

19th September 2023

**RE: Draft Decision on Summer 2024 (S24) Coordination Parameters at Dublin Airport**

Dear IAA,

I'd like the opportunity to respond to the draft decision published by the IAA dated September 8<sup>th</sup>, 2023. The executive summary recommends the following changes relative to Summer '23 (S23):

- Other than in the 0700z hour, implement the 'Scenario C' hourly runway capacity ('R60') limits, which involves a range of increases in the declared runway limits in the day hours. In the 0700z hour, implement 'Scenario B'.
- Stand counts are updated to reflect any expected changes by apron area relative to Summer 2023. Otherwise, the form of this parameter is unchanged from S23.

**Summary:**

1. The draft recommendation has failed to adequately address Condition 5 of the North Runway's planning permission which limits night-time flights across the entire Airport to less than 65.
2. The draft recommendation has failed to consider the current enforcement investigations and legal challenges being undertaken by Fingal County Council into breaches of planning with the North Runway's operations.
3. The draft recommendation also fails to address the 32m passenger cap at Dublin Airport. This was breached in 2019 because of the IAA's oversubscribing of slots. The daa are on course to breach the cap again this year and in future years as a result of the IAA's actions. The 32m cap is an Operating Restriction under EU598/2014 and can only be modified by ANCA using the Balanced Approach.
4. The IAA cannot authorise activity outside the scope of planning permission, as doing so is a breach of the EIA Directive.
5. The IAA is in breach of article 6 of the Slot Regulation as they have failed to take account of operational and environmental constraints.
6. Under SI No. 645 of 2003, the daa is responsible for notifying interested parties and the IAA of operating restrictions. And the IAA is responsible for notifying the Minister, EU Commission and Member States.

Section 2.1 of the draft decision cites the "Slot Regulation" and that the "*determination of coordination parameters at Coordinated airports in line with Article 6 of the Slot Regulation,*

taking account of relevant technical, **operational and environmental constraints** as well as any changes thereto”.

The purpose of this submission is to provide proof that the IAA has failed to take account of the relevant operational and technical constraints at Dublin Airport.

### **32m passenger cap:**

As part of the planning conditions for Terminal 2 at Dublin Airport, a limit of 32m passengers was imposed by An Bord Pleanála (PL06F.220670), by way of Condition 3.

#### **Capacity**

3. The combined capacity of Terminal 2 as permitted together with Terminal 1 shall not exceed 32 million passengers per annum unless otherwise authorised by a further grant of planning permission.

**Reason:** Having regard to the policies and objectives of the Dublin Airport Local Area Plan and capacity constraints (transportation) at the eastern campus.

A further planning application (PL06F.223469) in relation to the main Terminal was granted permission and also restricted capacity to 32m:

2. The combined capacity of Terminal 1 (including the extension authorised by this grant of permission) and Terminal 2 granted permission under planning register reference number F06A/1248 (An Bord Pleanála appeal reference number PL 06F.220670) shall not exceed 32 million passengers per annum unless otherwise authorised by a further grant of planning permission.

**Reason:** Having regard to the policies and objectives of the Dublin Airport Local Area Plan and capacity constraints (transportation) at the eastern campus.

In 2019, Dublin Airport handled 32.9m passengers (<https://www.daa.ie/dublin-airport-welcomed-32-9m-passengers-in-2019/>). This breach of the planning permission was facilitated by CAR by allocating too many slots in their determinations. It is imperative that the IAA do not repeat this same mistake and facilitate another breach of planning. It is noted that the first 8 months of 2023 are equivalent to the equivalent 8 months in 2019 (<https://ansperformance.eu/traffic/>). Fingal County Council have issued the daa with an enforcement warning letter in relation to the breach in 2019. This enforcement is a very straight forward process as the passenger numbers cannot be disputed. This breach of planning permission was facilitated by CAR and is a breach of the EIA Directive.

The 32m cap is also an Operating Restriction as per EU 598/2014, under ANCA's remit, and any attempt by the IAA to change this Operating Restriction requires a planning application to Fingal County Council and ANCA.

**Condition 5:**

The IAA has failed to acknowledge that ANCA has determined that there are 3 Operating Restrictions in force currently at Dublin Airport:

- Condition 3(d) and Condition 5 of the North Runway's planning permission, and
- Condition 3 of Terminal 2's planning permission

Section 3.31 references an enforcement notice issued by Fingal County Council to the daa and that the daa were granted a stay on the enforcement and leave to apply for a Judicial Review. It needs to be made clear that these proceedings were ex parte without Fingal County Council's involvement.

On September 11<sup>th</sup> Fingal County Council wrote to Councillors outlining their position on the legal challenge by the daa:

***"Statement to Councillors***

*Fingal County Council has reviewed the court papers from the High Court hearing on August 8 where daa was granted leave for a Judicial Review and a stay on the Enforcement Notice issued by the Planning Authority. The Council opposes all grounds of challenge advanced at the High Court hearing which was held on an ex parte basis. The Council is now preparing its Opposition Papers.  
ENDS"*

And on September 18<sup>th</sup> Fingal County Council further wrote to Councillors updating them:

*"Further to the statement below, issued on Monday 11<sup>th</sup> September, I wish to advise you that in response to the challenge by the daa to the Enforcement Notice issued by the Planning Authority, Fingal County Council has filed and served its opposition papers and is seeking to have the proceedings transferred into the Commercial Planning and Environmental Division of the High Court."*

Therefore, it is clear that Fingal County Council has filed and served opposition papers.

Section 3.35 states that the IAA needs a decision on Condition 5, yet the IAA have made no effort to obtain their own view via the courts.

