

PLANNING ACT 2008

**THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)
RULES 2010**

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

DEADLINE 2 SUBMISSION

ON BEHALF OF

PROLOGIS UK LIMITED AND PROLOGIS UK 121 LIMITED

CONTENTS

1	INTRODUCTION AND SCOPE	3
2	VIRES AND THE SECTION 35 DIRECTION.....	3
3	RESPONSE TO SEGRO'S POSITION ON REASONABLE ALTERNATIVES	9
4	COMPULSORY ACQUISITION: THE COMPELLING CASE	15
5	PUBLIC BENEFITS VERSUS PRIVATE LOSS	17
	ANNEX A: DCO 7.4 – APPLICANT'S RESPONSE TO HEARING ACTION POINTS.....	20
	ANNEX B: DCO 7.5 – APPLICANT'S RESPONSE TO EXQ1	24
	ANNEX C: SECTION 35 APPLICATION	29

1 Introduction and Scope

- 1.1 This document is submitted on behalf of Prologis UK Limited and Prologis UK 121 Limited (together, "**Prologis**") in response to the documents submitted by SEGRO Properties Limited ("**SEGRO**") for a Development Consent Order ("**DCO**") for East Midlands Gateway Phase 2 ("**EMG2**") ("**DCO Application**") at Deadline 1 (7 April 2026).
- 1.2 This section seeks to address the Deadline 1 documents submitted by SEGRO excluding matters relating to compulsory acquisition, traffic and transport, and socio-economic issues. These excluded matters are reserved for Deadline 3 (28 April 2026) in accordance with the Rule 8 Letter dated 18 March 2026 for which Prologis expressly reserves its position. Where submissions are made below which may be related to these topics, Prologis reserves the right to supplement this position at Deadline 3.
- 1.3 Specifically, this document addresses the following, submitted at Deadline 1:
- (a) DCO 7.2: DCO Applicant's Response to Relevant Representations;
 - (b) DCO 7.4: Applicant's Response to Hearing Action Points; and
 - (c) DCO 7.5: Applicant's Response to Examining Panel's First Written Questions.
- 1.4 The main body of this submission addresses the key substantive themes arising from SEGRO's Deadline 1 documents in particular the Response to Prologis' Relevant Representation. Detailed responses to further Deadline 1 documents are set out in the Annexes to this submission.
- 1.5 This submission sets out Prologis' principal points and concerns in response to the Deadline 1 documents listed above. Although SEGRO's Deadline 1 documents were provided directly to Prologis by SEGRO on 8 April 2026 pursuant to an agreement between the parties for mutual direct exchange, the remaining Deadline 1 documents submitted to the Planning Inspectorate on 7 April 2026 were not made available on the Planning Inspectorate's website until 14 April 2026. This effectively allowed only six working days to consider and respond to all other Deadline 1 documents, in addition to those supplied by SEGRO. Given the volume of material submitted at Deadline 1 and this curtailed period for response, it has not been possible to review all documents in their entirety. Nothing in this submission should be taken as acceptance of any matter not expressly addressed herein.
- 1.6 Terms used in this submission have the same definition as set out in Prologis' Written Representation dated 7 April 2026 unless otherwise defined.

2 Vires and the Section 35 Direction

These responses relate in particular to DCO 7.2 (Response to Relevant Representations) and DCO 7.4 (Response to Hearing Action Points).

- 2.1 Prologis made initial oral representations on this issue at ISH1 (Agenda item 6) on 11 March 2026 (see Prologis's Written Summary of Oral Submissions, submitted at Deadline 1, paragraphs 6 and 7). Further representations were made in Prologis's Written Representations at paragraphs 3.1 to 3.17.
- 2.2 SEGRO's response to the issue at Deadline 1 raises significant concerns regarding the lawfulness of any DCO granted pursuant to the DCO Application as submitted. Any application made in reliance on a Section 35 Direction must correspond fully with the proposed project specified in that direction. If it does not, to make a DCO in relation to the development contained in the DCO Application would be *ultra vires*. In simple terms, the

power of the Secretary of State to make a DCO under the PA 2008 in a case such as this flows directly from the terms of the Section 35 Direction. As explained below, that important jurisdictional issue is reflected in the way the Direction is drafted.

2.3 The Section 35 Direction dated 21 February 2024 directs (emphasis added):

... that the proposed East Midlands Freeport – East Midlands Gateway Phase 2 ("the Proposed Project") as set out in the applicant's formal request be treated as development of national significance for which development consent is required.

The text of the direction then states:

The Secretary of State notes that the Proposed Project comprises the following as detailed or referred to in the Applicant's qualifying request: • a logistics and manufacturing hub, including a substantial carbon neutral campus/headquarters including co-located head office functions.

This fixes the description of the Proposed Project.

2.4 The Direction continues (emphasis added):

Having considered the detail of the Proposed Project against the criteria ... the Secretary of State is of the view that the Proposed Project by itself is nationally significant".

2.5 The reference within the Direction to the Secretary of State having considered 'the details of the Proposed Project' and to these details being 'set out in the applicant's formal request' or 'detailed or referred to in SEGRO's qualifying request' makes it clear that the Direction is to be understood by reference to the application to which it responded.

2.6 That formulation and approach reflects the underlying statutory context. Section 35ZA(2) provides that the power in section 35(1) to give a direction in a case within section 35(2)(a)(ii) (business or commercial projects of prescribed description) is exercisable only in response to a 'qualifying request'. Section 35ZA(11) defines a 'qualifying request' as a written request for a direction which (emphasis added):

(a) ***specifies the development to which it relates; and***

(b) ***explains why the conditions in section 35(2)(a) and (b) are met in relation to the development.***

2.7 In the formal application made to the Secretary of State for the Section 35 Direction ("**the Section 35 Application**")¹ SEGRO not only made clear that the development to which it relates included a sustainable carbon neutral campus/headquarters including co-located head office functions, but also emphasised and relied upon that feature of the Proposed Project as an important component relevant to its purported national significance.

2.8 Section 4 of the Section 35 Application is entitled 'The Proposed Development' and its purpose was to satisfy the requirement in section 35ZA that a qualifying request must specify the development to which the request relates.

2.9 At paragraph 4.2 SEGRO explained (emphasis added):

... The proposal is for a logistics and manufacturing hub including a very substantial carbon neutral campus/headquarters required by Maersk.

¹ A copy of the Section 35 Application is located at Annex C to these submissions.

- 2.10 The importance of this ‘very substantial carbon neutral campus/headquarters’ was further explained and emphasised at paragraph 4.6 (emphasis added):

The development would be anchored by a new centralised UK operation for Maersk ... which would make up a third of the total EMG2 site.

- 2.11 Further detail in respect of this anchor element of the development and its importance was provided in paragraphs 4.7 and 4.8 (emphasis added):

4.7 Maersk’s ambition is to bring together its UK operation to create a carbon neutral inland port with access to rail, road and air. At EMG1, Maersk already occupies an existing 65,000 sq.m (700,000 sq.ft) logistics operation within the Freeport area and is in the process of delivering a bespoke rail-freight container handling facility on land adjacent to the rail freight terminal operated by Maritime Transport. The proposed campus at EMG2 would build upon the success of these facilities at EMG1 to create a national centre of operations. The facilities would comprise of both logistics warehousing and co-located head office functions. This strategic project requires a high quality, comprehensively master planned environment, of a calibre and scale commensurate with what has been delivered by SEGRO at EMG1.

4.8 Maersk’s two key visions of integrating logistics and achieving Net Zero by 2040 are closely aligned with the East Midlands Freeport objective of being the UK’s pre-eminent multimodal inland Freeport. The inter-port rail connectivity provides a key enabler for Maersk in integrating both Ocean and domestic supply chains whilst also meeting environmental objectives. Its new logistics facility at EMG1 has been constructed in accordance with the UKGBC Net Zero Carbon Standard and the ambition is for the new connected container yard (adjacent to the Maritime Transport Rail Terminal) to run with net zero emissions. Maersk aim to link this with electric HGVs which will create further opportunities for supply chain decarbonisation by enabling last mile journeys from the Rail Terminal to Maersk’s facilities at EMG1 to be undertaken by electric HGV along with subsequent final mile deliveries.

- 2.12 Section 5 of the Section 35 Application sought to address relevant considerations arising from the DCLG’s 2013 Policy Statement on the making of section 35 directions in the context of the Proposed Project as specified in section 4. In paragraph 5.13 SEGRO relied upon the importance of the proposed new facility for Maersk (emphasis added):

... The proposed development will be home to Maersk’s new national operational hub, creating an inland port and will take up approximately a third of the total site. The proposed development would therefore support and encourage the strategic growth plans of a major global logistics and shipping company to strengthen their presence in the regional [sic] and further afield. This would not be possible without building on their already significant commitment at EMG1.

- 2.13 Mindful of the jurisdictional significance of the description of the proposed development to which it relates, the Direction warns SEGRO that if the details of the Proposed Project change, SEGRO ‘may wish to seek confirmation from the Secretary of State that the development which is to be the subject of the proposed application is the same as that for which this Direction is given.’ SEGRO did not seek any such confirmation before submitting the DCO Application and has therefore proceeded at risk.

- 2.14 The DCO Application as submitted fails to comply with the Section 35 Direction in two critical respects:

(a) First, the dDCO makes no provision for, and does not secure the delivery of, the ‘substantial carbon neutral campus/headquarters including co-located head office functions’ which formed an integral part of the project description in the Section 35 Direction. The principal powers in Part 2 of the dDCO authorise operation and use only for ‘logistics and advanced manufacturing uses’ – there is no reference to a

carbon neutral campus or headquarters.² No plans or assessments accompanying the DCO Application show these aspects.

- (b) Second, the description of development applied for is confined to B2 and B8 uses and does not include the Use Class E(g)(i) consent that would be necessary to authorise the 'co-located head office functions' expressly identified in the Section 35 Direction or a mixed-use campus development comprising a combination of such uses.

- 2.15 In both respects, the development that would be authorised by the dDCO does not correspond to the development described in the Section 35 Direction and would not secure its delivery. If the Secretary of State were to grant development consent for a scheme that departs from the Direction in these respects, such a decision would be ultra vires and susceptible to challenge.
- 2.16 SEGRO's Deadline 1 submissions have reinforced rather than answered these concerns. Each is addressed in turn below.

Carbon Neutral Campus

- 2.17 The dDCO as submitted makes no specific provision for, and does not secure the delivery of, the carbon neutral campus element identified in the Section 35 Direction. It is not reflected in the description of development in Schedule 1. It is not shown on plans accompanying the application. It is not secured through the requirements in Schedule 2. There is nothing else of which Prologis is aware that would secure the delivery of such development, whether by a particular point in time or at all, in the event the DCO were granted.
- 2.18 SEGRO's response to Action Point 15 has served only to deepen this concern. That response has introduced a material and revealing qualification to SEGRO's position. SEGRO now states that the project "*consisted primarily of a logistics and manufacturing hub and, only if required by Maersk, a carbon neutral campus/headquarters*" (emphasis added).
- 2.19 That characterisation represents a fundamental departure from the basis on which the Section 35 Direction was sought and granted. It is wholly inconsistent with the terms of SEGRO's own application for the direction (see above).
- 2.20 At ISH1, counsel for SEGRO submitted that the carbon neutral campus was 'not integral' to the Section 35 Direction. That position was unsustainable when it was advanced, and the Applicant's response to Action Point 15 has rendered it wholly untenable. SEGRO now seeks to dismiss the campus element by asserting that the Secretary of State, in granting the direction, '*did not single it out as being key to his decision that the DCO Scheme is nationally significant*'. That assertion is irrelevant to the legal question. The relevant question is not whether the Secretary of State identified the campus as the sole or principal reason for granting the direction, but whether the project as described in the direction (and for which the Secretary of State exercised the section 35 power) includes a substantial carbon neutral campus/headquarters. It plainly does.
- 2.21 The attempted retreat from the description of the proposed development in the Section 35 Application and Direction is made more explicit by the proposed requirement that SEGRO now offers. The draft requirement provides that:

"any part of the authorised development which comprises a campus/headquarters including co-located head office functions shall be carried out in accordance with a scheme submitted

² Article 5 of the dDCO provides: "Subject to the provisions of this Order and to the requirements, the undertaker and any persons authorised by the undertaker may operate and use that part of the authorised development comprised in Works Nos. 1 to 5 for the purposes of logistics and advanced manufacturing uses, any purposes for which such parts of the authorised development is designed and for any purposes ancillary to those purposes."

to and approved by the local planning authority setting out the measures to be taken with a view to achieving carbon neutral construction".

