

From: [Kinder, Will](#)
To: [York Potash Harbour](#)
Cc: [McDonald, Andy \(Finance\)](#)
Subject: 150821 TR030002 CATS Parties: Protective Provisions
Date: 06 November 2015 17:17:59
Attachments: [protective provisions \(BP\).docx](#)
[Letter from CATS to PINS_06 11 15.pdf](#)

Dear Sir / Madam,

Please find attached: (i) a letter from CATS North Sea Limited as CATS Operator on behalf of the CATS Parties in relation to the protective provisions sought by the CATS Parties in respect of the application by York Potash Limited for an Order Granting Development Consent for the York Potash Harbour Facilities; and (ii) the protective provisions referred to in the letter.

Please confirm receipt of this letter.

Regards

For and on behalf of

Andy McDonald

CATS Business Manager

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6 November 2015

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Dear Sir/Madam

**APPLICATION FOR THE YORK POTASH HARBOUR FACILITIES DEVELOPMENT
CONSENT ORDER (TR03002)**

We refer to the Examining Authority's second round of written questions and, in particular, question DC0 214 regarding article 34 and Schedules 7 – 11 of the DCO.

We can confirm that CATS North Sea Limited (the "CATS Operator") has had an exchange of correspondence and a technical meeting with the applicants.

Draft amended protective provisions for Schedule 9 have been provided to the applicants. The applicants have indicated that they have no objection in principle to the matters contained in the amended protective provisions, but there are some matters of detail they wish to discuss. A meeting between the parties is scheduled for this coming Tuesday 10 November 2015. We enclose with this letter a copy of the protective provisions in materially the same form as provided to the applicants previously.

The applicants have very recently raised land right issues on which the CATS Operator is seeking clarification from the applicants. At this stage it is not known what the implications, if any, of this may be.

Yours faithfully



pp. Andy McDonald
CATS Business Manager
CATS North Sea Limited

SCHEDULE 9

Article 34

PROTECTIVE PROVISIONS

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 pipe 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 pipes or protected crossings.

“affected asset(s)” means:

- (i) underground apparatus in the pipeline corridor where relevant work(s) are to be carried out within the easement widths relating to that apparatus;
- (ii) apparatus on or above ground in the pipeline corridor which would be physically and directly impacted upon by the relevant work(s);
- (iii) protected crossings where relevant work(s) are to be carried out within **x** metres of the protected crossing concerned; and
- (iv) 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 and includes:

- (a) any structure existing at the time that 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 pipeline for the purposes of Section 65(2) of the Pipe-lines Act 1962) properly appurtenant to the pipes as are described in section 65(2) of the Pipe-lines Act 1962;

“cats pipeline” means the pipeline shown on the [Plan XXX]

“construction access plan” means a plan identifying how access will be maintained to pipes 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 pipes, 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 pipes (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 pipes; and

(e) details of how reasonable access with or without vehicles will be provided for owners of the protected land and operators of the pipes:

(i) to construct, inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the pipes and protected crossings; and

(ii) to ensure the continuing safety and operation or viability of their manufacturing facilities;

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

“cats pipeline critical construction activities” means (i) excavation works within the cats easement, (ii) piling within 10m of the cats pipeline, (iii) backfilling and compaction work within the cats easement, (iv) erection of crash mats above the cats pipeline, and (v) all lifting above the cats pipeline.

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

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

“engineer” means an engineer appointed by the owner or operator of a pipe 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;

“operational works” means the operation of the authorised development

“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 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 Wilton Complex, any owner or occupier in the Wilton Complex;

(d) 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 pipes in or comprising the protected crossings; and

(e) in relation to protected land means any person falling within paragraphs (a) to (d) above.

“pipeline corridor” means those parts of the Order land shown X on plan Y

“pipe(s)” means all

- (a) apparatus located in the pipeline corridor or in or comprising a protected crossing; and
- (b) apparatus the operation, maintenance, repair, replacement and/or abandonment of which and/or access to which may be affected by the relevant works

“protected crossings” means:

- (a) the tunnel under the River Tees which carries pipes 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;
- (c) the protected crossings; and
- (d) the Wilton Complex

“relevant pipe” means a pipe which may be affected by a relevant work

“relevant works” means a work which may have an effect on the operation, maintenance, repair, replacement and/or abandonment and/or access to a pipe or a protected crossing

“specified persons” means:

- (a) the following:
 - (i) [●] in relation to SABIC UK 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 plan [...]; and

“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; and

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

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

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

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

(f) details of the location of any pipes 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, an 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 of excavation

(i) details of the undertaker and their principal contractors' management of change procedures.

(j) 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.

(k) 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

(l) 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

(m) 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

(n) 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

(o) details of the design measures incorporated into the authorised works, to ensure the entirety of the cats pipeline can be properly inspected.

(p) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators.

(q) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised works and during the operational works to ascertain any change or damage to the cats pipeline cathodic protection system and the proposed remedial works.

