

IMMINGHAM EASTERN RO-RO TERMINAL



Cover Letter to PINS regarding the Applicant's Deadline 10 Submissions

Document 10.2.104

APFP Regulations 2009 – Regulation 5(2)(q)

PINS Reference – TR030007

January 2024

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Ms Robbins
The Planning Inspectorate
National Infrastructure
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Temple Quay
Bristol
BS1 6PN

Attn. Lily Robbins

Our Ref
10276966

Your Ref
TR030007

Date
18 January 2024

Dear Ms Robbins

Immingham Eastern Ro-Ro Terminal (TR030007) Deadline 10 Submission

I write on behalf of the Applicant, Associated British Ports, in respect of the above.

Further to the Examination Timetable set out at Annex A of the Rule 8 letter dated 2 August 2023 [PD-009], as amended by the Procedural Decision of the ExA dated 11 January 2024 [PD-026], we are today submitting the documents set out in the table below as required for Deadline 10.

<u>Document Title</u>	<u>Document Reference</u>
Guide to the DCO Application V13 (Clean)	1.4
Guide to the DCO Application V13 (Tracked)	1.4
Draft Development Consent Order (Clean) V8	3.1
Draft Development Consent Order (Tracked) V8	3.1
Explanatory Memorandum (Clean) V5	3.2
Explanatory Memorandum (Tracked) V5	3.2
Statement of Common Ground between Associated British Ports and Able Humber Ports Limited V2	7.5
Statement of Common Ground between Associated British Ports and DFDS Seaways Plc V3	7.7
Statement of Common Ground between Associated British Ports and The Marine Management Organisation V3	7.8

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Statement of Common Ground between Associated British Ports and Associated Petroleum Terminals (Immingham) Limited and Humber Oil Terminals Trustee Limited V3	7.12
Statement of Common Ground between Associated British Ports and the Health and Safety Executive	7.15
Statement of Common Ground between Associated British Ports and North East Lincolnshire Council	7.19
Statement of Common Ground Tracker V10	10.2.9
Statement of Commonality V3	10.2.57
Cover Letter to PINS regarding the Applicant's Deadline 10 Submissions with Appendices	10.2.104
Applicant's Response to Interested Parties' Deadline 9 Submissions	10.2.105
Applicant's Response to Natural England's Deadline 9 Submissions with Appendix	10.2.106
Port of Immingham Operations Manual	10.2.107
Applicant's Response to ExA's Rule 17 Letter dated 12 January 2024 with Appendix	10.2.108
IERRT Enhanced Operational Controls	10.2.109

Draft Development Consent Order (dDCO)

As noted in its Deadline 9 cover letter **[REP9-001]**, the Applicant had intended that the version of the dDCO submitted at Deadline 8 **[RE8-005]** would be the final version. In light of the ExA's letter dated 12 January 2024 **[PD-029]**, however, which raised several questions regarding the dDCO, the Applicant has decided to provide a revised final version of its dDCO at Document Reference 3.1. This version includes a revised protective provision with Network Rail and also incorporates amendments that have been requested after Deadline 8 by the MMO and National Highways.

The Applicant has also provided a revised version of the Explanatory Memorandum at Deadline 10, as Document Reference 3.2.

Statements of Common Ground (SoCG)

The ExA issued a Rule 17 Letter to the Applicant requesting that the Applicant provides further information regarding the status of several outstanding SoCGs **[PD-023]**. As noted in its response to this letter **[AS-082]**, the Applicant has continued to work with all of the interested parties in order to finalise the SoCG as soon as possible. The Applicant is now submitting the following final, signed copies of SoCG Ground at Deadline 10:

- Able Humber Ports (Document Reference 7.5)
- DFDS (Document Reference 7.7)
- Marine Management Organisation (Document Reference 7.8)
- IOT Operators (Document Reference 7.12)
- Health and Safety Executive (Document Reference 7.15)

- North East Lincolnshire Council (Document Reference 7.19)

The Applicant has provided final copies of all of the SoCGs requested by the ExA in **[PD-023]**. This is reflected in the Deadline 10 version of the SoCG Tracker document (Application Document 10.2.9). The Applicant is also providing an updated Statement of Commonality (Application Document 10.2.57) at Deadline 10 in case this is of assistance to the ExA.

