

**PLANNING ACT 2008**

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

**APPLICATION BY SEGRO PROPERTIES LIMITED FOR THE EAST MIDLANDS GATEWAY PHASE  
2 AND HIGHWAY ORDER 202X**

**Deadline 4 Submission**

**ON BEHALF OF**

**EAST MIDLANDS INTERNATIONAL AIRPORT LIMITED**

**EAST MIDLANDS AIRPORT PROPERTY INVESTMENTS (INDUSTRIAL) LIMITED**

**Interested Party References:** 

## 1. INTRODUCTION

- 1.1 This is East Midlands International Airport Limited's ("**EMA**") ("**the Airport**", as appropriate) and East Midlands Airport Property Investment (Industrial) Limited's ("**EMIAL**") Deadline 4 submission provided in respect of SEGRO Properties Limited's ("**SEGRO**") application for a Development Consent Order ("**DCO**") for the East Midlands Gateway Phase 2 ("**EMG2**") ("**the DCO Application**").
- 1.2 Terms used in this submission have the same definition as set out in EMA and EMIAL's Written Representation dated 7 April 2026 unless otherwise defined.
- 1.3 This DL4 Submission is interim in nature in relation to certain respects. At CAH2 and ISH3 SEGRO indicated that it would bring forward, at Deadline 4, both a revised requirement directed at the need to bring its application into alignment with the Section 35 Direction and a substantial written response to the viability evidence of Mr Peter Roberts of DWD. As at the date of this submission that material has not been provided. EMA and EMIAL therefore further reserve their position in respect of this material and reserve the right to respond to both at a later date. EMA and EMIAL note that they have been required repeatedly to do so owing to the failure of SEGRO as applicant to provide information or carry out assessments which should have been made available from the outset of the process.
- 1.4 In view of the brevity of the substance of this document, a summary has not been provided.

## 2. ALIGNMENT WITH PROLOGIS

- 2.1 EMA and EMIAL continue to support the case being made to the Examination by Prologis UK Limited and Prologis UK 121 Limited (together, "**Prologis**") in relation to land north of Hyams Lane which is the subject of the Joint Application.
- 2.2 EMA and EMIAL:
- 2.2.1 have had sight of the documents to be submitted by Prologis at Deadline 4;
  - 2.2.2 agree with and endorse the contents of those documents; and
  - 2.2.3 reserve the right to speak to and expand upon the matters raised in them in further written submissions or during hearings.
- 2.3 In light of the fact that EMA and EMIAL's position is on all fours with Prologis, EMA and EMIAL do not propose to repeat points made by Prologis. Rather, as set out above, EMA and EMIAL endorse and adopt those submissions.

## 3. MATTERS ADDRESSED

- 3.1 This document contains EMA and EMIAL's:
- 3.1.1 Comments on SEGRO's Response to Deadline 1 submissions (Appendix 1);
  - 3.1.2 Responses to relevant action points from CAH2 (Appendix 2);
  - 3.1.3 Responses to relevant actions points from ISH3 (Appendix 3); and
  - 3.1.4 EMA and EMIAL's proposed protective provisions for the dDCO and dMCO, accompanied by a commentary to address the requirements of ExQ2s 8.4.1 and 9.0.1 (Appendix 4).
- 3.2 EMA and EMIAL have separately submitted the following documents at Deadline 4:
- 3.2.1 Post hearing submissions for CAH2;

- 3.2.2 Post hearing submissions for ISH3;
- 3.2.3 Responses to ExQ2s; and
- 3.2.4 A submission made jointly with Prologis in relation to the ExP's rule 17 request dated 2 June 2026.

#### 4. **PROCEDURAL FAIRNESS**

4.1 EMA and EMIAL agree with and endorse the concerns raised in section 2 of Prologis' D4 submission relating to procedural fairness. EMA and EMIAL have voiced concerns on this subject previously, particularly in relation to SEGRO's persistent failure to provide information:

- 4.1.1 At Deadline 1, in paragraph 6a of our Written Representation (REP1-216D);
- 4.1.2 In section 3 of our Deadline 2 submissions (REP2-049D); and
- 4.1.3 In section 5 of our Deadline 3 submissions (REP3-059).

4.2 In addition to the above matters, EMA and EMIAL wish to highlight the points below in relation to ISH3.

4.3 The traffic and transport impacts of EMG2 are matters of critical importance to EMA and EMIAL – particularly so to EMA as airport operator. The importance of surface access to the Airport has been made clear previously and was set out at length in section 4 of our Deadline 3 submission (REP3-059).

4.4 EMA was therefore disappointed that:

4.4.1 So little time was devoted to the topic during ISH3, particularly given there was adequate time for this important topic to be explored further:

- (a) At the start of the first day of ISH3, the ExP explained that the day's proceedings would conclude at 17:00 (Transcript, Part 1 @02:17). A number of matters were dealt with before the first break. The hearing resumed after that break at 11:30. It was at that point that the ExP turned to agenda items 4.1 to 4.5 relating to traffic and transport: those of evident interest to EMA. The ExP drew that part of the agenda to a close after just an hour and a quarter, out of a desire to "start another topic area" (Transcript, Part 2 @1:15:21).
- (b) On more than one occasion during the hearing, the ExP hurried Interested Parties along, for example at 1402 on day 1 ("quickly please, because we've got a lot to get through").
- (c) It was therefore a surprise that on day 1 of ISH3, the ExP adjourned the hearing at 15:44. On day 2, the hearing began at 1000 and concluded around 13:00. That left over half a day of hearing time in which highways matters relating to the airport could have been explored at more length.

