

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 8

SABIC'S DEADLINE 8 REPLY TO

THE APPLICANT'S DEADLINE 7A "PROTECTIVE PROVISIONS

POSITION STATEMENT WITH SABIC" [REP7a-030]

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 On 10 February 2025 the ExA published a Rule 17 request for further information (**Rule 17 Request**).
- 1.4 On 17 February 2025 at Deadline 7A SABIC submitted its Response to the ExA's Rule 17 Request [REP7a-069].
- 1.5 Also at Deadline 7A the Applicant submitted its "Protective Provisions Position Statement with SABIC" [REP7a-030] (**Applicant's Position Statement**).
- 1.6 This document provides a substantive response to the Applicant's Position Statement.
- 1.7 SABIC had understood, until it received notification of the Applicant's Position Statement, that the Applicant would insist on the protective provisions in favour of SABIC contained in the Net Zero Order being duplicated in this Order.
- 1.8 The Applicant's Position Statement renders SABIC's Deadline 7A Response to the ExA's Rule 17 Request [REP7a-069] somewhat out of date.
- 1.9 This document therefore:
 - 1.9.1 Provides updated answers to questions 2 and 5 of the Rule 17 Request (Sections 2 and 3 of this document);
 - 1.9.2 Sets out SABIC's preferred protective provisions (Annex 1);
 - 1.9.3 Includes a table (Annex 2) highlighting:
 - (a) Areas of remaining disagreement with the Applicant;
 - (b) The reason for the disagreement;
 - (c) The consequences if the disagreement is not resolved in SABIC's favour.

2. **UPDATED RESPONSE TO RULE 17 REQUEST, QUESTION 2**

2. The Examining Authority (ExA) would invite all IPs to summarise their position, in regard to:
 - i) any outstanding objection(s);
 - ii) Protective Provisions (PP);
 - iii) CA/ temporary possession; and
 - iv) 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.

2.1 Question 2(i)

- 2.1.1 SABIC's objection to the scheme remains, unless protective provisions in the form set out in Annex 1 are included in the Order. The Applicant's Deadline 7A draft DCO [REP7a-003] 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 7A draft DCO [REP7a-003]. In particular they do not address SABIC's key concerns as set out in paragraphs 4 of the Summary and Conclusions section of SABIC's Closing Submissions:
- (a) Suitable protections from compulsory acquisition and temporary possession;
 - (b) Protection for SABIC Petrochemicals BV; or
 - (c) Suitable and adequate indemnity,
- 2.2.3 In addition they do not provide protection for the Brinefields or the Wilton to Grangemouth Ethylene Pipeline (**WGEP**). 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 7A draft DCO [REP7a-003] does not include adequate 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 8 no agreement has been reached.
- 2.4.2 The timing of the provision of a costs undertaking by the Applicant, together with the unexpected imposition of Deadline 7A in respect of the EXA's Rule 17 Request has mean that SABIC has had to focus on meeting Examination deadlines which has limited progress.
- 2.4.3 SABIC intention is to continue to negotiate with the Applicant following the closure of the Examination to see whether agreement can be 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 confirmation 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 has 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.

3.2.2 Until Deadline 7A the reason for disagreement between the parties has been the Applicant's insistence that the protective provisions in the Order must be Net Zero DCO protective provisions unamended and in their entirety.

3.2.3 SABIC has expended a large amount of time and effort the Examination explaining why those provisions are inadequate and defective. Further, although SABIC has based its preferred protective provisions on those included in the York Potash DCO, on two occasions (at Deadline 6 and 7A) 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.

3.2.4 In the face of these efforts the Applicant remained wholly inflexible in its position and had not taken any steps to explain or comment on why SABIC's preferred drafting is problematic or should be rejected. It took no steps to modify its draft protections or reciprocate SABIC's attempts to reach concessions.

3.2.5 The Applicant's Position Statement has only now changed this position, at a time when there is less than 2 weeks of the Examination remaining.

3.2.6 Although the Applicant's Position Statement has moved their drafting closer to SABIC's, it is important to note two points. The first is that some of that drafting was adopted by SABIC at Deadlines 6 and 7A directly as an accommodation of the Applicant's concerns. In other words the parties have moved together on a number of points. A key example is the drafting relating to the diversion of SABIC's Apparatus.

3.2.7 Most importantly, however, the parties have been unable to agree on the following issues of fundamental importance to SABIC:

- (a) The need for SABIC's consent (or consent by an arbitrator) before the Applicant can use compulsory acquisition and temporary possession powers (sub-paragraphs 22(1) to (5) of SABIC's Deadline 8 Protective Provisions);
- (b) the exclusion of SABIC Petrochemicals BV from the protection of the indemnity and insurance provisions (the definition of "SABIC" in paragraph 2(1) of SABIC's Deadline 8 Protective Provisions, applying paragraphs 1, 22 to 28, 30 and 31 to SABIC Petrochemicals BV); and
- (c) the terms of the indemnity itself (sub-paragraph 25(2) of SABIC's Deadline 8 Protective Provisions).

These are set out in more detail in paragraph 8 of SABIC's Summary and Conclusion Section to its Closing Submissions.

- 3.2.8 SABIC considers each of these provisions critical to protect its operations and indeed the wider national UK ethylene production and distribution network. Together, they are the points of principle which constitute the key reasons why SABIC has taken such an active role in the Examination.

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. It has not been possible to progress these negotiations in the run up to Deadlines 7A or 8.

Womble Bond Dickinson (UK) LLP

24 February 2025

ANNEX 1

SABIC'S DEADLINE 8 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(a), 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;

^a 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 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 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 or the specified person 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 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.

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) 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.

(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) 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 not materially 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(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 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 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 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 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 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) or, if no comments are received, the expiry of the 21 day period specified in sub-paragraph (b); and
- (d) give reasons for the 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;
- (i) any other important and relevant consideration.

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(a)), 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;

^a 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 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 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 or the specified person 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 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.

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) 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.

(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) 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 not materially 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(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 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 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 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 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) or, if no comments are received, the expiry of the 21 day period specified in sub-paragraph (b); and
- (d) give reasons for the 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;
- (i) any other important and relevant consideration.

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(a)), 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;

^a 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 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 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 or the specified person 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 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.

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) 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.

(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) 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 not materially 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(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 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 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 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 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) or, if no comments are received, the expiry of the 21 day period specified in sub-paragraph (b); and
- (d) give reasons for the 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;
- (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

