

Document [3.2]

# Explanatory Memorandum to Draft Development Consent Order

[January] 2025

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

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## **1 Introduction**

- 1.1 This memorandum accompanies an application for a development consent order (“the Application”) submitted on behalf of Segro Properties Limited (“the Applicant”). The Application seeks approval of the draft The East Midlands Gateway Phase 2 and Highway Development Consent Order 20[ ] (“the draft DCO”).
- 1.2 As required by Regulation 5(2)(c) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, as amended, (“the Regulations”), this memorandum explains the purpose and the effect of provisions in the draft DCO. It has been prepared taking into account the guidance set out in the Advice Note 15: drafting Development Consent Orders (1 July 2018).
- 1.3 The Applicant is Segro Properties Limited. Segro Properties Limited is a wholly owned subsidiary of SEGRO PLC, a UK Real Estate Investment Trust (REIT) and a FTSE 100 company. Further details about the Applicant and related companies can be found in the Funding Statement (Document 4.2).
- 1.4 This Explanatory Memorandum relates to the Applicant’s draft DCO submitted to the Examining Authority with the Application on [ ] 2025 (Document 3.1).
- 1.5 The Applicant has submitted with the Application a document called ‘Guide to Application’ (Document 1.3) which provides an overview of the Application and explains each of the documents submitted with the Application.

## **2 Purpose of the DCO**

- 2.1 The Application relates to a second phase of East Midlands Gateway Logistics Park (EMG1) which is a Strategic Rail Freight Interchange (SRFI) located to the north of East Midlands Airport. EMG1 is a nationally significant infrastructure development comprising a rail freight terminal and warehousing. It was authorised by The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (SI 2016/17) (the EMG1 DCO) and is substantially complete. This proposed second phase to EMG1 is known as East Midlands Gateway 2 (referred to as ‘EMG2’) and in brief comprises the following:
- EMG2 Main Site – A new multi-unit logistics/industrial development located south of East Midlands Airport and the A453, and west of the M1 motorway. This part of the site falls within the ‘East Midlands Airport and Gateway Industrial Cluster’ (EMAGIC) site, which forms part of the East Midlands Freeport designated by the Government in 2022.
  - Highways Works – works to the highway network including significant improvements at Junction 24 of the M1 (referred to as J24 Improvements) and the road network interacting with that junction.
  - EMG1 Works – the proposals include changes within EMG1 incorporating additional warehousing on Plot 16 together with works to increase the permitted height of the cranes at the rail-freight terminal, improvements to the public transport interchange and site management building.
- 2.2 The three components above are collectively referred to as the Scheme.
- 2.3 The Scheme is shown on the plan titled ‘[ ]’ (Document [ ]) and is more fully described in Schedule 1 of the draft DCO (Document 3.1) and in the other Application documentation, in particular the Guide to Application (Document 1.3) and Chapter 2 of the Environmental Statement (Document 6.3).
- 2.4 In January 2024, the Applicant made an application to the Secretary of State under s.35 of the Planning Act 2008 (“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.

- 2.5 The Secretary of State ("SoS") issued a direction dated 21 February 2024 ("s.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."*
- 2.6 The Highways Works required as part of the Scheme meet the criteria is a nationally significant infrastructure project ("NSIP") within Sections 14(1)(h) and 22(1) of the PA 2008. Under s.22, an NSIP must fall within one of the three categories specified, which are expressly stated to be alternatives. Whilst the Scheme includes improvement of existing highway and construction of new highway, it is predominantly alteration of existing highway within the meaning of s.22(1)(b). The Scheme is wholly located in England. National Highways Limited, being a strategic highways company, is the highway authority for the highway affected by the Highways Works. The land required for the Highways Works is [ ] hectares which is greater than the minimum threshold of 15 hectares stipulated in Section 22(4)(a) in relation to the alteration of a motorway. The alterations to the highway are likely to have a significant effect on the environment and the application is accompanied by an environmental statement (document reference 6). The Scheme therefore complies with all requirements of s.22(3) of the PA 2008.
- 2.7 The draft DCO also authorises associated development. Provision for ancillary matters is made in the body of the draft DCO.
- 2.8 The EMG1 Works are subject to material change application pursuant to paragraph 3(1) of Schedule 6 to the PA 2008.
- 2.9 Part 6 of the PA 2008 is to be applied when determining applications for orders granting development consent. This includes s.103 - s.107 which provide the framework for decision-making and the examination of applications for a draft DCO.

