

H2 Teesside DCO Examination Anglo American Deadline 8 Submission

Interested Party Reference 20049353

Anglo American Woodsmith Limited

24 February 2025

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1.0 **Scope of Submission – Deadline 8**

1.1 We write on behalf of our client, Anglo American Woodsmith (Teesside) Limited; Anglo American Woodsmith Limited; and Anglo American Crop Nutrients Limited (collectively ‘Anglo American’), registered as an Interested Party for the H2 Teesside DCO Examination (20049353).

1.2 Anglo American is submitting the following as part of the Deadline 8 submissions:

- Section 2: Final submission updates: summary of issues and project interface arrangements;
- Section 3: Comments on DL7A documents submitted by Applicant;
- At Appendix 1, Anglo American’s version of Schedule 3;
- At Appendix 2, Anglo American’s version of Schedule 29; and,
- At Appendix 3, a Shared Area plan for certification in the DCO.

2.0 Summary of issues

Anglo American's Position

- 2.1 Anglo American is in the unfortunate position of having to maintain its objection to the H2 Teesside DCO. The H2 Teesside DCO presents a significant and inadequately mitigated threat to the Woodsmith Project. Anglo American's Relevant Representation [RR-010] and Written Representation [REP2-074] provide the background to the Woodsmith Project which will not be repeated here. However it is important to reiterate as context that the Woodsmith Project is a consented Nationally Significant Infrastructure Project, where a case has been made for delivery in the public interest. Anglo American has invested significant resources in the delivery of the Woodsmith Project. Throughout the Examination, Anglo American has been clear that it will remove its objections provided that comprehensive and adequate measures are in place to manage the interface of the Woodsmith Project with the H2 Teesside Project (the "Respective Projects"). In the absence of sufficient protections for Anglo American, the powers sought in the dDCO could have the impact of frustrating Anglo American's ability to complete implementation of the Woodsmith Project.
- 2.2 In the interests of agreeing adequate and sufficient provisions for the interface of the Respective Projects, Anglo American has continued to meet with the Applicant through the course of the Examination. Whilst these meetings have been progressive, this progress was not reflected in the updated draft of the Side Agreement received by Anglo American on 20 February 2025. Details of where this revised draft fell short of a position that Anglo American had considered agreed are set out at paragraphs 2.8 to 2.14 below. In summary, there are critical points of principle in Anglo American's objections to the Application that remain outstanding.
- 2.3 Because of this, Anglo American does not consider that the DCO Protective Provisions (Schedule 29) submitted by the Applicant at Deadline 7A comprise adequate protection for Anglo American, nor effective interface of the Respective Projects [REP7a-025]. At Deadline 7A the Applicant also submitted updated Schedule 3 (*Modifications to and amendments of the York Potash Harbour Facilities Order 2016*) to the dDCO [REP7a-026]. In the context of the lack of progress in settling a Side Agreement that sets out sensible interface arrangements for safe and effective delivery of the Respective Projects, and protection of Anglo American's existing operations, Anglo American cannot accept both Schedule 3 and Schedule 29 to the dDCO as submitted by the Applicant at Deadline 7A.
- 2.4 The Applicant throughout the Examination has asserted that the Woodsmith Project will be safeguarded by the Protective Provisions. If this is to be the case, those protective provisions need to represent effective protection of Woodsmith Project property interests until such time as the Applicant has agreed terms upon which rights can be acquired for the delivery of the H2 Teesside Project, as well as sensible interface provisions to deliver the Respective Projects safely and effectively. Anglo American therefore requests that the dDCO incorporates the Schedule 3 and Schedule 29 in the form attached at Appendix 1 and Appendix 2 respectively. The demands of net zero and government drive for hydrogen energy are recognised, and the form of both Schedule 3 and Schedule 29 at Appendix 1 and 2 respectively have been updated since Anglo American's Deadline 7A submissions, to reflect so far as possible a reciprocal and reasonable position without causing detriment to

the delivery of the Woodsmith Project. The respective Schedules therefore differ from those submitted by the Applicant at Deadline 7A as follows:

- 1 Schedule 3: is amended to provide for cooperation in respect of project delivery on all Shared Areas, but does not include specific obligations as regards Shared Area 1 (Redcar Bulk Terminal) or Shared Area 2 (Bran Sands) as the interface arrangements for those areas remain under discussion; and
- 2 Schedule 29: general provisions are included but specific detail in respect of each Shared Area is not included because those provisions remain under discussion.

Further detail of Anglo American’s submitted form of Schedule 3 and Schedule 29 is in Section 3 below. It is anticipated that negotiation of the Side Agreement will continue and specific arrangements that are not included in Schedule 3 and Schedule 29 will be provided for in that document, once those arrangements are settled¹.

- 2.5 The close of the Examination is now imminent, and Anglo American regrets that voluntary agreement has not yet been reached, but must emphasise that this is due to delay on the part of the Applicant in returning comments on the drafts submitted by Anglo American since December 2024.
- 2.6 Detailed commentary on the current status of agreements is included below.

Status of Negotiations

- 2.7 Table 1.1 provides a summary of the outstanding agreements between Anglo American and BP and their current status:

Table 2.1 Status of Agreements

Protective Provisions	Draft	<p>Sent to the Applicant 10/12/24.</p> <p>Deadline 5: Applicant dDCO includes Schedule 29 to include restriction on compulsory powers over Anglo American’s land interests [REP5-007]</p> <p>Deadline 6a: Applicant dDCO removes restriction on compulsory powers over Anglo American’s land interests [REP6a-008]</p> <p>Anglo American requests that the DCO includes Schedule 3 and Schedule 29 respectively in the form attached at Appendix 1 and Appendix 2.</p>
Side Agreement	Draft	<p>Sent to the Applicant 04/12/24.</p> <p>Anglo American have continually chased a response to initial comments.</p> <p>Interim meeting held with H2 Teesside on 23rd January on Side Agreement technical points.</p>

¹ Anglo American anticipates that negotiations for the Side Agreement will continue and that specific interface provisions at Bran Sands and Redcar Bulk Terminal (RBT) will be provided for in that document. Given that the Parties have not reached agreement at the time of this DL8 submission, it is premature to legislate for interface arrangements on the face of both DCOs.

		Response to Side Agreement received 20/02/25. Anglo American’s comments are anticipated to be returned to H2 Teesside week commencing 24th February.
Land Agreement	Draft	<p>Heads of Terms received from H2 Teesside for the Tunnel location 10/01/24.</p> <p>Comments on the Heads of Terms returned to H2 Teesside by acting agent and a follow up meeting held early February.</p> <p>No other draft land agreements or Heads of Terms received.</p>
Statement of Common Ground	Draft	The Applicant provided Anglo American with a draft Statement of Common Ground 20/02/25. Anglo American did not agree that it correctly reflected the status quo and the Parties agreed that it should not be submitted. Anglo American will continue to engage with the Applicant.

Source: Anglo American

Side Agreement

- 2.8 Anglo American is aware that the Examining Authority is not the deciding body in respect of matters under negotiation privately between the Parties. It is however relevant to comment on the lack of progress made to settle meaningful measures to manage the interface of the Respective Projects, as without such measures agreed outside of the dDCO, Anglo American necessarily seeks robust Protective Provisions on the face of the Order.

The Applicant provided an updated Side Agreement to Anglo American on 20 February 2025 (i.e. just 4 days before Deadline 8). Three fundamental issues of principle were not adequately provided for in this agreement, which in the opinion of Anglo American does not reflect the technical discussions with the Applicant that have been ongoing in the interim 11 weeks. In addition there has crucially been no progress as regards agreements as to the property arrangements at the interface points of the Respective Projects. In the absence of such arrangements, the Applicant proposes to rely on the compulsory purchase powers in the dDCO.

Issue of Principle 1: H2 Teesside Compulsory Powers

- 2.9 Anglo American cannot accept a position where H2 Teesside might exercise compulsory powers over Anglo American land, for the reasons consistently made throughout the Examination: to do so would frustrate the deliverability of its consented Nationally Significant Infrastructure Project – the York Potash DCO.
- 2.10 The draft Side Agreement recently amended by the Applicant does not include any commitment to avoid exercising these powers over Anglo American’s land interest. The

delay in progressing Property Agreements is a source of frustration for this issue, and clearly falls short of the general rule that an applicant should seek to acquire land by negotiation wherever practicable². Anglo American remains cooperative to reach agreement on land issues with the Applicant to facilitate the delivery of the H2 Teesside Project. It is fundamental to Anglo American's objection that the draft Side Agreement, nor the Applicant's submitted Schedule 29 to the dDCO (*Provisions for the Protection of Anglo American*) include any qualification to the power in article 22 (*compulsory powers over land*) of the dDCO over Anglo American land interests.

