

PLANNING ACT 2008

INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

APPLICATION FOR THE YORK POTASH HARBOUR FACILITIES DEVELOPMENT CONSENT ORDER (Reference TR30002)

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DEADLINE 4

RESPONSE TO EXAMINING AUTHORITY'S SECOND WRITTEN QUESTIONS OF DEA UK SNS LIMITED (Unique Reference Number 10031322)

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1. INTRODUCTION

- 1.1 This is the Response to the Examining Authority's Second Written Questions of DEA UK SNS Limited (**DEA**). DEA's submission is made on behalf of itself and its joint venture partner, Sterling Resources (UK) Plc.
- 1.2 The form of this document is identical to the submissions of Huntsman Polyurethanes (UK) Limited (**Huntsman**) and SABIC UK Petrochemicals Limited (**SABIC**), save that DEA's submission also answers question PAR 2.1.
- 1.3 In this document SABIC, Huntsman and DEA are together referred to as **the Objectors**.

2. RESPONSE TO EXAMINING AUTHORITY'S SECOND WRITTEN QUESTIONS

<b>DCO 2.4</b>	<b>Article 34 and Schedules 7-11 Protection of interests</b> <b>To: The Applicant</b> <b>To: All interested parties seeking protective provisions in relation to pipelines of other transport links, in particular CATS Management, DEA, SABIC, Huntsman and RBT/Tata Steel UK/The liquidators of SSI UK</b> <b>Please provide an update of progress on securing agreed protective provisions, together with amended schedules for the DCO.</b>
	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.  A broad timeline is set out below: <ul style="list-style-type: none"><li>• 18 September: the Objectors provided their revised protective provisions to the Applicant.</li><li>• 13 October: The Applicant provides discussion draft revised Protective Provisions.</li></ul>

- 16 October: Meeting of the Applicant, the Objectors and BT CATS at Wilton.
- 21 October: The Applicant provides revised Protective Provisions
- 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.

The Objectors attach their proposed Protective Provisions in **Annex 1** of this Response. These protective provisions, and the assessment below, is based on the Applicant's draft of 21 October.

The key difference between the parties are as follows:

1. With regard to paragraph (a) in the definition of "apparatus" the Applicant refers to structures existing at the time of 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.
  - b. More generally the Applicant's provisions do not deal with the issue of works outside the easement strips which might affect pipes.
  - 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

	<p>proposed works.</p> <ul style="list-style-type: none"> <li>d. The Objectors have included new definitions of “relevant pipe” and “relevant protected crossing” in the attached Protective Provisions to deal with this issue.</li> <li>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.</li> <li>f. The Objectors have reduced the notice period down from 90 days to 45 days.</li> </ul> <p>4. With regard to defining the “pipeline corridor”:</p> <ul style="list-style-type: none"> <li>a. The Objectors accept that this can be defined by a plan.</li> <li>b. The Applicant has produced a first 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: <ul style="list-style-type: none"> <li>i. DEA’s pipe north of the A1085 roundabout; and</li> <li>ii. SABIC’s pipe through the centre of Plot 59a.</li> </ul> </li> </ul> <p>5. With regard to compulsory acquisition:</p> <ul style="list-style-type: none"> <li>a. The Applicant has introduced a concept of known and specifically “unknown rights”, the latter not benefitting from protection against extinguishment.</li> <li>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.</li> <li>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.</li> <li>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.</li> <li>e. If deeming provisions are to be included then the definition of specified</li> </ul>
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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.

6. Paragraph 23(5) and (6).

- a. The Objectors have added deeming provisions for approval of works details and compulsory acquisition, although in a slightly different form than the amendment proposed by the Applicant.
- b. 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.
- c. The Objectors have reduced the notice period down from 90 days.

