



South Dublin County Council

Development Plan 2016 – 2022



Comhairle Contae
Átha Cliath Theas
South Dublin County Council

Chief Executive's Report on Proposed Material Alteration to Variation No. 3

April 2019
Land Use Planning and
Transportation Department
South Dublin County Council

Table of Contents

Table of Contents.....	1
1.0 Introduction	2
2.0 Outline of the Public Consultation.....	2
3.0 Outcome of the Public Consultation Programme.....	3
4.0 Next Steps	4
5.0 Categorisation and Summary of Issues Raised	4
5.1 Acknowledgement / General	4
5.2 Legislative and Policy Context.....	5
6.0 Conclusion.....	11

1.0 Introduction

The purpose of this Chief Executive's Report is to present the outcome of the public consultation process carried out in relation to a proposed Material Alteration to Variation No. 3 to the South Dublin County Development Plan 2016-2022; to respond to the submissions made during the consultation period; and to make recommendations in relation to the proposed Material Alteration, where appropriate.

2.0 Outline of the Public Consultation

On the 20th November 2018, South Dublin County Council (SDCC) gave notice that it had prepared Proposed Variation No. 3 to the South Dublin County Development Plan 2016-2022, pursuant to Section 13 of the Planning and Development Act, 2000 (as amended).

Variation No. 3 amends the zoning objective of approximately 178 hectares of land from zoning objective 'EE' (Enterprise and Employment) to objective 'REGEN' (Regeneration). These lands are located in the Ballymount / Naas Road area, which are south of the Grand Canal and east of the M50, adjoining the boundary with Dublin City Council, all located within the areas of Fox and Geese, Bluebell, Ballymount, Redcow, Gallanstown and Drimnagh.

The reason for the Variation is to facilitate the regeneration of the brownfield lands at this location, which is in close proximity to existing and proposed transport nodes, is close to Dublin City and would provide for a more intensive mix of enterprise and/or residential led development. The Variation supports the implementation of the National Planning Framework (NPF) 2018 and the Eastern and Midland Assembly (Draft) Regional Spatial and Economic Strategy (RSES) 2018, in particular National Strategic Outcome (NSO) No. 1 of the NPF, which seeks to achieve compact growth and consolidation of Ireland's cities as a top priority.

Variation No. 3 was passed at the February Council meeting held on 11th February 2019, with one proposed Material Alteration. The proposed Material Alteration seeks to amend the written Statement of South Dublin County Development Plan 2016-2022 by inserting a new sentence at the end of Specific Local Objective, CS6 SLO 1 (previously amended as part of Variation No. 3). The wording of CS6 SLO1, as amended by Variation No. 3 and including the proposed Material Alteration (in green text) reads as follows:

*'To initiate a plan led approach to the sustainable regeneration of the brownfield lands in the Naas Road / Ballymount REGEN zoned lands. The plan led approach will include the preparation of a masterplan in 2019 with a view to preparing a Local Area Plan or other appropriate mechanism for the Regeneration (REGEN) and Local Centre (LC) at Walkinstown zoned lands. The masterplan will provide a framework for the sequential and phased development of the lands, integrating sustainable transport, land use and blue and green infrastructure. The spatial planning of the area will be informed by the Naas Road Framework Plan (2010). **That no planning applications for residential use of these lands be approved prior to the passing of a Local Area Plan for these lands.'***

The public consultation period for the proposed Material Alteration took place from the 1st of March 2019 to 29th of March 2019 inclusive (a period of 4 weeks) during which time information on the proposed Material Alteration to Variation No.3 to the South Dublin County Development Plan 2016-2022 including planning and environmental reports were made available to the public and prescribed bodies. Submissions were invited as follows;

- Notification of the preparation and display of the proposed Material Alteration to Variation No. 3 of the South Dublin County Development Plan 2016-2022, including planning and environmental reports for the purpose of public consultation was placed in the *Irish Times* on the 1st March 2019 and in *The Echo* on the 7th March 2019, together with information on the public consultation programme and an invitation to make submissions.
- Email that provided notification regarding the proposed Material Alteration to Variation No. 3 consultation programme and an invitation to make submissions was sent to relevant prescribed bodies.
- Public information displays regarding proposed Material Alteration to Variation No. 3 were placed in all of the Council's Public libraries, as well as County Hall (Tallaght Offices) and Clondalkin Civic Offices. The display material included a land use zoning map, planning and environmental reports.
- A Facebook and Twitter campaign took place during the 4 week public consultation period.
- Notification of proposed Material Alteration to Variation No. 3 consultation programme sent to Elected Members on 1st March 2019.

