

From: [Green, Ian](#)
To: [York Potash Harbour](#)
Subject: 151120 TR030002 Tata Steel - covering email
Date: 20 November 2015 19:20:04
Attachments: [image003.jpg](#)
Importance: High

Dear Sirs,

We shall be submitting Comments on Responses to Second Questions but will not be able to meet Deadline 5. This is due to the Applicant providing today a revision to protective provisions which has raised a land ownership question which cannot be resolved in time for a timely and comprehensive submission. We have also been trying to speak with the representatives of the Official Receiver regarding SSI given the significant overlap in interests between Tata/RBT and SS; they have not been able to speak with us meaningfully as they are still getting up to speed with the issues and the various representations. We will provide the Comments either over the weekend or on Monday. We do not believe that this will prejudice the Applicant and trust that it is acceptable to the Examining Authority.

Kind regards,

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The Planning Act 2008 (as amended)

The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)

The York Potash Harbour Facilities Order

Planning Inspectorate Reference: TR030002

Response to and comments on responses to Examining Authority's Second Round of Questions 16 October 2015 - Tata Steel UK Limited

(Reference: YPOT - AFP050)

20 November 2015

Please note that following the liquidation of Sahaviriya Steel Industries UK Limited (SSI) these submissions are made on the part of Tata Steel UK Limited in respect of its interests (including Redcar Bulk Terminal (RBT)) only.

Ref	Question	Response and Comments
CA 2.2	<p><i>The land proposed to be subject to compulsory acquisition on the northern route option</i></p> <p>Please confirm the observation made at the site visit that the conveyor would not interfere with the conveyor installation on the Redcar Bulk Terminal site (RBT).</p> <p>Please also confirm that, as the northern part of the strip would only be required for maintenance as opposed to operational access (which would be via the southern pipeline corridor where there are already access roads) there would be no restriction on the ability of loaders or other vehicles operated on behalf of RBT or related interests from gaining access around the south side of the RBT conveyor system; and</p> <p>As only rights to construct the overhead conveyor and thereafter maintain it are sought, that it is accepted by the Applicant that following construction the land could remain wholly within the RBT/Tata/SSI security fence with access only required by the Applicant on occasion, after due notice, for maintenance purposes.</p>	<p>The Applicant has indicated that this is confirmed but the plan provided as Document 3.16 gives rise to serious concerns as to significant interference and has not been discussed with Tata/RBT prior to its submission. RBT has confirmed that RBT could not accept the proposed fencing off of an area right up to RBT's southerly most conveyor on the coal side as this would reduce RBT's bulk storage capacity significantly and effectively reduce the coal stacker's stocking capability by 50%. Consequently, the Applicant is not able to provide the confirmation sought by the Examining Authority.</p> <p>It is clear from Document 3.16 that the land strip is to be separated from RBT's remaining land by a security fence which runs immediately adjacent to or under the RBT conveyors such that access to the south of the RBT conveyors is wholly restricted to gated openings. We have not been provided with any information as to the availability of access through these gates and any restrictions or protocols that may apply. There are no relevant protective provisions in the DCO at present. NB. Document 3.16 has not been discussed with Tata (nor with RBT) prior to its submission. Consequently, the Applicant is not able to provide the confirmation sought by the Examining Authority.</p> <p>Further, and in response to the final part of this question, it is clear that the relevant land will be wholly excluded from the RBT/Tata/SSI interests as a result of the new security fence. It would appear that the Applicant's intention is that it will be RBT which may enjoy only occasional access to the access road rather than the Applicant. This effective exclusive possession would appear to exceed the scope of the powers being sought under the Order. RBT infrastructure will require significant and costly revision if the Northern Route is pursued.</p>

