



Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

20th May 2022

Mr. Peter Burke TD

Minister for Local Government and Planning

Department of Housing, Local Government and Heritage

Custom House

Dublin 1

D01 W6X0

BY HAND AND BY EMAIL

**Re: Notice Pursuant to section 31AM(8) of the Planning and Development Act
2000 (as amended) – Cork County Development Plan 2022-2028**

A chara,

I am writing to you in relation to the recent adoption by the elected members of the Cork County Development Plan 2022-2028 (the 'Development Plan').

In particular, I am writing to you in the context of the statutory duty of the Office of the Planning Regulator ('the Office') pursuant to section 31AM(8) of the Planning and Development Act 2000 (as amended) (the 'Act') to issue a Notice to you on the basis that, having considered the Development Plan, the Office is of the opinion that:

- a) the Development Plan has not been made in a manner consistent with and fails to implement recommendations of the Office, which required specific changes to the Development Plan having regard to the provisions of the *Retail Planning Guidelines for Planning Authorities* (2012) ('Retail Planning Guidelines') that an overall strategy for the proper planning and sustainable development of the area must address retail development.

Specifically, the Development Plan, including policies and objectives on retail development, has not been informed by a Joint Retail Strategy with Cork City

Council to secure plan-led development for retail within the two neighbouring authorities, and adopted into the Development Plan. In addition, the Development Plan includes policy to facilitate a retail outlet centre in the identified eastern sub-catchment NE-2 of the Cork Metropolitan Strategic Planning Area, introduced by material amendment under MA 1.9.20, in the absence of the necessary strategy work to inform and underpin such specific policy, including the preparation and adoption into the plan of a joint retail strategy.

- b) the Development Plan has not been made in a manner consistent with and fails to implement recommendations of the Office, which required specific changes to the Development Plan to ensure consistency with the Core Strategy and having regard to the requirement to implement the sequential approach to the zoning for residential lands under the *Development Plan Guidelines for Planning Authorities (2007)* and the *Development Plans, Guidelines for Planning Authorities – Draft for Consultation (August, 2021)*.

Specifically the Development Plan includes land use zoning objectives for 'NEW RESIDENTIAL' (Medium B Density Residential Development), introduced by material amendment under:

- MA 5.2.6.27(a) Bantry BT-R-0X¹.

- c) the Development Plan has not been made in a manner consistent with and fails to implement recommendations of the Office, which required specific changes to the Development Plan to ensure consistency with Specific Planning Policy Requirement (SPPR) 4 of the *Urban Development and Building Height Guidelines for Planning Authorities (2018)*, and having regard

¹ MA Recommendation 2 included a typo which referred to 'MA 5.2.6.27 Bantry ... new Residential BR-R-X', rather than to BT-R-0X, however it is clear from the Office's submission as to which lands the recommendation referred. It is evident from the Chief Executive's report under section 12(8) and from the 31AM(6) notice letter that there was no uncertainty in this regard. The proposed material alterations of the draft Plan referred to four proposed amendments, (a)-(d), collectively under MA 5.2.6.27. For clarity, the subject amendment is MA 5.2.6.27(a).

to the *Sustainable Residential Density Guidelines for Planning Authorities* (2009).

Specifically the Development Plan includes zoning objectives for reduced residential densities within 1km of a train station on the Cork suburban rail network², introduced by material amendment, under:

- MA 4.2.3.41 Carrigtwohill CT-R-18 (Medium B Density)
- MA 4.2.3.43 Carrigtwohill CT-R-04 (Medium A Density)

which densities do not secure the minimum densities for such locations set out in the Guidelines issued by the Minister under Section 28 of the Planning and Development Act 2000 (as amended), titled "*Sustainable Residential Development in Urban Areas (2007)*" or any amending or replacement Guidelines;

- d) the Development Plan has not been made in a manner consistent with and fails to implement recommendations of the Office, which required specific changes to the Development Plan having regard to the *Spatial Planning and National Roads, Guidelines for Planning Authorities* (2012),

Specifically the Development Plan includes zoning objectives for industrial zoning and Special Policy Zoning in the vicinity of the M8 Junction 15 (Fermoy south), introduced by material amendment, under:

- MA 3.1.4.15 Fermoy: new Industrial site FY-I-05; and
- MA 3.1.4.16 Fermoy: new special policy area FY-X-01;

- e) as a consequence of the above, the Development Plan made by Cork County Council ("the Council") fails to set out an overall strategy for the proper planning and sustainable development of the area concerned, contrary to the requirements of Section 10(1) of the Act; and
- f) the use by you of your function to issue a direction under section 31 of the Act would be merited.

² As defined by the *Cork Metropolitan Area Transport Strategy 2040*.

The reasons for the Opinion of the Office are set out in further detail in section 2 of this Notice letter. This letter is a Notice to you pursuant to section 31AM(8) of the Act.

1. Background

The Draft Cork County Development Plan 2022 – 2028 (the draft Plan) was on public display from 22 April 2021 to 1 July 2021.

A statement was appended to the draft Development Plan, as required under Section 28(1A)(b) of the Act, concerning the implementation of Ministerial Guidelines. The statement did not include any information to demonstrate that the planning authority had formed the opinion that it is not possible to implement certain policies and objectives of the Minister contained in any relevant guidelines, as outlined in further detail below, and did not provide any reasons for not implementing any such policies or objectives.

The Office made a submission to the draft plan containing ten (10) recommendations and four (4) observations on 1 July 2021.

Recommendation 9 (Joint Retail Strategy) of the Office's submission to the draft Plan required the planning authority to prepare an appropriately detailed Joint Retail Strategy with Cork City Council to secure plan-led development for retail within the two neighbouring authorities.

Having regard to the Minister's letter under section 9(7) of the Act concerning co-ordination of the objectives for retail outlet centres, the Joint Retail Strategy was required, in particular, to consider the implications of retail developments contemplated in the draft Plan such as outlet centres referred to under section 9.11 of the draft Plan.

In relation to the overall pattern of development proposed by the Council under the Core Strategy of the draft Plan, the Office was generally satisfied with the approach in Bantry, subject to any amendments required under Recommendations 1 and 2 (core strategy), Recommendation 3 (quantity of land zoned for residential use), and Recommendation 6 (infrastructure provision and tiered approach to zoning).

In relation to residential density standards, the Office considered the overall proposed approach to residential density, as set out in Chapter 4 of the draft Plan (sections 4.7 to 4.10) to constitute a positive and rational approach. Although an inconsistency with the recommended standards for residential densities, as set out in the *Sustainable Residential Developments in Urban Areas (Cities, Towns and Villages) Guidelines for Planning Authorities* (2009), was identified in respect of lower settlement tiers under Recommendation 7, this did not include ‘*Towns with proposed high quality Public Transport Corridor Potential*’, such as Carrigtwohill, included in table 4.1 of the draft Plan.

In relation to employment and enterprise type policies and zoning objectives (including industry and related uses) the Office was generally satisfied that the draft Plan provided a highly strategic and well-considered approach to the development of employment and enterprise development in the county focused on strategic employment locations. Observation 2 of the Office’s submission to the draft Plan did, however, request that the planning authority reconsider zoning objectives having regard to the tiered approach to zoning under NPO 72a-c of the National Planning Framework, and the mitigation of climate change through sustainable settlement and transport strategies under section 10(2)(a) of the Act.

The Office received a notice under section 12(5)(aa) of the Act on 3 February 2022. This notice did not specifically state that the planning authority had decided not to comply with particular recommendations of the Office’s submission on the draft Plan. The notice generally acknowledged, to a greater or lesser extent, where decisions had been made which were inconsistent with the Office’s recommendations. The notice did not contain formal reasons for those decisions, but rather included ‘*broadly the same responses as set out in the Chief Executive’s Section 12(4) Report circulated on 24th September 2021*’, which generally explained the reasoning that informed those decisions.

The Elected Members, having considered the draft Plan and the Chief Executive’s (CE’s) Report on submissions received (dated 24 September 2021), resolved to amend the draft Cork County Development Plan 2022-2028 on 13th February 2021.

The material alterations to the draft Plan were on public display from 18 January 2022 to 15 February 2022.

The material alterations included a number of changes including:

- MA 1.9.20 amended the policy and objectives of the draft Plan concerning Retail Outlet Centres.
- A series of individual material amendments to the following land use zoning objectives:
 - Residential Reserve zoning objectives
 - New residential zoning objectives
 - Existing Residential / Mixed Residential and Other Uses zoning objective
 - Industrial land use zoning objectives
- Amendments to the residential densities specified for residential land use zoning objectives for certain settlements, including Carrigtwohill and Bandon.

No relevant material amendments were made to the Section 28(1A)(b) statement at material alteration stage.

The Office made a submission on 15 February 2022 to the material alterations to the draft Plan containing seven (7) recommendations. The Office's submission letter stated:

There are, however, a relatively small number of cases where the Office is of the view that the amendments are not consistent with national or regional policies, the Core Strategy of the draft Plan itself, or the Natura Impact Report prepared by the planning authority.

These instances have been clearly identified in the submission below and the reasons and considerations of the Office in reaching this conclusion have been set out.

The Office also considers that further consideration is required in respect of the application of the 'Residential Reserve' zoning objective, which is not consistent with the Core Strategy of the draft Plan, and in certain cases where changes to the density standards are not consistent with national policy.

Finally, in the light of the need to progress a co-ordinated approach to planning for retail development with Cork City Council as the Minister's statutory guidelines on retail development intend, careful re-consideration of the proposed material alteration in respect of retail outlet centres is also recommended so that this forthcoming joint strategy is not to be effectively undermined.

The letter also noted the decision of the planning authority not to comply, in particular, with Recommendation 9 of the Office's submission on the draft Plan concerning the preparation of a Joint Retail Strategy with Cork City Council to secure plan-led development of any future retail development across the two neighbouring authorities.

The Office recommendations at MA stage included:

- MA Recommendation 6 – Retail Outlet Centres (MA 1.9.20)
- MA Recommendation 2 – Additional Residential Reserve zoning objectives (including MA 5.2.6.27 Bantry New Residential BR-R-X)
- MA Recommendation 4 – Residential Densities (including MA 4.2.3.41 Carrigtwohill CT-R-18 and MA 4.2.3.43 Carrigtwohill CT-R-04)
- MA Recommendation 5 - Industrial land use zoning objectives (including MA 3.1.4.15 - FY-I-05 and MA 3.1.4.16 - FY-X-01)

The elected members of Cork County Council resolved to make the Cork County Development Plan 2022 – 2028 at a Full Council Meeting on 25 April 2022.

Subsequently, the Chief Executive sent a notice letter under Section 31(AM)(6) of the Act dated 3rd May 2022 to the Office advising of the making of the Development Plan and specifying the recommendations of the Office not complied with.

The section 31AM(6) notice letter stated that MA Recommendation 5, MA Recommendation 6 and Recommendation 9 had not been complied with, either in full or in part.

However, it is apparent from the notice letter that the planning authority has taken the decision also not to comply, whether in part or entirely, with MA Recommendation 2, MA Recommendation 3 and MA Recommendation 4.

Having reviewed the CE's reports on the draft Plan and material alterations to the draft Plan, the notice of the making of the Development Plan and the reasons in the notice letter, the Office has concluded that, with the exception of the below, the recommendations of the Office have been responded to in the reports and/or Notice and have been addressed to the satisfaction of the Office, or are otherwise considered satisfactory within the legislative and policy context.

1.1 Joint Retail Strategy and Retail Outlet Centre

Recommendation 9 of Office's submission on the draft plan required the planning authority to prepare a Joint Retail Strategy (JRS) with Cork City Council to secure plan-led development for retail within the two neighbouring authorities.

Recommendation 9 – Joint Retail Strategy stated:

Having regard to the requirements of the Guidelines for Planning Authorities Retail Planning Guidelines (DECLG, 2012) the planning authority is required to prepare an appropriately detailed Joint Retail Strategy with Cork City Council to secure plan-led development for retail within the two neighbouring authorities.

