

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

19th April 2022

Our Ref. 16008

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

Formal written submission

Dear Sir / Madam,

We, Marston Planning Consultancy, 23 Grange Park, Foxrock, Dublin, D18 T3Y4 are instructed by our clients EdgeConneX Ireland Limited, with a registered address at 6th Floor, South Bank House, Barrow Street Dublin 4 to make a formal submission on the provisions of the Proposed Material Alterations of the South Dublin Draft County Development Plan 2022-2028. This submission is accompanied by a legal opinion on the Proposed Amendments by Stephen Dodd SC. This sets out the legal considerations, including 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's did not make a submission on the original 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 29th 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 Proposed 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 Amendments 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 cited the Transmission System Operator (TSO), EirGrid's announcement in December 2021, to conclude that it would not grant any further grid connections in the Dublin area until 2028. This submission will set out the misconceived nature of the argument put forward by Councillor Johansson, and why not permitting data centres in 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 9th March 2022. This motion therefore forms the basis of the Material Amendment that is subject to this submission.

We would refer the Council to the fact that it is not current policy either of the Commission for Regulation of Utilities ("CRU"), EirGrid or the Government to prohibit data centre connection or development. However, as we will demonstrate under this submission, there are a range of criteria under which EirGrid will consider in providing grid connections to data centres. 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 adopted by 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. Edgeconnex

Our client's have a long established presence adjacent and to the west of the Grange Castle Business Park within South Dublin having established their first data centre in 2017. Their original data centre campus on lands to the south of the Grand Canal and east of the R120 is in full receipt of planning permission that allows for future expansion under Planning Ref. SD16A/0214, SD16A/0345 and SD17A/0141/SD17A/0392 as well as SD18A/0298 as well as a Strategic Infrastructure Development application that was granted under ABP Ref. VA06S.309951.

The purchase of lands to the immediate west of the R120 and also just south of the Grand Canal is the location of our client's second data centre campus that has received two grants of permission for single storey data centres under Planning Ref. SD19A/0042 / ABP Ref. PL06S.305948 and Ref. SD21A/0042. Works on this site have not commenced and include the creation of a pocket park alongside the Grand Canal. This part of the site will also be subject to SID application after the Board recently decreed that the substation and its transmission lines that will serve this campus should be subject of such an application.

EirGrid Connection Agreement to Edgeconnex

We respectfully submit that in this instance our client is already in receipt of a Connection Agreement from EirGrid to connect their permitted substation (known as Kishoge) into the national grid. This offer was made by EirGrid on the 21st August 2020 in the full knowledge of the constraints within the Greater Dublin area. Given this was made following both the EirGrid '*Data Centre Connection Offer Process and Policy*' ("DCCOPP") published initially in July 2019 and updated in July 2020 and the National Climate Action Plan 2019; it is only reasonable to conclude that the locational requirements and other criteria in place at the time, were considered to have been met. The nature of this offer is that it will facilitate the gas plants proposed under the most recent application to supply and reinforce the national grid in c. Q1, 2024.

Our clients also have an executed connection agreement with ESB on a firm capacity basis, that was signed in September 2019, for the connection of the Coolderrig substation to the national grid that will provide power to the data centre campus to the east of the R120.

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 saved online and stored in 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, in our considered opinion 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 leads to, which is also part of the Material Alterations, that seeks to set 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 13.3, 13.2 and 13.1

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 as it would materially contravene the provisions of the new County Development Plan.

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).

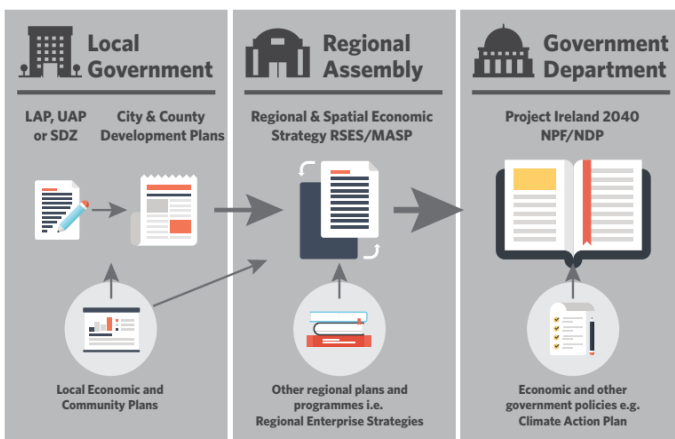
The implication of this is that even relatively minor applications relating to a data centre development, even if that application sought to improve its use of power, or to alter its power usage to a green fuel, that there would be a presumption of refusal due to provisions of the new County Development Plan.

