

PLANNING ACT 2008

INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

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

DEADLINE 7

**COMMENTS ON THE APPLICANT'S DOCUMENT 8.10: SCHEDULE OF CHANGES TO THE DRAFT
DEVELOPMENT CONSENT ORDER**

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

1. INTRODUCTION

- 1.1 These are the comments on the Applicant's Deadline 6 Document 8.10: "Schedule of Changes to the Draft Development Consent Order" (the **Applicant's Deadline 6 Submission**) submitted by SABIC UK Petrochemicals Limited (**SABIC**).
- 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 In this document SABIC, Huntsman and INEOS are together referred to as the **Objectors**.
- 1.4 The Objectors have previously made "Submissions relating to Schedule 9 of the Proposed Order for the Protection of the Pipeline Corridor and Protected Crossings" (the **Objectors' Deadline 6 Submission**) which is referred to in this document.

2. COMMENTS ON THE APPLICANT'S DEADLINE 6 SUBMISSION

The Objectors' detailed comments are contained in the Annexures to this document:

- 2.1 Annex 1 contains the Objectors' Response to the Applicant's Schedule of Changes to the draft Development Consent Order;
- 2.2 Annex 2 contains the Response of the Objectors to the Applicant's Statement of Differences; and
- 2.3 Annex 3 contains the Objectors' Response to the Detailed Comments of the Applicant on the Protective Provisions.

Bond Dickinson LLP

29 December 2015

ANNEX 1

RESPONSE TO THE APPLICANT'S SCHEDULE OF CHANGES TO THE DRAFT DEVELOPMENT CONSENT ORDER

This table refers to all changes to the draft DCO submitted on 6 November 2015 (Document 4.1C)

DCO Reference	Applicant's Explanation of Change
Article 25(4)(c)	As mentioned in Document 8.8, the Applicant has removed item (c) from article 25(4) as the position is better covered by amendments to Schedule 9 which have been made since this provision was added. Bond Dickinson has confirmed that the removal of this sub-paragraph is agreed. <i>This amendment is accepted.</i>

ANNEX 2

RESPONSE OF THE OBJECTORS TO THE APPLICANT'S STATEMENT OF DIFFERENCES

STATEMENT BY APPLICANT		OBJECTORS' RESPONSE
1.	The position of Bond Dickinson has consistently been that they have no objection in principle to the Order, provided that they are content with the protective provisions contained in Schedule 9.	It follows that if adequate protective provisions are not contained in the Order then the Objectors <u>do object</u> in principle to the Order.
3.	However, the context for these protective provisions should not be forgotten. The pipeline corridor is populated by a significant amount of infrastructure, all of which is already governed by "permit to work" provisions which are contained in the legal arrangements between the asset owners and their landlord, Sembcorp and by which the undertaker has agreed to be bound. The nature of these arrangements is set out in an extract from the Deed of Grant agreed between Sembcorp and the undertaker contained in Annex 2 of this Appendix 1.	It is agreed that this is the form of the arrangements generally put in place between Sembcorp and the owners of pipelines. In addition, grantees are generally required to enter into the following obligations: <i>"At all times take all reasonable and proper precautions to ensure that in the exercise of the Specified Rights as little damage or disturbance as possible is caused to the [Grantor's] [Landlord's] Land and/or any structures equipment pipes drains and/or other apparatus and/or infrastructure thereon or thereunder (whether the property of the [Grantor's] [Landlord] or of a third party) and make good as soon as reasonably practicable or pay compensation to the Landlord the occupier(s) and/or the user(s) of the said land and/ or the owner(s) of such structures equipment pipes drains and/or other apparatus and/or infrastructure for any Losses suffered by them or any of them for any damage or disturbance caused by the [Tenant] [Grantee] to the said land and/or any such structures equipment pipes drains and/or other apparatus and/or infrastructure (including by reason of the use of the [Demised Land] [Easement Area] by or on behalf of the Tenant and/or the exercise of the Specified Rights or of any of them).</i>

