

Date: 13 January 2023
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Dear Sir/Madam,

Sunnica Energy Farm

**FHPUT's Comments on Sunnica's Response to Written Representation [REP3A-035]
relating to the Campus to the east of Newmarket Road**

Deadline 5

PINS Reference: 20031202

1 INTRODUCTION

- 1.1 We act on behalf of HPUT A Limited and HPUT B Limited as trustees of the Federated Hermes Property Unit Trust ("**FHPUT**") in relation to Sunnica Energy Farm (the "**DCO Scheme**"). FHPUT are the freehold owners of the Campus site which lies to the east of Newmarket Road, as shown on sheet 16 of the land plans [REP2-003] and in figure 1 of FHPUT's Written Representation [REP2-144].
- 1.2 This submission responds to Sunnica's Response to FHPUT's Written Representation dated 22 November 2022 [REP3A-035] ("**Sunnica's Response**").
- 1.3 All the defined terms in this submission are as set out in FHPUT's Written Representation [REP2-144], which for convenience is provided at Appendix 1. FHPUT was represented at the first Compulsory Acquisition Hearing on 6 December 2022. Its Written Summary of Oral Submissions is provided at Appendix 2 [REP4-154]. For ease, this submission comments on Sunnica's Response thematically, focusing on the principal matters of concern to FHPUT.
- 1.4 For the reasons set out below, **FHPUT is in a position where it must maintain its objection to the DCO Scheme**. However, since the first CAH, positive progress has been made between FHPUT and the Sunnica towards agreeing Protective Provisions. Subject to the finalisation of the Protective Provisions and conclusion of a separate legal agreement, FHPUT remains hopeful that it may be able to withdraw its objection prior to the second CAH, scheduled for February 2023.
- 1.5 As it stands, FHPUT's position remains that the application should be refused or compulsory purchase and temporary possession powers should not be granted over the Campus. The

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impacts on the Campus and the directly consequential wider impacts for public health and the national horse racing industry, together with the absence of an appropriate assessment of alternatives, indicate that the benefits of the DCO Scheme do not outweigh its harms. Sunnica has also therefore failed to demonstrate a compelling case in the public interest for the compulsory acquisition of rights over the Campus.

2 **APPENDICES**

- 2.1.1 Appendix 1: FHPUT's Written Representation dated 11 November 2022 [REP2-144];
- 2.1.2 Appendix 2: FHPUT's Written Summary of Oral Representations at CAH1 on 6 December 2022 (PINS ref: [REP4-154]);
- 2.1.3 Appendix 3: FHPUT's proposed draft Protective Provisions as at 12 January 2022 (the "**Protective Provisions**").

3 **ALTERNATIVES**

- 3.1 FHPUT's Written Representation [REP2-144] identified a number of potential alternatives; first to the proposed cable corridor in the vicinity of the Campus and second, to the access arrangements currently proposed through the Campus.

Cable route alternatives

- 3.2 As discussed in section 8.3.2 of FHPUT's Written Representation [REP2-144], FHPUT considers that there are two potential alternatives to the proposed cable route that would have lesser impacts on the Campus operations:
 - (a) Option 1 (as identified in Figure 4-3 in Chapter 4 of the ES [APP-173]), which would route the cable corridor to the west and south of the Campus site, only encroaching on an area of undeveloped land within HPUT's ownership (as shown on Figure 7 of FHPUT's Written Representation).
 - (b) A variation of Option 1, pushing the cable route slightly to the south, so as to avoid the Campus site altogether (as shown on Figure 8 of FHPUT's Written Representation).
- 3.3 Sunnica's Response [REP3A-035] purports to identify constraints which justify the rejection of Option 1 and the southerly variation to Option 1 described above. Nothing in Sunnica's Response, however, alters the analysis set out by FHPUT in its Written Summary of Oral Representations at CAH1 [REP4-154]: Sunnica has not identified any overriding constraints that justify the rejection of Option 1 or a slight variation to it so as to avoid the Campus altogether.
- 3.4 Sunnica's alternative cable route options assessment in ES Chapter 4 (Alternatives and Design Evolution) [App-036] is at a very high-level, with alternative cable routes considered only in their entirety without sufficient consideration of localised options around the Campus. The result of the option appraisal in Chapter 4 of the ES was to select Option 1 as the preferred route. It is not clear when or why that option was rejected in favour of the current proposed alignment. Furthermore, the ES does not appear to consider a southerly variation to that option so as to avoid the Campus altogether. Further appropriate

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consideration of heritage, vegetation and local plan allocations appears likely to establish that impacts are not significant and are far from insuperable, especially in comparison with the impacts of the DCO Scheme on the Campus.

