

Commission for Aviation Regulation
3rd Floor
6 Earlsfort Terrace
Dublin 2

26th April 2023

RE: Draft Decision on Winter 2023 Coordination Parameters at Dublin Airport

Dear CAR,

I'd like the opportunity to respond to the draft decision published by the CAR dated April 14th, 2023. The executive summary recommends the following changes:

- Implement the 'W23 Wishlist' hourly runway capacity ('R60') limits, which involves a range of increases in the declared runway limits in the day hours.
- Update the within-hour 10 minute ('R10') runway limits to reflect dual parallel runway operations, in line with the S23 declaration.
- Stand counts are updated to reflect any expected changes by apron area relative to Winter 2022. Otherwise, the form of this parameter is unchanged from W22.

The draft recommendation has failed to adequately address Condition 5 of the North Runway's planning which limits night-time flights across the entire Airport to less than 65.

The draft recommendation has failed to consider the current enforcement investigations being undertaken by Fingal County Council into breaches of planning with the North Runway's operations. If the daa are found in breach of planning, then the North Runway could be forced to shut pending a revised planning application.

The draft recommendation also fails to address the 32m passenger limit at Dublin Airport and CAR's actions could facilitate a breach of the 32m cap as occurred in 2019.

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.

In 2019, Dublin Airport handled 32.9m passengers. This breach of the planning permission was facilitated by CAR for making too many slots available in their determinations. It is imperative that CAR do not repeat this same mistake and facilitate another breach of planning. It is noted that the first 3 months of 2023 are ahead in passenger numbers compared to the equivalent 3 months in 2019. Therefore, the breach in passenger numbers could be reached earlier in 2023 and would be open to enforcement proceedings and potential shutdown of the airport. The means to alleviate this breach is for CAR not to provide slots exceeding the capability to handle more than 32m passengers.

Condition 5:

The only reference to Condition 5 in the Winter '23 draft determination is in section 3.22:

“As set out in the S23 declaration decision, any Operating Restrictions within the meaning of Regulation (EU) No 598/2014 ought to be set out such that there is clarity on the scope and duration of the legally enforceable constraining factor which it will represent during a given scheduling season. Where this is not case, as particularly noted in the S23 decision in respect of Condition 5 of the North Runway planning permission, and should a determination subsequently be made such that an Operating Restriction falls to be enforced in that scheduling season in a manner which requires a reduction in operations, it may be necessary for the Commission to review the affected parameters in the prevailing declaration and/or for parties not to use their allocated slots. Pending any such determination, the R60 parameters in the night hours remain in line with the pre-existing single (southern) runway capacity for the W23 declaration.”

Fingal County Council are currently conducting enforcement investigations against the daa for breaches of planning related to their North Runway planning permission. 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 daa's own submissions to CAR state this and CAR should make a declaration based on having Condition 5 in force. It will cause mayhem at Dublin airport if the airlines are not given clear visibility in their schedules.

This interpretation of Condition 5 is contrary to the intentions of An Bord Pleanála and contrary to the ongoing planning application by the daa as part of their Relevant Action process. All forecasts supplied by the daa for their Relevant Action application assumed a 65-flight limit applied as soon as the North Runway was opened. The daa's main claim in their application is that Condition 5 will lead to lost passengers up to 2025. How can CAR ignore this planning application where it clearly shows the daa's interpretation of Condition 5 and why they want to remove it?

Condition 5 is as follows:

5. On completion of construction of the runway hereby permitted, the average number of night time aircraft movements at the airport shall not exceed 65/night (between 2300 hours and 0700 hours) when measured over the 92 day modelling period as set out in the reply to the further information request received by An Bord Pleanála on the 5th day of March, 2007.

Reason: To control the frequency of night flights at the airport so as to protect residential amenity having regard to the information submitted concerning future night time use of the existing parallel runway.

The CAR are confused by the mention of the 92-day modelling period. The condition references the further information request received by An Bord Pleanála on Mar 5th, 2007. Below is the information request from An Bord Pleanála and the response from the daa:

5. Information request 5 – Night Noise

5.1 Item 5 of the information request states:

Quantify the potential for increase in night flights on the existing 10R/28L runway which could derive from the growth of air traffic at the airport arising from the proposed runway relative to that which would occur without the new runway.

