



Oifig an  
Rialaitheora Pleanála  
Office of the  
Planning Regulator

19<sup>th</sup> June 2023

Mr. 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 31AN(4) of the Planning and Development Act  
2000 (as amended) – Fingal Development Plan 2023-2029**

A chara,

I am writing to you pursuant to section 31AN(4) of *the Planning and Development Act 2000* (as amended) (the "Act") in the context of the Fingal Development Plan 2023-2029 (the "Plan"). In particular, I write arising from the consideration by this Office of the following:

- a) The Notice of Intent to issue a Direction issued to Fingal County Council (the "Council") by your office on the 4<sup>th</sup> of April 2023;
- b) The report of the Chief Executive of the Council dated the 30<sup>th</sup> of May 2023 on the submissions and observations received by the Council (the "Report");
- c) The five (5) submissions made directly by elected members of the Council to this Office and considered by this Office pursuant to section 31(10)(a) of the Act. It is noted that one (1) submission was received from an elected member outside of the statutory time period. Under section 31AN(4), there is no provision for the OPR to consider submissions that have not been made either (a) to the CE (and detailed in the report on any submissions received), or (b) by elected members to the OPR directly within the statutory period and,

therefore, the submission of Cllr O’Leary has not been considered by the OPR. Notwithstanding this, it is noted that the submission related to the lands zoned General Employment to the south east of Junction 5 on the M1 at Hedgestown, Courtlough. In the OPR’s view, the substance of the submission and issues raised have been addressed in other submissions made to the Office and/or the Chief Executive.

### **Draft Direction**

The draft Direction contained 3 parts:

- Part 2(a) requested the omission of a number of zoning objectives from the adopted Plan including:
  - (i) Land zoned General Employment to the east of Junction 2 on the M2 at St. Margaret’s.
  - (ii) Land zoned Food Park to the south of Coolquay Village.
  - (iii) Lands zoned Rural Business to the south of Coolquay Village.
  - (iv) Land zoned General Employment to the south east of Junction 5 on the M1 at Hedgestown, Courtlough.
- Part 2(b) requested the reinstatement of the Greenbelt zoning objective for lands at PA SH 12.4 Newtown.
- Part 2(c) requested the deletion of additional text inserted under PA CH 8.1 as modified consistent with the recommendation of the Chief Executive’s Report (CE’s Report) dated the 15<sup>th</sup> of January 2023.

The Office now recommends, pursuant to section 31AN(4) of the Act that you issue the attached final Direction in the same form as the draft Direction, except with minor amendments to delete part 2(b) regarding PA SH 12.4 Newtown. The Office has also made a minor amendment to correct an error in the draft Direction. The amendments are identified in red strikethrough in the attached proposed Direction in this regard. To maintain the sequential numbering in the direction, part 2(c) is now part 2(b) in the attached proposed Direction.

In forming this decision, this Office reiterates the submissions made to the Minister in the Notice which issued from this Office to your office on 22<sup>nd</sup> March 2023 pursuant to section 31(AM)(8) of the Act.

### **Public Consultation on the Draft Direction**

The public consultation on the draft Direction took place between 18<sup>th</sup> April 2023 and 2<sup>nd</sup> May 2023. The CE's Report summarised the views of members of the public and elected members who made submissions to the planning authority.

You might please note the following:

- The Office received five (5) submissions directly from elected members (Cllr Jimmy Guerin, Cllr Grainne Maguire, Cllr Tony Murphy, Cllr Brigid Manton and Cllr Adrian Henchy). One (1) of the submissions opposed part 2(a)(i) of the Direction relating to the lands zoned General Employment to the east of M2 at Junction 2 at St. Margaret's. One (1) submission opposed part 2(a)(ii) and (iii) of the Direction relating to the lands to the south of Coolquay village. Two (2) submissions opposed part 2(a)(iv) of the Direction relating to the lands zoned General Employment in the adopted Plan to the south east of Junction 5 on the M1 at Hedgestown, Courtlough.
- There was a further submission that opposed MA PA SH 7.1 Turvey Avenue, Donnabate, which was not subject to the draft Direction. As MA PA SH 7.1 was not subject of the draft Direction and thus was not the subject of public consultation, at this juncture, the OPR cannot consider the submission further.
- A total of 172 submissions were received by the Chief Executive during the consultation period. Of these:
  - Six (6) related to part 2(a)(i) Lands zoned GE east of Junction 2 on M2 at St. Margaret's.
  - Three (3) related to part 2(a)(ii) Lands zoned FP south of Coolquay Village.
  - Three (3) related to part 2(a) (iii) Lands zoned RB south of Coolquay Village.
  - Two (2) related to part 2(a)(iv) Lands zoned GE south east of Junction 5 on the M1 at Hedgestown, Courtlough.

- One (1) related to part 2(b) PASH 12.4 – Newtown: Reinstate GB zoning.
- 163 related to part 2(c) - delete the amended and additional text inserted under PA CH 8.1 which relates to aircraft noise and noise insulation. One (1) of these submissions (DAA) was in support of the draft Direction and 162 submissions were opposed to part 2(c) of the draft Direction.
- Five (5) of the submissions were from elected members, all opposed to the draft Direction. The submissions were as follows:
  - Part 2(a)(i) Lands zoned GE east of Junction 2 on M2 at St. Margaret's – two (2) submissions opposing the draft Direction.
  - Part 2(c) – three (3) submissions opposing the draft Direction.
- As set out in the CE's Report, Transport Infrastructure Ireland (TII) and the National Transport Authority (NTA) made one (1) submission each, both in support of the draft Direction.
- As set out in the CE's Report, there was also one (1) submission from HSE Environmental Health which opposed the draft Direction. The remainder of the submissions were from the general public, land owners, environmental interest groups and resident associations, all opposed to the draft Direction.

### **Part 2 (a)(i) Land zoned General Employment to the east of Junction 2 on the M2 at St. Margaret's**

The Office is satisfied that the Chief Executive's recommendation in respect of part 2(a)(i) is generally appropriate as it would omit the GE zoning from the lands.

However, the Office considers that the subject lands should be unzoned as opposed to GB-Greenbelt as recommended by the Chief Executive.

In considering the above, the Office notes that the insertion of the alternative land use zoning objective GB-Greenbelt as proposed by the Chief Executive has not been subject to assessment in accordance with the requirements for Strategic Environmental Assessment or Appropriate Assessment, or to public consultation. The Office considers, therefore, that if the local authority wishes to zone the land

GB-Greenbelt, it may address this matter by making a future variation to the Plan under section 13 of the Act.

As set out in the section 31(AM)(8) Notice issued to you by this office on 22<sup>nd</sup> March 2023, the Chief Executive's previous recommendation to elected members was to make the Plan without this zoning change (CE's Report on the draft Plan 28<sup>th</sup> July 2022).

