

File With _____

SECTION 131 FORM

Appeal NO: ABP 317802-25Defer Re O/H ☐

TO: SEO

Having considered the contents of the submission dated 28/5/25 received by email fromApplicant I recommend that section 131 of the Planning and Development Act, 2000 be ~~not~~ be invoked at this stage for the following reason(s): New Planning materialE.O.: Catharine FlynnDate: 11-6-25.

To EO: _____

Section 131 not to be invoked at this stage. ☐Section 131 to be invoked – allow 2/4 weeks for reply. ☐

S.E.O.: _____

Date: _____

S.A.O.: _____

Date: _____

M _____

Please prepare BP _____ - Section 131 notice enclosing a copy of the attached submission

to: _____

Allow 2/3/4 weeks – BP _____

EO: _____

Date: _____

AA: _____

Date: _____

File With _____

CORRESPONDENCE FORMAppeal No: ABP 317802-25M S. KhatipovaPlease treat correspondence received on 28/5/25 by email as follows:

- | | |
|---|--|
| 1. Update database with newagent for Applicant/Appellant _____
2. Acknowledge with BP <u>23</u> _____
3. Keep copy of Board's Letter <input type="checkbox"/> | 1. RETURN TO SENDER with BP _____
2. Keep Envelope: <input type="checkbox"/>
3. Keep Copy of Board's letter <input type="checkbox"/> |
|---|--|

Amendments/CommentsResponse to 132.**4. Attach to file**

- | | |
|---|---|
| (a) R/S <input type="checkbox"/> | (d) Screening <input type="checkbox"/> |
| (b) GIS Processing <input type="checkbox"/> | (e) Inspectorate <input type="checkbox"/> |
| (c) Processing <input type="checkbox"/> | |

RETURN TO EO ☐

	Plans Date Stamped <input type="checkbox"/>
	Date Stamped Filled in <input type="checkbox"/>
EO: <u>Catherine Lynn</u>	AA: <u>29/5/25</u> <u>Fedorie Khatipova</u>
Date: <u>29/5/25</u>	Date: <u>30/05/25</u>

Catherine

Lita Clarke

From: Bord
Sent: Wednesday 28 May 2025 16:10
To: Appeals2
Subject: FW: ABP Ref. 317802
Attachments: ABP submission 317802 Edgeconnex.pdf

From: anthony@marstonplanning.ie <anthony@marstonplanning.ie>
Sent: Wednesday, May 28, 2025 4:06 PM
To: Bord <bord@pleanala.ie>
Subject: ABP Ref. 317802

Caution: This is an **External Email** and may have malicious content. Please take care when clicking links or opening attachments. When in doubt, contact the ICT Helpdesk.

To whom it may concern

Please find attached submission by Edgeconnex Ireland Limited in relation to the ABP letter of the 8th May 2025.

We would be grateful if the Board would confirm receipt of this email. Many thanks in advance.

Kind Regards

Anthony Marston
Principal – Marston Planning Consultancy

M: 086-3837100
23 Grange Park, Foxrock, Dublin 18, D18 T3Y4
www.marstonplanning.ie

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MARSTON

PLANNING CONSULTANCY

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1

27th May 2025

Our Ref: 16008

Re: Planning and Development Act 2000 (as amended) and the statutory regulations (as amended). First Party Appeal by EdgeConneX Ireland Limited against the decision of South Dublin County Council to refuse permission for development that includes the development at this site of 5.14hectares that is located within the townland of Ballymakailly to the west of the Newcastle Road (R120), Lucan, Co. Dublin (the "Decision"). The development will consist of the construction of two no. adjoined single storey data centres with associated office and service areas with an overall gross floor area of 15,274sqm.

South Dublin County Council Planning Ref. SD22A/0333

An Bord Pleanála Ref. ABP317802-23

Period for making submission to An Bord Pleanála on or before: end of 28th May 2025

Dear Sir / Madam,

We, Marston Planning Consultancy, 23 Grange Park, Foxrock, Dublin, D18 T3Y4; are instructed by EdgeConneX Ireland Limited (the "**First Party**"), 6th Floor, South Bank House, Barrow Street, Dublin 4 to lodge this first party submission in response to the An Bord Pleanála letter that was dated the 08 May 2025. This followed a request from the Board dated the 15 April 2025. Due to the complexity of the matters questioned, and the need to liaise with EirGrid, the Board provided additional time to respond to this intrinsically complex matter. The Board's letter primarily relates to confirmation from the system operator that the statement sent to the Board and received on the 25th March was correct.