Night Flights

- 5.2 The Bord has asked for an estimate of the increase in night flights that could derive from the growth of traffic with, relative to without, the proposed runway. The answer to this question is 30 movements per night on average, equating to the difference between the unconstrained and constrained positions in 2025, discussed below.
- 5.3 The bulk of night-time movements occur, and are forecast to occur, in the first and last hour of the night period (defined as 2300 to 0700 hours) and effectively represent either the end or beginning, respectively, of daily schedules. They would, therefore, be expected to grow at a similar rate to the daytime (defined as 0700 to 2300 hours) movements. Accordingly, when preparing the EIS the use of the runway at night was assumed to grow at the same rate as use during the day. This means that night traffic grows from an average of 45 movements per night over the 92 day modelling period to 65 movements per night in 2025 in the constrained case and 95 movements per night in 2025 in the unconstrained case. The detailed INM input sheets, some of which were previously included in Appendix G, are attached for reference.
- 5.4 A greater relative growth could have been assumed for night-time traffic in the constrained case as the relatively higher scarcity of daytime slots might cause airlines to modify schedules to include more night-time activity to compensate. This approach would reduce the difference between the constrained case and the unconstrained case but was not used as it would not represent a credible worst case for the assessment of impacts.

The request was to quantify the potential for increase in night flights on the existing 10R/28L runway which could derive from the growth of air traffic at the airport arising from the proposed runway relative to that which would occur without the new runway. This request was made to see if there would be an increase in night-time flights even if the North Runway was not granted planning.

The answer from the daa (Aer Rianta) was that activity would grow from 45 movements per night to 65 movements without the North Runway. But if the North Runway was granted planning permission, then the night-time activity would grow to 95 flights.

The daa made reference to the '92-day modelling period' as they deliver their statistics using annual figures and the 92-day summer period. This reference is there purely to define the average over this period. An Bord Pleanála have just reiterated this in Condition 5, but it was never intended that the 65 limit be applied to the Summer period only, as suggested previously by CAR.

Below is a slide from a Mott MacDonald report titled 'Dublin Airport Operating Restrictions, Quantifications of Impacts on Future Growth – 2017 Study'. The slide shows how Mott MacDonald interprets Condition 5:

“Although the night restriction compliance is measured over the 92 day period, the spirit of the restrictions would require night period scheduling limits to be applied on a year-round basis”.

This is very clear from Mott MacDonald that Condition 5 is an operating restriction leading to a reduction in aircraft movements and that the limits should be applied on a year-round basis.

Background

Background

Planning Conditions

- ▶ The North Runway planning permission (PL06F 21742) contains the following conditions to take effect from completion of the new runway
 - Condition 3(d) states that: *Runway 10L-28R shall not be used for take-off or landing between 2300 hours and 0700 hours⁽¹⁾*
 - Condition 5 states that: *the average number of night time aircraft movements at the airport shall not exceed 65/night (between 2300 hours and 0700 hours) when measured over the 92 day modelling period.*
- ▶ This study interprets Condition 5 as follows
 - Night movements are based on actual aircraft landing or taking-off times
 - The 65/night limit is based on the average over the 92 day modelling period (16 June to 15 September)
 - All night operations, including ad hoc operations and unplanned operations (e.g., delayed daytime flights), as well as regularly scheduled night flights are taken into account.
 - Therefore, scheduling limits to ensure compliance must take account of aircraft taxi times and make reasonable allowances for delayed flights
 - Although the night restriction compliance is measured over the 92 day period, the spirit of the restrictions would require night period scheduling limits to be applied on a year-round basis

Runway Modes of Operation



Source: daa

(1) except in cases of safety, maintenance considerations, exceptional air traffic conditions, adverse weather, technical faults in air traffic control systems or declared emergencies at other airports

The CAR have relied on advice from Egis consultants in their interpretation of Condition 5.

Note Egis clearly state in their report to CAR that they have not seen transcripts of the Oral Hearing in relation to Condition 5:

“Having not seen transcripts of the oral hearings that preceded establishment of Condition 5 it is difficult to judge the breadth and depth of topics discussed, but we assume that, as a minimum, the following were covered with regards to mitigation of night noise:

- 1. Ways to measure the night noise levels (where the 92 day modelling period comes from),*
- 2. Ways to minimise night noise levels (where the 65 movements/night cap comes from)”.*

The daa in their investor prospectus (<https://www.daa.ie/wp-content/uploads/2021/09/Tap-2028-Prospectus.pdf>) also highlight the issue with the 65-flight limit.