3.0 Outcome of the Public Consultation Programme

The number of submissions that were received during the public consultation period amounted to 7. All submissions were read, analysed and summarised. A list of all the persons/bodies that made submissions within the public consultation period is provided in Table 1 below, together with a reference number that can be clicked as a link (on electronic copies of this Chief Executive's Report) to a database containing scanned copies of each submission.

In accordance with the requirements of Section 13(3A) a of the Planning and Development Act 2000, as amended, written submissions or observations received by South Dublin County Council were published on the Council's website (www.consult.southdublincoco.ie) within 10 working days of receipt.

Person	Body/Company (if applicable)	Ref
Veronica Cooke	Kildare County Council	PMAV3CDP0001
Suzanne Dempsey	Irish Water	PMAV3CDP0002
Tara Spain	Transport Infrastructure Ireland	PMAV3CDP0003
Harry Walsh	AAI Walkinstown	PMAV3CDP0004
David Galvin	Environmental Protection Agency	PMAV3CDP0005
Cllr Francis Timmons	South Dublin County Council	PMAV3CDP0006
Department of Housing Planning and Local Government	Department of Housing Planning and Local Government	PMAV3CDP0007

Table 1: List of Persons / Bodies that made submissions

4.0 Next Steps

This Chief Executive's Report on the public consultation for the proposed Material Alteration is hereby submitted to the members of South Dublin County Council for consideration. The Chief Executive intends the Report to be considered on the 7th May 2019 at the County Council Meeting.

Following the public consultation for the proposed Material Alteration and an assessment of all submissions, it is a recommendation of this report that no Material Alteration is made to Variation No. 3 of the County Development Plan 2016-2022, as it is unwarranted and raises significant legal concerns.

In making this recommendation, it is acknowledged that at the February Council meeting when the CE report relating to Variation No. 3 was considered, the Members agreed to make the variation subject to the Motion proposed by Councillor D. Looney, which was passed by the Members.

In this regard and given the material alteration cannot be supported, the Chief Executive is seeking the view of Council members in relation to the entirety of Variation No. 3 of the County Development Plan.

5.0 Categorisation and Summary of Issues Raised

This Section presents a summary of each of the issues raised under the relevant category heading and the Chief Executive's response and recommendation. Each of the issues listed includes a reference that can be clicked as a link (on electronic copies of this Chief Executive's Report) to a database containing scanned copies of each submission. Submissions are also available to the public on South Dublin County Council's consultation portal website accessed as follows: <http://consult.sdublincoco.ie>

5.1 Acknowledgement / General

Issues raised/points made in the submissions under the heading 'Acknowledgement/General' are summarised below. This includes submissions that state 'no comment'/'no observation'/'no objection'.

- 1 Kildare County Council has no comment to make regarding the Proposed Material Alteration to Variation No. 3 of the County Development Plan. ([PMAV3CDP0001](#)), *Kildare County Council*
- 2 Irish Water has no objection to the wording of the Proposed Material Alteration to Variation No. 3 of the County Development Plan. ([PMAV3CDP0002](#)), *Irish Water*
- 3 Transport Infrastructure Ireland (TII) has no specific observation in relation to the Proposed Material Alteration to Variation No. 3 of the County Development Plan. ([PMAV3CDP0003](#)), *Transport Infrastructure Ireland*
- 4 The submission from the Environmental Protection Agency (EPA) highlights that SDCC should ensure that the Material Alteration is consistent with the need for proper planning and sustainable development. Adequate infrastructure should be put in place to service any proposed development. SDCC should ensure that the Material Alteration is consistent with key relevant higher-level plans and programmes. ([PMAV3CDP0005](#)), *Environmental Protection Agency*
- 5 Submission welcomes the zoning amendment at Ballymount / Naas Road and supports the Proposed Material Alteration to Variation No. 3. Submission notes that there should be minimum disruption and full consultation must take place with residents already living in the area. The submission considers that the area has huge potential for redevelopment and appeals to SDCC to maximise the number of Council housing units in the area. ([PMAV3CDP0006](#)), *AAI Walkinstown*

