

**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—

“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;

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“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;

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

“EA Permit 1” means the environmental permit issued by the Environment Agency pursuant to the Environmental Permitting (England and Wales) Regulations 2016 under reference EPR/FB3601GS in respect of the landfill site at Bran Sands (formerly Waste Management Licence EAWML60092);

“EA Permit 2” means the environmental permit issued by the Environment Agency pursuant to the Environmental Permitting (England and Wales) Regulations 2016 under reference EPR/NB3498VD in respect of the discharge of trade effluent arising from the construction and operation of the Woodsmith Project;

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“Eston Triangle Area” means the land comprised in plots 16/29, 15/83, 15/245, 15/80, 15/79, 15/81, 15/76, 15/78, 15/77, 15/75, 15/74, 15/73, 15/85, 15/86, 15/244, 15/84, 15/87, 15/88, 15/71 and 15/70 identified in the Land Plans.

“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 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 as at the date of the Order;

“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 so far within the Order Limits;

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“Shared Area 1” means the land comprising plots 13/7, 13/2, 13/3, 13/1, 13/6, 13/5 and 13/4 on the Land Plans;

“Shared Area 2” means the land comprising 12/2, 15/76, 15/70, 15/73, 11/78, 11/79, 11/80, 11/81, 11/83, 11/82, 11/84, 11/85, 11/88, 11/86, 11/87, 11/128, 11/89, 11/90, 11/91, 11/92, 11/93, 11/94, 11/129, 11/113, 11/122, 11/130, 12/3, 11/132, 15/79, 11/114, 15/87, 11/97, 11/98, 11/131, 11/95, 11/96, 11/99, 15/74, 15/72, 15/77, 15/75, 16/29, 15/83, 11/67, 11/69, 11/71, 11/123, 12/5, 12/1, 11/124, 11/125, 15/82, 12/4, 11/127, 15/88, 11/135, 11/134, 11/112, 11/126, 11/111, 11/121, 15/80, 11/133, 11/136, 15/78, 15/84, 15/81, 15/85, 15/71, 12/6, 15/244, 15/245 and 15/86 on the Land Plans;

“Shared Area 3” means the land comprising plots 15/53, 15/52, 15/51, 15/54, 15/47, 15/55, 15/48, 15/50, 15/49, 15/69 and 15/56 on the Land Plans;

“Shared Area 4” means the land comprising plots 15/40, 15/31, 15/30, 15/41, 15/42, 15/27 and 15/43 on the Land Plans;

“Shared Area 5” means the land comprising plots 15/38, 15/45, 15/140, 15/178, 15/182, 15/186, 15/183, 15/189, 15/166, 15/165, 15/163 and 15/195 on the Land Plans;

“Shared Area 6” means the land comprising plots 18/5 15/153, 15/221, 15/226, 15/223, 15/129, 15/136, 15/216, 15/212, 15/156, 15/145, 15/138, 15/144, 15/127, 15/148, 15/220, 15/154, 15/211, 15/215, 15/134, 15/132, 15/91, 15/90, 15/94, 15/92, 15/93, 15/95, 15/96, 15/97, 15/99, 15/98, 15/100, 15/103, 15/102, 15/104, 15/106, 15/105, 15/101, 15/108, 15/107, 15/109, 15/110, 15/111, 15/112, 15/114, 15/113, 15/130, 19/18, 19/22, 19/28, 15/231, 19/21, 19/27, 19/23, 19/25, 18/6, 18/9, 18/11, 18/12, 18/13, 15/131, 15/135, 15/133, 18/8, 19/26, 15/146, 15/149, 15/147, 15/150, 15/152, 15/209, 15/222, 15/210, 15/213, 15/224, 15/214, 15/89, 18/1, 19/19, 15/233, 15/234, 15/232, 15/143, 15/155, 15/142, 15/137, 15/128, 19/20, 18/7, 19/17, 19/16, 19/24, 15/151 and 18/5 on the Land Plans;

“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;

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

“STDC Agreement Area” means the area coloured orange on the plan which is certified as the H2 Teesside STDC Agreement Area Plan by the Secretary of State under article 44 (certification of plans etc.) for the purposes of this Order;

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“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 and any amended or replacement order including York Potash Harbour Facilities (Amendment) Order 2022 and reference to “York Potash Order” includes Planning Permission Reference R/2021/0409/FFM in respect of such part of the Woodsmith Project.

