



Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

7th January 2025

Alan Dillon TD,
Minister of State for Local Government and Planning,
Department of Housing, Local Government and Heritage,
Custom House,
Dublin 1,
D01 W6X0.

BY HAND AND BY EMAIL

**Re: Notice pursuant to section 31AP(4) of the Planning and Development Act
2000 (as amended) – Ballina Local Area Plan 2024-2030**

A chara,

I am writing to you pursuant to section 31AP(4) of the Planning and Development Act 2000, as amended (the Act) in the context of the Ballina Local Area Plan 2024-2030 (the Local Area Plan). In particular, I write arising from the consideration by this Office of the following:

- a) the Notice of Intent to issue a Direction issued to Mayo County Council (the Planning Authority) by your office on 25th October 2024, and
- b) the report of the Chief Executive of the Council, received on 9th December 2024, on the submissions and observations received by the Council (the CE's Report).

This Office has carefully considered the CE's Report and the submissions summarised therein.

Draft Direction

The draft Direction issued by the Minister contained a single part as follows:

The Planning Authority is hereby directed to take the following steps with regard to the Local Area Plan:

(a) Delete the following Material Alterations from the adopted Local Area Plan such that the subject lands revert to as indicated in the draft Local Area Plan:

- (i) Material Alteration MA 29 – i.e. the subject lands revert to Enterprise & Employment from New Residential;*
- (ii) Material Alteration MA 30 – i.e. the subject lands revert to Agriculture, and Existing Residential from New Residential;*
- (iii) Material Alteration MA 31 – i.e. the subject lands revert to Enterprise & Employment from New Residential;*
- (iv) Material Alteration MA 33 – i.e. the subject lands revert to Recreation & Amenity from New Residential;*
- (v) Material Alteration MA 34 – i.e. the subject lands revert to Agriculture from New Residential;*
- (vi) Material Alteration MA 35 – i.e. the subject lands revert to Agriculture, and Recreation & Amenity from New Residential;*
- (vii) Material Alteration MA 36 – i.e. the subject lands revert to Agriculture from New Residential;*

and apply all necessary consequential updates to the text of the plan consistent with the foregoing.

Public Consultation on the Draft Direction

The public consultation on the draft Direction took place from 29th October 2024 to 12th November 2024 inclusive. The CE's Report summarises the views of the elected members, members of the public, and the prescribed authorities that made submissions to the Planning Authority.

The CE's Report states that seven (7) submissions were received in relation to the draft Direction during the statutory public consultation period as follows:

- Councillor Jarlath Munnely
- Downey Brogan

- The Planning Partnership on behalf of Vincent Ruane Construction
- Brock McClure on behalf of Bourke Builders
- Northern and Western Regional Assembly (NWRA)
- Uisce Éireann (UÉ)
- National Transport Agency (NTA)

You might please note the following:

- the Office received no direct submissions from elected members of the Planning Authority during the statutory public consultation period;
- no submissions were received during the statutory public consultation period opposing the draft Direction in respect of MA 29 and MA 31;
- the submission from Councillor Jarlath Munnnelly opposes the draft Direction in respect of MA 30, MA 35 and MA 36;
- one (1) submission was received during the statutory public consultation period opposing the draft Direction in respect of MA 33;
- one (1) submission was received during the statutory public consultation period opposing the draft Direction in respect of MA 35;
- one (1) submission was received during the statutory public consultation period opposing the draft Direction in respect of MA 36; and
- the submissions from the NWRA, NTA and UÉ support the draft Direction in respect of all parts. The UÉ submission to the draft Direction consultation, in addition to providing clarification regarding two sites related to MA 33 and MA 34, refers to its submission at material alterations stage and reconfirms the reasons raised in it.

Chief Executive's Recommendation

The CE's Report states that the Chief Executive has considered each of the seven (7) submissions made through the statutory public consultation. The Chief Executive's recommendation remains the same as that contained in the CE's Report

on the Material Alterations, i.e. to make the Local Area Plan without all seven (7) material alterations (MA 29, MA 30, MA 31, MA 33, MA 34, MA 35, and MA 36).

Following detailed consideration of the CE's Report the Office now recommends, pursuant to section 31AP(4) of the Act, that you issue the attached final Direction with a minor amendment to the draft Direction to omit part 2(a)(vii) MA 36.

Consideration of Reasons

As set out in the section 31AO(7) Notice Letter (31AO(7) notice letter) dated 15th October 2024 to your office, one reason was given by the elected members for the decision not to comply with the recommendation of the Office when adopting the Local Area Plan, as detailed in the section 31AO(5) Notice Letter, received from the Planning Authority on 25th September 2024. The same reason was given by the elected members in respect of each of the lands the subject of the draft Direction. This reason was carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act.