7. Are Proposed Material Amendments 13.3, 13.2 and 13.1 consistent with 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.

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.

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 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 consistent with, and are in fact 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, whilst recognising in making the development plan, the planning authority including the elected members, are bound by the four corners of the Planning Acts and the requirements set out therein. 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.

Currently all existing Data Centre connections being offered by EirGrid in the Dublin region are being offered on a case by case and a flexible demand basis. Flexible demand is where the electrical load for a data centre must be reduced on instruction from EirGrid under the Data Centre Connection Offer Process and Policy (DCCOPP), via the National Control Centre (NCC).

It should also be noted that new offers will be subject to EirGrid’s application of the CRU Direction. The criteria to be applied for new offers are set out on page 8 of this submission. However, as already outlined, our client is already subject to offers on both their sites in Grange Castle.

EirGrid have also noted the following in relation to Data Centre 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.

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 grid will not be negatively impacted by a proposed development.

CRU Direction Nov 2021 to EirGrid and ESN (data centres can connect to transmission and distribution grid) Direction under S34(1) of the Electricity Regulation Act 1999, as amended – as governs connection to the Grid

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 23rd 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)".(the "Direction") This followed a consultation carried out by CRU in June / July 2021 following a warning from EirGrid on a worsening security of electricity supply situation in the State. One of the options under this consultation document was a moratorium on data centre connections; which was not upheld in the November Direction, but in considering the matter under the Juneconsultation the CRU stated:

"The CRU does not consider this appropriate at this time as there are mechanisms that data centres can employ which in the CRUs view can contribute to their overall flexibility."

The November Direction also confirms that there is no moratorium on data centre development, and sets out criteria and advises EirGrid and ESN that they should apply as they see fit and that the situation will remain under review and that monitoring is required. The interpretation of this, is that new offers may be constrained in certain areas, but that the application of DCCOPP will be made on a case by case basis in line with the criteria set out. It is therefore clear that a blanket ban on data centre connections is not in line with DCCOPP or CRU Direction; and that the status of Data Centres as being "Open for Consideration² is fully in accordance with existing policy.

Irrespective of this, and for the clarification of the Planning Authority we have set down the four criteria set out by the CRU in their Direction. This has directed Eirgrid and ESN 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.

Pursuant to Section 34(1) of the Electricity Regulation Act 1999 (the Act), the CRU directed EirGrid & ESBN to assess 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:

- *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.*

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 22nd November, 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.

The Greater Dublin Area has been identified as a constrained region in terms of the national grid following the publication by EirGrid of the 'DCCOPP'. However, there are projects that already have an offer from Eirgrid but have not as yet attained full planning permission; or are yet to complete the build out of their campuses, as is the case with our client. 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.

Government Policy

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 included a number of measures including 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 10th 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.

On the 1st February 2022 in which Minister Leo Varadkar stated that his Department intended to complete a review of the 2018 '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 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 4th 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.

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. EirGrid have set out how they will be applying the criteria set out in the CRU Direction, and it is clear that there is no moratorium or blanket ban on data centre development, and that each data centre will be considered on a case by case basis. This is reflected under the identification of data centres as being *'Open for Consideration'* under the 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 was 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, as set out above this is incorrect. Further to the consideration of new offers, the fact is that a number of operators already have Connection Agreements in place, 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 the CRU and EirGrid who operate under legislation 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 lawful consideration of ICT development in accordance with National and Regional Planning Policy. We can confirm that there is no moratorium on processing or granting data centre connection applications within the Greater Dublin Area under the NPF or any Government Policy.

