



Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

27th June 2023

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

BY HAND AND BY EMAIL

**Re: Notice pursuant to section 31AN(4) of the Planning and Development Act
2000 (as amended) – Clare County 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 Clare County 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 Clare County Council (the "Council") by your office on 18th April 2023; and
- b) the report of the Chief Executive of the Council dated 7th June 2023 on the submissions and observations received by the Council (the "CE's Report").

I refer also to the eight (8) submissions made directly by and/or on behalf of elected members of the Council to this Office and considered by this Office pursuant to section 31(10)(a) of the Act. This Office has carefully considered the CE's Report and the submissions made directly to this Office.

Draft Direction

The draft Direction contained two parts:

Part 2

- a. Reinstate the following zoning objectives and associated text consistent with the recommendations 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 and as per Volume 3a of the proposed amendments to the draft Plan dated 28th November 2022.

And

- 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.

You will note that the CE's Report prepared in accordance with section 31(8) of the Act recommends:

(A) To implement part 2a.(i) and 2a.(xx) of the draft Direction, as follows:

Part 2a.(i) Kilrush R5 – i.e. the subject lands revert to unzoned 'white lands' from Residential.

1. *Omit the Residential land use zoning objective from the subject land and revert to unzoned 'white lands' consistent with the recommendation of the Chief Executive's Report dated 10th July 2022.*
2. *Omit the associated text contained in the Kilrush Settlement Plan in Volume 3d of the Interim Clare County Development Plan 2023-2029 as follows:*

R5 Lands North of the Ennis Road

This is a large site located north of the Ennis Road at the entrance to the Kilrush Settlement. The lands have the potential to impact on the Lower River Shannon cSAC and River Shannon & River Fergus Estuaries SPA. Any future development proposals shall include mitigation to protect water quality (construction and operation), Special Conservation Interest birds and habitats stipulated in line with Natura Impact Report (NIR) Mitigation 2, 3 and 4a set out in Volume 10a of the Plan.

Part 2a.(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 28th November 2022.

1. *Amend the northern portion of the lands to Open Space from Low Density Residential as per Volume 3a of the proposed amendments to the draft Plan dated 28th November 2022.*
2. *Amend the associated text contained in the Ennis Settlement Plan in Volume 3a of the Interim Clare County Development Plan 2023-2029 as follows:*

LDR2 Knox's Bridge & OS1

The density of the proposed development will inform the most suitable location for vehicular access. Low density development may be accommodated through the existing access way subject to a satisfactory Traffic Impact Assessment being submitted.

Any development shall be of a high-quality design which sensitively incorporates the orchard/walled garden area, protects the mature trees on site, provides a buffer to the railway line and reflects the riverside setting,

providing a green infrastructure buffer along the riverbank. Partial removal of the stone wall dividing the site may be permitted for vehicular and pedestrian access (in an east-west direction). Any planning application relating to this site shall include an archaeological assessment having regard to the proximity of an Archaeology Zone and a number of Recorded Monuments.

The northern section of this site zoned Open Space is located in an area that has been identified as being at risk from flooding. A site-specific Flood Risk Assessment in accordance with 'The Planning System and Flood Risk Management – Guidelines for Planning Authorities' (DoEHLG/OPW 2009) shall also be submitted as part of any planning application made in relation to this site. Any development proposals shall include details of how surface water will be controlled during construction to allow the local authority to screen the proposals under Article 6(3) of the EU Habitats Directive. Only proposals that can clearly demonstrate that they will not adversely affect on the cSAC will be permitted.

The trees located on the perimeter of the site shall be retained and incorporated into future development proposals and lighting shall be designed to ensure that there will be no increase in ambient light levels beyond the perimeter of the development footprint (through a Light Spill Model Study). A landscape management plan will also be required.

(B) Not to implement Part 2a.(ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii), (xviii), (xix); and

(C) Not to implement Part 2b.

Following detailed consideration of the CE's Report and the submissions made directly to the Office, 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, subject to a minor amendment to correct typographical and numerical errors. In addition, we made one minor amendment to increase clarity regarding reference to the material alterations. These minor amendments are highlighted in red

text with a strikethrough for proposed deletions in the attached proposed final Direction.

