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**DUBLIN AIRPORT**  
**“Response to Consultation on the Scope of the Interim Review”**  
**26 AUGUST 2016**

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Response to CP4/2016 “Consultation on the Scope of the Interim Review of the 2014 Determination of the Maximum Level of Airport Charges at Dublin Airport Relating to the Northern Parallel Runway”

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26 August 2016

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## 1. Introduction

In responding to CP4/2016, with regard to the existence of substantial grounds to conduct a review of particular elements of the regulatory treatment of the North Runway, it is important to consider the general guidance on the definition of ‘substantial grounds’. As noted in CP4/2016 there are three factors to be considered to test for the existence of ‘substantial grounds’:

1. That the circumstances be exceptional (we consider that circumstances which could not have been, or were not, foreseen at the time of the making of the Determination would be considered exceptional)
2. That the exceptional circumstances are generally outside of the control of Dublin Airport and
3. That the effects of those circumstances are liable to be sufficiently significant to compromise the objectives of the original decision if not reviewed.

In addition to considering the exceptional nature of any particular circumstances, and the extent to which they can be controlled by Dublin Airport, an understanding of the objectives of the 2014 Determination is necessarily required, to consider whether any particular set of circumstances is likely to compromise those objectives to a sufficiently significant degree, in arriving at a view as to whether the three conditions of the substantial grounds test have been met.

In making a Determination CAR has three statutory objectives<sup>1</sup> which set a framework for the Determination; the provision of regulatory certainty underpins the achievement of all three of these objectives.

The decisions taken in the 2014 Determination with regard to the North Runway<sup>2</sup> provided regulatory certainty on the expected commencement of the North Runway and when and how it would be remunerated:

- i) The trigger of 25m annual passengers provided certainty as to **when a requirement** for the North Runway would be deemed to exist.
- ii) CAR set out their **expectation for the commencement** of the North Runway in paragraph 7.64 of the 2014 Determination, “... Once conditions outlined above are met [runway trigger set at 25mppa] the price cap will increase by €0.59 which will remunerate the planning, design, preparation and construction of the parallel runway.

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<sup>1</sup> 1. To facilitate the efficient and economic development and operation of Dublin Airport which meet the requirements of current and prospective users of Dublin Airport

2. To protect the reasonable interests of current and prospective users of Dublin Airport in relation to Dublin Airport

3. To enable Dublin Airport Authority to operate and develop Dublin Airport in a sustainable and financially viable manner

<sup>2</sup> Called the Northern Parallel Runway in CP4/2016

DAA can commence preparation in advance...”. This paragraph provided regulatory certainty as to when daa could commence construction of the project; that preparation for the North Runway could continue in advance of the trigger condition being met but that project construction should only commence on its attainment.

- iii) The inclusion of the €247m<sup>3</sup> allowance for the North Runway into the RAB, and hence the 59c per passenger increase to the base price cap, in the year following the attainment of the runway trigger, provided regulatory certainty as to the **timing of and means by which** the capital costs of the North Runway would be remunerated.

Of note is that the 2014 Determination provided for the inclusion of the full runway allowance in the price cap formula in a single year, if the trigger condition was met within the period – whether that year was to be within the regulatory period (runway trigger met in 2018 or before), or within the next regulatory period (runway trigger met in 2019). As all triggers and the capital allowances to which they pertain are deemed to end on the expiry of a regulatory period, this feature of the runway trigger provided an important degree of regulatory certainty on the remuneration of the North Runway – a project with a lengthy design and construction timeframe which could reasonably be expected to span more than a single regulatory period.

The remuneration in full of efficiently incurred capital expenditure is consistent with CAR’s statutory objective to enable the development of Dublin Airport in a sustainable and financially viable manner. In the 2014 Determination, an allowance of €247m for the North Runway was made, representing CAR’s judgement of the capital investment required to efficiently deliver the project. In effect, the 50:50 risk-sharing mechanism provided in paragraph 7.77 was therefore intended to apply to an unknown and potentially small deviation from the allowance made for the efficient delivery of the project.

