

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 7A

SABIC'S DEADLINE 7A RESPONSE

THE EXAMINING AUTHORITY'S RULE 17 REQUEST DATED 10 FEBRUARY 2025

1. BACKGROUND

- 1.1 SABIC originally submitted its preferred protective provisions at Deadline 3 in its "Comments on responses to ExA's ExQ1 - (8.11.6 Response to ExQ1 Compulsory Acquisition and Temporary Possession - REP2-027)" [REP3-020]. This was the form which had been provided to the Applicant in pre-application consultation, and was based on protective provisions in favour of SABIC contained in the York Potash DCO.
- 1.2 On 13 January 2025, at Deadline 6, SABIC submitted updated Protective Provisions [REP6-010]:
- 1.2.1 Annex 1 contained SABIC's Deadline 6 Protective Provisions. These were updated from its Deadline 3 Submission. The principal changes were:
- (a) The deletion the prohibition of compulsory acquisition for all but unknown rights which was contained in the York Potash PPs. This is a significant concession for SABIC because it opens up the possibility if SABIC's apparatus being diverted (with all of the difficulties that would cause), and is only made on the basis that of the checks and balances contained elsewhere in the document, including the new provisions about the provision of alternative apparatus and replacement facilities and rights, and the inclusion of the York Potash indemnity and insurance provisions.
 - (b) The removal of a general reference to protective provisions benefitting the "inventory owner" (ie any person who owns the molecules in the pipes) and instead included specific reference to that owner: SABIC Petrochemicals BV. The rationale for the inclusion of the inventory owner is explained in detail paragraph 3.2 of the "Written Summary of SABIC's Representations to CAH1" [REP4-051]. This rationale applies specifically to SABIC Petrochemicals BV.
 - (c) The inclusion of drafting to ensure that the protections and agreements between the parties would run with the land and the undertaking.
 - (d) Amending the expert determination provisions to instead refer to arbitration.
- 1.2.2 Annex 2 contained a Comparison of the Deadline 6 Protective Provisions and the protective provisions in favour of SABIC which were included in the Applicant's Deadline 5 dDCO, together with an explanation as to why SABIC's alternative drafting is required.
- 1.3 This current document has been prepared in response to the ExA's Rule 17 request for further information dated 10 February 2025 (**Rule 17 Request**). It provides:

- 1.3.1 An answer to questions 2 and 5 of the Rule 17 Request (Sections 2 and 3 of this document);
- 1.3.2 SABIC's preferred protective provisions (Annex 1);
- 1.3.3 A table (Annex 2) highlighting:
- (a) Areas of disagreement with the Applicant;
 - (b) The reason for the disagreement;
 - (c) The consequences if the disagreement is not resolved in SABIC's favour.
- 1.4 SABIC would stress that, notwithstanding the way Annex 2 is presented (to be helpful to the ExA), it does not consider that the ExA should approach the protective provisions solely by taking what the Applicant is offering and asking SABIC to justify any deviations from those protections. SABIC has provided its protective provisions (and indeed did so at consultation stage) and it is equally for the Applicant to demonstrate both why the protections sought by SABIC should not be included in the DCO as made and why its drafting is to be preferred.
- 1.5 SABIC is very concerned that the Applicant's failure to engage with these substantive issues during the Examination may cause it substantial prejudice. Whilst it is acknowledged that the Applicant is to be allowed the last word at Deadline 8, SABIC is very concerned that a situation appears to have arisen where the Applicant will only puts its substantive objections to SABIC's protective provisions before the ExA at Deadline 8, a stage where SABIC has no opportunity to consider or reply to those objections. That is not procedurally fair by any objective measure and we would ask the ExA to take steps to avoid this happening.

2. RULE 17 REQUEST, QUESTION 2

<p>2. The Examining Authority (ExA) would invite all IPs to summarise their position, in regard to:</p> <ul style="list-style-type: none">i) any outstanding objection(s);ii) Protective Provisions (PP);iii) CA/ temporary possession; andiv) the status of any side agreement, interface agreement or other relevant agreements they consider necessary to provide relevant protections or mitigations from the Proposed Development.
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2.1 Question 2(i)

- 2.1.1 SABIC's objection to the scheme remain, unless protective provisions in the form set out in Annex 1 are included in the Order. The Applicant's Deadline 7 draft DCO [REP7-018] does not contain adequate protection

2.2 Question 2(ii)

- 2.2.1 SABIC does consider that its protective provisions in the form set out in Annex 1 of this document, would allay its concerns. However those protective provisions have not been agreed by the Applicant..

2.2.2 Conversely, SABIC does not consider that protective provisions in the form included in the Applicant's Deadline 7 draft DCO [REP7-018]. In particular they do not contain any protections in respect of compulsory acquisition and temporary possession, although the specific details of these deficiencies are set out in more detail in Annex 2.

2.3 Question 2(iii)

2.3.1 The Applicant's Deadline 7 draft DCO [REP7-018] does not include any protection in from compulsory acquisition or temporary possession. The specific details of these deficiencies are set out in more detail in Annex 2.

2.4 Question 2(iv)

2.4.1 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.

3. RULE 17 REQUEST, QUESTION 5

5. Pursuant to the matter highlighted in 3. above, as stated by the ExA at a number of the Hearings, the ExA will not be asking the Secretary of State to decide and consult further on which version of a PP to include in the final Development Consent Order (DCO) if any are not agreed by the close of the Examination. To that end, please can all parties who are negotiating PPs, including the Applicant, provide by DL7a on Monday 17 February 2025 a statement of agreement of a single version of PPs with that agreed version presented to the ExA. If this is not possible please provide the following:

- Your preferred version of PPs which should be highlighted to show where there is disagreement.
- Commentary as to the reason for the disagreement and why this disagreement has not been resolved.
- Commentary on the potential consequences if this is not resolved in your favour.
- Statement of progress on any side agreements.

We reiterate that we will not be rewriting PPs, we will be recommending one of the versions which is presented to us by the end of the Examination.

All parties will have a further opportunity to comment on DL7a submissions at DL8 on Monday 24 February 2025 with the Applicant's final reply to these comments at DL9 on Friday 28 February 2025.

If PPs are subsequently agreed after DL7a and before the close of the Examination, the ExA will accept these as additional submissions at any time between DLs with conformation from both parties that these are indeed an agreed version.

3.1 SABIC's preferred PPs

3.1.1 SABIC's preferred protective provisions are set out at Annex 1 of this document.

3.2 Commentary as to the reason for the disagreement and why this disagreement has not been resolved and commentary on the potential consequences if this is not resolved in your favour.

- 3.2.1 SABIC assumes from the Applicant's Deadline 7 draft DCO [REP7-018] that the protective provisions contained in that document constitute the Applicant's preferred protective provisions.
- 3.2.2 SABIC has therefore set out in Annex 2 of this document a commentary as to where the drafting is not agreed between the parties, and the potential consequences if matters are not resolved in SABIC's favour.
- 3.2.3 The reason for disagreement between the parties is the Applicant's insistence that the protective provisions in the Order must be Net Zero DCO protective provisions unamended and in their entirety.
- 3.2.4 SABIC has explained in the Examination why those provisions are inadequate and defective and has explained why this is the case. Further, although SABIC has based its preferred protective provisions on those included in the York Potash DCO, on two occasions (at Deadline 6 and in this Deadline 7A submission) SABIC has sought to modify its drafting to accommodate the Applicant's comments and concerns. SABIC has constantly sought middle ground and to find agreement.
- 3.2.5 In the face of these efforts, before the Examination the Applicant has remained wholly inflexible in its position and has not taken any steps to explain or comment on why SABIC's preferred drafting is problematic or should be rejected. It has also taken no steps to modify its draft protections or reciprocate SABIC's attempts to reach concessions.
- 3.2.6 The Applicant has stressed throughout the examination that SABIC's concerns can be addressed through protective provisions. Any yet the Applicant's preferred protective provisions do not themselves contain any protection whatsoever for SABIC in relation to compulsory acquisition or temporary possession in relation to their interests. This position is impossible to reconcile.
- 3.2.7 The Applicant has therefore placed SABIC in a difficult position:
- (a) To the extent that the Applicant now seeks to explain why SABIC's amendments should not be accepted or are not needed, or to counter the details justifications set out in Annex 2, SABIC will not be afforded a right of reply.
 - (b) To the extent that they do not change their position, their inflexibility on drafting will have frustrated the Examining Authority's attempts to seek an agreed position in the Order and will have left the Examining Authority in a position where they have no information as to which parts of SABIC's drafting, if any, may be acceptable and why any drafting may not be acceptable.

3.3 Statement of progress on any side agreements

- 3.3.1 As stated above, SABIC remains in negotiations with the Applicant in respect of protective provisions and a side agreement.
- 3.3.2 One key reason why agreement has not been reached is the Applicant's insistence that the protective provisions in the DCO must mirror those contained in SABIC's benefit in the Net Zero DCO. SABIC has explained to the Examination its concerns about the inadequacies of those provisions, and why they cannot be accepted.
- 3.3.3 There has been quite a lot of progress in narrowing the substantive issues between the parties, however as of Deadline 7A important issues do remain between the parties and no agreement has been reached.

Womble Bond Dickinson (UK) LLP

17 February 2025

ANNEX 1

SABIC'S DEADLINE 7A PROTECTIVE PROVISIONS

FOR THE PROTECTION OF SABIC

Benefit of protective provisions

1.—(1) The following provisions of this Schedule have effect for the benefit of SABIC, unless otherwise agreed between the undertaker and SABIC.

(2) Except to the extent as may be otherwise agreed in writing between the undertaker and SABIC, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of this Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between SABIC and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to SABIC on or before the date of that transfer or grant.

(3) Sub-paragraph (2) applies to any agreement—

- (a) which states that it is “entered into for the purposes of the SABIC Protective Provisions”; and
- (b) whether entered into before or after the making of this Order.

(4) Article 43 (procedure in relation to certain approvals) does not apply to any consent, agreement or approval required or contemplated by any of the provisions of this Schedule.

Interpretation

2. —(1) In this Schedule—

“access roads” means the access roads within the Order limits giving access to pipelines, the protected crossing or within or giving access to the Wilton Complex, the North Tees Facilities and the Brinefields;

“affected assets” means—

- (a) apparatus which would be physically affected by the relevant works;
- (b) the protected crossing where relevant works are to be carried out within 25 metres of the protected crossing; and
- (c) in relation to the exercise of an identified power, any apparatus in the protected land which would be affected by the exercise of that power.

“alternative apparatus” means new apparatus to be provided by the undertaker to replace existing apparatus which the undertaker intends to remove, such new apparatus to be to a specification and standard which will serve SABIC in a manner which is no less effective or efficient than previously;

“apparatus” means pipelines, cables and drains owned or operated by SABIC and includes—

- (a) any structure existing at the time when a particular action is to be taken under this Schedule in which apparatus is or is to be lodged or which will give access to apparatus;
- (b) any cathodic protection, coating or special wrapping of the apparatus; and
- (c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962(1), as if the pipelines were a “pipe-line” in section 65(1) of that Act;

“Brinefields” means SABIC's land containing brinefields and underground storage cavities bounded to the west by Seaton Carew Road, to the south by Seal Sands Road, to the north by Greatham Creek registered at the Land Registry under title numbers CE171306 and CE149858;

(1) 1962 c. 58. Section 65 was amended by section 89(1) of, and paragraphs 1 and 2 of Schedule 2 to, the Energy Act 2011 (c. 16), paragraph 7 of Schedule 1 of the Gas (Third Party Access and Accounts) Regulations 2000 (S.I. 2000/1937) and regulation 22 and paragraph 5 of the Schedule to the Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011 (S.I. 2011/2305).

