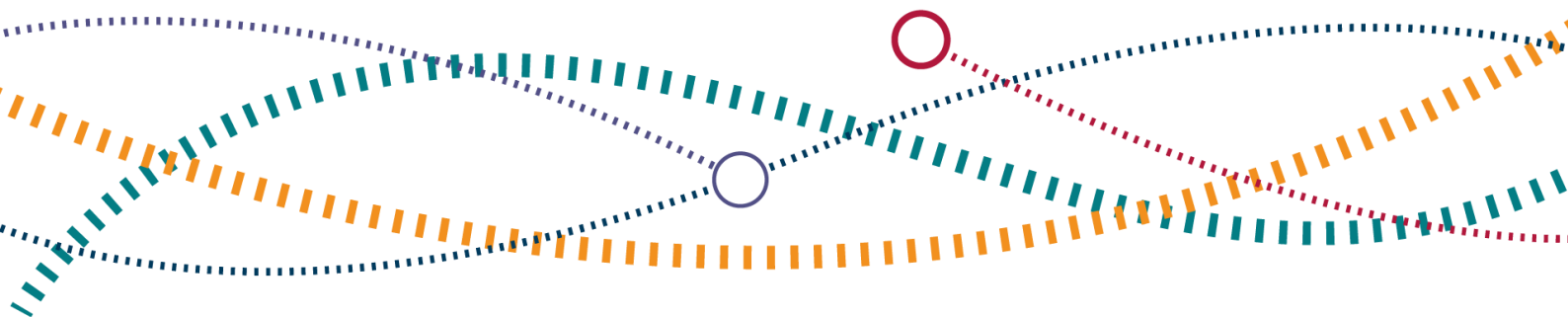




Determination by the Office of Rail and Road

Appeal under Part M of the Network Code by Network Rail Infrastructure Limited in respect of the Timetabling Panel's Determination in respect of dispute references TTP1706 and TTP1708

22 December 2020



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Introduction

1. This determination by the Office of Rail and Road (ORR) concerns the appeal made by Network Rail Infrastructure Limited (Network Rail), on 2 September 2020, pursuant to Part M of the Network Code (Part M)¹ against the determination of the Timetabling Panel of the Access Disputes Committee (the Panel), dated 24 August 2020 (the Determination).²
2. The Determination considered dispute TTP1706, raised by GB Railfreight Limited (GBRf) and dispute TTP1708, raised by Freightliner Group Limited (Freightliner). Both disputes concerned the same issue and were considered together.

Background

3. Disputes TTP1706 and TTP1708 were raised in response to Network Rail's decision to take late notice access for a series of engineering possessions, relating to the replacement of aged timbers in the Manea Bridges between Ely and Peterborough.
4. Network Rail had consulted train operators on five possible possessions strategies for carrying out the necessary works, referred to as DEFCON 0 to DEFCON 4. Network Rail ultimately decided on DEFCON 4 which required a 28 day blockade of the route.
5. Following a hearing held on 13 August 2020, the Panel determined that in place of Network Rail's decision to adopt DEFCON 4 it should instead adopt the DEFCON 0 possessions strategy. This strategy required a series of shorter, weekend blockades over a significantly longer period.
6. On 2 September 2020, Network Rail appealed to ORR against the Determination. It did not appeal the direction to adopt DEFCON 0 in place of DEFCON 4. However, it appealed two parts of the Determination, namely:
 - (a) the finding in paragraph 73 "*that Network Rail's application of the Decision Criteria was seriously flawed and could not be accepted*"; and
 - (b) the Panel's statement given in guidance in paragraph 87.3 "*That a Capacity Study is formally required in circumstances such as this, to enable Access Beneficiaries being asked to agree to Restrictions of Use to understand which of their scheduled services can be accommodated on the Network, whether by diversion or single line working, to enable them to respond appropriately before Network Rail reaches any Decision on Restrictions of Use.*".

¹ [Network Code Part M](#)

² [The Panel's Determination in respect of dispute references TTP1706 and TTP1708](#)

Relevant provisions of the Network Code, Engineering Access Statement (EAS) and Timetable Planning Rules (TPR)³

The Network Code (Part D)⁴

7. The Network Code is a set of rules incorporated into, and forming part of, each track access agreement between Network Rail and holders of rights of access to the track it owns and operates.
8. It is the responsibility of Network Rail to establish a timetable for the Network, referred to as the “Working Timetable”. Part D sets out the rules for the revision of the Working Timetable, a process that normally takes place twice per year. Part M provides the process by which a party, if dissatisfied with a decision of a Timetabling Panel in relation to a dispute arising under Part D, can appeal the matter to ORR for determination.
9. Condition D.3 of the Network Code deals with variations made to the working timetable after its publication 26 weeks before the timetable comes into effect (known as “D-26”).
10. The process for Network Rail Variations with 12 or more weeks’ notice (outside of the bi-annual process) is set out in Condition D3.4.
11. The process for Network Rail Variations with less than 12 weeks’ notice (outside of the bi-annual process) is set out in Condition D3.5.
12. Condition D4.6 sets out a list of considerations for Network Rail to apply when deciding any matter under Part D.
13. The Network Code does not explicitly require a Capacity Study anywhere under the Part D process.

The TPR and EAS (collectively referred to as the Rules)⁵

14. The TPR is a document regulating the standard timings and other matters necessary to enable trains to be included in the working timetable, for various parts of the rail network.

³ We have set out the relevant extracts in an annex at the end of this letter.

⁴ [Network Code Part D](#)

⁵ [The Rules](#)

15. The EAS describes the rules regulating the arrangements for engineering access to the rail network and sets out details of any Restrictions of Use; and any alternative train routes or stopping patterns which may apply during any Restrictions of Use.

16. The Network Code and the EAS are incorporated into the track access agreements between Network Rail and all train operators. As noted by the Panel at paragraph 69, the TPR binds Network Rail and the Panel considered (as does ORR) that the TPR is incorporated into the Network Code. In the event of a conflict, the Network Code will take precedence over Track Access Agreements (clause 1.2(o) of the template freight operator track access contract), the TPR and the EAS (section 2.4.2 TPR and 1.5.1.2 EAS).

Change procedure under the Rules

17. The TPR and EAS both set out a procedure “to provide a means of altering [the Rules] other than through the twice-yearly process having effect from the Passenger Change Dates” (section 2.4.1 TPR and 1.5.1.1 EAS).

18. The Rules state that such agreed additions, substitutions and/or deletions to the access opportunities with the EAS “*will be regarded as being within the Engineering Access Statement*” (section 2.4.2 TPR and 1.5.1.2 EAS).

19. Under the TPR, this change procedure is in section 2.4 (copied below) and states it is drafted in accordance with Condition D3.4.3 of the Network Code (Network Rail Variations with at least 12 weeks’ notice):

“2.4.2 This procedure will be used by Network Rail to add, substitute or delete engineering access opportunities contained within the Engineering Access Statement. All possessions so agreed will be regarded as being within the Engineering Access Statement”.

20. Under the EAS, the equivalent change procedure is in section 1.5 of the EAS and states it is drafted in accordance with Condition D2.2.7⁶ of the Network Code (Revision of Timetabling Planning Rules and Engineering Access Statement).

