

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

On behalf of

**Vecglen Ltd
The Herbert Building
The Park
Carrickmines
Dublin 18**

To

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

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1.0 INTRODUCTION

- 1.1 On behalf of our client, Vecglen Ltd, The Herbert Building, The Park, Carrickmines, 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 zoned for employment use in the County, including various landholdings in the Ballymount Industrial Estate area which are zoned Objective EE, and has delivered a number of largescale industrial, warehousing and logistics developments in the Dublin area. In delivering these developments they have gained significant experience in the demands of industry, including the data centre sector, and wish to set out our significant concerns in respect to the proposed restrictions on data centre development being considered under the proposed Material Amendments, and also to ensure that applications are considered on their merits under the land use zoning objectives in the Development Plan until such time as the plan is varied to reflect a new City Edge statutory plan for the area.

Key Grounds of Submission

- 1.3 The key grounds of submission set out hereinafter can be summarised as follows:
- As set out in further detail below, our client has lands subject to Objective EE zoning under the current County Development Plan 2016-22, with a stated objective to “*provide for enterprise and employment related uses*”, and this zoning objective pertaining to their lands remains unchanged under the Material Amendments to the Draft Development Plan 2022-2028.
 - We note the intention of the Planning Authority to bring forward a Strategic Framework and subsequently a statutory plan for the City Edge area, however, the Plan should acknowledge that applications will be assessed under the provisions of the Development Plan and land use zoning objective in the interim and until such time as the Development Plan is varied, if such a necessity arise, to align with a future local statutory plan for the area.
 - While our client’s landholdings do not accommodate any data centre use at present, there may be potential for the partial or full change of use of existing light industrial / warehouse buildings or new data centre developments in this area to accommodate an element of data centre use.
 - 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 inclusion of Amendment No. 13.3 in the new Development Plan would result in significant difficulty in the delivery, operation, and evolution of data centre developments.

1.4 Our client also wishes to raise their general concern that the Material Amendments to the Draft Plan as currently drafted (and in particular Amendment Nos. 13.1, 13.2, and 13.3) would pose a significant threat to data centre development over the lifetime of the new Development Plan, threatening a sector which has contributed significant investment and added to employment in the county over the past number of years. The data centre sector has in turn resulted in economic benefits for other sectors and increased demand for other employment generating uses, such as warehousing and logistics.

1.5 While the recent focus on the availability of high voltage electricity to serve major industry such as data centres is noted, it should also be noted that the national and regional policy context strongly supports the delivery of data centre development. Furthermore, we refer the Planning Authority to the recent decision of the Board (on April 14th 2022) to grant permission on appeal for a new data centre development in Drogheda County Meath under ABP Ref.: PL17.310729. The Board noted the following in granting permission:

“the proposed development would be in accordance with the current national, regional and local planning, would not have a significant impact on climate or legally binding national emissions targets in relation to greenhouse gases, would not have an unacceptable impact on the landscape or biodiversity, would not seriously injure the visual or residential amenities of the area or of property in the vicinity, and would be acceptable in terms of road and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.”

1.6 The Board’s Inspector, in recommending a grant of permission, also referred to the fact that the electricity connection agreement process with the System

Operator (EirGrid in the case of HV electricity) represented a separate process from the planning process, and noted that the recent Commission for the Regulation of Utilities (CRU) Direction to the System Operators will ensure the security of the transmission system and allow for a robust assessment of connection agreement applications.

- 1.7 With this in mind, and having regard to this recent and instructive precedent, it is submitted that the Planning Authority should ensure that the new Development Plan does not curtail data centre development unnecessarily, particularly in circumstances where there is a reasonable prospect of power being secured and / or in light of the likely improvement in the capacity of the electricity grid over the 6 year Development Plan period and ensure that the new Plan is consistent with current national and regional policy.
- 1.8 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.

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

Core Strategy and City Edge

- 2.1 Chapter 2 – Core Strategy includes proposed amendments of relevance to our client’s lands in the Ballymount area as they specifically reference the emerging City Edge project proposals. Amendment 2.4 seeks to amend CS2 Objective 1 to read as follows:

*“To prepare a Local Area Plan or other appropriate mechanism for the zoned Regeneration (REGEN) lands and other lands at Naas Road/Ballymount ~~to include the Local Centre zoning (LC) at Walkinstown~~ as defined by the City Edge Project boundary. The LAP or equivalent will commence in 2022 and provide a framework for the sequential and phased development of the lands, integrating sustainable transport, land use and blue and green infrastructure. The spatial planning of the area will be informed by the ~~Naas Road~~ City Edge Strategic Framework until such time as a Statutory Plan is in place.
Note: All references to Naas Road/Ballymount Lands throughout Chapter 2 to be updated to City Edge/City Edge Strategic Framework.”*

- 2.2 The main concern with the above relates to the fact that it doesn’t acknowledge the land use zoning context in the new Development Plan, which the Strategic Framework could conflict with and accordingly additional text is suggested in Section 3 below.

Zoning

- 2.3 The relevant lands in our client’s ownership in the county, in the Ballymount Industrial Estate area, remain primarily zoned objective EE under the draft Plan, with a stated objective to *“provide for enterprise and employment related uses”*.
- 2.4 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.

