



**Decision on the Scope
of the Interim Review
of the
2014 Determination of the
Maximum Level of Airport Charges at Dublin Airport
Relating to the North Runway**

Commission Paper 6/2016

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Commission for Aviation Regulation

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1. Executive Summary

- 1.1 This paper sets out our decision on the scope of the interim review of the 2014 Determination in relation to the regulatory treatment of the North Runway.¹
- 1.2 We previously decided on the scope of the review in December 2015 but subsequently received requests from interested parties to extend the scope beyond the timing of the remuneration of the project via the price cap on airport charges.²
- 1.3 In response to these requests, on 25 July 2016 the Commission published Consultation Paper CP4/2016 on expanding the scope of the review of the 2014 Determination in relation to the North Runway.³ Submissions to this consultation were requested to give reasoning of the existence or not of substantial grounds for each additional element to be added to the review.
- 1.4 After considering all submissions received, the Commission has decided that there are no substantial grounds to include the cost allowance, the risk sharing mechanism, the runway length or capacity assessments in the scope of the review. Although stakeholder participation in the preparation of the scope of the project being put out to tender is encouraged by the Commission, such collaboration can be achieved without amending the 2014 Determination. We will therefore limit the scope of the review to the timing of trigger to better align remuneration with the timeline of the project as indicated previously in the December 2015 Decision and any enhanced reporting and monitoring that may be required.
- 1.5 However, we accept that the North Runway project costs were build up a number of years ago and that as the project is finalised, final cost estimates may differ compared to current estimates (in either direction) for reasons outside the control of Dublin Airport.
- 1.6 If the final cost estimates are substantially different to the allowance, then the 50/50 risk sharing mechanism may not be appropriate. At this time, setting a new allowance would be premature; given we have not reviewed, in any detail, the recent estimates suggested by Dublin Airport. Rather, in our draft decision paper we plan to set out a process by which we may move from 50/50 to constructive consultation to deal with a cost which differs from the allowance.
- 1.7 The next step in this interim review is the publication in November of a draft decision on the regulatory treatment which will be subject to a public consultation. A final decision on the regulatory treatment of the North Runway will be published before the end of the year.
- 1.8 Section 2 of this paper provides a background to this decision. In Section 3 we discuss if there are substantial grounds for each element of the scope and in Section 4 we outline the submissions received for this consultation.

¹ Previously referred as the Northern Parallel Runway project.

² http://www.aviationreg.ie/_fileupload/2015/review/2015-12-22%20Decision%20on%20Conducting%20Review.pdf

³ http://www.aviationreg.ie/_fileupload/2016runway/scope/CP42016%20Consultation%20on%20Expanding%20Scope.pdf

2. Background

- 2.1 In December 2015, we issued a paper on the scope of the review. In that paper, we limited the consultation to the timing of remuneration relating to the North Runway project allowance. Subsequently we received requests from interested parties to extend the scope beyond the timing of the remuneration of the project via the price cap on airport charges.⁴
- 2.2 Aer Lingus, Dublin Airport and Ryanair each requested that the review be expanded to include additional aspects of the regulatory treatment of the runway project, including the cost allowance, the risk sharing mechanism, participation in the tendering process, the runway length and capacity assessments.
- 2.3 In response to these requests, on 25 July 2016 the Commission published the Consultation Paper CP4/2016 on expanding the scope of the review of the 2014 Determination in relation to the North Runway.⁵ Submissions to this consultation were required to give reasoning of the existence or not of substantial grounds for each additional element to be added to the review.
- 2.4 Six parties responded to the consultation on the scope of the review: Dublin Airport, International Airlines Group (IAG), Irish Aviation Authority (IAA), Ryanair, St Margaret's Concerned Residents Group (SMCRG) and St Margaret's The Ward Residents. The Commission would like to thank all interested parties who made submissions and assisted us in our consideration of these issues. All responses are published on our website.⁶
- 2.5 After making a determination of the maximum level of airport charges at Dublin Airport, the Commission can review it and if it sees fit, amend the determination. This can be at its own initiative or at the request of a concerned party. Before doing so, the Commission needs to establish if there are substantial grounds that justify the review.
- 2.6 In making a decision on the scope of the consultation, the Commission has considered the three tests posed in the consultation related to the existence or not of substantial grounds, in a manner consistent with the three statutory objectives of the Commission as set out in Section 33 of the Aviation Regulation Act, 2001 as amended by the State Airport Act, 2004.

