

**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**

**WRITTEN REPRESENTATION**

**ON BEHALF OF**

**SEMBCORP UTILITIES (UK) LIMITED**

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## Introduction

1. This written representation is made on behalf of Sembcorp Utilities (UK) Limited (“**Sembcorp**”). Abbreviations used are the same as in the ExA's first written questions and requests for information issued on 19 May 2022 unless stated otherwise.
2. Sembcorp is a Teesside based subsidiary of Sembcorp Energy UK, a leading provider of sustainable solutions supporting the UK's transition to Net Zero. With a total operational portfolio of around 1GW, including significant renewable generation and existing battery storage, Sembcorp Energy UK helps to keep the country's electricity system balanced and resilient, through a fast-acting, decentralised fleet of assets. In turn, Sembcorp Energy UK is part of the Singapore-based Sembcorp Industries group, a leading multi-national energy and urban solutions provider, which is playing its part in building a sustainable future through supporting the energy transition and delivering sustainable development. Listed on the main board of the Singapore Exchange, it is a component stock of the Straits Times Index and sustainability indices including the FTSE4Good and iEdge SG ESG. It has a balanced energy portfolio of 16.3GW, with 6.8GW of gross renewable energy capacity comprising solar, wind and energy storage.
3. On Teesside, Wilton International (“**Wilton**”), within the Teesside Freeport, sits amongst a hub of decarbonisation innovation. Sembcorp's major industrial power plants deliver high-quality, centralised utilities and services to energy-intensive industrial businesses. This includes the operation of a private electricity grid at Wilton as well as the management and control of a significant network of pipeline corridors connecting Wilton and other industrial businesses located within the other clusters at Billingham and North Tees. The pipeline corridors enable the transportation of industrial gases, raw materials and feedstock seamlessly between manufacturers, storage and process plants.

## The important role of Wilton in the UK and local economy

4. Wilton, where Sembcorp's industrial power and other utility assets are located, is one of the UK's leading multi-occupancy industrial and manufacturing sites, with the products made there being both of national importance and generating millions of pounds in export revenues annually for the UK economy.
5. Wilton is a large industrial / manufacturing site located between Redcar and Middlesbrough, to the south of the former steel-making enclave now being redeveloped by Teesworks and Teesport (the fifth largest port in the UK and only major net exporting port in England) and to the north of the A174 Redcar - A19 dual carriageway. Initially developed by the former Imperial Chemical Industries conglomerate (“**ICI**”), Wilton was officially opened in the early 1950s as a major integrated petrochemical facility, supported by internal electricity generation facilities. Following divestment by ICI in the late 1990s, Wilton continues to contain major petrochemical process plant and it now hosts diversified businesses in a variety of fields including energy generation, plastic recycling and process research together with office accommodation and production research facilities. Raw materials are imported to and exported from Wilton via marine terminals at Teesport and North Tees, by pipeline, by road and by rail.
6. Wilton's operation is split between Sembcorp (as a freeholder and integrated infrastructure provider to the entire complex) and a series of individual process and related industrial undertakings. A number of multinational chemical companies now operate on the site and more than £1 billion has been spent by companies at Wilton in recent years. This includes in excess of £200 million by

Sembcorp to date in new and improved assets. Sembcorp is currently underway with a project to add around 360MW of battery energy storage, with the first phase due to commence construction later this year. This builds on Sembcorp's commitment to delivering a low carbon and energy secure future for the UK, including pioneering new technologies such as the UK's first ever wood-fired power station, Wilton 10 – built by Sembcorp at Wilton and part fuelled by locally processed waste wood material.

7. Other significant investment at Wilton includes £250 million by SABIC on its Low Density Polyethylene plant (the world's largest such facility), £350 million on Crop Energies' bioethanol plant and a new £250 million energy from waste facility in which Sembcorp is a major stakeholder. Furthermore, SABIC is currently underway with a major overhaul and fuel conversion project for its Olefins 6 'cracker' plant with an estimated cost of around £850 million.
8. Around 4,400 people are currently employed at Wilton, with a further 1,300 contractors visiting the site each weekday. Thousands more jobs are supported through the supply chains of businesses based at the site, which include SABIC, Ensus, Alpek Polyester UK, Huntsman, Biffa Polymers, Nippon Gases and Anglo Woodsmith. The significance of these businesses cannot be overestimated. For example, since its opening in March 2011, Biffa Polymers' polymer recycling plant has handled up to 30% of the UK's plastic milk bottle recycling.
9. Sembcorp actively markets Wilton with a view to securing inward investment and further growth. The Northeast of England is recognised and promoted by the Department for International Trade as a leading location in the UK for foreign direct investment into the chemistry using industries. Wilton's status as a multi-occupancy business and research centre is a key attraction. The complex is one of the largest R&D facilities in Europe and is home to the Centre for Process Innovation ("CPI"), part of the Technology Strategy Board's (also branded as Innovate UK) High Value Manufacturing Catapult network. CPI is a British technology and innovation centre which was established in 2004 by the UK Government agency ONE NorthEast as one of five centres of excellence in a long-term strategy to "reposition the North-East [of England] on the world stage for research and development". CPI helps companies to develop, prove, prototype and scale-up new products and processes by providing access to facilities, expertise and networks of public and private funders. Accordingly, Wilton's continued success forms a key part of the Government's long-standing economic and trade strategy for the UK.
10. Wilton is also one of the main sites used by the economic cluster body the Northeast of England Process Industry Cluster ("NEPIC"). An economic or business cluster is a geographic concentration of interconnected businesses, suppliers, and associated institutions in a particular field. Clusters have the potential to affect competition in three ways: by increasing the productivity of the companies in the cluster; by driving innovation in the field; and by stimulating new businesses in the field. Clusters increase the productivity with which companies can compete, nationally and globally.
11. NEPIC has been created by the chemistry using industries based in Northeast England – including many Wilton-based businesses – where more than 1,400 companies are locally based in the supply chain for this vital sector. The sector has over 35,000 direct employees and some 190,000 indirect employees in the northeast of England and together they represent over one third of the industrial economy of the region. Companies in the NEPIC area manufacture 50% of the UK's petrochemicals and 35% of the UK's pharmaceuticals and they significantly contribute towards making the region the only net exporting region of the UK. By 2017 the total GVA contribution of NEPIC to the local and UK economy had climbed to £3.34 billion.

12. To sustain cluster performance in the long term, strong inter-organisational relationships within the cluster are vital, including important aspects of strategic management of the essential supporting infrastructure. In the case of Sembcorp, this includes the strategic management of the Sembcorp Pipeline Corridor (see further below).
13. Wilton thus forms part of an important cluster of petrochemical, speciality and other process manufacturing businesses of local, regional and national economic significance. Sembcorp plays a central role as part of that cluster. Wilton itself is an industrial and manufacturing hub of national importance and whilst overall Sembcorp supports the Net Zero Teesside Project (“**Project**”) (acknowledging the important contribution the Project could, if selected and/or developed have towards the shared goal of reducing the UK’s greenhouse gas emissions over the coming decade(s)), Sembcorp continues to express its concern about the impact Project may have on it, Wilton and a number of the existing industrial emitters on Teesside, which the CO2 gathering network is intended to support.

### **Sembcorp's role**

14. Sembcorp supplies the major industrial businesses at Wilton with secure and reliable supplies of electrical power, steam, water (raw, potable and demineralised), and other services, using greener, more sustainable power generating facilities. It also owns much of the land available for development on the site. Wilton's 'ready-to-go' site solution integrates energy, development land, infrastructure, utilities and security, supported by the site's extensive network of internal infrastructure, providing gas, electricity, water, steam, drainage, pipe and road connectivity, moving inputs, products, by-products and wastes between different production facilities – both within and outwith the Wilton complex itself. This includes:
  - a. on-site energy generation utilising multiple assets with National Grid backup to ensure energy security, resilience and cost savings;
  - b. established industrial infrastructure ready to deliver the utilities, feedstocks, industrial gases and products needed by investing businesses;
  - c. a range of large-scale, fully serviceable development plots are available, with flexible tenancies and pre-consented planning – enabling quick and convenient 'plug-and-play' property solutions and enabling businesses to reduce investment project costs, risk and timeframes; and
  - d. specialist site safety and security teams compliant with all applicable standards demanded by major process industry companies, including COMAH regulations.
15. For investing, energy-intensive industrial businesses, this delivers competitive advantage through reduced costs, risk and project timeframes.
17. Sembcorp also provides an essential pipeline route and associated infrastructure between Wilton and Billingham via North Tees (“**Sembcorp Pipeline Corridor**”)<sup>1</sup>. The Sembcorp Pipeline Corridor carries a variety of industrial gases, raw materials and feedstock including natural gas, fuel oils, nitrogen and hazardous chemicals such as hydrogen cyanide. These are produced or used by major multinationals and household names including BOC, Ineos, Huntsman and Mitsubishi.

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<sup>1</sup> At Billingham meeting up with CF Fertiliser’s pipeline corridor which runs in and around the Billingham cluster.

The Sembcorp Pipeline Corridor connects directly into Wilton's substantial network of service corridors (also known as vein lines), which themselves incorporate established pipelines, cables, cable routes & supports, culverts, bridges, pipe supports and anchor blocks.

