

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 8

SABIC'S CLOSING SUBMISSIONS

SUMMARY AND CONCLUSION

1. This document draws together SABIC's submissions to the Examination and seeks to aid the Examining Authority's consideration of SABIC's case by making it more easily accessible.
2. It should be read together with SABIC's Deadline 8 Protective Provisions Submission Document which sets out a line-by-line justification of SABIC's Deadline 8 Protective Provisions.
3. In addition to this Summary and Conclusion, this document contains the following sections:
 - 3.1 Section 1 contains Definitions.
 - 3.2 Section 2 sets out a Summary of SABIC's Position.
 - 3.3 Section 3 sets out the geographical context of SABIC's business: a description of SABIC's sites and the links between those sites and a brief explanation as to what occurs there.
 - 3.4 Section 4 sets out the operational and safety context of SABIC's business. This includes safety and regulatory requirements and an explanation of the "circuit" and the effect of any interruption (however brief) to its operations. It also sets out the potential effects on the national ethylene production industry, explains why SABIC is seeking protection for SABIC Petrochemicals BV and how the international import and export element of its business leads to their involvement. It also includes details of SABIC's contribution towards regional employment and the economy of the region.
 - 3.5 This includes the likely length and serious effects of an interruption to SABIC's apparatus to its business, and why these are magnified by the connectivity between the three sites of UK ethylene production and SABIC's inability to mitigate the effects the national effects of a shut down which falls outside its usual maintenance planning in six years' time.
 - 3.6 Section 5 sets out a number of site specific concerns about the land and rights which could be taken under Order and the effects the Order in its current form could have on its operations.
 - 3.7 Section 6 sets out SABIC's general concerns about the DCO powers.
 - 3.8 Section 7 sets out SABIC's submissions in relation to the wording of protective provisions.
4. SABIC has engaged in the Examination to protect its position in relation to the following key concerns:

- 4.1 To seek to re-establish the more robust protective provisions contained in the York Potash Order in light of SABIC's concerns about the weakness and lack of protection provided by the Net Zero Order protective provisions, in particular in relation to the issues set out in paragraphs 1.2 to 1.4 below.
 - 4.2 To adequately protect its assets from compulsory acquisition, temporary possession and diversion.
 - 4.3 To ensure that suitable and adequate indemnity and insurance provisions are included in the Order.
 - 4.4 To ensure that SABIC Petrochemicals BV benefits from the protection of that indemnity and those insurance provisions.
5. SABIC and the Applicant are in agreement that suitable and adequate protective provisions are capable of satisfying SABIC's objections to the Application. Their disagreement is solely what protective provisions are suitable and adequate.
6. SABIC has made significant amendments to the form of its protective provisions during the Examination to try to make them more acceptable to the Applicant (see [REP3-020], [REP6-010], [REP7a-069] and SABIC's Deadline 8 Protective Provisions Submission Document).
7. Of particular importance was SABIC's concession in [REP7a-069] (and carried forward into SABIC's Deadline 8 Protective Provisions Submission Document) that, as a last resort, it would be possible for the undertaker to use its powers of compulsory acquisition in relation to its land and rights. This removes any serious argument that SABIC's version of the protective provisions could somehow thwart the implementation of the authorised development, and therefore places SABIC at considerable risk. Given the seriousness of the potential consequences of this change (since it opens up the potential to very serious financial losses and potential business extinguishment – in addition to the potential effects on the UK ethylene production and distribution systems) this concession was made subject to careful controls to make sure that this only occurs as a last resort. This changes have not been accepted by the Applicant (see paragraphs 8.2 to 8.4 below).
8. Despite these efforts, and that the fact that the parties have come closer together in relation to their drafting, none of the key issues set out in paragraph 1.1 to 1.4 above have been resolved in SABIC's favour:
 - 8.1 Paragraph 1.1. Although the Applicant's proposed protective provisions as set out in their Deadline 7a Position Statement [REP7a-030] have moved away from an insistence on using unamended Net Zero protective provisions, they have not moved at all in relation to the key concerns set out in paragraphs 1.2 to 1.4 above which were the reason for SABIC's engagement with the Examination.
 - 8.2 Paragraph 1.2. The Applicant's proposed protective provisions as set out in their Deadline 7a Position Statement [REP7a-030] provide a mechanism for diverting SABIC's apparatus, but do not contain the high level of protection SABIC is seeking before compulsory acquisition may take place.
 - 8.3 Paragraph 1.3. The Applicant's proposed protective provisions as set out in their Deadline 7a Position Statement [REP7a-030] do not provide suitable and adequate indemnity and insurance provisions.
 - 8.4 Paragraph 1.4. No protection whatsoever is provided for SABIC Petrochemicals BV as owner of the inventory.
- 8.5 Under the Applicant's preferred protective provisions they are neither prepared to:
 - 8.5.1 Guarantee the continuous operation of SABIC's facilities (they reject sub-paragraphs 22(1) to (5) of SABIC's Deadline 8 Protective Provisions), or

