

Document DCO 3.2

Explanatory Memorandum to Draft Development Consent Order

SEPTEMBER 2026

The East Midlands Gateway Phase 2
and Highway Order 202X and The East Midlands Gateway
Rail Freight and Highway (Amendment) Order 202X

**The East Midlands Gateway Phase 2 and
Highway Order 202X and The East Midlands
Gateway Rail Freight and Highway (Amendment)
Order 202X**

**EXPLANATORY MEMORANDUM TO DRAFT
DEVELOPMENT CONSENT ORDER**

(DOCUMENT DCO 3.2)

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1 Introduction

Background

- 1.1 This memorandum accompanies an application for a development consent order (the DCO Application) submitted by SEGRO Properties Limited (the DCO Applicant). The DCO Application seeks approval of the proposed The East Midlands Gateway Phase 2 and Highway Development Consent Order (the draft DCO or the Order) (**Document DCO 3.1**) [[REP6-007D](#)].
- 1.2 The DCO Application relates to a second phase of the existing SEGRO Logistics Park East Midlands Gateway (EMG1). EMG1 is a Strategic Rail Freight Interchange located to the north of East Midlands Airport and was authorised by The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (SI 2016/17) (EMG1 DCO). EMG1 was substantially completed in October 2024.
- 1.3 This second phase is known as 'East Midlands Gateway 2', 'EMG2', the 'EMG2 Project' or the 'Proposed Development'.

EMG2 Project

- 1.4 The EMG2 Project comprises three main components:

Main Component	Summary of Component	Works Nos.
DCO Application made by the DCO Applicant for the DCO Scheme		
EMG2 Works	Logistics and advanced manufacturing development located on the EMG2 Main Site south of East Midlands Airport and the A453, and west of the M1 motorway. The development includes HGV parking and a bus interchange. Together with an upgrade to the EMG1 substation and provision of a Community Park.	DCO Works Nos. 1 to 5 including relevant Further Works as described in the draft DCO (Document DCO 3.1) [REP6-007D]. DCO Works Nos. 20 and 21 including relevant Further Works as described in the draft DCO (Document DCO 3.1) [REP6-007D].
Highway Works	Works to the highway network: the A453 EMG2 access junction works (referred to as the EMG2 Access Works); significant improvements at Junction 24 of the M1 (referred to as the J24 Improvements), works to the wider highway network including the Active Travel Link, Hyams Lane Works, Works to Long Holden, L57 Footpath Upgrade, A6 Kegworth	DCO Works Nos. 6 to 19 including relevant Further Works as described in the draft DCO (Document DCO 3.1) [REP6-007D].

	Bypass/A453 Junction Improvements and Finger Farm Roundabout Improvements.	
MCO Application made by the MCO Applicant for the MCO Scheme		
EMG1 Works	Additional warehousing development on Plot 16 together with works to increase the permitted height of the cranes at the EMG1 rail-freight terminal, improvements to the public transport interchange, site management building and the EMG1 Pedestrian Crossing.	MCO Works Nos. 3A, 3B, 5A, 5B, 5C, 6A and 8A in the draft MCO (Document MCO 3.1) [REP6-013M].

- 1.5 A more detailed description of the EMG2 Project and its components can be found in Chapter 3 of the Environmental Statement (ES) submitted with the DCO Application (**Document DCO 6.3 / MCO 6.3**) [[REP3-006](#)]. The components are also shown on the Components Plan (**Document DCO 2.7 / MCO 2.7**) [[REP4-010](#)].
- 1.6 Two concurrent applications are being made for the three component parts of the EMG2 Project:
- 1.6.1 The first application, being the DCO Application, is made by the DCO Applicant for the DCO Scheme comprising the EMG2 Works component and the Highway Works component.
- 1.6.2 The second application, being an application for a material change order to the EMG1 DCO, is made by SEGRO (EMG) Limited (the MCO Applicant) for the EMG1 Works component (MCO Scheme).
- 1.7 The DCO Application and the MCO Application, and the strategy for securing consent for the EMG2 Project, is more fully described in the Guide to Applications (**Document DCO 1.3 / MCO 1.3**) [[APP-005D / APP-009M](#)].

DCO Applicant

- 1.8 The DCO Applicant, SEGRO Properties Limited (Company number 00448911) of 1 New Burlington Place London W1S 2HR, is a wholly owned subsidiary of SEGRO PLC, a UK Real Estate Investment Trust (REIT) and a FTSE 100 company.
- 1.9 Further details about the DCO Applicant and related companies can be found in the Funding Statement (**Document DCO 4.2**) [[APP-020D](#)].

DCO Application

- 1.10 As indicated above, the DCO Application seeks consent for the DCO Scheme comprising the EMG2 Works and the Highway Works. It is made pursuant to section 37 of Part 5 of the PA 2008 and:
- 1.10.1 In respect of Works Nos. 1 to 7, is made pursuant to a direction made by the Secretary of State (SoS) under section 35 of the Planning Act 2008 (PA 2008) and dated 21 February 2024 (Section 35 Direction) (**Document DCO 6.1B**) [[APP-068](#)] as described in paragraphs 1.11 and 1.12 below;

1.10.2 In respect of Works Nos. 8 to 12, the works to the strategic road network are an NSIP in their own right and the application is made pursuant to section 22 of the PA 2008, as described in paragraphs 1.13 to 1.17 below; and

1.10.3 In respect of Works Nos. 13 to 21, are associated development as described in paragraph 1.18 below.

Section 35 Direction

1.11 In January 2024, the DCO Applicant made an application to the SoS under section 35 of the PA 2008 for a direction to recognise the development of the EMG2 Main Site, as being of national significance for which development consent is required.

1.12 The SoS issued the Section 35 Direction confirming that the proposed scheme by itself is nationally significant because the proposal would:

- *“be likely to have significant economic impact;*
- *be important in driving growth in the economy;*
- *have an impact on an area wider than a single local authority area;*
- *be of a substantial physical size and scale;*
- *contribute to delivering the outcomes of the Freeport; and*
- *benefit from the application being determined through a single, unified consenting process provided by the Planning Act 2008 which would remove the need to apply and the uncertainty of applying for separate powers and consents.”*

Highways NSIP

1.13 Consideration was given as to whether any of the Highway Works might constitute an NSIP in their own right. Whether they do depends on whether the works meet the criteria and thresholds relating to ‘highway’ NSIPs as set out in section 22 of the PA 2008.

1.14 There are three categories of works on highways which may qualify as NSIPs. These are the ‘construction’, ‘alteration’ and ‘improvement’ of such a highway.

1.15 No new highways are proposed to be constructed as part of the DCO Scheme for the purposes of section 22(2) of PA 2008.

1.16 As regards the ‘alteration’ and ‘improvement’ of highway, the criteria and thresholds are as follows:

1.16.1 Alteration (section 22(3) of PA 2008) – The works are an NSIP if:

- (a) The highway is wholly in England;
- (b) The SoS or a strategic highways company is the highway authority for the highway; and
- (c) The area of development relating to a motorway is greater than 15ha or if the area of development relating to an all-purpose trunk road with an

expected speed limit greater than or equal to 50mph is greater than 12.5ha or if the area of development relating to other all-purpose trunk road is greater than 7.5ha.

1.16.2 Improvement (section 22(5) of PA 2008) – The works are an NSIP if:

- (a) The highway is wholly in England;
- (b) The SoS or a strategic highways company is the highway authority for the highway; and
- (c) The improvements are likely to have a significant effect on the environment.

1.17 Part of the Highway Works comprising Work Nos. 8 to 12 are an alteration to a highway wholly in England, are to highway for which a strategic highways company is the highway authority and exceed the thresholds in section 22(3) of the PA 2008. They are therefore an alteration for the purposes of section 22(3) of the PA 2008 and a NSIP in their own right.

Associated Development

1.18 The remaining works comprising Work Nos. 13 to 21 are associated development being works to highway managed by National Highways (Works Nos. 16 and 18), works to highway managed by Leicestershire County Council (Works Nos. 13, 14, 15, 17 and 19), the upgrade to the EMG1 substation (Works No. 20) and the provision of the Community Park (Works No. 21).

1.19 The Applicants have reviewed the proposed associated development against the principles set out in paragraph 5 of the Government's Guidance on associated development: 'Planning Act 2008: Guidance on associated development applications for major infrastructure projects'¹ (the Guidance). The Guidance records that associated development for the purposes of section 115 of the Planning Act 2008 requires a direct relationship between the associated development and the principal development, should support the construction or operation of the principal development or help address its impacts and should be proportionate to the nature and scale of the development. Each element is explained in the table below. The individual elements are also shown on the drawing appended to [\[REP6A-001D\]](#).

Works No. and summary	Direct Relationship	Support construction, operation or address impacts	Proportionate in nature and scale
13 – improvements to access junction of EMG1	These improvements are only required to accommodate the increase in traffic generated by EMG2	Supports operation of EMG2 and addresses impacts	Improvements are proportionate to the scale of EMG2 and mitigate its impacts

¹ Issued by the then Department for Communities and Local Government dated April 2013.

