

Commission for Aviation Regulation  
3<sup>rd</sup> Floor  
6 Earlsfort Terrace  
Dublin 2

20th September 2022

**RE: Draft Decision on Summer 2023 Coordination Parameters at Dublin Airport**

Dear CAR,

I'd like the opportunity to respond to the draft decision published by the CAR dated September 7<sup>th</sup>, 2022. The following is the submission I made to the Summer 2022 decision, and which is still valid:

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"The primary concern is the interpretation of Condition 5 of the planning permission for the North Runway and its impacts for future capacity at Dublin Airport.

"For Summer 2022, the parameters were rolled forward from Summer 2021. This decision was reached following a detailed consideration of Condition 5 of the planning permission for the North Runway, and its implications for capacity at the airport. The impact of this condition remains in line with the conclusions reached in our decision for Summer 2022. As the 92-day modelling period defined in Condition 5 of the planning permission for the North Runway occurs in the Summer, the constraint will not affect the level of traffic in Winter 2022. Thus, Condition 5 will not serve to reduce capacity relative to the 2021 capacity parameters in Winter 2022."

The draft decision on Summer 2022 is contained in CAR document CN5/2021

"As the runway is not expected to be completed before late August 2022, approximately 75 of the 92 days in the modelling period referred to in Condition 5 will already have elapsed in Summer 2022 before Condition 5 is expected to crystallise. Thus, the first full and relevant 92-day compliance period over which the average specified in Condition 5 could be calculated would be no sooner than Summer 2023".

This interpretation of Condition 5 is contrary to the intentions of An Bord Pleanála and contrary to the ongoing planning application by the daa as part of the EU598/2014 process. All forecasts supplied by the daa assume a 65-flight limit applied as soon as the North Runway is opened.

Condition 5 is as follows:

5. On completion of construction of the runway hereby permitted, the average number of night time aircraft movements at the airport shall not exceed 65/night (between 2300 hours and 0700 hours) when measured over the 92 day modelling period as set out in the reply to the further information request received by An Bord Pleanála on the 5<sup>th</sup> day of March, 2007.

**Reason:** To control the frequency of night flights at the airport so as to protect residential amenity having regard to the information submitted concerning future night time use of the existing parallel runway.

The CAR are confused by the mention of the 92-day modelling period. The condition references the further information request received by An Bord Pleanála on Mar 5th, 2007. Below is the information request from An Bord Pleanála and the response from the daa:

## 5. Information request 5 – Night Noise

### 5.1 Item 5 of the information request states:

**Quantify the potential for increase in night flights on the existing 10R/28L runway which could derive from the growth of air traffic at the airport arising from the proposed runway relative to that which would occur without the new runway.**

#### **Night Flights**

- 5.2 The Bord has asked for an estimate of the increase in night flights that could derive from the growth of traffic with, relative to without, the proposed runway. The answer to this question is 30 movements per night on average, equating to the difference between the unconstrained and constrained positions in 2025, discussed below.
- 5.3 The bulk of night-time movements occur, and are forecast to occur, in the first and last hour of the night period (defined as 2300 to 0700 hours) and effectively represent either the end or beginning, respectively, of daily schedules. They would, therefore, be expected to grow at a similar rate to the daytime (defined as 0700 to 2300 hours) movements. Accordingly, when preparing the EIS the use of the runway at night was assumed to grow at the same rate as use during the day. This means that night traffic grows from an average of 45 movements per night over the 92 day modelling period to 65 movements per night in 2025 in the constrained case and 95 movements per night in 2025 in the unconstrained case. The detailed INM input sheets, some of which were previously included in Appendix G, are attached for reference.
- 5.4 A greater relative growth could have been assumed for night-time traffic in the constrained case as the relatively higher scarcity of daytime slots might cause airlines to modify schedules to include more night-time activity to compensate. This approach would reduce the difference between the constrained case and the unconstrained case but was not used as it would not represent a credible worst case for the assessment of impacts.

The request was to quantify the potential for increase in night flights on the existing 10R/28L runway which could derive from the growth of air traffic at the airport arising from the proposed runway relative to that which would occur without the new runway. This request was made to see if there would be an increase in night-time flights even if the North Runway was not granted planning.