- 8.5.2 Provide an indemnity to SABIC to cover its consequential losses arising from such an interruption (their rejection of sub-paragraphs 25(2) of SABIC's Deadline 8 Protective Provisions). It is SABIC Petrochemicals BV who would be likely to suffer such losses if that continuous operation is interrupted (see Section 4.4 above), however the Applicant has excluded them entirely from the indemnity (the exclusion of the reference to SABIC Petrochemicals BV from the definition of "SABIC" of SABIC's Deadline 8 Protective Provisions).
- 8.6 In other words the Applicant wants to take the powers to interrupt SABIC's system should they need to do so, but they do not want to be responsible for the consequential losses which will ensue.
- 8.7 SABIC notes the Examining Authority's statement that it will either adopt the Applicant's protective provisions or those advanced by SABIC.
- 8.8 In light of the explanations provided in this document the Examining Authority is respectfully requested to recommend to the Secretary of State that SABIC's Deadline 8 Protective Provisions be included in the Order when it is made.

DETAILED CLOSING SUBMISSIONS

1. DEFINITIONS

The following definitions apply in this document:

- 1.1 Net Zero Order means the Net Zero Teesside Order 2024.
- 1.2 SABIC- Means the three affected SABIC companies:
 - 1.2.1 SABIC UK Petrochemicals Limited (Company No 03767075) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF;
 - 1.2.2 SABIC Tees Holding Limited (Company No 06009440) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF and
 - 1.2.3 SABIC Petrochemicals BV (registered in the Netherlands with Company No 14033495) whose registered office is at Europaboulevard 1, Sittard, 6135 LD, Netherlands.
- 1.3 SABIC UK- Means SABIC UK Petrochemicals Limited and SABIC Tees Holding Limited.
- 1.4 York Potash Order means the York Potash Harbour Facilities Order 2016.

2. SUMMARY OF SABIC'S POSITION

- 2.1 SABIC made a relevant representation in relation to the Application to protect its position in relation to the following key concerns:
 - 2.1.1 To seek to re-establish the more robust protective provisions contained in the York Potash Order in light of SABIC's concerns about the weakness and lack of protection provided by the Net Zero Order protective provisions, in particular in relation to the issues set out in paragraphs 2.1.2 to 2.1.4 below.
 - 2.1.2 To adequately protect its assets from compulsory acquisition, temporary possession and diversion.
 - 2.1.3 To ensure that suitable and adequate indemnity and insurance provisions are included in the Order.
 - 2.1.4 To ensure that SABIC Petrochemicals BV benefits from the protection of that indemnity and those insurance provisions.
- 2.2 SABIC and the Applicant are in agreement that suitable and adequate protective provisions are capable of satisfying SABIC's objections to the Application. Their disagreement is solely what protective provisions are suitable and adequate.
- 2.3 SABIC has not been able to reach agreement with the Applicant and is not satisfied with the form of Protective Provisions included in the draft DCO (**ddCO**) at Deadline 7A [REP7a-003] as set out in the Applicant's Deadline 7a Position Statement [REP7a-030] .
- 2.4 Without adequate protection, SABIC's own nationally significant operations (see paragraph 4.5 below) will be put at risk. Whilst the Examining Authority must of course pay close regard to the fact that the Application is for a Nationally Significant Infrastructure Project (NSIP), it must also have regard to the effect that such an NSIP can have on a third party's nationally significant operation. It should also have regard to the fact that SABIC's nationally significant operations are well established whilst the Applicant's project, like any proposed development, is inevitably to some extent speculative.
- 2.5 SABIC's firm view is that a new NSIP should only be allowed to prevent established nationally significant activities from continuing in very exceptional circumstances. The Applicant has failed

to demonstrate that SABIC's own nationally significant activities have been appropriately considered by the Applicant and no balance of competing interests has been carried out by the Applicant.

- 2.6 SABIC UK's operations have many of the characteristics of a statutory undertaker and it is vital that its facilities and apparatus are properly protected to ensure the safety and continuity of its operations.

3. THE GEOGRAPHICAL CONTEXT OF SABIC'S BUSINESS

3.1 Overview

- 3.1.1 SABIC operates from two primary sites at **Wilton International** and the **North Tees Site**.
- 3.1.2 Its facilities on Teesside also include the **Brinefields** and the adjacent **Brine Reservoirs**.
- 3.1.3 These facilities are linked together via pipeline corridors known as **Link Line Corridors**.
- 3.1.4 In addition SABIC operates two cross-country pipelines: the **Trans-Pennine Ethylene Pipeline** and the **Wilton to Grangemouth Ethylene Pipeline** which form part of the national ethylene production and distribution network.

3.2 Wilton International

- 3.2.1 Wilton International is an industrial area between Eston and Redar in North Yorkshire bounded by the A174 to the south, the A1053 Greystone Road to the west, the A1085 and the Mains Dike to the east.
- 3.2.2 SABIC's two main manufacturing sites are at Wilton International:
- (a) The first, known as the **Cracker**, manufactures ethylene; and
 - (b) The second known as the **LDPE Plant** uses some of that ethylene to make low density polyethylene.

3.3 North Tees Site

- 3.3.1 The **North Tees Site** is situated at Huntsman Drive and Riverside Road, Seal Sands, registered at HM Land Registry under title numbers CE149851, CE149852 and CE149853.
- 3.3.2 It is the site of substantial storage, distribution and shipping services including three shipping terminals. Ethane is imported into the North Tees Site via the River Tees and, once processed by the Cracker, ethylene is exported.

