

**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.

**Interpretation**

2.—(1) In this Schedule—

“access roads” means the access roads within the Order limits—

- (a) giving access to pipelines or the protected crossing; or
- (b) 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 the identified powers, 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 as if the pipelines were a “pipe-line” in section 65(1) of that Act;

“Brinefields” means the land tinted and edged blue on the certified plan;

“certified plan” means the plans showing the Brinefields, the North Tees Facilities, the pipeline corridor, the protected crossing and the Wilton Complex which are certified as the Information

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Dated 24 Feb 2025

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Plan by the Secretary of State under article 44 (certification of plans etc) for the purposes of this Schedule;

“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 provisions of this Order—

- (a) article 11 (street works);
- (b) article 12 (construction and maintenance of new or altered means of access);
- (c) article 13 (temporary closure of streets and public rights of way);
- (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);
- (h) article 23 (power to override easements and other rights);
- (i) article 25 (compulsory acquisition of rights etc.);
- (j) article 26 (private rights);
- (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 the land tinted and edged mauve on the certified plan;

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

“owner” means, in relation to the access roads, any person—

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- (i) with an interest in the access roads; or
- (ii) with private rights of way on or over the access roads;

“**pipeline corridor**” means the land tinted and edged green on the certified plan;

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“**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 reasonably possible to establish this);

“**protected crossing**” means the tunnel which carries pipelines under the River Tees known as Tunnel 2 which is shown cross-hatched and edged brown on the certified plan;

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“**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,

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and any successor in title to SABIC’s rights and interests in the protected land;

“**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 land tinted and edged pink on the certified plan;

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“**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
  - (p) any further particulars provided in accordance with paragraph 4(2).
- (2) Where this Schedule provides that the acknowledgement, approval, agreement, consent or authorisation of SABIC or the specified person is required for any thing (or that any thing must be done to SABIC's reasonable satisfaction—
- (c) 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
  - (d) 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 or the persons who constitute the specified persons as defined in sub-paragraph (1) (as the case may be) shall constitute approval, agreement, consent or authorisation on behalf of all of them.

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#### 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.

(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.

(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 immediately 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(4); 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 paragraphs 7(2) and 31 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 acknowledgement of receipt from a specified

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person under paragraph 4(3) 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 acknowledgement 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) If the undertaker considers that—

- (a) any further particulars requested by SABIC under paragraph 4(2) are not reasonably required;
- (b) SABIC has unreasonably withheld its authorisation under paragraph 6(1); or
- (c) 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 arbitration under sub-paragraph (2)(a)—

- (a) the arbitrator is to determine whether or not the further particulars must be provided by the undertaker; and
- (b) the undertaker is not required to provide them unless directed so to do by the arbitrator.

(4) Where the matter is referred to arbitration under sub-paragraph (2)(b) or (2)(c) 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 6(1)(a) and 6(1)(b).

#### 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 under paragraph 4.

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(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 31.

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) 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, any 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.

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(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, any pipeline, the Wilton Complex, the North Tees Facilities or the Brinefields first provide an alternative

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or replacement means of access (together with facilities and rights to enable SABIC lawfully to use that access) which is not materially less advantageous to SABIC.

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(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(5) 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 or the undertaker 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.

#### **Mitigation in respect of SABIC apparatus, etc.**

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**21.—**(1) The undertaker must not in the exercise of the identified powers 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 identified powers 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) 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.

(2) If alternative apparatus is to be provided under sub-paragraph (1)—

- (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 of this Schedule shall apply 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 6(1)(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 reasonably possible the detrimental effects on SABIC’s operations;”

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

(3) 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.

(4) Where under sub-paragraph (1) 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.

(5) 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 SABIC 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—

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- (a) SABIC may refer the matter to an arbitrator for determination under paragraph 31; 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 31 is on-going, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

#### Costs

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 affected assets under paragraph 15;
- (f) considering and responding to consultation in relation to the construction access plan under paragraph 18 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) Subject to the following provisions of this paragraph, 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
- (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.

(3) Nothing in sub-paragraphs (1) or (2) 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.

(4) SABIC must give the undertaker reasonable notice of any claim or demand under this paragraph 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.

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(5) 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.

(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.

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

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#### **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 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 email address for service in respect of the specified person, subparagraph (1)(a) of article 45 (service of notices) will not apply to the service of any notice under this Schedule, which must instead be effected by electronic means.

