



28th September 2022

Mr Peter Burke TD

Minister for Housing, Local Government and Heritage
Department of Housing, Local Government and Heritage
Custom House
Dublin 1
D01 W6X0

**Re: Notice pursuant to section 31AN(4) of the Planning and Development Act
2000 (as amended) – Limerick Development Plan 2022 – 2028**

A chara,

I am writing to you pursuant to section 31AN(4) of *the Planning and Development Act 2000* (as amended) (the "Act") in the context of the Limerick Development Plan 2022-2028 (the "Plan"). In particular, I write arising from the consideration by this Office of the following:

- a) the Notice of Intent to issue a Direction issued to Limerick City and County Council (the "Council") by your office on 28th July 2022,
- b) the report of the Chief Executive of the Council dated 7th September 2022 on the submissions and observations made to the planning authority (the "Report"), and
- c) one submission made directly by an elected member of the Council to this Office and considered by this Office pursuant to section 31(10)(a) of the Act.

Draft Direction

The draft Direction contained two parts:

- Part 2(a) reinstate zoning objectives to those set out in the draft Plan in the case of five (5) individual material amendments; and

- Part 2(b) delete the Data Centre zoning objective on lands consisting of 33 hectares at Ballysimon.

You will note that in the Report prepared in accordance with section 31(8) of the Act, the Chief Executive recommends that the draft Direction issued by the Minister is given effect as drafted and without amendment.

The Office now recommends, pursuant to section 31AN(4) of the Act that you issue the attached Direction in the same form as the draft direction (i.e. without minor amendment).

In forming this recommendation, this Office reiterates the submissions made to you in the Notice which issued from this Office to your office on 15th July 2022 pursuant to section 31(AM)(8) of the Act.

Public Consultation on the Draft Direction

The public consultation on the draft Direction took place between 6th August 2022 and 19th August 2022. The Report of the Chief Executive summarised the views of members of the public and prescribed bodies who made submissions to the planning authority.

You might please note the following:

- the Office received one (1) submission from an elected member (Cllr Dan McSweeney). This submission opposes the draft Direction only in respect of Part 2(a)(i) MA No 142 (zoning objective at Ballykeefe);
- the reasons outlined in the submission relate to consistency with national policy and the *Planning System and the Flood Guidelines*, site specific characteristics and economic benefits. The submission is attached to this letter for information purposes;
- a total of nine (9) submissions were received by the Chief Executive during the consultation period, including six (6) from the public, two (2) from prescribed authorities (Office of Public Works and Department of Agriculture). The CE report also includes the submission from the Office acknowledging the adoption of the Plan (albeit that this submission was not made under section 31);

- the Chief Executive received no submissions from elected members of the planning authority during the consultation period;
- as set out in the Report, the submissions from members of the public were as follows:
 - Part 2(a) zoning objectives – A single submission was received opposing the draft Direction in relation to each of the five (5) zoning objectives as follows:
 - (i) MA no. 142 at Ballykeefe (1)
 - (ii) MA no. 145 at Pa Healy Road (1)
 - (iii) MA no. 146 at Pa Healy Road (1)
 - (iv) MA no. 147 at former Greenpark Racecourse (1)
 - (v) MA no. 148 at Crescent Shopping Centre (1)

As set out in the Report, the reasons outlined in the submissions relate to consistency with national policy and the *Planning System and Flood Risk Management, Guidelines for Planning Authorities* (the Flood Guidelines), site specific characteristics and economic benefits; and

- Part 2(b) Data Centre zoning at Ballysimon - One (1) submission was received opposing this aspect of the draft Direction. As set out in the Report, the reasons outlined in the submission relate to site suitability and economic benefits;
- as set out in the Report, the submission received from the OPW supports Part 2(a) of the draft Direction; and
- as set out in the Report, the submission received from the Environmental Co-Ordination Unit, Department of Agriculture states that it is not aware of any impact that may in conjunction with the Notice have a significant cumulative effect. The submission does not state if it is supporting or opposing the draft Direction.