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 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 9th 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 statutory remit is *to to operate and ensure the maintenance of and, if necessary, develop a safe, secure, reliable, economical and efficient electricity transmission system, and to explore and develop opportunities for interconnection of its system with other systems, in all cases with a view to ensuring that all reasonable demands for electricity are met and having due regard for the environment; and to "Lead the island's electricity sector on sustainability and decarbonisation"*. It is clearly not within the remit of the Council

to operate outside of its own statutory remit 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, their principle role 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 not adopt Proposed Amendments 13.1, 13.2 and 13.3 as follows:

1. **To not adopt Proposed Amendment 13.1 and Amend Table 13.4 Zoning Objective ‘REGEN’ so that ‘Data Centre’ is moved back from being ‘Not Permitted’ to being ‘Open for Consideration’.**
2. **To not adopt Proposed Amendment 13.2 and Amend Table 13.9 Zoning Objective ‘MRC’ so that ‘Data Centre’ is moved back from being ‘Not Permitted’ to being ‘Open for Consideration’.**
3. **To not adopt Proposed Amendment 13.3 and Amend Table 13.10 Zoning Objective ‘EE’ so that ‘Data Centre’ is moved back 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 the CRU, EirGrid or the Government to cease data centre grid connection or development in any form. However, as we have demonstrated under this submission, there are a range of criteria under which EirGrid (and indeed ESBN as appropriate) will consider in providing connections to data centres to the national grid.. 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 adopted by 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 do not adopt 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 – Senior Counsel Opinion

- OPINION -

QUERIST: *EdgeConneX Ireland Ltd.*

SUBJECT: *Proposed Material Amendments 13.1, 13.2 and 13.3 of Draft South County Development Plan 2022-2028*

PRELIMINARY

1. The purpose of this Opinion is to accompany the submission of Marston Planning Consultancy on behalf of EdgeConneX Ireland Ltd. More particularly it is to address the lawfulness of the proposed material alterations to the Draft South Dublin County Development Plan 2022-2028 insofar as they concern data centres. More particularly this relates to Proposed Material Amendments 13.1, 13.2 and 13.3 which seeks:
 - To amend Table 13.4 zoning objective 'REGEN' such that "Data Centre" is moved from "Open for Consideration" to being "Not Permitted".
 - To amend Table 13.9 zoning objective 'MRC' such that "Data Centre" is moved from "Open for Consideration" to being "Not Permitted".
 - To amend Table 13.10 zoning objective 'EE' such that "Data Centre" is moved from "Open for Consideration" to being "Not Permitted".
2. It is noted that under the Draft South County Development, zoning objectives 'REGEN', 'MRC' and 'EE', are the only zoning objectives under which Data Centres are 'open for consideration'. In respect of all the other zoning objectives in the draft South Dublin Development Plan, "Data Centre" are listed as "not permitted". The effect of the proposed material amendments if adopted would mean that there is no land zoned for data centres in the entire functional area of the Council.
3. This legal opinion is prepared with regard to the submission of Marston Planning Consultancy which sets out the relevant policy context for the proposed material alterations. That submission, *inter alia*, outlines that the proposed material alteration arises from Motion 90 which sought to reject the Chief Executive recommendation of No change and to ban data centres by moving Data Centre to Not Permitted under all zoning. The reason for the same was stated as follows

"It has become even more clear since the last Development Plan discussions that there is no more capacity for further data centres in the South Dublin area. EirGrid announced in December that it would not grant any further connections in the Dublin area until 2028. Since this coincides with dates of this plan it would be prudent to ban all new data centres for the duration of the plan".

Notwithstanding the Chief Executive's recommendation was against adopting such proposed motion and amendment, outlining the reasons for the same, the elected members resolved to adopt such motion by proposing material alterations to the draft plan which would involve banning data centres by moving data centres to not permitted for all zoning objectives.