14 – active travel link	This link is required to facilitate access to the EMG2 Main Site by sustainable means	Supports operation of EMG2 and addresses impacts	Improvements are proportionate to the nature of EMG2 and mitigate its impacts
15 – controlled crossing on A453	This crossing will allow persons travelling by sustainable means to cross the A453 and access the EMG2 Main Site	Supports operation of EMG2 and addresses impacts	Improvements are proportionate to the nature of EMG2 and mitigate its impacts
16 – verge and gantry mounted signs	The updates to verge and gantry signs are required to direct users for the A50 to the new J24A exit being constructed as part of the s22 Highway NSIP	Supports operation of the s22 Highway NSIP	Improvements are proportionate to the scale of the s22 Highway NSIP
17 – works to Long Holden PRow	Long Holden is a PRow on the perimeter of the EMG2 Main Site and works are required to accommodate the development	Supports construction, operation of EMG2 and address impacts	Improvements are proportionate to the scale and nature of EMG2 and mitigate its impacts
18 – works to A42/A453 Finger Farm roundabout	The A42/A453 Finger Farm roundabout leads road uses on to the A453 to access the EMG2 Main Site	Supports operation of EMG2 and addresses impacts	Improvements are proportionate to the scale of EMG2 and mitigate its impacts
19 – upgrade footpath L57 to a cycle track	Converting footpath L57 enables access to the EMG2 Main Site from Castle Donington by sustainable means	Supports operation of EMG2 and addresses impacts	Improvements are proportionate to the nature of EMG2 and mitigate its impacts
20 – upgrade to existing substation	The existing substation within EMG1 requires upgrading to provide power to the EMG2 Main Site	Supports operation of EMG2	Improvements are proportionate to the scale and nature of EMG2

21 – provision of community park	The Community Park is adjacent to and serves the EMG2 Main Site	Supports operation of EMG2 and addresses impacts	Improvements are proportionate to the scale and nature of EMG2 and mitigate its impacts
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- 1.20 The Guidance also clarifies that associated development should not be an aim in itself and should not be justified solely as a source of additional revenue. None of the works within Part 3 of Schedule 1 of the draft DCO as summarised in the table above are an aim in themselves nor do they provide an additional source of revenue to the Applicants.

2 Purpose of the DCO

- 2.1 This memorandum is required by Regulation 5(2)(c) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, as amended, (the 2009 Regulations), and explains the purpose and the effect of provisions in the draft DCO (**Document DCO 3.1**) [[REP6-007D](#)]. It has been prepared having regard to the guidance set out in the Advice Note 15: drafting Development Consent Orders (July 2018).
- 2.2 The draft DCO, if made, will authorise the carrying out and use of the authorised development, being the DCO Scheme comprising the EMG2 Works and the Highway Works.
- 2.3 The authorised development is divided up into separate 'Works' shown on the Works Plans (**Document series DCO 2.3**) [[APP-035D](#), [REP1-006D](#), [REP1-009D](#), [REP4-006D](#) and [REP4-007D](#)] and the Highways Plans General Arrangement (**Document series DCO 2.8**) and described in Schedule 1 of the draft DCO (**Document DCO 3.1**) [[REP6-007D](#)].

EMG2 Works

- 2.4 The EMG2 Works comprise a comprehensive logistics and advanced manufacturing development together with supporting and co-located office and other ancillary functions. The development is defined in Schedule 1 of the draft DCO (**Document DCO 3.1**) [[REP6-007D](#)] and comprises the following elements within the EMG2 Main Site:
 - 2.4.1 Construction of logistics and advanced manufacturing development and ancillary buildings (Works No. 1);
 - 2.4.2 Construction of road infrastructure (Works No. 2);
 - 2.4.3 Construction of bus interchange (Works No. 3);
 - 2.4.4 Construction of HGV parking (Works No. 4); and
 - 2.4.5 Provision of hard and soft landscaping (Works No. 5).
- 2.5 Further elements within the EMG2 Works are as follows:
 - 2.5.1 Upgrade of the EMG1 substation (Works No. 20); and
 - 2.5.2 Creation of a Community Park (Works No. 21).
- 2.6 In order to respond to occupier demand and the evolving requirements of industry, it is essential that flexibility is built into the proposals. The principles of the 'Rochdale Envelope' approach have therefore been followed for the EMG2 Works in line with the advice contained in Planning Inspectorate's *Advice Note Nine: Using the 'Rochdale Envelope'* (July 2018). Put simply, using the 'Rochdale Envelope' means defining the parameters within which the construction and operation of the proposed development would be undertaken, as opposed to a detailed design. This then ensures a balance between clarity and certainty for the local community, other interested parties, the decision-makers, and a clear focus for the EIA process, while also ensuring the flexibility to incorporate a range of occupier requirements regarding building footprints and plot layouts.

- 2.7 The parameters for the development of the EMG2 Main Site are set out on Parameters Plan (**Document DCO 2.5**) [\[REP6-006D\]](#) which establishes the following key parameters or design principles for the proposed works at the EMG2 Main Site:
- 2.7.1 A maximum of 300,000 sq.m. of floorspace (GIA) overall, with an additional allowance of 200,000 sq.m. in the form of internal mezzanines across the site (such floorspace only to be used for purposes relating to the building's primary use). The development will primarily comprise logistics buildings with up to 20% of the floorspace capable of being used for advanced manufacturing (Works No. 1);
 - 2.7.2 A series of Development Zones to the north and south of Hyams Lane where new buildings are proposed to be located together with supporting infrastructure (Works No. 1);
 - 2.7.3 Maximum amount of floorspace for each Development Zone and range of units to be erected within each zone (Works No. 1);
 - 2.7.4 Maximum external building heights for each Development Zone to ensure the overall height of the development is fixed (Works No. 1);
 - 2.7.5 Vehicular access from the A453 via a new arm off the Hunter Road roundabout with a possible alternative principal access (new roundabout) further to the west along the A453 (Works No. 6);
 - 2.7.6 A bus interchange terminal at the site entrance which replicates and builds upon the successful sustainable travel strategy for the EMG1 site (Works No. 3);
 - 2.7.7 A secure, dedicated, HGV parking area (of approximately 95 spaces) to meet the needs of HGVs visiting the EMG2 Main Site (Works. No. 4);
 - 2.7.8 Structural landscaping areas and buffers including new and retained landscaped features. This includes a significant landscaped earthwork mound on the western and southern part of the site. The landscape areas would include SuDS features (Works No. 5);
 - 2.7.9 Provision of a new estate road serving the Development Zones. 'Limits of deviation' are identified on the Parameters Plan providing a degree of flexibility for the eventual detailed layout and alignment of this road, whilst still providing an appropriate level of certainty regarding its positioning. A zone is also identified where the estate road will cross Hyams Lane (Works Nos. 2 and 7);
 - 2.7.10 Retention of Hyams Lane with its surface upgraded to provide enhanced pedestrian/cycle connectivity through the EMG2 Main Site (Works No. 7); and
 - 2.7.11 Modification and extension of existing substation located within EMG1 (Works No. 20).
- 2.8 Key development parameters are also set out in Table 3.5 of Chapter 3 of the ES (**Document DCO 6.3**) [\[REP3-006\]](#).

Highway Works

- 2.9 The Highway Works comprise a comprehensive package of highways works including access to the EMG2 Main Site, substantial improvements around J24 of the M1 as well

as more minor works on the local highways network and pedestrian/cycle route enhancements. The works include the following:

- 2.9.1 A453 access junction works to the EMG2 Main Site (Works No. 6);
- 2.9.2 Hyams Lane works (Works No. 7);
- 2.9.3 Works to the M1 northbound (Works No. 8);
- 2.9.4 Construction of link road from the M1 northbound to the A50 westbound (Works No. 9);
- 2.9.5 Works to the A50 westbound (Works No. 10);
- 2.9.6 Works to the link road from the M1 southbound and A50 eastbound to M1 Junction 24 (Works No. 11);
- 2.9.7 Works to the west side of the M1 Junction 24 roundabout and A453 northbound approach (Works No. 12a);
- 2.9.8 Works to the east side of the M1 Junction 24 roundabout and A453 southbound approach (Works No. 12b);
- 2.9.9 Improvements to the EMG1 access junction (Works No. 13);
- 2.9.10 Construction of the Active Travel Link between the EMG1 access junction and the A453 west of Finger Farm roundabout (Works No. 14);
- 2.9.11 Provision of an uncontrolled crossing of the A453 at the East Midland Airport signalised access junction (Works No. 15);
- 2.9.12 Works to M1 northbound signage on the approach to M1 Junction 23A (Works No. 16);
- 2.9.13 Works to Long Holden (Works No. 17);
- 2.9.14 Works to the A42/A453 Finger Farm roundabout (Works No. 18); and
- 2.9.15 Upgrade to public footpath L57 to a cycle track (Works No. 19).

Ancillary Matters

- 2.10 The draft DCO (**Document DCO 3.1**) [\[REP6-007D\]](#) also deals with some ancillary matters, including powers for the purposes of carrying out the authorised development to acquire rights and land pursuant to section 120 of the Act and powers, under section 120 (3) and (4) and Part 1 of Schedule 5, paragraph 2, to authorise the creation, extinguishment and interference with interests in, or rights over, land (including the stopping up and diversion of public rights of way). The compulsory purchase powers sought are explained within the Statement of Reasons (**Document DCO 4.1**) [\[REP1-025D\]](#).

