

NERL capital expenditure (capex) and Airspace Modernisation Strategy (AMS) funds governance policy and processes – draft for stakeholder comment

1. This note sets out our draft policy and processes for capex and AMS funds governance during RP3. We invite comments on the policy and processes by 2 August 2019. Comments should be sent to economicregulation@caa.co.uk and will be taken into account when we publish our final policy and processes which will inform associated licence conditions and other supporting policy and guidance material where appropriate, for RP3.
2. The note includes the following sections:
 - a) Background
 - b) Change governance cases
 - c) Capex incentives on NERL
 - d) Role of Independent Reviewer
 - e) Key risks
 - f) Next steps
 - g) Appendix A – Service and Investment Plan (SIP) process
 - h) Appendix B – Operational expenditure (opex) Flexibility Fund (OFF) process
 - i) Appendix C – AMS Support Fund (ASF) process

Background

Draft RP3 proposals

3. The CAA's draft proposals for RP3¹ set out its general policy intentions with regard to “enhanced” governance arrangements for NERL during RP3. NERL proposed in its business plan that SIP governance, which is used to manage and update their capital programme, could also be used to reach decisions on expenditure from the OFF.
4. Subject to the CAA's proposed strengthening measures and ensuring proper links with the AMS governance framework, the CAA supports this approach. The proposed strengthening measures are listed below:
 - NERL should provide timely and regular updates to airspace users on its approach to options appraisal, before it makes its final decisions to commit to major projects;
 - if NERL and airspace users cannot agree on a preferred solution, an escalation process to senior stakeholders (including the CAA, Department for Transport (DfT) (if related to airspace), airports (dependent on subject) and airlines) would be triggered;

¹ [CAP 1758](#) – RP3 Consultation Document (February 2019)

- the role of the Independent Reviewer (IR) will be enhanced to include assessing how well NERL has explained and justified its capital programme in its SIP, as well as reviewing its reporting;
 - the IR will report to the CAA and airspace users, and these reports will inform the CAA's decision on whether capital spending should be allowed in the regulatory asset base (RAB) following its ex-post reviews of capital efficiency. Adjustments would be made in the reference period following that in which the spending will be incurred. If NERL does not provide persuasive evidence that spending has been effectively incurred the CAA may exclude such spending from its RAB; and
 - if there are significant weaknesses in NERL's ongoing provision of information on its capital spending, then any overspend during RP3 will only be remunerated at its cost of new debt finance (rather than the full weighted average cost of capital (WACC)) during RP3, even if it subsequently passes an efficiency test.
5. The draft proposals also set out provisions for costs uncertain at the time of adoption of the performance plan, but important to support the delivery of national strategic objectives.
 6. The CAA maintained the capex contingency allowance of £34 million proposed by NERL and agreed with airspace users through customer consultation. Use of the allowance will be subject to the enhanced governance process, with the final decision on spend taken by NERL.
 7. In December 2018, the CAA published the UK AMS,² setting out the detailed initiatives that industry must deliver to achieve the objectives envisaged in current government policy. NERL will have a key role in supporting the development and implementation of airspace modernisation. It is important to ensure that NERL's governance procedures are properly linked to the wider AMS governance framework.
 8. The OFF is proposed to hold £35 million (2017 prices) over RP3, and would be similar in nature to the existing RP2 FAS Facilitation (NERL) Fund but broader in scope. The OFF is intended to be the main vehicle to support uncertain costs arising from the implementation of the AMS, although this will not necessarily be its only use. The main differences between the OFF and the capex contingency allowance that is proposed for RP3 is that the OFF applies to opex rather than capex and that the final say on releasing money under the fund will be taken by the CAA.
 9. The ASF of £10 million has been proposed for RP3 with an explicit focus on airspace modernisation over RP3. This would be financed from the CAA's Determined Costs and would be similar in nature to the existing RP2 FAS Facilitation (Small Gaps) Fund, but broader in scope. The ASF is intended to be used for projects that are important to the

² [CAP 1711](#) - Airspace Modernisation Strategy (December 2018)

success of the AMS and where there are no other appropriate mechanisms for the recovery of these costs. This fund will be available to non-NERL third parties only.

Key principles

10. In producing its proposed capex and funds governance policy for RP3 the CAA has been guided by the following principles:
 - NERL's efficiently incurred capex will be added to its RAB;
 - NERL should provide an appropriate level of information to enable airline users and other stakeholders to comment on the costs, options, delivery, benefits and risks associated with NERL's capex and requests for OFF funding;
 - NERL decides its capex and is accountable for its costs, delivery and benefits. The one exception is that the AMS co-sponsors (CAA and DfT) can direct NERL to undertake certain AMS-related expenditure;
 - NERL should be financially incentivised to provide sufficient information to airline users and other stakeholders, to spend capex efficiently, and to deliver projects on time;
 - the capex and funds governance processes should be easily understood and workable, avoiding unnecessary complication enabling a wide acceptance from all stakeholders; and
 - the processes shall evolve over time to reflect the feedback and experience of airspace users, other stakeholders and NERL on their usefulness and ease of use.

