

EWR Company: Written submission of oral case at ISH5

Deadline 6, 14th December 2021



Issue Specific Hearing 4 – Response to Action Points

Ref	Question to	Question	Applicant's Response
Action Point 5	EWR Co	Confirm whether (and if so when) East West Railway Company (EWR) 2020 bat surveys, that have been relied upon to draw conclusions for this Examination, can be submitted to the Examination.	<ul style="list-style-type: none"> i. <i>EWR Co has discussed the bat surveys with the Applicant and has agreed that the relevant report may be submitted to the Examination at Deadline 6 with the redaction of individuals' details and the grid references of the identified roosts.</i>

Issue Specific Hearing 5 - Written Summary of Oral Submissions and Response to Action Points

Ref	Question to	Question	Applicant's Response
<i>4(b) Update on any proposed draft protective provisions or intended amendments to the dDCO relating to highways design matters associated with the potential interfaces with the EWR scheme, and the current position of the Applicant regarding any associated future design changes</i>			
1.1	EWR Co	EWR Co to provide an update in respect of protective provisions.	<ul style="list-style-type: none"> i. EWR Co confirmed that the protective provisions and a draft side agreement had been shared with the Applicant, and that discussions between the parties were ongoing. EWR Co also confirmed that the protective provisions would be submitted to the Examination at Deadline 6. As is normal, only the draft protective provisions will be shared with the Examination, in this case along with a commentary. ii. EWR Co's position is that there needs to be protection in the A428 dDCO to reflect the potential proximity of the EWR Project to the Scheme and the need for these key infrastructure projects to work together. While it was accepted that EWR Co is not a statutory undertaker, who is presently in the position of Network Rail for example, the potential proximity of the two projects means that if it is possible to avoid increased environmental, community and economic impacts, then this ought to be secured. It is also in the public interest that resources be used appropriately. <p><i>Action Point 7 - Protective Provisions from East West Rail Company and justification for them.</i></p> <ul style="list-style-type: none"> i. Appendix A to this summary sets out EWR Co's response to Action Point 7.
1.2	EWR Co	EWR Co to explain the relationship between the protective provisions and the comments submitted in relation to the design principles.	<ul style="list-style-type: none"> i. EWR Co confirmed that the response provided to WQ2.10.1.1 and WQ2.10.2.1 at Deadline 4 [REP4-067] dealt solely with the Applicant's design principles, which are a separate matter to the protective provisions. <p><i>Action Point 15 - What specific changes would be needed to particular parts of the Design Principles document, so as to affect the design of specific components of the Proposed Development. Marked up changes requested.</i></p> <ul style="list-style-type: none"> i. In the response provided to WQ2.10.1.1 and WQ2.10.2.1 at Deadline 4 [REP4-067], EWR Co set out its position in relation to the Applicant's proposed design principles. This included a request for a design principle to ensure engagement with EWR Co, as well as an amendment to requirement 12 of Schedule 2 to the dDCO to secure the consultation in respect of the design development process. In both cases, the proposed drafting was provided.

