IAA Submission to
An Bord Pleanála Draft Decision 314485-22

Irish Aviation Authority
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1. Executive Summary

1.1 The IAA welcomes the opportunity to respond to the Draft Decision of An Bórd Pleanála (ABP) in respect of the appeal of the decision of Fingal County Council (FCC) to grant permission, subject to conditions, for the taking of a Relevant Action within the meaning of Section 34(c) of the Planning and Development Act 2000, as amended (the "Regulatory Decision", also the "RD"). The substance of the RD as determined by FCC was to, among other things, amend Condition 3(d) of the North Runway planning permission, revoke Condition 5 of the North Runway planning permission, and impose a new Operating Restriction in the form of an annual Noise Quota Scheme (NQS).

1.2 Conditions 3(d) and 5 are operating restrictions for the purposes of current EU law, and also amounted to operating restrictions under the preceding EU directive (enacted in 2002), in respect of which the IAA was the competent authority. Here, the IAA's submission focuses on the proposals in respect of Operating Restrictions, and the application of the Balanced Approach.[1]

1.3 In Section 2, we outline the relevant roles of the IAA. In particular, we clarify the roles of the IAA and of other parties in respect of scheduling and slot capacity at Dublin Airport, and also in respect of Instrument Flight Procedures, including flight paths.

1.4 In Section 3, we address the approach of ABP to the Draft Decision, which has led ABP to propose new Operating Restrictions in the form of Condition 3(e), and a new Condition 5 which is more restrictive than the most restrictive interpretations of the current Condition 5. In summary, the IAA submits that ABP should reconsider its approach in order to comply with the relevant EU Balanced Approach legislative framework. The IAA notes the finding of ABP, and of its consultants Vanguardia, that the measures determined by FCC in the RD are sufficient to achieve the required noise abatement objective. However, notwithstanding the requirements of the EU Balanced Approach, ABP nonetheless proposes Operating Restrictions which go far beyond the noise abatement objective.

1.5 Aside from the general methodological approach adopted, the IAA notes that the newly proposed Operating Restrictions would not be fit for purpose, as they are insufficiently precise and, in the case of the proposed new Condition 5, based on a number of calculation errors and apparent misconceptions. Those have led to a proposal for an annual aircraft movement cap which is significantly different from what was intended, as is clear from the Inspector's Report. Specific observations on the proposed new Operating Restrictions are outlined in sections 4 and 5.

1.6 It is nonetheless welcome that, unlike previous Operating Restrictions contained in planning permissions at Dublin Airport, these proposals are subject to public consultation, which enables ABP to take account of these issues before any decision is taken. Overall, the IAA submits that, based on the

[1] Aircraft noise - European Commission

analysis and findings set out in the Draft Decision, the correct approach in respect of Operating Restrictions is to confirm the decision of FCC. Should ABP be minded to do otherwise, the IAA respectfully submits that it would be necessary to engage in a further round of consultation in respect of corrected and clarified proposals resulting from an application of the EU Balanced Approach.

1.7 In that case, ABP should ensure that it brings to bear all necessary expertise in relation to what is highly technical, regulated, and specialised subject matter, and among the most impactful of decisions which are made in respect of the airport, both for aviation stakeholders and for local residents. The IAA reiterates that it is available to meet, or otherwise engage with, ABP in relation to these matters and continues to believe that it would be helpful if such engagement were to be established.

2. Introduction and Overview of Roles and Responsibilities

2.1 Having regard to the Draft Decision material, we consider that it would be helpful to firstly clarify the relevant roles and responsibilities of the IAA, and those of certain other parties which are referred to in that material.

2.2 The IAA is the single civil aviation regulator for Ireland. It is responsible for the regulation of aviation safety, aviation security, and consumer interests, the latter including the rights of air passengers and the economic and performance regulation of certain aviation and travel service providers.

2.3 Up to 30 April 2023, the Commission for Aviation Regulation (CAR) was responsible for discharging some of the regulatory oversight functions which are now the responsibility of the IAA. The Air Navigation and Transport Act 2022 (the "ANTA") provided for the dissolution of the CAR and the transfer of its responsibilities, functions, and staff to the IAA. The ANTA also provided for the air navigation service provision (i.e. air traffic control) function of the IAA to be transferred to a separate new commercial semi-state company, the Irish Air Navigation Service trading as AirNav Ireland.

2.4 Since April 2023, the IAA and AirNav Ireland are therefore separate entities, and the IAA is no longer an air navigation service provider, including at Dublin Airport. Contrary to what is asserted at page 103 of the Inspector's Report which accompanies the Draft Decision, AirNav Ireland is not a '*newly formed (2023) air aviation service within IAA,'* nor is there an *'IAA ANSP'* any longer (page 77).

2.5 The IAA has a number of current and previous regulatory oversight and decision-making functions in respect of operations, infrastructure, airport charges, slot capacity and allocation, and (formerly) noise-related operating restrictions at Dublin Airport. In particular:

- From 2001 to 30 April 2023, under section 8(1) of the Aviation Regulation Act 2001 (the "2001 Act"), the CAR was the competent authority for Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (the "Slot Regulation"). As noted above, the CAR has been dissolved and its roles and responsibilities have been transferred to the IAA. Therefore, the IAA is now responsible for discharging Ireland's obligations in relation to EU rules governing the setting of capacity and the allocation of slots at coordinated airports, under the Slot Regulation (currently just Dublin Airport).

