

**M54 TO M6 LINK ROAD (THE PROJECT)
 CADENT GAS LIMITED
 DEADLINE 9 RESPONSE 16 APRIL 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 Applicant’s submission to the Examining Authority’s (**ExA**) on the status of protective provisions submitted at Deadline 8. Cadent has previously submitted its comments on the ExA’s Schedule of Recommended Amendments to the Applicant’s Draft DCO (the **ExA’s Schedule of Amendments**) and made detailed submissions, including at Deadline 8.

2. PROTECTIVE PROVISIONS IN THE DRAFT DCO

2.1 Cadent’s preferred form of protective provisions (the **Cadent PPs**) have been provided to the ExA on a number of occasions and were most recently appended to Cadent’s Deadline 8 submission (**Appendix 1**). A redline comparison between the Cadent PPs and the protective provisions contained in the latest Draft DCO were appended to Cadent’s Deadline 8 submission (**Appendix 2**).

2.2 Cadent has fully engaged with the ExA’s questions in respect of its protective provisions throughout the examination of the Project. Cadent has previously provided its:

- 2.2.1 preferred form of protective provisions to the ExA at Deadline 4;
- 2.2.2 updated preferred form of protective provisions to the Applicant and to the ExA at Deadline 6;
- 2.2.3 comments on the ExA’s Schedule of Recommended Amendments at Deadline 7, explaining the changes required in respect of the protective provisions; and
- 2.2.4 full and final explanation of its position on the protective provisions at Deadline 8.

2.3 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. Cadent remains committed to reaching an agreed position if possible and will continue to engage with the Applicant. It is hoped that the agreed form of protective provisions can serve as the template between the two parties for future projects.

3. THE APPLICANT’S DEADLINE 8 RESPONSE

3.1 The Applicant submitted a revised draft of the DCO at Deadline 8, together with its full and final position on the form of protective provisions.

3.2 The Applicant has stated in its Deadline 8 submission that its preferred form of protective provisions is in the form previously approved by the Secretary of State (see Table 2 and Table 3.1 of that submission). That is not correct, as explained the Table below (please see section 1. Expenses). As explained in more detail below, the Applicant introduced new and materially different wording on expenses in its Deadline 9 submission. This wording, which could cause serious detriment to Cadent, was introduced at a very late stage in the examination, has not been included in the Draft DCO until Deadline 8 and has not been included in any DCO with Cadent previously.

3.3 Cadent’s position is set out below.

Provision	Cadent’s Response
<i>1. Expenses</i>	

<p>Paragraph 3/20 On Street Apparatus</p>	<p>The Applicant has submitted at Deadline 8 a material change to paragraph 20(3) of Part 3 of Schedule 9 to the Draft DCO.</p> <p>The wording that the Applicant has now included was not included in its submission version of the Draft DCO or in any subsequent versions of the Draft DCO that have been submitted to the examination.</p> <p>The wording that the Applicant now seeks has not been included in any previous protective provisions in Cadent’s favour in a DCO, and is contrary to the Secretary of State’s approved wording in the A585 DCO, the A38 DCO and the M42 DCO. It has been a matter of agreement between the Applicant and Cadent on each of these schemes and (until the Applicant’s submission on Deadline 8) on the Project.</p> <p>Cadent’s position is, and the Cadent PPs are, consistent with all DCOs promoted by the Applicant that contain protective provisions in favour of Cadent. Please see for example: paragraph 45 of Part 5 of Schedule 12 to The M42 Junction 6 Development Consent Order 2020; paragraph 51 of Part 5 of Schedule 9 to The A38 Derby Junctions Development Consent Order 2021; and paragraph 20 of Part 3 of Schedule 10 to The A585 Windy Harbour to Skippool Highway Development Consent Order 2020. This is also consistent with the protective provisions afforded to other gas undertakers by the Applicant, such as National Grid Gas plc and Southern Gas Networks plc.</p> <p>Not only is the Applicant’s proposed wording inconsistent with previous DCOs, but it is also inconsistent with the Draft DCO. For example, the Applicant’s wording is inconsistent with paragraph 36 of Part 4 of Schedule 9 to the Draft DCO and the protective provisions in favour of another statutory undertaker (National Grid), which the Applicant has not sought to amend and which has the same effect as Cadent’s preferred wording in the Cadent PPs. It is unclear why, at this very late stage in the examination, the Applicant has sought to amend the wording as it applies to Cadent and not as it applies to National Grid.</p> <p>Finally, the Applicant has introduced this wording into this examination at Deadline 8 (five and a half months into a six-month examination, after extensive pre-application consultation and with only one remaining deadline). Cadent has not had sufficient time to consider this wording and its consequences, but it changes the position that has been agreed in respect of costs across all of the Applicant’s DCOs which contain protective provisions in favour of Cadent. This could lead to significant costs to Cadent and could cause serious detriment to Cadent.</p> <p>The Applicant’s position in respect of the other two outstanding points on the Cadent PPs in its Deadline 8 submission, on which Cadent has made detailed submissions and justified its position, is put as follows in light of the Secretary of State’s previous decisions on the A38 DCO, A585 DCO and M42 DCO: <i>“Highways England respectfully requests that the ExA and the Secretary of State uphold this position.”</i> In respect of this new provision, Cadent makes the same submission and requests that the wording remains as approved and as drafted in respect of National Grid. This is particularly the case given the late stage at which the wording has been introduced to the examination.</p>
<p>2. Consequential loss</p>	
<p>Paragraph 11/28 Indemnity</p>	<p>Cadent’s full and final position on this wording was set out in its response at Deadline 8.</p> <p>In its Deadline 8 response the Applicant has not addressed all, or indeed the most recent and thorough, decisions that are relevant to the ExA and Secretary of State’s determination of this point. In its Deadline 8 submission, Cadent provided a full explanation of all relevant decisions on this point.</p>

	<p>The Applicant has only drawn the ExA’s attention to the A38 DCO Decision and the M42 DCO Decision. As was made clear in Cadent’s Deadline 8 submission, in neither of the A38 DCO decision or the M42 DCO decision did the Examining Authority or the Secretary of State deal with the consequential loss wording in any detail.</p>
<p>3. Betterment and deferral of benefit discount</p>	
<p>Paragraph 10/27 Expenses</p>	<p>Cadent’s full and final position on this wording was set out in its response at Deadline 8.</p> <p>Cadent’s position remains that the diversions are scheme costs that should be borne by the Applicant, and that there is no justification for Cadent being liable for a proportion of such costs when (but for the Project) Cadent would not incur them. Imposing a costs liability on Cadent, which could be significant and which is not planned for or required in terms of network management, is not appropriate.</p> <p>Therefore, these costs could cause a serious detriment to Cadent’s undertaking and could put Cadent in breach of its statutory duty which, by virtue of section 9 of the Gas Act 1986, is to: “<i>develop and maintain an efficient and economical pipe-line system for the conveyance of gas</i>”.</p>

3.4 Cadent reserves the right to respond to any further submissions that the Applicant submits on 16 April 2021.

CMS CAMERON MCKENNA NABARRO OLSWANG LLP

16 APRIL 2021

