ÚDARÁS EITLÍOCHTA NA hÉIREANN
IRISH AVIATION AUTHORITY

2026 Determination on Airport Charges: Consultation on Treatment of Passenger Cap Planning Conditions

11 November 2026



Table of Contents

1. Introduction and Overview 3
2. Draft Determination Approach and Submissions Received 5
3. IAA Draft Assessment 9

1. Introduction and Overview

1.1 In this paper, we set out a supplementary consultation on a specific issue raised by Dublin Airport in response to the 2026 Draft Determination on the Maximum Levels of Airport Charges at Dublin Airport for 2027-2031. It relates to Dublin Airport's application (of August 2026) to the Minister to amend (rather than revoke) the 32mppa Conditions. Dublin Airport says that this is a material development which post-dates the Regulatory Proposition and the Draft Determination, and claimed that there is now an expectation that a 40 million airport-wide annual passenger cap will apply throughout the 2027-2031 period and beyond.

1.2 As a result, Dublin Airport suggests including triggered price cap uplifts which would increase the price cap if the IAA were to take account of the requested 40 million cap in slot coordination parameters. To calculate those uplifts, Dublin Airport has used our Draft Determination models to calculate the direct effect of limiting the passenger forecast to 40 million over 2028-2031, combined with the indirect effect of lower passenger volumes in reducing forecast Commercial Revenues and Opex. Alternatively, Dublin Airport suggests capping the 2026 determination passenger forecast at 40 million throughout the period 2027-2031.

1.3 In summary, our draft position on this issue is that:

- We disagree with the perspective Dublin Airport set out in its response regarding the likelihood/practicability of annual passenger volumes being 40 million, as a result of the airport being subject to a binding passenger cap set at that level through most or all of the upcoming period, and also disagree that there has been some fundamental change in circumstances such that this scenario has become more likely/inevitable since Dublin Airport's Regulatory Proposition and/or the Draft Determination.
- Dublin Airport's suggestion therein that the airport will be capped at 40 million passengers over the short and medium term would have broader implications than acknowledged by Dublin Airport, in particular regarding efficient capital costs and the risk associated with progressing with major capacity infrastructure without knowing whether and when any such annual cap will be removed.
- Dublin Airport's proposed approach of including triggered price cap uplifts is excessively blunt and inadequately flexible, and the proposed mechanism would generate problematic incentives within the price control.

1.4 We therefore do not propose to cap the traffic forecast, nor to include a triggered price cap mechanism. Instead, we continue to think that the determination should progress on the basis that the issue of an annual passenger cap at Dublin Airport will be resolved, as per the clearly stated intention of Government, noted below. This remains in line with the approach of the Draft Determination, and Dublin Airport's own approach in the Regulatory Proposition. Dublin Airport has also recently clarified that, in light of the continuing growth in passenger demand over the coming years, it will in fact continue to work with all stakeholders with the aim of ensuring that Dublin Airport is in a position to accommodate more passengers, whilst making sure *'everything possible is done to meet planning requirements'*.[1]

1.5 If any passenger cap (whether the existing 32mppa Conditions, or a possible future 40 million cap) does transpire to impact on passenger volumes within the period and, as a result, the determination no longer aligns with our statutory objectives, we reiterate that there is a flexible interim review mechanism available, and if appropriate such a review could be

[1] https://www.daa.ie/passenger-numbers-up-0-5-to-3-2-million-at-dublin-airport-in-october/

completed within any year of the period, and take effect within that same year.

1.6 However, Dublin Airport's submission now raises the prospect that, during the upcoming period, it might proceed with the Infrastructure Application projects even while it was still subject to an annual cap of 40 million passengers, without any visibility as to whether and when that cap might be revoked. Complying with such a restriction would mean that daa would have to restrict annual passenger volumes below the level which could be processed without any of that infrastructure. We thus instead propose that the continued remuneration of the Infrastructure Application projects in future determinations will be subject to the condition that traffic volumes at Dublin Airport are not, in effect, bound by such an annual cap which is limiting on demand. We consider this to be necessary to protect the interests of future Users from the possible risk of underwriting investment which provides no real benefit to Users because of the continuing existence of an annual cap which prevents or impedes the optimal use of that infrastructure.

1.7 In this paper, we use figures and models as per the Draft Determination, in March 2026 prices. As usual, these figures are likely to change in the Final Determination, as a result of separate changes made following our consideration of submissions we have received, and also updated data, where applicable.

1.8 This supplementary consultation is limited in scope to how the issue of passenger cap(s) should be addressed within the determination framework, and the direct and indirect implications of different approaches. Submissions should not be made on other topics (any such submissions will be disregarded).

1.9 Capitalised terms in this paper have the same meaning as the Draft Determination.

1.10 We invite submissions by **Friday 27th November 2026.** Responses should be titled "Submission on 2026 Determination consultation" and sent by email to consultation@iaa.ie. We may correspond or meet with interested parties who make submissions, seeking clarification or explanation of their submissions, or associated data or evidence. After the consultation deadline has closed, interested parties should not attempt to make further or new written submissions, such as through correspondence or written submissions in other forms. All submissions and associated evidence which interested parties want us to take into account ahead of the Final Determination must be provided by the consultation deadline.

1.11 Ordinarily, we place all submissions received on our website. We expect to do so shortly after the consultation period closes. We may include the information contained in submissions in reports and elsewhere as required. If a submission contains confidential material, it should be clearly marked as confidential and a redacted version suitable for publication must also be provided. This should be provided alongside the unredacted submission, i.e. also by **Friday 27th November.** Respondents should note that the IAA is subject to an obligation of transparency when making a determination.

1.12 We do not ordinarily edit submissions. Any party making a submission has sole responsibility for its contents and indemnifies us in relation to any loss or damage of whatever nature and howsoever arising suffered by us as a result of publishing or disseminating the information contained within the submission.

