

# Economic regulation of NATS (En Route) plc: further update on approach to the next price control review (“NR23”)

CAP2160

A large, abstract graphic composed of overlapping blue and purple shapes, resembling a stylized wing or a large letter 'C', occupies the lower two-thirds of the page. It features a gradient from light blue to dark blue and purple.

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## About this document

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This document follows on from the December 2020 Consultation (CAP1944) and March 2021 Update (CAP2119) publications and provides further details on the next NERL price control review (“NR23”), including:

- our current view on the timetable;
- guidance for NERL in developing its business plan and the engagement process with stakeholders; and
- our intended approach to the reconciliation of NERL’s revenues for 2020 to 2022.

This document has been informed by the representations received in response to the March 2021 Update.

### Next steps

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In chapter 3, we request feedback on our policy on the reconciliation review. Please e-mail responses to [economicregulation@caa.co.uk](mailto:economicregulation@caa.co.uk) by no later than 15 July 2021.

The rest of this document is intended to provide guidance to NERL and other stakeholders. Comments are also welcome on these matters.

If you would like to discuss any aspect of this document, please contact Stewart Carter ([stewart.carter@caa.co.uk](mailto:stewart.carter@caa.co.uk)).

# Summary and introduction

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## Introduction

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1. This document follows on from the December 2020 Consultation (CAP1944) and March 2021 Update (CAP2119) publications and provides further details in relation to the next NERL price control review (“NR23”), including:
  - our current view on the timetable (see chapter 1);
  - guidance for NERL in developing its business plan and the customer engagement process with airspace users (see chapter 2); and
  - the reconciliation review for NERL’s revenues for 2020 to 2022 (see chapter 3).<sup>1</sup>
2. We have considered the representations that we received to the March 2021 Update on the issues above.
3. In chapter 3 we request feedback on our policy for the reconciliation review. The rest of this document is intended to provide updates and guidance to NERL and other stakeholders.

## Background on previous documents

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4. NERL is subject to price controls that set the maximum charges that it can recover from airspace users for the provision of air traffic services (“ATS”) for its Eurocontrol en route, London Approach and Oceanic en route services.
5. We last made price control determinations on NERL’s charges for Reference Period 3 (“RP3”) in 2019. NERL rejected our RP3 decisions and the determination was referred to the Competition and Markets Authority (“CMA”). During the period when the CMA was considering the reference, covid-19 emerged as a global pandemic, with the resulting severe and unprecedented downturn across the aviation sector. The CMA decided that due to the uncertainty created by covid-19, we should review the price control to take account of the impact of the covid-19 pandemic when better information had become available. The CMA established price controls covering the period January 2020 to December 2022. The CMA said a reconciliation review would be

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<sup>1</sup> In our March 2021 Update, we said that we would publish a working paper on the 2020 to 2022 reconciliation by the end of June 2021. This material has been incorporated into chapter 3 of this document.

appropriate with reference to actual flight volumes and costs over the period since the start of 2020.

6. In December 2020, we published a consultation which set out our initial thinking on the key issues regarding our approach to the next price control for NERL in the light of the impact of the covid-19 pandemic. It identified:
  - the short-term and longer-term policy challenges that we would need to consider in developing the regulatory framework for NERL;
  - the possible policy options for addressing these challenges; and
  - the timetable and processes which we would need to follow in order to have new price controls in place in a timely manner.
7. In March 2021, we published an update which set out our thinking on our overall approach to policy, the timetable, process issues, and our approach to Traffic Risk Sharing (“TRS”) and the reconciliation review. It also included the Pensions regulatory policy statement.

## Update on timetable for NR23

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8. In the March 2021 Update, we said that we intend to rely on the price control arrangements put in place by the CMA for 2022 and defer the start of the next main price control period to January 2023. We understand that stakeholders broadly support this approach.
9. We also said that NERL should aim to deliver its business plan to us by the end of 2021, and we would engage with stakeholders to develop a provisional timetable and publish an update as soon as practicable. In response, NERL suggested that we move the date for its business plan to March 2022 and a number of other stakeholders asked that we set out a clear timetable as a priority.
10. The continuing uncertainty around the recovery of air traffic levels from the impact of the covid-19 pandemic means that we may need to be particularly flexible with the timetable for this review to suit evolving circumstances. Our current view of the timetable is summarised below:

<b>10 December 2021</b>	NERL to provide a building block update
<b>7 February 2022</b>	NERL to provide its business plan
<b>June 2022</b>	CAA publishes its Initial Proposals
<b>November 2022</b>	CAA publishes its Final Decisions
<b>January 2023</b>	CAA publishes its licence modification decision

11. While we are allowing NERL more time to produce its business plan we do not agree that NERL should delay providing its business plan to March 2022, as this would not allow sufficient time for us to reach a decision and consult on price control proposals and licence modifications. We recognise that the timetable remains tight. To mitigate these risks we have proposed a more iterative process whereby NERL provides an update on key price control building blocks by 10 December 2021 so that we will have sufficient time to analyse the information NERL provides and consult NERL and other stakeholders on the results of our assessment. We will discuss the scope and requirements for this building block update with NERL, but we would expect it to include NERL's view on the building blocks used to calculate user charges with focused commentary on key areas.

## Guidance for business plan and consumer engagement

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12. The March 2021 Update noted that we had provided extensive guidance about development of the business plan for RP3, much of which remains appropriate for NR23.<sup>2</sup> In its response, NERL noted that it would proceed with its business plan on the basis of our RP3 guidance, although it noted areas where it considered updates to the guidance were required.
13. We acknowledge that there are several areas where we should provide updated or additional guidance. We have developed five additional guiding principles for the development of NERL's NR23 business plan detailed in chapter 2, to be considered alongside existing RP3 guidance, which mean that NERL should:
- a) develop business plan scenarios that take into account key factors and circumstances that may impact on traffic recovery and likely future capacity;
  - b) set out the key drivers for its operating expenditure ("opex") and capital expenditure ("capex") for the NR23 period to allow for stakeholders to comment on areas where there are options and trade-offs to be made;
  - c) demonstrate clear links between costs and service outcomes for the different scenarios agreed between NERL and stakeholders;
  - d) consider how best to mitigate uncertainty; and
  - e) demonstrate how it has taken consumers into account in developing its business plan.
14. On the process for customer engagement, NERL said that:

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<sup>2</sup> CAA, "Economic regulation of NATS (En Route) plc: Update on approach to the next price control review", CAP 2119, March 2021

- the principles from RP3 remained relevant; and
  - any update to our guidance should acknowledge both the impact of the current exceptional circumstances on the UK aviation sector, and the limited time and customer resources available to support consultation.
15. Our view is that, given the time and resource constraints, it will be especially important that:
- this engagement is iterative and involves NERL sharing its thinking, options and views on trade-offs as its planning progresses and ahead of providing a full business plan. It should do this to allow as much time as practicable for meaningful engagement with stakeholders and for NERL to take account of customers' views in its business plan. This could include NERL taking a more flexible approach to separating out engagement on key topics and sharing its initial thinking as its proposals are being developed. We recognise that any early information should be treated as preliminary and that we and stakeholders should expect this information to evolve; and
  - we engage more proactively with NERL and stakeholders than in previous customer engagement processes, to better understand NERL's proposals and the views of stakeholders on them as they develop. This is consistent with views expressed by the CMA that we should set out our views earlier in the review process.
16. We support NERL's plan for initial customer engagement in June 2021, with in-depth consultation in October and November 2021.