- 3.5 The applicant has only belatedly purported to identify constraints which justify the rejection of Option 1 or the southerly variation to that option. The purported constraints identified in Sunnica's Response (REP3A-035) are summarised in the left hand column of the table below. FHPUT does not accept that those provide adequate justification for rejecting those cable route options for the reasons set out in the right-hand column of the table.

| | Sunnica's grounds for rejection of Option 1 and its variation | FHPUT comment |
|----|--|---|
| 1. | <p>Optioneering stages</p> <p>Option 1 was identified at the pre-scoping stage, a very early stage in the scheme. By the EIA Scoping stage in March 2019, non-statutory consultation stage in June/July 2019 and at statutory consultation/PEIR stage in August 2020 it had been dismissed in favour of the most northerly of the two route options running to the north of the FHPUT buildings, as is now proposed by the DCO application.</p> | <p>This explanation suggests that Sunnica's optioneering and consultation have been fundamentally flawed in this location. It appears that Sunnica has failed to take account of the particular sensitivities of the Campus in consideration of alternatives. For reasons which remain unclear, Sunnica abandoned an option which would have significantly reduced the Project's impacts on the Campus and, since then, has failed to re-visit the local routing around the Campus site.</p> <p>This approach conflicts with Sunnica's duty under Government's Guidance on the pre-application process to undertake a "thorough, effective, and proportionate" process of consultation (para 25). The applicant must consider feedback from the public on potential options, and ensure that the consultation process is "proportionate to the impacts of the project in the area that it affects" (para 77).</p> |
| 2. | <p>Heritage</p> <p>Snailwell Roman Villa, a Scheduled Monument, (NHLE 1006868) (the "Roman Villa") is located approximately 120m south of the FHPUT land. The installation of a grid connection cable to the south of the FHPUT land, as per Option 1 shown on Figure 4-3 [APP-173], therefore has the potential to</p> | <p>There is no evidence that the Roman Villa is a reason to discount Option 1 or a southerly variation to it.</p> <p>Sunnica does not appear to have carried out any assessment of the impacts of Option 1 or a southerly variation to it upon the setting of the Roman Villa. As a buried designated heritage asset, its significance lies, in the main, from the evidence under the ground, rather than from its setting. Furthermore,</p> |

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| | Sunnica's grounds for rejection of Option 1 and its variation | FHPUT comment |
|----|--|--|
| | <p>impact the setting of the scheduled monument and to impact archaeology that may be associated. By routing the cable to the north of the FHPUT buildings the DCO Scheme gives the Roman Villa and potential associated archaeology a much wider berth.</p> | <p>any impact upon the Roman Villa's setting would be temporary, i.e. during construction, with no longer term impact and would be outweighed by the substantial benefits of avoiding impacts on the Campus operation.</p> <p>While it may be the case that there are some archaeological remains associated with the Roman Villa, that is by no means certain and it does not appear that Sunnica has carried out any assessment of the likely archaeological remains of the impacts on such remains associated with Option 1 or its southerly variation. It would be standard good practice to undertake some form of field evaluation to demonstrate what, if any, remains are present if there is a significant concern that there may be remains of high significance. The test is whether any remains might be considered to be 'demonstrably equivalent' to the scheduled remains and therefore to be treated, in planning terms, as if they were scheduled. At a distance of 100m plus, that seems unlikely.</p> <p>Ultimately, the heritage constraints which Sunnica now relies upon as a reason to discount Option 1 and a southerly variation have not been properly assessed and are not substantiated. To the extent that any adverse impacts are established to flow from the cable route options, those would need to be weighed against the substantial harm caused to the Campus operations, which are highly sensitive and of national importance. No such assessment has been carried out by Sunnica and it has therefore failed to establish what, if any, heritage harm would result from a cable alignment along the route of Option 1 or a southerly variation to it and whether any such harm would be sufficient to justify the significant harm to the operation of the Campus.</p> |
| 3. | Vegetation removal | <p>The footpath and verge on the east side of Newmarket Road is relatively wide (between</p> |

