Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

21 February 2020

Mr Damien English TD
Minister for Housing and Urban Development
Department of Housing, Planning and Local Government
Custom House
Dublin 1
D01 W6X0

Re: Notice Pursuant to section 31AM(8) of the Planning and Development Act 2000 (as amended) - Variation No.2 of the Cork County Development Plan 2014

A Chara,

I am writing to you in relation to the recent adoption, by the elected members of Cork County Council, of Variation No.2 of the Cork County Development Plan 2014 ("Variation No.2").

In particular, I am writing to you in the context of the statutory duty of the Office of the Planning Regulator (the "Office") pursuant to section 31AM(8) of the Planning and Development Act 2000 (as amended) (the "Act") to issue Notice to you on the basis that, having considered Variation No.2, the Office is of the opinion that:

a) Variation No.2 has not been made in a manner consistent with the recommendation of the Office, which was that Variation No.2 should not be made prior to the preparation of an updated joint retail strategy for the Cork Metropolitan Area, as required by guidelines on Retail Planning published by the Minister under section 28 of the Act; and

b) the decision of Cork County Council to vary the Cork County Council Development Plan 2014 is considered premature and results in the making of a Development Plan (as varied) in a manner that fails to set out an overall strategy for the proper planning and sustainable development of the area concerned, which is a breach of the requirements of the Act; and

c) as a consequence, the use by you of your function to issue a direction under section 31 of the Act would be merited.

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The reasons for the Opinion of the Office are set out in further detail in section 2 of this Notice letter. This letter is a Notice to you pursuant to section 31AM(8) of the Act.

1. Background

On 25 October 2019, Cork County Council published notice of a proposed variation of the Cork County Development Plan 2014-2020 ("the Proposed Variation").

The purpose of the Proposed Variation is to amend paragraph 7.10.5 Retail Outlet Centres (previously inserted as part of Variation No. 1 of the Development Plan) to provide strategic policy support for the provision of a Retail Outlet Centre in the N25 Corridor sub-catchment (referred to as NE2 sub-catchment) of the Cork Metropolitan Strategic Planning Area and include a new paragraph 7.10.6 'Innovation in the County's Retail Offer'.

Consistent with section 13(2)(a) of the Act, Cork County Council sent a notice and a copy of the Proposed Variation to the Office.

The Office evaluated and assessed the Proposed Variation under the provisions of sections 31AM (1) and (2) of the Act. Under section 31 AM (2), in assessing and evaluating any proposed variation of statutory plans, the Office must endeavour to ensure that, where appropriate, it addresses the legislative and policy matters relating to development plans including:

a) matters generally within the scope of section 10 and, in particular, subsection (2)(n) of that section in relation to climate change;
b) consistency with the development plan and the National Planning Framework (or, where appropriate, the National Spatial Strategy) and regional spatial and economic strategies;
c) relevant guidelines for planning authorities made under section 28, including the consistency of development plans with any specific planning policy requirements specified in those guidelines; and
d) policy directives issued under section 29.

On 21 November 2019, the Office made a submission to Cork County Council which contained the following recommendation:

In order to ensure effective co-ordination of national, regional and local planning requirements by Cork County Council in the discharge of its development planning functions, the Office recommends your authority not make the Variation No.2 as proposed because:

I. The proposed variation is not consistent with the Retail Planning Guidelines for Planning Authorities (2012) and specifically Sections 3 and 4 and specifically Sections 3.5 Table 1 and 4.11.4 which has been referred to in Section 7.10.5 of the Cork County Development Plan 2014; and

II. Would otherwise be premature to the preparation and finalisation of wider retail, spatial planning and transportation policies relevant to the implementation of the above guidelines and the securing of plan-led development in the interests of the proper planning and sustainable development of the area.

