



**Consultation
on
Process for Consideration
of a
Supplementary Capex Allowance**

Commission Paper 5/2016

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Commission for Aviation Regulation

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1. Introduction

- 1.1 This paper consults on a process for considering a supplementary capital expenditure (capex) allowance within a determination period.
- 1.2 When making a Determination of Airport Charges at Dublin Airport the Commission includes an allowance for capital expenditure to meet the needs of the airport for a five-year period.
- 1.3 While there is flexibility within a determination to adapt to changing needs, in exceptional circumstances these flexibilities may not be sufficient. Here we discuss the option for a statutory review of a determination of airport charges to potentially incorporate a supplementary capital investment plan.
- 1.4 In this paper we outline a suggested process to be followed by Dublin Airport and the Commission. We invite interested parties to comment on the details of this process. We will assess all submissions received and in October 2016 we will publish a final document outlining the final process to be followed.
- 1.5 The closing date for receipt of submissions is **5pm, 16 September 2016**.

Background

- 1.6 Within a determination period circumstances can differ to those forecast when making the determination. In general, changing circumstances are dealt with by the incentives and risk sharing mechanisms within the determination, however, these mechanisms are less capable of dealing with large changes in the need for capital expenditure. There are a number of options available to Dublin Airport to deal with unexpected requirements for capital expenditure.
- 1.7 Rather than waiting for the next periodic price review, within a determination period Dublin Airport can:
 - Make use of flexibility within capex groups.
 - Conduct consultations with users for additional projects. Where unanimous agreement is reached, the Commission will include the additional projects in its consultative process at the time of the next determination.
 - Fund additional projects from shareholders' funds.
 - Request an interim review of the determination to increase the capital allowance. This paper discusses the process for using this mechanism.

Flexibility within Groups

- 1.8 Capital allowances in a determination generally allow for a degree of flexibility. As circumstances change, Dublin Airport can reallocate the allowance to projects of different scale or projects not in the investment plan. This flexibility can be exercised on condition that the total spending in a category remains below the allowance for that category.

- 1.9 The level of flexibility varies by group. In some cases the allowance is tied to specific projects referred to as deliverables; should these projects not be delivered, the allowance for the relevant capex group is revised down by the appropriate amount.
- 1.10 In the 2014 Determination there are six capex groups. 56% of the allowance for Airfield Maintenance is flexible, as is 61% of the allowance for Revenue Projects and 97% of the allowance for Business Development. Allowances for IT, Landside Terminals Maintenance, and Other Projects are not subject to any deliverables and are therefore 100% flexible. In total €81m of the capital allowance is tied to specific projects whereas €260m can be reallocated by Dublin Airport.
- 1.11 While this is a significant amount of flexibility there may be situations where it is not sufficient, for example, if total required capital expenditure exceeds the allowance for the group.

Consultation with Users

- 1.12 In the 2014 Determination we stated that should Dublin Airport anticipate going over allowance on a particular grouping then it should consult with users. In order for an allowance for a grouping to be increased based on a consultation held between Dublin Airport and users there must be "unanimous support of users". In certain circumstances this may be difficult to achieve even where projects have a justifiable need.
- 1.13 In addition, the exact treatment of the project by the Commission will not be known until the next determination, following consultation with all interested parties. This will lead to a degree of uncertainty which may be particularly problematic for larger projects.

Statutory Review to Potentially Increase Capital Allowance

- 1.14 For larger projects a statutory consultation and review conducted by the Commission, at the time that there is a perceived need for these projects, would give more certainty to Dublin Airport about how the associated costs would be recovered. In addition, the Commission would have the opportunity to assess projects for efficiency, apply appropriate mechanisms for their entry into the RAB and apply appropriate monitoring and reporting requirements on the spending.
- 1.15 The rest of this document sets out the process the Commission would expect to be followed for this option. This process is the subject of this consultation and we invite respondents to assess the suitability of the process and ways in which it could be improved.

2. Process for Consideration of Supplementary Capex Allowance

2.1 This section outlines the conditions required for using this mechanism and the process we would expect Dublin Airport to follow before requesting a supplementary allowance. It also details the process we would expect to follow once such a request is received from Dublin Airport.

Conditions required for making use of this process

2.2 In order to use this process for an interim supplementary capital allowance the following conditions should be met:

- Circumstances driving the need for additional capital expenditure must be substantially different to those expected at the time of making the prevailing determination (substantial grounds).
- The capital projects must have a clearly justified need which must be met urgently.
- The projects must be significant in cost – in excess of about 10% of the prevailing non-triggered Capital Investment Plan (CIP).
- All other flexibilities within the existing determination must have been exhausted.

Process for Dublin Airport

2.3 In advance of submitting a supplementary capital investment plan to the Commission, Dublin Airport should consult with users. This consultation should cover the merits of the project but also why it cannot be delivered using the flexibility in the existing determination. The following are some of the components the Commission would require as part of the consultation.