Part 2(a) - Zoning Objectives

The Office is satisfied that the Chief Executive's recommendation in respect of Part 2(a) is appropriate as it would reinstate the five (5) subject zoning objectives to those set out in the draft Plan.

As set out in the section 31(AM)(8) Notice issued to you by this office on 15th July 2022, the Chief Executive's previous recommendation to elected members was to make the Plan without these zoning amendments (Chief Executive's Report on the Public Consultation on Material Alterations, 10th May 2022).

The statement of reasons for Part 2(a) in the draft Direction relates to the zoning of lands in a manner that is inconsistent with National Policy Objective (NPO) 57 which requires the avoidance of inappropriate development in areas at risk of flooding in accordance with the Flood Guidelines.

The Office notes the submission of the OPW, which supports the Direction and welcomes the reinstatement of the zoning objectives outlined in Part 2(a) and states that *'a core objective of the Guidelines is to avoid inappropriate development in areas at risk of flooding'*.

The issue of flood risk management was previously taken into consideration by the Office as set out in the section 31AM(8) Notice with respect to the specific provisions set out in the Flood Guidelines as to what local authorities should do when considering land use zoning objectives in areas at risk of flooding¹.

The specific matters raised in the submissions received in relation to the individual zoning objectives are addressed below.

MA No 142 (Lands at Ballykeefe revert to Agriculture from Enterprise and Employment)

The Office notes that a number of the reasons cited in the submissions are similar to the reasons given by the elected members for the decision to not comply with the

¹ Section 4.23 of the Planning System and Flood Risk Management Guidelines

recommendation of the Office when adopting the Plan, and were detailed in the section 31AM(6) notice received from the planning authority including:

- other lands zoned for Enterprise & Employment along the Dock Road have passed the SFRA Justification Test;
- the site is strategically located, with accessibility and connectivity that supports economic development; and
- a Site Specific Flood Risk Assessment (September 2021) prepared by consultants on behalf of the landowner for these lands concluded that a less vulnerable use such as Enterprise and Employment could be justified.

As set out in the section 31AM (8) notice to your office, these reasons were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act and the Office adopts the same rationale as set out in the 31AM(8) notice in response to those similar points raised again in submissions to the Chief Executive as summarised in the Report.

The submission received from Cllr Mc Sweeney raises the following additional reasons:

- Plot A lands have been zoned in the past and has an industrial entrance onto the road;
- some lands in Plot A are zoned but this does not allow road access to the site and creates a land locked site for development; and
- Plot A lands are part of an infill development between Mungret Recycling centre, OPW Offices and Castle Mungret Industrial Estate.

The submission from John T Garrett on behalf of M. Baggett submits that the lands:

- are serviced;
- provide a key role in the interconnectivity of other lands;
- were zoned in the Southern Environs Local Area Plan 2011 – 2017; and
- not zoning these lands is a lost opportunity for the city and county.

The statement of reasons provided in the draft Direction relate to the zoning of lands in a manner that is inconsistent with NPO 57 which seeks to avoid inappropriate development in areas at risk of flooding having regard to the Flood Guidelines.

In relation to previous zoning of these lands, the Office notes that the lands were zoned for agriculture in the most recent Southern Environs LAP 2021-2027. Further, sections 10(8) and 19(6) of the Act provides that there is no presumption in law that any land zoned in a particular development plan or local area plan shall remain so zoned in any subsequent plan. Further section 4.26 of the Flood Guidelines states:

“Information about flooding and flood risk is improving and will improve further as a result of national exercises undertaken by OPW and others, and implementation of these Guidelines. Future flood risk assessments required to support the development plan process may highlight existing, undeveloped areas which, on their own merits, were zoned for development in previous development plans but which new information indicates may now, or in the future, be at risk of flooding.”

In relation to the availability of services and road access, and the infill nature of the lands, the Office remains of the view that the plan making Justification Test is required to be satisfied given that the SFRA identifies that these lands are located in Flood Zone A.