18. Importantly, the Sembcorp Pipeline Corridor provides pipeline connection capability to:
  - a. Teesside's North Sea gas processing plants and the UK national gas transmission networks, enabling businesses at Wilton or Billingham who require a supply of natural gas in large volumes to have access to it; and
  - b. the UK's ethylene distribution network, with Teesside being the central node and the only chemical cluster to provide combined production, consumption, storage and export facilities on the system.
19. Sembcorp takes on a key role in respect of the Sembcorp Pipeline Corridor: managing, maintaining, patrolling and facilitating both the use of the corridor and the shared apparatus infrastructure and any works within it (see further below). Sembcorp acts as a central body for the management of the Sembcorp Pipeline Corridor (as distinct from its parallel capacity as a landowner) and this co-ordinating function provides significant economic and strategic value. In this respect, Sembcorp could be considered to play a similar role to that occupied by National Grid concerning the management and oversight of the UK's national electricity grid and gas transmission networks, albeit with a more limited scope and scale.<sup>2</sup>
20. Sembcorp coordinates all users use of the Sembcorp Pipeline Corridor, in terms of both routine communication and in the management of all works, from routine assurance to future proposals and enhancements. The Applicants have asked to be part of this communication distribution list in the negotiated Heads of Terms with Sembcorp and this is now included in the draft agreement with them, which demonstrates that the Applicants themselves also see the benefits of Sembcorp's role as pipeline authority.
21. Additionally, during the negotiations we understand the Applicants have asked Anglo Woodsmith and PD Teesport to grant them the rights necessary for the CO<sub>2</sub> gathering network aspect of the Project, and both of these parties have indicated that Sembcorp would be best placed to coordinate and grant the rights directly to the Applicants. In Sembcorp's view, this demonstrates those parties also recognise the value and role that Sembcorp undertakes as the pipeline authority in the Sembcorp Pipeline Corridor. Sembcorp has significant experience in this role, having undertaken it since acquiring the business in 2003.
22. At present, the Sembcorp Pipeline Corridor (which makes up only part of the Order Limits) has the capacity required for both Sembcorp's and the wider Wilton and Billingham cluster's business plans. This includes future development, including the likely relocation and expansion of existing users as well as the establishment of new manufacturing and process plant during the next 30 to 60 years. Compulsory acquisition of rights by the Applicants and the extinguishment of existing established rights in the Sembcorp Pipeline Corridor as proposed in the dDCO will impact Sembcorp's ability to service its other customers and to continue to provide this vital co-ordinating function.
23. As set out above, these matters are separate to Sembcorp's status as an owner of land within the Order Limits. Its active role as the pipeline authority for the Sembcorp Pipeline Corridor provides

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<sup>2</sup> For convenience, in this Written Representation Sembcorp's management role with respect to the Sembcorp Pipeline Corridor is referred to as it acting as the "pipeline authority".

a separate substantial benefit for industrial occupiers of Wilton and the wider NEPIC area which itself serves the public interest. This could not be adequately provided for through the standard compulsory acquisition and compensation mechanisms i.e. the value of Sembcorp's involvement to the cluster, the region and the UK economy is not compensable because it is conceptually different to and wider than a mere land interest.

### **The legal framework governing the Sembcorp Pipeline Corridor**

24. Sembcorp is a freeholder, leaseholder and rights holder pursuant to several deeds in and around the Teesside area. As the owner and controller of the complete Sembcorp Pipeline Corridor<sup>3</sup>, Sembcorp has granted several packages of rights to its customers to use the Corridor, including use of the surrounding land, apparatus and infrastructure.
25. There are broadly two main categories of apparatus and infrastructure:
- a. **Shared Apparatus<sup>4</sup> and Infrastructure<sup>5</sup>** is the equipment and civil structures that Sembcorp or its predecessors have built and provided for its customers to provide a readily useable route for new pipelines and other apparatus. All customers are able to make shared use of this equipment (where provided for in their package of rights) and Sembcorp maintains it in exchange for a maintenance charge<sup>6</sup>.
  - b. **Exclusive Apparatus Infrastructure** is the equipment that customers build within the Sembcorp Pipeline Corridor for their sole purpose and use, where other customers are not entitled to use it. It should be noted that Exclusive Apparatus Infrastructure is still subject to Sembcorp's direction and design approval in its capacity as pipeline authority.
26. There are different types of rights granted for different customer needs, and the documentation with each customer has been tailored for each i.e. these are not template documents. The packages of rights comprise a mix of easements and contractual licences which – in combination – convey the rights of use of the Sembcorp Pipeline Corridor for transmission of waste, water, natural gas, nitrogen, etc for each of the customers' specific businesses.
27. In this regard, the various packages of rights granted by Sembcorp over the Sembcorp Pipeline Corridor generally provide for the following functions to be exercised by Sembcorp in the wider interest:
- a. **management** is the organisation and coordination of activities within the Sembcorp Pipeline Corridor, such as communication to customers via the distribution list of any works or proposals (new customers, new works, and maintenance) that will be taking place, liaison with other landowners where relevant and the operation of a diary and plan for upcoming maintenance activities, so as to ensure customers' apparatus is not damaged, works are co-ordinated and managed safely, and that in so far as is possible

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<sup>3</sup> Save for the Crown Land comprised in the two tunnels under the River Tees.

<sup>4</sup> Such as support racks, stanchions, pipe supports, pipebridges, cable supports, cable bridges and cable trees upon which pipelines, tubes, cables, wires and other conducting media may be located

<sup>5</sup> Such as the drains, bridges, ducts, culverts, access tracks, trenches, embankments and other civil structures

<sup>6</sup> Made up of a proportionate share of the cost of its maintenance plus a fee in respect of Sembcorp's management and overheads for so doing.

business is not interrupted. This also includes overseeing the protective provisions as between asset owners provided for in the relevant packages of rights i.e. Sembcorp will not permit/consent to any one asset owner's works in the Corridor unless that asset owner has gone through the applicable process of notifying the other asset owners of the details/method statement etc and affording those other asset owners an opportunity to specify what protective measures need to be put in place to protect their respective assets during any those works;

- b. **maintenance** of the Shared Apparatus and Infrastructure within the Sembcorp Pipeline Corridor more generally and provision of access and accessways, including effecting repairs (planned and reactive) and patrolling the Corridors and alerting customers to any major defects or issues identified by those patrols;
- c. **facilitation** including:
  - i. access onto the Sembcorp Pipeline Corridor and adjoining property for the purpose of carrying out inspection and/or works to a customer's own apparatus or Exclusive Apparatus Infrastructure;
  - ii. liaising with other customers in respect of any proposed works;
  - iii. scheduling the works and issuing inductions and issue of permits to work in accordance with the relevant works provisions;
  - iv. reviewing method statements and monitoring design and safety reviews;
  - v. producing and issuing a 'mod' form in respect of any proposed works and reviewing specified qualifying activities;
  - vi. attending customers' project meetings and/or process reviews; and
  - vii. monitoring and auditing any works conducted.

28. It will be seen that Sembcorp's role as pipeline authority is underpinned by this interconnected web of reciprocal rights and obligations. These are essential in order for Sembcorp to discharge its functions and to ensure the on-going safe operation of the apparatus and infrastructure. The rights are enforceable against Sembcorp as the contracting party to the easements or licences and, conversely, Sembcorp is able to enforce customers' obligations in order to protect the collective interest in the safe, efficient and effective operation of the Sembcorp Pipeline Corridor and the businesses that use it whether at Wilton or elsewhere upon Teesside.

### **The potential adverse effect of the Project**

#### Damage to co-ordinated management of the Sembcorp Pipeline Corridor

29. Sembcorp is concerned to ensure that the important apparatus within the Sembcorp Pipeline Corridor, as well as route for connecting pipework, cables and other conducting media between Wilton and the other clusters is not disrupted by the Applicants' proposals in ways that lead to economic harm, loss of employment, or additional operational safety or environmental concerns for the existing plant.



30. There is no explicit policy guidance in the National Policy Statements in respect of the impact of fossil fuel generating stations on major onshore industrial operations or infrastructure, such as Wilton or the Sembcorp Pipeline Corridor.

31. However, paragraph 4.1.3 of the Overarching National Policy Statement for Energy (EN-1) states that:

*"In considering any proposed development, and in particular when weighing its adverse impacts against its benefits ... [the ExA] should take into account its potential benefits ... and its potential adverse impacts".*

32. Paragraph 4.1.4 of EN-1 goes on to explain that *"social and economic benefits and adverse impacts"* should be taken into account *"at national, regional and local levels"*.

33. This is supplemented by EN-1 paragraph 5.1.2 which makes clear that the *"list of impacts (generic and technology-specific) and the policy in respect of the consideration of impacts"* in EN-1 and in the impact section of the technology-specific NPSs *"is not exhaustive"*. The NPSs address those impacts and means of mitigation that are anticipated to arise most frequently, but they are not intended to provide a list of all possible effects or ways to mitigate such effects. The ExA should therefore consider other impacts and means of mitigation where it determines that the impact is relevant and important to its decision.

34. In this regard, as set out above, Wilton is a hub of petrochemical, speciality and other process manufacturing businesses and these businesses are vital contributors not only to the regional, but also the national economy. It forms a vital part of the NEPIC cluster. The businesses served by the Sembcorp Pipeline Corridor – including those located at Wilton – are as a whole a highly significant economic asset and, whilst they are not an NSIP or the direct subject of NPS policy, they make an important and relevant contribution to national economic life. This is a matter to which the ExA should attach considerable weight.

35. The importance of the cluster (and of Wilton in particular) is recognised in the adopted local plans for the host local authorities. For example, paragraph 1.18 of the Redcar and Cleveland Local Plan (May 2018) acknowledges that:

*"The chemical industry, mainly based at Wilton International, is a vitally important part of the local, regional and national economy."*

36. This is supplemented by paragraph 5.28 which states:

*"Wilton International is a world class chemicals and energy complex with large multinational operators such as Sabic, Lotte and Huntsman currently operating from the site. The site is operated by Sembcorp who provide a range of utilities to meet the needs of operators. These sectors are a significant employer within the borough, and with potential for growth and investment over future years."*

37. Policy LS4 also sets out key strategic aspirations to *"deliver significant economic growth and job opportunities through the South Tees Development Corporation and Tees Valley Enterprise Zone"* and *"develop the chemical, technology and energy production industries"* at Wilton.