Ref	Question to	Question	Applicant's Response
			<ul style="list-style-type: none"> ii. EWR Co considers that as a minimum the Applicant ought to consult proactively with EWR Co in order to establish the extent to which accommodation of the two projects can be achieved. Such an approach would reflect obligations in respect of good design contained in the NN NPS at paragraph 4.28 <i>et seq.</i> Such an obligation is appropriate and should be seen as an important inclusion in the dDCO regardless of the parties' positions in respect of protective provisions. iii. For clarity, the above amendments in relation to Design Principles requested by EWR Co are set out at Appendix B to this summary with tracked changes showing. This does not represent a change to the amendments previously set out in [REP4-067].
1.3	EWR Co	EWR Co to confirm that, as set out in its Deadline 5 submissions, design changes may be needed but can be addressed after the Examination.	<ul style="list-style-type: none"> i. EWR Co confirmed that the approach taken to the drafting of the protective provisions was to provide the ability for the Scheme's design to flex to accommodate the EWR Project, subject to the caveat that any such changes do not result in any materially new or materially different environmental effects from those reported in the environmental statement. ii. EWR Co confirmed that the majority of the potential interfaces would be with side roads rather than the NSIP itself. Therefore, it would be possible to address these changes under 1990 Act applications, to the extent that the Scheme's design could not be flexed within the confines of the DCO. <p><u>Post Hearing Note</u></p> <ul style="list-style-type: none"> iii. The key exception to (ii) is the potential interaction between the EWR Project and the Scheme at Black Cat Junction. As detailed at section 3.3 of Appendix 1 to [REP4-067], Route Alignments 1,2 and 6 would closely interact with the Black Cat Junction. As a result, the mechanism secured by the protective provisions is required to ensure the efficient coordination of works in this location.
1.4	EWR Co	EWR Co to confirm why the protective provisions are not yet before the Examination.	<ul style="list-style-type: none"> i. EWR Co highlighted that the key issue for the Examination is the need for the ExA to be assured that the public interest and the environment are protected. ii. EWR Co confirmed that, in order to provide the Applicant with the opportunity to discuss the protective provisions outside the Examination, the protective provisions had not yet been submitted but would be provided at Deadline 6. iii. In response to the points raised by the Applicant, EWR Co explained that the protective provisions set out appropriate coordination mechanisms so that these will be in place ahead of implementation. This provides a pragmatic approach to ensure engagement and mitigate the potential for increased impacts on communities and the environment.
1.5	EWR Co	EWR Co to comment on the concerns raised by the Cambridge Authorities.	<ul style="list-style-type: none"> i. EWR Co confirmed that the protective provisions are not intended to circumvent engagement or consultation with the relevant local authorities. Rather, they operate alongside the existing mechanisms in the DCO to provide protection for EWR Co. ii. Therefore, even if a change to design or other inclusion is needed as a result of the operation of the protective provisions, this would still be subject to necessary approvals from local planning and highway authorities, for example.
1.6	EWR Co	EWR Co to explain why it is within the remit the Applicant to consider the EWR Project.	<ul style="list-style-type: none"> i. EWR Co explained that the question of the remit for consideration of the EWR Project goes to the timing and state of evolution of the two projects. Crucially, it is in the public interest to minimise environmental impacts and avoid unnecessary impact on the public purse, which can be achieved by coordinating the design and delivery of the two projects. ii. In preparing the protective provisions, EWR Co has drafted for questions of conditionality. This is due to certain EWR Project alignments not interfacing with the Scheme, meaning that there are outcomes which may have little impact. However, if there are interactions, it is in public interest to ensure that these are appropriately managed. By

Ref	Question to	Question	Applicant's Response
			<p>ensuring engagement and providing the mechanism for passive provision, the protective provisions facilitate the reduction in impacts where there are substantial interactions.</p> <p>iii. Although it is not incumbent upon the Applicant to assess its Scheme cumulatively with the EWR Project, this does not mean that it cannot accommodate the EWR Project. This is why, for example, at paragraph 1.3 (i) above, it is explained that there is a requirement to remain within the assessed envelope of effects for the Scheme.</p> <p>iv. EWR Co confirmed that it would continue to engage with the Applicant.</p>

