PLANNING ACT 2008

APPLICATION BY SEGRO PROPERTIES LIMITED FOR A DEVELOPMENT CONSENT ORDER IN RESPECT OF EAST MIDLANDS GATEWAY PHASE 2

COMPULSORY ACQUISITION HEARING 1

WRITTEN SUMMARY OF ORAL SUBMISSIONS BY PROLOGIS

AND

RESPONSES TO ACTION POINTS 1 & 2

This document provides a written summary of the oral submissions made by Hereward Phillpot KC ("**Counsel for Prologis**"), leading counsel instructed by Howard Bassford of DLA Piper UK LLP, on behalf of Prologis UK Limited and Prologis UK 121 Limited ("**Prologis**") at Compulsory Acquisition Hearing 1 held on 10 March 2026.

Please note that due to the alignment with East Midlands Airport ("**EMA**") on many of the matters discussed, where Mark Westmoreland Smith KC ("**Counsel for EMA**") leading counsel for EMA led on submissions with which Counsel for Prologis expressly agreed, those submissions are also summarised below for completeness.

These submissions are summarised with reference to the relevant Detailed Agenda Item under which they were discussed. Where no such items are included below, it can be assumed that Prologis had no submissions to make in relation to these items.

Agenda Item 2: General Case

Statutory and policy tests relevant to compulsory acquisition ("CA") and/or temporary possession under the Planning Act 2008 and DCLG Guidance

1 Counsel for EMA made detailed submissions on the statutory and policy framework. In summary, it was submitted that CA powers are draconian, that the section 122 tests present high hurdles, and that particular caution is required where such powers are sought by a private developer to acquire the land of another private developer who intends to develop the land in the same manner. The following key issues were identified: (1) need for development does not translate to a need for CA; (2) the evidential deficit on viability; (3) the Applicant's failure to acknowledge the access value of the northern part of the site; (4) highway mitigation is just that – mitigation intended to consume its own smoke, not a benefit justifying CA; (5) reasonable alternatives under paragraph 8 of the CA Guidance have not been exhausted; (6) the absence of any real assessment of private loss; and (7) paragraph 13 of the CA Guidance requires clear evidence that public benefit outweighs private loss. Counsel for Prologis agreed with these submissions.

2 In relation to section 122(3), whilst the CA Guidance refers to the balance of public interest benefits and private loss, that is a simplified way of expressing what is of necessity a multifaceted assessment. The compelling case test is effectively all-embracing, and includes consideration of alternatives, attempts to avoid CA through changes to the scheme and/or negotiation, and the overall balance of benefits and harms arising from the proposed order. This is why the courts have recognised that the compelling case test embraces the human rights aspect of the assessment.

3 Public interest benefits must be balanced with public interest harms, and all such harms must be properly reflected in the decision. In this case the public interest harms are likely to involve a wider set of issues than might be encountered in a more 'standard' CA case. It will include not only the immediate public harm of frustrating the Joint Application, but also the wider context of what is proposed. This goes beyond what might be regarded as a site-specific question: land is proposed to be taken, by authorisation of the state, from one private sector commercial enterprise to benefit the commercial interests of another. The implications that may have on foreign direct investment because of a change in the perception of expropriation risk will need very careful consideration in this examination so that the public interest balance is undertaken on a properly informed basis.

4 It should be noted that the Applicant emphasises and relies upon not only delivery of the development per se, but also delivery within the Freeport window as an important basis for its case for CA. This not only touches on the viability question but also on the likely pace and programme of implementation even if the scheme goes ahead. Thorough testing and scrutiny is therefore required both of the robustness of that claim, and the extent to which weight ought to be attached delivery of the southern land in the Freeport period (if that happens) so far as public benefits are concerned.

5 It will be important in this examination to give careful and detailed consideration to the application of two further and related elements of the CA Guidance:

5.1 First, paragraph 8, which requires the Applicant to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to CA, including modifications to the scheme, have been explored.