The statement of reasons for Part 2(a)(i) in the draft Direction relate to the zoning of lands in a manner that is inconsistent with the National Strategic Outcomes for compact growth, sustainable mobility and transition to a low carbon and climate resilient society. The zoning was considered to be inconsistent with NPO 62; the Greater Dublin Area Transport Strategy 2022-2042; and Regional Policy Objectives 5.3, 5.6, 8.3 and 8.4. The Office also considered that the zoning failed to have regard to section 6.2.5 in the *Development Plans, Guidelines for Planning Authorities* (2022) (Development Plan Guidelines) which requires that the evidence and rationale underpinning the zoning of land for employment purposes must be clear and strategic in nature. The Office further considered that there was a failure to demonstrate that the zoning satisfied the criteria in Section 2.7 of the *Spatial Planning and National Road Guidelines for Planning Authorities* (2012) (National Road Guidelines) regarding development at national road interchanges.

The Office notes the submissions of TII and the NTA supports part 2(a)(i) of the draft Direction to omit the General Employment zoning affecting the subject lands. In respect of TII's submission, the CE's Report states:

*TII contended that the evidence-based approach prescribed by national planning and transport policy does not appear adhered to in the rezoning of lands at Junction 2 of the M2 in St. Margaret's and is thus contrary to the provisions of the national and regional policies and objectives referred to in the submission.*

With regard to the submission from the NTA, the CE's Report states:

*The submission referred to Policy EEP2 of the Development Plan and expressed concern that employment and trip intensive uses could be permitted in peripheral locations, including those referenced in the draft*

*Direction, which are removed from public transport services and active travel infrastructure. Support was expressed for Draft Direction 2(a)(i) and the submission stated that the NTA considers that the zoning of these lands for General Employment would not accord with the Transport Strategy for the Greater Dublin Area 2022-2042.*

The Office has considered in detail the submission made by the elected member Cllr Jimmy Guerin and the CE's Report which summarises the submissions made with respect to the subject lands. The OPR acknowledge the concerns raised in the submissions that the CE's Report at draft Plan stage did not reflect the full contributions of the elected members regarding the justification for the proposed zoning. The Office however, has considered in full the reasons put forward in the submissions in support of the zoning, including the additional supplemental reports provided.

Submissions expressed concerns regarding the accuracy of the Economic and Employment Land Use Study (the "Study") that was prepared to inform the draft Plan and that it does not reflect the quantum or realistic availability of GE zoned lands within the County. The Office has considered a note titled 'A cursory commentary on the Fingal Economic Employment Land Use Study - September 2022' (the "September 2022 Note") by KPMG that was referred to in the submission above regarding the Fingal Economic and Employment Land Use Study. However, it is also noted that clarification regarding the scope of the September 2022 Note is set out in the council minutes dated 12<sup>th</sup> December 2022. This includes subsequent correspondence from KPMG to the effect that the September 2022 Note was not to be interpreted as a review or update of the Study, nor was it intended to cause any uncertainty in respect of that study's research and findings.

The Office acknowledges that the Study prepared to inform the draft Plan was a strategic, high level report regarding the assessment of land available for employment generating uses. Notwithstanding this, it is noted that the September 2022 Note submitted estimates that there is still a substantial bank of available general employment lands within the County to cater for future demand (c. 1,080 ha). The September 2022 Note also details that 52% of the lands zoned GE in the County are undeveloped. There are also extensive areas of land zoned for other

employment uses that are undeveloped including Food Park (127 ha), Heavy Industry (216 ha), High Technology (285 ha), Metro Economic Corridor (281 ha), Rural Business (63 ha) and Warehousing and Distribution (17.5 ha). The September 2022 Note also states that if levels of development activity continue in line with recent trends, there will still be c. 416ha of GE lands available for development by the expiry of the plan by 2029. This is evidence of the sufficiency of supply.

While there is a strong demand for employment land in the county, as detailed in the market expert reports submitted, it is considered that the Plan provides sufficient lands to meet projected employment growth over the plan-period. The September 2022 Note states that all employment land that is presently undeveloped can or should be classed as “available”. However, no clear demonstrable evidence has been submitted to indicate that there is a shortage of employment lands that would warrant the zoning of a large tract of land within the greenbelt to general employment use.

It is also noted that the Study prepared in support of the draft Plan states:

*While half of the Dublin Enterprise Zone has been developed, there is the potential to create an additional 20,000 jobs on the 716 hectares of undeveloped, zoned and serviced land available in the Zone.*

Having regard to the extensive land available throughout the county, the Office does not support the contention that there are insufficient suitably sized and serviced sites within the county to accommodate potential large operators in the pharma, industrial or logistics market. Neither does the Office agree with the contention that the failure to zone the subject lands will result in an acute shortage of employment lands in the county. It is also noted that the Chief Executive has not recommended that further employment zoning is required or necessary considering the current level of lands zoned in the Dublin Enterprise Zone in addition to the lands already identified on the southern side of the N2.

The Office is not satisfied, on the basis of the information submitted, that there is a shortage of zoned land to cater for future need or that there is a robust evidence-base to support an additional 37ha of general employment land at this location. The

subject lands are located in the greenbelt and prior to the current Plan, were zoned for same.

The rezoning would represent a significant encroachment of the greenbelt and is considered contrary to Policy SPQHP48 of the Plan, which recognises the importance of greenbelts and national policy objective NPO 62 to strengthen the value of greenbelts and green spaces at a regional and city scale. The Office does not concur that the strategic location of the lands would override the need to protect such greenbelt lands.

Furthermore, Table 5.2 of the EMRA (Eastern and Midlands Region) RSES identifies strategic employment locations in the Dublin Metropolitan Area, including the Dublin Enterprise Zone (DEZ) in Dublin 15. RPO 5.6 Employment Lands states:

*The development of future employment lands in the Dublin Metropolitan Area shall follow a sequential approach, with a focus on the re-intensification of employment lands within the M50 and at selected strategic development areas and provision of appropriate employment densities in tandem with the provision of high quality public transport corridors.*

The subject lands are not contiguous to the identified strategic development area and are physically removed from the DEZ. As noted in the CE's Report on the draft Plan, the M2 road currently acts as a natural barrier in the area and this should be maintained as the buffer between the zoned lands and the greenbelt. The Office remains of the view that the rezoning does not support a sequential approach.

Furthermore, no strategic rationale to underpin the zoning of further land for employment purposes at this location has been provided in accordance with section 6.2.5 of the Development Plans Guidelines.

As outlined in the draft Direction, the zoning is also considered to be contrary to the objectives *the Greater Dublin Area Transport Strategy 2022 - 2042* (GDATS). The objections of the NTA are notable in this regard. Under section 9(6A) of the Act, the planning authority is obliged to ensure that its development plan is consistent with this strategy. RPO 8.4 also requires that '*land use plans within the GDA shall demonstrate a consistency with the NTA's Transport Strategy for the Greater Dublin Area*'.