3 The Assessment Parameters

- 3.1 The Parameters Plan (**Document DCO 2.5**) [[REP6-006D](#)] is the plan which identifies the parameters of that part of the authorised development comprising the EMG2 Works (Works Nos. 1 to 7, 20 and 21) and is the basis of the environmental assessment that has been carried out. It identifies the parameters that apply to each development zone.
- 3.2 In addition to identifying the spatial extent of each use, the Parameters Plan sets out the maximum zone floorspace, maximum overall floorspace, the finished floor levels and building height range and the height and location of the strategic bunding. The extent of the structural green infrastructure to be provided is also identified. These provide the “Rochdale Envelope” for the purposes of the environmental assessment of the development on the site. This is in line with Advice Note 9 “Using the Rochdale Envelope” (July 2018).
- 3.3 The control of the development is secured by reference to:
- 3.3.1 Articles 4 (Parameters of authorised development) and 40 (Governance of requirements and governance of protective provisions relating to highway works) of the draft DCO (**Document DCO 3.1**) [[REP6-007D](#)];
 - 3.3.2 The description of the works in Schedule 1 of the draft DCO (**Document DCO 3.1**) [[REP6-007D](#)];
 - 3.3.3 The requirements in Schedule 2 of the draft DCO (**Document DCO 3.1**) [[REP6-007D](#)]; and
 - 3.3.4 The parameters on the Parameters Plan (**Document DCO 2.5**) [[REP6-006D](#)] and the limits of deviation shown on the Works Plans (**Document series DCO 2.3**) [[APP-035D](#), [REP1-006D](#), [REP1-009D](#), [REP4-006D](#) and [REP4-007D](#)].
- 3.4 Details over and above those shown on the Parameters Plan, including, for example, the precise location and height of buildings within the development zones; the detailed design of infrastructure; detailed landscaping scheme and ecological mitigation details, are to be approved following the grant of the DCO and following the submission of details to the local planning authority pursuant to the requirements contained in Schedule 2 of the draft DCO (**Document DCO 3.1**) [[REP6-007D](#)].
- 3.5 In the case of Highway Works, being Works Nos. 8 to 19 as described in Schedule 1 of the draft DCO (**Document DCO 3.1**) [[REP6-007D](#)], the detailed working drawings of the works involved will be governed by Parts 1 and 2 of Schedule 13 (Protective provisions) of the draft DCO. Those designs are required to be in accordance with the Highways Plans General Arrangements (**Document series DCO 2.8**) [[REP1-015D](#), [REP4-011D](#), [REP4-012D](#), [REP1-018D](#), [AS-012D](#)].
- 3.6 The approved details cannot however stray outside the authorised development or beyond the parameters, as is made clear by articles 4 (Parameters of authorised development) and 43 (Certification of plans and documents), and, in respect of certain highway works, as shown on the Highway Plans Long Sections (**Document series DCO 2.10**) [[APP-049D](#) and [REP4-014D](#)] referenced in article 4. The approval of details subsequent to the making of the DCO, and the ability to change details approved, is in accordance with paragraph 19 of Advice Note 15: drafting Development Consent Orders (July 2018).

4 Plans

- 4.1 The documentation submitted with the DCO Application is described in section 3 of the Guide to Application (**Document DCO 1.3**) and includes all the plans and documents required to comply with Regulation 5(2) of the 2009 Regulations.
- 4.2 The plans submitted with the DCO Application include:
- 4.2.1 **Location Plan (Order Limits) (Document DCO 2.1)** [[APP-024D](#)] enabling the identification of the land affected by the DCO Application and the administrative boundaries;
 - 4.2.2 **Land Plans** pursuant to Regulation 5(2)(i) (**Document series DCO 2.2**) [[APP-026D](#), [AS1-003](#) and [AS1-004](#)] showing the land affected by the development and the land subject to compulsory purchase powers;
 - 4.2.3 **Works Plans** pursuant to Regulation 5(2)(j) (**Document series DCO 2.3**) [[APP-035D](#), [REP1-006D](#), [REP1-009D](#), [REP4-006D](#) and [REP4-007D](#)] identifying the additional works which are referred to in the draft DCO (**Document DCO 3.1**) [[REP6-007D](#)] and, where appropriate, show limits of deviation;
 - 4.2.4 **Access and Rights of Way Plan** pursuant to Regulation 5(2)(k) (**Document series DCO 2.4**) [[REP1-010D](#), [REP4-008D](#) and [REP4-009D](#)] which identify new and altered means of access, stopping up of streets and roads, new and diverted public footpaths, bridleways and cycle tracks;
 - 4.2.5 **Parameters Plan** pursuant to Regulation 5(2)(o) (**Document DCO 2.5**) [[REP6-006D](#)] which identifies the parameters with which the EMG2 Works must comply. The parameters plan is the plan upon which the environmental assessment reflected in the ES which has been submitted with the DCO Application (**Document DCO 6.1 – 6.23**);
 - 4.2.6 **Illustrative Landscape Masterplan (Document DCO 2.6)** [[APP-040D](#)] is provided to assist in demonstrating a form of development of the EMG2 Main Site which would comply with the parameters which have been assessed (as shown on the parameters plan). It is not the basis for the environmental assessment reflected in the ES and it identifies simply one way in which a development may come forward in conformity with the parameters plan;
 - 4.2.7 **Components Plan (Document DCO 2.7)** [[REP4-010](#)] identifying the various components of the EMG2 Project as a whole (i.e. including the MCO Scheme);
 - 4.2.8 **Highway Plans General Arrangement, Highway Plans Cross Sections, Highway Plans Long Sections and A453 Bridge Plan** pursuant to Regulation 5(2)(o) (**Document series DCO 2.8**) [[AS-012D](#), [REP1-015D](#), [REP1-018D](#), [REP4-011D](#) and [REP4-012D](#)], 2.9 [[APP-046D](#), [REP1-020D](#) and [REP4-013D](#)], 2.10 [[APP-049D](#) and [REP4-014D](#)] and 2.11 [[APP-053D](#)] describing the various elements of the highway mitigation on plan and, where felt helpful, in cross section;
 - 4.2.9 **Highway Classification Plan, Traffic Regulation Plan and Speed Limit Plan (Documents DCO 2.12** [[REP1-021D](#)], 2.13 [[REP1-022D](#)] and 2.14 [[REP1-023D](#)]). These plans deal with the consequential changes to the regulation of the highways as a result of the Highways Works. They are cross referred to in the schedules in the draft DCO specifically dealing with those measures;

- 4.2.10 **Special Category Land Plan** required by Regulation 5(2)(i)(iv) (**Document DCO 2.15**) [[APP-057D](#)] showing the special category land affected by compulsory purchase powers; and
- 4.2.11 **Community Park Plan** (**Document DCO 2.16**) [[REP4-015D](#)] showing the layout and landscaping of the proposed Community Park, including the routes of public rights of way through it.

5 The Draft DCO

- 5.1 The text below deals with each article and Schedule of the draft DCO (**Document DCO 3.1**) [[REP6-007D](#)] in turn.
- 5.2 Reference is made to the model provisions, however, there are substantive departures from those provisions in view of the revocation of Section 38(3) of the Act 2008 and repeal of the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009. The model provisions are therefore taken only as a starting point along with articles used in other approved development consent orders. In this case, particular regard has been had to the EMG1 DCO, The Northampton Gateway Rail Freight Interchange Order 2019² (Northampton DCO) and The West Midlands Rail Freight Interchange Order 2020³ (West Midlands Interchange DCO).

PART 1

PRELIMINARY

Article 1 (Citation and commencement)

- 5.3 This article provides for citation and commencement of the Order.

Article 2 (Interpretation)

- 5.4 This article provides for the interpretation of the Order, principally comprising the definition of terms.
- 5.5 Definitions of the “main site”, “highway works”, “EMG1” and “community park” have been added to facilitate the drafting of the separate provisions relating to different elements of the development.
- 5.6 The definition of cycle track expressly includes a right of way on foot to reflect representations from Leicestershire County Council as the Highway Authority responsible for maintain the definitive map, expressing a desire for a right of way of on foot to be preserved and recorded in the Order.
- 5.7 Definitions have also been added separately to Schedule 2 to enable easy reference to the requirements.
- 5.8 Article 2(2) expands the definition of rights over land to clarify that it includes rights to do, or to place and maintain, anything in on or under land or in the airspace above its surface.
- 5.9 Article 2(3) makes it clear that measurements are approximate to take account of marginal differences arising out of construction of the works. This allows only small tolerances since the works are still subject to the constraints imposed by Articles 4 and 43.
- 5.10 Article 2(4) ties in references to work numbers to the works in Schedule 1 and references to requirements to the requirements listed in Schedule 2.

