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RELEVANT REPRESENTATION

Representation by Cadent Gas Limited (Cadent) to the A428 Black Cat to Caxton Gibbet Improvements Project Development Consent Order (DCO)

Cadent is a licensed gas transporter under the Gas Act 1986, with a statutory responsibility to operate and maintain the gas distribution networks in North London, Central and North West England. Cadent's primary duties are to operate, maintain and develop its networks in an economic, efficient and coordinated way.

Cadent wishes to make a relevant representation to the A428 Black Cat to Caxton Gibbet Improvements DCO in order to protect its position in light of infrastructure which is within or in close proximity to the proposed DCO boundary. Cadent's rights to retain its apparatus in situ and rights of access to inspect, maintain, renew and repair such apparatus located within or in close proximity to the order limits including should be maintained at all times and access to inspect such apparatus must not be restricted.

The documentation and plans submitted for the above proposed scheme have been reviewed in relation to impacts on Cadent's existing apparatus located within this area, and Cadent has identified that it will require adequate protective provisions to be included within the DCO to ensure that its apparatus and land interests are adequately protected and to include compliance with relevant safety standards.

Protective Provisions

Cadent has high pressure gas pipelines and associated apparatus located within the order limits which are affected by works proposed and which may require diversions subject to the impact. Proposed diversions have not yet reached detailed design stage and so the final positioning, land rights and consents required for these gas diversions are not confirmed. At this stage, Cadent cannot be satisfied that the DCO includes all land and rights required to accommodate such diversions as detailed design studies will need to influence these requirements. Cadent will not decommission its existing apparatus and/or commission new apparatus until it has sufficient land and rights in land (to its satisfaction) to do so, whether pursuant to the DCO or otherwise.

Cadent will require its protective provisions to be included within the DCO. This is the position with all of the Applicant's NSIP projects. Cadent's protective provisions are appended at Appendix 1.

Cadent has been in detailed discussion with the Applicant over the form of protective provisions in relation to a number of schemes. These are substantially agreed, save for three points of dispute which Cadent and the Applicant have not yet agreed. These three points have been the subject of detailed submissions on the Applicant's M25 J28 Scheme, and the Examining Authority for the Applicant's M25 J28 Scheme has adopted Cadent's preferred form of protective provisions (see Appendix 2). Cadent's protective provisions reflect the Examining Authority's recommended draft of the protective provisions on the Applicant's M25 J28 Scheme.

Work No.51

Cadent has engaged with the Applicant throughout the pre-application process in relation to Work No.51 and accepts the Applicant's environmental assessment in respect of archaeology, the consequence of which is that Work No.51 is (until the archaeology is removed) an NSIP in its own right.

Cadent is aware that the Applicant has programmed the delivery of Work No.51 as an advanced work and that it has secured planning permission for the removal of archaeology. Cadent agrees with the need for article 19 of the draft DCO, which is required to cover the circumstance where Cadent undertakes Work No.51 in advance of the grant of the DCO pursuant to its permitted development rights. There would be a number of matters that would need to be satisfied before Cadent undertook such works in advance of the grant of the DCO, as explained in the Applicant's explanatory memorandum.

Land Rights

Cadent has experience of promoters securing insufficient rights in land within DCOs for necessary diversions of its apparatus, or securing rights for the benefit of incorrect entities. It is important that sufficient rights are granted to Cadent to allow Cadent to maintain its gas distribution network in accordance with its statutory obligations. As a responsible statutory undertaker, Cadent's primary concern is to meet its statutory obligations and ensure that any development does not impact in any adverse way upon those statutory obligations. Adequate protective provisions for the protection of Cadent's statutory undertaking are therefore required and are in discussion between parties but not yet agreed.

Cadent wishes to reserve the right to make further representations as part of the examination process but in the meantime will seek to engage with the promoter with a view to reaching a satisfactory agreement.

