

THE YORK POTASH HARBOUR FACILITIES ORDER 201X

Applicant's Responses to Other Parties' Responses to the Examining Authority's Second Questions



Document 8.7

York Potash Limited

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YORKPOTASH
A Sirius Minerals Project



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Other Party Response	Applicant's Response
<i>Environment Agency (EA)</i>	
The EA deferred to the MMO in relation to question DCO 2.14 and to NE and the MMO in relation to question HRA 2.4	No comment.
<i>PD Teesport Limited (PDT)</i>	
Response to question CA 2.4 and DCO 2.4 PDT referred to two minor corrections required to Schedule 11 of the draft DCO.	These corrections were incorporated into the draft DCO submitted for Deadline 4 (Document 4.1C).
Response to question DCO 2.2 PDT set out text in relation to the jurisdiction of the harbour authority.	The Applicant confirms it agrees with the text.
Response to question DCO 2.12 PDT confirmed the protective provisions in Schedule 11 do not need to refer to the provisions in the DML which control dimensions and design of the quay further.	The Applicant agrees.

Natural England (NE)	
NE responded to DCO 2.6, DCO 2.7, DCO 2.8, Ec 2.1, HRA 2.1, HRA 2.2, HRA 2.3 and HRA 2.4.	The Applicant had advanced sight of NE's response and incorporated the necessary amendments in the draft DCO submitted for Deadline 4 (Document 4.1C).
Marine Management Organisation (MMO)	
MMO responded to DCO 2.1, DCO 2.6, DCO 2.8, DCO 2.9, DCO 2.10, DCO 2.12, DCO 2.13, DCO 2.14, DCO 2.16, DCO 2.17, Ec 2.1, HRA 2.4	The Applicant had advanced sight of the MMO's response and incorporated the necessary amendments in the draft DCO submitted for Deadline 4 (Document 4.1C).
National Grid Electricity Transmission Plc (National Grid)	
National Grid withdrew its objection.	Noted by the Applicant.
Northumbrian Water Limited (NWL)	
Letter confirming progress.	NWL have confirmed that an agreement with the Applicant is imminent and the Applicant hopes to have further information regarding that agreement shortly.
Redcar and Cleveland Borough Council (RCBC)	
Response to DCO 2.6 RCBC confirmed that they are satisfied with requirements 3(3) and 3(4).	The Applicant notes the position.
Response to DCO 2.7 RCBC have confirmed that they are satisfied with the wording of requirement 6(2).	The Applicant corrected the omission of the word "statement" in the draft DCO submitted for Deadline 4 (Document 4.1C).

<p>Response to DCO 2.9</p> <p>RCBC stated:</p> <p><i>"Suggest a reference in this Schedule to an agreement, approval, consent, notice, report, scheme, submission or any other form of communication is a reference to that form of communication being in writing.</i></p> <p><i>In the context of the DCO does not the use of shall mean an instruction command or obligation?</i></p> <p><i>Consideration may be given to introducing a similar schedule to Schedule 7 of the FM2 Power Station Order 2015 SI 2015 No. 9999 with regard to dealing with the requirements/conditions"</i></p>	<p>The Applicant amended article 37 to require any approvals etc. to be in writing and this was incorporated in the draft DCO submitted for Deadline 4 (Document 4.1C).</p> <p>The Applicant has changed "shall" to "must" where the context so permits.</p> <p>The majority of the provisions in the Schedule referred to are contained in the articles of the draft DCO.</p>
<p>Response DCO 2.13</p> <p>RCBC indicated that they are content with the documentation envisaged and the wording of the requirements although they suggest that article 6(3) could also mention the HRA.</p>	<p>The Applicant does not consider it appropriate for reference to be made to the HRA in article 6(3) since the aim of the article is to confine the authorised works to those that have been assessed in the environmental statement which is a separate exercise to the HRA.</p>
<p>Responses to DCO 2.14 and DCO 2.17</p> <p>RCBC made some suggestions as to additions to the Order "for clarity".</p>	<p>The Applicant does not feel there is insufficient clarity in relation to the responsible body for enforcing compliance with requirements or the provisions of the DML.</p> <p>As the Applicant's own response to DCO 2.17 confirms, the Applicant does not believe the principle of accretion applies here.</p>
<p>Response to PAR 2.1</p> <p>RCBC stated in response to the three tunnel options shown in the 9th October submission from TATA/SSI:</p>	

<p><i>"No further evidence with regard to conveyor corridor.</i></p> <p><i>The three options shown in the submission from TATA/SSI would require further detailing not least with regard to the movement of the product."</i></p>	<p>The Applicant notes that RCBC has no evidence to submit with regard to the feasibility of a tunnel option. Indeed, in the last few weeks, good progress has been made with RCBC in relation to progressing a brief for, and appointment of, an experienced architect to design the external treatment of the conveyor bridge over the A1085. The Applicant and RCBC have agreed the identity of an appropriate architect and a programme of work is under discussion.</p>
<p>Response to TT 2.1</p> <p>RCBC confirmed that requirement 7 will sufficiently safeguard the interest of Royal Mail.</p>	<p>The Applicant notes that this is consistent with the Applicant's response to this question.</p>
<p>Response to TT 2.1</p> <p>RCBC stated:</p> <p><i>"Engineers have advised that they are satisfied that the works which require consent will be acceptable in highway terms for the duration of its operation"</i></p>	<p>RCBC's position is noted and is unsurprising given that the works concerned will only last up to three weeks and no road closures are required.</p>
<p>Response to NV 2.1</p> <p>RCBC have advised that they are satisfied with the provisions of the draft DCO of 2 October 2015.</p>	<p>The Applicant notes the position.</p>
<p>Response to LVA 1.1</p> <p>RCBC stated that they see no reason why the area concerned could be the subject of environmental enhancement.</p>	<p>The Applicant notes the position.</p>

BP CATS	
Letter of 20 October 2015 Letter of 6 November 2015 Protective Provisions	<p>The ExA will be aware that the necessary amendments have been made to the plans in respect of the revised alignment of the BP CATS pipeline and were submitted to the ExA for Deadline 4 together with a revised layout for the temporary compound affected (see Applicant's response to DCO 2.4 in Document 8.6).</p> <p>Since the submission on behalf of BP CATS for Deadline 4, a further meeting has taken place and the Applicant subsequent to that meeting supplied BP CATS with a further set of amended protective provisions (Schedule 9) on 15 November 2015. A response to those protective provisions was received on 18 November and it is clear that the issues between BP CATS and the Applicant in relation to the protective provisions have significantly reduced. The Applicant has responded (on 19 November) with further amendments which it is hoped will result in wholly agreed provisions.</p> <p>The provisions under discussion with BP CATS incorporate amendments arising from the submission made by Bond Dickinson on behalf of SABIC/Huntsman/DEA which the Applicant feels to be appropriate.</p> <p>The latest version of the Schedule 9 protective provisions is attached at Appendix 1 along with a comparite with the 6 November version.</p> <p>The discussions with BP CATS since Deadline 4 have given rise to minor amendments to the relevant constructability notes being discussed between the Applicant and BP CATS. When the Applicant is clear that final versions have been agreed then revised replacement constructability notes will be submitted to the ExA. This will require an amendment to the revision numbers in article 2 of the draft DCO.</p> <p>The protective provisions in Schedule 9 offer the BP CATS pipeline protection in excess of the current protection contained in the Deed</p>

	<p>of Grant which governs the pipeline. Under that Deed of Grant there is no control over what is carried out beyond the easement width and far less control over what is carried out within the easement width than that offered by the protective provisions in Schedule 9.</p>
<p>SABIC/Huntsman/DEA</p>	
<p>Response to DCO 2.4</p> <p><i>Following the Hearings of 24 and 25 September the Objectors have had constructive discussions with York Potash, but have not yet reached agreement on the form of Protective Provisions.</i></p> <p><i>A broad timeline is set out below:</i></p> <ul style="list-style-type: none"> • <i>18 September: the Objectors provided their revised protective provisions to the Applicant.</i> • <i>13 October: The Applicant provides discussion draft revised Protective Provisions.</i> • <i>16 October: Meeting of the Applicant, the Objectors and BT CATS at Wilton.</i> • <i>21 October: The Applicant provides revised Protective Provisions.</i> • <i>30 October: (1) The Objectors provide their initial response on the draft of 21 October 2015; (2) the Applicant provides draft plans of the pipeline corridor.</i> <p>The Objectors attached their proposed Protective Provisions in Annex 1 of their Response.</p> <p><i>These protective provisions, and the assessment below, is based on the Applicant's draft of 21 October.</i></p> <p><i>The key difference between the parties are as follows:</i></p> <ol style="list-style-type: none"> 1. <i>With regard to paragraph (a) in the definition of "apparatus" the Applicant refers to structures existing at the time of</i> 	<p>As indicated in the timeline set out, the Applicant provided a full set of amendments to Schedule 9 of the protective provisions on 21 October 2015. In response, on 30 October, the Objectors made three general comments on those amended provisions.</p> <p>The Applicant did not see the further amendments to the protective provisions put forward by the Objectors in their submission for Deadline 4 until after Deadline 4 and so was unable to take them into account in the draft DCO submitted for Deadline 4 (Document 4.1C).</p> <p>As indicated in the response to BP CATS (above), and in response to the Objector points below, the Applicant has incorporated elements of the Objectors' amendments when providing an amended schedule to BP CATS where it is felt appropriate to do so.</p> <ol style="list-style-type: none"> 1. The amendment sought by the Objectors has been accepted and incorporated into the latest version of Schedule 9 contained at Appendix 1.

commencement of their development; the Objectors' view is that structures should be covered where they exist at the time of the particular action under the Protective Provisions.

2. *With regard to definitions such as Access Roads the Construction Access Plan:*

a. *The Objectors are concerned that the scheme could require the closure of roads affecting access to pipes (or manufacturing facilities) outside the Order land and in particular in the Wilton Complex.*

b. *For example the Order would allow the Applicant temporarily close the northern access road into the site (from the A1085) and this could occur at the same time as other gates on site are closed (for example the Dogger Bank scheme allows the closure of two of the remaining gates which would leave only one open gate). Also COMAH requirements require at least two gates to be in operation to deal with emergencies.*

c. *It is therefore important that the Wilton Complex is not excluded from the ambit of the construction access plan.*

d. *It follows from this that a broader definition is required in respect of "protected land".*

e. *A plan is attached at Annex 2 showing the extent of the Wilton Complex.*

3. *York Potash has included a definition of "affected asset" which was not in the Objectors' original draft.*

a. *The Objectors are concerned about the limitations of this definition, especially in relation to overground pipes and what the term "physically and directly affected" might mean.*

2. The Applicant is not prepared to widen the protective provisions to generally protect the very extensive Wilton Complex against unforeseen impacts. The Wilton Complex is referred to in the context of the Construction Access Plan and the Applicant is prepared to have regard to road closures affecting the Wilton Complex from other schemes when formulating its Construction Access Plan. This does not require any amendment to the definition of "protected land" which is dealing with the specific protection of the pipelines and the tunnels under the River Tees, not, as the Objectors would have it, the entirety of the Wilton Complex.