“construction access plan” means a plan identifying how access will be maintained to apparatus, the protected crossing, and to and within the Wilton Complex, the North Tees Facilities and the Brinefields during the proposed construction or maintenance work including—

- (a) any restrictions on general access by SABIC, including the timing of restrictions;
- (b) any alternative accesses or routes of access that may be available to the undertaker using the access roads;
- (c) details of how the needs and requirements of SABIC (including their needs and requirements in relation to any major works that they have notified to the other operators of the protected land as at the date when the plan is published) have been taken into account in preparing the plan;
- (d) details of how uninterrupted and unimpeded emergency access with or without vehicles will be provided at all times for SABIC; and
- (e) details of how reasonable access with or without vehicles will be retained or an alternative provided for SABIC to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the pipelines and the protected crossing;

“construction or maintenance works” means any works to construct, maintain, or decommission the authorised development;

“damage” includes all damage to apparatus including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

“engineer” means an independent engineer appointed by SABIC for the purposes of this Order;

“identified powers” means the powers conferred by the following—

- (a) article 11 (street works);
- (b) article 12 (construction and maintenance of new or altered means of access)
- (c) article 13 (temporary stopping up of streets, public rights of way and access land);
- (d) article 14 (access to works);
- (e) article 17 (discharge of water);
- (f) article 20 (authority to survey and investigate the land);
- (g) article 22 (compulsory acquisition of land) in so far as the exercise of such powers is not excluded by paragraph 23 (1) and sub-paragraph (1);
- (h) article 23 (power to override easements and other rights) in so far as the exercise of such powers is not excluded by paragraph 23 (1) and sub-paragraph (1);
- (i) article 25 (compulsory acquisition of rights etc.) in so far as the exercise of such powers is not excluded by paragraph 23 (1) and sub-paragraph (1);
- (j) article 26 (private rights) in so far as the exercise of such powers is not excluded by paragraph 23 (1) and sub-paragraph (1);
- (k) article 28 (acquisition of subsoil or airspace only);
- (l) article 31 (rights under or over streets);
- (m) article 32 (temporary use of land for carrying out the authorised development); and
- (n) article 33 (temporary use of land for maintaining the authorised development).

“major works” means works by SABIC requiring the closure, diversion or regulation of any roads serving the apparatus, the protected crossing, the Wilton Complex the North Tees Facilities and the Brinefields;

“North Tees Facilities” means SABIC's land at Huntsman Drive and Riverside Road, Seal Sands, registered at the Land Registry under title numbers CE149851, CE149852 and CE149853;

“operator” means any person who is responsible for the construction, operation, use, maintenance or renewal of any pipeline;

“pipeline corridor” means the following established corridors containing the apparatus of chemical manufacturers and other industrial operators on Teesside:

- (a) the corridor of land linking the Wilton Complex and the protected crossing;
- (b) the corridor of land linking the protected crossing and the North Tees Facilities;

- (c) the corridor of land linking the North Tees Facilities and the Wilton to Grangemouth Ethylene Pipeline;
- (d) the corridor of land linking the North Tees Facilities and the Brinefields;
- (e) the corridor of land linking the Brinefields and the Saltholme Brine Reservoirs, crossing Seal Sands Road, running to the south of and parallel to Seal Sands Road and the A1185 and also crossing the A1185; and
- (f) the corridor of land containing the buried Wilton to Grangemouth Ethylene Pipeline including the land known as SABIC Compound 38;

“pipeline” means any apparatus owned or operated by SABIC located in the pipeline corridor or in or comprising the protected crossing at the time the pipeline survey is carried out or as may be added between the date of the pipeline survey and the commencement of the authorised development, providing that any such additions are notified to the undertaker as soon as reasonably practicable;

“pipeline survey” means a survey of the pipeline corridor and the protected crossing to establish (if not known)—

- (a) the precise location of the pipelines and the protected crossing;
- (b) the specification of the pipelines and the protected crossing including, where relevant, their composition, diameter, pressure and the products they are used to convey;
- (c) any special requirements or conditions relating to the pipelines which differ from the requirements or conditions applying to standard pipelines of that type;
- (d) the precise location of any easement widths or rights (where it is possible to establish this).

“protected crossing” means the tunnel which carries pipelines under the River Tees known as Tunnel 2;

“protected land” means such parts of the Order land as fall within—

- (a) the access roads;
- (b) the pipeline corridor;
- (c) the protected crossing;
- (d) the Wilton Complex;
- (e) the North Tees Facilities; and
- (f) the Brinefields

“relevant work” means a work which may have an effect on the operation, maintenance, abandonment of or access to any pipeline or the protected crossing;

“SABIC ” means:

- (a) SABIC UK Petrochemicals Limited (Company Number 03767075) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF; and
- (b) SABIC Tees Holdings Limited (Company Number 06009440) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF,

and any successor in title to SABIC's rights and interests in the protected land, and in respect of paragraphs 1, 22 to 28, 30 and 31 also includes SABIC Petrochemicals BV (registered in the Netherlands with Company No 14033495) whose registered office is at Europaboulevard 1, Sittard, 6135 LD, Netherlands;

“specified person” means the Company Secretary, SABIC UK Petrochemicals Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF or such other person or address within the United Kingdom as they may notify to the undertaker in writing.

“temporary crossing point ” means a point where construction traffic will cross over a pipeline and, unless the pipeline is under a carriageway of adequate standard of construction, any proposed reinforcement of that crossing;

[“Wilton Complex” means the industrial area known as Wilton International between Eston and Redar in North Yorkshire bounded by the A174 to the south, the A1053 Greystone Road to the west, the A1085 and the Mains Dike to the east;

“works details” means the following—

- (a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;
- (b) details of any proposed temporary crossing points;
- (c) details of how the undertaker proposes to indicate the location of the easement widths taken from the actual location of the pipelines shown on the pipeline survey during construction of the authorised development, including any fencing or signage;
- (d) details of methods and locations of any piling proposed to be undertaken under paragraph 11;
- (e) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 12;
- (f) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 13;
- (g) details of the location of any pipelines affected by the oversailing provisions in paragraph 14, including details of the proposed clearance;
- (h) details of the method location and extent of any dredging, a technical assessment of the likely effect of the dredging on the protected crossing and any mitigation measures which are proposed to be put in place to prevent damage to the protected crossing;
- (i) details of the undertaker and their principal contractors’ management of change procedures;
- (j) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;
- (k) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to the pipeline;
- (l) details of the lifting study during the construction phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;
- (m) details of the lifting study during the operational phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;
- (n) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators;
- (o) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to the pipeline cathodic protection system and the proposed remedial works; and
- (p) any further particulars provided in accordance with paragraph 4(2).

(2) Except in relation to paragraphs 1, where this Schedule provides that the acknowledgement, approval, agreement, consent or authorisation of SABIC is required for any thing (or that any thing must be done to SABIC’s reasonable satisfaction)—

- (a) that acknowledgement, approval, agreement, consent or authorisation (or intimation that the matter in question has been done to SABIC’s reasonable satisfaction) shall not be unreasonably withheld or delayed; and
- (b) the grant or issue of such acknowledgement, approval, agreement, consent or authorisation (or intimation) by any one or more of the entities which constitute SABIC as defined in subparagraph (1) shall constitute approval, agreement, consent or authorisation on behalf of all of them except in paragraph 22 where an consent must be received from the SABIC company who owns the land, right or interest.

Pipeline survey

3.—(1) Before commencing any part of the authorised development in the pipeline corridor or

which may affect the protected crossing the undertaker must—

- (a) carry out and complete the pipeline survey; and
- (b) comply with sub-paragraph (3) below.

(2) The pipeline survey must be undertaken by an appropriately qualified person with at least 10 years' experience of such surveys and carried out in accordance with all relevant national standards and codes (including those of the United Kingdom Onshore Pipeline Operators' Association and the American Petroleum Institute).

(3) When the pipeline survey has been completed the undertaker must serve a copy of the pipeline survey on SABIC and invite SABIC to advise the undertaker within 28 days of receipt of the survey if SABIC considers that the pipeline survey is incomplete or inaccurate and if so in what respect following which the undertaker must finalise its pipeline survey.

Authorisation of works details affecting pipelines or the protected crossing

4.—(1) Before commencing any part of a relevant work the undertaker must submit to SABIC the works details in respect of any affected asset and obtain a written acknowledgement of receipt of those works details from the specified persons in relation to the affected asset concerned.

(2) The undertaker must as soon as reasonably practicable provide such further particulars as SABIC may, within 45 days from the receipt of the works details under sub-paragraph (1), reasonably require.

(3) Where the undertaker submits works details under sub-paragraph (1) or further particulars under sub-paragraph (2), the specified person shall as soon as reasonably practicable provide the undertaker with a written acknowledgement of receipt in respect of those works details or further particulars (as the case may be).

5. No part of a relevant work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that relevant work under paragraph 4 have been authorised by SABIC; or
- (b) the works details supplied in respect of that relevant work under paragraph 4 have been authorised by an arbitrator under paragraph 7(3); or
- (c) authorisation is deemed to have been given in accordance with paragraph 7(1).

6.—(1) Any authorisation by SABIC required under paragraph 5(a) may be given subject to such reasonable conditions as SABIC may require to be made for—

- (a) the continuing safety and operation or viability of the affected asset; and
- (b) the requirement for SABIC to have—
 - (i) uninterrupted and unimpeded emergency access with or without vehicles to the affected asset at all times; and
 - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.

(2) The authorised development must be carried out in accordance with the works details authorised under paragraph 5 and any conditions imposed on the authorisation under paragraph 6(1).

(3) Where there has been a reference to an arbitrator in accordance with paragraph 7(2) and the arbitrator gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the arbitrator under paragraph 7(3).

7.—(1) In the event that—

- (a) no response has been received to the submission of the works details under paragraph 4 within 45 days of the undertaker obtaining a written acknowledgment of receipt from a specified person under paragraph 4(1) and no further particulars have been requested under paragraph 4(2); or
- (b) authorisation has not been given within 30 days of the undertaker obtaining a written acknowledgment of receipt from a specified person of the further particulars supplied under

paragraph 4(2),

approval of the works details is to be deemed to be given and the relevant works may commence.

(2) In the event that—

- (a) the undertaker considers that SABIC has unreasonably withheld its authorisation under paragraph 6(1); or
- (b) the undertaker considers that SABIC has given its authorisation under paragraph 6(1) subject to unreasonable conditions,

the undertaker may refer the matter to an arbitrator for determination under paragraph 31.

(3) Where the matter is referred to an arbitrator under sub-paragraph (2) the arbitrator is to determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 6(1).

Notice of works

8. The undertaker must provide to SABIC a minimum of 28 days' notice prior to commencing any relevant work in order that an engineer can be made available to observe the relevant works and, when required, advise on the necessary safety precautions.

