

File With

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SECTION 131 FORM

Appeal No

ABP— 318180-23

Defer Re O/H

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Having considered the contents of the submission dated/received 09/11/2023 from John Callaghan I recommend that section 131 of the Planning and Development Act, 2000 be/not be invoked at this stage for the following reason(s):

no new material issues

Section 131 not to be invoked at this stage.

Section 131 to be invoked — allow 2/4 weeks for reply.

Signed

Pat B

Date

13/05/2024

EO

Signed

[Empty box]

Date

[Empty box]

SEO/SAO

M

Please prepare BP — Section 131 notice enclosing a copy of the attached submission.

To

[Empty box]

Task No

[Empty box]

Allow 2/3/4 weeks

BP

Signed

[Empty box]

Date

[Empty box]

EO

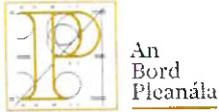
Signed

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Date

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AA



# Planning Appeal Online Observation

Online Reference  
NPA-OBS-002722

LDG - 068057-23

## Online Observation Details

Contact Name  
John Callaghan

Lodgement Date  
09/11/2023 16:09:04

Case Number / Description  
318180

## Payment Details

Payment Method  
Online Payment

Cardholder Name  
John Callaghan

Payment Amount  
€50.00

## Processing Section

S.131 Consideration Required

Yes — See attached 131 Form

N/A — Invalid

Signed

*Pat G*

Date

10/11/2023

EO

*BP40 to issue*

13/10/23 : 09/11/23 ✓

## Fee Refund Requisition

Please Arrange a Refund of Fee of

€

Lodgement No

LDG—

Reason for Refund

Documents Returned to Observer

Yes  No

Request Emailed to Senior Executive Officer for Approval

Yes  No

Signed

Date

EO

## Finance Section

Payment Reference

ch\_30AamxB1CW0EN5FC1hy2yNVo

Checked Against Fee Income Online

EO/AA (Accounts Section)

Amount

€

Refund Date

Authorised By (1)

SEO (Finance)

Authorised By (2)

Chief Officer/Director of Corporate Affairs/SAO/Board Member

Date

Date

## Observation On Planning Appeal

**Bord Pleanála Case reference:** PL06F.318180

**Planning Authority Case Reference:** FW22A/0308

**Project Address.** Cruiserath Road, Dublin 15. Fingal County Council.

**Applicant:** Universal Developers LLC

**Observer:** John Callaghan

**Observer:** 10 The Cloisters, Oldcastle Road, Kells, Co Meath. A82C9Y7

**Address for correspondence:** 10 The Cloisters, Oldcastle Road, Kells, Co Meath. A82C9Y7

### 1.0 Background to this Submission

1.1 On the 15th August John Callaghan wrote to Ms AnnMarie Farrelly CEO Fingal County Council citing the decision of the Supreme Court in **White v. Dublin City Council [2004] IESC 35** (Denham J<sup>1</sup> & Fennelly J<sup>2</sup>) and requested an opportunity to comment on Further Information received by the Planning Authority on August 3rd 2023 which the Authority deemed was not significant.

1.2 It is obvious that the information sought by the Planning Authority on the 17th of February 2023 was material to the determination of the Planning Grant. It is clear that many aspects of the Further Information submitted On August 3rd 2023 engaged and related to the EIA Directive.

1.3 The Council responded to the request in the following terms:

*Dear Mr Callaghan*

*I acknowledge receipt of your email.*

*Planning permission FW22A/0308 is currently open for further comment on Additional Information for existing 3<sup>rd</sup> party observers.*

*Should the Additional Information be deemed significant it would be re-opened to the general public for further comment.*

*If Fingal County Council decision is appealed to An Bord Pleanála you will have an opportunity to make a comment on the appeal lodged.*

*Please see An Bord Pleanála website for further information. [Planning Appeals | An Bord Pleanála \(pleanala.ie\)](#). At the end of the page in further information it has – Make an observation on a planning appeal.*

Clearly the Council ignored the request and had already anticipated the decision would be a grant advising I would have a remedy of commenting on an appeal if someone else appealed to An Bord Pleanála.

1.4 John Calaghan replied to the Planning Authority as follows:

<sup>1</sup> [https://www.courts.ie/acc/alfresco/44e076df-ac9d-4e1c-987a-c6964bcbe927/2004\\_IESC\\_35\\_1.pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/44e076df-ac9d-4e1c-987a-c6964bcbe927/2004_IESC_35_1.pdf/pdf#view=fitH)  
<sup>2</sup> [https://www.courts.ie/acc/alfresco/213826aa-f4d5-4c40-a803-27fb38599362/2004\\_IESC\\_35\\_2.pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/213826aa-f4d5-4c40-a803-27fb38599362/2004_IESC_35_2.pdf/pdf#view=fitH)

Many thanks Catherine for your reply. The Option of making an Observation to the Board as opposed to an appeal are very different. Only those who appeal will have Standing to take a Judicial Review. Please consider the precedent in *White v. Dublin City Council* [2004] IESC 35.

In any event your reply will assist in grounding a Judicial Review in the event of a Grant, should the application not be opened to Public Participation. Its worth noting too Mr Justice McKechnie in *An Taisce V An Bord Pleanála* [2020] IESC 39<sup>3</sup> who emphasised the importance of the aid of public participation to good decision making:

128. It must be remembered that the underlying purpose of public participation in environmental matters is to facilitate good, fully informed decision making, it being acknowledged that the public as a whole is one of the greatest repositories of environmental information. The EIA Directive recognises that without the opportunity to participate, it will be more difficult for the competent authority to reach the kind of decision as is envisaged. Good decision-making can take place where the decision-maker has the relevant information before it. As the appellants have demonstrated, the matters which fall to be considered at the leave stage are matters in respect of which the public may have highly relevant information. It seems to me that, as a result of the restrictions imposed, Part XA of the 2000 Act fails to provide for effective participation at a stage when all solutions remain open: quite clearly, the option of refusing to grant leave is off the table by the time the public have any opportunity to make submissions which may be of relevance to that decision.

1.5 Page 35 of the Planning Report indicates that people who had initially commented on the application were permitted to make further comments and that the Further Information was Not Deemed Significant, even though the Planning Authority could not bring itself to grant permission without Further Information.

Subsequent report of the Planning Officer typed 13th September 2023.

A request for additional information was made on 17th February 2023. A response was received on 3rd August 2023. The response was not deemed significant therefore public notices were not required.

#### Third Party Submissions/Observations

A number of third party submissions were received following receipt of the additional information. The issues raised include:

1.6 The Planners Report made no reference to the request to the Planning Authority to make a submission on the Further Information received per the Judgement in **White v. Dublin City Council** [2004] IESC

1.7 . There is nothing in the Planners Report that would allow the conclusion to be drawn that the Planner was aware of the Request. There is nothing in the Report to allow a member of the Public to understand why the Request was effectively refused. The Case of **Connelly v An Bord Pleanála and Ors** [2018] IESC 31<sup>4</sup> is relevant to the issue of reasoned decisions.

