

**EWR Company: Response to Deadline 5 submissions
A428 Black Cat to Caxton Gibbet Improvement Scheme**

Deadline 6, 14th December 2021



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1. Introduction

- 1.1. This document sets out East West Railway Company's (EWR Co) response to information and submissions received at Deadline 5. Where a comment is not subject to reply it is because EWR Co does not wish to comment further on a particular matter at this stage. It should not be interpreted that the comment is accepted or conceded unless this is expressly stated.
- 1.2. Section 2 sets out EWR Co's comments in relation to information and submissions received at Deadline 5, as follows:
 - 1.2.1. Table 1: EWR Co's response to the Applicant's comments on EWR Co's submissions made at Deadline 4 [REP5-014]; and
 - 1.2.2. Table 2: EWR Co's comments on the Applicant's comments on other parties' responses to the Examining Authority's Second Round of Written Questions [REP5-015].

2. Responses to Deadline 5 Submissions

Table 1: EWR Co's response to the Applicant's comments on EWR Co's submissions made at Deadline 4 [REP5-014]

Item No.	Document name and PINs Reference No.	Extracts	EWR Co Response
1	Applicant's Comments on submissions made at Deadline 4 - [REP5-014], page 143	<p>EWR Co's Response to Applicant's Response [REP3-007] on page 190 to EWR Co's response to Q1.17.4.1 East West Rail [REP1- 074] b and c</p> <p><i>Applicant's Response:</i> <i>"East West Rail Co (EWR) is in the very early design stage not yet having even announced a preferred route, prepared its preliminary design or consulted on that design. In contrast, the Applicant has completed its preliminary design taking on board comments from consultation, completed its Environmental Impact Assessment (including setting its limits of deviation) and has commenced the detailed design stage for the Scheme. The Applicant maintains its view that given the very early stage of the design for the EWR Scheme it is not possible for any design commitments to be sought for EWR within the A428 Scheme. The nature of the DCO process is such that by the time a scheme is in Examination there are certain elements required in order to provide certainty and control over the design but as a consequence of that certainty there is also a reduction in the ability to accommodate changes at a late stage. Therefore, it is the Applicant's view that it would be for the EWR Scheme design (when completed) to look for efficiencies based on the existing design of</i></p>	<p>EWR Co does not dispute that the proposals for the EWR Project and the Scheme are at different stages of evolution. However, it is not accepted that it is not possible for <i>any</i> design commitments to be sought. Further, as is apparent from the draft protective provisions submitted to the Examination at Deadline 6, EWR Co are not seeking design changes at this stage. Rather, the protective provisions establish the mechanism for the post-consent adaptation of the Scheme (by way of works to integrate the Scheme and the EWR Project), protective works and amendments to construction programming. This mechanism is subject to an exclusion of works or matters that would give rise to materially new or materially different environmental effects from those reported in the environmental statement. This provides for the proportionate management of key interfaces without the need to amend the Scheme during the course of the Examination.</p> <p>In light of EWR Co's present lack of physical assets and the absence of a confirmed route alignment, the protective provisions set out the mechanism for coordinating interactions without rigidly defining those interactions or seeking the protection of particular assets. Crucially, should the final route alignment for the EWR Project not</p>