Matters relating to the new parallel runway development at Dublin airport may impact the Group

In August 2007, a 10-year planning permission was granted for a new parallel runway at Dublin airport. In March 2017, the planning permission was extended by a further five years to August 2022. Initial enabling works on the new parallel runway commenced in late 2016 and the main runway construction works commenced in February 2019. Construction of the new parallel runway is nearing completion, and this will be followed by a commissioning and testing phase which is expected to be completed in the summer of 2022.

A condition of the 2007 planning permission is that on completion of the new parallel runway, the average number of late night and early morning aircraft movements at Dublin airport shall not exceed 65 between 23:00 hours and 07:00 hours. A further condition restricts the use of the new parallel runway between 23:00 and 07:00 hours, save where safety, emergency or other similar circumstances require that it be used during those hours.

The Group has been involved in a process seeking to amend and replace these conditions and mitigate the risks associated with them. In this respect, daa lodged a planning application with Fingal County Council (“FCC”), the “competent authority”, in December 2020 for the purposes of the Aircraft Noise (Dublin Airport) Regulation Act 2019. In the absence of a planning determination before August 2022, the date that the 2007 planning permission expires, the new parallel runway would become operational with the onerous conditions in place for the period up to when a determination is received from FCC. It is not clear what the timeframe for the potential conclusion of the planning application process is and the current estimate is that a decision will issue from FCC in quarter 3, 2022. If the decision is appealed by a third party, as expected, a decision from the appeal board, An Bord Pleanála, is anticipated in quarter 1, 2024. This uncertainty could have an adverse impact on the Group’s ability to plan for the deployment of capacity at Dublin Airport. These conditions could result in a period, potentially up to quarter 1, 2025, where Dublin airport would be forced to operate at a reduced capacity for certain times of the day thereby impacting the throughput capability in that period. In such circumstances, no assurances can be given that there would be no material adverse effect on the Group’s business, results of operations, prospects and/or financial condition.

The daa are going to extraordinary measures to change Condition 5 and replace it with a Noise Quota Scheme (NQS). The only reason they are doing this is because of the 65-flight limitation imposed by An Bord Pleanála. It is incredulous that CAR somehow interpret Condition 5 as having no influence over night-time flights. Why would ABP impose the operating restriction and why would the daa seek planning permission to remove it if it does not cause flight restrictions?

Condition 5 is deemed an Operating Restriction by ANCA, as is Condition 3(d). The very term ‘Operating Restriction’ means it restricts movements.

The daa have gone to great lengths in their current planning application to show the movement losses when the North Runway is operational. In a 2016 Public Consultation document, the daa clearly state that Condition 5 will lead to a 65-flight limit:

Planning Conditions 3(d) and 5 for North Runway will damage Dublin Airport’s connectivity and limit the future potential of the Airport.

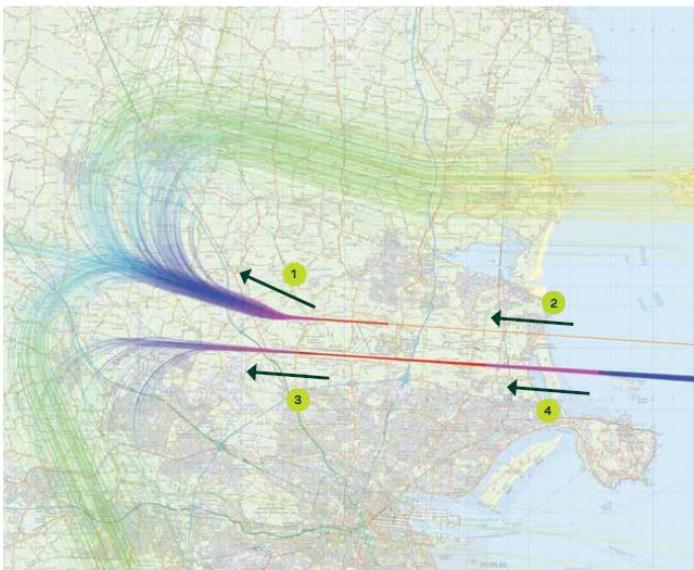
- Planning permission for North Runway has been granted, however, two of the 31 conditions are onerous and we believe unwarranted given the level of growth forecast and the importance of the airport to the economy of Ireland. These onerous conditions limit the potential of the airport to operate, grow and deliver the maximum economic and societal benefits for Fingal, for Dublin and for Ireland as a whole.