Applicant's Responses to Interested Parties' Deadline 9 submissions

The Applicant has noted that at Deadline 9, Monday 15th new material and information was provided by some of the interested Parties, including closing statements. The Applicant has provided the ExA with it brief comments on those final submission, albeit not with a view of repeating information already before the examination.

Protective Provisions and Principal Areas of Disagreement Trackers

On Monday 15 January 2024 (Deadline 9) the Applicant provided the ExA with updated versions of the Protective Provisions Tracker and the Principal Areas of Disagreement Tracker documents **[REP9-009 and REP9-008]**. Due to the proximity of Deadline 10 to those recent submissions, the Applicant has not updated these tracker documents for submission at Deadline 10. In any event, the position as set out in the Deadline 9 versions of these documents has not changed at Deadline 10.

Protective Provisions for Cadent Gas Limited

At Deadline 9, Cadent Gas Limited (Cadent) submitted a response to the Applicant's draft DCO **[REP9-021]** submitted at Deadline 8, in which Cadent stated that amendments to its protective provisions are required. The Applicant is of the view that the version of the Protective Provisions as submitted in the Deadline 8 dDCO **[REP8-005]** (and which also appear in the revised dDCO submitted at Deadline 10 – Application Document 3.1 V8) would provide Cadent with entirely adequate protections. The Applicant's response to Cadent's **[REP9-021]** is appended to this cover letter (see **Appendix 1**).

Compulsory Acquisition

At Deadline 9, Volkswagen Group UK Ltd (Volkswagen) submitted a response to the ExA's request for further information dated 9 January 2024 **[REP9-031]**, in which Volkswagen stated that it continues to object to the Proposed Development. The Applicant is of the view that Volkswagen's comments are misplaced and has provided a response to Volkswagen which is appended to this cover letter (see **Appendix 2**).

If you have any questions arising from the information above, please do not hesitate to contact us at brian.greenwood@clydeco.com or rajpreet.uppal@clydeco.com.

Yours sincerely

Brian Greenwood

Brian Greenwood
Clyde & Co LLP

Appendix 1:
Explanation of the Applicant's Position in Respect of Protective Provisions: Cadent Gas Limited

Explanation of the Applicant's Position in Respect of Protective Provisions Cadent Gas Limited

