DUBLIN AIRPORT

"Response to Consultation on the Process for Consideration of a Supplementary Capex Allowance"

23 September 2016

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Response to CP5/2016 "Consultation on Process for Consideration of a Supplementary Capex Allowance"

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1. Introduction

daa welcomes the opportunity to engage with CAR on the proposed new process for consideration of a supplementary capex allowance within a determination period, as set out in CP5/2016. It is our view, that a process, which closely replicates the capital planning and delivery processes in standard commercial entities, would be a beneficial and welcome addition to the existing regulatory framework.

1.1 Five year Capital Investment Plan (CIP)

Currently, capital allowances for Dublin Airport are set at the beginning of the five year regulatory determination period, following user consultation and assessment by CAR of CIP proposals put forward by daa. This process requires the development of a five year capital plan approximately two years in advance of the regulatory period which therefore requires forecasting six to seven years in advance of the end of the regulatory period. The current process provides a reasonable level of regulatory certainty for daa and airport users with regard to:

i) the infrastructure to be delivered; and
ii) the asset value which will be allowed entry to the Regulatory Asset Base (RAB), with subsequent remuneration through 'return of' and 'return on' capital within the price cap over the asset life of the investment on completion of the project.

However, it is generally recognised, that the current process lacks flexibility to allow the capital plan to evolve in line with changing business needs between the setting of allowances and period end. This lack of responsiveness within the process is dissimilar to how investment decisions are made, and infrastructure delivered, in markets not subject to economic regulation.

To ameliorate this short-coming in the current process, CAR introduced a level of capex flexibility[1] in the 2009 Determination, which was extended in the 2014 Determination[2]. Overall, flexibility is restricted by two factors:

i) Capital allowances - flexibility can be restricted before the start of the regulatory period when capital for a particular project/(s) is not allowed by CAR and daa has deemed the project necessary for operational/commercial reasons.

[1] Projects were grouped into 10 categories with daa having flexibility to spend on projects outside of the original CIP. This flexibility was contingent on the total spend for a project group not exceeding the total allowance for the group.

[2] In theory, flexibility on the allocation of 80% of the €308m (non-triggered) capital allowances for the period 2015-2019 is available to Dublin Airport. However, as the necessity for each individual project within the €308m total was assessed separately, with only those projects considered necessary for delivery within the period being approved, the extent to which projects can be swapped, modified or dropped from the capital plan is substantially more limited than the headlined 80% would suggest.

ii) Capex envelopes (as defined by CAR) - a situation could occur where there is flexibility in one envelope but a new project cannot be accommodated as it doesn't fit into that envelope classification.

1.2 Interim Capex Consultation process

Outside of the five year CIP process, daa have previously engaged in consultations with users to seek approval for additional capital investment in the period between Determinations (this process is referred to in the rest of this document as 'interim capex consultation'). This process provides a lower level of certainty with regards to the remuneration of the capital investment as CAR are unable to provide certainty on whether the capex would be allowed entry to the RAB until the following determination[3]. Nevertheless, daa considered it a useful and appropriate mechanism for determining user support for proposed projects and to therefore form a view of the likelihood of the capex being ultimately admitted to the RAB. However, as there remains a material level of regulatory risk regarding the allowance amount and the treatment on entry to the RAB, the scale of the projects brought forward to such consultation has been relatively small[4].

In the 2014 Determination, CAR stipulated that any such interim capex consultation during the current regulatory period would have to deliver 'unanimous' airline support in order for the capital to enter the RAB and be remunerated in the following determination. This requirement is particularly onerous given that 37 airlines currently operate at Dublin Airport, all of which have different operating models and facility requirements. The likelihood that any individual project would impact all airlines in the same manner is minimal and there is little incentive for airlines to support an interim capital project from which they do not directly benefit. As a result, a consensus level of support from all airlines will be extremely difficult, if not impossible, to achieve. For example, an airline in Terminal 2 would not directly benefit from a project proposed for Terminal 1 and therefore could be inclined not to support the project even if there is a positive business case for such at an overall airport level. The 'unanimous support' requirement therefore significantly limits daa's ability to avail of this process[5].

