

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 13 SUBMISSIONS

ON BEHALF OF

SEMBCORP UTILITIES (UK) LIMITED

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Introduction

1. This 'Deadline 13' written submission is made on behalf of Sembcorp Utilities (UK) Limited (“**Sembcorp**”). It contains Sembcorp's comments/responses on:
 - a. the Applicants' final dDCO [**REP12-003**];
 - b. the associated supporting plan showing the Applicants' proposed extent of the protective provisions in Sembcorp's favour [**REP12-029**], together with the explanatory memorandum [**REP12-006**] and schedule of changes [**REP12-005**]; and
 - c. the Applicants' final Statement of Reasons [**REP12-010**] and Compulsory Acquisition Schedule [**REP12-131**].
2. Terms defined in Sembcorp's DL12 position statement concerning protective provisions [**REP12-143**] have the same meaning in these submissions unless stated otherwise.

Comments on supporting plan [REP12-029]

3. This plan appears to be a reproduction of an earlier indicative plan submitted by Sembcorp during the examination [**REP2-099a**]. As set out at [**REP12-143**] paragraphs 16 to 21, the land tinted yellow on this drawing shows the location of the main 'trunk' route of the Sembcorp Pipeline Corridor only.
4. However, this does not show the full extent of the integrated network of supporting infrastructure and apparatus (serving both the Wilton Complex and other parts of the Teesside cluster) operated and managed by Sembcorp. Sembcorp owns and/or manages further land or assets in its capacity as the 'pipeline authority' as well as owning and/or managing infrastructure which supports the Wilton Complex and which is located beyond that trunk route.
5. The full extent of the relevant land and infrastructure is shown edged red on the plans submitted as Annexe A of Sembcorp's position statement (see [**REP12-146** to **REP12-161**]. This is the area to which the definition of 'Sembcorp Pipeline Corridor' should apply and which should be shown on the Sembcorp Pipeline Corridor protective provisions supporting plans (to be certified under Schedule 14 of the dDCO).

Comments on Applicants' explanatory memorandum [REP12-006], Statement of Reasons [REP12-010] and Compulsory Acquisition Schedule [REP12-131]

6. Sembcorp notes that the only consideration given to and explanation of the proposed protective provisions (both in favour of Sembcorp and others) in the dDCO is comprised in paragraph 3.8.94. This does nothing more than cross-refer to the Statement of Reasons.
7. The Statement of Reasons itself goes on to do nothing more than list the parties with whom the Applicants are seeking to agree protective provisions, which includes Sembcorp (see [**REP12-010**] paragraph 9.1.29). No specific explanation or justification for the proposed protective provisions relating to the Sembcorp Pipeline Corridor has been put forward by the Applicants at all.
8. Whilst there is a further cross-reference to the Compulsory Acquisition Schedule, this does nothing more than provide a highly abbreviated summary of some of the engagement between the

Applicants' and Sembcorp's solicitors undertaken with a view to seeking to agree a mutually acceptable set of draft protective provisions for the benefit of Sembcorp and the Sembcorp Pipeline Corridor (see [REP12-131] at row 73). Again, there is no explanation at all as to why the Applicants consider their proposed protective provisions to be appropriate and, in particular, why a different approach to that taken by the Examining Authority and the Secretary of State in the Dogger Bank DCO is warranted.

Comments on schedule of changes [REP12-005]

9. To the extent that the Applicants have attempted to justify their position vis-à-vis the Sembcorp Pipeline Corridor protective provisions, the only representations on this matter are set out in the schedule of changes to the dDCO (see [REP12-005] at row 17). These are limited and do not address this highly important and relevant matter in any detail.
10. The Applicants' position relates (in summary) to the following issues and arguments:
 - a. Sembcorp's role where apparatus in the Sembcorp Pipeline Corridor is also subject to third party protective provisions elsewhere in the dDCO;
 - b. An alleged need for a "consistent approach" between the Sembcorp protective provisions and those third party protective provisions;
 - c. An assertion that the present case is materially different to that at issue in the Dogger Bank DCO on the basis that the proposed powers of compulsory acquisition or extinguishment of land and rights do not affect areas within the Wilton Complex itself; and
 - d. A further assertion that, to protect the delivery of the project, the Applicants must retain compulsory powers over the Sembcorp Pipeline Corridor.
11. For the reasons set out below, the Applicants' position on all of these points is misconceived and should be given no weight by the ExA.

