

**Submission on the Material Alterations to the
Draft South Dublin County Development Plan
2022-2028**

On behalf of

**Echelon Data Centres,
Unit 22, The Cubes Offices,
Beacon South Quarter,
Dublin 18**

To

**Senior Executive Officer,
Forward Planning Section,
Land Use Planning & Transportation Department, County Hall,
Tallaght, Dublin 24**

26th April 2022



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1.0 INTRODUCTION

- 1.1 On behalf of our client, Echelon Data Centres, Unit 22, The Cubes Offices, Beacon South Quarter, Dublin 18, we, John Spain Associates, 39 Fitzwilliam Place, Dublin 2, wish to make a submission on the Material Amendments to the Draft South Dublin County Development Plan 2022-2028.
- 1.2 Our client is the owner of lands at Crag Avenue, Clondalkin Industrial Estate, Clondalkin and at the townland of Milltown, Newcastle, Co. Dublin, which are subject to several extant permissions for data centre development. The lands in our client's ownership are zoned Objective EE under the current County Development Plan 2016-2022, and the lands retain this zoning under the Draft County Development Plan 2022-2028 and the Material Amendments thereto.
- 1.3 Our client also has an interest in lands adjacent to and adjoining the aforementioned landholdings, and intends to bring forward applications for the expansion of the permitted data centre developments at these locations in due course.
- 1.4 The permitted and planned developments on our client's lands represent a very significant investment in South Dublin, which will result in significant and positive direct and indirect economic effects, benefiting the county as a whole.
- 1.5 Further details in relation to the lands in our client's ownership which are subject to extant permissions for data centre development are provided in Appendix 1 of this submission.

Key Grounds of Submission

- 1.6 The key grounds of submission set out hereinafter can be summarised as follows:
 - As set out in further detail below, both the above-referenced land holdings are currently subject to an Objective EE zoning under the current County Development Plan 2016-22, with a stated objective to *"provide for enterprise and employment related uses"*.
 - This zoning remains unchanged for both landholdings under the Material Amendments to the Draft Development Plan 2022-2028, with both sites retaining the Objective EE zoning.
 - As set out in Appendix 1, both sites benefit from extant permissions for data centre development, and as set out in further detail below, the permissibility of data centre development on EE zoned lands, and the suitability of such lands for data centre development is well established in the county.
 - It is noted that 'Data Centre' has been introduced as a separate '*sui generis*' use class under the Draft Plan, which was listed as an 'Open for Consideration' use under the Draft Plan
 - However, the Material Amendments to the Draft Plan propose an alteration to the EE zoning objective (along with the REGEN and MRC zoning objectives), to omit Data Centre use from the list of 'Open for Consideration' uses under this objective, and instead to place Data Centre use under the 'Not Permitted' uses under the EE zoning objective (and the REGEN and MRC zoning objectives).
 - These proposed amendments would serve to render Data Centre development a 'Not Permitted' use throughout the county, and would

prejudice the delivery of data centre development, while also rendering permitted and existing data centre development a non-conforming use wherever it is located in the county.

- It is submitted that the Material Amendment to the Draft Plan (Amendment No. 13.3) which designates Data Centre use a 'Not Permitted' use under the EE zoning should be omitted, with Data Centre use to remain an 'Open for Consideration' use under the EE zoning objective. A similar approach would be warranted in relation to the REGEN and MRC zoning objectives also (Amendment Nos. 13.1 and 13.2 respectively).
- Section 12 of the Planning and Development Act 2000, as amended sets out the statutory provisions and obligations relevant to the making of a new Development Plan. Under section 12(18) of the Act, the statutory obligations of the Planning Authority are specifically stated to include an obligation to ensure the Development Plan is consistent with the national and regional policy objectives of the NPF and the relevant RSES, along with the SPPRs of section 28 Guidelines issued by the minister.
- It is submitted that the requested change to the Material Amendments is required in order to avoid bringing the new Development Plan into direct conflict with national and regional policy objectives of the National Planning Framework and the Regional Spatial and Economic Strategy for the EMRA, thereby representing a breach of the statutory obligations of the Planning Authority as set out under the Act.
- The absence of the omission of Amendment No. 13.3 would result in a significant extent of existing and permitted data centre development in the county being rendered a 'non-conforming' use, potentially resulting in significant difficulty in the delivery, operation, and evolution of data centre developments.