Appendix A – ISH5 - Action Point 7 – Protective Provisions

1. The potential interfaces between the Scheme and the EWR Project have been described in EWR Co's response to Q1.17.4.1(b) [REP1- 074], EWR Co's Deadline 2 submission regarding the draft itinerary for the Accompanied Site Inspection [AS011] and Appendix 1 to EWR Co's responses to WQ2 [REP4-048]. As a result, they are not repeated in these submissions.
2. From the above listed documents, it is clear that the Scheme and the EWR Project have the potential to be geographically related. As such, it is entirely appropriate and efficient that the Scheme make reasonable provision for the accommodation of the EWR Project where it can in order to ensure that key interfaces are properly managed, taking appropriate and proportionate account of the route alignment eventually chosen for the EWR Project. The resulting minimisation of the environmental impacts and impact on the public purse is clearly in the public interest. As there will be a need for further development of the Scheme prior to commencement of works, it is reasonable to suppose that accommodation can be achieved.
3. The protective provisions proposed by EWR Co secure this, allowing the efficient delivery of both projects. In addition, they provide 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.
4. EWR Co maintains that, should the Scheme not be delivered in a manner that takes account of the EWR Project, there is a risk that the latter will be rendered more expensive or more difficult to deliver. This would lengthen the programme to delivery and may adversely affect the achievement of the wider transport and economic objectives of the EWR Project. Further, a lack of coordination in respect of the interfaces between the projects risks significant economic and environmental impacts due to the potential requirement for the reworking of structures by the EWR Project, shortly after their installation by the Scheme. Such a scenario is not in the interests of either party, or in the public interest, and the proposed protective provisions provide a clear mechanism to avoid such a scenario materialising.
5. As stated during ISH5 on 1 December 2021, EWR Co had not previously submitted the proposed protective provisions to the Examination, so as to allow for constructive discussions with the Applicant outwith the Examination process. However, following the ExA's request during ISH5 and the subsequent Action Point, the below table details the protective provisions proposed by EWR Co and the justification for them. The substantive provisions remain as previously shared with the Applicant, although cross references have been updated and paragraph 100(3) deleted.

Paragraph	Protective Provision	Justification
93	The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and EWR Co.	-
94	<p>In this Schedule—</p> <p>“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;</p> <p>“engineer” means an engineer appointed by EWR Co for the purposes of this Order;</p> <p>“EWR alignment” means the EWR project route alignment:</p> <ul style="list-style-type: none"> (a) confirmed by a preferred route alignment announcement; (b) presented within any statutory consultation; (c) specified within an application made pursuant to section 37 of the 2008 Act; or (d) specified within a development consent order, <p>in respect of the EWR project, whichever comes latest;</p> <p>“EWR Co” means East West Railway Company Limited (company number 11072935 whose registered office is at One Grafton Mews, Midsummer Boulevard, Milton Keynes, England, MK9 1FB);</p> <p>“EWR project” means the project to construct and operate new and upgraded railways between Oxford and Cambridge, including a new railway to be constructed between Bedford and Cambridge;</p> <p>“interface scheme” means a scheme comprising plans, programmes, methodologies and designs and such other materials as shall be reasonably necessary to demonstrate how the final design of the authorised development has been designed so as to enable the integration of the authorised development with the EWR project;</p> <p>“plans” includes the interface scheme, sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes, details of the extent, timing and duration of any specified work and any such other information as may be specified by the engineer acting reasonably;</p> <p>“protective works” means any works specified by the engineer under paragraph 51(4); and</p> <p>“specified work” means so much of any of the authorised development as is situated:</p> <ul style="list-style-type: none"> (a) upon, across, under, over or within 15 metres of, or that may in any way adversely affect, the EWR alignment; or (b) within the order limits presented during the statutory consultation for the EWR project or within the development consent order application for the EWR project, whichever is most recent. 	<p>The proposed protective provisions are adapted from those used in previous DCOs in respect of railway undertakings. As such, the form of the provisions should be familiar to both the Applicant and the ExA. 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 be in the vicinity of the Scheme, the key approval mechanisms would not be triggered. If they are triggered, this is only to the extent necessary.</p> <p>The conditional nature of the proposed protective provisions is achieved through the definition of “specified work”, which limits the application of the operative provisions by reference to the EWR alignment or the EWR order limits. Should the EWR alignment or the EWR order limits not be sufficiently progressed at the relevant time, the protections offered by reference to specified works would not apply. 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>The relevance of the definitions of “interface scheme” and “plans” is set out at 95(1), below.</p>
95(1)	The undertaker must before commencing construction of any specified work supply to EWR Co proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by in accordance with article 54 (arbitration).	Paragraph 95 provides an approval mechanism in respect of specified works. As a result, it is conditional on the EWR Project being sufficiently progressed at the time of commencement of construction of the relevant work forming part of the Scheme. By requiring the submission and approval of “plans”, paragraph 95(1) ensures that the relevant aspects of the Scheme must take account of the EWR Project. The definition of plans includes an “interface scheme”, which would detail how the specified work had been designed to enable the integration of the EWR Project. This mechanism would ensure that the parties engage in respect of the extent to which integration were required, with arbitration providing a resolution in the absence of agreement.
95(2)	The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to EWR Co the engineer has not intimated his disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further	In order that the approval mechanism under paragraph 95 does not frustrate the delivery of a NSIP, paragraph 95(2) provides a deemed approval mechanism in favour of the Applicant.

