

Senior Executive Officer  
Forward Planning Section  
Land Use Planning and Transportation Department  
South Dublin County Council  
County Hall,  
Tallaght,  
Dublin 24

19<sup>th</sup> April 2022

Our Ref. 21047

**Re: South Dublin Draft County Development Plan 2022-2028 – Material Alterations**

**Formal written submission**

Dear Sir / Madam,

We, Marston Planning Consultancy, 23 Grange Park, Foxrock, Dublin, D18 T3Y4 are instructed by our client Vantage Data Centers DUB 11 Ltd. with a registered address at 1-2 Victoria Buildings, Haddington Road, Dublin 4 to make a formal submission on the provisions of the Proposed Material Amendments of the South Dublin Draft County Development Plan 2022-2028. This submission is accompanied by a legal opinion on the Proposed Amendments by Jarlath Fitzsimons SC. This sets out the legal case and statutory provisions of the need for the adopted South Dublin County Development Plan 2022-2028 to be consistent with the National Planning Framework (NPF) and the Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy 2019 (EMRA RSES). This opinion forms Appendix A of this submission.

We wish to place on record that our client did not make a submission on the original draft South Dublin Draft County Development Plan 2022-2028 as they were not concerned in relation to the implications of Policy EDE7 Objective 2, or the identification of a data centre as an '*open for consideration*' use under the Draft Plan.

We note that the Proposed Material Alterations were issued for public inspection on the 29<sup>th</sup> March 2022. This followed the Council having considered the Draft Plan and the Chief Executive's report in respect of the submissions received and resolved in accordance with section 12(6) and 12(7) of the Planning and Development Act 2000 (as amended) that the Draft Plan be amended. The proposed amendments constitute Material Alterations to the South Dublin Draft County Development Plan 2022-2028.

The focus of this submission are Proposed Amendments 13.1, 13.2 and 13.3 of the Material Alterations. These amendments are as follows:

Proposed Amendment 13.1 seeks to Amend Table 13.4 Zoning Objective 'REGEN' so that '**Data Centre**' is moved from being '*Open for Consideration*' to being '*Not Permitted*'.

Proposed Amendment 13.2 seeks to Amend Table 13.9 Zoning Objective 'MRC' so that '**Data Centre**' is moved from being '*Open for Consideration*' to being '*Not Permitted*'.

Proposed Amendment 13.3 seeks to Amend Table 13.10 Zoning Objective 'EE' so that '**Data Centre**' is moved from being '*Open for Consideration*' to being '*Not Permitted*'.

The submission, and arguments made within it, applies to Proposed Amendment 13.1, 13.2 and 13.3.

## **1. Background to this submission**

This submission is made following a motion by People Before Profit Councillor M. Johansson (Motion no. 90) that sought to reject the Chief Executive's recommendation that no change to the classification of data centres should occur under the EE, REGEN and MRC zonings.

The motion incorrectly and misleadingly cited EirGrid's announcement in December 2021 that it would not grant any further grid connections in the Dublin area until 2028. This submission will set out the incorrect nature of the argument put forward by Councillor Johansson, and will outline why not permitting data centres in respect of any zoning, conflicts with National and Regional Planning policy. It was noted that the rationale and justification for Councillor Johansson's motion was that the EirGrid statement aligns with the next review of the Development Plan. We note that the Chief Executive recommended that the motion should not be adopted. However, the motion was voted upon and adopted by the Councillors on the 9<sup>th</sup> March 2022. This motion therefore forms the basis of the Material Amendment that is subject to this submission.

We refer the Council to the fact that it is not current policy either of EirGrid or the Government to restrict data centre development in any form. Instead there are a range of criteria which EirGrid will consider in providing power and connections to data centres that will each be considered on their individual merit. There is clearly an intrinsic link between power and data centre development and this is recognised in current policy set out by the CRU and EirGrid. This is reflected in Policy EDE7 Objective 2 of the Draft Plan that is also amended under the Material Alterations.

We respectfully submit, for reasons that are set out under this submission, that there is no basis for making data centres 'not permitted' uses under the Material Alterations of the Draft Plan.

## **2. Vantage Data Centres**

Our client currently has a live planning application before South Dublin County Council for determination under Planning Ref. SD21A/0241 within the Profile Park Business Park. This application was lodged on the 31<sup>st</sup> August 2021 and was subject to an Additional Information (AI) request on the 28<sup>th</sup> October 2021. The AI request raised a number of issues relating to the power demand of data centres and their impact on the national grid; as well as macro policies relating to Energy and Climate Action. A comprehensive response to the AI request was made to the Planning Authority on the 21<sup>st</sup> March 2022. The application, as amended by the response to the Additional Information, is for the construction of 2 no. two storey data centres and ancillary development with a gross floor area of 41,105sqm. Under the AI response the applicant also altered the Gas Plant to a Multi-Fuel Generational Plant and its function changed so that its primary purpose is to reinforce the national grid. A decision on the application is due by the 16<sup>th</sup> May 2022.

A separate planning application has been lodged by our client with An Bord Pleanála under the Strategic Infrastructure Development (SID) legislation for a 110kV GIS substation and 2 no. underground transmission lines on lands to the immediate south of the above application, and also within the Profile Park Business Park. The substation and connections into the national grid have already been agreed with EirGrid. The SID application was lodged to An Bord Pleanála on the 17<sup>th</sup> February 2022, and is due to be determined by the Board by the 17<sup>th</sup> August 2022 (ABP Ref. ABP-312793-22).

### ***EirGrid offer to Vantage***

Our client's proposed development, outlined in application Planning Ref. SD21A/0241 requires a grid connection agreement with EirGrid to connect to the national grid. Our client entered into a connection agreement with EirGrid on 1 April 2021.

## **3. Importance of data centres to the modern economy**

It is not in contention that there are a number of data centre operators within the South Dublin administrative area. However, it is notable that the campuses are in a various state of completion in terms of the planning and development process. It is also notable that the data centres operate on different models, with some operating as co-location operators; managed serviced data centres; enterprise data centres; and cloud data centres. They provided, and are increasingly providing an important role within the wider economy.

Modern society means that everyone uses data in some form or another whether they are sending an email; shopping online, playing video games or just casually browsing social media. Every single aspect of that

activity is processed through a data centre. Put simply the shift to working from home during the 2020 and 2021 pandemic, which is likely to continue post pandemic, could not have occurred without the availability of data centres. In essence they are the lifeline that keeps the modern economy working and the world connected.

#### **4. South Dublin County Development Plan 2016-2022**

We note that data centres were not identified as a specific land use under the previous County Development Plan that has been the statutory development plan in place under which the majority of planning applications for data centres within the administrative area of South Dublin have been assessed. This required applications to be considered on a case by case basis, as outlined in the Plan, in relation to conformity with the relevant policies, objectives and standards contained within the Plan. Particularly the Plan outlined that the use (data centre) would need to be considered in relation to zoning objective of the site and its impact on the County at a strategic and local level.

This led to the assessment of data centres under the 2016 Plan, by both the Planning Authority and An Bord Pleanála, on the basis of pattern of development and the precedent of such uses having been granted under the relevant zoning. This led to them both reaching conclusions that data centre's were acceptable within the EE, MRC and REGEN zones as they contributed positively to the achievement of the objectives of these zonings; as well as having a positive impact on the economic development of the County; and growth of Foreign Direct Investment, particularly in terms of attracting multinationals within the Information and Communication Technology sector, to the South Dublin County Council administrative area and Ireland. Their positive considerations of these issues has led to the granting of permission for a number of data centres in the area.

#### **5. South Dublin Draft County Development Plan 2022-2028**

The South Dublin Draft County Development Plan 2022-2028 recognises the important role of data centres and that they form one of the most extensive land use types in the County. The Draft Plan also recognises that Dublin is one of the fastest growing data centre markets in Europe with a significant element of this growth in the administrative area of South Dublin County Council.