		<i>Not to commit any breach of any Applicable Legislation and not to permit or suffer any breach thereof or non-compliance therewith and not to cause permit or suffer either the existence or the commission by its employees agents contractors or invitees of any non-compliance with or contravention of any Applicable Legislation;</i> <i>To keep the Pipe-line in good and substantial repair and condition in a manner appropriate to a Reasonable and Prudent Contractor and use all reasonable endeavours to ensure that (i) no substances leak, spill or discharge from it and (ii) no Tenant Contamination occurs;</i> <i>To exercise the rights granted under this [Underlease] [easement] in accordance with best practice and in such a way as not to cause any nuisance, damage, disturbance, annoyance, interference or inconvenience to the owners, occupiers, users of the Landlord's Land and any land adjoining or neighbouring the Landlord's Land."</i>
4.	These arrangements impose safeguards both for the constructors of new infrastructure and the protection of the existing pipeline corridor overseen by Sembcorp. The legal arrangements between the Applicant and Sembcorp in relation to the pipeline corridor oblige the Applicant also to observe those arrangements. They deal with the same type of issues as the protective provisions in Schedule 9. However the protective provisions in Schedule 9 go far beyond the level of protection provided for the existing pipes under the current arrangements with Sembcorp.	New pipelines such as the Breagh and CATS Pipelines have been added to the pipeline corridor over the years; however, it was never envisaged by the Objectors that the pipeline corridor would be used for the construction of an overhead conveyor for potash. This Authorised Development is alien to the pipeline corridor and, unlike the Breagh and CATS Pipelines, is potentially in direct conflict with the existing uses. The reference here to the Objectors' existing rights is somewhat misleading, as the main purpose of the Protective Provisions is to protect the Objectors from the full exercise of the powers sought by the Applicant in the Order, which go far beyond the private rights which the Objectors understand Sembcorp to have granted to the Applicant. Where the Applicant's drafting is being considered, the key question that must be asked is what would the effect be in the event that the Order powers were exercised to their fullest extent if the stronger protection sought by the Objectors did not exist. Where the Objectors' businesses would be affected, or destroyed, if the powers are exercised this fact must be weighed carefully in the balance when exercising the public interest test under Section 122 of the Planning Act 2008.

		In terms of any private arrangements put in place between the Applicant and Sembcorp, these are not directly enforceable by the Objectors against the Applicant due to rules relating to privity of contract. As a result, the Objectors' rights in the pipeline corridor require Sembcorp to obtain the Objectors' consent to any works within the relevant easements strips and also require the Objectors to specify any reasonable protective works that are required to protect their own assets. The landlord is obliged to carry out these works at its own cost. Sembcorp is also under an obligation to the Objectors not to undermine or damage or suffer to be undermined or damaged their pipelines or do or suffer to be done anything which may interfere with free flow and passage through the pipelines. These arrangements are not reflected in the terms of the draft Order itself, and the proposed Protective Provisions are the only means to ensure that the necessary protections will apply if Order powers are exercised. Moreover, the general arrangements described above were developed to deal with arrangements as between pipeline operators. The Applicant is not proposing to construct a new pipeline, but rather a conveyor system which is entirely alien to the pipeline corridor as it currently exists and operates. It was never conceived that a potash conveyor and associated structures (including supports) would cut its way through the land. It is therefore entirely reasonable that bespoke Protective Provisions are put in place in Schedule 9 of the Order to deal with this bespoke project, its relationship with the existing pipeline corridor and the broad powers conferred by the proposed Order.
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ANNEX 3