Further provisions about works

9.—(1) Before carrying out a relevant work the undertaker must—

- (a) provide SABIC with baseline data which will be used in the cathodic protection assessment of any existing pipeline; and
- (b) carry out a pipeline settlement and stress analysis to demonstrate any potential pipeline movement will not present an integrity risk to the affected asset.

(2) The pipelines must be located by hand digging prior to the use of mechanical excavation provided that any excavation outside of 2 metres of the centreline of a pipeline may be dug by mechanical means.

10. No explosives are to be used within the protected land.

11.—(1) All piling within 1.5 metres of the centreline of a pipeline must be non-percussive.

(2) Where piling is required within 50 metres of the centreline of a pipeline or which could have an effect on the operation or maintenance of a pipeline or access to a pipeline, details of the proposed method for and location of the piling must be provided to SABIC for approval in accordance with paragraph 4.

12.—(1) Where excavation of trenches (including excavation by dredging) adjacent to a pipeline affects its support, the pipeline must be supported in a manner approved by SABIC.

(2) Where the undertaker proposes to carry out excavations which might affect above ground structures such as pipeline supports in the pipeline corridor, the undertaker must calculate the zone of influence of those excavations and provide those calculations to SABIC under paragraph 4.

13.—(1) Where a trench is excavated across or parallel to the line of a pipeline, the backfill must be adequately compacted to prevent any settlement which could subsequently cause damage to the pipeline.

(2) Proposed methods and locations of compacting must be notified to SABIC in accordance with paragraph 4.

(3) Compaction testing must be carried out once back filling is completed to establish whether the backfill has been adequately compacted as referred to in sub-paragraph (1) and what further works may be necessary, and the results of such testing must be supplied to SABIC.

(4) Where it is shown by the testing under sub-paragraph (3) to be necessary, the undertaker must carry out further compaction under sub-paragraph (1) and sub-paragraphs (1), (2) and (3) continue to apply until such time as the backfill has been adequately compacted.

(5) In the event that it is necessary to provide permanent support to a pipeline which has been exposed over the length of the excavation before backfilling and reinstatement is carried out, the

undertaker must pay to SABIC a capitalised sum representing the increase of the costs (if any) which may be expected to be reasonably incurred in maintaining, working and, when necessary, renewing any such alterations or additions.

(6) In the event of a dispute as to—

- (a) whether or not backfill has been adequately compacted under sub-paragraphs (1) to (4); or
- (b) the amount of any payment under sub-paragraph (5),

the undertaker or SABIC may refer the matter to an arbitrator for determination under paragraph 33.

14.—(1) A minimum clearance of 500 millimetres in respect of above ground apparatus and 600 millimetres in respect of buried apparatus must be maintained between any part of the authorised development and any affected asset (whether that part of the authorised development is parallel to or crosses the pipeline) unless otherwise agreed with SABIC.

(2) In the event that works details approved in respect of a relevant work under paragraph 4 do not comply with SABIC's standard designs for the protection which must to be installed between the relevant work and buried apparatus the minimum clearance of 600 millimetres referred to in sub-paragraph (1) shall not apply and a minimum clearance of 1500 millimetres will apply instead.

(3) No manholes or chambers are to be built over or round the pipelines.

Monitoring for damage to affected assets

15.—(1) When carrying out the relevant work the undertaker must monitor the relevant affected assets to establish whether damage has occurred.

(2) Where any damage occurs to an affected asset as a result of the relevant work, the undertaker must immediately cease all work in the vicinity of the damage and must notify SABIC to enable repairs to be carried out to the reasonable satisfaction of SABIC.

(3) If damage has occurred to an affected asset as a result of relevant work the undertaker will, at the request and election of SABIC—

- (a) afford SABIC all reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to SABIC its costs incurred in doing so including the costs of testing the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or
- (b) fully and properly repair the affected asset as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of SABIC to have effectively repaired the affected asset before any backfilling takes place.

(4) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where SABIC agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

(6) In the event that the undertaker does not carry out necessary remedial work in a timely manner then SABIC is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

16.—(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and SABIC must be notified immediately.

(2) Where there is leakage or escape of gas or any other substance, the undertaker must immediately—

- (a) remove all personnel from the immediate vicinity of the leak;
- (b) inform SABIC;
- (c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and
- (d) assist emergency services as may be requested.

Compliance with requirements, etc. applying to the protected land

17.—(1) Subject to sub-paragraph (2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting SABIC as an owner of the protected land, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the protected land.

(2) The undertaker is not bound by any condition, requirement or regulation that is—

- (a) introduced after the date on which notice of the works was given under paragraph 8 ; or
- (b) determined by the arbitrator following a determination under paragraph 31 to unreasonably—
 - (i) create significant engineering, technical or programming difficulties; or
 - (ii) materially increase the cost of carrying out the works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

Access for construction and maintenance

18.—(1) Before carrying out any construction or maintenance works affecting SABIC's access rights over the access roads, the undertaker must prepare a draft construction access plan and consult on the draft construction access plan with SABIC.

(2) The undertaker must take account of the responses to any consultation referred to in sub-paragraph (1) before approving the construction access plan.

19.—(1) In preparing a construction access plan under paragraph 18 the undertaker must—

- (a) establish the programme for SABIC's major works in the pipeline corridor the Wilton Complex, the North Tees Facilities and the Brinefields and plan the construction or maintenance works to prevent or (if such conflict cannot be reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and
- (b) where it proposes to restrict or extinguish SABIC's access to the protected land, or any pipeline or the Wilton Complex, the North Tees Facilities or the Brinefields first provide an alternative or replacement means of access together with facilities and rights which are no less advantageous to SABIC.

(2) Where a reference is made to an arbitrator under paragraph 31 in relation to any disagreement about a construction access plan, in addition to the criteria set out in paragraph 31(4) the appointed arbitrator must have regard to—

- (a) whether major works were, at the date of the consultation already programmed to take place;
- (b) the extent to which the authorised development can be accommodated simultaneously with the programmed major works;
- (c) the usual practice in respect of conditions or requirements subject to which authorisation to close or divert the access roads is given by the owner of the access roads;
- (d) the undertaker's programme in respect of the authorised development and the extent to which it is reasonable for it to carry out the authorised development at a different time;
- (e) the availability (or non-availability) of other times during which the authorised development could be carried out;
- (f) the programme in respect of the major works and the extent to which it is reasonable for SABIC to carry out the major works at a different time; and
- (g) the financial consequences of the decision on the undertaker and on SABIC.

(3) In this paragraph, "programmed", in relation to works, means works in respect of which the owner of the access roads has been notified of the specific dates between which the works are programmed to be carried out provided that the period covered by such dates must be the length of time the works are programmed to be carried out and not a period within part of which the works are to be carried out.

20.—(1) No works affecting access rights over the access roads are to commence until 30 days after a copy of the approved construction access plan is served on SABIC.

(2) Where SABIC refers the construction access plan to an arbitrator for determination under paragraph 31, no works affecting access rights over the access roads may commence until that determination has been provided.

(3) In carrying out construction or maintenance works the undertaker must at all times comply with the construction access plan.

Restriction on exercising powers

21.—(1) The undertaker must not in the exercise of the powers conferred by this Order acquire, appropriate, extinguish, suspend or override any rights of SABIC in the protected land if the authorised development can reasonably and practicably be carried out without such acquisition, appropriation, extinguishment, suspension or override.

(2) The undertaker must in the exercise of the powers conferred by this Order at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on SABIC, including any disruption to access and supplies of utilities and other services that are required by them in order to carry out their operations.

22.—(1) The undertaker must not exercise the identified powers in respect of SABIC's land, rights and interests unless one of the following consents has been given—

- (a) written consent by SABIC;
- (b) consent by an arbitrator appointed under paragraph 31; or
- (c) deemed consent in accordance with sub-paragraph (5).

(2) Where an identified power provides for the undertaker to automatically extinguish or override a right or interest of SABIC, the restriction in sub-paragraph (1) is to operate so that the extinguishment or override of the right or interest does not apply unless SABIC has given its consent or consent has been given by an arbitrator appointed under paragraph 31 or is deemed to be given under sub-paragraph (5).

(3) Where SABIC's consent is required under sub-paragraph (1) or (2) the undertaker must serve a notice on SABIC requesting that consent.

(4) If the undertaker considers that consent under sub-paragraph (3) has been unreasonably withheld, the undertaker may refer the request for consent to an arbitrator appointed under paragraph 31 for determination.

(5) If SABIC fails to respond to a request for consent within 30 days of the undertaker serving that request on the specified person in full accordance with sub-paragraph (3) and article 45 (service of notices) as amended by paragraph 30, the consent of SABIC is deemed to be given.

(6) In the event that consent is given or deemed to be given under paragraph (1), SABIC's apparatus must not be removed, and any right to maintain the apparatus in the land must not be extinguished, until alternative apparatus has been constructed and is in operation and equivalent facilities and rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of the alternative apparatus have been granted to SABIC.

(7) Where alternative apparatus is to be provided under paragraph (6):

- (a) the undertaker must give to SABIC written notice, with specification of the proposed alternative apparatus, together with plans and sections showing its situation and location;
- (b) paragraphs 4 to 20 shall apply to the alternative apparatus as if the details of that alternative apparatus and the carrying out of the works to provide and construct the alternative apparatus constituted the carrying out of a relevant work, subject to the following amendments:
 - (i) in paragraph 8 the notice period of "not less than 28 days" will be replaced with a period of "not less than 3 calendar months unless otherwise agreed with SABIC"; and
 - (ii) in paragraph 6(1) there shall be added immediately before paragraph (a) a new paragraph (aa) as follows:

"(aa) without prejudice to paragraph (a), the timing of the works to construct

and bring into operation the alternative apparatus so as to reduce so far as possible the detrimental effects on SABIC's operations;"

(c) the undertaker will have special regard to its obligations under paragraph 21(2).

(8) Any alternative apparatus to be constructed under this Schedule must be constructed in such manner and in such line or situation as may be authorised or deemed to be authorised under paragraph 5.

(9) Where under paragraph (6) facilities and rights must be granted to SABIC those facilities and rights must be on such terms and conditions as may be agreed between the undertaker and SABIC or in default of agreement determined by an arbitrator under paragraph 31, and such terms must be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

(10) Subject always to paragraph (9) if the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, or the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator materially worse than the rights enjoyed by them in respect of the apparatus to be removed, the arbitrator must make such provision for the payment of compensation by the undertaker to SABIC as appears to the arbitrator to be reasonable, having regard to all the circumstances of the particular case.

Insurance

23.—(1) Before carrying out any part of the authorised development on the protected land, the undertaker (or any contractor carrying out such works on behalf of the undertaker) must put in place a policy of insurance with a reputable insurer against the undertaker's liabilities under paragraph 25 in accordance with the terms and level of cover as may be agreed in writing between the undertaker and SABIC or, in the case of dispute, in accordance with the terms and level of cover determined by an arbitrator under paragraph 31, and evidence of that insurance must be provided on request to SABIC.

(2) Not less than 30 days before carrying out any part of the authorised development on the protected land or before proposing to change the terms of the insurance policy, the undertaker must notify SABIC of details of the terms of the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.

