



Variation No. 2 of the Cork County Development Plan 2014 (Retail Outlet Centres) **Section 31(8) Chief Executive's Report**

Draft Direction, Summaries, and Recommendations •

23rd June 2020





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Section 1(a): Introduction

Overview of this Report

The purpose of this report is to summarise the views and recommendations of all those who made submissions during the public consultation on the draft Ministerial Direction and make recommendations in relation to the best manner in which to give effect to the draft direction.

The **Chief Executive's Report- "Draft Direction, Summaries, and Recommendations"** consists of the following:

Section 1(a) Introduction: Provides an introduction and overview of the report, describes the consultation that was undertaken during the Section 31 (7) consultation phase and details the legislative background and requirements for the report.

Section 1(b) Summary of the views of and recommendations made by all those who made a submission as follows:

1(b) (i) Summary of the views of any person who made submissions or observations

1(b) (ii) Summary of the views of and recommendations made by elected members

1(b) (ii) Summary of the views of and recommendations made by the Regional Assembly

Section 1(c) Recommendations in relation to the best manner in which to give effect to the draft direction.

The Report also includes "Appendices" to the report as follows;

- Appendix A(i) Full list of submitters by Interested Parties (A-Z)
- Appendix A(ii) Full list of submitters by Unique Reference Number

Public Consultation

The public consultation stage on the Draft Ministerial Direction on the Cork County Development Plan 2014 took place from **Thursday 19th March 2020 to Wednesday May 27th 2020 at midnight***.

*Period from the 29th March 2020 to the Saturday 23rd May 2020, inclusive has been disregarded when calculating the specified period as a result of a Ministerial Order made on the 29th March 2020 under Section 251A(4) of the Planning and Development Act, 2000 (as amended) ("2000 Act") which came into effect as a result of the enacted Emergency Measures in the Public Interest (Covid 19) Act, 2020 and which was further extended by Orders on the 17th April and 8th May 2020.

These public consultations were advertised through a number of media:

- An advertisement was placed in a number of Newspapers circulating locally;
- A notice was placed on the Cork County Council website;
- Prescribed authorities were notified;



A copy of the draft direction was available for inspection at www.corkcocodevplan.com during the consultation period.

In order to aid the public in accessing information and making a submission on the Draft Ministerial Direction on the Cork County Development Plan 2014, Cork County Council made an electronic copy available on the Cork County Development Plan 2014 webpage. The public notice and the draft ministerial direction were available to download. Submissions were invited from the public during the consultation period and could be made electronically (via Cork County Council's Website/Cork County Development Plan web page) or sent via post.

A total of 32 submissions were received. A list of the persons and organisations that made submissions is included in Appendix A.

Legal Background to the Chief Executive's Report

Section 31(8) of the Planning and Development Acts, as amended, requires that the Chief Executive no later than 4 weeks after the expiry of the public consultation period shall prepare a report on any submissions or observations received under subsection (7)(c) which shall be furnished to the elected members of the planning authority, the Office of the Planning Regulator ("OPR") and the Minister.

Section 31(9) states that the report referred to in subsection (8) shall—

- (a) Summarise the views of any person who made submissions or observations to the planning authority,*
- (b) Summarise the views of and recommendations (if any) made by the elected members of the planning authority,*
- (c) Summarise the views of and recommendations (if any) made by the regional assembly,*
- (d) Make recommendations in relation to the best manner in which to give effect to the draft direction.*

Section 31(10) states that the elected members of the planning authority may make a submission to the Office of the Planning Regulator in relation to the draft direction notice issued at any time up to the expiry of the period of time referred to in subsection (7)(b) and where so submitted shall send a copy of it to the Minister.

Under the provisions of Section 31(8) of the Planning and Development Act, 2000, as amended, the Section 31(8) Chief Executive's Report shall be furnished to the elected members of Cork County Council, the OPR and the Minister not later than Wednesday June 24th 2020.

Section 31(9)(d) states that report should "make recommendations in relation to the best manner in which to give effect to the draft direction"

Under Section 31AN(4) the OPR shall consider the report of the Chief Executive on the submissions, together with any submission made under section 31(10), and shall recommend to the Minister that he or she issue the direction with or without minor amendments or where the Office is of the opinion that—

- (a) a material amendment to the draft direction may be required,*



(b) further investigation is necessary in order to clarify any aspect of the report furnished or submissions made, or
(c) it is necessary for any other reason,

then the Office may, for stated reasons, appoint a person to be an inspector no later than 3 weeks after the date of receipt of the Chief Executive's Report.

If the Minister agrees with the Recommendation, then he or she shall issue the Direction under Section 31 with or without minor amendments.

Under Section 31(17) the direction issued by the Minister is deemed to have immediate effect and its terms are considered to be incorporated into the plan, or, if appropriate, to constitute the plan. No Variation of the County Development Plan will be required in the event the Minister issues a Direction.



Section 1(b): Summary of the views of and recommendations made by all those who made a submission

Section 1(b) (i) Summary of the views of any person who made submissions or observations

Unique Reference Number	Name of Interested Party	Summary of Submission
DMDVAR191677341	Cork City Council	<p>The key concerns are:</p> <ol style="list-style-type: none"> 1. Issues with the methodology used, in particular the assumptions relating to the size of the catchment area; the understatement of the level of on line retail; and the omission of assessment of the impact of changes in retailing whereby shoppers seek broad range of activities as part of the retail experience. 2. The study shows a negative impact on the city centre retail of €5.85million annually. Any negative impact may be significant to the vibrancy of retail in Cork City Centre given the tight margins in operation. This will be particularly pertinent as businesses recover from the economic impact of COVID 19. 3. The development would lead to car-borne retailing, which is unsustainable, particularly on the N25 which is an important, but already congested, transport corridor that serves the Cork Metropolitan Area. These concerns are echoed in the range of submissions made by local, regional and State bodies and business representative organisations. <p>Seeks to address the issues raised by the Office of the Planning Regulator (OPR).</p> <p>A) Joint Retail Strategy - Cork City Council will work with Cork County Council to prepare this. The terms of reference should inform the locational aspects with regard to future retail development. This should set out both a retail hierarchy and factors that should influence the location of all types of retail. It should also inform the appropriate sub-catchment for retail types, including retail outlet centres.</p> <p>B) Regard to National Guidelines - Since the adoption of Variation No 2, the Cork Metropolitan Area Transport Strategy (CMATS) was adopted by the National Transport Authority (NTA). Locational assessment should be informed by both the Spatial Planning and National Roads Guidelines for Planning Authorities (2012), and consultation with the NTA and TII in light of the investment priorities and timeframes set out in the</p>



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		<p>CMATS.</p> <p>Overarching objective - that targets and ambitions set for Cork Metropolitan Area in both the National Planning Framework and the Southern Regional Spatial and Economic Strategy are achieved in a sustainable manner that enhances the resilience and success of businesses and communities of Cork.</p>
DMDVAR191669816	Department of Communications, Climate Action and Environment	Should consult directly with their respective Regional Waste Management Planning Office regarding the development of final plans.
DMDVAR191123308	Environmental Protection Agency	<p>1) Notes the determination regarding SEA. Cork County Council should determine whether implementing the proposed Variation would be likely to have significant effects on the environment.</p> <p>2) Refer to previous submission which should also be taken into account at this time, as appropriate.</p> <p>3) In proposing and in implementing the Variation, Cork County Council should ensure that the Variation is consistent with the need for proper planning and sustainable development.</p> <p>4) In considering the Variation, Cork County Council should take into account the need to align with national commitments on climate change mitigation and adaptation, as well as incorporating any relevant recommendations in sectoral, regional and local climate adaptation plans.</p> <p>5) Cork County Council should also ensure that the Variation aligns with key relevant higher-level plans and programmes and is consistent with the relevant objectives and policy commitments of the National Planning Framework and the {Southern Regional Spatial and Economic Strategy.</p>
DMDVAR199539149	Gas Networks Ireland	No comment
DMDVAR198377912	Kerry County Council	No observation to make.
DMDVAR211136036	National Transport Authority	<p>Stated that issues raised in submission of 22nd November 2019 remain to be addressed as highlighted by the draft Ministerial Direction.</p> <p>Previous submission raised the following:</p> <ul style="list-style-type: none"> • Formulation of policy best undertaken as part of a review of the Metropolitan Cork Joint Retail Strategy/Development Plan review process. • Identification of appropriate locations would be more appropriately based on a more extensive area than that