Letter from EirGrid

In response to this matter we enclose a letter dated the 2nd May 2025 from EirGrid in which they confirm that:

*"EirGrid considers that it is for EdgeConneX Ireland Limited (ECX) to satisfy itself that the MIC provided for in the D48 Connection Agreement is sufficient to accommodate the proposed ECX data centres, in addition to the other data centres that have been permitted on the site.
As such, EirGrid is not in a position to provide the confirmation requested by An Bord Pleanála in its letter dated 15th April 2025."*

We can confirm that ECX are satisfied that the D48 connection agreement is sufficient for them to operate their already permitted campus and the proposed development. There is no standard approach in terms of the capacity of data centres, particularly in the case of Edgeconnex, who operate as data centre retailers. The utilisation of space will depend on customer, mix of customers, age of the deployment and a number of other variables.

Legal Opinion from Stephen Dodd SC

In addition to the EirGrid letter we have enclosed a legal opinion from Mr. Stephen Dodd, Senior Counsel. This sets out the extent to which the Board can take into account the response from Eirgrid in its planning determination; as well as the ability of the Board to grant permission in lieu of the requested confirmation from EirGrid. The conclusions to both these questions are that the Board have sufficient information in front of them to positively determine this application having regard to the question subject of this response, but

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Company Reg. no. 668650

also Policy EDE7, Objective 2 of the South Dublin County Development Plan 2022-2028, for the following reasons.

The Stephen Dodd, SC legal opinion sets out that any reasonable interpretation by a member of the public of Policy EDE7, Objective 2 of the South Dublin County Development Plan 2022-2028, would not interpret it as requiring proof of a fixed connection agreement as opposed to a flexible demand connection offer. Instead such a person are more likely to interpret the same as not being prescriptive, is some form of demonstration of evidence of capacity such as by a determination by the relevant regulatory authority.

We submit that the detail of technical regulatory matters of deciding whether there is capacity in the network is therefore not a matter for determination by planning authority or Board but by other appropriate regulatory authorities.

In the present instance both the connection offer and subsequent acceptance through signing a connection agreement is undoubtedly evidence of capacity being allocated to the proposed facility. The question of demonstration of "sufficient" capacity will depend on the specific demands of the development. Insofar as the proposed development and other data centres have onsite generation facilities to deal with flexible demand requirements from EirGrid (if required), this would also further reduce the capacity needs to be delivered through the connection agreement with EirGrid during such events (if they occur).

It is also implicit in the response from EirGrid that the Maximum import capacity (MIC) under the connection agreement can be used for the proposed development and so the letter provides confirmation of the same. It is not therefore the case that EirGrid has not provided a degree of confirmation.

The legal opinion also clearly sets out that the Board can lawfully grant permission, if the letter from EirGrid is not sufficient in the eyes of the Board, to meet their request. The Board can satisfy itself that sufficient capacity in the electricity network to accommodate the proposed development has been demonstrated from all the information placed before it, even in the absence of the full specific confirmation sought.

It is evident that EirGrid have no concerns with the connection agreement being used for the proposed data centre and the other permitted data centres insofar as the developer has satisfied itself that there is sufficient MIC. This answer is perfectly understandable in circumstances, where the connection agreement preceded the grant of the proposed development.

Connection Agreement application

As submitted in our response to your request for information dated 28 February 2025, the D48 Connection Agreement is in place for Kishoge 110kV substation at Grangecastle Business Park Extension, Dublin 22 (the "Connection Agreement"). EdgeConneX confirms that it intends to connect the Proposed ECX Data Centre with the Kishoge 110kV substation, so that this data centre enjoys the benefit of the D48 Connection Agreement. This was in the contemplation of the connection agreement insofar as it was reflected in the documentation submitted to Eirgrid in seeking the connection agreement.

