

PLANNING ACT 2008

INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

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

---

DEADLINE 6

SUBMISSIONS ON BEHALF OF  
SABIC UK PETROCHEMICALS LIMITED  
(Unique Reference Number 10031257)

RELATING TO SCHEDULE 9 OF THE PROPOSED ORDER  
FOR THE PROTECTION OF THE PIPELINE CORRIDOR AND PROTECTED CROSSINGS

---

1. INTRODUCTION

- 1.1 This is the detailed submission requested by the Examining Authority from SABIC UK Petrochemicals Limited (**SABIC**) in respect of the proposed Schedule 9 Protective Provisions (**Protective Provisions**) in the proposed York Potash Harbour Facilities Development Consent Order (**the Draft Order**).
- 1.2 The form of this document is identical to the submissions of Huntsman Polyurethanes (UK) Limited (**Huntsman**) and INEOS UK SNS Limited (**INEOS**).
- 1.3 With effect from 30 November 2015 DEA UK SNS Limited (**DEA**) changed its name to INEOS UK SNS Limited. INEOS is the same legal company that previously constituted DEA. All previous objections representations and correspondence from or referring to DEA should be read by the Examining Authority in examining the above Order as being from, or referring to, INEOS.
- 1.4 In this document SABIC, Huntsman and INEOS are together referred to as **the Objectors**.
- 1.5 The purpose of this document is to set out the Objectors' outstanding concerns in relation to the form of the Applicant's proposed Deadline 6 Protective Provisions.
- 1.6 This Submission sets out the following:
  - 1.6.1 Statement of Issues (Section 2 and **Annex 2**);
  - 1.6.2 Case for including the Objectors' drafting in the final Order (Section 3);
  - 1.6.3 Draft Protective Provisions showing the Objectors' proposed amendments to the provisions being offered by the Applicant (**Annex 1**);
  - 1.6.4 Background to the Objectors' requirements for Protective Provisions in the Draft Order including an assessment of the tests in relation to compulsory acquisition and an assessment of the tests set out in Section 122 of the Planning Act 2008 (**Annex 3**);
  - 1.6.5 The Objectors' proposed Pipeline Corridor Plans (**Annex 4**);
  - 1.6.6 The Wilton Complex (**Annex 5**); and

1.6.7 A clean copy of the Objectors' Protective Provisions (**Annex 6**).

1.7 The Objectors are also making a parallel submission at Deadline 6 containing their comments in relation to the Examining Authority's Draft Development Consent Order. That submission does not address the Protective Provisions contained in Schedule 9 of the Draft Order.

## **2. STATEMENT OF ISSUES**

2.1 Some progress has been made with the Applicant in negotiating Protective Provisions which would properly and adequately protect the Objectors. Both sides have sought to make concessions where possible, however it has not been possible to find a form of words that will satisfy all of the Objectors' concerns. As a result the Objectors still have serious concerns about the form of the Protective Provisions which are being proposed by the Applicant.

2.2 It is understood that the Applicant will submit revised Protective Provisions at Deadline 6. **Annex 1** of this submission contains the Applicant's Deadline 6 Protective Provisions, modified to show as track changes the further amendments which the Objectors consider necessary in order to satisfy their concerns in relation to the Draft Order.

2.3 A Statement of Issues (ie setting out the issues which have not been agreed between the Applicant and the Objectors) has been agreed with the Applicant and is set out in **Annex 2**. The Objectors' concerns arising under each head of the Statement of Issues are examined in detail in Section 3 below.

## **3. CASE FOR THE OBJECTORS' DRAFTING**

### **3.1 The need to cover planned pipelines which are known about at the time of the pipeline survey but which are constructed after the pipeline survey**

3.1.1 Both SABIC and Huntsman have advanced plans for construction projects in the pipeline corridor.

3.1.2 SABIC is currently undertaking a major project to change the feedstock of the Cracker from naphtha to ethane. The extent and timing of the proposed works are set out in Section 1.3.2 of **Annex 3**. Some of these works are underway, with further works expected to take place in 2020 to coincide with the next overhaul of the Cracker. It is vital that these works coincide due to the fact that the Cracker is designed to operate continuously (see paragraph 1.3.3(c) of **Annex 3**) and the financial implications of disruption or delay to these works and of a shutdown of the Cracker are considerable and are set out in paragraphs 1.3.3(d) and (h) of **Annex 3**.

3.1.3 Huntsman is also proposing to carry out works to provide a new benzene pipeline (see Section 1.4.2 of **Annex 3**). There is a reasonable likelihood that this project will require works within Tunnel Number 2 and the Pipeline Corridor to install a new pipeline, although this is not certain at the moment as it may be possible to utilise an existing redundant pipeline, in which case the works would be limited to the connection point with, and modification of, System 97 within the pipeline corridor. This project is different from SABIC's in that it is a new project and not an upgrade of the apparatus Huntsman uses in its existing production operations. However it is directly linked with the existing nitrobenzene and aniline production operations by Huntsman at Wilton, and plans are at a relatively advanced stage. It is only reasonable that projects of this type, which may not be installed at the time of the pipeline survey, but are likely to be installed when the authorised development is carried out, are included in the pipeline survey so that they can be properly protected by the protective provisions.

3.1.4 The Objectors' requirement that proposed pipelines are protected by the Protective Provisions is designed to deal with a real and important issue for both SABIC and Huntsman, fundamental to their operations.

- 3.1.5 In order to ensure that the Protective Provisions deal equitably with the Applicant's need for certainty, and to ensure that the proposed Order can be implemented, the definition of "proposed pipeline" requires that there is a proposal in place at the time of the pipeline survey, the location of which can be identified at the time of that survey. This places the onus on the Objectors to ensure that there is certainty as to the location of their proposed pipelines at the time of the pipeline survey. It also provides a mechanism by which the undertaker can be made aware of such proposals.

## 3.2 The definition of "affected asset"

- 3.2.1 The main purpose of this definition is that it is to be used in paragraph 4 (and subsequent paragraphs which relate to the approval of works details by owners and operators of pipelines and protected crossings).
- 3.2.2 The Objectors' starting point in relation to the Draft Order was that if there is a pipeline in the Order land it should benefit from the full protection of the Protective Provisions. That is the position that would be taken by a statutory undertaker, and the Objectors are strongly of the view that their operations are broadly analogous to those of statutory undertakers in terms of their complexity and national and local importance (see paragraph 2.2.4(e) of **Annex 3**).
- 3.2.3 The Applicant subsequently raised concerns about the administrative burdens of seeking the approval of works details from affected owners and operators who have pipelines in the pipeline corridor.
- 3.2.4 The routing of the proposed conveyor through the pipeline corridor, with all of its technical difficulties and congested uses is not a situation of the Objectors' making, and they should not be expected to accept a lesser degree of protection simply because the Applicant has chosen to route its conveyor through this land.
- 3.2.5 Nevertheless, in response to the Applicant's comments, the Objectors have sought to compromise and to reduce the administrative burden on the Applicant by agreeing that if a pipeline could not be affected by the proposed works the undertaker would not have to provide works details to the owner and operator. In short, the Objectors have reluctantly agreed to introduce an element of subjective assessment of the effects of the proposed works in order to assist the Applicant.
- 3.2.6 Turning to the Applicant's proposed wording of the definition of "affected asset", and each of the limbs in paragraphs (a) to (e), the Objectors have the following concerns:
- (a) For underground pipelines the Applicant's provisions limit the protection to works which are to be carried out in the "easement width" reserved for that pipeline. This leads to an absurd situation where the undertaker would be under an obligation to provide works details in respect of works which could not affect the underground pipelines, but be under no obligation to provide works details for works which might seriously affect or damage the pipelines.
  - (b) Above-ground pipelines do not benefit from easement widths, and most of them are subject to general grants of rights to maintain existing assets in place which were granted when sites were sold off by ICI (see paragraph 1.1.1 of **Annex 3**). The Objectors are concerned that the definition preferred by the Applicant (which requires pipelines to be "physically affected") appears to seriously water down the protections they are seeking. In particular, the Objectors are keen to ensure that access can be taken to pipelines by all suitable machinery for the purpose of repair and maintenance (including emergency repairs) and the requirement that the pipeline itself be "physically affected" may not secure this protection.

- (c) With regard to works which might affect a protected crossing, the Applicant is proposing to seek approval only where works are within 25 metres of the protected crossing. The Objectors are not in a position to agree to a particular distance in this provision:
  - (i) Firstly they do not know the nature, method and extent of the particular works which the undertaker may be undertaking;
  - (ii) Secondly they do not have the in-house technical expertise to determine the likely effect of the proposed works, especially dredging works, on the protected crossings.
  - (iii) The Objectors' main concerns in this regard are dredging and the construction of the quay, and the Objectors' preferred wording reflects this with reference to Work No.1 or 2.
  - (iv) Equally, however, the Objectors would be prepared to revert to their original form of protection, which was for approval to be sought for "protected crossings where relevant works may have an effect on the operation, maintenance, repair, replacement and/or abandonment of the protected crossing and/or access to it".
- (d) With regard to proposed pipelines, please see Section 3.1 above. Assuming that the Secretary of State accepts that proposed pipelines will benefit from protection, it will be necessary to deal with the circumstances in which they will constitute affected assets. The most efficient way to achieve this would seem to be to include proposed pipelines where the timetable established under the pipeline survey suggests that they will be in place at the time when the relevant works under the Order are carried out.
- (e) Paragraph (e) of the definition of "affected asset" is different in nature to (a) to (d) because it relates to the exercise of "identified powers": powers of compulsory acquisition identified under paragraph 25(8) of the Protective Provisions. The Objectors submit as follows:
  - (i) Paragraphs 28(2), and (7) to (9), to which the definition of "identified powers" relates, refer to "pipelines" rather than to "apparatus" and "pipeline" would therefore seem to be a more appropriate term to use.
  - (ii) However perhaps a better view is that paragraph (e) of the definition of "affected asset" is not needed at all, as paragraphs 28(2), and (7) to (9) make no mention of "affected assets".

3.2.7 In addition, as a general point, the Objectors are concerned that the assessment of whether relevant works would have an effect on affected assets under paragraphs (a) to (d) of the definition of "affected asset" clearly takes into account whether the undertaker's works under the Order would affect the taking of access to the affected asset in question. In particular, the Objectors are seeking protection where works would not affect a pipeline directly, but would affect access to that pipeline.

### **3.3 The extent of definition of "apparatus"**

3.3.1 As originally drafted by the Applicant, Schedule 9 only protected "pipes" being pipes located in the pipeline corridor and all ancillary apparatus including such works and apparatus properly appurtenant to the pipes as are specified by section 65(2) of the Pipelines Act 1962".

- 3.3.2 The Pipeline Corridor essentially forms an extended part of the Wilton Complex, being run by the same company (Sembcorp) and being mainly (but not exclusively) used by the owners of facilities on the Wilton Complex. The Wilton Complex and Pipeline Corridor are complex areas of land with linkages between pipelines, production facilities, and watercourses. For example, ditches and watercourses within the Wilton complex provide an overflow mechanism for the saline reservoirs to the south of the Wilton Complex and which are associated with SABIC's Cracker (see Section 1.3.1 of **Annex 3**), whilst Dabholme Gut to the west of the northern part of the Pipeline Corridor forms the main site drain for the Wilton Complex.
- 3.3.3 In essence, the systems of handling drainage are an integral part of the Wilton Complex, and should be considered in the same way as pipelines.
- 3.3.4 This principle was accepted in definition of "apparatus" in the Dogger Bank A&B DCO.

### 3.4 The extent of land shown on the Pipeline Corridor Plan

- 3.4.1 The definition of "pipeline corridor" was originally contained in the Protective Provisions, but has been moved to the main body of the Order. Nevertheless the definition remains central to the Protective Provisions, which fundamentally protect "pipelines" which are "apparatus located in the pipeline corridor".
- 3.4.2 The "pipeline corridor" is defined by reference to the land shown shaded yellow on the "pipeline corridor plan" (again the definition has been removed to Article 2 of the draft DCO). The Objectors accept the principle that the pipeline corridor can be defined by a plan.
- 3.4.3 The Applicant has submitted a draft plan to the Planning Inspectorate (Document 3.15C), but this does not appear to cover all of the Objectors' assets. In particular, the extent of the yellow shading needs to be extended to cover:
- (a) INEOS's pipeline north of the A1085 roundabout; and
  - (b) SABIC's pipeline through the centre of Plot 59a.
- 3.4.4 Plans showing the additional areas of land which need to be covered are contained in **Annex 4** outlined in blue. INEOS's pipeline is marked "1" and SABIC's "2" on the plans.
- 3.4.5 Additional areas where there is apparatus adjacent to the Order limits are also outlined in blue on the plans at **Annex 4**. Although the Objectors themselves do not have interests to protect in those areas of land, the Protective Provisions are intended to be of application to all pipeline owners and operators and it is important that their interests are properly and similarly protected.
- 3.4.6 The Applicant seeks to make arbitrary distinctions between:
- (a) Those parts of pipelines which fall within the Order land (which are protected) and those which fall just outside (which are not); and
  - (b) Those parts of the pipelines which fall within the area where permanent works are to be carried out (which are protected) and those which fall within land which is to be taken temporarily (which are not).

