

Martin Rolfe
Chief Executive,
NATS,
Corporate & Technical Centre,
4000 Parkway,
Whiteley,
Fareham,
PO15 7FL



21 May 2020

Dear Martin,

Approval of the form, scope and content of the resilience plan submitted on 18 March 2019 under Condition 2 of the Air Traffic Services Licence for NATS (En Route) Plc dated 28 March 2001 and as modified from time to time (the “NERL Licence”).

Thank you for submitting your resilience plan on 18 March 2019 in accordance with Condition 2 of the NERL Licence (the “Resilience Plan”) and for the time you have put in since then to work with the Independent Reviewer to aid its review of the Resilience Plan.

Review and Approval of the Resilience Plan

We have reviewed the Resilience Plan and, in our view, it seems to be a comprehensive plan that addresses the areas set out in the guidance we provided in CAP 1682,¹ when the resilience condition was included in the NERL Licence. It is clear that considerable effort has gone into developing the Resilience Plan with your policies and processes having been developed and certified in accordance with established international best practice.

We have also reviewed the Independent Reviewer’s report dated 13 September 2019 (the “IR Report”). This provides a more detailed view of the Resilience Plan itself and the underlying policies and processes. The Independent Reviewer (appointed in accordance with Condition 2.14 of the NERL Licence) does not state whether we should approve the Resilience Plan but it provides an assessment of whether the Resilience Plan properly addresses the requirements of our guidance in CAP 1682. It provides a view to the CAA as to NERL’s ability to deliver the NERL Licence Condition 2 requirements and how NERL manages and continuously improves its service resilience, contingency and business continuity requirements. Overall the IR Report supports our view that the Resilience Plan seems to be robust and comprehensive.

I note your statements in the Resilience Plan that your primary focus when disruption occurs is, rightly, on ensuring a safe operation. We have always recognised that this must be the case and have developed resilience thresholds with you, set out in our guidance in CAP 1682, that provide clear expectations and parameters around the levels and severity of delay which would normally trigger an investigation into possible licence breach.

I am therefore pleased to approve the form, scope and level of detail of the Resilience Plan in accordance with Condition 2.12 of the NERL Licence.

¹ CAP 1682: Decision on Modifications to Condition 2 of NATS (En Route) plc licence in respect of resilience planning, policy statement on enforcement and resilience plan guidance.

Please note that this approval does not constitute approval of any other requirements, such as those relating to safety or to the Security of Network and Information Systems Regulations 2018.

Future iterations of the Resilience Plan

The Independent Reviewer made some recommendations for improvements in future iterations of the Resilience Plan. While we agree that the areas identified below require improvement, we do not consider their current status prevents us from approving the Resilience Plan as granted by this letter. However, we expect to see consideration and/or implementation (as appropriate) of the following recommendations in the next iterations of the Resilience Plan:

- The Resilience Plan is based on existing constituent plans and procedures which it documents, and the Independent Reviewer confirmed that the relevant documents are in place with good centralised management processes to ensure timely review and training. However, as noted in the IR Report, the Independent Reviewer found that the documents were not referenced in a robust and consistent manner, making it difficult to trace down the high-level statements in the Resilience Plan to the underlying documents. We agree that including a clearly mapped and up to date list of the key documentation in the next iteration of the Resilience Plan would aid future reviews that we may carry out.
- The Independent Reviewer found that NERL Business Impact Analysis process (as defined in the Resilience Plan) is fundamentally sound. However, it noted that for most of the assets NERL relies heavily on the high levels of confidence in its proactive resilience that are largely based on assumptions in the asset Safety Cases (as defined in the Resilience Plan). There is a lower level of confidence in the reactive resilience which could lead to slower recovery with unacceptable levels of delay and disruption. The Independent Reviewer recommended that NERL should assess a wider range of disruption impacts (such as partial failures rather than total failures) and use assumptions consistent with continued operation at normal levels of service. This would give a more balanced reliance on reactive resilience with greater confidence of meeting the resilience criteria. We agree that basing the resilience of service delivery on assumptions in the asset safety cases may not drive recovery times that minimise service disruption. However, we recognise that, in carrying out a risk assessment to determine whether to mitigate or accept these risks, you found that the risk of occurrence in most cases was low. While there is currently lower confidence in the reactive resilience at present, the resilience thresholds we agreed with you provide clear expectations and parameters around reactive resilience and levels of delay. We would expect confidence to increase with further iterations of the Resilience Plan as NERL assesses a wider range of disruptive events, as recommended by the Independent Reviewer.
- The Independent Reviewer noted that the resilience processes have been applied to the new D-SESAR operational systems but suggested that, for such a large step-change, it would be appropriate to develop enhanced resilience procedures for D-SESAR. We agree with the Independent Reviewer that there is further work to be done on resilience in relation to the introduction of D-SESAR, on both the old and the new systems. The Independent Reviewer notes that you have already identified this and are working on solutions for the next iteration of the Resilience Plan. We will monitor this closely through the next iteration of your Resilience Plan.

In addition to the recommendations in the IR Report we noted that the Independent Reviewer reported that NERL prioritises traffic on a 'first-come-first-served' basis. However, we saw no evidence in the Resilience Plan or the IR Report that NERL has taken

into account our view² that the non-discrimination obligation in the licence allows NERL to take into account “*the need to maintain the most expeditious flow of air traffic as a whole without unreasonably delaying or diverting individual aircraft*”. We note that NERL does this in times of high demand and through short-term air traffic management procedures to manage flow from airports into capacity constrained areas. It would be useful to include more details of the capacity reallocation prioritisation policy and your process for incorporating the views of your stakeholders in the next iteration of the Resilience Plan.

On-going monitoring regime

In CAP 1682 we said that we may take account of other forms of delay and cancellations which could be indicators of NERL’s resilience performance. We also stated that we would monitor incidents and trends that fall short of formal intervention thresholds to check that there were no underlying systemic issues. We will work with you to agree mechanisms and parameters for regular reporting which can be incorporated into the Resilience Plan as it is applied in practice.

We look forward to working with you on updating the Resilience Plan, due in March 2021, in accordance with Condition 2.13 of the NERL Licence.

Yours sincerely

A handwritten signature in black ink that reads "Paul Smith". The signature is written in a cursive, slightly informal style.

Paul Smith
Group Director

² Set out in a letter to NERL on 29 June 2016, see Appendix D