



Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

OPR Ref: AD-024-22

15th July 2022

Mr. Peter Burke TD
Minister 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 31AM(8) of the Planning and Development Act
2000 (as amended) – Limerick Development Plan 2022 – 2028**

A chara,

I am writing to you in relation to the recent adoption by the elected members of the Limerick Development Plan 2022 – 2028 (the 'Development Plan').

In particular, I am writing to you in the context of the statutory duty of the Office of the Planning Regulator ('the Office') pursuant to section 31AM(8) of the *Planning and Development Act 2000* (as amended) (the 'Act') to issue a Notice to you on the basis that, having considered the Development Plan, the Office is of the opinion that:

- a) the Development Plan has not been made in a manner consistent with, and fails to implement, recommendations of the Office, which required specific changes to the Development Plan;
 - i. to make the Development Plan without the inclusion of the zoning of an area of 33 hectares of land, in an isolated and peripheral area outside the development plan boundary for Limerick, for a data centre, which change was recommended by the Office so as to ensure consistency with the

national policy objectives (NPOs) of *Project Ireland 2040 National Planning Framework* (the NPF) and in light of the *Development Plans, Guidelines for Planning Authorities (2022)*¹ and the *Spatial Planning and National Roads, Guidelines for Planning Authorities (2012)*; and

- ii. to make the Plan without material amendments MA No. 142, MA No. 145, MA No. 146, MA No. 147 and MA No. 148, which changes were recommended by the Office so as to ensure consistency with the NPOs of the NPF, in light of *the Planning System and Flood Risk Management Guidelines for Planning Authorities (2009)* ('the Flood Guidelines').
- b) the failure to implement the recommendations above means that the Development Plan made by Limerick City and County Council fails to set out an overall strategy for the proper planning and sustainable development of the area concerned, contrary to the requirements of the Act; and
- c) the use by you of your function to issue a direction under section 31 of the Act would be merited.

The reasons for the Opinion of the Office are set out in further detail in section 2 of this Notice letter. This letter is a Notice to you pursuant to section 31AM(8) of the Act.

1. Background

1.1 Draft Limerick Development Plan 2022 – 2028

The Draft Limerick Development Plan 2022 – 2028 (the draft Plan) was on public display from 26th June 2021 to 6th September 2021.

A statement was appended to the draft Development Plan, as required under section 28 (1A)(b) of the Act, concerning the implementation of Ministerial Guidelines. The statement did not include any information to demonstrate that the planning authority had formed the opinion that it is not possible to implement certain policies and

¹ Ministerial Planning Guidelines under Section 28 of the Planning and Development Act 2000 (as amended): *Development Plans, Guidelines for Planning Authorities* were published on 1st July 2022 and superseded the draft version published in August 2021

objectives of the Minister contained in any relevant guidelines, as outlined in further detail below, and did not provide any reasons for not implementing any such policies or objectives. Such information and reasons are required where section 28(1B)(b) applies.

The Office made a submission on the draft Plan containing seventeen (17) recommendations and seven (7) observations on 6th September 2021.

In relation to the overall pattern of development proposed by the Council under the draft Plan, the Office made a series of recommendations seeking revisions including; the city component of the overall area of the authority (Recommendations 1 and 2), tiered approach to zoning (Recommendation 8), employment zoned lands (Recommendation 12) and Renewable Energy Targets (Recommendation 16).

The Office received a notice under section 12(5)(aa) of the Act on 14th March 2022. The notice outlined the recommendations of the Office that the planning authority decided not to comply with and the reasons for those decisions.

In respect of Recommendation 4 of the Office's submission to the draft Plan, which raised concerns in relation to the target growth allocation to Patrickswell, the Office acknowledges the decision to adopt a revised growth strategy for the town and accepts the reasons provided by the elected members in support of this.

In respect of the density assumptions applied in the core strategy table (Recommendation 5) and having given consideration to the Chief Executive's report (CE Report) on the draft Plan, the reasons in the notice letter and the reasons given by the elected members, the Office accepts that the application of a graduated approach to residential densities to the Level 2, 3 and 4 towns is compatible with the longer term sustainable development of these towns.

Furthermore, the Office acknowledges the policy approach of the Plan which includes the requirement to act consistently with the *Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities* (2009) in the application of density standards in the development management context.

1.2 Material Alterations to the draft Plan

The elected members, having considered the draft Plan and the CE Report on submissions received, resolved to amend the draft Limerick Development Plan 2022-2028 on 18th February 2022.

The material alterations to the draft Plan were on public display from 12th March 2022 to 11th April 2022. The material alterations included a number of changes including the following.

- A series of individual material amendments to the land use zoning objectives to zone additional land for 'New Residential'.
- An amendment to change the zoning objective of 33 hectares at Ballysimon, located beyond the city and environs boundary, for a data centre.
- An amendment which omits the provision that holiday home developments should be located within or adjoining existing settlements.
- To zone various lands within flood zone A and B for vulnerable and/or highly vulnerable uses despite the lands having failed the Justification Test in the authority's own Strategic Flood Risk Assessment (SFRA).

The Office made a submission on 11th April 2022 to the material alterations to the draft Plan containing four (4) recommendations and one (1) observation. The Office's submission stated:

...the Office considers the revised approach to the Limerick Shannon Metropolitan Area in the draft Plan clearly sets out a future vision and a more focused and appropriately structured policy approach for this area of national and regional importance. In addition, the core strategy and settlement hierarchy now more clearly align with national and regional policy requirements for the metropolitan area and the county as a whole...

The Office's submission further stated:

....a significant number of material amendments have been introduced which relate to zoning land in flood plains for vulnerable development.

Although the guidelines allow for some sustainable development of land at risk of flooding in exceptional circumstances, local authorities must conduct a Justification Test, which demonstrates that such development is justified based on specific criteria. It is of significant concern, therefore, that these zoning amendments have been introduced by elected members in cases where the land in question has failed the Justification Test in your Strategic Flood Risk Assessment.

The Office recommendations at Material Alterations stage included:

- MA Recommendation 1 – Compact Growth and Residential Zonings: Additional zonings in Mungret, Clonmacken, Castletroy and Ballykeefe.
- MA Recommendation 2 – Data Centre: Zoning at Ballysimon House, Commons Road, Ballysimon for data centre
- MA Recommendation 3 – Holiday Home Development: an amendment to Objective ECON 040 Location of Tourism Accommodation
- MA Recommendation 4 – Flood Risk Management: Additional zoned lands that are identified as being within a flood zone at Ballykeefe, Clonmacken, Pa Healy Road, former Green Park Racecourse, Dooradoyle, Caherdavin, Castletroy, Ballykeefe Mungret.

1.3 Adoption of Limerick Development Plan 2022 – 2028

The elected members of Limerick City and County Council resolved to make the Limerick Development Plan 2022 – 2028 at a council meeting on 17th June 2022.

Subsequently, the chief executive sent a notice letter under section 31(AM)(6) of the Act dated 23rd June 2022 to the Office advising of the making of the Development Plan and specifying the recommendations of the Office not complied with.

The section 31AM(6) notice letter stated that all four recommendations of the Office had not been complied with, either in full or in part.