<p>CA 2.3</p>	<p><i>Compulsory acquisition of rights over the hot metal rail route and Tata/SSI access road and in relation to the northern conveyor route option.</i></p> <p>In view of the cessation of steel-making and coking at the Redcar site, please indicate whether the concerns over the issue of constructing the Potash Conveyor over the hot metal rail route while in use are now allayed, even if the points of concern over the conveyor's presence over potentially resumed hot metal movements at some future date remain.</p> <p>In the light of the clarification provided on site and in respect of which confirmation is sought under questions CA 1.2, is objection to the possible use of the northern conveyor corridor still maintained in relation to the operation of RBT and related coal stacking areas?</p>	<p><i>The Applicant would point out that the SSI road bridge and hot metal rail bridge are constructed on land owned by Sembcorp. As owners of the freehold Sembcorp also own the airspace above the land. Rights to construct, access and operate the rail and road bridges were granted but this does not cede control of that airspace to SSI or TATA.</i></p> <p>The Applicant's comment is disingenuous. Whilst Sembcorp retains a freehold interest in the relevant land, this interest is qualified by the extent of the rights granted to Tata/SSI in perpetuity. Extensive rights to construct, maintain, replace and use bridges were granted over the land specified in the deed of grant, including the airspace above that land without express limitation. Tata is therefore afforded protection from any kind of interference with those rights, including the erection of any structure in the airspace within which Tata is entitled to exercise those rights. The various statements made by the Applicant as to the proposed headroom allowance need to be considered in this context.</p> <p>Whilst there is no current operation of the Hot Metal Rail, its future use should not be prejudiced. The HMR (as for the Haul Road) plays a vital role in connecting RBT with the wider site and for potential steel operations at Redcar. Tata continues to operate its (steel) Beam Mill. The DCO may not be implemented for several years and there is no certainty that the conveyor can be constructed or operated at a time when the HMR is not in use. In this context, the concerns raised must still remain and are not diminished.</p> <p>It is assumed that the reference to CA 1.2 should read CA 2.2.</p> <p>As is clear from the response to CA 2.2, this objection is maintained.</p>
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DCO 2.4	Please provide an update of progress on securing agreed protective provisions, together with amended schedules for the DCO.	<p>Schedule 9 was substantially rewritten post Deadline 3 as a result of the Applicant's discussions with other parties. The Schedule has been further amended by the Applicant since it was provided to us on 28 October. Whilst we did not have any substantive concerns in respect of the rewritten Schedule, we consider that the latest amendments have compromised the value of the provisions and therefore provide a mark-up of Schedule 9 at Appendix 1 (which we have shared with the Applicant).</p> <p>As the Applicant has advised, we returned a mark-up of Schedule 10 on 4 November and this was the subject of a discussion (with some progress) on 18 November. We attach our preferred form of Schedule 10 as Appendix 2. Of particular concern is the availability of the protective provisions to Tata in respect of its continuing legal rights to use the HMR and Haul Road assets (and to construct and use a third crossing) notwithstanding physical ownership of the infrastructure.</p> <p>In respect of the Constructability Notes, whilst some of our previously requested amendments have been incorporated, a number of substantive issues remain unaddressed and have not been subject to consultation with Tata/RBT:</p> <ul style="list-style-type: none"> • No proper consideration on the introduction of headroom restrictions and other constraints where currently no such restrictions or constraints exist; • Broad assumptions as to the ease with which closures/possessions may be obtained; • No proposals in respect of overrunning construction works where reliant on operational closures; • Deferring key methodology issues for later determination; • Failure to consider or detail mitigation as required in respect of acknowledged constraints introduced as a result of the works. <p>Tata considers that these Notes do not provide sufficient certainty as to the technical issues and how these will be addressed, nor do they provide any binding framework but merely a range of possible options; they cannot therefore be agreed at this time.</p> <p>In any event, the Notes state that they are "not exhaustive but will assist in future discussions and development". What is lacking from the Notes and from the DCO is a proper consultative approach to the carrying out of the authorized works; it is considered necessary that the DCO (whether within the protective provisions or the main body of the Order) should provide formally for a consultation-based approach to developing and addressing the constructability issues to be incorporated within evolving Constructability Notes that remain subject to the requirements of the DCO in that regard. Currently the draft DCO requires only that the authorized works are carried out in accordance with the Constructability Notes as at the time of making the Order such that any further details or revisions will not be subject to the DCO.</p>
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DCO 2.4 (cont.)		We have been discussing with the Applicant a number of amendments to the articles of the DCO. We do not comment on these in this document but will make further submissions in respect of the DCO wording subject to the outcome of those discussions.
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	Project Need, Project Description, Alternatives and Route Selection (PAR) ES Chapter 3	
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Par 2.1	<p><i>Crossing of A1085 and Hot Metal rail route/access road</i></p> <p>Please indicate whether you are able to provide any further evidence beyond the alternative options referred to in the Tata/SSI submission of 9 October 2015 to counter that put forward by the Applicant and accepted by pipeline operators as to why the conveyor cannot cross these corridors underground. The Applicant and any other concerned IP should comment on the 3 options shown in the 9 October 2015 submission from Tata/SSI.</p>	<p>We consider that it is for the Applicant to satisfy the Examining Authority that the tunneling (as well as any other alternative) options are not suitable and/or that the conveyor option is preferable in terms of <i>all</i> relevant factors and interests (not simply commercial and economic expediency) including the balance of risk to third party assets. Tata (and its partners at Redcar) were presented with the tunneling options and asked by the Applicant to consider them in terms of feasibility and suitability. This was followed by a request from the Applicant that Tata sign a letter to the effect that the tunneling option was not feasible/suitable. Tata and its partners at Redcar did not agree to such an approach as they are of the opinion that the tunneling <i>is</i> feasible and is entirely suitable and preferable in the context of their interests/assets at Redcar, notwithstanding the evidence put forward by the Applicant.</p>
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Appendix 1

Schedule 9 Protective Provisions

Appendix 2

Schedule 10 Protective Provisions

Bumess Paul
6 November 2015
Eversheds
13 November 2015

SCHEDULE ~~9-9~~

Article 34

PROTECTIVE PROVISIONS

FOR THE PROTECTION OF PIPELINE CORRIDOR AND PROTECTED CROSSINGS

Benefit of protective provisions

1. The following provisions of this Schedule shall have effect for the benefit of any owner of the protected land and any operator of a ~~pipe~~pipeline within the pipeline corridor, unless otherwise agreed in writing between the undertaker and the said owner or operator.

Interpretation

2. In this Schedule:

"access roads" means the access roads within the Order limits giving access to ~~pipes~~pipelines or protected crossings;

"affected asset(s)" means:

- (a) underground apparatus in the pipeline corridor where relevant work(s) are to be carried out within the easement widths relating to that apparatus;
- (b) apparatus on or above ground in the pipeline corridor which would be physically or operationally and directly impacted upon affected by the relevant work(s);
- (c) protected crossings where relevant work(s) are to be carried out within **25** metres of the protected crossing concerned; and
- (d) 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.

"apparatus" means ~~pipes, the pipelines and cables, sewers, drains, ditches, watercourses or other apparatus within the pipeline corridor~~ and includes;

- (a) any structure ~~which is~~ existing at the time of ~~commencement of the authorised development and~~ 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 ~~including such works and apparatus~~ (whether or not comprising a ~~pipe line~~pipeline for the purposes of Section 65(2) of the ~~Pipe Lines~~Pipelines Act 1962) properly appurtenant to the ~~pipes~~pipelines as are described in section 65(2) of the ~~Pipe lines~~Pipelines Act 1962;

Comment [IG1]: We have three interacting definitions: "pipeline", "apparatus" and "affected asset". It is not clear which is the lead definition. The amended definition of "pipeline" is not effective in any event as it is in itself circular: "A pipeline is a pipeline...". The definition of "pipeline" should refer to "apparatus" UNLESS the references to pipeline in the Schedule are replaced with either "apparatus" or, preferably, "affected asset".

Comment [IG2]: See IG1

Comment [revs3]: Tried to make this more specific rather than generic - the purpose is to protect the pipelines and their associated apparatus not sewers or drains, as explained in para 1.

Comment [IG4]: I understood the Schedule to be about protecting the pipeline corridor and the assets within it. NB. Tata has an interest in Heavy fuel, oil, oxygen and nitrogen pipes, HV cables, Gas Main, Fibre optic cable and a water main, all within the corridor.

Field Code Changed

"cats pipeline" means the pipeline identified as "Gas BP Cats" on the conveyer route plans

"cats easement" means the easement width of the cats pipeline

"construction access plan" means a plan identifying how access will be maintained to ~~the pipeline~~ pipelines and the protected crossings and the Wilton Complex during the proposed construction or maintenance work including:

- (a) any restrictions on general access by owners of the protected land and operators of the ~~pipes~~ pipelines, 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 owners of the protected land and operators of the pipelines (including their needs and requirements in relation to any ~~programmed~~ 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 emergency~~ times for owners of the protected land and operators of the pipelines; and
- (e) details of how reasonable access with or without vehicles will be retained or an alternative provided for owners ~~and operators of pipes~~ the protected land and protected crossings to operators of the pipelines to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the ~~pipes~~ pipelines and protected crossings.