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| | Sunnica's grounds for rejection of Option 1 and its variation | FHPUT comment |
|----|---|--|
| | Option 1 shown on Figure 4-3 [APP-173] would require increased vegetation removal, as it would run parallel to the edge of Newmarket Road. | the road and the boundary fence/hedge). Sunnica has not confirmed the working width required for a cable trench in this location; nor what vegetation would have to be removed as a result and the landscape impacts of such removal. Even if alternatives would require the removal of vegetation, that does not justify the rejection of those options in favour of a route that would cause significant adverse effects to the Campus operations. |
| 4. | Option 1 shown on Figure 4-3 [APP-173] would bisect employment allocation FRD6 of the East Cambridgeshire Local Plan, as identified by Figure 2-11 of the Planning Statement [APP-263], allocating the FHPUT land for employment development (B1/B2 uses). The grid connection route as proposed by the DCO Scheme would skirt the northern edge of this allocation, resulting in the creation of less constraint on this allocation in comparison. Planning Permission 17/01838/ESF granted by East Cambridge District Council on 5 March 2019 in respect of the Campus granted outline planning permission for buildings labelled 'Mid Tech 1' and 'Mid Tech 2' located across much of the land to the south of the existing FHPUT buildings. | <p>Sunnica had every opportunity in advance of its application to explore with FHPUT whether it would be preferable from the landowner's perspective to route the grid connection towards the southernmost and undeveloped edge of the Campus, away from the current operational buildings. FHPUT would certainly have preferred that option. However, rather than engage constructively with the landowner, Sunnica has promoted a cable route that would cause significant harm to the operational part of the Campus site which accommodates highly sensitive and nationally important biotech operations.</p> <p>Furthermore, Sunnica has failed to provide any adequate reasons for rejecting a southerly variation to Option 1 to push the grid connection slightly to the south of the Campus (allocation FRD6) along the property boundary with allocation FRD5 where it is unlikely development would be located for either allocation. FRD5 and FRD6 are shown at Figure 1 at paragraph 3.6 below. Sunnica has not substantiated the assertion that it would require a working width in this location of as much as 100m (REP3A-035). Even if that is right, such works would not sterilise the employment allocations and do not justify the selection of a cable alignment that would harm an existing employment site of national importance.</p> |

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3.6 Map 8.17 of the East Cambridgeshire Local Plan 2015 is reproduced below:

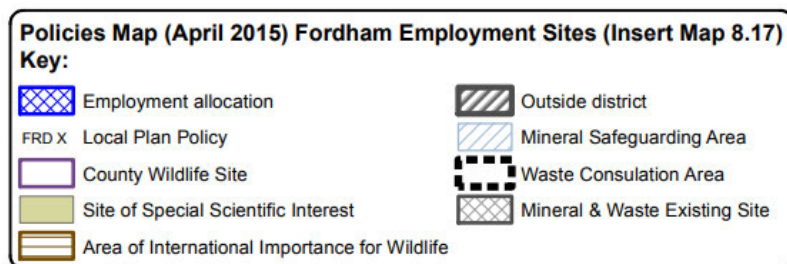
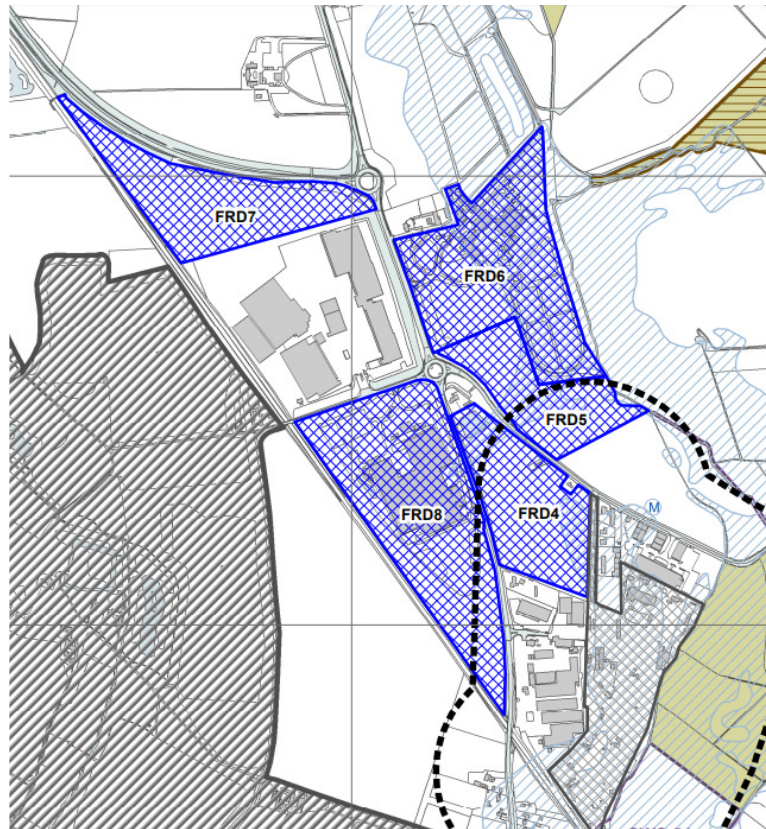