7. Paragraph 23(9).

- a. 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.
- b. This is a principle which was included in the Dogger Bank Order (albeit in a different form).
- c. 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.
- d. The Objectors appreciate that the Applicant is not seeking powers of compulsory acquisition which would allow it to 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

	<p>determination in respect of compulsory acquisition:</p> <ol style="list-style-type: none"> <li>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.</li> <li>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.</li> </ol> <p>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 excuse the Applicant from liability under the indemnity. This provision is not included in the Applicant’s draft.</p> <p>11. Paragraph 32(2):</p> <ol style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>c. Such requirements include the following: <ol style="list-style-type: none"> <li>i. COMAH requirements (such as the need to maintain emergency access);</li> <li>ii. The Pipeline Safety Regulations; and</li> <li>iii. Statutory inspections.</li> </ol> </li> </ol> <p>In addition, the Objectors have amended the word “pipe” to “pipeline” throughout for the sake of consistency in respect of the term “pipeline corridor”.</p>
<p><b>PAR 2.1</b></p>	<p><b>PAR 2.1</b>  <b><i>Crossing of A1085 and Hot Metal rail route/access road</i></b>  <b>To: RBT/Tata Steel UK/The liquidators of SSI UK</b>  <b>To: RCBC</b>  <b>To: The Applicant and IPs seeking to protect pipeline and other underground assets</b>  <b>Please indicate whether you are able to provide any further evidence beyond the alternative options referred to in the Tata/SSI submission of 9 October 2015 to counter that put forward by the Applicant and accepted by pipeline operators as to why the conveyor cannot cross these corridors underground. The Applicant and any other concerned IP should comment on the 3 options shown in the 9 October 2015 submission from Tata/SSI.</b></p>
	<ol style="list-style-type: none"> <li>1. The section of undergrounding proposed in the Tata/SSI Submission of 9 October relates to a section of the proposed conveyor which would intersect</li> </ol>

	<p>with DEA's Breagh Pipeline.</p> <ol style="list-style-type: none"><li>2. 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 part of Tata/SSI as part of their objection as opposed to forming part of the Application.</li><li>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.</li><li>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.</li></ol>
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Bond Dickinson LLP  
6 November 2015

**ANNEX 1**

**THE OBJECTORS' PROPOSED PROTECTIVE PROVISIONS**

SCHEDULE 9

Article 34

PROTECTIVE PROVISIONS

FOR THE PROTECTION OF PIPELINE CORRIDOR AND PROTECTED CROSSINGS ETC.

*Benefit of protective provisions*

1. The following provisions of this Schedule shall have effect for the benefit of any owner and any operator 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 or giving access to the Wilton Complex and the pipeline corridor and any access road adjacent to or giving access to pipelines or protected crossings;

“apparatus” means pipelines, 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 and

(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-line for the purposes of Section 65(2) of the Pipeline-lines Act 1962<sup>1</sup>) properly appurtenant to the pipelines as are described in section 65(2) of the Pipeline-lines Act 1962;

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

(a) any restrictions on general access by owners and operators, 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 and operators (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 and operators; and

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



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

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

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

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

“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:

(i) with an interest in the pipeline corridor;

(ii) with rights in, on, under or over the pipeline corridor; or

(iii) 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; and

(c) in relation to the Wilton Complex, any owner or occupier in the Wilton Complex; and

(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 pipelines in or comprising the protected crossing; and

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

“pipeline corridor” means those parts of the Order shown shaded yellow on plans [...];

“pipeline(s)” means all:

(a) apparatus located in the pipeline corridor or in or comprising a protected crossing; or

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

“protected land” means:

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

“relevant pipeline” means a pipeline which may be affected by a relevant work;

“relevant protected crossing” means a protected crossing which may be affected by a relevant work;

“relevant work” means a work which may have an effect on the operation, maintenance, repair, replacement and/or abandonment and/or access to a pipeline 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; and
- (iii) [...] in relation to DEA UK SNS Limited,

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

(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
- or such other person as they may notify to the undertaker in writing;

“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 12; and
- (c) details of methods of excavation and any zones of influence it has calculated under paragraph 13; and

(d) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 14; and

(e) details of the location of any pipelines affected by the oversailing provisions in paragraph 15, including details of the proposed clearance; and

(f) 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

(g) such further particulars as an owner or operator may, within 90 days from the day on which any of the items listed in (a)-(f) above are submitted under the relevant paragraph of this Schedule, reasonably require.