In this regard we have attached at Appendix C copies of the Site Plan and the Proposed Site Masterplan submitted as part of the application form for the Connection Agreement. This application form, and the corresponding plans, are attached to the final Connection Agreement. ECX submits as follows:

1. The OS map included the whole campus as it was intended that the D48 Connection Agreement would serve the data centres within the campus;
2. The masterplan shows the data centres that are intended to be served by the D48 Connection Agreement, namely DUB04 (permitted pursuant to reference: Planning Ref. ABP-305948-19/SD19A/0042), DUB05 (planning ref: SD21A/0042) and DUB06 (intended to be developed)."

The Proposed Development will not be an "islanded" data centre

Furthermore, it is important as a matter of clarity for the Board to understand that the proposed development that is the subject of this appeal, nor any of the already permitted data centres on the campus, can be considered as "islanded" data centres. An "islanded" data center is one that's not connected to the national

electricity grid and instead runs only or mainly on its own on-site power generation, typically using fossil fuels like natural gas.

These data centres are, therefore, independent of the main power network. This is not the case in this instance, and we can confirm that the contracted connection from EirGrid serves as the primary power source for all data centres on the campus. We can confirm that the entire campus will be substantively powered from the EirGrid connection, with the natural gas plant dealing with flexible demand requirements from EirGrid that will allow resiliency of the national power grid. The grant of permission for a data centre and power plant under Planning Ref. SD21A/0042 (and subsequently amended under SD22A/0289) fully took this into consideration. The need for, and operation of the power plant will not substantively change if permission is granted in this instance.

We submit that we have set out under this response as much clarity as is possible, that the fixed connection agreement, demonstrating existing capacity in the electricity grid, will ensure that the permitted on-site gas powered generation would not be used as the primary energy source. This ensures compliance with the Government Statement on the Role of Data Centres in Ireland's Enterprise Strategy, July 2022 as the campus or any element of it, would not form an "islanded" data centre development as it would be connected to the national grid. This would ensure that the proposed development will not be powered mainly by on-site fossil fuel generation in accordance with the overarching objectives of the Climate Action Plan 2025, by reference to reducing Greenhouse Gas emissions.

Although the Gas Plant is currently required as part of the flexible demand arrangement with EirGrid, ECX is intending to transition to sustainable fuels, should they be sufficiently available. Furthermore, if the gas plant is no longer required as an alternative power source in order to comply with EirGrid's requirements for ensuring resiliency of the grid, it will be removed from site. We refer the Board to Condition no. 3 of the permission granted under Planning Ref. SD22A/0289 that states that:

"(ii) Within four (4) years from the date the first Gas Plant commences operation, the applicant or operator shall undertake a review with GNI of the ability to serve the Gas Plant with green gas and / or hydrogen (or similar fuels) shall be investigated and reported to the Planning Authority. Any ability for the Gas Plant to be operated with green gas and/ or hydrogen (or similar fuels) shall be implemented within an agreed timeline agreed with GNI.

(iii) If the applicant receives a firm offer from EirGrid under which the Gas Plant is not required, and the connection has been realized with capacity onsite from EirGrid, then the Gas Plants shall be removed from the entire site within a year of the ceasing of operation. The nature and extent of the permitted Gas Plants, or any other element of the parent permission granted under Reg. Ref. SD21A/0042 will otherwise not be amended by this application. An EPA Industrial Emissions (IE) licence will be applied for to facilitate the operation of the Gas Plant that is subject of this amendment application."

This will ensure that the proposed development, as well as having the grid connection, will have planned trajectory to reduce emissions, including through decarbonised gas and that this would not threaten energy security.

We submit that it is not in question that the onsite generation will not form the main source of electricity and will only be a fallback, when required, in accordance with the terms of the connection offer.

In addition, the development includes solar PV panels, which will provide further on site power from renewable sources. ECX has also engaged has engaged with brokers of renewable PPAs in Ireland to procure a renewable PPA.