(3) The undertaker (or any contractor carrying out such works on behalf of the undertaker) must maintain insurance in relation to the authorised development affecting SABIC during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover as may be agreed in writing between the undertaker and SABIC or at such level as may otherwise be determined by an arbitrator under paragraph 31.

24.—If SABIC has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 23—

- (a) SABIC may refer the matter to an arbitrator for determination under paragraph 33; and
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph 33 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs and indemnification

25.—(1) The undertaker must repay to SABIC all reasonable fees, costs, charges and expenses reasonably incurred by SABIC in relation to these protective provisions in respect of—

- (a) authorisation of survey details submitted by the undertaker under paragraph 3(3), authorisation of works details submitted by the undertaker under paragraph 4 and the imposition of conditions under paragraph 6;
- (b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 8;
- (c) responding to the consultation on piling under paragraph 11;
- (d) considering the effectiveness of any compacting which has taken place under paragraph 13,

including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;

- (e) the repair and testing of a affected assets under paragraph 15;
- (f) considering and responding to consultation in relation to the construction access plan under paragraph 19 and providing details of their programme for major works to the undertaker under paragraph 19;
- (g) dealing with any request for consent, approval or agreement by the undertaker under paragraph 22; and
- (h) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 23,

including the reasonable costs incurred by SABIC in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to allow SABIC to carry out its functions under these protective provisions.

(2) The undertaker must indemnify and keep SABIC indemnified against all reasonable costs, charges, damages and expenses, and against consequential loss and damage, which may be occasioned or reasonably incurred by the them—

- (a) by reason of the construction, operation, maintenance, repair and decommissioning of the authorised development or the failure of it; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction, operation, maintenance, repair and decommissioning of the authorised development,

(3) The fact that any act or thing may have been done by SABIC on behalf of the undertaker or in accordance with plans approved by or on behalf of SABIC or in accordance with any requirement of the engineer appointed by SABIC or under his supervision does not excuse the undertaker from any liability under the provisions of this sub-paragraph (2).

(4) Nothing in the preceding provisions of this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of SABIC, its officers, employees, servants, contractors or agents.

(5) SABIC must give the undertaker reasonable notice of any claim or demand under sub-paragraph (2) and no settlement or compromise of such a claim or demand is to be made without the prior 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.

(6) SABIC must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Schedule.

(7) In the assessment of any sums payable to SABIC under this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by, or any agreement entered into by, SABIC if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

(8) SABIC must use its reasonable endeavours to mitigate any costs, expenses, loss, demands, and penalties to which this paragraph applies.

(9) If requested to do so by the undertaker, SABIC must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to this paragraph.

(10) The undertaker shall only be liable under this paragraph for claims reasonably incurred by SABIC.

Further protection in relation to the exercise of powers under the Order

26. The undertaker must give written notice to SABIC of the terms and level of cover of any guarantee or alternative form of security put in place under article 47 (funding for compulsory

acquisition compensation) and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

27.—The undertaker must give written notice to the SABIC if any application is proposed to be made by the undertaker for the Secretary of State’s consent under article 8 (consent to transfer benefit of this Order), and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

28. The undertaker must, when requested to do so by SABIC, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 44 (certification of plans etc.) in electronic form.

29. Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to SABIC.

30. Where SABIC has provided an e-mail address for service in respect of the specified person, sub-paragraph (1)(a) of article 45 (service of notices) will not apply to the service of the said notice, which must be effected by electronic means.

Arbitration

31.—(1) Article 46 (arbitration) applies to this Schedule subject to the following provisions of this paragraph.

(2) The fees of the arbitrator are payable by the parties in such proportions as the arbitrator may determine or, in the absence of such determination, equally.

(3) The arbitrator must—

- (a) invite the parties to make a submission in writing and copied to the other party to be received by the arbitrator within 21 days of their appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(4) An arbitrator appointed for the purposes of this Schedule must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effect that the consent in question would have on SABIC's operations and the operations of the UK ethylene production and supply industry;
- (e) the likely duration and financial and economic consequences of any cessation of or interruption of ethylene production and supply including the costs associated with the restoration of production;
- (f) the ability of SABIC to undertake its operations or development in a timely and cost-effective manner, including any statutory or regulatory duties, requirements or obligations;
- (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on SABIC and the UK ethylene production and supply industry;
- (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (i) any other important and relevant consideration.

ANNEX 2

COMPARISON OF (1) PROTECTIVE PROVISIONS IN FAVOUR OF SABIC CONTAINED IN THE APPLICANT'S DEADLINE 7 dDCO AND (2) SABIC'S DEADLINE 7A PROTECTIVE PROVISIONS SET OUT IN ANNEX 1

SCHEDULE 34

Article 41

~~PROTECTIVE PROVISIONS~~ FOR THE PROTECTION OF SABIC

~~PETROCHEMICALS UK LIMITED~~

BENEFIT OF PROTECTIVE PROVISIONS

~~1.~~(1.) The following provisions of this Schedule have effect for the benefit of SABIC, unless otherwise agreed between the undertaker and SABIC.

~~(2) Except to the extent as may be otherwise agreed in writing between the undertaker and SABIC, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of this Order)—~~

- ~~(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between SABIC and the transferee or grantee (as the case may be); and~~
- ~~(b) written notice of the transfer or grant must be given to SABIC on or before the date of that transfer or grant.~~

~~(3) Sub-paragraph (2) applies to any agreement—~~

- ~~(a) which states that it is "entered into for the purposes of the SABIC Protective Provisions"; and~~
- ~~(b) whether entered into before or after the making of this Order.~~

~~(4) Article 43 (procedure in relation to certain approvals) does not apply to any consent, agreement or approval required or contemplated by any of the provisions of this Schedule.~~

(2): This is to provide comfort to SABIC that where agreements are reached with the undertaker they will bind any transferee or lessee of the undertaking.

INTERPRETATION

~~2. 2. (1)~~ In this Schedule—

“access roads” means the access roads within the Order limits giving access to pipelines, the protected crossing or within [or giving access to the Wilton Complex, the North Tees site](#) ~~Facilities~~ and the Brinefields;

“affected assets” means—

- (a) ~~(a)~~ apparatus which would be physically affected by the relevant works;
- (b) ~~(b)~~ the protected crossing where relevant works are to be carried out within 25 metres of the protected crossing; and
- (c) ~~(c)~~ in relation to the exercise of an identified power, any apparatus in the protected land which would be affected by the exercise of that power;

“alternative apparatus” means [new apparatus to be provided by the undertaker to replace existing apparatus which the undertaker intends to remove, such new apparatus to be to a specification and standard which will serve SABIC in a manner which is no less effective or efficient than previously](#);

“apparatus” means pipelines ~~and~~ cables [and drains](#) owned or operated by SABIC ~~within the Order limits~~ and includes—

- (a) ~~(a)~~ any structure existing at the time when a particular action is to be taken under this Schedule in which apparatus is or is to be lodged or which will give access to apparatus;
- (b) ~~(b)~~ any [cathodic protection](#), coating or special wrapping of the apparatus; and
- (c) ~~(c)~~ all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act

"or giving access to": this has come about due to further information coming to light about the non-highway status of Huntsman Drive, which gives access to the North Tees Site.

"Facilities": this is the correct description as defined below, "North Tees Facilities".

"alternative apparatus": this is necessary as a result of SABIC's amendments to paragraph 22 below (ie its concession which opens to door in relation to potential compulsory acquisition). This means that the issue of replacement facilities and rights now arises if alternative apparatus is to be provided.

"and drains": SABIC is concerned that the scheme might also affect its drains which should also be protected.

"within the Order limits": these words should be deleted. The undertaker's works to construct the authorised development is likely to affect SABIC's assets both inside and outside the Order limits. For example works maybe carried out at the edge of the Order limits which could adversely effect apparatus outside the Order limits: that apparatus requires equal protection. It is therefore not appropriate to limit the protection of SABIC's apparatus that that which lies within the Order limits.

"cathodic protection": underground pipes are provided with cathodic protection to prevent corrosion and thereby maintain their integrity. That protection system therefore requires protection under these provisions.

1962⁽¹⁾), as if the pipelines were a “pipe-line” in section 65(1) of that Act~~(a)~~;

“Brinefields” means SABIC's land containing brinefields and underground storage cavities bounded to the west by Seaton Carew Road, to the south by Seal Sands Road, to the north by Greatham Creek registered at the Land Registry under title numbers CE171306 and CE149858;

~~“Brinefields” means the land shown outlined in red on the Brinefields Plan;~~

~~“Brinefields Plan” means the plan entitled [“XX” (drawing number XX)];~~

“construction access plan” means a plan identifying how access will be maintained to apparatus, the protected crossing, and to and within the Wilton Complex, the North Tees Facilities and the Brinefields during the proposed construction or maintenance work including—

- ~~(a)~~ ~~(a)~~—any restrictions on general access by SABIC, including the timing of restrictions;
- ~~(b)~~ ~~(b)~~—any alternative accesses or routes of access that may be available to the undertaker using the access roads;
- ~~(c)~~ ~~(c)~~—details of how the needs and requirements of SABIC (including their needs and requirements in relation to any major works that they have notified to the other operators of the protected land as at the date when the plan is published) have been taken into account in preparing the plan;
- ~~(d)~~ ~~(d)~~—details of how uninterrupted and unimpeded emergency access with or without vehicles will be provided at all times for SABIC; and
- ~~(e)~~ ~~(e)~~—details of how reasonable access with or without vehicles will be retained or an alternative provided for SABIC to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the pipelines and the protected crossing;

“Brinefields”: SABIC would consider the inclusion of plans showing the extent of the land in question, but no such plans form part of the Application.

⁽¹⁾ 1962 c. 58. Section 65 was amended by section 89(1) of, and paragraphs 1 and 2 of Schedule 2 to, the Energy Act 2011 (c. 16), paragraph 7 of Schedule 1 of the Gas (Third Party Access and Accounts) Regulations 2000 (S.I. 2000/1937) and regulation 22 and paragraph 5 of the Schedule to the Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011 (S.I. 2011/2305).

“construction or maintenance works” means any works to construct, maintain, or decommission the authorised development;

“damage” includes all damage to apparatus including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

“engineer” means an independent engineer appointed by SABIC for the purposes of this Order;

“identified powers” means the powers conferred by the following—

- (a) article 11 (street works);
- (b) article 12 (construction and maintenance of new or altered means of access)
- (c) article 13 (temporary stopping up of streets, public rights of way and access land);
- (d) article 14 (access to works);
- (e) article 17 (discharge of water);
- (f) article 20 (authority to survey and investigate the land);
- (g) article 22 (compulsory acquisition of land) in so far as the exercise of such powers is not excluded by paragraph 23 (1) and sub-paragraph (1);
- (h) article 23 (power to override easements and other rights) in so far as the exercise of such powers is not excluded by paragraph 23 (1) and sub-paragraph (1);
- (i) article 25 (compulsory acquisition of rights etc.) in so far as the exercise of such powers is not excluded by paragraph 23 (1) and sub-paragraph (1);
- (j) article 26 (private rights) in so far as the exercise of such powers is not excluded by paragraph 23 (1) and sub-paragraph (1);
- (k) article 28 (acquisition of subsoil or airspace only);
- (l) article 31 (rights under or over streets);
- (m) article 32 (temporary use of land for carrying out the authorised development); and

"independent" engineer: this is to make it clear that the appointment must be an external independent appointment.

