



# **Submission on behalf of the St Margaret's The Ward Residents Group**

***TO IAA'S DRAFT W24 DECISION***

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## EXECUTIVE SUMMARY

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The main points outlined in this submission are:

- The IAA's draft decision allocates 14.4m passengers for the W24 season. This extrapolates to approximately 41.6m for the entire W24 and S24 period. This equates to 9.6m (33%) additional passenger seats above the passenger cap of 32m. The IAA's draft determination will facilitate the breaching of the passenger cap.
- Assuming a 34.7% contribution of seats in W24 and a cap of 32m passengers, then a maximum of 11.07m passengers could be catered for at Dublin Airport for W24. Assuming a load factor of 81% then a maximum cap of up to 13.67m seats could be made available. Assuming 180 seats per movement, 13.67m seats equates to approximately 76k movements. An allocation above this number only serves to breach the 32m cap.
- The IAA have erroneously excluded 4.8% of passengers, contrary to the clear advice of Fingal County Council and An Bord Pleanála.
- Dublin Airport breached the 32m cap in 2019 and again in 2023, according to their own figures and the figures from the CSO.
- Dublin Airport is on course to breach the 32m cap even further in 2024
- The breach of the passenger cap has been facilitated by the IAA in over-allocating slots
- The IAA have not provided the historical planning evidence on the passenger cap in their draft decision. It is unclear if the IAA made the coordination committee aware of the planning history and how An Bord Pleanála and Fingal County Council interpreted the cap. If the IAA did not share this information, then they should do so now as a matter of urgency.
- ABP ruled in 2018 that the request from the daa to add '*origin-destination*' to the planning condition would be material in planning terms and refused its approval by way of a S146(A) notice.
- In the S146(A) the daa clearly showed how they interpreted the planning condition and that it applied to ALL passengers as per the International Aviation Convention.
- In 2019 the daa applied to increase passenger numbers from 32 to 35m but withdrew this application in 2020.

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- In pre-planning meetings between the daa, Fingal County Council and ANCA, very clear advice from the Planning & Strategic Infrastructure Dept is provided that the 32mppa is considered to be a cumulative, annual figure comprising all passengers using (traveling to, through and from) Dublin Airport. There is to be no differentiation between different types of passengers.
- Fingal County Council have made it very clear in their request for further information for the Infrastructure Application (F23A/0781) that they agree with the CSO's reporting mechanism on passenger numbers, and no adjustments should be made.
- The daa's own passenger numbers show they breached the cap, but they have tried to deliberately mislead by counting transfer passengers only once and excluding transit passengers.
- The 32m cap is an Operating Restriction under EU598/2014 regulations and therefore ANCA should be contacted for opinion and how the IAA's actions could affect this Operating Restriction. Any impact on an Operating Restriction requires a Regulatory Decision by ANCA under the Aircraft Noise (Dublin Airport) Regulations Act.
- The IAA have failed to address Condition 5 (65 nighttime flights) again and have provided no guidance on how they would modify the slot allocation if the High Court was to rule in favour of Fingal County Council and the Relevant Action application was defeated.
- The IAA should respect the Planning Authority's views and those of An Bord Pleanála on planning matters and allocate slots based on their interpretation and rulings. If other parties don't agree then it's up to these parties to pursue matters. The current draft declaration is incorrectly siding with the daa's flawed views on planning and ignoring both Fingal County Council and ABP.

## **I.0 Planning History**

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### **I.0 Introduction**

This Chapter summarises the various planning decisions to date related to the 32m cap.

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## I.2 History of 32m passenger cap

Both Condition 3 of An Bord Pleanála Ref. **PL06F.220670** (Multiple infrastructure permission including Terminal 2) and Condition 2 of An Bord Pleanála Ref. **PL06F.223469** (Extension to Terminal 1) provide for a combined terminal passenger capacity of 32 mppa.

**Condition 3:** *The combined capacity of Terminal 2 as permitted 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.*

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

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

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## I.2 2018 – SI46A (ABP ref PL06F.22067)

In 2018, the Dublin Airport Authority made a request to An Bord Pleanála under S.146A to amend the wording of Condition no. 3 (PL06F.220670) to remove connecting passengers from the scope of the condition. The amended wording sought to include the words highlighted in bold as follows:

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

The daa's letter can be viewed at:

<https://planningapi.agileapplications.ie/api/application/document/FG/634827>

In the letter from the daa, they elaborate on passenger types:

### Clarification of Passengers Types

~~For much of its history Dublin Airport operated as primarily an origin-destination airport. This means that Dublin was either the departing or arriving destination for most passengers. At the time of the grant of the T2 planning permission, 99% of passengers were origin-destination passengers.~~

Connecting passengers are passengers who may travel through Dublin Airport, but Dublin is not their final destination.