1.7 The relevant content of the Draft Plan and Material Amendments as they relate to the grounds of submission is outlined in Section 2 and the suggested amendments and grounds supporting same are provided in Section 3.

1.8 Appendix 2 of this submission comprises a legal submission prepared by A&L Goodbody Solicitors, which sets out the relevant legal principles and grounds which support the requested omission of Material Amendment No. 13.3 (and consequently Amendment Nos. 13.1 and 13.2 also). The legal submission also makes reference to relevant case law supporting the legal grounds. These aspects of the legal submission will not be repeated herein to avoid repetition, and the reader is referred to Appendix 2 for further details.

2.0 REVIEW OF THE DRAFT COUNTY DEVELOPMENT PLAN AND PROPOSED MATERIAL AMENDMENTS

Zoning

2.1 The lands in our client's ownership in the county remain primarily zoned objective EE under the draft Plan, with a stated objective to "*provide for enterprise and employment related uses*".

2.2 The Draft Development Plan defined 'Data Centre' as a new *sui generis* use. Under the Draft Plan as originally published by the Planning Authority, Data Centre use was listed as an 'Open for Consideration' use under the EE, MRC,

and REGEN zoning objectives, and was listed as a 'Not Permitted' use under all other zoning objectives.

- 2.3 However, the Material Amendments to the Draft Plan (which are the subject of the current submission) included three amendments of relevance to the aforementioned zoning objectives. Material Amendments Nos. 13.1, 13.2, and 13.3 relate to the REGEN, MRC, and EE zoning objectives respectively, and have the effect of deleting or omitting 'Data Centre' use from the list of 'Open for Consideration' uses under each of these zonings, and instead listing 'Data Centre' use as a 'Not Permitted' use under these zoning objectives.
- 2.4 The cumulative result of these proposed amendments (should they be adopted in the new Plan) would be to render 'Data Centre' use a 'Not Permitted' use under all of the zoning objectives within the new County Development Plan. As set out in further detail below, our client has a significant concern that these proposed amendments (and in particular Amendment No. 13.3 relating to the EE zoning) would prejudice the delivery of significant investment in the county in the form of planned data centre development.
- 2.5 Material Amendment No. 9.5 introduces a further amendment relevant to data centre development, by amending EDE7 Objective 2 as set out below (added text in green, and omitted text in red and struck through):

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.*

Other Relevant Policies and Objectives

- 2.6 The following objectives were included in the Draft Plan, and are not subject to any identified change under the published Material Alterations to the Draft Plan.
- 2.7 EDE7 Objective 1 is "*To ensure that, insofar as possible, space extensive enterprise is located on lands which are outside the M50 and which do not*

compromise labor intensive opportunity on zoned lands adjacent to public transport.”

- 2.8 EDE7 Objective 3 is *“To ensure that landscaping and site layout in space extensive developments provides for demonstrated biodiversity measures and that landscape and biodiversity measures integrate into the green infrastructure network, in accordance with the Green Infrastructure Strategy set out in Chapter 4 of this Plan.”*
- 2.9 The next section of this submission details the grounds of submission, along with the requested changes to the published Material Amendments to the Draft Plan.

3.0 GROUNDS OF SUBMISSION

- 3.1 This section of the current submission sets out amendments which are respectfully requested to the Draft Development Plan.

Proposed Amendment No. 13.3

- 3.2 As set out in detail below, Material Amendment No. 13.3 (which seeks to omit ‘Data Centre’ use from the list of ‘Open for Consideraion’ uses under the EE zoning objective, and instead list ‘Data Centre’ use as a ‘Not Permitted’ use under this zoning) is directly contrary to provisions of national and regional planning policy, government policy, and the applicable elements of the Planning and Development Act 2000, as amended pertaining to the making of Development Plans.
- 3.3 Amendment No. 13.3 should therefore be omitted, and the new South Dublin County Development Plan should be made or adopted without Material Amendment No. 13.3.
- 3.4 Furthermore, consideration should be given to the omission of Material Amendment Nos. 13.1 and 13.2, which have the same effect as Amendment 13.3 in relation to the REGEN and MRC zoning objectives.
- 3.5 Were the Plan to be adopted with the above-mentioned Material Amendments included, it is submitted that the Plan would be in direct conflict with national and regional planning policy, government policy, and the relevant legislation.