In this instance, the Justification Test undertaken by the planning authority for Enterprise and Employment has taken account of the locational characteristics of the lands and 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”².*

With respect to the lands referred to as ‘Plot A’ which are zoned and potentially landlocked, the Office notes that an existing entrance and access road has been developed into the existing civic and amenity site (zoned as Utilities) which provides the opportunity for access into these adjacent lands. Notwithstanding, in the Office’s

² B2, XXXI, SFRA 12th March 2022

opinion, this is not an adequate basis to justify diverging from the requirements in NPO 57. .

In relation to economic development, the Office notes that there are 55 hectares of lands zoned for Enterprise and Employment and identified as Tier 1 in the Settlement Capacity Audit of the Plan. No evidence is provided on behalf of Mr Garrett to demonstrate how the provision in the Development Plan is insufficient or why the removal of this zoning objective would impact negatively on the economic growth of Limerick.

Following consideration of the submissions and report, there is no basis to amend the recommendation of this Office in respect of Part 2(a)(i).

MA No 145 (Lands at Pa Healy Road revert to Community and Education from Mixed Use)

The Office notes that a number of the reasons cited in the submissions are similar to the reasons given by the elected members for the decision to not comply with the recommendation of the Office when adopting the Plan, and were detailed in the section 31AM(6) notice received from the planning authority. These reasons included:

- lands are not required for the adjoining Gaelchoiste school;
- lands adjoin city centre with a school, park, college, hospital and bus stop within 15 minute walk and will contribute to compact growth;
- the adjoining school site passed the Justification Test; and
- site adjoins city core and passes the justification test and flood mitigation measures (submitted) can be provided.

As set out in the section 31AM (8) notice to your office, these reasons were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act and the Office adopts the same rationale as set out in the 31AM(8) notice in response to those similar points raised again in submissions to the Chief Executive as summarised in the Report.

The additional reasons submitted by HRA Planning on behalf of the Downes Family are summarised as:

- there is no basis to suggest that mixed-use zoning for these lands would be inconsistent with NPO 57 which relates to enhancement of water quality and resource management. While flooding can affect water quality, it cannot be assumed that water quality issues can or will occur in every instance and this did not form the basis of the conclusions of the Justification Tests carried out for these lands;
- the land is not essential for education purposes and are located in an area undergoing regeneration and mixed use zoning would provide compatible and complementary uses;
- equal consideration of sites with respect to proximity should be applied - other Justification Tests, including that for Enterprise and Employment at Greenpark, demonstrate that the Planning Authority has determined that lands that are further removed from the core are suitable for the purposes of flood risk assessment; and
- the FRA submitted examines the specific characteristics of the site and floor levels acknowledging the potential for coastal and fluvial flooding.

In relation to the relevance of NPO 57, this objective recognises that flood risk management is an integral part of managing the water resource. Like any resource, this includes managing both the quantity and quality of that resource, and the potential effects of same. As acknowledged in the supporting text to NPO 57, planning is critically important to the management of water resources:

*The planning system both directly and indirectly influences effective water management. This includes water services provision, river basin management, landscape, **flood risk planning**, coastal and marine management and climate change adaptation. Accordingly statutory development plans must ensure the integration of sustainable water management considerations.³ (our emphasis)*

³ National Planning Framework, page 123

In relation to enhancing both water quality and resource management NPO 57 specifically identifies the Flood Guidelines, River Basin Management Plan objectives, and sustainable water management solutions. In this instance, the draft Direction identified the Flood Guidelines only as being relevant in this instance.

The Office remains of the view that the Development Plan as made is inconsistent with NPO 57 and the methodologies the Flood Guidelines with which NPO57 requires planning authorities to act in accordance

In relation to the argument that these lands are not essential for education purposes, the office did not raise any objection to the zoning objective on these grounds.

In relation to the SFRA's consideration of lands located further from the city centre as appropriate for the purposes of the Justification Test, the Office accepts that the Pa Healy Road lands are located closer to the city core⁴ than some other zoned lands.