## Reconciliation review

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17. In the March 2021 Update we provided our latest thinking on the challenges and policy options for the 2020 to 2022 reconciliation as follows:
- we intended to reconcile costs and revenues based on estimates of efficient costs rather than actual costs;
  - the review of the efficient cost baseline should be either a focused review of the building blocks or some form of variance analysis;
  - the requirements on NERL and airlines to provide the information required to support an approach should be reasonable and proportionate;
  - we would seek to complete as much of the review as practicable during 2021;
  - on the review of 2022 costs, we intended to adopt a similar approach as to 2020/2021, but this will be based on forecasts as opposed to actual costs; and



- we would aim to make any final adjustments to NERL's revenues to both protect NERL's financeability and to allow for an affordable level of charges and so support the recovery in demand for air traffic.
18. In their responses to the March 2021 Update, NERL and stakeholders broadly supported our approach. Some airlines did caution that a reconciliation for 2022 that is based on forecasts may result in unintended consequences for economic incentives. NERL said that our review should focus on the most important cost items and those which have shown the greatest variance from the CMA's determination, and that care should be taken in applying any benchmarking information.
19. Having considered these comments, we have made some updates to our approach to reconciliation, including:
- instead of completing the reconciliation during 2021, we now plan to complete this in 2022 as part of the NR23 process;
  - we will use outturn data for 2020 and 2021 and available forecasts for the remainder of 2022. If appropriate, we will conduct a further true-up in 2023, once information on outturn costs for 2022 is available. We would only expect to need to do a true-up if there seemed to be significant variation between forecast and outturn efficient costs;
  - the reconciliation review will involve assessment of the main price control building blocks that relate to costs and volumes and focus on the most material issues; and
  - we will be requesting a submission from NERL with its business plan that should allow us to progress our work on the reconciliation review. It will be important that NERL clearly sets out, and provides appropriate evidence of, how it acted efficiently given the circumstances and information available to it at the time. In a similar way to our approach to *ex post* capex reviews we do not intend to use the benefit of hindsight to assess the efficiency of NERL's decisions.
20. We also said in the March 2021 Update that we will need to implement a modification to NERL's licence condition to replace the current TRS mechanism for the period covered by the reconciliation review. This is intended to prevent the automatic recovery of the revenue shortfall based on the current TRS with a two-year lag, which would likely cause an unacceptable spike in NERL's charges in 2022. We will set our approach to the recovery of these revenues as part of the NR23 process.
21. We welcome comments from stakeholders on our approach to the reconciliation review.

## Chapter 1

# Timetable

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## Introduction

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- 1.1 In the March 2021 Update, we explained the advantages of delaying the start of the new price control until January 2023, including allowing sufficient time for NERL to develop its business plan. We set out a provisional timetable for the price control review, which included a modification to NERL's licence in the autumn of 2021 to, among other things, disapply automatic application of TRS for 2020 and 2021 (which would otherwise lead to an inappropriate spike in NERL's charges).
- 1.2 This chapter summarises the views of respondents and explains our latest thinking and proposal for the timetable for NR23.

## Consultation responses

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- 1.3 In its response to our March 2021 Update, NERL asked that we defer the delivery date of its business plan to March 2022. NERL said this would allow it to better take account of information from the summer of 2021 and facilitate more effective user engagement.
- 1.4 NERL also suggested the CAA's review could be streamlined by focusing on priority areas and excluding some that were more recently and extensively covered as part of the CMA appeal process, such as capex governance.
- 1.5 Other stakeholders requested that the CAA set out a clear timetable as a priority as this would allow interested parties to plan their resources so that they might engage in the process.
- 1.6 Stakeholders, including NERL, also suggested that the reconciliation work be deferred until 2022.

## Way forward

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- 1.7 We recognise that our earlier proposal that NERL should provide a business plan by December 2021 would have meant a shorter period for NERL to develop its plans compared with RP3. We also understand that the impact of the covid-19 pandemic has created constraints on NERL's and airlines' resources.
- 1.8 We propose to extend the deadline for NERL to deliver its business plan to us to 7 February 2022. This will allow further time for NERL to develop its plans while still allowing us sufficient time to develop and consult on our price control proposals and the associated licence modifications. We also intend to defer the

reconciliation review to 2022 and include this as part of NR23. We expect this will also reduce the workload on NERL in 2021.

- 1.9 We do not expect NERL to follow the previous process of a fully formed initial and then revised business plan. We consider it is more important that NERL focuses on meaningful stakeholder engagement in the time available. This is likely to work best if NERL adopts a more agile approach to this engagement, including sharing its initial thinking with airlines and the CAA before it is fully developed. We set out our expectations for NERL's customer engagement more fully in chapter 2.
- 1.10 Ahead of submission of its business plan, we propose that NERL provides a building block update to the CAA by 10 December 2021. This will allow us to start our analysis of NERL's forecasts of key building blocks at the end of 2021, while allowing NERL additional time to finalise its business plan. We will discuss the scope and requirements for this building block update with NERL, but we would expect it to include NERL's view on the building blocks used to calculate user charges with focused commentary on key areas. There will also be an opportunity for NERL to provide a further update on the building blocks as part of its response to our initial proposals.
- 1.11 Under our updated timetable, we would publish the final notice of licence modifications in January 2023. Once they come into effect, these licence modifications would apply retrospectively from 1 January 2023. Where there is a difference to actual prices charged in 2023 and those allowed by the licence modification, we would expect NERL to operate a true-up that is recovered over the remaining years of the new price control.
- 1.12 While the relevant provisions of the Air Traffic Management and Unmanned Aircraft Act 2021 ("ATMUA Act 2021") have not yet come into force, for the timetable we have assumed that the statutory framework that will govern the licence modification process will be the new regime in the Transport Act 2000 as amended by the ATMUA Act 2021. This means that we can modify licence conditions without needing NERL's consent, subject to appropriate stakeholder consultation, with NERL, materially affected airlines and prescribed aerodromes having a right of appeal to the CMA.