- 2.22 That requirement is purely contingent: it applies only 'if' a campus comes forward. It does not secure the delivery of the element that was integral to the Section 35 Direction; it merely imposes a carbon neutrality standard in the event that such development is independently proposed by an occupier. The proposed requirement is further diluted by not requiring the achievement of carbon neutral status, but rather "a view to it". Furthermore, the carbon neutral component is limited to construction, which is in conflict with paragraph 4.8 of the Section 35 Application which refers to the ambition for the new container yard "to run with net zero emissions" - a formulation which addresses operational emissions, not merely those arising from construction.
- 2.23 Accordingly, the proposed requirement does not secure provision of the campus and equally fails to secure carbon neutrality. The proposed requirement simply underlines the conclusion that what is now proposed does not correspond with the description of the Proposed Project in the Section 35 Direction, and that as a result the Secretary of State does not have the jurisdiction to grant a DCO in the terms applied for.
- 2.24 In those circumstances, SEGRO has two potential options available to address the jurisdictional issue:
- (a) it could seek to amend the application to bring it within the scope of the Section 35 Direction (supported by any additional assessments that may be required as a result); or
 - (b) it could withdraw the application.
- 2.25 Simply persisting with the application in its current form and relying on the position stated at Deadline 1 is plainly not a reasonable option for SEGRO. It would lead either to an unlawful decision by the Secretary of State to grant a DCO in circumstances where there is no power to do so and the likelihood of legal challenge or, more likely, a refusal to grant the DCO applied for.
- 2.26 Furthermore, the particular facts of this case illustrate the importance of that jurisdictional issue. SEGRO sought a Section 35 Direction so that it could obtain powers of compulsory acquisition over land actively being promoted for essentially the same type of development by a third party (initially MAG and later MAG/Prologis). In seeking now to justify the grant of such powers, it lays claim to the benefit of the Secretary of State's conclusion that the Proposed Project described in the Direction is nationally significant. But the decision made pursuant to the Section 35 Application was in respect of a materially different development, one with a 'very substantial' campus/headquarters for Maersk, operating as an 'anchor' for the development as a whole and occupying approximately a third of the entire site. That is no longer what is proposed and its delivery would (at best) not be secured if the DCO was granted in its current form.
- 2.27 The change in the description of development from that contained in the Section 35 Application and Direction is reflected in the absence of any binding contractual commitment from Maersk or any other potential customer. There is nothing in the DCO Application that secures Maersk's stated support for centering its UK operation at the EMG2 site such that the Examining Panel ("**ExP**") and the Secretary of State can properly rely upon it as ensuring that the development authorised reflects that covered by the Section 35 Direction. The Maersk letter is a statement of aspiration, not a legally enforceable obligation. As might be expected of any prudent potential customer at this early and uncertain stage, Maersk has not made any binding commitment. If Maersk chooses not to proceed in line with its letter, there would be no legal means of compelling SEGRO to deliver the development as described by the Section 35 Direction.
- 2.28 As matters stand, SEGRO would (at the very least) be free to develop a scheme which is materially different from that to which the direction relates – and it cannot be assumed that

such a scheme, short of the carbon neutral campus/headquarters, would have been judged by the Secretary of State to be nationally significant.

- 2.29 In addition, if the Secretary of State is persuaded by evidence that Maersk or any other potential customer does have a requirement for a carbon neutral campus or headquarters facility in this location, there is no reason why that requirement could not equally be met by Prologis or any other developer on the site. Any such requirement would not be specific to SEGRO and provides no justification for the grant of compulsory acquisition powers.
- 2.30 The fact that SEGRO's own proposed requirement applies to 'any occupier' who proposes a campus, and is not limited to Maersk, is itself an acknowledgment that the delivery of this element is not dependent on SEGRO as the developer or the making of the DCO.
- 2.31 There is also no evidence of a binding commitment by SEGRO that the facility referred to in the letter of support (if it was ever to come forward) will have the critical characteristic of being carbon neutral. SEGRO has not defined what it considers 'carbon neutral' to mean in this context (either in the proposed requirement or otherwise), nor distinguished between the concepts of carbon neutrality and net zero carbon in current practice in either construction or operation. Neither term has any established legal meaning which could be relied upon to fill that lacuna. As counsel for Prologis submitted at CAH1, whilst historically these terms 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 or indeed any reduction.
- 2.32 The use of the formulation '*with a view to achieving*' in the proposed requirement further dilutes the commitment: it does not require carbon neutral construction to be achieved, only that measures are taken 'with a view to' achieving it – an aspiration, not a standard. It does not address the operation phase of the intended "campus/headquarters".
- 2.33 Thus, even leaving to one side the jurisdictional barrier that exists to the granting of the DCO as applied for, the element of the scheme that was presented to the Secretary of State as a defining characteristic of the project justifying its national significance has been reduced to a contingency that may or may not materialise.

Co-Located Head Office Functions

- 2.34 So far, SEGRO has not sought to address the correct land use classification of a "campus/headquarters including co-located head office functions". These terms are not defined in the proposed requirement, and nor are they used anywhere else in the dDCO. Once SEGRO has set out its position on this matter, Prologis will have the opportunity to consider what is said and to respond. It is possible that SEGRO may seek to argue that the head office functions should properly be regarded as purely ancillary to the primary B2/B8 uses, and thus that a development as described in the Section 35 Direction *could* in principle be constructed and operated under the DCO as applied for (even if there is no certainty that would happen). Any such argument does not withstand scrutiny. The Section 35 Direction describes a '*substantial carbon neutral campus/headquarters including co-located head office functions*'. The use of the word 'substantial' is significant and reflects the development specified in the Section 35 Application. A substantial headquarters is not naturally read as incidental floorspace that is merely ancillary to warehouse uses. If the headquarters element is a substantial part of the development case – as SEGRO clearly and unequivocally represented to the Secretary of State in seeking the Section 35 Direction – it should be expressly authorised and assessed as such.
- 2.35 The Section 35 Direction applies to a scheme of development that includes '*co-located head office functions*'. As explained above, such a development would fall within Use Class E(g)(i) (offices) under the Town and Country Planning (Use Classes) Order 1987 (as amended). Alternatively, it would comprise a mixed use development including Class E(g)(i) (offices). However, as per the DCO Application's Planning Statement and Transport Assessment, the

description of development applied for includes B2 (general industrial) and B8 (storage and distribution) uses only. No E(g)(i) use is included (or suitable mixed use), and no provision for it is made in Schedule 1 to the dDCO or elsewhere in the application documents.

- 2.36 This presents a significant and currently unanswered question regarding the treatment and provision for the suggested Maersk headquarters. If the substantial co-located head office functions are to be treated as ancillary to the B2/B8 uses, they would need to be subsidiary in both scale and purpose to those primary uses, with appropriate controls in the requirements securing this limitation. This was plainly not the intention at the time the Section 35 Direction was sought and made, where this element of the development was described as ‘very substantial’.
- 2.37 A further consequence of the way in which the proposed development has been framed in the application documents is that the Secretary of State has no basis on which to assess the impacts of such a headquarters (whatever its carbon credentials), as it has not been provided for in SEGRO’s own environmental impact assessment or transport assessment. The environmental effects of a substantial campus/headquarters with co-located head office functions – including traffic generation, air quality, landscape and visual impact, and effects on residential amenity – would be materially different from those of a B2/B8 logistics scheme, yet none of these impacts have been assessed. Note that the headquarters functions include but are not limited to the head office functions.
- 2.38 Even if, somehow, the jurisdictional and assessment issues could be overcome without SEGRO changing the application so that it aligned with the Section 35 Direction, the mismatch between the proposed development in the DCO and the Proposed Project as defined in the Section 35 Direction would have significant consequences for the assessment of the case for compulsory acquisition. SEGRO has only been given the opportunity to seek powers of compulsory acquisition as a result of the Section 35 Direction, which is founded upon a particular and express description of the Proposed Development on its face. If that development either would not or may not actually be delivered if the DCO is implemented in full, for the reasons set out above that necessarily affects the judgment to be made by the Secretary of State as to whether a compelling case exists to grant powers of compulsory acquisition. In short, when the proposed development is shorn of that additional distinguishing element it can no longer be assumed to be nationally significant and the public interest benefits claimed for the opportunity for SEGRO to deliver B8/B2 development on the Prologis/MAG land rather than this being delivered by Prologis/MAG become even more limited in nature.

3 Response to SEGRO’s Position on Reasonable Alternatives

These responses relate in particular to DCO 7.2 (Response to Relevant Representations), Appendix 6

CA Guidance

- 3.1 SEGRO’s Deadline 1 response to Prologis’s Relevant Representation demonstrates a misunderstanding of the approach to the consideration of potential alternatives in the application of the compelling case test under section 122 PA 2008.
- 3.2 The CA Guidance is inevitably subsidiary to the legal test set by Parliament, which is that the case for compulsory acquisition must be compelling. That in turn reflects the pre-existing caselaw that informed the use of those words in the PA 2008 and explains what that means in practice. The words used in the CA Guidance must be understood and applied having careful regard to that legal context.
- 3.3 The approach to the consideration of alternatives, and the adequacy of the Applicant’s exploration of alternatives before resorting to an application for compulsory powers, must be seen against the backdrop of the recognition by the courts of the draconian nature of such powers and the reasons why a compelling case is needed to justify their use. In ***Mapeley***

Beta Acquisition Co Ltd. v. SSCLG [2016] EWHC 2997 (Admin) the court described property ownership as a constitutional right that is jealously guarded by law. A compelling case that compulsory acquisition is necessary in the public interest must therefore be made out to take this right away without consent. One aspect of that robust legal protection of this constitutional right which forms part of the compelling case test is that before that draconian sanction is adopted other options should have been considered and discarded (see **Margate Town Centre Regeneration Co Ltd. v. SSCLG** [2013] EWCA Civ 1178). Resort to compulsory acquisition is intended as a last resort (see **Saravanamuthu v. SSCHLG** [2025] EWHC 2132 (Admin)). These cases are considered in further detail in section 4 below in respect of the correct understanding and application of the compelling case test.

- 3.4 When considering alternatives in the context of an application for powers of compulsory acquisition, both timing and evidence are key. This is reflected in paragraph 8 of the CA Guidance which requires the Applicant “*to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored*” (emphasis added). It is important to note the use of the past tense. It is not a matter of responding to suggested alternatives after the application for compulsory powers has been made. The burden is instead squarely on the Applicant to demonstrate what was done to consider alternatives before the decision to seek compulsory powers.
- 3.5 SEGRO’s response to the five alternatives identified by Prologis³ states at paragraph 3.57 that ‘*the guidance does not require that the alternatives must be ruled out as definitely unworkable or any other similarly high bar. Rather the guidance requires that reasonable alternatives be explored*’. That response misses the point in two important ways. First, it fails to recognise the context for and important purpose of the consideration of alternatives here, and thus the importance of demonstrating a thorough, systematic and open-minded examination of alternatives by SEGRO. Second, it fails to grapple with the implications of the points explained above about timing and the need for evidence.
- 3.6 The key question therefore is not whether SEGRO can now, at the examination stage, articulate reasons why each alternative raised by Affected persons in their Relevant Representations might be said to be problematic. The burden is on SEGRO to demonstrate that it considered reasonable alternatives prior to submission of the DCO Application. Where it is proposed to seek draconian powers to interfere with a constitutional right that is jealously guarded by law, that consideration must be shown to be genuine, structured and thorough. Anything less would not be enough to discharge the burden that the law and the CA Guidance has imposed. This should have included each of the alternatives put forward by Prologis and any other reasonable alternatives.
- 3.7 In this context it is striking that SEGRO’s response provides no indication, let alone evidence, of when, by whom, or on what basis alternatives were assessed prior to the DCO Application being made. That is a remarkable state of affairs given the clear terms of the CA Guidance, the fact that the examination is now well underway and that SEGRO has submitted its response to Relevant Representations by Affected Persons which squarely raise this point. It may well indicate that this crucial step was not taken, or not taken seriously, before the application was submitted. If that does prove to be the case, SEGRO simply will not be able to satisfy the requirements of the CA Guidance.
- 3.8 Each of the five alternatives identified by Prologis represents a pathway that could and should have been thoroughly examined by SEGRO before seeking compulsory acquisition powers. They are not abstract possibilities but concrete steps that were available to SEGRO and that it chose not to take or explore with the landowners.
- 3.9 In support of its assertion that alternatives have been ‘thoroughly explored’, SEGRO offers a single sentence: ‘*It is indisputable from the record of interaction between the parties that alternatives have been thoroughly explored with a genuine view on the part of SEGRO to*

³ DCO 7.2 Response to Relevant Representations, Appendix 6, paragraphs 3.55-3.79

reach agreement.' The record set out at Annex 1 of SEGRO's response does not tell the full story. It demonstrates that correspondence took place, but it does not demonstrate what alternatives were explored, what information was prepared to inform any such consideration, and how and by whom the alternatives were assessed. It is incapable of being treated as evidence capable of discharging the burden to demonstrate that alternatives have been properly explored before compulsory powers were sought.