² S.I. 2019 No. 1358

³ S.I. 2020 No. 511

- 5.11 Article 2(5) provides that areas referred to in the Book of Reference (**Document DCO 4.3**) [[AS1-007](#)] are approximate – for the same reason as Article 2(3) is required.
- 5.12 Article 2(6) provides that where a document or plan is referred to then it is a reference to the document or plan of that number referred to in Schedule 16 of the Order.
- 5.13 Article 2(7) provides that where any approval, agreement or consent is required pursuant to the Order then it must be secured in writing. Writing for these purposes includes by electronic transmission.
- 5.14 Articles 2(3) - (5) are substantially the same to those provisions included in EMG1 DCO.

PART 2

PRINCIPAL POWERS

Article 3 (Development consent granted by the Order)

- 5.15 This article provides (as permitted by section 115 of the PA 2008) development consent for the authorised development to be carried out within the Order limits subject to the provisions of the Order and to the requirements.

Article 4 (Parameters of authorised development)

- 5.16 This article identifies the parameters and limits of deviation with which the authorised development must comply. The Parameters Plan (**Document DCO 2.5**) [[REP6-006D](#)] provides the limits of deviation for the EMG2 Works and the Works Plans (**Document series DCO 2.3**) [[APP-035D](#), [REP1-006D](#), [REP1-009D](#), [REP4-006D](#) and [REP4-007D](#)] and Highway Plans Long Sections (**Document series DCO 2.10**) provide the limits of deviation for the Highway Works. The article is included pursuant to section 115 of the PA 2008, since the parameters set the extent of the authorised development for which consent is granted.
- 5.17 This approach is in line with the Rochdale Envelope approach and the guidance set out in Planning Inspectorate's Advice Notes 9 and 15.
- 5.18 As in recent orders, the article allows for exceptions to the application of the limits where the relevant planning authority are satisfied that it would not result in any materially new or materially different significant effects on the environment. This approach aligns with the Northampton DCO and with other made DCOs for other types of NSIP.

Article 5 (Authorisation of use)

- 5.19 This article authorises the operation and use of the main site for storage and distribution and advanced manufacturing uses together with co-located office functions as it would have had the development been built pursuant to a planning permission and ensures the development aligns with the Section 35 Direction. The uses of the main site are however limited to these uses and permitted development rights under The Town and Country Planning (General Permitted Development) (England) Order 2015 are disapplied by Article 41(6) of the Order.

Article 6 (Maintenance of authorised development)

- 5.20 This article is based upon article 3 of the model provisions and provides for the maintenance of the authorised development by the undertaker. The definition of

maintenance is identical to that contained in the Northampton DCO and the West Midlands Interchange DCO.

Article 7 (Benefit of Order)

- 5.21 The Order will benefit the “undertaker” as defined. However, some powers will benefit only the DCO Applicant as follows:
- (a) Part 5 (Powers of Acquisition) will be for the sole benefit of the DCO Applicant to ensure that the articles relating to the exercise of compulsory acquisition powers cannot be transferred unless the DCO Applicant and the SoS consents; and
 - (b) Only the DCO Applicant has the power to carry out the highway works and deliver them in accordance with the protective provisions in Parts 1 and 2 of Schedule 13 unless the DCO Applicant and the SoS consents to a transfer of those powers or the relevant highway authority takes over responsibility for carrying out the highway works in default of the undertaker, pursuant to the provisions of Schedule 13.
- 5.22 In respect of (b) above, it is felt that the power to carry out the highway works should be restricted to the named undertaker rather than be available to all the owners of the land interests within the Order limits to ensure an orderly and comprehensive approach to the carrying out of the works.
- 5.23 Sub-paragraph 4 has been included to ensure that any works which may be carried out by other parties under the protective provisions are authorised. It is included in other Orders such as the Northampton DCO and the West Midlands Interchange DCO.

PART 3

STREETS

Article 8 (Street works)

- 5.24 This article is broadly based on article 8 of the general model provisions. It makes provision for the undertaker to carry out the works described in article 8 (a) – (j) for the purposes of the authorised development affecting the streets specified in Schedule 3 of the Order. Ordinarily the undertaker would require a street works licence pursuant to the New Roads and Street Works Act 1991 to carry out such works, however, the inclusion of this article in the DCO will provide a statutory right to undertake street works within the specified streets without the need for the undertaker to obtain a separate licence from the street authority. The authority given by article 8(1) is a statutory right for the purposes of sections 48(3) and 51(1) of the New Roads and Street Works Act 1991, the application of which is permitted by section 120(5)(a) of the PA 2008. The provision relates to the authorised development and is therefore permitted by section 120(3) of the PA 2008, in addition to section 120(4) and specifically paragraph 15 of Part 1 of Schedule 5 to the PA 2008 (i.e. the carrying out of civil engineering or other works).
- 5.25 This article is identical to the Northampton DCO and substantially the same as the West Midlands Interchange DCO.

Article 9 (Power to alter layout, etc., of streets)

- 5.26 This article is not contained in the model provisions but is based upon one that has precedent in other development consent orders, for example the Northampton DCO and the West Midlands Interchange DCO. It is substantially the same as article 9(1) of the EMG1 Order although paragraph (4) provides that the power will not apply to the strategic road network. The article is authorised pursuant to section 120(3) of the PA 2008 since any necessary works are related to the authorised development, in addition to section 120(4) and specifically paragraph 15 of Part 1 of Schedule 5 to the PA 2008 (i.e. the carrying out of civil engineering or other works).

Article 10 (Permanent stopping up of streets)

- 5.27 This article makes provision for the stopping up of streets permanently where a substitute is to be provided. The drafting of this article largely reflects that of article 9 in the model provisions and Schedule 4 of the draft DCO has been completed to identify the lengths of street that are to be permanently stopped up subject to this article and alternative street to be provided. All of the streets to which this article applies which are to be permanently stopped up are highways and these are shown on the Access and Rights of Way Plans (**Document series DCO 2.4**) [[REP1-010D](#), [REP4-008D](#), and [REP4-009D](#)].
- 5.28 This article also makes provision for all rights of way (both public and private) in the stopped-up streets to be extinguished and provision is made for the payment of compensation.
- 5.29 The article is in identical terms to the article contained in the Northampton DCO. In addition to section 120(3) (i.e. by virtue of the stopping up being related to the authorised development), the inclusion in the DCO of the power to stop up these streets is specifically authorised by section 120(4) and paragraph 17 of Part 1 of Schedule 5 to the PA 2008.

Article 11 (Temporary stopping up of streets)

- 5.30 This article deals with the temporary stopping up of streets for the purpose of carrying out the authorised development. It is included in the Order as it may be necessary for the undertaker to stop up streets temporarily. As with article 10 (Permanent stopping up of streets), in addition to section 120(3) (i.e. by virtue of the temporary stopping up being related to the authorised development), the inclusion in the DCO of the power to stop up these streets is specifically authorised by section 120(4) and paragraph 17 of Part 1 of Schedule 5 to the PA 2008.
- 5.31 The drafting of this article generally reflects the model provisions, however, paragraphs 3 and 4(a) of the model provisions have not been included as it is considered that it is not necessary to specify any streets to be temporarily stopped up at this stage and it is drafted so that the prior consent of the street authority is required before any streets are stopped up temporarily.
- 5.32 The article is, in substance, the same as the Northampton DCO.

Article 12 (Public rights of way – creation, substitution and stopping up)

- 5.33 This article has been included in the Order to allow for the creation, substitution and stopping up of rights of way affecting land within the Order limits. It is necessary for

some public rights of way to be stopped up and substitutes provided in order for the authorised development to be carried out.

- 5.34 Section 136 of the PA 2008 requires that the Order may include the stopping up of a public right of way provided that an alternative right of way will be provided, or an alternative is not required. This article makes provision for alternative public rights of way to be created for the majority of the existing public rights of way that are to be stopped up.
- 5.35 Schedule 5 of the Order identifies the public rights of way that are affected by this article. Part 1 specifies the extent of the permanent stopping up, along with the new public rights of way that are to be created. The Schedule fixes terminus points for the new rights of way to be created; however, the exact alignment of the right of way between those points is to be agreed by with the local highway authority.
- 5.36 Part 2 of Schedule 5 identifies the existing rights of way which will be permanently stopped up for which no substitute is to be provided.

Article 13 (Accesses)

- 5.37 The new means of access to the main site is identified in Schedule 1 (Authorised development) and is part of the Highways Works covered by Schedule 13 (Protective provisions). However, to allow some flexibility, this article is included to allow for modification of the access, or other means of access to be provided. This is subject to prior agreement with the relevant highway authority or, in the case of private streets, the street authority.
- 5.38 Paragraph 6 provides for alterations to private means of access to be carried out (as detailed in Part 1 of Schedule 6) to enable the carrying out and use of the highway works.
- 5.39 Paragraph 7 refers to some private means of access which are being closed for which no substitute is to be provided. These are listed in Part 2 of Schedule 6.
- 5.40 The article is substantially the same as the Northampton DCO.

Article 14 (Maintenance of highway works)

- 5.41 This article is included to provide for the maintenance of the new and altered public highways following the completion of the relevant works. It cross refers to the process of certification of commencement of maintenance by the undertaker under the highway protective provisions in Part 1 and Part 2 of Schedule 13 (Protective provisions). The article is based on other made DCOs including the Northampton DCO. In addition, it also cross refers to the dedication provisions contained in Schedule 13. This provision is permitted by section 120(3) of the PA 2008 because maintenance of the highway works is clearly “related” to the consent. The specification of the highway authority for the highway works is also authorised by section 120(4) and paragraph 23 of Part 1 to Schedule 5 of the PA 2008.