## EU 598/2014:

Article 14 (Existing operating restrictions) of EU598/2014 states that:

*“Noise-related operating restrictions which were already introduced before 13 June 2016 shall remain in force until the competent authorities decide to revise them in accordance with this Regulation.”*

Condition 3(d), condition 5 and condition 3 of Terminal 2’s planning permissions are therefore still in force and are deemed operating restrictions by ANCA. ANCA have adjudicated on the Relevant Action planning application from the daa to remove and amend Condition 3(d) and 5. ANCA would only go through this process for an operating restriction. The daa also went through this process as the applicant and therefore there can be no disputing that ANCA, the daa and the airlines clearly see Condition 5 as an Operating Restriction. In Article 2(6) an Operating Restriction means:

*“a noise-related action that limits access to or reduces the operational capacity of an airport, including operating restrictions aimed at the withdrawal from operations of marginally compliant aircraft at specific airports as well as operating restrictions of a partial nature, which for example apply for an identified period of time during the day or only for certain runways at the airport.”*

Therefore, there can be no disputing that Condition 5 is an Operating Restriction under EU and Irish Law. The IAA have questioned whether it is enforceable. But the IAA cannot propose measures that are outside planning permission, as this violates the EIA Directive. The IAA should not be concerned about the enforceability of the condition, but rather whether the condition is part of planning or not.

Noise Consultants Ltd created a report for ANCA as part of the Relevant Action application titled ‘Aspects of a Potential Noise Problem associated with Planning Application F20A/0668’, <https://www.fingal.ie/sites/default/files/2021-02/20210209-aspects-of-a-potential-noise-problem-assoc-with-f20a-0668-.pdf>. In section 1.15 of this report, it states that:

*“Condition 3(d) and 5 are noise related operating restrictions that were **already introduced** before 13 June 2016, when Regulation (EU) 598/2014 entered into force (the ‘Aircraft Noise Regulation’). The Aircraft Noise Regulation introduced a new process for imposing, amending and replacing operating restrictions, but provided that operating restrictions that were already introduced before 13 June 2016 would remain in force until the Member State’s competent authority decided to revise them in accordance with the Aircraft Noise Regulation.”*

The conditions are still in force as the Relevant Action application is under appeal. It is clear that Noise Consultants Ltd see the conditions as being already introduced.

In section 3.28 of the draft decision, the IAA question whether condition 5 is ‘introduced’ within the meaning of EU598/2014. There is no ambiguity that Condition 5 is an Operating Restriction. The IAA don’t elaborate on what they mean by ‘introduced’. It may be a reference to section 3.83 of the Summer 2023 determination. It states that that cargo companies have

queried whether the rules for the introduction of new noise related operating restrictions have been followed. Under SI No. 645 of 2003 which enacted Council Directive No 2002/30/EC, it states in section 11 that the Airport Authority should notify interested parties including the IAA. It is also the responsibility of the IAA to inform the Minister, EU Commission and other Member States.

Therefore, the daa and IAA have responsibility to ensure that all existing operation restrictions prior to EU598/2014 have been notified to the relevant authorities. I wrote to Mr Simon Fagan of the daa over 12 months ago making him aware of the daa's obligations. Has the daa notified the IAA in line with section 11 of SI No. 645 of 2003? And has the IAA notified the Minister, EU Commission and Member States?

If the cargo companies are suggesting that these operating restrictions are not legitimate based on non-adherence to section 11 then it could also be argued that the daa's current planning permission to revoke and amend the operating restrictions is premature as the operating restrictions are not in effect. All interested parties are aware of these operating restrictions, and they have been discussed as part of CAR's Summer 2022 determination and all the interested parties have made submissions on the daa's planning application. Section 12 of SI No. 645 of 2003 does allow any person, including the Minister and the IAA to appeal a decision on operating restrictions if they so wish. The IAA cannot use the threat of legal action by airlines and cargo companies as a reason for not upholding the planning laws.

## **Conclusion:**

Fingal County Council has found the daa in breach of planning in relation to Condition 5 and has filed papers to stop the unlawful development. The Planning Authority deemed with upholding An Bord Pleanála's planning conditions has clearly determined that the daa are in breach.

The IAA should be consulting with Fingal County Council and adhering to their determination. The IAA is not a planning body and has no role in determining planning conditions. The actions of the IAA are in breach of the EIA Directive.

Condition 5 is one of the two conditions that the daa are trying to amend with their Relevant Action planning application which is currently under appeal with An Bord Pleanála. The daa want to change Condition 5 as it limits the number of aircraft activity at night. The IAA is somehow suggesting that the huge efforts by the daa to amend and replace Condition 5 are a waste of time and they deem it unenforceable. The IAA also ignores the fact that ANCA and Fingal County Council's Planning Authority underwent planning determinations to evaluate the replacement of condition 5 with a Noise Quota Scheme. Does the IAA seriously believe that the daa, ANCA and Fingal County Council would have gone through this process if Condition 5 was considered unenforceable?

The North Runway opened on the 24th of August 2022. The 65-flight limit should have been applied straight away and maintained until such time as the planning authority amended the condition. Local residents and environmental NGOs will robustly defend Condition 5 and any further misinterpretations by the IAA.

The IAA must also adhere to the 32m passenger cap at Dublin Airport. The IAA facilitated the breach of the 32m cap in 2019.

It is imperative that IAA seek guidance and clarity from Fingal County Council and ANCA in order to designate the correct coordination parameters for Summer 2024 and have plans in place for all eventualities, none of which are documented in the draft determination. The allocation of slots in accordance with the 65-flight limit should be clearly laid out and not left to the last minute as is case with the IAA's draft determination.

Yours Sincerely

Liam O'Gradaigh, Ward Cross, The Ward, Co Dublin

(St Margarets The Ward Residents Group)