- 3.10 Notably, each of the alternatives currently under consideration has been proposed by Prologis in response to the application for compulsory powers, not by SEGRO. Despite multiple requests, SEGRO has failed to share information necessary to enable proper evaluation of those alternatives, even at this late stage. This is not the conduct of a party genuinely exploring alternatives; it is the conduct of a party seeking to foreclose them. Properly understood in appropriate context, the chronology represents the repeated attempts by Prologis to initiate the exploration of alternatives and SEGRO placing obstacles in the way of the genuine exploration of those alternatives. The absence of any substantive documentation showing a pre-application internal assessment of alternatives before the ExP is telling. SEGRO's position amounts to an attempted post hoc rationalisation in the face of opposition, not the pre-decision structured assessment contemplated by the CA Guidance and required in the practical working out of the implications of the surrounding legal context.
- 3.11 Therefore, SEGRO has not met the evidential test in the CA Guidance and its internal decision-making process must be examined to understand whether there is in fact any evidence reasonably capable of meeting that test. To confer powers of compulsory acquisition on the current basis, the Secretary of State would have to act contrary to the CA Guidance. It is difficult to contemplate how a compelling case could exist on the facts here if that Guidance is not satisfied.

Overarching Points

- 3.12 SEGRO's 'overarching points'⁴ warrant close examination. First, at paragraph 3.59,⁵ SEGRO asserts that alternatives (a) and (b) depend upon planning permission being granted pursuant to the Joint Application, '*the likelihood and timing of which is wholly uncertain.*' SEGRO's reliance on the alleged uncertainty of the Joint Application is misplaced when regard is had to the material uncertainties affecting its own DCO Application. As set out in Section 2 of this submission, a serious issue has arisen as to whether the Secretary of State has jurisdiction to grant the DCO as applied for. That legal obstacle to the lawfulness of any decision to make a DCO as applied for in this case is additional to the issue of viability and deliverability and the other inherent uncertainties of the DCO process itself.⁶ SEGRO cannot simultaneously assert that the Joint Application is too uncertain to form the basis of an alternative whilst advancing a DCO Application that is itself beset by uncertainty and, if successful, the attendant risk of legal challenge.
- 3.13 Even setting those points to one side, SEGRO cannot assert that open-minded decision makers are more or less likely to deliver a positive outcome to an application in one forum, but not in another. The decision-making process followed by the local planning authority is public and transparent. The ExP and in due course the Secretary of State will be able to follow that process without difficulty by seeking updates from NWLDC. Other interested parties will be able to review and supplement any response it provides by reference to publicly available material.
- 3.14 Further and in any event, SEGRO has based its response on the unrealistically pessimistic assumption that the uncertainty on which it relies will persist even at the stage that the Secretary of State comes to determine its application for a DCO. That is not an assumption that could sensibly be made by the ExP for the purposes of examining the application and it

⁴ DCO 7.2 Response to Relevant Representations, Appendix 6, paragraphs 3.58–3.67

⁵ DCO 7.2 Response to Relevant Representations, Appendix 6

⁶ As per paragraphs 4.13 and 5.23(c) of the Prologis Written Representation

will plainly need carefully to consider how the grant of planning permission might affect the position so that this can be factored into its report and recommendation to the Secretary of State. Having regard to that task facing the ExP, SEGRO's failure to engage openly and fully with those implications in its response to Prologis's representations is surprising and unhelpful to the proper examination of its application for powers to compulsorily acquire Prologis's land.

- 3.15 It is also notable that SEGRO has itself sought to characterise the Joint Application as interfering with its DCO. In its letter of objection to the Joint Application dated 5 January 2026, SEGRO stated that approval of the Joint Application would '*undermine the DCO process and the SoS's direction that the EMG2 scheme is a project of national significance*'. This position is difficult to reconcile with SEGRO's simultaneous assertion that the Joint Application is too uncertain to form the basis of a reasonable alternative. SEGRO cannot credibly contend both that the Joint Application poses a real threat to its DCO process (warranting objection) and that it is so uncertain as to be incapable of being delivered. Nor is it appropriate for SEGRO to invoke its own objection to the Joint Application as evidence of the uncertainty of that application – particularly when the substance of that objection has been contested by Prologis.
- 3.16 SEGRO has instead sought to dismiss the reasonableness of alternatives (a) and (b) based upon their uncertainty concerns rather than recognising that planning permission for the proposed uses is very likely to be granted sooner rather than later: the site will become a draft employment allocation in the Regulation 19 version of the Local Plan; it is located in the Freeport and the Applicant is itself seeking development consent for essentially the same development on that land in the DCO. These matters along with the locational advantages of the site and the fact it is controlled by a willing and capable developer actively promoting its development mean that absent the DCO there is reasonable certainty that it will come forward for employment development. Hence rather than dismissing these alternatives, SEGRO should have considered the implications of a grant of planning permission for the compelling case test, including if necessary the implications of any uncertainty as to exactly when it is granted.
- 3.17 Second, SEGRO asserts at paragraphs 3.60–3.61⁷ that some of the alternatives would '*adversely impact on the delivery of the whole DCO scheme*' and involve a '*mix and match approach*'. This argument begs the very question at issue: whether comprehensive single-developer delivery *via* compulsory acquisition is necessary in the public interest on the particular facts of this case. SEGRO's submission presupposes the answer it seeks to prove. As repeatedly emphasised by Prologis, the relevant question is whether the benefits that might *potentially* be achieved *via* Compulsory Acquisition are so great as to justify granting such powers – not whether the alternatives precisely replicate SEGRO's preferred delivery model. The mere fact that an alternative would involve some adaptation from the current DCO design does not render it unreasonable. Moreover, given the site's credentials (essentially similar to those set out above) it is entirely reasonable to conclude that the Southern Land, and therefore the benefits associated with development of the entire site, are also likely to come forward via a planning application without the need for compulsory acquisition. Prologis alternatives (c) and (d) address whole DCO site delivery using standard planning and commercial mechanisms such as a Joint Venture Agreement which could include equalisation of costs for off-site highways and on-site spine road / utilities / physical infrastructure.
- 3.18 Paragraph 3.62 also exposes a fundamental inconsistency in SEGRO's position. Without prejudice to the submissions on viability to be made at Deadline 3, the scenario that SEGRO dismisses as one that '*could not happen*' is precisely the scenario that SEGRO has itself relied upon in Appraisal 2 of its Viability Appraisal to seek to demonstrate to the Secretary of State that the Southern Land cannot viably be developed on its own. SEGRO cannot have it both ways: either the scenario it has used in its Viability Appraisal reflects the most realistic and robust (i.e. commercially attractive) option for the independent development of the Southern Land or it does not. If it does not, Appraisal 2 does not provide (and could not properly be held to provide) evidence capable of justifying the assertion made in SEGRO's

⁷ DCO 7.2 Response to Relevant Representations, Appendix 6

Statement of Reasons. This is an issue that Prologis will address at Deadline 3 when it responds to the Viability Appraisal.

- 3.19 Third, SEGRO argues at paragraph 3.65 that alternatives require '*joint, co-operative working between developers*' and that '*all attempts to negotiate such terms have failed.*' Prologis does not accept that characterisation. First, joint, collaborative working is entirely commonplace in active and high growth development areas – it is not to be treated as a difficulty that justifies the use of draconian powers of compulsory acquisition. SEGRO is itself working with local and highway authorities through a Transport Working Group (the developer grouping refers to itself as 'East Midlands Growth Point'). As far as Prologis is concerned, negotiations remain ongoing notwithstanding SEGRO's efforts to foreclose them. SEGRO's assertion that Prologis is 'difficult' to negotiate with is difficult to reconcile with the fact that it is SEGRO, not Prologis, that has sought to characterise the negotiations as having failed.
- 3.20 Finally, it is important to recognise that it will not properly be open to the ExP or the SoS to simply accept at face value SEGRO's assertion that it has made reasonable attempts to negotiate in good faith and that this has failed, particularly in circumstances where those matters are contested. Those are matters calling for evidence, and that evidence will need to be thoroughly tested.

Reasonable Alternatives

- 3.21 Paragraphs 3.69 - 3.73 address SEGRO's concerns with alternative (a). This alternative will provide certainty of delivery of the Joint Application scheme to realise its benefits for the Freeport. Prologis accept that this does not provide certainty for the delivery of the Southern Land, but the Joint Application will facilitate the principal access corridor that could provide access to the Southern Land. The Southern Land will become a draft employment allocation in the emerging Local Plan, and it is within the Freeport, so Prologis consider that in this alternative scenario, there is a reasonable prospect of employment development being delivered upon it in the absence of the DCO. The Council are bringing forward the East Midlands Freeport Strategic Infrastructure and Contributions Supplementary Planning Document (currently a draft) which sets out a framework for contributions towards off-site highways improvements and site-specific infrastructure delivery.
- 3.22 Paragraph 3.74 purports to address alternative (b) but in reality, simply fails to engage with it in any meaningful way. As explained in Prologis's RR and WR, the underlying principle reflected in alternative (b) is that in the event that the use of compulsory acquisition could be justified to enable the land south of Hyam's Lane to be developed, that objective could be achieved simply by taking the land and/or rights over land between the Southern Land and the public highway. This would leave Prologis and MAG free to develop the remainder of the Northern Land (either under the DCO or any planning permission granted to them, depending on the circumstances). SEGRO's only response to this alternative in its Deadline 1 submissions is to assert that it has the same difficulties as described in response to alternative (a) and that it "does not overcome the dependency of the southern land on the northern land and crucially the need for co-operation from a competitor". That response is patently inadequate and misconceived. First and foremost, if SEGRO had powers to achieve access to the southern land by compulsion it clearly would overcome the dependency to which it refers. It is understood that SEGRO has agreed terms with the landowner of the Southern Land which exclude the use of compulsory acquisition powers, thereby closing off this route for itself. Second, the objections made to alternative (a) do not provide a satisfactory basis for discounting alternative (b).
- (a) Alternative (b) does not depend on planning permission being granted on the northern land, and the principle would apply equally if instead Prologis were to rely on the development consent which SEGRO has applied for under the DCO (see the Spawforths' Report appended to Prologis's Written Representations at pages 30-32, scenario (b)(ii)).

- (b) For the same reasons, concerns about ‘mix and match’ could be addressed through the same route, if they had any merit. In reality, the two developments are so similar in their essential nature and form that this issue cannot amount to a point of principle.
 - (c) It is for the party seeking powers of compulsory acquisition to demonstrate that such an approach would render it impossible or excessively difficult to deliver the DCO as a whole. For the reasons set out in Prologis’s RR and WR and in this response, SEGRO has failed to show why two highly experienced developers could not develop the site as a whole using common commercial mechanisms to deal with apportionment of costs etc and any other practical matters.
 - (d) Issues related to viability will be dealt with at Deadline 3.
- 3.23 Paragraphs 3.75 - 3.76 address alternative (c). SEGRO are correct that Prologis could implement the Joint Application under this scenario, but they could alternatively implement the DCO scheme on the northern land. In considering this objection to alternative (c), it is to be recalled that SEGRO’s case is that the development proposed in the Joint Application is not commercially viable. Whilst Prologis does not accept this, and will respond in more detail to the suggestion at Deadline 3, SEGRO’s position on viability is plainly inconsistent with this element of its response. In short, if SEGRO wishes the Secretary of State to conclude on the evidence that the development proposed in the Joint Application is unlikely to be implemented because of a lack of commercial viability, it cannot also invite the conclusion that if Prologis is given the ability to implement the DCO on its land it will instead be likely to implement the Joint Application scheme. In any event, this is an entirely reasonable alternative that should have been considered by SEGRO prior to deciding to seek Compulsory Acquisition powers, and is still capable of being pursued now. It addresses SEGRO’s case as to the benefits of facilitating whole DCO scheme delivery, and any issues calling for co-ordination could be dealt with through standard planning and commercial mechanisms such as a Joint Venture Agreement. Such an agreement could include equalisation of costs for off-site highways improvements and on-site spine road / utilities / physical infrastructure delivery.
- 3.24 Paragraphs 3.77 - 3.79 seek to dismiss alternatives (d) and (e) with great brevity. As noted, the reasonable alternatives should have been explored by SEGRO as a precursor to Compulsory Acquisition and hence should have been considered before the Examination commenced. If this was the case, then the DCO scheme could have been amended to achieve the targeted substitution of some of the Joint Application parameters. Alternative (d) proposes the implementation of the DCO scheme with targeted amendments, combined with standard planning and commercial mechanisms such as a Joint Venture; and alternative (e) does the same with the whole DCO scheme being implemented by a single SEGRO / Prologis Joint Venture entity which would decide whether (or not) to include amendments to the DCO scheme to reflect the Joint Application parameters. The “enhanced benefits” would be those from the Joint Application scheme such as the on-site Training Hub and larger development zone in the northern area. Both these alternatives are entirely reasonable.
- 3.25 The ExP is invited to note the disparity between SEGRO’s assertion that alternatives have been ‘thoroughly explored’ and the remarkably thin and unevidenced nature of its responses. Each alternative is dismissed in terms that presuppose the very conclusions SEGRO seeks to establish; that comprehensive single-developer delivery is essential; that the Joint Application creates unacceptable uncertainty; and that collaboration with Prologis is impossible. None of these propositions is self-evident, and SEGRO’s submissions do not provide the evidential foundation to support them.
- 3.26 Prologis repeats the invitation made to the ExP at paragraph 6.8 of the Prologis Written Representation to seek a detailed disclosure of the internal decision pathway that led to the conclusion that compulsory acquisition of the Prologis/MAG Land was necessary and proportionate having explored all reasonable alternatives. The current absence of any such evidence suggests that the alternatives were not genuinely explored before the decision to seek compulsory acquisition was made, and that SEGRO’s current responses constitute post hoc rationalisation rather than the demonstration of what was done required by the CA Guidance.

