



5th August 2022

For the Attention of: Ann Doherty, Chief Executive

Cork City Council
City Hall,
Anglesea Street,
Cork,
T12 T997

**Section 31 of the Planning and Development Act 2000, as amended
Notice of Intention to Issue a Direction to Cork City Council on the Cork City
Development Plan 2022 - 2028**

Dear Ann,

Consequent to a recommendation made to me by the Office of the Planning Regulator (the Office) on 22nd July 2022 in respect of the Cork City Development Plan 2022 – 2028, as adopted by the elected members of Cork City Council on 27th June 2022, and pursuant to Section 31 of the Planning and Development Act 2000 (as amended) (the Act), I write to give notice of my intention to issue a direction to Cork City Council to take certain measures specified in this notice.

The matter of requiring Cork City Council and Cork County Council to coordinate on a joint retail strategy, pursuant to section 9(7) of the Act was the subject of a recent High Court judgment (reference 2021 No. 631 JR), issued on 27th May. Consequently, it does not form part of the forming of my Opinion or the Statement of Reasons set out in this notice letter or the accompanying draft Direction.

I wish to also remind you of the recent enactment of the Planning and Development, and Maritime and Valuations (Amendment) Act 2022 affecting Ministerial Directions on



development plans and local area plans in the Planning and Development Act, 2000 (as amended) as advised in Circular NRUP 04/2022, issued on 27th July 2022. Pending the consolidation of the Act on foot of the amendments, you are asked to take note of the procedural amendments that now apply to the section 31 process as it relates to development plans. For example, section 31(8) requires your report prepared under this subsection to also be furnished to the relevant Regional Assembly.

Opinion

On consideration of the recommendation made to me by the Office, I have formed the opinion that:

- (i) 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.
- (ii) The Plan, as made, fails to set out an overall strategy for the proper planning and sustainable development of the area;
- (iii) The Plan is not consistent with National Policy Objectives set out in the National Planning Framework, specifically NPO 3c, NSO 10 and NPO 31.
- (iv) The Plan is not consistent with regional development objectives set out in the Regional Spatial and Economic Strategy for the Southern Region, specifically CMASP PO 16, RPO 35, RPO 151, RPO 55c and RPO 185.
- (v) The Plan is inconsistent with Ministerial Guidelines issued under Section 28 of the Act, specifically:
 - a. The Retail Planning Guidelines 2012;
 - b. Development Plans Guidelines for Planning Authorities (2022);
 - c. The Planning System and Flood Risk Management, Guidelines for Planning Authorities (2009).
- (vi) The Plan, as made, is not in compliance with the requirements of the Act.

A draft of the Direction accompanies this notice and I request that you publish notice of this draft Direction, no later than two weeks after receipt of this notice. The reasons for



the Direction are set out in the Statement of Reasons section of the attached draft Direction and further detail is provided below.

Process to Date

The Draft Cork City Development Plan 2022 – 2028 (the draft Plan) was placed on public display from 26th July 2021 to 4th October 2021. The Office made a submission on the draft Plan containing 12 recommendations and 8 observations (4th October 2021).

The Elected Members of Cork City Council, having considered the draft Plan and the Chief Executive's (CE's) Report on submissions received (December 2021), resolved to amend the draft Cork City Development Plan 2022-2028. The material alterations to the draft Plan were displayed in public from 1st April 2022 to 28th April 2022.

The submission to Cork City Council from the Office at material amendment (MA) stage (dated 28th April 2022) set out seven recommendations.

A Chief Executive's report was prepared on the submissions received, including the submission made by the Office. It is noted that your report accepted the majority of recommendations and observations of the Office and recommended changes in response to the issues raised. The elected members of the planning authority did not accept a number of these recommendations. The elected members of Cork City Council resolved to make the Development Plan on 27th June 2022.

