



17th August 2022

Mr Peter Burke TD

Minister for Housing, Local Government and Heritage
Department of Housing, Local Government and Heritage
Custom House
Dublin 1
D01 W6X0

**Re: Notice pursuant to section 31AN(4) of the Planning and Development Act
2000 (as amended) –Cork County Development Plan 2022-2028**

A chara,

I am writing to you pursuant to section 31AN(4) of the *Planning and Development Act 2000* (as amended) (the "Act") in the context of the Cork County Development Plan 2022-2028 (the "Plan"). In particular, I write arising from the consideration by this Office of the following:

- a) the Notice of Intent to issue a Direction issued to Cork County Council (the "Council") by your office on 3rd June 2022, and
- b) the report of the Chief Executive of the Council dated 27th July 2022 on the submissions and observations received by the Council (the "Report").

I refer also to the submissions made directly by elected members of the Council (Councillors Anthony Barry, Alan O'Connor, Frank O' Flynn, Patrick Gerard Murphy, Joe Carroll, Kay Dawson, and Danny Collins Mayor of County Cork on behalf of the Members) to this Office and considered by this Office pursuant to section 31(10)(a) of the Act. These submissions were also submitted to the Chief Executive and were summarised by him in the report referred to, above. This Office has carefully taken into consideration the Report and each of the submissions made directly to this Office.

Draft Direction

You will note that the Report prepared in accordance with section 31(8) of the Act does not make a recommendation on the best manner in which to give effect to the draft Direction as required under section 31(9)(d) of the Act and ultimately concludes that the Minister ought not issue a direction under section 31 of the Act in respect of any matter contained in the draft Direction of 3rd June 2022.

Rather in purported compliance with section 31(9)(d) the Chief Executive recommends that the best manner in which to give effect to each of the matters specified in the draft Direction is to confine consideration to the following:

- Whether the legislative provisions as regard the making of the Cork County Development Plan 2022-2028, as set out in the Act, have been properly discharged. The Report refers the Office and Minister to the High Court judgement on the Section 31 Direction in the matter of Variation No.2 of the Cork County Development Plan 2014 and the subsequent judgement in the Court of Appeal; and the High Court judgement in the matter of section 9(7). In particular:

that the Office and the Minister give significant consideration to the Judgements of the Courts and provide clear explanation as to how the approach of the Council to the making of the policy contained in the draft Direction differs to the policy formation process undertaken as regards all other aspects of making of the Cork County Development Plan 2022-2028.

- Whether the manner in which the Cork County Development Plan 2022-2028 was made reflects the constitutional role of Local Government.
- Whether the manner in which the Cork County Development Plan 2022-2028 was made reflects the responsibilities and obligations for such matters set out in the *Local Government Act 2001*.

The Office has carefully considered the matters raised in the Chief Executive's Report including the lengthy references to recent caselaw.

The Office now recommends, pursuant to section 31AN(4)(a) of the Act that you

issue the attached Direction, with minor amendments to the draft direction as identified in red in the attached document.

The Office notes that the Minister added the following wording at the outset of the draft Direction:

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 judgement (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 of the accompanying notice letter.

The Office agrees with the Minister's statement and confirms that the Section 9(7) Direction is not relied upon by the Office in making this recommendation.

Having reviewed the Chief Executive's Report it appears that the position in the draft Direction has been misunderstood in respect of the planning authority's obligations in relation to section 28 guidelines. The Office recommends minor modifications to the draft Direction to make clearer that it is not a failure to follow, or an inconsistency with section 28 guidelines per se that falls foul of the legal requirements. What is crucial is that there has been no or no adequate reasons provided for the failure to implement the guidelines insofar as concerns the joint retail strategy, whether generally or in accordance with the express statutory obligations under section 28(1B)(b) and/or 10(2A)(e). The Office has identified those minor amendments in red in the attached proposed Direction.

In forming this recommendation, this Office reiterates the submissions made to you in the Notice, which issued from this Office to your office on 20th May 2022 pursuant to section 31AM(8) of the Act, but notes the clarification in respect of the Minister's Section 9(7) Direction above and does not rely on same.

The public consultation on the draft Direction took place between 17th June and 1st July 2022. The Report summarised the views of members of the public who made submissions to the planning authority under section 31(7)(c), the views and recommendations made by the elected members of the planning authority, and the views and recommendations of the Southern Regional Assembly (SRA).

You might please note the following in respect of the submissions and observations received in respect of the draft Direction:

- A total of 51 submissions were received by the Chief Executive during the display period, including 40 from the public, eight from elected members, the SRA and two prescribed authorities.
- The submissions to the Office from seven elected members under section 31(10)(a) of the Act, including the submission from the Mayor on behalf of the elected members which arose out of the Special Planning Meeting of 20th June 2022 were as follows:
 - Part 2(a) Joint Retail Strategy – one submission (Mayor’s submission) was received against the draft Direction and no submissions were received in favour of the draft Direction;
 - Part 2(b) Retail Outlet – one submission (Mayor’s submission) was received against the draft Direction and one submission was received in favour of the draft Direction;
 - Part 2(c) land use zoning in Bantry - two submissions (including the Mayor’s submission) were received against the draft Direction and no submissions were received in favour of the draft Direction;
 - Part 2(d) residential density in Carrigtwohill - two submissions (including the Mayor’s submission) were received against the draft Direction and one submission was received in favour of the draft Direction; and
 - Part 2(e) land use zoning in the vicinity of the M8 Junction 15 (Fermoy south) – four submissions (including the Mayor’s submission) were received against the draft Direction and no submissions were received in favour of the draft Direction.
- All seven of the above submissions were also made to the Council. As set out in the Report, the submissions from one elected member who did not make a direct submission to the Office, and 40 from members of the public were as follows:

- Part 2(a) Joint Retail Strategy - one submission was received in favour of the draft Direction and two against;
 - Part 2(b) Retail Outlet - two submissions were received in favour of the draft Direction and five against;
 - Part 2(c) land use zoning in Bantry - one submission was received in favour of the draft Direction and two against;
 - Part 2(d) residential density in Carrigtwohill - one submission was received in favour of the draft Direction and 18 against;
 - Part 2(e) land use zoning in the vicinity of the M8 Junction 15 (Fermoy south) - one submissions was received in favour of the draft Direction and 14 against;
 - Five submissions were made on miscellaneous issues that did not relate to the matters of the draft Direction, one of these was a repeat submission.
- As set out in the Report, the submission received from the SRA in respect of Part 2(a) and 2(b), requests that RPO 55 / CMASP PO 16 are taken into consideration in the Direction and Point (III) of the Statement of Reasons and RPO 35 / RPO 151 are taken into consideration in the Direction and Point (IV) of the Statement of Reasons.
 - As set out in the report, the submission received from Transport Infrastructure Ireland (TII) supports Part 2(a) the joint retail strategy, Part 2(b) retail outlet centres, and Part 2(e) industrial zoning in the vicinity of the M8 Junction 15 (Fermoy south).
 - As set out in the Report, the submission received from the National Transport Authority (NTA) supports Part 2(a), Part 2(b), and Part 2(d) of the draft Direction.
 - In relation to views and recommendations given by elected members and the views of members of the public in submissions made under section 31(7)(c), and summarised under section 31(9), subsection (a) and (b) of the Act, the

Office notes that many of the views and recommendations relating to Part 2(a) and Part 2(b) relate to the detailed legal issues arising out of the High Court judgement of Humphreys J in *Cork County Council v Minister for Housing* [2021] IEHC 683; and

- In relation to views and recommendations given by elected members, and views of members of the public under section 31(7)(c) of the Act, and summarised under section 31(9), subsection (a) and (b) of the Act, the Office notes that views and recommendations relating to Part 2(b) the Retail Outlet Centre opposed to the draft Direction were similar to the reasons given by elected members for the decision to not comply with the recommendation of the Office when adopting the Plan and were detailed in the section 31AM(6) notice received from the planning authority. Additional views include the following: the creation of additional amenities in the area; job promotion; and the existence of infrastructure already in place to support the development. The views relating to Part 2(b) in support of the draft Direction relate to the viability of the development with regard to the impact on the town centre and existing vacancy rates, the road network capacity and the over reliance on the private car. In relation to the submission from the SRA under section 31(7)(c) of the Act, summarised under section 31(9)(c) of the Act the Office notes that the views relate to consistency with the RSES RPO 55 Retail and Cork MASP objective 16.
- In relation to views and recommendations given by elected members, and the views of members of the public under section 31(7)(c) of the Act and summarised under section 31(9), subsection (a) and (b), the Office notes that views relating to Part 2(c) land use zoning in Bantry relate to constraints on lands zoned residential, the under-delivery of housing, consistency with the core strategy and national/regional policy, consistency with compact growth and sequential approach and the tier 2 (serviceable) status. In relation to the submission from the SRA under section 31(7)(c) of the Act and summarised under section 31(9)(c), the Office notes that the views relate to consistency with the RSES RPO 35 Compact Growth and RPO 151 Integration of Land Use and Transport.

- In relation to views and recommendations given by elected members, and the views of members of the public under section 31(7)(c) of the Act and summarised under section 31(9), subsection (a) and (b), the Office notes that views relating to Part 2(d) residential density Carrigtwohill, which largely repeat those made in the section 31AM(6) notice, relate to social mix and issues, overdevelopment, transport infrastructure not available, impact on amenities, flood risk, failure to have regard to exceptions to density requirements under the guidelines, and the non-binding nature of the Office's recommendations. In relation to the submission from the NTA under 31(7)(c) and the Act and summarised under section 31(9)(a) of the Act, the views given in support of the draft Direction relate to the need to align land use and transport planning to promote consolidation in line with good access to public transport.
- In relation to views and recommendations given by elected members, and views of members of the public under section 31(7)(c) of the Act and summarised under section 31(9), subsection (a) and (b), the Office notes that views relating to Part 2(e) industrial zoning in the vicinity of the M8 Junction 15 (Fermoy south) relate to the need to support the expansion of the existing businesses in the area on strategic, well-connected and serviced lands with no traffic issues, the need to facilitate relocation from town centre, and the presence of similar land uses. In relation to the submission from Transport Infrastructure Ireland under section 31(7)(c) of the Act and summarised under section 31(9)(a) the views given in support of the draft Direction relate to the *Spatial Planning and National Roads Guidelines for Planning Authorities (2012)* (*Spatial Planning and National Roads Guidelines*) and the need to support and protect the steady-state maintenance and safety of the National Roads network.
- As set out in the section 31AM(8) notice to your office, the views and recommendations were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act and the Office adopts the same rationale as set out in

the 31AM(8) notice in respect of those similar points raised again by the elected members and members of the public.

Part 2(a)

You will note that the Report prepared in accordance with section 31(8) does not make a recommendation on the best manner in which to give effect to, inter alia, Part 2(c) of the draft Direction, contrary to the requirements of section 31(9). Specifically, the Chief Executive recommended

that the best manner in which to give effect to the draft Direction in each of the policy matters contained therein is to confine consideration as to whether:

- *The legislative provisions as regard the making of the Cork County Development Plan 2022-2028 as set out in the Planning and Development Act 2000, as amended have been properly discharged. In this regard the Chief Executive would refer the Office and Minister to the High Court Judgements in the Case of Section 31 Direction in the matter of Variation No.2 of the Cork County Development Plan 2014 and subsequent Judgement in the Court of Appeal; and the High Court Judgement in the mater of section 9(7);*
- *The manner in which the Cork County Development Plan 2022-2028 was made reflects the Constitutional role of Local Government*
- *The manner in which the Cork County Development Plan 2022-2028 reflects the responsibilities and obligations for such matters set out in the Local Government Act 2001.*

The Chief Executive also recommends:

that the Office and the Minister give significant consideration to the Judgements of the Courts and provide clear explanation as to how the approach of the Council to the making of the policy contained in the draft Direction differs to the policy formation process undertaken as regards all other aspects of making of the Cork County Development Plan 2022-2028. It is my view that a detailed explanation of same will be critical to providing the transparency and consistency necessary to safeguard the integrity of the Plan-making process; a

lengthy detailed process that involves community and stakeholder consultation throughout. Moreover, having given significant considerations to the matters outlined [in section 3 of the CE report] including the flawed process to date, I am of the view that the Minister ought not issue a direction under section 31 of the Planning and Development Act 2000 as amended, in respect of any matter contained in the Draft Direction of 3rd June 2022.