The Joint Retail Strategy is required to:

- (i) address the functional area of the two authorities, not just the Metropolitan Area;*
- (ii) inform the core strategy, retail hierarchy and retail policy approach of the county development plan consistent with the provisions of the Guidelines, including in particular the key messages, the five national policy objectives in section 2.5, and the detailed 'Development Plan and Retailing' requirements as set out under section 3.3;*
- (iii) identify the additional retail floor space required to support the settlement hierarchy, the quantity and type of retail floor space requirements by constituent authorities, and provide guidance on the location and function*

of retail objectives taking account of the Retail Planning Guidelines policy objectives and the relevant settlement hierarchy; and

- (iv) *having regard to the Minister's letter under section 9.7 of the Act concerning co-ordination of the objectives for retail outlet centres, the Joint Retail Strategy is required, in particular, to consider the implications of retail developments contemplated in the draft Plan such as outlet centres referred to under section 9.11 of the draft Plan*

The planning authority did not comply with the recommendation. The Chief Executive's report under section 12(4), responded to each of the parts (i)-(iv) of Recommendation 9, which are summarised as follows:

- Re part (i), the report pointed to the fact that in the case of the evaluation by the Office of the Draft Waterford City and County Development Plan, Waterford City and County Council was requested to do a Joint Retail Strategy for the metropolitan area only, not its whole functional area, that the Southern Regional Assembly had no concern with a joint retail strategy limited to the metropolitan area of Cork, and that the Department raised no issue with the previous Joint Retail Strategy which was limited to the metropolitan area. The report above also signaled that the Council was committed to working with the City Council to prepare a Joint Retail Strategy for the MASP area as is appropriate given the size and scale of the county.
- Re parts (ii) & (iii), the report above also signalled that the Council was committed to the preparation of a Joint Retail Strategy consistent with the provisions of the guidelines and parts (ii) & (iii) of the recommendation.
- In addition and in relation to part (iii), the Chief Executive stated:

‘The section 9(7) notice is currently under legal challenge in Judicial Review proceedings. Accordingly, the matters outlined below and the Council's actions in respect of the section 9(7) notice are without prejudice to the determination of these proceedings and the implications this may have for the section 9(7) notice.

The Chief Executive indicated that it was *'not possible within, the timeframe remaining ... to incorporate consideration of retail outlet centres into the ...*

retail strategy, such that this Council could incorporate any co-ordinated policy that might arise into the making of its Development Plan.' The Chief Executive also stated:

'this Council is committed to working jointly with the City Council post adoption of both Council's Development Plan, on the specific matter of policy development for retail outlet centres. Such work would be with a view towards incorporation of co-ordinated policy where necessary and where determined by Cork County Council into its policy objectives for retail outlet centres.'

The Chief Executive concluded '*no amendment required*' in respect of Recommendation 9. As noted, above, the section 12(5)(aa) notice broadly repeated the content of the Chief Executive's Report.

Several amendments were proposed at material alteration stage relating to retail, including material amendments MA 1.9.10 to MA 1.9.21, many of which update the text to take account of the absence of a new Joint Retail Strategy, including MA 1.9.16 which replaces paragraph 9.5.7 Joint Retail Study for Metropolitan Cork to state:

'... a Draft Joint Retail Strategy and Study is in the process of being prepared, however, it was not completed in time to be included in this Plan. It is expected that this study will be concluded within 12 months of the adoption of both City and County Development Plans and once finalised will inform a variation to the Cork County Development Plan.'

The text only refers to the completion of the 'study' within 12 months to inform a future variation, not a Joint Retail Strategy. In addition, this matter is dealt with in the general text of paragraph 9.5.7 and is not the subject of an objective of the Plan.

Amendment MA 1.9.20 materially altered the Plan provisions concerning the section on retail outlet centres under paragraphs 9.11.9 to 9.11.21. The extensively amended text reflects that of Variation no. 2 of the existing County Development Plan 2014. It inserts a new vision to:

'Facilitate an innovative competitive comparison retail outlet centre serving a regional catchment that is sustainably located, which provides synergies with

tourism attractions and existing urban areas, avails of existing and planned public transport, does not give rise to traffic congestion, and does not have any adverse effects upon the vitality and viability of existing retailing centres.'

Having considered a previous *Study on the Requirement for a Retail Outlet Centre (s) in the Cork Metropolitan Area* prepared on behalf of the Cork County Council in advance of the publication (October 2019) of Variation no. 2, the amended text concludes:

Having assessed a number of potential locations within a number of sub catchments against a range of considerations including retail impact, tourism synergy, traffic, access and public transport it was concluded that the most appropriate location for a Retail Outlet Centre in Metropolitan Cork is the NE-2 sub catchment (N25).

Amendment MA 1.9.20 also inserts objective TCR 10-2: Retail Outlet centre and a map indicating the relevant sub-catchment, within the Cork Metropolitan Area boundary:

'TCR 10-2: Retail Outlet centre – Support the provision of a Retail Outlet Centre in the NE-2 sub catchment (N25) of the County Metropolitan Strategic Planning Area'

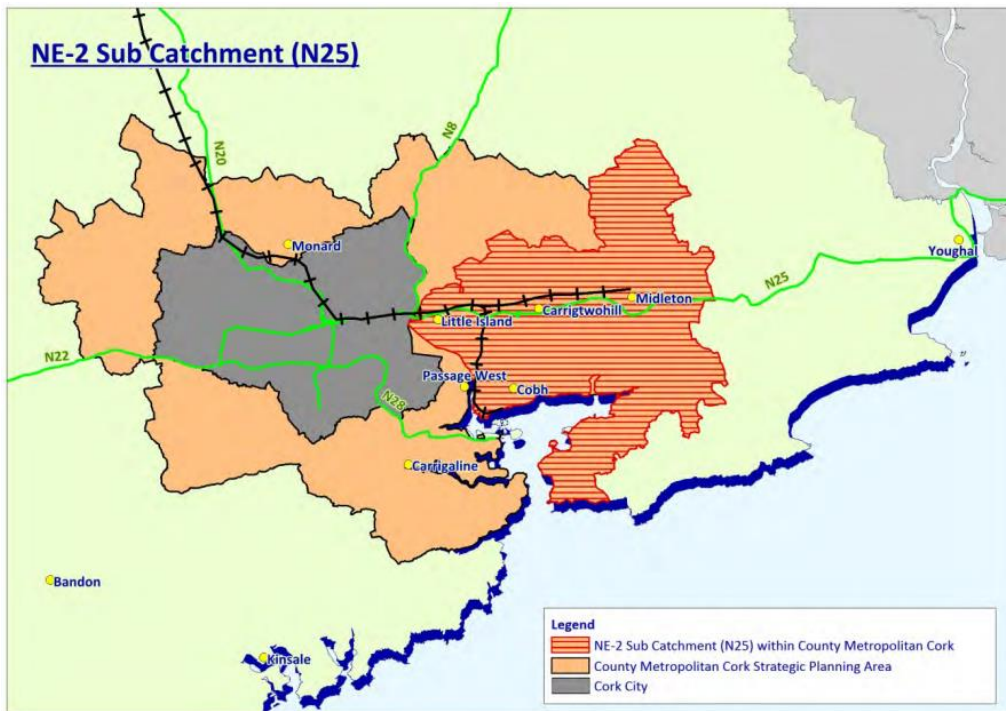


Figure 1: Map of ME-2 Sub Catchment (N25) under MA 1.9.20

MA Recommendation 6 of the Office’s submission on the material alterations to the draft plan addresses MA 1.9.20.

MA Recommendation 6 - Retail Outlet Centres stated:

Having regard to:

- a) *The provisions of the Retail Planning Guidelines for Planning Authorities (2012) that an overall strategy for the proper planning and sustainable development of the area must address retail development, that the policies and objectives included in the plan must be evidence-based and plan led and, in the case of County Cork, must be informed by a joint retail strategy with Cork City Council (as also required by CMASP PO 16 of the MASP);*
- b) *the absence of a joint determination by Cork County Council and Cork City Council in respect of the potential provision of retail outlet Centre development in Cork City and County as required by the Minister under section 9(7) of the Act; and*

- i) *pending the determination by the Minister of any dispute between the two planning authorities in respect of the matter subject of the section 9(7) letter;*

the planning authority is required to make the Plan without MA 1.9.20.

The reasons given in the section 31AM(6) notice for not complying with MA Recommendation 6, repeated the Chief Executive's response to the recommendation in the section 12(8) report. Excluding the reasons repeated from the 12(4) report and section 12(5)(aa) notice in respect of Recommendation 9 (joint retail strategy) the reasons may be summarised as follow:

- It is expected that the Joint Retail Strategy will be concluded within 12 months of the adoption of both the City and County development plans and once finalised will inform a variation to the Cork County Development Plan if considered appropriate.
- Having regard to the judgement of the High Court on the judicial review of the direction on Variation no. 2, Recommendation 9 on the draft Plan was premised on a misunderstanding of the Retail Planning Guidelines that a Joint Retail Strategy was "required".
- The subsequent High Court judgement of 5 November 2021 (concerning the Direction on Variation no. 2 of the County Development Plan 2014) identified legal errors of the OPR and Minister, including the assumption that a Joint Retail Strategy was required under the Retail Planning Guidelines, when the legal status of the guidelines is something that the council has to have regard to rather than be 'required' to follow.
- The Office's interpretation that the guidelines require a Joint Retail Strategy for the entire functional area of the two councils, not simply the metropolitan area, is inconsistent with its position on Variation no. 2. This shift in the OPR's interpretation is unexplained. *'Insofar as the Guidelines envisage a Joint Retail Strategy being prepared, it does not say that the Joint Retail Strategy is envisaged for the entire functional areas of Cork County Council and Cork City Council.'*

- It is the view of the Council that a Joint Retail Strategy for the MASP area only is the appropriate planning approach in particular given the size and scale of the County.
- The requirement for a JRS for the full county is inconsistent with the OPR's approach to Waterford City and County Council and Kilkenny County Council, where it did not seek for the strategy to cover the whole functional areas of the two local authorities.
- The SRA raised no issues concerning the intended geographic extent of the JRS.
- The department raised no issue with the approach adopted by the two councils in preparing the previous JRS.
- Due to lateness of the section 9(7) letter from the Minister, after the publication of the draft Plan, it is not possible to co-ordinate matters within the time remaining for the making of the development plan. The notice also refers to the judicial review proceedings initiated regarding the section 9(7) notice.
- The status of the High Court judgement is a clear and definitive finding in law and this status is not detracted by the mere fact that a matter has been appealed by the Office to the Court of Appeal. It is therefore incorrect to suggest that the judgement is provisional.
- MA Recommendation 6 is premised on an unlawful and erroneous interpretation of the guidelines, similar to the Section 31 Direction in respect of Variation no.2 of the County Development Plan 2014.
- It is the opinion of the Council that the State's appeal of the High Court judgement on the section 31 Direction does not affect the preparation of the Cork County Development Plan 2022-2028.
- Amendment MA 1.9.20 of paragraphs 9.11.9 to 9.11.13 on Retail Outlet Centres, in addition to MA 1.9.21 on design and innovation seek to reflect the decision of the judicial order to quash the section 31 Direction of Variation no. 2 of the Cork County Development Plan 2014.

Pursuant to Section 10(1A) of the Act, the development plan must include a Core Strategy which shows that the development objectives in the development plan are consistent, as far as practicable, with national and regional development objectives

set out in the National Planning Framework and the regional spatial and economic strategy and with specific planning policy requirements specified in guidelines under *subsection (1) of section 28*.

Further, and crucially for the purposes of this recommendation, pursuant to Section 10(2A)(e), the Core Strategy must also “*provide relevant information to show that, in setting out objectives regarding retail development contained in the development plan, the planning authority has had regard to any guidelines that relate to retail development issued by the Minister under section 28*”.