## Key dates

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- 1.13 We set out below our current view of the key dates for the work on NR23. We will keep the timetable under review as NR23 progresses.

<b>Autumn 2021</b>	Licence modification ahead of 2022, to prevent automatic application of TRS. This document will also include an update on the policy principles that will guide our approach to the recovery of revenue from the 2020 to 2022 reconciliations.
<b>Autumn 2021</b>	Request for information (“RFI”) sent to NERL to support the reconciliation review.
<b>10 December 2021</b>	NERL delivers data on its building blocks.
<b>7 February 2022</b>	NERL delivers its business plan and a response to the reconciliation RFI.
<b>February to May 2022</b>	CAA reviews NERL’s business plan and develops its initial proposals, including on reconciliation.
<b>June to July 2022</b>	8-week consultation on the IPs, including allowing NERL to update its building blocks. We will invite NERL and user representatives to present to CAA board members during or shortly after the end of the consultation period.
<b>August to October 2022</b>	CAA considers proposals in light of stakeholder responses and makes final decision.
<b>November – December 2022</b>	Four-week statutory consultation on licence modifications.
<b>1 January 2023</b>	Start of NR23.
<b>January 2023</b>	CAA publishes notice of licence modification.
<b>March/April 2023</b>	Licence modifications take effect (with retrospective application from 1 January 2023).

## Chapter 2

# Guidance

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## Introduction

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- 2.1 This chapter deals with two main issues:
- business plan guidance for NERL; and
  - the approach NERL should adopt to customer consultation during the NR23 process and our involvement in this consultation process.
- 2.2 Following feedback from stakeholders, we continue to consider that most of our business planning guidance for NERL from RP3<sup>3</sup> remains relevant and appropriate for the NR23 review.
- 2.3 Nonetheless, there are areas where it would be helpful to provide updated guidance to take account of the current uncertainty and difficult circumstances facing the aviation sector due to the:
- impact of the covid-19 pandemic; and
  - findings of the CMA;
- as well as to take account of the views of stakeholders, including NERL, airlines and the CAA Consumer Panel.
- 2.4 These are discussed in this chapter and we address more detailed points around the RP3 guidance in Appendix C.
- 2.5 Following the discussion of business plan issues below we then update on our views on customer engagement.

## Business plan guidance

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- 2.6 We expect NERL to consider the following five new guiding principles for both the customer engagement process and as it develops its business plan for NR23.

**Principle 1: NERL’s business plan should be based around a plausible range of scenarios, which have been developed through engagement with airspace users**

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<sup>3</sup> CAA, “Guidance for NERL in preparing its business plan for Reference Period 3”, CAP1625, January 2018

**and other stakeholders. Where possible, these scenarios should be agreed with users.**

- 2.7 Given the current uncertainty around traffic forecasts due to the impact of the covid-19 pandemic, we consider it will be important that NERL develops a flexible business plan around a range of different plausible outcomes, or scenarios, as well as setting out how the regulatory framework could be designed to be more flexible to deal with this uncertainty.
- 2.8 We expect these scenarios will be based around different plausible levels of expected traffic. Each scenario should be integrated with other parts of the plan and accompanied by clear and detailed assumptions, including associated service levels and costs. It should be clear to stakeholders what the links are between different elements of the plan, to understand the impact of different assumptions in the scenario. For example, if a scenario is based on a relatively rapid recovery in traffic, it should be clear what impact this has on service levels and costs.
- 2.9 We expect the high-level approach to these scenarios to be developed early in the customer engagement process with input from stakeholders. NERL should seek to agree these scenarios with airspace users, while recognising these scenarios may need to evolve during the price review. This should help to facilitate discussion around NERL's business plans from a common starting point.
- 2.10 While not intended to be comprehensive, we would expect the scenarios should take account of:
- different published and internal forecasts for traffic, including factors that may have an impact on traffic recovery and demand for air traffic services, not least given the potential effect of restrictions on international travel, and likely future capacity;
  - levels of service quality that are consistent with stakeholder needs and priorities in the light of the covid-19 pandemic;
  - the priorities of consumers and airspace users around cost efficiency; and
  - other key factors for NERL's NR23 investment programme, such as airspace modernisation.
- 2.11 We expect NERL should own and be accountable for delivery of its business plan under each scenario, clearly setting out how this meets the needs of its customers, responds to the circumstances in each scenario, and delivers a robust level of technical, operational and financial resilience.

- 2.12 If the current uncertainty reduces, the scenarios may need to evolve and the range and/or number of scenarios may narrow during the process of NERL developing and finalising its business plan.
- 2.13 The development of integrated scenarios means that it is not necessary for NERL to also adopt the two track “core and wider” approach to business planning as set out in our RP3 guidance.

**Principle 2: NERL should provide robust supporting evidence for its opex and capex plans, including: the key drivers, how the costs link with each other and to the traffic and service level forecasts, what other options and trade-offs it has considered and rejected, and how programmes might need to evolve if circumstances change.**

- 2.14 NERL’s business plan information should enable stakeholders to understand the key variables that will drive NERL’s costs. It should enable stakeholders to provide meaningful input where there is scope for options and trade-offs to deliver the service levels under each scenario. We recognise that either opex or capex, or a combination, may be able to deliver an outcome successfully. NERL should discuss these options with stakeholders and justify how it has decided on its preferred approach.
- 2.15 The CMA review highlighted the links between opex and capex and gave examples of where opex can be sensitive to changes in the assumed timing of different components of NERL’s investment plan.<sup>4</sup> NERL should take account of the CMA’s guidance that:

“NERL’s engagement with users on risks associated with its capex plan should include explicit attention being given by NERL to identifying the opex effects that may be associated with different changes to that plan, and different options with respect to how NERL might respond”.<sup>5</sup>

This transparency should mitigate the risk, or perceived risk, of perverse incentives that could arise because different incentive frameworks apply to capex and opex.