Chief Executive's Response

The Chief Executive acknowledges the submissions received from prescribed and public bodies which note and acknowledge the proposed Material Alteration to Variation No. 3.

The EPA highlights that SDCC should ensure that the proposed Material Alteration is consistent with the need for proper planning and sustainable development and should take into account the need to ensure consideration of national commitments and consistency with relevant higher-level plans and proposals. The Chief Executive acknowledges the advice provided by the EPA in the event a Material Alteration is made.

It is noted that the Variation, which was made on the 11th of February, is welcomed in most cases and that any concerns raised in submissions regarding residential amenity, although not directly relevant to this consultation exercise, are also noted. These will be addressed through a number of mechanisms as outlined in the Chief Executive's report regarding Variation No. 3, which was prepared following the previous public consultation relating specifically to Variation No. 3.

Chief Executive's Recommendation

That no Material Alteration is made to Variation No. 3 of the South Dublin County Development Plan 2016-2022.

5.2 Legislative and Policy Context

Issues raised/points made in the submissions under the heading '*Legislative and Policy Context*' are summarised below.

- 1 The Department of Housing, Planning and Local Government (DoHPLG) welcomes the Variation and acknowledges that *'the regeneration of the area is strongly supported by [the] Department, which has funded the preparatory planning research and infrastructural studies necessary for the Naas*

Road, under the Urban Regeneration and Development Fund' (URDF). The Department also acknowledges the preparatory work being undertaken with Dublin City Council (DCC) with a view to informing the preparation of an integrated planning framework for the area.

The Department goes on to comment on the wording of the proposed Material Alteration and considers that it would '*inflexibly pre-judge the outcome of the research and analysis underway in relation to the regeneration of this area....*'.

The Department strongly advises SDCC not to proceed with the proposed Material Alteration and highlights that the Planning Authority has '*sufficient scope not to approve any development proposals in the meantime that would be premature to the determination of such a strategy and its implementation in economic or other terms*'. ([PMAV3CDP0007](#))

- 2 A further submission on behalf of a landowner/developer, requests that the wording which forms the proposed Material Alteration is omitted from CS6 SLO1 in its entirety. There are three reasons for this request set out in the submission, as follows:

- The proposed material alteration is contrary to Development Plan Guidelines;
- The proposed alteration is *ultra vires*;
- Judicial Review and Compensation.

Each of the above issues is dealt with below, in turn:

The proposed Material Alteration is contrary to Development Plan Guidelines

- The Development Plan Guidelines underline that the primary function of the planning system is to support the sustainable development of land. Development Plans are the principal vehicle for all local planning decisions.
- The proposed Material Alteration would be contrary to the function of the planning system insofar as it would:
 - Represent an overtly negative objective which does not support sustainable development and would prohibit development of zoned land which has already gone through the development plan process, including strategic environmental assessment (SEA).
 - Weaken the current strategic framework in the SDCC Development Plan creating ambiguity and uncertainty in approach, also undermining significant private sector investment decisions.
 - Be contrary to national policy as contained in the NPF and RSES. The purpose of the Variation is to positively respond to and better align the Development Plan with objectives contained in the NPF and RSES which are unequivocal in their intentions to support increased levels of growth to meet housing targets and maximise the return on underutilised brownfield lands.
 - The insertion of the new wording conflicts with the purpose of the making of the Variation, namely, to create policy conditions which better support the development of identified lands in the short-term.
 - Any proviso that development will not be permitted pending the preparation of a Local Area Plan, the timeline for which is unknown, will directly inhibit this objective.
 - Critically, the implications of the proposed wording also extend beyond the geographical area to which Variation No. 3 applies. It is unclear if this is an intended

or unintentional consequence of the proposed alteration, but it will negatively constrain the delivery of existing established Development Plan objectives.