In making this recommendation, this Office reiterates the submissions made to the Minister in the Notice which issued from this Office to your office on 5th April 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 from 28th April to 11th May 2023, inclusive. The CE's Report summarised the views of members of the public, elected members and the prescribed authorities who made submissions to the planning authority.

You might please note the following:

- The Office received eight (8) individual submissions from or on behalf of elected members:
 - one (1) submission from Councillor Shane Talty on behalf of Councillors Liam Grant, Joe Garrihy and Joe Killeen;
 - four (4) submissions from Councillor Tony O'Brien (Cathaoirleach) on behalf of the elected members of Clare County Council;
 - two (2) submissions (duplicates) from Councillor Páidraig O'Ceallaigh c/o Councillor Tony O'Brien; and
 - one (1) submissions from Councillor Tony O'Brien (Cathaoirleach) on his own behalf).

All of the submissions opposed the draft Direction.

- The reasons outlined in the submissions repeat those raised in the Report (i.e. submissions made by members of the public as well as elected members to the planning authority) and relate to:

Part 2a.(ii) Killaloe R6 – deficit in housing stock as zoned residential lands have remained undeveloped; will alleviate one-off housing pressure; bypass

and river crossing will facilitate development; principle of site development accepted under TOU2; within 6km of the Limerick Shannon Metropolitan Area (LSMA) and complements all existing plans; core strategy based on outdated 2016 census data; housing crisis.

Part 2a.(iv) Liscannor R3 – has regard to guidelines and policies, and is consistent with proper planning and sustainable development; is consistent with compact growth; is sequential and can achieve pedestrian access to Main Street; there is increased housing demand from remote workers; wastewater treatment plant (WWTP) has capacity.

Part 2a.(v) - (xii) Broadford LDR 1, 2, 4, 5, 6, 7, 8 & 9 – zoning of land needed to accommodate growth and to deliver on WWTP for Broadford (a Priority Action Areas under the third cycle *Water Framework Directive* (WFD) with risk to human health and environment); ambition for Broadford as a sustainable commuter community; LDR zoning should be retained as national, regional and local policy support investment in rural waste water treatment (WWT) infrastructure (NSO 9 and RPO 213); consistent with Objective CDP 11.34 Rural Wastewater, Objective CDP 4.8(c) Small villages and Broadford Settlement Statement; would accommodate relatively low scale development; zoning to create critical mass is key to securing investment in WWT infrastructure; LDR acts as an alternative to one-off housing; Uisce Éireann (UÉ) will only consider capital investment where land is zoned; consistent with NPO 72a-c as WWTP is intended to be delivered within Plan-period; consistent with NPO 18a growth or rural settlements.

Part 2a.(xiii) - (xviii) Cooraclare LDR 1, 2, 3, 4, 5 & 6 – zoning of land needed to accommodate growth and to deliver on WWTP for Broadford (a Priority Action Areas under the third cycle WFD with risk to human health and environment); WWTP; LDR zoning should be retained as national, regional and local policy support investment in rural WWT infrastructure (NSO 9 and RPO 213); consistent with Objective CDP 11.34 Rural Wastewater, Objective CDP 4.8(c) Small villages and Cooraclare Settlement Statement; would accommodate relatively low scale development; zoning to create critical mass is key to securing investment in WWT infrastructure; LDR acts as an

alternative to one-off housing; UÉ will only consider capital investment where land is zoned; consistent with NPO 72a-c as WWTP is intended to be delivered within plan-period; consistent with NPO 18a growth of rural settlements.

Part 2b. – Need to balance transport function with social and economic function; similar to policy in last plan limiting consideration to farmers' sons/daughters actively engaged in farming, which has had negligible impact due to very few applications; would not result in traffic hazard; only in exceptional circumstances; aligns with RPO 27 and NPO 15; aligns with *Croí Cónaithe (Towns) Fund Scheme*, RPO 38 and NPO 15 for rural regeneration; as N67, N68 and N85 cover c.47% of the land mass in West Clare it will result in serious social, cultural and economic impacts; greater risk of traffic accidents as farmers will have to commute to their farms.

