



To: Directors of Services for Planning for each City and County Council  
Chief Executives, City and County Councils  
Senior Planners, City and County Councils  
Directors of Regional Assemblies  
Office of Planning Regulator  
An Bord Pleanála

**Circular Letter: NRUP 07/2022**

21<sup>st</sup> December 2022

A Chara,

**Re: Circular concerning:**

- A. Planning and Development, Maritime and Valuation (Amendment) Act 2022 (Commencement of Certain Provisions) (No. 4) Order 2022;**
- B. Amendments to the *Sustainable Urban Housing - Design Standards for New Apartments Guidelines for Planning Authorities (2020)*; and**
- C. Residential Zoned Land Tax: Submissions by Landowners requesting Zoning Amendments**

I am directed by Mr. Darragh O'Brien T.D., Minister for Housing, Local Government and Heritage to bring to your attention this Circular on the above, separated into three distinct parts, the details of which follow below.

**Please bring this Circular to the attention of all relevant persons in the planning and development sections of your organisation. Please note that transitional arrangements apply to Part B of this Circular.**

**Enquiries**

Any queries in relation to this Circular should be addressed to:

[ForwardPlanning@housing.gov.ie](mailto:ForwardPlanning@housing.gov.ie)



Is mise le meas,

A handwritten signature in black ink, appearing to read 'Paul Hogan', is shown within a rectangular box. The signature is written in a cursive style.

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**Paul Hogan**

Chief Planner

Department of Housing, Local Government and Heritage



## **A. Planning and Development, Maritime and Valuation (Amendment) Act 2022 (Commencement of Certain Provisions) (No. 4) Order 2022**

Further to the enactment of the Planning and Development, Maritime and Valuation (Amendment) Act 2022, I write to advise of the commencement on 4<sup>th</sup> of November 2022, of sections 2, 8 and 9 of the Planning and Development, Maritime and Valuation (Amendment) Act 2022, applying minor technical amendments to the Act.

### **Details**

Circular NRUP 04/2022 had advised that all provisions have commenced however following a review of the drafting of the Act, it was identified that Sections 8 and 9 require a specific commencement order. In that context, this circular is issued.

Sections 8 and 9 relate to Ministerial Directions on Local Area Plans. Specifically, Section 8 amends Section 31AO of the Act, which makes provision for the evaluation and assessment by the Office of the Planning Regulator of matters relating to local area plans. Section 9 amends section 31AP which includes consequential provisions to section 31AO, also related to the matter of local area plans. Appendix I, attached, sets out the relevant provisions.

Section 2 has been included for commencement also ('definitions') as it contains definitions therein that are necessary to come into operation in order for sections 8 and 9 to have effect.

These improvements will benefit all stakeholders, including local authorities, the Office of the Planning Regulator and the wider public.



**B. Amendments to the Sustainable *Urban Housing - Design Standards for New Apartments Guidelines for Planning Authorities (2020)* (hereafter ‘Apartment Guidelines’) issued under s.28 of the Planning and Development Act.**

Pursuant to Section 28(4) of the Planning and Development Act 2000, as amended, this amendment removes Specific Planning Policy Requirements (SPPRs) 7 and 8 of the Apartment Guidelines (see Appendix II for detail of the SPPRs that are removed). The effect of this amendment is that Build To Rent (BTR) is no longer a distinct class of development for planning purposes, and that planning standards for BTR development are required to be the same as those for all other generally permissible apartment types.

Section 5.0 of the Apartment Guidelines continues to recognise BTR development as a valid form of rental accommodation and sets out typical characteristics, but with no allowable divergence from the minimum standards for apartments generally, which are set out in Sections 3.0 and Section 4.0 of the Guidelines. This ensures that apartment developments, irrespective of the intended end user, will be designed to the same minimum standards.

This amendment shall come into effect on **22<sup>nd</sup> December 2022**.

**A copy of these amended Guidelines is included with this correspondence. These Guidelines will also be published and available to view on the Department’s website.**

**Transitional Arrangements**

All current appeals, or planning applications (including any outstanding SHD applications and appeals consequent to a current planning application), that are subject to consideration within the planning system on or before 21<sup>st</sup> December



2022, will be considered and decided in accordance with the current version of the Apartment Guidelines, that include SPPRs 7 and 8.