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		<p><i>the A428 Scheme. There should not be an obligation on the A428 Scheme to redesign or make changes to incorporate a future design from EWR when that information is not currently available.</i></p> <p><i>Whilst the Applicant is still of the view that protective provisions for an asset that is not yet in place is premature, the Applicant is reviewing the proposed Protective Provisions provided. The Applicant notes that EWR were to provide a separate Interface Agreement and the Applicant would like to consider the Protective Provisions in line with this agreement which has not yet been received. Once the Interface Agreement has been shared the two can be considered together and any cooperation possible between the schemes can be considered."</i></p>	<p>be in the vicinity of the Scheme, the key approval mechanisms would not be triggered. This provides a proportionate level of protection, taking account of the differing extent to which the EWR Project and the Scheme are currently progressed.</p> <p>As requested at Action Point 7 of ISH5, EWR Co submitted the draft protective provisions to the Examination at Deadline 6, along with full justification for each provision. EWR Co provided the Applicant with a draft Interface Agreement on 19 November 2021. The Applicant's counter proposal is awaited, and is anticipated to be received at Deadline 6.</p> <p>EWR Co remains committed to further engagement with the Applicant.</p>
2	Applicant's Comments on submissions made at Deadline 4 - [REP5-014], page 144.	<p>EWR Co's Response to Applicant's Response [REP3-007] on page 190 to EWR Co's response to Q1.17.4.1 East West Rail [REP1- 074] d and e</p> <p>Applicant's Response: <i>"Please refer to the Applicant's response to REP4-066a above."</i></p>	EWR Co's response to the Applicant's response to REP4-066a is set out at item 1, above.
3	Applicant's Comments on submissions made at Deadline 4 - [REP5-014]. page 145.	<p>EWR Co's response to Applicant's Response [REP3-007] on page 203 to CPRE Cambridgeshire and Peterborough (REP1-056e), Q1.11.1.3</p> <p>Applicant's Response: <i>"Please refer to the Applicant's response to REP4-066a above."</i></p>	EWR Co's response to the Applicant's response to REP4-066a is set out at item 1, above.

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4	Applicant's Comments on submissions made at Deadline 4 - [REP5-014], page 145.	<p>EWR Co's response to Applicant's comments [REP3-030] on EWR Co Response [REP1-073] to Action Points 1, Table 2.1, page 2 EWR Co Response</p> <p>Applicant's Response: <i>"Please refer to the Applicant's response to REP4-066a above."</i></p>	EWR Co's response to the Applicant's response to REP4-066a is set out at item 1, above.
5	Applicant's Comments on submissions made at Deadline 4 - [REP5-014], page 146.	<p>EWR Co's Response to Applicant's comments [REP3-030] on EWR Co Response [REP1-073] to Action Points 2, Table 2.1, Page 3 EWR Co Response</p> <p>Applicant's Response: <i>"Please refer to the Applicant's response to REP4-066a above."</i></p>	EWR Co's response to the Applicant's response to REP4-066a is set out at item 1, above.
6	Applicant's Comments on submissions made at Deadline 4 - [REP5-014], page 148.	<p>EWR Co's Response to Applicants Comments [REP3-030] on EWR Co response to Cambridgeshire County Council, Huntingdonshire District Council and South Cambridgeshire District Council Comments on Applicant's Statement of Common Ground with Central Bedfordshire Council and Applicant's Statement of Commonality [REP3- 040), page 5</p> <p>Applicant's Response: <i>"Please refer to the Applicant's response to REP4-066a above. The Applicant reiterates that</i></p>	EWR Co's response to the Applicant's response to REP4-066a is set out at item 1, above.

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		<p><i>it is not reasonably possible to make provision for the accommodation of the EWR Scheme when design for that scheme is so uncertain and lacking in any detail.</i></p> <p><i>The Applicant agrees with EWR in relation to the approach regarding cumulative impacts.”</i></p>	

Table 2- EWR Co's comments on the Applicant's comments on other parties' responses to second round of written questions [REP5-015]