1.3 Current Situation

Traffic grew by 15.4% in 2015 (year 1 of regulatory period) to 25m passengers and in that first year, already exceeded that expected (and for which capital allowance had been made to accommodate) in year 5 of the regulatory period. Traffic growth has continued in the current year (+11.9% YTD August 2016) with indications (through the slot application process for winter 2016) that the growth momentum will be sustained for the remainder of 2016. This level of traffic growth has and is continuing to present challenges in managing the current level of demand for airport facilities. Additionally, any airline plans for further growth in the current period may well be constrained by the existing capacity at the airport.

To ascertain if the current level of demand is having an impact on airlines' operations and growth plans at Dublin Airport, daa commenced interim consultation with airport users in July 2016 regarding their capacity and service level requirements for the remainder of the current regulatory

[3] Final decision on the treatment of capex which had been subject to interim capex consultation between 2010 and 2014 was made in the 2014 Determination.
[4] Six projects were subject of interim capex consultation in the 2010-2014 period with HBS having the highest capital cost consulted on at €10.4m (2011 prices).
[5] In the 2014 Determination, only two (one safety related and one commercial) out of six interim consultation projects were allowed by CAR when reconciling out-turn spend although broad support had been obtained for the remaining four.

period[6]. daa presented users with a capacity assessment based on the current levels of demand and highlighted where certain processors were close to or at capacity. The consultation asked users to voluntarily provide information on growth/demand for the remainder of the regulatory period in order for daa to ascertain if additional investment i.e. outside of the original CIP maybe required. Through bilateral customer contacts, certain airlines (individually) expressed to daa that they had such requirements therefore the consultation was to ensure that all airlines had been given an opportunity to make their requirements (if any) known.

1.4 Summary

It is evident that the two mechanisms (CIP flexibility and interim consultation) which are currently in place, designed to overcome the inherent inflexibility of the process by which capital allowances are currently set for a determination period, are not adequate in all circumstances.
In particular, where a large scale capital project:

i) cannot be accommodated through capex flexibility within the envelope(s) to which it would belong;
ii) is not unanimously supported by users because it doesn't directly benefit all users; and
iii) impacts the financial viability of Dublin Airport[7] should it remain outside the RAB,

the current regulatory framework provides no adequate remedy.

2. Consideration of options available to fund new projects

In paragraph 1.7, CAR set out four options which they consider could be utilised to secure funding for additional capital requirements that arise within a regulatory period, such as may result from the on-going capacity consultation with airlines. The four funding options were as follows:

i) through the capex flexibilities in the CIP;
ii) to hold an interim capex consultation with airlines to seek unanimous[8] support;
iii) to use shareholders' funds; or
iv) seek an interim review of the determination for supplementary capex allowance.

The following sub-sections considers the first three of these funding options in turn, with Section 4.1 considering the interim review of the determination, and the proposed process by which such review could be sought and completed, in depth.

2.1 Flexibilities in the CIP

The capex flexibilities available in the 2014 Determination are within envelopes rather than across the totality of the (non-triggered) CIP. In essence, any new project must be assessed against the envelope to which it would belong. CAR disallowed c€44m of capital which daa put forward as necessary in CIP 2015-2019 Proposals, therefore, flexibility was restricted from the beginning of the regulatory period.

[6] This consultation process addressed the following issues i)Dublin Airport's current terminal and airfield capacity and expected capacity following the full build-out of CIP 2015-2019, approach to the management of scare capacity and their proposals – for either managed solutions or infrastructure projects.

[7] This issue is discussed in detail in Section 2.3

[8] "If users agree to that overspend than in 2019 when reconciling spending we would increase the allowance by the amount of the consultation. For a consultation to result in an increased allowance it must have unanimous support of users."

