



Pinsent Masons

BY E-MAIL

Your Ref: EN010106  
Our Ref: 133788301.2\661999.07003

[REDACTED]

[REDACTED]

21 July 2022

Dear Mr Kean

**APPLICATION BY SUNNICA LTD FOR AN ORDER GRANTING DEVELOPMENT  
CONSENT FOR THE SUNNICA ENERGY FARM**

1. I am writing on behalf of Sunnica Ltd (the "**Applicant**"), as Pinsent Masons LLP is instructed as the Applicant's legal advisors, in relation to the Applicant's proposed application to make changes to its application for development consent ('**Changes Application**') outlined in previous correspondence, in particular, our letters dated 19 April 2022 and 28 April 2022.

**Delay to submission of the Changes Application**

2. In our letter of 28 April 2022, in particular at paragraphs 3.19 to 3.21, we set out the reasons why we considered it preferable to delay the start of the examination to provide sufficient time to enable the Applicant to prepare and consult upon its proposed Changes Application before the examination starts. For the reasons discussed in greater detail in this letter, the Applicant now proposes to delay the submission of its Changes Application until Deadline 2 (30 August 2022) of the draft Examination Timetable appended to the Examining Authority's Rule 6 letter (dated 28 June 2022) to enable further targeted consultation to take place in relation to the inclusion within the Order limits of a small parcel of land that is required temporarily during construction to permit the passage of Abnormal Indivisible Loads. This letter sets out the reasons for the delay, the actions that the Applicant will be taking during the delay and sets out the Applicant's views on the procedural implications of that delay.

**Changes Application**

3. As is set out in that previous correspondence, the Applicant has been working at pace in response to National Grid making it known after the submission of the application and

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despite extensive prior engagement, that National Grid did not consider Option 1 to be technically feasible.

4. The changes proposed are summarised in the materials published in support of the consultation held by the Applicant between 6 June 2022 and 6 July 2022. The Applicant's proposed Changes Application will seek the Examining Authority's acceptance of three changes to the application:
  - a. Change 1: to remove the Burwell National Grid Substation Extension Option 1 (this is the option located immediately to the east of the existing Burwell National Grid Substation and the land which borders Weirs Drove and Newham Drove) from the Scheme;
  - b. Change 2: a new option to be added to the application to enable the use of 400kV cabling within the grid connection routes A and B; and
  - c. Change 3: Option to allow additional electrical infrastructure to be added to the substations referred to in the application at Sunnica West A, Sunnica East A and Sunnica East B. The change would not involve making the substations any larger than was included in the application.
5. In effect, Change 1 seeks the removal of Option 1 and Changes 2 and 3 are required to facilitate a new Option 3 by enabling the electricity generated at the sites to be transformed on site to 400kV through the inclusion of new electrical infrastructure and by permitting 400kV cabling to carry that electricity to its connection point to the national electricity network at the National Grid Burwell Substation. Option 3, if selected, would remove the requirement for a substation to be located in the vicinity of its connection point.

#### **Updated Crane Routing Review for Option 3**

6. The Applicant has used the additional time afforded by deferring the start of the Preliminary Meeting productively and at pace, to consult on its proposed Changes Application and consider the responses received, to prepare that application, carry out additional technical work and to continue discussions with National Grid Electricity Transmission in relation to the options for connecting the Scheme to the electricity transmission grid.
7. Part of this additional technical work has involved revisiting its assessment of the access requirements for abnormal indivisible loads ('**AILs**'). Appendix D to the Framework Construction Traffic Management Plan and Travel Plan [**APP-118**] ('**Crane Routing Review**') reviewed the access requirements for cranes with a range of differing lifting capacities, from 450 tonnes up to 1000 tonnes. Option 3 would require 400kV transformers which are larger than the 132 kV transformers originally considered for transportation to Sunnica West A, Sunnica East A and Sunnica East B. This will require a larger crane than was considered in the Crane Routing Review.
8. The results of this updated crane routing review carried out for Option 3 indicate that, with one exception, the larger cranes can be accommodated within the bounds of the existing highway. That one exception relates to the manoeuvre required to depart/enter Mildenhall Road at the junction labelled AS-37 on the Access and Rights of Way Plans Rev 1 [**AS-005**]. The updated crane routing review shows that, during this manoeuvre, the wheels of the larger crane will remain within the bounds of the carriageway, however, the bed of the vehicle will depart the bounds of the highway and over-sail private land beyond the existing Order limits. The vehicle would be required to over-sail this land on no more than