#### **Arbitration**

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

(2) Subject to sub-paragraph (4), 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 the arbitrator's appointment;
  - (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submissions under paragraph (a);
  - (c) issue a decision within 42 days of receipt of—
    - (i) the submissions under sub-paragraph (b); or
    - (ii) if no submissions are submitted under that paragraph, the submissions under sub-paragraph (a); and
  - (d) give reasons for the arbitrator's decision.
- (4) If the arbitrator does not issue the decision within the time required by sub-paragraph (3)(c) then—
- (a) the arbitrator is not entitled to any payment in respect of their fees; and
  - (b) the matter in question shall immediately be referred to a new arbitrator in which case—
    - (i) the parties shall immediately upon the new arbitrator's appointment provide the new arbitrator with copies of the written submissions and comments previously provided under sub-paragraphs (3)(a) and (3)(b);
    - (ii) no further submissions or comments may be requested by or provided to the new arbitrator in addition to those provided pursuant to sub-paragraph (i); and
    - (iii) the new arbitrator shall then proceed to comply with sub-paragraphs (3)(c) and (3)(d).
- (5) 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; and
  - (i) any other important and relevant considerations.

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## SUBMISSIONS:

### 1. Issue 1 – transfer of agreements and grant of consent

- 1.1. Schedule 34 paragraph 1 of the dDCO omits the sub-paragraph (4) contained within SABIC's updated preferred protective provisions [REP7a-069]. SABIC has provided no explanation as to why this specific sub-paragraph has been included.
- 1.2. Article 43 of the dDCO contains provisions as to how consents under the dDCO (including under the protective provisions) are to be dealt with. By way of example:
  - 1.2.1. Article 43(1) requires that consents must be given in writing – this is clearly a sensible measure as it provides certainty and to what has been approved, by whom and when;

1.2.2. Article 43(2) requires that consent must not be unreasonably with-held or delayed – this does not prejudice SABIC’s position as it merely requires that SABIC act reasonably which should not be contentious (the Applicant does not understand that SABIC contends that it should be permitted to act in an unreasonable or capricious manner); and

1.2.3. Article 43(5) which provides that consents are deemed to be granted if SABIC has not responded within six weeks – this is a reasonable and proportionate measure to ensure that the consenting requirements under the protective provisions do not cause avoidable delay to the implementation of the Proposed Development and the realisation of its significant public benefits. SABIC’s position is further protected in this regard by article 43(6) which specifically requires any application submitted by the undertaker to state both the effect of article 43(5) and the ‘target date’. SABIC would remain at liberty to withhold its consent (acting reasonably).

1.3. Articles 43(3) and (4) do not apply to the SABIC protective provisions.

1.4. Sub-paragraph 2(2) is functionally equivalent to sub-paragraph 2(2) of SABIC’s updated preferred protective provisions [REP7a-069], but with the omission to references to SABIC’s proposed paragraph 22 which (for the reasons set out below under Issue 11) is not appropriate for inclusion in the dDCO.

## 2. Issue 2 – various definitions

2.1. The definitions that are contained in Schedule 34 to the draft DCO differ from those contained in SABIC’s updated preferred protective provisions [REP7a-069].

2.2. **Brinefields, Wilton Complex, North Tees Facilities, pipeline corridor, protected crossing:** As explained in REP7a-030, the Applicant made several requests to SABIC over several months for the provision of plans showing these areas, in order for the Applicant to confirm whether the proposed areas can be agreed. To date, no draft plans have been provided by SABIC.

2.3. Definitions for these areas have now been provided in REP7a-069. It is not clear why these could not have been provided to the Applicant by SABIC much earlier in the examination, but now that they are available the Applicant has prepared a set of plans showing each area. The Applicant submits that identifying these areas by reference to a certified plan is clearly preferable to the narrative approach adopted by SABIC.

2.4. For example, SABIC’s proposed definition of the Wilton Complex is high level and vague, whereas the plan proposed by the Applicant provides a clear delineation of the relevant land.

2.5. Similarly, SABIC’s proposed definition of the Brinefields refers to registered title numbers, but it is possible for the land contained within a given title to change over time e.g. if part is transferred into a new, separate title with its own title number. SABIC’s proposed approach therefore has the potential to lead to uncertainty in the future, whereas showing the relevant areas on a plan as proposed by the Applicant provides certainty as to their extent.

2.6. Appropriate consequential amendments have also been made to the dDCO to ensure that these are included amongst the schedule of plans which require certification by the Secretary of State.

2.7. **owner:** this definition has been omitted from SABIC’s updated preferred protective provisions [REP7a-069], but it is necessary to retain the part referring to the owner of the access roads because this is required for the purposes of paragraph 19 of the Schedule.

2.8. **SABIC:** this definition mirrors that contained in SABIC’s updated preferred protective provisions [REP7a-069], save for the omission of references to SABIC BV.

2.9. Insofar as the Applicant is aware, any and all of the SABIC apparatus within or near the Order limits is owned and operated by SABIC UK Petrochemicals Limited and SABIC Tees Holdings Limited. As far as the Applicant is able to ascertain, the additional SABIC BV neither owns nor operates any apparatus or other infrastructure.

