



Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

5th April 2023

Kieran O'Donnell TD
Minister of State for Local Government and Planning
Department of Housing, Local Government and Heritage
Custom House
Dublin 1
D01 W6X0

BY HAND AND BY EMAIL

**Re: Notice Pursuant to section 31AM(8) of the Planning and Development Act
2000 (as amended) – Clare County Development Plan 2023 – 2029**

A chara,

I am writing to you in relation to the recent adoption by the elected members of the Clare County Development Plan 2023 - 2029 (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 recommendations of the Office, Office made on 28th March 2022 and 3rd January 2023, which required specific changes to the Development Plan:
 - (i) to ensure consistency with the National Policy Objectives ('NPO') of the *National Planning Framework – Project Ireland 2040* (the 'NPF'), and with the Regional Policy Objectives ('RPOs') of the *Southern Regional Assembly Regional Spatial & Economic Strategy for the Southern Region* - NPO 3 and RPO 35 for compact growth; NPO 6

regeneration; NPO 18a proportionate growth; and NPO 72a-c tiered approach to zoning, section 10(2)(n) of the Act, for the promotion of sustainable settlement and transportation strategies in urban and rural areas, and having regard to the *Development Plans Guidelines for Planning Authorities* (2022) (the ‘Development Plans Guidelines’).

Specifically the Development Plan zoning of lands for residential that do not support compact growth and the sequential approach to development, is not commensurate with the core strategy of the Development Plan, is not inconsistent with proportionate growth and regeneration of towns and villages, includes lands that are not serviced or serviceable within the Plan period and which does not support integrated land use and transport planning that will enable an increase in travel by sustainable transport modes and achieve reductions in greenhouse gas emissions;

- (ii) having regard to the Spatial Planning and National Roads, Guidelines for Planning Authorities (2012) (the ‘National Roads Guidelines’), which requires the planning authority to maintain the capacity, efficiency and safety of national roads. Specifically the Development Plan includes an exemption to allow consideration of access to individual dwellings off existing accesses to National Secondary Roads.
 - (iii) to ensure consistency with the NPOs of the NPF, NPO 57 flood risk management, having regard to The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009) (the ‘Flood Guidelines’). Specifically the Development Plan includes lands zoned for vulnerable uses / development that are located within Flood Risk Zone A and/or zoned for highly vulnerable uses within Flood Risk Zone B.
- b) as a consequence of the above, the Development Plan made by Clare County Council (‘the Council’) fails to set out an overall strategy for the proper planning and sustainable development of the area concerned, contrary to the requirements of section 10(1) 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 letter. This letter is a Notice to you pursuant to section 31AM(8) of the Act.

1. Background

1.1 Draft Clare County Development Plan

The Draft Clare County Development Plan 2023 – 2029 (the draft Plan) was on public display from 10th December 2021 to 28th March 2022.

A statement was appended (as appendix 7) to the draft Plan as required under section 28(1A)(b) of the Act, concerning the implementation of the Ministerial Guidelines, and was amended at material alteration stage. The statement did not include any information to demonstrate that the planning authority had formed the opinion that it was not possible to implement certain policies and objectives of the Minister contained in any relevant guidelines, as outlined in further detail below, and did not include information to demonstrate that the Council had formed the opinion, with reasons, as to why it was not possible, because of the nature and characteristics of the area or part of the area of the Development Plan, to implement such policies and objectives as required where section 28(1B)(b) of the Act applies.

The Office made a submission to the draft Plan on 28th March 2022 containing thirteen (13) recommendations and eight (8) observations.

The Office's submission to the draft Plan identified a number of issues for the planning authority to address to align the draft Plan with current national and regional policy and the Act.

Specifically issues raised related to:

- Recommendation 1: Limerick Shannon Metropolitan Area
- Recommendation 2: Population Targets
- Recommendation 3: Settlement Hierarchy
- Recommendation 4: Distribution of Growth

- Recommendation 5: Determination of Residential Land Zoning Requirements
- Recommendation 6: Residential Land Use Zoning
- Recommendation 7: Killaloe - inclusion of objectives for Ballina
- Recommendation 8: Compact Development
- Recommendation 9: Development Management Standards
- Recommendation 10: Traveller Accommodation
- Recommendation 11: Retail Strategy
- Recommendation 12: Exceptional Circumstances For Access To National Roads
- Recommendation 13: Flood Risk Management

Subsequently, the Chief Executive sent a notice letter under section 12(7) of the Act dated 28th November 2022 advising the Office of the proposed amendments to the draft Plan. The Chief Executive also sent a notice letter under section 12(5)(aa) of the Act dated 1st December 2022, setting out the recommendations of the Office which the planning authority had decided not to comply with and the reasons and justification for its decision.

The notice letter dated 1st December 2022 provided reasons for not complying with Recommendations 3, 4, 5, 6, 8, 10, 11 and 12 in part or in full. However, on review, the Office considered that Recommendations 9 and 13 of the Office's submission also had not been complied with in part or in full.

1.2 Material Alterations to the Draft Clare County Development Plan 2023-2029

The elected members, having considered the draft Plan and the Chief Executive's (CE's) Report on submissions under section 12(4) of the Act (10th July 2022), resolved to amend the draft Plan. The Material Alterations to the draft Plan were on public display from 28th November 2022 to 3rd January 2023.

The material alterations included a number of changes, including extensive amendments to land use zoning objectives for residential use. The planning authority

also issued a section 12(5)(aa) notice letter (1st December 2022) which provided reasons for not complying with Recommendations 3, 4, 5, 6, 8, 10, 11 and 12 in full or in part.

The Office made a submission on 3rd January 2023 on the Material Alterations to the draft Plan containing ten (10) recommendations and no observations. In addition to those recommendations the Chief Executive acknowledged had not been complied with, the Office also noted in its submission that Recommendations 9 (Development management standards), and Recommendation 13 (Flood Risk Management) had not been complied with in part.

The Office's recommendations at material alterations stage included:

- MA Recommendation 1 – Core Strategy
- MA Recommendation 2 – Ennis Key Town
- MA Recommendation 3 – Kilrush Service Town
- MA Recommendation 4 – Small Towns
- MA Recommendation 5 – Small Towns
- MA Recommendation 6 – Unserviced Large Villages And Small Towns
- MA Recommendation 7 – Clusters
- MA Recommendation 8 – Enterprise Zoning Objectives
- MA Recommendation 9 – Flood Risk Management
- MA Recommendation 10 – Appropriate Assessment.

1.3 Adopted Clare Development Plan 2023-2029

The elected members of the Council resolved to make the Clare County Development Plan 2023 – 2029 on 9th March 2023.

Subsequently, the Chief Executive sent a notice letter under section 31AM(6) of the 2000 Act dated 16th March 2023 to the Office advising of the making of the Development Plan and specifying the recommendations of the Office that had not been complied with or the aspects of the Development Plan inconsistent with the recommendations of the Office.

The notice letter sent pursuant to section 31AM(6) of the Act stated that all MA recommendations made by the Office, except for MA Recommendation 8 and MA Recommendation 10, had not been complied with in full or in part. The said notice letter included a summary of the Chief Executive's reasons, or the elected members' reasons, for not complying with the recommendations.

As outlined above, the section 12(5)(aa) notice letter (1st December 2022) provided reasons for not complying with Recommendations 3, 4, 5, 6, 8, 10, 11 and 12 in full or in part. On review, the Office also considered that Recommendations 9(v) and 13 had not been complied with in full or in part.

With the exception of Recommendation 12, the Office accepts the response of the Chief Executive, and/or the reasons of the Chief Executive and/or the elected members for not complying in full or in part with the recommendations of the Office, including recommendations 9(v) and 13.

In respect of MA Recommendations 1, 2, 3, 4, 5, 6, 7 and 9, the Chief Executive has set out the reasons for not-complying with the recommendations of the Office in the section 31AM(6) notice letter.

In relation to MA Recommendation 1(i) (Core Strategy), the reasons of the Chief Executive and/or elected members are given indirectly in response to other MA recommendations (2, 3, 4, 5, 6 and 7) relating to specific residential land use zonings.

In relation to MA Recommendations 2 (Ennis Key Town) and 7 (Clusters), the Office accepts the reasons of the elected members for non-compliance. The Office considers that the reasons of the elected members provide an acceptable rationale for the inclusion of these amendments and/or the scale of the amendment is minor in nature, and no further action is required.

In relation to MA Recommendations 3 (Kilrush Services Town), 4 (Small Towns), 5 (Small Towns), and 6 (Unserviced Large Villages and Small Towns), the Office's accepts the reasons of the Chief Executive or elected members for non-compliance in respect of land use zoning objectives Kilrush Agriculture, Kilrush R7, Cappa R2, Cappa Agriculture, Kilkee R8, Tulla R3, Lisdoonvarna R3, Lisdoonvarna R4, Miltown Malbay R3, Miltown Malbay R4, Newmarket-on-Fergus R6, Quin SR4, Ballyvaughan

Agriculture and Kilmihil VGA6. The Office considers that the reasons of the elected members provide an acceptable rationale for the inclusion of these amendments and/or the scale of the amendment is minor in nature, and no further action is required.

In relation to MA Recommendation 9 (Flood Risk Management), the Office notes that the Development Plan was made without four of the material alterations listed in the Office's submission. The Office accept the reasons provided by the Chief Executive in the respect of Ennis R12 and the reasons provided by the elected members in respect of Ennis LDR12 and Ennis COM5, having regard to the flood risk mitigation measures to be applied under the plan in each case.

The Office also accepts the clarifications provided by the Chief Executive in the Chief Executive Report under section 12(8) of the Act generally in respect of Recommendation 13.

However, in respect of material amendments to avoid zoning land at risk of flooding for vulnerable uses consistent with Recommendation 13, the elected members decided to make the plan without a material amendment to rezone part of the LDR2 lands at Knox's Bridge¹ Ennis from Low Density Residential Development (LDR2) in the draft Plan to Open Space (i.e. the adopted plan zoned lands for residential use which are partially in flood zone A and B). The making of the Plan without the amendment of part of LDR12 to Open Space does not comply with Recommendation 13 of the Office's submission on the draft Plan to not zone for highly vulnerable development any lands that have not passed the Justification Test.

Having reviewed the CE's reports on the draft Plan (10th July 2022) and on the Material Alterations to the draft Plan (30th January 2023), the notice of the publication of the Material Alterations and of the making of the Development Plan and the reasons in the notice letters, the Office has concluded that, with the exception of the below, the recommendations of the Office have been responded to in the reports

¹ Motion E.7 refers to the land as Clonroadmore, however the Development Plan refers to this site as Knox's Bridge and OS1, and refers to mixed use lands as Clonroad More.

and/or Notice Letters and have been addressed to the satisfaction of the Office, or are otherwise considered satisfactory within the legislative and policy context.

The outstanding matters, therefore, are as follows:

- Residential zoning amendments, MA Recommendation 3, MA Recommendation 4, MA Recommendation 5 and MA Recommendation 6;
- Exceptional circumstances for access to national roads, Recommendation 12;
- Flood risk management, Recommendation 13 and MA Recommendation 9.

These outstanding matters are considered in more detail below.

1.4 Residential Land Use Zonings – Kilrush, Killaloe, Mullagh, Liscannor, Broadford and Cooraclare

Kilrush

MA Recommendation 3 of the Office's submission to the Material Alterations to the draft Plan required the planning authority to make the plan without seven material amendments to land use zoning objectives (to or from residential), which were considered inconsistent with national and regional objectives for compact growth, regeneration, proportionate growth and to prevent the coalescence of settlements.

MA Recommendation 3 states the following:

Having regard to the core strategy of the draft Plan; national and regional objectives for compact growth under NPO 3c and RPO 35, regeneration under NPO 6 and RPO 34, proportionate growth under NPO 18a, and to prevent coalescence of settlements under NPO 62; the provisions of the Development Plans, Guidelines for Planning Authorities (2022) including the policy and objective for a sequential approach to development; and the provision of a sustainable settlement and transport strategy in accordance with section 10(2)(n) of the Planning and Development Act 2000, as amended, the planning authority is required to make the Plan without the following material amendments:

- *Kilrush p.48 Agriculture – from Residential R5 to Agriculture (-c.1.3ha)*

- *Kilrush p.49 R7 – from Recreation to Residential (c.0.7ha)*
- *Kilrush p.50 R5 – from White lands to Residential (c.6ha)*
- *Kilrush p.51 R10 – from White lands / Agriculture to Residential (c.0.9ha)*
- *Kilrush p.52 SR4 – from Agriculture to Strategic Reserve (c.0.6ha)*
- *Cappa p.54 R2 – from Agriculture to Residential (c.1.4ha)*
- *Cappa p.55 Agriculture – from Residential R2 to Agriculture (-c.1.4); and*
- *All text changes associated with the preceding named amendments.*

The Chief Executive recommended the Plan be made without all seven amendments consistent with the Office's recommendation. However, the elected members decided to make the plan with five of the amendments. As noted, above, the Office accepted the reasons of the elected members for deciding to make the Plan with four of the five amendments. However, in respect of Kilrush R5, only a generic reason (proper planning and sustainable development) has been given by the members, which the Office considers is not adequate.

The area of greenfield land zoned primarily residential for the Plan period, excluding strategic reserve and Kilrush R5, measures c.13 ha. This includes 2 ha of additional provision to ensure a sufficient supply of zoned land over the Plan period. This excludes the delivery of units on land zoned mixed-use (MU).

The core strategy estimates that c.8 ha greenfield land is required to accommodate growth over the plan period based on the housing supply targets, and c.3 ha to accommodate unmet demand.

Kilrush R5 is a c.6 ha site, which would bring the total area of greenfield residential zoned land to 18.8 ha. Kilrush R5 is therefore not required to be zoned for residential purposes in order to implement the core strategy.

Kilrush R5 is located in a peripheral location to the northeast of the town. The zoning is not sequential and leapfrogs agricultural lands located closer to the centre of the town, which does not have regard to the policy and objective of the *Development Plans, Guidelines for Planning Authorities* (2022) (Development Plan Guidelines) to prioritise the most centrally located development sites in a settlement first. In this

respect, no or no adequate reasons have been provided to explain why the Council has decided not to implement the policy and objectives of the said Guidelines in respect of this zoning objective.

The site also largely falls outside the CSO boundary and comprise lands which do not conform to the definition of 'existing built-up footprint' under the NPF. The zoning of this land would therefore be inconsistent with NPO 3 and RPO 35 compact growth and would undermine the achievement of the National Strategic Outcome for compact growth.

The zoning of excessive and peripheral greenfield lands, contrary to the core strategy and compact development, will also undermine the potential to regenerate and rejuvenate the service town of Kilrush inconsistent with NPO 6.

The facilitation of disproportionate growth for Kilrush is inconsistent with NPO 18a to support proportionate growth.

Killaloe

MA Recommendation 4 of the Office's submission to the Material Alterations to the draft Plan required the planning authority to make the Plan without ten (10) material amendments to zoning objectives for small towns.

