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21 November 2022

An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

Dear Sir/Madam,

RE: Fingal County Council Ref. FS5/056/22; Section 5 Referral to An Bord Pleanála

On behalf of our client, daa plc¹, we wish to refer the above-referenced Section 5 Declaration to An Bord Pleanála for review. Please find enclosed report which sets out our own Opinion on the matter, a copy of Fingal County Council's Declaration, and a cheque for the required fee of €110².

Please do not hesitate to contact the undersigned in the event of any queries.

Yours sincerely,

Ed Barrett
Gravis Planning
ebarrett@gravisplanning.com

¹ daa plc, THREE, The Green, Dublin Airport Central, Dublin Airport, Swords, Co. Dublin K67 X4XS.

² daa plc, as an airport operator, qualifies for a reduced fee of €110 for Referrals to An Bord Pleanála.

daa plc

**Referral to An Bord Pleanála under Section 5
of the Planning and Development Act**

North Apron Extension

November 2022

Prepared By:

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1.0 Introduction

- 1.1 This report is submitted to An Bord Pleanála by Gravis Planning¹ in support of a Referral under Section 5 of the Planning and Development Act 2000 (as amended), made on behalf of daa plc², regarding the status of proposed works to extend an existing section of Apron at Dublin Airport.
- 1.2 Fingal County Council has, under planning reg. ref. FS5/056/22, issued a Declaration that the proposed works do not constitute exempt development³. We respectfully disagree with the Council's Declaration, and wish to refer the matter to An Bord Pleanála accordingly.
- 1.3 The proposed works are known as the 'North Apron Extension' project. They will comprise the construction of new Apron pavement on the airside at Dublin Airport, the rehabilitation of existing Apron pavement, along with associated ancillary development including surface water drainage and attenuation, electrical infrastructure, road markings and signage, and elevated airfield lighting.
- 1.4 A brief overview of the proposed works is provided below.

Overview of the Proposed Works

- 1.5 The North Apron Extension project will deliver a minor extension to the existing North Apron at Dublin Airport⁴. The site of the proposed development is located to the north of the existing North Apron area serving Hangar 6. It is currently a mix of hardstanding and managed grassland.
- 1.6 The proposed Apron extension will provide for the movement of aircraft and the distribution of vehicles and equipment on the airside⁵, including access to a new aircraft hangar ('Hangar 7') which, subject to planning, is to be developed by a third party to the north of the existing Apron. An application for this Hangar is due to be lodged with the planning authority in early-December.
- 1.7 The area of new and rehabilitated pavement that will form the extension is illustrated on the submitted Site Layout⁶. In addition to the pavement works, the following ancillary development is required:

¹ Gravis Planning, Denshaw House, 121 Baggot Street Lower, Dublin 2, D02 FD45.

² daa plc, THREE, The Green, Dublin Airport Central, Dublin Airport, Swords, Co. Dublin K67 X4XS.

³ Copy enclosed at Appendix A.

⁴ The area of the proposed extension is 2,800 sq. m. The area of the existing North Apron is 15,000 sq. m. The overall area of the existing apron and taxiway network at Dublin Airport is in excess of 1,329,000 sq. m. (132ha.).

⁵ In compliance with Class 32 (b) of Schedule 2 (Part 1) of the Planning and Development Regulations.

⁶ Drawing Ref. D22002-RAM-XXX-XX-XXX-DR-C-10-0030 Rev. 1

- Electrical and Drainage infrastructure⁷
- Elevated airfield lighting
- Road markings and signage

1.8 The proposed works - including all ancillary elements - are located entirely within the operational area of Dublin Airport, on land owned by daa plc and zoned 'DA' ('Dublin Airport').

1.9 The works do not include the creation of any additional floorspace and are not of a nature or scale to require Environmental Impact Assessment and/or Stage 2 Appropriate Assessment⁸.

1.10 They do not contravene any of the restrictions on exemption contained in Article 9 of the Planning and Development Regulations⁹.

Purpose of the Proposed Works

1.11 The Apron Extension will provide for the movement of aircraft and the distribution of vehicles and equipment on the airside. This will include the provision of access to a new aircraft hangar ('Hangar 7') which is to be developed to the north of the existing Apron.

1.12 It will not provide any new aircraft stands and will not have any impact on passenger capacity at the airport.

The Question on which a declaration is sought

1.13 It is considered that the required works constitute 'development' as defined under Section 3 (1) of the Planning and Development Act 2000 (as amended). The question on which a declaration is sought, therefore, is whether the works required are, or are not, exempt development.

1.14 The works comprise the following elements:

- *The construction of new Apron pavement and the rehabilitation of existing Apron pavement*
- *The installation of associated electrical and drainage infrastructure*
- *The rearrangement of existing road markings and signage and the creation of new road markings and signage*

⁷ Including electronic cabling, slot drains, pipework, organic carbon analyser and attenuation tanks.

