

**A585 WINDY HARBOUR TO SKIPPOL IMPROVEMENT SCHEME (THE PROJECT)  
DEADLINE 5 – 9 AUGUST 2019  
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 the ExA's second round of written questions which include questions directed at Cadent.

1.2 Cadent has made a number of submissions to the examination of the Project to date. This document should be read alongside Cadent's submissions at Deadline 1, Deadline 2 and Deadline 3.

**2. HEARINGS**

2.1 Cadent would wish to attend an issue specific hearing on the dDCO on 10 to 12 September 2019 given the outstanding issues, identified below, in relation to the protective provisions.

**3. EXA QUESTIONS**

3.1 Please see below Cadent's response to the ExA's second round of written questions.

ExA's Question	Cadent's Response
2.1.11	<p>Cadent has set out its status as the licensed operator of a gas distribution network in submissions to date, and has identified the importance of maintaining the integrity of its gas distribution network in its Deadline 1, Deadline 2 and Deadline 3 submissions.</p> <p>Cadent's position, as set out at Deadline 3, is that it is not satisfied that the tests under section 127 of the PA 2008 can be met unless and until it has appropriate protective provisions in place. Until that time, Cadent is not satisfied that:</p> <ol style="list-style-type: none"><li>1. its land can be purchased and not replaced, or that any rights over its land can be acquired, without serious detriment to the carrying on of Cadent's undertaking;</li><li>2. (where its land is to be purchased) it can be replaced by other land belonging to, or available for acquisition by, Highways England without serious detriment to the carrying on of Cadent's undertaking; or</li><li>3. (where rights over its land are to be acquired) any detriment to the carrying on of Cadent's undertaking, in consequence of the</li></ol>

	<p>acquisition of the right, can be made good by Highways England by the use of other land belonging to or available for acquisition by them.</p> <p>For the purpose of section 127 of the PA 2008, land includes any interest in or right over land<sup>1</sup>. Therefore, the Applicant's statement at Deadline 4 that it is not acquiring any of Cadent's land is not correct in the context of section 127 of the PA 2008.</p> <p>Cadent will not be satisfied that the tests under section 127 and 138 will be met until such time as appropriate protective provisions are put in place.</p> <p><b><u>Protective Provisions Update</u></b></p> <p>By way of an update to the ExA, the protective provisions are in substantially agreed form between Cadent and Highways England save for two points: insurance and security. Cadent's position on these points, and the need for insurance and security to be included within the protective provisions, is set out below.</p> <p><b><u>Insurance</u></b></p> <p>Cadent's standard asset protection agreement and protective provisions include a requirement for the relevant undertaker (in this case, Highways England), and any contractor(s) working near Cadent's assets, to hold third party liability insurance for the period of the works, with sufficient coverage on a per-claim and aggregate basis as is relevant to the nature of the activities and the risks to Cadent.</p> <p>This is a fundamental requirement for Cadent, to ensure that it is properly protected against any damage caused by Highways England or its contractors, and in particular to provide a guaranteed credit line during the entire period of construction of the works.</p> <p>This is particularly important in circumstances where Cadent's gas distribution network will need to be diverted as part of the Project.</p> <p>Although Cadent accepts that Highways England benefits from certain exemptions with respect to its requirement to provide commercial third-party insurance, Cadent still requires further comfort as to the appropriateness of the insurance provision being offered.</p> <p><b><u>Security</u></b></p> <p>Cadent's standard protective provisions also include a requirement for the undertaker to provide appropriate security (by way of parent company guarantee or bond) to cover their liability to Cadent. This is required to give meaningful effect to the indemnity and as a way to secure Highway</p>
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<sup>1</sup> Please see section 159(2) of the PA 2008

	<p>England's overall performance. This principle is commonplace, as security provisions ensure that the indemnity provisions have meaningful effect.</p> <p>In this instance, Cadent accepts that a parent company guarantee is not appropriate given that Highways England does not have a parent company, and that funding from HM Government may be available to cover various liabilities.</p> <p>However, liability arising from accidental damage to the gas distribution network as part of the Project is a wider issue, and potentially a larger liability not specifically addressed in the Funding Statement. The Funding Statement identifies the costs to deliver the Project (including capital expenditure, compulsory acquisition costs and compensation claims). The Funding Statement does not address potential liability under the protective provisions.</p> <p>Therefore, until Cadent has full comfort on how its financial position is to be protected, the provision of a bond or letter of credit from an acceptable credit provider remain appropriate, as it is essential that Cadent is comfortable that Highways England is in a financial position to deliver on any liability arising under the indemnity provisions.</p>
2.2.7	<p>Cadent considers that it is important that the powers of compulsory acquisition and temporary possession can be transferred to it pursuant to the DCO. Therefore, Cadent is satisfied with Article 8(4).</p>