

**EWR Company: Response to Deadline 6 submissions  
A428 Black Cat to Caxton Gibbet Improvement Scheme**

**Deadline 8, 14<sup>th</sup> January 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 6. 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 6, as follows:
  - 1.2.1. Table 1: EWR Co's response to the Applicant's comments on Deadline 5 submissions [REP6-035]
  - 1.2.2. Table 2: EWR Co's comments on the Applicant's revisions to 3.1 Updated draft Development Consent Order (Tracked [REP6-002] and Clean [REP6-003]) and 9.3 Schedule of Changes to the draft DCO [REP6-023];
  - 1.2.3. Table 3: EWR Co's comments on the Applicant's revisions to the 6.8 First Iteration Environmental Management Plan (Tracked [REP6-007] and Clean [REP6-008]);
  - 1.2.4. Table 4: EWR Co's comments on the Applicant's response to actions arising from Issue Specific Hearing 5 [REP6-031];
  - 1.2.5. Table 5: EWR Co's comments on the written summaries of oral representations made at Issue Specific Hearing 5 by the Applicant [REP6 -037]; and
  - 1.2.6. Table 6: EWR Co's comments on the written summaries of oral representations made at Issue Specific Hearing 5 by the Cambridgeshire Authorities [REP6-067].



## 2. Responses to Deadline 6 Submissions

Table 1: EWR Co's response to the Applicant's comments on Deadline 5 submissions [REP6-035]

Item No.	Document name and PINs Reference No.	Extracts	EWR Co Response
<b>The Applicant's comments [REP6-035] on EWR's responses to Deadline 4 submissions [REP5-024]</b>			
1	Applicant's Deadline 6 Submission - 9.75 Comments on Deadline 5 Submissions [REP6-035], pages 8-9	<p><i>"The Applicant notes this response from EWR Co and would refer to its previous responses provided at Deadline 5 [REPS-015 in response to 02.10.1.1 and 02.10.2.1 and REPS-014 in response to REP4-066] together with its response to Action Point 7 contained within document 9.75 the Applicant's Response to actions arising from Issue Specific Hearing 5 submitted at Deadline 6.</i></p> <p><i>The previous responses and the response to Action Point 7 in particular, maintains the Applicant's view that the EWR Scheme is too far behind the design development of the A428 Scheme and as such it is not possible or appropriate for the A428 Scheme to consider including protective provisions of the type sought by EWR. Further it is not possible or appropriate for the A428 Scheme to make allowances for any changes to its design for the EWR Scheme which has not yet selected its preferred route, not undertake statutory consultation and not submitted an application for development consent."</i></p>	<p>EWR Co's response to the Applicant's Response to actions arising from Issue Specific Hearing 5 [REP6-031] is set out in Table 4, below.</p> <p>As detailed in [REP6-095] and in Table 4 of this response, EWR Co's position remains that in light of the information provided in [REP1-074], [AS011] and [REP4-048] there is no reason why the Applicant cannot take account of the EWR Project.</p> <p>The draft Protective Provisions, additional design principle and amendments to requirement 12 of Schedule 2 to the dDCO (as detailed in [REP6-094]) do not seek design changes at this stage. Rather, they establish the mechanism for consultation, 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 – all within assessed parameters.</p> <p>For this reason, it is not accepted that it is not possible or appropriate to consider the inclusion of the draft Protective</p>

