

# H2Teesside Project

Planning Inspectorate Reference: EN070009

Land within the boroughs of Redcar and Cleveland and Stockton-on-Tees, Teesside and within the borough of Hartlepool, County Durham

The H2 Teesside Order

Document Reference: 8.50 Response to landowner Deadline 7A Submissions

Planning Act 2008



**Applicant: H2 Teesside Ltd**

Date: February 2025

---

## DOCUMENT HISTORY

<b>DOCUMENT REF</b>	<b>8.50</b>		
<b>REVISION</b>	0		
<b>AUTHOR</b>	DWD		
<b>SIGNED</b>	NC	<b>DATE</b>	24.02.25
<b>APPROVED BY</b>	DWD		
<b>SIGNED</b>	MS	<b>DATE</b>	24.02.25
<b>DOCUMENT OWNER</b>	DWD		

---

## TABLE OF CONTENTS

<b>1.0</b>	<b>INTRODUCTION .....</b>	<b>4</b>
1.1	Background .....	4
1.2	The Purpose and Structure of this Document .....	4
<b>2.0</b>	<b>RESPONSE TO DEADLINE 7A SUBMISSIONS .....</b>	<b>5</b>

## TABLES

Table 2-1: Response to Deadline 7A Submissions.....	5
---	---

## APPENDICES

**APPENDIX 1: THE APPLICANT’S COMMENTS ON ANGLO AMERICAN’S PREFERRED PROTECTIVE PROVISIONS FOR INCLUSION AT SCHEDULE 29 OF THE DRAFT DCO**

**APPENDIX 2: THE APPLICANT’S COMMENTS ON ANGLO AMERICAN’S PREFERRED PROTECTIVE PROVISIONS FOR INCLUSION AT SCHEDULE 3 OF THE DRAFT DCO**

---

## **1.0 INTRODUCTION**

### **1.1 Background**

1.1.1 This document has been prepared on behalf of H2Teesside Limited (the 'Applicant'). It relates to an application (the 'Application') for a Development Consent Order (a 'DCO'), that was submitted to the Secretary of State for Energy Security and Net Zero ('DESNZ') on 25 March 2024, under Section 37 of the Planning Act 2008 (the 'PA 2008') in respect of the H2Teesside Project (the 'Proposed Development').

1.1.2 The Application has been accepted for examination. The Examination commenced on 29 August 2024.

### **1.2 The Purpose and Structure of this Document**

1.2.1 This document provides the comments of the Applicant in response to the submissions made by landowners at Deadline 7A of the Examination (17 January 2025).

## 2.0 RESPONSE TO DEADLINE 7A SUBMISSIONS

Table 2-1: Response to Deadline 7A Submissions

PARTY	SOURCE DOCUMENT(S)	COMMENT AT DEADLINE 7A	APPLICANT RESPONSE
Anglo American	REP7a-053	<ol style="list-style-type: none"> <li>1. Environment Permits – Anglo American has requested that the drafting of article 48 is broadened and an indemnity for the benefit of Anglo American in the event that the Proposed Development causes a breach of both environmental permits.</li> <li>2. Anglo American has asked to be a consultee for Requirements 3, 15, 18, 22 and 28;</li> <li>3. Anglo American is concerned about the progress of negotiations of the side agreement</li> <li>4. Anglo American has submitted an updated version of its preferred version of Schedule 29 to the draft DCO</li> <li>5. Anglo American has submitted its preferred version of Schedule 3 to the draft DCO</li> <li>6. Absence of Operational Noise Requirement</li> </ol>	<p><b>Environmental permits</b></p> <p>The Applicant considers it very unlikely that the Proposed Development will cause a breach of either of the Environment Permits. This is because the Applicant will not be undertaking activities pursuant to either Environment Permit. In relation to Environmental Permit FB3601GS the Proposed Development will not take place within an area of the site that has been infilled. Furthermore, the landfill (being the subject of Environmental Permit FB3601GS) is in the closure phase. As such, the conditions that remain relevant in this permit and the Closure Plan pertain to general site maintenance (i.e., access, security, and reporting requirements). It is very unlikely that the Proposed Development would cause a breach of those conditions.</p> <p>However, in response to Anglo American’s concerns, the Applicant included article 48 in the DCO to clarify that the Proposed Development does not breach Environment Permit FB3601GS. Following Anglo American’s submissions, the Applicant is content to amend article 48 of the draft DCO to also include Environmental Permit EPR/NB3498VD. The drafting in article 48 would be amended as follows (newly inserted text shown in italics and bold for clarity):</p> <p><u>‘Interface with anglo american permits</u></p> <p>48.— (1) The carrying out of an authorised activity shall not constitute a breach of, or non-compliance with, the Anglo American permit <i>1 or the Anglo American permit 2</i>.</p> <p>(2) In this article—</p> <p>“Anglo American permit <b>1</b>” means environmental permit number FB3601GS;</p> <p><b>“Anglo American permit 2” means environmental permit number NB3498VD;</b></p> <p>and</p> <p>“authorised activity” means any works or activities authorised by this Order, works carried out in connection with the authorised development, or the exercise by the undertaker of functions conferred by this Order.’</p> <p>The Applicant does not agree with Anglo American’s submission that further amendments to article 48 are required and that the provision should relate to the impact or effect of the authorised activity, rather than the activity itself. The Applicant’s position is that it would not be legally appropriate to say that the effect would not be a breach, not least because any such effect would be a consequence of “carrying out” the activity. Other precedents in DCOs (such as article 3 of the Lake Lothing Third Crossing Development Consent Order 2020 or</p>