- 2.10. To the extent that SABIC contends that the SABIC BV entity should be included as an inventory owner (in terms of the contents of any pipeline), this would not be appropriate:
- 2.10.1. The purpose of protective provisions relating to apparatus is to maintain the integrity of that apparatus by managing the practical interface between the Proposed Development and existing infrastructure. SABIC BV has no such infrastructure.
  - 2.10.2. The rationale for including SABIC BV in this manner is not clear in any event and it is not readily apparent why SABIC BV should be treated differently to any other entity which owns inventory in or near a DCO project. SABIC's proposed approach would lead to a position where, if a secure self-storage facility (such as those provided by 'Big Yellow Box', 'Safestore' and others) was located near a DCO Order limits, then every single person who stores any item in that facility would be entitled to be the beneficiary of bespoke protective provisions.
  - 2.10.3. The Applicant has been unable to identify any precedent for an inventory owner (without more) to be made the beneficiary of protective provisions in a DCO. SABIC has not cited a single precedent for this approach which would be a significant departure from the Secretary of State's long-established practice. This includes the recently made NZT DCO where the practical interactions between that project and SABIC's apparatus were functionally the same as those of the current Proposed Development and the Secretary of State declined to include SABIC BV.
- 2.11. In any event, the Applicant's preferred form of protective provisions contains significant safeguards in order to prevent any adverse impacts on the SABIC apparatus and any associated inventory. These include: the requirement for works details of relevant works to be submitted, approved by SABIC and then implemented by the undertaker prior to the commencement of those works; further restrictions on the methods of working such as piling and trenching; and a prohibition on any interference with SABIC's apparatus, or associated rights, until suitable alternative apparatus has been approved by SABIC, constructed and associated replacement rights have been granted (see below for further details including Paragraphs 4-7 and 22 in particular). By protecting the integrity of the apparatus through these means, any inventory within that apparatus will also be effectively protected.
- 2.12. **Works Details definition:** The Applicant has made minor amendments to SABIC's preferred definition of 'works details' to incorporate certain additional matters relating to temporary crossings and the demarcation of easement widths (see below for more detail on the rationale for these changes under issue 6 and 7). The Applicant understands from its review of SABIC's updated preferred protective provisions [REP7a-069] that these amendments are not in issue.
- 2.13. However, the Applicant has omitted reference to "proposed remedial work" from subparagraph (o). This is because the works details for the relevant works are submitted for approval prior to their construction being commenced (see paragraph 4(1)). It is therefore logically impossible for any remedial works to be proposed at that time because the relevant works have not been carried out and, accordingly, it cannot be known at that stage whether any such remedial works will be required at all.
- 2.14. In any event, the purpose of submitting the works details for approval is precisely to ensure that such damage does not arise by requiring SABIC's consent for them in advance of construction commencing. Should damage to the cathodic protection nevertheless occur, the cost of repairing this would be borne by the undertaker under paragraph 25(2).
- 3. Issue 3 – pipeline survey (paragraph 3)**
- 3.1. The Applicant notes that SABIC's updated preferred protective provisions [REP7a-069] have now accepted the Applicant's proposal that the survey be undertaken by an "appropriately qualified person".

- 3.2. Whilst the Applicant has no in-principle objection to the survey being carried out in accordance with relevant standards and codes, it does not consider that the inclusion of express reference to the United Kingdom Onshore Pipeline Operators' Association and the American Petroleum Institute in the dDCO is appropriate. This is because these are matters of professional judgment and will be highly fact-dependent.
  - 3.3. This is a matter that can instead be quite properly and more appropriately left to the professional judgment of the “qualified person” who must have at least 10 years’ experience of this type of survey and can therefore also be expected to be familiar with and to apply all relevant standards and codes.
  - 3.4. To the extent that there is any disagreement as to what the relevant standards and codes are, and whether they have been complied with, this can be dealt with by reference to the dispute resolution process set out in the Schedule if required (see paragraph 31).
- 4. Issue 4 – consent for works provisions (paragraphs 4 to 7)**
- 4.1. The breadth of the works to which paragraphs 4 to 7 apply provides appropriate protection for SABIC’s operations and apparatus. The “relevant works” comprise any part of the authorised development that may have an effect on the operation, maintenance, abandonment of or access to any pipeline or the protected crossing. The scope of these works is standard wording contained in protective provisions and is consistent with the scope of works that was contained in the protective provisions for the benefit of SABIC in the NZT DCO (see paragraph 188 in Part 16 of Schedule 12).
  - 4.2. This includes the ability for SABIC to request additional information within 30 days of the request for consent in respect of the works details being submitted.
  - 4.3. Whilst the Applicant’s proposed 30 day period matched that provided for in the recently made NZT DCO, it has nevertheless been willing to adopt the period of 45 days from SABIC’s preferred protective provisions [REP7a-069] in order to reduce the number of outstanding points of difference.
  - 4.4. However, due to this extended period, it is vital that the version of paragraph 4(3) proposed by the Applicant [REP7a-030] is incorporated in order to prevent avoidable delay to programme. This is because provision of the acknowledgement of receipt is essential in order to commence the decision periods in paragraph 7.
  - 4.5. The Applicant’s proposed wording makes clear that the specified person is under a positive duty to issue the acknowledgement of receipt immediately and, since this is merely a pro forma receipt, this is not onerous on SABIC. SABIC has also advanced no reason why any longer period of delay would be warranted.
  - 4.6. A new sub-paragraph 2(a) has been inserted into paragraph 7 to clarify that where SABIC and the undertaker do not agree as to whether additional information requested by SABIC under paragraph 4(2) is reasonably required then this can be referred to an independent arbiter to find a resolution. Sub-paragraph (3) then requires the undertaker to provide the requested information if the arbiter determines that referral in SABIC’s favour.
- 5. Issue 5 – cathodic protection assessment (paragraph 9)**
- 5.1. SABIC’s updated preferred protective provisions [REP7a-069] have adopted the wording proposed by the undertaker [REP7a-030] which means that this Issue has now been resolved.
- 6. Issue 6 – details of temporary crossing points**
- 6.1. SABIC’s superseded preferred protective provisions [REP6-010] included an additional paragraph requiring that details of any proposed temporary crossing points be notified to SABIC in accordance with paragraph 4. This paragraph relates to the submission of works details for SABIC’s approval.
  - 6.2. There is no precedent for SABIC’s preferred protective provision in the NZT DCO despite the potential for interactions with underground pipelines being in substance the same as for