- From 2003 until 2019, the IAA was the competent authority in Ireland for Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports (the "Airport Noise Directive"). The Aircraft Noise (Dublin Airport) Regulation Act 2019 (the "2019 Act") transferred the role of competent authority for the introduction of noise-related operating restrictions from the IAA to Fingal County Council ("FCC"), so that this role would be undertaken within, rather than separately from, the planning process, accordingly making

amendments to the Planning and Development Act (the "2000 Act") to provide for a planning process in respect of potential noise problems caused by development at Dublin Airport and for applications in respect of operating restrictions at Dublin Airport.

- The IAA is responsible, under various pieces of national and EU legislation, for the regulatory oversight of the safety of flight operations, of the provision of safe and secure aerodromes, and of the safe management of Irish airspace and manoeuvring of aircraft on the ground at aerodromes, including the certification and oversight of AirNav Ireland.

The Slot Regulation

2.6 Pursuant to section 8 of the 2001 Act, the IAA is the authority responsible for discharging and overseeing Ireland's obligations as a Member State under the Slot Regulation (EC 95/93). We are thus responsible for the following matters:

- Under Article 3 of the Slot Regulation, the IAA is responsible for setting the coordination status of Irish airports. Dublin Airport has been designated as coordinated, meaning that air carriers must obtain slots to operate at Dublin Airport.

- Under Article 6 of the Slot Regulation, the IAA is responsible for declaring the coordination parameters at any coordinated airport, *'while taking account of all relevant technical, operational and environmental constraints as well as any changes thereto'*. The coordination parameters quantify the capacity of each relevant airport sub-system, for example the runways, aircraft parking stands, terminal building systems and/or processors (such as security screening and immigration). Collectively, the coordination parameters determine the number of slots which are available for allocation to air carriers and, consequently, the number of operations which can be scheduled at a coordinated airport in accordance with the Slot Regulation.

- Under Article 4 of the Slot Regulation, the IAA is responsible for procuring an independent slot coordinator in respect of any coordinated airport. The coordinator allocates slots to individual air carriers on the basis of the capacity as declared under Article 6 of the Slot Regulation, and monitors slot adherence by air carriers with slots allocated to them.

- Under S.I. No. 460/2013 – European Communities (Airport Slots) Regulations 2013, the IAA is responsible for applying the Irish slot sanction scheme required by Article 14 of the Slot Regulation. This provides for the imposition of financial sanctions on air carriers for slot misuse, such as operating at Dublin Airport without a slot, or consistently operating at a time significantly different to the slots allocated to a carrier, or operating a different aircraft type relative to that for which the slots were allocated.

2.7 Article 5 of the Slot Regulation requires that, at a coordinated airport, a Coordination Committee be set up to make proposals and provide advice on various aspects of the scheduling and slot allocation process. Membership of this committee must be open to, at least, the air carriers using the airport

regularly and their representative organisations, the managing body of the airport concerned, the relevant air traffic control authorities, and the representatives of general aviation using the airport regularly. One of the roles of the Coordination Committee at Dublin Airport is to provide advice to the IAA on the coordination parameters to be determined in accordance with Article 6 of the Slot Regulation. Through this process, airlines, the airport operator, and the air navigation service provider all provide input into the capacity declaration process.

2.8 In line with its duties under Article 4 of the Slot Regulation, the IAA has appointed Airport Coordinated Limited ("ACL") as the independent slot coordinator for Dublin Airport. In this role, ACL decides how the available capacity is to be specifically allocated between individual air carriers who have requested slots at Dublin Airport, in line with prioritisation criteria as set out in the Slot Regulation.

2.9 Thus, contrary to paragraph 12.4.8 of the Inspector's Report, the scheduling of flights during the night is not a matter for daa. The allocation of slots for such flights is carried out by the independent slot coordinator, based on available capacity which has been declared in the coordination parameters by the IAA, taking into consideration the capacity of each airport sub-system. In doing so, we seek to strike an appropriate balance between service quality (i.e. avoiding overloaded infrastructure) and facilitating demand.

2.10 daa is ultimately responsible for operating the airport. However, in ordinary circumstances, the level of scheduled traffic at Dublin Airport, including nighttime traffic, is therefore a function of the available capacity, as declared by the IAA through the coordination parameters, and the decisions of individual airlines as to how many flights they wish to operate within that available capacity. Those decisions of airlines are in turn based on passenger demand and operational factors.

2.11 As noted above, AirNav Ireland is responsible for the provision of air navigation services, including at Dublin Airport. For the avoidance of doubt, it is not the case that AirNav Ireland *'will ultimately restrict the scheduling of flights during the daytime hours',* as asserted at paragraph 12.4.63 of the Inspector's Report. The Inspector's basis for this assertion is unclear. Instead, flights will continue to be scheduled as described above.

Instrument Flight Procedures

2.12 The IAA notes a misconception, in both the Inspector's Report and the Vanguardia reports, as to the roles and responsibilities in respect of Instrument Flight Procedures (IFPs), as well as the nature of the regulatory requirements and the oversight role of the IAA in that regard. For example, paragraph 12.3.14 of the Inspector's Report states the following:

> *'The flight patterns from the NR have also been amended, i.e. the applicant's supplementary information submission to the Board, to consider the requirements of the Irish Aviation Authority and divert north, northwest, earlier from the NR than originally proposed.'*

2.13 The IAA did not specify any such requirement. IFPs, such as arrival and departure flight paths, are the responsibility of the aerodrome operator or, if delegated by the aerodrome operator, the air navigation services provider (ANSP), in line with Regulation (EU) No 139/2014. From a safety perspective, the role of the IAA is to ensure that the flightpath submitted to it by the aerodrome operator or ANSP meets safety requirements (ICAO, EU and National). In the case of the current IFPs at Dublin Airport, the IAA, in line with its statutory role, assessed the IFPs which were submitted to it and, finding that they did comply with safety requirements, approved them. That should not be confused with any suggestion that these specific IFPs were required by the IAA, or that the IAA thinks that they are the optimal flightpaths, whether from a safety perspective or otherwise.