- 1 At Deadline 9, Cadent Gas Limited ("Cadent") submitted its 'Response to Draft DCO Submitted at Deadline 8' document [REP9-021]. This document has been produced in response to that submission.
- 2 As the ExA is aware, ABP is the freehold owner of the Port of Immingham. Cadent have an easement in respect of a single intermediate pressure gas main which crosses the area of the port estate which it is proposed will become the Western Storage Area (Work No.6). **Annex 1** to this document is an extract from the Cadent Gas Utilities Search Report which shows the extent of Cadent's apparatus which fall within the red line boundary.
- 3 **Schedule 4 Part 9 Paragraph 99 (Application)**
- 3.1 Cadent have asserted that the protective provisions should survive in perpetuity. The Applicant, however, stands by the drafting in [REP8-003] which limits application of the protective provision to the construction period for the Western Storage Area (Work No. 6) only.
- 3.2 As the ExA will also be aware from the Accompanied Site Visit and the Application Documents (including the Book of Reference [REP8-007] and Chapter 2 of the Environmental Statement [AS-063]), the area of the proposed Western Storage Area (Work No. 6) is currently occupied by Volkswagen Group United Kingdom Limited for use as a car storage area. As per Chapter 2 of the Environmental Statement [AS-063], it is proposed that the Western Storage area will:
- "be 9.6 hectares in size and will provide some 800 trailer bays. The trailer bays will consist of paved areas with spaces marked out with painted lines. In and out gates will also be provided to access the Western Storage Area from and to the Southern Storage Area, as well as ancillary buildings (see Appendix 2.3 to the ES (superseded by Annex B of the ES Addendum (Application Document Reference number 10.3.8)))."*
- 3.3 The above description of works within the Western Storage Area is borne out in Schedule 1 of the draft Development Consent Order (Application Document 3.1), which details the works to be undertaken (in addition to ancillary works) in this area as follows:
- "Work No. 6 – The construction and laying out of the western ro-ro freight storage area as shown on sheets 4 and 5 of the works plans comprising—*
- (a) the working of land for port facilities, the removal of materials, the laying of port infrastructure and services together with associated civil works and earth;*
- (b) the surfacing of the storage area; and*
- (c) the erection of security fencing, gates and lighting."*
- 3.4 As a result, the ExA will be aware that the proposed development in the Western Storage Area will comprise limited works of surfacing, fencing, drainage and lighting before it is employed for the storage of vehicles in the same manner as it is used today. No material works will be undertaken in proximity to Cadent's apparatus.
- 3.5 Meanwhile, by virtue of Cadent having entered into it, the Applicant considers that the existing easement for Cadent's gas main contains all of the protections which

Cadent can and could reasonably require for the operation and preservation of their apparatus within what has always been (and will continue to be) a storage area within an operational port. It is entirely incorrect for the Applicant to assert in **[REP9-021]** that the easement was not “*entered into in contemplation of the authorised works*”. The easement was entered into in contemplation of the Western Storage Area being used in the manner which is actually proposed as part of the IERRT development.

3.6 Despite the entirely proportionate legal protections already in place under Cadent’s easement, the Applicant is nonetheless prepared to provide additional protections for Cadent provided the protections are proportionate and relate solely to the construction period. Following this, use of the Western Storage area will return to normal, as contemplated by Cadent’s easement, and the additional protections afforded by the protective provisions should fall away in their entirety. The protections afforded by Cadent’s easement would, of course, remain.

4 **Schedule 4 Part 9 Paragraph 100 (Interpretation) – Definition of Authorised Works**

4.1 Cadent have asserted that the definition of “specified works” within the protective provision should not be limited to those works which relate to Work No. 6 (the Western Storage Area), as has been proposed by the Applicant in **[REP8-003]**. The Applicant, however, stands by the drafting in **[REP8-003]**.

4.2 As shown in **Annex 1**, Cadent’s apparatus is limited to a single gas pipeline within the Western Storage Area. As such, the Applicant sees no justification for the protective provision having effect prior to construction works which specifically relate to the Western Storage Area. It should not be the case that the indemnities contained in the protective provisions should apply when works on the other side of the port (such as the marine works) are taking place, whilst no construction works are taking place in proximity to Cadent’s infrastructure. In these circumstances, the operations within what is to be the Western Storage Area will continue to be those which were contemplated in Cadent’s existing legal easement.

4.3 In **[REP9-021]** Cadent asserts that the Applicant’s drafting would enable “a whole host of undefined ancillary works” in this area without the protective provisions being in place. The Applicant believes that it is immaterial whether the Western Storage Area is used for the storage of cars (as today) or construction materials and equipment for use in the authorised works. Cadent’s existing easement will provide sufficient protections for Cadent’s interests. Meanwhile, any earthworks or drainage works (for example) within this area would fall within the definition of Work No. 6 and trigger the protections afforded to Cadent under the protective provisions.