NOTE ON THE TABLE		
<p>Column (1) shows the text of the Applicant's Deadline 7A Protective Provisions in black. This is agreed text.</p> <p>Coloured text is either:</p> <p>Blue underlined text: alternative drafting of SABIC.</p> <p>Red underlined text: text deleted by SABIC</p>	<p>Column (2) copies and contextualises the text set out in the Applicant's Deadline 7A "Protective Provisions Position Statement with SABIC" [REP7a-030]</p>	<p>Column (3) sets out SABIC's responses to the Applicant's Deadline 7A "Protective Provisions Position Statement with SABIC" [REP7a-030] on a paragraph -by-paragraph basis. It indicates where the parties agree, and also explains why SABIC's position is to be preferred where there is disagreement.</p> <p>Some of SABIC's text or deletions are not referred to in the Applicant's text. These are coloured in red text below.</p>
(1) TEXT OF THE DCO	(2) APPLICANT'S COMMENTS AND JUSTIFICATION	(3) SABIC'S JUSTIFICATION AND RESPONSES
<p>SCHEDULE 34</p> <p>Article 41</p> <p>PROTECTIVE PROVISIONS OR THE PROTECTION OF SABIC PETROCHEMICALS UK LIMITED</p>		<p>"SABIC PETROCHEMICALS UK LIMITED":</p> <p>SABIC has two objections:</p> <p>(1) This is not SABIC's name. The correct name is SABIC UK Petrochemicals Limited</p> <p>(2) This does not reflect the fact that the Protective Provisions protect not only SABIC UK Petrochemicals Limited, but also – even in the Applicant's drafting – also cover SABIC Tees Holdings Limited.</p>
<p>BENEFIT OF PROTECTIVE PROVISIONS</p> <p><u>1.-(1-)</u> The following provisions of this Schedule have effect for the benefit of SABIC, unless otherwise agreed between the undertaker and SABIC.</p> <p><u>(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)—</u></p> <p><u>(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</u></p> <p><u>(b) written notice of the transfer or grant must be given to SABIC on or before the date of that transfer or grant.</u></p> <p><u>(3) Sub-paragraph (2) applies to any agreement—</u></p> <p><u>(a) which states that it is "entered into for the purposes of the SABIC Protective Provisions"; and</u></p> <p><u>(b) whether entered into before or after the making of this Order.</u></p>	<p>1. Issue 1 – transfer of agreements and grant of consent</p> <p>1.1 Schedule 34 paragraph 1 of the dDCO omits the sub-paragraphs (2) to (4) contained within SABIC's preferred protective provisions [REP6-010].</p> <p>1.2. Sub-paragraphs (2) and (3) are only engaged where the Applicant and SABIC have reached a 'side agreement' as to the appropriate form of protective provisions. Such agreement has not been reached between the parties despite the significant efforts and time expended by the Applicant.</p> <p>1.3. In this regard, the Applicant's solicitors returned the travelling draft of the side agreement and protective provisions appendix to SABIC's lawyers on 30 January 2025. No substantive response has been received from SABIC since then, nor any acknowledgement of receipt.</p> <p>1.4. It appears to the Applicant that SABIC may have decided to stop or pause the bilateral negotiations. In these circumstances, the Applicant considers that it is now highly unlikely that a side agreement will be concluded during the examination and, accordingly, sub-paragraphs (2) and (3) no longer serve a useful purpose.</p>	<p>1.2 Agreed</p> <p>1.3 It is usual for an Applicant to pay the costs of an Interested Party in relation to the negotiation of a side agreement. Although a side agreement and amended protective provisions were provided to SABIC, the Applicant was aware that SABIC needed its costs to be covered before it would review them. The undertaking was not provided until 11 February, meaning that SABIC was faced with either responding to Examination Deadline 7A or engaging with the Applicant in relation to the Side Agreement in the remaining 4 working days</p> <p>1.4 In light of the above it is unfair to characterise SABIC's approach as deciding to stop or pause bilateral negotiations and nor is that a reasonable conclusion to have made.</p> <p>Moreover, sub-paragraphs (2) and (3) have no effect if an agreement is not reached. The Applicant does not state an objection in principle to these sub-paragraphs applying or appear to be arguing that it would be unreasonable for them to apply. SABIC considers that these paragraphs are entirely reasonable</p>

<p>(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.</p>	<p>1.5. With respect to sub-paragraph (4), REP6-010 provides no explanation as to why this has been included. 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:</p> <p>1.5.1. 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;</p> <p>1.5.2. Article 43(2) requires that consent must not be unreasonably withheld 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</p> <p>1.5.3. 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).</p> <p>1.6. Articles 43(3) and (4) do not apply to the SABIC protective provisions.</p>	<p>and should be included in the made DCO given that the Examining Authority would no doubt urge the parties to continue to seek agreement after the Examination comes to a close.</p> <p>1.5 Article 43 appears to be novel DCO drafting. Certainly the Applicant's Explanatory Memorandum [REP7a-008] cites no precedent for its inclusion. SABIC is not arguing that the principle is unacceptable; rather it is novel drafting and that protective provisions generally therefore generally deal with freestanding drafting.</p> <p>SABIC's protective provisions originally made provision for the matters dealt with in Article 43 of the draft DCO on a paragraph-by-paragraph basis [REP6-010]. At Deadline 7A SABIC conceded the principle of setting out a more general clause in paragraph 2(2) dealing with the matters set out in Article 43.</p> <p>The Applicant's insistence on both article 43 and paragraph 2(2) is duplicative and runs the danger of creating a conflict between article 43 and those specific provisions. See in particular SABIC's response to the Applicant's paragraph 1.5.3 Comments below.</p> <p>1.5.1. SABIC's protective provisions already provide for consents (for example paragraph 7(1)(a) in relation to deeming provisions.</p> <p>1.5.2 SABIC's protective provisions include this provision at paragraph 2(2)(a).</p> <p>1.5.3 SABIC's protective provisions include specific deeming provisions with specific provisions as to timings. For example paragraph 7(1)(a) provides a 45 day deeming period. The Applicant has not previously raised an issue with the length of time set out in any of these deeming provisions.</p>
<p>INTERPRETATION</p> <p>2.2.—(1) In this Schedule— “access roads” means the access roads within the Order limits—</p> <p>(a) giving access to pipelines or the protected crossing; or (b) within or giving access to the Wilton Complex, the North Tees facilities Facilities and the Brinefields;</p>		

“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 ~~the an~~ identified ~~powers~~ 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) ~~(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 1962, 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.

“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;

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

2.1. The definitions that are contained in Schedule 34 to the draft DCO differ from those contained in SABIC’s preferred protective provisions [REP6-010].

2.2. Brinefields, Wilton Complex, North Tees facilities: these definitions proposed by SABIC rely upon the relevant areas of land being shown on accompanying plans. The Applicant has 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. In these circumstances, the definitions of these areas proposed by SABIC simply do not ‘work’ because there are no supporting plans, and the Applicant is unable to produce its own plans because SABIC has not explained where these areas of land are located or how they have been identified.

2.4. In these circumstances:

2.4.1. the definitions of the ‘Brinefields’ and ‘Wilton Complex’ have not been included in the dDCO;

2.4.2. any references to them have been omitted; and

2.4.3. the definitions of the ‘North Tees facilities’ and the ‘pipeline corridor’ from Schedule 12, Part 16 of the Net Zero Teesside Order 2024 (“NZA DCO”) (which contains functionally equivalent protective provisions in favour of SABIC) have been incorporated in order to identify these areas in a manner consistent with this recent order.

2.1 SABIC’s Deadline 7A protective provisions [REP7a-069] include a definition of the Brinefields.

2.2 Having assembled the Book of Reference submitted with the Application, the Applicant is well aware of the land which SABIC has an interest in and where the Brinefields and Wilton Complex are located. Moreover, SABIC has sent plans and drawings to the Applicant in respect of the Brinefields, WGEP and Compound 28, but these have not been acknowledged and no clarifications have been requested.

2.3 Further, the Applicant has tacitly acknowledged in its definition of the “North Tees Facilities” that plans are not necessary, and indeed such a definition was accepted in the Net Zero Order. SABIC’s definitions reflect this approach.

2.4.1 SABIC’s Deadline 7A protective provisions [REP7a-069] include a definitions for “Brinefields” and “Wilton Complex” which are also included at Deadline 8.

2.4.2 Accordingly SABIC’s Deadline 8 Protective Provisions retain reference to “Brinefields” and “Wilton Complex”

2.4.3 SABIC’s protective provisions also include definitions of the “North Tees facilities” and the “pipeline corridor” which are dealt with separately below.

