

SABIC UK PETROCHEMICALS LIMITED (URN 20049383)

SABIC TEES HOLDINGS LIMITED (URN: H2TS-AFP121)

SABIC PETROCHEMICALS BV

APPLICATION BY H2TEESSIDE LIMITED FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE H2TEESSIDE PROJECT (EN070009)

DEADLINE 6

SABIC'S DEADLINE 6 PROTECTIVE PROVISIONS

1. SABIC originally submitted its preferred protective provisions at Deadline 3 in its "Comments on responses to ExA's ExQ1 - (8.11.6 Response to ExQ1 Compulsory Acquisition and Temporary Possession - REP2-027)" [REP3-020]. This was the form which had been provided to the Applicant in pre-application consultation, and was based on protective provisions in favour of SABIC contained in the York Potash DCO.
2. Annex 1 contains SABIC's latest Protective Provisions ("Deadline 6 Protective Provisions"). These have been updated from its Deadline 3 Submission. The principal changes are:
 - 2.1 The deletion the prohibition of compulsory acquisition for all but unknown rights which was contained in the York Potash PPs. This is a significant concession for SABIC and is made on the basis that of the checks and balances contained elsewhere in the document, including the new provisions about the provision of alternative apparatus and replacement facilities and rights, and the inclusion of the York Potash indemnity and insurance provisions.
 - 2.2 We have removed a general reference to protective provisions benefitting the "inventory owner" (ie any person who owns the molecules in the pipes) and instead included specific reference to that owner: SABIC Petrochemicals BV. The rationale for the inclusion of the inventory owner is explained in detail paragraph 3.2 of the "Written Summary of SABIC's Representations to CAH1" [REP4-051]. This rationale applies specifically to SABIC Petrochemicals BV.
 - 2.3 The inclusion of drafting to ensure that the protections and agreements between the parties would run with the land and the undertaking.
 - 2.4 Amending the expert determination provisions to instead refer to arbitration.
3. Annex 2 contains a Comparison of the Deadline 6 Protective Provisions and the protective provisions in favour of SABIC which were included in the Applicant's Deadline 5 dDCO, together with why SABIC's alternative drafting is required.
4. SABIC would stress that, notwithstanding the way Annex 2 is presented (to be helpful to the ExA), it does not consider that the ExA should approach the protective provisions solely by taking what the Applicant is offering and asking SABIC to justify any deviations from those protections. SABIC has provided its protective provisions (and indeed did so at consultation stage) and it is equally for the Applicant to demonstrate why the protections sought by SABIC should not be included in the DCO as made.

Womble Bond Dickinson (UK) LLP

13 January 2025

ANNEX 1

SABIC'S DEADLINE 6 PROTECTIVE PROVISIONS

SCHEDULE []

FOR THE PROTECTION OF SABIC

Article []

Benefit of protective provisions

- 1.—(1) The following provisions of this Schedule have effect for the benefit of SABIC, unless otherwise agreed between the undertaker and SABIC.
- (2) Except to the extent as may be otherwise agreed in writing between the undertaker and SABIC, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of this Order)—
- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between SABIC and the transferee or grantee (as the case may be); and
 - (b) written notice of the transfer or grant must be given to SABIC on or before the date of that transfer or grant.
- (3) Sub-paragraph (2) applies to any agreement—
- (a) which states that it is “entered into for the purposes of the SABIC Protective Provisions”; and
 - (b) whether entered into before or after the making of this Order.
- (4) Article 43 (procedure in relation to certain approvals) does not apply to any consent, agreement or approval required or contemplated by any of the provisions of this Part.

Interpretation

2. In this Schedule—

“access roads” means the access roads within the Order limits giving access to pipelines, the protected crossing or within or giving access to the Wilton Complex, the North Tees facilities and the Brinefields;

“affected assets” means—

- (a) apparatus which would be physically affected by the relevant works;
- (b) the protected crossing where relevant works are to be carried out within 25 metres of the protected crossing; and
- (c) in relation to the exercise of an identified power, any apparatus in the protected land which would be affected by the exercise of that power.

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

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

- (a) any structure existing at the time when a particular action is to be taken under this Part 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(1)), as if the pipelines were a “pipe-line” in section 65(1) of that Act;

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

“Brinefields Plan” means the plan entitled “” (drawing number);

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

“construction access plan” means a plan identifying how access will be maintained to apparatus, the protected crossing, and to and within the Wilton Complex, the North Tees Facilities and the Brinefields during the proposed construction or maintenance work including—

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

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

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

“engineer” means an engineer appointed by SABIC for the purposes of this Order;

“major works” means works by SABIC requiring the closure, diversion or regulation of any roads serving the apparatus, the protected crossing, the Wilton Complex the North Tees Facilities and the Brinefields;

“North Tees Facilities” means the land shown outlined in red on the North Tees Facilities Plan;

“North Tees Facilities Plan” means the plan entitled “XX” (drawing number XX);]

“operator” means any person who is responsible for the construction, operation, use, maintenance or renewal 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;
 - (ii) with rights in, on, under or over the pipeline corridor in respect of a pipeline; or
 - (iii) with a pipeline or proposed pipeline in, on, under or over the pipeline corridor;
- (b) in relation to the access roads, any person—
 - (i) with an interest in the access roads; or
 - (ii) with private rights of way on or over the access roads;
- (c) in relation to the protected crossing, any person—
 - (i) with an interest in the protected crossing;
 - (ii) with rights in relation to the protected crossing; or
 - (iii) with pipelines in or comprising the protected crossing; and
- (d) in relation to protected land means any person falling within paragraphs (a) to (c) above.

“pipeline corridor” means the land identified as the pipeline corridor on the [identify plan];

“pipeline” means any apparatus owned or operated by SABIC located in the pipeline corridor or in or comprising the protected crossing at the time the pipeline survey is carried out or as may be added between the date of the pipeline survey and the commencement of the authorised development, providing that any such additions are notified to the undertaker as soon as reasonably practicable;

“pipeline survey” means a survey of the pipeline corridor and the protected crossing to establish (if not known)—

- (a) the precise location of the pipelines and the protected crossing;
- (b) the specification of the pipelines and protected crossing including, where relevant, their

composition, diameter, pressure and the products they are used to convey;

- (c) any special requirements or conditions relating to the pipelines which differ from the requirements or conditions applying to standard pipelines of that type;
- (d) the precise location of any easement widths or rights (where it is possible to establish this).

