

27 October 2025

The Planning Inspectorate  
National Infrastructure Planning  
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**By email only**

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Dear The Planning Inspectorate

**Withdrawal of Objection on behalf of SABIC UK Petrochemicals Limited and SABIC Petrochemicals BV ("SABIC")**

**EN020028- APPLICATION FOR THE MORGAN OFFSHORE WIND PROJECT AND MORECAMBE OFFSHORE WINDFARM: TRANSMISSION ASSETS DEVELOPMENT CONSENT ORDER ("the Order")**

We write on behalf of SABIC. SABIC is an interested party in the examination of the Order (URN 20053908).

The Applicant and SABIC have agreed protective provisions for SABIC's benefit in the attached form which the Applicant has included in the Applicant's draft Order submitted at Deadline 6.

There is now, therefore, no difference between the Applicant and SABIC as to the form of the Protective Provisions to be included in the final Order and SABIC hereby withdraws its objection to the Order.

Yours faithfully

*Womble Bond Dickinson (UK) LLP*

**Womble Bond Dickinson (UK) LLP**

**Enclosures**

1. Agreed protective provisions for the benefit of SABIC

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## FOR THE PROTECTION OF SABIC

**Benefit of protective provisions**

1.—(1) The following provisions of this Schedule have effect for the benefit of SABIC, unless otherwise agreed between the undertaker and SABIC.

(2) Except to the extent as may be otherwise agreed in writing between the undertaker and SABIC, where the benefit of this Order is transferred or granted to another person under article 6(benefit of the Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between SABIC and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to SABIC on or before the date of that transfer or grant.

(3) Sub-paragraph (2) applies to any agreement—

- (a) which states that it is “entered into for the purposes of the SABIC Protective Provisions”; and
- (b) whether entered into before or after the making of this Order.

**Interpretation**

2. —(1) In this Schedule—

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; or (ii) “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means a policy of public liability or third party liability insurance effected and maintained by the undertaker with insurance cover of not less than £25,000,000.00 (twenty five million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised project and (b) after the construction period of the authorised project in respect of the operation, maintenance and decommissioning of the authorised project by or on behalf of the undertaker which constitute a relevant work and arranged with an insurer whose security or credit rating meets the same requirements as an acceptable credit provider and such insurance shall include:

- (a) a waiver of subrogation and an indemnity to principal clause in favour of SABIC;
- (b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“access roads” means the roads and other access routes within the Order limits (whether or not they are defined topographical features) giving access to pipeline;

“affected assets” means—

- (a) apparatus which may be physically affected by the relevant works;
- (b) in relation to the exercise of an identified power, any apparatus which would be affected by the exercise of that power.

“alternative apparatus” means new apparatus to be provided by the undertaker to replace existing apparatus which the undertaker intends to remove, such new apparatus to be to a specification and standard which will serve SABIC in a manner which is no less effective or efficient than previously;

“apparatus” means pipelines and cables owned or operated by SABIC and includes—

- (a) any structure existing at the time when a particular action is to be taken under this Schedule in which apparatus is or is to be lodged or which will give access to apparatus;

- (b) any cathodic protection, coating or special wrapping of the apparatus; and
- (c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962(a)), as if the pipelines were a “pipe-line” in section 65(1) of that Act;

“authorised project” has the same meaning as if given to the same term in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised project and construction of any works authorised by this Schedule;

“construction access plan” means a plan identifying how access will be maintained to apparatus during the proposed construction or maintenance work including—

- (a) any restrictions on general access by SABIC, including the timing of restrictions;
- (b) any alternative accesses or routes of access that may be available to the undertaker using the access roads;
- (c) details of how the needs and requirements of SABIC (including their needs and requirements in relation to any major works as at the date when the plan is published) have been taken into account in preparing the plan;
- (d) details of how uninterrupted and unimpeded emergency access with or without vehicles will be provided at all times for SABIC; and
- (e) details of how reasonable access with or without vehicles will be retained or an alternative provided for SABIC to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the pipelines and the protected crossing;

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

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

“engineer” means SABIC's in-house engineer or an independent engineer appointed by SABIC for the purposes of some or all of this Schedule;

“identified powers” means the powers conferred by the following—

- (a) article 9 (street works);
- (b) article 12 (temporary closure of public rights of way);
- (c) article 13 (temporary restriction of use of streets);
- (d) article 14 (access to works);
- (e) article 16 (discharge of water);
- (f) article 17 (authority to survey and investigate the land);
- (g) article 18 (protective works to buildings);
- (h) article 20 (compulsory acquisition of land);
- (i) article 22 (compulsory acquisition of rights .);
- (j) article 24 (private rights);
- (k) article 26 (acquisition of subsoil only);
- (l) article 28 (rights under or over streets);
- (m) article 29 (temporary use of land for carrying out the authorised project); and
- (n) article 30 (temporary use of land for maintaining the authorised project ).