The rationale for the motion to alter the status of a 'data centre' from being open for consideration to being not permitted under the EE, MRC and REGEN zones is unclear. The Draft Plan identifies 'Open for Consideration' uses as the following:

*"Land uses that are listed as 'open for consideration' in the land use zoning tables may be acceptable to the Planning Authority subject to detailed assessment against the principles of proper planning and sustainable development, and the relevant policies, objectives and standards set out in this Plan.*

*Proposed uses in this category will be subject to full assessment on their own merits and particularly in relation to their impact on the development of the County at a strategic and a local level. Such uses may only be permitted where they do not materially conflict with other aspects of the County Development Plan."*

The second paragraph of this categorisation of open for consideration is critical in considering the Material Alterations. In our considered opinion the identification of data centre as a specific land use and categorising that use as being 'Open for Consideration' under the Draft Plan provides the Planning Authority with, a significantly greater degree of control in terms of the assessment of individual data centre planning applications that the 2016 Plan did.

It enables the Council to consider the impact of any data centre at a local and strategic level, and also considering it in relation to other policies of the County Development Plan, which most notably relates to EDE7 Objective 2 (see below), which also forms a Material Alteration of the Draft Plan.

The Draft Plan also recognises that the requirement for data centres is increasing (section 9.3). This section of the Plan, which also forms part of the Material Alterations, sets out a set of criteria that relates to what is defined as Space Extensive Land Uses. The Draft Plan recognises that data centres are one of the most space extensive land use types in the County. It recognises that the requirement for data centres is increasing with social and technology needs.

The Draft Plan recognises the need for land extensive uses, such as data centres, and requires them to be located at appropriate locations having regard to infrastructural, transport and environmental considerations as well as the need for orderly growth (Policy EDE7). Objective 1 under Policy EDE7 sets that such land uses, insofar as possible, should be located outside of the M50 on zoned lands adjacent to public transport. The need for such space extensive uses to be located as set out under Policy EDE7, Objective 1 is fully supported by our clients.

Policy EDE7 Objective 2, sets out a list of requirements for space extensive enterprises need to demonstrate. Proposed Amendment 9.5 of the Material Alterations seeks to amend this as follows:

*“To require that space extensive enterprises demonstrate the following:*

- *The appropriateness of the site for the proposed use having regard to EDE7 Objective 1;*
- *Strong energy efficiency measures to reduce their carbon footprint in support of national targets towards a net zero carbon economy, including renewable energy generation;*
- *Maximise on site renewable energy generation to ensure as far as possible 100% powered by renewable energy, where on site demand cannot be met in this way, provide evidence of engagement with power purchase agreements **in Ireland** (PPA);*
- *Sufficient capacity within the relevant water **and**, wastewater **and electricity** networks to accommodate the use proposed;*
- *Measures to support the just transition to a circular economy;*
- *Measures to facilitate district heating or heat networks where excess heat is produced;*
- *A high-quality design approach to buildings which reduces the massing and visual impact;*
- *A comprehensive understanding of employment once operational;*
- *A comprehensive understanding of levels of traffic to and from the site at construction and operation stage;*
- *Provide evidence of sign up to the Climate Neutral Data Centre Pact.”*

These changes, and the rest of the content of EDE7 Objective 2 provides clear assessment criteria that would need to be considered in relation to any ‘Space Extensive Land Use’ such as a data centre.

In response to a number of submissions, the Chief Executive’s Report outlined that the Council had monitored recent discussions on Data Centre energy consumption. The response to submission SD-C19-213 in particular outlined that the Draft Plan had strong policies on high energy users through EDE7 Objective 2, as set out above. This objective requires applicants to provide evidence of engagement with power purchase agreements (PPAs), and a requirement for applicants to demonstrate that there is sufficient capacity in the electricity network.

The Chief Executive of the County Council states that this will accord with the recent Policy Statement of Security of Electricity Supply issues by the Government in November 2021 and which requires for the connection of large energy users to the electricity grid to take into account the potential impact on security of electricity supply and on the need to decarbonise the electricity grid.

The Chief Executive concludes that having regard to the above, and the Government’s continued support for data centres, it was considered that the policy in the Draft Plan is robust and will require demonstration by applicants of capacity in the relevant networks and of the energy efficiency of the development.

## **6. Implications of the Proposed Material Amendments 13.1, 13.2 and 13.3**

The implication of the Proposed Amendment is that it will classify data centres as being ‘*Not Permitted*’ if adopted by the Council. These uses are defined as follows under the Draft Plan:

*“Land uses that are listed as ‘not permitted’ under each of the zoning objectives are considered not to be acceptable. Each use listed under this category would not, therefore, be favourably considered by the Planning Authority.”*

The implication of this change is that any future data centre application, or indeed any live applications, if the decision is made following the coming into effect of the new Plan, would have to be refused permission by the Planning Authority.

The Proposed Amendments 13.1, 13.2 and 13.3 will, irrespective of the planning status of each data centre development, alter its status to a Non-Conforming Use under the Draft Plan. These are land uses that do

not conform with the zoning objective of a site. The Draft Development Plan sets out that development proposals that relate to a valid permission, *'particularly those that would intensify non-conforming uses, will be permitted **only** where the proposed development would not be detrimental to the amenities of the surrounding area and would accord with the principles of proper planning and sustainable development. This includes the integration of land use and transport planning'* (own emphasis).

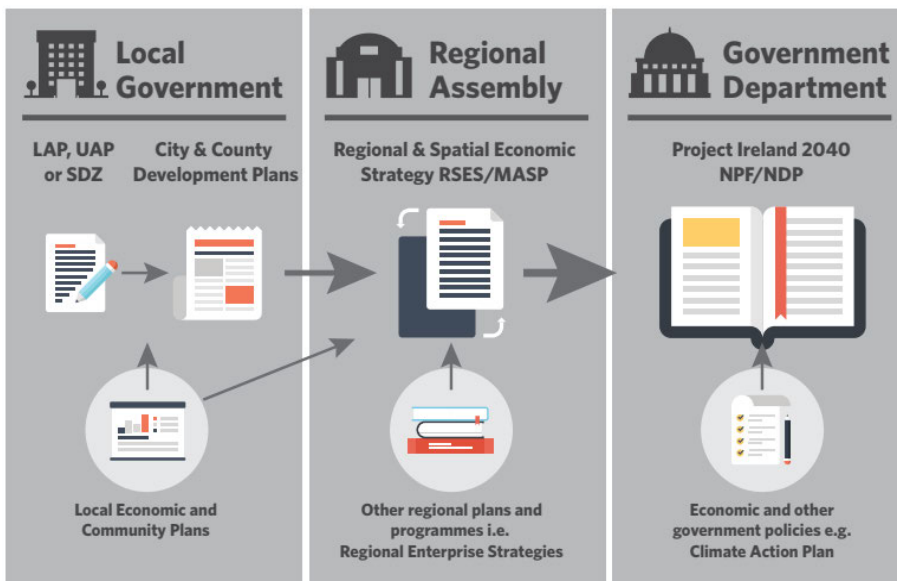
The implication of this is that even relatively minor applications relating to a data centre development, even if that application sought to improve its use of power, or to alter its power usage to a green fuel, would need to be refused under the zoning provisions.

## 7. Are Proposed Material Amendments 13.1, 13.2 and 13.3 supported by National and Regional Planning policy?

In making the Development Plan the members of SDCC are restricted to considering the proper planning and sustainable development of the area to which the development plan relates, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or any Minister of the Government. In this section 'statutory obligations' includes, in relation to a local authority, the obligation to ensure that the development plan is consistent with —(a) the national and regional development objectives specified in - (i) the National Planning Framework, and (ii) the regional spatial and economic strategy, and (b) specific planning policy requirements specified in guidelines under subsection (1) of section 28. This is a critical element for the County Council to consider, and we submit that there are clear inconsistencies between the Proposed Amendments and National and Regional policy.

### **How is local land use policy defined by national and regional level?**

The interpretation of national planning policy and regional planning policy to the local context is an important context for the members to consider in determining the Proposed Material Alterations. The National Planning Framework (NPF) was published in February 2018 setting out a vision for Ireland in land use and planning terms to 2040. The NPF replaced the National Spatial Strategy once it was adopted as the long term land use and planning vision for Ireland.



The Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy 2019 (EMRA RSES) then interprets these and provides a regional spatial strategy that is then interpreted at a local level in this case via the South Dublin County Development Plan. The relationship between these plans is set out below (source: Figure 1.2 EMRA RSES).

A review of both documents, and all section 28 Guidelines does not set out any proposed ban or similar on data centres in Ireland; Greater Dublin Area or within South Dublin County Council in particular. In fact the opposite is true. In particular, the NPF and RSES strongly support the implementation and development of Information and Communications Technology (ICT) infrastructure. There is a clear inconsistency therefore between the Material Amendments and the NPF and RSES.

For example, National Strategic Outcome 5 of the NPF relates to the creation of “A Strong Economy Supported by Enterprise, Innovation and Skills”. This strategic outcome is underpinned by a range of objectives relating to job creation and the fostering of enterprise and innovation. The following objective, relating to Information and Communications Technology (ICT) infrastructure (including data centres) is included under National Strategic Outcome 5:

*“Promotion of Ireland as a sustainable international destination for ICT infrastructures such as data centres and associated economic activities.”*

The NPF also states under National Strategic Outcome 5:

*“Ireland is very attractive in terms of international digital connectivity, climatic factors and current and future renewable energy sources for the development of international digital infrastructures, such as data storage facilities. This sector underpins Ireland’s international position as a location for ICT and creates added benefits in relation to establishing a threshold of demand for sustained development of renewable energy sources.”*

The NPF is therefore considered to be favourably disposed to the location of ICT infrastructure in Ireland, including such facilities within the administrative area of South Dublin County Council. The Proposed Material Alterations are therefore clearly inconsistent with National Strategic Outcome 5 of the NPF.

The Regional Spatial and Economic Strategy (RSES) for the Eastern and Midlands Regional Assembly (EMRA) has interpreted the above NPF objective at a regional level and includes Regional Policy Objective (RPO) 8.25 which states the following:

*“Local Authorities shall:*

- *Support and facilitate delivery of the National Broadband Plan.*
- *Facilitate enhanced international fibre communications links, including full interconnection between the fibre networks in Northern Ireland and the Republic of Ireland.*
- *Promote and facilitate the sustainable development of a high-quality ICT network throughout the Region in order to achieve balanced social and economic development, whilst protecting the amenities of urban and rural areas.*
- *Support the national objective to promote Ireland as a sustainable international destination for ICT infrastructures such as data storage facilities and associated economic activities at appropriate locations.*
- *Promote Dublin as a demonstrator of 5G information and communication technology.”*

We respectfully submit that the Proposed Alterations are not supported at, and are contrary to National or Regional Policy as set out under the National Policy Framework and RSES.

## **8. What is EirGrid’s and the Commission for Regulation of Utilities (CRU) role in data centre development?**

It is important that the Planning Authority are fully aware of all policy that are set out on a national basis for data centres. This already sets out significant restrictions and constraints, outside of the planning process, that govern the ability of a data centre to operate, with the main one relating to connections to the national grid.

Under its Data Centre Connection Offer Process and Policy dated 12 June 2019 (updated on 17 July 2020) (“DCCOPP”), EirGrid introduced “flexible demand” offerings for all data centres in “constrained” areas in order to enable EirGrid to offer connections to data centres where firm capacity may not be readily available. Under the DCCOPP, where capacity availability in a particular area is constrained, EirGrid will reserve the right to apply flexible demand arrangements and this will be reflected as a requirement for connection offers for new data centres in that area.

Currently all Data Centre connections being offered by EirGrid in the Dublin region are being offered on a flexible demand basis due to the greater Dublin region being identified as a constrained area Flexible demand effectively operates to allow EirGrid to issue an instruction to a Data Centre to reduce a portion of its electrical load when capacity is constrained in that area.

In summary, the DCCOPP sets out the following criteria for data centre grid connections:

1. Flexible demand will be available to customers seeking to connect in constrained areas.
2. Capacity review to be performed following the annual T-4 capacity auction to determine if additional firm access can be made available.
3. Firm capacity will be provided for data centres where on-site dispatchable generation is made available to EirGrid.
4. Connection offers are based on planning permission for a site and must line up with the capacity sought.
5. Flexibility will be allowed for MIC ramping in constrained areas.

These policies of EirGrid are driving **the need for on-site dispatchable generation on all data centre sites** to ensure security of supply for the grid as a whole, until such time as transmission and generation capacity short-falls are addressed.

EirGrid have published plans to increase the available capacity on the grid by 50% by 2030 that takes into consideration both the existing number and expected future data centres that will come on stream during this period as well as the aim to move significantly towards more renewable sources of energy generation during the period to 2030.

As per point 3 above, EirGrid have stipulated under the DCCOPP that in order for a data centre to receive a firm grid connection, it **must install on-site dispatchable generation** to match its requested firm capacity. This is a critical point to consider when assessing any new application for a data centre. It means that the national grid will not be negatively impacted by a proposed development as the Data Centre will have its own on-site generation to supply it with electricity when capacity is constrained in that area.

Therefore, to get a connection to the national grid, the data centre must install on-site generation and EirGrid have stipulated that this generation must be capable of running continuously for an extended period of time and not limited by fuel reserves.

### **Changing policy**

It is without doubt that policy in terms of both climate change and data centres has significantly altered over the last few years. This has been incorporated within the publication of the National 'Climate Action Plan 2021' at the start of November 2021; and the publication on the 23<sup>rd</sup> November 2021 by the Commission for Regulation of Utilities (CRU) of their "*Direction to the System Operators related to Data Centre grid connection processing (CRU/21/124)*". This followed a period of uncertainty and press speculation in relation to the long term development of data centres in Ireland.

This was addressed in November and December 2021 by various Government policy statements. Government Policy on the security of electricity supply was issued in the Policy Statement on Security of Electricity Supply that is dated November 2021. This stated that it is a national priority to construct gas fired power plants to combat the squeeze on electricity supplies in the short to medium term. The Government Policy statement to Planning Authorities issued on the 10<sup>th</sup> December 2021 also highlights this and states that "*the connection of large energy users to the electricity grid should take into account the potential impact on security of electricity supply and on the need to decarbonise the electricity grid*".

These documents are the most up to date policy documents governing climate action and grid connections for data centres and power plants. Despite these Government Policy statements there remained uncertainty following statements by the Chief Executive of EirGrid that it would not provide connection agreements for new data centre facilities in the Dublin Region until 2028.

However, this position was clarified just prior to Christmas 2021, in which EirGrid stated that it would assess each data centre application to be located in the Dublin Region on a case by case basis, meaning it could be possible for new facilities to get EirGrid approval in the years ahead. It should be noted that our client has a grid connection agreement with EirGrid. This ties in with the CRU policy paper published in November 2021 – "*CRU Direction to the System Operators related to Data Centre grid connection processing*" that outlined it would be inappropriate to impose a moratorium on the construction of new data centre facilities. This position would appear to have been contradicted again in early January.

However, the matter was clarified initially on the 1<sup>st</sup> February 2022 in which Minister Leo Varadkar stated that his Department intended to complete the review of the 'Government Statement on the Role of Data Centres in Ireland's Enterprise Strategy' in the first half of 2022. The Minister also added that the role of data centres in the Irish economy should be assessed in the context of the total economic value they provide, and not as an isolated economic activity. The important economic and societal role of data services such as video calls, streaming services, and other remote work technology became ever more apparent during the onset of the COVID-19 pandemic. Data centres securely process, store and manage the data which keeps much of our information-based economy and society moving. These investments underpin the digital economy in which data is the key asset.

This was further clarified on the 4<sup>th</sup> February 2022; in which Minister Eamon Ryan (Minister for the Environment, Climate and Communications) stated that the CRU has issued a direction to EirGrid and ESB Networks, the electricity distribution system operator, that requires each of the system operators to prioritise data centre connections based on location, the availability of on-site generation and flexibility in reducing demand when required. This will reduce the potential impact of data centres on security of electricity supply.