Having reviewed the CE Reports on the draft Plan and Material Alterations to the draft Plan, the notice of the making of the Development Plan and the reasons in the notice letter, the Office has concluded that, with the exception of the below, the

recommendations of the Office have been responded to in the reports and/or section 31AM (6) notice letter and have been addressed to the satisfaction of the Office, or are otherwise considered satisfactory within the legislative and policy context.

1.4 MA Recommendation 2 – Data Centre (MA no.149)

This recommendation required the planning authority to make the plan without MA no. 149 which zoned lands at Ballysimon House for a data centre.

MA Recommendation 2 stated the following:

Having regard to NSO 1 and RSO 1 to achieve compact growth under the NPF and the RSES, to the Development Plans, Guidelines for Planning Authorities - Draft for Consultation (August 2021), to the requirements under section 10(2)(n) of the Act, and to the provisions of the Spatial Planning and National Roads Guidelines for Planning Authorities (2012), including section 2.7, the planning authority is required to make the Plan without proposed amendment:

- *MA no.149 to include the Zoning of an area of 33ha for data centre at Ballysimon House, Commons Road, Ballysimon.*

The Chief Executive acknowledged that development beyond the boundary would not be sequential with the city first approach and recommended to accept the recommendation of the Office and to make the plan without MA no. 149.

The elected members voted to make the Development Plan contrary to the recommendation of the CE Report for the following reasons:

- *The site has excellent grid connection opportunities with the infrastructure already in place on site with 100kV powerlines connecting to the adjacent 220kV power station, which would lead to minimal disruption to the surrounding area for the required power connections.*
- *The site is close to a natural aquifer, providing suitable water requirements to the site.*
- *The site is ideally located close to the motorway and key road links, close to existing employment areas, has flat topography and no known*

ecological flooding or archaeological constraints. Low traffic improvements associated with the development of a data centre would be appropriate for this location.

- *Government and Limerick City and County Council recognise the need and opportunity for a data centre in Limerick.*

Consideration of reasons given by Chief Executive and elected members

The Office acknowledges the desire of the elected members to provide for the development of a data centre in the city and environs area, however, the lands subject of MA no. 149 are located well beyond the Limerick City and Environs plan boundary and the CSO boundary.

In relation to the reason given for the site selection, the Office notes that there are 18 hectares of undeveloped lands zoned in the draft Plan specifically for 'Data Centre' type development located within the boundary of the Limerick City and Environs Plan area.

The reasons of the elected members do not demonstrate that the lands are zoned in accordance with, and having regard to, the methodology set out in Section 6.2.5 of the section 28 Ministerial Guidelines *Development Plans, Guidelines for Planning Authorities* (2022) which state that “*a plan must include a rationale for any requirement to zone additional lands, based on projected population, economic and employment growth...*”.

The lack of an evidence based rationale being set out in support of the requirement for the subject zoning objective at this location extending to 33 hectares in an isolated location beyond the boundary of the city and environs area is not consistent with both the National Planning Framework National Strategic Outcome 1 (NSO 1) in relation to securing compact growth and both National Policy Objective 53 that supports greater efficiency in land management by the rate of land use change; and National Policy Objective 62 that seeks to strengthen the value of greenbelts to allow for the long term strategic expansion of urban areas, and demonstrates an absence of regard for the section 28 Ministerial Guidelines *'Development Plans, Guidelines for Planning Authorities'* (2022).

In relation to the reason given that the site is ideally located close to the motorway, the Office notes that direct access to the site is from the local road network. The access point into these lands is unclear, but the land is located along the local road network and is proximate to the N24 national route and the M7 Ballysimon Interchange.

However, section 2.7 of the section 28 Ministerial Guidelines '*Spatial Planning and National Roads Guidelines for Planning Authorities*' (2012) states that "*planning authorities must exercise particular care in their assessment of development/local area plan proposals relating to the development objectives and/or zoning of locations at or close to interchanges where such development could generate significant additional traffic with potential to impact on the national road*".

In relation to the reasons given by the elected members there is no evidence to demonstrate that an assessment of the zoning of the lands above has been carried out to determine whether such development could generate significant additional traffic with potential to impact on the N24, which demonstrates a failure to have regard to section 2.7 of the 2012 Guidelines.

The reasons given do not, therefore, address the substantive issue in the recommendation that the Plan be made without zoning amendment MA no 149 due to the isolated and peripheral location of the land, the inconsistency with National Strategic Outcome NSO 1 compact growth, National Policy Objective 52 that supports greater efficiency in land management by the rate of land use change and National Policy Objective 62 that seeks to strengthen the value of greenbelts to allow for the long term strategic expansion of urban areas. Further, the development of these lands is inconsistent with the implementation of objectives for sustainable settlement and transport strategies under section 10(2)(n) of the Act

1.6 MA Recommendation 4 – Flood risk management

This recommendation required the planning authority to make the plan without several material amendments relating to lands zoned in areas identified as being at risk of flooding.

MA Recommendation 4 stated the following:

Having regard to NPO 57 of the NPF, and to provisions of The Planning System and Flood Risk Management, Guidelines for Planning Authorities (2009), as amended, the planning authority is required to:

(i) make the plan without the following proposed material amendments:

- MA no.142 Ballykeefe from Agriculture to less vulnerable Enterprise & Employment in Flood Zone A.
- MA no.143 Condell Road in Clonmacken from Agriculture to highly vulnerable New Residential in Flood Zones A and B.
- MA no.145 Pa Healy Road from Community & Educational to Mixed Use which allows highly vulnerable development in Flood Zones A and B.
- MA no.146 Pa Healy Road from less vulnerable Enterprise & Employment to Mixed Use which allows highly vulnerable development in Flood Zones A and B.
- MA no.147 former Green Park Racecourse from less vulnerable Enterprise & Employment to highly vulnerable New Residential in Flood Zones A and B.
- MA no.148 lands adjacent to the Crescent Shopping Centre in Dooradoyle from water compatible Semi Natural Open Space to less vulnerable Enterprise & Employment in Flood Zones A and B.
- MA no.150 lands in Caherdavin from Agriculture to District Centre which allows for highly vulnerable development in Flood Zone A.
- MA no.151 lands in Castletroy from Agriculture to highly vulnerable New Residential which has an overlap with Flood Zones A and B.
- MA no.153 lands at Ballykeefe, Mungret, from Agriculture to less vulnerable Enterprise and Employment in Flood Zone A.

(ii) make the plan with minor modification to CAF O21 Identified Flood Risk to implement the flood mitigation measures included under the Justification Test including to ensure that vulnerable uses, including that of a residential

nature, shall not be permitted at ground floor level on the District Centre zoned lands at Jetland/ Ennis Road/ Ennis Road Retail Park, at Caherdavin/Moyross; and

(iii) make the Plan with such minor modification as necessary to restrict development, within existing residential / highly vulnerable / vulnerable development areas situated within Flood Zones A and B, to minor development consistent with the approach set out in The Planning System and Flood Risk Management, Guidelines for Planning Authorities (2009).

The Office notes that the submission of the Office of Public Works on the material alterations (1st April 2022) also raised concerns in relation to flood risk management for the following: MA no's 142, 143, 145, 146, 147, 148, 150 & 151.

The CE recommended to make the Development Plan without the following proposed material alterations:

- MA no. 142, MA no. 143, MA no. 145, MA no. 146, MA no. 147, MA no. 148, MA no. 150 and MA no. 153.
- In relation to MA no. 151 the CE recommended to remove the area (0.216ha) within the flood zone allowing for 2.734ha of new residential to be zoned (map included in CER).
- In response to (ii) and (iii) of MA Recommendation 4 the CE recommended minor amendments to Objective CAF 021, CAF 020 and Policy CAF P5.