Section 10 of the Act also requires that the development plans of county councils must set out a settlement hierarchy (Section 10(2A)(f)) and requires the inclusion of certain details in connection therewith.

The *Retail Planning Guidelines* provide that “*future retail development should be plan-led following the settlement hierarchy*” (section 2.5.1, page 14) and section 3.3 (pages 20-21) thereof provides:

“The function of the development plan is to establish an overall strategy for the proper planning and sustainable development of its area. Specifically in relation to retailing, the development plan must be:

- Evidence based through supporting analysis and data to guide decision-making;*
- Consistent with the approach of these guidelines; and*
- Clear and precise with regard to specific objectives and requirements.”*

Section 3.5 of the *Retail Planning Guidelines* (page 22) states:

*“[...] certain development plans and local area plans **must be informed by joint or multi-authority retail strategies** which should assess retail activity and demand needs that transcend planning authority boundaries (See Annex 3 for further guidance on the preparation of joint or multi-authority retail strategies). **To give these strategies statutory backing the policies and objectives of the strategy should be adopted into the development plan and local area plan as appropriate or adopted as a variation to a development plan..**’ (our emphasis)*

Table 1 on page 22 of the *Retail Planning Guidelines*, entitled ‘*Authorities who must prepare joint or multi-authority retail strategies*’, identifies Cork City and County Councils as planning authorities who must prepare a Joint Retail Strategy for the ‘Strategy Area’ of Cork.

Annex 3 to the *Retail Planning Guidelines* deals with the preparation of joint or multi-authority retail strategies, and states (page 62):

“*Once the joint or multi-authority retail strategy is in place, **this strategy will enable relevant planning authorities to properly inform their development plan review processes** about the overall quantum and type of development that the market is likely to bring forward in response to changing demographic and consumer spending factors.*” (our emphasis)

Accordingly, an overall strategy for the proper planning and sustainable development of the area must address retail development and, in relation to such development, the policies and objectives included in the plan must be evidence-based and plan led. In the case of an area identified as a Strategy Area requiring a joint or multi-authority retail strategy, the overall strategy for the proper planning and sustainable development of the area must, in relation to retail development, be informed by - and, therefore, logically, must follow after - the preparation of the Joint Retail Strategy.

In short, for the Development Plan to set out an overall strategy for the proper planning and sustainable development of the area insofar as concerns retail development, the development of a strategy - in this a Joint Retail Strategy - must come first and the specific policies and objectives included in the plan must be informed by and reflect that strategy.

In the preparation of the Cork County Development Plan 2022-2028, there has been a failure to set out an overall strategy in accordance with the requirements of and within the meaning of the Act.

In addition, pursuant to Section 27(1) ‘*A planning authority shall ensure, when making a development plan ... that the plan is consistent with any regional spatial and economic strategy in force for its area.*’

Section 12(18) also provides that the statutory obligations in relation to a local authority includes the obligation to ensure that the development plan is consistent

with the National Planning Framework and the Regional Spatial and Economic Strategy. Section 12(11) provides that in making the development plan members shall be restricted to considering the proper planning and sustainable development of the area to which the plan relates, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or any Minister of the Government.

Consistent with national policy set out in the *Retail Planning Guidelines (2012)*, Cork MASP Policy Objective 16, provides that it is a policy objective of the Southern Regional Assembly RSES to '*support the role of the Metropolitan Cork Joint Retail Strategy and seek further preparation of joint retail strategies for Metropolitan Cork between Cork City Council and Cork County Council in accordance with Section 28 Retail Planning Guidelines for Planning Authorities (2012).*'

The failure of the planning authority to prepare a Joint Retail Strategy to inform the setting out of retail policy and objectives of the plan is therefore inconsistent with the RSES and with sections 10(1A), 10(2A)(a) and/or 12(11) and 12(18) of the Act.

The Office notes the reference in the CE's report to the High Court judgement; however, this order is currently the subject of an appeal to the Court of Appeal. In addition, the judgment does not address the requirement for consistency with the provisions of the Regional Spatial and Economic Strategy for the Southern Region, including *CMASP PO 16* of the Cork Metropolitan Area Spatial Plan. Moreover, the requirement for co-ordination with Cork City Council as required by letter issued by you under section 9(7) of the Act has also yet to be met.

Your letter dated 22nd April 2021 to both planning authorities under section 9(7) of the Act required Cork County and Cork City to co-ordinate the scope for retail development generally and retail outlet centre development specifically in respect of the Cork City and Cork County Development Plans for the period 2022-28, including that the authorities jointly determine and prepare an addendum to the current Joint Retail Strategy or a separate report.

The Office notes that this requirement has not been fulfilled, and remains the subject of legal proceedings initiated by Cork County Council.

As such, no Joint Retail Strategy has been prepared, and the text in the Plan which states that a Draft Joint Retail Strategy and Study is in the process of being prepared

(paragraph 9.5.7, MA 1.9.16) does not specify the inclusion retail outlet centres within the scope of the Strategy.

It is also noted that reference is made in the text to both a Strategy and Study without clearly distinguishing between the two, resulting in a lack of clarity and transparency.

In relation to the meaning of the 'strategy area' for Cork, the Office has given consideration to the CE's reasoning for the view of the Council that a Joint Retail Strategy for the MASP area only is the appropriate planning approach in particular given the size and scale of the County. The Office accepts that this approach is reasonable and is consistent with the RSES and the approach to the previous Joint Retail Strategy (2013) prepared by both authorities.

Material amendment MA 1.9.20 inserted into the draft County Development Plan 2022-2028 the substance and detail of Variation no. 2 of the County Development Plan 2014, concerning the specific policy approach and development objective for retail outlet centres in the county.

The policy approach and objective relating to the facilitation and support of a Retail Outlet Centre in a specific geographical location in the county has been introduced by MA 1.9.20 in the absence of a Joint Retail Strategy.

The decision to include MA 1.9.20 is considered by the Office to be premature at this stage, due to the lack of a Joint Retail Strategy with Cork City Council to secure plan-led development of any future retail development across the two neighbouring authorities as envisaged in the section 28 *Retail Planning Guidelines for Planning Authorities* (2012) and a lack of a joint determination between Cork City Council and Cork County Council as to whether there is capacity and scope for retail outlet centre development in Cork City and County Council.

Section 11(1A) of the Act requires the preparation of a new development plan to be '*strategic in nature for the purposes of developing*' the objectives and policies to deliver an overall strategy for the proper planning and sustainable development of the area of the development plan and the core strategy. Strategic work, including the development of a Joint Retail Strategy, must therefore come first and necessarily precede and inform specific policies and objectives.

Accordingly, the overall strategy for the proper planning and sustainable development of the area should, in relation to retail development, be informed by the Joint Retail Strategy, rather than pre-emptively determining the matter.

1.2 Residential Zoning Objectives

MA Recommendation 2 of Office's submission on the material alterations to the draft Plan required the planning authority to make the plan without several material amendments introducing additional land use zoning objectives for residential reserves.

MA Recommendation 2 stated:

Having regard to the sufficiency of land zoned for residential development in the respective towns consistent with the Core Strategy (table under MA 1.2.13), and the approach to the zoning for residential lands under the Development Plans, Guidelines for Planning Authorities – Draft for Consultation (August, 2021), the planning authority is required to make the Plan without the Residential Reserve zoning objectives and associated objectives where relevant, under the following amendments:

- MA 4.3.3.17 Midleton MD-RR-29 (14.78ha)
- MA 5.1.4.22 Bandon BD-RR-01 (5.7ha)*
- MA 5.1.4.23 Bandon BD-RR-02 (2.93ha)*
- MA 5.2.5.12 Clonakilty CK-RR-01 (11.78ha)*
- MA 5.2.6.27 Bantry (BR-RR-01) and new Residential BR-R-X (20.75ha)*

**Site not included in the Infrastructure Assessment under MA 1.2.20.*

The planning authority did not comply, in part, with the recommendation.

The elected members voted to make the Plan in accordance with the recommendation of the Office by making it without **MA 4.3.3.17 Midleton MD-RR-29**, **MA 5.1.4.22 Bandon BD-RR-01**, **MA 5.2.5.12 Clonakilty CK-RR-01** and **MA 5.2.6.27(b) Bantry (BT-RR-01)**, in accordance with the recommendation of the Chief Executive.

MA 5.2.6.27(a) Bantry new Residential BT-R-0X³ - The section 31AM(6) notice indicated that the elected members voted to make the Plan with MA 5.2.6.27(a) Bantry contrary to the recommendation of the Chief Executive's report under section 12(8), for the reason that '*these lands are required to meet the housing targets for Bantry*' and indicated that the site was determined as tier 2 in the infrastructure assessment.

This 4.07ha area of land was proposed to be zoned BT-AG-01 Agriculture in the draft Plan, forming part of larger parcel of 28.57ha. Four related amendments, MA 5.2.6.27(a)-(d) were proposed at material alterations stage. The Office accepted MA 5.2.6.27(c) and (d).

Under Table 2.X Cork County Core Strategy Table (inserted by MA 1.2.13), 22ha of land is required to accommodate the town's housing target of 344 units. Land zoned primarily for residential use, including 'additional provision', exceeds this requirement. In addition, the Special Policy Areas zoned for a mix of residential and other uses total a further c.27 ha.

The Office does not therefore consider that there is an evidence basis to support the need for a further c.4 ha of New Residential zoned land, surplus to 'additional provision', to accommodate the level of growth set out in the Core Strategy for Bantry over the plan period.

Further, in making the development plan with the amendment, the planning authority has failed to have regard to the requirements of the *Development Plan Guidelines for Planning Authorities* (2007), specifically Section 4.5 which states::

'The process for setting objectives for the zoning of land must seek to get the right balance between:

(a) Making sure that enough land is being zoned...; and

³ MA Recommendation 2 included a typo which referred to '*MA 5.2.6.27 Bantry ... new Residential BR-R-X*', rather than to BT-R-0X, however it is clear from the Office's submission as to which lands the recommendation referred. It is evident from the Chief Executive's report under section 12(8) and from the 31AM(6) notice letter that there was no uncertainty in this regard. The proposed material alterations of the draft Plan referred to four proposed amendments, (a)-(d), collectively under MA 5.2.6.27. For clarity, the subject amendment is MA 5.2.6.27(a).

(b) *Avoiding the zoning of too much land and thereby creating a situation where priorities for development are not clear and where as a result it is difficult to secure an orderly and progressive approach to the development of the area, particularly in the matter of providing essential service....’;*

and that:

‘a development plan should ensure that enough land will be available to meet anticipated development requirements and will be developed in a sequential and co-ordinated manner.’

The Office notes that according to the revised infrastructure assessment inserted in the draft Plan under MA 1.2.20, the subject site is indicated as fully serviced (tier 1). However, as noted by the elected members and Chief Executive report under section 12(8), the Housing Land Availability Study (2016) (HLAS) considered the subject lands to be tier 2 in the infrastructure assessment.

Further, this zoning amendment leapfrogs beyond lands zoned Agriculture (in the development plan, as made) to a peripheral and non-sequential location outside of the CSO boundary, in an area with no or very intermittent public footpaths.

The zoning amendment is, therefore, inconsistent with the requirements for compact growth in NPO 3c of the National Planning Framework and RPO 35 of the Regional Spatial and Economic Strategy, and the sequential approach to development having regard to section 4.19 of *Development Plans Guidelines for Planning Authorities (2007)*, and section 6.2.3 of the *Development Plans, Guidelines for Planning Authorities, Draft for Consultation (2021)* and is inconsistent with the core strategy of the adopted Plan.

Further, this zoning amendment is inconsistent with the requirements of section 10(2A)(d)(ii) of the Act which requires the development plan to provide details of how the zoning proposals in respect of lands zoned for residential and for a mixture of residential and other uses accords with national policy that development of land shall take place on a phased basis.

1.3 Residential Densities

MA Recommendation 4 of the Office's submission on the material alterations to the draft Plan required the planning authority to make the plan without several material amendments which reduced the densities applicable to certain zoning objectives.