In the 2014 Determination, CAR also provided additional information on a more specific objective, which we believe is relevant to the current consideration of the timing of the remuneration of the North Runway, which they targeted in making that determination – the delivery of a smooth price path for the price cap. This objective is referred to in paragraphs 12, 7.2 and 7.124 and in paragraph 7.132 CAR explained that their decision to accelerate depreciation within the price cap formula was to provide for just such a smooth price path. Paragraph 7.132 also explains that the decision to accelerate depreciation was not for reasons of financial viability of Dublin Airport (which they consider were adequately addressed without recourse to acceleration of depreciation) suggesting that a smooth price path was not targeted solely as a tool for the achievement of this statutory objective.

The statutory objectives of CAR have not been amended since the making of the 2014 Determination; we assume, in formulating this response to CP4/2016, that the more specific objectives discussed in the 2014 Determination also remain valid within this current consultation process.

## 2. Background to Current Consultation

To comply with the timeline set out in the Airport Charges Directive (ACD) for notification of pricing proposals to airport users, pricing proposals for 2016 had to be published in November 2015 if changes to prices were to be implemented to coincide with the IATA scheduling seasons (4 months’ notice of pricing proposals, and 2 months’ notice of actual changes to prices is required under the

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<sup>3</sup> All monetary values in this document are in July 2014 prices unless otherwise stated.

ACD with commencement of summer 2016 season on 27th March 2016). However, in November 2015 there was a high level of uncertainty as to whether the 25m annual passenger trigger for the North Runway would be reached by year end – rapid traffic growth was evident at Dublin Airport in 2015 to the extent that it was a possibility, though far from certain. If 25m passengers were reached in 2015 then, as per the 2014 Determination, 59c would be added to the price cap for 2016; if 25m passengers was not reached then no addition for the North Runway allowance would be made to the price cap for 2016. Given the level of uncertainty regarding whether the runway trigger would be reached in 2015, and hence whether the price cap for 2016 would be increased by 59c, the development of pricing proposals for 2016 was particularly difficult. As a result, on 6 November 2015, daa made an application to CAR for an interim review of the 2014 Determination relating to the k-term in the price cap formula to allow for additional flexibility to recover allowed revenues over the entire regulatory period rather than (as is currently the case) having a true-up of allowed revenues on an annual basis. The grounds which daa put forward as being significant grounds to conduct an interim review of the k-term in the price cap formula was that the unexpectedly rapid increase in traffic volume was exceptional (unexpected both by CAR and daa in their forecasts of traffic volumes for the regulatory period), outside the direct control of daa and – as it gave rise to a significant level of uncertainty as to the price path at the airport for the following year – compromised the objectives of the 2014 Determination, particularly with regard to the provision of a smooth price path to airlines.

On 22 December 2015, CAR published their decision on the daa application for interim review (CP2/2015) rejecting the substantial grounds put forward by daa (paragraph 2.16 “..The traffic growth occurred earlier than forecast in the 2014 Determination but it is not exceptional, the Commission forecast almost 25m passengers in 2019. In addition, by including the runway trigger of 25m passengers the Commission acknowledged that this level of traffic was possible at any stage in the period.”

In CP2/2015 CAR gave notice of their intention to conduct an interim review of the 2014 Determination with regard to the timing of the entry of the runway allowance into the price cap formula. CAR stated that their expectation, in setting the 2014 Determination, had been that “when 25m passengers were reached .... Dublin Airport would be ready to commence construction of the runway.”<sup>4</sup> In holding this expectation, CAR further state that their view, at the time of making the 2014 Determination, was that “...commencement of construction would be aligned with the €0.59 entering the price cap.”<sup>5</sup> The intention to conduct this interim review in 2016 was stated in paragraph 3.8.