the current Proposed Development. Nevertheless, the Applicant has not raised an in-principle objection to this proposal.

- 6.3. However, in order to avoid needless duplication, the Applicant's preferred protective provisions have incorporated this requirement into the definition of the "works details" that must be submitted in respect of every relevant work. This will ensure that the details of the temporary crossing points are still provided, whilst also:
  - 6.3.1. reducing unnecessary bureaucracy, by enabling a single omnibus application for consent to be submitted to SABIC; and
  - 6.3.2. enabling the details of the temporary crossing points to be assessed as part of an holistic works details package i.e. in their proper context rather than as an isolated exercise divorced from the consideration of the actual works themselves.
- 6.4. SABIC's updated preferred protective provisions [REP7a-069] have adopted the Applicant's proposed approach which means that this Issue has now been resolved.

**7. Issue 7 – demarcation of easement widths**

- 7.1. SABIC's superseded preferred protective provisions [REP6-010] included an additional paragraph requiring that the easement widths of any pipelines (taken from the pipeline survey carried out under paragraph 3) must be fenced off during construction.
- 7.2. Whilst the Applicant understands SABIC's underlying objective – to demarcate the location of the pipelines in some visual manner so as to reduce the risk of any inadvertent damage occurring during construction – SABIC's proposed absolute requirement was disproportionate and unworkable.
- 7.3. For example, due to the narrow width of parts of the pipeline corridor it is perfectly conceivable that parts of the Proposed Development will be carried out within the easement widths. SABIC's proposed absolute requirement for the easement widths to be fenced off would clearly interfere with the undertaker's ability to implement the authorised development in those circumstances, including where the works are located a significant distance away from the pipeline itself and thus pose no material practical risk to its integrity.
- 7.4. Similarly, as drafted, SABIC's preferred protective provision could also have been interpreted to mean that every easement width must be fenced. Where there are multiple parallel pipelines each having an associated easement width then this would lead to the undertaker being obliged to erect multiple lines of parallel fencing which is clearly disproportionate, unworkable, and serves no useful purpose.
- 7.5. To overcome these issues, the Applicant has inserted a new sub-paragraph (c) into the definition of "works details" to require that the package submitted for approval contain details of how the undertaker proposes to demarcate the easement widths during construction. This will ensure that SABIC's underlying objective is achieved in a proportionate manner, which can also be tailored to the specific works and location in question, and consent would be required for those proposals as part of the holistic works package under paragraph 5, meaning SABIC would be able to indicate specific requests where it relates to demarcation and any concerns can then be resolved through a consistent and proportionate process in the same way as all other works details.
- 7.6. SABIC's updated preferred protective provisions [REP7a-069] have adopted the Applicant's proposed approach which means that this Issue has now been resolved.

**8. Issue 8 – clearance from buried apparatus (paragraph 14)**

- 8.1. This paragraph is in substantially the same form as SABIC's updated preferred protective provisions [REP7a-069], save that the Applicant's proposed protective provision specifies a minimum clearance of 600 millimetres from any buried apparatus.
- 8.2. Due to the relatively narrow width of parts of the pipeline corridor, the larger distance of 1,500 millimetres set out in SABIC's preferred protective provisions would unreasonably interfere with the undertaker's ability to implement the authorised development in an

effective and efficient manner, as well as sterilising a wider strip of land by requiring a larger set-off across the entire pipeline corridor.

