

Submission by Prospect to CAP1758 - Draft UK Reference
Period 3 Performance Plan Proposals.

12th April 2019

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Introduction

1. Prospect is the UK trade union representing Air Traffic Controllers (ATCOs), Air Traffic System Specialists and Specialist workers within Air Traffic Management across the vast majority of UK Air Navigation Service Providers. This document outlines the formal written response to CAP1758 on behalf of Prospect's Air Traffic Control Officers (ATCOs') and Air Traffic System Specialists (ATSS) Branches.

Executive Summary

2. Prospect is supportive of the NERL Revised Business Plan, its concepts, high level approach and broad aims. We felt this was a considered, comprehensive plan that tackled some key areas, and would produce a fit for purpose, modern and efficient service for the travelling public
3. We strongly feel that the Draft Performance Plan as tabled by the CAA considerably weakens the ability of NERL to provide this and that a focus on cost has once again prevailed, rather than a focus on providing the tools, airspace and people to deliver a high quality and resilient service.
4. The Draft Performance Plan as it is currently set out is unachievable. The knock-on effect will be a delay to the airspace modernisation and technology upgrade programs, which will ultimately end up increasing the cost to airspace users through increased delay.
5. NERL will be forced to prioritise day to day service delivery at the expense of the rest of the objectives of the plan.
6. We are extremely concerned about the proposed levels of regulatory return, which are very modest given the size and nature of the business, and that the Draft Performance Plan puts this under even more pressure with levels of penalty and choice of traffic forecast. There is a significant risk of detrimental social consequences as NERL would likely seek to protect its return as much as possible, probably at the expense of staff.
7. We do however feel that the process and proposals for RP3 are less prescriptive, and that some lessons from the regulatory approach in RP2 have been learned.
8. The level of ambition in NERL's Revised Business Plan is high, with three important areas to be delivered, namely;
 - a. A high quality, resilient day to day service
 - b. A significant airspace modernisation program

- c. The introduction of a significant number of demanding and complex technological upgrade programs.¹
9. This is probably the most challenging reference period NERL has faced and it is important that the performance plan allows for the full level of resource required to enable it to be delivered. There is a real and substantial risk that as currently set out the draft performance plan does not meet the NERL requirements. Without the levels of resource as set out in NERL's proposals, service delivery will have to be prioritised, to the detriment of airspace modernisation and technology upgrade programs.
10. The levels of incentives (in reality penalties) are of concern when considered with the rest of the plan. It is likely that NERL will be in penalty on the capacity incentive every year, given the number of projects that need to be delivered. There needs to be proper provision for delay to be accrued as the direct result of technology or airspace introduction, without taking anything away from an allowance for day to day service delay. NERL (and our members) provide a good, consistent service, which is significantly better than the comparator group ANSPs and to be penalised for this due to the introduction of service enhancing measures will be extremely demotivating and unacceptable.
11. The 3Di target as currently set out is likely to be unachievable, and we do not understand the rationale or evidence that the CAA is citing to continue the current downward trend as set out. LAMP (the primary enabler for a lower 3Di score) was not delivered in RP2 and until significant airspace change is enacted, lowering the 3Di score in rising traffic will be impossible.

General Remarks

12. Prospect broadly supports NERL's Revised Business Plan and welcomes the general recognition for increased resilience and capacity improvements through greater numbers of staff, a significant investment in new technology and the modernisation of airspace. We note that the CAA are, at a high level, supportive of the approach and concepts of the plan.
13. We commend the CAA in its forward-looking approach to ADS-B surveillance over the ocean, which will bring significant benefits in safety, capacity and fuel burn / environmental improvements. However, we do have concerns over the CAA's proposals which allow only the partial recovery of the costs involved and its proposals for a review, as set out further in this document.
14. The CAA's views on airspace modernisation are very welcome, and it is of huge benefit that NERL's proposals on this have been accepted as is. Airspace desperately needs modernisation – not least to generate additional capacity, but also to take

¹ It is important to note that the technological upgrade programs are essential to the delivery of airspace modernisation, as the current legacy systems are unable to support modern airspace structures and usage.

advantage of the advanced technologies that are now available and continue to be developed, for deployment on board the aircraft, on the ground and in space. The overarching issue surrounding the reduction proposed by the CAA on the Opex allowance could put this at risk through the need to prioritise staff to service delivery.