The vast majority of connecting passengers are transfer passengers. They may arrive into Dublin on one aircraft and switch aircraft to complete the second leg of their journey towards their final destination. These passengers remain airside, and have no impact on transportation requirements at the airport. In line with international aviation convention such passengers are counted twice, once as an arriving passenger, and secondly as a departing passenger even though it is a single person travelling through the airport. For example, 1,000 transfer passengers is actually 500 people travelling through the airport.

A second type of connecting passenger is a transit passenger. A small number of aircraft stop at Dublin Airport for technical reasons including to refuel. Passengers on these flights are counted as transiting through the airport although they do not generally use the terminal buildings as they remain on the aircraft during the transit stop. It is much clearer that condition no. 3 doesn't apply to such passengers, however we include them for overall context.

Transfer and transit (collectively referred to as connecting passengers) do not impact the transportation network. An airport that facilitates connecting passengers may be referred to as a hub airport.

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This line is extremely relevant:

***“In line with international aviation convention such passengers are counted twice, once as an arriving passenger and secondly as a departing passenger eg. 1000 transfer passengers are actually 500 people travelling through the airport.”***

Therefore, the daa clearly acknowledged their interpretation that, in line with International Aviation Convention, transfer passengers are counted twice.

ABP's Direction of August 2018 stated:

*"It is considered that the alteration sought would be material in planning terms, and cannot, therefore be considered under S.146A of the Act. The Board considered that the proposed alteration would enable greater throughput of overall passenger numbers through the airport. This greater level of activity would have material planning consequences (in terms of movement and access to the airport, airport capacity, and also in relation to planning policy relation to the airport) and would go beyond what was permitted in the permission granted."*

The decision on the S.146A application confirms that the limit of 32mmpa applies to **any** passenger type in the terminal buildings.

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## I.3 2019 – FS5/036/19 (ABP-305458-19)

In September 2019, the daa made an application to Fingal County Council seeking a declaration under section 5 (FS5/036/19) on whether development is or is not exempted development. The development consisted of the following:

*“Three questions in relation to the use by passengers of the airport in excess of 32 million passengers per annum.*

*(a) Is the use of the 'airport' in excess of 32 million passengers per annum (mppa) constitute 'development', if the combined capacity of Terminal 2 as permitted together with Terminal 1 does not exceed 32 mppa and if so, is it exempt development?*

*(b) Is the use of the 'airport' by up to 3 million connecting passengers in excess of 32 million passengers per annum (mppa) constitute 'development' if those connecting passengers are facilitated by the separately permitted transfer facility and the combined capacity of Terminal 2 as permitted together with Terminal 1 does not exceed 32 mppa?*

*(c) Currently a connecting passenger using Dublin Airport is double counted, as both an arriving and department passenger (for the purpose of aviation security measures). If a connecting passenger is counted singly for the purposes of planning, is this development, and if so, is it exempt development?”*

The decision by Fingal County Council was to refer it to An Bord Pleanala.

The question to ABP was whether the 3 questions in FS5/036/19 in relation to the use of in excess of 32mppa is or is not development or is or is not exempted development

ABP's Inspector stated in their report:

*"Use of the "airport" by up to 3 million connecting passengers in excess of 32 million passengers per annum (mppa), if those connecting passengers are facilitated by the Pier 4 passenger transfer facility and the combined capacity of the facility together with Terminal 2 as permitted and Terminal 1 would exceed 32 mppa, would contravene condition no. 3 of PL06F.220670, and is therefore not exempted development."*

Therefore, the Board's inspector's view was that the use of the airport by 3 million connecting passengers was not exempted development and that use of the Pier 4 passenger transfer facility was to be included in the calculation.

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## 1.4 2019 – (F19A/0449)

The daa previously breached the passenger cap in 2019 and so have already carried out unauthorised development at Dublin Airport. Even though this breach was reported to Fingal County Council, no follow up action was taken.

Here is the press release from the daa's website where they openly boast about the numbers :

<https://www.dublinairport.com/latest-news/2020/01/29/dublin-airport-welcomed-32.9m-passengers-in-2019>

***“Dublin Airport welcomed a total of 32.9 million passengers during 2019, setting a new record for traffic at the airport”.***

It should be noted that in September 2019, the daa submitted a planning application (F19A/0449) to increase passenger numbers from 32mppa to 35mppa. However, they withdrew the application in June 2020. There has been no attempt since then to apply for planning permission to increase passenger numbers beyond 32m until the Infrastructure Application was submitted on December 15<sup>th</sup> 2023.

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## I.5 Pre-planning Document, 2020

In a pre-planning document dated February 25<sup>th</sup>, 2020 (reference Number: PPC 106276 & PPC 106336) between the daa, ANCA and the Planning Authority a discussion arose in relation to the interpretation of the 32mppa cap with regard to passenger types:

- Discussion on the interpretation of the 32mppa passenger capacity cap with regard to types of passengers, in particular the transfer/ transit passengers.
- The P&SI Dept advises the applicant that, with reference to ABP decisions and known international, European and national methods of counting passengers at airports, the 32mppa passenger cap included in Condition 3 of F06A/1248 (PL 06F 220670) and Condition 2 of F06A/1843 (PL 06F 223469) is considered to be a cumulative, annual figure comprising all passengers using (traveling to, through and from) Dublin Airport.
- The P&SI Dept advises the applicant that as the 32mppa cap is considered to be all inclusive figure, it is not considered possible/ practical for planning assessment and subsequent enforcement purposes, to make any differentiation between different types of passengers.