PARTY	SOURCE DOCUMENT(S)	COMMENT AT DEADLINE 7A	APPLICANT RESPONSE
			<p>article 6 of Longfield Solar Farm Order 2023) where the DCO acts to prevent provisions from applying relate to “the construction of any work or the carrying out of any operation” related to the authorised development – not to the effects or impacts of the construction or carrying out of operations. Also, as previously stated, the operation of the article needs to be considered in context of Anglo American’s Protective Provisions in Schedule 29 of the draft DCO and indemnity being discussed in private commercial negotiations.</p> <p>In relation to the indemnity sought by Anglo American, as noted in paragraph 14.2 of the Applicant’s PP Position Statement [REP7a-025], the parties have agreed to address the indemnity in private commercial negotiations. As noted in Anglo American’s deadline 6A and 7A submissions [REP6a-022] and [REP7a-053], the Applicant understands that Anglo American is agreeable with this approach. As such, the Applicant does not consider that paragraph 12 of Schedule 29 to the draft DCO [REP7a-003] needs to address the Environment Permits.</p> <p>The Applicant otherwise refers to its response in paragraph ‘ANGLO1’ in [REP4-013] and item 3 in [REP6a-020].</p> <p><b>Consultee for requirements</b></p> <p>The Applicant considers the interactions between the York Potash Order and the Proposed Development are appropriately addressed through the protective provisions contained in Schedules 3 and 29 of the draft DCO [REP7a-003]. These schedules contain reciprocal protective provisions for the benefit of both the Applicant and Anglo American.</p> <p>The Applicant considers the protections afforded in Schedule 29 of the draft DCO provide sufficient protection so that Anglo American does not need to be a consultee in relation to Requirements 3, 15, 18 and 22.</p> <p>In relation to the detailed design, paragraph 8 of Schedule 29 of the draft DCO relates to the interface design process. This paragraph requires the Applicant to participate in a constructability review of the ‘Shared Area’ (being the overlapping areas between the York Potash Order and Proposed Development), which must be approved by Anglo American. The ‘Specified Works’ (being the parts of the Proposed Development within the Shared Area) must be carried out in accordance with the approved constructability review. Paragraph 9 of Schedule 29 of the draft DCO sets out the design principles for the Specified Works. These design principles protect various aspects of the York Potash Order. Paragraphs 3 and 5 require the Applicant to obtain Anglo American’s consent before it carries out the ‘Specified Works’. Paragraphs 6 and 10 sets out very detailed requirements the Applicant must comply with when constructing, operating and maintaining the Specified Works. Given the strict control over the design process and consent mechanisms in Schedule 29, Anglo American already</p>

PARTY	SOURCE DOCUMENT(S)	COMMENT AT DEADLINE 7A	APPLICANT RESPONSE
			<p>has sufficient control over the aspects of the Proposed Development that will interact with the York Potash Order. As such, it is not necessary to add Anglo American as a consultee in relation to Requirement 3 in the draft DCO.</p> <p>In relation to the CEMP and CTMP, Schedule 29 paragraph 7(1)(a)(iii)(aa) of the draft DCO requires the Applicant to submit a construction programme and construction traffic and access management to Anglo American for Anglo American’s approval, before carrying out the Specified Works. Paragraph 7(1)(a)(iv) requires the Applicant to update the construction programme monthly and provide the updated version to Anglo American every month. Paragraph 7(1)(a)(v) requires the Applicant to construct the Specified Works in accordance with the construction programme and construction traffic and access management plan.</p> <p>In relation to the restoration of land, Schedule 29 paragraph 7(1)(a)(ix) of the dDCO requires that following completion of the Specified Works, the Applicant must 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, unless otherwise agreed with Anglo American.</p> <p>The Applicant is agreeable to include Anglo American as a consultee to requirement 28. The drafting of paragraph 2891) of Schedule 2 to the draft DCO would be amended as follows (newly inserted text shown in italics and bold for clarity):</p> <p>28.—(1) Within 12 months of the date that a Work No. permanently ceases operation (or such longer period as may be agreed in writing with the relevant planning authority), the undertaker must submit to the relevant planning authority for its approval (following consultation with the Environment Agency, Sembcorp, CF Fertilisers, <b>Anglo American</b> and, on matters relating to traffic management arrangements pursuant to sub-paragraph (6)(h), National Highways)—</p> <p>(a) a decommissioning environmental management plan for that part; and</p> <p>(b) evidence that any necessary planning consents have been granted for decommissioning in relation to that part.</p> <p><b>Side agreement and private protective provisions</b></p> <p>The Applicant has continued to engage with Anglo American in relation to the negotiation of protective provisions and a side agreement. The Applicant refers to the update it provided regarding the status of negotiations in item 16 of Responses to Questions raised under Rule 17 dated 10 Feb 2025 [REP7a-040]. Since Deadline 7A, the Applicant issued Anglo American with comments on the</p>



PARTY	SOURCE DOCUMENT(S)	COMMENT AT DEADLINE 7A	APPLICANT RESPONSE
			<p>side agreement and protective provisions on 19 February 2025. The Applicant looks forward to progressing negotiations with Anglo American and is confident the parties will reach agreement and execute the side agreement shortly after the end of examination.</p> <p><b>The Applicant's comments on Anglo American's preferred protective provisions for inclusion at Schedule 29 of the draft DCO</b></p> <p>Please see Appendix 1</p> <p><b>The Applicant's comments on Anglo American's preferred protective provisions for inclusion at Schedule 3 of the draft DCO</b></p> <p>Please see Appendix 2</p> <p><b>Operational noise requirement</b></p> <p>The Applicant refers to its response to Q2.9.9 in Response to ExQ2.9 Draft Development Consent Order [REP5-045].</p> <p><b>Certified plans</b></p> <p>At deadline 8 the Applicant has submitted Document Reference 8.55 - H2 Teesside STDC Agreement Area Plan. The H2 Teesside STDC Agreement Area Plan is the STDC Agreement Area for the purposes of Schedule 29 of the draft DCO.</p> <p>The Applicant will submit 'H2 Teesside Anglo American Shared Area Plan' shortly after deadline 8 and in any event, on or before deadline 9. The H2 Teesside Anglo American Shared Area Plan is the Applicant's preferred Shared Area Plan for the purposes of Schedules 3 and 29 of the draft DCO.</p>
BOC Limited	REP7a-054	<p>Since our last update to the Examining Authority on 6 February 2025, BOC Limited, the Applicant and their respective representatives have had additional productive meetings regarding proposed protective provisions. The parties are aiming to have appropriate protective provisions agreed by 18 February 2025 and thereafter signed and dated by the end of that week. Fieldfisher LLP (who act for BOC Limited) will update the Examining Authority again on 18 February to confirm whether this aim has been achieved and consequently how BOC Limited wishes to proceed.</p>	<p>The Applicant understands that BOC Limited's solicitors submitted the following representations to the ExA on 21 February 2025:</p> <p><i>"Although BOC Limited and the Applicant have now agreed a draft agreement with appropriate protective provisions, the Applicant has failed to provide the protective provisions in a form for execution, or a timetable for execution.</i></p> <p><i>In the absence of any meaningful progress by Deadline 8 (24 February 2025), BOC will request that the Examining Authority programme a further hearing date in order to address protective provisions before 28 February 2025.</i></p> <p><i>To the extent that no protective provisions are entered into between the parties, BOC will request that amendments are made to the Order to include</i></p>