The Office notes that a number of the views in the submissions against the direction were similar to the reasons given by the elected members for the decision to not comply with the recommendations of the Office when adopting the Plan, and were detailed in the section 31AM(6) notice (in which Recommendation 9 and MA Recommendation 6 were addressed together) received from the planning authority, including:

- Having regard to the judgement of the High Court on the judicial review of the direction on Variation No. 2 of the Cork County Development Plan 2014, Recommendation 9 on the draft Plan, was premised on a misunderstanding of the *Retail Planning Guidelines for Planning Authorities (2012)* (*Retail Planning Guidelines*) that a Joint Retail Strategy was “required” when the legal status of the guidelines is something that the council has to ‘have regard’ to rather than something ‘required’ to be followed.
- 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 Cork County Development Plan 2014.

As set out in the section 31AM(8) notice to your office, the reasons were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act and the Office adopts the same rationale as set out in the 31AM(8) notice in respect of those similar points raised again by elected members.

Additional reasons, and or elaborations of reasons previously given, can be summarised as follows:

- The Office, in carrying out its statutory role, incorrectly applied recommendations at material alteration stage by ‘*requiring*’ rather than

'requesting' the specified action be taken, presenting it as a mandatory requirement and pre-empting role of Minister to issue a direction;

- The Office failed to provide adequate reasons and considerations for its recommendations;
- Planning authority only has to 'have regard' to section 28 guidelines, not comply with them;
- Office took a stringent approach only to some section 28 guidelines;
- Questions whether giving precedence to 10 year old Ministerial retail policy over the recently adopted Plan is consistent with plan-led development – planning authority justified from planning viewpoint not to comply with recommendation;
- That the planning authority decided not to follow incorrect advice of the Office is not sufficient justification for a direction;
- CMASP PO 16 does not require the planning authority to prepare a Joint Retail Strategy within a particular timeframe and supports the 2013 Joint Retail Strategy;
- Item 5(a) of the Opinion claims the plan is inconsistent with RPGs – lack of consistency between the Office and the Minister on the status of the RPGs;
- Part 2(a) would set 12-month binding target for Joint Retail Strategy with no regard to quality;
- The Office recommended a draft Direction before the High Court judgement of 27th May 2022;
- Office in revisiting issues considered by the High Court, and the Minister, in accepting the recommendation of the Office and issuing a draft Direction, ignored the High Court Judgement;
- Elected members believe they put forward strong arguments in favour of the amendments having regard to various guidelines;

- Elected members are satisfied they complied with their legal obligations in making the Plan, having regard to the two High Court judgements;

In relation to the alleged misapplication by the Office of its statutory role in making recommendations, section 31AM(2) provides that in assessing and evaluating a draft Plan, or material alterations to draft Plan, the Office must endeavor to ensure it addresses matters including (c) 'relevant guidelines for planning authorities made under section 28, including the consistency of development plans with any specific planning policy requirements specified therein'. (emphasis added).

Further, section 31AM(3) provides that in making an observation or submission '*the Office shall make ... such recommendations ... as it considers necessary to ensure effective co-ordination of national, regional and local planning requirements by the planning authority in the discharge of its development planning functions*'.

The Office is satisfied that it has carried out its functions in accordance with the above-mentioned provisions of the Act. The Office has considered in detail the recent High Court decisions of Mr Justice Humphreys in relation to the Section 31 Direction and Section 9(7) Direction and the Office does not consider its approach in respect of this matter to be inconsistent with the applicable caselaw and/or legislative framework. The Office has noted above that it is not relying on the Section 9(7) Direction as part of this recommendation.

The Office notes that in respect of a development plan (rather than a variation to a development plan) there is an express duty pursuant to section 28(1B)(b) of the Act (described as an "enhanced duty" by Mr Justice Humphreys in *Cork County Council v Minister & OPR*) to explain why the planning authority has not considered it possible to implement section 28 guidelines. The planning authority is required to append a statement to the development plan which must include information which demonstrates how it has implemented the policies and objectives of the Minister contained in section 28 guidelines when considering their application to the area or part of the area of the development plan (see section 28(1B)(a)). Where the planning authority has formed the opinion that it is not possible, because of the nature and characteristics of the area or part of the area of the development plan, to implement certain policies and objectives of the Minister contained in the guidelines and is required to give reasons for the forming of the opinion and why the policies and

objectives of the Minister have not been so implemented. No or no adequate reasons have been provided by the planning authority in this regard and in the Office's opinion, the planning authority has failed to discharge its duty under section 28(1B)(b) to explain why it has not implemented the relevant guidelines. In the Office's view this demonstrates a failure to have regard to the relevant section 28 guidelines and the Office has in no way misunderstood the legal status of the guidelines or the obligations on the Council in this regard.

In relation to the alleged pre-empting of the role of the Minister to issue a direction by 'requiring' rather than 'requesting' the amendment of the plan, the Office considers it has exercised its functions lawfully and has provided adequate reasons for making recommendations in accordance with its powers under the Act and in light of the legal obligations on the Council in making a development plan.

A number of the submissions to the Chief Executive and aspects of the Chief Executive's conclusion assert that the Office and/or the Minister are acting ultra vires and/or contrary to recent caselaw in this area. The Office does not agree that this is the case. The Office notes numerous references in the Report to the Irish Constitution and to the *Local Government Act 2001*, as amended. Whilst the Office of course notes the status of local authorities under the Constitution and the *Local Government Act 2001*, this does not detract from the local authority's legal obligations or from the Office's or the Minister's functions under the Act.

The Office is also satisfied that in setting out its submission on the draft Plan and at material alterations stage it set out its reasoning and considerations through the relevant recommendations/observations and supporting text.

In relation to the non-binding status of guidelines issued by the Minister under section 28 of the Act, the Office has not stated that the relevant guidelines are mandatory or legally binding, but rather that in order 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 case 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 accordance with section 11(1A) of the Act.

In respect of the establishment of such a strategy, the relevant section 28 guidelines - in this case *The Retail Planning Guidelines* - provide that specifically in relation to retailing the development plan must be evidence-based, consistent with the approach of the guidelines and clear and precise with regard to specific objectives and requirements (section 3.3, pages 20-21). Furthermore 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.

The planning authority has failed to have regard to these guidelines and no or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why aspects of the guidelines have not been implemented, contrary to the obligation on the planning authority to provide such reasons as referred to above. In this regard the Office also notes the requirements in RSES RPO 55 and Cork MASP Policy Objective 16 (CMASP PO 16) with which the Council is required to act consistently.

In this regard the Office acknowledges the submission of TII which reiterates concerns that the approach to retail in the Plan is at variance with national policy and guidelines and existing known constraints on capacity and safety of national roads infrastructure that the amendment should be postponed until public / stakeholder consultation of the Joint Retail Strategy for the Metropolitan Area has been commenced / concluded. This supports an evidence-based plan-led approach to retail policy for the Metropolitan Area.