⁴ http://www.aviationreg.ie/_fileupload/2015/review/2015-12-22%20Decision%20on%20Conducting%20Review.pdf

⁵ http://www.aviationreg.ie/_fileupload/2016runway/scope/CP42016%20Consultation%20on%20Expanding%20Scope.pdf

⁶ <http://www.aviationreg.ie/regulation-of-airport-charges-dublin-airport/2014-determination.576.html>

3. Substantial Grounds and the Decision on Scope

- 3.1 In our December 2015 Decision, we stated that the scope of the review is limited to the timing of the trigger to better align remuneration with the timeline of the project. This review will include consideration of specific milestone deliverables within the project and enhanced reporting and monitoring processes as there may be links between trigger dates and project delivery. In this Section we set out the requests by Aer Lingus, Dublin Airport and Ryanair, received in May 2016, related to expanding the scope of the interim review, and whether or not there are substantial grounds for the inclusion of each element requested.

Cost Allowance and Risk Sharing

Requests

- 3.2 Aer Lingus suggested that we engage independent consultants to review the cost and the business case of the North Runway.
- 3.3 Dublin Airport proposed either an earlier review in the third quarter of this year, focusing on the timing of remuneration and the treatment of over/underspends (stating that all efficiently incurred capital expenditure should enter the RAB), or a later review at a time of greater certainty on costs and planning conditions pertaining to the runway. The later review could additionally consider the appropriate cost allowance.
- 3.4 Ryanair asked us to review the cost allowance for the project, given that Dublin Airport has revised the cost estimate from €247m to €320m.
- 3.5 Ryanair also requested a review of the policy of 50/50 risk sharing of cost over/underspends with a view to placing the risk in its entirety on Dublin Airport.

Substantial grounds

- 3.6 The Commission has decided that, at this time, substantial grounds do not exist for the inclusion of the cost allowance or the risk sharing mechanism in the scope of this review. Given that the final cost estimate of the project will not be known for some time, the revised estimate of €320m remains uncertain; therefore we do not believe the level of information is available to assess if substantial grounds exist to examine the cost allowance, and in particular if there are circumstances outside of the control of Dublin Airport that effected cost.
- 3.7 In relation to cost allowances and risk sharing, the 2014 Determination aims to encourage efficient capital expenditure. This objective may not be achieved if the cost allowance or the risk sharing are continually revised or adjusted. The Commission believes, for the reason provided above, it is in the interest of current and future users that the cost allowance stays as it is for now. In other words, €247m is the amount to enter the RAB plus 50% of any cost overrun or less 50% of any cost underrun. The original cost allowance of €247m combined with the 50/50 risk sharing may be sufficient to allow Dublin Airport proceed with the project without a revised cost allowance or a different risk sharing rule.
- 3.8 That being said, the Commission understands that circumstances outside the control of Dublin Airport could result in a higher (or lower) cost estimate than €247m. In our decision paper, we will expand on the RAB roll forward principles to address how those principles could be applied as a replacement for the 50/50 risk sharing mechanisms.⁷ In addition, we will detail how

⁷ 2009 Draft Determination, Annex 1:
http://www.aviationreg.ie/_fileupload/2009_07_06_draft_determination_redacted_version.pdf

consultation with users combined with an assessment of the reasons for cost differences may be used. Unless an appropriate level of consultation takes place, the current approach will continue to apply. This will maintain the incentive on Dublin Airport to be cost efficient. At the end of that process we will review the level of engagement and the cost estimates and assess if substantial grounds exist to amend the current approach.

Participation in the Tendering Process

Request

- 3.9 Ryanair suggested the inclusion of stronger measures to ensure cost efficiency, for example, by involving users in the tender process.

Substantial Grounds

- 3.10 Taking account of the received submissions, the Commission has decided that substantial grounds do not exist for the inclusion of participation of users and stakeholders in the tendering process of the North Runway. The Commission would support the airport, airlines and all interested parties working together in this way. However, an amendment of the 2014 Determination is not required to achieve this, nor is the suggestion exceptional in that regard. As discussed above, in our decision paper we will further detail the RAB roll forward principles relative to the North Runway. Participation on tendering could be part of the evidence presented to the Commission to show user consultation or involvement.