⁸ Refer to Section 4 of this Report

⁹ Refer to Section 4 of this Report

- *The installation of new elevated airfield lighting*

Our Opinion

- 1.15 Having assessed the proposed works within the legislative context applying, we consider them to be Exempt Development having regard to Class 32, Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended). For context, Class 32 is a critical airport planning exemption. It allows daa plc, as managers of strategic national infrastructure, to respond in a timely manner to constantly evolving airport operational requirements. Without the application of Class 32, the timely delivery of key airport safety and operational infrastructure would be extremely compromised. It is acknowledged that, in applying Class 32, the requirements of the Habitats and EIA Directives must be robustly satisfied, however this must not lead to a moratorium on all Class 32 exemptions for airfield paving projects. This, clearly, would not be in the national interest.
- 1.16 We consider that the proposed works fall within the scope and meaning of Class 32 (b), (c) and (e):

Class 32

'The carrying out by any person to whom an aerodrome licence within the meaning of the Irish Aviation Authority (Aerodromes and Visual Ground Aids) Order, 1998 (No. 487 of 1998) has been granted, of development consisting of:

(b) the construction, *extension, alteration* or removal *of aprons, taxiways* or airside roads *used for the movement of aircraft and the distribution of vehicles and equipment on the airside, within an airport*

(c) the construction, erection or alteration of visual navigation aids on the ground including taxiing guidance, signage, inset and *elevated airfield lighting* or apparatus necessary for the safe navigation of aircraft, *within an airport*

(e) the erection or alteration of directional locational or warning signs on the ground, *within an airport.*

- 1.17 Full detail of our assessment is contained in Section 4 of this report.

Fingal County Council Assessment and Declaration

- 1.18 Fingal County Council has, under planning reg. ref. FS5/056/22, issued a Declaration that the proposed works *do not* constitute exempt development.

- 1.19 In arriving at this conclusion the Council relies heavily on perceived precedent arising from its assessment of a separate project, known as ‘Apron 5H’¹⁰. The ‘Apron 5H’ project comprises a major expanse of new Apron paving, to be delivered to the west of the subject site, which is currently commencing construction. It will provide for 12 new aircraft stands and ground servicing equipment on a site of 19.2 ha. This precedent case is considered further in Section 3 of this report.
- 1.20 The works which are the subject of this Referral are of a much smaller scale and do not provide for any new aircraft stands and/or ground servicing equipment. They are required purely for the movement and distribution of aircraft and vehicles on the airside. They are, quite clearly, of a different nature, scale and impact to the ‘Apron 5H’ project.
- 1.21 The proposed works must be assessed on their own merits; however the Council bases its assessment, from the outset, on the works constituting an extension of the ‘Apron 5H’ project rather than an extension of the *existing* North Apron:
- “The subject development would, if constructed be an eastern extension to the recently permitted not yet constructed northern extension to the north apron”¹¹*
- 1.22 It should be noted, in this regard, that the submitted application form for a Declaration (and supporting documentation) is very clear that the works in question are for an extension to the *existing* North Apron (Not the ‘*existing and permitted*’ Apron)¹².
- 1.23 The Council cites the ‘landside’ location of the proposed surface water attenuation tanks as meaning that Class 32 cannot apply – pointing to the consideration of this question under FS5/037/19 (i.e. the precursor to planning reg. ref. F20A/0550). In doing so, the Council seems to be misunderstanding the definition of an “airport”, and how that applies to Class 32 (i.e. for works *“within an airport”*). The security fence to the east of the proposed area of paving delineates the security restricted area of the airport. Airport operational areas however, are located on both sides of the security fence – both landside and airside. Airport car parks, for example, are located landside and the terminals are located both landside and airside. The Council also, in our view, misinterprets the spirit and intent of the Regulations – which is to allow Dublin Airport the flexibility to provide additional areas of Apron on the airside without recourse to planning permission (subject to the normal limitations). The fact that the drainage infrastructure – an integral part of any new paving project – is best placed, for locational and operational reasons, on the

¹⁰ As permitted under planning reg. ref. F20A/0550.

¹¹ Planning Officer’s Report, FS5/056/22

¹² It is acknowledged that the proposed works are contiguous to the Apron 5H project site and, as with any airside project at Dublin Airport, will connect to the wider drainage infrastructure network, however that should not preclude them from being considered under Class 32 on their own merits. Any area of apron or taxiway paving provided at Dublin Airport will necessarily adjoin another – it is a connected system.

other side of the security fence¹³ cannot reasonably be cited as meaning that Class 32 cannot apply. To do so entirely misses the flexibility that is intended to be provided and inherently recognised in the Regulations. It is clear that the works in question - in their entirety - are “*within an airport*” and that they provide for “*the movement of aircraft and the distribution of vehicles and equipment on the airside*”. They have no other function. As such, there can be no question that Class 32 applies.

