 2024 (REP7-042)). In the absence of these, Anglo American continues to request the following in respect of Article 48 and Schedule 2 (Requirements) as currently drafted within the draft DCO.

Article 48

Anglo American has two Environmental Permits on land where the H2 Teesside proposed works present a potential risk of breach, being Environmental Permit numbers FB3601GS and EPR/NB3498VD. The former relates to waste operations, and the latter is for discharge to water and groundwater.

Only the former is referenced in the latest version of the dDCO under Article 48 (REP7-019). Anglo American raised this in its Deadline 7 submission (REP7-042).

On the basis that Anglo American has significant liability under both the Environmental Permit numbers FB3601GS and EPR/NB3498VD, 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. This has been agreed between Anglo American and the Applicant in principle, and the agreed approach is that an indemnity will be provided in the Side Agreement to provide financial assurance to Anglo American in the case of a breach.

At Deadline 7, Anglo American stated that in the event that this indemnity was not secured through a Side Agreement, it would make recommendations for revised wording to Article 48 and the Protective Provisions to manage the issue within the DCO at Deadline 8. As Deadline 7A was subsequently inserted into the Examination Timetable, requiring the submission of amended Protective Provisions, Anglo American is submitting at this Deadline such an amendment to cover the indemnity within the Protective Provisions, included at Annex 1.

Anglo American is of the view that provision for the indemnity is required in the Protective Provisions to be included in the dDCO (Schedule 29) because Article 48 is not effective protection in the case of a breach of either Environmental Permit. Firstly, Article 48 references only one Environmental Permit. Secondly (and in any event) Anglo American maintains its objection to the drafting, as set out in its Deadline 3 submission (REP3-012) and at Issue Specific Hearing 2. The drafting purports to exclude the carrying out of any work or activity authorised by the Order or otherwise in connection with the authorised development from constituting a breach of the Environmental Permit. The effect of this provision relates to the activity itself, rather than the impact which ultimately would constitute the breach of either permit and require remediation. In addition, it is not considered correct that any Development Consent Order can simply legislate for exclusion of liability. As set out in Anglo American's Deadline 3 submission, any disapplication of legislation must be within the scope of The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2015 (REP3-012).

To effectively mitigate the risk of exposing Anglo American to unreasonable risk as a consequence of a breach of either one of the Environmental Permits, it requests that Schedule 29 is amended to include the indemnity wording as included in the revised Protective Provisions at Annex 1.

Requirements

The H2 Teesside project includes significant project overlaps with Anglo American's projects, threatening the delivery of its consented York Potash DCO if not properly managed. The design development at these interfaces continues to lack detail and specific issues to be resolved cannot yet be identified.

In the absence of these interfaces being managed through Protective Provisions / Side Agreement, Anglo American maintains its previous requests to be named as a consultee on the following requirements:

- Requirement 3 (Detailed Design)
- Requirement 15 (Construction Environmental Plan)
- Requirement 18 (Construction Traffic Management)
- Requirement 22 (Restoration of Land)
- Requirement 28 (Decommissioning)

In addition to the above, Anglo American maintains its request that an operational noise requirement (as drafted by the Applicant at Deadline 5 – REP5-045) is included within the draft DCO. As previously stated, this will ensure that the management and mitigation measures identified in the assessment of cumulative noise impacts set out in the Environmental Statement are included in the final scheme.

Land Rights Tracker

Deadline 7A invites the Applicant to submit a final update to the Land Rights Tracker together with an agreed position statement setting out where the Applicant and relevant Interested Parties agree or disagree with elements of its content, which is to be signed by both parties.

The Land Rights Tracker was last updated at Deadline 5 in December 2024, with the Applicant summarising the negotiating position with Anglo American as follows:

"The Applicant is continuing to have meaningful weekly meetings with Anglo American to discuss the land agreements, as well as technical meetings. The Applicant is in discussions with Anglo American's solicitors regarding the side agreement and Protective Provisions and is currently reviewing the Applicant's comments on this document. The Applicant also received Anglo American's preferred version of public Protective Provisions. The Applicant has incorporated the aspects of Anglo American's public protective provisions that are agreed. Commercial considerations are mainly agreed and negotiations are ongoing with the legal representatives on the long form agreements."
(REP5-036)

Anglo American has sought to proactively engage with the Applicant throughout the DCO process and, to that end, has cooperated with the provision of plans and information in order to facilitate agreement

being reached with regards to project interfaces. However, the continued lack of response from the Applicant has significantly frustrated this process such that in the absence of an updated Land Rights Tracker, Side Agreement or Protective Provisions being issued by the Applicant, the position described above has not changed and no position statement has been agreed between the two parties.

Rule 17 of the EPR - Questions of 10 February 2025

Anglo American submits answers to Questions 2, 5, 15 and 16.

Question 2

Under Question 2, Interested Parties are invited to summarise their position with regard to outstanding objections, Protective Provisions, CA/temporary possession, and the status of other agreements.

As set out above, Anglo American continues to await a formal response to the Protective Provisions and Side Agreement issued to the Applicant in December 2024. In the absence of these, there is no clarity on the interface between the two projects – or how these will be managed - such that Anglo American must maintain its objection to the H2 Teesside DCO on all grounds previously submitted during the course of the Examination.

Anglo American maintains its earlier request to be added as a consultee for Requirements 3, 15, 18, 22 and 28 on the basis that a lack of design development and agreement between the two parties necessitates consultation on these issues.

Attached to this Submission are the following documents, which Anglo American requests are included in that form in the DCO:

- Annex 1 – Schedule 29: Provisions for the Protection of Anglo American
- Annex 2 – Schedule 3: Modifications to and amendments of the York Potash Harbour Facilities Order 2016
- Annex 3 - Shared Area Plan (for certification pursuant to Article 44 of the DCO)

Further commentary on this is provided in response to Questions 5 and 16 (below).

Anglo American has worked cooperatively with the Applicant to reach voluntary agreements concerning the land interests necessary for the Applicant's authorised development. However, due to a lack of engagement and progress from the Applicant since the draft Protective Provisions and Side Agreement were submitted to it in December 2024, no agreements have been finalised. While Anglo American remains open to entering into these agreements, it continues to object to the proposed compulsory acquisition of its land interests, some of which benefit from development consent as a Nationally Significant Infrastructure Project (York Potash DCO, 2016). If the draft DCO is approved in its current form, including the proposed acquisition rights, it would pose a significant and genuine risk to frustrate the delivery of Anglo American's Woodsmith Project.