15. We will cautiously examine any proposals to introduce a condition of the NERL License with respect to airspace modernisation, as such conditions should reflect matters for which NERL is genuinely accountable. There are many other stakeholders that are required to play their part in the delivery of successful airspace changes.
16. We also recognise and welcome the increases in Opex that the CAA has allowed in 2018 and 2019. This has helped amongst other things facilitate the recruitment of new trainees which in the fullness of time will allow for greater resilience and capacity. NERL has also had to fund costs in support of new technology (e.g. data centres) as well as a significant rise to the threat from cyber security.
17. Taken as a whole, however, the CAA's proposal poses real threats to NERL delivering the desired outcomes. It is inevitable that the smaller proposed increase in Opex against the NERL Revised Business Plan - in the context of the day-to-day pressure on service delivery as traffic volumes continue to grow - would give rise to resourcing challenges around Project Delivery and Transition and also significantly hamper the efforts to deliver the much-needed Airspace Modernisation.
18. Increasing operational staffing is of paramount importance to enable NERL to meet the growing capacity challenge. This needs to be done now, due the lead-times for ATCO training. It is worth noting that, particularly in Germany and France, failure to recognise this in RP2 has resulted in eye-wateringly high delays, and significant disruption to the travelling public. There is no reason that the UK should be in this position, but investment in sufficient levels of resource needs to start now.
19. We feel that the proposals set out in CAP1758 do not provide sufficient evidence to lend weight to the CAA's rationale for its conclusions. This is particularly pertinent to staff costs, and proposals on the DB scheme with respect to deficit repair and trapped surplus. We urge the CAA to revisit Opex – modelling these costs against the demands of service delivery and delivery of the change programmes: recognising that many of the cost savings from the change programmes will not accrue until after the RP3 period. The final business plan has to acknowledge that the investment programme includes an element of Opex 'spend to save'.
20. The choice of traffic forecast is a cause for concern, although we understand the CAA's points around independence, we maintain that the NERL forecast is of a higher quality, and reduces the financial risk to NERL concerning the traffic risk sharing mechanism with respect to actual traffic v traffic forecast when using STATFOR. Para 1.31 of the Draft Performance Plan states NERL's approach is theoretically preferable, so put simply, if there is a higher quality and more accurate forecast – why wouldn't you use it?
21. We very much welcomed observer status in the customer consultation process that allowed us to hear the airlines' thoughts and points of view first hand, which can aid in communicating to our members decisions around the performance plan. This also

helps inform our conversations with NERL and demonstrates a real commitment to social dialogue.