2. Draft Determination Approach and Submissions Received

2.1 In the Draft Determination, we outlined that Dublin Airport had estimated three passenger forecasts in the Regulatory Proposition, which Dublin Airport described as follows:

- An unconstrained forecast, with passenger traffic close to 44m by 2031.
- An 'Infrastructure Constrained' forecast, in which Dublin Airport assumed that infrastructure constraints would weigh on demand such that passenger volumes would grow more slowly, reaching 42.3 million by 2031.
- A 'Planning Constrained' forecast, in which passenger volumes would be limited by planning conditions to a 40 million cap (the "40mppa Conditions") throughout the period.

2.2 Dublin Airport proposed that the Infrastructure Constrained forecast should be used for the 2026 Determination, with passenger volumes therefore exceeding 40mppa over 2029-2031. The Dublin Airport Regulatory Proposition also outlined a proposed Asymmetric Risk Adjustment (ARA), for the following reasons, among others:

'During the cap litigation Dublin Airport submitted a 40mn passengers operating condition application. This would increase the passengers it is allowed to handle up to 40mn. In the case such a condition is granted and there is no decision yet from Europe, there may be an environment in which Dublin Airport cannot exceed 40mn passengers per annum.

In this case the passenger forecast would follow the infrastructure constrained model until 2029, where it flatlines at 40mn until the cap is resolved. As 6.14 details, due to the game theory incentive to overbid in capacity constrained environment it is possible that the actual outturns would be slightly lower than 40mn. This however has not been modelled due to its small baring on overall figure. Since there is no certainty as to when the cap is resolved, it would be preferable to have an asymmetric risk adjustment that compensates for the shortfall between what passenger numbers would have been absent a cap and what they actually become due to the cap.

Such an approach is much more favourable for all parties rather than the scenario where there is no contingency measure, the cap is enforced, and Dublin Airport loses outperformance and underperforms on passenger numbers. The passenger suffers through underinvestment, lower quality Of service and higher airfares, as airlines have increased monopoly power where demand exceeds supply. Alternatively, where the cap is lifted, the airport outperforms passenger numbers and in turn benefits from higher revenues and profits from essentially an external event dependent on the Irish and European judicial systems.'[2]

2.3 Dublin Airport outlined the detail of its proposed ARA in respect of the 40mppa Conditions as follows, from paragraph 5.8.16 of the Regulatory Proposition. There, it was presented as more a potential component of the asserted asymmetric risk, as opposed to a mechanism which itself prices in *'the shortfall between what passenger numbers would have been absent a cap and what they actually become due to the cap':*

'Oxera's analysis also examined how a binding passenger cap would compound the base asymmetric risk. Even risks that would normally be symmetric, such as annual GDP variance, become asymmetric when the airport operates at capacity. Whilst traffic can decline if GDP falls below forecast, it cannot grow above the cap if economic conditions exceed expectations, as the airport is prevented from capturing the extra passenger demand due to the cap. This

[2] Regulatory Proposition, paragraphs 6.12.1 to 6.12.3

transforms what would be a balanced distribution of outcomes into one-sided risk.

Where a 40mppa passenger cap is assumed to bind throughout 2027-31, expected annual underperformance increases from €7-22 million (shocks only) to €10-31 million (shocks plus cap effect). However, significant uncertainty remains regarding whether the cap will be maintained, raised to 40mppa, or removed during the regulatory period. The primary asymmetric risk from demand shocks exists independently of the cap and requires correction regardless Of the cap's future status.'

2.4 Subsequently, in the IAA Draft Determination, we outlined the following from paragraph 6.82:

'As noted above, Dublin Airport has also estimated a forecast which is constrained by a 40mppa annual passenger cap, but it does not propose that such a forecast is used for the determination. We agree with that approach, particularly in circumstances where Dublin Airport's position is that it cannot comply with an annual passenger cap. Further, legislation is currently in development which would permit the Minister to revoke (or replace) the current 32mppa Conditions, and which would also preclude the possibility of any more caps. The process of addressing the existing 32mppa Conditions is ongoing and considered a matter of priority for the Irish Government.

While it is ultimately the responsibility of daa to comply with planning conditions contained in daa's planning permissions, we note that it is daa's own position is that it cannot comply with an annual passenger cap planning condition. While the final judgement of the CJEU remains outstanding, the Advocate General (AG's) opinion appears to have cast some doubt over the ability of daa to comply with the 32mppa Conditions, at least in certain circumstances.

This will not, either, be the first time that we have had to forecast passenger traffic in the context of possible overhanging external factors. In the Original 2019 Determination, there was the prospect of a 'Hard Brexit'. We stated that a hard Brexit was a possible but highly uncertain extreme downside, and that, if warranted, such a scenario could lead to an interim review, were it to materialise. Here, if any such planning related issues were to have a major impact during the determination period such that the prevailing determination no longer aligned with our statutory objectives, we could review and potentially amend the determination as appropriate.'

2.5 We also proposed not to include the suggested ARA, for the reasons outlined from paragraph 6.85 of the Draft Determination.

Responses to Draft Determination

2.6 Dublin Airport addresses this issue at various points in its response.[3] From paragraph 4.3.10 of its published response, Dublin Airport now notes that, subsequent to the Draft Determination, it has submitted an application to the Minister under Section 7 of the Dublin Airport Capacity Act 2026 (the "2026 Act"), in which it proposes to replace the 32mppa Conditions with a 40mppa, airport-wide, annual passenger cap.[4] Dublin Airport notes that its application to the Minister post-dates the Draft Determination, and states that this is a material change in circumstances relative to the Regulatory Proposition and Draft Determination. It states that it is imperative that we account for this change in circumstances in the Final Determination.