4 Compulsory Acquisition: The Compelling Case

These responses relate in particular to DCO 7.2 (Response to Relevant Representations), Appendix 6.

- 4.1 In its Deadline 1 submissions, SEGRO has revealed a significant misunderstanding of the nature and operation of the compelling case test and the legal standard that must be satisfied before the Secretary of State may authorise the compulsory acquisition of the Prologis/MAG Land. This section addresses:
- (a) the manner in which SEGRO has articulated its case; and
 - (b) the judicial treatment of the compelling case test and its implications here.

SEGRO's Case on the Compelling Case Test

- 4.2 At paragraph 3.47 of its response to the Prologis Relevant Representation, SEGRO addresses the balance of 'public benefits v private loss'. SEGRO's articulation of the test is revealing. It acknowledges that the CA Guidance requires 'compelling evidence' of public benefit outweighing private loss, but then asserts that the Guidance '*does not qualify the term "outweigh"*' and that '*there is no requirement such as to significantly, substantially or greatly outweigh.*' SEGRO thereby advances the proposition that a marginal improvement in public benefit over private loss is sufficient to satisfy the statutory test. That proposition is wrong in law and the Secretary of State's decision would be susceptible to challenge if the application was determined on that basis.
- 4.3 It is nevertheless instructive to note that SEGRO has prepared and advanced its case on the basis of this understanding of the applicable legal test. The ExP and the Secretary of State will therefore need to read and appraise SEGRO's Statement of Reasons with that legal error clearly in mind.
- 4.4 The error is a fundamental one. Section 122(3) of the PA 2008 provides that the Secretary of State must be satisfied that 'there is a compelling case in the public interest' for the compulsory acquisition. The word 'compelling' is significant: it imports a standard that is materially higher than a bare balance of advantage. In framing section 122 of the PA 2008 Parliament chose to import the concept of the compelling case into legislation. As explained in more detail below, it is necessary to have regard to the caselaw when seeking to understand and apply the test. As the caselaw makes clear, the public benefits must not merely outweigh the private loss; they must do so decisively. Parliament chose the word 'compelling' for a reason: it connotes a standard that is qualitatively different from a bare balance of advantage.
- 4.5 SEGRO's approach treats the statutory test as if it were no more than a conventional planning balance – an exercise in which the decision-maker weighs benefits against harms and, if the former marginally exceed the latter, grants consent.
- 4.6 That is not what section 122(3) requires. The compelling case test is not merely a balance; it is an all-embracing assessment that includes consideration of: (a) the alternatives that were or ought to have been explored; (b) the attempts made to avoid CA through changes to the scheme or through negotiation; (c) the balance of public interest benefits against public interest harms; and (d) the proportionality of the interference with private rights.
- 4.7 SEGRO's approach also fails to grapple with the distinct character of the compelling case test as recognised in paragraph 16 of the CA Guidance, which provides that '*There may be circumstances where the Secretary of State could reasonably justify granting development consent for a project, but decide against including in an order the provisions authorising the compulsory acquisition of the land.*' That makes explicit that the test for granting development consent and the test for authorising compulsory acquisition are different and separable. A scheme may be acceptable in planning terms – the benefits may 'outweigh' the harms in the

planning balance – but the additional and distinct threshold of a ‘compelling case in the public interest’ for compulsory acquisition may not be met.

- 4.8 As the Court of Appeal confirmed in *R (FCC Environment (UK) Ltd) v Secretary of State for Energy and Climate Change* [2015] EWCA Civ 55 ("**Rookery**") the test for compulsory acquisition is distinct from, and not automatically satisfied by, any decision to grant development consent.⁸

Judicial Treatment of the Compelling Case Test

- 4.9 The courts have considered the approach to the compelling case test in compulsory purchase cases and have established a clear and consistent line of authority that bears directly on the present case. The Court has used the term "draconian" in the context of compulsory acquisition given the level of intervention in private rights effected by the grant and exercise of powers of compulsion. The term is not used lightly and decision-makers should be alive to its importance – it is not a rhetorical flourish but the word used by the Court.

- 4.10 In *R v Secretary of State for Transport, ex parte De Rothschild* [1988] 57 P&CR 330, the Court of Appeal considered the principles to be applied when the court reviews the Secretary of State’s confirmation of a compulsory purchase order and held:

*"the Secretary of State must be satisfied that the compulsory purchase order is justified on its merits before he can properly confirm it. He must not exercise his powers capriciously. Given the obvious importance and value to land owners of their property rights, the abrogation of those rights in the exercise of his discretionary power to confirm a compulsory purchase order would, in the absence of what he perceived to be a sufficient justification on the merits, be a course which surely no reasonable Secretary of State would take."*⁹

- 4.11 Whilst the Court declined to accept that "special rules" beyond ordinary *Wednesbury* principles apply to subsequent legal challenge in compulsory purchase cases, it made clear that *"the draconian nature of the order will itself render it more vulnerable to successful challenge on Wednesbury/Ashbridge grounds unless sufficient reasons are adduced affirmatively to justify it on its merits."*¹⁰

- 4.12 The *De Rothschild* formulation drew on the earlier decision of the Court of Appeal in *Prest v Secretary of State for Wales* [1983] 81 LGR 193, in which Lord Denning MR stated:

"I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised by Parliament and the public interest decisively so demands: and then only on the condition that proper compensation is paid: see Attorney-General v. De Keyser's Royal Hotel Ltd. If there is any reasonable doubt on the matter, the balance must be resolved in favour of the citizen" (emphasis added).

- 4.13 That language – ‘the public interest decisively so demands’ – is important. It establishes that the standard is not one of marginal advantage. The public interest must ‘decisively demand’ the compulsory acquisition. Lord Denning added that: *‘If there is any reasonable doubt on the matter, the balance must be resolved in favour of the citizen.’* SEGRO’s attempt to characterise the test as a bare balancing exercise in which any margin of advantage suffices is directly contrary to this established constitutional principle.

- 4.14 In *Mapeley Beta Acquisition Co Ltd v Secretary of State for Communities and Local Government* [2016] EWHC 2997 (Admin), Mr Justice Kerr stated:

⁸ Please refer to paragraph 5.4 of Prologis’ Written Representation.

⁹ *R v Secretary of State for Transport, ex parte De Rothschild* [1988] 57 P&CR 330, at 337

¹⁰ *R v Secretary of State for Transport, ex parte De Rothschild* [1988] 57 P&CR 330, at 336.

"The law jealously guards the right of a property owner to enjoy its property, which has been called a constitutional right. A compelling case that the purchase is necessary in the public interest must be made out to take the right away without consent. The Secretary of State may only endorse the destruction of the owner's property right if it is "clear that the Secretary of State has allowed those rights to be violated by a decision based upon the right legal principles, adequate evidence and proper consideration of the factors which sway his mind into confirmation of the order sought": per Watkins LJ in Prest v. Secretary of State for Wales [1983] 81 LGR 193 , 211–2, cited by Laws J in Chesterfield Properties plc v. Secretary of State for the Environment (1997) 76 P&CR 131 , 128."

- 4.15 Of particular significance to the present case is the decision of the Supreme Court in **R (on the application of Sainsbury's Supermarkets Ltd) v Wolverhampton City Council** [2010] UKSC 20. The Supreme Court considered the exercise of compulsory purchase powers under section 226 of the Town and Country Planning Act 1990 in circumstances where two rival private developers competed for the same site. Lord Collins, delivering the leading judgment, emphasised that " *The courts have been astute to impose a strict construction on statutes expropriating private property, and to ensure that rights of compulsory acquisition granted for a specified purpose may not be used for a different or collateral purpose...*" Lord Collins went on to state that:

"there is a difference between the exercise of powers of compulsory acquisition and the exercise of powers to control development and grant planning permission, which is rooted in the deep-seated respect for private property."

- 4.16 Lord Walker, in the same case, stated:

"the exercise of powers of compulsory acquisition, especially in a "private to private" acquisition, amounts to a serious invasion of the current owner's proprietary rights. The local authority has a direct financial interest in the matter, and not merely a general interest (as local planning authority) in the betterment and well-being of its area. A stricter approach is therefore called for. As Lord Collins says in his conclusions at para 71 of his judgment, a real (rather than a fanciful or remote) connection must be shown between any off-site benefits and the proposed redevelopment for which a compulsory purchase order is proposed."

- 4.17 The **Sainsbury's** analysis is of direct relevance to the present case. SEGRO is a private commercial developer. It seeks to acquire, by compulsion, the land of another private commercial developer - Prologis - which is itself actively promoting the same type of development on the same land. This is a paradigm 'private to private' acquisition of the kind that the Supreme Court identified as 'particularly sensitive' and for which 'a stricter approach is... called for.' The ExP is invited to apply that heightened standard to every element of SEGRO's case for compulsory acquisition.

5 Public Benefits versus Private Loss

These responses relate in particular to DCO 7.2 (Response to Relevant Representations), Appendix 6 and Annex 5.

- 5.1 Prologis reserves the right to supplement the submissions made in this section with its response to be submitted at Deadline 3 in relation to socio-economic issues, in accordance with the examination timetable set out in the Rule 8 Letter.
- 5.2 As explained in section 2 above, there is a direct connection between the vires issue and the assessment of the compelling case for compulsory acquisition. In addition to representing a legal barrier to the grant of the DCO as applied for, the failure of the DCO Application to accord with the Section 35 Direction has direct implications for the CA case:
- (a) First, the Section 35 Direction is the foundation for the claim that delivery of the development should attract particular weight because it is of national significance. If

the DCO Application does not correspond to the development described in the Direction, it cannot be assumed that the development is of national significance.

- (b) Second, if either the Application is amended to bring it into line with the section 35 Direction, or SEGRO seeks to argue that the proposed development as applied for already includes scope for substantial headquarters and head office functions, no such development has been assessed in the Environmental Statement or Transport Assessment. Neither the ExP nor the Secretary of State can properly evaluate the public benefits (or environmental effects) of development that has not been assessed.
 - (c) Third, in the absence of clarity about what development is actually being sought, a compelling case for compulsory acquisition cannot be made out.
- 5.3 In the context of the correct test for CA powers as outlined above, the benefits claimed by SEGRO in support of their CA case must be scrutinised to determine whether they are genuinely attributable to the exercise of CA powers – or whether they are merely additive benefits. For these purposes, ‘attributable’ benefits are those which would not arise but for compulsory acquisition; ‘additive’ benefits are those which result simply from more land being developed, regardless of whether that development is secured through compulsory acquisition or through conventional planning and commercial mechanisms. In this case, the additive benefits are those which would come forward in any event if the Southern Land were developed under the Town and Country Planning Act 1990.
- 5.4 The benefits claimed by SEGRO in its response¹¹ (including Freeport business rates, operational jobs, GVA, the community park, sustainable transport, and BREEAM Outstanding standards) are not exclusive to the DCO route and certainly do not require compulsory acquisition powers (even if delivered pursuant to development consent granted by the DCO). As noted in Section 13 of the Prologis Relevant Representation, these do not provide any material benefit which would justify CA powers. Nowhere in SEGRO’s Annex 5 comparison does it engage with the distinction between benefits that are genuinely attributable to compulsory acquisition and benefits that are merely additive. Instead, SEGRO’s analysis proceeds as if the relevant question were simply whether the DCO Scheme delivers marginally greater benefits than the Joint Application. That is not the question. The question is whether those benefits that can only be achieved through the exercise of compulsory acquisition powers are so compelling as to justify the draconian interference with Prologis’ property rights that is proposed. SEGRO has not identified any such benefits, still less demonstrated that they meet the demanding threshold of section 122(3).
- 5.5 SEGRO’s critique of the Joint Application and the timing of delivery is superficial. SEGRO identifies a series of date slippages in the anticipated determination of the Joint Application, but fails to engage with the substantive question: what would be the consequences for SEGRO’s case in the event that planning permission is granted? For the reasons briefly outlined above, Prologis is confident that the development proposed in the Joint Application is in accordance with the relevant development plan and national policy and would generate very substantial public interest benefits, and that there is nothing to displace the resulting presumption in favour of granting permission. SEGRO has appended its objection to the Joint Application at Annex 3 but tellingly it has neither appended nor attempted to engage with Prologis’ response to that objection dated 2 March 2026. In order for the Secretary of State to understand SEGRO’s case, it will be necessary to know how SEGRO says it would be affected in the event that planning permission for the Joint Application has been granted by the time of the Secretary of State’s decision. In those circumstances, the incremental benefits of the DCO Scheme over the Joint Application would be limited, and certainly not sufficient to justify the draconian interference with Prologis’ rights.
- 5.6 Moreover, it is not only private loss that must be weighed in the balance. The grant of compulsory acquisition powers would cause public loss: the loss of the opportunity to deliver the public interest benefits of the Joint Application. Those benefits noted in Section 8 of the

¹¹ DCO 7.2 Response to Relevant Representations, Appendix 6, Annex 5

Prologis Relevant Representation will be lost to the public, irrespective of whether the DCO Scheme is ultimately delivered if CA powers are granted. As explained in Prologis's Relevant Representations and Written Representations, the Environmental Statement submitted with the DCO Application does not assess this public interest harm, and SEGRO's analysis proceeds as if the only consequence of granting CA powers is private loss to Prologis and MAG. That is a fundamental deficiency in the evidence before the ExP which, as per Annex B below, SEGRO has not seen fit to rectify.