APPENDIX 1

CADENT'S PROTECTIVE PROVISIONS

SCHEDULES

SCHEDULE [] PROTECTIVE PROVISIONS

PART [#] FOR THE PROTECTION OF CADENT GAS LIMITED

Application

1. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of Cadent’s undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent’s undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of the Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“Cadent” means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Cadent’s undertaking” means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995);

“commence” and “commencement” include any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground conditions;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“facilities and rights” for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” have effect as if Cadent’s existing apparatus was authorised development and as if the term maintain includes protect and use;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“rights” includes restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any of the authorised works or activities (including maintenance) undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 7(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 7(2) or otherwise.

On Street apparatus

3.—(1) This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—

- (a) paragraphs 4, 9, 10 and 11; and
- (b) where sub-paragraph (2) applies, paragraphs 7 and 8.

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

Apparatus of Cadent in stopped up streets

4.—(1) Where any street is stopped up under article 18 (Permanent stopping up and restriction of use of streets and private means of access), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway, but nothing in this paragraph shall affect any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 7.

(2) Notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 17, Cadent will be at liberty at all times to take all necessary access across any such street and to execute and execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary alteration, diversion or restriction in respect of any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

5. (1) The undertaker must exercise the powers conferred by article 22 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld or delayed)

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure or secure the consent to and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 9 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 7 do not apply, the undertaker must, unless Cadent agrees otherwise—

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 6, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed and any right of Cadent to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account paragraph 8(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus; and
- (b) subsequently for the maintenance of that apparatus.

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed, then the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 15 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) Any approval of Cadent given under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and
- (b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).

(5) Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

- (a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and
- (b) all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and

approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works (including such an event attributable to its maintenance)—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.

(12) In this paragraph, "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses

10.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand, all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3) if it elects to do so; or
 - (ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 9(6).

Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works (including works carried out under article 22 (protective work to buildings)) by or on behalf of the undertaker or in consequence of any act or default

of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs properly incurred by, paid by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents;
- (b) any part of the authorised works carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 11; and
- (c) any indirect or consequential loss of any third party arising from any such damage or interruption, which is not reasonably foreseeable 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.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

Enactments and agreements

12. Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

13.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or Cadent requires the removal of apparatus under paragraph 7(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

Access

14. If in consequence of any agreement reached in accordance with paragraph 6(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative

rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

15. Save for differences or disputes arising under sub-paragraphs 7(2) and 7(4) any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 54 (arbitration).

Notices

16. Notwithstanding article 53 (service of notices) any plans submitted to Cadent by the undertaker pursuant to sub-paragraph 9(1) must be sent via email to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com as well as via post to Plant Protection, Cadent Gas Limited, Brick Kiln Street, Hinckley, Leicestershire, LE10 0NA, or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

APPENDIX 2

SCHEDULE OF ExA RECOMMENDED AMENDMENTS TO M25 J28 DRAFT DCO

M25 Junction 28 Improvement Scheme

Examining Authority's (ExA) Consultation Draft Development Consent Order (DCO)

Schedule of ExA's recommended amendments to the Applicant's draft DCO Version 6 [REP7-003]

Note to Interested Parties:

The Examining Authority (ExA) reminds Interested Parties (IP) that the recommended schedule of changes to the draft DCO [REP7-003] as set out below follows a statutory process. It is made irrespective of the recommendation the ExA will make to the Secretary of State (SoS) and is not an indication that ExA has already made up its mind on the Application. IPs participation and written responses will be treated as being given without prejudice to any position or view they hold on the scheme. IPs are invited to identify any outstanding concerns previously raised that are not addressed below.