22. We note with interest the comments made in para 6, page 6 of the Draft Performance Plan. We understand that the CAA requires NERL to provide a safe and high-quality service, but we seek more clarity on what is defined as 'high quality'. Throughout RP2 so far, NATS has largely been within acceptable ranges of the targets however we have still seen complaints that have led to the project Oberon and Palamon investigations. These investigations have been a distraction, act as a demotivator to the hard-working operational staff and consume valuable resource. We would argue that if NERL accepts the plan, and broadly delivers on its targets, then the regulator should robustly defend NERL and rebut complaints of this type, which can reasonably be described as vexatious. NERL cannot continue to be distracted by vitriolic airlines who are using legislation as a lobbying tool. Resource and cost in dealing with these are disproportionate to the actual issue. Both NERL and our members need to be allowed to focus on the job in hand.
23. NATS has been at the forefront of economic regulation of ATM services in Europe since the provisions of the Transport Act were enacted to facilitate the NATS PPP. Our members have in many ways borne the brunt of the continued 'do more for less' (and repeat ad nauseum) mantra. In our view, this drive for greater and greater efficiency savings cannot be sustained indefinitely and a tipping point is reached where further cuts threaten the ability of the regulated business to perform effectively and deliver a quality service.
24. These fears were borne out during RP2. Despite our protestations, the drive to focus on cost above all else and the ensuing round of redundancies as RP2 commenced have resulted in an acute shortage of skilled staff in a number of areas. These staff - our members - now face daily challenges in resourcing and delivering capacity and a quality service to customers. The interventions by the CAA as set out in the draft performance plan risk exacerbating this.
25. It is worth highlighting Eurocontrol's Performance Review Commission's views on cost capacity.
26. *"The introduction of binding economic and capacity performance targets by the SES Performance Scheme in 2012 contributed to a steady improvement in cost-efficiency, while on the capacity side the Air Navigation Service (ANS) system benefited from lower traffic levels caused by the economic crisis which began in 2008. While the continuous improvement in cost-efficiency is to be welcomed, taking the economic view, i.e. combining provision and delay costs, the PRC notes with concern however that a significant proportion of these cost-efficiency savings are being absorbed by the sustained increase in ATFM delay costs. The PRC recalls that it had expressed concerns in previous performance review reports that delays would also increase unless sufficient attention was focussed on capacity management."*
27. *"With the focus mainly on cost savings over the past years, the system benefited from the depressed traffic levels following the start of the economic crisis in 2008. However, with traffic growing again it is vital to work proactively on capacity deployment in order to be able to accommodate forecast demand and to avoid exponential increases of delay costs to airspace users."²*

² <https://www.eurocontrol.int/publications/performance-review-report-prr-2017>

Safety

2.16 We welcome comments on any issues raised and our proposed approach to safety.

28. We are supportive of the CAA's approach to safety. NATS has a good safety track record, and a strong focus on an open and just culture. However, it is important that NATS does not become complacent. There is a risk that commercial pressure and continued and baseless accusations on service quality from a certain airline and airport could lead to the balance between safety and service becoming strained. The CAA should also pay particular attention to the interdependencies between targets and incentives to ensure they are realistic, achievable and do not incentivise short-term decision-making to the detriment either of safety or long-term improvement.

Environment

3.36 We welcome comments on any of the issues raised in this chapter and in particular on our proposals for changes to the calculation of the 3Di metric, the revised 3Di targets and financial incentives.

3.37 We also welcome comments on our proposed approach to defining the RP3 CDO monitoring reference height.

29. Our members have helped NATS make significant improvements in its environmental performance over RP2. There is no silver bullet when it comes to environmental improvement and gains are made by small incremental changes. 3Di is well known amongst the air traffic control community and is often at the forefront of decision-making in operation rooms. ATCOs are generally motivated to ensure flight trajectories are as environmentally efficient as possible and it is part of professional pride to enable every aircraft route to be as efficient as possible. Examples include striving to give each aircraft the most direct route possible, and the most efficient cruising flight level available.
30. This is a fragile balance as increasing traffic exponentially increases complexity which therefore brings more aircraft in to more numerous conflicts and in turn reduces the ability to provide the most efficient flight profile.
31. We note that the CAA has decided not to agree NATS' request to enhance the quality and appropriateness of the 3Di matrix by excluding factors outside of NATS' control, apart from training flights etc. as per the first bullet point in para. 3.13.
32. As representatives of experts who operate in the operational environment continuously, we ask the CAA to review this position, to ensure that the measure has credibility as an incentive and doesn't become irrelevant to operational staff.
33. Flights that are diverting due to a runway closure are often high workload events, the situation is usually unexpected, and in the event of a runway closure at a medium or

busy airport, becomes complex very quickly. The immediate focus involves accommodating many diversion requests, tactically arranging routings, directing these aircraft around other traffic, and balancing the delivery of diverting aircraft to other airfields, where there is often limited capacity. Clearly these situations are not of NERLs' making and are complex enough, without worrying about environmental performance. In fact, this becomes of little to no consequence in difficult and unexpected situations. Capturing these flights as part of the 3Di score is just demotivating, in a stressful and high workload situation. It is outside of NERL and its staff's control as the focus has to be entirely on aircraft safety, often with aircraft diverting to unfamiliar airfields, with limited fuel.