The plan which was produced by the Objectors is incorporated into the revised protective provisions for the purpose of identifying the Wilton Complex for the provisions relating to the Construction Access Plan.

3. The inclusion of a definition of "affected assets" resulted from a discussion at the meeting on 16 October 2015 between the Applicant, the Objectors and BP CATS and the Applicant understood that it was generally agreed that a specific definition would be helpful.

The general scheme of the protective provisions is that consent is required from an owner or operator of an affected

<p><i>b. More generally the Applicant's provisions do not deal with the issue of works outside the easement strips which might affect pipes.</i></p> <p><i>c. The Objectors are therefore firmly of the view that the Protective Provisions should use as their starting point the existence of a pipe in the pipeline corridor, and whether that pipe may be affected by the proposed works.</i></p> <p><i>d. The Objectors have included new definitions of "relevant pipe" and "relevant protected crossing" in the attached Protective Provisions to deal with this issue.</i></p> <p><i>e. It is accepted that if a pipe could not be affected by a work then there should be no need to serve works details on its owner and operator.</i></p> <p><i>f. The Objectors have reduced the notice period down from 90 days to 45 days.</i></p> <p><i>4. With regard to defining the "pipeline corridor":</i></p> <p><i>a. The Objectors accept that this can be defined by a plan.</i></p> <p><i>b. The Applicant has produced a fifth draft plan for review, but this does not appear to cover all of the Objectors' assets. The extent of the yellow shading needs to be extended to cover:</i></p> <p><i>i. DEA's pipe north of the A1085 roundabout; and</i></p> <p><i>ii. SABIC's pipe through the centre of Plot 59a.</i></p> <p><i>5. With regard to compulsory acquisition:</i></p> <p><i>a. The Applicant has introduced a concept of known and specifically "unknown rights", the latter not benefitting from protection against extinguishment.</i></p>	<p>asset for authorised works and therefore, since this is an onerous obligation on the Applicant with potential to cause delay, it is important that it is as clear as possible which assets this relates to and in what circumstances.</p> <p>The definition has been amended in the latest provisions by deletion of the words "and directly".</p> <p>4. The pipeline corridor has always been referred to in the protective provisions but it is now defined by a plan. The plan of the pipeline corridor was intended to identify the area which will be subject to the conveyor footings and supports and the location of the principle pipeline routes. The two areas referred to in paragraph 4 b i & ii do not fall within that corridor and are only affected by the temporary use of land. These are adequately protected by the provisions in article 30.</p> <p>5. The Objector makes reference to the Applicant introducing a concept of unknown rights. The Applicant has "introduced" nothing at this stage but has simply maintained its ability to deal with unknown rights as explained in the Statement of Reasons submitted with the application (Document 5.1). From previous representations made on behalf of the</p>
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b. *The history of the Wilton Complex in terms of the sale of ICI legacy facilities (and associated rights) is complicated and does not lend itself to this approach if the Objectors' operations are to be afforded proper protection. This is because many of SABIC and Huntsman' rights in apparatus existing at the time of disposal from ICI are not defined by reference to a plan. Instead they are protected by a general grant of rights applying (to paraphrase) to the apparatus existing at that time and serving the facility which was to be subject to the disposal.*

c. *The Applicant's approach to unknown rights places the Objectors in the position of relying on the Applicant's due diligence in respect of the Book of Reference, and if that due diligence is not correct (and the right is unknown) to suffer the consequences of having (and more importantly losing) an unprotected right. This reverses the normal burden of due diligence and places the risk on the Objectors, which is not acceptable.*

d. *The Objectors are therefore firmly of the opinion that the Protective Provisions should use as its starting point the existence of a pipe in the pipeline corridor and that the concept of "unknown rights" should not be included in the Order.*

e. *If deeming provisions are to be included then the definition of specified person" will need to be widened to allow the Objectors to change the nominated person and to allow other parties with pipes in the land to be notified.*

Objectors the Applicant thought it was acknowledged that the particular circumstances of the ICI legacy meant that it was legitimate for the Applicant to retain compulsory acquisition powers in relation to unknown rights. This is nothing to do with lack of due diligence but simply a reality that the complexity, and vagueness of some of the rights granted in the past mean that it is not possible to be sure that all rights have been identified.

Some amendments have been made to Schedule 9 paragraphs 23 and 24, as reflected in the latest version in **Appendix 1**. These have been sent to the Objectors and a response is awaited. It is not known whether those amendments address any of the concerns raised by the Objectors in this regard.

As regards the deeming provisions, the latest version of the protective provisions has been amended to incorporate the drafting requested by the Objectors.

<p>6. <i>Paragraph 23(5) and (6).</i></p> <p>a. <i>The Objectors have added deeming provisions for approval of works details and compulsory acquisition, although in a slightly different form that the amendment proposed by the Applicant.</i></p> <p>b. <i>In particular the loss of rights in pipes would have such serious consequences that the Objectors consider that a further step (a deeming notice) should be required.</i></p> <p>c. <i>The Objectors have reduced the notice period down from 90 days.</i></p> <p>7. <i>Paragraph 23(9).</i></p> <p>a. <i>The Objectors consider that if powers of compulsory acquisition are to be exercised over their rights that new apparatus (and replacement rights for that apparatus) should be provided by the Applicant before the power can be exercised.</i></p> <p>b. <i>This is a principle which was included in the Dogger Bank Order (albeit in a different form).</i></p> <p>c. <i>It is true that the Applicant has included a limitation on the exercise of articles 24 and 25 of the Order, which the Objectors welcome, but this is not comprehensive and is not a guarantee that the Objectors' pipes will not be affected. For example, article 30(1)(b) provides for the removal of "buildings" from the land when temporary possession is taken which could conceivably include the Objectors' apparatus. The Objectors have included article 23(9) in order to guard against such consequences.</i></p> <p>d. <i>The Objectors appreciate that the Applicant is not seeking powers of compulsory acquisition which would allow it to</i></p>	<p>6. The additional step requested by the Objectors has been incorporated in the latest version of the protective provisions contained in Appendix 1.</p> <p>7. There are no proposals to interfere with the known rights of the Objectors. The amended protective provisions in Appendix 1 provide that compulsory acquisition cannot be exercised in respect of the Objectors' interests in the pipelines or access to the pipelines.</p> <p>As regards article 30(1)(b), the Objectors are concerned that the term "buildings" might include the Objectors' pipelines or related apparatus and in consequence have included extensive suggested provisions which relate to scenarios such as replacement pipelines which are not in contemplation or a reasonably foreseeable consequence of the works involved which are all of a temporary nature. Accordingly, in order to safeguard against the term "building" being construed as including a pipeline and related apparatus it is suggested that the definition of "building" in article 2 of the draft DCO could be amended by the addition of the following words:</p>
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secure these rights, but they would expect such rights to be procured by the Applicant in the event that the Objectors' pipes or protected crossings were affected.

8. *Paragraph 24. In relation to insurance:*

a. *The Applicant's proposed insurance provisions provide that they should be allowed to proceed to with works in advance of the result of any expert determination relating to insurance being known.*

b. *The Objectors consider that it is a wholly unacceptable position and that drafting has not been carried through into this paragraph.*

c. *The Objectors have agree to a reduced notice period from 90 to 30 days.*

9. *Paragraph 25. This relates to powers for owners and operators to call for expert determination in respect of compulsory acquisition:*

a. *The Applicant has indicated that it considers that the issue of expert determination in relation to identified powers is dealt with in paragraph 23.*

b. *However the Objectors also require a route to expert determination to address issues such as whether the undertaker is exercising an identified power, and whether the provisions of article 23(9) have been satisfied, and this drafting has therefore been retained.*

10. *Paragraph 26(2). The Objectors' proposed provisions include a proviso in relation to the proposed indemnity that, in the absence of negligence, the fact that the an owner or operator has taken an action (such as approving a plan) should not*

"but for the purposes of article 30 shall not include a pipeline or its associated apparatus"

8. The Applicant is of the view that, given that the insurance provisions sought by the Objectors, and accepted by the Applicant, allow a very significant number of owner/operators to dispute the level of insurance cover it is unacceptable for the Applicant to have to wait until the level of cover is agreed by all those parties before being able to carry out any part of the authorised development. Cover will be provided prior to the commencement of development and it will only be the precise level of cover that will be at issue.

9. Given the provisions in paragraphs 23 and 30(1) there is no need to repeat the ability for the owners and operators to call for expert determination on matters outside of the subject matter that this paragraph is dealing with i.e. insurance.

10. The Applicant has incorporated this provision in the latest version of the protective provisions at **Appendix 1**.

<p><i>excuse the Applicant from liability under the indemnity. This provision is not included in the Applicant's draft.</i></p> <p><i>11. Paragraph 32(2):</i></p> <p><i>a. The Applicant's proposed article 40(2) (arbitration and expert determination) sets out a list of issues which an expert must consider in coming to their determination.</i></p> <p><i>b. The Objectors consider that in addition to the list of criteria set out at article 40(2)(e) the expert should specifically consider any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations.</i></p> <p><i>c. Such requirements include the following:</i></p> <p><i>i. COMAH requirements (such as the need to maintain emergency access);</i></p> <p><i>ii. The Pipeline Safety Regulations; and</i></p> <p><i>iii. Statutory inspections.</i></p> <p><i>In addition, the Objectors have amended the word "pipe" to "pipeline" throughout for the sake of consistency in respect of the term "pipeline corridor".</i></p>	<p>11. The additional paragraph 32(2) proposed by the Objectors has been incorporated into the latest protective provisions in Appendix 1.</p> <p>"Pipe" has been changed to "pipeline" as requested.</p>
<p>DEA Response to PAR 2.1</p> <p>1. <i>The section of undergrounding proposed in the Tata/SSI Submission of 9 October relates to a section of the proposed conveyor which would intersect with DEA's Breagh Pipeline.</i></p> <p>2. <i>DEA is not aware that any undergrounding in this location is proposed as part of the Application or of any proposed amendment to the Application to facilitate this. It has certainly not seen any detailed proposals in this regard. The suggestion therefore appears for the moment to be aspirational on the</i></p>	<p>The ExA is referred to Appendix 3 of Document 8.6, being the Applicant's response to the TATA Steel and Others submissions, specifically to section 7. It is noted that DEA has no technical information to provide to the ExA with regard to the feasibility of a tunnel option. The Applicant's position remains that it will not be pursuing any such option.</p>

part of Tata/SSI as part of their objection as opposed to forming part of the Application.