The proposed alteration is ultra vires

- The submission contends that the proposed Material Alteration is unlawful on the basis of the following:
 - An objective which aims to prevent development cannot be a development objective in a statutory Local Authority Development Plan, having regard to the High Court ruling on *Glencar Explorations plc v Mayo County Council* (1993) 2 I.R. 237.
 - It does not comply with the Council's statutory obligation under Section 15 of the Planning and Development Act 2000 (as amended), which imposes a duty on every planning authority to take such steps within its powers to 'secure' the objectives of the Development Plan.
 - Case Law precedent confirms that even seeming powers, for example powers which simply state that an application may be granted or refused, are subject to legal limits. Such limits may be express or may be implied from the statutory scheme within which the power is provided. Section 34(1) of the Planning and Development Act 2000 (as amended) is referenced in support.
 - The proposed Material Alteration as proposed by Elected Members is *ultra vires* in that it will bind the planning authority to disregard the conditions to which Section 34(2) of the Act requires it to have regard, including all the provisions of the Development Plan, so far as material to an application, and any other material considerations. The amendment, as proposed, represents an action which is in excess of statutory powers of South Dublin County Council and is therefore unlawful.
 - A key principle of the planning system is the creation of investment certainty and the formal zoning of land via the Development Plan process creates a legitimate and legal expectation that any favourable site zoning objective will not be materially altered during the plan period.

Judicial Review and Compensation

- Submission notes that any process of adopting the proposed Material Alteration as drafted will be challenged by way of Judicial Review and/or a claim for compensation.
- Proposed Material Alteration will place a material and unlawful restriction on the development of client's lands.
- Planning legislation is clear that while compensation shall not be payable for a refusal of planning permission based on any change of zoning of any land as a result of making a new Development Plan, the exclusion of compensation does not apply in respect of a change of zoning arising under a variation of a Development Plan.
- On foot of any adoption of the proposed Material Alteration, and in a scenario where a planning application is subsequently refused on the basis of this unlawful action, compensation will be sought for costs arising from the zoning change and will also include a claim for damages for breach of legitimate expectation of the landowners that the zoning of their lands would not be changed during the life of the current County Development Plan.
- The submission highlights that an application for a Strategic Housing Development is being prepared for the client's land at Ballymount Road Lower. This is being advanced through a close working partnership with South Dublin County Council. These lands are zoned for development in the South Dublin County Development Plan 2016-2022 and the making of

an application is not constrained by any policies contained therein. The submission contends that, without prejudice to any decision-making processes, the development of these lands as proposed will contribute positively to the realisation of adopted Development Plan objectives. ([PMAV3CDP0004](#))

Chief Executive's Response

The Chief Executive has carefully considered the issues raised in relation to the legislative and policy context pertaining to the proposed Material Alteration and provides responses and recommendations under the following subheadings:

- Masterplanning Process / Future Plan
- South Dublin County Development Plan 2016-2022
- Legal Implications of Proposed Material Alteration

Masterplanning Process / Future Plan

The Chief Executive welcomes the submission by the Department of Housing Planning and Local Government (DoHPLG) that strongly supports Variation No. 3 to the County Development Plan, which was made in February 2019. The preparatory work being undertaken by SDCC in conjunction with Dublin City Council with a view to informing the preparation of a planning framework for the variation lands is also recognised and supported by the Department. In relation to the wording of the proposed Material Alteration, it is emphasised by the Department that the relevant planning authorities (including SDCC) have sufficient scope not to approve any development proposals that would be considered premature to the determination of a planning framework plan for the area. It is the view of the Chief Executive that this statement is significant in that it means that sufficient powers exist under current legislation to implement what the proposed Material Alteration seeks to achieve, on a case-by-case basis, as opposed to via the blanket measure proposed.