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### 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.

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(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 and EA Permit 2 or render compliance with the obligations under, or conditions attached to, the EA Permit 1 and EA Permit 2—

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- (i) materially more difficult; and/or
- (ii) materially more expensive;
- (d) make regulatory compliance materially 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,

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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.

(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.

(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 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 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**

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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 Anglo American Specified Works without the prior written consent of Anglo American.

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(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); and
- (i) article 19 (protective works to buildings).

Commented [PM13]: Issue 6 - compulsory acquisition

(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.

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#### Constructability principles

7.—(1) Subject to sub-paragraph (4) 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:

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- (a) in respect of all Shared Areas—
  - (i) 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;
  - (ii) ensure that works carried out to, or placing of H2T Apparatus beneath, roads along which construction, operation or maintenance access is required by Anglo American in respect of any Anglo American Apparatus (including the overland conveyer) will be of adequate specification to bear the loads;
  - (iii) 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—
    - aa. 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 (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;

- bb. provide a copy to Anglo American any relevant construction quality assurance plan, construction management and execution plan and construction environmental management plan approved under Requirement 15(3) and plans approved under Requirement 15(7) which relate to construction activities in the Shared Area
- cc. 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
- dd. obtain agreement of Anglo American to the location of any temporary 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;
- (iv) update on a monthly basis the construction programme approved under paragraph (iii)(aa) and supply a copy of the updated programme to Anglo American every month;
- (v) at all times construct the Specified Works in compliance with the relevant agreed construction programme and construction traffic and access management plan;
- (vi) 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;
- (vii) report to Anglo American of any environmental incidents which occur as a consequence of or are found in association with the carrying out of the Specified Works including the identification of contamination or hazards to construction;
- (viii) 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 by Anglo American earlier than three months of the date of completion, providing reasonable information regarding the layout of the H2T Works in the Shared Area in question, subject to Anglo American providing reasonable notice to the undertaker;
- (ix) 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
- (x) obtain the prior written consent of Anglo American for the use of any recycled aggregate material within the Shared Area;
- (b) In respect of Shared Area 1, construct the Specified Works in such a way that:
  - (i) access is maintained for Anglo American at all times to carry out all activities associated with the operation and maintenance of its ship loader, the outloading and conveyor circuit;
  - (ii) no works are carried out in that part of Shared Area 1 which is the subject of the AA Property Arrangements;
- (c) In respect of Shared Area 2, construct the Specified Works in such a way that:
  - (i) the access required by Anglo American through Shared Area 2 for the construction, maintenance and operation of the quay authorised by the York Potash Order is safeguarded at all times;
  - (ii) Anglo American has access to operate and maintain:
    - aa. the discharge facility in compliance with its obligations under EA Permit 2; and
    - bb. the landfill (including but not limited to the leachate chambers and monitoring boreholes) in compliance with its obligations under EA Permit 1

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- (iii) continuing use of and access for Anglo American and third parties to, and along, the pipeline corridor within Shared Area 2 is maintained at all times;
  - (iv) the Anglo American owned private access road around the perimeter of the NWL Facility remains open to all permitted users unless otherwise agreed in writing with Anglo American for all purposes;
  - (v) Anglo American's right of access along the Eston Triangle Area is safeguarded; and
  - (vi) the construction, operation and maintenance of any overland conveyor to be located within Shared Area 2 is not impaired.
- (d) In respect of Shared Area 3, construct the Specified Works in such a way that:
- (i) Anglo American's access to the access road through Shared Area 3 is maintained at all times;
  - (ii) Anglo American has access to operate, manage and maintain the landfill (including but not limited to the monitoring boreholes and the YLEM Gas Management Facility) in compliance with its obligations under EA Permit 1;
  - (iii) the Anglo American owned private access road around the perimeter of the NWL Facility remains open to all existing users unless otherwise agreed in writing with Anglo American for all purposes; and
  - (iv) the construction, operation and maintenance of any overland conveyor to be located within Shared Area 3 is not impaired.
- (e) In respect of Shared Area 4, construct the Specified Works in such a way that:
- (i) use by Anglo American of laydown areas within Shared Area 4 in connection with construction activities for the Woodsmith Project is appropriately protected;
  - (ii) access to the rail crossing point within or adjacent to Shared Area 4 for Anglo American is safeguarded;
  - (iii) Anglo American's access to the access road through Shared Area 4 is maintained at all times;
  - (iv) Anglo American has access to operate, manage and maintain the landfill (including but not limited to the monitoring boreholes and the YLEM Gas Management Facility) in compliance with its obligations under EA Permit 1; and
  - (v) the construction, operation and maintenance of any overland conveyor to be located within Shared Area 4 is not impaired.
- (f) In respect of Shared Area 5, construct the Specified Works in such a way that the construction, operation and maintenance of any overland conveyor to be located within Shared Area 5 is not impaired.
- (g) In respect of Shared Area 6 construct the Specified Works in such a way that the construction, operation and maintenance of, and access to, any overland conveyor to be located within Shared Area 6 is not impaired, other than during the construction of the Specified Works.