The answer from the daa (Aer Rianta) was that activity would grow from 45 movements per night to 65 movements without the North Runway. But if the North Runway was granted planning permission, then the night-time activity would grow to 95 flights.

The daa made reference to the '92-day modelling period' as they delivered their statistics using annual figures and the 92 day summer period. This reference is there purely to define the average over this period. An Bord Pleanála have just reiterated this in Condition 5, but it was never intended that the 65 limit be applied to the Summer period only, as suggested by CAR.”

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Following the above submission, I received feedback from CAR and provided the following response:

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“I note CAR's decision on coordination parameters for Winter 2022 and specifically the interpretation of Condition 5. The response to my submission states that CAR had sought noise consultants to interpret the condition.

I note that Helios provided the interpretation but what is very worrying is that Helios were not provided with any background material from the Oral Hearings of 2007 as stated in their advice (attached).

Could you please explain why this material was not provided to Helios?

I've attached the AI responses from January 2007 and the particular question that is of interest to this discussion is request #5 where it mentions the 92-day summer average. This document along with the Oral Hearing transcripts should have been provided to Helios. I believe that this information would have provided clarity to Helios about the origins of Condition 5 and why this should be interpreted as a nightly 65 flight limit.

I would also like to point out that CAR did not engage with local communities when discussing Condition 5. The Aviation Regulation Act 2001 states in section 33(d) that the determination should have due regard for '*the contribution of the airport to the region in which it is located*'. The CAR has had no due regard for local communities.

Will CAR accept legal responsibility for this decision and the consequences of the daa's actions if they breach the 65 night-time flight limit?

What plans have CAR in place if a legal challenge is brought to this decision?”

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The response from CAR is that the Information Request from 2007 was provided to and reviewed by Helios. In my response I stated:

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“It is very strange that the advice report from Helios makes no reference to the further information request from 2007. In their report they state:

*"Having not seen transcripts of the oral hearings that preceded establishment of Condition 5 it is difficult to judge the breadth and depth of topics discussed, but we assume that, as a minimum, the following were covered with regards to mitigation of night noise:*

- 1. Ways to measure the night noise levels (where the 92 day modelling period comes from), and*
- 2. Ways to minimise night noise levels (where the 65 movements/night cap comes from)."*

There was no reference to the information requests from 2007 in the FOI material I received from CAR on this topic. Could you please forward the relevant emails, to and from Helios, to me?

The daa were intending to adhere to the 65 night-time flight limit. The loss in flights is included in their current planning application, starting from 2022.

The daa in their investor prospectus (<https://www.daa.ie/wp-content/uploads/2021/09/Tap-2028-Prospectus.pdf>) also highlight the issue with the 65-flight limit.

### ***Matters relating to the new parallel runway development at Dublin airport may impact the Group***

In August 2007, a 10-year planning permission was granted for a new parallel runway at Dublin airport. In March 2017, the planning permission was extended by a further five years to August 2022. Initial enabling works on the new parallel runway commenced in late 2016 and the main runway construction works commenced in February 2019. Construction of the new parallel runway is nearing completion, and this will be followed by a commissioning and testing phase which is expected to be completed in the summer of 2022.

A condition of the 2007 planning permission is that on completion of the new parallel runway, the average number of late night and early morning aircraft movements at Dublin airport shall not exceed 65 between 23:00 hours and 07:00 hours. A further condition restricts the use of the new parallel runway between 23:00 and 07:00 hours, save where safety, emergency or other similar circumstances require that it be used during those hours.

The Group has been involved in a process seeking to amend and replace these conditions and mitigate the risks associated with them. In this respect, daa lodged a planning application with Fingal County Council ("FCC"), the "competent authority", in December 2020 for the purposes of the Aircraft Noise (Dublin Airport) Regulation Act 2019. In the absence of a planning determination before August 2022, the date that the 2007 planning permission expires, the new parallel runway would become operational with the onerous conditions in place for the period up to when a determination is received from FCC. It is not clear what the timeframe for the potential conclusion of the planning application process is and the current estimate is that a decision will issue from FCC in quarter 3, 2022. If the decision is appealed by a third party, as expected, a decision from the appeal board, An Bord Pleanála, is anticipated in quarter 1, 2024. This uncertainty could have an adverse impact on the Group's ability to plan for the deployment of capacity at Dublin Airport. These conditions could result in a period, potentially up to quarter 1, 2025, where Dublin airport would be forced to operate at a reduced capacity for certain times of the day thereby impacting the throughput capability in that period. In such circumstances, no assurances can be given that there would be no material adverse effect on the Group's business, results of operations, prospects and/or financial condition.

