

## 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 THE 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 Schedule—

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

“expert” means a person appointed pursuant to paragraph 12(b);

“H2T Apparatus” means the pipeline, cables, structures to be owned, occupied or maintained by the H2T Undertaker within the Shared Area;

“H2T Order” means the H2Teesside Order 202\*;

“H2T Project” means the construction, operation or maintenance of the authorised development as is defined by the H2T Order;

“H2T Specified Works” means so much of the H2T Project as is within the Shared Area;

“H2T Undertaker” means the undertaker as defined by the H2T Order;

“Land Plans” means the land plans as defined by the H2T Order;

“Parties” means the H2T Undertaker and the undertaker;

“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 H2T Order;

“Respective Projects” means the H2T Project and the authorised development;

“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 H2T Order Limits;

“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 the H2T Order; and

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

### **Consent to works in the shared area**

3.—(1) Where the consent or agreement of the H2T Undertaker is required under the provisions of this Schedule the undertaker 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 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 the undertaker for discussions in relation to the information supplied and the consenting process.

(2) The H2T Undertaker 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 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 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 the H2T Undertaker 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 the H2T Undertaker.

(5) Wherever in 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 (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); and/or
- (b) prevent the ability of the H2T Undertaker to have uninterrupted access to the H2T Project; and/or
- (c) make regulatory compliance more difficult or expensive,

provided that before the H2T Undertaker can validly refuse consent for any of the reasons set out in sub-paragraphs (a) and (c) 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 the H2T Undertaker within that seven day period.

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

(7) In the event that—

- (a) the undertaker considers that the H2T Undertaker has unreasonably withheld its authorisation or agreement under paragraphs 5(1), 6(1) and/or 6(2); or
- (b) the undertaker considers that the H2T Undertaker has given its authorisation under paragraphs 5(1), 6(1) and/or 6(2) subject to unreasonable conditions,

the undertaker may refer the matter to an expert for determination 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 the H2T Undertaker by recorded delivery and addressed to Chris Daykin, BP Hydrogen & CCU, 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 [chris.daykin@uk.bp.com](mailto:chris.daykin@uk.bp.com) and [clare.haley@uk.bp.com](mailto:clare.haley@uk.bp.com).

(9) In the event that the H2T 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 the undertaker 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 the undertaker and, subject to compliance with sub-paragraph (10), if by the expiry of the further 28 day period the H2T Undertaker has failed to notify the undertaker 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 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 H2T Specified Works are or may be undertaken concurrently with the Specified Works within the Shared Area, the undertaker must—

- (a) co-operate with the H2T Undertaker 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 and operation of the H2T Project is maintained for the H2T 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 area**

5.—(1) The undertaker must not carry out the Specified Works without the prior written consent of the H2T Undertaker obtained pursuant to, and in accordance with, the provisions of paragraph 3.

(2) Where under paragraph 3(5) the H2T Undertaker 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 the H2T Undertaker.

(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 of the

Specified Works, new Plans in respect of the Specified Works 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 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 12.

(5) The undertaker must give to the H2T Undertaker 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 the H2T Undertaker 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 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) The undertaker must at all reasonable times during construction of the Specified Works allow the H2T Undertaker 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 the H2T Undertaker 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, the H2T Undertaker 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 the H2T Undertaker to the H2T Specified Works unless first agreed in writing by the H2T Undertaker.

(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 H2T Specified Works is materially obstructed, the undertaker must provide such alternative means of access to the H2T Specified Works as will enable the H2T Undertaker to construct, maintain or operate the H2T 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 the H2T Undertaker of the location of any part of its then existing or proposed H2T 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 H2T Specified Works without the prior written consent of the H2T Undertaker.

(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 the H2T Undertaker.

(3) The articles referred to in sub-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); and
- (e) article 15 (protective works to buildings).

(4) In the event that the H2T Undertaker withholds its consent pursuant to sub-paragraph (2) 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.

