

**Office of Rail and Road and Network Rail**

# #32051 Review Capability and Governance of Capacity Allocation

Final Report

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This report takes into account the particular instructions and requirements of our client. It is not intended for and should not be relied upon by any third party and no responsibility is undertaken to any third party.

Job number 292981-00

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## Contents

<b>1.</b>	<b>Executive Summary</b>	<b>1</b>
1.1	Purpose of Study	1
1.2	Overview	1
1.3	Capacity Allocation Process (CAP)	2
1.4	Recommendations	3
1.5	Acknowledgements	9
<b>2.</b>	<b>Introduction</b>	<b>10</b>
2.1	Background	10
2.2	Aims, purpose and requirements	10
2.3	Approach and context	10
2.4	Report structure	10
2.5	Glossary of terms	11
<b>3.</b>	<b>Methods &amp; Approach</b>	<b>14</b>
3.1	Overview	14
3.2	Familiarisation	15
3.3	Evidence collection	15
3.4	Moderation	16
3.5	Reporting	16
<b>4.</b>	<b>Findings</b>	<b>17</b>
4.1	Q1) Whether the current CAP outcomes comply with all applicable Licence Conditions and Regulations?	17
4.2	Q2) How effectively does Network Rail as licence holder govern the interactions between Network Rail's regions and System Operator [in relation to LC 6.9 and 7.10]?	19
4.3	Q3) How do System Operator and the Network Rail regions record the quality, effectiveness and timeliness of delivery of the CAP and keep the CAP processes and capabilities under review to deliver best practice in context of regional devolution?	20
4.4	Q4) How does Network Rail engage with and manage stakeholders to the CAP process, including access beneficiaries, ORR and funders?	21
4.5	Q5) How does Network Rail communicate its process and decisions from the CAP to stakeholders in accordance with its Licence and Access Regulation 19 [in a timely manner to allow industry to take business decisions]?	23
4.6	Q6) How does Network Rail ensure the quality of information for current and future capacity is accessible; complete; transparent and up to date?	24
4.7	Q7) What process does Network Rail follow to create a clear understanding over the appropriate levels of evidence, tools and timescales that should be in place to effectively inform CAP decisions (and is that process applied consistently)?	27
4.8	Q8) How does Network Rail agree with ORR the appropriate levels of evidence, tools and timescales to effectively inform it in its response to statutory access consultations?	29
<b>5.</b>	<b>Recommendations</b>	<b>31</b>
5.1	Overarching recommendations	31
5.2	Further guidance related to recommendation SOW32051-01 (process maps)	38
<b>6.</b>	<b>Appendices</b>	<b>A-1</b>

## Tables

Table 1 - Case study abbreviation terms	1
Table 2 - Review questions	1
Table 3 - Indicative CAP stages	2
Table 4 - Overarching recommendations and supporting actions and issues	4
Table 5 - Report Layout	10
Table 6 - Case Study abbreviation terms	11
Table 7 - Indicative CAP stages	11
Table 8 - Abbreviations used throughout this report	12
Table 9 - the 8 questions addressed in this report	14
Table 10 - Documents provided by case and source	15
Table 11 - Outline of Tools/Assessments completed for each assessment	28
Table 12 - Outlines an illustrative guideline in assessment methods, timescales, and basis of interpretation for the CAP process	29
Table 13 - Recommendations	32
Table 14 - Description of the steps for the flow chart	39
Table 15 - Summary of requirements from the Network Licence	B-1
Table 16 - Summary of requirements from the Railways Regulations 2016, Part 5, Reg 19	B-2

## Figures

Figure 1 – The Review Process	15
Figure 2 - SoAR Process Flow Chart	38

## Appendices

<b>Appendix A</b>	<b>A-1</b>
Mandate / Statement of Works	A-1
<b>Appendix B</b>	<b>B-1</b>
Summary of Requirements	B-1

# 1. Executive Summary

## 1.1 Purpose of Study

Effectively managing access to the network for train operators is important in ensuring the needs of passengers and freight customers are met, balancing service volumes against factors like performance and operability, and commercial requirements such as journey time and connectivity.

Network Rail and the Office of Rail and Road (ORR) have commissioned Arup, in partnership with Winder Phillips Associates, in their role as one of Network Rail's Independent Reporters to review how Network Rail discharges its duties in relation to the Capacity Allocation Process (CAP) set out in the Network Licence and the Guidance on the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016. In doing so they were also asked to look at how those processes work jointly between Network Rail and ORR where required.

To understand where the process has not worked as well as desired in some instances, the Reporter Team were asked to review six case studies. These cases were chosen by Network Rail and ORR as examples of where problems occurred rather than as a fully representative sample. All the case studies were unsupported applications, being either Section 17 for new rights or Section 22a for amended rights under the Railways Act 1993. Therefore, the outputs of this review cannot be compared with other, successful applications managed by Network Rail and ORR.

## 1.2 Overview

The case studies selected are listed in the table below and throughout the document the following terms are used to refer to the specific case studies:

**Table 1 - Case study abbreviation terms**

Case Study	Reference term
01 - Freightliner Heavy Haul Limited 8 <sup>th</sup> Supplemental Agreement Section 22A	FLHH
02 - GB Railfreight Limited 15 <sup>th</sup> Supplemental Agreement Section 22A	GBRf
03 - Great North Western Railway Company limited London-Blackpool Section 17	GNWR
04 - Grand Union Trains Limited London-Carmarthen Section 17	GUT-C
05 - "Wrexham-Bidston" (GBRf 17th Supplemental Agreement & Transport for Wales Rail Limited 4th Supplemental Agreement) Section 22As	Wrexham-Bidston
06 - West Coast Main Line Section 17s from Grand Union Trains and Avanti West Coast (AWC)	WCML

For each case study the Reporter Team were asked to review available documents related to each case (provided by Network Rail and the ORR) and carry out interviews with relevant participants in the process from Network Rail, ORR and the train and freight operators who had made applications for Access Rights. In doing so, the team were asked to assess each of the cases against eight specific questions as shown in Table 2 below:

**Table 2 - Review questions**

Review Questions for Case Studies
1. Whether the current CAP outcomes comply with all applicable Licence Conditions and Regulations (As outlined in Appendix B)?
2. How effectively does Network Rail as licence holder govern the interactions between Network Rail's regions and System Operator?

Review Questions for Case Studies
3. How do System Operator and the Network Rail regions record the quality, effectiveness and timeliness of delivery of the CAP and keep the CAP processes and capabilities under review to deliver best practice in context of regional devolution?
4. How does Network Rail engage with and manage stakeholders to the CAP process, including access beneficiaries, ORR and funders?
5. How does Network Rail communicate its process and decisions from the CAP to stakeholders in accordance with its Licence and Access Regulation 19?
6. How does Network Rail ensure the quality of information for current and future capacity is accessible; complete; transparent and up to date?
7. What process does Network Rail follow to create a clear understanding over the appropriate levels of evidence, tools and timescales that should be in place to effectively inform CAP decisions (and is that process applied consistently)?
8. How does Network Rail agree with ORR the appropriate levels of evidence, tools and timescales to effectively inform it in its response to statutory access consultations?

Informed by the evidence from the document review and interviews, an assessment for each case study was produced. These assessments were then compared across all case studies to ensure key issues had been explored. In some instances, evidence was more limited, given the time elapsed, but interviews helped to explore the issues that were relevant at the time.

From this work and answering the eight questions, a set of 22 suggested actions for improvement to the CAP have been developed and are described in this report. These actions have been grouped to create six overarching recommendations.

### 1.3 Capacity Allocation Process (CAP)

To help understand the CAP, we have broken it down into a number of stages. These are described in Table 3 below. We have used these to help target our recommendations. The stages should be treated as indicative and should be developed further by NR and ORR (in response to our first recommendation).

**Table 3 - Indicative CAP stages**

CAP Stage	Description
Pre-Application	<p>Operators discuss the possibility of additional access being required with NR. This could be in conjunction with the Customer Account team, or the Capacity Planning team. Sometimes this will be as part of discussions with other Operators, for instance in an Event Steering Group (ESG). NR may be able to give an indication of whether the Application can be supported, based on initial discussions.</p> <p>Paths are bid to the Capacity Planning team under the Train Operator Variation Request (TOVR) process. If capacity is available to accommodate the paths compliantly on the graph, they will be allowed to operate in anticipation of obtaining future firm Access Rights.</p> <p>The decision as to whether the Application can be supported or not will be made here by NR and will dictate the next step in the process.</p>
Submission of an application	<p>Submissions from an Applicant are made through the completion of either a Form F or Form P (for freight or passenger applications respectively)</p> <p>A supported Application is the subject of Industry consultation and is submitted to the Sale of Access Rights (SoAR) Panel for endorsement before proceeding to ORR for approval. At this stage evidence, such as performance data, may accompany the Application. These Applications are made under either Section 18 or Section 22.</p> <p>If NR is unable to support the Application then the Applicant submits a Section 17 or Section 22a Application directly to ORR. The reason for the lack of support is stated and evidence may be provided to support the Application. The Applicant will carry out Industry consultation in advance of their submission with responses forming part of the evidence considered by the ORR.</p>

CAP Stage	Description
Formal Representations	NR is invited to supply formal Representations to ORR as to why the Application cannot be supported. Evidence should be provided at this stage to support the position. The Applicant may also be asked for further information and/or evidence to support their Application.  The Applicant arranges an Industry Consultation lasting a full calendar month and responds to any concerns raised.
Discussions between the parties	Discussions can take place throughout the above stages in an attempt to reach an agreed position on the allocation of capacity.
ORR Consideration	ORR considers the Application and any accompanying evidence and directs NR to either grant or reject the Application.
Publication	The decision is made publicly available, and the Track Access Contract amended formally to reflect the new Rights.
Network Code	NR apply Network Code that governs the application of Access Rights into the timetable bid / offer processes (both LTP & STP).

## 1.4 Recommendations

The table below sets out the six overarching recommendations from this review which are based on the findings from the six case studies although it is important to note that these six case studies were selected for being particularly challenging and where problems had arisen. Each recommendation and its overall benefits and evidence of implementation that we would expect to see are described. We also show which of the eight review questions have prompted the recommendation.

Below this description of the recommendations, we list a number of suggested specific actions for improvement, describing the issues they would help to address. Each action has a reference number relating to the question that prompted it (so action 1.1 is the first action arising from question 1). These actions are described more fully in Section 4 of the report. There is a level of overlap between the actions but, as they were prompted by specific areas we were requested to investigate, they are all referenced in the recommendations table for completeness. Within the table, we also show which stage(s) of the CAP the action targets.

Unless explicitly stated otherwise, it can be assumed the actions were found to be relevant to all of the case studies.

This review is focussed on elements of the CAP supporting the Sale of Access Rights. Whilst processes relating to the use of the Network Code to develop the Working Timetable may be impacted by the recommendations, and NR and the ORR may choose to bring these within the scope of the recommendations, the context of these recommendations and actions is on process improvements relating to the Sale of Access Rights.

**Table 4 - Overarching recommendations and supporting actions and issues**

Ref Number	Recommendation	Benefits	Evidence of Implementation	Relevant review questions	Owner
SOW32051-01	Clarify the overarching CAP process including a definition, mapping out the individual stages, identifying how they are connected and who is accountable (e.g., System Operator or Region). Ensure the process requires proportional responses based on case complexity and that it provides clarity of decision making	Clarity on the process, clear expectations in terms of timescales and supporting evidence	Published process setting out all necessary steps and defined responsibilities	1, 2	Network Rail System Operator
Ref. in report	Suggested actions for improvement	Issues identified in the case study reviews to be addressed			Indicative CAP stage
1.1	Set out a clear definition of the CAP including what processes are to be covered within the CAP and identifying any other interacting industry processes which can impact / be impacted by the CAP but remain outside the scope of the CAP. It should cover relevant areas for improvement raised by this review.	What the CAP is, its definition, purpose, and what it covers, were unclear to many during the review process. Defining a linear process is not practical as the order of stages to go through may differ by types of Application (e.g., FOCs will generally seek a Train Path before an Access Right) and there are several entry points to the process.			All
1.2	Develop an overarching process description setting out how each of the interrelated processes work and include target timescales – this should cover initial approaches to Network Rail before Form P/F are submitted.	Processes for individual stages within the CAP were not often well defined. How stages interact and how those interactions vary based on the type of case were unclear.			All
1.3	Publish the principles to key stakeholders to provide clarity to assist in Applications and what responses will be expected at the various stages of the process.	Stakeholders were mostly aware of the guidance material available online but felt there was a lack of transparency over process and considerations during Network Rail’s internal stages.			Pre-Application, Submission, Discussions
2.1	Set out clearly using RACI or similar, the roles of Regions / Routes and System Operator in dealing with the various stages of the process.	The inconsistency in responsibilities and approaches taken by Regions created challenges for both Applicants and national Network Rail customer managers.			Pre-Application, Submission, Representations, Discussions
2.2	Provide clarity on who signs off decisions at Regional and central levels through the main stages of an Application to ensure transparency, particularly as decisions to not support an Application are not signed off at SoAR Panel.	Applicants did not feel there was enough clarity or transparency over who had ultimate accountability for decisions regarding support for Applications.			Pre-Application, Submission, Representations, Discussions