Table 1 provides a summary of the outstanding agreements between Anglo American and BP and their current status:

Table 1 Status of Agreements

Document	Status	Latest Position
Protective Provisions	Draft	Sent to the Applicant 10/12/24. No response received.
Side Agreement	Draft	Sent to the Applicant 04/12/24. No response received.
Land Agreement	Draft	Required, not yet received
Statement of Common Ground	Draft	Agreed 17/09/24

Source: Anglo American

Question 5

We attach at Annex 1 Anglo American’s preferred form of Protective Provisions for inclusion in the draft DCO at Schedule 29. The points at issue can be identified in the tracked changes within that document.

The necessity of including the Protective Provisions in the form submitted by Anglo American is due to the absence of any agreement with the Applicant, despite best efforts. The Protective Provisions are essential to prevent the powers of the DCO, if made, frustrating the ability of Anglo American to deliver the consented Woodsmith Project. The provisions can be summarised as follows:

- a Protection from exercise of compulsory powers over Anglo American owned land or rights in land. This protection is required in order to safeguard Anglo American’s land interests that are essential to the delivery of the Woodsmith Project. Anglo American remains clear that any arrangements as to land must be made by agreement, and has consistently demonstrated its cooperation with the Applicant to secure such agreements. To provide for the required level of protection, the application of paragraph 6 of the Protective Provisions to the exercise of compulsory powers over Anglo American land interests has been reinstated. In respect of this protection, Anglo American would point out that in H2 Teesside’s original submitted version of Schedule 29, this full protection was incorporated.
- b Full provision to mitigate the risk of the authorised development causing breach of the Environmental Permits, under which Anglo American has full liability. To provide for this, reference to both Environmental Permits has been included in the drafting, as well as specific reference in paragraph 9 (Design Principles) to facilitate Anglo American’s own monitoring ability.
- c Provision for protection of the overland conveyor piling (paragraph 9 Design Principles) in the context of timing of the delivery of the H2 Teesside hydrogen pipeline to ensure safe and effective delivery of both projects.
- d Provision for indemnity to cover loss and damage, and specifically any loss resulting from a breach of the Environmental Permits.
- e Provisions as to interface of the Respective Projects. Unless an agreement is in place to provide for arrangements at specific areas where the Respective Projects interface, in order to safeguard the delivery of both, it is essential that Anglo American have visibility of the H2 Teesside proposals in areas affected by the powers sought in the DCO, and the ability to protect the York Potash DCO Scheme.

Given the lack of Agreement, it is essential that should the DCO be made, it is subject to full provisions to allow Anglo American to protect its means of delivering the consented Woodsmith Project.

Question 15

As outlined in the table above, the current version of the Statement of Common Ground between the Applicant and Anglo American is dated 17 September 2024. On 13 February 2025 Anglo American received confirmation from the Applicant that an updated Statement of Common Ground would not be published at Deadline 7A, in a continuation of the position agreed prior to Deadline 7. Both parties have agreed that in the context of limited progress such an update is redundant.

As requested by Question 15 under Rule 17 of the EPR – Questions of 10 February 2025, an explanation on why an updated Statement of Common Ground has not been reached is required.

Anglo American is yet to reach agreement with the applicant on the Protective Provisions, Side Agreement, and Land Agreement and maintains its objection to the current drafting of the DCO to include Schedule 3, Article 48, and the Requirements as detailed above. On this basis, and as stated in its Deadline 7 submission (REP7-042), Anglo American's written representations serve to confirm that the position is unchanged.

Question 16

We attach at Annex 2 Anglo American's preferred form of Schedule 3 to the dDCO. This contains proposed amendments to the York Potash DCO in the form of provisions for the protection of H2 Teesside.

Anglo American has sought to engage with the Applicant to agree provisions as to the interface of the Respective Schemes at specified areas which are within the limits of deviation of both proposed developments. Unfortunately, despite best efforts on the part of Anglo American these discussions have not progressed to a point where agreement has been reached.

The proposed Schedule 3 contains high level protections for H2 Teesside which will require Anglo American in the exercise of the powers in its own DCO to seek the consent of H2 Teesside in a number of areas where the respective Projects interface, and cooperate with H2 Teesside at all points of project interface.

However, at Redcar Bulk Terminal and Bran Sands (named Shared Areas 1 and 2 respectively) the Applicant has not committed to the arrangements discussed in technical meetings between the Parties. On this basis, whilst Anglo American is willing to cooperate with the Applicant as regards works in these areas, it cannot accept restrictions on the powers of the DCO in the interests of the delivery of the H2 Teesside scheme, because to do so would frustrate Anglo American's ability to deliver its consented NSIP.

The Shared Area Plan is referred to in the Protective Provisions and is submitted at Annex 3. The necessity for a plan showing the areas of interface is agreed in principle. Anglo American submits that these areas of interface ("Shared Areas") must be individually identified on the plan, on the basis that the Protective Provisions differentiate between each area for the reasons set out above.

Anglo American would note that the preferred protective provisions apply unless otherwise agreed in writing between the Parties. On that basis, should agreement be reached as has been Anglo American's intention throughout the Examination, that agreement will set out the arrangements for project interface such that both can progress effectively.

The Examining Authority will note that the submitted provisions for the protection of H2 Teesside in proposed Schedule 3 to the dDCO are not reciprocal to those submitted for the protection of Anglo American in the proposed Schedule 29 to the dDCO. The reason for this, is that as set out above, key technical points of interface between the two Projects has not yet been recorded in an agreement.

The parties have discussed the interface of the respective projects in each of the "Shared Areas" however until the Applicant has otherwise committed to those interface arrangements, Anglo American cannot accept restrictions on its own DCO powers, and also cannot be exposed to the risk that H2 Teesside DCO powers might extinguish the means of delivering the Woodsmith Project.

Concluding Remarks

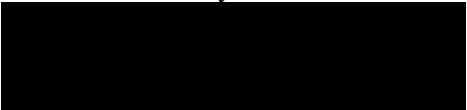

As invited under the Rule 17 of the EPR Questions of 10 February 2025, Anglo American submits at Deadline 7A a summary of its position, outstanding objections, and at Annexes 1 and 2 its preferred version of Protective Provisions and Schedule 3 for the H2 Teesside DCO.

Anglo American's position has not changed since December 2024, when it submitted to the Applicant its comments on the draft Protective Provisions and Side Agreement. Reaching agreement remains essential to enable the H2 Teesside project to progress without detrimentally impacting Anglo American and the delivery of the Woodsmith Project.

With limited time remaining in the Examination, Anglo American must express its frustration at the negligible progress that has been made during a very protracted period. In this submission, Anglo American restates requests made at earlier deadlines for amendments to drafted Requirements. Whilst it is acknowledged that engagement with the Applicant is ongoing, it must be stated that this engagement is yet to result in satisfactory progress, requiring Anglo American to suggest alternative routes for resolving issues in the amended Protective Provisions.

Anglo American remains open to reaching agreement with the Applicant and will continue to take a proactive role in engagement.