The Office's submission to Cork County Council made reference to the following:

- *Retail Planning Guidelines for Planning Authorities* (2012), published by the Minister under section 28 of the Act;
- *Spatial Planning and National Roads Guidelines for Planning Authorities* (2012), published by the Minister under section 28 of the Act;
- Draft Regional Spatial and Economic Strategy (RSES) for the Southern Regional Assembly area (adopted subsequent to the Variation, on 31 January 2020).

Consistent with section 13(4)(b) and section 31AM(4), the Chief Executive (CE) of the planning authority prepared a report on submissions and observations received which included a summary of the recommendations, submissions and observations made by the Office. The CE's report also provided a summary of the submissions and observations made by any other persons, which included, inter alia, Transport Infrastructure Ireland, the National Transport Authority and the Southern Regional Assembly.

The CE's report also outlined the recommendations of the CE in relation to the manner in which those issues and recommendations should be addressed.

The Office notes the assurances given in the CE's report regarding the need for further policy work to support a future retail outlet proposal and that the adoption of the variation will not facilitate a planning applications for such a proposal, set out as follows:

1.40 As part of the Cork County Development Plan Review Cork County Council will be preparing a Draft Joint Retail Strategy covering the City and the County. This Strategy will inform the policies and objectives of the relevant Draft City and County Development Plans due to be published in 2021. The study prepared to support Variation No.2 will help to inform the preparation of the Retail Outlet Centre part of that Draft Joint Retail Strategy.

1.41 The Cork County Development Plan Review will include a review of the current land use zoning provisions set out in the current Municipal District Local Area Plans. Therefore there will be an opportunity to reflect the specific outcomes of the Draft Joint Retail Strategy where appropriate. This will allow for a comprehensive policy response at both the strategic and local site specific level as required.

2.25 Cork County Council is satisfied that there are ample safeguards in the current Variation when merged alongside the previous Variation including references to the Retail Planning Guidelines, the Spatial Planning and National Roads Guidelines, the Joint Retail Strategy and the need to protect the national road network which addresses all the concerns raised. It should be noted that this Variation on its own or combined with Variation No. 1 will not facilitate specific planning applications. Instead it will provide further high level policy guidance which can be used as a basis for further policy formulation as part of the County Development Plan Review as necessary.

On 27 January 2020, Cork County Council adopted the Variation No.2 with minor changes, consistent with the recommendations of the Chief Executive in his report on submissions received on Proposed Variation No.2.

By letter submitted to the Office on 30 January 2020 under section 31AM(6) of the Act, Cork County Council informed the Office of its decision to not comply with the Office's recommendation on Variation No.2 and set out reasons for the decision.

By way of assistance, I enclose herewith brief containing the following:

a. Proposed draft direction
b. Appendix 1 - Proposed Variation No.2
c. Appendix 2 - Adopted Variation No.1
d. Appendix 3 - OPR Submission on Proposed Variation No.2
e. Appendix 4 - Chief Executive's report on Proposed Variation No.2
f. Appendix 5 - Adopted Variation No.2

g. Appendix 6 - Chief Executive's letter to OPR re Adopted Variation No.2
h. Appendix 7 - National Transport Authority submission on Proposed Variation No.2
i. Appendix 8 -Transport Infrastructure Ireland submission on Proposed Variation No.2
j. Appendix 9 - Study on the Requirement for Retail Outlet Centre(s) in the Cork Metropolitan Area

2. Opinion of the Office and Reasons

Having considered the adopted Variation No.2, the Office notes, under section 31 AM(7) of the Act, that the said variation has not been made in a manner consistent with the recommendation of the Office. Further, the Office is of the opinion that the Cork County Development Plan 2014, as varied by Variation No.2, fails to set out an overall strategy for proper planning and sustainable development of the area concerned for the reasons set out below.

As you will be aware, under section 31AM(1)(f) of the Act, the Office has a statutory duty to evaluate and assess proposed variations of local authority development plans. The following provisions of the Act are relevant in terms of the evaluation and assessment of variations of local authority development plans such as Variation No.2 by Cork County Council:

- The provisions of section 31AM(2) as set out above.