Unique Reference Number	Name of Interested Party	Summary of Submission
		<p>of the Cork Metropolitan Area given the regional-level catchment.</p> <ul style="list-style-type: none"> • Concern with application of multi-criteria analysis particularly in relation to public transport accessibility. • Siting of the development on a national road with capacity constraints and inconsistency with the NPF and the Spatial Planning and National Roads Guidelines for Planning Authorities, 2012.
DMDVAR197178173	Southern Region Waste Management Office	No comment to make.
DMDVAR191681350	Transport Infrastructure Ireland	<ol style="list-style-type: none"> 1. Issues raised in previous submission remain to be addressed as highlighted by the draft Ministerial Direction. 2. Recent decision of An Bord Pleanala to uphold Cork County Councils decision to refuse planning permission at Tullagreen at N25 Cobh Cross Interchange Carrigtwohill (ABP Ref. No: PLO4.303155) highlights the known constraints that exist on the N25 corridor.
DMDVAR211331791	Adrian Godwin	<p>As a business owner in the town of Fermoy (client base of retail businesses and their employees) have serious concerns about the creation of a retail park in Carrigtwohill.</p> <ol style="list-style-type: none"> 1 - Fermoy has only in the last number of years recovered following the crash of 2008. Retail businesses in the town have started to grow and a number of newer businesses have opened. This would have a detrimental impact on town retail units and lead to a loss of local employment with further economic impacts following the current pandemic. 2 - The effect that large out of town retail parks had on the Cork City Centre is evident. This has led to the closure of a number of small retail shops in lieu of large UK stores which are now facing their own difficulties. 3 - There appear to be large volumes of retail space available in both the City and the surrounding retail parks. The closure of Debenhams in Mahon Point will result in a closure of almost 50% of the centre. This space should be filled before granting planning for other ventures.
DMDVAR205711003	Anna Aherne	<p>Opposed to variation to the County Development Plan 2014. A Tourist Outlet Village in Carrigtwohill seems ill judged at this time and it would be better to support the local businesses and communities in the already established villages of East Cork and help in their rejuvenation. With the serious consequences of climate</p>



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		change already being felt there is a need to mitigate against it and be vigilant in what we plan for the future.
DMDVAR211309721	Caroline Fenton	Concerned with traffic (4,000 and 6,000 cars going into the outlet each day) as live in close proximity to the site.
DMDVAR211286149	Coralie Boutique	<p>Object to the variation due to the devastating impact it would have on trade in Fermoy town:</p> <ul style="list-style-type: none"> - Fermoy retailers and small businesses face the extreme challenge of recovery from the sudden & acute economic shock of business closure during the COVID-19 pandemic. It is expected it will take several years for businesses to recover from the closure and upon re-opening, reduced consumer footfall whilst COVID-19 is in the community. - Businesses in the rural town have been hit by an unprecedented loss of revenue, loss of trade, and loss in re-sale value of stock due to the pandemic which will take several years to recover from - compounded by the fact that the country is undoubtedly heading into a recessionary period. - A development of this undertaking, bringing global giants in terms of brands at discounted pricing to compete with small businesses in such close proximity to Fermoy, will decimate small local retailers & without doubt result in business closures. - Recovery from COVID-19, combined with the negative economic impact of Brexit on Fermoy trade in the expected recession over the coming years will result in an extremely difficult trading environment coupled with weakened consumer confidence as consumers brace for recession. To add such aggressive competition in such close proximity to a rural town would be catastrophic for small businesses in Fermoy.
DMDVAR210460103	Cork Branch of the Irish Hotels Federation	<p>1. Accepts that the development of a Retail Outlet Centre presents a significant Tourism and Economic opportunity for Cork. A Tourism Impact Statement completed by CHL consulting outlines the economic and tourism benefits a development of such an outlet Centre would be for Cork and it is clear it would lead to:</p> <ul style="list-style-type: none"> • Attracting significant visitors' numbers to Cork • Generating additional spending & economic activity for Cork • Generating additional bed nights for Cork <p>2. The tourism strategy for Cork: Growing Tourism in Cork - A Collective Strategy 2016-2020, highlights the goal of increasing tourism revenue through the development of a compelling visitor proposition based on the delivery of distinctive visitor-centric experiences, which include 'in places to shop'.</p> <p>3. The proposed development of a Retail Outlet Centre is</p>



Unique Reference Number	Name of Interested Party	Summary of Submission
		<p>entirely consistent with this strategy. It will introduce a unique experience to the Cork region and beyond, which will increase the revenues earned from tourism, and which will also help to increase source market diversity, and lengthen the season.</p> <p>4. The Cork Branch of the Irish Hotels Federation supports fully any investment into the Cork Region that will drive and enhance the local and wider Cork Economy in a conscientious, sustainable and planned manner. Their position remains unchanged and given the changing dynamics of how challenging business may be in the future arising from the fall out of Covid-19 pandemic it is imperative that any investment into the Cork region that can boost demand, Jobs and economic activity is welcomed.</p> <p>5. The Cork Branch of the IHF has 64-member properties, providing employment for almost 19,000 people in the Cork region and represents approximately 3,000 hotel and guest house bedrooms.</p>
DMDVAR205252048	Cork Business Association	<p>Overall Conclusion</p> <ul style="list-style-type: none"> • Variation is against proper planning and sustainable development and should not be made prior to the preparation of a joint updated retail strategy as required under retail planning guidelines. • Echo the concerns of the OPR that the variation was premature and resulted in a Development Plan that fails to set out an overall strategy for the proper planning and sustainable development of Cork which represents a breach of the legislation. <p>The study was flawed as it was not jointly completed by both authorities. The entire approach to the proposed development is extremely questionable as follows:</p> <ul style="list-style-type: none"> • no provision in the existing Joint Retail Strategy for a Retail Outlet Centre to be developed • study appears to be a concerted attempt to reclaim the revenues lost as a result of the boundary extension • a developer-led proposal led to the brief being changed demonstrating a reactive rather than proactive attitude to such a major strategic development <p>Site Selection Coincided with a Developer-Led Proposal Questionable that the study recommends site brought forward by a developer as the most suitable location for a Retail Outlet Centre whilst blatantly omitting the city centre from the study area.</p> <p>Loose interpretation of Policy</p>



Unique Reference Number	Name of Interested Party	Summary of Submission
		<p>A loose interpretation of policy was applied in the policy review section of the study noting that the introduction of a ROC 'could be in compliance with retail planning policy objectives' with no consideration of the primacy of the city centre. This is a clear departure from policy.</p> <p>The Exclusion of the City Centre Study is flawed as the City Centre was excluded from the site selection process. Justification for its exclusion is weak. There is in excess of 150 hectares of land at the docklands. A 'do nothing approach' was not considered [which is a key element of any meaningful assessment of need] particularly given reported 18% vacancy level in the city centre and recent losses of retail. Ample space exists within the city centre to accommodate the quantum of comparison retail and in line with the sequential test it should not divert this retail elsewhere.</p> <p>Vacant space in the city could be delivered with significantly less capital investment, in a manner which supports not competes with the existing retail sector in Cork, and in an area that benefits from being on a high quality public transport network.</p> <p>Modal Split/Car Dependency Car dependent nature of proposal with 90% of the visitors travelling by car is completely unsustainable undermines the investment in the rail line and the recently announced CMATS. Traffic impacts in the area will be significantly worsened.</p> <p>Tourism Based on Kildare Village Outlet figures it is likely the proposal will only result in a marginal increase in tourism revenue. Potential food offering on site limits the potential overspill benefit to local restaurants.</p> <p>Trade Draw Hard to believe that retail impact will only be 0.5% on the City Centre and only 0.3% on Midleton. The basis for calculation is questioned. In light of the Covid-19 crisis there is absolutely no scope to further draw retail trade away from any of the existing retailers particularly in Cork City Centre and Midleton.</p> <p>The need for further study The report notes that there are issues around the rapidly</p>