There has been an investment in data centres by a wide range of companies since the 2000's within the South Dublin administrative area. Since then, these companies and others have grown their infrastructure, investment, and technical employee base here, making the cloud industry a leading employer and contributor to the Irish economy now and into the future. In 2018, an IDA study found that data centres contributed a total of €7bn in economic activity over the previous seven years and that there are more than 20,000 jobs (Cloud Infrastructure Ireland submission to the CRU) in the computer, electronics, and optical equipment sectors, which are largely supported by those operating data centre infrastructure here.

Our clients and other data centre operators have invested significantly in terms of cloud infrastructure that has enabled industries, governments, universities, and schools to seamlessly make the shift to the cloud in the past 2 years. Our client wishes to work with the Council, and the CRU, EirGrid and ESB Networks in contributing positively to Ireland's renewable energy goal of 80% by 2030.

#### ***What is the CRU's role in energy policy and data centre connections?***

The Commission for Regulation of Utilities (CRU) mission is to protect the public interest in Water, Energy and Energy Safety and one of their four strategic objectives is to deliver sustainable low-carbon solutions with well-regulated markets and networks. In their decision paper of the 22<sup>nd</sup> November 2021 titled "CRU Direction to the System Operators related to Data Centre grid connection processing" (the "CRU Decision Paper"), the CRU have confirmed that it will work with EirGrid and ESB Networks, government and wider industry to facilitate the delivery of an electricity generation fleet that can meet Ireland's Climate Action Plan 2021 (CAP) target of up to 80% of electricity demand from renewable energy sources by 2030, whilst ensuring Ireland's energy needs are met. These targets align with the *National Development Plan 2021 – 2030* which commits to increasing the share of renewable electricity up to 80% by 2030.

We respectfully submit that these changes to a greater reliance on renewable electricity are clearly outside the control of our client, but are strongly welcomed as the applicant will source 100% renewable power through a supplier via the national grid under its currently live application.

The CRU Decision Paper outlines criteria that both EirGrid and ESB Networks will need to consider in assessing data centre connection applications to determine whether to make a connection offer. In this regard we note that the client already has an accepted Flexible Demand Connection Agreement with EirGrid.

Irrespective of this, and for the clarification of the Planning Authority we have set down the four criteria set out by the CRU Decision Paper. . This has directed EirGrid and ESBN to assess future applications for the connection of data centres by reference to the following assessment criteria to determine whether a connection offer can be made within the system stability and reliability needs of the electricity network. These set out ready-made constraints that are included within Policy EDE7 Objective 2, as amended, under the Material Alterations.

- *The location of the data centre applicant with respect to whether they are within a constrained or unconstrained region of the electricity system*



- *The ability of the data centre applicant to bring onsite dispatchable generation (and/or storage) equivalent to or greater than their demand, which meets appropriate availability and other technical requirements as may be specified by the relevant SO, in order to support security of supply.*
- *The ability of the data centre applicant to provide flexibility in their demand by reducing consumption when requested to do so by the relevant SO in times of system constraint through the use of dispatchable on-site generation (and/or storage) which meets appropriate availability and other technical requirements as may be specified by the relevant SO, in order to support security of supply.*
- *The ability of the data centre applicant to provide flexibility in their demand by reducing consumption when requested to do so by the relevant SO, in times of system constraint, in order to support security of supply.*

The CRU provided that the above criteria would not be ranked or afforded priority over another and found that the system operators, EirGrid and ESB, are best placed to consider the assessment of the criteria and be afforded flexibility in their assessment in deciding whether or not to make a connection offer. The Greater Dublin Area has been identified as a constrained region in terms of the national grid following the publication of EirGrid's DCCOPP. However, as the fact that our client has a grid connection agreement with EirGrid illustrates, there are projects that already have such an agreement with EirGrid but have not as yet attained full planning permission. Put simply, it is not a case that now, any data centre application should be considered as 'not permitted' but there needs to be a wider and rational consideration of each data centre application on their individual merits. This is what national and regional policy currently amounts to, and what should form policy for data centres under the new Plan.

Furthermore, it is clear that the objective is to ensure that any data centre development is scaled to ensure that it has capacity to dispatch energy equivalent to, or greater than the data centres capacity agreement with EirGrid into the national grid. This will provide security of power within the local and wider area that will have significant benefits in facilitating other developments in the local area with significant benefits to the local economy. In essence this policy ensures that any new data centre does not impact upon the national grid.

These objectives also seek to ensure that a data centre operator has the ability to reduce its net consumption of energy from the national grid when requested to do so in times of systems constraint when power will be dispatched from the plant into the national grid. The objective will ensure that each data centre reinforces the national grid that will ensure the security of supply of electricity to the wider national grid if and when required.

#### *Summary*

We refer the Planning Authority to the fact that the CRU has not afforded priority to these criteria and that the CRU have indicated that EirGrid and ESB Networks need to be afforded flexibility in considering the assessment criteria to decide whether it is appropriate to make a connection offer; and that each connection must be considered on its own merits. In summary EirGrid and CRU policy does not place an outright ban on data centre grid connection applications in the Dublin area, but rather it applies a specific criteria in relation to those applications that align with the national security of supply needs. Furthermore, the Proposed Amendments do not provide any flexibility to operators if EirGrid upgrade infrastructure in a far more expedient manner, prior to the next review of the county Development Plan. We submit that any local policy should reflect this within the adopted South Dublin County Development Plan. The Proposed Amendments 13.1, 13.2 and 13.3 do not provide this flexibility.

#### **9. How does a data centre development comply with Climate Action Plan 2021**

Our client, in making this submission, recognises the need to balance the demand for development with climate action and resilience that is reflected in both the Council's own Climate Action Plan 2019; as well as the recently published national Climate Action Plan 2021. This more recent Climate Action Plan has replaced the Climate Action Plan 2019, that contained Action 20 relating to data centres. A far broader policy approach now applies to data centres under Climate Action Plan 2021, and our submission has therefore addressed the current Climate Action Plan.

The policies and long term aims of Climate Action Plan 2021 are based on continuing to facilitate data centre development, subject to certain criteria, and future reviews, up to 2030. The Plan recognises, and takes account of the changes in demand for electricity over the next 10 years; and that this will alter the profile for demand and recognises that the forecast growth in data centres will represent a challenge to Ireland's emissions targets.

Government policy set out under the Climate Action Plan 2021, states that the strategy on data centres will be reviewed (section 11.1) to ensure that growth of such users can only happen in alignment with sectoral emission ceilings and renewable energy targets. Whilst the 2021 Plan identifies the potential for further regulatory measures to manage demand from data centres, in the context of climate targets and future network needs; these do not currently exist. We respectfully submit that the adopted Plan should reflect this and should require individual data centre applications to be considered on their merits having regard to EirGrid and CRU policy but also the criteria set out under Policy EDE7 Objective 2, as amended, of the Draft Plan.

#### **10. Is there an availability of power from EirGrid?**

The motion put forward and carried by Councillor Johansson was based on the premise that there were no more capacity for further data centres in the South Dublin area; and that EirGrid had announced that they would not grant any further connections in the Dublin area until 2028. However, the fact is that a number of operators already have connection agreements in place, including our clients, but have not reached a position where permission has been granted. The Proposed Amendment therefore amounts to a complete contradiction to existing EirGrid policy where connection agreements are in place, and takes no consideration of this matter.

We respectfully submit that it is not the case that there is an absence of power supply available via EirGrid and this is an incorrect interpretation of the current system issues. It also fails to realise the wider macro energy issues that are required to facilitate the transition to decarbonise the national grid.

It is also important to note that the policy of the Plan is not merely for April 2022; but it is policy that needs to be in place for a period of six years from the date that the Plan comes into effect. The Plan making process requires flexibility therefore in policy and land use designations, particularly where they are not supported at a regional or national policy level.

#### **11. Is the provision of Power Plants on data centre site in accordance with climate change and renewable energy policy at a national, regional and local policy perspective?**

Policy relating to climate change and renewable energy is set out under the South Dublin County Council Climate Change Action Plan 2019; and the recent Government publication of "*Climate Action Plan 2021: Securing Our Future*". We note that the SDCC Climate Change Action Plan 2019 was prepared having regard to the wider *A Strategy towards Climate Change Action Plans* for the Dublin Local Authorities, published in 2017; and must therefore be considered to be in accordance with this strategy.