- 5.7 There is a further dimension to the public interest harm which extends beyond the immediate parties. As set out at paragraphs 5.13 to 5.18 of the Prologis Written Representation, the use of compulsory acquisition powers to reverse the outcome of a fair, open and transparent commercial competition between rival developers sets a damaging precedent whose implications would go well beyond the immediate facts.

DLA Piper UK LLP

21 April 2026

ANNEX A: DCO 7.4 – Applicant's Response to Hearing Action Points

SEGRO Ref	SEGRO Extract / Summary	Prologis Response
AP2 (Morpeth)	SEGRO acknowledges the Morpeth revocation but distinguishes EMG2 on the basis that it is privately funded and will deliver 'objectively verifiable economic benefits for the region', whereas the Morpeth scheme was a publicly funded road scheme where Government reassessment withdrew funding due to poor value for money.	<p>SEGRO's response to Action Point 2 (DCO 7.4) purports to distinguish the Morpeth Revocation Decision on the basis that EMG2 is privately funded and will deliver 'objectively verifiable economic benefits for the region', whereas the Morpeth scheme was a publicly funded road scheme where Government reassessment withdrew funding due to poor value for money.</p> <p>The Morpeth Decision actually reinforces Prologis' case for the reasons set out at paragraphs 7.7–7.25 of its Written Representation.</p> <p>SEGRO's response at Deadline 1 conflates funding with viability. As Prologis's Written Representations explain, the two are distinct concepts.</p>
AP8 (Legal basis of determination)	Legal basis of determination submissions on s.104/s.105 split.	<p>SEGRO's response to Action Point 8 conflates two legally distinct concepts: the 'salami-slicing' doctrine under the EIA Regulations and the question of whether different elements of a project should be determined under section 104 or section 105 of the Planning Act 2008.</p> <p>The 'salami-slicing' doctrine is directed at preventing applicants from artificially dividing a single project into smaller components to avoid triggering EIA thresholds. It has no application to the question addressed by Action Point 8, which is the distinct statutory question of how the Secretary of State should determine whether to grant development consent and confer other powers for the different elements of a project once properly assessed under the EIA Regulations.</p> <p>The question posed was whether the determination of the EMG2 project should be undertaken under section 104, section 105, or a 'split approach'. That is a question of statutory jurisdiction as described in <i>R (EFW Group Ltd) v Secretary of State for Business, Energy and Industrial Strategy</i> [2021] EWHC 2697 (Admin), in which Mr Justice Dove held at [59]: <i>'I accept the submission of the defendant that section 105 of the 2008 Act should be interpreted as applying to free-standing parts of an application to the extent that "section 104 does not apply in relation to the application". Such an approach reflects the purpose and intent of the legislation without</i></p>

SEGRO Ref	SEGRO Extract / Summary	Prologis Response
		<p><i>unduly disturbing the effect of the statutory language. Thus, the ExA was correct to take the approach which he did.</i> This is not a question of environmental assessment methodology. SEGRO accepts that the EMG2 project should be determined on the basis of a 'split approach', with the business and commercial development determined under section 105 and the Highways Works determined under section 104. That concession is correct, but what must then follow is a discrete assessment of the split components in order to provide the Secretary of State with the evidence necessary to make a lawful determination under each statutory framework. Without such discrete assessment, the Secretary of State cannot reliably conclude that the requirements of section 104 and section 105 have been separately satisfied.</p>
AP12 (Freeport)	<p>Factual background to the Freeport designation. SEGRO sets out the history of the EMAGIC Freeport, including available tax incentives such as 'relief from SDLT on qualifying acquisitions of land and property within the designated tax site.'</p>	<p>Two points of principle: (1) the Freeport benefits are additive, not exclusive to the DCO route – they accrue from the scale of the whole site being developed; and (2) the Freeport designation is not dependent on a single developer or on compulsory acquisition.</p>
AP15 (Carbon Neutral Campus)	<p>SEGRO states that the project 'consisted primarily of a logistics and manufacturing hub and, only if required by Maersk, a carbon neutral campus/headquarters.' SEGRO contends that 'unless and until the DCO is made, there is insufficient certainty to commit to EMG2' and that 'it is not considered appropriate for the dDCO to secure the provision of a carbon neutral campus/headquarters for Maersk.' A contingent requirement is proposed applying only if a campus comes forward.</p>	<p>SEGRO is now introducing conditionality to the carbon neutral headquarters that was not provided for in the Section 35 Direction. The qualification 'only if required by Maersk' is a material departure from the basis on which the Direction was sought. The proposed contingent requirement does not secure delivery of the campus element. This goes directly to the vires point addressed at Section 2 above.</p>

SEGRO Ref	SEGRO Extract / Summary	Prologis Response
AP21 (Dualling)	<p>Transport Assessment does not require safeguarding. Nonetheless a safeguarding requirement agreed with LCC to be provided at Deadline 3</p>	<p>Prologis notes the fundamental inconsistency in SEGRO's position: SEGRO seeks compulsory acquisition of the Prologis/MAG Land on the basis that it is required to facilitate the delivery of the DCO Scheme, yet the proposed safeguarding requirement would sterilise part of that same land against development in order to accommodate potential future highway works that SEGRO's own Transport Assessment confirms are not triggered by the DCO Scheme. Land cannot simultaneously be 'required' for development (so as to justify its compulsory acquisition) and 'required' to be kept free from development (so as to safeguard it for future highway works). In the absence of a clear and satisfactory explanation to the contrary, the implications of SEGRO's approach to this issue are that it cannot satisfy either the test in section 122(2) or that in section 122(3) in relation to this land.</p> <p>Prologis reserves its position to review the safeguarding requirement once the updated dDCO is received at Deadline 2.</p>
AP25 (New evidence requested by the ExP)	<p>The ExP specifically requested evidence regarding the adverse impacts of the Joint Application not coming forward.</p> <p>SEGRO responds: <i>'It is the Applicants' position that there will be no adverse impacts of the joint application not coming forward because the benefits of the EMG2 scheme far outweigh the alternative proposals. No new evidence is submitted or required.'</i></p>	<p>SEGRO's response is both unsubstantiated and circular. It amounts to an assertion that the DCO scheme's benefits far outweigh the alternative so as to justify CA power. The response provides no evidence, no analysis, and no engagement with the question put.</p> <p>Prologis submits that:</p> <ul style="list-style-type: none"> a) The uncertainty SEGRO identifies regarding the Joint Application applies equally to the DCO scheme - the argument cuts both ways (Written Representation, paragraph 5.35); (a) The assessment of adverse effects in the context of EIA does not depend on the certainty that they will occur. It is concerned with effects that are 'likely', a term which has a specific meaning in this statutory context. So far from connoting certainty, it does not even mean 'more likely than not' in the context of EIA. In the EIA context "likely" connotes a real risk of something happening, reflecting the precautionary principle, and not probability (<i>R (An Taisce) v. Secretary of State for Energy and Climate Change</i> [2016] Env. L.R. 2, per Sullivan J at [12], [19] and [23]). (b) In this case, there is plainly (at least) a real risk of a scenario in which the grant of the DCO as applied for (i.e. including powers of compulsory

SEGRO Ref	SEGRO Extract / Summary	Prologis Response
		<p>acquisition) prevents implementation of the development proposed in the Joint Application, but where the development authorised by the DCO either does not come forward, or comes forward only in part, or subject to substantial delay. Hence the need identified by Prologis for a realistic worst-case assessment to be undertaken of those effects (Written Representation, paragraph 2.4(a)). Even on SEGRO's own evidence, there is a realistic possibility that the DCO scheme would not be implemented, and in that event the consequences of frustrating the Joint Application must be assessed. To assess such a realistic worst case is not to conclude that SEGRO's proposal is unlikely to come forward, it is merely to identify the serious possibility that it may not do so.</p> <p>b) The ES does not assess the socio-economic consequences of frustrating the Joint Application where the DCO scheme is not delivered in full or at all. That deficiency has not been remedied, and the consequence is that the ES remains materially incomplete and the efficacy and efficiency of the examination process continues to be undermined by insufficient evidence on behalf of SEGRO.</p>

ANNEX B: DCO 7.5 – Applicant's Response to ExQ1

SEGRO Ref	SEGRO Extract / Summary	Prologis Response
<p>Q1.3.2</p>	<p>Compatibility with Joint Application – SEGRO's argues that the Joint Application is fundamentally incompatible with the DCO Scheme, primarily because Prologis proposes to develop land earmarked for the Community Park and essential landscaping mitigation, and its primary access from the A453 would sever SEGRO's development plateau.</p>	<p>Further to the response provided to this question by Prologis at Deadline 1, the following observations are made to SEGRO's response.</p> <p>The Joint Application and the Proposed Development are both made in outline form, based on Parameters with no fixed masterplan. Both schemes allow for a variance of levels within development parcels and plots, depending on the number of buildings to come forward within each parcel. The Proposed Development provides for a 3m variance (+/- 1.5m up or down). Consequently, it is not evident what basis or assumptions have informed the comparison set out by SEGRO at Annexure 1E. Prologis consider that the discrepancies and associated tolerances mean that the ability for the schemes to marry up, or the risk of incompatibility, cannot be reliably assessed at this stage. This assessment will depend on the final masterplans for both developments.</p> <p>The levels proposed within the Joint Application were specifically designed around enabling the roundabout access to the south, on Hyam's Lane, at the existing ground level to allow land to the south of Hyams' Lane, which forms part of the Proposed Development, to come forward and enable delivery of the wider scheme. Following changes made by SEGRO, the width, geometry, and nature of the access corridors now differ and the opportunity to achieve compatibility between the Joint Application and the Proposed Development has not been secured. These differences arise from each scheme having been designed independently. Critically, SEGRO altered its access arrangements after Prologis had amended the Joint Application to better align with SEGRO's earlier proposals, without explanation or consultation with Prologis. It was open to SEGRO to amend its DCO Application prior to or following submission to align with the Joint Application which had already been submitted.</p> <p>The section overlay provided at Annexure 1D does not feature a map key to convey where within the Site the sections relate to. Similarly, it is suggested the current Prologis / EMIA site section and SEGRO's section should be clearly labelled on the drawing. The remaining seven pages of Annexure 1D appear to be blank or illegible and as such Prologis would query if there is any further or missing information which is illegible.</p>