The Chief Executive highlights that SDCC is committed to delivering a plan-led and sustainable approach for the redevelopment of Ballymount / Naas Road, as a matter of priority. URDF funding which supports a series of studies to inform the future spatial planning of the area has been awarded by DHPLG. This work will include a range of environmental assessments including assessing impacts from existing businesses operating in the area (for example the Seveso sites). Preliminary works are currently in progress to advance the preparation of the planning framework for the area. A briefing document has been prepared by SDCC in partnership with DCC to allow for the procurement of consultants in order to commence the initial baseline studies which will inform the plan-led approach for redevelopment of the area.

Notwithstanding this, in advance of the preparation of a planning framework, any planning applications received for residential developments will be assessed, as required by the Act, in accordance with the policies and objectives set out in the County Development Plan, in accordance with relevant regional and national guidance and in accordance with the proper planning and sustainable development of the area. The development management process will be considerate of the preparatory work that is being undertaken for the area to inform the development of a planning framework, and residential developments will be assessed and considered with this future development strategy for the area in mind.

While it is acknowledged that strategic housing development (SHD) applications are ultimately considered by an Bord Pleanála, the planning authority, nonetheless has a key role in the process, which

includes participation in formal pre-planning consultations and the submission of a Chief Executive's (CE) report on a proposal to an Bord Pleanála. In the course of any such consultations/reports, an Bord Pleanála will be made aware by SDCC of the impending preparation of a planning framework for the Ballymount / Naas Road area, where relevant.

The purpose of the Chief Executive's report on a strategic housing development application is (*inter alia*) to convey the opinion of the planning authority, as to whether the proposed SHD would be consistent with the relevant objectives of the development plan and local planning framework, as the case may be, and the proper planning and sustainable development of the area. The CE report also sets out a summary of the points raised in the submissions or observations received by an Bord Pleanála. A summary of the views expressed by Elected Members at an Area Committee Meeting (or other meeting) on the proposed development is also outlined in the report.

SDCC's role also involves the facilitation of pre-planning meetings for SHD applications in accordance with Section 247 of the Planning and Development Act (2000), as amended and participation in the tripartite pre-planning meeting which is required to take place between an Bord Pleanála, the planning authority and the applicant. It is considered that this level of detailed engagement between SDCC and an Bord Pleanála throughout the SHD application process will ensure that the Board has comprehensive information, including details regarding any planning framework being prepared, which will allow it to make an informed decision regarding large scale residential developments within the variation lands.

The Chief Executive agrees with the Department's view that the effect of the proposed Material Alteration would be to inflexibly pre-judge the outcome of the research and analysis underway in relation to the regeneration of this area and the appropriate response in planning policy and plan-making terms.

County Development Plan 2016-2022

The Chief Executive acknowledges the concerns raised regarding the conflict between the wording of the proposed Material Alteration and the Development Plan Guidelines for Planning Authorities 2007. It is highlighted in the Development Plan Guidelines that the County Development Plan is intended to provide the strategic framework and policy context for all local planning decisions. It is considered that the proposed Material Alteration would be contrary to the function of the County Development Plan, as set out in the Guidelines in that it seeks to pre-judge the consideration of development on zoned lands, which have already been through the formal development plan preparation and variation process.

While the rationale for the proposed Material Alteration is understood and acknowledged by the Chief Executive, it is considered that this is not the correct mechanism to either guide or prevent development in this area, nor is it the correct mechanism to achieve balanced and sustainable development of the variation lands. SDCC is committed to delivering a planning framework for the redevelopment of the area as a matter of priority and funding has been allocated under the Urban Regeneration Development Fund (URDF) to support a series of studies to inform the future spatial planning of the area.

In summary, the wording of the proposed Material Alteration would undermine the South Dublin County Development Plan 2016-2022, which represents the adopted policy framework for considering all development proposals, including those within the variation lands. The proposed Material Alteration is therefore considered to be unnecessary and unjustified.