Runway Length

Request

- 3.11 Aer Lingus suggested that independent consultants should review all aspects of the North Runway project, including its length.
- 3.12 Ryanair requested a review of the need to build a runway of length 3.1km, and suggested that if Dublin Airport is to proceed with this length that a separate regulatory till be applied to the length over 2.1km.

Substantial Grounds

- 3.13 The Commission has considered the submissions on this topic and found that substantial grounds do not exist for the inclusion of the runway length in the scope of the review. Between September 2002 and August 2003, consultation for the study and construction of a 3.11km new parallel runway was undertaken between Dublin Airport and its users as part of the Dublin Masterplan. In particular, consultation on the detailed design was held through a proposed "Technical Group". The runway length was again consulted on with users during the capex meetings for previous determinations, especially in 2009.
- 3.14 After the said consultations, the Commission allowed for a North Runway of 3.1km length in both the 2009 and 2014 Determinations. The Commission allowed such length first in 2009 to allow direct access from Dublin to key markets in developing economies, including the Far East, as required in the 2009 Ministerial Direction. In 2014, the need for a runway at Dublin Airport of in excess of 3,000m was stated by the 2014 Draft National Aviation Policy, and the desirability of the promotion of direct international air links to key markets and new high growth emerging economies in the 2014 Ministerial Direction.
- 3.15 When making the past two determinations, the Commission protected the interests of current and prospective users by not allowing a longer runway (3.7km) that would not have met the

reasonable requirements of users.

- 3.16 The Commission therefore believes that there are no exceptional circumstances that would merit the review of the planned length of the North Runway, considering that (a) consultation was held in 2002, 2009 and 2014; (b) the runway is part of a national policy objective; and (c) users had the opportunity to express their views on the runway length on all occasions.

Capacity Assessments

Request

- 3.17 Aer Lingus suggested that remuneration for the runway should be linked to the delivery of other capital projects designed to maximise current runway capacity and address other capacity constraints.

Substantial Grounds

- 3.18 The Commission has decided that substantial grounds do not exist for the inclusion of capacity assessments in the scope of the review. The Commission believes that the per-passenger price cap in place incentivises Dublin Airport to grow traffic and maximise the use of its infrastructure. The Commission considers that there are no exceptional circumstances in relation to the need for capacity assessments in the context of the North Runway project, given that there is no change in the incentives that Dublin Airport has to make the best use of its infrastructure in order to increase passenger numbers and maximize its aeronautical and commercial profits.
- 3.19 The Commission supports evidence based infrastructure investment and as such is of the view that capacity assessments have an important role to play at the right time. Conducting one as part of an interim review, to retrospectively assess capital allowances granted in 2014 would result in regulatory uncertainty for both Dublin Airport and users. However, we are considering carrying out some work in this area separate from this review.

Issues outside the Competence of the Commission

Planning Conditions

- 3.20 The Commission received suggestions that the interim review should consider the economic impact of the restrictions on night-time flights for the existing runways and peak usage of the new runway. The Commission has no legal remit to take decisions relating to planning permissions. We suggest that any views related to planning conditions be expressed to relevant authorities.

4. Responses to Consultation

4.1 This Section summarises the submissions received under each of the topics.

Cost Allowance

Dublin Airport

4.2 Dublin Airport states that the allowance in the 2014 Determination no longer represents the expected efficient cost of the North Runway.

4.3 Dublin Airport cites new factors (construction price inflation, implications of the EASA regulations, and increased congestion of the airfield) that require additional funding.

4.4 According to Dublin Airport, the €320m is a later estimate based on benchmarking of costs against similar construction projects.

4.5 Dublin Airport suggests that if the interim review is to consider revision of the cost allowance made, it should be based on the results of the competitive tender process.

4.6 Dublin Airport warns that if a review of the cost allowance would extend to year end or Q1 2017, no decision on the remuneration of the Runway project would be available to inform 2017 pricing proposals.

4.7 Dublin Airport proposes two options to ensure that efficient costs are remunerated:

- a) The allowance for the North Runway be revised to reflect the cost of the efficient delivery of the project (outcome of the tender process) and the risk-sharing mechanism be retained.
 - However, Dublin Airport notes that the timeline for completion of the tender process may be extended if measures to ensure cost efficiency were introduced.
 - Dublin Airport states the need for a formula of the revised Runway cost, since the outturn would be determined on completion of the tender process.
- b) The cost allowance for the North Runway remains as per the 2014 Determination, with the replacement of the risk-sharing mechanism with a review of the efficiency of the outturn spend undertaken by independent cost consultants, appointed by CAR, on project completion.