The 2014 Determination allowed a total (non-triggered) capital allowance of €341m, which represented CAR's judgement of the capital investment required at Dublin Airport to accommodate forecasted traffic of 24.8m passengers by 2019. In contrast, daa had estimated through its CIP that c€385m of capital expenditure (non-triggered) was required to support 23.5m passenger traffic by 2019. The difference mainly attributes to the 'Business Development envelope' where the following projects were disallowed; Bus Lounges, Apron 300R and T1 check-in and security. The disallowance of these capacity enhancing projects, from the outset, has resulted in daa's 'flexibility' being severely limited compounded by the fact that passenger growth has exceeded both daa and CAR forecasts resulting in demand for facilities in a number of processors being close to or at capacity.

2.2 Interim capex consultation

The current interim capex process allows daa to seek support from users on a project in a relatively short time frame, with typical consultations lasting 6 to 8 weeks. The reasons why it is difficult to receive unanimous support for individual projects from users have been highlighted in Section 1.2. CAR itself states in Section 1.12 of CP2/2016 *"…may be difficult to achieve [unanimous support of users] even where projects have a justifiable need".* However, even if a project were to receive unanimous support from users, a degree of risk remains with daa as CAR cannot make a decision regarding the amount nor treatment of the amount in the RAB until the following determination period

2.3 Fund from shareholder's funds

CAR say there is an option for daa to fund new projects through shareholders' funds. This would result in the capital incurred not entering the RAB, however, the benefits associated with the project i.e. incremental passengers or commercial revenues will be captured in the price cap in the following determination.

All efficiently incurred capital spend should be remunerated through the RAB/price cap to support the principles of economic regulation and CAR's statutory objective which is to enable daa to operate and develop Dublin Airport in a sustainable and financially viable manner.
The regulated entity should never be expected to forgo 'return of' and 'return on' efficiently incurred capital to satisfy user requirements where the return on the RAB is set as to return a normal profit. Where the regulated entity bears volume risk, it must be expected that it will benefit when the volume variance is positive in the same way it is expected to bear the cost when the volume variance is negative.

With regard to any potential new projects, outside of the 2015 - 2019 CIP, it would be unreasonable to assume such an option exists given; the potential scale of the project/(s), high degree of regulatory uncertainty on capital treatment and the benefits associated the project/(s) would continue to accrue to users well beyond the current determination process.

3. Designing a Process for Supplementary Capex Allowance

In designing a supplementary capex allowance process consideration should be given to the circumstances which would give rise to a requirement for supplementary capex, when in the regulatory period they are likely to occur and what outputs the process should deliver (with timing of output a critical concern).

Firstly, we consider under what circumstances the need for such a process or investment would arise during a determination period. These include:

i) Externally[9] imposed requirements on daa, for example, new security, environmental etc. regulations;
ii) Capacity constraints such that the airport is unable to satisfy demand; and
iii) Airline requirements for new facilities to accommodate changing operating models.

We address in Section 4.1 our view of whether the circumstances as outlined above would be sufficient to establish substantial grounds for an interim review.

Secondly, we consider the timing within a regulatory period, where a requirement for a supplementary capex allowance may be necessary. Regulatory forecasts are currently prepared for a five year period and are based on historic data, with the most recent full year data being two years old, i.e. 2013 data was the most current full year data when estimating 2015 to 2019 projections. The CIP is based on current and projected demand, asset maturity and compliance with externally imposed requirements and unless there is a significant decline in business, the commencement of projects will begin to roll out from the beginning of the regulatory period. In the event that business demand is greater than anticipated, potential additional capital requirements would most likely be evident in years 2 – 3 of the regulatory period to accommodate the growth in excess of that projected. As year 1 is very close to the forecasting of the CIP, it is unlikely that within twelve months daa would be aware of additional requirements. On the other hand, if unanticipated business demands were to occur towards the latter end of the period (years 4 to 5), preparation of the subsequent CIP would already be underway and such additional requirements are likely to inform that process, especially given the limited remaining time within the current period from which the benefit could be derived.

Thus, the fact that such issues are currently being considered at this precise point in the cycle is unsurprising.