This approach would be likely to lead to a scenario where an owner or operator of a pipeline some distance away from the works is asked to approve works details, whilst the owner of a pipeline closer to the works (but outside the pipeline corridor) is not.

- 3.4.7 The Objectors' requirement that the pipeline corridor plan is amended is again designed to deal with a real and important issue for both SABIC and INEOS in relation to the known location of pipelines and is a limited and sensible amendment.

### **3.5 The definition of the "pipeline survey"**

- 3.5.1 There are a number of differences between the Objectors and the Applicant in respect of the definition of the "pipeline survey".
- 3.5.2 The first difference is that the Objectors consider that the pipeline survey should be a complete survey and not just limited to establish what "is not known".
- 3.5.3 The second difference in paragraph (b) of the definition of "pipeline survey" relates to proposed pipelines (see the definition of "proposed pipelines" which cross references this paragraph). See Section 3.1 above, which sets out why proposed pipelines should be included in the pipeline survey.
- 3.5.4 The third difference provides that the survey should establish the access roads which are affected. This information is required to allow the undertaker to address the issue of what is and is not an affected asset on the basis of the effect on access to it (see paragraph 3.2.7 above). It will also allow the undertaker to establish where works might affect the Objectors' access rights for the purposes of Articles 22 and 23 of the draft Order.

### **3.6 The scope and process of the pipeline survey and recovery of costs relating thereto**

- 3.6.1 There are a number of differences between the Objectors and the Applicant in relation to paragraph 3 of the Protective Provisions.
- 3.6.2 In paragraph 3(1) the Applicant uses the term "authorised works". This term does not appear to be defined by the draft order and is therefore uncertain. The Objectors therefore consider that the term "authorised development" should be used: that is known and is certain.
- 3.6.3 In paragraph 3(2) the Objectors consider that the pipeline survey should be carried out in conjunction with the nominated representative of owners and operators:
- (a) The pipeline survey was included in the Protective Provisions primarily to limit the Objectors' concerns in relation to the Applicant's drafting in relation to "unknown rights" being excluded from the restriction on compulsory acquisition of rights and interests (see Section 3.8 below). As originally drafted, the concept of unknown rights placed the Objectors in a situation where they (as opposed to the Applicant) would have been at risk in the event of a failure of the Applicant's due diligence in establishing the extent of the Objectors' rights and interests, thus reversing the usual burdens applying in relation to due diligence. The purpose of the pipeline survey is therefore to allow the Objectors to have proper input to ensure that there is less chance of an accidental exclusion of the Objector's pipelines.
  - (b) Only the owners and operators will know their plans in relation to proposed pipelines and it is important that the pipeline survey takes account of this knowledge.
- 3.6.4 The Applicant has confirmed that in the event that the Secretary of State includes provision for the owners and operators to have a role in the pipeline survey they would wish to see the protections set out in sub paragraphs 3(1)(a) and 3(3) included in the Protective Provisions.

- 3.6.5 Notwithstanding the involvement of the owners and operators' nominated persons in the survey, the undertaker's surveyor will be responsible for carrying out the pipeline survey. Given what is potentially at stake in relation to the compulsory acquisition of unknown rights, it is important that the pipeline survey can be challenged by owners and occupiers in the event that it is incomplete and inaccurate. Paragraph 3(4) and (5) therefore make provision for expert determination.
- 3.6.6 The Objectors were concerned about the Applicant's drafting of paragraph 3(3) which essentially requires them to carry out their own survey in order to establish whether the Applicant's survey is incomplete or inaccurate. This is exacerbated by the 30 day period allowed to them to carry out this work.
- 3.6.7 Finally, the Objectors consider that the undertaker should pay the costs of owners and operators incurred in relation to the carrying out of the pipeline survey. The Applicant has struck out this provision on the basis that the owners and operators will be being provided with a free survey of their rights and assets. The Objectors do not consider that this argument holds up in practice. The Objectors' involvement in the pipeline survey would be occasioned solely as a result of the undertaker's proposed works. It is notable that SABIC and Huntsman have operated their pipelines since the breakup of ICI in the 1990s without previously needing to undertake such a survey.

### **3.7 Whether the minimum clearance should relate to "pipelines" or just "affected assets"**

- 3.7.1 The minimum clearance provision is contained in paragraph 17 of the Protective Provisions. The purpose of this provision is to ensure that there is sufficient room above pipelines to allow the pipeline to be properly repaired and maintained.
- 3.7.2 The Objectors consider that paragraph 17 should refer to pipelines for two main reasons:
- (a) Firstly the definition of "pipeline" is broader than "affected asset". It refers to any pipeline in the pipeline corridor. The Objectors consider that paragraph 17 should be an absolute restriction to protect all pipelines and that it is not appropriate to limit it to affected assets.
  - (b) Secondly the term "affected asset" is generally only used in circumstances where works details must be approved, and that is not the case in paragraph 17. The one exception to this rule is paragraph 18 which relates to monitoring of affected assets, the rationale being that the monitoring associated with the carrying out of the works should have some limitation; however, please note that the related paragraph 19 which provides for the repair of damaged pipelines is not limited to affected assets.

### **3.8 The inclusion of Paragraph 25(9) (replacement assets and rights)**

- 3.8.1 The Protective Provisions contain various provisions designed to protect the Objectors from the effect of the identified powers (ie powers containing elements of compulsory acquisition).
- 3.8.2 The undertaker has consistently indicated to the Objectors that it is not its intention to compulsorily acquire the Objectors' rights or interests in the pipeline corridor.
- 3.8.3 However it is vitally important to note that the Protective Provisions stop some distance short of containing an outright restriction on the acquisition of the Objectors' rights and interests:
- (a) Paragraph 25(1) provides that Articles 24 and 25 will not be used in relation to the Objectors' rights in the pipeline corridor, but this restriction does not apply to

“unknown rights” (ie rights which are not known to the Applicant at the date of the Order or discovered as part of the pipeline survey).

- (b) Paragraph 25(2) provides that the undertaker may acquire “unknown rights” with the consent of the owner of the right. However where consent is withheld the undertaker may refer the matter to an expert who will determine whether the consent has been unreasonably withheld.
- (c) 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.
- (d) In assessing whether consent has been unreasonably withheld the expert will be under a duty to carry out a balancing exercise considering all of the factors under Article 40(e) of the Draft Order. It is important to understand that it is not automatically reasonable for the Objectors to withhold consent simply on the basis that their pipelines (or broader rights and interests) would be affected.

3.8.4 Whilst the Objectors remain under threat of compulsory acquisition, it is vital that the Protective Provisions should provide that before such powers are exercised new apparatus (and replacement rights for that apparatus) should be provided by the Applicant before the power can be exercised.

3.8.5 This is a principle which was included in the Dogger Bank A&B DCO, albeit in a different form (see paragraph 8(2) of Part 6 of Schedule 12 of that order).

3.8.6 The Objectors appreciate that the Applicant is not seeking powers of compulsory acquisition which would allow it to secure replacement rights, but in light of the importance of the Objectors’ respective undertakings (see Section 1 of **Annex 3**) and the balance of the public interest test (see Section 2 of **Annex 3**) they would expect the Order to provide that such rights must be procured by the Applicant in the event that the Objectors’ pipes or protected crossings were affected by the Order.

3.8.7 To date the Applicant has attacked paragraph 25(9) as being “overkill” and unnecessary. What they have not done is to rule out exercising such powers, or grapple with the issue of why it would be reasonable to sever the Objectors’ pipelines if they did so, given the Objectors’ case set out in the General Background in **Annex 3**.

### **3.9 Paragraph 26 - Whether, if owners etc dispute the quantum/terms of the insurance the development can commence prior to the expert determination being completed**

3.9.1 The Applicant and the Objectors are in agreement that the undertaker should put in place a suitable and adequate policy of insurance. It is also agreed that where there is a dispute about the quantum or terms of the insurance policy an owner or operator should be able to refer the matter to expert determination.

3.9.2 However the Applicant’s proposed drafting provides that it should be allowed to proceed with works in advance of the result of any expert determination relating to insurance being known.

3.9.3 The Objectors consider this provision to be wholly unacceptable: it is both inequitable and against the rules of natural justice.

3.9.4 The principle accepted throughout the Protective Provisions in relation to other matters is that if the matter is referred to an expert then the taking of the relevant action should await the results of expert determination. The Applicant’s proposed drafting could lead to a situation whereby the undertaker could sidestep the insurance provision by



carrying out and completing works in advance of the expert making their determination, thereby side-stepping the Protective Provisions entirely.

3.9.5 A clear timetable for expert determination is set out in Article 40 of the Draft Order, and the scope for undue delay to be caused by the process of expert determination is therefore limited to what the Applicant considers is reasonable.

3.9.6 In summary, the Objectors consider that where the quantum or terms of the insurance policy is referred to an expert under Article 27 of the Draft Order, the undertaker should have to wait for the expert to publish his determination and comply with it before carrying out works.

### **3.10 The inclusion of parties whose material is carried through the pipelines in the indemnity provisions**

3.10.1 The Applicant's indemnity in paragraph 28(2) of the Protective Provisions does not cover a situation where one company owns and/or manages a pipeline and production facility and another company in the same group owns the chemical which is in the pipe and is being processed.

3.10.2 In such a situation it is unrealistic to expect the owner of the product to sue the owner/operator of the pipeline through the Courts in order that they incur a loss which would be covered by this indemnity.

3.10.3 The principle that the undertaker will indemnify a pipeline owner for its consequential losses is established in paragraph 28(2), and that would extend to their losses as owner of the contents of the pipelines.

3.10.4 The Applicant has not provided any cogent explanation as to why the principle already established in paragraph 28(2) should not equally apply where such a company does not happen to own the pipelines themselves.

### **3.11 Conclusion**

3.11.1 The Objectors' Protective Provisions are a proportionate and reasonable response to the failure of the Applicant's draft Protective Provisions to deal with a number of important issues.

3.11.2 The need for robust and adequate Protective Provisions to protect the Objectors' interests is set out in detail in Section 2.2.6 of the General Background in **Annex 3**.

3.11.3 In the event that the Secretary of State grants development consent for the authorised development, the Objectors strongly submit that Protective Provisions be included in the final Order in the form set out in **Annex 6** and including all of the Objectors' suggested amendments.

Bond Dickinson LLP  
16 December 2015

**ANNEX 1**

**SCHEDULE 9 PROTECTIVE PROVISIONS INCLUDING THE OBJECTORS' PROPOSED  
AMENDMENTS SHOWN AS TRACK CHANGES**

## SCHEDULE 9

Article 34

### FOR THE PROTECTION OF PIPELINE CORRIDOR AND PROTECTED CROSSINGS

#### *Benefit of protective provisions*

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

#### *Interpretation*

2. In this Schedule—

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

“affected asset(s)” means—

(a) underground pipelines where relevant work(s) are to be carried out which ~~within the easement widths relating to that apparatus~~ may have an effect on the operation, maintenance, repair, replacement and/or abandonment of and/or access to the pipeline concerned or its easement width;

(b) pipelines on or above ground ~~which would be physically affected by the~~ where relevant work(s) are to be carried out which may have an effect on the operation, maintenance, repair, replacement and/or abandonment of and/or access to the pipeline concerned;

(c) protected crossings in respect of works associated with Work No.1 or 2 or where where relevant work(s) are to be carried out within 25 metres of the protected crossing concerned; ~~and~~

(d) proposed pipelines which are likely (on the basis of the timetable contained in the completed pipeline survey) to have been installed at the time when relevant work(s) are carried out, where the relevant work(s) may have an effect on the construction, operation, maintenance, repair, replacement and/or abandonment of and/or access to the proposed pipeline concerned; and

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

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

(a) any structure existing at the time when a particular action is to be taken under this Schedule in which apparatus is or is to be lodged or which will give access to apparatus;

(b) any cathodic protection, coating or special wrapping of the apparatus; and

(c) all ancillary apparatus (whether or not comprising a pipe-line for the purposes of Section 65(2) of the Pipe-lines Act 1962(a)) properly appurtenant to the pipelines as are described in section 65(2) of the Pipe-lines Act 1962;

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

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

“cats pipeline critical construction activities” means the following authorised works—

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

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

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

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

“easement width” means in respect of each pipeline [or proposed pipeline](#) the easement width shown on the conveyor route plans as adjusted if necessary (in respect of pipelines shown on the conveyor route plans) or added to (in respect of pipelines constructed after the date of this Order) as a result of the pipeline survey;

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

“major works” means works by any person requiring the closure, diversion or regulation of any roads serving the Wilton Complex [or the pipeline corridor](#);

“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 a pipeline in the pipeline corridor; or
  - (ii) with rights in, on, under or over the pipeline corridor in respect of a pipeline;
  - (iii) a pipeline or proposed pipeline in, on, under or over the pipeline corridor;
- (b) in relation to the access roads, any person—
  - (i) with an interest in the access roads; or
  - (ii) with private rights of way on or over the access roads;
- (c) in relation to the protected crossings, any person—
  - (i) with an interest in the protected crossings;

- (ii) with rights in relation to the protected crossings; or
- (iii) with pipelines in or comprising the protected crossings; and
- (d) in relation to protected land means any person falling within paragraphs (a) to (c) above.