- 2.16 We recognise that programmes and costs forecasts may need to evolve as circumstances change. We expect NERL to provide all stakeholders, including the CAA, with the relevant information needed to explain the implications of any changes to the programme on both opex and capex, and to be clear on how any

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<sup>4</sup> CMA Final Report, para 8.41, 9.127

<sup>5</sup> CMA Final Decision, paragraph 9.129

future changes might affect its opex and capex. This was highlighted as an important lesson from RP3. For example, NERL provided further information to the CMA on the impact on opex related to the planned Heathrow third runway and to its technology programme, and the CMA highlighted that it was:

“important that the assessment of the costs that users be required to bear take proper account of the ways in which circumstances might evolve, and the implications that may have for resulting [opex] requirements.”<sup>6</sup>

- 2.17 We note that airspace modernisation remains a key strategic driver for NR23, and it will be important that NERL continues to support this programme. Our expectations for NERL’s business plan with regard to airspace modernisation are set out in Appendix C.

**Principle 3: NERL should demonstrate clear links between costs and service outcomes for each of the business plan scenarios.**

- 2.18 Traffic, costs and service delivery are linked. As such, NERL’s business plan scenarios should have a clear and consistent set of assumptions for these elements.<sup>7</sup>
- 2.19 Understanding how NERL’s cost requirements may vary for a range of service outcomes is important for stakeholders to be able to make informed input on different options and trade-offs. NERL should provide stakeholders with an assessment of how NERL’s cost requirements may vary under different scenarios, with evidence of the efficiency, risk and contingency of its approaches. It is important that airspace users and consumers are aware of the consequence of lower cost options where this is delivered by reduced capacity, levels of service and/or resilience to cope with higher than expected traffic volumes, to be able to make these trade-offs.
- 2.20 We expect airspace users and consumers to have an increased focus on value for money in NR23. So NERL must demonstrate how it will provide the given level of service to deliver the safety, capacity and environmental outcomes, and whether consumers are willing to pay for improved levels of service. NERL should also provide evidence to demonstrate the efficiency of its cost forecasts, including benchmarking and applying innovative ways of working and technologies.

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<sup>6</sup> CMA Final Report, para 8.68

<sup>7</sup> CAP1940, criterion C06



**Principle 4: in addition to its work on scenarios, NERL should consider how the uncertainty due to the impact of the covid-19 pandemic should be mitigated and managed effectively in the interests of consumers.**

- 2.21 As this price control is being set in the context of ongoing uncertainty over key elements, this is an opportunity for NERL and stakeholders to consider how this uncertainty should be managed by providing additional flexibility through the design of the regulatory framework. NERL should see this as an opportunity to develop new mechanisms or refine existing mechanisms that are flexible and can be used to respond to changing circumstances and the potential for the outcome to be different to forecast scenarios.
- 2.22 For example, NERL should consider whether existing mechanisms (such as the Opex Flexibility Fund) should continue and, if so, whether they could be made more effective in dealing with the impact of the covid-19 pandemic and other uncertainties. It should suggest modifications where it considers that these arrangements do not most effectively manage the current uncertainty in the interests of customers and consumers.
- 2.23 NERL should also consider the traffic risk sharing mechanism and whether it could be improved so that it manages uncertainty better at an efficient cost for consumers. Although the UK is no longer under the EU performance scheme framework, we consider the EU approach to traffic risk sharing is a relevant benchmark and should inform NERL's discussion with stakeholders on this.
- 2.24 NERL should also consider and discuss with stakeholders whether there are other mechanisms available to mitigate the uncertainty created by the impact of the covid-19 pandemic. This may include cost risk-sharing mechanisms, trigger mechanisms (such as for uncertain projects), or re-opener provisions in particular circumstances.

**Principle 5: NERL's business plan should be customer and consumer focussed. It should demonstrate how NERL has developed its business plan through transparent, meaningful and effective engagement with its customers and taken proper account of consumers' interests.**

- 2.25 An important part of the business plan will be demonstrating that NERL has conducted high quality consultation and engagement with its customers on how its plan addresses consumer priorities during the NR23 period. The business plan should demonstrate a clear link between outcomes for consumers and its future plans under each of the business plan scenarios.
- 2.26 NERL should also consider how it should deal with any instances where the respective interests of airspace users and consumers may diverge. Ahead of submission of NERL's revised RP3 business plan, we shared advice from the CAA Consumer Panel in relation to NERL's RP3 business plan, noting that the

Consumer Panel considered that not enough was being done to understand and incorporate the needs of consumers into NERL's business planning.<sup>8</sup> The CAA Consumer Panel suggested that constructive consumer engagement, for example, through having consumer representation as part of NERL's customer engagement process, would help minimise the risks of regulatory outcomes not being in the consumer interest.<sup>9</sup>

- 2.27 We regard it as important that NERL considers how it can best ensure that the views of consumers are properly reflected in its business plan. For example, NERL should consider whether to do a survey of consumers to understand their views. NERL should also set out how it has taken account of the advice from the CAA Consumer Panel in the development of its NR23 business plan.
- 2.28 Further details of our guidance for NERL on its approach to customer consultation is set out in the section below.

## Customer consultation

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### Introduction

- 2.29 In response to the March 2021 Update, NERL said that engagement with airlines during this business planning and customer consultation process will be more difficult than for previous price reviews. Nonetheless, NERL proposed that the general principles for customer consultation from RP3 should remain, and that any update should acknowledge the impact of the current exceptional circumstances on the limited time and customer resources available in 2021 to support consultation. Other respondents focussed on the need for a clear timetable, rather than the approach to customer consultation.
- 2.30 As we explained in chapter 1, the timetable for the NR23 review is relatively challenging. In addition to setting new price controls, the review must take account of the impact of the covid-19 pandemic for the period 2020 to 2022 and consider the future path to recovery. In addition to uncertainty about the recovery, the covid-19 pandemic has had a significant impact on the whole sector, with stakeholders having to reduce costs, which has had a significant impacted on resources.
- 2.31 Despite these challenges, it is essential that NERL, its customers and other stakeholders seek to engage in a meaningful way on this review as the outcome of the review is likely to have a direct and material impact on how NERL acts to support the recovery in air traffic levels over the coming years. Bearing this in

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<sup>8</sup> [Letter from P Smith 25 September 2018](#)

<sup>9</sup> Views from Consumer Panel re CAP1994

mind, we expect NERL to ensure that it provides information to stakeholders in a timely and transparent fashion, to enable them to provide NERL with informed views on its developing business plan.

- 2.32 The greater use of technology to hold remote meetings should allow NERL to reach a wider range of airspace users more easily, and to hold more regular meetings, which is consistent with a more iterative approach to consultation.