Lastly, we consider what the process should deliver and why:

i) Straight-forward consultation process to determine
   (1) support by users and
   (2) CAR decision on supplementary capex which would enable quick delivery of project to maximise benefits;
ii) Regulatory certainty to daa on project allowance, treatment on entry to RAB and start of remuneration timing through price cap;
iii) Monitoring and reporting requirements consistent with current CIP process; and
iv) Process in line with CAR'S statutory objectives[10].

[9] Capital spend arising as a result of externally imposed requirements differs to that in items (ii) and (iii) as it would be a mandatory requirement and therefore consultation would only be required on project cost.

[10] To facilitate the efficient and economic development and operation of Dublin Airport which meet the requirements of current and prospective users of Dublin Airport.
To protect the reasonable interests of current and prospective users of Dublin Airport in relation to Dublin Airport
To enable Dublin Airport Authority to operate and develop Dublin Airport in a sustainable and financially viable manner

A quick, responsive decision making process would support CAR's objective to protects the interests of current and prospective users as there would be clarity on whether there was support for a project which may either directly or indirectly be in users interest, it also allows speedy project commencement so that the project delivers expected benefits as early as possible. Furthermore, regulatory certainty needs to be delivered quickly so as to allow timely project commencement to maximise benefits of the project. The alignment of CIP and supplementary capex processes will provide consistency of processes for users and daa. There is no a priori substantial difference between projects included in the CIP and those that would arise for consideration in such a supplementary capex process such as would justify an alternative means of monitoring and reporting – the project will either be delivered or it will not and the reconciliation of the capex outturn against allowance would occur in the Determination subsequent to its completion. Lastly, the entry in full, of efficiently incurred capital expenditure to the RAB[11] is consistent with CAR's statutory objective to enable the development of Dublin Airport in a sustainable and financially viable manner.

Taking all the above into account therefore suggests any new process should be designed to be short in length (to reflect the urgency of new capital investments to satisfy user requirements) and be consistent with CIP monitoring and reporting process to deliver more regulatory certainty to daa and users on cost allowance, treatment in RAB and remuneration.

In circumstances such as outlined (Section 1.2) with uncertain or differing user requirements, the consultation process would also benefit from a more proactive facilitation by CAR, including multi-lateral and bilateral engagements. This would aid greater understanding of user requirements and even if agreement is not possible to be achieved, greater and speedier clarity at this point would also provide more certainty.

4. Proposed New Process for Supplementary Capex Allowance

The proposed new process by CAR firstly does not give adequate consideration to projects arising from user requirements as it assumes that all additional capex requirements are from daa given the extent of work proposed to justify any new project/(s). However, it must be highlighted that in many instances and as demonstrated through the on-going capacity consultation process, airlines can be or are the drivers of some new capital requirements. Therefore an onerous process to justify a project to the users who have requested the infrastructure would appear inefficient.

Additionally, the new process includes a reappraisal of the existing CIP rather than looking at new business requirements. This introduces significant focus on historical projects which have already been subject to lengthy discussions/consultation regarding the project need, requirements, efficiency and costings when no out-turn reconciliation is possible until the end of the determination period.

4.1 Conditions required for use of process

In paragraph 2.2 of CP5/2016, CAR sets out four conditions daa must satisfy in order to avail of this proposed supplementary capex allowance process. The first requirement is that daa demonstrate the existence of 'substantial grounds' for the opening of an Interim Review of the determination in

[11] To avoid unnecessary complexity, the till exit process is not taken into consideration.

force. In CP4/2016[12], CAR gives general guidance on 'substantial grounds' and notes that there are three factors to be considered in testing for the existence of 'substantial grounds':

i) That there has been a change in circumstances since the making of the determination of sufficient scale to be considered exceptional;
ii) That the exceptional circumstances are generally outside of the control of Dublin Airport and;
iii) That the effects of those circumstances are liable to be sufficiently significant to compromise the objectives of the original decision if not reviewed.