<p>“damage” includes all damage to apparatus including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;</p>		
<p>“engineer” means an independent engineer appointed by SABIC for the purposes of this Order;</p> <p>“identified powers” means the powers conferred by the following provisions of this Order—</p> <ul style="list-style-type: none"> (a) (a) article 11 (street works); (b) (b) article 12 (construction and maintenance of new or altered means of access); (c) (c) article 13 (temporary closure of streets and public rights of way); (d) (d) article 14 (access to works); (e) (e) article 17 (discharge of water); (f) (f) article 20 (authority to survey and investigate the land); (g) (g) article 22 (compulsory acquisition of land); (h) (h) article 23 (power to override easements and other rights); (i) (i) article 25 (compulsory acquisition of rights etc.); (j) (j) article 26 (private rights); (k) (k) article 28 (acquisition of subsoil or airspace only); (l) (l) article 31 (rights under or over streets); (m) (m) article 32 (temporary use of land for carrying out the authorised development); and (n) (n) article 33 (temporary use of land for maintaining the authorised development); <p>“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;</p>	<p>Engineer: this definition has been amended to clarify that the engineer is to act as an independent professional observer, rather than a partisan representative. This accords with the overall public interest in ensuring the safe implementation of the Proposed Development. The cost of providing the engineer is borne by the undertaker under paragraph 25(1)(b), not SABIC.</p>	<p>"engineer": This definition is agreed.</p>
<p>“North Tees Facilities” means the site at North Tees Works at which SABIC operates various facilities SABIC's land at Huntsman Drive and Riverside Road, Seal Sands, registered at the Land Registry under title numbers CE149851, CE149852 and CE149853;</p> <p>“operator” means any person who is responsible for the construction, operation, use, maintenance or renewal of any pipeline;</p>		<p>SABIC's Deadline 7A protective provisions [REP7a-069] included a revised definition to reflect that plans would not be provided.</p>
<p>“owner” means—</p> <ul style="list-style-type: none"> (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 		<p>The definition of "owner" was excluded from SABIC's Deadline 7A protective provisions [REP7a-069] and is similarly excluded in its Deadline 8 protective provisions as it is not needed. The protective provisions provide specific protections for SABIC.</p>

<p>(iii) with a pipeline or proposed pipeline in, on, under or over the pipeline corridor;</p> <p>(b) in relation to the access roads, any person—</p> <p>(i) with an interest in the access roads; or</p> <p>(ii) with private rights of way on or over the access roads;</p> <p>(c) in relation to the protected crossing, any person—</p> <p>(i) with an interest in the protected crossing;</p> <p>(ii) with rights in relation to the protected crossing; or</p> <p>(iii) with pipelines in or comprising the protected crossing; and</p> <p>(d) in relation to protected land means any person falling within paragraphs (a) to (c) above;</p>		
<p>“pipeline corridor” means the Sembcorp Protection Corridor as defined in Schedule 42 of this Order; <u>following established corridors containing the apparatus of chemical manufacturers and other industrial operators on Teesside:</u></p> <p>(a) <u>the corridor of land linking the Wilton Complex and the protected crossing;</u></p> <p>(b) <u>the corridor of land linking the protected crossing and the North Tees Facilities;</u></p> <p>(c) <u>the corridor of land linking the North Tees Facilities and the Wilton to Grangemouth Ethylene Pipeline;</u></p> <p>(d) <u>the corridor of land linking the North Tees Facilities and the Brinefields;</u></p> <p>(e) <u>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</u></p> <p>(f) <u>the corridor of land containing the buried Wilton to Grangemouth Ethylene Pipeline including the land known as SABIC Compound 38;</u></p> <p>“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;</p> <p>“pipeline survey” means a survey of the pipeline corridor and the protected crossing to establish (if not known)—</p> <p>(a) (a) the precise location of the pipeline <u>pipelines</u> and the protected crossing;</p> <p>(b) (b) the specification of the pipelines and <u>the</u> protected crossing including, where relevant, their composition, diameter, pressure and the products they are used to convey;</p> <p>(c) (c) any special requirements or conditions relating to the</p>		<p>SABIC's Deadline 7A protective provisions [REP7a-069] included a revised definition to reflect that plans would not be provided.</p> <p>The Applicant's protective provisions do not work in this regard because the pipeline corridors to be protected include land which is not operated by Sembcorp, specifically the Wilton to Grangemouth Ethylene Pipeline (WGEP).</p>

<p>pipelines which differ from the requirements or conditions applying to standard pipelines of that type;</p> <p>(d) (d) the precise location of any easement widths or rights (where it is reasonably possible to establish this);</p> <p>“protected crossing” means the tunnel which carries pipelines under the River Tees known as Tunnel 2;</p> <p>“protected land” means such parts of the Order land as fall within—</p> <p>(a) (a) the access roads;</p> <p>(b) (b) the pipeline corridor;</p> <p>(c) (c) the protected crossing; and</p> <p>(d) <u>the Wilton Complex;</u></p> <p>(e) (e) the North Tees Facilities; <u>and</u></p> <p>(f) <u>the Brinefields</u></p> <p>“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;</p>		
<p>“SABIC” means—;</p> <p>(a) SABIC UK Petrochemicals Limited (company number <u>Company Number</u> 03767075) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF; and</p> <p>(b) SABIC Tees Holdings Limited (company number <u>Company Number</u> 06009440) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF,</p> <p>and any successor in title to SABIC's rights and interests in the protected land, <u>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;</u></p>	<p>2.6. SABIC: this definition mirrors that contained in SABIC's preferred protective provisions [REP6-010], save for the omission of references to SABIC BV.</p> <p>2.7. 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.</p> <p>2.8. 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:</p> <p>2.8.1. 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.</p>	<p>2.7 SABIC can confirm that SABIC Petrochemicals BV does not own and operate any apparatus or other infrastructure.</p> <p>2.8 This is an area of substantive disagreement between the parties. SABIC avers strongly that this would be entirely appropriate. See Section 4.4 of SABIC's Closing Submissions.</p> <p>2.8.1 The Applicant is only partly correct. Protective provisions can be used for a variety of purposes to mitigate unacceptable effects of the development on third parties. In fact their remit is far broader, and they can equally protect statutory bodies such as the Environment Agency and Port Authorities.</p> <p>Ultimately, in this case, SABIC is asking for protective provisions to protect the ongoing integrity and viability of its operations and to ensure that its operations are able to continue notwithstanding the construction of the authorised development.</p> <p>It is accepted that a key aspect of protective provisions is to protect the integrity of apparatus operated by those protected.</p> <p>However, it is also well-established that protective provisions have a role in protecting the financial position of the person affected, because otherwise the authorised development could cause the third party to suffer significant financial loss and even put their future operations at risk.</p> <p>The Examining Authority will note that protection against these types of losses occurs frequently in the Applicant's Deadline 7A DCO [REP7a-003]. Examples include the protective provisions in Schedule 19 in favour of National Grid Electricity Transmission Plc (see the indemnity at paragraph 10) and those in</p>

	<p>2.8.2. 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 in any different manner than 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.</p>	<p>Schedule 20 in favour of National Gas Transmission Plc (see the indemnity at paragraph 11).</p> <p>It just so happens that SABIC's business is set up differently in that the apparatus is operated by one group company, SABIC UK Petrochemicals Limited, whilst the inventory (ie the contents of the pipelines) is owned by a different group company (SABIC Petrochemicals BV).</p> <p>This reflects the international, transcontinental nature of SABIC's ethylene production and supply business, a feature which is not present in the same way in the domestic operations of National Grid Electricity Transmission Plc or National Gas Transmission Plc.</p> <p>This situation is relatively unusual, however SABIC has tried to find middle ground with the Applicant by:</p> <ul style="list-style-type: none">(a) Deleting references to "inventory owner" and including the specific name of the person for whom protection is sought; and(b) Limiting the protections which apply to SABIC Petrochemicals BV to insurance, costs and indemnities. <p>SABIC is not seeking to extend the protection beyond a single named company within the SABIC group of companies. The reason for this are set out in Section 4.4 of SABIC's Closing Submissions.</p> <p>As demonstrated above, the usual position in protective provisions is that the owner of the inventory carried in a pipeline which is owned and operated by the same person will benefit from indemnity provisions in the order.</p> <p>The Applicant should not be allowed to escape liability under the protective provisions just because the nature of SABIC's international business means that its business operations are split in this way, especially when their works could cause such significant losses for SABIC Petrochemicals BV.</p> <p>As stated above, this protection simply puts SABIC as a business in the same position as, for example, National Grid Electricity Transmission Plc or National Gas Transmission Plc are in by virtue of their protective provisions.</p> <p>2.8.2 The rationale for including SABIC Petrochemicals BV as inventory owner is set out in Section 4.4 of SABIC's Closing Submissions.</p> <p>Its position is further explained in SABIC's response to the Applicant's paragraph 2.8.1 comments (see above).</p> <p>The Applicant's "Big Yellow Box" analogy is specious. SABIC is not asking for the protective provisions to protect a variety of unconnected, unknown third parties. Rather it is asking specific protection for a single group company because of specific circumstances which arise as a result of the international nature of its business. That protection does not put the Applicant in a different position vis-à-vis SABIC's apparatus from that which would apply in relation to other more usual protective provisions.</p>
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	<p>2.8.3. The Applicant has been unable to identify any precedent for an inventory owner (without more) to be made the beneficiary of protective provisions in any made 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.</p>	<p>2.8.3 A full explanation as to why this protection is necessary is set out in Section 4.4 of SABIC's Closing Submissions.</p> <p>As stated above, inventory owners benefit from protective provisions all the time. It just happens that the inventory owner and the owner of the apparatus is usually the same legal person.</p>
<p>"specified person" means—</p> <p>the (a) Company Secretary, SABIC UK Petrochemicals Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF in relation to SABIC UK Petrochemicals Limited;</p> <p>or (b) Company Secretary, SABIC Tees Holdings Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF in relation to SABIC Tees Holdings Limited, or</p> <p>such other person or address within the United Kingdom as each of these personsthey may notify to the undertaker in writing;</p> <p>"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;</p> <p><u>"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;</u></p> <p>"works details" means the following—</p> <p>(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;</p> <p>(b) (b)—details of any proposed temporary crossing points;</p> <p>(c) (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;</p> <p>(d) (d)—details of methods and locations of any piling proposed to be undertaken under paragraph 11;</p> <p>(e) (e)—details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 12;</p> <p>(f) (f)—details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 13;</p> <p>(g) (g)—details of the location of any pipelines affected by the oversailing provisions in paragraph 14, including details of the proposed clearance;</p> <p>(h) (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;</p> <p>(i) (i)—details of the undertaker and their principal contractors'</p>	<p>2.9 Specified persons: the definition in Schedule 34 of the dDCO is the same save for the insertion of a requirement for any alternative person or address nominated to be located within the United Kingdom. Both SABIC entities are UK companies with the apparatus itself located on Teesside, and it would be therefore be disproportionate for the undertaker to be obliged to remit notices to an overseas address.</p>	<p>2.9 SABIC is content for any alternative address to be in the UK</p> <p>SABIC is content for this definition to solely name SABIC UK Petrochemicals Limited, and this is reflected in the additional amendments.</p> <p>"Wilton Complex": SABIC's Deadline 7A protective provisions [REP7a-069] included a revised definition to reflect that plans would not be provided.</p>