Key stakeholders

11. The key stakeholders for capex, the OFF and AMS funds will be:
 - a) NERL which is responsible for its opex and capex and has been commissioned to set up, finance and manage the Airspace Change Organising Group (ACOG) to produce the UK airspace change masterplan, and to propose airspace change proposals (ACPs);
 - b) Airspace users (primarily commercial airlines), which use and pay for NERL's air traffic services, but also general aviation and the military, who interact with NERL's services and have an interest in AMS;
 - c) Airports which are reliant on NERL's air traffic services to allow aircraft to fly to and from the airport, and are generally responsible for lower altitude ACPs in their vicinity;
 - d) CAA as the safety, airspace and economic regulator of NERL;

- e) The CAA's Airspace Modernisation Oversight Team (AMOT³) which acts as the gateway between AMS delivery groups and co-sponsors, and will monitor risks and oversee delivery of the AMS; and
- f) AMS co-sponsors, the DfT and CAA.

Change governance cases

12. The governance framework must outline the appropriate procedures and stakeholders involved under a variety of circumstances. This section identifies three 'cases' which may result; the process and form of governance used will depend on the form of change in delivery that is being proposed.

A. Business as usual (non-AMS)

13. Activities that (1) are not related to the AMS, and (2) would typically be considered part of NERL's business as usual will be considered in this first change governance case.
14. For capex, since NERL is accountable for its capital programme, activities that fall under this case would be governed by the enhanced SIP process. This process will be led by NERL. The enhanced SIP governance process is described in Appendix A.
15. As the ultimate manager of its own spending, NERL will retain the final decision-making ability on activities in this case, following engagement with stakeholders through the enhanced SIP process. However, the CAA will be able to express a view, and signal as to whether given expenditure is appropriate. In the case of capital expenditure, this could for example signal whether a given activity might not be included in the RAB. If NERL provides insufficient information to justify an increase in its costs, it would not earn its full cost of capital on the increase.
16. The IR will have a role in supporting and informing airspace users and the CAA views stemming from the NERL consultation process.
17. For opex, we do not outline a specific process for NERL to follow, though we provide broad principles and eligibility criteria for the OFF in Appendix B. The CAA will determine whether opex is recovered through the OFF.

B. Business as usual (AMS-related)

18. Activities that (1) support the implementation of the AMS, and (2) would typically be considered part of NERL's business as usual are considered as part of the second change governance case.
19. Such activities, where they are capex, would still be governed through the enhanced SIP process (as described in Appendix A), though there will be engagement with AMOT

³ AMOT was formerly known as the CAA's Delivery Monitoring and Oversight function.

alongside other stakeholders. AMOT will largely be an observer in the process, being informed of NERL's plans though it will also be able to express any views or concerns as part of the SIP process. Again, consistent with the principle of NERL being responsible for its own expenditure, NERL would retain decision-making responsibility on activities within this case. The CAA will be able to express a view on whether capex is likely to be added to the RAB for RP4, with expenditure recovered from users.

20. Following AMOT's engagement in the SIP process, if there are any remaining concerns regarding a particular activity, AMOT can escalate to the AMS co-sponsors. The co-sponsors will engage directly with NERL to ensure the concerns are adequately addressed.
21. There will also be scope for AMOT to engage early in the process, including at the commissioning stage where AMOT (on behalf of the co-sponsors) will be able to identify and propose projects for further development. AMOT will also be involved in the determination of which activities are considered to be related to the AMS. Should the activity be deemed suitably important for the delivery of the project, AMOT will have the opportunity to declare their support for the project at the determination stage.
22. For opex, the broad governance principles and eligibility criteria for the OFF are in Appendix B. For AMS-related proposals, AMOT will be able to engage early in the process and declare their support for particular projects, with an escalation route to AMS co-sponsors for activities AMOT think should go ahead.
23. Activities that have been initiated due to a third party's requirement as part of the AMS may still be eligible to be considered as part of this change governance case (and be eligible for OFF consideration). For this to be the case, projects would typically need to be delivered or sponsored through the OFF eligibility process by NERL on behalf of the third party.