The elected members rejected the CE Recommendation for the following:

- MA no 142, MA no 145, MA no 146, MA no 147, MA no 148.

Consideration of reasons given by Chief Executive and elected members

National Planning Framework National Policy Objective 57 seeks to avoid inappropriate development in areas at risk of flooding in accordance with the Ministerial Guidelines issued under section 28 of the Act, the Flood Guidelines.

The provisions of the Flood Guidelines and the making of the Development Plan are discussed in detail below as they are applicable to all of the relevant sites referenced in MA Recommendation 4.

The Flood Guidelines are aimed at ensuring a more consistent, rigorous and systematic approach to flood risk identification, assessment and management within the planning system. In summary, these guidelines provide that:

- development in areas at risk of flooding should be avoided unless there are wider sustainability grounds that justify appropriate development and where the risk to development on site and to other areas can be reduced or managed to an acceptable level;
- a sequential approach must be adopted to flood risk management when assessing the location of new development based on avoidance, reduction and mitigation of flood risk; and
- that where a planning authority is considering (in the plan) the future development (for vulnerable uses) of areas that are at a high or moderate risk of flooding, the planning authority must be satisfied that it can clearly demonstrate on a solid evidence base that the zoning or designation for development will satisfy the Justification Test for the plan making stage (Box 4.1).

These statutory guidelines, when taken together with the legislative measures in the planning code, provide a sound basis for planning authorities to identify, assess and take appropriate steps to manage flood risk in a sustainable manner within their area.

In respect of the reasons given by elected members the following is relevant:

- The Flood Guidelines specify provisions in respect of the consideration of planning applications through the development management process. These are, however, additional to the plan-making provisions, and are not a replacement for same.
- The Flood Guidelines do not differentiate between lands that are partially located in Flood Zone A or B. Any lands proposed to be zoned for highly vulnerable development in areas at a high or moderate risk of flooding are subject to the aforementioned provisions.

For clarity, in relation to what local authorities should do when considering land use zoning objectives in areas at risk of flooding, the Flood Guidelines state the following at paragraph 4.23:

Having prepared a Strategic Flood Risk Assessment and mapped flood zones as part of its development plan review process and any more detailed flood risk assessments as necessary, situations can arise where a planning authority will need to consider the future development of areas at a high or moderate risk of flooding, for uses or development vulnerable to flooding that would generally be inappropriate as set out in Table 3.2. In such cases, the planning authority must be satisfied that it can clearly demonstrate on a solid evidence base that the zoning or designation for development will satisfy the Justification Test outlined in Box 4.1 opposite.

Box 4.1 goes on to indicate the following as the Development Plan Justification Test:

Where, as part of the preparation and adoption or variation and amendment of a development/local area plan, a planning authority is considering the future development of areas in an urban settlement that are at moderate or high risk of flooding, for uses or development vulnerable to flooding that would generally be inappropriate as set out in Table 3.2, all of the following criteria must be satisfied:

- (i) The urban settlement is targeted for growth under the National Spatial Strategy, regional planning guidelines, statutory plans as defined above or under the Planning Guidelines or Planning Directives provisions of the Planning and Development Act, 2000, as amended;*
- (ii) The zoning or designation of the lands for the particular use or development type is required to achieve the proper planning and sustainable development of the urban settlement and, in particular: Is essential to facilitate regeneration and/or expansion of the centre of the urban settlement;*
- (iii) Comprises significant previously developed and/or under-utilised lands; Is within or adjoining the core of an established or designated urban settlement;*

- (iv) Will be essential in achieving compact and sustainable urban growth;
and*
- (v) There are no suitable alternative lands for the particular use or
development type, in areas at lower risk of flooding within or adjoining
the core of the urban settlement.*

A reading of the above clearly signals that the Flood Guidelines indicate that zoning of land for future development in areas known to be at risk of flooding can only be justified in situations where it is for redevelopment or regeneration of previously developed areas, particularly town and city centre areas that are essential to support compact growth, where no alternatives exist and where appropriate measures to address residual flood risk are put forward. Furthermore, NPO 57 seeks to avoid inappropriate development in areas at risk of flooding in accordance with the Flood Guidelines.

Having regard to this policy context, the specific sites and the reasons of the elected members are assessed individually as follows:

1.8 MA no. 142 Ballykeefe from Agriculture to Enterprise & Employment

The CE recommended that the Plan be made without MA no. 142. The elected members rejected the CE recommendation to remove the zoning for the following reasons:

- *The flood risk assessment accompanying the Draft Development Plan is based on the precautionary approach and the Flood Guidelines sets out that there are no uncertainties in datasets and assessment techniques.*
- *Areas at risk of flooding along the Dock Road and adjoining the former Racecourse are zoned for Enterprise and Employment, with a high risk of flood. Flood risk is not an impediment to development for Enterprise and Employment.*
- *The Development Plan Justification Test submitted, justifies the suitability of the lands for Enterprise and Employment and measures to prevent flood inundation, including the raising of floor levels.*

- *Strategic location of the site with accessibility and connectivity to the inter-regional transport network and other transport modes supports optimisation of land use at this location for economic development.*

Consideration of reasons given by Chief Executive and elected members

MA no. 142 relates to four plots of land with a combined area of 25 hectares. The SFRA identifies that these lands are located in Flood Zone A.

Punch Consulting Engineers carried out a Site Specific Flood Risk Assessment² (SSFRA) for the four land parcels following the identification of these sites in the SFRA as Flood Risk A and the zoning of them for agriculture use in the draft Plan.

The above report (SSFRA) concluded that

The type of development proposed on the Flood Zone A areas may be subject to a Justification Test in accordance with The Planning System and Flood Risk Management Guidelines dependent on the site development proposals put forward. Given the low probability of flooding on the Flood Zone A designated site areas, it is highly likely that a 'less vulnerable use' such as 'Enterprise and Employment' could be justified. The sites are all well serviced in regard drainage and access requirements and would therefore benefit from a 'less vulnerable' use zoning. Further planning advice is required for the Planning Justification (Box 4-1).

However this assessment did not apply the Justification Test.

The land use zoning objective of the Plan for lands zoned as 'Enterprise and Employment' provide that 'less vulnerable development' is open for consideration. As per Table 3.2 of the Flood Guidelines, the Plan Making Justification Test is required to be satisfied.

² This SSFRA was included in the amended SFRA published with the material alteration of the development plan under MA no.209

In the preparation of the plan, a Plan Making Justification Test was applied in the SFRA³ which concludes that *“Part 2 of the Justification Test has not been passed and parts of the site are at high risk of flooding so should be retained for water compatible uses”*⁴.

Therefore, the reasons given by the members for not accepting the CE’s recommendation in relation to this amendment appear to misapply or fundamentally misunderstand the Flood Guidelines. These lands have failed the Plan Making Justification Test as set out in the SFRA.

The core message of the Flood Guidelines in the situation above is one of avoidance due to the risks involved, unless the development envisaged is critical to the functioning of a city or town centre, or extension to same for regeneration purposes, circumstances which the subject lands would not appear to justify.