MA Recommendation 4 states the following:

Having regard to the core strategy of the draft Plan; national and regional objectives for compact growth under NPO 3c and RPO 35, regeneration under NPO 6 and RPO 34, and proportionate growth under NPO 18a; the provisions of the Development Plans, Guidelines for Planning Authorities (2022) including the policy and objective for a sequential approach to development; and the provision of a sustainable settlement and transport strategy in accordance with section 10(2)(n) of the Planning and Development Act 2000, as amended, the planning authority is required to make the Plan without the following material amendments:

- *Kilkee p.69 R8 – from White land to Residential (c.1.8ha);*
- *Killaloe p.34 R6 – from Tourism to Residential (c.8ha);*

- *Tulla p.46 R3 – from SR to Residential (2ha);*
- *Lisdoonvarna p.80 R3 – Agriculture to Residential (c.2ha);*
- *Lisdoonvarna p.81 R4 – Agriculture to Residential (c.0.25);*
- *Lisdoonvarna p.83 R5 – White lands to Residential (c.0.5ha);*
- *Miltown Malbay p.90 R3 – Agriculture to Residential (c. 1.25);*
- *Miltown Malbay p.92 R4 – Enterprise to Residential (c.1.6ha);*
- *Newmarket-on-Fergus 76 R5 – from white land to Residential (c.1.9ha);*
- *Newmarket-on-Fergus 77 R6 – from white land to Residential (c.1ha); and*
- *All text changes associated with the preceding named amendments.*

The Chief Executive recommended the Plan be made without the ten (10) zoning amendments consistent with the Office’s recommendation, however the elected members decided to make the Plan with eight of the amendments. As noted above, the Office accepted the reasons of the elected members for seven of the eight amendments, with the exception of Killaloe R6.

The Office notes the detailed reasons given by the elected members in respect of Killaloe R6, which can be summarised as follows:

- deficit in housing stock and proposed zoned lands have not been developed;
- will enhance and complement existing zoned land;
- population projections based on 2016 CSO seriously understates the current housing need in the locality. Minister O’Brien stated that more land needed to be zoned as residential for house building;
- site already identified as suitable for development, zoned tourism;
- the WWTP upgrade due in 2024 will cater for increased housing;
- the completion of the River Shannon crossing and bypass in 2025 will improve access and will allow the community to develop without impacting on the historical and heritage centre of Killaloe core; and
- just outside the Limerick and Shannon Metropolitan Area Spatial Plan (LSMASP).

The Development Plan sets out a clear and strong strategy to address the existing deficit in housing stock, comprising a mix of regeneration of brownfield lands, reuse of existing vacant building stock and extensive greenfield zoning.

The area of greenfield land zoned primarily residential for the Plan period, excluding strategic reserve and Killaloe R6, measures slightly over 6 ha. This excludes the delivery of units on land identified for compact growth and zoned for mixed use.

The core strategy estimates that 3.36 ha is required to meet the housing supply target, with additional provision of 0.5 ha is zoned residential to ensure a sufficient supply of zoned land over the plan period. It also provides 1.8ha to accommodate unmet demand.

The settlement is therefore already served by serviced or serviceable zoned land to accommodate growth well in excess of the population growth targets. Killaloe R6 has a stated area of 8 ha and it is therefore not necessary for the implementation of the core strategy.

Killaloe R6 is located in a peripheral location to the south of the settlement. It is the only new residential land use zoning objection proposed to be located outside of the proposed bypass. The zoning is not sequential but leapfrogs agricultural lands and Strategic Residential Reserve Lands that are located closer to the centre of Killaloe, contrary to the policy and objective of the Development Plans Guidelines to prioritise the most centrally located development sites in a settlement first. In this respect, no or no adequate reasons have been provided to explain why the Council has decided not to implement the policy and objectives of the said Guidelines in respect of this zoning objective.

The Office accepts that the development of the subject lands appear unlikely to significantly impact directly on the heritage of the historic centre. However the continuation of low-density suburban sprawl can have significant indirect impacts on historic settlement centres, including through the generation of additional car-based trips to and from the centre.

The zoning of excessive and peripheral greenfield lands, contrary to the core strategy and compact development, will also undermine the potential to regenerate and rejuvenate the small town of Killaloe inconsistent with NPO 6

The subject lands, which were zoned for tourism in the Clare County Development Plan 2017-2023 (Development Plan 2017-2023) and the draft Plan, is an appropriate location for the wide range of tourism uses that will complement the existing tourism and economic base of the town. The site was zoned for tourism due to its strategic location adjoining the town and its proximity to River Shannon and Lough Derg. The draft Plan recognised the potential of these lands to accommodate development that will significantly contribute to the tourism industry at both a local and regional scale. The replacement of strategically located tourism land with inappropriately located residential lands will, however, undermine the future economic tourism potential of Killaloe.

The Killaloe R6 site falls wholly outside the CSO boundary and comprise lands which do not conform to the definition of 'existing built-up footprint' under the NPF. The zoning of this land would therefore be inconsistent with NPO 3 and RPO 35 compact growth and undermine the achievement of the National Strategic Outcome for compact growth.

The Office concurs that Killaloe is located outside of the Limerick Shannon Metropolitan Area and also is not a designated key town under the RSES, which areas are prioritised for population and economic growth. However, the facilitation of disproportionate growth for Killaloe through excessive residential zoning is inconsistent with NPO 18a to support proportionate growth.

Mullagh and Liscannor

MA Recommendation 5 of the Office's submission to the Material Alterations to the draft Plan required the planning authority to make the Plan without five (5) material amendments to zoning objectives for small towns.

MA Recommendation 5 states as follows:

Having regard to the core strategy of the draft Plan; national and regional objectives for compact growth under NPO 3c and RPO 35, regeneration under NPO 6 and RPO 34, proportionate growth under NPO 18a, and the tiered approach to zoning under NPO72a-c; the provisions of the Development Plans, Guidelines for Planning Authorities (2022) including the policy and objective for a sequential approach to development; and the provision of a sustainable

settlement and transport strategy in accordance with section 10(2)(n) of the Planning and Development Act 2000, as amended, the planning authority is required to make the Plan without the following material amendments:

- *Quin p.74 SR4 – from White land to Strategic Reserve (c.2.7ha);*
- *Ballyvaughan p.102 Agriculture – from Residential R3 to Agriculture (- c.1ha);*
- *Ballyvaughan p.103 R3 – from Open Space to Residential (c.0.4ha);*
- *Mullagh p.128 R3 – from Agriculture to Residential (c.2ha);*
- *Liscannor p.140 R3 – from Agriculture to Residential (c.1.6ha); and*
- *All text changes associated with the preceding named amendments.*

The Chief Executive recommended the Plan be made without the five (5) subject amendments in compliance with the Office's recommendation, however the elected member decided to make the Plan with four of the amendments. As noted, above, the Office accepted the reasons of the elected members on two of the four amendments, with the exception of Mullagh R3 and Liscannor R3.

The Office notes the detailed reasons given by the elected members in respect of Mullagh R3, which related to:

- Demand for development; and
- Section 4.4.1 of the Development Plans Guidelines.

The core strategy prepared by the planning authority has had regard to the *Housing Supply Targets Methodology, Guidelines for Planning Authorities* (2021) and has had regard to the Development Plans Guidelines. It determined that c.0.5ha was required to accommodate housing growth, however the total area of greenfield land zoned residential, excluding Mullagh R3 and strategic reserve lands, is 1.21ha. In addition there are extensive lands zoned for mixed use to accommodate compact growth. No details of demand for development have been provided by the elected members, however it is evident that there is more greenfield land being zoned than is required to accommodate projected growth for Mullagh.

Under section 4.4 of the Development Plans Guidelines it is a policy and objective that zoned housing land in an existing development plan, that is serviced and can be developed for housing within the life of the new development plan under preparation, should not be subject to de-zoning.

The subject lands were zoned under the Development Plan 2017-2023, however there is no public footpath or public lighting along the public road accessing the site. In addition, according to Uisce Éireann's (UÉ) submission on the Material Alterations to the draft Plan (3rd January 2023) the subject lands are not serviced for wastewater. Although UÉ indicate that the lands may be serviceable subject to a 400m network extension, this may require third party permissions to carry out such works. Therefore the agricultural zoning objective proposed in the draft Plan, which the Chief Executive recommended be reinstated, has had regard to the Development Plans Guidelines.

The Mullagh R3 site has a stated area of 1.92ha and is located in a peripheral location to the east of the village. The zoning is not sequential but leapfrogs agricultural lands located closer to the centre of the village, which does not have regard to the policy and objective of the Development Plans Guidelines to prioritise the most centrally located development sites in a settlement first. In this respect, no or no adequate reasons have been provided to explain why the Council has decided not to implement the policy and objectives of the said Guidelines in respect of this zoning objective.

The zoning of excessive and peripheral greenfield lands, contrary to the core strategy and compact development, will also undermine the potential to regenerate and rejuvenate the village of Mullagh. It will therefore unnecessarily increase land take from agricultural use and from habitats and necessitate the development of additional infrastructure instead of the facilitating the use of existing infrastructure inconsistent with NPO 6.

Although there is no CSO boundary for the settlement, these peripheral lands are neither brownfield or infill and are located at a walking distance of c.600m, mostly beyond agricultural lands or white lands. The zoning of this land would therefore be inconsistent with NPO 3 and RPO 35 compact growth and undermine the achievement of the National Strategic Outcome for compact growth.

The Office notes the detailed reasons given by the elected members in respect of Liscannor R3, which relate to:

- availing of investment in WWTP;
- the need for more permanent housing;
- having good access to village centre.

The core strategy identifies a housing supply target of nine (9) homes for Liscannor over the six year Plan period. 2.08 ha are zoned for residential use excluding Liscannor R3 and strategic reserve sites. Therefore sufficient provision has been made for residential development to avail of local infrastructure investment and to accommodate demand for permanent housing. The zoning of an additional 1.65 ha stated area for residential use is therefore inconsistent with the core strategy of the Development Plan.

These lands are located in an elevated position behind the historic village core. A private coach park for the Cliffs of Moher lies immediately adjacent to the west. The only apparent existing access to the lands is via a single track narrow country lane within an 80kph speed limit zone, which has neither footpaths nor public lighting and therefore it is not serviced. The Office notes that the planning authority's Serviced Land Assessment determined that the land is serviceable, however no details have been set out. As the site is not zoned in the Development Plan 2017-2023 and is not serviced, the zoning of the site for agriculture is consistent with the policy and objective for zoning of residential land under the Development Plan Guidelines.

The zoning of excessive and peripheral greenfield lands, contrary to the core strategy and compact development, will also undermine the potential to regenerate and rejuvenate the village of Liscannor inconsistent with NPO 6.

The facilitation of disproportionate growth for Mullagh and Liscannor is also inconsistent with NPO 18a to support proportionate growth.

Broadford and Cooraclare

MA Recommendation 6 of the Office's submission on the Material Alterations to the draft Plan required the planning authority to make the Plan without fifteen (15) zoning amendments for three village settlements.

MA Recommendation 6 states the following:

Having regard to the core strategy of the draft Plan; national and regional objectives for compact growth under NPO 3c and RPO 35, regeneration under NPO 6 and RPO 34, proportionate growth under NPO 18a, and the tiered approach to zoning under NPO72a-c; the provisions of the Development Plans, Guidelines for Planning Authorities (2022) including the policy and objective for a sequential approach to development; and the provision of a sustainable settlement and transport strategy in accordance with section 10(2)(n) of the Planning and Development Act 2000, as amended, the planning authority is required to make the Plan without the following material amendments:

- *Broadford p.93 LDR1 – from Agriculture to LDR (c.0.5);*
- *Broadford p.93 LDR2 – from Agriculture to LDR (c.4.5ha);*
- *Broadford p.93 LDR4 – from VGA to LDR (c.2.1ha);*
- *Broadford p.93 LDR5 – from mixed to LDR (c.0.25ha);*
- *Broadford p.93 LDR6 – from VGA to LDR (c.0.8ha);*
- *Broadford p.93 LDR7 – from Existing Residential to LDR (c.1ha);*
- *Broadford p.93 LDR8 – from Existing Residential to LDR (c.0.8ha);*
- *Broadford p.93 LDR9 – from Existing Residential to LDR (c.0.3ha);*
- *Cooraclare p.197 LDR1 – from VGA to LDR (c.1.25ha);*
- *Cooraclare p.197 LDR2 – from Agriculture to LDR (c.1.5ha);*
- *Cooraclare p.197 LDR3 – from VGA to LDR (0.75ha);*
- *Cooraclare p.197 LDR4 – from Agriculture to LDR (c.1.5ha);*
- *Cooraclare p.197 LDR5 – from Agriculture to LDR (c.0.6ha);*
- *Cooraclare p.197 LDR6 – from VGA to LDR (c.0.25ha);*

- *Kilmihil p.157 VGA6 – from Enterprise to VGA (2ha); and*
- *All text changes associated with the preceding named amendments.*

The Chief Executive recommended the Plan be made without the 14 of the 15 material amendments, with the exception of Kilmihil VGA6. However the elected member decided to make the Plan with all 15 of the amendments. As noted, above, the Office accepted the reasons of the Chief Executive concerning Kilmihil VGA6.

The reasons given by the elected members for making the Plan with the material amendments to Broadford and Cooraclare can be summarised as follow:

- Appropriate to zone lands in anticipation of funding under Multi-Annual RW Programme Measure 8;
- The provision of services is a precedent for how services in other towns and villages can be delivered;
- Acknowledges role of Local Authority in service provision;
- UÉ indicated that only settlements with land use zoning will be considered for future capital investment.

The Development Plan states there is no public wastewater treatment infrastructure serving either settlement, but that Council has made a funding application under the Multi-Annual Rural Water Programme 2022- 2025 Measure A8 – ‘Waste Water Collection and Treatment Needs for Villages and Settlements without access to Public Waste Water Services’.

In its submission on the material alterations, UÉ stated that ‘Given funding has not yet been approved under this scheme, and the expected timeline for delivery of a WWTP in an unserviced settlement following funding approval, it may be considered premature to zone additional lands in these settlements for future growth.’

The Office further notes that neither settlement was included in the Serviced Land Assessment attached to the Development Plan, and the planning authority has not determined whether the subject lands are serviceable for wastewater and other relevant services during the Plan period. The subject zonings therefore are not consistent with NPO 72a-c and do not have regard to Ministerial guidelines relating

to the carrying out of a Settlement Capacity Audit, including an infrastructural assessment. In this respect, no or no adequate reasons have been provided to explain why the said Guidelines have not been followed.

The Office acknowledges that the provision of wastewater services to unserved settlements by the local authority through the Multi-Annual RW Programme Measure 8. However, in its submission on the material amendments, UÉ considered the proposal to zone these lands premature given that funding has not yet been approved under this scheme, and the expected timeline for delivery of a WWTP in an unserved settlement following funding approval. The lands can therefore be determined not to be serviceable during the Plan period and therefore the zoning of those lands is inconsistent with NPO 72a-c.

UÉ has confirmed (in email of 30/03/23 to the Office, and appended to this letter) that it has '*no remit in the area of provision of new infrastructure to unsewered settlements*', such as Cooraclare and Broadford, and that the subject funding scheme is within the remit of the Department of Housing, Local Government and Heritage. Therefore the zoning or not of the subject lands has no bearing on capital expenditure decisions of UÉ.

The core strategy has not determined specific housing targets for Cooraclare and Broadford, but rather collective targets for unserved settlements and the open countryside. It is a general objective for the two settlements under the Development Plan that growth is incremental and small scale in nature, and is relative and appropriate to the function, scale, size and character of the village.

The subject zoning amendments provide Low Density Residential (LDR) zoning of 9.19 ha stated area in Broadford and 6.11 ha stated area in Cooraclare. 1.91 ha has also been zoned Residential in Broadford.