Furthermore, in cases where a request for a Large-Scale Residential Development (LRD) meeting has been submitted to a local authority for a proposal that includes specified BTR development in accordance with s.32B of the Planning and Development Act on or before the date of this Circular (21<sup>st</sup> December 2022), even if the LRD meeting has yet to take place, the opinion has yet to issue, or a planning application has yet to be made but is made within 6 months of receipt of the opinion as required by s.32A of the Act, the development will be assessed by the local authority and where applicable, on appeal to the Board, in accordance with the Guidelines issued prior to the BTR update i.e. the version of the Apartment Guidelines that includes SPPRs 7 and 8, will remain applicable.



### **C. Residential Zoned Land Tax: Submissions by Landowners requesting Zoning Amendments**

This part of the Circular is intended to assist planning authorities in the process of considering any submissions requesting a change to statutory land use zonings, as facilitated under Section 653I(1)(a) and (b) of the Taxes Consolidation Act 1997 (as amended).

#### **Context**

As set out in Circular NRUP 06/2021, the Residential Zoned Land Tax (RZLT) was announced in Budget 2022 and is contained in the Finance Act 2021. The provisions of the tax are due to come into effect on 1 February 2024.

The principal purpose of the Residential Zoned Land Tax is to encourage the *timely* activation of zoned *and serviced* residential development land for housing, rather than solely to raise revenue. It is intended that the Residential Zoned Land Tax will function as a significant incentive to bringing forward suitably zoned and serviced land for residential development. As referenced in Circular NRUP 02/2022 The Department published section 28 guidelines<sup>1</sup> on the 29 June 2022 to assist planning authorities and stakeholders in meeting their obligations under the legislation, in order to activate zoned and serviced land for housing.

Circular NRUP 02/2022 also indicated that a Section 29 Ministerial Policy Directive would be issued to facilitate consideration of rezoning submissions received during the public display periods for the draft and supplemental maps. Having considered the existing provisions in legislation and statutory guidelines, rather than issuing a Ministerial Policy Directive, this Circular draws attention to

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<sup>1</sup> These can be accessed at the following link <https://www.gov.ie/en/publication/fbc41-residential-zoned-land-tax-guidelines-for-planning-authorities/#:~:text=The%20Residential%20Zoned%20Land%20Tax,lands%20in%20cities%20and%20towns>



the provisions available to planning authorities for the purposes of expediting requests for rezoning.

Mapping of the land which satisfies the relevant criteria is undertaken by the planning authority, while management of the Residential Zoned Land Tax, including liability, payment and enforcement, will be undertaken by the Revenue Commissioners. Maps must be updated annually by planning authorities.

### **Progress to Date**

Draft maps identifying land that satisfies the relevant criteria were published by all planning authorities on 1 November 2022. A supplemental map (as provided for in Section 653F of the TCA 1997) may be published where necessary by 1 May 2023, with the process to be completed with publication of the final map by 1 December 2023.

### **Accepting and publishing submissions**

During the public notification periods for the draft maps (1 November 2022 – 1 January 2023) and supplemental maps (1 May 2023 to 1 June 2023), submissions may be made by the owners of land identified as satisfying the relevant criteria on the maps in order to remove their lands from the scope of the tax by the rezoning of the land. The provision for making these requests for rezoning is only available during the first undertaking of the mapping process for the tax in order to afford an opportunity for land previously unaffected by the taxation measure to seek amendment to avoid the tax. It is not available for any subsequent annual review of maps for the purpose of the tax.

Submissions relating to zoned sites which are not mapped for the purpose of the Residential Zoned Land Tax on a draft or supplemental map shall not be considered for a change of zoning.



Submissions requesting changes to zoning are subject to timelines for publication as set out in Section 13(3A) of the Planning and Development Act 2000 i.e. within 10 working days of receipt, including provision for application of Section 251 of the Planning Act 2000 regarding discounted days, where such a submission is made between 25 December and 1 January. All other submissions received during the draft map and supplemental map notification periods, must be published by the planning authority by 11 January 2023 and 11 June 2023 respectively.

As set out in sections 653D and 653G of the Taxes and Consolidation Act 1997 (as introduced by Finance Act 2021), submissions from landowners are to be accompanied by a site location plan to a scale sufficient to identify the land with the landowner's site outlined. The planning authority may seek additional information from landowners proving ownership.