Yours sincerely



Senior Director
BA (Hons) MPhil MRTPI

**Annex 1: Anglo American's preferred form of
Protective Provisions for inclusion in
the draft DCO at Schedule 29**

SCHEDULE 29

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF ANGLO AMERICAN

1. For the protection of Anglo American the following provisions have effect, unless otherwise agreed in writing between the Parties.

2. The following definitions apply in this Schedule—

"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;

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

"EA Permit 1" means the environmental permit for the landfill site at Bran Sands given permit number EPR/FB3601 GS (formerly Waste Management Licence EAWML60092);

["EA Permit 2" means the Discharge Permit EPR/NB3498VD;](#)

"expert" means a person appointed pursuant to paragraph 14(b);

"H2T Apparatus" means the pipeline, cables, structures to be owned, occupied or maintained by the undertaker 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 land coloured blue on the Shared Area Plan comprising the area of land within the Order Limits that overlaps with Anglo American interests pursuant to the Property Documents or otherwise within the limits of deviation of the York Potash Order;](#)

"Shared Area Plan" means the plan which is certified as the H2 Teesside Anglo American Shared Area Plan by the Secretary of State under article 44 (certification of plans etc.) for the purposes of this Order;

"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 Bulle 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 and any amended or replacement order approved as part of element (4) of the Woodsmith Project, including York Potash Harbour Facilities (Amendment) Order 2022.

Consent to works in the shared area

3.—(1) Where the consent or agreement of Anglo American is required under the provisions 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) the identity of the contractors carrying out the works 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 required 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 paragraphs 5(1), 6(1) and 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 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 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 (where the conditions proposed or any refusal relate to such matters, a reasoned explanation or other form of evidence will be provided by Anglo American to provide an understanding of the matters raised); and/or

- (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, the EA Permit [1 or the EA Permit 2](#) or render compliance with the obligations under, or conditions attached to, the EA Permit [1 or the 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 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 in that seven day period.

Deleted: sub-sub-

(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 Schedule.

(7) In the event that—

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

the undertaker may refer the matter to dispute resolution under paragraph 14.

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

- (a) [Project Manager, Woodsmith Mine, Sneaton, Whitby, YO22 5BF](#); and
- (b) [Company Secretary, Anglo American, 17 Charterhouse Street, London, EC1N 6RA](#).

Deleted: [details of Anglo American to be confirmed]

Deleted: [details of Anglo American 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 (1), 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 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 employees, contractors and sub-contractors; and

- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the Respective Projects.

Regulation of works within the shared area

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 14(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 14.

(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 paragraph 3 and this paragraph 5 insofar 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 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 over the shared area

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](#) without the prior written consent of Anglo American.

Deleted: Anglo American Specified Works

(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 matters);
- (g) article 17 (discharge of water);
- (h) article 18 (felling or lopping of trees and removal of hedgerows);
- [\(i\) article 19 \(protective works to buildings\);](#)
- [\(j\) 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 \(acquisition of subsoil or airspace only\);](#)
- [\(p\) 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 \(statutory undertakers\).](#)

Deleted: and

(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.

Formatted: Indent: Left: 1.3 cm, No bullets or numbering

Constructability principles

7.—(1) The undertaker in respect of the [Specified Works](#) (unless otherwise agreed, or in an emergency relating to potential death or serious injury, or where it would render the Specified Works, H2T Apparatus, Anglo American Specified Works or Anglo American Apparatus unsafe, or put the undertaker in breach of its statutory duties) must in respect of au Shared Areas—

Deleted: s

Deleted: w

- (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 any part of any 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 without prejudice to the generality of sub-paragraph (a) 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 any construction compounds where such areas are not those referred to in table 5-2 "construction programme and management" of chapter 5 of the environmental statement;
 - (d) update the monthly construction programme approved under paragraph (c)(i) monthly and supply a copy of the updated programme to Anglo American every month;
 - (e) at all times construct the Specified Works in compliance with the relevant agreed construction programme and construction traffic and access management plan;
 - (f) 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 Disease and Dangerous Occurrences Regulations applicable from time to time within 24 hours of the duty to report arising;
 - (g) 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;
 - (h) 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
 - (i) obtain the prior written consent of Anglo American for the use of any recycled aggregate material within the Shared Area.
- (2) Unless otherwise agreed, the undertaker must not do anything within the Shared Area 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).
- (3) 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.
- (4) In considering a request for any consent under the provisions of this Schedule, Anglo American must not—
- (a) request an additional construction traffic and access management plan or a spoil management plan if such a plan has already been approved pursuant to sub-paragraph (1)(c)(i) (as relevant in respect of a traffic and access management plan) or agreed pursuant to sub-paragraph (3) (in respect of a spoil management plan); and
 - (b) refuse consent for reasons which conflict with the contents of documents approved by Anglo American pursuant to the provisions of this paragraph and paragraph 8.

Deleted: sub-

Interface Design Process

8.—(1) Prior to the seeking of any consent under this Schedule, the undertaker must, unless Anglo American has brought forward works in that part of the Shared Area before the undertaker, participate in a design and constructability review for that part of the Shared Area which shall, at a minimum (unless otherwise agreed), include the following matters—

- (a) 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 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 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

9. The Specified Works must be designed in such a way (unless otherwise agreed by Anglo American—

- (a) that the location and design of the Specified Works do not interfere with the operation and maintenance of [all monitoring boreholes, leachate chambers nor the integrity of landfill that are the subject of the EA Permit 1 or the EA Permit 2, so as not to conflict with the ability of Anglo American to comply with the EA Permit 1 or the EA Permit 2;](#)
- (b) so as not to conflict with the ability of Anglo American to construct [all works authorised by the York Potash Order, and to preserve the optionality of Anglo American to proceed with the construction of](#) the southern tower for the overland conveyor in the location authorised by the York Potash Order or the conveyor towers in the alternative locations within the Shared Area [until such time as Anglo American notify the undertaker in writing; and](#)
- (c) [to ensure that the piling for any overland conveyor referred to in sub-paragraph 9\(b\) is in place to the reasonable satisfaction of Anglo American in advance of the commencement of any such part of the authorised development comprising the hydrogen pipeline.](#)

Deleted: boreholes BH0622, BH0627, BH0628

Deleted: and

Maintenance and Operational Principles

10. The Specified Works must be maintained and operated in such a way that (unless otherwise agreed, in an emergency, or where it would render the Specified Works, Anglo American Specified Works or Anglo American Apparatus unsafe, or put the undertaker in breach of its statutory duties)—

- (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 Permit [1 and the EA Permit 2.](#)

- (b) Anglo American (along with NWL) has unhindered access to monitor the gas monitoring facility located within the NWL Facility so as to be able to comply with its obligations under the EA Permit [1](#) and the EA Permit [2](#); and
- (c) the operation [and maintenance](#) of any overland conveyor located within those Shared Areas is not impaired.