2.7 Dublin Airport notes that the 2026 Act provides a process for the Minister to revoke or amend a passenger capacity condition which the Minister considers to be causing, or likely to cause,

[3] Section 2.3 (partly redacted), from paragraph 4.3.10 to 4.3.16, from paragraph 5.3.60 to 5.3.66
[4] https://data.oireachtas.ie/ie/oireachtas/act/2026/25/eng/enacted/a2526.pdf

serious harm to the economy, international connectivity, or the international reputation of the State in respect of air transport. Dublin Airport notes that a Ministerial order cannot be made prior to an Environmental Impact Assessment being conducted by ACP. It states, therefore, that any potential order to amend or revoke a particular passenger capacity condition may, or may not, ultimately be made. It states that this new process should not be interpreted as having *'de-risked'* Dublin Airport from the prospect of a passenger cap being in effect.

2.8 At paragraph 5.3.65, Dublin Airport states that the Final Determination should reflect '*the expectation of a 40mppa cap applying throughout the regulatory period*'. It continues as follows:

'There is no live application which could possibly permit Dublin Airport to handle more than 40mpaa during the period 2027-31, Dublin Airport is not in a position to commence the lengthy preparations required for any such new application until the relevant decision-makers conclude their live application processes, and any future new application by Dublin Airport to permit over 40mppa will take a long time.'

2.9 At paragraph 2.3.8, Dublin Airport outlines a list of four possible options which it suggests the IAA might consider to be open to us, in its order of preference:

1. Cap the traffic forecast at 40 million (i.e. in line with the Planning Constrained forecast which Dublin Airport outlined, but did not adopt, in the Regulatory Proposition).
2. Include an *ex ante* triggered adjustment term which would de-risk Dublin Airport from the prospect of a 40mppa cap constraining demand, by increasing the price cap in such circumstances.
3. Include a commitment to reopen the '*full determination*' where necessary in the event of a cap constraining demand.
4. Outline an *ex post* adjustment to be included in the subsequent (2031) determination where necessary to compensate for any cap which transpired to constrain demand over the 2027-2031 period.

2.10 Of these options, Dublin Airport says that option 3 or option 4 would be irrational '*in light Of the realities of (i) the 40mppa passenger cap which is expected to arise from live applications to the Minister and Fingal, and (ii) how very far away Dublin Airport currently is from obtaining any theoretically possible new application (to the Minister or Fingal) to handle more than 40mppa, given planning System constraints.*'

2.11 From paragraph 4.3.15, Dublin Airport then includes proposed triggered adjustments (the "40mppa Triggers"), based on the Draft Determination models. They are based on the direct impact of setting passenger volumes to 40mppa over 2028-2031, combined with the consequent indirect impact on Opex and Commercial Revenues only. The proposed price cap increases range from €0.32 in 2028, to €1.60 by 2031. Dublin Airport does not now appear to include any adjustment in respect of the previously asserted asymmetric risk within the 40mppa Triggers. Dublin Airport notes that they exclude the impact on Capex trigger values, and suggests that a further '*refinement*' would be to have two full sets of Capex trigger values, depending on whether or not the 40mppa Triggers have activated.

2.12 Ryanair addresses this same issue from paragraph 2.3 to paragraph 2.6 of its response, noting the enactment of the 2026 Act, which empowers the Minister to amend or remove passenger cap planning conditions. Ryanair refers to statements from the Minister, Taoiseach, and in the programme for Government regarding the removal of the cap. Ryanair notes that it has since come to light that Dublin Airport has applied to the Minister to amend, rather than

remove, the cap.

2.13 In contrast to Dublin Airport, Ryanair submits that we should not limit the passenger forecast to 40 million or otherwise factor it into the determination, because:

- The stated intention and policy of government, and the legislature as reflected in Section 36 of the 2026 Act, is that there should be no annual passenger cap on Dublin Airport, and that same will be removed. Ryanair notes that we are required to take account of Government policy under Section 33(d) of the 2001 Act.
- Unlike the 32mppa Conditions, which were only imposed by ACP on appeal, Dublin Airport has itself sought the imposition of a 40mppa cap (first from FCC, and now from the Minister as well). Ryanair suggests that we should not apply any future '*artificial*' seat caps in respect of a planning condition which Dublin Airport could have applied to remove, but has instead applied to amend.

3. IAA Draft Assessment

3.1 As outlined above, in the Draft Determination, we did not propose to set the passenger forecast in line with either the current 32mppa Conditions, or a possible future passenger cap of 40mppa, nor to include any triggered price cap uplift based on traffic being capped at 40 million as Dublin Airport now suggests (or at 32mppa).

3.2 We said that, if any such cap (whether 40mppa, or 32mppa) transpired to limit passenger volumes such that the determination no longer aligned with our statutory objectives, we could carry out an interim review within the period and potentially amend the determination, based on all of the specific circumstances presenting at that time. This also aligned with the approach set out by Dublin Airport in its Regulatory Proposition.

3.3 Having considered Dublin Airport's revised position in response to the Draft Determination, our own draft view in that regard currently remains unchanged. We note the following:

- We disagree with Dublin Airport that there is some major change in circumstances relative to the position at the time of the Regulatory Proposition/Draft Determination such that it is now more likely/inevitable that annual passenger traffic will in practice be 40mppa over 2028-2031 (the "40mppa Capped Scenario").
- We also consider that Dublin Airport should have suggested any such novel triggered approach to the passenger cap sooner than in response to the Draft Determination, such as in its response to Issues Paper or in the Regulatory Proposition (where it instead appeared to refer to an approach of pricing the possible cap into the central determination scenario through the inclusion of an ARA, as outlined above).[5]
- More substantively, we disagree with Dublin Airport on the likelihood that the 40mppa Capped Scenario will transpire. Firstly, daa's own position in various proceedings is now that it cannot deliver that outcome/comply with such a cap, and clarity in that regard has not yet emerged from any of those ongoing proceedings, particularly where the CJEU has decided not to answer the third question which was referred to it.[6] Secondly, Dublin Airport's position is based on a series of implicit and explicit assumptions, each of which was uncertain previously (as stated by Dublin Airport itself) but remain uncertain now. These assumptions, outlined below, are largely not substantiated, and in some cases do not appear fully logical or consistent.
- Aside from the foregoing, from a technical perspective, we consider that Dublin Airport's approach to triggering in a scenario in which the airport would be capped at 40mppa over the short and medium term to be incomplete, in particular by taking no account of the implications for efficient capital costs. We also consider it to be excessively blunt, and to generate problematic incentives to make decisions which may be at odds with the interests of Users.
- Further, we have now in any case assessed the downside where passenger traffic is limited to 40mppa from 2028. That downside is similarly impactful to the downsides already tested and designed into the Draft Determination in respect of the Triggered Scenario as part of our financeability assessment.

3.4 We consider these four points in turn below.

Suggested Change in Circumstances

3.5 In 2023, Dublin Airport submitted the Infrastructure Application to FCC, in which it sought

[5] See paragraph 2.9 of Issues Paper: https://www.iaa.ie/docs/default-source/publications/corporate-publications/economic-regulation/2026-determination-on-airport-charges-at-dublin---issues-paper-consultation.pdf?sfvrsn=714ca45f_9

[6] In its observation to the CJEU, the IAA outlined that if the Court agreed with the IAA in respect of the first question, it would be necessary to then answer the third question in order to allow the resolution of the proceedings. Similarly, daa originally proposed the inclusion of the third question on the basis that it would be necessary to resolve the proceedings. Judgment is available here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62024CJ0857

the imposition of a 40mppa airport-wide annual passenger cap in place of the existing 32mppa cap on terminals 1 and 2, which are contained within the respective planning permissions for those terminals. That application remains pending before FCC, as it was at the time of the Regulatory Proposition and the Draft Determination.

3.6 The Regulatory Proposition/CIP27 timelines have been set out on the basis that the Infrastructure Application would be determined in 2028. From 2029, Dublin Airport's proposed passenger forecast then exceeded 40mppa. This could have only meant that either:

1. There would be no applicable passenger cap over 2029-2031, for example if FCC/ACP were to determine the Infrastructure Application by revoking the 32mppa Conditions without imposing the 40mppa Conditions[7], or alternatively the Minister were to make an order which would revoke any cap[8], or
2. Dublin Airport would continue to be in non-compliance with whatever passenger cap was in effect, as has been the case in recent years in relation to the 32mppa Conditions.

3.7 Dublin Airport has now also requested the Minister to impose the same 40mppa Conditions, pursuant to the 2026 Act. Should the Minister make the requested order, based on the timelines provided for in that act, it appears likely that this may occur in 2027. Consequently, relative to what Dublin Airport was expecting if the 40mppa Conditions were first imposed when the Infrastructure Application was determined, any such replacement of the 32mppa Conditions with the 40mppa Conditions might now be expected approximately a year earlier.

3.8 Dublin Airport does not explain why the replacement of the 32mppa Conditions with the 40mppa Conditions at an earlier point in time relative to what Dublin Airport previously expected, would somehow mean that those 40mppa Conditions will subsequently be in effect over a much longer period of time than would be the case if the 32mppa Conditions had been first replaced with the 40mppa Conditions at a later point in time, when the Infrastructure Application was determined. Instead, it appears that, subsequently, for passenger traffic to grow above 40mppa over the rest of the regulatory period, it would remain the case that either:

1. There would be no applicable passenger cap over 2029-2031, for example if FCC/ACP were to determine the Infrastructure Application by revoking the 32mppa Conditions without imposing the 40mppa Conditions, or the Minister were to make an order which would revoke any cap, or
2. Dublin Airport would continue to be in non-compliance with whatever passenger cap was in effect, as has been the case in recent years in relation to the 32mppa Conditions.

3.9 Thus, what Dublin Airport refers to as changed circumstances appears primarily to be Dublin Airport's own new assertion that passenger traffic will not exceed 40mppa because Dublin Airport itself is now '*not in a position to commence the lengthy preparations required for any such new application until the relevant decision-makers conclude their live application processes*', now referring to both the Minister, and the planning authorities, in that context. That position appears inconsistent with the basis upon which Dublin Airport has approached the determination to date. This asserted position is unexplained, and comes only weeks after Dublin Airport has separately confirmed that, should the Minister decide to revoke any passenger cap, Dublin Airport will provide the Minister with any supporting material required for that purpose. As noted above, it has also subsequently clarified that it will continue to work with stakeholders to aim to facilitate the demand expected over the coming years.

[7] We understand that, pursuant to Section 26 of the 2026 Act, any decision of FCC/ACP to revoke the 40mppa Conditions (if same were to be imposed by the Minister) would supersede any such earlier decision of the Minister.
[8] Or alternatively, that a higher cap, such as 45mppa, is imposed.

3.10 However, in its response to the Draft Determination, Dublin Airport claimed that it would not even commence those preparations until all of the live application processes are determined. Even assuming that those are all determined in Dublin Airport's favour and in line with the timeline set out by Dublin Airport (and in the case of the Infrastructure Application, the suggested timeline is ambitious relative to the experience to date under the 2019 Act), and assuming that the decisions (both Regulatory Decisions in application of the Balanced Approach, and planning decisions) survive any legal challenges and (if relevant) the reviewing of any proposed Operating Restrictions by the European Commission, on Dublin Airport's assertion, this would mean that it would be a very long time before the question of a passenger cap at Dublin Airport is resolved. In the meantime, it could be the case that traffic volumes will already be consistent with an annual volume higher than 40mppa before the current Infrastructure Application is even determined.