Subsequently, in accordance with Section 31AM(6), you as Chief Executive, issued a notice letter dated 4th July 2022 to the Office which advised of the making of the Development Plan and specifying the recommendations not complied with. The notice letter stated that MA Recommendation 3, MA Recommendation 4, MA Recommendation 5 and MA Recommendation 6 had not been complied with, either in full or in part. The notice letter also noted that the planning authority has taken the decision to partially comply with MA Recommendation 1, MA Recommendation 2, and MA Recommendation 7.

It is also noted that the planning authority decided not to comply, in particular, with Recommendation no. 7 of the Office's submission on the draft Plan concerning the preparation of a Joint Retail Strategy with Cork County Council to secure plan-led development of any future retail development across the two neighbouring authorities.



Your report under section 12(4), responded to each of the parts (i)-(iv) of Recommendation 7, which are summarised as follows:

In relation to part (i):

- The Council is committed to preparing a joint retail strategy with Cork County Council
- It is considered that the preparation of a joint retail strategy for the MASP area only is the most appropriate planning approach given the size and scale of the county.
- Waterford City and County Council have been asked by OPR to do a JRS only for the MASP area.
- Southern Regional Assembly has no concerns with JRS for MASP only.

Regarding parts (ii) informing the Core Strategy and retail policies of the plan and (iii) identify additional floor area requirements and provide guidance on location and function of retail:

- The Council is committed to the preparation of a JRS however, although the strategy is at an advanced stage, the final strategy could not be agreed by both parties.
- Notwithstanding the above, retail policy guidance has been included as required under legislation.
- A retail hierarchy has been included in the draft Plan and, core retail areas, district centres and larger urban town centres have been defined and identified in the zoning maps.

Regarding part (iv) having regard to Minister's section 9(7) letter and requirement for JRS to consider the implications of outlet centres:

- The City Council is committed to working with the County Council on coordinated objectives for retail outlet centres and may vary the plan in due course regarding any policy outcomes from this process.

You as Chief Executive concluded that no material alterations are proposed in respect of Recommendation 7. As noted, above, the section 12(5)(aa) notice broadly repeated the content of the CE's Report.



On 22nd July 2022, in accordance to Section 31AM(8) of the Act, the Office notified the Minister for Local Government and Planning that the Cork City Development Plan 2022-2028 had not been made in a manner consistent with the recommendations of the Office, which required specific changes to the Development Plan that are summarised as follows:

- 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.
- 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 support compact growth and implement the sequential approach to the zoning for residential lands under the *Development Plans Guidelines for Planning Authorities (2022)*;
- 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 provide for the facilitation of services for the community, in particular schools in accordance with Section 10(2)(l) and Section 10(1) of the Act to set out an overall strategy for the proper planning and sustainable development.

Reasons

The Development Plan as made fails to follow 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 City Council and Cork County Council to inform their respective development plans. In this respect, the Development Plan as made is also inconsistent with Cork MASP Policy Objective 16 listed in the Regional Spatial and Economic Strategy for the Southern Region and RPO 55c which states that it is an objective to '*Prepare Retail Strategies in*



accordance with the Retail Planning Guidelines including Joint Retail Strategies where applicable’.

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 objectives and policies to deliver an overall strategy and (b) the core 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 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 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 (20th December 2021) to work jointly with the County Council on coordinated objectives for retail outlet centres and may vary the plan in due course regarding any policy outcomes from this process, it is necessary that a clear policy objective be included to make provision for same.

Furthermore, the adopted Development Plan zones additional residential land in excess of what is required for Cork City as set out in the Core Strategy. These zonings are located in peripheral and non-sequential locations beyond extensive undeveloped greenfield lands, contrary to national and regional policy objectives promoting compact growth (NPO 3c and RPO 35) and contrary to the requirement that ‘*residential development will be carried out sequentially*’ (RPO 151). The amendments would encourage a pattern of development in particular locations which are inconsistent with national and regional policy objectives promoting compact growth (NPO 3c and RPO 35) and which fails to follow section 6.2.3 of the *Development Plans, Guidelines for Planning Authorities* (2022) issued under section 28 of the Act regarding the sequential approach. 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 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 follow the requirement under section 4.4 of the *Development Plans, Guidelines for Planning Authorities* (2022) to ensure enough land is zoned and to avoid zoning too much land.