PARTY	SOURCE DOCUMENT(S)	COMMENT AT DEADLINE 7A	APPLICANT RESPONSE
			<p><i>protective provisions drafted by Fieldfisher on behalf of BOC in order to adequately safeguard its business and operations.”</i></p> <p>The Applicant is concerned that these representations could be materially misleading.</p> <p>In particular, the Applicant would respectfully request the ExA to note that:</p> <ul style="list-style-type: none"> <li>i. A timetable for approval and execution of the agreement has been shared with BOC Limited. This remains contingent upon BOC Limited providing additional information without which the agreement cannot be engrossed for execution;</li> <li>ii. the Applicant and its solicitors have requested this information from BOC Limited and its solicitors. the final outstanding information was received by the Applicant’s solicitors on the afternoon of 24 February 2025.</li> </ul> <p>The Applicant is reviewing the information provided and, anticipates that the agreement will be completed this week. A further update on progress will be provided on or before DL9.</p>
CF Fertilisers	REP7a-055	<ol style="list-style-type: none"> <li>1. Objections still remain</li> <li>2. Does not consider protective provisions are capable of addressing CF’s in principle concerns with the DCO application</li> <li>3. Negotiations on Side Agreement is continuing (not expected to conclude before end Feb)</li> </ol>	<p>The Applicant is confident that CF Fertilisers’ concerns can be addressed by protective provisions and a side agreement. The parties continue to have regular meetings, most recently on 12 February 2025. The parties have reached an in-principle agreement regarding the headline commercial matters to resolve CF Fertilisers’ concerns with the Proposed Development. Side agreement negotiations are ongoing. The Applicant remains confident that the parties will be able to enter into a side agreement shortly after the end of examination.</p>
Lighthouse Green Fuels	REP7a-058	<ol style="list-style-type: none"> <li>1. Applicant to confirm if LGF’s amendments to PPs were made. LGF will review PPs that H2T submitted at D7A</li> <li>2. LGF maintains objection to CA of plot 9/41 until PPs are agreed. LGF is still looking for information of CA of 9/16</li> </ol>	<ol style="list-style-type: none"> <li>1. The Applicant has incorporated LGF’s amendments to the extent that the Applicant was able to agree to the same. Noted that LGF will review the PPs submitted at D7A.</li> <li>2. The Applicant has been in discussions with LGF and understands that sufficient information has now been provided to alleviate LGF’s concerns regarding the use of CA powers in relation to plots 9/41 and 9/16. It is however understood that LGF will not withdraw its objection in this regard until a side agreement has been completed. It is anticipated that a side agreement will be issued to LGF’s solicitors shortly and the Applicant is confident that the parties will be in a position to enter into the side agreement shortly after the end of examination.</li> </ol>
National Gas Transmission	REP7a-059	<ol style="list-style-type: none"> <li>1. Absence of direct substantive engagement</li> <li>2. Maintains objection</li> <li>3. PPs not in agreed form</li> <li>4. Drafting of Paragraph 6 (CA powers)</li> </ol>	<p><b>Engagement</b></p> <p>The Applicant has continued to engage with NGT in respect of this matter, with a meeting held on 4 February 2025, and various emails between the Applicant and</p>

PARTY	SOURCE DOCUMENT(S)	COMMENT AT DEADLINE 7A	APPLICANT RESPONSE
		5. Indemnity cap not appropriate 6. Side Agreement will not be agreed before end Feb 7. Not been negotiating for land	<p>NGT which has resulted (as noted in NGT’s DL7A submission [REP7a-059]) in the Applicant agreeing to insert NGT’s preferred compulsory acquisition provisions in the protective provisions. There has also been direct engagement on the matters that remain outstanding in the protective provisions and on the issue of an indemnity cap. <b>Protective provisions</b></p> <p>The Applicant has responded to NGT’s submissions in respect of the protective provisions in its DL7A PPs Position Statement with National Gas Transmission plc [REP7a-17] and in its response to Question 3 in Document Reference 8.53 Response to Questions raised under Rule 17 letter dated 19 February 2025.</p> <p><b>Side agreement and indemnity cap</b></p> <p>As noted above, the Applicant has continued to engage with NGT in respect of the protective provisions and the related side agreement. A key item at the meeting on 4 February 2025 and subsequent correspondence has been the issue of an indemnity cap. To this end, the Applicant has responded to various requests for further information by NGT and has provided further justifications for its inclusion. This remains a central issue for the Applicant and this position has been repeatedly communicated to NGT. If the parties are unable to reach agreement on this point, the Applicant considers that it is unlikely that a side agreement will be agreed before the end of Examination.</p> <p><b>Land negotiations</b></p> <p>While no Heads of Terms have been issued to NGT, the Applicant has been discussing protective provisions with NGT since March 2024 and has been in technical discussions regarding Project Union. The technical and commercial interface between H2Teesside and NGT has been ongoing, with meetings taking place on a weekly basis.</p> <p>The Applicant has been working closely with NGT to progress the technical and commercial arrangements for tie-in to Project Union and blending. The land agreements necessary to formalise the Project Union tie-in would be negotiated subsequent to the technical details having been agreed between H2Teesside and NGT which, as noted above, is ongoing.</p> <p>The Proposed Development and the Project Union tie-in in particular is novel in nature and therefore the land requirements are being considered between H2Teesside and NGT. To negotiate these agreements ahead of the technical interface being agreed would be premature as the location(s) and land requirements have not been finalised and it would not be beneficial nor indeed possible to produce Heads of Terms and associated plans without this detail. These land agreements would form part of a wider “commercial package” regarding the above connections.</p>