*Authorisation of works details affecting pipelines or protected crossings*

3. (1) Before commencing any part of a relevant work the undertaker must submit to the owners and any operators of relevant pipelines and owners of relevant protected crossings the works details and obtain a written acknowledgement of receipt of those works details from the specified persons in relation to the relevant pipelines or relevant protected crossings.  
  
(2) The undertaker must as soon as reasonably practicable provide such further particulars as the owners or operators of any relevant pipeline or the owners of any relevant protected crossings may, within 45 days from the day on which initial works details are submitted under paragraph 3(1), reasonably require.
4. No part of a relevant work shall be commenced until one 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 owners and operators of all relevant pipelines and the owner of all relevant protected crossing; 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 owners or operators of a relevant pipeline 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 owners or operators of the relevant pipeline or the owner of the protected crossing may require to be made for:  
  
(a) the continuing safety and operation or viability of the relevant pipeline and the relevant protected crossings; and  
  
(b) the requirement for the owners and operators of the relevant pipeline and the owners of the relevant protected crossings to have:  
  
(i) uninterrupted and unimpeded emergency access with or without vehicles to all relevant pipelines and all relevant protected crossings at all times; and  
  
(ii) reasonable access with or without vehicles:  
  
(I) to construct, inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the relevant pipelines and relevant protected crossings; and  
  
(II) to ensure the continuing safety and operation or viability of their manufacturing facilities.

(2) Save as is provided in paragraph 5(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) 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 acknowledgement 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 acknowledgement 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 owners and any operators of relevant pipelines and owners of the relevant protected crossings a minimum of 28 days' notice prior to commencing a relevant work in order that an engineer can be made available to observe the relevant work 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 relevant pipelines with baseline data for any existing cathodic protection of the relevant pipelines; and

(b) carry out a pipeline settlement and stress analysis to demonstrate any potential pipeline movement will not present an integrity risk to relevant pipelines.

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

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 relevant 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 relevant pipeline in accordance with paragraph 3.
10. During construction an area, at least 1.5 metres either side 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) Where piling is required within 1.5 metres 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 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 relevant pipeline in accordance with paragraph 3.
13. (1) Where excavation of trenches (including excavation by dredging) adjacent to a pipeline affects its support, the relevant 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. (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 relevant pipeline.
- (2) Proposed methods and locations of compacting must be notified to the owner and operator of the relevant 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 14(1) and what further works may be necessary, and the results of such testing must be supplied to the owner and operator of the relevant pipeline.
- (4) Where it is shown by the testing under paragraph 14(3) to be necessary, the undertaker must carry out further compaction testing under paragraph 14(1) and paragraphs 14(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 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 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 14(1) to (4); or
- (b) the amount of any payment under paragraph 14(5),
- the undertaker or the owner or operator of the relevant pipeline may refer the matter to an expert for determination under article 42(2).
15. (1) A minimum clearance of 1,500mm must be maintained between any part of the authorised development and any pipeline (whether that part of the authorised development is parallel to or crosses the pipeline) unless otherwise agreed in writing with the owner of that pipeline.

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

*Monitoring for damage to pipelines*

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

(2) Where any damage occurs to a pipeline or a protected crossing, the owner and operator of the relevant pipeline or the owner of the protected crossing must be notified by the undertaker to enable repairs to be carried out.

(3) If damage has occurred pursuant to paragraph 16(2) the undertaker will, at the request and election of the owner or operator of the 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.

(3) Where testing has taken place under paragraph 16(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.

(4) 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.

17. (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 pipeline;

(c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 50 metres from the leakage; and

(d) assist emergency services as may be requested.