5.2 Second, paragraph 16, which recognises that there may be circumstances that justify granting development consent but not CA powers, including a decision by the Secretary of State that the scheme should be modified in a way that affects the requirement for land which would otherwise be subject to CA. Section 14 of Prologis's Relevant Representation explains how the DCO scheme could be modified to avoid, or at the very least substantially reduce, the need for CA whilst still delivering a comprehensive development of the land within the order limits.

If the Secretary of State concludes that an alternative to CA should have been pursued instead of the DCO scheme, it could lead to a decision to remove some or all of the proposed CA provisions. Crucially, this does not itself preclude the grant of development consent.

Human rights and equality considerations

6 Nothing further to add on this sub-item beyond the submissions made in relation to the sub-item above.

Structure, content and up-to-date position of the Funding Statement

7 Counsel for EMA made submissions on the Funding Statement, noting in particular the failure to take into account the access value of the Prologis/MAG Land, the absence of any parent company funding agreement, and that uncertainty of funding goes directly to uncertainty of delivery – which the Applicant's Counsel had acknowledged would undermine the case for CA. Counsel for Prologis adopted and endorsed those submissions.

8 Picking up on Counsel for EMA's point regarding the implications of paragraph 17 of the CA Guidance, that the policy test is not one of sufficiency or bare adequacy but requires a richness of information – as much information as possible. The rationale for that approach is that if there is realistic doubt on the evidence as to whether the project will go ahead, or proceed at the pace at which it is promoted, that would undermine the case for the proposed interference with the rights of affected persons. The Applicant has indicated it would produce viability evidence at Deadline 1, Prologis will seek to respond to that when given the opportunity to do so.

9 In response to a question from the ExP as to whether Prologis had any different view on the stated development cost of £420 million in the Funding Statement, it was confirmed that Prologis had not yet interrogated that figure and anticipated getting into more detail once the viability evidence was received. This was formalised in Action Point 1 published by PINS on 18 March 2026. Prologis' response to this Action Point is follows this summary.

Structure and content of the Statement of Reasons

10 The Statement of Reasons had been comprehensively rebutted at Appendix 3 of Prologis's Relevant Representation. In terms of overall content, there is no consideration of the public interest loss of failing to consider the Joint Application. That harm is not only a matter of private interest loss but is also a public interest loss, and it arises on grant of the CA powers, not on implementation. The harm arises and may or may not be offset by what happens next, and the examination will need to look at whether there is a real risk that the DCO development is not implemented, either at all or in full or on the timetable indicated – resulting in harm without the corresponding benefits advanced to seek to justify that harm.

Additional matters

11 The ExP invited the parties to consider the decision of the Secretary of State in relation to the A1 Northumberland (Morpeth to Ellingham) DCO. This was formalised in Action Point 2 published by PINS on 18 March 2026. Prologis' response to this Action Point was included in their Written Representation, but for completeness also follows this summary.

RESPONSE TO ACTION POINT 1

Action by: Prologis and EMIA

Set out the position on whether they consider the estimated total development cost of approximately £420 million, as stated in paragraph 4.3 of the Funding Statement, to be reasonable and accurate.

Response:

1.1 Paragraph 4.3 of the Funding Statement (October 2025) states:

"*The total development costs for the DCO Scheme are anticipated to be in the region of £420 million. This includes:*

4.3.1 All infrastructure, construction and financing costs;

4.3.2 All land costs where the land interests are acquired by private treaty;

4.3.3 All compensation payable where the land interests are acquired pursuant to compulsory acquisition powers;

4.3.4 Any claims for blight that might be submitted, although none are anticipated; and

4.3.5 Any claims under the Noise Insulation Regulations 1975 for road traffic noise (although, as explained in Chapter 7 of the Environmental Statement (Document DCO 6.7), it is not anticipated that there will be any such claims)."

No breakdown of the £420m has been provided between subheadings 4.3.1 – 4.3.5.

1.2 Whilst Prologis wishes to be as helpful as possible, it is not in a position to confirm whether or not £420 million is reasonable or accurate, or provide a meaningful opinion that could be relied upon, due to the lack of the necessary information and detail made available by SEGRO at the present time.

1.3 It is against this background that Prologis has previously commented that SEGRO has not yet provided sufficient information and evidence in respect of the viability (and separately funding) of the proposed scheme to enable an accurate analysis and consideration.