“protected crossing” means the tunnel which carries pipelines under the River Tees known as Tunnel 2;

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

- (a) the access roads;
- (b) the pipeline corridor;
- (c) the protected crossing;
- (d) the Wilton Complex;
- (e) the North Tees Facilities; and
- (f) the Brinefields

“relevant work” means a work which may have an effect on the operation, maintenance, abandonment of or access to any pipeline or the protected crossing;

“SABIC ” means:

- (a) SABIC UK Petrochemicals Limited (Company Number 03767075) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF; and
- (b) SABIC Tees Holdings Limited (Company Number 06009440) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF,

and any successor in title to SABIC's rights and interests in the protected land, and in respect of paragraphs 1, 24 to 30, 32 and 33 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 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) Company Secretary, SABIC Tees Holdings Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF in relation to SABIC Tees Holdings Limited; or

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

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

“Wilton Complex Plan” means the plan entitled “” (drawing number);]

“works details” means the following—

- (a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;
- (b) details of any proposed temporary crossing points under paragraph 10;
- (c) details of methods and locations of any piling proposed to be undertaken under paragraph 13;
- (d) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 14;
- (e) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 15;
- (f) details of the location of any pipelines affected by the oversailing provisions in paragraph 16, 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 crossing and any mitigation measures which are proposed to be put in place to prevent damage to the protected crossing;

- (h) details of the undertaker and their principal contractors' management of change procedures;
- (i) 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;
- (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 pipeline;
- (k) 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;
- (l) 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;
- (m) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators;
- (n) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to the pipeline cathodic protection system and the proposed remedial works; and
- (o) any further particulars provided in accordance with 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 SABIC and invite SABIC to advise the undertaker within 28 days of receipt of the survey if SABIC considers that the pipeline survey is incomplete or inaccurate and if so in what respect following which the undertaker must finalise its pipeline survey.

Authorisation of works details affecting pipelines or protected crossing

4.—(1) Before commencing any part of a relevant work the undertaker must submit to SABIC the works details in respect of any affected asset and obtain a written acknowledgement of receipt of those works details from the specified persons in relation to the affected asset concerned.

(2) The undertaker must as soon as reasonably practicable provide such further particulars as SABIC may, within 45 days from the receipt of the works details under sub-paragraph (1), reasonably require.

5. No part of a relevant work is to be commenced until one of the following conditions has been satisfied—

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

6.—(1) Any authorisation by SABIC required under paragraph 5(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as SABIC may require to be made for—

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

(b) the requirement for SABIC to have—

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

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

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

7.—(1) In the event that—

- (a) no response has been received to the submission of the works details under paragraph 4 within 45 days of the undertaker obtaining a written acknowledgment of receipt from a specified person under paragraph 4(1) and no further particulars have been requested under paragraph 4(2); or
- (b) authorisation has not been given within 30 days of the undertaker obtaining a written acknowledgment of receipt from a specified person of the further particulars supplied under paragraph 4(2),

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

(2) In the event that—

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

the undertaker may refer the matter to arbitrator for determination under paragraph 33.

(3) Where the matter is referred to an arbitrator under paragraph 7(2) 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 sub-paragraphs (a) and (b) of paragraph 6(1).

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

10.—(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 must be suitably reinforced with sleepers 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 SABIC 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 are to be used within the protected land.

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

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

14.—(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.

15.—(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 33.

16.—(1) A minimum clearance of 500 millimetres in respect of above ground apparatus and 1500 millimetres in respect of buried apparatus must be maintained between any part of the authorised development and any affected asset (whether that part of the authorised development is parallel to or crosses the pipeline) unless otherwise agreed with SABIC.

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

Monitoring for damage to affected assets

17.—(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.

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

(2) Where there is leakage or escape of gas or any other substance, the undertaker must immediately—

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

Compliance with requirements, etc. applying to the protected land

19.—(1) Subject to sub-paragraph (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 under paragraph 8 ; or
- (b) determined by the arbitrator following a determination under paragraph 33 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

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

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

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

- (a) establish the programme for SABIC's major works in the pipeline corridor the Wilton Complex, the North Tees Facilities and the Brinefields and plan the construction or maintenance works to prevent or (if such conflict cannot be reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and
- (b) where it proposes to restrict or extinguish SABIC's access to the protected land, or any pipeline or the Wilton Complex, the North Tees Facilities or the Brinefields first provide

an alternative or replacement means of access together with facilities and rights which are no less advantageous to SABIC.

(2) Where a reference is made to an arbitrator under paragraph 33 in relation to any disagreement about a construction access plan, in addition to the criteria set out in paragraph 33(4) the appointed arbitrator must have regard to—

- (a) whether major works were, at the date of the consultation already programmed to take place;
- (b) the extent to which the authorised development can be accommodated simultaneously with the programmed major works;
- (c) the usual practice in respect of conditions or requirements subject to which authorisation to close or divert the access roads is given by the owner of the access roads;
- (d) the undertaker's programme in respect of the authorised development and the extent to which it is reasonable for it to carry out the authorised development at a different time;
- (e) the availability (or non-availability) of other times during which the authorised development could be carried out;
- (f) the programme in respect of the major works and the extent to which it is reasonable for SABIC to carry out the major works at a different time; and
- (g) the financial consequences of the decision on the undertaker and on SABIC.

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

22.—(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 33, 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

23.—(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 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.

24.—(1) The undertaker must not exercise the identified powers in respect of SABIC's land, rights and interests unless one of the following consents has been given—

- (a) written consent by SABIC;
- (b) consent by an arbitrator appointed under paragraph 33; or
- (c) deemed consent in accordance with sub-paragraph (5).

(2) Where an identified power provides for the undertaker to automatically extinguish or override a right or interest of SABIC, the restriction in sub-paragraph (1) is to operate so that the extinguishment or override of the right or interest does not apply unless SABIC has given its consent or consent has been given by an arbitrator appointed under paragraph 33 or is deemed to be given under sub-paragraph (5).

(3) Where SABIC's consent is required under sub-paragraph (1) the undertaker must serve a notice on SABIC requesting that consent and that consent must not be unreasonably withheld.

(4) If the undertaker considers that consent under sub-paragraph (3) has been unreasonably withheld, the undertaker may refer the request for consent to an arbitrator appointed under paragraph 32 for determination.

(5) If SABIC fails to respond to a request for consent within 30 days of the undertaker serving that request on the specified person in full accordance with sub-paragraph (3) and article 45 (service of notices) as amended by paragraph 32, the consent of SABIC is deemed to be given.

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

(7) If alternative apparatus is to be provided under paragraph (6):

- (a) the undertaker must give to SABIC written notice, with specification of the proposed alternative apparatus, together with plans and sections showing its situation and location;
- (b) paragraphs 4 to 22 shall apply to the approval of details of that alternative apparatus and the carrying out of the works to provide and construct the alternative apparatus 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 12 calendar months unless otherwise agreed with SABIC"; and
 - (ii) in paragraph 6(1) that shall be added immediately before paragraph (a) and 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 of the on SABIC's operations;"

- (c) the undertaker will have special regard to its obligations under paragraph 23(2).