Article 15 (Classification of highways)

- 5.42 This article is required to make provision for the classification of new highways within the Order limits. The provision to classify the highways is specifically permitted by section 120(4) and paragraph 19 of Part 1 to Schedule 5 of the PA 2008.

Article 16 (Speed limits)

- 5.43 This article is based upon articles in other made DCOs. It makes provision for the lengths of road identified in Schedule 8 to be subject to varied or new speed limits as set out in that schedule upon completion of the relevant part of the authorised development, as if such restrictions were imposed by an order under the Road Traffic Regulation Act 1984.
- 5.44 The article also enables temporary speed limits during construction by agreement with the relevant highway authority.
- 5.45 The inclusion of the article is permitted by section 120(3) of the PA 2008, since the regulation of speed limits on the various highways is related to the provision of the highway works as part of the authorised development. The requirement of the various speed limits is also necessarily related to the classification of the various highways, and is therefore permitted by section 120(4) and paragraph 19 of Part 1 of Schedule 5 of the PA 2008.
- 5.46 Part 1 of Schedule 8 provides for amendments to existing orders. Part 2 of Schedule 8 provides for a new 50 mph speed limit to be imposed on certain parts of the highway.
- 5.47 Paragraph 5 of this article makes it clear that the new speed limits set by the Order may be varied in the future by the relevant traffic authority, as they could have been had they been imposed by an order under the Road Traffic Regulation Act 1984.

Article 17 (Traffic regulation)

- 5.48 This article makes provision for new permanent and temporary Traffic Regulation Orders to give the ability with the consent from the relevant traffic authority to impose such orders as may be necessary for the carrying out of the works. These powers are similar to those contained in the Northampton DCO. The provision is permitted by section 120(4) and paragraph 20 of Part 1 to Schedule 5 of the PA 2008 which deals with the specification of the classes of traffic authorised to use a highway – in that this is a provision relating to that paragraph (matters “related to” being specifically permitted by section 120(4)).

Article 18 (Agreements with highway authorities)

- 5.49 This article is included to allow the undertaker to enter into agreements with the relevant highway authority relating to the construction of a new highway, carrying out of works in the highway, stopping up, alteration or diversion of highways, maintenance of the structure of any bridge carrying a highway over or under railway and landscaping.
- 5.50 All of the highway works will be carried out in accordance with the powers within the Order and the relevant provisions of Parts 1 or 2 of Schedule 13 (Protective provisions). However, this article is included in the Order as a precautionary measure in relation to any agreements that might be required with the highway authorities thus avoiding the need to find an alternative statutory authority which may not be fit for purpose. For example, section 278 of the Highways Act 1980 can authorise works to the public highway however they have to be undertaken on behalf of the highway authority and be of public benefit, which would not necessarily be the case.
- 5.51 The article is in the same form as the Northampton DCO.

PART 4

SUPPLEMENTAL POWERS

Article 19 (Discharge of water)

- 5.52 This article largely reflects the drafting of article 14 in the general model provisions and is required to allow for the drainage of the land within the Order limits in connection with the carrying out and maintenance of the development. Under the provisions of this article consent is required from the person who owns the relevant watercourse, public sewer or drain but such consent may not be unreasonably withheld. Its inclusion is permitted by section 120(3) as well as section 120(4) and specifically paragraph 26 of Part 1 to Schedule 5 of the PA 2008.
- 5.53 The drafting has been updated from the model provisions to refer to the Environmental Permitting (England and Wales) Regulations 2010 which supersede the relevant provisions of the Water Resources Act 1991.

Article 20 (Authority to survey and investigate the land)

- 5.54 This article is included to enable the undertaker to enter land within the Order limits to survey or investigate the land.

PART 5

POWERS OF ACQUISITION

Article 21 (Guarantee in respect of payment of compensation)

- 5.55 The DCO Applicant has included this article as security in respect of payment of compensation for the protection of any interests which are to be compulsorily acquired. The article will ensure that no compulsory acquisition powers can be pursued until appropriate security for the liabilities of the undertaker to pay compensation in respect of that acquisition has been provided to the relevant local planning authority. The article is related to the powers for the acquisition of land and is therefore related to paragraph 1 of Part 1 of Schedule 5 to the PA 2008. Its inclusion is therefore authorised by section 120(4) of the PA 2008.
- 5.56 The requirement to provide a form of security for potential compensation as a result of exercising compulsory acquisition powers is a generally accepted principle which has been included in various recent approved orders⁴. It is considered that 15 years is an appropriate time period for the relevant security to be in place, since this extends 10 years from the final date on which any compulsory acquisition may be exercised under the Order.

Article 22 (Compulsory acquisition of land)

- 5.57 This article will authorise the compulsory acquisition of land shown on the Land Plans (**Document series DCO 2.2**) [[APP-026D](#), [APP-029D](#), [APP-030D](#), [AS1-003](#) and [AS1-004](#)] and described in the Book of Reference (**Document DCO 4.3**) [[AS1-007](#)] and is permitted by section 120(4) and paragraph 1 of Part 1 of Schedule 5 to the P 2008, and by section 123 of the PA 2008. The DCO Applicant is seeking acquisition of the freehold in respect of the land shown coloured pink on the Land Plans. There are also some parcels of land over which the DCO Applicant seeks acquisition of new rights only as described in paragraph 5.58 below. This is explained in further detail in the Statement of Reasons (**Document DCO 4.1**) [[REP1-025D](#)].

⁴ Paragraph 1 refers to "land" but section 159 of the PA 2008 confirms that in this context, "land" includes a right in, on, over or under land.

- 5.58 This article also provides for the extinguishment of rights, trusts and incidents to which the land was previously subject, as permitted by paragraph 2 of Part 1 of Schedule 5 to the PA 2008.
- 5.59 Further detail on the rationale for this article is contained in the Statement of Reasons (**Document DCO 4.1**) [[REP1-025D](#)].

Article 23 (Compulsory acquisition of rights)

- 5.60 This article is included to allow the compulsory acquisition of existing rights and the power to create and acquire compulsorily new rights over the land shown on the Land Plans (**Document DCO 2.2**) [[APP-026D](#), [APP-029D](#), [APP-030D](#), [AS1-003](#) and [AS1-004](#)], described in the Book of Reference (**Document DCO 4.3**) [[AS1-007](#)]. The article is permitted by section 120(4) and paragraphs 1 and 2 of Part 1 to Schedule 5 of the PA 2008. The land in which new rights may be created is listed in Schedule 11 of the Order. The article is based on recently approved provisions in various made orders. This approach ensures that compulsory purchase is limited only to the rights that are required.
- 5.61 The approach requires a modification to compulsory purchase and compensation provisions and these are dealt with in Schedule 12 of the Order, which is permitted by section 120(5)(a) of the PA 2008.

Article 24 (Private rights)

- 5.62 This article is largely based on article 22 of the model provisions, with some amendments (most notably it applies to private rights and restrictions generally rather than just private rights of way). It provides that all private rights over land which is subject to compulsory acquisition (in respect of the freehold) are extinguished and in respect of compulsory acquisition of rights, are extinguished to the extent that those rights are inconsistent with the rights required for the authorised development. This power is permitted by section 120(4) and paragraph 2 of Part 1 to Schedule 5 of the PA 2008. The power is also supplementary to articles 22 and 23 and its inclusion is therefore necessary to give full effect to the Order; it is therefore permitted by section 120(5)(c) of the PA 2008.

Article 25 (Power to override easements and other rights)

- 5.63 This article ensures that where the works permitted by the Order interfere with existing easements or other rights, those rights shall not present an impediment to delivery. Its purpose is to provide certainty that the carrying out of the authorised development will not be prevented as a result of any unknown third party rights. It also ensures that the land is affected to the minimum extent necessary to enable delivery of the development.
- 5.64 The article provides for compensation to be payable to the beneficiary of any right that is extinguished, abrogated or discharged. This power is permitted by sections 120(3), 120(4) and paragraphs 2 and 3 of Part 1 to Schedule 5 of the PA 2008. The power is also supplementary to articles 22 and 23 and its inclusion is therefore necessary to give full effect to the Order; it is therefore permitted by section 120(5)(c) of the PA 2008.

Article 26 (Compulsory acquisition of land – incorporation of the mineral code)

- 5.65 By incorporating the ‘mineral code’ this article exempts the existing minerals under land being automatically acquired pursuant to the exercise of compulsory acquisition. It also addresses the situation where an owner wishes to work existing minerals and provides

the undertaker with the ability to compensate the owner for any inability to do so as a result of the development. The article follows article 19 of the model provisions and its inclusion is permitted by 120(4) and paragraphs 2 and 3 of Part 1 to Schedule 5 of the PA 2008.