34. Flights that are affected by other airspace events should also be excluded, particularly in situations with significant weather. The UK can experience significant weather disruption, particularly in the summer, and it is not unusual for entire sectors of airspace to be disrupted by bad weather. When severe weather is a clear and direct hazard to the safe operation of a flight, quite rightly pilots will refuse to fly through it. This often entails a very complex and high workload with controllers often having to think rapidly in rerouting aircraft. Unfortunately, this can often add track miles to an aircraft's route, as they fly around the area of weather in question. Clearly we cannot control the weather, no matter how much we may wish to. Therefore, it is entirely inappropriate to be penalised through 3Di for these routes. There is a direct and clear responsibility on both the pilot and controller to ensure the safe operation of a flight, by routing it away from weather, and to allow these flights to be counted in the 3Di matrix leads to a direct correlation between an incentive (with the potential in this case for financial penalty) and safety. This is clearly not to be tolerated in an operational environment.
35. NERL will have some influence in airspace design, but to anticipate that 3Di will improve drastically could be presumptuous. Many factors contribute to 3Di performance but to assume improvement in RP3 because of airspace design, without knowing what the redesign will look like, how it will improve performance or when it will be in place is approaching matters in the wrong order. Currently there are no viable proposals to allow the proposed 3Di targets to be met. There are many factors and stakeholders that influence airspace design. Noise and ground based stakeholders have a large influence, and it's likely these benefits won't be delivered until close to the end of RP3. It is probable that the most environmentally efficient routes (for aircraft emissions) will not be achieved due to the need to deconflict aircraft in congested airspace, and to accommodate ground-based stakeholder objections. 3Di improvement requires incremental small changes many of which have been achieved in RP2 and there is limited scope for more in RP3.
36. The proposed 3Di targets stem from those set in RP2 which included an assumed benefit from the delivery of LAMP. As this was not delivered we would urge the CAA to set targets from a new start point, and consider them moving forward around airspace change implementation dates, perhaps having a non-linear target over the reference period. The ability to improve 3Di will be extremely limited in the short term, and incentivising the wrong target could actually have the opposite effect, with credibility of the measure becoming lost, and operational staff, knowing targets are unrealistic and potentially unachievable, lose interest in striving to improve environmental performance. (Why bother if you can't achieve them?).

Capacity

4.54 Stakeholders are invited to submit their views on any of the issues discussed in this chapter and in particular on:

- *our draft proposals for the targets for capacity metrics and the associated financial incentives; and*
- *our draft proposal to introduce modulation for the C2 metric for material variation between forecast and actual traffic volumes.*

