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KH/GRE001200062
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Dear Sir

Consultation Underground Drilling Access

Thank you for your letter of 24 July, written in reply to ours of 30th June 2014. Your letter arrived during Kate Harrison's annual leave, hence the unavoidable delay in replying.

Our letter of 30th June 2014 pointed out that the consultation document failed correctly to describe the effect of the current law in relation to the Court's power to over-rule a landowner's refusal of access rights. In particular, it gave the impression that, under the existing law, the only condition necessary for the court to grant a right of access is that it is expedient in the national interest to do so. And it failed to make clear that, under the existing law (s. 3 of the Mines (Working Facilities and Support) Act 1966 as applied by the Petroleum Act 1998), a landowner's refusal of consent can be over-riden only if the refusal is unreasonable. It seemed to us obvious that a consultation which seeks views on a proposal to change the law must describe the existing law accurately.

By your letter of 24 July you appear to accept what we said, and say that "...for the purposes of clarity, DECC has published on the consultation website an update clarifying the criteria in section 3 of the 1966 Act."

You do not say when the clarifying update was published; we assume at about the same time as you sent your letter to us.

The further information you have given does not and cannot cure the original and fundamental defect in the consultation. On the assumption that it was published only three weeks before the close of the consultation, it is too late. On the basis that no publicity was given to the publication it is not accessible to the public in general (and in particular to those who have already responded to the consultation). And because the original mistake in the law informs, shapes and is contained in the original consultation document, which remains on the website unchanged, the consultation on a change in the law remains misleading and cannot be lawful.

The defect in the consultation that we have identified is far from technical. It would lead consultees to think that what is being proposed is a minor change in the law when in fact it is a very significant one. The proposal, if enacted, would remove a landowner's right reasonably to refuse consent (or to grant it subject to reasonable conditions).

This is important because there are many cases where – under the existing law – a Court might uphold a landowner's refusal of consent as reasonable, even if it accepted the case that a particular project is in the national interest. To pick one topical example, it is quite possible that a Court would hold a refusal of consent reasonable if consenting to fracking would lead to a fall in the value of the owner's land.

The report *Shale Gas Rural Economy Impacts* (which was made available to the Government in March 2014, before the current consultation was launched) shows that there is evidence that fracking **is** likely to have a negative effect on property prices, yet it was published – and then only in a heavily redacted form, only on 7th August 2014 – one week before the close of the consultation. The public should have been given this information so that they could comment with an understanding of the potential impact of fracking on one aspect of land ownership and with understanding of the full implications of a change in the law.

We are instructed that the redactions in the report deal with social impacts, potentially including health problems associated with fracking. It is our view that this information too should have been made available to the public in the consultation.

Your partial approach is, we are instructed, evident not only in the incomplete and misleading description of the current law, but also in the factual information given on fracking in the consultation.

The information ignores the general risk of climate change impacts on land, to which fracking would contribute.

It ignores air pollution and the risk of human error causing water contamination.

It is misleading in the impression it gives that landowners retain rights through the planning system.

These are serious defects.

For example, the document states, at page 15, that "Air pollution or emissions and impacts on climate change are extremely unlikely to occur anywhere other than at the surface point of entry" and are therefore excluded from the consultation. This is factually untrue.

Multiple studies in the US and UK, including a study by Public Health England, established potential health risks and impacts due to air pollution from shale gas extraction.

A study by the Department for Energy and Climate change established that shale gas extraction was incompatible with global efforts to tackle climate change without global action to ensure other fossil fuels stay in the ground, or carbon capture is enforced globally.

Numerous studies, including the latest IPCC report on climate change, have established that global warming can have significant impacts well beyond the "surface point of entry".

A further example, also on page 15, is that "There is no evidence of any cases of contamination emanating from the hydraulic fracturing affecting an aquifer or drinking water supplies". This is a grossly misleading statement. In fact, there are a number of studies on this. For example a peer reviewed study by the University of Texas published in the Journal of Environmental Science and Technology found elevated levels of contaminants including arsenic, barium, selenium and strontium in private water wells closest to shale gas activities in the Barnett Shale, Texas. The contamination could have come from pipes disturbed by the fracking process - rather than from the fracking chemicals themselves. Other studies have found methane and ethane, again linked to hydraulic fracturing operations.

Public Health England's 2013 study noted that the Massachusetts Institute of Technology (2011) reviewed 43 incidents of environmental pollution related to natural gas operations (including shale) and found almost 50% were related to contamination of ground water as a result of drilling operations. The most common cause of such contamination appeared to be inadequate cementing or casing; the second major cause (33%) was surface spills of stored fracking fluids or flowback water.

A recent review by the Associated Press found that in four states hundreds of complaints have been made about well-water contamination from oil or gas drilling, and pollution was confirmed in a number of them, according to a review that casts doubt on industry suggestions that such problems rarely happen.

Questions of fact such as these are bound to have a bearing on whether or not members of the public, including landowners, will want to respond to the consultation and whether they are able meaningfully to respond to the question of whether or not the law should be changed. The more risky and potentially hazardous the fracking process, the more likely it is that consultees will feel that landowners should retain the right reasonably to refuse to allow drilling under their property. But that question is not exposed or examined in the consultation because of its flawed description of the current law and its one sided account of the facts.

We therefore ask that this consultation exercise is stopped and, if the Government seeks to press on with changes to law on fracking, then it issues a new consultation

document setting out accurately the relevant law, including that at the moment a landowner has the right to reasonably refuse access under their land. This, together with an accurate summary of all the facts including of the risks, dangers, disadvantages and economic loss associated with fracking and which could, under the current law, lead to a Court's upholding the refusal of consent, would in turn allow consultees to give a properly informed opinion about whether or not the law should be changed.

We request a copy of the full report *Shale Gas Rural Economy Impacts*.

We request an urgent reply by the date for the end of the consultation: i.e. 15th August 2014.

Yours faithfully

Harrison Grant