Figure 1

Access alternatives

3.7 Option 1, or a southerly variation to it, would have unlocked access alternatives which would not have caused the serious detriment to those comprised in the DCO Scheme as it stands. However, even assuming that the current cable route remains unchanged, FHPUT considers that there are two far preferable alternatives to the proposed access through the Campus site (as discussed in section 8.3.3 of FHPUT's Written Representation [REP2-144]), namely:

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- (a) Access from land to the north of the Campus, via plots 16-12; 16-09; 16-08 and 16-04, all of which are already subject to the acquisition of rights (as shown on Figures 11 and 12 of FHPUT's Written Representation [REP2-144]).
- (b) Access from the roundabout on the A142, to the north of the Campus site, via plots 16-10; 16-09; 16-08 and 16-04 all of which are already subject to the acquisition of rights (as shown on Figure 11 of FHPUT's Written Representation [REP2-144]).

3.8 Sunnica has not provided any explanation as to why those options would be unsuitable.

4 **PROTECTIVE PROVISIONS AND OPTION AGREEMENT**

- 4.1 As set out above, there are clear alternatives to the proposed cable alignment and access strategy that would significantly reduce the DCO Scheme's impacts on the Campus which justify the refusal of compulsory acquisition and temporary possession powers over plots 16-04; 16-05; 16-06 and 16-07.
- 4.2 Notwithstanding those alternatives, FHPUT has made it clear in its Written Representation [REP2-144] and Written Summary of Oral Submissions [REP4-154] that it remains open to discussing Protective Provisions and a separate legal agreement with Sunnica. This section sets out FHPUT's efforts in this regard.

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- 4.3 Following FHPUT's Relevant Representation, Sunnica offered belatedly to route HGV construction traffic through an alternative access coloured green/blue/mauve on the plan at Figure 2 below, rather than through the Campus itself:

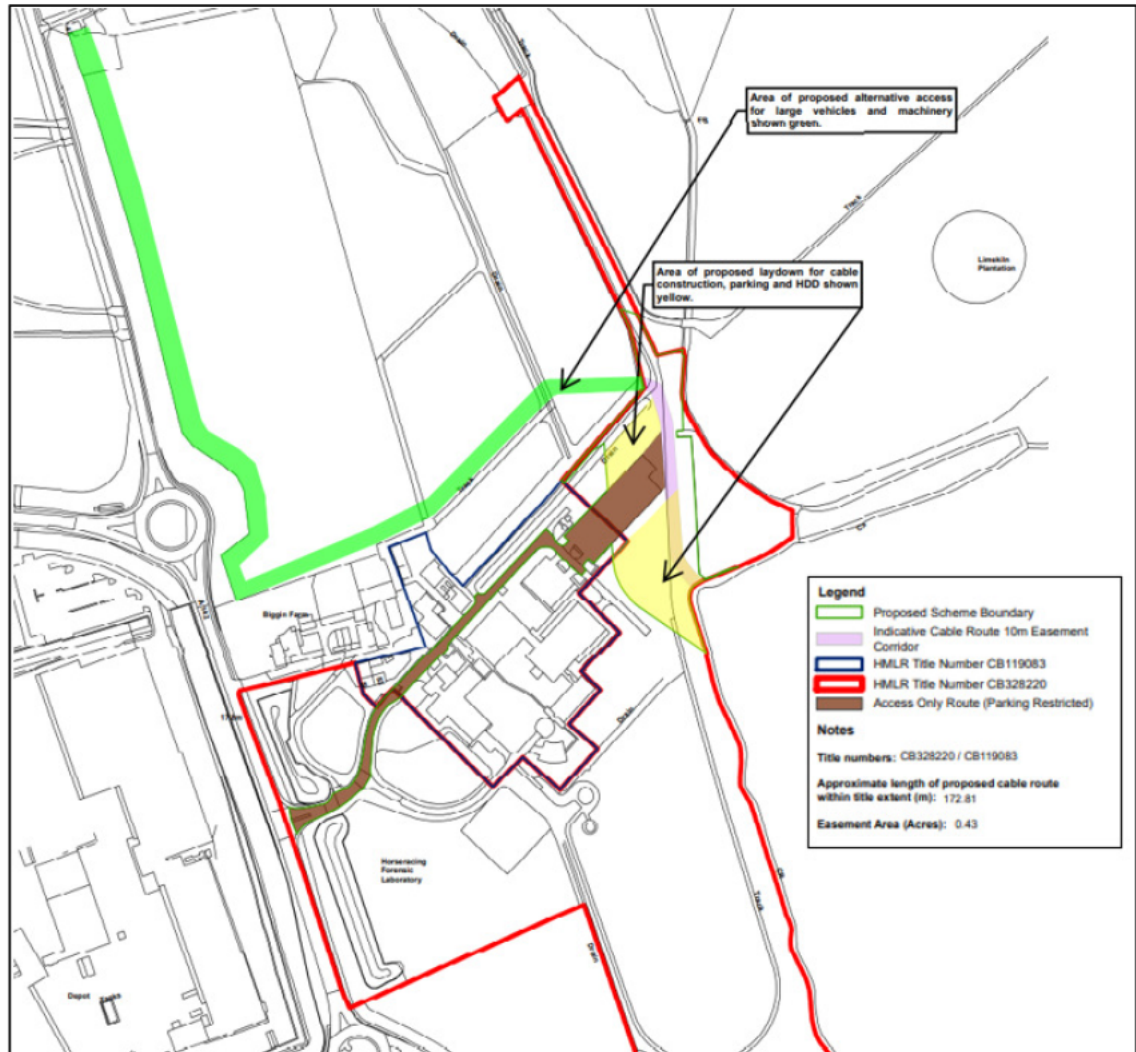


Figure 2

- 4.4 Sunnica's revised proposal, based on Figure 2, was as follows:
- 4.4.1 Areas for construction laydown and parking for Sunnica vehicles are coloured yellow (within an area currently the subject of proposed Access Rights) to the north and south of the Campus car park coloured brown (an area currently the subject of proposed Access Rights).
- 4.4.2 All HGVs would be routed via the route coloured green/blue/mauve in Figure 2 above, within the area of land located to the north of the Campus, instead of routing HGVs through the Campus access road.

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- 4.4.3 Only cars / light vans would route through the Campus's access road to access the laydown and parking areas coloured yellow with a maximum of 15 cars / light vans per day.
- 4.4.4 HGVs would access the proposed laydown and parking areas via the cable route corridor coloured purple, avoiding the need for them to access the Campus car park within the area coloured brown.
- 4.4.5 There would be no parking permitted by vehicles associated with the Scheme on the area coloured brown.
- 4.5 FHPUT welcomed the direction of travel but identified that it remains vital that the security and integrity of the Campus is maintained, i.e. the impacts are not only noise and vibration arising from use of the Campus access road by HGVs. The operational part of the Campus is wholly unsuited to Sunnica's construction traffic of any type of vehicle at any times.
- 4.6 As set out in FHPUT's Written Representation, biotech activities undertaken at the Campus are subject to strict controls requiring a Controlled Drugs Licence. The contracts awarded to the Campus also contain security stipulations as interference with testing is a key concern of pharmaceutical clients. As such, all visitors to the site (including deliveries) are by prior arrangement only and access to the facility is via security gates which are strictly controlled / monitored. Regulatory training is required for all persons accessing the site. It would not be feasible to replicate these arrangements for Sunnica's construction traffic, whatever types of vehicles are involved.
- 4.7 In any case, as the green/purple/mauve route offers a suitable and available alternative access route FHPUT could not see why it would be necessary to use the Campus access road for construction traffic or any other purpose. FHUT's technical team, including Caneparo Associates (transport consultants), could see no reason why LGVs and cars cannot also use the green route which Sunnica accepts is suitable for HGVs. Moreover, that alternative access proposition means there is no justification for any temporary possession or compulsory acquisition powers over the Campus access road.
- 4.8 FHPUT therefore proposed that before construction of the authorised development, a security fence should be installed along the alignment shown purple in Figure 3 below, with a restriction preventing Sunnica from any project-related activity to the west of the security fence.

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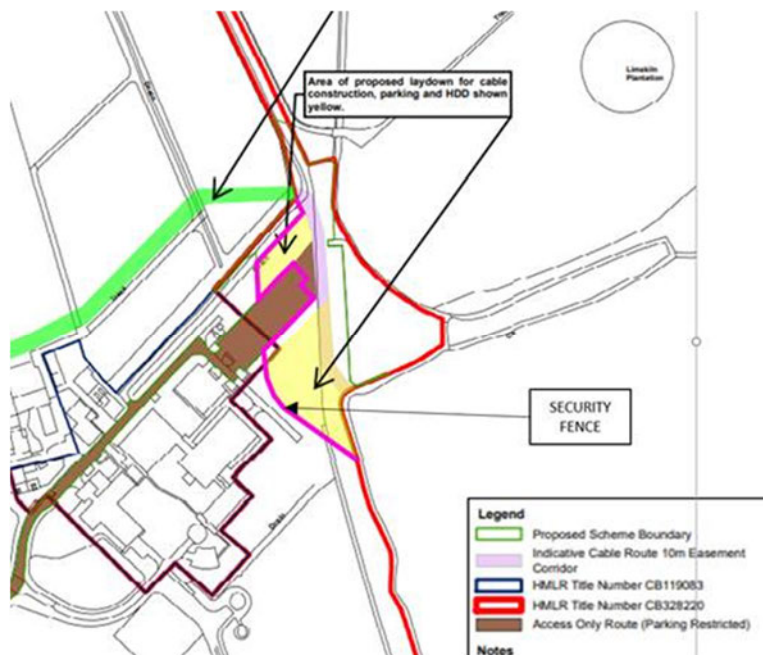