No submissions were made during the consultation on the draft Direction regarding MA 29 and MA 31. Therefore, the Office has nothing further to add to the reasons given in our 31AO(7) notice letter regarding these two material alterations.

The following additional or expanded reasons were also raised in submissions received by the Chief Executive:

MA 30

One submission was received by an elected member (Councillor Jarlath Munnelly) opposing the draft Direction in respect of MA 30.

The following matters were raised in the submission to the Chief Executive and summarised in the CE's Report:

- existing policies are not working and the NWRA Regional Spatial and Economic Strategy (RSES) 2-year tracking report shows Ballina only achieving 41% of housing requirements associated with the RSES compared to Castlebar (82%);
- housing targets are likely to be increased;

- lands zoned in adopted plan will not be built on during lifetime of the plan and therefore supports zoning of additional lands;
- the flood risks can be managed locally through a planning application;
- laughable that lands would be zoned Agriculture; and
- if elected members proposed additional lands as they see fit, they should be allowed.

The submissions from the NWRA, NTA and UÉ support the draft Direction in respect of MA 30.

In relation to the reason that existing policies are not working, fundamental to ensuring that zoned lands can be activated over a plan period is the preparation of a Settlement Capacity Audit and infrastructure assessment to determine the implications for the cost and timing of delivery of infrastructural services. In the absence of these assessments, there is no understanding of what the cost and timing for the delivery of infrastructure services are. As such, the zoning of lands without carrying out a detailed audit or assessment may have significant implications for the cost and timing of delivery of infrastructural services during the plan period and does not demonstrate that efficient and effective use is made of existing infrastructure and services, inconsistent with Objective GSO 1 of the Mayo County Development Plan 2022-2028 (County Development Plan) to avoid the inappropriate extension of services and utilities.

No such assessment has been prepared in respect of the MA 30 lands and matters relating to the availability of infrastructure to service these lands were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act, and the Office adopts the same rationale as set out in the 31AO(7) notice letter in response to this similar issue now raised in submissions.

At the present point in time, it would be premature to pre-empt future amendments that may be made to the housing targets set out in the core strategy of the County Development Plan and at settlement level, including the relevant statutory processes that such amendments require.

Notwithstanding, the Office does not consider that any future changes in housing targets justify the zoning of these MA 30 lands for Residential use in a peripheral and non-sequential location partially outside the CSO settlement boundary¹, and which does not support sustainable travel patterns.

In relation to the elected members' local knowledge and the intentions of landowners to develop other lands in the town, this was a matter for elected members to consider when zoning those lands for development, and is not a reasonable basis for zoning the MA 30 lands contrary to the policy objectives for the proper planning and sustainable development of the area.

No reasons or basis is provided for the assertion that the lands should not be zoned as Agriculture.

In relation to the point that flood risk can be managed locally through a planning application, The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009) (Flood Guidelines) state that

*development management for flooding should be based on sound strategy, policies and objectives within the development plan and local area plan where appropriate, setting out the basis for considering planning applications in principle and in detail.*²

A key principle of the Flood Guidelines is to avoid development in areas at risk of flooding, and if this is not possible, substitute a land use that is less vulnerable to flooding.

Matters relating to flood risk management were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act, and the Office adopts the same rationale as set out in the 31AO(7) notice letter in response to this similar issue now raised in the submission.

¹ This means within the existing built-up footprint of all sizes of urban settlement, as defined by the CSO in line with UN criteria i.e. having a minimum of 50 occupied dwellings, with a maximum distance between any dwelling and the building closest to it of 100 metres, and where there is evidence of an urban centre (shop, school etc.).

² Section 5.1, The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009).

In relation to the reason that elected members should be allowed to propose additional lands as they see fit, the Office is satisfied that the relevant statutory provisions have been fully adhered to in this regard.

Following consideration of the CE's Report, there is no planning or policy basis to amend the recommendation of this Office in respect of the draft Direction in relation to MA 30.

MA 33

One submission was received from Downey Brogan opposing the draft Direction in respect of MA 33.

The following matters were raised in the submission to the Chief Executive and summarised in the CE's Report:

- request that the lands should be zoned Agriculture, rather than Recreation & Amenity as required by the draft Direction.

The lands were zoned Recreation & Amenity in the draft Local Area Plan.

Notwithstanding any argument in favour of an alternative zoning objective, there is no provision in legislation for that zoning objective to be revisited and/or revised to Agriculture at this stage of the process.

