

File With _____

CORRESPONDENCE FORMAppeal No: ABP 313583

M _____

Please treat correspondence received on 7/8/24 as follows:

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

Amendments/Comments

5137 Resp From An Tausce2/D 7/8* To be scanned

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 ☒SamEO: [Signature]Date: 9/8/24Plans Date Stamped ☐Date Stamped Filled in ☐AA: Fadimic KhodjovsDate: 8/8/24

File With _____

SECTION 131 FORMAppeal NO: ABP 313583-22Defer Re O/H ☐

TO: SEO

Having considered the contents of the submission dated 7/8/24 received fromAn Taisee I recommend that section 131 of the Planning and Development Act, 2000to not be invoked at this stage for the following reason(s): no m issuedE.O.: [Signature]Date: 9/8/24

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: _____

James Sweeney

From: Bord
Sent: Wednesday 7 August 2024 11:04
To: Appeals2
Subject: FW: Ref. 313583
Attachments: 20240807-ABP-313583.pdf

From: Phoebe Duvall <Phoebe.Duvall@antaisce.org>
Sent: Wednesday, August 7, 2024 11:01 AM
To: Bord <bord@pleanala.ie>
Subject: Ref. 313583

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.

A Chara,

Please find attached a submission from An Taisce in relation to Ref. 313583.

Best regards,

Phoebe Duvall

Senior Planning and Environmental Policy Officer
An Taisce - The National Trust for Ireland
5 Foster Place, Dublin 2, Ireland
Phone: 01 454 1786
www.antaisce.org

Company Reg. No. 12469 | Charity Ref. No. CHY4741 | Charity Regulator No. 20006358
An Taisce is a membership-based charity
Join at www.antaisce.org/membership

Please note that I work Monday through Thursday.



An Taisce

The National Trust for Ireland

5 Foster Place

Dublin 2, Ireland

D02 V0P9

20240807-ABP-313583

An Bord Pleanála
64 Marlborough Street
Dublin 1

Sent by email to: bord@pleanala.ie

7th August 2024

Ref. 313583

App. Huntstown Power Company Limited

For: Demolition of 2 no. existing residential dwellings and construction of 2 no. data hall buildings. EIAR submitted with application

Site: Lands adjacent to Huntstown Power Station, North Road, Finglas, Dublin 11

A Chara,

Thank you for your letter of 18th July 2024 requesting further comment from An Taisce under s.131 of the Planning and Development Act 2000 (as amended) in relation to submissions received on 7th and 13th June regarding the above appeal.

1. Brock McClure Report

1.1 Corporate Power Purchase Agreement

The use of Corporate Power Purchase Agreements (CPPAs) exacerbates the issue of data centres diluting renewables penetration into the electricity grid. Data centres with CPPAs for renewables are still increasing the overall demand for electricity - the higher the total electricity demand, the more renewable capacity is needed to decarbonise the electricity sector and reach the national target of 80% renewable-generated electricity by 2030.

Furthermore, if new data centres use CPPAs to buy renewable power, that renewable energy will simply cover new data centre energy demand rather than dealing with our existing emissions mitigation needs. Unless CPPAs are used for *existing* large energy users or industrial developments, which is not the case here, they are not actually contributing to decarbonisation. Therefore, CPPAs such as the one proposed in the subject application, actually undermine our efforts to decarbonise.

An Taisce is a membership-based charity | Join us at www.antaisce.org/membership

An Taisce – The National Trust for Ireland | *Protecting Ireland's heritage, safeguarding its future*

Registered Office: Tailors' Hall, Back Lane, Dublin, D08 X2A3, Ireland | www.antaisce.org | +353 1 707 7076 | info@antaisce.org

Company Limited by Guarantee no. 12469 | Charity CHY4741 | Charity Regulator no. 20006358 | EU Transparency Register no. 473905437651-60

Directors: Stuart McCaul (Chair), Trish O'Connell (Vice Chair), Laura Segura Gutierrez (Hon Secretary), John Conroy (Treasurer)
Olivia Rogers, Rónán O'Brien, Finbarr Murray, Heten Shaw, Terri Morrissey, Sinead Mercier, Phil Doyle

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

An Taisce's concerns still stand as expressed in our submission of 13th June 2024 regarding the fact the Government Statement on the Role of Data Centres in Ireland's Enterprise Strategy was not screened for Strategic Environmental Assessment (SEA) per EU Directive 2001/42/EC.