2.14 The IAA notes the submissions from interested parties outlined in the Inspector's Report, and that the IFPs currently in effect differ from those which were previously modelled by daa (where there was no divergence, or a later divergence, off the parallel runways operating in a westerly direction). In line with safety requirements, there are different possible options in that regard, based on various permutations, such as, for example, whether the parallel runways are operated dependently or independently. There is also the possibility of an Alternative Means of Compliance (AltMoC), to demonstrate compliance with safety requirements, being developed. This would require a proposal and submission to the IAA for approval, before it could be implemented. The IAA is aware of a limited number of examples in Europe where an AltMoC has been approved in respect of flightpaths which do not diverge in the case of parallel/near parallel runways. The IAA would work with stakeholders, where helpful and appropriate, in relation to the assessment and approval process for any potential AltMoC.

2.15 The IAA also notes the following commentary at paragraph 12.6.112:

> *'The IAA requirement to change the flight routes from the NR is raised as one of the greatest concerns in the third-party submissions. The applicant has repeatedly stated that this is a safety issue. No submissions have been received from the IAA in relation to this requirement.'*

2.16 Again, the IAA did not specify any such requirement. From a safety perspective, the role of the IAA is to ensure that the flight routes submitted to it by the aerodrome operator or ANSP meets safety requirements (Global, EU and National).

2.17 The Inspector's Report concludes at paragraph 12.11.6 as follows:

> *'Having regard to the absence of any further correspondence from the IAA on the supplementary information, I do not consider the Board can dismiss the applicant's assertions on the need for the new flight patterns and I consider it reasonable that these would be required for safe operation of aircraft movements departing from the NR.'*

2.18 The IAA considers that it is incumbent on ABP, if it is uncertain in relation to a function carried out by the IAA or on any technical points in relation to that function, to engage with the IAA to obtain clarity. This is preferable to making assumptions regarding what is required for safe operations, drawing inferences from the absence of a submission from the IAA on a particular point, or seemingly expecting the IAA to address all such matters through submissions to ABP, in case ABP might be unaware of the nature of the regulatory framework. The IAA's role in this regard has previously been outlined in published material. It is not apparent what submission would be expected from the IAA, in circumstances where there was no such specific *'IAA requirement to change the flight routes'*.

2.19 The IAA reiterates that it remains available to meet with ABP in respect of the foregoing, and in respect of any other technical or other matters in relation to ABP's consideration of this appeal.

3. Approach to the Draft Decision

3.1 The International Civil Aviation Organization (ICAO) Balanced Approach, included in Annex 16, Volume 1 of the ICAO Chicago Convention and enshrined in EU and Irish law (the "Balanced Approach"), is the principal policy in the area of aircraft noise management at airports. It requires all available options to be evaluated to identify the most cost-effective measure or combination of measures to mitigate a specific noise problem. As part of the process to implement the Balanced Approach, there is an evaluation of the likely costs and benefits of the various measures available in order to identify the relative cost-effectiveness of the measures. The most cost-effective measures are then selected, with the ultimate goal being to achieve the required noise abatement objective in the most cost-effective manner. The four pillars of the Balanced Approach, as defined within the relevant legislation, are:

- Reduction of Noise at Source
- Land-use Planning and Management
- Noise Abatement Operational Procedures, and,
- As a last resort, where the foregoing is insufficient to achieve the abatement objective, the imposition of Operating Restrictions.

3.2 As noted at paragraph 7.2.1 of the Inspector's Report, from 2003 until 2019, the IAA was the competent authority in Ireland for the Airport Noise Directive, which regulated the introduction of noise-related operating restrictions at community airports and required the application of the Balanced Approach. The 2019 Act transferred this role to FCC, such that it now takes place within, rather than separately from, the planning processes governed by the 2000 Act. This role is discharged by the Aircraft Noise Competent Authority (ANCA), an independent directorate within FCC.

3.3 In this case, ANCA, as the Competent Authority for the introduction of noise-related operating restrictions, determined that a noise problem at Dublin Airport would arise from the Relevant Action application from daa. As such, as per the Balanced Approach, a specific Noise Abatement Objective ("NAO") was set by ANCA to mitigate that noise problem.

Legislation

3.4 EU rules and procedures with regard to the introduction of noise-related Operating Restrictions are governed by Regulation (EU) No 598/2014 (the "Aircraft Noise Directive"), which requires the application of a very specific legal framework and technical methodology, and in particular the application of the Balanced Approach. The 2019 Act gives further effect to these same rules and procedures in Ireland. Under Part 2 of the 2019 Act, both FCC and ABP are required to apply this methodology and to ensure that the Balanced Approach is adopted when discharging their decision-making functions under the legislation. Some of the key provisions of the relevant legislation are outlined below.