PARTY	SOURCE DOCUMENT(S)	COMMENT AT DEADLINE 7A	APPLICANT RESPONSE
			<p>The Applicant has also been speaking with affected freeholders and a leaseholder in order to secure relevant voluntary land agreements and engaging with NGT in regards to natural gas supply.</p>
Navigator Terminals	REP7a-062	<ol style="list-style-type: none"> <li>1. Maintaining objection</li> <li>2. PPs not agreed</li> <li>3. Ask ExA for inclusion of Article 39 in dDCO</li> <li>4. Submitted PPs</li> </ol> <p>Side Agreement can be agreed before end Feb</p>	<p>The Applicant welcomes Navigator Terminals' support on Article 39 in the draft DCO. This article is particularly important in the locality of the Proposed Development where a number of affected landowners have existing or proposed development proposals.</p> <p>On 24 February 2025 the Applicant received Navigator Terminals' comments on the side agreement and protective provisions. The Applicant and Navigator Terminals are attending a meeting on 25 February 2025 and are aiming to finalising the side agreement and protective provisions.</p>
Net Zero North Sea Storage Ltd	REP7a-063	<p>A letter indicating that commercial discussions were ongoing and NZNSS require appropriate PPs to be added to the H2Teesside Order was submitted at DL7A.</p>	<p>The Applicant has engaged with Net Zero North Sea Storage Limited (NEP) following the submissions made at Deadline 7A and made amendments to the bespoke protective provisions included within Schedule 44 of the dDCO. These amendments reflect discussions between the parties and the drafting which the Applicant considers is appropriate to sufficiently protect NEP's assets.</p> <p>In addition to discussions regarding the form of protective provisions to be placed on the face of the dDCO, the Applicant is engaging with NEP regarding a side agreement to ensure the interfaces between the respective projects are sufficiently protected and the Applicant is confident that agreement will be reached in short order.</p>
Net Zero Teesside Power Ltd	REP7a-064	<p>A letter indicating that commercial discussions were ongoing and NZTP require appropriate PPs to be added to the H2Teesside Order was submitted at DL7A.</p>	<p>The Applicant has engaged with Net Zero Teesside Power Limited (NZT) following the submissions made at Deadline 7A and made amendments to the bespoke protective provisions included within Schedule 43 of the dDCO. These amendments reflect discussions between the parties and the drafting which the Applicant considers is appropriate to sufficiently protect NZT's assets.</p> <p>In addition to discussions regarding the form of protective provisions to be placed on the face of the dDCO, the Applicant is engaging with NZT regarding a side agreement to ensure the interfaces between the respective projects are sufficiently protected and the Applicant is confident that agreement will be reached in short order.</p>
NPL Waste	REP7a-066	<ol style="list-style-type: none"> <li>1. Payment of Adequate compensation, particularly for disturbance and the mines and minerals.</li> <li>2. Hazardous/contaminated soils that may be affected by the project (currently an access route affects mounds of discarded soils, where their origin is unknown) and confirmation that the applicant will dispose of the materials to meet all statutory regulations.</li> </ol>	<p>The Applicant is continuing to negotiate with NPL for a voluntary agreement and received comments on the Heads of Terms from NPL on the 5<sup>th</sup> February 2025.</p> <p>Compensation is provided for by statute, should the Applicant need to rely on statutory powers in the DCO. The Applicant's preference is to complete land assembly by agreements. The Applicant will compensate NPL either via agreed</p>

PARTY	SOURCE DOCUMENT(S)	COMMENT AT DEADLINE 7A	APPLICANT RESPONSE
		<ol style="list-style-type: none"> <li>3. Reinstatement of a High Security fence and whilst dismantled as part of the project, security.</li> <li>4. Reinstatement of the land back to as existing prior to entry and not leaving any materials and access roads laid for the project in situ</li> </ol>	<p>terms in an agreement, or in relation to any substantiated claim which is brought forward in due course.</p> <p>In relation to any contaminated or hazardous materials found on the site during the construction period, the Applicant will dispose of these materials in a safe way in line with any statutory requirements. These matters are secured by Requirements 12 and 15.</p> <p>In relation to the reinstatement of the site, the Applicant will reinstate the land back to its original position prior to the end of construction. A record of condition will be undertaken by the Applicant prior to and after the construction works to ensure that the site is reinstated. These matters are secured by Article 32(5) and Requirement 22.</p>
PD Teesport	REP7a-067	<ol style="list-style-type: none"> <li>1. Submitted their preferred PPs</li> <li>2. Disapplication of the 1966 Act</li> <li>3. Overlap with the Cargo Terminal expansion (tunnel depth)</li> <li>4. Side Agreement can be completed before end Feb</li> </ol>	<p>The Applicant's position in relation to its preferred protective provisions for the protection of PD Teesport Limited is set out in its PPs Position Statement with PD Teesport Limited [REP7a-031].</p> <p>In relation to the proposed disapplication of the Tees and Hartlepool Port Authority Act 1966 and the interactions between the Applicant's proposed trenchless crossing of the River Tees and PD Teesport's proposed container port development, please refer to the Applicant's responses to questions 12 and 13 in Document Reference: 8.53 Response to Questions raised under Rule 17 letter dated 19 February 2025.</p> <p>The Applicant and PD Teesport continue to negotiate the side agreement. The Applicant, like, PD Teesport, is hopeful that agreement will be reached before the end of examination.</p>
SABIC	REP7a-068 and REP7a-069	<ol style="list-style-type: none"> <li>1. Submitted PPs</li> <li>2. Lack of engagement</li> <li>3. SABIC is currently in negotiations with the Applicant in respect of protective provisions and a side agreement. There has been some progress in narrowing the issues between the parties, however as of Deadline 7A no agreement has been reached.</li> </ol>	<p>The Applicant shared with SABIC an updated set of Protective Provisions on 30 January 2025. The Applicant, as of 19 February 2025, was still awaiting substantive feedback on these documents from SABIC's legal counsel.</p> <p>The Applicant does not agree with the claim of a 'lack of engagement' on its side, having set up regular weekly calls with SABIC. The Applicant has reviewed the preferred protective provisions submitted by SABIC at DL7A and notes that SABIC has now adopted the Applicant's suggested drafting on most of the points of difference.</p> <p>An updated draft of Schedule 34 has therefore been provided (in both tracked change and clean versions), together with an updated set of submissions to set out the remaining points of difference.</p> <p>The Applicant notes that SABIC has now also identified the various areas (Brinefields, Wilton Complex, &amp;c.) referred to in SABIC's preferred protective provisions. It is not clear why this has only been forthcoming at this late stage in</p>