MA Recommendation 4 stated:

Having regard to the provisions of the Sustainable Residential Density Guidelines for Planning Authorities (2009) and SPPR 4 of the Urban Development and Building Height Guidelines for Planning Authorities (2018), the planning authority is required to make the Plan without the following amendments which relate to density standards:

- MA 4.2.3.41 Carrigwohill CT-R-18
- MA 4.2.3.43 Carrigwohill CT-R-04
- MA 5.1.4.5 Bandon BT-X-03
- MA 5.2.5.6 Clonakilty CK-X-01
- MA 5.2.5.9 Clonakilty CK-R-02

The planning authority did not comply, in part, with the recommendation.

The Office has given consideration to the reasons of the planning authority for deciding not to comply with the Office's recommendation concerning **MA 5.2.5.6 Clonakilty** and **MA 5.2.5.9 Clonakilty**. The Office accepts the reasons provided by the Chief Executive in support of the zoning amendments and considers that these changes would not unduly impact on the overall Core Strategy, or the compact and sequential growth of the aforementioned settlements.

The Office notes the decision of the planning authority to make the Plan with MA 5.1.4.5 Bandon with a minor modification to the residential density applicable to the site⁴. The Office is therefore satisfied that the planning authority has complied with the recommendation in this regard.

⁴ The planning authority submitted an addendum to the Section 31AM(6) notice on 17/05/22 to correct a typo error in the density range applicable from ~~20-50uph~~ to 30-50uph.

In relation to **MA 4.2.3.41 Carrigtwohill and MA 4.2.3.43 Carrigtwohill**, the section 31AM(6) notice states that the elected members voted to make the plan with MA 4.2.3.41 and MA 4.2.3.43, contrary to the recommendation of the CE's report for the reason that *'given the significant levels of population and housing growth proposed and level of high density zoning already proposed in Carrigtwohill (29.3ha) that there was a need to make provision for a better mix of densities to accommodate a good social mix and allow residents to trade up to lower density housing with the settlement without having to leave it.'*

- MA 4.2.3.41 reduces density in respect of CT-R-18 (2.21ha) from 30/50 to 20/35uph (less than conventional semi-detached housing); and
- MA 4.2.3.43 reduces density in respect of CT-R-04 (6.85ha) from 50+ to 30/50uph.

Both of these site are, however, located within easy walking distance of the Carrigtwohill rail station where national and regional policy supports achieving higher densities to maximise the number of residents who can benefit from investment in public infrastructure and support sustainable settlement and transportation strategies.

The draft Plan identified MA 4.2.3.43 (CT-R-04) as contained within the Carrigtwohill North Urban Expansion Area for lands north of the railway line, which lands were subject of the Carrigtwohill North Framework Master Plan Study (2015) and 2017 LAP. The objectives of the LAP, are informed by a number of studies / surveys including transport assessments, been carried into the plan. CT-R-04 is one of a number of sites identified in the plan as suitable for higher densities based on walking distance to the rail station and was designated for 'High Density' under the draft Plan.

It is evident from the land use zoning objectives of the draft Plan that those land parcels, to the north of the railway line, closest to the station were designated for 'High Density' (50+ uph). The balance of residential lands were designated for a more moderate 'Medium A' density (30-50uph), including MA 4.2.3.41 (CT-R-18).

The *Guidelines for Planning authorities on Sustainable Residential Development in Urban Areas* (2009), recognise that *'To maximise the return on this investment, it is important that land use planning underpins the efficiency of public transport services*

by sustainable settlement patterns – including higher densities – on lands within existing or planned transport corridors.'

These guidelines, which have been confirmed by Circular Letter NRUP 02/21, recommend that increased densities should be promoted within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station. The guidelines state: *'In general, minimum net densities of 50 dwellings per hectare, subject to appropriate design and amenity standards, should be applied within public transport corridors, with the highest densities being located at rail stations / bus stops, and decreasing with distance away from such nodes.'*

It is a specific planning policy requirement, under SPPR 4 of the *Urban Development and Building Height Guidelines for Planning Authorities (2018) (BHG)*, *'that in planning the future development of greenfield or edge of city / town locations for housing purposes, planning authorities must secure: 1. The minimum densities for such locations set out in the Guidelines issued by the minister under section 28 of the Planning and Development Act 2000 (as amended), titled "Sustainable Residential Development in Urban Areas (2007)" or any amending or replacement Guidelines'*.

The entirety of the sites subject of MA 4.2.3.41 (CT-R-18) and MA 4.2.3.43 (CT-R-04) are located within 1km of the Carrigtwohill rail station. CT-R-04 is within c.250m and CT-R-18 within 630m of the station and, assuming an appropriate pedestrian permeable layout to future development, both sites are within 1km walking distance to the station.

The *Cork Metropolitan Area Transport Strategy 2040 (CMATS)* indicates that it is proposed to provide a 10-minute frequency on the Midleton-Cork rail line along which line Carrigtwohill is situated.

The *Sustainable Urban Housing: Design Standards for New Apartments (2018)* indicate that the capacity of public transport (e.g. the number of train services during peak hours) should also be taken into consideration in considering higher density development such as apartments, with 10 minute frequencies considered high frequency. Increased densities are therefore particularly important on such sites within the 1km catchment of Cork's suburban rail network.

Further, the application of inappropriately low densities within metropolitan towns targeted for growth under the core strategy is contrary to NPO 3 and RPO 35 compact growth.

The Office acknowledges the reasons given by elected members to allow residents to trade up to lower density housing within the settlement. However, in that regard, Carrigwohill is currently characterised by relatively low-density residential development with options for the delivery of a variety of housing types on other lands. In addition, high quality family homes can easily be accommodated within the 30-50uph density standard range. However, there is also a need for one and two bedroom units to meet the needs of other members of the community within the Metropolitan Area⁵, as evidenced by the Joint Housing Strategy and HNDA carried out on behalf of Cork County and Cork City Councils. And planning for such low density development in the vicinity of a new rail line would set a very undesirable precedent.

The Office is not satisfied, therefore, that there is an evidence based rationale for applying a lower density standard to these sites in Carrigwohill than to other similarly located sites in other parts of the County and nationwide, contrary to national policy.

1.4 Industrial land use zoning objectives

MA Recommendation 5 of the Office's submission on the material alteration to the draft Plan required the planning authority to make the plan without several material amendments relating to industrial and/or special policy area zoning objectives in the vicinity of interchanges on the M8.

MA Recommendation 5 stated:

Having regard to the provisions of the Spatial Planning and National Roads, Guidelines for Planning Authorities (2012), and the provisions of NSO 2 of the NPF concerning enhanced regional accessibility, the planning authority is

⁵ The Joint Housing Strategy and HNDA refers to the Metropolitan Strategic Planning Area rather than to the Metropolitan Area.

required to make the Plan without the following material amendments in order to ensure the maintenance of the strategic traffic function of the M8:

- *MA no.3.1.4.15 - FY-I-05*
- *MA no.3.1.4.16 - FY-X-01*
- *MA no.3.1.5.28 - MH-I-07*

In relation to MA 3.1.5.28 – MH-1-07 the planning authority made the plan in accordance with the recommendation of the Office by making it without the amendment.

In relation to **MA 3.1.4.15 Fermoy: new Industrial site FY-I-05**, the section 31AM(6) notice indicated that the elected members voted to make the Plan with MA 3.1.4.15 contrary to the recommendation of the CE's Report for the reason '*that it would facilitate the expansion of the existing established uses on adjoining sites and given that the site is fully serviced with good road connectivity.*'

MA 3.1.4.15 (FY-I-05) proposes to zone 13.9ha land for industrial development. The land was zoned Greenbelt 1 in the draft Plan.

The subject lands are greenfield land situated adjacent to J15 on the M8, through which an access road to an existing commercial premises is routed. There are adjacent commercial / industrial premises adjoining on c.5ha of land.

In relation to **MA 3.1.4.16 Fermoy: new special policy area FY-X-01**, the section 31AM(6) notice indicated that the elected members voted to make the plan with MA 3.1.4.16, contrary to the recommendation of the CE's report for the reason '*that it would facilitate an NCT centre which would be able to serve a wide hinterland of both Fermoy and Mitchelstown.*

MA 3.1.4.16 (FY-X-01) proposes to zone 15.11ha of land, as a Special Policy Area – Expansion of existing Mart facilities and provision of an NCT Centre. The land was not proposed to be zoned in the draft Plan.

The subject lands accommodate an existing Mart, with the balance of the lands (c.8ha) undeveloped. The CE's Report explains that MA 3.1.4.16 is part occupied by Cork Livestock Marts Facility, and was permitted in the greenbelt as an exception to

greenbelt policy in the context of facilitating its relocation from Fermoy town centre and the connection the use has with the rural area.

Further, the Chief Executive states that existing objectives of the Plan cater for the development needs of such established uses in greenbelt areas and the situations, where exceptions to greenbelt policy can be considered. These policies are set out in Objective RP 5-16, 5-17 and 5-18 of the draft Plan. The future expansion of the Mart facilities on site MA 3.1.4.16 (FY-X-01) can, therefore, be considered within the policy framework and without zoning a further 8ha of land.

Both sites are remote from the town of Fermoy, located on the far side of the M8, and would not facilitate sustainable transport patterns.

Furthermore, the two subject sites are approximately 800m apart. Should both sites be developed there would be significant pressure to develop the intervening lands.

The Chief Executive's report states that there is in excess of 60ha of zoned and serviced land, with good access to the motorway, available within the development boundary of Fermoy town and in excess of 100ha available within Mitchelstown, any of which land would be suitable for the development of an NCT centre.

The Chief Executive considered that new employment uses should be located within Fermoy where they can support the viability of the town, help generate potential custom for other businesses and support compact growth. The Chief Executive further considered that the zoning of significant sites outside the town will undermine the delivery of these zoned lands and the case for infrastructure funding to support their delivery.

The Chief Executive also notes the position of TII in respect of the two amendments, which is considered to be at variance with section 2.7 of the *Spatial Planning and National Roads Guidelines for Planning Authorities (2012)* (the SPNR Guidelines), Section 2.7 of the SPNR Guidelines, which addresses development at national road interchanges or junctions, requires planning authorities to exercise particular care where plan proposals relating to the development objectives and/or to the zoning of locations at or close to interchanges, where such development could generate significant additional traffic with potential to impact on the national road.

TII stated in their submission on the MA that each of these zonings are *'inappropriate'* and are *'at variance with section 2.7 of the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities.'*

TII recommends that the plan be made without MA 3.1.4.15 (FY-I-05) to protect the steady-state maintenance, operation, and safety of the National Roads network. It also recommends that MA 3.1.4.16 (FY-X-01) should be re-evaluated and accompanied by an appropriate evidence base as indicated in the SPNR Guidelines to demonstrate that proposals support and protect the steady-state maintenance and safety of the National Roads network.

Having regard to the above, the Office does not consider that the reasons provided by the elected members provide an evidence based rationale for the zoning objectives such that would set aside the strong planning rationale set out the CE's report and in national planning policy.

2. Opinion of the Office and Reasons

Having considered the adopted Development Plan, the Office also notes, under section 31 AM(7) of the Act, that the said Development Plan has not been made in a manner consistent with the recommendations of the Office.

Further, the Office does not accept that the reasons given for not implementing the Office's recommendations in the notice letter dated 3 May 2022 adequately justify the failure to implement those recommendations or explain how, notwithstanding that failure, the Development Plan as adopted sets out an overall strategy for the proper planning and sustainable development of the area.

As you will be aware, under section 31AM(1)(a-e) of the Act, the Office has a statutory duty to evaluate and assess local authority development plans.

The following provisions of the Act are relevant in terms of the evaluation and assessment of local authority development plans such as this Development Plan:

- The provisions of section 31AM(2).