<p>management of change procedures;</p> <p>(j) (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;</p> <p>(k) (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;</p> <p>(l) (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;</p> <p>(m) (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;</p> <p>(n) (n)—details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators; and</p> <p>(o) <u>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</u></p> <p>(p) (p)—any further particulars provided in accordance with paragraph 4(2).</p>		<p>(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.</p> <p>The Applicant appears to have accepted SABIC's drafting in relation to cathodic protection elsewhere (for example sub-paragraph (k)) and it is unclear why it has not accepted it here.</p>
<p>(2) (2) Where <u>Except in relation to paragraphs 1, where</u> this Schedule provides that the acknowledgement, approval, agreement, consent or authorisation of SABIC or the specified persons is required for any thing (or that any thing must be done to SABIC's reasonable satisfaction) —</p> <p>(a) (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</p> <p>(b) (b)—the grant or issue of such acknowledgement, approval, <u>agreement,</u> 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</p>	<p>1.7. Sub-paragraph 2(2) does not appear in SABIC's preferred protective provisions [REP6-010], but its inclusion is necessary in order to address two particular features of the SABIC protective provisions:</p> <p>1.7.1. Sub-paragraph (2)(a): supplements article 43(2) of the dDCO by making clear that the duty not to withhold or delay the giving of consent, &c. unreasonably applies to both the SABIC entities and the specified persons for the purposes of this specific Schedule.</p> <p>1.7.2. As set out above, the Applicant does not understand that SABIC contends that it should be permitted to act in an unreasonable or capricious manner when discharging its functions under this Schedule, and this should apply equally to the specified persons when discharging those functions.</p> <p>1.7.3. Sub-paragraph (2)(b): as set out in the definition of SABIC, there are two corporate entities involved. This sub-paragraph makes clear that it is sufficient for consent to be granted by one of the SABIC entities on behalf of both of them.</p>	<p>1.7 Paragraph 2(2) <u>does</u> appear in SABIC's Deadline 7A protective provisions [REP7a-069].</p> <p>1.7.1 SABIC has conceded the inclusion of paragraph 2(2) in the Protective provisions. However it considers that Sub-paragraph 2(2)(a) is not supplementary but duplicative.</p> <p>As stated above in response to paragraph 1.5 of the Applicant's comments, article 43(2) is a novel drafting and it is therefore usual for protective provisions to make their own provision for the matters dealt with under that Article.</p> <p>1.7.2 SABIC is content that the specified person should be under a duty to act reasonably. Although this paragraph was originally omitted because the "specified person" simply acted as an address for service, the Applicant's amendments now require them to acknowledge receipt of works details, and they can be included to acknowledge this change of function.</p> <p>1.7.3 SABIC broadly accepted this drafting in its Deadline 7A protective provisions [REP7a-069].</p> <p>There remains are two key differences between the parties.</p>

<p>(1) (as the case may be) shall constitute approval, agreement, consent or authorisation on behalf of all of them <u>except in paragraph 22 where an consent must be received from the SABIC company who owns the land, right or interest.</u></p>	<p>1.7.4. This will prevent unnecessary delays and costs for both parties by reducing the need for duplicate consents to be issued, whilst leaving the SABIC entities free to arrange their internal governance and administrative arrangements for the discharge of their functions under the Schedule in whichever manner that best suits them.</p>	<p>Firstly the definition of "specified person" has been amended so that it now refers only to SABIC UK Petrochemicals Limited. Reference to "specified persons" has therefore been removed.</p> <p>Secondly paragraph 22 has been excluded. Where consent to compulsory acquisition is required, that consent should properly be obtained from the SABIC company who holds the interest in the land.</p>
<p>PIPELINE SURVEY</p> <p>3.3.—(1) Before commencing any part of the authorised development in the pipeline corridor or which may affect the protected crossing the undertaker must—</p> <p>(a) (a) carry out and complete the pipeline survey; and</p> <p>(b) (b) comply with sub-paragraph (3) below.</p> <p>(2) (2)—The pipeline survey must be undertaken by an appropriately qualified person with at least 10 years' experience of such surveys <u>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).</u></p> <p>(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.</p>	<p>3.1 This paragraph is the same as in SABIC's preferred protective provisions [REP6-010], save that the Applicant has proposed that the survey be undertaken by an "appropriately qualified person".</p> <p>3.2 SABIC's proposal is overly narrow and no explanation or rationale has been provided for it. Nor is it readily apparent why the pipeline survey cannot equally or more effectively be carried out by an engineer or another suitably qualified professional with relevant experience of the Teesside area.</p> <p>3.3 The Applicant's preferred approach was also adopted by the Secretary of State in the NZT DCO (see paragraph 189 in Part 16 of Schedule 12 to the NZT DCO), who rejected SABIC's preferred drafting on this point.</p>	<p>3.1 This is accepted.</p> <p>"in accordance with all relevant national standards and codes ": this additional wording should be uncontentious and simply reflects the need to apply relevant codes and standards.</p> <p>"American Petroleum Institute": this reference is deliberate as they are widely used in the UK oil and gas industry.</p>
<p>AUTHORISATION OF WORKS DETAILS AFFECTING PIPELINES OR THE PROTECTED CROSSING</p> <p>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 <u>and obtain a written acknowledgement of receipt of those works details from the specified persons in relation to the affected asset concerned.</u></p> <p>(2) The undertaker must as soon as reasonably practicable provide such further particulars as SABIC may, within 30<u>45</u> days from the receipt of the works details under sub-paragraph (1), reasonably require.</p>	<p>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 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).</p> <p>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. Whilst SABIC's preferred protective provisions [REP6-010] provide for a period of 45 days, this would cause unreasonable additional delay to programme.</p> <p>4.3 A 30 day period (i.e. an entire month) is more than sufficient for SABIC to appoint external experts (if relevant), review the request for consent and inform the undertaker as to what additional information is desired, including during seasonal holiday periods.</p> <p>4.4 The Applicant's proposed 30 day period also matches that provided for in the recently made NZT DCO. SABIC has advanced no reason why the same period should be considered inappropriate now given this recent endorsement of the Applicant's position by the Secretary of State.</p>	<p>4.1 Agreed.</p> <p>4.3 SABIC does not have internal staff with the combination of technical expertise and underutilisation to immediately deal with works details submitted by this scheme, and is conscious of the number of other consented DCOs and prospective DCOs which affect its land which could compound this issue (for example York Potash, Net Zero and Lighthouse Green).</p> <p>The 45 day 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 and that that could be occurring simultaneously with other DCOs.</p>