3.4 Brinefields and Brine Reservoirs

- 3.4.1 The Brinefields contain underground storage cavities and are located east of Seaton Carew Road and north of Seal Sands Road registered at HM Land Registry under title numbers CE171306 and CE149858.
- 3.4.2 These Brinefields were originally mined by ICI to extract brine which was used to manufacture chlorine. Today the cavities are used to store chemicals.
- 3.4.3 When not in use the cavities are filled with brine from the above-ground Brine Reservoirs located west of Seaton Carew Road and north of the A1185 registered at HM Land Registry under title numbers CE149857 and CE184248.

- 3.4.4 Some (more limited) quantities of brine are still also mined in the Brinefields to maintain the salinity of the brine in the Brine Reservoirs.

3.5 Pipeline Corridor: Link Line Corridors

3.5.1 Historical Context

- (a) The various industrial sites on Teesside, between Billingham in the west, Seal Sands and Wilton International in the east, were once owned and operated by a single company, ICI.
- (b) Many of ICI's factories and facilities were interdependent and symbiotic; they were linked together by pipes. The connecting corridors through which these pipes ran are called the **Link Line Corridors**.

3.5.2 Current Arrangements

- (a) When ICI was broken up many of the different pipes passed into new ownership and a new model had to be found to manage these essential connections.
- (b) Today the Link Line Corridors are owned by Sembcorp, but contain pipes which are owned and operated by the various businesses within the Teesside cluster.

3.5.3 Link Line Corridors and Tunnel No. 2

- (a) Wilton International to the North Tees Site. This link line runs north from Wilton (along the western boundary of the Northumbrian Water Bran Sands Effluent Treatment Works) and passes under the River Tees via a tunnel under the River Tees known as **Tunnel No 2**. A further Link Line Corridor on the north bank of the Tees links Tunnel No.2 to the North Tees Site.
- (b) North Tees Site to the Wilton to Grangemouth Ethylene Pipeline (**WGEP**).
- (c) North Tees Site to the Brinefields.
- (d) Brinefields to the Saltholme Brine Reservoirs. This heads south out of the Brinefields, crosses Seal Sands Road, and then runs to the south of and parallel to Seal Sands Road and the A1185. It then turns north has crosses the A1185 to link into the Saltholme Brine Reservoirs.

3.6 Pipelines: TPEP and WGEP

3.6.1 National Operations

- (a) SABIC's operations are part of a larger national system of ethylene production via the Trans Pennine Ethylene Pipeline (**TPEP**) and the Wilton to Grangemouth Ethylene Pipeline (**WGEP**).

3.6.2 WGEP

- (a) The WGEP links the Teesside systems to Grangemouth (where Ineos has a cracker) and Mossmorran (where ExxonMobil has a cracker).
- (b) It is a high pressure buried ethylene pipeline running between Wilton and Grangemouth, Scotland, starting at Compound 38 (the white land at the centre of temporary possession Plot 5/19), located east of Seaton Carew Road and south of Seal Sands Road. This is the point where an above ground ethylene pipeline (known as **System 32**) goes underground and becomes the WGEP.

- (c) The overall system links ethylene consumers across Grangemouth, Wilton, Stanlow, Runcorn, Carrington and Saltend (Hull). A UK Onshore Pipeline Operators' Association document, providing some information about this system in order to aid the ExA's understanding of SABIC's Teesside operations and the national scale of the "circuit", was annexed to [REP5-086].

4. THE OPERATIONAL AND SAFETY CONTEXT OF SABIC'S BUSINESS

4.1 COMAH

- 4.1.1 SABIC's operations fall within the ambit of the Control of Major Accident Hazards Regulations 2015 (**COMAH**).
- 4.1.2 In particular Wilton International, the North Tees Site and the Brinefields are all COMAH sites and the TPEP and WGEP are both major accident hazard pipelines.
- 4.1.3 The COMAH designation is as a direct result of the large quantities of chemicals or substances of a hazardous nature, which are either manufactured, transported or stored at these locations.
- 4.1.4 COMAH places SABIC under a duty to take all necessary measures to prevent major accidents involving dangerous substances, and to limit the consequences to people and the environment of any major accidents which do occur.
- 4.1.5 The Applicant's Consultation Report states that:
- "In relation to the COMAH-designated sites, the Applicants will comply with the required permitting processes and liaise with the SABIC team where works occur within their boundary."*
- 4.1.6 SABIC is not aware of any enforceable commitment within the dDCO to comply with SABIC's COMAH plan, and it is unclear how this issue is to be resolved.

4.2 Bonded Warehouse

- 4.2.1 The North Tees Site is a bonded warehouse.
- 4.2.2 SABIC has responsibilities to HM Treasury to ensure the safety of the goods held in the bonded warehouse which have not yet been subject to excise duties.
- 4.2.3 The goods held in this warehouse consist of combustible fuels and the Applicant's operations in this location (for example removal of any fence) would create a risk of unauthorised third parties entering a restricted site. The Applicant's activities therefore give rise to risks including to health and safety.