#### *Ancillary Matters*

- 2.10 The draft DCO 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 4.1).

### **3 Plans and Other Documents**

- 3.1 The documentation submitted with the Application is described in section [ ] of the Guide to Application and includes all the plans and documents required to comply with Regulation 5(2) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended).
- 3.2 The plans submitted with the Application include:

- i) A **Location Plan** enabling the identification of the site and the administrative boundaries (Document 2.1).
- ii) **Land Plans** (pursuant to Regulation 5(2)(i) - Documents 2.2) showing the land affected by the development and the land subject to compulsory purchase powers.
- iii) **Works Plans** (pursuant to Regulation 5(2)(j) - Documents 2.3) identifying the areas for the different works which are referred to in Schedule 1 in the draft DCO (Document 3.1) and, where appropriate, show limits of deviation.
- iv) **Access and Rights of Way Plans** (pursuant to Regulation 5(2)(k) - Documents 2.4) which identify new and altered means of access, stopping up of streets and roads, new and diverted public footpaths, bridleways and cycle tracks.
- v) **Parameters Plan** (pursuant to Regulation 5(2)(o) - Document 2.12) which identifies the parameters with which the works must comply. The parameters plan is the plan upon which the environmental assessment reflected in the Environmental Statement has been based.
- vi) **Highway Plans** (pursuant to Regulation 5(2)(o) – Documents 2.5, 2.6, 2.7). These describe the various elements of the highway mitigation on plan and, where felt helpful, in cross section.
- vii) **Highway Classification Plans, Traffic Regulation Plans and Speed Limit Plans** (Documents 2.9, 2.10, 2.11). 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.
- viii) **Illustrative Masterplan** (Document 2.13), is also 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 Environmental Statement and it identifies simply one way in which a development may come forward in conformity with the Parameters Plan.

#### **4 Summary of the Works**

- 4.1 The authorised development is divided up into separate works that describe the different aspects of the proposal. The works numbers relate to areas shown on the Works Plans and the Highways Plans (Documents 2.3 and 2.5). The detail of the Works is set out in Schedule 1 of the draft DCO.

#### **5 The Assessment Parameters**

- 5.1 The Parameters Plan is the plan which identifies the parameters of the authorised development on the main site and is the basis of the environmental assessment that has been carried out.
- 5.2 The Parameters Plan identifies the parameters that apply to each development zone. In addition to identifying the spatial extent of each use, the 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” (1 July 2018).
- 5.3 The control of the development is secured by reference to:

- articles 4 (*Parameters of authorised development*) and 41 (*Governance of requirements and governance of protective provisions relating to highway works*);
- the description of the works in Schedule 1;
- the requirements in Schedule 2; and
- the parameters on the Parameters Plan and the limits of deviation shown on the Works Plans [and the Highways Plans].

5.4 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 DCO.

5.5 In the case of highway works comprised in Works Nos. 8 to 19, the detailed working drawings of the works involved will be governed by Parts 2 and 3 of Schedule 12 (protective provisions). Those designs are required to be in accordance with the Highways Plans – General Arrangements (Documents 2.5).

5.6 The approved details cannot however stray outside the authorised development or beyond the parameters, as is made clear by articles 4 and 43. The approval of details subsequent to the making of the Order, and the ability to change details approved, is in accordance with paragraph 19 of Advice Notice 15: drafting Development Consent Orders.