Ref Number	Recommendation	Benefits	Evidence of Implementation	Relevant review questions	Owner
SOW32051-02	Clarify the stakeholder engagement process which is published to all funders and access beneficiaries	Ensures transparency in the wider process and shows clearly how engagement influences decisions	Comprehensive process with evidence on each Application of the process followed and clearly referenced in decisions	4, 5	Network Rail
Ref. in report	Suggested actions for improvement	Issues identified in the case study reviews to be addressed			Indicative CAP stage
4.1 & 5.1	Network Rail should set out indicative timescales upon receipt of Application. These should identify agreed timescales and deliverables from all parties including ORR. For most cases these can follow a common template, however cases identified as complex may require bespoke arrangements which are developed based on lessons learned from previous cases.	<p>A common theme across case studies was a lack of clarity over how long an Application may take to be resolved, and the impact it could have on the ability for Applicants to make informed business decisions. Extended timescales also impacted the validity of assumptions used to inform Applications and supporting evidence. This lack of clarity often included perceived contradictions between different contractual arrangements, guidance documents and processes.</p> <p>Beyond initial representation timescales there is uncertainty over the time Network Rail will take to produce evidence, and the time ORR will take to declare it has sufficient evidence to then make a decision.</p>			All
4.2	Network Rail should summarise responses to consultation in a similar fashion to the way ORR summarises responses in providing its decisions to ORR and Applicants.	It was unclear in several of the cases if the Stakeholder consultation impacted on decisions. Summarising responses in any Representations to ORR would make it clearer if any of the feedback materially affected decisions taken.			Representations, Discussions
4.3	As part of the overall CAP, Network Rail should set out clearly their stakeholder engagement process including a published RACI, this should expand on currently documented arrangements such as that for formal industry consultations on Applications. This is consistent with action 2.1.	Parts of the process for stakeholder consultation is documented but timescales can be unclear, and the processes vary by Region. Providing greater clarity on what is required will improve overall consistency of response which is particularly important for cross Regional services.			All



Ref Number	Recommendation	Benefits	Evidence of Implementation	Relevant review questions	Owner
SOW32051-03	<p>Network Rail and ORR to produce guidance on how it presents and assesses capacity in the context of CAP. This should include:</p> <ul style="list-style-type: none"> <li>Outline factors that make up capacity and could be considered when assessing an Access Rights request application.</li> <li>Review methods in which future changes to the network capability can be published and accessed.</li> </ul>	<p>The range of methods and tools available to assess applications under CAP is complex and choice varies depending on case-by-case issues. Producing and maintaining guidance to outline possible approaches that may be applicable under CAP will make this more transparent. Incorporation of these factors into the current work to produce RAG scores for the Framework Capacity Statement will provide transparent upfront information on network capacity. Subject to the value in inclusion of each factor.</p>	<p>An agreed guidance for factors that could be considered under CAP and a published statement on the Network Rail website, alongside the regulatory requirements for publishing capacity.</p>	6	Network Rail / ORR
Ref. in report	Suggested actions for improvement	Issues identified in the case study reviews to be addressed			Indicative CAP stage
6.1	Complete the current work to publish capacity by Strategic Route Section as RAG status in the Framework Capacity Statement. Outline what the RAG status considers and excludes in terms of factors affecting capacity.	Information on available capacity was not always up-to-date nor was a process to keep it up-to-date evident at that time (GNWR).			Pre-Application, Representations, Discussions, ORR considerations
6.2	Consider the incorporation and value of wider capacity factors: traction power, level crossings, performance etc.	<p>Some interviewees raised questions about how capacity should be assessed, not just in terms of paths in the timetable but also other factors such as power supply, level crossing downtime and track maintenance requirements (GBRf)</p> <p>In the GUT-C case, Train Path capacity was compliant with TPRs, however, the application was unsupported on the grounds of performance.</p> <p>Power supply was a capacity limiting factor in the WCML case studies, determined through a detailed power supply study of the proposed timetable during the later stages of the case.</p>			Pre-Application, Representations, Discussions, ORR considerations
6.3	Review methods and processes in which future changes to the network that affect capacity can be indicated in terms of changes to capacity.	<p>It was unclear what the baseline was for future applications noting this was being addressed by an ESG (GUT-C).</p> <p>It was noted in one interview that Applications tend to be made on the current timetable rather than any future capacity.</p>			Pre-Application, Representations, Discussions, ORR considerations

Ref Number	Recommendation	Benefits	Evidence of Implementation	Relevant review questions	Owner
SOW32051-04	Develop a clear set of criteria for undertaking assessments of Access Rights applications. This should cover supported and unsupported Applications and include a consistent approach to evidence gathering.	Provision of clear guidelines will enable greater consistency in analytical support to future Applications.	Guidelines documented and available for potential Applicants setting out relevant tools and processes alongside a selection matrix based on risk and complexity of the individual case.	7	Network Rail System Operator
Ref. in report	Suggested actions for improvement	Issues identified in the case study reviews to be addressed			Indicative CAP stage
7.1	Develop guidelines and processes for identifying the key measures of capacity that are relevant to the Application, and the methods of assessing them. This should outline which approaches and tools are most appropriate for different types of Application, including indicative timescales and requirements for clear remits/scope.	No written process for setting out the appropriate levels of evidence, tools or timescales was provided as part of this review.			Pre-Application, Representations, Discussions, ORR Consideration
7.2	Produce guidance to both System Operator and Regions as to the process in agreeing the interpretation of results from the measures applied. This may, for example, link to CUI limits, performance objectives or level crossing risk limits.	Note that in some cases the requirements for evidence changed throughout the timeframe of the application. For example, the WCML application, included a review of Train Paths based on updating the 2013 capacity assessment, although not specific to the applications for WCML. Subsequently a re-cast timetable <sup>1</sup> aimed at accommodating Train Slots followed by RailSys performance modelling.			Pre-Application, Representations, Discussions, ORR Consideration
7.3	Share guidance with Applicants and stakeholders to ensure there is transparency in the potential process of assessments Network Rail may undertake.	Linked to 7.2 above.			Pre-Application, Representations, Discussions, ORR Consideration

<sup>1</sup> A timetable which may be produced by an Event Steering Group in preparation for an Event

Ref Number	Recommendation	Benefits	Evidence of Implementation	Relevant review questions	Owner
SOW32051-05	Develop an agreed protocol between ORR and Network Rail setting out the evidence to be provided on an agreed scale of case complexity. Each formal application can be assessed against the scale with Applicants on a case-by-case basis.	Ensure clarity on expectations on all parties in provision of evidence	Agreed protocol provided to all key stakeholders	8	Network Rail / ORR
Ref. in report	Suggested actions for improvement	Issues identified in the case study reviews to be addressed			Indicative CAP stage
8.1	Network Rail and ORR to set out and agree a clear protocol for evidence requirements by case complexity and likely timescales.	All parties raised the issue that a lack of clarity over what evidence may be required to inform an Access Rights decision made it difficult to determine the timescales and resource requirements for managing Applications.			Representations, Discussions, ORR Consideration
8.2	Network Rail and ORR to agree specific case requirements for likely complex cases at the outset of an Application - this may be before or after Form P/F.	The interviews highlighted that it was often assumed by the ORR that Network Rail would know what evidence would be required to inform an Access Rights decision, in terms of both type of evidence (e.g., performance data), and also the form of that data (e.g. the method to be used and the exam question being asked). This lack of clarity could lead to extended timescales and a less collaborative working relationship.			Pre-Application, Representations, Discussions, ORR Consideration
8.3	For complex cases (based on the agreed protocol) Network Rail and ORR should set out on a case-by-case basis the key criteria for assessment/evidence outcomes that will influence decisions.	A common theme through the review process was that stakeholders did not feel confident they knew what the benchmark was for an Application to be successful and often felt that this could change during the process. The lack of transparency could make working relationships more challenging and also increased the likelihood of disputes.			Representations, Discussions, ORR Consideration
8.4	Network Rail to consider the need for an industry-wide framework which assesses whether the flexing requirements of an Application triggers the need for a timetable re-cast.	Under the CAP process consideration is required in terms of Train Slots which may only be feasible through re-cast or development of a timetable as was the case for the WCML case and completed via an ESG. However, there is no formal mechanism in the Network Code that stipulates operators <i>have</i> to bid in accordance with the outputs of an ESG.			Pre-Application, Representations, Discussions, ORR Consideration
8.5	Consider communication routes between ORR and Network Rail technical teams so that technical discussions can be held directly at the appropriate level.	There was no clear evidence that ORR and Network Rail technical teams directly communicated to discuss analysis leading to the risk of findings and review questions being misinterpreted.			Representations, Discussions, ORR Consideration

Ref Number	Recommendation	Benefits	Evidence of Implementation	Relevant review questions	Owner
SOW32051-06	Develop a continuous improvement process for sharing good practice and lessons learned	Support wider learning from cases	Agreed procedure and evidence of sharing	3	Network Rail
Ref. in report	Suggested actions for improvement	Issues identified in the case study reviews to be addressed			Indicative CAP stage
3.1	Review whether assessments of each Application would be beneficial, with greater focus placed on more complex cases.	Whilst each case is unique, there are often consistent elements which can be identified across case studies which could drive common approaches, improving the timescales and transparency of the CAP.			All
3.2	Lessons learnt and good practice to be shared across System Operator and Regions – this is particularly relevant for Open Access operators where it was stated that experience gained from previous Applications affected the way Regions handled current Applications	Many of these case studies presented new challenges to those involved, particularly for those working in Regional Teams being consulted on FNPO cases (Freight and Open Access). It was suggested that opportunities were being missed for lessons to be shared across Regions to improve processes and the customer experience for Applicants.			All

## 1.5 Acknowledgements

The Reporter team would like to express their thanks to the teams at ORR, Network Rail and train and freight operators who assisted in the review and provided open and honest responses to the questions raised and provided relevant documents.

## 2. Introduction

### 2.1 Background

Arup, supported by Winder Phillips Associates, has been appointed by the Office of Rail and Road (ORR) and Network Rail as Independent Reporter to review the capability and governance of Capacity Allocation. A copy of the mandate is included in Appendix A.

### 2.2 Aims, purpose and requirements

Specifically, the purpose of the review is to attempt to establish whether Network Rail is reasonably able to discharge its Licence Requirement and provide and comply with a Capacity Allocation Process (CAP) allowing persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

To meet this purpose, it was agreed to answer 8 questions for each of 6 case studies that have been impacted by specific factors, where it was perceived the case could have followed a more positive course. These were necessarily unsupported (“Section 17 or 22A”<sup>2</sup>) applications where there were issues of contention involved. In choosing these cases the mandate provided a means of stress testing the CAP when it is applied to cases where the supported (“Section 18 or 22”) applications would not be suitable. Our review is based on those case studies and any wider general observations made in the interviews conducted as part of this process. **It is recognised that this is therefore a biased sample and that the majority of Access Rights Applications progress more smoothly, also these case studies cannot give a full representation of practice in every Network Rail Route/Region, or every Applicant.**

It is important to note the review focussed on the process rather than the outcome of each case study – no opinion is provided on whether the decisions regarding the award of Access Rights were correct.

### 2.3 Approach and context

In order to answer the 8 questions in the mandate, the Reporter team have:

- Reviewed the Licence and Regulation requirements for establishing and operating the CAP
- Reviewed Network Rail process, guidance, and training documentation for implementing and managing the CAP
- Reviewed Network Rail and ORR documents for each of the case studies
- Interviewed relevant Network Rail and ORR staff to discuss the case studies and overall CAP process
- Interviewed key stakeholders to the case studies to understand their views.

### 2.4 Report structure

The structure of this report is presented in Table 5.

Table 5 - Report Layout

Section	Description
Section 1 - Executive Summary	Provides a high-level summary of this report’s findings and recommendations.
Section 2 - Introduction	Provides the background and summarises the aims and requirements of the Statement of Works.
Section 3 - Methods & Approach	A description of the approach and methodology adopted for the assurance assessment.

<sup>2</sup> Section 17 for new contracts and section 22A for amendments to existing contracts

Section	Description
Section 4 - Findings	Summarises the findings from the application of the methodology, analysis and evidence assessed.
Section 5 - Recommendations	Provides recommendations for future improvements.
Appendices	Provide additional detail in support of the main text including findings for each case study.