Third party consents

12. Sembcorp is cognisant of the fact that there are third party protective provisions in the dDCO under which the Applicants would be required to seek consent for works from the owners and operators of apparatus within the Sembcorp Pipeline Corridor.
13. This is why Sembcorp's preferred protective provisions include express provision clarifying that – where such third party consent has been obtained – the Applicants are not required to seek the same consent again under the Sembcorp Pipeline Corridor protective provisions (see REP12-144], para. C(1)). This is to avoid needless duplication and delay.
14. However, it is imperative that the grant of such third party consent does not exclude Sembcorp's separate oversight provisions as 'pipeline authority'. This is because – whilst an individual third party owner or operator will of course have regard to its own requirements in granting or withholding such consent – this is different to the over-arching approach to the control and planning of works carried out by Sembcorp – managing the competing interests of all apparatus owners and operators in accordance with the existing carefully calibrated legal arrangements.

15. In addition, there are two specific serious shortcomings with the protective provisions proposed by the Applicants in this regard (at [REP12-003], para. 214).

Needless complexity and uncertainty

16. As drafted, the Applicants' proposal would require Sembcorp to "*take into account that the approval of the third party owner or operator is also being sought pursuant to the third party protective provisions*". This is vague and impractical because such third party consent is only – on the Applicants' approach – a theoretical possibility at this stage; such consent may (of course) be withheld (or approved). Under the Applicants' proposed drafting, it is also unclear exactly to what Sembcorp is to have regard: the fact that consent might be requested, that it has already been requested, the likelihood of such consent being forthcoming or something else.
17. Sembcorp's preferred drafting avoids this uncertainty by providing instead that where the third party consent has been requested Sembcorp must be given a copy of that request at the same time and, where it is given, a copy of the relevant third party approval must also be provided (see [REP12-144], para. C(3)). This operates on three levels:
- a. First, it enables Sembcorp to maintain up-to-date records (and, where necessary, to consider the wider implications of a change) relating to the Sembcorp Pipeline Corridor which is essential in order to ensure its safe and efficient ongoing management.
 - b. Second, it allows Sembcorp to take account of what may have already been approved in exercising its own functions under the Sembcorp Pipeline Corridor protective provisions.
 - c. Third, it enables Sembcorp to determine whether and, if necessary, to communicate in a consistent manner with any other owner or operator (who may not be a third party owner or operator whose consent is being sought and/or who benefits from any specific third party protective provisions of their own) with regard to the matter for which the approval is being sought by the Applicants.
18. Sembcorp's proposed approach has the benefit of simplicity and certainty and should be preferred to that advanced by the Applicants.

Inappropriate restriction on matters that may be considered

19. The Applicants' proposed drafting would also inappropriately restrict the matters which Sembcorp may consider when deciding whether its consent under the protective provisions should be given or withheld. This is because paragraph 214(1) [REP12-003] provides that "*Sembcorp must only have regard to its overarching managerial role for the Sembcorp operations*".
20. Sembcorp considers that this formulation is unnecessarily and overly narrow because it would preclude (indeed, prohibit) Sembcorp from having regard to matters which are not necessarily 'managerial', but may nevertheless be cogent material considerations. For example, updated apparatus safety standards or working methods. Sembcorp submits that the Applicants' proposed limitation is not in the public interest.
21. Moreover, to the extent that the Applicants may consider in the future that Sembcorp has unreasonably had regard to some factor in exercising its functions under the protective provisions, this is capable of remedy through (in effect) an appeal to an independent third body – whether by way of arbitration or under an expedited determination procedure by an appointed expert. See, generally, [REP12-144] paras. N and O and [REP12-142] paras. 58 to 62.