Furthermore, notwithstanding the submissions made, the Office considers that the lands are remote from high quality public transport and poorly served by active travel measures. The rezoning of further lands at this location would not be consistent with RPO 5.3 or 5.6 and would not facilitate sustainable travel patterns.

Section 2.7 Development at National Road Interchanges or Junctions in the National Roads Guidelines provides that planning authorities must exercise particular care in their assessment of development plan proposals relating to the zoning of locations at or close to interchanges where such development could generate significant additional traffic with potential to impact on the national road. TII advises that proposals for development adjacent to national roads are only acceptable if it can be demonstrated that the road can continue to perform its strategic transport function into the future. TII state that they consider that the evidence-based approach prescribed in the national policy does not appear to have been adhered to in relation to the subject zoning.

The submissions reference a planning application permitted for a large logistics development to the east of the subject lands at Cherryhound. It is stated that TII's approach is contradictory as there was no objection to this development, notwithstanding the fact that it will be accessed from the same junction as the subject lands. It is noted however, that the application lands referred to form part of an established employment area – the Dublin Enterprise Zone identified as a strategic employment development area under RSES, unlike the subject site which is located within a strategic greenbelt.

The Office considers that there are already significant lands identified on the southern side of the N2 which are considered more than adequate to meet current and future demands. The Office remains of the view that rezoning further lands at this location fails to have regard to the requirements of section 2.7 Development at National Road Interchanges or Junctions in the National Road Guidelines. The planning authority also fails to identify any or any adequate reasons for not implementing the policies and objectives in these Guidelines.

The Office considers that the above points raised in the submissions received from the elected members and those set out in the CE's Report do not provide an evidence-based justification to warrant an amendment to part 2(a)(i) of the draft Direction. Following consideration of the submissions and CE's Report, there is no basis to amend the recommendation of this Office in respect of part 2 (a)(i).

#### **Part (a) (ii) Land zoned Food Park south of Coolquay Village**

#### **Part (a) (iii) Lands zoned Rural Business to the south of Coolquay Village**

The Office is satisfied that the Chief Executive's recommendation in respect of part 2(a)(ii) and 2(a)(iii) is generally appropriate as it would omit the FP – Food Park and RB – Rural Business zoning from the two land parcels. However, the Office considers that the subject lands should be unzoned. The Chief Executive has recommended that the lands zoned FP should be zoned RU-Rural; and that the lands zoned RB-Rural Business should be zoned RU-Rural to the north of Ward River and GB-Greenbelt to the south of Ward River.

In considering the above, the Office notes that in relation to the insertion of alternative land use zoning objectives GB-Greenbelt and RU-Rural as proposed by the Chief Executive, such proposed zonings have not been subject to assessment in accordance with the requirements for Strategic Environmental Assessment or Appropriate Assessment, or to public consultation. The Office considers, therefore, that if the local authority wishes to zone the land GB-Greenbelt and RU-Rural, it may consider this by way of making a future variation to the Plan under section 13 of the Act.

As set out in the section 31(AM)(8) Notice issued to you by this office on 22<sup>nd</sup> March 2023, the Chief Executive's previous recommendation to elected members was to make the Plan without this zoning and that the Food Park lands be zoned Rural; the portion of Rural Business lands north of the Ward River be zoned Rural; and the portion of the Rural Business lands south of the Ward River be zoned Greenbelt (CE's Report on the draft Plan 28<sup>th</sup> July 2022).

As per the lands east of Junction 2 on the M2 at St. Margaret's, the statement of reasons for Part 2 (a)(ii) and Part 2 (a)(iii) in the draft Direction relate to the zoning of lands in a manner that is inconsistent with the National Strategic Outcomes for compact growth, sustainable mobility and transition to a low carbon and climate resilient society.

The Office has considered in detail the submission made by the elected member Cllr Manton and the CE's Report which summarises the submissions made with respect to the subject lands. The OPR acknowledges the concerns raised in the submissions which state that the CE's Report at draft Plan stage did not reflect the full reasons of the elected members regarding the justification and rationale for the proposed zoning. The Office has however, considered in full the reasons put forward in the submissions in support of the zoning.

One of the principal reasons put forward in support of the zoning objective, is that the lands will facilitate the relocation of businesses displaced as a result of the closure of the city centre fruit and vegetable market and that the lands are an appropriate location for agri-businesses. However, the Development Plan, informed by the Fingal Economic Study, indicates that there is a total of 192 ha of land zoned for Food Park, of which 127 hectares is undeveloped, and 92 hectares of lands zoned for Rural Business of which 63 hectares is undeveloped.

Based on the extent of undeveloped zoned land, there is no evidence-based rationale to zone these lands for these types of employment uses in order to provide for a sufficient supply of employment zoned lands over the plan period. No strategic rationale has been provided to underpin the zoning of lands for employment purposes at this location in accordance with section 6.2.5 of the Development Plans Guidelines, and no or no adequate reasons have been provided by the planning authority to explain why objectives and policies in the said Guidelines have not been implemented.

Submissions made suggest that the description of FP and RB zoning objectives as employment lands is simplistic and fails to recognise the targeted aim of the zoning objective. The Office however, considers that the lands constitute employment lands. This is evidenced in the Study which clearly states in section 4.2.2 that FP – Food

Park and RB-Rural Business are zoning classifications considered as being related to enterprise uses relating to employment.

The submissions also detail that these lands have been zoned in successive development plans. However, section 10(8) of the Act states *“there shall be no presumption in law that any land zoned in a particular development plan (including a development plan that has been varied) shall remain so zoned in any subsequent development plan.”* The Plan is a forward looking document and it must be ensured that the zoning objectives are appropriate and facilitate the principles of compact growth. No substantive evidence has been submitted to support the development of such lands for agri-business use, having regard to their remote and peripheral location.

The Office considers that the lands are in a peripheral location and not well served by existing or planned public transport. The lands are not easily accessible from larger centres of population by active travel. The concerns of the NTA are noted in this regard. In respect of NTA’s submission, the CE’s Report states:

*Reference is also made to the draft Directions 2(a)(ii) and 2(a)(iii). It was noted that given the extent of land zoned, a specific rural need should be demonstrated and the scale and type of development strictly controlled. Employment and therefore trip intensive uses should not be permissible as this would embed reliance on private vehicles.*

The Office remains of the view that the development of the subject lands provide for greenfield development outside Coolquay village contrary to national strategic outcomes for compact growth, sustainable mobility and transition to low carbon and climate resilient society and regional policy objective RPO 5.3. The zoning is also considered contrary to national policy objective NPO 62 to strengthen the value of greenbelts and green spaces at a regional and city scale, having regard to the fact that part of the lands are located within a greenbelt zone.