## 2.5 Glossary of terms

### 2.5.1 Case studies

Throughout the document the following terms are used to refer to the specific case studies:

**Table 6 - Case Study abbreviation terms**

Case Study	Reference term
01 - Freightliner Heavy Haul Limited 8 <sup>th</sup> Supplemental Agreement Section 22A	FLHH
02 - GB Railfreight Limited 15 <sup>th</sup> Supplemental Agreement Section 22A	GBRf
03 - Great North Western Railway Company limited London-Blackpool Section 17	GNWR
04 - Grand Union Trains Limited London-Carmarthen Section 17	GUT-C
05 - “Wrexham-Bidston” (GBRf 17th Supplemental Agreement & Transport for Wales Rail Limited 4th Supplemental Agreement) Section 22As	Wrexham-Bidston
06 - West Coast Main Line Section 17s from Grand Union Trains and Avanti West Coast (AWC)	WCML

### 2.5.2 The CAP

To help understand the CAP, we have broken it down into a number of stages. These are described in Table 7 below. We have used these to help target our recommendations. The stages should be treated as indicative and should be developed further by NR and ORR (in response to our first recommendation).

**Table 7 - Indicative CAP stages**

CAP Stage	Description
Pre-Application	<p>Operators discuss the possibility of additional access being required with NR. This could be in conjunction with the Customer Account team, or the Capacity Planning team. Sometimes this will be as part of discussions with other Operators, for instance in an Event Steering Group (ESG). NR may be able to give an indication of whether the Application can be supported, based on initial discussions.</p> <p>Paths are bid to the Capacity Planning team under the TOVR process. If capacity is available to accommodate the paths compliantly on the graph, they will be allowed to operate in anticipation of obtaining future firm Access Rights.</p> <p>The decision as to whether the Application can be supported or not will be made here by NR and will dictate the next step in the process.</p>
Submission of an application	<p>Submissions from an Applicant are made through the completion of either a Form F or Form P (for freight or passenger applications respectively)</p> <p>A supported Application is the subject of Industry consultation, and is submitted to the Sale of Access Rights (SoAR) Panel for endorsement before proceeding to ORR for approval. At this stage evidence, such as performance data, may accompany the Application. These Applications are made under either Section 18 or Section 22.</p> <p>If NR is unable to support the Application then the Applicant submits a Section 17 or Section 22a Application directly to ORR. The reason for the lack of support is stated, and evidence may be provided to support the Application. The Applicant will carry out Industry consultation in advance of their submission with responses forming part of the evidence considered by the ORR.</p>

CAP Stage	Description
Formal Representations	NR is invited to supply formal Representations to ORR as to why the Application cannot be supported. Evidence should be provided at this stage to support the position. The Applicant may also be asked for further information and/or evidence to support their Application.  The Applicant arranges an Industry Consultation lasting a full calendar month and responds to any concerns raised.
Discussions between the parties	Discussions can take place throughout the above stages in an attempt to reach an agreed position on the allocation of capacity.
ORR Consideration	ORR considers the Application and any accompanying evidence and directs NR to either grant or reject the Application.
Publication	The decision is made publicly available, and the Track Access Contract amended formally to reflect the new Rights.
Network Code	NR apply Network Code that governs the application of Access Rights into the timetable bid / offer processes (both LTP & STP).

### 2.5.3 Abbreviations

The following abbreviations are used throughout this report.

**Table 8 - Abbreviations used throughout this report**

Term	Abbreviation
Avanti West Coast	AWC
Capacity Allocation Process	CAP
Common Interface File	CIF
Customer Relationship Executive	CRE
Concept Timetable Plan	CTP
Capacity Utilisation Index	CUI
Enhancements Delivery Plan	EDP
Event Steering Group	ESG
Freightliner Heavy Haul Limited	FLHH
Freight and National Passenger Operations	FNPO
Application for approval of a freight framework agreement	Form F
Application for approval of a passenger framework agreement	Form P
GB Railfreight Limited	GBRf
Great North Western Railway Company Limited	GNWR
Grand Union Trains Limited	GUT
Industry Planning Group	IPG
Network Rail	NR
Office of Rail and Road	ORR

Term	Abbreviation
Timetable Principal Change Date	PCD
Public Interface File	PIF
Red, Amber, Green	RAG
Rail Network Enhancements	RNEP
Supplemental Agreement	SA
System Operator	SO
Sale of Access Rights	SoAR
Strategic Route Section	SRS
Track Access Contract	TAC
Transport for Wales Rail Limited	TfWRL
Train Operator Variation Request	TOVR
Timetable Planning Rules	TPRs
Train Service Specification	TSS
International Union of Railways Code 406	UIC406
West Coast Main Line	WCML
Working Timetable	WTT



## 3. Methods & Approach

### 3.1 Overview

This section provides a description of the methodology adopted and the approach undertaken for the assessment and progression of this review.

The review aimed to address the 8 questions included in the Statement of Works (included as Appendix A), set out in Table 9.

**Table 9 - the 8 questions addressed in this report**

Question
1. Whether the current CAP outcomes comply with all applicable Licence Conditions and Regulations? (As outlined in Appendix B)
2. How effectively does Network Rail as licence holder govern the interactions between NR's regions and System Operator?
3. How do System Operator and the Network Rail regions record the quality, effectiveness and timeliness of delivery of the CAP and keep the CAP processes and capabilities under review to deliver best practice in context of regional devolution?
4. How does Network Rail engage with and manage stakeholders to the CAP process, including access beneficiaries, ORR and funders?
5. How does Network Rail communicate its process and decisions from the CAP to stakeholders in accordance with its Licence and Access Regulation 19?
6. How does Network Rail ensure the quality of information for current and future capacity is accessible; complete; transparent and up to date?
7. What process does Network Rail follow to create a clear understanding over the appropriate levels of evidence, tools and timescales that should be in place to effectively inform CAP decisions (and is that process applied consistently)?
8. How does Network Rail agree with ORR the appropriate levels of evidence, tools and timescales to effectively inform it in its response to statutory access consultations?

In order to answer the questions, the following review process was adopted:

**Figure 1 – The Review Process**



### 3.2 Familiarisation

The review team undertook an evaluation of over 1000 documents, broken down in Table 10 below.

**Table 10 - Documents provided by case and source**

Source	ORR	NR	Other
Process documentation + 1 working agreement document	18	83	4
01 – Freightliner Heavy Haul Limited (FLHH) 8 <sup>th</sup> SA section 22A	64	4	
02 – GB Railfreight Limited (GBRf) 15 <sup>th</sup> SA section 22A	17	9	
03 – Great North Western Railway Company limited (GNWR) Blackpool section 17	96	7	
04 – Grand Union Trains Limited (GUT) Carmarthen section 17	124	5	
05 – “Wrexham-Bidston” (GBRf 17th SA & TfWRL 4th SA) section 22A	409	45	
06 – West Coast Main line (WCML) Section 17s	143	35	
<b>Total</b>	<b>871</b>	<b>188</b>	<b>4</b>

A full list of documents received and reviewed as part of this process is provided in the document register included in Appendix E.

### 3.3 Evidence collection

In addition to reviewing the documents above, evidence was collated through stakeholder engagement. During the review process of this mandate, we carried out 26 interviews with representatives from Network Rail, the ORR, and Access Rights Applicants. We are appreciative of the time given by stakeholders for

these interviews, particularly given the short-notice timescales required. The list of interviews conducted is recorded in Appendix C. Summaries of our findings for each of the six case studies can be found in Appendix D.

### **3.4 Moderation**

Interviews included a minimum of two Lead Reporters in order to ensure consistency across the information gathering process. Regular moderation meetings were held between Lead Reporters in order to further verify that consistency and to collate emerging themes from the findings. Weekly moderation meetings were held with the Project Director and the draft report has been subject to a further independent review by the Independent Reporter.

Integral to the process of delivering the review, the draft results are shared with the client to present the review findings to:

- ensure there were no misunderstandings of the evidence presented;
- afford the opportunity to provide further evidence, when a clear gap in the evidence was established; and
- ensure an open collaborative assessment that communicated the emerging findings.

During these moderation sessions the assessment of each of the framework questions was reviewed and agreement reached on the findings, or the opportunity taken for more evidence to be provided. The output from this is therefore either confirmation of the earlier assessment or the modification of the findings taking into consideration new evidence or perspectives. As a final check on consistency a further review-wide session was held within the Reporter team to validate each of the questions.

### **3.5 Reporting**

Weekly meetings were held with the joint ORR/Network Rail client team to give visibility of emerging findings. Feedback was sought from the client team on the case study summaries which are attached at Appendix D and was also sought on the initial draft of this report.

Based on our review of the case studies and process documentation, we have summarised our assessment of Network Rail's current compliance of the Capacity Allocation Process against its key requirements as set out in the Network Licence and Rail Regulations. This assessment is set out in Appendix B.

## 4. Findings

This section brings together the findings from the individual case studies, summaries of which are provided in Appendix D. The findings are presented against each of the eight questions the Reporter Team were tasked with reviewing.

Against each question the same structure has been used:

- **In the round summary** – an overview of the findings drawing out common themes where appropriate
- **Case study evidence** – specific evidence from individual case studies
- **Suggested actions for improvement** – suggested changes to drive improvement and feed into the recommendations set out in Section 5.

### 4.1 Q1) Whether the current CAP outcomes comply with all applicable Licence Conditions and Regulations?

#### 4.1.1 In the round summary

There is no clear description of what “Capacity Allocation Process” means, what it covers or any document describing it. In interviews across all organisations there was no consistent view of what the CAP was, with many respondents having not heard of the term before. There were differing views as to when capacity is being allocated, whether it is during franchise specification, when Access Rights are sold, or when the timetable is completed using Part D of the Network Code.

Whilst clear in description, the operation and application of processes involved with allocation of Access Rights and the provision of Train Paths in the timetable was unclear from the documents reviewed and from the interviews undertaken. The role of processes such as Congested Infrastructure and Event Steering Groups are not defined within the CAP. It was unclear from process documentation and from interviews who was understood to be the appointed officer with overall responsibility for the CAP as required by the Network Licence.

While there is comprehensive guidance available from both Network Rail and the ORR over some processes such as SoAR and Timetable Production (Part D), these are not defined within an overarching CAP. Details on some stages are lacking, in particular the earlier stages. The process for assessing Applications when first received is not defined and in the majority of the cases the role of SoAR Panel was limited as they do not assess unsupported Applications.

The role of Regions and SO is unclear in many of the cases and there was no clarity on issues such as evidence expectations and requirements, defining and agreeing acceptance criteria, timescales outside those specified for consultation periods and initial Representations. This meant it was unclear who or where the decision to not support an Application was taken.

It is important to note that the response to the Covid pandemic had an impact on a number of cases either through resource challenges or uncertainty regarding the return of demand and withdrawn services from the height of the pandemic.

#### 4.1.2 Case study evidence

Noting they are historic (and not current) and are acknowledged to be some of the more difficult cases over the last few years, the case studies highlighted a number of issues:

- **Compliance with CAP** – there is no single definition of CAP or documented process or rules against which to judge this (**all**)

- Network Licence 5.10 requires the appointment of an officer with overall responsibility for the CAP. The documents reviewed, and interviews undertaken revealed it was unclear who held that responsibility at the time of the case studies.
- Distinguishing between Access Rights and Train Paths in the timetable – in one case (**GNWR**) NR did not support the Application initially because of performance and capacity concerns. The supporting capacity review appeared to be seeking white space in the current timetable and neither considered flexing of other paths or a re-structured timetable. A defined CAP would clarify the process.
- Duration of Track Access Contracts – clarity may be required on the guidance provided within ORR’s “Duration of Framework Agreements, October 2019” (**FLHH**). In addition, the ORR stated a longer period supported the requirement to “enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance” (**GUT-C & GBRf**) although this is not stated in the Licence Conditions or Regulations we reviewed.
- Maintenance access – this was cited by Network Rail as a reason for not supporting an Application, but ORR pointed out this should be dealt with by Part D of the Network Code (**FLHH**). However, the Regulations state NR should consider the impact of access windows on Applicants.
- Responsibilities – at different times during the process, formal Representations were issued by either FNPO or the System Operator Managing Director (**GUT-C**) suggesting lack of clarity on responsibilities in that instance.
- Lack of clarity between Routes and SO. It was not clear who actually has decision making authority to not support an Application as SoAR has no decision-making role at this point. The Regional processes mean various teams within Network Rail had an impact on support for the Application. GUT on the **WCML** case stated that the decision process was opaque.
- Transparency – GUT were unclear on how they could resolve performance concerns raised in Representations given lack of clarity over what acceptable performance impacts would be, beyond their commitment to work with the Industry during timetable development as standard practice (**GUT-C**).
- Timeliness – extended timescales for carrying out detailed capacity and performance assessment on busy route sections were not pre-agreed with the Applicant or ORR (**GUT-C, Wrexham-Bidston**). The length of time to reach decisions was also a concern to one freight Applicant (**GBRf**).
- Progressing straight to Section 17 – GUT stated that they went straight to a Section 17 Application on **WCML** because they had failed to get NR to agree to a Section 18 in previous Applications (regardless of Region) to progress the Application more quickly.
- Congested infrastructure – ORR stated this should not preclude granting access rights (**GBRf**) as stated in the Declarations of Congested Infrastructure. Whilst a framework is clear in documents such as Article 5 of the Implementing Regulation for the allocation of rail infrastructure capacity, this is not explicitly covered by the Licence Conditions & Regulations we reviewed, nor was it clearly understood by many of the participants involved in the case studies reviewed.