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			Provisions or other allowances for changes to the Scheme design.
<b>The Applicant's comments [REP6-035] on EWR Co's comments on the responses to the EXA Second Round of Written Questions [REP5-024]</b>			
2	Applicant's Deadline 6 Submission - 9.75 Comments on Deadline 5 Submissions [REP6-035], pages 10-11	<i>"The Applicant notes this response from EWR Co and would refer to its previous responses provided at Deadline 5 [REPS-015 in response to 02.10.1.1 and 02.10.2.1 and REPS-014 in response to REP4-066] together with its response to Action Point 7 contained within document 9.75 the Applicant's Response to actions arising from Issue Specific Hearing 5 submitted at Deadline 6. The previous responses and the response to Action Point 7 in particular, maintains the Applicant's view that the EWR Scheme is too far behind the design development of the A428 Scheme and as such it is not possible or appropriate for the A428 Scheme to consider including protective provisions of the type sought by EWR. Further it is not possible or appropriate for the A428 Scheme to make allowances for any changes to its design for the EWR Scheme which has not yet selected its preferred route, not undertake statutory consultation and not submitted an application for development consent."</i>	<p>As detailed in [REP6-095] and in Table 4 of this response, EWR Co's position remains that in light of the information provided in [REP1-074], [AS011] and [REP4-048] there is no reason why the Applicant cannot take account of the EWR Project.</p> <p>The draft Protective Provisions, additional design principle and amendments to requirement 12 of Schedule 2 to the dDCO (as detailed in [REP6-094]) do not seek design changes at this stage. Rather, they establish the mechanism for consultation, 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.</p> <p>For this reason, it is not accepted that it is not possible or appropriate to consider the inclusion of the draft Protective Provisions or other allowances for changes to the Scheme design.</p>

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Table 2: EWR Co's comments on the Applicant's revisions to 3.1 Updated draft Development Consent Order (Tracked [REP6-002] and Clean [REP6-003]) and 9.3 Schedule of Changes to the draft DCO [REP6-023]

Item No.	Document name and PINs Reference No.	Extracts	EWR Co Response
1	REP6-002 and REP6-003 page 62 REP6-023 page 43	<i>"Requirement 12 has been amended to ensure that the detailed design must accord with the design principles set out in the scheme design approach and design principles document."</i>	<p>In its response to Q2.10.2.1(b) [REP4-067], EWR Co proposed amendments to requirement 12 of Schedule 2 of the dDCO in order to secure consultation in respect of the design development process. Subsequently, EWR Co provided a tracked changes version of the amendments to requirement 12, as well as a full schedule of amendments (Appendices B and C of [REP6-094]).</p> <p>The revised dDCO ([REP6-002] and [REP6-003]) does not include the amendments to requirement 12 specified by EWR Co, including the requirement to consult. While the reference to the scheme design approach and design principles is acceptable in place of EWR Co's proposed reference to the First Iteration EMP, the scheme design approach and design principles document [REP3-014] has</p>

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			<p>not been updated to include the design principle proposed by EWR Co in [REP4-067].</p> <p>As a result, EWR Co's position remains that:</p> <ul style="list-style-type: none"> <li>i. requirement 12 must be amended to secure consultation in respect of the design development process; and</li> <li>ii. the design principle proposed by EWR Co in [REP4-067] must be included in the scheme design approach and design principles document [REP3-014].</li> </ul>
2	REP6-002 and REP6-003	<i>Not applicable.</i>	<p>The revised dDCO ([REP6-002] and [REP6-003]) does not include the amendment to article 11(5) or the draft Protective Provisions proposed by EWR Co at Appendices A and C of [REP6-094].</p> <p>For the reasons set out in Tables 1 and 4 of this response, as well as in [REP6-094] and [REP6-095], EWR Co's position remains that the amendment to article 11(5) and the draft Protective Provisions are required to secure reasonable and proportionate provision for the accommodation of the EWR Project in order to ensure the proper management of key interfaces, the efficient delivery of both projects and the minimisation of environmental impacts and impacts on the public purse.</p>



Table 3 - EWR Co's comments on the Applicant's revisions to the 6.8 First Iteration Environmental Management Plan (Tracked [REP6-007] and Clean [REP06-008])

Item No.	Document name and PINs Reference No.	Extracts	EWR Co Response
1	First Iteration Environmental Management Plan (Tracked [REP6-007] and Clean [REP06-008])	The Applicant has submitted revisions to the First Iteration Environmental Management Plan.	<p>As detailed in EWR Co's response to Q2.10.1.1(b) [REP4-067], it is necessary and appropriate to include a design principle to require the consideration at detailed design of the opportunities to integrate the Scheme and the EWR Project, both in terms of design changes to allow for engineering efficiencies and the coordination of construction programmes. In [REP4-067], EWR Co a draft design principle:</p> <p><i>"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."</i></p> <p>At Item 1, Table 2 of [REP6-095], EWR Co further justified the inclusion of the above design principle in its response to the Applicant's Deadline 5 submission, highlighting that:</p> <p><i>"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</i></p>