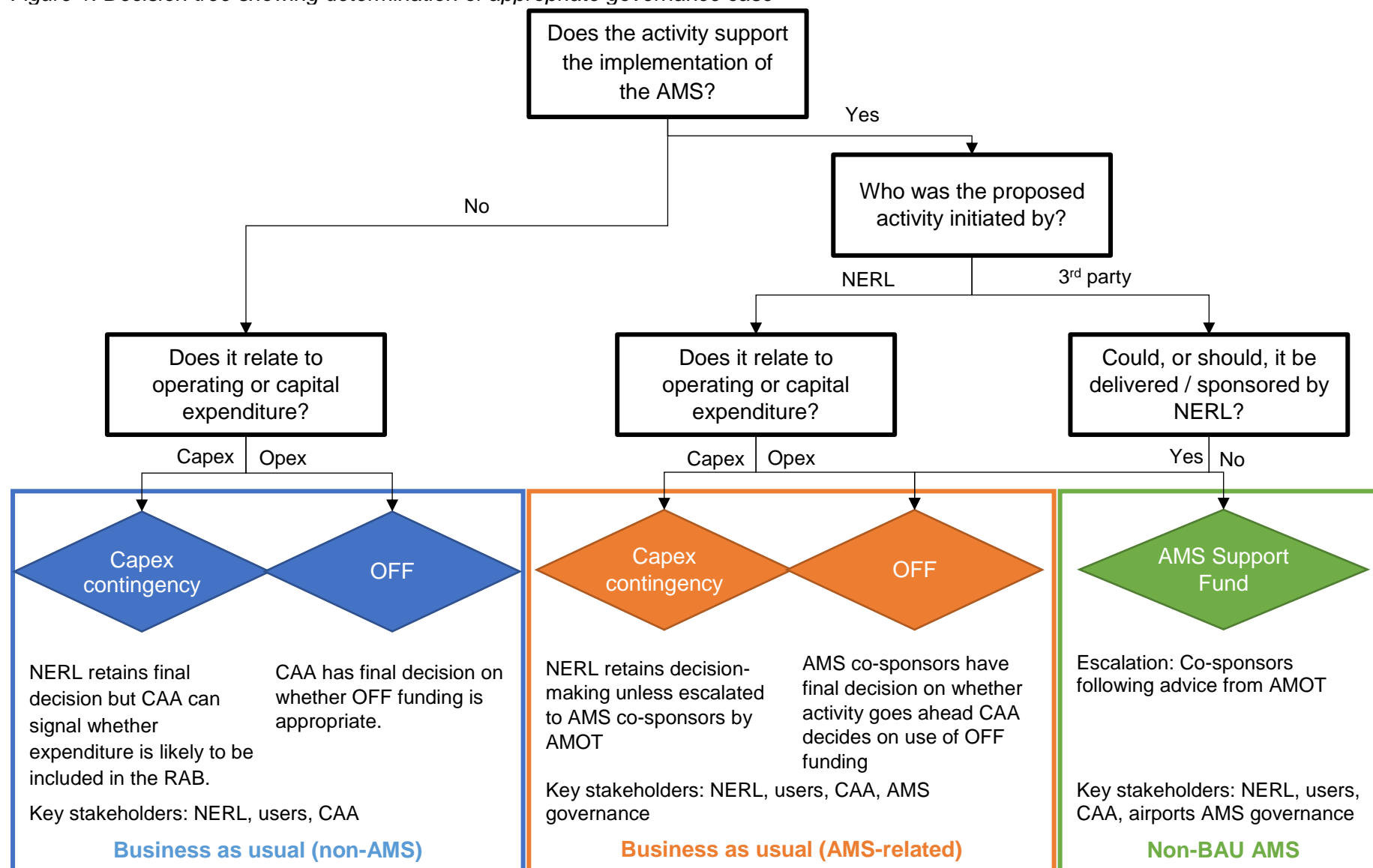
C. Not business as usual (AMS) related third parties

24. The third change governance case is when there are activities that (1) support the implementation of the AMS, but (2) have been initiated by a third party and could not appropriately be delivered or sponsored by NERL. In this case, the activity could be considered for funding through the ASF.
25. The governance process and eligibility criteria for consideration of funding through the ASF are Appendix C.

Decision tree

26. Figure 1 shows the decision tree used to determine what the appropriate governance process should be.

Figure 1: Decision tree showing determination of appropriate governance case



Capex incentives on NERL

27. There are three capex incentives that will apply to NERL:
- a) An *ex-post efficiency review*, which will consider NERL's RP2 capex
 - b) An *information incentive* designed to ensure NERL appropriately informs stakeholders as part of its capex engagement; and
 - c) A *delivery incentive* designed to ensure timely delivery of NERL's capex programme.

Ex-post efficiency review

28. The CAA will commission an independent review of the cost efficiency of NERL's RP2 capex early in RP3. If the review identifies any expenditure as inefficient, the CAA may decide to disallow some or all of the inefficient spend. This will be achieved by a downwards adjustment to NERL's starting RAB for RP4. Similarly, the CAA will conduct a review of RP3 capex in RP4.

Information incentive

29. For RP3, to encourage the provision of high quality information as part of capex engagement under the enhanced SIP process, we are intending to apply a financial incentive on NERL, such that if there are significant weaknesses in NERL's ongoing provision of information on its capital spending, then any overspend during RP3 would only be remunerated at its cost of new debt finance (rather than the full WACC), even if it subsequently passes an efficiency test. The incentive shall apply when there has been a serious failure in the provision of information to justify the overspend. The incentive will take effect through a one-off reduction in the starting RAB for RP4. The assessment shall be complementary to any CAA ex post efficiency review of NERL's RP3 capital programme and the delivery incentive.