“pipeline(s)” means the apparatus located in the pipeline corridor, or in or comprising a protected crossing ~~at the time when the pipeline survey is carried out;~~

“pipeline survey” means a survey of the pipeline corridor and the protected crossings to establish ~~if not known:~~

- (a) the precise location of the pipelines and the protected crossings;
- (b) the location of any new or diverted pipeline which an owner or operator proposes to install and the proposed timetable for its installation;
- (c) the specification of the pipelines, proposed pipelines and protected crossings identified under paragraphs (a) and (b) including, ~~where relevant,~~ their composition, diameter, pressure and the products they are used or to be used to convey;
- (d) any special requirements or conditions relating to the pipelines or proposed pipelines which differ from the requirements or conditions applying to standard pipelines of that type;
- (e) the access roads used to gain access to the pipelines, proposed pipelines or protected crossings;
- (f) the precise location of any easement widths or rights (where it is possible to establish this).

“proposed pipeline” means a new or diverted pipeline which, at the time of the pipeline survey, an owner or operator proposes to install and which is contained in the completed pipeline survey in accordance with paragraph (b) of the definition of “pipeline survey”.

“protected crossings” means—

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

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

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

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

“specified persons” means—

- (a) the following—
  - (i) Company Secretary, SABIC UK Petrochemicals Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF in relation to SABIC UK Petrochemicals Limited;
  - (ii) Operations Manager, Huntsman Polyurethanes, PO Box 99, Wilton, Redcar, TS10 4YA in relation to Huntsman Polyurethanes (UK) Limited;
  - (iii) Company Secretary, INEOS UK SNS Limited, 4<sup>th</sup> Floor, 90 High Holborn, London WC1V 6LJ in relation to INEOS UK SNS Limited; and
  - (iv) [ ] in relation to CATS North Sea 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
- (iv) such other person as they may notify to the undertaker in writing.

“unknown rights” means rights which are:

- (a) not known at the date of the Order; or
- (b) identified as unknown in the book of reference,  
but not including any rights relating to pipelines (or access to pipelines) where a pipeline or proposed pipeline is shown on the pipeline survey;

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

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

“works details” means the following—

- (a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned and/or their location;
- (b) details of any proposed temporary crossing points under paragraph 10;
- (c) details of methods and locations of any piling proposed to be undertaken under paragraph 14;
- (d) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 15;
- (e) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 16;
- (f) details of the location of any pipelines affected by the oversailing provisions in paragraph 17, including details of the proposed clearance;
- (g) details of the method location and extent of any dredging, a technical assessment of the likely effect of the dredging on the protected crossings and any mitigation measures which are proposed to be put in place to prevent damage to the protected crossings;
- (h) details of the undertaker and their principal contractors’ management of change procedures;
- (i) details of the traffic management plan, which plan shall include details of vehicle access routes for construction and operational traffic and which shall assess the risk from vehicle movements and include safeguards to address identified risks;
- (j) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to the cats pipeline;
- (k) details (to include a dynamic analysis undertaken by the undertaker and provided to the cats pipeline operator) of the conveyor and conveyor support structure and the measures to be undertaken to ensure vibration does not impact on the cats pipeline;
- (l) details of the lifting study during the construction phase, which shall include a technical assessment of the protection of underground assets and which study shall provide for individual lift plans;
- (m) details of the lifting study during the operational phase, which shall include a technical assessment of the protection of underground assets and which study shall provide for individual lift plans;
- (n) details of the means by which the entirety of the cats pipeline can be properly inspected and if necessary repaired during the construction and operation of the authorised development which shall provide for an excavation to a depth of 0.6 metres below the cats pipeline and 2 metres either side of the centreline of the cats pipeline consistent with the relevant constructability notes;

- (o) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators; and
- (p) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to the cats pipeline cathodic protection system and the proposed remedial works.
- (q) any further particulars provided pursuant to paragraph 4(2)

*Pipeline survey*

3.—(1) Before commencing any part of the authorised development in the pipeline corridor or which may affect a protected crossing the undertaker must:

(a) serve a notice on the specified persons inviting them to participate in the pipeline survey and giving them not less than 45 days' notice of the need to confirm their intention to participate in the pipeline survey and to nominate a representative for the pipeline survey;

(b) carry out and complete the pipeline survey; and

(c) comply with sub-paragraph (3) below.

(2) The pipeline survey must be undertaken by a surveyor who is a member of the Royal Institute of Chartered Surveyors with at least 10 years experience of such surveys in conjunction with any representative of an owner or operator nominated under sub-paragraph (1).

(3) When the pipeline survey has been completed the undertaker must serve a copy of the pipeline survey on the owners and operators of the pipelines and protected crossings and invite them to advise the undertaker within 28 days of receipt of the survey if they consider that the pipeline survey is incomplete or inaccurate and if so in what respect following which the undertaker will finalise its pipeline survey any specified person who nominated a representative under paragraph (1)(a) unless the specified person has confirmed in writing that they instead wish to receive a written notice in which case the undertaker must instead serve a written notice.

(4) If:

(a) an owner or operator who nominated a representative under sub-paragraph (1)(a); or

(b) the undertaker

considers that the pipeline survey is incomplete or inaccurate they may, within 45 days of the service of the pipeline survey or, as the case may be, the written notice on the specified person under sub-paragraph (3), refer the matter to an expert for determination under article 40(2).

(5) If the matter is referred to an expert under sub-paragraph (3), the undertaker shall not commence any part of the authorised development in the pipeline corridor or which may affect a protected crossing until the expert has given his determination.

*Authorisation of works details affecting pipelines or protected crossings*

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

(2) The undertaker must as soon as reasonably practicable provide such further particulars as the owner or operator of any affected asset may, within 45 days from the receipt of the works details under paragraph 4(1), reasonably require.

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

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

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

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

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

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

(4) Where there has been a reference to an expert in accordance with paragraph 7(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 7(3).

**7.—**(1) In the event that—

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

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

(2) In the event that—

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

the undertaker may refer the matter to an expert for determination under article 40(2) and paragraph 33 of this Schedule.

(3) Where the matter is referred to an expert under paragraph 7(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 6(1).

(4) Where the undertaker considers that the owner or operator of the cats pipeline has unreasonably withheld its authorisation under paragraph 6(2) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by



the secretary of the United Kingdom Onshore Pipeline Association (UKOPA) for determination under article 40(2) and paragraph 33 of this Schedule.

*Notice of works*

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

*Further provisions about works*

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

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

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

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

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

(2) Details of proposed temporary crossing points referred to in sub-paragraph (1) must be notified to the owner and operator of the pipeline in accordance with paragraph 4.

**11.** During construction, an area equivalent to the easement widths of the pipelines (taken from the actual location of the pipelines shown on the pipeline survey) must be fenced off using some form of visual indication such as netlon fencing or "heras" type fence panels. Suitable signage warning of the danger of live pipelines must be erected at a minimum distance of every 50 metres.

**12.** No explosives must be used within the protected land.

**13.—**(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.

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

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

(1) Any proposed piling operations within—

- (a) 10 metres either side of the centreline of the cats pipeline will require the crown of the pipeline to be physically exposed, so its location can be confirmed with the asset operator or owner as appropriate and where within 2 metres of the centreline of the cats pipeline it shall be exposed by hand digging only; and
- (b) 5 metres either side of the centreline of the cats pipeline and, in addition to the obligations in paragraph 14(2)(a), will require excavation to be carried out to a level below the depth of the pipeline, to ensure that no materials are present that could damage the pipeline if disturbed, in the presence of the asset owner or operator as appropriate.

- (2) All excavations within 2 metres of the centreline of the cats pipeline must be hand dug.
- (3) All piling within 10 metres of the centreline of the cats pipeline must be non-percussive.

**15.—**(1) Where excavation of trenches (including excavation by dredging) adjacent to a pipeline affects its support, the pipeline must be supported in a manner approved by the owner and operator of the relevant pipeline.

(2) Where the undertaker proposes to carry out excavations which might affect above ground structures such as pipeline supports in the pipeline corridor, the undertaker must calculate the zone of influence of those excavations and provide those calculations to the owner and operator of the pipeline under paragraph 4.

**16.—**(1) Where a trench is excavated across or parallel to the line of a pipeline or proposed pipeline, the backfill must be adequately compacted to prevent any settlement which could subsequently cause damage to the pipeline or proposed pipeline.

(2) Proposed methods and locations of compacting must be notified to the owner and operator of the pipeline or proposed pipeline in accordance with paragraph 4.

(3) Compaction testing must be carried out once back filling is completed to establish whether the backfill has been adequately compacted as referred to in paragraph 16(1) and what further works may be necessary, and the results of such testing must be supplied to the owner and operator of the pipeline or proposed pipeline.

(4) Where it is shown by the testing under paragraph 16(3) to be necessary, the undertaker must carry out further compaction testing under paragraph 16(1) and paragraphs 16(1), (2) and (3) shall continue to apply until such time as the backfill has been adequately compacted.

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

(6) In the event of a dispute as to—

- (a) whether or not backfill has been adequately compacted under paragraphs 16(1) to (4); or
- (b) the amount of any payment under paragraph 16(5),

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

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

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

#### *Monitoring for damage to pipelines*

**18.—**(1) When carrying out the relevant work the undertaker will monitor the relevant affected assets to establish whether damage has occurred.

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

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

- (a) afford the owner or operator of the affected asset all reasonable facilities to enable it to fully and properly repair and test the affected asset 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 affected asset as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of the owner or operator of the affected asset to have effectively repaired the affected asset before any backfilling takes place.

(4) Where testing has taken place under paragraph 18(2)(b), the undertaker must (save where an owner or operator of the affected asset agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work sub-paragraphs (2) to (4) of this paragraph will apply to that damage.

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

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

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

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

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

**20.—**(1) Subject to paragraph 20(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 pursuant to paragraph 8 of this Schedule; 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 20(2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

*Access for construction and maintenance*

**21.—**(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 operators of the pipelines and any owners and occupiers of any properties within the Wilton Complex whose access to their property is likely to be affected by those works.

(2) The undertaker must take account of the responses to any consultation referred to in paragraph 21(1) before approving the construction access plan.

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

- (a) establish the programme for major works in the pipeline corridor and the Wilton Complex and plan the construction or maintenance works to prevent or (if such conflict cannot be reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and
- (b) establish where an owner of the protected land or operator of a pipeline or proposed pipeline or any owners and occupiers of any properties within the Wilton Complex whose access to their property is likely to be affected by those works has a reasonable expectation to exercise access rights over particular access roads in respect of which rights are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby that expectation can be met.

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

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

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

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

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

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

#### *Restriction on exercising powers*

**24.** (1) The undertaker must not in the exercise of the powers conferred by this Order acquire, appropriate, extinguish, suspend or override any rights in the protected land if the authorised development can reasonably and practicably be carried out without such acquisition, appropriation, extinguishment, suspension or override.

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

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

(2) Without prejudice to paragraph 25(1) the undertaker must not exercise the identified powers—

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

(3) Where an identified power provides for the undertaker to automatically extinguish or override a right or interest of an owner of the protected land, the restriction in paragraph 25(2) shall operate so that the said extinguishment or override of the said right or interest will not apply unless the owner of the right or interest (and where the right or interest is in a pipeline the operator of the pipeline) has given its consent or consent has been given by an expert appointed under article 24(2) or is deemed to be given under sub-paragraph (7).