We would reiterate that we consider that the content of Statement constitutes the setting of a framework for future development consent of projects listed in Annexes I and II to the EIA Directive. The Statement's Principles for Sustainable Data Centre Development are described as "*A set of national principles that should inform and guide decisions on future data centre development.*"

Indeed, Section 5 of the Brock McClure report reinforces this:

"It is noted to An Bord Pleanála that Objective DMS092 Space Extensive Developments as included in the Fingal County Development Plan 2023-2029 requires space extensive developments to show compliance with the principles for Sustainable Data Centre Development as per the Government Statement on the Role of Data Centres in Ireland's Enterprise Strategy (July 2022)."

The Fingal County Development Plan is requiring compliance with the Statement's Principles, further cementing these as a framework and criteria for granting development consent. The Brock McClure also provides an extensive explanation of the project's compliance with those principles in section 4.1.11.

Yet because the Government Statement, though clearly serving as a development consent framework, has not undergone SEA or SEA screening, we submit that the Statement and the Principles therein cannot be used as a framework or criteria to justify or permit data centre development.

We would again highlight that the CJEU has generally taken a broad approach to the interpretation and application of the various aspects of the SEA Directive.

Furthermore, to our knowledge the Government Statement has not been assessed against our obligations under the Climate Action and Low Carbon Development Act 2015 (as amended) (see section 7 of the Brock McClure report). Therefore, we do not consider that it can be used as a justification for the proposal's compliance with the Climate Action Plan.

2. AWN Response on Alignment with the Climate Action Plans 2023/2024

It is noted that the Board's request related to alignment with Climate Action Plan 2023 but that in the intervening period Climate Action Plan 2024 was finalised and is now the relevant plan that the Board must consider. Both CAP23 and CAP24 are bound by the carbon budgets and sectoral emissions ceilings (which have not changed for 2021-2025 between the publication of CAP 23 and 24, except in relation to projected budget exceedances which are discussed in the following section).

2.1 Flawed Calculations and Carbon Budget Compliance

We submit that the emissions calculations provided in the AWN report are flawed. Crucially, the calculations throughout assume that Carbon Budget 2 for 2026-2030 will be 200MtCO_{2e}. Per the Climate Action and Low Carbon Development Act 2015 (as amended) (hereafter referred to as the Climate Act), any exceedance of a carbon budget must be carried over into the next carbon budget, thereby decreasing that subsequent budget by the amount of the overshoot. Therefore, as the EPA have emphasised, Carbon Budget 2 for the 2026-2030 period will have to be reduced by any overshoot that occurs in Carbon Budget 1 for 2021-2025. Currently, EPA projections¹ estimate that this overshoot will be within a range of 26 MtCO_{2e} for the With Existing Measures (WEM) scenario to 19 MtCO_{2e} for the With Additional Measures (WAM) scenario.² Therefore, once the exceedance is applied, the 2026-2030 budget will be smaller and actually lie in the range of 174-181 MtCO_{2e}. Therefore, the percentage of national emissions, per the carbon budget, contributed by the plant for Phase 1 & 2 should be increased accordingly.

This failure to account for the projected exceedances impacts the calculations throughout the AWN report and means that the development will have a more significant impact on the carbon budgets and sectoral ceilings than is stated by the applicant.

We would also highlight that not only will Carbon Budget 2 be reduced from 200Mt as a result of the Carbon Budget 1 exceedance, but the EPA projections also already indicate there will be a very significant exceedance of Carbon Budget 2. They state in section 4.1 of the 2024 emissions projections report:

"With this carryover, Budget 2 is projected to be exceeded by 135 Mt CO₂ eq in the WEM scenario and by 85 Mt CO₂ eq in the WAM scenario. Consequently, far higher emissions reductions will be needed in order to comply with Budget periods 2 and 3."

This is particularly relevant because the emissions and carbon budget impacts of the subject proposal have not been assessed beyond 2030, despite the fact that we know the provisional allocation for Carbon Budget 3 and already have information on projected exceedances of Budget 2.

