

THE YORK POTASH HARBOUR FACILITIES ORDER 201X

Applicant's Schedule of Changes to the draft Development Consent Order



Document 8.10

Eversheds LLP

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YORKPOTASH
A Sirius Minerals Project



THE YORK POTASH HARBOUR FACILITIES ORDER 201X

APPLICANT'S SCHEDULE OF CHANGES TO THE DRAFT DEVELOPMENT CONSENT ORDER (DOCUMENT 4.1D)

This table refers to all changes to the draft DCO submitted on 6 November 2015 (Document 4.1C)

DCO Reference	Applicant's Explanation of Change
Contents	The descriptions of Schedules 9 and 10 have been amended to correlate with their updated titles.
Footnote (b) on page 3	Square brackets removed from the reference to the Infrastructure Act 2015. The Act has come into force since the first draft Order was submitted.
<p>Article 2:</p> <ul style="list-style-type: none"> • Definition of "book of reference"; • Definition of "building"; • Definition of "constructability notes"; • New definition of "Notice to Mariners"; • Definition of "outline ecological management plan"; and • New definition of "WGS84". 	<ul style="list-style-type: none"> • Document reference updated to 5.3B to reflect the latest version of the book of reference submitted for Deadline 6; • This definition has been amended to clarify that for the purposes of article 30, the term "building" shall not include a pipeline. This is in response to Bond Dickinson's concern in relation to plots 54a and 59a where their client's pipeline run through temporary works areas; • Revision numbers for the BP CATS notes have been updated; • Inserted as requested by the ExA and based on (but not identical to) the suggested definition from the MMO; • Document reference updated to 6.11B to reflect the updated version submitted for Deadline 6; and • Inserted as requested by the ExA and based on the suggested definition from the MMO.
Article 6(3)(b)	The words "or within the lagoon" have been added to this sub-paragraph as discussed at the DCO Hearing on 24 November and as noted in Document 8.8.

Article 25(4)(c)	As mentioned in Document 8.8, the Applicant has removed item (c) from article 25(4) as the position is better covered by amendments to Schedule 9 which have been made since this provision was added. Bond Dickinson has confirmed that the removal of this sub-paragraph is agreed.
Article 37	Typographical errors corrected.
<p>Article 38:</p> <ul style="list-style-type: none"> (a) book of reference; (k) the outline construction environmental management plan; (l) the outline ecological management plan; (p) drawing number PB1586 – SK1081 (Document 3.16); (q) drawing numbers PB1586 – SK1026 and SK1027 (Documents 3.5A and 3.5B); and (r) The Wilton Complex Plan. 	<ul style="list-style-type: none"> (a) Document reference updated; (k) Document reference updated following submission of updated outline construction environmental management plan which accompanies this submission; (l) Document reference updated following submission of updated outline ecological management plan which accompanies this submission; (p) Revision number updated to reflect discussions with RBT. The updated Document 3.16 accompanies this submission and the Applicant understands that the revised plan is acceptable to RBT but awaits formal confirmation; (q) Added as per the ExA's draft DCO; and (r) This plan has been added as it is referred to in Schedule 9 of the DCO.
Article 40(2)(f)	Typographical error corrected.
<p>Schedule 2:</p> <ul style="list-style-type: none"> • Requirement 6(1) • Requirement 6(2) • Requirement 9(1) 	<ul style="list-style-type: none"> • References to the governance tracker have been updated. • Typographical error "alternative" has been corrected to "alteration". • Reference to the outline ecological management plan has been updated.

<ul style="list-style-type: none"> Requirement 11 	<ul style="list-style-type: none"> The words "through the removal of the overhead conveyor system" have been inserted and "will" has been changed to "must" following discussions at the DCO Hearing on 24 November and the ExA's draft DCO.
<p>Schedule 4</p>	<p>Typographical errors corrected.</p>
<p>Schedule 5:</p> <ul style="list-style-type: none"> Paragraph 9 Paragraph 14 Paragraph 17(1) Paragraph 17(2) Paragraph 18(1) Paragraph 18(3) Paragraph 19(d) Paragraph 33 	<ul style="list-style-type: none"> The licence period has been amended to 20 years as explained in Document 8.8. The words "to be" have been added as per the ExA's draft DCO. "Stage" has been changed to "operation" as discussed and agreed at the DCO Hearing on 24 November and as per the ExA's draft DCO. Typographical error corrected. "site" has been amended to "area of Works Nos. 2 and 3" for clarity as discussed and agreed at the DCO Hearing on 24 November and as per the ExA's draft DCO. The wording has been re-ordered as discussed and agreed at the DCO Hearing on 24 November and as per the ExA's draft DCO. (d) has been removed following a discussion in relation to the definition of "appropriately trained personnel". As mentioned in Document 8.8 the MMO and the Applicant both consider that this should be removed. Typographical error corrected.
<p>Schedule 9</p>	<p>The Applicant's proposed protective provisions for the pipeline corridor and protected crossings are those contained in Schedule 9 of the draft DCO submitted for Deadline 6 (Document 4.1D). They have been amended, and</p>

extended, significantly over the process of the Examination as a result of discussions with various parties. The Applicant is content that the positions reached with the various parties are the final positions and no further agreement is likely to be reached. The position of the parties in respect of Schedule 9 is as follows:

- a) **Bond Dickinson** – the identification of the outstanding issues has been agreed with Bond Dickinson and these issues are addressed in the note contained at **Appendix 1**.
- b) **BP CATS** – the content of Schedule 9 as contained in the draft DCO (Document 4.1D) has been agreed with BP CATS with the exception of one issue only. One of the agreed amendments was agreed too late for inclusion in the draft DCO (Document 4.1D). This is as follows:
 - i. Paragraph 13(3) - add the words "save that in the case of the cats pipeline all piling within 10 metres of the centreline of the cats pipeline must be non-percussive"
 - ii. Paragraph 14(4) – delete.

These amendments only affect BP CATS and are acceptable to the Applicant.

The only outstanding issue relates to the indemnity provisions which is addressed in **Appendix 2**.

- c) **Tata Steel UK Limited** – some minor amendments to Schedule 9 have been requested by DLA Piper LLP and subject to those amendments the Schedule is agreed. These were received by the Applicant too late to incorporate within the amended DCO and to obtain other parties' views. They are:
 - i. Paragraph 14(1) – insertion of "for approval" between "pipeline" and "by way" in line 4; and
 - ii. Paragraph 27(1)(b) – the insertion of "at its own risk" between "development" and "whilst" in the second line.

	<p>The amendments are not essential since they do not change any issue of substance but the Applicant has no objection to either of them.</p>
Schedule 10	<p>The Applicant's proposed protective provisions for the assets oversailed are those contained in Schedule 10 of the draft DCO submitted for Deadline 6 (Document 4.1D). Schedule 10 has been the subject of discussions with the lawyers acting for TATA Steel UK Limited and the version incorporated in the draft DOC (Document 4.1D) is the product of those discussions and has been agreed with them.</p>
<p>Schedule 11:</p> <ul style="list-style-type: none"> • Paragraph 4(1)(d) • Paragraph 4(6) – Table 1 • Paragraph 11 	<ul style="list-style-type: none"> • Typographical error corrected. • Cross references to Schedule 5 have been updated. • Following the discussion at the DCO Hearing on 24 November the Applicant has liaised with the Tees Port Authority in respect of this paragraph and both parties have agreed that it is not as clear as it ought to be. Accordingly, revised wording has been agreed between the Applicant and the Tees Port Authority which is reflected in this amended draft DCO.