OBJECTORS' RESPONSE TO THE DETAILED COMMENTS OF THE APPLICANT ON THE PROTECTIVE PROVISIONS

No.	Issue	Applicant's comment	Objectors Replies
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	The Applicant has accepted that the protective provisions should apply to any pipelines that exist when the pipeline survey is carried out which will include any pipelines not currently in existence but installed prior to that point. The Applicant does not feel it appropriate to gear protective provisions towards pipelines which are not physically in existence at the time of the works being carried out and which may never exist. Even if this was confined to planned pipelines, what would qualify as a "planned" pipeline? Until a pipeline has been constructed there can be no certainty as to whether it will be constructed. No specific programmed pipelines have been referred to by Bond Dickinson; any such pipelines will come within the general controls relating to the pipeline corridor under the Sembcorp lease and there is no reason why those pipelines should not reflect the existence of the authorised development.	The Objectors have a simple starting position in respect of the assessment of whether or not a particular pipeline should be protected from the authorised development by the Protective Provisions: if there is a pipeline, it should be protected. That is the position that would apply in respect of, for example, the apparatus of statutory undertakers. The Objectors' drafting of the Protective Provisions flows directly from this simple starting position. The time when the undertaker should consider whether a pipeline exists is the time when they carry out the works. Indeed that is the only time when they can sensibly make that assessment. During the examination it became clear that the Applicant's draft Protective Provisions would place the Objectors in a position whereby "unknown rights" would not be protected from compulsory acquisition (see the final words of Article 25(1)), and that "unknown rights" were rights that the Applicant had not discovered in putting together the Book of Reference. This approach would place the Objectors in the unenviable position of having to rely on the Applicant's due diligence exercise having captured and accurately recorded their rights before the protection against compulsory acquisition would apply, thus reversing the normal allocation of risk that would apply in due diligence. The purpose of the pipeline survey was, then, to provide comfort to the Objectors that they would have the opportunity to input into a survey to minimise the risk of their assets being unprotected from compulsory acquisition.