Under this proposed draft Direction, Broadford LDR 4 will revert to VGA2 (1.95 ha) and LDR6 will revert to VGA3 (0.7ha). Cooraclare LDR1, LDR3, part of LDR4 and LDR6 will revert to VGA land use zone (a total of c.3.25ha), and 0.5ha of LDR2 will revert to undeveloped existing residential. The VGA zonings, or Village Growth Areas, are intended to allow for the sustainable compact growth of small villages, providing opportunities for small scale cluster type housing, as well as for other uses

appropriate to the function, size and scale of the settlement. These potential development lands would be more than sufficient to accommodate the incremental and small scale development within Broadford and Cooraclare anticipated by the Development Plan, in the event it receives wastewater treatment services.

The facilitation of disproportionate growth for Broadford and Cooraclare is also inconsistent with NPO 18a to support proportionate growth.

1.5 Exceptional Circumstances for Access on to National Roads

Recommendation 12 of the Office's submission to the draft Plan required the planning authority to omit the exemption provided for under in section 11.2.9.3 of the draft Plan to allow consideration of access to individual dwellings off existing accesses to National Secondary Roads.

Recommendation 12 states as follows:

Having regard to the provisions of the Spatial Planning and National Roads Guidelines for Planning Authorities (2012) the planning authority is requested to omit the exemption provided for under in section 11.2.9.3 of the draft Plan to allow consideration of access to individual dwellings off existing accesses to National Secondary Roads.

The CE's Report (10th July 2022) recommended to omit the blanket exemption for one off housing access under s.11.2.9.3, but no amendment was included in this regard at the material alterations stage. Although the section 12(5)(aa) notice refers to the decision not to comply with the recommendation of the Office, no reasons are given for the decision of elected members (agreed by Council Resolution) not to comply with the recommendation of the Office. The section 31AM(6) notice also did not address this recommendation of the Office. Therefore no reasons for not complying with Recommendation 12 have been given by either the Chief Executive or the elected members.

Section 11.2.9.3 of the Development Plan, as made, states:

Existing Accesses onto National Secondary Roads

It is an objective of the Council to restrict the creation of additional access points for new developments onto national roads to which speed limits of greater than 50kmh apply. A less restrictive approach will be applied to existing accesses onto national secondary roads where a balance needs to be struck between the important transport function of such roads and the social and economic development of the areas through which they pass.

The Council will give consideration to individual rural house developments utilising existing accesses onto national secondary roads in the following circumstances:

- There are no alternative sites available with access off a regional or local road;*
- The development will not undermine the strategic transport function of the national road network, will not result in the premature obsolescence of the network, and where applicable will not compromise the carrying capacity at adjacent road junctions;*
- The location of the proposed access is at a point on the National Road Network where there are no plans for future upgrades;*
- All safety issues and considerations are adequately addressed in accordance with the NRA's Design Manual for Roads and Bridges;*
- The development fully complies with the objectives set out in Chapter 4 of this Plan – Urban and Rural Settlement Strategy;*
- There is a genuine need for the dwelling proposed; and*
- The proposed development would not create an undesirable precedent for further development in the area.*

Section 2.5 (Required Development Plan Policy on Access to National Roads) of the National Roads Guidelines requires all development plans to implement the policy measure *'to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 kmh apply ... for all categories of development'*. (Emphasis added)

A key message of the National Roads Guidelines states that *‘Development plans must include policies which seek to maintain and protect the safety, capacity and efficiency of national roads and associated junctions, avoiding the creation of new accesses and the intensification of existing accesses to national roads where a speed limit greater than 50 kmh applies’*. This is supported by the National Strategic Objective (NSO) to maintain the strategic capacity and safety of the national roads network, with particular regard to inter-urban roads as part of enhanced regional accessibility.

Section 2.6 (Exceptional Circumstances) of the National Roads Guidelines provides for exceptional circumstances to the section 2.5 requirements, where *‘planning authorities may identify stretches of national roads where a less restrictive approach may be applied’* as part of the plan review process *‘having consulted and taken on board the advice of’* TII and subject to specific criteria. Exceptional circumstances may be applied:

- (1) *in the case of development of national and regional strategic importance which by their nature are most appropriately located outside of urban areas and where the locations concerned have specific characteristics that make them particularly suitable for the developments proposed; and*
- (2) *to certain lightly-trafficked sections of national secondary routes serving structurally weak and remote communities where a balance has to be struck between the important transport functions of such road and supporting the social and economic development the areas.*

In its submission on the draft Plan (9th March 2022) TII stated that the provision under s.11.2.9.3 was at variance with the provisions of official policy (under section 2.5) and conflicts with objectives to safeguard capacity and road safety on the national road network. TII recommended that:

The ‘exceptional circumstances’ included in Section 11.2.9.3 of the Draft Plan, ‘Existing Accesses onto National Secondary Roads’, are at variance with the provisions of official policy and conflict with objectives to safeguard capacity and road safety on the national road network. TII requests removal of the foregoing provisions from the Draft Plan prior to adoption to ensure adherence

to the provisions of the Section 28 Ministerial Guidelines ‘Spatial Planning and National Roads Guidelines for Planning Authorities’ (DoECLG, 2012).

In its submission on the Material Alterations to the draft Plan (20th December 2022), TII noted the Chief Executive’s recommendation was to remove these but that it does not appear to have been included as a proposed material amendment to the draft Plan.

TII stated, in relation to exceptional circumstance, existing accesses onto national secondary roads, that it

remains of the position that such provisions are in conflict with national and regional policy objectives to safeguard capacity and road safety on the national road network, including the TEN – T Regulation (EU) No 1315/2013, the National Planning Framework, the National Development Plan, and the National Investment Framework for Transport in Ireland as well as the requirements of Regional Policy Objectives: RPO 140, RPO 153, RPO 155, RPO 156 and RPO 167 and conflict with the provisions of the Section 28 Ministerial Guidelines ‘Spatial Planning and National Roads Guidelines for Planning Authorities’ (DoECLG, 2012).

In this regard the Office notes that TII highlight several RPOs that support the Minister’s policy approach to maintaining the capacity and safety of national roads under the SPNRGs. In particular:

- RPO 140 *International Connectivity* seeks to sustainably maintain, support and enhance the Region’s International Connectivity Transport Network including the Trans European Transport Network (TEN-T), the strategic capacity and safety of the national road network and the role of our strategic road and sustainable transport networks; and under

In its submission on the material alterations, TII recommended:

Exceptional Circumstances provisions included in Section 11.2.9.3 of the Draft Plan relating to Existing Accesses onto National Secondary Roads conflict with official policy provisions and were recommended to be removed from the Plan in the Chief Executives Report.

TII maintains the position that such provisions should be omitted from the Plan to ensure adherence to the provisions of the Section 28 Ministerial Guidelines 'Spatial Planning and National Roads Guidelines for Planning Authorities' (DoECLG, 2012). In addition, TII considers such provisions conflict with official policy, including Regional Policy Objectives RPO 140 and RPO 153 of the Southern Region Assembly Regional Spatial and Economic Strategy.

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 exceptional circumstances provisions for 'Existing Accesses onto National Roads' under section 11.2.9.3 has been retained in the Plan nor how this approach is consistent with an overall strategy for the proper planning and sustainable development of the area.

The statement under section 28(1A)(b) attached to the Development Plan as made 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 contained in the National Roads Guidelines because of the characteristics of the area, in addition to the reasons for the forming of that opinion, contrary to section 28(1B)(b). There is a positive obligation on the planning authority to do so in these circumstances and the planning authority has failed to do so.

Further, the inclusion of exceptional circumstances provisions for 'Existing Accesses onto National Roads' under section 11.2.9.3 does not support the achievement of the national strategic outcomes of the NPF, specifically the National Strategic Objective to maintain *'the strategic capacity and safety of the national roads network'*, nor does it support the regional policy objectives of the RSES, specifically RPO 140 'so support and enhance ... the strategic capacity and safety of the national road network'.

Therefore, the making of the Plan with exceptional circumstances provisions for 'Existing Accesses onto National Roads' under section 11.2.9.3 fails to have adequate regard to the National Roads Guidelines, and fails to support the achievement of the national strategic outcomes of the NPF to maintain *'the strategic capacity and safety of the national roads network'*, and is inconsistent with the Regional Policy Objectives of the RSES, specifically, RPO 140 *'to support and*

enhance ... the strategic capacity and safety of the national road network' and, in the Office's opinion, the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.

1.6 Flood Risk Management

Ballynacally VGA3

MA Recommendation 9 required the planning authority to make the Plan without several proposed material amendments to land use zoning objectives of the draft Plan which would accommodate vulnerable or highly vulnerable uses within flood risk zones A or B, respectively.

MA Recommendation 9 states as follows:

Having regard to NPO 57, RPO 3.10, and to the provisions of the Planning System and Flood Risk Management Guidelines for Planning Authorities (2009), the planning authority is required to make the Plan (Volumes 3a, 3b and 3d) without the following material amendments:

- *Ennis p.26 ENT4 – from Agriculture to Enterprise;*
- *Ennis p.65 R12 – from Strategic Reserve to Residential*
- *Ennis p.74 LDR12 – from Open Space to LDR*
- *Ennis p.71 Existing Residential (ER1) – from Open Space to Existing Residential*
- *Ennis p.76 UT1 – from Open Space to Utilities*
- *Ennis p.82 COM5 – from Agriculture to Commercial*
- *Ennis p.96 Existing Residential – from Open Space*
- *Parteen p.53 Existing Residential – from Open Space*
- *Ballynacally p.174 VGA3 – from Agriculture; and*
- *All text changes associated with the preceding named amendments.*

The CE's Report (30th January 2023), in responding to Recommendation 9, recommended the Plan be made without the subject zoning amendments, with the

exception of MA R12 (Ennis p.65) at Gaurus/Ballymacahill. As noted above, the Office accepted the reasons given by the Chief Executive in relation to this zoning amendment.

The elected members also made the Plan with Ennis LDR12, Ennis COM5, and Ballynacally VGA3 contrary to the recommendation of the Chief Executive. The Office accepted the reasons given by the elected members for making the Plan with Ennis LDR12 and Ennis COM5.

In relation to Ballynacally VGA3, the reasons of the elected members are as follow:

- *The site has never flooded and is not prone to flooding given the significant difference in levels between the watercourse and these lands.*

The Strategic Flood Risk Assessment (SFRA) for the Material Alterations to the draft Plan states that the settlement of Ballynacally is within flood zone A and B. The flood risk zoning map on page 132 of the SFRA shows that the majority of land use zoning objective VGA3, an undeveloped greenfield site, is within flood risk zones A and B.

The Office notes that the plan-making justification tests carried out for sites in Ballynacally (pages 132-135) do not include VGA3.

NPO 57 seeks to enhance water resource management by ensuring flood risk management informs place-making by avoiding inappropriate development in all areas at risk of flooding in accordance with the Flood Guidelines.

RPO 116 requires that consideration must be given to future appropriate land-use policies in accordance with the requirements of the Flood Guidelines².

The Flood Guidelines 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. The key message of the Flood Guidelines is to avoid development in areas at risk of flooding and to adopt a sequential approach to flood risk management.

² MA Recommendation 9 contained an incorrect reference to RPO 3.10 instead of RPO 116. RPO 3.10 does not exist in the RSES for the Southern Regional Assembly.

The Flood Guidelines also provide that where a planning authority is considering the future development of areas at a high or moderate risk of flooding, it 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.

As noted, above, no justification test has been carried out in respect of this site. The land use zoning objective would facilitate uses that are vulnerable to flood risk and uses that are highly vulnerable to flood risk. The making of the Plan with the subject land use zoning objective does not therefore have regard to the Flood Guidelines and is inconsistent with NPO 57 and RPO 116. In this respect, no or no adequate reasons have been provided to explain why the said Guidelines have not been followed.

Ennis LDR2

Recommendation 13 required the planning authority to, among others, carry out plan making justification tests for all land proposed to be zoned for development vulnerable to flooding within flood risk zone A/B, and to not zone land for vulnerable or highly vulnerable development within flood risk zone A or B, respectively.

Recommendation 13 Flood Risk Management states as follows:

Having regard to the detailed requirements of The Planning System and Flood Risk Management, Guidelines for Planning Authorities (DEHLG and OPW 2009), as amended by Circular PL 2/2014, the planning authority is required to:

(i) revisit the Strategic Flood Risk Assessment and carry out the plan-making justification test for all lands proposed to be zoned to accommodate development vulnerable to flooding within areas at a high or moderate risk of flooding in particular the following:

- Ennis - Op6, Op15, Op18 and TOU1*
- Bunratty - R1*
- Killaloe - Residential and Tourism*
- O'Callaghan's Mills - Existing Residential*
- Scarrif/Tuamgraney - Community Zoned Lands*

- *Ballyvaughan - Commercial, Existing Residential*
- *Ballynacallay - Commercial, Existing Residential*
- *Belharbour - Existing Residential, Mixed Use*
- *Carrigaholt - Existing Residential, Mixed Use*
- *Cooraclare - Existing Residential, Mixed Use*
- *Corofin - New Residential (R3), Existing Residential, Utilities*
- *Cranny - Enterprise*
- *Creegh - Existing Residential*
- *Doolin - Tourism, Mixed Use*
- *Doonbeg - Existing Residential*
- *Inagh - Commercial, Community, Mixed Use*
- *Inch - Existing Residential*
- *Killadysert - Existing Residential, Community*
- *Kilmihil - Existing Residential, Community*
- *Knock - Existing Residential, Community*
- *Lisdoonvarna - Existing Residential, Tourism, Community*
- *Lissycasey - Commercial, Existing Residential*
- *Moy - Residential*
- *Moyasta - Existing Residential, Tourism*
- *Querrin - Existing Residential*
- *Quilty - Existing Residential*
- *Spanish Point - Tourism*

(ii) *consequent to the above, to not zone for highly vulnerable (Flood Zones A and B) or less vulnerable (Flood Zone A) development, any lands that have not passed the Justification Test;*

(iii) include in the Plan all non-structural and structural (if applicable) flood risk management measures recommended under point 3 of the Justification Test as required to prevent flood risk to vulnerable uses; and

(iv) overlay the flood risk zone mapping on the land use zoning objective maps to facilitate the implementation of guidelines, including through the development management process.

The planning authority is advised to consult with the OPW in respect of the above

The Office considers the Development Plan, as made, does not comply with Recommendation 13 in respect of Ennis LDR2, which zoned land partially within flood zone A/B for low density residential development (a highly vulnerable use).

The LRD zoning objective had been included in the draft Plan but had failed the Justification Test carried out as part of the SFRA. Recommendation 13 of the Office's submission to the draft Plan, had required the planning authority not to zone lands that have not passed the Justification Test for highly vulnerable uses.

The OPW, in its submission to the draft Plan dated 21st March 2022, also stated that the LDR2 had failed the Justification Test and that the zoning objective should be substituted for a zoning appropriate to the level of risk as recommended in the Flood Guidelines.

Consistent with the recommendation of the Chief Executive, MA Ennis LDR (Open Space / OS1, p.111) amended the zoning objective for the northern portion of the lands within flood zone A/B from LDR to Open Space (OS1). That area of the land outside the flood zone remained zoned LRD.

The Office considered this to be an appropriate response to Recommendation 13 as the Open Space zoning objective does not accommodate vulnerable or highly vulnerable uses.

The elected members made the Plan without this material amendment (motion E.7) resulting in lands at risk of flooding being zoned for highly vulnerable residential development.

The Office considers therefore that the Development Plan has been made inconsistent with a recommendation of the Office.