4. For the reasons which will outlined hereinafter, if this material alteration was adopted for the reasons outlined in the motion, then there are compelling reasons for stating that such material alteration would be unlawful on the basis of the following:
- (I) It is in breach of the mandatory statutory requirement that a development plan is consistent with the National Planning Framework and/or Regional Spatial and Economic Strategy.
 - (II) The reasons for the material alternations are flawed by virtue of material errors of fact and/or a failure to take into account relevant considerations.
 - (III) Is ultra vires and/or not rational and/or proportionate.

Each of the above will be addressed in turn.

I Requirement for Consistency with NPF

5. The objectives in a development plan are required to be consistent with the National Planning Framework (NPF) and applicable Regional Spatial and Economic Strategy (RSES). This is evident from a number of statutory provisions relating to the making of a development plan. Section 11 concerns the preparation of a draft development plan and states under section 11(1A)

“(1A) The review of the existing development plan and preparation of a new development plan under this section by the planning authority shall be strategic in nature for the purposes of developing —

(a) the objectives and policies to deliver an overall strategy for the proper planning and sustainable development of the area of the development plan, and

(b) the core strategy,

and shall take account of the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or of any Minister of the Government”.

In addition, section 11(4) concerns consideration by elected members of the draft development plan and report of the Chief Executive and states at section 11(4)(d)

“d) Following the consideration of a report under paragraph (c), the members of the planning authority or of the committee, as the case may be, may issue directions to the chief executive] regarding the preparation of the draft development plan, and any such directions shall be strategic in nature, consistent with the draft core strategy, and shall take account of the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or of any Minister of the Government, and the chief executive shall comply with any such directions.

Furthermore, section 12 concerns the making of a development plan and at section 12(11) states:

(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

6. The actual meaning of the phrase “statutory obligations” as used in the above subsection is defined in section 12(18) of the 2000 Act as amended, states:

“(18) 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 .

7. Thus the NPF, RSES and SPPRs fall into a special category of a requirement that the development plan is consistent with the same. This was noted in *Cork County Council v Minister for Housing* [2021] IEHC 683, where Humphreys J classified five categories of policy or guidance stating as the first category at para. 88:

(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.

This requirement for consistency is reflected in other statutory provisions dealing with the core strategy of the development plan. Thus section 10(1A) of the Planning and Development Act 2000 as amended, states:

(1A) The written statement referred to in subsection (1) shall 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 and the regional spatial and economic strategy and with specific planning policy requirements specified in guidelines under subsection (1) of section 28

Also Section 10(2A):

(2A) Without prejudice to the generality of subsection (1A) , a core strategy shall —

(a) provide relevant information to show that the development plan and the housing strategy are consistent with the National Planning Framework and the regional spatial and economic strategy and with the specific planning policy requirements specified in guidelines under subsection (1) of section 28

8. The submission of Marston Planning Consultancy outlines that the NPF contains specific objectives concerning the importance of data centres and the promotion of the same. In particular, National Strategic Outcome 5 refers to:

“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.”

9. In addition, the Regional Spatial and Economic Strategy (RSES) for the Eastern and Midlands Regional Assembly (EMRA) includes Regional Policy Objective (RPO) 8.25 which states that Local Authorities shall, *inter alia*:

“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”.

10. It is difficult to see how a development plan under which data centres are specifically classified as “not permitted” under all zoning objective of the development plan could be considered to be consistent with the NPF and RSES which seeks the promotion of Ireland as a destination for ICT infrastructure such as data centres. While the

proposed material alteration does not specifically refer to a ban on data centres, this is the effective result of making data centres as “not permitted” in all zoning objectives in the development plan. It means that on all lands within the entire functional area of South Dublin County Council, data centres will not be permitted.

