

**From:** [Tracey Williams](#)  
**To:** [Claire Brook](#)  
**Cc:** [Taylor, Scott \(Scott.Taylor@sembcorp.com\)](#); [Nichols, Carole](#); [Geoff Bullock \(gb@dwdllp.com\)](#); [Jake Barnes-Gott \(jbg@dwdllp.com\)](#) ([jbg@dwdllp.com](#)); [Tees CCPP](#); [KJ Johansson](#)  
**Subject:** RE: EN010082 – THE TEES COMBINED CYCLE POWER PLANT [BD-MA.FID3466397]  
**Date:** 21 November 2017 14:59:37  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)

---

Dear Claire,

Thank you for your email of 20 November 2017. Please find the Planning Inspectorate's response below;

### **Statement of Reasons**

If you are satisfied that the Development Consent Order (DCO) does not "authorise the compulsory acquisition of land or an interest in land or right over land" then a statement of reasons is not required.

### **Book of Reference**

Only if there are no interests and no land as described in APFP Regulation 7 (1) (a) to (e) is it not applicable to provide a Book of Reference (BoR).

### **Protective Provisions**

Advice contained in Planning Inspectorate Advice Note Fifteen does not mandate the use of protective provisions. It is up to the Applicant and other parties to decide whether or not protective provisions are required to protect interests and to negotiate the terms of those protective provisions. It is for the Applicant therefore to decide whether or not the DCO contains them. If they are not required, the Applicant should not provide blank schedules but should make clear that the absence of protective provisions from the DCO is not indicative of failure to reach agreement with any party (which would suggest that negotiations may continue throughout the examination resulting in late drafting changes).

### **Explanatory Memorandum**

Please ensure that the explanation provided in the Explanatory Memorandum (EM) about the approach to drafting the DCO does not give rise to uncertainty about, for example, compliance with pre-application consultation procedure or the provision of application documents where these are prescribed. Therefore, the covering letter, EM and any cross references/signposts contained within the application documents should be clearly worded.

Particularly, the Applicant should avoid terminology which is mis-leading, for example within the document *'the Schedule of Land Ownership and Interests'* you state that "given the limited number of parties with interests in the land". However, the question is whether or not there are any interests or types of land which must be recorded in the appropriate part of the BoR. Only if there are none is it not applicable to provide a BoR. This should be made clearer.

The Applicant also needs to be satisfied that any parties not familiar with

the application documents can easily and quickly identify the relevant information in order to reach the conclusion on whether particular documents should be required.

In summary you need to ensure that;

- all explanations are clear in explaining why the APFP Regulations do not apply and clearly justify why certain parties have been identified as Category 1, 2 or 3.
- that a clear justification and explanation is provided in the place where one would first look for it (i.e the schedule) this can then be cross-referred to, from other places to avoid duplicating.
- Be explicit about how you are following guidance and advice, particularly where on the face of it there may be a discrepancy, or if you are not following advice justify why that is appropriate in this case.
- Please fully Quality Assurance check the full Application, checking all documents to ensure full consistency across all sets so that each set submitted is complete and identical to the electronic version, making sure that each contain the latest version of every document.

I confirm that this advice will be published as s51 advice alongside your letter of withdrawal of the originally submitted application.

Thank you

Tracey Williams  
Case Manager  
Major Applications and Plans  
The Planning Inspectorate, Temple Quay House, Temple Quay, Bristol  
BS1 6PN

Direct Line: 0303 444 5085

Helpline: 0303 444 5000

Email: [tracey.williams@pins.gsi.gov.uk](mailto:tracey.williams@pins.gsi.gov.uk)

Web: [infrastructure.planninginspectorate.gov.uk](http://infrastructure.planninginspectorate.gov.uk) (National Infrastructure Planning)

Web: [www.gov.uk/government/organisations/planning-inspectorate](http://www.gov.uk/government/organisations/planning-inspectorate) (The Planning Inspectorate)

Twitter: @PINSgov

This communication does not constitute legal advice.

Please view our [Information Charter](#) before sending information to the Planning Inspectorate.

---

**From:** Claire Brook [mailto: Claire.Brook@wbd-uk.com]

**Sent:** 20 November 2017 12:28

**To:** Tracey Williams; Tees CCP

**Cc:** Taylor, Scott (Scott.Taylor@sembcorp.com); Nichols, Carole; Geoff Bullock (gb@dwdllp.com); Jake Barnes-Gott (jbg@dwdllp.com) (jbg@dwdllp.com)

**Subject:** EN010082 – THE TEES COMBINED CYCLE POWER PLANT [BD-MA.FID3466397]

**Importance:** High

Dear Tracey,

Further to our recent discussions, and prior to lodging Sembcorp's DCO application with you, we thought it would be helpful to clarify a number of points in terms of the documents we propose to submit as part of the application. In particular, you have raised queries as to certain documents that may accompany a DCO application, namely a statement of reasons, a book of reference and protective provisions in the Development Consent Order and whether these are required for our application. For the reasons outlined below, we do not consider that such documents are essential or even appropriate with respect to Sembcorp's application as set out below. We have sought to explain our reasoning and appropriately signpost this in our draft application documents.