(4) Where a person is asked to give consent under this paragraph 25(2), the consent must not be unreasonably withheld.

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

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

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

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

- (a) article 10 (street works);
- (b) article 11 (temporary stopping up of streets);
- (c) article 12 (access to works);
- (d) article 14 (discharge of water);
- (e) article 16 (authority to survey and investigate the land);
- (f) article 24 (compulsory acquisition of rights) insofar as the exercise of such powers is not excluded by paragraph 24 (1) and paragraph 25(1);
- (g) article 25 (power to override easements and other rights) insofar as the exercise of such powers is not excluded by paragraph 24 (1) and paragraph 25(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 in circumstances:

(a) Where the exercise would permanently affect an owner's right for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of a pipeline or proposed pipeline unless:

(i) the undertaker has provided to the affected owner new rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal or as the case may be replacement of the pipeline or proposed pipeline;

(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) where a pipeline is to be moved a replacement pipeline, that is materially and operationally no worse than the pipeline belonging to the owner affected by the exercise of the identified power, has been constructed in accordance with, and in the location 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 pipeline 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).

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

(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 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 or proposed 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*

26.—(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 28 in accordance with the terms and level of cover notified under paragraph 26(2) or, in the case of dispute, in accordance with the terms and level of cover determined by an expert under article 40(2), and evidence of that insurance must be provided on request to owners of the protected land and operators of pipelines and proposed pipelines.

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

(3) The undertaker must maintain insurance in relation to the authorised development affecting owners of the protected land and operators of pipelines and proposed pipelines during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover specified in paragraph 26(2) or at such level as may otherwise be determined by an expert under article 40(2).

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

- (a) the owner of the protected land or operator of a pipeline or proposed pipeline may refer the matter to an expert for determination under article 40(2); and
- ~~(b)~~ the undertaker ~~may put in place an insurance policy it considers to be appropriate and continue with the authorised development whilst the determination under article 40(2) is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination~~ must not:
  - (i) commence the authorised development until that determination has been provided and an insurance policy has been put in place which is in accordance with that determination; or
  - ~~(b)(ii)~~ (as the case may be) change the terms or level of the insurance policy until that determination has been provided and the revised terms and level of the insurance policy must be in accordance with that determination.

#### *Costs*

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

- (a) the carrying out of the pipeline survey under paragraph 3;
- ~~(a)(b)~~ \_\_\_\_\_ authorisation of works details submitted by the undertaker under paragraph 4 and the imposition of conditions under paragraph 6;
- ~~(b)(c)~~ \_\_\_\_\_ the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 8;
- ~~(c)(d)~~ \_\_\_\_\_ responding to the consultation on piling under paragraph 14;
- ~~(d)(e)~~ \_\_\_\_\_ considering the effectiveness of any compacting which has taken place under paragraph 16, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;
- ~~(e)(f)~~ \_\_\_\_\_ the repair and testing of a pipeline or protected crossing under paragraph 18;
- ~~(f)(g)~~ \_\_\_\_\_ considering and responding to consultation in relation to the construction access plan under paragraph 21 and providing details of their programme for major works to the undertaker under paragraph 22;
- ~~(g)(h)~~ \_\_\_\_\_ dealing with any request for consent or agreement by the undertaker under paragraph 25; and
- ~~(h)(i)~~ \_\_\_\_\_ considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 26,

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

(2) The undertaker must indemnify and keep the owners of the protected land and operators of the pipelines and proposed pipelines, and any person who uses the pipeline for the conveyance of chemicals or other materials, indemnified against all reasonable costs, charges, damages and expenses, and against consequential loss and damage, which may be occasioned or reasonably incurred by the owners and operators—

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

and the fact that any act or thing may have been done by the owner of protected land or operator of a pipeline [or proposed pipeline](#) on behalf of the undertaker or in accordance with plans approved by or on behalf of the owner or operator or in accordance with any requirement of the engineer appointed by the owner or operator or under his supervision will not (if it was done without negligence on the part of the owner or operator or of any person in their employ or of its contactors or agents) excuse the undertaker from any liability under the provisions of this paragraph 28(2).

(3) An owner or operator must give the undertaker reasonable notice of any claim or demand under paragraph 28(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*

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

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

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

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

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

**33.** Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to the owners of the protected land and the operators of the pipelines [and proposed pipeline](#).



*Expert Determination*

**34.**—(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.

## **ANNEX 2**

### **STATEMENT OF ISSUES**

1. The need to cover planned pipelines which are known about at the time of the pipeline survey but which are constructed after the pipeline survey.
2. The definition of "affected asset".
3. The extent of definition of "apparatus".
4. The extent of land shown on the Pipeline Corridor Plan.
5. The definition of the "pipeline survey".
6. The scope and process of the pipeline survey and recovery of costs relating thereto.
7. Whether the minimum clearance should relate to "pipelines" or just "affected assets".
8. The inclusion of Paragraph 25(9) (replacement assets and rights).
9. Paragraph 26 - Whether, if owners etc dispute the quantum/terms of the insurance the development can commence prior to the expert determination being completed.
10. The inclusion of parties whose material is carried through the pipelines in the indemnity provisions.

## ANNEX 3

### GENERAL BACKGROUND

#### 1. BACKGROUND

##### 1.1 The Wilton Complex

- 1.1.1 SABIC and Huntsman operate chemical manufacturing facilities at the Wilton Complex (see the Plan at **Annex 5**). The Wilton Complex was formerly wholly-owned and operated by ICI, but from the 1990s, with the fragmentation of ICI it has been a multi-occupancy site. Shared facilities on site are owned and operated by Sembcorp.
- 1.1.2 The Wilton Complex is criss-crossed by corridors which are used to transfer raw materials, manufactured produce, utilities and waste around the site. Much of the apparatus running through these corridors is owned by the occupiers of the Wilton Complex (such as SABIC and Huntsman), but some of it is owned by Sembcorp as a supplier to its tenants or utility companies such as Northumbrian Water Limited.

##### 1.2 The Pipeline Corridor

- 1.2.1 The corridors within the Wilton Site connect with a pipeline corridor which heads north out of the Wilton Site. This was designed to link the Wilton Complex and Tunnel Number 2 (and a further tunnel known as Tunnel Number 1) under the River Tees and beyond that to other facilities on the northern banks of the Tees.
- 1.2.2 The pipeline corridor also now carries INEOS's pipeline, and associated cables, to the point where they pass under the riverbed of the Tees.
- 1.2.3 The specific parts of the pipeline corridor affected by the Order are shown on the plan at **Annex 4 (the Pipeline Corridor)**. There is a dispute between the Objectors and the Applicant as to the extent of the Pipeline Corridor (see Section 3.4 of the Main Submission above).

##### 1.3 SABIC's Facilities

###### 1.3.1 General

- (a) SABIC has two principal facilities at the Wilton Complex:
- (i) The **Cracker**, which mainly produces ethylene. A project is currently underway to modify the Cracker into an ethane gas cracker using shale gas-based feedstock.
  - (ii) The **LDPE Plant** which produces low density polyethylene, a thermoplastic made from ethylene.
- (b) Approximately half of the ethylene made by the Cracker is supplied to the LDPE Plant.
- (c) By-products of the Cracker are further processed on other units to produce benzene, cyclohexane and butadiene.

- (d) The Cracker and LDPE Plant are linked via the Pipeline Corridor to SABIC's facilities to the north of the Tees, in particular its ship loading and unloading facilities at its North Tees Works.
- (e) SABIC transfers naphtha (soon to be ethane) from its jetties at the North Tees Works along the Pipeline Corridor to the Wilton Complex, and then transfers ethylene in the opposite direction for distribution to purchasers.

### 1.3.2 Works to SABIC's Facilities

- (a) SABIC is currently carrying out works to create new ethane import infrastructure. This will include an import terminal and storage tank at SABIC's North Tees site and a new interplant pipeline between North Tees and the Cracker along the Pipeline Corridor. These works are due to be completed in 2016.
- (b) The next overhaul of the Cracker, a major engineering operation involving over 1,000 additional personnel and 30 cranes, is due in 2020.
- (c) This overhaul will also facilitate the second phase of the change in feedstock for the Cracker from naphtha to ethane, involving significant changes which are required in order to process higher rates of the new feedstock.
- (d) These on-plant changes will include the installation of a new distillation column and ancillaries at the south edge of the plant as well as changes to existing furnaces, compressors, heat exchangers and control systems.

### 1.3.3 SABIC's operations

- (a) SABIC employs approximately 450 people at the Wilton Complex of whom 300 are employed at the Cracker.
- (b) Following the change in Cracker feedstock from naphtha to ethane these numbers will remain broadly the same.
- (c) The Cracker is designed to operate 24 hours a day, seven days a week, only being shut down for planned overhauls.
- (d) In the event of the Cracker being taken offline by an interruption to supply it cannot simply be restarted. It would have to be drained and reset and it would take approximately 10 to 12 days to bring it back into operation. This has major ramifications in terms of potential losses incurred in the event of such an interruption.
- (e) Based on IHS Chemical data, SABIC's modelled integrated Cracker margins (ie sales revenue less costs) suggest:
  - (i) For the period 2014 to 2015, a margin of £500,000 per day.
  - (ii) After the change in feedstocks in 2020 margins are estimated to be of the order of £1,000,000 per day.
- (f) In addition to this loss, in the event of a controlled shutdown of the Cracker there would be additional shutdown costs of typically £5,000,000
- (g) Fixed costs for SABIC's UK site operations are in the region of £100 million per annum.

## 1.4 Huntsman's Facilities

### 1.4.1 Background

- (a) Huntsman owns and operates an integrated facility on the Wilton Complex for the manufacture of nitrobenzene and aniline:
- (b) The **Nitrobenzene Plant** produces nitrobenzene for Huntsman's neighbouring **Aniline Plant**. It was constructed in 1996 and has been further improved, with the most recent capacity expansion being completed in April 2015.
- (c) The Aniline Plant produces aniline. The vast majority (90-95%) is exported to Huntsman's Rotterdam site and used in the manufacture of isocyanates (also called **MDI**), with the balance supplied to external customers.
- (d) The Nitrobenzene Plant and Aniline Plant are linked to other facilities via the Pipeline Corridor:
  - (i) Benzene is imported by pipeline to the Nitrobenzene Plant from storages to the north of the Tees. Huntsman owns this pipeline.
  - (ii) Dilute Effluent is exported by pipeline from the Nitrobenzene Plant to Northumbrian Water Limited's Bran Sands treatment works. Northumbrian Water own this pipeline.
  - (iii) Hydrogen is supplied by pipeline from the BOC Hydrogen Plant at North Tees to the Aniline Plant. BOC owns this pipeline.
  - (iv) All aniline produced on the Aniline Plant is exported via pipeline to the Vopak Storage Terminal on the north bank of the Tees to the east of the portal to Tunnel Number 2. Huntsman owns this pipeline.
- (e) The Nitrobenzene Plant and Aniline Plant are integrated into Teesside chemical operations, most notably with:
  - (i) GrowHow (for the supply of nitric acid);
  - (ii) BOC (for the supply of Hydrogen); and
  - (iii) Sembcorp Utilities (for the supply of utilities).
- (f) Any impact on Huntsman operations would have knock-on effects to these suppliers.

### 1.4.2 Works to Huntsman's facilities

- (a) Huntsman is currently progressing a project with a third party to provide a benzene pipeline.
- (b) The proposed pipeline will run from the third party's storage facility on the north side of the River Tees through Tunnel Number 2 and pass down the pipeline corridor. The proposed benzene pipeline will then be connected into System 97 (Benzene) which currently runs to the Wilton Site from Tunnel Number 1 (Number 1 Tunnel is situated to the west of Tunnel Number 2).
- (c) The timescale for construction is before the end of 2016.

- (d) The proposed pipeline may either be new build or utilise an existing, redundant, pipeline. These two options would, of course, have significantly different scope in terms of construction :
  - (i) A new pipeline would involve construction along the length of the Tunnel Number 2 and most of the pipeline corridor.
  - (ii) Utilising an existing line would see construction activity limited to the connection point with, and modification of, System 97.