Article 27 (Time limit for exercise of authority to acquire land and rights compulsorily)

- 5.66 This article imposes a time limit of five years from the date the Order comes into force for the exercise of compulsory acquisition powers. The time limit for exercising the compulsory acquisition powers under Part 1 of the Compulsory Purchase Act 1965 is disapplied by section 125(3)(a) of the PA 2008. This article imposes a time limit which is linked to the time period in which the authorised development must commence (see requirement 2 in Schedule 2 of the Order), in accordance with section 154(3) of the PA 2008.

Article 28 (Modification of Part 1 of the 1965 Act)

- 5.67 This article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 (the "1965 Act") as applied to the Order by section 125 of the PA 2008. The modification of those provisions is permitted by section 120(5)(a) of the PA 2008.
- 5.68 Article 28(4)(a) omits paragraphs 1(2) and 14(2) of the 1965 Act because those provisions relate to tunnels which are not applicable to the EMG2 Project.

Article 29 (Application of the 1981 Act)

- 5.69 This article provides for the application of the vesting declaration procedure to the compulsory acquisition under the Order. The application of the Compulsory Purchase (Vesting Declarations) Act 1981 (the "1981 Act") is permitted by section 120(5)(a) of the PA 2008. The wording is substantially the same as that in the Northampton DCO and the West Midlands Interchange DCO.
- 5.70 Article 29(4) omits the need for the undertaker to vest rights "in themselves" pursuant to section 4(1) of the 1981 Act. Schedule 11 identifies the land in which the DCO Applicant, as the undertaker, proposes to acquire a right rather than taking possession of land. The land identified in Schedule 11 in connection with Works Nos 14(b) and (c) is required to facilitate delivery and dedication of a cycle track; and for Works No. 20 is required in connection with the cabling route to provide power to the buildings within the authorised development. In each instance, the cycle route and power cable will be adopted and maintained by others comprising the highway authority and statutory utility company respectively. The omission of the words identified from section 4(1) of the 1981 Act, permit the DCO Applicant to vest such rights in the highway authority and the statutory utility company.

Article 30 (Statutory Undertakers and operators of the electronic communications code network)

- 5.71 This article allows the undertaker to extinguish rights of statutory undertakers and to replace, renew, reposition, alter and/or supplement apparatus belonging the statutory undertakers within the Order limits. The inclusion of the article is authorised by section 127(2) and (3) of the PA 2008. The DCO Applicant considers that any statutory undertakers' land affected can be replaced (or relocated/diverted) without serious detriment to the carrying on of the undertaking, and there are suitable protective provisions proposed in this regard.

Article 31 (Rights under or over streets)

- 5.72 This article gives the DCO Applicant the power to occupy land above or below streets within the Order limits without having to acquire that land. Compensation is payable for any loss or damage to structures along the relevant street. This article is required to enable the carrying out of the authorised development and it therefore permitted by section 120(3) of the PA 2008.

Article 32 (Temporary use of land for carrying out the authorised development)

- 5.73 This article allows the DCO Applicant to occupy the land specified in Schedule 10 (Land of which temporary possession may be taken) temporarily while the works are carried out, and also any of the land identified for the permanent acquisition that has not yet been acquired.
- 5.74 The article also makes provision for the time limit for return of the land, restoration and payment of compensation.
- 5.75 Paragraph 10 incorporates section 13 of the Compulsory Purchase Act 1965 and applies it to the temporary use of the land. The power is required in relation to the temporary use of land to ensure that the undertaker will be able to enforce the taking of temporary possession of the land to carry out the relevant works in the event that the owner or occupier refuses to allow possession.
- 5.76 Paragraph 11 provides that any dispute relating to the restoration of the land must be determined by arbitration unless otherwise agreed by the undertaker and the owner of the affected land.

Article 33 (Temporary use of land for maintaining authorised development)

- 5.77 This article allows the undertaker to take temporary possession of land within the Order limits to maintain the authorised development during the 5 year maintenance period (being the five years from when the development is first brought into use). The article follows article 29 of the model provisions and its inclusion in the Order is authorised by virtue of sections 120(3), 120(4) and paragraph 1 of Part 1 to Schedule 5, and section 125 of the PA 2008.
- 5.78 Paragraph 12 provides that any dispute relating to the restoration of the land must be determined by arbitration unless otherwise agreed by the undertaker and the owner of the affected land.

Article 34 (Apparatus and rights of statutory undertakers in stopped up streets)

- 5.79 This article follows article 32 of the model provisions and protects statutory undertakers' rights where their apparatus is under, in, along or across a street which has been stopped up under the Order.
- 5.80 The article provides that a statutory undertaker must remove/relocate the apparatus at the reasonable request of the undertaker (the undertaker bearing the cost of that relocation). The provision is linked to article 10 and its inclusion is therefore authorised by sections 120(3) as well as 120(4) and paragraph 14 of Part 1 to Schedule 5 of the PA 2008, which allows provision for the removal, disposal or re-siting of apparatus.

Article 35 (No double recovery)

- 5.81 This article is based on other recent orders and secures the established principle that a claimant in compulsory purchase is to be compensated for no more and no less than his loss. The article ensures that compensation is not payable in respect of the same loss or damage under both the Order and other compensation regimes. It is a supplementary provision, and its inclusion is authorised by section 120(5)(d) of the PA 2008 as well as sections 120(3) and 120(4) and paragraph 36 of Part 1 to Schedule 5 of the PA 2008.
- 5.82 This article is contained in many made orders and is based on the drafting within The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 No.1358, article 37). Whilst it is noted that the Secretary of State has not approved the article in some made orders, it is considered necessary because it is important that the Order is clear that any compensation payable under it is not to be paid more than once. If the provision is not included, then there is significant potential for disputes and litigation or lengthy Tribunal proceedings in future. It would further open the door to departures from the long-established principle of equivalence which underpins compensation law.

PART 6

MISCELLANEOUS AND GENERAL

Article 36 (Operational land for the purposes of the 1990 Act)

- 5.83 This article declares that land within the Order Limits utilised for the highway works shall be treated as operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990. The provision is included pursuant to sections 115 and 120(3) of the PA 2008.

Article 37 (Defence to proceedings in respect of statutory nuisance)

- 5.84 This article is based upon an article in the model provisions and appears in other made orders, including the Northampton DCO. It provides a defence in the circumstances specified to proceedings brought in relation to a nuisance caused by noise or vibration. The article is included as authorised by section 158 of the PA 2008.

Article 38 (Felling or lopping of trees and removal of hedgerows)

- 5.85 This article is based upon an article in the model provisions. It is included to enable the undertaker to fell or lop any tree hedgerow or shrub within the Order limits, or to cut back its roots, where it believes that it is necessary to prevent the tree hedgerow or shrub from interfering with the authorised development, but subject to some exceptions. It is included pursuant to sections 120(3) and 120(4) and paragraph 13 of Part 1 to Schedule 5 of the PA 2008. The distance of 15 metres has been carefully considered and has been reduced from an earlier proposal for 25 metres as the minimum distance necessary to ensure the authorised development can be delivered.
- 5.86 The article makes provision for compensation to be payable for any loss or damage arising, as authorised by section 120(4) and paragraph 26 of Part 1 to Schedule 5 of the PA 2008.
- 5.87 The article also allows for the felling, lopping or cutting back of trees subject to a tree preservation order, as identified in table 2 of appendix DCO 6.10C (arboricultural assessment) included within the ES (**Document DCO 6.10C**) [\[REP3-047\]](#), with the consent of the relevant planning authority. The article follows the guidance in paragraph 22 of Advice Note Fifteen: drafting Development Consent Orders.

Article 39 (Protective Provisions)

- 5.88 The article gives effect to the protective provisions which are contained in Schedule 13 (Protective provisions) referred to further below.

Article 40 (Governance of requirements and governance of protective provisions relating to highway works)

- 5.89 The article addresses the tension between a desire to maintain flexibility on details to be approved pursuant to requirements (and in the case of the highway works, protective provisions) and the need to ensure that any details approved do not take the development outside the scope of the authorised development or beyond the scope of what has been environmentally assessed.

Article 41 (Disapplication, application and modification of legislative provisions)

- 5.90 This article seeks, as permitted by section 120(5) of the PA 2008, to incorporate and modify legislative provisions which are necessary for carrying out the authorised development. This includes the disapplication of permitted development rights as set out in paragraph 5.18 of this memorandum.
- 5.91 Paragraph 9 of the article further provides that nothing in the Order modifies or amends The East Midlands Gateway Rail Freight Interchange and Highway Order 2016. This is necessary because the boundaries of the two orders will overlap.

Article 42 (Planning permission)

- 5.92 This article addresses any inconsistencies between planning permissions relating to the authorised development.

Article 43 (Certification of plans and documents)

- 5.93 This article reflects the drafting of the model provisions and specifies with reference to Schedule 16 (Certification of plans and documents) the plans and documents that must be submitted, as soon as practicable following the making of the order, to the decision maker to be certified as a true copy.

Article 44 (Service of notices)

- 5.94 This article is a departure from the model provisions. It is included to ensure certainty regarding the procedure for service of any notice required by the Order, for example, under article 20 (Authority to survey and investigate the land). The article is included pursuant to section 120(3) of the PA 2008.