Miscellaneous provisions

11.—(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 Schedule.

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

Indemnity

12.—(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 breach of the EA Permit 1 or the EA Permit 2](#), or the operations of Anglo American, or in the supply of any goods, by Anglo American, 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) [indemnify and keep indemnified Anglo American against liability which Anglo American incurs by reason of any breach by the undertaker or its authorised personnel.](#)

(2) 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.

(3) 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.

(4) 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).

(5) ~~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 (4).~~

(6) 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 14 does not relieve the undertaker from any liability under this paragraph.

Dispute Resolution

13. Article 46 (arbitration) does not apply to the provisions of this Schedule.

14. Any difference in relation to the provision in this Schedule must be referred to—

Deleted: ~~<#>compensate Anglo American for any other reasonable 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.¶~~
~~<#>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; and¶~~
~~<#>any indirect or consequential loss or loss of profits by Anglo American.¶~~

Deleted: ~~<#>The undertaker shall only be liable under this paragraph 12 for claims reasonably incurred by Anglo American.¶~~

- (a) a meeting of Chris Daykin, BP Hydrogen & Carbon Capture and Use or the Vice President for hydrogen and carbon capture, usage and storage in the United Kingdom 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.

15. The fees of the expert appointed pursuant to paragraph 14(b) 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.

Deleted: expect

16. Where appointed pursuant to paragraph 14(b), 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 that 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.

17. 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 in 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.

Deleted: sub-

18. 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.

Annex 2: Anglo American's preferred form of Schedule 3 to the draft DCO

SCHEDULE 3

MODIFICATIONS TO AND AMENDMENTS OF THE YORK POTASH HARBOUR FACILITIES ORDER 2016

1. Article 34 is deleted and replaced with “Schedules 7 to 13 have effect”.
2. After Schedule 12 insert new Schedule 13 –

“SCHEDULE 13

FOR THE PROTECTION OF H2T UNDERTAKER

Interpretation

1. For the protection of the H2T Undertaker the following provisions have effect, unless otherwise agreed in writing between the Parties.

2. The following definitions apply in this part of this Schedule:-

"Anglo American Specified Works"	means so much of the Woodsmith Project as is within the Shared Area
"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
"Expert"	means a person appointed pursuant to paragraph 9;
"H2T Order"	means The H2Teesside Order as it is made by the Secretary of State
"H2T Project"	means the construction, operation or maintenance of development authorised by the H2T Order and any planning permission intended to operate in conjunction with the H2T Order
"H2T Specified Works"	means so much of the H2T Project as is within the Shared Area
"H2T Undertaker"	means H2T being the applicant for the application for the H2T Order
"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 H2T Project 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 land coloured blue on the Shared Area Plan
"Shared Area 1"	means the land comprising the area shown labelled ‘Shared Area 1’ on the Shared Area Plan
"Shared Area 2"	means the land comprising the area shown labelled ‘Shared Area 2’ on the Shared Area Plan

“Shared Area 3”	means the land comprising the area shown labelled ‘Shared Area 3’ on the Shared Area Plan
“Shared Area 4”	means the land comprising the area shown labelled ‘Shared Area 4’ on the Shared Area Plan
“Shared Area 5”	means the land comprising the area shown labelled ‘Shared Area 5’ on the Shared Area Plan
“Shared Area 6”	means the land comprising the area shown labelled ‘Shared Area 6’ on the Shared Area Plan
"Shared Area Plan"	means the plan which is certified and named as the Anglo American Shared Area Plan by the Secretary of State under article 44 of the H2T Order
"Woodsmith Project"	<p>means the construction operation and maintenance of development authorised by the York Potash Order or by any planning permission or development consent order issued whether before or after the making of the H2T Order as part of the Woodsmith Project such development comprising:-</p> <ul style="list-style-type: none"> (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 RBT and the harbour authorised by the York Potash Order and planning permissions
"York Potash Order"	means the York Potash Harbour Facilities Order 2016 and any amended or replacement order approved as part of element (d) of the Woodsmith Project including York Potash Harbour Facilities (Amendment) Order 2022, and reference to “York Potash Order” includes any planning permission associated with the Woodsmith Project, including Planning Permission Reference R/2021/0409/FFM in respect of such part of the Woodsmith Project comprising (d), any live planning application submitted in respect of the overland conveyor and port handling facility.

Consent To Works In The Shared Areas 3, 4, 5, 6

3. –(1) Where the consent or agreement of the H2T Undertaker is required under the provisions of this part of this Schedule Anglo American must give at least 21 days written notice to the H2T Undertaker 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 York Potash Order any powers sought to be used or works to be carried out relate to;
- (c) the identity of the contractors carrying out the work;
- (d) the proposed programme for the power to be used or works to be carried out; and
- (e) the named point of contact for Anglo American for discussions in relation to the information supplied and the consenting process.

(2) The H2T Undertaker must notify Anglo American within 14 days of the receipt of the written notice under paragraph 3(1) of:-

- (a) any information it reasonably requires to be provided in addition to that proposed to be supplied by Anglo American under paragraph 3(1);
- (b) any particular circumstances with regard to the construction or operation of the H2T Project it requires to be taken into account;
- (c) the named point of contact for the H2T Undertaker 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 paragraphs 5(1), 6(1) and 6(2) must be accompanied by the information referred to in paragraph 3(1) as amended or expanded in response to sub-paragraph (2).

(4) Subject to paragraph (5), where conditions are included in any consent granted by the H2T Undertaker pursuant to this part of this Schedule, Anglo American 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 the H2T Undertaker.

(5) Wherever in this part of this Schedule provision is made with respect to the agreement approval or consent of the H2T Undertaker, that approval or consent must be in writing and subject to such reasonable terms and conditions as the H2T Undertaker 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 H2T Project (for the avoidance of doubt where the conditions proposed or any refusal relate to such matters, a reasoned explanation or other form of evidence will be provided by the H2T undertaker to provide an understanding of the matters raised);
- (b) make regulatory compliance more difficult or expensive, and / or
- (c) prevent the ability of the H2T Undertaker to have uninterrupted access to the H2T Project.

Provided that before the H2T Undertaker can validly refuse consent for any of the reasons set out in paragraphs (a) and (b) it must first give Anglo American seven days' notice of such intention and consider any representations made in respect of such refusal by Anglo American to the H2T Undertaker within that seven day period.

(6) The seven day period referred to in the proviso to 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) Anglo American considers that the H2T Undertaker has unreasonably withheld its authorisation or agreement under paragraphs 5(1), 6(1) and 6(2); or
- (b) Anglo American considers that the H2T Undertaker has given its authorisation under paragraphs 5(1), 6(1) and 6(2) subject to unreasonable conditions

Anglo American may refer the matter to an expert for determination under paragraph 10.