Issue of Principle 2: Piling Arrangements

- 2.11 There remain several unresolved issues regarding Shared Areas 2, 3, 5 and 6. Of concern is that the Applicant has not yet agreed to the piling agreements put forward by Anglo American to ensure the safe delivery of both schemes. Anglo American understands that the H2 Teesside pipeline will be classified as a Major Accident Hazard Site (COMAH Site) (as is the case with the Net Zero Teesside (NZE) pipeline). In order to ensure safe implementation of both schemes, Anglo American has suggested provision that the piling for any overland conveyor within the Shared Area delivered as part of the Woodsmith Project is in place, to the reasonable satisfaction of Anglo American, in advance of the commencement of any works to construct the H2 Teesside pipeline. This is a point of principle and Anglo American must object to the H2 Teesside DCO in the absence of such agreement.
- 2.12 Provision for phasing of this nature is included in paragraph 9(c) of Schedule 29 at Appendix 2.

Issue of Principle 3: Interface Arrangements

- 2.13 As stated throughout the Examination, a key issue is a lack of agreement on the management of key interfaces, which in the context of limited design development by H2 Teesside means that Anglo American has limited understanding of the potential impacts between the Respective Projects. The Applicant has repeatedly cited the arrangements that the Parties reached on the Net Zero Teesside (NZE) project as precedent to the interface between H2 Teesside and the Woodsmith Project. Those arrangements and the means of managing points of interface were significantly more advanced in relation to NZE than this Application. Consequently, Anglo American is of the view that it is premature for the Protective Provision Schedule to provide for detailed specific interfaces, and that discussions of the Side Agreement should continue to provide for those interfaces in that document once arrangements are settled.
- 2.14 The Parties have discussed means of resolving conflict of the Respective Projects at points of interface. However, the Applicant's amendments to the recently revised draft Side Agreement makes a loose and inadequate commitment to an interface solution regarding the H2 Teesside Project impact on the Woodsmith Project critical operations at Bran Sands. The disappointing level of commitment is unacceptable to Anglo American on the grounds that it does not give Anglo American sufficient comfort that the Applicant will deliver a solution so far discussed.

² [Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land](#)

- 2.15 On this basis Anglo American repeats its request that it be added as a consultee for Requirements as previously stated, in particular for Requirement 3 so that there is adequate opportunity for Anglo American to review the design as it develops.
- 2.16 In addition, Anglo American remains firmly of the view that Schedule 29 of the dDCO should include restrictions on the exercise of compulsory acquisition powers over Anglo American's land interests, such that Anglo American's consent is required.

3.0 **Comments on Deadline 7A Documents – the Draft DCO**

Schedule 3

- 3.1 The Applicant in its Deadline 7A submissions concerning Schedule 3 to the dDCO notes that in preparing that schedule, it has largely followed the equivalent Schedule 3 in the Net Zero Teesside Order 2024 (NZT) [REP7a-026]. Anglo American recognises that there are similarities of interface, however an important distinction must be made in that the arrangements for safe and effective delivery of NZT and the Woodsmith Project at the time were very significantly more advanced than the interface arrangements of the Respective Projects. This is most effectively demonstrated in the fact that the NZT Order included a restriction on the powers in that Order to compulsorily acquire Anglo American land interests – as, rightly so, those arrangements were provided for in suitable agreements for the delivery of NZT in that respect. As noted at paragraph 2.11 above, were such agreements to be settled in these circumstances a critical point of deadlock would be resolved. The Applicant has not adequately proved to Anglo American that the Woodsmith Project would not be detrimentally impacted as a result of H2 Teesside’s project in specific Shared Areas and to avoid such detriment, property arrangements should be made by agreement between the parties. This has not been the case in spite of repeated requests by Anglo American for draft documents.
- 3.2 As Schedule 3 would operate to amend the York Potash DCO, and restrict the powers under that Order, Anglo American can only accept those amendments where provision is made for effective interface of the Respective Projects such that the implementation of the powers in the York Potash DCO are not frustrated. Anglo American has cooperated with the Applicant to resolve interface arrangements, and for respective obligations to be provided for in the Side Agreement. It is fully expected that the discussions to agree these interfaces will continue and for agreement to be reached, however it is absolutely critical that the York Potash DCO remains capable of implementation until that point. Both sets of reciprocal protective provisions (in Schedule 3 and Schedule 29) are clear (paragraph 1) that those provisions have effect unless otherwise agreed in writing between the Parties.
- 3.3 As detailed in Anglo American’s Deadline 7a submissions and above (paragraph 2.11), key areas of interface being the Redcar Bulk Terminal and Bran Sands remain unresolved. Anglo American cannot therefore accept restrictions on its ability to implement the York Potash Order in these areas but remains resolved to cooperate with the Applicant in order that the H2 Teesside development can be implemented safely and effectively. The form of Schedule 3 at Appendix 1 to these submissions reflects this position.
- 3.4 It is noted that the Applicant’s Deadline 7A submissions have not included a restriction on the compulsory acquisition powers in the York Potash DCO, as a measure of reciprocity to the provisions in Schedule 29 to the H2 Teesside DCO (see paragraph 6.6 of Issue 6 in the Applicant’s DL7A submissions [REP7a-025]). This is of no effect, as the powers of compulsory purchase in the York Potash Order have expired.
- 3.5 So that the provisions in Schedule 3, amending the York Potash Order, do not have the effect of frustrating the ability of Anglo American to deliver the Woodsmith Project, Anglo American’s position is as follows:

- 1 the Shared Areas are individually identified on the Shared Area Plan
- 2 the provisions of Schedule 3 must differentiate at these areas (see paragraphs 3, 5 and 6) such that the Woodsmith Project at RBT and Bran Sands is not frustrated or exposed to uncertainty
- 3 Schedule 3 otherwise provides reciprocal arrangements with Schedule 29.

Schedule 29

- 3.6 The Applicant's Deadline 7A submissions include an updated version of Protective Provisions and Position statement [REP7a-025] which is a response to the Protective Provisions submitted by Anglo American at Deadline 5 [REP5-069]. For ease of reference, the following paragraphs refer to the Position Statement, and identify the issues outstanding between the Parties.
- 3.7 The Applicant has made several references to Anglo American's preferred version of the Protective Provisions deviating from the provisions made under the NZT Order. Whilst Anglo American has agreed that these provisions should form the basis for the drafting of Protective Provisions with the H2 Teesside DCO, as noted above it must be emphasised that the interface agreements made for the NZT Order were significantly more advanced. The updated Side Agreement has not yet adequately resolved this issue. On this basis, a number of amendments are required to ensure that Anglo American's protection corresponds to the level of design development and agreement at these interfaces.
- 3.8 Anglo American's response to issues raised by the Applicant is set out below. In the interests of being concise, response is restricted to amendments Anglo American substantially does not agree to.

Issue 1 – various amendments to definitions

- 3.9 ***1.2 – AA Property Arrangements***
- 3.10 Issue: *'AA has not provided the Applicant with a copy of the lease [with Red Car Bulk Terminal Ltd] for confidentiality reasons. 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'.*
- Response: Anglo American has been clear that the Redcar Bulk Terminal lease relates to Anglo American's Port Handling Facility (PHF). Anglo American also has an agreed easement and commercial agreement with Redcar Bulk Terminal for the operation of the ship loader and export of polyhalite. In the interests of the effective implementation of the Woodsmith Project, and the ability to export the polyhalite, Anglo American maintains its position that the powers sought in the dDCO should not prevent this.
- 3.11 This approach remains as now set out in Anglo American's Deadline 7A Schedule 3 amends and Schedule 29 Protective Provisions, as follows:

- 1 Schedule 29: provides for Anglo American consent (to be justified and not unreasonably withheld) prior to H2 Teesside works in any Shared Area;
- 2 Specific arrangement as to interface of the Respective Projects at Redcar Bulk Terminal are not provided for in the Protective Provisions as these are not agreed;
- 3 Schedule 29 necessarily includes restriction on the exercise of the Compulsory Acquisition powers in the DCO without Anglo American's consent (see further paragraphs 3.15-3.20 below);
- 4 Schedule 3: Anglo American will cooperate with H2 Teesside. No specific interface arrangements are provided for in Schedule 3, as these are not yet agreed (as set out above).

3.12 **1.5 Shared Area and Shared Area Plan**

3.13 Issue: Shared Area Plan.

Response: Anglo American accepts amendments to references to the Shared Area Plan. However, until there is some resolution of matters at Bran Sands and Redcar Bulk Terminal (Shared Areas 1 & 2), as set out in Anglo American's Deadline 7A submission [REP7a-053], Shared Areas must be individually identified on the plan to enable differentiation of the Protective Provisions between each area.

A Shared Area Plan is attached at Appendix 3 for certification under the DCO.

Issues 5 & 6 – regulation of powers over the shared area

3.14 Response: At Deadline 6a, the Applicant removed from the draft DCO the restrictions on compulsory powers over Anglo American land (and other restrictions) [REP6a-008]. Previous to this deadline, the Applicant included such restrictions on those powers. This is a retraction of its own position.

3.15 As stated throughout the Examination, Anglo American strongly objects to the proposed compulsory acquisition of its land interests. This amendment to the Protective Provisions at Deadline 6a poses a significant and genuine risk to frustrate the delivery of Anglo American's Woodsmith Project.