## Further Guidance

- 2.33 In our December 2020 Consultation and March 2021 Update, we said it would be necessary to take a flexible and agile approach to the development of NERL's business plan and its approach to customer consultation. We expect NERL to ensure it makes the most effective use of the time available, starting as soon as practicable and continuing dialogue and engagement through to the submission of its building block update in December 2021.
- 2.34 Consistent with this approach, we understand that NERL intends to:
- discuss its approach to business plan development with its customers in June 2021; and
  - follow this with a schedule of in-depth consultation in October/November 2021.
- 2.35 It is essential, particularly in the more challenging and material areas of its plan, that NERL is transparent with stakeholders and can demonstrate how it has taken stakeholder views into account in its business plan. As such, in addition to the discussions outlined above, we encourage NERL to consider how to maintain dialogue with stakeholders between June and October/November 2021 to ensure it maximises the opportunities for stakeholders to engage meaningfully and effectively on NERL's plans.
- 2.36 In respect of the initial discussion on the form of engagement; NERL and users may want to consider whether:
- the establishment of a Customer Consultation Working Group (CCWG), with a similar structure and mode of operation to that of RP3, would be proportionate given resource constraints or whether some lighter touch but fully effective approach (perhaps modelled on NERL's consultation on its Service and Investment Plan ("SIP")) would be warranted;
  - a single independent chair of the CCWG would be more efficient and effective than NERL and airspace user co-chairs; and

- there would be merit in appointing an airspace user champion, to facilitate discussion both between users and with NERL. This could enable more active and effective dialogue and agreement between airspace users on NERL's proposals where they would otherwise be resource or time constrained during the engagement process. If taken forwards, the champion could be selected by users with the cost being included in NERL's business plan.

- 2.37 NERL will also need to consider how to separate out discussion on key topics so that relevant experts can participate and engage with the information it shares with users in a timely and efficient way. To support a shared understanding of the options and trade-offs, it may be appropriate for NERL to share draft information and data (with appropriate caveats) on an ongoing basis, rather than heavily structured and lengthy briefing sessions. Users will need to consider how they can engage, when they expect to receive information and in what form to enable an informed and focused discussion.
- 2.38 The role of a "user champion" could supplement this process to ensure there is a shared level of understanding ahead of set piece discussions and ensure preliminary questions and clarifications are addressed in advance. Consideration should also be given as to whether, and how best, to separate out discussion on key topics so that relevant experts can participate and support meaningful discussions. Where it is not possible to provide necessary information during a session/discussion, NERL should commit to the timely and transparent provision of responses as soon as practicable afterwards.
- 2.39 Stakeholder representation through the cycle of customer consultation will be important. Users should not only ensure that the relevant regulatory and technical experts can participate, but should also ensure the appropriate engagement from senior leadership.
- 2.40 Given NERL's role in providing national infrastructure, it will need to consider and ensure that as well as airspace users, other interested stakeholders have the opportunity to participate in the development of its business plan. This may include airport operators and slot coordinators, bodies representing consumer interests and staff representatives. Where appropriate, NERL may also consider inclusion of bodies and authorities involved in airspace modernisation and European air traffic network management.
- 2.41 In previous price control reviews we have set out a customer consultation mandate requiring the establishment of a CCWG, with specific roles and responsibilities on NERL, airspace users, third parties and the CAA, and provided for NERL and stakeholders to report on the outcome of the customer consultation. For this review we note that NERL intends to discuss its planned approach with its customers in June 2021 and NERL considers this offers the most flexible and effective way forward. If appropriate, we will write to NERL and

other stakeholders to formalise agreements on the approach, following those discussions.

### **CAA involvement in customer engagement**

- 2.42 For RP3, the CAA assumed an observer role during the customer consultation programme, and provided only high level inputs on the initial business plan (IBP) and ahead of the revised business plan (RBP). We remain keen not to unduly influence discussions between NERL and its customers, nor to diminish the opportunity for airspace users to engage directly with NERL. However, given the compressed timelines, and to help ensure we have understood as best as possible NERL's plans, we intend to be more active in this engagement, where appropriate, to inform our own analysis and decisions.
- 2.43 We will generally maintain the principle of observer status during multilateral meetings. However, where appropriate, we will seek clarifications to aid our understanding of NERL's proposals. We will focus on requesting further information where needed to make clear links between scenarios, costs and service levels, and consider whether NERL is responding to stakeholder views. During these discussions, we will generally not offer views on NERL's proposed programme, such as on whether we prefer one project over another, or take a view on the appropriate service levels.
- 2.44 In addition, as necessary, we will seek bilateral engagement with NERL on specific issues during the customer consultation process. Where appropriate, we will make available materials and notes of such discussions to stakeholders. This may include detailed observations/questions for NERL to address following the customer consultation process, ahead of delivering its business plan.

## Chapter 3

# Reconciliation review

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## Introduction

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- 3.1 We have committed to a reconciliation review of actual flight volumes and costs for 2020 to 2022, recognising that NERL's current price control arrangements include an established mechanism for TRS, the recommendations of the CMA in 2020, and a range of considerations including around NERL's financeability and the affordability of its charges. We will need to exercise our functions in accordance with our statutory duties (as set out in Appendix B).
- 3.2 In the March 2021 Update, we suggested that we would publish a working paper on the reconciliation review but instead we have decided to cover these issues in this chapter.
- 3.3 This chapter updates our approach to the reconciliation review, including:
- the main points from our March 2021 Update;
  - a summary of responses from stakeholders;
  - our updated views on the approach to reconciliation;
  - the provision of further information by NERL; and
  - key issues for consultation and next steps.

## Summary of our March 2021 Update

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- 3.4 In March 2021, we said that:
- the start date for the next price control should be January 2023, thus creating a need for an additional year of reconciliation for 2022;
  - we intended to reconcile costs and revenues based on estimates of efficient costs rather than actual costs;
  - the review of the efficient cost baseline should be either a focused review of the building blocks or some form of variance analysis;
  - the requirements on NERL and airlines to provide the information required to support an approach should be reasonable and proportionate;
  - we would seek to complete as much of the review as practicable during 2021;

- on the review of 2022 costs, we intended to adopt a similar approach as to 2020/2021, but this will be based on forecasts as opposed to actuals; and
- we would aim to make any final adjustments to NERL's revenues to both protect NERL's financeability and to allow for an affordable level of charges and so support the recovery in demand for air traffic.