More generally as regards verification of the capacity as is set out in the Legal Advice Note which accompanied the appeal, the fact the EirGrid made a connection offer amounts to capacity in the national grid being allocated to the site, which incorporates the proposed development the subject matter of the appeal. This was a matter for EirGrid to decide with its field of competence. Insofar as the developer has confirmed that the collective electricity demands of the previously permitted developments and the proposed development do not exceed maximum import capacity of 48.2 MVA demand facility, then this is clear evidence that there is sufficient capacity.

Conclusion

We submit that this submission has comprehensively addressed the requested for further information.

EirGrid have confirmed that it is for ECX to satisfy itself that the MIC provided for in the D48 Connection Agreement is sufficient to accommodate the proposed ECX data centres, in addition to the other data centres that have been permitted on the site. As noted previously, ECX have confirmed they are satisfied that the MIC provided for in the D48 Connection Agreement is sufficient to accommodate the proposed ECX data centres, in addition to the other data centres that have been permitted on the site.

As noted by Stephen Dodd SC in his opinion, EirGrid's response is perfectly understandable in the circumstances. It is also implicit in the response from EirGrid that the Maximum import capacity (MIC) under the connection agreement can be used for the proposed development and so the letter provides confirmation of the same. It is not therefore the case that EirGrid has not provided a degree of confirmation.

Furthermore, while the Board can take into account the response given by Eirgrid, it cannot come to a conclusion of a failure to demonstrate sufficient capacity merely because Eirgrid says that it is for the developer to satisfy itself that the connection agreement is sufficient to accommodate the proposed data centre. Indeed that the Board can clearly lawfully grant planning permission in the absence of the confirmation requested from Eirgrid.

We submit that the First Party already has a 'connection agreement' with EirGrid. The Proposed Development will operate under the same connection agreement as the already Permitted Development. As noted, this was in the contemplation of the connection agreement insofar as it was reflected in the documentation submitted to Eirgrid in seeking the connection agreement. There will be no need for a new connection into the National Grid from the Proposed Development. We can confirm that the First Party is acting fully in accordance with the terms and conditions of the existing Connection Agreement.

We respectfully submit that the Proposed Development will not be an "islanded data centre" and is fully aligned and in accordance with Government policy set out under the Government's revised "*Statement on the Role of Data Centres in Ireland's Enterprise Strategy*" on the 27th July 2022. The First Party is committed to advancing the goals behind the Six Principles and the Proposed Development and Permitted Developments are fully aligned with government policy.

In conclusion, for all of the foregoing arguments, reason and considerations, An Bord Pleanála are invited to overturn the decision of South Dublin County Council and to grant permission on the basis that the MIC of the Connection Agreement is sufficient capacity within the electricity network and the First Party has also engaged in seeking PPAs ; and therefore is fully in accordance with Policy EDE7, objective 2 of the South Dublin County Development Plan 2022-2028 as well as National Data Centre Policy and is therefore fully in accordance with the proper planning and sustainable development of this area including the preservation and improvement of amenities thereof.

We look forward to an early and favourable response on this matter.

Yours faithfully,



Anthony Marston (MIPI, MRTPI)
Marston Planning Consultancy

APPENDIX A – EirGrid confirmation of connection agreement in place



EirGrid plc
An tUibhchruith,
160 Bóthar Shíol Bhroin,
Droichead na Dethra,
Baile Átha Cliath 4,
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EirGrid plc
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Edmund Wilson
ENERGY CONTINUITY XCHANGE IRELAND II LIMITED
6th Floor, South Bank House
Barrow Street
Dublin 4
D04 TR29

2nd May 2025

CP1175 Kishoge 110 kV Station / D48 contract reference

Dear Edmund,

I refer to the letter dated 11th March 2025 issued by EirGrid to Energy Continuity Xchange Ireland II Limited, in which EirGrid confirmed the existence of the D48 Connection Agreement dated 18th August 2022 and the Maximum Import Capacity (MIC) provided for in the D48 Connection Agreement, and the letter dated 15th April 2025 issued by An Bord Pleanála to Marston Planning Consultancy in respect of the planning appeal with case number ABP-317802-23.

