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To Drax Power Ltd, Ms Katie Bingley,  
Mr John Stones, Ms Gwendoline  
Cooper and Mr Paul Cooper and all  
other Affected Persons

Your Ref:

Our Ref: EN010091

Date: 27 November 2018

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Dear Sir/Madam

## **Planning Act 2008 (as amended) – Section 89**

### **The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) – Rule 17 and the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regs)**

#### **Application by Drax Power Ltd for an Order Granting Development Consent for the Drax Re-power Project**

#### **Application for Additional Land**

#### **For the Applicant – whether or not to accept the proposed provision**

The Applicant has sought to make a number of changes to the application for compulsory acquisition within its Deadline 2 submissions. The Applicant considers that the CA Regs are engaged, and the Examining Authority (ExA) has no reason to disagree.

The Applicant seeks the following changes:

- An increase in the areas of Plots 9 and 62 for compulsory acquisition of the freehold of land in connection with Work No 5 and Work No 6. The subsequent increases would result in the decrease in size of Plots 12 and 65 respectively of land sought for the compulsory acquisition of the rights over the land;
- A refinement of the alignment of the Work No 7 which involves an exchange of land in both directions between compulsory acquisition of the rights over the land and temporary possession requirements for Plots 11, 12, 25, 26, 27, 32 and 33.

The ExA also considers the Applicant has complied with Regulation 5 of the CA Regs as the prescribed documents have been provided. However, the ExA is concerned that not all of the Regulations have been met, notably Regulations 7 to 9, which

include requirements for notification giving 28 days for receipt of representations and publicity. The ExA is also concerned that the Applicant has not clarified how it has considered that these procedural requirements can be met within the examination timetable.

The Secretary of State would not lawfully be able to authorise the compulsory acquisition of additional land if the procedural requirements of the CA Regs have not been met. The Applicant will be aware that a decision whether or not to accept the proposed provision must be made within 28 days of receipt of the application for additional land (by 6 December 2018). However, in view of the above uncertainties, the ExA is not in a position to accept the proposed provision for examination on behalf of the Secretary of State.

The ExA requests a response from the Applicant on the matters outlined above within seven days, **by Tuesday 4 December 2018**, and if necessary requests the Applicant to resubmit the application for additional land.

A change to the application, even if it is deemed to be material, does not prevent it from being accepted into the examination.

The ExA has decided that the totality of changes is not so material as to warrant a new application, and that there are no new significant environmental effects as a result of the minor changes to the authorised development such as the refinement of the alignment of the Gas Pipeline. However, the ExA has decided nevertheless that because this change to the application involves the inclusion of additional land for compulsory acquisition of freehold this amounts to a material change to the application.

It is noted that that Applicant has been in discussions with the Affected Persons regarding the rights now sought in respect of their interests. However, no evidence of this is before the ExA. Therefore before accepting this material change to the application and in the interest of fairness, the ExA requests that the Applicant provide copies of the consultations undertaken, and responses received from those persons affected by the changes.

The ExA also wishes to draw the Applicant's attention to the provisions of the Government's guidance on award of costs. Affected landowners may incur additional costs in seeking new professional advice on the new CA request and may consider this unreasonable.

**For the Affected Persons, and specifically Ms Katie Bingley, Mr John Stones, Ms Gwendoline Cooper and Mr Paul Cooper**

The ExA also requests comments in respect to the additional land provision for Plots 9 and 62, but also to all other identified plots above.

The ExA requests this response is received within seven days, **by Tuesday 4 December 2018**.

Yours faithfully

*Richard Allen*

Richard Allen

**Lead Member of the Panel of Examining Inspectors**

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