- A total of 25 submissions were received from the public by the Chief Executive during the consultation period, including UÉ, Transport Infrastructure Ireland (TII) and the Southern Regional Assembly (SRA) and five from elected members. Of these, the Chief Executive considered seven submissions not to be relevant as they did not address the lands concerned.
 - One (1) submission received in respect of part 2a.(i) Kilrush R5, but which did not raise issues relevant to the draft Direction;
 - two (2) submissions were received in respect of and opposed to part 2a.(ii) Killaloe R6, including one from an elected member;
 - two (2) submissions were received in respect of part 2a. (iii) Mullagh R3, one (1) of which was opposed to part 2a.(iii) and one (1) of which (from UÉ) was generally in support of part 2a.(iii);
 - three (3) submissions were received in respect of part 2a. (iv) Liscannor R3, two (2) of which were opposed to part 2a. and one (1), from UÉ, was neutral;
 - three (3) submissions were received in respect of part 2a.(v)-(xviii) Broadford LDR1, 2, 4, 5, 6, 7, 8 & 9, and Cooraclare LDR1, 2, 3, 4, 5 & 6,

two (2) of which were opposed to part 2a.(v)-(xviii), and one (1), from ÚE, which was in support of part 2a.(v)-(xviii);

- one (1) submission was received that opposed part 2a.(xix) Ballynacally VGA3;
 - one (1) submission was received that opposed part 2a.(xx) Ennis LDR2;
 - seven (7) submissions were received in respect of, and opposed to, part 2a. generally, but only one (1) of which raises issues relevant to part 2a.;
 - three (3) submissions were received in respect of, and in support of, part 2b, but only one (1), from TII< which raises issues relevant to part 2a; and
 - six (6) submissions were received in respect of, and opposed to, part 2b., but two (2) of which did not raise issues relevant to part 2a.
- As set out in the CE's Report, TII made a submission in support of part 2b of the draft Direction; and UÉ made a submission in support of part 2a.(iii) and (v)-(xviii) of the draft Direction.
 - As set out in the CE's Report, the SRA made a submission in support of the draft Direction and considered the subject zonings to be contrary to the principle of compact growth (RPO 35); RPO 116 to be relevant to points (I) and (III) of the statement of reasons; and RPO 140 to be relevant to point (II) of the statement of reasons.

Part 2a.

Overall response to Part 2a.

The Chief Executive considers that the *Housing Supply Target Methodology for Development Planning, Guidelines for Planning Authorities (2020)* (HST Guidelines), which form the basis for determining the housing supply target in the core strategy, does not take account of the current housing crisis. The Chief Executive considers that the housing supply target included in the core strategy, at 4,500 units, does not reflect the influx of Ukrainian refugees (4,511 persons) and International Protection Migrants (800), and notes that the preliminary 2022 census population for the

county, at 127,938 persons, is 3,460 above ESRI's high migration scenario for the county.

The Chief Executive, therefore, suggests that the actual demand for housing is over and above that accounted for in the *Project Ireland 2040: National Planning Framework* (NPF), *Regional Spatial and Economic Strategy* (RSES) and HST Guidelines and makes the argument that additional lands are required to provide for housing units to cater for the increasing unmet demand over the lifetime of this plan.

On the other hand, and at material alterations stage, the planning authority amended the core strategy to provide for 'additional provision' residential land use zoning on a county wide basis, across almost all tier 1-4 settlements, including Kilrush, Killaloe, Mullagh, Liscannor and Ennis.

The Office accepted this as generally consistent with provisions of the *Development Plans, Guidelines for Planning Authorities* (2022) (the Development Plans Guidelines), which allows for zoning more serviced land than required in order to ensure appropriate supply of new housing. The guidelines set a limit of not greater than 20-25% for additional provision. The revised core strategy provides just in excess of 25% across the county.

In addition, at material alterations stage, the planning authority also amended the core strategy to provide for additional 'unmet demand' on the basis that the preliminary 2022 census figures and the Ukrainian refugee housing crisis, increasing the housing units target by 1,260 to 5,760 units.