<sup>3</sup> [https://www.courts.ie/acc/alfresco/80f2cbbf-4f1e-4065-8ca3-f8c14308035b/2020\\_IESC\\_39.pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/80f2cbbf-4f1e-4065-8ca3-f8c14308035b/2020_IESC_39.pdf/pdf#view=fitH)

<sup>4</sup> [https://www.courts.ie/acc/alfresco/b5fc7d8a-a799-4446-95e3-37a2a7f5bdd8/2018\\_IESC\\_31\\_1.pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/b5fc7d8a-a799-4446-95e3-37a2a7f5bdd8/2018_IESC_31_1.pdf/pdf#view=fitH)

The following paragraphs from the Chief Justice's Judgement should be considered:

*11.4 It follows that, while the general principle remains the same, there is an additional requirement in a case to which the EIA regime applies to the effect that the decision must be sufficiently clear to enable any interested party to consider whether they may have grounds to challenge the decision on the basis that it might be contended that an adequate EIA had not been conducted.*

*11.5 In that context, it is important to note that the EIA regime does not require any particular result to the relevant process but rather is concerned with the process itself. It requires a particular assessment to be carried out and, by necessary inference, that a sustainable permission only be granted where that assessment is favourable to the grant of the permission concerned. It follows that, amongst the reasons which need to be given, there must be included the basis on which the assessment required under the EIA regime leads to the conclusion that a permission can be granted. That in turn requires that the decision, or other relevant and connected materials available to any interested party, must demonstrate that an EIA was carried out and that the decision maker properly had regard to the results of the EIA in coming to its conclusion.*

*11.6 Against that background it is necessary to look at the Decision. It is clear that the Inspector's report sets out the analysis of the matters which the Inspector considered necessary in the context of an EIA. But it is also clear that an additional assessment was carried out both by the Board in considering the Inspector's report, again by the Board in requiring additional information including an NIS and finally by the assessment of the Board of the overall situation in the light, amongst other things, of that additional information.*

*11.7 In those circumstances it does not seem to me that it can be said that there is inadequate information to allow a party to assess whether a proper EIA has been carried out. Any interested party can identify the issues which were addressed in the Inspector's report, in the additional information and in the Board's final assessment. If there is a case to be made that material issues were not assessed then an interested party has access to adequate information to enable them to mount such a case. In my view it follows that the information and reasons given are adequate to permit any interested party to mount a challenge based on a contention that a proper EIA was not carried out. Such a party knows the matters that were assessed and, for the reasons already analysed, knows why the result of that assessment was as set out in the Decision. So far as information and reasons are concerned that is sufficient to meet the legal requirement. Insofar as the High Court judgement found otherwise I would reverse the judgement.*

1.8 The Planning Authority effectively found that the planning application was not sufficiently complete to satisfy the requirements of the EIA Directive. The extract from the Further Information response submitted by John Spain Associates, confirms that the Further Information related to matters falling under the scope of the EIA Directive.

## **INTRODUCTION**

On behalf of our client, Universal Developers LLC, we wish to respond to the request for Further Information (FI) issued by the Planning Authority on the 17<sup>th</sup> of February 2023 in respect of an application for a proposed data centre development at Cruiserath Road, Dublin 15.

In addition to this cover letter the following documentation is submitted with this FI response:

- Response report prepared by AWN Consulting, including the following:
  - Air Quality and Climate EIA Chapter Addendum prepared by AWN Consulting;
  - Inward Noise Assessment Report prepared by AWN Consulting;
- Soil Quality Assessment report prepared by AWN Consulting with Appendix: Ground Investigation Report prepared by IGSL;
- Architectural drawings of proposed sheltered bicycle parking prepared by HJL Architects;
- Report on Carbon Generated During the Construction Phase of the Project prepared by HJL Architects.

This cover letter provides an overall response to the FI request received, and refers to the inputs prepared by the relevant experts for further details.

1.9 Any Application to the High Court by way of Judicial Review would be premature while the remedy of an observation to An Bord Pleanála was open.

## **2.0 Grounds of Opposition**

2.1 The Application was not sufficiently detailed to satisfy the EIA Directive.

2.1.1 Recital 8 of Directive

2.1.2 Annex IV required the following information is submitted

### ***ANNEX IV***

#### ***INFORMATION REFERRED TO IN ARTICLE 5(1)***

#### ***(INFORMATION FOR THE ENVIRONMENTAL IMPACT ASSESSMENT REPORT)***

1. *Description of the project, including in particular:*
  - (a) *a description of the location of the project;*
  - (b) *a description of the physical characteristics of the whole project, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;*
  - (c) *a description of the main characteristics of the operational phase of the project (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;*
  - (d) *an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation) and quantities and types of waste produced during the construction and operation phases.*
2. *A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.*
3. *A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the project as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.*
4. *A description of the factors specified in Article 3(1) likely to be significantly affected by the project: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.*

5. A description of the likely significant effects of the project on the environment resulting from, *inter alia*:

- (a) the construction and existence of the project, including, where relevant, demolition works;
- (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
- (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
- (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
- (e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
- (f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;
- (g) the technologies and the substances used.

The description of the likely significant effects on the factors specified in Article 3(1) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project.

6. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

7. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

8. A description of the expected significant adverse effects of the project on the environment deriving from the vulnerability of the project to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to Union legislation such as Directive 2012/18/EU of the European Parliament and of the Council <sup>(1)</sup> or Council Directive 2009/71/Euratom <sup>(2)</sup> or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

9. A non-technical summary of the information provided under points 1 to 8.

10. A reference list detailing the sources used for the descriptions and assessments included in the report.

<sup>(1)</sup> Directive 2012/18/EU of the European Parliament and the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC ( OJ L 197, 24.7.2012, p. 1)."

2.1.3 The Board is asked to note the following points relating to the EIA Directive.

- The Technical must contain all information in Annex IV points 1 to 8
- While the Non Technical Summary set out a figure for the power to be consumed by the facility ( power assumed to refer to electrical power) no figure was provided for the Primary Energy Consumption as defined by 2.5 of The Energy Efficiency Directive (EU) 2023/1791<sup>5</sup> 'primary energy consumption' or 'PEC' means gross available energy, excluding international maritime bunkers, final non-energy consumption and ambient energy;
- Energy Efficiency First is defined by Article 2.18 of REGULATION (EU) 2018/1999<sup>6</sup> (18)

'energy efficiency first' means taking utmost account in energy planning, and in policy and investment decisions, of alternative cost-efficient energy efficiency measures to make energy demand and energy supply more efficient, in particular by means of cost-effective end-use energy savings, demand response initiatives and more efficient conversion, transmission and distribution of energy, whilst still achieving the objectives of those decisions;

- Page 9 of the Non Technical Summary refers to a power load of 73.1MW while page 20 refers to a total power load for cumulative plus existing data centres at the site at 219.7MW and refers to 3 wind farms at Cork, Galway and Donegal projected to deliver a capacity of 229MW.
- Wind Farms typically have a Capacity Factor of 27 to 35% depending on the year

