



28th September 2022

For the Attention of: Mr. Tim Lucey, Chief Executive

Cork County Council
County Hall
Carrigrohane Road,
Cork
T12 R2NC

Section 31 of the Planning and Development Act 2000, as amended
Decision to Issue a Direction to Cork County Council on the Cork County Development Plan
2022 – 2028

Dear Tim,

I am writing to you to inform you of the following in relation to the Section 31 draft Direction issued to Cork County Council on 3rd June 2022, and subsequent consideration by the Office of the Planning Regulator (the Office) of your report and the submissions made directly to the Office in connection with Cork County Development Plan 2022 – 2028, as adopted, by the elected members of Cork County Council, on 25th April 2022.

I wish to also remind you of the 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.



The Office notified the Minister pursuant to section 31AN(4) of the Planning and Development Act 2000 (as amended) on the 17th August 2022 and recommended that I as Minister, issue the Direction, with minor amendments to the draft Direction.

PROCESS TO DATE

As you are aware, the draft Direction consisted of five parts; the deletion and insertion of policy relating to retail, objectives relating to zoning and residential densities.

Subsequently, the Office in their notification letter pursuant to Section 31AN(4) of the Planning and Development Act 2000 (as amended), recommended that the proposed final Direction be issued as follows:

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

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

- b) Delete the amended and additional provisions for 'Retail Outlet Centres' inserted under MA 1.9.20, including objective TCR 10-2 Retail Outlet Centre and associated map.
- c) Reinstate the zoning objective of those lands subject of zoning objective Bantry BT-R-0X inserted under MA 5.2.6.27(a) to that of the draft Plan i.e. the subject land reverts to BT-AG-01 Agriculture.



- d) Delete the amended residential densities on specific sites under MA 4.2.3.41 Carrigtwohill CT-R-18 to revert to Medium A density and MA 4.2.3.43 Carrigtwohill 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.

A copy of the notice letter and proposed final Direction was submitted to the Minister by the Office along with supporting documentation, which included the following:

1. Cork County Council Chief Executive's Report issued under section 31(8) of the Act (with associated documentation);
2. A copy of the 7 submissions received by the OPR pursuant to section 31(10)(a) of the Act.

It is noted that you, as Chief Executive, in your report recommended that I, as Minister not issue a Direction under section 31 of the Act in respect of any matter contained in the draft Direction of 3rd June 2022.



DECISION

Having reviewed and considered the following:

- the Office's notification letter under 31AN(4),
- your report on the draft Direction, and
- the submissions made directly by the elected members of Cork County Council to the Office,

I, as Minister, am of the opinion to issue the Direction to effect recommendation 2. c), d) and e) received from the Office under section 31AN(4) (now 2. a), b) and c) of final direction). I refer you to the Statement of Reasons set out in the enclosed Direction.

The draft Direction has been updated to include reference to the finalised *Development Plans Guidelines for Planning Authorities (2022)* and reference has been provided to section 28(1B)(b) of the Act regarding the statement to be appended to the development plan and the reasons for the forming of the opinion why policies and objectives have not been implemented.

Minor amendments further clarify the reasons for issuing the Direction particularly where additional text is provided to clarify that *"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."*

In accordance with Section 31AN (4A)(b) of the Act, my reasons for not issuing a final Direction on recommendation 2. a) and 2. b) are set out as follows:

1. There are 2 recent legal challenges which inform my decision not to include 2. a) and 2. b) in the final Direction on the Cork County Development Plan 2022-2028.



i. Cork County Council v. The Minister for Housing, Local Government and Heritage and Cork City Council (notice party) [2022] IEHC 281 [2021 No. 631 JR].

Cork County Council challenged a Ministerial letter issued to Cork County Council under Section 9 (7) of the Planning and Development Act, 2000 (which required the making of joint retail strategy). A Judgment of *certiorari* (quashing the S. 9(7) letter) issued in May 2022. The Section 9(7) process was used to give effect to Cork City Council and Cork County Council coordinating and cooperating to prepare a joint retail strategy. The findings of the Court in this case are relevant to recommendations 2. a) and 2. b) as they relate to the matter of retail policy in Cork, as set out in the development plan.

ii. Cork County Council v. (By Order) The Minister for Housing, Local Government And Heritage, Ireland And The Attorney General Respondents and The Office Of The Planning Regulator (notice party) [2021] IEHC 683 [2021 No. 189 JR].

Cork County Council sought to quash a Section 31 Ministerial Direction 2020 in relation to Variation No. 2 of the Cork County Development Plan 2014. A Judgment of *certiorari* (quashing the S. 31) Direction issued on 5th November 2021. The State appealed the case to the Court of Appeal, who determined on 29th June 2022 not to hear proceedings on the basis that the case was moot (the Cork County Development Plan 2014 – 2020 was no longer in force). The findings of the Court in this case are relevant to recommendations 2. a) and 2. b) as they relate to the matter of retail policy in Cork, as set out in the development plan.