While the Plan supports the rural economy and the agri-food sector this is not a basis for zoning lands to which no clear evidence-based justification has been provided, particularly having regard to their peripheral location and poor accessibility.

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

**Part 2(a)(iv) Land zoned General Employment to the south east of Junction 5 on the M1 at Courtlough**

The Office is satisfied that the Chief Executive's recommendation in respect of part 2(a)(iv) is generally appropriate as it would omit the GE – General Employment zoning from the lands. However, the Office considers that the subject lands should be unzoned. The Chief Executive has recommended that the lands be zoned RU-Rural.

In considering the above, the Office notes that in relation to the insertion of the alternative land use zoning objective RU-Rural as proposed by the Chief Executive, such zoning has not been subject to assessment in accordance with the requirements for Strategic Environmental Assessment or Appropriate Assessment, or to public consultation. The Office considers, therefore, that the appropriate process to address this matter is for the Council to consider making a future variation to the Plan under section 13 of the Act.

As set out in the section 31(AM)(8) Notice issued to you by this office on 22<sup>nd</sup> March 2023, the Chief Executive's previous recommendation to elected members was to make the Plan without this zoning and that the lands be zoned Rural (CE's Report on the draft Plan 28<sup>th</sup> July 2022). The Chief Executive stated that the zoning would breach NTA policy to protect strategic transport corridors and channel employment growth within key strategic employment areas of the County, aligned with existing and planned infrastructure.

As per the lands east of Junction 2 on the M2 at St. Margaret's, the statement for reasons for Part 2(a)(iv) in the draft Direction relate to the zoning of lands in a manner that is inconsistent with the National Strategic Outcomes for compact growth, sustainable mobility and transition to a low carbon and climate resilient society.

The Office has considered in detail the submissions made by the elected members (Cllr Maguire and Cllr Murphy) and the CE's Report, which summarise the submissions made with respect to the subject lands. The OPR acknowledge the concerns raised in the submissions that the CE's Report at draft Plan stage did not reflect the full reasons of the elected members regarding the justification and rationale for the proposed zoning. The Office has however, considered in full the reasons put forward in the submissions in support of the zoning.

The submissions made set out detail regarding the planning history of the lands and a rationale for the zoning, including that there are constraints to development on the adjoining lands due to flooding and requirement to provide an ecological corridor. Details of the extensive investment in physical infrastructure including access roundabout, junctions, water supply infrastructure, wastewater pump station and existing employment uses on the lands are provided. The submissions state that the zoning is a logical extension of the existing business park. The Office notes the additional points set out in the submissions in support of the proposed zoning and acknowledges that there has been significant investment, particularly in terms of the road infrastructure serving these lands.

Carefully noting all of the above, it is not considered that any robust assessment or rationale has been provided regarding the need to zone further additional employment land at this location having regard to the fact that the extent of lands zoned for General Employment at Junction 5 extends to 77 ha, of which only 13 ha has been developed.

While there may be some development constraints on a portion of the lands this is very small relative to the total lands zoned for General Employment at Junction 5 and there is ample existing capacity without the need for further incremental zoning. The extent of existing land zoned is appropriate and sufficient to accommodate future low intensity employment uses including businesses seeking to relocate from areas such as City Edge or the Metro Economic Corridor.

Furthermore, there are extensive lands elsewhere in the County zoned GE as evidenced by the Study. There is no clear policy support for the rezoning of the lands for example by reason of being identified as a strategic employment area in the EMRA RSES. It is not considered that the lands are well served by existing or

planned high frequency public transport. In this regard, the objection of the NTA to the proposed zoning and the NTA submission that it would not accord with the *Transport Strategy for the Greater Dublin Area, 2022-2042* is notable.

Taking all of the above into account, the Office considers that sufficient lands are zoned at Junction 5 Courtlough to cater for future anticipated needs. The Office remains of the view that the zoning should be omitted having considered the following:

- the Chief Executive's recommendation at draft Plan stage;
- the national strategic outcomes of the NPF for compact growth, sustainable mobility and transition to a low carbon and climate resilient society;
- the sequential approach and planning for future development in a manner that facilitates sustainable transport patterns consistent with RPOs 5.3 and 5.6; and
- the evidence based zoning of land for employment purposes having regard to section 6.2.5 Development Plans Guidelines

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

#### **Part 2(b) reinstatement of the Greenbelt zoning objective for lands at PA SH 12.4 Newtown.**

The Office is satisfied that the Chief Executive's recommendation in respect of part 2(b) is appropriate. The Chief Executive has now provided clarification that the t t Plan as adopted, does not in fact provide for the zoning of the lands in question as GE-General Employment and that the lands are zoned GB-Greenbelt.

At draft Direction stage, the section 31AM (6) Notice issued by Fingal County Council on 1<sup>st</sup> March 2023, stated that the Plan had been made with material amendment PA SH12.4.

This material amendment was to amend the zoning of the subject lands from GB-Greenbelt to GE-General Employment and to insert a new map based local objective and site specific objective that any general enterprise and employment type

development of the lands shall be contingent on the widening and upgrading of Kilshane Road, installation of active travel infrastructure and provision of a detailed landscaping plan. It was on this basis, that the draft Direction was issued to reinstate the Greenbelt zoning objective for the lands.

The CE's Report on the draft Direction issued on 30<sup>th</sup> May 2023 has now clarified that at the Special Council meeting held in February 2023 it was decided by the elected members that the lands in question should revert back to their GB-Greenbelt zoning, but that the map based local objective regarding the upgrading of roads on the lands should be retained. In this regard, it has now emerged via the CE's Report that the subject lands were in fact not zoned GE-General Employment when the Council made the Plan.

The Office has no objection in principle to the map based local objective set out in the CE's Report. Having regard to the clarification now provided by the Chief Executive, and the fact that the primary intent of the draft Direction was to reinstate the GB-Greenbelt zoning objective, the Office recommends that the draft Direction is amended to exclude the requirement that the lands PA SH 12.4 at Newtown revert to Greenbelt zoning. This amendment to the draft Direction is minor in nature as it has been clarified by Fingal County Council that the lands remain zoned GB-Greenbelt and, therefore, the requirement of the draft Direction as set out under part 2(b) is not necessary.

#### **Part 2(c) deletion of additional text inserted under PA CH 8.1**

The Office is satisfied that the Chief Executive's recommendation in respect of part 2(c) is appropriate as it would omit the amended and additional text inserted under material amendment PA CH 8.1.

As set out in the section 31(AM)(8) Notice issued to you by this office on 22<sup>nd</sup> March 2023, the Chief Executive's previous recommendation to elected members was to make the Plan without this material amendment.

The statement of reasons for Part 2(c) in the draft Direction relate to the fact that provisions of the material amendment which relate to the proposed noise insulation scheme, are matters which should be determined through the appropriate statutory



process including the Noise Action Plan and that the inclusion of material amendment PA CH 8.1 would be inconsistent with the NPO 65.

