



28th July 2023

For the Attention of: Ms. AnnMarie Farrelly, Chief Executive

Fingal County Council
County Hall
Main Street
Swords
County Dublin
K67 X8Y2

Section 31 of the Planning and Development Act 2000 (as amended)
Decision to Issue a Direction to Fingal County Council regarding the
Fingal Development Plan 2023 – 2029

Dear AnnMarie,

I am writing to inform you of the following in relation to the section 31 draft Direction that issued to Fingal County Council on 4th April 2023, and the subsequent consideration by the Office of the Planning Regulator ('the Office') of your report and the submissions made directly to the Office in connection with the Fingal Development Plan 2023 – 2029, as adopted by the elected members of Fingal County Council on 22nd February 2023.

The Office notified the Minister pursuant to section 31AN(4) of the Planning and Development Act 2000 ('the Act') on 19th June 2023 and recommended that I, as Minister, issue the Direction as attached to the *Notice of Intention to Issue a Direction*, with minor amendments.

The draft Direction can be summarised as follows:

- Part 2(a) - delete four (4) zoning objectives from the adopted Plan: i.e. the subject land is unzoned.
- Part 2(b) - reinstate one (1) zoning objective consistent with the recommendation of the chief executive's report dated 15th January 2023.

Oifig an tAire Stáit atá freagrach as
an Rialtas Áitiúil agus Pleanáil
Minister of State for Local
Government and Planning

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- Part 2(c) - delete the amended and additional text inserted under PA CH 8.1 as modified, consistent with the recommendation of the chief executive's report of 15th January 2023.

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

- Fingal County Council Chief Executive's Report issued under section 31(8) of the Act;
- A copy of submissions received by the Office pursuant to section 31(10) of the Act.

Having reviewed and considered the Office of the Planning Regulator's notification letter under section 31AN(4), your report on the draft Direction and submissions received, and the submissions made directly by elected members of the Council to the Office, I am of the opinion that the Direction should be issued in line with the recommendations of the Office. In the above regard, I refer you to the Statement of Reasons set out in the enclosed Direction, inclusive of specified inconsistencies with National Policy Objectives of the National Planning Framework.

Please note the Direction includes minor renumbering to effect the omission of Part 2(b) of the draft Direction previously issued, subsequent to the clarification provided in your report with respect to the GB zoning objective pertaining to lands at Newtown in the adopted plan.

With regard to part 2(a)(iv) of the Direction, which relates to land zoned General Employment in the adopted Plan to the south east of Junction 5 of the M1 motorway at Hedgestown, Courtlough, I wish to confirm for the avoidance of any doubt that the land in question is as described in the Direction. While a larger area was delineated in mapping provided by the Office, it is clear that the Office of the Planning Regulator's statutory notices refer to land in the townland of Hedgestown that was zoned General Employment in the current Development Plan having been zoned Rural in the previous Development Plan.



In relation to material alteration PA CH 8.1, as modified, I note from page 33 of your report in respect of the draft Direction that some submissions received by your authority contended that requirements arising out of various planning permissions related to the airport have not been adhered to and it has been asserted that this is resulting in an overall increase in levels of aircraft noise in the vicinity.

As set out below, the Aircraft Noise Competent Authority (ANCA) has statutory responsibility for aircraft noise regulation. In addition, in accordance with Section 23 of the 2019 Act, ANCA as the competent authority has specific enforcement powers including the power to address failures to comply with a relevant provision, which can include a provision of a noise mitigation measure or operating restriction which is not included in a planning permission granted under section 34 of the Act of 2000, or a provision of the 2019 Act.

Fingal County Council, in its capacity as planning authority, has separate planning enforcement powers under Part VIII of the 2000 Act, which empower it to investigate potential breaches of planning legislation, including compliance with the conditions attached to a grant of planning permission. Pursuant to section 30 of the Act, I am specifically precluded from exercising any power or control in relation to any particular case with which a planning authority is or may be concerned. This includes matters pertaining to planning enforcement.

I wish to highlight that notwithstanding the specific reference to section 34B and 34C of the Aircraft Noise (Dublin Airport) Regulation Act 2019 at page 17 of the Office of the Planning Regulator's section 31AN(4) notice letter, I am cognisant that these sections are provisions of the Planning and Development Act 2000 (as amended), as inserted by the 2019 Act.

Notwithstanding the foregoing, I agree with the Office of the Planning Regulator that the regulation of noise is governed by separate statutory provisions and processes and that the



material alteration included in the adopted plan is not consistent with National Policy Objective 65 of the National Planning Framework.

I note the provisions of the European Communities (Environmental Noise) Regulations 2018, as amended, designates Fingal County Council as the action planning authority for the purpose of making and approving a noise action plan for Dublin Airport.

The Regulations provide for noise action plans and revised noise action plans to be made available to the general public. They also provide for public consultation on proposed noise action plans and the review of noise action plans, and for the results of public consultation to be taken into account in finalising such plans. I note under the provisions of the above Regulations, as amended, that current Noise Action Plans are due to be reviewed no later than 18th July 2024.