In paragraph 3.9 CAR “advise Dublin Airport not to include the €0.59 when setting prices for 2016 and to maintain the option to review pricing in 2016 depending the outcome of the interim review.” daa followed this advice in setting pricing for 2016 following receipt of clarification from CAR that, in setting pricing with regard to a price cap without the inclusion of the 59c runway trigger allowance, daa could assume that the €247m runway allowance would be treated as having not entered the RAB in 2016 and would, therefore, not be subject to erosion through depreciation in that year.

On 25 July 2016, CAR issued CP4/2016 commencing the consultation process for an interim review of the 2014 Determination relating to the runway trigger notified in CP2/2015. CP4/2016 provides a listing of a number of additional elements which have been requested by interested parties for inclusion within the scope of an interim review of the regulatory treatment of the North Runway (encompassing the original scope - the timing of the runway trigger – stated in CP2/2015). The remainder of this document presents daa’s view as to whether substantial grounds exist for the

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<sup>4</sup> CP2/2015, paragraph 2.16

<sup>5</sup> CP2/2015, paragraph 3.6

inclusion of these additional items within the scope of an interim review of the 2014 Determination relating to the regulatory treatment of the North Runway.

### **3. Potential Additions to Scope of Interim Review**

In formulating our view of whether substantial grounds exist to broaden the scope of the interim review, to include any particular element proposed for inclusion, we have sought to follow the guidance provided by CAR in paragraph 5.4 of CP4/2016 “any party seeking to broaden the scope of the review to include elements other than the timing of the remuneration must clearly show:

- that some exceptional event or set of circumstances has materialised since publication of the 2014 Determination.
- that this was outside the control of the regulated entity.
- that the effect of this is likely to compromise the objectives of the original decision regarding the aspect in question.”<sup>6</sup>

The following sub-sections of Section 3 discuss each of the proposed elements in turn.

#### **3.1 Review all aspects of the North Runway (including length, cost and associated infrastructure)**

With regard to the Aer Lingus proposal to review all aspects of the North Runway we address runway length and associated costs in this sub-section; runway cost is addressed in sub-section 3.2. As noted by CAR in paragraph 4.16 of CP4/2016 the runway length (at 3.1km) has been consulted on for both the 2009 and 2014 Determination and in both determinations allowance was made for this project at this length. We are not aware of any changes in aircraft technology, fleet mix etc. which would give rise to exceptional circumstances since the making of the 2014 Determination which would merit a review of this element.

Aer Lingus have not specified what they consider to be ‘associated infrastructure’ of the North Runway in their 25 May 2016 correspondence with CAR. Nevertheless, we do not believe that there has been any change to the associated infrastructure requirements of the North Runway that were not anticipated, or could not have been anticipated, at the time the 2014 Determination was made. Compliance with the planning permission granted for such runway infrastructure and compliance with any regulations pertaining to airport infrastructure in force at the time of construction<sup>7</sup> would be rational expectations for the delivery of the North Runway (to avoid any risk to allowed operation of the new infrastructure). We do not consider therefore that any exceptional circumstances in relation to ‘associated infrastructure’ of the North Runway have arisen since the making of the 2014 Determination.

In the absence of exceptional circumstances relating to either runway length or associated infrastructure for the North Runway not all three tests for the existence of substantial grounds can be satisfied. Nevertheless, we do not consider that the other two conditions for the existence of

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<sup>6</sup> Paragraph 6 of CP6/2006 provides additional clarity on the requirement for all three of these conditions to be true in order for the existence of substantial grounds to have been established “There should be a presumption against holding reviews other than in exceptional circumstances, that are outside the control of the DAA, and where the financial or other effects of those circumstances are liable to be large enough to compromise the achievement of the Commission’s statutory objectives unless the original decision were reviewed.”

<sup>7</sup> In October 2014, when the 2014 Determination was made, the requirement to move from compliance with ICAO Annex 14 to compliance with EASA regulations for aerodrome design by 31 December 2017 was known – COMMISSION REGULATION (EU) No 139/2014, issued 12 February 2014.

substantial grounds hold true in this instance. It is our view, therefore, that substantial grounds to review these elements do not exist and, as a result, they are not eligible for inclusion within the scope of the interim review.