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two occasions during construction, when it brings the transformer to the site and when the unladen vehicle departs<sup>1</sup>.

9. To ensure that this manoeuvre can be facilitated the Applicant intends in its proposed Changes Application to make a small extension to the Order limits at this location to include this additional strip of private land over which a power of temporary possession will be sought.
10. As the results of the updated crane review were not available at the time the Applicant commenced its consultation on its proposed Changes Application, the Applicant did not consult persons with interests in the land that would be temporarily over-sailed. The Applicant therefore intends to delay submission of the Changes Application to carry out a further targeted consultation on this aspect of its proposed changes.

### **Scope of further targeted consultation**

11. The Applicant intends to hold a further targeted consultation, currently envisaged between 26 July 2022 and 23 August 2022, in relation to its temporary requirement for the over-sail land and in relation to the updated crane routing review. The Applicant intends to consult:
  - a. all persons with an interest in the over-sail land identified through the Applicant's diligent inquiries;
  - b. Cambridgeshire County Council, Suffolk County Council and National Highways;
  - c. East Cambridgeshire District Council and West Suffolk Council; and
  - d. Burwell Parish Council, Exning Parish Council, Fordham Parish Council, Snailwell Parish Council, Chippenham Parish Council, Freckenham Parish Council, Worlington Parish Council, Kennett Parish Council, Red Lodge Parish Council, Barton Mills Parish Council, West Row Parish Council and Isleham Parish Council.
12. The Applicant also intends to invite the persons with interests in the over-sail land that have the capacity to grant a licence, to negotiate the terms of such a licence with a view to avoiding the necessity of the exercise of a temporary possession power, should the Changes Application be accepted and the DCO made.

### **Procedural matters**

13. The Applicant has expressed its view in its previous correspondence that it would be preferable to have resolved its proposed Changes Application before the Examination commences and acknowledges that the delay to submission of the Changes Application to proposed Deadline 2 is less than optimal. While less than optimal, the proposed date of submission of the Changes Application would still fall early in the examination and would leave more than sufficient time for it to be considered and, if accepted, for the

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<sup>1</sup> It may be possible to avoid the over-sail manoeuvre on the departing movement as it is understood that unladen vehicles of this size can be split into two smaller independent vehicles that can be driven separately.



application as changed to be examined. It is not unusual for a changes application to be considered during the early stages of the examination of an application for a DCO.

14. The Applicant acknowledges that it would be preferable for interested parties to be in a position to prepare their Written Representations and, in the case of the local authorities, their Local Impact Reports, with the benefit of the Changes Application having been submitted. However, submission of the Changes Application at proposed Deadline 2 would not prejudice any interested party because it is open to the Examining Authority to manage the significant remaining proportion of examination (5 months) as it considers to be appropriate to enable the application as changed (should the Changes Application be accepted) to be properly examined. For example, the Applicant considers that it would be reasonable for interested parties to reserve their positions in their Written Representations and Local Impact Reports in relation to Option 3 and, given the Applicant's firm intention not to proceed with Option 1, not to expend significant resources if any, on preparing submissions in relation to Option 1. Furthermore, we would also draw your attention to the Applicant's letter of today's date where we provide the Examining Authority with a suggested revised Timetable taking into account, where possible, the requests from those who responded at Procedural Deadline A. Our aim in this revised Timetable is to seek to accommodate those who have requested changes and, in particular, would move the Written Representations deadline from 30 August 2022 to 20 September 2022. Our letter also states that we consider that should the Examining Authority accept the Changes Application, then it could request comments on the Changes Application by new Deadline 3b, 4 October 2022, and, if required, hold a Hearing into the Changes Application during the week of 18 to 21 October 2022.