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			<p><i>in the wording of the draft design principle, which refers to the “potential interfaces” and “so far as reasonably practicable”. 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.”</i></p> <p>At paragraph 1.2.1 of [REP3-014] the Applicant identifies that the design principles set out in that document will be secured in the First Iteration Environmental Management Plan. While [REP6-008] includes a number of design principles in the annexed Landscape and Ecology Management Plan, it does not include the design principle proposed by EWR Co. Similarly, the scheme design approach and design principles document [REP3-014], as referred to at requirement 12 of Schedule 2 to the updated dDCO ([REP6-002] and [REP6-003]), does not include EWR Co’s proposed design principle.</p> <p>As a result, EWR Co’s concerns as to the exclusion of the proposed design principle have not been addressed. EWR Co’s position remains that:</p> <ul style="list-style-type: none"> <li>i. requirement 12 must be amended to secure consultation in respect of the design development process; and</li> <li>ii. the design principle proposed by EWR Co in [REP4-067] must be included in the scheme design approach and design principles document [REP3-014].</li> </ul>

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Table 4 - EWR Co's comments on the Applicant's response to actions arising from Issue Specific Hearing 5 [REP6-031]

Item No.	Document name and PINs Reference No.	Extracts	EWR Co Response
1	[REP6-031], page 4	<p><b>“Summary of East West Rail proposal:</b></p> <p><i>In spite of there being neither any existing East West Rail Co (EWR) apparatus to protect both now and at the anticipated date of decision for the A428 Order nor any section 127 status to consent the erection of such apparatus, EWR have maintained in oral submissions at ISH5 that it would be appropriate for the Applicant to provide protective provisions for and for the benefit of the EWR Scheme.”</i></p>	<p>EWR Co does not dispute that the proposals for the EWR Project and the Scheme are at different stages of evolution and accepts that EWR Co is not presently a statutory undertaker. However, this does not preclude the inclusion of the draft Protective Provisions in order to secure joint working and management of interfaces as further information as to the EWR Project becomes available.</p> <p>Therefore, for the reasons detailed in [REP6-094] and [REP6-095], EWR Co's position remains that the draft Protective Provisions are required to secure reasonable and proportionate provision for the accommodation of the EWR Project in order to ensure the proper management of key interfaces, the efficient delivery of both projects and the minimisation of environmental impacts and impacts on the public purse.</p>

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2	[REP6-031], pages 4 - 5	<p><b>“Background of EWR and A428 Scheme development:</b></p> <p><i>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. To date it has undertaken non statutory consultation with at least 5 different route alignments. 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 A428 Scheme.</i></p> <p><i>In a PINS meeting note dated 2 September 2021 (publicly available on the PINS website), it is confirmed that EWR do not anticipate submitting their development consent order application until April 2023. Given the usual timeline to grant of consent, this would likely mean that EWR's scheme would not be granted consent, and therefore possess section 127 status, until August 2024 at the earliest if the current expected DCO application timetable is met. By which time the Applicant intends to have substantially progressed completion of construction of the A428 Scheme.</i></p> <p><i>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</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, this does not preclude the inclusion of the draft Protective Provisions in order to secure joint working and management of interfaces as further information as to the EWR Project becomes available.</p> <p>Because EWR Co does not currently possess physical assets in proximity to the A428, particularly prior to announcement of a preferred route alignment, the draft Protective Provisions set out the mechanism for coordinating interactions without rigidly defining those interactions or seeking the protection of particular assets. Further, 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 and, if they are triggered, this will only be to the extent necessary. Similarly, should insufficient progress be made in relation to the design of the EWR Project ahead of commencement of construction of the relevant Scheme work, the definition of “specified work” would restrict the provisions that would apply. As such, the draft Protective Provisions acknowledge the differing stages of evolution of the EWR Project and the Scheme while providing reasonable and proportionate protection for the EWR Project.</p> <p>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, EWR Co are not seeking design changes at this stage. Rather, the draft Protective</p>

