



18 April 2023

For the Attention of: Mr. Pat Dowling, Chief Executive

Clare County Council,
Áras Contae an Chláir
New Road
Ennis
Co. Clare
V95 DXP2

Section 31 of the Planning and Development Act 2000, as amended
Notice of Intention to issue a Direction to Clare County Council
regarding the Clare County Development Plan 2023-2029

Dear Pat,

Consequent to a recommendation made to me as Minister by the Office of the Planning Regulator (the Office) on 5th April 2023 in connection with the Clare County Development Plan 2023–2029, as adopted by the elected members of Clare County Council on 9th March 2023, and pursuant to section 31 of the Planning and Development Act 2000 (as amended) (the Act), I write to give notice of my intention to issue a direction to Clare County Council to take certain measures specified in this notice.

Opinion

On consideration of the recommendation made to me by the Office, I have formed the opinion that:

- (i) Clare County Council, in making the development plan, has failed to implement recommendations made to it, as planning authority, by the Office under section 31AM of the Act;
- (ii) The Plan, as made, fails to set out an overall strategy for the proper planning and sustainable development of the area;
- (iii) The Plan is inconsistent with national and regional policy objectives specified in the National Planning Framework (NPF) and the Regional Spatial and Economic Strategy for the Southern Region (RSES);
- (iv) The Plan, as made, is not in compliance with the requirements of the Act.



A draft of the Direction accompanies this notice and I request that you publish notice of this draft Direction, no later than two weeks after receipt of this notice. The reasons for the Direction are set out in the Statement of Reasons incorporated in the attached draft Direction and further detail is provided in the Summary of Issues as set out below.

Process to Date

The draft Clare County Development Plan 2023–2029 (the draft Plan) was on public display from 10th December 2021 to 28th March 2022. The Office of the Planning Regulator made a submission to the draft Plan on 28th March 2022, containing thirteen (13) recommendations and eight (8) observations which addressed a broad range of issues.

The elected members, having considered the draft Plan and the Chief Executive’s Report on submissions received (dated 10th July 2022), resolved to amend the draft Clare County Development Plan 2023–2029. Subsequently, Clare County Council sent a notice letter under section 12(5)(aa) of the Act to the Office specifying the recommendations of the Office that were not complied with.

In particular, no amendments were made to address Recommendation 12 of the Office’s submission in relation to exceptional circumstances for access to national roads.

The material alterations to the draft Plan were on public display from 28th November 2022 to 3rd January 2023. The Office made a submission on 3rd January 2023 containing ten (10) recommendations and no observations. The Office’s recommendations at the Material Alterations stage included:

- MA Recommendation 3, 4, 5 and 6 – Sustainable Development
- MA Recommendation 9 – Flood Risk Management

The submission also noted the decision of the planning authority not to comply with Recommendation 12 of the Office’s submission to the draft Plan (Exceptional Circumstances for Access to National Roads) and highlighted concerns in relation to the planning authority’s response to Recommendation 13 (Flood Risk Management).

The elected members of Clare County Council resolved to make the Clare County Development Plan 2023–2029 at a council meeting on 9th March 2023. Subsequently, the planning authority issued a notice letter under section 31AM(6) of the Act to the Office



advising of the making of the Development Plan and specifying the recommendations of the Office that were not complied with.

Having reviewed the Chief Executive's reports on the draft Plan and material alterations to the draft Plan, the notice of the making of the Development Plan and the reasons in the notice letter, the Office has concluded that, with the exception of the items below, the recommendations of the Office have been responded to 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, relate to the following:

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

Summary of Issues

OPR MA Recommendations 3, 4, 5 and 6

Having regard to the core strategy of the draft Plan; national and regional policy objectives for compact and proportionate growth, as well as regeneration; the provisions of the Development Plans Guidelines for Planning Authorities (2022); and section 10(2)(n) of the Act, the planning authority was required to make the Plan without certain specified material amendments to land use zoning.

Notwithstanding the above, the elected members decided to make a significant number of the material amendments referred to in the Office's submission, contrary to your recommendations as Chief Executive.

Having carefully considered the elected members reasons, as set out in the section 31AM(6) notice submitted, the Office accepted the rationale provided by the elected members for their decisions in a number of cases. However, with respect to lands identified in sections 2(a)(i) to (xviii) of the enclosed draft Direction, the Office has concluded that the zonings are inconsistent with objectives of national and regional planning policy, and fail to have regard to Ministerial planning guidelines under section 28 of the Act. Please see the statement of reasons incorporated in the draft Direction for specific details in this regard.