However, proximity to the core is only one factor that must be considered in the application of the Justification Test as set out in Box 4.1 of the Flood Guidelines, and proximity to the core does not override the requirement to apply or comply with the other elements of the Justification Test.

In relation to the submission of flood risk assessment information prepared by CS Consulting on behalf of the Downes family (August 2021), this information was previously submitted to the planning authority in support of the material amendment, was available to the planning authority at the time of carrying out the updated Justification Test on the Material Amendments, and was referenced in the SFRA (March 2022).

The Flood Guidelines at paragraph 4.23 clearly set out that the SFRA is carried out by the planning authority as part of the preparation and adoption of a development plan, and that having prepared a SFRA 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. NPO 57 requires the avoidance of

⁴ Defined in the Flood Guidelines as '*the core area of a city, town or village which acts as a centre for a broad range of employment, retail, community, residential and transport functions*'

inappropriate development in areas at risk of flooding in accordance with the Flood Guidelines.

In this case, a Justification Test was undertaken for 'Education and Community Use' as proposed in the draft Plan. This zoning objective passed the Justification Test given that there is an opportunity for water compatible elements such as *'playing pitches, sports fields and car parking which cannot be accommodated elsewhere'*⁵. The SFRA Plan Making Justification Test concludes that the site be zoned for Community and Education. Consequently the Mixed Use zoning has not passed a plan making Justification Test for the zoning contained in the Plan as part of the SFRA as required by the Flood Guidelines.

The reasons given comparing the application of the Justification Test with other sites within the Plan area does not provide a basis for setting aside the conclusions and recommendations of the SFRA for the subject lands and in the Office's opinion, is not an adequate evidential basis for diverging from the requirements of NPO 57.

Following consideration of the submissions and report, there is no basis to amend the recommendation of this Office in respect of Part 2(a)(ii).

MA No 146 (Lands at Pa Healy Road revert to Enterprise and Employment from Mixed Use)

The Office notes that a number of the reasons cited in the submissions were similar to the reasons given by the elected members for the decision to not comply with the recommendation of the Office when adopting the Plan, and were detailed in the section 31AM(6) notice received from the planning authority, including:

- lands adjoin city centre with a school, park, college, hospital and bus stop within 15 minute walk and will contribute to compact growth;
- site adjoins city core and passes the justification test and flood mitigation measures can be provided; and

⁵ SFRA 12th March 2022, Part B, Submission No LCC-C62-55, page XV

- supporting technical information and justification for the mixed use zoning, including a plan making Justification Test, sets out the planning reasons consistent with the guidelines.

As set out in the section 31AM(8) notice to your office, these reasons were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act and the Office adopts the same rationale as set out in the 31AM(8) notice in response to those similar points raised again in submission to the Chief Executive and as summarised in the Report.

The additional reasons submitted by HRA Planning on behalf of the O'Mara Family are summarised as follows:

- there is no basis to suggest that mixed use zoning for these lands would be inconsistent with NPO 57, which relates to enhancement of water quality and resource management;
- the material difference between the Justification Tests is the consideration of the location – by reason of proximity, accessibility, character and mixed commercial uses this area can be described as adjacent to the city centre, adjoining the core. There should be equal consideration to the assessment of all sites in respect to their proximity to the urban core.
- the zoning of these lands as mixed use are of equitable or preferable suitability to other sites subject to flood risk adjoining the core, with some sites requiring flood mitigation/design, an approach that would apply to the zoning of this site, with mitigation through design and Flood Risk Assessment (FRA) at planning application stage;
- *the Development Plans, Guidelines for Planning Authorities (2022) (the Development Plans Guidelines)* sets out that the sequential approach to zoning should be applied and sites close to the urban core should be prioritised.

The issues raised in relation to consistency with NPO 57 and comparison with the proximity of other zoned lands to the city centre have been addressed above in relation to MA no. 145 Pa Healy Road and the Office adopts the same rationale in relation to MA no. 146.