3.5 Under Article 2(6) of the Aircraft Noise Regulation, an Operating Restriction is defined as a *'noise-related action that limits access to or reduces the operational capacity of an airport, including operating restrictions aimed at the withdrawal from operations of marginally compliant aircraft at specific airports as well as operating restrictions of a partial nature, which for example apply for an identified period of time during the day or only for certain runways at the airport.'*

3.6 Under Article 5(2), the Balanced Approach must be adopted in respect of aircraft noise management at airports where a noise problem has been identified. To that end, it must be ensured that:

> *'(a) the noise abatement objective for that airport, taking into account, as appropriate, Article 8 of, and Annex V to, Directive 2002/49/EC, is defined;*
>
> *(b) measures available to reduce the noise impact are identified;*
>
> *(c) the likely cost-effectiveness of the noise mitigation measures is thoroughly evaluated;*
>
> *(d) the measures, taking into account public interest in the field of air transport as regards the development prospects of their airports, are selected without detriment to safety;*
>
> *(e) the stakeholders are consulted in a transparent way on the intended actions;*
>
> *(f) the measures are adopted and sufficient notification is provided for;*
>
> *(g) the measures are implemented; and*
>
> *(h) dispute resolution is provided for.'*

3.7 Article 5(3) states that:

> *'Member States shall ensure that, when noise-related action is taken, the following combination of available measures is considered, with a view to determining the most cost-effective measure or combination of measures:*
>
> - *the foreseeable effect of a reduction of aircraft noise at source;*
> - *land-use planning and management;*
> - *noise abatement operational procedures;*
> - *not applying operating restrictions as a first resort, but only after consideration of the other measures of the Balanced Approach.'*

3.8 Under Article 5(4), measures *'may be differentiated according to aircraft type, aircraft noise performance, use of airport and air navigation facilities, flight path*

and/or the timeframe covered'.

3.9 Article 5(6) states that:

> *'Measures or a combination of measures taken in accordance with this Regulation for a given airport shall not be more restrictive than is necessary in order to achieve the environmental noise abatement objectives set for that airport. Operating restrictions shall be non-discriminatory, in particular on grounds of nationality or identity, and shall not be arbitrary.'*

3.10 In summary:

- The key requirement of this legislation is that the measure or package of measures are sufficient to achieve the NAO, but measures, and in particular Operating Restrictions, cannot be unnecessarily restrictive such that they go beyond the NAO.
- Various ways of achieving the NAO must be fully explored, and the most cost-effective measure or package of measures must be adopted.
- Operating Restrictions are the last resort where other measures (including operational measures such as, for example, potential improvements to the IFPs referenced above), have been assessed and are insufficient to achieve the NAO.

3.11 Under the Slot Regulation, the IAA has been assigned the role of the 'Member State'. Article 8(1) of the Aircraft Noise Regulation provides for FCC or ABP to give notice to the IAA and other parties as follows:

> *'Before the introduction of an operating restriction, the competent authorities shall give to the Member States, the Commission and the relevant interested parties six months' notice, ending at least two months prior to the determination of the slot coordination parameters as defined in point (m) of Article 2 of Council Regulation (EEC) No 95/93 for the airport concerned for the relevant scheduling period.'*

3.12 It is therefore anticipated that, once the decision-making process is concluded and the European Commission and the IAA have been notified by ABP of their introduction, and the notice period has elapsed, the IAA would take account of any lawful Operating Restriction for scheduling purposes, by reflecting it in the slot coordination parameters determined under Article 6 of the Slot Regulation.

3.13 It is also important to note that the legislation provides for regular monitoring by ANCA of whether the package of measures is effectively achieving the NAO. If it is not, the Balanced Approach is to be applied, including, where necessary, the imposition of new or amended Operating Restrictions.

3.14 Furthermore, the EU-US Air Transport Agreement[2], and the EU- Canada Air Transport Agreement[3], place obligations on Ireland to ensure that the Balanced

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02007A0525%2801%29-20100624
[3] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02010A0806%2801%29-20190516

Approach is followed in respect of any new Operating Restrictions which are being introduced. The EU has sought to discharge these obligations via the Aircraft Noise Regulation, and Ireland has sought to discharge them via the 2019 Act. As stated at Recital 3 of the Aircraft Noise Regulation:

> *'Incorporating the international rules of the Balanced Approach in this Regulation should substantially lessen the risk of international disputes in the event of third-country carriers being affected by noise-related operating restrictions.'*

Approach to the Draft Decision

3.15 The IAA notes that the ICAO, EU, and National legislative framework, and in particular, the Balanced Approach methodology, has not been followed by ABP in respect of the new Operating Restrictions contained in the proposed Condition 3(e) and Condition 5. While ABP and Vanguardia conclude, in line with FCC, that the RD as determined by FCC is anticipated to be sufficient to achieve the NAO for Dublin Airport, ABP nonetheless proceeds to propose additional Operating Restrictions. Furthermore, it does so based on considerations which do not form part of an application of the Balanced Approach at Dublin Airport, such as the following:

- Comparisons with specific Operating Restrictions at other airports. Insofar as those airports are also subject to the Balanced Approach, these restrictions will have resulted from the specific NAOs at those airports and the application of the Balanced Approach to identify the most cost-effective way to achieve that NAO in those specific cases. While the Inspector's Report asserts, such as at paragraph 12.2.52, that a particular form of Operating Restriction is '*best practice'* given that it is in place at certain UK airports, the IAA submits that best practice should instead be considered from the perspective of the application of the EU Balanced Approach, rather than in respect of any particular measure which might result from the Balanced Approach at a given airport. The legislation is clear that the objective is to avoid imposing Operating Restrictions insofar as possible, only imposing them where there is no other way to achieve the NAO.