<sup>5</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL\\_2023\\_231\\_R\\_0001&qid=1695186598766](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2023_231_R_0001&qid=1695186598766)

<sup>6</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_2018.328.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_2018.328.01.0001.01.ENG)

### All Island Wind Capacity Factors

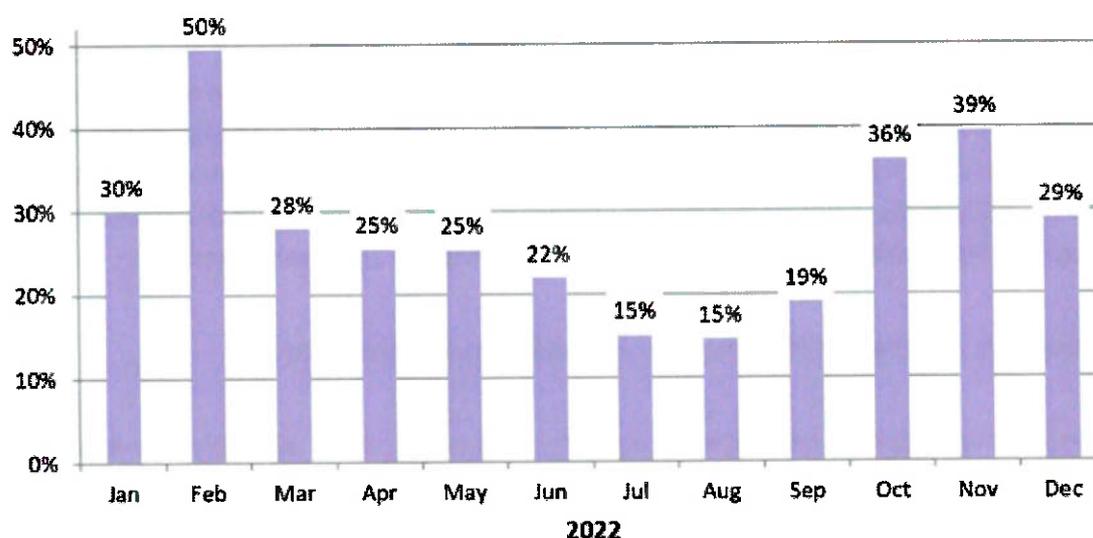


Figure 4: All-Island Monthly Wind Capacity Factors in 2022

Figure above from *Annual Renewable Energy Constraint and Curtailment Report 2022 May 2023*<sup>7</sup>

It is obvious that extensive thermal power generation capacity would be required to complement the power derived from wind power to meet the data sector power demand that is required 8766 hours a year and 31,557,600 seconds a year.

- The figures of 73.1 MW for the proposed phase and 219.7MW for the cumulative current and future demand at the site must relate to a fluctuating Primary Energy Demand or Primary Energy Consumption, which must include Own use generation losses, and transmission losses which are not accounted for.
- Article 4 of the Energy Efficiency Directive<sup>8</sup> sets out the Requirement to reduce energy consumption. That reduction includes a reduction in renewable energy consumed. Where thermal electricity generation is required it is essential to utilise waste heat in order to comply with the Energy Efficiency Directive.
- The Non Technical Summary does not provide any information as to where the additional thermal power plant required to generate power will be located as would be required in times of lower or no wind periods or period of cloud or darkness.
- It is essential that the location, type, waste heat recovery, and generation technology associated with any additional thermal power demand arising from this development be evaluated so that Alternatives under the meaning of the EIA Directive can be considered.

<sup>7</sup>

file:///C:/Users/GGMachines\_Gaming/OneDrive/2023%20Planning/Fingal/Amazon/Annual-Renewable-Constraint-and-Curtailment-Report-2022-V1.0.pdf

<sup>8</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL\\_2023\\_231\\_R\\_0001&qid=1695186598766](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2023_231_R_0001&qid=1695186598766)

## 2.2 The Renewable Energy Directive (EU) 2023/...<sup>9</sup> (RED III)

### Article 1

#### Amendments to Directive (EU) 2018/2001

Directive (EU) 2018/2001 is amended as follows:

(1) in Article 2, the second paragraph is amended as follows:

(a) point (1) is replaced by the following:

*“(1) “energy from renewable sources” or “renewable energy” means energy from renewable non-fossil sources, namely wind, solar (solar thermal and solar photovoltaic) and geothermal energy, osmotic energy, ambient energy, tide, wave and other ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas, and biogas;*

- It is reasonable for the EIAR Report to consider powering the proposed data centre on each of the renewable energies set out in Article 1 and considering alternative locations that would avail matching the generation profile of renewable energy to the consumption profile of the data centre proposed.
- The Board are referred to the Judgement of the CJEU in *Holohan V An Bord Pleanála* CASE C41/17<sup>10</sup>

*2. The fifth, sixth and seventh questions — alternatives in the environmental impact assessment*

*92. The fifth, sixth and seventh questions concern information provided by the developer on alternatives to the project under assessment. In the case in the main proceedings, consideration was given at an early stage to whether the bypass road could ‘span’ the floodplain by means of a bridge. This alternative development was rejected on cost grounds, however. The High Court’s questions seek to ascertain whether the developer must nonetheless provide information on the environmental effects of executing the road development project in that way.*

*(a) The fifth question — the main alternatives*

*93. The fifth question seeks to ascertain whether an alternative is to be regarded as one of the ‘main alternatives’ within the meaning of Article 5(3)(d) of the EIA Directive even in a case where the developer rejected it at an early stage.*

*94. For the purposes of assessing which alternatives are to be regarded as main alternatives, the relevance of those alternatives to the environmental effects of the project or to their avoidance should be decisive. The purpose of the EIA Directive, after all, according to Article 3 thereof, is to identify, describe and assess the environmental effects of projects. Alternatives therefore are of interest first and*

<sup>9</sup> <https://data.consilium.europa.eu/doc/document/PE-36-2023-INIT/en/pdf>

<sup>10</sup>

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=204755&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=362287>

foremost if they are capable of influencing the environmental effects of the project concerned.

95. Although the stage at which another solution was rejected is irrelevant from that point of view, it may indirectly have a bearing on the extent of the reasons to be given. The extent of those reasons forms the subject matter of the sixth and seventh questions.

96. For the purposes of Article 5(3) of the EIA Directive, therefore, alternatives are main alternatives if they are capable of having a significant impact on the environmental effects of the project concerned.

(b) *Reliance on the assessment by the developer*

97. Although the request for a preliminary ruling does not refer a question in this regard, it is important, before answering the sixth and seventh questions, to address the fact that Article 5(3)(d) of the EIA Directive requires only information on the other alternatives studied by the developer. Indeed, the national court proceeds on the assumption that the developer 'studied' the aforementioned bypass road development option. That notwithstanding, the fundamental decision on the part of the EU legislature to place reliance on the assessment by the developer also has a bearing on the information which a developer provides on the alternatives he has studied.