In relation to the submission that the Office has taken a stringent approach only to some section 28 guidelines the Office is satisfied that it carried out its evaluation and assessments of the draft Plan and of the material alterations of the draft Plan in accordance with the provisions under section 31AM.

Regarding the submissions that the *Retail Planning Guidelines* are out of date, the said guidelines are the operative guidelines that the Office is required to address under section 31AM(2)(c). It is within the power of the Minister to revoke, amend or replace these guidelines should they be no longer deemed appropriate. The Office does not accept that the failure of the planning authority to determine future retail policy based on up to date information as part of a joint retail strategy, can be

considered to be a 'plan-led' concept, or to represent the effective coordination of national, regional and local policy.

Regarding the status of the Cork Metropolitan Area Strategic Plan, the Office notes that NPO 67 sought '*to make provision for Metropolitan Area Strategic Plans to be prepared for Dublin, Cork, Limerick, Galway and Waterford Metropolitan areas and in the case of Dublin and Cork, to also address the wider city region, by the appropriate authorities in tandem with and as part of the relevant Regional Spatial Economic Strategies.*' It is therefore clear that the CMASP, which is contained as part of the Regional Spatial Economic Strategy for the Southern Region Assembly, forms part of that Strategy and that the policy objectives contained there-within are regional policy objectives. CMASP PO 16 therefore has status of a regional policy objective and it is a statutory obligation of the elected members to ensure the development plan is consistent there-with under section 12(11) read in conjunctions with 12(18).

The Office acknowledges the submission of the SRA that the draft Direction is consistent with CMASP PO 16 and also with RPO 55 Retail. RPO 55, which was not referred to in the Office's submissions, heretofore provides, amongst other things, that it is an objective to:

(c) Prepare Retail Strategies in accordance with the Retail Planning Guidelines including Joint Retail Strategies where applicable. [...].

The SRA submits that the Minister's draft Direction is consistent with RSES RPO 55 Retail in addition to the CMASP PO 16 Retail. RPO 55 Retail is a parallel requirement to CMASP PO 16 requiring, inter alia, the preparation of retail strategies in accordance with the *Retail Planning Guidelines* including Joint Retail Strategies, where applicable. It would be appropriate that the provision in the direction noting the inconsistency of the development plan with CMASP PO 16 should also refer to this provision of the RSES.

In this regard the Office agrees with the submission of the SRA that RPO 55 should be taken into consideration in the Direction and Statement of Reasons. The Office recommends that minor amendments be made to the Direction in this regard to make reference to RSES RPO 55 and the Office has identified said minor amendments in the attached proposed Direction in red.

The Office notes the concern of the submissions regarding the 12-month time period for completion of the joint retail strategy under Part 2(a) of the Direction. However, the draft Plan stated, *'as required by the Retail Planning Guidelines, a Draft Joint Retail Strategy and Joint Retail Study for the Metropolitan Area'* was in the process of being prepared and that it was the intention for it (the combined Joint Retail Strategy and Study) to be introduced and inform the draft Plan at amendment stage. The maximum period between publication of the draft Plan and the publication of the Material Alterations under section 12 of the Act is approximately 37 weeks / 259 days.

In view of the work carried out to date on the Joint Retail Strategy, a 12-month timeline to complete this work is therefore considered feasible and is considered reasonable in view of the requirements of the RPGs. The Office also notes that no alternative timeline was presented by elected members or in the CE Report, and the Office is concerned to ensure that the requirements of CMASP PO 16 and RPO 55 are reflected in the Development Plan, and an open-ended timeframe was not considered to be sufficient to do so.

Whereas the elected members consider they put forward strong arguments in favour of the amendments having regard to the various guidelines, the Office notes that the planning authority did not include in the statement under 28(1A)(b) 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 under the specified guidelines and/or give reasons for forming such an opinion as required under section 28(1B)(b).

Furthermore, the information in the statement appended to the Development Plan¹, did not demonstrate how the planning authority has implemented the policies and objectives of the Minister in accordance with Section 28(1B)(a). Therefore, notwithstanding that the planning authority only has to 'have regard' to the said guidelines under section 28(1), the Office remains satisfied that the planning authority, in making the plan, did not carry out its functions as concerns the requirement to 'have regard' to the guidelines in accordance with the statutory

¹ Table 1 of Appendix A to Volume 1 of the Development Plan

requirements of section 28(1) and the enhanced duty in section 28(1B)(b) of the Act to provide reasons if it is considered not possible to implement section 28 guidelines.

Part 2(b)

You will note that the Report prepared in accordance with section 31(8) does not make a recommendation on the best manner in which to give effect to, inter alia, Part 2(c) of the draft Direction, contrary to the requirements of section 31(9)(d).

The recommendations of the Chief Executive are set out at Part 2(a) above and are stated to be applicable to each part of the draft Direction.

The Office notes that a number of the submissions against the direction were similar to the reasons given by the elected members for the decision to not comply with the recommendations of the Office when adopting the Plan, and were detailed in the section 31AM(6) notice, in which Recommendation 9 and MA Recommendation 6 were addressed together, received from the planning authority. These have already been set out above, in respect to Part 2(a).

Additional reasons, and or elaborations of reasons previously given, can be summarised as follows:

- Office did not establish MA 1.9.20 would contravene a mandatory requirement, only that it is premature pending a Joint Retail Strategy envisaged but not required by the RPGs;
- Questions whether giving precedence to 10 year old Ministerial retail policy over the recently adopted Plan is consistent with plan-led development – planning authority justified from planning viewpoint not to comply with recommendation;
- OPR cannot deny that the outlet centre was plan-led and evidence-based when sequential test used;
- A direction to delete MA 1.9.20 could be considered an indirect challenge to the authority of the High Court;
- Infrastructure already in place to support retail outlet centre;

- Retail outlet will support job promotion;
- Build on the success of Kildare Village; and
- Support local communities in terms of providing additional amenities.

In addition, views and recommendations supporting the draft Direction may be summarised as follow:

- Insufficient population to support the retail outlet centre;
- Excessive vacancy rates in towns;
- Should follow the town centre first approach;
- Constrained outlook for future retail sales;
- Presence of failed retail parks in county;
- Outlet centres not supported by the RPGs;
- Impact on the capacity and safety of national roads;
- Contrary to sustainable development, climate action and international commitments; and
- Direction is consistent with CMASP PO 16 and with RPO 55.