Legal Implications

The Chief Executive acknowledges the concerns raised regarding the legal implications of the proposed Material Alteration and the suggestion that the wording is *ultra vires* and has the potential to be challenged by way of Judicial Review. The legal standing of the proposed Material Alteration is cause for concern in that it creates the potential for SDCC to be liable for a compensation claim by an applicant in a scenario where a planning application is refused on the basis of the proposed Material Alteration.

The case of *Glencar Explorations plc v Mayo County Council* (1993) 2 I.R. 237 was cited in a submission as being relevant and having parallels to the proposed Material Alteration, whereby Mayo County Council adopted an amendment to its Development Plan in 1992 which amounted to an effective ban on mining in a specified area. It was subsequently ruled via a court of law that this decision was *ultra vires* and that the Council did not have the authority to impose such a restriction on development.

The Chief Executive recognises that this ruling may be applicable to the proposed Material Alteration and that planning authorities are required by Section 34(1) of the Planning and Development Act, 2000 (as amended) to assess all planning applications and to make a determination on whether an application should be granted subject to, or without conditions, or refused. A specific objective in the development plan to refuse residential development, as put forward by the proposed Material Alteration, would effectively be pre-judging any such planning application, such that it would not be considered or assessed on its own merits.

Furthermore, a legal opinion obtained by the Elected Members of Dun Laoghaire Rathdown County Council provided advice and guidance on a *'Proposal to initiate procedures under Section 13 of the Planning & Development Act, 2000 (as amended) to effect a variation of the existing Development Plan of the County Council'* and contains elements that are applicable to this case. A series of six questions were asked by the Elected Members, one of which is particularly relevant to the proposed Material Alteration as follows:

'Are there any circumstances in which a Planning Authority, (a) having acted intra vires, or, (b) ultra vires where its action amounts to a nullity, can attract a liability in respect of a variation to the County Development Plan?'

The Opinion of Counsel states in relation to lawful Variations that –
'Section 190(2) provides that compensation shall not be payable for a refusal of Planning Permission based on any change of zoning of any land as a result of the making of a new Development Plan, and this is echoed in the exclusions set out in paragraph 20 of the Fourth Schedule of the Act. However, this exclusion of compensation does not apply in respect of a change of zoning arising under a variation of a Development Plan'.

In relation to unlawful Variations, the Opinion of Counsel states –
"There may be financial exposure for [Dun Laoghaire-Rathdown] County Council if, as a result of the making of an unlawful variation of the existing Development Plan, landowners suffer loss if intended sales of their land are undermined as a result of such rezoning. This can arise as a possible claim for damages brought by landowners claiming against [Dun Laoghaire-Rathdown] County Council for the causing of loss to them by unlawful means. Furthermore, if it happens that a variation of the Development Plan is unlawfully put in place which is successfully challenged by way of Judicial Review

there possibly might be financial exposure of [Dun Laoghaire-Rathdown] County Council itself or its Officials if an aggrieved party established a case in Misfeasance in Public office.”

In this regard, it is noted that the wording of CS6 SLO1 (as amended by Variation No. 3) which includes the statement *‘To initiate a plan led approach to the sustainable regeneration of the brownfield lands in the Naas Road / Ballymount ‘REGEN’ zoned lands...’* applies to both existing ‘REGEN’ zoned lands, as well as lands which were rezoned from ‘EE’ (Enterprise and Employment) to ‘REGEN’ by Variation No. 3. As such, the effect of the proposed Material Alteration on the existing ‘REGEN’ zoned lands would be to ‘down-zone’ them. This would result from the fact that residential use, which is permitted in principle within the ‘REGEN’ zone, would now be restricted by the proposed Material Alteration, via a presumption of refusal of any planning application for residential development. This has the potential to attract challenge by way of Judicial Review and/or claims for compensation.

Having regard to the foregoing and the legal advice and precedent discussed above, it is considered that South Dublin County Council may be open to challenge via judicial review and / or liable for claims for compensation if the proposed Material Alteration to Variation No. 3 of the County Development Plan is made.

