

The Planning Act 2008 (as amended)

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

The York Potash Harbour Facilities Order

Planning Inspectorate Reference: TR030002

**Comments on the Examining Authority's draft Development Consent Order dated 25 November 2015 -
Tata Steel UK Limited and Redcar Bulk Terminal**

(Reference: YPOT - AFP050)

16 December 2015

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

1. Introduction

In accordance with the Examining Authority's Rule 17 letter dated 25 November 2015, we wish to provide the following comments on the draft DCO. We understand that the Applicant is intending to submit a statement as to outstanding issues (as opposed to common ground) and, insofar as these issues are not addressed by the comments below, we shall provide our response (including any issues that are still in dispute but not covered by the Applicant's submission) by Deadline 7 as set out in the Rule 17 letter.

Comments on the draft DCO

2. Articles

- a. Article 5 - We are concerned as to the uncertainty in respect of all other protective provisions caused by the express reference to the protective provisions for Tees Port Authority in this article. A distinctly possible interpretation is that those other protective provisions do not apply in relation to maintenance of the authorized development which cannot be the intention. We understand that the inclusion in Article 3 of a reference to protective provisions (pursuant to our earlier request) should render unnecessary further specific reference to protective provisions within other articles - unless there is to be an inference as to limited application (which we consider is wrong) but we note that the same can also be said for "the requirements". Accordingly we request that (to mirror Article 3) this article is expressed by reference to all protective provisions, not just those of Tees Port Authority, as follows:

Maintenance of authorised development

5. Subject to the requirements and ~~in respect of tidal works also to Schedule 11 (the protective provisions for the protection of the Tees Port Authority)~~ the undertaker may at any time maintain the authorised development.

- b. Article 12(3) - Please delete repetition of the words "works to improve".

- c. Article 30 (12) - The definition of "building" is wide but there is no definition of "occupied". Given the clear operational importance of assets covered by the protective provisions, which may or may not be physically "occupied" yet still considered to be buildings for the purposes of the Order, we consider that it is necessary to amend Article 30 (12) as follows:

(12) Paragraph (11) shall not authorise the undertaker to take temporary possession of any building if it is for the time being occupied ~~and~~ or is subject to observance of the protective provisions.

- d. Article 38 - The reference at (p) requires updating. We believe that most current reference should be to PB1586 - SK1081 Rev D. The plan is yet to be approved by the RBT board (see Item 4 below).

3. Schedules

- a. Schedule 3, Part 3, 5 (3) - the proposed amendment to Section 8 of the 1965 Act introduces the ability for the undertaker to withdraw a notice to treat in the event that the tribunal orders the acquisition of the balance of a severed interest. We consider that any withdrawal of a notice to treat should be subject to the procedure set out in Section 31 of the 1961 Act. Unless the Applicant can demonstrate that Section 31 of the 1961 Act is incorporated in the Order and will be applicable in any event, we consider that this sub-paragraph (3) should read as follows:

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, in accordance with section 31 of the 1961 Act withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice”.

- b. Schedule 9 - We provided an amended version of Schedule 9 to the Applicant on 15 December but understand that the Applicant was not able to incorporate these amendments in time for its Deadline 6 submission. However, the Applicant had confirmed that our amendments are approved. We attach (at Appendix 1) a copy of the Schedule 9 showing those amendments and

the email from the Applicant confirming approval (Appendix 2).

- c. Schedule 10 - SUBJECT TO Item 4 below, we can confirm that we have now agreed the drafting of Schedule 10 with the Applicant. We understand that the Applicant will be providing the Examining Authority with the agreed version at Deadline 6 and so we are not including a copy with these Comments. Whilst it is not anticipated, if the draft of Schedule 10 that is provided by the Applicant does not reflect our agreed terms, we reserve the right to comment further at Deadline 7.
- d. Constructability Notes - We have discussed the Notes with the Applicant and Schedule 10 has been amended to take account of the fact that the Notes, whilst useful in terms of background to the agreement of detailed design and constructability, are not agreed or to be considered determinative as currently drafted.

