**COMHAIRLE CHONTAE ÁTHA CLIATH THEAS
SOUTH DUBLIN COUNTY COUNCIL**



**MEETING OF SOUTH DUBLIN COUNTY COUNCIL**

**Monday, 11th February 2019**

**H-I 7 (c)**

**GC21 -Disposal of site comprising 0.107 acres at Grange Castle Business Park to Gas Networks Ireland**

Gas Networks Ireland (GNI) have developed an Above Ground Installation (AGI) gas pressure reducing station on lands within Grange Castle Business Park to serve the supply needs of businesses located within the park and adjacent areas. In order to cater for increased demand, GNI propose to further develop the AGI in the business park and in this regard have made an application to acquire a further area of lands in Council ownership adjacent to their existing site as identified outlined in red on Drawing No. BGE/90/ACQ/01/01A and comprising 0.107 acres or thereabouts. The extension of the AGI station within the Park will be of benefit to existing and potential clients of Grange Castle Business Park as it will cater for future increases of Natural Gas supply demands.

I recommend that subject to the provisions of Section 183 of the Local Government Act 2001 and in accordance with Section 211 of the Planning & Development Act 2000 that the Council dispose of the site to Gas Networks Ireland lands subject to the following terms and conditions

**1**. That the lands being disposed of comprise approximately 0.107 acres (0.0435 hectares) or thereabouts. The precise boundaries have yet to be established. A formal disposal map shall be prepared in due course by the Council for inclusion with the legal documents but in the interim a draft plan for identification purposes Drawing No ­­­BGE/90/ACQ/01/01A is annexed showing the site outlined in red.

The Council has also agreed to grant GNI a temporary working area on Council owned lands as identified and shaded green on Drawing No. BGE/90/WW/01/01A.

**2.** The land to be disposed of by way of a 999 year lease comprising of approximately

 0.11 acres on the basis of the sum of €400,000 (four hundred thousand euro) per

 acre (the ‘Purchase Price’), payable, as to the amounts described at (a), (b and (c)

 below:-

* 1. 10% of the Purchase Price on signing and exchange of a Contract for Sale / an Agreement for Lease in respect of the site. Such amount to be refunded in the event that the terms and conditions of the disposal not having been satisfied.
	2. 80% of the Purchase Price within 15 business days of date of Gas Networks Ireland entry onto the site for the purpose of commencing construction works on foot of the final grant of planning permission (provided that, for the avoidance of doubt, Gas Networks Ireland shall be entitled to carry out due diligence and engineering analysis activities (including, but not limited to geotechnical analysis and studies, soils testing, water analysis, site borings, environmental assessments, etc.) prior to the payment of this sum in accordance with any building licence to that effect as described in term no. 5.
	3. The remaining 10% of the Purchase Price on the grant of the Master Lease which shall occur at the time and in the manner set out in term no. 10 below.

The Council shall be entitled to charge interest at a rate of eight per cent (8%) per annum on any outstanding sums in the event of failure by Gas Networks Ireland to pay the foregoing sums on the above dates. This interest rate penalty shall be calculated on a daily basis for any period of time deposits are outstanding without cause.

**3**. That the extension to the above ground natural gas installation and associated works is to be carried out in compliance with relevant planning permission Reg. Ref. SD18A/0269. The applicant shall forward to the Council within nine months of the date of final grant of planning permission, and in any event, no later than one month prior to the applicant commencing works on foot of the final grant of planning permission, a copy of the outline building programme for such works describing the key construction milestones.

* 1. That: (i) if the construction works (meaning site preparation and shell and core construction) have not commenced within nine months of the date of final grant of planning permission for the development, or such later date as may be agreed in writing with South Dublin County Council; or (ii) if shell and core construction works are not substantially completed in accordance with the final grant of planning permission within thirty (30) months from the date of commencement of such works then either party may by written notification on the other rescind the agreement for lease / contract for sale.
	2. That the Council shall enter into an agreement for lease or contract for sale in respect of the sale of the site to Gas Networks Ireland (by way of grant of the Master Lease), based on and to give effect to these heads of terms, and which agreement / contract shall contain a licence authorising the applicant to enter into the site from the date thereof prior to the grant of the Master Lease, to carry out due diligence and site analysis (including, but not limited to geotechnical analysis and studies, soils testing, water analysis, site borings, environmental assessments, etc.) prior to the grant of final planning permission, and after the issue of such permission, to construct the extension to the above ground natural gas installation. The agreement / contract shall contain further reasonable obligations upon Gas Networks Ireland with respect to that construction to ensure the satisfactory completion of the approved development on the site.
	3. The Applicant will be responsible for all planning levies and contributions payable in accordance with the Council’s Development Contribution Scheme made under the Planning and Development Act 2000, as amended, and agrees not to exercise any right to appeal against the financial contributions. The contributions under the Scheme are payable prior to entry on to the site or as otherwise agreed by the Council. The Applicant must satisfy themselves as to the capacity of all services to service the proposed development.

**7**. That all site investigations (including archaeological investigations), groundwork’s, overhead and underground cable diversions, demolitions/site clearance/septic site removal (such works are subject to regulations and to obtaining the relevant statutory licences), services connections, development and associated costs incurred in the delivery of the entire completed development shall be borne by the Applicant.

**8**. That the Applicant shall undertake not to use the site for any purposes other than that of carrying out the proposed development, i.e. extension to above ground installation, ancillary services and site works which contain its substantial operations and subject to the terms of the “Master Lease” (see term no. 10 below). All buildings shall be occupied by the applicants or their tenants, agents, employees, invitees and/or assigns in accordance with the terms of the Master Lease.