38. Paragraph 1.67 also makes clear that Wilton's economic and social contribution also arises within the wider context of the NEPIC cluster:

*"The chemicals industry is a key part of the local economy with the Wilton International site, together with sites on the northern side of the river, comprising the largest integrated chemicals complex in the UK in terms of manufacturing capacity, and the second largest in Europe. The chemicals sector supports a significant number of jobs in the borough and makes an important contribution to the local economy."* [emphasis added]

39. The Stockton-on-Tees Borough Council Local Plan (January 2019) contains similar provision. For example, Policy SD2.5.a establishes the need for new development to "*demonstrate operational benefits to the North and South Tees Cluster*" (which includes Wilton) in order "*to meet the needs of existing businesses, new start-ups and major inward investment*". Policy SD4.3 further highlights the important role played by this area for hazardous substances installations, of which the Sembcorp Pipeline Corridor forms an essential part.
40. Paragraphs 4.16 and 4.36 further emphasise the "integrated" nature of the cluster on both sides of the Tees Valley which "*is of vital importance to the local, regional and national economy*".
41. The emphasis on the importance of addressing the needs of Wilton as part of the wider cluster (in which regard, the Sembcorp Pipeline Corridor acts as the vital artery between the Wilton, Billingham and North Tees industrial complexes) finds further support in NPPF83 which provides that planning decisions should make appropriate provision for vital knowledge networks such as NEPIC.
42. Accordingly, any development carried on by the Applicants must not materially disrupt these existing businesses or the vital supporting infrastructure (within the Sembcorp Pipeline Corridor) upon which they rely. The continued vitality and growth of Wilton and the cluster is clearly an important and relevant consideration.
43. Sembcorp is concerned that the Applicant's proposals to extinguish rights in the Sembcorp Pipeline Corridor will result in disruption to the flows in the pipelines. Any disruption to the flows in the pipelines will likely result in direct financial loss to the owners/end users which in many instances will be significant. Further, Sembcorp is concerned that the Applicants' works in and its use of the Sembcorp Pipeline Corridor would be implemented in a way that would leave Wilton operators and other users exposed to events or disruption that could have the effect of harming the safe operation of plant or damaging infrastructure, adversely affecting the ability of Sembcorp (and other plant operators) to deliver planned maintenance or planned upgrades.
44. As described above, there is a complex structure of legal relationships set out in property and contractual documents which underpin the provision and receipt of the complex infrastructure services provided by Sembcorp. The various producers located at Wilton and in the wider NEPIC cluster rely upon its continuation.
45. In particular:
  - a. some of the manufacturing processes and products managed, stored and transported within Wilton and the Sembcorp Pipeline Corridor are potentially hazardous to the workforce, local populations and the environment. Facilities within the complex are on the register maintained by the Health and Safety Executive (HSE) under the COMAH Regulations. Parts of the Wilton complex are also within a secure, access controlled perimeter for these reasons;
  - b. Sembcorp has since 2003 held the role of pipeline authority (in addition to its ownership of the majority of the investment land within Wilton) in a manner that has

enabled the continued safe, effective and integrated operation of diverse, complex and potentially hazardous industrial plant, apparatus and infrastructure in separate ownerships

- c. Particularly within the Sembcorp Pipeline Corridor, where it has little of its own apparatus, it undertakes its role for the collective benefit of all of the users and in order to protect the economic benefit to be derived from the activities taking place within the three clusters upon Teesside linked by it;
  - d. the passage of the pipeline apparatus and the related development process proposed by the Applicants within the Sembcorp Pipeline Corridor would best be regulated alongside other existing and proposed uses and developments, in order to avoid unforeseen conflicts between the Project and other use and development; and
  - e. Sembcorp's co-ordinating role has enabled potential conflicts between customers, whether managing and upgrading large and complex plant requiring new or when undertaking statutorily required assurance works on their apparatus within the Sembcorp Pipeline Corridor, to be avoided in a manner that has assisted with their safe operation and maximised the economic benefit to be obtained from the area as a whole, including Wilton.
46. Sembcorp achieves these outcomes in large part through the complex interplay of existing contracts and property rights that regulate its relationship with plant operators and regulate access and the exchange of materials through the highly complex shared infrastructure in the Sembcorp Pipeline Corridor. It also acts in many respects as a 'quasi-public authority', convening, representing and regulating its customers to maximise shared benefit and minimise conflict.
47. The following examples illustrate the vast array of functions which Sembcorp carries out as pipeline authority in accordance with this carefully calibrated and balanced legal framework:
- a. There are carefully crafted deemed acceptance provisions in existing deeds managed by Sembcorp, such that a constructee enjoys certainty that it can construct, subject to taking account of any reasonable concerns raised by Sembcorp or other customers.
  - b. Notice and consultation obligations with existing apparatus owners exists primarily for safety so they can require reasonable protection of their existing assets, but also identify applicable code and standards issues which constructees may not be aware of. This also allows detailed knowledge of third party apparatus to be shared e.g requiring certain sections to be fully welded (when British Standards may otherwise permit the use of flanged joints) and/or requiring the revision of designs so as not to place a joint or valve typically within 3 metres of an existing purge valve, drain vent or similar due to risk of fluid leak and/or a flammable atmosphere.
  - c. Sembcorp assists in developing and monitoring safe systems of work, including advising constructees on the potential hazards around them – whilst the Applicants' construction and maintenance contractors will no doubt be experienced in building its pipeline, they will not necessarily know all of the hazards which exist in the Sembcorp Pipeline Corridor such as culvert loadings or the requirements that must be complied with in respect of other types or categories of apparatus.
  - d. Sembcorp also manages liability to the existing apparatus owners and obtains appropriate indemnities and insurances from the constructee for damage that may be

caused to that existing apparatus owner's equipment or to the Shared Apparatus and Infrastructure. This ensures that Sembcorp and its customers have appropriate recourse and protection if during construction or maintenance their apparatus is damaged.

- e. Sembcorp holds and also obtains via the standard documentation, outline detail on all apparatus in the Sembcorp Pipeline Corridor such that, in the event of an emergency or incident, it can provide crucial information (including to the emergency services) without the need for contact with every individual apparatus owner, i.e. it is not just a question of providing information on the specific apparatus to which the incident relates, but also upon the surrounding hazards.
  - f. The local authority issues the rates bill for the Sembcorp Pipeline Corridor to Sembcorp, which then apportions the liability to those with apparatus in it.
48. Consequently, if the Applicants seek to acquire rights over the Sembcorp Pipeline Corridor and to extinguish or suspend the existing rights in it enjoyed by Sembcorp and its customers, it is incumbent upon them to set out in detail their proposals for the on-going management of this vitally important infrastructure. They have not addressed this at all in their application, however.
49. Even if such management measures were proposed, the inevitable fragmentation of the current integrated role played by Sembcorp as pipeline authority that would result could have significant adverse effects on the continued safe and economic operation of the Sembcorp Pipeline Corridor and those businesses across the three Teesside chemical clusters which rely upon it, including Wilton. For common sense, practical reasons there is much advantage in their being a single body for the co-ordination, review and notification of works within the Sembcorp Pipeline Corridor to which all users of it can turn, especially given that the area included within the Order Limits is only part of the whole. It would be less efficient, economical and coordinated for two different parties to manage different parts of the Corridor.
50. A far better solution will be for the Applicants to accept that they will be merely part of a wider 'ecosystem' of operators, producers and businesses in the cluster and to participate in the existing co-ordination arrangements which Sembcorp has successfully operated for nearly two decades.

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

51. The dDCO proposed by the Applicants envisages extensive powers to acquire compulsorily rights over the Sembcorp Pipeline Corridor and, just as importantly, to extinguish the existing rights enjoyed by Sembcorp and its customers.
52. Under Section 122 of the PA 2008, a DCO which includes compulsory acquisition powers may be granted only if the conditions in sections 122(2) and (3) are met. These conditions are receptively that:
- a. the land is required for the development to which the DCO relates or is required to facilitate or is incidental to that development; and
  - b. there is a compelling case in the public interest for inclusion of powers of compulsory acquisition in the DCO.
53. For these purposes, section 159 of the PA 2008 clarifies that "land" includes any interest in or right over land.

54. Further guidance as to the Secretary of State's approach to CA is set out in the *Guidance related to procedures for the compulsory acquisition of land* (September 2013) ("**CA Guidance**"). Without repeating the full content of the CA Guidance, a number of key principles may be distilled:
- a. all reasonable alternatives to compulsory acquisition must be explored by the Applicants;<sup>7</sup>
  - b. the Applicants must have a clear idea of how they intend to use the land;<sup>8</sup>
  - c. the Applicants must satisfy the Secretary of State that the land to be acquired is no more than is reasonably required;<sup>9</sup> and
  - d. compelling evidence must be provided that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired.<sup>10</sup>
55. In this context, Sembcorp has particular concerns as to:
- a. the extent of the proposed powers of compulsory acquisition of rights of the Sembcorp Pipeline Corridor; and
  - b. the Applicants' articulation of the public interest insofar as the Project would affect the Sembcorp Pipeline Corridor and, by extension, Wilton and the wider Teesside chemical clusters which rely upon it.
56. With respect to point a., the dDCO proposes to grant powers for the Applicants to acquire compulsorily rights across the whole width of the Sembcorp Pipeline Corridor within the Order Limits.
57. However, it is Sembcorp's understanding (based upon information provided by the Applicants) that these rights are sought primarily in order to enable the provision of an up to 22inch CO2 transportation pipeline. Given the size of this proposed development, the proposed extent of the CA powers over the Sembcorp Pipeline Corridor (typically up to a width of 30 to 35 metres) is manifestly excessive.
58. To put matters in perspective, based on its extensive experience as the pipeline authority responsible for the overall management and co-ordination of the Sembcorp Pipeline Corridor, Sembcorp would expect a 5 metre wide rack to accommodate between 5 and 10 pipelines plus additional cabling.
59. Sembcorp further understands that, elsewhere along the route, the Applicants are seeking only a 1 metre wide easement strip. Whilst there may well be good reasons for the width of the easement strip to be extended in certain places, the Applicants have as yet provided no reasoned justification for the extensive scope of the powers sought over the Sembcorp Pipeline Corridor. Absent such explanation, the powers sought by the Applicants in the dDCO are excessive.