The Flood Guidelines state that flood hazards should be identified and considered at the earliest stage in the planning process, that development should be located in areas with little or no flood hazard and should only be permitted in areas at risk of flooding when there are no alternative, reasonable sites available in areas at lower risk that also meet the objectives of proper planning and sustainable development.

Pursuant to section 10(1) of the Act, the development plan must set out an overall strategy for the proper planning and sustainable development of the area of the development plan.

Pursuant to section 10(2)(n) the Plan must include objectives for the promotion of sustainable settlement and transportation strategies including measures to reduce energy use, GHG emissions and to adapt to climate change.

Accordingly, an overall strategy for the proper planning and sustainable development of the area must ensure, amongst other considerations, that flood risk management informs place making by avoiding inappropriate development in areas at risk of flooding as required by NPO 57 and as per the recommendation of the ORR.

³ SFRA prepared by JBA Consulting for Limerick City and County Council

⁴ B2, XXXI, SFRA 12th March 2022

The reasons given fail to address the substantive issue in the OPR recommendation, that the plan be made without zoning amendment MA no 142 because that would be inconsistent with National Policy Objective 57 of the National Planning Framework, which seeks to avoid inappropriate development in areas at risk of flooding in accordance with the Ministerial Guidelines issued under Section 28 of the Act, the Flood Guidelines. Significant lands have been zoned in the plan as made without passing the provisions of the sequential approach and plan-making Justification Test detailed in the Flood Guidelines.

1.9 MA no.145 Pa Healy Road from Community & Educational to Mixed Use

The CE recommended that the Plan be made without MA no. 145. The elected members rejected the CE Recommendation and retained the zoning as Mixed Use for the following reasons:

- *The LCETB has confirmed additional lands are not required for the adjoining Gaelcholaiste.*
- *Located adjoining the city centre zoned area with a school, park, college, hospital and bus stop within 15minutes walk, the site contributes to compact growth and facilitate residential development in proximity to the city core and services.*
- *Same flooding characteristics as the site granted permission for a school. Mixed use and schools are vulnerable uses, which require a justification test. The site adjoins the city core and passes the justification test and flood mitigation measures can be provided (details submitted with motion).*

Consideration of reasons given by Chief Executive and elected members

The SFRA identifies that these lands are located in Flood Zone A and B.

The SFRA Plan Making Justification Test, which was reviewed following the motion being passed to zone the site mixed use and the submission of an FRA, concludes that the site be zoned for Community and Education.

Again, the core message of the Flood Guidelines on flood risk is one of avoidance unless the development envisaged is critical to the functioning of a city or town

centre or extension to same for regeneration purposes, circumstances which the subject lands would not appear to justify.

The Flood Guidelines state that flood hazards should be identified and considered at the earliest stage in the planning process, that development should be located in areas with little or no flood hazard and should only be permitted in areas at risk of flooding when there are no alternative, reasonable sites available in areas at lower risk that also meet the objectives of proper planning and sustainable development.

Pursuant to section 10(1) of the Act, the development plan must set out an overall strategy for the proper planning and sustainable development of the area of the development plan.

Pursuant to section 10(2)(n) the Plan must include objectives for the promotion of sustainable settlement and transportation strategies including measures to reduce energy use, GHG emissions and to adapt to climate change.

Accordingly, an overall strategy for the proper planning and sustainable development of the area must ensure, amongst other considerations, that flood risk management informs place making by avoiding inappropriate development in areas at risk of flooding as required by NPO 57 and as per the recommendation of the ORR.

The reasons given fail to address the substantive issue in the OPR recommendation, that the plan be made without zoning amendment MA no 145 because that would be inconsistent with National Policy Objective 57 of the National Planning Framework, which seeks to avoid inappropriate development in areas at risk of flooding in accordance with the Ministerial Guidelines issued under Section 28 of the Act, the Flood Guidelines. Significant lands have been zoned in the plan as made without passing the provisions of the sequential approach and plan-making Justification Test detailed in the Flood Guidelines

1.10 MA no.146 Pa Healy Road from Enterprise & Employment to Mixed Use

The CE recommended that the Plan be made without MA no. 146. The elected members rejected the CE Recommendation to remove the zoning for the following reasons:

- *Located adjoining the city centre zoned areas, neighbouring a school, park, college and hospital, within 15minutes walk of city centre and bus stops, the site contributes to compact growth and facilitates residential development in proximity to the core.*
- *Access to the new Gaelcholaiste is off Pa Healy Rd via a shared access with the subject lands with the subject lands, with the agreement that HGVs would not utilise this to avoid conflict with school traffic. Enterprise and Employment use would compromise the agreement resulting in HGV movements on the access road and access to the Gaelcholaiste will not be facilitated.*
- *Same flooding characteristics as the site granted permission for a school. Mixed use and schools are vulnerable uses that require a justification test. The site adjoins the city core and passes the justification test and flood mitigation measures can be provided.*

Consideration of reasons given by Chief Executive and elected members

MA no. 146 relates to a land parcel located between Pa Healy Road and a new post primary gaelscoil. The SFRA submitted with the draft Plan identifies that the lands are located within Flood Zone A and B.

The elected members' reasons indicate that the site "passes the Justification Test". However there is no Flood Risk Assessment or Plan-Making Justification Test included for these lands. The Flood Guidelines state that flood hazards should be identified and considered at the earliest stage in the planning process, that development should be located in areas with little or no flood hazard and should only be permitted in areas at risk of flooding when there are no alternative, reasonable sites available in areas at lower risk that also meet the objectives of proper planning and sustainable development.

Pursuant to section 10(1) of the Act, the development plan must set out an overall strategy for the proper planning and sustainable development of the area of the development plan.

Pursuant to section 10(2)(n) the Plan must include objectives for the promotion of sustainable settlement and transportation strategies including measures to reduce energy use, GHG emissions and to adapt to climate change.

Accordingly, an overall strategy for the proper planning and sustainable development of the area must ensure, amongst other considerations, that flood risk management informs place making by avoiding inappropriate development in areas at risk of flooding as required by NPO 57 and as per the recommendation of the ORR.

The reasons given fail to address the substantive issue in the OPR recommendation, that the plan be made without zoning amendment MA no. 146 because that would be inconsistent with National Policy Objective 57 of the National Planning Framework, which seeks to avoid inappropriate development in areas at risk of flooding in accordance with the Ministerial Guidelines issued under Section 28 of the Act, the Flood Guidelines. Significant lands have been zoned in the plan as made without passing the provisions of the sequential approach and plan-making Justification Test detailed in the Flood Guidelines

1.11 MA no.147 former Green Park Racecourse from Enterprise & Employment and Open Space and Recreation to New Residential.