**9**. That the Applicant shall build nothing (except with the prior written approval of the Council) on the site except the buildings shown on the approved drawings and for which Planning Permission has been granted, as outlined in term no. 3. Full ‘as constructed’ drawings shall be appended to the Master Lease. A maintenance Plan for the external areas and buildings shall be submitted to the Council.

**10**. That as soon as building works have reached eaves level (in other words the “topping-out” phase of construction, meaning that all foundations are in place, the structural system is erected and inspected, and the building is weather-tight with roof complete) in accordance with relevant planning permission(s) in the development on the site, and if the works have been carried out to the satisfaction of the Councils Consultant Engineers acting reasonably, the Council will grant the applicants a lease of that site. The lease shall be for a term of 999 years (commencing from a date to be agreed upon, but no earlier than the date of Practical Completion of the buildings thereon) subject to a rent of €400.00 per annum (exclusive of rates, taxes, and outgoings in respect of the site). The Council’s Solicitors shall draft the lease for approval by Gas Networks Ireland’s solicitors. The lease granted shall be known as the Master Lease (“Master Lease”). The Master Lease shall provide that the lessee shall become a member of the management company for the Business Park and shall pay the annual service charge described in accordance with the provisions of the Master Lease and appendices thereto.

  **11**. That the Agreement to Lease or contract for sale is not to operate as a lease and it shall not be transferable save in the case of a financial institution of good standing which has entered into a mortgage with the applicants specifically for the purposes of financing the applicants to undertake the development of the site.

* 1. That South Dublin County Council reserves the right, only to be exercised by the Council acting reasonably, to re-enter on the site and resume possession thereof should the applicants fail to commence and complete the buildings within the period specified at term no. 5 above or in the event of the dissolution, bankruptcy or insolvency of the applicants save in the case where a Financial Institution which has entered into a mortgage with the applicants for the purposes of financing the development of the site and enforces its security against the site. South Dublin County Council shall provide written notice of any intent to exercise this right and offer a 30 day cure period for rectification of any default on Gas Networks Ireland part, including use of mediation/arbitration, or similar third-party intercession.
	2. That during the building period and pending the grant of the Master Lease, Gas Networks Ireland will provide all reasonably required evidence of the ‘all risks, public liability and employer’s liability insurance cover maintained by the Applicant for the construction period. It is acknowledged that following completion of the construction of the extension to the above ground natural gas installation, the building and all insurable risks associated therewith will be included in the Applicants self-insurance programme. All insurance will be subject to the approval of the Councils insurance advisors, acting reasonably.

The insurance shall, be in the joint names of the Applicant and the Council, or shall contain an indemnity to principals clause, and will be for such an amount as will provide cover for the full Reinstatement Value of so much of the building as is erected at any time together with a sum for Professional Fees and removal of debris charges

Gas Networks Ireland shall also indemnify South Dublin County Council against any claim for compensation which might / may be made by any party arising out of building works being carried out on the site, or any working areas or on any access points thereto.

* 1. That the Council is and shall be carrying out extensive construction projects in the Business Park. Both parties shall use their reasonable endeavours to ensure that any interaction between respective contractors employed to carry out any works including, but not limited to building or road works, is carried out in an open and transparent manner with engineers and liaison officers such as to ensure that no additional contract costs accrue to either party.
	2. That no uncovered outdoor storage shall be permitted on the subject lands. All processing, packing, waste disposal or recycling and such like operations shall be carried out within suitable structures or equipment such as compactors located on the premises in accordance with any statutory regulations or requirements in that regard.
	3. That all car and commercial vehicle parking areas, loading areas and service areas must be suitably landscaped and screened from public view. In this regard Gas Networks Ireland shall carry out at Gas Networks Ireland Limited costs such boundary and landscape treatment works as the Council may reasonably require, bearing in mind the nature of the Park and provided that such works are not substantially more than required of any other occupiers of the Park during construction. Such works may, only where reasonable, be in addition to similar works required under a planning permission for development of the subject lands. Gas Networks Ireland shall submit a copy of its landscaping and security plan to the Council’s Development Department prior to the grant of the Master Lease for approval.
	4. That each party shall be responsible for their own professional (i.e. legal, engineering, architects, and other required consultants’) fees in this case.
	5. That Gas Networks Ireland shall pay any V.A.T., stamp duty or taxes arising at any stage in this transaction (except where any lawful exemption or relief therefore applies), including on the creation of a Building Licence (if any), an Agreement to Lease or contract for sale, and a Master Lease.
	6. That the Councils Solicitor shall draft the agreements, contracts and leases and may include further reasonable terms and conditions as deemed appropriate to give effect to the heads of terms set out herein, including provision for use of an expert or arbitrator process to settle any disputes arising, as appropriate, in order to achieve a reasonable balance in the protection of the parties’ respective interests in the matter. In the case of disputes concerning final measurement and valuation of the site for the purposes of calculating the Purchase Price, an arbitration clause shall refer to the appointment of a Chartered Valuation Surveyor to act as arbitrator. This person to be appointed by agreement of the parties or in default of agreement to be appointed by the President of the Society of Chartered Surveyors in the Republic of Ireland. The costs of any arbitration to be borne equally by the parties.
	7. That Gas Networks Ireland shall satisfy South Dublin County Council (acting reasonably) prior to exchange of the agreement for lease/contract for sale, that sufficient funds are available for the payment of the sums set out in term no. 2 above, and prior to commencement of construction or the relevant phase thereof as appropriate.
	8. That the above proposal is subject to the necessary approvals and consents being obtained – in order to allow full construction activities.
	9. No agreement enforceable at law is created or is intended to be created until an exchange of contracts has taken place.

The lands being disposed of form part of the lands acquired from Bernard Murphy in 1980 for housing, industry and amenity purposes.

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**Daniel McLoughlin**

**Chief Executive**