(8) Any notice under paragraph 3(1) and any request for approval or consent under the provisions of this part of this Schedule must be sent to the Undertaker by recorded delivery and addressed to Andy Lane, VP Hydrogen – UK, bp, Chertsey Road, Sunbury on Thames, Middlesex TW16 7LN, and copied to Clare Haley, Senior Counsel, bp, Chertsey Road, Sunbury on Thames, Middlesex TW16 7LN (or the equivalent named individual holding those positions at the time of the notice) and by email to andy.lane@uk.bp.com and clare.haley@uk.bp.com

(9) In the event that the Undertaker 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 Anglo American may serve upon the H2T Undertaker written notice requiring the H2T Undertaker to give their decision within a further 28 days beginning with the date upon which the H2T Undertaker received written notice from Anglo American and, subject to compliance with paragraph (10), if by the expiry of the further 28 day period the H2T Undertaker has failed to notify Anglo American of its decision the H2T Undertaker is deemed to have given its consent, approval or agreement without any terms or conditions.

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

Co-Operation

4. Insofar as the H2T Specified Works are or may be undertaken concurrently with the Anglo American Specified Works within any of the Shared Areas, Anglo American must:-

- (a) co-operate with the Undertaker with a view to ensuring:-
 - (i) the co-ordination of programming of all activities and the carrying out of works within the relevant Shared Area; and
 - (ii) that access for the purposes of the construction and operation of the H2T Project is maintained for the Undertaker and its contractors, employees, contractors and sub-contractors; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the Respective Projects.

Regulation Of Works Within The Shared Areas 3, 4, 5, 6

5. –(1) Anglo American must not carry out the Anglo American Specified Works within Shared Area 3, 4, 5 or 6 without the prior written consent of the Undertaker obtained pursuant to, and in accordance with, the provisions of paragraph 3.

(2) Where under sub-paragraph 3(5) the H2T Undertaker requires any protective works to be carried out either by themselves or by Anglo American (whether of a temporary or permanent nature) such protective works must be carried out to the reasonable satisfaction of the H2T Undertaker.

(3) Nothing in paragraph 3 or this paragraph 5 precludes Anglo American from submitting at any time or from time to time, but in no case less than 48 days before commencing the execution of any Anglo American Specified Work within Shared Area 3, 4, 5 or 6, new Plans in respect of that Anglo American 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 10(b) and the expert gives approval for the works concerned, the Anglo American Specified Works to which this paragraph applies must be carried out in accordance with that approval and any conditions applied by the decision of the expert under paragraph 9.

(5) Anglo American must give to the H2T Undertaker not less than 28 days' written notice of its intention to commence the construction of any of the Anglo American Specified Works to which this paragraph applies and, not more than 14 days after completion of their construction, must give the H2T Undertaker written notice of the completion.

(6) Anglo American is not required to comply with sub-paragraphs 5(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 the H2T Undertaker 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 5 in so far as is reasonably practicable in the circumstances.

(7) Anglo American must at all reasonable times during construction of the Anglo American Specified Works to which this paragraph applies allow the Undertaker and its officers, employees, servants, contractors, and agents access to that Anglo American Specified Works and all reasonable facilities for inspection of that Anglo American Specified Works.

(8) After the purpose of any temporary works has been accomplished, Anglo American must with all reasonable dispatch, or after a reasonable period of notice in writing from the H2T Undertaker requiring Anglo American to do so, remove the temporary works in, on, under, over, or within the relevant Shared Area to which this paragraph applies.

(9) If Anglo American fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to paragraph (8), the H2T Undertaker may remove the temporary works and may recover the reasonable costs of doing so from Anglo American.

(10) Anglo American must not exercise the powers conferred by the York Potash Order or undertake the Anglo American Specified Works to which this paragraph applies to prevent or interfere with the access by the Undertaker to that H2T Specified Works unless first agreed in writing by the Undertaker.

(11) If in consequence of the exercise of the powers conferred by the York Potash Order or the carrying out of the Anglo American Specified Works within Shared Area 3, 4, 5 or 6 the access to any of the H2T Specified Works in the relevant Shared Area is materially obstructed, Anglo American must provide such alternative means of access to that H2T Specified Works as will enable the Undertaker to construct, maintain or use its H2T Project no less effectively than was possible before the obstruction.

(12) To ensure its compliance with this paragraph 5, Anglo American must before carrying out any of the Anglo American Specified Works within Shared Area 3, 4, 5 or 6 request up-to-date written confirmation from the H2T Undertaker of the location of any part of its then existing or proposed H2T Specified Works.

Regulation Of Powers Over Shared Areas 3, 4, 5, 6

6. –(1) Anglo American must not exercise the powers granted under the York Potash Order within Shared Area 3, 4, 5 or 6 so as to hinder or prevent the construction, operation or maintenance of the H2T Specified Works in that Shared Area without the prior written consent of the Undertaker.

(2) Anglo American must not exercise the powers under any of the articles of the York Potash Order specified in paragraph (3) below, over or in respect of the Shared Area within Shared Area 3, 4, 5 or 6 otherwise than with the prior written consent of the Undertaker.

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

- (a) Article 10 (street works);
- (b) Article 11 (temporary stopping up of streets);
- (c) Article 12 (access to works);
- (d) Article 14 (discharge of water);
- (e) Article 15 (protective works to buildings);
- (f) Article 16 (authority to survey and investigate land);

(4) In the event that the H2T Undertaker withholds its consent pursuant to paragraph (2) it must notify Anglo American in writing of the reasons for withholding such consent and (if applicable) the time period during which such consent will be withheld.

Miscellaneous Provisions

7. –(1) The H2T 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) Anglo American must pay to the Undertaker the reasonable expenses incurred by the Undertaker in connection with the consenting processes under this part of this Schedule, including the approval of plans, inspection of any Anglo American Specified Works or the alteration or protection of the H2T Specified Works.

Dispute Resolution

8. Article 40 of the York Potash Order does not apply to the provisions of this part of this Schedule.

9. Any difference in relation to the provisions in this part of this Schedule must be referred to:-

- (a) a meeting of Chris Daykin, BP Hydrogen & Carbon Capture and Use or the Vice President for hydrogen and carbon capture, usage and storage in the United Kingdom 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.
- (c) The fees of the expert are payable by the Parties in such proportions as the expert may determine or, in the absence of such determination, equally as between the Parties.

10. 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 paragraph (a) above;
- (c) issue a decision within 42 days of receipt of the submissions submitted pursuant to paragraph (a) above; and

(d) give reasons for the decision.

11. The expert must consider where relevant:-

- (a) the development outcomes sought by the H2T Undertaker and Anglo American;
- (b) the ability of the H2T Undertaker and Anglo American to achieve the outcomes referred to in 11(a) above 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 the H2T Order or the York Potash Order, the H2T Undertaker's or Anglo American's outcomes could be achieved in any alternative manner without the H2T Specified Works being materially compromised in terms of increased cost or increased length of programme; and
- (e) any other important and relevant considerations.