In relation to the use of mitigation through design and Flood Risk Assessment at planning application stage, the Flood Guidelines (Figure 3.2) clearly demonstrate that the sequential approach only proceeds to mitigation where the Justification Test has been passed. As no Justification Test has been passed for the Mixed Use zoning objective, mitigation is not, therefore, relevant.

Similarly, Flood Risk Assessments prepared for planning applications are not a replacement for the SFRA. The Flood Guidelines clearly identify a hierarchy of decision making under which land at risk of flooding should only be zoned for vulnerable uses if it passes the plan making Justification test. Once the land is zoned, a site specific FRA, including a Justification Test for development management, will then be carried out at planning application stage. The SFRA and FRA, therefore, perform different functions with differing level of detail. The Justification Test for development management (to be submitted by the applicant) applies different criteria, as set out in Box 5.1 of the guidelines, the first criteria being that:

The subject lands have been zoned or otherwise designated for the particular use or form of development in an operative development plan, which has been adopted or varied taking account of these Guidelines.

The Office acknowledges that the sequential approach is advocated in the *Development Plans Guidelines*. This does not, however, override NPO 57 which requires the avoidance of inappropriate development in areas at risk of flooding in accordance with the Flood Guidelines. In this case the lands are located in Flood Zone A and B, and under the Flood Guidelines the planning authority must be satisfied that it can clearly demonstrate on a solid evidence base that the zoning satisfies the Justification Test.

Following consideration of the submissions and report, there is no basis to amend the recommendation of this Office in respect of Part 2(a)(iii).

MA No 147 (Lands at former Greenpark Racecourse revert 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).

The Office notes that a number of the reasons cited in the submissions were similar to the reasons given by the elected members for the decision to not comply with the recommendation of the Office when adopting the Plan, and were detailed in the section 31AM(6) notice received from the planning authority including:

- Greenpark lands have not failed any Justification Test; a Flood Risk Assessment and Justification has been submitted to the planning authority which passed the justification test;
- Enterprise & Employment zoning allows for highly vulnerable uses under the *Planning System and Flood Risk Management Guidelines*; and
- An Bord Pleanála has granted permission for residential development on these lands.

As set out in the section 31AM (8) notice to your office, the reasons were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act and the Office adopts the same rationale as set out in the 31AM(8) notice in response to those similar points raised again in submissions to the Chief Executive and as summarised in the Report.

The subject lands are largely located in Flood Zones A and B and are dependent on protection by earthen embankments. Given the highly vulnerable nature of residential development and the potential impact of flooding on people and the environment, it is of critical importance that the zoning objective for these lands avoids inappropriate development in accordance with the Flood Guidelines as required by NPO 57.

The additional reasons submitted by Tom Phillips & Associates on behalf of Voyage Property are summarised as follows:

- the OPR position appears grounded on erroneous and mistaken contention that the Justification Test carried out by JBA for LCCC was failed. The

Justification Tests in the SFRA and the Site-Specific FRA passed, however the Executive decided to zone the lands as Enterprise and Employment;

- there is no inconsistency with NPO 57 as the Flood Guidelines facilitate zoning where the plan making Justification Test has passed;
- the partial application of the Justification Test and unsubstantiated statements are unsupported and undermine the site's planning context;
- the sequential approach has not been followed reverting to substitution rather than proceeding to mitigation;
- Greenpark is an appropriate location for residential development;
- Greenpark lands are not part of the Dock Road and the case for enterprise and employment is weak given the housing shortage;
- there is no evidence to support the quantum of enterprise and employment zoned land;
- the OPR did not give adequate assessment of the reasons of the elected members as a detailed reasoning and analysis as to why the zoning of these lands is appropriate was submitted; and
- the lands were zoned for residential use in the previous county development plan.

The subject lands were zoned as Enterprise and Employment in the draft Plan, were identified to be within Flood Risk A and B, and as such, a Justification Test was necessary. The Justification Test passed for the zoning of these lands as Enterprise and Employment in the SFRA⁶ which outlined that the '*lands at Greenpark off the Dock Road subject of Flood Zone A and B are essential for the provision of lands for employment uses which cannot be accommodated in the city centre*'.