⁶ We consider the reference to Condition D2.2.7 is an error and it should refer to Condition D3.4.3 as does section 2.4 of the TPR.

Access Impact Matrix

21. As part of its determination of a previous access dispute, TTP773 (dated 1 April 2015), the Panel directed that Network Rail consult with the industry “*with a view to incorporating the [Access Impact] Matrix, as may be suitably developed and amended following such consultation, into the [TPR] at the earliest opportunity*” (paragraph 6.2 of TTP773). Following that direction, Network Rail amended both the TPR and EAS to incorporate an access impact process. This was inserted into Section 7 of the TPR, and Section 6 of the EAS. Both sections describe “*the introduction of the Access Impact process to be followed to enable agreement...for delivering Capacity Study requests relating to the Engineering Access Statement*”.

22. In ORR’s consideration, neither the TPR nor the EAS includes any clear statement as to when the matrix is to apply. Neither is there any clear statement in the Network Code that the matrix applies to Restrictions of Use either proposed during the bi-annual revision process under Condition D2.2 or in order to facilitate Network Rail Variations under Conditions D3.4 and D3.5.

ORR's handling of the appeal

23. By letter dated 2 September 2020, Network Rail notified ORR, in accordance with Conditions M3.1.1 and M6.1.1, that it wished to challenge the Determination on two grounds (set out in more detail in paragraph 41 below), using the expedited appeal process.

24. On 4 September 2020, ORR wrote to GBRf and Freightliner inviting them to provide representations (by 8 September 2020) on whether or not the appeal should proceed and on Network Rail's request to expedite the appeal, and to provide representations on the substance of the appeal (by 16 September 2020).

25. On 7 September 2020, GBRf and Freightliner responded confirming that they did not object to the appeal proceeding but did not support Network Rail's request to expedite the appeal.

26. On 8 September 2020, XC Trains Limited, an interested party to the appeal, wrote to ORR summarising its position, which ORR noted. It did not comment on the request to expedite the appeal.

27. On 8 September 2020, ORR wrote to the parties to advise them that it was minded to hear the appeal on the basis that it raised a matter of importance to the industry. However, ORR did not consider it appropriate to expedite the appeal, as the timescales requested by Network Rail would not allow for a thorough review of all issues and representations.

28. GBRf submitted its representations on the appeal on 15 September 2020. Freightliner submitted its representations on 16 September 2020. These are summarised in paragraphs 35 and 36 below.

29. On 24 September 2020, ORR wrote to Network Rail, Freightliner and GBRf, inviting Network Rail to explain its interpretation of when (if at all) a Capacity Study is mandated under the Network Code and Operating Rules. ORR invited GBRf and Freightliner to comment on the questions asked if they wished to do so.

30. On 1 October 2020, Network Rail and Freightliner responded to ORR's letter of 24 September 2020 (summarised below at paragraphs 39 and 40). GBRf did not make any further comment.

Network Rail's grounds of appeal

31. Network Rail's Notice of Appeal, dated 2 September 2020, put forward two grounds of appeal:

- (a) *"A Capacity Study is not mandatory whenever a Restriction of Use is sought under paragraph 3.4 or 3.5 of Part D of the Network Code contrary to the apparent suggestion in paragraphs 70, 72 and 87.3 of the Determination"*; and
- (b) *"[Network Rail] has followed the appropriate decision criteria contrary to paragraph 73 of the Determination and [Network Rail] was entitled to take into account the severe consequences for all parties of being able to undertake the Urgent Works within the required timescale when making its decision in accordance with D4.6"*.

32. We have considered all of Network Rail's representations, but set out below Network Rail's own summary of its arguments (paragraphs 4.41 to 4.46), as follows:

"4.41 Nowhere in either D3.4 or D3.5 is there a reference to the [EAS], Access Impact process or either Network Rail or the Train Operators delivering Capacity Study requests whether relating to the [EAS] or otherwise.

4.42 Annex 1 of Part D sets out the timeline for the timetable development process and includes a specific section for the revision of the Timetable Planning Rules and the [EAS]. This is contrast [sic] with the sections of Annex 2 of Part D dealing with the timeline for Network Rail Variations with at least 12 weeks' notice and less than 12 weeks' notice. Network Rail variations under Condition D3 have a significantly shorter process in terms of both stages and timescales and makes no reference to the revision of the [TPR] and the [EAS].

4.43 If Capacity Studies were mandatory requirements for Network Rail variations to the Working Timetable pursuant to D3.4 or D3.5 then this would be expressly stated in Part D and the annexes and the [TPR].

4.44 In paragraph 70 of the Determination, the Panel refers to the TPR extract, and then states "Network Rail's Decision clearly falls into one of the higher levels of severity, requiring a Capacity Study". The Panel fails to explain why Condition D3.4 or D3.5 require one to be prepared. There is no reference to a Capacity Study in D3.4, or D3.5, or anywhere else in Part D, or the Code as a whole. Despite that, the Panel then goes on to say, in paragraph 72, that "Condition D3.5 makes it clear that Network Rail is required to comply with the provisions of D3.4 (other than those specifically excluded) as far as practicable.", but then follows with the statement that "It is clear that no Capacity Study was prepared". As explained above, there is no link between D3.4, D3.5 and a Capacity Study.

4.45 The Panel then states that it "found it difficult to understand how Network Rail could have considered its application of the Decision Criteria to have been fully informed without the required Capacity Study having been completed". As outlined above, Network Rail was able to apply the Decision Criteria without a Capacity Study and furthermore one was not required.

4.46 Accordingly the Panel's Guidance in paragraph 87.3 that "a Capacity Study is formally required in circumstances such as this" is incorrect."

33. In addition, we note here Network Rail's further argument (at paragraphs 4.29 to 4.33) that, as in its view, Capacity Studies generally take 16 weeks to prepare, Network Rail would be unable to obtain urgent access pursuant to D3.5 so as to complete urgent and safety critical maintenance and renewals work on short notice.

34. Network Rail requested a declaration from ORR, providing that:

- (a) Paragraphs 3.4 and 3.5 of Part D of the Network Code do not require a mandatory Capacity Study to be prepared whenever a Restriction of Use is sought under those paragraphs from Network Rail;
- (b) Network Rail's application of the Decision Criteria was not "seriously flawed" as per Paragraph 73 of the Determination; and
- (c) Network Rail is entitled to consider the likely consequences of failing to obtain the required possession and/or being unable to undertake the necessary works when applying the objective in D4.6.1 and the conclusions in D4.6.2.