The CE recommended that the Plan be made without MA no. 147. The elected members rejected the CE Recommendation to remove the zoning for the following reasons:

- *Limerick as a city and Ireland as a country is currently facing an unprecedented housing crisis. Delivery of well located, suitable and affordable homes for the people of Limerick must be the number one priority for the Elected Members of the council.*
- *An Bord Pleanála granted planning permission for the first 371 homes to be delivered on these lands. Circa 6.5hectares (circa 16 acres) of these strategic housing development lands are located in flood zones A/B which equates to circa 60% of the total application lands. ABP considered both the LCCC submission and the detailed site specific flood risk assessment (SSFRA) for the lands undertaken by RPS Consulting Engineers on behalf of the landowner, and clearly sided with RPS in this regard. ABP consider the delivery of homes in flood zone A acceptable, provided proposed mitigation is implemented which can be considered and conditioned as part of any future planning application process on the lands.*

- On 18th February 2022 the Elected Members of this council decided to include a material amendment to the draft plan to retain the New Residential zoning on the Greenpark lands and the executive were instructed to incorporate this material amendment into the revised draft plan to be placed on public consultation. The executive did not properly execute this instruction as the justification test was not fully applied to the lands in terms of New Residential use, but rather maintained in its previous form justifying Enterprise and Employment zoning with an unsubstantiated conclusion reached that “although not suitable for highly vulnerable development due to the level of residual risk and the brownfield nature of the site, less vulnerable uses (enterprise and Employment) with appropriately detailed FRA and emergency plan may be accommodated”.
- During the public consultation period a number of notable submissions were made in relation to flood risk. Both the Office of the Planning Regulator (OPR) and Office of Public Works (OPW) made submissions in this regard. Both of these submissions mistakenly classify Greenpark as having failed a justification test undertaken by the local authority. This is simply not the case. Greenpark has never failed a justification test.
- It should be noted that under the zoning matrix in the draft development plan, Enterprise and Employment zoning allows for the following types of development in principle, or open for consideration; hospitals, schools, childcare facilities, all of which are specifically deemed highly vulnerable uses under the Flood Risk Management Guidelines, as well as health centres and health practitioners which although not specifically categorized in the aforementioned table, could reasonably be expected to be placed in the same category as hospitals.
- On the 28 March 2022, the OPR made a submission on the Clare Draft Development Plan. In this submission, the OPR recommends that the local authority “not zone for highly vulnerable (Flood Zone A and B) or less vulnerable (Flood Zone A) development, any lands that have not passed the Justification Test”. It is clear from this statement that the OPR would have had no comment to make on the zoning of lands in Greenpark for New Residential

had the executive supported the instruction of the Elected Members to zone the lands New Residential by undertaking a Justification Test in this regard.

- *JBA Consulting Engineers also appear to sanction the zoning of lands for highly vulnerable uses that have passed the Justification Test in Flood Zones A/B with the wording of their Strategic Flood Risk Assessment prepared on behalf of Dun Laoghaire Rathdown Plan where JBA state “it is not appropriate for new highly vulnerable development to be located in Flood Zones A or B other than in those areas deemed to have passed the Development Plan Justification Test”.*

Consideration of reasons given by Chief Executive and elected members

MA no. 147 relates to 14.7 hectares at the former Limerick Racecourse located to the south west of Limerick city centre.

The SFRA prepared by the planning authority to inform the preparation of the development plan has identified much of these lands as being susceptible to flooding and located in Flood Zones A and B with some portion of the lands adjoining residential areas to the southwest in Flood Zone C.

As required by Part 4 of the Flood Guidelines the zoning of lands where there are risks of flooding is required to pass all of the criteria of Justification Test (Box 4.1) (paraphrased and OPR emphases):

- (i) the zoning is essential to facilitate regeneration and/or expansion of the centre of the urban settlement;
- (ii) comprises significant previously developed and/or under-utilised lands;
- (iii) is within or adjoining the core of an established or designated urban settlement;
- (iv) be essential in achieving compact and sustainable urban growth; and
- (v) that there are no suitable alternative lands for the particular use or development type, in areas at lower risk of flooding within or adjoining the core of the urban settlement.

Looking at the totality of the subject lands in comparison to the justification test criteria:

- the zoning objective could be considered to represent the re-use of lands that were formerly used as a racecourse and that are under-utilised, however
- the lands might not be considered as adjoining the core (as defined in the guidelines) of Limerick, being very much in its south-western environs, and
- there would be suitable alternative lands for the development type proposed in areas of lower risk within or adjoining the core of Limerick.

In the context of the above, the Office also notes the supplementary information for this land parcel (reference Greenpark LCC-C62-129) which was included in the updated SFRA published with the Material Alterations to the draft Plan, dated 12th March 2022.

Further, as referenced by the reasons of the elected members, a Strategic Housing Development planning permission has been approved by An Bord Pleanála⁵ in respect of some of the subject lands.

Having examined An Bord Pleanála's decision and supporting file documents, particularly the site specific flood risk assessment by RPS consultants and An Bord Pleanála's consideration of that in both the Inspectors report and Board Order, the site the subject of the above application would appear to be broadly in Flood Risk Zone C (low risk) with further mitigation measures proposed such as raising development levels and provision of emergency escape routes out of the development in the event that the main access road is flooded in the situation where earthen embankments that were originally constructed to protect agricultural lands from estuarial flooding, might be breached.

Notwithstanding, the Office notes the CE Report and the submission from OPW in relation to MA no. 147, both of which indicate that there remains significant concerns on behalf of the executive and the OPW that the overall area, which is dependent on

⁵ Reference 311588, approved on the 30th March 2022

these earthen embankments, is essentially not suitable for the development type envisaged.

The Office recognises the reasons given by the elected members which identify the priority on housing delivery, the SHD permission granted on a portion of the lands and the enablement of some vulnerable uses in the existing enterprise zoning.

Further, the Office acknowledges that An Bord Pleanála has approved permission for a substantial housing development on that part of the lands the subject of this MA that would not appear to have a serious risk of flooding.

Therefore, taking the above into account, and having regard to the demonstrated failure to have regard to the Flood Guidelines including by reason of a failure to meet the Justification Test, the zoning of the subject lands that are known to have a significant risk of flooding and beyond those covered by the ABP SHD decision, is not consistent with an overall strategy for proper planning and sustainable development in the area.

Section A1.3 of the SFRA, prepared by JBA Consulting for Limerick City and Council applied the Plan Making Justification Test to the lands zoned for Enterprise and Employment at Greenpark. Therein it outlined that the Limerick Dock Road had been identified as “*a key employment and enterprise location under the MASP*” and states that these lands, subject of Flood Zone A and B, are essential for the provision of land for employment uses. Crucially, the SFRA concluded that;

Although not suitable for highly vulnerable development due to the level of residual risk and the brownfield nature of the site, less vulnerable uses (Enterprise and Employment) with appropriately detailed FRA and emergency plan, may be accommodated.

Given the above, the SFRA recommended that the zoning objective for these lands should remain as Enterprise and Employment.

The Office further notes that the SFRA includes the following update;

A motion was passed to change the zoning to residential, which included a FRA and justification test. However, despite reviewing the information provided the assessment and details of the justification test previously undertaken apply and

the recommendation to retain water compatible/less vulnerable uses as appropriate to the Flood zone remains.

The reasons given by the elected members appear to suggest that the executive could make the subject lands meet the requirements of the justification test in relation to housing development. However, the elected member's reasons do not outline where this belief is grounded.

Pursuant to section 10(1) of the Act, the development plan must set out an overall strategy for the proper planning and sustainable development of the area of the development plan.

Pursuant to section 10(2)(n) the Plan must include objectives for the promotion of sustainable settlement and transportation strategies including measures to reduce energy use, GHG emissions and to adapt to climate change.

Accordingly, an overall strategy for the proper planning and sustainable development of the area must ensure, amongst other considerations, that flood risk management informs place making by avoiding inappropriate development in areas at risk of flooding as required by NPO 57 and as per the recommendation of the ORR.