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(2) Unless otherwise agreed, the undertaker must not do anything within the Shared Areas 2, 3, 4, 5 and 6 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 Area 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 the event that Anglo American notifies the Undertaker in writing that Anglo American will not construct any part of the Anglo American Specified Works ("Anglo American Abandoned Works"),



the Undertaker can construct, operate and maintain the Specified Works without regard to and without complying with paragraphs 7(1)-(3) insofar as those paragraphs apply to the Anglo American Abandoned Works.

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(5) Paragraphs 7(1)(b)-(g) do not permit Anglo American to do anything to the Specified Works and H2T Apparatus which have been constructed in accordance with an approval given by Anglo American pursuant to paragraphs 3 or 5 or determined by an expert in accordance with paragraph 14.

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(6) 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 7(1)(a)(iii)(aa) (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.

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### 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 EA Permit 1 and EA Permit 2, so not to materially conflict with the ability of Anglo American to comply with the obligations of EA Permit 1 and EA Permit 2; and
- (b) so as not to conflict with the ability of Anglo American to construct and 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 Shared Area 4 until such time as Anglo American notifies the Undertaker in writing.

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#### 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 EA Permit 2;
- (b) Anglo American (together 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 EA Permit 2;
- (c) the operation of any overland conveyor located within those Shared Areas is not impaired; and
- (d) Anglo American is able to access any overland conveyor within those shared areas.

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#### 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 any 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, the undertaker must—

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- (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 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.

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(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) 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
- (b) any indirect or consequential loss or loss of profits by Anglo American.

Commented [PM27]: Issue 16

(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 or 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.

(6) 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).

(7) The undertaker shall only be liable under this paragraph 12 for claims reasonably incurred by Anglo American.

Commented [PM28]: Issue 15

(8) 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).

(9) 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—

- (a) a meeting of BP Vice President Hydrogen & Carbon Capture and Storage in the United Kingdom or BP Director Hydrogen in the United Kingdom and the Project Manager, Anglo American Woodsmith Mine and the Company Secretary of Anglo American 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 Law Society, who must be sought to be appointed within 28 days of the notification of the dispute.

Commented [PM29]: Issue 17

**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.

**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 subparagraph (a);
- (c) issue a decision within 42 days of receipt of the submissions submitted pursuant to subparagraph (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.

