WOMBLE BOND DICKINSON

SABIC UK PETROCHEMICALS LIMITED (URN 20049383)

SABIC TEES HOLDINGS LIMITED (URN: H2TS-AFP121)

SABIC PETROCHEMICALS BV

APPLICATION BY H2TEESSIDE LIMITED FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE H2TEESSIDE PROJECT (EN070009)

DEADLINE 6

SABIC'S RESPONSE TO THE APPLICANT'S RESPONSES TO ExQ2 [REP5-044]

ExQ2	QUESTION	APPLICANT'S RESPONSE	SABIC'S COMMENTS
Q2.6.8	In their response to the Applicants reply to ExQ1 [REP3-021] Q1.6.17, SABIC stated that "If the Applicant is unable to identify what rights it needs to extinguish then it is difficult to see how they can satisfy the Secretary of State (SoS) that the powers being sought are no more than is reasonably required for the purposes of the development". Please can the Applicant provide further explanation as to how they are able to satisfy the SoS that the rights sought to be acquired are reasonable.	The Applicant needs powers to extinguish and/or suspend rights and override easements and other rights in the Order land to the extent that they would conflict with the construction or operation of the Proposed Development. Accordingly, the Applicant has included powers in article 26 of the dDCO to ensure that easements and other private rights identified as affecting the land are extinguished or suspended, so as to facilitate the safe, efficient and effective construction and operation of the Proposed Development. Article 26 of the dDCO is therefore necessary and applies in relation to land in which compulsory acquisition or temporary possession are proposed; viz. land tinted pink, blue or yellow on the Land Plans. With respect to land tinted yellow, in respect of which temporary possession only is sought, article 26(4) of the dDCO makes clear that any private	The Applicant's explanation about the operation of Article 26(7) of the Order broadly coincides with SABIC's own understanding. In particular, it is agreed that under that sub-paragraph the undertaker may serve a notice excluding easements and other private rights from being extinguished or suspended. The key point, however, is that the service of such a notice, and the preservation of any particular easement or right, is at the sole discretion of the undertaker. Article 26(7) cannot be seen as a guarantee or a protection of SABIC's rights; rather it is a power which can be used as a concession from the undertaker. The Applicant does not appear to be saying that this power will be used: just that it is available. In this context, although the Applicant does not say so expressly, it would appear that it is their case that it is or may be necessary for them to seek to extinguish or suspend SABIC's easements or other private rights for the purposes of the authorised development.

		rights are only suspended for the period in which the Applicant is in lawful possession of the land i.e. they would only be suspended temporarily. Compensation is payable to anyone whose rights are extinguished, suspended or interfered with under article 26(5) of the dDCO. Furthermore, and notwithstanding the extensive and diligent efforts made by the Applicant to identify all relevant rights and interests in the Order land, there may still be unknown rights, restrictions, easements or servitudes affecting that land which also need to be extinguished or suspended to enable the Proposed Development to proceed. The Applicant does not understand that SABIC objects to the principle of such unknown rights being extinguished or suspended, and it will be appreciated that – by their very nature – it would not be possible for the Applicant to particularise them in advance as they are ‘unknown’. In addition, the Applicant draws attention to article 26(7) of the dDCO. This provides that the Applicant may by notice preserve a right, restriction or interest from being extinguished or suspended i.e. it is excepted from the operation of the preceding paragraphs of that article. Similarly, the Applicant and the person in or to whom the right or restriction in question is vested, belongs or benefits may “*at any time*” agree that the extinguishment and suspensive provisions of article 26 do not apply. This means that if the Applicant is made aware of any further unknown rights in the future the dDCO includes provision to ensure that these are not inadvertently extinguished or suspended in circumstances where this would be inappropriate in some fashion.	Given the effects of SABIC, as set out in set out in Section 1 of the "Written Summary of SABIC's Representations to CAH1" [REP4-49] and SABIC's response to Q2.6.11 in "SABIC's Response to ExQ2" [REP5-086], SABIC considers that the ExA should require a full and compelling justification for the acquisition of SABIC's easements or other interests and that if the Applicant does need them it should provide specific justification which can then be weighed in the balance against SABIC's interest and the broader public interest of preserving the UK ethylene production and distribution industry. This highlights the need for protective provisions in favour of SABIC.