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

(9) Where under paragraph (6) facilities and rights must be granted to SABIC those facilities and rights must be on such terms and conditions as may be agreed between the undertaker and SABIC or in default of agreement determined by an arbitrator under paragraph 33, and such terms must be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

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

(11) In this paragraph, "identified powers" means the powers conferred by the following—

- (a) article 11 (street works);
- (b) article 12 (construction and maintenance of new or altered means of access)
- (c) article 13 (temporary stopping up of streets, public rights of way and access land);
- (d) article 14 (access to works);
- (e) article 17 (discharge of water);
- (f) article 20 (authority to survey and investigate the land);
- (g) article 22 (compulsory acquisition of land) in so far as the exercise of such powers is not excluded by paragraph 23 (1) and sub-paragraph (1);
- (h) article 23 (power to override easements and other rights) in so far as the exercise of such powers is not excluded by paragraph 23 (1) and sub-paragraph (1);
- (i) article 25 (compulsory acquisition of rights etc.) in so far as the exercise of such powers is not excluded by paragraph 23 (1) and sub-paragraph (1);
- (j) article 26 (private rights) in so far as the exercise of such powers is not excluded by paragraph

- 23 (1) and sub-paragraph (1);
- (k) article 28 (acquisition of subsoil or airspace only);
- (l) article 31 (rights under or over streets);
- (m) article 32 (temporary use of land for carrying out the authorised development); and
- (n) article 33 (temporary use of land for maintaining the authorised development).

Insurance

25.—(1) Before carrying out any part of the authorised development on the protected land, the undertaker must put in place a policy of insurance with a reputable insurer against its liabilities under paragraph 27 in accordance with the terms and level of cover as may be agreed in writing between the undertaker and SABIC or, in the case of dispute, in accordance with the terms and level of cover determined by an arbitrator under paragraph 33, and evidence of that insurance must be provided on request to SABIC.

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

(3) The undertaker must maintain insurance in relation to the authorised development affecting SABIC during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover as may be agreed in writing between the undertaker and SABIC or at such level as may otherwise be determined by an arbitrator under paragraph 33.

26.—(1) If SABIC has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 26—

- (a) SABIC may refer the matter to an arbitrator for determination under paragraph 33; and
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph 33 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs

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

- (a) authorisation of survey details submitted by the undertaker under paragraph 3(3), authorisation of works details submitted by the undertaker under paragraph 4 and the imposition of conditions under paragraph 6;
- (b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 8;
- (c) responding to the consultation on piling under paragraph 13;
- (d) considering the effectiveness of any compacting which has taken place under paragraph 15, 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 17;
- (f) considering and responding to consultation in relation to the construction access plan under paragraph 20 and providing details of their programme for major works to the undertaker under paragraph 21;
- (g) dealing with any request for consent, approval or agreement by the undertaker under paragraph 24; 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 25,

including the reasonable costs incurred by SABIC in engaging and retaining such external experts,

consultants and contractors as may be reasonably necessary to allow SABIC to carry out its functions under these protective provisions.

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

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

and 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 (if it was done without negligence on the part of SABIC or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(3) 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.

(4) SABIC must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part.

(5) In the assessment of any sums payable to SABIC under this Part 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 Part or increasing the sums so payable.

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

28. 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 48 (funding for compulsory acquisition compensation) and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

29.—The undertaker must give written notice to the SABIC if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 8 (consent to transfer benefit of this Order), and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

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

30. The undertaker must, when requested to do so by SABIC, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 44 (certification of plans etc.) in electronic form.

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

32. Where SABIC has provided an e-mail address for service in respect of the specified person, sub-paragraph (1)(a) of article 45 (service of notices) will not apply to the service of the said notice, which must be effected by electronic means.

Arbitration

33.—(1) Article 46 (arbitration) applies to this Part subject to the following paragraphs.

(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); and
- (d) give reasons for the decision.

(4) The arbitrator must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effect that the consent in question would have on SABIC's operations and the operations of the UK ethylene production and supply industry;
- (e) the likely duration and financial and economic consequences of any cessation of or interruption of ethylene production and supply including the costs associated with the restoration of production;
- (f) the ability of SABIC to undertake its operations or development in a timely and cost-effective manner, including any statutory or regulatory duties, requirements or obligations;
- (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on SABIC and the UK ethylene production and supply industry;
- (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (i) any other important and relevant consideration.

ANNEX 2

COMPARISON OF (1) PROTECTIVE PROVISIONS IN FAVOUR OF SABIC CONTAINED IN THE DEADLINE 5 dDCO AND (2) SABIC's DEADLINE 6 PROTECTIVE PROVISIONS SET OUT IN ANNEX 1

<p>SCHEDULE 34 <u>[]</u> Article 41 <u>[]</u></p> <p>PROTECTIVE PROVISIONS FOR THE PROTECTON <u>PROTECTION</u> OF SABIC</p> <p>PETROCHEMICALS UK LIMITED</p> <p>Benefit of protective provisions</p> <p>1. <u>—(1)</u> The following provisions of this Schedule have effect for the benefit of SABIC, unless otherwise agreed between the undertaker and SABIC.</p> <p><u>(2) Except to the extent as may be otherwise agreed in writing between the undertaker and SABIC, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of this Order)—</u></p> <p><u>(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between SABIC and the transferee or grantee (as the case may be); and</u></p> <p><u>(b) written notice of the transfer or grant must be given to SABIC on or before the date of that transfer or grant.</u></p> <p><u>(3) Sub-paragraph (2) applies to any agreement—</u></p> <p><u>(a) which states that it is “entered into for the purposes of the SABIC Protective Provisions”; and</u></p> <p><u>(b) whether entered into before or after the making of this Order.</u></p>	<p>(2) This is to provide comfort to SABIC that where agreements are reached with the undertaker they will bind any transferee or lessee of the undertaking.</p>
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(4) Article 43 (procedure in relation to certain approvals) does not apply to any consent, agreement or approval required or contemplated by any of the provisions of this Part.

Interpretation

2. In this Schedule—

“access roads” means the access roads within the Order limits giving access to pipelines, the protected crossing or within or giving access to the Wilton Complex, the North Tees ~~site~~facilities and the Brinefields;

“affected assets” means—

(a) apparatus which would be physically affected by the relevant works;

(b) the protected crossing where relevant works are to be carried out within 25 metres of the protected crossing; and

(c) in relation to the exercise of an identified power, any apparatus in the protected land which would be affected by the exercise of that power~~;~~.

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

“apparatus” means pipelines ~~and~~, cables and drains owned or operated by SABIC ~~within the Order limits~~ and includes—

"or giving access to": this has come about due to further information coming to light about the non-highway status of Huntsman Drive, which gives access to the North Tees Site.