EirGrid considers that it is for EdgeConneX Ireland Limited (ECX) to satisfy itself that the MIC provided for in the D48 Connection Agreement is sufficient to accommodate the proposed ECX data centres, in addition to the other data centres that have been permitted on the site.

As such, EirGrid is not in a position to provide the confirmation requested by An Bord Pleanála in its letter dated 15th April 2025.

Yours sincerely,

Kilian Murphy

EirGrid

Stiúrthóir: Brendan Tuohy Cathaoirleach, an Dr Theresa Donaldson Leaschathaoirleach, Deirdre Merriman, Tom Coughlan, Michael Hand, Rosa M Sanz García (An Spáinn), James Hyman, Ivan Schuster, Pauline Walsh
Directors: Brendan Tuohy Chair, Dr Theresa Donaldson Deputy Chair, Deirdre Merriman, Tom Coughlan, Michael Hand, Rosa M Sanz García (Spain), James Hyman, Ivan Schuster, Pauline Walsh
Uimhir Chláraithe na Cúldeaschá: No. 1 Company Reg No. 338522

Appendix B – Stephen Dodd, Senior Counsel legal opinion

- OPINION -

QUERIST: *EdgeConneX Ireland*

AGENT: *Jay Sattin, Partner, MHC Solicitors, Barrow Street, Dublin 2*

SUBJECT: ABP 317802-23: proposed 2 adjoined single storey data centres with associated office on a Site within the townland of Ballymakailly, West of Newcastle Road (R120), Lucan, Co. Dublin

I QUERIES

1. In the context of the above first party appeal (ABP 317802-23) pending before An Bord Pleanála I have been requested to consider:

- (a) Whether the confirmation sought by the Board in the RFI can be taken into account in their planning application;
- (b) Whether the Board can still lawfully grant planning permission in lieu of the required confirmation from Eirgrid;
- (c) In the context of this development, the extent to which the Board can take into account reliance on the national grid to power a data centre and the evidence it requires to verify any such reliance.

II BACKGROUND

2. On the 26th March 2023 Querist lodged a planning application (SD22A/0333) with South Dublin County Council for development comprising construction of 2 adjoined single storey data centres with associated office on a Site within the townland of Ballymakailly, West of Newcastle Road (R120), Lucan, Co. Dublin. The Council refused permission on the 25th July 2023 giving two reasons for refusal as follows:

- (1) Having regard to the existing insufficient capacity in the electricity network (grid), the lack of a fixed connection agreement to connect to the grid, the lack of significant on site renewable energy to power the proposed development, the lack of evidence provided in relation to the applicant's engagement with Power Purchase Agreements (PPAs) in Ireland, and the reliance on a gas powered plant to provide energy to the development, it is considered that the applicant has failed to demonstrate that the proposed use is acceptable on EE zoned lands, in accordance with EDE7 Objective 2 and Section 12.9.4 of the South Dublin County Development Plan 2022-2028. In this regard the proposed development,

would, therefore, be contrary to the proper planning and sustainable development of the area.

- (2) The proposed development does not comply with GI1 Objective 4, GI2 Objective 2, GI2 Objective 4, NCBH11 Objective 3 and GI5 Objective 4 the South Dublin County Development Plan 2022-2028 in relation to the retention and protection of existing green infrastructure and provision of green infrastructure.
3. A first party appeal has been lodged which seeks to address the reasons for refusal. This includes a legal note from MHC solicitors concerning the first reason for refusal.
4. The Board by letter dated 28th February 2025 raised three requests for further information which concerns:
- Confirmation from Eirgrid that the Eirgrid connection agreement letter submitted with the application includes the proposed data centres the subject matter of the appeal
 - A query that as no planning permission is in place, to clarify if and how the connection agreement in place includes the data centres the subject to the appeal
 - If no connection agreement is in place for the data centres, provide confirmation from Eirgrid that the stage 1 of the application process has been completed for the proposed data centre
5. This was responded to by Marston Planning Consultancy on behalf of Querist enclosed a letter from Eirgrid confirming the existence of the D48 connection agreement. It was also noted that the connection agreement refers to the facility at Kishoge, which is the location of the proposed development. The response stated while it was not privy to the decision making process of Eirgrid, it was sufficient that a D48 connection agreement exists for the three data centre developments. It said the D48 connection agreement includes a mechanism whereby Eirgrid may restrict the load under the D48 connection to ensure that the agreement does not exceed the capacity within the relevant electricity network.
6. The Board issued a further letter seeking confirmation from Eirgrid that the connection agreement is sufficient to accommodate the proposed data centre development, in addition to two other data centre developments granted under planning ref: SD19A/0041 and SD21A/0042. Eirgrid in a letter dated 2nd May 2025, considered it was for Querist to satisfy itself that connection agreement is sufficient to accommodate