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		<p>changing retail environment and the impact, in particular, of online retailing on floor space demand. The study suggests a comprehensive householder survey of expenditure patterns in the CMA would be required. The proposals as such are premature.</p> <p>Incorrect Assumptions The 2 hour catchment appears too generous, overlapping with Kildare and as such skewed the need for the ROC. The % diversion of trade from each centre is questionable.</p> <p>Primacy of Cork City Centre The City has not fully realised its potential to develop into a major retail centre for the region. It is the primary tier in the retail hierarchy and the most significant urban centre in the County and region. However, the retail role of the City is vulnerable and it is envisaged that its role and function as the major retail destination in the region will continue to erode unless there is significant investment and redevelopment in the prime city centre retail core in the short term.</p> <p>The County Council is appealed upon to recognise the primacy of the City Centre and to make all future policy decisions pertaining to retail developments with the best interests of the city and consequently the entire region in mind.</p>
DMDVAR210878038	Cork Environmental Forum	<ol style="list-style-type: none"> 1. Agree with the Draft Direction and its reasons, in particular the need to prepare a joint retail strategy. 2. The proposal is not what the County needs to improve its retail offering. Undermining the fabric of communities by displacing jobs and small businesses is not a sustainable model for development. 3. The proposed location in proximity to a Special Area of Conservation is questionable. 4. Preferable if such investment were spent on improving the retail offerings of the villages and towns of East Cork which would have much greater impact to rejuvenate these communities and support local jobs. Given the context of emerging from the Covid-19 lockdown and the ongoing Climate Crisis the greater need is to provide facilities that are easily accessed by more sustainable modes in villages and towns rather than having a large centre accessed primarily by road.
DMDVAR211340219	Denis O'Riordan	Request the deadline be extended due to the pandemic as this proposal is not just a Cork issue but one for the wider region and its towns.



Unique Reference Number	Name of Interested Party	Summary of Submission
DMDVAR211330683	Denise Fenton	Object to the proposed retail development. Concerned with the impact such a development could have in terms of anti-social behaviour in the immediate area. Also concerned with noise, air and traffic pollution as these will all significantly increase with this proposed development. Lack of infrastructure in the area which would be unable to take extra traffic.
DMDVAR211315273	Elaine O'Sullivan	Object to this development. Building a dwelling in close proximity and greatly concerned about volumes of traffic going in and out of the site.
DMDVAR210290045	Erin O'Brien	"In 1974, Vanity Fair opened up the first multi-store outlet center in Reading, Pennsylvania. Throughout the 1980s and 1990s, outlet malls grew rapidly in the United States." (Wikipedia) Now, almost 50 years later, someone is trying to bring this completely outdated and unsustainable concept to Cork. Support the Minister's draft direction and is confident that Cork County Council will find more innovative, sustainable ways to develop the economy and serve the people of Cork.
DMDVAR210868928	Fiona Vincent (Coordinator of West Cork Environmental Group)	<ol style="list-style-type: none"> 1. The heart of communities, the town centres, must play a key role in developing County Cork and revitalising the rural economy. Indeed the town teams, that Cork County Council has put together as lockdown restrictions begin to be eased, are tasked with exactly this role. 2. This planned variation would facilitate the abandonment of our existing urban centres, would be damaging to the retail sector as a whole and especially damaging to the Tourist Industry which is a main stay of County Cork's economy. 3. The proposed variation will run against National Retail Policy and against National Policy on Climate Change and against the government's Framework for Town Centre Renewal. 4. Agree with the views of the OPR that variation No. 2 fails to set out an overall strategy for the proper planning and sustainable development of the area.
DMDVAR206784343	Glounthaune Sustainable Development Committee	Welcome the Minister's draft direction and support the issuing of the Ministerial Direction to delete the variation. Variation No. 2 should be rejected as to allow a development of this kind is unsustainable and contrary to national guidelines. The variation is not in line with local, regional and national policy in relation to supporting and protecting the role of Cork City and towns in the Cork Metropolitan Area.
DMDVAR191640904	Mary O'Leary	Not in favour of the variation for the following reasons: <ol style="list-style-type: none"> 1) Retail Outlet stores undermine the survival of local hardware/furniture stores already struggling to compete. 2) The Council should be looking at creating a Circular



Unique Reference Number	Name of Interested Party	Summary of Submission
		<p>Economy in line with EU policy and ROC's do not support this.</p> <p>3) There is a need to rebuild and bring life back into our local towns and Cork City centre. Retail centres draw business away from the centres. Cork City centre is dead and businesses are struggling to compete.</p> <p>4) The COVID 19 pandemic will change the economic situation considerably and we need to support our existing businesses and SME's.</p> <p>5) Supporting local business benefits the local economy unlike retail outlets whose profits will leave the country.</p>
DMDVAR211313658	Paul Fenton	Building a dwelling in close proximity and greatly concerned about volumes of traffic going in and out of the site.
DMDVAR211327344	Samantha Wims	Mitchelstown is suffering enough with business closures. Run successful boutique in the town and believe customers travel to the store spending their money in cafes, other shops, etc. An outlet will take customers away causing the town to suffer even more.
DMDVAR211326779	Su-man menswear	Do not want to see an outlet store being built in Cork as are a family run businesses hiring local staff. An outlet in Cork will be detrimental to the business and to the town of Fermoy.
DMDVAR211242629	Susan Hickey	Objects to the proposed Retail Outlet Centre in Carrigtwohill as the development will have a disastrous effect on all commuter/satellite towns with businesses of a similar nature.
DMDVAR211293333	Susan O'Riordan	<ul style="list-style-type: none"> • An extension on the consultation period should be given to allow businesses to consult as many were unaware. • The vision for outlet centres does not seem very realistic particularly with regard to traffic congestion as evidenced by the queues of traffic into Mahon Point and Kildare Village • Low cumulative retail impact appears to be questionable. Were fashion retailers in towns close to Kildare village consulted as to their experiences? • The requirement that 'products sold will not be in competition with those currently on sale in typical city/town centre locations' appears unachievable. • Questionable whether the client interested in developing such a facility will still have any interest post pandemic. • Query why Cork County Council wish to add a Retail Outlet Centre to the concerns of retailers during a recession. <p>Such a proposal would be better considered as part of</p>



Unique Reference Number	Name of Interested Party	Summary of Submission
		the Forthcoming CDP Review and not as a Variation to the CDP 2014.
DMDVAR211326261	Suzsa	A retail outlet centre will destroy retail stores across Cork County. Businesses are struggling and an outlet centre will be the final stroke.
DMDVAR193569043	William Loftus	Kennedy Quay in Cork City and the Docklands would be an appropriate location for a retail outlet facility and combined with an amenity walk could provide a tourist link to Cobh and Youghal. A plan (aerial photographs and sketch notes for the amenity walk is included as part of the submission along with a number of newspaper articles about Cork.



Section 1(b) (ii) Summary of the views of and recommendations made by elected members.

Unique Reference Number	Name of Interested Party	Summary of Submission
DMDVAR211281348	Members of Cork County Council	<p>A. Legal Matters pertaining to the decision of the OPR to recommend to the Minister the issuing of a Draft Directive</p> <p>The draft direction and the considerations set out therein are fundamentally flawed and are not in accordance with the provisions of the Planning and Development Act 2000 as amended, in particular section 31AM (8) under which the notice and draft direction were purported to be issued. It is noted that section 31AM (8) (a) to (c) are cumulative requirements to be met prior to a recommendation or draft direction being issued by the OPR. In this regard the following should be noted:</p> <p>Joint Retail Strategy</p> <ul style="list-style-type: none"> • The Cork Joint Retail Strategy was prepared and adopted by Cork County Council and Cork City Council in 2014 in accordance with the Retail Guidelines. • Council is only required “to have regard” to the Retail Guidelines not obliged to apply as may be the case of a Special Planning Policy Requirement (SPPR) under Section 28(1). The OPR’s flawed interpretation of Council’s obligations to comply with, rather than have regard to Guidelines, could have the effect of restricting Council’s rights to form Policy on a range of matters. • Council proceeded with Variation No2 having taken account of the existing Cork Joint Retail Strategy as adopted in 2015. • The Retail Planning Guidelines do not require that Joint Retail Strategies, be they current or future, contain specific policies on retail outlet developments. • The Retail Planning Guidelines do not require that a Joint Retail Strategy is updated prior to making a variation of the development plan. Section A 3.5 states that it is “best practice” that an up to date strategy has been prepared to inform the development plan review process. The Notice of the OPR makes no reference to this. <p>In the light of the above matters, the Notice is erroneous insofar as its assertion that Variation No2 should not be made prior to an updated joint retail strategy for the Cork Metropolitan Area, “as required” by Guidelines on Retail Planning. The notice was therefore not in accordance with Section 31AM (8) (a).</p>



