

**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 SUMMARY OF ORAL SUBMISSIONS**

**AND ANSWER TO ACTION POINT 8**

**ON BEHALF OF**

**SEMBCORP UTILITIES (UK) LIMITED**

**Issue Specific Hearing 3 – 12 July 2022**

**Compulsory Acquisition Hearing 2 – 13 July 2022**

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## Introduction

1. Please see below a written summary of the oral submissions made by Andrew Byass, Counsel for Sembcorp Utilities UK Ltd ("**Sembcorp**"), at the examination hearings held on 12 and 13 July 2022, together with Sembcorp's response to Action Point 8.

## Issue Specific Hearing 3 – 12 July 2022

### Articles of dDCO

#### Article 2

2. There was much in the discussion with which Sembcorp agrees. The essential/principal point to make is about ensuring that the Protective Provisions ("PPs") cater for permitted preliminary works. The Applicants have said that that is the intention and Sembcorp will revert to them with some drafting points as part of the separate bilateral negotiations on the PPs with a further update to being provided to the ExA in due course.

#### Article 44

3. Sembcorp has a concern in relation to Article 44 that has not previously been raised in written representations. Article 44 applies to Sembcorp's consent under paragraph 183 of the PP such that, if there is no response within six weeks, consent is deemed to be given. This is not appropriate since, given its role and expertise in relation to the Sembcorp Pipeline Corridor, Sembcorp's positive consent should be required.
4. This should be addressed through the negotiations of the PPs, which are the subject of on-going discussion between Sembcorp and the Applicants.

### Schedule 2 of dDCO

#### Requirement 2

5. The amendments to the notice provisions in the dDCO proposed by the Applicants have addressed Sembcorp's concerns.

#### Requirements 3, 4, 7, 8, 11, 16, 18, 21, 23, 25 and 32

6. Insofar as the Applicants have objected to the proposed inclusion of Sembcorp as a mandatory consultee, there are other recent examples of private landowners being named as consultees in DCOs. In Deadline 4 representations, Sembcorp referred to the M54 to M6 link road development and the M25 junction 28 development – a filling station and cemetery as landowners respectively.
7. The essential point is that Sembcorp is in a unique position. There are four main points in this regard:
  - a. Point 1 – As set out in written representations already, there is a wider public interest in ensuring the safe and efficient operation of the Sembcorp Pipeline Corridor. As far as Sembcorp is aware this is not in dispute.
  - b. Point 2 – The operation of the Sembcorp Pipeline Corridor is particularly complex. In Sembcorp's Deadline 2 representations, Sembcorp refers to itself as a pipeline authority

and did so advisedly. There is an interlocking 'ecosystem' of legal and practical provisions that govern the operation of the Sembcorp Pipeline Corridor.

The point Sembcorp seeks to draw from that is that because of that interlocking set of provisions on both a practical and legal basis, there are competing maintenance and operational demands, that Sembcorp is uniquely well-placed to identify and respond to and be a consultee in respect of because of its existing oversight function.

- c. Point 3 – There are several means by which the Applicants' works could impact on the safe and efficient running of the Sembcorp Pipeline Corridor. It carries potentially hazardous products. There are several potential hazards impacting on construction and maintenance that are unique to the Sembcorp Pipeline Corridor. Sembcorp manages these given its central oversight role, and some of those have been traversed in written representations already.

Standard operating methods or standard construction methods may not be appropriate in all circumstances and Sembcorp is uniquely well placed to identify such situations. This applies to even something as straightforward as, or potentially as straightforward as, management of flood risk where Sembcorp is able to say whether a proposal is going to come into conflict with a particular aspect of its management in relation to flood risk.

By way of further example, in relation to noise and vibration there is a particular concern with vibration during construction affecting existing infrastructure and, again, Sembcorp's position is that it is more appropriate for it to be able to intervene as a consultee under the Requirements if necessary to raise or address any issues.

- d. Point 4 – Sembcorp's position is that the optimal time at which to take account of the impact of any proposals impacting upon the Sembcorp Pipeline Corridor is at the time that those proposals are being approved by the planning authority.

Sembcorp has technical knowledge and experience of the unique requirements of the Sembcorp Pipeline Corridor that it can provide at that stage. Its position is unique as it has been managing the Corridor for 19 years and is well aware of the very particular circumstances that apply to its safe and efficient operation. This is in the public interest.

These are not just abstract concerns. Examples have been provided of highway works, which could block access to the Sembcorp Pipeline Corridor and potentially place in jeopardy the safe operation of apparatus within it.