Chief Executive’s Recommendation

That no Material Alteration is made to Variation No. 3 of the South Dublin County Council Development Plan 2016-2022.

6.0 Conclusion

Following a meeting on the 11th February 2019, South Dublin County Council initiated the process for public consultation to commence in accordance with Section 13 of the Planning and Development Act 2000 (as amended) with regard to the proposed Material Alteration. The proposed Material Alteration is to Specific Local Objective CS6 SLO 1, as reworded following Variation No.3. The proposed Material Alteration wording is at the end of CS6 SLO 1 (as amended by Variation No. 3), set out below in green text:

CS6 SLO 1:

*To initiate a plan led approach to the sustainable regeneration of the brownfield lands in the Naas Road / Ballymount REGEN zoned lands. The plan led approach will include the preparation of a masterplan in 2019 with a view to preparing a Local Area Plan or other appropriate mechanism for the Regeneration (REGEN) and Local Centre (LC) at Walkinstown zoned lands. The masterplan will provide a framework for the sequential and phased development of the lands, integrating sustainable transport, land use and blue and green infrastructure. The spatial planning of the area will be informed by the Naas Road Framework Plan (2010). **That no planning applications for residential use of these lands be approved prior to the passing of a Local Area Plan for these lands.***

Following a 4-week consultation process, a number of submissions were received from individuals, agencies and organisations, through which a number of pertinent issues emerged.

As detailed in Section 5.0, the most prominent issues raised were in relation to the proposed Material Alteration under the categories of 'Legislative and Policy Context' and 'Acknowledgement / General'.

Under the 'Acknowledgement / General' category the proposed Material Alteration was noted by a number of public bodies. Variation No. 3, which was made in February 2019 was also acknowledged and welcomed while some concern emerged regarding what impact the variation would have on residential amenity. While Variation No. 3 and the issue of residential amenity is not directly relevant to the current public consultation process, it is highlighted that the impact of the Variation on local communities will be considered throughout the plan making and development process, as outlined in the CE Report, which followed the last public consultation.

A number of critical points in relation to the proposed Material Alteration were raised under the category of 'Legislative and Policy Context'. This category was considered under three subheadings as follows: Masterplanning Process / Future Plan; South Dublin County Development Plan 2016-2022 and Legal Implications of Proposed Material Alteration.

The Department of Housing, Planning and Local Government strongly urge SDCC not to proceed with the proposed Material Alteration as, in its view, it would inflexibly pre-judge the outcome of the research and analysis underway in relation to the regeneration of this area and the appropriate response in planning policy and plan-making terms. It is considered that the wording of the Proposed Material Alteration would undermine the South Dublin County Development Plan 2016-2022, which represents an appropriate policy framework for consideration of all development proposals, including those within the variation lands. The proposed Material Alteration is therefore considered to be both unjustified and unnecessary.

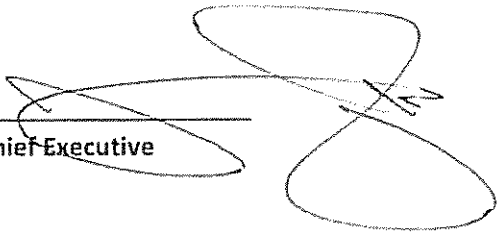
The Chief Executive acknowledges the concerns raised regarding the legal implications of the proposed Material Alteration and the suggestion that the wording is *ultra vires* and has the potential to be challenged by way of Judicial Review. The legal standing of the proposed Material Alteration is cause for concern in that it creates the potential for SDCC to be liable to pay compensation to an applicant in a scenario where a planning application is refused on the basis of the proposed Material Alteration.

While the rationale for the proposed Material Alteration is understood and acknowledged by the Chief Executive, it is considered that it is not the appropriate mechanism to either guide or prevent development in this area, nor is it the correct mechanism to achieve balanced and sustainable development of the variation lands.