The ExA has not responded to those changes to Articles and Schedules requested by Transport for London (TfL) in its Deadline 4 [REP4-038] and Deadline 6 [REP6-044] responses where TfL confirmed at Issues Specific Hearing 3, held on Wednesday 7 May 2021 (ISH3) [EV-038] that such changes would be covered either by its Protective Provisions in Schedule 9 of the draft DCO or by any private agreement between themselves and the Applicant.

| No. | Article/ Schedule | Text as set out in draft DCO Version 6 [REP7-003] | ExA's recommended amendment | Reason and Notes |
|-----|--|---|--------------------------------|---|
| 1. | Part 3, Article 13(1) and (2) Temporary closure, alteration, diversion and restriction of use of streets | <i>(1) "The undertaker, during and for the purposes of carrying out the authorised development, may temporarily close, alter, divert or restrict the use of any street and may for any reasonable time-"</i> <i>(2) "Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily altered, diverted or restricted under the</i> | No changes proposed. | While the ExA acknowledges the term "use of any street" is a broad one, the ExA is satisfied that such power is constrained by paragraph (4) in which the consent of the street authority is required. Little evidence is before the ExA to suggest that in practice, the Applicant would utilise the power on more roads than it needed. On that basis, the ExA does not propose to change the paragraphs as recommended by IPs. |

| No. | Article/ Schedule | Text as set out in draft DCO Version 6 [REP7-003] | ExA's recommended amendment | Reason and Notes |
|-----|--|---|---|---|
| | | <i>powers conferred by this article, and which is within the Order limits as a temporary working site."</i> | | |
| 2. | Part 3, Article 13(6) Temporary closure, alteration, diversion and restriction of use of streets | <i>(6) "If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application is made, it is deemed to have granted consent".</i> | <i>(6) "If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days 42 days beginning with the date on which the application is made, it is deemed to have granted consent".</i> | The ExA accepts that previous Orders cited by the Applicant have made similar provisions for 28-day notice periods. However, the ExA is mindful that the Covid-19 pandemic has placed additional pressures on all organisations including local authorities. While the ExA considers 56-days to be overly long, the ExA is recommending an additional two weeks be added as a goodwill and reasonable gesture during these times. Little evidence is before the ExA to suggest that the recommended additional period would cause any serious bearing on the timely delivery of the Proposed Development. |
| 3. | Part 3, Article 18(2)(c) Traffic regulation | <i>(c) "Authorise the use as a parking place of any road".</i> | [DELETE] | The ExA notes the Applicant's response to Action Point 2 [REP4-026] to Issue Specific Hearing 2 [EV-010]. However, the ExA remains |

| No. | Article/ Schedule | Text as set out in draft DCO Version 6 [REP7-003] | ExA's recommended amendment | Reason and Notes |
|-----|---|---|---|--|
| | | | | provisionally unconvinced that this power is necessary given that it is intended that operative parking would take place on site. The ExA recommends the power is deleted. |
| 4. | Part 3, Article 18(11) Traffic regulation | <i>(11) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.</i> | <i>(11) If the traffic authority fails to notify the undertaker of its decision within 28 days 42 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.</i> | See response to Point 2. |
| 5. | Part 4, Article 19(9) Discharge of water | <i>(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application that person will be deemed to have granted consent or given approval, as the case may be.</i> | <i>(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days 42 days of receiving an application that person will be deemed to have granted consent or given approval, as the case may be.</i> | See response to Point 2. |

| No. | Article/ Schedule | Text as set out in draft DCO Version 6 [REP7-003] | ExA's recommended amendment | Reason and Notes |
|-----|---|---|--|---|
| 6. | Part 4, Article 22(2) Authority to survey and investigate the land | <i>(2) "No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land".</i> | No change proposed. | The ExA is not persuaded that 14 days' notice would be insufficient to notify persons with an interest in the land. |
| 7. | Part 5, Article 35(2) Temporary use of land for the carrying out the authorised development | <i>(2) "Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for entry is taken in respect of land specified under paragraph (1)(a)(ii)".</i> | No changes proposed. | See response to Point 6. |
| 8. | | <i>(2) "The authorised development must be</i> | <i>(2) "The authorised development must be</i> | The ExA has expressed in written questions [PD-008] and further |