The submissions from the NWRA, NTA and UÉ support the draft Direction in respect of MA 33.

The Office acknowledges the clarification from UÉ that the lands are serviced by a wastewater network. Notwithstanding, the Office's agrees with the CE's Report that

residential development at this peripheral location which is located outside the CSO boundary at almost 2.2km walking distance from the town centre is highly isolated, non-sequential and is not consistent with sustainable travel patterns. Furthermore, the rezoning of these lands for residential development would be contrary to the Core Strategy as set out in the Mayo County Development Plan 2022-2028.

Following consideration of the CE's Report, there is no planning or policy basis to amend the recommendation of this Office in respect of the draft Direction in relation to MA 33.

MA 34

No submission was received opposing the draft Direction in respect of MA 34.

The submissions from the NWRA, NTA and UÉ support the draft Direction in respect of MA 34.

The Office acknowledges the clarification from UÉ that the lands are serviced by a wastewater network. Notwithstanding, the Office's agrees with the CE's Report that

residential development at this peripheral location which is located outside the CSO boundary at almost 2.2km walking distance from the town centre is highly isolated, non-sequential and is not consistent with sustainable travel patterns. Furthermore, the rezoning of these lands for residential development would be contrary to the Core Strategy as set out in the Mayo County Development Plan 2022-2028.

Following consideration of the CE's Report, there is no planning or policy basis to amend the recommendation of this Office in respect of the draft Direction in relation to MA 34.

MA 35

Two submissions were received opposing the draft Direction in respect of MA 35, one from the elected member Councillor Jarlath Munnely and one from Brock McClure on behalf of Bourke Builders.

The following matters were raised in the submission to the Chief Executive and summarised in the CE's Report:

- existing policies are not working and the NWRA RSES 2-year tracking report show Ballina only achieving 41% of housing requirements associated with the RSES;
- housing targets are likely to be increased;

- Census 2022 should be reflected in the new Local Area Plan in terms of population and housing forecasting. New data was published in July 2024 from the ESRI, the draft revised National Planning Framework (NPF) was published, and there are new housing targets recently released from the Government of 303,000 homes up to 2030;
- all the lands should be zoned New Residential but any part of the lands the Minister sees as unsuitable should be zoned Strategic Reserve;
- lands zoned in adopted plan will not be built on during lifetime of the plan and therefore supports zoning of additional lands;
- the flood risks can be managed locally through a planning application; and
- if elected members proposed additional lands as they see fit, they should be allowed.

The submissions from the NWRA, NTA and UÉ support the draft Direction in respect of MA 35.

In relation to the reason that existing policies are not working, fundamental to ensuring that zoned lands can be activated over a plan period is the preparation of a Settlement Capacity Audit and infrastructure assessment to determine the implications for the cost and timing of delivery of infrastructural services. In the absence of these assessments there is no understanding of what the cost and timing for the delivery of infrastructure services are. As such, the zoning of lands without carrying out a detailed audit or assessment may have significant implications for the cost and timing of delivery of infrastructural services during the plan period and does not demonstrate that efficient and effective use is made of existing infrastructure and services, inconsistent with Objective GSO 1 of the County Development Plan to avoid the inappropriate extension of services and utilities.

No such assessment has been prepared in respect of the MA 35 lands and matters relating to the availability of infrastructure to service these lands were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act, and the Office adopts the same rationale as set out in the 31AO(7) notice letter in response to this similar issue now raised in submissions.

In relation to housing targets, under section 19 of the Act the Local Area Plan is required to be consistent with inter alia the core strategy of the County Development Plan.

In this respect, the Office agrees with the CE's Report that *'the rezoning of these lands for residential development would be contrary to the Core Strategy as set out in the Mayo County Development Plan 2022-2028'*. In relation to the points regarding the Census 2022, new data from the ESRI, the review of the NPF, and new housing targets recently released from Government of 303,000 homes up to 2030, there are specific statutory and policy provisions for the implementation of any such changes at a local level.

At the present point in time, it would be premature to pre-empt future amendments that may be made to the housing targets set out in the core strategy of the County Development Plan and at settlement level, including the relevant statutory processes that such amendments require.

Notwithstanding, the Office does not consider that any future changes in housing targets justify the zoning of these MA 35 lands for residential use in a peripheral and non-sequential location partially outside the CSO settlement boundary, and which does not support sustainable travel patterns.