Delivery incentive

30. The CAA will introduce a financial incentive on NERL's delivery of its capex programme. This will involve a general assessment of NERL's capex delivery, supplemented by a focus on the delivery of specific milestones for programmes or projects that lead to important outcomes that benefit users. The specific milestones that will be considered have not been decided yet, but the CAA's current thinking is that they might include the following:
- a) the DP (en route) and DP (lower) technology changes which together will provide a common platform for the Swanwick and Prestwick centres allowing for legacy escape and mutual contingency, and will provide the capacity necessary for airspace modernisation;
 - b) the ADP6 airspace change for Essex airspace which would increase capacity into Stansted and Luton airports; and

- c) LAMP airspace changes to modernise airspace in the South East of England to take account of the performance capabilities of modern aircraft.
- 31. The IR will produce an annual report on NERL's progress on delivering its capital investment programme. The report is likely to include a judgement on NERL's overall delivery performance. The report will take account of comments from NERL and other stakeholders (including airlines, airports and the AMS co-sponsors).
- 32. The CAA will publish the report which will be used to inform the CAA's views on NERL's actual delivery of programmes and outcomes.
- 33. The process will be dynamic to take account of sensible changes to NERL's capital programme over RP3 that have been agreed with users through the enhanced SIP process.
- 34. The financial incentive will take the form of a reduction in NERL's starting RAB for RP4, based on both the general assessment of NERL's delivery and the delivery of the specific programme or project milestones above. The amount of the incentive shall be capped, and is likely to be linked to NERL's return on equity on its capital investment in RP3. The assessment shall be complementary to any CAA ex post efficiency review of NERL's RP3 capital programme.

Role of the IR

- 35. The current role of the IR is to "review the accuracy of the Licensee's reporting". In practice, the IR has taken a more active role in assessing the quality of NERL's reporting more generally, and this has led to positive developments, for example on reporting risk management. NERL's business plan supported an enhanced role for the IR, and the CAA's RP3 draft proposals also included expanding the IR's role to include assessing how well NERL has explained and justified its capital programme in its SIP, as well as reviewing its reporting.
- 36. In the context of capex governance at Heathrow airport, the appointment of an Independent Funds Surveyor (IFS) has had a positive reception. The IFS has played an important role in giving airlines more confidence in the capex governance process, and allowed more transparency and clarity in the process.⁴
- 37. An enhanced role for the IR could provide a similar role for NERL's capital programme – noting the need to adopt a proportionate approach, the IR's scope would likely be less broad compared to the IFS. Even if the IR was not ultimately put in a position to reach views on the efficacy of expenditure, regular reports by the IR would likely be a key input into the CAA's

⁴ The IFS is jointly appointed by the airlines and Heathrow Airport to provide support in the capex governance process. It reviews and reports on the reasonableness of key investment decisions. This was modelled on the role of a monitoring surveyor in commercial property and aimed at providing assurance that capex is invested efficiently. More detail can be found in [CAP1563e](#) - Review of Heathrow Airport's Q6 Capex Governance, CEPA (June 2017)

ex-post efficiency review. Therefore, stakeholders would be able to take IR reports as a signal on whether, for example, certain capital spending is likely to be allowed as part of the RAB.

38. The IR will:

- assess how well NERL has explained and justified its capital programme in its SIP;
- review the accuracy and timeliness of NERL's reporting in its SIP;
- track and assess NERL's progress in delivering its investment plan and achieving the associated benefits; and
- report on the cost efficiency of NERL's capex.

39. The IR will report both to the CAA and airspace users, and these reports will (among other evidence) inform the CAA in its ex-post reviews of capital efficiency. The IR will produce:

- regular reports on each SIP and interim SIP. The report on the annual SIP (provided by NERL in December each year) shall include a report on NERL's capex delivery during the year (see above). This will contain both a general view on NERL's capex delivery on its whole capex programme, and a report on particular projects or programmes that are subject to the RP3 delivery incentive; and
- ad hoc reports on various aspects of NERL's capital programme and performance, for example the efficiency of NERL's spend on a particular programme, or its approach to securing that its capex delivers benefits in line with business cases.

40. These reports should help support stakeholder understanding of NERL's capital programme. Airspace users have noted that it can be challenging for them to effectively assess the efficiency of NERL capital expenditure. NERL spending on, for example, IT infrastructure can differ significantly from that typical for airlines, and is often made of bespoke projects, making it difficult to benchmark.

Key risks

Timing of spending of money

41. A key risk for the OFF and ASF is that money is not released at the correct time in RP3. Worthy projects may not receive funding early in the reference period due to the potential for there being even more beneficial projects in the future, leading to a surplus of funding if future projects do not materialise. Conversely, large expenditures early on could prevent future worthy projects from being funded during RP3.
42. In order to mitigate this risk, the eligibility processes for the funds will need to account for this. Projects may need to be prioritised before funding is released, with each project ultimately funded demonstrating it is of a clear value and that the case for it is well-evidenced.

43. One possibility that may be worth exploring further would be to introduce an annual forward-looking plan of activities that are expected to seek funding from the OFF and ASF in the next 12-month period. This could either be in the form of a forward plan, produced by NERL and airspace users (in conjunction with the CAA) for the OFF, or the ASF Decision Board for the ASF. Stakeholders could then use this to inform expectations for the use of the funds in the medium term and to inform the prioritisation of available funds.