### 3.2 Cost Allowance and Risk-sharing Mechanism

In this sub-section we consider the proposal to include the cost allowance for the North Runway and the risk-sharing mechanism provided in the 2014 Determination for the treatment of under or over spends against the allowance for triggered projects as both factors relate to the remuneration of efficiently incurred capital expenditure and are intrinsically interrelated.

It is reasonable to assume that the €247m allowance made by CAR for the North Runway in the 2014 Determination represented their view<sup>8</sup> of the cost to efficiently deliver the project; in order to protect the reasonable interests of users the allowance made could not be in excess of the expected efficient cost nor, to enable the development of Dublin Airport in a sustainable and financially viable manner, could it be below. We consider that the 50:50 risk-sharing mechanism for cost over or under runs provided in the 2014 Determination for trigger projects (including the North Runway) was a tool to avoid the uncertainty which arose in relation to the assessment of efficient costs of the Terminal 2 project as a result of the appreciable time gap between the completion of the project and the final assessment of the out-turn costs. It is also reasonable to assume, based on paragraph 7.77 of the Determination, “There will be no retrospective adjustment for extra return on capital foregone or earned because of the deviation from the allowance during the period of the Determination”<sup>9</sup>, that no substantial deviation (positive or negative) from the expected cost was foreseen, and that therefore the provision of regulatory certainty on the treatment of outturn cost was expected to outweigh any negative effect of applying the risk-sharing mechanism. These two decisions, taken together, were expected to deliver both CAR’s statutory objectives (particularly as they relate to the remuneration of efficiently incurred capex) and an appropriate level of regulatory certainty.

There are a number of new factors which have arisen since the making of the 2014 Determination which have significantly altered the expected cost of the North Runway in advance of the commencement of construction:

- There has been a marked divergence between construction price inflation and the general CPI measure of inflation in the Irish economy – both as experienced in 2015 and as forecast for 2016 and over the period of North Runway construction. As the capital allowances made in the 2014 Determination are indexed to CPI rather than construction price inflation, this divergence has a significant impact on the nominal cost allowance for the project.

	2014	2015	2016 (forecast)
<b>Construction price inflation</b>	<b>5.0%</b>	<b>5.5%</b>	<b>5.5%*</b>
<b>CPI (consumer price index)</b>	<b>0.2%</b>	<b>-0.3%</b>	<b>0.4%**</b>

\*Source: Society of Chartered Surveyors Ireland (SCSI)

\*\*Source: Central Bank of Ireland, Quarterly Bulletin Q3 2016.

- Modification of the North Runway design to comply with the EASA regulations for aerodrome design has led to increased scope in some elements – while the requirement to

<sup>8</sup> This was also daa’s expected cost of the North Runway at that point in time; EY, independent cost consultants appointed by CAR to review the costs of the projects within daa’s CIP 2015-2019 proposals, calculated an expected cost for the project of €290m.

<sup>9</sup> If CAR had expected a substantial amount of over/under spend against the allowance the 50:50 risk-sharing mechanism would not have been in the interests of users (in the case of an under spend) or consistent with enabling the financial viability of Dublin Airport (in the case of an over spend).

become EASA compliant was known at the time of the 2014 Determination, the full implications of such requirement on the design of the North Runway were not.

- The usage of Dublin Airport, in particular the number of based aircraft and the over-night stand demand generated as a result, is significantly different than that which was expected by daa when it requested a runway trigger such that construction would commence at a traffic volume of 23.5mppa, and on which our cost assessment was based. The airfield is therefore considerably more congested, requiring greater complexity in the phasing of the runway project with knock-on cost implications, than had been accounted for in our cost estimate.