The reasons given by the elected members are as follows:

- *Existing access road, residential, commercial offices and carparking on site currently above 3.2m OD have been historically free from flooding bar a section to the North East, below 3.2m OD, of the site adjoining the railway bridge. The subject lands were [out] of the reach of the constructed OPW Lower Fergus Flood Scheme but did not have to be flood protected.*
- *A detailed site-specific flood Risk Assessment will be required to support a planning application for these lands to ensure that they meet the requirements of the Flood Risk Planning Guidelines (2009) for the Development Application Stage. Development should not be permitted on the minor portion of lands below CFRAM study ground levels contour of 3.2m OD.*

The flood risk area is located at the north east section of LDR2, and the elected members acknowledge that the land has been subject to flooding. It is not a relevant consideration under the Flood Guidelines that a site falls within a flood relief scheme as such schemes are not failsafe and residual flood risk remains. Notwithstanding, the SFRA and plan making Justification Test states that the site does not benefit from defences.

In addition, the requirement for a site specific flood risk assessment for certain sites under the Flood Guidelines does not negate the requirement to have regard to the provisions of the Flood Guidelines concerning development plan preparation.

The LDR land use zoning objective would accommodate uses and developments that are highly vulnerable to flood risk. It is a requirement under the Flood Guidelines for such lands to pass the plan-making Justification Test before being considered for zoning for such uses under the Plan. In this case, the subject lands failed the plan making Justification Test.

The zoning objective does not therefore have regard to the Flood Guidelines and is inconsistent with NPO57 and RPO 116. In this respect, no or no adequate reasons have been provided to explain why the said Guidelines have not been followed.

2. Opinion of the Office and Reasons

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

Further, the Office does not accept that the reasons given for not implementing the Office's recommendations in the notice letters dated (1st December 2022 and 16th March 2023) 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) of the Act, the Office has a statutory duty to evaluate and assess planning authority development plans.

The following provisions of the Act are relevant in terms of the evaluation and assessment of planning 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 letters from the planning authority issued on 1st December 2022 under section 12(5)(aa) and on 16th March 2023 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).

As set out below, the Development Plan as made is not consistent with the policy objectives of the NPF and of the RSES; and fails to have regard to certain Ministerial Guidelines issued under section 28 of the Act, in relation to sustainable residential

development, access to national roads and flood risk management, which matters individually and cumulatively represent a failure to set out an overall strategy for the proper planning and sustainable development of the functional area of the Council.

The Development Plan as made is inconsistent with the national and regional policy in the NPF and RSES, namely the National Strategic Outcomes for compact growth, enhanced regional accessibility and sustainable management of water and other water resources, NPO 3 and RPO 35 (compact growth), NPO 6 (regeneration), and NPO 18a (proportionate growth), NPO 72a-c (tiered approach to zoning), RPO 140 (maintenance of the strategic capacity and safety of national roads), and NPO 57 and RPO 116 (flood risk management).

The adopted Development Plan includes zoning objectives and material amendments to the draft Plan which zone additional residential land in excess of what is required for Clare County as set out in the core strategy. These zoning objectives and amendments are located in peripheral and/or non-sequential locations and would encourage a pattern of development in particular locations which is inconsistent with national and regional policy objectives promoting compact forms of development (NPO 3 and RPO 35) and inconsistent with national policy to promoting proportionate growth of settlements (NPO 18a), which include lands that are not serviced or serviceable within the plan period inconsistent with the requirement to implement a tiered approach to zoning (NPO 72a-c), and which fails to have regard to the policy and objective for a sequential approach to development in the Development Plans Guidelines (section 6.2.3) which guidelines issued under section 28 of the Act.

The adopted Development Plan includes policy provisions for exceptional circumstances for access on to national roads, which are not consistent with National Strategic Outcome of the NPF for enhanced regional accessibility, including the maintenance of the strategic capacity and safety of the national road network, are not consistent with regional policy objectives RPO 140 to maintain the strategic capacity and safety of the national road network and do not have regard to sections 2.5 and 2.6 of the Roads Guidelines which issued under section 28 of the Act.

The adopted Development Plan includes zoning objectives and material amendments to the draft Plan which zone land for uses within flood risk zone A/B

that are vulnerable and/or highly vulnerable to flood risk which lands have not passed the plan making Justification Test. These zoning objectives are inconsistent with national and regional policy objectives for flood risk management (NPO 57 and RPO 116) and fail to have regard to The Flood Guidelines issued under section 28 of the Act by not demonstrating a solid evidence base that proposed land use zoning objectives will satisfy the Justification Test.

Further, the statement under section 28(1A)(b) attached to the Development Plan as made 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 contained in the Development Plans Guidelines and/or in the National Roads Guidelines and/or in the Flood Guidelines because of the nature and characteristics of the area, in addition to failing to include the reasons for the forming of that opinion contrary to section 28(1B)(b).

Moreover, having considered the reasons given by the elected members as set out above, the Office remains of the view that provisions of the Development Plan as made are inconsistent with National Planning Objectives NPO 3, NPO6, NPO 18a, NPO 57 and NPO 72a-c, Regional Policy Objectives RPO 35, RPO 140, and RPO 116 and fails to have regard to the section 28 Development Plans Guidelines, the National Roads Guidelines and the Flood Guidelines and that the inclusion of such provisions, individually and cumulatively means the Development Plan as made fails to set out an overall strategy for the proper planning and development of the area.

The Development Plan as made therefore fails to set out an overall strategy for the proper planning and sustainable development of the area. The factors that the Office has taken into account in forming this opinion include:

- i. the peripheral, non-sequential location of residential zonings, largely or wholly outside of the CSO boundary;
- ii. the consequential areas of land to accommodate residential development significantly in excess of the target for specific settlements under the Core Strategy and inconsistent with the proportionate growth and regeneration of towns and villages;

- iii. the unavailability of an appropriate range of infrastructural services for certain lands that have been zoned residential;
- iv. the reliance upon inappropriate exceptional circumstances for access on to national roads;
- v. the zoning of lands for uses that are vulnerable and/or highly vulnerable to flood risk within flood risk zone A and / or B;
- vi. the policy and objective for the sequential approach when zoning lands for development (Section 6.2.3) in the Development Plans Guidelines; Section 2.5 (Required Development Plan Policy on Access to National Roads) and Section 2.6 (Exceptional Circumstance) in the National Roads Guidelines; and Section 4.23 in the Flood Risk Guidelines;
- vii. National Strategic Outcomes of the NPF for compact growth, enhanced regional accessibility and sustainable management of water and other environmental resources; and
- viii. National Policy Objectives 3, 6, 18a, 57 and 72c of the NPF and Regional Policy Objectives 35, 116, and 140 of the RSES which state:

NPO 3c

Deliver at least 30% of all new homes that are targeted in settlements other than the five Cities and their suburbs, within their existing built-up footprints

NPO 6

Regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area.

NPO 18a

To support the proportionate growth of and appropriately designed development in rural towns that will contribute to their regeneration and

renewal, including interventions in the public realm, the provision of amenities, the acquisition of sites and the provision of services.

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 72c

When considering zoning land for development purposes that cannot be serviced within the life of the relevant plan, such lands should not be zoned for development.

RPO 35(c) – Support for Compact Growth

Development Plans shall set out a transitional minimum requirement to deliver at least 30% of all new homes that are targeted in settlements other than the cities and suburbs, within their existing built-up footprints in accordance with NPF National Policy Objective 3c. This will be evidence based on availability and deliverability of lands within the existing built up footprints.

RPO 116

Consideration must be given to future appropriate land-use policies in accordance with the requirements of the Guidelines, “The Planning System and Flood Risk Management 2009”. Strategic and local flood risk assessments and plans should be prepared where appropriate, which should include consideration of potential impacts of flood risk arising from climate change. It is an objective to avoid inappropriate development in areas at risk of flooding and integrate sustainable water management solutions (such as SUDS, non-porous surfacing and green roofs) to create safe places in accordance with the Guidelines.

RPO 140(b) International Connectivity:

It is an objective to: b. Sustainably maintain the strategic capacity and safety of the national roads and rail network including planning for future capacity enhancements to ensure effective land transport connections to the major ports, airports and markets.

- ix. The Chief Executive’s reports on submissions on the draft Development Plan and Material Alterations to the draft Development Plan.
- x. The relevant requirements of section 10, section 12(18) and section 28 of the Act; and
- xi. The Office's statutory obligations under the Act.

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 as set out in the submissions of 28th March 2022 and 3rd January 2023 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, namely:

- a. Reinstate the following zoning objectives and associated text consistent with the recommendation of the chief executive's reports dated 10th July 2022 and 30th January 2023:
 - (i) Kilrush R5 – i.e. the subject lands revert to unzoned 'white lands' from Residential
 - (ii) Killaloe R6 - i.e. the subject lands revert to Tourism from Residential
 - (iii) Mullagh R3 - i.e. the subject lands revert to Agriculture from Residential
 - (iv) Liscannor R3 - i.e. the subject lands revert to Agriculture from Residential
 - (v) Broadford LDR1 - i.e. the subject lands revert to Agriculture from LDR
 - (vi) Broadford LDR2 - i.e. the subject lands revert to Agriculture from LDR
 - (vii) Broadford LDR4 - i.e. the subject lands revert to VGA from LDR
 - (viii) Broadford LDR5 - i.e. the subject lands revert to Mixed Use (MU) from LDR
 - (ix) Broadford LDR6 - i.e. the subject lands revert to VGA from LDR
 - (x) Broadford LDR7 - i.e. the subject lands revert to Existing Residential from LDR
 - (xi) Broadford LDR8 - i.e. the subject lands revert to Existing Residential from LDR
 - (xii) Broadford LDR9 - i.e. the subject lands revert to Existing Residential from LDR
 - (xiii) Cooraclare LDR1 - i.e. the subject lands revert to VGA from LDR
 - (xiv) Cooraclare LDR2 - i.e. the subject lands revert to Agriculture from LDR
 - (xv) Cooraclare LDR3 - i.e. the subject lands revert to VGA from LDR

- (xvi) Cooraclare LDR4 - i.e. the subject lands revert to Agriculture from LDR
- (xvii) Cooraclare LDR5 - i.e. the subject lands revert to Agriculture from LDR
- (xviii) Cooraclare LDR6 - i.e. the subject lands revert to VGA from LDR
- (xix) Ballynacally VGA3 - i.e. the subject lands revert to Agriculture and Mixed Use from VGA
- (xx) Ennis LDR2 - i.e. the subject lands revert to Open Space as per the material amendment of the draft Plan.

b. Delete subsection 'Existing Accesses onto National Secondary Roads' under 'Exceptional Circumstances' of section 11.2.9.3 of the Plan consistent with the recommendation of the chief executive's report dated 10th July 2022:

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

Yours sincerely,



Niall Cussen

Planning Regulator



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

Clare Development Plan 2023 -2029

“Development Plan” means the Clare Development Plan 2023 -2029

“Planning Authority” means Clare County Council

The Minister of State at the Department of Housing, Local Government and Heritage in exercise of the powers conferred on him by section 31 of the Planning and Development Act 2000 (No.30 of 2000) and the Housing, Local Government and Heritage (Delegation of Ministerial Functions) Order 2023 (S.I. No. 116 of 2023), and consequent to a recommendation made to him by the Office of the Planning Regulator, hereby directs as follows:

1. This Direction may be cited as the Planning and Development (Clare Development Plan 2023-2029) Direction 2023.
2. The Planning Authority is hereby directed to take the following steps with regard to the Development Plan:
 - a. Reinstate the following zoning objectives and associated text consistent with the recommendation of the Chief Executive’s Report dated 10th July 2022:
 - (i) Kilrush R5 – i.e. the subject lands revert to unzoned ‘white lands’ from Residential

- (ii) Killaloe R6 - i.e. the subject lands revert to Tourism from Residential
- (iii) Mullagh R3 - i.e. the subject lands revert to Agriculture from Residential
- (iv) Liscannor R3 - i.e. the subject lands revert to Agriculture from Residential
- (v) Broadford LDR1 - i.e. the subject lands revert to Agriculture from LDR
- (vi) Broadford LDR2 - i.e. the subject lands revert to Agriculture from LDR
- (vii) Broadford LDR4 - i.e. the subject lands revert to VGA from LDR
- (viii) Broadford LDR5 - i.e. the subject lands revert to Mixed Use (MU) from LDR
- (ix) Broadford LDR6 - i.e. the subject lands revert to VGA from LDR
- (x) Broadford LDR7 - i.e. the subject lands revert to Existing Residential from LDR
- (xi) Broadford LDR8 - i.e. the subject lands revert to Existing Residential from LDR
- (xii) Broadford LDR9 - i.e. the subject lands revert to Existing Residential from LDR
- (xiii) Cooraclare LDR1 - i.e. the subject lands revert to VGA from LDR
- (xiv) Cooraclare LDR2 - i.e. the subject lands revert to Agriculture from LDR
- (xv) Cooraclare LDR3 - i.e. the subject lands revert to VGA from LDR
- (xvi) Cooraclare LDR4 - i.e. the subject lands revert to Agriculture from LDR

- (xvii) Cooraclare LDR5 - i.e. the subject lands revert to Agriculture from LDR
 - (xviii) Cooraclare LDR6 - i.e. the subject lands revert to VGA from LDR
 - (xix) Ballynacally VGA3 - i.e. the subject lands revert to Agriculture and Mixed Use from VGA
 - (xx) Ennis LDR2 - i.e. the subject lands revert to Open Space as per the material amendment of the draft Plan.
- b. Delete subsection 'Existing Accesses onto National Secondary Roads' under 'Exceptional Circumstances' of section 11.2.9.3 of the Plan consistent with the recommendation of the chief executive's report dated 10th July 2022:

STATEMENT OF REASONS

- I. The Development Plan as made includes material amendments to the draft Plan which zone additional residential land in excess of what is required for Clare County as set out in the Core Strategy. These zoning objectives and amendments are located in peripheral and/or non-sequential locations and would encourage a pattern of development in particular locations which is inconsistent with national and regional policy objectives promoting compact forms of development (NPO 3 and RPO 35, which include lands that are not serviced or serviceable within the plan period inconsistent with the requirement to implement a tiered approach to zoning (NPO 72a-c), and inconsistent with national policy to promoting proportionate growth of settlements (NPO 18a), and fails to have regard to the policy and objective for a sequential approach to development under section 6.2.3 of the *Development Plans, Guidelines for Planning Authorities* (2022) issued under section 28 of the Act.

- II. The Development Plan as made includes policy provisions for exceptional circumstances for access on to national roads, which are not consistent with the National Strategic Outcome of the NPF for enhanced regional accessibility, including the maintenance of the strategic capacity and safety of the national road network, are not consistent with regional policy objectives RPO 140 to maintain the strategic capacity and safety of the national road network, and do not have regard to section 2.5 and section 2.6 of the *Spatial Planning and National Roads Guidelines for Planning Authorities* (2012) issued under section 28 of the Act.
- III. The Development Plan as made includes zoning objectives and material amendments to the draft Plan which zone land for uses within flood risk zone A/B that are vulnerable and/or highly vulnerable to flood risk which lands have not passed the plan making Justification Test. These zoning objectives are inconsistent with national and regional policy objectives for flood risk management (NPO 57 and RPO 116) and fail to have regard to *The Planning System and Flood Risk Management Guidelines for Planning Authorities* (2009) issued under section 28 of the Act by not demonstrating on a solid evidence base that proposed land use zoning objectives will satisfy the Justification Test.
- IV. Further, the statement under section 28(1A)(b) attached to the Development Plan as made 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 contained in the *Development Plans, Guidelines for Planning Authorities* (2022), and/or in the *Spatial Planning and National Roads Guidelines for Planning Authorities* (2012) and/or in *The Planning System and Flood Risk Management Guidelines for Planning Authorities* (2009) because of the nature and characteristics of the area, in addition to failing to include the reasons for the forming of that opinion contrary to section 28(1B)(b).