PARTY	SOURCE DOCUMENT(S)	COMMENT AT DEADLINE 7A	APPLICANT RESPONSE
			<p>the examination when the Applicant and its solicitors have been requesting this for several months.</p> <p>Nevertheless, now that the relevant areas have been defined, the Applicant has amended its preferred protective provisions to reflect these.</p> <p>The Applicant considers that the most appropriate way to achieve this is by reference to a plan as this will provide certainty as to the exact areas of land intended. SABIC's suggested means of identifying these areas by reference to narrative descriptions is less exact and could lead to uncertainty if, for example, land is removed from a specific title number in the future. Showing the relevant areas on a map (the Applicant's preferred approach) does not suffer from this issue. The Applicant has submitted this plan at Deadline 8 (8.44.15.2 – Sabic information plan)</p>
Mission to Seafarers	REP7a-073	<ol style="list-style-type: none"> <li>1. Duration of construction period</li> <li>2. A conversation prior to any disruption to access to the Seafarers Mission</li> </ol>	<p>The Applicant had a call with the Mission to Seafarers on Friday 21<sup>st</sup> February 2025 and clarified that pipeline construction would occur during the Phase 1 construction period.</p> <p>The Applicant agreed to further revise the wording in the fCEMP to indicate that the Applicant will discuss any disruption in access to the Seafarers Mission in advance and seek to agree the most appropriate timing for this. This has been provided in the updated FCEMP submitted at Deadline 8.</p>
North Tees Group (NTG)	REP7-053, REP7-054, and REP7-055	Various points	The Applicant notes and will respond to NTG's points from these written submissions as soon as possible but no later than Deadline 9.
CATS	N/A	N/A – Applicant update	<p>The Applicant has undertaken further commercial and technical engagement with CATS/Kellas since DL7A. As a result, one of the principal outstanding points of difference between the parties has now been resolved.</p> <p>Accordingly, the Applicant is preparing an amended schedule setting out its preferred protective provisions, with commentary and this will be submitted to the ExA on or before DL9.</p>
Natara	N/A	N/A – Applicant update	<p>The Applicant has been engaged in further useful discussions directly with Natara Global Limited in order to seek to establish the scope of Natara's practical underlying concerns. This was necessary because the previous examination submissions made on Natara's behalf were expressed at a high level of generality.</p> <p>Following that engagement, the Applicant has prepared an additional schedule of protective provisions for inclusion in the dDCO which has been specifically drafted to address Natara's detailed underlying concerns and ensure that there is no material impact on Natara's land or operations.</p>

PARTY	SOURCE DOCUMENT(S)	COMMENT AT DEADLINE 7A	APPLICANT RESPONSE
			<p>The new schedule provides that – prior to entering onto Natara’s land – the undertaker must submit a construction management and logistics plan for Natara’s approval. The undertaker must then comply with the approved plan.</p> <p>This is supplemented by a number of other protective provisions including:</p> <ul style="list-style-type: none"> <li>i. general duties on (a) the undertaker to minimise the impact on Natara as far as reasonably practicable and (b) Natara not to unreasonably withhold or delay granting consent;</li> <li>ii. requirements for the undertaker to carry out a survey of condition before and after the construction of the Proposed Development, and to reinstate Natara’s property;</li> <li>iii. reimbursement of Natara’s costs; and</li> <li>iv. a mechanism for the speedy and cost-effective resolution of any disputes.</li> </ul>
South Tees Group	REP7a-074-077	<ol style="list-style-type: none"> <li>1. Retained Phase 2 Land</li> <li>2. Application of COMAH and HSC Regimes</li> <li>3. Red main access road and pipeline connection to RBT land</li> <li>4. Protective provisions</li> </ol>	<p>Please refer to the Applicant’s separate Response to STG for coverage of Topics 1-3.</p> <p>Specifically with regard to protective provisions, the Applicant provided detailed submissions regarding its preferred protective provisions at deadline 7A [REP7a-027]. As part of these submissions, the Applicant commented on STG’s preferred protective provisions that were provided to the Applicant on 17 January 2025. STG has since updated its preferred protective provisions and submitted these into examination at deadline 7A [REP7a-075] (<b>STG PPs</b>). The Applicant has agreed to some of the updates that STG has suggested, which are shown in the amendments to Schedule 30 that is submitted at deadline 8.</p> <p>The Applicant provides the following comments on the protective provisions submitted at deadline 7A, to the extent these matters were not already addressed in the Applicant’s detailed submissions [REP7a-027].</p> <p><b>Definition of alternative apparatus:</b> The definition contained in Schedule 30 of the draft DCO (<b>DCO PPs</b>) of alternative apparatus is “appropriate alternative apparatus adequate <u>to enable the STG entity to undertake its operations on the STG site in a manner not less efficient than previously</u>”. The definition contained in the STG PPs is “appropriate alternative apparatus adequate <u>to the satisfaction of the STG entity</u>.” The definition in the STG PPs is inappropriate as it provides the STG entity complete control in determining whether the apparatus is appropriate. As such, the Applicant could provide alternative apparatus that does not impact on the ability for the STG entity to carry out its operations, but the STG could still refuse such apparatus. This is unreasonable. The definition included in the DCO PPs is precedent for statutory undertakers in the Net Zero</p>



PARTY	SOURCE DOCUMENT(S)	COMMENT AT DEADLINE 7A	APPLICANT RESPONSE
			<p>Teesside Order 2024 (see, for example paragraph 18, 33, 133, 341 and 353, of Parts 3, 4, 12, 25 and 26 respectively of Schedule 12).</p> <p><b>Paragraph 34(1):</b> The Applicant has included the phrase ‘or settled by arbitration in accordance with paragraph 37’ in paragraph 34(1) of the DCO PPs to confirm the dispute resolution mechanism that is available in the event the parties do not agree to the terms and conditions for alternative apparatus. This phrase ought not to be controversial as arbitration is the dispute resolution mechanism that is applicable to Schedule 30. This wording is consistent with the PPs contained in the draft DCO for other statutory undertakers (see, for example, paragraph 6(1) of Schedules 28 and 38). It is also consistent with the protective provisions for statutory undertakers in the Net Zero Teesside Order 2024 (see for example paragraphs 138(1) and 358(1) of Parts 12 and 26 of Schedule 12).</p>