the proposed data centres in addition to the other data centres that have been permitted to on the site.

7. It is in the context of the above that the Queries set out earlier arise.

III DEVELOPMENT PLAN AND REASON FOR REFUSAL 1

8. Insofar as the request made by the Board arises in the context of the first reason for refusal by the Council, which cites provisions of the South Dublin County Council, it is proposed consider the meaning of the same. EDE7 Objective 2 and Section 12.9.4 of the South Dublin County Development Plan 2022-2028 provides as follows:

EDE7 Objective 2:

To require that space extensive enterprise demonstrates 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, wastewater and electricity network 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.

9. The interpretation of a development plan is a question of law, to be considered by reference to well settled principles of interpretation – it should be construed not as a complex legal document drafted by lawyers but in a way in which members of the public, without legal training, might understand it – see, inter alia, *Tennyson v. Corporation of Dun Laoghaire* [1991] 2 I.R. 527; *Attorney General (McGarry) v. Sligo County Council* [1991] 1 I.R. 99; and *In Re XJS Investments Ltd* [1986] I.R. 750.

10. Thus the development plan is to be interpreted from the perspective of the reasonably intelligent member of the public, which comprises an informed member of the public. See *Clones v An Bord Pleanála* [2021] IEHC 303.

11. The first reason for refusal given by the Council, cited EDE7 Objective 2 and referred to a lack of a “fixed connection agreement” to connect to the grid. However, the first matter to note is that the development plan objective makes no reference to such a requirement. The requirement under the development plan EDE7 Objective 2 is that space extensive enterprise “demonstrates”, inter alia:

Sufficient capacity within the relevant water, wastewater and electricity network to accommodate the use proposed

While it is accepted that a data centre amounts to a space extensive enterprise, EDE7 Objective 2 is not specifically or solely in the context of data centres or indeed electricity networks. The objective is stated at a much higher level of generality to require a demonstration of capacity within the relevant water, wastewater and electricity network. Specific details such as connection agreement nor indeed specific types of connection agreement such as fixed connection agreement are not mentioned. A reasonably intelligent member of the public would not therefore interpret the same as requiring proof of a fixed connection agreement. Instead such person might interpret the same as not being prescriptive of the precise means of demonstrating that sufficient capacity in the electricity network to accommodate the proposed use.

12. Secondly, the relevant objective is contained within the South Dublin County Development Plan 2022-2028 which was adopted on the 22nd June 2022 and came into effect on 3rd August 2022. As is set out in the Advice Note prepared by MHC solicitors which accompanied the first party appeal, the Data Centre Connection Offer Process

and Policy (DCCOPP) was published in June 2020 which identified the greater Dublin area as constrained and introduced flexible demand arrangements and this will be reflected as a requirement for connection offers for new data centres in the area. It is therefore apparent that the regulatory context for connection offers in place at the time of the subsequent adoption of the South Dublin County Development Plan for the functional area of South Dublin required flexible demand arrangement in connection offers. Therefore it appears that so called 'fixed' connection offers are not available. In such circumstances, a reasonably intelligent member of the public would not therefore consider that a requirement to demonstrate sufficient capacity in the electricity network required a fixed as opposed to a flexible demand connection offer.

