

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**

SEMBCORP PIPELINE CORRIDOR PROTECTIVE PROVISIONS

EXPLANATORY MEMORANDUM

SEMBCORP UTILITIES (UK) LIMITED

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Introduction

1. This explanatory memorandum is submitted on behalf of Sembcorp Utilities (UK) Limited (“**Sembcorp**”) and should be read in conjunction with Sembcorp's preferred draft protective provisions for the benefit of Sembcorp, the Sembcorp Pipeline Corridor and the Wilton Complex which they serve (“**PPs**”).
2. The purpose of this document is to explain the effect and purpose of the provisions in the PPs. These are largely part copied from the protective provisions incorporated for the protection of Sembcorp and the Wilton Complex in The Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 (“**Dogger Bank DCO**”), subject to appropriate changes to reflect the current application and taking account of comments provided by the Applicants to Sembcorp's solicitors. Where these PPs differ materially from the Dogger Bank DCO this is identified and explained below.
3. Copies of the PPs are annexed to Sembcorp's DL12 position statement: Annexe E1 is a 'clean' version and Annexe E2 shows tracked changes compared to the dDCO version most recently submitted by the Applications at DL8 [REP8-003] (the “**DL8 dDCO**”). Where the PPs proposed by Sembcorp differ materially from those put forward by the Applicants in the DL8 dDCO (such as through the inclusion of additional provisions) the reason for this is explained below.
4. Please note that the paragraph numbering of the PPs has been changed to lettering. This is because the paragraph numbering in Schedule 16 of the DL8 dDCO runs through all 27 Parts continuously. Accordingly, lettering is used in the PPs to ensure that any internal cross-references are clear. These should be replaced with the appropriate paragraph numbers in any final recommended or made DCO once the numbering of the other Parts has been confirmed.
5. This explanatory memorandum comments only on matters pertaining to the PPs. Sembcorp reserves the right to submit further comments in response to the Applicants' final proposed dDCO which is due to be lodged at DL12.

The provisions of the PPs: article 2 of the dDCO

6. Article 2 (*Interpretation*) provides for the interpretation of the rest of the dDCO, including the Schedules. Where appropriate some Schedules also contain provisions setting out what terms mean in the relevant Schedule.
7. In article 2(1) principium, additional wording has been inserted to make clear that where a term defined in article 2 is also defined in the PPs (such as the definition of “*owner*”), the more specialised definition is to apply for the purposes of the PPs in the schedule.
8. The definition of “*Sembcorp*” has been included in article 2(1) because it is used not only in the PPs, but also elsewhere in the dDCO (such as in connexion with consultation on the discharge of requirements). This is to ensure consistency. Additional wording has been inserted to clarify that – where Sembcorp's specialised functions as ‘pipeline authority’ are transferred to a different entity, the requirement to consult or seek consent under the dDCO or the PPs relates to that new entity instead.
9. The definition of the “*Sembcorp operations*” cross-refers to the PPs. This is because – whilst the term is used in the main part of the dDCO – its definition for the purposes of the PPs relies on other defined terms which differ from those given a general definition in article 2(1) (such as “*owner*”).

Cross-referring to the definition in the PPs in this manner means that it is not necessary to also transfer these specialised definitions from the PPs into the main dDCO (which would lead to further unnecessary drafting complexity).

10. The "*Sembcorp Pipeline Corridor*" to which the PPs apply is defined by reference to sundry supporting plans. These comprise:
 - a. An overview plan to aid the location of the more detailed sheets;
 - b. 15 detailed sheets showing the location of relevant Sembcorp land and interests edged red; and
 - c. An additional plan showing the extent of the "Wilton Complex" edged mauve – this additional plan is required for the purposes of the PPs in order to delineate clearly the scope of the area which the PPs are intended to benefit, but is conveniently included here for the purposes of this explanatory memorandum.