- Under section 31 AM(3)(a), the Office shall make such recommendations in relation to the Office's evaluation and assessments to those authorities as it considers necessary in order to ensure effective co-ordination of national, regional and local planning requirements by the relevant planning authority in the discharge of its development planning functions.
- In performing its functions, the Office must, under section 31P(3) of the Act, take account of the objective for contributing to proper planning and sustainable development and the optimal functioning of planning under the Act.
- Under section 31S, the Office must, in performing its functions, have regard to:
 - a) the policies and objectives for the time being of the Government, a State authority (including Ministerial guidelines, policy directives and directions issued under *Chapter IV of Part II*), planning authorities and any other body which is a public authority whose functions have, or may have, a bearing on the proper planning and sustainable development of cities, towns, villages or other areas, whether urban or rural,
 - b) the public interest and any effect the performance of the Office's functions may have on issues of strategic, economic or social importance to the State,
 - c) the National Planning Framework (or, where appropriate, the National Spatial Strategy) and any regional spatial and economic strategy for the time being in force, and
 - d) the requirements of relevant acts of the European Union, in particular, those relating to—
 - (i) the Environmental Impact Assessment Directive,
 - (ii) Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment,
 - (iii) the Habitats Directive, and
 - (iv) the Birds Directives,

in so far as those requirements relate to planning authorities by virtue of being designated competent authorities for the purposes of those acts.

Accordingly, having considered the Development Plan in light of section 31AM(1)(a-e), section 31AM(2), section 31AM(3)(a), section 31P(3) and section 31S, and the letter from the planning authority of the 3 May 2022 issued under section 31AM(6), the Office is of the opinion that the Development Plan has not been made in a manner consistent with the recommendations of the Office under Section 31AM (7).

The Development Plan as made fails to have regard to Ministerial Guidelines issued under Section 28 of the Act, specifically the requirement under the *Retail Planning Guidelines for Planning Authorities (2012)* that certain development plans must be informed by joint retail strategies, the policies and objective of which strategy should be adopted into the Development Plan. A Joint Retail Strategy has not been prepared and finalised by Cork County Council and Cork City Council to inform their respective development plans. In this respect, the Development Plan as made is also inconsistent with Cork MASP Policy Objective 16, which forms part of the Regional Spatial and Economic Strategy for the Southern Region.

Further, the amendment MA 1.9.20 introduced policy and objectives to facilitate and support a Retail Outlet Centre with a regional catchment, within the Cork metropolitan area, in the absence of an evidence-based Joint Retail Strategy to inform the material amendment, fails to have regard to the Guidelines, contrary to Section 28(1) and 28 (1A).

The Development Plan has not therefore been informed or underpinned by the necessary strategic work (contrary to Section 11(1A) which requires the preparation of a development plan to be “*strategic in nature for the purposes of developing*” (a) the policies and objectives to deliver an overall strategy and (b) the core strategy) and retail strategy, and it therefore fails to set out an overall strategy for the proper planning and sustainable development of the area. In this regard there has been a breach of the requirement in Section 10(2A)(e) that the Core Strategy must “*provide relevant information to show that, in setting out objectives regarding retail development contained in the development plan, the planning authority has had regard to any guidelines that relate to retail development issued by the Minister under section 28*”.

The statement under Section 28(1A)(b) attached to development plan as made fails to include information which demonstrates that the planning authority has formed the opinion that it is not possible to implement the policies and objectives contained in the *Retail Planning Guidelines* because of the nature and characteristics of the area, in addition to the reasons for the forming of that opinion contrary to Section 28(1A)(b)].

Having regard to the commitment outlined in the CE's report (24 September 2021) to work jointly with the City Council post adoption of both Council's Development Plan, on the specific matter of policy development for retail outlet centres, and the statement that a Joint Retail Strategy is in the process of being prepared and is expected to be concluded within 12 months of the adoption of both City and County Development Plans and once finalised will inform a variation to the Cork County Development Plan, the Office recommends that a clear policy objective be included to make provision for same.

Furthermore, the adopted Development Plan includes material amendment MA 5.2.6.27(a) to the draft Plan which zones additional residential land in excess of that required for the town of Bantry as set out in the Core Strategy. This amendment is also located in a remote and/or peripheral and non-sequential location outside of the CSO settlement boundary, at a distance from the centre of the settlement, beyond extensive undeveloped greenfield lands, including lands zoned Agriculture, contrary to national and regional policy objectives promoting compact growth (NPO 3c and RPO 35) and requiring that '*residential development will be carried out sequentially*' (RPO 151).

The amendment therefore fails to have regard to the requirement to implement or adopt the sequential approach to residential zoning under section 4.19 of the *Development Plans, Guidelines for Planning Authorities (2007)* issued under Section 28 of the Act, except in exceptional circumstances (which '*must be clearly justified ... in the written statement*'), and under section 6.2.3 of the *Development Plans, Guidelines for Planning authorities, Draft for Consultation (2021)*.

Further, in making the Development Plan with residential zoning in excess of that determined to be required under the Core Strategy, the planning authority has failed to have regard to the requirement under section 4.5 of the *Development Plan*

Guidelines for Planning Authorities (2007) to ensure enough land is zoned and to avoid zoning too much land.

In making the Development Plan with the subject amendment, the planning authority has made the plan inconsistent with the requirements of section 10(2A)(d)(ii) of the Act which requires the development plan to provide details of how the zoning proposals in respect of lands zoned for residential and for a mixture of residential and other uses accords with national policy that development of land shall take place on a phased basis.

The statement under Section 28(1A)(b) attached to Development Plan as made fails to include information which demonstrates that the planning authority has formed the opinion that it is not possible to implement the policies and objectives contained in the *Development Plan Guidelines for Planning Authorities* (2007) and / or in the *Development Plan Guidelines for Planning Authorities, Draft for Consultation* (2021), because of the nature and characteristics of the area, in addition to the reasons for the forming of that opinion contrary to Section 28(1A)(b)].

The Development Plan as made with material amendments MA 4.2.3.41 and MA 4.2.3.43 Carrigtwohill, to provide for a reduction of residential densities on lands within the metropolitan area settlement within 1km of a railway station on the Cork Suburban railway line, below the minimum densities recommended in the *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas: Cities, Towns & Villages* (2009), is inconsistent with:

- A specific planning policy requirement contained in Ministerial Guidelines issued under section 28 of the Act, specifically SPPR 4 of the *Urban Development and Building Height Guidelines for Planning Authorities* (2018) which requires that planning authorities must secure the minimum densities set out in the *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas: Cities, Towns & Villages* (2009);
- The recommendation under section 5.8 of the *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas: Cities, Towns & Villages* (2009) to increase residential densities within 1km of a rail station to at least 50uph net; and

- The policy objectives of the NPF and the RSES for the Southern Regional Assembly, specifically the requirement to implement compact growth under NPO 3 and RPO 35.

The statement under Section 28(1A)(b) attached to Development Plan as made fails to include information which demonstrates that the planning authority has formed the opinion that it is not possible to implement the policies and objectives contained in the *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas: Cities, Towns & Villages* (2009) and in the *Urban Development and Building Height Guidelines for Planning Authorities* (2018), because of the nature and characteristics of the area, in addition to the reasons for the forming of that opinion contrary to Section 28(1A)(b).

The Development Plan as made with material amendments MA 3.1.4.15 Fermoy: new Industrial site FY-I-05 and MA 3.1.4.16 Fermoy: new special policy area FY-X-01, which zone two extensive rural sites outside of any settlement adjacent Junction 15 of the M8, and which fails to have regard to Ministerial Guidelines issued under Section 28 of the Act, specifically the requirement under section 2.7 of the *Spatial Planning and National Roads Guidelines for Planning Authorities* (2012) that planning authorities:

- *must ensure that the strategic traffic function of national roads is maintained by limiting the extent of development that would give rise to the generation of short trip traffic on national roads*
- *must exercise particular care where plan proposals relating to the development objectives and/or to the zoning of locations at or close to interchanges, where such development could generate significant additional traffic with potential to impact on the national road;*
- *must make sure that such development which is consistent with planning policies can be catered for by the design assumptions underpinning such junctions and interchanges, thereby avoiding potentially compromising the capacity and efficiency of the national road/associated junctions and possibly leading to the premature and unacceptable reduction in the level of service available to road users*

Material amendments MA 3.1.4.15 Fermoy: new Industrial site FY-I-05 and MA 3.1.4.16 Fermoy: new special policy area FY-X-01, due to their remote location at a distance from the built-up area and from land zoned to accommodate planned development contiguous with the settlement of Fermoy, is not practically accessible by sustainable transport. In this respect, no or no adequate reasons relating to the proper planning and sustainable development of the area have been provided to explain why the said Guidelines have not been followed.

The statement under Section 28(1A)(b) attached to Development Plan as made fails to include information which demonstrates that the planning authority has formed the opinion that it is not possible to implement the policies and objectives contained in the *Spatial Planning and National Roads Guidelines for Planning Authorities (2012)* because of the nature and characteristics of the area, in addition to the reasons for the forming of that opinion contrary to Section 28(1A)(b)].

The Development Plan has not been made in a manner consistent with and has failed to implement the recommendations of the Office of the Planning Regulator under Section 31 AM.

Having regard to the matters set out, above, the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area and is not in compliance with the requirements of the Act

The factors that the Office has taken into account in forming this opinion are as follows:

- i. The *Guidelines for Planning Authorities Retail Planning Guidelines (DECLG, 2012)*, which states:

“... future retail development should be plan-led following the settlement hierarchy”.

“The function of the development plan is to establish an overall strategy for the proper planning and sustainable development of its area. Specifically in relation to retailing, the development plan must be:

- Evidence based through supporting analysis and data to guide decision-making;
- Consistent with the approach of these guidelines; and
- Clear and precise with regard to specific objectives and requirements.”

“...certain development plans and local area plans must be informed by joint or multi-authority retail strategies which should assess retail activity and demand needs that transcend planning authority boundaries (See Annex 3 for further guidance on the preparation of joint or multi-authority retail strategies). To give these strategies statutory backing the policies and objectives of the strategy should be adopted into the development plan and local area plan as appropriate or adopted as a variation to a development plan.’

and

“Once the joint or multi-authority retail strategy is in place, this strategy will enable relevant planning authorities to properly inform their development plan review processes about the overall quantum and type of development that the market is likely to bring forward in response to changing demographic and consumer spending factors.”

- ii. The *Development Plan Guidelines for Planning Authorities* (2007) which state:

In order to maximise the utility of existing and future infrastructure provision and promote the achievement of sustainability, a logical sequential approach should be taken to the zoning of land for development:

(i) Zoning should extend outwards from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference (i.e. ‘leapfrogging’ to more remote areas should be avoided);

(ii) A strong emphasis should be placed on encouraging infill opportunities and better use of under-utilised lands; and

(iii) Areas to be zoned should be contiguous to existing zoned development lands.

Only in exceptional circumstances should the above principles be contravened, for example, where a barrier to development is involved such as a lake close to a town. Any exceptions must be clearly justified by local circumstances and such justification must be set out in the written statement of the development plan

- iii. *The Development Plans, Guidelines for Planning Authorities, Draft for Consultation (2021), which state:*

“In undertaking the zoning function for new residential development at individual settlement scale, planning authorities are required to adopt a sequential approach which reflects the compact growth, utilisation of existing infrastructure and town regeneration national policy objectives of the NPF, furthering developing the Tiered Approach.”

- iv. *The Specific Planning Policy Requirement 4 contained the Urban Development and Building Height Guidelines for Planning Authorities (2018), which states:*

“It is a specific planning policy requirement that in planning the future development of greenfield or edge of city/town locations for housing purposes, planning authorities must secure:

- 1. the minimum densities for such locations set out in the Guidelines issued by the Minister under Section 28 of the Planning and Development Act 2000 (as amended), titled “Sustainable Residential Development in Urban Areas (2007)” or any amending or replacement Guidelines; ...”*

- v. *Sustainable Residential Development in Urban Areas: Cities, Towns & Villages (2009) which states:*

“It is recommended that increased densities should be promoted within 500 metres walking distance¹⁸ of a bus stop, or within 1km of a light rail stop or a rail station. The capacity of public transport (e.g. the number of train services during peak hours) should also be taken into consideration in considering appropriate densities. In general, minimum net densities of 50 dwellings per hectare, subject to appropriate design and amenity standards, should be applied within public transport corridors, with the highest densities being located at rail stations / bus stops, and decreasing with distance away from such nodes.”