Rationale for the Requested Amendment

Statutory Obligations of the Planning Authority and Elected Members in Preparing the new County Development Plan

- 3.6 Section 12 of the Planning and Development Act 2000, as amended sets out the statutory provisions and obligations relevant to the making of a new Development Plan.
- 3.7 Section 12(11) of the Act states the following:

*“(11) In making the development plan under subsection (6) or (10), the members 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.” (emphasis added)

3.8 Under section 12(18) of the Act, the ‘statutory obligations’ of the Planning Authority are specifically stated to include an obligation to ensure the Development Plan is consistent with the national and regional policy objectives of the NPF and the relevant RSES, along with the SPPRs of section 28 Guidelines issued by the minister.

3.9 Section 12(18) states the following:

“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 .”

3.10 As will be set out below, the proposed Material Amendment No. 13.3 (and consequently 13.1 and 13.2) directly conflict the with national and regional policy objectives of the National Planning Framework (NPF) and the Regional Spatial and Economic Strategy (RSES) for the Eastern and Midlands Regional Assembly (EMRA). Furthermore, the proposed amendments are contrary to the policies of the Government Statement on The Role of Data Centres in Ireland’s Enterprise Strategy.

3.11 On this basis it is submitted that these Material Amendments, if adopted by the Planning Authority when making the Development Plan, would be contrary to the statutory obligations of the Planning Authority as prescribed under the Act and set out above.

3.12 On this basis it is submitted that Material Amendment No. 13.3 should be omitted, and the Plan should be made without that Material Amendment. Consideration should be given to similarly omitting Material Amendment Nos. 13.1 and 13.2.

Direct Conflict with National and Regional Planning Policy

3.13 The following sets out the key national policy objective (NPO) of the NPF which the proposed Material Amendments directly conflict with. The direct conflict of the Material Amendments with one of the Regional Policy Objectives of the RSES for the EMRA is also established, along with an account of how the proposed amendments directly conflict with Government policy on data centre development in the state.

3.14 As stated previously, the national and regional planning policy context provided within the National Planning Framework (NPF) and the Regional Spatial and Economic Strategy for the Eastern and Midlands Regional Assembly (RSES for the EMRA) provide unequivocal support for the delivery

of data centre development in Ireland and within the Eastern and Midlands Region.

The National Planning Framework

3.15 The National Planning Framework was published in February 2018 and contains policies which are supportive of the development of ICT infrastructure, with particular reference made to ‘data centres’.

3.16 National Policy Objective 74 of the NPF is as follows:

“Secure the alignment of the National Planning Framework and the National Development Plan through delivery of the National Strategic Outcomes.”

3.17 National Strategic Outcome 6 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.

3.18 The following objective, relating to ICT infrastructure (including datacentres) is included under National Strategic Outcome 6:

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

3.19 The NPF further states under National Strategic Outcome 6:

“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 centres. 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.”

3.20 Having regard to the above, the National Planning Framework expressly requires the promotion and delivery of the National Strategic Outcomes of the Framework. One of these National Strategic Outcomes in turn requires the promotion of Ireland as a sustainable international destination for ICT infrastructures such as data centres.

3.21 By rendering ‘Data Centre’ use a ‘Not Permitted’ use under the EE zoning objective, proposed amendment No. 13.3 (and similarly Nos. 13.1 and 13.2 in relation to the REGEN and MRC zonings) would prejudice the delivery of data centre development in the county, directly contrary to a NPO of the NPF.

3.22 The omission of Material Amendment No. 13.3 when adopting / making the new County Development Plan would avoid this direct conflict with the provisions of the NPF.

The Regional Spatial and Economic Strategy for the Eastern and Midlands Regional Assembly

3.23 Within the RSES for the EMRA, Regional Policy Objective (RPO) 8.25 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 centres and associated economic activities at appropriate locations.*
- *Promote Dublin as a demonstrator of 5G information and communication technology.”*

3.24 Thus, the RSES for the EMRA also requires, under one of its Regional Policy Objectives, that the delivery of data centre development is supported as per the National Policy Objective of the NPF.

3.25 Therefore, by rendering ‘Data Centre’ use a ‘Not Permitted’ use under the EE zoning objective, proposed amendment No. 13.3 (and similarly Nos. 13.1 and 13.2 in relation to the REGEN and MRC zonings) would prejudice the delivery of data centre development in the county, and would also be directly contrary to a RPO of the RSES for the EMRA.

Government Policy on Data Centre Development

3.26 The Government Statement on The Role of Data Centres in Ireland’s Enterprise Strategy was published by the Government of Ireland in 2018. The statement followed on from a commitment made in October 2017, whereby the Government agreed to a strengthened Strategic Policy Framework for the continued development of data centres in Ireland, as part of objectives for wider economic growth and regional development.