The result of these three factors is that the expected cost of the North Runway prior to construction in 2016 is €320m (current prices) compared with the expected cost in 2014 of €247m (July 2014 prices). This increase in the expected cost has two main implications:

- i) The allowance made in the 2014 Determination no longer represents the expected efficient cost of the North Runway
- ii) The size of the over-spend against the allowance to be subject to the 50:50 risk-sharing mechanism is expected to be significantly greater than had been the case when this mechanism was introduced as an appropriate means of providing regulatory certainty on cost over/under spends

We consider that these three factors constitute exceptional circumstances and that all three factors are outside the control of daa. Further, given the scale of the investment required for the North Runway, and the size of the differential between the expected cost in 2014 and today's expected cost, that these exceptional circumstances will result in the full efficient cost of delivery of the North Runway not being eligible for remuneration through the price cap – and thus their effects are liable to be significant enough to compromise the objectives of the original decision. We therefore consider that substantial grounds exist to review the cost allowance for the North Runway and / or the risk-sharing mechanism for cost over/under spends on triggered projects.

With regard to whether the cost allowance for the North Runway, the risk-sharing mechanism or both should be included within the scope of the interim review we make the following points:

**Review of capital allowance** : The €320m (current prices) estimate is a further (later) estimate of the efficient cost of the North Runway based on bench-marking of costs against similar construction projects; ultimately, it is through a competitive tender process that the true efficient cost of the North Runway, as evaluated by the market, will be determined. While a review of the cost estimate at this point in time, prior to tender return and evaluation, may result in a change to the allowance made, it will not serve to provide much greater certainty as to the true efficient cost of the runway that should be eligible for remuneration through the price cap. If the interim review therefore is to consider revision of the cost allowance made, such revision should be based on the results of the competitive tender process.

In paragraph 4.6, CAR states that if a review of the cost allowance was to be undertaken (on the €320m estimate) they would expect the airport to consult with users initially; they would then engage consultants to estimate an efficient cost allowance, and then consult on this as part of the draft determination on the interim review. This procedure would extend the conclusion of the interim review process to at least year end, if not substantially into Q1 2017 (depending on how quickly cost consultants could be engaged, and their time requirement to carry out the review of the cost estimate). It would appear, therefore, that if this approach were adopted no decision on the remuneration of the runway project would be available to inform 2017 pricing proposals. We return to this regulatory uncertainty in our concluding remarks.



**Review of risk-sharing mechanism** : The risk-sharing mechanism was intended, as far as we understand, to reconcile small deviations between out-turn cost and the efficient cost of delivery of triggered projects such that the value to be reconciled would not have a material impact on either the reasonable interests of users or the financial viability of Dublin Airport. As it is already evident, based on an updated cost estimate, that the value likely to fall within the scope of the risk-sharing mechanism will be greater than anticipated, a significant amount of efficiently incurred capital expenditure is likely not to gain entry to the RAB. We believe therefore that it is no longer appropriate to apply the risk-sharing mechanism set out in the 2014 Determination to the differential between the outturn cost and the current cost allowance, which no longer represents the best estimate of the efficiently incurred cost of project delivery, in order for CAR's statutory objectives to be attained. If however, the cost allowance for the North Runway was revised to reflect the efficient cost of the project, based on outturn of the competitive tender process, then the risk-sharing mechanism could be retained for reconciliation of outturn cost versus this efficient runway allowance.

**Review of both:** Subject to the discussion above in relation to a review of the capital allowance, it is our view that a review of both the capital allowance and the risk-sharing mechanism, at this point in time – prior to tender selection, will suffer from the same short-comings as a review of the capital allowance in isolation.

As per the timeline set out in CP4/2016 for this consultation process, a Draft Determination is due in October 2016 and a Final Determination by end 2016. This timeline would result in a Draft Determination certainly, and a Final Determination probably, issuing in advance of tender return and evaluation. As this is the case we consider that the most appropriate course of action for the interim review is to consider the risk-sharing mechanism for cost over/under runs, absent any greater certainty on the true efficient cost of runway delivery.

