

PLANNING ACT 2008

**THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)
RULES 2010**

**APPLICATION BY NET ZERO TEESSIDE POWER LIMITED AND
NET ZERO NORTH SEA STORAGE LIMITED FOR A
DEVELOPMENT CONSENT ORDER IN RESPECT OF THE NET
ZERO TEESSIDE PROJECT GENERATING STATION**

DEADLINE 3 SUBMISSIONS

ON BEHALF OF

SEMBCORP UTILITIES (UK) LIMITED

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Introduction

1. This 'Deadline 3' written submission is made on behalf of Sembcorp Utilities (UK) Limited (“**Sembcorp**”). It contains Sembcorp's comments on:
 - a. the Applicants' responses to the ExA's ExQ1;¹
 - b. the Applicants' Statement of Commonality;²
 - c. WRs submitted by other parties to the examination; and
 - d. the Applicants' dDCO.³
2. Abbreviations used are the same as in the ExA's first written questions and requests for information issued on 19 May 2022 unless stated otherwise.

Comments on Applicants' responses to ExA ExQ1

GEN.1.14

3. As set out in Sembcorp's Deadline 2 Written Representations (“**DL2WR**”), the extent of the powers and CA rights sought by the Applicants over the Sembcorp Pipeline Corridor is excessive and a sufficient reasoned justification has not been articulated. This relates to both:
 - a. the physical extent⁴; and
 - b. the temporal extent⁵.
4. As to a., Sembcorp notes that there is a further inconsistency as to the physical extent/width of the Applicants' proposed apparatus/pipeline corridor over STDC's land: here, the Applicants are seeking a 28 metre wide 'exclusive' corridor whereas STDC's own is only 17 metres.⁶ This reinforces Sembcorp's own concerns set out in the DL2WR that the proposed width of the rights sought over the Sembcorp Pipeline Corridor of up to circa 35 metres is clearly far in excess of what is objectively necessary for the works envisaged.

PPL.1.6

5. Whilst Sembcorp agrees that the draft revised NPSs do encourage the delivery of new CCS infrastructure as part of a balanced approach to securing the UK's energy supplies and reducing carbon emissions, it considers that the Applicants are over-stating the significance of these emerging policy documents.

¹ REP2-016

² REP2-013

³ REP2-002

⁴ DL2WR, paras. 56 to 61

⁵ DL2WR, para. 62

⁶ REP2-097c at row 4

6. The Applicants' argument in this regard is broadly as follows. There is an urgent need for new electricity generating capacity. New CCS infrastructure will be needed to ensure the transition to a net zero economy and, as well as its role in reducing emissions from gas-fired electricity generation, it will also be needed to capture and store CO2 emissions from industrial processes. There are no realistic alternatives to CCS in order to deliver Net Zero by 2050. Where CCS proposals are covered by a section 35 direction, the application for development consent will need to be considered in accordance with the NPS. On the basis of this analysis, the Applicants conclude that "*the draft revised energy NPS documents are very strongly supportive of the Proposed Development*".
7. It is important to note at the outset that the draft revised NPSs do not have any formal or privileged status under PA 2008 and there is no legal requirement in PA 2008 which requires the present NZT application to be determined in accordance with these draft policy documents. To the extent that they are relevant, they are 'important and relevant' considerations, but the weight to be given to them is a matter of judgment for the decision-maker and, crucially, this must be balanced against any other important and relevant considerations, such as the potential adverse impact on other operators or infrastructure at Wilton, in the Sembcorp Pipeline Corridor and in the wider Tees chemical clusters.
8. In this regard, even if the draft revised NPSs (including EN-1 which forms the vast majority of the Applicants' analysis on this matter) encourage new CCS development, they do not indicate that this is to be brought forward 'at any cost'. It is necessary to consider the potential impact on existing (or future) economic operators and development in the region that may be affected or sterilised by the Applicants' proposals and to weigh this in the balance, noting in this regard the significant public interest in the ongoing success of Wilton and the wider Tees chemical clusters. As Sembcorp has made consistently clear throughout, the appropriate way to mitigate this risk is through the incorporation of appropriate protective provisions and amendments to the Requirements in the dDCO. These matters are addressed in greater detail in the DL2WR and below.
9. Moreover, the policy support in the draft revised NPSs is for the *general principle* of CCS development. As the Applicants themselves have acknowledged in their response to ExQ1, paragraphs 3.5.8 and 3.5.9 of the draft revised EN-1 NPS make clear that it is for industry to bring forward specific projects aimed at meeting the identified general need. The NPS is otherwise ambivalent as to specific locations for new development and does not identify specific projects which are supported unlike, for example, the Airports NPS which identifies not only a general need for airport capacity expansion, but goes on specifically to set out what form it is to take and where it is to be located i.e. a third runway at Heathrow. This is not the case for the draft revised NPSs which, as previously described, are generally supportive of new CCS infrastructure, but – crucially – do not specifically support this particular Proposed Development.