22. Accordingly, Sembcorp submits that its proposed protective provisions should be preferred on this issue.

Consistency with third party protective provisions

23. The Applicants' position on this matter appears to be that controls on the use of powers of compulsory acquisition and extinguishment of land and rights should not be included in the Sembcorp Pipeline Corridor protective provisions because they are not included in the third party protective provisions. This is on the basis that:

- a. the previous Dogger Bank DCO protective provisions contained a single set of protective provisions relating to all owners and operators at the Wilton Complex; and
- b. a consistent approach is now "*preferred*" on the basis that a different approach for Sembcorp is not justified.

24. These arguments are fundamentally flawed for the following reasons:

- a. Whilst it is correct that the Dogger Bank DCO protective provisions covered multiple owners and operators at the Wilton Complex, it is important to note that (amongst other things) these protective provisions included controls on the unfettered use of powers of compulsory acquisition and extinguishment of land and rights by the promoter. The fact that some other owners and operators may now benefit from third party protective provisions does not in itself justify the omission of **any** controls on such compulsory powers from the present dDCO. The Applicants have advanced no explanation as to why this is the logical consequence of this change.
- b. Sembcorp notes that the desired 'consistency' is merely "*preferred*". The Applicants have advanced no explanation or reason as to why it is either necessary or appropriate. In any event, there are clear reasons why a different approach as far as Sembcorp and the Sembcorp Pipeline Corridor are concerned. This is because – as the pipeline authority – Sembcorp occupies a unique position different to any other landowner or operator of apparatus in the area (see in particular [REP12-] paras. 22 to 24 and 38 to 42). This unique role justifies a different approach and this has been Sembcorp's consistent position throughout the Examination.

25. For these reasons, Sembcorp's proposed protective provisions should be preferred.

Order Limits not located within the Wilton Complex

26. The Applicants' argument on this front appears to be that the Dogger Bank DCO proposals would have had a potential impact on areas within the Wilton Complex itself, including its development potential for existing and future industries. By comparison, the Applicants' consider that compulsory acquisition powers over the Sembcorp Pipeline Corridor (as now proposed) would have a more limited impact on the Wilton Complex such that controls over the unfettered use of such powers should not be included in the current dDCO.

27. Sembcorp notes at the outset that this argument has not previously been advanced in the Examination. It should be given little to no weight for the reasons set out below.

28. Sembcorp considers that the Applicants' analysis ignores the clear conclusions of the Dogger Bank DCO examining authority. In particular, the examining authority's concern related to the potential

adverse consequences of the carrying out of development – even if part of an NSIP – on "*the Wilton Parties operations*"¹, not simply the proposed land acquisition. Its consideration of this issue specifically included potential damage to the essential supporting infrastructure serving the Wilton Complex, including the risk arising from lack of co-ordination of works and the knock-on economic and environmental consequences (including pollution incidents, plant shut downs with consequential economic and employment losses and, due to increased uncertainty, investment decisions that lead to either delayed implementation or higher project costs) as well as the effects (arising from compulsory acquisition) on the interplay of existing rights enabling companies within the Wilton Complex to share infrastructure.²

29. This makes clear that the potential for interference with the Wilton Complex's supporting infrastructure (much of which is contained within the Sembcorp Pipeline Corridor) formed a key consideration in the Dogger Bank DCO examining authority's determination that protective provisions – incorporating limitations on the exercise of compulsory powers over that infrastructure – were necessary in order to ensure the continued safe and economic operation of the Wilton Complex in the public interest.³ This applies not only to land acquisition itself, but also to "*interference with access, operations and other upgrade proposals*" connected with the Wilton Complex's supporting infrastructure.⁴
30. Interference with the supporting infrastructure (and its associated rights) is readily capable of posing a serious risk to the on-going operations at the Wilton Complex. Indeed, the potential adverse consequences in this case are even wider reaching than in that of Dogger Bank given that the Sembcorp Pipeline Corridor serves not only the Wilton Complex, but also other sites across the wider cluster (see, for example, [REP12-143], paras. 16, 19, 25, 43, 65, 68, 73 and 75). It is not simply the impact of such interference on the Wilton Complex which is of concern, but on all cluster operators served by the Corridor. In this respect, the potential adverse environmental and economic impacts should the Applicants' works and powers not be managed appropriately are – if anything – greater than in Dogger Bank, not less.
31. At its most fundamental level, the Applicants' approach appears to misunderstand the vital role which the Sembcorp Pipeline Corridor (between Wilton and Billingham), as well as other assets located outwith the Wilton Complex, play in enabling those owners and operators within the Wilton Complex (and the wider cluster) to operate.
32. For these reasons, notwithstanding the fact that the Applicants' proposed Order Limits in the dDCO do not include land within the Wilton Complex itself, the proposed inclusion of unfettered compulsory powers over the Sembcorp Pipeline Corridor remains of significant concern and necessitates the inclusion of appropriate controls (based on those in the Dogger Bank DCO) in order to manage that risk.