#### 1.4.3 Huntsman's operations

- (a) Huntsman's operations are "world scale" and provide critical mass to a number of suppliers.
- (b) The BOC Hydrogen plant and one of GrowHow's nitric acid plants are essentially parasitic on Huntsman's operations and if Huntsman's business was removed they would be likely to close.
- (c) Aniline is a key substance used in the production of polyurethane chemicals. Although there is a small merchant market for aniline, aniline production is always associated with a consuming polyurethanes production plant.
- (d) These market characteristics make it very difficult to source large quantities of aniline at short notice. For this reason, planned maintenance of the Aniline Plant is always aligned to that of its consuming polyurethanes plant.
- (e) A significant outage at Huntsman's Aniline Plant would therefore very quickly lead to a significant impact on its polyurethane production as it is highly unlikely that sufficient aniline could be purchased at short notice.
- (f) Any such purchases would in any event come at a premium to the cost of own produced aniline but a much larger impact from reduced polyurethane production and associated sales can be anticipated.
- (g) The magnitude of the potential impact can be derived from the size of the business interruption insurance policy that the company holds (\$200M).
- (h) In terms of employment Huntsman directly employs approximately 75 people at its Wilton facility.
- (i) In addition to this, there are a large number of people indirectly employed to in the maintenance, servicing and logistics that support this facility.
- (j) It is widely accepted that the ratio of supply chain jobs to direct jobs is at least 2:1. Suggesting that at least 150 jobs in the supply chain are supported by the Huntsman operation.

## 1.5 **INEOS's Pipeline System**

### 1.5.1 **Background**

- (a) INEOS is a licensee and the operator of the Breagh gas field, approximately 65 kilometres off the north-east coast of England.
- (b) INEOS operates the Breagh Pipeline System (**Breagh Pipeline**) which includes:

- (i) A 100-kilometre long 20 inch sub-marine pipeline. Petroleum fluids (wet gas) are exported from the Breagh field through to a beach valve station at Coatham Sands, Teesside, and then through a further 11 kilometres of onshore buried pipeline to the Teesside Gas Processing Plant.
  - (ii) An additional 3 inch pipeline runs back to circulate mono-ethylene glycol from the Teesside Gas Processing Plant to the offshore Breagh platform installation. There the mono-ethylene glycol (**MEG**) is injected in the 20 inch pipeline for hydrate inhibition and corrosion management.
  - (iii) A fibre optic cable also runs along the pipelines in order to allow for remote control of the offshore platform from the Teesside Gas Processing Plant. Together, these three components constitute the Breagh pipeline system.
- (c) Part of the onshore section of the Breagh Pipeline runs through the Pipeline Corridor.

### **1.5.2 INEOS's operations**

- (a) INEOS processes all pipeline fluids in the Teesside Gas Processing Plant. Processing occurs in three phases in order to produce:
  - (i) Natural gas (called "dry gas") that is sold into the National Transmission System
  - (ii) Hydrocarbon condensate that is exported to a local storage terminal for onward sale; and
  - (iii) MEG for reinjection into the 20 inch pipeline.
- (b) The average rate of production of gas from the Breagh field is 110 million standard cubic feet per day. Based on a gas price of 50 pence per therm this equates to approximately £550,000 of gross revenue per day. This revenue would be lost to INEOS in the event of a shutdown of the Breagh Pipeline.
- (c) It is anticipated that the rate of production will increase over the coming years. For example, it is currently forecast that production will reach 125 million standard cubic feet per day by September 2016. At a price of 50p/therm this would generate daily gross revenue of over £600,000.
- (d) INEOS's gas sales are often transacted on a forward sale basis, ie a fixed price is agreed in the present for deliveries to the buyer during a particular period in the future.
- (e) If the Breagh Pipeline is shutdown then INEOS will be unable to deliver any forward sale quantities contracted for the period of the shutdown. The buyer will then be entitled to buy back the under-delivered quantity in the market and this is likely to be at a higher price given that the transaction would be for immediate supply. INEOS would be liable for the difference between the contract price and the higher price paid by the buyer.

## **2. COMPULSORY ACQUISITION**

### **2.1 Powers Sought**

- 2.1.1 Although no powers for freehold compulsory acquisition are included in the Draft Order, the Applicant is seeking:

- (a) Powers for the temporary possession of the Order Land;
  - (b) The acquisition of rights through the Order Land; and
  - (c) The extinguishment and overriding of any rights which are inconsistent with the acquisition of those rights.
- 2.1.2 The Objectors' interests in the Pipeline Corridor are in the nature of rights to maintain their apparatus through the land.
- 2.1.3 In the case of SABIC and Huntsman, these rights mostly date back to the break-up of ICI and the sale of existing infrastructure which required the granting of rights to the new owners.
- 2.1.4 However, in the case of INEOS their rights were obtained from Sembcorp as lessees of the Pipeline Corridor when the Breagh Pipeline was installed.
- 2.1.5 The absence of freehold acquisition powers of itself does not therefore provide the Objectors with any protection, whilst the power to extinguish or override their rights contained in Articles 24 and 25 of the Draft Order is of great concern.
- 2.1.6 Although the protective provisions offered by the Applicant provide some mitigation against the unchecked effects of the Draft Order, the Objectors consider that they are inadequate. It is therefore necessary to consider the principles lying behind the Objectors' objections in order that the magnitude of harm caused by any inadequacies in the Draft Order can be properly assessed and in order that a proper assessment can be made of the issues.

## 2.2 Section 122 of the 2008 Act

Section 122 of the Planning Act 2008 sets out the principal test for the Secretary of State in determining whether or not to include powers of compulsory acquisition in a development consent order. The key tests are that:

- (a) The land must be required for the development to which the development consent relates or to facilitate or be incidental to that development; and
- (b) There is a compelling case in the public interest for the land to be acquired compulsorily.

### 2.2.1 "Required"

- (a) Paragraph 11 of the DCLG's "Guidance related to procedures for the compulsory acquisition of land" dated September 2013 (the **DCLG Guidance**) suggests that the first of these tests requires that the Secretary of State is satisfied that the land to be acquired is "no more than is reasonably required for the purposes of the development".
- (b) Paragraph 11 of the DCLG Guidance continues in relation to Section 122(2)(b):

*"An example might be the acquisition of land for the purposes of landscaping the project. In such a case the Secretary of State will need to be satisfied that the development could only be landscaped to a satisfactory standard if the land in question were to be compulsorily acquired, and that the land to be taken is no more than is reasonably necessary for that purpose, and that is proportionate."*



- (c) The case of *Sharkey v. Secretary of State for the Environment* (1992) 63 P & C 332 in the Court of Appeal (supplied in Annex 1 to the Objectors' initial written representations) considered the meaning of the word "required" in the context of Section 226(1)(a) of the 1990 Act (as that Section was originally enacted). McGowan LJ stated at page 340:

*"...the local authority do not have to go so far as to show that the compulsory purchase is indispensable to the carrying out of the activity or the achieving of the purpose; or, to use another similar expression, that it is essential. On the other hand, I do not find the word 'desirable' satisfactory, because it could be mistaken for 'convenient', which clearly, in my judgment, is not sufficient. I believe the word 'required' here means 'necessary in the circumstances of the case'."*

- (d) This supports the general proposition that applies in respect of any application for powers of compulsory purchase of acquisition: the acquiring authority must justify the need for every last inch of land.

### **2.2.2 Public Interest Test**

- (a) The other limb of the Section 122 test is in subsection (3) and provides that there must be a compelling case in the public interest for the land to be acquired compulsorily."
- (b) Paragraph 13 of the DCLG Guidance states:

*"For this condition to be met, the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss."*

- (c) Paragraphs 14 to 16 of the DCLG Guidance continue by explaining that:

*"...the Secretary of State will weigh up the public benefits that a scheme will bring against any private loss to those affected by compulsory acquisition." When addressing the question of whether to grant powers of compulsory acquisition the decision maker is also bound to have regard to Article 1 of the First Protocol of EHCR (protection of property).*

### **2.2.3 Powers in the Draft DCO**

- (a) The starting point for analysis of the Objectors' private loss is the "worst case scenario" of the undertaker exercising the Order powers to their fullest extent. The starting point here is the powers contained in the Draft Order.
- (b) The Draft Order contains two main types of provision for compulsory purchase which are of concern to the Objectors:
- (i) Firstly the acquisition of rights to construct the conveyor and keep it in situ and the imposition of restrictions in Article 24; and
  - (ii) Secondly the power to interfere with and override easements and other rights in Article 25.

- (c) The use of these powers against the Objectors' interests in the Pipeline Corridor has the potential to destroy the Objectors' operations as their rights to maintain and access their apparatus could be overridden.
- (d) One important factor to note is that although the Layout Plans (Document 3.2) and the Conveyor Route Plans (Document 3.3) show the proposed conveyor as taking a particular route, the Order is not prescriptive (see the width and extent of Work No.4 on Document 2.2A to 2.2C, the power to deviate as set out in Article 4 of the Draft Order and the Parameters Table (Document 6.9). It is not therefore possible for the Objectors to identify how proximate the conveyor will be to their own apparatus.
- (e) By way of explanation, the conveyor (Work No 4) is not confined to the land shaded green on Works Plan Sheet 1. It may deviate laterally by 20 metres into the land for the conveyor footings - Work No 5. This means that the right is effectively being taken to install the conveyor at any point across the whole width of the Pipeline Corridor. This position has not been changed by the amendment to Article 4(c) in the current version of the Draft Order.
- (f) This creates considerable additional uncertainty for the Objectors as to which of their rights might be affected by the scheme.
- (g) In addition, Article 30 (temporary use of land for carrying out the undertaking) provides powers for the undertaker to take temporary exclusive possession of the Pipeline Corridor (Article 30(1)(a)(ii)) for a period in excess of six years and a power for them to "remove any building... from that land", which would include the Objectors' apparatus.
- (h) Even a short period of temporary exclusive possession and/or removal could have profound consequences for the Objectors' operations and their nationally significant assets.
- (i) This issue has been amplified by the inclusion during the examination of powers for the undertaker to take temporary possession for the purpose of maintenance, in addition to construction.

#### **2.2.4 Private Loss**

- (a) The Objectors' operations are carried out at both a nationally and regionally significant scale.
- (b) The Order, if granted in the current form, has the potential to override the Objectors' rights and severely disrupt or even end their operations. The Pipeline Corridor is an essential artery without which the Objectors' operations cease to function.
- (c) A temporary interference with the Objectors' rights, apparatus or operations in the Pipeline Corridor would cause substantial difficulties, inconvenience and financial losses and place their operations at risk.
- (d) Any permanent overriding or extinguishment of their rights would, all other things being equal, bring their operations to an end.
- (e) The Objectors are not as a matter of law statutory undertakers, however the physical nature of their operations through the Pipeline Corridor, and the scale and regional and national importance and significance of their operations means that they are in many ways analogous to statutory undertakers in terms of the public utility nature of their operations.

- (f) It is an anomaly of the law that they are not treated as such for the purposes of the stricter tests contained in the Planning Act 2008 at Sections 127 (in relation to temporary possession) and 138 (in respect of the acquisition and extinguishment of rights).
- (g) In short it is something of an anomaly or an oversight that the Objectors' apparatus does not benefit from this enhanced protection. Although, as a matter of law, the Secretary of State must fall back on and apply the test in Section 122, in doing so it should weigh the public benefits of the scheme against the potential private losses of the Objectors.
- (h) However, it is also necessary to take into account certain public dis-benefits caused by any disruption of the Objectors' operations, which are inseparable from their private interests.
- (i) In paragraph 6.4.118 of the Dogger Bank A&B DCO the Examining Authority stated that:
 

*"The continued safe operation of the Wilton Complex, employment and generation of economically significant products and other economic benefits there is in the public as well as the private interest."*
- (j) The potential scale and extent of this potential detriment is set out in Section 3.1, which makes it clear that the consequences of granting the powers of compulsory acquisition as set out in the Draft Order, without suitable and adequate protective provisions would be very severe both in terms of public and private loss.
- (k) In addition to direct losses, it is likely that very significant consequential losses would arise if there was an interference with the Objectors' businesses, including damages to third parties caused by the non-delivery of product.
- (l) The Examining Authority will appreciate that the nature of consequential losses is that their extent would not become fully apparent until the powers under the Order were exercised. It is not, therefore, possible to give an account of potential consequential losses at this stage, however they could clearly be very considerable indeed.
- (m) In addition, the powers sought by the Applicant would, if granted in the terms it is requesting, and without suitable and adequate protective provisions, cause significant business uncertainty for the Objectors.