However, following the draft Plan public consultation, the Chief Executive's Report (November, 2021), in response to submissions received to the draft Plan requesting the lands be zoned New Residential, states that '*the justification test does not pass*'⁷

⁶ Prepared by JBA Consultants for the Council

⁷ Page 178, CE Report on Public Consultation, Volume 1, 26th November 2021

and recommends no change to the zoning in respect of these lands (i.e. the zoning objective remains Enterprise and Employment).

The Office notes that the supplementary information (a flood risk assessment by RPS, a report prepared by Lisney, a flood risk assessment prepared for the SHD development and submission prepared by Tom Phillips) for this land parcel (reference Greenpark LCC-C62-129) was included in this updated SFRA as an appendix.

Further, as set out in the section 31AM(8) notice letter, the Office considered the justification test criteria, together with the CE Report and the submission from OPW in relation to MA no. 147, both of which conclude that the lands are not suitable for highly vulnerable residential development.

It is unclear what is referred to in the point raised in respect of the 'part-application of the Justification Test'. The Office has not applied a Justification Test for any lands but has outlined in the Notice letter the rationale for its recommendation, consistent with NPO 57 which requires the avoidance of inappropriate development in area at risk of flooding in accordance with the Flood Guidelines.

With respect to the issues raised regarding the application of the sequential approach and the justification test, the SFRA sets out the approach taken in the assessment of flood risk for Limerick City Centre and surroundings⁸. The Flood Guidelines (Figure 3.2) clearly demonstrate that the sequential approach only proceeds to mitigation where the Justification Test has been passed. As previously stated, no Justification Test has been passed for the New Residential zoning objective and mitigation is not, therefore, relevant.

In relation to the argument that Greenpark is an appropriate location for residential development; the case for enterprise and employment is weak given the housing shortage; and there is no evidence to support the quantum of enterprise and employment zoned land, the office did not raise any objection to the zoning objection on these grounds. The reasoning for the recommendation relates to the consideration of such matters in the context of avoiding inappropriate development in

⁸ Section 7.2 SFRA March 2022

areas at risk of flooding consistent with NPO 57 which requires the avoidance of inappropriate development in area at risk of flooding in accordance with the Flood Guidelines.

Furthermore, there is, in any event, no evidence provided to demonstrate that the Core Strategy of the Development Plan has not sufficiently provided suitable lands for residential use that will provide for the sustainable growth of Limerick City and environs.

In relation to the Office's consideration of the reasoning and analysis provided by the elected members, the Office is satisfied that the reasons have been fully taken into consideration as set out in the section 31AM(8) notice letter. The Office acknowledged the reasons given by both elected members and the public submission, including regarding the need for housing, and the site's location and characteristics. However, having fully considered the reasons given, the Office concluded that the reasons given failed to address the substantive issue in the Office's recommendation, that the Plan be made without zoning amendment MA no 147 because that would be inconsistent with NPO 57, which requires the avoidance of inappropriate development in areas at risk of flooding in accordance with the Flood Guidelines. In the Office's opinion, no adequate reasons have been provided to justify a divergence from the requirements in NPO 57.

Finally, in relation to previous zoning of these lands, the provisions of sections 10(8) and 19(6) of the Act, and section 4.26 of the Flood Guidelines are set out in respect of MA 142 above, and the Office adopts the same rationale in relation to MA no. 147.

Following consideration of the submissions and report, there is no basis to amend the recommendation of this Office in respect of Part 2(a)(iv).

MA No 148 (Lands at Crescent Shopping Centre revert to Semi Natural Open Space from Enterprise and Employment)

The Office notes that a number of the reasons cited in the submissions were similar to the reasons given by the elected members for the decision to not comply with the recommendation of the Office when adopting the Plan, and were detailed in the section 31AM(6) notice received from the planning authority including:

- the site passes the Justification Test having regard to the documentation submitted with the material alteration motion.