There is also the issue of the "unallocated emissions" in the sectoral ceilings for Carbon Budget 2 which gives a Budget 2 total of 226 MtCO_{2e} rather than 200 MtCO_{2e} (before exceedances are factored in). Section 1.29 of the AWN submission does acknowledge this issue, but it does not comment further or provide any analysis. Resolving this problem of unallocated emissions either requires the reduction the sectoral ceilings or requires carbon removal (which is not technologically viable at scale yet and is very unlikely to be by 2030). Even if the unallocated emissions issue is ignored for the purposes of assessing this application, the issue of carbon budget and sectoral ceiling exceedances remains.

In Table 1 of the AWN report, the proposed total average plant emissions of 95,978t over the four year period 2027-2030 is incorrectly calculated. The annual emissions total 397,856t over the four years gives a total annual average of 99,464t. This is approximately 5% greater than shown in the table. Coupled with a reduction in carbon budget to 181Mt (WAM) the percentage

¹ <https://www.epa.ie/publications/monitoring--assessment/climate-change/air-emissions/EPA-GHG-Projections-Report-2022-2050-May24--v2.pdf>

² It is worth noting that this apparent improvement on the 2023 EPA budget exceedance projections is primarily a result of timeseries changes in the Agriculture, Forestry and Other Land Use sector as opposed to improved effectiveness in emissions mitigation policy.

of the national total carbon budget as a result of the plant changes from 0.24% to 0.27% annually. For WEM and a carbon budget reduction to 174Mt, the contribution of the plant annually is 0.29%. This is 12.5% higher for WAM and 21% higher for WEM than claimed in the proposal. This represents a significant contribution to exceeding the second carbon budget at a time when the Climate Action Plan is envisaging major reductions to comply with both the Climate Act and forthcoming EU obligations to achieve a 90% reduction in emissions by 2040.

Additionally, the applicant is assuming the carbon budget would be evenly divided over the five years, with similar emissions each year 2026 to 2030. We would highlight that this is a somewhat unrealistic with the likely reality that higher emissions in the earlier years would mean a smaller budget remaining for 2029 and 2030. In this scenario, the data centre would account for a greater share of national emissions (per the carbon budget) during these last two years.

The inconsistencies in the calculations discussed above imply that a significantly greater emissions commitment is occurring as a result of the proposed plant at a time when compliance with the Climate Act and CAP23 and CAP24 are requiring increasingly radical reductions in emissions.

Regarding the contribution of the proposal to carbon budget exceedances, Section 1.41 of the AWN report states:

"Thus in the context of the Sectoral Emission Ceilings, and in circumstances where the Proposed Development is included under existing electricity demand forecasts, with a transmission connection agreement (TCA) dated to 8" March 2021, there is no evidence that the Proposed Development would contribute to an exceedance of the Emission Ceiling. Thus, the risk of an exceedance of the sectoral emission ceiling is associated with an expansion of demand including additional data centres not already in receipt of a TCA."

The EPA are projecting an exceedance of the sectoral emissions ceiling for electricity (see the EPA's Table 2 below) on the basis of existing TCAs. If this includes the subject proposal, then, on the contrary, the subject proposal *would* contribute to an exceedance of the sectoral emission ceiling. If the proposal is not included, then it is new demand and therefore again contributes to an exceedance.

To comply with the constraints of the legally binding carbon budgets, sectoral activities must add up to a figure within the relevant sectoral ceiling. Given the currently projected exceedances for Carbon Budget 2 and the ceilings therein, budget and sectoral ceiling compliance must mean cutting back on current projected WEM/WAM activities as well as not adding further new demand. This should be considered by the Board in assessing whether the proposed development constitutes proper planning and sustainable development within the context of carbon budget constraints.