3.27 The statement sets out the following introductory context in relation to data centre development in Ireland:

“This statement outlines the role data centres play in Ireland’s ambition to be a digital economy hot-spot in Europe. Ireland currently hosts several global players in the ICT sector and boasts a strong cadre of technology-rich Irish owned enterprises. The evidence speaks for itself with 16 of the top 20 software companies, 9 of the top 10 US ICT companies, the top 10 ‘born on the web companies’, and 4 of the top 5 IT services companies based here. Data centres are central to the digital economy. Data centre presence in Ireland raises its visibility internationally as a technology-rich, innovative economy. In turn, this places Ireland on the map as a location of choice for a range of sectors and activities that are increasingly reliant on digital capabilities including manufacturing, financial services, animation, retail and global business services.

Data centres directly contribute to job creation and they also generate significant added economic benefit by providing a range of services to other firms that undertake production, research and development, marketing, sales,

service, and support activities in locations with no physical/geographic connection to the data centre.”

3.28 The statement recognises that “*Project Ireland 2040 (National Planning Framework and National Development Plan 2018-2027) includes an objective for the promotion of Ireland as a sustainable international destination for ICT infrastructures such as data centres and associated economic activities.*”

3.29 Furthermore (and of particular relevance to the current submission) the following is set out within the Government statement:

- *“The strategic importance of data centres is reflected in the thematic infrastructure priorities in Project Ireland 2040, which embeds policy support for data centres into the planning policy hierarchy.*
- *Regional level plans (Regional Spatial and Economic Strategies) must be consistent with Project Ireland 2040 and, **in turn, local development plans must be consistent with regional plans.**”*

3.30 The statement concludes as follows:

“Ireland continues to enhance the business environment to ensure its attractiveness as business needs evolve. The Government reaffirms support for the development of enabling technology and infrastructure to meet enterprise, economic and social policy goals.

We acknowledge the need for social acceptance of large data centre developments. The planning process provides the necessary framework for ensuring that all necessary standards are met and that comprehensive statutory and non-statutory consultation is built into the process.

The Government endorses, supports and promotes the appropriate and timely delivery of data centres across the regions. It reaffirms that it is Government policy and in the national interest, that these developments are delivered in the most efficient and timely way possible, based on the best available knowledge and informed engagement on their impacts.

The policy responses summarised above will help ensure that Ireland continues to achieve its national enterprise policy objectives, mindful of the strategic issues that come with developments in the area, while ensuring that our sustainability goals are also reached.”

3.31 The foregoing extracts from the Government strategy on data centres clearly identify the support for their delivery, while also reiterating and highlighting the fact that the delivery of data centres is strongly supported in national and regional policy (the NPF and RSES). Furthermore, in this regard the Government statement clearly reinforces the assertions made previously in this submission, that the preparation of County Development Plans must be consistent with regional plans, which must in turn be consistent with the NPF as their policies relate to data centre development.

3.32 As has already been established above, the proposed Material Amendments to the Draft South Dublin County Development Plan currently are not consistent with national or regional policy on data centre development, and consequently the Material Amendments are also contrary to the provisions of

the Government Statement on The Role of Data Centres in Ireland's Enterprise Strategy.

- 3.33 In turn, as set out previously, the inconsistency of the proposed Material Amendment No. 13.3 (and similarly 13.1 and 13.2) with a NPO of the NPF, a RPO of the RSES for the EMRA, and finally with Government Policy serves to render these amendments contrary to the provisions of section 12 of the Planning and Development Act 2000, as amended.
- 3.34 Therefore, to avoid such a conflict and inconsistency with the relevant legislation and policy arising, it is submitted that proposed Material Amendment No. 13.3 in relation to the permissibility of 'Data Centre' development under the EE zoning objective should be omitted, and that the new South Dublin County Development Plan 2022-2028 should be made without that amendment. Consideration should similarly be given to omitting Material Amendment Nos. 13.1 and 13.2.