#### 4.1.3 Suggested actions for improvement

1.1 Set out a clear definition of the CAP including what processes are included and any related processes that are outside. Ensure the process covers relevant areas for improvement raised by this review.

- This will ensure that the purpose and coverage of the CAP is understood and sets out clearly how Network Rail will comply with the Network Licence requirements. It will also ensure clarity on who is responsible for what stage of the process aiding transparency.

1.2 Develop an overarching process description setting out how each of the interrelated processes work and include target timescale ranges – ensuring this covers initial approaches to Network Rail before Forms P/F are submitted.

- The current process descriptions only cover certain elements of the CAP. Defining how each element works, the likely timescales for completion of each element (for example, Declaration of Congested Infrastructure or calling an ESG if applicable) and the interaction between the processes will enable a shared view on the indicative overall time to process the Application and the levels of effort required.

1.3 Publish the process to key stakeholders to provide clarity to assist in Applications and what responses will be expected at the various stages of the process.

- This will enable a more open process, particularly for the progress of the earlier stages of Applications. This will particularly assist unsupported Applications under Sections 17 or 22a.
- 

## 4.2 Q2) How effectively does Network Rail as licence holder govern the interactions between Network Rail’s regions and System Operator [in relation to LC 6.9 and 7.10]?

### 4.2.1 In the round summary

There was some variation in the governance between the case studies, partly reflecting their differing timings and the state of devolution. In most cases it was clear that a Customer Relationship Executive (CRE) within the Regions managed the relationship with the Applicant. However, there was a lack of consistency over the approach taken to internal consultation by different Regions. Particular issues raised included: unenforceable timescales for responses, wide distribution leading to responses which create a significant workload and are not always relevant to SoAR decisions. Challenges were raised by Applicants over transparency and impartiality. There is also a lack of clarity over who can act as a decision maker, with comments made in interview stating a belief that there were “too many people with the opportunity to veto”.

**Note** the Licence refers to Route Businesses not Regions.

### 4.2.2 Case study evidence

*Some of the case studies were a few years old and either those responsible within NR had moved on and / or there was little documentation on the interactions between SO and the Regions. That said, the following issues were identified.*

- The Regional teams were unable to define the responsibilities allocated to them under Network Licence 6.10 (**WCML** and **GNWR**).
- The relevant roles of Regions and SO in relation to Applications were not clearly defined and decision making in the stages prior to SoAR Panel were unclear. In the case of **WCML** the decisions rested with the Regional team, but the Applicants felt this undermined the work led by SO during the preceding Event Steering Group (ESG) work.
- Timeliness
  - Some Regions require several people to sign off on an Application with no time limit specified; it was reported this wide consultation can take time to complete, particularly if a key signatory is on leave (**FLHH**).
  - The time to provide advice, due to the detailed modelling by SO and the existence of an ESG looking at the future capacity, was noted as a long period in some cases; with ESG timescales not shown to be designed around considering when Access Rights decisions are required to enable the industry to make informed business decisions (**GUT-C**, **WCML**, **Wrexham-Bidston**). The case studies included examples where an ESG was created as a result of Access Rights aspirations exceeding available capacity (**WCML**), and examples where ESGs already existed to manage known significant timetable changes, with Access Rights Applications then becoming an additional variable to consider during the process (**GUT-C**, **Wrexham-Bidston**).

- Network Rail's FNPO team informed us they have previously taken a paper to SoAR Panel to define a Service Level Agreement to improve the timescales for all internal consultations, but that it had not been adopted as formal process.
- Transparency – in most cases it was clear who was responsible for the client relationship (**the Region / FNPO**). It was reported in interviews that the process for internal consultation of an Application is not always clear, with Regions taking different approaches (**FLHH**). Nor was it always clear if SO or the Region was responsible for the response when there was a Declaration of Congested Infrastructure (**GBRf**).
- Suitably qualified staff – Wales & Western Region have identified three key skilled staff to jointly review Applications: the Route Head of Strategic Planning, Route Timetable Project Manager and SO Advance Timetable Manager. Whilst devolution means there is nothing to dictate this or a similar arrangement being adopted for every Region, this arrangement was observed to be a positive one that is currently only in place on this Region.

#### 4.2.3 Suggested actions for improvement

2.1 Set out clearly using a Responsible, Accountable, Consulted and Informed (RACI) matrix or similar, the roles of Regions/Routes and SO in dealing with the various aspects of the process building in good practice and lessons learned.

- Setting out clear roles and responsibilities will help meet the requirements of the Network Licence, including a nominated responsible officer and the relevant roles of SO and the Regional teams.

2.2 Provide clarity on who signs off decisions through the main stages of an Application to ensure transparency, particularly as decisions to not support an Application are not signed off at SoAR Panel

- A number of Applicants stated that it was difficult to understand where decisions were taken and by whom. When Applications reach SoAR Panel the current process sets out authority levels, but the role of SoAR Panel is limited in unsupported Applications. It is the process in deciding whether an Application is supported or not that has been key in all of the case studies, and it is clarity on this decision that will improve openness in the way they are viewed.

### 4.3 Q3) How do System Operator and the Network Rail regions record the quality, effectiveness and timeliness of delivery of the CAP and keep the CAP processes and capabilities under review to deliver best practice in context of regional devolution?

#### 4.3.1 In the round summary

No evidence was provided of recording the quality, effectiveness or timeliness of the CAP delivery in any of the case studies. The recording of the early stages of Applications was particularly limited. There was no evidence provided to us of lessons learned reviews being carried out following the conclusion of Applications, or of sharing of best practise related to a CAP between different functions within NR (noting that the West Coast has not concluded yet).

*It should be noted that processes relating to a limited number of Regions (and Routes within those Regions) were assessed in this review.*

#### 4.3.2 Case study evidence

- Records – we did not see any evidence that Network Rail recorded the quality, effectiveness and timeliness of the CAP for any of the case studies. We understand that recently NR have started to provide ORR with a log of live Applications that are jointly reviewed every month. There was little documentary evidence in the case studies of early discussions with prospective Applicants before the Form P was submitted and the decision to not support Applications at this point (**GNWR, WCML**).

- Freight – in one interview it was stated the volume of Applications meant a reactive approach was taken and that a more structured approach, for example considering the method for assessing the Application, would require extra resource time (**FLHH**). It was also stated by some Applicants they go straight to ORR with unsupported Section 17 or 22A Applications to speed up the process and ensure more transparency on timescales (**GBRf, GUT-C**).
- Sharing of best practice – there was no evidence of the sharing of best practice / lessons from the case studies and between Regions. In interview the Network Rail FNPO team stated that where Regions did not have experience of open access Applications it made the process more challenging (**GNWR, GUT-C**).
- Scope of mandate – the case study sample meant only Wales & Western Region (both Wales Route and Western Route were interviewed as they handle Applications separately) and North West & Central Region (no process distinction between Routes identified) were reviewed. In addition, the **FLHH** case study involved negotiations regarding the Southeast Route Engineering Access Statement, this Route no longer exists, and Southern Region were not interviewed as part of this mandate. Similarly, there was consultation with Scotland’s Railway within the **WCML** case study, however these were not significant to the areas we investigated and so no interview took place.

### 4.3.3 Suggested actions for improvement

3.1 Ensure that a review of each Application is held once complete – the form of the review should be appropriate to each Application given most are routine in nature. Focus should be on more complex cases.

- This review will include both what went well and any issues that arose during the Application, to identify what could have been done differently. It will set out actions to promote best practice and lessons for future Applications. The review should include Applicants as well as Network Rail and ORR. By openly working together this will improve cross working and reduce the likelihood of future recurrence of any identified problems.

3.2 Lessons learnt and good practice should be shared across SO and Regions – this is particularly relevant for Open Access operators where it was stated that familiarity with previous Applications affected the way Regions handled them. This should include keeping training material up to date.

- Sharing learning and good practice beyond those involved in specific cases will spread knowledge further. Many of the case studies presented new challenges to those involved and by sharing learning it will enable others, in SO, Regions, Applicants and ORR to be aware of the problems experienced as well as where particular practices were successful.

## 4.4 Q4) How does Network Rail engage with and manage stakeholders to the CAP process, including access beneficiaries, ORR and funders?

### 4.4.1 In the round summary

Beyond the specified timescales to respond to formal parts of the process (e.g. industry consultation, initial Representations), we have seen no evidence of formal processes relating to engaging with stakeholders, nor a RACI to inform how they are managed and by whom. However relationships between CREs and their Operator customers were seen to be strong, and stakeholders valued having a clear, single point of contact.

It was not clear through evidence or interviews how feedback given to Network Rail was used to inform decisions. NR continue to work with Applicants to explore technical solutions but that seemed to be the extent of consideration of Applicant’s Representations.

Engagement between Network Rail and the ORR was limited to a senior-level trilateral (between Network Rail / ORR / Department for Transport) and communication between customer / case managers once Applications have been submitted (consisting of a mix of formal letters, and emails outlining positions). It was not clear that ORR and Network Rail technical teams directly communicate to explore the evidence submitted and discuss further requirements.



#### 4.4.2 Case study evidence

- Documented process – this is set out in Network Rail’s Commercial Manual including stated timescales for formal stages of the process.
- Stakeholder consultation – this seems to have been managed well by the Network Rail CRE in each case study, consulting with the key stakeholders following receipt of the Application within the stated timescales. Stakeholders included adjacent train operators, funders and local transport authorities (e.g., **GNWR**).
- Ongoing stakeholder engagement – in one case it was noted that the decisions for not supporting the Application from SoAR Panel were unclear, although this was addressed by the Applicant attending SoAR which was welcomed (**FLHH**).
- Engagement with the Applicant – in most cases this was carried out by the Network Rail CRE. It was noted that this relationship is generally positive, although this can be at odds with the language in formal written communications (**GUT-C**).
- Applicants – relationships between Network Rail CREs and their Operator colleagues were seen to be strong, however engagement is not always consistent across customers and varies between informal communication, regular general meetings, and formal written communications specific to Applications.
- Specifiers – this particularly impacted the **Wrexham-Bidston** and **WCML** case studies where franchise commitments were made without full endorsement from Network Rail. We are aware processes have changed since these franchises were let, but have not seen how franchise specification has been included as a stage in a CAP.
- 3rd party funders – the specific commercial requirements of the freight business and their customers are understood by the Freight CRE teams but were not seen to be given full consideration within the Regions. There is no general engagement between Network Rail and external funders, however Network Rail attended meetings where requested.

#### 4.4.3 Suggested actions for improvement

4.1 Network Rail should set out project plans upon receipt of Application. These should identify agreed timescales and deliverables from all parties. For most cases these can follow a common template, however cases identified as complex may require bespoke arrangements which are developed based on lessons learned from previous cases.

- By agreeing expectations at the start of engagement between Network Rail and an Applicant, all parties will understand the direction of travel and what is expected of them to lead towards a decision. This increased clarity will support the ability of the industry to make business decisions. Whilst the timelines identified should be respected, these should not become regulated dates and Network Rail should be able to agree with Applicants changes to dates without penalty. Communication between parties over changes will hopefully improve transparency.

4.2 Network Rail should summarise responses to consultation in a similar fashion to ORR in providing its decisions to ORR and applicants.

- NR should summarise responses from the consultation process and explain how they have impacted its decision to support, or otherwise, an application.

4.3 As part of the overall CAP, Network Rail should set out clearly their stakeholder engagement process including a published RACI, this should expand on currently documented arrangements such as that for formal industry consultations on Applications. This should include identifying who decision makers are within the organisation.

- It was stated at interviews that it was not clearly understood who within Network Rail did what with regards to the CAP. Relationships with Applicants should still be owned by

CREs, but visibility of the roles other people in Network Rail play will improve Applicants' understanding of the process.

## 4.5 Q5) How does Network Rail communicate its process and decisions from the CAP to stakeholders in accordance with its Licence and Access Regulation 19 [in a timely manner to allow industry to take business decisions]?

### 4.5.1 In the round summary

All Applicants understood the general process for Network Rail to communicate its decisions, however, a number of key issues were identified that potentially impacted the ability of industry to take business decisions:

**Timeliness:** whilst the specific commercial requirements of the freight business and their customers is understood by the FNPO CRE teams it was not seen to be given full consideration within the Regions, particularly with relation to timescales for decisions.

**Transparency:** Applicants did not always feel it was clear why an Application might not be supported and what remedial action may be available to the Applicant to resolve issues.

**Accuracy:** the quality of some aspects of the responses was challenged in a number of case studies.

**Completeness:** as detailed in the case study evidence, responses were found to initially not include some areas of concern, which then led to further, unexpected, time being required to resolve these issues.