Authorisation of works details affecting pipes or protected crossings

3. (1) Before commencing any part of a relevant work the undertaker must submit to the owners and any operators of pipes and owners of the protected crossings which may be affected by that relevant work the works details and obtain a written acknowledgement of receipt of those works details from the specified persons in relation to the pipes or protected crossings concerned.

(2) The undertaker must as soon as reasonably practicable provide such further particulars as the owner or operator of any relevant pipe or the owner of any relevant protected crossing may, within 45 days from the acknowledgement of receipt of the works details under paragraph 3(1), reasonably require.
4. No part of a relevant work are to be commenced until one of the following conditions has been satisfied:

(1) 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 relevant pipes and the owner of all relevant protected crossings; or

(2) 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

(3) authorisation is deemed to have been given pursuant to paragraph 6(1) below).
5. (1) Any authorisation by the owner or operator of a relevant pipe or the owner of a protected crossing required under paragraph 4(1) of this Schedule must not be unreasonably withheld but may be given subject to such reasonable conditions as the owner or operator of the relevant pipe or the owner of the protected crossing may require to be made for:

(a) the continuing safety and operation or viability of the pipe(s) and the protected crossings; and;

(b) the requirement for the owner and operator of the relevant pipe(s) and the owner of the protected crossings to have:
 - (i) uninterrupted and unimpeded emergency access with or without vehicles to all relevant pipe(s) and all relevant protected crossings at all times; and
 - (ii) reasonable access with or without vehicles:
 - (a) to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the pipes and protected crossings; and
 - (b) to ensure the continuing safety and operation or viability of their manufacturing facilities.
- (2) Where the owner or operator can reasonably demonstrate that the authorised works will adversely affect the safety, operation or viability of an affected asset, the owner or operator shall be entitled to withhold their authorisation until the undertaker can demonstrate that the authorised works shall not adversely affect the safety, operation or viability of the affected asset.
- (3) Save as is provided in paragraph 5(2) 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 an owner or operator has unreasonably withheld its authorisation under paragraph 5; or
- (b) the undertaker considers that an owner or operator has given its authorisation under paragraph 5 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).

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 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 affected asset with baseline data for any existing cathodic protection of the pipes; 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.

(2) The pipes will be located by hand digging prior to the use of mechanical excavation.

(3) The undertaker shall engage an independent construction QA 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 pipes 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 pipe 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 pipe in accordance with paragraph 3.

10. During construction an area, at least 3 metres either side of the pipes, 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 pipes 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 50metres of a pipe or which could have an effect on the operation or maintenance of a pipe or access to a pipe, the undertaker shall carry out prior consultation with the owner and operator of the relevant pipe such piling must be undertaken by nonpercussive methods.

(2) Details of proposed methods and locations for the piling referred to in sub-paragraph (1) must be notified to the owner and operator of the pipe in accordance with paragraph 3.

(3) Any proposed piling operations within (i) 10 metres either side of the cats pipeline will require the crown of the pipeline to be physically exposed by hand digging, so its location can be confirmed with the asset operator or owner as appropriate; (ii) 5 metres either side of the cats pipeline, will require the crown of the pipeline to be physically exposed by hand digging and hand digging at the location of the piling to a level below the depth of the pipeline, to ensure that no materials are present that could damage the pipeline if disturbed, in the presence of the asset owner or operator as appropriate.

(4) All excavations within 1.5m of the cats pipeline must be hand dug.
14. (1) Where excavation of trenches (including excavation by dredging) adjacent to a pipe affects its support, the pipe must be supported in a manner approved by the owner and operator of the relevant pipe.

(2) Where the undertaker proposes to carry out excavations which might affect above ground structures such as pipe 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 pipe under paragraph 3.
15. (1) Where a trench is excavated across or parallel to the line of a pipe, the backfill must be adequately compacted to prevent any settlement which could subsequently cause damage to the pipe.

(2) Proposed methods and locations of compacting must be notified to the owner and operator of the pipe 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 pipe.

(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), (3) and (4) 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 pipe 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 pipe 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 pipe may refer the matter to an expert for determination under article 42(2).

16. (1) A minimum clearance of 1,500mm 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 pipe) unless otherwise agreed with the operator or owner of the relevant asset.

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

Monitoring for damage to pipes

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

(2) Where any damage occurs to a pipe or a protected crossing, the undertaker shall immediately cease all work in the vicinity of the damage and shall notify the owner and operator of the relevant pipe or the owner of the protected crossing to enable repairs to be carried out. Works in the vicinity of the damage shall not recommence until the repairs have been carried out to the reasonable satisfaction of the pipeline owner.

(3) The undertaker will, at the request and election of the owner or operator of the relevant pipe or the owner of the protected crossing, either:

(a) afford the owner or operator of the pipe or owner of the protected crossing all reasonable facilities to enable it to fully and properly repair and test the pipe 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 pipe 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 pipe or owner of the protected crossing to have effectively repaired the pipe or protected crossing before any backfilling takes place.

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

(4) Following the completion of a relevant work the undertaker must continue to monitor the pipes 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.