- 3. DEA has objected to the undergrounding of the proposed conveyor in this location because of the potential effect on the Breagh Pipeline, however in the event that suitable and adequate protective provisions are agreed with the Applicant it does not object in principle to undergrounding in this location.*
- 4. Whilst there is uncertainty as to the final form of protective provisions, DEA remains very concerned about the issue of undergrounding and must therefore sustain its objection.*

TATA/SSI/RBT

No representation was made on behalf of TATA/SSI/RBT at Deadline 4.

Revised draft Schedules 9 and 10 were sent to TATA/SSI/RBT lawyers on 28 October. Immediately prior to Deadline 4 the Applicant received a response to Schedule 10, but not in time for it to be taken account of in the draft DCO submitted for Deadline 4. A response on Schedule 9 was to follow but has not yet been received.

Given the current circumstances of the objectors, unsurprisingly, it has been difficult for the Applicant to pursue discussions with them. Discussions have of course taken place over an extended period, as explained in Appendix 3 to Document 8.6 with no issues of principle being anticipated, especially since an agent had been appointed to enter into negotiation and the Applicant had been advised that there was no objection to the principle of the crossing of the Hot Metal Rail Bridge (see paragraph 4.2(b) of Appendix 3 to Document 8.6). However, it has always been difficult to achieve continuing engagement on the matter with the objectors and with the difficulties in recent weeks this has only proved more problematic.

In recent days it has proved possible to speak to the lawyer on behalf of TATA and, on 18 November 2015 a discussion took place with regard to the contents of Schedule 10. As a result Schedule 10 has been revised by the Applicant and is attached at **Appendix 2** to this submission. The Applicant has taken into account some of the requested amendments but has in some respects tightened the provisions in Schedule 10. This is because of the experience of the Applicant in dealing with TATA, exacerbated in recent weeks by the difficulties of SSI and TATA. The Applicant is concerned to ensure that, once the necessary consent for the authorised development is obtained through the DCO process, its implementation is not frustrated or delayed by the difficulties in engaging with the companies concerned. The protective provisions still provide the essential protections required to ensure that there will be no unacceptable impact on the operation of the assets concerned.

It is evident from a recent meeting with the liquidators for SSI that they have little knowledge of the current situation which is therefore in a state of flux. In these circumstances the Applicant is even more concerned that without the requisite compulsory acquisition powers the previous experience of failure to engage will simply perpetuate and could frustrate delivery of the scheme.

APPENDIX 1a

REVISED SCHEDULE 9 (TRACKED)

SCHEDULE 9

Article 34

FOR THE PROTECTION OF PIPELINE CORRIDOR AND PROTECTED CROSSINGS

Benefit of protective provisions

1. The following provisions of this Schedule shall have effect for the benefit of any owner of the protected land and any operator of a pipepipeline within the pipeline corridor, unless otherwise agreed in writing between the undertaker and the said owner or operator.

Interpretation

2. In this Schedule—

“access roads” means the access roads within the Order limits giving access to pipespipelines or protected crossings;

“affected asset(s)” means—

- (a) underground apparatus in the pipeline corridor where relevant work(s) are to be carried out within the easement widths relating to that apparatus;
- (b) apparatus on or above ground in the pipeline corridor which would be physically ~~and directly impacted upon~~affected by the relevant work(s);
- (c) protected crossings where relevant work(s) are to be carried out within 25 metres of the protected crossing concerned; and
- (d) in relation to the exercise of an identified power, any apparatus in the protected land which would be affected by the exercise of that power.

“apparatus” means ~~pipes, cables, sewers, drains, ditches, watercourses or other apparatus~~the pipeline and cables within the pipeline corridor and includes—

- (a) any structure ~~which is~~ existing at the time ~~of commencement of the authorised development and when a particular action is to be taken under this Schedule~~ in which apparatus is or is to be lodged or which will give access to apparatus;
- (b) any cathodic protection, coating or special wrapping of the apparatus; and
- (c) all ancillary apparatus ~~including such works and apparatus~~ (whether or not comprising a ~~pipe line~~pipeline for the purposes of Section 65(2) of the ~~Pipe lines~~Pipelines Act 1962~~(a))~~) properly appurtenant to the pipespipelines as are described in section 65(2) of the ~~Pipe lines~~Pipelines Act 1962;

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

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

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

- (a) any restrictions on general access by owners of the protected land and operators of the pipelines, including the timing of restrictions;
- (b) any alternative accesses or routes of access that may be available to the undertaker using the access roads;
- (c) details of how the needs and requirements of owners of the protected land and operators of the pipelines (including their needs and requirements in relation to any ~~programmed~~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 [emergencies](#)~~owners of the protected land and operators of the pipelines~~; and
- (e) details of how reasonable access with or without vehicles will be [retained or an alternative](#) provided for owners [of the protected land](#) and operators of ~~pipes and protected crossings~~[the pipelines](#) to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the ~~pipes~~[pipelines](#) and protected crossings;

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

~~“cats pipeline critical construction activities” means—~~

- ~~(a) excavation works within the cats easement;~~
- ~~(b) piling within 10m of the cats pipeline;~~
- ~~(c) backfilling and compaction work within the cats easement;~~
- ~~(d) erection of crash mats above the cats pipeline; and~~
- ~~(e) all lifting above the cats pipeline.~~

“damage” includes all damage including in relation to a ~~pipe~~[pipeline](#) leakage and the weakening of the mechanical strength of a ~~pipe~~[pipeline](#);

“easement width” means in respect of each ~~pipe~~[pipeline](#) the easement width shown on the conveyor route plans;

“engineer” means an engineer appointed by the owner or operator of a ~~pipe~~[pipeline](#) in the pipeline corridor for the purposes of this Order;

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

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

“owner” means—

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

~~“pipeline(s)” means all apparatus~~[the pipelines](#) located in the pipeline corridor, ~~or in or comprising a protected crossing~~;

“protected crossings” means—

- (a) the tunnel under the River Tees which carries ~~pipes~~[pipelines](#) known as Tunnel 2; and
- (b) the apparatus under the River Tees known as the Breagh Pipeline;

“protected land” means such parts of the Order land as fall within ~~the access roads, the pipeline corridor and the protected crossings~~;

~~“relevant works” means—~~

- ~~(a) in relation to works other than dredging any part of the authorised development—~~
- ~~(a) within the access roads;~~

~~(i)(b)~~ the pipeline corridor; ~~and~~

~~(c) the protected crossings;~~

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

~~(b) in relation to dredging any part of the authorised development which—~~

~~(i) is within the area of Work No 1 as shown on the works plans; or~~

~~(ii) which may have an effect on the protected crossings;~~

“specified persons” means ~~{—————}~~

~~(a) the following—~~

~~(i) [] in relation to SABIC UI Petrochemicals Limited;~~

~~(ii) [] in relation to ~~{—————}~~ ETCHuntsman Polyurethanes (UK) Limited;~~

~~(iii) [] in relation to DEA UK SNS Limited; and~~

~~(iv) [] in relation to BP CATS Limited;~~

~~(b) where a person for whose benefit these protective provisions have effect is not mentioned in paragraph (a)—~~

~~(i) that person where the person is not an incorporated body;~~

~~(ii) the company secretary in relation to a company;~~

~~(iii) the designated partner in relation to a limited liability partnership; or~~

~~(iv) such other person as they may notify to the undertaker in writing.~~

“unknown rights” means rights which are not known at the date of the Order or which are identified as unknown in the book of reference;

“Wilton Complex” means the land shown outlined in red on the Wilton Complex plan ~~{...}~~; ~~and~~;

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

“works details” means the following—

(a) a description of the proposed works together with plans and sections of the proposed works where ~~thesesuch plans and sections~~ are reasonably required to describe the works concerned and or their location;

(b) details of any proposed temporary crossing points under paragraph 9;

(c) details of methods and locations of any piling proposed to be undertaken under paragraph ~~42~~; ~~13~~;

(d) details of methods of excavation and any zones of influence it has calculated under paragraph ~~43~~; ~~14~~;

(e) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph ~~44~~; ~~15~~;

(f) details of the location of any pipes/pipelines affected by the oversailing provisions in paragraph ~~45~~; ~~16~~, including details of the proposed clearance;

(g) details of the method location and extent of any dredging, ~~and~~ technical assessment of the likely effect of the dredging on the protected crossings and any mitigation measures which are proposed to be put in place to prevent damage to the protected crossings; ~~and~~

(h) details of ~~method~~ the undertaker and their principal contractors’ management of excavation-change procedures;

(i) details of the traffic management plan, which plan shall include details of vehicle access routes for construction and operational traffic and which shall assess the risk from vehicle movements and include safeguards to address identified risks;

- (j) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to the cats pipeline;
- (k) details (to include a dynamic analysis undertaken by the undertaker and provided to the cats pipeline operator) of the conveyor and conveyor support structure and the measures to be undertaken to ensure vibration does not impact on the cats pipeline;
- (l) details of the lifting study during the construction phase, which shall include a technical assessment of the protection of underground assets and which study shall provide for individual lift plans;
- (m) details of the lifting study during the operational phase, which shall include a technical assessment of the protection of underground assets and which study shall provide for individual lift plans;
- (n) details of the means by which the entirety of the cats pipeline can be properly inspected during the construction and operation of the authorised development which shall provide for unrestricted access (in so far as within the control of the undertaker) from one side of the cats pipeline to enable the cats pipeline to be excavated to a depth of 0.6 metres below the cats pipeline in a safe and secure manner;
- (o) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators; and
- (p) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to the cats pipeline cathodic protection system and the proposed remedial works.

Authorisation of works details affecting ~~pipes~~pipelines or protected crossings

3.—(1) Before commencing any part of the relevant ~~works~~work the undertaker must submit to the owners and any operators of any affected asset(s) the works details and obtain a written acknowledgement of receipt of those works details from the specified persons in relation to the ~~assets~~affected asset concerned.