98. In the light of the EU's environmental policy objective of ensuring a high level of environmental protection, laid down in Article 191(2) TFEU and Article 37 of the Charter of the European Union, as well as the precautionary principle and the principle of preventive action, also enshrined in Article 191(2) TFEU, it seems desirable that the alternatives to a project should be examined as comprehensively as possible. Such an approach would make it possible to select the project option which restricts the adverse environmental effects of that project to a minimum.

99. It is in line with this thinking that the strategic environmental assessment report preparation of which is required by Article 5(1) of the Directive on the assessment of the effects of certain plans and programmes on the environment (29) includes reasonable alternatives.

100. In Article 5(3)(d) of the EIA Directive, however, the EU legislature chose a different approach. Under that provision, the information to be provided by the developer is to include at least an outline of the main alternatives studied by him and an indication of the main reasons for his choice, taking into account the environmental effects. Annex IV(2) to the directive repeats this.

– *Legislative history*

101. As the national court requesting a preliminary ruling, An Bord Pleanála and Ireland submit, the aforementioned legislative choice is also readily apparent from the drafting history of Directive 97/11/EC. (30) Both the Commission (31) and the Parliament (32) proposed an obligation requiring the developer to provide a description of the main alternatives that might be envisaged. Their proposals did not prevail, however.

102. Furthermore, as early as 1980, the Commission had proposed that a description be provided of the alternatives that seemed to be reasonably feasible (33) and, even then, the

Council restricted that obligation to the text that also appears in the EIA Directive that is now applicable. (34)

103. And the most recent, not yet applicable, amendments introduced by Directive 2014/52 have, notwithstanding more extensive proposals from the Commission (35) and the Parliament, (36) adhered to the requirement in Article 5(1)(d) that only the reasonable alternatives studied by the developer be described.

104. The drafting history relating to Article 5(3)(d) of the EIA Directive thus confirms the conclusion to be drawn from its wording that the developer must provide information only on the alternatives which he has studied, but not on alternatives which might be feasible but which he did not consider.

– Espoo Convention

105. More extensive obligations in respect of the examination of alternatives, which are independent of the substantive requirements applicable to the project in question, are laid down in the Espoo Convention, referred to in the request for a preliminary ruling. (37) In accordance with Article 4(1) of, and Annex II(b), (c) and (d) to, that Convention, a description of reasonable alternatives and their effects on the environment must be provided.

106. That Convention does not, however, pursuant to Article 2(2) thereof, provide for an environmental impact assessment for all projects which are subject to the EIA Directive, but only for certain projects that are likely to cause significant adverse transboundary impact.

107. It is true that, for the purposes of a uniform interpretation, it would be desirable to interpret the EIA Directive in accordance with that Convention, (38) since much of the Directive is intended to implement the Convention. (39) Furthermore, the EU's powers must be exercised with due regard for international law; consequently, EU secondary law must in principle be interpreted in accordance with the EU's obligations under international law. (40)

108. However, in the light of its wording and legislative history, it is not possible to interpret Article 5(3)(d) of the EIA Directive as meaning that a project may obtain development consent only if the reasonable alternatives to it are also described and their effects on the environment are also assessed.

109. The question as to whether the rules on the assessment of alternatives which are applicable to certain projects under the Espoo Convention are by extension directly applicable to the EIA Directive, because, regard being had to its wording and to the purpose and nature of that Convention, the latter contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure, (41) has not been raised. Nor, presumably, would it be ultimately relevant to the judgment to be given in the main proceedings, since the project at issue does not, *prima facie*, fall within the scope of that Convention. There is therefore no need for the Court to give a ruling.

– Classification within the scheme and objectives of the EIA Directive

110. At first sight, it seems unsatisfactory that the examination of alternatives in the environmental impact assessment should be crucially dependent on the developer. However, that rule is — to some extent at least — sufficient for the purposes of the primarily procedural nature of the EIA Directive.

111. Thus, whether and to what extent the decision on a project must make reference to the reasons for the choice made in such a way as to take into account the environmental effects is not clarified in the EIA Directive. That directive does not lay down any substantive requirements in respect of granting development consent to a project. (42)

112. Even the fundamental or essential obligation laid down in Article 3 of the EIA Directive not only to identify and describe the direct and indirect effects of a project on certain factors but also to assess them in an appropriate manner in the light of each individual case, (43) as relied on by Mr Holohan and the other applicants in the main proceedings, does not in itself impose any substantive requirements in respect of the project concerned.

113. The developer may accordingly have an obligation under other provisions not only to take account of alternatives, but then also to document them.

114. Thus, an approval under Article 6(4) of the Habitats Directive would presuppose the absence of any alternatives. Such approval might conceivably be the case in the main proceedings were it to prove impossible to dispel all reasonable scientific doubt about whether the project is non-detrimental to the integrity of the protected areas concerned.

115. Moreover, the protection of species might also make an assessment of alternatives necessary in the present case. It follows from the order for reference that — presumably because of the presence of bats — there is some debate as to the need for exceptions to the system of strict protection laid down in Article 12 of the Habitats Directive. (44) Such exceptions are permissible under Article 16 only where there is no satisfactory alternative.

116. It may also occur that the authority competent to grant consent requires the developer to provide it with alternatives, as provided for in recital 13 of the EIA Directive. This is likely to be necessary in particular where the authority has to make a discretionary decision on the approval of the project.

117. Finally, the United Kingdom rightly submits that the assessment of alternatives in the context of the strategic environmental assessment of plans and programmes goes at least some way towards offsetting the lack of a compulsory examination of alternatives as part of the environmental impact assessment.

(c) Sixth and seventh questions — environmental effects of the alternatives

118. The sixth and seventh questions seek to clarify what information the developer must provide on the environmental effects of the alternatives. Whether such information must be included at all is the subject matter of the seventh question, while the sixth question is plainly concerned with the extent to which it should be included, if it has to be.

119. In accordance with Article 5(3)(d) of the EIA Directive, the information to be provided by the developer must include at least an indication of the essential reasons for his choice, taking into account the environmental effects.

120. This provision gives further expression to the fact that the scheme of Article 5(3)(d) of the EIA Directive is that the assessment of alternatives should be carried out by the developer. The latter is not obliged, at least by that directive, to make his choice according to the environmental effects of the various alternatives, or to take the environmental effects

into account at all in his decision. Rather, he is obliged only to make known the reasons for his choice in so far as these relate to the environmental effects.

121. If, however, as is apparently the case in the main proceedings, the choice made was determined not by the environmental effects but by purely financial considerations, it follows that there are no reasons for the choice that have to be made known.

122. In particular, Article 5(3)(d) of the EIA Directive imposes no obligation to identify, describe and assess the environmental effects of the alternatives.

123. The position would be different, however, if substantive rules laid down in other provisions required the developer to take account of alternatives. (45) In that event, the developer would generally have to record these also in accordance with Article 5(3)(d) of the EIA Directive and indicate the reasons justifying his choice of the alternative selected, in so far as those reasons relate to the environmental effects, in the context of those other provisions.