"identified powers": this definition has been moved from paragraph 22(11) in line with Parliamentary drafting requirements.

(n) article 33 (temporary use of land for maintaining the authorised development).

“major works” means works by SABIC requiring the closure, diversion or regulation of any roads serving the apparatus, the protected crossing, the Wilton Complex, ~~the North Tees Facilities and the Brinefields;~~

“North Tees Facilities” means ~~the land shown outlined in red on the North Tees Facilities Plan~~ SABIC's land at Huntsman Drive and Riverside Road, Seal Sands, registered at the Land Registry under title numbers CE149851, CE149852 and CE149853;

~~“North Tees Facilities Plan” means the plan entitled [“XX” (drawing number XX)];~~

“operator” means any person who is responsible for the construction, operation, use, maintenance or renewal of any pipeline;

~~“owner” means—~~

~~(a) in relation to the pipeline corridor, any person—~~

~~(i) with an interest in a pipeline in the pipeline corridor;~~

~~(ii) with rights in, on, under or over the pipeline corridor in respect of a pipeline; or~~

~~(iii) with a pipeline or proposed pipeline in, on, under or over the pipeline corridor;~~

~~(b) in relation to the access roads, any person—~~

~~(i) with an interest in the access roads; or~~

~~(ii) with private rights of way on or over the access roads;~~

~~(c) in relation to the protected crossing, any person—~~

~~(i) with an interest in the protected crossing;~~

"North Tees Facilities": SABIC would consider the inclusion of plans showing the extent of the land in question, but no such plans form part of the Application.

The word "owner" is not now needed in these protective provisions.

~~(ii) with rights in relation to the protected crossing; or~~

~~(iii) with pipelines in or comprising the protected crossing; and~~

~~(d) in relation to protected land means any person falling within paragraphs (a) to (c) above;~~

~~“pipeline corridor” means the land [hatched black] as the pipeline corridor on the pipeline corridor protective provisions supporting plan; following established corridors containing the apparatus of chemical manufacturers and other industrial operators on Teesside;~~

~~“pipeline corridor protective provisions supporting plan” means the plan entitled [“XX” (drawing number XX)];~~

- ~~(a) the corridor of land linking the Wilton Complex and the protected crossing;~~
- ~~(b) the corridor of land linking the protected crossing and the North Tees Facilities;~~
- ~~(c) the corridor of land linking the North Tees Facilities and the Wilton to Grangemouth Ethylene Pipeline;~~
- ~~(d) the corridor of land linking the North Tees Facilities and the Brinefields;~~
- ~~(e) the corridor of land linking the Brinefields and the Saltholme Brine Reservoirs, crossing Seal Sands Road, running to the south of and parallel to Seal Sands Road and the A1185 and also crossing the A1185; and~~
- ~~(f) the corridor of land containing the buried Wilton to Grangemouth Ethylene Pipeline including the land known as SABIC Compound 38;~~

~~“pipelines pipeline” means any apparatus owned or operated by SABIC located in the pipeline corridor or in or comprising the protected crossing at the time the pipeline survey is carried out or as may be added between the date of the pipeline survey and the commencement of the authorised development, providing that any such additions are notified to the undertaker as soon as reasonably practicable;~~

"pipeline corridor": SABIC would consider the inclusion of plans showing the extent of the land in question, but no such plans form part of the Application.

"pipeline": The work should be defined in the singular.

"pipeline survey" means a survey of the pipeline corridor and the protected crossing to establish (if not known)—

- (a) ~~(a)~~ the precise location of the ~~pipeline~~pipelines and the protected crossing;
- (b) ~~(b)~~ the specification of the pipelines and the protected crossing including, where relevant, their composition, diameter, pressure and the products they are used to convey;
- (c) ~~(c)~~ any special requirements or conditions relating to the pipelines which differ from the requirements or conditions applying to standard pipelines of that type;
- (d) the precise location of any easement widths or rights (where it is possible to establish this).

"protected crossing" means the tunnel which carries pipelines under the River Tees known as Tunnel 2;

"protected land" means such parts of the Order land as fall within—

- (a) ~~(a)~~ the access roads;
- (b) ~~(b)~~ the pipeline corridor;
- (c) ~~(c)~~ the protected crossing;
- (d) ~~(d)~~ the Wilton Complex;
- (e) ~~(e)~~ the North Tees Facilities; and
- (f) ~~(f)~~ the Brinefields;

"relevant work" means a work which may have an effect on the operation, maintenance, abandonment of or access to any pipeline or the protected crossing;

"SABIC" means:

~~"(a) SABIC" means SABIC Petrochemicals~~ UK Petrochemicals Limited, (Company Number 03767075) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF; and

"pipelines": there is more than one pipeline affected.

(d) The infrastructure in this area has a complex history, and it is important that the undertaker fully understand where apparatus is located and the extent of SABIC's rights and interests. It may be necessary to erect secure demarcation fencing to the extent of the wayleave for the apparatus and so it is important to know where that fencing would need to be erected.

Paragraphs (a) and (b) provide protection to the two SABIC companies whose land is affected by powers of compulsory acquisition under the scheme;

"SABIC UK Petrochemicals Limited": this is the correct name. The Applicant's protective provisions do not identify the correct SABIC company.

(b) SABIC Tees Holdings Limited (Company Number 06009440) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF.

and any successor in title to SABIC's rights and interests in the protected land, and in respect of paragraphs 1, 22 to 28, 30 and 31 also includes SABIC Petrochemicals BV (registered in the Netherlands with Company No 14033495) whose registered office is at Europaboulevard 1, Sittard, 6135 LD, Netherlands;

“specified person” means the Company Secretary, SABIC ~~Petrochemicals~~-UK Petrochemicals Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF ~~in relation to SABIC Petrochemicals UK Limited,~~ or such other person or address within the United Kingdom as they may notify to the undertaker in writing₂.

"SABIC Tees Holdings Limited": this SABIC company also has an interest in land within the red line boundary.

"any successor in title to SABIC's rights and interests" this ensures that successors in title are also protected;

"in respect of paragraphs 1, 22 to 28, 30 and 31 also includes SABIC Petrochemicals BV ": this provides protection for SABIC Petrochemicals BV, who own the inventory (ie the molecules in the pipes). The paragraphs cited relate to the protection of insurance, costs and indemnities. The rationale for the inclusion of the inventory owner is explained in detail paragraph 3.2 of the "Written Summary of SABIC's Representations to CAH1" [REP4-051] but in essence, SABIC's business is split between the operator of the pipeline and the owner of what the pipeline carried. The Applicant should not be allowed to escape liability under the protective provisions just because SABIC has chosen to split its business operations in this way, especially when their works could cause such significant losses for SABIC Petrochemicals BV. This protection simply puts SABIC as a business in the same position as, for example, National Gas Transmission Plc are in by virtue of their protective provisions.

"SABIC UK Petrochemicals Limited": the Applicant's protective provisions again give an incorrect name which is corrected here. Note, this definition is provided in relation to the service of notices relating to works. Therefore SABIC Tees Holdings Limited and SABIC Petrochemicals BV are not included.

"such other person or address": this flexibility is necessary to allow SABIC to nominate a particular person or mailbox to receive notices when the authorised development gets under way.

"within the United Kingdom": this is a concession to the undertaker that the address provided must be in the UK.

"temporary crossing point" means a point where construction traffic will cross over a pipeline and, unless the pipeline is under a carriageway of adequate standard of construction, any proposed reinforcement of that crossing;

"Wilton Complex" means the industrial area known as Wilton International between Eston and Redar in North Yorkshire bounded by the A174 to the south, the A1053 Greystone Road to the west, the A1085 and the Mains Dike to the east;

"works details" means the following—

- (a) ~~(a)~~—a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;
- (b) details of any proposed temporary crossing points;
- (c) details of how the undertaker proposes to indicate the location of the easement widths taken from the actual location of the pipelines shown on the pipeline survey during construction of the authorised development, including any fencing or signage;
- (d) ~~(b)~~—details of methods and locations of any piling proposed to be undertaken under paragraph ~~40~~11;
- (e) ~~(c)~~—details of methods of excavation and any zones of influence the undertaker has calculated under paragraph ~~44~~12;
- (f) ~~(d)~~—details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph ~~42~~13;
- (g) ~~(e)~~—details of the location of any pipelines affected by the oversailing provisions in paragraph ~~43~~14, including details of the proposed clearance;
- (h) ~~(f)~~—details of the method location and extent of any dredging, a technical assessment of the likely effect of the dredging on the protected crossing and any mitigation measures which are proposed to be put in place to prevent damage to the protected crossing;
- (i) ~~(g)~~—details of the undertaker and their principal contractors' management of change procedures;

This definition is associated with the deletion of the former paragraphs 10 and 11 of SABIC's Deadline 6 Protective Provisions [REP6-010] and their inclusion instead in the definition of "works details".

"Wilton Complex": SABIC would consider the inclusion of plans showing the extent of the land in question, but no such plans form part of the Application.

Paragraphs (b) and (c): these paragraphs replace paragraphs 10 and 11 of SABIC's Deadline 6 Protective Provisions [REP6-010]. They are required because underground apparatus is affected by the scheme. It is necessary (and usual) to protect that apparatus at crossing points to avoid the fracturing of underground apparatus. The deletion of those paragraphs, and the inclusion of these additional paragraphs under the definition of "works details" reflects the fact that it may be appropriate to take different actions within Sembcorp's pipeline corridor compared to the Wilton to Grangemouth Ethylene Pipeline where it runs through farmland. It is therefore a change in favour of the Applicant.

(j) ~~(h)~~—details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;

(k) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to the pipeline;

(l) ~~(i)~~—details of the lifting study during the construction phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;

(m) ~~(j)~~—details of the lifting study during the operational phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;

(n) ~~(k)~~—details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators; ~~and~~

(o) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to the pipeline cathodic protection system and the proposed remedial works; and

(p) ~~(l)~~—any further particulars provided in accordance with paragraph 4(2).

(2) Except in relation to paragraphs 1, where this Schedule provides that the acknowledgement, approval, agreement, consent or authorisation of SABIC is required for any thing (or that any thing must be done to SABIC's reasonable satisfaction)—

(a) that acknowledgement, approval, agreement, consent or authorisation (or intimation that the matter in question has been done to SABIC's reasonable satisfaction) shall not be unreasonably withheld or delayed; and

(k) underground pipes are provided with cathodic protection to prevent corrosion and thereby maintain their integrity. That protection system therefore requires protection under these provisions.

(o) underground pipes are provided with cathodic protection to prevent corrosion and thereby maintain their integrity. That protection system therefore requires protection under these provisions.

(2)(a): This provides for SABIC to not unreasonably withhold or delay its approval or consent, and is in favour of the Applicant.

(b) the grant or issue of such acknowledgement, approval, agreement, consent or authorisation (or intimation) by any one or more of the entities which constitute SABIC as defined in sub-paragraph (1) shall constitute approval, agreement, consent or authorisation on behalf of all of them except in paragraph 22 where an consent must be received from the SABIC company who owns the land, right or interest.

