

DRAFT 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 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, 2021);
 - 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 the
- (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 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.

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.

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). 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(1A)(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 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* (2021). 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.

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(1A)(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(1A)(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)*. 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(1A)(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.