



28th July 2022

For the Attention of: Mr Pat Daly, Chief Executive

Limerick City and County Council,
Merchants Quay,
Limerick City
County Limerick

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

Dear Pat,

Consequent to a recommendation made to me as Minister by the Office of the Planning Regulator (the Office) on 14th July 2022 in connection with the Limerick Development Plan 2022 – 2028, as adopted by the elected members of Limerick City and County Council on 17th 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 Limerick City and County Council to take certain measures specified in this notice.

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) Limerick City and County Council has failed to implement recommendations made to it, as planning authority, by the Office under section 31AM of the Act;
- (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 inconsistent with national and regional policy objectives specified in the National Planning Framework (NPF).
- (iv) The Plan, as made, is inconsistent with Ministerial Guidelines issued under Section 28 of the Act to which s. 28(1A)(b) applies; and
- (v) 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 in the Summary of Issues as set out below.

PROCESS TO DATE

The draft Limerick Development Plan 2022 – 2028 (the draft Plan) was on public display from 26th June 2021 until 6th September 2021. The Office made a submission on the draft Plan containing seventeen (17) recommendations and seven (7) observations (6th September 2021).

The elected members, having considered the draft Plan and the Chief Executive (CE) Report on submissions received, resolved to amend the draft Limerick Development Plan 2022-2028 on 18th



February 2022. The material alterations to the draft Plan were on public display from 12th March 2022 to 11th April 2022.

The Office made a submission on 11th April 2021 to the material alterations to the draft Plan containing four (4) recommendations and one (1) observation. The recommendations of the Office at Material Alterations stage included:

- MA Recommendation 2 – Data Centre: Zoning at Ballysimon House, Commons Road, Ballysimon for data centre. This recommendation required the planning authority to make the plan without MA no. 149 which zoned lands at Ballysimon House for a data centre.
- MA Recommendation 4 – Flood Risk Management: Additional zoned lands that are identified as being within a flood zone at Ballykeefe; Clonmacken; Pa Healy Road; former Green Park Racecourse; Dooradoyle; Caherdavin, Castletroy, and Ballykeefe Mungret.

It is noted, that you, as CE, acknowledged that development beyond the boundary would not be sequential with the city first approach and recommended to accept the recommendation of the Office and to make the plan without MA no. 149. The elected members voted to make the Development Plan contrary to the recommendation of the CE Report.

I also note that you recommended to make the Development Plan without the following proposed material alterations:

- MA no. 142, MA no. 143, MA no. 145, MA no. 146, MA no. 147, MA no. 148, MA no. 150 and MA no. 153.

The elected members rejected the CE Recommendation for the following:

- MA no 142, MA no 145, MA no 146, MA no 147, MA no 148.



The elected members of Limerick City and County Council resolved to make the Limerick Development Plan 2022 – 2028 at a council meeting on 17th June 2022.

Subsequently, you issued a notice letter under Section 31(AM)(6) of the Act dated 23rd June 2022 to the Office advising of the making of the Development Plan, specifying the recommendations of the Office not complied with.

SUMMARY OF RECOMMENDATIONS FROM THE OFFICE - Section 31AM(8) Notice

On 15th July 2022, in accordance to section 31AM(8), the Office notified the Minister for Local Government and Planning that the Limerick Development Plan 2022-28 had not been made in a manner consistent with the recommendations of the Office, which required specific changes to the Development Plan to ensure consistency with the NPO 53, NPO 57 and NPO 62 of the National Planning Framework (NPF), and with Ministerial Guidelines issued under Section 28 of the Act, *The Planning System and Flood Risk Management, Guidelines for Planning Authorities (2009)* and *Spatial Planning and National Roads Guidelines for Planning Authorities (2012)*.

As a consequence of the above, it is the opinion of the Office that the Development Plan, as made by Limerick City and County Council, fails to set out an overall strategy for the proper planning and sustainable development of the area concerned, which is a breach of the requirements of the Act.