The reasons given fail to address the substantive issue in the OPR recommendation, that the plan be made without zoning amendment MA no 147 because that would be inconsistent with National Policy Objective 57 of the National Planning Framework, which seeks to avoid inappropriate development in areas at risk of flooding in accordance with the Ministerial Guidelines issued under Section 28 of the Act, the Flood Guidelines. Significant lands have been zoned in the plan as made without passing the provisions of the sequential approach and plan-making Justification Test detailed in the Flood Guidelines

1.12 MA no.148 lands adjacent to the Crescent Shopping Centre from Semi Natural Open Space to Enterprise & Employment.

The CE recommended that the Plan be made without MA no. 148. The elected members rejected the CE Recommendation to remove the zoning and adopt the plan incorporating MA no. 148 and MA no. 13 with minor modifications underlined below:

MA13 Econ OXX Dooradoyle Urban Quarter – it is an objective of the Council to;

- a) Promote the continued development of lands around the Dooradoyle District Centre and adjoining lands as a strategic employment location through the delivery of additional office based employment uses in a phased manner in conjunction with supporting infrastructure development.*
- b) Promote improvements to connectivity, signage and permeability within the wider area including pedestrian and cycle facilities linking to Portland Park and provide for the link road from Dooradoyle Road to Rosbrien Road.*
- c) Facilitate the early upgrading of the existing flood defence infrastructure, thus ensuring the long-term flood protection of the wider lands in Dooradoyle in a manner compatible with any future City Wide Flood Relief Scheme.*
- d) Ensure any application on lands at risk of flooding is accompanied by a site specific flood risk assessment, which shall demonstrate that any development does not result in additional significant flood risk in the area and does not impede the future delivery of a wider flood relief scheme for Limerick. This FRA shall also include a detailed Emergency Response Plan and Breach Modelling Assessment using a methodology to be agreed in advance with LCCC.*
- e) Require an overall framework plan/masterplan to be prepared for the lands in advance of, or as part of, any application for a portion of the currently undeveloped lands.*

The members considered that the site passes the Justification Test in relation to the proposed Enterprise and Employment land use zoning objective, having regard to the documentation submitted with the material alteration motion including:

- Appendix 1 Dooradoyle Urban Quarter Strategic Flood Risk Assessment Summary Report;
- Appendix 2 Plan Making Justification Test;
- Appendix 3 Strategic Flood Risk Assessment;
- Appendix 4 Geotechnical Analysis;

- Appendix 5 Downstream Breach Assessment;
- Appendix 6 IDA Submission on Draft Development Plan; and
- MA 13 as referenced above.

Consideration of reasons given by Chief Executive and elected members

MA no.148 relates to undeveloped lands adjacent to the Crescent District Centre in the southern environs area of the Limerick City and Environs Plan boundary. The SFRA identifies these lands as being located in Flood Zone A and B, i.e. of high to moderate risk of flooding.

The land use zoning objective for lands zoned as ‘Enterprise and Employment do provide that ‘less vulnerable development’ is open for consideration. However, as per Table 3.2 of the Flood Guidelines, the Plan Making Justification Test is required to be satisfied with respect to the criteria in Box 4.1., which includes that (paraphrased and OPR emphases):

- (i) the zoning is essential to facilitate regeneration and/or expansion of the centre of the urban settlement;
- (ii) comprises significant previously developed and/or under-utilised lands;
- (iii) is within or adjoining the core of an established or designated urban settlement;
- (iv) be essential in achieving compact and sustainable urban growth; and
- (v) that there are no suitable alternative lands for the particular use or development type, in areas at lower risk of flooding within or adjoining the core of the urban settlement.

The Office notes the various reports referenced by the elected members’ reasons. Notwithstanding, it is crucial to also recognise that the SFRA for the draft Plan prepared on behalf of Limerick City and County Council (12th March 2022) also

applied the Plan Making Justification Test for these lands⁶ in response to submission no LCC-C62-149 and the amendment of the elected members.

This SFRA, prepared independently for the planning authority, concluded that the lands are not essential to facilitate regeneration and that suitable land is available for the development type envisaged elsewhere in areas outside of any flood risk.

The SFRA also sets out that the embankments and associated flood protection “are now within the scope of the Limerick Flood Relief Scheme” which has been progressed by LCCC and OPW. In particular, the SFRA concluded that (OPR emphasis);

the lands within Flood Zone A and B should be retained for water compatible uses as Parts 2 and 3 of the Justification Test have not been passed. Pending the completion of the flood relief scheme the zoning of these lands are considered premature. However the Local Authority acknowledge that on completion of the flood relief scheme the potential for development of the lands can be re-appraised on foot of an appropriately detailed site specific flood risk assessment.

The recommendation of the SFRA is to retain the lands as water compatible semi natural open space. It also references that

a motion was passed to zone the land Enterprise and Employment, which included a FRA and justification test. However despite reviewing the information provided the assessment and details of the justification test previously undertaken apply and the recommendation to retain water compatible uses remain.

As such, while noting the reasons given by the elected members, the planning authority’s own independent flood risk assessment and the OPW concur that until such time as the Limerick Flood Relief Scheme is progressed and there is a full understanding of the nature and performance of existing flood defences, allowing for

⁶ Appendix B SFRA Material Alterations 08.03.22 XXXV

the effects of climate change, it is premature to re-zone the land for development that could be significantly adversely impacted in the event of a breach-event.

The '*Plan Making Flood Risk Justification Test – Doordoyle Urban Quarter/Portland Park Lands*', prepared by John Spain Associates, January 2022, refer to the lands as being "*a natural infill site between the developed areas north and south*". However the report, and the reasons provided by the elected members fail to provide a strategic planning reason as to why it is necessary develop these undeveloped lands for the purposes of economic development purposes when a range of other locations have been identified and are being progressed for such purposes. In this regard the Office notes that the Metropolitan Area Strategic Plan aspect of the RSES and the development plans core strategy identify a range of such locations balanced against wider compact growth, infrastructure availability and flood risk issues and these lands are not one of those.

Again, the core message of the Flood Guidelines on flood risk in the situation above is one of avoidance due to the risks unless the development envisaged is critical to the functioning of a city or town centre or extension to same for regeneration purposes, circumstances which the subject lands would not appear to justify.

The Flood Guidelines state that flood hazards should be identified and considered at the earliest stage in the planning process, that development should be located in areas with little or no flood hazard and should only be permitted in areas at risk of flooding when there are no alternative, reasonable sites available in areas at lower risk that also meet the objectives of proper planning and sustainable development.

As a result, significant lands have been zoned in the plan as made without passing the provisions of the sequential approach and plan-making Justification Test detailed in the Flood Guidelines, called up into the National Planning Framework by way of NPO 57.

Pursuant to section 10(1) of the Act, the development plan must set out an overall strategy for the proper planning and sustainable development of the area of the development plan.

Pursuant to section 10(2)(n) the Plan must include objectives for the promotion of sustainable settlement and transportation strategies including measures to reduce energy use, GHG emissions and to adapt to climate change.

Accordingly, an overall strategy for the proper planning and sustainable development of the area must ensure, amongst other considerations, that flood risk management informs place making by avoiding inappropriate development in areas at risk of flooding as required by NPO 57 and as per the recommendation of the ORR.