| No. | Article/ Schedule | Text as set out in draft DCO Version 6 [REP7-003] | ExA's recommended amendment | Reason and Notes |
|-----|--|--|--|--|
| | Schedule 2, Requirement 3(1) Detailed design | <i>designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority and relevant highway authority on matters related to its function..."</i> | <i>designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State, following <u>an independent design review and a report on its findings on the design of the bridges and structures and</u> consultation by the undertaker with the relevant planning authority and relevant highway authority on matters related to its function..."</i> | <p>written questions [PD-015] as well as at ISH1 [EV-009] and ISH3 [EV-038] its concerns with the design aspect of the scheme, particularly the bridges and structures. The ExA has noted the applicant's response. In particular the ExA notes the Applicant's Design Process Summary document submitted at Deadline 7 [REP7-028]. This document sets out the Applicant's reasoning for the design approach taken during the early design stages.</p> <p>The Applicant does not give any further explanation in this document of the design process undertaken to secure the best possible aesthetic appearance but does reiterate points made in previous submissions to support the design decisions that they have made. The additional information submitted by the Applicant at Deadline 7 does not provide additional information sufficient to alter the ExA's initial view that in order to fully comply with paragraphs 4.28, 4.29, 4.32, 4.33 and 4.35 of the National Policy Statement on National Networks, the</p> |

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| | | | | <p>SoS should have evidence that the bridges and structures have been subjected to an independent design review process prior to determining their acceptability in design terms.</p> <p>For this reason and to allow flexibility, the ExA proposes to retain the words "<i>compatible with</i>". Should the ExA not proceed with the recommendation that the bridge and structure designs be subjected to an independent design review, or that the SoS deems it as unnecessary, then the ExA will recommend that "<i>compatible with</i>" be replaced with "<i>in accordance with</i>", which the ExA considers represents affirmative wording.</p> |
| 9. | Schedule 2, Requirement 3(2) Detailed design | <i>(2) "Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding engineering drawings and sections and the undertaker must make those amended details</i> | <i>(2) "Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding engineering drawings and sections and the undertaker must make those amended details</i> | <p>In written question DCO 1.30 [PD-008] the ExA requested that Requirement 17 be amended so the "<i>electronic form</i>" was replaced with "<i>online</i>" as the former did not necessarily mean the latter. The Applicant duly obliged. The recommended change here follows the same reasoning.</p> |

| No. | Article/ Schedule | Text as set out in draft DCO Version 6 [REP7-003] | ExA's recommended amendment | Reason and Notes |
|-----|---|--|--|--|
| | | <i>available in electronic form for inspection by member so of the public".</i> | <i>available in electronic form online for inspection by member so of the public".</i> | |
| 10. | Schedule 2, Requirement 4(1) Construction Environmental Management Plan | <i>(1) "No part of the authorised development is to commence until a CEMP, substantially in accordance with the Outline CEMP..."</i> | <i>(1) "No part of the authorised development is to commence until a CEMP, substantially in accordance with the Outline CEMP..."</i> | The ExA is concerned with the term "substantially in accordance" as expressed in WQ1 DCO 1.26 [PD-008]. The ExA considers the term is imprecise because "substantial" is not defined and is subjective and could mean anything from, for example, 99% to 51% accordant. There is a possibility that the CEMP could resemble a different document to its outline counterpart, with the potential for measures to have been previously unassessed or examined. The recommended change would provide this certainty to all parties concerned. |
| 11. | Schedule 2, Requirement 4(2) Construction Environmental Management Plan | <i>(2) "The CEMP must be written in accordance with ISO14001 and, so far as is relevant to that part of the authorised development, must reflect the mitigation measures set out in the REAC..."</i> | <i>"The CEMP must be written in accordance with ISO14001 and, so far as is relevant to that part of the authorised development, must reflect is in accordance with the</i> | See response 10, which is considered to equally apply to the term "must reflect/reflecting". |