4.4.2 The ExP appears unconcerned by the volume and significance of information identified by EMA as missing from SEGRO's application, which leaves EMA (and presumably others) unable to understand the highway impacts on the airport, as indicated by the following:

- (a) the ExP was unsympathetic to EMA's request during ISH3 that the missing information which is critical to understanding those impacts (identified in Appendix 3 of REP3-059) might form the subject-matter of one of the ExP's second written questions to SEGRO, suggesting that if it was not

forthcoming at Deadline 4 “then there is a room for any third round of questions” yet with the ExP uncertain whether that would be in July or August, and seemingly unconcerned that this information should have been contained in SEGRO’s application so that Interested Parties could scrutinise it prior to the start of the Examination;

- (b) the ExP invited EMA to raise its concerns directly with SEGRO outside the hearing, rather than choose to probe potential impacts on the airport itself; and
- (c) the ExP was unsympathetic to EMA’s request for a future hearing dedicated to understanding the traffic and transport impacts on the airport.

4.4.3 The position is exacerbated by the opacity of the emerging statements of common ground between SEGRO, Leicestershire County Council and National Highways, which as the ExP pointed out are “lacking in detail” which makes it difficult to probe issues. The ExP suggested some statements of common ground left them “flying in the dark”. They also highlighted that SOCGs needed to be more informative to facilitate third party engagement on the issues. This lack of transparency is particularly relevant to EMA being able to understand how NH and LCC have understood the highway impacts on the Airport in moving towards an agreed position with SEGRO. Again, this is a concern that EMA has raised previously and labelled as a “chilling effect” on the participation of Interested Parties: see paragraph 5.8 of our Deadline 3 submission (REP3-059).

## APPENDIX 1

### EMIA Response to DCO7.12/ REP2-032 (Applicant's response to D1 Submissions (Submitted at Deadline 2))

Reference	SEGRO Comments	EMIA Response
p252	<p>EMA make reference to their passenger activity, The PRTM model is a peak hour model that tests the operation of the highway network between 0800 to 0900 hours and 1700 to 1800 hours when traffic flows on the network are at their greatest.</p> <p>Whilst it is acknowledged that East Midlands Airport operates 24 hours per day, which could also be the case for occupiers of EMG2, total traffic flows on the network will be lower and therefore given the proposed mitigation will provide sufficient capacity at peak times, this will also be the case during all other times of the day.</p>	<p>As set out in throughout our responses (para 2b of our WR (REP1-216D), paragraphs 4.5-4.8 of our D3 submission (REP3-059) and as part of our oral presentation at ISH3), East Midlands Airport is the largest dedicated freight airport in the UK. Combining the cargo operation with its regional airport passenger operation, the Airport requires 24-hour, 7-days a week, 365-days-a-year road access by road that is safe, efficient and reliable. The Airport is critical national infrastructure that is dependent on the SRN and local highways network and given the nature of EMA's cargo function, weighted towards evening and nighttime cargo operations, it makes the airport's access needs different from most other airports across the UK.</p> <p>Cargo operations are mostly at night, with aircraft arriving and departing and HGVs accessing the airport from early evening to early morning. Cargo staff generally work overnight shifts, starting between 20:00 and 22:00. So, although this activity avoids peak traffic on the road network, it is more likely to be disrupted by overnight roadworks and operational traffic related to the Proposed Development.</p>
p253	<p><u>Significant works will be restricted to night time hours when traffic levels are lower and during those times management measures will ensure that the operation of the network is not significantly impacted. Details are presented in the Construction Traffic Management Plan</u></p> <p><u>(CTMP)</u>, appended to the Construction Environmental Management Plan (CEMP) which a revision of which has been submitted at Deadline 2 (AS-027D).</p>	<p>Although the applicant acknowledges the 24-hour operation, it has failed to acknowledge that EMA has a business-critical peak that falls outside of the network peak and there still remains insufficient information to understand the impacts of the Applicant's proposed extensive highway works and operation of EMG2 will impact the Airport, and how any proposed mitigation will temper those impacts, e.g., during overnight road closures for construction work.</p> <p>Despite EMA repeatedly identifying the absence of this information during the examination period (see section 9 of our RR (RR-013D), section 6 of our WR (REP1-216D) (and section 5 of our summary to the WR (REP1-217D) and section 5 of our D3 submission (REP3-059)), highlighting its absence at ISH3, and engaging with the Applicant directly since ISH3, the information needed to understand those impacts remains outstanding.</p>
Q13.0.15	<p>Aerodrome safeguarding standards- Having regard to the experience of development on EMG1 the Applicants do not</p>	<p>EMA's position remains that the protective provisions in the 2016 Order for EMG1 do not fully reflect current aerodrome safeguarding requirements.</p>

p263	see the need to review the protective provisions for EMG1 but will consider any specific justification provided by EMA.	Please refer to: <ul style="list-style-type: none"><li>- RR-049M paragraph 4.6.</li><li>- REP1-216D section 8, paragraph q</li><li>- Verbal confirmation by Pinsent Masons LLP for EMA during ISH3, reflected in our written post hearing submissions for that hearing.</li></ul>
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## APPENDIX 2

