

Policy for:

The acquisition of land rights for Cadent assets in 3rd party land

This guidance document specifies the requirements, roles and responsibilities for Cadent in relation to land rights associated with Cadent assets currently, or to proposed to be, installed on third party land.

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1. Purpose

The purpose of this document is to set out the requirements, roles and responsibilities for Cadent in relation to the acquisitions of rights associated with Cadent assets currently, or proposed to be installed on third party land. Aiming to stop assets being installed without the appropriate legal rights

This document sets out:

- The key terms used in relation to land rights
- Roles and responsibilities of Cadent teams
- When an easement is required
- Requirements for third parties working in our easement
- Decommissioned assets

2. Key terms

Reference	Identifier
Easement	<p>An easement, otherwise referred to as Deed of Grant, gives Cadent a secure right in perpetuity to install, lay, maintain, inspect, protect, renew and replace (amongst other rights) gas mains or services within private land (not publicly maintained).</p> <p>An easement is a legal right and is registered on a land title at the land registry and therefore is a right which runs with the land. This means that these rights transfer to each future purchaser of that parcel of land and cannot be terminated without agreement (known as a Surrender).</p> <p>Furthermore, an easement can include protection for gas mains and pipelines by prohibiting the owner of the land from undertaking certain activities, altering ground levels, planting certain species of trees and generally damaging or interfering with the integrity the asset.</p> <p>Without an easement, it is possible that Cadent has no formal right to retain or maintain apparatus in third party land which increases the risk of future financial liability for refused access, or worse the relocation or removal of pipelines.</p>
Lease	<p>A lease is a legally binding contract between a landlord (who owns the freehold of a property) and a tenant (who rents a property). Commonly used for the housing of Gas Governors where landowner’s do not want to sell the land. A lease is termed and can be for short term or long term (e.g. 20 years up to 999 years)</p>
Wayleave	<p>This is an electricity term, and a terminable right. Cadent do not enter into Wayleaves</p>
Statutory powers	<p>As a gas transporter, Cadent benefits from certain statutory rights to lay assets within ‘streets’ under the Gas Act 1986:</p> <p>Streets - Definition of “Street” in section 48 of the NRSWA 1991: “(1) In this Part a “street” means the whole or any part of any of the following, irrespective of whether it is a thoroughfare— (a) any highway, road, lane, footway, alley or passage, (b) any square or court, and (c) any land laid out as a way whether it is for the time being formed as a way or not.”</p>

	<p>If the pipe is located under a street (as above) which is a public highway (maintainable at public expense) then Cadent has rights granted by statute (schedule 4 of the Gas Act 1986) in relation to apparatus under streets. These would cover (amongst other things) the initial laying of the pipe, and also any subsequent repairs or alterations.</p> <p>Private Streets - See definition above for 'street'. Cadent's statutory rights extend to private streets ONLY in certain circumstances. In particular, they apply where the land is laid out as a way (and not dedicated to public use) and the laying of the pipes is for the purpose of conveying gas to any premises which abut on to the street i.e connections.</p> <p>Connections - If investigations identify that it's likely Cadent would have laid the pipe[s] and gas mains pursuant to a specific request from the owner of this property to connect them to gas then Cadent would argue the pipe was laid with permission of the landowner at the time and therefore this permission continues to apply, even where there is a change of ownership in the land where the pipe is located. Cadent has a legal obligation to connect premises under statute (section 9 and 10 of the GA 1986). Section 9 of the GA 1986 (likes it statutory predecessors) imposes a duty on us to develop and maintain a system for the conveyance of gas and to comply with any reasonable request to connect to that system and convey gas by means of that system to any premises. Section 10 of the GA 1986 (which can be traced back to the Gas Act 1948 where it can be found in similar form) also imposes a duty to connect certain premises to the relevant main and supply and lay any pipe necessary for that purposes upon request by the owner or occupier of such premises.</p> <p>Accordingly, Cadent can rely on these statutory provisions and any diversion should be at the requestor's/landowner's expense.</p>
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3. Why we have a policy for the acquisitions of land rights

Cadent as a Gas Transporter under the Gas Act 1986 benefits from certain statutory powers to lay and maintain gas services (see definitions) or mains in certain situations, for example, within a 'street' dedicated to public use as defined under the New Roads and Streetworks Act 1991.