5 **Schedule 4 Part 9 Paragraph 100 (Interpretation) and 107 (Indemnity) – Insurance Provisions**

5.1 Cadent have asserted in **[REP9-021]** that indemnity provisions relating to ‘acceptable insurance’ and the provision of security should be inserted into Paragraph 107 of the protective provisions, with corresponding definitions to be included in paragraph 100. Such an insurance policy should, in Cadent’s view, provide an indemnity limit of £50 million in addition to pollution liability clauses and Cadent as co-insured.

5.2 The Applicant does not consider that any amendment to Cadent’s protective provision in **[REP8-003]** is warranted.

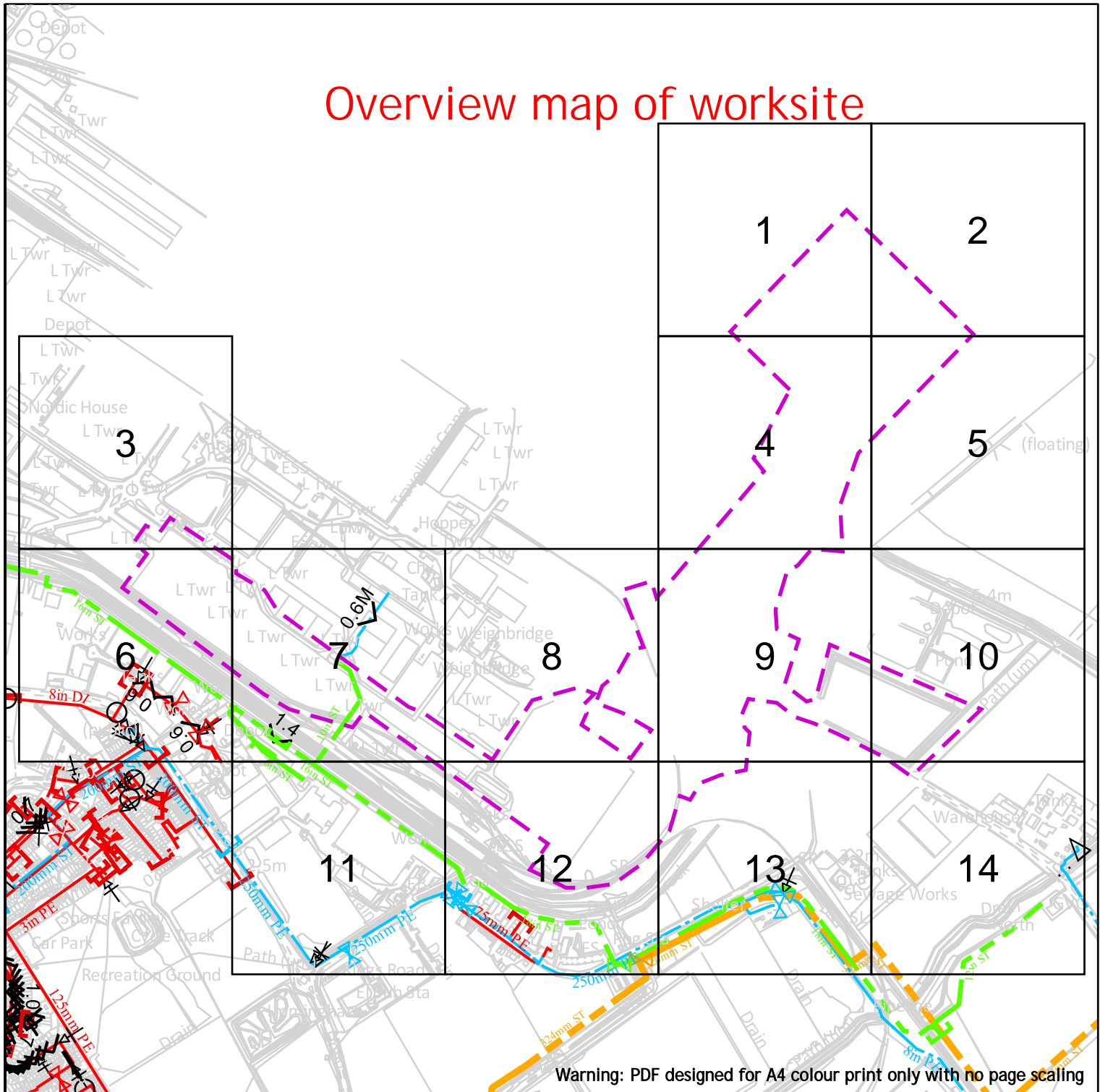
- 5.3 The Applicant considers that adequate indemnities are being provided to Cadent, and that there is no justification for requiring the Applicant to take out what is considered to be a prohibitively expensive and heavily restrictive policy of insurance in addition to the already offered indemnity. Requiring the Applicant to acquire a policy of insurance such as this would be entirely disproportionate.
- 5.4 With regards to Cadent's request for 'acceptable security', there has been no question of ABP's covenant strength in respect of the indemnities and Cadent should already hold insurance for their infrastructure as a matter of course. The Applicant has provided Cadent with its most recent accounts filings at Companies House, which demonstrate the Applicant's net worth to be many times larger than that which would be required to stand behind the indemnities which have been afforded. Cadent's additional drafting in relation to security is, therefore, entirely unnecessary.
- 5.5 The above is especially true due to the very limited interface between Cadent's apparatus and the proposed development, with a single intermediate pressure gas pipeline crossing an area of the site which is to be subject to very limited development works.