		<p>Overall Strategy</p> <p>A crucial precondition for invoking Section 31AM (8) is that (b) requires a conclusion that the development "...fails to set out an overall strategy for the proper planning and sustainable development of the area concerned".</p> <p>There is no consideration in the Notice of the Minister or the OPR of the overall strategy contained in the Cork County Development Plan 2014 as varied nor any analysis or explanation as to how Variation No2 may result in this overall strategy ceasing to be an overall strategy. The Notice does not identify any factors which could have led to such a conclusion and does not address the question whether the Cork County Development Plan 2014, as varied, fails to "set out" an overall strategy. There was no suggestion for saying that Variation No1 resulted in there not being an overall strategy for the proper planning and sustainable development of the area.</p> <p>Insofar as the statement of reasons for the Draft Direction includes the Variation being inconsistent with the Spatial Planning and National Road Guidelines (2012), it is inadequately reasoned, vague and fails to take account that the requirement under Section 28 is simply 'to have regard' to such Guidelines and not to follow the same.</p> <p>The alleged failure to 'work closely' with the other statutory authorities was complied with in the context of Variation No2 and said state authorities were consulted during the preparation of the Study which informed the Variation. Variation No1 which was made in accordance with prescribed legislative processes, including a consultation process that provided for inputs from the relevant state agencies.</p> <p>The draft direction is therefore inadequately reasoned with the Statement of Reasons simply stating that (1) Variation No2 has not been made in a manner consistent with the recommendation of the OPR and (2) the Cork County Development Plan 2014 as varied purports to identify a preferred location for a retail outlet centre in advance of preparing a joint retail strategy as required by the Retail Guidelines and is inconsistent with the Guidelines on Spatial Planning and National Roads (2012). It does not specify how it is inconsistent by reference to specific provisions. Furthermore, the accompanying Notice of the Minister and indeed of the OPR does not assist significantly in this regard.</p> <p>Other relevant policy and objectives of the Planning Authority</p>
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		<p>There is no evidence of the OPR taking wider policy objectives of the Planning Authority into account particularly considerations of economic development / tourism development matters such as synergies between retail outlets and tourism facilities as required under 31S (a) nor the National Planning Framework in respect of which the Cork Local Authorities made a Joint Submission – Cork 2050 – as required under Section 31S(c).</p> <p>The OPR notice says that the development has not been reviewed in the light of the adopted RSES but it is not explained how this has any connection with the Notice which refers to the Retail Planning Guidelines or indeed section 31AN(8).</p> <p>The requirement is simply “to have regard” to the Spatial Planning and National Road Guidelines such Guidelines, which the Council did in the making Variation No. 2. The Notice also fails to recognize that the Planning Guidelines on Spatial Planning and National Roads are referenced in the Joint Retail Strategy.</p> <p>B The planning and development merits of not proceeding with the Draft Ministerial Directive and allowing the CDP Variation No2 to stand as made by resolution the Elected Members of Cork County Council on 27th January 2020.</p> <ul style="list-style-type: none"> • Cork County Council is satisfied based on the study findings that there is ample capacity for a retail outlet centre in the Cork Metropolitan Area. 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 0.5% or less. • Such a facility of regional significance has the potential to deliver economic benefit to the Metropolitan Area, County and Region by meeting an identified need, retaining spend that would otherwise be expended in the only Retail Outlet Centre in the State, and attracting new visitors to Cork and extending the stay of visitors that would have been attracted by existing tourism sites/products. • Proposed Variations No.1 and No.2 of the CDP, 2014 when read together are in compliance with the Retail Planning Guidelines for Planning Authorities (2012). Variation No.1 and the current Variation when taken together have taken account of the relevant Sections of the Retail Planning Guidelines and in fact significant portions of the Guidelines text has been incorporated directly into the Variations.
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		<ul style="list-style-type: none"> • Cork County Council is satisfied that Variation No.2 does not in itself zone a specific site and that further policy analysis is required before a specific site could be identified within the N25 sub catchment. Cork County Council is strongly of the view that this proposed Variation provides a firm evidence base for plan led development following on from commitments made in the previous Variation No.1. It also provides a strong evidence based framework at a strategic level to support the development of further policy initiatives. • The Guidelines advocate a proactive approach in facilitating the meeting of retailing needs in line with a proper evidence base for that need. Cork County Council has sought to be proactive in particular by: <ul style="list-style-type: none"> Ø Ensuring that retail development is plan-led, hence the commissioning of the Retail Outlet Centre Study. Ø That there is a strong planning policy basis for this proposed Variation No.2. • The provision of a Retail Outlet Centre will 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. • Tourism, including cruise tourism, plays a key role in the economy of the area. Tourism results in expenditure additional to that of the resident population, being expenditure from visitors from outside the catchment. Maximising the opportunities for synergies with tourism attractions is important in maximising the economic benefits and minimising any impact upon the vitality and viability of existing centres, particularly Cork City Centre. A strategic development of the kind under consideration has the potential to make a significant positive economic contribution to the Metropolitan Area, County and Region by attracting new visitors, providing linked trips as well as encouraging longer stays for those that would have visited existing tourist attractions, including potential increases in overnight accommodation. • This will help to support the Cork Metropolitan Areas role as identified in the National Planning Framework which designates Cork to emerge as “an international centre of scale and is well placed to complement Dublin, but require significantly accelerated and urban focused growth to more fully achieve this role”. • Cork County Council entered into this process in a collaborative manner with the intention of developing an evidence based plan led approach to providing clear policy
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		<p>guidance for consideration of a retail outlet centre in Metropolitan Cork.</p> <ul style="list-style-type: none">• 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.• The proposed Variation along with Variation No.1 sets out a clear pathway to provide for high level strategic guidance, identifying the N25 corridor as the optimum sub catchment and the criteria to be used to assess any future retail outlet centre proposal.• Text proposed in Variation No. 2 updates the existing text in the Plan (Variation No. 1) to clarify that a high level study on the Requirement for a Retail Outlet Centre in the Cork Metropolitan Area has now been concluded. Having assessed a number of sample 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). Variation No.2 supports the provision of a retail outlet centre in this sub-catchment subject to further policy consideration.• Cork County Council is strongly of the view that this proposed Variation lays a firm evidence base for plan led development following on from commitments made in the previous variation.• The Municipal District Local Area Plans for the County Metropolitan Area and the Cork County Development Plan introduced, in 2017 and 2018 respectively, policy guidance in relation to retail outlet centres. The Study on the Requirement for a Retail Outlet Centre in the Cork Metropolitan Area as well as Variation No.2 can be used to inform the preparation of any future Joint Retail Strategy which could then inform the upcoming Development Plan Review process, having regard to existing Local Area Plan and County Development Plan policy.• Any developments being proposed in the sub-catchment will need to demonstrate that the proposal is in accordance with the Planning Guidelines on Spatial Planning and National Roads. Cork County Council is satisfied that the proposed Variation No.2 complies with the Spatial Planning and National Roads Guidelines for Planning Authorities (2012).
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		<ul style="list-style-type: none"> • The proposed Variation supports the delivery of the policies and objectives of the Regional Spatial and Economic Strategy for the Southern Region and the Cork Metropolitan Area Transport Strategy. The Variation will strengthen the already strong emphasis in the CMATS on the eastern rail corridor. <p>The members of the Council resolved to make a submission to the Office of the Planning Regulator and which is required by legislation to be copied to the Minister and further resolved to make a submission to Cork County Council's Public Consultation Process and which are recorded in the Chief Executive Report.</p>
DMDVAR211078735	Fine Gael members of the Cork County Council	<p>All 20 Members fully support the resolution of Council adopted overwhelmingly on two occasions and fully endorse the Chief Executive submission to the Office of the Planning Regulator and the Minister.</p> <p>The key elements are:</p> <ol style="list-style-type: none"> 1. The overarching objective of the National Planning Framework was to create a counter balance to Dublin and the East Coast. Cork has been identified at National and Regional level as being a key player in achieving this. In order to achieve this Cork must have at least the same outlets and attractions as the East Coast. 2. The Variation was passed overwhelmingly by the members in accordance with existing legislation and public consultation. 3. Has the Regulator accepted the principle that a local authority could in essence veto a variation of another authority by not participating fully in a joint study (even though every effort was made to collaborate). A precedent like this could have serious implications in other areas such as Housing. 4. The concept of local government is now recognised in our constitution. That recognition should allow each Local Authority to carry out what is a basic Democratic function, to make a County Development Plan and appropriate Variation when necessary. <p>Serious legal concerns as to the validity of the draft Directive</p> <p>Role of local government - Article 28A of the Constitution of Ireland recognises the role of local government. A margin of appreciation is appropriate in a review of the discharge by Cork County Council of what is one of its most important powers, that is, the making of a development plan (and in this case a variation of the development plan) after a public consultation process which included having appropriate regard to the provisions of environmental assessment for the purposes of the Strategic Environmental Assessment (SEA) Directive. The</p>



