



22<sup>nd</sup> January 2020

Ms Avril Feeney,  
Administrative Officer,  
Planning and Property Development Department,  
Block 4, Floor 3,  
Dublin City Council,  
Civic Offices, Wood Quay, Dublin 8

**Re: Proposed Variation no.8-27 to the Dublin City Development Plan 2016-2022**

A Chara,

Thank you for your authority's work on proposed variations no.8-27. The Office notes and fully endorses the overall reasoning behind the proposed variations being the renewal of well-serviced but under-utilised brownfield lands in accordance with national and regional planning policy as well as amendment of section 14.8.9 of the City Plan to include additional text in order to improve the functionality and passive surveillance of Z9 lands.

The Office of the Planning Regulator (OPR) has evaluated and assessed the proposed variations to the development plan, above, under the provisions of Section 31AM(1) and (2) of the Planning and Development Act 2000, as amended (the Act).

As your authority will be aware, one of the key functions of the OPR includes assessment of statutory plans and strategies to ensure consistency with legislative and policy requirements relating to planning.

The Office is currently developing an overall evaluation and assessment methodology for statutory plans. The submission below has been prepared to provide a high-level input to your authority in finalising the proposed variation of the plan.

**1. Matters within the scope of Section 10 and Section 10(2)(n)**

The Office is satisfied that the proposed variations have the potential to have a positive impact in terms of climate action under section 10(2)(n) by virtue of enabling more compact and sustainable urban development.

## **2. Consistency of proposed variations with the hierarchy of statutory plans**

The Office supports the principle of rezoning of the subject sites from low-intensity use, brownfield sites located in proximity to public transport infrastructure, for higher intensity uses, including residential, as consistent with the objectives of the National Planning Framework and of the Eastern and Regional Assembly Regional Spatial and Economic Strategy.

## **3. Consistency of proposed variations with relevant section 28 guidelines**

In its assessment of the proposed variation by reference to guidelines issued by the Minister under Section 28 of the Act, two of those guidelines would appear to be the most relevant to the subject variations, specifically in relation to flood risk management and spatial planning and national roads.

### **Flood Risk Management**

Proposed variations nos.8-27 would entail the rezoning of some locations vulnerable to flooding.

The provisions of *The Planning System and Flood Risk Management, Guidelines for Planning Authorities* (OPW, 2009; subject of amending circular PL 2/2014) (herein, the FRMG), are therefore pertinent.

The Strategic Flood Risk Assessment (SFRA) published by the planning authority on 07/01/20, identified eight of the sites as being at risk of flooding and these were brought forward to stage 2 assessment, including the application of the Justification Test, as required by the guidelines above.

Notwithstanding the above, the Office has particular concern regarding your authority's consideration of potential flood risk and the requirements of the guidelines above in relation to proposed variation No.19 – Old Kilmainham Road / South Circular Road.

The above variation No.19 entails the rezoning of five separate sites in central Kilmainham, two of which (the northern sites) adjoin the banks of the Camac River and are largely encompassed within flood zones A and B of that watercourse. The majority of the said two sites are proposed to be zoned Z1 *to protect, provide and improve residential amenities*, and will accommodate uses that are vulnerable to flood risk.

In this regard, the Office notes that the report of the OPW indicates that whilst a level of protection has been provided for this area by works at Kearns Place/Lady Lane, the extent of this protection, its design standard and how it will tie in to the proposed open space (Z9 areas) require further assessment to inform any proposed rezoning.

Moreover, the OPW report indicates that it would be contrary to the guidelines above to rezone

further lands for residential development in the area knowing that an adequate level of protection has not been provided and both fluvial and pluvial issues may still exist.

The Office accepts the principle of rezoning under points 1 and 2 of the Justification Test under the guidelines, as determined by your authority's SFRA, but is concerned that the SFRA has neither addressed the issue of management of risk to future vulnerable uses on the subject site, nor demonstrated that the future redevelopment of these lands will not cause unacceptable adverse impacts elsewhere, in accordance with point 3 of the justification test.

The appropriateness of the subject proposed variation needs further careful consideration and review in the light of the provisions of the guidelines above.

### **Recommendation 1:**

*Having regard to the above, your planning authority is requested to engage with the Office of Public Works in relation to Variation no.19 Old Kilmainham Road / South Circular Road, Z1 and in determining the appropriateness of the zoning objective proposed within Variation 19, taking into account the requirements of the document "The Planning System and Flood Risk Management Guidelines for Planning Authorities" (2009) issued by the Minister under Section 28 of the Act, and Circular PL 2/2014.*

*In particular, your authority is requested to confirm whether or not the variation above is consistent with the above guidelines, including the application of point 3 of the Justification Test.*

*Where such variation is not consistent with the guidelines above, Variation 19 should not be proceeded with.*

### **Spatial Planning and National Roads**

Proposed variations nos.8-27 would entail the re-zoning of lands to accommodate higher order, mixed uses within the vicinity of nationally important road transport infrastructure. The provision of the *Spatial Planning and National Roads Guidelines for Planning Authorities* (DECLG, 2012) (herein, the SPNRG) is therefore relevant.