"construction or maintenance works" means any works to construct, maintain, repair or decommission the authorised development;

"cats pipeline critical construction activities" means (i) excavation works within the cats easement; (ii) piling within 10m of the cats pipeline, (iii) backfilling and compaction work within the cats easement, (iv) erection of crash mats above the cats pipeline, and (v) all lifting above the cats pipeline.

"damage" includes all damage including in relation to a ~~pipe~~ pipeline leakage and the weakening of the mechanical strength of a ~~pipe~~ pipeline;

"easement width" means in respect of each ~~pipe~~ pipeline the easement width shown on the conveyer route plans;

"engineer" means an engineer appointed by the owner or operator of a ~~pipe~~ pipeline in the pipeline corridor for the purposes of this Order;

"major works" means works by any person requiring the closure, diversion or regulation of any of roads serving the Wilton Complex;

"operator" means any person ~~who owns and/or is responsible for a pipeline or the construction, operation, use, inspection, adjustment, alteration, repair, maintenance, renewal, removal or replacement of any pipe in the pipeline corridor;~~

Comment [IG5]: Is this qualification not excluding owners of pipelines who do not own the land. "operators" should be amended to clarify or cover this or this qualification (as used throughout) should be removed. See next comment.

Comment [IG6]: Amendments consequent upon the qualification made to owners throughout this schedule as per previous comment

Field Code Changed

"owner" means:

- (a) in relation to the pipeline corridor, any person with ~~pipes~~pipelines in, on, under or over the pipeline corridor, and
- (b) in relation to the access roads, any person:
 - (i) with an interest in the access roads; or
 - (ii) with private rights of way on or over the access roads;
- (c) in relation to the protected crossings, any person:
 - (i) with an interest in the protected crossings;
 - (ii) with rights in relation to the protected crossings; or
 - (iii) with ~~pipes~~ in or comprising the protected crossings; and
- (d) in relation to protected land means any person falling within paragraphs (a) to (c) above.

Comment [IG7]: Pipelines/affected assets/apparatus?

Comment [revs8]: Defined in article 2

["pipeline(s)" means ~~all apparatus~~the pipelines located in the pipeline corridor or in or comprising a protected crossing]

Comment [revs9]: Amended to prevent a circular definition with definition of apparatus - apparatus includes pipeline

Comment [IG10]: See IG 1 - this amended definition is in itself circular and has the effect of narrowing the scope of protected assets. Either this definition refers to "apparatus" or "affected assets" or the use of "pipelines" within the Schedule needs to be amended to "affected assets".

"protected crossings" means:

- (a) the tunnel under the River Tees which carries ~~pipes~~pipelines known as Tunnel 2; and
- (b) the apparatus under the River Tees known as the Breagh Pipeline

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

- (a) the access roads, ~~the pipeline corridor and the protected crossings;~~
- ~~(b) in relation to dredging any part of the authorised development which~~
 - ~~(i) is within the area of Work No 1 as shown on the works plans; or~~
 - ~~(ii) which may have an effect on the protected crossings;~~

"relevant works" means

- ~~(a)(b) in relation to works other than dragging any part of the authorised development within the pipeline corridor; ~~or~~ and~~
- (c) the protected crossings;

"relevant pipeline" means a pipeline which may be affected by a relevant work

Field Code Changed

"relevant work(s)" means a work which may have an effect on the operation, maintenance, repair, replacement and/or abandonment ~~of a pipe~~ and/or access to ~~a pipe or any apparatus or~~ a protected crossing

Comment [revs11]: to be consistent with amended definitions

"specified persons" means [] in relation to [] ETC;

(a) the following:

- (i) [•] in relation to SABIC UK Petrochemicals Limited;
- (ii) [•] in relation to Huntsman Polyurethanes (UK) Limited;
- (iii) [•] in relation to Tata Steel UK Limited;
- (iv) [•] in relation to DEA UK SNS Limited; and
- (v) [•] in relation to BP CATS Limited.

(b) (b) where a person for whose benefit these protective provisions have effect is not mentioned in paragraph (a):

- (i) that person where the person is not an incorporated body;
- (ii) the company secretary in relation to a company';
- (iii) the designated partner in relation to a limited liability partnership; or
- (iv) such other person as they may notify to the undertaker in writing.

"unknown rights" means rights which are not known at the date of the Order or which are identified as unknown in the book of reference;

"Wilton Complex" means the land shown outlined in red on the Wilton Complex plan; ~~{...};~~ ~~and~~

"Wilton Complex plan" means the plan with drawing title "Location of Wilton Complex (Plan 1)" certified as such by the Secretary of State for the purposes of this Order

Comment [revs12]: This is the plan supplied by Bond Dickinson

"works details" means the following:

- (a) a description of the proposed works together with plans and sections of the proposed works where ~~thesesuch plans and sections~~ are reasonably required to describe the works concerned and or their location; and
- (b) details of any proposed temporary crossing points under paragraph 9; and
- (c) details of methods and locations of any piling proposed to be undertaken under paragraph ~~+2~~13; and
- (d) details of methods of excavation and any zones of influence ~~(it)~~ has calculated under paragraph ~~+3~~14; and
- (e) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph ~~+4~~15. and

Comment [IG13]: Who?

Field Code Changed

- (f) details of the location of any pipelines affected by the oversailing provisions in paragraph 15.16, including details of the proposed clearance; and
- (g) details of the method location and extent of any dredging, and technical assessment of the likely effect of the dredging on the protected crossings and any mitigation measures which are proposed to be put in place to prevent damage to the protected crossings; and

Comment [revs14]: Covered by (d)

- (i) details of the method the undertaker and their principal contractors' management of change procedures.
- (j) details of the traffic management plan, which plan shall include details of vehicle access routes for construction and operational traffic, and which shall 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 cats pipeline
- (l) details (to include a dynamic analysis undertaken by the undertaker and provided to the cats pipeline operator) of the conveyor and conveyor support structure and the measures to be undertaken to ensure vibration does not impact on the cats pipeline
- (m) details of the lifting study during the construction phase, which shall include a technical assessment of the protection of underground assets and which study shall provide for individual lift plans
- (n) details of the lifting study during the operational phase, which shall include a technical assessment of the protection of underground assets and which study shall provide for individual lift plans
- (o) where the conveyor structure may impede the excavation of the cats pipeline details of the design measures incorporated into the authorised works, if needed to ensure the entirety of the cats pipeline can be properly inspected.
- (p) (p) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators.
- (q) (g) 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 cats pipeline cathodic protection system and the proposed remedial works.