In relation to the failure to establish that MA 1.9.20 would contravene a mandatory requirement under the said section 28 guidelines, only that it is premature pending a Joint Retail Strategy envisaged by the guidelines, the Office's submissions on the draft Plan and material alterations to draft Plan, including MA Recommendation 6(a) and preamble, set out clearly the requirements of the said guidelines to which the planning authority is required to have regard. The supporting points (b) and (i)² of the recommendation, which refer to the section 9(7) process, are not relied on by the Office in making this recommendation as indicated above.

² This typo should have stated point (c).

Regarding 'mandatory' requirements, as noted, above, the submission of the SRA considered the draft Direction Part 2(b) consistent with CMASP PO 16 and with RPO 55 Retail.

Regarding the precedence given to 10 year old guidelines over the recently adopted Plan, the *Retail Planning Guidelines* are the operative guidelines which the Office is required to address under section 31AM(2)(c), this matter has been addressed above.

In relation to the justification from a planning viewpoint in not accepting the recommendation of the Office, whilst the Office does acknowledge the work carried out, in the preparation of the '*Study on the Requirement for Retail Outlet Centre(s) in the Cork Metropolitan Area Draft Final Report*' (October, 2019), commissioned by Cork County Council, to inform Variation No. 2 of the Cork County Development Plan 2014, and which also informed material amendment MA 1.9.20 of paragraphs 9.11.9 to 9.11.13 on retail outlet centres, the Office does not accept that the Development Plan is consistent with the 'plan-led' concept as the planning authority did not determine future retail policy based on up to date information for the relevant geographic area, in conjunction with the relevant neighbouring authority, through a joint retail strategy, having regard to the requirements of the *Retail Planning Guidelines* and the requirements of RPO 55 and CMASP PO 16.

The Office does not accept that a decision by the Minister to issue Part 2(b), informed by the evaluations, assessments and recommendations of the Office in compliance with the Act, would be an indirect challenge to the authority of the High Court decision to quash the Section 31 Direction of Variation No. 2 of the Cork County Development Plan 2014. Section 31AM(1) requires the Office to evaluate and assess, among others, the draft Plan and the material alterations to the draft Plan. Section 31(AM)(2) sets out that that evaluation and assessment includes addressing the legislative and policy matters relating to relevant guidelines under section 28. Section 31AM(3) specifically requires the Office make recommendations it considers necessary to ensure effective co-ordination of national, regional and local planning requirements by the planning authority in the discharge of its development planning functions.

Regarding the assertion that the Infrastructure is already in place to support retail outlet centre, as the subject policy relates only to a sub-catchment of the county rather than to a specific site, it is not possible to determine that the relevant infrastructure is already in place. Furthermore, site-specific infrastructure is not an issue referred to in the draft Direction.

However, the Office notes the submission of TII which reiterates issues of known and acknowledged capacity constraints and safety concerns associated with the N25, including the N25 Carrigwohill to Midleton Upgrade Scheme. TII considers that a land use of the scale and typology such as a retail outlet centre on the N25 would impact adversely on the capacity and safety of the N25 and the associated junctions on a route of acknowledged constraints related to the capacity operations and safety. It is evident from TII's submission that its concerns are largely in respect of the development of an out-of-town retail outlet centre, however the policy of the plan is lacking in this regard. The Office considers this as demonstrating a need of the retail policy of the development plan, including in relation to specific policy provisions for a retail outlet centre, to be informed by a Joint Retail Strategy in an evidence-based, plan-led approach to such development.

The Office also notes the submission of the NTA did not consider the '*Study on the Requirement for Retail Outlet Centre(s) in the Cork Metropolitan Area*' to provide a satisfactory basis for the provisions for retail outlet centres under MA 1.9.20 and was of the view that the policy approach should be formulated as part of a review of the Metropolitan Cork Joint Retail Strategy, having regard to the *Retail Planning Guidelines* and the *Spatial Planning and National Roads Guidelines*.

In relation to the retail outlet centre supporting job promotion and the provisions of additional amenities for local communities, the Office does not dispute that this will be the case for the location of the retail outlet centre. However, this does not have regard to the wider potential impact of the policy on the metropolitan area and on the retail offer in the retail hierarchy for the Metropolitan Area, in particular, as set out in the guidelines; in CMASP PO 16, which seeks to support the role of Metropolitan Cork as the level 1 location for retail provision and the retail hierarchy as identified in the Metropolitan Joint Retail Strategy, which identifies Metropolitan Cork: Cork City

Centre as level 1; and RPO 55(b) which seeks to ensure that retail development is focused on urban and village centres, or the sequential approach if otherwise.

The inclusion of the subject policy supporting the development of a retail outlet centre within the metropolitan area, without first determining the appropriate evidence base under a Joint Retail Strategy to inform such a policy, risks undermining the retail base of other existing retail centres in the retail hierarchy of the city and county, including Cork City Centre as the primary retail centre for the metropolitan area, with consequential impacts on the retail offer that can be supported within those centres and on the employment that they provide contrary to RPO 55 and CMASP PO 16.

Part 2(c)

You will note that the Report prepared in accordance with section 31(8) does not make a recommendation on the best manner in which to give effect to, inter alia, Part 2(c) of the draft direction, contrary to the requirements of section 31(9)(d).

The recommendations of the Chief Executive are set out at Part 2(a) above and are stated to be applicable to each part of the draft Direction. The recommendations do not address the specific matters the subject of Part 2(c). We note the Chief Executive's section 12(8) Report had previously advised against making the Plan with this material amendment and we have noted above the Chief Executive's conclusion that the Minister ought not issue a direction under section 31.

The reason given by the elected members for the decision to not comply with the recommendations of the Office when adopting the Plan, detailed in the section 31AM(6) notice received from the planning authority, was that the subject lands were required to meet the housing targets for Bantry and the site was determined as tier 2 in the infrastructure assessment.

Additional views in the submissions to the draft Direction can be summarised as follows:

- Need to recognise the importance of Bantry as an economic driver;
- Only 23ha zoned for residential development of which c.8ha are subject to flood risk and access constraints;

- Does not take account of traditional issues which have resulted in under delivery of housing delivery in Bantry compared to housing targets including availability of land, zoned lands in state ownership and lands with no significant planning history;
- Disputes that the zoning would be inconsistent with the core strategy, national and regional planning policy and proper planning and sustainable development of the area;
- Questions validity that location is remote / peripheral / non sequential - CSO boundary for Bantry not intended or appropriate to be used as a metric for compact growth;
- Site is within 850m / 10 minute walking distance to town centre and well-positioned within walking distance to schools, etc., and represents compact development;
- Recent ministerial comments in relation to development plan guidelines note that residential lands should not be de-zoned; and
- Site assessed for infrastructure and considered Tier 2.