			However, the Applicant has used this opportunity to draw back the protections it is offering, by amending the definition of “pipeline” to link it directly to apparatus in existence at the time of the pipeline survey (i.e. as opposed to pipelines in place when the works are carried out). This was a new development at Deadline 6. The effects of the Applicant's definition of “pipeline” would go far beyond compulsory acquisition, and deny any new pipeline (i.e. installed between the date of the publication of the pipeline survey and the commencement of the authorised development) the protection of the Protective Provisions. This is of huge concern because both SABIC and Huntsman have advanced plans to install new pipelines in the pipeline corridor. The Objectors' Deadline 6 Submission in relation to the Protective Provisions sets out detail about SABIC and Huntsman's respective proposals at paragraphs 3.1.2 and 3.1.3. The need to protect proposed pipelines is not a hypothetical issue: it is a very real and important issue which affects two of the three Objectors. The Objectors made specific reference at the hearings of 24 September 2015 to SABIC's project to change the feedstock of the Cracker from naphtha to ethane, and mentioned that works along pipeline corridor observed at the site visit which were connected with this project. Both SABIC and Huntsman's projects were specifically mentioned in correspondence with the Applicant when the Statement of Issues remaining between the Objectors and the Applicant was drawn up. The Objectors are therefore surprised that the Applicant should express ignorance of them.
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			In light of SABIC and Huntsman's advanced plans to install new pipelines, it was therefore considered important to seek to capture "proposed pipelines" in the pipeline survey. In doing so, the Objectors have sought to include a definition of "proposed pipeline" which strikes the right balance between speculative projects which are in the very early stages of development and more developed projects like those of SABIC and Huntsman referred to in paragraphs 3.1.2 and 3.1.3 of the Objectors' Deadline 6 Submission. Paragraph (b) of the definition of "pipeline survey" provides that the survey must ascertain the location of any new or diverted pipeline which an owner or operator intends to install and the timetable for its installation. If the location and timetable for installation is not known at the time of the pipeline survey then the project will not constitute a "proposed pipeline". It will only escape from being subject to an "unknown right", and being excluded from protection under the Protective Provisions, if and to the extent that it is ultimately installed in the location shown on the pipeline survey. In short, only projects which are at a relatively advanced stage of development will be able to benefit from this protection as proposed pipelines. The onus will be on SABIC and Huntsman (and any other owners and operators) to ensure that their proposals are sufficiently certain at the time of the pipeline survey that they can constitute proposed pipelines. If a proposed pipeline has been constructed then it constitutes a "pipeline" and the protection afforded by the Protective Provisions should apply. This goes back to the Objectors' simple starting position that if there is a pipeline it should be protected.
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2)	The definition of affected asset	The Applicant is concerned to ensure that the definition of “affected asset” is as certain as possible. This is important because it is “relevant works” being carried out to an affected asset that requires the Applicant to submit to that asset owner details and obtain approval of them. The amendments sought by Bond Dickinson incorporate a judgment as to whether work is likely to have an effect on the asset. That judgment is already included in the definition of “relevant works”. It is unnecessary to have that judgment also included in the definition of affected asset.	As is stated above, the Objectors have a simple starting position in respect of the assessment of whether or not a particular pipeline should be protected from the authorised development by the Protective Provisions: if there is a pipeline, it should be protected. That is the position that would apply in respect of, for example, the apparatus of statutory undertakers. The Objectors’ drafting of the Protective Provisions flows directly from this simple starting position. The Objectors have made a major concession in response to the concerns of the Applicant that it would be too onerous for the Applicant to serve works details and obtain consent under paragraphs 4 to 7 of the Protective Provisions where a pipeline will not be affected. The Objectors therefore agreed that there could be some judgment as to whether or not the pipeline is actually affected by the works: hence the definition of “relevant works” in the Protective Provisions. This position can be clearly ascertained in the Objectors’ draft Protective Provisions submitted in Annex 1 of the Objectors’ Deadline 4 Response, which included definitions of “relevant pipeline” and “relevant protected crossing”, being pipelines, or protected crossings, “which may be affected by relevant works”, as well as “relevant works”. Once the Objectors made this concession, the Applicant sought to further curtail the broad protection of the Objector’s starting position by including a further concept of “affected asset”. Under its drafting it is not sufficient that a pipeline “may be affected”. It must also pass a further test set out in the definition of “affected asset”. For example, under the Applicant’s drafting the relevant works must be carried out within the easement width of an underground pipeline before that pipeline is protected. If works affect a pipeline then it is irrelevant to the Objectors (and the effect on safety and the continued operation of their pipelines) whether those works are carried out within the easement width or just outside it: the effect of the works will be the same. The Objectors have sought to assist the Examining Authority to understand the parties’ positions by putting their own protective provisions (see the Objectors’ Deadline 4 Submission) aside and grafting the protections they are seeking onto those proposed by the Applicant. It is accepted that there is a degree of repetition and reinforcement in the Objectors’ definitions of “affected asset” and “relevant works” as a result. However the Objectors’ Deadline 6 Protective Provisions are entirely consistent on this point with their Deadline 4 Submission.
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3)	The extent of definition of apparatus	The Applicant believes the definition of “apparatus” sought by Bond Dickinson goes beyond the scope of protective provisions in Schedule 9 which are entirely focused on pipelines and their associated infrastructure. Accordingly, whilst the inclusion of sewers (as pipelines) is accepted, the references to drains, ditches and watercourses is not felt to be appropriate. The protection of these features will be governed by either the requirements or other legislation, as existing. The reference to “or other apparatus” is far too vague, especially as this definition is seeking to define the term “apparatus”.	There is clearly a difference in the scope of the Protective Provisions being offered by the Applicant and the scope of the Protective Provisions which the Objectors consider to be reasonably necessary to protect their assets. These differences arise from the Application draft Order submitted by the Applicant which contained protective provisions for pipeline operators. When the Objectors came forward with their relevant representations they were invited to amend the existing Protective Provisions to deal with their concerns. Those concerns were broader than the protection of pipelines. The Objectors' justification for their proposed definition of apparatus is set out in Section 3.3 of their Deadline 6 Submissions.
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4)	The extent of land shown on the pipeline corridor plan	Bond Dickinson would want plot 54a and 59a to be included in the pipeline corridor plan. Plot 54a is the temporary works to the access roundabout. Plot 59a is a temporary compound to be located near to the material handling facility. The pipeline corridor plan identifies the area which will be subject to the conveyor footings and supports and the location of the principle pipeline routes. Plots 54a and 59a do not fall within that corridor and are only affected by the temporary use of land. The Applicant's view is that these areas are adequately protected by the provisions in article 30 and their arrangements with their landlord, Sembcorp. Indeed, as mentioned in the Schedule of Changes to the DCO, the Applicant has amended the definition of "building" in article 2 for the purposes of article 30 to further address this concern.	The Applicant is mistaken in its conclusion that the Objectors main concerns relate to the use that the land in Plots 54a and 59a. Rather, the Objectors' concerns again come down to their simple starting position that if there is a pipeline, it should be protected from the authorised development. A pipeline may be affected by works situated some distance from it, and it is therefore important to capture on the pipeline corridor plan all of the land in which pipelines are situated. There is a degree of confusion from the Applicant as to the extent of the additional land which the Objectors consider should be added to the pipeline corridor. The Objectors included a plan at Appendix 4 of their Deadline 6 Submission showing the additional areas of land the Objectors consider should be included in the pipeline corridor outlined in blue. In respect of plots 54a and 59a in the Book of Reference, the parts of those plots which are affected is relatively limited, as can be seen on the plan at Appendix 4 of the Objectors' Deadline 6 Submission. INEOS is equally concerned about the land to the north of the A1085, in which the Breagh Pipeline is situated. In formulating their Deadline 6 Submission, the Objectors were conscious that that the Protective Provisions had to be drafted so as to be consistent and provide adequate protection to other owners and operators of pipelines. For this reason they have also suggested the inclusion of further areas of land in which there are pipelines (see paragraph 3.4.5 of the Objectors' Deadline 6 Submissions)
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5)	The definition of the pipeline survey	The Applicant has agreed with Bond Dickinson that before the works are carried out a survey will be undertaken to ensure that the location and details of pipelines are accurately understood. Bond Dickinson would like the pipeline survey to be more extensive than the Applicant feels is necessary. In particular the Applicant does not feel it should be required to carry out a survey to establish matters which are already known, hence the Applicant would wish to maintain the words "if not known" in the second line of the definition.	As is stated above, during the examination it became clear that the Applicant's draft Protective Provisions would place the Objectors in a position whereby "unknown rights" would not be protected from compulsory acquisition (see the final works of Article 25(1)), and that "unknown rights" were rights that the Applicant had not discovered in putting together the Book of Reference. This approach would place the Objectors in the unenviable position of having to rely on the Applicant's due diligence exercise having captured and accurately recorded their rights before the protection against compulsory acquisition would apply, thus reversing the normal allocation of risk that would apply in due diligence. The Objectors therefore consider that the pipeline survey is an opportunity for owners and operators to input into the survey and to rectify any errors in the original due diligence exercise undertaken by the Applicant. It is therefore important that the pipeline survey should not simply "take as read" the details previously ascertained by the Applicant and plotted on the conveyor route plans. The Applicant's approach would entirely defeat the primary purpose of the Objectors requesting the pipeline survey in the first place, i.e. to correct any errors in the Applicant's previous research.
		Item (b) which Bond Dickinson wish to add should not be included because, as indicated above, the pipeline survey should only be dealing with assets which are in place at the time and not potential pipelines. It is not considered necessary to include reference to access roads in a survey of this nature.	Paragraph 3(1) of the Protective Provisions requires that the pipeline survey will preceed the carrying out of the authorised development. No minimum or maximum period is specified, and the gap between the pipeline survey and the commencement of the authorised works could extend to a number of months or years. It is important, therefore, to take into account the fact that pipelines could be constructed during this gap and be in existence when the undertaker comes to carry out works. It is therefore important that proposed pipelines are taken into account in the pipeline survey. As is stated above, the Objectors' simple starting position is that if there is a pipeline, it should be protected. Paragraph (b) of the definition of "pipeline survey" in the Objectors' Protective Provisions flows directly from this simple starting position.