On private land however, in most cases Cadent will not automatically have rights to undertake works or retain apparatus within this land. Cadent therefore has no legal right to install services or mains or to retain and maintain them, within private land (private roads can benefit from statutory powers – see definitions below) without an agreement in place.

To ensure that Cadent has legal rights to install and retain apparatus in situ, we must obtain Deed of Easements (or other legal interests such as a lease or land acquisition where appropriate) where we can't rely on Statutory Powers (see section 4).

4. Risk

Both historic factors and current process put at risk the long term security of our assets to remain in third party land because we either:-

- installed an asset without agreement from the landowner in the first place;
- did acquire an agreement but put the asset in a different location;
- did acquire an agreement but have subsequently diverted the asset and not varied the agreement; or
- we have lost the documentation to prove we had an agreement.

The drivers behind this relate to processes where:-

- We don't ensure the customer has acquired the appropriate rights before we adopt assets
- We commission assets for developers before agreements are completed, therefore losing our leverage to ensure the easement document is entered into
- We don't allow enough time in the programme for agreements to be completed and decisions are made to install assets without consent
- Lack of understanding across the business on the importance of securing long term rights for our assets and documenting any changes
- A lack of expectation management with customers from the outset to make them aware that easements are required
- The failure to obtain appropriate legal rights for apparatus can result in Cadent having to protect, divert, remove apparatus or compensate the landowner. Leading to reactive financial expenditure that isn't in the business plan.

5. Principles

5.1. When are land rights required?

Rights in 3rd party land are required where Cadent intends to install new or replace apparatus within private land where there are no existing rights in place or where Cadent does not have the benefit of Statutory Powers under the Gas Act 1986.

5.2. Pipelines

Cadent's standard Easement Guidance should be used to determine the easement width. An easement is required in the following situations:

- All mains in private land
- All services operating at pressures greater than 75 mbar (Low Pressure) in private land
- All services greater than or equal to 63mm diameter crossing third party land (i.e. on land not owned by the customer)
- All services greater than 50m in length in private land
- Mains and/or services to be installed within private roads/streets not dedicated to public use, that supplies a property that is NOT abutting the street i.e. where statutory powers do not apply
- For all other services crossing third party land (not covered by the rules above), Cadent will require a Consent to Lay form from the landowner to be obtained prior to installation and a copy sent to the Connections team and Land Services team along with an 'as laid plan' for Cadent's records.

5.3. Governors

Freehold acquisition of a site is the preference for all new gas governors. However we do except leases in certain circumstances. The rights need to cover:-

- All inlet and outlet pipework will require an easement

- A 3m exclusion zone around the kiosk is required to prevent building encroachment on the installation and to safeguard the integrity of the asset in relation to future access for maintenance
- Site specific requirements should be confirmed with Operations prior to finalising the transfer i.e. fencing, parking and access requirements for maintenance

Assumptions should not be made about whether land forms part of adopted highway (publicly maintained land) and advice should always be sought from the Land Services team (landservices@cadentgas.com) if in doubt. A highways search can be undertaken to identify the extent of the 'public' highway and the boundary of private land. It's not uncommon for small verges to form part of private land even though it may look as though it's part of the extended highway.

5.4. Decommissioned assets

When proposing to decommission pipelines or governors for any scheme, i.e. diversion, replacement or if it's no longer required as part of the network, the Cadent teams responsible for this work should check whether an existing easement or lease is in place which requires surrendering.

Where assets are decommissioned as part of a re-chargeable customer diversion, the asset should not be decommissioned until any existing easement rights have been surrendered. The legal and land fees associated with this are payable by the customer.

Land Services can provide initial advice on whether there are existing rights and should be contacted via landservices@cadentgas.com

Land Services do not automatically get notified that easements or leases are no longer required and the business can therefore be paying annual fees for assets that have been removed. All teams responsible for planning decommissioning works should ensure at the earliest opportunity that existing rights are identified and that an instruction has been sent to Land Services to surrender any rights identified.