MA Recommendation 2 – Data Centre (MA no.149)

Delete the Data Centre zoning objective on lands consisting of 33 hectares at Ballysimon

The Development Plan includes an area of 33 hectares zoned for a data centre at Ballysimon, which is located in a peripheral, isolated location, well beyond the Limerick City and Environs Plan boundary and CSO boundary.



The consideration by the Office of the reasons given by the CE and elected members stated that:

“The lack of an evidence based rationale being set out in support of the requirement for the subject zoning objective at this location extending to 33 hectares in an isolated location beyond the boundary of the city and environs area is not consistent with both the National Planning Framework National Strategic Outcome 1 (NSO 1) in relation to securing compact growth and both National Policy Objective 53 that supports greater efficiency in land management by the rate of land use change; and National Policy Objective 62 that seeks to strengthen the value of greenbelts to allow for the long term strategic expansion of urban areas, and demonstrates an absence of regard for the section 28 Ministerial Guidelines ‘Development Plans, Guidelines for Planning Authorities’ (2022).” Also, section 2.7 of the section 28 Ministerial Guidelines ‘Spatial Planning and National Roads Guidelines for Planning Authorities’ (2012) states that “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”.

In relation to the reasons given by the elected members there is no evidence to demonstrate that an assessment of the zoning of the lands above has been carried out to determine whether such development could generate significant additional traffic with potential to impact on the N24, which demonstrates a failure to have regard to section 2.7 of the 2012 Guidelines.

The reasons given do not, therefore, address the substantive issue in the recommendation that the Plan be made without zoning amendment MA no 149 due to the isolated and peripheral location of the land, the inconsistency with National Strategic Outcome NSO 1 compact growth, National Policy Objective 52 that supports greater efficiency in land management by the rate of land use change and National Policy Objective 62 that seeks to strengthen the value of greenbelts to allow for the long



term strategic expansion of urban areas. Further, the development of these lands is inconsistent with the implementation of objectives for sustainable settlement and transport strategies under section 10(2)(n) of the Act.

MA Recommendation 4 – Flood Risk Management (MAs nos.142, 145, 146, 147 and 148)

This recommendation required the planning authority to make the plan without several material amendments relating to lands zoned in areas identified as being at risk of flooding.

Reinstate the zoning objective to that of the draft Plan: MA no. 142 Ballykeefe i.e. the subject land reverts to Agriculture from Enterprise and Employment

MA no. 142 relates to four plots of land with a combined area of 25 hectares. The SFRA identifies that these lands are located in Flood Zone A.

The land use zoning objective of the Plan for lands zoned as ‘Enterprise and Employment’ provide that ‘less vulnerable development’ is open for consideration. As per Table 3.2 of the Flood Guidelines, the Plan Making Justification Test is required to be satisfied.

Reinstate the zoning objective to that of the draft Plan: MA no. 145 Pa Healy Road i.e. the subject land reverts to Community and Education from Mixed Use.

The SFRA identifies that these lands are located in Flood Zone A and B. The SFRA Plan Making Justification Test, which was reviewed following the motion being passed to zone the site mixed use and the submission of an FRA, concludes that the site be zoned for Community and Education.

Reinstate the zoning objective to that of the draft Plan: MA no. 146 Pa Healy Road i.e. the subject land reverts to Enterprise and Employment from Mixed Use.

MA no. 146 relates to a land parcel located between Pa Healy Road and a new post primary gaelscoil. The SFRA submitted with the draft Plan identifies that the lands are located within



Flood Zone A and B. There is no Flood Risk Assessment or Plan-Making Justification Test included for these lands.

Reinstate the zoning objective to that of the draft Plan: MA no. 147 former Green Park Racecourse i.e. the subject land reverts to Enterprise and Employment/Open Space and Recreation from New Residential except in respect of the lands to be developed for housing under ABP SHD reference 311588.