- 1.24 The Council’s assessment goes on to cite noise and transportation impact arising from the extended area of Apron as a concern in terms of cumulative environmental impact, noting that the impact of ground noise “*is as relevant to the subject case as in ref. FS5/037/19*”¹⁴. This is simply not the case, and betrays a fundamental misunderstanding of the project. It does not – unlike FS5/037/19 - entail the provision of new aircraft stands and is not in any way comparable in terms of noise impact. As set out in the submitted screening material, there is no risk of significant cumulative impact in this area. Similarly, the traffic impact arising from the project will be minimal and, in the context of project phasing and the strict operational procedures at the airport, does not pose any risk of significant cumulative impact and there will be no intensification of use as a result of the development, and airport operations will not increase.
- 1.25 The Council’s Assessment and Declaration also rests heavily on the identification of surface water drainage features, which form part of the proposed works, as being ‘mitigation measures’ for the purpose of Appropriate Assessment. In this regard, the Council’s ‘assessment’ simply points to perceived precedent arising from its consideration of the Apron 5H project. It does not provide any consideration of the works themselves. The two projects are simply not of a comparable nature and scale, including in terms of drainage infrastructure.
- 1.26 Notwithstanding the above point, the drainage infrastructure that is proposed is a standard ancillary aspect *any* airside paving project such as this¹⁵. It should not be viewed as mitigation for the purpose of AA, be that in connection with the works in question or, clearly, with the separate Apron 5H project.
- 1.27 These assumptions, i.e. that the works should be viewed as an extension of the permitted Apron 5H project, that Class 32 cannot apply due to the positioning of the ancillary drainage infrastructure, that there is a risk of significant cumulative noise and traffic impact and that the ancillary drainage infrastructure must be considered ‘mitigation’ for the purposes of AA, are fundamental to the Council’s conclusion that the proposed works do not constitute exempt development.

¹³ Which itself can be moved by way of exemption under Class 32 (d)

¹⁴ Planning Officer’s Report, FS5/056/22

¹⁵ Refer, for example, to similar works at Dublin Airport which have been confirmed as exempt development under planning reg. ref.s FS5/017/19 and FS5/024/20

- 1.28 We consider the Council's assessment to be flawed, and that the proposed works *do* constitute exempt development. Our assessment is set out in full in Section 4.0.

2.0 Description of Proposed Development

2.1 Site Location

2.1.1 The proposed works are to take place to the north of an existing section of Apron that serves Hangar 6 at Dublin Airport. The site of the proposed works is owned by daa plc and falls entirely within the area zoned 'DA' ('Dublin Airport') in the County Development Plan (CDP) and the Dublin Airport Local Area Plan (LAP). It is part of the 'Airport Area' as designated by the LAP and, by any reasonable assessment, forms part of the "airport" for the purposes of Class 32 of the Regulations.

2.1.2 The location of the proposed works is illustrated on the submitted Site Location Map¹⁶.

2.1.3 The bulk of the proposed works (paving, sub-surface electrical and drainage infrastructure, lighting, road markings and signage) are located airside, with some ancillary drainage infrastructure (surface water storage and attenuation tanks) to be located landside.

2.2 Description of Proposed Works

2.2.1 The proposed works comprise the following elements:

- *The construction of new Apron pavement and the rehabilitation of existing Apron pavement*
- *The installation of associated electrical and drainage infrastructure*
- *The rearrangement of existing road markings and signage and the creation of new road markings and signage*
- *The installation of new elevated airfield lighting*

2.2.2 The main element of the works is the provision of new and rehabilitated Apron pavement, which will extend the existing Apron northward. The new and rehabilitated pavement will have an area of 2,800 sq. m.

2.2.3 The existing Apron and airside road in this area will be relined when the extension works are complete, with new markings and signage to be added as required.

2.2.4 New elevated airfield lighting masts will be installed at 4 locations, as illustrated on the submitted Site Layout Plan¹⁷.

¹⁶ Dwg. Ref. D22002-RAM-XXX-XX-XXX-DR-C-10-0010 Rev. 0

¹⁷ Dwg. Ref. D22002-RAM-XXX-XX-XXX-DR-C-10-0030 Rev. 1

- 2.2.5 Surface water drainage will be collected by slot drain, directed through an oil interceptor and monitored by a Total Organic Carbon (TOC) analyser which will categorise flow as 'clean' or 'contaminated'.
- 2.2.6 Clean flow will be directed by valve to a clean water attenuation tank and will discharge to Kealy's Stream at greenfield run-off rate. The volume of the clean water attenuation tank will be 100m³.
- 2.2.7 Any contaminated flow will be directed by valve to a contaminated water storage tank. The volume of the contaminated water storage tank will be 350m³. It will discharge to the airport North-South sewer.
- 2.2.8 Similar drainage infrastructure has been confirmed to be an *ancillary* element of several previous airside pavement projects at Dublin Airport¹⁸, and is considered to be an ancillary element of the Apron extension in this case¹⁹. It is a standard part of any airside paving project such as this, and cannot be viewed as 'mitigation' for AA purposes.