In addition, the Development Plan fails to provide for the facilitation of services for the community, in particular schools in accordance with section 10(2)(l) and section 10(1) of the Act to set out an overall strategy for the proper planning and sustainable development.

Also, to note, the SEA Environmental Report on the MAs states that MAs 2.26, 2.60, 2.61, 2.62, 2.69, 2.78 and 2.99 “*would not provide the most evidence-based framework for development and have the potential to undermine sustainable development and proper planning. As a result they would present additional, unnecessary and potentially significant adverse effects on various environmental components, including soil, water, biodiversity, the landscape, air and climatic factors and material assets. Land use zoning proposed is considered to be premature under various alterations in the context of current population targets. Potentially significant adverse unnecessary effects, would be likely to include:*

- *Effects on ecology, ecological connectivity and non-designated habitats and species*
- *Loss of an extent of soil function arising from the replacement of semi-natural land covers with artificial surfaces*
- *Conflict with efforts to maximise sustainable compact growth and sustainable mobility*
- *Occurrence of adverse visual impacts (including erosion of designated Landscape Preservation Zones)*
- *Increased loadings on water bodies*
- *Effects on an aquifers of elevated and high vulnerability*

Where such alterations are further from the centre of urban/suburban areas and are greenfield sites, potentially significant unnecessary adverse effects would be likely to include:



- *Difficulty in providing adequate and appropriate waste water treatment as a result of zoning outside of established built development envelopes of established built development envelopes*
- *Adverse impacts upon the economic viability of providing for public assets and infrastructure*
- *Adverse impacts upon carbon emission reduction targets in line with local, national and European environmental objectives*
- *Conflicts between transport emissions, including those from cars, and air quality*
- *Conflicts between increased frequency of noise emissions and protection of sensitive receptors*
- *Potential effects on human health as a result of potential interactions with environmental vectors*

Taking into account the above, there is a need to reject these amendments in their current state in order to ensure proper planning and sustainable development.

Furthermore, Amendment 2.99 were found to potentially conflict with proper flood risk management and not comply with the Flood Risk Management Guidelines; there would be potential risk to environmental components including human health and material assets. As a result, there is a need to reject these amendments in their current state in order to comply with the Flood Risk Management Guidelines”.

The mitigation measure provided for the above material alterations was *“to reject these amendments in their current state in order to provide the most evidence-based framework for development and ensure sustainable development and proper planning”.*

In making the Development Plan with the subject amendments, 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 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.

Measures to be taken - Draft Direction

Accordingly, having considered the recommendation of the Office, I am issuing a draft Direction pursuant to Section 31 of the Planning and Development Act 2000 (as amended), to direct Cork City Council with regard to the Cork City Development Plan 2022 – 2028.

The Draft Direction sets out the following steps for the Planning Authority to take:

- a. Insert the following objective in Chapter 7 of the Plan:
To complete the preparation of a Joint Retail Strategy with Cork County 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 City Development Plan by way of a variation.
- b. Reinstate the following zoning objectives to that of the draft Plan:
 - (i) MA no. 2.62 i.e. the subject land reverts to ZO 18 Landscape Preservation Zones from ZO 2 New Residential Neighbourhoods.
 - (ii) MA no. 2.60 i.e. the subject land reverts to ZO 21 City Hinterland from ZO 2 New Residential Neighbourhoods.
 - (iii) MA no. 2.78 i.e. the subject land reverts to ZO 21 City Hinterland from ZO 2 New Residential Neighbourhoods.
 - (iv) MA no. 2.61 i.e. the subject land reverts to ZO 21 City Hinterland from ZO 2 New Residential Neighbourhoods except in respect of the lands to be developed for housing under Cork City Council planning reference 2140600.
 - (v) MA no. 2.69 i.e. the subject land reverts to ZO 21 City Hinterland from ZO 2 New Residential Neighbourhoods.
 - (vi) MA no. 2.99 with respect of “Ringwood” (south of M20) i.e. the remaining residential land reverts from ZO 2 New Residential Neighbourhoods to ZO 21 City Hinterland and Longer Term Strategic Development Lands.