### **Considerations during Planning Assessment**

Whilst Section 13 of the Planning and Development Act 2000 (as amended) provides that a planning authority may commence the process of variation of their development plan at any time, it is recommended that the process of reviewing all rezoning submissions received should be undertaken as a single, collective variation process after the public notification period for the supplemental map has ended on 1 June 2023. This approach will enable the full and cumulative assessment of the impact of all rezoning submissions received in relation to the publication of draft and supplemental maps on the proper planning and sustainable development of the area. A local authority may decide to provide a report on the rezoning submissions and the opinion of the Chief Executive in respect of those submissions received, to its Elected Members.

As a consequence of collectively considering submissions and the timelines involved in preparing for and undertaking variation to the development plan, the



process might not be completed by 1 November in order for the outcome to be reflected on the Final Map published on 1 December 2023. In this regard, attention is drawn to Section 653AE(1)(c) of the Taxes Consolidation Act 1997 (as amended), which allows for a deferral of tax by a landowner where a variation has not been made as a consequence of a submission made under Section 653I. As Section 653AE(1)(c) allows that anyone who has made a submission can apply for a deferral of liability, there is an imperative to ensure that rezoning requests are considered and the process to commence consideration of a variation to the development plan as appropriate is undertaken as soon as is practicable after 1 June.

Once a request for rezoning has been received, the planning authority must consider a number of key planning criteria as part of assessment of whether land should be subject to a proposed variation to amend the zoning objective. In this regard, attention is drawn to relevant parts of the Development Plans Guidelines for Planning Authorities (July 2022) and the Residential Zoned Land Tax – Guidelines for Planning Authorities (June 2022) issued under Section 28 of the Planning and Development Act 2000.

The impact of any proposed rezoning on the overall strategy for the proper planning and sustainable development of the area including the core strategy and housing supply targets for the county, as identified in the Development Plan, will be of particular relevance and Section 4.4 of the Development Plans Guidelines is considered helpful in this regard. Planning Authorities should ensure that any amendments to zonings will continue to ensure compliance with the requirements of Section 10(2A) of the Planning and Development Act 2000.

The sequential approach to zoning, as specified under Section 6.2.3, of the Development Plans Guidelines, is also of particular importance in assessing the merits of requests for zoning changes from landowners. Accordingly, planning



authorities should appropriately prioritise spatially central sites within settlements for new housing development consistent with the compact growth, utilisation of existing infrastructure and town regeneration national policy objectives of the NPF.

In considering rezoning proposals, planning authorities may have information to hand on the serviced status of alternative lands which may be required to meet the objectives of the development plan, available from the development plan and RZLT mapping processes. Where necessary, it would be useful to seek advice from statutory authorities to assist in identification of suitably serviced alternative lands where amendment to zoning is being considered.

### **Financial Impact and Existing Land Use**

While the financial impact of the tax on the landowner may form a reason for requests to amend zonings, this is not a planning matter and therefore should not be considered. The existing use of the land by the landowner will need to be considered and balanced against the proper planning and sustainable development of the area, including the need to meet development plan housing supply targets within existing or new serviced land. The Development Plans Guidelines should be relied upon to frame decision-making on the requests to amend zoning.

Issues such as contamination of land, archaeological remains or other criteria considered as part of scoping the land for the purpose of the tax under section 653B may also form part of submissions made requesting amendments to zonings. Where such issues arise as part of rezoning submissions, the local authority may decide to take this into account in considering whether the land use zoning should be amended, or whether the lands satisfy the relevant criteria in the first instance.



### **Zonings contained in Local Area Plans**

Where the statutory land use plan for an area or settlement is a Local Area Plan, any process to amend a zoning contained within an LAP can only be undertaken through variation of the development plan as set out in Section 653I of the TCA 1997 which directly references Section 13 of the Planning and Development Act 2000. Amendment to the local area plan alone would not address the housing targets within the development plan associated with settlements, including the settlement to which the LAP applied. Variation of the development plan will ensure that amendments to zonings which would require rebalancing of the housing supply targets and core strategy are adequately addressed. Co-ordination between planning authorities is recommended where requests for zoning amendments are received for a settlement subject to a joint local area plan.

Where a development plan as varied under this process results in a conflict with a local area plan currently in force, section 18(4)(b) of the Planning and Development Act 2000 will apply whereby that conflicting provision within the local area plan shall cease to have any effect.