2.3 Construction

- 2.3.1 The 'West Compound', permitted under planning reg. ref. F21A/0232, will be utilised during the construction period for staging labour, plant and materials before being escorted to the works location under daa escort. A small compound will also be located *within* the red line boundary to receive materials from the western compound. Authorised access routes to the works areas from gate posts and the site compound will be established and clearly defined.
- 2.3.2 An overview of the proposed construction methodology is included with the material submitted to Fingal County Council.

¹⁸ Refer, for example, to FS5/017/19, FS5/024/20, CLASS32/001/19

¹⁹ As established under P M Cantwell Ltd. & Anor. v McCarthy & Ors., the location of such ancillary infrastructure should not be a material consideration in the determination of a planning case.

3.0 Planning Context

- 3.0.1 A comprehensive review of relevant planning history has been undertaken, both in relation to development elsewhere within Dublin Airport, and within the vicinity of Dublin Airport. This has informed the assessment of potential cumulative impact contained within the submitted AA and EIA Screening Reports.
- 3.0.2 In addition, it should be noted that similar development to that proposed for the 'North Apron Extension' has been considered by Fingal County Council on a number of occasions in recent years, with Class 32 being widely applied. These precedent cases are outlined below.

3.1 Precedent Decisions

FS5/025/15

- 3.1.1 Fingal County Council confirmed, by Declaration dated 27 July 2015, that the extension of an existing apron adjoining an existing aircraft hangar in the western part of the airfield was exempt development by virtue of Class 32 (b) of the Regulations. The area of the extension in this case was approx. 510 sq. m.

CLASS32/001/19

- 3.1.2 In 2019 Fingal County Council confirmed – under planning reg. ref. CLASS32/001/19 – that works to extend the existing Apron 5G (by an area of c. 500 sq. m.), re-align the existing taxiway Link 7 (through the provision of 3,200 sq. m. of additional apron pavement), refurbish existing apron pavement (an area of c. 12,300 sq. m.) and reconfigure an existing area of apron adjoining 2no. aircraft hangars all constituted exempt development by virtue of Class 32 of the Regulations.

- 3.1.3 The Declaration encompassed ancillary development including:

- Drainage infrastructure (Gullies, slot drains, French drains, drainage pipes, manholes)
- Electrical infrastructure (Ducts, chambers, electrical cabinets, cabling)
- Aerodrome Ground Lights (AGL)
- High Mast Lights (HML)
- Road markings and signage

FS5/017/19

- 3.1.4 In 2019 Fingal County Council confirmed that works comprising the construction of new taxiway pavement (46,050 sq. m.) and the rehabilitation of existing taxiway pavement (25,000 sq. m.), together with ancillary development including surface water drainage and

attenuation infrastructure, road markings and signage and Aircraft Ground Lighting (AGL) constituted exempt development, with all of the works (including the ancillary drainage infrastructure) coming within the scope of Class 32 of the Regulations.

FS5/024/20

- 3.1.5 In 2021 Fingal County Council again confirmed that works comprising the construction of new and rehabilitated taxiway pavement – this time amounting to a total of 21,000 sq. m. of pavement area – and all associated ancillary development including surface water drainage and attenuation infrastructure, constituted exempt development by virtue of Class 32 of the Regulations.

FS5/037/19

- 3.1.6 Under planning reg. ref. FS5/037/19 Fingal County Council determined - in 2020 - that the 'Apron 5H' project, comprising new apron paving to deliver 12 new aircraft stands and a ground servicing equipment area across a site of 19.2 ha. *did not* constitute exempt development. This determination was informed by the opinion of the Council planner that part of the drainage infrastructure required was on land that was "*not part of the airport*" as it was "*not within the aerodrome, or connected to the aerodrome or used by the applicant in connection to the operation of the aerodrome*". On this basis, the planner came to the view that Class 32 could not be applied. The same rationale has been applied by Fingal County Council in the current case.
- 3.1.7 In addition, the Council determined that sub-threshold EIA was required for the project on the basis of noise and transport impact, and that the works could not be considered exempt development accordingly. It should be noted that the proposed works to which this Referral relates are simply not comparable in terms of noise or transportation impact.
- 3.1.8 A planning application followed, under planning reg. ref. F20A/0550, which was granted permission in December 2021²⁰. In assessing this application the Council came to the view that inherent drainage design and standard construction management features should be considered 'mitigation' measures for the purposes of Appropriate Assessment, and required a full NIS to be submitted. The requirement for NIS had been screened out by daa's professional team following comprehensive assessment in advance of submitting the application. Notwithstanding this, the requested information for NIS was submitted to the Council on a 'without prejudice' basis. Daa remains firmly of the view that Stage 2 AA was not necessary or appropriate in this case and that Fingal County Council's view on the matter is overly conservative.

²⁰ A First Party Appeal against the Financial Contribution only was subsequently submitted and is awaiting determination (ABP-312476-22).