This is very clear advice from the Planning & Strategic Infrastructure Dept that the 32mppa is considered to be a cumulative, annual figure comprising all passengers using (traveling to, through and from) Dublin Airport. There is to be no differentiation between different types of passengers.

Therefore, the daa cannot now turn around and state that their interpretation excludes transit passengers and only counts transfer passengers singly as alluded to in this article:

<https://www.travelextra.ie/dublin-airport-on-course-hit-its-cap-of-32m-passengers-on-december-17/>

The daa knew back in February 2020 how the Planning Authority interpreted the 32mppa cap.

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## I.6 Infrastructure Application (F23A/0781), 2023

In December 2023, the daa submitted an Infrastructure Application to increase passenger numbers from 32m to 40m. Fingal County Council made a Request for Further Information on February 16<sup>th</sup> 2024. It is very clear from section 11.5 of that request that Fingal County Council fully understands the interpretation of the cap and how An Bord Pleanála has ruled on matters relating to the cap in the past. The report states:

*“The annual passenger threshold policy was intended to protect the future development potential of the airfield balanced development in advance of a decision regarding the division of terminals to serve and realise the full airfield capacity between the east and west of the airfield. This longstanding policy has evolved and current policy provision requires protection of all increased capacity options until such a time as the optimal development strategy is determined. See section of this report on aviation sector policy and Airport LAP for further detail.*

*The International Civil Aviation Organisation (ICAO) and the Airports Council International (ACI) provide a standardised form and definition of terms for airports to record their Annual Airport Traffic Statistics. A Reference Manual on Airport Statistic (latest edition 2017) is published by Eurostat to provide information/guidance to reporting countries. This reporting of passenger statistics provided by airport operators rests with the CSO in Ireland.”*

The report further states:

*“The Planning Authority are of the considered opinion that the CSO definitions and counting convention apply to the existing 32 mppa cap and the proposed 40mppa cap. For purpose of clarity the Planning Authority are of the opinion that where a passenger leaves the terminal to stay in what has/is being referred to as the permitted 'terminal hotel' regardless of onward journey they are no longer considered to fall within the transit passenger category for counting mppa for the purpose of planning permission (i.e. they are counted twice, once for arrival and once for departure).”*

Therefore, there is no ambiguity with the Planning Authority on how the cap should be interpreted. The IAA should consult with the Planning Authority, ANCA and ABP to ensure that the coordination committee are fully briefed on the planning interpretation. The IAA has a duty to ensure that they are not complicit in breaking planning laws.

## 2.0 Passenger Numbers

### 2.1 Daa's Passenger Numbers

On the daa's corporate website, a section is devoted to '*Investor Relations*' - <https://www.daa.ie/media-centre/investor-relations-2/>. At the bottom of this section, passenger statistics are provided on a monthly basis:

#### Passenger Statistics

- [Passenger Statistics January, 2024](#)
- [Passenger Statistics February, 2024](#)
- [Passenger Statistics March, 2024](#)

[2023 Passenger Statistics](#)

All the monthly passenger figures for 2023 can be accessed by clicking on '*2023 Passenger Statistics*':



- [Passenger Statistics December, 2023](#)
- [Passenger Statistics November, 2023](#)
- [Passenger Statistics October, 2023](#)
- [Passenger Statistics September, 2023](#)
- [Passenger Statistics August, 2023](#)
- [Passenger Statistics July, 2023](#)
- [Passenger Statistics June, 2023](#)
- [Passenger Statistics May, 2023](#)
- [Passenger Statistics April, 2023](#)
- [Passenger Statistics March, 2023](#)
- [Passenger Statistics February, 2023](#)
- [Passenger Statistics January, 2023](#)

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Clicking on 'Passenger Statistics December, 2013' reveals not only the December 2023 figures but also includes the cumulative Year To Date (YTD) passenger figures:

Dublin Airport - December 2023 Statistics						
Region	Dec 2023	Dec 2022	% Change	YTD 2023	YTD 2022	% Change
Domestic	13,574	11,102	22%	156,570	128,549	22%
Great Britain	805,762	707,981	14%	9,518,467	7,778,809	22%
Rest of Europe	1,244,714	1,160,602	7%	18,672,355	15,980,480	17%
Transatlantic	254,897	238,231	7%	3,906,259	3,248,198	20%
Other International	86,862	72,066	21%	1,019,354	674,346	51%
Transit	632	19,226	-97%	249,589	275,180	-9%
<b>Total Passengers</b>	<b>2,406,441</b>	<b>2,209,208</b>	<b>9%</b>	<b>33,522,594</b>	<b>28,085,562</b>	<b>19%</b>
Commercial ATM's	17,321	16,378	6%	233,162	202,773	15%

The figures show that Dublin Airport handled 33,522,594 passengers in 2023, which is a clear breach of the 32mppa planning condition.