### **Decision to propose to make a variation to a development plan**

Upon review of the submissions received and taking into account the guidance provided within the Section 28 Ministerial Guidelines referenced and any other relevant policy and guidelines, the planning authority may propose to make a variation to the development plan. The decision to initiate the statutory process of varying the development plan is an executive function<sup>2</sup>

Provision is also made within Section 13(1A) of the Planning and Development Act 2000 for the elected members to submit a resolution to the Chief Executive

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<sup>2</sup> Section 3.9. Development Plan Guidelines for Planning Authorities - June 2022 p41.



of the planning authority requesting him or her to prepare a report on a proposal by them to initiate a process to consider the variation of the development plan which for the time being is in force. Such a resolution requires three quarters of the members of that authority have approved it. In responding to such a motion, the Chief Executive is required to prepare a report on the proposed variation within four weeks. If the Chief Executive considers that the proposal is not justified taking account of the proper planning and sustainable development of the area, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or of any Minister of the Government, the report must outline reasons for not initiating the variation process, in writing.

The process of undertaking a variation of the development plan shall follow the process set out in Section 13(2) – (14) of the Planning and Development Act 2000.

Where a request to amend a zoning has been submitted in accordance with the provisions of the legislation but the process of assessment and consideration by the local authority has not been completed by 1 month prior to publication of the final map on 1 December 2023, the land shall remain on the final map as published. As stated above, there is an imperative to ensure that rezoning requests are considered and the process to commence consideration of a variation to the development plan as appropriate is undertaken as soon as is practicable after 1 June. However, the owner of the land may seek a deferral of payment pending the outcome of the process under section 653I, as provided for in S653AE (1) (c) of the TCA 1997.



## **Plan Evaluation and Assessment by the Office of the Planning Regulator (OPR)**

As is the case for any variation of the development plan, the OPR may provide statutory observations and recommendations during the variation process, as provided for by Section 31(AM) of the Planning Act. Under Section 31AM (8) of the Act, the OPR, shall make a recommendation to the Minister to use his or her functions to take such steps as to rectify matters where a variation of a development plan has been made in a manner which is not consistent with recommendation of the Office or where it would fail to set out an overall strategy for the proper planning and sustainable development of the area concerned. As set out above, the provisions of S.653AE(1)(c) would allow for deferral of tax liability for land where a matter contained in a variation to a development plan relevant to that land was subject to a Ministerial Direction as Section 31(6) would apply until such time as a direction under S.31(16) is issued.

## **Conclusion**

It is intended that the Residential Zoned Land Tax will function as a significant incentive to bringing forward suitably zoned and serviced land for residential development. The legislative provisions for RZLT facilitate requests from landowners with land in scope as identified on the first set of maps published in 2022/23 to seek a rezoning of their land. This Circular, and the Section 28 Guidelines referred to above, with particular reference to the Development Plans Guidelines, provide planning guidance to planning authorities in considering rezoning requests, and where appropriate to commence the process of undertaking a variation to the development plan under the existing provisions set out within Section 13 of the Planning and Development Act 2000.



## **APPENDIX I**

**Specific provisions of the *Planning and Development, Maritime and Valuation (Amendment) Act 2022* (Sections 2, 8 and 9) concerning definitions, Ministerial directions on statutory plans, commenced 4<sup>th</sup> November 2022.**

(Full Act may be accessed at <https://www.irishstatutebook.ie/eli/acts.html>)

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### **Definitions - Part 2**

2. In this Act—

“Board” means An Bord Pleanála;

“Minister” means the Minister for Housing, Local Government and Heritage;

“Principal Act” means the Planning and Development Act 2000.

### **Amendment of section 31AO of Principal Act**

8. Section 31AO of the Principal Act is amended in subsection (7)(i) by the substitution of “as amended by the planning authority” for “as varied by the planning authority”.

### **Amendment of section 31AP of Principal Act**

9. Section 31AP of the Principal Act is amended—

(a) by the substitution of the following subsection for subsection (4): “(4)

The Office shall consider the report of the chief executive on the submissions, together with any submission made under section 31(10), and shall, no later than 3 weeks after receipt of that report—

(a) recommend to the Minister that he or she issue the direction with or without minor amendments, or

(b) for stated reasons, where the Office is of the opinion that— (i) a material amendment to the draft direction may be required, (ii) further investigation is necessary in order to clarify any aspect of the



report furnished or submissions made, or (iii) it is necessary for any other reason, appoint a person to be an inspector.”,

(b) by the insertion of the following subsections after subsection (4):

“(4A) The Minister shall consider a recommendation of the Office under subsection (4)(a) that he or she issue a direction with or without minor amendments and—

(a) where the Minister agrees with the recommendation, then the Minister shall, no later than 6 weeks after receipt of the recommendation, subject to subsection (16), issue the direction under section 31 with or without minor amendments, or

(b) where the Minister does not so agree with the recommendation, then the Minister shall—

(i) prepare a statement in writing of his or her reasons for not agreeing,

(ii) cause that statement to be laid before each House of the Oireachtas, and

(iii)

(iv) as soon as practicable, make that statement available on the website of the Department of Housing, Local Government and Heritage.