#### **Infrastructure Planning (Compulsory Acquisition) Regulations 2010**

15. The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 ('CA Regs'), as is explained in its Explanatory Memorandum, sets out the procedures to be followed where it is proposed to include in an order granting development consent a provision authorising the compulsory acquisition of land, which was not included in the application for the order. The Applicant considers that the CA Regs would not apply to the inclusion within its proposed development consent order of a provision that would authorise the temporary possession of the over-sail land.
16. Regulation 4 of the CA Regs confirms that regulations 5 to 19 of the CA Regs apply where it is proposed to include in an order granting development consent a provision authorising the compulsory acquisition of land and a person with an interest in the additional land does not consent to the inclusion of the provision.
17. A provision authorising the temporary possession of land is not a provision that authorises the compulsory acquisition of land, an interest in land or rights over land.
18. Temporary possession is fundamentally different in character from the compulsory acquisition of land, or of rights over land, because a temporary possession does not in any way affect the title to that land. A temporary possession provision temporarily dispossess the occupant of the land and suspends the exercise of any rights enjoyed over that land for the duration of the period of temporary possession. During this period the owner would remain free to deal with the title in any way it sees fit, subject to the temporary possession. Once the temporary possession ceases the land may be re-occupied and any person enjoying rights over it would be able to resume doing so. At no point would the undertaker "acquire" the land or an interest in the land or any right over it.



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19. This distinction is maintained throughout Regulations 5 to 19 of the CA Regs which use the term “proposed provision” to refer to the provision that must be considered in accordance with the procedures set out in those regulations. Regulation 2 (Interpretation) explains that (emphasis added):

*“proposed provision” means a compulsory acquisition request in respect of additional land;*

and:

*“compulsory acquisition request” means a request for an order granting development consent to authorise compulsory acquisition of land or of an interest in or right over land;*

20. Because a temporary possession provision would not authorise the compulsory acquisition of land or of an interest in or right over land it is not a “proposed provision” and so the procedures in the CA Regs would not apply to the Applicant’s proposal to seek a power of temporary possession over the land it requires to over-sail to deliver Option 3, should the Examining Authority accept the Changes Application once submitted.
21. This approach would be consistent with the precedent set by the examination of the A14 Cambridge to Huntingdon Improvement Scheme Order 2016. During the course of that examination that applicant applied for a series of non-material changes which included the addition of further land within the Order limits and which variously included compulsory acquisition of land, of rights over land and of temporary possession of land. In the case of changes that required the compulsory acquisition of additional land, or rights over additional land, the Examining Authority either (i) followed the procedures in the CA Regs or (ii) accepted the changes without having followed the procedures in the CA Regs on the basis that all persons with interests in the land consented to the inclusion of the proposed provision in accordance with regulation 4 of the CA Regs. Consistent with the view that temporary possession is not compulsory acquisition, the Examining Authority did not require the applicant to obtain the consent of all persons with interests in the land, or follow the procedures in the CA Regs. This approach can be seen for example, in paragraph 2.3 of its procedural decision of 22 October 2015 [PD-018]<sup>2</sup> “*The change DR1.103 does not require compulsory acquisition, as it is for temporary possession; therefore, no additional consents are required from landowners.*”<sup>3</sup>

Yours sincerely

**Tom Edwards**

Senior Associate

for Pinsent Masons LLP

This letter is sent electronically and so is unsigned

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<sup>2</sup> Examination library reference is to the document as listed in the A14 Cambridge to Huntingdon Improvement Scheme Order 2016 examination library published by the Planning Inspectorate.

<sup>3</sup> The change DR1.103 that was accepted can be seen in REP10-047 (Highways England reference HE/A14/EX/163).