Figure 3

4.9 FHPUT, together with its technical and legal team, expended considerable time and effort in preparing a draft set of Protective Provisions so as to best protect the Campus operations. These were provided to Sunnica's solicitors, Pinsent Masons, on 29 November 2022 and revised on 20 December 2020 to take account of certain matters raised in Sunnica's Response [REP3A-035]. Pinsent Masons informed us on 23 December 2022 that they were substantially accepted subject to their specified amendments and certain confirmations from Sunnica's technical team, which remain to follow. The form provided at Appendix 3 shows what has been agreed to date, save for the redlined elements which were provided by us to Pinsent Masons on 12 January 2023, in respect of which understandably a response is to follow. We do not see any particular reason why these important but fundamentally drafting points should not be accepted.

4.10 In summary, the Protective Provisions provide as follows:

- (a) **Paragraph 3** - Sunnica is prevented from exercising temporary possession or compulsory acquisition powers over the Campus except as set out in an option agreement to be completed to the satisfaction of both parties (subject to contract) with FHPUT. Pinsent Masons has confirmed to us that it is to provide a first draft of the required legal agreement on 16 January 2023 and, subject to contract and terms reasonably agreeable to both parties, it is understood that the objective is to seek to complete the agreement before the second compulsory acquisition hearing, which FHPUT welcomes.
- (b) **Paragraph 4** – Sunnica is restricted to carrying out the authorised development in this location in the “**Campus cable route corridor**” (the land tinted purple and mauve on Figure 3) and “**Campus laydown area**” (the land tinted yellow and such of the land tinted brown as lies to the east of the works fence shown purple on Figure 3). Together these are referred to as the “**Campus works area**”. The

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Protective Provisions anticipate Sunnica's Book of Reference providing a rationalised version of Figure 3 to act as the "**Campus plan**", which is to be a certified document under the draft DCO. The Protective Provisions further anticipate Sunnica removing Work 9 from the works plans and DCO schedule and removing Plots 16-05 and 16-06 and the relevant part of 16-04 from the land plans and Book of Reference to reflect that there is no need or justification for using the Campus access road (see paragraphs 4.4 to 4.8 above).

- (c) **Paragraph 5** – Before it commences construction activity, Sunnica is required to install a security fence along the alignment shown purple on Figure 3 and not to enter the Campus to the west of it (for the reasons set out at paragraphs 4.5 to 4.8 above).
- (d) **Paragraph 6** – Requires Sunnica to agree work dates with FHPUT, so as to manage impacts on the remainder of the Campus, based on the period Sunnica has specified construction in this location will take.
- (e) **Paragraph 7** – Requires Sunnica to agree and comply with a construction method and management scheme in respect of its works on the Campus works area.
- (f) **Paragraph 8** – Requires Sunnica to comply with noise and vibration maxima, as measured in operational parts of the Campus, as identified by FHPUT's noise and vibration consultants as appropriate for scientific laboratories in the context of the relevant British Standard.
- (g) **Paragraph 9** – Requires Sunnica to carry out its works on the Campus works area only within the hours it has historically specified informally it will do so, given that there are dwellings on the Campus.
- (h) **Paragraph 10** – Relates to supervision to which Sunnica has historically specified informally it is open to being subject.
- (i) **Paragraphs 11 to 13** – Relate to standard provision in respect of construction liaison, even more critical given the implications of breaches of any terms of the Protective Provisions in this sensitive location. The provisions also clarify that Campus facilities are not to be used without FHPUT agreement and the health and safety file must be maintained in the usual manner.
- (j) **Paragraph 14** – Makes provision for the reinstatement of the "Campus works area", based on a schedule of condition in the usual manner.
- (k) **Paragraph 15** – Makes provision for maintenance and/or decommissioning of the authorised development on the Campus works area. Sunnica will not know at this stage what its requirements will be in this regard, so details are to be agreed on the same principles as the Protective Provisions once these have been shared with FHPUT at the appropriate time in the future.
- (l) **Paragraph 16** – Makes provision for expenses in the usual manner for Protective Provisions.