The South Dublin County Council Climate Change Action Plan 2019 seeks to improve the energy efficiency and reduce greenhouse gas emissions; whilst making South Dublin a more climate resilient region. We note that it is established Government policy (as stated in the Policy Statement on Security of Electricity Supply that is dated November 2021) that it is a national priority to construct (and therefore by default grant permission for) gas fired power plants to combat the squeeze on electricity supplies in the short to medium term. The latest bid auction has identified several suppliers that will add capacity through operating on gas.

The focus on gas as a short to medium term solution will enable the closure of coal and peat burning plants; and will bridge the gap to renewables achieving 80% by 2030. We note that the aim to increase the capacity of the national grid to take account of data centres that are already subject to connection agreements is fully allowed for under the Climate Action Plan 2021. It is notable that in some instances the sites that are subject to connection agreements do not have a valid permission.

The Policy Statement by Minister Ryan is fully in accordance with CRU policy, and whilst recognising the significant projected growth in energy demand, which is only partly due to data centres concludes that:

- *“the development of new conventional generation (including gas-fired and gasoil/distillate-fired generation) is a national priority and should be permitted and supported in order to ensure security of electricity supply and support the growth of renewable electricity generation;*
- *it is appropriate that existing conventional electricity generation capacity, including existing coal, heavy fuel oil and biomass fired generation, should be retained until the new conventional electricity generation capacity is developed in order to ensure security of electricity supply;*
- *the connection of large energy users to the electricity grid should take into account the potential impact on security of electricity supply and on the need to decarbonise the electricity grid;*
- *it is appropriate for additional electricity transmission and distribution grid infrastructure, electricity interconnection and electricity storage to be permitted and developed in order to support the growth of renewable energy and to support security of electricity supply; and*
- *it is appropriate for additional natural gas transmission and distribution grid infrastructure to be permitted and developed in order to support security of electricity supply.”*

This Policy Statement supports the CRU and EirGrid as they carry out their statutory roles to ensure security of electricity supply in Ireland. It provides clarity to investors and planning authorities that the Government fully supports the actions being taken by the CRU and EirGrid, including the need to develop new gas-fired generation capacity.

The Climate Action Plan also notes the requirement for an additional 5,000MW of new generation by 2030 at least 2,000MW coming from conventional generation. By making high efficiency flexible gas generation available at scale at the immediate point of demand, this actually reduces the requirement for future grid reinforcements and has the potential to relieve congestion in the locality. The Climate Action Plan also recognises the need for a diversified portfolio of generation up to 2030 and beyond in order to deliver grid stability and system services arising from increasing renewable energy penetration. High efficiency engines, along with storage and interconnection are recognised as contributing to this solution and facilitating greater levels of intermittent renewables.

## **12. What are the implications of the Proposed Amendments on existing and planned data centre operators, and transition to a greater reliance on renewable energy?**

There are a wide range of implications on existing and planned data centre operators as a result of the Proposed Amendments. The relationship between strategic and local policy is key in whichever sector it is considered, and is enshrined as a core principle of the planning system. It is clear that the Proposed Amendments run contrary to this principle. The Proposed Amendments will mean that they will not be in alignment with already agreed and future connections of data centres.

Gas powered plants are required, irrespective of data centres, as they supply grid balancing services which in turn facilitate greater levels of renewables to connect to the grid; and to replace older, less efficient and higher carbon intensity fossil fuel generators, such as coal, peat and oil generation that are currently operating but with a plan to de-commission them over the coming years. This will aid the move across to a more renewable energy production as we move to 2030.

In addition, the Irish gas grid operator, Gas Networks Ireland, in its Vision 2050 strategy from 2020, sets out a clear trajectory for transitioning the Irish gas grid to net zero over the coming decades, which includes increased volumes of green renewable gas, carbon capture and storage along with green hydrogen production, all of which are recognised and supported in the Climate Action Plan.

These plants have the ability to be designed to facilitate the transition of the gas grid to lower carbon intensity. The Proposed Amendments would be counter-productive from this perspective as it would not allow data centres to transition to a lower carbon intensity.

The need for power plants can only currently be provided via gas based plants that are a lower carbon generation solution (compared to coal, peat and oil generators currently on the Irish grid) which balances the grid and provides stability and flexibility during times of low wind / solar (addressing the unreliability and intermittency of renewables), along with critical inter-seasonal capacity over a longer duration than storage, for example.

Having such flexible low carbon generation facilitates greater levels of renewable penetration, along with supporting the decarbonisation of the Irish gas grid through carbon capture and storage, green biomethane, and green hydrogen going forward.

It is important, and is recognised by our clients that such plants have the capacity to operate under other fuel sources going forward that will enable them to continue to reinforce the grid on fully green fuel supplies such as green biomethane and green hydrogen. This should be encouraged under the Plan rather than seeking to '**not permit**' data centres. This will lead to a lack of long-term investment; against a lifespan of 20-30 years for each data centre. We submit that operators should be encouraged to invest in enabling this transition to more renewable fuels. The opposite would occur if data centres were identified as 'not permitted' uses under the new Plan.

The placing of data centres as '**not permitted**' uses under the adopted Plan would disallow data centre operators to alter their operation in accordance with the requirements of EirGrid who operate under and in accordance with Government policy and strategy that is set out under Climate Action Plan 2021.

The Proposed Amendments would also be in conflict, if accepted, with Policy EDE7 Objective 2, as amended, as data centres would not be permitted in any zone within the County Council area.

### **13. Conclusions**

We have reviewed the content of the South Dublin Draft County Development Plan 2022-2028 Material Alterations as well as the Chief Executives report relating to the submissions made to the Draft Plan and set out under this submission commentary in relation to further considerations in relation to Proposed Amendments 13.1, 13.2 and 13.3.

This submission is made in the interests of the sustainable development of the County to ensure the day to day operations and long term viability of data centres in the area, and the significant long term viability of Ireland as an attractive location for ICT companies. We can confirm that there is no moratorium on processing or granting data centre connection applications within the Greater Dublin Area.

Their continued presence as well as facilitating the flexibility in working arrangements in recent years, has also enabled, and will continue to enable data centres to provide grid flexibility. Their identification as not permitted uses has the potential to discourage the change to a more renewable, and carbon free national grid. Data centres and the need to provide alternative power sources will aid grid stability.

Policy EDE7 Objective 2 provides the Planning Authority, when considered in relation to the Open for Consideration status prior to the Material Alterations, to assess each data centre planning application on its own individual merits. This Objective aligns well with the recent Policy Statement on Security of Supply issued by Government in November 2021, and which requires large energy users proposing to connect to the electricity grid to take into account the potential impact on security of electricity supply and on the need to decarbonise the electricity grid.

Also, in November 2021 in conjunction with the above the Commission for the Regulation of Utilities issued a direction to the System Operators (EirGrid and ESB Networks) related to Data Centre grid connection. The direction provides criteria on how to assess new applications for a connection to their respective transmission and distribution networks to ensure security of supply and combat constraint issues.

We respectfully submit that it is unequivocal that there is no or potential for a moratorium on data centres. The position of EirGrid and the CRU is that they have adopted a set of criteria to assess new data centre connections. The position currently is clear in that EirGrid are open to considering connections from Data Centres and will make an assessment based on the criteria outlined above. We note that in the Chief Executive Report on the motion; it states that this was also the understanding of the Council and Codema (the Dublin Energy Agency) on the 9<sup>th</sup> March, and that there is no moratorium in place.

We respectfully submit that is not in doubt that EirGrid operate and manage the electricity grid and are best placed to assess whether a Data Centre or any other large electricity user should be granted a grid connection. We note that data centre applications do not normally include such connections within their scope and that this is normally addressed under the Strategic Infrastructure Development (SID) application process.