It is our view that in order to ensure that all efficiently incurred costs, and efficiently incurred costs only, are remunerated through the price cap one of the following two options should be selected, in the interim review, to fulfil this objective:

- a) that the cost allowance for the North Runway be revised to reflect the cost of the efficient delivery of the project – the efficient cost will be that which is provided through the outcome of the competitive tender process. In this case, as project outturn would be reconciled against an allowance for the efficient cost of the project, the risk-sharing mechanism could be retained. The timeline for completion of the tender process may however be extended substantially if additional measures to ensure cost efficiency (as discussed in sub-section 3.4) were to be introduced. It should be noted, if this option is selected, the additional measures would be introduced in the Final Determination. As the tender process would commence thereafter, a formula for the calculation of the revised efficient cost of the runway would need to be provided in the Final Determination, with the tender outturn variable being determined on completion of the tender process.

or

- b) that the cost allowance for the North Runway remain as per the 2014 Determination, with the replacement of the risk-sharing mechanism with a comprehensive review of the efficiency of the outturn spend undertaken by independent cost consultants, appointed by CAR, on project completion.

### **3.3 The application of a separate regulatory till to North Runway length over 2.1km.**

The above element has been requested for inclusion within the scope of the interim review, on the basis that, as not all aircraft (and hence not all airline users of Dublin Airport) will require a runway of 3.1km for take-off/landing, the reasonable interests of users is not protected by having a single regulatory till for all North Runway costs. In making the 2014 Determination, CAR would have been aware that a sub-set only of Dublin Airport users, and potential future users, had aircraft within their fleets that required runway length in excess of 2.1km; no separate regulatory till for costs of runway length above 2.1km was considered necessary to achieve the objective of protecting the reasonable interests of users at that time.

The length of the North Runway remains unchanged since this project was consulted on in both 2009 and 2014. Neither has there been any material change to the runway length requirements for the aircraft within the fleets of the existing users of Dublin Airport, to the fleet mixes of existing user airlines, nor to runway length requirements for aircraft generally (such as would be used by either existing or potential future users of Dublin Airport), since the making of the 2014 Determination. We do not consider, therefore, that any exceptional circumstances have occurred and that therefore, the first condition of the test for substantial grounds for interim review is not sustained. Neither do we consider that the two remaining conditions for the existence of substantial grounds are in evidence to support the inclusion of this element within scope of the interim review. It is our view, therefore, that substantial grounds to review this element do not exist and, as a result, it is not eligible for inclusion within the scope of the interim review.

### **3.4 Additional measures to ensure cost efficiency**

The inclusion of additional measures to ensure cost efficiency, e.g., the inclusion of users in the development of terms of reference for the tender for construction of the North Runway, has also been proposed. While little discussion of the exceptional circumstances for evaluation in the first condition of the substantial grounds test in relation to this proposal is provided by Ryanair or CAR, it is difficult to take any view on whether the three conditions for the existence of substantial grounds are present for this element. Nevertheless, as requested in paragraph 4.13, we provide here our views on this suggestion.

We consider that there could be merit in such a proposal for the North Runway project, given the large scale, one-off nature of the investment, to the extent that it delivered a common position between the airlines and the airport on the efficient cost of the runway and so removed an element of contention regarding out-turn cost reconciliation. However, there are a number of practical considerations which would need to be addressed, both in relation to the project timeline, and in the structure of any process arrived at in the Final Determination to enable such additional measures:

- Tender preparation is already under-way for the two main work packages (site clearance plus enabling works and main runway construction) as well as for the engine test facility, with all three tenders due to issue to the market at end September 2016. Given that a Final Determination from this consultation process is not due until year-end, the process is misaligned with the tendering process for the runway. Inclusion of users in the preparation of the terms of reference for these tenders would necessitate that the tendering process be delayed by a minimum of 4 months, with consequent delay in project delivery. As current runway capacity is insufficient to meet airline demand in all operational hours, it would be difficult to reconcile any such delay to the project plan, based on delay to commencement of the tendering process (notwithstanding the risk of further delays arising as the process was

being implemented, particularly if the factors outlined below are not adequately addressed in the process design), as being in the interests of existing or future users of Dublin Airport or in the interest of the sustainable development of the airport.