8.3. Whilst SABIC has alluded to this additional distance being “required from a safety perspective”:

8.3.1. no evidence has been provided as to what this putative safety issue might be or why it would arise in the context of the authorised development;

8.3.2. the Applicant’s proposal represents the industry-wide standard position in terms of clearance for this type of infrastructure and these types of works;

8.3.3. following detailed consideration by the Applicant’s technical team, the Applicant is satisfied that its proposed clearance for buried apparatus does not pose any material additional safety risk i.e. the Applicant’s preferred protective provisions will perform as well as SABIC’s from a safety perspective without unduly restricting the final design of the authorised development; and

8.3.4. the works details (including any set-off from SABIC’s apparatus) require approval in any event (Issue 4 above) – it is therefore not readily apparent what purpose is served by the additional restriction set out in paragraph 14(2) of SABIC’s updated preferred protective provisions [REP7a-069] other than to enable SABIC to have a ‘second bite at the cherry’ if its objection to the Applicant’s proposed design is over-ruled by an independent arbiter. That would cause delay to programme, serve no useful purpose and would be contrary to the public interest – the Applicant’s proposed drafting should therefore be adopted on this Issue.

**9. Issue 9 – compliance with requirements affecting the protected land (paragraph 17)**

9.1. SABIC’s updated preferred protective provisions [REP7a-069] have adopted the Applicant’s proposed wording which means that this Issue has now been resolved.

**10. Issue 10 – access for construction and maintenance (paragraphs 18 to 20)**

10.1. These paragraphs are in substantially the same form as SABIC’s updated preferred protective provisions [REP7a-069], save that the Applicant’s proposed protective provisions contain a minor amendment:

10.1.1. in paragraph 19(1)(b) to require that an alternative or replacement means of access is not materially less advantageous than the existing one; and

10.1.2. in paragraph 20(2) to enable both parties to refer any disputes regarding the construction access arrangements to arbitration.

10.2. This is because an alternative or replacement means of access will not necessarily be identical in all respects to the current arrangements. For example, it might be marginally longer in length or have a different gradient or be shared with other apparatus owners and operators. Each of these could in theory be construed as being less advantageous to SABIC, but would not in themselves necessarily be materially adverse to SABIC’s interests.

10.3. The Applicant’s preferred protective provision ensures that any such de minimis effects or the replacement access do not generate satellite disputes, whilst nevertheless still ensuring that there will be no significant effect on SABIC’s operations as a result of the authorised development.

10.4. The minor amendment to paragraph 20(2) confirms that either party may refer a dispute to arbitration. This prevents a situation arising whereby SABIC wishes to contest a matter, but the undertaker is unable to seek to find a resolution by making a referral. The Applicant’s preferred drafting accords with that in the functionally equivalent provision in the NZT DCO (see paragraph 205(2) of Part 16 of Schedule 12 to the NZT DCO).

**11. Issue 11 – mitigation in respect of SABIC apparatus, etc, (paragraphs 21 and 22)**

11.1. These paragraphs are in substantially the same form as SABIC’s updated preferred protective provisions [REP7a-069], save for the following points.