The Office recognises the important role of Bantry as a service centre for West Cork in the adopted Plan and is satisfied that the draft Direction is not inconsistent with this role having regard to the considerations set out below.

In relation to the sufficiency of residential zoned land in Bantry, there is over 24ha³ of land zoned 'Residential' in the adopted Plan, excluding lands the subject of MA 5.2.6.27(a) Bantry new Residential BT-R-0X. In addition, the Special Policy Areas zoned for a mix of residential and other uses in the town total a further c.27 ha. There are also opportunities for infill development generally and, it is reasonable to assume, for redevelopment of zoned Town Centre sites also.

Not more than c.0.18ha of land zoned 'Residential' is indicated as constrained by flood risk. This is part of a larger parcel of land (c.1.69ha) and, by reason of the

³ All land areas referred to by the Office are determined based on the data provided on the Council's development plan mapviewer at <https://corkcoco.maps.arcgis.com/apps/webappviewer/index.html?id=0998608db8dd4fa2b7dfef2e5ec808ce>

nature and location of the flood affected lands, those parts of the site could reasonably be expected to be integrated into any future housing development as part of the contribution to the development management standards for open space provision.

In relation to additional constraints, the submission does not set out what constraints affect 8ha of the residential zoned lands.

In relation to the availability of land, the core strategy determined that 23ha of land is required to provide for the housing target of 344 units. This included an 'additional provision' allowance to ensure a degree of choice in development sites to be provided locally, to avoid restricting the supply of new housing through inactivity on a particular landholding or site. The Office remains of the view that there is no evidence-base to support the need for an additional c.4 ha of new 'Residential' zoned land to accommodate the level of growth set out in the core strategy for Bantry over the plan period.

In this regard, Point IV.b of the Statement of Reasons states, inter alia, that *'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.'*

Although the guidelines of 2007 were the operative guidelines to which the planning authority was required to have regard at the time of the making of the development plan, the Office is cognisant that these guidelines have since been superseded by the *Development Plan, Guidelines for Planning Authorities* (June, 2022), which sets out an approach to ensuring sufficient provision of housing lands/ sites under section 4.4.3.

The guidelines provide that in making provision for housing within settlements in the core strategy, in certain instances a planning authority may provide for 'additional provision', subject to considering specified criteria, after first identifying the site/land requirements to meet the housing target. The guidelines provide that such proposals will be assessed and evaluated by the Office in accordance with the guidelines. As

set out above, the residential zoning for Bantry under the core strategy already provides for 'additional provision', which was accepted by the Office.

The Office is satisfied that the new provisions do not materially differ in how they are required to be applied by the planning authority, other than to clarify the approach by which residential zoning in excess of that required by the core strategy may be determined.

It would therefore be appropriate to make a minor amendment of the Statement of Reasons to also refer to section 4.4.3 of the adopted 2022 Guidelines. Minor amendments are identified in red in the attached proposed Direction in this regard.

Regarding the assertion that the site is not remote / peripheral / non-sequential, the Office notes the existence of extensive greenfield, agricultural lands between the site and the built up area of the settlement. Although the walking distances to amenities for a settlement of this size will be relatively short, the public road to the centre has no or very intermittent public footpaths for much of its length.

In this regard, Point IV.a. of the Statement of Reasons states, inter alia, that the development plan '*fails to follow the requirement to implement or adopt a sequential approach to the zoning of land for development under section 4.19 of the Development Plans Guidelines for Planning Authorities (2007), except in exceptional circumstances (which 'must be clearly justified ... in the written statement')*'.

As noted above, the Office is cognisant that these guidelines have been superseded by the *Development Plan, Guidelines for Planning Authorities* (June, 2022), however the revised guidelines include similar policy provisions and exceptions, including:

- a policy and objective '*that planning authorities adopt a sequential approach when zoning lands for development, whereby the most spatially centrally located development sites in settlements are prioritised for new development first, with more spatially peripherally located development sites being zoned subsequently*',
- allowance for exceptions to the sequential approach, which '*should be clearly justified and set out in the written statement of the development plan.*'

The Office is satisfied that the new provisions do not materially differ in how they are required to be applied by the planning authority, other than to clarify the nature of the sequential approach.

The draft direction refers to section 6.2.3 of the draft version of the 2022 guidelines, namely the Development Plans, Guidelines for Planning authorities, Draft for Consultation (2021). It would therefore be appropriate to make a minor amendment of the Statement of Reasons to refer to both guidelines, instead to section 6.2.3 of the adopted 2022 Guidelines. Minor amendments are identified in red in the attached proposed Direction in this regard.

Point IV.a of the Statement of Reasons already notes that RPO 151 requires residential development to abide by the principle that such development *'will be carried out sequentially, whereby lands which are, or will be, most accessible by walking, cycling and public transport – including infill and brownfield sites – are prioritised'*.

In relation to compact growth under NPO 3c of the NPF and RPO 35 of the Regional Spatial and Economic Strategy, the submission of the SRA requests that RPO 35 be taken into taken into consideration in the Direction and in the Statement of Reasons.

RPO 35 requires *'development plans to set out a transitional minimum requirement to deliver at least 30% of all new homes that are targeted in settlements other than cities and suburbs, within their existing built-up footprint in accordance with NPF National Policy Objective 3c. This will be evidence based on availability and deliverability of lands within the existing built-up footprints.'*

Specifically in relation to the reason given that the CSO boundary is not an appropriate metric for compact growth, the Office notes that on the matter of NPO 3, note 17 as contained in Appendix 4 of the NPF (page 176) states:

This means within the existing built-up footprint of all sizes of urban settlement as defined by the CSO in line with the UN criteria...

As set out in the notice letter, the land in question leapfrogs beyond lands zoned Agriculture (in the development plan, as made) to a peripheral and non-sequential

location outside of the CSO boundary in a manner that is inconsistent with national and regional objectives for compact growth.

The Office is satisfied, therefore, that the subject additional zoning is not consistent with the core strategy, with NPO 3c of the *Project Ireland 2040 National Planning Framework* (NPF) and RPO 35 of the RSES.