### **Statement of Reasons**

Regulation 5 (h) of the Infrastructure Planning (Application Prescribed Forms and Procedure) Regulations 2009 states that *if* the proposed order would authorise the compulsory acquisition of land, or an interest in land or right over land, a statement of reasons, and a statement to indicate how an order that contains the authorisation of compulsory acquisition is proposed to be funded, needs to be submitted with the application.

A statement of reasons is not required because the order as drafted will not authorise any powers of compulsory acquisition. Sembcorp does not require any additional rights or land and as such, is not proposing to apply for any compulsory acquisition as part of its DCO application.

Our covering letter and application form will clearly explain that powers of compulsory acquisition are not applied for. Our draft explanatory memorandum (which you have seen) also expands on this at paragraphs 2.4 and 5.7 which are set out below for ease of reference.

*2.4 The Project does not require any compulsory acquisition of land. All works will take place on land which SCU owns the freehold to. Similarly no acquisition or extinguishment of or interference with rights of any other party is required in order to deliver the Project. Consequently a full standardised Book of Reference is not being supplied as part of the Application as it is not considered necessary given the circumstances i.e. the fact that SCU owns the freehold to the land, no compulsory acquisition is proposed and further given the limited number of parties with interests in the land; the Land Ownership and Interests Schedule summarises details of those parties (Application Document Reference Number 3.1).*

*5.7 As identified in the Schedule of Land Ownership and Interests (Application Document Reference Number 3.1) SCU owns the freehold to the land and there are limited parties with other interests in the land. Consequently many provisions that relate to powers of compulsory acquisition and stopping up of streets or works in streets are not required. Similarly, as was indicated in the National Grid consultation responses (annexed to this document for ease of reference at Annex 2) protective provisions are required "where the promoter intends to acquire land, extinguish rights or interfere with NG apparatus". As land is not being compulsorily acquired and rights are not being extinguished, protective provisions are not necessary. The connections to the two existing substations on the Project Site will be addressed under the 'Connection Application' that was submitted to NG on 19<sup>th</sup> September 2017 and any connection works will be carried out in accordance with the terms of such agreement with NG. The Grid Connection Statement (Application Document Reference Number 5.2) provides further information in that regard.*

Further information to reflect this is also found at paragraph 7.20 of the draft consultation report which states:

*The Proposed Development does not require any potential compulsory acquisition of land because all works will take place on land SCU owns the freehold to.*

It would be helpful to get your confirmation that on the above basis, a Statement of Reasons is not required.

## **Book of Reference**

A full book of reference does not need to be submitted with this application. Paragraph 7.24 of the draft consultation report confirms the position in this regard:

*Given that SCU owns the freehold to the land, no compulsory acquisition is proposed and further given the limited number of parties with interests in the land, a Land Ownership and Interests schedule is being drawn up to summarise details of those parties, rather than a full Book of Reference in a standardised format which is not considered necessary given the circumstances".*

Regulation 5 (2) (d) of the Infrastructure Planning (Application Prescribed Forms and Procedure) Regulations 2009 states **where applicable**, the Book of Reference needs to be submitted with the application. As the applicant is not applying for any powers of compulsory acquisition, a book of reference is not applicable, and that is the starting point.

However where it is applicable, "book of reference" is defined in regulation 7 of the Infrastructure Planning (Application Prescribed Forms and Procedure) Regulations 2009 as a book, in five Parts, together with any relevant plan which—

- in Part 1 - contains the names and addresses for service of each person which is an owner, lessee, tenant, or occupier of the land or is otherwise interested in the land or has power to sell and convey or release land **which it is proposed shall be subject to powers of compulsory acquisition, rights to use land, or rights to carry out protective works to buildings.**
- in Part 2 contains the names and addresses for service of each person who would have the right to make a relevant claim. Sembcorp after making diligent inquiry concluded that there are no such parties.
- in Part 3 contains the names of all parties that are entitled to enjoy easements or other private rights over land (including private rights of navigation over water) which it is proposed shall be extinguished, suspended or interfered with. Sembcorp confirms there are no such parties.
- in Part 4 specifies the owner of any Crown interest in the land which is proposed to be used for the purposes of the order for which application is being made. Again this is not relevant.
- in Part 5 specifies certain special categories of land which again is not relevant.
- Specifies the area in square metres of each plot.

In relation to Parts 2 to 5, these sections would be blank or would contain wording to the effect "there are no such parties".

In relation to Part 1, Regulation 7 needs to be read in light of the wording of regulation 5 (2) (d) and the key wording in regulation 7 (1) (a) that states "**in respect of any land which it is proposed shall be subject to...**", which then goes on to describe the various types of compulsory acquisition and related powers. The only other parties that have interests in the proposed Order Land are National Grid (the existing sub-stations on site) and Northern Powergrid (for an existing cable which crosses the site). We can confirm that none of the interests of Northern Powergrid or National Grid are proposed to be subject to either powers of compulsory acquisition, rights to use their land interests or rights to carry out protective works to their buildings. Those powers are not being applied for.