3.11 If Dublin Airport's Draft Determination response position were correct that what is going to happen next is that a 40mppa cap will take effect and remain in effect until after all of the applications are determined, at which point Dublin Airport will commence the preparation of a further planning application (of a currently uncertain nature) and that application will then be submitted to the process established in the 2019 Act, then the 40mppa Conditions would be in effect well beyond the 2027-2031 period, with no visibility or certainty within that period as to whether or not the 40mppa Conditions will ultimately be revoked, and if so, on what basis. As noted further below, we consider that such a scenario may have different implications for the determination, and the broader development and operation of the airport, than acknowledged by Dublin Airport in its response to the Draft Determination.

3.12 Additionally, we note that when multiannual determinations were made in 2019 and 2022, Dublin Airport did not raise or request such a triggered planning cap mechanism, despite being already subject to the 32mppa Conditions, and in both cases, with traffic forecast to exceed that level over the upcoming determination period. As it has transpired, the 32mppa Conditions did then impact passenger traffic within the 2023-2026 period to some extent. The seat cap implemented for Winter 2024-2025 led to no passenger volume growth in that season (i.e. flat on Winter 2023). The uncertainty over subsequent seasons has likely also impacted traffic volumes to some extent, although that is difficult to assess. However, on an annual basis, Dublin Airport has still outperformed the traffic forecast throughout the period; had a triggered mechanism such as described by Dublin Airport been in place for W24, it would have simply added to the resulting financial outperformance in circumstances where daa did not comply with the 32mppa Conditions in any event.

3.13 Other than Capex, we note that other positions set out in Dublin Airport's response to the Draft Determination, in particular in relation to Opex, and service quality targets, remain premised on the basis that passenger traffic (including peak period volumes) will continue growing over the period. These appear to be internally inconsistent with the position adopted by Dublin Airport that passenger volumes will in practice be limited to 40mppa. For example:

- The position that many of the proposed service quality targets are too challenging because the airport will have to operate within increasingly constrained infrastructure due to growing traffic..
- The position that staffing requirements in certain Opex categories will grow elastically because of increasingly constrained infrastructure.

3.14 Objectively, instead of the foregoing, the main external change in circumstances since the Draft Determination is that there is now a legislative mechanism in place which allows the Minister to amend or revoke any passenger cap, and to do so much more quickly than was

possible under the existing planning system established by the 2019 Act, as addressed further below.

Likelihood/Certainty

3.15 Further, and substantively, we disagree with Dublin Airport's suggestion that there is now a high or significant degree of certainty that, once passenger demand reaches 40 million, annual passenger volumes will in practice be 40mppa over the upcoming period:

- Given the positions adopted by various parties, including daa, there are complex legal and technical issues which would require to be resolved in respect of any passenger cap, whether the existing 32mppa Conditions, or the possible future 40mppa Conditions. Those will require to be resolved either in the proceedings which are already ongoing and/or in potential future proceedings. In its response to the Draft Determination or otherwise, Dublin Airport has not yet laid out any legal basis or specific technical path which would enable it to ensure that annual passenger volumes of 40mppa are actually delivered, and not exceeded, over 2028-2031.
- Dublin Airport's assessment relies on a series of explicit and implicit assumptions to reach a specific conclusion on the basis of which it has calculated the 40mppa Triggers, and we disagree with Dublin Airport in respect of the likelihood that all of those assumptions will transpire in the way suggested.

3.16 Two years ago, in the IAA's observation (of 8 January 2025) provided to FCC on the Infrastructure Application, we submitted that, despite daa having requested that the 40mppa Conditions be imposed, there should not be any annual passenger cap imposed on the airport as part of the determination of that application. We noted the following, in summary:

- It is unclear how any such conditions could be imposed on, or accepted by, daa, where daa's position is that it cannot comply with such conditions. If daa is correct in that analysis, then the only way a particular volume of annual passenger traffic could be ensured is through daa obtaining the voluntary cooperation of all airlines and aircraft operators, which has not been forthcoming to date in respect of the 32mppa Conditions. At all events, slot coordination parameters cannot ensure that a given volume of annual passengers ultimately use the airport in a given year.[9]
- An annual passenger cap is a strictly disproportionate measure. If such a measure ever binds on passenger demand[10], it will severely curtail the usability of the airport, preventing scalable use for peak Christmas/Easter periods, and preventing any flights being added for special events. If an annual passenger cap were being considered as a direct mitigation measure, it will always be both less effective, and less efficient, than other available measures which are more granular and better targeted.[11]

3.17 Dublin Airport's suggestion that passenger volumes will be 40mppa over the upcoming period (the "40mppa Capped Scenario") appears to rely on, at least, all of the following assumptions:

- The Minister will decide to amend the 32mppa Conditions to the 40mppa Conditions, in good time for/ahead of 2028, and that order will then survive any legal challenge;
- The Minister will then decide not to remove (or further amend) the 40mppa Conditions over 2028-2031, despite the statements referred to by Ryanair regarding the clear intention of

[9] We have also outlined that the taking account of such constraints in coordination parameters requires that constraint to be capable of enforcement/compliance under the planning code.
[10] That is, as soon as demand reaches the level specified, as was the case during Winter 2024-2025.
[11] As Dublin Airport also explained in the CIP27 submission, which we note is similarly applicable to road access infrastructure: *'Defining the airport using "million passengers per annum" (mppa) as a metric is beneficial for comparing different airports; however, its simplicity has little relevance when it comes to planning the physical infrastructure and processing systems of an airport. These systems are significantly influenced by the hourly throughput of passenger processing across various terminal subsystems, as well as the aircraft utilising the runways, taxiways, stands, and gates.'*

Government that the airport is not to be subject to an annual passenger cap, and the fact that the mechanism now provided for in the 2026 Act will be available;

- A legal path, consistent with both EU law and Irish planning law, will be identified through which it can be ensured that not more than 40 million passengers actually use the airport in a given year;
- That legal path will be identified in a timely manner, and not require further proceedings over the upcoming period, during which daa continues to not comply with whatever passenger cap is in effect as has been the case over the current period;
- If ACP determines the Infrastructure Application (assuming any decision of FCC is appealed) within the period 2028-2031, ACP will decide to continue to impose/retain the 40mppa Conditions rather than revoke/replace/not impose them, notwithstanding the position of daa that it cannot ensure its own compliance with that measure, and despite the disproportionate and unintended side-effects as would be caused by any annual passenger cap binding on demand.