“major works” means works by SABIC requiring the closure, diversion or regulation of any roads serving the apparatus;

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

- (a) with an interest in the access roads; or

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<sup>a</sup> 1962 c. 58. Section 65 was amended by section 89(1) of, and paragraphs 1 and 2 of Schedule 2 to, the Energy Act 2011 (c. 16), paragraph 7 of Schedule 1 of the Gas (Third Party Access and Accounts) Regulations 2000 (S.I. 2000/1937) and regulation 22 and paragraph 5 of the Schedule to the Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011 (S.I. 2011/2305).

(b) with private rights of way on or over the access roads;

“pipeline corridor” means the corridor of land 3 metres measured in any direction from the centre of the pipeline in which SABIC has rights relating to the pipelines (including but not limited to right to install, operate, repair, maintain and renew the pipelines or a right to take access to the pipelines);

“pipeline” means the Trans Pennine Ethylene Pipeline and any associated apparatus owned or operated by SABIC located in the pipeline corridor at the time the pipeline survey is carried out or as may be added between the date of the pipeline survey and the commencement of the relevant work, providing that any such additions have been notified to the undertaker;

“pipeline survey” means a survey of the pipeline corridor to establish—

- (a) the precise location of the pipeline;
- (b) the specification of the pipeline including composition, diameter and pressure;
- (c) any special requirements or conditions relating to the pipeline 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 land” means such parts of the Order land as fall within the pipeline corridor;

“relevant work” means any of the authorised project or activities undertaken in association with the authorised project which has been the subject of a works details notice and for the avoidance of doubt, includes works, activities and the location of wader scrapes and planting required or to be required under the landscaping scheme or ecological management scheme referred to in Schedule 2)

“SABIC” means:

(a) SABIC UK Petrochemicals Limited (Company Number 03767075) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF and any successor in title to SABIC's rights and interests in the protected land; and

(b) in respect of paragraphs 1, 22 to 28, 30 and 31 of this Schedule also includes SABIC Petrochemicals BV (registered in the Netherlands with Company No 14033495) whose registered office is at Europaboulevard 1, Sittard, 6135 LD, Netherlands;

“specified person” means the Company Secretary, SABIC UK Petrochemicals Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF or such other person or address within the United Kingdom as SABIC may notify to the undertaker in writing.

“temporary crossing point” means a point where construction traffic will cross over a pipeline and, unless the pipeline is under a carriageway of adequate standard of construction, any proposed reinforcement of that crossing;

“works notification zone” means the distance of 50 metres measured in any direction from the centre of the pipeline;

“works notification” means a notice description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;

“works details notice” means a notice from SABIC to the undertaker specifying which of the works details specified in the sub-paragraphs of the definition of “works details” it considers to be relevant and which it requires to be submitted to it by the undertaker under paragraph 4(3).

“works details” means such of the following as are specified in a works details notice—

- (a) a more detailed description of the proposed works together with further plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;
- (b) details of any proposed temporary crossing points;
- (c) details of how the undertaker proposes to indicate the location of the easement widths taken from the actual location of the pipelines shown on the pipeline survey during construction of the relevant work, including any fencing or signage;
- (d) details of methods and locations of any piling proposed to be undertaken under paragraph

11;

- (e) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 12;
- (f) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 13;
- (g) details of the location of any pipelines affected by the oversailing provisions in paragraph 14, including details of the proposed clearance;
- (h) details of the method location and extent of any dredging, a technical assessment of the likely effect of the dredging on the protected crossing and any mitigation measures which are proposed to be put in place to prevent damage to the protected crossing;
- (i) details of the undertaker and their principal contractors' management of change procedures;
- (j) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;
- (k) details of the electrical design of the authorised project in sufficient detail to allow an independent specialist to assess whether AC interference from the relevant works may cause damage to the pipeline;
- (l) details of the lifting study during the construction phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;
- (m) details of the lifting study during the operational phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;
- (n) details of the emergency response plan as prepared by SABIC in consultation with local emergency services;
- (o) details of the assessment and monitoring work to be undertaken both prior to the construction of the relevant work and during the operation of the relevant work to ascertain any change or damage to the pipeline cathodic protection system and the proposed remedial works; and
- (p) any further particulars provided in accordance with paragraph 4(2).