Table 2: Assessment of Achievement of Sectoral Ceilings under the *With Additional Measures* Scenario

Sectors	Projected Emissions 2021-2025 (Mt CO ₂ eq)	Sectoral Ceiling 2021-2025 (Mt CO ₂ eq)	Projected Emissions 2026-2030 (Mt CO ₂ eq)	Sectoral Ceiling 2026-2030 (Mt CO ₂ eq)
Electricity	41	40	24	20
Transport	58	54	49	37
Buildings (Residential)	30	29	24	23
Buildings (Comm and Public)	7	7	5	5
Industry	33	30	30	24
Agriculture	113	106	100	96
Other*	9	9	8	8
LULUCF (no ceiling currently)	23		25	
Total with LULUCF**	314	295	267	200

* Waste, F-gases and Petroleum Refining

**National objective includes LULUCF

The AWN report (and the EIAR) invokes the 2022 IEMA Guidance for project assessment. The IEMA "Significance" assessment sections 1.58-1.71 concludes that the proposed development has only "Minor Adverse" outcomes for "all phases" (2027-2030). First, this entirely ignores the period beyond 2030 when, as stated above, our emissions reduction requirements and carbon budgets will be even more stringent.

Second, the IEMA framework does not account for the legally binding carbon budget sectoral ceiling constraints. In that context, even taking the AWN report's calculations at face value without correcting for the budget exceedances, etc., one single development accounting for 2.9% of the entire 2026-2030 sectoral ceiling for electricity is extremely significant.

Similarly, the latest version of Ireland's Long Term Strategy (LTS) as submitted to the EU sets target of 3Mt for 2030 emissions relating to electricity. The proposed 104,637t of plant emissions for 2030 (per Table 1) would in and of itself represent 3.5% of this target value.

Additionally, the proposed use of a CPPA and does not resolve the carbon budget compliance issues as the subject proposal still increases overall energy demand and the emissions associated with that. While it discusses CPPAs and alignment with IEMA guidance, the AWN submission has not addressed how a CPPA resolves the issue of our legally binding obligation to ensure on-time carbon budget and sectoral ceiling compliance, particularly in light of the projected exceedances.

2.3 EU Climate Legal Obligations

In discussing the EU Effort Sharing Regulation, section 1.18 of the AWN submission states: *"...Ireland's obligation under the Regulations is a 30% reduction in non-ETS GHG emissions by 2030 relative to its 2005 levels."* However, this is contradictory to CAP24 (see Box 2.1, pg. 38) which states:

"For non-ETS sectors, which includes emissions from agriculture, transport, buildings, and light industry, Member States' nationally binding targets (for the period 2021 to

2030) are covered by the Effort Sharing Regulation (ESR). Under the ESR, Ireland is required to reduce its emissions from these sectors by 42% by 2030, relative to 2005 levels."

In addition, the ETS scheme targets a reduction of 62% in emissions by 2030. This proposal will not facilitate this as it increases ETS emissions. Furthermore, by doing so it compromises the flexibility arrangements whereby Ireland can offset some of its ETS emissions to Effort Sharing Regulation emissions overshoots.

We would also again emphasise that any participation in the EU ETS and the purchase of the associated emissions permits relates to mitigation obligations under EU climate law. This does not negate, prevent or act in place of the obligations under the national carbon budgets and sectoral emissions ceilings in accordance with the Climate Act, which covers both the ETS and non-ETS sectors.

2.4 Climate Act Section 15 Obligations

Section 15(1) of the Climate Action and Low Carbon Development Act 2015 (as amended) places obligations on relevant bodies, including An Bord Pleanála:

"15(1) A relevant body shall, in so far as practicable, perform its functions in a manner consistent with—

- (a) the most recent approved climate action plan,*
- (b) the most recent approved national long term climate action strategy,*
- (c) the most recent approved national adaptation framework and approved sectoral adaptation plans,*
- (d) the furtherance of the national climate objective, and*
- (e) the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State."*

The applicant has submitted a report attempting to demonstrate the proposal's alignment with CAP23/CAP24 which the Board must now assess (and it is practicable to do so). On the basis of the report's contents and the flaws as highlighted above, An Taisce considers that the applicant has failed to demonstrate that the proposal is aligned with CAP23/CAP24 and with the carbon budgets and sectoral emissions ceilings to which CAP23/CAP24 is bound (as well as the national climate objective, the LTS and the objective of emissions mitigation). We therefore respectfully submit that the Board, in performing its function to determine planning appeals, is very likely precluded by s.15(1) from granting permission for the subject proposal.

Please acknowledge this submission and advise us of any decision made.

Is mise le meas,

Phoebe Duvall
Senior Planning and Environmental Policy Officer
An Taisce – The National Trust for Ireland