Comment [IG15]: Why limited just to cats?

Authorisation of works details affecting pipelines or protected crossings

3. (1) Before commencing any part of the relevant works the undertaker must submit to the owners and any operators of any affected asset (s) the works details and obtain a written acknowledgement of receipt of those works details from the specified persons in relation to the affected assets concerned.

Field Code Changed

(2) The undertaker must as soon as reasonably practicable provide such further particulars as the owner or operator of ~~the any~~ affected asset(s) may, within 45 days from the ~~acknowledgement of~~ receipt of the works details under paragraph 3(1), reasonably require.

4. No part of ~~thea~~ relevant ~~works are~~ work is to be commenced until one of the following conditions has been satisfied:

(1) the works details supplied in respect of ~~those works~~ that relevant work under paragraph 3 of this Schedule have been authorised by the owner and operator of all the affected ~~asset(s)-~~ ~~(assets);~~ or

(2) the works details supplied in respect of that relevant work under paragraph 3 of this Schedule have been authorised by an expert under paragraph 6(3); or

(3) authorisation is deemed to behave been given pursuant to paragraph 6(1) below) ~~or, if authorisation has been refused and referred to an expert for determination and the determination has provided authorisation, until that determination has been made.;~~

5. (1) Any authorisation by the owner or operator of ~~thean~~ affected asset(s) ~~required~~ under paragraph 4(1), of this Schedule must not be unreasonably withheld but may be given subject to such reasonable conditions as the owner or operator of the affected asset(s) may require to be made for

(a) Laithe continuing safety and operation or viability of the affected asset(s) ~~concerned;~~ and

(b) the requirement for the owner and operator of the affected asset(s) to have:

- (i) uninterrupted and unimpeded emergency access with or without vehicles to the affected asset at all times ~~for emergencies;~~ 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 ~~pipe(s) and/or protected crossing(s).~~ affected assets

~~Save as is provided in paragraph 5(3) the~~ (2) Where the owner or operator of the cats pipeline can reasonably demonstrate that the authorised works will significantly adversely affect the safety of the cats pipeline the owner or operator shall be entitled to withhold their authorisation until the undertaker can demonstrate to the reasonable satisfaction of the owner or operator that the authorised works shall not significantly adversely affect the safety of the cats pipeline.

(3) The authorised development shall be carried out in accordance with the works details authorised under paragraph 4 and any conditions imposed on the authorisation under paragraph 5(1).

(4) Where there has been a reference to an expert in accordance with paragraph 6(2) and the expert gives authorisation the authorised development shall be carried out in accordance with the authorisation and conditions contained in the award of the expert under paragraph 6(2) 3.

6. (1) In the event that:

(a) no response has been received to the submission of the works details under paragraph 3 within ~~the 45 day period referred to in paragraph~~ 345 days of the

Comment [IG16]: Using "affected asset" here rather than "pipeline" - we consider the use of "affected asset" to be appropriate throughout as the definition of pipeline is too narrow. See comments above.

Comment [IG17]: Why just cats?

Field Code Changed

undertaker obtaining a written acknowledgment of receipt from a specified person under paragraph 3(1) and no further particulars have been requested under paragraph 3(2); or

- (b) authorisation has not been given within 30 days of the undertaker ~~providing the owner or operator with~~obtaining a written acknowledgment of receipt from a specified person of the further particulars supplied under paragraph 3(2)7)

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

~~If authorisation has been refused or if~~(2) In the event that:

- (a) the undertaker considers that ~~the~~an owner or operator has unreasonably withheld its authorisation under paragraph 5(1): or
- (b) the undertaker considers that an owner or operator has given its authorisation under paragraph 5(1) subject to unreasonable conditions.

the undertaker may refer the matter to an expert for determination under article 40(2).

(3) Where the matter is referred to an expert under paragraph 6(2) the expert shall determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 5(1).

(4) Where the undertaker considers that the owner or operator of the cat's pipeline has unreasonably withheld its authorisation under paragraph 5(2) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by the Secretary of the United Kingdom Onshore Pipeline Association (UKOPA) for determination under article 40(2).

Notice of works

7. The undertaker will provide to the owner and operator of an affected asset - a minimum of 28 days' notice prior to commencing that 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

8. (1) Before carrying out a relevant work the undertaker must:
- (a) provide the owners and any operators of any affected asset with baseline data for any existing cathodic protection of the ~~pipes~~affected asset; 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 ~~pipes~~asset.
- (2) The ~~pipes~~pipelines ~~will be located by hand digging prior to~~ the use of mechanical excavation except that any excavation within 1.5 metres of the centreline of a pipeline must be hand dug.

Comment [IG18]: How can you locate with diggers?? Suggest that this provision reads "The pipelines will be located by hand digging prior to the use of mechanical excavation provided that any excavation outside of 1.5 metres of the centreline of a pipeline may be by mechanical means."

Field Code Changed

(3) The undertaker shall engage an independent construction Quality Assurance Inspector(s) to oversee cats pipeline critical construction activities during the construction phase.

9. (1) Where temporary crossings for construction traffic are to be used, other than where the pipes/pipelines are under a carriageway of adequate standard of construction, then the crossing points shall be suitably reinforced with sleepers and/or road plates or a specially constructed reinforced concrete raft or by installing a temporary bridge over the pipe/pipeline as necessary.

(2) Details of proposed temporary crossing points referred to in sub-paragraph (1) must be notified to the owner and operator of the pipe/pipeline in accordance with paragraph 3.

10. During construction an area of at least 1.5 metres either side of the pipes/pipelines, must be fenced off using some form of visual indication such as netlon fencing or "heras" type fence panels. Suitable signage warning of the danger of live pipes/pipelines must be erected at a minimum distance of every 50 metres.

11. No explosives must be used within the protected land.

12. (1) There will be no lifting over any exposed sections of the cats pipeline or live or vulnerable plant containing hazardous substances or pressure enemy.

(2) Any construction works above the buried sections of the cats pipeline will require the protection of the cats pipeline.

~~12.~~13. (1) Where piling is required within 1.5 metres of a pipe/pipeline or which could have an effect on the operation or maintenance of a pipe/pipeline or access to a pipe/pipeline, the undertaker shall carry out prior consultation with the owner and operator of the relevant pipe such piling must be undertaken by nonpercussive methods/pipeline by way of submission of the relevant works details.