Accordingly, Sembcorp submits that the correct conclusion to be drawn is that *at most* the draft revised NPSs support the principle of this type of development, but they do not go any further than that. They are an important and relevant consideration deserving some weight⁷, but the continuing success of Wilton and the cluster is itself an important and relevant consideration that deserves significant weight in its own right. These two things must, therefore, both be factored into the planning balance as set out in Sembcorp's DL2WR.

TT.1.1

10. Whilst Sembcorp notes that Heads of Terms, which include access rights, are substantially agreed with the Applicants, these access rights relate to the proposed works within the Sembcorp Pipeline

⁷ Taking account of their draft status.

Corridor and Works No 2 to the extent affecting Sembcorp's gas supply pipeline respectively, and not to general access arrangements for the NZT works as a whole.

11. As to any proposed lorry routeing outwith the Sembcorp Pipeline Corridor (but nevertheless utilising Sembcorp's land or road network), as set out in REP2-099 the Applicants have not to date specifically or expressly approached Sembcorp in relation to any rights which may be required in this regard.

Comments on Applicants' Deadline 2 Statement of Commonality

12. The Applicants have produced a summary of parties and progress on relevant matters in the latest version of their Statement of Commonality. The entry relevant to Sembcorp is at row 8.26 in Table 3.1.
13. The ExA is requested to note that Sembcorp was not consulted upon the contents of this document or on the Applicants' view of the status of these matters between it and the Applicants prior to them being lodged with the ExA. Sembcorp does not consider that a number of the entries reflect the current position between it and the Applicants on the identified issues.
14. Sembcorp considers that the following characterisation would more accurately summarise the current status:

Topic	Status
Compulsory Acquisition and Temporary Possession	Currently subject to disagreement
Construction Programme and Management	Subject to further discussion
Decommissioning	Subject to further discussion
Development Consent Order	Subject to further discussion
Land Interests	Subject to further discussion
Protective Provisions	Subject to further discussion
Site Access	Subject to further discussion

Comments on WRs submitted by other parties

15. Sembcorp notes that its concerns as to the potential for the (excessive) rights sought by the Applicants in the dDCO to sterilise unnecessarily the productive use and development of land⁸ are shared by a number of other parties to the examination, including STDC⁹ and North Tees¹⁰. This is

⁸ Cf. DL2WR, para. 61

⁹ REP2-097a, paras. 3.14 to 3.16 and 3.22 to 3.23

¹⁰ REP2-070

clearly a matter of concern amongst those entities contributing to or involved in the promotion of the wider success of Teesside, whether the redevelopment and rejuvenation of the former Redcar Steel Works and/or one of the chemical clusters, not just to Sembcorp .