11. In general terms, the overview plan and the detailed sheets show the following:
 - a. **Overview:** This shows the Sembcorp Pipeline Corridor as it interlinks with CF Fertilisers at Billingham (to the west), runs across North Tees area (including through the North Tees Group estate) and connects (through Sembcorp's No 1 and No 2 River Tunnels) to the south bank of the River Tees, and the Wilton Complex (including connections to the integrated network of vein lines on the Wilton Complex which serve individual customers). As part of this, it includes road and other culverts and pipe gantries (for example over or under railways or streams). It also shows the Wilton Complex, as well as Sembcorp's outlying land, upon which brine and water reservoirs are located (which provide supplies to the Wilton Complex). In addition, the Sembcorp gas pipeline(s) protection strip, as well as above ground installation (AGI) compounds, and accessways are also shown.
 - b. **Sheet 1 of 15:** This shows a section of the Sembcorp Pipeline Corridor within the Billingham site, as well as road culverts and pipe gantries (over the railway) linking the CF Fertiliser sections of the pipeline corridor with Sembcorp's (which principally begins at Cowpen Bewley Road) (centre top). In addition, Sembcorp's gas pipeline easement and two gas compounds (AGI1 and the 'Enron' compound) which provide the link to National Grid's national gas transmission system at Billingham are shown.
 - c. **Sheet 2 of 15:** The Sembcorp Pipeline Corridor plus its culverts and crossings under Seaton Carew Road as well across the Network Rail Greatham Creek railway are shown. This also shows the Sembcorp gas pipeline protection strip in the north west.
 - d. **Sheet 3 of 15:** The Sembcorp Pipeline Corridor is shown. There are two principal branches: the main 'trunk' corridor to the south and the gas pipeline(s) to the north, including the 3 gas pipelines (North and South 24 inch, plus 8 inch naphtha) and access road into and out from the Teesside gas processing plant ("**TGPP**"). At TGPP Sembcorp holds AGI2 and installations enabling gas to be taken from the TGPP plant, as well as gas to be reversed and flowed to Billingham. There is also a facility where a 'pig' can be launched or received – this is used for inspecting the inside of a buried pipelines.
 - e. **Sheet 4 of 15:** The Sembcorp Pipeline Corridor – including the North Tees Section through the North Tees Group estate (which was visited at the ASI on 20 October 2022), the Monsanto (Ineos) and PD Ports (then Tees & Hartlepool Port Authority) (THPA 1975

Deed) sections – is shown as well as Sembcorp’s No 1 River tunnel. This also shows the Sembcorp 24 and 8 inch gas pipelines in the north east.

- f. **Sheet 5 of 15:** The Sembcorp Pipeline Corridor – including that section granted under the THPA 1975 Deed – is shown as is the No 2 River tunnel, Sembcorp’s Bran Sands leasehold and freehold land, as well as the Sembcorp gas pipelines and their associated tunnel under river (the southernmost of the two tunnels).
 - g. **Sheet 6 of 15:** The Sembcorp Pipeline Corridor – being the No 1 tunnel south linkline, No 1 tunnel south headhouse, No 1 tunnel, and the Dorman Long (now STDC) leasehold land – is shown.
 - h. **Sheet 7 of 15:** The Sembcorp Pipeline Corridor – in the form of the Bran Sands lease (from Anglo Woodsmith), Sembcorp’s freehold land, the 1958 lease from PD Ports (heading SSW), Sembcorp’s pipe racks and tracks across Network Rail’s land and Sembcorp’s freehold land CE189162 – is shown.
 - i. **Sheet 8 of 15:** The Sembcorp Pipeline Corridor – in the form of the No 1 tunnel South Tees link and Sembcorp’s freehold land under titles CE189162 and 189024 – is shown.
 - j. **Sheet 9 of 15:** Sembcorp’s freehold land (including within the Wilton Complex) – principally under titles CE189024 and CE188998 – is shown. This contains further Sembcorp pipeline infrastructure.
 - k. **Sheet 10 of 15:** Sembcorp’s freehold land (including within the Wilton Complex) – principally under titles CE189675 and CE188861 – is shown. This contains further Sembcorp pipeline infrastructure.
 - l. **Sheet 11 of 15:** Sembcorp’s freehold land (including within the Wilton Complex) – principally under titles CE189675 and CE188861 – is shown. This is similar to Sheet 10, but positioned further to the south. This also includes Sembcorp’s No 2 raw water reservoir, used to supply and support the Wilton Complex (under title CE188490).
 - m. **Sheet 12 of 15:** Sembcorp’s freehold land (including within the Wilton Complex) – principally under title CE189162 – is shown. This contains further Sembcorp pipeline infrastructure.
 - n. **Sheet 13 of 15:** Sembcorp’s freehold land (including within the Wilton Complex) – principally under titles CE189162 and CE189486 – is shown. This contains further Sembcorp pipeline infrastructure.
 - o. **Sheet 14 of 15:** Sembcorp’s freehold land (including within the Wilton Complex) under title CE189486 is shown. This contains further Sembcorp pipeline infrastructure.
 - p. **Sheet 15 of 15:** Sembcorp’s freehold land (principally under title CE189675) together with the brine reservoir and potable water reservoirs that support the gas storage (currently principally nitrogen for fire suppression) and water supply to the Wilton Complex. Title CE189675 contains further Sembcorp pipeline infrastructure which runs out to Greystones Road (A1053).
12. It should be noted that the PP supporting plans do not show the order limits. This is because it is intended that the benefit of the PPs apply to land both within and without the order limits. This is