(vii) MA no. 2.26 i.e. the subject land reverts to ZO 13 Education from ZO 5 Mixed Use Development.

- c. Delete ZO 02 New Residential Neighbourhood zoning in Carrigrohane.

Please note that in accordance with Section 31(4)(c) and Section 31(6) of the Act, those parts of the Cork City Development Plan 2022 – 2028 referred to in this notice shall be taken not to have not come into effect, been made or amended.

Next Steps - Procedural Requirements

I wish to draw your attention to the public consultation obligations under Section 31 of the Act, and the initial requirement as Chief Executive under Section 31(7) to publish notice of the draft Direction no later than 2 weeks after receipt of this notice, stating that the draft direction may be inspected as specified in the notice, for a period of not more than 2 weeks.

The notice must also state that written submissions or observations in respect of the draft direction may be made to the planning authority during the consultation period.

Also in line with statutory requirements, a Chief Executive's report is to be prepared on the public consultation period under Section 31(8), and must be furnished to the Office, the elected members and myself as Minister, no later than 4 weeks after the public consultation process is completed, for further consideration.

In accordance with Section 31(9) of the Act, the report of the Chief Executive must;

- a) summarise the views of any person who made submissions or observations to the planning authority;
- b) summarise the views of and recommendations (if any) made by the elected members of the planning authority;
- c) summarise the views of and recommendations (if any) made by the regional assembly, and
- d) make recommendations in relation to the best manner in which to give effect to the draft direction.

In addition, the elected members of the planning authority may make a submission to the Office of the Planning Regulator at any time up to the conclusion of the 2 week public



consultation period referred to above and may also copy any such submissions to me, as Minister.

The Office will then consider the Chief Executive's report together with any submissions made and will make a further recommendation to me, as Minister, regarding whether the Direction is to be issued with or without minor amendments. Where I am in agreement with the further recommendation, I may issue the final direction.

Where the Office is of the opinion that a material amendment to the Draft Direction is required, or further investigation is necessary, or it is necessary for another reason, then the Office may appoint an inspector no later than 3 weeks after receipt of the Chief Executive's report, prior to making a final recommendation to me.

My officials are available to assist you, as necessary, in complying with the foregoing process now underway. Should you have any queries please contact Laura Courtney, Planning Adviser at Laura.Courtney@housing.gov.ie.

Yours sincerely,

Peter Burke
Peter Burke, T.D.,
Minister of State for Local Government and Planning

Copied to:

- Cathaoirleach, Cork City Council, City Hall, Anglesea Street, Cork, T12 T997
- Mr. David Kelly, Director, Southern Regional Assembly, Assembly House, Waterford, X91 F8PC
- Office of the Planning Regulator, Fourth Floor (West Wing) Park House, Grangegorman, 191-193A North Circular Road, Dublin 7, D07 EWW4.

DRAFT DIRECTION IN THE MATTER OF SECTION 31

OF THE PLANNING AND DEVELOPMENT ACT 2000 (as amended)

Cork City Development Plan 2022-2028

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

“Planning Authority” means Cork City Council

The matter of requiring Cork City Council and Cork County Council to coordinate on a joint retail strategy, pursuant to section 9(7) of the Act was the subject of a recent High Court judgment (reference 2021 No. 631 JR), issued on 27th May. Consequently, it does not form part of the forming of my Opinion or the Statement of Reasons set out in this draft Direction or the accompanying notice letter.