### **2.2.5 Public Benefit**

- (a) In assessing the public benefit of the proposed scheme, it is important to distinguish between the proposed development and many other projects which fall to be determined under the regime in the Planning Act 2008.
- (b) The development of electricity generating stations, for example, are of huge national and public utility. They contribute to national energy security and the move towards a low carbon economy. Similarly, highway schemes provide huge public benefits in terms of reduced congestion and safety improvements.
- (c) Public utility of this kind is far less readily apparent in the York Potash scheme which is essentially the construction of a private ship loading facility to support a single commercial enterprise. This suggests that in assessing the public benefit of the York Potash scheme a large element present in those other schemes cannot be weighed in the balance, or at the very least, far less weight can be attached to it.

- (d) As paragraph 6.4.121 of the Examining Authority's Report into the Dogger Bank A&B DCO in relation to the balance in the public interest test in Section 122(3) it concluded:

*"... the Panel is clear that the weight to be accorded to the public benefit of the applicant's NSIP is equivalent to the weight to be accorded to the continuing safe and economic operation of the Wilton Complex."*

- (e) With regard to the York Potash scheme there are two main differences:

- (i) The absence of the kind of public utility that is present in a cable to support an off-shore generating facility, but absent in a scheme to support a single commercial enterprise; and
- (ii) The effects of this scheme on the Breagh Pipeline (and for that matter the CATS pipeline) who were not affected by Dogger Bank.

- (f) The Objectors note the Applicant's estimate of the construction cost of the scheme set out in Section 6 of its Funding Statement and the short term socio-economic public benefits which may well arise as a result of this investment.

- (g) However the Objectors also note the relatively modest scale of employment generation which would arise as a result of the Authorised Development. This is stated in paragraph 19.7.1 of Section 19 of the Environmental Statement to be as follows:

*"The operational workforce at the proposed harbour facility would be 26 employees per day (Phase 1) and 34 employees per day (on completion of Phase 2)."*

- (h) It is acknowledged that the Applicant's overall operations (including the mine and materials handling facility) would be likely to generate additional jobs, however the scale of job creation is not readily apparent from the Application.

- (i) Finally, the Examining Authority is referred to the Inspector's Report in the London Thames Gateway Development Corporation (Bromley by Bow) (South) Compulsory Purchase Order 2010 (Appeal Reference LDN 023/E5900/005/003) which was included in Annex 2 of the Objectors' Written Representations.

- (j) The conclusion of that Report was (to paraphrase) that when considering the impact of a proposal on employment the Secretary of State should attach greater weight to existing employment than the potential employment which might arise as the result of a development.

- (k) This proposition was also accepted by the Examining Authority in the Dogger Bank A&B DCO in paragraph 6.4.153 of their report.

- (l) The potential public benefits of the Authorised Development inevitably contain an element of speculation and conjecture. By contrast, the on-going operations of the Objectors and other Wilton operators are real and substantial and to a degree predictable on the basis of the existing position, past performance and market predictions.

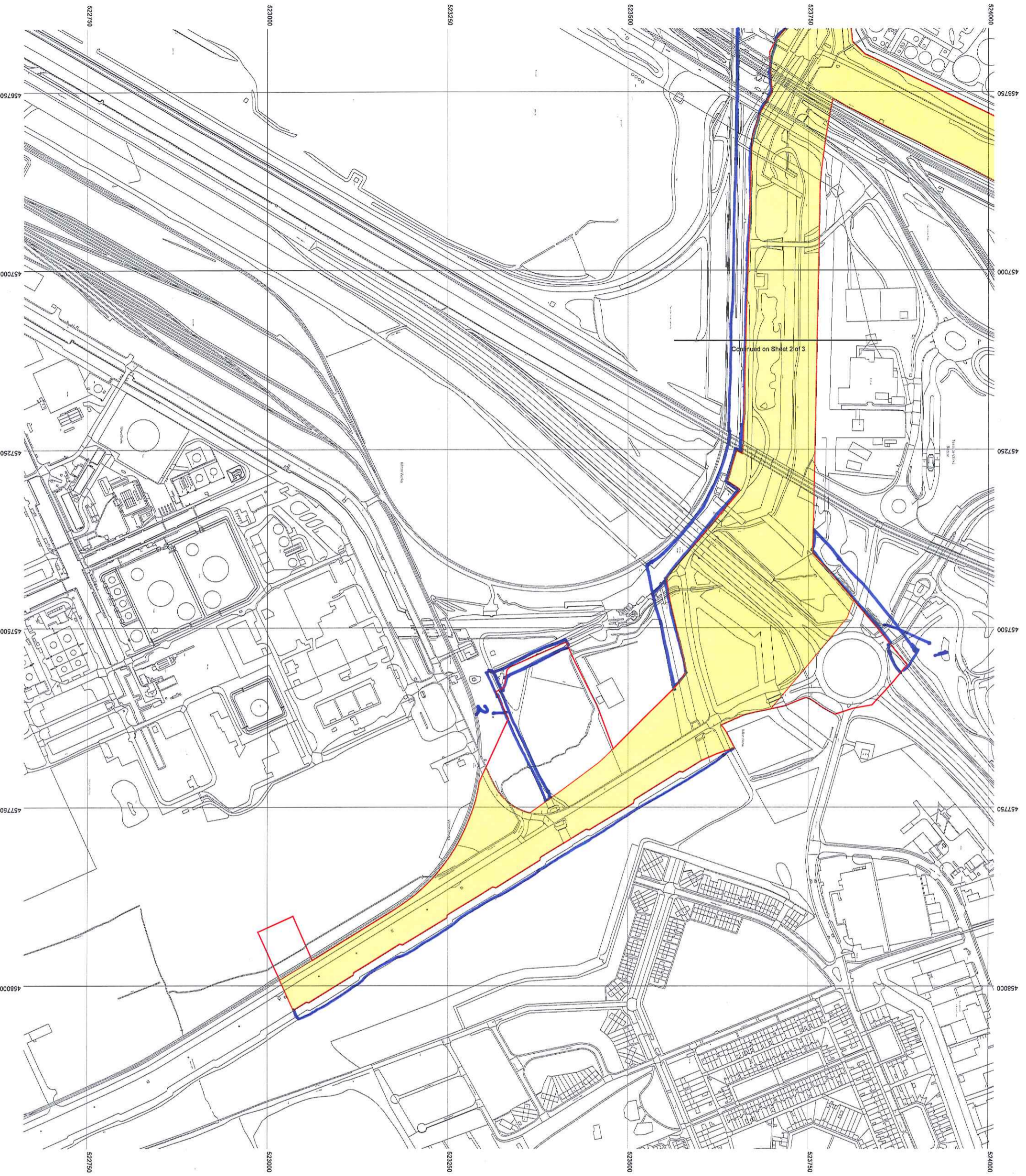
## **2.2.6 Conclusion: Does Public Benefit outweigh private loss?**

- (a) It is clear from Section 3 above that the Objectors' are the owners and operators of substantial undertakings affected by the Draft Order which are of regional,

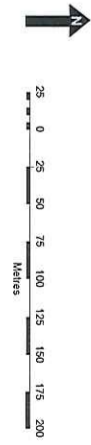
national and international scale and importance. They are major employers who make a substantial contribution both to the Treasury in terms of taxes, and the general economic prosperity of the region and nation as a whole.

- (b) The nature of the Objectors' operations is highly complex and technical, and any interference with their rights or apparatus can have major ramifications both from a health and safety point of view, and in terms of their continued operations and the prosperity of the region. In INEOS's case, any interference with the Breagh Pipeline has the potential to jeopardise key assets that helps to ensure the UK's energy security.
- (c) Although the Objectors are not, in fact, statutory undertakers, and are not therefore afforded the additional protection of Sections 127 and 138 of the Planning Act 2008, the nature of their operations and businesses places them in a position where they should be viewed in a similar light and a very high degree of protection indeed should be afforded to their interests.
- (d) In weighing the public benefit against private loss, the consequences to a nationally significant chemical manufacturing site and to a nationally significant gas transmission high pressure pipeline are of very considerable weight indeed on the side of private loss in this case outweigh the public benefit of the scheme.
- (e) Without suitable and adequate protective provisions, it follows that the test set out in Section 122(3) of the Planning Act 2008 has not been satisfied in respect of the Pipeline Corridor and that the powers of compulsory acquisition which the Applicant is seeking in relation to this land should not be granted.
- (f) If the scheme is to proceed, this highlights the need for the proposed protective provisions to be tightened to offset the potential for private and public loss and reduce its weight when set against the potential public benefit of the Authorised Development.
- (g) Where the Objectors' proposed protective provisions (as set out in **Annex 1**) are weakened or made uncertain, the weight of private loss in the equation will increase accordingly.
- (h) When carrying out its assessment of the scheme, in order to establish whether or not the public interest test has been fulfilled by the Applicant, it will first be necessary to settle the terms of the proposed Protective Provisions in order that the level (and weight) of private loss can be properly ascertained. This can then be weighed in the balance against the scheme's public benefit.

**ANNEX 4**  
**THE PIPELINE CORRIDOR**



**Legend:**  
 Land required for or affected by the authorised development (the Order Limits)  
 Pipeline Corridor



© Crown copyright. All rights reserved. 2015  
 Licence number 0100031673

Notes:

Created by:  
 TerraQuest Solutions Limited  
 Quaker House  
 252-260 Broad Street  
 Birmingham  
 B1 2JH  
 w: www.terraquest.co.uk  
 e: information@terraquest.co.uk

**TerraQuest**  
 A Shiva Minerals Project  
 Shiva Minerals  
 A Shiva Minerals Project

Created for:  
 York Potash Limited  
 7-10 Manor Court  
 Manor Gate  
 YO11 3TU

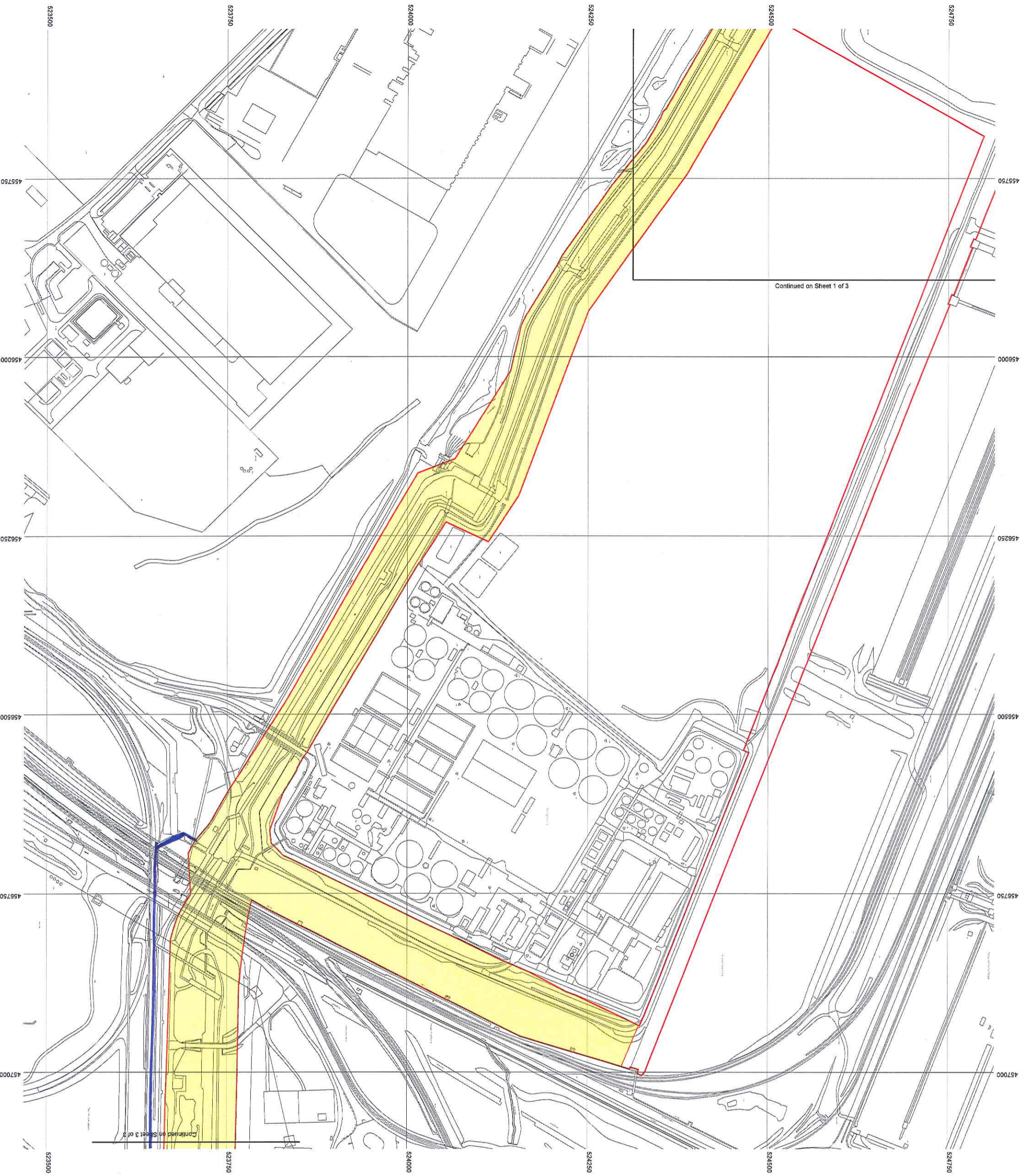
**YORKPOTASH**  
 A Shiva Minerals Project