4.0 Compliance with Exempted Development Provisions

4.1 Legislative Context

Relevant Definitions

4.1.1 'Development' is defined under Section 3(1) of the Acts as follows:

"development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land."

4.1.2 'Works' is defined under Section 2(1) of the Acts as follows:

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure."

4.1.3 'Structure' is defined under Section 2 of the Acts as follows:

"structure" means any building, erection, structure, excavation, or other thing constructed, erected, or made on, in, or under any land, or any part of a structure so defined, and, where the context so admits, includes the land on, in, or under which the structure is situate."

4.1.4 'Aerodrome' is defined Under Article 5(1) of the Regulations as follows:

"aerodrome" means any definite and limited area (including water) intended to be used, either wholly or in part, for or in connection with the landing or departure of aircraft."

4.1.5 'Airport' is defined under Article 5(1) of the Regulations as follows:

"airport" means an area of land comprising an aerodrome and any buildings, roads and car parks connected to the aerodrome and used by the airport authority in connection with the operation thereof"

4.1.6 'Statutory Undertaker' is defined under Section 2 of the Acts as follows:

“statutory undertaker” means a person, for the time being, authorised by or under any enactment or instrument under an enactment to—

(a) construct or operate a railway, canal, inland navigation, dock, harbour or airport,

(b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or

(c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking;

Provisions of the Planning Acts and Regulations

4.1.7 Section 4(2)(a) of the Acts sets out that,

“The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that:

(i) By reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development.”

4.1.8 Section 4(2)(b) of the Acts sets out that,

“Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.”

4.1.9 Article 6(1) of the Regulations identifies that,

“subject to Article 9, certain development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.”

4.1.10 Under Part 1 of Schedule 2 of the Regulations, general exemptions for airports are set out under Class 32:

Description of Development	Conditions or Limitations
<p>CLASS 32 <i>The carrying out by any person to whom an aerodrome licence within the meaning of the Irish Aviation Authority (Aerodromes and Visual Ground Aids) Order, 1998 (No. 487 of 1998) has been granted, of development consisting of</i></p> <p><i>(a) the construction or erection of an extension of an airport operational building within an airport,</i></p> <p><i>(b) the construction, extension, alteration or removal of aprons, taxiways or airside roads used for the movement of aircraft and the distribution of vehicles and equipment on the airside, within an airport,</i></p> <p><i>(c) the construction, erection or alteration of visual navigation aids on the ground including taxiing guidance, signage, inset and elevated airfield lighting or apparatus necessary for the safe navigation of aircraft, within an airport,</i></p> <p><i>(d) the construction, erection or alteration of security fencing and gates, security cameras and other measures connected with the security of airport infrastructure, within an airport, or</i></p> <p><i>(e) the erection or alteration of directional locational or warning signs on the ground, within an airport.</i></p>	<p><i>1. Where the building has not been extended previously, the floor area of any such extension shall not exceed 500 square metres or 15% of the existing floor area, whichever is the lesser.</i></p> <p><i>2. Where the building has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions, shall not exceed 15% of the original floor area or 500 square metres, whichever is the lesser.</i></p> <p><i>3. The planning authority for the area shall be notified in writing not less than 4 weeks before such development takes place.</i></p>

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Table 1: Class 32 of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended)

4.1.11 The extract at paragraph 4.1.9 above refers to Article 9 of the Regulations. Article 9 (1) (a) sets out a number of ‘Restrictions on Exemption’ for development to which Article 6 relates (e.g. ‘Class 32’ development, as set out above). These ‘Restrictions on Exemption’ are set out, and assessed, in Table 1 of this report. None of the restrictions apply in this case.

4.1.12 Section 4 (4) of the Act states that:

“development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required”

4.1.13 EIA and AA Screening Reports for the proposed works were submitted as part of the Section 5 Request for a Declaration, which conclude that they do not require Environmental Impact Assessment or Stage 2 Appropriate Assessment.

4.2 Assessment of the Proposed Works in Legislative Context

4.2.1 The proposed works comprise the following:

- *The construction of new Apron pavement and the rehabilitation of existing Apron pavement*
- *The installation of associated drainage infrastructure*
- *The rearrangement of existing road markings and signage and the creation of new road markings and signage*
- *The installation of new elevated airfield lighting*

4.2.2 All of the proposed works relate to Apron pavement at Dublin Airport and fall within the scope of Class 32 development under Part 1 of Schedule 2 of the Regulations, specifically Class 32 (b), (c), and (e):

Class 32 (b)
the construction, extension, alteration or removal of aprons, taxiways or airside roads used for the movement of aircraft and the distribution of vehicles and equipment on the airside, within an airport

(Gravis Planning emphasis)

4.2.3 Class 32 (b) encompasses the installation of new pavement and the rehabilitation of existing pavement to facilitate the movement of aircraft and vehicles on the airside, as

proposed, as well as ancillary development including surface water drainage infrastructure.