- 11.2. In paragraphs 21(1) and (2), a minor change has been made to the wording to refer to the “identified powers” which are now included as a defined term for the Schedule as a whole. This approach ensures certainty as to which powers are engaged for the purposes of these provisions.
- 11.3. The general restriction on the use of the identified powers set out in paragraph 22(1) to (5) of SABIC’s preferred protective provisions has been removed. These relate primarily to the Applicant’s compulsory acquisition powers and survey powers set out in the main articles of the dDCO.
- 11.4. The Applicant strongly refutes the inclusion of this abovementioned general restriction. This would impose unreasonable restrictions on the Applicant as it would jeopardise the delivery of the authorised development, including in terms of programme, constructability and funding drawdown. These powers are required to ensure the authorised development can be constructed, operated and maintained and also to ensure that the authorised development’s nationally significant public benefits can be realised, including supporting the Government’s policies in relation to the timely delivery of new generating capacity and achieving ambitious net zero targets.
- 11.5. With the controls in place in the Applicant’s preferred form of protective provisions in respect of controlling the impacts of works across SABIC’s and apparatus land, the impacts to SABIC’s assets are able to be controlled.
- 11.6. This includes the provisions in the Applicant’s proposed paragraph 22 which provides that SABIC’s apparatus must not be removed, and any of SABIC’s rights 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.
- 11.7. Paragraph 22(2) requires that the details of the undertaker’s proposals must be submitted to SABIC for review and approval in the same way as for other relevant works under the Schedule (see above), and the undertaker must then implement the approved details and grant the replacement rights (paragraph 22(3)). Those replacement rights must be no less favourable as a whole compared to SABIC’s current rights, and there is also provision for the payment of compensation following a referral to an arbitrator to ensure that SABIC is not adversely affected taken in the round (paragraph 22(4) and (5)).
- 11.8. With these measures in place, the Applicant ensures that there is no realistic prospect that the exercise of the identified powers would have a detrimental impact on the ability of SABIC to continue to operate its business, or for SABIC’s apparatus (whether considered as an holistic system or otherwise) to be protected. The Applicant needs the ability to then deliver those approved works, utilising the land shown on the Order limits.
- 11.9. The Applicant’s preferred form of protective provisions strikes an appropriate balance and accords with the position adopted by the Secretary of State in the recent NZT DCO for the protection of all pipeline owners and operators across the pipeline corridor (see paragraphs 216 and 217 in Part 17 of Schedule 12 to the NZT DCO).
- 11.10. Whilst SABIC’s updated preferred protective provisions [Annex 2 of REP7a-069] refer to the York Potash DCO, this is clearly distinguishable on the facts:
- 11.10.1. The York Potash DCO relates to a different type of development in a different location, whereas the interactions between the NZT DCO and the current Proposed Development are the same for all practical purposes;
- 11.10.2. The York Potash DCO contains no bespoke protective provisions in favour of SABIC (SABIC is not even mentioned), unlike the NZT DCO which contains a specific protective provisions schedule tailored to address the potential interactions with SABIC’s land and apparatus.

11.10.3. The NZT DCO is significantly more recent; and

11.10.4. The NZT DCO sets out the Secretary of State's clear position on where the balance of convenience lies as far as SABIC's apparatus is concerned – SABIC advanced much the same arguments in support of its preferred protective provisions during the NZT DCO examination and these were definitively rejected in the Secretary of State's final decision and not incorporated within the made NZT DCO.

11.11. In this context, the Applicant considers that that balance lies clearly in favour of the grant of compulsory acquisition powers, taking into account the measures to avoid, minimise or mitigate the effects of such powers summarised above, and noting the substantial public benefits that it considers exist for the authorised development.

11.12. The Applicant also refers to the justification for compulsory acquisition powers that is outlined in the Statement of Reasons [CR1-013].

#### **12. Issue 12 – insurance (paragraphs 23 and 24)**

12.1. These paragraphs are in substantially the same form as SABIC's updated preferred protective provisions [REP7a-069], in which SABIC has now adopted the Applicant's proposed inclusion of the words "or any contractor carrying out such works on behalf of the undertaker" in parentheses.

12.2. This minor amendment did not prejudice SABIC's level of protection, but provides a degree of flexibility by confirming that the approved policy of insurance can be taken out by the relevant contractor rather than necessarily in the undertaker's own name.

12.3. The practical effect in terms of the protection afforded to SABIC is no different: the insurance will still be on the approved terms and will still be in place at the relevant times.

12.4. The Applicant's preferred drafting also accords with the relevant protective provisions in the NZT DCO on this point (see paragraph 206 in Part 16 of Schedule 12 to the NZT DCO).

12.5. This Issue has accordingly now been resolved in favour of the Applicant's proposed approach.

#### **13. Issue 13 – costs recovery and duty to mitigate (paragraph 25)**

13.1. The Applicant's preferred drafting in paragraph 25 of Schedule 34 to the dDCO provides sufficient protection to SABIC as it covers the scope of the damage, service interruption or supply of goods that SABIC is most likely to suffer as a result of the works referred to in paragraph 4 of the protective provisions.

13.2. The Applicant should not be responsible for paying for any unreasonable costs incurred by SABIC, hence the inclusion of a 'reasonableness' standard in paragraphs 25(1) and (2). This is also consistent with paragraph 25(7) of the protective provisions. The inclusion of this 'reasonableness' standard is preceded in various bespoke protective provisions, including those which apply expressly and specifically for the benefit of SABIC (see, for example paragraphs 56 (Air Products PLC), 68 (CATS North Sea Limited), 86 (CF Fertilisers UK Limited), 94 (Exolum Seal Sands LTD and Exolum Riverside LTD), 102 (Ineos Nitriles (UK) Limited), 141 (National Powergrid (Northeast) PLC), 157 (NPL Waste Management Limited), 208 (Sabic Petrochemicals UK Limited), 224 (Sembcorp Protection Corridor), 255 (Suez Recycling and Recovery UK Limited), 268 (South Tees Development Corporation), 295 (The Breagh Pipeline Owners), 304 (Teesside Windfarm Limited), 327 (Huntsman Polyurethanes (UK) Limited), 348 (Northumbrian Water Limited), 361 (Northern Gas Networks Limited), 371 (NT Group) and 400 (TGLP, TGPP and NGPL) of Parts 5-9, 12-13, 16-17, 19-23 and 25-28 respectively of Schedule 12 to the NZT DCO).