So, the details of lost passenger and flights in the planning application are false now if the daa do not adhere to the 65-flight limit. Also, they would need to update their risk assessment in their financial prospectus.

I believe it's a safe assumption that the daa are now relying on CAR's interpretation of Condition 5. And of course, all the aviation stakeholders agreed. But that's not the view of residents who attended the Oral Hearings in 2007 and the advice obtained.

CAR will have to take responsibility for any breach of the planning condition after August 24th. The health and well-being of residents is at stake and waiting until Summer 2023 is not acceptable. A simple solution is not to open the runway until the daa's planning application has concluded. The single runway is capable of handling 32m passengers. Otherwise, organisations will be forced to uphold ABP's planning conditions.”

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I am still waiting on a response from CAR with the emails and materials shared with Helios which would contradict Helios’ claim of not seeing the transcripts of the oral hearings that preceded the establishment of Condition 5.

The daa are going to extraordinary measures to change Condition 5 and replace it with a Noise Quota Scheme. The only reason they are doing this is because of the 65-flight limitation imposed by An Bord Pleanála. It is incredulous that CAR somehow interpret Condition 5 as having no influence over night-time flights. Why would ABP impose the operating restriction and why would the daa seek planning permission to remove it if it does not cause flight restrictions?

Condition 5 is deemed an Operating Restriction by ANCA, as is Condition 3(d). The very term ‘Operating Restriction’ means it restricts movements.

The daa have gone to great lengths in their current planning application to show the movement losses when the North Runway is operational. In a 2016 Public Consultation document, the daa clearly state that Condition 5 will lead to a 65-flight limit:

**Planning Conditions 3(d) and 5 for North Runway will damage Dublin Airport’s connectivity and limit the future potential of the Airport.**

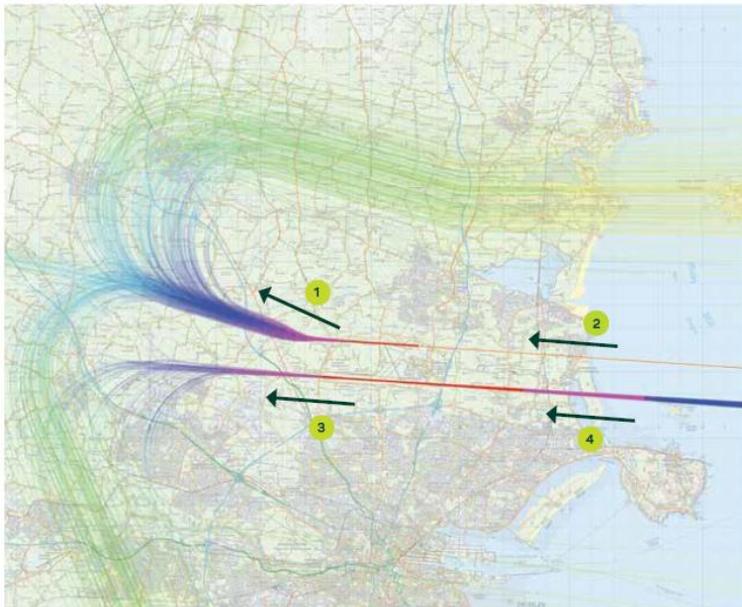
- Planning permission for North Runway has been granted, however, two of the 31 conditions are onerous and we believe unwarranted given the level of growth forecast and the importance of the airport to the economy of Ireland. These onerous conditions limit the potential of the airport to operate, grow and deliver the maximum economic and societal benefits for Fingal, for Dublin and for Ireland as a whole.

**Condition 3(d)** would prohibit the use of North Runway for landings and take-offs between the hours of 11 pm to 7 am.

**Condition 5** states that, on completion of construction of the new runway, the average number of night time aircraft movements at the airport shall not exceed 65 per night (between 11 pm to 7 am).