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		<p><i>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 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>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 within appropriate parameters without the need to amend the Scheme during the course of the Examination.</p>
3	[REP6-031], pages 5 - 7	<p><b>“Summary of reasons why the draft Protective Provisions provided by EWR would not be appropriate:</b></p> <p><i>The Applicant has now reviewed the EWR proposed Protective Provisions together with the Interface Agreement and is still of the view that these documents would be inappropriate to incorporate into the A428 Scheme. To illustrate this point, we have listed, by way of examples, some of the difficulties that would arise should the Protective Provisions be included in the A428 Order.”</i></p>	<p>EWR Co’s response to each of the specific matters raised by the Applicant is set out under items 3a, 3b, 3c and 3d, below.</p>

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3a	<i>[REP6-031], pages 5 - 7</i>	<i>"1. The EWR proposed Protective Provisions make reference to triggers (for example, preferred route announcement, statutory consultation, etc) for different stages of the EWR Scheme. These triggers are unacceptable on the basis that there is a lack of detail and certainty at each stage. Until they have an Order made by the Secretary of State, EWR is not a Statutory Undertaker for the purposes of section 127 of the Planning Act 2008 (being "any person authorised to construct...any railway") and this is not likely to occur until August 2024 at the earliest, by which time construction of the A428 Scheme will be well underway. On current timescales, the A428 Scheme is programmed to be open for traffic in Q2 2026, so even if the EWR Scheme secured consent and was able to discharge requirements to mobilise by December 2025, the A428 Scheme would be in its final 18 months of construction."</i>	<p>EWR Co does not dispute that the proposals for the EWR Project and the Scheme are at different stages of evolution and accepts that EWR Co is not presently a statutory undertaker.</p> <p>As detailed at item 2, above, should insufficient progress be made in relation to the design of the EWR Project ahead of commencement of construction of the relevant Scheme works, the definition of "specified work" would restrict the provisions that would apply. This is achieved by reference to the triggers under the definition of "EWR alignment", as referred to in the Applicant's response.</p> <p>In the absence of any alternative triggers proposed by the Applicant, EWR Co's position remains that the definition of "EWR alignment" is appropriate and provides a proportionate level of protection, taking account of the differing extent to which the EWR Project and the Scheme are currently progressed.</p>
3b	<i>[REP6-031], pages 5 - 7</i>	<i>"2. The EWR proposed Protective Provisions require the Applicant to provide a significant amount of detail showing how the A428 Scheme will interact with the EWR Scheme. For example, the definition of 'specified work' contained within the EWR proposed Protective Provisions covers works that may adversely affect the EWR alignment. As this alignment is not yet known, and will not be known with any certainty until consent is granted for the EWR Scheme following a DCO</i>	<p>As acknowledged in the Applicant's response, the mechanism under the draft Protective Provisions for the provision of information and inclusion of protective works is not novel and is reflected in the provisions for the protection of Network Rail Infrastructure Limited at Part 5 of Schedule 9 to the dDCO [REP6-002]. Further, the draft Protective Provisions incorporate conditionality to reflect the differing stages of development of the EWR Project and the Scheme, as detailed below. In this context, it is not accepted that it is impossible for the Applicant to commit to the draft Protective Provisions nor that the collaborative</p>