**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 Law Society.

Commented [PM30]: Issue 17

## Applicant's submissions

### 1. Issue 1 – various amendments to definitions

- 1.1. There are various differences between the definitions contained in the protective provisions in Schedule 29 of the draft Development Consent Order (**DCO PPs**) and Anglo American's (**AA**) preferred protective provisions [REP7-042] (**AA PPs**).
- 1.2. **AA Property Arrangements:** The AA PPs definition of 'AA Property Arrangements' includes 'Lease entered into between Redcar Bulk Terminal Limited; York Potash Ltd and Sirius Minerals Plc dated 10 June 2019' in the definition of 'AA Property Arrangements'. AA has not provided the Applicant with a copy of the lease due to confidentiality issues. Until the lease is provided to the Applicant, the Applicant cannot agree to restrictions by reference to a document that the Applicant has not seen.
- 1.3. **Anglo American Apparatus:** The definition of 'Anglo American Apparatus' in the AA PPs refers to AA's apparatus 'within the Order Limits,' whereas the DCO PPs refers to the 'Shared Area.' It is not necessary to extend the definition to be within the Order Limits as the extent of the interactions between the authorised development and the York Potash Order (as defined in the DCO PPs) are confined to the Shared Areas (as defined in the DCO PPs).
- 1.4. **EA Permit 1 and EA Permit 2:** The DCO PPs make minor drafting amendments to the definition of EA Permit 1 and EA Permit 2, however, the environmental permits that are referred to in these definitions are the same as AA PPs.
  - 1.1. **Property documents:** The Applicant has amended the definition of 'property documents' to clarify that only the property documents that are in existence as at the date of the Order are applicable. This is to ensure the obligations under Schedule 29 do not extend to property documents that are not currently in existence, as it would be unreasonable to create obligations now that relate to unknown documents. The same amendment has been made to this definition in Schedule 3.
  - 1.5. **Shared Area & Shared Area Plan:** The definition of 'Shared Area' in the DCO PPs is made by reference to the 'Shared Areas Plan'. The Shared Areas Plan was developed by both parties and will be certified in accordance with Article 44.
  - 1.6. AA has defined 'Shared Area' as 'the such land in the Order Limits that is within the York Potash Order Limits.' The Applicant considers that defining the area by reference to a plan is more appropriate as it is more precise and the meaning of this definition is immediately clear without having to compare the Order Limits of the authorised development and the order limits of the York Potash Order. This is especially important as the definition of York Potash Order also includes other planning permissions.
  - 1.7. The Applicant's definition also includes the phrase 'so far as within the Order Limits' as there are some areas coloured in blue on the Shared Areas Plan that are outside of the Order Limits of the authorised development.
  - 1.8. **STDC Agreement Area:** The AA PPs include a definition of 'STDC Agreement,' which is defined as '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'. The Applicant understands that this Deed of Licence and Option has been the subject of a variation. AA has not been able to provide a copy of the Deed of Variation because of confidentiality issues, however, AA has explained the area to which the Deed of Variation applies.
  - 1.9. The Applicant has therefore updated the definition of STDC Agreement to refer to a plan of the area that is the subject of the Deed of Variation. That plan will be certified in accordance with Article 44.

- 1.10. **York Potash Order:** The Applicant has extended the definition of the York Potash Order to include Planning Permission Reference R/2021/0409/FFM to reflect the current status of planning for the Woodsmith Project.
- 2. Issue 2 – information provided to AA (paragraph 3(1))**
- 2.1. Paragraph 3(1)(c) of the DCO PPs do not include the phrase ‘which of the entities which make up the undertaker is to carry out the works’, whereas this phrase is included in the paragraph of 3(1)(c) of the AA PPs. This phrase was used in the Net Zero Teesside Order because the undertaker comprised of two separate entities. This is not the case in the draft DCO and therefore should be deleted.
- 3. Issue 3 – reasons for refusing consent for works (paragraph 3(5))**
- 3.1. The conditions contained in paragraphs 3(5) are generally consistent with the conditions contained in the protective provisions for the benefit of AA in Net Zero Teesside Order 2024 (see paragraph 231(5) in Part 18 of Schedule 12).
- 3.2. The Applicant has inserted a phrase ‘(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)’ at the end of paragraph 3(5)(a). It is reasonable for AA to provide a reasoned explanation about any refusal on the grounds of safety and operational viability of the Woodsmith Project. This is so the Applicant can properly understand that refusal and determine if it should be disputed. Schedule 3 of the draft DCO contains a reciprocal obligation, where the Applicant is consenting works pursuant to the York Potash Order.
- 3.3. The Applicant has made minor changes to paragraph 3(5)(c) to include EA Permit 2, as requested by AA. The Applicant has also inserted ‘material’ into paragraph 3(5)(c) and (d) to avoid AA from refusing consent in the event that the relevant works makes compliance with the EA Permits or regulatory compliance more difficult or expensive, but only to a minimal extent. For example, it would not be reasonable for AA to refuse consent to works on the basis that it would make regulatory compliance £1 more expensive.
- 4. Issue 4 – alternative means of access (paragraph 5(11))**
- 4.1. The DCO PPs do not require the Applicant to ‘promptly’ provide alternative means of access, as requested by AA. Paragraph 5(11) already requires the Applicant to provide alternative access and paragraph 5(10) prevents the Applicant’s ability to prevent or interfere with AA’s access without AA’s consent. The Applicant considers these paragraphs provide sufficient protection. Further, the wording in the DCO PPs is consistent with the equivalent provision of the Net Zero Teesside Order 2024 (see paragraph 233(11) in Part 18 of Schedule 12).
- 5. Issue 5 – regulation of powers over the shared area (paragraph 6(1))**
- 5.1. The restriction in paragraph 6(1) of the DCO PPs is in relation to the ‘Anglo American Specified Works,’ whereas in the AA PPs, the restriction relates to the ‘Woodsmith Project’. The extent of the interactions between the Woodsmith Project and the authorised development are the Shared Areas. Accordingly, it is more appropriate to refer to the ‘Anglo American Specified Works’ as that definition makes reference to the Shared Areas. This is also consistent with the equivalent provision of the Net Zero Teesside Order 2024 (see paragraph 234(1) in Part 18 of Schedule 12).
- 6. Issue 6 – regulation of powers over the shared area (paragraph 6(3))**
- 6.1. The articles included in paragraph 6(3) of the DCO PPs exclude articles 20, 22, 23, 25, 26, 28, 31, 32, 33 and 34. These articles primarily relate to the Applicant’s compulsory acquisition powers and survey powers. The DCO PPs also does not include paragraph 6(5) of the AA PPs, which is a further restriction on compulsory acquisition and temporary possession.
- 6.2. The Applicant strongly refutes the inclusion of these abovementioned articles in paragraph 6(3) as well as the inclusion of 6(5) from the AA PPs, as this would impose unreasonable