Item No.	Document name and PINs Reference No.	Extracts	EWR Co Response
1	Applicant's Response to East West Rail's response to EXA Q2.10.1.1 – Scheme Design Approach and Design Principles in REP5-015 on page 75.	<p>Q2.10.1.1 – Scheme Design Approach and Design Principles</p> <p><i>“Given the different stages that the two projects are at, the Applicant does not consider that a design principle relating to East West Rail Co (EWR) is appropriate. The design process for the EWR Scheme, which is yet to announce a preferred route, prepare its preliminary design for that route or consult on that design, all of which could result in significant changes, is at a very early stage. This is in contrast to the Scheme which has already completed its preliminary design taking on board comments from consultation, completed its Environmental Impact Assessment, set its limits of deviation and has commenced the detailed design stage.</i></p>	<p>As set out in the response at item 1 of Table 1, above, EWR Co does not dispute that the proposals for the EWR Project and the Scheme are at different stages of evolution. However, it is not accepted that there is too much uncertainty for <i>any</i> real consideration to be given to potential interfaces.</p> <p>As for the draft protective provisions, the logic behind the inclusion of a design principle relating to the EWR Project is to establish the mechanism to ensure appropriate engagement between the parties at the appropriate stage. At that stage, further information in respect of the EWR Project is likely to be available and can then be taken into account. Nevertheless, the difference in the design development of the two projects is acknowledged in the wording of the draft design principle, which refers to the</p>

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		<p><i>Given this significant difference in design development between the two schemes, there is too much uncertainty for any real consideration to be given to any potential interfaces with EWR, especially as EWR's design is likely to be subject to change and evolve during its non-statutory or statutory consultation. However, the Applicant is willing to continue engagement with EWR through the regular monthly engagement meetings between the parties and will consider further cooperation opportunities when EWR provide a copy of the Interface Agreement that they have referred to. The Applicant will continue to engage with EWR to clarify this position."</i></p>	<p><i>"potential interfaces" and "so far as reasonably practicable".</i> Clearly, if the EWR Project is not sufficiently progressed at the point when the design principle is triggered, the weight to be attached to it will be reduced.</p> <p>As requested at Action Point 7 of ISH5, EWR Co submitted the draft protective provisions to the Examination at Deadline 6, along with full justification for each provision. EWR Co provided the Applicant with a draft Interface Agreement on 19 November 2021. The Applicant's counter proposal is awaited, and is anticipated to be received at Deadline 6.</p> <p>EWR Co considers that it is important for the Scheme to demonstrate that it has proactively sought to engage with and accommodate the EWR Project in the public interest and to give effect to good design in accordance with the National Networks National Policy Statement.</p> <p>EWR Co remains committed to further engagement with the Applicant.</p>
2	Applicant's Response to East West Rail's response to EXA Q2.10.2 – Design Development Process in REP5-015 on page 78.	<p><i>"As explained above, East West Rail Co (EWR) is in the very early design stage not yet having even announced a preferred route, prepared its preliminary design or consulted on that design. In contrast, the Applicant has completed its preliminary design taking on board comments from consultation, completed its Environmental Impact Assessment, set its limits of deviation and has commenced the detailed design stage for the Scheme. Therefore, if EWR wish to</i></p>	<p>As set out in the response at item 1 of Table 1, above, EWR Co does not dispute that the proposals for the EWR Project and the Scheme are at different stages of evolution. In light of the ongoing Examination, EWR Co has sought to establish the mechanism to ensure engagement and cooperation at the point of detailed design rather than seeking substantive design changes during the Examination.</p>