### RESPONSE TO COMPULSORY ACQUISITION HEARING 2 ACTION POINTS

AP No.	Action	Action by	EMIA Response
28	<p>The applicant and any relevant IPs are requested to identify the legal authorities relied upon in support of the proposition, referred to in written submissions, that it is settled law that the use of compulsory acquisition powers may be properly justified in order to facilitate a scheme of development in the public interest which is preferable to an alternative scheme advanced by an objector that would not require compulsory acquisition.</p> <p>Please provide references to relevant case law, including full citations, Where any such authorities are not readily accessible via publicly available sources (for example, BAILII), copies of those decisions should be provided.</p>	Applicants IPs	<p>Please see the Prologis Response under the heading Compulsory Acquisition Test which EMA adopts.</p> <p>SEGRO has consistently sought to paint the use of compulsory purchase powers as ordinary and common place. Indeed, SEGRO’s entire response to the APs case has been a ‘nothing to see here’ defence. That is not a defence at all but an encouragement to the ExP not to properly scrutinise, which is, of course, the ExP’s role. It is a means by which SEGRO encourages the ExP not to properly apply what was said by the Courts in the Prest case (on which see EMA’s RR [RR-013D, §§8.1-8.5]. Moreover, the simple fact that in another case (or any number of other cases) an acquiring authority has been able to demonstrate through its case-specific evidence that the demanding tests set by Parliament have been met does not assist SEGRO in this case.</p> <p>SEGRO’s approach is not only a failure to properly apply the tests and but also to recognise that, whilst compulsory purchase powers are usually used in DCOs, they are nationally significant schemes and, generally, provide critical infrastructure such as roads, railways and power stations. This is not such a scheme. Rather it is a commercial scheme for a private operator.</p> <p>SEGRO suggested that the ‘answer’ in this case was the judgment of Mr Justice Harrison in <u><i>The London Borough of Bexley v Secretary of State for the Environment, Transport and the Regions</i></u> [2001] EWHC Admin 323. It was said that that case shows that compulsory purchase powers can be granted to support one scheme over another where there were competing private developers. If that is what was being urged on the ExP, it was wrong.</p> <p>In that case compulsory purchase powers were granted in relation to a supermarket scheme where there was another supermarket scheme that did not require such powers. However, the compulsory purchase scheme offered more certain prospects that the redevelopment would proceed and more certain prospects that there would not be delay in implementing the scheme, as well as specific planning advantages relating to the effect on neighbouring properties and pedestrian access.</p> <p>First, the acquiring authority in that case was not a private developer but a local planning authority seeking to use its compulsory purchase powers under the Town and</p>

			<p>Country Planning Act to redevelopment an area. It had partnered with a private operator to deliver the scheme, but the private operator was not to be awarded compulsory purchase powers. That is very different to circumstances in which a private developer itself seeks compulsory powers against a commercial rival to achieve a competitive advantage it failed to achieve through normal open market competition.</p> <p>Secondly, compulsory purchase powers were required in that case to unlock the land and deliver the developer. That is not the case here – the APs actively want to develop the land and have said that they are prepared to work with SEGRO to deliver the scheme without the use of compulsory purchase powers.</p> <p>Thirdly, the relative benefits in the Bexley case cannot have any sway in this. By way of example, in that case the scheme requiring the powers was the more certain and more likely to be delivered earlier. That is not the case here. Delivery will be achieved earlier through the Joint Application.</p> <p>The decision-maker must apply the compelling case test and be satisfied that the compulsory purchase order is justified on the facts and merits of this case. The elements of that particular supermarket scheme that the Secretary of State preferred were a factor in the balance in that case and no more.</p> <p>The APs have been urging the ExP to consider carefully what are the additional benefits of the compulsory acquisition scheme in this case where in that scheme did not come forward there is a likelihood that substantially similar benefits would be delivered on the APs land and that the land south of Hyam’s Lane would also come forward given that access would be established through the Joint Application, the benign policy position (and allocation), the Free Market window and general demand for this form of development allied with the Prologis viability assessment that shows on SEGRO’s own terms that site to be deliverable. The APs position accords wholly with Bexley and SEGRO is wrong to think Bexley is some kind of answer to their needs.</p>
30	Further explanation of “substantial” in relation to the carbon neutral campus/headquarters including co-located head office which was part of the SoS’s s35 direction for the business and commercial NSIP. In particular, when properly understood, whether the s35 direction requires a head office under Class E rather than merely ancillary office space and whether the environmental statement assesses this and the dDCO is	Applicants Prologis EMIA	Please see the Prologis response under the heading “Section 53, Vires and Campus” which EMA adopts.

	<p>drafted in such a way that enables this to be delivered. (Post Hearing Note: See also Action Point 65 from ISH3)</p>		
31	<p>To clarify the definition of “likely” under the EIA Regulations and to explain whether the asserted displacement of socio-economic benefits associated with the joint application, arising from delivery of the DCO Scheme “the delivery scenario”, should be assessed as a likely significant effect in the Environmental Statement. To provide case references and copies of those decisions where relevant.</p>	<p>Applicants Prologis EMIA</p>	<p>Please see EMA’s CAH2 post hearing submissions paragraphs 31-39 under the heading “ExP Question 2”.</p>
32	<p>To provide a short explanatory note, preferably in table format, identifying DCOs that have been granted but not subsequently delivered and to explain whether and how this evidence informs the assessment of whether the “non-delivery scenario” is likely. The note should also clarify whether this matter should be addressed within the Environmental Statement as a likely significant effect or by other means, if considered outside the scope of the EIA Regulations, but nonetheless deemed important and relevant to the Secretary of State’s decision.</p>	<p>Applicants Prologis EMIA</p>	<p>Please see EMA’s CAH2 post hearing submissions paragraph 44. Please also see the Prologis response which provides similar information in tabular form and with important caveats and context which EMA adopts.</p>
33	<p>To submit representations covering the two outstanding bullet points from agenda item 3.2:</p> <ul style="list-style-type: none"> <li>• Whether in light of the discussions, and if it is determined that further socio-economic assessment is required for the delivery and non-delivery scenarios, the applicants must then re-visit and update their approach to the compelling case test in their Statement of Reasons in the context of justifying compulsory acquisition powers?</li> <li>• Whether the counterfactual position advanced by Prologis that development on</li> </ul>	<p>Applicants Prologis EMIA</p>	<p>Please see EMA’s CAH2 post hearing submissions:</p> <ul style="list-style-type: none"> <li>• Paragraphs 47-49 under “ExP Question 4”</li> <li>• Paragraphs 50-53 under “ExP Question 5”</li> </ul>