Restriction on compulsory powers would impede delivery of the NZT project

33. The Applicants' assert that they must retain unfettered compulsory powers over the Sembcorp Pipeline Corridor in the dDCO in order to facilitate the construction, maintenance and operation of the NZT project.

¹ [REP12-140], para. 4.3.40 [emphasis added]

² [REP12-140] paras. 4.13.16 and 6.4.117

³ [REP12-140], paras. 6.4.117 and 6.4.118

⁴ [REP12-140] para. 6.4.120

34. The ExA will note from the draft protective provisions submitted by Sembcorp [REP12-144], however, that Sembcorp is not proposing that these powers be removed from the dDCO altogether. It is simply that – before they are exercised – the Applicants (or any future undertaker to whom the benefit of the project might be transferred) must first engage with Sembcorp so as to ensure that the potential adverse risks to the Sembcorp Pipeline Corridor (and the businesses and industries which rely upon it, including at the Wilton complex) are appropriately managed.
35. In similar fashion to the Dogger Bank DCO, this can be achieved by requiring the Applicants to obtain consent prior to exercising the identified powers over the Sembcorp Pipeline Corridor. Sembcorp's consent must not be unreasonably withheld and, if the Applicants consider that Sembcorp's consent has been unreasonably withheld, they may refer the matter to an independent third party to resolve the matter.⁵
36. In this regard, the Dogger Bank DCO examining authority's clear conclusion was that this approach struck a fair and proportionate balance between the competing public interests and, importantly, "*would not provide any significantly likelihood of substantial delay or uncertainty in the project*".⁶
37. In these circumstances, Sembcorp submits that its proposed protective provisions should be preferred.

Comments on dDCO [REP12-003]

38. Subject to the inclusion of appropriate protective provisions in Part 17 of Schedule 12 to the dDCO for the benefit of Sembcorp and the Sembcorp Pipeline Corridor, Sembcorp would have no further objection to the dDCO being made.
39. In particular:
 - a. Appropriate protective provisions as provided by Sembcorp would be sufficient to overcome its concerns regarding the potential impact of 'permitted preliminary works';
 - b. The revised Requirements in Schedule 2 are acceptable (insofar as they relate to Sembcorp's involvement as a consultee); and
 - c. The transfer of Sembcorp related definitions back into the schedule (instead of article 2 of the dDCO) is generally acceptable, although Sembcorp notes that whilst R38 at [REP12-003], pg. 59, cross-refers to the definition of Sembcorp in Part 17 of Schedule 12, no definition has in fact been inserted.
40. Consequently, and for the avoidance of doubt, Sembcorp has prepared an updated draft of its preferred protective provisions. A copy of this is attached, together with tracked change versions comparing the amended text to both the relevant parts of the Applicants' DL12 dDCO [REP12-003] and Sembcorp's own DL12 preferred draft [REP12-144]. Should the ExA be minded to recommend that the dDCO be made, it is respectfully invited to make such a recommendation

⁵ Sembcorp notes that the Applicants have proposed arbitration under article 47 of the dDCO as the dispute resolution mechanism. Sembcorp has no objection to this approach as a matter of general principle, but suitable drafting has been put forward in [REP12-144], para. O, should the ExA conclude that an expedited process is nevertheless required. This replicates the expedited process of expert determination provided for in the Dogger Bank DCO subject to the minor amendments detailed in Sembcorp's supporting explanatory memorandum [REP12-142].

⁶ [REP12-140] para. 7.2.38

subject to the condition that protective provisions in this form be incorporated therein in place of those proposed by the Applicants.

DLA Piper UK LLP

7 November 2022