The reasons given fail to address the substantive issue in the OPR recommendation, that the plan be made without zoning amendment MA no 148 because that would be inconsistent with National Policy Objective 57 of the National Planning Framework, which seeks to avoid inappropriate development in areas at risk of flooding in accordance with the Ministerial Guidelines issued under Section 28 of the Act, the Flood Guidelines. Significant lands have been zoned in the plan as made without passing the provisions of the sequential approach and plan-making Justification Test detailed in the Flood Guidelines.

2. Opinion of the Office and Reasons

Having considered the adopted Development Plan under section 31AM(7) of the Act, the Office is of the opinion that the said Development Plan has not been made in a manner consistent with the recommendations made by the Office.

Further, the Office does not accept that the reasons given for not implementing the Office's recommendations in the notice letter dated (23rd June 2022) adequately justify the failure to implement those recommendations or explain how, notwithstanding that failure, the Development Plan as adopted sets out an overall strategy for the proper planning and sustainable development of the area.

As you will be aware, under section 31AM(1)(a-e) of the Act, the Office has a statutory duty to evaluate and assess local authority development plans.

The following provisions of the Act are relevant in terms of the evaluation and assessment of local authority development plans such as this Development Plan:

- The provisions of section 31AM(2) as set out above.

- Under section 31 AM(3)(a), the Office shall make such recommendations in relation to the Office's evaluation and assessments to those authorities as it considers necessary in order to ensure effective co-ordination of national, regional and local planning requirements by the relevant planning authority in the discharge of its development planning functions.
- In performing its functions, the Office must, under section 31P(3) of the Act, take account of the objective for contributing to proper planning and sustainable development and the optimal functioning of planning under the Act.
- Under section 31S, the Office must, in performing its functions, have regard to:
 - a) the policies and objectives for the time being of the Government, a State authority (including Ministerial guidelines, policy directives and directions issued under *Chapter IV of Part II*), planning authorities and any other body which is a public authority whose functions have, or may have, a bearing on the proper planning and sustainable development of cities, towns, villages or other areas, whether urban or rural,
 - b) the public interest and any effect the performance of the Office's functions may have on issues of strategic, economic or social importance to the State,
 - c) the National Planning Framework (or, where appropriate, the National Spatial Strategy) and any regional spatial and economic strategy for the time being in force, and
 - d) the requirements of relevant acts of the European Union, in particular, those relating to—
 - (i) the Environmental Impact Assessment Directive,
 - (ii) Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment,
 - (iii) the Habitats Directive, and

- (iv) the Birds Directives, in so far as those requirements relate to planning authorities by virtue of being designated competent authorities for the purposes of those acts.

Accordingly, having considered the Development Plan in light of section 31AM(1)(a-e), section 31AM(2), section 31AM(3)(a), section 31P(3) and section 31S, and the letter from the planning authority of the 23rd June 2022 issued under section 31AM(6), the Office is of the opinion that the Development Plan has not been made in a manner consistent with the recommendations of the Office under section 31AM (7).

The Development Plan as made is inconsistent with the National Planning Framework and the methodologies of statutory guidelines the NPF refers to.

In addition, the reasons set out by the elected members in rejecting the recommendations made by the Office demonstrate a failure to have regard, properly and/or adequately and/or at all, to Ministerial Guidelines made pursuant to Section 28, which failure is demonstrated, inter alia, by the inclusion of:

- (i) lands zoned for data centre development located in a non-sequential and peripheral location outside the boundary of the plan for Limerick City that is inconsistent with National Planning Framework National Strategic Outcome 1, National Policy Objective 53, National Policy Objective 62 in relation to securing compact and sustainable patterns of development.

No or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why lands have been zoned in such a way and how this approach (involving a failure to zone lands having regard to relevant Guidelines) is consistent with an overall strategy for the proper and sustainable development of the area.

- (ii) lands zoned in a manner that is inconsistent with National Planning Framework National Policy Objective 57, which seeks to avoid inappropriate development in areas at risk of flooding having regard to Ministerial Guidelines issued under Section 28 of the Act, the Flood Guidelines. Significant lands have been zoned in the plan as made without passing the

provisions of the sequential approach and plan-making Justification Test detailed in the Flood Guidelines.

No or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why the lands have been zoned in such a way and how this approach (which appears to misapply or fundamentally misunderstand the Flood Guidelines) is consistent with an overall strategy for the proper planning and sustainable development of the area.

Further, the statement under Section 28(1A)(b) attached to the Development Plan as made:

(a) fails to include information which demonstrates that the planning authority has formed the opinion that it is not possible to implement the policies and objectives outlined at (I) and (II), above, as contained in the Guidelines, because of the nature and characteristics of the area or part of the area and to give reasons for the forming of that opinion and to explain why it is not possible to implement the policies and objectives, contrary to Section 28(1B)(b); and

(b) fails to provide any or any adequate explanation, consistent with the requirement to deliver an overall strategy for the proper planning and sustainable development of the area, as to why the Development Plan provides for zoning of lands in a way that does not have regard to the policies and objectives set out in *The Planning System and Flood Risk Management Guidelines for Planning Authorities*, *the Development Plans Guidelines for Planning Authorities and Spatial Planning and National Roads Guidelines for Planning Authorities*.

There is a positive obligation on the planning authority, pursuant to Section 28(1A)(b) to give reasons for the forming of this opinion. The members of the planning authority have not addressed or explained why it was considered appropriate to zone lands other than in accordance with the methodology set out in the Guidelines and therefore why the policies and objectives of the Minister have not been implemented.

In addition, MA no. 149 is located adjacent to the N24 national route and fails to have regard to Ministerial Guidelines issued under section 28 of the Act, specifically the requirement under section 2.7 of the *Spatial Planning and National Roads Guidelines for Planning Authorities* (2012) in respect of exercising care in the assessment of zoning locations at or close to interchanges where such development would generate significant additional traffic with potential to impact on the national road.

As set out above, the factors that the Office has taken into account in forming this opinion are as follows:

- (i) The requirements of section 10(1), 12(18) and section 28(1) and 28(1A) of the Act.
- (ii) The National Planning Framework including National Strategic Outcome 1; National Policy Objective 53, National Policy Objective 57 and National Policy Objective 62, which state the following

NSO 1 Compact Growth

Carefully managing the sustainable growth of compact cities, towns and villages will add value and create more attractive places in which people can live and work. All our urban settlements contain many potential development areas, centrally located and frequently publicly owned, that are suitable and capable of re-use to provide housing, jobs, amenities and services, but which need a streamlined and co-ordinated approach to their development, with investment in enabling infrastructure and supporting amenities, to realise their potential. Activating these strategic areas and achieving effective density and consolidation, rather than more sprawl of urban development, is a top priority.

NPO53

Support the circular and bio economy including in particular through greater efficiency in land management, greater use of renewable

resources and by reducing the rate of land use change from urban sprawl and new development.

NPO 57

Enhance water quality and resource management by:

- *Ensuring flood risk management informs place-making by avoiding inappropriate development in areas at risk of flooding in accordance with The Planning System and Flood Risk Management Guidelines for Planning Authorities;*
- *Ensuring that River Basin Management Plan objectives are fully considered throughout the physical planning process;*
- *Integrating sustainable water management solutions, such as Sustainable Urban Drainage (SUDS), nonporous surfacing and green roofs, to create safe places.*

NPO 62

Identify and strengthen the value of greenbelts and green spaces at a regional and city scale, to enable enhanced connectivity to wider strategic networks, prevent coalescence of settlements and to allow for the long-term strategic expansion of urban areas.