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

18. (1) Subject to paragraph 18(2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting owners, 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(2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority or the police.

*Access for construction and maintenance*

19. (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 and operators.

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

20. (1) In preparing a construction access plan under paragraph 19 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 or operator 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 paragraph 27(6) 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.

21. (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 and operators.

(2) Where an owner or an operator 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*

22. (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 and operators, including any disruption to access and supplies of utilities and other services that are required by them in order to carry out their operations.

23. (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 pipelines or access to pipelines.

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

(a) the consent in writing of the owner and, where the exercise of powers affects a pipeline, the consent in writing of the operator of that pipeline; or

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

(c) 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, the restriction in paragraphs 23(2) shall operate so that the said extinguishment or override of the said right or interest will not apply unless the owner in question (or as the case may be the operator) has given its consent or consent has been given by an expert under sub-paragraph (5) or is deemed to be given under sub-paragraph (7).

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

(6) If an owner or operator 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 or operator 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 pipelines:

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

(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 pipelines on the protected land as agreed by the owner and operator of the pipeline or in default of agreement determined by an expert under article 40(2);

(iii) replacement pipelines, that are materially and operationally no worse than the pipelines 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 pipeline have agreed that replacement pipelines have been provided and are available for use in accordance with sub-paragraph (iii) or in default of agreement determined by an expert under article 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 pipeline or in default of agreement determined by an expert under article 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 pipeline 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 article 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 and operators.

(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 and operators 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 and operators 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 article 40(2).

25. If an owner or operator 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 24, before such a power may be exercised:

(a) the owner or operator may refer the matter to an expert for determination under article 40(2); and

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

#### *Costs*

26. (1) The undertaker must repay to owners and operators all reasonable fees, costs, charges and expenses reasonably incurred by them in relation to these protective provisions including 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 12;

(d) considering the effectiveness of any compacting which has taken place under paragraph 14, 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 16;

(f) considering and responding to consultation in relation to the construction access under paragraph 19 and providing details of their programme for major works to the undertaker under paragraph 20;

(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 24,

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 and operators and any person who uses the pipeline for the conveyance of their product 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*

27. The undertaker must give written notice to the owners and the operators 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. The undertaker must give written notice to the owners and the operators 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. The undertaker must, when requested to do so by an owner or an operator, 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. The authorised development must be carried out in accordance with the methods and measures set out in the relevant constructability notes.