(b): this simplifies approval procedures by making it clear that only one SABIC company must approve in relation to most provisions. This is in favour of the Applicant.

PIPELINE SURVEY

~~3.3~~—(1) Before commencing any part of the authorised development in the pipeline corridor or which may affect ~~athe~~ protected crossing the undertaker must—

(a) ~~(a)~~ carry out and complete the pipeline survey; and

(b) ~~(b)~~ comply with sub-paragraph (3) below.

(2) ~~(2)~~—The pipeline survey must be undertaken by an appropriately qualified person with at least 10 years' experience of such surveys and carried out in accordance with all relevant national standards and codes (including those of the United Kingdom Onshore Pipeline Operators' Association and the American Petroleum Institute).

"appropriately qualified person with at least 10 years' experience of such surveys": SABIC has accepted the Applicant's position and dropped its requirement for a RICS surveyor .

(3) ~~(3)~~—When the pipeline survey has been completed the undertaker must serve a copy of the pipeline survey on SABIC and invite SABIC to advise the undertaker within 28 days of receipt of the survey if SABIC considers that the pipeline survey is incomplete or inaccurate and if so in what respect following which the undertaker must finalise its pipeline survey.

"national standards and codes": this is a point of clarification and two of the relevant codes are stated.

"American Petroleum Institute": this reference is deliberate as they are widely used in the UK oil and gas industry.

AUTHORISATION OF WORKS DETAILS AFFECTING PIPELINES OR THE PROTECTED CROSSING

4.4—(1) Before commencing any part of a relevant work the undertaker must submit to SABIC the works details in respect of any affected asset and obtain a written acknowledgement of receipt of those works details from the specified persons in relation to the affected asset

concerned.

(2) The undertaker must as soon as reasonably practicable provide such further particulars as SABIC may, within ~~30~~⁴⁵ days ~~(or such longer period as is agreed between the parties)~~ from the receipt of the works details under sub-paragraph (1), reasonably require.

(3) Where the undertaker submits works details under sub-paragraph (1) or further particulars under sub-paragraph (2), the specified person shall as soon as reasonably practicable provide the undertaker with a written acknowledgement of receipt in respect of those works details or further particulars (as the case may be).

5.5.—No part of a relevant work is to be commenced until one of the following conditions has been satisfied—

- (a) ~~(a)~~ the works details supplied in respect of that relevant work under paragraph 4 have been authorised by SABIC; or
- (b) ~~(b)~~ the works details supplied in respect of that relevant work under paragraph 4 have been authorised by an arbitrator under paragraph 7(3); or
- (c) ~~(c)~~ authorisation is deemed to have been given in accordance with paragraph 7(1).

6.6.—(1) Any authorisation by SABIC required under paragraph 5(a) ~~must not be unreasonably withheld but~~ may be given subject to such reasonable conditions as SABIC may require to be made for—

- (a) ~~(a)~~ the continuing safety and operation or viability of the affected asset; and
- (b) ~~(b)~~ the requirement for SABIC to have—
 - (i) ~~(i)~~ uninterrupted and unimpeded emergency access with or without vehicles to the affected asset at all times; and
 - (ii) ~~(ii)~~ reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.

(2) ~~(2)~~—The authorised development must be carried out in accordance with the works details authorised under paragraph 5 and

"45 days": This period takes into account the fact that SABIC will need to appoint external experts to review the works details and will need to time to make an appointment. It also reflects the fact that the period is not expressed as working days, and therefore needs to take account of the time needed to properly respond should a notice be received at the end of December.

(3): This sub-paragraph requires SABIC to acknowledge receipt of works details, and is in the Applicant's favour.

"must not be unreasonably withheld": this has been deleted as the wording applies generally by virtue of the new paragraph 2(2).

any conditions imposed on the authorisation under paragraph 6(1).

~~(3)~~ ~~(3)~~—Where there has been a reference to ~~arbitration~~an arbitrator in accordance with paragraph ~~26~~7(2) and the arbitrator gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the ~~award~~award of the arbitrator under paragraph 7(3).

~~7.7.~~—(1) In the event that—

~~(a)~~ ~~(a)~~—no response has been received to the submission of the works details under paragraph 4 within 45 days of the undertaker obtaining a written ~~acknowledgement~~acknowledgment of receipt from a specified person under paragraph 4(1) and no further particulars have been requested under paragraph 4(2); or

~~(b)~~ ~~(b)~~—authorisation has not been given within 30 days of the undertaker obtaining a written ~~acknowledgement~~acknowledgment of receipt from a specified person of the further particulars supplied under paragraph 4(2),

-approval of the works details is to be deemed to be given and the relevant works may commence.

~~(2)~~ ~~(2)~~—In the event that—

~~(a)~~ ~~(a)~~—the undertaker considers that SABIC has unreasonably withheld its authorisation under paragraph 6(1); or

~~(b)~~ ~~(b)~~—the undertaker considers that SABIC has given its authorisation under paragraph 6(1) subject to unreasonable conditions,

-the undertaker may refer the matter to an arbitrator for determination under paragraph ~~26~~31.

~~(3)~~ ~~(3)~~—Where the matter is referred to ~~arbitration~~an arbitrator under sub-paragraph (2) the arbitrator is to determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under ~~paragraphs~~sub-paragraphs (a) and (b) of paragraph 6(1)~~(a) and 6(1)(b)~~.

"paragraph 7(2)": this is the correct paragraph reference.

NOTICE OF WORKS

~~8.8.~~—The undertaker must provide to SABIC a minimum of 28 days' notice prior to commencing any relevant work in order that an engineer can be made available to observe the relevant works and, when required, advise on the necessary safety precautions.

FURTHER PROVISIONS ABOUT WORKS

~~9.~~—(1) Before carrying out a relevant work the undertaker must—

- (a) provide SABIC with baseline data which will be used in the cathodic protection assessment of any existing pipeline; and
- (b) carry out a pipeline settlement and stress analysis to demonstrate any potential pipeline movement will not present an integrity risk to the affected asset.

(2) The pipelines must be located by hand digging prior to the use of mechanical excavation provided that any excavation outside of 2 metres of the centreline of a pipeline may be dug by mechanical means.

~~10.9.~~—No explosives are to be used within the protected land.

~~11.10.~~—(1) All piling within 1.5 metres of the centreline of a pipeline must be non-percussive.

(2) Where piling is required within 50 metres of the centreline of a pipeline or which could have an effect on the operation or maintenance of a pipeline or access to a pipeline, details of the proposed method for and location of the piling must be provided to SABIC for approval in accordance with paragraph 4.

~~12.11.~~—(1) Where excavation of trenches (including excavation by dredging) adjacent to a pipeline affects its support, the pipeline must be supported in a manner approved by SABIC.

(2) Where the undertaker proposes to carry out excavations which might affect above ground structures such as pipeline supports in the pipeline corridor, the undertaker must calculate the zone of influence of those excavations and provide those calculations to SABIC under paragraph 4.

~~13.12.~~—(1) Where a trench is excavated across or parallel to the line

Paragraph 9 reflects the fact that underground pipelines are affected by the scheme. This means that extra care must be taken when working in proximity to these assets and that these additional protection measures are necessary.

of a pipeline, the backfill must be adequately compacted to prevent any settlement which could subsequently cause damage to the pipeline.

~~(2)~~ ~~(2)~~—Proposed methods and locations of compacting must be notified to SABIC in accordance with paragraph 4.

~~(3)~~ ~~(3)~~—Compaction testing must be carried out once back filling is completed to establish whether the backfill has been adequately compacted as referred to in sub-paragraph (1) and what further works may be necessary, and the results of such testing must be supplied to SABIC.

~~(4)~~ ~~(4)~~—Where it is shown by the testing under sub-paragraph (3) to be necessary, the undertaker must carry out further compaction under sub-paragraph (1) and sub-paragraphs (1), (2) and (3) continue to apply until such time as the backfill has been adequately compacted.

~~(5)~~ ~~(5)~~—In the event that it is necessary to provide permanent support to a pipeline which has been exposed over the length of the excavation before backfilling and reinstatement is carried out, the undertaker must pay to SABIC a capitalised sum representing the increase of the costs (if any) which may be expected to be reasonably incurred in maintaining, working and, when necessary, renewing any such alterations or additions.

~~(6)~~ ~~(6)~~—In the event of a dispute as to—

~~(a)~~ ~~(a)~~—whether or not backfill has been adequately compacted under sub-paragraphs (1) to (4); or

~~(b)~~ ~~(b)~~—the amount of any payment under sub-paragraph (5),

the undertaker or SABIC may refer the matter to an arbitrator for ~~arbitration~~determination under paragraph ~~2633~~.

~~14.13~~.—(1) A minimum clearance of 500 millimetres in respect of above ground apparatus and 600 millimetres in respect of buried apparatus must be maintained between any part of the authorised development and any affected asset (whether that part of the authorised development is parallel to or crosses the pipeline) unless otherwise agreed with SABIC.

~~(2)~~ In the event that works details approved in respect of a relevant work under paragraph 4 do not comply with SABIC's standard designs for the protection which must be installed between the relevant work and

"500 millimetres in respect of above ground apparatus and 600 millimetres in respect of buried apparatus": SABIC's Deadline 6 Protective Provisions [REP6-010] included a 1500 millimetre distance. SABIC has relaxed the 1500 distance to 600 millimetres unless sub-paragraph (2) applies. This is in the Applicant's favour.

(2): This provides that the 600 millimetre distance does not apply when protections (for example buried slabs) do not confirm with SABIC's standard

buried apparatus the minimum clearance of 600 millimetres referred to in sub-paragraph (1) shall not apply and a minimum clearance of 1500 millimetres will apply instead.

(23) No manholes or chambers are to be built over or round the pipelines.

MONITORING FOR DAMAGE TO AFFECTED ASSETS

~~15.14.~~—(1) When carrying out the relevant work the undertaker must monitor the relevant affected assets ~~within the Order limits~~ to establish whether damage has occurred.

~~(2)~~ ~~(2)~~—Where any damage occurs to an affected asset as a result of the relevant work, the undertaker must immediately cease all work in the vicinity of the damage and must notify SABIC to enable repairs to be carried out to the reasonable satisfaction of SABIC.

~~(3)~~ ~~(3)~~—If damage has occurred to an affected asset as a result of relevant work the undertaker will, at the request and election of SABIC—

~~(a)~~ ~~(a)~~—afford SABIC all reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to SABIC its costs incurred in doing so including the costs of testing the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or

~~(b)~~ ~~(b)~~—fully and properly repair the affected ~~assets~~asset as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of SABIC to have effectively repaired the affected ~~assets~~asset before any backfilling takes place.

~~(4)~~ ~~(4)~~—Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except_ where SABIC agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

~~(5)~~ ~~(5)~~—Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work,

designs. In this cases the 1500 millimetre distance will apply. This is required from a safety perspective.

"within the Order limits": these words should be deleted. The undertaker's works to construct the authorised development are likely to affect SABIC's assets both inside and outside the Order limits. For example works may be carried out at the edge of the Order limits which could adversely effect apparatus outside the Order limits: that apparatus requires equal protection. It is therefore not appropriate to limit the protection of SABIC's apparatus that that which lies within the Order limits.