APPENDIX 1

STATEMENT OF DIFFERENCES WITH BOND DICKINSON (SABIC/HUNTSMAN/DEA(INEOS))

1. The position of Bond Dickinson has consistently been that they have no objection in principle to the Order, provided that they are content with the protective provisions contained in Schedule 9.
2. Over the months, there have been extensive discussions relating to the protective provisions and the Applicant has attempted to accommodate as many of the Bond Dickinson requirements as possible (as requested from time to time).
3. However, the context for these protective provisions should not be forgotten. The pipeline corridor is populated by a significant amount of infrastructure, all of which is already governed by "permit to work" provisions which are contained in the legal arrangements between the asset owners and their landlord, Sembcorp and by which the undertaker has agreed to be bound. The nature of these arrangements is set out in an extract from the Deed of Grant agreed between Sembcorp and the undertaker contained in Annex 2 of this Appendix 1.
4. These arrangements impose safeguards both for the constructors of new infrastructure and the protection of the existing pipeline corridor overseen by Sembcorp. The legal arrangements between the Applicant and Sembcorp in relation to the pipeline corridor oblige the Applicant also to observe those arrangements. They deal with the same type of issues as the protective provisions in Schedule 9. However the protective provisions in Schedule 9 go far beyond the level of protection provided for the existing pipes under the current arrangements with Sembcorp.
5. The Applicant has sought to address points raised and has agreed to more onerous protective provisions than the current arrangements provide, however, attempts to impose increasingly more onerous protective provisions on the Applicant should be seen in this context.
6. It is notable that BP CATS, who have a significant interest in the pipeline corridor, have agreed the contents of Schedule 9 as proposed by the Applicant and contained within the draft DCO (Document 4.1D) with the sole exception of the form of indemnity in paragraph 28(2).
7. The list set out below identifies the outstanding issues between Bond Dickinson and the Applicant in relation to the drafting of Schedule 9. The wording of these issues, as set out below, has been agreed with Bond Dickinson. Without exception the issues are, in the Applicant's view, examples of Bond Dickinson seeking to impose more onerous obligations on the Applicant than is reasonable.
 - 1) The need to cover planned pipelines which are known about at the time of the pipeline survey but which are constructed after the pipeline survey;
 - 2) The definition of affected asset;
 - 3) The extent of definition of apparatus;
 - 4) The extent of land shown on the pipeline corridor plan;
 - 5) The definition of the pipeline survey;
 - 6) The scope and process of the pipeline survey and recovery of costs relating thereto;
 - 7) Whether the minimum clearance should relate to pipelines or just affected assets;
 - 8) The inclusion of paragraph 25(9);
 - 9) Paragraph 26 - whether, if owners etc. dispute the quantum/terms of the insurance the development can commence prior to the expert determination being completed; and
 - 10) The inclusion of parties whose material is carried through the pipelines in the indemnity provisions.

8. Each of these issues is addressed in Annex 1 to this Appendix 1 which also contains the Applicant's Schedule 9 submitted for Deadline 6 with tracked changes showing the changes that Bond Dickinson would wish to be made to address the above points.

ANNEX 1 TO APPENDIX 1

No.	Issue	Relevant Paragraphs of Schedule 9	Applicant's comment
1)	The need to cover planned pipelines which are known about at the time of the pipeline survey but which are constructed after the pipeline survey	Definitions of: <ul style="list-style-type: none"> • access roads; • affected asset – item (d); • easement width; • pipeline survey; • unknown rights; and • Additional definition of “proposed pipeline”; Additional reference to “proposed pipeline” in: <ul style="list-style-type: none"> • Paragraphs 6(1)(b)(ii), 16, 17, 23, 25, 26, 27, 28, 29, 30, 31 and 33. 	<p>The Applicant has accepted that the protective provisions should apply to any pipelines that exist when the pipeline survey is carried out which will include any pipelines not currently in existence but installed prior to that point.</p> <p>The Applicant does not feel it appropriate to gear protective provisions towards pipelines which are not physically in existence at the time of the works being carried out and which may never exist. Even if this was confined to planned pipelines, what would qualify as a “planned” pipeline? Until a pipeline has been constructed there can be no certainty as to whether it will be constructed.</p> <p>No specific programmed pipelines have been referred to by Bond Dickinson; any such pipelines will come within the general controls relating to the pipeline corridor under the Sembcorp lease and there is no reason why those pipelines should not reflect the existence of the authorised development.</p>
2)	The definition of affected asset	Definition of affected asset	The Applicant is concerned to ensure that the definition of “affected asset” is as certain as possible. This is important because it is “relevant works” being carried out to an affected asset that requires the Applicant to submit to that asset owner details and obtain approval of them. The amendments sought by Bond Dickinson incorporate a judgment as to

			whether work is likely to have an effect on the asset. That judgment is already included in the definition of "relevant works". It is unnecessary to have that judgment also included in the definition of affected asset.
3)	The extent of definition of apparatus	Definition of apparatus	The Applicant believes the definition of "apparatus" sought by Bond Dickinson goes beyond the scope of protective provisions in Schedule 9 which are entirely focussed on pipelines and their associated infrastructure. Accordingly, whilst the inclusion of sewers (as pipelines) is accepted, the references to drains, ditches and watercourses is not felt to be appropriate. The protection of these features will be governed by either the requirements or other legislation, as existing. The reference to "or other apparatus" is far too vague, especially as this definition is seeking to define the term "apparatus".
4)	The extent of land shown on the pipeline corridor plan	Defined in article 2	<p>Bond Dickinson would want plot 54a and 59a to be included in the pipeline corridor plan.</p> <p>Plot 54a is the temporary works to the access roundabout. Plot 59a is a temporary compound to be located near to the material handling facility.</p> <p>The pipeline corridor plan identifies the area which will be subject to the conveyor footings and supports and the location of the principle pipeline routes. Plots 54a and 59a do not fall within that corridor and are only affected by the temporary use of land. The Applicant's view is that these areas are adequately protected by the provisions in article 30 and their arrangements with their landlord, Sembcorp. Indeed, as mentioned in the Schedule of Changes to the DCO, the Applicant has</p>

			amended the definition of "building" in article 2 for the purposes of article 30 to further address this concern.
5)	The definition of the pipeline survey	Definition of pipeline survey	<p>The Applicant has agreed with Bond Dickinson that before the works are carried out a survey will be undertaken to ensure that the location and details of pipelines are accurately understood. Bond Dickinson would like the pipeline survey to be more extensive than the Applicant feels is necessary. In particular the Applicant does not feel it should be required to carry out a survey to establish matters which are already known, hence the Applicant would wish to maintain the words "if not known" in the second line of the definition.</p> <p>Item (b) which Bond Dickinson wish to add should not be included because, as indicated above, the pipeline survey should only be dealing with assets which are in place at the time and not potential pipelines.</p> <p>It is not considered necessary to include reference to access roads in a survey of this nature.</p>
6)	The scope and process of the pipeline survey and recovery of costs relating thereto	Paragraph 3 and paragraph 28	<p>Whilst the Applicant has agreed to the carrying out of a pipeline survey on the basis that it is a prudent measure, the Applicant does not wish this to be another potential cause for delay as a result of having to obtain approval of the survey from the various different asset owners. The Applicant is committing to carry out the survey through an appropriately experienced surveyor and to engage with the owners and operators of the pipelines to ensure that the survey is accurate. It is not necessary for the exercise to be expanded beyond this and to</p>