(2) The undertaker must as soon as reasonably practicable provide such further particulars as the owner or operator of ~~the~~any affected asset(s) may, within 45 days from the ~~acknowledgement of~~ receipt of the works details under paragraph 3(1), reasonably require.

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

- (a) the works details supplied in respect of ~~those works~~that relevant work under paragraph 3 of this Schedule have been authorised by the owner and operator of all the affected ~~asset(s)~~asset(s); or
- (b) the works details supplied in respect of that relevant work under paragraph 3 of this Schedule have been authorised by an expert under paragraph 6(3); or
- ~~4.(c) authorisation is deemed to behave been given pursuant to paragraph 6(1) below) ~~or, if authorisation has been refused and referred to an expert for determination and the determination has provided authorisation, until that determination has been made.~~~~

5.—(1) Any authorisation by the owner or operator of ~~the~~an affected asset(s) required under paragraph 4(a) of this Schedule must not be unreasonably withheld but may be given subject to such reasonable conditions as the owner or operator of the affected asset(s) may require to be made for—

- (a) the continuing safety and operation or viability of the affected asset(s) ~~concerned~~; and
- (b) the requirement for the owner and operator of the affected asset(s) to have—
 - (i) uninterrupted and unimpeded ~~emergency~~ access with or without vehicles to the affected asset at all times ~~for emergencies~~; 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 ~~pipe(s) and/or protected crossing(s)-affected asset.~~

~~(2) Save as is provided in paragraph 5(3) the~~Where the owner or operator of the cats pipeline can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the cats pipeline the owner or operator shall be entitled to withhold their authorisation until the undertaker can demonstrate to the reasonable satisfaction of the owner or operator that the authorised development shall not significantly adversely affect the safety of the cats pipeline.

~~(2)(3) The~~ authorised development shall be carried out in accordance with the works details authorised under paragraph 4 and any conditions imposed on the authorisation under paragraph 5(1).

~~(3)(4) Where there has been a reference to an expert in accordance with paragraph 6(2) and the expert gives authorisation,~~ the authorised development shall be carried out in accordance with the authorisation and conditions contained in the award of the expert under paragraph 6~~(23)~~.

6.—(1) In the event that—

- (a) no response has been received to the submission of the works details under paragraph 3 within ~~the 45 day period referred to in paragraph 3~~45 days of the undertaker obtaining a written acknowledgment of receipt from a specified person under paragraph 3(1) and no further particulars have been requested under paragraph 3(2); or
- (b) authorisation has not been given within 30 days of the undertaker ~~providing the owner or operator with~~obtaining a written acknowledgment of receipt from a specified person of the further particulars supplied under paragraph 3(2),

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

~~(2) If authorisation has been refused or if~~In the event that—

- (a) the undertaker considers that the owner or operator has unreasonably withheld its authorisation under paragraph 5(1); or
- (b) the undertaker considers that an owner or operator has given its authorisation under paragraph 5(1) subject to unreasonable conditions,

~~(2)~~ the undertaker may refer the matter to an expert for determination under article 40(2).

(3) Where the matter is referred to an expert under paragraph 6(2) the expert shall determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 5(1).

~~(4) Where the undertaker considers that the owner or operator of the cats pipeline has unreasonably withheld its authorisation under paragraph 5(2) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by the secretary of the United Kingdom Onshore Pipeline Association (UKOPA) for determination under article 40(2).~~

Notice of works

7. The undertaker will provide to the owner and operator of an affected asset –a minimum of 28 days’ notice prior to commencing ~~that 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

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

- (a) provide the owners and any operators of any affected asset with baseline data for any existing cathodic protection of the ~~pipes~~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 ~~pipe~~asset.

(2) The pipelines will be located by hand digging prior to the use of mechanical excavation except that any excavation within 2 metres of the centreline of a pipeline must be hand dug.

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

9.—(1) Where temporary crossings for construction traffic are to be used, other than where the pipelines are under a carriageway of adequate standard of construction, then the crossing points shall be suitably reinforced with sleepers and/or road plates or a specially constructed reinforced concrete raft or by installing a temporary bridge over the pipeline as necessary.

(2) Details of proposed temporary crossing points referred to in sub-paragraph (1) must be notified to the owner and operator of the pipeline in accordance with paragraph 3.

10. During construction, an area, at least 1.5 metres either side equivalent to the easement widths of the pipelines 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.

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

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

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

~~12.13.~~—(1) Where piling is required within 1.50 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, the undertaker shall carry out prior consultation with the owner and operator of the relevant pipe ~~such piling must be undertaken by nonpercussive methods~~ pipeline by way of submission of the relevant works details.

(2) Details of Any proposed piling operations within—

(a) 10 metres either side of the centreline of the cats pipeline will require the crown of the pipeline to be physically exposed, so its location can be confirmed with the asset operator or owner as appropriate and locations for the piling referred to where within 2 metres of the centreline of the cats pipeline it shall be exposed by hand digging only; and

(b) 5 metres either side of the centreline of the cats pipeline and, in sub-addition to the obligations in paragraph ~~(4)~~13(2)(a), will require excavation to be carried out to a level below the depth of the pipeline, to ensure that no materials are present that could damage the pipeline if disturbed, in the presence of the asset owner or operator as appropriate.

(3) All excavations within 2 metres of the centreline of the cats pipeline must be notified to the owner and operator of the pipe in accordance with paragraph 3 hand dug.

~~(4)~~(4) All piling within 10 metres of the centreline of the cats pipeline must be non percussive.

~~13.14.~~—(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 the owner and operator of the relevant pipeline.

(2) Where the undertaker proposes to carry out excavations which might affect above ground structures such as pipeline supports in the pipeline corridor, the undertaker must calculate the zone of influence of those excavations and provide those calculations to the owner and operator of the pipeline under paragraph 3.

~~14.15.~~—(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 the owner and operator of the pipeline in accordance with paragraph 3.

(3) Compaction testing must be carried out once back filling is completed to establish whether the backfill has been adequately compacted as referred to in paragraph 4415(1) and what further works may be necessary, and the results of such testing must be supplied to the owner and operator of the pipepipeline.

(4) Where it is shown by the testing under paragraph 4415(3) to be necessary, the undertaker must carry out further compaction testing under paragraph 4415(1) and paragraphs 4415(1), (32) and (43) shall continue to apply until such time as the backfill has been adequately compacted.

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

(6) In the event of a dispute as to—

- (a) whether or not backfill has been adequately compacted under paragraphs 4415(1) to (4); or
- (b) the amount of any payment under paragraph 4415(5),

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

15.16.—(1) A minimum clearance of ~~1,500mm~~1500mm must be maintained between any part of the authorised development and any affected asset ~~underground (whether that part of the authorised development is parallel to or crosses the pipeline)~~ unless otherwise agreed with the operator or owner of the ~~relevant~~affected asset.

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

Monitoring for damage to pipespipelines

16.17.—(1) When carrying out the relevant works the undertaker will continuously monitor the pipesrelevant pipelines and the protected crossings to establish whether damage has occurred.

(2) Where any damage occurs to a pipepipeline or a protected crossing, as a result of the relevant work, the undertaker shall immediately cease all work in the vicinity of the damage and shall notify the owner and operator of the relevant pipepipeline or the owner of the protected crossing ~~must be notified by the undertaker~~ to enable repairs to be carried out to the reasonable satisfaction of the owner of the pipeline or protected crossing.

(3) ~~The~~If damage has occurred to a pipeline or a protected crossing as a result of relevant work the undertaker will, at the request and election of the owner or operator of the relevant pipepipeline or the owner of the protected crossing, either—

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

(4) Where testing has taken place under paragraph 4617(2)(b), the undertaker must (if the owner or operator of the pipepipeline or the owner of the ~~tunnel~~protected crossing so requests) provide it with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of a relevant work the undertaker must continue to monitor the pipespipelines and the protected crossing to establish whether any damage has occurred and if damage is found to have occurred sub-paragraphs (2) to (4) of this paragraph will apply to that damage.

(6) Pursuant to the approved assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to the cats pipeline cathodic protection system, the undertaker shall undertake any necessary remedial work.

(7) In the event that the undertaker does not carry out necessary remedial work timeously then the affected owner shall be entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

~~17.18.~~—(1) If any damage occurs to a ~~pipe~~pipeline causing a leakage or escape from a ~~pipe~~pipeline, all work in the vicinity shall cease and the owner and operator of the ~~pipe~~pipeline must be notified immediately.

- (2) Where there is leakage or escape of gas, the undertaker must immediately—
- (a) remove all personnel from the immediate vicinity of the leak;
 - (b) inform the owner and operator of the relevant ~~pipe~~pipeline;
 - (c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least ~~50~~350 metres from the leakage; and
 - (d) assist emergency services as may be requested.

Compliance with requirements, etc. applying to the protected land

~~18.19.~~—(1) Subject to paragraph ~~18~~19(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; or
 - (b) determined by the expert following a determination under article 40(2) to unreasonably—
 - (i) create significant engineering, technical or programming difficulties; or
 - (ii) materially increase the cost of carrying out the works.

(3) Paragraph ~~18~~19(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 planning authority or the police.

Access for construction and maintenance

~~19.20.~~—(1) Before carrying out any construction or maintenance works affecting access rights over the access roads, the undertaker must prepare a draft construction access plan and publicise and consult on the draft construction access plan with owners of the protected land and operators of the ~~pipes~~pipelines.

(2) The undertaker must take account of the responses to any consultation referred to in paragraph ~~19~~20(1) before approving the construction access plan.

- ~~20.21.~~—(1) In preparing a construction access plan under paragraph ~~19~~20 the undertaker must—
- (a) establish the programme for major works in the pipeline corridor and the Wilton Complex and plan the construction or maintenance works to prevent or (if such conflict cannot be reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and
 - (b) establish where an owner of the protected land or operator of a ~~pipe~~pipeline has a reasonable expectation to exercise access rights over particular access roads in respect of which rights ~~which~~ are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby that expectation can be met.

(2) Where a reference is made to expert determination under article 40(2) in relation to any disagreement about a construction access plan, in addition to the criteria set out in article 40(2)(e) the appointed expert must have regard to—

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

(3) In this paragraph, “programmed”, in relation to works, means works in respect of which the owner of the access roads has been notified of the specific dates between which the works are programmed to be carried out.

21.22.—(1) No works affecting access rights over the access roads may commence until 30 days after a copy of the approved construction access plan is served on the owners of the protected land and operators of pipes~~pipelines~~.