The Office has considered in detail the CE's Report which summarises the submissions made with respect to the material amendment. The high volume of submissions received that object to the removal of PA CH 8.1 and the significant concerns raised in a number of the submissions regarding adverse noise impacts associated with Dublin Airport and the effects this has on human health and residential amenity are acknowledged.

The Office also acknowledges the opposition to the draft Direction and the significant concerns raised regarding the negative health impacts associated with excessive aircraft noise. Evidence from bodies such as the World Health Organisation is noted.

The elected members' interests in protecting the health and amenities of communities that may be affected by the airport and its operations are also understood and accepted.

On the other hand, the Office is of the view that there are sufficient policies and objectives in the plan to manage noise effects associated with the operations of Dublin Airport. These include policies DAP 5, 6 and 8 and objectives DAO 11, 15 and 16 detailed in the previous section 31AM8 Notice issued.

Matters of noise control at Dublin airport are subject to a separate statutory code under the provisions of the *Aircraft Noise (Dublin Airport) Regulation Act 2019* (Airport Regulation Act) and sections 34B and 34C of the above Act which establishes a regulatory role for the Airport Noise Competent Authority (ANCA) in setting a Noise Abatement Objective.

The Airport Regulation Act provides that the Chief Executive shall be independent in the performance of the functions of the Airport Noise Competent Authority (ANCA).

It is also noted that the Development Plans Guidelines specifically advise that

*in preparing the development plan, planning authorities must exercise caution not to inappropriately seek to address the operation of other statutory codes and regulatory regimes that relate to the development sector, but are outside the legislative remit of the development plan.*

The inclusion of PA CH 8.1 in the Plan would create overlapping and potentially conflicting regimes with regard to planning policy, the regulatory role of ANCA and the role of Fingal County Council in setting out the Noise Action Plan. DAA noted in its submission that the inclusion of PA CH 8.1 would create a conflict with other legislative provisions and the Office would concur with this view.

The wording of the proposed objective seeks to expand the noise insulation scheme operated by DAA to include all areas exposed to 40dB<sub>L</sub>night or higher as produced by aircraft during night time. The Office is of the view that this represents a noise mitigation measure, the regulation of which is subject to a specific regime established by the Airport Regulation Act.

It is noted that some submissions, including a submission from the HSE National Office for Environmental Health, state that the objective is not in conflict with NPO 65 and is a health protection measure. The HSE submission also points out that if the Ministerial Direction is confirmed, then these health protection standards should be incorporated into the Noise Abatement Strategy formulated by the Aircraft Noise Competent Authority.

NPO 65 seeks to promote the proactive management of noise through the mechanism of Noise Action Plans. *The Noise Action Plan for Dublin Airport 2019-2023* (NAP) was prepared by Fingal County Council as the designated action planning authority with responsibility for preparing the Plan under the *European Communities Environmental Noise Regulations 2018* (European Noise Regulations). The NAP identifies existing aircraft noise emissions, the current methods of noise management, and their appropriateness and possible improvements in line with latest developments in policy and research.

The wording of the proposed objective states that the Development Plan recognises “*the inadequacy of the proposed noise insulation scheme to protect the health of those affected by aircraft noise*” and commits to “*the expansion of noise insulation to ensure noise levels produced by aircraft during night time are reduced to below 40Db<sub>L</sub> Night*”.

These provisions are not supported by the NAP adopted. The Office considers that the proposed objective would, in effect, amend the NAP and scope of the noise

insulation scheme without going through the relevant statutory procedures. However, the NAP can only be amended pursuant to the process under the European Noise Regulations. In this regard, the Office considers that the objective is contrary to the provisions of NPO 65 and would create conflicting and overlapping mechanisms, which the legislation and policy seeks to avoid.

As regards submissions that suggest it is undemocratic to remove the text proposed under PA CH 8.1 and that the elected members have the right to include an objective in the Plan which conflicts with the provisions of NPO 65, as outlined above, these are matters to be determined through other appropriate statutory processes, including the preparation of the NAP.

The Office is satisfied that it has exercised its functions lawfully and in a bona fide manner having regard to the relevant statutory and policy considerations in making its recommendation to the Minister.

The Office notes that a number of the submissions relate to matters such as enforcement of planning conditions relating to runways at Dublin Airport and the governance structure of ANCA. These are matters outside the scope of the Direction.

The Office also notes that the CE's Report highlights that a number of submissions raise objection to specific procedural issues relating to the draft Direction. These, for example, include concerns that the draft Direction and public notice were defective and that the revised amendment to PA CH 8.1 was not detailed; that the rationale and scope of the draft Direction are unclear and lack legal clarity; that the SEA procedure was inadequate; and that the short consultation period is in breach of the Aarhus Convention, SEA Directive and fair procedure.

In relation to the above, the Office notes that the section 31AM(8) Notice which issued on 22<sup>nd</sup> March 2023, set out full details of the modified text in the Plan and provided a clear, robust and detailed rationale to support the recommendation to omit the material amendment. The timelines associated with the consultation period on the draft Direction are set out in statute under section 31A (7) of the Act.

The Office considers that the above points raised in the submissions do not provide an evidence-based justification to warrant an amendment to part 2(c) of the draft Direction.

Following consideration of the submissions and CE's Report, there is no basis to amend the recommendation of this Office in respect of Part 2(c).

### **Recommendation**

In light of the above and for the reasons given in our notice letter of 22<sup>nd</sup> March 2023, the Office remains of the view as set out in the 31(AM)(8) notice, with the exception of the clarification and amendment regarding PA SH 12.4 Newtown, that the Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.

Having regard to section 31AN(4) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act to issue the direction accompanying this notice with the minor amendments identified above.

In the opinion of this Office, this will ensure that the Plan sets out an overall strategy for proper planning and sustainable development and meets the requirements of the Act.

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](mailto:plans@opr.ie).

Yours sincerely,



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**Niall Cussen**

Planning Regulator

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

**Fingal Development Plan 2023-2029**

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

“Planning Authority” means Fingal 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 (Fingal 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) Delete the following zoning objectives from the adopted Plan i.e. the subject land is unzoned:
    - (i) Land zoned General Employment in the adopted Plan to the east of Junction 2 on the M2 at St. Margaret’s which was zoned Greenbelt in the Fingal County Development Plan 2017-2023.
    - (ii) Land zoned Food Park in the adopted Plan south of Coolquay village.
    - (iii) Land zoned Rural Business in the adopted Plan to the south of Coolquay village.

- (iv) Land zoned General Employment in the adopted Plan to the south east of Junction 5 on the M1 at Hedgestown, Courtlough which was zoned Rural in the Fingal County Development Plan 2017-2023.