### **Constructability Principles**

7.—(1) Subject to sub-paragraph (3), the undertaker must 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 H2T Specified Works, H2T Apparatus, Specified Works or Anglo American Apparatus unsafe, or put the undertaker in breach of its statutory duties)—

- (a) carry out the Specified Works in such a way that will not prevent or interfere with the continued construction of the H2T Specified Works, or the maintenance or operation of the H2T Apparatus unless the action leading to such prevention or interference has the prior written consent of H2T Undertaker;
- (b) ensure that works carried out to, or placing of Anglo American Apparatus beneath, roads along which construction or maintenance access is required by the H2T Undertaker in respect of any H2T Apparatus will be of adequate specification to bear the loads ;
- (c) prior to the carrying out any of the Specified Works in any part of any Shared Area,—
  - (i) submit a construction programme and a construction traffic and access management plan in respect of that area to the H2T Undertaker and obtain agreement thereof from the H2T Undertaker (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;
  - (ii) provide a copy to the H2T Undertaker any relevant construction environmental management plan approved under Requirement 6 which relate to construction activities in the Shared Area;
  - (iii) where applicable, confirm to the H2T Undertaker in writing the identity of the client for the purposes of the relevant Construction Design and Management Regulations applicable from time to time; and
  - (iv) at all times construct the Specified Works in compliance with the relevant approved construction traffic and access management plan;
- (d) update on a monthly basis the construction programme approved under sub-paragraph (c)(i) and supply a copy of the updated programme to the H2T Undertaker every month;
- (e) notify the H2T Undertaker of any incidences which occur as a result of, or in connection with, the Specified Works which are required to be reported under the relevant Reporting of Injuries Diseases and Dangerous Occurrences Regulations applicable from time to time within 24 hours of the duty to report arising;
- (f) report to the H2T Undertaker 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;
- (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 or if required by the H2T Undertaker earlier than three months of the date of

completion, providing reasonable information regarding the layout of the Specified Works in the shared area in question, subject to the H2T Undertaker providing reasonable notice to the undertaker;

- (h) other than in respect of land in which the undertaker has a freehold interest, following the completion of each of the Specified Works unless otherwise agreed in writing by the H2T Undertaker 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;
- (i) in respect of land in which the undertaker has a freehold interest following the completion of each of the Specified Works the area affected must not be left in such a state as to adversely affect the construction, maintenance and operation of the H2T Specified Works; and
- (j) obtain the prior written consent of the H2T Undertaker for the use of any re-cycled aggregate material within the Shared Area;
  
- (k) prior to carrying out any works in plots 13/1, 13/2 and 13/3 of the Land Plans and adjacent waterside, obtain the H2T Undertaker's approval for such works, such approval not to be unreasonably withheld or delayed and will consider (l); and
- (l) ensure the H2T Undertaker has unhindered land and waterside access (as applicable) to plots 13/1, 13/2 and 13/3 of the Land Plans, including the ability to berth and/or moor vessels to the existing infrastructure.

(2) Any spoil from the H2T 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.

(3) In the event that the H2T Undertaker notifies the undertaker in writing that the H2T Undertaker will not construct part of the H2T Specified Works ("H2T Abandoned Works"), the undertaker can construct, operate and maintain the Specified Works without regard to and without complying with paragraphs 7(1) and 7(2) insofar as those paragraphs apply to the H2T Abandoned Works.

(4) In considering a request for any consent under the provisions of this Schedule, the H2T Undertaker 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 (2) in respect of a spoil management plan); and
- (b) refuse consent for reasons which conflict with the contents of documents approved by the H2T Undertaker pursuant to the provisions of this paragraph and paragraph 8.

### **Interface Design Process**

**8.**—(1) Prior to the seeking of any consent under this Schedule, the undertaker must, unless the H2T Undertaker 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; and
- (c) a construction hazard study.

(2) Unless otherwise agreed, the undertaker must submit the outcome of the design and constructability review referred to in sub-paragraph (1) to the H2T Undertaker 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 the H2T Undertaker.

(5) In considering any request for consent or approval under this Schedule, the H2T Undertaker must not refuse consent for details that are consistent with those approved under sub-paragraph (2) unless the H2T Undertaker 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 H2T Project.

### **Miscellaneous provisions**

9.—(1) The undertaker and the H2T Undertaker 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 the H2T Undertaker the reasonable expenses incurred by the H2T Undertaker 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 H2T Specified Works.

