

**M25 J28 IMPROVEMENTS PROJECT (THE PROJECT)**  
**CADENT GAS LIMITED**  
**DEADLINE 9 RESPONSE 30 JUNE 2021**

**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 Examining Authority’s (**ExA**) Schedule of ExA’s recommended amendments to the Applicant’s draft DCO Version 6.

**2. PROTECTIVE PROVISIONS IN THE DRAFT DCO**

2.1 Cadent’s preferred form of protective provisions (the **Cadent PPs**) were appended (as **Appendix 1**) to Cadent’s Deadline 5 submission. The Cadent PPs are the form of protective provisions that Cadent requests are included in the DCO and have been the subject of detailed submissions by Cadent throughout the examination of the Project.

2.2 Cadent has sought to engage with the Applicant to reach an agreed position on protective provisions across all schemes that it is promoting (subject to any scheme specific requirements), and negotiations are ongoing. However, Cadent has been unable to reach an agreed position with the Applicant. Cadent remains committed to reaching an agreed position if possible and will continue to engage with the Applicant notwithstanding the forthcoming close of the examination.

2.3 In respect of the Cadent PPs to be included in the draft DCO, Cadent agrees with the amendments that the ExA has requested that the Applicant make within the Schedule of ExA’s recommended amendments to the Applicant’s draft DCO Version 6. This form of the Cadent PPs has been fully justified through the examination of the Project.

2.4 Cadent notes that the Applicant has continued to resist the ExA’s recommended amendments in the draft DCO submitted at Deadline 8 and made further submissions.

2.5 Cadent’s position on the three outstanding issues, and the ExA’s recommendations, is set out below.

Provision	Change	Reasoning
<i>1. Consequential loss</i>		
Paragraph 11 Indemnity	Delete sub-paragraph 3(c) or as an alternative Cadent would be happy to	Cadent agrees with the ExA’s recommended change to the draft DCO and Cadent’s position has been set out and justified in its submissions to the examination. The Applicant has not justified its position.

	<p>accept the following the following amendment to sub-paragraph 3(c) to:</p> <p>“any indirect or consequential loss of any third party arising from any such damage or interruption, which is not reasonably foreseeable <u>at the commencement of the relevant works referred to in sub-paragraph (1) SAVE THAT the undertaker’s indemnity under para. (1)(b) shall extend to any contractual liability Cadent has in respect of the indirect or consequential loss of a landowner in whose land apparatus is or, pursuant to the works will be, located</u></p>	
<b>2. Betterment and deferral of benefit discount</b>		
Paragraph 10 Expenses	Delete sub-paragraphs (2) to (5)	<p>Cadent agrees with the ExA’s recommended change to the draft DCO and Cadent’s position has been set out and justified in its submissions to the examination.</p> <p>Whilst the Applicant has made a number of submissions, none of these justify the inclusion of this wording on this scheme.</p> <p>Cadent’s position is based on analogous primary legislation. The Applicant has not been able to demonstrate a justification for the wording on this scheme and instead has sought to rely on legislation which is not analogous (NRSWA and the Highways Act 1980 which only regulate works within the street). The Applicant’s reference in its Deadline 8 submission to previous schemes does not justify the position on this scheme.</p>
<b>3. Expenses</b>		
Paragraph 3	Delete sub-paragraph 3	<p>Cadent agrees with the ExA’s recommended change to the draft DCO and Cadent’s position has been set out and justified in its submissions to the examination.</p> <p>The Applicant’s position was introduced late in the examination and is inconsistent with the agreed position that Cadent and the Applicant have reached on all previous DCOs and which regulates the specific costs relationship between Cadent and the Applicant.</p>

		The introduction of Paragraph 3(3) does alter the specific costs relationship. Just as Article 39 (7) of the draft DCO is included to apply costs sharing to the compensation principles set out in Article 39 (which the Applicant states in its Explanatory Memorandum is necessary so that “the cost sharing provisions under that Act will apply instead of the compensation provision in this article”, so Paragraph 3(3) is included to seek to apply costs sharing provisions instead of the costs provision in Paragraph 3.
--	--	---

2.6 Cadent reserves the right to respond to the Applicant’s submissions.

**CMS CAMERON MCKENNA NABARRO OLSWANG LLP**

**30 JUNE 2021**