SDCC is committed to delivering a planning framework for the redevelopment of the area as a matter of priority and funding has been allocated under the Urban Regeneration Development Fund (URDF) to support a series of studies to inform the future spatial planning of the area. Preliminary works are currently in progress to advance the preparation of the planning framework and a briefing document has been prepared by SDCC in partnership with DCC to allow for the procurement of consultants in order to commence the initial baseline studies.


The Chief Executive considers that South Dublin County Council, under the provisions of the Planning and Development Act, 2000 (as amended) and the South Dublin County Development Plan 2016-2022,

has sufficient scope to ensure that no premature development is granted within the Variation lands and that as such, a Material Alteration to Variation No. 3 is unnecessary and unwarranted in this instance.



Chief Executive

30/4/19
Date



Comhairle Contae
Átha Cliath Theas
South Dublin County Council

**PLANNING AND DEVELOPMENT ACT 2000, AS AMENDED
PLANNING AND DEVELOPMENT (STRATEGIC ENVIRONMENTAL
ASSESSMENT) REGULATIONS 2004-2011
NOTICE OF MATERIAL ALTERATION TO VARIATION NO.3
OF SOUTH DUBLIN COUNTY COUNCIL DEVELOPMENT PLAN
2016-2022**

Notice is hereby given pursuant to Section 13 of the Planning and Development Act 2000 (as amended) that South Dublin County Council is proposing a Material Alteration to Variation No. 3 of the South Dublin County Council Development Plan 2016-2022 in accordance with Section 13 of the Planning and Development Act 2000 (as amended) in the following manner;

Material Alteration to Variation No. 3 – Zoning Amendment to Lands at Ballymount / Naas Road

Amend the Written Statement of South Dublin County Council Development Plan 2016-2022 by inserting a new sentence at the end of Specific Local Objective, CS6 SLO 1, previously amended as part of Variation No. 3 (contained in Chapter 1, Introduction and Core Strategy) as follows:

“That no planning applications for residential use of these lands be approved prior to the passing of a Local Area Plan for these lands.”

Documents Accompanying Proposed Material Alteration to Variation No.3:

- Written Statement outlining proposed Material Alteration to Variation No. 3 of the County Development Plan 2016-2022.
- A statement of assessment for the Strategic Environmental Assessment (SEA) and Appropriate Assessment (AA) of the proposed Material Alteration to Variation No. 3 of the County Development Plan 2016-2022.
- A Schedule 2a SEA Screening Assessment of the proposed Material Alteration to Variation No. 3 of the County Development Plan 2016-2022.

Public Display:

The Proposed Material Alteration to Variation No. 3 of the South Dublin County Council Development Plan 2016-2022 along with accompanying planning and environmental reports are being placed on public display and may be inspected from **1st March 2019 to 29th March 2019** (both dates inclusive) during normal opening hours at County Hall, Tallaght; the Civic Offices, Clondalkin; and in County Library, Tallaght and all Local Branch Libraries during normal opening hours for each library (excluding Bank Holidays).

The documents may also be viewed on South Dublin County Council's website at www.sdcc.ie

Making a Submission:

Submissions should be in **ONE** medium only and should include the full name and address of the person making the submission, details of organisation, community group or company represented, where relevant, and should be clearly marked – **Material Alteration to Variation No. 3 South Dublin County Council Development Plan 2016-2022**. As an online facility has been provided for your convenience, e-mail submissions will not be accepted.

Submissions or observations can be made as follows:

On Line: <https://consult.sdublincoco.ie/> (up to **12.00 midnight on 29th March 2019**).

OR

By Post: Senior Executive Officer, Forward Planning Section, Land Use, Planning and Transportation Department, South Dublin County Council, County Hall, Tallaght, Dublin 24 (up to **4.00pm on 29th March 2019**):

LATE SUBMISSIONS WILL NOT BE ACCEPTED.

Any written submissions or observations in respect of the proposed material alteration received within the timeframe will be taken into consideration before the making of the proposed material alteration.

Daniel McLoughlin
Chief Executive, South Dublin County Council and A/Director of Services
Land Use Planning and Transportation Department

Web: www.sdcc.ie