The March 2024 statistics show a further increase in passenger numbers for the first quarter of 2024 compared to 2023:

Dublin Airport - March 2024 Statistics						
Region	Mar 2024	Mar 2023	% Change	YTD 2024	YTD 2023	% Change
Domestic	14,370	9,169	57%	42,468	28,961	47%
Great Britain	857,344	781,479	10%	2,293,964	2,132,921	8%
Rest of Europe	1,425,727	1,321,507	8%	3,773,079	3,604,746	5%
Transatlantic	316,432	272,452	16%	654,709	600,772	9%
Other International	90,090	77,155	17%	265,492	224,915	18%
Transit	390	20,855	-98%	517	66,777	-99%
<b>Total Passengers</b>	<b>2,704,353</b>	<b>2,482,617</b>	<b>9%</b>	<b>7,030,229</b>	<b>6,659,092</b>	<b>6%</b>
Commercial ATM's	18,665	17,815	5%	50,672	49,370	3%

The figures show that Dublin Airport handled an additional 371,137 passengers, an increase of 6%, for quarter one 2024. This is in addition to breaching of the cap in 2023.

The daa have had plenty of advance notice of these inevitable breaches and were served with enforcement warnings by Fingal County Council.

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On January 24<sup>th</sup> the daa published figures for December 2023 and total figures for the whole of 2023:

<https://www.dublinairport.com/latest-news/2024/01/24/almost-32-million-through-dublin-airport-s-terminals-in-2023>

2023 In Numbers	
Passengers Through Terminals	31,908,471
Connecting Passengers	1,081,800*
Other Passengers	532,222**
Number of Flights	241,595

\* This 1,081,800 figure represents the number of people who connected through the terminals at Dublin Airport (counted once); one person equals one passenger, as opposed to a double count of such people (as they take two flights (1 arriving and 1 departing) for aviation reporting purposes.

\*\* Passengers that did not use the terminals include Transit passengers who do not exit the plane when landing at Dublin Airport, and other categories such as Search and Rescue and Air Ambulance.

It is clear from the above description that the figure of 31,908,471 only includes 1,081,800 connecting passengers when in fact that figure should be doubled in line with International Aviation Convention. The daa cite the International Aviation Convention in their letter to An Bord Pleanála on June 28<sup>th</sup>, 2018, when the daa sought a section 146 (A) request to amend the 32mppa cap to be applicable to origin-destination passengers only:

<https://planningapi.agileapplications.ie/api/application/document/FG/634827>

In the letter by the Group Head of Planning, Ms Yvonne Dalton, she states:

***“In line with International Aviation Convention such passengers are counted twice, once as an arriving passenger, and secondly as a departing passenger even though it is a single person travelling through the airport. For example, 1,000 transfer passengers is actually 500 people travelling through the airport.”***

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So, the 1,081,800 figure is actual people and this equates to 2,163,600 transfer passengers.

The 'Other Passengers' category includes transit passengers and search and rescue and air ambulance passengers and their figure of 532,222 has also not been included in the headline figure of 31,908,471.

This reporting is flawed and inconsistent with the normal reporting of passenger numbers to their investors and to the CSO and Department of Transport.

**It can only be construed that this is a deliberate attempt to mislead the Planning Authorities and the Irish public.**

**It is imperative that the IAA is not playing a significant role to facilitate the daa with this deliberate breach.**

On the Dublin Airport webpage, the daa gave 'massaged' figures for 2023 - <https://www.dublinairport.com/latest-news/2024/01/24/almost-32-million-through-dublin-airports-terminals-in-2023>:

2023 In Numbers	
Passengers Through Terminals	31,908,471
Connecting Passengers	1,081,800*
Other Passengers	532,222**

The total figure for 2023 is given as 31,908,471 passengers. They deliberately use the term 'Passenger Through Terminals' to attempt to lower the number used by the International Aviation Convention.

They also list connecting passengers but count them singly in the total figures. The International Aviation Convention definition of passengers counts transfer passengers as both an arrival and a departing passenger. Therefore, an additional 1,081,800 passengers needs to be added to the total figures. Also, the 'Other Passengers' are excluded. Therefore, the total figure for December in line with the International Aviation Convention is **33.522m**. as per the figures provided on the daa's Investor webpage.

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There is undisputed proof based on pre-planning guidance given by Fingal County Council's Planning & Infrastructure Department to the daa in February 2020, and the decision by ABP in relation to the section 146 (A) request and the daa's own interpretation of the International Aviation Convention on passenger numbers, that the daa knowingly and deliberately handled over 33.522 million passengers in 2023.