	period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.	
95(3)	If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), EWR Co gives notice to the undertaker that EWR Co desires itself to construct any part of a specified work which in the opinion of the engineer will or may improve the efficiency of joint construction programming matters then, if the undertaker desires such part of the specified work to be constructed, EWR Co must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.	In light of the potential proximity of the construction works associated with the EWR Project and the Scheme, it is feasible that there may be efficiencies to be gained through the construction of certain aspects of specified works by EWR Co rather than the Applicant. As a result, both paragraph 95(3) and the below addition to article 11(5) of the dDCO are required. <i>(j) East West Railway Company Limited (company number 11072935), whose registered office is at One Grafton Mews, Midsummer Boulevard, Milton Keynes, England, MK9 1FB in relation to any rights acquired over the Order land pursuant to article 28 and the construction of any specified works or protective works pursuant to paragraph 95 of schedule 9.</i>
95(4)	When signifying approval of the plans the engineer may specify any adaptations required in order to enable integration of the authorised works and the EWR project, protective works (whether temporary or permanent) or construction programming matters which in his opinion should be carried out or specified before the commencement of the construction of a specified work to ensure the safety or stability of the EWR alignment and such protective works as may be reasonably necessary for those purposes must be constructed by EWR Co or by the undertaker, if EWR Co so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the adaptations or protective works have been completed and the construction programming matters specified to the engineer's reasonable satisfaction.	Paragraph 95(4) provides for adaptations to specified works or programming matters, or the construction of protective works, as necessary to ensure the safety or stability of the EWR alignment. This ensures engagement as to the plans submitted under paragraph 95(1). As for paragraph 95(3), the option is provided for EWR Co to construct the protective works.
95(5)	The undertaker shall not be required to construct any protective works (whether temporary or permanent), or any part of the interface scheme or accommodate any construction programming matters specified under paragraph 95(4) where those works or matters would give rise to any materially new or materially different environmental effects from those reported in the environmental statement.	Paragraph 95(5) provides an upper limit on the extent of protective works, interface scheme provisions or programming matters which may be required under paragraph 95. Both the Applicant and the ExA should be familiar with the form of the limitation, which is used throughout the dDCO to provide that approval is required where the environmental effects exceed the specified threshold. If another consent were to be required to realise the delivery of the EWR Project, then this would be identified by the potential to exceed this limitation.
96(1)	Any specified work and any protective works to be constructed by virtue of paragraph 95(4) must, when commenced, be constructed— (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 95; (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer; and (c) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe access to the EWR alignment by EWR Co.	Provided the principle of paragraph 95 is accepted, the requirements under paragraph 96(1) should be uncontroversial.
96(2)	If any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, pay to EWR Co all reasonable expenses to which EWR Co may be put and compensation for any loss which it may sustain by reason of any such interference or obstruction.	While the EWR Project does not currently have a confirmed route alignment, the protective provisions deal with the construction of the Scheme. As such, it is entirely feasible that the EWR Project will at that stage be at a point where EWR Co requires access to the location of the confirmed route alignment. Paragraph 96(2) ensures that EWR Co's expenses and losses incurred by reason of a failure by the Applicant to comply with paragraph 96(1) are recoverable.
96(3)	Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of EWR Co or its servants, contractors or agents or any liability on EWR Co with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.	Paragraph 96(3) provides standard exemptions to the Applicant's liability under the protective provisions.