Title:  
 The York Potash Harbour Facilities Order 201X - Pipeline Corridor Plan (Sheet 3 of 3)  
 The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009  
 Regulation 5(2)(b) Document Number: 3.15C

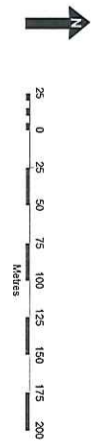
Scale:  
 1:2500 @ A1  
 Date:  
 October 2015

Drawing No:  
 YPL Pipeline Corridor Plan Sheet 3  
 Revision:  
 v4

Approved By:	Checked By:	Drawn By:
MD	DC	PK



**Legend:**  
 Land required for or affected by the authorised development (the Order Limits)  
 Pipeline Corridor



© Crown copyright. All rights reserved. 2015  
 Licence number 0100031673

Notes:

Created by:  
 TerraQuest Solutions Limited  
 One Westfield House  
 252-260 Broad Street  
 Birmingham  
 B1 2JF  
 w: www.terraquest.co.uk  
 e: information@terraquest.co.uk

**TerraQuest**  
 Built-up & Regent Solutions  
 Water & Energy Solutions

Created for:  
 York Potash Limited  
 7-10 Manor Court  
 Manor Gate  
 YO11 3TU

**YORKPOTASH**  
 A Sinos Minerals Project

Title:  
 The York Potash Harbour Facilities Order 201X - Pipeline Corridor Plan (Sheet 2 of 3)  
 The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009  
 Regulation 5(2)(g) Document Number: 3.15B

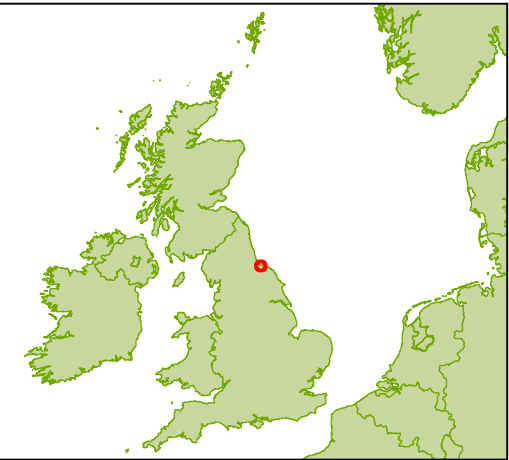
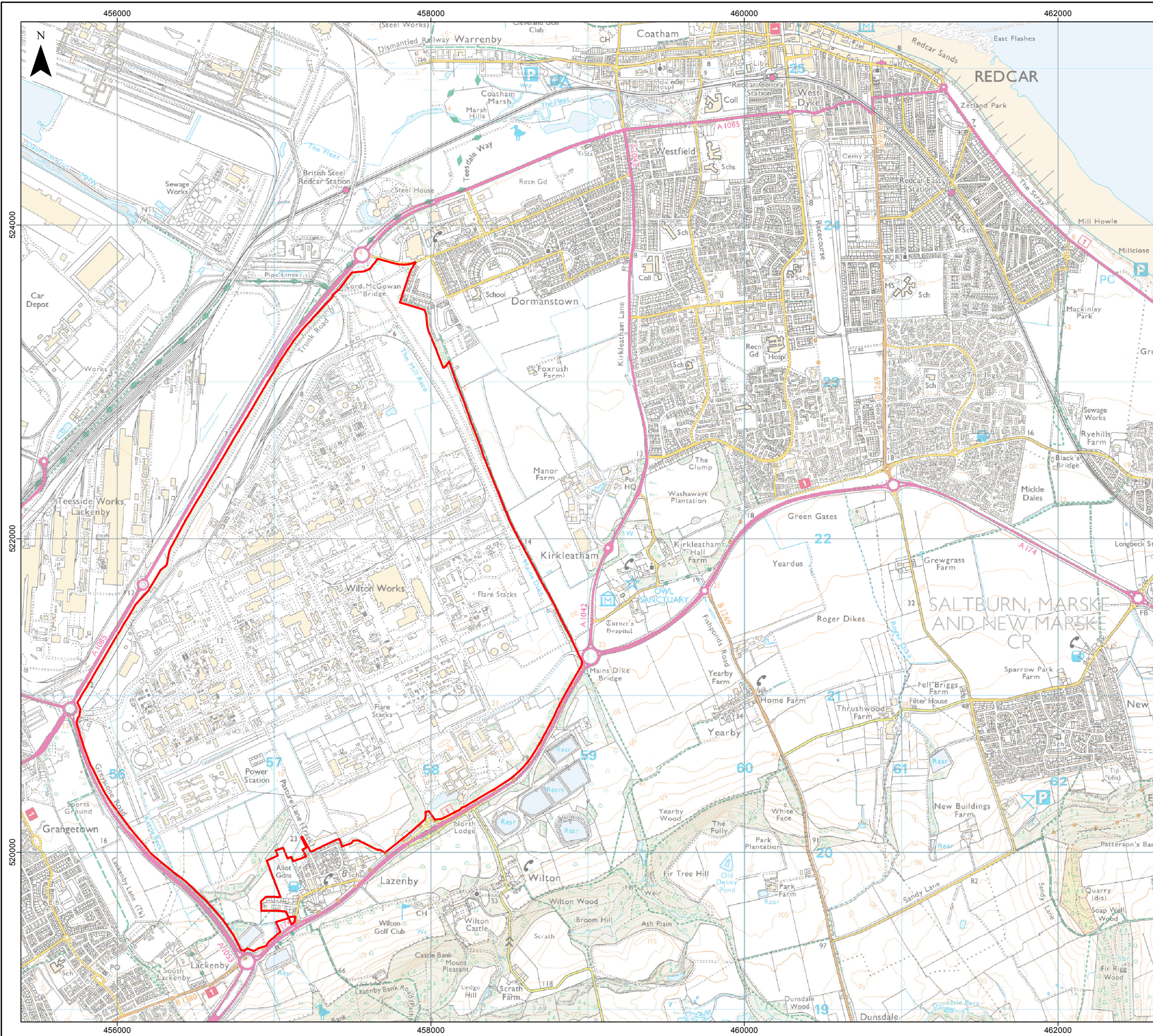
Scale:  
 1:2500 @ A1  
 Date:  
 October 2015

Drawing No:  
 YPL Pipeline Corridor Plan Sheet 2  
 Revision:  
 V4

Approved By:	Checked By:	Drawn By:
MD	DC	PK

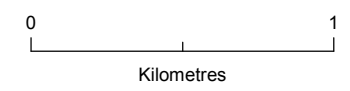


**ANNEX 5**  
**THE WILTON COMPLEX**



**Legend**  
 Wilton complex

# DRAFT



Data Source: Ordnance Survey Data © Crown copyright. All rights reserved, 2014. Licence number 0100031673

PROJECT TITLE  
**DOGGER BANK TEESSIDE 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

The concepts and information contained in this document are the copyright of Forewind. Use or copying of the document in whole or in part without the written permission of Forewind constitutes an infringement of copyright. Forewind does not warrant that this document is definitive nor free of error and does not accept liability for any loss caused or arising from reliance upon information provided herein.

**ANNEX 6**

**THE OBJECTORS' PROTECTIVE PROVISIONS**

## SCHEDULE 9

Article 34

### FOR THE PROTECTION OF PIPELINE CORRIDOR AND PROTECTED CROSSINGS

#### *Benefit of protective provisions*

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

#### *Interpretation*

2. In this Schedule—

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

“affected asset(s)” means—

- (a) underground pipelines where relevant work(s) are to be carried out which may have an effect on the operation, maintenance, repair, replacement and/or abandonment of and/or access to the pipeline concerned or its easement width;
- (b) pipelines on or above ground where relevant work(s) are to be carried out which may have an effect on the operation, maintenance, repair, replacement and/or abandonment of and/or access to the pipeline concerned;
- (c) protected crossings in respect of works associated with Work No.1 or 2 or where relevant work(s) are to be carried out within 25 metres of the protected crossing concerned;
- (d) proposed pipelines which are likely (on the basis of the timetable contained in the completed pipeline survey) to have been installed at the time when relevant work(s) are carried out, where the relevant work(s) may have an effect on the construction, operation, maintenance, repair, replacement and/or abandonment of and/or access to the proposed pipeline concerned; and
- (e) in relation to the exercise of an identified power, any pipeline which would be affected by the exercise of that power.

“apparatus” means the pipes, pipelines cables, sewers, drains, ditches, watercourses or other apparatus and includes—

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

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

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

“cats pipeline critical construction activities” means the following authorised works—

- (a) excavation works within the cats easement;
  - (b) piling within 10m of the cats pipeline;
-

- (c) backfilling and compaction work within the cats easement;
- (d) erection of crash mats above the cats pipeline; and
- (e) all lifting above the cats pipeline.

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

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

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

“easement width” means in respect of each pipeline or proposed pipeline the easement width shown on the conveyor route plans as adjusted if necessary (in respect of pipelines shown on the conveyor route plans) or added to (in respect of pipelines constructed after the date of this Order) as a result of the pipeline survey;

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

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

“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 a pipeline in the pipeline corridor; or
  - (ii) with rights in, on, under or over the pipeline corridor in respect of a pipeline;
  - (iii) a pipeline or proposed pipeline in, on, under or over the pipeline corridor;
- (b) in relation to the access roads, any person—
  - (i) with an interest in the access roads; or
  - (ii) with private rights of way on or over the access roads;
- (c) in relation to the protected crossings, any person—
  - (i) with an interest in the protected crossings;
  - (ii) with rights in relation to the protected crossings; or
  - (iii) with pipelines in or comprising the protected crossings; and

(d) in relation to protected land means any person falling within paragraphs (a) to (c) above.  
“pipeline(s)” means the apparatus located in the pipeline corridor, or in or comprising a protected crossing ;

“pipeline survey” means a survey of the pipeline corridor and the protected crossings to establish :

- (a) the precise location of the pipelines and the protected crossings;
- (b) the location of any new or diverted pipeline which an owner or operator proposes to install and the proposed timetable for its installation;
- (c) the specification of the pipelines, proposed pipelines and protected crossings identified under paragraphs (a) and (b) including their composition, diameter, pressure and the products they are used or to be used to convey;
- (d) any special requirements or conditions relating to the pipelines or proposed pipelines which differ from the requirements or conditions applying to standard pipelines of that type;
- (e) the access roads used to gain access to the pipelines, proposed pipelines or protected crossings;
- (f) the precise location of any easement widths or rights (where it is possible to establish this).

“proposed pipeline” means a new or diverted pipeline which, at the time of the pipeline survey, an owner or operator proposes to install and which is contained in the completed pipeline survey in accordance with paragraph (b) of the definition of “pipeline survey”.

