

**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 4 SUBMISSIONS**

**ON BEHALF OF**

**SEMBCORP UTILITIES (UK) LIMITED**

## **CONTENTS**

INTRODUCTION .....	3
RESPONSES TO APPLICANTS' COMMENTS ON SEMBCORP'S DL2 WR AND EXA EXQ1 RESPONSES .....	3
COMMENTS ON APPLICANTS' DL3 STATEMENT OF COMMONALITY .....	6

## Introduction

1. This 'Deadline 4' written submission is made on behalf of Sembcorp Utilities (UK) Limited (“**Sembcorp**”). It contains Sembcorp's comments/responses on:
  - a. the Applicants' comments on Sembcorp's deadline 2 (“**DL2**”) written representations (“**WR**”) and responses to the ExA's ExQ1, both lodged at deadline 3 (“**DL3**”);<sup>1</sup> and
  - b. the Applicants' Statement of Commonality lodged at DL3.<sup>2</sup>
2. Abbreviations used are the same as in the ExA's first written questions and requests for information issued on 19 May 2022<sup>3</sup> unless stated otherwise. Terms defined in Sembcorp's DL2 WR have the same meaning in these submissions unless stated otherwise.

## Responses to Applicants' comments on Sembcorp's DL2 WR and ExA ExQ1 responses

### ExA ExQ1 TT.1.1

3. This question related to inter alia the Applicants' proposals for HGV access to the development site across Sembcorp land (and other third party land) as shown on Figure 16-2<sup>4</sup>. As set out in Sembcorp's responses to ExQ1, the Applicants had not approached Sembcorp with a view to securing access in this manner.<sup>5</sup>
4. Sembcorp notes paragraph 21.2.7 of the Applicants' comments which states that:

*"Access to the PCC Site and related areas located in the Teesworks site would be via public highways and accesses directly from those into the Teesworks site."*<sup>6</sup>
5. Consequently, Sembcorp understands that (notwithstanding Figure 16-2), the Applicants do not intend to access the development site across this Sembcorp land and do not intend to seek permission so to do. The ExA is requested to note that such permission has been neither requested from nor granted by Sembcorp.

### Sembcorp's DL2 WR

6. In this section, references to paragraph numbers are to the relevant passages in the first column of section 16 of the document 'Deadline 3 Submission - 9.12 Applicants comments on Written Representations'<sup>7</sup> and the Applicants' responses thereto set out in the second column of that table. References to page numbers are to the relevant pages of the PDF file.<sup>8</sup>

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<sup>1</sup> REP3-012 and REP3-011 respectively

<sup>2</sup> REP3-008

<sup>3</sup> PD-012

<sup>4</sup> APP-173

<sup>5</sup> REP2-099

<sup>6</sup> REP3-011, page 29

<sup>7</sup> REP3-012

<sup>8</sup> The document itself lacks internal printed pagination and the table of contents therein also appears to contain sundry errors.

*The potential adverse effect of the Project*

*[paras. 29 to 38 on pages 90 to 91]*

7. For the avoidance of doubt, Sembcorp's case (in terms of the application of the relevant NPSs and the relevant grounds for determination of this application) is that, unless appropriately managed, the potential adverse impacts of the proposed development on the Sembcorp Pipeline Corridor, Wilton and the wider chemical clusters would outweigh the benefits.
8. However, it would wish to re-iterate its consistent position that that the way that these potential adverse impacts can be managed is through the inclusion of appropriate requirements and protective provisions in the dDCO as previously set out in Sembcorp's DL2 and DL3 submissions.<sup>9</sup>

*[paras. 45 to 50 on pages 91 to 93]*

9. The Applicants state that they "*do not propose to manage the pipeline corridor as a whole*".<sup>10</sup>
10. Sembcorp would stress to the ExA that this type of piecemeal interference is exactly the risk about which it is concerned. It is necessary for **someone** to manage the Sembcorp Pipeline Corridor so as to ensure its continued safe, efficient and effective operation and to facilitate the further success and expansion of the businesses which the Corridor serves: at Wilton, Billingham and across the wider chemical clusters.
11. It goes without saying that the integrated nature of the Corridor and the diverse, complex and potentially hazardous industrial apparatus and equipment contained within it necessitates holistic oversight and management of the whole Corridor. If the Applicants are not proposing to do this then Sembcorp will need to continue fulfilling this role.
12. However, Sembcorp cannot do that effectively unless appropriate protective provisions are in place to control the otherwise unfettered use of compulsory powers by the undertaker which could have significant adverse effects on the continued safe and economic operation of the Sembcorp Pipeline Corridor and the businesses which depend upon it. The inclusion of effective protective provisions in the dDCO is a matter of imperative concern.

*Inadequate justification for proposed compulsory acquisition or extinguishment of rights*

*[paras. 51 to 58 on pages 93 to 94]*

13. Sembcorp wishes to raise two key points:
  - a. The Applicants' proposals as to the installation and operation of Work No. 6 would be fundamentally different to the current arrangements that pertain in the Sembcorp Pipeline Corridor because the rights that they are seeking in the dDCO would (a) operate on a compulsory, not a consensual basis and (b) would be capable of unilaterally and automatically extinguishing the existing rights of others in the Corridor. This would materially affect Sembcorp's ability to continue with the holistic management of the Corridor as a whole since the Applicants have made clear that they have no intention of taking this vital responsibility on themselves.