		If there are specific rights enjoyed by SABIC about which it is concerned and which are not at present included in the Book of Reference then the Applicant would invite SABIC to particularise same.	
Q2.6.11	In their DL4 submission [REP4-050], SABIC question how the SoS is to decide whether the level of security being provided under Article 47 (funding for CA compensation) is adequate, especially in light of its concerns about the serious consequences of an incidental suspension of an inconsistent right under Article 26. The Funding Statement [APP-025] at paragraph 3.1.2 states that financial provision has been made in this regard. Please explain how the ExA and SoS can be certain that this is adequately covered.	Article 47(1) (Funding for compulsory acquisition compensation) of the Draft Development Consent Order (Document Ref: 4.1) clearly sets out that it is for the Secretary of State to decide and approve the amount of either the guarantee or alternative form of security required to be given by the Applicant to fund any compulsory acquisition compensation that may arise through the exercise of compulsory acquisition DCO powers. The Applicant is prevented from using the specified compulsory acquisition powers until the financial security amount is approved and put in place. The Applicant would expect the Secretary of State to refer to the combination of legislation, case law and established practice (known collectively as the 'compensation code') when determining the amount of security required under article 47(1) and which would be considered in the context of the compulsory acquisition powers which the Applicant was seeking to use (and for which financial security is therefore required). If, in the event of the Proposed Development obtaining development consent and exercising its compulsory acquisition powers, Sabic were to make a claim for compensation, the onus would be upon them as the claimant to show that the amount being claimed was appropriate in the circumstances. The Applicant's position is, as stated at Compulsory Acquisition Hearing 1 [REP4-015], that it can address Sabic's concerns through providing Protective Provisions in the draft DCO. The Funding Statement [APP-025] does state that the cost estimate set out in paragraph 3.1.1	As stated in SABIC's Deadline 4 response [REP4-050] SABIC supports the principle of guarantees and securities being provided before compulsory acquisition takes. Article 47 provides for such a security to be provided, but does not provide a mechanism under which information is to be provided to the Secretary of State to allow him to make an objective assessment regarding the level of compensation to be provided. In particular, it is unclear how the effects of SABIC, as set out in set out in Section 1 of the "Written Summary of SABIC's Representations to CAH1" [REP4-49] and SABIC's response to Q2.6.11 in "SABIC's Response to ExQ2" [REP5-086], would be taken into account, including business extinguishment in the event of a permanent acquisition of even a small part of SABIC's "circuit". When producing the Funding Statement [APP-025] it is unclear whether the Applicant was aware of and made provision for, this level of loss. It is also unclear what level of certainty will exist as to which of SABIC's land and rights may be required at the time when an application is made to the Secretary of State under Article 47. SABIC agrees that protective provisions are needed to deal with its concerns and welcomes the Application's commitment to provide suitable and adequate protective provisions. However to date the Applicant's dDCO does not include protective provisions which protect SABIC against compulsory acquisition. SABIC is submitting

		includes provision for compensation payable in respect of any compulsory acquisition. The Applicant would also refer to its response to ExQ1.6.29 Response to ExQ1 Compulsory Acquisition and Temporary Possession [REP2-024], which explains that appropriate consideration of the relevant compensation provisions has been undertaken to ensure that all compensation potentially payable to affected parties is taken into account and that funding is available. This has been accounted for fully in the Property Cost Estimate that is derived from a detailed review of anticipated costs for acquiring land and rights on a case-by-case basis, whether for temporary or permanent rights or freehold acquisition. This includes allowances for compensation relating to acquisition of land and rights, disturbance claims as well as claims under section 10 of the Compulsory Purchase Act 1965, Part 1 of the Land Compensation Act 1973 and blight claims. As also made clear in the Funding Statement and in the Applicant's response to ExQ1.6.27, the Proposed Development is being developed by project partners (being the ultimate parent companies) BP p.l.c. and Abu Dhabi National Oil Company (ADNOC) who have adequate funds to fund the development.	updated protective provisions at Deadline 6 which provide for protection against compulsory acquisition.

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13 January 2025