## **6 The Draft Order**

6.1 The text below deals with each article and Schedule of the draft DCO in turn.

6.2 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, regard has been had to The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>1</sup>, The Northampton Gateway Rail Freight Interchange Order 2019<sup>2</sup> and The West Midlands Rail Freight Interchange Order 2020<sup>3</sup>.

### ***PART 1***

#### ***PRELIMINARY***

##### *Article 1 (Citation and commencement)*

6.3 This article provides for citation and commencement of the Order.

##### *Article 2 (Interpretation)*

6.4 This article provides for the interpretation of the Order, principally comprising the definition of terms.

6.5 Definitions of the “main site” and “highway works” have been added to facilitate the drafting of the separate provisions relating to those elements of the development.

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<sup>1</sup> S.I. 2016 No. 547

<sup>2</sup> S.I. 2019 No. 1358

<sup>3</sup> S.I. 2020 No. 511

- 6.6 Definitions have also been added separately to Schedule 2 to enable easy reference to the requirements.
- 6.7 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 air-space above its surface.
- 6.8 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.
- 6.9 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.
- 6.10 Article 2(5) provides that areas referred to in the Book of Reference (Document 4.3) are approximate – for the same reason as Article 2(3) is required.
- 6.11 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 15 of the draft DCO.
- 6.12 Articles 2(3) - (6) are identical to those included in The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>4</sup>.

## **PART 2**

### **PRINCIPAL POWERS**

#### *Article 3 (Development consent granted by the Order)*

- 6.13 This article provides (as permitted by section 115 of the 2008 Act) 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)*

- 6.14 This article identifies the parameters and limits of deviation with which the authorised development must comply. The Parameters Plan provides the parameters for the EMG2 Main Site and the Works Plans provide the limits of deviation for all of the proposed development. The article is included pursuant to section 115 of the 2008 Act, since the parameters set the extent of the authorised development for which consent is granted.

- 6.15 This approach is in line with the Rochdale Envelope approach and the guidance set out in Planning Inspectorate's Advice Notes 9 and 15.

- 6.16 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 [ ].

#### *Article 5 (Authorisation of Use)*

- 6.17 This article authorises the operation and use of the EMG2 Main Site for business and commercial uses as it would had the development been built pursuant to a planning permission.

#### *Article 6 (Maintenance of authorised development)*

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<sup>4</sup> S.I. 2016 No. 772

6.18 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 [ ].

*Article 7 (Benefit of Order)*

6.19 The Order will benefit the “undertaker”, as defined, which, in the case of the EMG2 Main Site, will include all parties who qualify under section 156 of the 2008 Act. However, some powers will benefit only Segro Properties Limited as follows:

(a) Part 5 (Powers of Acquisition) will be for the sole benefit of Segro Properties Limited to ensure that the articles relating to the exercise of compulsory acquisition powers cannot be transferred unless the Secretary of State consents; and

(b) only Segro Properties Limited have the power to carry out the highway works and deliver them in accordance with the protective provisions in Parts 2 and 3 of Schedule 12 unless the Secretary of State 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 12.

6.20 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.

6.21 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 [ ].

**PART 3**

**STREETS**

*Article 8 (Street works)*

6.22 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. 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 2008 Act. The provision relates to the authorised development and is therefore permitted by section 120(3) of the 2008 Act, in addition to section 120(4) and specifically paragraph 15 of Part 1 of Schedule 5 to the 2008 Act (i.e. the carrying out of civil engineering or other works).

6.23 This article is identical to [ ].

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

6.24 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 [ ] and [ ]. It is identical to article 9(1) of the East Midlands Gateway Rail Freight Interchange and Highway Order<sup>5</sup>. The article is authorised pursuant to section 120(3) of the 2008 Act since any necessary works are related to

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<sup>5</sup> S.I. 2016 No. 49 (for example, articles 12, 13 and 14).



the authorised development, in addition to section 120(4) and specifically paragraph 15 of Part 1 of Schedule 5 to the 2008 Act (i.e. the carrying out of civil engineering or other works).