(2) Except in relation to paragraphs 1, where this Schedule provides that the acknowledgement, approval, agreement, consent or authorisation of SABIC or the specified person is required for any thing (or that any thing must be done to SABIC's reasonable satisfaction)—

- (a) that acknowledgement, approval, agreement, consent or authorisation (or intimation that the matter in question has been done to SABIC's reasonable satisfaction) shall not be unreasonably withheld or delayed; and
- (b) the grant or issue of such acknowledgement, approval, agreement, consent or authorisation (or intimation) by any one or more of the entities which constitute SABIC as defined in sub-paragraph (1) shall constitute approval, agreement, consent or authorisation on behalf of all of them except in paragraph 22 where an consent must be received from the SABIC company who owns the land, right or interest.

### **Pipeline survey**

**3.—**(1) Before commencing any part of the authorised project in the pipeline corridor the undertaker must—

- (a) carry out and complete the pipeline survey; and
- (b) comply with sub-paragraph (3) below.

(2) The pipeline survey must be undertaken by an appropriately qualified person with at least 10 years' experience of such surveys and carried out in accordance with all relevant national standards and codes (including those of the United Kingdom Onshore Pipeline Operators' Association and the American Petroleum Institute).

(3) When the pipeline survey has been completed the undertaker must serve a copy of the pipeline

survey on SABIC and invite SABIC to advise the undertaker within 28 days of receipt of the survey if SABIC considers that the pipeline survey is incomplete or inaccurate and if so in what respect following which the undertaker must finalise its pipeline survey.

#### **Authorisation of works details affecting the pipeline**

4.—(1) Before commencing any part of the authorised project within the works notification zone the undertaker must submit to SABIC a works notification.

(2) Within 20 working days of receiving a works notification SABIC must consider whether the works described by the works notification may in any way adversely affect any apparatus and, if SABIC so concludes it may serve a works details notice on the undertaker.

(3) Before commencing any part of a relevant work the undertaker must submit to SABIC the works details in respect of any affected asset.

(4) The undertaker must as soon as reasonably practicable provide such further particulars as SABIC may, within 20 working days from the receipt of the works details under sub-paragraph (3), reasonably require.

5. Where a works details notice has been served by SABIC no part of a relevant work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that relevant work under paragraph 4 have been authorised by SABIC; or
- (b) the works details supplied in respect of that relevant work under paragraph 4 have been authorised by an arbitrator under paragraph 7(3); or
- (c) authorisation is deemed to have been given in accordance with paragraph 7(1).

6.—(1) Any authorisation by SABIC required under paragraph 5(a) may be given subject to such reasonable conditions as SABIC may require to be made for—

- (a) the continuing safety and operation or viability of the affected asset; and
- (b) the requirement for SABIC to have—
  - (i) uninterrupted and unimpeded emergency access with or without vehicles to the affected asset at all times; and
  - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.

(2) The authorised project must be carried out in accordance with the works details authorised under paragraph 5 and any conditions imposed on the authorisation under paragraph 6(1).

(3) Where there has been a reference to an arbitrator in accordance with paragraph 7(2) and the arbitrator gives authorisation, the authorised project must be carried out in accordance with the authorisation and conditions contained in the award of the arbitrator under paragraph 7(3).

7.—(1) In the event that no response has been received to the submission of the works details under paragraph 4 within 20 working days of the relevant date, approval of the works details is to be deemed to be given and the relevant works may commence.

(2) If the undertaker considers that—

- (a) any further particulars requested by SABIC under paragraph 4(4) are not reasonably required;
- (b) SABIC has unreasonably withheld its authorisation under paragraph 6(1); or
- (c) SABIC has given its authorisation under paragraph 6(1) subject to unreasonable conditions, the undertaker may refer the matter to an arbitrator for determination under paragraph 31.