- Under section 31 AM(3)(a), the Office shall make such recommendations in relation to the Office's evaluation and assessments to those authorities as it considers necessary in order to ensure effective co-ordination of national, regional and local planning requirements by the relevant planning authority in the discharge of its development planning functions.

- In performing its functions, the Office must, under section 31P(3) of the Act, take account of the objective of contributing to proper planning and sustainable development and the optimal functioning of planning under the Act.

- Under section 31S, the Office must, in performing its functions, have regard to:
  a) the policies and objectives for the time being of the Government, a State authority (including Ministerial guidelines, policy directives and directions issued under *Chapter IV* of *Part II*), planning authorities and any other body which is a public authority whose functions have, or may have, a bearing on the proper planning

and sustainable development of cities, towns, villages or other areas, whether urban or rural,

b) the public interest and any effect the performance of the Office's functions may have on issues of strategic, economic or social importance to the State,

c) the National Planning Framework (or, where appropriate, the National Spatial Strategy) and any regional spatial and economic strategy for the time being in force, and

d) the requirements of relevant acts of the European Union, in particular, those relating to—
   (i) the Environmental Impact Assessment Directive,
   (ii) Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment,
   (iii) the Habitats Directive, and
   (iv) the Birds Directives,

   in so far as those requirements relate to planning authorities by virtue of being designated a competent authorities for the purposes of those acts.

Accordingly, having considered Variation No.2 in light of section 31AM(1)(f), section 31AM(2), section 31 AM(3)(a), section 31P(3) and section 31S, and the letter from the Chief Executive of the 30 January 2020 issued under section 31AM(6), the Office is of the opinion that the making of Variation No.2 is premature and inconsistent with Ministerial Guidelines issued under Section 28 of the Act, and therefore, the Cork County Development Plan 2014 as varied by Variation No.2 fails to set out an overall strategy for the proper planning and sustainable development of the area concerned.

The factors that the Office has taken into account in forming this opinion are as follows:

i. Section 10(1) of the Act states *"A development plan shall set out an overall strategy for the proper planning and sustainable development of the area of the development plan and shall consist of a written statement and a plan or plans indicating the development objectives for the area in question."*

ii. Section 10(1A) of the Act states *"The written statement referred to in subsection (1) shall include a core strategy which shows that the development objectives in the development plan are consistent, as far as practicable, with national and regional development objectives set out in the National Planning Framework and the regional spatial and economic strategy and with specific planning policy requirements specified in guidelines under subsection (1) of section 28."*

iii. Section 10(2A)(e) requires that a core strategy shall, inter alia *"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."*

iv. The *Retail Planning Guidelines for Planning Authorities* (2012) (the "Guidelines") are guidelines published by the Minister under section 28 of the Act. Section 3.5 of the Guidelines states that (page 22) *"certain development plans must be informed by joint or multi-authority retail strategies which should assess retail activity and demand needs that transcend planning authority boundaries"*. Table 1 of section 3.5 of the Guidelines (page 22) includes Cork City and County Councils on the list of authorities who must prepare joint or multi-authority retail strategies.

v. Section 3.5 of the Guidelines also provides clarity in relation to the central objectives of joint retail strategies:
"*In order to plan for future development, the central objectives of joint or multi-authority retail strategies are to identify:*

   a. *the broad (m2) requirement for additional retail floorspace development over the plan period in the overall area to support the settlement hierarchy;*
   b. *the retail floorspace requirements both quantity and type by constituent planning authorities; and*
   c. *broad guidance as to location and function of retail activity, taking account of the policy objectives in Chapter 2 and the relevant settlement hierarchy."*

vi. The Metropolitan Cork Joint Retail Strategy 2015 contains no policy guidance or direction on retail outlet developments consistent with the central objectives for such joint retail strategies as set out in section 3.5 of the Guidelines. The retail study that informed Variation No.2 concluded that there is only capacity for one such retail

outlet in the Cork Metropolitan Area, which is an area that includes all of the functional area of Cork City Council and part of the functional area of Cork County Council.