- Assuming the issue of tenders were to be delayed as per point immediately above, the process arrived at in the Final Determination would need to clearly define the requirements of users in their participation in the tendering process in respect of level and expertise of resourcing, form and timeliness of feedback etc., to ensure that the tendering process proceeded at an acceptable pace so as to avoid further delay to project delivery. The level and expertise of the resources airlines would devote to this process would be critical to its success - the process for the main runway construction will require extensive engagement with bidders in an iterative process to develop a final design, given the complexity of that work package; additionally, resources would need to be allocated to the enablement works and engine test facility tenders. We expect the phase of iterative engagement with bidders on the main construction works tender to take place over a 5 month period and the process would need to specify the minimum period for which airlines would be required to devote resources to the tender; to ensure constructive engagement in the iteration of project design any resourcing which airlines would dedicate to this process would need a level of familiarity with complex procurement processes and / or project design of a similar scale/complexity, and ideally the same staff would remain attached to the process throughout. Given the level of resourcing that would be required for airlines to engage fully in the tender<sup>10</sup>, we believe that CAR would need to consider including within the structure of the process provisions allowing for suspension of airline involvement in the event that the resourcing dedicated to the tenders reduced to the extent that it impeded progress e.g., where feedback was not being provided to agreed timelines etc.
- The tenders will be subject to EU procurement rules, with strict requirements for the maintenance of confidentiality of information shared between the tenderer and bidders. The process would need to include measures to ensure compliance by airport users engaged in the tender process with the confidentiality requirements. Clarity, or at the minimum thorough assessment, would also be required as to the extent reliance on the procedures set out by CAR would offer protection to daa (as the tenderer) from legal action in the event of breach of confidentiality in the tendering process. The process would also need to provide a high degree of clarity as to with whom decision-making responsibility within the tendering process lay; this would be a necessary protection to daa against procurement challenge / legal action from a bidder(s) on the basis of lack of clarity on who was making the procurement decision/perception of undue external influence on the procurement process.
- Included in the current estimate cost of the runway are costs relating to a number of Community Mitigation measures relating to noise abatements, which must be completed to satisfy the planning conditions for the North Runway. The noise abatements schemes include a house insulation scheme, school insulation scheme and a pre-school insulation scheme. It is expected therefore that there will be a number of smaller tenders, relating to the above noise abatement measures, which will be conducted on an ad-hoc basis over the construction period as agreement is reached with owners of affected properties so that the insulation schemes will be tendered in smaller packages for groupings of work. Airline engagement in the tender processes for these schemes would require ad-hoc, short-term resourcing over the next 3-4 years. Within the structure of the process it would be necessary

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<sup>10</sup> For comparison, daa is currently committing, during the tender preparation stage, 10-13 full time staff, across a range of specialities including procurement, infrastructure design, legal and administration to the runway project.

to clearly set out whether airline engagement would include these smaller tenders and details of the notice requirements, resource commitments etc.

- Included in the total estimated cost of the runway project are costs related to other Community Mitigations such as compensatory habitat, which must also be completed to satisfy the planning conditions for the North Runway, planning fees and statutory levies as well as internal daa costs for the runway project team. None of these cost elements can or will be subject to public tender<sup>11</sup>. We would therefore consider it necessary for the process to include within its structure a provision against any public statement being made comparing total tendered elements only to the total cost of the runway project, by any party which was to participate in the development of the terms of reference for tender design.
- Finally, in order for the benefit of reduced contention on the outturn cost of the project to be realised, would require airlines to be bound by the outcome of the tendering process and for this requirement to be made explicit. The process to be arrived at in the Final Determination would need to clearly define the obligations on all parties to the tender process and how CAR would intend to monitor the fulfilment of these obligations.