<p>(3) Where the undertaker submits works details under sub-paragraph (1) or further particulars under sub-paragraph (2), the specified persons shall immediately<u>person shall as soon as reasonably practicable</u> provide the undertaker with a written acknowledgement of receipt in respect of those works details or further particulars (as the case may be).</p> <p>5. 5.—No part of a relevant work is to be commenced until one of the following conditions has been satisfied—</p> <ul style="list-style-type: none"> (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(4<u>3</u>); or (c) (c) authorisation is deemed to have been given in accordance with paragraph 7(1). <p>6. 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—</p> <ul style="list-style-type: none"> (a) (a) the continuing safety and operation or viability of the affected asset; and (b) (b) the requirement for SABIC to have— <ul style="list-style-type: none"> (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. <p>(2) (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).</p> <p>(3) (3)—Where there has been a reference to arbitration<u>an arbitrator</u> in accordance with paragraphs<u>paragraph</u> 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<u>award</u> of the arbitrator under paragraph 7(3).</p> <p>7. 7.—(1) In the event that—</p> <ul style="list-style-type: none"> (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<u>acknowledgment</u> of receipt from a specified person under paragraph 4(3<u>1</u>) 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<u>acknowledgment</u> of receipt from a specified person of the further particulars supplied under paragraph 4(2), 	<p>4.5 The new paragraph 4(3) has been incorporated in order to clarify that the specified persons are under a positive duty to issue the receipt. This is essential in order to commence the decision periods in paragraph 7.</p>	<p>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.</p> <p>4.5 Similar drafting requiring a response "as soon as reasonably practicable" is included in SABIC's protective provisions. It is difficult to see how the Applicant would be prejudiced by this very slight change.</p>
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<p>approval of the works details is to be deemed to be given and the relevant works may commence.</p> <p>(2) If the undertaker considers that—</p> <ul style="list-style-type: none"> (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, <p>(d) the undertaker refer the matter to an arbitrator for determination under paragraph 31.</p> <p>(3) Where the matter is referred to arbitration under sub-paragraph (2)(a)—</p> <ul style="list-style-type: none"> (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. <p>(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).</p>	<p>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 'break the deadlock'. Sub-paragraph (3) then requires the undertaker to provide the requested information if the arbiter determines that referral in SABIC's favour.</p>	<p>4.6 This is an entirely new provision which SABIC had was not previously aware of.</p> <p>SABIC has included this drafting into its Deadline 8 protective provisions subject to the amendment of sub-paragraph (2) to delete the sub-paragraph number "(d)" but not the contents of that sub-paragraph.</p>
<p>NOTICE OF WORKS</p> <p>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.</p> <p>FURTHER PROVISIONS ABOUT WORKS</p> <p>9.9—(1) Before carrying out a relevant work the undertaker must—</p> <ul style="list-style-type: none"> (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. <p>(2) (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.</p>	<p>5.1 This paragraph is broadly aligned with SABIC's preferred protective provisions [REP6-010], subject to the inclusion of a minor revision to paragraph 9(1)(a) to confirm and clarify that the baseline data to be provided to SABIC is that related to the cathodic protection assessment that the undertaker will be carrying on.</p> <p>Issue 6</p> <p>6.1. SABIC's preferred protective provisions [REP6-010] included an additional paragraph requiring that details of any proposed temporary</p>	<p>5.1 This paragraph is agreed and was included in SABIC's Deadline 7A protective provisions [REP7a-069].</p> <p>Issue 6</p> <p>The paragraph the Applicant is referring to was included in the York Potash DCO protective provisions in favour of SABIC.</p>

	<p>crossing points be notified to SABIC in accordance with paragraph 4. This paragraph relates to the submission of works details for SABIC's approval.</p> <p>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.</p> <p>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:</p> <p>6.3.1. reducing unnecessary bureaucracy, by enabling a single omnibus application for consent to be submitted to SABIC; and</p> <p>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.</p> <p>Issue 7</p> <p>7.1 SABIC's 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.</p> <p>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 requirements are disproportionate and unworkable.</p> <p>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.</p> <p>7.4 Similarly, as drafted, SABIC's preferred protective provision could also be interpreted to mean that every easement width must be fenced. Where there are multiple parallel pipelines each having an associated easement width the 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.</p> <p>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.</p>	<p>The approach of included these details within the definition of "works details" so that they have to be notified to SABIC under paragraph 4 is agreed and agreed and the Applicant's suggested amendments were included in SABIC's Deadline 7A protective provisions [REP7a-069].</p> <p>Issue 7</p> <p>The paragraph the Applicant is referring to were included in the York Potash DCO protective provisions in favour of SABIC.</p> <p>The approach of included these details within the definition of "works details" so that they have to be notified to SABIC under paragraph 4 is agreed and agreed and the Applicant's suggested amendments were included in SABIC's Deadline 7A protective provisions [REP7a-069].</p>
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<p>10. —No explosives are to be used within the protected land.</p> <p>11.14.—(1) All piling within 1.5 metres of the centreline of a pipeline must be non-percussive.</p> <p>(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.</p> <p>12.12.—(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.</p> <p>(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.</p> <p>13. 1013.—(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.</p> <p>(2) (2)—Proposed methods and locations of compacting must be notified to SABIC in accordance with paragraph 4.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(6) (6)—In the event of a dispute as to—</p> <p>(a) (a)—whether or not backfill has been adequately compacted under sub-paragraphs (1) to (4); or</p> <p>(b) (b)—the amount of any payment under sub-paragraph (5),</p> <p>the undertaker or SABIC may refer the matter <u>to an arbitrator</u> for arbitration<u>determination</u> under paragraph 31.</p> <p>14.14.—(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.</p>	<p>Issue 8 – clearance from buried apparatus (paragraph 14)</p> <p>8.1. This paragraph is in substantially the same form as SABIC's preferred protective provisions [REP6-010], save that the Applicant's proposed</p>	<p>Issue 8 – clearance from buried apparatus (paragraph 14)</p> <p>8.1 The principle of a 600mm clearance in relation to buried apparatus was accepted in SABIC's Deadline 7A protective provisions [REP7a-069].</p>
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(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 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

~~15.15.~~—(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, ~~any~~ 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, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

protective provision specifies a minimum clearance of 600 millimetres from any buried apparatus.

8.2. In addition, 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 standard position in terms of clearance for this type of infrastructure and these types of works; and

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.

SABIC has a number of standard designs for protection of buried apparatus. Where these designs are used SABIC is content for a 600 millimetre clearance to apply. However where there is a departure from those standard designs SABIC would expect a 1,500 millimetre distance to apply. That is the effect of sub-paragraph (2).

SABIC is seeking to minimise the risk that any work in future, intended to expose the Applicant's apparatus (eg for maintenance or inspection) does not bring with it a high risk to SABIC's pipeline's integrity because the two assets are so close together.

8.3.3 Equally the Applicant does not provide any evidence as to why it considers that there is no material additional safety risk.

"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 affect 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.