(1) Details of proposed methods and location so if the piling referred to in sub paragraph (1) must be notified to the owner and operator of the pipe in accordance with paragraph 3.

(2) Any proposed piling operations within (i) 10 metres either side of the cats pipeline will require the crown of the pipeline to be physically exposed, so its location can be confirmed with the asset operator or owner as appropriate and where within 2 metres of the centreline of the cats pipe line it shall be exposed by hand diming only: (ii) 5 metres either side of the centreline of the cats pipeline will require excavation to be carried out to a level below the depth of the pipeline, to ensure that no materials are present that could damage the pipeline if disturbed, in the presence of the asset owner or operator as appropriate.

(3) All excavations within 2 metres of the centreline of the cats pipeline must be hand dug.

(4) All piling within 10 metres of the centreline of the cats pipeline must be non percussive

~~13.~~14. (1) Where excavation of trenches (including excavation by dredging) adjacent to a pipe/pipeline affects its support, the pipe/pipeline must be supported in a manner approved by the owner and operator of the relevant pipe/pipeline.

Where the undertaker proposes to carry out excavations which might affect above ground structures such as pipe supports in the pipeline corridor, the undertaker must calculate the zone of influence of those excavations and provide those calculations to the owner and operator of the pipe/pipeline under paragraph 3.

Comment [IG19]: Why only cats?

Comment [IG20]: How is any comment/response to be addressed?

Comment [IG21]: Why only cats?

Field Code Changed

~~14.15.~~ (1) Where a trench is excavated across or parallel to the line of a pipepipeline, the backfill must be adequately compacted to prevent any settlement which could subsequently cause damage to the pipepipeline.

(2) Proposed methods and locations of compacting must be notified to the owner and operator of the pipepipeline in accordance with paragraph 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 paragraph ~~14.15~~(1) and what further works may be necessary, and the results of such testing must be supplied to the owner and operator of the pipepipeline.

(4) Where it is shown by the testing under paragraph ~~14.15~~(3) to be necessary, the undertaker must carry out further compaction testing under paragraph ~~14.15~~(1) and paragraphs ~~14.15~~(1), (3) and (4) shall 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 pipepipeline which has been exposed over the length of the excavation before backfilling and reinstatement is carried out, the undertaker shall pay to the owner or operator of the relevant pipepipeline 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 paragraphs ~~14.15~~(1) to (4); or
- (b) the amount of any payment under paragraph ~~14.15~~(5),

the undertaker or the owner or operator of the relevant pipepipeline may refer the matter to an expert for determination under article 4042(2).

~~15.16.~~ (1) A minimum clearance of 1,500mm must be maintained between any part of the authorised development and any affected asset ~~underground~~(whether that part of the authorised development is parallel to or crosses the pipe) unless otherwise agreed with the operator or owner of the ~~relevant affected~~ asset.

(2) No manholes or chambers are to be built over or round the pipespipelines.

Monitoring for damage to pipespipelines

~~16.17.~~ (1) When carrying out the relevant works the undertaker will continuously monitor the pipesrelevant pipelines and the protected crossings to establish whether damage has occurred.

(2) Where any damage occurs to a pipepipeline or a protected crossing: as a result of the relevant work, the undertaker shall immediately cease all work in the vicinity of the damage and shall notify the owner and operator of the relevant pipepipeline or the owner of the protected crossing ~~must be notified by the undertaker~~ to enable repairs to be carried out. Works in the vicinity of the damage shall not recommence until the repairs have been carried out to the reasonable satisfaction of the pipeline owner.

(3) The If damage has occurred to a pipeline or a protected crossing as a result of relevant work the undertaker will, at the request and election of the owner or operator of the relevant pipepipeline or the owner of the protected crossing, either:

- (a) afford the owner or operator of the pipepipeline or owner of the protected crossing all reasonable facilities to enable it to fully and properly repair and test the pipepipeline or protected crossing and pay to the owner or operator 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) itself fully and properly repair the pipepipeline or protected crossing as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of the owner or operator of the pipepipeline or owner of the protected crossing to have effectively repaired the pipepipeline or protected crossing before any backfilling takes place.

(4) Where testing has taken place under paragraph 4617(2)(b), the undertaker must (if the owner or operator of the pipepipeline or the owner of the ~~tunnel~~protected crossing so requests) provide it with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of a relevant work the undertaker must continue to monitor the pipespipelines and the protected crossing to establish whether any damage has occurred and if damage is found to have occurred sub-paragraphs (2) to (4) of this paragraph will apply to that damage.

(6) Pursuant to the approved 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 cats pipeline cathodic protection system, the undertaker shall undertake any necessary remedial work.

(7) In the event that the undertaker does not carry out necessary remedial work timeously then the affected owner shall be entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

~~17~~18. (1) If any damage occurs to a pipepipeline causing a leakage or escape from a pipepipeline, all work in the vicinity shall cease and the owner and operator of the pipepipeline must be notified immediately.

(2) Where there is leakage or escape ~~of gas~~, the undertaker must immediately:

- (a) remove all personnel from the immediate vicinity of the leak/escape;
- (b) inform the owner and operator of the relevant pipepipeline;
- (c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least ~~50~~350 metres from the leakage; and
- (d) assist emergency services as may be requested.

Compliance with requirements, etc. applying to the protected land

~~18~~19. (1) Subject to paragraph ~~18~~19(2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting owners of the protected land, the undertaker must

Comment [IG22]: Is this unique to the cats pipeline?

Field Code Changed

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 7 of this Schedule; or
- (b) determined by the expert following a determination under article 40(2) to unreasonably:
 - (i) create significant engineering, technical or programming difficulties; or
 - (ii) materially increase the cost of carrying out the works.

(3) Paragraph ~~18~~19(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 planning authority or the police.

Access for construction and maintenance

~~19~~20. (1) Before carrying out any construction or maintenance works affecting access rights over the access roads, the undertaker must prepare a draft construction access plan and publicise and consult on the draft construction access plan with owners of the protected land and operators of the ~~pipes~~pipelines.

(2) The undertaker must take account of the responses to any consultation referred to in paragraph 19(1) before approving the construction access plan.

~~20~~21. (1) In preparing a construction access plan under paragraph 4.920 the undertaker must:

- (a) establish the programme for major works in the pipeline corridor and the Wilton Complex and plan the construction or maintenance works to prevent or (if such conflict cannot be reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and
- (b) establish where an owner of the protected land or operator of a ~~pipe~~pipeline has a reasonable expectation to exercise access rights over particular access roads in respect of which rights which are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby that expectation can be met.