restrictions on the Applicant as it would jeopardise the delivery of the authorised development. These powers are required to ensure the authorised development can be constructed, operated and maintained and also to ensure that the authorised development's nationally significant public benefits can be realised, including supporting the Government's policies in relation to the timely delivery of new generating capacity and achieving ambitious net zero targets.

- 6.3. With the controls in place in the Protective Provisions in respect of controlling impacts of works across AA's land, the impacts to AA's land, and its ability for the Woodsmith Project to be developed, are able to be controlled. With these measures in place, the Applicant ensures that there is no realistic prospect that the exercise of compulsory land powers would have a detrimental impact on the ability of Woodsmith Project to be developed, or AA's apparatus to be protected.
  - 6.4. The Applicant needs the ability to then deliver those approved works, utilising the land shown on the Order limits. In this context, the Applicant considers that the balance lies clearly in favour of the grant of compulsory acquisition powers, taking into account the measures to avoid, minimise or mitigate the effects of such powers, and noting the substantial public benefits that it considers exist for the authorised development.
  - 6.5. The Applicant also refers to the justification for compulsory acquisition powers that is outlined in the Statement of Reasons [CR1-013].
  - 6.6. The Applicant has also removed the compulsory acquisition restrictions in Schedule 3 of the draft DCO to ensure that the rights of AA and the Undertaker are reciprocal in respect of compulsory acquisition.
- 7. Issue 7 – constructability principles (paragraph 7(1))**
- 7.1. Paragraph 7(1) of the DCO PPs notes that all of the sub-paragraphs are in relation to the 'specified works'. This phrase is not contained in the equivalent paragraph of the AA PPs. This phrase is necessary as it clarifies to which works the obligations in sub-paragraphs (a)-(g) relate.
  - 7.2. Compared to paragraph 7(1) of the DCO PPs, the AA PPs delete the exception to compliance with paragraph 7(1)(a)-(g) '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'. Safety of apparatus and compliance with statutory duties are imperative and must take precedence over the obligations in sub-paragraphs 7(1)(a)-(g). The drafting of paragraph 7(1) of the DCO PPs in this aspect is consistent with the equivalent provision of the Net Zero Teesside Order 2024 (see paragraph 235(1) in Part 18 of Schedule 12).
  - 7.3. The addition of 'subject to sub-paragraph (4) at the beginning of paragraph 7(1) is addressed in Issue 10 below.
- 8. Issue 8 – constructability principles (paragraph 7(1)(a)(iii)(dd))**
- 8.1. Paragraph 7(1)(a)(iii)(dd) of the DCO PPs include a carve out so that the Applicant does not need consent from AA regarding the location of the temporary construction compounds, to the extent these are included in the DCO application. By contrast, the AA PPs do not include this carve out. This carve out is necessary as without it, this deliverability of the authorised development is contingent on AA providing its consent. In this regard, the Applicant refers to its submissions at Issue 6 above. The wording in the DCO PPs is consistent with the equivalent provision of the Net Zero Teesside Order 2024 (see paragraph 235(1)(a)(iii)(cc) in Part 18 of Schedule 12).
- 9. Issue 9 – further detailed constructability principles for shared areas and design principles (paragraphs 7(1)(a)(iii)(bb), 7(1)(a)(vii), 7(1)(a)(viii) and 7(1)(b)-(g) and 9)**
- 9.1. At deadline 5, paragraph 7 of Schedule 29 to the draft DCO [REP5-006] only contained constructability principles in relation to all shared areas. This was because negotiations were