3.18 As we have outlined previously, and in the various proceedings, the existing 32mppa Conditions were not a mitigation measure. They were never intended to prevent passengers from using the airport by constraining the airport as a whole, nor to lead to a complete non-availability of any slots for new operations, for any potential new airline entrants, nor to lead to the withdrawal of historic slots. Such effects run contrary to the interests of passengers by reducing choice and value. Nor were they intended to interfere with the basic ability to use the airport on an ad hoc basis for any peak periods and any special events, nor to prevent individual ad hoc flights such as for sports teams etc, as was the case during Winter 2024. As far as we are aware, there is no other EU airport, including all of the other Irish airports, where an annual passenger cap has been imposed.

3.19 Those effects have led to Government taking the atypical step of passing the 2026 Act to both 1) enable the Minister to amend or revoke a specific planning condition of this nature and, 2) preclude the imposition of such caps in the future. As Ryanair has noted, various commitments and statements have been made regarding the intention to remove the passenger cap.[12]

3.20 While it may be considered that amending the 32mppa Conditions to the 40mppa Conditions is the quickest available interim measure to address the former, if those 40mppa Conditions are subsequently not revoked by either the Minister or the planning bodies, and if they are taken account of/complied with by daa, then they will interfere with the use of the airport in the same way as the 32mppa Conditions, as soon as they bind on traffic demand. That interference was considered sufficiently serious to warrant the enactment of 2026 Act. Dublin Airport's unexplained assumption appears to be that a further order would not be progressed by the Minister in those circumstances, where the 2026 Act is already available.

3.21 Instead, it is likely that the information referred to by Dublin Airport will be required much sooner than was suggested by Dublin Airport in its response to the Draft Determination. If Dublin Airport wishes to avoid a repeat of the situation it has found itself in over recent years, in terms of planning non-compliance and/or disproportionate impacts on the usability of the airport, then it should have already commenced the associated preparations.

Potential Implications of 40mppa Capped Scenario

3.22 In estimating the 40mppa Triggers, Dublin Airport has used the Draft Determination models to create a separate determination scenario in which it has assumed that annual passenger

[12] For example: https://www.rte.ie/news/dublin/2026/0108/1552104-passenger-cap-dublin-airport/

traffic is 40 million over 2028-2031, which has a further impact in reducing both Opex, and Commercial Revenues. It has calculated the triggers as the difference between the price cap in that scenario, as against the Draft Determination scenario.

3.23 Leaving aside the likelihood of it occurring as discussed above, we consider that a scenario in which the airport is in practice constrained to 40mppa over the determination period (and for an indefinite period thereafter) generates at least two significant further impacts on capital costs, which Dublin Airport does not appear to have considered:

- Dublin Airport's exposure to systematic risk over 2028-2031.
- The business case for/risk of investing in the capacity projects in CIP27, in particular those contained within the Infrastructure Application.

3.24 Firstly, in the scenario where the trigger(s) were to activate, they would, to a large extent, de-risk Dublin Airport in respect of passenger volumes, other than in the case of a major downside such as Covid-19 (which would likely warrant an interim review in any case, rather maintaining the *ex ante* volume risk allocation).

3.25 The proposed 40mppa Conditions relate to the outturn in total airport passenger volumes, the same metric used for the price cap. Such a measure binding on traffic would, as far as we are aware, make Dublin uniquely capacity constrained in the context of a price regulated airport. Assuming that daa can comply with it, pricing that outcome into the determination would mean that there would be a very low prospect of traffic differing materially from the effective traffic forecast of 40mppa.

3.26 Upside would be limited by the planning law obligation on daa to materially (in planning law terms) comply with the conditions, while downside would be limited by excess demand relative to an apparently uniquely definitive annual passenger capacity constraint. Even in the event of a significant downside demand shock which would see demand naturally fall back below the 40mppa level (similar to that which occurred during the 2009 determination period), in the context of a scenario where the airport is subject to an effective cap of 40mppa over the short and medium term, airlines would likely maintain all available slots which fit within the 40mppa constraint in order to retain the best prospect of historic precedence for future seasons.

3.27 For example, Heathrow is often cited as a particularly constrained airport, given runway capacity and an annual movement cap, but it remains subject to material volume risk at passenger level, through aircraft gauge and load factors.[13] An annual passenger cap which binds on demand means that the airport is literally full at the passenger level for the full year, beyond the movement-level constraints which bind Heathrow.

3.28 An entity which faces little volume risk becomes insulated from positive or negative demand shocks which would otherwise have fed through to the level of return it can earn. Consequently, Dublin Airport's exposure to such systematic risk would be significantly reduced relative to the scenario outlined in the Draft Determination, and in previous determinations.