		<p>making of a development plan is a "reserved function", i.e. it requires a resolution of the elected members of the local 'authority, and, thus, the plan carries a democratic imprimatur.</p> <p>Inconsistency with Section 28 guidelines - Difficult to understand how it can justifiably be asserted that Cork County Council did not "have regard to" the two sets of 'Section 28 Guidelines' referred to in reason No 2 of the draft directive. It is clear from the statutory report of the Chief Executive of Cork County Council, dated 20th December 2019, that Cork County demonstrated it had regard to the guidelines. The guidelines referred to are planning policies to which the planning authority is required to have regard and not Specific Planning Policy Requirements (SPPRs) which must be complied with. (Various case law and judgements are also referenced on this matter).</p> <p>Extent to which the statutory report of the Chief Executive of Cork County Council was addressed by the OPR - The OPR should have properly addressed all the substantive points made by the Chief Executive of Cork County Council in his statutory report on the Variation, dated 20th December 2019 in order to fully engage with and give adequate explanations of the reasonableness and validity of his opinion particularly so as the substantive points were made in detail on behalf of a constitutionally recognised local government body. (Various case law and judgements are also referenced on this matter).</p> <p>Other legal issues - There are various other serious legal issues that may well be raised in any judicial review proceedings which may be instigated in this matter. It does appear, for example that part of the problem is that the statutory scheme was clearly not designed to deal with circumstances where the Planning Authority Elected Members are in full agreement with the views and advice of the Executive.</p>
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Section 1(b) (iii) Summary of the views of and recommendations made by the Regional Assembly.

Unique Reference Number	Name of Interested Party	Summary of Submission
DMDVAR211073395	Southern Regional Assembly	<p>Submitted an observation on proposed Variation No 2 to Cork County Council, dated 22nd November 2019 which assessed the proposed Variation No 2 against the South West Regional Planning Guidelines and objectives under the Draft Regional Spatial and Economic Strategy (RSES) for the Southern Region.</p> <p>The RSES was made in January 2020 and the following Regional Planning Objectives (RPOs) are of note, specifically for Point (II) in the Direction's Statement of Reasons.</p> <ul style="list-style-type: none">a) RPO 55 Retailb) Metropolitan Area Strategic Plan (MASP) Policy Objective 16 <p>These objectives of the RSES and Cork MASP have relevance for Proposed Variation No.2 and should be taken into consideration in the Direction and Statement of Reasons. In addition, refer to text under Section 4.6 "Retail" and text under Cork MASP Section 8.7 "Role of Retail" in the RSES for the importance of the retail sector as a catalyst for town and city centre renewal and the importance of joint retail strategies which support the above Regional Policy Objectives (which was attached as Appendix 1)</p>



Section 1(c) Recommendations in relation to the best manner in which to give effect to the draft Direction.

I Planning Policy Matters

Having given detailed and serious consideration to the draft Ministerial Section 31 Direction to Variation No.2 of the Cork county Development Plan, 2014, as amended, I remain fully satisfied that the making of Variation No2:

1. Satisfies all statutory requirements,
2. Is in the interests of the proper planning and sustainable development of the area and
3. Is not premature pending the making of an Updated Joint Retail Strategy, should Cork County Council and Cork City Council do so.

First and foremost we are engaged in a planning process and it is in my view appropriate and timely to set out from the beginning what I believe to be the planning and development merits of allowing the Variation No2 to stand as made by resolution by the Elected Members of Cork County Council on 27th January 2020.

- Based on the finding of the Study on the Requirement for Retail Outlet Centre(s) in County Cork there is ample capacity for a retail outlet centre in the Cork Metropolitan Area. 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 0.5% or less.
- Such a facility of regional significance has the potential to deliver economic benefit to the Metropolitan Area, County and Region by meeting an identified need, retaining spend that would otherwise be expended in the only Retail Outlet Centre in the State, and attracting new visitors to Cork and extending the stay of visitors that would have been attracted by existing tourism sites/products.
- Proposed Variations No.1 and No.2 of the CDP, 2014 when read together are in compliance with the Retail Planning Guidelines for Planning Authorities (2012). Variation No.1 and the current Variation when taken together have taken account of the relevant Sections of the Retail Planning Guidelines and in fact significant portions of the Guidelines text has been incorporated directly into the Variations.
- Variation No.2 does not in itself zone a specific site and that further policy analysis is required before a specific site could be identified within the N25 sub catchment. I am strongly of the view that this proposed Variation provides a firm evidence base for plan led development following on from commitments made in the previous Variation No.1. It also provides a strong evidence based framework at a strategic level to support the development of further policy initiatives.
- The Guidelines advocate a proactive approach in facilitating the meeting of retailing needs in line with a proper evidence base for that need. Cork County Council has sought to be proactive in particular by:
 - Ensuring that retail development is plan-led, hence the commissioning of the Retail Outlet Centre Study.
 - That there is a strong planning policy basis for this proposed Variation No.2.



- The provision of a Retail Outlet Centre will 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.
- Tourism, including cruise tourism, plays a key role in the economy of the area. Tourism results in expenditure additional to that of the resident population, being expenditure from visitors from outside the catchment. Maximising the opportunities for synergies with tourism attractions is important in maximising the economic benefits and minimising any impact upon the vitality and viability of existing centres, particularly Cork City Centre. A strategic development of the kind under consideration has the potential to make a significant positive economic contribution to the Metropolitan Area, County and Region by attracting new visitors, providing linked trips as well as encouraging longer stays for those that would have visited existing tourist attractions, including potential increases in overnight accommodation.
- This will help to support the Cork Metropolitan Areas role as identified in the National Planning Framework which designates Cork to emerge as “an international centre of scale and is well placed to complement Dublin, but require significantly accelerated and urban focused growth to more fully achieve this role”.
- Cork County Council entered into this process in a collaborative manner with the intention of developing an evidence based plan led approach to providing clear policy guidance for consideration of a retail outlet centre in Metropolitan Cork.
- 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.
- The proposed Variation along with Variation No.1 sets out a clear pathway to provide for high level strategic guidance, identifying the N25 corridor as the optimum sub catchment and the criteria to be used to assess any future retail outlet centre proposal.
- Text proposed in Variation No. 2 updates the existing text in the Plan (Variation No. 1) to clarify that a high level study on the Requirement for a Retail Outlet Centre in the Cork Metropolitan Area has now been concluded. Having assessed a number of sample 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). Variation No.2 supports the provision of a retail outlet centre in this sub-catchment subject to further policy consideration.
- The Municipal District Local Area Plans for the County Metropolitan Area and the Cork County Development Plan introduced, in 2017 and 2018 respectively, policy guidance in relation to retail outlet centres. The Study on the Requirement for a Retail Outlet Centre in the Cork Metropolitan Area as well as Variation No.2 can be used to inform the preparation of any future Retail Strategy which could then inform the upcoming Development Plan Review process, having regard to existing Local Area Plan and County Development Plan policy.
- Any developments being proposed in the sub-catchment will need to demonstrate that the proposal is in accordance with the Planning Guidelines on Spatial Planning and National Roads. Cork County Council is satisfied that the proposed Variation No.2 complies with the Spatial Planning and



National Roads Guidelines for Planning Authorities (2012).