"facilities": this aligns the paragraph to the definition of "North Tees Facility".

"alternative apparatus": this is necessary as a result of SABIC's amendments to paragraph 24 below in relation to the provision of replacement facilities and rights if alternative apparatus is to be provided.

"and drains": SABIC is concerned that the scheme might also affect its drains which should also be protected.

"within the Order limits": these words should be deleted. The undertaker's works to construct the authorised development is likely to affect SABIC's assets both inside and outside the Order limits. For example works maybe carried out at the edge of the Order limits which could adversely effect apparatus outside the Order limits: that apparatus requires equal protection. It is therefore not appropriate to limit the protection of SABIC's apparatus that that which lies within the Order limits.

<p>(a) any structure existing at the time when a particular action is to be taken under this Schedule<u>Part</u> in which apparatus is or is to be lodged or which will give access to apparatus;</p> <p>(b) any <u>cathodic protection</u>, coating or special wrapping of the apparatus; and</p> <p>(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(<u> </u>), as if the pipelines were a “pipe-line” in section 65(1) of that Act;</p> <p>“Brinefields” means the land shown outlined in red on the Brinefields Plan;</p> <p>“Brinefields Plan” means the plan entitled [“XX”] (drawing number XX);</p> <p>“construction access plan” means a plan identifying how access will be maintained to apparatus, the protected crossing, and to and within the Wilton Complex, the North Tees Facilities and the Brinefields during the proposed construction or maintenance work</p> <p><u> </u>including—</p> <p>(a) any restrictions on general access by SABIC, including the timing of restrictions;</p> <p>(b) any alternative accesses or routes of access that may be available to the undertaker using the access roads;</p> <p>(c) details of how the needs and requirements of SABIC (including their needs and requirements in relation to any major works that they have notified to the other operators of the protected land as at the date when the plan is published) have been taken into account in preparing the plan;</p> <p>(d) details of how uninterrupted and unimpeded emergency access with or without vehicles will be provided at all times for SABIC; and</p> <p>(e) details of how reasonable access with or without vehicles will be retained or an alternative provided for SABIC to inspect, repair, replace and</p>	<p>"cathodic protection": underground pipes are provided with cathodic protection to prevent corrosion and thereby maintain their integrity. That protection system therefore requires protection under these provisions.</p>
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<p>maintain and ensure the continuing safety and operation or viability of the pipelines and the protected crossing;</p> <p>“construction or maintenance works” means any works to construct, maintain, or decommission the authorised development;</p> <p>“damage” includes all damage to apparatus including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;</p> <p>“engineer” means an engineer appointed by SABIC for the purposes of this Order;</p> <p>“major works” means works by SABIC requiring the closure, diversion or regulation of any roads serving the apparatus, the protected crossing, the Wilton Complex, the North Tees Facilities and the Brinefields;</p> <p>“North Tees Facilities” means the land shown outlined in red on the North Tees Facilities Plan;</p> <p>“North Tees Facilities Plan” means the plan entitled [“XX” (drawing number XX)];</p> <p>“operator” means any person who is responsible for the construction, operation, use, maintenance or renewal of any pipeline;</p> <p>“owner” means—</p> <ul style="list-style-type: none">(a) in relation to the pipeline corridor, any person—<ul style="list-style-type: none">(i) with an interest in a pipeline in the pipeline corridor;(ii) with rights in, on, under or over the pipeline corridor in respect of a pipeline; or(iii) with a pipeline or proposed pipeline in, on, under or over the pipeline corridor;(b) in relation to the access roads, any person—	
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<p>(i) with an interest in the access roads; or</p> <p>(ii) with private rights of way on or over the access roads;</p> <p>(c) in relation to the protected crossing, any person—</p> <p>(i) with an interest in the protected crossing;</p> <p>(ii) with rights in relation to the protected crossing; or</p> <p>(iii) with pipelines in or comprising the protected crossing; and</p> <p>(d) in relation to protected land means any person falling within sub-paragraphs<u>paragraphs</u> (a) to (c) above;<u>;</u></p> <p>“pipeline corridor” means the land identified as the pipeline corridor on the [identify plan];</p> <p>“pipelines<u>pipeline</u>” means any apparatus owned or operated by SABIC located in the pipeline corridor or in or comprising the protected crossing at the time the pipeline survey is carried out or as may be added between the date of the pipeline survey and the commencement of the authorised development, providing that any such additions are notified to the undertaker as soon as reasonably practicable;</p> <p>“pipeline survey” means a survey of the pipeline corridor and the protected crossing to establish (if not known)—</p> <p>(a) the precise location of the pipeline<u>pipelines</u> and the protected crossing;</p> <p>(b) the specification of the pipelines and protected crossing including, where relevant, their composition, diameter, pressure and the products they are used to convey;</p> <p>(c) any special requirements or conditions relating to the pipelines which differ from the requirements or conditions applying to standard pipelines of that type;</p>	<p>"paragraphs": Text corrected to "paragraphs" from "sub-paragraphs".</p> <p>"pipeline": it is usual to define works in the singular.</p> <p>"pipelines": more than one pipeline is affected by the Order.</p>
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(d) the precise location of any easement widths or rights (where it is possible to establish this).

“protected crossing” means the tunnel which carries pipelines under the River Tees known as Tunnel 2;

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

- (a) the access roads;
- (b) the pipeline corridor;
- (c) the protected crossing;
- (d) the Wilton Complex;
- (e) the North Tees Facilities; and
- (f) the Brinefields;

“relevant work” means a work which may have an effect on the operation, maintenance, abandonment of or access to any pipeline or the protected crossing;

“SABIC ” means:

“(a) SABIC” means ~~SABIC Petrochemicals~~ UK [Petrochemicals Limited](#), (Company Number 03767075) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF; and

(b) [SABIC Tees Holdings Limited \(Company Number 06009440\)](#) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF,

and any successor in title to SABIC's rights and interests in the protected land, and in respect of paragraphs 1, 24 to 30, 32 and 33 also includes [SABIC Petrochemicals BV \(registered in the Netherlands with Company No 14033495\) whose registered office is at Europaboulevard 1, Sittard, 6135 LD, Netherlands](#);

(d) The infrastructure in this area has a complex history, and it is important that the undertaker fully understand where apparatus is located and the extent of SABIC's rights and interests. It may be necessary to erect secure demarcation fencing to the extent of the wayleave for the apparatus and so it is important to know where that fencing would need to be erected.