- Comparisons with a counterfactual scenario without the Relevant Action, including, for example, where a particular interpretation of the current Condition 5 is in effect. Such a counterfactual is theoretical relative to actual current operations, and also in circumstances where there is wide-ranging uncertainty and dispute over the meaning and effect of the current Condition 5 as imposed by ABP in 2007, and whether it is capable of enforcement (as reflected in ongoing legal proceedings). Furthermore, the IAA's efforts to take account of the 32mppa terminal passenger limitation planning condition imposed by ABP in 2007, also referenced by Vanguardia, have been stayed by the High Court in respect of the slot coordination parameters for summer 2025. Questions have been referred to the European Court of Justice to the overall effect of whether it is permissible for the IAA to take account of those conditions, and whether there is otherwise any legal basis for daa to comply with them.

- Proposing Operating Restrictions based on simply converting a traffic forecast or QC restriction into an Operating Restriction in the form of a movement cap, as appears to be suggested by Vanguardia where it recommends an annual ATM cap of c32,000 per year, or where the Inspector's Report asserts instead that *'it is reasonable and practical to restrict the aircraft movement to the proposed aircraft movements in the applicant's EIAR which is 13,000 per year'*.

3.16 While it may be useful to consider the measures in place at other airports as part of considering available options, it is clear that the two new Operating Restrictions, as proposed:

- On ABP's own analysis and that of Vanguardia, are more restrictive than necessary to achieve the NAO.

- Have not resulted from the application of a Cost Effectiveness Assessment, and there does not appear to be any evidence as to whether they are the most cost effective way of achieving whatever objective(s) they are intended to achieve (notwithstanding that it is recognised that what is required to be achieved, i.e. the NAO, is expected to be achieved without those measures).

- Have not followed consideration of whether other measures, including operational procedures such as the potential to improve the IFPs, could be deployed to achieve whatever is sought to be achieved (and as noted above, the NAO is forecast to be achieved in any case).

3.17 It appears also to be necessary for Vanguardia to properly frame any analysis or advice with reference to what is required by the national legislation and the Balanced Approach.

Ambiguity

3.18 The IAA is further concerned that, in both cases, the proposed Operating Restrictions are insufficiently precise, such that they are capable of significantly different interpretations and of being more/less restrictive depending on how certain elements are interpreted. As is apparent from the ongoing legal proceedings in respect of the current Condition 5, any such ambiguity places the IAA in a difficult position, in that the IAA is required to take account of such conditions, but if the wording leaves doubt as to their precise meaning and effect, the IAA does not know what exactly it is required to take account of, and this is contested before the IAA by interested parties. This is addressed further below in respect of the individual conditions. The IAA wrote to ABP in September 2024 requesting a meeting to clarify certain ambiguities highlighted here, however, this was refused by ABP.

3.19 The IAA further notes that the proposed Condition 1 includes the following text, which is said to apply to subsequent conditions:

> *'Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the*

development shall be carried out and completed in accordance with the agreed particulars.'

3.20 We presume the above could only apply in respect of elements which are not relevant to third parties such as, for example, the practicalities of reporting requirements. Any conditions which are relevant to third parties, and in particular Operating Restrictions which are to be taken account of by the IAA in the coordination parameters, must be determined unambiguously through the present decision-making process and communicated to the IAA in accordance with the legislative requirements, rather than any details being left over for bilateral agreement between daa and the planning authority.

Conclusion

3.21 In summary, given the findings of ABP and Vanguardia that, in line with the assessment of FCC, the RD is expected to be sufficient to achieve the NAO, the IAA's understanding is that it is not open to ABP to go beyond the NAO and specify further Operating Restrictions in the manner outlined in the Draft Decision. The IAA suggests that the correct conclusion from the analysis outlined in the Draft Decision, is to confirm the Operating Restrictions as determined by FCC.

3.22 The IAA further suggests that ABP should be particularly slow to impose further measures, and in particular further Operating Restrictions, in the following circumstances:

- There are likely further improvements that could be made in terms of operational procedures to reduce the extent to which residential amenity is disturbed by aircraft noise. The IAA suggests leaving flexibility for stakeholders to continuously seek out improvements, rather than having measures hard-coded as planning conditions where it takes several years to change them. This is also consistent with the EU Balanced Approach, where such measures are to be fully explored before resorting to Operating Restrictions.

- If the NAO is nonetheless not being achieved, as noted above, it is for ANCA, as a body with specialist expertise in this area, and as an organisation which engages with the IAA in respect of technical matters, to impose any other measures necessary to remedy this in the most cost-effective manner based on the situation then pertaining.

- There is significant uncertainty associated with the assumptions underpinning all of the analysis and forecasts, such as traffic forecasts and noise contour modelling, particularly over the medium and longer term. For example, as noted above, the level of, and nature of, traffic at Dublin Airport is ordinarily a function of airline demand, subject to constraints established by the slot coordination parameters. Actual traffic will undoubtedly differ from the forecasts provided by daa. In the medium and longer term, it will likely differ quite significantly. This can be observed in the extent to which actual developments have differed entirely from the assumptions and forecasts upon which the Operating Restrictions from 2007, specifically the

current Condition 5 and the 32mppa terminal passenger conditions, were based. Again, this supports an approach which leaves as much flexibility as possible for the regular monitoring process, in which ANCA is empowered to impose further measures, where necessary.

3.23 For these reasons, the IAA supports the decision of FCC in respect of Operating Restrictions, and believes that ABP should confirm that decision. If ABP considers it necessary to give further consideration to further measures in application of the Balanced Approach, the IAA suggests that it would be necessary to engage in a further round of consultation in respect of corrected proposals. In addition to the above comments regarding the general approach taken in the Draft Decision, as addressed in sections 4 and 5 below, the two new proposals are also undermined by a number of errors and misconceptions which limits the extent to which the IAA is able to properly engage with them. It is nonetheless clear from the Inspector's Report that what was intended to be proposed is very different from what has actually been proposed.