1.4 In respect of paragraph 4.3.1, there is insufficient clarity as to what permutation of the scheme that the dDCO would authorise SEGRO intends to deliver or what has been included in the £420 million figure. For example, the dDCO sets broad parameters for development that would allow multiple different forms of development to be implemented, with significantly different costs associated with those different forms. In order to appraise the reasonableness of the £420 million it would therefore be necessary to understand not only how much is attributable to those matters covered by paragraph 4.3.1, but also, what illustrative scheme has been appraised and included in the total development cost.

1.5 To illustrate this point further, SEGRO's DCO submission provides conflicting information on this matter:

(a) SEGRO's Parameters Plan (EMG2 Works) Drawing No: EMG2 -UMC -SI-01-DR-A -0088 P22 allows for the provision of between 7 and 24 buildings spread over Zones 1-7 totalling a maximum floor space of 300,000m2.

(b) SEGRO's Programme - Outline and Construction Programme – EMG2 contained with Document DCO 6.3A Environmental Statement Technical Appendices Appendix 3A – Construction Environmental Management Plan refers to the delivery of 11 units but no building sizes are specified.

(c) SEGRO's Illustrative Landscape Masterplan drawing No EMG1-10666-FPCR-XX-XX-DR-L-001: P12 details 8 buildings with no building sizes provided.

1.6 On the basis of the submitted documents, it is unclear which of these multiple permutations has been adopted to arrive at the proposed total development cost.

1.7 The cost will vary considerably depending on the size of individual buildings, thereby materially impacting the total development cost and therefore viability.

1.8 By way of illustration, the provision of 24 individual buildings compared to 7 much larger buildings could increase total building costs by approximately £50 million alone, before any infrastructure costs (on-site and off-site) are even considered.

1.9 It is also unclear whether the total development costs stated include provision for approximately 200,000 sq m of mezzanine floor space within the buildings, which, although not stated on the Parameters Plan noted above, is referred to within the DCO Application. Depending on the actual requirement, specification, size and the buildings in which the mezzanine is to be provided, the inclusion of mezzanine floor space could vary the total DCO cost by a further £50-£70 million.

1.10 Further to the above, the method of procurement and phasing will impact the total construction costs for both buildings and infrastructure works. It is unclear what assumptions SEGRO has made regarding tendering and whether buildings and infrastructure works packages will be tendered individually or as multiple packages, which dramatically impacts the resulting cost.

1.11 In respect of paragraphs 4.3.2 and 4.3.3, linked to the above points will be the assumed acquisition and phasing of the land assembly (for example, the draw-down terms of the option land south of Hyam's Lane), the phasing of infrastructure, and the development of each phase and/or building.

1.12 No information has been provided in respect of land acquisition costs (whether agreed or yet to be agreed) and it is therefore not possible to factor these into the overall total development cost.

1.13 The financing costs and the rate of finance to be applied to each element (land acquisition, infrastructure and building construction), together with the assumed lease-up periods for each building (driven by occupier take-up through either build-to-suit or speculative development), are not known. These are critical elements which will determine total finance costs and therefore total development costs.

1.14 The terms of draw-down of the option land south of Hyam's Lane, third-party payments and the finance rate applied to these elements are all required in order to undertake a meaningful assessment of total development costs.

1.15 In addition, the Funding Statement does not address whether the £420 million figure includes the costs of delivering the Maersk headquarters campus that formed a central part of the Section 35 Direction. The Direction describes the proposed project as comprising "a logistics and manufacturing hub, including a substantial carbon neutral campus/headquarters including co-located head office functions." SEGRO's own application for the Direction described this as "a very substantial carbon-neutral campus / headquarters required by Maersk" intended to function as a centralised UK operational headquarters.

1.16 Clarification is required on the size and number of buildings which will form the Maersk campus, the timing for the delivery of this phase along with the building specification to understand what is meant by the term "carbon neutral". None of this is broken down or explained in the Funding Statement. If the £420 million figure includes these costs, there is no transparency as to what portion of the total is attributable to this element or whether it is realistic. If it does not, then the stated total development cost is necessarily incomplete. The absence of any detail on this point is a material gap in the information provided by SEGRO which reflects broader issues with this element of the application.