still ongoing regarding the extent of the shared areas, as well as the necessary protections for each specific shared area to address the interactions of the authorised development and the Woodsmith Project.

9.2. Since deadline 5, negotiations have progressed which has enabled the Applicant to include further detail regarding the necessary constructability principles for each shared area. Paragraphs 7(1)(b)-(g) outlines the protections the Applicant considers are necessary in order to address the key areas of interaction between both projects. In addition, paragraphs 7(1)(a)(iii)(bb), 7(1)(a)(vii) and 7(1)(a)(viii) have been inserted/amended to reflect the current status of negotiations.

9.3. Similarly, the design principles have been negotiated further since deadline 5. Paragraph 9 of the DCO PPs has been updated to reflect the current status of negotiations.

**10. Issue 10 – constructability principles (paragraph 7(4))**

10.1. The Applicant has included paragraph 7(4) to simplify the construction of the authorised development in the event that any part of the Anglo American Specified Works is not going to be constructed. Construction of the authorised development would be simpler, quicker and cheaper if it did not need to interact with, and have regard to the Woodsmith Project. The purpose of paragraph 7(1)-(3) is to ensure the construction, operation and maintenance of the Woodsmith Project is not prevented by the authorised development. As such, it would be unreasonable for the Applicant to still need to comply with these requirements so as to safeguard an aspect of the Woodsmith Project that is not going to be constructed.

10.2. The exercise of this paragraph is purely reliant on AA providing notice to the Applicant that AA is not going to construct any part of the Anglo American Specified Works.

10.3. There is a reciprocal paragraph for the benefit of AA included in paragraph 7(3) of Schedule 3 to the draft DCO.

**11. Issue 11 - constructability principles (paragraph 7(5))**

11.1. The Applicant has inserted paragraph 7(5) in the DCO PPs to make it clear that the protections provided in paragraph 7(1)-(3) do not permit AA to interfere with H2T's Apparatus or the Specified Works. This ought to be uncontroversial and ensures the delivery of the authorised development is not hampered by AA.

**12. Issue 12 - constructability principles (paragraph 7(6))**

12.1. Paragraph 7(6) of the DCO PPs is not contained in the AA PPs. The purpose of this paragraph is to streamline the consent for works process and ensure consistency with management plans and other documents AA approve pursuant to paragraphs 7 and 8. Deleting this paragraph may result in delays arising from the need to prepare duplicative management plans. Having duplicate management plans may create conflict and inconsistency with such plans.

12.2. Further, the wording in the DCO PPs is consistent with the equivalent provision of the Net Zero Teesside Order 2024 (see paragraph 235(4) in Part 18 of Schedule 12).

**13. Issue 13- maintenance and operational principles (paragraph 10)**

13.1. Similar to paragraph 7(1) of the DCO PPs, paragraph 10(1) of the DCO PPs states that the operation and maintenance of the Specified Works is also subject to '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.' The Applicant reiterates its submissions at Issue 7 above to support the drafting of paragraph 10(1) of the DCO PPs.