(2) Where a reference is made to expert determination under article 40(2) in relation to any disagreement about a construction access plan, in addition to the criteria set out in article 42(2)(e), the appointed expert 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 undertakers 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 the owner or operator to carry out the major works at a different time; and
- (g) the financial consequences of the decision on the undertaker and on any owner and operator.

(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 on which the works are programmed to be carried out.

~~21-22.~~ (1) No works affecting access rights over the access roads may commence until 30 days after a copy of the approved construction access plan is served on the owners of the protected land and operators of pipes.

(2) Where an owner of the protected land or an operator of a pipe refers the construction access plan to an expert for determination under ~~Article 40~~ article 42(2), 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 shall at all times comply with the construction access plan.

Restriction on exercising powers

~~22-23.~~ (1) The undertaker ~~shall~~must not in the exercise of the powers conferred by ~~articles 24 and 25~~ of this Order ~~to~~ acquire, appropriate, extinguish, suspend or override any rights in the protected land ~~which are known and shall only exercise if the authorised development can reasonably and practicably be carried out without~~ such ~~powers in relation to unknown rights~~ 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 owners of the protected land and operators of ~~pipes~~the pipelines, including any disruption to access and supplies of utilities and other services that are required by them in order to carry out their operations.

~~23-24.~~ (1) The undertaker must not exercise the powers conferred by articles 24 and 25 of this Order to acquire, appropriate, extinguish, suspend or override any rights in the protected land relating to the pipelines or access to pipes except in relation to unknown rights.

(2) Without prejudice to paragraph 23(1) the undertaker must not exercise the identified powers in relation to ~~an affected asset~~ the protected land without:

Comment [IG23]: Amend

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(a) in relation to the protected land without the consent in writing of the owner of that ~~affected asset~~land; or and

(b) where the exercise of powers affects a pipeline, the consent in writing of the operator of that pipeline, or

(c) consent given by an expert appointed under article 40(2); or

~~(b)(d)~~ deemed consent pursuant to subparagraph (5) below ~~and the undertaker shall obtain written acknowledgement of receipt of a request for consent from the specified persons in relation to the asset(s) concerned.~~

(3) Where an identified power provides for the undertaker to automatically extinguish or override a right or interest of an owner of the protected land, the restriction in ~~paragraph~~paragraphs 23(1) shall operate so that the said extinguishment or override of the said right or interest will not apply unless the owner of the right or ~~interest has~~interest has given its consent, ~~deemed consent has been given pursuant to sub-paragraph (5) below~~ or consent has been given by an expert appointed under article 40(2) or is deemed to be given under sub-paragraph (7).

(4) Where a person is asked to give consent under this paragraph ~~23(2)~~ the consent must not be unreasonably withheld.

(5) If the undertaker considers that consent has been unreasonably withheld, the undertaker may refer the request for consent to an expert appointed under article 40(2) for determination.

(6) If an owner of the protected land or operator of a ~~pipe~~pipeline fails to respond to a request for consent within 30 days after from the ~~acknowledgement of date when a written request for~~ consent ~~their~~ consent is made to the specified person the undertaker may serve a further notice on that owner or operator (a "deeming notice").

(7) In the event that an owner of the protected land or operator of a pipeline fails to respond to a deeming notice within 10 working days from the date when a written acknowledgement of receipt of the deeming notice is obtained by the undertaker from the specified person the consent of the owner of the protected land or operator of a pipeline as the case may be is deemed to have been given.

(8) In this paragraph, "identified powers" means the powers conferred by the following:

(a) article 10 (street works);

(b) article 11 (temporary stopping up of streets);

(c) article 12 (access to works);

(d) article 14 (discharge of water);

(e) article 16 (authority to survey and investigate the land);

(f) article 24 (compulsory acquisition of rights) insofar as the exercise of such powers is not excluded by paragraphs 23(1) or 24(1) of this Schedule;

(g) article 25 (power to override easements and other rights) insofar as the exercise of such powers is not excluded by paragraphs 23(1) or 24(1) of this Schedule;

~~(f)~~(h) article 29 (rights under or over streets); and

~~(g)~~(i) article 30 (temporary use of land for carrying out the authorised development).

Insurance

~~24-25.~~ (1) Before carrying out any part of the authorised development on the protected land, the undertaker must put in place a policy of insurance with a reputable insurer against its liabilities under paragraph 26 in accordance with the terms and level of cover notified under paragraph 24(2) or, in the case of dispute, in accordance with the terms and level of cover determined by an expert under article 40(2), and evidence of that insurance must be provided on request to owners of the protected land and operators of ~~pipes and the undertaker shall notify the owners of the protected land before changing the terms of the insurance policy~~ pipelines.

(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 the owners of the protected land and operators of pipes 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 must maintain insurance in relation to works and the authorised development affecting owners of the protected land and operators of pipes during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover specified in paragraph 24(+2) or at such level as may otherwise be determined by an expert under article 40(2).

~~25-26.~~ If there is (1) If an owner of the protected land or operator of a pipeline has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 24:

- (a) the owner of the protected land or operator of a ~~pipe~~ pipeline may refer the matter to an expert for determination under article 40(2); 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 article 40.(2) is complete, following which the undertaker ~~shall, if necessary,~~ must adjust the insurance policy ~~in accordance of~~ necessary to accord with the determination.

Costs

~~26-27.~~ The undertaker must repay to owners of the protected land and operators of ~~the pipes~~ pipelines all reasonable fees, costs, charges and expenses reasonably incurred by them in relation to these protective provisions in respect of:

- (a) authorisation of works details submitted by the undertaker under paragraph 3 and the imposition of conditions under paragraph 5;
- (b) the engagement of an engineer and their observation of the authorised works affecting the ~~pipes~~ pipelines and the provision of safety advice under paragraph 7;
- (c) responding to the consultation on piling under paragraph ~~12~~ 13;

Comment [revs24]: This is all overkill - the necessary protection exists in the remainder of the protective provisions.