			<p>include representatives of all the various asset owners.</p> <p>The provision of a copy of the pipeline survey will be of significant benefit in any event to the asset owners and assist them in the future in the management of their assets. Accordingly it is not felt appropriate for any costs that are incurred in connection with the asset owners responding to the pipeline survey to be recoverable.</p>
7)	Whether the minimum clearance should relate to pipelines or just affected assets	Paragraph 17	<p>The minimum clearance referred to in paragraph 17 is appropriately related to an affected asset because the definition of affected asset identifies those assets which may be affected by the relevant works. If it related to pipeline instead, then it would apply whether or not there would be any effect on the pipeline concerned.</p>
8)	The inclusion of paragraph 25(9)	Paragraph 25(9)	<p>Bond Dickinson have added in a whole series of provisions which address a scenario which is not proposed or even contemplated; that being the physical interference with the assets owners' assets such as their removal and replacement or alteration to access etc. The powers in the Order do not extend to interfering with the assets in that manner and these further provisions are unnecessary.</p>
9)	Paragraph 26 - whether, if owners etc. dispute the quantum/terms of the insurance the development can commence prior to the expert determination being completed	Paragraph 26	<p>The Applicant has extended its insurance and indemnity provisions to all asset owners. This is one example of a protective provision which goes well beyond the provisions which protect existing assets from other assets.</p> <p>The consequence is that there are a very significant number of parties to whom the insurance cover is relevant. To have to wait</p>

			<p>until every single party has agreed the details of the cover would cause a real risk of delay which is a risk to the programme the Applicant does not wish to accept. It is not in the Applicant's interest to fail to put in place the appropriate insurance prior to commencing the works. If any party is unhappy at the detail or level of cover then the provision provides for expert determination and the insurance to be adjusted accordingly. The Applicant believes that this strikes the right balance between the various interests of the parties.</p>
10)	The inclusion of parties whose material is carried through the pipelines in the indemnity provisions	Paragraph 28(2)	<p>The indemnity within the Schedule is for the benefit of the asset owners within the Order land. The Applicant cannot be responsible to others, potentially varied and unknown, whose material is carried through the pipes. That responsibility is governed by the commercial arrangements between the asset owners and their customers.</p>

ANNEX 1 TO APPENDIX 1

**APPLICANT'S SCHEDULE 9 (AS CONTAINED IN DRAFT DCO (DOCUMENT 4.1D)) WITH
AMENDMENTS SOUGHT BY BOND DICKINSON BUT NOT AGREED BY THE APPLICANT
SHOWN AS TRACKED CHANGES¹**

¹ Please note that the base version of Schedule 9 is not identical to the one contained in the Draft DCO (Document 4.1D). There has been some correction of typographical errors, cross referencing and completion of the "specified persons" details since the Schedule in this Annex was agreed.

SCHEDULE 9

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 owner or operator of a 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 pipelines, proposed pipelines or protected crossings;

“affected asset(s)” means—

(a) underground pipelines where relevant work(s) are to be carried out which ~~within the easement widths relating to that apparatus~~ may have an effect on the operation, maintenance, repair, replacement and/or abandonment of and/or access to the pipeline concerned or its easement width;

(b) pipelines on or above ground ~~which would be physically affected by the~~ where relevant work(s) are to be carried out which may have an effect on the operation, maintenance, repair, replacement and/or abandonment of and/or access to the pipeline concerned;

(c) protected crossings in respect of works associated with Work No.1 or 2 or where ~~where~~ relevant work(s) are to be carried out within 25 metres of the protected crossing concerned; ~~and~~

(d) proposed pipelines which are likely (on the basis of the timetable contained in the completed pipeline survey) to have been installed at the time when relevant work(s) are carried out, where the relevant work(s) may have an effect on the construction, operation, maintenance, repair, replacement and/or abandonment of and/or access to the proposed pipeline concerned; and

~~(d)~~(e) _____ in relation to the exercise of an identified power, any ~~apparatus-pipeline in the protected land~~ _____ which would be affected by the exercise of that power.

“apparatus” means the pipes, pipelines and cables, sewers, drains, ditches, watercourses or other apparatus within the pipeline corridor 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 (whether or not comprising a pipe-line for the purposes of Section 65(2) of the Pipe-lines Act 1962) properly appurtenant to the pipelines as are described in section 65(2) of the Pipe-lines Act 1962;

“cats easement” means the easement width of the cats pipeline;

“cats pipeline” means the pipeline identified as “Gas BP Cats” on the conveyor route plans;

“cats pipeline critical construction activities” means the following authorised works—

(a) excavation works within the cats easement;

(b) piling within 10m of the cats pipeline;

(c) backfilling and compaction work within the cats easement;

(d) erection of crash mats above the cats pipeline; and

(e) all lifting above the cats pipeline.

“construction access plan” means a plan identifying how access will be maintained to pipelines, 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 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 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 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 of the protected land and operators of the pipelines to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the pipelines and protected crossings;

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

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

“easement width” means in respect of each pipeline or proposed pipeline the easement width shown on the conveyor route plans as adjusted if necessary (in respect of pipelines shown on the conveyor route plans) or added to (in respect of pipelines constructed after the date of this Order) as a result of the pipeline survey;

“engineer” means an engineer appointed by an owner or operator of a pipeline for the purposes of this Order;

“major works” means works by any person requiring the closure, diversion or regulation of any roads serving the Wilton Complex or the pipeline corridor;

“operator” means any person who is responsible for the construction, operation, use, inspection, adjustment, alteration, repair, maintenance, renewal, removal or replacement of any pipeline;

“owner” means—

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

“pipeline(s)” means the apparatus located in the pipeline corridor, or in or comprising a protected crossing ~~at the time when the pipeline survey is carried out~~;

“pipeline survey” means a survey of the pipeline corridor and the protected crossings to establish ~~if not known~~:

(a) the precise location of the pipelines and the protected crossings;

(b) the location of any new or diverted pipeline which an owner or operator proposes to install and the proposed timetable for its installation;

(c) the specification of the pipelines, proposed pipelines and protected crossings identified under paragraphs (a) and (b) including, ~~where relevant,~~ their composition, diameter, pressure and the products they are used or to be used to convey;

(d) any special requirements or conditions relating to the pipelines or proposed pipelines which differ from the requirements or conditions applying to standard pipelines of that type;

(e) the access roads used to gain access to the pipelines, proposed pipelines or protected crossings;

(f) the precise location of any easement widths or rights (where it is possible to establish this).

“proposed pipeline” means a new or diverted pipeline which, at the time of the pipeline survey, an owner or operator proposes to install and which is contained in the completed pipeline survey in accordance with paragraph (b) of the definition of “pipeline survey”.