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

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

Restriction on exercising powers

22.23.—(1) The undertaker ~~shall~~must not in the exercise of the powers conferred by articles 24 and 25 of this Order to acquire, appropriate, extinguish, suspend or override any rights in the protected land which are known and shall only exercise if the authorised development can reasonably and practicably be carried out without such powers in relation to unknown rights~~acquisition, appropriation, extinguishment, suspension or override.~~

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

24.—(1) The undertaker must not exercise the powers conferred by articles 24 and 25 of this Order to acquire, appropriate, extinguish, suspend or override any rights in the protected land relating to the pipelines or access to pipelines except in relation to unknown rights.

(2) Without prejudice to paragraph 24(1) the undertaker must not exercise the identified powers

- (a) in relation to an affected asset~~the protected land~~ without the consent in writing of the owner;
- (b) in relation to a pipeline where the exercise of powers affects a pipeline, without the consent in writing of the operator of that affected asset or pipeline;
- (c) without consent given by an expert appointed under article 40(2); or

~~23.~~(d) without deemed consent pursuant to sub paragraph (57) below ~~and the undertaker shall obtain written acknowledgement of receipt of a request for consent from the specified persons in relation to the asset(s) concerned.~~

~~(1)~~(3) Where an identified power provides for the undertaker to automatically extinguish or override a right or interest of an owner of the protected land, the restriction in paragraph 23 ~~(paragraphs 24(2))~~ shall operate so that the said extinguishment or override of the said right or interest will not apply unless the owner of the right or interest has given its consent, ~~deemed consent has been given pursuant to sub paragraph (5) below~~ or consent has been given by an expert appointed under article ~~40~~24(2) ~~or is deemed to be given under sub-paragraph (7).~~

~~(2)~~(4) Where a person is asked to give consent under this paragraph ~~23,24(2)~~, the consent must not be unreasonably withheld.

~~(3)~~(5) If the undertaker considers that consent has been unreasonably withheld, the undertaker may refer the request for consent to an expert appointed under article 40(2) for determination.

~~(4)~~(6) If an owner of the protected land or operator of a pipe~~pipeline~~ fails to respond to a request for consent within 30 days from the acknowledgement of date when a written request for ~~consent,~~their consent is ~~deemed~~made to ~~have been given.~~the specified person the undertaker may serve a further notice on that owner or operator (a “deeming notice”).

(7) In the event that an owner of the protected land or operator of a pipeline fails to respond to a deeming notice within 10 working days from the date when a written acknowledgement of receipt of the deeming notice is obtained by the undertaker from the specified person, the consent of the owner of the protected land or operator of a pipeline as the case may be is deemed to be given.

~~(5)~~(8) In this paragraph, “identified powers” means the powers conferred by the following—

- (a) article 10 (street works);
- (b) article 11 (temporary stopping up of streets);
- (c) article 12 (access to works);
- (d) article 14 (discharge of water);
- (e) article 16 (authority to survey and investigate the land);
- (f) article 24 (compulsory acquisition of rights) insofar as the exercise of such powers is not excluded by paragraph 24(1);
- (g) article 25 (power to override easements and other rights) insofar as the exercise of such powers is not excluded by paragraph 24(1);
- ~~(f)~~(h) article 29 (rights under or over streets); and
- ~~(g)~~(i) article 30 (temporary use of land for carrying out the authorised development).

Insurance

~~24-25.~~(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 26~~27 in accordance with the terms and level of cover notified under paragraph 25(2) or, in the case of dispute, in accordance with the terms and level of cover determined by an expert under article 40(2), and evidence of that insurance must be provided on request to owners of the protected land and operators of pipes and the undertaker shall notify the owners of the protected land before changing the terms of the insurance policy.~~pipelines.

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

~~(2)~~(3) The undertaker must maintain insurance in relation to ~~works and~~ the authorised development affecting owners of the protected land and operators of pipes~~pipelines~~ during the construction, operation, maintenance, repair and decommissioning of the authorised development

in the terms and at the level of cover specified in paragraph ~~24~~25(2) or at such level as may otherwise be determined by an expert under article 40(2).

~~25-26.~~ (1) If an owner of the protected land or operator of a pipeline has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph ~~24~~25—

- (a) the owner of the protected land or operator of a ~~pipe~~pipeline may refer the matter to an expert for determination under article 40(2); and
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development whilst the determination under article 40(2) is complete, following which the undertaker ~~shall, if necessary,~~must adjust the insurance policy ~~in accordance~~if necessary to accord with the determination.

Costs

~~26-27.~~ The undertaker must repay to owners of the protected land and operators of the pipespipelines all reasonable fees, costs, charges and expenses reasonably incurred by them in relation to these protective provisions in respect of—

- (a) authorisation of works details submitted by the undertaker under paragraph 3 and the imposition of conditions under paragraph 5;
- (b) the engagement of an engineer and their observation of the authorised works affecting the ~~pipes~~pipelines and the provision of safety advice under paragraph 7;
- (c) responding to the consultation on piling under paragraph ~~12~~13;
- (d) considering the effectiveness of any compacting which has taken place under paragraph ~~14~~15, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;
- (e) the repair and testing of a ~~pipe~~pipeline or protected crossing under paragraph ~~16~~17;
- (f) considering and responding to consultation in relation to the construction access plan under paragraph ~~19~~20 and providing details of their programme for major works to the undertaker under paragraph ~~20~~21;
- (g) dealing with any request for consent or agreement by the undertaker under paragraph ~~23~~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 ~~24~~25,

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

(2) The undertaker must indemnify and keep the owners of the protected land and operators of the ~~pipes~~pipelines indemnified against all reasonable costs, charges, damages and expenses, and against consequential loss and damage, which may be occasioned or reasonably incurred by the owners and operators—

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

and the fact that any act or thing may have been done by the owner of protected land or operator of a pipeline on behalf of the undertaker or in accordance with plans approved by or on behalf of the owner or operator or in accordance with any requirement of the engineer appointed by the owner or operator or under his supervision will not (if it was done without negligence on the part of the owner or operator or of any person in their employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph 27(2).

(3) An owner or operator must give the undertaker reasonable notice of any claim or demand under paragraph ~~26(427(2))~~ and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

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

(5) In the assessment of any sums payable to an owner or operator under this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by, or any agreement entered into by, the owner or operator if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

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

~~27-28.~~ The undertaker must give written notice to the owners of the protected land and the operators of ~~pipelines~~ of the terms and level of cover of any guarantee ~~of~~ alternative form of security put in place under article 23 (Guarantees in respect of payment of compensation) and any such notice must be given no later than 28 days before any such guarantee ~~of~~ alternative form of security is put in place specifying the date when the guarantee or alternative form of security will come into force.

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

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

~~29-30.~~ The undertaker must, when requested to do so by an owner of the protected land or an operator of a ~~pipeline~~, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 38 (Certification of Plans etc) in the form of a computer disc with read only memory.

~~30-31.~~ The authorised development must be carried out in accordance with the methods and measures set out in the relevant constructability notes.

~~31-32.~~ Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to the owners of the protected land and the operators of the ~~pipelines~~.

Disputes

Expert Determination

~~33.~~~~(1)~~ Any dispute under this Schedule is to be determined by the expert determination procedure as provided for in article 40(2) (arbitration and expert determination~~)-) as modified by this paragraph.~~

~~32.~~~~(2)~~ In addition to the considerations set out in article 40(2)(e) the expert must consider any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations and have regard to the constructability notes.

APPENDIX 1b
REVISED SCHEDULE 9 (CLEAN)

SCHEDULE 9

Article 34

FOR THE PROTECTION OF PIPELINE CORRIDOR AND PROTECTED CROSSINGS

Benefit of protective provisions

1. The following provisions of this Schedule shall have effect for the benefit of any owner of the protected land and any operator of a pipeline within the pipeline corridor, unless otherwise agreed in writing between the undertaker and the said owner or operator.

Interpretation

2. In this Schedule—

“access roads” means the access roads within the Order limits giving access to pipelines or protected crossings;

“affected asset(s)” means—

- (a) underground apparatus in the pipeline corridor where relevant work(s) are to be carried out within the easement widths relating to that apparatus;
- (b) apparatus on or above ground in the pipeline corridor which would be physically affected by the relevant work(s);
- (c) protected crossings where relevant work(s) are to be carried out within 25 metres of the protected crossing concerned; and
- (d) in relation to the exercise of an identified power, any apparatus in the protected land which would be affected by the exercise of that power.

“apparatus” means the pipeline and cables within the pipeline corridor and includes—

- (a) any structure existing at the time when a particular action is to be taken under this Schedule in which apparatus is or is to be lodged or which will give access to apparatus;
- (b) any cathodic protection, coating or special wrapping of the apparatus; and
- (c) all ancillary apparatus (whether or not comprising a pipeline for the purposes of Section 65(2) of the Pipelines Act 1962(a)) properly appurtenant to the pipelines as are described in section 65(2) of the Pipelines Act 1962;

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

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

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

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

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

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

“cats pipeline critical construction activities” means—

- (a) excavation works within the cats easement;
- (b) piling within 10m of the cats pipeline;
- (c) backfilling and compaction work within the cats easement;
- (d) erection of crash mats above the cats pipeline; and
- (e) all lifting above the cats pipeline.

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

“easement width” means in respect of each pipeline the easement width shown on the conveyor route plans;

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

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

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

“owner” means—

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

“pipeline(s)” means the pipelines located in the pipeline corridor, or in or comprising a protected crossing;

“protected crossings” means—

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

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

- (a) the access roads;
- (b) the pipeline corridor; and
- (c) the protected crossings;

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

“specified persons” means—

- (a) the following—
 - (i) [] in relation to SABIC UI Petrochemicals Limited;
 - (ii) [] in relation to Huntsman Polyurethanes (UK) Limited;
 - (iii) [] in relation to DEA UK SNS Limited; and
 - (iv) [] in relation to BP CATS Limited;
- (b) where a person for whose benefit these protective provisions have effect is not mentioned in paragraph (a)—
 - (i) that person where the person is not an incorporated body;
 - (ii) the company secretary in relation to a company;
 - (iii) the designated partner in relation to a limited liability partnership; or
 - (iv) such other person as they may notify to the undertaker in writing.