| No. | Article/ Schedule | Text as set out in draft DCO Version 6 [REP7-003] | ExA's recommended amendment | Reason and Notes |
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| | | | <i>mitigation measures set out in the REAC..."</i> | |
| 12. | Schedule 2, Requirement 5(2) Landscaping | <i>(2) "The landscaping scheme and LEMP must reflect the mitigation measures set out in the REAC and be substantially in accordance with the Preliminary Environmental Design and the Outline LEMP".</i> | <i>(2) "The landscaping scheme and LEMP must reflect be in accordance with the mitigation measures set out in the REAC and be substantially in accordance with the Preliminary Environmental Design and the Outline LEMP".</i> | See response to Point 11 |
| 13. | Schedule 2, Requirement 5(3)(g) Landscaping | <i>(g) "; and a permanent visual screening fence to be installed and planting to be undertaken in the interests of the visual amenity of the residents of Grove Farm".</i> | [DELETE] | See response to Point 20 |
| 14. | Schedule 2, Requirement 5(4) Landscaping | <i>(4) "All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other</i> | <i>(4) "All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other</i> | The Applicant has not advanced the "other recognised codes of good practice" in evidence in this Examination. The ExA considers that unchecked, these other codes could well be inferior to the British Standards. The ExA recommends that |

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| | | <i>recognised codes of good practice".</i> | <i>recognised codes of good practice <u>which must first be agreed by the Secretary of State</u>".</i> | if the Applicant intends on using other codes, they must first be agreed by the SoS to ensure that such other codes are appropriate. |
| 15. | Schedule 2, Requirement 8(1) Surface and foul water drainage | <i>(1) "No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the mitigation measures set out in the REAC..."</i> | <i>(1) "No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the <u>in accordance with the</u> mitigation measures set out in the REAC..."</i> | See response to Point 11 |
| 16. | Schedule 2, Requirement 9(2) Archaeological remains | <i>(2) "The Archaeological Management Plan must be substantially in accordance with..."</i> | <i>(2) "The Archaeological Management Plan must be substantially in accordance with..."</i> | See response to Point 10. |
| 17. | Schedule 2, Requirement 10(2) Traffic management | <i>(1) "No part of the authorised development comprising the construction, alteration or improvement of the M25 or A12 is to commence until a</i> | <i>(1) "No part of the authorised development comprising the construction, alteration or improvement of the M25 or A12 is to commence until a</i> | Capital letters replacing the lower case to be consistent with other Requirements where plans are mentioned. |

| No. | Article/ Schedule | Text as set out in draft DCO Version 6 [REP7-003] | ExA's recommended amendment | Reason and Notes |
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| | | <i>traffic management plan for that part..."</i> | <i>traffic management plan</i> <u>Traffic Management Plan</u> for that part..." | |
| 18. | Schedule 2, Requirement 10(2) Traffic management | <i>(2) "The traffic management plan prepared under sub- paragraph (1) must be substantially in accordance with the Outline Traffic Management Plan and reflect the relevant mitigation measures set out in the REAC".</i> | <i>(2) "The traffic management plan</i> <u>Traffic Management Plan</u> <i>prepared under sub- paragraph (1) must be substantially in accordance with the Outline Traffic Management Plan and reflect the relevant mitigation measures set out in the REAC".</i> | See responses to Points 11 and 16. |
| 19. | Schedule 2, Requirement 11(2) Trees | <i>(2) "The Aboricultural Method Statement must be substantially in accordance with the Outline Aboricultural Method Statement and reflect the relevant mitigation measures set out in the REAC".</i> | <i>(2) "The Aboricultural Method Statement must be substantially in accordance with the Outline Aboricultural Method Statement and reflect the relevant mitigation measures set out in the REAC".</i> | See response to Point 11. |
| 20. | Schedule 2, Requirement 19 | <i>"In relation to any provision of this Schedule</i> | <i>"In relation to any provision of this Schedule</i> | See response to Point 2. |