13.3. The scope of compensation included in paragraph 25(2)(b) is broad enough to cover the types of expenses, losses etc. SABIC is likely to suffer as a result of the damage, service interruption or supply of goods contemplated by paragraph 25(1)(a). This is consistent with the protective provisions for the benefit of SABIC in the NZT DCO (see paragraph 208 in

- Part 16 of Schedule 12) as well as the examples listed in paragraph 13.2 above. Conversely, the scope of compensation sought by SABIC goes far beyond this and is unreasonable.
- 13.4. The Applicant should not be liable for consequential loss, indirect loss or loss of profits as these losses are far too remote from, and lack a causal link to, the damage or interruption to service or supply of goods contemplated by paragraph 25. As such, the exclusion in paragraph 25(3)(b) is appropriate. Paragraph 25(3)(b) is preceded in the protective provisions for the benefit of Navigator Terminals in NZT DCO (see paragraph 338(2)(b) in Part 24 of Schedule 12) as well as the bespoke protective provisions elsewhere in that Order (see for example, paragraphs 109(2)(b) (Marlow Foods Limited), 125(3) (Railway Interests), 255(2)(b) (Suez Recycling and Recovery UK Limited), 295(2)(b) (The Breagh Pipeline Owners) and 361(4)(b) (Northern Gas Networks Limited) of Parts 10-11, 19, 21 and 26 respectively of Schedule 12 to the NZT DCO).
- 13.5. The Applicant should not be liable for any act, neglect or default of SABIC and therefore the inclusion of paragraph 25(3)(a) is appropriate. Conversely, the proviso in paragraph 25(2) of SABIC's updated preferred protective provisions [REP7a-069] is not appropriate: if the undertaker is required to carry out works in accordance with plans approved by SABIC or in accordance with requirements imposed by SABIC's engineer or under its supervision then it is fundamentally inappropriate for the undertaker to be exposed to liability if damage arises as a result of the matters which SABIC has itself required and imposed upon the undertaker where the undertaker is not responsible and not at fault.
- 13.6. Paragraph 25(4) balances the need between the Applicant approving claims or demands it is going to pay for, and any burden imposed on SABIC for seeking such approvals from the Applicant. It is appropriate for SABIC to seek the Applicant's consent before it settles or makes any compromise of any claim or demand, given the Applicant is the party that is ultimately going to pay for such claim or demand.
- 13.7. The Applicant also requires oversight of and a level of control over claims to be able to manage its liability. Paragraph 25(4) avoids any additional burden placed on SABIC by having to continually seek the Applicant's consent before settling or making any compromise, as in the event the Applicant withholds its consent, the Applicant is from then on responsible for resolving the claim or demand. This also enables the Applicant to have the possibility of minimising its liability, whereas SABIC would have no commercial incentive to do so because it would expect any claim to be paid by the undertaker. This is consistent with various bespoke protective provisions (see for example paragraphs 26(4) (National Grid Electricity Transmission), 41(4) (National Gas Transmission PLC), 56(3) (Air Products PLC), 68(3) (CATS North Sea Limited), 86(3) (CF Fertilisers UK Limited), 94(3) (Exolum Seal Sands LTD and Exolum Riverside LTD), 102(3) (Ineos Nitriles (UK) Limited), 109(3) (Marlow Foods Limited), 141(3) (Northern Powergrid (Northeast) PLC), 157(3) (NPL Waste Management Limited), 170(3) (PD Teesport Limited), 208(4) (Sabic Petrochemicals UK Limited), 224(3) (Sembcorp Protection Corridor), 240(3) (Anglo American), 255(3) (Suez Recycling and Recovery UK Limited), 268(3) (South Tees Development Corporation), 295(3) (The Breagh Pipeline Owners), 304(3) (Teesside Windfarm Limited), 327(4) (Huntsman Polyurethanes (UK) Limited), 348(3) (Northumbrian Water Limited), 361(5) (Northern Gas Networks Limited) and 400(3) (TGLP, TGPP and NGPL) of Parts 3, 4-10, 12-14, 16-23, 25-26 and 28 respectively of Schedule 12 to the NZT DCO).
- 13.8. Following review of SABIC's updated preferred protective provisions [REP7a-069], the Applicant understands that SABIC has now adopted the Applicant's proposed wording for paragraph 25(4).
- 13.9. Paragraph 25(7) requires SABIC to use reasonable endeavours to mitigate its loss, costs etc. This is not an onerous standard and simply involves SABIC taking reasonable steps,

where it is appropriate to do so, in order to reduce the scale of any losses. This is a standard approach in the industry and more widely in commercial arrangements. As an example, if there was a water leak in your house, you would be incentivised to ‘turn off’ the water tap. Paragraph 25(7) seeks to require SABIC to take no more than that kind of common sense step to mitigate both parties’ financial exposure.