~~(b) Reinstate the Greenbelt zoning objective for lands PA SH 12.4 Newtown i.e. the subject lands revert to Greenbelt from General Employment consistent with the recommendation of the chief executive's report dated 15<sup>th</sup> January 2023.~~

- (b) Delete the amended and additional text inserted under PA CH 8.1 as modified, consistent with the recommendation of the chief executive's report dated 15<sup>th</sup> January 2023.

## STATEMENT OF REASONS

- I. The Development Plan as made includes significant land zoned for General Employment, Rural Business, and Food Park outside of the Dublin City and suburbs boundary or any settlement boundary and at locations remote from high quality public transport and outside the designated strategic employment development areas identified in the RSES for the Dublin Metropolitan Area inconsistent with the National Strategic Outcomes for compact growth, sustainable mobility and transition to a low carbon and climate resilient society, NPO 62 to strengthen the value greenbelts and green spaces at a regional and city scale, as well as the sequential approach and planning for future development in a manner that facilitates sustainable transport patterns consistent with the *Greater Dublin Area Transport Strategy 2022 - 2042* (Measure PLAN 4), Regional Policy Objectives 5.3, 5.6, and 8.4 in the RSES.
- II. The Development Plan as made includes land zoned for General Employment to the east of the M2 at Junction 2 at St. Margaret's in close proximity to a Junction 2 of the M2 national road network inconsistent with the *Greater Dublin Area Transport Strategy 2022 -*

2042 Measure ROAD 2, and Regional Policy Objectives 8.3 and 8.4, and where the planning authority has not demonstrated that the rezoning satisfies the criteria in Section 2.7 of the *Spatial Planning and National Roads Guidelines for Planning Authorities* (2012) (National Road Guidelines) regarding development at national road interchanges or junctions.

- III. The Development Plan does not include a strategy for employment development to inform the zoning of further land for employment purposes at Junction 2 of the M2 at St. Margaret's, lands located south of Coolquay village ~~and~~ lands south east of Junction 5 on the M1 at Courtlough south of Balbriggan, ~~and lands at Newtown St. Margaret's~~ which fails to have regard to the Ministerial Guidelines issued under Section 28 of the Act, specifically the requirement that the evidence and rationale underpinning the zoning of land for employment purposes must be clear and strategic in nature under Section 6.2.5 zoning for employment uses in the *Development Plans, Guidelines for Planning Authorities* (2022) (the Development Plans Guidelines).
- IV. The Development Plan as made includes provisions that recognises the inadequacy of the proposed noise insulation scheme to protect the health of those affected by aircraft noise and that it is an objective to take measures including the expansion of noise insulation to ensure noise levels produced by aircraft during night time are reduced to below 40DbL Night, which matters are subject to a separate statutory code which includes the designation of a separate action planning authority, the Aircraft Noise Competent Authority, and the preparation of a Noise Action Plan. The inclusion of matters which should be determined through the appropriate statutory process, including the Noise Action Plan, is therefore inconsistent with NPO 65.
- V. No adequate reasons nor explanations relating to the proper planning and sustainable development of the area have been provided to explain why lands have been zoned in such a way and how this

approach (involving a failure to demonstrate a strategic rationale to underpin the zoning of further land for employment purposes ~~zone~~ ~~lands~~ and to a failure to have regard to the Development Plan Guidelines and to satisfy the criteria for development at national road interchanges or junctions) is consistent with an overall strategy for the proper and sustainable development of the area.

- 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 for Local Government and  
Planning

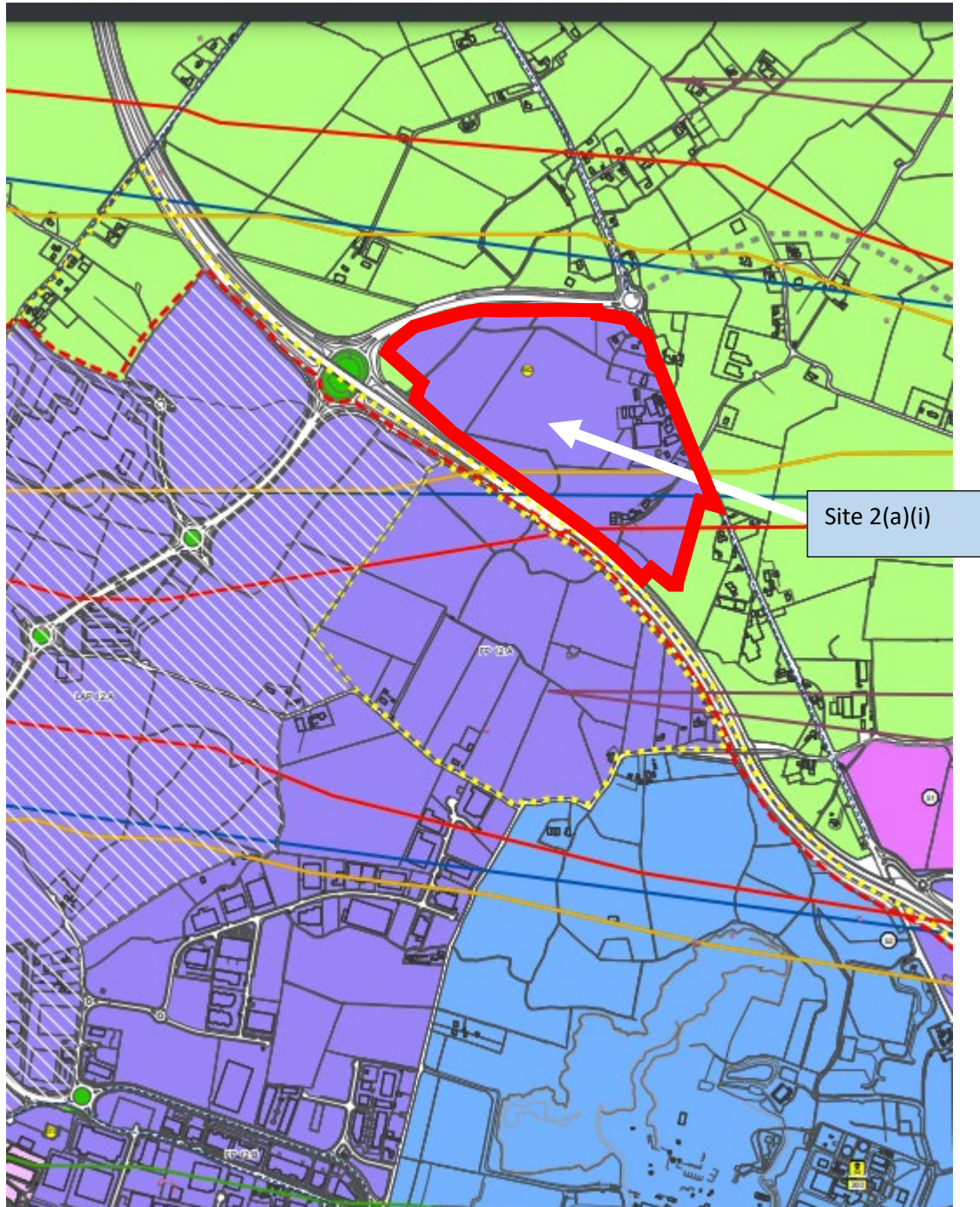
DD of MM 2023.