124. In accordance with Article 5(3)(d) of the EIA Directive, the developer must therefore indicate the reasons which determined the choice he made from various options available to him, in so far as those reasons relate to the environmental effects of the project and of the alternatives.

#### V. Conclusion

125. I therefore propose that the Court's answer to the request for a preliminary ruling should be as follows:

(1) Although the assessment provided for in Article 6(3) of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora need not expressly identify the entire extent of the habitat types and species on account of which the site was included on the list of sites of Community interest or is protected as a special protection area under Directive 2009/147/EC on the conservation of wild birds, it must at least implicitly contain complete, precise and definitive findings capable of excluding all reasonable scientific doubt as to the effects of the works under consideration on the protected habitat types and species (Question 1).

(2) The assessment provided for in Article 6(3) of Directive 92/43 covers effects on a site's conservation objectives appropriately only if it includes the adverse effects on the typical species of the protected habitat types and on other species and habitat types to the extent that these are necessary to the conservation of the protected habitat types and species (Question 2).

(3) The assessment provided for in Article 6(3) of Directive 92/43 must also include adverse effects on species or habitats outside the protected areas, where such adverse effects may be detrimental to the conservation objectives of the protected areas (Question 3).

(4) In the context of a development consent granted under Article 6(3) of Directive 92/43, details of the construction phase may be left to unilateral decision of the developer only where every reasonable scientific doubt that the effects of such a decision will not be detrimental to the integrity of the site concerned has been dispelled (Question 8).

(5) *The competent authority must provide, for those elements of a decision to approve a development under Article 6(3) of Directive 92/43 which are liable to give rise to reasonable scientific doubt as to whether the effects of that development are non-detrimental to the integrity of the site concerned, detailed and express reasons that are such as to dispel those doubts. This is true in particular of doubt prompted by the findings of an inspector. Although the authority may refer by way of reasons to a scientific expert opinion, that must also be capable of dispelling all reasonable scientific doubt (Questions 9, 10 and 11).*

(6) *In accordance with Article 5(3)(c) of Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, the developer must provide the information necessary to identify and assess any potential significant effects which the project may have on flora and fauna (Question 4).*

(7) *For the purposes of Article 5(3) of Directive 2011/92, alternatives are main alternatives if they are capable of significantly influencing the environmental effects of the project concerned (Question 5).*

(8) *In accordance with Article 5(3)(d) of Directive 2011/92, the developer must indicate the reasons which determined the choice he made from various options available to him, in so far as those reasons relate to the environmental effects of the project and of the alternatives (Questions 6 and 7).*

### 2.3 The EU has adopted the following revised 2030 Energy and Climate Targets

	Old 2030 Target	New 2030 Target
CO2 Emissions Reduction	40%	55% <sup>11</sup>
Renewable Energy	40%	45%
Energy Efficiency	30%	39%

Effectively Ireland has a fixed quota for energy consumption and for CO2 based emissions. When additional production is proposed without additional energy efficiency measures decarbonisation becomes more challenging.

The EU President Ursula Von Leyden has set out the Commission's view that Ireland cannot divorce itself from emissions related to a growing economy powered by the FDI sector, and that growth cannot be on the back of fossil fuel.

In essence additional production needs to be on the basis of additional energy efficiency and near 100% Renewable Energy.

<sup>11</sup>

The notion of offsetting renewable energy sources in North America against Fossil Energy consumed in Ireland is naked greenwashing.

The Government have published a policy position on Renewable Power Purchase Agreements in 2022 **Renewable Electricity Corporate Power Purchase Agreements Roadmap March 2022**<sup>12</sup>

**Detailed Principles and Implications:**

**The above principles are set out in further detail below:**

**1 GHG emission Reduction**

*Corporate power procurement should clearly deliver additional GHG emissions reduction and contribute to Ireland's 2030 climate and renewable energy targets.*

*This means that the policy and regulatory framework should incentivise actions that deliver additional GHG emission reductions by LEUs. In that regard, regulatory barriers to corporate power purchasers investing in measures that reduce carbon should be addressed.*

*Likewise, large energy users should ensure that their increasing electricity demand is not driving higher carbon emissions from a whole system perspective and ensure their low carbon power procurement is delivering additional carbon-reduction, for example driving new*

*investments in technologies and solutions that would not have existed otherwise and are not*

*fully funded by all customers through the PSO levy and network tariffs.*

*LEUs should consider actions that support decarbonisation and Ireland's overall GHG emissions reduction targets beyond simply procuring additional renewable generation.*

*Transparency of hour-by-hour generating system efficiency, curtailment and facilitating LEUs*

*to monitor, optimise and report the carbon intensity of their energy use can assist LEUs demonstrate the opportunities for, and impacts of, these investments.*

**2 Deliver lower costs for all electricity consumers**

*Corporate power procurement should lower the net costs of the energy transition to Irish consumers and the State.*

*The RESS is the flagship programme to deliver on Ireland's up to 80% renewable electricity target. It is important that the private sector contracting through CPPAs complements the RESS and together they deliver the lowest overall costs to consumers. A supportive spatial planning framework and grid connection policy will be important in this regard to ensure a*

<sup>12</sup> <https://assets.gov.ie/220107/ed5977f3-76a4-42c4-b2b7-dd5c4c4d7002.pdf>

*strong pipeline of renewable energy generation projects.*

*While CPPAs may be one of the tools that facilitates phasing out renewable subsidies over time, this may not address the wider system costs associated with the increasing levels of variable renewable generation. As previously noted, keeping RESS and CPPAs separate leads to clearer additionality for CPPAs. However, there will always be a risk of competition between the CPPA and RESS markets and a tension between their relative attractiveness to developers. CPPAs may have a role in providing a route to market to renewable energy projects that might otherwise not be suitable for RESS, and therefore have a role to play in complementing the RESS auctions and ensuring a steady pipeline of projects connecting to the grid. Longer term, integrating RESS and CPPA markets avoids the problem of competition between the two. Adapting RESS or the design of future support schemes to incorporate CPPA demand for renewable electricity projects could be a means of lowering overall costs to all consumers. Design decisions for each RESS auction may provide short term levers to stimulate supply of CPPAs; however, this must be balanced against the need to reduce the costs of electricity to all consumers.*

### **3 Ensure transparency and accuracy in reporting**

*Corporate power procurement should be measured and reported in a way that accurately reflects actual emissions reduction in space and time and avoids 'Greenwashing'. This means that the policy and regulatory framework should facilitate accurate carbon emissions reporting, including considering temporal and spatial dynamics, through data provision, standards and regulations. LEUs should be enabled to reflect emissions reductions from wider actions beyond just power procurement for example relating to electricity storage solutions. LEUs should measure emissions associated with electricity demand and procurement accurately, considering temporal and spatial dynamics and the carbon impact of the same. They should report the impact of their actions clearly and transparently. The Climate Action Plan 2021 provides that the SEAI, the CRU and the system operators will work with large energy users and enterprise development agencies, to develop approaches to enhance reporting and usage of lower carbon energy sources, including increased transparency of electricity emissions data to enable large energy users to address their electricity emissions across time (hourly) and geographic locations*

### **4 Innovation**

*Corporate power procurement should stimulate innovation including new technologies and innovative grid/hybrid solutions. This means that regulatory barriers to investment by large*

energy users in innovative solutions that can reduce carbon emissions should be assessed and, where appropriate, removed. Business model innovation by generators and large energy users should be encouraged. Such initiatives and net zero data centres and real time matching and reporting of electricity consumption across time and space are to be supported and may be boosted by the sharing of information and best practise, e.g. through the Large Industry Energy Network<sup>5</sup>. LEUs should experiment with new solutions that enhance effectiveness and reduce costs and carbon emissions. LEUs should also consider collaborating with other energy users and energy providers on energy parks that can create synergies and additional carbon-reduction opportunities.