GBRf's response to the appeal

35. In its representations of 15 September 2020, GBRf stated that it “*had no reason to oppose the process of appeal*” and made the following submissions (our summary):

- (a) Network Rail, had previously agreed to carry out a Capacity Study for this particular blockade;
- (b) Without the information that the timetabling and capacity work can provide to both parties, there cannot be proper and reasoned considerations to feed into the Decision Criteria before making the necessary decisions. For extremely late notice possessions of the magnitude of the Manea Bridges blockade, understanding the end-to-end impact of diverted services is even more critical;
- (c) Not all Capacity Studies take 16 weeks to prepare as each will be dependent on the severity and complexity of the proposed Restriction of Use (and GBRf did not accept that 16 weeks was required to complete this particular study);
- (d) Section 7 of the TPR clearly sets out the Access Impact process to be followed to enable agreement between Network Rail and Timetable Participants for delivering Capacity Study requests relating to the EAS. GBRf emphasised that the words “*relating to*” the EAS mean it is not only just for possessions proposed as part of the annual EAS process, or those already published in it, but for all possessions given that the wording does not differentiate between any of the types or timescales.
- (e) The procedure in section 2.4.2 of the TPR for altering the EAS or TPR other than through the bi-annual process makes it clear that, if accepted, a proposed possession will become regarded as being in the EAS.
- (f) A late notice possession request such as the Manea Bridges blockade, is intrinsically related to the EAS. It is, therefore the case that the Access Impact Matrix requirement is applicable and needed.

Freightliner's response to the appeal

36. In its representations of 16 September 2020, Freightliner made the following submissions (our summary):

- (a) Establishing the impact of proposed possessions was a well-established principle, and fundamentally important for operators. Network Rail had previously agreed to complete a Capacity Study to support the proposal for access requested.
- (b) Arguably, for late notice Restrictions of Use the principle of understanding the impact on train services is even more important given the reduced timescales to put in place appropriate mitigations.
- (c) Section 7 of the TPR outlines an Access Impact Matrix that describes how Capacity Studies should be completed in line with Restrictions of Use in the EAS.
- (d) Freightliner found it difficult to understand why it would take 16 weeks to complete a Capacity Study (which is longer than the time taken to build the national Working Timetable). It noted that this timescale had not been mentioned at the Hearing or in any previous discussions.
- (e) Without knowing the impact that the Restrictions of Use would have on Freightliner's services, Network Rail could not have applied the Decision Criteria with any degree of certainty or accuracy.
- (f) As part of its appeal, Network Rail appeared to be re-applying the Decision Criteria after the decision has already been taken.

ORR's request for further information and the responses received

37. On 24 September 2020, ORR invited Network Rail to make representations to explain its position on “when (if at all) a capacity study is mandated under the Network Code, and/or [the Rules]”. ORR also invited both Freightliner and GBRf to comment on the questions put to Network Rail.

38. On 1 October 2020, ORR received a response to this request from Network Rail and Freightliner.

39. In summary, Network Rail reiterated its previously stated position that the Access Impact Matrix is applicable to possessions which are incorporated in the EAS as part of the bi-annual timetable process under Condition D2 but that any possessions sought under D3 are not in the EAS so the Access Impact Process does not apply. It did not identify any provisions in Part D which mandate the production of a Capacity Study.

40. In contrast, Freightliner contended that RoUs sought under D3.4 (and by extension D3.5) are in the EAS, and that section 7 of the TPRs also applies to such possessions.

ORR's consideration of the appeal

Network Rail's first ground of appeal

41. Network Rail has identified two grounds of appeal, and characterised each of them slightly differently at the start and end of its appeal notice. Network Rail's first ground of appeal within its Notice of Appeal (as set out below) is phrased variously as:

"3.1.1 A Capacity Study is not mandatory whenever a Restriction of Use is sought under paragraph 3.4 or 3.5 of Part D of the Network Code contrary to the apparent suggestion in paragraphs 70, 72, and 87.3 of the Determination."

and

"5.1 The Determination is wrong in law because the Panel erred in its interpretation of Condition D3.4 and D3.5 of the Code, and Section 1 of the [TPR] in finding in paragraphs 70, 72 and 87.3 of the Determination that Network Rail was required to prepare a Capacity Study before making its decision under D3.5."

42. The first question that arises is whether the Panel did in fact decide that a Capacity Study is mandatory whenever a Restriction of Use is sought under Condition D3.4 or D3.5 of the Network Code.

43. In paragraphs 70 and 72 of the Determination, the Panel noted that *"Network Rail's Decision clearly falls into one of the higher levels of severity [set out in Annex C of the TPRs], requiring a Capacity Study"*, and stated that the Panel *"found it difficult to understand how Network Rail could have considered its application of the Decision Criteria to have been fully informed without the required Capacity Study having been completed"*.

44. In paragraph 87.3 of the Determination, the Panel went on to provide guidance that *"a Capacity Study is formally required **in circumstances such as this**"* (our emphasis). ORR considers that the Panel expressly found that a Capacity Study was required on the specific facts of this case – it made no finding either way as to whether a Capacity Study is mandatory whenever a Restriction of Use is sought under Conditions D3.4 or D3.5.

45. We note Network Rail's statement in paragraph 4.44 of its Notice of Appeal that *"There is no reference to a Capacity Study in D3.4 or D3.5, or anywhere else in Part D, or the Code as a whole."* However, Network Rail accepts in its 1 October 2020 letter, it has a power to produce such studies, should it consider it appropriate in the particular circumstances of the proposed possession.

46. We have set out above Network Rail’s summary of its position, including its points in relation to whether or not a Capacity Study is mandatory. We have considered all of its arguments. Likewise, we have considered all the arguments made by Freightliner and GBRf.

47. We note the provision in Part D of the Network Code that, when deciding any matter in Part D, Network Rail’s objective shall be “*to share capacity on the Network for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective users and providers of railway services*” (Condition D4.6.1). In achieving this objective, it must apply any or all of the considerations in Conditions D4.6.2(a)-D4.6.2(l).

48. These considerations include (e) maintaining an integrated system of transport for passengers and goods; (f) the commercial interests of Network Rail or timetable participants; and (j) enabling operators of trains to utilise their assets efficiently. We consider that in certain cases, Network Rail will need to undertake a Capacity Study to properly take some or all of these twelve considerations into account. There may be cases of emergency in which such a study will be impracticable, or cases where otherwise it is not necessary. The basic point is that we consider the need and ability to produce a Capacity Study will vary from case to case depending on the circumstances.

49. We have not identified (nor has Network Rail) any point where the Panel has in fact determined that a Capacity Study is mandated by either D3.4 or D3.5. Rather, Network Rail is appealing against what it notes is guidance or “an apparent suggestion” by the Panel. As such, this ground of appeal is raised against a decision that the Panel did not expressly make. Further, Network Rail has not raised a challenge in the alternative that a Capacity Study was not required in this specific case. Given this, we consider that, strictly speaking, this is sufficient to dispose of this ground.

50. However, we recognise the concern Network Rail and the wider industry has in establishing an answer to Network Rail’s question on this point. We have therefore considered the text of the EAS and TPR and the extent to which, if at all, a Capacity Study is required when a Restriction of Use is sought under Conditions D3.4 or D3.5. While it is not necessary for ORR to rule on this point for the purposes of determining this appeal (as explained in paragraph 49) our consideration and recommendations on this point are set out in a separate, published letter to Network Rail and the Class Representative Committee.

Network Rail’s second ground of appeal

51. As with its first ground, Network Rail’s second ground of appeal is set out in different language in two different places within its Notice of Appeal, which states:

“3.1.2 Network Rail followed the appropriate decision criteria contrary to paragraph 73 of the Determination and Network Rail was entitled to take into account the serious safety concerns identified and the severe consequences for all parties of being unable to undertake the Urgent Works within the required timescale when making its decision in accordance with D4.6.”⁷

while paragraph 5.2 adopted similar language, with an additional opening sentence:

“The Determination is wrong in law for wrongly concluding that Network Rail’s application of the Decision Criteria set out in D4.6 was “seriously flawed”.”