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<sup>7</sup> CA Guidance, para. 8

<sup>8</sup> CA Guidance, para. 9

<sup>9</sup> CA Guidance, para. 11

<sup>10</sup> CA Guidance, para. 13

60. Moreover, Sembcorp would further note that the provision of easement strips in a managed infrastructure corridor such as the Sembcorp Pipeline Corridor is not generally required at all in order to secure the effective protection of the apparatus. This is because the management arrangements in place (operated by Sembcorp in its capacity as the pipeline authority) already serve this function. Extensive easement strips are, accordingly, superfluous.
61. The disruption to the future development capacity of the Sembcorp Pipeline Corridor and the restrictions on the placement of new apparatus by extending the Order Limits so wide is significant; particularly noting that pipelines can and are often stacked above one another which reduces land-take, visual impact and cumulative maintenance burden. The extent of the powers sought by the Applicants would effectively sterilise the remainder of the developed Sembcorp Pipeline Corridor and, in conjunction with the proposed powers to extinguish or suspend third party rights, would in practice prevent the laying of other important apparatus and infrastructure within the Corridor that could otherwise easily be accommodated alongside the Applicants' proposed equipment. This would have the effect of constraining future growth at Wilton and in the industrial cluster more generally.
62. Furthermore, it is not apparent from the Applicants' Statement of Reasons why it is necessary for them to seek powers to acquire compulsorily the full package of rights over the Sembcorp Pipeline Corridor in perpetuity. For example, the table in Schedule 7 of the dDCO intimates that many of the rights sought relate to access, landscaping and maintenance. Such matters are transitory and could equally well be addressed by suitable temporary rights over the relevant land. It is not necessary for perpetual rights to be obtained, especially given the time-limited duration of the development that would be authorised by the dDCO (circa 60 years).
63. Sembcorp remains content to continue to manage and facilitate the Sembcorp Pipeline Corridor so as to secure the wider socio-economic interest in its efficient and safe functioning, and to grant the Applicants equivalent rights to its own customers sufficient to meet the needs of the Project, subject to the agreement of suitable heads of terms. Draft documentation has already been issued to the Applicants on 25 May 2022.
64. In these circumstances, Sembcorp submits that the rights sought by the Applicants and the associated powers of CA (insofar as these relate to the Sembcorp Pipeline Corridor) are excessive in both extent and duration. Further, the compulsory acquisition of such rights is not, in fact, required, since the Applicants can obtain the rights they need directly from Sembcorp, in common with other users of the Corridor.
65. With respect to point b., it is necessary for the Applicants to demonstrate – and for the Secretary of State to be satisfied – that there is a compelling case in the public interest for compulsory acquisition. The Applicants' (limited) analysis of this vital statutory requirement is set out sections 7 and 13 of the Statement of Reasons. No consideration of the potential adverse impact of the Project on the existing users of the Sembcorp Pipeline Corridor or on Wilton is provided at all.
66. Importantly, the balancing exercise described at paragraphs 13.1.3 to 13.1.7 of the Statement of Reasons considers only the interaction of the putative public benefits of the Project versus the private loss that would be suffered by those whose land or interests in land are proposed to be acquired or extinguished. There is no consideration of the adverse impact on Sembcorp's ability (or, indeed that of any other person) to manage the Sembcorp Pipeline Corridor in the public interest so as to ensure its continued safe and efficient operation.
67. The continued safe operation of the Sembcorp Pipeline Corridor, employment and the generation of economically significant products and other economic benefits that it facilitates (including at

Wilton and across the NEPIC cluster more generally) is in the public as well as the private interest. The significant public benefit offered by the continued successful operation of the Sembcorp Pipeline Corridor considered as a whole, integrated infrastructure network is relevant and important under the PA 2008, is substantial and forms an important and relevant consideration in the decision to be taken on this application.

68. It follows that there is not a simple trade-off between the public interest as represented by the development of the Project and the private interests of Sembcorp. The competing public interest in the effective management of the Sembcorp Pipeline Corridor must also be taken into account and this has not been considered by the Applicants at all.
69. This is important because Sembcorp is concerned about the Applicants being provided with powers that enable it to interfere with the operations of Sembcorp and others associated with the Sembcorp Pipeline Corridor and those customers who depend upon it. Sembcorp's concerns are essentially that the Applicants and their successors in title have neither the duty nor the relevant technical information to ensure the development of the relevant parts of its Project is balanced against the interests of Sembcorp and its customers. The unfettered operation of compulsory acquisition powers in the absence of engagement between the undertakers and Sembcorp could have significant adverse effects on the continued safe and economic operation of these important businesses, and constrain future growth.
70. This position takes account of the fact that several Sembcorp customers are operating large, technically complex and high economic value plant and equipment. This is plant which may cause significantly adverse and possibly hazardous social, economic and environmental effects should access to it or to the Sembcorp Pipeline Corridor which supports it be blocked, repairs or upgrades to it be delayed or significant infrastructure be damaged.
71. If the Applicants have pre-emptive powers, including the compulsory acquisition or extinguishment of rights within the operational area of the integrated Sembcorp Pipeline Corridor, the potential for the timing of acquisition and development and for the interference with access, operations and other upgrade proposals could be significantly detrimental to the continuing safe and economic operation of plant, both that of individual operators at Wilton and within the wider cluster served by the Corridor. The weight that should be afforded to this matter by the ExA is significant and at the very least equivalent to the weight to be accorded to the putative public benefits of the Project.
72. For these reasons, the Applicants have not demonstrated that the proposed powers of compulsory acquisition that would be exercisable over the Sembcorp Pipeline Corridor within the Order Limits are either necessary or that there is a clear and compelling public interest in their inclusion should the DCO be granted. In Sembcorp's submission, such powers are not necessary and it would not in any event be in the public interest to grant them.

### **Need for protective provisions and additional requirements**

73. As set out above, Sembcorp is supportive of the principle of the Project which offers significant opportunities to enhance the offer of the NEPIC cluster and drive competitive advantage for the region and the UK on a global scale.
74. However, it is vital that securing these envisaged benefits does not adversely affect the highly important existing economic activity within the cluster which is served by the Sembcorp Pipeline Corridor, including at Wilton.

75. Sembcorp considers that as long as the Applicants are prepared to take their place as part of the wider 'eco system' of entities active within the cluster, ensuring that its needs are balanced with those of other entities rather than taking precedence over them, this risk can be mitigated.
76. The appropriate means by which this can be achieved are the inclusion of:
- a. appropriate protective provisions in favour of Sembcorp; and
  - b. ensuring that the DCO requirements provide for Sembcorp to be consulted prior to any subsequent approval of detailed plans or specifications relating to the Sembcorp Pipeline Corridor.
77. A copy of the protective provisions included in The Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 is reproduced in the Appendix to these written representations. Subject to appropriate necessary modifications, Sembcorp considers that these strike the right balance between the competing public interests. These should also not be controversial given that they have previously been considered appropriate and necessary by the ExA and the Secretary of State in relation to this earlier DCO.
78. As to requirements, Sembcorp seeks the following:
- a. with respect to Requirements 3(2) and 3(7) (concerning the approval of detailed particulars of Works 2A and 6 affecting Sembcorp assets or the Sembcorp Pipeline Corridor), in each case RPA approval must be “in consultation with Sembcorp”;
  - b. with respect to Requirement 16 (concerning approval of a CEMP), RPA approval must be “in consultation with Sembcorp” insofar as it relates to Works 2A and 6;
  - c. similar provision must be included in respect of any other works which would or may affect Sembcorp's assets, Wilton or the Sembcorp Pipeline Corridor; and
  - d. with respect to Requirement 32, this must be amended so as to require decommissioning to be carried into effect, with RPA approval to be "in consultation with Sembcorp”.
79. Sembcorp intends to discuss appropriate detailed amendments to the dDCO with the Applicants and will provide a further update to the ExA in due course.



## APPENDIX

**2015 No. 1592**

**INFRASTRUCTURE PLANNING**

**The Dogger Bank Teesside A and B Offshore Wind Farm  
Order 2015**

*Made* - - - - *4th August 2015*

*Coming into force* - - *26th August 2015*

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An application under section 37 of the Planning Act 2008<sup>(a)</sup> (the “2008 Act”) has been made to the Secretary of State for an order granting development consent.

The application has been examined by a Panel, which has made a report to the Secretary of State under section 74(2) of the 2008 Act.

The Secretary of State has considered the report and recommendation of the Panel, has taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009<sup>(b)</sup> and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State is satisfied that the special category land (as defined in article 34 of the Order), when burdened with the order rights (as defined in that article), will be no less advantageous than it was before to the persons in whom it is vested; other persons, if any, entitled to rights of common or other rights; and the public; and that, accordingly, section 132(3) of the 2008 Act applies.

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(a) 2008 c.29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to, the Localism Act 2011(c.20). Section 74(2) was amended by paragraph 29(2) of that Schedule. Section 104(2) was amended by paragraph 49 of that Schedule and section 58 of the Marine and Coastal Access Act 2009 (c.23). Section 114 was amended by paragraph 55 of Schedule 13 to the Localism Act 2011. Section 120 was amended by section 140 of, and paragraph 60 of Schedule 13 to, that Act. Section 132 was amended by section 23(3) of the Growth and Infrastructure Act 2013 (c.27).

(b) S.I. 2009/2263; relevant amending instruments are S.I. 2012/635 and 2012/787.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

Accordingly, the Secretary of State, in exercise of the powers in section 114 and 120 of the 2008 Act, makes the following Order:

## PART 1

### Preliminary

#### Citation and commencement

1. This Order may be cited as the Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 and comes into force on 26th August 2015.

#### Interpretation

2.—(1) In this Order—

“1961 Act” means the Land Compensation Act 1961(a);

“1965 Act” means the Compulsory Purchase Act 1965(b);

“1980 Act” means the Highways Act 1980(c);

“1990 Act” means the Town and Country Planning Act 1990(d);

“1991 Act” means the New Roads and Street Works Act 1991(e);

“2004 Act” means the Energy Act 2004(f);

“2008 Act” means the Planning Act 2008;

“2009 Act” means the Marine and Coastal Access Act 2009(g);

“ancillary works” means the ancillary works described in Part 2 (ancillary works) of Schedule 1 (authorised project) and any other works authorised by this Order that are not development within the meaning of section 32 of the 2008 Act;

“authorised development” means the development and associated development described in Part 1 of Schedule 1 and any other development authorised by this Order that is development within the meaning of section 32 of the 2008 Act;

“authorised project” means the authorised development and the ancillary works;

“Bizco 2” means Doggerbank Project 2 Bizco Limited (company number 07791977)(h);

“Bizco 3” means Doggerbank Project 3 Bizco Limited (company number 07791964)(i);

“book of reference” means the book of reference certified as the book of reference by the Secretary of State under article 42 (certification of plans and documents, etc.);

“building” includes any structure or erection or any part of a building, structure or erection;

“cable” includes, in respect of an onshore cable, a direct-lay cable and a cable laid in a cable duct and, in respect of an onshore or offshore cable, a fibre-optic cable;

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(a) 1961 c.33.

(b) 1965 c.56.

(c) 1980 c.66.

(d) 1990 c.8.

(e) 1991 c.22.

(f) 2004 c.20.

(g) 2009 c.23.