---

## APPENDIX 1: THE APPLICANT'S COMMENTS ON ANGLO AMERICAN'S PREFERRED PROTECTIVE PROVISIONS FOR INCLUSION AT SCHEDULE 29 OF THE DRAFT DCO

1. The Applicant provided detailed submissions on its preferred protective provisions at deadline 7A [REP7a-025]. As part of these submissions, the Applicant commented on Anglo American's preferred protective provisions submitted at deadline 7 [REP7-042]. Anglo American has since updated its preferred protective provisions and submitted these into examination at deadline 7A [REP7a-053]. The Applicant provides the following comments on the protective provisions submitted at deadline 7A, to the extent these matters were not already addressed in the Applicant's detailed submissions [REP7a-025].
  2. **Amendments to definitions**
    - 2.1. **AA Property Arrangements:** Anglo American has deleted the definition of 'AA Property Arrangements' from its preferred protective provisions. The Applicant considers such definition is necessary as it relates to paragraph 7(1)(b)(ii) of the Applicant's preferred protective provisions. Compared to Anglo American's D7A protective provisions, the Applicant's protective provisions provide more detailed constructability principles for each shared area. The definition is used for Shared Area 1, hence the inclusion in the Applicant's protective provisions.
    - 2.2. **Eston Triangle Area:** The definition of 'Eston Triangle Area' is not included in Anglo American's preferred protective provisions. The Applicant considers such definition is necessary as it relates to paragraph 7(1)(c)(v) of the Applicant's preferred protective provisions. Compared to Anglo American's D7A protective provisions, the Applicant's protective provisions provide more detailed constructability principles for each shared area.
    - 2.3. **Shared Areas:** The Applicant has included definitions for each shared area in its preferred protective provisions. This is because the Applicant's protective provisions provide more detailed constructability principles for each shared area, compared to Anglo American's D7A protective provisions.
  3. **Design principles - paragraph 9**
    - 3.1. The Applicant has inserted 'materially' in paragraph 9(b) of its preferred protective provisions. The Applicant repeats its submissions made at paragraph 3 of [REP7a-025].
    - 3.2. Paragraph 9(c) of Anglo American's protective provisions includes a design principle that requires the piling for the overland conveyor (being part of the development approved by the York Potash Order) must be carried out before the Applicant commences the construction of the hydrogen pipeline. The Applicant cannot agree to this restriction. Paragraph 9(c) is not subject to any timing arrangements, meaning that the delivery of the Proposed Development is entirely dependent on Anglo American carrying out works for its own development. The Applicant has no control over the timing of Anglo American carrying out those works. As such, this requirement could cause significant delays, or even jeopardise the delivery of the Proposed Development.
  4. **Indemnity (paragraph 12)**
    - 4.1. Paragraph 12(1)(b) of Anglo American's preferred protective provisions is far broader than the equivalent paragraph in the Applicant's protective provisions. The Applicant's wording should be accepted as it more directly links to the matters outlined in paragraph 12(1) of both the Applicant's and Anglo American's protective provisions. The Applicant's drafting of paragraph 12(1)(b) is broadly consistent with the wording contained in the equivalent paragraph of the protective provisions for the benefit of Anglo

---

American in Net Zero Teesside Order 2024 (see paragraph 240(1)(b) of Part 18 of Schedule 12).

- 4.2.** Anglo American's preferred protective provisions do not contain paragraph 12(2) of the Applicant's preferred protective provisions. In relation to paragraph 12(2)(a), the Applicant considers this paragraph is necessary as it is unreasonable for the Applicant to be liable for any damage or interruption that is attributable to Anglo American. This paragraph was contained in the protective provisions for the benefit of Anglo American in Net Zero Teesside Order 2024 (see paragraph 240(2) of Part 18 of Schedule 12). Anglo American has not explained why this paragraph should be removed from Schedule 29 of the draft DCO. In respect of paragraph 12(2)(b) of its protective provisions, the Applicant refers to paragraph 16 of its submission [REP7a-025].
- 4.3.** Anglo American's preferred protective provisions do not include a requirement for Anglo American to explain how it has minimised any claim or details to substantiate any cost or compensation claimed pursuant to paragraph 12(1). This requirement is contained in the Applicant's preferred protective provisions (see paragraph 12(6)). Both the Applicant's preferred protective provisions and Anglo American's protective provisions contain a duty for Anglo American to mitigate its loss or costs in whole or part: paragraph 12(5) of the Applicant's protective provisions and paragraph 12(3) of Anglo American's protective provisions. Accordingly, Anglo American ought to be required to show the Applicant how it has complied with this duty by minimising any claim, if requested by the Applicant, per the requirement in paragraph 12(5) (in the Applicant's version) or 12(3) (in Anglo American's version). This requirement was contained in the protective provisions for the benefit of Anglo American in Net Zero Teesside Order 2024 (see paragraph 240(5) of Part 18 of Schedule 12). Anglo American has not explained why this paragraph should be removed from Schedule 29 of the draft DCO. This requirement is also consistent with various bespoke protective provisions (see for example paragraphs 56(4) (Air Products PLC), 86(5) CF Fertilisers UK Limited, 94(4) (Exolum Seal Sands LTD and Exolum Riverside LTD), 102(4) (INEOS Nitriles (UK) Limited), 208(7) (Sabic Petrochemicals UK Limited), 224(4) (Sembcorp Utilities (UK) Limited), 295(4) (The Breagh Pipeline Owners) and 327(7) (Huntsman Polyurethanes (UK) Limited), of Parts , 5, 7-9, 16-17, 21 and 23 respectively of Schedule 12 to the Net Zero Teesside Order).

## **5. Dispute resolution (paragraph 14)**

- 5.1.** The Applicant has also made a minor change to paragraph 14(a) of its preferred protective provisions. This amendment is not contained in Anglo American's protective provisions. The amendment relates to the Applicant's representative that attends the meeting as the first step of the dispute resolution process. This is a minor amendment and ought not to be controversial.