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

(6) 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 pipe causing a leakage or escape from a pipe, all work in the vicinity shall cease and the owner and operator of the pipe 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;
- (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 pipes.

(2) The undertaker must take account of the responses to any consultation referred to in paragraph 19(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 pipe 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, 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 dates between 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 pipes.

(2) Where an owner of the protected land or an operator of a pipe refers the construction access plan to an expert for determination under article 42(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 pipes, 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 pipes or access to pipes.

(2) Without prejudice to paragraph 23(1) the undertaker must not exercise the identified powers in relation to the protected land without:

(a) in relation to the protected land without the consent in writing of the owner of that land; or and

(b) where the exercise of powers affects a pipe, the consent in writing of the operator of that pipe, or

(c) consent given by an expert appointed under article (5) below; or

(d) deemed consent pursuant to sub-paragraph (7) below where the exercise of the identified powers affects apparatus that is operated for the benefit of the Wilton Complex, without the consent in writing of the operator in relation to that apparatus.

(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 23(12) 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 (or as the case may be the operator of the pipewhere the identified power would affect apparatus that is operated for the benefit of the Wilton Complex, the operator in relation to that apparatus) has given its consent or consent has been given by an expert appointed under sub-paragraph 27paragraph (5) or is deemed to be given under sub-paragraph (7).

(4) Where a person is asked to give consent under this paragraph 23(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 paragraph 27article 40(2) for determination.

(6) If an owner of the protected land or operator of a pipe fails to respond to a request for consent within 30 days after 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").the day on which the request is made, consent is deemed to have been withheld, and the undertaker may if it considers that consent has been unreasonably withheld refer the request for consent to an expert appointed under paragraph 27 for determination.

(7) In the event that an owner of the protected land or operator of a pipe 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, their consent 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 23(1);

(g) article 25 (power to override easements and other rights)) insofar as the exercise of such powers is not excluded by paragraph 23(1);

(h) article 29 (rights under or over streets); and

(i) article 30 (temporary use of land for carrying out the authorised development).

(9) The undertaker must not exercise the identified powers unless:

(a) Where the exercise would affect pipes:

(i) The undertaker has provided to affected owners new rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of pipes;

(ii) The rights referred to in sub-paragraph (i) are granted on terms and conditions that are materially no worse than the terms and conditions that apply to similar pipes on the protected land as agreed by the owner and operator of the pipe or in default of agreement determined by an expert under paragraph 27article 40(2);

(iii) replacement pipes, that are materially and operationally no worse than the pipes belonging to the owner affected by the exercise of the identified powers, have been constructed in accordance with, and in the locations provided for by, the rights referred to in sub-paragraph (i), and are available for use by the owner and operator; and

(iv) the owner and operator of the pipe have agreed that replacement pipes have been provided and are available for use in accordance with sub-paragraph (iii) or in default of agreement determined by an expert under paragraph 27article 40(2).

(b) Where the exercise would affect access to or over the protected land:

(i) The undertaker has provided to affected owners new rights of access;

(ii) The rights referred to in sub-paragraph (i) are granted on terms and conditions that are materially no worse than the terms and conditions that apply to similar access on the protected land as agreed by the owner and operator of the pipe or in default of agreement determined by an expert under paragraph 27article 40(2);

(iii) replacement access, that is materially and operationally no worse than the access currently used by the owner and operator and affected by the exercise of the identified powers, has been constructed in accordance with, and in the locations provided for by, the rights referred to in sub-paragraph (i), and is available for use by the owner and operator; and

(iv) the owner and operator of the pipe have agreed that replacement access has been provided and is available for use in accordance with sub-paragraph (iii) or in default of agreement determined by an expert under paragraph 27article 40(2).

Insurance

24. (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 in accordance with the terms and level of cover notified under paragraph 24(2) or, in the case of dispute, in accordance with the terms and level of cover determined by an expert under paragraph 27, and evidence of that insurance must be provided on request to owners of the protected land and operators of pipes.

(2) Not less than 90 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 pipes 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 and the authorised development affecting owners of the protected land and operators of pipes 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(2) or at such level as may otherwise be determined by an expert under paragraph 27article 40(2).

25. (1) If an owner of the protected land or operator of a pipe considers that any proposed exercise by the undertaker of a power under this Order breaches paragraphs 22 or 23, or if there is a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 2724, before such a power may be exercised:

(a) the owner of the protected land or operator of a pipe may refer the matter to an expert for determination under paragraph 27article 40(2); and

(b) the undertaker must not exercise the power concerned until that determination has been provided and is accordance with that determination.

Costs

27. The undertaker must repay to owners of the protected land and operators of the pipes 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 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 pipe or protected crossing under paragraph 17;

(f) considering and responding to consultation in relation to the construction access 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 23; 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 pipes 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 or operator on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer 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 26(2).

(3) An owner or operator must give the undertaker reasonable notice of any claim or demand under paragraph 26(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 pipes 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.

29. The undertaker must give written notice to the owners of the protected land and the operators of pipes 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 pipe, 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 pipes.

Expert Determination

32. (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.

Disputes

33. 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).