52. ORR considers there to be a link between both of the grounds of appeal raised by Network Rail, in relation to the production of a Capacity Study and the fulfilment of the Decision Criteria under Condition D4.6.

53. In paragraph 72 of the Determination the Panel stated that it *“found it difficult to understand how Network Rail could have considered its application of the Decision Criteria to have been fully informed without the required Capacity Study having been completed”*.

54. The Panel then applied its judgment to the considerations within Condition D4.6.2. The Panel concluded that while criterion (a) (*“maintaining, developing and improving the capability of the Network”*) fell in Network Rail’s favour, the majority of the remaining criteria fell in favour of Freightliner and GBRf, especially criterion (f) (*“commercial interests”*). On that basis, the Panel concluded that Network Rail’s application of the Decision Criteria was *“seriously flawed”* (paragraph 73 of the Determination).

55. ORR has taken into consideration the decision of the Panel, the arguments made by Network Rail in its appeal documents, as well as the representations of both Freightliner and GBRf.

56. Network Rail’s summary of its position (paragraph 4.41 and following of its appeal notice) contends that no Capacity Study was required, and that it was able to apply the Decision Criteria without one. The majority of Network Rail’s appeal notice concerns the question of whether a Capacity Study is mandated or not. It has not provided significant argument on the weighing up of the Decision Criteria. In paragraph 2.5, it contends that the consequence of the Panel’s determination is that *“the commercial interests of the Claimants have been attributed more weight than the need for Urgent Works and the serious safety and economic consequences of what will happen if those Urgent Works cannot be carried out in the required timescale”*. Elsewhere, as already identified, Network Rail put as its

⁷ Network Rail sets out this ground in slightly different text at paragraph 5.2, but the basic position appears to be the same

second ground of appeal in paragraph 5.2 that it was “*entitled to take into account both the safety risks identified [...] and the severe consequences for all parties of being unable to do works with the required timescale*”.

57. Within its letter of 16 September 2020 to ORR, Freightliner made the following representations in relation to Network Rail’s application of the Decision Criteria:

- (a) It “*remains clear to Freightliner that without knowing the impact that the Restriction of Use would have on Freightliner’s services the Decision Criteria could not have been applied with any degree of certainty or accuracy*” (paragraph 2.2).
- (b) “*Given that we still do not know what the impact of the Restriction of Use would have been on Freightliner’s services (as timetabling work was stopped after the Panel Hearing), it is not clear on what basis the Decision Criteria could have been applied*”(paragraph 2.2).
- (c) “*Without reapplying the Decision Criteria retrospectively Freightliner strongly supports the application of the Decision Criteria as detailed previously and as supported by the Panel and confirmed in the Determination*” (paragraph 2.2).

58. Within its letter of 15 September 2020, GBRf put forward representations that:

- (a) It “*believes that, without the information that the timetabling and capacity work can provide to both parties, there just cannot be proper and reasoned considerations to feed into the Decision Criteria before making the necessary decision for taking the Manea Bridges blockade in the suggested manner*”
- (b) “*It appears in Network Rail’s Notice of Appeal [...] that it has just re-applied and re-engineered the Decision Criteria to that shown in its Sole Reference Document for TTP 1706*”

59. In making a possessions decision, it is for Network Rail to weigh the competing interests that may form part of the Decision Criteria, in order to “*decide which of them is or are the most important in the circumstances*” (D4.6.3). Where Network Rail is required to decide any matter under Part D, “*its objective shall be to share capacity on the Network for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective users and providers of railway services*” (D4.6.1).

60. As noted above (paragraph 54), the Panel considered that the Decision Criteria considerations applied by Network Rail either fell in its favour, were neutral or fell in Freightliner’s and GBRf’s favour (Determination, paragraph 73). In particular, the Panel

identified that the commercial interests element (item D4.6.2(f)) was “*especially heavily*” in favour of the freight operators, and therefore Network Rail’s application of the Decision Criteria could not be accepted.

61. Network Rail, in its Notice of Appeal, stated that the Determination “*attributed undue weight*” to the commercial interests of Freightliner and GBRf “*compared to considerations a, b, c, d, f, i and j*” (paragraph 4.25). However, we do not consider this was in fact what the Panel determined; it did not decide that operators’ commercial interests outweighed all other criteria. The Panel does not appear to have attributed weightings *between* the different criteria. Rather, in paragraph 73, the Panel identified that the majority of the criteria were all in favour of the operators: it identified that criterion (a) (maintaining ... the capability of the Network) fell in Network Rail’s favour in this instance; it considered criterion (i) (mitigating the effect on the environment) was neutral; and the Panel considered that all the other criteria were in favour of Freightliner and GBRf, and that (f) (commercial interests) fell “*especially heavily*” in their favour. Further, the Panel expressed (paragraph 72) that it found it “*difficult to understand how Network Rail could have considered its application of the Decision Criteria to have been fully informed*”, which would have included considering those commercial interests, if it did not produce a Capacity Study, given the scale of the proposed disruption.

62. In this appeal determination, we consider that it was reasonable for the Panel to determine that Network Rail did not apply the Decision Criteria correctly in favour of the freight operators; the fact that the commercial interests of the operators were of particular relevance was only one of the Panel’s conclusions as to where the balance of the criteria fell. We consider that in part Network Rail’s failure to apply the Decision Criteria appropriately may have been due to Network Rail’s failure to produce a Capacity Study. We agree with the Panel that it was appropriate to produce a Capacity Study, in circumstances such as this, where the consequences of NR’s proposed Restrictions of Use were so disruptive for freight operators. Relevant here is the Panel’s point at paragraph 21, not contradicted by Network Rail, that it was “*unable to recollect any Restriction of Use on this scale being imposed at such short notice in the 10 years since the current dispute resolution structure was adopted*”.

63. ORR notes the importance of achieving the Objective (at D4.6.1, “*to share capacity on the Network for the safe carriage of passengers and goods in the most efficient and economical manner*”). Further to this, ORR notes that in adhering to the Objective, that Network Rail “*shall apply any or all of the considerations*” (in D4.6.2) which are “*relevant to the particular circumstances*” (D4.6.3).

64. In upholding the Panel’s determination, we are not deciding that Network Rail must always allow commercial interests to outweigh other considerations, but rather that Network

Rail needs to be properly informed when exercising the Decision Criteria. Network Rail is required to consider the likely consequences (i.e. safety risks) of failing to obtain a required possession and/or being unable to undertake the necessary works when applying the objective in D4.6.1 and the considerations in D4.6.2 (paragraph 6.3.3 of Network Rail's appeal notice) – but those do not remove the necessity for Network Rail to be properly informed when exercising the Decision Criteria, and we consider it was the Panel's Determination that Network Rail was indeed not properly informed.