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		<p><i>influence the Scheme's detailed design, they should provide comments to the Applicant in this respect now provided they have enough certainty regarding their design to do so. Dealing with this post consent and through amendments to paragraph (2) of Requirement 12 of the dDCO will simply not achieve what EWR seek.</i></p> <p><i>In addition, the requirement to consult under paragraph (1), which would only apply if the Applicant wished to deviate from the preliminary design, should be limited to those bodies who have decision making functions within the relevant administrative areas and can inform the Secretary of State on related matters. It is not appropriate to afford EWR a similar status to a decision making body simply due to their promotion of a Nationally Significant Infrastructure Project which has yet to be submitted or consented. To the extent that the Department for Transport require the Applicant to work with EWR on matters relating to engineering efficiencies and the coordination of construction programmes, this is a matter which can and should be dealt with outside of the DCO process.</i></p> <p><i>To date, insufficient information has been provided by EWR to enable any meaningful engagement between the parties in relation to detailed design. The Applicant anticipates that this is because EWR have not yet developed the level of detail required to enable this, and will not do so until a preferred route has been announced, statutory consultation has been</i></p>	<p>Paragraph 5.1.1 of [REP3-014] identifies that the nature of the changes anticipated during detailed design relate to engineering efficiency and the generation of information for construction. Given the potential for engineering and construction efficiencies to be achieved through the coordination of the Scheme and the EWR Project, this is an appropriate stage for engagement between the parties to occur. In light of the lack of a secured mechanism for consultation with any parties in relation to the application of the design principles, the amendments to Requirement 12 are necessary. EWR Co notes that the ExA has requested that other interested parties provide proposed drafting in relation to this point, and reserves its position in relation to any submissions made.</p> <p>The requirement to consult under paragraph (1) would apply in the event of a deviation from any of the items listed. The public interest lies in ensuring that lack of coordination between the EWR Project and the Scheme does not result in increased environmental, community or economic impacts. Therefore, it is appropriate for EWR Co to be consulted where a deviation from the principles in the First Iteration EMP is proposed.</p> <p>The information submitted to the Examination to date identifies potential alignments, allowing for the possible interfaces between the EWR Project and the Scheme to be considered. While it is accepted that there is an element of optionality, it is not the case that it is not possible to understand the potential impacts or consider the</p>

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		<p><i>completed, and the design developed in response to stakeholder comments. The window of opportunity to inform detailed design of the Scheme is now, and unless this information is provided in short order with a significant level of certainty (which will not be possible until EWR has selected a route, and designed and consulted on that route) there will be limited opportunities to take it into account without causing potential delay to the Scheme.”</i></p> <p><i>Finally, it is not yet certain if there will be any overlap of construction programmes or, if there is overlap, its extent and whether co-ordination could be facilitated without impacts to the Scheme's construction programme. Despite this, the Applicant is willing to continue engagement with EWR through the regular monthly engagement meetings and will consider further cooperation opportunities as these arise.</i></p> <p><i>Given this, the changes proposed by EWR to Requirement 12 of the dDCO are not necessary and would not achieve the purpose for which they have been proposed.</i></p>	<p>mechanisms to manage those impacts at a stage when greater design certainty can be achieved. Further detail as to the logic behind the inclusion of appropriate mechanisms, rather than substantive changes to the Scheme, is provided in the response to item 1 of Table 2, above. For these reasons, it is not accepted that the proposed changes to Requirement 12 are unnecessary or unworkable.</p> <p>EWR Co will continue to engage with the Applicant, both in respect of the continued development of the design of the EWR Project and the appropriate mechanism to secure the avoidance of increased environmental, community and economic impacts.</p>
3	Applicant's Response to East West Rail's response to EXA Q2.17.4.1 – East West Rail in REP5-015 on page 128.	<p>a) Oral Summary of ASI</p> <p>b) Design Changes currently proposed or being proposed</p> <p><i>“a) The Applicant notes this response from East West Rail Co.</i></p> <p><i>b) The Applicant notes this response from East West Rail Co.</i></p>	The Appendix to [REP4-067] was submitted to the Examination to ensure that the most recent information in respect of EWR Co's ongoing option development and emerging preferences is before the Examination. The information presented identifies potential alignments, allowing for the possible interfaces between the EWR Project and the Scheme to be considered. While it is accepted that there is an element of optionality, it is not

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		<p><i>The Applicant would also comment that the additional information provided in the Appendix does not change the current position, which is that there remains too much uncertainty to understand the impact of the East West Rail scheme on the A428 Scheme.</i></p>	<p>the case that it is not possible to understand the potential impacts. Furthermore, it is open to the Applicant to engage with EWR Co to enhance its understanding of potential interfaces.</p>