### **3.5 Milestone deliverables; enhanced reporting and monitoring processes**

In paragraph 4.7, CAR states that they are strongly of the view that any review<sup>12</sup> should consider the inclusion by Dublin Airport of specific milestone deliverables within the project and enhanced reporting and monitoring processes. It would have been possible, in making the 2014 Determination, for CAR to have included requirements on milestone deliverables for remuneration of the runway project; CAR chose not to do so. Similarly, CAR had the flexibility to require enhanced reporting and monitoring processes for the runway project when choosing to make allowance for the runway project as a triggered project within CIP 2015-2019. It should be noted that CAR did choose to make specific requirements for the remuneration of other projects allowed within the CIP 2015-2019 e.g., T1 Arrivals and T1 Façade projects, and therefore it is evident that CAR had given consideration to the desirability of specific requirements for the remuneration of individual projects. As the ability to require milestone deliverables and / or enhanced reporting and monitoring processes was available to CAR it must be concluded that they considered neither were required for the runway project in order for their statutory objectives to be fulfilled. We are unaware of the exceptional circumstances which CAR consider have occurred, since the making of 2014 Determination, the effects of which are sufficiently significant to compromise the objectives of the 2014 Determination without the insertion of specific milestone deliverables and enhanced reporting and monitoring processes, and request that this be set out in the decision on substantial grounds for the conducting of an interim review.

## **4. Concluding Remarks**

The North Runway project is of significant concern to both Dublin Airport and its users. With demand for runway facilities now close to, or in excess of, the capacity of the existing runway infrastructure of Dublin Airport over significant portions of the operational day, runway infrastructure represents the main capacity constraint to airlines' growth plans for Dublin and hence

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<sup>12</sup> We are uncertain whether 'review' in this context refers to the review of the cost estimate discussed in paragraph 4.6 or, more generally, to the interim review in its entirety.

the overall growth of Dublin Airport. Additionally, the North Runway represents the largest single capital investment to be undertaken at Dublin Airport since the delivery of Terminal 2.

Given the expansion it represents, and the costs that will be incurred by Dublin Airport (to be ultimately remunerated by users through the price cap), the North Runway project, and its regulatory treatment, is of significant importance to both daa and airport users. The 2014 Determination provided a significant level of regulatory certainty on this project to all parties in advance of commencement and significant costs being incurred. The interim review of the timing of the runway trigger/regulatory treatment of the North Runway should aim to provide a similar level of regulatory certainty in the interests of existing and future users and the development of Dublin Airport in a financially viable manner. In this regard, only those elements of the regulatory treatment of the North Runway for which substantial grounds for review can be established, on a stand-alone basis, should be brought forward to review, to appropriately safeguard the regulatory certainty provided in the 2014 Determination.

One final item for consideration at this juncture is the development of pricing options for 2017, and publication of same in accordance with the timeline set down in the ACD. Pricing proposals must be published by end November 2016 for implementation in summer 2017<sup>13</sup>, and there is a body of work to be completed in advance of their publication<sup>14</sup>. It would be extremely helpful to us in the preparation of pricing proposals and also, we assume, to airlines in their planning for the seasons ahead, if CAR would address how the interim review process is to be aligned with the timeline of the ACD, so as to provide certainty on whether the pricing proposals for 2017 can be informed by the outcome of the interim review. If the timelines cannot be aligned, we would request a statement of advice from CAR, similar to that provided in CP2/2015 – where CAR advised daa not to consider the 59c addition to the price cap on attainment of 25mppa in 2015 as having entered the price cap for 2016 – as to whether we should account for an uplift to the base price cap for 2017 reflective of partial/full allowance for the North Runway. Such a statement of advice would provide a basis on which the pricing proposal development work could commence, should the timelines for the interim review and publication of pricing proposals remain unaligned.

In this document we have sought to clearly set out our views on whether substantial grounds exist to review particular elements of the regulatory treatment of the North Runway, however we would be pleased to provide further clarity on any points, if that would be helpful to CAR in arriving at a decision on the scope of the interim review.

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<sup>13</sup> Pricing changes are implemented to coincide with the IATA scheduling seasons as this facilitates airline scheduling decisions on a seasonal basis.

<sup>14</sup> In practice, the development of pricing proposals has taken 6-8 weeks in previous years and we expect a similar time commitment to be required in the current year.