- The proposed Variation supports the delivery of the policies and objectives of the Regional Spatial and Economic Strategy for the Southern Region and the Cork Metropolitan Area Transport Strategy.
- The Variation will strengthen the already strong emphasis in the CMATS on the eastern rail corridor. It is noted that the Cork Metropolitan Area Transport Strategy has been approved by the NTA.
- I am strongly of the view that this proposed Variation lays a firm evidence base for plan led development following on from commitments made in the previous variation.

II Legal Considerations

On foot of a request on 3rd March 2020 by the Cork County Council Corporate Policy Group I arranged to obtain legal advices on matters relating to the making of Variation No.2 and the Section 31 Process. Said advices informed my report to the Special Meeting of Council (22nd May 2020) and which was Requisitioned by the Mayor to facilitate the Elected Members in seeking to obtain my advice and assistance as provided for under Section 132 of the Local Government Act 2001, as amended.

It is my view that the legal considerations informing my advices to Council on 22nd May 2020 remain pertinent to this Report which is being prepared pursuant to Section 31(8) of the Planning & Development Act 2000, as amended.

Section 31(9)(d) of the Planning and Development Act 2000 also places a very significant legal duty on the Chief Executive of the Council, in that that Officer is required to make recommendations to the Minister in relation to the best manner in which to give effect to the draft Ministerial Direction. In the circumstances, as Chief Executive, it is incumbent upon me to consider not just the planning policy matters that arise but also any matters of legal process that arise and that may impact on the robustness of any future decision which the Minister may make in this matter. Accordingly, while I would reiterate that I am satisfied that Variation No. 2 is in the interests of the proper planning and sustainable development of the area and is soundly made, the following is also of particular relevance in reaching my recommendations on how best to give effect to the Draft Ministerial Direction.

- I am satisfied based on advices received that the Section 31 Notice dated the 5th March 2020 and the Draft Direction attached thereto are predicated upon the recommendation and notice of the OPR which states that the Variation was not made in accordance with the OPR recommendation which is 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 the Retail Planning Guidelines ("RPG") under section 28 of the 2000 Act. The Notice further states that the decision to vary the development plan, is premature and results in the making of a development plan as varied that fails to set out an overall strategy for the proper planning and sustainable development of the area concerned.
- I am also satisfied based on the advices received that the Draft Direction and the considerations set out therein are fundamentally flawed and are not in accordance with the provisions of the 2000 Act, in particular section 31AM(8) under which the notice and draft direction were purported to be issued. It is noted that section 31AM(8)(a) to (c) are cumulative requirements to be met prior



to a recommendation or draft direction being issued by the OPR. In this regard the following should be noted:

- i. The OPR notice at pg. 7 cites Section 3.5 of the RPG which states, “...*certain development plans must be informed by joint or multi authority retail strategies...*” and that Table 1 of section 3.5 includes Cork City and County Council which must be prepared. The Cork Joint Retail Strategy was prepared and adopted in 2014 in accordance with the Guidelines.
 - ii. While pg. 7 of the OPR notice seeks to underline the words that the development “...must be informed...” such language cannot alter the fundamental extent of the requirement of Cork County Council which is only a requirement “to have regard” to the RPG under section 28 of the 2000 Act. The Council is not bound to slavishly follow same. The statement is not a special planning policy requirement (“SPPR”) which the Council is obliged to apply under section 28(1). In any event, a Cork Joint Retail Strategy was prepared and adopted in 2014.
 - iii. The RPG do not require the Joint Retail Strategy to contain specific policies on retail outlet developments. It refers to “broad” requirement or guidance as to location and function of retail activity (section 3.5). There is no requirement for the Joint Retail Strategy to address policy and location aspects of prospective retail outlet [as appears to be suggested in the OPR Notice at pg. 8, point (vii)]. Section 4.11.2 of the RPG sets out locational criteria for exceptional provision for large scale retail warehouses in excess of 6000 m² cap. It does not state these matters are to be contained in a Joint Retail Strategy.
 - iv. The RPG do not require that a Joint Retail Strategy is updated prior to making a variation of the development plan. Section 3.6 refers to monitoring trends and updating the joint or multi authority retail strategies and this updating requirement is addressed in more detail in Section A 3.5 which is in Annex 3 of the RPG. Section A 3.5 states that it is “*best practice*” that an up to date strategy has been prepared to inform the development plan review process. The Notice of the OPR makes no reference to this key provision of the RPG and Annex 3 seems to have not been considered. The RPG only goes so far to say that it is “*best practice*” to update prior to review of the development plan – not that it “is required”. Pages 4 and 8 of the Notice refers to the Chief Executive's Report which has referred to future draft joint retail strategy being prepared as part of the Cork County Development Plan Review. This is precisely in accordance with the “*best practice*” referred to in Annex A 3.5. The criticisms of the Chief Executive's Report at pg. 8 of the Notice is therefore entirely misplaced.
 - v. In the light of the above matters, the Notice is in error insofar as Variation No. 2 should not be made prior an updated joint retail strategy for the Cork Metropolitan Area, “as required” by RPG. The RPG do not “require” such a update. The Notice is therefore not in accordance with section 31AM(8)(a) insofar as the recommendation of the OPR is premised on a misunderstanding that such a prior update of the Joint Retail Strategy is “required” by the RPG.
- The Notice and recommendation are also not in accordance with section 31AM(8)(b). An essential precondition for issuing the notice under section 31AM(8) is that the development plan or variation results in the failure to set out an overall strategy for the proper planning and sustainable development of the area. There is no doubt that the Cork County Development Plan 2014 contains an overall strategy for the proper planning and sustainable of the area, which included a retail



strategy which is set out in Chapter 7 of the Plan (and which is referred in the core strategy at 2.5.4 to 2.5.6 of the Core Strategy). No Ministerial Direction was issued at that time under section 31 of the 2000 Act as amended, suggesting otherwise. Furthermore, there was no suggestion or indeed basis for saying that Variation No. 1 resulted in there not being an overall strategy for the proper planning and sustainable development of the area.

- The Notice of the OPR makes no reference to the existing overall strategy including retail strategy in the development plan. Therefore, it is illogical to state that a variation of a development plan does not set out an “overall strategy”. Clearly what section 31AM(8) involves is a consideration of whether the variation has the *result* that the existing overall strategy in the development plan is no longer an overall strategy. However, there is no consideration or analysis by the OPR of the existing overall strategy (including as varied by Variation No. 1) and whether Variation No. 2 resulted in there not being a valid overall strategy.
- Furthermore, what is a crucial precondition for invoking section 31AM(8) is that (b) requires a conclusion that the development “...*fails to set out an overall strategy for the proper planning and sustainable development of the area concerned*”. Thus the OPR may disagree or not like the overall strategy and may prefer some other overall strategy informed by an updated Joint Retail Strategy, but this does not mean that the development plan as varied fails to set out an overall strategy.
- The Notice and Draft Direction falls into the error which was the subject of comment on the invalid Ministerial Direction in *Tristor Ltd v Minister for Environment, Heritage and Local Government and Others* [2010] IEHC 397. As Clarke J stated at 16. 6.14:

“Provided that there is a strategy set out, and that it is reasonably described as an overall strategy for the proper planning and sustainable development of the relevant area, then it does not seem to me that the Minister is entitled to impose an alternative strategy simply because the Minister may prefer it”.

The same applies to the OPR in issuing a Notice, recommendation and draft direction under section 31AM(8). Furthermore, Clarke J stated at 16. 6.15 states:

“16 6.15 It seems to me that, to the extent that the Minister may wish to rely on a failure to set out an overall strategy for the proper planning and sustainable development of the area, then it is necessary for the Minister to identify factors from which it could reasonably be concluded that the Draft Development Plan does not set out, such a strategy. It is not a question of whether the Minister agrees or disagrees with the strategy. Rather, it is a question of whether it can be said that a strategy in the terms of the section has been “set out”.