“protected crossings” means—

(a) the tunnel under the River Tees which carries 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;

(b) the pipeline corridor; and

(c) the protected crossings;

“relevant work(s)” means a work which may have an effect on the operation, maintenance, repair, replacement and/or abandonment of and/or access to any pipeline or a protected crossing;

“specified persons” means—

(a) the following—

(i) Company Secretary, SABIC UK Petrochemicals Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF in relation to SABIC UK Petrochemicals Limited;

(ii) Operations Manager, Huntsman Polyurethanes, PO Box 99, Wilton, Redcar, TS10 4YA in relation to Huntsman Polyurethanes (UK) Limited;

(iii) Company Secretary, INEOS UK SNS Limited, 4th Floor, 90 High Holborn, London WC1V 6LJ in relation to INEOS UK SNS Limited; and

(iv) [] in relation to CATS North Sea Limited,

or such other person as they may notify to the undertaker in writing; or

(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:

(a) not known at the date of the Order; or

(b) identified as unknown in the book of reference,

but not including any rights relating to pipelines (or access to pipelines) where a pipeline or proposed pipeline is shown on the pipeline survey;

“Wilton Complex” means the land shown outlined in red on the Wilton Complex Plan;

“Wilton Complex Plan” means the plan entitled “Location of Wilton Complex (Plan 1)” (drawing number T-MIS-0065-01);

“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 and/or their location;
- (b) details of any proposed temporary crossing points under paragraph 10;
- (c) details of methods and locations of any piling proposed to be undertaken under paragraph 14;
- (d) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 15;
- (e) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 16;
- (f) details of the location of any pipelines affected by the oversailing provisions in paragraph 17, including details of the proposed clearance;
- (g) details of the method location and extent of any dredging, a 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;
- (h) details of the undertaker and their principal contractors’ management of change procedures;
- (i) 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;
- (j) 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;
- (k) 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;
- (l) 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;
- (m) 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;
- (n) details of the means by which the entirety of the cats pipeline can be properly inspected and if necessary repaired during the construction and operation of the authorised development which shall provide for an excavation to a depth of 0.6 metres below the cats pipeline and 2 metres either side of the centreline of the cats pipeline consistent with the relevant constructability notes;
- (o) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators; and
- (p) 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.
- (q) any further particulars provided pursuant to paragraph 4(2)

Pipeline survey

3.—(1) Before commencing any part of the authorised development in the pipeline corridor or which may affect a protected crossing the undertaker must:

(a) serve a notice on the specified persons inviting them to participate in the pipeline survey and giving them not less than 45 days' notice of the need to confirm their intention to participate in the pipeline survey and to nominate a representative for the pipeline survey;

(b) carry out and complete the pipeline survey; and

(c) comply with sub-paragraph (3) below.

(2) The pipeline survey must be undertaken by a surveyor who is a member of the Royal Institute of Chartered Surveyors with at least 10 years experience of such surveys in conjunction with any representative of an owner or operator nominated under sub-paragraph (1).

(3) When the pipeline survey has been completed the undertaker must serve a copy of the pipeline survey on the owners and operators of the pipelines and protected crossings and invite them to advise the undertaker within 28 days of receipt of the survey if they consider that the pipeline survey is incomplete or inaccurate and if so in what respect following which the undertaker will finalise its pipeline survey any specified person who nominated a representative under paragraph (1)(a) unless the specified person has confirmed in writing that they instead wish to receive a written notice in which case the undertaker must instead serve a written notice.

(4) If:

(a) an owner or operator who nominated a representative under sub-paragraph (1)(a); or

(b) the undertaker

considers that the pipeline survey is incomplete or inaccurate they may, within 45 days of the service of the pipeline survey or, as the case may be, the written notice on the specified person under sub-paragraph (3), refer the matter to an expert for determination under article 40(2).

(5) If the matter is referred to an expert under sub-paragraph (3), the undertaker shall not commence any part of the authorised development in the pipeline corridor or which may affect a protected crossing until the expert has given his determination.

Authorisation of works details affecting pipelines or protected crossings

4.—(1) Before commencing any part of a relevant work the undertaker must submit to the owners and any operators of any affected asset the works details 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 the owner or operator of any affected asset may, within 45 days from the receipt of the works details under paragraph 4(1), reasonably require.

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 3 of this Schedule have been authorised by the owner and operator of all the affected assets; or

(b) 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

(c) authorisation is deemed to have been given pursuant to paragraph 6(1) below.

6.—(1) Any authorisation by the owner or operator of an affected asset required under paragraph 5(a) 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 may require to be made for—

(a) the continuing safety and operation or viability of the affected asset; and

(b) the requirement for the owner and operator of the affected asset 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 construct, inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.

(2) Where the owner or operator of the cats pipeline can reasonably demonstrate that the authorised development 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 development 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 5 and any conditions imposed on the authorisation under paragraph 6(1).

(4) Where there has been a reference to an expert in accordance with paragraph 7(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 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 shall be deemed to be given and the relevant works may commence.

(2) In the event that—

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

the undertaker may refer the matter to an expert for determination under article 40(2) and paragraph 33 of this Schedule.

(3) Where the matter is referred to an expert under paragraph 7(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 6(1).

(4) Where the undertaker considers that the owner or operator of the cats pipeline has unreasonably withheld its authorisation under paragraph 6(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) and paragraph 33 of this Schedule.

Notice of works

8. The undertaker will provide to the owner and operator of an affected asset 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 the owners and any operators of any affected asset with baseline data for any existing cathodic protection of the 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 asset.

(2) The pipelines will 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.

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

10.—(1) Where temporary crossings for construction traffic are to be used, other than where the 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 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 pipeline in accordance with paragraph 4.

11. During construction, an area equivalent to the easement widths of the pipelines (taken from the actual location of the pipelines shown on the pipeline survey) 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 pipelines must be erected at a minimum distance of every 50 metres.

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

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

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

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

14.—(1) 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 the owner and operator of the relevant pipeline in accordance with paragraph 4.

(1) Any proposed piling operations within—

(a) 10 metres either side of the centreline 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 pipeline it shall be exposed by hand digging only; and

(b) 5 metres either side of the centreline of the cats pipeline and, in addition to the obligations in paragraph 14(2)(a), 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.

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

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

15.—(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 the owner and operator of the relevant pipeline.

(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 the owner and operator of the pipeline under paragraph 4.

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

(2) Proposed methods and locations of compacting must be notified to the owner and operator of the pipeline or proposed pipeline 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 paragraph 16(1) and what further works may be necessary, and the results of such testing must be supplied to the owner and operator of the pipeline or proposed pipeline.

(4) Where it is shown by the testing under paragraph 16(3) to be necessary, the undertaker must carry out further compaction testing under paragraph 16(1) and paragraphs 16(1), (2) and (3) 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 pipeline 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 pipeline 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 16(1) to (4); or
- (b) the amount of any payment under paragraph 16(5),

the undertaker or the owner or operator of the relevant pipeline or proposed pipeline may refer the matter to an expert for determination under article 40(2).

17.—(1) A minimum clearance of 1500mm must be maintained between any part of the authorised development and any affected-asset-pipeline or proposed pipeline (whether that part of the authorised development is parallel to or crosses the pipeline or proposed pipeline) unless otherwise agreed with the owner and operator of the affected-asset-pipeline or proposed pipeline.

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

Monitoring for damage to pipelines

18.—(1) When carrying out the relevant work the undertaker will 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 shall immediately cease all work in the vicinity of the damage and shall notify the owner and operator of the affected asset to enable repairs to be carried out to the reasonable satisfaction of the owner and operator of the affected asset.

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

- (a) afford the owner or operator of the affected asset all reasonable facilities to enable it to fully and properly repair and test the affected asset 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 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 the owner or operator of the affected asset to have effectively repaired the affected asset before any backfilling takes place.

(4) Where testing has taken place under paragraph 18(2)(b), the undertaker must (save where an owner or operator of the affected asset 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 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.

19.—(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity shall cease and the owner and operator of the pipeline 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;
 - (b) inform the owner and operator of the relevant pipeline;
 - (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

20.—(1) Subject to paragraph 20(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 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 pursuant to paragraph 8 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 20(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

21.—(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 operators of the pipelines and any owners and occupiers of any properties within the Wilton Complex whose access to their property is likely to be affected by those works.

(2) The undertaker must take account of the responses to any consultation referred to in paragraph 21(1) before approving the construction access plan.