IAG

4.8 IAG claims that the new runway capacity has never been subject to a rigorous economic business case process.

4.9 IAG suggests that CAR should engage an independent report on the economic justification for the new runway (whether at the initial or revised proposed costs) and the timing of the application of increased cap on airport charges.

4.10 IAG believes that daa consistently under-recovers by the maximum 5%, deploying these monies in traffic growth, in order to clawback these amounts two years in arrears, across a broader passenger-base. IAG concludes that it is this growth which has led to an earlier than anticipated need for new runway capacity– and on which daa now seeks a €70m increase in allowance.

IAA

- 4.11 IAA mentions that a sufficient allowance should be provided to daa to develop an appropriately specified runway which complies with all national/international standards and legal requirements.
- 4.12 IAA warns that lower costs should not result in future delays or additional costs.
- 4.13 IAA states that the process decided by CAR should facilitate the new runway construction as soon as possible.

Ryanair

- 4.14 Ryanair argues that Dublin Airport must consult with users on the reasons for the cost overrun (€70m) and gives users the opportunity to reassess the project given the new cost.

50/50 Risk Sharing Mechanism

Dublin Airport

- 4.15 Dublin Airport considers that the mechanism is not appropriate because the current cost allowance no longer represents the best estimate of the efficiently incurred cost.
- 4.16 However, Dublin Airport states that if the cost allowance was revised to reflect the efficient cost of the project (tender process), then the risk-sharing mechanism could be retained.

IAG

- 4.17 IAG claims that the treatment of cost under/over-runs cannot be considered as risk-sharing, because daa is able to maximise the amounts users pay, by persuading CAR to increase the allowance – and then spending as much as possible.

IAA

- 4.18 IAA believes this mechanism is not appropriate for such a large figure (€70m) identified in advance of commencement of construction.

Ryanair

- 4.19 Ryanair notes that this mechanism does not exist in competitive markets and it is not appropriate where a cost overrun is such a significant proportion of the original allowance.

Cost Efficiencies – Tendering Process

Dublin Airport

- 4.20 Dublin Airport believes that the inclusion of users in the preparation of the terms of reference would necessitate that the tendering process and project delivery be delayed.
- 4.21 Dublin Airport points out that the Final Determination would need to clearly define the requirements of user participation to ensure that the tendering process proceeded as to avoid further delay. Dublin Airport suggests that CAR would need to consider provisions allowing for suspension of airline involvement if lack of resourcing impeded progress.
- 4.22 Dublin Airport states that it would be necessary to set out whether airline engagement would

include the smaller tenders for noise abatement schemes; and that community mitigation costs such as compensatory habitat, planning fees and statutory levies as well as internal daa costs for the runway project team cannot and will not be subject to public tender.

- 4.23 Dublin Airport indicates that the Final Determination would need to clearly define the obligations on all parties to the tender process and how CAR would monitor the fulfilment of these obligations. Dublin Airport argues that airlines should be explicitly bound by the outcome of the tendering process. It points out that tenders will be subject to EU procurement rules, with strict requirements for confidentiality of information.

IAG

- 4.24 IAG considers that it is unfair to ask users to commit to the outcome of an unknown tender process. However, IAG states it is reasonable to expect users to commit to such an outcome on the basis that users' involvement would be significant and meaningful, and that the outcome reflected their involvement.

IAA

- 4.25 The IAA, as operator of the runway, requests be included in any stakeholder group to prepare Terms of Reference for the tender. IAA argues that this proposal should be tightly timed and results binding with a pre-commitment by all parties to accept the outcomes.

Runway Length

Dublin Airport

- 4.26 Dublin Airport considers that the runway length (3.1km) has been consulted on for both the 2009 and 2014 Determination. Dublin Airport states that it is not aware of any changes which would give rise to exceptional circumstances to merit a review of this element.

IAG

- 4.27 IAG disagrees that a 3.1km runway is necessary. In IAG's view, CAR should set funding for a new runway at the airport according to the requirements of current users.
- 4.28 IAG suggests that daa could present a business case for a longer runway (demonstrating that it would be NPV+, over a reasonable period), based on its anticipated requirements of future users (who are not current users).