As set out in the section 31AM(8) notice to your office, the reasons were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act and the Office adopts the same rationale as set out in the 31AM(8) notice in response to those similar points raised again in submissions to the Chief Executive and as summarised in the Report.

The additional reasons submitted by John Spain Associates on behalf of Clancourt Group are summarised as follows:

- lands are essential to facilitate expansion of urban settlement, are underutilised in an infill location, adjoin a district centre, are sequentially favourable, suitable for economic development and the Justification test has not been correctly applied in the SFRA;
- Development Plan Guidelines and the RSES support different types of employment uses and provision of sufficient lands for employment uses including zoning of the subject lands would support the adoption of the development plan;
- A Flood Risk Assessment (FRA) prepared by ARUP on behalf of Clancourt Group accompanies the submission. This FRA is based on more detailed and up to date information than CFRAMS which does not contain the level of detail required for the Justification Test. The FRA did not identify a high degree of breach associated with the embankments (Part 3 of the Justification Test);
- OPW submission does not determine if the Justification Test was carried out correctly;
- there is a technical solution to address the site specific flood risk; and
- the zoning should not be delayed on the basis of a future flood relief scheme. The lands could be develop in a manner consistent with a future flood relief scheme and could assist in the delivery of same.

In relation to the appropriateness of the zoning of the subject lands for Enterprise and Employment as an expansion of the urban settlement adjacent to the existing district centre, and policy support in the RSES and *Development Plan Guidelines* for the development of these lands, the office did not raise any objection to the zoning objective on these grounds. The reasoning for the recommendation relates to the consideration of such matters in the context of avoiding inappropriate development in areas at risk of flooding consistent with NPO 57 which requires the avoidance of inappropriate development in areas at risk of flooding in accordance with the Flood Guidelines. The SFRA identified these lands as being within Flood Zone A and B.

In such cases, the guidelines, at section 4.23 state *“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”*.

The Justification Test carried out as part of the SFRA included consideration of the matters under Part 2 (i) – (iv) of Box 4.1 set out in the Flood Guidelines⁹. Having carried out the assessment, the planning authority concluded the Justification Test had not passed and it recommended that *‘these lands are not included for Enterprise and Employment’*¹⁰.

The submission states that the FRA prepared by John Spain Associates and ARUP on behalf of Clancourt Group is based on more detailed and up to date information than the planning authority’s SFRA (CFRAMS), and the lands are considered to pass the Justification Test carried out as part of their own FRA. However, this information was previously submitted to the planning authority in support of the material amendment, was available to the planning authority at the time of carrying out the updated Justification Test on the Material Amendments, and was referenced in the SFRA (March 2022).

Further, the subject lands failed Part 2 of the Justification Test in relation to the requirement for the zoning to achieve the proper planning and sustainable development of the urban settlement. As such, the Justification Test was failed

⁹ SFRA March 2022, Part B XXXV & XXXVI Submission No LCC-C62-149

¹⁰ Page 212, Chief Executives Report Draft Limerick Development Plan, 26th November 2021

irrespective of the level of detail of the information to inform the flood risk assessment under Part 3, including the risk of a breach associated with the embankments.

The Flood Guidelines at paragraph 4.23 clearly set out that the SFRA is carried out by the planning authority as part of the preparation and adoption of a development plan, and that having prepared a SFRA 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. NPO 57 requires the avoidance of inappropriate development in areas at risk of flooding in accordance with the Flood Guidelines.

The Office notes that the OPW made submissions during the public consultation stage of the draft Plan and the public consultation of the material alterations stage. In their submission to the draft Plan¹¹ commentary was included with respect to the application of the Justification Tests including advice to the Planning Authority to *'demonstrate that the Plan Making Justification test has been applied in proposed vulnerable development zoning within Flood Zones A and B'*. Further, at the material alterations of the draft Plan consultation stage. The OPW submission¹² lists a number of land use zonings *'which would allow inappropriate development in Flood Zone A and B, despite these zonings failing to pass the Plan Making Justification Test'*. It is therefore clear that the OPW considered the application of the Justification Tests of the SFRA and outlined in their comments the acceptability or otherwise of them. The Office also notes the submission of the OPW in support of the draft Direction as set out above.