SEGRO Ref	SEGRO Extract / Summary	Prologis Response
<p>Q1.4.3</p>	<p>Community Park – SEGRO's view that the Community Park is sufficient to create a meaningful buffer and successfully perform the multi-purpose functions of recreation, landscape, ecological mitigation and drainage attenuation. They have noted no scope to change the size of the Community Park as it would compromise the quality and viability of the development.</p>	<p>Breeding skylark have been confirmed within the EMG2 Main Site at moderate levels (magnitude), with a residual minor adverse significance of effect, with surveys indicating an estimated nine breeding territories. Skylark are a Species of Principal Importance under Section 41 of the NERC Act and are Red listed on Birds of Conservation Concern, and therefore the development is required to follow the mitigation hierarchy set out in paragraph 193 of the NPPF.</p> <p>The proposed Community/Country Park is not considered to provide a suitable or reliable mechanism for mitigating the loss of skylark breeding habitat. This is because of the anticipated multifunctional nature of the Country Park, including public access, landscape planting and attenuation features, which are unlikely to consistently provide the open and undisturbed conditions typically required by nesting skylark.</p> <p>While the EMG2 Ecology and Biodiversity ES chapter refers to grassland management measures that may support foraging and wider biodiversity value, it has not been clearly demonstrated that the Country Park is intended to function as, or would be capable of delivering, effective replacement breeding habitat for skylark. SEGRO's response to Prologis' Relevant Representation reflects this position at issue 5, noting that <i>'the most likely scenario will be that the small number of skylarks are displaced into the significant amounts of suitable habitat available locally'</i>, but does not identify specific mitigation measures to address the loss of on site breeding habitat.</p> <p>It is therefore not considered that the Community Park can perform the intended multipurpose functions effectively or in full.</p> <p>In order properly to understand and assess the likely success of the Community Park in integrating the multiple functions it is intended to serve, and thus the likelihood that it will deliver the benefits claimed, a plan should be provided by SEGRO which clearly delineates the areas designated for public access, the areas allocated for drainage and balancing ponds, and the areas set aside for skylark mitigation. Such a plan would enable proper assessment of the extent to which the Community Park can deliver public access and recreational benefit, given the competing demands on the space. SEGRO's application documents do not appear to include any plan or breakdown that would enable this assessment to be comprehensively made.</p>

SEGRO Ref	SEGRO Extract / Summary	Prologis Response
<p>Q5.0.3</p>	<p>Skylarks – SEGRO notes skylarks are common nationally but have declined historically (hence s.41/BoCC5 status), which they attribute mainly to agricultural change rather than development, and they say recent trends show stabilisation and some rebound.</p> <p>For EMG2, they maintain skylarks are of local importance but the impact is assessed as habitat loss below local scale with a residual minor (non-significant) effect. They contend that the Community Park grasslands are designed to enhance foraging and, because they sit next to arable land outside the Order Limits, will provide a commutable foraging resource for birds nesting nearby, reducing adverse effects. On that basis, they argue it is not proportionate to require</p>	<p>Breeding skylark have been confirmed within the EMG2 Main Site at moderate levels, with surveys indicating an estimated nine breeding territories. Skylark are a Species of Principal Importance under Section 41 of the NERC Act and are Red-listed on Birds of Conservation Concern, and therefore the development is required to follow the mitigation hierarchy set out in paragraph 193 of the NPPF.</p> <p>The British Trust for Ornithology (BTO) Breeding Bird Survey (BBS) data show that skylark populations remain substantially below historical levels following severe long-term declines since the 1960s, and the species remains Red-listed on Birds of Conservation Concern 5, reflecting its continued conservation vulnerability¹². While agricultural intensification is recognised as a key driver of decline, BTO evidence¹³ demonstrates that local availability, extent and connectivity of suitable open arable habitat strongly influence skylark density and persistence, meaning that large-scale development resulting in permanent habitat loss and fragmentation contributes cumulatively to ongoing pressures on the species. Long-term declines in skylark populations in England appear to have stabilised, with increases of approximately 14% recorded between 2013 and 2023; however, this short-term increase has not offset the substantial population and range losses that have occurred (overall estimated –11.8% change in population abundance between 1995 and 2023) and therefore does not indicate a full recovery to previous levels¹⁴.</p> <p>The ES confirms that the proposed development would result in the permanent loss of suitable arable nesting habitat, and that this habitat cannot be replaced within the EMG2 Works. As avoidance is not possible, the focus necessarily shifts to mitigation and, where</p>

¹² Maps of population density and trends | BTO – <https://www.bto.org/get-involved/volunteer/projects/bbs/results/maps-population-density-and-trends>

¹³ Skylark | BTO – <https://www.bto.org/learn/about-birds/birdfacts/skylark#population-change>

¹⁴ Heywood, J.J.N., Massimino, D., Balmer, D.E., Kelly, L., Marion, S., Noble, D.G., Pearce-Higgins, J.W., White, D.M., Woodcock, P., Wotton, S. Gillings, S. (2025) The Breeding Bird Survey 2024. BTO Research Report 765. British Trust for Ornithology, Thetford.

SEGRO Ref	SEGRO Extract / Summary	Prologis Response
	<p>full off-site replacement/complete mitigation of the residual effect and that decision-makers can still meet their legal duties without it</p>	<p>required, compensation. While on-site grassland management measures are proposed, these habitats would not replicate arable farmland conditions and, owing to accessibility, disturbance, planting structure and fragmentation, will not function as reliable nesting habitat for skylark. On-site measures may contribute to foraging opportunities but are unlikely, in isolation, to fully mitigate the loss of breeding habitat.</p> <p>The ES places reliance on the displacement of skylark into surrounding farmland; however, this approach is not secured and does not fully reflect the cumulative loss of arable habitats arising from other committed or proposed developments. In this context, reliance on displacement alone does not provide certainty that the residual effects have been satisfactorily addressed.</p> <p>Additionally, in the Local Impact Report – East Midlands Gateway Phase 2, April 2026, Leicestershire County Council state that skylark will be impacted by the loss of arable habitat as a result of the proposed development, and while impacts are proposed to be reduced through grassland management and provision of alternative habitat, details of suitable breeding habitat have not been provided at the time of reporting.</p> <p>It is therefore not robust to seek to sidestep the NPPF’s paragraph 193 approach simply by labelling the effect as a “residual minor” effect. SEGRO’s non-significant conclusion depends materially on (i) displacement into surrounding farmland and (ii) the Community Park grasslands functioning effectively as mitigation. As illustrated above, these measures still leave a material risk that significant harm has not been avoided.</p> <p>Therefore, a range of mitigation options still available should be explored further. These include targeted off-site arable mitigation, such as the creation and long-term management of skylark plots within cereal crops¹⁵ or provision of off-site grassland management, where sufficiently open and undisturbed grassland can be secured and managed specifically to meet skylark nesting requirements, with appropriate controls on access and vegetation structure. These mitigation options are well-established and commonly accepted approaches for mitigating development impacts on farmland birds and can be</p>

¹⁵ AHW4: Skylark plots - GOV.UK – <https://www.gov.uk/find-funding-for-land-or-farms/ahw4-skyllark-plots>

SEGRO Ref	SEGRO Extract / Summary	Prologis Response
		implemented flexibly and proportionately. These options should be considered as necessary to ensure compliance with paragraph 193 of the NPPF.

ANNEX C: Section 35 Application

APPLICATION ON BEHALF of SEGRO

For a direction from the Secretary of State
under S.35 (1) of the Planning Act 2008 relating to East
Midlands Freeport - East Midlands Gateway Phase 2

**APPLICATION FOR A DIRECTION UNDER S.35 PLANNING ACT 2008 –
EAST MIDLANDS GATEWAY PHASE 2**

CONTENTS

- SECTION 1** INTRODUCTION
- SECTION 2** IDENTIFICATION OF RELEVANT LEGAL AND POLICY CONSIDERATIONS
- SECTION 3** DESCRIPTION OF THE PROPOSED DEVELOPMENT
- SECTION 4** THE APPLICANT
- SECTION 5** REVIEW OF RELEVANT CONSIDERATIONS ARISING FROM APPLICATION OF THE
POLICY STATEMENT
- SECTION 6** SUMMARY AND CONCLUSIONS

APPENDICES

- APPENDIX 1** INDICATIVE SITE LOCATION PLAN
- APPENDIX 2** FREEPORT EMAGIC TAX SITE PLAN
- APPENDIX 3** KEY AREAS OF OPPORTUNITY FOR STRATEGIC LOGISTICS IN LEICESTERSHIRE
PLAN
- APPENDIX 4** VISION DOCUMENT
- APPENDIX 5** SUSTAINABLE TRANSPORT STRATEGY
- APPENDIX 6** MIDLANDS ENGINE SUPPORT LETTER
- APPENDIX 7** EMG1 EMPLOYEE POSTCODE MAP

1. INTRODUCTION

- 1.1 This is an application on behalf of SEGRO Properties Ltd (SEGRO) for a direction under s.35 of the Planning Act 2008 in respect of proposals for a commercial/business development on land to the south of East Midlands Airport and south-east of M1 Junction 23A as identified indicatively on the plan at Appendix 1.
- 1.2 The land concerned is a second phase of East Midlands Gateway, which is a nationally significant infrastructure development (rail freight terminal and warehousing) which was authorised by a Development Consent Order (DCO) in 2016. Phase 1 is under construction and in operation on land to the north of East Midlands Airport (EMG1).¹
- 1.3 The site concerned lies to the south of East Midlands Airport. It is one of the sites designated as part of the East Midlands Freeport and is the majority of the land still to be developed within the East Midlands Airport and Gateway Industrial Cluster² (EMAGIC). The East Midlands Freeport was designated in 2022 and those parts of the Freeport within EMG1 are already occupied and benefitting from Freeport status.
- 1.4 SEGRO is seeking to bring forward the Freeport site as the next phase of East Midlands Gateway and wish to ensure as fast a track as possible to the delivery of the site. This is line with the recent Government emphasis on speeding up delivery of the Freeport sites set out in the Freeports Delivery Roadmap published on 19 December 2023.
- 1.5 In the Ministerial Foreword to the Roadmap the Secretary of State for Levelling Up, Housing and Communities stated that the Roadmap: *“.. is a comprehensive set of measures that government will implement to accelerate Freeport delivery and maximise its benefits for all: we are doubling down on our efforts to promote Freeports to investors; we are making sure those investors have as smooth a journey through the planning system as possible.”*
- 1.6 SEGRO wishes to play its part in realising the benefit of its Freeport sites as soon as possible and believes that key to this will be utilising the consenting process in the Planning Act 2008.
- 1.7 This document explains how the proposed development meets the criteria in s.35 of the Planning Act 2008 and the related guidance and sets out the basis for the request that a s.35 direction be issued so that the proposed development is treated as development for which a development consent order is required.
- 1.8 The document is structured as follows:

¹ The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 SI No. 17

² For Freeport sites within EMAGIC see plan in Appendix 2.

Section 2:	Identification of relevant legal and policy considerations
Section 3:	The National/Regional Economic Imperative and Freeport Context
Section 4:	The Proposed Development
Section 5:	Review of relevant considerations arising from application of the 2013 Policy Statement
Section 6:	Conclusions

2. IDENTIFICATION OF RELEVANT LEGAL AND POLICY CONSIDERATIONS

Sections 35 and 35ZA

- 2.1 Under s.35 of the Planning Act 2008, the Secretary of State has the power to direct that a proposed commercial or business project of a prescribed description be treated as development for which development consent is required³.
- 2.2 An application can only be made in response to a “qualifying request” made by, inter alia, a “*person who proposes to carry out any of the development to which the request relates*”.⁴
- 2.3 This application is submitted by SEGRO who intend to carry out the proposed development.
- 2.4 In order to be a “qualifying request” the request must be in writing, must specify the development to which it relates and must explain why the conditions in section 35(2)(a) and (b) of the Planning Act 2008 are met in the relation to the development.⁵
- 2.5 This document constitutes the qualifying request. It specifies the development to which it relates in Section 2 and, in respect of section 35 (2) (a) it explains in the paragraphs below that the proposed development is “*a business or commercial project of a prescribed description*”. In respect of (2)(b) it is confirmed that the proposed development is in England.
- 2.6 S.35 also requires that the Secretary of State conclude that the project is of national significance either by itself or when considered with one or more business and commercial projects. This is considered in Section 5 of this document by reference to the matters identified in the relevant policy statement.

³ S.35 (1) and (2)

⁴ S.35ZA (2)

⁵ S.35ZA (11)

2013 Regulations

- 2.7 The Infrastructure Planning (Business or Commercial Projects) Regulations 2013 set out the prescribed description for the purpose of the application of S.35(2)(a)(ii).
- 2.8 The relevant part of the regulations state that a project is a prescribed project if it consists “*wholly or mainly of the construction of buildings or facilities for use for the purposes of one or more of the matters in the Schedule to these Regulations*”.⁶
- 2.9 The proposed development will be constructed and used wholly or mainly for the purposes of storage and distribution of goods, industrial processes and offices, all of which are included in the Schedule to the Regulations.