- There is no consideration in the Notice of the OPR of the overall strategy contained in the Cork County Development Plan 2014 as varied nor any analysis as to how Variation No. 2 may result in this overall strategy ceasing to be an overall strategy. The Notice does not identify any factors for which such conclusion could be made and does not address the question whether the Cork Development Plan 2014, as varied, fails to “set out” an overall strategy. This is addressed again below in more detail.
- A further significant error on the part of the OPR is that it fails to take into account that Variation No. 2 is to be read in conjunction with Variation No. 1 and erroneously purports to consider Variation No. 2 in isolation. In fact Variation No. 2 involves inserting words into Paragraph 7.10.5



of the Cork County Development Plan which was introduced by Variation No. 1. Variation No. 1 was not the subject of any Ministerial direction and the current proposed draft direction cannot collaterally challenge the same as any direction would be out of time. Variation No. 2 deletes only a small portion of Variation No. 1 and so retains the bulk of that variation. Thus importantly when so appropriately read together, the text of Paragraph 7.10.5 involves considerable safeguards and criteria which do not appear to have been considered by the OPR or Minister and which still apply. These criteria include that any proposal for an outlet centre must meet, *inter alia*, the following criteria:

- the provisions of the Cork County Development Plan and Metropolitan Cork Joint Retail Strategy;
 - the sequential test set out in chapter 4 of the Retail Planning Guidelines for Planning Authorities;
 - is in accordance with the Planning Guidelines on Spatial Planning and National Roads in that the proposal can demonstrate that the development will not adversely affect the efficiency of the national road network and key junctions and interchanges and that it can be demonstrated that traffic volumes can be accommodated within the design assumptions for such roads, taking account of the opportunities for encouraging a modal shift towards more sustainable travel modes
 - will take account of the vitality/viability criteria in respect of city/town centres set out in the Retail Planning Guidelines for Planning Authorities (2012) and avoid the incorporation of uses and activities, as part of the development, which are more appropriate to city and town centre location.
- The OPR Notice at pg. 5 contains a pro forma citation of section 31S but there is no evidence of the OPR actually taking into account other relevant policy and objectives of the planning authority as required under section 31S(a) such as synergies between retail outlets and tourism and other economic policies nor indeed under section 31S(c), the National Planning Framework, in respect of which submissions, as described at pg. 3 in the Council's letter of 30th January 2020 to the OPR, are set out.
 - The notice at pg. 9 says that the development has not been reviewed in the light of the adopted Regional Spatial and Economic Strategy but it is not explained how this has any connection with the Notice which refers to the RPG or indeed section 31AM(8). Also the Notice at pg. 9 says the Variation No. 2 fails to have "sufficient" regard to the Spatial Planning and National Road Guidelines. However, there is only a requirement "to have regard" to such Guidelines and the Council in making Variation No. 2 did have regard to such Guidelines. The Notice also fails to note that the Joint Retail Strategy also states that: "*Proposals for large scale retail warehouse floorspace should be in accordance with Planning Guidelines on Spatial Planning and National Roads.*" Furthermore, again the notice is unreasoned or explained as to how these relate back to the opinion at pg. 1 of the notice listing points (a) to (c) which purportedly are framed in terms of section 31AM(8)(a) to (c).
 - The Notice of OPR also says at pg. 9, that there was a failure to have regard to the five key principles in the Spatial Planning and National Road Guidelines and states at point (xiii) that the Office is of the opinion that "...the consultation that informed the variation does not satisfy the intent of the guidelines as set out point 12". Point 12 cites the Guidelines which state that in preparing plans, the relevant planning authorities, NRA and other bodies must "...*work closely together to ensure that future development is guided to suitable locations*". It is not clear what



the OPR means by the intent as the Guidelines do not prescribe the nature of working closely together nor does it refer to any specific steps or measures. However, the Study on the Requirement for Retail Outlets Centres, which informed Variation No. 2 specifically notes at Section 1.6 that both TII and the NTA were written to and informed of the study/project and requested to provide initial advice on potential issues and key considerations and that a joint meeting was held to discuss the study. It is not apparent that the OPR considered this. Moreover, as importantly noted above, Variation No. 2 must be read in conjunction with Variation No. 1 which includes the criteria that any proposal for an outlet centre must meet criteria which includes being in accordance with the Planning Guidelines on Spatial Planning and National Roads. It therefore follows that the Spatial Planning and National Road Guidelines (and all requirements arising therefrom) are specifically embedded within Variation No. 2 as read with Variation No. 1 in the Cork County Development Plan. It is noted that the Cork Metropolitan Area Transport Strategy has been by the NTA.

- All of the aforesaid errors in the notice from the OPR which are set out above, are replicated in the Notice of the Minister dated 5th March 2020 sent to Cork County Council along with the Draft Direction which sets out a failure to implement a recommendation of the OPR and states that the variation as made fails to set out an overall strategy for proper planning and sustainable development. Again as stated above, it is unclear how a variation relating to retail in a development plan could ever set out an “overall strategy” for the proper planning and sustainable development and so the Minister has equally misconstrued this requirement. However, as will be set out below, the variation does not have the result that there is not and/or no longer an overall strategy for proper planning and sustainable or more specifically retail strategy for proper planning and sustainable development of the area.
- Pg. 3 of the Notice of the Minister further says that Variation No. 2 is “inconsistent with the holistic approach as set out in the Retail Planning Guidelines 2012”. It is unclear what is meant by such vague notion of “holistic” approach, where this is expressed and/or how Variation No. 2 in fact is inconsistent with such “holistic” approach

III Alleged failure to set an “overall strategy” for the proper planning and sustainable development

- For the reasons which were outlined above both the OPR Notice and the Notice of the Minister and Draft Direction are in error in suggesting that the Variation No. 2 “fails to set out an overall strategy for the proper planning and sustainable development of the area”. In addition to the points made above, this claim is firmly rejected for additional reasons which will be set out hereinafter. It is incorrect and misconceived to say Variation No. 2 fails to set out an overall strategy, insofar it is itself a statement of strategy which forms part of and is to be read in conjunction with other strategies to form an overall strategy for the proper planning and sustainable development of the area.
- The Metropolitan Cork Joint Retail Strategy 2013 was prepared on behalf of Cork County Council and Cork City Council in accordance with the Retail Planning Guidelines for Planning Authorities (2012), issued by the Department of the Environment, Community and Local Government. (This was the third iteration of the Joint Retail Strategy following the 2002 and 2008 versions). The strategy was based upon the findings of a background study, the Metropolitan Cork Joint Retail Study 2013. This agreed Joint Retail Strategy was incorporated into both the Cork County Development Plan 2014 and Cork City Development Plan 2015.



- The Cork County Development Plan 2014 incorporates the joint retail strategy within its overall county retail strategy which is set out in Chapter 7 Town Centres and Retail. It is also further embedded within the 2014 County Development Plan Core Strategy – Chapter 2. An extract from Section 7.4 – Retail Hierarchy for the County states as follows;

Central to the retail strategy for County Cork is the retail hierarchy which will form the basis for determining the appropriate quantum and location of new development. The Guidelines recognise that the classification in such hierarchies is often indicative and that specific retail functions provided by each tier overlap in many respects. In general however these locations represent the most appropriate centres for retail and other appropriate activities due to their existing infrastructure and proximity to significant catchment populations.

The retail hierarchy for the county has in part been informed by the Joint Retail Strategy for the Metropolitan Area. The full hierarchy for the County, general retail function and individual objectives for each level is set out in Table 7.1.

- Chapter 7 of the 2014 Plan sets out broad guidance and objectives in relation to the retail hierarchy, the location for retail development, retail impact assessment, the requirement for future retail, vacancy and the approach to other specific categories of retail development all of which align with the Joint Retail Strategy and accordingly the Retail Planning Guidelines, 2012.

Progression since 2014/2015:

- In the years following the adoption of the 2014 County Development Plan and in parallel with an ever improving economy it became evident that there was a need for additional policy guidance and support for Metropolitan Cork as a potential location for a Retail Outlet Centre.
- During the Review of the Municipal District Local Area Plans additional text was added to the 4 Metropolitan Local Area Plans supporting Metropolitan Cork as a location for an outlet centre including the identification of criteria for assessment of outlet centres not specifically identified in the Joint Retail Strategy or its accompanying study.