The adoption of the Fingal Development Plan with the material alteration in question conflicts with this statutory process and is not consistent with NPO 65. You will be aware that Fingal County Council has a statutory obligation under section 12(11) of the 2000 Act to ensure that its Development Plan is consistent with the objectives of the National Planning Framework.

Furthermore, I note the exclusive statutory role conferred on Fingal County Council under the Aircraft Noise (Dublin Airport) Regulation Act 2019 and for these purposes now called the Aircraft Noise Competent Authority (ANCA). Accordingly, ANCA is now the competent authority for the purposes of the Aircraft Noise Regulation and the Act of 2019. The functions of the competent authority are to be exercised by the Chief Executive of the Council. ANCA is therefore the competent authority, inter alia, in respect of noise mitigation measures, noise related activities and operating restrictions.

The stated objective of PA CH 8.1 (material alteration of the Development Plan) as made constitutes a noise mitigation measure and a noise related activity or, in the alternative, is an



operating restriction which can only be considered, assessed and imposed by the competent authority.

The inclusion of this particular objective is not in compliance with the provisions of the Planning and Development Act, 2000 (as amended) and the Aircraft Noise (Dublin Airport) Regulation Act 2019 and the exclusive jurisdiction conferred on ANCA and the Chief Executive under the 2019 Act in respect of the subject matter of the objective. There is a conflict with section 15 of the Planning and Development Act, 2000, whereby it is a general duty of the planning authority to secure the objectives of the development plan, and with section 3 of the Act of 2019 having regard to obligations of independence, influence and direction contained therein.

Section 9(1) of the Act of 2019 confers on the competent authority the jurisdiction to assess the noise situation at the airport and pursuant to subsections (2) and (3), it is required to comply with the specified criteria before adopting noise related actions or operating restrictions.

Section 9(7) of the 2019 Act requires that measures or a combination of measures taken in accordance with the Aircraft Noise Regulation, the 2019 Act and the Act of 2000 for the airport shall not be more restrictive than is necessary in order to achieve the noise abatement objective. It is noted that ANCA included provisions relating to a noise insulation scheme as one of the conditions of a recent regulatory decision.

By including an objective in the Development Plan to expand noise insulation schemes operated by DAA to include all areas exposed to 40 dB L_{night} or higher as produced by aircraft during night time, it is considered that the plan has included matters upon which statutory competence has been conferred on ANCA under the 2019 Act. I further note that section 4 of the 2019 Act relates to ANCA's role in this regard. Further, in adopting the material alteration, neither the Balanced Approach nor the other criteria required under the 2019 Act have been applied before adopting such a measure. Competence with respect to noise insulation schemes is granted to the competent authority under the 2019 Act.



In carefully considering the recommendation of the Office, I am cognisant that you, as Chief Executive of the planning authority, advised the elected members against making the plan with this material alteration (in both its original and adopted modified form), and it is clear that the Office of the Planning Regulator concur with your position on the matter.

In reaching my decision in relation to part 2(a) of the Direction, I have noted your recommendations as Chief Executive under section 31(9) of the Planning and Development Act 2000 (as amended) in relation to the best manner in which to give effect to the draft Direction. With regard to your recommendation to insert specified alternative land use zoning objectives on certain identified lands, I am of the opinion that should the planning authority consider alternative zoning objectives are necessary, this is a matter that would be most appropriately determined by the elected members of Fingal County Council in exercise of their reserved function to vary the Development Plan pursuant to section 13 of the 2000 Act. This process would be informed by environmental assessment, as well as public consultation, and would provide an opportunity for further engagement with the Office.

Accordingly, Fingal County Council should **TAKE NOTICE** that on 28th day of July, 2023 I have issued a Direction pursuant to section 31 of the Planning and Development Act 2000 (as amended). Pursuant to section 31(17) of the Act, this Direction is deemed to have immediate effect and its terms are considered to be incorporated into the plan. A copy of this Direction is enclosed.

In light of the foregoing, Fingal County Council is required, pursuant to section 31(2) of the Planning and Development Act, 2000 (as amended) to comply with this Direction so as to rectify the matter in a manner that, in my opinion, will ensure that the Fingal Development Plan 2023–2029 sets out an overall strategy for proper planning and sustainable development and meets the requirements of the Act.



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

My officials remain available to assist you, as necessary, in complying with the foregoing process.

Yours sincerely,

A handwritten signature in blue ink, reading 'Kieran O'Donnell', is written over a horizontal line.

Kieran O'Donnell TD

Minister of State for Local Government and Planning

Copied to:

- Cathaoirleach, Fingal County Council, County Hall, Main St, Swords, Co. Dublin, K67 X8Y2.
- Eastern and Midland Regional Assembly, 3rd Floor North, Ballymun Civic Centre, Main Street, Ballymun, Dublin 9, D09 C8P5.
- Office of the Planning Regulator, Fourth Floor (West Wing) Park House, Grangegorman, 191-193A North Circular Road, Dublin 7, D07 EWW4.