- 2.5 However, the Material Amendments to the Draft Plan (which are the subject of the current submission) includes 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.
- 2.6 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, and associated positive external impacts on other industries in the County.
- 2.7 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 proposed material amendments to the Draft Development Plan.

Proposed Amendment No. 2.4

- 3.2 We note the intention of the Planning Authority to bring forward a Strategic Framework and subsequently a statutory plan for the City Edge area, however, the Plan should acknowledge that applications will be assessed under the provisions of the Development Plan and land use zoning objective in the interim and until such time as the Development Plan is varied to align with a future local statutory plan for the area.
- 3.3 Therefore, we request that CS Objective 1 be amended to read as follows (additional text in red and bold):

*“To prepare a Local Area Plan or other appropriate mechanism for the zoned Regeneration (REGEN) lands and other lands at Naas Road/Ballymount as defined by the City Edge Project boundary. The LAP or equivalent will commence in 2022 and provide a framework for the sequential and phased development of the lands, integrating sustainable transport, land use and blue and green infrastructure. The spatial planning of the area **will be primarily informed by the land use zonings under the Development Plan, whilst having regard to** the City Edge Strategic Framework, until such time as a Statutory Plan is in place.*

Note: All references to Naas Road/Ballymount Lands throughout Chapter 2 to be updated to City Edge/City Edge Strategic Framework.”

Rationale for Proposed Amendment

- 3.4 The above requested amendment is necessary to ensure an objective of the Development Plan does not conflict with the EE zoning of specific lands under the Development Plan, as we are aware some proposals in the initial consultation process for City Edge may require alterations to the land use zoning context, and in those circumstances, the provisions of the ‘Strategic Framework’ of future LAP would have to yield to the provisions of the Development Plan, having regard to the statutory provisions of the Planning and Development Act 2000, as amended.
- 3.5 Any applications must be decided in accordance with the provisions of the Development Plan and associated land use zoning and cannot have regard to any non—statutory policy of the planning authority, particularly where such policy conflicts with the provisions of the statutory development plan. Precedence cannot be given to an evolving non—statutory policy ahead of development plan provisions to which the planning authority has a duty to give effect under section 15 of the Planning and Development Act 2000, as amended (‘the 2000 Act’).
- 3.6 The requested amendment would also reflect that the City Edge area is a ‘Strategic Long Term Development Area’ and therefore applications should be considered on their merits in accordance with their current land use zoning under the new Development Plan.
- 3.7 The Development Plan’s primacy over other considerations in assessing applications, which in turn illustrates that there must be consistency between specific objectives and land use zonings in the Plan, is reflected in the fact that it is the first matter to be referred to under section 34 (2) of the 2000 Act, to which the planning authority and, by extension, the Board are required to have regard. Its primacy is also reflected in the statutory obligation imposed on the planning authority to take such steps as are necessary to give effect to the provisions of the development plan. Therefore, it is respectfully submitted that the above requested amendment to CS Objective 1 of the Draft Plan is necessary to ensure it does not conflict with the land use zoning objectives in the Ballymount area.

Proposed Amendment No. 13.3

- 3.8 As set out in further 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.
- 3.9 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.
- 3.10 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.

Rationale for the Requested Amendment

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

3.11 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. This section of the Act expressly requires that Planning Authorities, in preparing their Development Plan ensure that the Development Plan does not conflict with any of the National Policy Objectives of the NPF, Regional Policy Objectives of the RSES, or the provisions of Government Policy.

3.12 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.”

3.13 As will be set out below, the proposed Material Amendment No. 13.3 (and consequently 13.1 and 13.2) directly conflicts 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.

3.14 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.

Government Policy on Data Centre Development

3.15 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 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.”

3.16 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.”*

3.17 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.**”*

3.18 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.”

3.19 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.

- 3.20 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.

Conflict with the Provisions of National and Regional Planning Policy

- 3.21 The National Planning Framework contains policies which are supportive of the development of ICT infrastructure, with particular reference made to ‘data centres’.

- 3.22 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.”

- 3.23 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.

- 3.24 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.”

- 3.25 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.”

- 3.26 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.

- 3.27 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.

3.28 At the regional level, 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.”*

3.29 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.

3.30 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.

3.31 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. 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.

3.32 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 E2 zoning objectives within their new 2021-2027 County Development Plan¹. 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.

3.33 An Bord Pleanála have recently granted permission on appeal for data centre development under the new Meath County Development Plan (on lands

¹ 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>

zoned E1 and within the environs of Drogheda town). 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.²

- 3.34 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, Vecglen Ltd, welcomes the opportunity to make this submission on the Material Amendments stage of the preparation of a new South Dublin County Development Plan.
- 4.2 Firstly, our client requests amendments to Proposed Material Amendment 2.4 to ensure the CS Objective 1 of the Development Plan does not conflict with the EE zoning of specific lands under the Development Plan and within the City Edge plan area, having regard to the statutory provisions of the Planning and Development Act 2000, as amended.
- 4.3 In addition, our client has significant concerns that the Material Amendments as they relate to the restriction on data centre use, 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.
- 4.4 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.

Yours Sincerely,



John Spain Associates

² ABP Ref.: 310729: <https://www.pleanala.ie/en-ie/case/310729>