OPR Recommendation 12



Having regard to the provisions of the Spatial Planning and National Roads Guidelines for Planning Authorities (2012), Clare County Council was requested to omit the exemption provided for under section 11.2.9.3 of the draft Plan that would allow consideration of access to individual dwellings off existing accesses to National Secondary Roads.

It is noted that Transport Infrastructure Ireland also separately requested the removal of this provision in its submissions to the planning authority, and that you as Chief Executive of Clare County Council recommended that the provision in question should be removed from the Plan in line with national policy and in the interest of traffic safety.

Notwithstanding the above, the elected members proceeded to make the plan inclusive of the provision in question. In doing so, no evidence based justification or reasons have been provided for the elected members' decision, whereas national and regional policy objectives clearly indicate the importance of maintaining the strategic capacity and safety of the national roads network.

Furthermore, in so far as the members' decision also failed to implement the policies and objectives of the Minister as set out in the Spatial Planning and National Roads Guidelines, the elected members were obliged to provide reasons for why the policies and objectives of the Minister have not been implemented, in accordance with section 28(1B)(b) of the Act.

Please refer to the specific provisions referenced in the statement of reasons incorporated in the draft Direction for further details.

OPR Recommendation 13 and MA Recommendation 9

Having regard to NPO 57 of the NPF and to the provisions of the Planning System and Flood Risk Management Guidelines for Planning Authorities (2009), Recommendation 13 and MA Recommendation 9 of the Office's submissions to Clare County Council required the planning authority to take specified actions in relation to flood risk management.

While the Office accepted elements of the planning authority's response to the items raised, the elected members proceeded to make the plan with specific land use zonings at Ballynacally and Ennis that are inconsistent with national and regional policy objectives related to flood risk management, and which fail to have regard to the aforementioned guidelines. Section 2(a)(xix) and (xx) of the draft Direction refer to the lands in question.



The Strategic Flood Risk Assessment which informed the plan clearly indicates the subject lands at Ballynacally are at risk of flooding while the applicable zoning objective of the lands would facilitate uses that are both vulnerable and highly vulnerable to flood risk, in the absence of a Justification Test, as required by the guidelines. Furthermore the planning authority has provided no, or no adequate, reasons to explain why the guidelines have not been followed, as per section 28(1B)(b) of the Act.

In the case of the identified lands at Ennis, the Office highlights that the LDR zoning objective had been included in the draft Plan but had failed the Justification Test carried out as part of the Strategic Flood Risk Assessment. 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.

It is further noted that you, as Chief Executive, recommended that the plan be made without the Ballynacally zoning, and had supported an amendment to address issues arising in respect of the Ennis zoning. However, the elected members adopted the plan contrary to your recommendations in respect to the foregoing, and notwithstanding that the OPW had also raised concerns its submission in respect of both zonings.

In light of the above, the Development Plan made by Clare County Council fails to set out an overall strategy for the proper planning and sustainable development of the area concerned, contrary to the requirements of Section 10(1) of the Act and is not in compliance with the requirements of the Act.

Decision

On review of the recommendation issued by the Office, corresponding documents and analysis, I, as Minister, am of the opinion to issue a draft Direction and in that regard, I refer you to the Statement of Reasons set out in the enclosed draft Direction and the considerations below.

I, as Minister, consider that the plan as made:

- is not in compliance with the provisions of the Act including:
 - Section 10(1), which requires the development plan to set out an overall strategy for the proper planning and sustainable development of the area.
 - Section 28, as the statement under section 28(1A)(b) that is appended to the development plan 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 of the Minister contained in the Development Plans Guidelines (2022), the Spatial Planning and National Roads Guidelines (2012) and the Planning System and Flood Risk Management Guidelines (2009); because of the nature and characteristics of the area, in addition to the reasons for the forming of that opinion contrary to section 28(1B)(b).

- is inconsistent with objectives of the National Planning Framework, in particular NPO 3a and 3c (Compact Growth), NPO 18a (Proportionate Growth), and NPO 57 (Flood Risk Management), and is also inconsistent with the National Strategic Outcome for enhanced regional accessibility, including the maintenance of the strategic capacity and safety of the national road network.
- is inconsistent with objectives of the Regional Spatial and Economic Strategy for the Southern Region specifically RPO 35 (Compact Growth), RPO 116 (Flood Risk Management), and RPO 140 (Strategic Capacity and Safety of National Roads).
- fails to have regard to Ministerial Guidelines issued under Section 28 of the Act, specifically:
 - Development Plans, Guidelines for Planning Authorities (2022)
 - Spatial Planning and National Roads, Guidelines for Planning Authorities (2012)
 - The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009)

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

Having regard to the matters set out above, the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area and is not in compliance with the requirements of the Act.