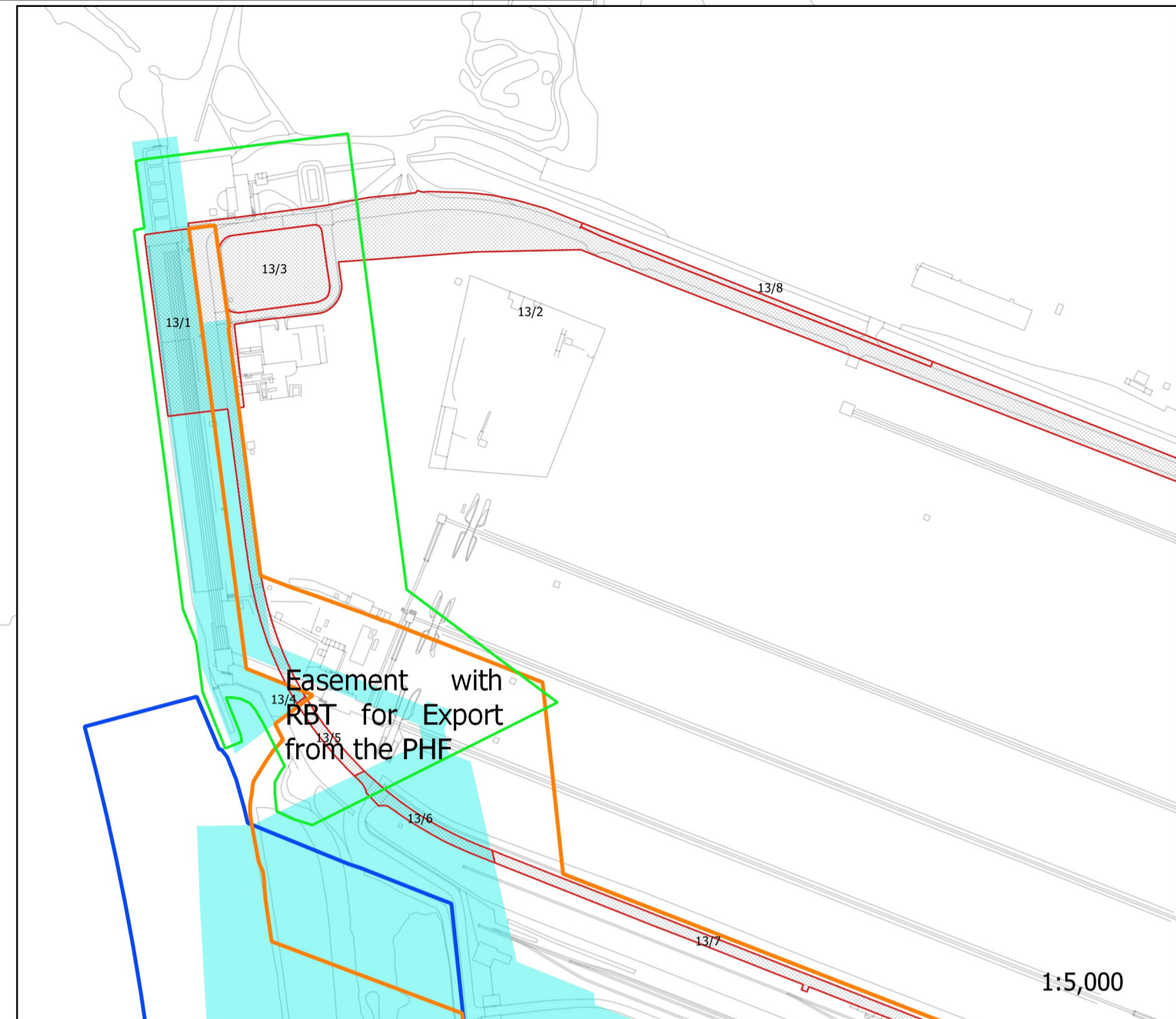
12. Any determination by the expert is final and binding which the Parties must comply with and is enforceable by the Parties by injunction except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by a single arbitrator 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.