(a) and (b) provide protection to the two SABIC companies whose land is affected by powers of compulsory acquisition under the scheme;

"any successor in title to SABIC's rights and interests" this ensures that successors in title are also protected;

"in respect of paragraphs 1, 24 to 30, 32 and 33 also includes SABIC Petrochemicals BV ": this provides protection for SABIC Petrochemicals BV, who own the inventory (ie the molecules in the pipes). The paragraphs cited relate to the protection of insurance, costs and indemnities. The rationale for the inclusion of the inventory owner is explained in detail paragraph 3.2 of the "Written Summary of SABIC's Representations to CAH1" [REP4-051]

<p><u>“specified persons” means—</u></p> <p>(a) <u>the following—</u></p> <p>“specified person” means the (i) Company Secretary, SABIC Petrochemicals-UK <u>Petrochemicals</u> Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF in relation to SABIC <u>UK</u> Petrochemicals UK Limited; or such other person as they may notify to the undertaker in writing;</p> <p>(ii) <u>Company Secretary, SABIC Tees Holdings Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF in relation to SABIC Tees Holdings Limited;</u> <u>or</u></p> <p><u>such other person or address as they may notify to the undertaker in writing.</u></p> <p><u>[“Wilton Complex” means the land shown outlined in red on the Wilton Complex Plan;</u></p> <p><u>“Wilton Complex Plan” means the plan entitled “” (drawing number);]</u></p> <p>“works details” means the following—</p> <p>(a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;</p> <p>(b) <u>details of any proposed temporary crossing points under paragraph 10;</u></p> <p>(bc) details of methods and locations of any piling proposed to be undertaken under paragraph 10<u>13</u>;</p> <p>(cd) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 14<u>14</u>;</p> <p>(de) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 15<u>15</u>;</p>	<p>"specified persons": this definition is provided in relation to the service of notices relating to works. Therefore SABIC Petrochemicals BV is not included.</p> <p>"such other person or address": this flexibility is necessary to allow SABIC to nominate a particular person or mailbox to receive notices when the authorised development gets under way.</p> <p>(b) this is required because underground apparatus is affected by the scheme. It is necessary (and usual) to protect that apparatus at crossing points to avoid the fracturing of underground apparatus.</p>
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<p>(ef) details of the location of any pipelines affected by the oversailing provisions in paragraph 43<u>16</u>, including details of the proposed clearance;</p> <p>(fg) details of the method location and extent of any dredging, a technical assessment of the likely effect of the dredging on the protected crossing and any mitigation measures which are proposed to be put in place to prevent damage to the protected crossing;</p> <p>(gh) details of the undertaker and their principal contractors' management of change procedures;</p> <p>(hi) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;</p> <p><u>(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 pipeline;</u></p> <p>(ik) details of the lifting study during the construction phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;</p> <p>(jl) details of the lifting study during the operational phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;</p> <p>(km) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators;and</p> <p><u>(n) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to the pipeline cathodic protection system and the proposed remedial works; and</u></p> <p>(lo) any further particulars provided in accordance with paragraph 4<u>(2)</u>.</p>	<p>(j) underground pipes are provided with cathodic protection to prevent corrosion and thereby maintain their integrity. That protection system therefore requires protection under these provisions.</p> <p>(n) underground pipes are provided with cathodic protection to prevent corrosion and thereby maintain their integrity. That protection system therefore requires protection under these provisions.</p>
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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 ~~an appropriately qualified person~~ 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 SABIC and invite SABIC to advise the undertaker within 28 days of receipt of the survey if SABIC considers that the pipeline survey is incomplete or inaccurate and if so in what respect following which the undertaker must finalise its pipeline survey.

Authorisation of works details affecting pipelines or protected crossing

4. —(1) Before commencing any part of a relevant work the undertaker must submit to SABIC the works details in respect of any affected asset and obtain a written acknowledgement of receipt of those works details from the specified persons in relation to the affected asset concerned.

(2) The undertaker must as soon as reasonably practicable provide such further particulars as SABIC may, within ~~30~~45 days ~~(or such longer period as is agreed between the parties)~~ from the receipt of the works details under sub-paragraph (1), reasonably require.

5. No part of a relevant work is to be commenced until one of the following conditions has been satisfied—

"surveyor who is a member of the Royal Institute of Chartered Surveyors": SABIC considers that a RICS surveyor should be appointed to undertake the survey.

"45 days": This period takes into account the fact that SABIC will need to appoint external experts to review the works details and will need time to make an appointment. It also reflects the fact that the period is not expressed as working days, and therefore needs to take account of the time needed to properly respond should a notice be received at the end of December.

<p>(a) the works details supplied in respect of that relevant work under paragraph 4 have been authorised by SABIC; or</p> <p>(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</p> <p>(c) authorisation is deemed to have been given in accordance with paragraph 7(1).</p> <p>6. —(1) Any authorisation by SABIC required under paragraph 5(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as SABIC may require to be made for—</p> <p>(a) the continuing safety and operation or viability of the affected asset; and</p> <p>(b) the requirement for SABIC to have—</p> <p>(i) uninterrupted and unimpeded emergency access with or without vehicles to the affected asset at all times; and</p> <p>(ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.</p> <p>(2) The authorised development must be carried out in accordance with the works details authorised under paragraph 5 and any conditions imposed on the authorisation under paragraph 6(1).</p> <p>(3) Where there has been a reference to arbitration<u>an arbitrator</u> in accordance with paragraph 26<u>7(2)</u> and the arbitrator gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award<u>award</u> of the arbitrator under paragraph 7(3).</p> <p>7. —(1) In the event that—</p> <p>(a) no response has been received to the submission of the works details under paragraph 4 within 45 days of the undertaker obtaining a</p>	
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written ~~acknowledgement~~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 ~~acknowledgement~~acknowledgment of receipt from a specified person of the further particulars supplied under paragraph 4(2),

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

(2) In the event that—

(a) the undertaker considers that SABIC has unreasonably withheld its authorisation under paragraph 6(1); or

(b) the undertaker considers that 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 ~~26~~33 .

(3) Where the matter is referred to ~~arbitration~~an arbitrator under paragraph 7(2) 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 sub-paragraphs (a) and (b) of paragraph 6(1).

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

10. —(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 must be suitably reinforced with sleepers 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 SABIC 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.

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

4013. —(1) All piling within 1.5 metres of the centreline of a pipeline must be non-percussive.

(2) Where piling is required within 50 metres of the centreline of a pipeline or which could have an effect on the operation or maintenance of a pipeline or

Paragraphs 9 to 11 reflect the fact that underground pipelines are affected by the scheme. This means that extra care must be taken when working in proximity to these assets and that these additional protection measures are necessary.

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.

~~14~~¹⁴. —(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.