The CE's report on submissions to Variation No.2 acknowledges that the study prepared to support Variation No.2 will help to inform the preparation of the Retail Outlet Centre part of a future joint retail strategy. This is clearly inconsistent with the requirements of the Guidelines; a future joint retail strategy should inform locational and other aspects with regard to future retail development through the relevant development plans not the other way around. The identification of a preferred sub-catchment for one retail type in advance of the joint retail strategy represents a piecemeal rather than strategic approach to planning.

vii. The draft Metropolitan Cork Joint Retail Strategy 2013 which informed the preparation of the current Cork City and Cork County Development Plans has not been updated to address the policy and location aspects of planning for a prospective retail outlet centre nor in respect of the preparation of new development plans for the two planning authority areas.

viii. Since there is only capacity for one retail outlet in the Cork Metropolitan Area and an updated joint retail strategy has not been prepared to take account of a prospective retail outlet proposal, the Office is of the opinion that it is premature to identify a preferred sub-catchment for a prospective outlet centre as proposed by Variation No.2.

ix. Both the Cork City and Cork County Development Plans are due for review. Cork County Council has informed the Office that it will commence the review of the Cork County Development Plan 2014 on 12 March 2020. Cork City Council has informed the Office that it will commence the review of the Cork City Development Plan 2015 on 14 April 2020. The CE's report states that the Council will be preparing a future joint retail strategy covering the City and the County which will inform upcoming draft development plans for the City and County. The Office notes that this is the approach envisaged in section 3.5 of the *Retail Planning Guidelines for Planning Authorities* (2012).

x. The recently adopted RSES for the Southern Regional Assembly area supports the role of the Metropolitan Cork Joint Retail Strategy and seeks further preparation of

joint retail strategies for Metropolitan Cork between Cork City Council and Cork County Council in accordance with section 28 Retail Planning Guidelines for Planning Authorities (2012).[1] The Cork City and Cork County Development Plans have not been reviewed in the light of the adopted RSES for the Southern Regional Assembly area, as required under sections 11(1)(aa) and (ab) of the Act.

xi. The draft Cork Metropolitan Area Transport Strategy (CMATS) 2040 (the "Strategy") has been developed by the National Transport Authority (NTA) in collaboration with Transport Infrastructure Ireland (TII), Cork City Council and Cork County Council. The Strategy when complete will set out a framework for the planning and delivery of transport infrastructure and services to support the CMA's development in the period up to 2040. The Strategy makes references to a number of proposed improvements to the national and local road network identified in the National Development Plan and RSES affecting Cork such as the upgrade of the Dunkettle interchange and N25 enhancement.

xii. The Office considers that Variation No.2 fails to have sufficient regard to the *Spatial Planning and National Roads Guidelines for Planning Authorities*, and in particular its five key principles in terms of the timing of its identification of a preferred sub-catchment with known road capacity and safety issues for a largely car borne development proposal. The Office considers that the Council has provided insufficient details to demonstrate that the strategic traffic function of national roads would be maintained. The *Spatial Planning and National Roads Guidelines for Planning Authorities* (2012) state *"Planning Authorities and the National Roads Authority and other public transport bodies must work closely together: It is vital that, in the course of preparing plans and assessing planning applications, the relevant planning authority, the National Roads Authority and other statutory bodies with responsibility for transport services and road infrastructure provision work closely together to ensure that future development is guided to suitable locations."*

xiii. In light of the concerns raised by the National Transport Authority and Transport Infrastructure Ireland in their submissions on the variation and ongoing work to complete the Cork Metropolitan Area Transport Strategy, the Office is of the opinion that the consultation that informed the variation does not satisfy the intent of the guidelines set out in point 12 above.