(4B) As soon as practicable after a statement has been prepared under subsection (4A)(b), the Minister shall cause a copy of it to be sent to the Office, the planning authority concerned and, where relevant, the regional assembly concerned and the Office and that authority shall, as soon as practicable thereafter, make it available on their respective websites.”,

(c) in subsection (7)(a), by the insertion of “and the Cathaoirleach of the planning authority” after “the chief executive”,



(d) by the insertion of the following subsections after subsection (9):

“(9A) Where the Minister does not agree with a recommendation of the Office under subsection (9) where paragraph (a) or (c) of that subsection applies, then the Minister shall—

(a) prepare a statement in writing of his or her reasons for not agreeing,

(b) cause that statement to be laid before each House of the Oireachtas, and

(c) as soon as practicable, make that statement available on the website of the Department of Housing, Local Government and Heritage. (9B) As soon as practicable after a statement has been prepared under subsection (9A), the Minister shall cause a copy of it to be sent to the Office, the planning authority concerned and, where relevant, the regional assembly concerned and the Office and that authority shall, as soon as practicable thereafter, make it available on their respective websites.”,

(e) by the deletion of subsections (12), (13) and (15), and

(f) in subsection (16), by the substitution of “subsection (4A) or (9)” for “subsection (9)” in each place where it occurs.

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## **APPENDIX II**

### **Specific Planning Policy Requirement 7: Planning Definition of BTR and Resident Supports and Services**

“BTR development must be:

- (a) Described in the public notices associated with a planning application specifically as a ‘Build-To-Rent’ housing development that unambiguously categorises the project (or part of thereof) as a long-term rental housing scheme, to be accompanied by a proposed covenant or legal agreement further to which appropriate planning conditions may be attached to any grant of permission to ensure that the development remains as such. Such conditions include a requirement that the development remains owned and operated by an institutional entity and that this status will continue to apply for a minimum period of not less than 15 years and that similarly no individual residential units are sold or rented separately for that period;
- (b) Accompanied by detailed proposals for supporting communal and recreational amenities to be provided as part of the BTR development. These facilities to be categorised as:
  - (i) Resident Support Facilities - comprising of facilities related to the operation of the development for residents such as laundry facilities, concierge and management facilities, maintenance/repair services, waste management facilities, etc.
  - (ii) Resident Services and Amenities – comprising of facilities for communal recreational and other activities by residents including sports facilities, shared TV/lounge areas, work/study spaces, function rooms for use as private dining and kitchen facilities, etc.”

### **Specific Planning Policy Requirement 8: Variation in Dwelling Mix and Design Standards**

“For proposals that qualify as specific BTR development in accordance with SPPR 7:

- (i) No restrictions on dwelling mix and all other requirements of these Guidelines shall apply, unless specified otherwise;



(ii) Flexibility shall apply in relation to the provision of a proportion of the storage and private amenity space associated with individual units as set out in Appendix 1 and in relation to the provision of all of the communal amenity space as set out in Appendix 1, on the basis of the provision of alternative, compensatory communal support facilities and amenities within the development. This shall be at the discretion of the planning authority. In all cases the obligation will be on the project proposer to demonstrate the overall quality of the facilities provided and that residents will enjoy an enhanced overall standard of amenity;

(iii) There shall be a default of minimal or significantly reduced car parking provision on the basis of BTR development being more suitable for central locations and/or proximity to public transport services. The requirement for a BTR scheme to have a strong central management regime is intended to contribute to the capacity to establish and operate shared mobility measures.

(iv) The requirement that the majority of all apartments in a proposed scheme exceed the minimum floor area standards by a minimum of 10% shall not apply to BTR schemes;

(v) The requirement for a maximum of 12 apartments per floor per core shall not apply to BTR schemes, subject to overall design quality and compliance with building regulations.”