The Office notes, as raised in submissions, the ‘policy and objective’ of the recently adopted section 28 *Development Plan Guidelines* (June 2022) ‘*that zoned housing land in an existing development plan, that is serviced and can be developed for housing within the life of the new development plan under preparation, should not be subject to de-zoning*’.

The policy and objective however states that the provision applies to land that is both zoned in an existing development plan, and is also serviced and can be developed for housing within the life of the new development plan.

In this instance, although the subject site was in fact zoned residential under the Cork County Development Plan 2014, Table D3 of the development plan, as made, makes clear that the site is not currently serviced but requires interventions for roads access, footpath access, public lighting, foul sewer drainage, surface water drainage and for water supply.

Notwithstanding the consideration of the zoning objective under the above policy and objective of the Development Plan Guidelines, the reasons set out in IV of the draft Direction persist.

Following consideration of the submissions and Report, the Office is satisfied that there is no basis to materially amend Part 2(c) of the draft direction.

Part 2(d)

You will note that the Report prepared in accordance with section 31(8) does not make a recommendation on the best manner in which to give effect to, inter alia, Part 2(d) of the draft Direction, contrary to the requirements of section 31(9)(d).

The recommendations of the Chief Executive are set out at Part 2(a) above and are stated to be applicable to each part of the draft direction. The recommendations do

not address the specific matters the subject of Part 2(d). We note the Chief Executive's section 12(8) report had previously advised against making the Plan with this material amendment and we have noted above the Chief Executive's conclusion that the Minister ought not issue a direction under section 31.

The reasons given by the elected members for the decision to not comply with the recommendations of the Office when adopting the Plan, detailed in the section 31AM(6) notice received from the planning authority, was 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.'*

Additional views and recommendations in the submissions in respect of the draft Direction can be summarised as follows:

- Dominance of social / affordable / lower cost homes typically associated with higher density;
- Higher density development generates social and economic issues;
- Social infrastructure needed to support higher densities is not being supported or delivered;
- Members view that given the level of high density already proposed there is a need to accommodate better social mix and allow residential to trade up to lower density without having to leave settlement;
- High density will lead to overdevelopment of area;
- Medium density will deliver more appropriate housing density;
- Higher density development is being pushed because of rail station;
- Public transport not available to support high density;
- Proposes that western land, which is over 1km from rail station, should be medium density and eastern land should be high density;

- Road infrastructure not capable of supporting higher densities;
- No reason linked to this density requirement is included in statement of reasons and draft direction is therefore invalid;
- Development will impact on amenity and biodiversity;
- Regular flooding in the area;
- Office's recommendation not binding based on High Court ruling;
- Office's view does not trump democratic view of elected members - Minister can have regard to the Office's view but must make his own assessment; and
- Office did not consider *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas: Cities, Towns & Villages (2009)* (*Guidelines on Sustainable Residential Development in Urban Areas*) in terms of exceptions to minimum densities, specifically section 5.4.

In relation to concern about social mix, social issues, social infrastructure and overdevelopment, these are matters for the planning authority to determine, whether through an appropriate detailed local area plan and/or through the development management process having regard to the full range of relevant policy objectives contained in the development plan, as it would have to do so regardless of density.

The Office, in pages 23-25 of the section 31(AM)(8) notice letter, has already addressed the suitability of the subject sites for higher densities due to their proximity within walking distance to the railway station at Carrigtwohill, 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 and the Office adopts its previous reasons in this regard.

The Office, in pages 23-25 of the section 31(AM)(8) notice letter, has also already addressed the *Guidelines on Sustainable Residential Development in Urban Areas* concerning the application of densities in appropriate locations, to which the planning authority must have regard and the Office adopts its previous reasons in this regard.

The Office also noted that the guidelines are supported by SPPR 4 of the *Urban Development and Building Height Guidelines for Planning Authorities* (2018) (BHGs), ‘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’.

This view is further supported by the submission of the NTA, which supports the draft Direction. The submission reiterates from its previous submissions that considering the overall scale of the metropolitan area towns, such as Carrigwohill, the location of existing and proposed rail stations and the provisions of the Cork Metropolitan Area Transport Strategy for substantial improvements in bus services provision in these towns there is a correspondingly high potential for all zoned residential lands required to accommodate future population growth targets to be located in areas which fall within the local walking catchment of existing or proposed public transport services. The application of high rather than medium densities to these areas would in turn support the delivery of improved public transport services.

Regarding the alleged failure to include in the Statement of Reasons any reasons relating to the draft Direction on density, the Office would clarify that Point V of the Statement of Reasons addresses Part 2(d) of the Direction concerning the issue of residential density.

In response to concerns about impact on biodiversity, it is a matter for the planning authority in carrying out SEA to consider potential impacts on, among others, biodiversity as a factor of the environment. Further, such issues, including issues of local amenity and local residential amenities, including overdevelopment and impact on the local road infrastructure, are matters to be addressed by the planning authority in the development management process.

Regarding the risk of flooding, the flood risk mapping prepared as part of the Strategic Flood Risk Assessment for the draft Development Plan and material amendments did not indicate any flood risk on the subject sites.

In response to the submission that the Office did not consider the *Guidelines on Sustainable Residential Development in Urban Areas* in terms of exceptions to minimum densities, it is evident from the Office's submissions to, and recommendations and observations on, the draft Plan and on the material alterations that the Office addressed the provisions of the subject guidelines in some detail, having regard to the very wide range of locational contexts of settlements throughout the county.

Following consideration of the submissions and Report, the Office is satisfied that there is no basis to materially amend the recommendation of this Office in respect of Part 2(d).

Part 2(e)

You will note that the Report prepared in accordance with section 31(8) does not make a recommendation on the best manner in which to give effect to, inter alia, Part 2(e) of the draft Direction, contrary to the requirements of section 31(9)(d).

The recommendations of the Chief Executive are set out at Part 2(a) above and are stated to be applicable to each part of the draft Direction. The recommendations do not address the specific matters the subject of Part 2(e). We note the Chief Executive's section 12(8) report had previously advised against making the Plan with this material amendment and we have noted above the Chief Executive's conclusion that the Minister ought not issue a direction under section 31.