	<p>the southern land would come forward under a planning application, and therefore provides the correct baseline with which to assess the DCO scheme's socio-economic effects, is too speculative and contingent to be given any more than limited weight? For example, whilst the land is part of a draft allocation in the emerging local plan, the ExP notes Planning Inspectorate's guidance on cumulative effects, which categorises development identified in emerging development plans as tier 3 development and the least certain to come forward.</p>		
34	<p>To clarify the assumption that the southern land is land-locked and whether, in theoretical terms, access could be achieved through a reconfiguration of the motorway service area, noting that such access has not been modelled, and set out what the implications of this would be in relation to the respective viability analyses.</p>	<p>Applicants Prologis EMIA</p>	<p>Please see Prologis' response. There is no realistic basis on which such access could be achieved, even if it could be demonstrated to be physically possible, as it would be in direct conflict with Government policy.</p>
35	<p>To prepare a single joint Excel spreadsheet setting out their respective valuations side by side, using consistent cost headings, clearly identifying areas of agreement and disagreement. All formulas should be retained (not replaced with values). Where different methodologies are used, these should be shown alongside the other valuer's figures and commentary.</p>	<p>Applicants Prologis EMIA</p>	<p>Due to its Excel format, this has been submitted separately as part of Prologis' Deadline 4 submission.</p>
36	<p>To clarify whether Plot 1/2 (Hyam's Lane) on Land Plan Sheet 1 [APP-027D] would need to be acquired to enable development of the northern and/or southern land, including any north-south access, and to explain how this would be addressed given the Book of Reference identifies the primary ownership as unknown, including whether compulsory acquisition powers would be relied upon.</p>	<p>Applicants Prologis</p>	<p>Please see Prologis' response to this question which provides the position of Leicestershire County Council and confirms that Hyam's Lane is adopted unclassified highway. Accordingly, it would be within the powers of the highway authority to approve any new road crossing of Hyam's Lane to provide north-south access between the northern land and the southern land, notwithstanding that the Book of Reference identifies the subsoil ownership as unknown. Hyam's Lane itself would not, therefore, constitute a ransom strip. As such, compulsory acquisition of Hyam's Lane is not necessary to enable development of either the northern land or the southern land.</p>

### APPENDIX 3

#### RESPONSE TO ISSUE SPECIFIC HEARING 3 ACTION POINTS

AP No.	Action	Action by	Response
39	Provide case law, examining authority recommendation report and Secretary of State decision references as part of post hearing submissions relating to agenda item 3.1 on the lawful determination of the DCO application.	Applicants Prologis EMIA Protect Diseworth	Please see Prologis' response to this action point included as part of their Deadline 4 submission.
42	<p>To clarify the interaction between the proposed bridge solution for the link road and the works shown under Package 4 (red package) including:</p> <ul style="list-style-type: none"> <li>(i) whether the proposed bridge and associated vertical alignment would preclude or constrain the future delivery of a bridge across the motorway</li> <li>(ii) the implications for available headroom and vertical clearance, noting the difference between an underpass and bridge scenario</li> <li>(iii) the implications for abnormal high loads coming from/ to East Midlands Airport</li> </ul>	Applicants EMIA	<p>(i) Based on the information available, the proposed EMG2 link road is likely to constrain the future delivery of a motorway crossing bridge under Package 4, particularly if the Package 4 alignment and its connection to the A453 remain unchanged.</p> <p>The road from Package 4 bridge once on the west side of the M1 would need to drop quickly in levels to tie in with the A453 based on the original alignment. Level information for the Package 4 works has not been provided by the Applicant. However, this appears constrained and difficult to achieve if the designers complied with the vertical design requirements, as it is only a short distance between the M1 northbound off-slip and the A453. Leaving that aside, there would be a significant releveling/raising of the ground required around each of the Package 4 bridge embankments to support the raised road level. The DCO submission does not take this into consideration (where it 'overlaps' with the Package 4 route) and instead closely matches the existing ground levels.</p> <p>The DCO application (even with a substandard headroom to the DCO bridge), requires approx. 200m to change in road level from the bridge to existing ground (based upon the provided long section information). There is less than a 50m distance for the Package 4 link road to achieve the same and match the existing ground levels at the same location, which appears too steep to achieve the required standards. The standards specified in DMRB document CD109 states in paragraph 5.1 that the required gradient on an all-purpose single carriageway road can be a maximum of 8% which indicates an 8m drop in road level would require a minimum of 100m.</p> <p>(ii) More detailed design information has been provided for EMG2, including long sections from the M1 northbound diverge taper, across the proposed A453 bridge, and onward to the A50 northbound merge.</p>

			<p>The long section indicates that between Chainages 0m and 700m the proposed link road generally follows the existing ground profile. Between approximately Chainages 700m and 950m, the road rises at the maximum practicable rate within design standards to meet the proposed bridge location and intersection with the A543.</p> <p>As the vertical alignment of Package 4 is unknown, it is not currently possible to determine whether sufficient clearance would exist between the two schemes. Additional clearance may be achievable by lowering the EMG2 link road south of its bridge; however, further investigation would be required. Any reduction in levels would likely need to be accommodated further south, as the alignment appears constrained to the north by the proposed overbridge and to the south by the M1 carriageway.</p> <p>An alternative EMG2 arrangement shown within the Package 4 information replaces the A453 bridge crossing with an underpass beneath the A453. This option could provide greater flexibility to lower the EMG2 alignment and increase separation between the two schemes. However, the impact on surrounding infrastructure and overall feasibility would require further assessment.</p> <p>(iii) For structures located on recognised high-load routes, design standards typically require a minimum headroom of 6.45m plus any allowance for road sag curvature (6.45m + S) (DMRB document CD127 para. 4.1). As the sag curve information has not been provided, this assessment considers only the base requirement.</p> <p>The proposed clearance of 5.84m is therefore below the standard requirement of 6.45m + S. It is understood that a Departure from Standard has been submitted and agreed by the Overseeing Organisation but as we don't have sight of the mitigation measures proposed it is not clear what has been agreed. Such a submission would typically consider the impact on affected vehicles, alternative routing arrangements, and warning signage. No supporting information on these matters has been provided.</p> <p>An alternative route between the M1 and the A453 exists south of East Midlands Airport and may provide a suitable diversion for northbound abnormal loads. For southbound movements from M1 Junction 24, this would potentially require vehicles to continue to M1 Junction 23 before returning northbound. The EMIA team would need to review the departure agreed and the alternative routes before it can confirm the operations of the airport would not be adversely affected.</p>
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## APPENDIX 4