~~15~~¹⁵. —(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—

<p>(a) whether or not backfill has been adequately compacted under sub-paragraphs (1) to (4); or</p> <p>(b) the amount of any payment under sub-paragraph (5),</p> <p>-the undertaker or SABIC may refer the matter <u>to an arbitrator</u> for arbitration<u>determination</u> under paragraph 26<u>33</u>.</p> <p>13<u>16</u>. —(1) A minimum clearance of 500 millimetres <u>in respect of above ground apparatus and 1500 millimetres in respect of buried apparatus</u> must be maintained between any part of the authorised development and any affected asset (whether that part of the authorised development is parallel to or crosses the pipeline) unless otherwise agreed with SABIC.</p> <p>(2) No manholes or chambers are to be built over or round the pipelines.</p> <p>Monitoring for damage to affected assets</p> <p>14<u>17</u>. —(1) When carrying out the relevant work the undertaker must monitor the relevant affected assets within the Order limits to establish whether damage has occurred.</p> <p>(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.</p> <p>(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—</p> <p>(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 <u>cathodic protection and</u> any further works or testing shown by that testing to be reasonably necessary; or</p>	<p>"1500 millimetres" clearance: this additional distance is required from a safety perspective in respect of buried apparatus.</p> <p>"within the Order limits": these words should be deleted. The undertaker's works to construct the authorised development is likely to affect SABIC's assets both inside and outside the Order limits. For example works maybe carried out at the edge of the Order limits which could adversely effect apparatus outside the Order limits: that apparatus requires equal protection. It is therefore not appropriate to limit the protection of SABIC's apparatus that that which lies within the Order limits.</p> <p>"cathodic protection": underground pipes are provided with cathodic protection to prevent corrosion and thereby maintain their integrity. That protection system therefore requires protection under these provisions.</p>
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(b) fully and properly repair the affected ~~assets~~asset as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of SABIC to have effectively repaired the affected ~~assets~~asset before any backfilling takes place.

(4) Where testing has taken place under sub-paragraph ~~(3)~~(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.

~~15~~18. —(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and SABIC must be notified immediately.

(2) Where there is leakage or escape of gas or any other substance, the undertaker must immediately—

(a) remove all personnel from the immediate vicinity of the leak;

(b) inform SABIC;

(c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and

(d) assist emergency services as may be requested.

Compliance with requirements, etc. applying to the protected land

~~16~~19. —(1) Subject to sub-paragraph (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 ~~the~~ notice of the works was given under paragraph 8.; or

(b) determined by ~~arbitration~~the arbitrator following a determination under paragraph ~~26~~33 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

~~17~~20. —(1) Before carrying out any construction or maintenance works affecting SABIC's access rights over the access roads, the undertaker must prepare a draft construction access plan and consult on the draft construction access plan with SABIC.

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

~~18~~21. —(1) In preparing a construction access plan under paragraph ~~17~~20 the undertaker must—

<p>(a) establish the programme for SABIC's major works in the pipeline corridor, the Wilton Complex, the North Tees Facilities and the Brinefields and plan the construction or maintenance works to prevent or (if such conflict cannot be reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and</p> <p>(b) establish where SABIC is reasonably expected to exercise access rights to <u>where it proposes to restrict or extinguish SABIC's</u> access to the protected land, or any pipeline over particular access roads in respect of which rights are proposed to be restricted or extinguished, establish the purpose of that expectation and <u>or the Wilton Complex, the North Tees Facilities or the Brinefields first</u> provide an alternative or replacement means of access whereby that expectation can be met <u>together with facilities and rights which are no less advantageous to SABIC.</u></p> <p>(2) Where a reference is made to arbitration <u>an arbitrator</u> under paragraph 26 <u>33</u> in relation to any disagreement about a construction access plan the, in addition to the criteria set out in paragraph 33(4) the appointed arbitrator must have regard to—</p> <p>(a) whether major works were, at the date of the consultation already programmed to take place;</p> <p>(b) the extent to which the authorised development can be accommodated simultaneously with the programmed major works;</p> <p>(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;</p> <p>(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;</p> <p>(e) the availability (or non-availability) of other times during which the authorised development could be carried out;</p>	<p>(b) this is required to ensure that SABIC continues to enjoy the access it needs to continue its operations.</p> <p>"in addition to the criteria set out in paragraph 33(4)": a list of criteria the arbitrator must consider is set out in paragraph 33(4). This is to make it clear that the criteria set out in paragraphs (a) to (g) below are additional criteria.</p>
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- (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.
- ~~19~~²². —(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 ~~or the undertaker~~ refers the construction access plan to ~~arbitration~~^{an arbitrator} for determination under paragraph ~~26~~³³, 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

- ~~23.~~ —(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 SABIC, including any disruption to access and

(2) SABIC's drafting does not include a right for the undertaker to refer the plan to arbitration because the undertaker produces and approves the plan in question. The undertaker is required to prepare the construction access plan, take account of SABIC's comments and then approve the plan. The document is therefore approved by the undertaker. There is therefore no need for the undertaker to refer the plan to arbitration: it is the undertaker's own plan.

Paragraphs 23 and 24:

These paragraphs are designed to protect SABIC's land and rights from compulsory acquisition.

The operational context of SABIC's apparatus as a "single, interconnected, holistic system" as set out in Section 1 of the "Written Summary of SABIC's Representations to CAH1" [REP4-051]. This explains that if this circuit is broken, even temporarily, the whole circuit fails. It follows that the extinguishment or suspension of rights to facilitate the authorised

supplies of utilities and other services that are required by them in order to carry out their operations.

24. —(1) The undertaker must not exercise the identified powers in respect of SABIC's land, rights and interests unless one of the following consents has been given—

(a) written consent by SABIC;

(b) consent by an arbitrator appointed under paragraph 33; or

(c) deemed consent in accordance with sub-paragraph (5).

(2) Where an identified power provides for the undertaker to automatically extinguish or override a right or interest of SABIC, the restriction in sub-paragraph (1) is to operate so that the extinguishment or override of the right or interest does not apply unless SABIC has given its consent or consent has been given by an arbitrator appointed under paragraph 33 or is deemed to be given under sub-paragraph (5).

(3) Where SABIC's consent is required under sub-paragraph (1) the undertaker must serve a notice on SABIC requesting that consent and that consent must not be unreasonably withheld.

(4) If the undertaker considers that consent under sub-paragraph (3) has been unreasonably withheld, the undertaker may refer the request for consent to an arbitrator appointed under paragraph 32 for determination.

(5) If SABIC fails to respond to a request for consent within 30 days of the undertaker serving that request on the specified person in full accordance with sub-paragraph (3) and article 45 (service of notices) as amended by paragraph 32, the consent of SABIC is deemed to be given.