65. Condition D5.3.1(c) provides that the Panel (or ORR) may substitute an alternative decision in place of Network Rail's, provided that it only does so in exceptional circumstances. The finding by the Panel that Network Rail failed to appropriately consider both the Objective and the Decision Criteria, meant that the Panel considered it appropriate to substitute an alternative decision in place of Network Rail's decision (the application of DEFCON 0 instead of DEFCON 4). This was so, given the exceptional circumstances of the matter, which the panel held had a "*significant effect on the operations and businesses of both Claimants*" (paragraph 81 of the Determination), factors which Network Rail had failed to adequately consider.

66. ORR supports the Panel's view that Network Rail's application of the Decision Criteria "*could not be accepted*" (paragraph 73 of the Determination). In addition, ORR does not accept the underlying point of Network Rail's representations (in its letter to ORR dated 1 October 2020) that if it had "*prioritised the interests of FGC [Freightliner] and/or GBRf, it would not have decided the issue in accordance with the objective at Condition D4.6.1*". The Panel did not state that Network Rail must prioritise the interests of the operators, or that commercial interests are an overriding consideration. Rather, the Panel concluded that Network Rail's decision-making process was flawed because it was not properly informed as to what those commercial interests were (and could not have been properly so informed in the absence of a Capacity Study on this occasion); further, that Network Rail did not exercise the Decision Criteria properly (and not just in relation to the commercial interests criterion). We also note here that the works have now gone ahead and that Network Rail has not appealed the application of the alternative DEFCON 0 (whether on grounds that this was not an exceptional circumstance for the purpose of Condition D5.3.1(c), or on safety grounds or otherwise).

ORR's conclusions and determination

67. In relation to Network Rail's first ground of appeal, ORR determines that the appeal is not upheld. We have set out above that we consider Network Rail's appeal is asking ORR to make a determination overturning a finding that the Panel did not actually make, namely that a Capacity Study is mandatory whenever a Restriction of Use is sought under Condition D3.4 or D3.5 of the Network Code. We do not consider that the Panel reached such a decision, and as such there is no such finding for us to overturn. Rather, we consider that the Panel found that a Capacity Study was required on the specific facts of this case, but the Panel did not extend that finding to require a Capacity Study in every instance of a Restriction of Use sought under Conditions D3.4 or D3.5. Network Rail has not challenged the finding that a Capacity Study was required on the specific facts of this case.

68. We have published a separate letter to Network Rail and the industry identifying deficiencies in the EAS and TPR in relation to the requirement for Capacity Studies and addressing what we consider they should do to clarify Section 7 of the TPR and Section 6 of the EAS. We consider it is in the wider interests of all players in the industry to have clear agreed rules on when Capacity Studies should be undertaken.

69. ORR determines in relation to the second ground of Network Rail's appeal, that the appeal is not upheld. ORR agrees with the Panel's determination that Network Rail's application of the Decision Criteria was flawed in this instance (and takes no issue with its characterisation that it was "seriously flawed"). The Panel identified that if Network Rail had properly weighted the Decision Criteria in accordance with Condition D.6 of the Network Code, it would have identified that the majority of them were in favour of the affected freight operators; it found that this was especially true with regard to their commercial interests. We accept the Panel's finding that it was difficult to understand how Network Rail could have been fully informed in the absence of a Capacity Study. Accordingly, we uphold the Panel's determination on this point.



Martin Jones
Deputy Director, Access and International
Duly Authorised by the Office of Rail and Road
22 December 2020

Annex

Condition D3.4 Network Code

3.4 Network Rail Variations with at least 12 Weeks' Notice

3.4.1 The procedures described in this Condition D3.4 are designed to facilitate the planning of Network Rail Restrictions of Use at least 12 weeks prior to the start of each Timetable Week.

3.4.2 Network Rail shall be entitled to make a variation to the Working Timetable provided that:

- (a) the Network Rail Variation is made only for the purpose of taking Restrictions of Use which are consistent with the Rules, as published following the process set out in Condition D2.2 or as amended in accordance with the procedure established pursuant to Condition D3.4.3; and
- (b) Network Rail complies with the procedure set out in this Condition D3.4.

3.4.3 Network Rail shall include in the Rules a procedure to enable amendment of the Rules, following their finalisation in accordance with Condition D2.2. This amending power is without prejudice to the amending power referred to in Condition D2.2.7, and is to be utilised in order to facilitate changes which Network Rail considers necessary to take Restrictions of Use.

3.4.4 The procedure referred to in Condition D3.4.3:

- (a) must require that no amendment to the Rules may be made unless Network Rail has consulted with all Timetable Participants likely to be affected by the amendment;
- (b) must require that all decisions of Network Rail be made by application of the Decision Criteria in accordance with Condition D4.6;
- (c) may authorise changes to the procedure.

3.4.5 All amendments to the Rules made pursuant to the procedure referred to in Condition D3.4.3 shall be subject to the appeal procedures in Condition D5 as if they were made pursuant to a procedure set out in this Part D.

3.4.6 Notwithstanding anything stated elsewhere in this Part D, where any amendment is made to the procedure referred to in Condition D3.4.3 by use of that procedure, the amendment shall not take effect until the determination of any appeal against the same.

3.4.7 Where Network Rail proposes to make any variation to the Working Timetable consequent upon an amendment to the Rules made in accordance with this Condition D3.4, Network Rail shall provide to each Timetable Participant, by TW-30, its proposals for Restrictions of Use in respect of the corresponding Timetable Week. All such proposals may be amended or supplemented by Network Rail at any time prior to TW-26 and such amendments or supplements should also be provided to Timetable Participants prior to TW-26.

3.4.8 After TW-30 but by TW-26, Network Rail shall consult with each Timetable Participant affected (directly or indirectly) by the Restrictions of Use proposed pursuant to Condition D3.4.7 and shall seek to agree all Network Rail Variations to be made.

3.4.9 To facilitate the planning of any Network Rail Variation, Network Rail may require that any Timetable Participant shall submit a revised Access Proposal in respect of any Train Slot.

3.4.10 Where Network Rail requires a revised Access Proposal:

- (a) the requirement must be notified to the affected Timetable Participant no later than TW-22;
- (b) Network Rail shall specify the aspects of the Access Proposal which need to be revised and its reasons for this;
- (c) Network Rail shall specify a reasonable period in which the revised Access Proposal must be provided, and in any event the revised Access Proposal shall be submitted no later than TW-18.

3.4.11 Network Rail may modify, accept or reject a revised Access Proposal and where it modifies or rejects any revised Access Proposal, it must provide written reasons for its decision.

3.4.12 Where a revised Access Proposal has not been submitted by a Timetable Participant as required by Network Rail, Network Rail shall be entitled to make a Network Rail Variation of any Train Slot in respect of which the revised Access Proposal was required and no appeal may be made in respect of Network Rail's decision.

3.4.13 Not later than TW-14, Network Rail shall notify all Timetable Participants of its decision in respect of Network Rail Variations to be made pursuant to the procedure in this Condition D3.4.

3.4.14 Not later than TW-13, any Timetable Participant affected by Network Rail's decision notified pursuant to Condition D3.4.13 shall inform Network Rail whether it accepts or disputes that decision.

3.4.15 At TW-12, Network Rail shall record and provide to all Timetable Participants, in accordance with Condition D3.7.1, the Network Rail Variations to be made pursuant to this Condition D3.4.