**Expectations:** no agreement was sought between parties at the start of the process as to timescales, evidence requirements, or acceptance criteria.

### 4.5.2 Case study evidence

Key issues raised by the case studies are:

- **Understanding the process** – Throughout the interviews all parties seem to have understood the process of formal communications in the case studies from the guidance documents published by the ORR on their website. Within Network Rail, the process is documented in the Commercial Manual, and this was seen to be followed.
- **Transparency** – In one case (**FLHH**) it was stated that the factors which led to Network Rail taking the decision to not support the Application were not clear to the Applicant. This made it difficult for the Applicant to take action to amend the Application to resolve the reasons for non-support. It should be noted that this has now been addressed in part by the Applicant taking the opportunity to attend the SoAR Panel discussions on their case.
- **Accuracy** – The quality of evidence for making a decision was called into question in a number of cases (**GBRf, GNWR, GUT-C, Wrexham-Bidston**). Issues identified included the accuracy of Timetable Planning Rules (TPRs), compliance with TPRs in development timetables, and the interpretation of performance analysis.
- **Impartiality** – On the **WCML**, GUT questioned the differing response to AWC in the Network Rail representations which they felt suggested discriminatory behaviour; the FNPO team then had to reassure GUT this was not the case.
- **Completeness** – In some cases initial Representations and development work did not deal with all areas which would eventually come into consideration during the case. In the **GUT-C** case it was stated that the initial NR representation left a number of issues unanswered which then took a period of several months to resolve. Similarly, in the **WCML** case study, areas such as power supply became considerations later on in the process which delayed a resolution.

- **Timeliness** to allow industry to take business decisions – concerns were expressed that the time taken to communicate a decision was too long for the fast-moving freight market (**FLHH, Wrexham-Bidston**).

#### 4.5.3 Suggested actions for improvement

5.1 Network Rail should set out clear target timelines for all Applications which identify agreed timescales and deliverables from all parties.

- This should be part of the project plans developed under improvement 4.1.

Suggested actions relating to improving transparency around decision making have already been identified in response to findings under previous questions.

## 4.6 Q6) How does Network Rail ensure the quality of information for current and future capacity is accessible; complete; transparent and up to date?

### 4.6.1 In the Round Summary

Network Rail provide a range of information that relates to the capacity of the network. Over the timeframes of the cases studies considered in this review, the range of information has evolved. Network Rail’s website includes the following information relating to capacity:

1. The Network Statements and Framework Capacity Statements
  - a. The Network Statements and Framework Capacity Statements provide an overview of the allocation of network capacity, and relevant information regarding the network broken down into Strategic Route Sections (SRS).
  - b. These documents have evolved, with the most recent Framework Capacity Statements presenting a new format based on a RAG score for each SRS. This provides a high-level indication of the available capacity on the network that has been developed based on judgement and expertise in Network Rail. This supersedes a previous complex and limited Capacity Utilisation Index (CUI) based calculation for the entire network, which was based on Train Paths (set out in a timetable) as opposed to Train Slots (an access right definition which cannot be the same as a timetable)<sup>3</sup>.
2. Timetable Planning Rules (TPRs)
  - a. The Timetable Planning Rules mandated as part of Network Code Part D provide the industry agreed rules and building blocks for the development of timetables. The rules directly impact on the available capacity of the network and are updated according to the Timetable Planning Process.
3. Timetables
  - a. Network Rail also publish the timetable according to the Timetable Planning Process. The timetable is provided in pdf format. Timetable data formats, such as PIF and CIF files can be requested from Network Rail but are not published online with the exception of Network Rail’s open data feeds that provide a limited data format timetable.
4. Calendar of Events
  - a. Network Rail publish the ‘Calendar of Events’ which outlines known future significant timetable change events. Where these events are classed as significant change, it leads to the formal creation of an Event Steering Group (ESG) to co-ordinate a framework process up to

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<sup>3</sup> The Railways (Access, Management and Licensing of Railway Undertakings) Regulation 21, sets out that “...a framework agreement must not specify any train path in detail.” This is differentiated as a “Train Slot” as outlined in an agreement rather than a “Train Path” as detailed in a timetable.

the start of the Timetable Production Process. The document also provides a list of changes that are not classed as Significant Events, although it is noted the list is not comprehensive.

- b. The Calendar of Events does not directly inform potential changes to future capacity but indicates events that may lead to potential changes to capacity.

A key issue found during the review process was there not being a concise/conscious clear agreement as to what is meant by capacity. Comments were made during the review process that capacity is space in the timetable, however, other comments suggested it includes network capability and is made up of multiple factors that contribute to capacity. These factors, for example, might include traction power limits, level crossing risk, train performance, and limits placed on CUI or UIC406 measures. A number of these factors have been raised in Representations made in the case studies but there is no consistent agreement as to what factors would be considered as part of capacity considerations when reviewing Applications. In addition, it is more challenging to measure capacity when considering Train Slots compared to Trains Paths in a timetable which can be modelled.

Whilst timetables and TPRs are published on Network Rail's website, they represent the current operating timetable, as train paths which can in turn be measured to determine capacity use. When reviewing capacity for access rights over longer time spans, the clarity on future rights in relation to capacity is not clearly stated, and at the same time more challenging to measure as Train Slots (access rights) as opposed to Train Paths (timetable) as noted above.

The recent Framework Capacity Statement provides an indication of capacity based on Train Slots/Access Rights, the process in which the RAG score is determined is based on expert judgement. A clearly defined process or what contributes to the RAG scoring is not defined, however. The RAG scoring used in the Framework Capacity Statements does not include a temporal element, both in terms of time periods through a day (i.e., peak/off-peak) and in terms of future access rights and capacity. In terms of time periods throughout a day, as with Congested Infrastructure, the network may only be congested for limited timeframes, which is not presented within the Framework Capacity Statement.

Information informing capacity in relation to future changes is not directly provided. There are however key documents that give indication to future changes which may impact on network capacity. This includes the Calendar of Events, and two publications referenced in the Network Statement: Rail Network Enhancements Pipeline (RNEP) and Enhancements Delivery Plan (EDP).

In relation to CAP, the Calendar of Events leads to the establishment of an ESG that follows a framework process that can lead up to the Timetable Development Process. The EDP is also potentially relevant to the CAP as it indicates committed projects that are in delivery phase. Neither publication provides information that relates to capacity and access rights but does provide a list of known changes that might impact them.

Where an ESG is initiated, this can provide a framework process that leads to the development of a more detailed view on future capacity and Train Paths.

#### 4.6.2 Case study evidence

The following outlines key evidence from the case studies reviewed and in relation to Question 7.

##### Current Capacity:

- Information on available capacity was not always up to date nor was a process to keep it up-to-date evident at that time (**GNWR**).
- For freight Applicants the information on available capacity is based on whether a Train Path can be found in the current timetable. Often, Applications already operate as spot bids, and this is used as the basis of the Application (**FLHH, GBRf**). We note this may not always be relevant if the timetable is planned to change in the future.
- Declaration of congested infrastructure – the ORR clarified this should not preclude the granting of access rights in quieter periods whilst the enhancement plan is being developed and in itself was not a reason to reject potential access rights from being granted (**GBRf**).

- On the **Wrexham-Bidston** case study a question was raised challenging the use of CUI/UIC406 as a criterion in defining the available capacity. The application was not supported in part based on a CUI assessment and comparing results to UIC406 recommendations. The Applicant challenged this approach noting this criterion is not outlined in Network Code Part D or Network Rail's Code of Practice for Congested Infrastructure.
- In the **Wrexham-Bidston** the published TPRs were challenged as part of the application review and acknowledged by Network Rail as being inaccurate requiring updating through the review.

#### Future Capacity:

- It was unclear what the baseline was for future applications noting this was being addressed by an ESG (**GUT-C**).
- It was noted in one interview that Applications tend to be made on the current timetable rather than any future capacity.
- That said, one application was made on the basis of the number of freight paths made available in the Crossrail hybrid bill (**FLHH**).
- Similarly in the **Wrexham-Bidston** case study questions were raised over the inclusion of freight paths with no rights and which were to serve a not-yet-committed construction project, and an increased passenger service which was seen by different parties as either an aspiration or a commitment.
- The **WCML** case initially tested capacity on the basis of Train Paths (feasibility of paths from the 2013 assessment overlaid in the May 2020 timetable) but followed by feasibility based on Train Slots (tested feasibility through a re-cast of the WCML via an ESG after declaring congested infrastructure).

#### Completeness

- Some interviewees raised questions about how capacity should be assessed, not just in terms of paths in the timetable but also other factors such as power supply, level crossing downtime and track maintenance requirements (**GBRf**)
- **GUT-C** questioned the real value of closely defining available capacity given the high number of variables and felt the effort would be better spent on effective response to specific capacity requests.
- In the **GUT-C** case, Train Path capacity was compliant with TPRs, however, the application was unsupported on the grounds of performance.
- Power supply was a capacity limiting factor in the **WCML** case studies, determined through a detailed power supply study of the proposed timetable during the later stages of the case.

#### Transparency

We note that the transparency of information on current and future capacity is undergoing improvement in the Framework Capacity Statements

#### **4.6.3 Suggested actions for improvement**

The following outlines key priority areas for improvement:

- 6.1 Complete the current work to publish capacity by SRS as RAG status in the Framework Capacity Statement. Outline what the RAG status considers and excludes in terms of factors affecting capacity.
  - This provides transparency on the process and a high-level view on the current network capacity, and potentially promotes early discussions between Network Rail and Applicants.
- 6.2 Consider the incorporation and value of inclusion of wider capacity impacting factors. For example:

- Where traction power is a known potential limit to capacity;
- Where level crossing risk is a known potential limit to capacity; and
- Where performance objectives are not met/ or at risk of not being met.
- This could enhance the information provided that outlines network capacity and the factors that contribute to it.

6.3 Review methods and processes in which future changes to the network that affect capacity can be indicated in terms of changes to capacity.

- This would provide greater information up front to potential Applicants which may be necessary for longer term access rights.

## **4.7 Q7) What process does Network Rail follow to create a clear understanding over the appropriate levels of evidence, tools and timescales that should be in place to effectively inform CAP decisions (and is that process applied consistently)?**

### **4.7.1 In the round summary**

A range of tools and assessments methods have been conducted to inform Network Rail's representations on Applications. However, no evidence has been provided that gives clear guidance or process in the selection of tools and assessments applied in the case studies. For two case studies both on the WCML (**GNWR** and **WCML**) the selection of tools and assessments completed does not appear to be fully consistent. For example, performance modelling was not conducted on the **GNWR** case,, but was on the **WCML** case study.

For case studies that included the involvement of ESG's, the ESG framework sets out a process for identifying assessments required, remitting of assessments, and setting out timescales all as part of the ESG group. It does not, however, cover in detail the process in determining levels of evidence required and tool section.

The basis for the majority of assessments has been focused on the analysis and assessments of Train Paths within a timetable as there are measurable outcomes in doing so. In some cases, a timetable re-cast assessment was completed reviewing the capability of the network to support the Train Slots through creation of a new timetable. Each type of assessment completed has a differing range of timescales driven by the level of complexity in the assessment and some assessments have dependencies on completion of other assessments to inform it. For example, performance and power modelling require a feasible timetable to complete a modelling assessment.

### **4.7.2 Case study evidence**

The following outlines key evidence from the case studies reviewed in relation to Question 7.

#### **Network Rail Process**

- No written process for setting out the appropriate levels of evidence, tools or timescales was provided as part of this review.
- The case studies reviewed adopted different approaches at least in part due to the bespoke nature of each Application. These are listed below and outlined in Table 11:
  - TPR Assessments – a review of a proposed timetable to check compliance against the TPRs
  - UIC406 or CUI – methods which define capacity as percentage utilisation against technical or TPR capabilities.
  - Path Variance Review – reviews historical performance of specific train paths in a table looking at variance from planned timings and presented as a train graph (distance-time)

- Timetable re-cast – full or part development of a timetable to review the ability of the infrastructure to support the Train Service Specification (access rights, proposed access rights).
  - Performance Modelling – dynamic simulations of timetables.
  - Traction Power Modelling – dynamic or static modelling of traction power systems
- Note that in some cases the requirements for evidence changed throughout the timeframe of the application. For example, the **WCML** application, included a review of Train Paths based on updating the 2013 capacity assessment, although not specific to the applications for **WCML**. Subsequently a re-cast timetable was developed as a Concept Timetable aimed at accommodating Train Slots followed by RailSys performance modelling.