In Section 3 of this paper, we highlight the reasons why such a supplementary capital allowance request may arise. While significant projects arising as a result of external requirements being imposed on daa would appear to meet the substantial grounds test, it would, however be helpful to have confirmed that CAR would consider this to be the case i.e. where the only change in the imposition of a regulatory requirement to urgently (i.e. within current regulatory period) spend a material amount on a security, safety, environmental or other regulatory required project that this regulatory requirement alone would provide sufficient grounds for the Interim Review as currently proposed. It should also be noted here that the currently proposed threshold of 10% of non-triggered CIP may not align with the capex requirement to satisfy such regulatory requirements in all cases. As was seen with the introduction of a regulatory requirement for the ETD (explosive trace detection) screening of passengers from 1 March 2015, such regulatory changes can be mandated for implementation within an extremely short timeframe. It may therefore be the case that the process being proposed could not be conducted within the timeframe between the mandating of a requirement and its introduction (though recognising that this urgency may not arise in all cases). We would propose that a ring-fenced capital allowance to respond to unexpected regulatory changes during the period be considered for the next determination, with release of capital from that allowance being triggered by the introduction of a new regulatory requirement. We do not have discretion as to whether we provide the facilities compliance with regulatory requirements demand, so the scope of any interim review in relation to such projects would necessarily be limited to questions of how much capital is required rather than whether the project is desirable. A full interim review, in its length and complexity, may not be the most appropriate mechanism therefore to deal with such circumstances.

There is even less certainty or clarity as to whether projects driven by capacity requirements or changes in user operating models would satisfy the existence of substantial grounds – particularly considering that unexpectedly high traffic volumes have been deemed not to provide exceptional circumstances in the past[13] (which may give rise to changed capacity requirements) nor have changes in user requirements[14]. We would ask CAR to provide further detail on what type of issues would be considered to give rise to substantial grounds in a process of this type. It should be considered, given the legislative requirement for the establishment of substantial grounds for Interim Review, whether this process provides the level of flexibility which airlines would like daa to be able to provide in responding to their changing requirements.

The second condition requires that the project/(s) put forward must have a clear justifiable need and be delivered urgently. Under the current CIP and interim capex consultation process, daa presents to users on the proposed new project/(s) and demonstrates the need and urgency of projects. We assume that any projects brought forward would follow a similar process level of review where extent of user support remains to be determined.

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12 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.

13 See CP2/2015

14 See CP5/2007 p32

The third condition requires that "*projects must be significant in cost – in excess of about 10% of the prevailing non-triggered Capital Investment Plan*". 10% of current non-trigger CIP amounts to c€34m; while this threshold level may be deemed appropriate for this regulatory period, it may not be the case for future regulatory periods as the total CIP amount and the triggered CIP amount will fluctuate between determinations. As there is already a requirement to establish substantial grounds for the Interim Review, we are unsure what additional benefit the setting of a threshold level is intended to deliver. If however, CAR does decide to impose a threshold to avail of such a process, we would recommend that the threshold be reviewed in each subsequent determination to determine the appropriate level.

The final condition requires daa to ensure all other flexibilities have been exhausted. While daa would seek to use flexibilities before entering such a process, daa cannot guarantee all flexibilities will be fully utilised until the end of the regulatory period for a number of reasons. These include; project scope changes and costs which are subject to estimation until tendered.

As discussed in Section 2.1, daa's flexibilities are limited when full capital expenditure for CIP projects has not been allowed (c€44m in total disallowed in 2015 to 2019 CIP) and there has been no allowance for contingency projects within the overall final capital allowance. The requirement for daa to demonstrate that flexibility is not sufficient in the current CIP will require a reconciliation which would only be a further set of estimates rather than reporting on project completion as final costings are not known until fully delivered. As discussed, a request for such a supplementary allowance is likely to arise in the early part of a determination (years 2 to 3) and while many projects may have commenced, dates of completion will differ with final costings unknown until delivery. In the event full capital allowance/(s) have not be used, CAR will adjust the RAB as necessary (adjusting for price differences) in the following determination period and as a result, there would be no dis-benefit to users. In summary, the requirement for daa to prove that all flexibilities have been exhausted early in a determination period adds additional requirements and complexity to the process while providing no additional benefit to users.