The Project will require connections to the Grid in due course. This is addressed separately as explained in paragraph 5.7 to the draft Explanatory Memorandum as set out above. Any rights relating to connections to the Grid would be obtained under separate agreement reached pursuant to the application for grid connection, and would not be addressed by means of any compulsory acquisition or related powers. As you are aware, it is entirely at the applicant's discretion as to when it makes an application for grid connection and whether or not it applies for a Development Consent Order containing powers of compulsory acquisition.

As no such powers of compulsory acquisition or similar powers are required or applied for, submission of a full Book of Reference would be illogical as Part 1 would, on the correct interpretation of regulation 7, in fact also be blank.

It would be helpful to get your confirmation that on the above basis, a Book of Reference is not required.

### **Protective Provisions**

It naturally follows that protective provisions are not required because the applicant is not applying for an Order that would give it powers to do anything that would have any impact on the interests of any other party.

Many standard articles in DCOs relating to protective provisions entitle the undertaker to exercise powers of compulsory acquisition or related powers **subject to** compliance with protective provisions; protective provisions and compulsory acquisition powers are interrelated and as clarified above, powers of compulsory acquisition are not sought in this application. It would in fact muddy the waters somewhat if protective provisions were included in the draft Order and it would be misleading.

Whilst PINS has referred us to Advice Note Fifteen which states "*Where agreement on protective provisions has not been reached during pre-application, applicants should as a minimum submit on application the standard protective provision of the relevant party with the amendments that the applicant is seeking to it*", the National Grid consultation response states that protective provisions are only required "*where the promoter intends to acquire land, extinguish rights or interfere with NG apparatus*".

Our position with regard to protective provisions and the NG response which is annexed to the draft Explanatory Memorandum (Annex 2) is explained at paragraph 5.7 of the Explanatory Memorandum (reproduced above) i.e. that they are not required because we are not proposing to apply for powers to acquire land or extinguish or interfere with any statutory undertaker's rights. The Explanatory Memorandum makes a clear cross reference to the Grid Connection Statement and confirms that any connection works would be carried out in accordance with the terms of any agreement pursuant to the Connection Application.

As such, we do not consider that the inclusion of protective provisions in our draft Order are necessary in order to comply with the guidance and for the application to be accepted.

Again we would appreciate your confirmation that there is no requirement to provide draft protective provisions in this case.

It would be appreciated if you could consider the points raised and how we have addressed them in the draft application documents and provide a response at your earliest convenience, including section 51 advice as necessary.

The Applicant wants to continue to work with PINS in finalising its DCO application and is very keen that matters such as these are clarified as soon as possible. If you would like to have a call or have any further questions, with regard to the above, do not hesitate to contact us.

Kind regards.

Womble Bond Dickinson LLP

### **Claire Brook**

Partner

Womble Bond Dickinson (UK) LLP

**d:** +44 113 290 4421

**m:** +44 7772 320716

**t:** +44 345 415 0000

**e:** [Claire.Brook@wbd-uk.com](mailto:Claire.Brook@wbd-uk.com)



**Please consider the environment! Do you need to print this email?**

---

The information in this e-mail and any attachments is confidential and may be legally privileged and protected by law. [tracey.williams@pins.gsi.gov.uk](mailto:tracey.williams@pins.gsi.gov.uk) only is authorised to access this e-mail and any attachments. If you are not [tracey.williams@pins.gsi.gov.uk](mailto:tracey.williams@pins.gsi.gov.uk), please notify [claire.brook@wbd-uk.com](mailto:claire.brook@wbd-uk.com) as soon as possible and delete any copies. Unauthorised use, dissemination, distribution, publication or copying of this communication or attachments is prohibited and may be unlawful.

Any files attached to this e-mail will have been checked by us with virus detection software before transmission. Womble Bond Dickinson (UK) LLP accepts no liability for any loss or damage which may be caused by software viruses and you should carry out your own virus checks before opening any attachment.

Content of this email which does not relate to the official business of Womble Bond Dickinson (UK) LLP, is neither given nor endorsed by it.

This email is sent by Womble Bond Dickinson (UK) LLP which is a limited liability partnership registered in England and Wales under number OC317661. Our registered office is 4 More London Riverside, London, SE1 2AU, where a list of members' names is open to inspection. We use the term partner to refer to a member of the LLP, or an employee or consultant who is of equivalent standing. Our VAT registration number is GB123393627.

Womble Bond Dickinson (UK) LLP is a member of Womble Bond Dickinson (International) Limited, which consists of independent and autonomous law firms providing services in the US, the UK, and elsewhere around the world. Each Womble Bond Dickinson entity is a separate legal entity and is not responsible for the acts or omissions of, nor can bind or obligate, another Womble Bond Dickinson entity. Womble Bond Dickinson (International) Limited does not practice law. Please see [www.womblebonddickinson.com/legal](http://www.womblebonddickinson.com/legal), notices for further details.

Womble Bond Dickinson (UK) LLP is authorised and regulated by the Solicitors Regulation Authority.

---

**This email has been scanned by the Symantec Email Security.cloud service.  
For more information please visit <http://www.symanteccloud.com>**

---