- 22.**—(1) In preparing a construction access plan under paragraph 21 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 pipeline or proposed pipeline or any owners and occupiers of any properties within the Wilton Complex whose access to their property is likely to be affected by those works has a reasonable expectation to exercise access rights over particular access roads in respect of which rights are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby that expectation can be met.

(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 40(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 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 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 which the works are programmed to be carried out provided that the period covered by such dates must be 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.

23.—(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 pipelines and proposed pipelines.

(2) Where an owner of the protected land or an operator of a pipeline or proposed pipeline refers the construction access plan to an expert for determination under article 40(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

24. (1) The undertaker must not in the exercise of the powers conferred by this Order acquire, appropriate, extinguish, suspend or override any rights 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 owners of the protected land and operators of 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.

25.—(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 proposed pipelines or access to pipelines or proposed pipelines except in relation to unknown rights.

(2) Without prejudice to paragraph 25(1) the undertaker must not exercise the identified powers—

- (a) in relation to the protected land without the consent in writing of ~~the owner; and~~
 - (i) the owner; and
 - (ii) (where the exercise of powers affects a pipeline or proposed pipeline) the operator of that pipeline;
- ~~(b) where the exercise of powers affects a pipeline without the consent in writing of the operator of that pipeline;~~
- ~~(c)~~ (b) without consent given by an expert appointed under article 40(2); or
- ~~(d)~~ (c) without deemed consent pursuant to sub-paragraph (7) below.

(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 25(2) 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 (and where the right or interest is in a pipeline the operator of the pipeline) has given its consent or consent has been given by an expert appointed under article 24(2) or is deemed to be given under sub-paragraph (7).

(4) Where a person is asked to give consent under this paragraph 25(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 pipeline or proposed pipeline fails to respond to a request for consent within 30 days of the undertaker obtaining a written acknowledgement of receipt of the request for consent from 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 or proposed 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 or proposed pipeline as the case may be is deemed to be 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 paragraph 24 (1) and paragraph 25(1);
- (g) article 25 (power to override easements and other rights) insofar as the exercise of such powers is not excluded by paragraph 24 (1) and paragraph 25(1);
- (h) article 29 (rights under or over streets); and
- (i) article 30 (temporary use of land for carrying out the authorised development).

(9) The undertaker must not exercise the identified powers in circumstances:

(a) Where the exercise would permanently affect an owner’s right for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of a pipeline or proposed pipeline unless:

(i) the undertaker has provided to the affected owner new rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal or as the case may be replacement of the pipeline or proposed pipeline;

(ii) the rights referred to in sub-paragraph (i) are granted on terms and conditions that are materially no worse than the terms and conditions that apply to similar pipelines on the protected land as agreed by the owner and operator of the pipeline or in default of agreement determined by an expert under article 40(2);

(iii) where a pipeline is to be moved a replacement pipeline, that is materially and operationally no worse than the pipeline belonging to the owner affected by the exercise of the identified power, has been constructed in accordance with, and in the location provided for, by the rights referred to in sub-paragraph (i), and is available for use by the owner and operator; and

(iv) the owner and operator of the pipeline have agreed that replacement pipeline has been provided and is available for use in accordance with sub-paragraph (iii) or in default of agreement determined by an expert under article 40(2).

(b) Where the exercise would permanently affect access to or over the protected land unless:

(i) The undertaker has provided to affected owners new rights of access;

(ii) The rights referred to in sub-paragraph (i) are granted on terms and conditions that are materially no worse than the terms and conditions that apply to similar access on the protected land as agreed by the owner or in default of agreement determined by an expert under article 40(2);

(iii) replacement access, that is materially and operationally no worse than the access currently used by the owner and operator and affected by the exercise of the identified powers, has been constructed in accordance with, and in the locations provided for by, the rights referred to in sub-paragraph (i), and is available for use by the owner and operator; and

(iv) the owner and operator of the pipeline or proposed pipeline have agreed that replacement access has been provided and is available for use in accordance with sub-paragraph (iii) or in default of agreement determined by an expert under article 40(2).

Insurance

26.—(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 28 in accordance with the terms and level of cover notified under paragraph 26(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 pipelines and proposed 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 pipelines and proposed pipelines 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 the authorised development affecting owners of the protected land and operators of pipelines and proposed pipelines during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover specified in paragraph 26(2) or at such level as may otherwise be determined by an expert under article 40(2).

27.—(1) If an owner of the protected land or operator of a pipeline or proposed pipeline has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 26—

(a) the owner of the protected land or operator of a pipeline or proposed 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 whilst the determination under article 40(2) is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination must not:~~

(i) commence the authorised development until that determination has been provided and an insurance policy has been put in place which is in accordance with that determination; or

~~(ii) (as the case may be) change the terms or level of the insurance policy until that determination has been provided and the revised terms and level of the insurance policy must be in accordance with that determination.~~

Costs

28. (1) The undertaker must repay to owners of the protected land and operators of the pipelines and proposed pipelines all reasonable fees, costs, charges and expenses reasonably incurred by them in relation to these protective provisions in respect of—

(a) the carrying out of the pipeline survey under paragraph 3;

~~(b)~~ authorisation of works details submitted by the undertaker under paragraph 4 and the imposition of conditions under paragraph 6;

~~(c)~~ the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 8;

~~(d)~~ responding to the consultation on piling under paragraph 14;

- ~~(d)~~(e) _____ considering the effectiveness of any compacting which has taken place under paragraph 16, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;
- ~~(e)~~(f) _____ the repair and testing of a pipeline or protected crossing under paragraph 18;
- ~~(f)~~(g) _____ considering and responding to consultation in relation to the construction access plan under paragraph 21 and providing details of their programme for major works to the undertaker under paragraph 22;
- ~~(g)~~(h) _____ dealing with any request for consent or agreement by the undertaker under paragraph 25; and
- ~~(h)~~(i) _____ considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 26,

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 pipelines and proposed pipelines, and any person who uses the pipeline for the conveyance of chemicals or other materials, 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 or proposed 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 28(2).

(3) An owner or operator must give the undertaker reasonable notice of any claim or demand under paragraph 28(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

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

30. The undertaker must give written notice to the owners of the protected land and the operators of pipelines and proposed 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.

31. The undertaker must, when requested to do so by an owner of the protected land or an operator of a pipeline or proposed 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.

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

33. 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 pipelines and proposed pipeline.

Expert Determination

34.—(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.

ANNEX 2 TO APPENDIX 1

EXTRACT FROM SEMBCORP DEED OF GRANT

SCHEDULE 1

THE SPECIFIED RIGHTS

1. RIGHT TO CONSTRUCT GRANTEE'S APPARATUS

The right to construct (at any time and in phases) and place the Grantee's Apparatus in accordance with the Construction Provisions utilising Infrastructure.

2. RIGHT TO MAINTAIN GRANTEE'S APPARATUS

The right to maintain in position the Grantee's Apparatus utilising Infrastructure.

3. RIGHT TO CARRY OUT NECESSARY WORKS

The right to carry out such works on the Corridors as may be required for the purpose of laying constructing maintaining adjusting altering renewing replacing repairing testing cleansing relaying making safe protecting or removing any part or parts of the Grantee's Apparatus or Infrastructure and/or for the purpose of exercising any other rights granted to the Grantee by this Deed.

4. RIGHT OF USER

The exclusive right to use the relevant Grantee's Apparatus, the Infrastructure and the Easement Area provided that such use shall be for the Permitted Purpose but for no other purpose.