"cathodic protection": underground pipes are provided with cathodic protection to prevent corrosion and thereby maintain their integrity. That protection system therefore requires protection under these provisions.

sub-paragraphs (2) to (4) of this paragraph apply to that damage.

~~(6)~~ ~~(6)~~—In the event that the undertaker does not carry out necessary remedial work in a timely manner then SABIC is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

~~16.15.~~—(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and SABIC must be notified immediately.

~~(2)~~ ~~(2)~~—Where there is leakage or escape of gas or any other substance, the undertaker must immediately—

- ~~(a)~~ ~~(a)~~—remove all personnel from the immediate vicinity of the leak;
- ~~(b)~~ ~~(b)~~—inform SABIC;
- ~~(c)~~ ~~(c)~~—prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and
- ~~(d)~~ ~~(d)~~—assist emergency services as may be requested.

COMPLIANCE WITH REQUIREMENTS, ETC. APPLYING TO THE PROTECTED LAND

~~17.16.~~—(1) Subject to sub-paragraph (2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting ~~owners~~ SABIC as an owner of the protected land, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the protected land.

~~(2)~~ ~~(2)~~—The undertaker is not bound by any condition, requirement or regulation that is—

- ~~(a)~~ ~~(a)~~—introduced after the date on which ~~the~~ notice of the works was given under paragraph 8.; or
- ~~(b)~~ ~~(b)~~—determined by ~~arbitration~~ the arbitrator following a determination under paragraph ~~26~~ 31 to unreasonably—
 - ~~(i)~~ ~~(i)~~—create significant engineering, technical or programming difficulties; or
 - ~~(ii)~~ ~~(ii)~~—materially increase the cost of carrying out the works.

"SABIC as an owner": this is for clarity.

~~(3)~~ ~~(3)~~ Sub-paragraph (2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

ACCESS FOR CONSTRUCTION AND MAINTENANCE

18.17.—(1) Before carrying out any construction or maintenance works affecting SABIC's access rights over the access roads, the undertaker must prepare a draft construction access plan and consult on the draft construction access plan with SABIC.

(2) The undertaker must take account of the responses to any consultation referred to in ~~subparagraph~~ sub-paragraph (1) before approving the construction access plan.

19.18.—(1) In preparing a construction access plan under paragraph ~~17~~ 18 the undertaker must—

~~(a)~~ ~~(a)~~ establish the programme for SABIC's major works in the pipeline corridor, the Wilton Complex, the North Tees Facilities and the Brinefields and plan the construction or maintenance works to prevent or (if such conflict cannot be reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and

~~(b) establish where SABIC is reasonably expected to exercise access rights to access to the protected land or any pipeline over particular access roads in respect of which rights are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby that expectation can be met.~~

(b) where it proposes to restrict or extinguish SABIC's access to the protected land, or any pipeline or the Wilton Complex, the North Tees Facilities or the Brinefields first provide an alternative or replacement means of access together with facilities and rights which are no less advantageous to SABIC.

~~(2)~~ ~~(2)~~ Where a reference is made to ~~arbitration~~ an arbitrator under paragraph ~~26~~ 31 in relation to any disagreement about a construction

(b) this is required to ensure that SABIC continues to enjoy the access it needs to continue its operations.

access plan ~~the~~, in addition to the criteria set out in paragraph 31(4) the appointed arbitrator must have regard to—

- (a) ~~(a)~~—whether major works were, at the date of the consultation already programmed to take place;
- (b) ~~(b)~~—the extent to which the authorised development can be accommodated simultaneously with the programmed major works;
- (c) ~~(c)~~—the usual practice in respect of conditions or requirements subject to which authorisation to close or divert the access roads is given by the owner of the access roads;
- (d) ~~(d)~~—the undertaker’s programme in respect of the authorised development and the extent to which it is reasonable for it to carry out the authorised development at a different time;
- (e) ~~(e)~~—the availability (or non-availability) of other times during which the authorised development could be carried out;
- (f) ~~(f)~~—the programme in respect of the major works and the extent to which it is reasonable for SABIC to carry out the major works at a different time; and
- (g) ~~(g)~~—the financial consequences of the decision on the undertaker and on SABIC.

(3) ~~(3)~~—In this paragraph, “programmed”, in relation to works, means works in respect of which the owner of the access roads has been notified of the specific dates between which the works are programmed to be carried out provided that the period covered by such dates must be the length of time the works are programmed to be carried out and not a period within part of which the works are to be carried out.

~~20.19.~~—(1) No works affecting access rights over the access roads are to commence until 30 days after a copy of the approved construction access plan is served on SABIC.

(2) ~~(2)~~—Where SABIC ~~or the undertaker~~ refers the construction access plan to ~~arbitration~~an arbitrator for determination under paragraph ~~26~~31, no works affecting access rights over the access roads may commence until that determination has been provided.

(3) ~~(3)~~—In carrying out construction or maintenance works the

"in addition to the criteria set out in paragraph 31(4)": a list of criteria the arbitrator must consider is set out in paragraph 31(4). This is to make it clear that the criteria set out in paragraphs (a) to (g) below are additional criteria.

(2) SABIC's drafting does not include a right for the undertaker to refer the plan to arbitration because the undertaker produces and approves the plan in question. The undertaker is required to prepare the construction access plan, take account of SABIC's comments and then approve the plan. The document is therefore approved by the undertaker in the form they choose.

undertaker must at all times comply with the construction access plan.

RESTRICTION ON EXERCISING POWERS

There is therefore no need for the undertaker to refer the plan to arbitration: it is the undertaker's own plan.

Paragraphs 21 and 22: Context

These paragraphs are designed to protect SABIC's land and rights from compulsory acquisition.

The operational context of SABIC's apparatus as a "single, interconnected, holistic system" as set out in Section 1 of the "Written Summary of SABIC's Representations to CAH1" [REP4-051]. This explains that if this circuit is broken, even temporarily, the whole circuit fails. It follows that the extinguishment or suspension of rights to facilitate the authorised development, over even a small section of SABIC's system, would prevent or suspend SABIC's production and supply operations.

Another important point is set out in paragraph 1.8 of that document that even a brief temporary interruption to the circuit would mean that SABIC's system would have to be restarted, a process that is likely to take 2-3 weeks. The effects of such a temporary interruption are set out in paragraphs 1.10 to 1.13 of that document.

As a result of these points, in particular the effect of breaking the circuit, and length of time it takes to restart ethylene production, it is vital that SABIC's apparatus is well protected from the compulsory acquisition and temporary possession powers contained in the dDCO, and that those protections go above and beyond merely providing for replacement apparatus to be provided before existing apparatus is removed.

No protection whatsoever is currently provided.

Paragraphs 21 and 22 reflect the protections for SABIC which were included in the York Potash Order, but are in fact less stringent.

21.—(1) The undertaker must not in the exercise of the powers conferred by this Order acquire, appropriate, extinguish, suspend or override any rights of SABIC in the protected land if the authorised development can reasonably and practicably be carried out without such acquisition, appropriation, extinguishment, suspension or override.

(2) The undertaker must in the exercise of the powers conferred by this Order at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on SABIC, including any disruption to access and supplies of utilities and other services that are required by them in order to carry out their operations.

22.—(1) The undertaker must not exercise the identified powers in respect of SABIC's land, rights and interests unless one of the following consents has been given—

- (a) written consent by SABIC;
- (b) consent by an arbitrator appointed under paragraph 31; or
- (c) deemed consent in accordance with sub-paragraph (5).

(2) Where an identified power provides for the undertaker to automatically extinguish or override a right or interest of SABIC, the restriction in sub-paragraph (1) is to operate so that the extinguishment or override of the right or interest does not apply unless SABIC has given its consent or consent has been given by an arbitrator appointed under paragraph 31 or is deemed to be given under sub-paragraph (5).

(3) Where SABIC's consent is required under sub-paragraph (1) or (2) the undertaker must serve a notice on SABIC requesting that consent.

(4) If the undertaker considers that consent under sub-paragraph (3) has been unreasonably withheld, the undertaker may refer the request for consent to an arbitrator appointed under paragraph 31 for determination.

(5) If SABIC fails to respond to a request for consent within 30 days of the undertaker serving that request on the specified person in full accordance with sub-paragraph (3) and article 45 (service of notices) as amended by paragraph 30, the consent of SABIC is deemed to be given.

Paragraph 21 provides that SABIC's rights cannot be extinguished or suspended unless there is a situation whereby the authorised development cannot be carried out unless this is done. The undertaker must also minimise detrimental effects on SABIC.

Paragraph 22 provides that the undertaker must not use compulsory powers in relation to SABIC's land, rights and interests without SABIC's consent. It provides deeming provisions if SABIC does not respond, and also a right for the undertaker to seek consent via arbitration if it has been unreasonably withheld.

This drafting represents a significant concession from SABIC in respect of the York Potash Protective Provisions, which provided an absolute prohibition on the acquisition of known land and rights (ie those listed in the Book of Reference). Although SABIC remains of the view that an absolute prohibition is necessary and justified in respect of the authorised development, it is also cognizant of the ExA's comments that it will not "mix and match" protective provisions and is likely to adopt either SABIC's drafting or the Applicant's preferred drafting wholesale.

(6) In the event that consent is given or deemed to be given under paragraph (1), SABIC's apparatus must not be removed, and any right to maintain the apparatus in the land must not be extinguished, until alternative apparatus has been constructed and is in operation and equivalent facilities and rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of the alternative apparatus have been granted to SABIC.

(7) Where alternative apparatus is to be provided under paragraph (6):

(a) the undertaker must give to SABIC written notice, with specification of the proposed alternative apparatus, together with plans and sections showing its situation and location;

(b) paragraphs 4 to 20 shall apply to the alternative apparatus as if the details of that alternative apparatus and the carrying out of the works to provide and construct the alternative apparatus constituted the carrying out of a relevant work, subject to the following amendments:

(i) in paragraph 8 the notice period of "not less than 28 days" will be replaced with a period of "not less than 3 calendar months unless otherwise agreed with SABIC"; and

(ii) in paragraph 6(1) there shall be added immediately before paragraph (a) a new paragraph (aa) as follows:

"(aa) without prejudice to paragraph (a), the timing of the works to construct and bring into operation the alternative apparatus so as to reduce so far as possible the detrimental effects on SABIC's operations;"

(c) the undertaker will have special regard to its obligations under paragraph 21(2).

(8) Any alternative apparatus to be constructed under this Schedule must be constructed in such manner and in such line or situation as

(6) to (10): If consent is obtained to take SABIC's rights to effect a diversion, SABIC's apparatus requires protection. This position was not envisaged by the York Potash DCO (and there was no protection whatsoever in the Net Zero DCO), and so these additional paragraphs are therefore required.

(6): SABIC's apparatus may not be moved until alternative apparatus has been constructed and equivalent facilities and rights have been granted to SABIC in respect of the alternative apparatus. This is a standard protection in these cases.