11. It is to be emphasized that announcements made by Eirgrid, the CRU or statements in the Dail, do not and cannot have the effect of altering objectives in the NPF or RSES. As is set out in the submission of Marston Planning Consultancy, the reasons for the motion do not accurately reflect these statements which will be addressed in considering the inadequate reasons. However, even if they did, such announcement or statements do not have the status of objectives in the NPF or RSES. Section 20C of the 2000 Act as amended, concerns the National Planning Framework and sets out the content of the same, stating:

(2) The matters referred to in subsection (1) are as follows:

(a) the identification of nationally strategic development requirements as respects cities, towns and rural areas in relation to employment, future population change, and associated housing and commercial development requirements;

(b) the indication of national infrastructure priorities to address the strategic development requirements referred to in paragraph (a) as regards transportation (including public transportation), water services, waste management, energy and communications networks and the provision of educational, health care, retail, cultural and recreational facilities;

12. There have been no modifications made to the objectives of the NPF relating to data centres. In fact, section 20C(1) makes clear that the NPF which was made in 2018 is to set out objectives for a period of between 10 and 20 years insofar as it refers to:

(b) in respect of a period that is not less than 10 years nor more than 20 years after such publication or in any revision or replacement of the National Planning Framework

Section 20C(4) deals with the revision or replacement of the NPF after 6 years which would be 2024, insofar as it states:

(5) Every 6 years after the date of publication of the National Planning Framework, the Government shall either —

(a) revise the Framework or replace it with a new one, or

(b) publish a statement explaining why the Government has decided not to revise the Framework and include in the statement an indication of a date by which it will be revised or a new National Planning Framework will be published.

13. Similarly, there have been no modifications to the Regional Spatial and Economic Strategy (RSES) for the Eastern and Midlands Regional Assembly (EMRA)

14. In making the development plan, the planning authority including the elected members, are bound by the four corners of the Planning Acts and the requirements set out therein. As noted this includes a requirement for the development plan to be consistent with the NPF. This was noted by Clarke J in *Christian v Dublin City Council* [2012] IR 504, in the context of the making of a development plan, where he stated at para. 60:

“.....statutory bodies do not have the right to make any legally binding decisions save in accordance with the mandate specifically conferred on them by law. The default position is that such bodies cannot act unless the legal criteria which entitle them to so act have been established and then only within the bounds imposed by law. Such bodies are not at large. Rather, such bodies are required to act solely within the four walls of whatever statutory or legal regime applies to them”.

15. It is therefore not open to the elected members to disregard objectives and requirements of the NPF and RSES on the basis of announcements made by Eirgrid, CRU or the Government concerning data centres which in any case have evolved and changed. Such announcements do not have the same planning status under the Planning Acts as objectives in the NPF or RSES
16. If the proposed material alterations were adopted it would also mean that the core strategy of the development would also be in breach of section 10(1A) of the 2000 Act insofar as the core strategy must include a written statement 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. In addition, it would also render other policies in the development plan relating to data centres, effectively redundant.
17. Therefore for the reasons outlined above, if proposed material alterations relating to data centres, were adopted this would be ultra vires and in breach of the requirements of the Planning Acts.

II INADEQUATE AND FLAWED REASONS

18. In deciding zoning objectives relating to land, there is a requirement to give reasons. This is clear from the judgment in *Christian v Dublin City Council* [2012] 2 IR 506., where the elected members decided to remove “residential” as being open for consideration in respect of institutional zoning under the then draft Dublin City Development Plan. The elected members went against the recommendation of the Chief Executive in removing residential and such decision was quashed by Clarke J in the High Court. Clarke J stated at 75:

It seems to me to be clear, therefore, that there is no basis in principle for suggesting that elected members cannot give, or be required to give, reasons. The fact that the Act of 2000 places such an obligation, at least in some cases, on elected members seems to put the matter beyond doubt.

19. Also para 81:

“...it seems to me that when a development plan gets down to the nuts and bolts in a way which has the potential to specifically affect the rights of individuals, both those who may wish to develop their own lands or those who may have their own interests interfered with by the development of neighbouring lands, then it seems to me that it is necessary to give at least some reasons for the precise means of implementing the overall strategy or policy adopted”.