4.3 Restarting the Cracker

- 4.3.1 The Cracker differs from an electrical circuit in one important respect: it cannot be turned on and off at the flick of a switch.
- 4.3.2 If the Cracker was to be forced to shut down for any reason it would need to be drained and reset. These operations would also cause significant noise and nuisance to the local community in terms of the works and flaring. It is imperative, therefore, that adequate safeguards are put in place to prevent this from happening.
- 4.3.3 This process would be likely to take between two and three weeks and cost in the region of five million pounds (£5,000,000).

- 4.3.4 This would interrupt operations at the LDPE Plant which relies on the Cracker for supplies. In relation to both facilities this would cause loss of revenue, delays to the fulfilment of orders and reputational damage to SABIC.

4.4 Split Ownership

- 4.4.1 One important feature of SABIC's operations is that:
- (a) The apparatus is operated by one group company, SABIC UK Petrochemicals Limited; but
 - (b) The inventory (ie the contents of the pipelines) is owned by a different group company (SABIC Petrochemicals BV).
- 4.4.2 This arrangement reflects the international, transcontinental nature of SABIC's ethylene production and supply business, a feature which is not present in the same way in the domestic operations of, say, National Grid Electricity Transmission Plc or National Gas Transmission.
- 4.4.3 The context for this arrangement is that the processing of ethane to ethylene on Teesside is only part of the journey of the inventory which is being processed. Feedstock is shipped into the North Tees Site to be processed and whilst some of the ethylene produced is used at the LDPE Plant or supplied to third parties in the UK via the TPEP and WGEP, a significant proportion of the ethylene is shipped out of the North Tees Site for distribution internationally.
- 4.4.4 There is therefore a split of ownership between SABIC UK Petrochemicals Limited which owns the fixed, physical, apparatus in the UK, and SABIC Petrochemicals BV, who owns and continues to own the inventory as it passes across international borders to be processed and distributed.
- 4.4.5 It is SABIC Petrochemicals BV who would be likely to suffer consequential loss as a result of the authorised development.
- 4.4.6 The Applicant has characterised SABIC's request for the benefit of the indemnity and the insurance policy to be extended to SABIC Petrochemicals BV as being unusual and running contrary to precedent.
- 4.4.7 It is a well-established principle that protective provisions have a role in protecting the financial position of the person affected, because otherwise the authorised development could cause a third party to suffer significant financial losses, thereby putting their future operations at risk.
- 4.4.8 In this context, the Examining Authority will note that protection against consequential losses occurs frequently in the Applicant's Deadline 7A DCO [REP7a-003]. Examples include the protective provisions in Schedule 19 in favour of National Grid Electricity Transmission Plc (see the indemnity at paragraph 10) and those in Schedule 20 in favour of National Gas Transmission Plc (see the indemnity at paragraph 11).
- 4.4.9 SABIC's request for the benefit of the indemnity and the insurance policy to be extended to SABIC Petrochemicals BV is therefore not unusual: it is to place SABIC and the undertaker in the same position they would be in if SABIC's business was not an international one.
- 4.4.10 It is unreasonable and inequitable for the Applicant to seek to avoid offering well-precedented protections to SABIC simply because of the international nature of SABIC's business.

4.5 The "Circuit"

- 4.5.1 The Constituent parts of SABIC's operations must be understood as a **single, interconnected, holistic system** rather than a fragmented mosaic of separate operations.
- 4.5.2 When considering this system it might be helpful to have in mind an electrical circuit . If the circuit is broken, even temporarily and to a very small extent, the whole circuit fails. Similarly, the extinguishment or suspension of rights to facilitate the authorised development, over even a small section of SABIC's system, would prevent or suspend SABIC's production and supply operations.
- 4.5.3 It follows that the extinguishment or suspension of rights to facilitate the authorised development, over even a small section of SABIC's system, would prevent or suspend SABIC's production and supply.
- 4.5.4 The WGEP provides a critical link between SABIC's operations on Teesside and the other two UK ethylene Crackers. This link means that SABIC's internal "circuit" forms part of a larger national circuit which relies on the continuous operation of SABIC's facilities: without interruption.
- 4.5.5 SABIC's own operations are therefore fundamentally connected with other manufacturers of ethylene: INEOS at Grangemouth and ExxonMobil at Mossmorran. A diversion of SABIC's apparatus would almost certainly have significant effects across all three operations.
- 4.5.6 These effects are incredibly difficult or impossible to minimise or mitigate in any way whatsoever: there is no "work around" which would allow a temporary diversion and keep the system running while a diversion is effected.
- 4.5.7 The Examining Authority is asked to keep firmly in mind that these three facilities – Wilton, Grangemouth and Mossmorran – comprise the totality of the UK's ethylene manufacturing industry. The protection of SABIC's facilities and apparatus from compulsory acquisition is therefore important not just as a protection for SABIC, but also for the protection of Ineos and Exxonmobil whose sites rely on the WGEP, and therefore the future of the UK's ethylene manufacturing industry.
- 4.5.8 In short, any operational problems experienced by SABIC on Teesside as a result of the authorised development would be likely to cause operational problems to the ethylene production and distribution system at a national level.
- 4.5.9 Moreover, the interruption of supply would also affect the overall system which links ethylene consumers across Grangemouth, Wilton, Stanlow, Runcorn, Carrington and Saltend (Hull).
- 4.5.10 The potentially nationally significant serious detriment to the UK ethylene production and distribution system – and to end users of ethylene – is a factor which should be borne clearly in mind by the Examining Authority when considering which version of the protective provisions to include in their final recommended Order.
- 4.5.11 In particular, it is only right that the highest and most rigorous standards are applied in the Order to make sure that compulsory acquisition powers are only used when there is no other option
- 4.5.12 Under the Applicant's preferred protective provisions they are neither prepared to:
 - (a) Guarantee the continuous operation of SABIC's facilities (they reject sub-paragraphs 22(1) to (5) of SABIC's Deadline 8 Protective Provisions), or