**Table 11 - Outline of Tools/Assessments completed for each assessment**

	TPR Assessment (path validation)	CUI or UIC406	Path Variance Review	Timetable Re-Cast	Performance Modelling (RailSys/Treno)	Traction Power Modelling
WCML	No <sup>4</sup>	No		Yes	Yes	No
GNWR	Yes	No	Yes	No	No	Yes
Wrexham-Bidston	Yes	Yes				n/a
GUT-C		No	Yes	Yes	Yes	No

#### 4.7.3 Suggested actions for improvement:

7.1 Develop guidelines and processes for identifying the key measures of capacity that are relevant to an Application, and the methods of assessing them. This should outline which approaches and tools are most appropriate for different types of Applications, including indicative timescales and requirements for clear remits/scope. An illustration is outlined in Table 12 below.

- This removes ambiguity as to the approaches Network Rail may take when reviewing applications and gives a guideline on potential timescales.

7.2 Produce guidance as to the process in agreeing the interpretation of results from the measures applied. This may, for example, link to CUI limits, performance objectives or level crossing risk limits. Illustrated examples are included in Table 12 below.

- This provides transparent guidelines as to what measures may be applied on application reviews and what the process is for agreeing the interpretation of results or measures up front as part of scoping an application review.

7.3 Share guidance with Applicants and stakeholders to ensure there is transparency in the potential process of assessments Network Rail may undertake.

- Ensure process is transparent and clear to Applicants.

<sup>4</sup> At the request of the ORR, Network Rail carried out a capacity assessment re-refresh from a 2013 capacity assessment of the WCML. This reviewed if the Train Paths outlined in the 2013 report remained in the May 2020 timetable. It was not focused on any specific application but in the knowledge that a number of potential applications were being made at the time.

**Table 12 - Outlines an illustrative guideline in assessment methods, timescales, and basis of interpretation for the CAP process**

Assessment Technique/Tool	Dependencies	Timescales	Basis of Interpretation
New TPR Validation	Proposed Train Paths may require validation through assessment of new TPRs or SRTs.	Weeks	Validation of proposed TPRs/SRTs.
TPR Path Validation	Requires outline Train Paths to validate in the context of a timetable. May be dependent on TPR/SRT validation assessment. May not be possible based on Train Slots.	Weeks	Potential to pass/fail application with regards to 100% TPR compliance.
CUI or UIC406 Measures	Could be developed theoretically based on Train Slots, or Train Paths (timetable)	Weeks	Agree acceptable range of utilisation outcome.
Level Crossing Risk	Could be developed theoretically based on Train Slots, or Train Paths (timetable)	Weeks – Months	Agreement on Risk limits on case-by-case basis for each Level Crossing
Historical Performance (e.g., Train Path Variance)	May need to assume application is made on future timetable that will perform similarly to that observed historically.	Weeks	Agreement on acceptable levels of performance
Timetable development/Re-cast	Inputs regarding Train Slots/Train Service Specification. May be dependent on TPR/SRT validation assessment.	Months	Production of concept timetable / timetable that meets Train Slots/TSS objective and is compliant with TPR requirements
Timetable Performance Modelling	Requires feasible timetable. May require a base comparison timetable model (and infrastructure model)	Months	Many potential outcomes and approaches including comparative assessments. Typical outputs include, Average Minutes lateness, punctuality, unscheduled stops.
Traction Power Modelling	Requires feasible timetable	Months	Level of risk of failure, understanding the key risk scenarios and how they might be mitigated

## 4.8 Q8) How does Network Rail agree with ORR the appropriate levels of evidence, tools and timescales to effectively inform it in its response to statutory access consultations?

### 4.8.1 In the round summary

There was no clear or consistent process between Network Rail and ORR to agree what the appropriate levels of evidence and tools should be for each case study. There was no evidence that indicated any agreement/process between ORR/ Network Rail regarding interpretation of or implication of the outcome of tools/assessments that inform Applications. In some cases, the level of evidence and use of tools exceeded expectations from ORR. The ORR made requests for more information and evidence from Network Rail, but without providing clear context as to what questions ORR aimed to be answered by the requests. Requests for technical evidence were also indirect between ORR technical review teams and Network Rail’s technical teams who did not have direct contact in discussing technical findings or interpretations.

### 4.8.2 Case study evidence

The following outlines key evidence from the case studies reviewed in relation to Question 8.



- There was no evidence of any agreement in advance of the level of evidence and tools needed to inform ORR’s response to statutory access consultations. For some, there were differences in opinion such as how to apply the declaration of congested infrastructure (**GBRf**).
- In one case Network Rail did agree the tools and timescales at discrete stages in the assessment (**GUT-C**). However, the ORR set the timelines for some outstanding responses to be provided by Network Rail and stated that the performance assessment provided was “more detailed than we have received for similar applications in the past”.
- In our interview with FNPO it was stated that greater clarity with ORR on guidelines for the appropriate levels of evidence would be welcomed (**GBRf**).
- Comments were stated that requests for information and evidence was made through formal channels (Network Rail Customer Executive) with no direct contact between ORR and Network Rail technical teams providing the evidence.
- There is evidence of a number of requests from ORR to Network Rail for further evidence without prior upfront agreement in requirements.

#### 4.8.3 Suggested actions for improvement:

- 8.1 Network Rail and ORR to set out and agree a clear protocol for evidence requirements by case complexity, covering evidence type (based on the process/guidance outlined for Q6) and likely timescales.
- 8.2 Network Rail and ORR to agree specific case requirements for likely complex cases at the outset of an Application - this may be before or after Form P/F.
  - To ensure an efficient process in the production of evidence with both parties agreeing what is suitable as part of scoping/remitting reviews.
- 8.3 For complex cases (based on the agreed protocol) Network Rail and ORR should set out on a case-by-case basis the key areas for interpretation of assessment/evidence outcomes and the key criteria that will influence decisions. Ensures clarity in outcomes of evidence as part of the review process.
- 8.4 Network Rail to consider practicalities of an industry wide framework to inform ‘timetable re-cast’ assessments where flexing of rights is sought as part of an Application.
  - Aims to ensure industry, including train operators, are engaged in applications that require timetable re-casts.
- 8.5 Consider communication routes between ORR and Network Rail technical teams to ensure technical discussions can be held directly at the appropriate level.
  - Ensures technical matters are discussed between technical experts in Network Rail and ORR and avoids the potential for misunderstanding in communications.

## 5. Recommendations

### 5.1 Overarching recommendations

As specified in Section 4, from our assessment of the six case studies against each of the key questions, we identified 22 suggested actions for improvement. These are improvements which will potentially support compliance with the Network Licence requirements as well as improving the likely outcomes from future Applications. From these we have developed a number of overarching recommendations as described below.

Table 13 sets out the six overarching recommendations from this review. Each recommendation, and its overall benefits and evidence of implementation that we would expect to see are described. We also show which of the eight review questions have prompted the recommendation.

Below this description of the recommendation, we list the previously identified suggested actions for improvement, describing the issues they would each help to address. Each action has a reference number relating to the question that prompted it (so action 1.1 is the first action arising from question 1, which can be found in Section 4.1 above). These actions are described more fully in Section 4 of the report. Within the table, we also show which stage(s) of the CAP the action targets.

Unless explicitly stated otherwise, it can be assumed the actions were found to be relevant to all of the case studies.

This review is focussed on elements of the CAP supporting the Sale of Access Rights. Whilst processes relating to the use of the Network Code to develop the Working Timetable may be impacted by the recommendations, and NR and the ORR may choose to bring these within the scope of the recommendations, the context of these recommendations and actions is on process improvements relating to the Sale of Access Rights.

**Table 13 - Recommendations**

Ref Number	Recommendation	Benefits	Evidence of Implementation	Relevant review questions	Owner
SOW32051-01	Clarify the overarching CAP process including a definition, mapping out the individual stages, identifying how they are connected and who is accountable (e.g., System Operator or Region). Ensure the process requires proportional responses based on case complexity and that it provides clarity of decision making	Clarity on the process, clear expectations in terms of timescales and supporting evidence	Published process setting out all necessary steps and defined responsibilities	1, 2	Network Rail System Operator
Ref. in report	Suggested actions for improvement	Issues identified in the case study reviews to be addressed			Indicative CAP stage
1.1	Set out a clear definition of the CAP including what processes are to be covered within the CAP and identifying any other interacting industry processes which can impact / be impacted by the CAP but remain outside the scope of the CAP. It should cover relevant areas for improvement raised by this review.	What the CAP is, its definition, purpose, and what it covers, were unclear to many during the review process. Defining a linear process is not practical as the order of stages to go through may differ by types of Application (e.g., FOCs will generally seek a Train Path before an Access Right) and there are several entry points to the process.			All
1.2	Develop an overarching process description setting out how each of the interrelated processes work and include target timescales – this should cover initial approaches to Network Rail before Form P/F are submitted.	Processes for individual stages within the CAP were not often well defined. How stages interact and how those interactions vary based on the type of case were unclear.			All
1.3	Publish the principles to key stakeholders to provide clarity to assist in Applications and what responses will be expected at the various stages of the process.	Stakeholders were mostly aware of the guidance material available online but felt there was a lack of transparency over process and considerations during Network Rail’s internal stages.			Pre-Application, Submission, Discussions
2.1	Set out clearly using RACI or similar, the roles of Regions / Routes and System Operator in dealing with the various stages of the process.	The inconsistency in responsibilities and approaches taken by Regions created challenges for both Applicants and national Network Rail customer managers.			Pre-Application, Submission, Representations, Discussions
2.2	Provide clarity on who signs off decisions at Regional and central levels through the main stages of an Application to ensure transparency, particularly as decisions to not support an Application are not signed off at SoAR Panel.	Applicants did not feel there was enough clarity or transparency over who had ultimate accountability for decisions regarding support for Applications.			Pre-Application, Submission, Representations, Discussions

Ref Number	Recommendation	Benefits	Evidence of Implementation	Relevant review questions	Owner
SOW32051-02	Clarify the stakeholder engagement process which is published to all funders and access beneficiaries	Ensures transparency in the wider process and shows clearly how engagement influences decisions	Comprehensive process with evidence on each Application of the process followed and clearly referenced in decisions	4, 5	Network Rail
Ref. in report	Suggested actions for improvement	Issues identified in the case study reviews to be addressed			Indicative CAP stage
4.1 & 5.1	Network Rail should set out indicative timescales upon receipt of Application. These should identify agreed timescales and deliverables from all parties including ORR. For most cases these can follow a common template, however cases identified as complex may require bespoke arrangements which are developed based on lessons learned from previous cases.	<p>A common theme across case studies was a lack of clarity over how long an Application may take to be resolved, and the impact it could have on the ability for Applicants to make informed business decisions. Extended timescales also impacted the validity of assumptions used to inform Applications and supporting evidence. This lack of clarity often included perceived contradictions between different contractual arrangements, guidance documents and processes.</p> <p>Beyond initial representation timescales there is uncertainty over the time Network Rail will take to produce evidence, and the time ORR will take to declare it has sufficient evidence to then make a decision.</p>			All
4.2	Network Rail should summarise responses to consultation in a similar fashion to the way ORR summarises responses in providing its decisions to ORR and Applicants.	It was unclear in several of the cases if the Stakeholder consultation impacted on decisions. Summarising responses in any Representations to ORR would make it clearer if any of the feedback materially affected decisions taken.			Representations, Discussions
4.3	As part of the overall CAP, Network Rail should set out clearly their stakeholder engagement process including a published RACI, this should expand on currently documented arrangements such as that for formal industry consultations on Applications. This is consistent with action 2.1.	Parts of the process for stakeholder consultation is documented but timescales can be unclear, and the processes vary by Region. Providing greater clarity on what is required will improve overall consistency of response which is particularly important for cross Regional services.			All

Ref Number	Recommendation	Benefits	Evidence of Implementation	Relevant review questions	Owner
SOW32051-03	<p>Network Rail and ORR to produce guidance on how it presents and assesses capacity in the context of CAP. This should include:</p> <ul style="list-style-type: none"> <li>• Outline factors that make up capacity and could be considered when assessing an Access Rights request application.</li> <li>• Review methods in which future changes to the network capability can be published and accessed.</li> </ul>	The range of methods and tools available to assess applications under CAP is complex and choice varies depending on case-by-case issues. Producing and maintaining guidance to outline possible approaches that may be applicable under CAP will make this more transparent. Incorporation of these factors into the current work to produce RAG scores for the Framework Capacity Statement will provide transparent upfront information on network capacity. Subject to the value in inclusion of each factor.	An agreed guidance for factors that could be considered under CAP and a published statement on the Network Rail website, alongside the regulatory requirements for publishing capacity.	6	Network Rail / ORR
Ref. in report	Suggested actions for improvement	Issues identified in the case study reviews to be addressed			Indicative CAP stage
6.1	Complete the current work to publish capacity by Strategic Route Section as RAG status in the Framework Capacity Statement. Outline what the RAG status considers and excludes in terms of factors affecting capacity.	Information on available capacity was not always up to date nor was a process to keep it up-to-date evident at that time (GNWR).			Pre-Application, Representations, Discussions, ORR considerations
6.2	Consider the incorporation and value of wider capacity factors: traction power, level crossings, performance etc.	<p>Some interviewees raised questions about how capacity should be assessed, not just in terms of paths in the timetable but also other factors such as power supply, level crossing downtime and track maintenance requirements (GBRf)</p> <p>In the GUT-C case, Train Path capacity was compliant with TPRs, however, the application was unsupported on the grounds of performance.</p> <p>Power supply was a capacity limiting factor in the WCML case studies, determined through a detailed power supply study of the proposed timetable during the later stages of the case.</p>			Pre-Application, Representations, Discussions, ORR considerations
6.3	Review methods and processes in which future changes to the network that affect capacity can be indicated in terms of changes to capacity.	<p>It was unclear what the baseline was for future applications noting this was being addressed by an ESG (GUT-C).</p> <p>It was noted in one interview that Applications tend to be made on the current timetable rather than any future capacity.</p>			Pre-Application, Representations, Discussions, ORR considerations