### COMMENTARY ON PROPOSED PROTECTIVE PROVISIONS IN RESPONSE TO ExQ 8.4.1 and 9.0.1

1. On 2 June 2026, the Examining Panel (“**ExP**”) issued Examining Authority’s Written Questions 02 (“**ExQ2**”), which included two specific requests at ExQ 8.4.1 and 9.0.1 for parties who benefit from protective provisions, where there is disagreement with the Applicant in respect to drafting, to set out alternative versions explaining each specific provision and why the preferred drafting is justified.
2. East Midlands International Airport Limited (“**EMA**”) has the benefit of protective provisions in Schedule 16 of the East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (“**2016 Order**”). The Applicant has carried forward the same version of the protective provisions from the 2016 Order into the dDCO and dMCO.
3. Since the 2016 Order the CAA guidelines and standards have been significantly tightened. As such, the protective provisions in the 2016 Order are not a reliable starting point to reflect the current regulatory environment. EMA has identified a number of issues with the version of the protective provisions present in the 2016 Order, which reduce the level of protection that it should be entitled as airport operator under current standards. These terms proposed by SEGRO could also expose EMA to risk of non-compliance with the up to date CAA guidelines and standards.
4. Consequently, EMA has prepared a new version of its protective provisions, which mirrors much of the detail in the Management Strategy for the Safeguarding of East Midlands Airport from the 2016 Order. It is considered that the new version of the protective provisions will not result in an increased burden on the Applicant in terms of submission of material – however it will provide a more robust framework within which EMA can expect details to be submitted, in addition to restrictions on the authorised development reaching certain milestones until such detail is provided and approved. Without these controls, EMA’s protective provisions are unable to offer sufficient protection to the airport undertaking, which poses considerable aerodrome licensing and aerodrome certification and safety risks.
5. The way that the new EMA protective provisions are intended to operate is split into 3 distinct parts:
  - a. Part 1 - The Applicant and EMA agree an Aeronautical Safeguarding Assessment prior to any application being made by the Applicant under requirement 7 (detailed design approval). The Aeronautical Safeguarding Assessment acts as the outline Management Strategy for the safeguarding of East Midlands Airport, under which details need to be submitted and approved prior to commencement of the authorised development within a phase.
  - b. Part 2 – Prior to the commencement of the authorised development within a phase, the Applicant will submit and EMA will approve the details to be approved under the Aeronautical Safeguarding Assessment (e.g. elevations and coordinates of buildings, wind shear assessments, glint and glare matters, lighting and bird hazards etc).
  - c. Part 3 – Other matters such as surface access restrictions, aerodrome liaison groups and dispute resolution.

	EMA Protective Provisions as requested by the Airport Operator (“EMA PPs”)	Equivalent Provision in the Protective Provisions for the benefit of the Airport Operator in the dDCO and dMCO <sup>1</sup> (“Applicant’s PPs”)	Justification
<b>Part 1 - Aeronautical Safeguarding Assessment – Framework</b>			
1	<p><b>Aeronautical Safeguarding Assessment – Framework</b></p> <p>(1) No application pursuant to requirement 7 (detailed design approval) is to be submitted without an Aeronautical Safeguarding Assessment having first been submitted to and approved by the airport operator.</p> <p>(2) The Aeronautical Safeguarding Assessment must assess the likely impact of the proposed development upon aerodrome operations.</p> <p>(3) The Aeronautical Safeguarding Assessment must relate to both the construction and operational phases and include:</p> <ul style="list-style-type: none"> <li>a) scaled plans, elevations and coordinates for all buildings, structures, cranes, plant and equipment showing heights in metres above mean sea level, or metres above ground level of surveyed ground height;</li> <li>b) proposed finished floor and roof levels in metres above mean sea level or metres above ground level of surveyed ground height;</li> <li>c) an assessment of impacts upon obstacle limitation surfaces and instrument flight procedures;</li> <li>d) a wildlife management plan;</li> </ul>	<p><b>Paragraph 1</b></p> <p>The undertaker must carry out the authorised development in accordance with the management strategy for the safeguarding of East Midlands Airport (Document DCO 6.20C).</p>	<p>The intended way in which the EMA PPs will operate is to require, under (1), that the Applicant seeks approval from EMA in respect of the framework for submission of further aeronautical safeguarding details, prior to any application for detail design of the authorised development being submitted for approval. The remaining provisions in paragraph 1 simply provide for what the aerodrome safeguarding assessment needs to include.</p> <p>Paragraph 1 of the proposed EMA PPs provides for exactly the same level of detail to be submitted by the Applicant in respect of the topics of aerodrome safeguarding, as set out particularly in DCO 6.20C, which largely mirrors the level of protection afforded to EMA in the 2016 Order.</p> <p>The key difference between the EMA PPs and the Applicant’s PPs (and those in the 2016 Order) is the fact that there is now proposed to be an express trigger on when the framework needs to be submitted. Without this trigger, there is a substantial risk that the Applicant could begin submitting details of design without first having put in place the necessary framework for how those details would be approved from the perspective of aerodrome safeguarding impacts.</p>

<sup>1</sup> These are also the provisions which appear in the East Midlands Gateway Rail Freight Interchange and Highway Order 2016 at Schedule 16 (“2016 Order”).