- VI 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 of the Act.
- VII In light of the matters set out at I-VI above, the Minister is of the opinion that the Development Plan as made fails to set out an overall strategy for the proper planning and sustainable development of the area.
- VIII In light of the matters set out at I to VI, above, the Development Plan is not in compliance with the requirements of the Act.

GIVEN under my hand,

Minister of State with responsibility for Local Government
and Planning

day of Month, year.

Appendices to s.31AM(8) Notice Letter

Appendix 1

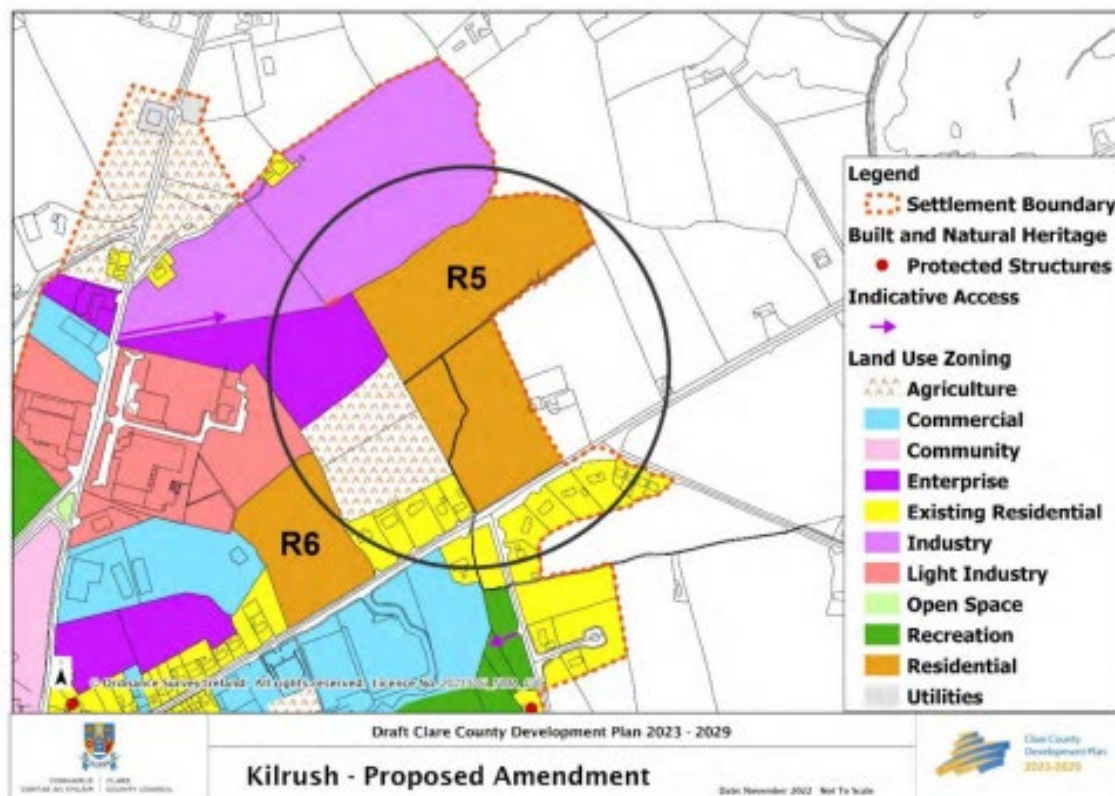
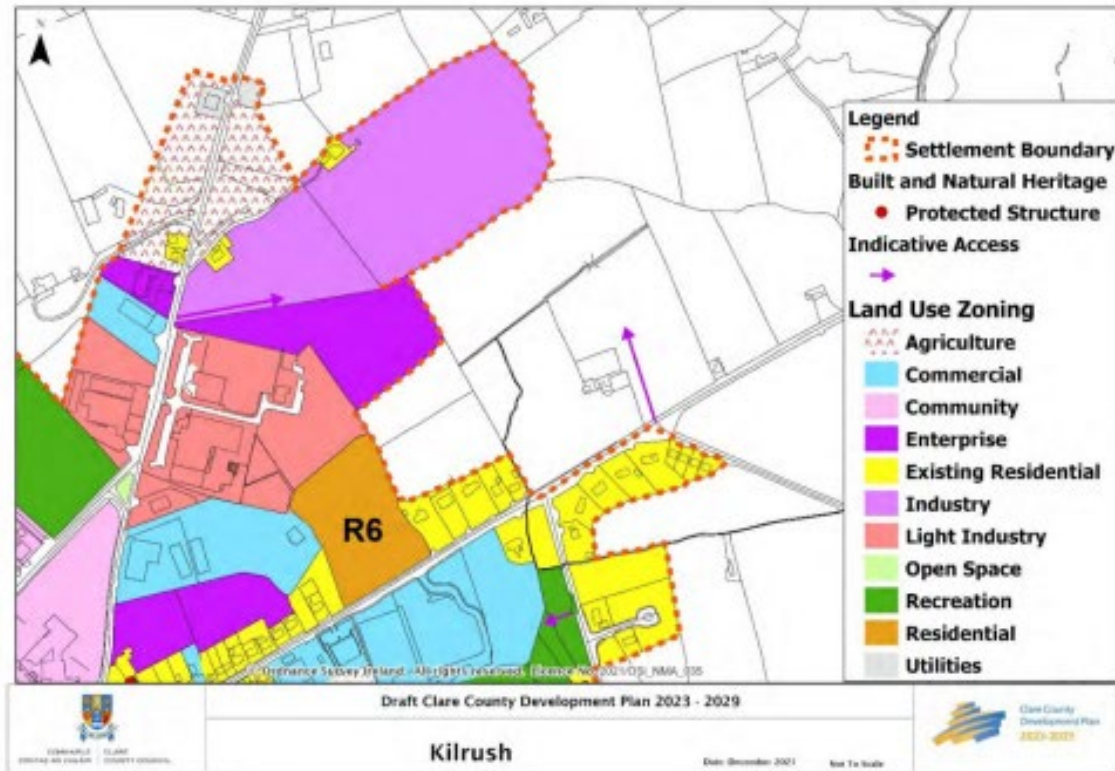
- Excerpts of land use zoning maps from draft Plan and from MAs as contained in material alterations to the draft Plan. Note: NTS
- Aerial photographs of sites subject of the draft Direction. Note: NTS.

Appendix 2

- Copy of email from Uisce Éireann, referred to in the Notice Letter.

Appendix A

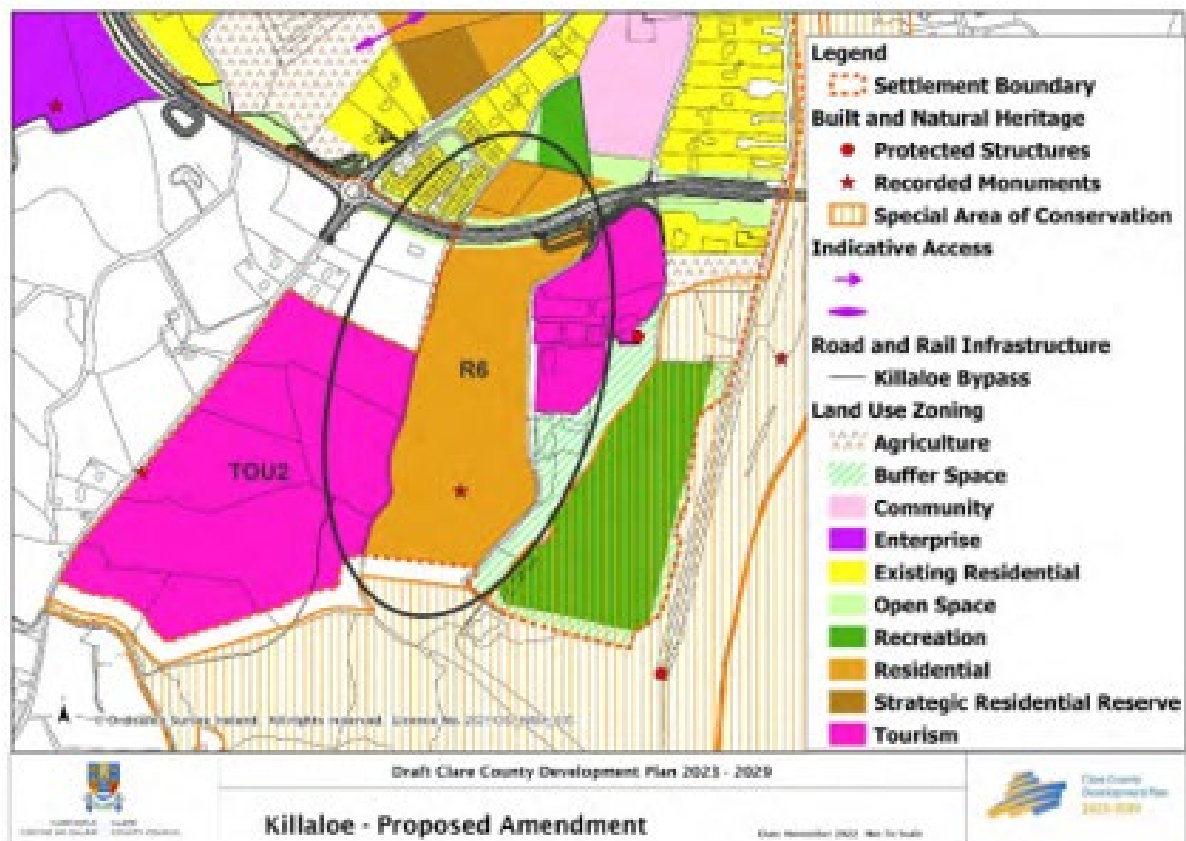
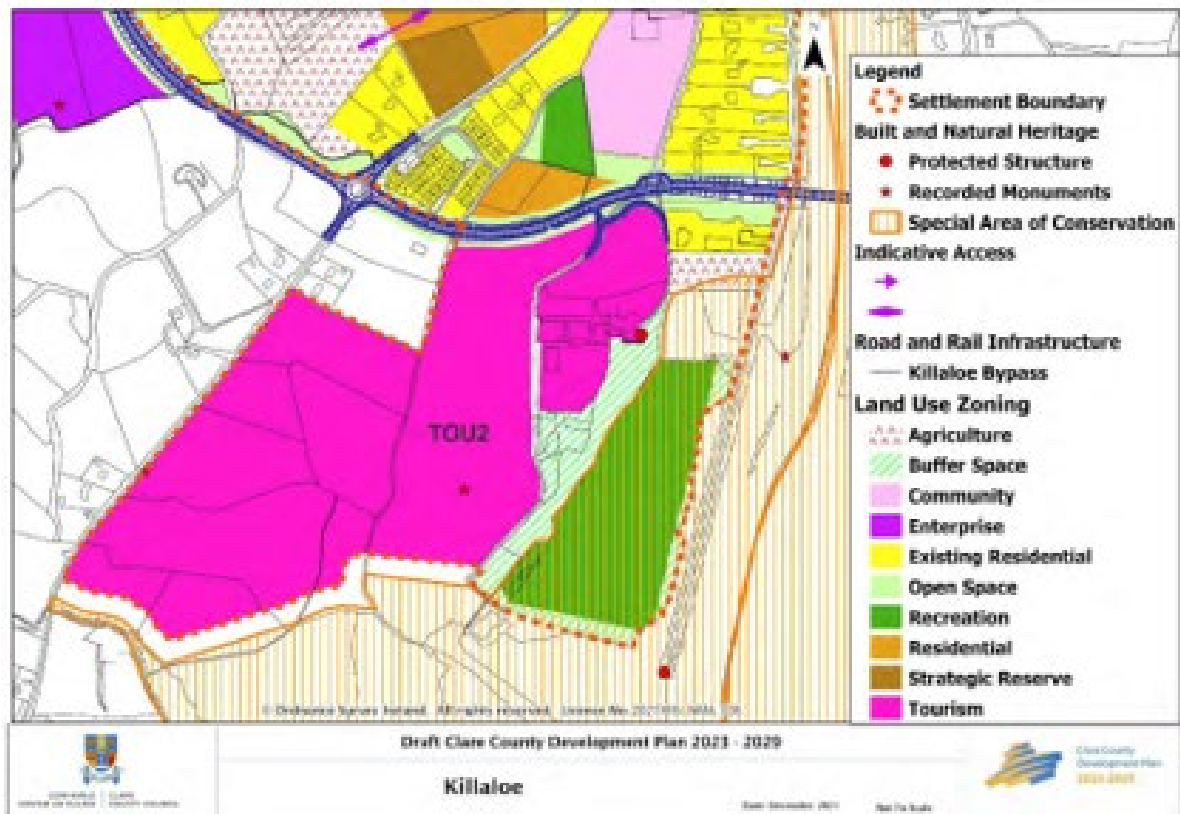
MA Kilrush R5 – p.50 Vol. 3d West Clare MD amendments