Unintentional transfer of accountability

44. Another key risk is that the involvement of other parties in the governance process, particularly for AMS, may blunt the incentive for NERL (as the provider of en route and London Approach air traffic services, and sponsor of ACPs) and airports (also as a sponsor of ACPs) to take responsibility and accountability for their expenditure and decision making.
45. The capacity and environmental targets in the performance plan will provide some incentive on NERL to provide a given level of service, as otherwise it could pay financial penalties. This helps to mitigate against NERL failing to invest sufficiently to maintain service levels, as does its obligation under Condition 2(2) of its licence, at all times, to develop and maintain its assets, personnel, systems and other parts of its business to meet any reasonable level of overall demand for its services. On airspace change, the Government's Green Paper on Aviation Strategy consulted on the prospect of new legislation which would require NERL to take forward ACPs, both for airspace for which it is responsible, and, possibly in, lower level airspace where an airport does not propose an ACP for airspace in its area which had been identified for airspace change in the masterplan. This could mitigate against the risk of stakeholders being unwilling to make ACPs where they are required for the proper development of the network.

Classification of costs

46. NERL could have an incentive to categorise spending as related to airspace modernisation. This is a high priority area and it is, therefore, more likely that spending will be allowed (for example, the CAA's draft RP3 performance plan proposals did not apply an efficiency adjustment to airspace modernisation capex but did apply an adjustment to other capex). Airspace users have an incentive to endeavour that the OFF is not used to fund work that is part of NERL's normal operational business, as any unspent amount in the OFF will be returned to them through lower charges in RP4. However, this could be diluted by other stakeholders who, as they do not pay, NERL charges will have objectives other than cost efficiency.
47. Additionally, any funds from the OFF or ASF that are not utilised will be returned to users in future reference periods. Therefore, there is an overarching incentive for NERL (or project

sponsors more generally) to use as much of these funds as possible. There is a risk that this incentive would lead to stakeholders using a fund for projects that need not be funded specifically from that fund, in turn making less money available for more relevant projects.

48. This risk is somewhat mitigated through the eligibility criteria and governance process for applications for funding from the OFF and ASF.

Next steps

49. We will take account of comments made on our proposals by 2 August 2019 in developing our final policy and processes for RP3. Our final policy and processes will be published along with our final RP3 Performance Plan proposals. The final policy and processes and, where appropriate, associated NERL licence conditions, will be published before the start of RP3 in January 2020.

Annex A: The enhanced SIP process

Background

50. Condition 10(3) of NERL's Licence requires the company to prepare a SIP that refers to the most recent business plan and the related airspace and technology programmes each year. This must provide an update of investment plans, delivery against programme milestones and any material change in NERL's expectations regarding services or investment plans. The development of the SIP must be consulted on with users and reasonably approved by the CAA. The current role of the IR is to "review the accuracy of the Licensee's reporting".
51. While there is general agreement that the current SIP process works reasonably well, stakeholders have previously agreed it could be improved.⁵ During its RP3 consultation, NERL consulted customers on enhancements to the SIP process:
- Agreeing key level zero milestones or other milestones with customers at the annual full SIP meeting. These are to be tracked under the SIP process, without removing the requirement for overall SIP reporting of total capex plan
 - NERL's proposed escalation process involved a first stage of a SIP Taskforce investigating recommendations and options. A second stage would escalate to senior stakeholders (potentially including DfT and wider AMS governance structure if related to airspace), airlines, and other stakeholders (e. g. airports) depending on subject.
52. NERL should own the SIP process and develop it with airline users and other stakeholders. We have proposed a process below but do not intend to mandate every part of it by including it all in NERL's licence. This will enable all parties to agree changes to the process without the need for us to modify the licence. We expect that the process will evolve over time to take account of airline user, other stakeholder and NERL's experiences of using it during RP3. If users and stakeholders find that NERL is not sharing sufficient information in a timely manner to allow them to make informed comments on proposed modifications to NERL's capex or new projects and programmes, we will consider taking a more interventionist approach by including more of the SIP process in the licence. However, our preferred approach would be to allow NERL, airspace users and other stakeholders more freedom to develop and use a process that meets their needs, instead of relying on the CAA to determine how they should engage on NERL's capital programme.

⁵ Chase Partners Limited (January 2019) 'NERL SIP: Review of SIP Process – Independent Reviewer Report', available at www.caa.co.uk/natslicence, pg. 2