(h) The registered office of Doggerbank Project 2 Bizco Limited is 55 Vastern Road, Reading, Berkshire RG1 8BU.

(i) The registered office of Doggerbank Project 3 Bizco Limited is 55 Vastern Road, Reading, Berkshire RG1 8BU.

“cable crossing” means the crossing of existing subsea cables and pipelines by the inter-array, inter-platform or export cables authorised by this Order together with physical protection measures including cable protection;

“cable protection” means measures to protect cables from physical damage and exposure due to loss of seabed sediment including, but are not limited to, the use of bagged solutions filled with grout or other materials, protective aprons or coverings, mattresses, flow energy dissipation devices or rock and gravel burial;

“carriageway” has the same meaning as in the 1980 Act<sup>(a)</sup>;

“combined platform” means a single offshore platform combining 2 or more of the following—

- (a) an offshore collector platform;
- (b) an offshore converter platform;
- (c) an offshore accommodation or helicopter platform;

“commence” means—

- (a) in relation to marine activities licensed by Marine Licences 1 to 4, begin to carry out any of those activities except for pre-construction surveys and monitoring;
- (b) in any other case, begin to carry out any material operation (as defined in section 155 of the 2008 Act) in respect of the authorised development or forming part of the authorised project except for operations consisting of site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, the diversion and laying of services, the erection of any temporary means of enclosure and the temporary display of site notices or advertisements;

and “commencement” must be construed accordingly;

“commercial operation” means—

- (a) in relation to Project A, the exporting, on a commercial basis, of electricity from the wind turbine generators comprised in Project A;
- (b) in relation to Project B, the exporting, on a commercial basis, of electricity from the wind turbine generators comprised in Project B;
- (c) in relation to any other part of the authorised project, the exporting, transmission or conversion, on a commercial basis, of electricity;

“construction compound” means a secure temporary construction area associated with the onshore works (including temporary fencing, lighting and ground preparation) to be used for the location of site offices; general storage; storage of plant, cable drums, ducting and other construction materials; welfare facilities; car parking; waste management; lay-down areas; banded generators; and fuel storage or any other means of enclosure of areas required for construction purposes;

“electrical converter substation and compound” means an electrical converter housed within 1 or more converter halls and a compound containing electrical equipment including power transformers, switchgear, reactive compensation equipment, harmonic filters, cables, lightning protection systems including masts, control buildings, communications masts, back-up generators, access, fencing and other associated equipment, structures or buildings;

“environmental statement” means the document certified as the environmental statement by the Secretary of State under article 42 together with any supplementary or further environmental information submitted in support of the application for this Order;

“gravity base foundation” means a foundation type that rests on the seabed and supports a wind turbine generator, meteorological station or offshore platform primarily due to its own weight and that of added ballast, with or without skirts or other additional fixings, which may

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(a) “Carriageway” is defined in section 329.

include associated equipment including J-tubes and access platforms and separate topside connection structures or an integrated transition piece. (Sub-types for wind turbine generators and meteorological stations include conical gravity base and flat-based gravity base foundations. Sub-types for platforms include offshore platform conical or flat-base gravity base foundations and offshore platform semi-submersible gravity base foundations);

“highway” has the same meaning as in the 1980 Act(a);

“highway authority” has the same meaning as in the 1980 Act(b);

“HVAC” means high voltage alternating current;

“HVDC” means high voltage direct current;

“land plans” means the plans certified as the offshore and onshore land plans by the Secretary of State under article 42;

“maintain” includes upkeep, inspect, repair, adjust, alter, relay and remove, to the extent assessed in the environmental statement; and any derivative of maintain must be construed accordingly;

“Marine Licence 1” means the marine licence in Schedule 8 (Marine Licence 1: Project A Offshore Generation – Work Nos. 1A and 2T);

“Marine Licence 2” means the marine licence in Schedule 9 (Marine Licence 2: Project B Offshore Generation – Work Nos. 1B and 2T);

“Marine Licence 3” means the marine licence in Schedule 10 (Marine Licence 3: Project A Offshore Transmission – Work Nos. 2A, 3A and 2T);

“Marine Licence 4” means the marine licence in Schedule 11 (Marine Licence 4: Project B Offshore Transmission – Work Nos. 2B, 3B and 2T);

“MCA” means the Maritime and Coastguard Agency;

“meteorological mast” or “meteorological station” means a fixed or floating structure housing or incorporating equipment to measure wind speed and other meteorological and oceanographic characteristics, including a topside which may house electrical switchgear and communication equipment and associated equipment, and marking and lighting;

“MHWS” (mean high water springs) means the highest level that spring tides reach on average over a period of time;

“MLWS” (mean low water springs) means the average of the low water heights occurring at the time of spring tides (which is also the outermost extent of the relevant planning authority’s jurisdiction);

“MMO” means the Marine Management Organisation;

“monopole foundation” means a foundation option based around a single vertical pillar structure driven, drilled, or embedded into the seabed by means such as suction or gravity. This main support structure may change in diameter via tapers and abrupt steps. (Sub-types for wind turbine generators and meteorological stations include monopole with steel monopile footing, monopole with concrete monopile footing and monopole with a single suction-installed bucket footing);

“multi-leg foundation” means a foundation option based around structures with several legs or footings. This includes jackets, tripods and other structures which include multiple large tubulars, cross-bracing or lattices. Multi-leg foundations may be fixed to the seabed by footings which are driven, drilled, screwed, jacked-up or embedded into the seabed by means such as suction or gravity. (Sub-types for wind turbine generators and meteorological stations include multi-legs with driven piles, drilled piles, screw piles, suction buckets and jack-up foundations. Sub-types for platforms include offshore platform jacket foundations (potentially using driven piles, suction buckets or screw piles) and offshore platform jack-up foundations);

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(a) “Highway” is defined in section 328.

(b) See section 1.

“National Grid substation” means the existing National Grid Electricity Transmission plc substation located at Lackenby;

“offshore accommodation or helicopter platform” means a platform (either singly or as part of a combined platform) housing or incorporating some or all of the following: accommodation for staff during the construction, operation and decommissioning of the offshore works, landing facilities for vessels and helicopters, re-fuelling facilities, communication and control systems, electrical systems such as metering and control systems, small- and large-scale electrical power systems, J-tubes, auxiliary and uninterruptible power supplies, large-scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore collector platform” means a platform (either singly or as part of a combined platform) housing or incorporating electrical switchgear or electrical transformers, electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large-scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore converter platform” means a platform (either singly or as part of a combined platform) housing or incorporating HVDC electrical switchgear or electrical transformers and other equipment to enable HVDC transmission to be used to convey the power output of the multiple wind turbine generators to shore including electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large-scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore order limits and grid co-ordinates plan” means the plans certified as the offshore order limits and grid co-ordinates plan by the Secretary of State under article 42;

“offshore platform” means any of the following—

- (a) an offshore accommodation or helicopter platform;
- (b) an offshore collector platform;
- (c) an offshore converter platform;
- (d) a combined platform;

“offshore works” means (except in Part 3 of Schedule 1) the Project A offshore works, the Project B offshore works and any other authorised development associated with those works;

“offshore works plans” means the plans certified as the offshore works plans by the Secretary of State under article 42;

“onshore order limits and grid co-ordinates plan” means the plans certified as the onshore order limits and grid co-ordinates plan by the Secretary of State under article 42;

“onshore special category land plan” means the plan certified as the onshore special category land plan by the Secretary of State under article 42;

“onshore works” means (except in Part 3 of Schedule 1) the Project A onshore works, the Project B onshore works, the shared works and any other authorised development associated with those works;

“onshore works plans” means the plans certified as the onshore works plans by the Secretary of State under article 42;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired and described in the book of reference;

“Order limits” means—



(a) the limits shown on the offshore order limits and grid co-ordinates plan within which the offshore works may be constructed as part of the authorised project;

(b) the limits shown on the onshore order limits and grid co-ordinates plan within which the onshore works may be constructed as part of the authorised project;

“outline code of construction practice” means the document certified as the outline code of construction practice by the Secretary of State under article 42;

“outline decommissioning statement” means the document certified as the outline decommissioning statement by the Secretary of State under article 42;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“Project A” means the Project A offshore works and the Project A onshore works;

“Project A offshore works” means Work Nos. 1A, 2A, 2T and 3A and any other authorised development associated with those works;

“Project A onshore works” means Work Nos. 4A, 5A, 6A and 8A and any other authorised development associated with those works;

“Project B” means the Project B offshore works and the Project B onshore works;

“Project B offshore works” means Work Nos. 1B, 2B, 2T and 3B and any other authorised development associated with those works;

“Project B onshore works” means Work Nos. 4B, 5B, 6B and 8B and any other authorised development associated with those works;

“relevant planning authority” means Redcar and Cleveland Borough Council;

“relevant planning authority for the port” means Redcar and Cleveland Borough Council or, in relation to a port outside Redcar and Cleveland Borough that is used to service the construction of the offshore works, the local planning authority responsible for that port;

“Requirement” means a Requirement set out in Part 3 (requirements) of Schedule 1; and a reference to a numbered Requirement is a reference to the Requirement set out in the paragraph of the same number in that Part;

“scour protection” means measures to prevent loss of seabed sediment around foundation bases by the use of bagged solutions filled with grout or other materials, protective aprons, mattresses, flow energy dissipation devices and rock and gravel burial;

“shared works” means Work Nos. 7, 7L, 8S, 9, 10A, 10B, 10C, 10D, 10E, 10F, 10G, 10H, 10I, 10J and 10K;

“street” means a street within the meaning of section 48 of the 1991 Act(b), together with land on the verge of a street or between 2 carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act(c);

“streets and public rights of way plan” means the plans certified as the streets and public rights of way plan by the Secretary of State under article 42;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“undertaker” means, subject to article 8(3) (consent to transfer benefit of Order),—

(a) in relation to Project A and related ancillary works, Bizco 2;

(b) in relation to Project B and related ancillary works, Bizco 3;

(c) in relation to the shared works, Bizco 2 and Bizco 3; and

(d) in any other case, Bizco 2 and Bizco 3;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil

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(a) 1981 c.67. The definition was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c.34).

(b) Section 48 was amended by section 124(2) of the Local Transport Act 2008 (c.26).