## Responses to our March 2021 Consultation

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- 3.5 Stakeholders broadly supported our position that reconciliation should be based on efficient costs rather than actual costs.
- 3.6 Stakeholders also broadly agreed that year 2022 should form part of the reconciliation review. However, some cautioned that reconciliation using 2022 forecasts may result in unintended consequences for economic incentives.
- 3.7 Some stakeholders recommended that our review should consider specific factors such as NERL's use of government support schemes, the implementation for redundancy programme and the long-term impact on operational performance.
- 3.8 NERL suggested that our review should focus on the most important cost items and those which show greatest variance from the CMA determination. It also said that we should avoid the use of artificial *ex post* efficiency benchmarks derived with benefit of hindsight.
- 3.9 NERL and Prospect also said that service quality incentives should be disabled and/or removed for the years 2020 to 2022.

## Our overall approach

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- 3.10 As noted in chapter 1, we now propose to carry out the reconciliation review as part of the work on the NR23 review. This means the main review will be carried out in 2022 after we have received NERL's business plan and the information we need to carry out this review.
- 3.11 This review will be based on outturn costs in 2020 and 2021. For 2022, we have considered stakeholder views and propose to reach a preliminary view on the efficient cost baseline based on actuals and forecasts available at the time. We may conduct a true-up in 2023 when actual costs for the whole of 2022 are available, if appropriate. We would only expect to need to do a true-up if there seemed to be significant variation between forecast and outturn efficient costs.
- 3.12 We will also need to consult on modifications to NERL's licence later this year to prevent the automatic recovery of the revenue shortfall based on the current TRS with a two-year lag, which would likely cause an unacceptable spike in NERL's charges in 2022. As noted in the March 2021 Update, we expect this consultation to address the policy principles that will guide our approach to the

recovery of revenue from the 2020 to 2022 reconciliation review, which would then be implemented as part of our NR23 process. At this stage our position is as set out in the March 2021 Update.

## Scope of the reconciliation review

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- 3.13 We propose that the reconciliation review should focus on applying variance analysis to a selection of NERL's price control building blocks. This approach would focus our review on NERL's most important building blocks and cost items that have shown the greatest variance from the CMA determination. We consider this to be a proportionate approach to the review and protecting consumers.
- 3.14 We acknowledge stakeholder feedback that the reconciliation review should be flexible enough to consider a number of bespoke factors around the circumstances of the covid-19 pandemic and the review, while also being reasonable and proportionate in terms of additional information requirements.
- 3.15 Our current view is that the review should focus on:
- **Opex:** we propose reviewing this building block in detail given its overall materiality, and the scope for variances in staff and other costs;<sup>10</sup>
  - **Pensions costs:** there may be material changes to NERL's ongoing pension costs given the scope for changes to its staffing levels;
  - **Capex:** we consider that it would be appropriate to review this building block given its materiality and importance, for example, to the delivery of the airspace modernisation programme. However, our review could be at a high level given the existing and ongoing scrutiny through the SIP governance arrangements and as capex is added to NERL's Regulatory Asset Base (RAB) and recovered through allowances for regulatory depreciation;

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<sup>10</sup> We note that NERL will not be allowed to recover through user charges support it has received from Government, e.g. from furlough of staff.



- **Service quality incentives:** in 2020, NERL outperformed its service quality targets, but, as noted by NERL and Prospect, this was driven by the downturn in traffic. We consider that those targets were not appropriate for incentivising good performance in 2020. As such, we propose that capacity and environmental incentives should not apply to 2020. For 2021, we would consider applying the same approach as for 2020 if traffic levels remain substantially below the baseline for the remainder of the year. Although the incentives are/may be suspended, we intend to monitor (and publish) NERL's actual performance and ensure that NERL fully explains any failures to meet targets. As the path of the traffic recovery becomes clearer, we will confirm our approach to 2022;
- **Oceanic:** we consider that the review of ADS-B would be separate from the scope of the reconciliation review.<sup>11</sup> However, we would conduct a high-level review of the other Oceanic building blocks, given the importance of this service.

3.16 We might expect the impact on the cost of capital and non-regulated revenues to be less material areas for our reconciliation review, so have not included them as areas of focus in the scope above. However, we would review these if there was evidence that they are material to the assessment of efficient costs.

## Provision of further information by NERL

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3.17 The allowances that we make for efficient costs will depend on NERL providing high quality information and evidence in support of its proposals for cost recovery. As noted in our December 2020 Consultation, it is important that NERL clearly sets out and provides appropriate evidence on how it acted efficiently, given the circumstances and information available to it at the time.

3.18 We will provide further guidance to NERL on its submission in the form of a request for information ("RFI"). We would expect to provide this guidance to NERL in the autumn 2021 and for NERL to make its submission with its business plan by 7 February 2022. Our current expectation is that our guidance will ask NERL to provide the following information and evidence for the period 2020 to 2022 (with 2022 being based on forecasts):

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<sup>11</sup> We carried out informal engagement on the ADS-B review in April 2021, based on questions identified in our December 2020 Consultation (CAP1994) and previous workshop. This engagement continues ahead of a more formal consultation on the subject in due course.

- information on each of these building blocks with a focus on key cost drivers and efficiency initiatives, supported by appropriate evidence, including benchmarking and detailed explanations of the impacts of the initiatives;
- a clear and well-structured narrative, explaining the basis of their decisions at the time, and capturing the trade-offs made between short-term and long-term benefits and how those trade-offs were addressed by decisions that NERL has taken. In a similar way to our approach to *ex post* capex reviews we do not intend to use the benefit of hindsight to assess the efficiency of NERL's decisions; and
- information on the benefits and costs for consumers (quantified or qualitative) that supports these decisions.

3.19 We expect that the reconciliation review will require engagement with NERL to resolve any outstanding queries. We consider that this engagement would take place during February to April 2022.

3.20 We consider that our approach summarised above meets the selection criteria in the December 2020 Consultation, which is that it should be proportionate, targeted and transparent.

## Consultation questions and next steps

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3.21 We welcome feedback on any aspect of the issues discussed outlined in this chapter and in particular on the scope and focus of the reconciliation review and our approach to gathering further information from NERL.