“unknown rights” means rights which are not known at the date of the Order or which are identified as unknown in the book of reference;

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

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

“works details” means the following—

- (a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned and/or their location;
- (b) details of any proposed temporary crossing points under paragraph 9;
- (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 it 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 crossings and any mitigation measures which are proposed to be put in place to prevent damage to the protected crossings;
- (h) details of the undertaker and their principal contractors’ management of change procedures;
- (i) details of the traffic management plan, which plan shall include details of vehicle access routes for construction and operational traffic and which shall assess the risk from vehicle movements and include safeguards to address identified risks;
- (j) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to the cats pipeline;
- (k) details (to include a dynamic analysis undertaken by the undertaker and provided to the cats pipeline operator) of the conveyor and conveyor support structure and the measures to be undertaken to ensure vibration does not impact on the cats pipeline;
- (l) details of the lifting study during the construction phase, which shall include a technical assessment of the protection of underground assets and which study shall provide for individual lift plans;
- (m) details of the lifting study during the operational phase, which shall include a technical assessment of the protection of underground assets and which study shall provide for individual lift plans;

- (n) details of the means by which the entirety of the cats pipeline can be properly inspected during the construction and operation of the authorised development which shall provide for unrestricted access (in so far as within the control of the undertaker) from one side of the cats pipeline to enable the cats pipeline to be excavated to a depth of 0.6 metres below the cats pipeline in a safe and secure manner;
- (o) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators; and
- (p) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to the cats pipeline cathodic protection system and the proposed remedial works.

Authorisation of works details affecting pipelines or protected crossings

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

(2) The undertaker must as soon as reasonably practicable provide such further particulars as the owner or operator of any affected asset may, within 45 days from the receipt of the works details under paragraph 3(1), reasonably require.

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

- (a) the works details supplied in respect of that relevant work under paragraph 3 of this Schedule have been authorised by the owner and operator of all the affected assets; or
- (b) the works details supplied in respect of that relevant work under paragraph 3 of this Schedule have been authorised by an expert under paragraph 6(3); or
- (c) authorisation is deemed to have been given pursuant to paragraph 6(1) below.

5.—(1) Any authorisation by the owner or operator of an affected asset required under paragraph 4(a) of this Schedule must not be unreasonably withheld but may be given subject to such reasonable conditions as the owner or operator of the affected asset may require to be made for—

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

(2) Where the owner or operator of the cats pipeline can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the cats pipeline the owner or operator shall be entitled to withhold their authorisation until the undertaker can demonstrate to the reasonable satisfaction of the owner or operator that the authorised development shall not significantly adversely affect the safety of the cats pipeline.

(3) The authorised development shall be carried out in accordance with the works details authorised under paragraph 4 and any conditions imposed on the authorisation under paragraph 5(1).

(4) Where there has been a reference to an expert in accordance with paragraph 6(2) and the expert gives authorisation, the authorised development shall be carried out in accordance with the authorisation and conditions contained in the award of the expert under paragraph 6(3).

6.—(1) In the event that—

- (a) no response has been received to the submission of the works details under paragraph 3 within 45 days of the undertaker obtaining a written acknowledgment of receipt from a

specified person under paragraph 3(1) and no further particulars have been requested under paragraph 3(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 3(2),

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

(2) In the event that—

- (a) the undertaker considers that the owner or operator has unreasonably withheld its authorisation under paragraph 5(1); or
- (b) the undertaker considers that an owner or operator has given its authorisation under paragraph 5(1) subject to unreasonable conditions,

the undertaker may refer the matter to an expert for determination under article 40(2).

(3) Where the matter is referred to an expert under paragraph 6(2) the expert shall determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 5(1).

(4) Where the undertaker considers that the owner or operator of the cats pipeline has unreasonably withheld its authorisation under paragraph 5(2) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by the secretary of the United Kingdom Onshore Pipeline Association (UKOPA) for determination under article 40(2).

Notice of works

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

Further provisions about works

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

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

(2) The pipelines will be located by the use of mechanical excavation except that any excavation within 2 metres of the centreline of a pipeline must be hand dug.

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

9.—(1) Where temporary crossings for construction traffic are to be used, other than where the pipelines are under a carriageway of adequate standard of construction, then the crossing points shall be suitably reinforced with sleepers and/or road plates or a specially constructed reinforced concrete raft or by installing a temporary bridge over the pipeline as necessary.

(2) Details of proposed temporary crossing points referred to in sub-paragraph (1) must be notified to the owner and operator of the pipeline in accordance with paragraph 3.

10. During construction, an area equivalent to the easement widths of the pipelines 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.

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

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

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

13.—(1) Where piling is required within 50 metres of the centreline of a pipeline or which could have an effect on the operation or maintenance of a pipeline or access to a pipeline, the undertaker shall carry out prior consultation with the owner and operator of the relevant pipeline by way of submission of the relevant works details.

(2) Any proposed piling operations within—

(a) 10 metres either side of the centreline of the cats pipeline will require the crown of the pipeline to be physically exposed, so its location can be confirmed with the asset operator or owner as appropriate and where within 2 metres of the centreline of the cats pipeline it shall be exposed by hand digging only; and

(b) 5 metres either side of the centreline of the cats pipeline and, in addition to the obligations in paragraph 13(2)(a), will require excavation to be carried out to a level below the depth of the pipeline, to ensure that no materials are present that could damage the pipeline if disturbed, in the presence of the asset owner or operator as appropriate.

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

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

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 the owner and operator of the relevant pipeline.

(2) Where the undertaker proposes to carry out excavations which might affect above ground structures such as pipeline supports in the pipeline corridor, the undertaker must calculate the zone of influence of those excavations and provide those calculations to the owner and operator of the pipeline under paragraph 3.

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 the owner and operator of the pipeline in accordance with paragraph 3.

(3) Compaction testing must be carried out once back filling is completed to establish whether the backfill has been adequately compacted as referred to in paragraph 15(1) and what further works may be necessary, and the results of such testing must be supplied to the owner and operator of the pipeline.

(4) Where it is shown by the testing under paragraph 15(3) to be necessary, the undertaker must carry out further compaction testing under paragraph 15(1) and paragraphs 15(1), (2) and (3) shall continue to apply until such time as the backfill has been adequately compacted.

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

(6) In the event of a dispute as to—

(a) whether or not backfill has been adequately compacted under paragraphs 15(1) to (4); or

(b) the amount of any payment under paragraph 15(5),

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

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

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

Monitoring for damage to pipelines

17.—(1) When carrying out the relevant works the undertaker will continuously monitor the relevant pipelines and the protected crossings to establish whether damage has occurred.

(2) Where any damage occurs to a pipeline or a protected crossing, as a result of the relevant work, the undertaker shall immediately cease all work in the vicinity of the damage and shall notify the owner and operator of the relevant pipeline or the owner of the protected crossing to enable repairs to be carried out to the reasonable satisfaction of the owner of the pipeline or protected crossing.

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

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

(4) Where testing has taken place under paragraph 17(2)(b), the undertaker must (if the owner or operator of the pipeline or the owner of the protected crossing so requests) provide it with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of a relevant work the undertaker must continue to monitor the pipelines and the protected crossing to establish whether any damage has occurred and if damage is found to have occurred sub-paragraphs (2) to (4) of this paragraph will apply to that damage.

(6) Pursuant to the approved assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to the cats pipeline cathodic protection system, the undertaker shall undertake any necessary remedial work.

(7) In the event that the undertaker does not carry out necessary remedial work timeously then the affected owner shall be entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

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

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

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

Compliance with requirements, etc. applying to the protected land

19.—(1) Subject to paragraph 19(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; or
 - (b) determined by the expert following a determination under article 40(2) to unreasonably—
 - (i) create significant engineering, technical or programming difficulties; or
 - (ii) materially increase the cost of carrying out the works.

(3) Paragraph 19(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 planning authority or the police.

Access for construction and maintenance

20.—(1) Before carrying out any construction or maintenance works affecting access rights over the access roads, the undertaker must prepare a draft construction access plan and publicise and consult on the draft construction access plan with owners of the protected land and operators of the pipelines.

(2) The undertaker must take account of the responses to any consultation referred to in paragraph 20(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 major works in the pipeline corridor and the Wilton Complex and plan the construction or maintenance works to prevent or (if such conflict cannot be reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and
- (b) establish where an owner of the protected land or operator of a pipeline has a reasonable expectation to exercise access rights over particular access roads in respect of which rights are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby that expectation can be met.

(2) Where a reference is made to expert determination under article 40(2) in relation to any disagreement about a construction access plan, in addition to the criteria set out in article 40(2)(e) the appointed expert must have regard to—

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

(3) In this paragraph, “programmed”, in relation to works, means works in respect of which the owner of the access roads has been notified of the specific dates on which the works are programmed to be carried out.

22.—(1) No works affecting access rights over the access roads may commence until 30 days after a copy of the approved construction access plan is served on the owners of the protected land and operators of pipelines.

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

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

Restriction on exercising powers

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 owners of the protected land and operators of the pipelines, including any disruption to access and supplies of utilities and other services that are required by them in order to carry out their operations.

24.—(1) The undertaker must not exercise the powers conferred by articles 24 and 25 of this Order to acquire, appropriate, extinguish, suspend or override any rights in the protected land relating to the pipelines or access to pipelines except in relation to unknown rights.

(2) Without prejudice to paragraph 24(1) the undertaker must not exercise the identified powers—

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

(3) Where an identified power provides for the undertaker to automatically extinguish or override a right or interest of an owner of the protected land, the restriction in paragraphs 24(2) shall operate so that the said extinguishment or override of the said right or interest will not apply unless the owner of the right or interest has given its consent or consent has been given by an expert appointed under article 24(2) or is deemed to be given under sub-paragraph (7).

(4) Where a person is asked to give consent under this paragraph 24(2), the consent must not be unreasonably withheld.

(5) If the undertaker considers that consent has been unreasonably withheld, the undertaker may refer the request for consent to an expert appointed under article 40(2) for determination.

(6) If an owner of the protected land or operator of a pipeline fails to respond to a request for consent within 30 days from the date when a written request for their consent is made to the specified person the undertaker may serve a further notice on that owner or operator (a “deeming notice”).

(7) In the event that an owner of the protected land or operator of a pipeline fails to respond to a deeming notice within 10 working days from the date when a written acknowledgement of receipt of the deeming notice is obtained by the undertaker from the specified person, the consent of the owner of the protected land or operator of a pipeline as the case may be is deemed to be given.