Article 45 (Arbitration)

- 5.95 This article is included in case of any dispute regarding the provisions of this Order, subject to it being expressly dis-applied, as it is in the case of some of the protective provisions which provide for their own dispute resolution mechanisms. The provision is included pursuant to sections 120(3) and 120(4) and paragraph 37 of Part 1 to Schedule 5 of the PA 2008.

SCHEDULES

Schedule 1 (Authorised Development)

- 5.96 This schedule describes the authorised development for which development consent is sought, including associated development.
- 5.97 Schedule 1 also includes “Further Works” being works required to facilitate delivery of the DCO Scheme (namely Works Nos. 1 to 21). It is not possible to identify the precise locations and scope of the further works at this stage. The draft DCO provides however that further works that are likely to give rise to any materially new or materially different significant effects on the environment and that have not been assessed in the environmental statement or in any updated environmental information supplied under the EIA Regulations are not authorised.

Schedule 2 (Requirements)

- 5.98 As permitted by section 120(1) and (2) of the PA 2008, the draft DCO also includes, at Schedule 2, requirements to govern the authorised development. These have had regard to the drafting of conditions in planning permissions granted for similar schemes and also the requirements contained in the EMG1 DCO, the Northampton DCO and the West Midlands Interchange DCO. They are, however, bespoke for the particular development proposed. The objective of these requirements is self-explanatory.
- 5.99 The topics covered by the requirements are set out below, along with an explanation, where helpful:

- **Time limit** (Requirement 2)

This requirement provides that the authorised development must commence within 5 years of the date the Order comes into force. This is a standard provision.

- **Components of development and phasing** (Requirement 3)

This requirement controls commencement of parts of the authorised development until details of the phasing of that part has been approved by the local planning authority.

- **Sustainable transport** (Requirement 4)

This requirement controls some key aspects of the development relevant to sustainable transport including a commitment to comply with an overall framework travel plan, occupier travel plans and the sustainable transport strategy. It also requires the establishment of a travel plan fund and a bus fund to finance sustainable transport measures including the establishment of the sustainable transport working group which will have an ongoing roll in relation to the sustainable transport measures and will continue operate for at least 5 years from full occupation of the development with a view to maximising delivery of the outcomes and aims of the sustainable transport strategy.

- **Design and phasing of highways works** (Requirements 5 and 6)

These requirements provide that the highway works as defined in the Order must be completed before occupation of any of the authorised buildings. There is provision for an alternative later trigger to be agreed with the relevant highway authority. This flexibility is required in case of delays beyond the control of the undertaker and other relevant stakeholders but is limited so that an alternative later trigger can only be agreed where it would not give rise to any materially new or materially different significant effects on the environment. The requirements also

state that the highway works must be constructed in accordance with the provisions of Appendix 1 to the Design Approach Document (**Document DCO 5.3A** and **[REP2-024]**) and Parts 1 and 2 of Schedule 13 (protective provisions in favour of the relevant highway authorities).

- **Detailed design approval** (Requirement 7)

Requirement 7 ensure that a large number of detailed matters (including, for example, estate roads, built development, embankments and bunds, hard landscaping etc.) are approved by the local planning authority at the appropriate stages. This includes details relating to the main site, community park and the substation. The requirement further provides that any details submitted for approval must be in accordance with the design approach document and the parameters plan.

- **Foundation works risk assessment** (Requirement 8)

This requirement ensures that where any part of the authorised development includes foundation or piling works comprising penetrative ground works then a risk assessment will first be undertaken and will be approved by the local planning authority in consultation with the Environment Agency. The works must then be undertaken in accordance with the approved assessment.

- **Provision of landscaping** (Requirement 9)

This requirement ensures that a written landscaping scheme is submitted for each part of the main site including the community park prior to development commencing on that part. The scheme must be in accordance with chapters 9 and 10 of the ES, the parameters plan, the landscape and ecological management plan (LEMP), the biodiversity net gain report and in accordance with the principles established by the illustrative landscape masterplan.

- **Landscape and ecological management plan** (Requirement 10)

This requirement provides that the development is be carried out in accordance with chapters 9 and 10 of the ES, the landscape and ecological management plan (LEMP) and the biodiversity net gain report. The wording requires a final LEMP for each component of the development to be submitted and approved by the local planning authority and for management and maintenance of the green infrastructure for the life of the authorised development.

If any of the landscaping provided as part of the development is removed, uprooted or destroyed or dies within 15 years from the date it is planted then the undertaker is required to replace it like for like (or a variation to it as may be agreed by the local planning authority).

- **Construction environmental management plan** (Requirement 11)

This requires that the development be carried out in accordance with phase specific construction environmental management plans, “P-CEMPs”, approved prior to the relevant phase of the development commencing. Each P-CEMP is to accord with the principles set out in the submitted construction environmental management plan (CEMP) which was submitted with the DCO Application. Each P-CEMP will include management plans regulating the undertaking of the development including, for example, a soil management plan and material and

waste management plan. Each P-CEMP will also include a construction traffic management plan to ensure that the impacts of construction of the development on the local and strategic road network are managed and mitigated so far as possible.

- **Earthworks** (Requirement 12)

This requirement ensures that an earthwork strategy is approved prior to any development on the main site and the development be carried out in accordance with that strategy.

- **Archaeology and built heritage** (Requirement 13)

This requirement provides for further archaeological investigation for recording purposes and also for a building survey of the buildings on the main site which are to be demolished.

- **Lighting details** (Requirement 14)

This requirement provides for approval of all permanent lighting which must be in accordance with the principles established in the submitted lighting strategy. It further ensure that any external lighting scheme must demonstrate that the western and southern elevations of the building facades are not externally illuminated within zones 1, 2, 4 and 5 as defined on the parameters plan to reduce any potential impacts on nearby residential areas.

- **Building sustainability** (Requirement 15)

This requirement imposes compliance with BREEAM 2023 “Excellent” in respect of the construction of each authorised building. It further imposes a requirement that each building must achieve a minimum EPC rating of A.

- **Flood risk and surface water drainage** (Requirements 16 and 17)

These requirements ensure that the appropriate mitigation is imposed, and details approved at the appropriate stages of development. The Environment Agency is required to be consulted on discharge of these requirements. Each phase of the development must be carried out in accordance with the surface water drainage scheme approved for that phase.

- **Foul water drainage** (Requirement 18)

A foul water drainage strategy must be approved before commencement of the development on the main site. The Environment Agency is required to be consulted on discharge of this requirement.

- **Construction hours** (Requirement 19)

This requirement places restriction on the hours during which construction may take place.

- **Construction noise** (Requirement 20)

This requirement places a specific requirement for construction noise to be managed in accordance with the relevant P-CEMP. Provision is also made for the monitoring of complaints.

- **Noise during the operational phase** (Requirement 21)

These requirements govern the approval of details of plant which have the potential to cause noise and their prior approval. The requirements also deal with monitoring in relation to noise during operation of the authorised development and the approach to dealing with noise complaints.

- **Contamination risk and verification** (Requirements 22 and 23)

These requirements ensure that no development is carried out on land which might be contaminated without the appropriate investigation and remediation.

- **Waste management during the operational phase** (Requirement 24)

This requirement ensures that occupants of the development must obtain approval of a scheme for waste management which must accord with the submitted framework site waste management strategy.

- **Employment** (Requirement 25)

This requirement provides for the submission and observance of an employment scheme for the provision of employment and training. The scheme must be approved by the local planning authority prior to commencement of construction of the component of the development to which it relates.

In addition, the requirement provides that before any warehouse or other building (excluding any ancillary buildings) within the main site are brought into use an employment scheme for that warehouse or building must be approved by the local planning authority. It must then be implemented in full. Paragraph (4) of the requirement sets out in detail the elements that must be included in the employment schemes.

- **Community Liaison Group** (Requirement 26)

This requirement provides for the establishment of a community liaison group and the approval of a protocol for that group by the local planning authority.

- **Signage** (Requirement 27)

This requirement provides for the submission and approval of a signage scheme to secure highway signage on the local road network in two locations before occupation of any warehouse. The works must be carried out in accordance with the approved scheme.

- **Community park** (Requirement 28)

This requirement provides for the completion and opening of the community park in accordance with the community park plan prior to occupation of the authorised buildings. This ensures that it is available for use at the earliest opportunity of the development. The requirement also provides for the future management and maintenance of the park to be undertaken in accordance with a plan approved by

the local planning authority and for the community park to be made available in perpetuity for use by the general public.

- **HGV park** (Requirement 29)

This requirement provides for the provision of the HGV park prior to occupation of the authorised buildings. It also provides for the future management of the HGV park in accordance with a plan approved by the local planning authority. The HGV park is required to be retained for the life of the development.

- **Electric hook up facilities** (Requirement 30)

This requirement requires any part of the development which is served by HGVs with chiller units to provide electric hook up facilities so that they do not need to run their engines whilst parked on-site.

- **Advanced manufacturing** (Requirement 31)

This requirement provides that no more than twenty per cent of the total gross floorspace provided as part of the authorised development will be used for advanced manufacturing. This is to ensure that the use of the authorised development is in accordance with the traffic modelling / assessment.