3.22 Taking due account of stakeholder feedback, we plan to issue a RFI to NERL in the autumn of 2021.

## APPENDIX A

## Abbreviations

Abbreviations	
ACE	ATM Cost Effectiveness
ACOG	Airspace Change Organising Group
ADS-B	Automatic Dependent Surveillance-Broadcast
AMS	Airspace modernisation strategy
ATFM	Air traffic flow management
ATM	Air traffic management
ATMUA Act 2021	Air Traffic Management and Unmanned Aircraft Act 2021
ATS	Air traffic services
C1	KPI in the area of capacity - average minutes of ATFM delay
C2	KPI in the area of capacity - average minutes of ATFM delay attributable to NERL
CAA	Civil Aviation Authority
Capex	capital expenditure
CCWG	Customer Consultation Working Group
CMA	Competition and Markets Authority
EU	European Union
H7	HAL price control review
HAL	Heathrow Airport Limited
IBP	initial business plan
KEA	horizontal en route flight efficiency of the actual trajectory indicator
KPA	Key performance area
KPI	Key performance indicator
NATS	National Air Traffic Services
NERL	NATS (En Route) plc
NM	Eurocontrol Network Manager
NR23	Review of NERL price controls 2023 to 2027 and delivery of a performance plan for user charges including non-NERL costs
Opex	operating costs/expenditure
PRC	Eurocontrol Performance Review Commission

<b>Abbreviations</b>	
RAB	Regulatory Asset Base
RBP	revised business plan
RFI	Request for information
RPS	Regulatory policy statement
RP3	Reference Period 3 (2020-2024)
TA00	Transport Act 2000
TRS	Traffic Risk Sharing

## APPENDIX B

## Our Duties

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B1 Our duties in respect of air traffic services are set out in section 2 of the Transport Act 2000, which is reproduced below.

### 2. CAA's general duty.

- (1) The CAA must exercise its functions under this Chapter so as to maintain a high standard of safety in the provision of air traffic services; and that duty is to have priority over the application of subsections (2) to (5).
- (2) The CAA must exercise its functions under this Chapter in the manner it thinks best calculated—
  - (a) to further the interests of operators and owners of aircraft, owners and managers of aerodromes, persons travelling in aircraft and persons with rights in property carried in them;
  - (b) to promote efficiency and economy on the part of licence holders;
  - (c) to secure that licence holders will not find it unduly difficult to finance activities authorised by their licences;
  - (d) to take account of any international obligations of the United Kingdom notified to the CAA by the Secretary of State (whatever the time or purpose of the notification);
  - (e) to take account of any guidance on environmental objectives given to the CAA by the Secretary of State after the coming into force of this section.
- (3) The only interests to be considered under subsection (2)(a) are interests regarding the range, availability, continuity, cost and quality of air traffic services.
- (4) The reference in subsection (2)(a) to furthering interests includes a reference to furthering them (where the CAA thinks it appropriate) by promoting competition in the provision of air traffic services.
- (5) If in a particular case there is a conflict in the application of the provisions of subsections (2) to (4), in relation to that case the CAA must apply them in the manner it thinks is reasonable having regard to them as a whole.
- (6) The CAA must exercise its functions under this Chapter so as to impose on licence holders the minimum restrictions which are consistent with the exercise of those functions.
- (7) Section 4 of the Civil Aviation Act 1982 (CAA's general objectives) does not apply in relation to the performance by the CAA of its functions under this Chapter.

## APPENDIX C

## Response to NERL's March 2021 submission

In its submission to our March 2021 Consultation, NERL noted several areas where it considered we should update our business planning guidance for RP3 (in CAP1625) or where no changes appeared necessary. We provide our views in the table below.

Area	NERL proposal	CAA response
Safety	<ul style="list-style-type: none"> <li>Update outcome targets in light of latest traffic forecasts</li> </ul>	While safety remains our primary duty, our current expectation is that we will not require additional safety performance reporting under the price controls. We will provide safety oversight through our existing safety regulatory activities.
Capacity	<ul style="list-style-type: none"> <li>Recalibrate delay targets in light of latest traffic forecasts</li> <li>Update approach to service performance at the sector as well as network level, in light of CAA decision and recommendations on Project Palamon, Feb 2021</li> </ul>	See our response on service quality and incentives below.
Resilience	<ul style="list-style-type: none"> <li>Update approach to operational resilience at the sector as well as network level, in light of CAA decision and recommendations on Project Palamon, Feb 2021</li> </ul>	We agree that NERL should take account of the outcome of Project Palamon, including Recommendation 1 – NERL should provide a resilient service that is capable of satisfying a range of reasonable scenarios for a rebound in traffic demand for the various areas of its regulated air traffic services.

Environment	<ul style="list-style-type: none"> <li>Recalibrate environment target in light of latest traffic forecasts</li> </ul>	See our response on service quality and incentives below.
Noise	<ul style="list-style-type: none"> <li>No change, given NERL (relatively) limited impact and greater priority of reducing CO2 emissions as part of the “build back green” agenda</li> </ul>	The RP3 guidance and references to noise in our RP3 decision remain relevant. NERL should expect to abide by existing and emerging/new DfT policy and CAA requirements on noise, including in relation to airspace design. NERL should expect to take account of noise in designing their operational activities and to work with wider stakeholders as part of the UK airspace design and implementation masterplan, in support of the AMS, to identify opportunities to mitigate noise impacts.
Airspace	<ul style="list-style-type: none"> <li>Update to reflect establishment of Airspace Change Organising Group (ACOG), and latest developments regarding plans for Heathrow 3<sup>rd</sup> runway</li> </ul>	<p>With regard to airspace modernisation, NERL's business plan should consider:</p> <ul style="list-style-type: none"> <li>NERL's role in the delivery of a modernised airspace architecture; NERL should clearly set out in its business plan how airspace change requirements will influence outcomes/outputs and costs;</li> <li>how NERL and ACOG will work together to achieve the aims of the airspace change masterplan (“masterplan”), that has now been extended in scope to cover all of UK. The revision of the masterplan anticipated for end of 2021<sup>12</sup> should be duly reflected in the business plan; and</li> <li>the efficient costs of running ACOG, including resources for the masterplanning task but excluding the costs of implementing individual airspace changes.</li> </ul>

<sup>12</sup> [UK airspace modernisation: Masterplan commission update – 12 May 2021.](#)