Measures to be taken – Draft Direction

Accordingly, having considered the recommendation of the Office, I am issuing a draft Direction pursuant to section 31 of the Planning and Development Act 2000 (as amended), to direct Clare County Council with regard to the Clare County Development Plan 2023-2029.



In accordance with section 31AN(1) of the Act, having considered and taken account of the proposed draft direction submitted by the Office, the draft Direction as issued incorporates minor descriptive amendments which are not material in nature and do not alter the substance of the Office's recommended draft direction but provide additional clarity in order to aid its interpretation.

The draft Direction sets out the following steps for the Planning Authority to take:

- (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 and Existing Residential 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 Agriculture and 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 and Mixed Use (MU) from LDR
 - (xiv) Cooraclare LDR2 - i.e. the subject lands revert to Agriculture and Existing Residential 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 VGA and 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

and in the case of the following, the zoning objective and associated text shall be amended consistent with the recommendation of the Chief Executive's Report dated 10th July 2022:

(xx) Ennis LDR2 - i.e. the northern portion of the subject lands is amended to Open Space from LDR as per Volume 3a of the proposed amendments to the draft Plan dated 28 November 2022.

- (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 note that in accordance with Section 31(4)(c) and Section 31(6) of the Act, those parts of the Clare County Development Plan 2023–2029 referred to in this notice shall be taken not to have come into effect, been made or amended.

Next Steps – Procedural requirements

I wish to draw your attention to the public consultation obligations under section 31 of the Planning and Development Act 2000 (as amended), and the initial requirement as Chief Executive, under section 31(7) to publish notice of the draft Direction no later than 2 weeks after receipt of this notice, stating that the draft Direction may be inspected as specified in the notice, for a period of not more than 2 weeks.

The notice must also state that written submissions or observations in respect of the draft Direction may be made to the planning authority during the consultation period.

Also in line with statutory requirements, a Chief Executive's report is to be prepared on the public consultation period under section 31(8), and must be furnished to the Office, the elected members and myself as Minister, no later than 4 weeks after the public consultation process is completed, for further consideration.

In accordance with Section 31(9) of the Act, the report of the Chief Executive must:

- (a) summarise the views of any person who made submissions or observations to the planning authority;



- (b) summarise the views of and recommendations (if any) made by the elected members of the planning authority;
- (c) summarise the views of and recommendations (if any) made by the regional assembly, and
- (d) make recommendations in relation to the best manner in which to give effect to the draft Direction.

In addition, the elected members of the planning authority may make a submission to the Office of the Planning Regulator at any time up to the conclusion of the 2 week public consultation period referred to above and must also send any such submissions to me, as Minister.

The Office will then consider the Chief Executive's report together with any submissions made and will make a further recommendation to me, as Minister, regarding whether the Direction is to be issued with or without minor amendments, or not issued. Where I am in agreement with the further recommendation, I may issue the final Direction.

Where the Office is of the opinion that a material amendment to the draft Direction is required, or further investigation is necessary, or it is necessary for another reason, then the Office may appoint an inspector no later than 3 weeks after receipt of the Chief Executive's report, prior to making a final recommendation to me.

My officials are available to assist you, as necessary, in complying with the foregoing process now underway.

Yours sincerely,

A handwritten signature in blue ink that reads "Kieran O'Donnell".

Kieran O'Donnell TD

Minister of State for Local Government and Planning

Copied to:

- Cathaoirleach, Clare County Council, Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2.
- Mr. David Kelly, Director, Southern Regional Assembly, Assembly House, Waterford, X91 F8PC.



- Office of the Planning Regulator, Fourth Floor (West Wing) Park House, Grangegorman, 191-193A North Circular Road, Dublin 7, D07 EWV4.

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

Clare County Development Plan 2023-2029

“Development Plan” means the Clare County 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 County 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 and Existing Residential 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 Agriculture and 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 and Mixed Use (MU) from LDR
- (xiv) Cooraclare LDR2 - i.e. the subject lands revert to Agriculture and Existing Residential 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 VGA and 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

and in the case of the following, the zoning objective and associated text shall be amended consistent with the recommendation of the Chief Executive's Report dated 10th July 2022:

- (xx) Ennis LDR2 - i.e. the northern portion of the subject lands is amended to Open Space from LDR as per Volume 3a of the proposed amendments to the draft Plan dated 28 November 2022.

- 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 objective 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 31AM 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.