(c) “Street authority” is defined in section 49.

vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“Wilton Complex” means the industrial and manufacturing plant shown edged red on plan 1 (T-MIS-0065-01) of the Wilton protective provisions supporting plans;

“Wilton protective provisions supporting plans” means the plans certified as the Wilton protective provisions supporting plans by the Secretary of State under article 42;

“wind turbine generator” means a structure comprising a tower, a rotor with 3 blades connected at the hub, a nacelle and ancillary electrical and other equipment which may include J-tubes, transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter transfer facilities and other associated equipment, fixed to a foundation;

“works plans” means the onshore works plans and the offshore works plans.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate, and distances between points on a work comprised in the authorised project are to be taken to be measured along that work, except in respect of the parameters referred to in—

- (a) Requirements 3 to 12 and 20;
- (b) Conditions 3 to 11 in Marine Licences 1 and 2; and
- (c) Conditions 3 to 9 in Marine Licences 3 and 4.

(4) References in this Order to a numbered Work are references to a work numbered in Part 1 of Schedule 1.

(5) References in this Order to points identified by letters are references to the points so lettered on the onshore works plans.

(6) References in this Order to co-ordinates are references to co-ordinates on the World Geodetic System 1984 datum.

(7) In this Order, “includes” must be construed without limitation.

## PART 2

### Principal powers

#### **Development consent granted by Order**

3.—(1) Subject to the provisions of this Order and to the Requirements—

- (a) Bizco 2 is granted development consent for Project A and related ancillary works;
- (b) Bizco 3 is granted development consent for Project B and related ancillary works; and
- (c) Bizco 2 and Bizco 3 are jointly granted development consent for the shared works,

to be carried out within the Order limits.

(2) Schedule 1 (authorised project) has effect.

#### **Maintenance of authorised project**

4.—(1) The undertaker may at any time maintain, and maintain from time to time, the authorised project except to the extent that this Order or any agreement made under this Order provides otherwise.

**26.** The undertaker must paint all structures that are part of the authorised scheme yellow (colour code RAL 1023) from at least HAT to a height as directed by Trinity House.

**27.** In case of damage to, or destruction or decay of, the authorised scheme or any part of it, the undertaker must as soon as possible and no later than 24 hours following the identification of damage, destruction or decay, notify Trinity House and the MMO.

**28.** The undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

### **Progress of authorised scheme**

**29.** The undertaker must keep Trinity House, the MCA and the MMO informed of progress of the authorised scheme including—

- (a) notice of commencement of construction of the authorised scheme within 24 hours of commencement having occurred;
- (b) notice within 24 hours of any aids to navigation being established by the undertaker; and
- (c) notice within 5 working days of completion of construction of the authorised scheme.

### **Amendments to plans, etc.**

**30.** Where any Condition requires licensed activities to be carried out in accordance with any programme, statement, plan, protocol, scheme, details or arrangements approved by the MMO, the approved programme, statement, plan, protocol, scheme, details or arrangements must be taken to include any amendments that may subsequently be approved in writing by the MMO (after consulting any person that the MMO is required to consult under the relevant Condition).

## **SCHEDULE 12**

Articles 31 and 43

### **Protective provisions**

#### **PART 1**

##### **Protection for electricity, gas, water and sewerage undertakers**

**1.** The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and the utility undertaker in question.

**2.** In this Part—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus”—

- (a) in the case of a utility undertaker within paragraph (a) of the definition of that term, means electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by the utility undertaker;
- (b) in the case of a utility undertaker within paragraph (b) of the definition of that term, means any mains, pipes or other apparatus belonging to or maintained by the utility undertaker for the purposes of gas supply;

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(a) See section 64. The definition of “electrical plant” was amended by paragraph 38(3) of Schedule 6 to the Utilities Act 2000.

determined by the Secretary of State for the Environment, Food and Rural Affairs and after notice in writing by 1 to the other.

## PART 6

### Protection of owners and operators at Wilton

#### Preliminary

1. The provisions of this Part have effect for the benefit of owners and operators in the Wilton Complex<sup>(a)</sup> and owners of the Wilton Land unless otherwise agreed in writing between the undertaker and the owner or operator in question.

2. In this Part—

“alternative apparatus” means alternative apparatus adequate to serve the owner of the apparatus in question in a manner no less efficient than previously;

“apparatus” means mains, pipes, cables, sewers, drains, ditches, watercourses or other apparatus and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“construction access plan” means a plan identifying how access will be maintained to land in the Wilton Complex during the construction of the authorised project, including—

- (a) any restrictions on access, including the timing of restrictions;
- (b) any alternative accesses or routes of access that may be available to the undertaker using the Wilton Site Roads; and
- (c) details of how the needs and requirements of persons with operations at the Wilton Complex (including their needs and requirements in relation to any programmed works that they have notified to the other operators at the Wilton Complex as at the date when the plan is published) have been taken into account in preparing the plan;

“description”, in relation to works, means a detailed description of the works and includes full detail of any protective measures proposed to be incorporated as part of those works (for example, to safeguard any apparatus the removal of which is not required by the undertaker under paragraph 4(2));

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or on land;

“maintenance access plan” means a plan identifying how access will be maintained to land in the Wilton Complex during the maintenance of the authorised project, including—

- (a) any restrictions on access, including the timing of restrictions;
- (b) any alternative accesses or routes of access which may be available to the undertaker using the Wilton Site Roads; and
- (c) details of how the needs and requirements of persons with operations at the Wilton Complex (including their needs and requirements in relation to any programmed works that they have notified to the other operators at the Wilton Complex as at the date when the plan is published) have been taken into account in preparing the plan;

“major works” means works by any person requiring the closure, diversion or regulation of any of the Wilton Site Roads;

“operator” means any person who is responsible for the construction, operation, use, inspection, adjustment, alteration, repair, maintenance, renewal, removal or replacement of any apparatus or alternative apparatus in the Wilton Complex, but who is not an owner in relation to the Wilton Land or the Wilton Complex;

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(a) “Wilton Complex” is defined in article 2(1).

“owner” means—

(a) in relation to the Wilton Land, any person—

- (i) with an interest in the Wilton Land;
- (ii) with rights in, on, under or over the Wilton Land;
- (iii) with apparatus in, on or under the Wilton Land;

(b) in relation to the Wilton Complex, any owner or occupier in the Wilton Complex;

“Wilton Land” means the Wilton Complex and Plots 42A, 42B, 43A, 43B, 44A, 44B, 63A, 63B, 64, 65, 66, 67A, 67B, 67C, 67D, 67E, 67F, 68, 86 and 87 shown on the land plans;

“Wilton Site Roads” mean any of the roads shown in red on plan 2 (T-MIS-0066-01) of the Wilton protective provisions supporting plans(a), to the extent these are in the Wilton Complex, and includes any part of such a road.

3. Nothing in this Part applies to apparatus in respect of which the relations between the undertaker and the owner are regulated by Part 3 of the 1991 Act.

### **General, consent and insurance**

4.—(1) The undertaker must not in the exercise of the powers conferred by this Order acquire, appropriate, extinguish or suspend any rights in the Wilton Land if the authorised project can reasonably and practicably be carried out without such acquisition, appropriation, extinguishment or suspension.

(2) The undertaker must in the exercise of the powers conferred by this Order at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on owners and operators, including any disruption to access and supplies of utilities and other services that are required by them in order to carry out their operations.

5.—(1) The undertaker must not exercise the identified powers—

- (a) in relation to the Wilton Land without the consent in writing of the owner of that land; or
- (b) where the exercise of the identified powers affects apparatus in the Wilton Land that is operated for the benefit of the Wilton Complex, without the consent in writing of the operator in relation to that apparatus.

(2) Where a person is asked to give consent for the purposes of sub-paragraph (1), the consent must not be unreasonably withheld.

(3) If the undertaker considers that consent has been unreasonably withheld, the undertaker may refer the request for consent to an expert appointed under paragraph 24 for determination.

(4) If an owner or operator fails to respond to a request for consent within 30 days after the day on which the request is made, consent is deemed to have been unreasonably withheld, and the undertaker may refer the request for consent to an expert appointed under paragraph 24 for determination.

(5) Except in an emergency, or as otherwise provided in this Part, the undertaker must give at least 30 days’ notice of the proposed exercise of the identified powers to affected owners of the Wilton Land.

(6) In this paragraph, “identified powers” means the powers conferred by the following—

- (a) article 15 (temporary stopping up of streets);
- (b) article 16 (access to works);
- (c) article 18 (discharge of water);
- (d) article 20 (authority to survey and investigate land);
- (e) article 22 (compulsory acquisition of land);

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(a) “Wilton protective provisions supporting plans” is defined in article 2(1).

- (f) article 25 (compulsory acquisition of rights);
- (g) article 26 (private rights of way);
- (h) article 28 (rights under or over streets);
- (i) article 29 (temporary use of land for carrying out authorised project);
- (j) article 30 (temporary use of land for maintaining the carrying out authorised project).

**6.**—(1) Before carrying out any works on any part of the authorised project on the Wilton Land, the undertaker must put in place a policy of insurance with a reputable insurer against consequential loss and damage suffered by owners of the Wilton Land or as may be determined by an expert under paragraph 24, and evidence of that insurance must be provided on request to owners of the Wilton Land.

(2) Not less than 90 days before carrying out any works on any part of the authorised project on the Wilton Land or before proposing to change the terms of the insurance policy, the undertaker must notify the owners of the Wilton Land of details of the terms or cover of the insurance policy that it proposes to put in place including the proposed level of the cover to be provided.

(3) The undertaker must maintain insurance in relation to works or the use of the authorised project affecting owners of the Wilton Land during the operation of the authorised project at the level specified in the notice of proposed insurance.

**7.** If an owner or operator considers that any proposed exercise by the undertaker of a power under this Order breaches paragraph 4 or 5 or if there is a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 6, before such a power may be exercised—

- (a) the owner or operator may refer the matter to an expert for determination under paragraph 24; and
- (b) the undertaker must not exercise the power concerned until that determination has been provided.

## **Apparatus**

**8.**—(1) If, in exercise of the powers conferred by this Order, the undertaker acquires any estate, interest or right in any land in which any apparatus is placed, the apparatus must not be removed, and any right to maintain the apparatus in the land must not be extinguished, until alternative apparatus has been constructed and is in operation and equivalent rights for the alternative apparatus have been granted to the owner or operator of the apparatus.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in the land, it must give to the owner or operator in question written notice of the requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed; and in that case the undertaker must afford to the owner the necessary facilities and rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus in other land of the undertaker and subsequently for the maintenance of the apparatus.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between the owner or operator in question and the undertaker or in default of agreement settled by an expert appointed under paragraph 24.