because the infrastructure serving the Wilton Complex (which Sembcorp manages) forms an integrated network and cannot be sensibly or easily severed in practice.

13. In these circumstances, it is not necessary to show whether the protected land or infrastructure is within the order limits provided that its extent is clearly defined. This is achieved through Sembcorp's proposed supporting plans which clearly prescribe the physical extent of the protected land, whether in the Sembcorp Pipeline Corridor itself or the Wilton Complex which the apparatus serves.

The provisions of the PPs: Schedule 12, Part 16 of the dDCO

Extent of this Part

18. Paragraph A(1) explains the purpose of the PPs and the entities/interests which they are intended to benefit. This is subject to the ability for the undertaker and Sembcorp (in its capacity as the pipeline authority overseeing the management of the Sembcorp Pipeline Corridor) to agree alternative provision where appropriate.
19. Where such alternative provision is agreed, paragraph A(2) applies in the event that the benefit or powers of the dDCO are transferred from the Applicants to a different undertaker in the future. The effect of this provision is that such an agreement will automatically 'carry across' to the new undertaker. This provision is necessary in order to overcome the common law doctrine of 'privity of contract' under which agreements will not ordinarily bind third parties (such as any new transferred undertaker).
20. Paragraph A(3) makes further provision in order to make clear that:
 - a. The carry-over provision in paragraph A(2) only has effect if the agreement in question makes clear on its face that it is to apply by including a prescribed statement. This is similar to the requirement for a planning obligation made under section 106 of the Town and Country Planning Act 1990 to state that it is made under section 106 and provides legal certainty.
 - b. Agreements entered into both before and after the making of the DCO can carry over. This is because Sembcorp continues to negotiate with the Applicants with a view to reaching an agreed position, which may well be completed between the close of the examination and the potential making of the DCO. This sub-paragraph provides for this scenario.
21. Paragraph A(4) disapplies article 44(4) and (5) which provide for requests for approval under the dDCO to be deemed to be approved if a response is not provided within a specified timescale. It is necessary to disapply these provisions because the PPs provide for consent to be deemed to be withheld for the purposes of the PPs if a response is not provided within a specified (shorter) timescales. This accords with the approach taken in the Dogger Bank DCO.

Interpretation of this Part

22. Paragraph B sets out specialised definitions for the purposes of the PPs.

23. The definition of "*owner*" cross-refers to the definition in article 2(1) of the main dDCO where this is necessary to give effect to the consolidated definition in the PPs.
24. The definitions of "*Sembcorp Pipeline Corridor*" and "*Sembcorp Pipeline Corridor protective provisions supporting plans*" have been omitted in order to avoid unnecessary duplication with article 2(1) of the dDCO.
25. The definitions of "*third party owner or operator*" and "*third party protective provisions*" have been amended to reflect amended drafting later in the PPs.