Proposed enhanced SIP process

Annual and Interim SIP

53. As currently, NERL will be required to submit a SIP, no later than the end of December in calendar year and an interim SIP by the end of June in each year. The SIP would include the following content:
- an update of NERL's investment plans with reference to the most recent business plan;
 - NERL's delivery against the programme milestones provided;
 - links to business cases or updated business cases for any major new projects (we expect the business cases would be placed on NERL's customer website);
 - proposed milestones for any new programmes or material changes to existing milestones, with an explanation provided for material changes to existing milestones; and
 - material changes in the level and quality of services NERL will provide, how NERL will provide these services and likely implications for user charges. NERL should explain why there will be material changes.
54. The first SIP will form a baseline, which provides stakeholders (airspace users and airports) with a collective understanding of the detail of the anticipated work programme (and how it relates to the business plan), including milestones, expected benefits and associated costs.
55. In future SIPs, NERL will track the milestones included in the baseline SIP and use the following principles to engage with customers if there are changes:
- Safety: Advise customers and CAA if immediate change required;
 - Small: changes to implementation plan that do not affect 'key' milestones, NERL will provide an update at next SIP;
 - Medium: changes to key milestones incorporating either a 10% change in costs, 10% changes in benefits (scale or timescale), or three months change to a key milestone. In such cases NERL, would update through an ad-hoc meeting.
 - Large: if there are material or fundamental changes to the key milestones, scopes, benefits, or delivery of a project.
56. We expect NERL to hold a face-to-face update with customers with a formal options review before making a decision. NERL's updates should also provide customers with appropriate information to allow them to understand the nature of changes and the reasoning behind them. It should also allow stakeholders to adequately consider alternative approaches.
57. NERL's updates to stakeholders regarding new projects will be framed around business cases during the decision-making process. This could be framed around the project lifecycle, with greater detail and user engagement as each project nears the decision and

implementation milestones. The SIP should identify the current stage for each project that meets a minimum cost threshold. Our current view is that this threshold should be £10m, but we would welcome views on what that threshold should be.

Stage	Update provided from NERL	Stakeholder engagement
1. Initiation	Issues identified and potential solutions expected	Stakeholders agree that issue is worth further consideration.
2. Optioneering	Describe options identified and explored, setting out minded-to delivery routes	Information; offer further potential options; feedback on preferred solutions
3. Decision	Describe chosen option, including delivery plan and milestones	Discussion on chosen option and milestones, with decision or escalation to senior stakeholders
4. Implementation	Progress report on project delivery, highlighting emerging and potential risks to timescales or costs	Primarily information only, unless there are Medium or Large changes (as noted above)
5. Close out	Summarise completed projects including evaluation and lessons learned	Information; provide feedback on project and feed into lessons learned

58. NERL will share a draft SIP (or interim SIP) with stakeholders and the IR no later than six weeks before the SIP is finalised. NERL will then consult with users, including through a formal SIP meeting. The IR will assess the draft SIP and provide initial comments to airline users, other stakeholders (if relevant) and the CAA for the consultation meeting with stakeholders. Between the draft SIP being shared with stakeholders and SIP meetings, there should be no update to the draft SIP to allow the IR and stakeholders digest its content and provide feedback.
59. We would expect each SIP to be provided to stakeholders and the IR with enough time to digest in advance of the SIP meeting, and enough time for the IR to provide feedback to stakeholders.
60. At the SIP meeting, stakeholders will agree with NERL the milestones proposed in the draft SIP, which will be tracked over the following 12 months.
61. NERL, airline users and other stakeholders (where appropriate) should agree whether to proceed with projects where business cases (with projected costs of at least £10m) reach Stage 1 (Initiation), where they agree a new project is necessary, and Stage 3 (Option Decision), where they agree to proceed with the chosen option. This agreement could be made at an annual SIP or interim SIP meeting, or at an ad hoc meeting if agreement is required at other times of the year. Where there is disagreement between NERL and

stakeholders on either of these issues, there will be an escalation process as outlined in the following section.

62. Following the meeting, NERL will update the SIP to reflect feedback and before finalising and formally submitting it to the CAA. The IR shall produce an updated report on the final SIP and interim SIP, considering the changes that have been made since the draft SIP and overall conclusions on the final SIP. The CAA will decide whether to formally approve the form, scope and level of detail of a SIP or not, which will reflect:
- The quality of the information provided;
 - The extent to which NERL has appropriately engaged with stakeholders; and
 - Whether NERL's choices in relation to capex spend is likely to be appropriate.⁶

Quarterly dashboard updates

63. Between the annual SIP and interim SIP, NERL will provide quarterly dashboard updates. These quarterly reports will provide an update on the investment plan with additional material on any material changes or decisions that are needed to be made before the next SIP or interim SIP discussion.
64. As with the SIPs, NERL will track the milestones included in the baseline SIP and use the quarterly dashboard updates to engage with customers if there are changes as per the criteria listed in paragraph 55.
65. Where a major new project has reached a next stage in the project lifecycle (paragraph 57), NERL will present an updated business case, giving stakeholders an opportunity to provide feedback. Although, at most stages, airspace users will only be informed of developments, they will be able to escalate to the CAA if the quality of information is insufficient. Where timeliness is important, NERL can present business cases with Stages 1, 2 and 3 together.

