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To Whom It May Concern

Planning Act 2008 – Section 89 and The Infrastructure Planning (Examination Procedure) Rules 2010

Application by H2Teesside Limited for an Order Granting Development Consent for the H2Teesside Project

Unique Reference: 20049379

Response to Deadline 2 – Response to Applicants Oral Submissions

This letter is sent on behalf of Sembcorp Utilities (UK) Limited ("Sembcorp"), registered as an Interested Party for the above application, in accordance with Deadline 2.

Response to Applicants Oral Submissions

Please see below for Sembcorp's additional Written Representation.

I trust that the below is clear however please do not hesitate to contact me should you have any queries.

Yours sincerely

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Response to Applicants Oral Submissions

Applicant submission to the examination	Eversheds Sutherland comment/questions
<p>Mr Hereward Phillpot KC, on behalf of the Applicant, explained that the proposed development as applied for does not include a new multi-user corridor and no change is proposed to incorporate any such development. The project includes a hydrogen pipeline crossing under the River Tees to meet the operational needs for H2T, defined in Work No. 6 as "a hydrogen distribution network, being works for the transport of hydrogen gas...". If the pipe was to cater for other developments or uses, it would need to be established that this was nevertheless Associated Development (i.e. development associated with the principal development). That would require a direct relationship with the principal development and assessment against the core principles set out in the Government's Guidance on associated development applications for major infrastructure projects (2013).</p>	<p>Firstly, the applicant did consider developing a new multiuser tunnel, as is evident from the discussions that it held with Sembcorp and others, which specifically considered the option. As such, the Applicant's Environmental Statement should have reported on this as a scheme alternative. It only addresses microbore and HDD solutions, which are likely not to offer the same capacity.</p> <p>NPS EN1 states that: <i>"4.3.15 Applicants are obliged to include in their ES, information about the reasonable alternatives they have studied. This should include an indication of the main reasons for the applicant's choice, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility."</i></p> <p>Secondly, the Government guidance on Associated Development specifically provides for the possibility of providing additional capacity in infrastructure:</p> <p><i>"(iv) Associated development should be proportionate to the nature and scale of the principal development. However, this core principle should not be read as excluding associated infrastructure development (such as a network connection) that is on a larger scale than is necessary to serve the principal development if that associated infrastructure provides capacity that is likely to be required for another proposed major infrastructure project."</i>³</p> <p>The Applicant is aware of a number of other major infrastructure projects that require to cross the river with pipelines. Sembcorp has already made reference to these in its relevant representation and some are also themselves IPs.</p>
<p>As to the potential relevance of a scheme including a multi-user pipe as an alternative to the scheme which is proposed by the Applicant, Mr Phillpot KC explained that unless a specific provision in legislation or policy makes it necessary to consider any such</p>	<p>As is mentioned in the case cited by the Applicant, section 104(d) of the Planning Act 2008 states that the Secretary of State must have regard to <i>"(d)any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's]decision."</i></p>

<p>alternative it would not be a relevant consideration unless exceptional circumstances exist to make it so (as re-emphasised in R (on the application of Substation Action Save East Suffolk Limited) v Secretary of State for Business, Energy and Industrial Strategy [2022] EWHC 3177 (Admin) at [214]). No such exceptional circumstances are considered to exist in this case. Post hearing note: A copy of R (on the application of Substation Action Save East Suffolk Limited) v Secretary of State for Business, Energy and Industrial Strategy [2022] EWHC 3177 (Admin) has been provided as an Appendix to this Summary Note.</p>	<p>Sembcorp considers that the Applicant’s river crossing solution is likely to prevent other major infrastructure projects, also requiring to cross the river with infrastructure, in this location. It is also clear that there are very few options for routing pipelines around the industrial cluster and this is a critical pinch point the capacity of which should be maximised. It also considers that there is an alternative approach which would allow the applicant to proceed without this adverse effect. This is plainly relevant and material to the Secretary of State’s decision and should be regarded as an exceptional circumstance.</p> <p>As stated above, this judgement should be informed by appropriate consideration of alternatives in the Applicant’s ES and the relevant chapter should be updated to address the alternatives considered.</p>
<p>Even if the ExA were persuaded to treat such an alternative scheme as a material consideration, it would be necessary to assess whether it was likely to be important and the weight to give to it, by reference to the principles on dealing with alternatives in NPS EN-1. These principles are intended to limit those alternatives likely to be treated as important material considerations, and anyone inviting the ExA to have regard to a potential alternative scheme must properly address that policy guidance and its implications when seeking to make their case to the Secretary of State. Mr Elnur Ibrahimzade, on behalf of the Applicant, addressed the question of whether the non-provision of a multi-user pipeline would prejudice other potential crossings of the River Tees. He explained that there are already seven existing crossings in the area. Each new crossing has incrementally added to the difficulty of future crossings. As such, while all previous crossings have been installed in parallel arrangements, there is no available route for the Project’s crossing which avoids intersection with existing crossings. The Project has been designed to overcome the additional complexity involved in its own river crossing caused by existing</p>	<p>With reference to the relevant paragraphs of NPS EN1, Sembcorp provides its commentary on the principles of assessing this alternative:</p> <p>4.3.2 – It is not clear that the Applicant has <i>“assessed the likely worst-case environmental, social and economic effects of the proposed development to ensure that the impacts of the project as it may be constructed have been properly assessed.”</i> Sembcorp considers that the proposed river crossing solution is likely to make unviable other future crossings for other major infrastructure projects. This is due to the alignment and depth of the proposed microbore/HDD and the likely need for future projects to cross at very significant depth in order to achieve appropriate separation. The frustration of such projects would likely have social and economic effects that should be assessed and weighed in the balance.</p> <p>4.3.5 – it is not considered that the Applicant has reported adequately on the alternatives it has considered in this instance, for the reasons already explained.</p> <p>4.3.22 - bullet 1 – Alternatives should be considered in a proportionate manner. In this instance, the Applicant has not provided any information on the alternative, despite evidently considering it.</p> <p>4.3.22 - bullet 2 – An alternative that provides additional capacity to cross the river and avoids the sterilisation of an important crossing point would clearly also meet the</p>

crossings. Any future crossing would similarly have to account for the complexity caused by existing pipelines. This Project may add an additional layer of complexity but in principle this is not new or unacceptable, and it would not render future crossings impossible.

objectives of the Applicant's proposed development.

4.3.23 - The multiuser tunnel alternative would deliver greater capacity and there is no evidence that it could not be delivered in the same timescale as the proposed development.

4.3.25 - Sembcorp contends that the Applicant did consider a multi user tunnel as a main alternative, but did not report on this in the ES. In any event, for the reasons explained it is submitted that this should be considered both relevant and important by the Secretary of State.

4.3.26 - The alternative proposal would be entirely in accordance with the policies set out in NPS EN1.

4.3.27 - There is no evidence that this alternative would mean the development could not proceed, would not be commercially viable or physically suitable.

4.3.28 - This is not an alternative that is vague or immature. It is a specific solution which has been considered in some detail. Indeed, the Applicant held a number of meetings with Sembcorp and others to advance the solution. Sembcorp also confidentially shared technical work, to demonstrate the feasibility of an alternative multi-user tunnel solution across the River Tees with other land users.

4.3.29 - The Applicant considers that this alternative was considered and should have been reported on by the Applicant. This is not a situation where then alternative has been "*first put forward by a third party after an application has been made*". In any event, Sembcorp considered that the alternative is self-evidently suitable and the applicant has not disputed this.