1.17 As set out in Prologis' Written Representation, there is no binding contractual commitment from Maersk to deliver its operation through SEGRO as part of the DCO Scheme, nor any evidence of a binding commitment that the facility will be carbon neutral or what SEGRO is defining as a "carbon

neutral building". In this regard, it is noted that whilst historically "net zero carbon" and "carbon neutral" were used interchangeably, current practice tends to distinguish between them: "net zero carbon" is generally used where emissions have been robustly measured and materially reduced, with any residual emissions minimised before offsetting, whereas "carbon neutral" is typically used in a looser sense, to denote that emissions have been measured and offset, without necessarily demonstrating significant reduction. SEGRO has not defined which standard applies to the proposed campus (if it is now proposed), nor set out the methodology through which carbon neutrality would be assessed

1.18 The draft DCO as currently submitted makes no specific provision for the carbon neutral campus element: it is not reflected in the description of development in Schedule 1 or secured through the requirements in Schedule 2. If Maersk does not proceed, the cost and revenue assumptions underpinning the £420 million figure may be fundamentally altered, yet none of this is addressed or explained in the Funding Statement.

RESPONSE TO ACTION POINT 2

Action by: The applicants, Prologis, and EMIA

Provide an update explaining how they have considered the recent revocation decision relating to the A1 Morpeth to Ellingham scheme, particularly in the context of the discussion on the funding issue as to whether exceptional circumstances existed to justify revocation in that case. This should include any implications of that on this examination.

Response:

NB: The following text is as has already been included in Prologis' Written Representation at Section 7.

The Morpeth Decision and the Relationship Between Funding and Viability

1.1 During CAH1, the ExP raised the decision of the Secretary of State in relation to the A1 Northumberland (Morpeth to Ellingham) DCO (TR010059-002170-A1, Decision Letter dated 24 May 2024) ("**Morpeth Decision**") and invited the parties to consider what implications it might have for the relationship between funding and viability in the present examination.

1.2 In particular, the ExP posed the question whether, if a fundamental change in deliverability arising from the absence of secure funding renders a scheme non-viable, the converse would mean that the presence of secure funding renders a scheme viable. Prologis was specifically directed, at the close of the CAH1, to provide representations on this question at Deadline 1. This section addresses that question directly.

1.3 The short answer is no. There is a clear difference in principle between the availability of "secure funding" for a publicly funded road scheme, and the issue of commercial viability for a privately funded commercial development. The Morpeth Decision, properly understood, does not provide any material assistance to the Applicant in this case. Understanding why requires a careful reading of that decision in its proper context, which is materially and fundamentally different from the present case.

1.4 The present case involves a private sector commercial development promoted by SEGRO Properties Limited for commercial profit. Whether the DCO scheme is commercially viable is not a question that is answered by reference to whether SEGRO has the general financial capacity to fund it, should it later decide that it is commercially prudent to do so. It is a question of development economics: does the scheme generate a sufficient commercial return - after all costs, including full open market compensation for the Prologis/MAG Land – properly to justify a positive final investment decision? That is a wholly different question from the one that the Morpeth Revocation Decision was addressing (both conceptually and in practical terms), and the Revocation Decision provides no answer to it.

1.5 It is also necessary to distinguish between the availability of funds and the availability of funding. In the Morpeth case, the scheme was funded for development and DCO promotion and was included in the Road Investment Strategy, which meant it had a reasonable expectation of funding for delivery. National Highways nonetheless had to return to Government for funding before commencement – that is, a final investment decision. SEGRO, by contrast, has funds supposedly available at a corporate level, but those funds are not committed to this scheme. SEGRO must similarly go to its board for a final investment decision before commencement. The Funding Statement does not suggest that this scheme has secure funding; it suggests only that SEGRO has substantial corporate resources.