Escalation process for disagreements

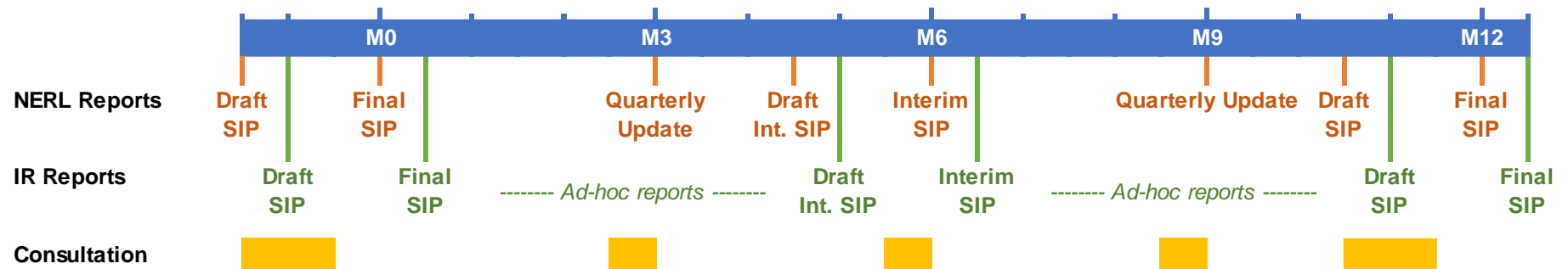
66. Where there is a disagreement between stakeholders and NERL regarding milestones or regarding new projects, this will be escalated to senior stakeholders within NERL, airspace users and the CAA. If the disagreement is in relation to an AMS-related project, or in relation to whether a project is AMS-related or not, it will also be escalated to the AMOT at the CAA and the DfT.
67. NERL is ultimately responsible for the quality and continuity of its service, including being accountable for final decisions over its capex programme. This remains the case even where an issue is not resolved through the escalation process described above. To ensure that users' interests are protected, at the end of RP3, the CAA will then determine whether any of

⁶ A CAA decision related to approving a SIP would not pre-judge decisions made as part of the ex-post capex review.

NERL's spend was inefficient and as such, not allowed in the RAB. In deciding whether a particular project or programme is allowed into the RP4 starting RAB, the CAA shall take note of the outcome of any escalation process, but will not be bound by an escalation decision

Timeline for enhanced SIP process

Figure 2: Timeline of SIP process, including periods of consultation with stakeholders.