MA no. 147 relates to lands at the former Limerick Racecourse located to the south west of Limerick city centre. The SFRA prepared by the planning authority to inform the preparation of the development plan has identified much of these lands as being susceptible to flooding and located in Flood Zones A and B with some portion of the lands adjoining residential areas to the southwest in Flood Zone C. As required by Part 4 of the Flood Guidelines the zoning of lands where there are risks of flooding is required to pass all of the criteria of Justification Test.

Reinstate the zoning objective to that of the draft Plan: MA no. 148 lands adjacent to the Crescent Shopping Centre i.e. the subject land reverts to Semi Natural Open Space from Enterprise and Employment.

MA no.148 relates to undeveloped lands adjacent to the Crescent District Centre in the southern environs area of the Limerick City and Environs Plan boundary. The SFRA identifies these lands as being located in Flood Zone A and B, i.e. of high to moderate risk of flooding. The SFRA, prepared independently for the planning authority, concluded that the lands are not essential to facilitate regeneration and that suitable land is available for the development type envisaged elsewhere in areas outside of any flood risk. In particular, the SFRA concluded that:

“the lands within Flood Zone A and B should be retained for water compatible uses as Parts 2 and 3 of the Justification Test have not been passed. Pending the completion of the flood relief scheme the zoning of these lands are considered premature. However the Local Authority acknowledge that on completion of the flood relief scheme the potential for



development of the lands can be re-appraised on foot of an appropriately detailed site specific flood risk assessment”.

REASONS

On review of the recommendation issued by the Office, corresponding documents and analysis, I, as Minister, consider that the recommendation of the Office to issue an intent to direct on the Limerick Development Plan 2022-2028 is justified on the basis that the plan as made:

- Is not in compliance with the provisions of the Act including s. 10(1), s. 12(18) and s. 28(1A).
- Is inconsistent with the National Planning Framework including National Strategic Outcome 1 – Compact Growth; National Policy Objective 53 – support the circular and bio economy through greater efficiency in land management, National Policy Objective 57 - Enhance water quality and resource management and National Policy Objective 62 - Identify and strengthen the value of greenbelts and green spaces at a regional and city scale.
- Is inconsistent with Ministerial Guidelines issued under Section 28 of the Act, specifically:
 - the Development Plan Guidelines for Planning Authorities (2007) and the Development Plans, Guidelines for Planning Authorities – Draft for Consultation (August, 2021);
 - the Planning System and Flood Risk Management Guidelines for Planning Authorities (2009), and
 - the Spatial Planning and National Roads, Guidelines for Planning Authorities (2012).

The Plan has not, therefore been made in a manner consistent with the recommendations of the Office and fails to set out an overall strategy for the proper planning and sustainable development of the area. It is considered that the Office of the Planning Regulator sets out a valid rationale for



its recommendation to me, as Minister, to exercise my function under section 31 of the Planning and Development Act.

DRAFT DIRECTION – Measures to be taken

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 Limerick City and County Council with regard to the Limerick Development Plan 2022 – 2028.

The Planning Authority is hereby directed to take the following steps within the Development Plan as set out in the draft direction to the planning authority accompanying this notice:

- (a) Reinstate the following zoning objectives to that of the draft Plan:
 - (i) MA no. 142 i.e. the subject land reverts to Agriculture from Enterprise and Employment.
 - (ii) MA no. 145 i.e. the subject land reverts to Community and Education from Mixed Use.
 - (iii) MA no. 146 i.e. the subject land reverts to Enterprise and Employment from Mixed Use.
 - (iv) MA no. 147 i.e. the subject land reverts to Enterprise and Employment/Open Space and Recreation from New Residential except in respect of the lands to be developed for housing under ABP SHD reference 311588.
 - (v) MA no. 148 i.e. the subject land reverts to Semi Natural Open Space from Enterprise and Employment.
- (b) Delete the Data Centre zoning objective on lands consisting of 33 hectares at Ballysimon.