Enforcement Complaints have been sent to Fingal County and investigations are currently ongoing,

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**2.2 CSO’s Passenger Numbers**

The CSO released 2023 aviation passenger numbers on April 18<sup>th</sup>:

<https://www.cso.ie/en/releasesandpublications/ep/p-as/aviationstatisticsquarter4andyear2023/>

Table 2 shows the 2023 figure for Dublin Airport as 33,259,959 passengers:

	January to December					% change
	2019	2020	2021	2022 <sup>2</sup>	2023	2022-2023
Dublin	32,676,251	7,267,240	8,266,271	27,793,345	33,259,959	20%
Cork	2,585,466	527,014	255,014	2,238,455	2,797,844	25%
Shannon	1,616,422	273,934	322,162	1,421,957	1,897,599	33%
Knock	805,443	142,532	174,027	709,540	813,266	15%
Kerry	369,836	82,959	115,398	355,043	414,571	17%
<b>Total</b>	<b>38,053,418</b>	<b>8,293,679</b>	<b>9,132,872</b>	<b>32,518,340</b>	<b>39,183,239</b>	<b>20%</b>

<sup>1</sup> Passenger numbers refer to commercial passengers only. Transit passengers are included and are counted twice (i.e. both as arriving and departing passengers).

<sup>2</sup> Minor revisions to data

This again is clear evidence that Dublin Airport has breached its 32m cap and this could only have happened with the IAA’s cooperation in assigning sufficient slots above the cap.

## **3.0 Operating Restriction**

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### **3.1 32m Passenger Cap – Operating Restriction**

Article 2(6) of EU 598/2014 defines 'Operating Restrictions' as:

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

And a 'noise-related action' is defined in article 2(5):

*“noise-related action’ means any measure that affects the noise climate around airports, for which the principles of the Balanced Approach apply, including other non-operational actions that can affect the number of people exposed to aircraft noise;”*

It is clear that the 32m passenger cap affects the noise climate around Dublin Airport and limits access to or reduces the operational capacity of Dublin Airport and, therefore, falls into the category of an Operating Restriction.

ANCA published a document titled 'Aircraft Noise Mitigation at Dublin Airport' in 2020, [https://www.fingal.ie/sites/default/files/2020-](https://www.fingal.ie/sites/default/files/2020-08/an_overview_of_aircraft_noise_mitigation_at_dublin_airport_2020.pdf)

[08/an\\_overview\\_of\\_aircraft\\_noise\\_mitigation\\_at\\_dublin\\_airport\\_2020.pdf](https://www.fingal.ie/sites/default/files/2020-08/an_overview_of_aircraft_noise_mitigation_at_dublin_airport_2020.pdf), and it illustrates the ICAO Balanced Approach to Aircraft Noise Management with 'Passenger Limits' listed under Operating Restrictions:

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## ICAO Balanced Approach to Aircraft Noise Management



Passive Measures



Active Measures

Noise Reduction at Source

Land Use Planning & Management

Operational Procedures

Operating Restrictions

- Aircraft Design
- Aircraft Fleet Mix
- Scheduling & Slot Selection
- Incentives

- Zoning
- Noise Insulation Schemes
- Property Purchase and Relocation Schemes

- Arrival & Departure Procedures
- Directional Runway Usage
- Preferential Runway Use
- Runway Alternation
- Noise Preferential Routing
- Multiple Routes and Route Alternation

- Movement Limits
- Noise Quotas
- Passenger Limits
- Noise Contours
- Noise Budgets

## SUBMISSION ON BEHALF OF THE ST MARGARET'S THE WARD RESIDENTS GROUP

ANCA have also stated in a number of pre-planning meetings with the daa in relation to planning application F20A/0668, that the 32m passenger cap is an Operating Restriction.

In a meeting on February 5<sup>th</sup>, 2020, the minutes of the meetings from ANCA clearly state that it's ANCA's position that the 32m cap is an Operating Restriction:

<https://planningapi.agileapplications.ie/api/application/document/FG/707690>

It was highlighted that each application will require a noise assessment and the timescale of possible regulatory processes needs to be carefully thought through as it is the position of ANCA that there are 3 Operating Restrictions:

1. Condition No. 3 of F04A/1755 (PL 06F.217429) North Runway Permission.
2. Condition No. 5 of F04A/1755 (PL 06F.217429) North Runway Permission.
3. 32 MPPA Passenger Cap on Terminal, 2 Condition No. 3 of F06/1248 (06F.220670) & Terminal 1 Extension, Condition No. 2 of F06A/ 1843 (06F.223469)

ANCA advised that it must consider all Operating Restrictions *as part of the EU 598 Balanced Approach process*.