[1] Cork MASP Policy Objective 16 from the RSES for the Southern Regional Assembly area

xiv. Having regard to (i)-(xiii) above and sections 10(1), 10(1A), 10(2A)(e), 28(1) of the Act, the making of Variation No.2 is premature and inconsistent with Ministerial Guidelines issued under section 28 of the Act, specifically the *Retail Planning Guidelines for Planning Authorities* (2012) and *Spatial Planning and National Roads Guidelines for Planning Authorities* (2012), and therefore, the Cork County Development Plan as varied by Variation No.2 fails to set out an overall strategy for the proper planning and sustainable development of the area concerned.

xv. Variation No.1 was an enabling alteration to the Cork County Development Plan mandating the Council to bring forth further iterations of the development plan in relation to the issue of retail outlet centres in a broad sense and for which the policy context and required approaches for enabling retail strategies are specified in the guidelines for retail development published by the Minister. Therefore, the Office is of the view that the Cork County Development Plan as varied by Variation No.1 remains a strategy for the proper planning and sustainable development of the overall area of Cork County Council.

xvi. Notwithstanding the explanation offered by the Chief Executive in relation to the decision of the Council not to implement the recommendation of the Office, the Office remains of the view that the variation to the Plan is premature and inconsistent with Ministerial Guidelines for the reasons set out above.

In light of the above, the Office is therefore of the opinion that Variation No.2 has not been made in a manner consistent with its recommendations and that the Cork County Development Plan 2014 as varied by Variation No.2 fails to set out an overall strategy for the proper planning and sustainable development of the area.

The Cork County Development Plan 2014 as varied by Variation No.2 purports to identify a preferred location for a retail outlet centre to serve the Cork metropolitan area in advance of the preparation of a joint retail strategy as required under the Guidelines on Retail Planning published by the Minister in April 2012 under section 28 of the Act and is inconsistent with the *Guidelines on Spatial Planning and National Roads* published by the Minister in January 2012 under section 28 of the Act, and therefore fails to set out an overall strategy for the proper planning and sustainable development of the area.

3. Recommendation to the Minister

Having regard to section 31AM(8) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act taking the steps set out in the draft direction accompanying this notice, i.e. the deletion of Variation No.2 of the Cork County Development Plan 2014, so as to rectify the matter in a manner that, in the opinion of the Office, will ensure that the Cork County Development Plan 2014 sets out an overall strategy for proper planning and sustainable development and meets the requirements of the Act.

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

[redacted]

DRAFT DIRECTION IN THE MATTER OF SECTION 31

OF THE PLANNING AND DEVELOPMENT ACT 2000 (as amended)

Variation No.2 of the Cork County Development Plan 2014

"Development Plan" means the Cork County Development Plan 2014

"Planning Authority" means Cork County Council

WHEREAS the powers and duties of the Minister for Housing, Planning, Community and Local Government 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, Planning, Community and Local Government pursuant to the Housing, Planning and Local Government (Delegation of Ministerial Functions) (No. 2) Order 2017 (S.I. 352 of 2017).

WHEREAS the Minister of State at the Department of the Housing, Planning, Community and Local Government in exercise of the powers conferred on him by section 31 of the Act 2000, and consequent to a recommendation made to him by the Office of the Planning Regulator under section 31AM(8) of the Act hereby directs as follows:

(1) This Direction may be cited as the Planning and Development (Variation No.2 of the Cork County Development Plan 2014) Direction 2020.