Ref Number	Recommendation	Benefits	Evidence of Implementation	Relevant review questions	Owner
SOW32051-04	Develop a clear set of criteria for undertaking assessments of Access Rights applications. This should cover supported and unsupported Applications and include a consistent approach to evidence gathering.	Provision of clear guidelines will enable greater consistency in analytical support to future Applications.	Guidelines documented and available for potential Applicants setting out relevant tools and processes alongside a selection matrix based on risk and complexity of the individual case.	7	Network Rail System Operator
Ref. in report	Suggested actions for improvement	Issues identified in the case study reviews to be addressed			Indicative CAP stage
7.1	Develop guidelines and processes for identifying the key measures of capacity that are relevant to the Application, and the methods of assessing them. This should outline which approaches and tools are most appropriate for different types of Application, including indicative timescales and requirements for clear remits/scope.	No written process for setting out the appropriate levels of evidence, tools or timescales was provided as part of this review.			Pre-Application, Representations, Discussions, ORR Consideration
7.2	Produce guidance to both System Operator and Regions as to the process in agreeing the interpretation of results from the measures applied. This may, for example, link to CUI limits, performance objectives or level crossing risk limits.	Note that in some cases the requirements for evidence changed throughout the timeframe of the application. For example, the WCML application, included a review of Train Paths based on updating the 2013 capacity assessment, although not specific to the applications for WCML. Subsequently a re-cast timetable was developed as a Development Timetable aimed at accommodating Train Slots followed by RailSys performance modelling.			Pre-Application, Representations, Discussions, ORR Consideration
7.3	Share guidance with Applicants and stakeholders to ensure there is transparency in the potential process of assessments Network Rail may undertake.	Linked to 7.2 above.			Pre-Application, Representations, Discussions, ORR Consideration

Ref Number	Recommendation	Benefits	Evidence of Implementation	Relevant review questions	Owner
SOW32051-05	Develop an agreed protocol between ORR and Network Rail setting out the evidence to be provided on an agreed scale of case complexity. Each formal application can be assessed against the scale with Applicants on a case-by-case basis.	Ensure clarity on expectations on all parties in provision of evidence	Agreed protocol provided to all key stakeholders	8	Network Rail / ORR
Ref. in report	Suggested actions for improvement	Issues identified in the case study reviews to be addressed			Indicative CAP stage
8.1	Network Rail and ORR to set out and agree a clear protocol for evidence requirements by case complexity and likely timescales.	All parties raised the issue that a lack of clarity over what evidence may be required to inform an Access Rights decision made it difficult to determine the timescales and resource requirements for managing Applications.			Representations, Discussions, ORR Consideration
8.2	Network Rail and ORR to agree specific case requirements for likely complex cases at the outset of an Application - this may be before or after Form P/F.	The interviews highlighted that it was often assumed by the ORR that Network Rail would know what evidence would be required to inform an Access Rights decision, in terms of both type of evidence (e.g., performance data), and also the form of that data (e.g., the method to be used and the exam question being asked). This lack of clarity could lead to extended timescales and a less collaborative working relationship.			Pre-Application, Representations, Discussions, ORR Consideration
8.3	For complex cases (based on the agreed protocol) Network Rail and ORR should set out on a case-by-case basis the key criteria for assessment/evidence outcomes that will influence decisions.	A common theme through the review process was that stakeholders did not feel confident they knew what the benchmark was for an Application to be successful and often felt that this could change during the process. The lack of transparency could make working relationships more challenging and also increased the likelihood of disputes.			Representations, Discussions, ORR Consideration
8.4	Network Rail to consider the need for an industry-wide framework which assesses whether the flexing requirements of an Application triggers the need for a timetable re-cast.	Under the CAP process consideration is required in terms of Train Slots which may only be feasible through re-cast or development of a timetable as was the case for the WCML case and completed via an ESG. However, there is no formal mechanism in the Network Code that stipulates Operators <i>have</i> to bid in accordance with the outputs of an ESG.			Pre-Application, Representations, Discussions, ORR Consideration
8.5	Consider communication routes between ORR and Network Rail technical teams so that technical discussions can be held directly at the appropriate level.	There was no clear evidence that ORR and Network Rail technical teams directly communicated to discuss analysis leading to the risk of findings and review questions being misinterpreted.			Representations, Discussions, ORR Consideration

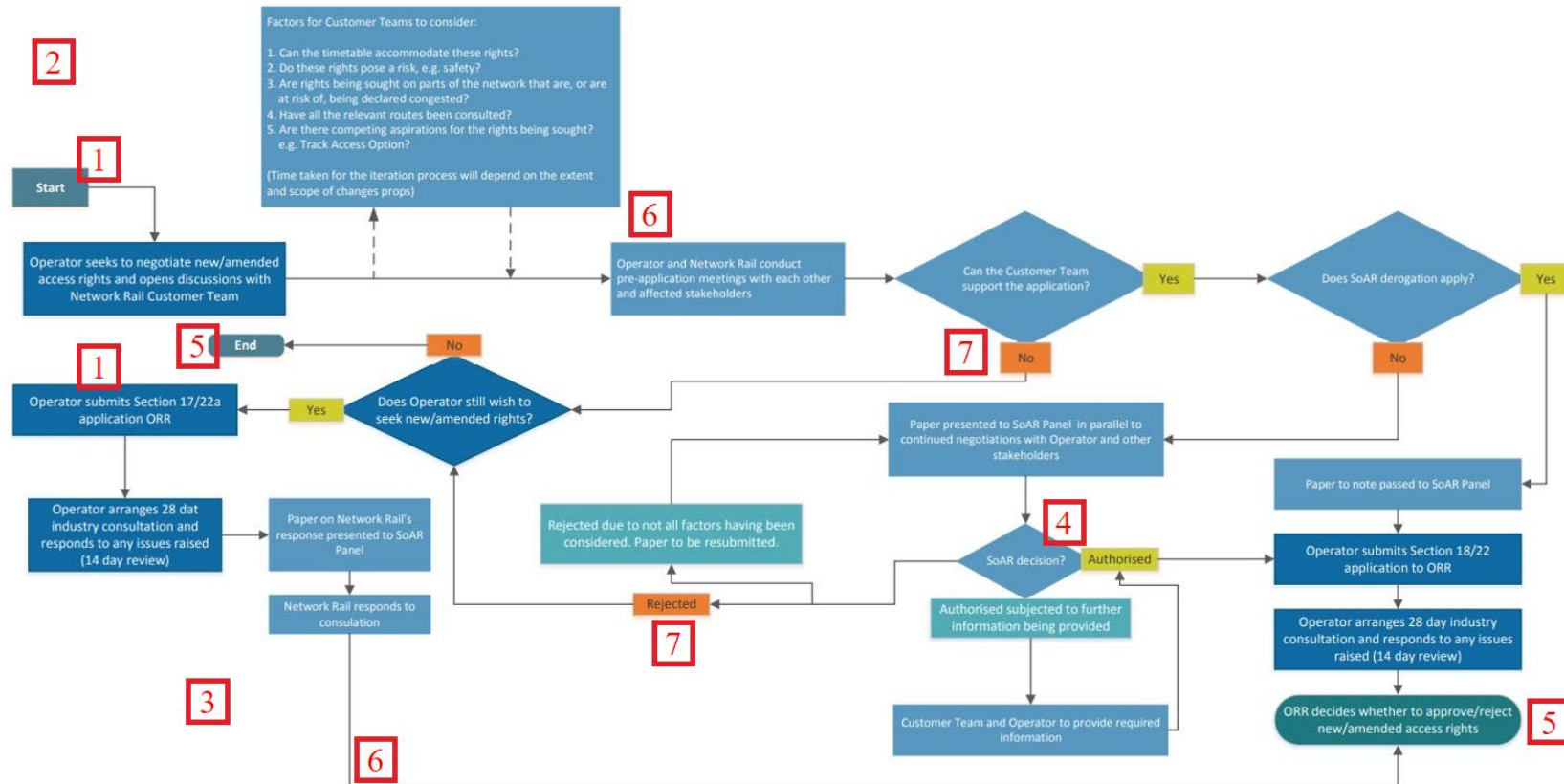
Ref Number	Recommendation	Benefits	Evidence of Implementation	Relevant review questions	Owner
SOW32051-06	Develop a continuous improvement process for sharing good practice and lessons learned	Support wider learning from cases	Agreed procedure and evidence of sharing	3	Network Rail
Ref. in report	Suggested actions for improvement	Issues identified in the case study reviews to be addressed			Indicative CAP stage
3.1	Review whether assessments of each Application would be beneficial, with greater focus placed on more complex cases.	Whilst each case is unique, there are often consistent elements which can be identified across case studies which could drive common approaches, improving the timescales and transparency of the CAP.			All
3.2	Lessons learnt and good practice to be shared across System Operator and Regions – this is particularly relevant for Open Access operators where it was stated that experience gained from previous Applications affected the way Regions handled current Applications	Many of these case studies presented new challenges to those involved, particularly for those working in Regional Teams being consulted on FNPO cases (Freight and Open Access). It was suggested that opportunities were being missed for lessons to be shared across Regions to improve processes and the customer experience for Applicants.			All



## 5.2 Further guidance related to recommendation SOW32051-01 (process maps)

Guidance from Network Rail and the ORR already includes a number of process maps. This section focusses on what we identified to be one of the key process maps, Network Rail’s “SoAR Process Flow Chart”, identifying where consideration should be given to amending the flow charts, adding additional clarifications, or creating new processes. As stated in the recommendation, we also propose that an overarching process map should be created which links together the separate process maps from across Network Rail and the ORR to provide the full picture of the process. A description of the flowchart is provided in Table 14.

Figure 2 - SoAR Process Flow Chart



This flowchart is focussed on the core SoAR process however this forms the core of the proposed map for the whole process and so areas for improvement have been identified through this chart.

**Table 14 - Description of the steps for the flow chart**

Step	Description
1	<p>The flowchart should recognise there are a number of ways in which the CAP process can start and at which capacity should be a consideration. From the case studies we have identified the following:</p> <ul style="list-style-type: none"> <li>Freight TOVR (which Operator may then seek to convert to Firm Rights)</li> <li>Refranchising with new Train Service Specifications (TSS)</li> <li>Engagement between Applicant and Customer Team</li> <li>Applicant goes straight to submitting Form P/F to ORR under Section 17 or 22a</li> <li>Major Infrastructure Programme with associated service changes (this would likely lead to an IPG and then ESG developing a TSS and then timetable)</li> <li>At the start of the process a record should be made on a national log</li> </ul>
2	<p>The understanding of current and future capacity should be an important tool in supporting Applicants developing their proposals, and relevant NR teams assessing Applications. This should be a live document that is available to all relevant parties before Applications for capacity are made.</p>
3	<p>All stages in the chart should have indicative timescales. For the more open-ended negotiation phases suggested minimum and maximum timescales should be given.</p>
4	<p>Narrative relating to SoAR Panel decisions should be published in the minutes, giving transparency over why decisions were made.</p>
5	<p>At the end of the process, including where Applications are withdrawn, a record should be made on the national log of the outcome and key information relating to the Application.</p>
6	<p>Links should be made to the process improvement recommended in SOW32051-03 and also the ESG framework</p>
7	<p>If an Application is not supported, consideration should be given as to whether this triggers a Declaration of Congested Infrastructure</p>

## 6. Appendices

### Appendix A

#### Mandate / Statement of Works

The mandate for this review is shown below.