16. This applies not only to future development potential, but to current activities and projects as well. For example, as intimated in Sembcorp's responses to the ExA's ExQ1¹¹, there is a significant degree of overlap between the Applicants' scheme and the York Potash project being built out by Anglo-American ("AA"), both of which are projected to have similar development timelines. This will require careful management of both the construction and operational interfaces.
17. In addition, whilst AA's preference is for NZT to make use of the Sembcorp tunnel under the River Tees¹², Sembcorp would wish to re-iterate that this matter is the subject of on-going consideration, technical evaluation and legal due diligence, and, accordingly, the future suitability and use of this tunnel cannot at present be guaranteed.
18. Other commercial operators active in the area – including Sembcorp customers with rights and/or apparatus within the Sembcorp Pipeline Corridor – have also highlighted the critical importance of the vital infrastructure located in the Corridor and the potentially severe consequences of any interruption of supply (even as little as 20 minutes) or unplanned disruption.¹³
19. The scale of the potential harm and the need for effective protective provision is not only limited to economic matters: it "*is a fundamental safety issue*".¹⁴ It is essential that effective management and co-ordination arrangements and measures are in place over the Sembcorp Pipeline Corridor – measures that are currently overseen and underpinned by Sembcorp's role and are proven to be effective. Crucially, these rely on Sembcorp's enjoyment of appropriate levels of direction and control and property rights over the Corridor so as to ensure that the delicate balance of interests and the wider public interest in the safe and efficient operation of the Corridor are maintained.
20. If the Applicants wish to interfere with the existing carefully managed ecosystem of rights and responsibilities that govern the operation and use of the Sembcorp Pipeline Corridor then it is incumbent upon them to explain how they would put in place equivalent management mechanisms in order to justify the rights sought in the dDCO – or any rights. The Applicants have failed to do this. As things stand, this omission means that the grant of unfettered compulsory rights over the Corridor would represent an unacceptable safety and economic risk.
21. These potential adverse impacts are important and relevant considerations to which the ExA should attach significant weight.

Comments on Applicants' dDCO

22. This section sets out Sembcorp's over-arching comments on the latest version of the dDCO, but this is not intended to be exhaustive nor does it set out specific amendments to the dDCO text. Sembcorp will engage with the Applicants to seek to agree the position. A further update will be provided to the ExA in due course.

¹¹ REP2-099

¹² REP2-073, para. 6.5

¹³ Cf. REP2-068, paras. 3.1 to 4.11; REP2-071, pp. 2 to 3; REP2-100, paras. 2.1 to 3.9

¹⁴ REP2-066, para. 4.1; REP2-067, para. 4.1

Requirements

Article 2 – definition of “permitted preliminary works”

23. This is in effect a carve-out from the need to discharge requirements prior to commencement. Amongst other things it includes the ability to fence off land which may have implications for Sembcorp and/or relevant pipeline operators’ ability to access the Pipeline Corridor for maintenance/inspection purposes and/or in case of emergency. Consequently, additional provision must be included in the dDCO so as to require consultation with and approval by Sembcorp prior to any permitted preliminary works being carried on which would or might affect the undertaking of such activities within the Sembcorp Pipeline Corridor and/or access to the Wilton complex.
24. Sembcorp also notes that the definition is wider than previous DCOs such as the Immingham Open Cycle Gas Turbine Order 2020. The preliminary works are also not specifically linked to the scheduled works unlike the Eggborough Gas Fired Generating Station Order 2018. There does not appear to be any particular explanation as to why these precedents have not been followed by the Applicants.

Requirement 2 – notice of commissioning

25. Notice of the intended date of commissioning of the development and final commissioning of inter alia Work No. 6 must be given to the LPA. Given the significant interference between (in particular) Work No. 6 and the Sembcorp Pipeline Corridor the notification requirements should be extended to Sembcorp in addition.
26. As drafted, it is also not necessary for notice to be given in advance. This must be revised to require advance notice for a suitable period to enable Sembcorp (and others) to make necessary preparations in good time.
27. In this regard, the proposed reduction of the notice period to only seven days is unreasonable and unrealistic given the need to liaise with multiple third parties with rights and equipment in the Sembcorp Pipeline Corridor and the potentially severe consequences if plant and machinery at Wilton or elsewhere are required to undergo unplanned shut-down. A notice period of "not less than 14 days in advance" should be incorporated in both elements of Requirement 2.