(8) In this paragraph, “identified powers” means the powers conferred by the following—

- (a) article 10 (street works);
- (b) article 11 (temporary stopping up of streets);
- (c) article 12 (access to works);
- (d) article 14 (discharge of water);
- (e) article 16 (authority to survey and investigate the land);

- (f) article 24 (compulsory acquisition of rights) insofar as the exercise of such powers is not excluded by paragraph 24(1);
- (g) article 25 (power to override easements and other rights) insofar as the exercise of such powers is not excluded by paragraph 24(1);
- (h) article 29 (rights under or over streets); and
- (i) article 30 (temporary use of land for carrying out 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 notified under paragraph 25(2) or, in the case of dispute, in accordance with the terms and level of cover determined by an expert under article 40(2), and evidence of that insurance must be provided on request to owners of the protected land and operators of pipelines.

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

(3) The undertaker must maintain insurance in relation to the authorised development affecting owners of the protected land and operators of pipelines during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover specified in paragraph 25(2) or at such level as may otherwise be determined by an expert under article 40(2).

26.—(1) If an owner of the protected land or operator of a pipeline has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 25—

- (a) the owner of the protected land or operator of a pipeline may refer the matter to an expert for determination under article 40(2); and
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development whilst the determination under article 40(2) is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs

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

- (a) authorisation of works details submitted by the undertaker under paragraph 3 and the imposition of conditions under paragraph 5;
- (b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 7;
- (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 a pipeline or protected crossing 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 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 owners and operators in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to allow the owner or operator to carry out its functions under these protective provisions.

(2) The undertaker must indemnify and keep the owners of the protected land and operators of the pipelines indemnified against all reasonable costs, charges, damages and expenses, and against consequential loss and damage, which may be occasioned or reasonably incurred by the owners and operators—

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

and the fact that any act or thing may have been done by the owner of protected land or operator of a pipeline on behalf of the undertaker or in accordance with plans approved by or on behalf of the owner or operator or in accordance with any requirement of the engineer appointed by the owner or operator or under his supervision will not (if it was done without negligence on the part of the owner or operator or of any person in their employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph 27(2).

(3) An owner or operator must give the undertaker reasonable notice of any claim or demand under paragraph 27(2) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

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

(5) In the assessment of any sums payable to an owner or operator under this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by, or any agreement entered into by, the owner or operator if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

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

28. The undertaker must give written notice to the owners of the protected land and the operators of pipelines of the terms and level of cover of any guarantee or alternative form of security put in place under article 23 (Guarantees in respect of payment of compensation) and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security will come into force.

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

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

30. The undertaker must, when requested to do so by an owner of the protected land or an operator of a pipeline, provide it with a complete set of the documents submitted to and certified by the

Secretary of State in accordance with article 38 (Certification of Plans etc) in the form of a computer disc with read only memory.

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

32. Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to the owners of the protected land and the operators of the pipelines.

Expert Determination

33.—(1) Any dispute under this Schedule is to be determined by the expert determination procedure as provided for in article 40(2) (arbitration and expert determination) as modified by this paragraph.

(2) In addition to the considerations set out in article 40(2)(e) the expert must consider any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations and have regard to the constructability notes.

APPENDIX 2a

REVISED SCHEDULE 10 (TRACKED)

SCHEDULE 10

Article 34

FOR THE PROTECTION OF ASSETS BRIDGED/OVERSAILED

1. The following provisions of this Schedule shall have effect, unless otherwise agreed in writing between the undertaker and the protected asset owner/s.

2. In this Schedule—

"construction" includes execution, placing, alteration, reconstruction and decommissioning and "construct" and "constructed" have corresponding meanings;

"Deeds of Grant" means the deeds dated 23 September 1949 and 23 February 1954 made between Imperial Chemical Industries Limited and Dorman Long & Co Limited;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the protected asset;

"protected asset" means the assets and land identified in the annex to this Schedule;

"protected asset owner" means the owner/s of a protected asset; and

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, a protected asset.

3. Where under this Schedule a protected asset owner is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that the protected asset owner complies with any obligations under statute.

4.—(1) The undertaker must not in the exercise of the powers conferred by this Order—

(a) create, acquire, appropriate, extinguish or suspend any rights or covenants in respect of any protected asset if the authorised development can reasonably and practicably be carried out without such creation, acquisition, appropriation, extinguishment or suspension; and

(b) without prejudice to (a) restrict the rights contained in the Deeds of Grant in so far as such rights are consistent with the construction, operation and maintenance of the authorised development.

(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 protected ~~asset owners~~assets.

(3) The undertaker shall not in the exercise of the powers conferred by this Order prevent access via any existing pedestrian or vehicular access to any protected asset, unless preventing such access is with the consent of the protected asset owner and is in any event subject to exception in the case of emergency.

(4) The undertaker shall not under the powers of this Order acquire or create new rights over a protected asset other than such rights as are necessary for the construction, operation and maintenance of Works No. 4 and Works No. 5 without the consent of the protected asset owner.

~~(4)(5)~~ Where the protected asset owner is asked to give its consent pursuant to this paragraph such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

4.5.A—(1) Before carrying out any works on any part of the authorised development affecting a protected asset the undertaker must put in place a policy of assurance with a reputable insurer against consequential loss and damage suffered by protected asset owners or as may be determined by an expert under ~~paragraph 19, article 40(2)~~, and evidence of that insurance must be provided on request to protected asset owners.

(2) Not less than ~~90~~30 days before carrying out any works on any part of the authorised development affecting a protected asset or before proposing to change the terms of the insurance

policy, the undertaker must notify the affected owners 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 the provided.

(3) The undertaker must maintain insurance in relation to works or the use of the authorised development affecting the protected asset during the operation of the authorised development at the level specified in the notice of proposed insurance.

~~5.6.B~~ If a protected asset owner notifies the undertaker that it considers that any proposed exercise by the undertaker of a power under this Order breaches these protective provisions or if there is a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph ~~85~~ before such a power may be exercised—

- (a) the protected asset owner may refer the matter to an expert for determination under ~~paragraph 19; article 40(2); and~~
- ~~(b) the undertaker must not exercise the power concerned until that determination has been provided.~~
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development whilst the determination under article 40(2) is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

7.—(1) The undertaker shall before commencing construction of any specified work supply to the protected asset owner proper and sufficient plans of that work for the reasonable approval of the protected asset owner and the undertaker must as soon as reasonably practicable provide such further particulars as the protected asset owner may within 45 days from the receipt of the plans reasonably require.

~~(3)(2)~~ The specified work shall not be commenced except in accordance with such plans as have been approved in writing by the protected asset owner or settled by arbitration, have been deemed to be approved pursuant to sub-paragraph (3) or settled by expert determination under the provisions of article 40(2).

~~(4)(3)~~ The approval of the protected asset owner under sub-paragraph (1) shall not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to the protected asset owner, the protected asset owner has not intimated its disapproval of those plans and the grounds of its disapproval the undertaker may serve upon the protected asset owner written notice requiring the protected asset owner to intimate its approval or disapproval within a further period of 28 days beginning with the date upon which the protected asset owner receives written notice from the undertaker. If by the expiry of the further 28 days the protected asset owner has not intimated its approval or disapproval, it shall be deemed to have approved the plans as submitted in the event that—

- (a) no response has been received to the submission of the plans within 45 days of the submission of the plans by the undertaker to the protected asset owner and no further particulars have been requested under sub-paragraph (1); or
- (b) approval has not been given within 30 days of the undertaker providing to the protected asset owner the further particulars supplied under sub-paragraph (1),

approval of the plans shall be deemed to be given and the relevant works may commence.

(4) No refusal of the approval sought under sub-paragraph (1) shall be reasonable for the purposes of sub-paragraph (3) or determination pursuant to article 40(2) unless the protected asset owner can demonstrate that the construction of the specified work will materially affect the safe operation or structural integrity of the protected asset concerned.

(5) In the event that the undertaker considers that the protected asset owner has unreasonably withheld its authorisation under sub-paragraph (1), the undertaker may refer the matter to an expert for determination under article 40(2).

~~6.8.~~—(1) Any specified work shall, when commenced, so far as reasonably practicable be constructed in accordance with these protective provisions and—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 57;
- (b) under the supervision (~~where appropriate and~~ if given) and to the reasonable satisfaction of the protected asset owner;
- (c) in such manner as to avoid damage to the protected asset; and
- (d) so as not to interfere with or obstruct the free, uninterrupted and safe use of any protected asset or any traffic thereon.

(2) If any damage to a protected asset or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker shall, make good such damage without unreasonable delay and shall pay to the protected asset owner all reasonable expenses incurred by the protected asset owner and compensate for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule shall impose any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of the protected asset owner or its servants, contractors or agents or any liability on the protected asset owner with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7.9. The undertaker shall—

- (a) at all times afford reasonable facilities to the protected asset owner for access to a specified work during its construction; and
- (b) supply the protected asset owner with all such information as it may reasonably require with regard to a specified work or the method of constructing it.

8.10.—(1) If any permanent or temporary alterations or additions to a protected asset, are reasonably necessary in consequence of the construction or operation of a specified work, in order to ensure the safety of the protected asset or the continued safe operation of the protected asset ~~of the protected asset owner~~, such alterations and additions may be carried out by the protected asset owner and if the undertaker shall pay to the protected asset owner the cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the protected asset owner in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) The protected asset owner shall, in respect of the capitalised sums referred to in this paragraph provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(3) If the cost of maintaining, working or renewing a protected asset is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to the protected asset owner under this paragraph.

9.11. The undertaker shall repay to the protected asset owner all reasonable fees, costs, charges and expenses reasonably incurred by the protected asset owner—

- (a) in respect of the approval by the protected asset owner of plans submitted by the undertaker and the supervision by it of the construction of a specified work;
- (b) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall ~~it~~ be reasonably necessary to appoint for inspecting, signalling, watching and lighting the protected asset and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (c) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the protected asset owner, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution of diversion of services which may be reasonably necessary for the same reason.

~~10.12.~~ If at any time after the completion of a specified work, not being a work vested in a protected asset owner, the protected asset owner gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of a protected asset, the undertaker shall, on receipt of such notice and without unreasonable delay, take such steps as may be reasonably necessary (and in accordance with the protective provisions) to put that specified work in such state of maintenance as not adversely to affect the protected asset.

~~11.13.~~ The undertaker shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any protected asset ~~belonging to a protected asset owner~~ unless it shall have first consulted the protected asset owner and it shall comply with the protected asset owner's reasonable requirements for preventing conflict or confusion between such illumination or illuminated sign or signal and any signal or other light used for controlling, directing or securing the safety of traffic on the protected asset.

~~12.14.~~ Any additional expenses which a protected asset owner may reasonably incur in altering, reconstructing or maintaining a protected asset under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that (other than in the case of emergency ~~or an operational imperative requiring urgent action~~) 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to the protected asset owner.