---

## APPENDIX 2: THE APPLICANT'S COMMENTS ON ANGLO AMERICAN'S PREFERRED PROTECTIVE PROVISIONS FOR INCLUSION AT SCHEDULE 3 OF THE DRAFT DCO

### 1. General

- 1.1. Schedule 3 of the draft DCO will amend the York Potash Harbour Facilities Order 2016 (as amended) to include protective provisions for the benefit of the Applicant. At deadline 7A, the Applicant updated its preferred version of Schedule 3 and prepared submissions to support its preferred version of Schedule 3 [REP7a-026] (**DCO PPs**). At this time, Anglo American had not provided the Applicant with its preferred version of Schedule 3.
- 1.2. Appendix 2 of Anglo American's deadline 7A submission [REP7a-053] contains Anglo American's preferred version of Schedule 3 (**AA Sch 3 PPs**). The Applicant has now had an opportunity to review the AA Sch 3 PPs and provides the following submissions, which supplement the submissions contained in [REP7a-026].
- 1.3. The Applicant strongly rejects the principle of the AA Sch 3 PPs not being reciprocal to the Applicant's or even Anglo American's preferred version of protective to be included in Schedule 29 of the DCO. Where two DCO projects are in close proximity to each other and have overlapping infrastructure, these interactions need to be appropriately managed through protective provisions. Having reciprocal protective provisions in this scenario is vital as otherwise, the powers in the development consent orders will not be appropriately regulated. Reciprocal protective provisions have accordingly been used in various development consent orders, such as Schedule 3 and Part 18 of Schedule 12 of the Net Zero Teesside Order, which in fact regulated the York Potash Order. Anglo American has noted that its preferred version of Schedule 3 is not reciprocal because the technical points of interface have not been recorded in an agreement. This is plainly wrong and not a relevant consideration to the terms of the protective provisions required in the DCO. The points of interface are clearly known, as without this information, the protections included in Schedule 29 could not have been prepared, and having them recorded in an agreement is not a pre-requisite to regulating them in the DCO. As such, reciprocal protective provisions are necessary and are capable of being drafted, which is evident through the Applicant's preferred protective provisions that are contained in Schedule 3.
- 1.4. The Applicant also has concerns with various aspects of the AA Sch 3 PPs, which are outlined below.
- 1.5. The AA Sch 3 PPs includes a definition of 'York Potash Order' that is wider than the York Potash Harbour Facilities Order 2016 (as amended). To avoid confusion, these submissions use the term 'YPO' when referring to the definition used by the AA Sch 3 PPs and 'YP DCO' when referring to that order specifically.

### 2. Definitions (paragraph 2 of AA Sch 3 PPs)

- 2.1. The AA Sch 3 PPs do not contain various definitions that are included in the DCO PPs, such as 'Anglo American Apparatus,' 'H2T Apparatus' and 'Land Plans'. This is because the AA Sch 3 PPs do not contain constructability principles. These definitions, along with the constructability principles should be included for the reasons outlined in paragraph 6 below.
- 2.2. The AA Sch 3 PPs contain definitions for 'Anglo American' and 'YPO.' These definitions are not necessary because once Schedule 3 is inserted into the YP DCO, these terms are already defined in that Order. The DCO PPs adopt definitions of these terms that are used in the YP DCO.

- 2.3.** The AA Sch 3 PPs insert the phrase ‘and any planning permission intended to operate in conjunction with the H2T Order’ into the definition of ‘H2T Project’. This makes the definition broader than that included in the DCO PPs. The Applicant does not consider that it is appropriate to broaden the scope of this definition as it creates obligations in relation to planning permissions that are not yet known. It also provides the same level of protection to development consent orders and planning permissions. Development consent orders have a greater level of powers, provided for by a statutory order. As such, providing the same level of protection to development consent orders and planning permissions overstates the protections that ought to be given to planning permissions.
- 2.4.** There are various definitions in the AA Sch 3 PPs that refer to Anglo American’s project as the ‘Woodsmith Project’ rather than the YP DCO (or more correctly, ‘Order’, given that Schedule 3 will be inserted into that Order). These definitions include ‘Respective Projects’ and ‘Anglo American Specified Works’. ‘Woodsmith Project’ has a far broader definition and includes any planning permission or development consent order made before or after the H2T Order. The Applicant does not consider this broadened definition is appropriate for the reasons outlined in paragraph 2.3. Rather, the Applicant considers these references should be replaced with ‘Order’ and the ‘Woodsmith Project’ definition be deleted, which is consistent with the DCO PPs.
- 2.5.** The AA Sch 3 PPs include a definition for Shared Areas 1 through to 6. It does not appear that the definitions of Shared Area 1 and 2 are used in the AA Sch 3 PPs. The Applicant does not consider that these definitions are necessary as Schedule 3 should regulate all areas where the York Potash Harbour Facilities Order 2016 (as amended) and H2T Project overlap. This is explained in further detail in paragraph 3 below. In any event, the definition of these areas that is included in the AA Sch 3 PPs is imprecise as the Shared Area Plan does not clearly delineate where each shared area starts and ends. If definitions are included for each shared area in Schedule 3, they should be made by reference to specific plots, which is consistent with the definitions contained in Schedule 29 to the draft DCO.
- 2.6.** As noted in paragraph 2.2 above, the definition of ‘YPO’ is not necessary. The references to planning permissions associated with the YP DCO also should not be included for the reasons outlined in paragraph 2.3. As noted in paragraph 2.2 above, any references to YPO should simply be ‘Order’.

### **3. Consent to works in Shared Areas (paragraph 3)**

- 3.1.** Paragraphs 3 and 5 of the DCO PPs require Anglo American to obtain the consent of H2T before carrying out the ‘Specified Works’. The ‘Specified Works’ are the works authorised by the YP DCO that are within the Shared Area. By contrast, the AA Sch 3 PPs regulate the ‘Woodsmith Project’ that is within Shared Areas 3-6.
- 3.2.** It is imperative that Schedule 3 regulates the powers contained in the YP DCO and the H2T Project in **all** overlapping areas. This is to ensure that statutory powers in the two separate orders do not clash.
- 3.3.** Anglo American’s deadline 7A submission implies that the powers for shared areas 1 and 2 cannot be regulated because ‘the Applicant has not committed to the arrangements discussed in technical meetings between the parties’. The Applicant strongly refutes such assertion, which misses the point of what the protective provisions are seeking to do.
- 3.4.** The Applicant has made various commitments in relation to the regulation of Shared Areas 1 and 2. This is evident through the insertion of Schedule 3 to the draft DCO at deadline 5. In particular, the constructability principles included at paragraph 7 regulate these shared areas. The Applicant updated Schedule 3 at deadlines 6A and 7A. Anglo American did not respond to the Applicant’s proposed Schedule 3 until deadline 7A.