97	<p>The undertaker must-</p> <p>(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and</p> <p>(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.</p>	<p>Paragraph 97 promotes the sharing of information and the provision of access to specified works. This is designed to ensure that EWR Co remains informed of the nature and progress of the specified works, providing the opportunity for any issues to be identified in a timely fashion and then remedied in accordance with the protective provisions.</p>
98	<p>EWR Co must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by EWR Co under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.</p>	<p>Paragraph 98 sets out the reciprocal provision to paragraph 97, in favour of the Applicant.</p>
99	<p>The undertaker must repay to EWR Co all reasonable fees, costs, charges and expenses reasonably incurred by EWR Co —</p> <p>(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 95(3) or in constructing any protective works under the provisions of paragraph 95(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works; and</p> <p>(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work or a protective work.</p>	<p>Paragraph 99 provides for the payment by the Applicant of EWR Co’s reasonable fees, costs, charges and expenses pursuant to the operation of the protective provisions.</p>
100(1)	<p>The undertaker must pay to EWR Co all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by EWR Co—</p> <p>(a) by reason of the construction or maintenance of a specified work or a protective work or the failure thereof; or</p> <p>(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work or a protective work;</p> <p>and the undertaker must indemnify and keep indemnified EWR Co from and against all claims and demands arising out of or in connection with a specified work or a protective work or any such failure, act or omission: and the fact that any act or thing may have been done by EWR Co on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer’s supervision shall not (if it was done without negligence on the part of EWR Co or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this subparagraph.</p>	<p>While the EWR Project does not currently have a confirmed route alignment, the protective provisions deal with the construction of the Scheme. As such, it is entirely feasible that the EWR Project will at that stage be at a point where EWR Co may incur costs, charges, damages and expenses as a result of work by the Applicant in respect of specified works or protective works. Therefore, imposing liability on the Applicant in such a scenario is a proportionate approach.</p>
100(2)	<p>EWR Co must give the undertaker reasonable written notice (and in any event not less than 7 days) of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior written consent of the undertaker.</p>	<p>Paragraph 100(2) requires that notice is provided in respect of a claim or demand under paragraph 100(1), and prevents settlement or compromise without the consent of the Applicant. This protects the Applicant from spurious claims, as well as promoting the sharing of information.</p>
101	<p>EWR Co must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 100) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).</p>	<p>As for paragraph 100(2), paragraph 101 promotes the sharing of information in respect of the Applicant’s liability under the protective provisions.</p>
102	<p>In the assessment of any sums payable to EWR Co under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by EWR Co if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.</p>	<p>Paragraph 102 provides standard exemptions to the Applicant’s liability under the protective provisions.</p>

103	<p>The undertaker and EWR Co may enter into, and carry into effect, agreements for the transfer to EWR Co of—</p> <p>(a) any lands, works or other property held by the undertaker in connection with the authorised works; and</p> <p>(b) any rights and obligations (whether or not statutory) of the undertaker relating to the authorised works.</p>	<p>Due to the potential proximity of the EWR Project and the Scheme, it is feasible that there may be efficiencies to be gained through the transfer of land, works, property, rights or obligations from the Applicant to EWR Co.</p>
104	<p>The undertaker must give written notice to EWR Co if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 11 (Consent to transfer benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—</p> <p>(a) the nature of the application to be made;</p> <p>(b) the extent of the geographical area to which the application relates; and</p> <p>(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.</p>	<p>In light of the protections afforded to EWR Co by the protective provisions and the extent of discussions with the Applicant to date, EWR Co requires sufficient notice of the transfer of the benefit of the Order so as to allow sufficient time for transitional arrangements at a technical level.</p>
105	<p>The undertaker must no later than 28 days from the date that the plans and documents submitted to and certified by the Secretary of State in accordance with article 52 (certification of Documents, etc.) are certified by the Secretary of State, provide a set of those plans and documents to EWR Co in an agreed electronic read only format.</p>	<p>This provision is standard and should be uncontroversial.</p>

Appendix B – Action Point 15 – Design Principles

1. The below design principle is proposed for inclusion in the Environmental Management Plan [APP-234], along with the other design principles set out in [REP3-014] and highlighted at paragraph 1.2.1 for inclusion in [APP-234]:

“In preparing the detailed design and the construction programme, the potential interfaces with the East West Rail Project shall be taken into account. So far as reasonably practicable, the detailed design and construction programme shall provide for and demonstrate the realisation of design and programming efficiencies between the Scheme and the East West Rail Project.”