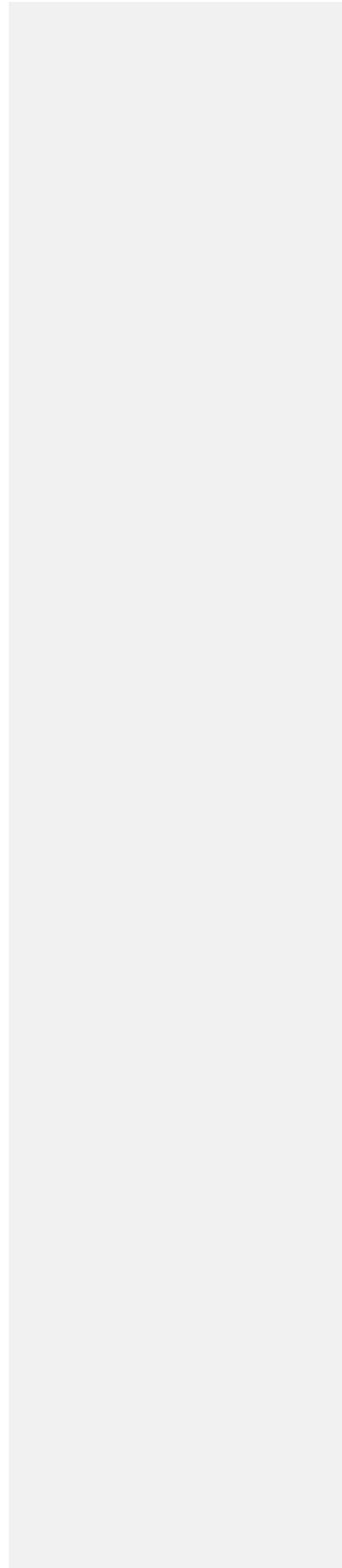
4. RBT

- a. The RBT board is meeting on 17 December 2015 to consider the DCO and the Plan 3.16. Whilst it is not anticipated that there will be any issue with approving Plan 3.16, we have been advised today that RBT has raised concerns as to the design and constructability of the Conveyor along the Northern Route (in addition to the access issue as addressed in Part 2 of amended Schedule 10 and shown on Plan 3.16) and in particular in respect of the need for adherence with Tata/RBT's "Passport to Safety", access/security protocols generally, and the location and protection of assets/services in the land. Clearly, Plots 9 and 10 (at RBT) are without the protection of Schedules 9 and 10 and there is currently no general provision within the DCO as to design/constructability approach and/or obligations. There is no constructability note in respect of RBT land.

We raised these concerns with the Applicant today (and we can confirm that the Applicant was acting in good faith in submitting today that Schedules 9 and 10 are agreed between us). We believe that these latest concerns could be addressed by way of amendment to Part 2 of Schedule 10, or by making plots 9 and 10 subject to Part 1 of that Schedule. We are already in discussion with the Applicant in this regard. In the absence of such amendment, it is unlikely that the RBT board will agree the form of the DCO.

DLA Piper LLP

16 December 2015



Appendix 1

Schedule 9 Protective Provisions

DLA Piper amends 15/12/15Eversheds current version
14 December 2015

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) **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—

- (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(1)) 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

Comment [IG1]: What is "on or above ground"? An object is missing.

(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 the easement width shown on the conveyer route plans as adjusted if necessary (in respect of pipelines shown on the conveyer 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—

- (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, and
- (b) in relation to the access roads, any person—
 - (i) with an interest in the access roads; or
 - (ii) with private rights of way on or over the access roads;
- (c) in relation to the protected crossings, any person—
 - (i) with an interest in the protected crossings;
 - (ii) with rights in relation to the protected crossings; or
 - (iii) with 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 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—

- (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 Holburn, 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;

“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 334 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 334 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.

(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.

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

(2) Where piling is required 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 [for approval](#) in accordance with paragraph 4.

(3) 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.

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

(5) 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, 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.

(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 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 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.

(2) 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.

(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 access to 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
- (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.

(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 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 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 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.

(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).

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 at its own risk 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 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) 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 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.

(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.

Appendix 2

Email from Applicant's solicitor

Green, Ian

From: Thomson, Morag <MoragThomson@eversheds.com>
Sent: 15 December 2015 14:08
To: Green, Ian
Cc: andy.pickford@tatasteel.com; william. woods (william.woods@siriusminerals.com); Hutton, Laura-Beth
Subject: Re: Amended Schedule 10 [DLAP-UKMATTERS.FID3800231]

Thanks Ian. All understood

Kind regards
Morag

Morag Thomson
Partner
Planning and Infrastructure Consenting
Eversheds

07770 586447

Sent from my iPhone

On 15 Dec 2015, at 14:05, Green, Ian <Ian.Green@dlapiper.com> wrote:

Morag

Schedule 10 is approved although there is a typo in 21(4) where I think it should be "requirements" rather than "requirement". Also, a number of the various references to paragraph 21 seem to have a superfluous full stop.

Thank you for confirming acceptance of the amendments to Sch 9. The comment on the definition of affected asset relates to what appears to be a missing object in the provision "[] on or above ground which would be physically affected by the relevant work(s)". Should it still not refer to "apparatus"?

Re. the plan, I understand that Garry O'Malley will be in touch with William today.

Kind regards

Ian

Ian Green
Legal Director
T +44 114 283 3295
F +44 114 283 3393
M +44 7738 295451
E ian.green@dlapiper.com

<image002.jpg>

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From: Thomson, Morag [<mailto:MoragThomson@eversheds.com>]
Sent: 15 December 2015 12:36
To: Green, Ian
Cc: andy.pickford@tatasteel.com; william. woods (william.woods@siriusminerals.com); Hutton, Laura-Beth
Subject: RE: Amended Schedule 10 [DLAP-UKMATTERS.FID3800231]
Importance: High

Ian – here is final version of Sch 10 agreed between us – okay?

I am afraid your amendments to Sch 9 arrive too late for inclusion in our revised draft Order however I will confirm to the Examining Authority that I have no objection to them, so we are agreed.

I do not however understand your comment (no amendment) to the definition of affected asset – are you seeking a change?

We still await confirmation that the RBT plan is agreed – please can you confirm? The conversation in our telecom a week ago suggested there would be no difficulty. Any help in eliciting a response would be gratefully received.

Kind regards

Morag

From: Green, Ian [<mailto:ian.Green@dlapiper.com>]
Sent: 15 December 2015 12:04
To: Thomson, Morag
Cc: andy.pickford@tatasteel.com
Subject: RE: Amended Schedule 10 [DLAP-UKMATTERS.FID3800231]
Importance: High

Morag

Please see attached Sch 9 with a very few amendments shown in track. Subject to these, I believe that we can agree this Schedule.

Kind regards

Ian

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M +44 7738 295451
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<image006.jpg>

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