37. Set against the backdrop of pressure on Service Delivery and Opex reductions, our view on Capacity targets reflects the need to strike the right balance between reward and incentive to deliver, against penalty for poor performance. Therefore, the C2 capacity targets must be realistic and achievable against the forecast traffic and to an extent we support the view that the C2 targets are modulated to protect against large changes in traffic volumes. We would not agree however that the targets set out by the CAA are realistic when compared to the Opex interventions in the draft National Performance Plan. With seven complex deployments to deliver over the reference period, a mechanism that divorces delay due to their introduction from day to day operational delay is essential. Indeed, if this is not allowed for, then the strong possibility exists for unintended safety risks to creep in. NERL could unconsciously seek to reduce transition delay to the bare minimum in order to reduce the level of penalty. This could have serious and unintended safety risks through not sufficiently managing traffic levels as operational staff bed in and familiarise themselves with the new technology and airspace.
38. We also have a concern on the level of incentive that has been proposed, particularly when taken in context with the rest of the plan as a whole. Should NERL be in significant penalty - likely given previous comments around the overall approach - this could make up a significant percentage of the overall regulatory return, placing further pressure on NERL financing and shareholder expectation. The incentives need to be set so they are realistic, and to a degree provide some motivation – but not at such a level that they end up with short-term decision-making, with a culture of preventing delay at all cost (literally) which then impacts the airspace modernisation program or technology upgrades as front-line staff are not able to be resourced to provide their expert input. There is a real danger that tough decisions around where to place resource could be skewed with the proposed incentives.
39. It must also be recognised that there are a large number of technology and airspace changes to implement, which again will impact on capacity albeit temporarily. We note the CAA comments about the legality of NERL's proposal to allow for this, and we would urge that – particularly in the approach to C2 an adequate solution can be found to manage the introduction of project delay outside of normal service delivery delay. It is highly likely that if this cannot be achieved then NERL will be in penalty every year of RP3. This will then become counterproductive as an incentive, due to the fact that if NERL will be in penalty anyway (due to transition delay), there is no reason to strive to deliver capacity in line with the target. If NERL will be in penalty anyway there will be no reason for our members to aid in enhancing capacity or reducing general day to day service delay.

RP3 Costs

5.70 We would welcome views on any aspect of the issues raised in this chapter, and in particular on:

- *our assumptions for operating costs, non-regulatory revenues and capital expenditure to support the calibration of NERL's price control and the Determined Costs in the UK performance plan;*
- *whether we should consider issuing a Regulatory Policy Statement in respect of our pensions policy; and*
- *how best to improve the governance and incentive arrangements relating to NERL's capital expenditure and whether NERL should have a new licence obligation to support and drive forward airspace modernisation.*

40. We reject the conclusion on Opex efficiency in para 5.12 which reflects the 'Steer/Helios efficient Operator model'. There is insufficient evidence to suggest that such Opex reductions can take place without giving rise to the under-staffing and resource shortages as identified in para 5.13. This would likely result in NERL being unable to provide a high-quality service as suggested in para 6 of the Draft Performance Plan.
41. The report did conclude that ATCO salaries are in line with European ANSP counterparts, and the anticipated salary growth is reasonable. There is a global shortage of ATCOs and NERL will need to remain competitive in this labour market.
42. Para 5.23 – is a very arbitrary assumption by the CAA with no basis that efficiency savings can start in 2019 as against 2020 – our view with DP En-route scheduled for introduction from 2020 onwards is that this will not be the case. We challenge the CAA to describe how it envisages NERL accomplishing this, together with which specific areas of NERL where these efficiencies should be delivered.
43. Para 5.25 - £71 million is a significant gap and an Opex reduction of that magnitude cannot simply be absorbed without impact. We will strongly resist any moves to transfer the burden onto NERL employees in order to achieve the reductions. Any consequential industrial unrest is likely to have a significant impact on service delivery.
44. We note that the CAA has broadly used historical trends as one piece of evidence when drawing conclusions around cost reductions. Whilst this shows strong performance and commitment on efficiency both from the regulatory approach and from NERL (as well as our members), the ability to continue this trend is now somewhat limited given the current and future operating environment of NERL. To expect a continued reduction in cost, just because that is what has happened before is not logical, particularly when set within the context of the investment program, airspace modernisation and growing traffic. Indeed, the very fact that NERL has had to increase costs at the end of RP2 itself demonstrates that this approach simply does not work.
45. We are concerned over the proposals for the reduction in regulatory return. We believe this doesn't fully take in to account the specifics and risks of the NERL business and the service it provides.
46. The regulatory return proposed is extremely thin when set in the context of the pressures on cost that the revised incentives, and the use of the STATFOR traffic forecast present. Whilst not a reason in itself to allow for a larger level of regulatory return, the significantly lower levels of returns proposed could cause shareholders to seek to protect what returns they can. It is possible, indeed likely, that the shareholders will direct the board of NERL to maximise returns as much as possible to protect the level of return they have been accustomed to. Given that the current draft NPP is challenging to say the least, (and likely we will be unable to meet service delivery or 3Di targets), we also fear

that the level of incentive (particularly penalties on 3Di and capacity) will put even more pressure on the regulatory return allowance, squeezing this further.