2. In order to secure the consultation in respect of the design development process, the below amendment to requirement 12 of Schedule 2 to the dDCO [APP-025] is proposed:

“Detailed Design

12. - (1) *The detailed design for the authorised development must accord with:*

(a) the preliminary scheme design shown on the works plans, the general arrangement plans and the engineering section drawings; ~~and~~

(b) the principles set out in the environmental masterplan; and

(c) the First Iteration EMP,

unless otherwise agreed in writing by the Secretary of State following consultation with the relevant local authority on matters related to their functions, and in the case of the First Iteration EMP consultation with East West Railway Company Limited, provided that the Secretary of State is satisfied that any amendment would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) The detailed design for the authorised development must be prepared in consultation with East West Railway Company Limited in respect of the consideration of engineering efficiencies and the coordination of construction programmes between the authorised development and East West Rail pursuant to the East West Rail design principle contained within the First Iteration EMP.

(3) Where amended details are approved by the Secretary of State under paragraph (1), those details are deemed to be substituted for the corresponding plans or sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.”

Appendix C – Schedule of Amendments

PLANNING ACT 2008
A428 BLACK CAT TO CAXTON GIBBET IMPROVEMENTS DEVELOPMENT CONSENT
ORDER 202[]
EAST WEST RAILWAY COMPANY
SCHEDULE OF AMENDMENTS
DEADLINE 6

1. Draft Development Consent Order

1.1. Insert the below provision at article 11(5):

“(j) East West Railway Company Limited (company number 11072935), whose registered office is at One Grafton Mews, Midsummer Boulevard, Milton Keynes, England, MK9 1FB in relation to any rights acquired over the Order land pursuant to article 28 and the construction of any specified works or protective works pursuant to paragraph 95 of schedule 9.”

1.2. Delete requirement 12 of Schedule 2 and replace with the following:

“Detailed Design

12. - (1) The detailed design for the authorised development must accord with:

(a) the preliminary scheme design shown on the works plans, the general arrangement plans and the engineering section drawings;

(b) the principles set out in the environmental masterplan; and

(c) the First Iteration EMP,

unless otherwise agreed in writing by the Secretary of State following consultation with the relevant local authority on matters related to their functions, and in the case of the First Iteration EMP consultation with East West Railway Company Limited, provided that the Secretary of State is satisfied that any amendment would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) The detailed design for the authorised development must be prepared in consultation with East West Railway Company Limited in respect of the consideration of engineering efficiencies and the coordination of construction programmes between the authorised development and East West Rail pursuant to the East West Rail design principle contained within the First Iteration EMP.

(3) Where amended details are approved by the Secretary of State under paragraph (1), those details are deemed to be substituted for the corresponding plans or sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.”

1.3. Insert the below protective provisions following Part 7 of Schedule 9:

93 *The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and EWR Co.*

94 *In this Schedule—*

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“engineer” means an engineer appointed by EWR Co for the purposes of this Order;

“EWR alignment” means the EWR project route alignment:

(a) confirmed by a preferred route alignment announcement;

(b) presented within any statutory consultation;

(c) specified within an application made pursuant to section 37 of the 2008 Act; or

(d) specified within a development consent order,

in respect of the EWR project, whichever comes latest;

“EWR Co” means East West Railway Company Limited (company number 11072935 whose registered office is at One Grafton Mews, Midsummer Boulevard, Milton Keynes, England, MK9 1FB);

“EWR project” means the project to construct and operate new and upgraded railways between Oxford and Cambridge, including a new railway to be constructed between Bedford and Cambridge;

“interface scheme” means a scheme comprising plans, programmes, methodologies and designs and such other materials as shall be reasonably necessary to demonstrate how the final design of the authorised development has been designed so as to enable the integration of the authorised development with the EWR project;

“plans” includes the interface scheme, sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes, details of the extent, timing and duration of any specified work and any such other information as may be specified by the engineer acting reasonably;

“protective works” means any works specified by the engineer under paragraph 51(4); and

“specified work” means so much of any of the authorised development as is situated:

(a) upon, across, under, over or within 15 metres of, or that may in any way adversely affect, the EWR alignment; or

(b) within the order limits presented during the statutory consultation for the EWR project or within the development consent order application for the EWR project, whichever is most recent.