3.24 The IAA is currently involved in a total of seven sets of legal proceedings generated by the existing Operating Restrictions which have previously been imposed by ABP at Dublin Airport, outside of the EU Balanced Approach framework which was enshrined in EU law. The approach of ABP in the Draft Decision, if reflected in the Final Decision, would likely lead to further proceedings, and likely also to the sort of international dispute contemplated by Recital 3 of the Aircraft Noise Regulation. Furthermore, or alternatively, it could undermine the achievement of the NAO in the short term, if, for example, it were to be decided to decommission the North Runway so as to disapply all of these planning conditions associated with it and revert to unrestricted operations on the other runways.

4. Proposed New Condition 3(e)

4.1 The Draft Decision proposes to revoke part (d) of Condition 3 of PL06F.217429:

> *'Runway 10L-28R shall not be used for take-off or landing between 2300 hours and 0700 hours'*

And to replace it with:

> *'Runway 10L-28R shall not be used for take-off or landing between 0000 and 0559 hours (inclusive, local time) except in cases of safety, maintenance considerations, exceptional air traffic conditions, adverse weather, technical faults in air traffic control systems or declared emergencies at other airports or where Runway 10L-28R length is required for a specific aircraft type.'*

4.2 The IAA notes that the proposal remains in line with the FCC decision, and is supportive of its continued inclusion by ABP.

4.3 The ABP Draft Decision also proposes to include an additional Condition 3(e), as a new Operating Restriction, which states:

> *'Runway 10L-28R shall be used for departure only between the hours of 06:00 to 08:00.'*

4.4 The IAA submits the following in respect of this proposal:

- As noted above, the IAA understands that such a further Operating Restriction may only be imposed where necessary to achieve the NAO.
- The wording is ambiguous; the IAA is aware of at least three very different interpretations which have been understood by different parties in respect of this wording.
- Based on what appears to be the most likely intended interpretation (having regard to the Draft Decision material), the combined effect of this Operating Restriction with the rest of Condition 3 would appear to mean that the southern runway (Runway 10R-28L) must be preferred for both arrivals and departures, when the airport is operating in RW10s direction (easterly), between 0600 and 0800 local time.

4.5 In relation to ambiguity, the wording of this proposal is open to being interpreted as follows:

- RW 10L-28R shall not be used for departures other than from 0600 to 0800 i.e. departures are limited to just 2 hours per day.
- RW 10L-28R shall not be used for arrivals during 0600 to 0800.
- RW10R-28L shall not be used for departures during 0600 to 0800.

4.6 The IAA believes (although is not entirely certain) that the second interpretation, that RW 10L-28R shall not be used for arrivals during 0600 to 0800, appears to be the intended one. Condition 3(c) separately requires that RW10R is to be preferred for departures, and either RW10R or RW10L for arrivals. So, in dual runway segregated mode operations, RW10R is for departures, and RW10L is for arrivals. However, the proposed Condition 3(e) would prohibit the use of RW10L for arrivals between 0600 and 0800. That appears to mean that there is no arrivals runway between 0600 and 0800 for parallel runway operations.

4.7 It may be that this was unintentional, and the proposal has been considered from the perspective of RW28 (westerly) operations only. The IAA submits that it would be necessary for the IAA and other parties to first understand clearly what this condition seeks to achieve, and whether that is necessary. If that is established, the IAA could properly carry out its statutory role of engaging in discussions with daa in respect of the technical feasibility of, and potential alternatives to, any such proposed Operating Restriction.

5. Proposed New Condition 5

5.1 The Draft Decision proposes to confirm the decision of FCC with respect to the revocation of the original Condition 5, and the introduction of a new quota count ("QC") Operating Restriction, between the hours of 2300 and 0659 inclusive, of 16,260. The IAA remains supportive of this.

5.2 In addition, the Draft Decision proposes a new Operating Restriction, as follows:

> *'The airport shall be subject to an annual aircraft movement limit of 13,000 between the nighttime hours of 2300 and 0659 (inclusive, local time) with aircraft movements split between the Winter 3,900 and Summer 9,100 to allow for extra flights during the 92-day summer busy period.'*

5.3 Firstly, and most fundamentally, as outlined in Section 3, the IAA understands that any such additional Operating Restriction can only be imposed where it is necessary to achieve the NAO. Secondly, and in any event, the proposed specifications of this Operating Restriction are unfortunately undone by a number of errors and misconceptions, leading to figures which are very different to what appears to have been intended.

5.4 In evaluating the likely costs and benefits of the various measures available, ANCA considered a Cost Effectiveness Assessment of a range of Operating Restrictions and mitigation measures, as part of the Regulatory Decision. This analysis, which is included in the ANCA Draft Regulatory Decision Report, indicated that the replacement of Condition 5 with the nighttime QC system is a much more cost-effective means of managing and limiting aircraft noise impacts than the current Condition 5, and that retaining Condition 3(d) and allowing aircraft to only use the south runway (10R-28L) at night will lead to increases in the number of people exposed to aircraft noise above the night time priority, which, in this respect, would fail to meet the NAO.