### **Indemnity**

10.—(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 H2T Apparatus used in connection with the H2T Specified Works or damage is caused to any part of the H2T Specified Works or there is any interruption in any service provided, or the operations of the H2T Undertaker, or in the supply of any goods, by the H2T Undertaker, the undertaker must—

- (a) bear and pay the costs reasonably incurred by H2T Undertaker in making good such damage or restoring the service, operations or supply; and
- (b) compensate the H2T Undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the H2T Undertaker, by reason or in consequence of any such damage or interruption.

(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 the H2T Undertaker, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by the H2T Undertaker.

(3) The H2T Undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall 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) The H2T Undertaker must use its reasonable endeavours to mitigate any claim or losses in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, the H2T Undertaker 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 the H2T Undertaker has not used its reasonable endeavours to mitigate and/or minimise that claim accordance with sub-paragraph (4).

(6) The fact that any work or thing has been executed or done with the consent of the H2T Undertaker and in accordance with any conditions or restrictions prescribed by the H2T Undertaker or in accordance with any plans approved by the H2T Undertaker or to its satisfaction or in accordance with any directions or award of any expert appointed pursuant to paragraph 12 does not relieve the undertaker from any liability under this paragraph.

(7) The undertaker shall only be liable under this paragraph 10 for claims reasonably incurred by the H2T Undertaker.

### **Dispute resolution**

**11.** Article 40 (arbitration) does not apply to provisions of this Schedule.

**12.** Any difference in relation to the provisions 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 H2T Undertaker and the undertaker 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.

**13.** The fees of the expert appointed pursuant to paragraph 12(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.

**14.** The expert must—

- (a) invite the Parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) allow each Party an opportunity to comment on the submissions made by the other provided they are received within 21 days of the receipt of the submissions referred to in sub-paragraph (a) above;
- (c) issue a decision within 42 days of receipt of the submissions submitted pursuant to sub-paragraph (a) above; and
- (d) give reasons for the decision.

**15.** The expert must consider where relevant—

- (a) the development outcomes sought by the H2T Undertaker and the undertaker;
- (b) the ability of the H2T Undertaker and the undertaker to achieve the outcomes referred to in sub-paragraph (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 Order, the H2T Undertaker's or the undertaker'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.

**16.** 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.”

# Applicant's submissions

## 1. General

- 1.1. To avoid confusion between the Applicant as H2 Teesside Limited and Applicant of the York Potash Order, these submissions refer to H2 Teesside Limited as the 'H2T Undertaker' and Anglo American as the 'AA Undertaker'. The development authorised by the York Potash Order is referred to as the Woodsmith Project. The submissions otherwise use defined terms from Schedule 3 of the draft DCO.
- 1.2. In preparing Schedule 3 to the draft DCO [REP7-018], the H2T Undertaker has largely followed the equivalent Schedule 3 in the Net Zero Teesside Order 2024 (**NZT Order**).
- 1.3. The H2T Undertaker considers that the protective provisions contained in Schedule 3, as updated in the draft DCO for Deadline 7A, appropriately and adequately protect the H2T Undertaker's interests and enable both the Woodsmith Project and the H2T Project to be constructed and operated without causing significant detriment to both projects.

## 2. Definitions (paragraph 2)

- 2.1. Compared to Schedule 3 in the NZT Order, the H2T Undertaker has made the following amendments to the definitions that are contained in paragraph 2 of Schedule 3 to the draft DCO.
- 2.2. **Expert:** The H2T Undertaker has inserted a definition of 'expert' to reflect the definitions used in Schedule 29 of the draft DCO. This ought to be an uncontroversial amendment.
- 2.3. **Property documents:** The H2T Undertaker has amended the definition of 'property documents' to clarify that only the property documents that are in existence as at the date of the H2T Order are applicable. This is to ensure the obligations under Schedule 3 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 29 of the draft DCO.
- 2.4. **Shared Area & Shared Area Plan:** The definition of 'Shared Area' is made by reference to the 'Shared Areas Plan'. The H2T Undertaker has added the phrase 'so far as within the Order Limits' at the end of the 'shared area' definition as there are some areas coloured in blue on the Shared Areas Plan that are outside of the Order Limits of the H2T Project. The same amendment has been made to this definition in Schedule 29 to the draft DCO.
- 2.5. The H2T Undertaker has also made minor amendments to the definition of 'Shared Area Plan' to be consistent with Schedule 29 to the draft DCO.