- vi. *The Spatial Planning and National Roads Guidelines for Planning Authorities* (2012), which state:

“Where a development plan or local area plan proposes development to take place on zoned lands adjacent to national roads which could affect the operation and capacity of such roads, the planning authority must prepare its plans in such a way that demonstrates that such roads can continue to perform their strategic transport function into the future.... . Planning authorities must therefore develop and evidence-based approach to planning policy and undertake detailed modelling as necessary.”

“...the planning system must ensure that the strategic traffic function of national roads is maintained by limiting the extent of development that would give rise to the generation of short trip traffic on national roads or alternatively by ensuring that the trip demand from future development will primarily be catered for on the non-national network. “

“...planning authorities must exercise particular care in their assessment of development/local area plan proposals relating to the development objectives and/or zoning of locations at or close to interchanges where such development could generate significant additional traffic with potential to impact on the national road. They must make sure that such development which is consistent with planning policies can be catered for by the design assumptions underpinning such junctions and interchanges, thereby avoiding potentially compromising the capacity and efficiency of

the national road/associated junctions and possibly leading to the premature and unacceptable reduction in the level of service available to road users.”

- vii. National Policy Objective NPO3(c) and NPO 72(c), and Regional Policy Objective RPO 35(c) and Cork MASP Policy Objective 16, which state:

NPO3(c)

“Deliver at least 30% of all homes that are targets in settlements other than the five Cities and the suburbs, within existing built-up footprints.”

RPO 35(c)

“Development Plans shall set out a transitional minimum requirement to deliver at least 30% of all new homes that are targeted in settlements other than the cities and suburbs, within their existing built-up footprints in accordance with NPF National Policy Objective 3c. This will be evidence based on availability and delivery of lands within the existing built-up area.”

Cork MASP Policy Objective 16 b

“Support the role of the Metropolitan Cork Joint Retail Strategy and seek further preparation of joint retail strategies for Metropolitan Cork between Cork City Council and Cork County Council in accordance with Section 28 Retail Planning Guidelines for Planning Authorities (2012).

- viii. The Cork County Core Strategy Table 2.X of the Development Plan as made.
- ix. The statement appended to the Development Plan under section 28(1A)(b) of the Act.
- x. The Chief Executive’s reports on submissions on the draft Development Plan and material alterations to the draft Development Plan.
- xi. The requirements of sections 10(1), 10(1A), 10(2A), 11(1A) 12(11), 12(18), 28(1), 28(1A), 28(1B), 28(1C) of the Act.

In light of the above, the Office is therefore of the opinion that the Development Plan has not been made in a manner consistent with its recommendations and that the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.

3. Recommendation to the Minister

Having regard to section 31AM(8) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act taking such steps as to rectify the matter as set out in the draft direction to the planning authority accompanying this notice, i.e.

- a. Delete paragraph 9.5.7 inserted under MA 1.9.16 relating to the preparation of a Joint Retail strategy, and to insert the following objective in Chapter 9 of the Plan:

To complete the preparation of a Joint Retail Strategy with Cork City Council which will jointly determine the scope for retail development generally, and for retail outlet centre development specifically, within the Cork metropolitan area within 12 months of the adoption of both City and County Development Plans and to adopt the Joint Retail strategy into the Cork County Development Plan by way of a variation.

- b. Delete the amended and additional provisions for 'Retail Outlet Centres' inserted under MA 1.9.20, including objective TCR 10-2 Retail Outlet centre and associated map;
- c. Reinstate the zoning objective of zoning objective Bantry BT-R-0X inserted under MA 5.2.6.27(a) to that of the draft Plan i.e. the subject land reverts to BT-AG-01 Agriculture;
- d. Delete the amended residential densities on specific sites under MA 4.2.3.41 Carrigtwohill CT-R-18 and MA 4.2.3.43 Carrigtwohill CT-R-04; and
- e. Reinstate the following zoning objectives to that of the draft Plan consistent with the recommendations of the Chief Executive' Report dated 16th March 2022.

- (i) MA 3.1.4.15 - FY-I-05 Fermoy 'Industrial development' –
reinstate the zoning objective of the subject land to that of the
draft Plan i.e. the subject land reverts to Greenbelt 1.

- (ii) MA 3.1.4.16 - FY-X-01 Fermoy 'Special Policy Area –
Expansion of existing mart facilities and provision of an NCT
centre' - reinstate the zoning status of the subject land to that of
the draft Plan i.e. the subject land reverts to unzoned.

Please do not hesitate to contact the Office should you have any queries in relation to the above. Contact can be initiated through the undersigned or at plans@opr.ie.

Yours sincerely,



Niall Cussen

Planning Regulator

niall.cussen@OPR.ie

Enclosures: Appendix

DRAFT DIRECTION IN THE MATTER OF SECTION 31

OF THE PLANNING AND DEVELOPMENT ACT 2000 (as amended)

Cork County Development Plan 2022-2028

“Development Plan” means the Cork County Development Plan 2022-2028

“Planning Authority” means Cork County Council

WHEREAS the powers and duties of the Minister for Housing, Local Government and Heritage under the Planning and Development Act 2000 (as amended) ("the Act"), other than the power to prosecute an offence, have been delegated to the Minister of State for Local Government and Planning pursuant to the Housing, Planning and Local Government (Delegation of Ministerial Functions) (No. 2) Order 2020 (S.I. 559 of 2020).

WHEREAS the Minister of State at the Department of the Housing, Local Government and Heritage in exercise of the powers conferred on him by section 31 of the Act, and consequent to a recommendation made to him by the Office of the Planning Regulator under section 31AM(8) of the Act hereby directs as follows:

- (1) This Direction may be cited as the Planning and Development (Cork County Development Plan 2022-2028) Direction 2022.
- (2) The Planning Authority is hereby directed to take the following steps with regard to the Development Plan:
 - a. Delete replacement paragraph 9.5.7 inserted under MA 1.9.16 relating to the preparation of a Joint Retail Strategy and insert the following objective in Chapter 9 of the Plan:

To complete the preparation of a Joint Retail Strategy with Cork City Council which will jointly determine the scope for retail development generally, and for retail outlet centre development specifically, within the Cork metropolitan area within 12 months of the adoption of both City and County Development Plans and to adopt the Joint Retail Strategy into the Cork County Development Plan by way of a variation.

- b. Delete the amended and additional provisions for 'Retail Outlet Centres' inserted under MA 1.9.20, including objective TCR 10-2 Retail Outlet Centre and associated map;
- c. Reinstate the zoning objective of those lands subject of zoning objective Bantry BT-R-0X inserted under MA 5.2.6.27(a) to that of the draft Plan i.e. the subject land reverts to BT-AG-01 Agriculture.
- d. Delete the amended residential densities on specific sites under MA 4.2.3.41 Carrigtwohill CT-R-18 and MA 4.2.3.43 Carrigtwohill CT-R-04; and
- e. Reinstate the zoning objectives of following lands to that of the draft Plan consistent with the recommendations of the Chief Executive' Report dated 16th March 2022.
 - (i) MA 3.1.4.15 - FY-I-05 Fermoy 'Industrial development' – reinstate the zoning objective of the subject land to that of the draft Plan i.e. the subject land reverts to Greenbelt 1.
 - (ii) MA 3.1.4.16 - FY-X-01 Fermoy 'Special Policy Area – Expansion of existing mart facilities and provision of an NCT centre' - reinstate the zoning status of the subject land to that of the draft Plan i.e. the subject land reverts to unzoned.

STATEMENT OF REASONS

- I. The Cork County Development Plan 2022-2028 as made fails to have regard to Ministerial Guidelines issued under Section 28 of the Act, specifically the requirement under the *Retail Planning Guidelines for Planning Authorities* (2012) that future retail development should be plan-led, that the development plan, specifically in relation to retailing, must be evidence-based, and that the Cork County Development Plan must be informed by a Joint Retail Strategy prepared with Cork City Council.

The Development Plan as made has not been informed by an up to date Joint Retail Strategy. It contains specific policy and an objective as to the location of a retail outlet centre which are not informed or underpinned by the necessary strategic work (contrary to Section 11(1A), which requires the preparation of a development plan to be “*strategic in nature for the purposes of developing*” (a) the policies and objectives to deliver an overall strategy and (b) the core strategy) and retail strategy, and it therefore fails to set out an overall strategy for the proper planning and sustainable development of the area, a key element of which is a strategy for the proper planning and sustainable development of retail development including provisions for a retail outlet centre.

- II. The Cork County Development Plan 2022-2028 as made includes policy and an objective to facilitate and support a Retail Outlet Centre with a regional catchment, within the Cork metropolitan area, inserted by material amendment (MA 1.9.20) in the absence of an evidence-based Joint Retail Strategy to inform said policy and objective and fails to have regard to the requirements of the Guidelines as outlined in (I) above, contrary to Section 28(1) and 28 (1A). In this respect, no or no adequate reasons relating to the proper planning and sustainable development of

the area have been provided to explain why the Guidelines have not been followed.

In this regard, there has been a breach of the requirement in Section 10(2A)(e) that the Core Strategy must “*provide relevant information to show that, in setting out objectives regarding retail development contained in the development plan, the planning authority has had regard to any guidelines that relate to retail development issued by the Minister under section 28*”.

Further, the statement under Section 28(1A)(b), attached to Development Plan as made, fails to include information which demonstrates that the planning authority has formed the opinion that it is not possible to implement the policies and objectives outlined at (I), above, as contained in the Guidelines, because of the nature and characteristics of the area and to give reasons for the forming of that opinion contrary to Section 28(1A)(b).

- III. The inclusion in the Development Plan as made of specific policy and objectives to facilitate and support a Retail Outlet Centre with a regional catchment, within the Cork metropolitan area, in the absence of an evidence-based Joint Retail Strategy to inform such policy and objective is inconsistent with CMASP PO 16 of the Cork Metropolitan Area Spatial Plan which forms part of the Regional Spatial and Economic Strategy for the Southern Region, and is therefore inconsistent with sections 10(1A) and/or 10(2A)(a) and/or 12(11) read in conjunction with 12(18) of the Act.
- IV. The Development Plan as made includes a material amendment (MA 5.2.6.27(a)) to the draft Plan that is not consistent with the Development Plan’s own Core Strategy, national and regional planning policy, and the proper planning and sustainable development of the area, including:

- a. Land zoned for residential development located in a remote and/or peripheral and non-sequential location outside of the CSO settlement boundary which leapfrogs beyond land zoned Agriculture, inconsistent with the requirements for compact growth in NPO 3c and RPO 35, and the requirement under RPO 151 that '*residential development will be carried out sequentially*', and fails to have regard to the requirement to implement or adopt a sequential approach to the zoning of land for development under section 4.19 of *Development Plans Guidelines for Planning Authorities* (2007), except in exceptional circumstances (which '*must be clearly justified ... in the written statement*'), and under section 6.2.3 of the *Development Plans, Guidelines for Planning authorities, Draft for Consultation* (2021). Accordingly, the development plan as made is not consistent with national and regional objectives set out in the National Planning Framework and the regional spatial and economic strategy for the region.

- b. Land zoned for residential development in excess of that needed to meet the Core Strategy housing supply targets for Bantry in the adopted Plan. This results in an internal inconsistency and incoherence in the Development Plan in circumstances where the plan zones an excessive amount of land for residential use having regard to the core strategy of the plan.

In making the plan with residential zoning in excess of that determined to be required under the Core Strategy, the planning authority has failed to have regard to the requirement under section 4.5 of the *Development Plan Guidelines for Planning Authorities* (2007) to seek to get the right balance between making sure enough land is zoned and avoiding the zoning of too much land.