13.10. It is also clearly appropriate for SABIC to take reasonable steps to mitigate or minimise part of its losses, even if the whole of the loss in question cannot be avoided completely, as proposed in the Applicant’s preferred protective provisions.

13.11. The Applicant’s preferred wording of paragraph 25(7) is also consistent with other statutory liabilities of this nature under various bespoke protective provisions, including specifically in favour of SABIC (see for example paragraphs 14(4) (Operators of Electronic Communications Code Networks), 26(5) (National Grid Electricity Transmission), 41(5) (National Gas Transmission PLC), 56(4) (Air Products PLC), 86(5) (CF Fertilisers UK Limited), 94(4) (Exolum Seal Sands LTD and Exolum Riverside LTD), 102(4) (Ineos Nitriles (UK) Limited), 109(4) (Marlow Foods Limited), 141(4) (Northern Powergrid (Northeast) PLC), 157(4) (NPL Waste Management Limited), 170(5) (PD Teesport Limited), 185(4) (Redcar Bulk Terminal Limited), 208(7) (Sabic Petrochemicals UK Limited), 224(4) (Sembcorp Protection Corridor), 240(5) (Anglo American), 255(4) (Suez Recycling and Recovery UK Limited), 268(4) (South Tees Development Corporation), 295(4) (The Breagh Pipeline Owners), 304(5) (Teesside Windfarm Limited), 327(7) (Huntsman Polyurethanes (UK) Limited), 338(4) (Navigator Terminals Seal Sands Limited), 348(4) (Northumbrian Water Limited), 361(3) (Northern Gas Networks Limited), 371(4) (NT Group), 400(4) (TGLP, TGPP and NGPL) of Parts 2-10, 12-28, respectively of Schedule 12 to the NZT DCO).

13.12. Where SABIC is under a duty to mitigate its loss, costs etc. per paragraph 25(7), it is also reasonable and proportionate for SABIC to be required to show the Applicant how it has complied with this duty by minimising any claim, if requested by the Applicant, per the requirement in paragraph 25(7). This is consistent with various bespoke protective provisions, including those applicable specifically to SABIC (see for example paragraphs 26(5) (National Grid Electricity Transmission), 41(5) (National Gas Transmission PLC), 56(4) (Air Products PLC), 68(4) (CATS North Sea Limited), 86(5) CF Fertilisers UK Limited, 94(4) (Exolum Seal Sands LTD and Exolum Riverside LTD), 102(4) (Ineos Nitriles (UK) Limited), 109(4) (Marlow Foods Limited), 141(4) (Northern Powergrid (Northeast) PLC), 157(4) (NPL Waste Management Limited), 170(5) (PD Teesport Limited), 208(7) (Sabic Petrochemicals UK Limited), 224(4) (Sembcorp Protection Corridor), 240(5) (Anglo American), 255(4) (Suez Recycling and Recovery UK Limited), 268(4) (South Tees Development Corporation), 295(4) (The Breagh Pipeline Owners), 304(5) (Teesside Windfarm Limited), 327(7) (Huntsman Polyurethanes (UK) Limited), 348(4) (Northumbrian Water Limited), 361(3) (Northern Gas Networks Limited) and 371(4) (NT Group) of Parts 3-10, 12-14, 16-23, 25-27 respectively of Schedule 12 to the NZT DCO).

#### **14. Issue 14 – dispute resolution mechanism (paragraph 31)**

14.1. This paragraph is in substantially the same form as SABIC’s updated preferred protective provisions [REP7a-069], save for the following minor amendments.

14.2. A new sub-paragraph 31(3)(c)(ii) has been inserted to confirm the relevant decision period if no submissions are in fact submitted to the arbitrator under sub-paragraph (b).

14.3. A new sub-paragraph (4) has also been inserted (with a consequential amendment to sub-paragraph (2)) to clarify what is to happen if the arbitrator fails to determine the matter referred within the relevant time limit. This is in order to avoid unnecessary delays to programme as a result of the dispute resolution process.

- 14.4. The mechanism in sub-paragraph (4)(b) entails, effectively, the referral of the dispute to a new arbitrator to whom copies of the existing documents will be provided so as to enable the new arbitrator to proceed straight to a decision. This avoids the need for the parties to incur the cost and inconvenience of re-litigating the entire arbitration process as a result of the arbitrator's failure to issue his decision timeously.
- 14.5. Sub-paragraph (4)(a) is justified because it will only be engaged if the arbitrator has failed to comply with his statutory duty to issue a decision timeously. There is no reason why SABIC or the undertaker should be obliged to pay the arbitrator's fees in those circumstances i.e. where the arbitrator has quite simply failed to deliver the service required.