The reasons given by the elected members for the decision to not comply with the recommendations of the Office when adopting the Plan, detailed in the section 31AM(6) notice received from the planning authority were as follows:

- in respect of MA 3.1.4.15 Fermoy: new Industrial site FY-I-05, *'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'*; and
- in respect of MA 3.1.4.16 Fermoy: new special policy area FY-X-01, that *'it would facilitate an NCT centre which would be able to serve a wide hinterland of both Fermoy and Mitchelstown.*

The Office addressed these issues in the Notice Letter attached to the draft Direction, after giving careful consideration to the report of the Chief Executive under section 12(8).

Additional or elaborated views and recommendations in the submissions to the draft direction can be summarised as follows:

- Importance of warehouse, distribution and logistic sector;
- Site currently comprises of existing important employers who have future expansion plans;
- Site is strategically located;
- Current Plan supports expansion in green belt;
- Need to relocate from Town Centre;
- Subject lands surrounded by similar land uses;
- Site is serviced and already connected to Wastewater Treatment plant; and
- Site has no traffic issues.

In relation to warehouse, distribution and logistics sector, the Office acknowledges that this is recognised as an important sector in the *Spatial Planning and National Roads Guidelines*. The Office also accepts that the subject sites are strategically located on an important junction of the national road network, the M8 Cork – Dublin motorway.

However, section 2.7 of the guidelines, to which the planning authority is required to have regard, 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. In particular, the guidelines state that the planning authority, in considering development plan proposals:

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.

The planning authority has provided no or no adequate reasons to explain why the guidelines have not been followed, whether generally or in accordance with the express statutory obligation under section 28(1B)(b) of the Act.

The submission from TII reiterates its submission to the material amendments that MA 3.1.4.15 be omitted and that MA 3.1 4.16 be re-evaluated and accompanied by an appropriate evidence base, as required by the guidelines, to demonstrate that the proposals would support and protect the steady state maintenance and safety of national roads.

Regarding the expansion of existing uses within the greenbelt, the section 31(AM)(8) notice noted the Chief Executive's report under section 12(8) which indicated that the expansion of existing established uses is provided for under Objectives RP 5-16, 5-17 and 5-18 of the Plan, as adopted.

Regarding the existence of similar uses in the vicinity, such uses do not in themselves establish a precedent for the rezoning of these lands.

Regarding the need to relocate development from the town centre of Fermoy, the Chief Executive's report under section 12(8) states 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. It was the expressed view of the Chief Executive 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, and that the subject amendments would undermine the delivery of these said zoned lands.

Regarding the connection to the Fermoy Wastewater Treatment Plant, the reasons set out in the draft direction raised no objection to the zoning objectives on these grounds.

Regarding the stated absence of traffic issues in relation to the subject sites, the reasons set out in the draft direction relate to the potential impact of future development on the capacity and safety of the strategic road network, not current traffic arising from existing development on the non-national road network.

Following consideration of the submissions and Report, the Office is satisfied that there is no basis to materially amend the recommendation of this Office in respect of Part 2(e).

Finally, the Office has also made some minor amendments to address typographical errors in the draft direction and these are identified in red in the attached proposed Direction.

Recommendation

Having regard to section 31AN(4) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act to issue the direction with minor amendments as explained above and as identified in red in the attached proposed Direction

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



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

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 Minister for Housing, Local Government and Heritage is, for the reasons set out in the Statement of Reasons hereto, of the Opinion that –

- (1) 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.
- (2) The Plan, as made, fails to set out an overall strategy for the proper planning and sustainable development of the area;
- (3) The Plan is not consistent with National Policy Objectives set out in the National Planning Framework, specifically NPO 3c.
- (4) 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 55** and RPO 151.

(5) The Plan is inconsistent with Ministerial Guidelines issued under Section 28 of the Act, specifically:

- a. the Retail Planning Guidelines 2012;
- b. the Development Plan Guidelines for Planning Authorities (2007) and the Development Plans, Guidelines for Planning Authorities – ~~Draft for Consultation~~-(August, 2022);
- c. Specific Planning Policy Requirement 4 contained in the Urban Development and Building Height Guidelines (2018),
- d. Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas: Cities, Towns and Villages (2009).
- e. the Spatial Planning and National Roads, Guidelines for Planning Authorities (2012),

and whilst the failure to implement the guidelines is not a failure to have regard to the guidelines per se, the failure to implement the guidelines has not been explained adequately or at all.

(6) The Plan, as made, is not in compliance with the requirements of the Act. ~~This Direction may be cited as the Planning and Development (Cork County Development Plan 2022-2028) Direction 2022.~~

~~(7) The Planning Authority is hereby directed to take the following steps with regard to the Development Plan:~~

And therefore the Minister is of the opinion that section 31 of the Planning and Development Act 2000 (as amended) apply;

NOW, THEREFORE, in exercise of the powers conferred on him by section 31 of the Planning and Development Act 2000 (as amended), the Minister for Housing, Local Government and Heritage 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 Carrigwohill CT-R-18 to revert to Medium A density and MA 4.2.3.43 Carrigwohill CT-R-04 to revert to High Density, and
- e) Reinstate the zoning objectives of the 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. Pursuant to section 31(1)(b) and section 31(1)(c)

The Cork County Development Plan 2022-2028 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 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. **Whilst a failure to follow the guidelines per se does not amount to a breach of the obligation to have regard to the guidelines, no or no adequate reasons relating to the proper planning or sustainable development of the area have been provided to explain why the guidelines have not been followed.**

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 appropriate strategic assessment and analysis (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 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. Pursuant to section 31(1)(c)

The Cork County Development Plan 2022-2028 as made includes policy and an objective to facilitate and support a Retail Outlet Centre within 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 follow the requirements of the Guidelines as outlined in (I) above, contrary to Section 28(1) and 28 (1A). **Whilst a failure to follow the guidelines per se does not amount to a breach of the obligation to have regard to the guidelines, ~~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(1**AB**)(b).

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

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 with RPO 55 of the**

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

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 follow 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~~* (2022~~4~~). 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 and under section 4.4.3 of the *Development Plans Guidelines for Planning Authorities* (2022).

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(1AB)(b).

V. Pursuant to section 31(1)(ba)(ii) and section 31(1)(c)

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(1AB)(b).

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

The Cork County Development Plan 2022-2028 as made fails to follow the Ministerial Guidelines issued under Section 28 of the Act, and specifically fails 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). **Whilst a failure to follow the guidelines per se does not amount to a breach of the obligation to have regard to the guidelines, ~~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(1AB)(b).

VII. 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 official seal,

Minister for Housing, Local Government and Heritage

day of Month, year.