The minutes from the P&SI Department of the same meeting also state that ANCA is of the opinion that the 32m cap is an Operating Restriction under EU598/2014:

<https://planningapi.agileapplications.ie/api/application/document/FG/733927>

- Discussion of procedural implications for the making of the planning applications and the content of same, following ANCA comment that in its opinion, the 32m mppa cap included for in Condition 3 of F06A/1248 (PL 06F 220670) and Condition 2 of F06A/1843 (PL 06F 223469) is an operating restriction as per the Regulation Act, 2019.
- As daa plc representatives did not necessarily agree with that interpretation and referred to legal opinion they have stating such, there is agreement that a further Section 247 pre planning consultation would take place following the applicant's consideration of the implications of the 32m mppa cap being an operating restriction.

In another pre-planning meeting on February 14<sup>th</sup>, 2020, it was re-iterated in the ANCA minutes that their opinion is that there are 3 Operating Restrictions:

<https://planningapi.agileapplications.ie/api/application/document/FG/733840>

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It was re-iterated as per the meeting on February 5<sup>th</sup> that each application will require an assessment under the Act and Regulations and the timescale of possible regulatory processes needs to be carefully thought through as it is the position of ANCA that there are 3 Operating Restrictions.

The minutes from the P&SI Department of the same meeting show that the P&SI Department questions whether the 32m passenger cap application should be applied under section 34C of the Planning Act:

<https://planningapi.agileapplications.ie/api/application/document/FG/733841>

- The P&SI Dept requests that consideration be given to the planning implications that arise if the ANCA continues to consider the 32mppa passenger cap as an operating restriction and would be reviewing same as part of any EU Regulation 598 process. For example, whether:
  - It would be necessary to apply for permission to amend/ revoke Condition 3 of F06A/1843 and Condition 2 of F06A/1248.
  - That would be part of the intended S34C application (i.e. relating to Conditions 3d and 5 of F04A/1755).
  - The approach taken by the applicant should be as broad as possible to ensure correct procedure, transparency and third-party involvement.

In a meeting on February 25<sup>th</sup>, 2020, the minutes from the P&SI Department show that they advised the daa that for enforcement purposes, they don't make any differentiation between passenger types:

<https://planningapi.agileapplications.ie/api/application/document/FG/737676>

- Discussion on the interpretation of the 32mppa passenger capacity cap with regard to types of passengers, in particular the transfer/ transit passengers.
- The P&SI Dept advises the applicant that, with reference to ABP decisions and known international, European and national methods of counting passengers at airports, the 32mppa passenger cap included in Condition 3 of F06A/1248 (PL 06F 220670) and Condition 2 of F06A/1843 (PL 06F 223469) is considered to be a cumulative, annual figure comprising all passengers using (traveling to, through and from) Dublin Airport.
- The P&SI Dept advises the applicant that as the 32mppa cap is considered to be all inclusive figure, it is not considered possible/ practical for planning assessment and subsequent enforcement purposes, to make any differentiation between different types of passengers.

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And in a meeting on September 16<sup>th</sup>, 2020, the daa presented a slide where they acknowledge that ANCA deem the 32m cap an Operating Restriction:

<https://planningapi.agileapplications.ie/api/application/document/FG/735166>

## Operating Restrictions at Dublin

### North Runway planning permission

- Condition 3d: No use of North Runway at night (2300 to 0700)
- Condition 5: 65 movement cap at night averaged over 92-day modelling period
- Condition 4: Crosswind runway essential use only

### T2/T1X planning permissions

- Condition 2: 32mppa cap is deemed an OR by ANCA



Document Classification: Class 1 - General



In conclusion, the pre-planning meeting minutes show unequivocal evidence that ANCA deem the 32m passenger cap as an Operating Restriction under EU598/2014, and that the daa acknowledged this understanding, and that the Planning Authority included all passenger types for enforcement purposes.

It is imperative that the IAA seek immediate guidance from ANCA as the IAA's actions will affect an Operating Restriction at Dublin Airport under ANCA's remit.

## **4.0 Draft Decision on W24 Coordination Parameters**

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### **4.1 Introduction**

This submission is in response to the IAA's Draft Decision on Winter 2024 Coordination Parameters at Dublin Airport.

We note the proposal from the daa to implement a seat capacity of 14.4 million seats for the W24 season and that other parameters remain unchanged relative to the Winter 2023 determination. We welcome the opportunity to comment on this proposal and provide evidence that while the intentions of the daa may be correct, the reality is that this proposal will once again facilitate a breach of the 32m passenger cap at Dublin Airport. It is not acceptable that a State Body knowingly facilitates a breach of a planning condition imposed by An Bord Pleanala. The IAA has a duty to respect planning conditions and has not performed its duty to ensure such a breach is not breached again. We note that the daa is hiding behind the IAA's proposals and justifying its actions de to the light touch regulation by the IAA. This is not acceptable, and the IAA needs to assert its authority and ensure no breaches can occur due to its decisions.