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		<p><i>application, it is impossible for the Applicant to commit to this. The potential interfaces are both unconfirmed and in potentially sensitive locations. Compliance with standards and the safety of the network needs to take precedence. It should be noted that the Applicant has been willing to commit to this provision for current statutory undertakers who have known apparatus already in existence (such as Network Rail Infrastructure Limited) but cannot commit to adapting the design in the future to an unknown extent, potentially at the risk of road safety.”</i></p>	<p>working and management of interfaces secured by the draft Protective Provisions poses a road safety issue.</p> <p>The definition of “specified work” is drafted such that the provision under paragraph 95(1) will only be triggered where the authorised development is situated:</p> <ul style="list-style-type: none"> <li>i. upon, across, under, over or within 15 metres of, or that may in any way adversely affect, the EWR alignment; or</li> <li>ii. 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.</li> </ul> <p>In turn, “EWR alignment” is defined as being the EWR project route which is the latest of that:</p> <ul style="list-style-type: none"> <li>i. confirmed by a preferred route alignment announcement;</li> <li>ii. presented within any statutory consultation;</li> <li>iii. specified within an application made pursuant to section 37 of the 2008 Act; or</li> <li>iv. specified within a development consent order.</li> </ul> <p>As a result, should insufficient progress be made in relation to the design of the EWR Project ahead of commencement of construction of the relevant Scheme work, the provision under paragraph 95(1) of the draft Protective Provisions would not be triggered. This position acknowledges the differing stages of development of the EWR Project and the</p>

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			Scheme, and represents a proportionate level of protection for the EWR Project.
3c	<i>[REP6-031], pages 5 - 7</i>	<i>“3. The Applicant has a fixed preliminary design and fixed limits of deviation. Therefore, its ability to facilitate any adaptations at the request of EWR are highly limited. The EWR proposed Protective Provisions require approval of works plans prior to 'specified works' (those which will likely affect the EWR Scheme) being undertaken. This also allows specification of 'any adaptations' required in order to enable integration of the authorised works and the EWR Scheme. Furthermore, the Applicant would need to pay all expenses associated with adapting their scheme to facilitate EWR's Scheme. It would be far less difficult, costly and time consuming for EWR to adapt their developing scheme around the A428 existing scheme than for the A428 Scheme to be delayed in order to accommodate potential requirements from the EWR Scheme, which are not yet certain.”</i>	<p>As acknowledged in the Applicant’s response at item 3b, above, the mechanism under the draft Protective Provisions for the provision of information and inclusion of protective works is not novel and is reflected in the provisions for the protection of Network Rail Infrastructure Limited at Part 5 of Schedule 9 to the dDCO [REP6-002]. Further, to the extent that the Scheme’s design could not be flexed within the confines of the DCO it would be possible to address these changes under 1990 Act applications.</p> <p>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 and avoiding the need for the EWR Project to carry out works to elements of the Scheme shortly after their construction. 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.</p>



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3d	<i>[REP6-031], pages 5 - 7</i>	<i>"4. Finally, having EWR's proposed Protective Provisions on the face of the Order would mean that a precedent would be set to allow any developer, regardless of statutory status, certainty of deliverability, certainty of proposal or detail would be entitled to seek protective provisions within a statutory instrument which holds criminal liability if not complied with. This would set a burdensome precedent on all future applicants (not least EWR themselves)."</i>	<p>Provision in respect of a development to be the subject of a future DCO application was included in the Able Marine Energy Park Development Consent Order 2014 ("Able DCO").<sup>1</sup> As such, there is already a precedent for the inclusion of appropriate and proportionate protection of emerging NSIPs.</p> <p>Part 5 of Schedule 9 to the Able DCO includes provisions for the protection of C.GEN Killingholme Limited ("C.GEN"). At the time of the examination of the Able Marine Energy Park scheme, C.GEN was proposing to make an application for a DCO in relation to a thermal generating station on a site nearby. C.GEN made representations to that effect, successfully requesting and achieving the inclusion of protective provisions.</p> <p>In the case of the EWR Project, the draft Protective Provisions incorporate and adapt drafting from both the traditional Network Rail protective provisions and the provisions at Part 5 of Schedule 9 to the Able DCO. This approach ensures reasonable and proportionate provision for the accommodation of the EWR Project in order to ensure the proper management of key interfaces, the efficient delivery of both projects and the minimisation of environmental impacts and impacts on the public purse. Further, as detailed at item 3b, above, the draft Protective Provisions incorporate conditionality to reflect the differing stages of development of the EWR Project and the Scheme.</p>

<sup>1</sup> [https://www.legislation.gov.uk/uksi/2014/2935/pdfs/uksi\\_20142935\\_en.pdf](https://www.legislation.gov.uk/uksi/2014/2935/pdfs/uksi_20142935_en.pdf)