Clarke J also noted the onus on elected members to give reasons where they depart from the recommendation of the Chief Executive, stating at para. 83:

“The problem as to reasons comes into focus when the elected members are not persuaded by the manager's position and adopt an amendment with which the manager does not agree. Where then is one to find the reasons for that amendment? The answer must be that, to the extent that the subject matter of the amendment is one in respect of which reasons are required (i.e. that it is not at the policy end of the spectrum) and to the extent that the elected members differ from the manager so that reasons cannot be found in the manager's report, then there is an obligation on the elected members to include whatever reasons motivate their decision either directly in the resolution itself or in some documentation or materials referenced in the resolution which can allow an interested party to ascertain the reasons for the amendment”.

20. Since the judgment in *Christian*, the extent of the requirement to give reasons in a planning context has further evolved. In *Connelly v An Bord Pleanala*, (July 17, 2018) Clarke J in the Supreme Court stated, albeit in the context of a planning decision, at para. 5.4

5.4 In my view it is of the utmost importance, however, to make clear that the requirement to give reasons is not intended to, and cannot be met by, a form of box ticking. One of the matters which administrative law requires of any decision maker is that all relevant factors are taken into account and all irrelevant factors are

excluded from the consideration. It is useful, therefore, for the decision to clearly identify the factors taken into account so that an assessment can be made, if necessary, by a court in which the decision is challenged, as to whether those requirements were met. But it will rarely be sufficient simply to indicate the factors taken into account and assert that, as a result of those factors, the decision goes one way or the other. That does not enlighten any interested party as to why the decision went the way it did. It may be appropriate, and perhaps even necessary, that the decision make clear that the appropriate factors were taken into account, but it will rarely be the case that a statement to that effect will be sufficient to demonstrate the reasoning behind the conclusion to the degree necessary to meet the obligation to give reasons”.

It further follows, that even where an administrative body or person has a wide discretion, the reasons given must not be erroneous. In *Tristor v Minister for the Environment* [2010] IEHC 397, Clarke J observed in relation to the Minister exercising a discretion (which would equally apply to a local authority), at para. 5.5.4 that:

“In coming to that view the Minister must take into account all proper factors and exclude from his consideration any factors which are irrelevant. In addition, the view which the Minister ultimately forms must be rationally based on the materials available to the Minister at the time”.

21. As outlined earlier, Motion 90 purports to provide a statement of reasons for the proposed material alterations which may be reiterated insofar as it states:

“It has become even more clear since the last Development Plan discussions that there is no more capacity for further data centres in the South Dublin area. EirGrid announced in December that it would not grant any further connections in the Dublin area until 2028. Since this coincides with dates of this plan it would be prudent to ban all new data centres for the duration of the plan.”

However, as outlined in the Report of Chief Executive in response to the same and the submission of Marston Planning Consultancy, there were a number of subsequent developments after December. It is clear from the submission of Marston Planning Consultancy the statement is simply inaccurate. Eirgrid did not state that they would not grant any further connections in the Dublin area until 2028. No moratorium has been imposed. Instead Eirgrid and the CRU have set out certain criteria to assess grid connection applications by data centres. Furthermore, the elected members in adopting the proposed motion, do not appear to have given any further statement of reasons for rejecting the response of the Chief Executive. There were therefore no reasons given for rejecting such further response of the Chief Executive.

22. In light of the above, if the proposed material alteration is adopted on basis of the reasons stated with Motion No. 90, such reasons would be inadequate considering the following:
- (i) Such reasons fail to take into account relevant considerations, including that Eirgrid and the CRU have set out criteria for assessing grid connection offers for data centres. In addition, the reason do not accurately reflect national policy relating to data centres
 - (ii) Such reasons contain material errors of fact as it is simply incorrect that Eirgrid will not be considering grid connection offers until 2028
 - (iii) The actual resolution accepting the proposed motion and going against the recommendation of the Chief Executive would appear to have been unreasoned. Thus no further reasons were given other than as stated with Motion No. 90.