Planning Precedents and Planning History

- 3.35 As set out within Appendix 1 of this submission, in the context of the sites under our client's control, there is an established pattern of planning precedent and planning history which highlights the suitability of EE zoned lands in the county for data centre development. This established approach to the assessment of data centre development proposals on EE zoned lands is consistent in other locations in the county.
- 3.36 The Planning Authority have consistently previously noted that the provision of data centre, or ICT facility development on EE zoned lands would be in accordance with the EE zoning objective, for example within the Chief Executive's Orders for recently permitted development under Reg. Ref.: SD20A/0309, Reg. Ref.: SD20A/0121, Reg. Ref.: SD19A/0042¹, and Reg. Ref.: SD20A/0324 the Planning Authority noted in each case that the proposed use was acceptable or permissible in principle. It is respectfully submitted that the new Development Plan should follow the same established approach to this nature of use on EE zoned lands, by recognising the newly defined 'data centre' use class as an 'Open for Consideration' use under the zoning matrix for EE zoned lands, as set out above.
- 3.37 It is noted that other Planning Authorities have taken such an approach when defining data centre use as a new *sui generis* use class as part of the review of their Development Plans. For example, Meath County Council have recognised Data Centre development as a 'Permitted Use' under the E1 and

¹ This interpretation of the compliance of such development with the EE objective was subsequently confirmed by the Board in their consideration of a third-party appeal under ABP Ref.: 305948-19. The Board's Order to Grant Permission noted the compliance of the development with the zoning objective. The Inspector's Report (at para. 8.2.1 and 8.2.2) stated:

*"The proposed development, comprising a data centre, offices, temporary gas powered generation plant and substation, was **determined by the Planning Authority to be permitted in principle on lands zoned 'EE'**, and this is not disputed by either party.*

*I would concur that **the principle of a data centre on lands zoned 'EE' – Enterprise and Employment Areas – in the South Dublin County Development Plan 2016-2022 is acceptable under the Plan.** The type of development proposed was envisaged within this land use zoning. In addition to being a plan-led development, the Development Plan itself was subject to a Strategic Environmental Assessment. (emphasis added)*

E2 zoning objectives within their new 2021-2027 County Development Plan². These zoning objectives within the Meath County Development Plan are the closest equivalents to the EE zoning within the draft South Dublin County Development Plan. The approach reflected in the new Meath County Development Plan 2021-2027 recognises the permissibility of data centre development under the E1 and E2 zonings to date, notwithstanding the absence of a separate use class for this nature of development under the previous 2013-2019 Development Plan.

- 3.38 An Bord Pleanála have recently granted permission on appeal for data centre development under the new Meath County Development Plan (on lands zoned E1). The Board's Order issued on the 14th of April 2022, noted that the provision of data centre development on the lands was in accordance with national and regional planning policy and with government policy.³
- 3.39 It is respectfully submitted, on the basis of the foregoing, that Material Amendment No. 13.3 should be omitted.

4.0 CONCLUSION

- 4.1 Our client, Echelon Data Centres welcomes the opportunity to make this submission on the Material Amendments stage of the preparation of a new South Dublin County Development Plan. However, as set out above, our client has significant concerns that the Material Amendments as currently set out (if adopted) would result in a direct conflict between the new Development Plan and national and regional planning policy, government policy, and the legislation governing the preparation of new Development Plans.
- 4.2 For this reason, it is requested that proposed Material Amendment No. 13.3 in relation to the permissibility of 'Data Centre' development under the EE zoning objective be omitted, and that the new South Dublin County Development Plan 2022-2028 should be made without that amendment. Consideration should similarly be given to omitting Material Amendment Nos. 13.1 and 13.2.
- 4.3 It is respectfully requested that the Planning Authority have regard to the points raised in this submission and take the appropriate action to ensure the new Development Plan fully aligns with the NPOs of the NPF, RPOs of the RSES, Government policy, and the requirements of the Planning and Development Act. For further details in relation to the relevant legal principles and legal grounds of submission, please refer to Appendix 2, which comprises a submission prepared by A&L Goodbody Solicitors.

Yours Sincerely,



John Spain Associates

² Chapter 11 of the new Meath County Development Plan 2021-2027 refers: <https://consult.meath.ie/en/consultation/meath-adopted-county-development-plan/chapter/11-development-management-standards-and-land-use-zoning-objectives>