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- 4.11 Womble Bond Dickinson, solicitors for Drug Development Solutions Limited, LGC Limited and LGC Bioresearch Limited have confirmed to us that they are content with the form of Protective Provisions at Appendix 3, subject to any changes to the DCO application.
- 4.12 Until the Protective Provisions are in an agreed form with Sunnica and the option agreement has been completed, FHPUT is in a position where it must maintain its objection to the DCO Scheme, for the reasons more particularly set out in the Written Representation.

5 **INADEQUATE ENGAGEMENT**

- 5.1 FHPUT has remained determined not to let it colour its efforts to seek agreed Protective Provisions and an appropriate legal agreement with Sunnica but there can be little doubt that Sunnica's engagement with FHPUT over the evolution of the DCO Scheme falls well below the standard required in statute, policy and PINS advice notes of a responsible DCO promoter in the frontloaded DCO regime.
- 5.2 As more particularly set out in FHPUT's Written Representation [REP2-144], from the time that FHPUT became aware of the possibility of the DCO Scheme (in 2019) it brought to Sunnica's attention the highly sensitive nature of the Campus operations, which made it unsuitable for construction activity associated with the DCO Scheme. Sunnica was urged to route the cable around the Campus or to recognise that an enormous amount of technical and legal work would be required to explore whether their preferred route could proceed without unacceptable impacts on the Campus.
- 5.3 Notwithstanding those efforts, it was not until FHPUT's Relevant Representation and the start of the Examination that Sunnica began to engage in a meaningful way with FHPUT.
- 5.4 In its interactions with FHPUT prior to that, Sunnica has generally sought to take the minimum steps to demonstrate to a third party that it had "engaged" with FHPUT or to have on record that it responded to an FHPUT letter or email. If each of these emails, letters or notices prior to submission of the application is scrutinised, it becomes clear that they are either commoditised and generic, materially the same as what was issued in respect of agricultural parcels of land along the grid connection route, or they fail to grapple with the substance of the issues and make no real movement towards agreement by private treaty and protective provisions.
- 5.5 Sunnica's Response weaves the dates of its tokenistic interactions prior to submission of the DCO with its belated efforts following FHPUT's detailed Relevant Representation together into a web of ostensibly proactive "engagement". This is an unrepresentative characterisation of what has occurred in reality.
- 5.6 The proof is simple and reflected in the current state of affairs: Sunnica's assessments submitted with the application for the DCO Scheme do not recognise the sensitivity of the Campus or the national importance of its activities. There are no adequate noise/vibration and transport assessments in Sunnica's ES for the Campus in light of its sensitivity, with Sunnica only offering to go some way towards carrying out those assessments after it submitted its application. Sunnica only shared exploration of routeing HGV construction traffic along the green route after FHPUT's Relevant Representation. Sunnica only agreed to the principle of not using the Campus access road after FHPUT's Written Representation. It was FHPUT's technical and legal team who had to think through and produce a set of

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Protective Provisions. Though we are grateful for contact by Pinsent Masons and WSP on behalf of Sunnica yesterday offering a first draft option agreement specific to the Campus on Monday, there is no reason this could not have been in circulation months in advance of the Examination rather than months into it, with no heads of terms relevant to the Campus ever having been circulated and for which there is now no time.

- 5.7 So nothing in Sunnica's Response alters the analysis that, at all times, the burden of finding a means of Sunnica's scheme proceeding in this location without impacts on the locally and nationally important Campus operations has fallen to FHPUT. It was unreasonable and unnecessary for Sunnica to leave FHPUT in this position, with all the time, cost and strain that caused.
- 5.8 Given the existence of suitable and available alternatives, the cable route should have followed Option 1 or a southerly variation to it. Even if there are tenable reasons for selecting the preferred cable route, there was no reason Sunnica could not have agreed the Protective Provisions and an option agreement prior to the start of the Examination. As a result of its inadequate engagement prior to the Examination, FHPUT has incurred unnecessary cost and Sunnica has had to expend time and resource during a busy Examination on a matter it could have resolved a long time ago.
- 5.9 What has occurred is a matter of record and we submit that the Examining Authority will be able to draw its own conclusions. The focus now is for Sunnica to accept the Protective Provisions and enter into the appropriate legal agreement, ideally before CAH2.
- 5.10 Alternatively, given the existence of suitable and available alternatives for the cable route and access the DCO application should be refused or no temporary possession or compulsory acquisition powers granted over the Campus.