3.16 Anglo American's preferred version of Protective Provisions submitted at Deadline 7a reinstated these protections, which were originally included in the Applicant's version of Schedule 29.

3.17 The Applicant has emphasised that the arrangements should mirror those settled in respect of the NZT DCO, but this amendment is a departure from these arrangements. As stated above, this amendment has been made in response to limited progress on interface arrangements and agreements on property issues.

3.18 Anglo American does not accept that to include equivalent provisions in Schedule 3 justifies the H2 Teesside position as the York Potash DCO compulsory powers over land are in any event expired.

3.19 H2 Teesside argue that the inclusion of any restriction on compulsory powers seriously jeopardises its proposed development. This is not a valid argument. Anglo American has consistently cooperated with H2 Teesside to enter into agreements to facilitate the delivery

of both projects, and progress has been frustrated by H2 Teesside's limited design development at these interfaces. Anglo American remains willing to cooperate. However it equally cannot accept a position where the DCO includes unfettered compulsory powers over Anglo American land that is critical to implement its own consented NSIP.

- 3.20 H2 Teesside contend that with the measures in the Protective Provisions 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". Anglo American does not accept this position because the arrangements at the Shared Areas are not agreed, the location of the tunnel head by its nature is seriously detrimental to the Woodsmith Project, and the piling arrangements put forward by Anglo American have not been accepted, which are critical to ensure safe interface of the Respective Projects. As mentioned in paragraph 3.19 above, if the Protective Provisions are to have the effect of safeguarding the delivery of the Woodsmith Project, those provisions must be in a robust form to reflect the status of interface arrangements.

Issue 7-12 – constructability principles

- 3.21 Anglo American can accept the inclusion of Constructability Principles in Schedule 3. As above, this has been included in the updated draft Schedule 3 attached at Appendix 1. For the reasons set out in this submission, it is not appropriate for the Protective Provisions to deal with specific interface arrangements at specified Shared Areas.
- 3.22 Anglo American does not share the Applicant's view that the interface in every area has been agreed. For this reason, and as set out in its Deadline 7a submission, Schedule 3 amendments must exclude Shared Areas 1 and 2. Constructability principles are otherwise reciprocal (see Appendix 1 and Appendix 2).
- 3.23 As regards the location of construction compounds, Anglo American notes that the Protective Provisions will provide for consultation and consent in advance of works. Its position remains that any arrangement as to property interests (including the location of temporary construction compounds) must be by agreement rather than through the exercise of compulsory powers, as included in the NZT Order.
- 3.24 The forms of Schedule 3 and Schedule 29 at Appendix 1 and 2 respectively to this submission have been updated to reflect that any design and constructability review refers to respective parties under those Protective Provisions will be for *acceptance* (rather than *approval*). The reason for this is to reflect the correct industry terminology. The consenting stage of design is in any event provided for in paragraph 3 of the Protective Provisions.
- 3.25 As explained in section 2 above, the Protective Provisions to be effective must put in place provision for phasing of the piling works for the overland conveyor and implementation of H2 Teesside pipeline in the Shared Area.

Issues 14-16 – indemnity

- 3.26 The principles of the indemnity have been agreed between Anglo American and the Applicant, and this is now reflected in the forms of Schedule 3 and Schedule 29 at Appendix 1 and 2 respectively. Anglo American will continue to discuss refinement of drafting with the Applicant.

Issue 17 – dispute resolution

- 3.27 Anglo American notes the Applicant’s position that the expert to whom disputes are referenced should be the President of the Law Society, rather than the President of the Institute of Civil Engineers. For efficiency and consistency however, Anglo American maintains its position that such body should be the same deciding body as that for the NZT Order.

Article 48

- 3.28 AA maintain its position that the proposed article 48 of the dDCO is not viable, for the reasons previously submitted [REP3-012 and REP7A-053]. The Applicant has agreed in principle to an indemnity in the case of breach of the environmental permits which would address the issue of liability under the EA Permit. For this reason, Anglo American requests that the indemnity provision as provided for in Schedule 29 at Appendix 2 is included.

Requirements

- 3.29 Anglo American maintains its previous requests to be named as a consultee on the following requirements:
- Requirement 3 (Detailed Design)
 - Requirement 15 (Construction Environmental Plan)
 - Requirement 18 (Construction Traffic Management)
 - Requirement 22 (Restoration of Land)
 - Requirement 28 (Decommissioning)
- 3.30 In addition to the above, Anglo American maintains its request that an operational noise requirement (as drafted by the Applicant at Deadline 5 – REP5-045) is included within the draft DCO. As previously stated, this will ensure that the management and mitigation measures identified in the assessment of cumulative noise impacts set out in the Environmental Statement are included in the final scheme.

4.0 **Concluding Remarks**

- 4.1 Anglo American received a draft Side Agreement from the Applicant on 20th February 2025. There are three issues of principle not yet addressed in this agreement, and as such Anglo American must maintain its objection to the H2 Teesside DCO. Anglo American cannot accept a position where the DCO includes unfettered compulsory powers over Anglo American land that is critical to implement its own consented NSIP.
- 4.2 Anglo American will continue to work with the Applicant in the interests of reaching agreement. However, in the absence of an adequate Side Agreement, Anglo American's concerns regarding the drafted Protective Provisions and Schedule 3 of the dDCO are amplified. On this basis, Anglo American requests that the version of Schedule 3 and Schedule 29 at Appendix 1 and Appendix 2 respectively are incorporated into the DCO. As noted above at paragraph 3.2, in each case the protective provisions apply unless otherwise agreed in writing between the parties. On the basis that the Respective Projects are both of nationally significant importance, it seems reasonable that until such point that design development facilitates optimal interface solution, the powers sought in the H2 Teesside dDCO do not frustrate the implementation of the previously consented York Potash DCO.
- 4.3 As stated at Deadline 7A and as has been Anglo American's position throughout the Examination, Anglo American remains open to reaching an agreement with the Applicant and has taken a proactive and cooperative role in the interests of doing so. Significant delay on the Applicant's part in returning draft agreements has meant that issues have not been resolved sufficiently early within the Examination to enable required amendments to be made.
- 4.4 Anglo American supports, in principle, the proposal for the H2 Teesside DCO, and has sought to reach agreement to enable the scheme to progress alongside its own consented DCO. However, in order to protect the deliverability of its own NSIP, Anglo American is compelled to maintain its objection to the H2 Teesside DCO on the basis that it currently presents a genuine and significant risk, with matters of principle yet to be managed to mitigate the risks consistently emphasised throughout this Examination.

Appendix 1 Anglo American's version of Schedule 3 for inclusion in the DCO

SCHEDULE 3

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

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

“SCHEDULE 13

FOR THE PROTECTION OF H2T UNDERTAKER

Interpretation

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

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

"Anglo American Specified Works"	means so much of the Woodsmith Project as is within the Shared Area
"Anglo American"	means the parties with the benefit of the York Potash Order (being Anglo American Woodsmith Limited and Anglo American Crop Nutrients Limited) and Anglo American Woodsmith (Teesside) Limited
"Expert"	means a person appointed pursuant to paragraph 9;
"H2T Order"	means The H2Teesside Order as it is made by the Secretary of State
"H2T Project"	means the construction, operation or maintenance of development authorised by the H2T Order and any planning permission intended to operate in conjunction with the H2T Order
"H2T Specified Works"	means so much of the H2T Project as is within the Shared Area
"H2T Undertaker"	means H2T being the applicant for the application for the H2T Order
"Parties"	means the Undertaker and Anglo American
"Plans"	includes sections, drawings, specifications design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the shared area
"Property Documents"	means any leases, licences or other documents by virtue of which Anglo American has an interest in, on or over land
"Respective Projects"	means the H2T Project and the Woodsmith Project
"Secretary of State"	means the Secretary of State for Energy Security and Net Zero or any successor in function
"Shared Area"	means the land coloured blue on the Shared Area Plan
"Shared Area 1"	means the land comprising the area shown labelled ‘Shared Area 1’ on the Shared Area Plan
"Shared Area 2"	means the land comprising the area shown labelled ‘Shared Area 2’ on the Shared Area Plan

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

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

3. –(1) Where the consent or agreement of the H2T Undertaker is required under the provisions of this part of this Schedule Anglo American must give at least 21 days written notice to the H2T Undertaker of the request for such consent or agreement and in such notice must specify the works or matter for which consent or agreement is to be requested and the Plans that will be provided with the request which must identify:-

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

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

- (a) any information it reasonably requires to be provided in addition to that proposed to be supplied by Anglo American under paragraph 3(1);
- (b) any particular circumstances with regard to the construction or operation of the H2T Project it requires to be taken into account;
- (c) the named point of contact for the H2T Undertaker for discussions in relation to the information supplied and the consenting process; and
- (d) the specific person who will be responsible for confirming or refusing the consent or agreement.

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

(4) Subject to paragraph (5), where conditions are included in any consent granted by the H2T Undertaker pursuant to this part of this Schedule, Anglo American must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by the H2T Undertaker.