## 3. Consent to works in shared area (paragraph 3)

- 3.1. The protective provisions contain "consent to works" provisions that specify that approval must be obtained from the H2T Undertaker prior to the AA Undertaker carrying out the 'specified works'. Paragraph 3(1)-(2) outlines the information the AA Undertaker needs to provide to the H2T Undertaker when seeking the H2T Undertaker's consent, such as the proposed programming.
- 3.2. The H2T Undertaker can reasonably refuse consent for the reasons outlined in paragraph 3(5), such as if the proposed works compromise the safety or operational viability or prevent the H2T Undertaker from uninterrupted access to the H2T Project. Before refusing consent, the H2T Undertaker must give the AA Undertaker notice of such intention and the H2T Undertaker must consider any representations made by the AA Undertaker. Any disputes regarding the grant of consent for works are determined by expert determination.
- 3.3. When providing consent, the H2T Undertaker can impose reasonable terms and conditions. The AA Undertaker must comply with such terms and conditions.
- 3.4. Paragraph 3(9) contains a deemed approval mechanism for the consent for works.
- 3.5. The only substantive difference between paragraph 3 of Schedule 3 in the draft DCO and the equivalent paragraph in Schedule 3 in the NZT Order is the inclusion of the phrase '(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) in paragraph 3(5)(a). It is reasonable for the H2T Undertaker to provide a reasoned explanation about any refusal on the grounds of safety and operational viability of the H2T Project. This is so the AA Undertaker can properly understand that refusal and determine if it should be disputed. Schedule 29 of the draft DCO contains a reciprocal obligation, where the AA Undertaker is consenting works pursuant to the draft DCO.

**4. Co-operation (paragraphs 4 and 9(1))**

- 4.1. Paragraph 4 contains provisions requiring the parties to cooperate in relation to the two developments. The provisions aim to co-ordinate programming of all activities for both projects, ensure construction access is maintained for the H2T Project and conflicts are avoided where reasonable.
- 4.2. Paragraph 9(1) requires the parties to act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required.
- 4.3. Paragraphs 4 and 9(1) are the same as the equivalent paragraph in Schedule 3 in the NZT Order.

**5. Regulation of works within shared area (paragraph 5)**

- 5.1. Paragraph 5 outlines further provisions regarding the construction of the specified works, such as requirements relating to protective works, the need for notice before commencing and after completion of works, exceptions for emergencies and ensuring the H2T Undertaker's access to the H2T Specified Works is maintained.
- 5.2. Paragraph 5 is the same as the equivalent paragraph in Schedule 3 in the NZT Order.

**6. Regulation of powers over the shared area (paragraph 6)**

- 6.1. Paragraph 6 requires the AA Undertaker to obtain the H2T Undertaker's consent before the AA Undertaker exercises powers under the York Potash Order that would hinder or prevent the construction, operation or maintenance of the H2T Specified Works. Further, the AA Undertaker must obtain the H2T Undertaker's consent before exercising the powers contained in articles 10-12, 14-16, of the York Potash Order in respect of the Shared Area. If the H2T Undertaker withholds consent, it must provide reasons and specify the timeframe during consent with be withheld.
- 6.2. These powers are required to prevent the Woodsmith Project from interfering with the construction and operation of the H2T Project.
- 6.3. Paragraph 6 of Schedule 3 to the draft DCO differs from the equivalent paragraph in Schedule 3 of the NZT Order as the restrictions on compulsory acquisition have been removed. This is to ensure both Schedule 3 and 29 in the draft DCO have reciprocal rights in relation to compulsory acquisition powers.