I remain of the view that the Office sets out a valid planning rationale for recommendations 2. a) and 2. b) which are grounded in achieving the proper planning and sustainable development of Cork in relation to retail policy and



retail development as it affects the City and County administrative areas. I must however, duly consider the judgments of the Courts in relation to both legal challenges taken by Cork County Council on this matter, where the Court found in favour of the Applicant on both occasions, based on the interpretation of the effect of legislation as currently worded and Section 28 guidelines as currently drafted.

Consequently, the Court's identification of specified legal matters in relation to the relevant provisions of the Planning and Development Act, 2000 (as amended) require remedy, an exercise that is already underway, as listed in bullet 2 below.

2. The Planning and Development Act, 2000 (as amended) (the Act) is currently being reviewed in full by the Attorney General. It is intended that the outcome of the review process will include reforms to the approach taken with regard to the role and status of planning guidelines, statutory development plans, the role of the Office, and Ministerial Directions, all of which have been the subject of some consideration as part of the cases listed at 1. This review process is due to be concluded by year-end and when a new Planning Bill is enacted, it will subject to transitional provisions, generate a requirement to update and review planning policies and objectives as set out in statutory Section 28 Guidelines, where relevant.



DIRECTION

Accordingly, Cork County Council should **TAKE NOTICE** that on the 28 day of September 2022, I as Minister, have issued a Direction pursuant to Section 31 of the Planning and Development Act 2000 (as amended).

Pursuant to Section 31(17) of the Planning and Development Act 2000, as amended, this Direction is deemed to have immediate effect and its terms are considered to be incorporated into the plan.

A copy of this Direction is attached to this letter.

STEPS TO BE TAKEN

In light of the foregoing Cork County Council is required, pursuant to Section 31(2) of the Planning and Development Act 2000 (as amended) to comply with this Direction so as to rectify the matter in a manner that, in my opinion, will ensure that the Cork County Development Plan 2022- 2028 sets out an overall strategy for proper planning and sustainable development and meets the requirements of the Act.

The Council should ensure that the Direction is available for inspection at its offices and on its website.

Yours sincerely,

Peter Burke T.D.,

Minister of State with responsibility for Local Government and Planning



Copied to:

- Cathaoirleach, Cork County Council, County Hall, Carrigrohane Road, Cork, T12 R2NC
- Mr. David Kelly, Director, Southern Regional Assembly, Assembly House, Waterford, X91 F8PC
- Office of the Planning Regulator, Fourth Floor (West Wing) Park House, Grangegorman, 191-193A North Circular Road, Dublin 7, D07 EWW4.

DIRECTION IN THE MATTER OF SECTION 31
OF THE PLANNING AND DEVELOPMENT ACT 2000 (as amended)
Cork County Development Plan 2022-2028

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

“Planning Authority” means Cork County Council

WHEREAS the powers and duties of the Minister for the Department of Housing, Local Government and Heritage under the Planning and Development Act 2000 (as amended), 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 Housing, Local Government and Heritage in exercise of the powers conferred on him by section 31 of the Planning and Development Act 2000 (as amended) ("the Act"), and consequent to a recommendation made to him by the Office of the Planning Regulator under section 31AN(4) of the Act 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 a recommendation 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 RPO 35, and RPO 151.
- (5) The Plan is inconsistent with Ministerial Guidelines issued under Section 28 of the Act, specifically:
 - a. the Development Plan Guidelines for Planning Authorities (2007) and the Development Plans, Guidelines for Planning Authorities – (2022);
 - b. Specific Planning Policy Requirement 4 contained in the Urban Development and Building Height Guidelines (2018),
 - c. Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas: Cities, Towns and Villages (2009).
 - d. 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.

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 of State at the Department of 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) 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.

- b) Delete the amended residential densities on specific sites under MA 4.2.3.41 Carrigtwohill CT-R-18 to revert to Medium A density and MA 4.2.3.43 Carrigtwohill CT-R-04 to revert to High Density, and

- c) 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)(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, (2022)*. 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 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(1B)(b).

II. 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 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(1B)(b).

III. 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, 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 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(1B)(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 a recommendation of the Office of the Planning Regulator under Section 31 AM.

GIVEN under my hand,

A handwritten signature in blue ink that reads "Peter Burke". The signature is written in a cursive style and is positioned above a solid horizontal line.

Peter Burke T.D.

Minister of State with responsibility for Local Government and Planning

28th day of September, 2022.