3.4.16 Subject as provided in Condition D3.4.12, any Timetable Participant which is dissatisfied with any final decision of Network Rail in respect of a Network Rail Variation may appeal against it in accordance with Condition D5.

Condition D3.5 Network Code

3.5 Network Rail Variations with less than 12 Weeks' Notice

3.5.1 It may be necessary for Restrictions of Use to be arranged by Network Rail with less than 12 weeks' notice or otherwise outside the process described in Condition D3.4. The following paragraphs of this Condition D3.5 are intended to facilitate such Restrictions of Use.

3.5.2 Where Network Rail proposes to make any variation to the Working Timetable in circumstances where it is not reasonably practicable to comply with the timing requirements of Condition D3.4, Network Rail shall follow the procedures set out in Condition D3.4 save that:

(a) the timing requirements specified there; and

(b) Conditions D3.4.13, D3.4.14 and D3.4.15; shall not apply. In carrying out those procedures, Network Rail shall be permitted (for itself) and shall prescribe (for affected Timetable Participants) such time periods for each step as are reasonably practicable in the circumstances. Network Rail shall notify all affected Timetable Participants of its final decision in respect of any such change as soon as reasonably practicable. Any variation to a Working Timetable made pursuant to this Condition D3.5.2 shall be a "Network Rail Variation" for the purposes of this Part D.

3.5.3 Any Timetable Participant which is dissatisfied with any final decision of Network Rail in respect of a Network Rail Variation made pursuant to Condition D3.5.2 may appeal in accordance with Condition D5.

Condition D4.6 Network Code

4.6 The Decision Criteria

4.6.1 Where Network Rail is required to decide any matter in this Part D its objective shall be to share capacity on the Network for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective users and providers of railway services (“the Objective”).

4.6.2 In achieving the Objective, Network Rail shall apply any or all of the considerations in paragraphs (a)-(l) below (“the Considerations”) in accordance with Condition D4.6.3 below:

- (a) maintaining, developing and improving the capability of the Network;
- (b) that the spread of services reflects demand;
- (c) maintaining and improving train service performance;
- (d) that journey times are as short as reasonably possible;
- (e) maintaining and improving an integrated system of transport for passengers and goods;
- (f) the commercial interests of Network Rail (apart from the terms of any maintenance contract entered into or proposed by Network Rail) or any Timetable Participant of which Network Rail is aware;
- (g) the content of any relevant Long Term Plan and any relevant Development Timetable produced by an Event Steering Group;
- (h) that, as far as possible, International Paths included in the New Working Timetable at D-48 are not subsequently changed;
- (i) mitigating the effect on the environment;
- (j) enabling operators of trains to utilise their assets efficiently;
- (k) avoiding changes, as far as possible, to a Strategic Train Slot other than changes which are consistent with the intended purpose of the Strategic Capacity to which the Strategic Train Slot relates; and
- (l) no International Freight Train Slot included in section A of an International Freight Capacity Notice shall be changed.

4.6.3 When applying the Considerations, Network Rail must consider which of them is or are relevant to the particular circumstances and apply those it has identified as relevant so as to reach a decision which is fair and is not unduly discriminatory as between any individual affected Timetable Participants or as between any individual affected Timetable Participants and Network Rail. Where, in light of the particular circumstances, Network Rail considers that application of two or more of the relevant Considerations will lead to a

conflicting result then it must decide which of them is or are the most important in the circumstances and when applying it or them, do so with appropriate weight.

4.6.4 The Objective and the Considerations together form the Decision Criteria.

TPR – sections 2.4 Change Procedure and 7. Access Impact Matrix

2.4 Change Procedure

Procedure for Altering Engineering Access Statement or Timetable Planning Rules other than through the Twice-Yearly Process Having Effect from a Passenger Change Date

2.4.1 This Procedure has been devised in accordance with Network Code Condition D 3.4.3 to provide a means of altering Engineering Access Statement and/or Timetable Planning Rules other than through the twice-yearly process having effect from the Passenger Change Dates. It supersedes the interim arrangements included within certain Train Operators' Track Access Agreements and within certain Regional Engineering Access Statement and Timetable Planning Rules documents.

2.4.2 This procedure will be used by Network Rail to add, substitute or delete engineering access opportunities contained within the Engineering Access Statement. All possessions so agreed will be regarded as being within the Engineering Access Statement. Network Rail is committed to the achievement of the Informed Traveller deadlines resulting in details of amended train services being available 12 weeks before the date of operation. Consequently, wherever possible, Network Rail will consult with Timetable Participants regarding possessions and other capacity restrictions which are disruptive to agreed train slots in sufficient time to allow details of those disruptive possessions to be included in a Confirmed Period Possessions Plan which will be published 26 weeks prior to the start of each 4-week period.

2.4.3 Where a need arises to amend the Engineering Access Statement/Timetable Planning Rules to cater for urgent safety requirements or other emergency situations, all parties concerned will co-operate in accelerating the normal timescales in this Procedure commensurate with the urgency of the circumstances.

2.4.4 Changes Initiated by Timetable Participants

2.4.4.1 A Timetable Participant may propose changes to any part of Engineering Access Statement/Timetable Planning Rules affecting or likely to affect that Timetable Participants.

2.4.4.2 The Timetable Participant shall submit a written statement of the proposed change and a concise explanation of the reasons for that change.

2.4.4.3 for Timetable Planning Rules, to its Network Rail Operational Planning Project Manager (LTP) who will acknowledge receipt.

2.4.4.4 For Engineering Access Statement, to the Engineering Access Planning Manager who will acknowledge receipt.

2.4.4.5 Within 10 working days of receipt of the proposed change, Network Rail shall notify all Timetable Participants affected with details of the proposed change and Network Rail's comments including concise reasons for the change and a statement as to whether Network Rail supports the proposal.

2.4.5 Changes Initiated by Network Rail

2.4.5.1 Network Rail may propose changes to any part of the Engineering Access Statement/Timetable Planning Rules.

2.4.5.2 Network Rail shall notify to all Train Operators affected details of the proposed change including a concise explanation of its reasons. Proposed changes to Engineering Access Statement shall be notified by Network Rail individually by email.

2.4.6 Response by Train Operators

2.4.6.1 Each Timetable Participant receiving notification of a proposed change in accordance with paragraphs 3.3.2 above will consider that proposal and respond to Network Rail within 10 working days from receipt of the notification, indicating:

2.4.6.2 its agreement to the proposed change or;

2.4.6.3 details of a counter-proposal and an explanation of its reasons or;

2.4.6.4 in the case of Timetable Planning Rules items such as sectional running times, a request that a joint investigation is carried out.

2.4.6.5 Any Train Operator whose response is not received by Network Rail within 10 working days will be deemed to have agreed to the proposed change and will forfeit any right of Appeal.

7 Access Impact Matrix

7.1 Introduction

7.1.1 This section describes the introduction of the Access Impact process to be followed to enable agreement between Network Rail and Timetable Participants for delivering Capacity Study requests relating to the Engineering Access Statement

7.1.2 The Access Impact Matrix was created by Network Rail and Crosscountry to jointly resolve Access dispute TTP773. The Access Impact Matrix grades Capacity Studies by severity. Operators will grade their Capacity Study requests from the Engineering Access Statement on their Operator Response Sheet.

