

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

ON BEHALF OF

SEMBCORP UTILITIES (UK) LIMITED

Issue Specific Hearing 5 – 18 October 2022

Compulsory Acquisition Hearing 3 – 19 October 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 18 and 19 October 2022

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The dDCO

Article 2

2. In discussion of points relating to the definition of “shared area plans”, Sembcorp has no comments. As to the “Sembcorp Pipeline Corridor protective provisions supporting plans”, Sembcorp envisages that these will be forthcoming in early course as the Protective Provisions ("**PPs**") themselves move forward.
3. A drafting point was raised in relation to the definition of “Sembcorp”. That is to say, the dDCO should make clear that Sembcorp is defined to apply to its successors – if any – in respect of the operation and maintenance of the Sembcorp Pipeline Corridor.

Permitted preliminary works

4. Sembcorp will confirm its position on this issue – the commencement of the identified permitted preliminary works – in writing at deadline 11, but in general terms its concern is capable of being resolved through appropriate PPs.

Requirement 37

5. Submissions were made regarding the necessity of (new) requirement 37. In response to previous submissions, Sembcorp have been added as a consultee to many, but by no means all, of the requirements. It will be a consultee when the requirement may be reasonably expected to relate to a matter which may impact on the safe and efficient operation of the Sembcorp Pipeline Corridor.
6. To that end, Sembcorp confirmed that it is concerned about the necessity for requirement 37. This provides that the RPA must consult with Sembcorp only when there is “authorised development which in the relevant planning authority’s opinion could affect Sembcorp’s interests”.
7. The following points were made:
 - a. Fundamentally, the necessity of this restriction is questioned. It appears to be focused on limiting the circumstances in which Sembcorp would provide consultation responses. Sembcorp, however, has no interest in wasting resources responding on matters in which it does not have an interest.
 - b. It is already the case that Sembcorp is not required to be consulted on everything, but only on matters in which there is the prospect of an impact on the safe operation or maintenance of the Sembcorp Pipeline Corridor. A proportionate approach has been taken in identifying relevant consultees in the requirements, including Sembcorp.
 - c. More importantly, and as previously explained, the operation of the Sembcorp Pipeline Corridor is a complex undertaking, involving not only a carefully crafted set of interlocking

legal rights and obligations, but also several potential hazards impacting on construction and maintenance that are unique to the Sembcorp Pipeline Corridor, which Sembcorp manages given its central oversight role of the Sembcorp Pipeline Corridor.

- d. It is difficult to see how the RPA will be better placed than Sembcorp to assess whether the relevant requirement would impact on a matter of concern to Sembcorp relating to the Sembcorp Pipeline Corridor, particularly given the oftentimes unique and complex nature of its maintenance and operation.
- e. Inevitably then, it will be incumbent on the RPA to make enquiries with Sembcorp about its interests in any particular application. If it does not do so:
 - i. at best this risks the RPA failing to properly discharge its responsibility to form a reasonable opinion about the effect on Sembcorp's interests; and
 - ii. at worst risks the RPA not consulting with Sembcorp on a matter which will have a real and serious impact on the safe and efficient operation of the Sembcorp Pipeline Corridor.
- f. It is likely to only build in delay with the RPA having to contact Sembcorp on each occasion where a relevant application comes in, giving less time for Sembcorp to consider the application and respond, should it have an interest. If there is then less time for Sembcorp to respond substantively if it does have an interest, that only defeats the purpose in including the opportunity for consultation in the first place.

Schedule 12, Part 16 PPs

8. Sembcorp has been consistent in its representations that it seeks PPs providing protection similar to those provided in respect of the Dogger Bank DCO.
9. It was confirmed that a principal point of disagreement remains provisions relating to compulsory acquisition, albeit there remains disagreement also on provisions relating to indemnities and insurance.
10. It was emphasized that the ExA in Dogger Bank concluded that there was a substantial public interest and benefit in the ongoing safe and effective operation of the Wilton Complex, at which Sembcorp operates and which is served by the Sembcorp Pipeline Corridor. In recognition of that public interest, PPs were made which provided for any acquisition to be agreed, but on the basis that such consent must not be unreasonably withheld by Sembcorp. The PPs provided for any disputes were to be resolved expeditiously by an independent third party.
11. The present NZT scheme raises effectively the same issues so equivalent PPs in broadly the same form as the Dogger Bank DCO should be included in the NZT dDCO.
12. It was confirmed that if necessary, and should this matter remain in dispute, Sembcorp would confirm its position in representations to be made at Deadline 12.

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13. Sembcorp remains hopeful that agreement as to the use of the Sembcorp Pipeline Corridor by the Applicants will be able to be agreed. There is mutual interest in such agreement being reached.
14. Sembcorp recognise that the interests and rights relating to the Sembcorp Pipeline Corridor are complex, with multiple parties involved. Various parts of the Sembcorp Pipeline Corridor may require tripartite agreements, or multiple agreements.
15. While there has been regular engagement, that engagement varies on matters of interest to Sembcorp, including for example in respect of rights in respect of crossings.
16. Without seeking to be critical, having regard to these complexities and multiple parties, there have been considerable delays in receiving draft agreements back from the Applicants' solicitors.
17. There were discussions in late September, with Sembcorp's understanding being that revised agreements – of those provided by Sembcorp in May – would be returned the following week, but as of the date of CAH3 Sembcorp was still awaiting the return of those full agreements. Sembcorp anticipates that there will still be much to discuss before the close of the Examination.
18. For these reasons, Sembcorp considers that it is unlikely that matters will be agreed by the close of the Examination.
19. For Sembcorp's part, that brings back into focus the importance of the PPs, and the scope for them playing a role in allowing for agreement to avoid the use of compulsory acquisition powers, as they did in Dogger Bank.
20. Sembcorp will of course work toward reaching agreement, but the position is as stated above, and requires engagement by the Applicants with multiple parties.

DLA Piper UK LLP

26 October 2022