### **5 Build in strong community benefits**

Corporate power procurement should align with Government and EU policy on delivering on the energy transition for communities, including the Just Transition. This means that projects developed under corporate PPAs should consider the requirements of their local communities, ensure the buy-in of those in proximity to project and maximise the positive spill overs for the local community from the investment. Those contracting CPPAs should include a level of community benefit, through contributions or investment in communities similar to those supported under RESS. Developers, generators and LEUs should have engagement with local communities to ensure strong community benefit provisions are included in projects from the beginning of project development. Where appropriate, CPPAs should also align with the Just Transition, particularly regarding the creation of Green Energy Parks. One example is the proposed Rhode Island Green Energy Park project in County Offaly. Offaly County Council are commissioning a feasibility study to explore the integration of renewable energy and green hydrogen in the region with data centres, supported by a grant under the Just Transition Fund.

### **6 Wider Policy Alignment**

Corporate power procurement should align with broader Government Policy, in particular the targets, measures and actions set out in the Climate Action Plan and annual updates of the same. This includes sectoral measures and actions and specifically the measures set out to reach the electricity target of up to 80% by 2030. Corporate power procurement should also align with the National Planning Framework, the National Marine Planning Framework, the National Development Plan and regional spatial and economic strategies. As set out above, CPPAs should align with the wider policy objectives of the RESS, which include strong inbuilt consumer protections and a framework for community energy that

*ensure communities benefit from renewable energy projects through benefit funds as well as community-owned projects. LEUs should ensure that projects developed through corporate power procurement meet sustainability criteria set out in the Renewable Energy Directive so that they can contribute to Ireland meeting its RES-E targets. CPPAs for the data centre sector will also be considered as part of the upcoming review of Government Statement on the role of data centres in Ireland's Enterprise Strategy and consistency with that statement, particularly the role of the enterprise agencies in facilitating and promoting links between LEUs, including data centres, and the renewable energy sector to align with and contribute towards emissions targets and future network needs, is essential. Finally, given Ireland's target of delivering 5 GW of offshore wind by 2030, there may be particular synergies between offshore wind projects and large energy users' power purchasing given the size of such projects. There may be opportunities in the future for CPPAs to complement or to reduce the level of public funding for offshore wind projects through Offshore RESS auctions.*

*The template and principles provided by the policy roadmap for renewable electricity CPPAs may be considered in the renewable gas and renewable heating and cooling sectors as industry invests to further deliver upon decarbonisation of large-scale energy use through close coupling of supply and demand across energy vectors.*

### **7 Alignment with EU Green Deal**

*CPPAs in Ireland should align with the framework and package of measures set out in the EU Green Deal to reduce EU net GHG emissions by at least 55% by 2030 and to deliver on the final targets and provisions set out under the recast Renewable Energy Directive. The development of CPPAs in Ireland should also align, insofar as is relevant, with forthcoming EU Commission guidance in this area. EU Commission Guidance on CPPAs*  
*The European Commission launched a public consultation, in January 2022, on how to improve permit-granting procedures for renewables projects and facilitate Power Purchase Agreements. The resulting guidance will be an important input into the development of CPPAs in Ireland over the coming years, which is expected to align with the principles set out above*

2.4 Neither the Planning Authority nor the Board can grant permission for development that does not accord with Government or Ministerial Policy per Section 34.2 of the Planning and Development Act 2000 as amended

*(2) (a) When making its decision in relation to an application under this section, the planning authority shall be restricted to considering the proper planning and sustainable development of the area, regard being had to—*

*(i) the provisions of the development plan,*

*F325[(ia) any guidelines issued by the Minister under section 28,]*

*(ii) the provisions of any special amenity area order relating to the area,*

*(iii) any European site or other area prescribed for the purposes of section 10(2)(c),*

*(iv) where relevant, the policy of the Government, the Minister or any other Minister of the Government,*

*(v) the matters referred to in subsection (4), F326[...]*

*F327[(va) previous developments by the applicant which have not been satisfactorily completed,*

*(vb) previous convictions against the applicant for non-compliance with this Act, the Building Control Act 2007 or the Fire Services Act 1981, and]*

*(vi) any other relevant provision or requirement of this Act, and any regulations made thereunder.*

*F325[(aa) When making its decision in relation to an application under this section, the planning authority shall apply, where relevant, specific planning policy requirements of guidelines issued by the Minister under section 28.]*

2.5 The Non Technical Summary refers to a power consumption of 219.7MW. On Site Generation with an output of 219.7MW generated with any technology other than Combined Cycle Turbines would require a Thermal input of 440 MW to 550MW

Such a Scale of power generation would bring the project within the scale and jurisdiction of the Strategic Infrastructure Act 2006 as the thermal input would exceed 300MW.

2.6 The proposed development is not compatible with Irish And EU Climate Policy or Law

2.7 Article 15 of Regulation (EU) 2018/1999<sup>13</sup> requires each EU Country to publish a long term climate strategy for the Commission's approval.

Ireland is the only EU Country to have failed to submit a plan to be approved<sup>14</sup>

Minister Ryan is working on it.