DCLG Policy Statement 2013

- 2.10 The 2013 policy statement was produced at the same time as the draft regulations but is understood to be still considered relevant.
- 2.11 The guidance sets out matters which are to be considered relevant to the judgement as to whether or not the project is of national significance. These are:
- *whether a project is likely to have a significant economic impact, or is important for driving growth in the economy;*
 - *whether a project has an impact across an area wider than a single local authority area;*
 - *whether a project is of a substantial physical size – further details are set out below; or*
 - *whether a project is important to the delivery of a nationally significant infrastructure project or other significant development.*
- 2.12 The text referred to in the third bullet point states that projects should be of a substantial size with an example given in respect of construction projects of a minimum of gross internal floorspace of 40,000m².
- 2.13 These matters are considered in Section 5 of this document.
- 2.14 The Policy Statement goes on to say the Secretary of State will also consider:
- *whether a project is likely to require multiple consents or authorisations, and which, in consequence, would benefit from the single authorisation process offered by the nationally significant infrastructure regime;*

⁶ Reg 2(a)

- *whether the project is related to a nationally significant infrastructure project being brought forward at the same time and therefore would benefit from the scheme being considered as a single application through the 2008 Act regime*

2.15 These matters are also considered in Section 5.

3. THE NATIONAL/REGIONAL ECONOMIC IMPERATIVE AND FREEPORT CONTEXT

3.1 On 1st March 2022, the Government announced the designation of Freeport status to the areas around, and linked to, East Midlands Airport. East Midlands Freeport is the only inland Freeport in England and will create a globally connected, world-leading advanced manufacturing and logistics hub at the heart of the UK. The spatial extent of the East Midlands Freeport covers three complementary locations, East Midlands Airport and Gateway Industrial Cluster (EMAGIC), Uniper’s Ratcliffe-on-Soar site, and the East Midlands Intermodal Park (EMIP). The EMG2 site falls within the EMAGIC area, which can be seen on the plan in Appendix 2.

3.2 Freeport designations are economic designations for special areas within the UK where different economic regulations apply. Freeports in England are centred around one or more air, rail, or seaport and are aimed at leveraging the UK’s world-class port infrastructure and a special customs procedure to attract trade-orientated investments. The EMAGIC freeport sites have the benefit of accessibility from road, rail and air.

3.3 With Freeport status comes a comprehensive package of measures, comprising tax reliefs, customs, business rates retention, planning, regeneration, innovation and trade and investment support and incentives. The Government’s Freeport programme aims to play a role in the UK’s post-Covid economic recovery and contribute to realising the levelling up agenda. At a Freeport, imports can enter with simplified customs documentation and without paying tariffs. Businesses operating inside designated areas in and around the port can manufacture goods using the imports and add value before exporting again without ever facing the full tariffs or procedures. Freeports are similar to enterprise zones, but are designed to specifically encourage businesses that import, process and then re-export goods.

3.4 The East Midlands Freeport is forecast to create 60,000 jobs in the region over the next 30 years and deliver £8.4 billion net additional gross added value to the UK economy⁷.

3.5 In the Autumn Statement 2023, the Chancellor announced four new ‘Investment Zones’ in England, one of which will be in the East Midlands. This further demonstrates the Government’s commitment to, and acknowledgment of, the strategic importance of the East Midlands to the UK’s economic growth strategy. Whilst the boundaries of the East

⁷ Department for Levelling Up, Housing and Communities (2021). Freeport Detailed Guide. Available at <https://www.gov.uk/guidance/freeports>

Midlands investment zone have not yet been confirmed, it is clear that it will at least in part overlap with the East Midlands Freeport designated area. The Investment Zones are aimed at being highly complementary to the UK Freeport programme and where there is already a Freeport linked to an Investment Zone it is envisaged it will offer accelerated and expanded cluster development.

- 3.6 The Freeport designation reflects the importance of the East Midlands to the UK economy and follows through from the Midlands Engine Strategy published in 2017. That Strategy recognised the strategic importance of the area and indeed specifically acknowledged the importance of East Midlands Airport to the UK economy as the UK's second largest freight handling airport. The Strategy sets out a collective ambition for economic growth to enable the region to capitalise on its locational advantage, and to make it a powerful engine for national growth. It noted that the Midlands Engine is the largest regional economy in the UK outside London and covers an area which homes 11 million people. The Strategy aligns with the National Industrial Strategy, highlighting how the region can build upon existing business sectors and areas of opportunity. It highlights that some 92% of the UK population can be reached from the Midlands within 4 hours, including 10 million people residing in the Midlands itself⁸. The area, and especially the area covering Leicestershire, Nottinghamshire, South Derbyshire and to Birmingham, is considered the 'Golden Triangle' for logistics operators given its highly sustainable and well-connected location.
- 3.7 To support regional growth, the East Midlands Development Company (EM DevCo) has been established. Supported by the Midlands Engine, it is focused on driving forward the transformation of four sites, one of which is the East Midlands Airport Area. The EM DevCo recognises East Midlands Airport as a nationally important asset for freight and logistics, noting it is Britain's busiest dedicated air-freight hub. It handles 1,000 tonnes a day and facilitates approximately £40bn of trade to and from the UK and £11bn of non-EU imports and exports each year. It has already witnessed significant growth with DHL Express and UPS investing, between them, over £200m in recent years⁹. The airport provides a stimulus for wider regional growth and a key example of this is EMG1 with occupiers such as Amazon and Kuehne and Nagel using both the rail freight facility at EMG 1 and air freight from the airport.
- 3.8 The rail terminal at EMG1 has itself also proved very successful in proving a focus for the growth of the use of rail freight. All occupiers of the warehousing on EMG1 utilise the rail terminal. The rail freight interchange provides a central distribution hub with connectivity to destinations across the national rail network including to other Freeports, such as Thames Freeport, Solent Freeport, Liverpool Freeport and Freeport East.

⁸ UKTI (2016). Midlands Engine Regeneration Opportunities Pitchbook- pg. 4

⁹ East Midlands Development Company. Growth Centre – East Midlands Airport Area. Available at: <https://www.emdevco.co.uk/east-midlands-airport-area/>

- 3.9 In more local policy terms, the Leicester and Leicestershire Strategic Growth Plan (2018) (SGP) recognises Leicestershire’s national locational advantages, specifically in relation to its connectivity. It identifies broad strategic locations where economic growth should take place, with one such key location being at ‘Leicestershire International Gateway’, which is focussed in and around East Midlands Airport and EMG1.
- 3.10 Empirical evidence relating to the need for industrial and logistics land and facilities to support the ambitions and plans for growth in this area is contained in a recent evidence base report commissioned by the Leicestershire Planning Authorities in conjunction with the Leicester and Leicestershire Local Enterprise Partnership entitled ‘Warehousing and Logistics in Leicester and Leicestershire: Managing growth and change’ (GL Hearn 2021)¹⁰.
- 3.11 This evidence base study focusses on the planning of large-scale logistics warehouse facilities and seeks to estimate the demand for such across the Functional Economic Market Area (the FEMA) over a 21-year period from 2020 – 2041. It concludes that there is demonstrable and immediate need for additional logistics space across the FEMA totalling some 861 hectares for the 21-year period. Although it does not apportion this figure between the local authorities, it identifies several broad Key Areas of Opportunity. Of particular note is that most of these Key Areas identified all converge and overlap at and around East Midlands Airport where the EMG2 site is located. This is shown on the plan in Appendix 3.
- 3.12 As a result of the 2021 GL Hearn evidence case report, the emerging Development Plan for the area (The North West Leicestershire Local Plan review) has fully acknowledged the need for additional strategic logistics sites in this area and is shortly to commence a public consultation on the best locations for this to be located. One of the locations included in the proposed consultation is the Freeport land south of East Midlands Airport at EMG2. This demonstrates a recognition by the Local Planning Authority of the potential suitability of the site for the proposed use. However, the Local Plan Review is still at an early stage and the plan is not due to be adopted until the end of 2026 at the very earliest.
- 3.13 SEGRO has nevertheless fully engaged with the Local Plan review process and as part of this SEGRO jointly-commissioned a report on the future Industrial and Logistics Demand to assist the Council and supplement the GL Hearn study. This report, prepared by Savills, was submitted as part of SEGRO’s representations to the earlier ‘Issues and Options’ consultation stage of the plan which was held in January 2022.
- 3.14 The Savills report again demonstrates that there is significant market demand for new industrial and distribution buildings in this locality. The demand was fuelled even

¹⁰ GL Hearn (2021) Warehousing and Logistics in Leicester and Leicestershire: Managing growth and change

further by the pandemic and Brexit as a result of which the market had been growing strongly with demand outstripping supply. The acceleration of a number of growth drivers such as online shopping and the desire for quick deliveries and companies considering bringing part of their operations back to the UK to guard against future supply chain shocks, has resulted in a significant demand for employment space. Demand in the East Midlands in particular was 113% above the long-term average in 2021, the highest on record, with vacancy at an historical low of 1.69% (the lowest rate nationally). Take-up in the East Midlands is driven by the North West Leicestershire area and its wider FEMA clearly cementing it as one of the most important industrial and logistics markets in the Country.

3.15 The above section demonstrates that the Freeport status, other supportive national and regional initiatives, existing successful development and the evidence of need all support the contention that the Freeport site would realise national, regional and local benefits and should be delivered as soon as possible.

3.16 More detail is contained in the following sections.

4. THE PROPOSED DEVELOPMENT

4.1 This section explains the details of the proposal, the synergy with EMG1 and details of the applicant, SEGRO.

The Proposals

4.2 SEGRO proposes to build upon the success of its flagship EMG1 by bringing forward the Freeport land lying to the south of East Midlands Airport which is the majority of the land remaining undeveloped in the UK's only inland Freeport. The proposal is for a logistics and manufacturing hub including a very substantial carbon neutral campus/headquarters required by Maersk.

4.3 The core site extends to some 100 ha (250 acres) (gross) and can be seen, along with its context and the proposals, in the document describing the proposed development contained at Appendix 4.

4.4 Phase 2 of East Midlands Gateway (EMG2) will take advantage of a combination of factors which together represent a unique opportunity for a development to provide a very significant contribution to the local, regional and national economy. These factors being:

- the designation of the site as a Freeport with the attendant benefits of the Freeport status to the development and the region;
- the proximity to East Midlands Airport being the second largest freight airport in the country;

- the proximity to EMG1 and its intermodal rail freight terminal;
- the synergy with the social and physical infrastructure of EMG 1;
- the provision of development within a strategic growth area – Leicestershire International Gateway which is focussed on East Midlands Airport and EMG1 and the wider areas around J23a, 24 and 24a of the M1 motorway;
- the proximity of the site to the East Midland Investment Zone and the potential for cumulative economic benefits;
- the involvement of a leading and experienced owner, funder, manager and developer of modern logistics and industrial parks;
- SEGRO’s commitment to deliver development which is Net Zero in construction, and
- the potential for occupiers to deliver Net Zero facilities in operation.

4.5 Overall, the proposal would deliver in the region of 279,000 sq.m (3m sq.ft) of floorspace for logistics and industrial uses.

4.6 The development would be anchored by a new centralised UK operation for Maersk, one of the world’s largest integrated shipping and logistics companies, which would broadly make up a third of the total EMG2 site.

4.7 Maersk’s ambition is to bring together its UK operation to create a carbon neutral inland port with access to rail, road and air. At EMG1, Maersk already occupies an existing 65,000 sq.m (700,000 sq.ft) logistics operation within the Freeport area and is in the process of delivering a bespoke rail-freight container handling facility on land adjacent to the rail freight terminal operated by Maritime Transport. The proposed campus at EMG2 would build upon the success of these facilities at EMG1 to create a national centre of operations. The facilities would comprise of both logistics warehousing and co-located head office functions. This strategic project requires a high quality, comprehensively master planned environment, of a calibre and scale commensurate with what has been delivered by SEGRO at EMG1.

4.8 Maersk’s two key visions of integrating logistics and achieving Net Zero by 2040 are closely aligned with the East Midlands Freeport objective of being the UK’s pre-eminent multimodal inland Freeport. The inter-port rail connectivity provides a key enabler for Maersk in integrating both Ocean and domestic supply chains whilst also meeting environmental objectives. Its new logistics facility at EMG1 has been constructed in accordance with the UKGBC Net Zero Carbon Standard and the ambition is for the new connected container yard (adjacent to the Maritime Transport Rail Terminal) to run with net zero emissions. Maersk aim to link this with electric HGVs which will create further opportunities for supply chain decarbonisation by enabling last mile journeys from the Rail Terminal to Maersk’s facilities at EMG1 to be undertaken by electric HGV along with subsequent final mile deliveries.