³ ABP Ref.: 310729: <https://www.pleanala.ie/en-ie/case/310729>

APPENDIX 1: LOCATION AND PLANNING HISTORY OF RELEVANT LANDHOLDINGS

Location of the Relevant Landholdings

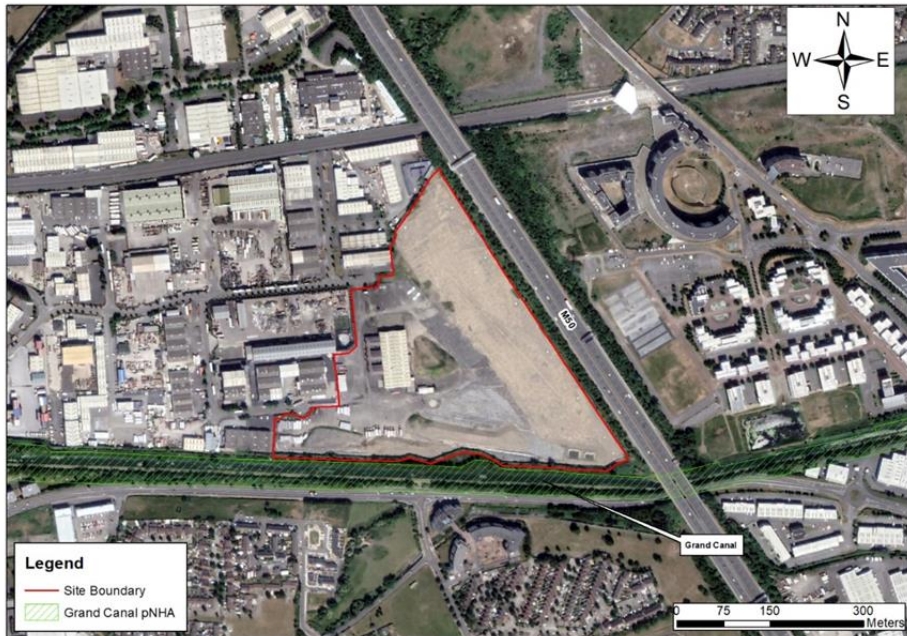
The Planning Authority's attention is drawn to lands in our client's control located at 3-4, Crag Avenue, Clondalkin Industrial Estate, Clondalkin, and in the townland of Milltown, located to the north of Peamount Road (R120), Newcastle, Co. Dublin. The submission is also of relevance to the wider lands in the county subject to an Objective EE zoning under the Draft Development Plan and the Material Alterations thereto, including lands in the direct vicinity of the lands set out below, which could accommodate the expansion of permitted data centre development.

Lands at 3-4 Crag Avenue, Clondalkin Industrial Estate

The subject lands are partially green field / scrubland and partially developed and have an area of c. 13 hectares. The site is located within a setting defined by industrial and logistics type development at Clondalkin Industrial Estate. The site formerly contained cable depot buildings and a significant area of hardstanding which was previously used for vehicle and materials storage / parking. It is noted that the site was previously cleared under an extant permission pertaining to the site, with the previous structures on site also having been removed. The lands are located adjacent to, but outside of, the M50.

The site has been subject to a series of applications (all of which have been previously granted) for data centre development and other associated ancillary infrastructure, including substation and utility connections. The relevant permissions are as follows:

- Reg. Ref.: SD20A/0309 - Recent permission (subject to a final grant of permission on the 4th of May 2021) for a revised data centre development on site, including 4 new ICT facility buildings and associated development.
- Reg. Ref.: SD18A/0068 – Permission for a datacentre development with associated energy centre and ancillary development.
- Reg. Ref.: SD19A/0185 – Amendment to the permission granted under Reg. Ref.: SD18A/0068, relating to changes to the permitted substation.
- Reg. Ref.: SD20A/0242 – Further recent amendment application to Reg. Ref.: SD18A/0068 (as previously amended by Reg. Ref.: SD19A/0185) to provide for ducted services connections, revised entrance arrangements, and other ancillary development.
- Reg. Ref.: SD13A/0271- Previous Permission for data centre development, associated energy centre and ancillary development.



**Figure A1: Location of the lands at Clondalkin Industrial Estate
Lands in the Townland of Milltown**

The landholding within the townland of Milltown comprises an area of c. 8 hectares and is located approximately 6km to the west of the M50. The lands are greenfield and are located to the north of the Peamount Road (R120). There are two existing dwellings located in the southern portion of the lands, the demolition of which is permitted under the permissions outlined below. The lands are subject to two extant permissions for energy centre and data centre development as follows:

- Reg. Ref.: SD20A/0324 – Permission for 2 no. two storey ICT facility buildings and associated development, which was subject to a final grant of permission on the 22nd of July 2021.
- Reg. Ref.: SD20A/0058 – Permission for an energy centre and associated development which was subject to a final grant of permission