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, Local Government and Heritage (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 City 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. Insert the following objective in Chapter 7 of the Plan:

To complete the preparation of a Joint Retail Strategy with Cork County 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 City Development Plan by way of a variation.

b. Reinstate the following zoning objectives to that of the draft Plan:

(i) MA no. 2.62 i.e. the subject land reverts to ZO 18 Landscape Preservation Zones from ZO 2 New Residential Neighbourhoods.

(ii) MA no. 2.60 i.e. the subject land reverts to ZO 21 City Hinterland from ZO 2 New Residential Neighbourhoods.

(iii) MA no. 2.78 i.e. the subject land reverts to ZO 21 City Hinterland from ZO 2 New Residential Neighbourhoods.

(iv) MA no. 2.61 i.e. the subject land reverts to ZO 21 City Hinterland from ZO 2 New Residential Neighbourhoods except in respect of the lands to be developed for housing under Cork City Council planning reference 2140600.

(v) MA no. 2.69 i.e. the subject land reverts to ZO 21 City Hinterland from ZO 2 New Residential Neighbourhoods.

- (vi) MA no. 2.99 with respect of “Ringwood” (south of M20) i.e. the remaining residential land reverts from ZO 2 New Residential Neighbourhoods to ZO 21 City Hinterland & Longer Term Strategic Development Lands.
 - (vii) MA no. 2.26 i.e. the subject land reverts to ZO 13 Education from ZO 5 Mixed Use Development.
- c. Delete ZO 02 New Residential Neighbourhood zoning in Carrigrohane

STATEMENT OF REASONS

I. Pursuant to section 31(1)(b), section 31(1)(ba)(i) and section 31(1)(c)

The Cork City Development Plan 2022-2028 as made fails to implement policy objectives of the Southern Regional Spatial and Economic Strategy, specifically RPO 55c which states that it is an objective to *“Prepare Retail Strategies in accordance with the Retail Planning Guidelines including Joint Retail Strategies where applicable”*, and the Cork MASP Policy Objective 16, and as such 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 City Development Plan must be informed by a Joint Retail Strategy prepared with Cork County Council.

The Development Plan as made has not been informed by an up to date Joint Retail Strategy. It contains specific policy and objectives 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.

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*”.

II. Pursuant to section 31(1)(b) and section 31(1)(ba)(i) and section 31(1)(c)

The Development Plan as made includes material amendments to the draft Plan (contrary to the evaluation of the Strategic Environmental Assessment), and which individually and cumulatively are not consistent with the 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 peripheral locations remote from the existing settlement, inconsistent with the requirements for compact growth in NPO 3c, RPO 35 and RPO 151, and fails to have regard to the sequential approach to development in 6.2.3 of *Development Plans Guidelines for Planning Authorities (2022)*.
- b) Land zoned for residential development in excess of that needed to meet the Core Strategy housing supply targets for Cork City in the adopted Plan, and which would further undermine the achievement of the brownfield development targets in the Core Strategy Table.
- c) Land zoned for residential development are in a flood risk area. This is inconsistent with NPO 57 and Section 28 *The Planning System and Flood Risk Management, Guidelines for Planning Authorities (2009)*.

The development plan as made therefore fails to set out an overall strategy for the proper planning and sustainable development of the area.

III. Pursuant to section 31(1)(ba)(i)

The Development Plan as made includes a material amendment (contrary to the evaluation of the Strategic Environmental Assessment), to change an Education zoned site to Mixed Use in the Cork Docklands, an area designated as a key enabler for Cork City, inconsistent with NSO 10 and NPO 31 which promote strategic planning of and investment in the provision of education to reinforce the delivery of sustainable communities and; the provisions of RPO 185 to support a planned approach to location of school facilities such that both proposed locations and existing schools are accessible by public transport and active travel modes, and

IV. Pursuant to section 31(1)(a)(i)(II)

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.

GIVEN under my hand,

Minister for State for Local Government and Planning

day of Month, year.