

**A38 DERBY JUNCTIONS SCHEME (THE PROJECT)  
DEADLINE 4 – 31 JANUARY 2020  
CADENT GAS LIMITED  
RESPONSE TO EXAMINING AUTHORITY’S (EXA) SECOND ROUND OF WRITTEN  
QUESTIONS**

**1. INTRODUCTION**

- 1.1 Cadent Gas Limited (**Cadent**) is a statutory undertaker for the purposes of the Planning Act 2008 (**PA 2008**) and is responding to question 10.14 raised in the ExA’s second round of written questions. The ExA asks statutory undertakers to provide detail as to whether it considers the proposed development would be likely to cause any serious detriment to their undertaker. Cadent address this question below.
- 1.2 These submissions supplement Cadent’s relevant representations which was received on 29 July 2019 and Cadent’s response to the ExA’s first round of written questions which was submitted on 5 November 2019.

**2. EXA QUESTIONS**

ExA’s Question	Cadent’s Response
10.14 Detriment to Cadent’s undertaking	<p>The proposed development includes (through powers included in the draft DCO) the acquisition of land and temporary and permanent rights in a significant number of plots in which Cadent has apparatus and rights. Furthermore, the proposed development also proposes the decommissioning and diversion of Cadent’s apparatus located in a number of these plots.</p> <p>Schedule 9, Part 1 of the dDCO does not contain the terms required by Cadent to sufficiently protect its apparatus. They do not fully regulate the interaction between the Project and Cadent’s apparatus. Cadent’s standard protective provisions fully regulate this interaction (for example including in relation to securing Cadent’s standards, and fully regulating approvals processes within an appropriate framework). In addition, the protective provisions included at Schedule 9, Part 1 do not adequately address the principle that Cadent should not be exposed to any liability as a result of a third party scheme which it derives no benefit from (a principle recognised by the Secretary of State in the Eggborough decision in respect of protective provisions). As such, Cadent is seeking the inclusion of its standard protective provisions.</p> <p>In the event that suitably worded protective provisions cannot be agreed then the exercise of unfettered compulsory purchase powers in respect of its apparatus the following consequences may arise:</p> <p>(a) failure to comply with industry safety standards, legal requirements and Health and Safety Executive standards create a health and safety risk. Cadent requires specific protective provisions in place for an appropriate level of control and assurance that the industry regulatory standards will be complied</p>

with in connection with works in the vicinity of Cadent's apparatus. Sufficient wording is not included within Schedule 9, Part 1 of the draft DCO. Cadent requires compliance with various industry standards to ensure that the integrity of the pipelines and as such distribution of gas is protected, the safety of the surrounding gas pipelines is protected, and the safety of personnel involved in working with gas pipelines is protected;

(b) any damage to apparatus potentially has serious hazardous consequences for individuals and property located in the vicinity of the pipeline / apparatus if it were to fail; and

(c) potentially significant consequences arising from continuity of supply, including to Cadent's undertaking and compliance with licence obligations if unrecoverable losses are sustained by Cadent as due to this scheme.

In the event that suitably worded protective provisions are agreed then Cadent considers this sufficient to remove any serious detriment to its undertaking.

#### **Protective Provisions Update**

On 3 October 2019 Cadent submitted its standard form protective provisions to Highways England in the form agreed in respect of its Windy Harbour scheme and included within the final dDCO for that scheme.

On the 13 January 2020 Cadent received a heavily marked up version of its standard form protective provisions from Highways England.

Cadent is in the process of establishing whether these amendments can be accepted.

Negotiations between the parties are expected to continue. Assuming that agreement as to the form of the protective provisions can be reached, Cadent requires these to be included on the face of the Order.

Cadent reserves its right to further update the ExA in due course as to the progress of negotiations of the protective provisions.

#### **Draft DCO Update**

Cadent also takes the opportunity of this submission to note that the proposed development proposes the diversion of Cadent's apparatus. Cadent is currently establishing the adequacy of the approach proposed to these diversionary works, including the scope of the replacement rights to be afforded to Cadent in respect of any diversion. Cadent notes an updated draft DCO is to be submitted on 3 February, with comments required by 10 February.