95(1) *The undertaker must before commencing construction of any specified work supply to EWR Co proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by in accordance with article 54 (arbitration).*

95(2) *The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to EWR Co the engineer has not intimated his disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer*

to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

- 95(3) *If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), EWR Co gives notice to the undertaker that EWR Co desires itself to construct any part of a specified work which in the opinion of the engineer will or may improve the efficiency of joint construction programming matters then, if the undertaker desires such part of the specified work to be constructed, EWR Co must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.*
- 95(4) *When signifying approval of the plans the engineer may specify any adaptations required in order to enable integration of the authorised works and the EWR project, protective works (whether temporary or permanent) or construction programming matters which in his opinion should be carried out or specified before the commencement of the construction of a specified work to ensure the safety or stability of the EWR alignment and such protective works as may be reasonably necessary for those purposes must be constructed by EWR Co or by the undertaker, if EWR Co so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the adaptations or protective works have been completed and the construction programming matters specified to the engineer's reasonable satisfaction.*
- 95(5) *The undertaker shall not be required to construct any protective works (whether temporary or permanent), or any part of the interface scheme or accommodate any construction programming matters specified under paragraph 95(4) where those works or matters would give rise to any materially new or materially different environmental effects from those reported in the environmental statement.*
- 96(1) *Any specified work and any protective works to be constructed by virtue of paragraph 95(4) must, when commenced, be constructed—*
- (a) *without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 95;*
 - (b) *under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer; and*
 - (c) *so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe access to the EWR alignment by EWR Co.*
- 96(2) *If any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, pay to EWR Co all reasonable expenses to which EWR Co may be put and compensation for any loss which it may sustain by reason of any such interference or obstruction.*
- 96(3) *Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of EWR Co or its servants, contractors or agents or any liability on EWR Co with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.*
- 97 *The undertaker must-*

- (a) *at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and*
 - (b) *supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.*

- 98 *EWR Co must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by EWR Co under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.*

- 99 *The undertaker must repay to EWR Co all reasonable fees, costs, charges and expenses reasonably incurred by EWR Co —*
 - (a) *in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 95(3) or in constructing any protective works under the provisions of paragraph 95(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works; and*
 - (b) *in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work or a protective work.*

- 100(1) *The undertaker must pay to EWR Co all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by EWR Co—*
 - (a) *by reason of the construction or maintenance of a specified work or a protective work or the failure thereof; or*
 - (b) *by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work or a protective work;*

and the undertaker must indemnify and keep indemnified EWR Co from and against all claims and demands arising out of or in connection with a specified work or a protective work or any such failure, act or omission: and the fact that any act or thing may have been done by EWR Co on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of EWR Co or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this subparagraph.

- 100(2) *EWR Co must give the undertaker reasonable written notice (and in any event not less than 7 days) of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior written consent of the undertaker.*

- 101 *EWR Co must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 100) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).*

- 102 *In the assessment of any sums payable to EWR Co under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by EWR Co if that action or agreement was not reasonably*

necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

103 *The undertaker and EWR Co may enter into, and carry into effect, agreements for the transfer to EWR Co of—*

- (a) any lands, works or other property held by the undertaker in connection with the authorised works; and*
- (b) any rights and obligations (whether or not statutory) of the undertaker relating to the authorised works.*

104 *The undertaker must give written notice to EWR Co if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 11 (Consent to transfer benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—*

- (a) the nature of the application to be made;*
- (b) the extent of the geographical area to which the application relates; and*
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.*

105 *The undertaker must no later than 28 days from the date that the plans and documents submitted to and certified by the Secretary of State in accordance with article 52 (certification of Documents, etc.) are certified by the Secretary of State, provide a set of those plans and documents to EWR Co in an agreed electronic read only format.*

2. Environmental Management Plan

2.1. Insert the below design principle into the Environmental Management Plan:

“In preparing the detailed design and the construction programme, the potential interfaces with the East West Rail Project shall be taken into account. So far as reasonably practicable, the detailed design and construction programme shall provide for and demonstrate the realisation of design and programming efficiencies between the Scheme and the East West Rail Project.”