- (b) Provide an indemnity to SABIC to cover its consequential losses arising from such an interruption (their rejection of sub-paragraphs 25(2) of SABIC's Deadline 8 Protective Provisions). It is SABIC Petrochemicals BV who would be likely to suffer such losses if that continuous operation is interrupted (see Section 4.4 above), however the Applicant has excluded them entirely from the indemnity (the exclusion of the reference to SABIC Petrochemicals BV from the definition of "SABIC" of SABIC's Deadline 8 Protective Provisions).

4.5.13 In other words they want to take the powers to interrupt SABIC's system should they need to do so, but they do not want to be responsible for the consequential losses which will ensue.

4.5.14 If the undertaker does not pay, the liability will rest with SABIC.

4.6 Employment

4.6.1 SABIC is a major employer in the region, employing approximately 400 full time employees (with an additional 400 contractors) locally, and 31,000 persons globally.¹

4.7 Financial Benefits and Investment

4.7.1 SABIC's operations contribute £400 million to the local economy.

4.7.2 In recent years SABIC has made significant investments at Wilton International, including around £250 million on its Low Density Polyethylene plant and around £850 million on a fuel conversion project for the Cracker.

4.7.3 As such it is very strongly in the public interest to protect SABIC's interests and assets in the areas of the proposed DCO Application. Businesses and investors into Teesside (and the UK more broadly) need to know that their established operations will be properly protected and that they can invest in them with confidence.

4.8 Scale of Losses

4.8.1 At Deadline 5 [REP5-086] SABIC drew the ExA's attention to its estimated loss of revenue if the Applicant was given the power to compulsorily acquire SABIC's rights without replacing them, and thereby sever its operations.

4.8.2 Following cessation of production on the Cracker and the immediate loss of margin, £100,000,000 of fixed costs would be the EBITDA loss of the site on an annualised basis. This is not including the reputational damage to SABIC and the consequential losses other parties might seek to recover from SABIC.

5. SABIC'S ADDITIONAL SITE SPECIFIC CONCERNS

5.1 Wilton International

5.1.1 Plot 19/10. The Applicant has not provided details of what sites it has assessed as alternatives to Plot 19/10 (and adjacent plots) chosen for construction compounds. SABIC considers that there are other, more appropriate sites at Wilton which should have been considered.

5.1.2 Plot 20/13. The taking of temporary exclusive possession of Plot 20/13 and adjacent plots. This land has underground storage cavities and above and below ground pipework. This is also the location where SABIC's (above-ground) system 32 goes underground and becomes the Trans-Pennine Ethylene Pipeline (TPEP), which is a major accident hazard pipeline. Underground pipework to essential water supplies from the reservoirs situated to the south of the A174 are also located in this area. Any

¹ Figures from 2023.

new assets and construction activity in this area would need to take account of these existing high hazard items.

5.1.3 Power to take temporary possession of the Wilton Site roads:

- (a) When ICI was broken up standard rules were established for the closure of roads within the Wilton site. This is a carefully balanced system whereby Sembcorp as landowner has control of the roads and operators such as SABIC notify them of their access and maintenance needs and essentially "book" time to work on their assets.
- (b) This system works well to balance the competing requirements of different operators, but is dependent on the land ownership and system of mutual rights and obligations which exist over the land. SABIC considers that the Applicant should use the established system to take access and would be very concerned about a development consent order which allowed the Applicant to unilaterally close the access roads.
- (c) The wide-reaching nature of the powers of temporary possession means that they provide a power to take possession of the site roads to the exclusion of SABIC, preventing access to its assets: both in terms of general access to its assets across the site and in particular along the northern access road to its ethylene cracker (Plot 20/6).