**Appendix to Section 31AM8 Notice Letter Fingal County Development Plan  
2023-2029 AD-013-22**

**Site 2(a)(i):** To the east of Junction 2 on the M2 at St Margaret's

**Zoning Objective:** 'General Employment'





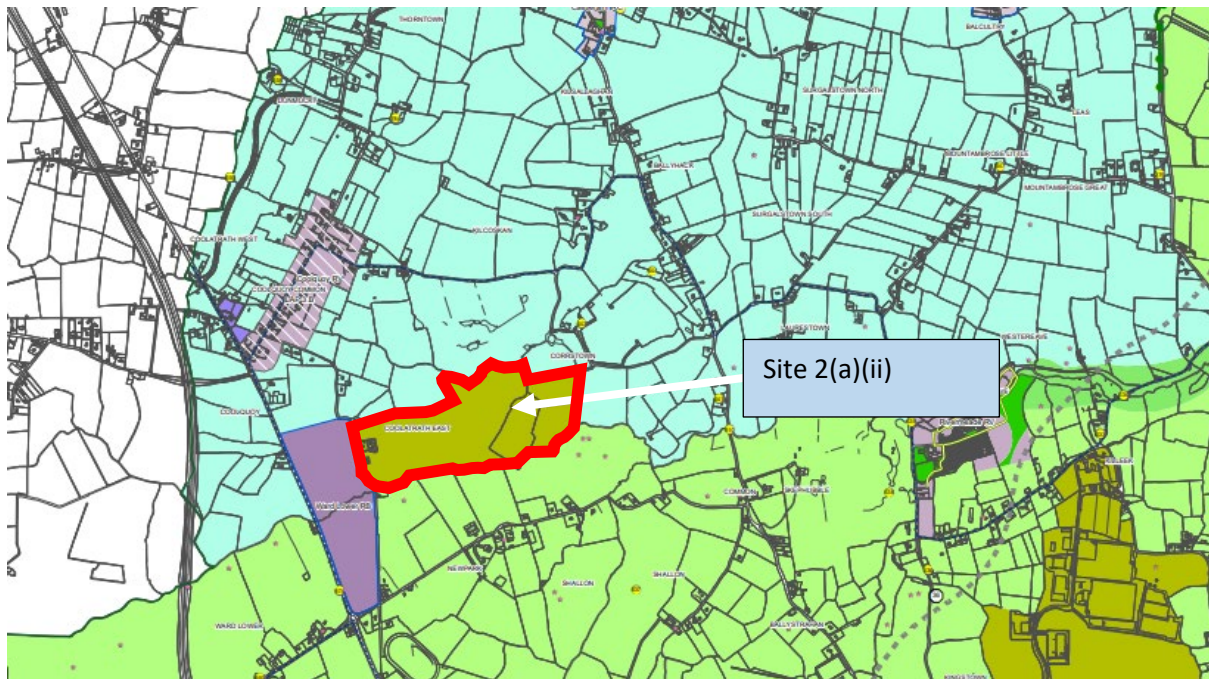
Site 2(a)(i)

Approx. outline of  
site.