MA Kilrush R5 - Approximate extent and location of amendment



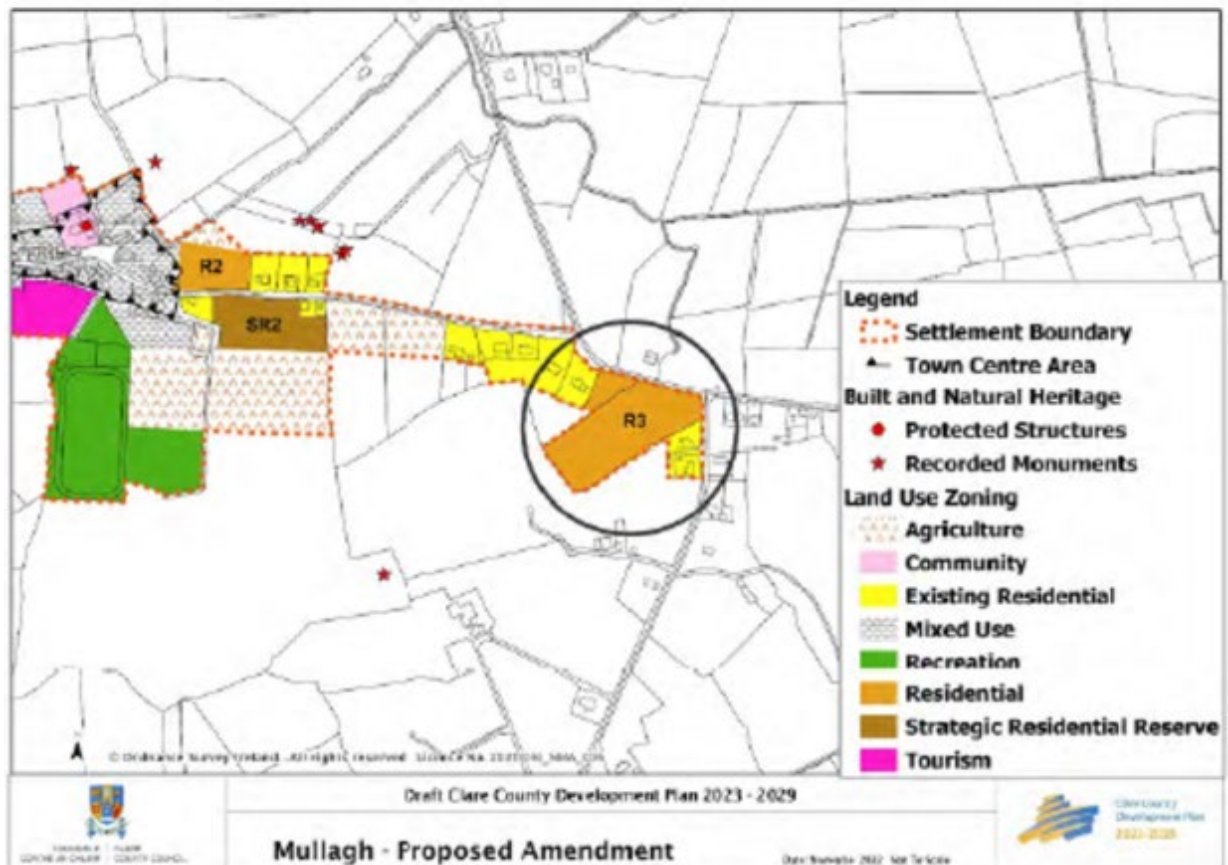
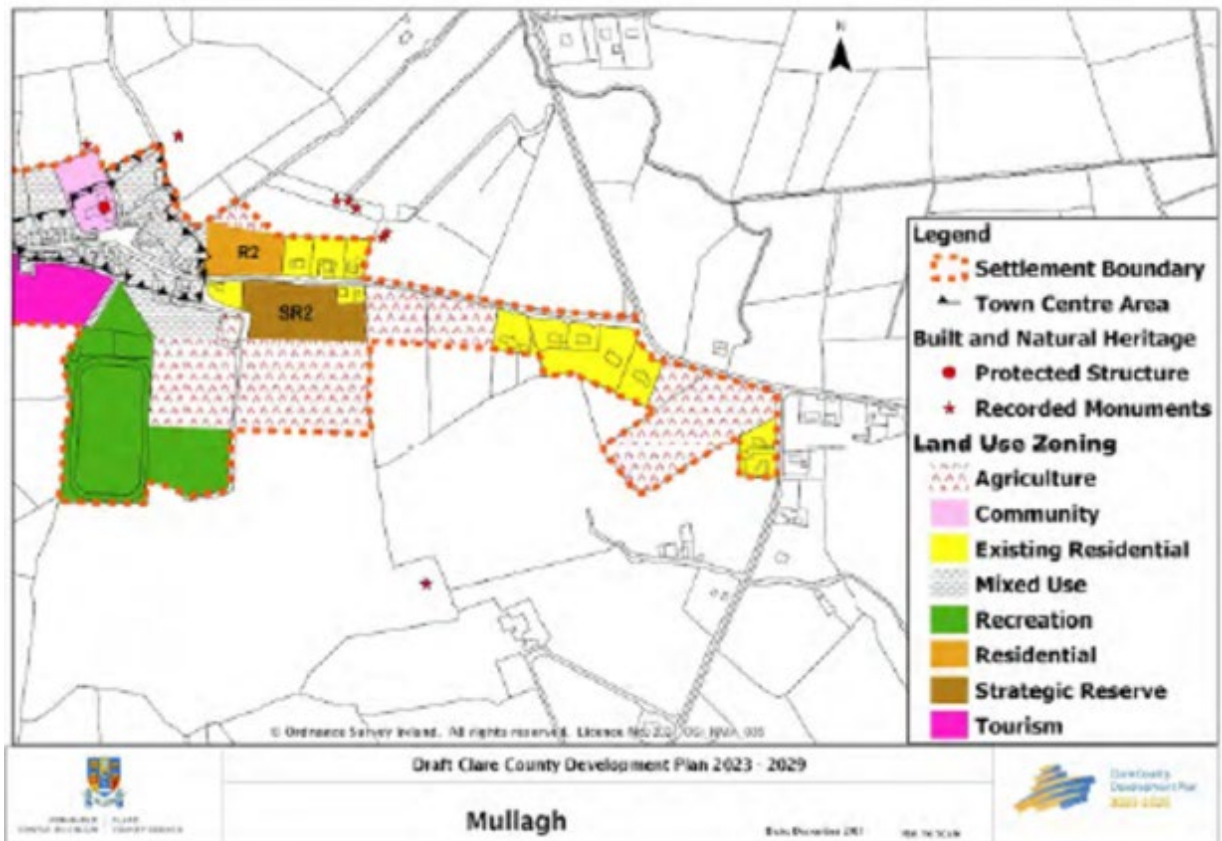
Killaloe R6 – p.35 Vol.3c Killaloe MD amendments



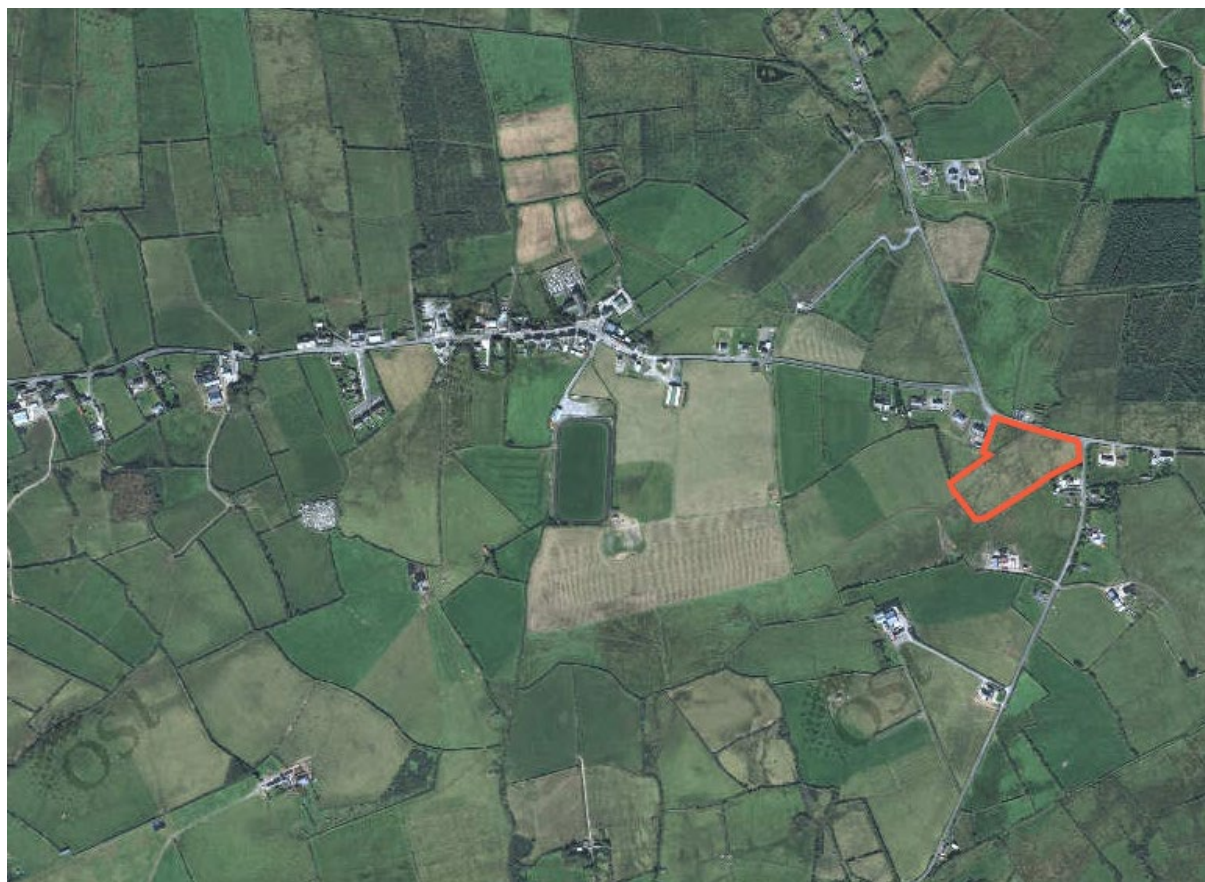
Killaloe R6 - Approximate extent and location of amendment



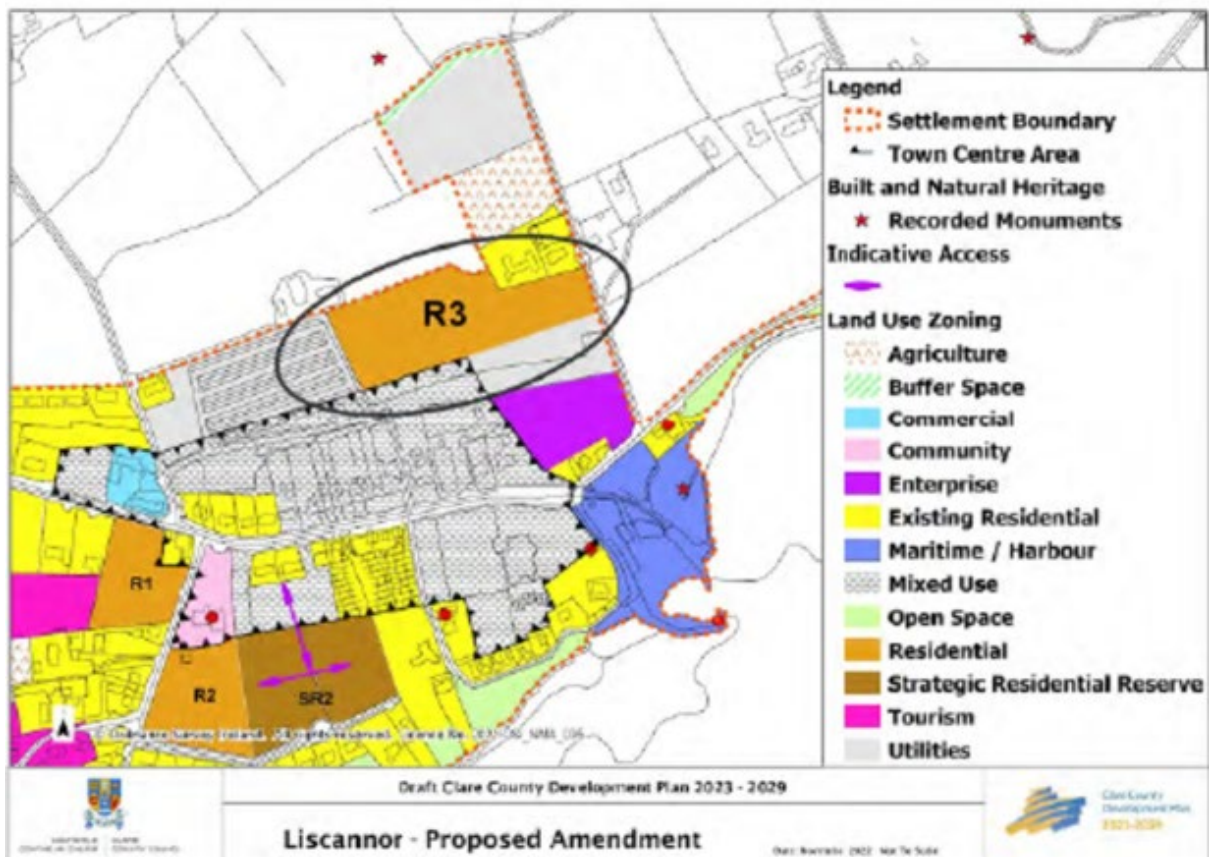
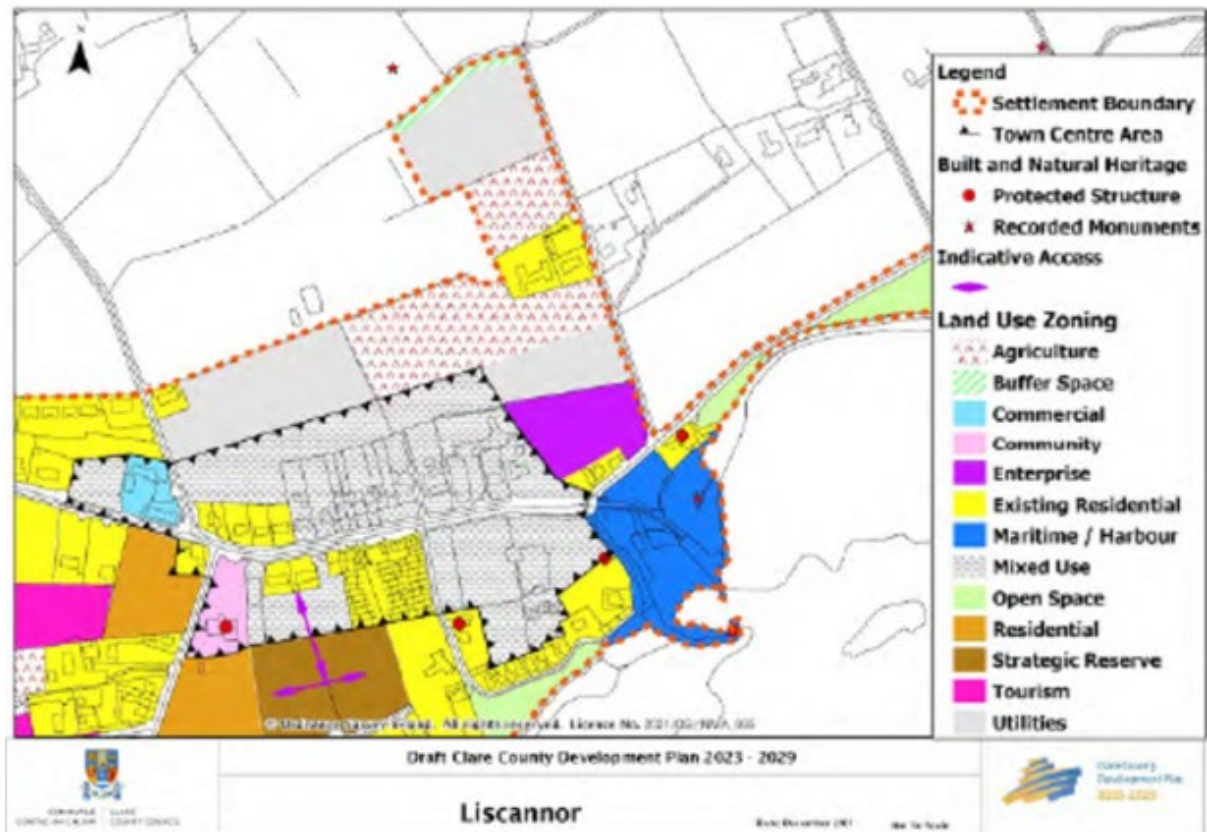
Mullagh R3 – p.128 Vol.3d West Clare MD amendments