- 4.2.4 In this case, part of the drainage infrastructure is located 'landside' at Dublin Airport. Notwithstanding this it is, very clearly in our view, within the "airport" and falls, accordingly, within the scope of Class 32.
- 4.2.5 The landside area concerned comprises managed grassland within the airport campus. It is within the 'Airport Area' as defined by the LAP, is accessed off an airport road (Castlemoate Road), is situated between an existing staff car park and an airport operational building (Castlemoate House) and, further to the permission granted under F20A/0550, is now permitted for the installation of drainage infrastructure directly connected to the operation of the airfield.
- 4.2.6 It is, by any reasonable assessment, part of the "airport" (It should be noted, in this regard, that Fingal County Council has previously confirmed the location of 'Gate Post 1B' on Castlemoate Road - a comparable location to the landside drainage infrastructure in this case - to be within the "airport" in the context of Class 32²¹).

Class 32 (c) & (e)

the construction, erection or alteration of visual navigation aids on the ground including taxiing guidance, signage, inset and elevated airfield lighting or apparatus necessary for the safe navigation of aircraft, within an airport

the erection or alteration of directional locational or warning signs on the ground, within an airport

(Gravis Planning emphasis)

- 4.2.7 Class 32 (c) and (e) covers the required road markings and signage, and the installation of elevated airfield lighting required as part of project.
- 4.2.8 The Regulations do not impose a limitation on the scale or extent of Apron works carried out under Class 32. The only limitations on scale under Class 32 relate to existing *buildings*.
- 4.2.9 The key considerations therefore, are whether any Article 9 Restrictions on Exemption apply - which is addressed Table 1 below – and whether the works require EIA and/or AA.

Article 9 Restrictions on Exemption do not Apply

- 4.2.10 Article 9 of the Regulations sets out a series of restrictions on exemption. If any of these restrictions apply to a proposed development that would otherwise constitute exempt development, the development no longer qualifies as exempt.

²¹ Planning Reg. Ref. FS5/045/18

4.2.11 The restrictions under Article 9 are considered individually for project in Table 1.

	Restriction	Assessment – North Apron Extension
1 (a)	<i>Development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would -</i>	
(i)	<i>"contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act"</i>	No planning condition, or permitted use, is contravened by the proposed works
(ii)	<i>"consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width"</i>	N/A. No laying out or widening of a means of access to a public road is proposed.
(iii)	<i>"endanger public safety by reason of traffic hazard or obstruction of road users"</i>	<p>The proposed development, once complete, will not endanger public safety through creating a traffic hazard or an obstruction to road users.</p> <p>During construction, traffic will access the proposed development site from the adjacent R132 public road through construction access - Gate 1 Bravo. It is not considered that any significant impact will arise as a result of construction traffic associated with the proposed works. Construction traffic associated with the proposed development will be temporary in nature and will be closely managed by both the contractor and daa.</p> <p>It is also noted that the proposed works will not facilitate additional capacity at the airport and will therefore not intensify traffic volumes once construction is complete.</p>

(iv)	<p><i>“except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan”</i></p>	<p>N/A.</p>
(v)	<p><i>“consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies”</i></p>	<p>No works are proposed under a public road.</p>

(vi)	<i>"interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan"</i>	N/A.
(vii)	<i>"consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan"</i>	N/A.
(viiA)	<i>"consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this"</i>	N/A.

(viiB)	<i>“comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site”</i>	An Appropriate Assessment Screening Report has been submitted to FCC, which confirms that the proposed works do not require a Natura Impact Statement.
(viiC)	<i>“consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000”</i>	N/A.
(viii)	<i>“consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use”</i>	N/A.
(ix)	<i>“consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan”</i>	N/A.

(x)	<i>“consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility”</i>	N/A.
(xi)	<i>“obstruct any public right of way”</i>	N/A.
(xii)	<i>“further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area”</i>	N/A.
(b)	<i>in an area to which a special amenity area order relates, if such development would be development:—</i>	N/A. The proposed works are not in an area to which a special amenity order relates.
(c)	<i>if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive</i>	N/A. The proposed works are not development to which Part 10 applies (i.e. EIA Development).

(d)	<i>if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards</i>	N/A.
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Table 1: Article 9 Restrictions on Exemption

4.2.8 No Restrictions on Exemption are triggered by the proposed development.

4.2.9 The majority of potential Restrictions on Exemption can be dismissed as ‘Not Applicable’ without the need for further assessment. Of particular interest to the Board however, will be the assessment of the proposed development’s environmental impact. No development can be considered exempt development if an Appropriate Assessment or Environmental Impact Assessment are required.

4.2.10 Detailed Appropriate Assessment and Environmental Impact Assessment Screening Reports have been prepared for the proposed development. They are summarised briefly below.