Requirement 3 – detailed design

28. The Works which appear to have the greatest possibility to affect the Sembcorp Pipeline Corridor directly are:
 - a. 2A
 - b. 2B
 - c. 6
 - d. 9B
 - e. 9F
 - f. 10

29. Consequently, a requirement for the LPA to consult with Sembcorp should be included in those requirements which require details of these works to be approved subsequently:

- a. 3(2)
- b. 3(3)
- c. 3(6)
- d. 3(7)
- e. 3(10)

Requirement 4 – Landscaping, biodiversity, &c.

30. These matters have the potential to require longer-term planting and so forth which may have implications for the Sembcorp Pipeline Corridor. For example, if it is necessary to remove planting or biodiversity mitigation in the future to carry out maintenance within the Sembcorp Pipeline Corridor or to access Sembcorp's land.

31. Similarly, Sembcorp will need to be assured that any proposals do not represent a material threat to the safety and integrity of existing or future apparatus in the Corridor.

32. As such, the Requirement should be amended so as to require the LPA to consult with Sembcorp prior to approving any proposals.

Requirement 7 – highway accesses

33. Sembcorp has two concerns in relation to this Requirement:

- a. There has been at least one previous instance where works to the local highway and road network carried out by another undertaker have not been effectively managed nor notified in advance, leading to obstruction of access to and from the Sembcorp Pipeline Corridor and potentially placing in jeopardy the safe operation of apparatus within it. Many of the COMAH risk assessments applicable to the apparatus and equipment in the Corridor place vital reliance upon emergency access being available.
- b. Wilton is a significant contributor to traffic volumes on the A1085, A174, and A1053 highway network (employees, deliveries, exports, &c.). Consequently, it is vital that any new highway accesses or connected works within the highway network in proximity to Wilton which are proposed by the Applicants take account of the potential impact on these existing, established traffic flows and do not impede them or lead to congestion on the local road network.

34. As such, the Requirement should be amended so as to require the relevant LPA to consult with Sembcorp prior to approving any proposals.

Requirement 8 – means of enclosure

35. This requirement imposes an obligation for the promoters to secure the approval of a scheme setting out the programme for removal of temporary means of enclosure as well as details of any permanent means of enclosure that is to be retained.

36. Sembcorp should be consulted by the LPA on both fronts so as to ensure that any proposals do not adversely affect Sembcorp and its customers' ability to access the Sembcorp Pipeline Corridor (maintenance, repair, inspection, safety and so on) nor prejudice existing security arrangements at Wilton.
37. It is also necessary for any temporary enclosures to be approved in advance following consultation with Sembcorp for the same reasons – as currently drafted these would not require approval at all as they would fall within the over broad definition of the “permitted preliminary works” set out in Article 2 of the dDCO (see above).

Requirement 11 – surface and foul water drainage

38. This requirement prevents the authorised development from commencing until details of temporary surface and foul water drainage systems have been approved. Sembcorp should be consulted by the LPA so as to ensure that any proposals do not adversely affect Sembcorp's own drainage system.

Requirement 16 – CEMP

39. This covers such matters as the code of construction practice, monitoring and reporting. Sembcorp will need to be a consultee in respect of such matters so as to ensure that the CEMP is aligned and does not conflict with the established construction/maintenance arrangements that govern the Sembcorp Pipeline Corridor.
40. Separate to this general point, requirement 16(2)(f) requires the CEMP to incorporate a scheme for the notification of significant construction impacts and complaint handling, but this is at present limited to local residents. This should be expanded to include commercial entities and businesses in the area as well (including Sembcorp) given the proximity to Wilton and Billingham and the inter-dependent connecting infrastructure that is present.