Errors

5.5 Overall, it is difficult to understand how exactly this proposed Operating Restriction has been derived. It is clear that it does not derive from an application of the EU Balanced Approach. The figures appear to derive primarily from the following errors or misconceptions:

- Mistaking the 92-day modelling period, which is just a sampling period used as a noise modelling tool, for the entire summer scheduling season (which spans seven months from March to October). Various other calculations relied upon in the Inspector's Report then flow from this error, such as the mistaken conclusion that, based on the NQS as determined by FCC and daa's traffic forecasts, up to 241 flights per night could operate over the 92-day modelling period. This misconception also underlies the proposed split between summer and winter, and the incorrect conclusion that the proposal of 13,000 movements would allow for c100 movements per night over the 'summer period'.

- There is confusion as to whether the intention was to allow for up to 13,000 *additional* flights as forecast in the EIAR (across the full day) relative to the counterfactual 'Permitted Scenario', as per paragraphs 12.4.52 and 12.4.63 of the Inspector's Report, or alternatively 13,000 *total* flights in the night hours, as per the wording of the proposed Operating Restriction.

5.6 At paragraph 12.4.30 of the Inspector's Report, with respect to the forecast impact of the RA, it is asserted that there is an inconsistency between various sources. It states that *'during the night…, using the EIAR information there would be 13,000 aircraft movements…'.* This, however, appears to be incorrect. The EIAR supplement submitted in September 2023 shows that the figure of 13,000 is an additionality, not a totality, of movements which would be permitted under the proposed scenario (and nor is the difference of 13,000 likely to be limited to the night hours). This is presented in Figure 5.1.

Figure 5.1: Air Traffic Forecasts in Assessment Years

	2025		2035	
	mppa	ATM ('000s per annum)	mppa	ATM ('000s per annum)
Permitted Scenario	31.8	227	32.0	228
Proposed Scenario	32.0	240	32.0	240

Source: Environmental Impact Assessment Report Supplement, Chapter 1: Introduction.

5.7 In fact, as shown in the chart below, in the most recent pair of summer and winter seasons (Winter 2023-2024, and Summer 2024), there were c35,000 movements (block times) between 2300 and 0659. There is no question of the EIAR having forecast that this figure would reduce to 13,000, which is far below even the most restrictive interpretation of the original Condition 5.

5.8 Similarly, at paragraph 12.4.49, the report permutates different average nighttime movement limits with reference to only the 92-day modelling sampling period, which does not take into account the remainder of the summer season, and proportionally provides annual movement figures from this underlying assumption. Once corrected, the proposed summer limit would actually equate to an average of 59 movements per night, as opposed to the c100 movements referenced in the Draft Decision.

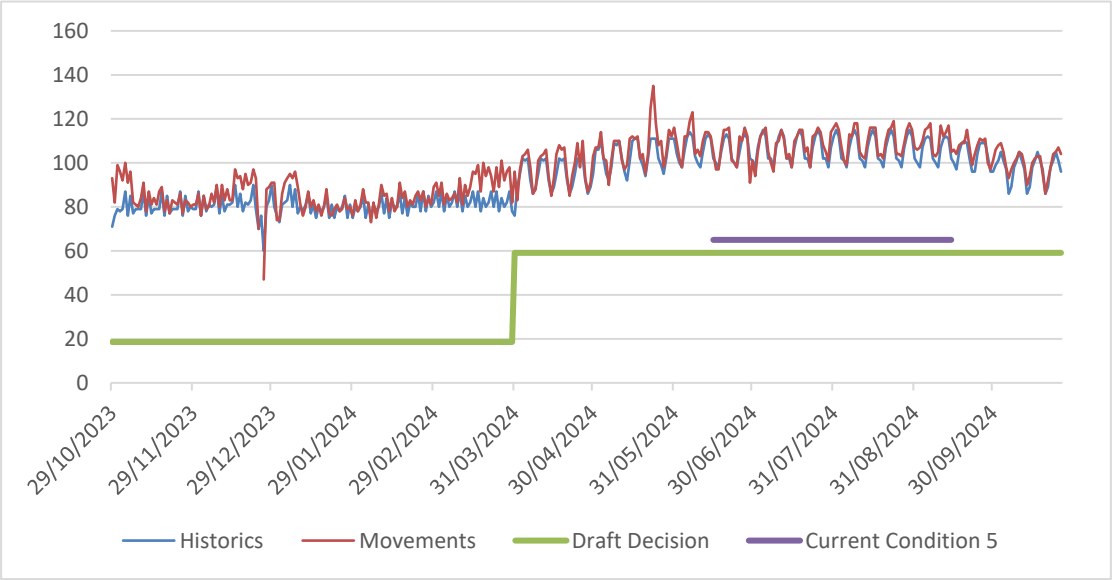
5.9 Assessing the current nighttime operations at Dublin Airport over the same hours as those included in the Draft Decision, the impact on operations is as follows. An air traffic movement limit of 13,000, with 9,100 permitted for summer and 3,900 for winter, would have meant the following in respect of the two most recent seasons:

- Over winter 2023/2024 (29 October 2023 to 30 March 2024), there were an average of 85 nighttime movements at Dublin Airport. In comparison, the proposed movement limit for winter in the Draft Decision is an average of 19 nighttime winter movements, a reduction of 78%.

- Over summer 2024 (31 March to 26 October 2024), there were an average of 106 nighttime movements. In comparison, the proposed movement limit for summer in the Draft Decision is an average of 59 nighttime summer movements, a reduction of 44%.

5.10 Figure 5.2 illustrates the Draft Decision proposal with reference to the current level of nighttime movements, and also shows the extent to which those movements largely operate on the basis of historic slot entitlements held by airlines operating at the airport from one scheduling season to the next equivalent scheduling season.