The reasons outlined in relation to a technical solution and the zoning being delayed on the basis of a future flood relief scheme are inconsistent with the approach to flood risk management as set out in the Flood Guidelines and therefore the requirements of NPO 57. Section 2.25 of the *Planning System and Flood Guidelines* states that the presence of protection structures should be ignored in determining

¹¹ Ref LCC-C62-263, page 927 of Chief Executives Report on Public Consultation on Draft Limerick Development Plan, 26th November 2021

¹² Ref LCC-C101-16, page 155 of Chief Executives Report on Public Consultation on Material Alternations 10th May 2022

flood zones. This is because *“areas protected by flood defences still carry a residual risk of flooding from overtopping or breach of defences and the fact that there is no guarantee that the defences will be maintained in perpetuity”*.

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.

In this instance, the SFRA¹³ states that the subject lands have not passed Part 2 of Box 4.1 Justification Test and the recommendation is to retain the semi natural open space zoning.

Following consideration of the submissions and report, there is no basis to amend the recommendation of this Office in respect of Part 2(a)(v).

Part 2(b) Delete the Data Centre zoning objective on lands consisting of 33ha at Ballysimon

The Office is satisfied that the Chief Executive’s recommendation in respect of Part 2(b) of the draft Direction is adequate as it would delete Data Centre zoning on lands at Ballysimon.

As set out in the section 31(AM)(8) notice issued to you by this office on 15th July 2022, the Chief Executive’s previous recommendation to elected members was to make the Plan without this zoning amendment (Chief Executive’s Report on the Proposed Material Amendments to the Draft Plan, 10th May 2022).

One public submission was received by the Chief Executive in relation to this Part of the draft Direction.

The Office notes that a number of the reasons cited in the submission were similar to the reasons given by the elected members for the decision to not comply with the

¹³ Part B, SFRA 12th March 2022, Ref LCC-C62-149, XXV - XXXVI

recommendation of the Office when adopting the Plan, and were detailed in the section 31AM(6) notice received from the planning authority including:

- site has excellent grid connection;
- site has suitable water requirements available; and
- ideal location close to motorway network, existing employment areas, suitable topography and no known constraints.

The additional reasons submitted by MKO on behalf of David Fitzgerald and family are summarised as follows:

- data centre would contribute to the vision for Limerick to become a major economic force. Removal of this zoning objective would be short sighted in terms of development of Limericks economy.

In relation to the reasons given that the land should be zoned to support the development of Limerick's economy, the Office notes that there are 18 hectares of lands zoned for 'Data Centre' within the Plan area that are undeveloped. There is no evidence provided in these reasons to demonstrate that the removal of this zoning objective would impact negatively on the economic growth of Limerick.

Following consideration of the submissions and report, there is no basis to amend the recommendation of this Office in respect of Part 2(b).

Recommendation

In light of the above and for the reasons given in our notice letter of 15th July 2022, the Office remains of the view, as set out in the 31(AM)(8) notice, that the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.

Having regard to section 31AN(4)(a) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act to issue the direction without minor amendment.

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 blue ink that reads "Niall Cussen". The signature is written in a cursive style.

Niall Cussen

Planning Regulator

████████████████████

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 31AN(4)(a) 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. Pursuant to section 31(1)(ba)(i) and section 31(1)(b)

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. Pursuant to section 31(1)(ba)(i), section 31(1)(b) and section 31(1)(c)

The Development Plan as made includes significant lands zoned in a manner that is inconsistent with National Planning Framework National Policy Objective 57, which requires the avoidance of inappropriate development in areas at risk of flooding in accordance with 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 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. Pursuant to section 31(1)(a)(i)(II) and section 31(1)(b)

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. Pursuant to section 31(1)(b)

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. Pursuant to section 31(1)(c)

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.