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<sup>9</sup> REP2-098, paras. 73 to 79; REP2-099, CA.1.21 section. vi); REP3-025, paras. 22 to 52

<sup>10</sup> REP3-012, page 91

- b. The Applicants have still not provided any further explanation as to why a width of up to 35 metres is necessary. Whilst they will obviously need an area for construction and maintenance, they have not provided a reasoned justification as to why that needs must be 35 metres wide, especially given the fact that they have not asked for such a broad area in their discussions with other landowners and operators of apparatus in the area. Sembcorp respectfully submits that the ExA should direct the Applicants to produce a full reasoned justification for the proposed width along the whole length of the proposed interference with the Sembcorp Pipeline Corridor by deadline 5 with other parties to the examination then being given the opportunity to comment thereon by an appropriate future deadline.

*[paras. 62 to 64 no page 94]*

14. The Applicants state that temporary rights "*self-evidently would not be adequate to allow the ongoing maintenance of the CO2 Gathering Network nor the necessary access to it*".
15. This fails to properly address Sembcorp's point that these types of activities during the maintenance/operational phase and, just as importantly, post-decommissioning (given the anticipated design life of the development) are by their very nature both transient and transitory i.e. the Applicants will only require temporary use of land whilst these activities are actually going on. Consequently, the Applicants have continued to fail to adduce any cogent justification as to why powers for the permanent compulsory acquisition of land or rights for these purposes are necessary.

*Need for protective provisions and additional requirements*

*[paras. 73 to 75 on pages 94 to 95]*

16. The protective provisions included at Schedule 12, Part 16 of the Applicants' dDCO are inadequate. Sembcorp's lawyers are in active discussions with a view to agreeing suitable alternative provisions. Comments on a revised draft proposed by the Applicants were returned to the Applicants' lawyers today (7 July 2022). Subject to the Applicants agreeing same, a further update on progress will be provided to the ExA in early course.
17. In terms of requirements, the Applicants state that Sembcorp has not identified any precedent DCOs which provide for persons who are not statutory undertakers / consultees<sup>11</sup> to be included as a mandatory consultee on requirements. There have in fact been two DCOs granted in the last three months alone whereby non-statutory undertakers were included as mandatory consultees in requirements.<sup>12</sup> Further examples can be provided if necessary. The Applicants' objection in this regard is therefore without merit.
18. Moreover, it is in any event desirable for Sembcorp to be a consultee when the relevant planning authority is considering whether to approve detailed designs, plans or other arrangements under the relevant requirements.<sup>13</sup> It is important for Sembcorp to be included due to its technical knowledge and experience which will enable it to flag any potential issues and provide relevant information before consent is given under the requirements in question.
19. There is no reason why a requirement for such consultation would necessarily cause delay to the implementation of the Applicants' scheme: if Sembcorp has no concerns in relation to the proposals

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<sup>11</sup> Sembcorp infers that the Applicants are here referring to consultees prescribed under PA section 42(1)(a).

<sup>12</sup> The M54 to M6 Link Road Development Consent Order 2022 S.I. 2022/475, requirement 11; The M25 Junction 28 Development Consent Order 2022 S.I. 2022/573, requirement 19

<sup>13</sup> cf. REP3-025, paras. 25 to 50 and 52

then it would raise no objections in response and, if there are technical concerns, it is clearly in the public interest that these should be considered and the Applicants' proposals revised and improved where appropriate.

20. However, absent a provision to this effect in the requirements, there would be no specific obligation on the local planning authority to consult with Sembcorp so as to enable any technical concerns that may apply to be ventilated at an appropriate and early stage.
21. Whilst the Applicants have suggested that the need for Sembcorp to approve certain specified "works details" under protective provisions in the dDCO will be sufficient to ensure that Sembcorp will receive the required information at the detailed design stage, Sembcorp does not agree that this would adequately address this particular concern in the specific circumstances of the Sembcorp Pipeline Corridor. This is because:
  - a. the emphasis and purpose of the requirements in the dDCO is different to any protective provisions;
  - b. the protective provisions proposed by the Applicants in the dDCO are not currently adequate;
  - c. even if the Applicants' detailed proposals might not in themselves necessarily have an effect on Sembcorp's operations (so as to trigger the protective provisions proposed by the Applicants in the dDCO), Sembcorp is nevertheless likely to have technical information and expertise which is of use to the decision-maker and the Applicants; and
  - d. the Applicants' proposed protective provisions are not absolute. It is quite conceivable that if Sembcorp were to refuse to approve works details that the Applicants would seek to argue on referral to an arbitrator that Sembcorp's refusal was unreasonable on the basis that the matters in question had already been approved by the relevant planning authority pursuant to the requirements.
22. Consequently, Sembcorp's position remains that it should be included as a mandatory consultee in respect of the requirements identified in its DL3 submissions.

### **Comments on Applicants' DL3 Statement of Commonality**

23. The Applicants have produced a further summary of parties and progress on relevant matters in the latest version of their Statement of Commonality lodged at DL3. The entry relevant to Sembcorp is at row 8.26 in Table 3.1.
24. As for the DL2 Statement of Commonality, 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.
25. There has been no further material progress on the SOCG between Sembcorp and the Applicants. Sembcorp's lawyers continue to await substantive comments on the draft commercial agreements aimed at securing appropriate rights for the Applicants over the Sembcorp Pipeline Corridor. As such, Sembcorp continues to consider that a number of the entries do not reflect the true current position between it and the Applicants on the identified issues.
26. The following characterisation continues to be a more accurate summary of the current status:

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

27. With particular reference to the potential use of Sembcorp's no. 2 tunnel beneath the River Tees, this remains the subject of on-going technical consideration and, as set out at DL3<sup>14</sup>, its future use cannot be guaranteed at this time.

**DLA Piper UK LLP**

**7 July 2022**

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<sup>14</sup> REP3-025, para. 17