Requirement 18 – CTMP

41. Given the importance of Wilton and the need for continuous convenient access to the Sembcorp Pipeline Corridor (for safety inspection, maintenance and so on), Sembcorp should be consulted on the draft CTMP so as to ensure that there are no material adverse impacts on traffic flow or highway safety related to the Wilton site prior to it being approved.
42. Sembcorp is particularly affected given that the promoters envisage that lorry routes will (in part) cross Sembcorp land and the promoters have not to date specifically approached Sembcorp about or considered the implications of this (cf. ExA's ExQ1.TT.1.1 and REP2-099).

Requirement 21 – Noise and vibration

43. This requires inter alia the approval of a scheme to monitor impacts during construction. For reasons which are unclear, the need to monitor vibration has been struck out in the latest iteration of the dDCO. Vibration caused by construction works can result in adverse impacts on other apparatus nearby, including by leading to equipment moving or coming loose.
44. This is a particular concern if the Applicants are required to drill a new tunnel under the River Tees because of the proximity to Sembcorp's existing No 2 River Tunnel. The nature of construction of Sembcorp's No 2 River Tunnel and experience with its No 1 River Tunnel (which is subject to structural cracking), when taken together with the hazardous nature of some of the products transported via pipelines within No 2 River Tunnel, means the need to monitor vibration should be

reinstated and Sembcorp should be consulted prior to the LPA approving the scheme so as to ensure that it is adequate to identify, prevent or mitigate any risks.

Requirement 23 – piling and penetrative foundation design

45. For the reasons given above in relation to Requirement 21, Sembcorp considers that Work No. 6 should be included in Requirement 23 in addition to Works No. 1 and 7, to the extent that Work No. 6 includes drilling and/or penetrative works. Again, Sembcorp should be consulted prior to the LPA approving the relevant method statement.

Requirement 25 – restoration of land used temporarily

46. Sembcorp must be consulted by the LPA prior to the restoration schemes being approved so as to ensure that these will not cause impediment to the ongoing management and maintenance of the Sembcorp Pipeline Corridor.

Requirement 29 – local liaison group

47. The promoters are required to establish a liaison group to deal with “*local residents and organisations*”. As currently drafted, only the LPA is a mandatory participant and the other membership is to be agreed between the LPA and the promoters. Sembcorp should be added as a mandatory participant given its crucial role and responsibilities concerning the management and operation of both the Sembcorp Pipeline Corridor and Wilton.
48. There are also established existing local liaison and consultation groups for Wilton which Sembcorp co-ordinates and attends. The Applicants should be required to participate in those Wilton groups as are relevant to its particular Works and to co-operate with Sembcorp in handling any complaints from local residents in a similar manner to that provided for in the Dogger Bank DCO.¹⁵

Requirement 32 – decommissioning

49. At present, the dDCO does not specifically require the decommissioning scheme to include a timetable for implementation or the removal of apparatus in the Sembcorp Pipeline Corridor. These matters will need to be set out expressly in the Requirement for inclusion in the decommissioning scheme.
50. Sembcorp will also need to be a consultee on such matters for the same reasons as its proposed consultation role in the approval of details during the construction phase (see above).

Protective provisions

51. Sembcorp continues to seek to agree suitable and proportionate protective provisions with the Applicants and reserves the right to make further submissions to the ExA in due course.

Other matters

52. STDC has indicated that it is now seeking not only a consultation role under the requirements, but its inclusion as an approver for sundry matters (REP2-097a, paras. 5.1 to 5.4). If this is incorporated

¹⁵ The Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 S.I. 2015/1592, Schedule 12, Part 6, paras. 21 to 23

in the dDCO then Sembcorp should be a consultee where STDC is the approving authority in like manner to the proposed requirement for the LPA to consult with it for the reasons given above.

DLA Piper UK LLP

23 June 2022