(3) Where the matter is referred to arbitration under sub-paragraph (2)(a)—

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



(4) Where the matter is referred to arbitration under sub-paragraph (2)(b) or (2)(c) the arbitrator is to determine whether or not authorisation should be given and, if so the conditions which should reasonably be attached to the authorisation under paragraphs 6(1)(a) and 6(1)(b).

(5) In this paragraph:

"relevant date" means the later of:

- (a) the works details submission date; and
- (b) the costs approval date.

"works details submission date" means the later of:

- (a) where no further particulars have been requested under paragraph 4(2) the date when the undertaker submits works details to a specified person under paragraph 4(1); and
- (b) where further particulars have been requested under paragraph 4(2) the date when the undertaker submits those further particulars to a specified person under paragraph 4(1); and.

"costs approvals date" means the date when :

- (a) the undertaker provides confirmation to SABIC that the estimate is agreed under sub-paragraph 25(5) or following SABIC's confirmation under subparagraph 25(6); or
- (b) any dispute as to the fee, charge, cost or expense specified by SABIC pursuant to sub paragraph (5) or (6) has been settled by arbitration in accordance with paragraph 25(8).

#### **Notice of works**

8. The undertaker must provide to SABIC a minimum of 28 days' notice prior to commencing any relevant work in order that an engineer can be made available to observe the relevant works and, when required, advise on the necessary safety precautions.

#### **Further provisions about works**

9.—(1) Before carrying out a relevant work the undertaker must—

- (a) provide SABIC with baseline data which will be used in the cathodic protection assessment of any existing pipeline; and
- (b) carry out a pipeline settlement and stress analysis to demonstrate any potential pipeline movement will not present an integrity risk to the affected asset.

(2) The pipelines must be located by hand digging prior to the use of mechanical excavation provided that any excavation outside of 3 metres of the centreline of a pipeline may be dug by mechanical means.

10. No explosives are to be used within the protected land.

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

(2) Where piling is required within 50 metres of the centreline of a pipeline or which could have an effect on the operation or maintenance of a pipeline or access to a pipeline, details of the proposed method for and location of the piling must be provided to SABIC for approval in accordance with paragraph 4.

12.—(1) Where excavation of trenches (including excavation by dredging) adjacent to a pipeline affects its support, the pipeline must be supported in a manner approved by SABIC.

(2) Where the undertaker proposes to carry out excavations which might affect above ground structures such as pipeline supports in the pipeline corridor, the undertaker must calculate the zone of influence of those excavations and provide those calculations to SABIC under paragraph 4.

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

(2) Proposed methods and locations of compacting must be notified to SABIC in accordance with paragraph 4.

(3) Compaction testing must be carried out once back filling is completed to establish whether the

backfill has been adequately compacted as referred to in sub-paragraph (1) and what further works may be necessary, and the results of such testing must be supplied to SABIC.

(4) Where it is shown by the testing under sub-paragraph (3) to be necessary, the undertaker must carry out further compaction under sub-paragraph (1) and sub-paragraphs (1), (2) and (3) continue to apply until such time as the backfill has been adequately compacted.

(5) In the event that it is necessary to provide permanent support to a pipeline which has been exposed over the length of the excavation before backfilling and reinstatement is carried out, the undertaker must pay to SABIC a capitalised sum representing the increase of the costs (if any) which may be expected to be reasonably incurred in maintaining, working and, when necessary, renewing any such alterations or additions.

(6) In the event of a dispute as to—

- (a) whether or not backfill has been adequately compacted under sub-paragraphs (1) to (4); or
- (b) the amount of any payment under sub-paragraph (5),

the undertaker or SABIC may refer the matter to an arbitrator for determination under paragraph 31.

**14.—**(1) A minimum clearance of 500 millimetres in respect of above ground apparatus and 600 millimetres in respect of buried apparatus must be maintained between any part of the relevant work and any affected asset (whether that part of the relevant work is parallel to or crosses the pipeline) unless otherwise agreed with SABIC.

(2) In the event that works details approved in respect of a relevant work under paragraph 4 do not comply with SABIC's standard designs for the protection which must be installed between the relevant work and buried apparatus, the minimum clearance of 600 millimetres referred to in sub-paragraph (1) shall not apply and a minimum clearance of 1500 millimetres will apply instead.