*Article 10 (Permanent stopping up of streets)*

- 6.25 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 DCP 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 (Documents 2.4).
- 6.26 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.
- 6.27 The article is in identical terms to the article contained in the [ ]. 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 2008 Act.

*Article 11 (Temporary stopping up of streets)*

- 6.28 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, 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 2008 Act.
- 6.29 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.
- 6.30 The article is, in substance, the same as [ ].

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

- 6.31 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.
- 6.32 Section 136 of the 2008 Act 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.
- 6.33 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.
- 6.34 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)*

- 6.35 The new means of access to the EMG2 Main Site is identified in Schedule 1 and is part of the Highways Works covered by Schedule 12. 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.
- 6.36 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.
- 6.37 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.
- 6.38 Paragraph 5 refers to new means of access to be provided. These are detailed in Part 3 of Schedule 6. The creation of the private accesses is permitted by section 120(3) of the 2008 Act because the purpose for which the provisions relating to the creation of the private accesses are included in the Order is to facilitate the development consented by the Order, and therefore their creation is clearly related to the authorised development.
- 6.39 The article is the same as [ ].

*Article 14 (Maintenance of highway works)*

- 6.40 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 paragraph [ ] of Part 1 and paragraph [ ] of Part 2 of Schedule 12 (provisional certificate). The article is based on [ ]. In addition, it also cross refers to the dedication provisions contained in Schedule 12. This provision is permitted by section 120(3) of the 2008 Act 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 2008 Act.

*Article 15 (Classification of highways)*

- 6.41 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 2008 Act.

*Article 16 (Speed limits)*

- 6.42 This article is based upon articles in other Development Consent Orders, for example, [ ]. 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.
- 6.43 The article also enables temporary speed limits during construction by agreement with the relevant highway authority.
- 6.44 The inclusion of the article is permitted by section 120(3) of the 2008 Act, 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 2008 Act.
- 6.45 Part 1 of Schedule 8 provides for amendments to existing orders. The existing orders which are the subject of amendment are contained in Document [ ].

- 6.46 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)*

- 6.47 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 [ ]. The provision is permitted by section 120(4) and paragraph 20 of Part 1 to Schedule 5 of the 2008 Act 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)*

- 6.48 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.

- 6.49 All of the highway works will be carried out in accordance with the powers within the DCO and the relevant provisions of Parts 1 or 2 of Schedule 12. 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, s.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.

- 6.50 The article is in the same form as [ ].

**PART 4**

**SUPPLEMENTAL POWERS**

*Article 19 (Discharge of water)*

- 6.51 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 2008 Act.

- 6.52 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)*

- 6.53 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)*

6.54 The 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 2008 Act. Its inclusion is therefore authorised by section 120(4) of the 2008 Act.

6.55 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 Orders<sup>6</sup>. 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 DCO.

6.56 The scope of the article is identical to that contained in [                    ].

*Article 22 (Compulsory acquisition of land)*

6.57 This article will authorise the compulsory acquisition of land shown on the Land Plans (Document 2.2) and described in the Book of Reference (Document 4.3) and is permitted by section 120(4) and paragraph 1 of Part 1 of Schedule 5 to the 2008 Act, and by section 123 of the 2008 Act. The 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 Applicant seeks acquisition of new rights only – see below at paragraph 6.60. This is explained in further detail in the Statement of Reasons (Document 4.1).

6.58 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 2008 Act.

6.59 Further detail on the rationale for this article is contained in the Statement of Reasons (Document 4.1).

*Article 23 (Compulsory acquisition of rights)*

6.60 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 2.2), described in the Book of Reference (Document 4.3). The article is permitted by section 120(4) and paragraphs 1 and 2 of Part 1 to Schedule 5 of the 2008 Act. The land in which new rights may be created is listed in Schedule 10. The article is based on recently approved provisions in various Development Consent Orders<sup>7</sup>. This approach ensures that compulsory purchase is limited only to the rights that are required.