Comment [revs25]:

Field Code Changed

- (d) considering the effectiveness of any compacting which has taken place under paragraph ~~4~~15, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;
- (e) the repair and testing of a ~~pipe~~pipeline or protected crossing under paragraph ~~4~~617;
- (f) considering and responding to consultation in relation to the construction access under paragraph ~~4~~920 and providing details of their programme for major works to the undertaker under paragraph ~~4~~921;
- (g) dealing with any request for consent or agreement by the undertaker under paragraph 23; 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 ~~2~~425,

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

(2) The undertaker must indemnify and keep the owners of the protected land and operators of the pipes indemnified against all reasonable costs, charges, damages and expenses, and against consequential loss and damage, which may be occasioned or reasonably incurred by the owners and operators:

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

and the fact that any act or thing may have been done by the owner of protected land or operator of a pipeline on behalf of the undertaker or in accordance with plans approved by or on behalf of the owner or operator or in accordance with any requirement of the engineer appointed by the owner or operator or under his supervision will not (if it was done without negligence on the part of the owner or operator or of any person in their employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph 26(2).

(3) An owner or operator must give the undertaker reasonable notice of any claim or demand under paragraph 26(~~4~~2) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(4) An owner or operator 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 pursuant to this Schedule.

(5) In the assessment of any sums payable to an owner or operator 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, the owner or operator 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.

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

~~27.~~28. The undertaker must give written notice to the owners of the protected land and the operators of ~~pipes~~pipelines of the terms and level of cover of any guarantee ~~or~~alternative form of security put in place under article 23 (Guarantees in respect of payment of 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 will come into force.

~~28.~~29. The undertaker must give written notice to the owners of the protected land and the operators of ~~pipes~~pipelines 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 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.

~~29.~~30. The undertaker must, when requested to do so by an owner of the protected land or an operator of a ~~pipe~~pipeline, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 38 (Certification of Plans etc) in the form of a computer disc with read only memory.

~~30.~~31. The authorised development must be carried out in accordance with the methods and measures set out in the relevant constructability notes.

~~31.~~32. 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 the owners of the protected land and the operators of the ~~pipes~~pipelines.

Disputes

Expert Determination

~~32.~~33. (1) Any dispute under this Schedule is to be determined by the expert determination procedure as provided for in article 40(2) (arbitration and expert determination) as modified by this paragraph.

(2) In addition to the considerations set out in article 40(2)(e) the expert must consider any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations and have regard to the Constructability Notes.

SCHEDULE 10

Article 34

FOR THE PROTECTION OF ASSETS BRIDGED/OVERSAILED

1. The following provisions of this Schedule shall have effect, unless otherwise agreed in writing between the undertaker and the protected asset owner/s.

2. In this Schedule—

"construction" includes execution, placing, alteration, reconstruction and decommissioning and "construct" and "constructed" have corresponding meanings;

"Deeds of Grant" means the deeds dated 23 September 1949 and 23 February 1954 made between Imperial Chemical Industries Limited and Dorman Long & Co Limited;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the protected asset;

"protected asset" means the assets and land identified in the annex to this Schedule;

"protected asset owner" means the owner/s of a protected asset; and

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, a protected asset.

3. Where under this Schedule a protected asset owner is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that the protected asset owner complies with any obligations under statute.

~~4.~~(1) The undertaker must not in the exercise of the powers conferred by this Order—

(a) create, acquire, appropriate, extinguish or suspend any rights or covenants in respect of any protected asset if the authorised development can reasonably and practicably be carried out in accordance with the protective provisions without such creation, acquisition, appropriation, extinguishment or suspension; ~~and~~

(b) without prejudice to (a) restrict the rights contained in the Deeds of Grant in so far as such rights are consistent with the construction, operation and maintenance of the authorised development in accordance with the protective provisions.

(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 protected ~~asset owners~~assets.

(3) The undertaker shall not in the exercise of the powers conferred by this Order prevent access via any existing pedestrian or vehicular access to any protected asset, unless preventing such access is with the consent of the protected asset owner and is in any event subject to exception in the case of emergency.

(4) The undertaker shall not under the powers of this Order acquire or create new rights over a protected asset other than such rights as are necessary for the construction, operation and maintenance of Works No. 4 and Works No. 5 (in accordance with the protective provisions) without the consent of the protected asset owner.

~~(4)~~(5) Where the protected asset owner is asked to give its consent pursuant to this paragraph such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

~~4.5~~A—(1) Before carrying out any works on any part of the authorised development affecting a protected asset the undertaker must put in place a policy of assurance with a reputable insurer against consequential loss and damage suffered by protected asset owners or as may be

determined by an expert under [paragraph 19, article 40\(2\)](#), and evidence of that insurance must be provided on request to protected asset owners.

(2) Not less than ~~90~~30 days before carrying out any works on any part of the authorised development affecting a protected asset or before proposing to change the terms of the insurance policy, the undertaker must notify the affected owners of details of the terms ~~or cover~~ of the insurance policy that it proposes to put in place including the proposed level of the cover to be provided.

(3) The undertaker must maintain insurance in relation to works or the use of the authorised development affecting the protected asset during the operation of the authorised development at the level specified in the notice of proposed insurance.

~~5.6.B~~ If a protected asset owner notifies the undertaker that it considers that any proposed exercise by the undertaker of a power under this Order breaches these protective provisions or if there is a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph ~~85~~8 before such a power may be exercised—

- (a) the protected asset owner may refer the matter to an expert for determination under [paragraph 19, article 40\(2\)](#); and
- (b) ~~{the undertaker must not exercise the power concerned until that determination has been provided.}~~
- (c) [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 article 40\(2\) is completed, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.](#)

Comment [IG1]: This should remain - it is arguable that (a) requires only the reference to have occurred. ...

~~7.~~7—(1) The undertaker shall before commencing construction of any specified work supply to the protected asset owner proper and sufficient plans of that work for the reasonable approval of the protected asset owner and the [undertaker must as soon as reasonably practicable provide such further particulars as the protected asset owner may within 45 days from the receipt of the plans reasonably require.](#)

~~(3)(2)~~2 The specified work shall not be commenced except in accordance with such plans as have been approved in writing by the protected asset owner or ~~settled by arbitration~~have been deemed to be approved pursuant to sub-paragraph (3) or settled by expert determination under the provisions of article 40(2).

~~(4)(3)~~3 The approval of the protected asset owner under sub-paragraph (1) shall not be unreasonably withheld, and ~~if by the end of the period of 28 days beginning with the date on which such plans have been supplied to the protected asset owner, the protected asset owner has not intimated its disapproval of those plans and the grounds of its disapproval the undertaker may serve upon the protected asset owner written notice requiring the protected asset owner to intimate its approval or disapproval within a further period of 28 days beginning with the date upon which the protected asset owner receives written notice from the undertaker. If by the expiry of the further 28 days the protected asset owner has not intimated its approval or disapproval, it shall be deemed to have approved the plans as submitted.~~in the event that—

- (a) no response has been received to the submission of the plans within 45 days of the submission of the plans by the undertaker to the protected asset owner and no further particulars have been requested under sub-paragraph (1); or
- (b) approval no response has not been given received within 30 days of the undertaker providing to the protected asset owner the further particulars supplied under sub-paragraph (1).

approval of the plans shall be deemed to be given and the relevant works may commence.