Overall the conditions proposed by CAR seriously limit daa's ability to avail of this process as (1) the main type of additional project during the current regulatory period is likely to be for capacity enhancement which we consider may not provide the exceptional circumstances deemed necessary to establish substantial grounds, (2) the 10%+ of CIP requirement may be too high for a project to qualify and (3) daa would need to engage in a detailed process of capital plan re-forecasting including flexibilities and trigger projects in addition to (a) delivering the current CIP and (b) progressing the new project for design, costing etc. for no discernible benefit to users given final reconciliation, and decision on amount allowed entry to RAB, will only occur at the next determination period.

4.2 Consultation Requirements

The new process would require daa to submit additional information above that required in the CIP process. CAR proposes that daa would be required to provide details on:

- i) Update on delivery of current CIP;
- ii) Timelines for delivery of the current CIP;
- iii) Demonstrate how flexibilities have been exhausted through a plan for the remainder of the regulatory period for delivery of CIP;
- iv) Projections for existing trigger projects in CIP;
- v) Comprehensive capacity assessments for new projects;

vi) Detailed business cases; and
vii) Timeline and milestones for delivery of the new projects.

The consultation requirements are not reflective of the fact that a project has arisen due to new circumstances as there is significant focus on the current CIP, flexibilities and trigger projects. It is imperative any new process looks forward and doesn't evolve into a process on reviewing historic data and requirements.

- CAR requires in one of their conditions that a project must be **urgent** to avail of the process. The detail of information proposed, particularly with regard to forecasting of existing capital plan, would not result in the consultation process delivering an outcome in a timely manner. Delay in reaching the process outcome is not consistent with the recognition of the project(s) under consideration being urgently required.

- daa has been given a CIP allowance for 2015-2019 with outturn reconciliation occurring at the end of the regulatory period. The additional requirements to report on the existing CIP are of no benefit to users when assessing **new** projects. Also, in the event the CIP has not been fully utilised, CAR will adjust for this in the following determination period resulting in no impact on users.

- daa do not understand the rational for the requirement to provide projections for trigger projects when these allowances are not remunerated until triggered and secondly trigger projects cannot be used for other capital requirements; we therefore consider projections for trigger projects of no relevance to this process and do not support this requirement.

- CAR's suggestions to provide a comprehensive capacity assessment, show how current capacity is already maximised, provide a detailed business case with project options and timelines for delivery all put the onus on daa to prove the requirement for the capital spend when in fact the circumstances giving rise to a need for this process are to satisfy user requirements. daa currently provide a similar level of detail on new projects as has been demonstrated:
  - daa provided costings to users when assessing CIP projects;
  - daa provided a high level capacity assessment when presenting at the capacity consultation; and
  - daa provided a number of business cases when consulting on the terminal-linked hotel.