Proposed variation no.25, East Wall Road, is within the vicinity of the potential route of the *Dublin Eastern Bypass Corridor Study Sector A: Dublin Tunnel to South or Sandymount Port Access Scheme*. Under the National Development Plan, the subject scheme is to be progressed through pre-appraisal and planning stages.

Although the National Planning Framework (NPF) does not refer to the project specifically, it identifies improved road access, particularly to/from the southern port area as facilitating the growth of Dublin Port, as one of the key growth enablers for Dublin.

The said infrastructure is also identified as one of the indicators under National Strategic Outcome no.6 *High Quality International Connectivity*, of the NPF.

This potential future infrastructure also informs the guiding principles for the sustainable development of the Metropolitan Area Strategic Plan (MASP) contained within the Eastern and Midlands Regional Assembly Regional Spatial and Economic Strategy (RSES) (section 5.3) and is identified as a key transport infrastructure investment (M50 Dublin Port South Access) in the MASP and the RSES (table 8.4), supported by Regional Policy Objective 8.10 Investment in Improved Strategic Road Connectivity.

Furthermore, the said infrastructure is supported by the National Transport Authority (NTA) Transport Strategy for the Greater Dublin Area 2016-2035, and is reflected in objective MTO32 of the City Development Plan 2016-2022 *to protect the routes of the said Southern Port Access Road, including from the Port Tunnel to Poolbeg.*

Having regard to the above, there would appear to be potential for inconsistency between proposed variation no.25 and emerging mobility infrastructure enhancement proposals in this strategically located part of Dublin city.

Specifically, section 2.9 of the guidelines above require that:

*'Development objectives, including the zoning of land, must not compromise the route selection process, particularly in circumstances where road scheme planning is underway and potential route corridors or upgrades have been identified and brought to the attention of the planning authority.'*

In particular, the guidance alerts the authorities to the potential for zoning to impact the value of land such as may affect the viability of the project, necessitate material alterations or lead to the abandonment of same.

In this regard it can reasonably be assumed that the proposed rezoning of the subject lands for higher order uses, including office /retail / residential, from general employment creation uses, has the potential to affect land values on site.

#### **Recommendation 2:**

*Your authority is requested to consider, in conjunction with Transport Infrastructure Ireland (TII) whether Variation no.25, is compatible with the Dublin Eastern Bypass Corridor Study Sector A: Dublin Tunnel to South or Sandymount Port Access Scheme currently in train, in view of the provisions of the Spatial Planning and National Roads Guidelines for Planning Authorities (DECLG, 2012).*

*Where such variation is not consistent with the guidelines above, Variation 25 should not be proceeded with.*

#### **4 Policy directives issued under section 29**

The Office has no comment in this regard.

## 5 Other legislative and policy matters as the Minister may communicate

The Office has no comment in this regard.

### **Summary**

The Office requests that your authority addresses the recommendations outlined above, which are made in the context of the provisions of Section 31AM(3)(a), in order to ensure that the plan is consistent with relevant national policy obligations, guidelines and legislative requirements.

The report of the Chief Executive of your authority prepared for the elected members under Section 13(4) of the Act must summarise these recommendations and the manner in which they should be addressed.

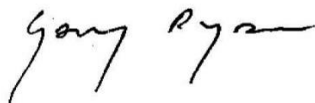
Your authority is required to notify this Office within 5 working days of the making of the local area plan and send a copy of the written statement and maps as made.

Where the planning authority decides not to comply with a recommendation of the Office, or otherwise makes the plan in such a manner as to be inconsistent with any recommendations made by the Office, then the Chief Executive shall inform the Office and give reasons for the decision of the planning authority.

Such notice requirements enable the Office to consider the matters further as regards the making of any recommendations to the Minister in relation to the provisions of Sections 31AM and 31AN of the Act.

Please feel free to contact the staff of the OPR in the context of your authority's responses to the above, which we would be happy to facilitate. Contact can be initiated through the undersigned or at [plans@opr.ie](mailto:plans@opr.ie).

Is mise le meas,



**Gary Ryan**

Director, Office of the Planning Regulator

076 100 2747

[gary.ryan@OPR.ie](mailto:gary.ryan@OPR.ie)