6)	The scope and process of the pipeline survey and recovery of costs relating thereto	Whilst the Applicant has agreed to the carrying out of a pipeline survey on the basis that it is a prudent measure, the Applicant does not wish this to be another potential cause for delay as a result of having to obtain approval of the survey from the various different asset owners. The Applicant is committing to carry out the survey through an appropriately experienced surveyor and to engage with the owners and operators of the pipelines to ensure that the survey is accurate. It is not necessary for the exercise to be expanded beyond this and to include representatives of all the various asset owners. The provision of a copy of the pipeline survey will be of significant benefit in any event to the asset owners and assist them in the future in the management of their assets. Accordingly it is not felt appropriate for any costs that are incurred in connection with the asset owners responding to the pipeline survey to be recoverable.	The Applicant would need to undertake a survey of this type before commencing the authorised development in any event. It is acknowledged that the pipeline survey provided for in the Objectors' Protective Provisions goes further than would otherwise be required, but the rationale for this is set out in the Objectors' response to Item 1 above (i.e. the purpose of the pipeline survey is to ensure that the Objectors do not have to rely on the Applicant's due diligence in respect of "unknown rights"). The Objectors' detailed response is set out in paragraphs 3.6.3 to 3.6.6 of their Deadline 6 Submission. The Objectors' detailed response is set out in paragraph 3.6.7 of their Deadline 6 Submission. In addition, notwithstanding the provision of a copy of the survey to the Objectors, the Applicant's surveyor will not be offering any warranties to the owners of the pipelines or their contractors or successors in title. As a result, the pipeline survey will be of limited value to the Objectors save in the context of the proposed Order.
7)	Whether the minimum clearance should relate to pipelines or just affected assets	The minimum clearance referred to in paragraph 17 is appropriately related to an affected asset because the definition of affected asset identifies those assets which may be affected by the relevant works. If it related to pipeline instead, then it would apply whether or not there would be any effect on the pipeline concerned.	The Objectors' responses are set out in Section 3.7 of their Deadline 6 Submission.