~~13.15.~~ The protected asset owner shall, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule -and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule.

~~14.16.~~ In the assessment of any sums payable to the protected asset owner under this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by the protected asset owner if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

~~15.17.~~ The undertaker and the protected asset owner may (at their absolute discretion), enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any protected asset ~~shown on the works plans and land plans and described in the book of reference;~~
- (b) any lands, works or other property held in connection with any such protected asset; and
- (c) any rights and obligations (whether or not statutory) of the protected asset owner relating to any protected asset or any lands, works or other property referred to in this paragraph.

~~16.18.~~ The undertaker shall give written notice to the protected asset owner if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 8 (consent to transfer benefit of Order) of this Order and any such notice shall be given no later than 28 days before any such application is made and shall describe or give (as appropriate)—

- (a) the nature of the application to be made (including the ~~identify~~identity of the parties to which it relates);
- (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.

~~17.19.~~ The undertaker shall no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 38 (Certification of plans etc) are certified by the Secretary of State, provide a set of those plans to the protected asset owner in the form of a computer disc with read only memory— ~~or such other electronic data format as the protected asset owner may reasonably request.~~

ANNEX

(1) Asset	(2) Asset Owner	(3) Crossing Number/Location
Land subject to lease in favour of M&G Fuels	M&G Solid Fuels LLP	Plot 60 on the land plans
A1085	Redcar and Cleveland Borough Council	MC1 on the conveyor route plans (Documents 3.3A-N)
Hot Metal Rail <u>Bridge</u>	Tata Steel UK Limited and Sahaviriya Steel Industries UK Limited	MC3 on the conveyor route plans (Documents 3.3A-N)
SSI Road Bridge	Sahaviriya Steel Industries UK Limited	MC6 on the conveyor route plans (Documents 3.3A-N)
Land and assets owned/occupied Tata Steel UK Limited by Tata Steel UK Limited	Tata Steel UK Limited	Plot 37a on the land plans

18.20. All works must be carried out in accordance with the methods and measures set out in the relevant constructability notes.

19.21. Any dispute under this ~~Section~~ Schedule is to be determined by the expert determination procedure as provided for in article 40(2) (arbitration and expert determination).

APPENDIX 2b

REVISED SCHEDULE 10 (CLEAN)

SCHEDULE 10

Article 34

FOR THE PROTECTION OF ASSETS BRIDGED/OVERSAILED

1. The following provisions of this Schedule shall have effect, unless otherwise agreed in writing between the undertaker and the protected asset owner/s.

2. In this Schedule—

"construction" includes execution, placing, alteration, reconstruction and decommissioning and "construct" and "constructed" have corresponding meanings;

"Deeds of Grant" means the deeds dated 23 September 1949 and 23 February 1954 made between Imperial Chemical Industries Limited and Dorman Long & Co Limited;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the protected asset;

"protected asset" means the assets and land identified in the annex to this Schedule;

"protected asset owner" means the owner/s of a protected asset; and

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, a protected asset.

3. Where under this Schedule a protected asset owner is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that the protected asset owner complies with any obligations under statute.

4.—(1) The undertaker must not in the exercise of the powers conferred by this Order—

- (a) create, acquire, appropriate, extinguish or suspend any rights or covenants in respect of any protected asset if the authorised development can reasonably and practicably be carried out without such creation, acquisition, appropriation, extinguishment or suspension; and
- (b) without prejudice to (a) restrict the rights contained in the Deeds of Grant in so far as such rights are consistent with the construction, operation and maintenance of the authorised development.

(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 protected assets.

(3) The undertaker shall not in the exercise of the powers conferred by this Order prevent access via any existing pedestrian or vehicular access to any protected asset, unless preventing such access is with the consent of the protected asset owner and is in any event subject to exception in the case of emergency.

(4) The undertaker shall not under the powers of this Order acquire or create new rights over a protected asset other than such rights as are necessary for the construction, operation and maintenance of Works No. 4 and Works No. 5 without the consent of the protected asset owner.

(5) Where the protected asset owner is asked to give its consent pursuant to this paragraph such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) Before carrying out any works on any part of the authorised development affecting a protected asset the undertaker must put in place a policy of assurance with a reputable insurer against consequential loss and damage suffered by protected asset owners or as may be determined by an expert under article 40(2), and evidence of that insurance must be provided on request to protected asset owners.

(2) Not less than 30 days before carrying out any works on any part of the authorised development affecting a protected asset or before proposing to change the terms of the insurance policy, the

undertaker must notify the affected owners 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 works or the use of the authorised development affecting the protected asset during the operation of the authorised development at the level specified in the notice of proposed insurance.

6. If a protected asset owner notifies the undertaker that it considers that any proposed exercise by the undertaker of a power under this Order breaches these protective provisions or if there is a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 5 before such a power may be exercised—

- (a) the protected asset owner may refer the matter to an expert for determination under article 40(2); and
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development whilst the determination under article 40(2) is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

7.—(1) The undertaker shall before commencing construction of any specified work supply to the protected asset owner proper and sufficient plans of that work for the reasonable approval of the protected asset owner and the undertaker must as soon as reasonably practicable provide such further particulars as the protected asset owner may within 45 days from the receipt of the plans reasonably require.

(2) The specified work shall not be commenced except in accordance with such plans as have been approved in writing by the protected asset owner or have been deemed to be approved pursuant to sub-paragraph (3) or settled by expert determination under the provisions of article 40(2).

(3) The approval of the protected asset owner under sub-paragraph (1) shall not be unreasonably withheld, and in the event that—

- (a) no response has been received to the submission of the plans within 45 days of the submission of the plans by the undertaker to the protected asset owner and no further particulars have been requested under sub-paragraph (1); or
- (b) approval has not been given within 30 days of the undertaker providing to the protected asset owner the further particulars supplied under sub-paragraph (1),

approval of the plans shall be deemed to be given and the relevant works may commence.

(4) No refusal of the approval sought under sub-paragraph (1) shall be reasonable for the purposes of sub-paragraph (3) or determination pursuant to article 40(2) unless the protected asset owner can demonstrate that the construction of the specified work will materially affect the safe operation or structural integrity of the protected asset concerned.

(5) In the event that the undertaker considers that the protected asset owner has unreasonably withheld its authorisation under sub-paragraph (1), the undertaker may refer the matter to an expert for determination under article 40(2).

8.—(1) Any specified work shall, when commenced, so far as reasonably practicable be constructed in accordance with these protective provisions and—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 7;
- (b) under the supervision (if given) and to the reasonable satisfaction of the protected asset owner;
- (c) in such manner as to avoid damage to the protected asset; and
- (d) so as not to interfere with or obstruct the free, uninterrupted and safe use of any protected asset or any traffic thereon.

(2) If any damage to a protected asset or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker shall, make good such damage without unreasonable delay and shall pay to the protected asset owner all

reasonable expenses incurred by the protected asset owner and compensate for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule shall impose any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of the protected asset owner or its servants, contractors or agents or any liability on the protected asset owner with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

9. The undertaker shall—

- (a) at all times afford reasonable facilities to the protected asset owner for access to a specified work during its construction; and
- (b) supply the protected asset owner with all such information as it may reasonably require with regard to a specified work or the method of constructing it.

10.—(1) If any permanent or temporary alterations or additions to a protected asset are reasonably necessary in consequence of the construction or operation of a specified work, in order to ensure the safety of the protected asset or the continued safe operation of the protected asset, such alterations and additions may be carried out by the protected asset owner and if the undertaker shall pay to the protected asset owner the cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the protected asset owner in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) The protected asset owner shall, in respect of the capitalised sums referred to in this paragraph provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(3) If the cost of maintaining, working or renewing a protected asset is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to the protected asset owner under this paragraph.

11. The undertaker shall repay to the protected asset owner all reasonable fees, costs, charges and expenses reasonably incurred by the protected asset owner—

- (a) in respect of the approval by the protected asset owner of plans submitted by the undertaker and the supervision by it of the construction of a specified work;
- (b) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting the protected asset and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (c) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the protected asset owner, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution of diversion of services which may be reasonably necessary for the same reason.

12. If at any time after the completion of a specified work, not being a work vested in a protected asset owner, the protected asset owner gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of a protected asset, the undertaker shall, on receipt of such notice and without unreasonable delay, take such steps as may be reasonably necessary (and in accordance with the protective provisions) to put that specified work in such state of maintenance as not adversely to affect the protected asset.

13. The undertaker shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any protected asset unless it shall have first consulted the protected asset owner and it shall comply with the protected asset owner's reasonable requirements for preventing conflict or confusion between such illumination or illuminated sign or signal and any signal or other light used for controlling, directing or securing the safety of traffic on the protected asset.

14. Any additional expenses which a protected asset owner may reasonably incur in altering, reconstructing or maintaining a protected asset under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that (other than in the case of emergency or an operational imperative requiring urgent action) 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to the protected asset owner.

15. The protected asset owner shall, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule.

16. In the assessment of any sums payable to the protected asset owner under this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by the protected asset owner if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

17. The undertaker and the protected asset owner may (at their absolute discretion), enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any protected asset;
- (b) any lands, works or other property held in connection with any such protected asset; and
- (c) any rights and obligations (whether or not statutory) of the protected asset owner relating to any protected asset or any lands, works or other property referred to in this paragraph.

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

- (a) the nature of the application to be made (including the identity of the parties to which it relates);
- (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.

19. The undertaker shall no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 38 (Certification of plans etc) are certified by the Secretary of State, provide a set of those plans to the protected asset owner in the form of a computer disc with read only memory or such other electronic data format as the protected asset owner may reasonably request.

ANNEX

<i>(1)</i> <i>Asset</i>	<i>(2)</i> <i>Asset Owner</i>	<i>(3)</i> <i>Crossing Number/Location</i>
Land subject to lease in favour of M&G Fuels	M&G Solid Fuels LLP	Plot 60 on the land plans
A1085	Redcar and Cleveland Borough Council	MC1 on the conveyor route plans
Hot Metal Rail Bridge	Sahaviriya Steel Industries UK Limited	MC3 on the conveyor route plans

SSI Road Bridge	Sahaviriya Steel Industries UK Limited	MC6 on the conveyor route plans
Land and assets owned/occupied by Tata Steel UK Limited	Tata Steel UK Limited	Plot 37a on the land plans

20. All works must be carried out in accordance with the methods and measures set out in the relevant constructability notes.

21. Any dispute under this Schedule is to be determined by the expert determination procedure as provided for in article 40(2) (arbitration and expert determination).