“protected crossings” means—

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

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

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

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

“specified persons” means—

- (a) the following—
  - (i) Company Secretary, SABIC UK Petrochemicals Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF in relation to SABIC UK Petrochemicals Limited;
  - (ii) Operations Manager, Huntsman Polyurethanes, PO Box 99, Wilton, Redcar, TS10 4YA in relation to Huntsman Polyurethanes (UK) Limited;
  - (iii) Company Secretary, INEOS UK SNS Limited, 4<sup>th</sup> Floor, 90 High Holborn, London WC1V 6LJ in relation to INEOS UK SNS Limited; and
  - (iv) [ ] in relation to CATS North Sea 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

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

“unknown rights” means rights which are:

- (a) not known at the date of the Order; or
- (b) identified as unknown in the book of reference,

but not including any rights relating to pipelines (or access to pipelines) where a pipeline or proposed pipeline is shown on the pipeline survey;

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

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

“works details” means the following—

- (a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned and/or their location;
- (b) details of any proposed temporary crossing points under paragraph 10;
- (c) details of methods and locations of any piling proposed to be undertaken under paragraph 14;
- (d) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 15;
- (e) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 16;
- (f) details of the location of any pipelines affected by the oversailing provisions in paragraph 17, including details of the proposed clearance;
- (g) details of the method location and extent of any dredging, a technical assessment of the likely effect of the dredging on the protected crossings and any mitigation measures which are proposed to be put in place to prevent damage to the protected crossings;
- (h) details of the undertaker and their principal contractors’ management of change procedures;
- (i) details of the traffic management plan, which plan shall include details of vehicle access routes for construction and operational traffic and which shall assess the risk from vehicle movements and include safeguards to address identified risks;
- (j) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to the cats pipeline;
- (k) details (to include a dynamic analysis undertaken by the undertaker and provided to the cats pipeline operator) of the conveyor and conveyor support structure and the measures to be undertaken to ensure vibration does not impact on the cats pipeline;
- (l) details of the lifting study during the construction phase, which shall include a technical assessment of the protection of underground assets and which study shall provide for individual lift plans;
- (m) details of the lifting study during the operational phase, which shall include a technical assessment of the protection of underground assets and which study shall provide for individual lift plans;
- (n) details of the means by which the entirety of the cats pipeline can be properly inspected and if necessary repaired during the construction and operation of the authorised development which shall provide for an excavation to a depth of 0.6 metres below the cats pipeline and 2 metres either side of the centreline of the cats pipeline consistent with the relevant constructability notes;
- (o) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators; and

- (p) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to the cats pipeline cathodic protection system and the proposed remedial works.
- (q) any further particulars provided pursuant to paragraph 4(2)

*Pipeline survey*

**3.—**(1) Before commencing any part of the authorised development in the pipeline corridor or which may affect a protected crossing the undertaker must:

(a) serve a notice on the specified persons inviting them to participate in the pipeline survey and giving them not less than 45 days' notice of the need to confirm their intention to participate in the pipeline survey and to nominate a representative for the pipeline survey; (b) carry out and complete the pipeline survey; and

(c) comply with sub-paragraph (3) below.

(2) The pipeline survey must be undertaken by a surveyor who is a member of the Royal Institute of Chartered Surveyors with at least 10 years experience of such surveys in conjunction with any representative of an owner or operator nominated under sub-paragraph (1).

(3) When the pipeline survey has been completed the undertaker must serve a copy of the pipeline survey on any specified person who nominated a representative under paragraph (1)(a) unless the specified person has confirmed in writing that they instead wish to receive a written notice in which case the undertaker must instead serve a written notice.

(4) If:

- (a) an owner or operator who nominated a representative under sub-paragraph (1)(a); or
- (b) the undertaker

considers that the pipeline survey is incomplete or inaccurate they may, within 45 days of the service of the pipeline survey or, as the case may be, the written notice on the specified person under sub-paragraph (3), refer the matter to an expert for determination under article 40(2).

(5) If the matter is referred to an expert under sub-paragraph (3), the undertaker shall not commence any part of the authorised development in the pipeline corridor or which may affect a protected crossing until the expert has given his determination.

*Authorisation of works details affecting pipelines or protected crossings*

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

(2) The undertaker must as soon as reasonably practicable provide such further particulars as the owner or operator of any affected asset may, within 45 days from the receipt of the works details under paragraph 4(1), reasonably require.

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

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

**6.—**(1) Any authorisation by the owner or operator of an affected asset required under paragraph 5(a) of this Schedule must not be unreasonably withheld but may be given subject to



such reasonable conditions as the owner or operator of the affected asset may require to be made for—

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

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

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

(4) Where there has been a reference to an expert in accordance with paragraph 7(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 7(3).

7.—(1) In the event that—

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

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

(2) In the event that—

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

the undertaker may refer the matter to an expert for determination under article 40(2) and paragraph 33 of this Schedule.

(3) Where the matter is referred to an expert under paragraph 7(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 6(1).

(4) Where the undertaker considers that the owner or operator of the cats pipeline has unreasonably withheld its authorisation under paragraph 6(2) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by the secretary of the United Kingdom Onshore Pipeline Association (UKOPA) for determination under article 40(2) and paragraph 33 of this Schedule.

#### *Notice of works*

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

*Further provisions about works*

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

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

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

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

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

(2) Details of proposed temporary crossing points referred to in sub-paragraph (1) must be notified to the owner and operator of the pipeline in accordance with paragraph 4.

**11.** During construction, an area equivalent to the easement widths of the pipelines (taken from the actual location of the pipelines shown on the pipeline survey) must be fenced off using some form of visual indication such as netlon fencing or “heras” type fence panels. Suitable signage warning of the danger of live pipelines must be erected at a minimum distance of every 50 metres.

**12.** No explosives must be used within the protected land.

**13.**—(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.

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

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

(1) Any proposed piling operations within—

- (a) 10 metres either side of the centreline of the cats pipeline will require the crown of the pipeline to be physically exposed, so its location can be confirmed with the asset operator or owner as appropriate and where within 2 metres of the centreline of the cats pipeline it shall be exposed by hand digging only; and
- (b) 5 metres either side of the centreline of the cats pipeline and, in addition to the obligations in paragraph 14(2)(a), will require excavation to be carried out to a level below the depth of the pipeline, to ensure that no materials are present that could damage the pipeline if disturbed, in the presence of the asset owner or operator as appropriate.

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

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

**15.**—(1) Where excavation of trenches (including excavation by dredging) adjacent to a pipeline affects its support, the pipeline must be supported in a manner approved by the owner and operator of the relevant pipeline.

(2) Where the undertaker proposes to carry out excavations which might affect above ground structures such as pipeline supports in the pipeline corridor, the undertaker must calculate the zone

of influence of those excavations and provide those calculations to the owner and operator of the pipeline under paragraph 4.

**16.—**(1) Where a trench is excavated across or parallel to the line of a pipeline or proposed pipeline, the backfill must be adequately compacted to prevent any settlement which could subsequently cause damage to the pipeline or proposed pipeline.

(2) Proposed methods and locations of compacting must be notified to the owner and operator of the pipeline or proposed pipeline in accordance with paragraph 4.

(3) Compaction testing must be carried out once back filling is completed to establish whether the backfill has been adequately compacted as referred to in paragraph 16(1) and what further works may be necessary, and the results of such testing must be supplied to the owner and operator of the pipeline or proposed pipeline.

(4) Where it is shown by the testing under paragraph 16(3) to be necessary, the undertaker must carry out further compaction testing under paragraph 16(1) and paragraphs 16(1), (2) and (3) shall continue to apply until such time as the backfill has been adequately compacted.

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

(6) In the event of a dispute as to—

- (a) whether or not backfill has been adequately compacted under paragraphs 16(1) to (4); or
- (b) the amount of any payment under paragraph 16(5),

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

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

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

#### *Monitoring for damage to pipelines*

**18.—**(1) When carrying out the relevant work the undertaker will monitor the relevant affected assets to establish whether damage has occurred.

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

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

- (a) afford the owner or operator of the affected asset all reasonable facilities to enable it to fully and properly repair and test the affected asset 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 affected asset as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of the owner or operator of the affected asset to have effectively repaired the affected asset before any backfilling takes place.

(4) Where testing has taken place under paragraph 18(2)(b), the undertaker must (save where an owner or operator of the affected asset agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work sub-paragraphs (2) to (4) of this paragraph will apply to that damage.

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

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

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

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

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

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

**20.**—(1) Subject to paragraph 20(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 pursuant to paragraph 8 of this Schedule; 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 20(2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

*Access for construction and maintenance*

**21.**—(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 operators of the pipelines and any owners and occupiers of any properties within the Wilton Complex whose access to their property is likely to be affected by those works.

(2) The undertaker must take account of the responses to any consultation referred to in paragraph 21(1) before approving the construction access plan.

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

- (a) establish the programme for major works in the pipeline corridor and the Wilton Complex and plan the construction or maintenance works to prevent or (if such conflict cannot be

reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and

- (b) establish where an owner of the protected land or operator of a pipeline or proposed pipeline or any owners and occupiers of any properties within the Wilton Complex whose access to their property is likely to be affected by those works has a reasonable expectation to exercise access rights over particular access roads in respect of which rights are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby that expectation can be met.

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

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

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

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

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

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

#### *Restriction on exercising powers*

**24.** (1) The undertaker must not in the exercise of the powers conferred by this Order acquire, appropriate, extinguish, suspend or override any rights in the protected land if the authorised development can reasonably and practicably be carried out without such acquisition, appropriation, extinguishment, suspension or override.

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

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

relating to the pipelines or proposed pipelines or access to pipelines or proposed pipelines except in relation to unknown rights.

(2) Without prejudice to paragraph 25(1) the undertaker must not exercise the identified powers—

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

(3) Where an identified power provides for the undertaker to automatically extinguish or override a right or interest of an owner of the protected land, the restriction in paragraph 25(2) shall operate so that the said extinguishment or override of the said right or interest will not apply unless the owner of the right or interest (and where the right or interest is in a pipeline the operator of the pipeline) has given its consent or consent has been given by an expert appointed under article 24(2) or is deemed to be given under sub-paragraph (7).

(4) Where a person is asked to give consent under this paragraph 25(2), the consent must not be unreasonably withheld.

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

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

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

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

- (a) article 10 (street works);
- (b) article 11 (temporary stopping up of streets);
- (c) article 12 (access to works);
- (d) article 14 (discharge of water);
- (e) article 16 (authority to survey and investigate the land);
- (f) article 24 (compulsory acquisition of rights) insofar as the exercise of such powers is not excluded by paragraph 24 (1) and paragraph 25(1);
- (g) article 25 (power to override easements and other rights) insofar as the exercise of such powers is not excluded by paragraph 24 (1) and paragraph 25(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 in circumstances:

(a) Where the exercise would permanently affect an owner’s right for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of a pipeline or proposed pipeline unless:

- (i) the undertaker has provided to the affected owner new rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal or as the case may be replacement of the pipeline or proposed pipeline;

- (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) where a pipeline is to be moved a replacement pipeline, that is materially and operationally no worse than the pipeline belonging to the owner affected by the exercise of the identified power, has been constructed in accordance with, and in the location 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 pipeline 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).
- (b) Where the exercise would permanently affect access to or over the protected land unless:
- (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 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 or proposed 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*

**26.—**(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 28 in accordance with the terms and level of cover notified under paragraph 26(2) or, in the case of dispute, in accordance with the terms and level of cover determined by an expert under article 40(2), and evidence of that insurance must be provided on request to owners of the protected land and operators of pipelines and proposed pipelines.

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

(3) The undertaker must maintain insurance in relation to the authorised development affecting owners of the protected land and operators of pipelines and proposed pipelines during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover specified in paragraph 26(2) or at such level as may otherwise be determined by an expert under article 40(2).

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

- (a) the owner of the protected land or operator of a pipeline or proposed pipeline may refer the matter to an expert for determination under article 40(2); and
- (b) the undertaker must not:

- (i) commence the authorised development until that determination has been provided and an insurance policy has been put in place which is in accordance with that determination; or
- (ii) (as the case may be) change the terms or level of the insurance policy until that determination has been provided and the revised terms and level of the insurance policy must be in accordance with that determination.

*Costs*

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

- (a) the carrying out of the pipeline survey under paragraph 3;
- (b) authorisation of works details submitted by the undertaker under paragraph 4 and the imposition of conditions under paragraph 6;
- (c) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 8;
- (d) responding to the consultation on piling under paragraph 14;
- (e) considering the effectiveness of any compacting which has taken place under paragraph 16, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;
- (f) the repair and testing of a pipeline or protected crossing under paragraph 18;
- (g) considering and responding to consultation in relation to the construction access plan under paragraph 21 and providing details of their programme for major works to the undertaker under paragraph 22;
- (h) dealing with any request for consent or agreement by the undertaker under paragraph 25; and
- (i) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 26,

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

(2) The undertaker must indemnify and keep the owners of the protected land and operators of the pipelines and proposed pipelines, and any person who uses the pipeline for the conveyance of chemicals or other materials, indemnified against all reasonable costs, charges, damages and expenses, and against consequential loss and damage, which may be occasioned or reasonably incurred by the owners and operators—

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

and the fact that any act or thing may have been done by the owner of protected land or operator of a pipeline or proposed pipeline on behalf of the undertaker or in accordance with plans approved by or on behalf of the owner or operator or in accordance with any requirement of the engineer appointed by the owner or operator or under his supervision will not (if it was done without negligence on the part of the owner or operator or of any person in their employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph 28(2).

(3) An owner or operator must give the undertaker reasonable notice of any claim or demand under paragraph 28(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*

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

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

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

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

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

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

*Expert Determination*

**34.—(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.