Their strategic remit is to ensure the grid operates well and to "*Lead the island's electricity sector on sustainability and decarbonisation*", and it is clearly not within the remit of the Council to go outside of this in interpreting a statutory undertaker. This was clearly and correctly set out within the Chief Executive Report on the motion in which it was stated:

*“EirGrid use a 2-stage engagement procedure before granting connections and the first of these occurs before the data centre applies for planning permission. As a result, EirGrid are best placed to decide on whether data centres should go ahead or not.”*

However, the principle role of the Council is to consider the proper planning and sustainable development of the area in terms of the statutory plan making process and under individual applications.

Furthermore, as outlined above, Draft Plan, through EDE7 Objective 2 sets a hierarchy of approaches to energy which must be demonstrated by space extensive development such as data centres. This means that relevant development must maximise on site renewable energy generation, and must show evidence of engagement with EirGrid and ESB Networks; as well as a commitment to purchasing power from renewable sources. This is a direct agreement with a renewable electricity developer in Ireland.

Given the complex issues surrounding this type of development, it is considered that the approach taken in the Draft Plan and CE Report on Public Consultation is reasonable and appropriate at this time, to allow for any further changes to the development of Data Centres within Dublin that must be considered across the lifetime of the Plan.

### **Recommendations**

To amend Proposed Amendments 13.1, 13.2 and 13.3 as follows:

1. To amend Proposed Amendment 13.1 and Amend Table 13.4 Zoning Objective ‘REGEN’ so that ‘Data Centre’ is moved from being ‘*Not Permitted*’ to being ‘*Open for Consideration*’.
2. To amend Proposed Amendment 13.2 and Amend Table 13.9 Zoning Objective ‘MRC’ so that ‘Data Centre’ is moved from being ‘*Not Permitted*’ to being ‘*Open for Consideration*’.
3. To amend Proposed Amendment 13.3 and Amend Table 13.10 Zoning Objective ‘EE’ so that ‘Data Centre’ is moved from being ‘*Not Permitted*’ to being ‘*Open for Consideration*’.

We would refer the Council to the fact that it is not current policy either of EirGrid or the Government to restrict data centre development in any form and the Proposed Amendments are in direct conflict with both the NPF and RSES. However, as we have demonstrated under this submission, there are a range of criteria under which EirGrid will consider in providing power and connections to data centres that will each be considered on their individual merit. There is clearly an intrinsic link between power and data centre development and this is recognised in current policy set out by the CRU and EirGrid. This is reflected in Policy EDE7 Objective 2 of the Draft Plan that is also amended under the Material Alterations.

We respectfully submit, for reasons that are set out under this submission, that there is no basis for making data centres ‘*not permitted*’ uses under the Material Alterations of the Draft Plan. On that basis we would request that South Dublin County Council reverse its Proposed Amendments 13.1, 13.2 and 13.3 under the Material Alterations as outlined above.

We would be obliged if you will acknowledge receipt of this submission in due course and we would be happy to furnish any further information that you may be required to deal with this matter.

Yours faithfully,



Anthony Marston (MIPI, MRTPI)  
**Marston Planning Consultancy**

**Appendix A – Opinion of Senior Counsel**

**Querist: Vantage Data Centers DUB11 Limited**

**Agent: Stephen Barry, Partner, Eversheds Sutherland  
[Agent Ref. SBB\aho\70260-0010]**

**Re: Material Amendments to Draft South Dublin Development Plan**

**Date: 20 April, 2022**

**OPINION OF SENIOR COUNSEL**

**A. Introduction**

1. Vantage Data Centers DUB11 Limited (“Querist”) is engaged in the development of data centres and has made two planning applications in respect of proposed data centre development at lands in Profile Park, Clondalkin, Dublin 22 (reg. ref. no. SD21A/0241) and Profile Park and Grange Castle Business Park, Dublin 22 (ref. no. ABP-312793-22).
2. On 1 March 2022, at a special meeting of South Dublin County Council held to consider the Chief Executive’s report on the draft South Dublin County Development Plan 2022–2028 (“the Draft Development Plan”), the members of the authority resolved that the Draft Development Plan should be amended by changing the land use designation of “Data Centres” in a number of zoning objectives from “open for consideration” to “not permitted”.
3. In circumstances where the amendment to the Draft Development Plan was considered to be a material alteration, the planning authority published notice of the proposed material alteration, stating that the proposed material alteration may be inspected for a period not less than 4 weeks and that written submissions or observations with respect to the proposed material alteration may be made to the planning authority on or before 26 April 2022. Pursuant to the provisions of section 12(7)(ad)(ii) of the Planning and Development Act 2000, as amended (“the 2000 Act”), such submissions and observation shall be taken into account by the authority before the development plan is made.
4. Indeed, it is noted from South Dublin County Council’s website that the Chief Executive will prepare a report on the submissions received on the Proposed Material Alterations and the Environmental Report and Natura Impact Report and will submit this to the elected members on 23 May 2022. The members of the authority will consider the Chief Executive’s report and will make the final plan at one or more Special Council Meetings, the last to be held no later than 1 July 2022.
5. The material amendments considered in this Opinion are as follows:

**Amendment 13.1**

Section 13.1 Land-Use Zoning Objectives, Table 13.4

Amend Zoning Objective 'REGEN' to read:

"Open for consideration:

Allotments, Bed & Breakfast, Betting Office, Boarding Kennels, Car Park, Crematorium, Cultural Use, ~~Data Centre~~, Doctor/Dentist, Embassy, Funeral Home, Garden Centre, Guest House, Hospital, Industry-General, Nursing Home, Off-Licence, Place of Worship, Primary Health Care Centre, Public House, Recycling Facility, Retail Warehouse, Retirement Home, Service Garage, Shop-Neighbourhood, Social Club, Veterinary Surgery, Warehousing, Wholesale Outlet.

Not Permitted:

Abattoir, Aerodrome/Airfield, Agriculture, Camp Site, Caravan Park-Residential, Cemetery, Concrete/Asphalt Plant in or adjacent to a Quarry, Conference Centre, Data Centre, Fuel Depot, Heavy Vehicle Park, Industry-Extractive, Industry Special, Nightclub, Outdoor Entertainment Park, Refuse Landfill/Tip, Refuse Transfer Station, Rural Industry-Food, Scrap Yard, Shop-Major Sales Outlet, Transport Depot, Wind Farm"

**Amendment 13.2**

Section 13.1 Land-Use Zoning Objectives, Table 13.9

Amend Zoning Objective 'MRC' to read:

"Open for Consideration:

Allotments, Crematorium, Cultural Use, ~~Data Centre~~, Doctor/Dentist, Education, Health Centre, Hospital, Industry-Light, Nightclub, Offices 100 sq.m - 1,000 sq.m, Outdoor Entertainment Park, Place of Worship, Primary Health Care Centre, Social Club, Sports Club/Facility, Stadium, Transport Depot, Warehousing.

Not Permitted:

Abattoir, Aerodrome/Airfield, Agriculture, Bed & Breakfast, Boarding Kennels, Camp Site, Caravan Park-Residential, Cemetery, Community Centre, Concrete/Asphalt Plant in or adjacent to a Quarry, Conference Centre, Data Centre, Embassy, Fuel Depot, Guest House, Heavy Vehicle Park, Home Based Economic Activities, Housing for Older People, IndustryExtractive, Industry-General, Industry-Special, Live-Work Units, Nursing Home, Office-Based Industry, Offices over 1,000 sq.m, Refuse Landfill/Tip, Refuse Transfer Station, Residential, Residential Institution, Retirement Home, Rural Industry-Food, Science and Technology Based Enterprise, Scrap Yard, Traveller Accommodation, Wind Farm, WorkLive Units."