5.2 North Tees Site

- 5.2.1 The Order would allow the Undertaker to take temporary possession of land all the way around the North Tees site, and to stop up highways within the Order Limits, thereby giving them the power to prevent access. This includes Huntsman Way, the main site access.
- 5.2.2 The compulsory acquisition of Plot 10/9 and the right to take temporary possession of the adjacent parts of Plot 10/10. Plot 10/10 contains SABIC's air compressors and water purification plant, and is essential for SABIC's operations: it must not be considered a normal access route or an equipment laydown area. Plot 10/9 is adjacent to the air compressors and water purification plant, it is in ongoing use by SABIC (and its contractors) in support of operating, inspecting and maintaining those assets.
- 5.2.3 The taking of temporary exclusive possession of and rights in Plots 10/14, 10/15 and 10/16 as well as the adjoining part of Plot 10/10. These plots contain high hazard pipework which SABIC must be able to access, inspect and maintain at all times.
- 5.2.4 Plots 10/14 and 10/15. These include essential access to high hazard operations of both SABIC and CF Fertilisers Ammonia Storage facility (via an access route which SABIC are responsible for), which cannot be compromised. All four plots (Plot 10/10, 10/14, 10/15 and 10/16) contain high hazard pipework which it must be possible to access, inspect and maintain at all times.
- 5.2.5 As stated above, SABIC's operations rely on its use of the River Tees to import ethane and export ethylene via the North Tees Site. It would be concerned about any reduction in controls which could disrupt navigation on the River Tees.
 - (a) Accordingly, at Issue Specific Hearing 4 (**ISH4**) SABIC welcomed the Applicant's amendment to the Construction Environment Management Plan at Deadline 5 [REP5-013] to provide an enforceable requirement regarding the use of trenchless technology in the River (and Greatham Creek Crossing). See SABIC's Written Summary of its Oral Submissions at ISH4 [REP6a-036]

- (b) However, SABIC also highlighted at ISH4 its concern about the disapplication of the PD Teesport's powers in relation to the River (see SABIC's Written Summary of its Oral Submissions at ISH4 [REP6a-036]). Due to the importance of securing SABIC'S ability to navigate the River, it would wish PD Teesport to be satisfied that they retain the powers they require to continue to properly manage navigation, whether under the Acts and Orders they operate under, or through suitable and adequate protective provisions.
- (c) SABIC notes the inclusion of a minimum depth of 60 metres for the trenchless crossing in the River Tees included in PD Teesport's preferred Protective Provisions as submitted at Deadline 7 [REP7- 058]. SABIC would be concerned about the ExA accepting a minimum distance that PD Teesport did not consider acceptable.

5.3 Tunnel No.2.

- 5.3.1 Tunnel No. 2 is a former ICI asset under the River Tees which is used by SABIC and other operators to link their assets between the pipeline corridors to the north and south of the River. Tunnel No. 2 does not have much capacity for any further installations. SABIC requires access at all times to its apparatus in this location and for its rights in relation to its pipes to be retained.

5.4 Link Line Corridors

- 5.4.1 As stated above, the various industrial sites on Teesside, between Billingham in the west, Seal Sands and Wilton International in the east, were once owned and operated by ICI. Many of ICI's factories and facilities were interdependent and symbiotic; they were linked together by pipes. The connecting corridors through which these pipes ran are called the Link Line Corridors.
- 5.4.2 When ICI was broken up many of the different pipes passed into new ownership and a new model had to be found to manage these essential connections.
- 5.4.3 Today the Link Line Corridors are owned by Sembcorp, but contain pipes which are owned and operated by the various businesses within the Teesside cluster. For example, SABIC owns and operates pipes running through the Link Line Corridors between the North Tees Site and Wilton International and between North Tees and the Saltholme Brine Reserves.
- 5.4.4 As the landowner Sembcorp has control of the corridor and manages a carefully balanced access system whereby operators such as SABIC notify them of their access and maintenance needs and essentially "book" time to work on their assets.
- 5.4.5 This system works well to balance the competing requirements of different operators, but is dependent on the land ownership and system of mutual rights and obligations which exist over the land. SABIC would be very concerned about a development consent order which allowed the Applicant to take rights in the Link Line Corridor which did not include these balances. It would be even more concerned about any powers being exercised which extinguished or modified the existing rights of operators within the corridor.
- 5.4.6 SABIC will require maintenance and operational access to its pipes through any construction and subsequent operation phases.

5.5 The Brinefields

- 5.5.1 The Brinefields are integral to SABIC's operations and it requires access to them at all times.

- 5.5.2 There are numerous boreholes in the Brinefields and plot 6/3 is particularly close to an existing borehole. SABIC is concerned about the practical implementation of a pipeline so close to existing boreholes and that the Applicant has not properly considered alternative routes which avoid this potential problem.
- 5.5.3 During the consultation period, SABIC highlighted that farmers use some of this area for livestock management and this must be considered during construction.

5.6 WGEP

- 5.6.1 Any development by the Applicant must be located so as not to interfere with the WGEP. It is major accident hazard pipeline which is likely to present engineering challenges to the development.
- 5.6.2 Any development in the vicinity of the WGEP could also present serious operational difficulties to SABIC and would not usually be allowed.
- 5.6.3 SABIC welcomes the exclusion of its Compound 38 from the Order limits (the white land in the middle of Plot 5/19), but it will require access to this compound at all times and it is therefore concerned about the temporary possession of plot 5/19 and the permanent acquisition of plot 5/18 which could prevent access to this land.
- 5.6.4 SABIC is very concerned about the proposed installation of above ground equipment in Plot 5/21. This plot does not appear to be directly above the ethylene pipeline. Nevertheless, it and adjacent plots fall within the zone around the WGEP in which SABIC seeks to prevent development from taking place due to the high hazard levels. This is an inappropriate location for the proposed development.
- 5.6.5 Moreover, Plot 5/21, 5/23, 5/18 and 5/19 straddle SABIC's access road to high hazard assets in Compound 38 and the powers being taken under the dDCO would allow the Applicant to prevent access to this compound.
- 5.6.6 In light of these difficulties and constraints, SABIC does not believe that it is appropriate for the scheme to use this land and is very concerned that the Applicant has not given due consideration to possible alternatives.
- 5.6.7 Any excavations or heavy loads in the vicinity of the WGEP would be of concern to SABIC.