Mullagh R3 - Approximate extent and location of amendment



Liscannor R3 – p.140 Vol.3d West Clare amendments

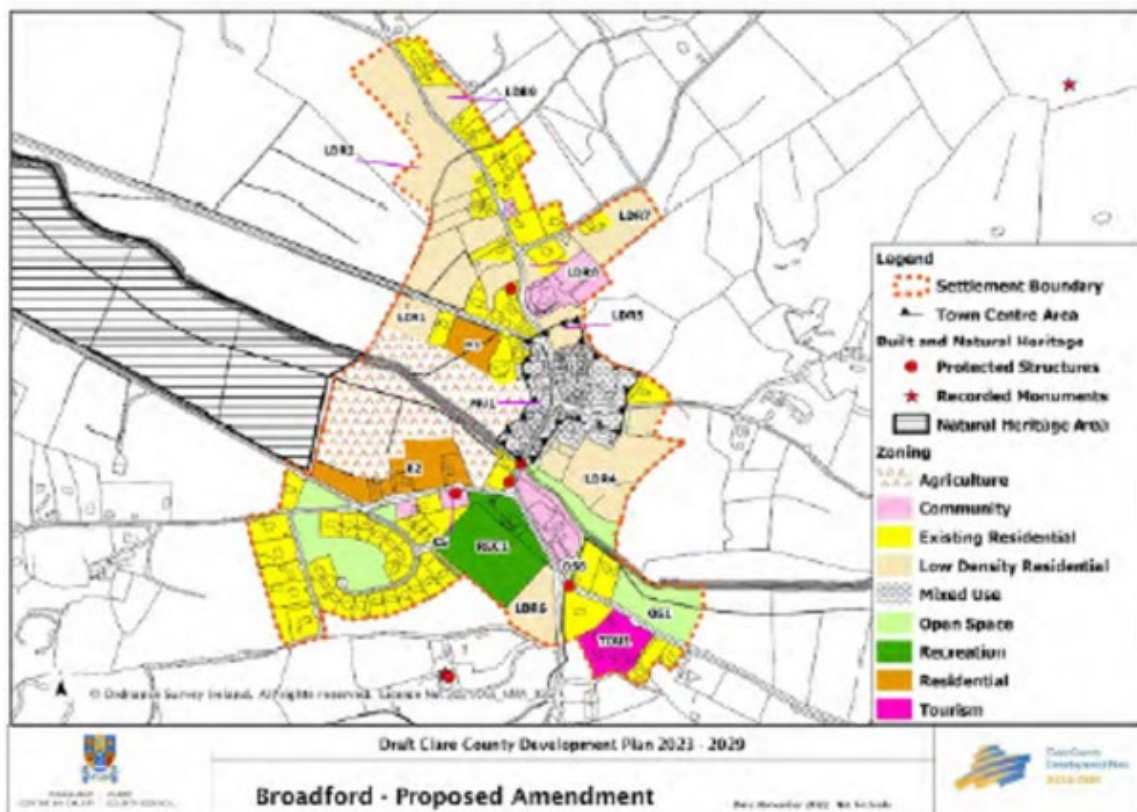
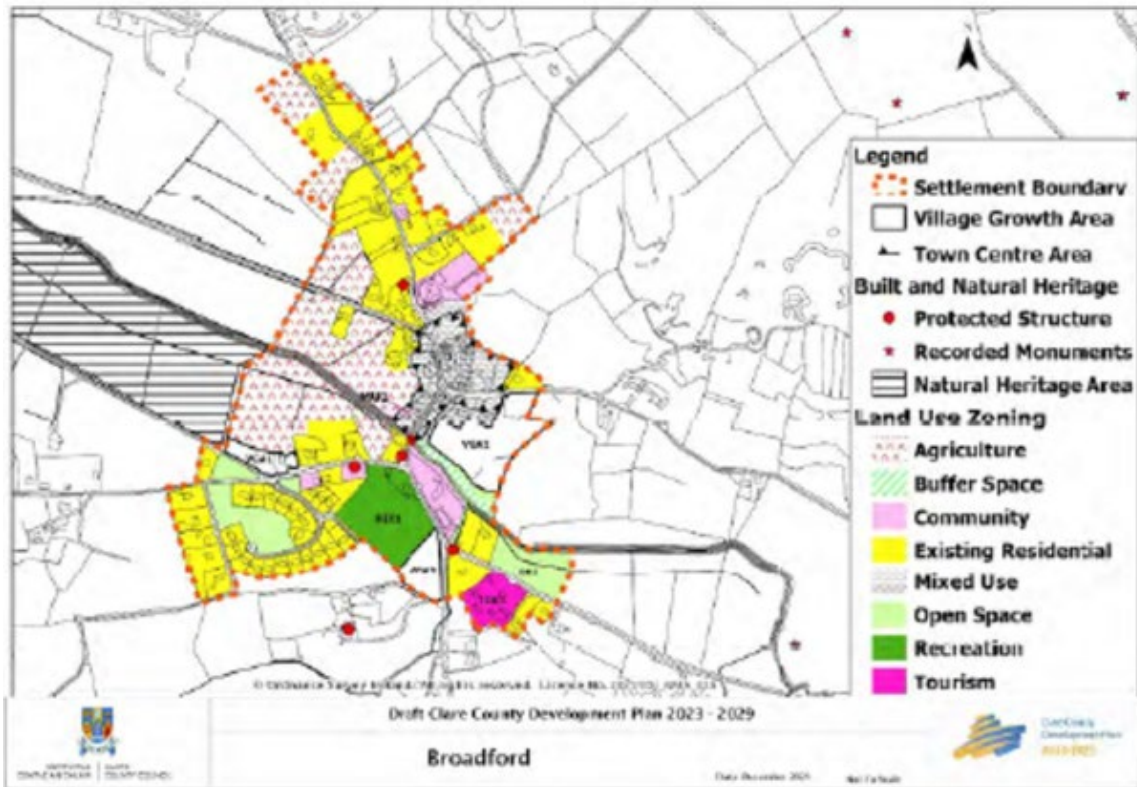


Liscannor R3 - Approximate extent and location of amendment

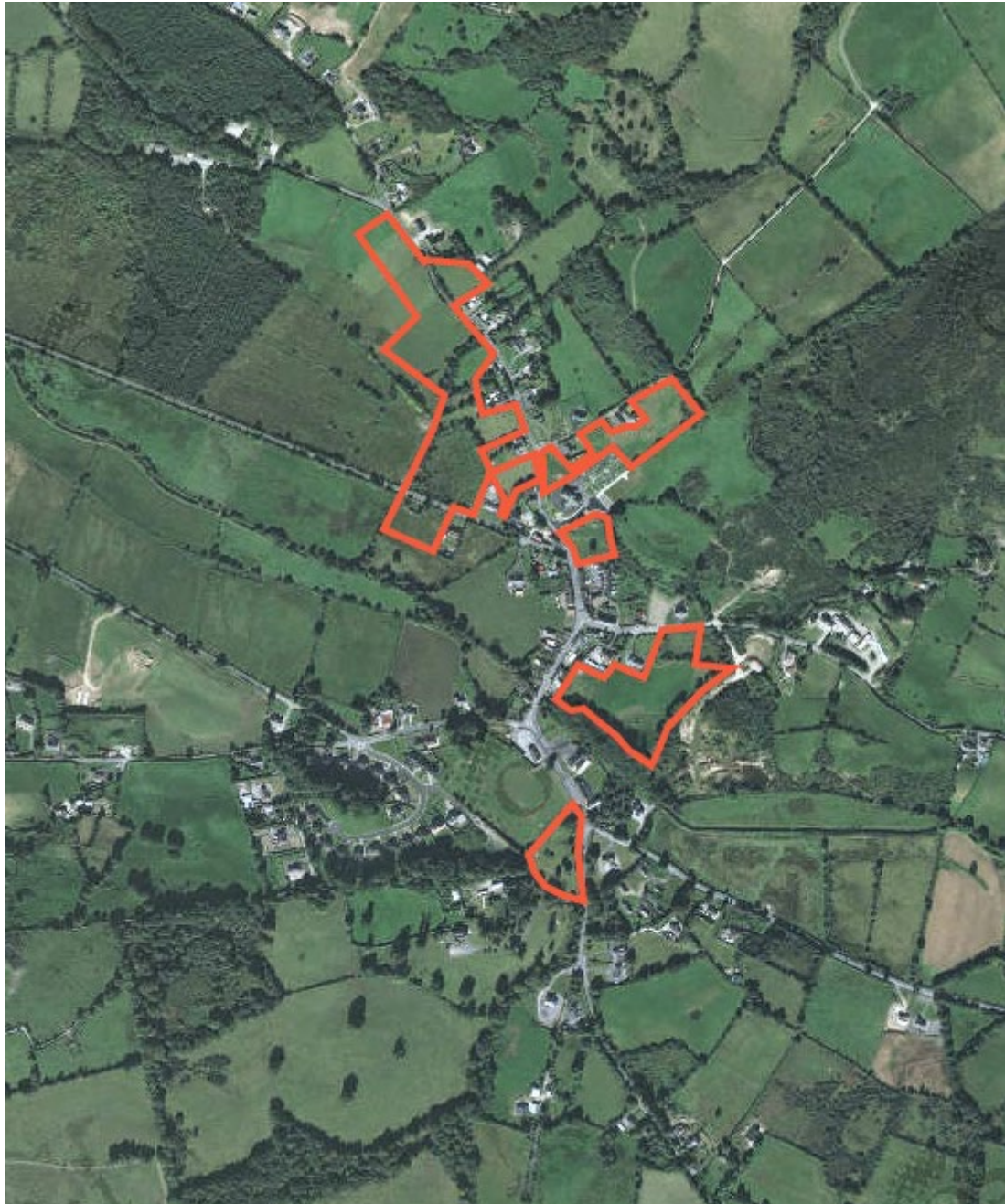


Broadford LDR1, LDR2, LDR4, LDR5, LDR6, LDR7, LDR8 and LDR9 – p.93

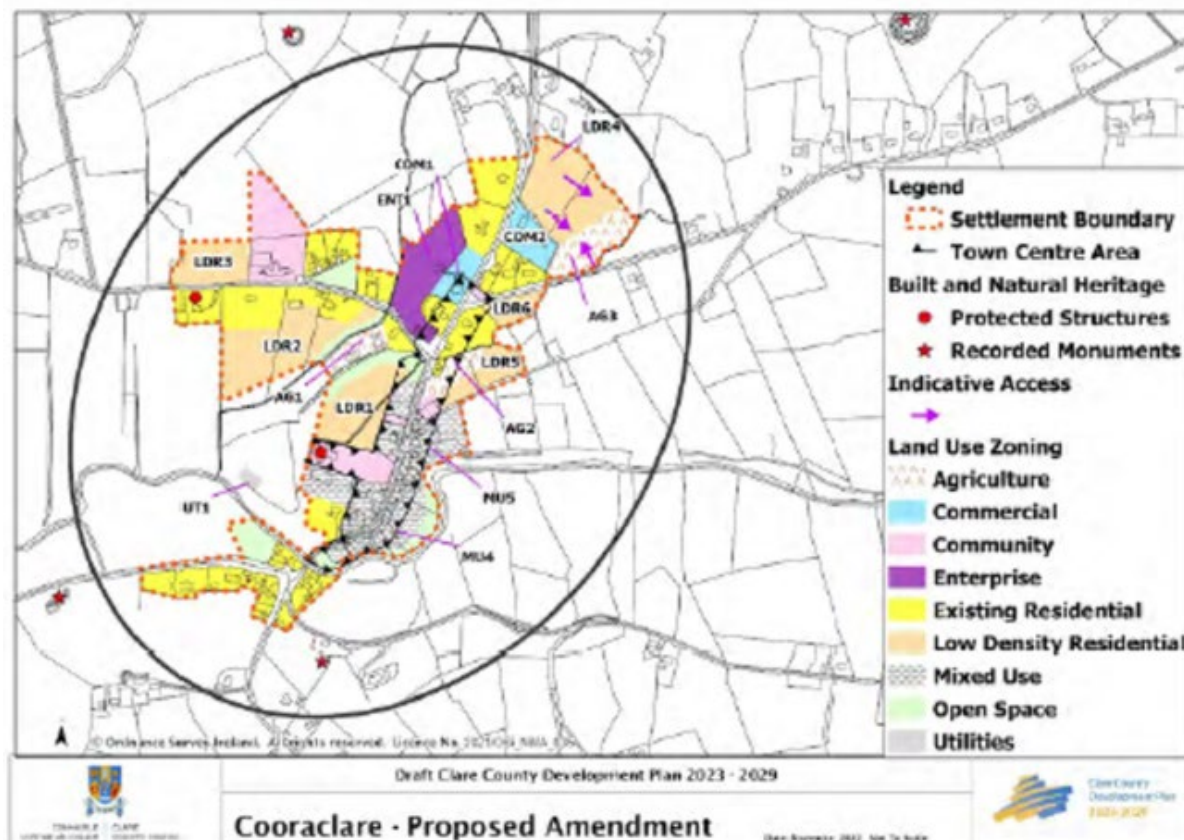
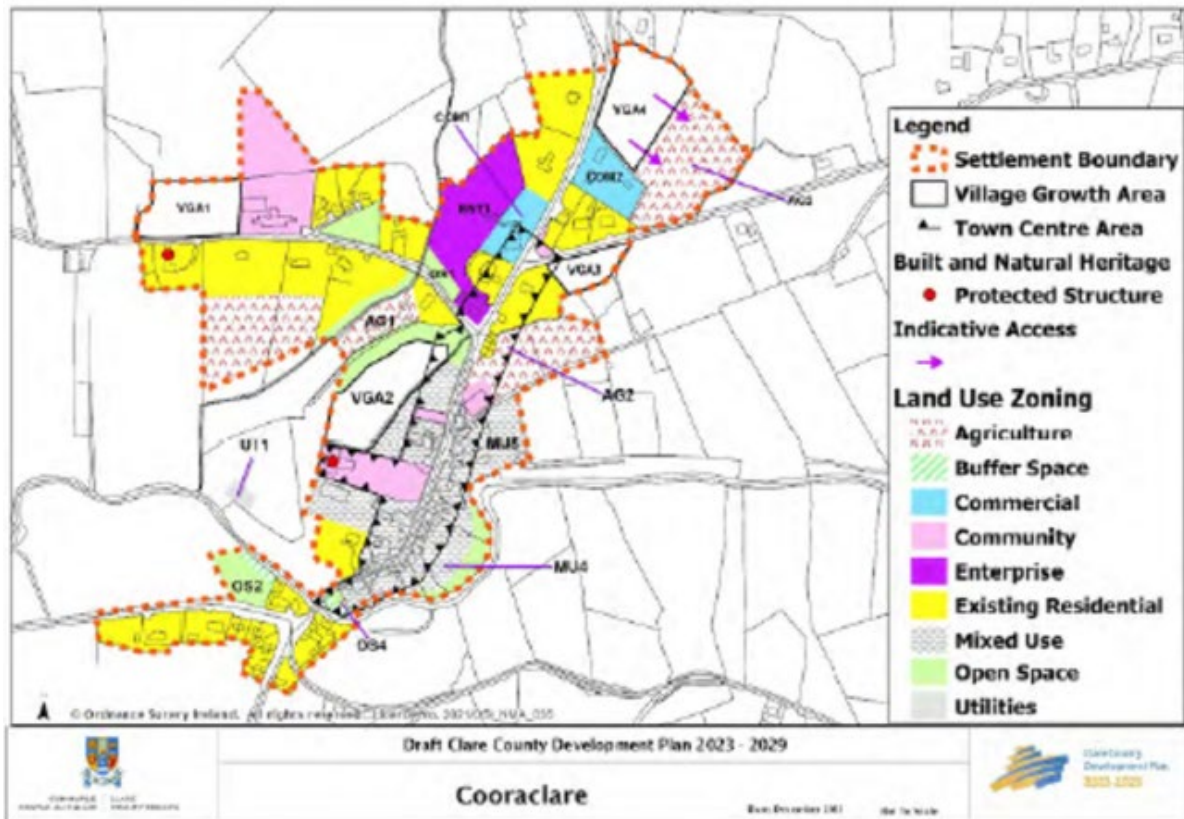
Vol.3c Killaloe MD amendments



Broadford LDR1, LDR2, LDR4, LDR5, LDR6, LDR7, LDR8 and LDR9 Broadford
– Approximate extent and location of amendments