(5) Wherever in this part of this Schedule provision is made with respect to the agreement approval or consent of the H2T Undertaker, that approval or consent must be in writing and subject to such reasonable terms and conditions as the H2T Undertaker may require including conditions requiring protective works to be carried out, but must not be unreasonably refused or delayed and for the purposes of these provisions it will be deemed to be reasonable for any consent to be refused if it would:-

- (a) compromise the safety and operational viability of the H2T Project (for the avoidance of doubt where the conditions proposed or any refusal relate to such matters, a reasoned explanation or other form of evidence will be provided by the H2T undertaker to provide an understanding of the matters raised);
- (b) make regulatory compliance more difficult or expensive, and / or
- (c) prevent the ability of the H2T Undertaker to have uninterrupted access to the H2T Project.

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

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

(7) In the event that:-

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

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

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

(9) In the event that the Undertaker does not respond in writing to a request for approval or consent or agreement within 28 days of its receipt of the postal request then Anglo American may serve upon the H2T Undertaker written notice requiring the H2T Undertaker to give their decision within a further 28 days beginning with the date upon which the H2T Undertaker received written notice from Anglo American and, subject to compliance with paragraph (10), if by the expiry of the further 28 day period the H2T Undertaker has failed to notify Anglo American of its decision the H2T Undertaker is deemed to have given its consent, approval or agreement without any terms or conditions.

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

Co-Operation

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

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

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

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

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

(3) Nothing in paragraph 3 or this paragraph 5 precludes Anglo American from submitting at any time or from time to time, but in no case less than 48 days before commencing the execution of any Anglo American Specified Work within Shared Area 3, 4, 5 or 6, new Plans in respect of that Anglo American Specified Work in substitution of the Plans previously submitted, and the provisions of this paragraph and paragraph 3 shall apply to the new Plans.

(4) Where there has been a reference to an expert in accordance with paragraph 9 and the expert gives approval for the works concerned, the Anglo American Specified Works to which this paragraph applies must be carried out in accordance with that approval and any conditions applied by the decision of the expert under paragraph 9.

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

(6) Anglo American is not required to comply with sub-paragraphs 5(1) to (5) above in a case of emergency, (being actions required directly to prevent possible death or injury) but in that case it must give to the H2T Undertaker notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and thereafter must comply with paragraphs 3 and 5 in so far as is reasonably practicable in the circumstances.

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

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

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

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

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

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

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

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

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

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

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

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

Constructability Principles

7.—(1) Subject to sub-paragraph (3), Anglo American 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 H2T 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.

(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 Anglo American 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, Anglo American 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, Anglo American must submit the outcome of the design and constructability review referred to in sub-paragraph (1) to the H2T Undertaker for acceptance prior to the seeking of any consent under this Schedule.

(3) Anglo American 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) Anglo American 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

7. –(1) The H2T Undertaker and Anglo American must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this part of this Schedule.

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

Indemnity

—(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, Anglo American must—

- (a) bear and pay the costs reasonably incurred by the H2T Undertaker in making good such damage or restoring the service, operations or supply; and
- (b) indemnify and keep indemnified the H2T Undertaker against liability which Anglo American incurs by reason of any breach by the undertaker or its authorised personnel.

(2) The H2T Undertaker must give Anglo American reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the H2T undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(3) 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.

(4) If requested to do so by Anglo American, 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) Anglo American 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 in 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 9 does not relieve the undertaker from any liability under this paragraph.

(7) The total liability of Anglo American whether for breach of, or under any indemnity contained in this Schedule shall be limited to the sum of £10,000,000 per claim and £25,000,000 in aggregate.

Dispute Resolution

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

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

- (a) a meeting of Chris Daykin, BP Hydrogen & Carbon Capture and Use or the Vice President for hydrogen and carbon capture, usage and storage in the United Kingdom and the Chief Executive Officer of Anglo American Crop Nutrients Limited to seek agreement on the matter in dispute within 21 days from the date of a dispute first being notified in writing by one Party to the other; and

- (b) in the absence of the difference being settled within that period, to be settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the Undertaker and Anglo American or, in the absence of agreement identified by the President of the Institute of Civil Engineers, who must be sought to be appointed within 28 days of the notification of the dispute.
- (c) The fees of the expert are payable by the Parties in such proportions as the expert may determine or, in the absence of such determination, equally as between the Parties.

10. The expert must:-

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

11. The expert must consider where relevant:-

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

12. Any determination by the expert is final and binding which the Parties must comply with and is enforceable by the Parties by injunction except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either Party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Appendix 2 Anglo American's version of Schedule 29 for inclusion in the DCO

PROTECTIVE PROVISIONS FOR THE PROTECTION OF ANGLO AMERICAN

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

2. The following definitions apply in this Schedule—

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

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

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

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

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

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

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

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

"Parties" means the undertaker and Anglo American;

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

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

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

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

"Shared Area" means the land coloured blue on the Shared Area Plan comprising the area of land within the Order Limits that overlaps with Anglo American interests pursuant to the Property Documents or otherwise within the limits of deviation of the York Potash Order;

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

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

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

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

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

"York Potash Order" means the York Potash Harbour Facilities Order 2016 and any amended or replacement order approved as part of element (4) of the Woodsmith Project, including York Potash Harbour Facilities (Amendment) Order 2022.

Consent to works in the shared area

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

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

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

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

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

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

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

- (a) compromise the safety and operational viability of the Woodsmith Project (where the conditions proposed or any refusal relate to such matters, a reasoned explanation or other form of evidence will be provided by Anglo American to provide an understanding of the matters raised); and/or

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

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

(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) Estates 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 the Shared Area, the undertaker must—

- (a) co-operate with Anglo American with a view to ensuring—
 - (i) the co-ordination of programming of all activities and the carrying out of works within the Shared Area; and
 - (ii) that access for the purposes of the construction, operation and maintenance of the Woodsmith Project is maintained for Anglo American and its employees, contractors and sub-contractors; and

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

Regulation of works within the shared area

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

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

(3) Nothing in paragraph 3 or this paragraph 5 precludes the undertaker from submitting at any time or from time to time, but in no case less than 48 days before commencing the execution of any Specified Work, new Plans in respect of that Specified Work in substitution of the Plans previously submitted, and the provisions of this paragraph and paragraph 3 shall apply to the new Plans.

(4) Where there has been a reference to an expert in accordance with paragraph 14(b) and the expert in determining the dispute gives approval for the works concerned, the Specified Works must be carried out in accordance with that approval and any conditions applied by the decision of the expert under paragraph 14.

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

(6) The undertaker is not required to comply with sub-paragraphs (1) to (5) above in a case of emergency (being actions required directly to prevent possible death or injury) but in that case it must give to Anglo American notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and thereafter must comply with paragraph 3 and this paragraph 5 insofar as is reasonably practicable in the circumstances.

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

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

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

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

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

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

Regulation of powers over the shared area

6.—(1) The undertaker must not exercise the powers granted under the Order so as to hinder or prevent the construction, operation or maintenance of the Woodsmith Project without the prior written consent of Anglo American.

(2) The undertaker must not exercise the powers under any of the articles of the Order specified in sub-paragraph (3) below over or in respect of the Shared Area otherwise than with the prior written consent of Anglo American.

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

- (a) article 10 (power to alter layout etc. of streets);
- (b) article 11 (street works);
- (c) article 12 (construction and maintenance of new or altered means of access);
- (d) article 13 (temporary closure of streets and public rights of way);
- (e) article 14 (access to works);
- (f) article 16 (traffic regulation matters);
- (g) article 17 (discharge of water);
- (h) article 18 (felling or lopping of trees and removal of hedgerows);
- (i) article 19 (protective works to buildings);
- (j) article 20 (authority to survey and investigate the land);
- (k) article 22 (compulsory acquisition of land);
- (l) article 23 (power to override easements and other rights);
- (m) article 25 (compulsory acquisition of rights etc.);
- (n) article 26 (private rights);
- (o) article 28 (acquisition of subsoil or airspace only);
- (p) article 31 (rights under or over streets)
- (q) article 32 (temporary use of land for carrying out the authorised development);
- (r) article 33 (temporary use of land for maintaining the authorised development); and
- (s) article 34 (statutory undertakers).

(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.