Annex 3: Shared Area Plan for Anglo American and H2 Teesside

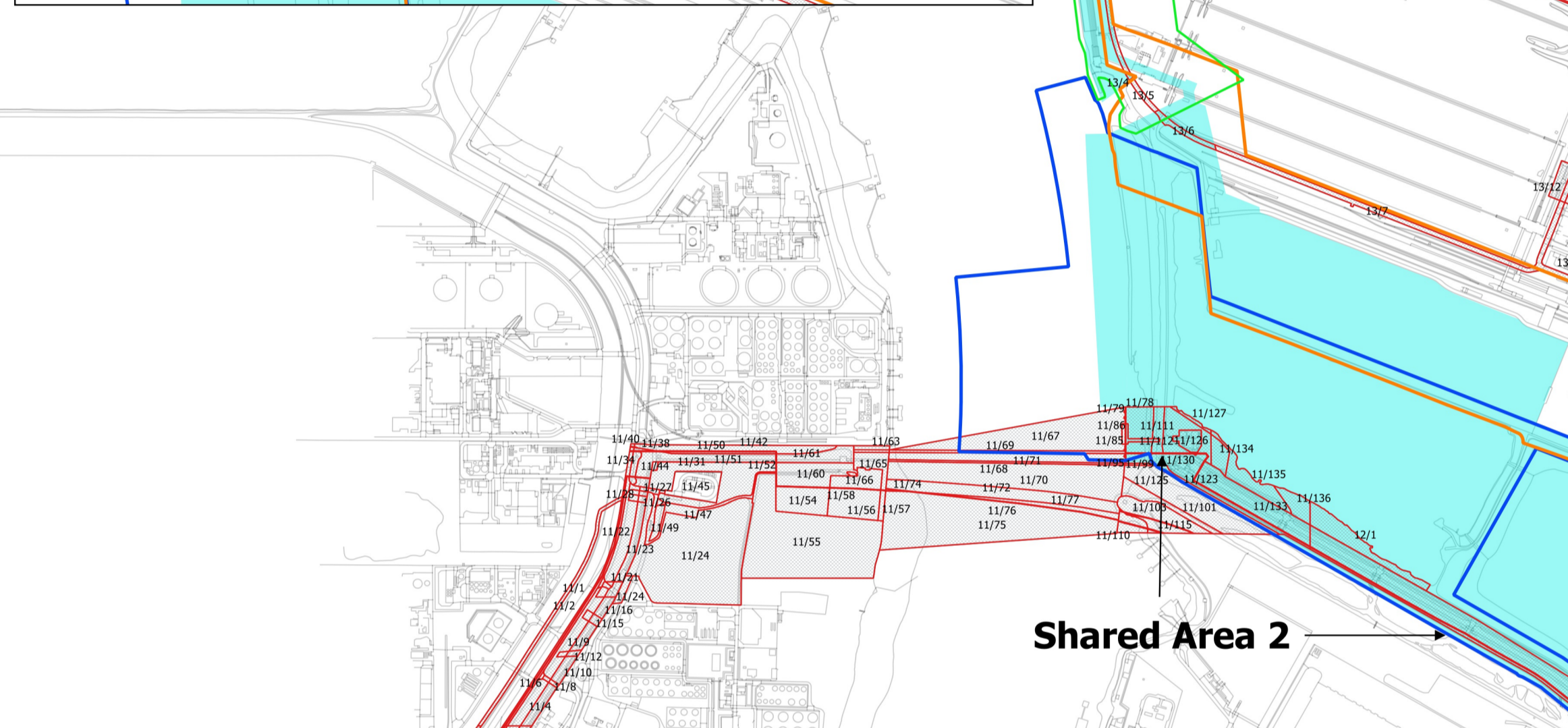
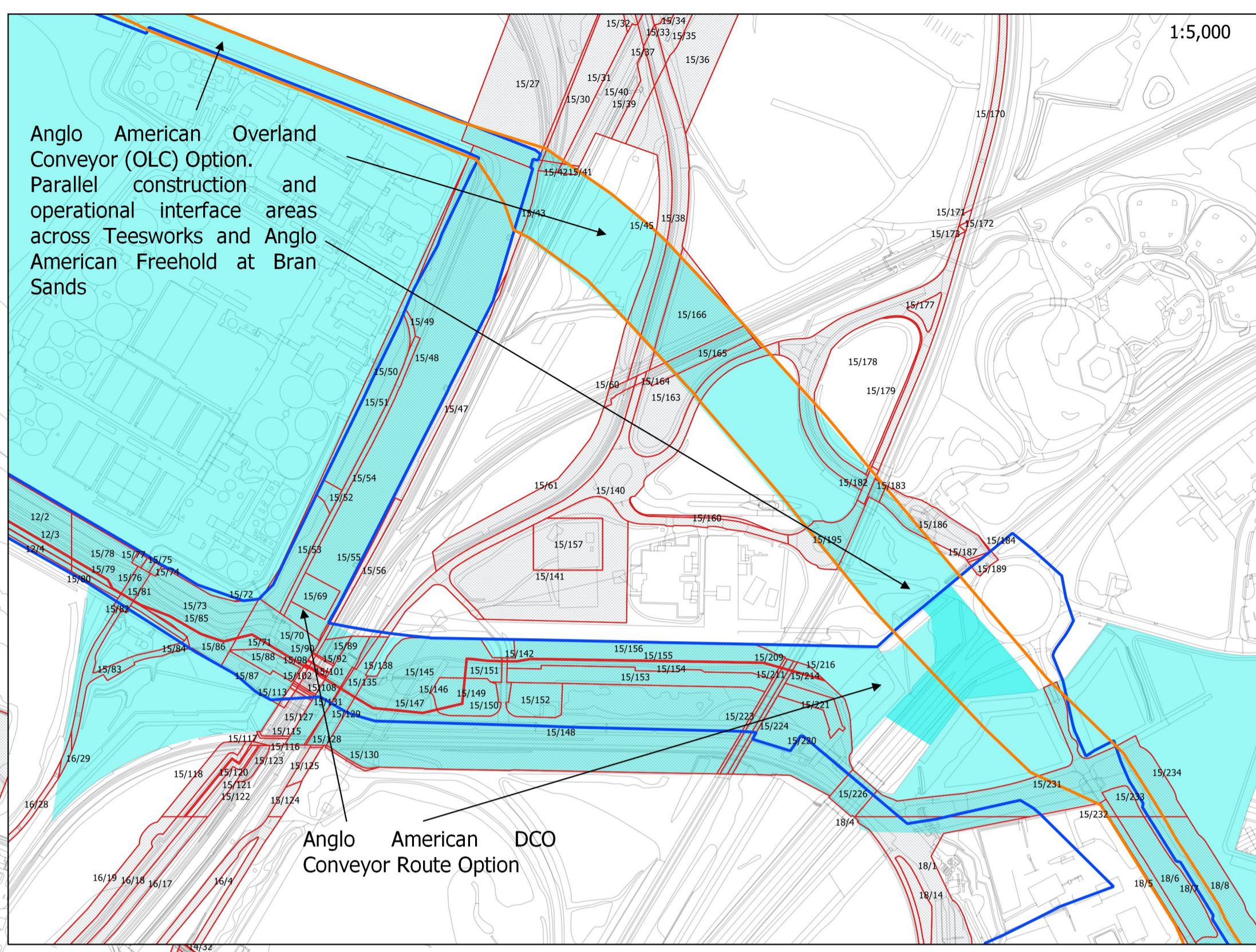


1:5,000

- Anglo American Land Interests
- Anglo American Development Consent Order
- Anglo American Town and Country Planning Application, Port Handling Facility (PHF) and Overland Conveyor (OLC)
- Lawful Development Certificate (LDC)
- H2 Teesside Red Line Boundary
- H2 Teesside Land Plots