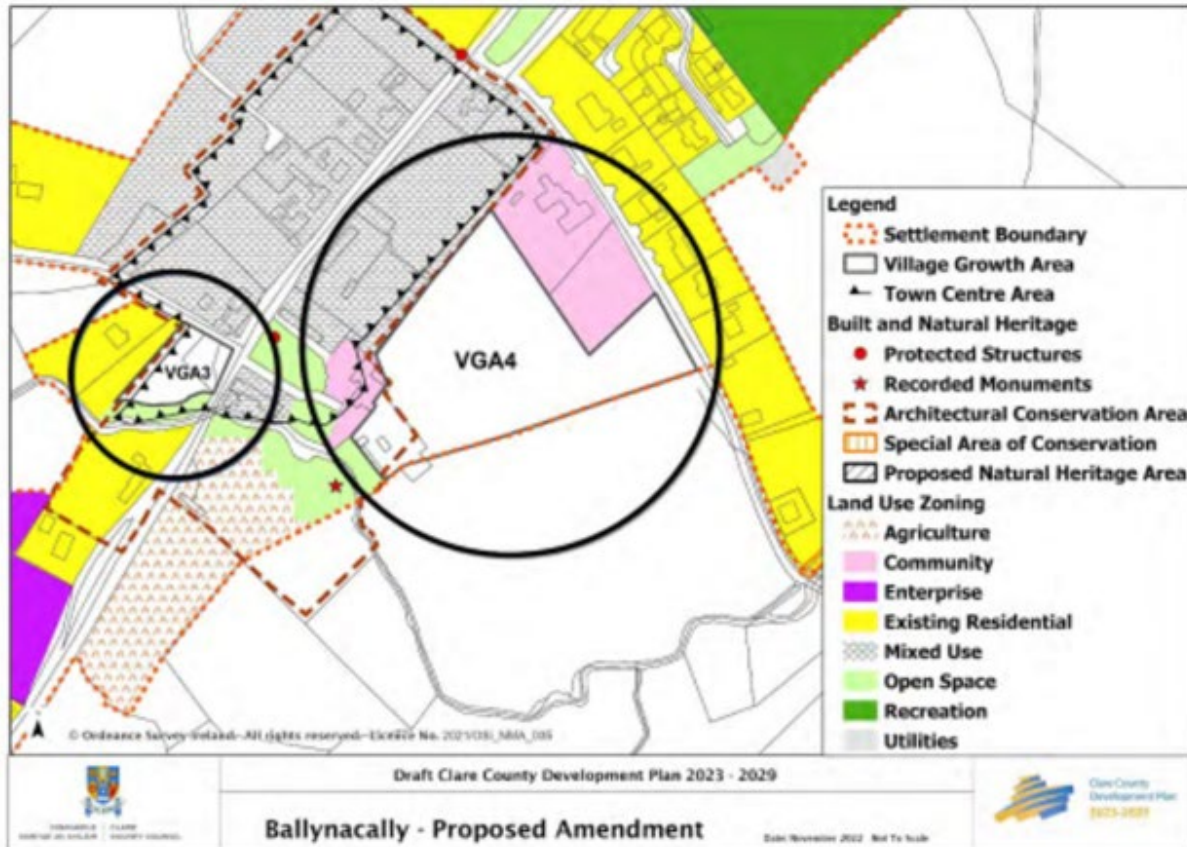
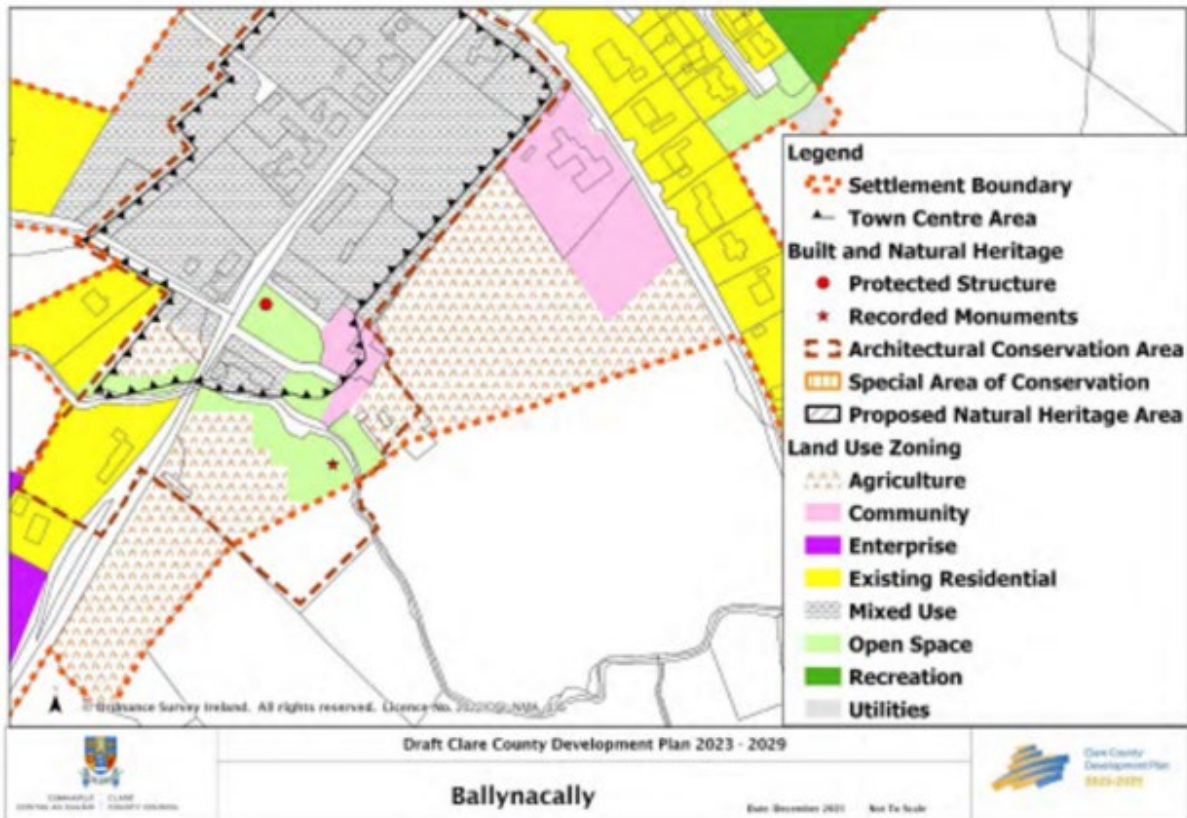
**Cooraclare LDR1, LDR2, LDR3, LDR4, LDR5 and LDR6 – p.197 Vol3.d West
Clare amendments**



**Cooraclare LDR1, LDR2, LDR3, LDR4, LDR5 and LDR6 – Approximate extent
and location of amendments**



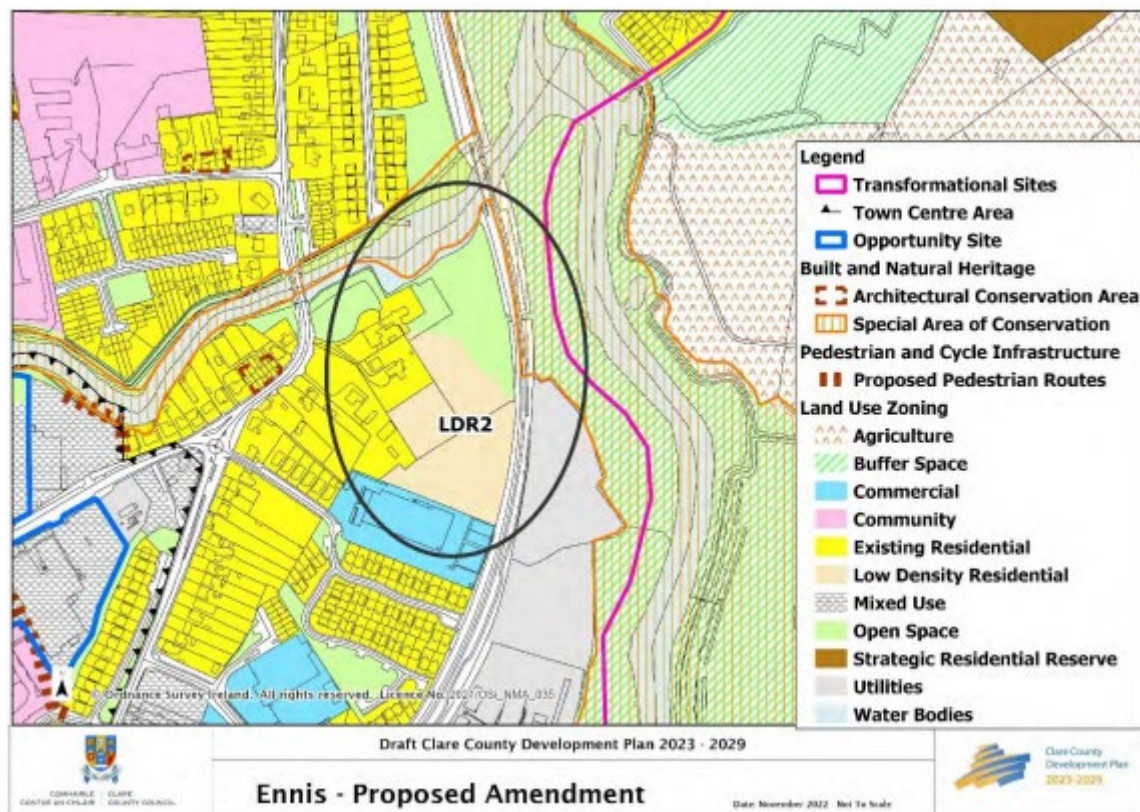
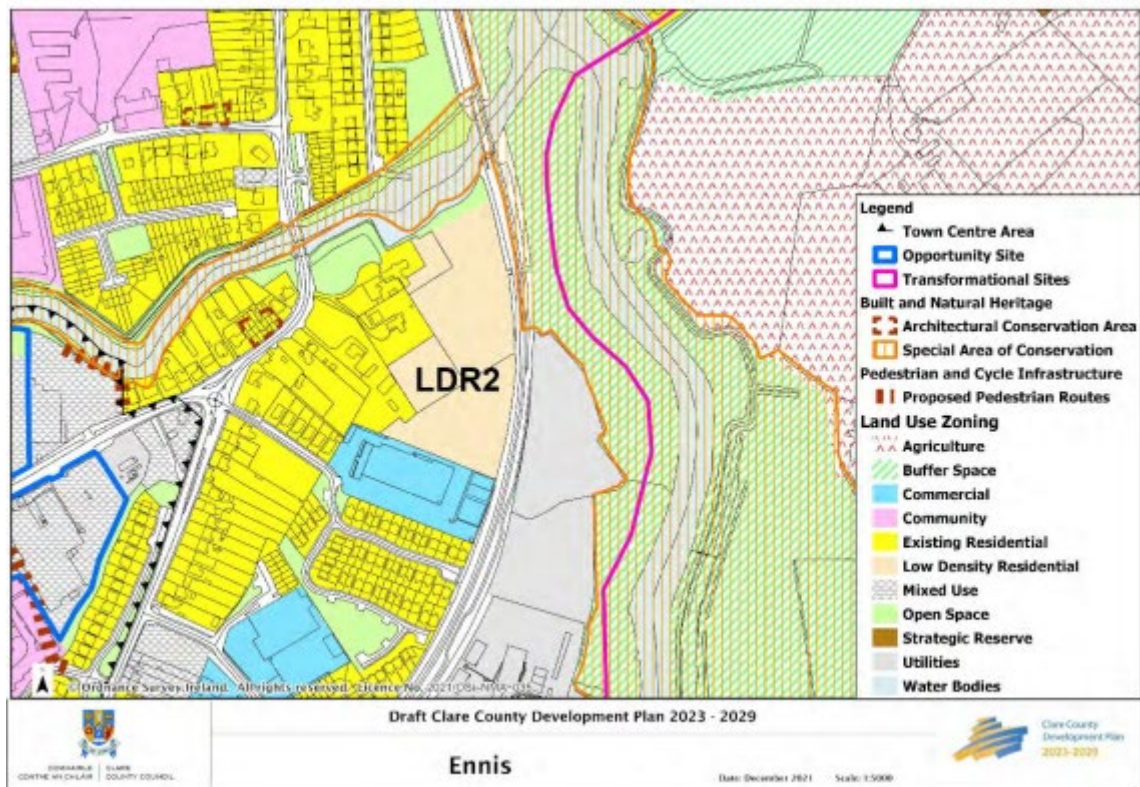
Ballynacally VGA3 – p.157 West Clare MD amendments



Ballynacally VGA3 – Approximate extent and location of amendment



Knox's Bridge LDR2 & OS1 – p.111 Vol.3a Ennis amendments



Knox's Bridge LDR2 & OS1 – Approximate extent and location of amendment.



Appendix 2

Delete

Respond

Quick Steps

Move

Tags

Editing

Zoom



Thu 30/03/2023 09:54
Elaine Heneghan
RE: Clare MAs

o  John Desmond (OPR)

Filed to eDocs

CAUTION: This eMail originated from outside your organisation and the BTS Managed Desktop service. Do not click on any links or open any attachments unless you recognise the sender or are expecting the email and know that the content is safe. If you are in any doubt, please contact the OGCI0 IT Service Desk.

Hi John,

As discussed, Uisce Éireann currently has no remit in the area of provision of new infrastructure to unsewered settlements. Please see below our standard response in relation to queries on unsewered villages and Measure A8:

In relation to your recent correspondence regarding XXXX, it should be noted that the settlement of XXXX is regarded as unsewered (i.e., no public wastewater treatment plant or public sewers present). As there is no public wastewater infrastructure in XXXX, Uisce Éireann currently has no remit in the area of provision of new infrastructure to unsewered settlements.

The Department of Housing, Local Government and Heritage recently announced the commencement of a new funding scheme targeting the waste water collection and treatment needs of villages and settlements without access to public waste water services. Applications for this funding scheme will be managed by the Rural Water Section of the Department of Housing Local Government and Heritage and details of the application / bid process are set out in Circular L1/22 - Applications for funding under Measure A8 - Waste Water Collection and Treatment needs for Villages and Settlements without access to Public Waste Water Services. The circular is available [here](#).

The Local Authority role under measure A8 is as follows

The local authority will undertake a number of important tasks for demonstration projects in their area. These include and are not limited to;

- Make applications for funding, prioritising suitable demonstration projects;
- Undertake all consultation and engagement with the local community to gain support for approved project(s);
- Keep the communities well informed on progress with the project(s);
- Manage the procurement of professional services for the planning stages;
- As multi-purpose bodies responsible for delivering a broad range of services in their area, co-ordinate opportunistic activity;
- Undertaking application for planning permission (under Part 8 of the Planning and Development Regulations 2001, as amended) for the project(s);
- Carry out site acquisition for any waste water treatment plant and pumping stations (by voluntary agreement by negotiation between the landowner and the acquiring authority or formally by use of CPO in co-ordination with Uisce Éireann);
- Wayleave acquisition (agreement by negotiation between the landowner and formally under notice); and
- Assisting with physical implementation of the demonstration projects at construction stage.

Should XXXXX be successful in their bid to be included in this programme, or otherwise receive funding for the provision of wastewater infrastructure, Through the Connections process Uisce Éireann work with the DHLGH & Local Authorities to support the development and implementation of an appropriate solution for XXXX.

Regards,
Elaine