Constructability principles

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

- (a) carry out the works in such a way that will not prevent or interfere with the continued construction of the Anglo American Specified Works, or the maintenance or operation of the Anglo American Apparatus unless the action leading to such prevention or interference has the prior written consent of Anglo American;
- (b) ensure that works carried out to, or placing of H2T Apparatus beneath, roads along which construction or maintenance access is required by Anglo American in respect of any Anglo American Apparatus (including the overland conveyor) will be of adequate specification to bear the loads;
- (c) prior to the undertaker carrying out any of the Specified Works in any part of any Shared Area, the undertaker must in respect of the Specified Work concerned—

- (i) submit a construction programme and a construction traffic and access management plan in respect of that area to Anglo American and obtain agreement thereof from Anglo American (noting that a single construction traffic and access management plan may be completed for one or more parts of each Shared Area or more than one Shared Area and may be subject to review if agreed between the Parties) and without prejudice to the generality of sub-paragraph (a) the plans must include such measures and construction practices or processes as are necessary to satisfactorily address the relevant issues in relation to construction traffic and access management during construction that are set out in this paragraph 7;
- (ii) 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;
- (iii) 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
- (iv) obtain the agreement of Anglo American to the Location of any construction compounds where such areas are not those referred to in table 5-2 "construction programme and management" of chapter 5 of the environmental statement;
- (d) update the monthly construction programme approved under paragraph (c)(i) monthly and supply a copy of the updated programme to Anglo American every month;
- (e) at all times construct the Specified Works in compliance with the relevant agreed construction programme and construction traffic and access management plan;
- (f) notify Anglo American of any incidences which occur as a result of, or in connection with, the Specified Works which are required to be reported under the relevant Reporting of Injuries Disease and Dangerous Occurrences Regulations applicable from time to time within 24 hours of the duty to report arising;
- (g) 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;
- (h) 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;
- (i) 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
- (j) obtain the prior written consent of Anglo American for the use of any recycled aggregate material within the Shared Area.

(2) Unless otherwise agreed, the undertaker must not do anything within the Shared Areas which will constrain the ability of Anglo American to construct and operate an overland conveyor along the route which is the subject of the STDC Agreement or do anything which will compromise the construction, operational efficiency or maintenance of that conveyor or make the construction, operation or maintenance of it materially more expensive (unless such difference in cost (including any difference attributable to delay) is agreed to be provided by the undertaker).

(3) Any spoil from the Anglo American Specified Works or the Specified Works (including contaminated material) must be dealt with in accordance with a spoil management plan to be agreed between the Parties in advance of the work by either Party generating such spoil beginning.

(4) In 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.

(5) In considering a request for any consent under the provisions of this Schedule, Anglo American must not—

- (a) request an additional construction traffic and access management plan or a spoil management plan if such a plan has already been approved pursuant to sub-paragraph (1)(c)(i) (as relevant in respect of a traffic and access management plan) or agreed pursuant to sub-paragraph (3) (in respect of a spoil management plan); and
- (b) refuse consent for reasons which conflict with the contents of documents approved by Anglo American pursuant to the provisions of this paragraph and paragraph 8.

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 acceptance prior to the seeking of any consent under this Schedule.

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

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

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

Design Principles

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

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

Maintenance and Operational Principles

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

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

Miscellaneous provisions

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

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

Indemnity

12.—(1) Subject to sub-paragraphs (2) and (3), if by reason, or in consequence, of the construction, maintenance or operation of any Specified Works, or failure thereof, any damage is caused to any Anglo American Apparatus used in connection with the Anglo American Specified Works or damage is caused to any part of the Anglo American Specified Works or there is any interruption in any service provided, or breach of the EA Permit 1 or the EA Permit 2, or the operations of Anglo American, or in the supply of any goods, by Anglo American, the undertaker must—

- (a) bear and pay the costs reasonably incurred by Anglo American in making good such damage or restoring the service, operations or supply; and
- (b) indemnify and keep indemnified Anglo American against liability which Anglo American incurs by reason of any breach by the undertaker or its authorised personnel.

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

(3) Anglo American must use its reasonable endeavours to mitigate any claim or losses in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies.

(4) If requested to do so by the undertaker, Anglo American must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(5) The undertaker shall not be liable under this paragraph in respect of any claim capable of being mitigated or minimised to the extent that Anglo American has not used its reasonable endeavours to mitigate and/or minimise that claim in accordance with sub-paragraph (4).

(6) The fact that any work or thing has been executed or done with the consent of Anglo American and in accordance with any conditions or restrictions prescribed by Anglo American or in accordance with any plans approved by Anglo American or to its satisfaction or in accordance

with any directions or award of any expert appointed pursuant to paragraph 14 does not relieve the undertaker from any liability under this paragraph.

Dispute Resolution

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

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

- (a) a meeting of Chris Daykin, BP Hydrogen & Carbon Capture and Use or the Vice President for hydrogen and carbon capture, usage and storage in the United Kingdom and the [Chief Executive Officer of Anglo American Crop Nutrients Limited] to seek agreement on the matter in dispute within 21 days from the date of a dispute first being notified in writing by one Party to the other; and
- (b) in the absence of the difference being settled within that period, to be settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the undertaker and Anglo American or, in the absence of agreement identified by the President of the Institute of Civil Engineers, who must be sought to be appointed within 28 days of the notification of the dispute.

15. The fees of the expert appointed pursuant to paragraph 14(b) are to be payable by the Parties in such proportions as the expert may determine or, in the absence of such determination, equally as between the Parties.