8)	The inclusion of paragraph 25(9)	Bond Dickinson have added in a whole series of provisions which address a scenario which is not proposed or even contemplated; that being the physical interference with the assets owners' assets such as their removal and replacement or alteration to access etc. The powers in the Order do not extend to interfering with the asset in that manner and these further provisions	The Objectors' responses are set out in Section 3.8 of their Deadline 6 Submission.
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	The Applicant has extended its insurance and indemnity provisions to all asset owners. This is one example of a protective provision which goes well beyond the provisions which protect existing assets from other assets. The consequence is that there are a very significant number of parties to whom the insurance cover is relevant. To have to wait until every single party has agreed the details of the cover would cause a real risk of delay which is a risk to the programme the Applicant does not wish to accept. It is not in the Applicant's interest to fail to put in place the appropriate insurance prior to commencing the works. If any party is unhappy at the detail or level of cover then the provision provides for expert determination and the insurance to be adjusted accordingly. The Applicant believes that this strikes the right balance between the various interests of the parties.	In case of a dispute, expert determination provides for a settled and time limited method of avoiding delay to the authorised development. The Objectors' detailed responses are set out in Section 3.9 of their Deadline 6 Submission.

10)	The inclusion of parties whose material is carried through the pipelines in the indemnity provisions	The indemnity within the Schedule is for the benefit of the asset owners within the Order land. The Applicant cannot be responsible to others, potentially varied and unknown, whose material is carried through the pipes. That responsibility is governed by the commercial arrangements between the asset owners and their customers.	The Objectors' responses are set out in Section 3.10 of their Deadline 6 Submission. When private rights are granted, Grantees are generally required to enter into the following obligation (our emphasis): <i>“At all times take all reasonable and proper precautions to ensure that in the exercise of the Specified Rights as little damage or disturbance as possible is caused to the [Grantor’s] [Landlord’s] Land and/or any structures equipment pipes drains and/or other apparatus and/or infrastructure thereon or thereunder (whether the property of the [Grantor’s] [Landlord] or of a third party) and make good as soon as reasonably practicable or pay compensation to the Landlord the occupier(s) and/or the user(s) of the said land and/ or the owner(s) of such structures equipment pipes drains and/or other apparatus and/or infrastructure for any Losses suffered by them or any of them for any damage or disturbance caused by the [Tenant] [Grantee] to the said land and/or any such structures equipment pipes drains and/or other apparatus and/or infrastructure (including by reason of the use of the [Demised Land] [Easement Area] by or on behalf of the Tenant and/or the exercise of the Specified Rights or of any of them).</i> <i>Not to commit any breach of any Applicable Legislation and not to permit or suffer any breach thereof or non-compliance therewith and not to cause permit or suffer either the existence or the commission by its employees agents contractors or invitees of any non-compliance with or contravention of any Applicable Legislation;</i> <i>To keep the Pipe-line in good and substantial repair and condition in a manner appropriate to a Reasonable and Prudent Contractor and use all reasonable endeavours to ensure that (i) no substances leak, spill or discharge from it and (ii) no Tenant Contamination occurs;</i> <i>To exercise the rights granted under this [Underlease] [easement] in accordance with best practice and in such a way as not to cause any nuisance, damage, disturbance, annoyance, interference or inconvenience to the owners, occupiers, users</i>
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			<i>of the Landlord's Land and any land adjoining or neighbouring the Landlord's Land."</i> A person whose substance is being conveyed by a pipe is clearly a "user" of the land.
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