- **Marketing of the advanced manufacturing floorspace** (Requirement 32)

This requirement provides for twenty per cent of the total gross floorspace to be reserved for advanced manufacturing uses and to be marketing for such uses until 31 December 2031 (the end of the Freeport incentives). The marketing is to be undertaken in accordance with a strategy approved by the local planning authority in consultation with East Midlands Freeport. If the marketing is unsuccessful then the restriction falls away after 31 December 2031 to enable the floorspace to be used for other uses.

- **Carbon neutral campus / headquarters construction and operation** (Requirement 33)

This requirement seeks to ensure that part of the development is used as a campus and secures measures to achieve carbon neutral construction and later operation of that part of the development to ensure conformity with the Section 35 Direction.

- **Operational environmental management plan** (Requirement 34)

This requirement was requested by the Environment Agency and provides that an operational environmental management plan will be approved before the main site, or the community park is brought into use. Clarification on the scope of the plan is awaited from the Environment Agency.

- **Greenhouse gas emissions** (Requirement 35)

This requirement ensures the mitigation measures within Chapter 19 of the ES are secured. The requirement prevents development from commencing until a scheme detailing how the measures required in Chapter 19 will be delivered has been approved by the local planning authority to address the construction phase of the authorised development. The second part of the requirement addresses the operational phase of the development to ensure that all necessary greenhouse gas

mitigation measures are secured for the life of each component of the authorised development.

- **Mezzanines** (Requirement 36)

This requirement provides that no more than 200,000 square metres of mezzanine floorspace will be provided within the EMG2 Main Site and limits the use of that mezzanine floorspace for storage. The requirement ensures that the proposed provision of mezzanine floorspace within the EMG2 Main Site does not exceed that which has been assessed in the ES and Transport Assessment submitted with the DCO Application.

- **Approvals and amendments to approved details** (Requirement 37)

This requirement allows details approved pursuant to the requirements to be amended with the agreement of the local planning authority or the relevant highway authority where the amendments relate to the highway works. This is necessary to provide for flexibility given that many of the details approved will apply for the life of the development.

Part 2 Procedure for approvals etc. under requirements

- **Applications made for certain approvals** (Requirement 1)
- **Further Information** (Requirement 2)
- **Fees** (Requirement 3)
- **Appeals** (Requirement 4)
- **Interpretation of Part 2 of Schedule 2** (Requirement 5)

Schedule 3 (Streets subject to street works)

- 5.100 This Schedule lists the streets within the Order limits which are to be subject to the street works pursuant to article 8.

Schedule 4 (Streets to be permanently stopped up for which a substitute is to be provided)

- 5.101 This Schedule lists the length of streets which are to be stopped up pursuant to article 10 and details of the substitute for those streets with reference to the Access and Rights of Way Plans (**Document DCO 2.4**).

Schedule 5 (Public Rights of Way)

Part 1 - Public Rights of Way to be Stopped Up for which a substitute is to be provided

- 5.102 This Part details the public rights of way which are to be stopped up with substitute to be provided pursuant to article 12 with reference to the Access and Rights of Way Plans (**Document DCO 2.4**).

Part 2 – New Public Rights of Way to be Created

- 5.103 This Part sets out the new public rights of way which are to be provided.

Schedule 6 (Private Means of Access)

Part 1 – Private Means of Access to be Replaced

- 5.104 This Part details the private means of access which are to be stopped up and replaced pursuant to article 13 with reference to the Access and Rights of Way Plans (**Document DCO 2.4**).

Part 2 – Private Means of Access to be Closed for which no Substitute is to be Provided

- 5.105 This Part details the private means of access which are to be stopped up pursuant to article 13 and not replaced, with reference to the Access and Rights of Way Plans (**Document DCO 2.4**).

Schedule 7 (Classification of New Highways)

- 5.106 This Schedule sets out the classification of the new lengths of highways created as a result of the highway works.

Schedule 8 (Speed Limits)

Part 1 - Existing Orders

Part 2 - Highways subject to 50mph speed limit

- 5.107 This Schedule sets out the varied or new speed limits which will apply following the completion of the works and also amends existing orders which conflict with those limits.

Schedule 9 (New traffic regulation orders)

- 5.108 This Schedule provides for a new traffic regulation order to be made in respect of Hyams Lane to prohibit the waiting of motor vehicles and Long Holden to prohibit vehicular traffic along it.

Schedule 10 (Land of which temporary possession may be taken)

- 5.109 This Schedule sets out the land of which temporary possession may be taken as referred to in article 32.

Schedule 11 (Land in which new rights may be created)

- 5.110 This Schedule lists the parcels of land in which new rights may be created.

Schedule 12 (Modifications of compensation and compulsory purchase enactments for creation of new rights)

- 5.111 This Schedule modifies provisions for compensation following the creation of new rights.

Schedule 13 (Protective provisions)

- 5.112 Schedule 13 includes provisions to protect the interests of various bodies whose assets may be affected by the proposed development. These include:

Part 1: For the protection of National Highways

- Part 2: For the protection of the Local Highway Authority
- Part 3: For the protection of National Grid
- Part 4: For the protection of Severn Trent Water Limited
- Part 5: For the protection of operators of electronic communications code networks
- Part 6: For the protection of the airport operator
- Part 7: For the protection of UK Power Distribution
- Part 8: For the protection of Cadent Gas
- Part 9: For the protection of Network Rail

5.113 Of particular note are Parts 1 and 2 of Schedule 13 which contain protective provisions to protect the interests of the highway authorities, being National Highways Limited and Leicestershire County Council. These provisions govern the carrying out of the highway works and obviate the need for any agreements pursuant to section 38 and section 278 of the Highways Act 1980 which would be the usual manner of governing off site highway works.

Schedule 14 (Miscellaneous controls)

5.114 This Schedule sets out various legislative provisions which are modified or excluded from application to the DCO for the following reasons:

DCO Provision	Legislative Provision	Reason
Schedule 14 Paragraph 2	Section 141 of the Highways Act 1980	Disapplied to ensure that the local highway authority does not serve a notice requiring the removal of landscaping within 15 feet of a carriageway which has been permitted by the authorised development and is to be managed and maintained by the undertaker.
	Section 167 of the Highways Act 1980	Disapplied in relation to retaining walls required during construction of the authorised development
Schedule 14 Paragraph 3	Section 56(1) and 1(A) of the New Roads and Streets Act 1991	Article 8 and Part 1 Paragraph 7 and Part 2 Paragraphs 3 and 4 of Schedule 13 (protective provisions) deal with the detail and approvals relating to notices and road space booking. These provisions are therefore disapplied to ensure only one approval mechanism is needed.
	Section 56A of the New Roads and	Article 8 and Parts 1 and 2 of Schedule 13 (protective provisions) deal with the detailed highway design which will include arrangements relating to the placing of

	Street Works Act 1991	apparatus. These provisions are therefore disapplied to ensure only one approval mechanism is needed.
	Section 58(1) of the New Roads and Streets Act 1991	This provision is disapplied to ensure the delivery of the authorised development is not frustrated where other road works have been completed within the previous 12 months.
	Section 61(1) of the New Roads and Streets Act 1991	This provision is disapplied to ensure that apparatus placed in a special road (e.g. the M1) can be diverted.
	Section 62(2) of the New Roads and Streets Act 1991	This provision is disapplied to ensure that any apparatus placed in, for example, the M1 or A50, will not be directed to be moved, since the placing of them will have been agreed under the draft DCO.
	Section 62(4) of the New Roads and Streets Act 1991	This provision is disapplied to ensure that any conflicting designations made by a street authority do not apply to the Highways Works permitted as part of the authorised development.
	Section 63(1) of the New Roads and Streets Act 1991	Detailed design is covered through the draft DCO including the protective provisions in Parts 1 and 2 of Schedule 13 and therefore this statutory provision is disapplied to ensure there is only one governing mechanism.
	Sections 73A(1) and 78A(1) of the New Roads and Streets Act 1991	Article 14 of the draft DCO and the protective provisions deal with maintenance of the Highway Works. These provisions are not yet in force, however and consistent with other made orders, they are disapplied so that should they come into force before or during construction, they will not apply to the authorised development. This approach ensures there is only one governing mechanism.
	Section 74 and 74A of the New Roads and Streets Act 1991	The timeframe/schedule for the carrying out and completion of the works is to be governed by the draft DCO and protective provisions and therefore this provision is disapplied to ensure that only the DCO is the appropriate governing mechanism
	Schedule 3A to the New Roads and Street Works Act 1991 and	These provisions are disapplied because the draft DCO, including protective provisions, cover carrying out of the works

	Paragraphs 2(1)d, 3, 3(4) and 5(1).	and there should be no additional, separate statutory provision.
Paragraph 4	Local Government (Miscellaneous Provisions) Act 1976	This provision is disapplied to provide certainty that no unknown future enactment restricts the authorised development.

Schedule 15 (Membership, role and protocol of Sustainable Transport Working Group)

- 5.115 This Schedule sets out the membership, role and protocol of the Sustainable Transport Working Group which is to be established pursuant to requirement 4. The members and voting arrangements for the group have been aligned with the working group that operates in respect of EMG1.

Schedule 16 (Certification of Plans and Documents)

- 5.116 This Schedule lists the various plans and documents that are to be certified by the SoS for the purposes of the Order. The documents listed are those referred to in the draft DCO.