47. The knock-on effect of this will be pressure on costs and spending which will inevitably fall on staff, given this is a large part of the cost base. We have seen in RP2 that staff morale was adversely affected when undue or unfair pressure was brought to bear, which lead to a lack of motivation, particularly when voluntary overtime was required. For the avoidance of doubt, RP3 has significant levels of challenging work, probably unmatched in any previous regulatory period, with an extremely limited number of people to perform and deliver it. Our members will not accept a reduction or stagnation in their terms and conditions to protect NERL's profit. There are significant risks to the delivery of this plan through unintended but foreseeable social consequences if the regulatory return as set out is left unchanged.
48. Following a bilateral meeting with the CAA we gained greater clarification on the CAA's view on non-regulatory income. Whilst it is true to say that, as this reduces some elements of cost to airspace users and efficiencies may be expected to be reflected in the NERL cost base, this can't necessarily translate to direct savings on a one-to-one basis. NERL infrastructure is used to provide various services, and the infrastructure will still be needed for NERL activity irrespective of any reduction in external revenue received.
49. Areas where NERL secures fees from third parties such as for the Sale of Radar Data have limited scope for expansion. If the CAA genuinely wants NATS to focus on Service Delivery and Resilience, the Delivery of its 'D-SESAR' Technology refresh programme and thereafter Airspace Modernisation, it is difficult to see where any significant external revenue generation would arise. In general terms also, NERL is not in the business of what might be described more generally as 'Commercial Activity', that is the domain of NSL, but rightly NERL will continue to seek to recover external revenue to offset costs where such opportunities arise from the regulated business infrastructure. Increasing the non-regulatory return is actually just a proxy for reducing costs further, which will aggravate all of the funding issues previously referenced in this document.
50. There are also unintended consequences in any reduction to the proposed Capex program. Should this not be funded as set out in the NERL Revised Business Plan, then additional costs in the form of redundancy payments may well be incurred, due to staff not being able to be deployed to various programmes. If these have to be deferred to a later date when the capital expenditure is made available.³
51. Following the adoption of the EU wide performance targets we note that the EU cost reduction target was set at 1.9% p.a. This is significantly lower than the cost reduction of the draft performance plan. NERL has consistently reduced its prices at a rate higher than the EU wide target, and given the resource that will be needed to deliver the plan as a whole, we question why the CAA determines that NERL's savings are required to be so much higher (circa 4%) than the EU wide target.

³ Large and/or complex technology programmes are prone to delays as can be seen by many such programmes across different industries (Met Police, NHS, HS2 etc.). Additionally, it is essential that corners are not cut and proper attention is paid to ensure safety. Lessons should be learned following the Boeing Max incidents.

Pensions

52. It is critically important that the Pensions 'Regulatory Policy Statement' is supported. We believe that this is in the long-term interest of both the airspace users and flying public as it acts to limit the future cost exposure of the DB scheme.
53. However, it is dangerous to set expectations around surplus levels. The trustees have legal obligations and in conjunction with NERL set the required level of funding. Whilst it is right for CAA to see assurance that the scheme is being managed appropriately, once that has been done it should not then base funding decisions on 'what if's' and conjecture. The customers may have a desire to have cheaper pension costs, but then the customers want cheaper everything. The costs are appropriate, have been significantly mitigated, twice,⁴ and if and when a surplus is generated, then and only then should conversations be held with the appropriate stakeholders to determine the appropriate course of action, not customers who only have one goal in mind. As we have seen before, rash, unconsidered decisions around the DB scheme funding and levels of surplus can in the long run result in greater costs if not managed appropriately.