In relation to the elected members' local knowledge and the intentions of landowners to develop other lands in the town, this was a matter for elected members to consider when zoning those lands for development, and is not a reasonable basis for zoning the MA 35 lands contrary to the policy objectives for the proper planning and sustainable development of the area.

In relation to the request to zone the lands Strategic Reserve, notwithstanding any argument in favour of an alternative zoning objective, a Strategic Reserve objective on these lands has not been subject to environmental assessment or public consultation.

In relation to the point that flood risk can be managed locally through a planning application, the Flood Guidelines state that:

*development management for flooding should be based on sound strategy, policies and objectives within the development plan and local area plan where appropriate, setting out the basis for considering planning applications in principle and in detail.*³

A key principle of the Flood Guidelines is to avoid development in areas at risk of flooding, and if this is not possible, substitute a land use that is less vulnerable to flooding. Matters relating to flood risk management were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act, and the Office adopts the same rationale as set out in the 31AO(7) notice letter in response to this similar issue now raised in the submission.

In relation to the reason that elected members should be allowed to propose additional lands as they see fit, the Office is satisfied that the relevant statutory provisions have been fully adhered to in this regard.

Following consideration of the CE's Report, there is no planning or policy basis to amend the recommendation of this Office in respect of the draft Direction in relation to MA 35.

MA 36

Two submissions were received opposing the draft Direction in respect of MA 36, one from Councillor Jarlath Munnely and one from The Planning Partnership on behalf of Vincent Ruane Construction.

The following matters were raised in the submission to the Chief Executive and summarised in the CE's Report:

- details of site history and a current planning application on the site are provided;

³ Section 5.1, The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009).

- land should be zoned to avoid material contraventions of the County Development Plan on other unfinished estates similar to Claremorris / Ballinrobe;
- subject lands are brownfield;
- the lands can be serviced by existing infrastructure put in place as part of the overall Friarscourt development. Correspondence was attached to such effect in the submission from The Planning Partnership on behalf of Vincent Ruane Construction from UÉ;
- the lands will benefit from sustainable transport measures along Killala Road;
- extent of flood risk is limited to a normal and small riparian / buffer strip along the adjacent watercourse which could be omitted from the zoning;
- MA 30 and MA 36 should not be considered together. The MA 36 lands are being developed as part of the larger Friarstown masterplan and are not peripheral or non-sequential in this context;
- existing policies are not working and the NWRA RSES 2-year report show Ballina only achieving 41% of housing requirements associated with the RSES;
- housing targets are likely to be increased;
- lands zoned in adopted plan will not be built on during lifetime of the plan and therefore supports zoning of additional lands;
- the flood risks can be managed locally through a planning application;
- laughable that lands would be zoned Agriculture; and
- if elected members proposed additional lands as they see fit, they should be allowed.

The Office notes the CE's Report and the submissions from the NWRA, NTA and UÉ, all of which support the draft Direction in respect of MA 36.

Following consideration of the submissions and CE's Report, the Office notes the very limited extent of flood risk on these lands, and accepts that these lands are capable of being accessed from the existing residential development at Friarstown,

that they do not extend the pattern of development on the Killala Road northwards away from the town centre, and additionally accepts the information provided regarding water services.

The Office therefore recommends a minor amendment to the final Direction to omit part 2(a)(vii) MA 36.

Recommendation

In light of the above and for the reasons given in our 31AO(7) notice letter, the Office remains of the view, as set out in this notice letter, that the Local Area Plan has been made in a manner that is inconsistent with the recommendations of the Office, inconsistent with the County Development Plan, and as a consequence the use by the Minister of his functions to issue a direction under section 31 would be merited in respect of MA 29, MA 30, MA 31, MA 33, MA 34, and MA 35 to ensure that the Local Area Plan sets out an overall strategy for proper planning and sustainable development.

Following detailed consideration of the CE's Report the Office recommends a minor amendment to the draft Direction to omit part 2(a)(vii) MA 36.

Having regard to section 31AP(4)(a) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act to issue the Direction with minor amendments identified in red text as per the attached proposed final Direction.

Please do not hesitate to contact the Office should you have any queries in relation to the above. Contact can be initiated through the undersigned or at plans@opr.ie.

Yours sincerely,



Niall Cussen

Planning Regulator
Designated Public Official under the Regulation of Lobbying Act 2015

**DIRECTION IN THE MATTER OF SECTION 31
OF THE PLANNING AND DEVELOPMENT ACT 2000 (as amended)**

Ballina Local Area Plan 2024-2030

“Local Area Plan” means the Ballina Local Area Plan 2024-2030.

“Planning Authority” means Mayo County Council.