The above also applies to the reclassification of pipelines or governors from a service to a main. A check should take place to see whether sufficient rights are in place to allow this change, and if not, new rights will need to be acquired or existing ones varied.

6. Roles & Responsibilities

The Land Services team interact with and receive requests from many different departments within Cadent. All teams involved in the following workstreams should ensure that they understand when easements and other land rights are required and engage Land Services at the appropriate stages:

6.1. Connections (Standard & Non Standard)

The connections team should make an initial assessment on whether an easement is required at the earliest stages of a connection enquiry using the current Cadent Easement Guidance document and refer to Land Services where there is any element of doubt.

If an easement is required, a Work Request Form including the following information should be submitted to Land Services no less than 3 months prior to a requested connection date to ensure that there is sufficient time to progress this. Customers should be advised at the earliest stages that an easement on Cadent's standard terms will be required to meet these timescales.

No works should be scheduled by Connections until the easement is completed. Updates on progress can be requested by contacting landservices@cadentgas.com

Minimum information to provide to Land Services on the WRF:

- Customer contact details (phone and email)
- Third Party landowner contact details (where available)
- Design Plan – showing route of proposed connection
- Contact details for relevant engineer managing the physical installation of the works

Note – The only exception to the above is for Affordable Warmth Solutions projects. Under their current contract we allow them the ability to install assets under a Consent to Lay document. With an easement (if required) to be obtained retrospectively.

6.2. Reinforcement or Diversions Works

No diversions or reinforcements should be commissioned or installed without appropriate land rights. Once a feasible route has been identified by construction teams, Land Services should be notified at the earliest opportunity to confirm whether an easement will be required and to confirm any associated costs which may be chargeable to a Customer. Construction teams are responsible for ensuring that adequate time is included within construction delivery timescales to allow for easement negotiations. If in doubt Land Services should be consulted at the earliest opportunity to avoid unnecessary delay.

Land Services can provide initial advice on easements during sanctioning stages to help inform costs.

If an easement is required, Land Services should be instructed to progress easement negotiations with a minimum of 3 months notice to an estimated commissioning date. Land Services cannot guarantee timescales to complete easements, in particular where 3rd Party landowners (not the Customer) are affected and this should be made clear to the Customer from the outset of the enquiry to ensure that expectations are managed.

If an easement is required, a Work Request Form should be completed and submitted to landservices@cadentgas.com. Minimum information required is:

- Project description – including length/size/location of diversion including grid coordinates and address
- Diversion design plan showing section to be decommissioned and section to be installed, including grid coordinates for connection points
- Customer contact details
- Estimated programme/mobilisation date and commissioning date
- Confirmation whether chargeable or non-rechargeable

6.3. Mains Replacement

In general mains replacement schemes should be in line with Cadent Engineering Bulletin EB/488. All staff working on these should be familiar with this policy and adhere to it along with the following.

When identifying the route for a mains replacement project, teams should consider whether easements will be required for works in private land. This includes where mains already exist in private land but may not benefit from adequate rights at present. If easement (land and legal) costs are likely to be prohibitive, design teams should consider routeing into public land where possible e.g. where existing mains are in

back gardens (installed back when Councils owned the Gas Network) without easements and therefore at risk of build overs.

Where route selection considers utilising an existing pipe for insertion, whether wholly or partially in private land, construction teams should ensure that legal rights (statutory or easements) are in place prior to Commencement of Works to ensure future access rights exist for future maintenance purposes. Existing rights should be checked at design stages and where in doubt advice sought from Land Services via landservices@cadentgas.com

5.4 Operations & ER&R

Before any access to land is taken (non-emergency), Cadent's rights should be checked and appropriate notice periods provided to landowners to avoid unnecessary compensation events and to maintain good relationships. Existing easements may specify notice periods before taking entry and may have bespoke access conditions. Failure to follow these can leave Cadent exposed to financial risk, reputational damage and complaints.