<p>(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.</p> <p>16.16—(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.</p> <p>(2) (2)—Where there is leakage or escape of gas or any other substance, the undertaker must immediately—</p> <p>(a) (a)—remove all personnel from the immediate vicinity of the leak;</p> <p>(b) (b)—inform SABIC;</p> <p>(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</p> <p>(d) (d)—assist emergency services as may be requested.</p>		
<p>COMPLIANCE WITH REQUIREMENTS, ETC. APPLYING TO THE PROTECTED LAND</p> <p>17.17—(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.</p> <p>(2) (2)—The undertaker is not bound by any condition, requirement or regulation that is—</p> <p>(a) (a)—introduced after the date on which the notice of the works was given under paragraph 8; or</p> <p>(b) (b)—determined by arbitration<u>the arbitrator</u> following a determination under paragraph 31 to unreasonably—</p> <p>(i) (i)—create significant engineering, technical or programming difficulties; or</p> <p>(ii) (ii)—materially increase the cost of carrying out the works.</p> <p>(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.</p>	<p>Issue 9 – compliance with requirements affecting the protected land (paragraph 17)</p> <p>9.1. This paragraph is in substantially the same form as SABIC's preferred protective provisions [REP6-010], save that the Applicant's proposed protective provision contains a minor amendment in paragraph 17(1) to clarify that it relates specifically to SABIC as an owner of the protected land.</p>	<p>Issue 9 – compliance with requirements affecting the protected land (paragraph 17)</p> <p>9.1 8.1 This wording is agreed and was included in SABIC's Deadline 7A protective provisions [REP7a-069].</p>
<p>ACCESS FOR CONSTRUCTION AND MAINTENANCE</p> <p>18.18—(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.</p> <p>(2) The undertaker must take account of the responses to any consultation referred to in sub-paragraph<u>sub-paragraph</u> (1) before approving the construction access plan.</p> <p>19.19—(1) In preparing a construction access plan under paragraph</p>	<p>Issue 10 – access for construction and maintenance (paragraphs 18 to 20)</p> <p>10.1. These paragraphs are in substantially the same form as SABIC's preferred protective provisions [REP6-010], save that the Applicant's proposed protective provisions contain a minor amendment:</p>	

18 the undertaker must—

(a) ~~(a)~~ establish the programme for SABIC's major works in the pipeline corridor ~~and 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) ~~(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 ~~which is not materially 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 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) ~~(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.

~~20.20.~~—(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) ~~(2)~~ Where SABIC ~~or the undertaker~~ refers the construction access plan to ~~arbitration 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) ~~(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.**

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

10.2. 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.

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

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 break the deadlock by making a referral. The Applicant's preferred drafting

As elsewhere these provisions should protect the Wilton Complex and the Brinefields.

10.1.1 SABIC is prepared to agree to the "not materially less advantageous", but considers that both (a) the access and (b) the facilities and rights provided should meet this standard. Its Deadline 8 protective provisions therefore make this amendment.

10.1.2 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. Their view of which access and which facilities and rights are "not materially less

	<p>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).</p>	<p>advantageous" will inevitably therefore be reflected in the plan, which will stand unless and until it is challenged by SABIC.</p> <p>There is therefore no need for the undertaker to refer the plan to arbitration: it is the undertaker's own plan.</p>
<p><u>RESTRICTION ON EXERCISING POWERS</u></p> <p>21.24.—(1) The undertaker must not in the exercise of the identified powers <u>conferred by this Order</u> 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.</p> <p>(2) The undertaker must in the exercise of the identified powers <u>conferred by this Order</u> 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 <u>of utilities</u> and other services that are required by them in order to carry out their operations.</p>	<p>Issue 11 – mitigation in respect of SABIC apparatus, etc, (paragraphs 21 and 22)</p> <p>11.1. These paragraphs are in substantially the same form as SABIC's preferred protective provisions [REP6-010], save for the following points.</p> <p>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.</p>	<p>11.2 SABIC is unsure why this amendment is necessary unless the Applicant is somehow seeking to use an as yet unidentified power in the Order which is not an "identified power" to extinguish or suspend SABIC's rights.</p> <p>The amendment is simply not necessary.</p> <p><u>General Comments on Paragraphs 21 and 22: Context</u></p> <p>These paragraphs are designed to protect SABIC's land and rights from compulsory acquisition.</p> <p>The operational context of SABIC's apparatus as a "single, interconnected, holistic system" as set out in Section 4.5 of SABIC's Closing Submissions (and during the Examination . 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.</p> <p>Another important point is set out in Section 4.3 of SABIC's Closing Submissions 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 Section 4.5 of SABIC's Closing Submissions.</p> <p>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.</p> <p>It is also necessary to keep in mind that SABIC's own operations are fundamentally connected with other manufacturers of ethylene: INEOS at Grangemouth and ExxonMobil at Mossmorran (see paragraphs 4.5.4 to 4.5.10. A diversion of SABIC's apparatus would almost certainly have significant effects across all three operations.</p> <p>These effects are incredibly difficult or impossible to minimise or mitigate in any way whatsoever: there is no "work around" which would allow a temporary diversion and keep the system running while a diversion is effected.</p> <p>The Examining Authority is asked to keep firmly in mind that these three facilities – Wilton, Grangemouth and Mossmorran – comprise the totality of the UK's ethylene manufacturing industry. The protection of SABIC's facilities and</p>

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.

11.3. The general restriction on the use of the identified powers set out in paragraph 24(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

apparatus from compulsory acquisition is important not just as a protection for SABIC, but also for the protection of Ineos and Exxonmobil whose sites rely on the WGEP, and therefore the future of the UK's ethylene manufacturing industry.

In this context it is only right that the highest and most rigorous standards are applied in the Order to make sure that compulsory acquisition powers are only used when there is no other option.

11.3 The Applicant's reference is to what is now sub-paragraphs 22(1) to (5).

Paragraphs 21 and 22 are based on provisions benefitting SABIC which were included in the York Potash Order. These provisions in fact precluded the use of compulsory acquisition and temporary possession powers in relation to known interests of SABIC.

The protective provisions proposed by SABIC are less stringent and represent 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.

11.4 This is a key point of principle between the parties.

The Applicant focuses on constructability and programme of the authorised development. It entirely ignores and fails to engage with the specific exceptional nature of SABIC's operations and the effects which its operations might have on the UK's ethylene industry as a whole (see Sections 4.3 and 4.5 of SABIC's Closing Submissions).

The nationally significant benefits of the authorised development are not disputed, but these have to be carefully weighed in the balance against the existing, established, nationally significant operations of SABIC, Ineos and Exxonmobil and the public benefits those operations provide to the economy and nation as a whole in terms of national chemical production capacity, employment etc. In respect of SABIC these are set out in paragraphs 4.6 and 4.7 of SABIC's Closing Submissions).

It is important to understand that sub-paragraphs 22(1) to (5) do not preclude compulsory acquisition.

Rather they provide 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.

Whilst these provisions are stringent they are not unprecedented (see the protective provisions in favour of SABIC in the York Potash Order which were more stringent). The reason for this stringency is set out above under the heading: "General Comments on Paragraphs 21 and 22: Context".

11.5 SABIC's clear position is that there is no way to control the impacts of any works which require the diversion or other repositioning of its assets (see paragraphs 4.5.5 to 4.5.10 of SABIC's Closing Submissions). The protections set out in sub-paragraphs (6) to (10) might allow works to be timed in a manner