## 4.2 Legislation

It is noted that the IAA have the power to determine the coordination parameters and whether to approve Local Guidelines proposed by the Coordination Committee. We note in section 2.6 of the draft decision that the IAA tends towards a maximal rather than minimal approach as regards capacity parameters. We wish to refer to the definition of 'coordination parameters' as defined in the Slot Regulation:

*“coordination parameters’ shall mean the expression in operational terms of all the capacity available for slot allocation at an airport during each coordination period, reflecting all technical, operational and environmental factors that affect the performance of the airport infrastructure and its different sub-systems ;”*

It is clear that Dublin Airport has operational and environmental factors affecting its performance. The IAA must respect these factors and Irish Planning Law and not cherry pick parts of the Slot Regulation to suit its narrative.

The onus is on the IAA to identify the 'established capacity'. We note that the IAA have not made a rigorous attempt to establish the capacity requirements at Dublin Airport within the planning conditions and have left it to the daa and coordination committee to interpret the planning conditions.

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## 4.3 Local Guideline

We note in section 2.10 of the draft decision that the daa proposed a Local Guideline which would suspend ad hoc passenger operations. The Coordination Committee voted against this and therefore was not proposed to the IAA for approval/assessment. The daa then reached out to the IAA requesting its help to comply with the 32m passenger cap.

In section 2.11, it states that the IAA wrote to Dublin Airport reiterating that the capacity declaration rather than a local guideline might be more appropriate. Therefore, the IAA was clearly accepting responsibility that the capacity declaration was the appropriate mechanism to abide by the 32m cap.

Section 2.13 refers to the EGM called to establish a sub-committee to consider options for complying with the 32m cap. It is extremely worrying that the mediator for the process was 'Mott MacDonald'. Mott MacDonald cannot be considered an independent mediator as they have carried out extensive consultancy for the daa in recent years for their Relevant Action planning application and the Infrastructure Application. It is astonishing that they would be allowed mediate the process. Are the IAA aware of the work that Mott MacDonald do for the daa? Did they not declare their Conflict of Interest?

The IAA should be aware of Mott MacDonald's role with the daa as reference has been made to Mott MacDonald in previous submissions to CAR.

From Table 2.1, it is clear that no proposals from the coordination committee on a seat cap and how it should be operated. Section 2.16 states that the interpretation of the 32m cap was disputed and should be adjudicated on by the courts. This is an unbelievable statement but one that has become typical of the aviation industry in Ireland in recent times.

Table 2.2 lists questions that the coordination committee were asked to vote on. Question #1 concerns the ambiguity of condition 3. This is like asking Turkeys to vote for Christmas. This is where the IAA should step in and ensure clarity on the planning condition. The committee voted 93% in support of the view that condition 3 is ambiguous. Again, an incredible result from a committee with zero respect for the planning laws of this country. This result proves what a shambles this committee really is.

In section 4.8 it states that Aer Lingus has put forward the suggestion that the 32m cap refers to origin and destination passengers. We show later in this submission that in 2018 the daa themselves tried unsuccessfully via a section 146A request to include '*origin-destination*' passengers in the planning condition (PL06F.220670) but were refused by An Bord Pleanála.

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The Board stated that the addition of 'origin-destination' would be material in planning terms and lead to an increase in passengers using the Terminals.

We agree with the IAA's decision that a seasonal seat cap should be imposed. In section 4.12 the IAA states this cap at 14,405,737 for the W24 period. Breaking this figure down it is very clear that the IAA have made some fundamental errors in their calculations. Firstly, the IAA interpret the cap to just include Terminals 1 and 2. In case ABP-305458-19 the Board's Inspector included the Pier 4 passenger facility in the interpretation of the condition. Therefore, the IAA are not using the correct interpretation.

The IAA go on to '*assume a similar proportion of passengers not using the capacity of Terminal 1 or Terminal 2 as was reported by Dublin Airport for 2023 (4.8%)*'. Again, it's worth to forensically examine this 4.8% claim. From Dublin Airport's website, <https://www.dublinairport.com/latest-news/2024/01/24/almost-32-million-through-dublin-airport-s-terminals-in-2023>, it lists the following numbers:

Passenger Through Terminals:	31,908,471
Connecting Passengers:	1,081,800
Other Passengers:	532,222

From the bottom of the webpage, it's clear that connecting passengers only includes those who connected through the terminals and counted once, and not counted twice as per the International Aviation Convention. Also, other passengers are those that did not use the terminals and includes Transit passengers and search and rescue and air ambulance, again not in line with the International Aviation Convention.

The excluded transfer passengers of 1,081,800 and the other passengers amounts to 1,614,022 which is 4.8% of the 33,522,594 passengers reported by the daa to their investors and the CSO and Department of Transport. Surely the IAA understands the International Aviation Convention on passenger numbers and respects the reporting convention of both the CSO and Department of Transport. It's imperative that the IAA does not exclude these 1,614,022 (4.8%) in their seat capacity determination. It's imperative that the IAA understands that the 32m cap was breached in 2023 and that they do all within their powers to ensure it's not breached again. It's worth highlighting the breach of the cap in 2019 when 32.9m passengers were handled. Amazingly the daa did not come up with their own interpretation of the International Aviation Convention on passenger numbers then.