**7. Constructability principles (paragraph 7)**

- 7.1. Paragraph 7 outlines the constructability principles to enable both projects to be constructed and operated in a way to minimise conflicts.
- 7.2. Since deadline 5, negotiations have progressed, which has enabled the H2T Undertaker to include further detail regarding the necessary constructability principles. The H2T Undertaker has updated the principles in paragraph 7 at Deadline 7A to reflect the current status of negotiations.
- 7.3. Paragraph 7 of Schedule 3 to the draft DCO differs from the equivalent paragraph in Schedule 3 of the NZT Order to reflect the different interactions between the Woodsmith project and H2T Project. However, the principles in paragraph 7 are reciprocated in Schedule 29 of the draft DCO, where relevant.

**8. Interface design process (paragraph 8)**

- 8.1. Paragraph 8 of Schedule 3 to the draft DCO requires the AA Undertaker to participate in a design and constructability review, and provide the outcome of that review to the H2T

Undertaker for approval before seeking consent for the specified works. The exception to this is if the H2T Undertaker has brought forward works in that part of the Shared Area before the AA Undertaker. Paragraph 8(5) imposes restrictions on the H2T Undertaker's refusal of the review. The specified works must be carried out in accordance with the approved design and constructability review.

8.2. Paragraph 8 is the same as the equivalent paragraph in Schedule 3 in the NZT Order.

## **9. Costs (paragraph 9(2))**

9.1. Paragraph 9(2) of Schedule 3 to the draft DCO requires the AA Undertaker to pay the H2T Undertaker the reasonable expenses incurred by the H2T Undertaker in connection with the consenting processes under Schedule 3. Paragraph 9(2) is the same as the equivalent paragraph in Schedule 3 in the NZT Order.

## **10. Indemnity (paragraph 10)**

10.1. Paragraph 10(1) of Schedule 3 to the draft DCO requires the AA Undertaker to pay reasonable costs, losses, demands etc if any damage is caused to any H2T Apparatus used in connection with the H2T Specified Works, or damage is caused to any part of the H2T Specified Works, or there is any interruption in any service provided, or the operations of the H2T Undertaker, or in the supply of any goods. These damages or interruption in services must arise from the construction, maintenance or operation of any Specified Works. Paragraph 10(2) lists the exclusions from this liability. Importantly, the AA Undertaker is only liable for reasonable claims.

10.2. The H2T Undertaker must give the AA Undertaker reasonable notice of any claim or demand and the AA Undertaker must give consent before it is settled. The H2T Undertaker has an obligation to mitigate its loss and must explain how the H2T Undertaker has done so, if requested by the AA Undertaker.

10.3. The AA Undertaker's liability is not relieved because the H2T Undertaker has given consent, or imposed conditions for any work or thing, or an expert has given any direction or award for such work or thing.

10.4. Paragraph 10 is different to the equivalent paragraph in Schedule 3 in the NZT Order in the following ways:

10.4.1. liability of third parties is removed;

10.4.2. the rights and responsibilities for settling or compromising claims has been modified; and

10.4.3. insertion of paragraph 10(7) to clarify that the AA Undertaker is only responsible for claims reasonably incurred by the H2T Undertaker.

10.5. These amendments have been made to ensure paragraph 10 in Schedule 3 contains reciprocal rights and responsibilities to the liability paragraph contained in paragraph 12 of Schedule 29 to the draft DCO.

10.6. The liability cap contained in the NZT Order has been removed as this is the subject of private negotiations.

## **11. Dispute resolution (paragraphs 11-16)**

11.1. Paragraphs 11-16 of Schedule 3 to the draft DCO outlines the dispute resolution process. Any dispute is first referred senior managers in both parties for resolution, failing which, the dispute is resolved by expert determination.

1.1. The only substantive difference between paragraphs 11-16 and the equivalent paragraphs in Schedule 3 in the NZT Order is the body that determines the expert that is appointed for resolving any dispute. The draft DCO lists the President of the Law Society as the appropriate body, whereas the NZT Order lists the appropriate body is the President of the Institute of Civil Engineers. The interactions of the Woodsmith Project and the H2T Project and the types of disputes that may arise from Schedule 3 are much broader than civil engineering issues, and for example, can relate to legal issues. As such, the H2T Undertaker

considers that a more generalist person, such as the President of the Law Society is the more appropriate body to appoint an expert.