5. RIGHT OF SUPPORT

The right to continuous support for the Grantee's Apparatus and the Easement Area from the Corridors.

6. RIGHT OF LINE WALKING

The right (in common with the Grantor and/or the occupiers of the Grantor's Property and their respective tenants and licensees and all others now or hereafter entitled to a like right or authorised by them or any of them) for the agents and servants of the Grantee at any time and from time to time to enter upon the Grantee's Apparatus and the Easement Area from the Grantor's Property for the purposes of walking the line or lines of the Grantee's Apparatus.

7. RIGHTS OF ACCESS TO GRANTEE'S APPARATUS

The right (in common as aforesaid) for the officers servants and agents of the Grantee at all reasonable times and in an emergency at all times with or without contractors surveyors employees and others and with or without motor or other vehicles plant apparatus and materials to enter upon the Corridors and the Easement Area and insofar as is reasonably necessary such of the Grantor's Property as shall be requisite for the purpose of obtaining access to and egress from the Grantee's Apparatus and the Easement Area for the purpose of exercising or in connection with the exercise of any of the rights granted to the Grantee by this Deed subject to such conditions which the Granter may reasonably impose

in relation to such access provided that:

- 7.1.1 the Grantor may at any time designate in writing a reasonably suitable and convenient permanent access route or access routes to be enjoyed by the Grantee in lieu of the right granted by this Paragraph 7; and

- 7.1.2 this Paragraph 7 shall not prevent the Grantor from disposing of any part or parts of the Grantor's Property free in all respects of the rights granted by this Paragraph 7 where the land to be disposed of is:
- (A) not within the Easement Area; or
 - (B) not required for the purposes of access and/or adequate permanent access is available to the Grantee over other land (whether land which is vested in the Grantor or land over which access rights subsist for the benefit of the Grantee)

SCHEDULE 4

THE WORKS PROVISIONS

- 1.1 The Grantee will not carry out any works upon the Grantor's Property without first obtaining and thereafter strictly complying with a permit to work to be issued in writing by the Grantor (which the Grantor hereby undertakes to issue upon request and upon reasonable terms) and will not carry out any such works unless the identity of the contractor carrying out such works shall first have been approved in writing by the Grantor as to which Clause 5.5 of this Deed shall apply.
- 1.2 In applying for any permit to work the intended works will be defined by the Grantee in detail to the extent that it is reasonable and practicable to do so and any application for such a permit will be in writing.
- 1.3 Any permit to work may include reasonable conditions which will be met strictly by the Grantee before and during the carrying out of the works in question relating to safety and protection for personnel plant pipelines and other equipment likely to be affected by the *works in question*.
- 1.4 Any permit to work may be withdrawn forthwith if the conditions therein contained are not complied with at all times in all material respects.
- 1.5 All work to be undertaken by the Grantee in accordance with the provisions of this Deed shall be carried out and completed in all respects in a manner appropriate to a Reasonable and Prudent Constructor and in a manner that does not interfere with the operations of the Grantor and/or any other occupiers of the Grantor's Property.
2. The Grantee will give the Grantor and any occupier of the Grantor's Property as long notice as may be reasonably practicable of any intention to exercise such of the Specified Rights as involve the execution of works on the Grantor's Property with a view to enabling the Grantor and such occupier to make suitable arrangements with respect to their activities and operations on the Grantor's Property. The period of notice shall in any event (except in emergency) be not less than twenty eight days and all movements of pipes vehicles and machinery in the exercise of the Specified Rights will be carried out so far as is reasonably possible in accordance with a programme of which the Grantor and any occupier of the Grantor's Property.
3. The Grantee will ensure that at all times during the exercise of the Specified Rights all means of access to and from the Grantor's Property are kept open and available for use by the Grantor or other occupiers.
- 4.1 The Grantee will provide all temporary and permanent underpinning and support for all buildings structures apparatus and equipment of the Grantor in or adjacent to the Grantee's Apparatus required in the exercise of the Specified Rights or any of them and all such work will be carried out in a manner appropriate to a Reasonable and Prudent Constructor.
- 4.2 Where the works to be carried out by the Grantee necessitate the provision of protective or other works (whether temporary or permanent) to safeguard and protect the buildings structures apparatus and equipment of the Grantor or any third party the cost thereof shall be borne by the Grantee.
5. All ditches open drains and watercourses interfered with by the exercise of the Specified Rights or by access to and from the Grantee's Apparatus will be maintained by the Grantee in an effective condition and will be left in as good a condition as before such interference.
6. Except in case of emergency the Grantee will where practicable give to all occupiers of the Grantor's Property prior notice of intended inspection or of any other intended entry in exercise of the Specified Rights. All representatives of the Grantee and its servants or agents whilst so engaged will carry and produce on request adequate means of identification and all damage caused by such representatives servants or agents in the course of any such entry will be made good or compensation paid therefor.

7. The Grantee will so far as practicable carry out reinstatement of damage caused in the exercise of the Specified Rights in lieu of paying compensation in respect of any such damage.
8. Should the Grantee at any time decide to abandon the Grantee's Apparatus or any part of it the Grantee will unless the same shall be removed pursuant to the provisions of Clause 5.2 of this Deed render and keep the same harmless.
9. The Grantee will comply with all requirements under:
 - (A) the Planning Acts;
 - (B) the Pipe-lines Act, 1962;
 - (C) the Health & Safety at Work etc. Act 1974;
 - (D) the Environmental Protection Act 1990 and the Environment Art, 1995; and
 - (E) all other relevant statutes and applicable regulations howsoever arising, in connection with the Grantee's Apparatus and/or the exercise of the Specified Rights.

APPENDIX 2

STATEMENT OF DIFFERENCES WITH BP CATS IN RELATION TO INDEMNITY

1. Schedule 9 as incorporated within the latest draft DCO (Document 4.1D) has been agreed with BP CATS with the sole exception of paragraph 28(2) relating to the form of indemnity for the owners of the protected land and operators of the pipelines.
2. The form of indemnity has been expressly agreed with both Bond Dickinson on behalf of Huntsman, SABIC and DEA (Ineos) and DLA Piper LLP on behalf of Tata Steel UK Limited.
3. Following Deadline 5 BP CATS indicated to the Applicant that it would prefer a different form of indemnity from that agreed with the other parties and contained in paragraph 28(2). It is understood that the form of indemnity sought by BP CATS is shown by the tracked changes in the version of Schedule 9 attached in the Annex to this Appendix 2 although formal confirmation is awaited.
4. The Applicant understands that BP CATS wish to pursue and indemnify which they consider to be a more normal industry standard. This would include in the indemnity liability to indemnify for negligent conduct on the part of BP CATS with only wilful misconduct being excluded from the indemnity. In return for this, a cap on liability is included which BP CATS has suggested to be £100 million.
5. The Applicant has given very serious consideration to the indemnity sought by BP CATS but does not feel that such an indemnity is acceptable for the following reasons:
 - 1) The Applicant notes that the other pipeline owners and operators have accepted the indemnity as drafted, which is based on DCO precedent, notwithstanding BP CATS' assertion that the indemnity they suggest is an industry standard;
 - 2) The Applicant sees no basis to adopt different indemnities for different parties.
 - 3) The inclusion of liability on the undertaker to indemnify a party in respect of its own negligent conduct is fundamentally objectionable; and
 - 4) In the context of the very many assets within the Order limits there is no particular benefit in the liability cap proposed by BP CATS in respect of its single asset.