	<ul style="list-style-type: none"> <li>e) details of construction methodologies relevant to aviation safety;</li> <li>f) details of temporary and permanent lighting, including highway lighting;</li> <li>g) a glint and glare assessment where necessary;</li> <li>h) an assessment of turbulence and wake effects caused by buildings or structures, 'wind shear' where necessary;</li> <li>i) details of telecommunications, radio and electronic equipment;</li> <li>j) details of proposed drainage, landscaping and attenuation ponds;</li> <li>k) details of any proposed drone or unmanned aircraft operations; and any</li> <li>l) such other information as the airport operator may reasonably require in connection with aerodrome safeguarding matters.</li> </ul>		
2	<p><b>Aeronautical Safeguarding Assessment – Approvals</b></p> <p>(1) No approval pursuant to this Part may be unreasonably withheld or delayed however approval may be refused on the grounds of aviation safety at the airport operator's absolute discretion.</p> <p>(2) Where any amendments are made to approved details within a phase which relate to matters relevant to aerodrome safeguarding, the undertaker will re-submit an application for consent under this paragraph of this Part.</p>		<p>This provision seeks to place reasonable controls on EMA's ability to withhold or delay the giving of approvals under the provisions of the EMA PPs. It also captures any re-submissions of design details within the same process outlined by the EMA PPs.</p>
<b>Part 2 - Aeronautical Safeguarding Assessment - Details</b>			
3	<p><b>Aeronautical Safeguarding Assessment – Detailed Drawings Approval</b></p>		<p>The proposed EMA PPs add a necessary control, which would prevent the Applicant from</p>

	<p>(1) No component of the authorised development pursuant to any phase approved under requirement 3 is to commence until the airport operator has approved the relevant details of scaled plans, elevations and coordinates for all buildings, structures, cranes, plant and equipment along with proposed finished floor and roof levels which have been submitted to it under the Aeronautical Safeguarding Assessment.</p>		<p>commencing any part of the authorised development until the airport operator has approved the relevant elevations, coordinates, floor levels, roof levels and crane/plant methodology.</p> <p>These measures are mandated by the CAA under its guideline associated with carrying out development within or near to aerodrome safeguarding zones.</p> <p>Under the Applicant's PPs, this level of detail is still required under Paragraph 1, however there would be no specific control on the commencement of development.</p> <p>This presents a key risk to the airport, which would have an ability to refuse details under Paragraph 1 but would have no commensurate ability to stop development under the DCO which is contrary to those details.</p> <p>This is a clear omission from the 2016 Order which is a significant risk to EMA.</p>
4	<p><b>Aeronautical Safeguarding Assessment – Obstacle Limitation Service and Instrument Flight Procedure Approval</b></p> <p>(1) No component of the authorised development pursuant to any phase approved under requirement 3 is to commence until the airport operator has approved the relevant details of that phase relating to obstacle limitation surfaces and instrument flight procedures which have been submitted to it under the Aeronautical Safeguarding Assessment.</p>		<p>The proposed EMA PPs add a necessary control, which would prevent the Applicant from commencing any part of the authorised development until the airport operator has approved the development heights and confirmed no infringement of the relevant obstacle limitation surfaces and instrument flight procedures.</p> <p>Under the Applicant's PPs, this level of detail is still required under Paragraph 1, however there would be no specific control on the commencement of development.</p> <p>This presents a key risk to the airport, which would have an ability to refuse details under Paragraph 1 but would have no commensurate ability to stop</p>

			<p>development under the DCO which is contrary to those details.</p> <p>This is a clear omission from the 2016 Order which is a significant risk to EMA.</p>
5	<p><b>Aeronautical Safeguarding Assessment – Wildlife Hazard Management Plan Approval</b></p> <p>(1) No component of the authorised development pursuant to any phase approved under requirement 3 is to commence until the airport operator has approved a Wildlife Hazard Management Plan relevant to that phase and which was submitted to the airport operator under the Aeronautical Safeguarding Assessment.</p> <p>(2) The Wildlife Hazard Management Plan must include measures relating to—</p> <ul style="list-style-type: none"> <li>a) landscaping;</li> <li>b) habitat management;</li> <li>c) drainage ponds and water features;</li> <li>d) waste management;</li> <li>e) pest control;</li> <li>f) monitoring and reporting procedures; and</li> <li>g) corrective measures where bird activity exceeds acceptable levels.</li> </ul>	<p><b>Paragraph 2</b></p> <p>The undertaker must produce a bird management plan to minimise any bird hazard impact (such plan to be substantially in accordance with the Bird Strike Hazard Management Plan (Document DCO 6.9K)) covering the design, construction and operation of the main site and obtain approval to the bird management plan from the airport operator prior to the submission of any details for approval under requirement 7 (detailed design approval). The approval of the bird management plan must not be unreasonably withheld or delayed. The approved bird management plan must then be complied with at all times.</p>	<p>The proposed EMA PPs add a necessary control, which would prevent the Applicant from commencing any part of the authorised development until the airport operator has approved the Wildlife Hazard Management Plan.</p> <p>Under the Applicant’s PPs, this level of detail is still required under Paragraph 1, however there would be no specific control on the commencement of development.</p> <p>This presents a key risk to the airport, which would have an ability to refuse details under Paragraph 1 but would have no commensurate ability to stop development under the DCO which is contrary to those details.</p> <p>This is a clear omission from the 2016 Order which is a significant risk to EMA.</p>
6	<p><b>Aeronautical Safeguarding Assessment – Construction Approval</b></p> <p>(1) No component of the authorised development pursuant to any phase approved under requirement 3 is to commence until the airport operator has approved the relevant construction</p>		<p>The proposed EMA PPs add a necessary control, which would prevent the Applicant from commencing any part of the authorised development within a phase until the airport operator has approved the relevant construction methodology for that phase.</p>