III BLANKET BAN: REASONABLENESS AND ULTRA VIRES

23. Furthermore, even if the reasons given for motion No. 90 were accurate and comprehensive, it is doubtful whether this could rationally justify a blanket ban on data centres for the duration of the development plan. There is also

certain authority which suggests that a blanket ban on certain land use activity is ultra vires under the Planning Acts. In *Glencar Explorations Plc v Mayo County Council* [1992] 2 I.R. 237, where the development plan imposed a ban on mining activity for minerals, Blayney J in the High Court considered this was ultra vires. Thus Blayney J stated:

“When this test is applied to the mining ban, I am satisfied that the result must be a finding that the County Council did not have power to include it in the development plan. It is not a development objective. As I stated earlier such an objective must be positive in character. The mining ban is not. It is entirely negative. Its purpose is to prevent development not to have it as an objective. It would have totally prevented any further exploration in a substantial part of the county. For these reasons I am satisfied that it was ultra vires the County Council.”

On appeal, the Supreme Court did not determine the same.

24. However, even if the elected members have the power to impose a ban on data centre development in the development plan (which is doubtful), such a decision could also be challenged on grounds of rationality. This is notwithstanding the wide discretion the Council have in deciding on policies where it falls within their statutory remit.
25. The question of grid connections offers is a matter of energy policy of Eirgrid and not a planning policy. As outlined in the submission of Marston Planning Consultancy, Eirgrid may make grid connections offers in advance of planning permission being granted and also after planning permission is granted. Even if no grid connection offer were made until 2028, this does not mean that the development plan should purport to preclude the planning authority from even considering granting permission for the same. A blanket ban on data centres effectively deprives the planning authority of discretion to even consider on a case by case basis whether proper planning and sustainable development may justify the grant of planning permission. Moreover, it also interferes with applications to modify existing permissions for data centres.
26. Thus even if the reasons given for Motion No. 90 were accurate, the blanket prohibition of data centres under the development plan would appear to be wholly disproportionate and not rationally related to the objectives sought to be achieved.
27. Policies contained in a development plan must be seen as against the backdrop of constitutionally protected property rights and so any interference with the same, must be proportionate. In *Christian v Dublin City Council*, Clarke J observed at para. 124:

“There can be little doubt that zoning issues can have a significant effect on the value of property. Whether one views a planning permission which is, of course, closely connected with zoning, as a benefit to be conferred or views any restrictions on obtaining a planning permission (including those brought about by relevant zoning) as a legitimate and proportionate limitation by the State of the rights to private property (a view which, on balance, I prefer) (see *The Central Dublin Development Association & Ors. v. Attorney General*(1975) 109 I.L.T.R. 69), it seems to me that there must be some proportionality between the aims of the planning regime as a whole and the effect on individuals whose position may be affected by decisions made in that planning process”.
28. The existing draft development plan provides for data centres to be open for consideration under three zoning objectives. The term ‘open for consideration’ is defined in the development plan as:

“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 status of data centres as being open for consideration therefore does not provide for the automatic grant of planning permission for data centre but allows the planning authority to assess the merits of any individual application on a case by case basis. This is entirely in line with the approach of Eirgrid concerning connection offers.

29. In addition, Policy EDE7 Objective 2, sets out a list of requirements for space extensive enterprises such as data centres, which need to be demonstrated. This is proposed to be further strengthened by Proposed Amendment 9.5 of the Material Alteration as outlined in the report of the Chief Executive which relate to energy requirements. Again these policies would require to be considered in assessing any planning application for a data centre.
30. The policies contained in the draft plan would appear to sufficient to meet the objective concerning energy efficiency and undue demands on the national grid and so it is unnecessary and disproportionate to effectively include an outright ban on consideration of planning applications for data centres.

CONCLUSION

31. For the reasons set out above, if the Council adopts Material Amendments 13.1, 13.2 and 13.3 of Draft South County Development Plan 2022-2028 then:
 - (i) This would be in breach of the mandatory statutory requirement for a development plan to be consistent with National Planning Framework and Regional Spatial and Economic Strategy (RSES) for the Eastern and Midlands Regional Assembly (EMRA).
 - (ii) The reasons for the same, are inadequate and vitiated by errors.
 - (iii) It is doubtful whether such material amendment which involves a blanket ban is within the power of the Council and/or can be rationally justified.

STEPHEN DODD SC

20th April 2022