Shared Area 1

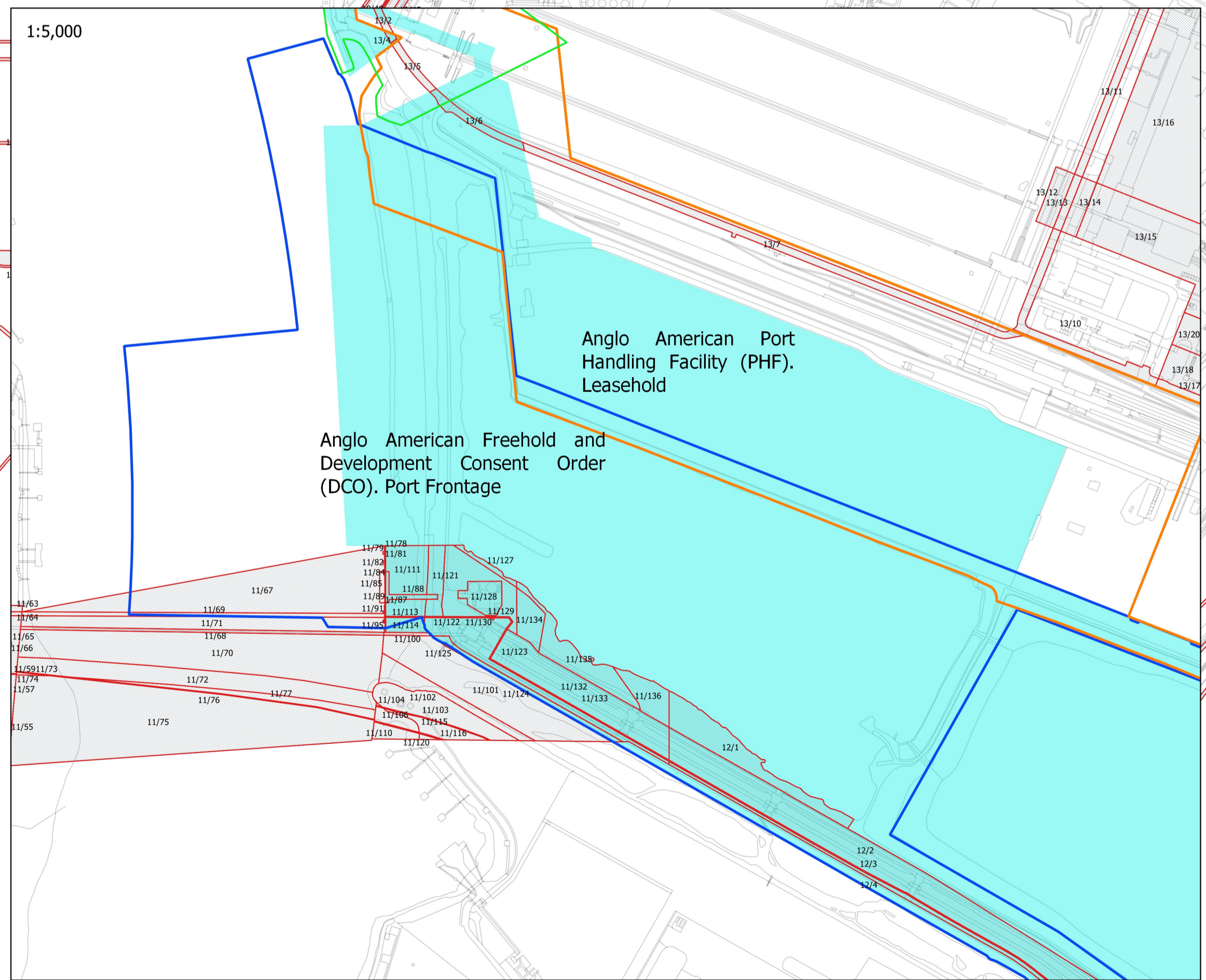


Shared Area 4

Shared Area 5

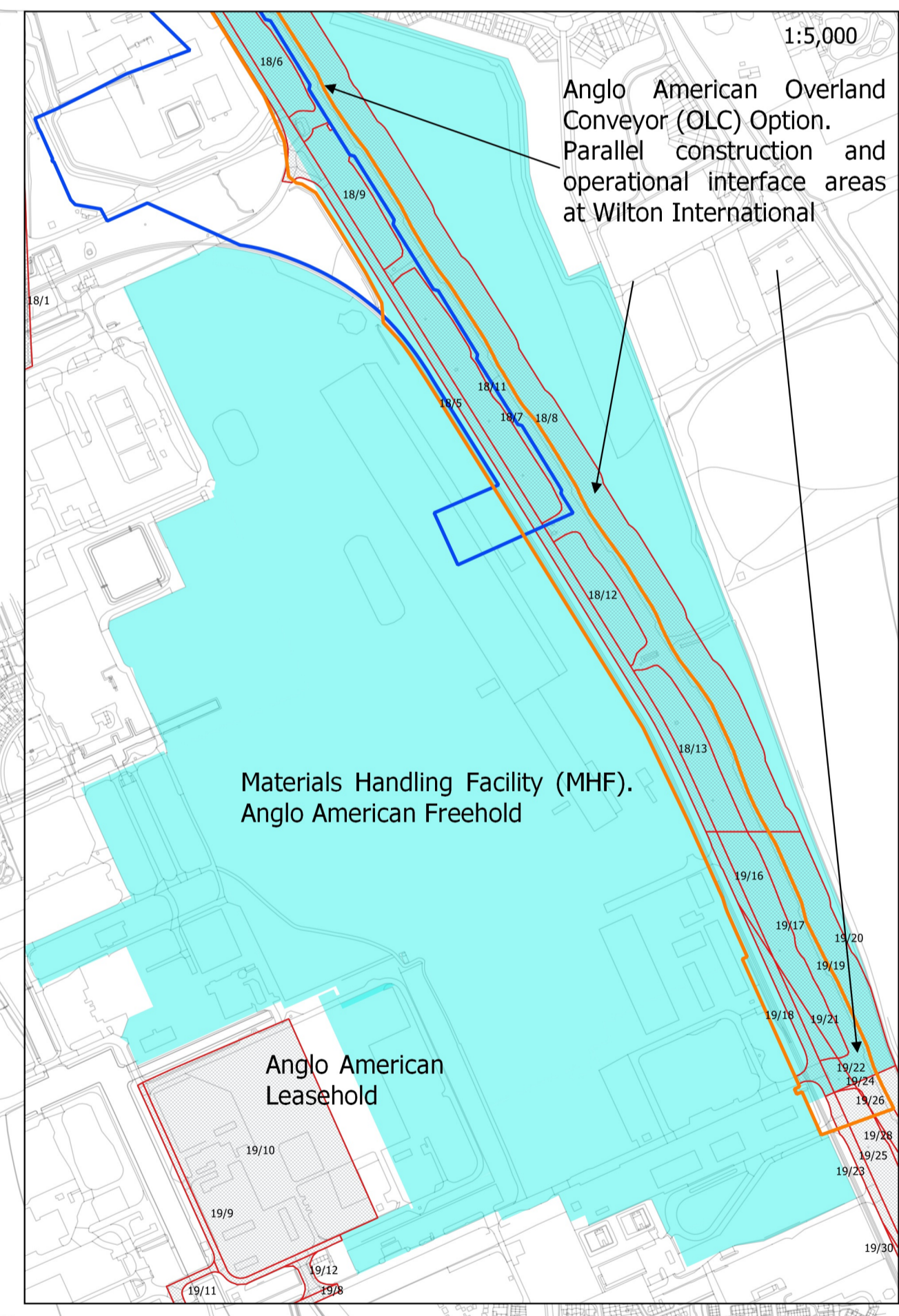
Shared Area 6

Shared Area 6



Shared Area 3

Shared Area 6



Anglo American Overland Conveyor (OLC) Option. Parallel construction and operational interface areas at Wilton International

V1	14/02/25	DR	DR	DR
----	----------	----	----	----

REV	DATE	BY	CHKD	APPD

Anglo American

The Woodsmith Project | Reskilling House | Lake View | Scarborough | YO11 3ZB | North
 T: +44 (0) 1723 470010 | W: www.angloamerican.com

Drawing Title: Anglo American and H2 Teesside Project Overlay Plan

SCALE @ A1: 1:10,000