### **Long-term strategies**

#### *Article 15*

### **Long-term strategies**

1. *By 1 January 2020, and subsequently by 1 January 2029 and every 10 years thereafter, each Member State shall prepare and submit to the Commission its long-term strategy with a perspective of at least 30 years. Member States should, where necessary, update those strategies every five years.*
2. *In aiming to achieve the overall climate objectives referred to in paragraph 3, the Commission shall, by 1 April 2019, adopt a proposal for a Union long-term strategy for greenhouse gas emissions reduction in accordance with the Paris Agreement, taking into account the Member States' draft integrated national energy and climate plans. The long-term strategy referred to in this paragraph shall include an analysis covering at least:*

<sup>13</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2018.328.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.328.01.0001.01.ENG)

<sup>14</sup>

[https://commission.europa.eu/energy-climate-change-environment/implementation-eu-countries/energy-and-climate-governance-and-reporting/national-long-term-strategies\\_en](https://commission.europa.eu/energy-climate-change-environment/implementation-eu-countries/energy-and-climate-governance-and-reporting/national-long-term-strategies_en)

*various scenarios for the Union's contribution towards the objectives set out in paragraph 3 inter alia a scenario on achieving net zero greenhouse gas emissions within the Union by 2050 and negative emissions thereafter;*

*the implications of the scenarios referred to in point (a) on the remaining global and Union carbon budget in order to inform a discussion about cost efficiency, effectiveness and fairness of greenhouse gas emission reduction.*

3. *The Member States' and the Union's long-term strategies shall contribute to:*

*fulfilling the Union's and the Member States' commitments under the UNFCCC and the [Paris Agreement](#) to reduce anthropogenic greenhouse gas emissions and enhance removals by sinks and to promote increased carbon sequestration;*

*fulfilling the objective of the [Paris Agreement](#) of holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1,5 °C above pre-industrial levels;*

*achieving long-term greenhouse gas emission reductions and enhancements of removals by sinks in all sectors in accordance with the Union's objective, in the context of necessary reductions according to the Intergovernmental Panel on Climate Change (IPCC) to reduce the Union's greenhouse gas emissions in a cost-effective manner and enhance removals by sinks in pursuit of the temperature goals in the [Paris Agreement](#) so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases within the Union as early as possible and, as appropriate, achieve negative emissions thereafter;*

*a highly energy efficient and highly renewables-based energy system within the Union.*

4. *Member States' long-term strategies should contain the elements set out in Annex IV. Furthermore, the Member States' and the Union's long-term strategies shall cover:*

*total greenhouse gas emission reductions and enhancements of removals by sinks;*

*emission reductions and enhancements of removals in individual sectors, including electricity, industry, transport, the heating and cooling and buildings sector (residential and tertiary), agriculture, waste and land use, land-use change and forestry (LULUCF);*

*expected progress on transition to a low greenhouse gas emission economy, including greenhouse gas intensity, CO<sub>2</sub> intensity of gross domestic product, related estimates of long-term investment, and strategies for related research, development and innovation;*

*to the extent feasible, expected socio-economic effect of the decarbonisation measures, including, inter alia, aspects related to macro-economic and social development, health risks and benefits and environmental protection;*

*links to other national long-term objectives, planning and other policies and measures, and investment.*

- 5. The Commission is empowered to adopt delegated acts in accordance with Article 43 in order to amend Annex IV for the purpose of adapting it to the developments in the Union long-term strategy or in the Union Energy and Climate policy framework that are directly and specifically related to the relevant decisions adopted under the UNFCCC and, in particular, under the [Paris Agreement](#).*
- 6. The integrated national energy and climate plans shall be consistent with the long-term strategies referred to in this Article.*
- 7. Member States and the Commission shall inform and make available to the public forthwith their respective long-term strategies and any updates thereof, including by means of the e-platform referred in Article 28. Member States and the Commission shall make relevant data of the final results available to the public, taking into account commercially sensitive data and compliance with the data protection rules.*
- 8. The Commission shall support Member States in the preparation of their long-term strategies by providing information on the state of the underlying scientific knowledge and opportunities for sharing knowledge and best practices, including, where relevant, guidance for Member States during the development and implementation phase of their strategies.*

9. The Commission shall assess whether the national long-term strategies are adequate for the collective achievement of the objectives and targets of the Energy Union set out in Article 1 and shall provide information on any remaining collective gap.

2.8 In the absence of an approved solution by the Commission of Ireland's Long Term Climate Strategy it is not possible to assess the proposed development for compliance with Government Policy. Any Grant of permission should be conditional on:

- 100% renewable power that geographically matches renewable power generation to project power consumption.
- Useful use of waste heat associated with any increase in thermal power generation.

Increasing fossil based thermal power generation undermines progress on decarbonisation.

2.9 The Public Participation requirements of EU Law have not been complied with.

2.10 The Climate Action Plan 23 targets for 2030 are challenging having regard to progress made to date. The European Climate Law sets a legally binding target of net zero greenhouse gas emissions by 2050. Ireland has as yet not filed its Long Term Climate Strategy with the Commission which was required by January 1st 2020<sup>15</sup>. The EPA report *Greenhouse gas emissions 1990-2022*<sup>16</sup>

## Sectoral emissions reduction targets and progress



Sector	2018 (Mt CO <sub>2</sub> eq)	2022 (Mt CO <sub>2</sub> eq)	% change 2018-2022	Indicative % reduction by 2025	Indicative % reduction by 2030
Electricity	10.33	9.77	-5.4%	~40%	~75%
Transport	12.19	11.63	-4.5%	~20%	~50%
Buildings (Residential)	7.09	6.11	-13.9%	~20%	~40%
Buildings (Commercial and Public)	1.54	1.43	-7.5%	~20%	~45%
Industry	6.98	6.58	-5.8%	~20%	~35%
Agriculture	23.39	23.34	-0.2%	~10%	~25%
Other	2.14	1.92	-10.6%	~25%	~50%
LULUCF	6.26	7.31	16.6%	na	na
<b>National Total (incl LULUCF)</b>	<b>69.93</b>	<b>68.07</b>	<b>-2.7%</b>		<b>51%</b>

<sup>15</sup>[https://commission.europa.eu/energy-climate-change-environment/implementation-eu-countries/energy-and-climate-governance-and-reporting/national-long-term-strategies\\_en](https://commission.europa.eu/energy-climate-change-environment/implementation-eu-countries/energy-and-climate-governance-and-reporting/national-long-term-strategies_en)

<sup>16</sup> Greenhouse gas emissions 1990-2022 EPA Emissions Team 2023 page 42

[https://www.epa.ie/publications/monitoring--assessment/climate-change/air-emissions/EPA-Provisional\\_GHG\\_Inventory\\_1990-2022\\_Webinar.pdf](https://www.epa.ie/publications/monitoring--assessment/climate-change/air-emissions/EPA-Provisional_GHG_Inventory_1990-2022_Webinar.pdf)

2.11 The application has failed to assess the emissions likely to be generated by the manufacture of power generation plant as opposed to the plant's operational emissions.

2.12 The planning application documents admit to the design being of a preliminary nature. This is not lawful. Refer to Sweetman No1 % Sweetman No 2 as well as Balcadden Road Residents V An Bord Pleanála.

Yours sincerely



John Callaghan

**Enclosures**

Correspondence to and from Fingal County Council

Ms AnnMarie Farrelly  
 CEO Fingal County Council  
 Fingal County Council  
 County Hall, Main Street, Swords  
 County Dublin  
 K67 X8Y2

August 15th 2023

**Re: Additional Information received on Application FW22A/0308 received 03/08/23 request to make a submission per the decision of the Supreme Court in *White v. Dublin City Council [2004] IESC 35***

Dear Ms Farrelly,

I refer to the additional information received on the above file relating to a data centre. The planning authority sought further information by order dated 17/02/2023 which was furnished on 03/08/2023. The information sought related to the EIAR Report submitted with the Application.