OFFICIAL



#### Independent Reporter Framework Statement of Works

1.0 COMMISSION INFORMATION	
Project Name:	Review Capability and Governance of Capacity Allocation
Bravo Sourcing Request Number:	#32051
Network Rail Contact:	[REDACTED]
Network Rail Department:	Planning & Regulatory Team
SoW Number:	0020
Network Rail PO Number:	[insert NR PO# when available]
Commission Value:	Time Charged Contract commission
Supplier Name:	[insert the name of the selected supplier after appointment]
Main Supplier Contact:	[name and email address of the main supplier contact]

*This Statement of Work (SoW) is the contractual vehicle for defining, authorising and commissioning a piece of work to be undertaken under the Independent Reporter Framework. The SOW has six sections:*

- 1 *Commission Information*
- 2 *Commission Overview*
- 3 *Scope of Services and Deliverables*
- 4 *Knowledge Transfer*
- 5 *Resource & Commercial Details*
- 6 *Invoicing*

*This SoW is entered into under and in accordance with the terms of the Independent Reporter Framework dated 1 February 2020 between Network Rail, the Office of Rail and Road, and the Supplier and includes and incorporates any special Terms and Conditions and any other amendments captured in this SoW.*

*Any dispute surrounding this SoW will be resolved in accordance with the Terms and Conditions outlined in the Framework Agreement.*

*Ownership and use of any Intellectual Property Rights shall be in accordance with the Framework Agreement Terms and Conditions.*

*Change control procedures are to be applied as set out in the Terms and Conditions of the Framework Agreement.*

2.0 COMMISSION OVERVIEW	
<p><b>Abbreviations</b></p>	<p>CAP - Capacity Allocation Process            CP – Control Period            FOCs – Freight Operating Companies            NR – Network Rail            NW&amp;C - North West and Central            ORR – Office of Rail and Road            SO – System Operator            TOCs – Train Operating Companies            W&amp;W - Wales and Western Region</p>
<p><b>2.1 Background</b></p>	<p>Train and freight operators seeking access to the network must apply to Network Rail (NR) to have capacity allocated. Recent examples of specific access applications and timetabling projects in Eastern, North West and Central (NW&amp;C) Region and Wales and Western Region (W&amp;W) have identified areas where an effective outcome has not been delivered for an operator seeking access.</p> <p>Observed factors in these cases include issues in: providing information; variability in the form and quality of evidence; lack of clarity on timescales; and subsequent delays in taking decisions on access rights or timetable introduction.</p> <p>Under the Network Licence, there is an obligation on the licence holder to establish, maintain and comply with a Capacity Allocation Process (CAP) and both Network Rail (NR)'s Regions and the System Operator (SO) have specified responsibilities, including conditions 6.9 and 7.10 which relate to providing information and advice.</p> <p>The Railways (Access, Management &amp; Licensing of Railway Undertakings) Regulations 2016, Part 5, Regulation 19 also sets out requirements for the allocation of capacity.</p>
<p><b>2.2 Business Objectives and Priorities</b></p>	<p>The purpose of the review is to establish whether Network Rail is reasonably able to discharge its Licence Requirement and provide and comply with a CAP allowing persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.</p>

### 3.0 SCOPE OF SERVICES AND DELIVERABLES

#### 3.1 Key requirements

The assessment shall address where specific factors have been identified with the outcomes of the CAP process:

- Avanti West Coast/Grand Union Trains 2022 WCML applications,
- Wrexham/Bidston 2022, GUT Carmarthen 2021,
- Grand Central (GNWR North West 2014),
- GB Railfreight Limited Section 22A 15th Supplemental Agreement - Decision letter from the Office of Rail and Road - 13 November 2020 (orr.gov.uk)
- Freightliner Heavy Haul Limited 8th SA decision letter (orr.gov.uk)

For these examples, the assessment shall address which factors resulted from the CAP processes and which were externally created, with reference to the following questions:

1. Whether the current CAP outcomes comply with all applicable Licence Conditions and Regulations. For the avoidance of doubt the CAP includes access rights (decisions and directions) and timetable allocation but excludes disputes.
2. How effectively does NR as licence holder govern the interactions between NR's regions and SO in relation to the LC 6.9 and 7.10?
3. How do SO and the NR's regions record the quality, effectiveness and timeliness of delivery of the CAP and keep the CAP processes and capabilities under review to deliver best practice in context of regional devolution?
4. How does NR engage with and manage stakeholders to the CAP process, including access beneficiaries, ORR and funders?
5. How does NR communicate its process and decisions from the CAP to stakeholders in accordance with its Licence and Access Regulation 19 in a timely manner to allow industry to take business decisions?
6. How does NR ensure the quality of information for current and future capacity is accessible; complete; transparent and up to date?
7. What process does NR follow to create a clear understanding over the appropriate levels of evidence, tools and timescales that should be in place to effectively inform CAP decisions?
8. How does NR agree with ORR the appropriate levels of evidence, tools and timescales to effectively inform it in its response to statutory access consultations?

<b>3.2 Key skills</b>	<p>Suppliers are required to demonstrate technical capabilities in the following areas (as a minimum):</p> <ul style="list-style-type: none"> <li>• All regulation and legislation governing railway Access and capacity planning</li> <li>• Assessing the effectiveness of governance and operational delivery</li> <li>• Assessing incentives to drive behaviours</li> <li>• Reviewing processes and operational efficiency</li> </ul>
<b>3.3 Key deliverables</b>	<ul style="list-style-type: none"> <li>• Weekly progress updates to ORR via Teams meeting.</li> <li>• A presentation of draft findings to be discussed with ORR and Network Rail during w/c 20th February 2023.</li> <li>• A draft report incorporating comments from the review meeting during w/c 6<sup>th</sup> March 2023.</li> <li>• A final report incorporating all comments during w/c 20<sup>th</sup> March 2023.</li> </ul>
<b>3.4 Proposed approach</b>	<p><i>[Insert at contract award stage]</i>          [Demonstrate and detail the proposed approach for the project, covering all areas of the projects scope and clearly state the requirement(s)]</p>
<b>3.5 Schedule &amp; timings</b>	<p>Contract Start Date: 19<sup>th</sup> December 2022*          Contract End Date: 31<sup>st</sup> March 2023*</p> <p>It is anticipated that the review may be undertaken in a 6-8 week period. The contract start and end dates allow for the Christmas and New Year holidays and any contract close-out administration.</p> <p>*These are indicative dates and will be agreed once the contract has been awarded and the PO has been approved.</p> <p>[Insert details pertaining to the commission's intended start and end date, as well as a commission schedule e.g., a Gantt chart with tasks and attributive start/end dates]</p>
<b>3.6 Relationship applicable for performing the duties under this statement of works contract</b>	<p>No processing of personal information.</p>

#### 4.0 KNOWLEDGE TRANSFER

<b>4.1 Knowledge Transfer</b>	<p><i>[Insert at contract award stage]</i>          [Explain and detail how knowledge transfer is to be enabled throughout the commission and how the final output will be delivered and presented to Network Rail and ORR.]</p>
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5.0 RESOURCE & COMMERCIAL DETAILS	
5.1 Supplier Resource	<p><i>[Insert at contract award stage]</i></p> <p>[Key personnel which will be engaged in the commission, along with their responsibilities. Details should include sub-contractors, if sub-contractors are being utilised for the delivery of this contract commission]</p> <p>In the event of "key personnel" becoming unavailable the supplier agrees to provide a replacement of equal standard and status within 48 hours of notice.</p>
5.2 Pricing Schedule	<p>This contract is based on a time charged contract commission, capped at £200,000</p> <p>Rates to be charge are as follows: <i>[Table to be inserted at contract award stage]</i></p> <p>Invoicing is monthly in arrears.</p> <p>All prices detailed are exclusive of VAT which will be charged at the prevailing rate.</p>
5.3 Payment Milestones	n/a
5.4 Place of work	<p>Quadrant:MK, Elder Gate, Milton Keynes MK9 1EN. For the avoidance of doubt, this is deemed the usual place of work.</p> <p>The majority of the services may be conducted from the suppliers' own office or remotely.</p> <p>Some travel to Network Rail's sites nationally may be required.</p> <p>Currently Network Rail is utilising remote working facilitated by video-conferencing platforms such as Microsoft Teams. The Supplier is required to adapt to similar measures.</p> <p>Network Rail will be following the very latest guidance set by the Government in relation to COVID-19 measures.</p>
5.5 Expenses	<p>Business Travel Expenses to UK locations other than the usual place of work [Milton Keynes] may be claimed, subject to prior agreement and in accordance with Network Rail 's Business Travel and Expenses Policy.</p> <p>The Supplier shall endeavour to minimise travel and expense costs throughout the duration of the contract.</p>

<b>5.6 Contract Variations</b>	<p>Variations to this Statement of Work contract may be permitted in accordance with Clause 88 of the Utilities Contract Regulations (modification of contracts during their term).</p> <p>All variations to this Statement of Work contract must be agreed in writing under a restated statement of works document, duly signed by all parties.</p>

<b>6.0 INVOICING</b>	
<b>6.1 Invoice Details</b>	<p>Network Rail operates a strict "NO PO – NO PAYMENT" policy.</p> <p>Invoices are to be raised on completion of the contract or in accordance with the milestone payments [where applicable] set out in this SOW.</p> <p>Invoices should contain the following information as a minimum:</p> <ul style="list-style-type: none"> <li>• Purchase Order number</li> <li>• SOW number as detailed in Section 1.0</li> <li>• Project Title and description</li> </ul> <p>Business expenses should be invoiced as a separate line and supported with receipts, as described in terms and conditions of the framework agreement and the Network Rail Business Expenses Policy.</p> <p>Please be aware that failure to provide the information above may potentially cause a delay in processing the invoice.</p> <p>Our preference wherever possible, is for invoices to be submitted via EDI.                  Alternatively, invoices may be submitted                  By email - <a href="mailto:invoices@networkrail.co.uk">invoices@networkrail.co.uk</a>                  By post – Network Rail Accounts Payable, PO Box 4145, Manchester M60 7WZ</p>



# Appendix B

## Summary of Requirements

This appendix lists the key requirements of the Capacity Allocation Process taken from the Network Licence (Table 15) and the Railway Regulations 2016, Part 5, Regulation 19 (Table 16). Against each key requirement we assess Network Rail’s current compliance and provide some commentary.

**Table 15 - Summary of requirements from the Network Licence**

Summary requirement	Current Compliance?	Comment
5.10 - Ensure CAP is complied with	Unclear	It is not clear what the CAP is
5.10 - decisions made by suitably qualified staff in a transparent and impartial way	Partial	Stakeholders have questioned the transparency of the process and decisions
5.10 - At all times have an appointed officer with overall responsibility for the CAP	Unclear	It was not clear who this is (name or role) and different answers were given during interviews. This has now been clarified as being the responsibility of the System Operator Group Director
6.9 - Promptly provide accurate information and impartial advice on the allocation of capacity in its Route Area	Partial	Stakeholders have challenged promptness and accuracy
6.9 - Advice provided by suitably qualified staff	Yes	Although there is variance by Region due to experience
6.10 - Comply with any other responsibilities set out for it in the CAP	Partial	Responsibilities set out were unclear
6.11 - Co-operate with any Potential Provider, Potential Funder or franchising authority and identify ways to satisfy reasonable requests	Yes	Although would benefit from agreeing project plan for requests with timescales & evidence requirements
7.9 - Establish and maintain a Capacity Allocation Process	Unclear	Stakeholders were unable to state what the CAP is or where they would find it
7.10 - Promptly provide accurate information and transparent & impartial advice on the allocation of capacity	Partial	Stakeholders have questioned the transparency of the process and decisions
7.10 - Advice provided by suitably qualified staff	Yes	No definition of “qualified” is specified however we saw evidence of the training provided
7.11 - Co-operate with any Potential Provider, Potential Funder or franchising authority and identify ways to satisfy reasonable requests	Yes	Although would benefit from agreeing project plan for requests with timescales & evidence requirements

**Table 16 - Summary of requirements from the Railways Regulations 2016, Part 5, Reg 19**

Summary requirement	Current Compliance?	Comment
Para 3 - Establish capacity allocation rules and process	Unclear	Elements of the process and how they relate are unclear. Beyond Part D consistent “Rules” do not seem to exist
Para 9 - CAP is conducted in accordance with the timetable for the production of the working timetable	Unclear	This is an industry issue rather than NR and not helped by the nature of Open Access, TOC & FOC requirements driving different timings
Para 16 - Infrastructure capacity is allocated on a fair and non-discriminatory basis	Yes	While stakeholders expressed a perception of unfairness there was no evidence to support that view.
Para 16 - Agreements with the railway undertaking to run train services to be non-discriminatory and transparent	Yes	Agreements and TACs seen to be transparent. While stakeholders expressed a perception of discrimination there was no evidence to support that view.
Para 16 - Respect the confidentiality of information supplied as part of the CAP	Yes	No issues were raised regarding confidentiality
Para 17&18 - May set requirements on Applicants to ensure its legitimate expectation about future revenues and utilisation of the infrastructure capacity are safeguarded	Partial	From interviews this felt like a hard thing for NR to deliver, particularly given the differing commercial considerations of Applicants and the potential for a “chicken & egg” situation between Rights, Paths, and capital investment
Para 20 - Consider the impact of maintenance access windows on Applicants	Partial	There were different views across stakeholders as to how and when maintenance access windows should be considered and how they can be used to inform decisions. (Can windows inform Access Rights decisions or just Path decisions through Part D?)