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From section 4.12 the IAA use a Load Factor of 81%. W23 used a period of 22 weeks from October 29<sup>th</sup> 2023 to March 30<sup>th</sup> 2024. From the daa's investor website the passenger numbers for November 2023 to March 2024 inclusive amounted to 11,736,256 passengers which is 34.6% of the S23 and W23 periods combined. Therefore, if 81% amounted to 11,736,256 passengers then 100% equates to 14,489,204 passenger seats at full capacity.

14.4m passengers for the W24 season extrapolates to approximately 41.6m for the entire W24 and S24 period. This equates to 9.6m (33%) additional passenger seats above the passenger cap of 32m. Therefore, the IAA has made 9.6m additional passenger seats available and expecting the daa and airlines not to use them. The airlines and daa are going to take full advantage of the additional seats being made available by the slot coordinator. And it's obvious who they are going to blame for any breach of the 32m cap. If the slots and additional seats were not available, then these breaches would not take place. The IAA is complicit in breaching the planning conditions and must accept full responsibility for their actions.

Assuming a 34.7% contribution of seats in W24 and a cap of 32m passengers, then a maximum of 11.07m passengers could be catered for at Dublin Airport for W24. Assuming a load factor of 81% then 13.67m seats could be made available. With an assumption of 180 seats per movements, 13.67m seats equates to approximately 76k movements. The IAA should be insisting on a passenger cap of 11.07m passengers for W24 and an associated movement cap of 76k movements.

## 4.4 Advice from Coordination Committee

In section 4.15 of the draft decision, the IAA is trying to deflect attention from itself with compliance of the 32m cap, stating that the IAA disagrees with the daa assertion that *'it is a matter for the IAA to determine the appropriate actions to comply with the 32m annual passenger terminal cap'*. We would argue that if the IAA declared a slot and seat declaration in line with the 32m cap, then it would be a very straight forward and easy condition to implement and comply with.

We note the results of the questions asked at the sub committee meetings. It is incredible to believe that there was 93% agreement that Condition 3 is ambiguous and should not be considered. This shows the contempt of the aviation industry for the Irish Planning laws. This should not have come down to this. The IAA should have had obtained clear legal and planning opinion on Condition 3 and should have advised the committee members as to their view. Did the IAA contact Fingal County Council? Did the IAA contact An Bord Pleanála? Did the IAA do thorough research on the planning history of the 32m cap? If so, then the evidence should be made available. If not, then the credibility of the IAA must be called into question.

## **5.0 Condition 5 of the North Runway (65 nighttime limit)**

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### **5.1 Condition 5**

In section 3.9 of the IAA's report the IAA makes reference to Condition 5 of the North Runway's planning conditions. It refers to the High Court proceedings on the subject matter that were adjourned to June 24<sup>th</sup> 2024.

In section 3.10 the IAA state that they propose no changes to the R60 limits for the night hours. No contingency has been provided as to how the IAA will adjust the limits if the court decides to agree with Fingal County Council on the enforcement. A prudent approach would be to not allow more than 65 nighttime flights until clarity is provided by the courts. The IAA should as a minimum clearly provide the guidance on how the limits will be changed if the court rules in favour of Fingal County Council. That at least provides clarity to all parties. The current approach by the IAA is to '*kick the can down the road*' that will seek to cause huge confusion and uncertainty.

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Reference was made earlier in this submission to Mott MacDonald's close relationship with the daa and their lack of independence. In a previous submission to CAR, we pointed out that Mott MacDonald outlined that Condition 5 should apply all year round and not just the 92-day Summer period ('*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”.***

Background

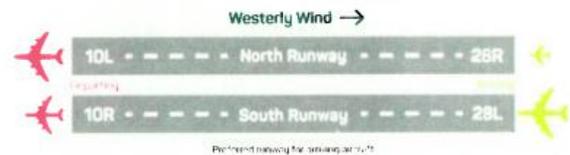
## Background

### Planning Conditions

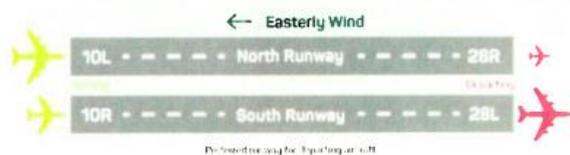
- ▶ The North Runway planning permission (PL06F.21742) contains the following conditions to take effect from completion of the new runway
  - Condition 3(d) states that *Runway 10L-28R shall not be used for take-off or landing between 2300 hours and 0700 hours<sup>(1)</sup>*
  - Condition 5 states that *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

#### Option 7b: Westerly Operations (approx. 70% of the time)



#### Option 7b: Easterly Operations (approx. 30% of the time)



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