**3.5.** The DCO PPs provide the protections that the Applicant requires for all Shared Areas (including Shared Areas 1 and 2) in order to construct, operate and maintain the H2T Project. The DCO PPs, read alongside the protections contained in Schedule 29 of the draft DCO provide adequate protections to ensure that both projects can co-exist.

**3.6.** Paragraph 3(8) of the DCO PPs contains the correct representatives of the Applicant to which any notice pursuant to paragraph 3(1) must be sent. This is a minor amendment and ought not to be controversial.

#### **4. Regulation of works within Shared Areas (paragraph 5)**

**4.1.** Similarly to paragraph 3 of the AA Sch 3 PPs, paragraph 5 also only applies to Shared Areas 3-6. The Applicant reiterates its submissions made at paragraph 3 above.

**4.2.** Consequentially, the phrase 'to which this paragraph applies' that is contained in paragraphs 5(4), (5), (7), (8) and (10) of the AA Sch 3 PPs is not necessary as these paragraphs must regulate all Shared Areas. Similarly, the phrase 'in the relevant Shared Area' in subparagraph (11) is also not necessary.

#### **5. Regulation of powers over Shared Areas (paragraph 6)**

**5.1.** Similarly to paragraph 3 of the AA Sch 3 PPs, paragraph 6 also only applies to Shared Areas 3-6. The Applicant reiterates its submissions made at paragraph 3 above.

**5.2.** Paragraph 6(1) of the AA Sch 3 PPs includes the phrase 'in the Shared Area.' This phrase is not necessary as the defined term immediately before this phrase ('H2T Specified Works') is already defined by reference to the shared areas.

**5.3.** The AA Sch 3 PPs include Article 16 (authority to survey and investigate land) in paragraph 6(3). By contrast, the DCO PPs have removed this reference. This is in order to ensure the restrictions contained in Schedules 3 and 29 of the draft DCO are reciprocal.

#### **6. Constructability principles**

**6.1.** Paragraph 7 of the DCO PPs contains constructability principles. By contrast, the AA Sch 3 PPs do not contain this paragraph.

**6.2.** The Applicant refers to paragraph 7 of its deadline 7A submissions [REP7a-026].

**6.3.** Furthermore, the constructability principles contained in paragraph 7 of the DCO PPs are generally reciprocal to those contained in paragraph 7 of Schedule 29. The protections need to generally be reciprocal for the reasons outlined in paragraph 1 above.

**6.4.** There are minor differences between the constructability principles contained in paragraph 7 of Schedules 3 and 29 to the draft DCO in order to reflect the different developments. For example, paragraph 7(1)(a)(iii)(bb) of Schedule 29 requires the Applicant to provide Anglo American relevant construction quality assurance plan, construction management and execution plan and construction environmental management plan approved under the draft DCO. Whereas, paragraph 7(1)(c)(iii) of Schedule 3 only requires Anglo American to provide the Applicant a construction environmental management plan approved under Requirement 6 of the YP DCO. This is because Anglo American has environmental permits over land that is included in the H2T Project. As such, Anglo American needs additional information from the Applicant in order to comply with those permits. By contrast, the Applicant does not have similar environmental permits.

**6.5.** Schedule 3 of the DCO PPs also contains paragraphs 7(1)(k) and (l). These restrictions are required in order to provide the necessary access for the Applicant to offload



---

modules from ships at the Redcar Bulk Terminal quay that are required for the H2T Project. The Applicant needs to consider any modifications to the quay as it may impact on the Applicant's proposed method for unloading modules.

## **7. Interface design process**

- 7.1.** The DCO PPs contains paragraph 8, which relates to the interface design process. Conversely, the AA Sch 3 PPs do not contain this paragraph.
- 7.2.** The Applicant considers this paragraph is necessary for the reasons outlined in paragraph 8 of its deadline 7A submissions [REP7a-026]. In addition, paragraph 8 of the DCO PPs is generally reciprocal with paragraph 8 of Schedule 29 to the draft DCO. The only substantive difference between Schedules 3 and 29 is that Schedule 3 does not contain the reference to the overland conveyor, which is included in paragraph 8(1)(d) of Schedule 29. This is to reflect the specific aspects of the development consented to by the YP Order.

## **8. Indemnity**

- 8.1.** Paragraph 10 of the DCO PPs contains an indemnity for the benefit of the Applicant. In contrast, the AA Sch 3 PPs does not contain an indemnity. The deletion of the indemnity paragraph is wholly inappropriate. The party carrying out works must provide an indemnity in order to give the other party sufficient protection. The deletion of this paragraph in the AA Sch 3 PPs has not been justified, is not precedented and is unreasonable. It is also inconsistent with the indemnity that is contained in paragraph 10 of Schedule 3 to the Net Zero Teesside Order 2024.
- 8.2.** The Applicant inserted paragraph 10(4) of the DCO PPs. By contrast, the AA Sch 3 PPs does not include this paragraph. The Applicant has inserted this paragraph in order to be reciprocal to paragraph 12(4) of Schedule 29 of the draft DCO.
- 8.3.** The Applicant refers to paragraph 10 of its deadline 7A submissions [REP7a-026]. In addition, the indemnity clause contained in paragraph 10 of the DCO PPs is reciprocal to paragraph 12 of Schedule 29 to the draft DCO.

## **9. Dispute resolution (paragraphs 8-12)**

- 9.1.** There are minor differences regarding the H2T representative that is included in paragraph 9(a) of the AA Sch 3 PPs and paragraph 12(a) of the DCO PPs. The representative included in the DCO PPs is correct and ought not to be controversial.
- 9.2.** There are also differences regarding the Anglo American representative that is included in 12(a) of the DCO PPs and the AA Sch 3 PPs. The Applicant amended the Anglo American representatives included in paragraph 12(a) of the DCO PPs at the request of Anglo American. That being said, the Applicant is agreeable to insert the representatives of Anglo American that it prefers.
- 9.3.** The Applicant has also replaced the 'President of the Institute of Civil Engineers' with the 'President of the Law Society'. The Applicant refers to paragraph 11 of its deadline 7A submissions [REP7a-026].