“County Development Plan” means Mayo County Development Plan 2022-2028.

“RSES” means the Regional Spatial and Economic Strategy for the Northern and Western Region.

The Minister of State at the Department of Housing, Local Government and Heritage in exercise of the powers conferred on him by section 31 of the Planning and Development Act 2000 (No.30 of 2000) ("the Act") and the Housing, Local Government and Heritage (Delegation of Ministerial Functions) Order 2024 (S.I. No. 234 of 2024), and consequent to a recommendation made to him by the Office of the Planning Regulator, hereby directs as follows:

(1) This Direction may be cited as the Planning and Development (Ballina Local Area Plan 2024-2030) Direction 2024.

(2) The Planning Authority is hereby directed to take the following steps with regard to the Local Area Plan:

(a) Delete the following Material Alterations from the adopted Local Area Plan such that the subject lands revert to as indicated in the draft Local Area Plan:

- (i) Material Alteration MA 29 – i.e. the subject lands revert to Enterprise & Employment from New Residential;
- (ii) Material Alteration MA 30 – i.e. the subject lands revert to Agriculture, and Existing Residential from New Residential;
- (iii) Material Alteration MA 31 – i.e. the subject lands revert to Enterprise & Employment from New Residential;
- (iv) Material Alteration MA 33 – i.e. the subject lands revert to Recreation & Amenity from New Residential;

- (v) Material Alteration MA 34 – i.e. the subject lands revert to Agriculture from New Residential;
- (vi) Material Alteration MA 35 – i.e. the subject lands revert to Agriculture, and Recreation & Amenity from New Residential;
- ~~(vii) Material Alteration MA 36 – i.e. the subject lands revert to Agriculture from New Residential;~~

and apply all necessary consequential updates to the text of the plan consistent with the foregoing.

STATEMENT OF REASONS

- I. The Local Area Plan includes material alterations (MA 29, MA 30, MA 31, MA 33, MA 34 and MA 35 and ~~MA 36~~) to the draft Local Area Plan, to zone additional residential land significantly in excess of what is required for the town having regard to the growth targets for Ballina under the core strategy of the County Development Plan. These material alterations are located in peripheral and non-sequential locations, and/or outside the CSO settlement boundary, and/or without adequate infrastructure, and do not support sustainable travel patterns.

These material alterations would therefore encourage a pattern of development in particular locations which is inconsistent with the objectives of the County Development Plan to promote compact and sequential development by consolidating the built-up footprint and developing outwards from the centre in a sequential manner, to avoid the inappropriate extension of services and utilities, and to encourage sustainable travel patterns, under Objectives CSO 4, CSO 5, SSO 3, SSO 6, GSO 1 and SO 12 of the County Development Plan and RPO 3.1 and RPO 3.2(c) for compact growth and RPO 7.20 of the RSES to increase the population living within settlements.

- II. The Local Area Plan includes material alterations (MA 30 and MA 35, ~~and MA 36~~) to zone land as New Residential located in Flood Zone A and B where The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009), issued under section 28 of the Act, indicate that such highly vulnerable uses are not appropriate unless a Justification Test is passed. The material alterations are therefore inconsistent with RPO 3.10 of the RSES to avoid inappropriate development in areas at risk of flooding and to implement the recommendations of the Guidelines, and/or are inconsistent with Objective INP 14 of the County Development Plan to have regard to the Guidelines in the preparation of plans, and the Planning Authority has failed to give any or any adequate reasons as to why the recommended approach of the Guidelines has not been implemented, and how the planning authority's adopted approach is consistent with ensuring that the Local Area Plan sets out an overall strategy for the proper planning and sustainable development of the area.
- III. The Local Area Plan has not been made in a manner consistent with, and has failed to implement, recommendations of the Office of the Planning Regulator made under section 31AO of the Act.
- IV. The Minister is of the opinion that the Local Area Plan as made is inconsistent with the objectives of the Development Plan of the area, which is a requirement of section 19(2) of the Act.
- V. The Minister is of the opinion that the Local Area Plan as made is not consistent with the objectives of the RSES, contrary to section 19(2) and section 27(1) of the Act.
- VI. The Minister is of the opinion that the Local Area Plan as made is not consistent with National Policy Objectives 33 and 57 of the National Planning Framework.
- VII. The Minister is of the opinion that the Local Area Plan as made fails to set out an overall strategy for the proper planning and sustainable development of the area.
- VIII. The Local Area Plan is not in compliance with the requirements of the Act.

GIVEN under my hand

Minister of State for Local Government and Planning

Day of Month, Year.