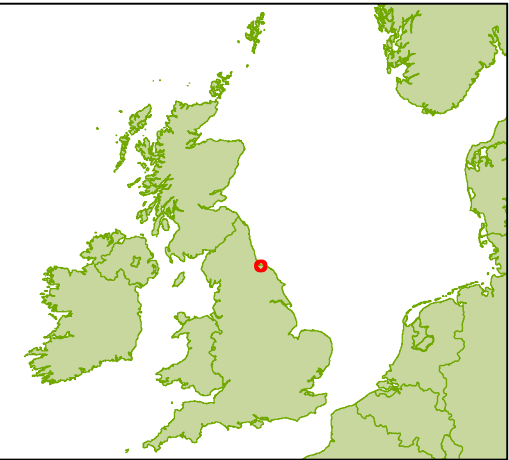
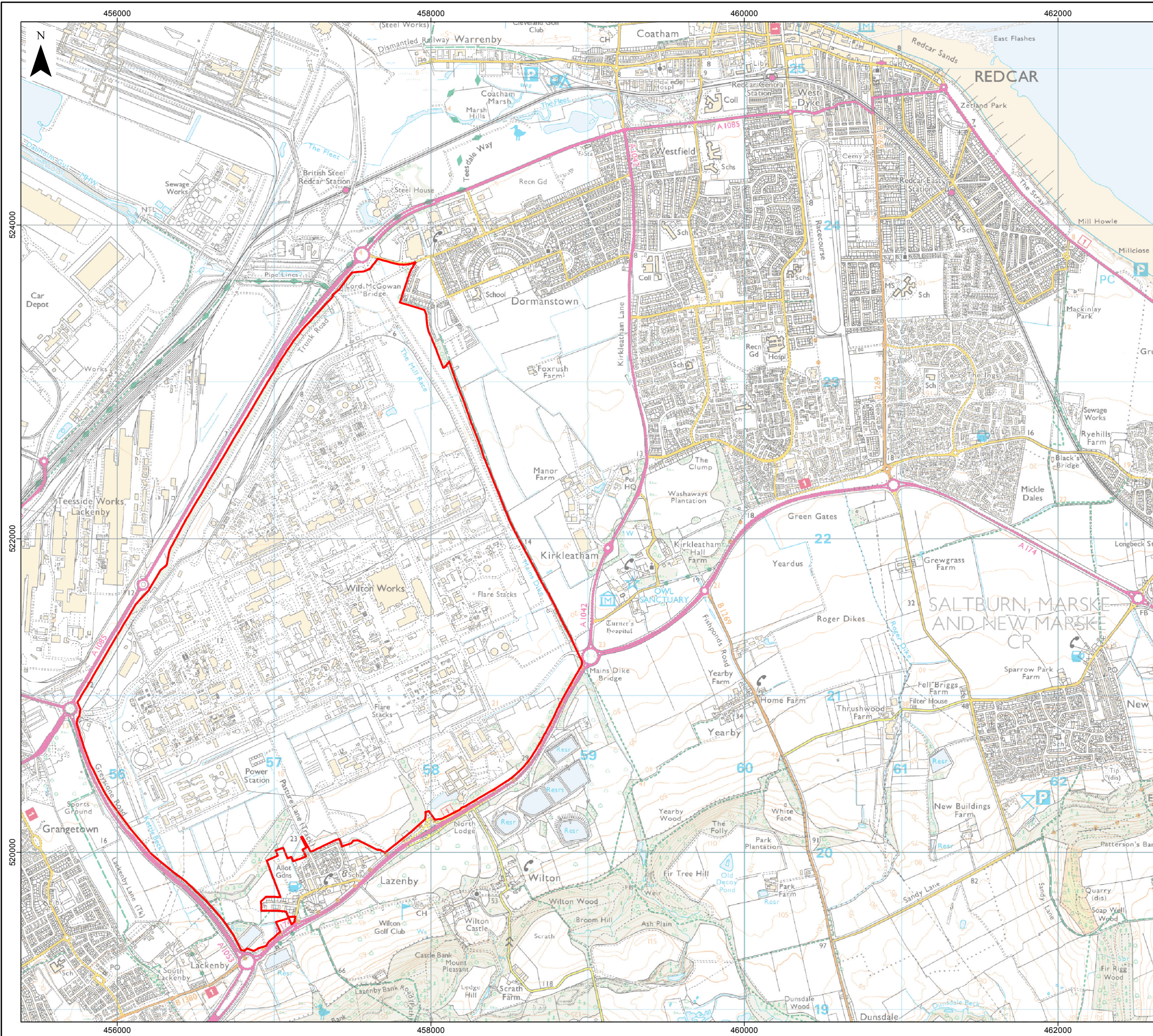
31. Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to the owners and the operators.

*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.

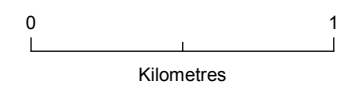
**ANNEX 2**  
**THE WILTON COMPLEX**





**Legend**  
 Wilton complex

# DRAFT



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PROJECT TITLE  
**DOGGER BANK TESSIDE OFFSHORE WIND FARM**

DRAWING TITLE  
**Location of Wilton Complex (Plan 1)**

VER	DATE	REMARKS	Drawn	Checked
1	22/01/2015	DRAFT	PR	##

DRAWING NUMBER:  
**T-MIS-0065-01**

SCALE 1:25,000 PLOT SIZE A3 DATUM OSGB36 PROJECTION BNG

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