3.29 On the basis that volume risk is the main driver of different relative risk exposure between airports and utilities, this would bring its exposure to systematic risk closer to that of utilities,

[13] For example, in H7, the UK CAA assessed the impact of capacity constraints at Heathrow, relative to the comparator sample, as driving an asset beta differential of up to 0.1. https://www.caa.co.uk/publication/download/19741
The UK has also assessed the impact of the Traffic Risk Sharing scheme, in which passenger traffic risk is shared between Heathrow and airlines.

as opposed to the airport comparators.[14] As outlined in the Draft Determination, the asset beta is the WACC component which measures exposure to systematic risk. If Dublin Airport's asset beta falls from 0.5 to the top end of the utility asset beta range as set out in the Draft Determination (i.e. 0.35), this would reduce the main WACC as per the Draft Determination from 4.56% to 3.49%.[15] If Dublin Airport's asset beta instead were to fall more modestly to 0.4, the top of the relative risk differential between Heathrow and comparator (less constrained) airports as assessed by the UK CAA in H7, the WACC would be 3.85%.

3.30 Table 3.1 sets out the impact of those sensitivities on the price caps.

Table 3.1: Draft Determination Price Cap Sensitivities

	2027	2028	2029	2030	2031
Price Caps (Draft Determination)	8.63	7.46	7.41	6.97	7.50
Price Caps (Asset beta 0.35)	7.79	6.61	6.56	6.12	6.64
Difference	**-0.84**	**-0.85**	**-0.85**	**-0.85**	**-0.86**
Price Caps (Asset beta 0.4)	8.07	6.89	6.84	6.40	6.92
Difference	**-0.56**	**-0.57**	**-0.57**	**-0.57**	**-0.58**

Source: IAA Calculations. Price caps including pre-existing triggers.

3.31 The impact of an asset beta of 0.35 is an average reduction of €0.85 over 2028-2031 (excluding 2027 on the basis that it will not be capacity constrained). That compares with an average uplift of €0.95 as estimated by Dublin Airport at paragraph 4.3.15 of its response to the Draft Determination, based on the net passenger, Opex, and Commercial Revenue impacts only.

3.32 Secondly, and more fundamentally, the assessed benefit to Users of the projects in the Infrastructure Application has relied on the premise that airlines will be able to use that new infrastructure to service passenger demand. The capacity assessment set out by Dublin Airport in support of CIP27 was based on continued traffic growth; the future busy day modelled by To70 provides for 15% more passengers and 10% more movements than the Summer 2026 busy day. Dublin Airport's position now raises the concern that it could decide to progress/deliver the Infrastructure Application projects while still subject to a cap of 40mppa, without any visibility as to whether, and if so when and subject to what conditions, that infrastructure could ever be used by such volumes of passengers.

3.33 If Dublin Airport were to be capped at 40mppa for an extended period of time, while investing in the Infrastructure Application infrastructure, then the business case/purpose of that infrastructure would be reliant on an assumption that a future decision will be made to revoke (or significantly further amend) the 40mppa Conditions. Determining the Infrastructure Application in the manner which Dublin Airport has requested (i.e. subject to the 40mppa Conditions) would permit Dublin Airport to construct major capacity enhancing infrastructure, but then require Dublin Airport to reduce annual passenger volumes below the level which can already be processed without any of that infrastructure. Such an approach could put Users at very significant risk of underwriting investment from which they would not be permitted to benefit. This is addressed further below.

[14] Page 4 of the Frontier report submitted by Dublin Airport in response to the Draft Determination sets out the view that volume risk is the main driver of different relative risk exposure between airports and utilities.

3.34 Finally, Dublin Airport proposes that the triggers would activate *'where the IAA have taken into account a passenger cap limit of 40mmpa as a coordination parameter tor slot allocation at the airport such that the cap has constrained actual demand e.g. if the IAA were to include such a parameter in the slot coordination process that is held in 2027 for Summer 2028, then this adjustment would be included in the price cap calculation for 2028.'* However, there are a number of clear difficulties with this proposed trigger event, which we consider to be excessively blunt:

- Slot allocation occurs on a seasonal, not annual, basis. In the example given by Dublin Airport, if there were no such coordination parameter for Winter 2027-2028 and Winter 2028-2029, approximately one third of passengers within 2028 would be subject to a price increase in respect of an inapplicable constraint.
- The parties to the ongoing proceedings are all in agreement that taking account of the constraint as a coordination parameter cannot determine the ultimate outcome in terms of passenger volumes. This means that, unless Dublin Airport takes further action to ensure that outcome, passenger volumes will not actually be 40mppa. This raises the prospect that the hard-coded price cap uplift would be overstated in itself, which would then be compounded by that uplift being recovered from more than 40 million passengers.

Downside Sensitivity

3.35 In addition to the downside tests set out in Section 11 of the Draft Determination, we have also tested the scenario outlined by Dublin Airport. A scenario where passenger volumes are 40mppa over 2028-2031 would generate the following downside relative to the Draft Determination passenger forecast.

Table 3.2: Passenger Volume Downside

	2027	2028	2029	2030	2031
Draft Determination Passenger Forecast	39.4	40.8	42.0	43.2	44.5
40mppa Passenger Forecast	39.4	40	40	40	40
Downside	0	1.92%	4.77%	7.51%	10.06%

Source: IAA

3.36 As outlined in the Draft Determination, we have already tested a downside where passenger volumes are 10% below our forecast in every year in the period 2027-2031. That downside was, in turn, less impactful than a 10% Commercial Revenue downside in every year, which ultimately drove the 79% pre-funding trigger allowances. Leaving aside indirect effects on other Building Blocks, the effect of the airport being limited to 40mppa is therefore much less impactful than the downsides which were already designed into the Draft Determination.

3.37 However, in line with Dublin Airport's approach, we also test the impact where the lower passenger volume feeds through to lower Opex and Commercial Revenues, as per the Draft Determination models. This generates an estimated Opex saving of €12m or 2.5% by 2031, and a Commercial Revenue reduction of €48m, or 8.4%, by 2031. This leads to no financing challenge in the Untriggered Scenario, but does lead to forecast FFO/Net Debt falling slightly below 13% in the Triggered Scenario by 2031.