13. Thirdly, at a much broader level, a reasonably intelligent member of the public would note that EDE7 Objective 2 as a development plan objective under the Planning Code is an expression of proper planning and sustainable development. The granular detail of technical regulatory matters of deciding whether there is capacity in the network is therefore not a matter for determination by planning authority or Board but by other appropriate regulatory authorities. Therefore what EDE7 Objective 2 requires, while not being prescriptive, is some form of demonstration of evidence of capacity such as by a determination by the relevant regulatory authority. In the present instance both the connection offer and subsequent acceptance through signing a connection agreement is undoubtedly evidence of capacity being allocated to the proposed facility. The question of demonstration of "sufficient" capacity will depend on the specific demands of the development. Insofar as the proposed development and other data centres have onsite generation facilities to deal with flexible demand requirements from Eirgrid (if required), this would also further reduce the capacity needs to be delivered through the connection agreement with Eirgrid during such events (if they occur).

IV ANSWER TO QUERIES

14. In the light of the above it is proposed to address the three specific queries raised.

(a) Whether the confirmation sought by the Board in the RFI can be taken into account in their planning application;

15. By this query it is assumed it is intended to mean whether the confirmation sought by the Board is necessary to ensure compliance with EDE7 Objective 2. The answer to this is clearly that it is not necessary. This might be a means of demonstrating sufficient capacity but such a confirmation is not necessary. Eirgrid in its response have not said that the maximum import capacity (MIC) under the connection agreement is insufficient to service the proposed development but instead has stated that it is a matter for Querist to satisfy itself that there is sufficient capacity. It is also implicit in the response from Eirgrid that the MIC under the connection agreement can be used for proposed development and so the letter provides confirmation of the same. It is not therefore the case that Eirgrid has not provided some degree of confirmation. It is evident that EirGrid have no concerns with the connection agreement being used for the proposed data centre and the other permitted data centres insofar as the developer has satisfied itself that there is sufficient MIC. This answer is perfectly understandable in circumstances, where the connection agreement preceded the grant of the proposed development. Thus Eirgrid are saying that the electricity demand requirements are to be assessed by the developer, in the light of what they proposed to construct (which includes the alternative on site generation (if required)). In circumstances, where Eirgrid has reserved specific MIC for the site, it is not the role of Eirgrid to interrogate subsequent proposed planning application to ascertain whether such reserved capacity would accommodate the data centre; that is a matter for Querist as the developer. In this respect Querist for these purposes, is positively in a position to confirm that its electricity demands for the proposed development can be accommodated by the connection agreement. Therefore while the Board can take into account the response given by Eirgrid, it cannot come to a conclusion of a failure to demonstrate sufficient capacity merely because Eirgrid says that it is for the developer to satisfy itself that the connection agreement is sufficient to accommodate the proposed data centre. It is also not the case that Eirgrid has been assigned a specific statutory function to provide the confirmation of the type sought by the Board.

(b) Whether the Board can still lawfully grant planning permission in lieu of the required confirmation from Eirgrid:

16. It follows from the answer to the above, that the Board can clearly lawfully grant planning permission in the absence of the confirmation requested from Eirgrid. It can

satisfy itself that sufficient capacity in the electricity network to accommodate the proposed development has been demonstrated from all the information placed before the Board, even in the absence of specific confirmation sought.

17. It should also be said that even if the Board considered that there was insufficient evidence to demonstrate sufficient capacity in order to comply with EDE7 Objective 2, the Board can still lawfully grant permission. This is because under section 37(2)(a) of the 2000 Act, the Board has a discretion to grant permission even where a proposed development is in material contravention of the development plan. It is only where the planning authority refused permissions on the basis of a finding of material contravention of the development, that the Board is potentially constrained under section 37(2)(b) of the 2000 Act where it may be required (if it agrees with the planning authority that there is a material contravention) to invoke the specified reasons set out under section 37(2)(b) in order to grant permission. However, in the present instance, in reason 1, the planning authority simply said that the applicant has failed to demonstrate that the proposed development was "in accordance with" EDE7 Objective 2 and Section 12.9.4 of the South Dublin County Development Plan 2022-2028. The planning authority did not therefore use the language of "material contravention" in refusing permission, which is necessary before section 37(2)(b) arises. See *Nee v An Bord Pleanála*. Therefore even if the Board agreed with the planning authority EDE7 Objective 2 and Section 12.9.4 of the South Dublin County Development Plan 2022-2028, requires a fixed connection agreement (which is not accepted) and other matters listed, to demonstrate sufficient capacity, the Board could take the view that notwithstanding the same, it is still prepared to grant permission in the interests of proper planning and sustainable development.

