



**STATEMENT OF REASONS
WITH REGARD TO A FINAL DIRECTION
IN THE MATTER OF SECTION 31
OF THE PLANNING AND DEVELOPMENT ACT 2000 (as amended)
CORK COUNTY DEVELOPMENT PLAN 2022-2028**

28th September 2022

As Minister of State at the Department of Housing, Local Government and Heritage in exercise of the powers conferred on me by section 31 of the Planning and Development Act 2000 (as amended) ('the Act') and having carefully considered a recommendation from the Office of the Planning Regulator ('the Office') under section 31AN(4) of the Act, I advise that:-

- (1) I have issued a Direction on the Cork County Development Plan 2022-2028 to effect recommendation (2) c), d) and e) as follows:
 - 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.
 - 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.
 - 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, and



(2) I have decided not to issue a Direction in relation to Recommendation (2) a) and b) issued by the Office in respect of the Cork County Development Plan 2022-2028, which would have required the deletion and the insertion of the following additional policy objectives:

- 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.

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 to Cork County Council.

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 recommendation 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, 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 is due to be concluded by year-end and when a new Planning Bill is enacted, it will be 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.

A copy of the Direction is also laid before each House of the Oireachtas, in accordance with Section 31(18) of the Act.

Is mise le meas,

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