(6) In the event that consent is given or deemed to be given under paragraph (1), SABIC's apparatus must not be removed, and any right to maintain the apparatus in the land must not be extinguished, until alternative apparatus has been constructed and is in operation and equivalent facilities and rights for the construction, adjustment, alteration, use, repair,

development, over even a small section of SABIC's system, would prevent or suspend SABIC's production and supply operations.

Another important point is set out in paragraph 1.8 of that document that even a brief temporary interruption to the circuit would mean that SABIC's system would have to be restarted, a process that is likely to take 2-3 weeks. The effects of such a temporary interruption are set out in paragraphs 1.10 to 1.13 of that document.

As a result of these points, in particular the effect of breaking the circuit, and length of time it takes to restart ethylene production, it is vital that SABIC's apparatus is well protected from the compulsory acquisition and temporary possession powers contained in the dDCO, and that those protections go above and beyond merely providing for replacement apparatus to be provided before existing apparatus is removed.

No protection whatsoever is currently provided.

Paragraphs 23 and 24 reflect the protections for SABIC which were included in the York Potash Order.

Paragraph 23 provides that SABIC's rights cannot be extinguished or suspended unless there is a situation whereby the authorised development cannot be carried out unless this is done. The undertaker must also minimise detrimental effects on SABIC.

Paragraph 24 provides that the undertaker must not use compulsory powers in relation to SABIC's land, rights and interests without SABIC's consent. It provides deeming provisions if SABIC does not respond, and also a right for the undertaker to seek consent via arbitration if it has been unreasonably withheld.

If consent is obtained, SABIC's apparatus may not be moved until alternative apparatus has been constructed and equivalent facilities and rights have been granted to SABIC in respect of the alternative apparatus. Provisions in relation to the approval of plans for such works are also included.

maintenance, renewal, inspection, removal and replacement of the alternative apparatus have been granted to SABIC.

(7) If alternative apparatus is to be provided under paragraph (6):

(a) the undertaker must give to SABIC written notice, with specification of the proposed alternative apparatus, together with plans and sections showing its situation and location;

(b) paragraphs 4 to 22 shall apply to the approval of details of that alternative apparatus and the carrying out of the works to provide and construct the alternative apparatus 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 12 calendar months unless otherwise agreed with SABIC"; and

(ii) in paragraph 6(1) that shall be added immediately before paragraph (a) and 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 of the on SABIC's operations:"

(c) the undertaker will have special regard to its obligations under paragraph 23(2).

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

(9) Where under paragraph (6) facilities and rights must be granted to SABIC those facilities and rights must be on such terms and conditions as may be agreed between the undertaker and SABIC or in default of agreement determined by an arbitrator under paragraph 33, and such terms must be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

Sub-paragraph (7)(b)(i) provides for a 12 month notice period to be given for such works. This reflects the difficulties set out in paragraph 1.8 "Written Summary of SABIC's Representations to CAH1" [REP4-051]: that even a brief temporary interruption to the circuit would mean that SABIC's system would have to be restarted, a process that is likely to take 2-3 weeks. SABIC should be allowed an opportunity to mitigate the effect of such works to such extent as they may be able to by identifying a time when it will least effect SABIC's operations and those of the other manufacturers of ethylene: Ineos at Grangemouth and ExxonMobil at Mossmorran.

This drafting represents a significant concession from SABIC in respect of the York Potash Protective Provisions, which provided an absolute prohibition on the acquisition of known land and rights (ie those listed in the Book of Reference). Although SABIC remains of the view that an absolute prohibition is necessary and justified in respect of the authorised development, it is also cognizant of the ExA's comments that it is unlikely to mix and match protective provisions and is likely to adopt either SABIC's drafting or the Applicant's preferred drafting wholesale.

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

(11) In this paragraph, "identified powers" means the powers conferred by the following—

(a) article 11 (street works);

(b) article 12 (construction and maintenance of new or altered means of access)

(c) article 13 (temporary stopping up of streets, public rights of way and access land);

(d) article 14 (access to works);

(e) article 17 (discharge of water);

(f) article 20 (authority to survey and investigate the land);

(g) article 22 (compulsory acquisition of land) in so far as the exercise of such powers is not excluded by paragraph 23 (1) and sub-paragraph (1);

(h) article 23 (power to override easements and other rights) in so far as the exercise of such powers is not excluded by paragraph 23 (1) and sub-paragraph (1);

(i) article 25 (compulsory acquisition of rights etc.) in so far as the exercise of such powers is not excluded by paragraph 23 (1) and sub-paragraph (1);

(j) article 26 (private rights) in so far as the exercise of such powers is not excluded by paragraph 23 (1) and sub-paragraph (1);

(k) article 28 (acquisition of subsoil or airspace only);

(l) article 31 (rights under or over streets);

(m) article 32 (temporary use of land for carrying out the authorised development); and

(n) article 33 (temporary use of land for maintaining the authorised development).

Insurance

2025. —(1) Before carrying out any part of the authorised development ~~affecting SABIC~~ on the protected land, the undertaker ~~(or any contractor carrying out such works on behalf of the undertaker)~~ must put in place a policy of insurance with a reputable insurer against its liabilities under paragraph 27 in accordance with the terms ~~cover~~ and level of cover as may be agreed in writing between the undertaker and SABIC or, in the case of dispute, in accordance with the terms and level of cover determined by an arbitrator under paragraph 33, and evidence of that insurance must be ~~provide~~ provided on request to SABIC.

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

(3) The undertaker ~~(or any contractor carrying out such works on behalf of the undertaker)~~ must maintain insurance in relation to the authorised development affecting SABIC during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover as may be agreed in writing between the

"on the protected land": SABIC considers that these words are clear and unambiguous. The undertaker's wording "affecting SABIC" introduces an unnecessary element of subjectivity as to when the insurance policy is required.

"against its liabilities under paragraph 27": it is important that these provisions set out what is to be insured against.

"terms and level of cover determined by an arbitrator": SABIC is not afforded an opportunity to approve the level or terms of cover by the York Potash protective provisions (on which these provisions are modelled), and without this drafting the terms and level of cover would be entirely at the discretion of the undertaker. In the York Potash Examination the undertaker argued that an approval mechanism could delay a start on site and the ExA accepted this proposition. However, it is therefore important that SABIC is allowed to challenge the undertaker where it considers that the cover is inadequate.

"the undertaker": SABIC considers that the obligation to keep in place an insurance policy should be placed on the undertaker, rather than being able to be passed to a third party.

undertaker and SABIC or at such level as may otherwise be determined by an arbitrator under paragraph 33.