4.3 Process for Commission

4.3.1 Remuneration

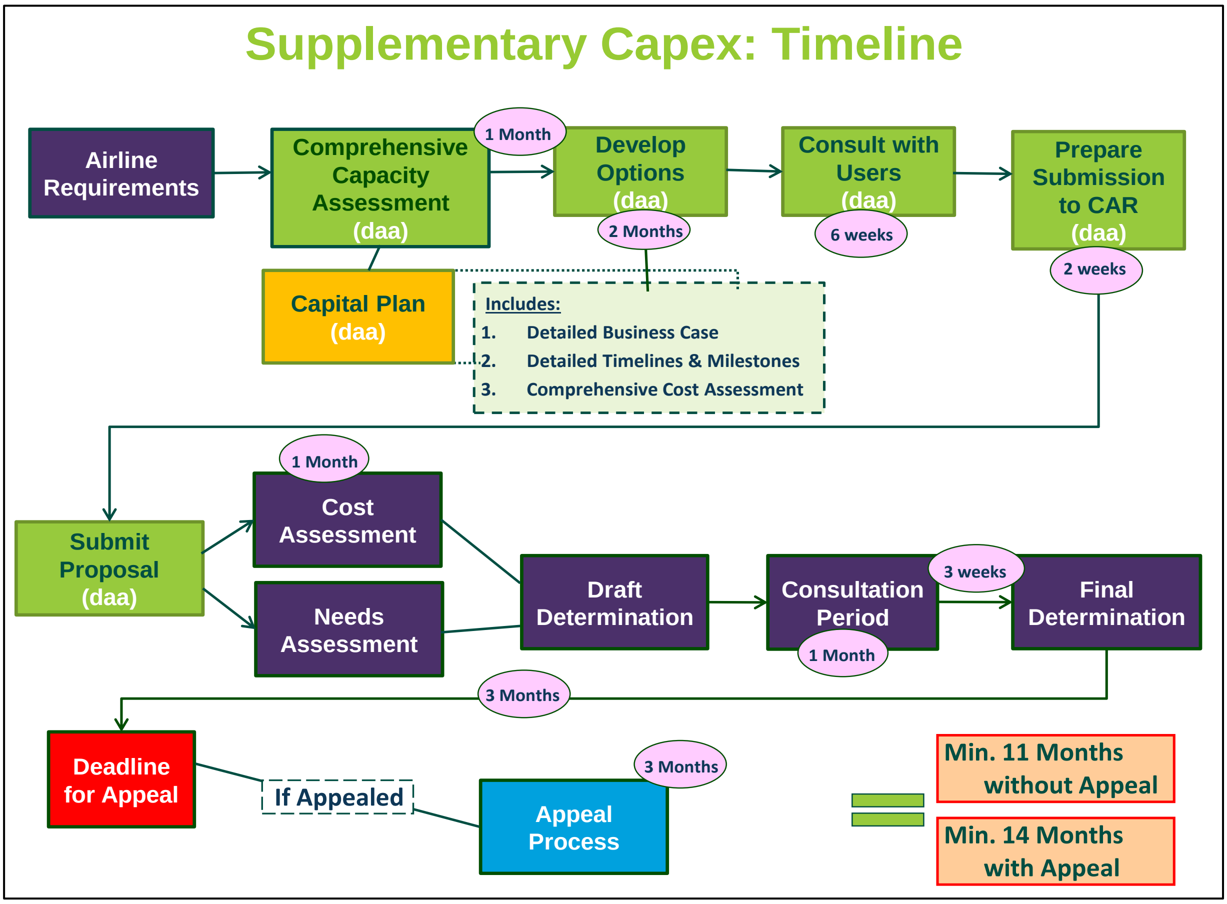
Following the consultation process whereby daa must demonstrate; substantial grounds, flexibilities have/will be utilised and there has been extensive consultation, CAR will assess the costs of the project for efficiency.

This implies the consultation will result in a decision by CAR on the treatment of spend in the RAB and the amount allowed. However, CAR also notes the possibility of imposing additional trigger mechanisms to adjust the price cap on the occurrence of an event. Therefore, remuneration of such spend could be conditional on additional requirements. This would significantly decrease the regulatory certainty for daa as actual remuneration through the price cap could potentially be dependent on multiple triggers when funding will be required immediately as demonstrated by the urgency of project and process. daa see no requirement for additional trigger mechanisms where we have just been assessed for an immediate capex requirement – and in fact such additional triggers would negate one of the benefits this process was intended to delivery; increased regulatory certainty on the treatment of capex spend prior to project commencement. Additionally, triggers (and associated allowances) expire with the ending of the determination period and therefore, as multiple triggers could span across more than one determination period for a single project this would result in an unacceptable level of complexity and regulatory uncertainty. Therefore, if funding was to be based on a trigger, one single trigger with reconciliation as per the standard CIP process would be the appropriate mechanism.

4.3.2 Consultation Length

daa estimate the timeline for such an Interim Review as proposed as outlined in Figure 1. The timeline is estimated between 11 and 14 months versus the current 6-8 week interim capex consultation process. Given CAR requires the project to have an urgent need, the below timeline would not accommodate rapid delivery, bearing in mind, planning (including applying for and obtaining planning permission) complexity and construction on large scale projects would last over 12 months and significantly longer in many cases.