		<p>We have launched work to update the Airspace Modernisation Strategy (AMS) and anticipate the final update to be published early in 2022. The Government is also in the process of revising transport policy across all modes to meet the challenge of the 2050 “net zero” emissions target. NERL should therefore consider how to maintain flexibility in their business plan to take account of changes in airspace policy.</p> <p>We expect NERL, more generally, to continue to play its role in airspace modernisation, and we expect ACOG to continue to manage and coordinate airspace change implementation in accordance with condition 10a of NERL licence and DfT and CAA's commissioning letters.</p>
Cyber security	<ul style="list-style-type: none"> <li>No change to core guidance, cyber-security requirements to take account of evolving capital programme</li> </ul>	<p>We expect NERL to have arrangements in place already to ensure protection, safety and service continuity in respect of cyber security threats as part of its business as usual activities, consistent with current legislative requirements. In its business plan, NERL should provide information on the level of service and associated costs.</p>
New technologies	<ul style="list-style-type: none"> <li>Drones—increasing focus from NERL from a safety perspective</li> </ul>	<p>NERL will need to identify any costs included in its cost base that are related to drones and explain why these are efficient and should be recovered from airspace users.</p>
Service quality and incentives	<ul style="list-style-type: none"> <li>No change to structure or weighting of financial incentives linked to delivery of service outcomes, apart from consideration of treatment of bonuses achieved during periods when traffic is materially below the forecast level on which the price control was based.</li> </ul>	<p>In this guidance, we do not set top-down targets for NERL to use in its NR23 planning, as was the case under the EU framework with KPAs and KPIs.</p> <p>We expect NERL to propose its own service quality outcomes and incentives, which are appropriately challenging and informed by the needs of its customers and wider stakeholders. These should also be consistent with supporting the recovery of the industry from the impact of the covid-19 pandemic.</p>



		<p>For its business plan, we expect NERL to consider:</p> <p>(i) views from stakeholders on the need for different or new metrics, what level of service they expect and how they consider performance should be monitored and incentivised;</p> <p>(ii) whether the metrics should evolve to better reflect customer interests and priorities;</p> <p>(iii) the value of monitoring and incentivising existing EU-wide metrics (e.g. KEA, C1, C2) to allow benchmarking, taking account of the Eurocontrol performance framework<sup>13</sup> (PRC reports, ACE benchmarking, NM post-ops process for attributing delay); and</p> <p>(iv) whether any new measures could be introduced as a result of Project Palamon, including how Oberon indicators<sup>14</sup> could be better integrated with overall service quality metrics.</p>
Costs	<ul style="list-style-type: none"> <li>No change to core guidance on demonstrating that costs are efficiently scaled to outcomes and outputs, deliver demonstrable value for money, supported by options and cost benefit analysis. Given the limited available time, NERL does not intend to explore “value-enhancing approaches to programme governance, including through</li> </ul>	<p>Our previous guidance remains relevant. NERL should also take account of the principles in chapter 2 of this document when providing evidence to support its cost forecasts for NR23.</p>

<sup>13</sup> <https://www.eurocontrol.int/air-navigation-services-performance-review>

<sup>14</sup> This refers to Oberon Indicators in the operational performance reports as required by the data provision in NERL's Service Standards Statement under Condition 11 of its Licence

	proposals for shared governance, and financial incentives”.	
Capex	<ul style="list-style-type: none"> <li>Guidance superseded by new arrangements introduced in RP3 to incentivise user engagement in the development of capital planning and to incentivise the efficient delivery of projects and programmes</li> </ul>	<p>NERL should refer to the guidance provided in CAP2011<sup>15</sup>, chapters 4 and 5, on capex efficiency regulatory policy statement (RPS) and engagement incentive guidance.</p> <p>NERL should provide business cases for all new capex and, where available, continuing capex projects as part of its business plans</p>
Opex	<ul style="list-style-type: none"> <li>No change to core guidance on demonstrating efficient operating costs, linked to traffic forecasts and other costs drivers</li> </ul>	Our previous guidance remains relevant. NERL should also take account of the principles in chapter 2 when exploring its cost forecasts for NR23.
Pensions	<ul style="list-style-type: none"> <li>Guidance superseded by new Regulatory Policy Statement on the policy principles relating to NERL defined benefit pension scheme costs</li> </ul>	We agree NERL should refer to the RPS and should explain how its pension costs forecasts take this into account.
Cost of capital	<p>Updated in light of:</p> <ul style="list-style-type: none"> <li>latest regulatory determinations in aviation and other regulated sectors,</li> <li>evidence on the interaction between traffic volume risk, expenditure levels,</li> <li>the timing and level of recovery of deferred revenues, and</li> </ul>	<p>To estimate an appropriate cost of capital, NERL should consider relevant precedent (such as from recent CMA reviews of NERL, water and energy).</p> <p>NERL should provide evidence to show that the cost of capital is set at the efficient level. This includes showing that:</p> <ul style="list-style-type: none"> <li>the equity beta is set based on the risk-sharing arrangements that NERL will have in place which mitigate the impacts of risks such as on traffic shocks;</li> </ul>

<sup>15</sup> CAP2011, available from: [www.caa.co.uk/cap2011](http://www.caa.co.uk/cap2011)

	<ul style="list-style-type: none"> <li>changes in market conditions and any new evidence generally.</li> </ul>	<ul style="list-style-type: none"> <li>the notional gearing is set at an appropriate level, taking account of the impact of covid-19 and the need for NERL to be financially resilient;</li> <li>the estimation of new debt and embedded debt costs are consistent with the notional capital structure employed;</li> <li>any references to actual debt costs incurred (for example, from the costs of NERL's recent financing) are shown to be appropriate for the notional company and demonstrated to be efficient; and</li> <li>the allowance for corporation tax is reasonable. NERL should also propose an appropriate approach to recovering tax costs, noting that for HAL we are planning to move away from a pre-tax cost of capital.</li> </ul>
RAB and regulatory depreciation	<ul style="list-style-type: none"> <li>Guidance pertained to the one-off fall in depreciation projected in 2021, so no longer relevant.</li> </ul>	<p>Our previous guidance remains relevant.</p> <p>As set out in our previous guidance and for HAL for H7, we will be open-minded about flexible approaches to the profiling of regulatory depreciation in the future to deliver an appropriate balance between affordability and financeability.</p>
Financeability	<ul style="list-style-type: none"> <li>No change to guidance</li> </ul>	<p>Our previous guidance remains relevant.</p> <p>NERL should consider the approach we have set out in the way forward for HAL for H7 (CAP2139) and appendix I (CAP2139A). This includes:</p> <ul style="list-style-type: none"> <li>considering reprofiling of depreciation and revenues to balance affordability of charges and financeability while the sector is recovering;</li> <li>setting out target credit ratings, using metrics to assess both debt and equity financeability, and showing incentives are appropriately calibrated; and</li> </ul>

		<ul style="list-style-type: none"><li>• setting out the target leverage for the notional company and assumptions for dividend payments, and why these are appropriate.</li></ul>
Customer consultation	<ul style="list-style-type: none"><li>• General principles for consultation stand. Any update should acknowledge the exceptional circumstances in which this year's customer consultation will take place, both in terms of the magnitude of the economic impact to the UK aviation sector, and the limited time and customer resources available in 2021 to support consultation.</li></ul>	See chapter 2 where we provide guidance on the approach to customer engagement.