~~24~~26. ~~—(1)~~ If SABIC has a dispute about the proposed insurance (including the terms ~~efor~~ level of cover) to be provided under paragraph ~~20~~26—

(a) SABIC may refer the matter to ~~arbitration~~an arbitrator for determination under paragraph ~~26~~33; and

(b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph ~~26~~33 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs

~~22~~27. —(1) The undertaker must repay to SABIC all reasonable fees, costs, charges and expenses reasonably incurred by SABIC in relation to these protective provisions in respect of—

(a) authorisation of survey details submitted by the undertaker under paragraph 3(3), authorisation of works details submitted by the undertaker under paragraph 4 and the imposition of conditions under paragraph 6;

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

(c) responding to the consultation on piling under paragraph ~~40~~13;

(d) considering the effectiveness of any compacting which has taken place under ~~paragraph 12~~paragraph 15, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;

<p>(e) the repair and testing of a pipeline or protected crossing<u>affected assets</u> under paragraph 14<u>17</u>;</p> <p>(f) considering and responding to consultation in relation to the construction access plan under paragraph 17<u>20</u> and providing details of their programme for major works to the undertaker under paragraph 18<u>21</u>; and</p> <p><u>(g) dealing with any request for consent, approval or agreement by the undertaker under paragraph 24; and</u></p> <p>(g) <u>h</u> considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 20<u>25</u>,</p> <p>-including the reasonable costs incurred by SABIC in engaging an<u>and</u> retaining such external experts, consultants and contractors as may be reasonably necessary to allow SABIC to carry out its functions under these protective provisions.</p> <p><u>(2) The undertaker must indemnify and keep SABIC indemnified against all reasonable costs, charges, damages and expenses, and against consequential loss and damage, which may be occasioned or reasonably incurred by the them—</u></p> <p><u>(a) by reason of the construction, operation, maintenance, repair and decommissioning of the authorised development or the failure of it; or</u></p> <p>(2) Subject to sub-paragraphs (3) and (4), if by reason or in consequence of the construction of any of the works referred to in paragraph 4, any damage is caused to the affected assets or property of SABIC, or there is any interruption in any service provided, or in the supply of any goods, by SABIC, the undertaker must—</p> <p>(a) bear and pay the cost reasonably incurred by SABIC in making good such damage or restoring the supply; and</p> <p>(b) make reasonable compensation to SABIC for any other expenses, loss, damages, penalty or costs incurred by SABIC, by reason or in consequence</p>	<p>"affected assets": paragraph 17 refers to "affected assets" rather than "pipeline or protected crossing..</p> <p>(g) The undertaker should meet SABIC's costs for considering whether to consent to the use of compulsory powers. It is likely that the undertaker has omitted this paragraph because it omitted paragraph 24.</p> <p>(2) SABIC considers that an indemnity should be provided in accordance with the precedent set out in the York Potash DCO rather than the watered-down version provided in the Net Zero Protective Provisions. This reflects the potentially serious implications of the authorised development in terms of potential losses (as set out in Section 1 of the "Written Summary of SABIC's Representations to CAH1" [REP4-051] and SABIC's response to Q2.6.11 in "SABIC's Response to ExQ2" [REP5-086]). It is especially important that a strong indemnity is included in the DCO in favour of SABIC as a counterbalance to SABIC's concession in respect of the absolute prohibition on the acquisition of known land and rights (ie those listed in the Book of Reference) contained in the York Potash Protective Provisions.</p>
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~~of any such damage or interruption.~~ 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 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 (if it was done without negligence on the part of SABIC or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

~~(3) Nothing in sub-paragraphs (1) or (2) imposes any liability on the undertaker with respect to—~~

~~(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of SABIC, its officers, employees, servants, contractors or agents; or~~

~~(b) any indirect or consequential loss or loss of profits by SABIC.~~

(43) SABIC must give the undertaker reasonable notice of any claim or demand under ~~subparagraph~~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.~~

(54) SABIC must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this ~~Schedule~~Part and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this ~~Schedule~~Part.

(65) In the assessment of any sums payable to SABIC under this ~~Schedule~~Part there must not be taken into account any increase in the sums claimed that is attributable to any action ~~take~~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~~[Part](#) or increasing the sums so payable.

~~(7) SABIC must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies.~~

~~(8) 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 sub-paragraph (2).~~

~~(9) 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

~~23~~[28](#). The undertaker must give written notice to SABIC of the terms and level of cover of any guarantee or alternative form of security put in place under article ~~47~~[48](#) (funding for compulsory acquisition compensation) and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

[29](#). —The undertaker must give written notice to the SABIC if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 8 (consent to transfer benefit of this Order), and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

[\(a\)](#) the nature of the application to be made;

[\(b\)](#) the extent of the geographical area to which the application relates;
and

[\(c\)](#) the name and address of the person acting for the Secretary of State to whom the application is to be made.

Paragraphs (7) to (9) a provision requiring SABIC to mitigate loss and substantiate costs is not compatible with the giving of an indemnity. The nature of an indemnity is that it allows for the recovery of a debt (ie as opposed to damages) and there is generally no duty to mitigate in relation to a debt. These clauses would essentially vitiate the indemnity.

29. This paragraph provides for SABIC to be given of any application under article 8 (consent to transfer benefit of this Order). This is to allow SABIC to be aware of the application and to be able to make representations to protect its interests. This is reasonable especially in the context of the Applicant's various references to the assets of BP as its parent company in providing financial security (and therefore comfort) to those affected by the scheme.

~~24~~³⁰. The undertaker, must, when requested to do so by SABIC, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 44 (certification of plans etc.) in electronic form.

~~25~~³¹. Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to SABIC.

32. Where SABIC has provided an e-mail address for service in respect of the specified person, sub-paragraph (1)(a) of article 45 (service of notices) will not apply to the service of the said notice, which must be effected by electronic means.

Arbitration

~~26. Any difference or dispute arising between the undertaker and SABIC under this Schedule must, unless otherwise agreed in writing between the undertaker and SABIC, be referred to and settled by arbitration in accordance with article 46 (arbitration).~~

33. —(1) Article 46 (arbitration) applies to this Part subject to the following paragraphs.

(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;

32. This provision was not in the York Potash Order, but has been included to assist SABIC in circumstances where it is monitoring a designated e-mail address for notices in circumstances where the undertaker might choose to instead post a notice.

33. The York Potash Order provided for expert determination, however SABIC is prepared to accept arbitration, which is understood to be the undertaker's preferred method.

- (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); and
- (d) give reasons for the decision.
- (4) The arbitrator 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.

(4) This paragraph is particularly important to SABIC in light of the potentially serious implications of the authorised development in terms of the operational difficulties and potential losses (as set out in Section 1 of the "Written Summary of SABIC's Representations to CAH1" [REP4-051] and SABIC's response to Q2.6.11 in "SABIC's Response to ExQ2" [REP5-086]). It seeks to ensure that the specific circumstances of SABIC's apparatus are intended to be taken into account in any arbitration.