6. SABIC'S GENERAL CONCERNS

6.1 DCO Powers

- 6.1.1 The Applicant's Deadline 7A Protective Provisions SABIC (see the Applicant's Position Statement [REP7a-030]) do not provide adequate protection against the interruption of SABIC's operations by the following powers.
- 6.1.2 SABIC is concerned about powers of compulsory acquisition and temporary possession, including the powers to override SABIC's existing rights and create rights which are not compatible with its existing rights.
- 6.1.3 The dDCO includes powers which would exclude SABIC from some of its facilities.
- 6.1.4 SABIC is concerned about powers to prohibit passage over streets. It is unclear whether the Applicant intends these powers to apply in relation to access roads at Wilton International, the North Tees Site and in respect of the Link Line Corridors, or whether they are intended to be limited to streets outside these sites.
- 6.1.5 The Applicant is seeking powers which would allow it to close private roads. As has been established during the Examination, this includes Huntsman Drive, the access

Road into the north Tees Site. If it is not seeking to extinguish or suspend third party rights over these roads or otherwise exclude access it should make clear, express provision guaranteeing the continuance of these rights and continuous access. Otherwise it should identify where it is proposing to extinguish or suspend third party rights and provide a justification for doing so.

- 6.1.6 SABIC requires access to its facilities and apparatus at all times. As stated above, SABIC is particularly concerned about maintaining access to the ethylene Cracker (Plot 20/6).
- 6.1.7 The measures to address traffic management, contained in the Framework CTMP [REP6-002], appear to be directed towards consultation and notification in respect of road closures and vehicle movements. Whilst these measures are welcomed, they do not address SABIC's issues around access.
- 6.1.8 As SABIC stated at Deadline 3 in its response to the Applicants reply to ExQ1 [REP3-021] Q1.6.17, if the Applicant is unable to identify what rights it needs to extinguish then it is difficult to see how they can satisfy the Secretary of State that the powers being sought are no more than is reasonably required for the purposes of the development". SABIC does not believe the Applicant has adequately addressed this point.
- 6.1.9 The Applicant has mentioned that Article 26(7) allows it to expressly exclude third party rights from land it acquires. At Deadline 6 [REP6-010] SABIC highlighted that Article 26(7) cannot be seen as a guarantee or a protection of SABIC's rights; rather it is a power which can at the undertaker's discretion be used as a concession from the undertaker. The Applicant does not appear to be saying that this power will be used: just that it is available.

6.2 Article 47

- 6.2.1 Throughout the course of the examination SABIC expressed its concerns around Article 47. SABIC supports the principle of guarantees and securities being provided before compulsory acquisition takes place, but does not feel the Applicant has adequately clarified how the Secretary of State is to determine if the level of security is adequate. At Issue Specific Hearing 2 [REP4-051] SABIC expressed concerns about an incidental suspension of an inconsistent right under Article 26 and how the effect of the extinguishment or suspension of its rights under Articles 26(2) and (4) would be taken into account under Article 47. Article 47 does not provide a mechanism under which information is to be provided to the Secretary of State to allow them to make an objective assessment regarding the level of compensation to be provided.
- 6.2.2 As the Applicant has not agreed to adequate protective provisions which limit the scope of their powers, it is difficult to see how the Secretary of State can properly undertake the balancing exercise to determine whether there is a compelling case in the public interest for granting the powers of extinguishment or suspension of private rights.
- 6.2.3 The only cogent way to make this assessment would be to assume that the Applicant will exercise such powers to their fullest extent to remove SABIC's apparatus such as to prevent its continued operations and to place this outcome into the balance against the benefits of the scheme. The same applies to other operators in and around the Order limits.
- 6.2.4 It is unclear whether the Applicant has taken into account this "worst case" assessment in its Funding Statement [APP-025]. Equally it is unclear to what extent there is recognition that the guarantee or security provided by Article 47 of the dDCO must be required to cover compensation paid in respect of business extinguishment in respect of SABIC and other operators in and around the Order limits.

- 6.2.5 In their Deadline 5 submission [REP-086] SABIC highlighted to the ExA that this issue was not resolved in the Net Zero Teesside Order and SABIC was left with significant risks in respect of these losses. In rejecting SABIC's preferred protective provisions, in the Net Zero DCO, the ExA made reference to "multi-million pound losses arising from a temporary loss of production" (paragraph 8.37.5), but did not then go on to assess the compensation consequences if the undertaker for that scheme exercised their unfettered powers to the fullest extent. In particular they did not make any reference to the consequences of compulsory acquisition of SABIC's interests in terms of funding the cost of business extinguishment if the Applicant chose to exercise those rights, or the implication of this in terms of Article 48 (funding for compulsory acquisition compensation) of the Net Zero DCO.