(4) No refusal of the approval sought under sub-paragraph (1) shall be reasonable for the purposes of sub-paragraph (3) or determination pursuant to article 40(2) unless the protected asset owner can reasonably demonstrate that the construction of the specified work will materially affect the safe operation or structural integrity of the protected asset concerned.

(5) In the event that the undertaker considers that the protected asset owner has unreasonably withheld its authorisation under sub-paragraph (1), the undertaker may refer the matter to an expert for determination under article 40(2).

~~6.8~~—(1) Any specified work shall, when commenced, so far as reasonably practicable be constructed in accordance with these protective provisions and—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph ~~5.7~~;
- (b) under the supervision (~~where appropriate and~~ if given) and to the reasonable satisfaction of the protected asset owner;
- (c) in such manner as to avoid damage to the protected asset; and
- (d) so as not to interfere with or obstruct the free, uninterrupted and safe use of any protected asset or any traffic thereon.

(2) If any damage to a protected asset or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker shall, make good such damage without unreasonable delay and shall pay to the protected asset owner all reasonable expenses incurred by the protected asset owner and compensate for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule shall impose any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of the protected asset owner or its servants, contractors or agents or any liability on the protected asset owner with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

~~7.9~~ The undertaker shall—

- (a) at all times afford reasonable facilities to the protected asset owner for access to a specified work during its construction; and
- (b) supply the protected asset owner with all such information as it may reasonably require with regard to a specified work or the method of constructing it.

~~8.10~~—(1) If any permanent or temporary alterations or additions to a protected asset ~~are~~ reasonably necessary in consequence of the construction or operation of a specified work, in order to ensure the safety of the protected asset or the continued safe operation of the protected asset ~~of the protected asset owner~~, such alterations and additions may be carried out by the protected asset owner and if the undertaker shall pay to the protected asset owner the cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the protected asset owner in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) The protected asset owner shall, in respect of the capitalised sums referred to in this paragraph provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(3) If the cost of maintaining, working or renewing a protected asset is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to the protected asset owner under this paragraph.

~~9.11~~ The undertaker shall repay to the protected asset owner all reasonable fees, costs, charges and expenses reasonably incurred by the protected asset owner—

- (a) in respect of the approval by the protected asset owner of plans submitted by the undertaker and the supervision by it of the construction of a specified work;
- (b) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall ~~it be~~ reasonably necessary to appoint for inspecting, signalling, watching and lighting the protected asset and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

- (c) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the protected asset owner, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution of diversion of services which may be reasonably necessary for the same reason.

~~10.12.~~ If at any time after the completion of a specified work, not being a work vested in a protected asset owner, the protected asset owner gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of a protected asset, the undertaker shall, on receipt of such notice and without unreasonable delay, take such steps as may be reasonably necessary (and in accordance with the protective provisions) to put that specified work in such state of maintenance as not adversely to affect the protected asset.

~~11.13.~~ The undertaker shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any protected asset ~~belonging to a protected asset owner~~ unless it shall have first consulted the protected asset owner and it shall comply with the protected asset owner's reasonable requirements for preventing conflict or confusion between such illumination or illuminated sign or signal and any signal or other light used for controlling, directing or securing the safety of traffic on the protected asset.

~~12.14.~~ Any additional expenses which a protected asset owner may reasonably incur in altering, reconstructing or maintaining a protected asset under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that (other than in the case of emergency or an operational imperative requiring urgent action) 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to the protected asset owner.

~~13.15.~~ The protected asset owner shall, 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 pursuant to this Schedule.~~

~~14.16.~~ In the assessment of any sums payable to the protected asset owner under this Schedule there shall 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 the protected asset owner 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.

~~15.17.~~ The undertaker and the protected asset owner may (at their absolute discretion), enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any protected asset ~~shown on the works plans and land plans and described in the book of reference;~~
- (b) any lands, works or other property held in connection with any such protected asset; and
- (c) any rights and obligations (whether or not statutory) of the protected asset owner relating to any protected asset or any lands, works or other property referred to in this paragraph.

~~16.18.~~ The undertaker shall give written notice to the protected asset owner 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 Order) of this Order and any such notice shall be given no later than 28 days before any such application is made and shall describe or give (as appropriate)—

- (a) the nature of the application to be made (including the ~~identify~~identity of the parties to which it relates);
- (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.

~~17.19~~ The undertaker shall no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 38 (Certification of plans etc) are certified by the Secretary of State, provide a set of those plans to the protected asset owner in the form of a computer disc with read only memory— or such other electronic data format as the protected asset owner may reasonably request.

ANNEX

(1) Asset	(2) Asset Owner	(3) Crossing Number/Location
Land subject to lease in favour of M&G Fuels	M&G Solid Fuels LLP	Plot 60 on the land plans
A1085	Redcar and Cleveland Borough Council	MC1 on the convey or route plans (Documents 3.3A-N)
Hot Metal Rail and Bridge	Tata Steel UK Limited and Sahaviriya Steel Industries UK Limited	MC3 on the convey or route plans (Documents 3.3A-N)
SSI Road and Bridge	Tata Steel UK Limited and Sahaviriya Steel Industries UK Limited	MC6 on the convey or route plans (Documents 3.3A-N)
Land and assets owned/occupied Tata Steel UK Limited by Tata Steel UK Limited	Tata Steel UK Limited	Plot 37a on the land plans

Comment [IG2]: The asset comprises the bridge and the rail infrastructure

Comment [IG3]: Tata has full rights to use this asset and retains the rights within the Deeds of Grant in relation to it. We need to be listed as an owner

Comment [IG4]: The asset comprises the bridge and the road infrastructure

Comment [IG5]: Tata has full rights to use this asset and retains the rights within the Deeds of Grant in relation to it. We need to be listed as an owner

~~18.20~~ All works must be carried out in accordance with the methods and measures set out in the relevant constructability notes.

~~19.21~~ Any dispute under this ~~Section~~ Schedule is to be determined by the expert determination procedure as provided for in article 40(2) (arbitration and expert determination).