7.1.3 Network Rail can challenge the grading and a revised or the original grading should be agreed by all parties. Network Rail and the relevant Timetable Participants will jointly agree a delivery date for the requested Capacity Study. Extensions to the delivery date of the requested Capacity Study will need to be agreed by Network Rail and the relevant Timetable Participants.

7.2 Access Impact Matrix

	Severity 1 Access that impacts on a single service group or single operator	Severity 2 Access that effects multiple service groups or operators and / or where capacity is shared by operators
Capacity Study [EAP]	<ul style="list-style-type: none"> -Isolated one off pieces of access that require minor retiming of less than 10 minutes -Regular diversions for Section 5 possessions -Regular diversions for a single piece of access -TSRs that require additional [x] with minor impact on train service (journey time extension no greater than 10 minutes) -Services required to start / terminate short where the planning solution is known 	<ul style="list-style-type: none"> -2 track timetables outside of normal Section 4 times -High Output possessions with TSRs and line blockages (pattern of services required to confirm line blockage times) -TSRs that require additional [x] for more than one operator -Diversions routes where capacity will be shared (an understanding of hourly patterns or ability to fit the WTT quantum of trains etc) -Regular diversionary routes for multiple operators (e.g. via Northampton / Hertford Loop etc) where capacity is understood -Services required to start / terminate short where the method of working is not known
Output requirements	<ul style="list-style-type: none"> -Understanding of the impact on train service group and required capacity -Understanding the impact on standard possession opportunities -Detailed Traffic Remarks by CPPP stage. If post CPPP, included as part of proposal 	<ul style="list-style-type: none"> -Detailed structure for the amended train plan stating additional time, diversionary routes, capacity restrictions by operator and allocated capacity -Understanding the impact on standard possession opportunities -Detailed Traffic Remarks by CPPP stage. If post CPPP, included as part of proposal

	Severity 3 Access that effects one or more operators and that requires significant diversion or retiming (of greater than 15 minutes)	Severity 4 Double or Triple disruption to one or more operators Disruption that effects one or more operators on more than one route Severe disruption on a primary route of one or more operators
Timetable Study [EAP & Train planning]	<ul style="list-style-type: none"> -Standard hourly pattern either undeliverable or requires significant amendment (>15 mins) -Where an understanding of the impact on service patterns and connections is required (services back to booked / missing key stations etc) -Potential impact on train crew and unit resources for one or more operators (turnarounds at key stations potentially impacted etc) -Restrictive capacity and / or where booked connections are impacted at key stations (i.e. Birmingham New Street / Leeds / London Terminals etc) -Access that requires the thinning of services to provide capacity for diverted services or degraded working -Access that requires multiple operators to start / terminate at a station that has a complex method of working for turn back moves -Severe impact on ability to move Empty Coaching Stock (possessions effecting depot access or requiring significant retiming [greater than 15 minutes] or diversion) 	<ul style="list-style-type: none"> -Abnormal diversionary routes where capacity and / or the impact on train paths and connections is not easily or fully understood -SLW plans outside of Section 4 where capacity is constrained with significant journey time detriment (of greater than 15 minutes) -Where one or more operators are impacted by more than one piece of access on one or more routes -Where capacity via a diversionary route is severely restricted (single line / absolute block / congested routes / stations etc) -Where an understanding of the impact on service patterns and connections is required (services back to booked / missing key stations etc) -SX blockade of one or more operators' primary routes (WCML / ECML all line block e.g. Wigan / Watford)
Output requirements	<ul style="list-style-type: none"> -Standard hourly pattern established through detailed timings (as opposed to production of a full timetable for the specific period) -Platforming exercise to understand capacity around any restriction at multi operator stations -Single train timing exercise to understand impact on journey time detriment and / or impact of crew and resources -Train by train timing to demonstrate impact on ECS moves to ensure deliverability of train service -Detailed structure for the amended train plan stating additional time, diversionary routes, capacity restrictions by operator and allocated capacity from output of Timetable Study -Detailed Traffic Remarks for access proposed in V1 / V3 by V2 / V4. For access requested post V2 / V4 included by CPPP. If post CPPP, included as part of proposal 	<ul style="list-style-type: none"> -Full timetable study for every operator effected for the duration of the disruption (with the exception of ECS moves where not applicable) or -Standard hourly pattern to understand capacity through detailed timings (as opposed to production of a full timetable for the specific period) -End to end journeys to be assessed where applicable (e.g. services that cannot return to a booked path) with no piece of access to be treated in isolation -Decision Criteria grid populated to support capacity allocation -Detailed structure for the amended train plan stating additional time, diversionary routes, capacity restrictions by operator drawn from output of Timetable Study -Detailed Traffic Remarks for access proposed in V1 / V3 by V2 / V4. For access requested post V2 / V4 included by CPPP. If post CPPP, included as part of proposal

EAS – sections 1.5 Change Procedure and 6. Access Impact Matrix

1.5 Change Procedure

The following standard Engineering Access Statement change procedure is applicable to this document

Procedure for Altering Engineering Access Statement or Timetable Planning Rules other than through the Twice-Yearly Process Having Effect from a Passenger Change Date

1.5.1 Introduction

1.5.1.1 This Procedure has been devised in accordance with Network Code Condition D 2.2.7 to provide a means of altering Engineering Access Statement and/or Timetable Planning Rules other than through the twice-yearly process having effect from the Passenger Change Dates. It supersedes the interim arrangements included within certain Train Operators' Track Access Agreements and within certain Regional Engineering Access Statement and Timetable Planning Rules documents.

1.5.1.2 This procedure will be used by Network Rail to add, substitute or delete engineering access opportunities contained within Engineering Access Statement. All possessions so agreed will be regarded as being within Engineering Access Statement. Network Rail is committed to the achievement of the Informed Traveller deadlines resulting in details of amended train services being available 12 weeks before the date of operation, consequently, wherever possible, Network Rail will consult with Train Operators regarding possessions and other capacity restrictions which are disruptive to agreed train slots in sufficient time to allow details of those disruptive possessions to be included in a Confirmed Period Possessions Plan which will be published 26 weeks prior to the start of each 4-week period.

1.5.1.3 Where a need arises to amend Engineering Access Statement/Timetable Planning Rules to cater for urgent safety requirements or other emergency situations, all parties concerned will co-operate in accelerating the normal timescales in this Procedure commensurate with the urgency of the circumstances.

1.5.2 Changes Initiated by Train Operators

1.5.2.1 A Train Operator may propose changes to any part of Engineering Access Statement/Timetable Planning Rules affecting or likely to affect that Train Operator.

1.5.2.2 The Train Operator shall submit a written statement of the proposed change and a concise explanation of the reasons for that change:

- for Timetable Planning Rules, to its Network Rail Programme Manager (LTP) who will acknowledge receipt
- for Engineering Access Statement, to the Engineering Access Planning Manager, who will acknowledge receipt

1.5.2.3 Within 5 working days of receipt of the proposed change, Network Rail shall notify to all Train Operators affected details of the proposed change and Network Rail's comments including concise reasons for the change and a statement as to whether Network Rail supports the proposal.