Figure 1: Timeline for Supplementary Capex Process



- CAR state *"..that this [supplementary process] would not become an unnecessarily long process"* as outlined by CAR in paragraph 2.17 of the paper. A typical interim consultation takes six-eight weeks, however, daa has found on recent consultations the length can increase with one taking up to one year as users challenged business case results[15].

- We do not believe that the process proposed can be managed within a reasonable time period and would ask that CAR reflect further on how to ensure that such delays will not occur so that benefits are not delayed and so that regulatory certainty can be provided to allow for quick and responsive decision making on projects

4.3.3 Post Consultation Requirements

In addition to the extra information required during the consultation process for consideration of a supplementary capex allowance, there are also increased monitoring and reporting requirements for the remainder of the regulatory period. This process should follow a similar assessment process to the CIP so it is difficult to understand the requirement for enhanced monitoring and reporting as ultimately the reconciliation occurs only once, on project completion.

5. Concluding Remarks

The allowance of supplementary capex is of significant concern to both Dublin Airport and its users. With demand for a number of airport facilities now close to, or in excess of, the capacity of the existing infrastructure of Dublin Airport over significant portions of the operational day capacity may constrain airlines' growth plans for Dublin and hence the overall growth of Dublin Airport. As mentioned, daa are currently consulting with airport users regarding their capacity and service level requirements for the remainder of the current regulatory period which will provide greater certainty on demand and use of facilities.

The suggested new process as outlined by CAR is more onerous with regard to justification of the capex requirement than is the case for the CIP as it must be (i) underpinned by a capacity assessment, (ii) demonstrated that existing capacity has been maximised and (iii) demonstrated that the project cannot be accommodated within the flexibilities provided within the existing CIP allowance. This process would require a lengthy preparation and consultation period which would not allow daa respond quickly to changing business needs. In addition, the risk to daa has not been minimised as a decision would be required a short period on whether to proceed with the project whereas this process is estimated to take up to 14 months to provide regulatory certainty on capex treatment.

Given the number of issues with the proposed new process as highlighted in Section 4, daa does not believe this is the best approach for all parties.

- CP5/2016 makes reference to this proposal being only one option[16]. We would ask what other options or alternatives to this process have been considered by CAR.

- CAR need to provide reasonable certainty on what the concluded new process will deliver. For example, if there is a clear need for new projects but support is not received from all users, what decision making steps will CAR follow in order to arrive at a decision and ensure consistency.

- CAR should also confirm the role of the current interim consultation.

[15] Consultation on T2-linked hotel commenced 10 July 2015 ended 18 July 2016.
[16] "The rest of this document sets out the process the Commission would expect to be followed for this option."

In conclusion, daa welcome the recognition by CAR that the existing capital approval mechanisms do not provide the necessary flexibility to enable the sustainable development of Dublin Airport to meet the needs of existing and future users. While we believe that the imposition of a regulatory requirement on Dublin Airport may provide substantial grounds we consider that it would be appropriate for CAR to i) confirm that they would also would consider this to be the case and ii) give separate consideration as to whether Interim Review is the most appropriate mechanism for resolving regulatory certainly around funding of such regulatory requirements in all cases. We also have concerns as to whether any or all of the following would provide substantial grounds for the conducting of such an Interim Review:

i) A requirement for additional infrastructure to provide additional capacity – given that such requirement is most likely to arise where traffic volumes exceed the forecast made for the period
ii) A requirement for additional infrastructure in response to changed user requirements
iii) and would welcome additional clarity on the circumstances which CAR consider would establish substantial grounds for such review.

Furthermore, where substantial grounds could be established, do not believe the Interim Review Process for Supplementary Capex, with the structure currently proposed, would allow for quick delivery of new projects to meet user requirements/incremental demand or provide greater certainty to daa if multiple triggers for remuneration could also be implemented. The issues we have identified were discussed in detail in Sections 3 and 4 of this document.

We ask CAR to consider all elements of this submission in designing and implementing any new process to consider the making of a supplementary capital allowance during a regulatory period.