Further, this zoning amendment is also inconsistent with the requirements of section 10(2A)(d)(ii) of the Act which requires the development plan to provide details of how the zoning proposals in

respect of lands zoned for residential and for a mixture of residential and other uses accords with national policy that development of land shall take place on a phased basis.

Further, the statement under Section 28(1A)(b) attached to development plan as made fails to include information which demonstrates that the planning authority has formed the opinion that it is not possible to implement the policies and objectives outlined at (IV), above, as contained in the Guidelines, because of the nature and characteristics of the area and to give reasons for the forming of that opinion contrary to Section 28(1A)(b).

- V. The Cork County Development Plan 2022-2028 as made is inconsistent with a requirement contained in Ministerial Guidelines issued under Section 28 of the Act, specifically Specific Planning Policy Requirement 4 contained in the *Urban Development and Building Height Guidelines (2018)* to secure minimum densities set out in the *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas: Cities, Towns & Villages (2009)* and the requirements for the planning authority to comply with, and the development plan to be consistent with, the aforementioned Specific Planning Policy Requirement under sections 28(1C) and/or 10(1A) and/or 10(2A)(a) and/or 12(11) read in conjunction with section 12(18).

Further, the statement under Section 28(1A)(b) attached to Development Plan as made fails to include information which demonstrates that the planning authority has formed the opinion that it is not possible to implement the policies and objectives outlined at (V), above, as contained in the Guidelines, because of the nature and characteristics of the area and to give reasons for the forming of that opinion contrary to Section 28(1A)(b).

- VI. The Cork County Development Plan 2022-2028 as made fails to have regard to the Ministerial Guidelines issued under Section 28 of the Act,

specifically the requirement to ensure the strategic function of national roads is maintained and that land zoned for development can be catered for by the design assumptions underpinning interchanges, under the *Spatial Planning and National Roads Guidelines for Planning Authorities* (2012). In this respect, no or no adequate reasons relating to the proper planning and sustainable development of the area have been provided to explain why the said Guidelines have not been followed.

Furthermore, the statement under Section 28(1A)(b) attached to the Development Plan as made fails to include information which demonstrates that the planning authority has formed the opinion that it is not possible to implement the policies and objectives outlined at (VI), above, as contained in the Guidelines to ensure the strategic function of national roads is maintained and that land zoned for development can be catered for by the design assumptions underpinning interchanges, because of the nature and characteristics of the area and fails to give reasons for the forming of that opinion contrary to Section 28(1A)(b).

- VII. The Development Plan has not been made in a manner consistent with and has failed to implement the recommendations of the Office of the Planning Regulator under Section 31 AM.
- VIII. By virtue of the matter set out at I to VI, above, the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.
- IX. By virtue of the matters set out at I to VI, above, the Development Plan is not in compliance with the requirements of the Act.

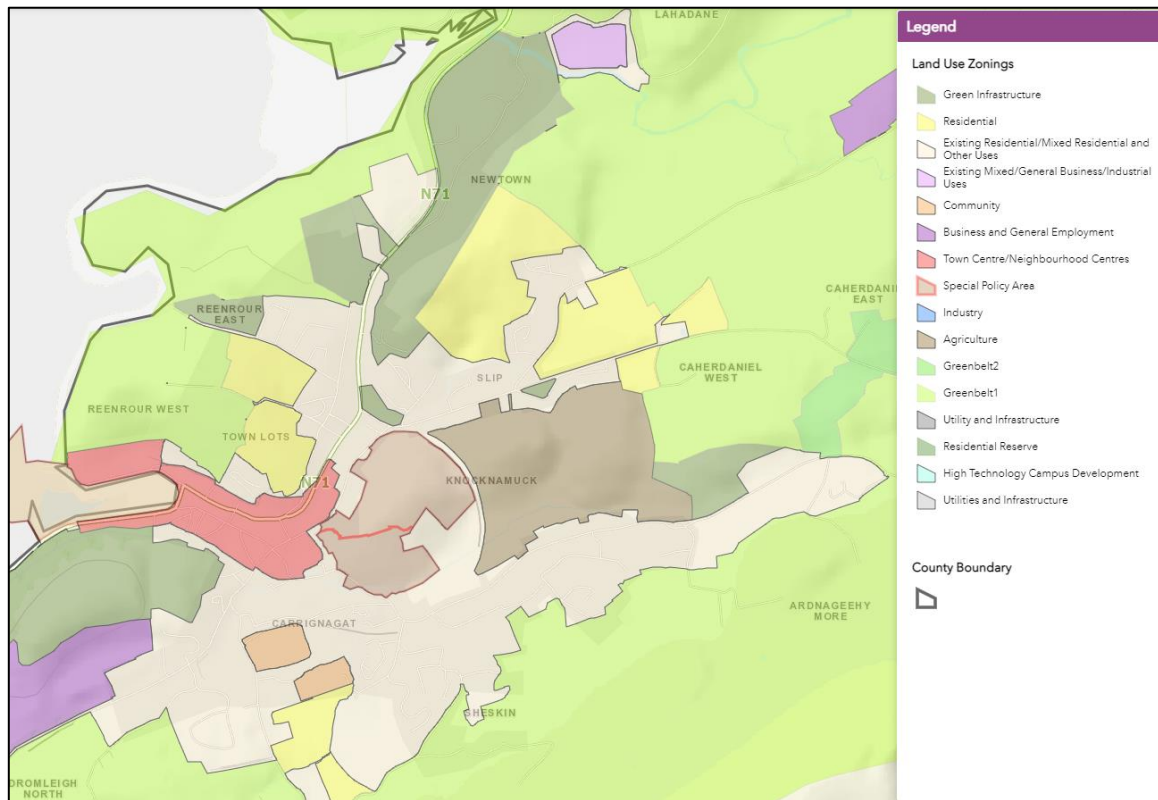
GIVEN under my hand,

Minister for Housing, Local Government and Heritage

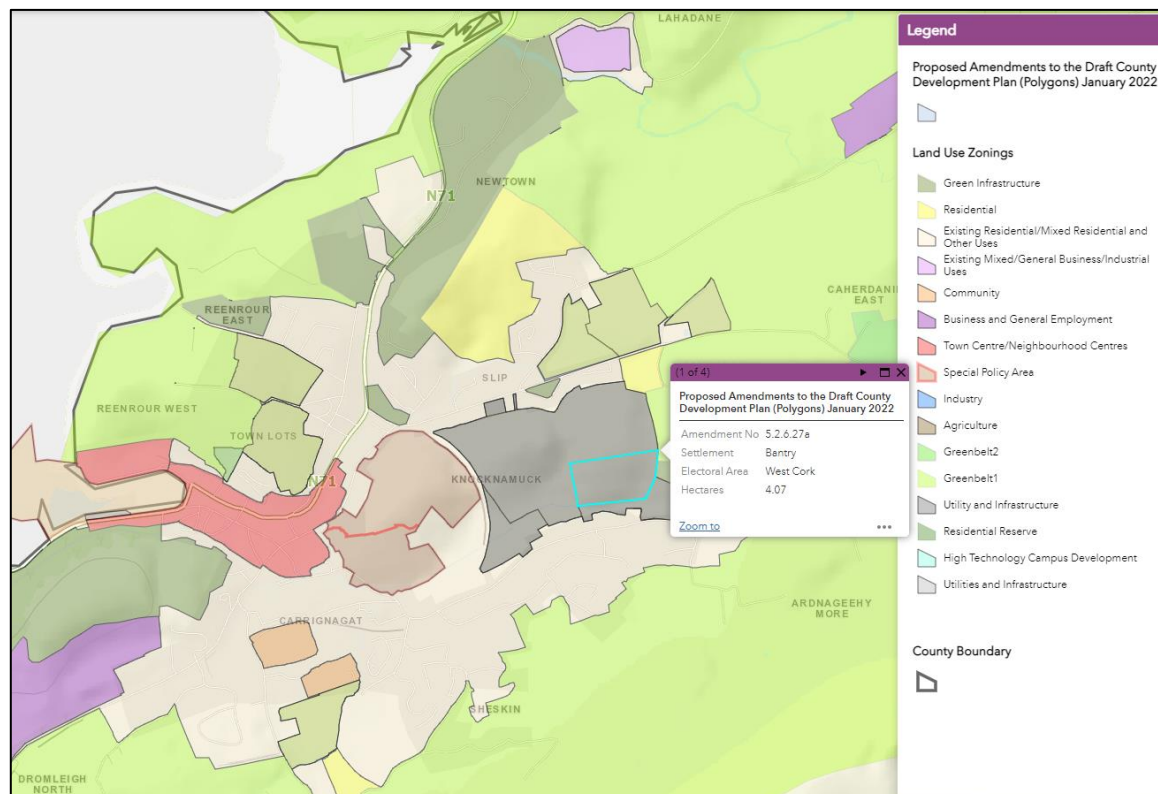
day of Month, year.

Appendix to Notice Pursuant to section 31AM(8) of the Planning and Development Act 2000 (as amended) – Cork County Development Plan 2022-2028

Bantry land use zoning objectives, draft Plan



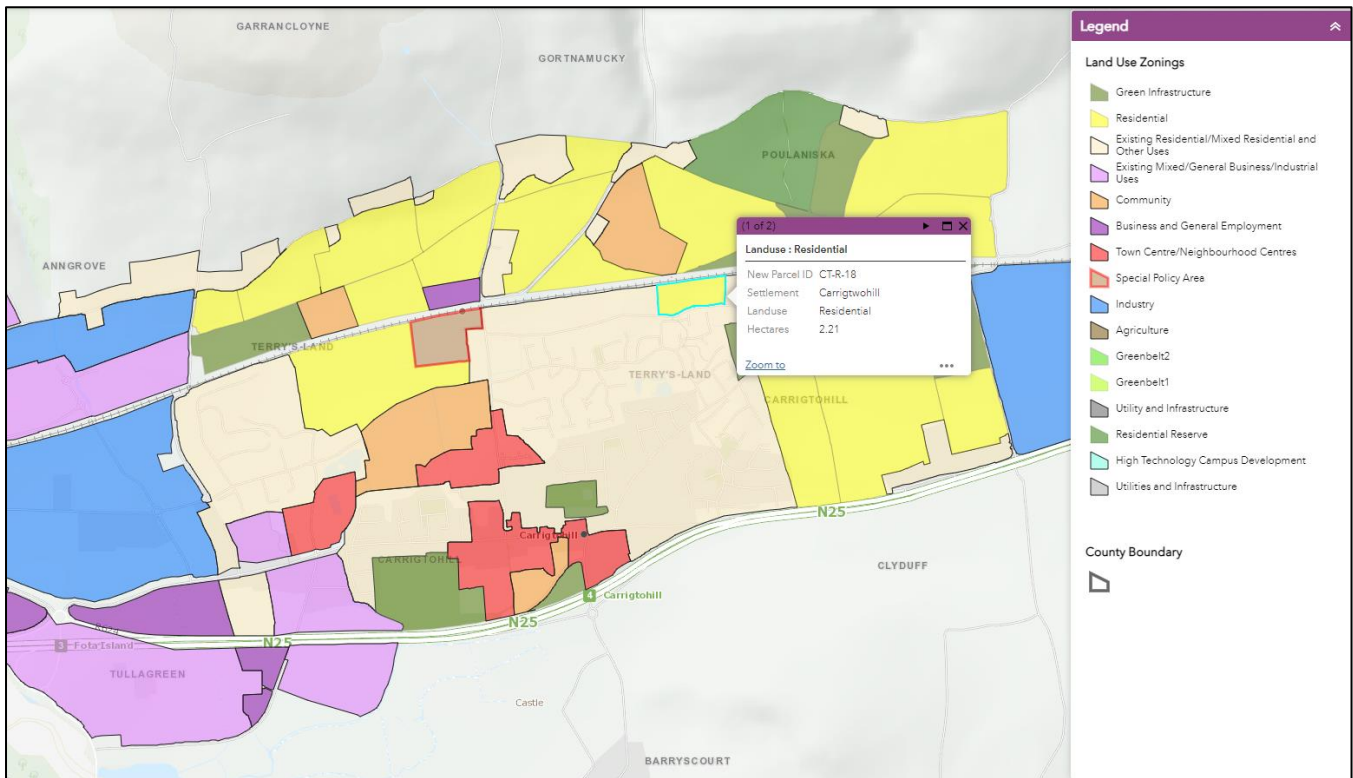
MA 5.2.6.27(a) – Change of zoning from BT-AG-01 Agriculture to new Residential BT-R-0X Medium B Density Residential Development.