	<p>activities to be undertaken on that phase insofar as the same may be relevant to aerodrome safeguarding matters and which have been submitted to it under the Aeronautical Safeguarding Assessment.</p>		<p>Under the Applicant's PPs, this level of detail is still required under Paragraph 1, however there would be no specific control on the commencement of development.</p> <p>This presents a key risk to the airport, which would have an ability to refuse details under Paragraph 1 but would have no commensurate ability to stop development under the DCO which is contrary to those details.</p> <p>This is a clear omission from the 2016 Order which is a significant risk to EMA.</p>
7	<p><b>Aeronautical Safeguarding Assessment – Lighting Approval</b></p> <p>(1) No component of the authorised development pursuant to any phase approved under requirement 3 is to commence until the airport operator has approved the relevant details of that phase relating to permanent and temporary lighting (including highway lighting), illuminated signage), which have been submitted to it under the Aeronautical Safeguarding Assessment.</p>		<p>The proposed EMA PPs add a necessary control, which would prevent the Applicant from commencing any part of the authorised development until the airport operator has approved the relevant lighting details.</p> <p>Under the Applicant's PPs, this level of detail is still required under Paragraph 1, however there would be no specific control on the commencement of development.</p> <p>This presents a key risk to the airport, which would have an ability to refuse details under Paragraph 1 but would have no commensurate ability to stop development under the DCO which is contrary to those details.</p> <p>This is a clear omission from the 2016 Order which is a significant risk to EMA.</p>
8	<p><b>Aeronautical Safeguarding Assessment – Glint &amp; Glare Approval</b></p> <p>(1) No component of the authorised development pursuant to any phase approved under requirement 3 is to commence until the airport operator has approved the relevant details of that phase</p>	<p><b>Paragraph 5</b></p> <p>The prior approval of the airport operator (acting as the statutory aerodrome safeguarding authority) must be obtained by the undertaker for the installation of any solar photovoltaic panels or apparatus within the authorised development, such approval not to</p>	<p>The proposed EMA PPs add a necessary control, which would prevent the Applicant from commencing any part of the authorised development until the airport operator has approved the glint and glare assessment.</p> <p>Under the Applicant's PPs, this level of detail is still required under Paragraph 1, however there would</p>

	relating to an aviation glint and glare assessment which have been submitted to it under the Aeronautical Safeguarding Assessment.	be unreasonably withheld or delayed. Any request for such approval must be accompanied by a full solar glare assessment and detailed risk assessment.	<p>be no specific control on the commencement of development.</p> <p>This presents a key risk to the airport, which would have an ability to refuse details under Paragraph 1 but would have no commensurate ability to stop development under the DCO which is contrary to those details.</p> <p>This is a clear omission from the 2016 Order which is a significant risk to EMA.</p>
9	<p><b>Aeronautical Safeguarding Assessment – Wind Shear Approval</b></p> <p>(1) No component of the authorised development pursuant to any phase approved under requirement 3 is to commence until the airport operator has approved the relevant details of that phase relating to building and structure induced turbulence ‘wind shear’ which have been submitted to it under the Aeronautical Safeguarding Assessment.</p>		<p>The proposed EMA PPs add a necessary control, which would prevent the Applicant from commencing any part of the authorised development until the airport operator has approved the wind shear assessment.</p> <p>Under the Applicant’s PPs, this level of detail is still required under Paragraph 1, however there would be no specific control on the commencement of development.</p> <p>This presents a key risk to the airport, which would have an ability to refuse details under Paragraph 1 but would have no commensurate ability to stop development under the DCO which is contrary to those details.</p> <p>This is a clear omission from the 2016 Order which is a significant risk to EMA.</p>
10	<p><b>Aeronautical Safeguarding Assessment – Drainage and Landscaping Approval</b></p> <p>(1) No component of the authorised development pursuant to any phase approved under requirement 3 is to commence until the airport operator has approved the relevant details of that phase relating to proposed drainage, landscaping</p>		<p>The proposed EMA PPs add a necessary control, which would prevent the Applicant from commencing any part of the authorised development until the airport operator has approved the details of drainage, landscaping and attenuation ponds.</p> <p>Under the Applicant’s PPs, this level of detail is still required under Paragraph 1, however there would</p>

	and attenuation ponds which have been submitted to it under the Aeronautical Safeguarding Assessment.		<p>be no specific control on the commencement of development.</p> <p>This presents a key risk to the airport, which would have an ability to refuse details under Paragraph 1 but would have no commensurate ability to stop development under the DCO which is contrary to those details.</p> <p>This is a clear omission from the 2016 Order which is a significant risk to EMA.</p>
<b>Part 3 - Other matters relevant to Aerodrome Safeguarding</b>			
11	<p><b>Aeronautical Safeguarding Assessment – Radio and Communications Approval</b></p> <p>(1) No radio communication equipment, microwave links, telecommunications or any equipment using electro-magnetic frequencies shall be used within the Order limits or in connection with the construction or operation of the authorised development unless approved by the airport operator.</p> <p>(2) If any equipment forming part of the authorised development causes interference with airport systems, the undertaker must immediately cease operation of the relevant equipment and implement corrective measures to be approved by the airport operator prior to installation.</p>	<p><b>Paragraph 3</b></p> <p>The prior approval of the airport operator must be obtained by the undertaker for the installation and operation of any radio communication or radio survey equipment (including any such temporary equipment) within the authorised development, such approval not to be unreasonably withheld or delayed.</p>	<p>This paragraph is almost identical to that which was secured in the 2016 Order. The only key difference is an additional paragraph which allows for the proper enforcement of the provision in the event that the Applicant breached any approval.</p>
12	<p><b>Aeronautical Safeguarding Assessment – Drones and Unmanned UAS Approval</b></p> <p>(1) No drones, or unmanned aircraft systems shall be operated at any time from, on, or in connection with the construction or</p>		<p>The use of drones and unmanned UAS within the aerodrome safeguarding zone is prohibited without the approval of the airport operator and in strict compliance with its requirements.</p>