6 **Conclusion**

- 6.1 For the above reasons, the Applicant considers that the protective provisions in favour of Cadent which were included in **[REP8-003]** remain more than sufficient to protect Cadent's interests.

Annex 1: Extract from the Cadent Gas Utilities Search Report

Overview map of worksite



Warning: PDF designed for A4 colour print only with no page scaling

WARNING! This area contains Gas Mains Operating at High Pressure (in excess of 7 bar) and/or Intermediate Pressure (between 2 and 7 bar). Before excavating in the area contact the Plant Protection team on 0800 688 588 or plantprotection@cadentgas.com

Dig Sites

Area:

Line:

- LP Mains
- MP Mains
- IP Mains
- LHP Mains

Valve

Depth of cover

Syphon

Diameter Change

Material Change

Out of Standard Service

Cadent
Your Gas Network

Date Requested: 27/09/2021
Job Reference: 23378509
Site Location: 520645 415741
Requested by: Mr Ben Evans

Your Scheme/Reference: LM
100245/DoM

View extent: 100m, 100m

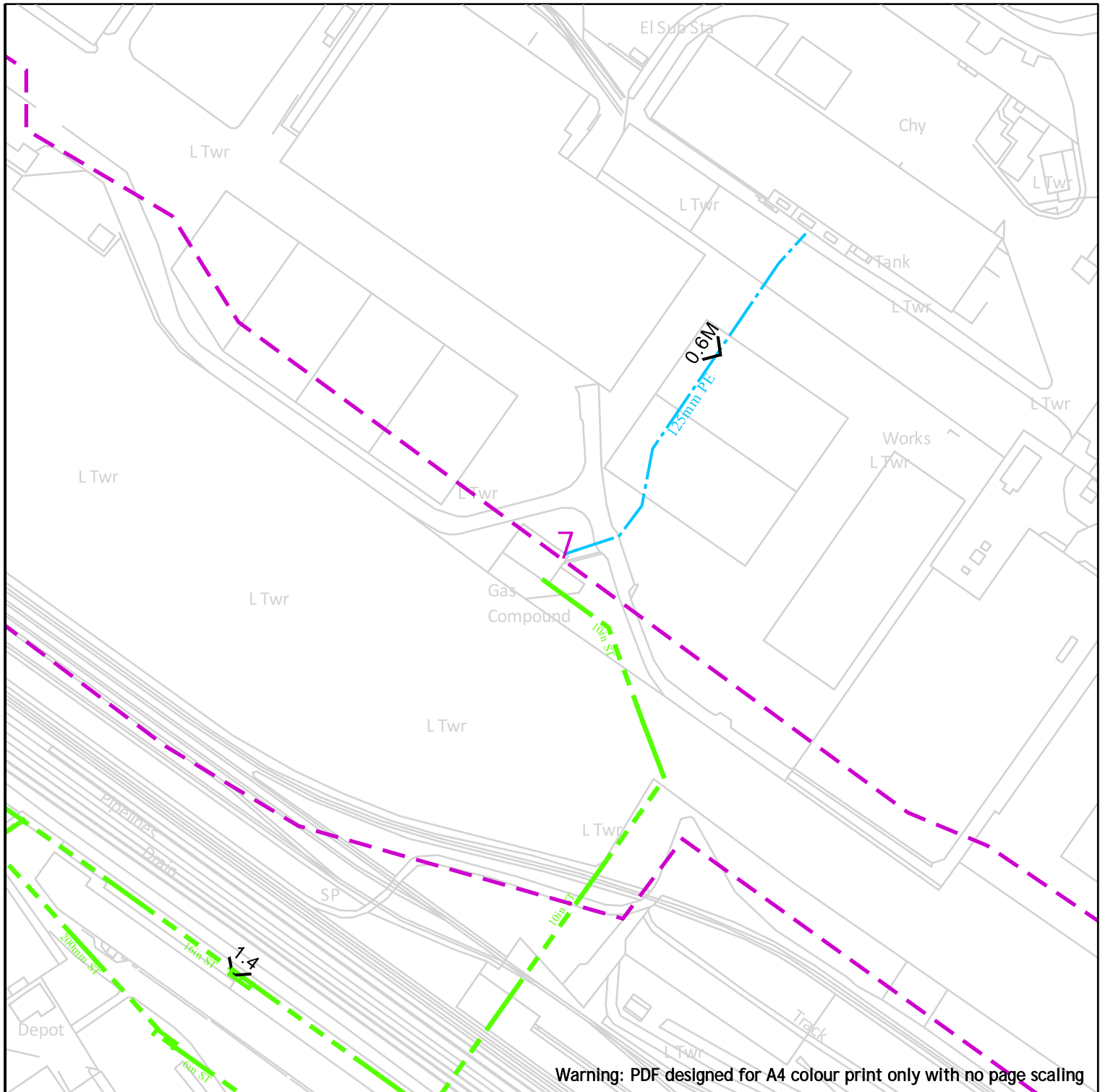
IMPORTANT NOTICES

This plan shows these pipes owned by Cadent Gas Limited in its role as a Licensed Gas Transporter (GT). Gas pipes owned by other GT's or otherwise privately owned may be present in this area. Information with regards to such pipes should be obtained from the relevant owners. The information shown on this plan is given without warranty, the accuracy thereof cannot be guaranteed. Service pipes, valves, syphons, stub connections etc. are not shown but their presence should be anticipated. No liability of any kind whatsoever is accepted by Cadent Gas Limited or their agents, servants or contractors for any errors or omission. Safe digging practices, in accordance with HS(G)47, must be used to verify and establish the actual position of mains, pipes, services and other apparatus on site before any mechanical plant is used. It is your responsibility to ensure that this information is provided to all persons (either direct labour or contractors) working for you on or near gas apparatus. The information included on this plan should not be referred to beyond a period of 28 days from the date of issue.