Figure 5.2: W23 and S24 air traffic movements at Dublin Airport, 2300 hrs to 0659 hrs



Source: IAA, ACL. Note, under the current Condition 5, nighttime ATM movements are not limited outside of the 92-day modelling period in the above interpretation. ATM movement figures refer to block times, notwithstanding the dispute between a number of parties as to whether the proper interpretation of the current Condition 5 is that it relates to block times or (less restrictively) runway times.

5.11 Any such withdrawal of the majority of night-time historic slot series at a major airport such as Dublin Airport would, as far as the IAA is aware, be unprecedented. As noted above, there are several questions currently before the European Court of Justice in relation to the 32mppa passenger terminal Operating Restriction, one of which is whether any such reduction in historic series is permissible at all in such circumstances (in that case, however, the reduction in question is less than 5% and not of the unprecedented level of approximately 75% proposed in this Draft Decision for winter).

Seasonal Splits

5.12 The IAA also notes the proposal that there would be a hard-coded seasonal split of the ATM limit. Again, unless required to cost-effectively achieve the NAO, the split of any available capacity is not a matter which should be specified in an Operating Restriction, which is unnecessarily restrictive and thus not compliant with the legislative framework. As per the QC scheme, any annual Operating Restriction should be applicable on an overall annual basis with a compliance period which spans from April to March inclusive, in order to be

technically feasible.

5.13 Summer demand relative to winter demand evolves over time and, and as indeed noted in the Inspector's Report, is specific to each airport. However, contrary to what is stated at paragraph 12.4.52 of the Inspector's Report, the level of summer traffic relative to winter traffic is not a question of '*compliance with international best practice'*. Traffic at the airport is, as mentioned previously, a function of the capacity declared in the coordination parameters, and the operational decisions of individual airlines operating at that airport. Those decisions are driven by market forces which are very much specific to the airport in question. At some airports, demand is highly seasonal, whereas at others it is spread much more evenly throughout the year.

Comparisons with other airports

5.14 The Inspector's Report notes that Heathrow, Gatwick, and Stansted all operate QC systems during the nighttime hours and asserts that the Dublin Airport QC of 16,260, as determined by FCC, exceeds all of these airports. It should be acknowledged that the QC systems at Heathrow, Gatwick, and Stansted are not comparable to the QC system determined by FCC, as at these airports, the QC system applies for a shorter period of time, between 2330 and 0600 (excluding, in particular, the peak departures hour between 0600 and 0700).

5.15 Notwithstanding that, as outlined in Section 3, such comparisons are not the proper focus of an application of the EU Balanced Approach to Dublin Airport, the like-for-like comparison would therefore be with the corresponding QC applicable in respect of Dublin Airport over the same period 2330 to 0600 hours, which is 7,990.

Conclusion

5.16 The IAA expects that no such calculation issues which have led to the proposed limit of 13,000 will feature in any Final Decision. More fundamentally, as set out in Section 3, the IAA believes that ABP needs to reconsider its approach to Operating Restrictions in this appeal in order to align with the legislative requirements of the EU Balanced Approach.

5.17 Without prejudice to this, the IAA notes that the Vanguardia proposal was to set an annual movement cap of c32,000, which appears to have been calculated as a replication of the QC Operating Restriction in the form of a movement cap based on the forecast flight schedule provided by daa. It is important to note that this Vanguardia proposal would still amount to a significant reduction in traffic relative to current levels, likely including an implied requirement for a significant reduction in historic slot series.

5.18 The reasons provided by Vanguardia relate to, essentially, providing for a backstop to guard against a situation where traffic levels at night-time could significantly exceed what is currently forecast, if the individual aircraft movements were to transpire to have lower overall QC values than forecast (i.e. to be quieter than currently forecast by daa). That is, to limit the possibility of a large increase in the volume of (quieter) ATMs, relative to the daa forecast, at

night. The stated reason is:

> *'To avoid substantial increases in ATMs being traded against marginal reductions in how noisy aircraft are, leading to increases in Additional Awakenings although the QC budget may not be exceeded.'*

5.19 If such a restriction were necessary to achieve the NAO, it must follow that in order to not be unnecessarily restrictive (as required by the legislation), rather than replicating its forecast effect, any movement cap must be less restrictive than the QC Operating Restriction is forecast to be. By definition, if the aircraft types operating do Dublin Airport become quieter more quickly relative to daa's current forecast, then more aircraft movements must be permissible relative to that same forecast in order to achieve the same NAO. If the concern is to avoid '*substantial increases'*, in such a scenario it follows that the limitation must not be set so low as to avoid any such increases at all.

5.20 Further, setting a movement cap at a level which replicates the forecast impact of the QC Operating Restriction undermines the incentive which would otherwise be generated by the QC to operate quieter aircraft at Dublin Airport, and in particular removes the incentive to expedite a transition to quieter aircraft relative to the daa fleet forecast. This may therefore misalign with Objective DAO16 of the current Fingal County Development plan (2023) *'…to encourage Airlines to use quieter aircraft so as to prevent and reduce, where necessary, on a prioritised basis the effects due to long term exposure to aircraft noise'.*

5.21 Finally, the IAA must emphasise that there are a number of points of detail which would require to be established unambiguously in relation to any movement limit. For example:

- When exactly a 'movement' happens, and in particular whether it relates to runway times or block times, and a number of points of further detail in that regard. This is one of the points of disagreement which has arisen in relation to the current Condition 5. There are various pros and cons in respect of both possible approaches, which could be addressed further where helpful.

- Whether there are any exemptions. For example, aircraft emergencies, emergency or time critical operations (including Search and Rescue or medical emergencies), as well as state flights.