Figure A2: Location of the lands at Milltown

APPENDIX 2: LEGAL SUBMISSION PREPARED BY A&L GOODBODY SOLICITORS

Date | 26 April 2022
Our ref | JHM 01428923
Your ref |

Senior Executive Officer
Forward Planning Section
Land Use Planning & Transportation Department
County Hall
Tallaght
Dublin 24

Our Client: Echelon Data Centres
Re: Submission in respect of Material Amendments to Draft Development Plan

Dear Sir or Madam

We make this submission on behalf of our client, Echelon Data Centres (**Echelon**), The Cubes Offices, Beacon South Quarter, Dublin 18, in respect of the South Dublin County Council's (**SDCC**) Draft Development Plan 2022 – 2028 (the **Draft Plan**) and certain proposed material amendments, which are set out below (the **Material Amendments**).

We refer to the submission of John Spain Associates (the **JSA Submission**), which addresses the planning implications of the Material Amendments on Echelon. To the extent that the issues raised by John Spain Associates are relevant to this submission, we adopt the same position. A copy of the JSA Submission is enclosed at Appendix A.

1. Background

Echelon is the owner of certain lands at Crag Avenue, Clondalkin Industrial Estate, Clondalkin, Dublin 22 and lands in the townland of Milltown, Newcastle, Co. Dublin. These lands are within the functional area of SDCC and are zoned Objective 'EE' under both the current County Development Plan 2016-2022 (the **Development Plan**) and the Draft Plan, inclusive of the Material Amendments. They are also subject to several extant planning permissions for data centre development.

The purpose of this submission is to set out Echelon's objections to the Material Amendments made by the Elected Members of SDCC to Chapter 13 of the Draft Plan, which, if adopted, will have the effect of precluding any future data centre development on land with a zoning objective of 'REGEN', 'EE' or 'MRC'.

2. Proposed Material Amendments

The Material Amendments relevant to this submission are as follows:

2.1. Amendment Ref. 9.5

Amendment Ref. 9.5 is relevant to data centre development, as it amends EDE7 Objective 2, which is set out below (added text in **green**, and omitted text in **red** and struck through):

“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.”

2.2. Amendment Ref. 13.1

Chapter/Section	Section 13.1 Land-Use Zoning Objectives, Table 13.4
Amendment ref	13.1
Page No.	506
Policy/Objective no.	Amend Table 13.4

Amend Zoning Objective 'REGEN' such that "Data Centre" development is "Not Permitted".

2.3. Amendment Ref. 13.2

Chapter/Section	Section 13.1 Land-Use Zoning Objectives, Table 13.9
Amendment ref	13.2
Page No.	510
Policy/Objective no.	Amend Table 13.9

Amend Zoning Objective 'MRC' such that "Data Centre" development is "Not Permitted".

2.4. Amendment Ref. 13.3

Chapter/Section	Section 13.1 Land-Use Zoning Objectives, Table 13.10
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Amendment ref	13.3
Page No.	512
Policy/Objective no.	Amend Table 13.10

Amend Zoning Objective 'EE' such that "Data Centre" development is "Not Permitted".

3. Submission

There are many reasons why Echelon may need to obtain further planning permissions for data centre development on its land. The Material Amendments outlined above could present a significant barrier to achieving permission for data centre development on these lands in future. As such, the Material Amendments are particularly discriminator, as against Echelon. As noted in the JSA Submission, if the Draft Plan is adopted with Material Amendment 13.3 (and consequently 13.1 and 13.2) included, it would be in direct conflict with national and regional planning policy, Government policy, and the relevant legislation.

3.1. Statutory Obligations in the Preparation of Development Plans

Section 12 of the Planning and Development Act 2000, as amended (the **PDA**), sets out a Planning Authority's statutory obligations relative to the making of a new development plan. Section 12(11) provides as follows:

"In making the development plan under subsection (6) or (10), the members 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."

Under section 12(18) of the PDA, those 'statutory obligations' referred to in section 12(11) are specifically stated to include an obligation to ensure a Development Plan is consistent with the national and regional policy objectives of the National Planning Framework and the relevant Regional Spatial and Economic Strategies, together with the Specific Planning Policy Requirements of any section 28 Guidelines issued by the Minister.

Section 12(18) provides as follows:

"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."

Accordingly, SDCC is legally bound not to make, adopt or agree to Development Plan objectives that are in direct conflict with the section 12(8) 'statutory obligations'.