Variation No. 1 of Cork County Development Plan 2014

- In 2018, a consequential variation (Variation No. 1) of the Cork County Development Plan to Chapter 7 *Town Centres and Retail* was adopted to take account of the additional policy guidance set out in the Local Area Plans. This included an additional commitment by the Council to carry out an evidence-based assessment to confirm the need for outlet centres and to identify potential suitable locations. This is in line with the Guidelines which advocates a proactive approach in facilitating the meeting of retailing needs in line with a proper evidence base for that need.

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

- The commitment to carry out an evidence-based study in adopted variation No. 1 did not suggest that this would be carried out as part of a new joint retail strategy nor did the Department request



this. TII in their submission on Variation No. 1 advocated for this 'evidence based plan led approach' to the location of strategic retail development did not state this would need to be done as part of an updated JRS. The text of Variation No. 1 (Outlet Centres) adopted in 2018 and which is now included in the Development Plan sets out the relevant assessment criteria (largely taken directly from the Retail Planning Guidelines) for retail outlet centres not previously included in the Joint Retail Strategy/Cork County Development Plan 2014. It does not depart from the overall Retail Strategy as set out in the Cork County Development Plan but rather seeks to provide further clarity in relation to the approach to a specific category of retail development.

Study on the Requirement for Retail Outlet Centre(s) in the Cork Metropolitan Area

- In order to make good on the commitment to carry out an evidence-based study Cork County and City Councils appointed consultants to prepare a Retail Outlet Centre Study in 2018 to consider the need for a Retail Outlet Centre(s) in Metropolitan Cork.
- Key Objectives of the Study:
 1. Identify the need and appropriateness for Retail Outlet Centre(s) in the Cork Metropolitan Area taking into account potential city/town impact; and
 2. If the need is confirmed then to provide quantification of this and provide proposals for suitable locations within the Study Area for such developments.
- On the basis of the study's findings 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 and therefore capacity to accommodate a Retail Outlet Centre in the Cork Metropolitan Area. 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. i.e. does not affect the overall strategy.
- 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.
- 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).

Variation No. 2 of Cork County Development Plan 2014

- Following the study (details of which are set out in the previous section) Variation No. 2 was adopted to give effect to its findings. Similar to Variation No. 1 it makes no changes to the overall strategy but rather is complementary to it, providing additional supporting policy guidance. The study which informed Variation No. 2 clearly took into account the existing joint retail strategy, the respective city/county development plan context, the requirements of the Retail Planning Guidelines and other relevant policy.



- The adoption of Variation No. 2 is the next stage in this process as it provides the evidence base firstly for the requirement/capacity for such a facility and secondly the sub catchment within Metropolitan Cork that would be best able to accommodate such a facility having regard to all the various considerations.
- This Variation provides further policy guidance on top of that already provided for under Variation No.1 for consideration of retail outlet centre proposals. Variation No.1 and Variation No. 2 provide a high-level policy framework to guide consideration of future proposals for retail outlet centres reinforcing the existing overall retail policy. Further policy guidance however will be required in order to deal with more site-specific considerations.

Conclusions/Next steps

In 2013, a Draft Metropolitan Cork Joint Retail Strategy was prepared to inform the development plan review process for both Cork Local Authorities which complied with the requirements of Section 3.5 of the Retail Planning Guidelines. This still remains the active retail strategy for Metropolitan Cork and it has not been replaced. Any development proposals must continue to be assessed against this. It is now complemented with the additions provided by Variations No.1 and No.2.

As part of the Cork County Development Plan Review, Cork County Council will be reviewing its retail policies with a view to addressing the impact of Covid 19 and the ongoing restructuring of the retail business. The study prepared to support Variation No.2 and Variation No.2 itself will form the basis of the Retail Outlet Centre part of this review.

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. This will allow for a comprehensive policy response at both the strategic and local site-specific level as required.

Once the County Development Plan and accompanying Retail Strategy are adopted, they will provide the policy framework for the assessment of any future planning applications for retail outlet centres. It should be noted that Variation No. 2 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.

In the light of all of the above, it is wholly rejected that Variation No. 2 “fails” to set out and/or results in a failure to have an overall strategy for the proper planning and sustainable of the area.

IV Overall Conclusion

The Draft Direction issued under Section 31 of the 2000 Act (as amended) is inadequately reasoned and fundamentally flawed for the reasons set out above, from both a planning policy and a legal process perspective. In these circumstances it is incumbent upon me to recommend that to give best effect to such a flawed Draft Direction is to not proceed with same. The Council has purported to engage with the process as being the appropriate response to the flawed Notice and Draft Direction in order to outline the reasons why it is considered that the OPR Notice and consequent Notice of the Minister and Draft Direction is in error. I respectfully submit that it would be wrong of the Minister to



proceed on the basis of the Recommendation and Notice of the OPR and to endorse same as to do so would result in a legally tainted Ministerial Direction.



Appendix A (i): Full list of submissions by Interested Party

Name of Interested Party	Unique Reference Number
Adrian Godwin	DMDVAR211331791
Anna Aherne	DMDVAR205711003
Caroline Fenton	DMDVAR211309721
Coral Boutique	DMDVAR211286149
Cork Branch of the Irish Hotels Federation	DMDVAR210460103
Cork Business Association	DMDVAR205252048
Cork City Council	DMDVAR191677341
Cork Environmental Forum	DMDVAR210878038
Denis O'Riordan	DMDVAR211340219
Denise Fenton	DMDVAR211330683
Department of Communications, Climate Action and Environment	DMDVAR191669816
Elaine O'Sullivan	DMDVAR211315273
Environment Protection Agency	DMDVAR191123308
Erin O' Brien	DMDVAR210290045
Fiona Vincent (Coordinator of West Cork Environment Group)	DMDVAR210868928
Fine Gael members of the Cork County Council	DMDVAR211078735
Gas Networks Ireland	DMDVAR199539149
Glounthaune Sustainable Development Committee	DMDVAR206784343
Kerry County Council	DMDVAR198377912
Mary O'Leary	DMDVAR191640904
Members of Cork County Council	DMDVAR211281348
National Transport Authority	DMDVAR211136036
Paul Fenton	DMDVAR211313658
Samantha Wims	DMDVAR211327344
Southern Region Waste Management Office	DMDVAR197178173
Southern Regional Assembly	DMDVAR211073395
Su-man menswear	DMDVAR211326779
Susan Hickey	DMDVAR211242629
Susan O'Riordan	DMDVAR211293333
Suzsa	DMDVAR211326261
Transport Infrastructure Ireland	DMDVAR191681350
William Loftus	DMDVAR193569043



Appendix A (ii): Full list of submissions by Unique Reference Number

Unique Reference Number	Name of Interested Party
DMDVAR 191123308	Environment Protection Agency
DMDVAR 191640904	Mary O'Leary
DMDVAR 191669816	Department of Communications, Climate Action and Environment
DMDVAR 191677341	Cork City Council
DMDVAR 191681350	Transport Infrastructure Ireland
DMDVAR 193569043	William Loftus
DMDVAR 197178173	Southern Region Waste Management Office
DMDVAR 198377912	Kerry County Council
DMDVAR 199539149	Gas Networks Ireland
DMDVAR 205252048	Cork Business Association
DMDVAR 205711003	Anna Aherne
DMDVAR 206784343	Glounthaune Sustainable Development Committee
DMDVAR 210290045	Erin O' Brien
DMDVAR 210460103	Cork Branch of the Irish Hotels Federation
DMDVAR 210868928	Fiona Vincent (Coordinator of West Cork Environment Group)
DMDVAR 210878038	Cork Environmental Forum
DMDVAR 211073395	Southern Regional Assembly
DMDVAR 211078735	Fine Gael members of the Cork County Council
DMDVAR 211136036	National Transport Authority
DMDVAR 211242629	Susan Hickey
DMDVAR 211281348	Members of Cork County Council
DMDVAR 211286149	Coral Boutique
DMDVAR 211293333	Susan O'Riordan
DMDVAR 211309721	Caroline Fenton
DMDVAR 211313658	Paul Fenton
DMDVAR 211315273	Elaine O'Sullivan
DMDVAR 211326261	Suzsa
DMDVAR 211326779	Su-man menswear
DMDVAR 211327344	Samantha Wims
DMDVAR 211330683	Denise Fenton
DMDVAR 211331791	Adrian Godwin
DMDVAR 211340219	Denis O'Riordan