ANNEX TO APPENDIX 2

**APPLICANT'S SCHEDULE 9 (AS CONTAINED IN DRAFT DCO (DOCUMENT 4.1D)) WITH
AMENDMENTS TO PARAGRAPH 28 SOUGHT BY BP CATS SHOWN AS TRACKED CHANGES²**

² Please note that the base version of Schedule 9 is not identical to the one contained in the Draft DCO (Document 4.1D). There has been some correction of typographical errors, cross referencing and completion of the "specified persons" details since the Schedule in this Annex was agreed.

SCHEDULE 9

Article 34

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 owner or operator of a 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 pipelines or protected crossings;

“affected asset(s)” means—

- (a) underground pipelines where relevant work(s) are to be carried out within the easement widths relating to that apparatus;
- (b) apparatus on or above ground which would be physically 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 the pipeline and cables within the pipeline corridor and includes—

- (e) 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;
- (f) any cathodic protection, coating or special wrapping of the apparatus; and
- (g) all ancillary apparatus (whether or not comprising a pipe-line for the purposes of Section 65(2) of the Pipelines Act 1962(3)) properly appurtenant to the pipelines as are described in section 65(2) of the Pipelines Act 1962;

“cats easement” means the easement width of the cats pipeline;

“cats pipeline” means the pipeline identified as “Gas BP Cats” on the conveyor route plans;

“cats pipeline critical construction activities” means the following authorised works—

- (h) excavation works within the cats easement;
- (i) piling within 10m of the cats pipeline;
- (j) backfilling and compaction work within the cats easement;
- (k) erection of crash mats above the cats pipeline; and
- (l) all lifting above the cats pipeline.

“construction access plan” means a plan identifying how access will be maintained to pipelines, the protected crossings and the Wilton Complex during the proposed construction or maintenance work including—

- (m) any restrictions on general access by owners of the protected land and operators of the pipelines, including the timing of restrictions;
- (n) any alternative accesses or routes of access that may be available to the undertaker using the access roads;
- (o) 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 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;

- (p) details of how uninterrupted and unimpeded emergency access with or without vehicles will be provided at all times for owners of the protected land and operators of the pipelines; and
- (q) details of how reasonable access with or without vehicles will be retained or an alternative provided for owners of the protected land and operators of the pipelines to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the pipelines and protected crossings;

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

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

“easement width” means in respect of each pipeline the easement width shown on the conveyor route plans as adjusted if necessary (in respect of pipelines shown on the conveyor route plans) or added to (in respect of pipelines constructed after the date of this Order) as a result of the pipeline survey;

“engineer” means an engineer appointed by an owner or operator of a pipeline for the purposes of this Order;

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

“operator” means any person who is responsible for the construction, operation, use, inspection, adjustment, alteration, repair, maintenance, renewal, removal or replacement of any pipeline;

“owner” means—

- (r) in relation to the pipeline corridor, any person—
 - (i) with an interest in a pipeline in the pipeline corridor; or
 - (ii) with rights in, on, under or over the pipeline corridor in respect of a pipeline;
 - (iii) a pipeline or proposed pipeline in, on, under or over the pipeline corridor, and
- (s) 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;
- (t) 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 pipelines in or comprising the protected crossings; and
- (u) in relation to protected land means any person falling within paragraphs (a) to (c) above.

“pipeline(s)” means the apparatus located in the pipeline corridor, or in or comprising a protected crossing at the time when the pipeline survey is carried out; “pipeline survey” means a survey of the pipeline corridor and the protected crossings to establish if not known:

- (a) the precise location of the pipelines and the protected crossings;
- (b) the specification of the pipelines and protected crossings 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 crossings” means—

- (v) the tunnel under the River Tees which carries pipelines known as Tunnel 2; and
- (w) the apparatus under the River Tees known as the Breagh Pipeline;

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

- (x) the access roads;
- (y) the pipeline corridor; and
- (z) the protected crossings;

“relevant work(s)” means a work which may have an effect on the operation, maintenance, repair, replacement and/or abandonment of and/or access to any pipeline or a protected crossing;

“specified persons” means—

- (a) the following—
 - (i) Company Secretary, SABIC, UK Petrochemicals Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF in relation to SABIC UK Petrochemicals Limited;
 - (ii) Operations Manager, huntsman Polyurethanes, PO Box 99, Wilton, Redcar, TS10 4YA in relation to Huntsman Polyurethanes (UK) Limited;
 - (iii) Company Secretary, INEOS UK SNS Limited, 4th Floor 90 High Holborn, London WC1V 6L in relation to INEOS UK SNS Limited; and
 - (iv) [] in relation to CATS North Sea Limited
or such other person as they may notify to the undertaker in writing; or
- (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:

- (a) not known at the date of the Order; or
- (b) which are identified as unknown in the book of reference,
but not including any rights relating to pipelines (or access to pipelines) where a pipeline is shown on the pipeline survey;

“wilful misconduct” means an intentional or reckless disregard by a person of avoidable and harmful consequences but not including any act, omission, error of judgement or mistake made in the exercise in good faith of any function, authority or discretion vested in that person

“Wilton Complex” means the land shown outlined in red on the Wilton Complex plan;

“Wilton Complex Plan” means the plan entitled “Location of Wilton Complex (Plan 1)” (drawing number T-MIS-0065-01);

“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 and/or their location;
- (b) details of any proposed temporary crossing points under paragraph 10;
- (c) details of methods and locations of any piling proposed to be undertaken under paragraph 14;
- (d) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 15;
- (e) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 16;
- (f) details of the location of any pipelines affected by the oversailing provisions in paragraph 17, including details of the proposed clearance;

- (g) details of the method location and extent of any dredging, a 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;
- (h) details of the undertaker and their principal contractors' management of change procedures;
- (i) 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;
- (j) 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;
- (k) 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;
- (l) 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;
- (m) 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;
- (n) details of the means by which the entirety of the cats pipeline can be properly inspected and if necessary repaired during the construction and operation of the authorised development which shall provide for an excavation to a depth of 0.6 metres below the cats pipeline and 2 metres either side of the centreline of the cats pipeline consistent with the relevant constructability notes;
- (o) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators; and
- (p) 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.
- (q) any further particulars provided pursuant to paragraph 4(2)

Pipeline survey

3.—(1) Before commencing any part of the authorised development in the pipeline corridor or which may affect a 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 a surveyor who is a member of the Royal Institute of Chartered Surveyors with at least 10 years' experience of such surveys.

(3) When the pipeline survey has been completed the undertaker must serve a copy of the pipeline survey on the owners and operators of the pipelines and protected crossings and invite them to advise the undertaker within 28 days of receipt of the survey if they consider that the pipeline survey is incomplete or inaccurate and if so in what respect following which the undertaker will finalise its pipeline survey.

Authorisation of works details affecting pipelines or protected crossings

4.—(1) Before commencing any part of a relevant work the undertaker must submit to the owners and any operators of any affected asset the works details 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 the owner or operator of any affected asset may, within 45 days from the receipt of the works details under paragraph 4(1), reasonably require.

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 3 of this Schedule have been authorised by the owner and operator of all the affected assets; or
- (b) 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
- (c) authorisation is deemed to have been given pursuant to paragraph 6(1) below.

6.—(1) Any authorisation by the owner or operator of an affected asset required under paragraph 5(a) 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 may require to be made for—

- (a) the continuing safety and operation or viability of the affected asset; and
- (b) the requirement for the owner and operator of the affected asset 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) Where the owner or operator of the cats pipeline can reasonably demonstrate that the authorised development 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 development 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 5 and any conditions imposed on the authorisation under paragraph 6(1).