1.6 The Secretary of State's conclusion on compulsory acquisition in the Morpeth Decision is at paragraph 233, which states:

"He notes that the ExA considered that there is sufficient funding available to meet any compensation liabilities for CA and/or TP and there is no need for any special or additional guarantees for funding [ER 7.10.4]. On 4 October, in the Network North announcement, the Prime

Minister set out that Government would provide funding to dual the A1 between Morpeth and Ellingham. As such, the Secretary of State is satisfied that adequate funding remains available for CA/TP requirements in line with the Compulsory Acquisition Guidance."

1.7 The significance of this passage cannot be overstated. The Morpeth DCO was a publicly funded national road infrastructure scheme, promoted by National Highways as a Government-owned company and funded directly by a confirmed Treasury spending commitment made at the highest political level. The question in that context was whether adequate public funds were confirmed and available to meet the compensation liabilities that would arise from CA. That question was answered by the Network North spending announcement at the most authoritative level available in public expenditure decision-making. There is no private commercial viability question in a Government road scheme of this kind: the scheme proceeds because the Government has decided, as a matter of public policy and public expenditure, that it should.

1.8 The present case is fundamentally different in character. The DCO Application is a private commercial development promoted by SEGRO Properties Limited, a wholly owned subsidiary of SEGRO plc. As SEGRO confirmed at CAH1, the Funding Statement relies upon the parent company's balance sheet – specifically referencing approximately £500 million in cash and £1.8 billion in undrawn credit facilities available to the SEGRO plc group at the end of 2024. The question is not whether SEGRO has access to those resources in the abstract; the question is whether, on the specific assumptions required by the DCO Scheme including the compensation costs for the Prologis/MAG Land, the scheme generates a sufficient commercial return to justify a final investment decision to proceed with development. If it does not, the scheme will not go ahead.

1.9 Indeed, a wealthy developer may have ample resources to fund a loss-making scheme but is unlikely to do so (otherwise it will not remain a wealthy developer for long); the existence of those resources does not make the scheme commercially viable. The two concepts are entirely distinct.

1.10 Paragraph 17 of the CA Guidance provides:

"*Any application for a consent order authorising compulsory acquisition must be accompanied by a statement explaining how it will be funded. This statement should provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required. It may be that the project is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty about the assembly of the necessary land. In such instances, the applicant should provide an indication of how any potential shortfalls are intended to be met. This should include the degree to which other bodies (public or private sector) have agreed to make financial contributions or to underwrite the scheme, and on what basis such contributions or underwriting is to be made*."

1.11 First, and most fundamentally, paragraph 17 explicitly contemplates the possibility that in some cases *"the project is not intended to be independently financially viable."* That is a clear and unequivocal acknowledgment that the existence of a Funding Statement does not establish commercial viability, and that the two concepts are distinct. If the CA Guidance had treated a satisfactory Funding Statement as sufficient proof of viability, it would not have needed to make provision for projects that are not independently financially viable at all. It does make that provision. The Morpeth Decision's reference to adequate funding being available therefore addresses only the narrow question of whether compensation liabilities can be met – precisely as paragraph 17 contemplates – and says nothing about whether the scheme is commercially viable in the development economics sense and is thus likely to be implemented if approved.

1.12 Second, paragraph 17 requires the Funding Statement to address *"the resource implications of both acquiring the land and implementing the project for which the land is required."* Those are two distinct and cumulative requirements: the costs of CA, and the costs of implementation. SEGRO's Funding Statement, which relies on general balance sheet capacity, does not provide the project-specific analysis of implementation costs that paragraph 17 requires. In particular, it does not model the resource implications of paying full open market compensation – including the controlling-access premium – relating to the Prologis/MAG Land, nor does it demonstrate how those acquisition costs interact with the overall development economics to produce a commercially positive return.

1.13 Third, where there are shortfalls (i.e. where the project is not independently financially viable) paragraph 17 requires the applicant to *"provide an indication of how any potential shortfalls are intended to be met"* and to explain the degree to which other bodies have *"agreed to make financial contributions or to underwrite the scheme, and on what basis."* SEGRO has provided no such analysis. There is no indication that any body – public or private – has agreed to underwrite the DCO Scheme or to contribute to any viability shortfall, for instance in relation to highway works or balancing viable and no-viable development components. The Funding Statement records only that SEGRO plc has the general balance sheet capacity to fund the scheme. That is not the same as an analysis of whether the scheme is commercially viable, and it does not address the paragraph 17 requirement to explain how shortfalls will be met where the project may not be independently viable. Indeed, where SEGRO asserts that alternatives are not viable, but that inclusion of land required for those alternatives renders its own scheme viable, this paradoxical relationship must be explained – not to do so must draw the subsequent final investment decision into question.