Sembcorp, of course, doesn't wish to involve itself unnecessarily. It asks to be a consultee at the point in the decision making when a decision about the 'in principle' approval of a particular work or action is being considered. If a bad decision has been made there is, in theory, the prospect of Sembcorp withholding its consent under the PPs, but by then a bad decision will have already been made. That is not good decision making. It is preferable for the planning authority to be put in a position whereby it can make a good decision in the first place. Sembcorp's unique experience means that it can foster good decision making at the appropriate time in the process.

Based on experience it is quite conceivable that an applicant would point to a planning authority's approval of a particular requirement and say withholding of

consent under PPs is unreasonable in those circumstances. That is a situation that creates the potential for unnecessary dispute, which would be avoided if Sembcorp was simply included as a consultee at the appropriate stage when details come to be approved under the Requirements.

There is no reason consulting with Sembcorp would cause delay. If anything, it will speed up the process because, when it comes to the point of asking for consent under the PPs, that can simply and easily be provided because Sembcorp will have already been a consultee when the details were up for consideration as part of the Requirements.

This is far from being unprecedented. There are other examples, including recent ones, of private landholders being provided this opportunity of being a mandatory consultee for the purposes of DCO requirements.

This is not a “floodgates” type of situation because Sembcorp has a unique role in relation to the Sembcorp Pipeline Corridor, which it is very concerned to guard. It is based upon its extensive experience of managing this Corridor over 19 years, and its concerns stem from this experience. By having regard to those concerns at the appropriate stage, it will provide the optimal way to ensure that the correct decisions are made at the right time under the Requirements.

#### Requirement 23

8. Sembcorp is seeking that requirement 23 also includes work no. 6. Insofar as there will be any tunnelling in the future, even if that's not a preferred option, then the concerns about piling / vibration relate to the existing infrastructure of Sembcorp in the Sembcorp Pipeline Corridor.

#### Requirement 29

9. Changes that have now been made to these requirements by the Applicants address Sembcorp's concerns so there are no further representations to make.

#### Schedule 12 – Protective Provisions

##### Part 16

10. The important objections which Sembcorp has in respect of compulsory acquisition over the Sembcorp Pipeline Corridor are set out in its written representations. There are negotiations ongoing between the Applicants and Sembcorp on PPs.

#### **Compulsory Acquisition Hearing 2 – 13 July 2022**

11. There are three main points from Sembcorp.
  - a. First, it agrees with what the Applicants have said re the use of No. 2 River Tunnel. That is subject to ongoing engineering and commercial discussions, but subject to those the Applicants' position is broadly agreed.
  - b. Second, so far as commercial negotiations to secure the rights needed by the Applicants are concerned, they are ongoing. Sembcorp's latest proposals in relation to a side agreement

were provided at the end of May. Sembcorp hopes that there will continue to be early and constructive engagement on those proposals, and looks forward to a response.

- c. Third, Sembcorp maintains in the interim its serious concerns about the justification provided to date for the scope of the compulsory acquisition powers sought. There appears to be inconsistency in the width sought by the Applicants without an objectively stated rationale.

12. There are three main areas in which further detailed consideration needs to be given by the Applicants to the rights that are sought:

- a. The construction of a new pipeline: plainly, consideration needs to be given to temporary use of land and the siting of the pipelines. The pipelines themselves are proposed to be 550 mm in diameter. Sembcorp's Written Representation describes how one can have up to five pipelines in a width of between 5 and 10 metres, so a significant amount of land is not actually required with pipelines being able to be sited on top of each other.
- b. A separate and important justification in relation to maintenance: The Applicants' response to Sembcorp's concerns about justification refer to maintenance. The problem is, so far as that is concerned, that the Sembcorp Pipeline Corridor is used by multiple operators – circa. 12 important industries in the local area as well as others, and they have an interconnecting system of rights of access for maintenance. Justification needs to be provided, if that is going to be interfered with, because of the delicate way in which all those interact and the way in which one gives way to the other and no single operator or user of the Sembcorp Pipeline Corridor has priority. If there is going to be a compulsory acquisition of rights in respect of maintenance, then a particular justification is needed from the Applicants and account needs to be taken of those matters.
- c. Finally, the ongoing concern about the duration of the rights sought and whether they need to be for a longer period than the lifetime of the project or not. Those concerns remain. Sembcorp remain concerned that there isn't any specific justification provided for the proposed perpetual duration of the rights, and it is for the Applicants to provide this.

13. In respect of the issue of the duration of the rights sought, Sembcorp has nothing further to add at this stage beyond the points made in paragraph 62 of its Deadline 2 representations.

#### **Action Point 8**

14. Sembcorp confirms that it does not have any material concerns in relation to vibration during operation of the development and that it therefore does not consider that vibration needs to be addressed in Requirement 22.

**DLA Piper UK LLP**

**2 August 2022**