Also in the Consultation document is a comparison of flight movements between the existing 2007 planning conditions and the proposed operations with the restrictions removed. It is very obvious that the total sum of all movements between 23:00-07:00 on all runways is restricted to 65 with the existing 2007 planning conditions for both 2022 and 2037 thus proving that the daa interpreted Condition 5 as restricting movements to 65:

**Aircraft Altitudes and Flight Movements in Westerly Operations (approx. 70% of the time) on a Representative Summer's Day**



**1. NORTH RUNWAY DEPARTURES**

Time	2016		2022		2037	
	Current Operations	With Existing Planning Conditions	With Existing Planning Conditions	With Proposed Operations	With Existing Planning Conditions	With Proposed Operations
	No. Flights	No. Flights	+/- No. Flights	+/- No. Flights	No. Flights	+/- No. Flights
0400-0500	N/A	0	0	0	0	0
0500-0600	N/A	0	0	0	0	0
0600-0700	N/A	0	+16	0	0	+19
0700-2300	N/A	311	+22	378	0	+11
2300-2300	N/A	6	0	12	0	-3
2300-0000	N/A	0	0	0	0	0
0000-0400	N/A	0	0	0	0	0

**2. NORTH RUNWAY ARRIVALS**

Time	2016		2022		2037	
	Current Operations	With Existing Planning Conditions	With Existing Planning Conditions	With Proposed Operations	With Existing Planning Conditions	With Proposed Operations
	No. Flights	No. Flights	+/- No. Flights	+/- No. Flights	No. Flights	+/- No. Flights
0400-0500	N/A	0	0	0	0	0
0500-0600	N/A	0	0	0	0	0
0600-0700	N/A	0	0	0	0	0
0700-2300	N/A	12	-12	25	0	+6
2300-2300	N/A	0	0	0	0	0
2300-0000	N/A	0	0	0	0	+6
0000-0400	N/A	0	0	0	0	0

**3. SOUTH RUNWAY DEPARTURES**

Time	2016		2022		2037	
	Current Operations	With Existing Planning Conditions	With Existing Planning Conditions	With Proposed Operations	With Existing Planning Conditions	With Proposed Operations
	No. Flights	No. Flights	+/- No. Flights	+/- No. Flights	No. Flights	+/- No. Flights
0400-0500	0	0	0	0	0	0
0500-0600	6	3	+2	3	0	+2
0600-0700	37	25	-1	25	0	+8
0700-2300	284	39	-15	55	0	+26
2300-2300	4	0	0	0	0	0
2300-0000	1	0	0	0	0	+2
0000-0400	2	1	0	1	0	+2

**4. SOUTH RUNWAY ARRIVALS**

Time	2016		2022		2037	
	Current Operations	With Existing Planning Conditions	With Existing Planning Conditions	With Proposed Operations	With Existing Planning Conditions	With Proposed Operations
	No. Flights	No. Flights	+/- No. Flights	+/- No. Flights	No. Flights	+/- No. Flights
0400-0500	4	3	+2	3	0	+6
0500-0600	6	7	+5	7	0	+8
0600-0700	3	4	+3	4	0	+5
0700-2300	285	310	+15	379	0	+17
2300-2300	15	29	-9	33	0	-5
2300-0000	22	12	+15	13	0	+20
0000-0400	18	10	+1	9	0	+3

On the current portal for the removal of the operating restrictions (<https://northrunway.exhibition.app/#board-2>), the daa clearer state that the implications of Condition 5 is to restrict movements between 23:00-07:00 to 65. It further states that:

*“If the two conditions are not amended, airlines will be forced to restrict a large number of their services to a shorter operating day. This means they would have to reduce the number of flights an aircraft based at Dublin could operate.”*

This is very clear, yet CAR have interpreted Condition 5 as effectively non-existent. What knowledge does CAR have on Condition 5 that is contrary to the daa? If the CAR’s interpretation is correct and the 65 flight limit does not apply, why then are the daa applying for planning permission to remove them and why did the Government specifically legislate to amend and revoke these operating restrictions in the Aircraft Noise Bill?