As noted in the JSA Submission, the Material Amendments are in direct conflict with national and regional planning policy, Government policy, and relevant legislation, and are therefore *ultra vires* the Planning Authority.

3.2. Lack of Planning Justification for Material Amendments

The Elected Members of SDCC who have introduced the Material Amendments have not provided any rationale or reasoning as to why data centre development should not be permitted within lands zoned as 'REGEN', 'EE' or 'MRC', which represents such a radical change from the position taken in the current Development Plan. With the Material Amendments, lands zoned as 'REGEN', 'EE' or 'MRC' are now unnecessarily restrictive insofar as it affects land owned by Echelon.

3.3. Breach of Constitutional and Human Rights

In the case of the *Sisters of Charity v Dublin City Council*, the High Court upheld a challenge by the Sisters of Charity to the imposition of more restrictive conditions on development of their lands in the new Dublin City Development Plan. The Sisters of Charity alleged that there was a breach of discrete articles of the Constitution, namely Art. 40 on personal rights and Art. 43 on private property. The specific provisions of those articles relied on are in the following terms:

“Article 40... 3.2° The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen...”

“Article 43 1.1° The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods. 1.2° The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property. 2.1° The State recognises, however, that the exercise of the rights mentioned in the foregoing provisions of this Article ought, in civil society, to be regulated by the principles of social justice. 2.2° The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good.”

The entitlement of corporate bodies to invoke the constitutional guarantee of private property was asserted by Keane J in the High Court in *Iarnród Éireann v Ireland*. Keane J held that the availability of Article 40.3, as well as Article 43, to protect property rights meant that the property rights of corporate bodies enjoy constitutional protection.

Article 1 (Protection of Property) of the European Convention on Human Rights (**ECHR**) states as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties”.

Mr Justice Clark noted that it was not possible to determine whether there was a breach of the above rights, as Dublin City Council had not provided sufficient reasons for their proposals. As such Mr Justice Clarke was not able to determine if the interference was disproportionate.

As noted above, Elected Members of SDCC who have introduced the Material Amendments have not provided any rationale or reasoning as to why data centre development should not be permitted within lands zoned as 'REGEN', 'EE' or 'MRC'. Accordingly, we are not able to consider whether the interference is unlawful. That said, we are not aware of any specific justification (as noted above) and accordingly if the Material Amendments are adopted, SDCC's approach may amount to a breach of Echelon's Constitutional rights and rights under the ECHR.

3.4. Irrationality and Natural Justice/Fairness

There is no relevant material to support a decision to change the zonings of 'REGEN', 'EE' or 'MRC' to exclude data centre development (*O'Keeffe v An Bord Pleanála*). Indeed, for the reasons set out above, any change of zoning would be so unreasonable that no reasonable authority could ever have come to it. As such, its unreasonableness makes it unlawful.

Furthermore, a decision which adversely affects rights without objective justification may be open to review on the basis that it is 'disproportionate'. This may be a breach of the principle of fairness in judicial review and we would assert that the proposed changes to the zonings of 'REGEN', 'EE' or 'MRC' to exclude data centre development contravenes this principle.

4. Conclusion

If the Material Amendments are adopted, those changes will place significant restrictions on our Echelon's ability to obtain future planning permissions. Echelon owns a substantial area of land zoned as 'EE', which is suitable for data centre development.

Furthermore, there are other uses that remain open for consideration within the relevant area that are likely to give rise to the same level of planning impact as data centre development. There is a complete lack of justification for why data centre development has been singled out in these circumstances.

The proposed change to the zonings of 'REGEN', 'EE' or 'MRC' to exclude data centre development will significantly impede how Echelon will be able to deal with its land. It appears to amount to a disproportionate interference and breach Articles 40 and 43 of the Constitution and Article 1 of the ECHR. We are not able to consider this further until and unless the Elected Members of SDCC who have introduced the Material Amendments provide sufficient reasons for the proposed changes.

Furthermore the proposed changes are not based on any supporting material, and are unreasonable. They are also disproportionate in their effect on Echelon.

For the reasons set out above, the proposed amendments to the zonings of 'REGEN', 'EE' or 'MRC', such that data centre development is not permitted in those areas, appear to be unlawful. Accordingly, the zonings of 'REGEN', 'EE' or 'MRC', which include data centre development as being "Open for consideration", as set out in the Development Plan and as set out in the Draft Plan as issued by the Chief Executive Officer, should be retained.

Yours faithfully

A&L Goodbody

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Appendix A