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4	[REP6-031], pages 7 - 8	<p><b>“The Applicant's counter proposal:</b>  <i>As an alternative proposal, the Applicant would be willing to enter into a cooperation agreement with EWR incorporating the following matters:</i></p>	<p>EWR Co received the draft cooperation agreement from the Applicant on 12 January 2022, so is unable to provide a full response to the proposed draft at Deadline 8.</p> <p>EWR Co’s response to each of the specific proposals raised by the Applicant in [REP6-031] is set out under items 4a, 4b, 4c and 4d, below. However, EWR Co’s position remains that the required protections should be secured by way of the draft Protective Provisions.</p>
4a	[REP6-031], pages 7 - 8	<p><i>“1. The parties agree to keep each other up to date in relation to the progress of each individual scheme.”</i></p>	<p>This proposal is uncontroversial and would be expected of two parties with a common governmental parent in any event.</p>
4b	[REP6-031], pages 7 - 8	<p><i>“2. As the design of the EWR Scheme develops and becomes more certain, the parties will engage regularly with a view to identifying any efficiencies that may be found within the parameters of the A428 Scheme given its advanced stage of design development – the extent to which that will be possible is dependent on the level of progress which the EWR Scheme may achieve relative to the A428 Scheme.”</i></p>	<p>While EWR Co will continue to engage with the Applicant, the identification of efficiencies does not offer sufficient protection to ensure the inclusion of protective works, implementation of an interface scheme and refinement of construction programming matters at the appropriate stage. This is achieved by the draft Protective Provisions and EWR Co’s position remains that the required protections should be secured by way of the draft Protective Provisions.</p>

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4c	[REP6-031], pages 7 - 8	<i>"3. EWR will seek the views of the A428 Project Team on any consultation material (either statutory or non-statutory) in advance of the consultation material being published with a view to considering and taking on board any comments from the A428 Project Team."</i>	EWR Co will continue to engage with the Applicant, including in respect of the consultation carried out on the EWR Project. However, if the Applicant's proposal were to be included in a cooperation agreement, the scope should be limited to consultation relating to the elements of the EWR Project in the vicinity of the Scheme to avoid unnecessary administrative burden for both parties.
4d	[REP6-031], pages 7 - 8	<i>"Furthermore, should EWR's Scheme progress to consent, the relationship between the two schemes would be guided by Protective Provisions for the benefit of the A428 Scheme which would need to be contained within EWR's Order, as is correct sequentially, common and appropriate."</i>	While protective provisions secured in a DCO in respect of the EWR Project could be used to provide for collaborative working from the date of that DCO, they would not provide for collaborative working or the management of interfaces prior to that. As such, the protections contained within the draft Protective Provisions must be secured within the dDCO for the Scheme, so as to ensure the provisions apply during the construction of the Scheme.

Table 5 - EWR Co's comments on the written summaries of oral representations made at Issue Specific Hearing 5 by the Applicant [REP6 -037]

Item No.	Document name and PINs Reference No.	Extracts	EWR Co Response
1	Written summaries of oral representations made at Issue Specific Hearing 5 by the Applicant [REP6 -037], pages 6 - 7	<i>"The Applicant explained its position is EWR is at a very early design stage with no preferred route. The A428 DCO is far more advanced, for example with defined limits of deviation. There is a lack of clear relationship between the schemes. The Applicant's view is it is not realistic to have design commitments."</i>	EWR Co does not dispute that the proposals for the EWR Project and the Scheme are at different stages of evolution. However, this does not preclude the inclusion of the draft Protective Provisions and the proposed design principle in order to secure joint working and management of