Financeability

7.38 We would welcome views on any aspect of the issues raised in this chapter and in particular on our approach to the cost of capital and financeability.

54. We do not agree on the CAA's approach to the calculation of cost of capital. We believe the CAA is taking general policy decisions based on the wider government regulated industry, and not fully examining the specifics of the NERL business. Being seen to regulate in a broadly similar way to other government economic regulators is not a good enough reason for the decision proposed in the draft performance plan. NERL faces very different risks than a water company for example, and these should be properly reflected.

Uncertainty Mechanisms

9.36 We welcome comments from stakeholders on the issues raised in this chapter and in particular whether our draft proposals create sufficient flexibility to allow for the efficient funding of airspace modernisation.

55. We support the current arrangements for traffic risk sharing, and for unforeseen costs. We are particularly keen that the CAA continues to appreciate that unforeseen costs may well result from airspace modernisation and that estimates of the costs of projects which are as yet not fully defined will be subject to change.

⁴ The trade unions in NATS have committed to two memorandums of understanding with respect to pensionable pay rises which allow the pension trustees confidence in a cap on increases in pensionable pay. This allows for a more conservative level of assumptions on pay, reducing future liabilities, therefore saving the airspace users considerable sums of money in funding pension contributions.

56. It is crucial that NERL has access to mechanisms for additional funding for unforeseen costs that arise, not only within existing planned projects but from other known unknown risks such as cyber security, and the increasing use of drones.

Terminal Navigation Services

10.27 We welcome comments from stakeholders on the issues raised in this chapter including our proposal to retain London City in the scope of the performance scheme for the purposes of TANS and our proposed TANS capacity target.

57. We support the CAA view that the UK TANS Market is contestable. We have seen a labour market emerge, and as the representative union for ATCOs across the UK, with over 2000 members we have a comprehensive overview of that market.

58. For the purposes of consistency we support the continued inclusion of London City in the performance Plan.

Oceanic

11.66 We welcome stakeholders' views on any of the issues discussed in this chapter. In particular, stakeholders are encouraged to comment on:

- *the approach to determining the building blocks and the proposed values of those building blocks;*
- *the decision to reject NERL's proposal of a pass-through approach ADS-B data costs to users;*
- *the proposed governance and performance monitoring arrangements regarding the costs and benefits of ADS-B; and*
- *whether the Oceanic price control should have a traffic risk sharing mechanism and whether Oceanic charges should be profiled or not.*

59. The adjustments made by the CAA (para 11.48) seem somewhat arbitrary. We challenge the proposed pensions adjustment (para 11.50) in similar way to our challenge to substantive pension costs for the En-route element. We also challenge the reduction of the data charge and non-staff opex by 5%. There seems to be no evidence to back up this decision.

60. We would support the inclusion of a traffic risk sharing mechanism. This would be consistent with the en-route approach used for the rest of NERL, and allows risk to be managed in a more appropriate way.

61. Airline operating behaviour can vary considerably from airline to airline. We have seen across Europe that when fuel saving and capacity increasing initiatives are made available, airlines do not always take advantage of this. Flexible use of airspace

procedures and the use of conditional routes are all good examples. Should NERL review the benefits after two years, it would need to be in the context that the airspace users had taken reasonable steps to avail themselves of the benefits offered by the use of ADS-B services within Oceanic airspace.

Summary

62. In summary we request the CAA make the following changes to the Draft Performance Plan:

Revisit the cost of capital and regulatory return proposals.

Remove C2 from the incentive scheme for transition delay or otherwise allow for transition delay in the C2 metric.

Reconsider the 3Di target taking in to account LAMP has not been delivered.

Allow the NERL Revised Business Plan proposals on Opex and Capex to ensure that the plan can be fully delivered.

Publish a pension Regulatory Policy Statement.

Allow the use of NERL's own Traffic Forecast

Allow full cost of data for the Oceanic ADS-B service