Appropriate Assessment/Environmental Impact Assessment are not Required

Appropriate Assessment

4.2.11 A detailed Appropriate Assessment Screening Report has been prepared for the proposed development by Atkins/SNC Lavalin. It concludes that that the proposed North Apron Extension project, either alone or in combination with other plans or projects (including the forthcoming ‘Hangar 7’ project), **does not** pose likely significant effects on European sites.

4.2.12 Fingal County Council, in its assessment of this case, does not appear to have undertaken any detailed assessment of the screening material provided, pointing instead to *perceived* precedent arising from the Apron 5H planning application. Its assessment is entirely deficient, relying on the circumstances of a case which is materially different in nature and scale, and a conclusion (entirely misguided in our view) that inherent design elements constitute ‘mitigation measures’ for the purposes of Appropriate Assessment²².

Environmental Impact Assessment

4.2.13 A detailed Environmental Impact Assessment Screening Report has also been prepared for the proposed development, again by Atkins/SNC Lavalin, in accordance with the requirements for sub-threshold EIA Screening as presented in Schedule 7A of the Planning and Development Regulations.

²² Daa awaits, with interest, the outcome of the ‘Eco Advocacy’ case for further clarity on this question of environmental law.

4.2.14 The key findings of the EIA Screening are summarised as follows:

- *Due to the limited nature of the works it is considered that there will be no significant cumulative impacts with other developments in the general area, including the proposed Hangar project;*
- *Limited noise, vibration and dust emissions may be generated during the set up works, however this is anticipated to be minimal in effect and will cause no significant impact;*
- *Waste will be generated during set up works however this is not anticipated to have a significant effect;*
- *There will be no significant impact on the receiving biodiversity, surface water or groundwater;*
- *There will be no significant impact on the receiving traffic environment;*
- *There will be no impact on recorded monuments or historic features;*

4.2.15 It is concluded that **no significant adverse impacts** to the receiving environment will arise as a result of the proposed works and, accordingly, that EIAR is not required.

- **The North Apron Extension works qualify as Exempt Development under Class 32 (b), (c) and (e) of the Planning and Development Regulations**
- **No Article 9 Restrictions on Exemption apply**
- **Appropriate Assessment is not required**
- **Environmental Impact Assessment is not required**
- **The proposed development, therefore, is Exempt Development**

5.0 Conclusion

- 5.1 This report sets out how the proposed works constitute exempt development, having regard to Class 32 (b), (c) and (e) of the Planning and Development Regulations.
- 5.2 Comprehensive AA and EIA Screening Reports have been provided, which confirm that neither Stage 2 Appropriate Assessment nor an Environmental Impact Assessment are required, and we have not identified any other Article 9 Restrictions on Exemption that apply. Furthermore, the proposed works will not result in any injurious landscape or visual impact or negatively affect any third-party lands.
- 5.3 We disagree with the assessment and declaration of Fingal County Council. The ancillary drainage infrastructure that is located landside *does not*, as FCC contend, preclude the works from being considered under Class 32. Furthermore, the surface water drainage infrastructure which forms part of the works *does not*, as FCC contend, constitute mitigation for the purposes of Appropriate Assessment.
- 5.4 In light of all of the foregoing, it is our considered opinion that the proposed works are exempt development and we look forward to a determination by An Bord Pleanála on this matter in due course.

Appendix A - Fingal County Council Declaration



David Shannon,
daa plc
Three, The Green
Dublin Airport Central
Swords
Co Dublin
K67 X4X5

NOTIFICATION OF DECLARATION UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

Decision Order No. PF/2290/22	Decision Date: 24-Oct-2022
Ref: FS5/056/22	Registered: 29-Sep-2022

Area: Swords

Applicant: daa plc

Development: Apron extension to existing North Apron to preserve access to hangar 6 and provide access to newly proposed hangar (see Planning Report for full description).

Location: North Apron, Dublin Airport, Co Dublin

Application Type: Request for Declaration Under Section 5

Dear Sir/ Madam

With reference to your request for a **DECLARATION** under Section 5 (1) received on 29-Sep-2022 in connection with the above, I wish to inform you that the above proposal **IS NOT Exempted Development** under Section 5(1) of the Planning and Development Act 2000 for the following reason(s):

1. Having regard to the application received 29-Sep-2022 for a Section 5 declaration in relation to:
 - Rehabilitation of existing pavement and construction of new 2,800sq.m pavement;
 - Construction of two new underground attenuation tanks;
 - Provision of a total organic carbon analyser enclosure;
 - Provision of drainage and electrical infrastructure;
 - Provision of high mast lights;
 - Provision of road pavement markings;
 - All associated site development and enabling works and services;

As described in the application form and in submitted documentation including:

- Supporting report
- AA screening report
- EIAR screening report
- Construction Methodology

At the site of the North Apron, Dublin Airport, Co Dublin

Having regard to:

- The precedent established in the consideration of Section 5 declaration reg ref: FS5/037/19 set out above
- The precedent established in the consideration of Planning Application reg ref: F20A/0550 described above with particular reference to consideration of mitigation measures for purposes of AA.