| No. | Article/ Schedule | Text as set out in draft DCO Version 6 [REP7-003] | ExA's recommended amendment | Reason and Notes |
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| | Details of consultation | <i>requiring details to be submitted to the Secretary of State for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than 28 days for any response..."</i> | <i>requiring details to be submitted to the Secretary of State for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than 28 days 42 days for any response..."</i> | The ExA does not consider that any change made to this Requirement would have any bearing on Schedule 2, Requirement 15(1). However, the ExA would welcome the Applicant's opinion on this should the ExA decide to recommend this change to the SoS. |
| 21. | Schedule 2, NEW REQUIREMENT Grove Farm | N/A | <u>"No part of the authorised development is to commence until a site specific plan for Grove Farm, which sets out mitigation measures including bespoke planting and a visual screen, and a scheme for post-construction noise monitoring to determine whether an acoustic screen would be required, has been submitted to and approved in writing by the Secretary of State in consultation with Transport for London</u> | The Applicant will be aware that the ExA remains concerned regarding the potential visual and noise effects the proposed development would have on the occupiers of Grove Farm. In respect of visual effects, the Application [APP-072 and REP5-007] current proposes planting along the boundary between Grove Farm and Work No.2 Change Request 8, submitted at Deadline 7 [REP7-002, REP7-028 and REP7-029] also proposes realigning the current egress road from Grove Farm as well as the provision of a visual fence. However, even if Change Request 8 were to be accepted into the Examination, nothing in the draft DCO compels the Applicant to |

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| | | | <u>and the London Borough of Havering. The authorised development must be carried out in accordance with the approved site-specific plan for Grove Farm".</u> | <p>undertake these works. The changes made to the draft DCO Requirement 5(3)(g) submitted at Deadline 7 does not alter our concerns in respect to guaranteed delivery of such measures.</p> <p>The ExA also remains concerned regarding peak noise levels and their potential effects. The ExA is provisionally not persuaded that it has sufficient evidence to suggest the provision of a noise barrier is unjustified because it has no evidence on what peak noise levels would be from future traffic using Work No.2, and their potential effects to the occupiers of Grove Farm.</p> <p>The ExA is of the view that an additional Requirement is necessary. This would require a bespoke plan of action for grove farm including additional noise monitoring to determine whether an acoustic fence would be required to mitigate peak noise levels.</p> |

| No. | Article/ Schedule | Text as set out in draft DCO Version 6 [REP7-003] | ExA's recommended amendment | Reason and Notes |
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| 22. | <p>Schedule 2, NEW REQUIREMENT</p> <p>Maylands Golf Course</p> | N/A | <p><u>"No part of the new loop road forming Work No 6 shall be used until Work No. 32 has been completed to the satisfaction of the Secretary of State".</u></p> | <p>As it currently stands, there is nothing in the draft DCO which compels the Applicant to carry out the realignment works to Work No. 32 Maylands Golf Course as shown in Change Request 7 [REP6-002, REP6-022 and REP6-023]. The recommended change would rectify this issue.</p> <p>The ExA notes the Applicant's Deadline 7 response to Action Point 9 [REP7-019] to ISH3 [EV-038] in which it is hoped that this matter would be dealt with by a private agreement. However, should such an agreement not be in place by the close of the Examination, the ExA considers such a Requirement should be inserted for the reasons given above, on a proviso that the ExA could remove it in our recommended DCO to the SoS if the agreement were signed before the close of the Examination, or that the SoS remove it prior to them making their decision.</p> |

| No. | Article/ Schedule | Text as set out in draft DCO Version 6 [REP7-003] | ExA's recommended amendment | Reason and Notes |
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| 23. | Schedule 2, NEW REQUIREMENT Code of Construction Practice | N/A | <u>"No part of the authorised development shall commence until a Code of Construction Practice has been submitted to and approved in writing by the Secretary of State in consultation with Transport for London and relevant planning authorities. The development shall be carried out in accordance with those approved details".</u> | <p>The ExA considers that notwithstanding the responses provided by the Applicant to Written Question GQ 1.6 [REP2-011] and the discussion at ISH 3 [EV-038], the ExA is of the view that the scheme would benefit from a single document to deal with construction practices, both environmental and practical, in the form of a Code of Construction Practice (CoCP).</p> <p>The ExA is not proposing the Applicant provide an outline document for the Examination as we accept that much of the information is contained in a number of documents, albeit needing a signposting document to inform where the information can be found [REP5-052]. However, the ExA considers at the detailed design stage, a single document in the form of a CoCP would be more helpful for the SoS and local authorities in their knowledge of construction practices the Applicant would adhere to.</p> |