1.14 In short, paragraph 17 of the CA Guidance does not relieve SEGRO of the obligation to demonstrate commercial viability; it adds a separate and additional requirement directed at funding adequacy. The CA Guidance treats these as two distinct questions. SEGRO has, to date, purported to address funding only in the most general terms – and has not addressed commercial viability at all. Both questions must be answered with evidence before the CA case can be properly evaluated.

1.15 The Morpeth sequence has a further, highly instructive implication for the present case. The grant decision was founded on a Prime Ministerial spending announcement - the most reliable and specific commitment of public expenditure available in the English constitutional system. That commitment was subsequently reversed and the scheme cancelled on grounds of poor value for money. If a commitment of that quality cannot be relied upon as a permanent guarantee of delivery, SEGRO's reliance on its general balance sheet capacity is very considerably further removed from the quality of commitment required to ground a compelling case for CA. SEGRO has produced no board resolution committing to the EMG2 scheme, no confirmed funding envelope, no analysis of the scheme's commercial return, and no final investment decision. The Morpeth experience shows that even the most authoritative possible commitment of public funding does not guarantee delivery.

The Blight Caused by Compulsory Acquisition Powers

1.16 One of the four exceptional circumstances cited at paragraph 22 of the Secretary of State's Revocation Decision for Morpeth ("**Revocation Decision**") was specifically "*the removal of planning blight from affected land.*" The Revocation Decision at paragraph 7 records that without revocation the DCO "*will remain in place until 14 June 2029 when it will expire if no development has taken place*" and that during that time *"the land could continue to be blighted and unduly affected by the existence of the DCO and its accompanying powers of compulsory purchase that place uncertainty on affected landowners*."

1.17 This is of direct relevance to the present case. Prologis has consistently submitted that the grant of CA powers over the Prologis/MAG Land would place an immediate and certain cloud over its interests, making it difficult to develop, let or sell any part of the land. The Revocation Decision confirms that the Secretary of State regards the blight caused by subsisting CA powers as a serious and independently sufficient harm warranting action - sufficiently serious, in Morpeth, to justify revocation of an already-granted DCO. The same harm would arise immediately and with certainty if CA powers were granted in the present case. Unlike in Morpeth, however, Prologis would have no recourse: the Prologis/MAG Land would be in private hands subject to a compulsory purchase cloud, not in the hands of a publicly accountable body such as National Highways that might eventually face political and financial pressure to act. The harm to Prologis would be immediate, certain, and without the protective mechanism of public accountability that made revocation achievable in the Morpeth context.

The Risk of Exercise Without Build-Out

1.18 The Morpeth sequence – grant, followed by cancellation of the underlying scheme, followed by revocation – is direct and powerful evidence that the grant of a DCO with CA powers does not guarantee that the development will proceed. A DCO was made; CA powers were conferred; the funding on which the scheme was premised was withdrawn; and the scheme was cancelled before

any construction took place. Prologis has consistently submitted that there is a material risk that SEGRO could exercise CA powers over the Prologis/MAG Land and then, for commercial reasons, not build out the DCO scheme. The Morpeth experience illustrates exactly this risk – albeit in a public rather than private funding context.

1.19 The critical distinction, however, is this: in Morpeth, when the scheme became undeliverable, the Secretary of State revoked the DCO. That revocation cannot undo the harm to individual landowners whose land was blighted during the intervening period, but it at least removed the planning and legal constraint going forward. In the present case, if SEGRO was to exercise CA powers over the Prologis/MAG Land and then fail to build out the scheme, there would be no equivalent mechanism to restore Prologis' position. Once the land is compulsorily acquired, it is gone. Prologis would receive compensation – but would have lost its land, its development opportunity, and with it the chance to deliver the public interest benefits of the Joint Application, permanently and irrecoverably.