**Amendment 13.3**

Section 13.1 Land Use Zoning Objectives, Table 13.10

Amend Table 13.10 Zoning Objective 'EE' to read:

*“Open for consideration:*

*Agriculture, Allotments, Car Park, Childcare Facilities, Concrete/Asphalt Plant in or adjacent to a Quarry, Data Centre, Garden Centre, Hotel/Hostel, Industry-Extractive, Motor Sales Outlet, Nightclub, Offices 100 sq.m - 1,000 sq.m, Offices over 1,000 sq.m, Public House, Refuse Landfill/Tip, Restaurant/Café, Retail Warehouse, Social Club, Sports Club/Facility, Stadium, Veterinary Surgery.*

*Not Permitted:*

*Aerodrome/Airfield, Bed & Breakfast, Betting Office, Camp Site, Caravan Park-Residential, Cemetery, Community Centre, Conference Centre, Crematorium, Cultural Use, Data Centre, Doctor/Dentist, Education, Embassy, Funeral Home, Guest House, Health Centre, Hospital, Housing for Older People, Live-Work Units, Nursing Home, Off-Licence, Outdoor Entertainment Park, Place of Worship, Primary Health Care Centre, Recreational Facility, Residential, Residential Institution, Retirement Home, Rural Industry-Food, Shop Major Sales Outlet, Shop-Neighbourhood, Wind Farm, Work-Live Units.”*

6. Counsel has been requested to prepare an opinion to consider whether the Material Amendments 13.1, 13.2 and 13.3 comply with the provisions of the 2000 Act and, in particular, sections 9(6), 10(1A), 12(11) and 27(1).
7. In order to do so, it is necessary to first set out the relevant statutory provisions in relation to the making of a development plan by members of a planning authority.



## B. Relevant Statutory Provisions

8. Section 9(6) of the 2000 Act requires, as far as is practicable, a development plan to be consistent with “national plans, policies or strategies” as the Minister “determines” relate to proper planning and sustainable development.
9. Subsection 10(1A) of the 2000 Act, as amended, requires planning authorities to include a core strategy which shows that the development objectives in the development plan are consistent, as far as practicable, with national and regional development objectives set out in the National Planning Framework [NPF] and the regional spatial and economic strategy [RSES] and with specific planning policy requirements [SPPRs] specified in guidelines under subsection 28(1).
10. In this regard although they cover similar ground, subsection 10(1A) might be regarded as going further than subsection 9(6) in two ways. Firstly it expressly references the NPF and RSES as sources of national and/or regional planning objectives with which the objectives in the development plan must be consistent and secondly it requires the development plan to show such consistency on its face in the “core strategy” – itself a statutory requirement under subsection 10(1B).
11. Section 12(11) provides that, in making the development plan, the members of a planning authority shall be restricted to considering the proper planning and sustainable development of the area to which the development plan relates, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or any Minister of the Government. In this context, it is significant that subsection 12(18) states that “statutory obligations” includes, in relation to a local authority, the obligation to ensure that the development plan is consistent with:
  - (a) the national and regional development objectives specified in—
    - (i) the National Planning Framework, and
    - (ii) the regional spatial and economic strategy,and
  - (b) specific planning policy requirements [SPPRs] specified in guidelines under subsection 28(1).
12. Section 27(1) of the 2000 Act, as substituted, provides that a planning authority shall ensure, when making a development plan, that the plan is consistent with any regional spatial and economic strategy in force for its area.
13. The provisions of both sections 9(6) and 10(1A) were expressly considered by the High Court in *Cork C.C. v. Minister for Housing* [2021] I.E.H.C. 783. In that case, Humphreys J. considered that there were five categories of policy or guidance that may arise, the first two of which are relevant here:

*“(i). Mandatory criteria where consistency is required. This category includes the National Planning Framework and the Regional Spatial and Economic*

*Strategy under s. 10(1A) in the development plan context, s. 28 SPPRs or s. 29 policy directives that are binding generally.*

*(ii). Policies determined under s. 9(6) in the Development Plan context where compliance is required as far as practicable. As noted above, ministerial environmental policies do not automatically become policies for the purposes of s. 9(6). There must be an accessible, explicit ministerial determination to that effect. This cannot in any event include s. 28 guidelines because that would cut across primary legislation...*

14. Accordingly, it is a mandatory obligation of a planning authority in making a development plan to ensure consistency with the NPF and RSES. Whilst subsection 10(1A) provides that a core strategy in the written statement of a development plan must show that the development objectives in the development plan are consistent, as far as practicable, with national and regional development objectives set out in the NPF and RSES, there is no such “practicability” refinement in sections 12(8) or 27(1).

15. It is useful to consider the contents of section 2.4 of the Draft Development Plan, which is headed “Strategic Context” and states as follows:

*“The parameters within which the Planning Authority frames the Core Strategy are defined within National and Regional planning policy frameworks comprising:*

- *Project Ireland 2040: National Planning Framework;*
- *The Eastern and Midlands Regional Spatial and Economic Strategy 2019-2031, including the Dublin Metropolitan Area Strategic Plan, and*
- *Section 28 Ministerial Guidelines including Specific Planning Policy Requirements outlined under Section 28(1) of The Act.*

16. Moreover, section 2.4 provides as follows, in the context of the NPF:

*“The NPF is centred around ten National Strategic Outcomes (NSOs) which are supported by ten Strategic Investment Priorities under the National Development Plan – Figure 1. Development Plans must align with these NSOs, which are underpinned by National Policy Objectives (NPOs). The preparation of the County Development Plan has been informed by these NSOs and related NPOs.”*

17. Thus, the Draft Development Plan, prior to the adoption of Material Alterations 13.1, 13.2 and 13.3 purported to implement the provisions of section 10(1A) of the 2000 Act.

C. Assessment of Material Amendments

18. The Draft Development Plan (Written Statement, including Appendices) and associated SEA Environmental Report and AA Natura Impact Report were placed on public display and made available for public inspection from 7 July to 15 September 2021, and submissions and observations could be made during that period. I am instructed that Querist did not make a submission on the draft Plan as it had no issue with the proposed use matrices of lands comprised in Zoning Objectives “REGEN”, “MRC” and “EE”.

19. However, other submissions were made on the Draft Development Plan which raised issues in relation to data centres, including one submission (SD-C195-119 People Before Profit) which stated:

*“It is believed that there was a real opportunity to completely ban data centres in South Dublin which would have sent a strong message that South Dublin takes the climate crisis extremely seriously.”*

20. In the Chief Executive’s response to these submissions in relation to data centres, it was noted that:

- as stated within Section 9.3, Space Extensive Land Uses generally have a higher carbon footprint, whether because of transport related uses or the large amounts of energy demanded by them;
- the Development Plan has included strong policies on high energy users through EDE7 Objective 2, requiring them to maximise onsite renewable energy generation with 100% renewable on site as far as possible;
- if demand cannot be met in this way there is a requirement to provide evidence of engagement with power purchase agreements (PPAs);
- these PPAs relate to renewable energy and emissions which will continually decrease as more renewables are connected to get to the national 70% target for renewable electricity.

21. The Chief Executive concluded:

*“Having regard to the above, and to the Government’s continued support for data centres, it is considered that the policy in the Draft Plan is robust and will require demonstration of capacity in the relevant networks and of the energy efficiency of the development.*

**CE Recommendation:**

*No change to the Draft Plan.”*

22. A member of the authority proposed Motion No.90 to introduce a ban on all new data centres for the duration of the forthcoming Development Plan by moving ‘data centre’ from “open for consideration” to “not permitted” under all zoning objectives.

23. The Chief Executive recommended that the motion should not be adopted and gave reasons for that recommendation. In addition to the issues noted in his response to the submissions on the Draft Development Plan in relation to data centres, the Chief Executive noted that Eirgrid plc (the electricity Transmission System Operator) had not, in fact, adopted a moratorium on data centre development, as had been stated in Motion No.90.
24. Notwithstanding the recommendation of the Chief Executive, on 1 March 2022, , the members of the authority resolved that the Draft Development Plan should be amended by changing the land use designation of “Data Centres” in a number of zoning objectives from “open for consideration” to “not permitted”.
25. In these circumstances, the key issue which arises for consideration is whether, in deciding to make the South Dublin County Development Plan 2022–2028, by including Material Alterations 13.1, 13.2 and 13.3, the planning authority would contravene an express statutory provision or statutory condition.
26. In this regard, I have considered, in particular, the decisions of the Superior Courts in *Glencar Exploration v. Mayo C.C. (No.1)*<sup>1</sup> and *(No.2)*<sup>2</sup> and *McEvoy v. Meath C.C.*<sup>3</sup>
27. However it should be noted that both of these cases deal with a statutory duty “to have regard to” certain policies and objectives when adopting a development plan rather than a duty to ensure consistency between the objectives of a development plan and the policies and objectives in question. Therefore, the case law, although potentially significant, is not entirely on point. Indeed, it is clear from the decision of the High Court in *Cork C.C. v. Minister for Housing* that there is a higher duty or obligation placed on a planning authority to ensure consistency between a development plan and the NPF and RSES than merely to “have regard to” policies in section 28 guidelines.
28. The decision of the High Court in *Glencar (No.1)* is authority for the proposition that a local authority which acted in defiance of Government policy and objectives would be acting *ultra vires* its powers. In that case, according to Blayney J. in the High Court:
 

*“Without attempting to define precisely the meaning of the phrase ‘shall have regard to’, I am satisfied that a local authority could not be said to have had regard to the policy of the Government in regard to mining when it adopted as part of its development plan a policy which was totally opposed to that policy. The members of the County Council may have considered the Government’s policy but, having considered it, instead of having had regard to it, it seems to me that they totally disregarded it.”*
29. However, in the Supreme Court in *Glencar (No.2)*, Keane C.J. took a different view, albeit *obiter*:

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<sup>1</sup> [1993] 2 I.R. 237.