6 **REMOVAL OF PARCELS FROM THE ORDER LIMITS/ORDER LAND**

- 6.1 Retaining the Campus access road within the Order limits and subject to DCO powers, is no longer tenable – Sunnica's Response does not offer any new traffic or transport evidence or assessments to demonstrate there would be no impact on the Campus associated with the original proposals; it provides no detailed localised vibration assessment necessary to evidence those original proposals could proceed without substantial adverse impacts on the Campus operation.
- 6.2 In its promotion of an alternative access strategy that avoids the Campus and agreement to the principle of a security fence and restriction on project-related activity to the west of that fence, Sunnica has effectively accepted that there are suitable alternatives to the Campus Access road such that the private and public impacts associated with the compulsory acquisition of rights and powers of temporary possession cannot be justified.
- 6.3 FHPUT therefore will welcome removal of all land west of the alignment shown purple in Figure 3 above from the Order limits/Order land (i.e. from the scope of compulsory acquisition/temporary possession powers etc.).

7 **VIABILITY**

- 7.1 FHPUT's Written Representation [REP2-144] identified that the funding statement for the DCO Scheme had failed to make provision for the enormous losses, running into millions,

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for the Campus failing to fulfil its obligations with customers under anti-doping and pharmaceutical contracts which would result from vibration exceedances of acceptable thresholds for specialist instrumentation used on site caused by HGVs on the Campus access road during construction and maintenance of the DCO Scheme in its current form.

7.2 Sunnica's Response [REP3A-035] states that it "*does not consider there is any possibility that its works would prevent [the Campus] from fulfilling its contractual obligations due to [Sunnica's] suggested methodology of construction*". This is mere assertion unsupported by assessment or evidence and, as we understand it, is wholly reliant on the methodology of construction comprised in the Protective Provisions being followed.

7.3 So it is clear that Sunnica has not given any consideration to the fact that compensation claims related to the Campus would make it impossible to deliver the DCO Scheme without compliance with the Protective Provisions in the form at Appendix 3 and removal of specified parcels from the land plans, as more particularly set out in Section 6 above.

8 **FLOOD RISK**

8.1 The confirmation in Sunnica's response that the flood defence bank will not be affected is welcomed. FHPUT notes, however, that the EA flood map shows work to be undertaken within the flood plain. FHPUT request Sunnica to confirm that adequate flood risk modelling has been undertaken to ensure the construction activity in this location:

- (a) will not be at risk of flooding?
- (b) will not cause an indirect effect on either flood risk to surrounding properties or give rise to the risk of construction-related contaminants (oil, lubricants etc) being mobilised which could affect the surrounding areas?

8.2 It is noted that Sunnica's Framework CEMP includes detail (Table 3-4) on the measures that the contractor will need to put in place to avoid/minimise these risks. This gives some comfort and is a standard approach but will need to be appropriately secured in the DCO.

9 **NEXT STEPS**

9.1 FHPUT considers that the Protective Provisions, as appended, and an appropriate legal agreement with FHPUT are the only way in which the DCO Scheme can proceed in this location without unacceptable impacts on the Campus and directly consequential wider impacts for public health and the national horse racing industry. Indeed it is the only way that the DCO Scheme can be delivered viably given the scale of losses likely to be incurred as a result of contractual losses flowing from interference with critical Campus activities otherwise.


9.2 If Sunnica does not accept the Protective Provisions, does not enter into the requisite legal agreement and does not remove the area west of the proposed security fence from the works plans, land plans, Book of Reference and description of the authorised development (see Figure 3 above) the DCO application should be refused or compulsory purchase and temporary possession powers should not be granted over the Campus. Option 1 or a southerly variation to it are suitable and available alternatives to the routeing of the DCO Scheme's grid connection along its current alignment through the Campus. None of the purported "constraints" suggested by Sunnica in respect of heritage, vegetation or local

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plan allocations are insurmountable and would not in any case outweigh the harm to the Campus from the powers currently sought in the DCO over it. Furthermore, even if the current cable alignment remains unchanged, there are suitable and available alternative access routes that would avoid the Campus and significantly reduce the impacts on its operations.

- 9.3 FHPUT will continue to elicit engagement by Sunnica to conclude the Protective Provisions and legal agreement, with the aim of these being respectively in agreed form and completed by CAH2. We will keep the Examining Authority updated on any progress achieved by FHPUT in either regard.

Yours faithfully



Bryan Cave Leighton Paisner

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