6.61 The approach requires a modification to compulsory purchase and compensation provisions and these are dealt with in Schedule 12, which is permitted by section 120(5)(a) of the 2008 Act.

*Article 24 (Private rights)*

6.62 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

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<sup>6</sup> paragraph 1 refers to “land” but section 159 of the 2008 Act confirms that in this context, “land” includes a right in, on, over or under land.

<sup>7</sup> [                    ]

to Schedule 5 of the 2008 Act. The power is also supplementary to articles 24 and 25 and its inclusion is therefore necessary to give full effect to the Order; it is therefore permitted by section 120(5)(c) of the 2008 Act.

*Article 25 (Power to override easements and other rights)*

6.63 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.

6.64 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 2008 Act. The power is also supplementary to articles 24 and 25 and its inclusion is therefore necessary to give full effect to the Order; it is therefore permitted by section 120(5)(c) of the 2008 Act.

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

6.65 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 2008 Act.

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

6.66 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 is disapplied by section 125(3)(a) of the 2008 Act. This article imposes a time limit which is linked to the time period in which the authorised development must commence (see requirement 2), in accordance with section 154(3) of the 2008 Act.

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

6.67 This article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the DCO by section 125 of the 2008 Act. The modification of those provisions is permitted by section 120(5)(a) of the 2008 Act.

*Article 29 (Application of the 1981 Act)*

6.68 This article provides for the application of the vesting declaration procedure to the compulsory acquisition under the Order. The application of the Act is permitted by section 120(5)(a) of the 2008 Act. The wording is the same as that in the [ ].

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

6.69 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 2008 Act. The 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)*

- 6.70 This article gives the 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 2008 Act.

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

- 6.71 This article allows the Applicant to occupy the land specified in Schedule 9 temporarily while the works are carried out, and also any of the land identified for the permanent acquisition that has not yet been acquired.

- 6.72 The article also makes provision for the time limit for return of the land, restoration and payment of compensation.

- 6.73 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.

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

- 6.74 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 2008 Act.

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

- 6.75 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.

- 6.76 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 2008 Act, which allows provision for the removal, disposal or re- siting of apparatus.

*Article 35 (No double recovery)*

- 6.77 This article is based on other recent DCOs<sup>8</sup> 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 2008 Act as well as sections 120(3) and 120(4) and paragraph 36 of Part 1 to Schedule 5 of the 2008 Act.

**PART 6**

**MISCELLANEOUS AND GENERAL**

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

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<sup>8</sup> [ ]

6.78 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 2008 Act.

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

6.79 This article is based upon an article in the model provisions and appears in a number of approved development consent orders, including [ ]. 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 2008 Act.

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

6.80 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 near the authorised development, or 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 2008 Act.

6.81 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 2008 Act.

6.82 The article also allows for the felling, lopping or cutting back of trees subject to a tree preservation order, as identified in appendix [ ] of the arboricultural assessment included within the Environmental Statement, 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)*

6.83 The article gives effect to the protective provisions which are contained in Schedule 12 referred to further below.

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

6.84 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)*

6.85 This article seeks, as permitted by section 120(5) of the 2008 Act, to incorporate and modify legislative provisions which are necessary for carrying out the authorised development.

*Article 42 (Planning permission)*

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

*Article 43 (Certification of plans and documents)*

6.87 This article reflects the drafting of the model provisions and specifies with reference to Schedule 15 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)*

6.88 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 2008 Act.

*Article 45 (Arbitration)*

6.89 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 2008 Act.

**SCHEDULES**

*Schedule 1 (Authorised Development)*

6.90 This schedule describes the authorised development for which development consent is sought, including associated development.

6.91 Schedule 1 also includes “Further Works” being diverse items the precise locations of which it is not possible to identify at this stage. These “Further Works” are not location specific because they relate to items the precise location of which is not ascertainable at this stage.

*Schedule 2 (Requirements)*

6.92 As permitted by section 120(1) and (2) of the 2008 Act, 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 [ ]<sup>9</sup>. They are, however, bespoke for the particular development proposed. The objective of these requirements is self-explanatory.

