

**A38 DERBY JUNCTIONS SCHEME (THE PROJECT)
DEADLINE 5 – 7 FEBRUARY 2020
CADENT GAS LIMITED**

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 the Promoter’s deadline 4 submission in which is provided an updated dDCO.
- 1.2 These submissions supplement Cadent’s relevant representations which were received on 29 July 2019, Cadent’s response to the ExA’s first round of written questions which was submitted on 5 November 2019 and its deadline 4 submission dated 31 January 2020.

2. DRAFT DEVELOPMENT CONSENT ORDER

- 2.1 The proposed development proposes the diversion of Cadent’s apparatus.
- 2.2 The dDCO contains article 10(4) which allows the Promoter to transfer the benefit of the Order to Cadent. This is welcomed by Cadent.
- 2.3 In respect of the plots required for the diversion of Cadent’s apparatus, the purpose for which rights over land may be acquired is listed in Schedule 5 as the “diversion and maintenance of and access to utilities”.
- 2.4 This is not broad enough to cover the right that Cadent will require for its apparatus. Cadent requires the permanent acquisition of adequate rights to Cadent’s satisfaction over the land where the gas pipelines are proposed to be diverted to (works 9, 21 and 35).
- 2.5 Cadent requires the purpose to be amended to read:
- 2.5.1 “for the diversion, operation, maintenance, protection and decommissioning of, and access to, [identify each utility and apparatus that is specified in the relevant Works or include new defined term so it is clear a separate right can be acquired in respect of each]”. (emphasis added)
- 2.6 This expansion of the purpose is necessary because the standard easements that Cadent requires are drafted as at [2.6.1 and 2.6.2] below:
- 2.6.1 “To retain, lay, construct, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable [a] [the] pipeline[s] for the distribution or storage of gas or other ancillary materials (whether such gas or materials are distributed by Cadent Gas Limited on its own behalf or on behalf of other persons) and all necessary apparatus ancillary thereto (all herein together called “the Works”) in upon beneath and over [a] [the] strip[s] of land shown coloured; and
- 2.6.2 To pass over the Strip of Land and so much of the Land as is reasonably necessary for the purposes of the Works and any other works belonging to Cadent Gas Limited or used by or in connection with the Undertaking and which are contiguous with the Strip of Land at all reasonable times and in an emergency at any time whether or not with workmen vehicles machinery and apparatus.” (emphasis added)

- 2.7 The purpose in the dDCO needs to be broad enough to ensure that rights equivalent to Cadent's standard easements can be acquired.
- 2.8 Cadent's expectation is that the powers contained within Article 26 (compulsory acquisition of rights) will be transferred to each relevant utility for the plots where diversions are required (so that each utility can GVD and have vested in it the rights for its diverted apparatus). For example, for Work No. 9, 12 diversions are listed. The Promoter will therefore need the ability to transfer the benefit of article 26 multiple times to multiple utilities to ensure that all diversions can be achieved. This appears to be the intention in article 10(4). Cadent is of the view that an amendment to the purpose in Schedule 5 to list all relevant utilities and apparatus could clarify that this is the intention of the DCO. Therefore, Cadent considers that the definition of "utilities" in Schedule 5 should be expanded to make this clear or a new defined term introduced.
- 2.9 It is noted that discussions are ongoing between the promoter and Cadent regarding how technically any diversion would be achieved and the work required to confirm this. The output of this work may assist in confirming whether or not the land proposed for diversions is appropriate.
- 2.10 Cadent reserves its right to update the examining authority following further discussions with the Promoter regarding the proposed diversions of Cadent's apparatus.

CMS CAMERON MCKENNA NABARRO OLSWANG LLP

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