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

#### **Monitoring for damage to affected assets**

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

(2) Where any damage occurs to an affected asset as a result of the relevant work, the undertaker must immediately cease all work in the vicinity of the damage and must notify SABIC to enable repairs to be carried out to the reasonable satisfaction of SABIC.

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

- (a) afford SABIC all reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to SABIC its costs incurred in doing so including the costs of testing the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or
- (b) fully and properly repair the affected asset as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of SABIC to have effectively repaired the affected asset before any backfilling takes place.

(4) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where SABIC agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

(6) In the event that the undertaker does not carry out necessary remedial work in a timely manner then SABIC is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

**16.—**(1) If any damage occurs to a pipeline as a result of the relevant work, which causes a leakage or escape from a pipeline, all work in the vicinity must cease and SABIC must be notified immediately.



- (2) Where there is leakage or escape of gas or any other substance, the undertaker must immediately—
- (a) remove all personnel from the immediate vicinity of the leak;
  - (b) inform SABIC;
  - (c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and
  - (d) assist emergency services as may be requested.

### **Compliance with requirements, etc. applying to the protected land**

17.—(1) Subject to sub-paragraph (2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting SABIC as an owner of the protected land, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the protected land.

- (2) The undertaker is not bound by any condition, requirement or regulation that is—
- (a) introduced after the date on which notice of the works was given under paragraph 8 ; or
  - (b) determined by the arbitrator following a determination under paragraph 31 to unreasonably—
    - (i) create significant engineering, technical or programming difficulties; or
    - (ii) materially increase the cost of carrying out the works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

### **Access for construction and maintenance**

18.—(1) Before carrying out any construction or maintenance works affecting SABIC's rights over the access roads, the undertaker must prepare a draft construction access plan and consult on the draft construction access plan with SABIC.

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

19.—(1) In preparing a construction access plan under paragraph 18 the undertaker must—

- (a) establish the programme for SABIC's major works in the pipeline corridor and plan the construction or maintenance works to prevent or (if such conflict cannot be reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and
- (b) where it proposes to restrict or extinguish SABIC's access to the protected land, first provide an alternative or replacement means of access together with facilities and rights which are not materially less advantageous to SABIC.

(2) Where a reference is made to an arbitrator under paragraph 31 in relation to any disagreement about a construction access plan, in addition to the criteria set out in paragraph 31(5) the appointed arbitrator must have regard to—

- (a) whether major works were, at the date of the consultation already programmed to take place;
- (b) the extent to which the relevant work 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 relevant work and the extent to which it is reasonable for it to carry out the relevant work at a different time;
- (e) the availability (or non-availability) of other times during which the relevant work could be carried out;

- (f) the programme in respect of the major works and the extent to which it is reasonable for SABIC to carry out the major works at a different time; and
- (g) the financial consequences of the decision on the undertaker and on SABIC.

(3) In this paragraph, “programmed”, in relation to works, means works in respect of which the owner of the access roads has been notified of the specific dates between which the works are programmed to be carried out provided that the period covered by such dates must be the length of time the works are programmed to be carried out and not a period within part of which the works are to be carried out.

**20.—**(1) No works affecting access rights over the access roads are to commence until 30 days after a copy of the approved construction access plan is served on SABIC.

(2) Where SABIC refers the construction access plan to an arbitrator for determination under paragraph 31, no works affecting access rights over the access roads may commence until that determination has been provided.

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

### **Restriction on exercising powers**

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

(2) The undertaker must in the exercise of the powers conferred by this Order at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on SABIC, including any disruption to access and supplies of utilities and other services that are required by them in order to carry out their operations.

**22.—**(1) The undertaker must not exercise the identified powers in respect of SABIC's land, rights and interests unless written consent has been given by SABIC.

(2) Where an identified power provides for the undertaker to automatically extinguish or override a right or interest of SABIC, the restriction in sub-paragraph (1) is to operate so that the extinguishment or override of the right or interest does not apply unless SABIC has given its consent or is deemed to be given under sub-paragraph (5).

(3) Where SABIC's consent is required under sub-paragraph (1) or (2) the undertaker must serve a notice on SABIC requesting that consent.

(4) In the event that consent is given under paragraph (1), SABIC's apparatus must not be removed, and any right to maintain the apparatus in the land must not be extinguished, until alternative apparatus has been constructed and is in operation and equivalent facilities and rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of the alternative apparatus have been granted to SABIC.