16. Where appointed pursuant to paragraph 14(b), the expert must—

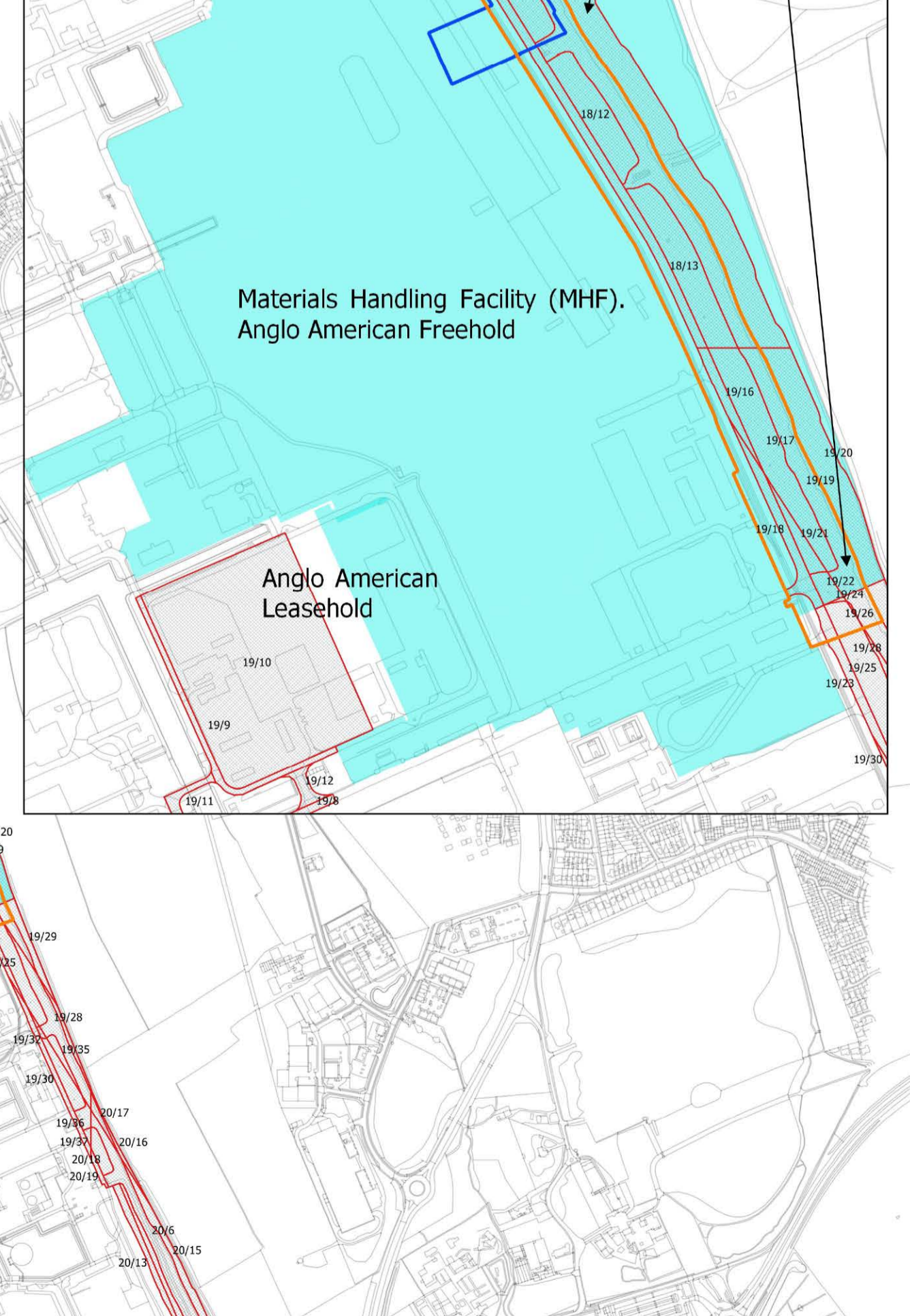
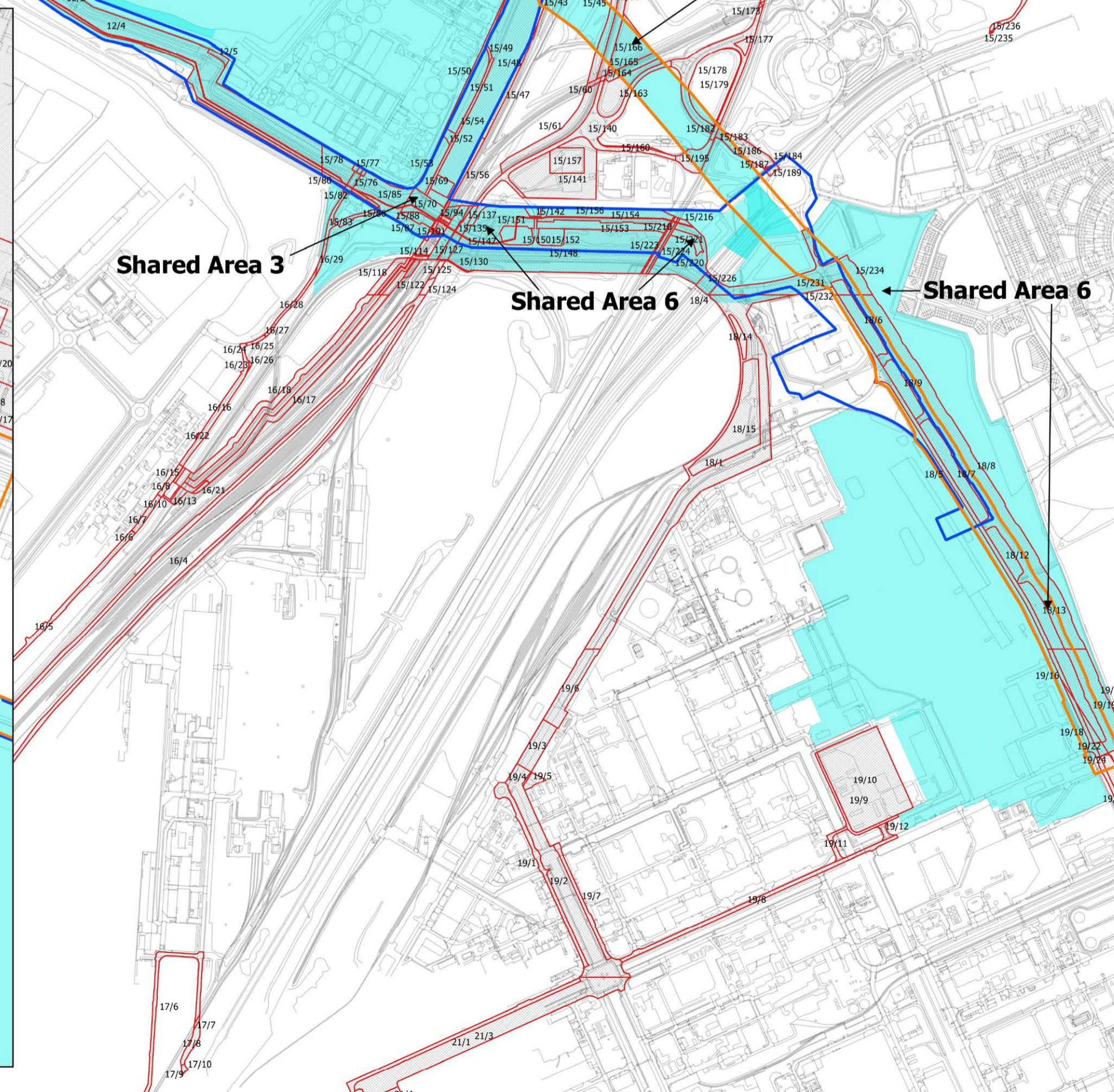
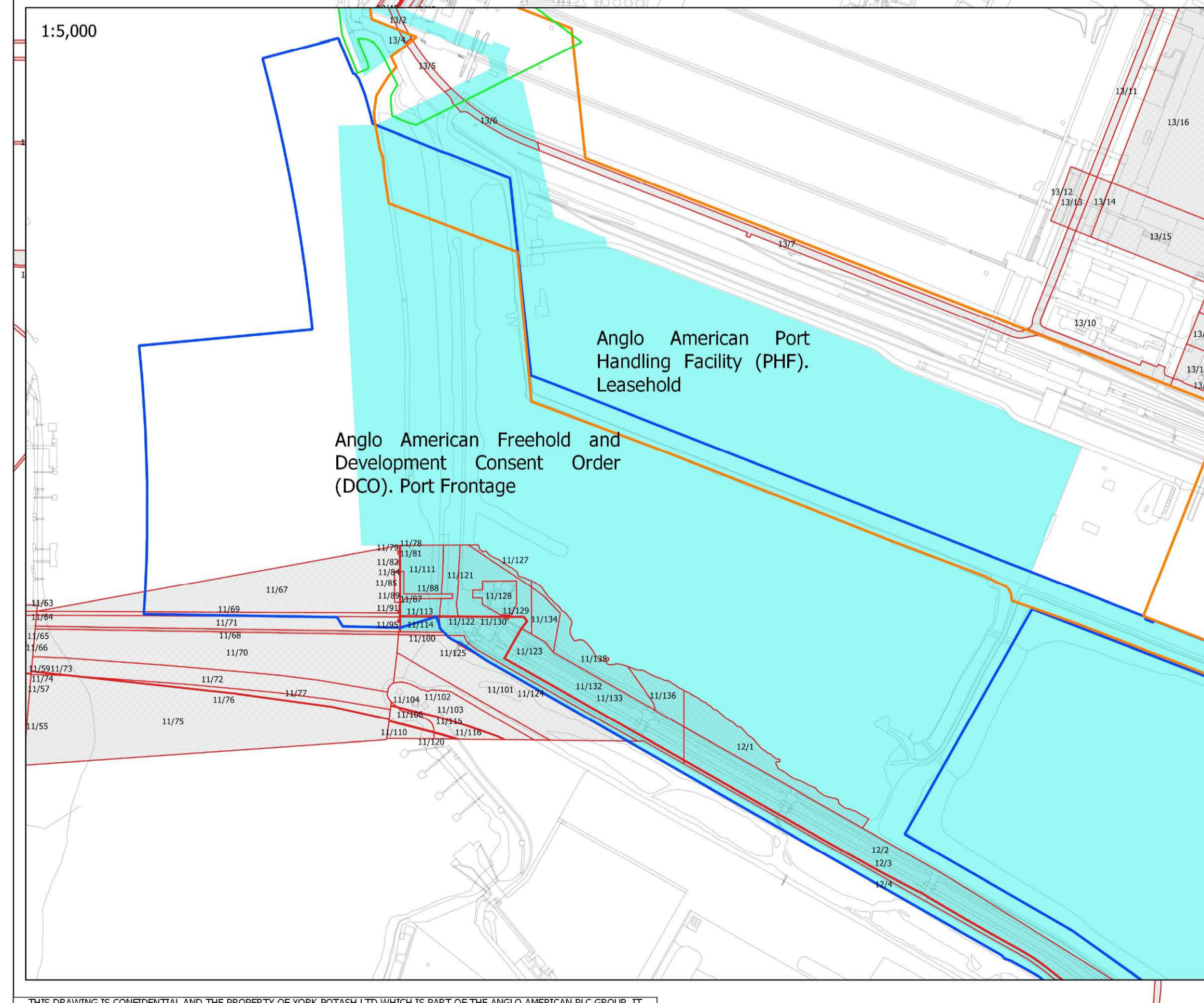
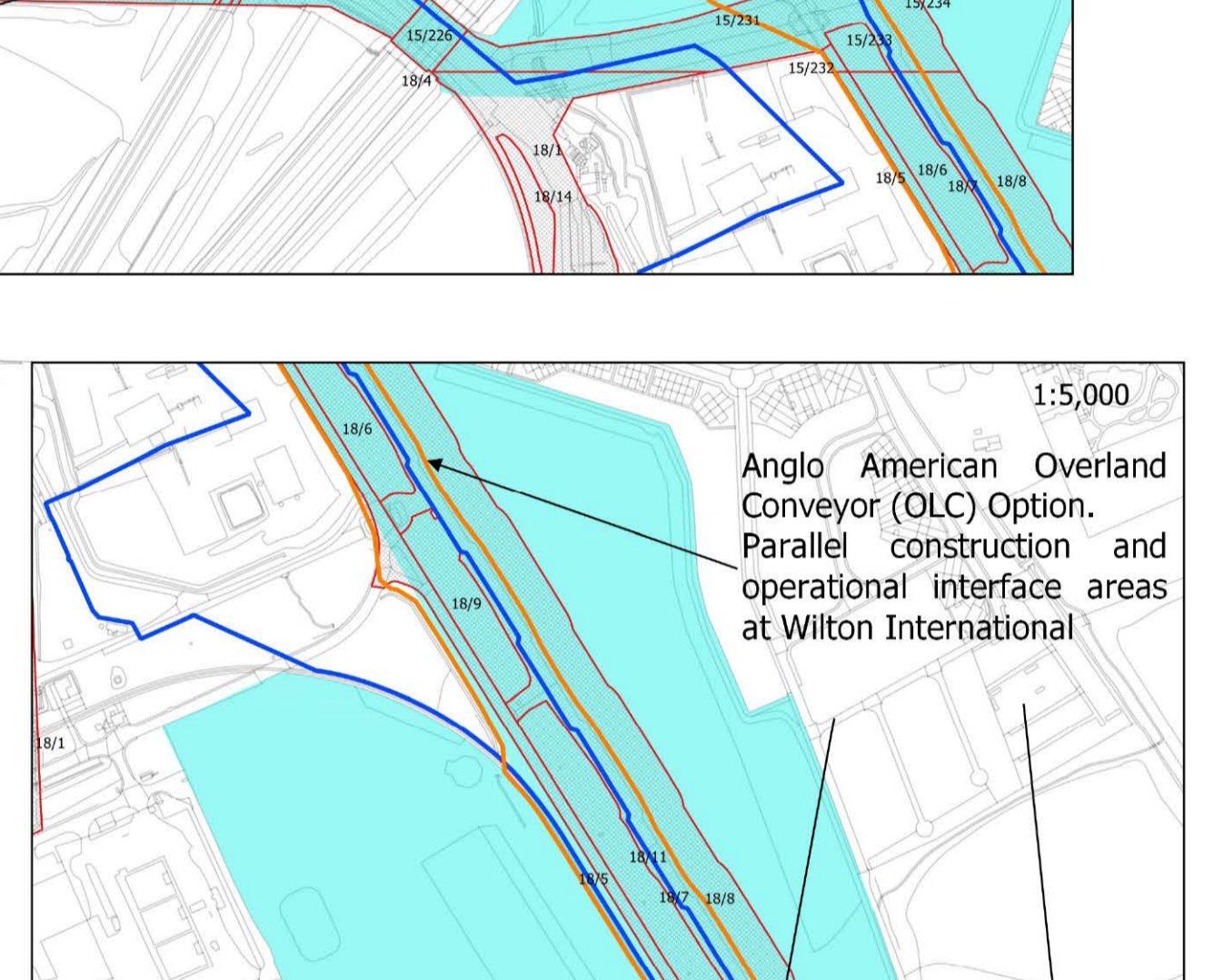
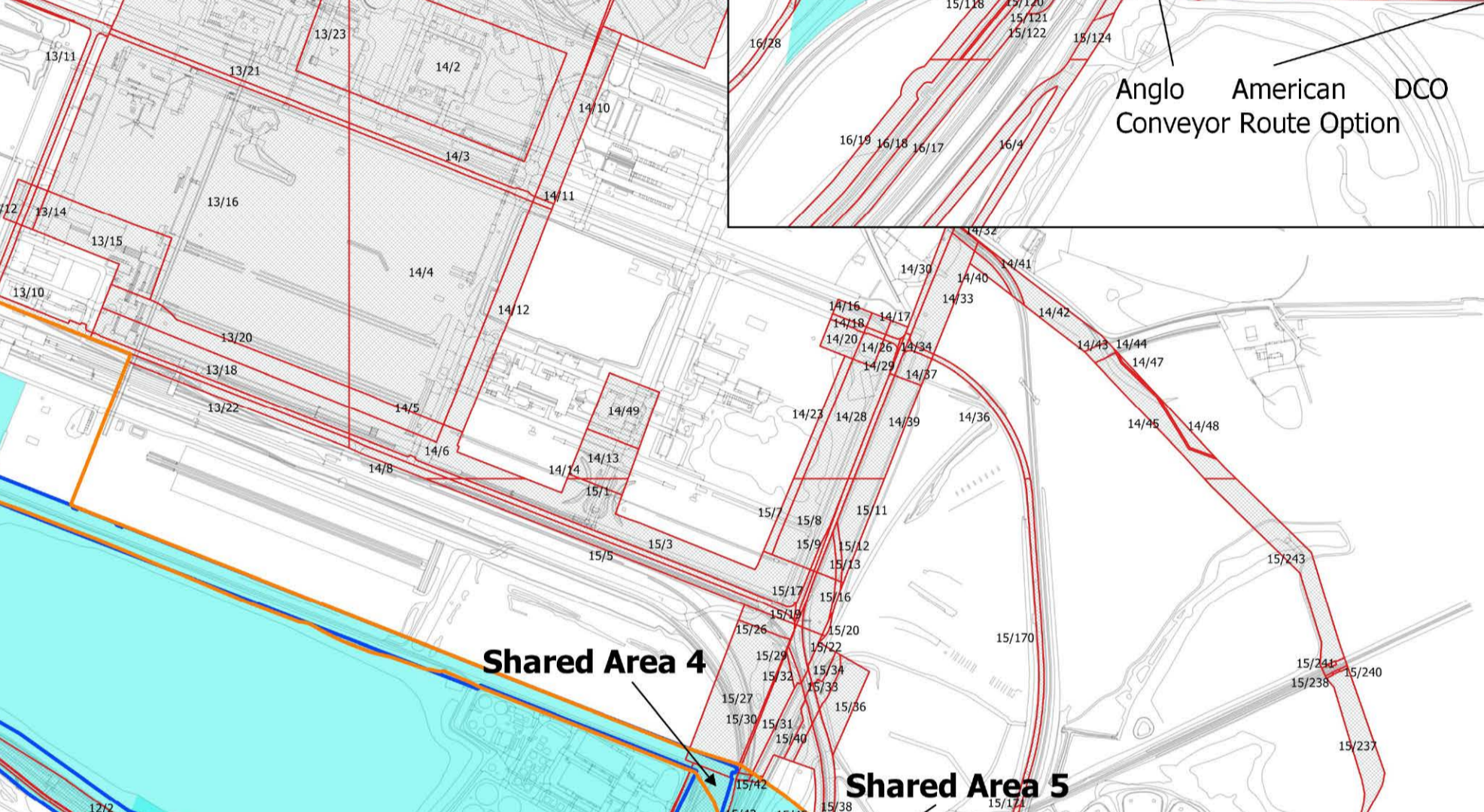
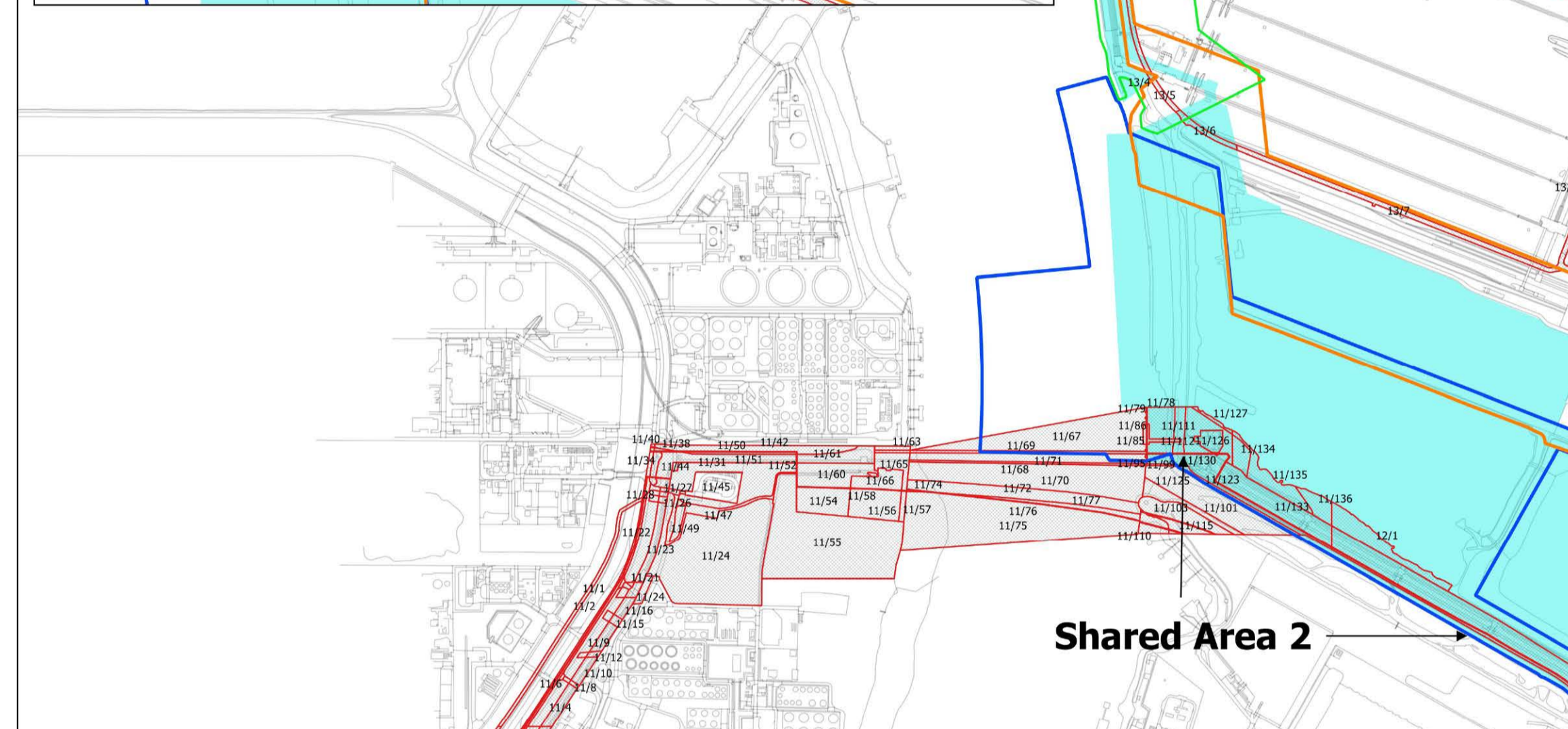
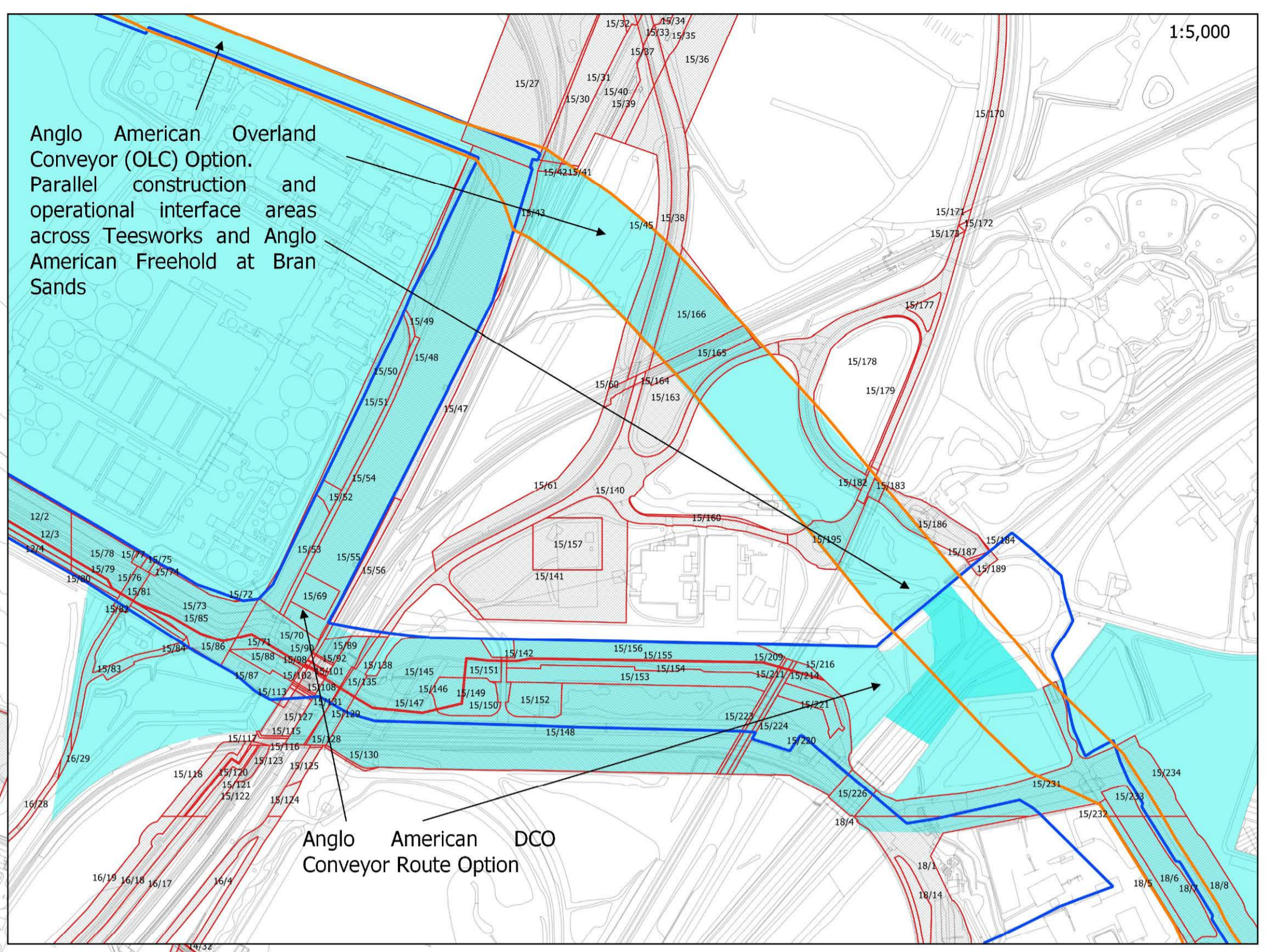
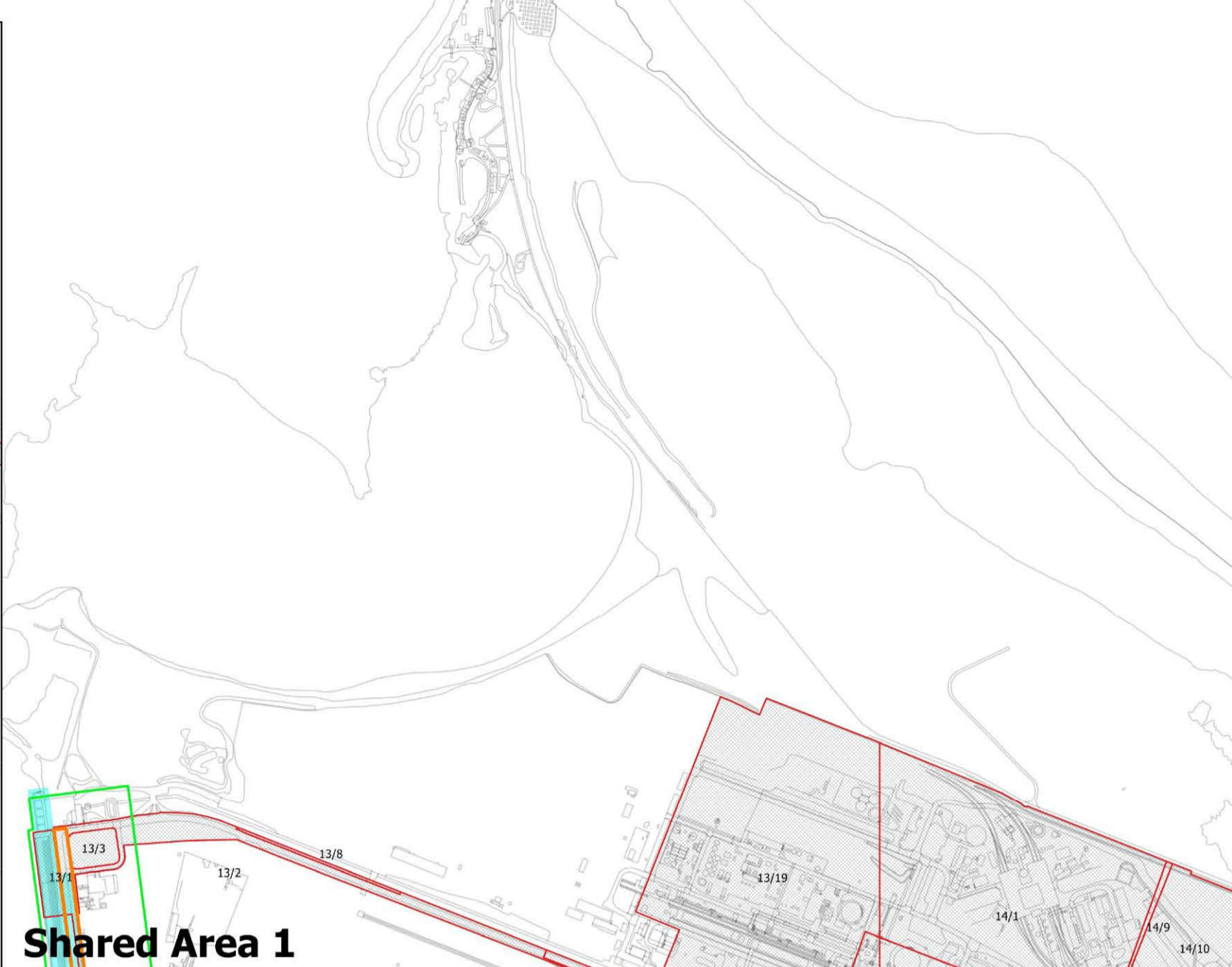
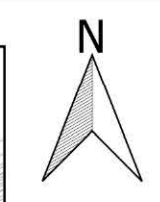
- (a) invite the Parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) allow each Party an opportunity to comment on the submissions made by the other provided that they are received within 21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

17. The expert must consider where relevant—

- (a) the development outcomes sought by the undertaker and Anglo American;
- (b) the ability of the undertaker and Anglo American to achieve the outcomes referred to in paragraph (a) in a timely and cost-effective manner;
- (c) any increased costs on any Party as a result of the matter in dispute;
- (d) whether under this Order or the York Potash Order, the undertaker's or Anglo American's outcomes could be achieved in any alternative manner without the Specified Works being materially compromised in terms of increased cost or increased length of programme; and
- (e) any other important and relevant considerations.

18. Any determination by the expert is final and binding which the Parties must comply with and is enforceable by the Parties by injunction except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either Party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Appendix 3 Shared Area Plan for Anglo American and H2 Teesside



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

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Drawing Title: Anglo American and H2 Teesside Project Overlay Plan

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