6.93 The topics covered by the requirements are set out below, along with an explanation, where helpful:

- **Time limit** (Requirement 2)
- **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 public transport strategy. It also requires the establishment of a sustainable transport working group which will have an ongoing roll in relation to the sustainable transport measures.

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<sup>9</sup> [ ]



- **Design and phasing of highways works** (Requirements 5 and 6)  
 This requirement sets out certain triggers by when certain parts of the highway works need to have been completed and includes a requirement to construct the highway works in accordance with the provisions of Parts 1 and 2 of Schedule 12.
- **Detailed design approval** (Requirements 7 and 8)  
 Requirements 7 and 8 ensure that a large number of detailed matters are approved by the relevant planning authority at the appropriate stages.
- **Provision of landscaping** (Requirement 9)  
 This requirement ensures that a written landscaping scheme is submitted for each part of the main site prior to development commencing on that part.
- **Landscape and ecological management plan** (Requirement 10)  
 This requires that the development be carried out in accordance with the submitted “LEMP” and for management and maintenance of the green infrastructure to be agreed with the relevant 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 CEMP.
- **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.
- **Building sustainability** (Requirement 15)  
 This requirement imposes compliance with BREEAM 2018 “Very Good” in respect of the construction of each warehouse.
- **Flood risk and surface water drainage** (Requirements 16 - 17)  
 These requirements ensure that the appropriate mitigation is imposed, and details approved at the appropriate stages of development.
- **Foul water drainage** (Requirement 18)
- **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.

- **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 from train movements 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 covers an obligation previously contained in the draft section 106 Agreement, following discussions with the local planning authority and following a suggestion by the Examining Authority. The requirement provides for the submission and observance of employment schemes for the provision of employment and training.

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

This requirement covers an obligation previously contained in the draft section 106 Agreement, following discussions with the local planning authority and following a suggestion by the Examining Authority. It provides for the establishment of a community liaison group and the approval of a protocol for that group by the relevant planning authorities.

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)*

6.94 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)*

6.95 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 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*

6.96 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 Plan (Document 2.4).

*Part 2 – New Public Rights of Way to be Created*

6.97 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*

6.98 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 Plan (Document 2.3).

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

6.99 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 Plan (Document 2.3).

*Part 3 – New private means of Access Created*

6.100 This Part sets out the new private means of access which are to be provided.

*Schedule 7 (Classification of New Highways)*

6.101 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*

6.102 This schedule sets out the varied or new speed limits which will apply following the completion of the works and also revokes existing orders which conflict with those limits.

*Schedule 9 (Land of which temporary possession may be taken)*

6.103 This Schedule sets out the land of which temporary possession may be taken as referred to in article 33.

*Schedule 10 (Land in which new rights may be created)*

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

*Schedule 11 (Modifications of compensation and compulsory purchase enactments for creation of new rights)*

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

*Schedule 12 (Protective provisions)*

6.106 Schedule 12 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

6.107 Of particular note are Parts 1 and 2 of Schedule 12 which contain protective provisions to protect the interests of the highway authorities, being National Highways and Leicestershire County Council. These provisions govern the carrying out of the highway works and obviate the need for any agreements pursuant to s.38 and s.278 of the Highways Act 1980 which would be the usual manner of governing off site highway works.

*Schedule 13 (Miscellaneous controls)*

6.108 This Schedule sets out various legislative provisions which are modified or excluded from application to the DCO.

*Schedule 14 (Membership, role and protocol of Sustainable Transport Working Group)*

6.109 This Schedule sets out the membership, role and protocol of the Sustainable Transport Working Group which is to be established pursuant to requirement 4.

*Schedule 15 (Certification of Plans and Documents)*

6.110 This Schedule lists the various plans and documents that are to be certified by the Secretary of State for the purposes of the DCO. The documents listed are those referred to in the draft DCO.