Please note that in accordance with Section 31(4) of the Planning and Development Act 2000, those parts of the Limerick Development Plan 2022 – 2028 Plan referred to in this notice shall be taken not to have 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 Planning and Development Act 2000 (as amended), 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.

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 must also send 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, or not issued. 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, T.D.,

Minister for Local Government and Planning

Copied to:

- Cathaoirleach, Limerick City and County Council, Merchants Quay, Limerick



- Mr. David Kelly, Director, Southern Regional Assembly, Assembly House, O'Connell Street, 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)

Limerick Development Plan 2022 – 2028

“Development Plan” means the Limerick Development Plan 2022 – 2028

“Planning Authority” means Limerick City and 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 at the Department of Housing, Local Government and Heritage pursuant to the Housing, Local Government and Heritage (Delegation of Ministerial Functions) 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 (Limerick 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) Reinstate the following zoning objectives to that of the draft Plan:
 - (i) MA no. 142 i.e. the subject land reverts to Agriculture from Enterprise and Employment.

- (ii) MA no. 145 i.e. the subject land reverts to Community and Education from Mixed Use.
 - (iii) MA no. 146 i.e. the subject land reverts to Enterprise and Employment from Mixed Use.
 - (iv) MA no. 147 i.e. the subject land reverts to Enterprise and Employment/Open Space and Recreation from New Residential except in respect of the lands to be developed for housing under ABP SHD reference 311588.
 - (v) MA no. 148 i.e. the subject land reverts to Semi Natural Open Space from Enterprise and Employment.
- (b) Delete the Data Centre zoning objective on lands consisting of 33 hectares at Ballysimon.

STATEMENT OF REASONS

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

The Development Plan as made includes lands zoned for data centre development located in a non-sequential and peripheral location outside the boundary of the plan for Limerick City that is inconsistent with National Planning Framework National Strategic Outcome 1, National Policy Objective 53, National Policy Objective 62 in relation to securing compact and sustainable patterns of development.

No or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why lands have been zoned in such a way and how this approach (involving a failure to zone lands having regard to the relevant Guidelines) is consistent with an overall strategy for the proper and sustainable development of the area.

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

The Development Plan as made includes significant lands zoned in a manner that is inconsistent with National Planning Framework National Policy Objective 57, which seeks to avoid inappropriate development in areas at risk of flooding having regard

to Ministerial Guidelines issued under Section 28 of the Act, *The Planning System and Flood Risk Management, Guidelines for Planning Authorities* (2009) ("the Flood Guidelines"). Significant lands have been zoned in the plan as made without passing the provisions of the sequential approach and plan-making Justification Test detailed in the Flood Guidelines.

No or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why the lands have been zoned in such a way and how this approach is consistent with an overall strategy for the proper planning and sustainable development of the area.

Further, the statement under Section 28(1A)(b) attached to the Development Plan as made:

- (a) 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) and (II), above, as contained in the Guidelines, because of the nature and characteristics of the area or part of the area and to give reasons for the forming of that opinion and to explain why it is not possible to implement the policies and objectives, contrary to Section 28(1B)(b); and
- (b) fails to provide any or any adequate explanation, consistent with the requirement to deliver an overall strategy for the proper planning and sustainable development of the area, as to why the Development Plan provides for zoning of lands in a way that does not have regard to the policies and objectives set out in *The Planning System and Flood Risk Management Guidelines for Planning Authorities*, the *Development Plans Guidelines for Planning Authorities* and *Spatial Planning and National Roads Guidelines for Planning Authorities*.

III. Pursuant to section 31(1)(a)(i)(II) and section 31(1)(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.

IV. Pursuant to section 31(1)(b)

In light of the matters set out at I to III, above, the Minister is of the opinion that the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.

V. Pursuant to section 31(1)(c)

In light of the matters set out at I to IV, above, the Development Plan is not in compliance with the requirements of the Act.

GIVEN under my hand,

Minister for Local Government and Planning
day of Month, year.