	<p>operation of the authorised development unless approved by the airport operator in writing.</p> <p>(2) Any approved drone operations pursuant to paragraph 5(1) of this Part shall be carried out in strict accordance with the terms of that approval.</p>		<p>An express approval over the use of drones and unmanned UAS is required as a result of advances in construction and operational practices since the 2016 Order.</p>
13	<p><b>Surface Access</b></p> <p>(1) The undertaker must not obstruct or in any way interfere with the existing access (including all emergency access routes) to the airport without the prior written consent of the airport operator.</p> <p>(2) No access to the airport may be diverted, closed or in any way restricted until a replacement route is provided and available for use.</p>	<p><b>Paragraph 4</b></p> <p>The undertaker must not obstruct or in any way interfere with the existing access (including all emergency access routes) to the airport, other than in accordance with the carrying out of the authorised development, without the prior consent of the airport operator such consent not to be unreasonably withheld or delayed. Any existing access route which is to be diverted as part of the authorised development must not be closed until the replacement route is constructed and available for use.</p>	<p>The key difference in the EMA PPs is to remove the words <i>“other than in accordance with the carrying out of the authorised development, without the prior consent of the airport operator such consent not to be unreasonably withheld or delayed”</i>.</p> <p>In EMA’s view, the effect of the wording which has been removed made Paragraph 4 essentially worthless for the protection of the airport operator, as any closure or interference with exiting accesses (and emergency access) would have been in accordance with the carrying out of the authorised development.</p> <p>The airport operator cannot allow any interference with its accesses – emergency or otherwise – irrespective of whether that interference is a consequence of or in accordance with the authorised development. Any such interference must be subject to the approval of the airport operator.</p> <p>The drafting around the replacement route has been retained in full.</p>
14	<p><b>Construction Activities and Crane Operations</b></p> <p>(1) The undertaker must not undertake crane operations, lifting operations or use of tall construction plant unless details have first been approved by the airport operator.</p>		<p>This paragraph adds an additional control on to paragraph 3 above (detailed design drawings) in connection with obstacle limitation safeguarding and seeks to protect the airport operator from construction operations which could breach CAA safety regulations and guidelines.</p>

	<p>(2) The undertaker must provide crane schedules identifying—</p> <ul style="list-style-type: none"> <li>a) maximum operating heights;</li> <li>b) operating locations;</li> <li>c) operational durations; and</li> <li>d) lighting and marking arrangements.</li> </ul> <p>(3) The undertaker must ensure compliance with all applicable CAA guidance relating to crane operations and obstacle safeguarding.</p> <p>(4) The airport operator may require temporary cessation of crane or tall plant operations where reasonably necessary in the interests of aviation safety.</p> <p>(5) The undertaker must indemnify the airport operator for all reasonable costs incurred in managing and mitigating interference caused by construction equipment.</p>		<p>This paragraph is omitted from the Applicant's PPs and the 2016 Order, which instead rely on the fact that details of crane and building heights and operations are to be submitted under the aerodrome safeguarding management plan.</p> <p>EMA consider that it is necessary for the protective provisions to include a robust control on the use of cranes, to ensure that operations are in accordance with CAA guidance and to ensure detailed operational matters (inc. crane lighting, durations and heights) are agreed by the airport operator in advance.</p>
15	<p><b>Aeronautical Safeguarding Liaison Group</b></p> <p>(1) No application pursuant to requirement 7 (detailed design approval) in respect of the main site is to be submitted until the undertaker has established an aeronautical safeguarding liaison group, comprised of the undertaker, the airport operator, the local planning authority and the local highway authority, to coordinate the sharing of information to satisfy the requirements of the aeronautical safeguarding assessment.</p> <p>(2) The aeronautical safeguarding liaison group will meet as regularly as is necessary throughout the construction and operation phases of the authorised development to discuss and act on matters which are relevant to the</p>		<p>EMA consider it necessary to establish a forum with the Applicant, the airport operator and the relevant highway authorities to manage and coordinate the submission of information under the aeronautical safeguarding assessment. This forum would be helpful to ensure active dialogue between the parties and to ensure resourcing time is understood in advance of submissions being made, as well as provide a basis on which requests for information can be made informally. This approach is well preceded on other airport adjacent schemes (e.g. Luton Airport, Gatwick Airport).</p>

	<p>safeguarding of the airport operator's undertaking.</p> <p>(3) The Aeronautical Safeguarding Liaison Group must operate, meet and make decisions in accordance with its terms of reference unless---</p> <p>a) Otherwise agreed by the members and the undertaker, in accordance with the process set out in its terms of reference; or</p> <p>b) Where the Aeronautical Safeguarding Liaison Group has not been established, otherwise agreed by the member and the undertaker.</p>		
16	<p><b>Arbitration</b></p> <p>Any difference or dispute arising between the undertaker and the airport operator under this Schedule must, unless otherwise agreed between the undertaker and the airport operator, be determined by arbitration in accordance with article 45 (arbitration).</p>	<p><b>Paragraph 6</b></p> <p>Any difference or dispute arising between the undertaker and the airport operator under this Part of this Schedule must, unless otherwise agreed between the undertaker and the airport operator be determined by arbitration in accordance with article 45 (arbitration).</p>	<p>The provision has the same effect.</p>