Item No.	Document name and PINs Reference No.	Extracts	EWR Co Response
		<i>It is for the EWR scheme design, when developed, to look for ways in which it would fit in with A428 scheme."</i>	<p>interfaces as further information as to the EWR Project becomes available.</p> <p>A full response in respect of the proposed design principle is provided at Table 3, above, while a full response in respect of the draft Protective Provisions is provided in Table 4, above.</p>
2	Written summaries of oral representations made at Issue Specific Hearing 5 by the Applicant [REP6 -037], pages 6 - 7	<i>"The Applicant noted it has no obligation to accommodate a future unknown EWR design. The presentation of Protective Provisions by EWR is premature where no asset in place. The Applicant has no in principle objection to cooperation, but it is not for this Order to include Protective Provisions as proposed by EWR."</i>	<p>It is the lack of an obligation on the Applicant to accommodate the EWR Project that necessitates the draft Protective Provisions. It is not accepted that the inclusion of the draft Protective Provisions is premature, as evidenced by the precedent for such an approach in the Able DCO detailed at item 3d of Table 4, above.</p> <p>A full response in respect of the draft Protective Provisions is provided in Table 4, above.</p>
3	Written summaries of oral representations made at Issue Specific Hearing 5 by the Applicant [REP6 -037], pages 6 - 7	<i>"EWR agreed to submit their draft Protective Provisions at Deadline 6 and the Applicant agreed will comment on these Protective Provisions also by Deadline 6 but the Applicant noted it would not be a 'counter-offer' as it fundamentally disagrees with the rationale for such Protective Provisions."</i>	EWR Co submitted the draft Protective Provisions at Deadline 6 [REP6-094] and awaits a full response from the Applicant, who had been supplied with the draft in October 2021.
4	Written summaries of oral representations made at Issue Specific Hearing 5 by the Applicant [REP6 -037], pages 6 - 7	<i>"The Applicant said it has been engaging with EWR but a fundamental problem is the lack of detail. Regarding the public interest argument put forward by EWR, it is difficult to see what this is when there are no scheme details, or what potential changes to the Applicant's scheme might be needed."</i>	EWR Co continues to engage with the Applicant as to the potential design of the EWR Project, in addition to the information already provided in [REP1-074], [AS011] and [REP4-048]. As such, it is not accepted that EWR Co has no design detail or that the potential for public interest issues arising from any proximity of the two projects cannot be considered at this stage.

Item No.	Document name and PINs Reference No.	Extracts	EWR Co Response
		<i>The Applicant is moving to detailed designed, EWR has no design detail at all.</i>	A full response in respect of the draft Protective Provisions, including an explanation as to how conditionality has been incorporated to account for the differing levels of design progression, is provided in Table 4, above.
5	Written summaries of oral representations made at Issue Specific Hearing 5 by the Applicant [REP6 -037], pages 6 - 7	<i>"The Applicant queried how the public interest argument (to minimise impacts on the public or environment) links to the Applicant's scheme, as it would be for EWR's scheme to consider cumulative impacts."</i>	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. It is for this reason that the draft Protective Provisions are subject to the caveat that any changes do not result in any materially new or materially different environmental effects from those reported in the environmental statement.

Table 6 - EWR Co's comments on the written summaries of oral representations made at Issue Specific Hearing 5 by the Cambridgeshire Authorities [REP6-067]

Item No.	Document name and PINs Reference No.	Extracts	EWR Co Response
1	Written summaries of oral representations made at Issue Specific Hearing 5 by the Cambridgeshire Authorities [REP6-067], page 7	<i>"Mr Tyrrell for CCC supported comments made by Mr Lyness QC that the East West Railway is at very early stages of design, has not aligned its preferred route, prepared its preliminary design or consulted on it. Mr Tyrrell raised a concern that no side agreement to be agreed between East West Rail and National Highways relating to roads should circumvent the involvement of the LHAs where their input would otherwise be permitted or required. Insofar as any agreement between EWR and the Applicant requires the Applicant to change any design of the road, CC would object to</i>	As highlighted by EWR Co during Issue Specific Hearing 5, the draft 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. 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.

Item No.	Document name and PINs Reference No.	Extracts	EWR Co Response
		<p><i>such provisions without very significant control by the local authorities.</i></p> <p><i>The ExA asked Mr Tyrrell which processes in particular CCC felt may be circumvented by the side agreement.</i></p> <p><i>Mr Tyrrell clarified that CCC was concerned about any changes to design happening under the DCO for this Scheme as a result of the side agreement which may otherwise only be consented through a Side Roads Order or separate DCO (for example for the EWR).</i></p>	