Condition 3(d) would prohibit the use of North Runway for landings and take-offs between the hours of 11 pm to 7 am.

Condition 5 states that, on completion of construction of the new runway, the average number of night time aircraft movements at the airport shall not exceed 65 per night (between 11 pm to 7 am).

Also in the Consultation document is a comparison of flight movements between the existing 2007 planning conditions and the proposed operations with the restrictions removed. It is very obvious that the total sum of all movements between 23:00-07:00 on all runways is restricted to 65 with the existing 2007 planning conditions for both 2022 and 2037 thus proving that the daa interpreted Condition 5 as restricting movements to 65:

Aircraft Altitudes and Flight Movements in Westerly Operations (approx. 70% of the time) on a Representative Summer’s Day



Legend
Aircraft Altitudes (above airport level)

0-1000 ft 1000-2000 ft 2000-3000 ft 3000-4000 ft 5000-10000 ft >10000 ft

1. NORTH RUNWAY DEPARTURES					
Time	2016	2022	2037		
	Current Operations	With Existing Planning Conditions	With Proposed Operations	With Existing Planning Conditions	With Proposed Operations
	No. Flights	No. Flights	+/- No. Flights	No. Flights	+/- No. Flights
0400-0500	N/A	0	0	0	0
0500-0600	N/A	0	0	0	0
0600-0700	N/A	0	+18	0	+18
0700-2300	N/A	311	+22	378	+11
2300-0000	N/A	6	0	12	-3
0000-0400	N/A	0	0	0	0

2. NORTH RUNWAY ARRIVALS					
Time	2016	2022	2037		
	Current Operations	With Existing Planning Conditions	With Proposed Operations	With Existing Planning Conditions	With Proposed Operations
	No. Flights	No. Flights	+/- No. Flights	No. Flights	+/- No. Flights
0400-0500	N/A	0	0	0	0
0500-0600	N/A	0	0	0	0
0600-0700	N/A	0	0	0	0
0700-2300	N/A	12	-12	25	+6
2300-0000	N/A	0	0	0	0
0000-0400	N/A	0	0	0	0

3. SOUTH RUNWAY DEPARTURES					
Time	2016	2022	2037		
	Current Operations	With Existing Planning Conditions	With Proposed Operations	With Existing Planning Conditions	With Proposed Operations
	No. Flights	No. Flights	+/- No. Flights	No. Flights	+/- No. Flights
0400-0500	0	0	0	0	0
0500-0600	6	3	+2	9	+2
0600-0700	37	25	-1	25	+8
0700-2300	284	39	-15	55	+26
2300-0000	4	0	0	0	0
0000-0400	2	1	0	1	+2

4. SOUTH RUNWAY ARRIVALS					
Time	2016	2022	2037		
	Current Operations	With Existing Planning Conditions	With Proposed Operations	With Existing Planning Conditions	With Proposed Operations
	No. Flights	No. Flights	+/- No. Flights	No. Flights	+/- No. Flights
0400-0500	4	3	+2	3	+6
0500-0600	6	7	+5	7	+8
0600-0700	3	4	+3	4	+5
0700-2300	265	310	+15	379	+17
2300-0000	16	29	-9	33	-5
0000-0400	22	12	+15	13	+20
0000-0400	18	10	+1	9	+3

On the daa's current portal for the removal of the operating restrictions (<https://northrunway.exhibition.app/#board-2>), the daa clearly state that the implications of Condition 5 is to restrict movements between 23:00-07:00 to 65. It further states that:

"If the two conditions are not amended, airlines will be forced to restrict a large number of their services to a shorter operating day. This means they would have to reduce the number of flights an aircraft based at Dublin could operate."