## OUR APPLICATION

# Purpose of Application

Two of the 31 conditions associated with North Runway's 2007 grant of permission are particularly onerous and limit Dublin Airport's ability to operate, grow and deliver maximum economic and societal benefit as Ireland recovers from the Covid-19 crisis.

### The two conditions are:

- Condition 3(d) prohibits the use of North Runway between 11pm and 7am
- Condition 5 limits the number of aircraft movements at the entire airport to 65 between 11pm and 7am

### Health implications:

What evaluation of the health implications for residents have been undertaken by CAR on its decisions for Summer 2022 and draft decision for Summer 2023? This is not just a numbers game and the CAR need to address the reason why condition 5 was imposed. I refer to a HSE submission to the ANCA public consultation -

<https://consult.fingal.ie/en/system/files/materials/15666/23216/Environmental%20Health%20Submission%20Feb%202022.pdf>. In this submission the HSE state:

*"As the existing Planning Conditions are in place to protect public health, it is important that the reasons for a change in this protection are clearly stated".*

What reasons have CAR provided to change these conditions with respect to the protection of Public Health?

The HSE also state that:

*"The Conditions 3(d) and 5 were put in place to protect public health so if the planning authority are going to increase the hours of operation they must ensure all who are significantly impacted have the opportunity of mitigation".*

The HSE clearly state that Conditions 3(d) and 5 were put in place to protect Public Health. It is not for CAR to decide how to interpret these conditions in relation to Public Health. CAR does not have the expertise nor the legal remit to interpret these conditions. This is for the planning authority and ANCA.

I refer to a health webinar (<https://vimeo.com/681045151>) by Professor Munzel from Germany, who is a leading Cardiologist and expert on the effects of aircraft noise on the cardiovascular system. In the webinar Professor Munzel outlines the health implications of night time aircraft noise and concludes that all night time flights should be stopped. Will CAR take responsibility for the health impact of local residents for its decision to allow more than 65 flights at night at Dublin Airport?

It is also worth highlighting that planning enforcement notices have been submitted to Fingal County Council and therefore CAR's decision for Summer 2022 and Summer 2023 are premature pending the outcome of these investigations. What is CAR going to do if the Planning Authority rule against the daa and force the daa to restrict operations to 65 flights at night? What are the legal implications for CAR for such an outcome? The prudent decision is to adhere strictly to 65 flights at night until any investigations are concluded. CAR could also be in a legal bind if a legal challenge is brought against the daa for their illegal activity. The daa and airlines will point to CAR's decision and CAR could be adjudged to be legally responsible for misinterpreting Condition 5.

In section 3.83 of the draft decision, it states that cargo companies have queried whether the rules for the introduction of new noise related operating restrictions have been followed. Under SI No. 645 of 2003 which enacted Council Directive No 2002/30/EC, it states in section 11 that the Airport Authority should notify interested parties including the IAA. It is also the responsibility of the IAA to inform the Minister, EU Commission and other Member States. If the cargo companies are suggesting that these operating restrictions are not legitimate based on non-adherence to section 11 then it could also be argued that the daa's current planning permission to revoke and amend the operating restrictions is premature as the operating restrictions are not in effect. All interested parties are aware of these operating restrictions, and they have been discussed as part of CAR's Summer 2022 determination and all the interested parties have made submissions on the daa's planning application. Section 12 of SI No. 645 of 2003 does allow any person, including the Minister and the IAA to appeal a decision on operating restrictions if they so wish.

The Aviation Regulation Act 2001 states in section 33(d) that the determination should have due regard for '*the contribution of the airport to the region in which it is located*'. What consideration has the CAR made about the local communities that live in the region, especially those closest to the airport?

The North Runway opened on the 24th of August 2022. The 65-flight limit should have been applied straight away and maintained until the planning authority amends the condition. The CAR needs to refer to ANCA who oversee these conditions which are deemed operating restrictions as per the Aircraft Noise Bill. Local residents will robustly defend Condition 5 and any further misinterpretations by the CAR.

It is imperative that CAR seek guidance and clarity from Fingal County Council and ANCA in order to designate the correct coordination parameters for Winter 2023.

Yours Sincerely

Liam O'Gradaigh, Ward Cross, The Ward, Co Dublin