Separate approvals by third party owners or operators

26. Paragraph C(1) provides that where the undertaker is required to obtain consent from the owners or operators of apparatus in the Sembcorp Pipeline Corridor under third party protective provisions elsewhere in the dDCO, it is not required to obtain further consent from that person under the PPs. This is not contained in the Dogger Bank DCO, but Sembcorp nevertheless considers that this is a sensible measure in order to reduce unnecessary duplication.
27. Nevertheless, paragraph C(2) as amended is necessary in order to make clear that the removal of a requirement to seek consent from a third party owner or operator under the PPs does not remove the requirement to obtain consent from Sembcorp under the PPs. This is because it is Sembcorp which occupies the special status of pipeline authority and manages the collective management of the competing interests in and demands over the Sembcorp Pipeline Corridor. Disapplying the requirement for the undertaker to seek Sembcorp's approval under the PPs on the basis that a third party owner or operator had already given consent would frustrate the intention of the PPs by overriding Sembcorp's separate – but highly important – co-ordinating function.
28. Where a third party consent has been sought or given, paragraph C(3) requires the undertaker to provide copies to Sembcorp. This is to ensure that Sembcorp's records – as pipeline authority – are kept up to date.

Restrictions under this Part in connection with the Sembcorp Pipeline Corridor

29. Paragraph D provides that where it is reasonably practicable for the undertaker to carry out the Authorised Development in a way which reduces or avoids impacts on the Sembcorp operations or the Sembcorp Pipeline Corridor, it must do so. These provisions replicate paragraphs 4(1), 4(2) and 13(1) of the Dogger Bank DCO protective provisions.
30. Paragraph E provides that the undertaker may not exercise the '*identified powers*' (as defined in paragraph E(6)) in relation to the protected land without Sembcorp's consent. These powers generally comprise powers to acquire or extinguish land or rights by compulsion or to otherwise carry out works which are by their nature likely to pose a risk of disruption to the Sembcorp operations. This provision mirrors that in paragraph 5 of the Dogger Bank DCO protective provisions.
31. Paragraph E(2) provides that Sembcorp must not unreasonably with-hold or delay giving its consent. This is a change from paragraph 5(2) of the Dogger Bank DCO protective provisions which provided only that consent should not be unreasonably with-held. Paragraph E(4) provides that consent is deemed to be with-held after 30 days.
32. Where the undertaker considers that consent has been withheld unreasonably or is deemed to have been with-held then it may 'appeal' to an independent determiner under paragraph E(3) or (4)

respectively. This is to ensure that the undertaker's ability to implement the Authorised Development cannot be frustrated by Sembcorp through the operation of the PPs.

33. Prior notice of the proposed exercise of the powers must be given to Sembcorp under paragraph E(5).

Removal of apparatus

34. Save as set out below, paragraph F is in materially the same terms as the DL8 dDCO. It provides that existing apparatus may not be removed unless and until a suitable replacement has been provided. Replacement apparatus can be provided by the undertaker or by the owner/operator of the apparatus in question.
35. The only amendments to this paragraph compared to the DL8 dDCO relate to the mechanism for the resolution of disputes (see below). These are minor consequential amendments only in order to reflect whichever dispute resolution method is included in the PPs.

Alternative apparatus

36. Save as set out below, paragraph G is in materially the same terms as the DL8 dDCO. It provides that where apparatus is replaced pursuant to the dDCO this must on equivalent terms to those on which the existing apparatus was held. If the new terms applicable to the replacement apparatus are less advantageous then reasonable compensation is to be paid. Where it is not possible to reach agreement then the matter is to be resolved by an independent determiner.
37. The only amendments to this paragraph compared to the DL8 dDCO relate to the mechanism for the resolution of disputes (see below). These are minor consequential amendments only in order to reflect whichever dispute resolution method is included in the PPs.