2.4 A detailed explanation must be provided by Dublin Airport as to why the existing capital investment plan is not sufficient. This must include:

- Details on delivery of current CIP including which projects have been prioritised, added or dropped from the CIP.
- Timelines for delivery of existing CIP and the expected outcomes.
- How Dublin Airport has used the flexibility within capex groups to try to address the needs driving the request for a supplementary capex allowance.
- Plan (including detailed timeline) for the remainder of the regulatory period for delivery of the existing CIP.
- Projections for existing trigger projects – when are they likely to enter the price cap.

2.5 Where new projects are required to deliver additional capacity a comprehensive capacity assessment must underpin the requirements. This assessment should show how the use of current infrastructure is being maximised.

2.6 Detailed business cases must be provided to users; these should include detailed cost information. Costs must be worked up comprehensively to

allow an assessment by users of the costs and benefits of projects.

- 2.7 Where appropriate Dublin Airport should present the costs and benefits of a number of options for addressing a need.
- 2.8 Detailed timelines and milestones for projects should be consulted on.
- 2.9 We believe that this process should not impose an onerous burden for Dublin Airport given that the same level of detailed information should ideally be shared with users in any other consultation process.

Process for the Commission

- 2.10 Dublin Airport must demonstrate to the Commission that:
 - Circumstances requiring additional capital expenditure are substantially different to those which existed at the time of making the previous determination.
 - Flexibility in the existing determination on capex is not sufficient to meet the need.
 - Dublin Airport consulted extensively with users, as detailed above.
- 2.11 The Commission will assess the costs of the project proposed by Dublin Airport in terms of cost efficiency.
- 2.12 The Commission will assess the need for the projects with reference to the above consultation with users.
- 2.13 The Commission will follow the procedures of Section 32(14) of the Aviation Regulation Act, 2001 as amended by the State Airports Act, 2004 to potentially amend the existing determination to allow additional capex.
- 2.14 The Commission will not consult on scope or substantial grounds of a review. Dublin Airport will need to convince the Commission that substantial grounds exist to reopen the determination to add supplementary capital allowances. The scope of the review will be confined to the supplementary capital allowance.
- 2.15 The Commission will consult with all interested parties on the need and costs for these capital allowances.
- 2.16 Where the Commission deems additional allowances are necessary additional trigger mechanisms are likely to be used to adjust the price cap on the occurrence of an event (for example delivery of a project).
- 2.17 It is our view that this would not become an unnecessarily long process. If detailed information has been shared by all parties in a timely manner and agreement has been reached during consultation, then the process should not be unduly lengthy.

3. Reporting and Delivery Requirements

- 3.1 The Commission is likely to include project specific reporting and delivery requirements for any projects approved by way of an interim allowance.
- 3.2 If cost recovery is to be triggered by the completion of the project, the trigger will likely only be met if the project has been delivered in accordance with the specifications as consulted upon, unless a change in scope was agreed with users and consulted on by the Commission.
- 3.3 As with other capex, outturn expenditure will be compared to the allowance and any necessary adjustments to the RAB will be made at the end of the regulatory period.
- 3.4 Given the scale of any project to which this process will be applicable, we expect Dublin Airport to set out a detailed timeline to be consulted upon with users and agreed with the Commission.
- 3.5 Dublin Airport should report regularly on progress with regard to agreed timelines.

4. Responding to the Consultation

- 4.1 The Commission requests the views of interested parties on the use of statutory consultations for consideration of supplementary capital allowances.
- 4.2 We may correspond with interested parties who make submissions, seeking clarification or explanation of their submissions. Such correspondence will not be an invitation to make further submissions.
- 4.3 Respondents should be aware that we are subject to the provisions of the Freedom of Information legislation. Ordinarily we place all submissions received on our website. We may include the information contained in submissions in reports and elsewhere as required. If a submission contains confidential material, it should be clearly marked as confidential and a redacted version suitable for publication should also be provided.
- 4.4 We do not ordinarily edit submissions. Any party making a submission has sole responsibility for its contents and indemnifies us in relation to any loss or damage of whatever nature and howsoever arising suffered by us as a result of publishing or disseminating the information contained within the submission.
- 4.5 While we endeavour to ensure that information on our website is up to date and accurate, we accept no responsibility in relation to the accuracy or completeness of our website and expressly exclude any warranty or representations as to its accuracy or completeness.

- 4.6 Responses should be titled "Response to Consultation on the Process for Consideration of Supplementary Capex Allowance" and sent:

By email to: info@aviationreg.ie (Preferable); or

By post to: Commission for Aviation Regulation, 3rd Floor, Alexandra House, Earlsfort Terrace, Dublin D02 W773

- 4.7 The closing date for receipt of submissions is **5PM, 16 September 2016**.