(4) Where there has been a reference to an expert in accordance with paragraph 7(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 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 shall be deemed to be given and the relevant works may commence.

(2) In the event that—

- (a) the undertaker considers that the 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) and paragraph 33 of this Schedule.

(3) Where the matter is referred to an expert under paragraph 7(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 6(1).

(4) Where the undertaker considers that the owner or operator of the cats pipeline has unreasonably withheld its authorisation under paragraph 6(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) and paragraph 33 of this Schedule.

Notice of works

8. The undertaker will provide to the owner and operator of an affected asset 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 the owners and any operators of any affected asset with baseline data for any existing cathodic protection of the 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 asset.

(2) The pipelines will 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 by mechanical means.

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

10.—(1) Where temporary crossings for construction traffic are to be used, other than where the 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 pipeline as necessary.

(1) Details of proposed temporary crossing points referred to in sub-paragraph (1) must be notified to the owner and operator of the pipeline in accordance with paragraph 4.

11. During construction, an area equivalent to the easement widths of the pipelines (taken from the actual location of the pipelines shown on the pipeline survey) 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 pipelines must be erected at a minimum distance of every 50 metres.

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

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

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

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

(1) 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 the owner and operator of the relevant pipeline in accordance with paragraph 4.

(2) Any proposed piling operations within—

- (a) 10 metres either side of the centreline 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 pipeline it shall be exposed by hand digging only; and
- (b) 5 metres either side of the centreline of the cats pipeline and, in addition to the obligations in paragraph 14(2)(a), 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.

15.—(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 the owner and operator of the relevant pipeline.

(1) 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 the owner and operator of the pipeline under paragraph 4.

16.—(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 the owner and operator of the pipeline 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 paragraph 16(1) and what further works may be necessary, and the results of such testing must be supplied to the owner and operator of the pipeline.

(4) Where it is shown by the testing under paragraph 16(3) to be necessary, the undertaker must carry out further compaction testing under paragraph 16(1) and paragraphs 16(1), (2) and (3) 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 pipeline 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 pipeline 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 16(1) to (4); or

(b) the amount of any payment under paragraph 16(5),

the undertaker or the owner or operator of the relevant pipeline may refer the matter to an expert for determination under article 40(2).

17.—(1) A minimum clearance of 1500mm 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 the owner and operator of the affected asset.

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

Monitoring for damage to pipelines

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

(1) Where any damage occurs to an affected asset 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 affected asset to enable repairs to be carried out to the reasonable satisfaction of the owner and operator of the affected asset.

(2) If damage has occurred to an affected asset as a result of relevant work the undertaker will, at the request and election of the owner or operator of the affected asset, either—

(a) afford the owner or operator of the affected asset all reasonable facilities to enable it to fully and properly repair and test the affected asset 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 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 the owner or operator of the affected asset to have effectively repaired the affected asset before any backfilling takes place.

(3) Where testing has taken place under paragraph 18(2)(b), the undertaker must (save where an owner or operator of the affected asset agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(4) Following the completion of a relevant work if damage is found to have occurred sub-paragraphs (2) to (4) of this paragraph will apply to that damage.

(5) 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.

(6) 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.

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

(1) Where there is leakage or escape of gas, the undertaker must immediately—

- (a) remove all personnel from the immediate vicinity of the leak;
- (b) inform the owner and operator of the relevant pipeline;
- (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

20.—(1) Subject to paragraph 20(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 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.

(1) 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 pursuant to paragraph 8 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.

(2) Paragraph 20(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

21.—(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 operators of the pipelines and any owners and occupiers of any properties within the Wilton Complex whose access to their property is likely to be affected by those works.

(1) The undertaker must take account of the responses to any consultation referred to in paragraph 21(1) before approving the construction access plan.

22.—(1) In preparing a construction access plan under paragraph 21 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 pipeline or any owners and occupiers of any properties within the Wilton Complex whose access to their property is likely to be affected by those works has a reasonable expectation to exercise access rights over particular access roads in respect of which rights are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby that expectation can be met.

(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 40(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 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 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 which the works are programmed to be carried out provided that the period covered by such dates must be 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.

23.—(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 pipelines.

(1) Where an owner of the protected land or an operator of a pipeline refers the construction access plan to an expert for determination under article 40(2), no works affecting access rights over the access roads may commence until that determination has been provided.

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

Restriction on exercising powers

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

(1) 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 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.

25.—(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 pipelines except in relation to unknown rights.

(1) Without prejudice to paragraph 25(1) the undertaker must not exercise the identified powers—

- (a) in relation to the protected land without the consent in writing of the owner; and
- (b) where the exercise of powers affects a pipeline without the consent in writing of the operator of that pipeline;
- (c) without consent given by an expert appointed under article 40(2); or
- (d) without deemed consent pursuant to sub paragraph (7) below.

(2) 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 25(2) 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 given its consent or consent has been given by an expert appointed under article 24(2) or is deemed to be given under sub-paragraph (7).

(3) Where a person is asked to give consent under this paragraph 25(2), the consent must not be unreasonably withheld.

(4) 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.

(5) If an owner of the protected land or operator of a pipeline fails to respond to a request for consent within 30 days of the undertaker obtaining a written acknowledgement of receipt of the request for consent from the specified person the undertaker may serve a further notice on that owner or operator (a “deeming notice”).

(6) 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 be given.

(7) 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 paragraph 24 (1) and paragraph 25(1);
- (g) article 25 (power to override easements and other rights) insofar as the exercise of such powers is not excluded by paragraph 24 (1) and paragraph 25(1);
- (h) article 29 (rights under or over streets); and
- (i) article 30 (temporary use of land for carrying out the authorised development).

Insurance

26.—(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 28 in accordance with the terms and level of cover notified under paragraph 26(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 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 pipelines 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 the authorised development affecting owners of the protected land and operators of pipelines during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover specified in paragraph 26(2) or at such level as may otherwise be determined by an expert under article 40(2).

27.—(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 26—

- (a) the owner of the protected land or operator of a 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 whilst the determination under article 40(2) is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs

28. (1) The undertaker must repay to owners of the protected land and operators of the 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 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 14;
- (d) considering the effectiveness of any compacting which has taken place under paragraph 16, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;
- (e) the repair and testing of a pipeline or protected crossing under paragraph 18;
- (f) considering and responding to consultation in relation to the construction access plan under paragraph 21 and providing details of their programme for major works to the undertaker under paragraph 22;
- (g) dealing with any request for consent or agreement by the undertaker under paragraph 25; 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 26,

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 pipelines (with the exception of the cats pipeline to which sub-paragraph (3) applies) 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 28(2).

(3) The undertaker indemnifies and keeps the owners and operators of the cats pipeline 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 operators or owners of the cats 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 wilful misconduct 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 sub-paragraph 28(3).

(4) The total aggregate liability of the undertaking to the owners of the cats pipeline in respect of the matters referred to in sub-paragraph (3) shall be limited to the sum of one hundred million pounds for any one event or series of connected events save where the matters referred to in sub-paragraph (3) arise as a result of the undertaker's wilful misconduct

~~(3)~~(5) An owner or operator must give the undertaker reasonable notice of any claim or demand under paragraph 28(2) and (3) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

~~(4)~~(6) 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)~~(7) 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

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

30. The undertaker must give written notice to the owners of the protected land and the operators of 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.

31. The undertaker must, when requested to do so by an owner of the protected land or an operator of a 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.

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

33. 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 pipelines.

Expert Determination

34.—(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.

(1) 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.