Consent under this Part in connection with Sembcorp operations

38. Paragraph H requires consent to be obtained by the undertaker prior to carrying out any part of the Authorised Development which would or may have an effect on the operation or maintenance of the Sembcorp operations. This differs from the provisions in paragraph E (see above) which relate to the proposed exercise of the identified powers (of compulsory acquisition and so forth). By comparison, paragraph H relates to and controls physical works proposed by the undertaker.
39. This paragraph is adapted from the equivalent provision in paragraph 10 of the Dogger Bank DCO protective provisions, but amended to reflect the fact that the Applicants are not yet in a position to provide detailed specifications of much of the proposed works in or near the Sembcorp Pipeline Corridor.
40. Paragraph H(1) provides for the undertaker to submit details of the proposed works to Sembcorp for approval. Sembcorp may also request further particulars where appropriate and necessary. Paragraph H(2) then provides that the works in question may not be carried on unless and until approval has been given.
41. Under paragraph H(3), Sembcorp must not unreasonably with-hold or delay giving its approval of the works details, but it may impose reasonable requirements on any consent. If the undertaker considers that consent has been unreasonably withheld or delayed or has been given subject to an unreasonable requirement it may 'appeal' to an independent determiner under paragraph H(4).

42. Paragraphs H(5) and (6) require that the works be carried out in accordance with the relevant approval.
43. The Applicants have not proposed that equivalents of paragraphs 10(6) and (7) of the Dogger Bank DCO protective provisions be included in the DL8 dDCO. Accordingly, they are omitted from Sembcorp's preferred PPs.

Insurance

44. Paragraph I largely replicates paragraph 6 of the Dogger Bank DCO protective provisions. It requires the undertaker to put in place a suitable policy of insurance during the construction and operation of the Authorised Development.
45. Paragraphs I(1) and (3) provide that the level of cover is to be agreed between the undertaker and Sembcorp separately.
46. Paragraph I(1) requires that the insurance include coverage for consequential loss and damage. This was omitted from the DL8 dDCO, but is specifically included in the Dogger Bank DCO protective provisions. This is because the potential liabilities to which Sembcorp could be exposed are not limited to physical damage, but also consequential losses if Sembcorp becomes liable to compensate its customers following an interruption of supply caused by the undertaker.
47. Paragraph I(4) is adapted from paragraph 7 of the Dogger Bank DCO protective provisions and provides a method for disputes regarding the insurance to be resolved by an independent determiner. It is not necessary for the other elements of paragraph 7 to be replicated because provision has been made for those types of disputes to be resolved in the relevant PPs themselves (see above).

Expenses

48. Paragraph J replicates paragraph 11 of the Dogger Bank DCO protective provisions. This provides that the undertaker must reimburse expenses incurred by the owner or operator of apparatus and/or Sembcorp, in its capacity as pipeline authority, where these have been incurred as a result of the undertaker's exercise of powers under the dDCO.
49. Paragraph J(1)(g) differs from the DL8 dDCO. The additional wording was omitted by the Applicants, but Sembcorp considers that it should be reinstated so as to ensure that owners, operators and Sembcorp are not left out of pocket as a result of the undertaker's actions.
50. This is subject to the new provisions at paragraph J(2) and (3) which provide that where reasonable and practicable the person entitled to reimbursement should notify the undertaker of the anticipated expense in advance and provide relevant supporting evidence for any claim. These provisions do not appear in the Dogger Bank DCO, but Sembcorp does not consider their inclusion (as proposed by the Applicants) to be controversial or disproportionate.

Indemnity

51. Paragraph K makes provisions for the undertaker to indemnify the owners and operators of apparatus and Sembcorp in respect of damage caused by the carrying out of the Authorised Development or any interruption of supply that results. It is largely based on paragraph 12 of the Dogger Bank DCO protective provisions.

52. Paragraph K(1) differs from the Dogger Bank DCO protective provisions in that the description of the types of damage to which the indemnity relates have been amended to reflect the nature of the Authorised Development now proposed. For example, subsidence caused by works which do not themselves take place on the Sembcorp Pipeline Corridor.
53. Additional text has also been inserted to make clear that the indemnity in favour of Sembcorp also covers circumstances where – as a result of the damage – Sembcorp becomes liable to pay money to a third party. For example, where there is an interruption of supply through the Sembcorp Pipeline Corridor which might require Sembcorp to compensate its customers for that failure of supply, notwithstanding the fact that the interruption is attributable to the undertaker's activities. This was less of a concern in the Dogger Bank DCO because it affected a lesser extent of the Sembcorp Pipeline Corridor than the Authorised Development currently proposed by the Applicants in the present dDCO.
54. Paragraph K(1)(b) has been amended to clarify that the undertaker is required to pay "*reasonable*" compensation and this is supplemented by a new paragraph K(4) which requires claimants to use reasonable endeavours to mitigate their losses where it is within their reasonable ability and control so to do. The equivalent provision in the Dogger Bank DCO protective provisions did not expressly require claimant to mitigate their losses.