(5) Where alternative apparatus is to be provided under paragraph (4):

- (a) the undertaker must give to SABIC written notice, with specification of the proposed alternative apparatus, together with plans and sections showing its situation and location;
- (b) paragraphs 4 to 20 shall apply to the alternative apparatus as if the details of that alternative apparatus and the carrying out of the works to provide and construct the alternative apparatus constituted the carrying out of a relevant work, subject to the following amendments:
  - (i) in paragraph 8 the notice period of "not less than 28 days" will be replaced with a period of "not less than 3 calendar months unless otherwise agreed with SABIC"; and
  - (ii) in paragraph 6(1) there shall be added immediately before paragraph (a) a new paragraph (aa) as follows:
    - "(aa) without prejudice to paragraph (a), the timing of the works to construct and bring into operation the alternative apparatus so as to reduce so far as possible the detrimental effects on SABIC's operations;"

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

(6) Any alternative apparatus to be constructed under this Schedule must be constructed in such manner and in such line or situation as may be authorised or deemed to be authorised under paragraph 5.

(7) Where under paragraph (6) facilities and rights must be granted to SABIC those facilities and rights must be on such terms and conditions as may be agreed between the undertaker and SABIC and such terms must be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

(8) Subject always to paragraph (9) if the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, or the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator materially worse than the rights enjoyed by them in respect of the apparatus to be removed, the arbitrator must make such provision for the payment of compensation by the undertaker to SABIC as appears to the arbitrator to be reasonable, having regard to all the circumstances of the particular case.

### **Insurance**

**23.—**(1) Before carrying out any part of the relevant work on the protected land, the undertaker (or any contractor carrying out such works on behalf of the undertaker) must put in place acceptable insurance against the undertaker's liabilities under paragraph 25, and evidence of that insurance must be provided on request to SABIC.

(2) Not less than 30 days before carrying out any part of the relevant work on the protected land or before proposing to change the terms of the insurance policy, the undertaker must notify SABIC of details of the terms of the acceptable insurance that it proposes to put in place, including the proposed level of the cover to be provided.

**24.—**If SABIC has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 23—

- (a) SABIC may refer the matter to an arbitrator for determination under paragraph 31; and
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the relevant work at its own risk whilst the determination under paragraph 31 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

### **Costs and indemnification**

**25.—**(1) The undertaker must repay to SABIC all reasonable fees, costs, charges and expenses reasonably incurred by SABIC in relation to these protective provisions in respect of—

- (a) authorisation of survey details submitted by the undertaker under paragraph 3(3), authorisation of works details submitted by the undertaker under paragraph 4 and the imposition of conditions under paragraph 6;
- (b) the engagement of an external engineer and their observation of the authorised project affecting the pipelines and the provision of safety advice under paragraph 8;
- (c) responding to the consultation on piling under paragraph 11;
- (d) considering the effectiveness of any compacting which has taken place under paragraph 13, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;
- (e) the repair and testing of affected assets under paragraph 15;
- (f) considering and responding to consultation in relation to the construction access plan under paragraph 19 and providing details of their programme for major works to the undertaker under paragraph 19;
- (g) dealing with any request for consent, approval or agreement by the undertaker under paragraph 22; and
- (h) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 23,

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

(2) The undertaker must indemnify and keep SABIC indemnified against all reasonable costs, charges, damages and expenses, and against consequential loss and damage, which may be occasioned or reasonably incurred by them—

- (a) by reason of the construction, operation, maintenance, repair and decommissioning of the relevant work or the failure of it; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction, operation, maintenance, repair and decommissioning of the relevant work,

(3) The indemnity contained in sub-paragraph (2) also applies to SABIC's liabilities in relation to the direct losses of third parties (including loss of profits) caused by the disruption of service of the TPEP and which may be occasioned or reasonably incurred by those third parties—

- (a) by reason of the construction, operation, maintenance, repair and decommissioning of the relevant work or the failure of it; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction, operation, maintenance, repair and decommissioning of the relevant work,

whether or not SABIC's liability in this regard is a direct or indirect loss to SABIC.

(4) The fact that any act or thing may have been done by SABIC on behalf of the undertaker or in accordance with plans approved by or on behalf of SABIC or in accordance with any requirement of the engineer appointed by SABIC or under his supervision does not excuse the undertaker from any liability under the provisions of this sub-paragraphs (2) and (3).