<https://documents.fingalcoco.ie/NorthgatePublicDocs/00771627.pdf>

Please be advised that significant amendments have been made recently to EU Law and related Energy Policy. New increased Climate Targets have been legally adopted. In addition measures to drastically reduce gas consumption in the EU have been adopted as well as a REPower EU Strategy.

The Planning Authority has not yet determined that Public Consultation will be permitted on the additional information received, and the web portal indicates that the public participation period has closed.

#### Summary

The consultation period for this application has expired (30 Jan 2023)

<b>Planning reference</b>	FW22A/0308
<b>Application type</b>	Permission
<b>Proposal description</b>	Universal Developers LLC, intend to PL06F.248544 / Fingal County Cour

The question the Chief Executive must ask is does anyone reasonably wish to comment on this additional clarification? I, John Callaghan of 10 The Cloisters, Kells, Co Meath, A82C9Y7 wish to make a submission on the additional information received.

The following case law relates to Public Participation. I have not yet made a submission and hence can't avail of the remedy in "*Kinsella*". Those who have already made submissions could avail of the Kinsella remedy.

The Cases of *Donal Kinsella v Dundalk Town Council [2004] IEHC 373*<sup>1</sup> and *White v. Dublin City Council [2004] IESC 35*<sup>2</sup> In "White" the development was amended without offering White an opportunity to make a submission.

In Kinsella it was determined there was an adequate remedy of appeal since Kinsella had already made a submission on the application.

In White it was determined Mr Rose had acted irrationally per *O'Keeffe v. An Bord Pleanála [1993] 1 I.R. 39* and upheld the Decision of the High Court granting certiorari quashing the decision to grant planning permission.

Can you as CEO indicate if an opportunity for further Public Participation will be provided? Please take this letter as notice that I will avail of any opportunity for further public participation.

In the event further Public Participation is not facilitated an appropriate remedy will be sought by way of Judicial Review.

In any event can you acknowledge this notice in writing?

Yours faithfully



John Callaghan of 10 The Cloisters, Oldcastle Road, Kells, Co Meath, A82C9Y7.

<sup>1</sup>

[https://www.bailii.org/cgi-bin/format.cgi?doc=/ie/cases/IEHC/2004/373.html&query=\(Donal\)+AND+\(Kinsella\)+AND+\(v\)+AND+\(Dundalk\)+AND+\(Town\)+AND+\(Council\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/ie/cases/IEHC/2004/373.html&query=(Donal)+AND+(Kinsella)+AND+(v)+AND+(Dundalk)+AND+(Town)+AND+(Council))

<sup>2</sup> [https://www.courts.ie/acc/alfresco/213826aa-f4d5-4c40-a803-27fb38599362/2004\\_IESC\\_35\\_2.pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/213826aa-f4d5-4c40-a803-27fb38599362/2004_IESC_35_2.pdf/pdf#view=fitH)

Planning Submissions | Planning Submissions@fingal.ie

Dear Mr Callaghan

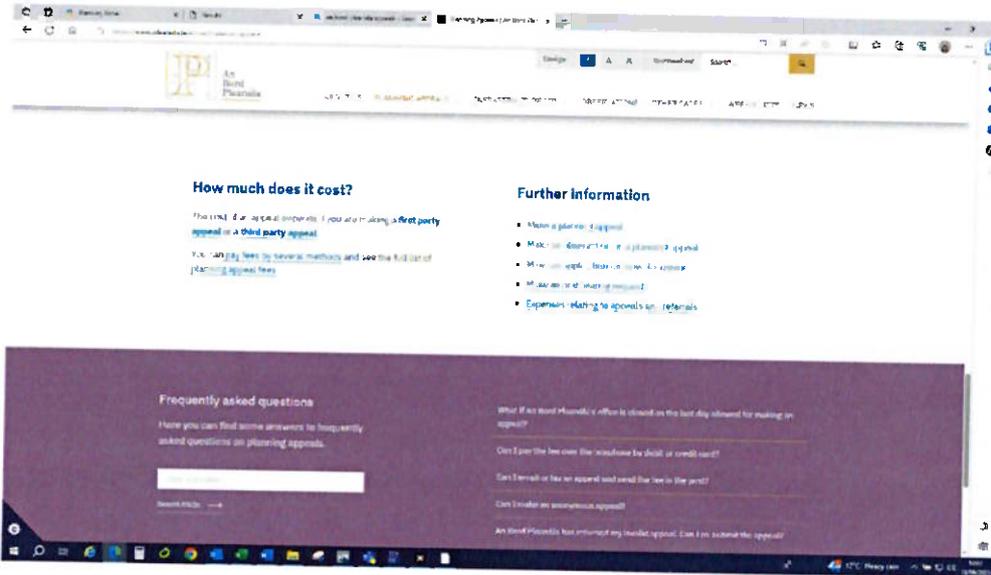
I acknowledge receipt of your email

Planning permission FW22A/0308 is currently open for further comment on Additional Information for existing 3<sup>rd</sup> party observers

Should the Additional Information be deemed significant it would be re-opened to the general public for further comment.

If Fingal County Council decision is appealed to An Bord Pleanála you will have an opportunity to make a comment on the appeal lodged

Please see An Bord Pleanála website for further information [Planning Appeals I An Bord Pleanála \(pleanala.ie\)](http://PlanningAppeals.IAnBordPleanala.ie) At the end of the page in further information it has – Make an observation on a planning appeal



Best Regards

Catherine Egan

Planning and Strategic Infrastructure Dept  
Fingal County Council | County Hall | Main Street | Swords | Co. Dublin | K67 X8Y2

Tel: (01) 8905000 | Email [planning.submissions@fingal.ie](mailto:planning.submissions@fingal.ie)



Planning Submissions  
<Planning.Submission  
s@fingal.ie>

Fri,  
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2:10 P  
M

to  
me

Dear Mr Callaghan

I acknowledge receipt of your email.

Planning permission FW22A/0308 is currently open for further comment on Additional Information for existing 3<sup>rd</sup> party observers.

Should the Additional Information be deemed significant it would be re-opened to the general public for further comment.

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Please see An Bord Pleanála website for further information. [Planning Appeals | An Bord Pleanála \(pleanala.ie\)](#). At the end of the page in further information it has – Make an observation on a planning appeal.



**Best Regards**

**Catherine Egan**

**Planning and Strategic Infrastructure Dept**

Fingal County Council | County Hall | Main Street | Swords | Co. Dublin | K67 X8Y2

**Tel: (01) 8905000** | Email: [planning.submissions@fingal.ie](mailto:planning.submissions@fingal.ie)



**From:** John Callaghan <[joncallaghan@gmail.com](mailto:joncallaghan@gmail.com)>

**Sent:** 15 August 2023 15:05

To: Customer Care Unit <CustomerCareUnit@fingal.ie>

Cc: Planning Department <Planning@fingal.ie>

Subject: Notification to the CEO of Fingal Coco of request to make a submission on FW22A/0308 100%

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