(4) The owner or operator in question must, after the alternative apparatus to be provided or constructed has been agreed or determined by an expert under paragraph 24, and after the grant to the owner of any such facilities and rights as are referred to in sub-paragraph (2) and after the expiration of any applicable notice period in respect of the works under the Pipelines Safety

Regulations 1996(a), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under this Part.

(5) Despite sub-paragraph (4), if the undertaker gives notice in writing to the owner or operator in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the owner or operator, must be executed by the undertaker without unnecessary delay to an appropriate standard and in a safe manner.

(6) If works are executed by the undertaker in accordance with sub-paragraph (5), the owner or operator of the apparatus must be notified of the timing of the works and afforded facilities to watch, monitor and inspect the execution of the works.

(7) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 3,000 millimetres of the apparatus, without the written agreement of the owner or operator, such agreement not to be unreasonably withheld.

**9.**—(1) Where, in accordance with this Part, the undertaker affords to an owner or operator facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted on such terms and conditions as may be agreed between the undertaker and the owner or operator in question or in default of agreement determined by an expert under paragraph 24, such terms to be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

(2) In settling the terms and conditions in respect of alternative apparatus to be constructed in or along the authorised project, the expert must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised project and for securing any subsequent alterations or adaptations of the alternative apparatus that may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the authorised project for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the expert materially worse than the rights enjoyed by them in respect of the apparatus to be removed, the expert must make such provision for the payment of compensation by the undertaker to the owner or operator as appears to the expert to be reasonable, having regard to all the circumstances of the particular case.

**10.**—(1) Not less than 30 days before commencing the execution of any works of the type referred to in paragraph 8(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under that sub-paragraph, and in all cases where such works are within 3,000 millimetres of any apparatus the removal of which has not been required by the undertaker under that sub-paragraph, the undertaker must submit to the owner or operator in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the owner or operator for the alteration or otherwise for the temporary or permanent protection of the apparatus, or for securing access to it,

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(a) S.I. 1996/825.

and the owner or operator must be notified of the timing of the works and afforded facilities to watch, monitor and inspect the execution of the works.

(3) Any requirements made by an owner or operator under sub-paragraph (2) must (except in circumstances where the requirements reasonably arise from the owner or operator watching, monitoring and inspecting those works) be made within 30 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it and, where the works relate to the installation or construction of the authorised project, such requirements may require the protective measures referred to in sub-paragraph (2) to be retained in place at any time that the authorised project is installed.

(4) If an owner or operator, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, this Part applies as if the removal of the apparatus had been required by the undertaker under paragraph 8(2).

(5) Nothing in this paragraph prevents the undertaker from submitting at any time or from time to time, but in no case less than 30 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) On the reasonable and evidenced request of an owner or operator affected by proposed works, the undertaker must extend the periods in this paragraph by a reasonable time.

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency, but in that case the undertaker—

- (a) must undertake the works in such manner as has regard to the potential lack of suitable temporary or permanent protection of the owner's or operator's apparatus;
- (b) must give to the owner or operator in question, as soon as reasonably practicable, notice and a plan, section and description of the works; and
- (c) must comply with sub-paragraph (2) so far as is reasonably practicable in the circumstances.

**11.—**(1) Subject to the provisions of this paragraph, the undertaker must pay to an owner or operator the reasonable expenses incurred by the owner or operator in, or in connection with,—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus under any provision of this Part;
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;
- (c) the survey of any land, apparatus or works, the watching, inspection, superintendence and monitoring of works or the installation or removal of any temporary works in consequence of the exercise by the undertaker of any power under this Order;
- (d) the design, project management, supervision and implementation of works;
- (e) the negotiation and grant of necessary rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus;
- (f) monitoring the effectiveness of any protective measures referred to in paragraph 10(2) and the installation of any additional protective measures reasonably required in order to deal with any deficiency in the expected level of protection afforded by those protective measures;
- (g) any other work or thing reasonably required in consequence of the exercise by the undertaker of any power under this Order or by the service by the undertaker of any notice, plan, section or description,



within a reasonable time of being notified by the owner or operator that it has incurred such expenses.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under this Part, that value being calculated after removal.

(3) If in accordance with this Part—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by an expert under paragraph 24 to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the owner in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) In determining whether the placing of apparatus of a type or capacity or of particular dimensions or the placing of apparatus at a particular depth, as the case may be, are necessary under sub-paragraph (3), regard must be had to current health and safety requirements, current design standards, relevant good practice and process design specification.

(5) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(6) An amount which apart from this sub-paragraph would be payable to an owner or operator in respect of works by virtue of sub-paragraph (1) must, if it confers a financial benefit on the owner or operator by deferment of the time for renewal of the apparatus in the ordinary course of the owner's or operator's business practice, be reduced by the amount that represents that benefit.

**12.—**(1) Subject to sub-paragraphs (2) and (3), if, by reason or in consequence of the construction of the authorised project or any such works referred to in paragraph 8(2), any damage is caused to any apparatus (other than apparatus, the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an owner or operator, or there is any interruption in any service provided by or operations of the owner or operator, the undertaker must—

- (a) bear and pay the cost reasonably incurred by the owner or operator in making good such damage or restoring the supply and operations; and
- (b) make compensation to the owner or operator and any other person whose supply or operations are affected by the interruption for any other expenses, loss, damages, penalty or costs incurred by them,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an owner or operator, its officers, servants, contractors or agents.

(3) An owner or operator must give the undertaker reasonable notice of any such claim or demand, and no settlement or compromise of any claim made against the owner or operator by any third party may be made without the consent of the undertaker which, if it withholds such consent,

has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**13.—**(1) The undertaker must not in the exercise of the powers conferred by this Order unreasonably delay or prevent the construction, installation, adjustment, alteration, operation, use, repair, maintenance, renewal, inspection, removal or replacement of apparatus in the Wilton Land.

(2) If an owner or operator considers that the undertaker is in breach of sub-paragraph (1), it may refer the matter to an expert for determination under paragraph 24.

**14.—**(1) The undertaker must afford to owners of the Wilton Land rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of apparatus in the Wilton Land acquired by the undertaker or affecting the rights of, or permitted under the rights acquired by, the undertaker.

(2) The rights referred to in sub-paragraph (1) must be granted on terms and conditions that are materially no worse than the terms and conditions that apply to similar apparatus affecting the authorised project as may be agreed between the undertaker and the person wishing to construct, adjust, alter, use, repair, maintain, renew, inspect, remove or replace that apparatus in question or in default of agreement determined by an expert under paragraph 24.

(3) In settling the terms and conditions of any grant of rights, regard must be had to the terms and conditions applicable from time to time to the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal or replacement of other apparatus in the Wilton Complex.

#### **Access for construction and maintenance**

**15.—**(1) Before carrying out any construction works affecting access rights over the Wilton Site Roads, the undertaker must prepare a draft construction access plan and publicise and consult on the draft plan with owners and operators in the Wilton Complex.

(2) The undertaker must take account of the responses to consultation referred to in sub-paragraph (1) before approving the construction access plan.

(3) No works affecting access rights over the Wilton Site Roads may commence until 30 days after a copy of the approved construction access plan is served on owners and operators in the Wilton Complex.

(4) On the reasonable and evidenced request of an owner or operator in the Wilton Complex affected by proposed works, the undertaker must extend the period mentioned in sub-paragraph (3) by a reasonable time.

**16.—**(1) Before carrying out any maintenance works affecting access rights over the Wilton Complex, the undertaker must prepare a draft maintenance access plan and publicise and consult on the draft plan with owners and operators in the Wilton Complex.

(2) The undertaker must take account of the responses to consultation referred to in sub-paragraph (1) before approving the maintenance access plan.

(3) No works affecting access rights over the Wilton Complex may commence until 30 days after a copy of the approved maintenance access plan is served on owners and operators in the Wilton Complex.

(4) On the reasonable and evidenced request of an owner or operator in the Wilton Complex affected by proposed works, the undertaker must extend the period mentioned in sub-paragraph (3) by a reasonable time.

**17.—**(1) In preparing a construction access plan under paragraph 15 or a maintenance access plan under paragraph 16, the undertaker must—

- (a) establish the programme for major works in the Wilton Complex and plan the construction or maintenance of the authorised project to prevent (or, if such conflict cannot be reasonable prevented, to minimise) any conflict between the construction or maintenance of the authorised project and the programmed major works; and

- (b) establish where an owner or operator has a reasonable expectation to exercise access rights over particular Wilton Site Roads in respect of which rights are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby that expectation can be met.

(2) Where a reference is made to expert determination under paragraph 24 in relation to any disagreement about a construction access plan, the appointed expert must have regard to—

- (a) whether major works were, at the date of the consultation already programmed to take place;
- (b) the extent to which the authorised project can be accommodated simultaneously with the programmed major works;
- (c) the usual practice in respect of conditions or requirements subject to which authorisation is given by the owner of the Wilton Site Road;
- (d) the undertaker's programme in respect of the authorised project and the extent to which it is reasonable for it to carry out the authorised project at a different time;
- (e) the availability (or non-availability) of other times during which the authorised project could be carried out;
- (f) the programme in respect of the major works and the extent to which it is reasonable for the owner or operator at the Wilton Complex to carry out the major works at a different time; and
- (g) the financial consequences of the decision on the undertaker and on any owner and operator in the Wilton Complex.

(3) In this paragraph, “programmed”, in relation to works, means works in respect of which the owner of the Wilton Site Roads has been notified of the dates between which the works are programmed to be carried out.

**18.** In exercising any right of access over any of the Wilton Site Roads, the undertaker must pay to the owner the reasonable expenses incurred by the owner in operating, repairing, maintaining, renewing, inspecting and replacing the Wilton Site Road together with any perimeter gatehouses and other security serving the Wilton Complex having regard to user, within a reasonable time of being notified by the owner that it has incurred such expenses.

### **Compliance with requirements, etc. of Wilton Complex**

**19.—**(1) Subject to sub-paragraph (2) in undertaking any works in the Wilton Land or exercising any rights relating to or affecting owners and operators in the Wilton Complex, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the Wilton Complex.