(7): This provides tweaks to the provisions relating to the approval of works details where a diversion is proposed. In particular, a longer period of notice of works must be given, and SABIC can impose conditions on the timing of the works. This reflects the difficulties set out in paragraph 1.8 "Written Summary of SABIC's Representations to CAH1" [REP4-051]: that even a brief temporary interruption to the circuit would mean that SABIC's system would have to be restarted, a process that is likely to take 2-3 weeks. SABIC should be allowed an opportunity to mitigate the effect of such works to such extent as they may be able to by identifying a time when it will least affect SABIC's operations and those of the other manufacturers of ethylene: INEOS at Grangemouth and ExxonMobil at Mossmorran.

may be authorised or deemed to be authorised under paragraph 5.

(9) Where under paragraph (6) facilities and rights must be granted to SABIC those facilities and rights must be on such terms and conditions as may be agreed between the undertaker and SABIC or in default of agreement determined by an arbitrator under paragraph 31, and such terms must be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

(10) Subject always to paragraph (9) if the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, or the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator materially worse than the rights enjoyed by them in respect of the apparatus to be removed, the arbitrator must make such provision for the payment of compensation by the undertaker to SABIC as appears to the arbitrator to be reasonable, having regard to all the circumstances of the particular case.

INSURANCE

23.20.—(1) Before carrying out any part of the authorised development ~~affecting SABIC~~on the protected land, the undertaker (or any contractor carrying out such works on behalf of the undertaker) must put in place a policy of insurance with a reputable insurer against the undertaker's liabilities under paragraph 25 in accordance with the terms, ~~cover~~ and level of cover as may be agreed in writing between the undertaker and SABIC or, in the case of dispute, in accordance with the terms and level of cover determined by an arbitrator under paragraph 31, and evidence of that insurance must be ~~provide~~provided on request to SABIC.

"on the protected land": SABIC considers that these words are clear and unambiguous. The undertaker's wording "affecting SABIC" introduces an unnecessary element of subjectivity as to when the insurance policy is required.

"against its liabilities under paragraph 27": it is important that these provisions set out what is to be insured against.

"terms and level of cover determined by an arbitrator": SABIC is not afforded an opportunity to approve the level or terms of cover by the York Potash protective provisions (on which these provisions are modelled), and without this drafting the terms and level of cover would be entirely at the discretion of the undertaker. In the York Potash Examination the undertaker argued that an approval mechanism could delay a start on site and the ExA accepted this proposition. However, it is therefore important that SABIC is allowed to challenge the undertaker where it considers that the cover is inadequate.

~~(2)~~ ~~(2)~~—Not less than 30 days before carrying out any part of the authorised development on the protected land or before proposing to change the terms of the insurance policy, the undertaker must notify SABIC of details of the terms ~~of cover~~ of the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.

~~(3)~~ ~~(3)~~—The undertaker (or any contractor carrying out such works on behalf of the undertaker) must maintain insurance in relation to the authorised development affecting SABIC during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover as may be agreed in writing between the undertaker and SABIC or at such level as may otherwise be determined by an arbitrator under paragraph 31.

~~24.21.~~ ~~—~~If SABIC has a dispute about the proposed insurance (including the terms ~~of~~ or level of cover) to be provided under paragraph ~~2023~~—

~~(a)~~ ~~(a)~~—SABIC may refer the matter to ~~arbitration~~an arbitrator for determination under paragraph ~~2633~~; and

~~(b)~~ ~~(b)~~—the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph ~~2633~~ is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

COSTS AND INDEMNIFICATION

~~25.22.~~—(1) The undertaker must repay to SABIC all reasonable fees, costs, charges and expenses reasonably incurred by SABIC in relation to these protective provisions in respect of—

~~(a)~~ ~~(a)~~—authorisation of survey details submitted by the undertaker under paragraph 3(3), authorisation of works details submitted by the undertaker under paragraph 4 and the imposition of conditions under paragraph 6;

"at such level as may otherwise be determined by an arbitrator under paragraph 31": As stated above, it is important that SABIC is allowed to challenge the undertaker where it considers that the cover is inadequate.

- (b) ~~(b)~~ the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 8;
- (c) ~~(c)~~ responding to the consultation on piling under paragraph ~~10~~11;
- (d) ~~(d)~~ considering the effectiveness of any compacting which has taken place under paragraph ~~12~~13, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;
- (e) ~~(e)~~ the repair and testing of a ~~pipeline or protected crossing~~affected assets under paragraph ~~14~~15;
- (f) ~~(f)~~ considering and responding to consultation in relation to the construction access plan under paragraph ~~17~~19 and providing details of their programme for major works to the undertaker under paragraph ~~18~~19; ~~and~~
- (g) dealing with any request for consent, approval or agreement by the undertaker under paragraph 22; and
- (h) ~~(g)~~ considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph ~~20~~23,

-including the reasonable costs incurred by SABIC in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to allow SABIC to carry out its functions under these protective provisions.

~~(2) Subject to sub-paragraphs (3) and (4), if by reason or in consequence of the construction of any of the works referred to in paragraph 4, any damage is caused to the affected assets or property of SABIC, or there is any interruption in any service provided, or in the supply of any goods, by SABIC, the undertaker must—~~

~~(a) bear and pay the cost reasonably incurred by SABIC in making good such damage or restoring the supply; and~~

"affected assets": paragraph 15 refers to "affected assets" rather than "pipeline or protected crossing.."

(g) The undertaker should meet SABIC's costs for considering whether to consent to the use of compulsory powers. It is likely that the undertaker has omitted this paragraph because it omitted paragraph 22.

~~(b) make reasonable compensation to SABIC for any other expenses, loss, damages, penalty or costs incurred by SABIC, by reason or in consequence of any such damage or interruption.~~

(2) The undertaker must indemnify and keep SABIC indemnified against all reasonable costs, charges, damages and expenses, and against consequential loss and damage, which may be occasioned or reasonably incurred by the them—

(a) by reason of the construction, operation, maintenance, repair and decommissioning of the authorised development or the failure of it; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction, operation, maintenance, repair and decommissioning of the authorised development,

(3) The fact that any act or thing may have been done by SABIC on behalf of the undertaker or in accordance with plans approved by or on behalf of SABIC or in accordance with any requirement of the engineer appointed by SABIC or under his supervision does not excuse the undertaker from any liability under the provisions of this sub-paragraph (2).

(4) ~~(3)~~ Nothing in ~~sub-paragraphs (1) or (2)~~ the preceding provisions of this paragraph imposes any liability on the undertaker with respect to—

~~(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of SABIC, its officers, employees, servants, contractors or agents; or,~~

~~(b) any indirect or consequential loss or loss of profits by SABIC.~~

(5) ~~(4)~~ SABIC must give the undertaker reasonable notice of any claim or demand under ~~subparagraph~~ sub-paragraph (2) and no settlement or compromise of such a claim or demand is to be made without the prior 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.

(6) ~~(5)~~ SABIC must, on receipt of a request from the undertaker, from

(2) SABIC considers that an indemnity should be provided in accordance with the precedent set out in the York Potash DCO rather than the watered-down version provided in the Net Zero Protective Provisions. This reflects the potentially serious implications of the authorised development in terms of potential losses (as set out in Section 1 of the "Written Summary of SABIC's Representations to CAH1" [REP4-051] and SABIC's response to Q2.6.11 in "SABIC's Response to ExQ2" [REP5-086]). It is especially important that a strong indemnity is included in the DCO in favour of SABIC as a counterbalance to SABIC's concession in respect of the absolute prohibition on the acquisition of known land and rights (ie those listed in the Book of Reference) contained in the York Potash Protective Provisions.

time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Schedule.

(7) ~~(6)~~—In the assessment of any sums payable to SABIC under this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by, or any agreement entered into by, SABIC if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

(8) ~~(7)~~—SABIC must use its reasonable endeavours to mitigate ~~in whole or in part and to minimise~~ any costs, expenses, loss, demands, and penalties to which ~~the indemnity under~~ this paragraph applies.

(9) ~~(8)~~—If requested to do so by the undertaker, SABIC must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to ~~sub-paragraph (2)~~ this paragraph.

(10) ~~(9)~~—The undertaker shall only be liable under this paragraph for claims reasonably incurred by SABIC.

FURTHER PROTECTION IN RELATION TO THE EXERCISE OF POWERS UNDER THE ORDER

~~26, 23~~—The undertaker must give written notice to SABIC of the terms and level of cover of any guarantee or alternative form of security put in place under article 47 (funding for compulsory acquisition compensation) and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

27—The undertaker must give written notice to the SABIC if any application is proposed to be made by the undertaker for the Secretary

(7) to (9): SABIC's Deadline 6 Protective Provisions [REP6-010] resisted the inclusion of these paragraphs, which were not included in the York Potash Order.

However SABIC is willing to make a further significant concession to have these sub-paragraphs included in the protective provisions.

27. This paragraph provides for SABIC to be given of any application under article 8 (consent to transfer benefit of this Order). This is to allow SABIC to

of State's consent under article 8 (consent to transfer benefit of this Order), and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

28. 24.—The undertaker, must, when requested to do so by SABIC, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 44 (certification of plans etc.) in electronic form.

29. 25.—Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to SABIC.

30. Where SABIC has provided an e-mail address for service in respect of the specified person, sub-paragraph (1)(a) of article 45 (service of notices) will not apply to the service of the said notice, which must be effected by electronic means.

ARBITRATION

~~26. Any difference or dispute arising between the undertaker and SABIC under this Schedule must, unless otherwise agreed in writing between the undertaker and SABIC, be referred to and settled by arbitration in accordance with article 46 (arbitration).~~

31.—(1) Article 46 (arbitration) applies to this Schedule subject to the following provisions of this paragraph.

(2) The fees of the arbitrator are payable by the parties in such proportions as the arbitrator may determine or, in the absence of such determination, equally.

be aware of the application and to be able to make representations to protect its interests. This is reasonable especially in the context of the Applicant's various references to the assets of BP as its parent company in providing financial security (and therefore comfort) to those affected by the scheme.

30: This provision was not in the York Potash Order, but has been included to assist SABIC in circumstances where it is monitoring a designated e-mail address for notices in circumstances where the undertaker might choose to instead post a notice.

31. The York Potash Order provided for expert determination, however SABIC is prepared to accept arbitration, which is understood to be the undertaker's preferred method.

(3) The arbitrator must—

- (a) invite the parties to make a submission in writing and copied to the other party to be received by the arbitrator within 21 days of their appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(4) An arbitrator appointed for the purposes of this Schedule must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effect that the consent in question would have on SABIC's operations and the operations of the UK ethylene production and supply industry;
- (e) the likely duration and financial and economic consequences of any cessation of or interruption of ethylene production and supply including the costs associated with the restoration of production;
- (f) the ability of SABIC to undertake its operations or development in a timely and cost-effective manner, including any statutory or regulatory duties, requirements or obligations;
- (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on SABIC and the UK ethylene production and supply industry;
- (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;

(4) This paragraph is particularly important to SABIC in light of the potentially serious implications of the authorised development in terms of the operational difficulties and potential losses (as set out in Section 1 of the "Written Summary of SABIC's Representations to CAH1" [REP4-051] and SABIC's response to Q2.6.11 in "SABIC;s Response to ExQ2" [REP5-086]). It seeks to ensure that the specific circumstances of SABIC's apparatus are intended to be taken into account in any arbitration.

(i) any other important and relevant consideration.