IAA

- 4.29 The IAA favours the longer runway as it future proofs the airport. It also states that daa should stick to existing planning and start work as soon as possible, as delays in construction will have effects on passenger delays, tourism and growth.

Ryanair

- 4.30 Ryanair argues that any discussions that occurred in previous determinations regarding the airport's infrastructure are irrelevant to the review.
- 4.31 Ryanair claims that Dublin Airport did not consult on the runway length. It states that Ryanair and Aer Lingus rejected the need for a new runway during the 2014 consultation and did not make a submission on the runway length. It is Ryanair's view that had they been consulted, airport users would have rejected the total length, as all users can operate, today and in the

foreseeable future, on a shorter runway than 3.1km.

- 4.32 Ryanair requests that if Dublin Airport builds a 3.1km runway against users' wishes, the costs and revenues from the unnecessary additional runway length should be included in a separate regulatory till, funded by future airport users.

St Margaret's Concerned Residents Group (SMCRG)

- 4.33 The SMCRG recommends that the North Runway length remains at 3.1km, as per original planning permission. The SMCRG states that any changes to length of runway should be considered under separate planning application, and conducted as per planning regulations.

Capacity Assessments

IAG

- 4.34 IAG note that there are critical infrastructure items of higher priority than the new runway that must be resolved in advance of the new runway being relevant.

IAA

- 4.35 IAA mentions that improved regulatory flexibility should focus on ensuring that appropriate capital investments can be made in order to enhance safety, maximise capacity and minimise the risk of delays.

Other Issues

Timing of Remuneration

IAG

- 4.36 IAG states that capital expenditure should only be remunerated when assets come into operation. It argues that this would reflect what happens in competitive situations.

Enhanced Milestone Reporting and Monitoring

Dublin Airport

- 4.37 Dublin Airport states that no milestone deliverables and/or enhanced reporting and monitoring processes were required by CAR for the 2014 Determination.

IAA

- 4.38 IAA welcomes the proposed enhanced monitoring of capital expenditure plans and reporting on milestones. It recommends that these updates should be published by the CAR or daa to provide clarity around the delivery of the new runway.

Pricing Proposals timeline according to ACD

Dublin Airport

- 4.39 Dublin Airport points out that pricing proposals must be published by end November 2016 for implementation in summer 2017. If the timelines cannot be aligned, Dublin Airport would request a statement of advice from CAR as to whether the Airport should account for an uplift to the base price cap for 2017 reflective of partial/full allowance for the North Runway.

Planning Conditions

IAG

- 4.40 IAG suggests that the economic impact of the restrictions on night-time flights for the existing runways and peak usage of the new runway should be considered. It also argues that the effect of planning and construction on existing and planned operations should be reviewed. According to IAG, if an impact is anticipated, it should be factored into the independent economic review.
- 4.41 It is understood by IAG that the crosswind runway will be decommissioned, which will have operational impact and should be included in an independent review.
- 4.42 IAG notes that the consultation on Relocation of Engine Test Facility at Dublin Airport (10th August 2016) cited North Runway planning conditions as a factor in locating the facility in a location that IAG considers to be operationally suboptimal.

St Margaret's Concerned Residents Group (SMCRG)

- 4.43 The SMCRG requests that conditions 3 and 5 attached to the runway planning permission must remain in place with no changes, to protect the residents of St. Margaret's. Otherwise, it asks for a full re-imburement of all costs associated to be refunded.
- 4.44 The SMCRG states that the transposition of EU Directive 598/14 into Irish legislation is premature, given the lack of evidence that aircraft are becoming less noisy, and that daa should no longer be able to use this argument without substantive evidence.

St. Margaret's The Ward Residents

- 4.45 St. Margaret's The Ward Residents claim that daa should no longer be the 'Competent Authority' that both monitors/ predicts the environmental impact of airport operations and also defines what mitigation measures should be funded. They argue that it is a conflict of interest of daa to seek unrestricted use of runways through the overturning of noise mitigation/night restriction planning conditions.

Ministerial Directions with Cost Benefit Appraisal

IAG

- 4.46 IAG endorses the proposal in the 'Independent Review of Airport Charges Regulation in Ireland' that to the extent that a Ministerial Direction formed any part of the decision making with respect to the North Runway, it should nonetheless be subject to a rigorous cost benefit appraisal.