If assistance is required with obtaining access to land or checking existing access rights prior to works, a Work Request Form should be completed and submitted to landservices@cadentgas.com within appropriate timescales. Minimum information required is:

- Project description – including address, access requirements, vehicles to be used, extent of land required for temporary works area and timescales to complete works
- A plan/Webmaps to show the excavation point/working area along with grid coordinates
- Engineer contact details
- Estimated programme/mobilisation date and mobilisation date
- Project wbs code

Although the Land Services team can facilitate the negotiation and completion of a legal easement, it is the responsibility of ALL departments involved in undertaking works to ensure that works do not proceed without one.

7. Third party interactions

7.1. Third parties working within a Cadent easement strip

Cadent Plant Protection and Land Services may receive requests from third parties to work within Cadent easement strips.

Cadent easements include 'restrictive covenants' which put restrictions over land, preventing landowners from undertaking certain activities without our consent. These restrictions include:

- The landowner 'shall not do or cause or permit to be done on the Land anything calculated or likely to cause damage or injury' to Cadent's pipeline
- The landowner 'shall not without the prior consent in writing of Cadent' make any material alternation to or deposit anything on the easement strip (including planting of trees or shrubs) which may interfere with or obstruct access to the easement strip
- The landowner shall not do anything to lessen or interfere with the support afforded to the pipeline or to reduce the depth of soil above the pipeline

- The landowner 'shall not erect or install or cause or permit to be erected or installed any building or structure or permanent apparatus in, through, upon or over the easement strip

Although these restrictions may be present over land as a result of our easements, there are situations where Cadent may wish to allow landowners to undertake minor or low risk activities over our easement strips and these should be individually assessed by Plant Protection on receipt of an enquiry.

If Cadent decides to 'consent' to a specific activity taking place within the easement strip which breaches the above restrictive covenants included within the easement, consent can be provided by a Plant Protection engineer, verbally or via email once appropriate Risk Assessments and Method Statements have been reviewed.

Alternatively, if works are considered higher risk, an engineer may wish to have the approved RAMS formally recorded within a Deed of Consent which requires the Party undertaking the work to indemnify Cadent for any damage should it occur. A Deed of Consent is a legal document which will need to be negotiated and completed by Land Services and Cadent Legal. Timescales to complete vary and range on average between 6 and 12 months.

If a Deed of Consent is required, a Work Request Form will need to be submitted to landservices@cadentgas.com with the following minimum information:

- Crossing party's contact details
- Job Description
- Crossing location, address and grid coordinates
- Approved RAMS
- Plan showing crossing point/s including coordinates – obtain from third party if necessary

7.2. Surrendering/releasing of easement rights

Should a third party approach Cadent to surrender/release easement rights on a section of land where there is no live gas asset digitised on records, or an asset has been deemed to be decommissioned as above, a Work Request Form (Appendix D) should be completed and submitted to landservices@cadentgas.com.

As a minimum, to be included with the WRF, land services require the following details:

- Confirmation from a Cadent engineer (e.g. plant protection or ER&R) that it is dead or already removed and is no longer required as part of Cadent's network
- Customer contact details
- Asset location including grid coordinates for the section to be surrendered and a plan showing the decommissioned section marked A to B ideally
- Confirmation from Network Design that there are no intentions to utilise the pipeline as a sleeve for a reinforcement or similar

All costs associated with releasing the deed are to be borne by the landowner/third party that is requesting the release

Document History

Description	Date	Version
New document	01/04/2020	Final

Version Control

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Application

Users should ensure they are in receipt of the current version by referring to the Policy Library on the Cadent Infonet site.

Compliance with this Policy does not confer immunity from breach of statutory or other legal obligations.

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Mandatory and Non-Mandatory requirements

In this document:

Shall: indicates a mandatory requirement

Should: indicates best practice and is the preferred option. If an alternative method is used then a suitable and sufficient risk assessment shall be completed to show that the alternative method delivers the same, or better, level of protection

Comments & Queries

Any comments or queries about the content of this document should be directed to:

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