**Site 2(a) (ii):** To the south of Coolquay village

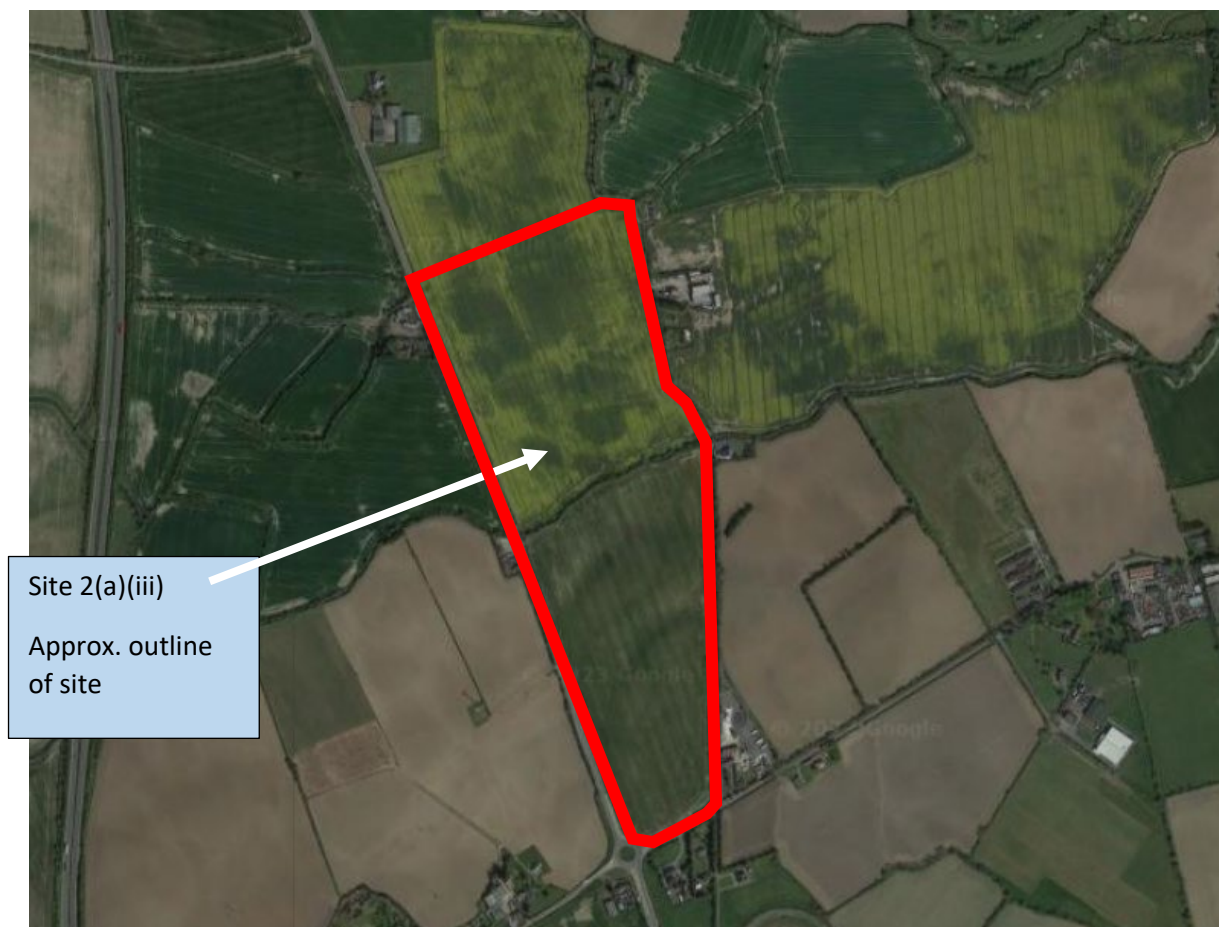
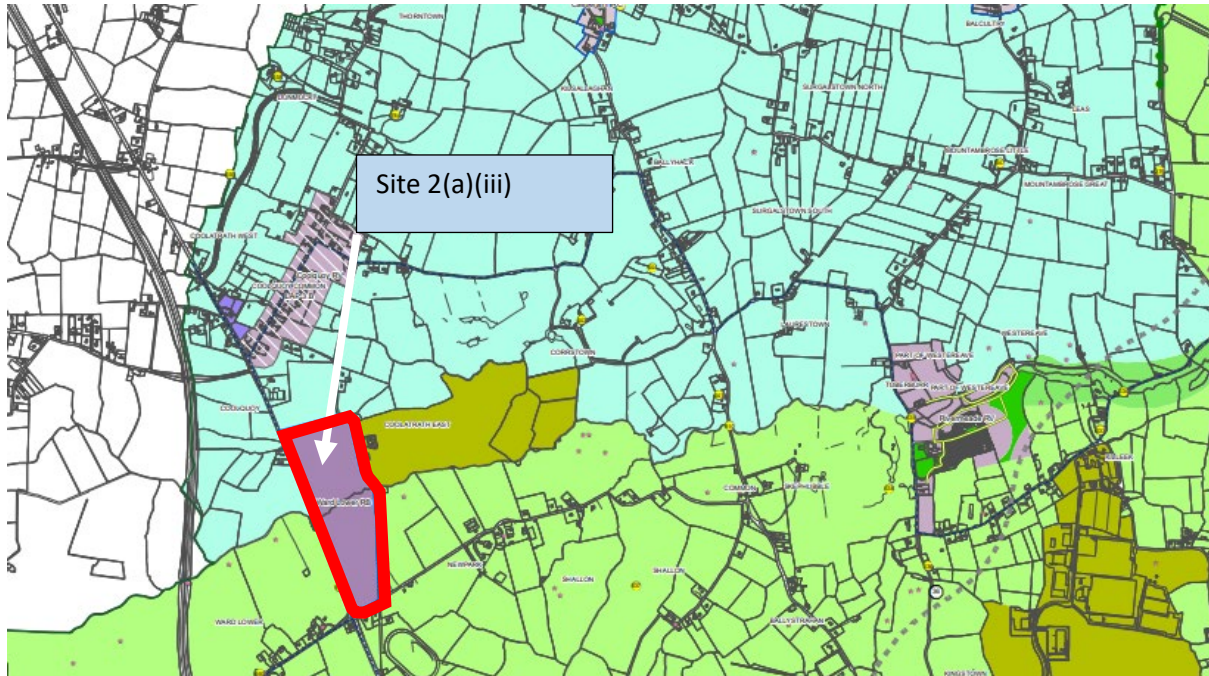
**Zoning Objective:** 'Food Park' south of Coolquay village





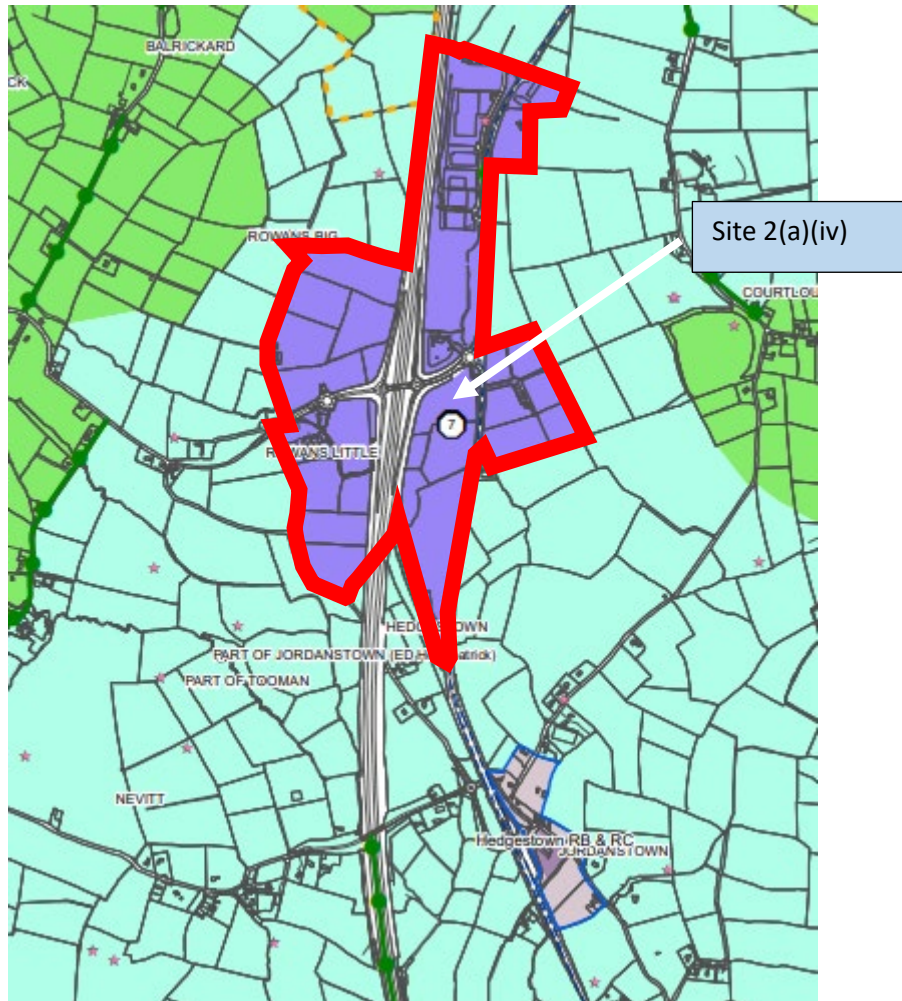
**Site 2(a) (iii):** To the south of Coolquay village

**Zoning Objective:** 'Rural Business' south of Coolquay village



**Site 2(a)(iv):** To the south east of Junction 5 on the M1 at Hedgestown, Courtlough

**Zoning Objective:** 'General Employment'







Site 2(a)(iv)

Approx. outline of site

**Site 2(b):** Lands at PASH 12.4 Newtown

**Amend** the zoning from GB-Greenbelt to 'GE-General Employment'