(iii) *The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009) which:*

require the planning system at national, regional and local levels to:

Avoid development in areas at risk of flooding, particularly floodplains, unless there are proven wider sustainability grounds that justify appropriate development and where the flood risk can be reduced or managed to an acceptable level without increasing flood risk elsewhere;

Adopt a sequential approach to flood risk management when assessing the location for new development based on avoidance, reduction and mitigation of flood risk.

(iv) *Development Plans, Guidelines for Planning Authorities (2022) which state:*

proposed employment zonings must have a credible rationale, particularly with regard to location and type of employment. It should be possible to demonstrate that the quantum of land zoned is not significantly out of step with estimated future demand arising from population, economic and employment growth and change.

(v) *Spatial Planning and National Roads Guidelines for Planning Authorities (2012) which state:*

planning authorities must exercise particular care in their assessment of development/local area plan proposals relating to the development objectives and/or zoning of locations at or close to interchanges where such development could- generate significant additional traffic with potential to impact on the national road. They must make sure that such development which is consistent with planning policies can be catered for by the design assumptions underpinning such junctions and interchanges, thereby avoiding potentially compromising the capacity and efficiency of the national road/associated junctions and possibly leading to the premature and unacceptable reduction in the level of service available to road users.

(vi) 92/43/EEC The Habitats Directive;

(vii) Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment;

(viii) The Chief Executive's reports on submissions on the draft Development Plan and material alterations to the draft Development Plan.

In light of the above, the Office is therefore of the opinion that the Development Plan has not been made in a manner consistent with its recommendations and that the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.

3. Recommendation to the Minister

Having regard to section 31AM(8) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act taking such steps as to rectify the matter as set out in the draft direction to the planning authority accompanying this notice, i.e.

- (a) Reinstate the following zoning objectives to that of the draft Plan:
 - (i) MA no. 142 i.e. the subject land reverts to Agriculture from Enterprise and Employment.
 - (ii) MA no. 145 i.e. the subject land reverts to Community and Education from Mixed Use
 - (iii) MA no. 146 i.e. the subject land reverts to Enterprise and Employment from Mixed Use
 - (iv) MA no. 147 i.e. the subject land reverts to Enterprise and Employment/Open Space and Recreation from New Residential except in respect of the lands to be developed for housing under ABP SHD reference 311588.
 - (v) MA no. 148 i.e. the subject land reverts to Semi Natural Open Space from Enterprise and Employment.
- (b) Delete the Data Centre zoning objective on lands consisting of 33 hectares at Ballysimon.

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,

A handwritten signature in black ink that reads "Niall Cussen". The signature is written in a cursive style and is contained within a light grey rectangular box.

Niall Cussen

Planning Regulator

████████████████████

DRAFT DIRECTION IN THE MATTER OF SECTION 31

OF THE PLANNING AND DEVELOPMENT ACT 2000 (as amended)

Limerick Development Plan 2022 – 2028

“Development Plan” means the Limerick Development Plan 2022 – 2028

“Planning Authority” means Limerick City and County Council

WHEREAS the powers and duties of the Minister for Housing, Local Government and Heritage under the Planning and Development Act 2000 (as amended) ("the Act"), other than the power to prosecute an offence, have been delegated to the Minister of State at the Department of Housing, Local Government and Heritage pursuant to the Housing, Local Government and Heritage (Delegation of Ministerial Functions) Order 2020 (S.I. 559 of 2020).

WHEREAS the Minister of State at the Department of the Housing, Local Government and Heritage in exercise of the powers conferred on him by section 31 of the Act , and consequent to a recommendation made to him by the Office of the Planning Regulator under section 31AM(8) of the Act hereby directs as follows:

- (1) This Direction may be cited as the Planning and Development (Limerick Development Plan 2022 - 2028) Direction 2022.
- (2) The Planning Authority is hereby directed to take the following steps with regard to the Development Plan:
 - (a) Reinstate the following zoning objectives to that of the draft Plan:
 - (i) MA no. 142 i.e. the subject land reverts to Agriculture from Enterprise and Employment

- (ii) MA no. 145 i.e. the subject land reverts to Community and Education from Mixed Use
- (iii) MA no. 146 i.e. the subject land reverts to Enterprise and Employment from Mixed Use
- (iv) MA no. 147 i.e. the subject land reverts to Enterprise and Employment/Open Space and Recreation from New Residential except in respect of the lands to be developed for housing under ABP SHD reference 311588.
- (v) MA no. 148 i.e. the subject land reverts to Semi Natural Open Space from Enterprise and Employment.

(b) Delete the Data Centre zoning objective on lands consisting of 33 hectares at Ballysimon.

STATEMENT OF REASONS

- I. The Development Plan as made includes lands zoned for data centre development located in a non-sequential and peripheral location outside the boundary of the plan for Limerick City that is inconsistent with National Planning Framework National Strategic Outcome 1, National Policy Objective 53, National Policy Objective 62 in relation to securing compact and sustainable patterns of development.

No or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why lands have been zoned in such a way and how this approach (involving a failure to zone lands having regard to the relevant Guidelines) is consistent with an overall strategy for the proper and sustainable development of the area.

- II. The Development Plan as made includes significant lands zoned in a manner that is inconsistent with National Planning Framework National Policy Objective 57, which seeks to avoid inappropriate development in areas at risk of flooding having regard to Ministerial Guidelines issued under Section 28 of the Act, *The Planning System and Flood Risk Management, Guidelines for Planning Authorities (2009)* ("the Flood

Guidelines"). Significant lands have been zoned in the plan as made without passing the provisions of the sequential approach and plan-making Justification Test detailed in the Flood Guidelines.

No or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why the lands have been zoned in such a way and how this approach (which appears to misapply or fundamentally misunderstand the Flood Guidelines) is consistent with an overall strategy for the proper planning and sustainable development of the area.

Further, the statement under Section 28(1A)(b) attached to the Development Plan as made:

(a) fails to include information which demonstrates that the planning authority has formed the opinion that it is not possible to implement the policies and objectives outlined at (I) and (II), above, as contained in the Guidelines, because of the nature and characteristics of the area or part of the area and to give reasons for the forming of that opinion and to explain why it is not possible to implement the policies and objectives, contrary to Section 28(1B)(b); and

(b) fails to provide any or any adequate explanation, consistent with the requirement to deliver an overall strategy for the proper planning and sustainable development of the area, as to why the Development Plan provides for zoning of lands in a way that does not have regard to the policies and objectives set out in *The Planning System and Flood Risk Management Guidelines for Planning Authorities*, the *Development Plans Guidelines for Planning Authorities* and *Spatial Planning and National Roads Guidelines for Planning Authorities*.

- III. The Development Plan has not been made in a manner consistent with and has failed to implement the recommendations of the Office of the Planning Regulator under Section 31 AM.

IV. In light of the matters set out at I to III, above, the Minister is of the opinion that the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.

V. In light of the matters set out at I to IV, above, the Development Plan is not in compliance with the requirements of the Act

GIVEN under my hand,

Minister for Housing, Local Government and Heritage

day of Month, year.