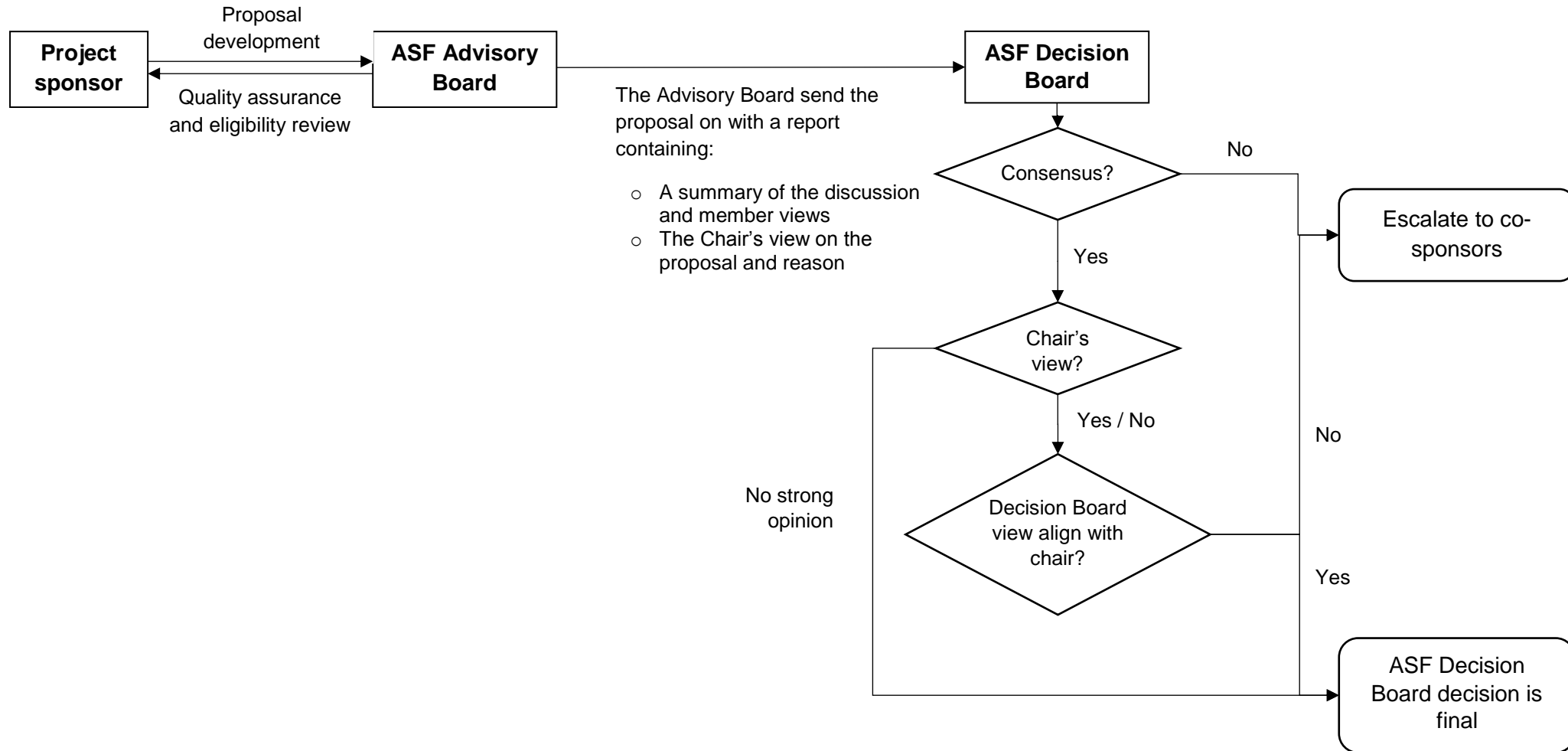


Annex B: The OFF process

68. In order for an activity (including third party activities delivered or sponsored by NERL) to be eligible for funding through the OFF, NERL would have to adequately demonstrate, as a minimum, that:
- the activity is supported by NERL's customers and, where appropriate, wider AMS governance bodies;
 - any additional expenditure is based on unforeseen additional scope rather than cost overruns and is a necessary requirement to deliver benefits to airspace users; and
 - the activity has a strong business case, demonstrating that the project is well costed and would benefit users, with a clear and established evidence base to support both cost and benefit forecasts. This is particularly true if the project is not directly related to the implementation of the AMS.
69. We will not prescribe the process that NERL should use, although we see merit in it using its proposed RP3 SIP process, instead we expect NERL and airline users to develop an agreed process for proposing cases to the CAA for approval.
70. Where NERL and airspace users agree that an activity should be funded from the OFF, the CAA will approve the use of the fund unless there are compelling reasons for not doing so. In such cases the CAA shall inform NERL and airspace users why it is minded not to approve the use of the fund and will give them an opportunity to present their case to the CAA before it makes its decision.
71. Where airspace users do not agree with a NERL proposal to use the OFF for an activity, NERL can present its case to the CAA. In such cases, the CAA will offer both NERL and airspace users the chance to express their views to it at either a joint meeting or separate meetings, before it makes its decision. In such cases the onus will be on NERL to justify the use of the OFF despite user objections.
72. Where the case is for an AMS related activity which, as the primary purpose of the OFF is to support airspace modernisation, we expect that in most cases AMOT will be involved in the CAA's decision whether the OFF shall be used for a specific activity.

Annex C: The ASF process

Figure 3: AMS Support Fund Governance Process



73. The roles of the bodies will be as follows:

- The **Project Sponsor** will prepare investment proposals and will present any proposals to the ASF Advisory Board (“Advisory Board”) and ASF Decision Board (“Decision Board”).
- The **Advisory Board** will check the quality of proposals, assess them for any regulatory issues, and ensure they meet the ASF eligibility criteria. The Advisory Board will comprise of chairs of AMS delivery groups or other senior representatives of those bodies delivering AMS initiatives, and the CAA’s Future Airspace Team, and will be chaired by AMOT.
- Once the Advisory Board confirms that an investment proposal is of sufficient quality and meets the eligibility criteria, it will be sent to the **Decision Board**. The Decision Board will be chaired by the CAA’s Future Airspace Team and will provide an objective review of potential investment proposals to the ASF and determine whether to fund an activity. The Decision Board will comprise of parties with interest in the equitability of decisions across the AMS deployment stakeholders, including airlines, general aviation, airports, air navigation service providers, Ministry of Defence, and wider industry through the Industry Communications for the Airspace Modernisation Strategy (ICAMS).

74. The eligibility criteria assessed by the Advisory Board will be as follows:

- Does the financial commitment requested, fall within the ASF budget capability?
- Do the objectives of the proposal align with the strategic aims of AMS and the research or implementation that supports AMS deployment?
- Does the proposal directly or indirectly aid the delivery of initiatives listed in the AMS?
- Have other financial support options been considered and exhausted, e. g. European or Government funding, economic regulatory settlements?
- Is there sufficient information in the proposal to demonstrate the above criteria has been met?
- Are there any policy, strategy or technical guidance or regulation required to enable this proposal to be successful?

75. The Advisory Board will meet quarterly, with the outcome of each meeting being a report prepared by AMOT to the Decision Board, which will contain a summary of the discussion and member views and the Chair’s view on the proposal and reason. The report will provide a recommendation to the Decision Board based on its review.

76. In its deliberations, Decision Board will consider the following questions:

- Does the proposal have cross industry support and meet AMS Strategic Guidance criteria?

- Is the proposal a necessary requirement to deliver the substantive and timely benefits of airspace modernisation?
- Does the scope seem achievable given resources, timings and budget described?
- Are the benefits described identifiable and measurable?
- Does the proposal deliver a positive value from the point of view of users paying the charges?

77. The Decision Board should reach decisions through consensus from the board's members. Where the board is unable to reach a decision, the matter will be escalated to the AMS co-sponsors. A matter will also be escalated to the co-sponsors if the Decision Board reached a consensus view which does not agree with a strongly held view of the Advisory Board chair that the proposal should either be awarded or not awarded funding from the ASF. Such an approach has the advantage of avoiding a combative environment and supporting projects that have broad support.
78. When a decision is escalated to the co-sponsors, they will have an opportunity to review the Advisory Board chair view and the Advisory Board and Decision Board recommendations and make a final determination on whether to fund a particular activity.