| No. | Article/ Schedule | Text as set out in draft DCO Version 6 [REP7-003] | ExA's recommended amendment | Reason and Notes |
|-----|--|---|--|---|
| 24. | Schedule 2, NEW REQUIREMENT Noise and vibration (s61 of the Control of Pollution Act 1974) | N/A | No changes proposed | The ExA has considered the request made by the London Borough of Havering for an additional Requirement to deal with the dust, noise and nuisance management plan at Deadline 7 [REP7-034]. However, the ExA does not consider the reasons given for this change are sufficient to suggest that the method proposed by the Applicant in dealing with such matters under Requirement 5 would not be adequate. |
| 25. | Schedule 9 Protective Provisions (Cadent Gas Ltd) | N/A | INSERT NEW PART 2 – FOR THE PROTECTION OF CADENT GAS LIMITED | The Applicant is requested to comment and amend the draft Protective Provisions for Cadent Gas as per version submitted by the Applicant at Deadline 6 [REP6-017] and subject to the following changes to Paragraphs 3 and 10 and 11 as requested by Cadent Gas in its submissions at Deadline 7 [REP7-037]. It is noted that the additional wording to Paragraph 11(3)(c) as requested by Cadent Gas are already included by the Applicant at Deadline 6 [REP6-017]. |

| No. | Article/ Schedule | Text as set out in draft DCO Version 6 [REP7-003] | ExA's recommended amendment | Reason and Notes |
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| | | | | <p>The Applicant is requested to insert these changes into the next iteration of the draft DCO at Deadline 8, Wednesday 8 June 2021.</p> <p>SEE ANNEX A (below)</p> |
| 26. | <p>Schedule 9</p> <p>Protective Provisions</p> <p>Part 6 (Transport for London)</p> | N/A | <p>INSERT NEW PART 6 -</p> <p>FOR THE PROTECTION OF</p> <p>TRANSPORT FOR LONDON</p> | <p>As stated at ISH3 [EV-038] and acknowledged by the Applicant in its Deadline 7 submissions [REP7-019] and [REP7-027] in lieu of a private agreement between the Applicant and Transport for London being signed the ExA requires Protective Provisions for Transport for London. The ExA notes, however, that matters between the parties on the appropriate wording is ongoing and notes that the Applicant's suggested tracked changes to Transport for London's draft version.</p> <p>The ExA is content to allow the parties further time to agree a final version of wording to be inserted into the recommended DCO to the SoS, and as such does not recommended such wording here. However, if by Deadline 9 agreement is not reached,</p> |

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| | | | | <p>the ExA will expect an up-to-date tracked changed version of the Protective Provisions with an explanation of the parties position. The ExA will then determine which change/non-change should occur in its recommended DCO to the SoS.</p> <p>The Protected Provisions are inserted on the proviso that should a private agreement be signed between the Applicant and Transport for London before the close of the Examination, it would for no part of the recommended DCO to the SoS, or that the SoS delete it when they make their decision.</p> |

ANNEX A

PART 2 – FOR THE PROTECTION OF CADENT GAS LIMITED

On Street apparatus

3.—

(1) This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—

- (a) paragraphs 4, 9, 10 and 11; and*
- (b) where sub-paragraph (2) applies, paragraphs 7 and 8.*

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing adopted public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

~~*(3) Paragraph 10 does not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—*~~

- ~~*(a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and*~~
- ~~*(b) the allowable costs are to be borne by the undertaker and Cadent in such proportions as may be prescribed by any such regulations.*~~

Expenses

10.—

(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand, all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;*

- (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3) if it elects to do so; or*
- (ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;*
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;*
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;*
- (d) the approval of plans;*
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;*
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;*
- (g) any watching brief pursuant to sub-paragraph 9(6).*

~~*(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.*~~

~~*(3) If in accordance with the provisions of this Part of this Schedule—(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 15 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.*~~

~~*(4) For the purposes of sub-paragraph (3)—(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and (b)*~~

~~where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.~~

(5)(2) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.