Whereas construction, extension, alteration or removal of aprons, taxiways or airside roads used for the movement of aircraft and the distribution of vehicles and equipment on the airside, within an airport, come within exempted development provisions of Class 32 b of Part 1 Schedule 2 of the Planning and Development regulations 2001 as amended. This exemption is limited amongst other provisions by Section 4(4) of the Planning and Development Act 2000 as amended if an environmental impact assessment or an appropriate assessment of the development is required.

The Planning Authority therefore considers the development proposed is development and is not exempt development.

Ref No: FS5/056/22

NOTE: Where a declaration is issued under section 5 (1) any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such a fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

Signed on behalf of Fingal County Council.


for Senior Executive Officer

25-Oct-2022

NOTES

(A) REFUND OF FEES SUBMITTED WITH A PLANNING APPLICATION

Provision is made for a partial refund of fees in the case of certain repeat applications submitted within a period of twelve months where the full standard fee was paid in respect of the first application and where both applications relate to developments of the same character or description and to the same site. An application for a refund must be made in writing to the Planning Authority and received by them within a period of eight weeks beginning on the date of Planning Authority's decision on the second application. For full details of fees, refunds and exemptions the Planning & Development Regulations, 2001 should be consulted.

(B) APPEALS

1. An appeal against the decision may be made to An Bord Pleanála by the applicant or ANY OTHER PERSON who made submissions or observations in writing to the Planning Authority in relation to this planning application within four weeks beginning on the date of this decision. (N.B. Not the date on which the decision is sent or received). A person who has an interest in land adjoining land in respect of which permission has been granted may within the appropriate period and on payment of the appropriate fee apply to the Board for Leave to Appeal against that decision.
1. Every appeal must be made in writing and must state the subject matter and full grounds of appeal. It must be fully complete from the start. Appeals should be sent to:
The Secretary, An Bord Pleanála, 64 Malborough Street, Dublin 1.
2. An appeal lodged by an applicant or his agent or by a third party with An Bord Pleanála will be invalid unless accompanied by the prescribed fee. A schedule of fees is at 7 below. In the case of third party appeals, a copy of the acknowledgement of valid submission issued by F.C.C. must be enclosed with the appeal.
3. A party to an appeal making a request to An Bord Pleanála for an oral Hearing of an appeal must, in addition to the prescribed fee, pay to An Bord Pleanála a further fee (see 7 (f) below).
4. Where an appeal has already been made, another person can become an "observer" and make submissions or observations on the appeal. A copy of the appeal can be seen at the Planning Authority's office.
5. If the Council makes a decision to *grant permission/ retention/ outline/ permission consequent on the grant of outline* and there is no appeal to An Bord Pleanála against this decision, a final grant will be made by the Council as soon as may be after the expiration of the period for the taking of such an appeal. If every appeal made in accordance with the Acts has been withdrawn, the Council will issue the final grant as soon as may be after the withdrawal.
6. Fees payable to An Bord Pleanála from 5th September 2011 are as follows:

Case Type

Planning Acts

(a) Appeals against decisions of Planning Authorities

Appeal

(i) 1 st party appeal relating to commercial development where the application included the retention of development	€4,500 or €9,000 if an EIS or NIS involved
(ii) 1 st party appeal relating to commercial development (no retention element in application)	€1,500 or €3,000 in EIS or NIS involved
(iii) 1 st party appeal non-commercial development where the application included the retention of development.	€660
(iv) 1 st party appeal solely against contribution condition(s) – 2000 Act Section 48 or 49	€220
(v) Appeal following grant of leave to appeal (An application for leave to appeal is also €110)	€110
(vi) An appeal other than referred to in (i) to (v) above.	€220
(b) Referral	€220
(c) Reduced fee for appeal or referral (applies to certain specified bodies)	€110
(d) Application for leave to appeal (section 37(6)(a) of 2000 Act)	€110
(e) Making submission or observation (specified bodies exempt).	€50
(f) Request for oral hearing under Section 134 of 2000 Act	€50

NOTE: the above fee levels for planning appeals and referrals remain unchanged from those already in force since 2007 (but note the addition of NIS in (i) and (ii) above).

Fees apply to: All third party appeals at 7(a)(iv) above except where the appeal follows a grant of leave to appeal; First party (section 37 appeals) planning appeals not involving commercial or retention development, an EIS or NIS. All other (non section 37) first party appeals.

These bodies at 7(c) above are specified in the Board's order which determined fees. They include planning authorities and certain other public bodies e.g. National Roads Authority, Irish Aviation Authority.

NB. This guide does not purport to be a legal interpretation of the fees payable to the Board. A copy of the Board's order determining fee under the Planning Act is obtainable from the Board. Further information about fees under other legislation may be found in the appropriate legislation and is also available from the Board.

If in doubt regarding any of the above appeal matters, you should contact An Bord Pleanála for clarification at (01) 8588 100.