In case of emergency call - 0800 111 999

Scale: 1:12813 (When plotted at A4)

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Warning: PDF designed for A4 colour print only with no page scaling

25m

WARNING! This area contains Gas Mains Operating at High Pressure (in excess of 7 bar) and/or Intermediate Pressure (between 2 and 7 bar). Before excavating in the area contact the Plant Protection team on 0800 688 588 or plantprotection@cadentgas.com

Dig Sites

Area:

Line:

- LP Mains
- MP Mains
- IP Mains
- LHP Mains

Valve

Depth of cover

Syphon

Diameter Change

Material Change

Out of Standard Service

Cadent
Your Gas Network

Date Requested: 27/09/2021
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In case of emergency call - 0800 111 999

Scale: 1:2500 (When plotted at A4)

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Appendix 2 – Applicant’s Response to Volkswagen Group UK Ltd’s Response to the Examining Authority’s request for further information dated 9 January 2024 [REP9-031]

1 Introduction

1.1 This document provides the Applicant’s response to the information submitted by Volkswagen Group UK Ltd (VWG) at Deadline 9 in Response to the Examining Authority’s Request for Further Information Dated 9 January 2024 [REP9-031].

2 Applicant’s Response

2.1 The Applicant would make the following observations in response to the representations made by VWG in [REP9-031].

2.2 The Applicant is concerned that VWG’s comment that it had not received confirmation of the alternative site location and plans from the Applicant until Friday 22 December 2023, and consequently that VWG were not able to progress negotiations, is mischaracterising the position between the parties.

2.3 The Applicant has been in active discussions with VWG since September 2021 in respect of their existing site at Immingham. The Applicant has since then provided multiple proposed scenarios and land opportunities to consolidate VWG’s operations in Grimsby so as to consolidate their storage site and thereby relinquish their site in Immingham – all of which have been designed to satisfy VWG’s aspiration to grow their operational footprint. VWG have made it clear to the Applicant that they wish to operate solely from Grimsby in the short to medium term future i.e. within the next 1-3 years.

2.4 In early 2022, VWG asked ABP to provide a response to an indicative pricing request, which was provided to VWG in March 2022. In the intervening period since then, and at the request of VWG, there have been nine iterations of the indicative pricing request to accommodate their needs, together with revised Heads of Terms that were sent on the 16 October 2023. It is those Heads of Terms that VWG reference in their response to the Examining Authority’s Request for Further Information [REP9-031], ABP having responded to VWG on the 10 January 2024 following numerous attempts by ABP to seek a formal response in the intervening period.

3 Negotiations to date

3.1 In order to assist the Examining Authority’s understanding of the progress with negotiations that has taken place between the parties, a more detailed timeframe of the key milestones is provided in the table below.

Date	Stage
September 2021	First VWG Invitation to Tender (ITT) provided to ABP but later withdrawn
March 2022	Request to issue a new Tender. Draft Heads of Terms also included.
June 2023	Further detailed ITT proposed

July 2023 Sept 2023 Oct 2023 Jan 2024	Subsequent revisions provided
16 October 2023	Revised Heads of Terms issued
10 January 2024	Comments received back by the Applicant on the Heads of Terms – but only on the basis of the proposed structure of the renewal – no commentary on the proposed commercial terms

3.2 At this time the Applicant is still waiting for further information from VWG regarding the intended commercial terms and the parameters of their needs which appear to be regularly shifting. The complexity of VWG’s structure with their parent company based in Germany is only compounding these delays, with first a Finance Board to navigate, followed by a Procurement Board. The Applicant does not have clear sight as to when these matters will be considered or any feedback on the proposed commercial terms that have been presented to VWG. Indeed, it appears such information will not be forthcoming for what the Applicant estimates to be a minimum of a further one to two months. Accordingly, the Applicant is not in a position to provide VWG with a letter of comfort in respect the agreement for lease of the Grimsby site in light of the fact that the terms to consolidate VWG’s interest are not yet agreed.

4 **Conclusions**

4.1 Despite these challenges outlined above, the Applicant remains hopeful that the parties will reach a satisfactory agreement, albeit that at this stage in light of the lack of feedback/commentary on the commercial elements of the Heads of Terms, and the Applicant’s need for certainty of delivery of the IERRT scheme, the Applicant has no choice but to retain powers for the compulsory acquisition of VWG’s leasehold interest in the draft Development Consent Order (document reference 3.1).