13.2. Paragraphs 10(c) and (d) of the DCO PPs states that the Specified Works must be operated and maintained in such a way that the operation of any overland conveyor located within those Shared Areas is not impaired and that access is able to be taken to any such conveyor. By contrast, the AA PPs replace the phrase 'Shared Areas' with 'Woodsmith Project'. As noted above, the extent of the interactions between the Woodsmith Project and the authorised development is limited to the Shared Areas. Accordingly, it is more appropriate to refer to the 'Shared Areas' in this paragraph, not the Woodsmith Project. This is also consistent with



the equivalent provision of the Net Zero Teesside Order 2024 (see paragraph 238(c) in Part 18 of Schedule 12).

13.3. The Applicant has included 'EA Permit 2' in paragraphs 10(a) and (b) to reflect the current status of negotiations.

**14. Issue 14 – scope of indemnity (paragraph 12)**

14.1. Paragraph 12 of the DCO PPs provides sufficient protection to AA as it covers the scope of the damage, service interruption or supply of goods that AA is most likely to suffer as a result of the Specified Works. The Applicant should not be liable to pay for any amount to any third party as this is too broad and lacks sufficient connection to any liability caused by the authorised development.

14.2. The Applicant and AA have agreed to address the indemnity for any breach of the EA Permit arising from the authorised development in private commercial negotiations. The need for a scheme of monitoring which the Applicant previously discussed in [REP4-013] at paragraph reference ANGLO1 is also being discussed privately and therefore has not been included in the DCO PPs.

**15. Issue 15 – scope of paragraph 12(1)(b) and 12(6)**

15.1. The Applicant should not be responsible for paying for any unreasonable costs incurred by AA, hence the inclusion of 'reasonable' in paragraphs 12(1)(b). This is also consistent with paragraph 12(6) of the protective provisions. AA is agreeable to the inclusion of 'reasonable' in paragraph 12(1)(a), so it is not clear why AA is resisting the inclusion in 12(1)(b) and 12(6).

15.2. In respect of paragraph 12(6), Schedule 3 of the DCO PPs includes an reciprocal paragraph (see paragraph 10(7) of Schedule 3).

15.3. Further, the inclusion of 'reasonableness' in paragraphs 10(1)(b) is preceded in various bespoke protective provisions (see, for example paragraphs 56, 68, 86, 94, 102, 141, 157, 208(2)(b), 224, 255, 268, 295, 304, 327, 348, 361, 371 and 400 of Parts 5-9, 12-13, 16-17, 19-23 and 25-28 respectively of Schedule 12 to the Net Zero Teesside Order).

15.4. The inclusion of paragraph 12(6) is also preceded in various protective provisions (see, for example paragraphs 9, 14(4), 56(4), 68(4), 86(5), 94(4), 102(4), 109, 125(2)(c), 141(4), 157(4), 170(5), 185(4), 208(7), 224(4), 255(4), 268(4), 295(4), 304(5), 327(7), 338(4), 348(4), 361(3) and 371(4) of Parts 1-2, 5-17 and 19-27 respectively Schedule 12 to the Net Zero Teesside Order).

**16. Issue 16 - Consequential losses (paragraph 12(2)(b))**

16.1. AA have sought to remove the exclusion of liability by the applicant for consequential and indirect losses and loss of profits. This amendment is not agreed.

16.2. The Applicant should not be liable for consequential loss, indirect loss or loss of profits as these losses are far too remote from, and lack a causal link to, the damage or interruption to service of supply of goods contemplated by paragraph 12(1). As such, the exclusion in paragraph 12(2)(b) is appropriate. Paragraph 12(2)(b) is preceded in various bespoke protective provisions in the Net Zero Teesside Order (see for example, paragraphs 109(2)(b), 125(3), 255(2)(b), 295(2)(b), 338(2)(b) and 361(4)(b) of Parts 10-11, 19, 21, 24 and 26 respectively of Schedule 12 to the Net Zero Teesside Order).

**17. Issue 17 – dispute resolution (paragraphs 14(b) and 18)**

17.1. The Applicant does not consider that the President of the Institute of Civil Engineers is the appropriate body to determine the expert to be appointed for any dispute arising from the protective provisions. The interactions of the authorised development with AA's operations and the types of disputes that may arise from the protective provisions are much broader than civil engineering issues, and for example, can relate to legal issues and environmental matters. As such, the Applicant considers that a more generalist person, such as the President of the Law Society is the more appropriate body to appoint an expert.