3.38 Applying the same methodology as was used in the Draft Determination, that could be resolved by bringing forward some of the clawback of capital costs from 2031, to 2028 and 2029, but without requiring any increase to the pre-funding triggers set at 79%. In summary, the estimated direct and indirect impact of passenger volumes being 40mppa over 2028-2031 is similar to the impact of the downside tests we have already tested in the Draft Determination. We have published, alongside this paper, the main financial model which

shows the impact of this scenario.

3.39 In the Final Determination, if our methodology remains in line with the Draft Determination, we could consider the 40mppa Capped Scenario among the stress tests; as outlined above, it would be unlikely to lead to major changes relative to the stress tests we have already applied. Including it might support a slightly higher clawback in earlier years to allow for a more significant triggered pricing increase in 2031, the year most impacted under the 40mppa Capped Scenario if the Infrastructure Application projects are progressing to the timeline previously set out by Dublin Airport.

Draft Conclusion

3.40 In summary:

- We disagree with Dublin Airport that there is a demonstrated material change relative to the Regulatory Proposition and Draft Determination (or previous determinations in 2019 and 2022) that warrants such a mechanism. Instead, there is an unexplained asserted new position from Dublin Airport itself that it would not now take steps to address the 40mppa Conditions it has requested, in the short or medium term, the resolution of which underpins its approach to the determination to date, and the business case set out for investing in new infrastructure. Objectively, the main change is that there is now a mechanism available to address any passenger cap much more quickly than would be possible under the 2019 Act.
- We do not agree with Dublin Airport on the likelihood/practicability of the airport being left subject to a binding passenger cap with which it is complying over an extended period of time, a situation which would be unique in the context of EU airports and which would likely generate serious and disproportionate side effects when it interacts with EU law.
- Such a mechanism creates challenges around incentives which are difficult to resolve, i.e. it may generate a significant financial incentive on Dublin Airport to become/stay capped until a particular point in time, and also (combined with Capex triggers) generate an incentive to progress the delivery of capacity enhancing projects without any visibility as to whether, and if so when, those projects would be permitted to support additional passenger volumes.
- There is broader uncertainty, as opposed to two discrete possible scenarios. For example, if the Minister were to decide not to make a 40mppa order, or was delayed in doing so, and daa were required to comply with the 32mppa Conditions instead, then the 40mppa Triggers would be entirely mis-specified and we would need to consider whether an interim review is required in any case which would likely include the removal of any such mis-specified triggers. An Interim Review based mechanism, if that transpires to be warranted, is typically the better approach in the context of complex multi-permutation scenarios.

3.41 We continue to believe, as Dublin Airport did previously, that the correct approach is for the determination to proceed on the assumption that the passenger cap issue will be resolved, as per the stated intention referenced by Ryanair. If that does not happen, we reiterate that there is a flexible interim review mechanism which can deal with a situation where the determination has become misaligned with its objectives as a result of any such developments. If necessary, an interim review can be carried out within a single year and take effect from that same year, as occurred in 2020. Such reviews can take account of all of the circumstances, rather than attempting to hard code various highly uncertain and contestable assumptions into a specific *ex ante* trigger mechanism at this point.

3.42 Leaving aside the merits of doing so, one possible outcome of such a review could be to insert the same uplifts as calculated by Dublin Airport, within the same year. The interim review approach could therefore deal with this issue at least as effectively as the approach set out by Dublin Airport in the specific circumstances set out by Dublin Airport, if the merits

of that approach were to be accepted. In all other circumstances, an interim review amendment would be a more effective mechanism rather than a pre-determined ex-ante mechanism which would be misaligned with those different circumstances.

3.43 We instead consider that Dublin Airport's suggestion that it would be capped at 40mppa over the short and medium term to generate concerning risks for the alignment of CIP27, with the interests of future Users, and in particular the capacity projects contained in the Infrastructure Application. Should Dublin Airport decide to proceed with the Infrastructure Application projects before it has any visibility over whether, and if so when, it will be permitted to use that infrastructure in the manner which it set out in consultation, and which we set out in the Draft Determination, our draft assessment is that Dublin Airport should do so at its own risk, rather than at the risk of future Users funding infrastructure from which they may derive little or no benefit.

3.44 We therefore propose that the continuing remuneration of the Infrastructure Application projects in the RAB for future determinations should be made contingent on the airport not being subject to an annual passenger cap which is binding on the level of demand, unless, at the time of that determination, there were compelling reasons to continue allowing for their remuneration. However, we do not propose to add further conditionality to the within-period triggers themselves over 2027-2031. If those triggers were to activate, and subsequently Dublin Airport were to remain capped at 40mppa, we would expect to assess, in subsequent determination(s), whether to claw back the associated remuneration generated by the triggers.

3.45 For the reasons set out above, we do not propose to include *ex ante* triggered price cap adjustments linked to a potential passenger cap. However, if such an adjustment mechanism were to be included, relative to the approach suggested by Dublin Airport, we consider that it should:

- Take account of not only the impact on passenger forecasts, Opex, and Commercial Revenues, but also the impact on capital costs, in particular the asset beta and the implications for/risk associated with progressing CIP27 in a scenario where the airport is still subject to such an annual cap.
- Be more carefully constructed in terms of the trigger event, and the calculation mechanism.

3.46 In respect of the downside tests, given the above, our draft assessment is that we should not make any changes to the determination on the basis of the 40mppa Capped Scenario downside. We do not think that it would align with the interests of Users to continue to facilitate the full Triggered Scenario in a situation where Dublin Airport were to be capped at 40mppa beyond the upcoming determination period, and with no certainty or visibility of when a potential decision might be made which would allow that infrastructure to actually be used for additional passenger traffic volumes. As outlined above, in any case, such a downside scenario would likely have a similar impact to some those which we have already tested in the Draft Determination.