1.5.3 Changes Initiated by Network Rail

1.5.3.1 Network Rail may propose changes to any part of Engineering Access Statement/Timetable Planning Rules.

1.5.3.2 Network Rail shall notify to all Train Operators affected details of the proposed change including a concise explanation of its reasons. Proposed changes to Engineering Access Statement arising before publication of the Draft Period Possessions Plan shall be notified by Network Rail in a single coordinated document to be issued each 4 weeks.

1.5.4 Response by Train Operators

1.5.4.1 Each Train Operator receiving notification of a proposed change in accordance with paragraphs 6.3.1 or 6.3.2 above will consider that proposal and respond to Network Rail within 10 working days from receipt of the notification, indicating:

- its agreement to the proposed change or
- details of a counter-proposal and an explanation of its reasons or
- in the case of Timetable Planning Rules items such as section running times, a request that a joint investigation is carried out.

1.5.4.2 Any Train Operator whose response is not received by Network Rail within 10 working days will be deemed to have agreed to the proposed change and will forfeit any right of Appeal.

1.5.5 Decision by Network Rail

1.5.5.1 Network Rail shall give due consideration to responses received from Train Operators in accordance with paragraphs 6.3.1 or 6.3.2 above and shall decide which

changes, if any, should be made to Engineering Access Statement/Timetable Planning Rules.

1.5.5.2 In reaching its decision, Network Rail shall have due regard to the Decision Criteria in Network Code Condition D6.

1.5.5.3 Network Rail will notify its decision to each affected Train Operator within 5 working days of the last date for receipt of responses under paragraph 6.4.1 above.

1.5.5.4 Any Train Operator, if it disputes Network Rail's decision, may Appeal to a Timetabling Panel and any such Appeal will be dealt with as though it had been made in accordance with Network Code Condition D2.2.7. Any Appeal must be referred to the Access Disputes Secretary in accordance with the timescales shown in Condition D5 (i.e. within 5 working days of notification by Network Rail of its decision)

Section 6 - Access Impact Matrix

6.1 Introduction

6.1.1 This section describes the introduction of the Access Impact process to be followed to enable agreement between Network Rail and Timetable Participants for delivering Capacity Study requests relating to the Engineering Access Statement

6.1.2 The Access Impact Matrix was created by Network Rail and Crosscountry to jointly resolve Access dispute TTP773. The Access Impact Matrix grades Capacity Studies by severity. Operators will grade their Capacity Study requests from the Engineering Access Statement on their Operator Response Sheet.

6.1.3 Network Rail can challenge the grading and a revised or the original grading should be agreed by all parties. Network Rail and the relevant Timetable Participants will jointly agree a delivery date for the requested Capacity Study. Extensions to the delivery date of the requested Capacity Study will need to be agreed by Network Rail and the relevant Timetable Participants

6.2 Access Impact Matrix

	Severity 1 Access that impacts on a single service group or single operator	Severity 2 Access that effects multiple service groups or operators and / or where capacity is shared by operators
<u>Capacity Study</u> [EAP]	<ul style="list-style-type: none"> -Isolated one off pieces of access that require minor retiming of less than 10 minutes -Regular diversions for Section 5 possessions -Regular diversions for a single piece of access -TSRs that require additional [x] with minor impact on train service (journey time extension no greater than 10 minutes) -Services required to start / terminate short where the planning solution is known 	<ul style="list-style-type: none"> -2 track timetables outside of normal Section 4 times -High Output possessions with TSRs and line blockages (pattern of services required to confirm line blockage times) -TSRs that require additional [x] for more than one operator -Diversions routes where capacity will be shared (an understanding of hourly patterns or ability to fit the WTT quantum of trains etc) -Regular diversionary routes for multiple operators (e.g. via Northampton / Hertford Loop etc) where capacity is understood -Services required to start / terminate short where the method of working is not known
Output requirements	<ul style="list-style-type: none"> -Understanding of the impact on train service group and required capacity -Understanding the impact on standard possession opportunities -Detailed Traffic Remarks by CPPP stage. If post CPPP, included as part of proposal 	<ul style="list-style-type: none"> -Detailed structure for the amended train plan stating additional time, diversionary routes, capacity restrictions by operator and allocated capacity -Understanding the impact on standard possession opportunities -Detailed Traffic Remarks by CPPP stage. If post CPPP, included as part of proposal

	Severity 3 Access that effects one or more operators and that requires significant diversion or retiming (of greater than 15 minutes)	Severity 4 Double or Triple disruption to one or more operators Disruption that effects one or more operators on more than one route Severe disruption on a primary route of one or more operators
<u>Timetable Study</u> [EAP & Train planning]	<ul style="list-style-type: none"> -Standard hourly pattern either undeliverable or requires significant amendment (>15 mins) -Where an understanding of the impact on service patterns and connections is required (services back to booked / missing key stations etc) -Potential impact on train crew and unit resources for one or more operators (turnarounds at key stations potentially impacted etc) -Restrictive capacity and / or where booked connections are impacted at key stations (i.e. Birmingham New Street / Leeds / London Terminals etc) -Access that requires the thinning of services to provide capacity for diverted services or degraded working -Access that requires multiple operators to start / terminate at a station that has a complex method of working for turn back moves -Severe impact on ability to move Empty Coaching Stock (possessions effecting depot access or requiring significant retiming [greater than 15 minutes] or diversion) 	<ul style="list-style-type: none"> -Abnormal diversionary routes where capacity and / or the impact on train paths and connections is not easily or fully understood -SLW plans outside of Section 4 where capacity is constrained with significant journey time detriment (of greater than 15 minutes) -Where one or more operators are impacted by more than one piece of access on one or more routes -Where capacity via a diversionary route is severely restricted (single line / absolute block / congested routes / stations etc) -Where an understanding of the impact on service patterns and connections is required (services back to booked / missing key stations etc) -SX blockade of one or more operators' primary routes (WCML / ECML all line block e.g. Wigan / Watford)
Output requirements	<ul style="list-style-type: none"> -Standard hourly pattern established through detailed timings (as opposed to production of a full timetable for the specific period) -Platforming exercise to understand capacity around any restriction at multi operator stations -Single train timing exercise to understand impact on journey time detriment and / or impact of crew and resources -Train by train timing to demonstrate impact on ECS moves to ensure deliverability of train service -Detailed structure for the amended train plan stating additional time, diversionary routes, capacity restrictions by operator and allocated capacity from output of Timetable Study -Detailed Traffic Remarks for access proposed in V1 / V3 by V2 / V4. For access requested post V2 / V4 included by CPPP. If post CPPP, included as part of proposal 	<ul style="list-style-type: none"> -Full timetable study for every operator effected for the duration of the disruption (with the exception of ECS moves where not applicable) or -Standard hourly pattern to understand capacity through detailed timings (as opposed to production of a full timetable for the specific period) -End to end journeys to be assessed where applicable (e.g. services that cannot return to a booked path) with no piece of access to be treated in isolation -Decision Criteria grid populated to support capacity allocation -Detailed structure for the amended train plan stating additional time, diversionary routes, capacity restrictions by operator drawn from output of Timetable Study -Detailed Traffic Remarks for access proposed in V1 / V3 by V2 / V4. For access requested post V2 / V4 included by CPPP. If post CPPP, included as part of proposal



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