(2) The Planning Authority is hereby directed to take the following steps with regard to the Cork County Development Plan 2014:

Revert to the Cork County Development Plan 2014 as made following the adoption of Variation No.1 and prior to the adoption of Variation No.2 by:

(i) The text in Paragraph 7.10.5 Retail Outlet Centres is to be deleted as follows:

~~In relation to Retail Outlet Centres the Councils vision is to;~~

~~"Facilitate an innovative competitive comparison retail outlet centre serving a regional catchment that is sustainably located, which provides synergies with tourism attractions and existing urban centres, avails of existing and planned public transport, does not give rise to traffic congestion, and does not have any adverse effects upon the vitality and viability of existing retailing centres."~~

(ii) The text in Paragraph 7.10.5 Retail Outlet Centres is to be reinstated as follows:

"Cork County Council will undertake a detailed evidence based assessment to confirm the need for such developments and which will identify potential suitable locations."

(iii) The text in Paragraph 7.10.5 Retail Outlet Centres is to be deleted as follows:

~~In 2019 Cork County Council appointed consultants to carry out a Study on the Requirement for a Retail Outlet Centre in the Cork Metropolitan Area. On the basis of the study's findings Cork County Council is satisfied that there is scope and retail potential capacity to accommodate a quantum of additional comparison retail floor space within the Cork Metropolitan Area and region up to 2023 of between 90,000 and 100,000 sq.m. of net retail comparison floor area. Therefore there is capacity to accommodate a Retail Outlet Centre in the Cork Metropolitan Area.~~

~~There are a variety of different Retail Outlet Centre formats and the success, and indeed impact of a Retail Outlet Centre is dependent upon the precise format chosen or proposed. The Council are satisfied such~~

~~a proposal should not have an adverse impact upon the vitality and viability of other retail centres in Metropolitan Cork or the existing retail network/hierarchy as set out in Table 7.1.~~

~~The Study indicates that the cumulative retail impact of a retail outlet centre on Cork City Centre, the District Centres and the Metropolitan Towns would be 1% or less.~~

~~Metropolitan towns in particular generally offer middle order comparison retailing which is generally not in direct competition with the type of goods on offer in the typical Retail Outlet Centre format which seeks to attract customers from a wide catchment area and from the tourism sector. Furthermore there is a requirement on applicants to demonstrate that products sold will not be in competition with those currently on sale in typical city/town centre locations.~~

~~The provision of such a Retail Outlet Centre can be a significant benefit to the metropolitan economy and an important contributor to the life, vitality and attractiveness of Metropolitan Cork as well as an important asset to the wider southern region.~~

~~Having assessed a number of potential locations within a number of sub catchments against a range of considerations including retail impact, tourism synergy, traffic, access and public transport it was concluded that the most appropriate location for a Retail Outlet Centre in Metropolitan Cork is the NE-2 sub catchment (N25).~~

(iv) County Development Plan Objective TCR10-2: Retail Outlet Centre is to be deleted.

(v) The Map in adopted Variation No.2 titled 'NE-2 Sub Catchment (N25)' is to be deleted.

(vi) Section 7.10.6 Innovation in the County's Retail Offer is to be deleted as follows:

~~Innovation in the County's Retail Offer~~

~~To ensure that the county sustains and enhances its attraction and competitiveness as a retail destination, it must be proactive and responsive in respect of innovation in retailing and new retail market trends. Retailing is a key part of Cork County's tourism offer and, as such, is important to the county's economy as a whole. Encouraging and facilitating innovation, be that in trading format, location or product, will assist the county to build on the success that has been established to date and, consequently its retail profile and attraction.~~

STATEMENT OF REASONS

I. Variation No.2 has not been made in a manner consistent with the recommendations of the Office of the Planning Regulator under Section 31AM.

II. The Cork County Development Plan 2014 as varied by Variation No.2 purports to identify a preferred location for a retail outlet centre to serve the Cork metropolitan area in advance of the preparation of a joint retail strategy as required under the Guidelines on Retail Planning published by the Minister in April 2012 under Section 28 of the Act and is inconsistent with the Guidelines on Spatial Planning and National Roads published by the Minister in January 2012 under Section 28 of the Act, and therefore fails to set out an overall strategy for the proper planning and sustainable development of the area.

GIVEN under my hand,

Minister for Housing and Urban Development

day of March, 2020.