Although the quantum of compensation is not a matter for the ExA, the proper and adequate assessment of potential compensation in the context of the funding statement and the adequacy and securing of the funding to sufficiently meet that liability, are (in the case of a private company) matters which the ExA should properly consider.

6.3 Article 16

- 6.3.1 SABIC is concerned that traffic regulation powers provided for in Article 16(1) and shown on the Traffic Regulation Measures Plan should be shown outside the Order limits.
- 6.3.2 SABIC also notes that the power to regulate traffic under Article 16(2) and is concerned that it does not include a geographical limit, is not subject to the consent of the traffic authority and is not subject to the usual duties under Section 122 of the Road Traffic Regulation Act 1984, which states:

122 Exercise of functions by strategic highways companies or local authorities

(1) It shall be the duty of every local authority upon whom functions are conferred by or under this Act, so to exercise the functions conferred on them by this Act as (so far as practicable having regard to the matters specified in sub-section (2) below) to secure the expeditious convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway or, in Scotland, the road.

(2) The matters referred to in sub-section (1) above, as being specified in this sub-section are:

(a) The desirability of securing and maintaining reasonable access to premises;

(b) The effect on the amenities of any locality affected and (without prejudice to the generality of this paragraph) the importance of regulating and restricting the use of roads by heavy commercial vehicles, so as to preserve or improve the amenities of the areas through which the roads run;

(c) The strategy prepared under Section 80 of the Environment Act 1995 (national air quality strategy);

(d) The importance of facilitating the passage of public service vehicles and of securing the safety and convenience of persons using or desiring to use such vehicles; and

(e) Any other matters appearing to ...the local authority.... to be relevant.

(3) The duty imposed by subsection (1) above is subject to the provisions of Part II of the Road Traffic Act 1991

7. PROTECTIVE PROVISIONS

- 7.1 At Deadline 8 the Applicant and SABIC have not reached agreement on the wording of protective provisions to protect SABIC.
- 7.2 SABIC has continued to engage with the Applicant with regard to protective provisions and to seek to reflect the Applicant's concerns, and move towards a joint position throughout the Examination:
 - 7.2.1 SABIC provided the Applicant with a copy of its protective provisions during the consultation phase on 23 January 2024. SABIC's protective provisions broadly align with those included in the York Potash DCO, where SABIC took an active role in Examination.
 - 7.2.2 These were submitted to the Examination as part of SABIC's Deadline 3 Response "Comments on responses to ExA's ExQ1 - (8.11.6 Response to ExQ1 Compulsory Acquisition and Temporary Possession - REP2-027)" [REP3-020]
 - 7.2.3 At Deadline 6 [REP6-010] SABIC submitted a revised set of protective provisions adjusting their position and making considerable concessions, with the intention of opening up negotiations.
 - 7.2.4 In the dDCO submitted at Deadline 7 [REP7- 018] the Applicant did not accept any of SABIC's requirements.
 - 7.2.5 At Deadline 7A [REP7a-068] SABIC made further concessions and submitted another revision of protective provisions in response to the EXA's Rule 17 Request.
 - 7.2.6 In the dDCO submitted at Deadline 7A [REP7a- 003] the Applicant provided an amended set of protective provisions which did accept some of SABIC's drafting, but not in relation to any of SABIC's key concerns (see above paragraph 2.1).
- 7.3 At Deadline 8 SABIC has submitted its final protective provisions. Where possible SABIC has taken account of the Applicant's changes at Deadline 7A.
- 7.4 At Deadline 8 SABIC has also submitted its Protective Provisions Submission Document which sets out a line-by-line justification of SABIC's Deadline 8 Protective Provisions.
- 8. SABIC engaged with the Examination to protect its position in relation to the following key concerns:
 - 8.1 To seek to re-establish the more robust protective provisions contained in the York Potash Order in light of SABIC's concerns about the weakness and lack of protection provided by the Net Zero Order protective provisions, in particular in relation to the issues set out in paragraphs 1.2 to 1.4 below.
 - 8.2 To adequately protect its assets from compulsory acquisition, temporary possession and diversion.
 - 8.3 To ensure that suitable and adequate indemnity and insurance provisions are included in the Order.
 - 8.4 To ensure that SABIC Petrochemicals BV benefits from the protection of that indemnity and those insurance provisions.
- 8.5 SABIC has stated throughout the Examination that it considers that objections could be allayed by suitable and adequate protective provisions. However, none of SABIC's key concerns is

addressed by the Applicant's Protective Provisions in their Deadline 7A Position Statement [REP7a-030] which would allow the Applicant to put SABIC at considerable risk of business extinguishment and/or substantial losses caused by the undertaker's actions, for which the Applicant refuses to accept liability. The Applicant's protective provisions are far more likely to lead to an interruption in SABIC's operations which is likely to cause significant difficulties not just for SABIC, but also for the broader UK ethylene production industry.

9. SUMMARY AND CONCLUSION

9.1 The Summary and conclusion is stated at the start of this document for ease of reference.

Womble Bond Dickinson (UK) LLP

24 February 2025