(c) In the context of this development, the extent to which the Board can take into account reliance on the national grid to power a data centre and the evidence it requires to verify any such reliance.

18. As noted the requirement under EDE7 Objective 2 is to demonstrate "sufficient capacity" in the electricity network to accommodate the proposed use. This therefore involves a consideration of the electricity needs of the proposed development from the national grid. Insofar as the proposed development will primarily be powered by the

connection agreement with on site generation (if required) to deal with flexible demand requirements from Eirgrid, then this is material to the extent of reliance on the national grid and it would appear appropriate to take into account.

19. More generally as regards verification of the capacity as is set out in the Legal Advice Note which accompanied the appeal, the fact the Eirgrid made a connection offer amounts to capacity in the national grid being allocated to the development at the site incorporating the proposed development the subject matter of the appeal. This was a matter for Eirgrid to decide with its field of competence and not the Board. Insofar as the developer has confirmed that the collective electricity demands of the previously permitted developments and the proposed development do not exceed maximum import capacity of 48.2 MVA demand facility, then this is clear evidence that there is sufficient capacity.

STEPHEN DODD SC

Appendix C – Extracts from Connection Agreement

DocuSign Envelope ID: B779448A-C199-4C61-A229-190A98CECF94
Version 2.00 (July 2013)



TRANSMISSION CONNECTION AGREEMENT

EirGrid plc.

and

Energy Continuity Xchange Ireland II Limited

Demand Customer Connection

Connection Application Form to the Transmission System

January 2017



Indicate for each device the capacitive MVar capability. If the device has more than one stage please indicate the number of stages and the MVar capability switched in each stage.

MVar in steps

MVar in steps

38. Is it intended to utilise shunt compensation as harmonic filters?

Yes ☐ No ☐

On-site Generators

39. Does the site include generators?

Yes ☒ No ☐

40. Will the generator export power to the transmission system?

Yes ☐ No ☒

It should be noted here that generators expecting to export onto the transmission system will also be required to submit an application in accordance with the document 'Process for Connection' available on www.eirgrid.com. Depending on the nature of the generation it will be processed under the Group Processing or Non-Group Processing Approach. Further information is available at <http://www.cer.ie/docs/000767/cer09099.pdf>

41. Will any of these generators be paralleled to the system?

Yes ☐ No ☒

If yes, please refer to and complete the relevant generation form available at <http://www.eirgridgroup.com/site-files/library/EirGrid/Generation-Facilities-Application-Form.pdf>

Maps and Diagrams

42. Please provide a 1:50,000 "Discovery Series" Ordnance Survey map, with the location address of the facility clearly marked. The electrical connection point must be clearly marked with an "X".

Name of OS map attachment:

P1-01 -OS PLACE MAP

Grid co-ordinates of the electrical connection point of your site (In appendix C an example is shown of how to correctly specify the grid co-ordinates):

Easting

7	0	2	6	3	1
---	---	---	---	---	---

Northing

7	3	1	9	5	1
---	---	---	---	---	---

43. Please provide a site plan in an appropriate scale. This site plan should indicate:

- the proposed location of the connection point,
- generators,
- transformers and
- site buildings.

Note that the connection point is normally at the HV bushings of the grid connected transformer. Space for the transmission compound will have to be clearly marked on the site plan. The exact size of the compound will depend on the connection method defined in the connection offer. Site plan is to be submitted in soft copy.

Site plan is to be submitted in soft copy.

Name of site plan attachment:

P1-04 - PROPOSED SITE MASTERPLAN

44. Please provide an electrical Single Line Diagram (SLD) of the proposed facility detailing all significant items of plant and their values.

- Generator transformer(s),
- power factor correction devices,
- location of alternative connection for on-site generation (if applicable) and
- grid connected transformer(s).

Name of the SLD attachment, should be submitted in soft copy.

ESSDUB98_SLD