This is very clear, yet CAR have interpreted Condition 5 as effectively non-existent. What knowledge does CAR have on Condition 5 that is contrary to the daa? If the CAR's interpretation is correct and the 65 flight limit does not apply, why then are the daa applying for planning permission to remove them and why did the Government specifically legislate to amend and revoke these operating restrictions in the Aircraft Noise Bill?



OUR APPLICATION

Purpose of Application

Two of the 31 conditions associated with North Runway's 2007 grant of permission are particularly onerous and limit Dublin Airport's ability to operate, grow and deliver maximum economic and societal benefit as Ireland recovers from the Covid-19 crisis.

The two conditions are:

- Condition 3(d) prohibits the use of North Runway between 11pm and 7am
- Condition 5 limits the number of aircraft movements at the entire airport to 65 between 11pm and 7am

Health implications:

What evaluation of the health implications for residents has been undertaken by CAR on its decisions for Summer 2023 and draft decision for Winter 2023?

I refer to a HSE submission to the ANCA public consultation - <https://consult.fingal.ie/en/system/files/materials/15666/23216/Environmental%20Health%20Submission%20Feb%202022.pdf>. In this submission the HSE state:

“As the existing Planning Conditions are in place to protect public health, it is important that the reasons for a change in this protection are clearly stated”.

The HSE also state that:

“The Conditions 3(d) and 5 were put in place to protect public health so if the planning authority are going to increase the hours of operation they must ensure all who are significantly impacted have the opportunity of mitigation”.

The HSE clearly state that Conditions 3(d) and 5 were put in place to protect Public Health. It is not for CAR to decide how to interpret these conditions in relation to Public Health. CAR does not have the expertise nor the legal remit to interpret these conditions. This is for the planning authority and ANCA.

I refer to a health webinar (<https://vimeo.com/681045151>) by Professor Munzel from Germany, who is a leading Cardiologist and expert on the effects of aircraft noise on the cardiovascular system. In the webinar Professor Munzel outlines the health implications of night-time aircraft noise and concludes that all night time flights should be stopped.

Will CAR take responsibility for the health impact of local residents for its decision to allow more than 65 flights at night at Dublin Airport?

It is also worth highlighting that planning enforcement investigations are ongoing by Fingal County Council in relation to a number of planning conditions with the North Runway's planning and therefore CAR's decision for Summer 2023 and Winter 2023 are premature pending the outcome of these investigations.

What is CAR going to do if the Planning Authority rule against the daa and force the daa to restrict operations to 65 flights at night?

What are the legal implications for CAR for such an outcome?

The prudent decision is to adhere strictly to 65 flights at night until all investigations are concluded. CAR could also be in a legal bind if a legal challenge is brought against the daa for their illegal activity. The daa currently refer to CAR's decision for justifying their non-adherence to Condition 5 and CAR could be adjudged to be legally responsible for misinterpreting Condition 5.

In section 3.83 of the Summer 2023 determination, it states 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. 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 CAR cannot use the threat of legal action by airlines and cargo companies as a reason for not upholding the planning laws. Also CAR should be questioning the daa if they did not perform their duty under SI No. 645 of 2003 and inform interested parties and the IAA of the Operating Restrictions attached to the North Runway's planning permission. Also CAR should be following up with the IAA to see if they have informed the Minister, EU Commission and other Member States.

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 will robustly defend Condition 5 and any further misinterpretations by the CAR.

Enforcement investigations by Fingal County Council

Over 100 warning complaints have been officially made to Fingal County Council's Planning Enforcement section alleging breaches of planning with the North Runway operations. These include Condition 5 as well as the conditions for the insulation scheme of dwellings, insulation scheme of schools as well as the condition for the Voluntary Purchase scheme. The conditions of planning for the insulation schemes are alleged to be in breach due to the divergent flight paths being operated on the North Runway. Fingal County Council is continuing its investigations and Fingal could find the daa in breach of planning and pursue legal channels to stop the alleged unlawful development.

What plans and provisions have the CAR in place if such a situation arises?

It is imperative that CAR seek guidance and clarity from Fingal County Council and ANCA in order to designate the correct coordination parameters for Winter 2023 and have plans in place for all eventualities, none of which are documented in the draft determination.

Yours Sincerely

Liam O'Gradaigh, Ward Cross, The Ward, Co Dublin
(St Margarets The Ward Residents Group)