<sup>2</sup> [2002] 1 I.R. 84.

<sup>3</sup> [2003] 1 I.R. 208.

*“There was no evidence to indicate that the respondent simply ignored the letter from the Minister for Energy: on the contrary, it adjourned the meeting at which it was to make the vital decision so that the Minister’s views could be considered. The fact that it is obliged to have regard to policies and objectives of the Government or a particular minister does not mean that, in every case, it is obliged to implement the policies and objectives in question. If the Oireachtas had intended such an obligation to rest on the planning authority in a case such as the present, it would have said so.”*

30. The view as expressed by Keane C.J. was expressly followed by the High Court in *McEvoy v. Meath C.C.* [2003] 1 I.R. 208. In that case, the court was considering the provision of section 27(1) of the 2000 Act, which provided (as originally enacted) that a planning authority “shall have regard to” any regional planning guidelines in force for its area when making and adopting a development plan. Of course, it should be noted that, in the interim, section 27(1) has been amended to require a planning authority to “ensure, when making a development plan..., that the plan is consistent with any [RSES] in force for its area”. Quirke J. held that the provisions of the subsection did not permit the planning authority to ignore the guidelines and proceed as if they did not exist. The High Court took the view that the obligation on the elected members of the planning authority was two-fold: (i) they had to fully inform themselves of the regional planning guidelines and (ii) they had to give reasonable consideration to the guidelines with a view to accommodating their objectives and policies.
31. In circumstances where the amended provisions of section 9(6), 10(1A) and 27(1) apply, then the test is to establish that Material Alterations 13.1, 13.2 and 13.3 to the Draft Development Plan, is not consistent with national plans, policies or strategies and that it was practicable to ensure such consistency. The significance of such a finding is that, while the requirement of “consistency” does not require precisely adopting such plans or policies, there must be an implication that the development plan must not conflict with the achievement of the objectives of the strategy. It is clear from the judgment of the High Court in *Cork C.C. v. Minister for Housing* that a requirement to be “consistent with” must mean going beyond the requirements of “taking account of” or “having regard to”. As one commentator suggests, the requirement of consistency “relates to the end result as reflected in the development plan rather than the process of adopting the development plan.”<sup>4</sup>
32. Accordingly, particular focus will be brought to bear on the provisions of the National Planning Framework and the RSES, in particular. In this regard, I have been furnished with a final draft submission prepared by Marston Planning Consultancy which, as I understand the position, will be submitted to the planning authority on or before 26 April 2022.

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<sup>4</sup> Dodd, *op. cit.*

33. It is clear from the Marston Planning Consultancy submission that there are a number of bases for asserting inconsistency between Material Alterations 13.1, 13.2 and 13.3 and both the NPF and RSES:
- in particular, the NPF and RSES strongly support the implementation and development of Information and Communications Technology (ICT) infrastructure;
  - for example, National Strategic Outcome 5 of the NPF relates to the creation of “A Strong Economy Supported by Enterprise, Innovation and Skills”. This strategic outcome is underpinned by a range of objectives relating to job creation and the fostering of enterprise and innovation;
  - the following objective, relating to Information and Communications Technology (ICT) infrastructure (including data centres) is included under National Strategic Outcome 5:  
*“Promotion of Ireland as a sustainable international destination for ICT infrastructures such as data centres and associated economic activities.”*
  - the NPF also states under National Strategic Outcome 5:  
*“Ireland is very attractive in terms of international digital connectivity, climatic factors and current and future renewable energy sources for the development of international digital infrastructures, such as data storage facilities. This sector underpins Ireland’s international position as a location for ICT and creates added benefits in relation to establishing a threshold of demand for sustained development of renewable energy sources.”*
  - the NPF is, therefore, considered to be favourably disposed to the location of ICT infrastructure in Ireland, including such facilities within the administrative area of South Dublin County Council;
  - the RSES for the Eastern and Midlands Regional Assembly [EMRA] has interpreted the above NPF objective at a regional level and includes Regional Policy Objective (RPO) 8.25 which states the following:  
*“Local Authorities shall:*  
*- [...]*  
*- Promote and facilitate the sustainable development of a high-quality ICT network throughout the Region in order to achieve balanced social and economic development, whilst protecting the amenities of urban and rural areas.*  
*- Support the national objective to promote Ireland as a sustainable international destination for ICT infrastructures such as data storage facilities and associated economic activities at appropriate locations.*  
*- [...]*”
34. Marston Planning Consultancy submit that Material Alterations 13.1, 13.2 and 13.3 are not supported by, and are contrary to, national and regional Policy as set out under the National Policy Framework and RSES.
35. Against this backdrop, I am of the view that there is a strong platform in both the NPF and RSES from which to argue that Material Alterations 13.1, 13.2 and 13.3 are inconsistent with the material provisions of the NPF and RSES.

36. Thus, the provisions of sections 10(1A), 12(11) and 27(1), in particular, are crucial to the assessment of the Material Alterations.
37. Further, it will be necessary for the planning authority to proffer reasons for its decision to adoption, or not to adopt, these Material Alterations. The very fact that there were no adequate reasons for the members' decision to make the Material Alterations to the Draft Development Plan, notwithstanding the detailed reasons for the recommendation of the Chief Executive is instructive.
38. Moreover, it is entirely unclear as to the nature of the technical material before them (or even available to them) upon which they could reasonably reject the recommendation of the Chief Executive. In *Wicklow County Manager v Wicklow County Council* [Unrep., High Court, O'Caomh J., February 26, 2003,) the county manager had refused to act upon a s.4 resolution (now s.140 of the Local Government Act) of the elected members directing him to refuse a particular planning permission on the basis that the resolution was invalid. Certain of the members challenged this decision unsuccessfully. O'Caomh J held that in circumstances where all of the technical reports generated by the executive supported the development, the elected members would have to have had some contradictory evidence on the merits of the proposal to support their conclusion that it should be refused. It is not entirely clear from whether the members had any material before them relating to the "ban" on data centres. Certainly, if there was no such material before them, then their decision not to follow the recommendation of the Chief Executive is unreasonable.
39. Finally in this context, in *Christian v. Dublin City Council* [2012] 2 I.R. 506, the High Court made clear that the duty to give reasons applied to the making of a development plan, at least where the plan moves away from general policy towards specific objectives and, in particular, reasons were required to be given for the precise measures adopted to implement policies. Clarke J. concluded that, while the reasons could generally be inferred from reports prepared by a Chief Executive, where the members disagreed with the recommendations of the Chief Executive, they were required to give reasons for any such decision.

#### D. Conclusion

40. Based on the analysis set out above, I am of the opinion that, in the event that South Dublin County Council decided to make the Development Plan containing Material Alterations 13.1, 13.2 and 13.3, that decision would breach the requirement of consistency with, amongst other things, the requirements of the NPF and RSES, under sections 10(1A), 12(11) and 27(1) of the 2000 Act.

Nothing further occurs at this time.

**JARLATH FITZSIMONS S.C.**

**20 APRIL, 2022**