(5) If SABIC considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), SABIC will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of 10 working days—

- (a) provide confirmation to SABIC that the estimate is agreed and pay to SABIC, by the date stipulated, that fee, charge, cost or expense; or
- (b) provide confirmation to SABIC that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and or paid at a later date.

(6) SABIC must take in to account any representations made by the undertaker in accordance with this paragraph and must, within 10 working days of receipt of the information pursuant to sub-paragraph (1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the date by which this is to be paid.

(7) SABIC must, when estimating and incurring any charge, cost or expense pursuant to this paragraph, do so with a view to being reasonably economic and acting as if SABIC were itself to fund the relevant fee, charge, cost or expense.

(8) Any dispute as to the fee, charge, cost or expense specified by SABIC pursuant to sub paragraph (5) or (6) will be settled by arbitration in accordance with Article [46] (arbitration) of this Order.

(9) Nothing in the preceding provisions of this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of SABIC, its officers, employees, servants, contractors or agents.

(10) SABIC must give the undertaker reasonable notice of any claim or demand under sub-paragraph (2) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(11) In the assessment of any sums payable to SABIC under this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by, or any agreement entered into by, SABIC if that action or agreement was not reasonably necessary and was

taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

(12) SABIC must use its reasonable endeavours to mitigate any costs, expenses, loss, demands, and penalties to which this paragraph applies.

(13) If requested to do so by the undertaker, SABIC must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to this paragraph.

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

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

26. The undertaker must give written notice to SABIC of the terms and level of cover of any guarantee or alternative form of security put in place under article 33 (funding) and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

27.—The undertaker must give written notice to SABIC if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 6 (benefit of the Order), and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

28. The undertaker must, when requested to do so by SABIC, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 42 (certification of plans and documents etc.) in electronic form.

29. Prior to the commencement of the relevant work the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to SABIC.

30. Notwithstanding article 48 (service of notices) any notice or other communication to be submitted to SABIC by the undertaker pursuant to this Schedule must be sent by email to SABIC at [ethylene.pipelinenorthwest@sabic.com](mailto:ethylene.pipelinenorthwest@sabic.com) or such other address as SABIC may from time to time appoint instead for that purpose and notify to the undertaker in writing..

### **Arbitration**

31.—(1) Article 46 (arbitration) applies to the entirety of this Schedule but for paragraph 22, and is subject to the following provisions of this paragraph.

(2) The fees of the arbitrator are payable by the parties in such proportions as the arbitrator may determine or, in the absence of such determination, equally.

(3) The arbitrator must—

- (a) invite the parties to make a submission in writing and copied to the other party to be received by the arbitrator within 21 days of their appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b) or, if no comments are received, the expiry of the 21 day period specified in sub-paragraph (b); and
- (d) give reasons for the decision.

(4) If the arbitrator does not issue the decision within the time required by sub-paragraph (3)(c) then—

- (a) the arbitrator is not entitled to any payment in respect of their fees; and
  - (b) the matter in question shall immediately be referred to a new arbitrator in which case—
    - (i) the parties shall immediately upon the new arbitrator's appointment provide the new arbitrator with copies of the written submissions and comments previously provided under sub-paragraphs (3)(a) and (3)(b);
    - (ii) no further submissions or comments may be requested by or provided to the new arbitrator in addition to those provided pursuant to sub-paragraph (i); and
    - (iii) the new arbitrator shall then proceed to comply with sub-paragraphs (3)(c) and (3)(d).
- (5) An arbitrator appointed for the purposes of this Schedule must consider where relevant—
- (a) the development outcome sought by the undertaker;
  - (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
  - (c) the nature of the power sought to be exercised by the undertaker;
  - (d) the effect that the consent in question would have on SABIC's operations and the operations of the UK ethylene production and supply industry;
  - (e) the likely duration and financial and economic consequences of any cessation of or interruption of ethylene production and supply including the costs associated with the restoration of production;
  - (f) the ability of SABIC to undertake its operations or development in a timely and cost-effective manner, including any statutory or regulatory duties, requirements or obligations;
  - (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on SABIC and the UK ethylene production and supply industry;
  - (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
  - (i) any other important and relevant consideration.