- 4.9 Across the wider development, SEGRO is committed to delivering EMG2 as net zero in construction, and with the ability for occupiers to run net zero in operation, and the development would be an industry leader in sustainability. SEGRO is committed to achieving net zero and one of its Strategic Priorities is “Championing Low Carbon Growth” which includes reducing operational carbon emissions (including occupier emissions) by 42% by 2030, measured against a 2020 baseline. This commitment to sustainability is led by SEGRO Sustainable Initiatives which covers wide ranging energy efficient initiatives including targeting an Energy Performance Certificate (EPC) rating of Band ‘A’ and a minimum of BREEAM ‘Excellent’ as part of SEGRO base build specification.
- 4.10 The proposed development will be set within a high quality and attractive landscape setting and includes a 28 ha (70 acre) landscaped community park to its western side which will be readily accessible for the local community. A schematic plan and illustrative layout are contained in the document in Appendix 4 to this document.
- 4.11 A key component of the proposals will be a Sustainable Transport Strategy that will mirror the highly successful transport strategy that has been delivered on EMG1. This is recognised nationally as an exemplar scheme which has far exceeded all targets and is currently achieving single use employee car patronage to EMG1 as low as 51%.
- 4.12 A central part of the strategy will be a Gateway Shuttle Bus service. This is a free service for all site employees, and provides a highly sustainable and affordable alternative to single occupancy car travel. It operates by providing a ‘last mile’ service for employees which links their workplaces to existing local bus operator services through a dedicated on-site interchange at the site entrance. Using state of the art fully electric shuttle buses, patronage at EMG1 has far exceeded expectations, with some 4,800 trips per week achieved in 2023. The shuttle service will be co-ordinated through a dedicated Transport Working Group set up as part of EMG1 which ensures that through close cooperation between all parties, bus services operate throughout the day to support the shift patterns of the businesses. Full details of the emerging Sustainable Transport Strategy for EMG2 are provided in Appendix 5.
- 4.13 In light of the success of EMG1 and ongoing clear demand for further space, SEGRO has sought to acquire the necessary interests to secure the site for some time. It has been successful in securing a legal interest in a significant part of the site, but not all, despite extensive efforts.

Synergy with EMG 1

- 4.14 EMG1 was authorised by a Development Consent Order in 2016 and over the last 5 years has provided over 457,000sq.m (4.92 million sq.ft) of strategic logistics floorspace and a rail terminal operated by Maritime Transport. The site is now providing some 6,500 on site jobs and this is expected to rise to 7,000-7,500 once the most recent occupiers, Maersk and CEVA, become fully operational in 2024.

- 4.15 The locational advantages of this area are clear from the unrivalled success of EMG1. This project originally had an expected build out timeline of 10 years, but in reality after just over 5 years there is now no land remaining which is capable of accommodating a unit in excess of 9,000 sq.m (100,000 sq.ft). Take up at the scheme has been far quicker than envisaged and has averaged approximately 139,355 sq.m (1.5 million sq.ft) per annum since serviced plots became available, with every occupier reportedly utilising the rail freight terminal (as of June 2022) and some also the air freight facility at East Midlands Airport.
- 4.16 In 2022 SEGRO, on behalf of the rail operator Maritime Transport, commenced a £22.3m expansion of the rail terminal ahead of market demand. This includes the construction of two 775m rail tracks, additional container storage and HGV parking and the creation of a divisional head office and training facility. Maritime is also, in partnership with SEGRO, currently seeking Seed Capital for the power upgrade necessary to invest in eHGV and Chargers to enable the “final mile” journeys to be undertaken by electric HGV.
- 4.17 EMG2 occupiers will be able to access the rail freight terminal on EMG1 building on the success of, and helping to support, this existing Nationally Significant Infrastructure Project. This would help achieve the Government’s target of achieving net zero greenhouse gas emissions by 2050, by reducing HGV traffic generation and increasing the volume of freight traffic travelling by rail.
- 4.18 EMG2 will share common social and physical infrastructure with EMG1. Both sites will benefit from, or be served by, a new upgraded substation on EMG1 taking supply from 28MW to 50 MW and also pedestrian and public transport links.
- 4.19 As referenced previously, the other key relationship between EMG1 and the proposed EMG2 development will be the expansion of the EMG Sustainable Travel Strategy. The proposed bus interchange at EMG2 will mirror, and act as the further hub for, the existing EMG1 shuttle services, connecting employees arriving at the EMG1 or EMG2 bus interchanges with local bus routes and the internal bus stops within the sites. Given the significant and anticipated blending of operations between the two sites, not least as set out in respect of Maersk, the service will provide a direct and highly sustainable link between EMG1 and EMG2.

SEGRO

- 4.20 SEGRO is a UK Real Estate Investment Trust (REIT), listed on the London Stock Exchange and Euronext Paris, and is a leading owner, manager and developer of modern warehouses and industrial property. It owns or manages 10.3 million square metres of space (110 million square feet) valued at £21.0 billion serving customers from a wide range of industry sectors. Its properties are located in and around major cities and at key transportation hubs in the UK and in seven other European countries.

- 4.21 For over 100 years SEGRO has been creating the space that enables extraordinary things to happen. From modern big box warehouses, used primarily for regional, national and international distribution hubs, to urban warehousing and manufacturing facilities located close to major population centres and business districts, it provides high-quality assets that allow its customers to thrive.
- 4.22 A commitment to be a force for societal and environmental good is integral to SEGRO's purpose and strategy. Its Responsible SEGRO framework focuses on three long-term priorities where the company believes it can make the greatest impact: Championing Low-Carbon Growth, Investing in Local Communities and Environments and Nurturing Talent.
- 4.23 In addition to the very successful development of EMG1, SEGRO has a history of working on other large schemes. Amongst those is:
- Northampton Gateway: SEGRO commenced construction of its Northampton Gateway scheme in 2020. The project will deliver 5m sq.ft. of logistics and warehousing and a new strategic rail freight interchange which was also approved via DCO¹¹. It is anticipated that the first units will be occupied from early 2025;
 - Coventry Gateway: A significant warehousing and industrial development south of Coventry with planning approval for 3.7m sq.ft. This is currently being delivered on site with the first 2 units occupied in 2023 by DHL and DP World and a second phase available for occupation during 2024;
 - Smartparc SEGRO Derby: Comprising 2m sq.ft of manufacturing and distribution specifically designed for food manufacturing and associated services with a central energy centre and private electric network. A 435,000sq.ft unit has been delivered for Hello Fresh and a further agreement has just been signed for a significant building for a food manufacturing company;
 - Rugby Gateway: A 1.2m sq.ft logistics park, completed in 2017 at Junction 1 of the M6. It is currently fully let to DHL, Amazon, H&M and Evri.
- 4.24 In May 2023, SEGRO was announced as the strategic partner of the neighbouring West Midlands Combined Authority (WMCA), with a commitment to invest £2 billion over the coming decade to deliver next generation, net zero warehouse facilities in the West Midlands.
- 4.25 As a strategic partner, SEGRO aims to deliver 13.5 million sq.ft of sustainable warehouse space across the West Midlands by the end of 2033, focussed on tech-enabled logistics facilities as well as purpose built space for research and development and light manufacturing.

¹¹ The Northampton Gateway Rail Freight Interchange Order 2019

4.26 The development programme is expected to create up to 14,000 jobs covering a wide range of employment types and industry sectors and will contribute significantly to economic growth and levelling up the region, which are two core aims of the WMCA.

5. REVIEW OF RELEVANT CONSIDERATIONS ARISING FROM APPLICATION OF THE 2013 POLICY STATEMENT

5.1 The matters identified as relevant in the DCLG Policy Statement are considered below in light of the information supplied above:

“whether a project is likely to have a significant economic impact, or is important for driving growth in the economy;”

5.2 The project will make a major contribution to delivering the outcomes of the East Midlands Freeport. It will contribute to the objectives of the Midlands Engine and will be a significant component of the Leicestershire International Gateway. An e mail letter from Midlands Engine emphasises the importance attached to this location and this site. That letter is contained in Appendix 6. It also supports the request for the development to be dealt with through the DCO process.

5.3 The proposed development will provide significant economic benefits to the local and wider economy at both the construction and operational stages. From the Freeport status alone, there will be retained business rates of £298 million.

5.4 At construction stage the project represents a total construction spend in the order of £310 million. This, when combined with the multiplier effects of construction spending across the economy represents a total economic output of the construction stage alone of over £900 million¹².

5.5 Once fully operational it is estimated that EMG2 would contribute £250 million of GVA annually, delivering at least 4,000 direct jobs on-site, and potentially 5,500 jobs indirectly through supply chains across the region.¹³ The plan at Appendix 7 shows the location of the homes of employees attending EMG1 and demonstrates the regional impact of those jobs.

5.6 The latest employment figures in respect of EMG1 demonstrate that it is now providing some 6,500 on site jobs and this is expected to rise to 7,000-7,500 once the most recent occupiers Maersk and CEVA become fully operational in 2024. Therefore, when EMG2 is combined with the EMG1 jobs the combined entity on full occupation will support some 11,000+ direct jobs.

¹² Source - CBI (2020) – ‘Fine Margins: Delivering financial sustainability in UK construction’

¹³ Source – ONS data and HCA Additionality Guide 4th Edition 2014

- 5.7 Furthermore, taking East Midlands Airport into account, whose growth and development has generated some 10,000 jobs, the importance of the area becomes clearly apparent in supporting over 20,000 jobs in this immediate area, creating and representing a nationally significant employment hub.
- 5.8 In summary and as evidenced above, the proposal is located in a nationally important economic growth hub where there is a clear and evidenced need for strategic warehousing development. Further development here as proposed will continue to bolster the national drive for economic growth focussed around the multimodal hub at this Freeport.

“whether a project has an impact across an area wider than a single local authority area”

- 5.9 The site is located at the intersection of several local authorities. Being at the northern end of North West Leicestershire, it is close to the boundaries of South Derbyshire, Erewash, Broxtowe, Rushcliffe and Charnwood. From employment data obtained on EMG1, it is also known that the site will have reach to the cities of Derby, Nottingham and Leicester. See the plan in Appendix 7 previously referred to.
- 5.10 This geographical location, along with the site’s excellent proximity to the M1, A42/M42 and A50 corridors, and to the airport, means it has an extremely broad regional reach across the counties of Leicestershire, Nottinghamshire and Derbyshire, and as far as Warwickshire and Staffordshire.

“whether a project is of a substantial physical size”

- 5.11 The core area of the proposed development site extends to approximately 100ha (250 acres) and will deliver in the order of 279,000 sq.m. (3m sq.ft) of floorspace. As per the Policy Statement, although size in itself will not be the determining factor in whether a project is nationally significant or not, the proposal is over 7 times larger than the 40,000sq.m. minimum guideline figure.

“whether a project is important to the delivery of a nationally significant infrastructure project or other significant development”

- 5.12 As explained in the above paragraphs the EMG2 proposals are linked both geographically and through common ownership/management with EMG1, an existing Nationally Significant Infrastructure Project. Whilst EMG1 has largely been developed it is suggested that the mutually supportive nature of EMG 1 and EMG 2 are relevant. This will be through the sharing and use of the intermodal rail facilities, power infrastructure and the integration of public transport facilities such as the Gateway Shuttle bus service and wider public bus service links.

5.13 The proposed development will also expand Maersk's operations in the area, in which they already occupy a 65,000 sq.m (700,000 sq.ft) facility as well as currently developing a dedicated container terminal at EMG1. The proposed development will be home to Maersk's new national operational hub, creating an inland port and will take up approximately a third of the total site. The proposed development would therefore support and encourage the strategic growth plans of a major global logistics and shipping company to strengthen their presence in the regional and further afield. This would not be possible without building on their already significant commitment at EMG1.

“whether a project is likely to require multiple consents or authorisations, and which, in consequence, would benefit from the single authorisation process offered by the nationally significant infrastructure regime”

5.14 The project will require multiple consents which it is anticipated will include:

- Compulsory powers for land assembly;
- Consents for works to the highways in respect of the highway works;
- Permanent and/or temporary powers to powers to divert or close footpaths
- Provisions relating to utilities

5.15 From the experience of SEGRO in seeking to acquire the necessary interests in land it is apparent that the delivery of the Freeport site will be contingent on the availability to SEGRO of compulsory acquisition powers.

“whether the project is related to a nationally significant infrastructure project being brought forward at the same time and therefore would benefit from the scheme being considered as a single application through the 2008 Act regime”

5.16 This is not relevant in this case.

CONCLUSIONS

- 6.1 The Secretary of State is asked to note that:
- 6.1..1 The proposal is mainly for the construction of buildings for storage and distribution of goods, industrial processes and offices and falls within a business or commercial project of a prescribed description for the purposes of section 35 (2) (a) (ii) of the Planning Act 2008 and Regulation 2 of The Infrastructure Planning (Business or Commercial Projects) Regulations 2013.
 - 6.1..2 When assessed against the criteria in the relevant policy statement (of 2013) it can be concluded that, due to its substantial size and the Freeport status of the site, the proposed project would be likely to have a significant economic impact and be important in driving growth in the economy.
 - 6.1..3 It can also be concluded that the proposal would have an impact on an area wider than a single local authority area and it will benefit from the single authorisation process available under the DCO process.
 - 6.1..4 It is clear that to deliver this site powers of compulsory acquisition will be required.
 - 6.1..5 In addition, and importantly, the DCO process will provide a one stop shop to enable development to be coordinated in a comprehensive manner, speeding up implementation and the resultant benefits of the Freeport status and the contribution it will make to the economy.
- 6.2 The Secretary of State is asked to conclude that the proposed development is nationally significant, and the project can be treated as development for which development consent, in the form of a development consent order, is required and make a direction under s.35 accordingly.