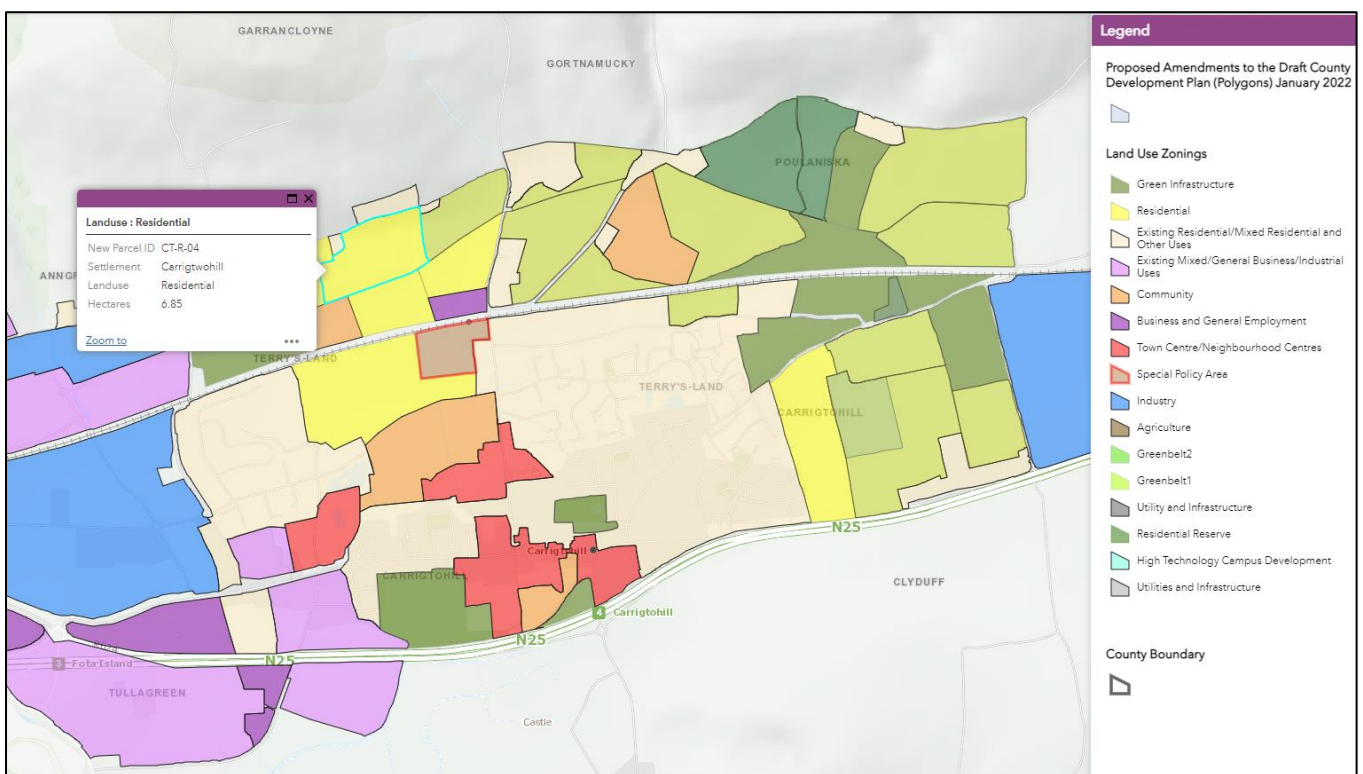
MA 5.2.6.27(a) BT-R-0X - Aerial photograph



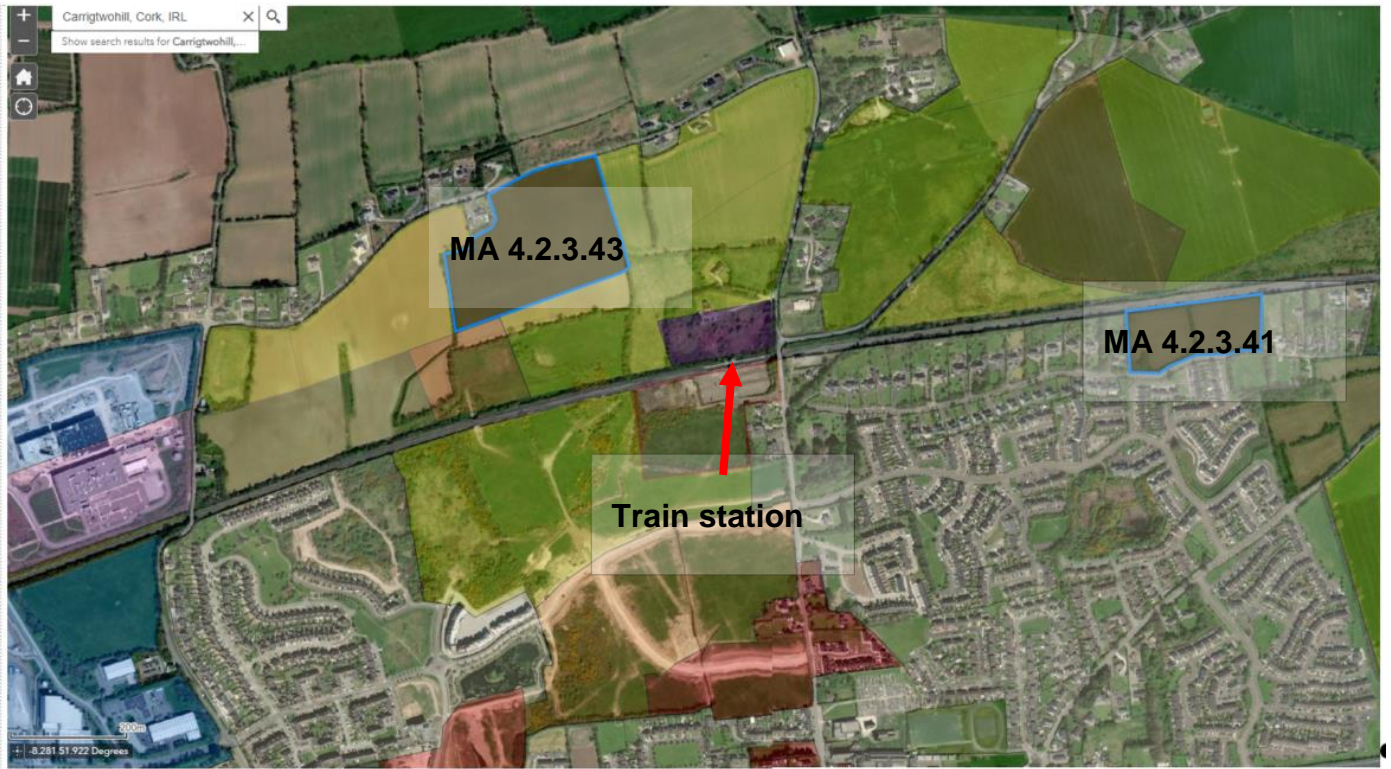
MA 4.2.3.41 Carrigtwohill CT-R-18



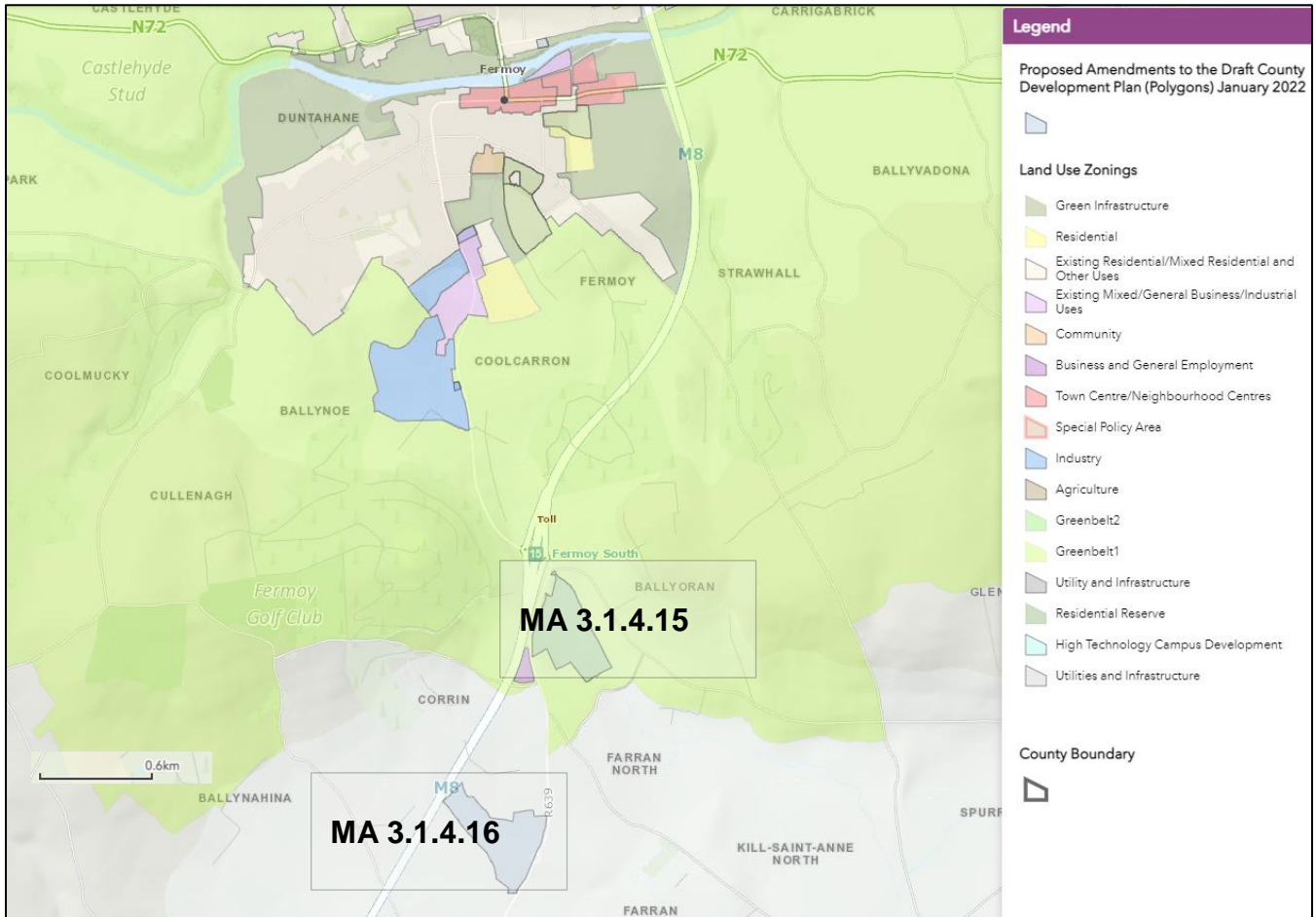
MA 4.2.3.43 Carrigtwohill CT-R-04



MA 4.2.3.41 & MA 4.2.3.43 (outlined in blue) - Aerial photograph



Fermoy settlement context for MA 3.1.4.15 - FY-I-05 and MA 3.1.4.16 FY-X-01



MA 3.1.4.15 - FY-I-05 and MA 3.1.4.16 FY-X-01 - Aerial photograph