Participation in community groups

55. Paragraph L requires the undertaker to participate in various liaison groups organised by Sembcorp in relation to the Wilton Complex. This is to facilitate more effective co-ordination and the resolution of complaints which may be made to Sembcorp regarding the Authorised Development. These replicate the substance of paragraphs 20 to 23 of the Dogger Bank DCO protective provisions.

Notice of start and completion of commissioning

56. Paragraph M is a new provision which is not derived from the Dogger Bank DCO protective provisions to reflect the specific nature and phasing of the Authorised Development.
57. No changes are proposed compared to the DL8 dDCO.

Dispute resolution

58. These provisions set out how disputes under the PPs are to be resolved. Two options are provided:
- a. **option one** in paragraph N is based on the mechanism proposed by the Applicants in the DL8 dDCO;
 - b. **option two** in paragraph O is based on paragraph 24 of the Dogger Bank DCO protective provisions.
59. Option one provides that disputes are to be resolved by arbitration in accordance with the main dispute resolution provision in article 47 of the dDCO. This is the mechanism proposed by the Applicants in the DL8 dDCO.
60. Sembcorp has no objection to option one being included in the final dDCO subject to the minor amendments proposed in the PPs. These are intended to clarify that a dispute under the PPs may

not involve Sembcorp as a direct party (for example, where it relates to the reimbursement of expenses incurred by another apparatus owner or operator).

61. Without prejudice to the foregoing, if it is considered that a bespoke dispute resolution mechanism is required for the purposes of the PPs then Sembcorp would likewise not object to the expedited process in paragraph O being incorporated instead. As set out above, this is derived from the dispute resolution mechanism provided for in the Dogger Bank DCO protective provisions, subject to the following minor changes:
- a. In paragraph O(2) the appointing body is changed from the local authority to the President of the Law Society. This is because the current Authorised Development spans multiple RPA areas. Sembcorp considers that it would be administratively more convenient for a single appointing body to be specified. The President of the Law Society routinely acts in such a capacity and is independent.
 - b. The timescale in paragraph O(3) for resolution of disputes is changed from 60 days to 90 days. This does not preclude a determination being issued sooner, but given the potentially expansive nature of the interaction between the Authorised Development and the Sembcorp Pipeline Corridor 90 days is considered to be a reasonable period. This would not disproportionately delay the resolution of disputes or the carrying out of the Authorised Development and, importantly, the amended wording now expressly requires the expert to use best endeavours to determine the dispute within the specified timeframe as well.
 - c. Paragraph O(5) has been amended so that where a dispute does not directly involve Sembcorp, the expert must nevertheless invite Sembcorp to participate in the dispute resolution process. This is so as to ensure that any wider implications of the dispute for the Sembcorp operations and any potential impacts on other owners or operators can be notified to the expert and taken into account where relevant.
 - d. Paragraph O(7) has been amended to clarify that the parties to the dispute which has been resolved by the expert must comply with his decision. In default of that, paragraph O(7)(c) provides an express statutory basis for injunctive relief to be obtained to enforce compliance where appropriate.
62. Sembcorp considers that, overall, these minor amendments will provide greater certainty for the Applicants, Sembcorp and other owners or operators that the dispute resolution process will operate effectively, efficiently and timeously.

Omitted Dogger Bank DCO protective provisions

63. Paragraph 15 to 19 of the Dogger Bank DCO protective provisions have been omitted from the PPs because the dDCO does not authorise works over the Wilton Site Roads or the Wilton Complex directly. Accordingly, they are not necessary in the present case.