(2) The undertaker is not bound by any condition, requirement or regulation that is—

- (a) introduced after the date on which notice of the works was given; or
- (b) determined by the expert following a determination under paragraph 24 to—
  - (i) create significant engineering, technical or programming difficulties; or
  - (ii) materially increase the cost of carrying out the works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority or the police.

### **Consultation, participation in community groups, co-operation on complaints, etc.**

**20.** Before undertaking any work in the Wilton Land or exercising any rights relating to or affecting the Wilton Land, the undertaker must consult the owners of the Wilton Land.

**21.** Before undertaking any works in the Wilton Land or exercising any identified powers (as defined in paragraph 5(6)) relating to or affecting owners or operators in the Wilton Complex, the undertaker must participate in any relevant consultation groups operated in the Wilton Complex.

**22.** Before undertaking any construction works on the Wilton Land or commencing the operation of Work No. 7, where any of these might reasonably be expected to give rise to significantly perceptible effects beyond the Wilton Land in terms of—

- (a) construction or operational noise and vibration management;
- (b) air quality, including dust emissions;
- (c) waste management;
- (d) traffic management and materials storage on site;
- (e) water management (surface water and groundwater); or
- (f) artificial light emissions,

the undertaker must participate in any relevant community environmental liaison group that might from time to time be established between the owners or operators at the Wilton Complex and local residents.

**23.** The undertaker must co-operate with the owners and operators in the Wilton Complex to respond promptly to any complaints raised in relation to the construction or operation of the authorised project in the Wilton Complex or the traffic associated with the authorised project.

## **Expert**

**24.—**(1) Except as provided in sub-paragraph (7), article 44 (arbitration) does not apply to this Part.

(2) Any difference under this Part must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified on the application of either party, with notice to the other, by the local authority.

(3) All parties involved in settling any difference must use best endeavours to do so within 60 days from the date of an expert first being proposed.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing within a specified period;
- (b) permit a party to comment on the submissions made by the other party; and
- (c) give reasons for his or her decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;
- (e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner;
- (f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;

- (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;
- (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
- (i) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 44.

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order grants development consent for 2 offshore wind turbine electricity generating stations in the North Sea between 125 kilometres and 290 kilometres off the United Kingdom coast together with associated development. The Order authorises the compulsory purchase of land and rights in land and the right to use land and to override easements and other rights.

The Order also grants deemed marine licences under Part 4 of the Marine and Coastal Access Act 2009 in connection with the wind farms.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 42 may be inspected free of charge at the offices of Redcar and Cleveland Borough Council, Redcar & Cleveland House, Kirkleatham Street, Redcar TS10 1RT.

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**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**

**WRITTEN REPRESENTATION**

**ON BEHALF OF**

**SEMBCORP UTILITIES (UK) LIMITED**

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**SUMMARY**

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1. Sembcorp Utilities (UK) Limited ("**Sembcorp**") is a Teesside based subsidiary of Sembcorp Energy UK, a leading provider of sustainable solutions supporting the UK's transition to Net Zero. With a total operational portfolio of around 1GW, including significant renewable generation and existing battery storage, Sembcorp Energy UK helps to keep the country's electricity system balanced and resilient, through a fast-acting, decentralised fleet of assets.
2. On Teesside, Wilton International ("**Wilton**"), within the Teesside Freeport, sits amongst a hub of decarbonisation innovation. It is one of the UK's leading multi-occupancy industrial and manufacturing sites, with the products made there being both of national importance and generating millions of pounds in export revenues annually for the UK economy.
3. Sembcorp's major industrial power plants deliver high-quality, centralised utilities and services to energy-intensive industrial businesses. This includes the operation of a private electricity grid at Wilton as well as the management and control of a significant network of pipeline corridors connecting Wilton and other industrial businesses located within the other clusters at Billingham and North Tees ("**Sembcorp Pipeline Corridor**"). The pipeline corridors enable the transportation of industrial gases, raw materials and feedstock seamlessly between manufacturers, storage and process plants.
4. Sembcorp actively markets Wilton with a view to securing inward investment and further growth. The Northeast of England is recognised and promoted by the Department for International Trade as a leading location in the UK for foreign direct investment. Wilton's status as a multi-occupancy business and research centre is a key attraction. The complex is one of the largest R&D facilities in Europe and is home to the Centre for Process Innovation ("**CPI**"), part of the UK's High Value Manufacturing Catapult network. CPI is a British technology and innovation centre which was established to "*reposition the North-East [of England] on the world stage for research and development*". CPI helps companies to develop, prove, prototype and scale-up new products and processes by providing access to facilities, expertise and networks of public and private funders. Accordingly, Wilton's continued success forms a key part of the Government's long-standing economic and trade strategy for the UK.
5. Wilton is also one of the main sites used by the economic cluster body the Northeast of England Process Industry Cluster ("**NEPIC**"). An economic or business cluster is a geographic concentration of interconnected businesses, suppliers, and associated institutions in a particular field. Clusters have the potential to affect competition in three ways: by increasing the productivity of the companies in the cluster; by driving innovation in the field; and by stimulating new businesses in the field. Clusters increase the productivity with which companies can compete, nationally and globally. By 2017 the total GVA contribution of NEPIC to the local and UK economy had climbed to £3.34 billion.
6. Wilton thus forms part of an important cluster of petrochemical, speciality and other process manufacturing businesses of local, regional and national economic significance. Sembcorp plays a central role as part of that cluster. Wilton itself is an industrial and manufacturing hub of national importance and whilst overall Sembcorp supports the Net Zero Teesside Project ("**Project**"), Sembcorp continues to express its concern about the impact the Project may have on it, Wilton and a number of the existing industrial emitters on Teesside, which the CO<sub>2</sub> gathering network is intended to support.
7. The 'ready-to-go' site solution provide by Sembcorp at Wilton integrates energy, development land, infrastructure, utilities and security, supported by the site's extensive network of internal infrastructure, providing gas, electricity, water, steam, drainage, pipe and road connectivity, moving

inputs, products, by-products and wastes between different production facilities – both within and outwith the Wilton complex itself.

8. Sembcorp is concerned to ensure that the important apparatus within the Sembcorp Pipeline Corridor, as well as routes for connecting pipework, cables and other conducting media between Wilton and the other clusters, is not disrupted by the Applicants' proposals in ways that lead to economic harm, loss of employment, or additional operational safety or environmental concerns for the existing plant.
9. Sembcorp acts as a central body for the Sembcorp Pipeline Corridor: managing, maintaining, patrolling and facilitating both the use of the corridor and the shared apparatus infrastructure and any works within it. This co-ordinating function is distinct from Sembcorp's parallel capacity as a landowner and provides significant economic and strategic value. In this respect, Sembcorp could be considered to play a similar role for the three connected chemical clusters to that occupied by National Grid concerning the management and oversight of the UK's national electricity grid and gas transmission networks, albeit with a more limited scope and scale.
10. Sembcorp coordinates all users use of the Sembcorp Pipeline Corridor, in terms of both routine communication and in the management of all works, from routine assurance to future proposals and enhancements. At present, the Sembcorp Pipeline Corridor has the capacity required for both Sembcorp's and the wider Wilton and Billingham cluster's business plans. This includes future development, including the likely relocation and expansion of existing users as well as the establishment of new manufacturing and process plant during the next 30 to 60 years.
11. There is a complex structure of legal relationships set out in property and contractual documents which underpin the provision and receipt of the complex infrastructure services provided by Sembcorp. The various producers located at Wilton and in the wider cluster rely upon its continuation.
12. CA of rights by the Applicants and the extinguishment of existing established rights in the Sembcorp Pipeline Corridor as proposed in the dDCO will impact Sembcorp's ability to service its other customers and to continue to provide this vital co-ordinating function. Sembcorp is concerned that the Applicant's proposals to extinguish rights in the Sembcorp Pipeline Corridor will result in disruption to the flows in the pipelines and consequent financial losses for other users. Further, Sembcorp is concerned that the Applicants' works in and its use of the Sembcorp Pipeline Corridor would be implemented in a way that would leave Wilton operators and other users exposed to events or disruption that could have the effect of harming the safe operation of plant or damaging infrastructure, adversely affecting the ability of Sembcorp (and other plant operators) to deliver planned maintenance or planned upgrades.
13. If the Applicants seek to acquire rights over the Sembcorp Pipeline Corridor and to extinguish or suspend the existing rights in it enjoyed by Sembcorp and its customers, it is incumbent upon them to set out in detail their proposals for the on-going management of this vitally important infrastructure. They have not addressed this at all in their application, however.
14. Sembcorp submits that the rights sought by the Applicants and the associated powers of CA (insofar as these relate to the Sembcorp Pipeline Corridor) are excessive in both extent and duration. Further, the CA of such rights is not, in fact, required, since the Applicants can obtain the rights they need directly from Sembcorp, in common with other users of the Corridor.
15. The continued safe operation of the Sembcorp Pipeline Corridor, employment and the generation of economically significant products and other economic benefits that it facilitates (including at



Wilton and across the NEPIC cluster more generally) is in the public as well as the private interest. The significant public benefit offered by the continued successful operation of the Sembcorp Pipeline Corridor considered as a whole, integrated infrastructure network is relevant and important under the PA 2008, is substantial and forms an important and relevant consideration in the decision to be taken on this application. The unfettered operation of CA powers in the absence of engagement between the Applicants and Sembcorp could have significant adverse effects on the continued safe and economic operation of these important businesses, and constrain future growth.

16. It follows that there is not a simple trade-off between the public interest as represented by the development of the Project and the private interests of Sembcorp. The competing public interest in the effective management of the Sembcorp Pipeline Corridor must also be taken into account and this has not been considered by the Applicants at all.
17. In Sembcorp's submission, the CA powers over the Sembcorp Pipeline Corridor sought by the Applicants are not necessary and it would not in any event be in the public interest to grant them. The necessary rights can simply be granted by Sembcorp on an equivalent basis to those enjoyed by all other users of the Corridor.
18. Ultimately, as long as the Applicants are prepared to take their place as part of the wider 'eco system' of entities active within the cluster, ensuring that their needs are balanced with those of other entities rather than taking precedence over them, these risks can be mitigated. This can be achieved through the inclusion of appropriate protective provisions and requirements in the DCO.