<p><u>(6) 22.—In the event that consent is given or deemed to be given under paragraph (1),</u> 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.</p> <p><u>(7) (2) —Where</u> alternative apparatus is to be provided under sub-paragraph paragraph (46)—:</p> <p>(a) <u>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;</u></p> <p>(b) (a)—paragraphs 4 to 20 of this Schedule shall apply <u>to the alternative apparatus</u> 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—:</p> <p>(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</p> <p>(ii) in paragraph 6(1) there shall be added immediately before paragraph 6(4)(a) a new paragraph (aa) as follows—:</p> <p>"(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;"</p> <p>(c) (b)—the undertaker will have special regard to its obligations under paragraph 21(2).</p> <p><u>(8) (3)</u>—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.</p> <p><u>(9) (4)</u>—Where under sub-paragraph paragraph (46) 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.</p> <p><u>(10) Subject always to paragraph (59) #if</u> 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</p>	<p>SABIC's and apparatus land, the impacts to SABIC's assets are able to be controlled.</p> <p>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.</p> <p>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)).</p> <p>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.</p> <p>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).</p> <p>11.10. Whilst SABIC's preferred protective provisions [Annex 2 of REP6-010] refer to the York Potash DCO, this is clearly distinguishable on the facts:</p> <p>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;</p>	<p>that will minimise disruption to SABIC (and Ineos and Exxonmobil) however it is unlikely that any minimisation or mitigation will be possible.</p> <p>11.6 Sub-paragraphs (6) to (10) must clearly be understood therefore as having the main purpose of trying to secure a replacement apparatus and facilities and rights to secure SABIC's future operations.</p> <p>11.8 SABIC fundamentally disagrees with the Applicant for the reasons set out above under the heading: "General Comments on Paragraphs 21 and 22: Context" and paragraph 11.6 above. See paragraphs 8.4 to 8.6 of the "Summary and Conclusion" in SABIC's Closing Submissions.</p> <p>11.9 Again SABIC fundamentally disagrees with the Applicant for the reasons set out above under the heading: "General Comments on Paragraphs 21 and 22: Context" and paragraph 11.6 above. See paragraphs 8.4 to 8.6 of the "Summary and Conclusion" in SABIC's Closing Submissions.</p> <p>The position adopted by the Secretary of State in the recent NZT DCO provided no protection whatsoever for SABIC in relation to compulsory acquisition and importantly the protective provisions 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) were not applied to SABIC's apparatus.</p> <p>In SABIC's submission it is not sufficient for the Examining Authority to simply take a precedent designed for apparatus in general in the pipeline corridor and to apply it to SABIC. Rather it must carefully consider SABIC's specific operational requirements and circumstances (including the national picture) and consider whether, in those circumstances, the additional protections SABIC is asking for are justified.</p> <p>11.10.1 The protections for SABIC set out in paragraph 22 have nothing whatsoever to do with to the type of apparatus comprised in the authorised development. They reflect the likely effects of the authorised development on SABIC's operations and seek to reduce or eliminate these.</p>
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<p>than the rights enjoyed by SABICthem 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.</p>	<p>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;</p> <p>11.10.3. The NZT DCO is significantly more recent; and</p> <p>11.10.4. The NZT DOC 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.</p> <p>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.</p> <p>11.12. The Applicant also refers to the justification for compulsory acquisition powers that is outlined in the Statement of Reasons [CR1-013].</p>	<p>Rather they are solely and clearly focused on avoiding the hugely detrimental effects of any diversion of SABICs apparatus as set out above under the heading "General Comments on Paragraphs 21 and 22: Context".</p> <p>11.10.2 It is not accurate to say that the York Potash DCO protective provisions do not mention SABIC. They are mentioned as "specified persons" in paragraph 2(1) of Schedule 9.</p> <p>The Examining Authority will note the striking similarities between the York Potash protective provisions and those advanced by SABIC in relation to this scheme. In fact the York Potash protective provisions were drafted by SABIC’s lawyers on their instructions and were later adopted by other affected parties, such as Huntsman Polyurethanes (UK) Limited, who are also listed as "specified persons". That is the reason why many of those provisions refer to "owners" rather than directly to SABIC, and no other conclusions should be drawn from that drafting.</p> <p>11.10.3 Temporal proximity is not necessarily indicative of need or adequacy, and in SABIC’s submission this is most certainly not in this case here.</p> <p>11.10.4 Having expended significant time and resources at the York Potash DCO Examination to secure precedent protective provisions, SABIC’s approach at the Net Zero Examinations was to seek to rely on those provisions in the expectation that they would be the starting point and that NZT would be required to justify its departures from that established precedent. That did not occur. SABIC considered that it had a reasonable expectation, in the absence of such substantive justification by the NZT, that its protective provisions would be preferred. Again that did not occur.</p> <p>SABIC has therefore reluctantly felt compelled to fully engage in this current Examination to set out a full and substantive justification for its preferred protective provisions to protect its apparatus in relation to this Application and forthcoming DCO applications such as Lighthouse Green Fuels.</p> <p>In these circumstances it is important that the Examining Authority should not consider that it is bound to follow the Net Zero order and should carefully consider all of the evidence before it when it decides which version of the protective provisions are to be preferred.</p> <p>11.11 SABIC’s protective provisions do not preclude compulsory acquisition of its land and interests. What they do is to provide more stringent protections that the Applicant might like or might be convenient for them, but restrictions which have precedent in the York Potash DCO. On SABIC’s submission the balance lies clearly in providing the protections set out in its Deadline 8 protective provisions to avoid hugely detrimental effects of any diversion of SABICs apparatus and the wider UK ethylene industry as set out in Sections 4.3 to 4.8 of SABIC’s Closing Submissions.</p>
<p>INSURANCE</p> <p>23.23.—(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 itthe undertaker's liabilities under paragraph 25 in accordance with the terms and level of cover as may be agreed in writing between the</p>	<p>Issue 12 – insurance (paragraphs 23 and 24)</p> <p>12.1. These paragraphs are in substantially the same form as SABIC’s preferred protective provisions [REP6-010], save for the inclusion of the words “or any contractor carrying out such works on behalf of the undertaker” in parentheses.</p> <p>12.2. This minor amendment does not prejudice SABIC’s level of protection, but provides a degree of flexibility by confirming that the approved policy of</p>	<p>12.1 This drafting was agreed in SABIC’s Deadline 7A protective provisions [REP7a-069].</p> <p>"the undertaker's liabilities": this wording is necessary because the liabilities under paragraph 25 which insurance must cover are all placed on the undertaker and not on the contractor. Irrespective of who puts the insurance in place, the</p>

<p>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.</p> <p>(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 the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.</p> <p>(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.</p> <p>24.24.—If SABIC has a dispute about the proposed insurance (including the terms of or level of cover) to be provided under paragraph 23—</p> <p>(a) (a)—SABIC may refer the matter to an arbitrator for determination under paragraph 31; and</p> <p>(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 31 is completed complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.</p>	<p>insurance can be taken out by the relevant contractor rather than necessarily in the undertaker's own name.</p> <p>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.</p> <p>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).</p>	<p>insurance policy must provide cover in respect of the undertaker's liabilities under paragraph 25. The contractor has no liabilities to cover.</p>
<p><u>COSTS AND INDEMNIFICATION</u></p> <p>25.25.—(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—</p> <p>(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;</p> <p>(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;</p> <p>(c) (c)—responding to the consultation on piling under paragraph 11;</p> <p>(d) (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;</p> <p>(e) (e)—the repair and testing of a pipeline or protected crossing affected assets under paragraph 15;</p> <p>(f) (f)—considering and responding to consultation in relation to the construction access plan under paragraph 18 19 and providing details of their programme for major works to the undertaker under paragraph 19;</p>	<p>Issue 13 – costs recovery and duty to mitigate (paragraph 25)</p> <p>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.</p> <p>13.2. The Applicant should not be responsible for paying for any unreasonable costs incurred by SABIC, hence the inclusion of '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</p>	<p>13.1 This is an area of fundamental disagreement between the parties, especially in relation to the wording of sub-paragraph (2).</p> <p>On a number of other issues set out in the Applications Deadline 7A Position Statement [REP7a-030] there is no longer any disagreement following SABIC's Deadline 7A protective provisions [REP7a-069].</p> <p>13.2 This is agreed. SABIC's drafting in its SABIC's Deadline 7A protective provisions [REP7a-069] included a "reasonableness" standard as sought by the Applicant. SABIC does not consider that the parties are in dispute on this point.</p>

<p>(g) (g)—dealing with any request for consent, approval or agreement by the undertaker under paragraph 22; and</p> <p>(h) (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,</p> <p>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.</p> <p>(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—</p> <p>(a) bear and pay the cost reasonably incurred by SABIC in making good such damage or restoring the supply; and</p> <p>(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.</p> <p><u>(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—</u></p> <p><u>(a) by reason of the construction, operation, maintenance, repair and decommissioning of the authorised development or the failure of it; or</u></p> <p><u>(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.</u></p>	<p>(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).</p> <p>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.</p> <p>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 of 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).</p>	<p>13.3 SABIC disagrees that the scope of paragraph 25(2) is adequate or sufficient.</p> <p>SABIC's position is consistent with the protective provisions in favour of SABIC in the York Potash Order (see paragraph 28(2) of Schedule 9).</p> <p>It is also not an unusual formulation in protective provisions (see paragraph 13.4 below).</p> <p>13.4 SABIC is puzzled by the Applicant's position on consequential loss (note indirect loss is essentially just another way of saying the same thing).</p> <p>Consequential loss is loss which arises in consequence of the actions of a third party.</p> <p>So to be clear, the Applicant's position here is that it should not be liable for a category of losses which SABIC incurs as a consequence of the Applicant's own actions.</p> <p>SABIC has repeatedly explained during the examination how sensitive its operations are to interruption and the significant consequences of such an interruption (see Sections 4.3 and 4.5 to 4.8 of SABIC's Closing Submissions).</p> <p>As set out above, SABIC's position is consistent with the protective provisions in favour of SABIC in the York Potash Order (see paragraph 28(2) of Schedule 9).</p>
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<p><u>(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).</u></p> <p><u>(4) (3) Nothing in sub-paragraphs (1) or (2) the preceding provisions of this paragraph imposes any liability on the undertaker with respect to—</u></p> <p><u>(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</u></p> <p><u>(b) any indirect or consequential loss or loss of profits by SABIC.</u></p> <p><u>(5) (4) SABIC must give the undertaker reasonable notice of any</u></p>	<p>3.5.(Part 1) ...the proviso in paragraph 27(2) of SABIC's preferred protective provisions [REP6-010] 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.</p> <p>3.5. (Part 2) 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.</p> <p>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.</p>	<p>Importantly, indemnification for consequential loss to an operator of a gas pipeline is not unusual.</p> <p>See for example the protective provisions included in the York Potash Order for the benefit of National Grid Electricity Transmission Plc (paragraph 9 of Schedule 8)</p> <p>Also consider protective provisions contained in other orders such as the A12 Chelmsford to A120 Widening DCO. Schedule 12 contains such indemnification for National Grid Electricity Transmission Plc in paragraph 44 (Part 4) and for Cadent Gas in paragraph 60 (Part 5).</p> <p>3.5 (Part 1) This comment appears to relate to sub-paragraph 25(3).</p> <p>This reason for this drafting is that the safe design and construction of the authorised development is a matter which is in the hands of the Applicant and should properly remain with them. SABIC's approval of the undertaker's plans is a mechanism designed to allow them to ensure the safety and continued operation of their apparatus. The purpose is not to put SABIC in a position where it takes on liability for the design of the works: the undertaker must carry out its own due diligence on the overall safety of the proposed works once those modifications are included.</p> <p>In the unlikely scenario that the undertakers works were not safe SABIC would expect the parties to informally discuss the technical issues which needed to be resolved. The parties can then agree revised works details as necessary in reliance on paragraph 1(1) of the protective provisions which state "unless otherwise agreed between the undertaker and SABIC".</p> <p>If agreement cannot be reached then the undertaker has recourse to arbitration.</p> <p>SABIC would point out that this is a very standard provision in protective provisions. Consider Schedule 12 of the A12 Chelmsford to A120 Widening DCO in particular the protective provisions for National Grid Electricity Transmission Plc in paragraph 44(2) (Part 4) and for Cadent Gas in paragraph 60(2) (Part 5).</p> <p>3.5 (Part 2) The parties are in substantial agreement in relation to liability for acts, neglect or default of SABIC (sub-paragraph (4)).</p> <p>Sub-paragraphs (3) and (4) reflects the balance struck in provisions such as the York Potash Order for the benefit of National Grid Electricity Transmission Plc (paragraph 9 of Schedule 8)</p> <p>"indirect or consequential loss": SABIC's detailed explanation for not including these words – and as to why consequential loss should be included in the indemnity – is set out in paragraph 3.4 above.</p> <p>13.6 This relates to sub-paragraph (5) of SABIC's protective provisions.</p> <p>This is agreed subject to a minor amendment and was included in SABIC's drafting in its SABIC's Deadline 7A protective provisions [REP7a-069].</p> <p>13.7 This again relates to sub-paragraph (5) of SABIC's protective provisions.</p>
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<p>claim or demand under this paragraph <u>sub-paragraph (2)</u> 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.</p> <p>(6) (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.</p> <p>(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.</p> <p>(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 this paragraph applies.</p> <p>(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.</p> <p>(10) -The undertaker shall only be liable under this paragraph for claims reasonably incurred by SABIC.</p>	<p>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).</p> <p>13.8. Paragraph 25(7) requires SABIC to use reasonable endeavours to mitigate its loss, costs etc. The Applicant's preferred wording of paragraph 25(7) is 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).</p> <p>13.9. 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</p>	<p>This is agreed subject to a minor amendment and was included in SABIC's drafting in its SABIC's Deadline 7A protective provisions [REP7a-069].</p> <p>13.8 This relates to sub-paragraph (8) of SABIC's protective provisions.</p> <p>This is agreed and was included in SABIC's Deadline 7A protective provisions [REP7a-069] subject to a minor amendment in drafting.</p> <p>13.9 This relates to sub-paragraph (9) of SABIC's protective provisions.</p> <p>This is agreed subject to a minor amendment and was included in SABIC's drafting in its SABIC's Deadline 7A protective provisions [REP7a-069].</p>
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	<p>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).</p>	
<p>FURTHER PROTECTION IN RELATION TO THE EXERCISE OF POWERS UNDER THE ORDER</p> <p>26. 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.</p> <p>27. 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)—</p> <p>(a) (a) the nature of the application to be made;</p> <p>(b) (b) the extent of the geographical area to which the application relates; and</p> <p>(c) (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.</p> <p>28. 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.</p> <p>29. 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.</p> <p>30. 30.—Where SABIC has provided an email <u>email</u> address for service in respect of the <u>a</u> specified person, article 45 sub-paragraph (1)(a) of article 45 (service of notices) will not apply to the service of any the said <u>any</u> notice under this Schedule, which must instead by <u>instead be</u> effected by electronic means.</p>		
<p>ARBITRATION</p> <p>31. 31.—(1) Article 46 (arbitration) applied <u>applies</u> to this Schedule subject to the following provisions of this paragraph.</p> <p>(2) (2) Subject to sub-paragraph (4), the <u>The</u> 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.</p> <p>(3) (3)—The arbitrator must—</p> <p>(a) (a) invite the parties to make a submission in writing and</p>	<p>Issue 14 – dispute resolution mechanism (paragraph 31)</p> <p>14.1. This paragraph is in substantially the same form as SABIC’s preferred protective provisions [REP6-010], save for the following minor amendments.</p>	

<p>copied to the other party to be received by the arbitrator within 21 days of the arbitrator's<u>their</u> appointment;</p> <p>(b) (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission under paragraph (a);</p> <p>(c) (c) issue a decision within 42 days of receipt of — the submissions under sub-paragraph (b) or, if no comments are received, the expiry of the 21 day period specified in sub-paragraph (b); and</p> <p>(i) the submissions under paragraph (b); or</p> <p>(ii) if no submissions are submitted under that paragraph, the submissions under paragraph (a); and</p> <p>(d) (d) give reasons for the arbitrator's decision.</p> <p>(4) If the arbitrator does not issue the decision within the time required by sub-paragraph (3)(c) then—</p> <p>(a) the arbitrator is not entitled to any payment in respect of their fees; and</p> <p>(b) the matter in question shall immediately be referred to a new arbitrator in which case—</p> <p>(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);</p> <p>(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</p> <p>(iii) the new arbitrator shall then proceed to comply with sub-paragraphs (3)(c) and (3)(d).</p> <p>(5) An arbitrator appointed for the purposes of this Schedule must consider where relevant—</p> <p>(a) (a) the development outcome sought by the undertaker;</p> <p>(b) (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;</p> <p>(c) (c) the nature of the power sought to be exercised by the undertaker;</p> <p>(d) (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;</p> <p>(e) (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;</p> <p>(f) (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;</p> <p>(g) (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</p>	<p>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).</p> <p>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.</p> <p>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 him 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.</p> <p>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.</p>	<p>14.2 SABIC has included some drafting to deal with this issue.</p> <p>14.3 This is agreed.</p>
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<p>production and supply industry;</p> <p>(h) (h)—the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and</p> <p>(i) (i) any other important and relevant considerations <u>consideration</u>.</p>		
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