The planning authority determined that 215ha of greenfield land was required to accommodate 3,342 units in the top four settlement tiers. However, a larger area of 246ha was so zoned. This area excludes residential (including LDR) zoned lands in Broadford and Cooraclare and extensive Village Growth Areas (VGAs) designations in 46 other unserviced tier 2 large villages and small villages facilitate compact development. It also excludes 1,227 units to be accommodated on zoned brownfield sites. In addition, 758 housing units are proposed to be accommodated in 'unserviced tier 2' settlements, including Broadford and Cooraclare, the other 46 small villages and the open countryside. In total, the core strategy provides for 5,327 units notwithstanding the stated target of 5,760.

The proposed Direction will remove approximately c.19ha¹ of residential zoned land from the top four settlement tiers, reducing the total area to c.227ha. At 35 units per hectare net density, 227ha can accommodate almost 5,960 residential units², although the core strategy estimates a yield of only 3,342 units on greenfield residential lands, in addition to 1,227 units on brownfield land, and 758 units within unserviced settlements and the open countryside.

The potential housing yield from the Plan, excluding the lands subject of the Direction, therefore is in the region of 7,944 units³. This is approximately 76.5% above the HST target of 4,500 units. At a net density of 30 units per hectare, the potential yield would still exceed the HST target by c.57%⁴, dropping to 39%⁵ excess at 25 units per hectare.

The core strategy and associated land use zoning objectives determined by the planning authority, which had regard to the HST Guidelines and to the Development Plans Guidelines, have already built in a very significant level of flexibility to account for the higher than anticipated growth rate (or "increasing unmet demand" as referred to in the CE's Report), which has arisen largely from the recent inward migration into the county. The Office fully supports this practical application of the planning policy context in the particular circumstances faced the Council.

The Office is satisfied that lands the subject of the draft Direction are not required to supplement the flexibility already provided through the core strategy, as made. Further, the Chief Executive has not set out any evidence-based calculations to demonstrate that revised housing targets are required in the light of the preliminary CSO census data for 2022, or that would justify the consequential requirement for the land use zoning objectives subject of the draft Direction.

The Office notes that the HST figures, which informed the core strategy, were determined based on the ESRI 50:50 scenario. This scenario departs somewhat from the RSES transitional population projections for the county for 2026 and for 2031. From table 1, it can be seen that the ESRI 50:50 scenario is between 2,722

¹ This excludes Ballynacally VGA designation, which falls outside of the top 4 tiers.

² 227ha * 0.75 * 35uph = 5,958.75 units.

³ 5,959 + 1,227 + 758 = 7,944 units.

⁴ 5,108 + 1,227 + 758 = 7,092 units.

⁵ 4,256 + 1,277 + 758 = 6,291 units.

and 3,922 less than the RSES projection range for 2022 (as determined on a pro-rata basis). It can also be seen that ESRI 50:50 scenario is between 7,497 and 10,097 less than the RSES projections range for 2029 (as determined on a pro-rata basis).

	2016	Pro-rata increase to 2022 (based on RSES target for 2026)	Total - end 2022	Pro-rata increase to 2029 (based on RSES target for 2031)	Total - end 2029
RSES	119,000	+6,300- +7,500	125,300- 126,500	13,000 – 15,600	132,000 – 134,600
ESRI 50:50		+3,578	122,578	+5,503	124,503
Census	118,817	+8,602	127,419		

Table 1: Comparison of RSES, ESRI and preliminary 2020 census results for County Clare.

Further, the preliminary results of the 2022 census indicate that the actual population growth of the county exceeds the upper RSES population projection range by more than 900 and is almost 4,850 in excess of the ESRI 50:50 scenario, which is equivalent to 1,940 dwelling units⁶.

Based on CSO data, which indicates there were 3,147 Ukrainian Refugees in County Clare on 11th December 2022⁷, the level of growth is largely, but not completely, explained by the accommodation of refugees. Having regard to the CE's Report, which states that there are now 5,311 refugees and asylum seekers (comprising

⁶ Based on 2.5 persons per household occupancy rate, as per NPF 2040 projection.

⁷ <https://www.cso.ie/en/releasesandpublications/fp/p-aui/arrivalsfromukraineinirelandseries8/>.

4,511 Ukrainian Refugees and 800 International Protection Migrants), it is evident that this cohort forms a significant element of the county's population growth.

While the core strategy has a housing target of 5,760 housing units (albeit the yield from zoning in the core strategy table is indicated as being based on 5,327 units), the Office estimates that up to 7,944 units can be accommodated by the plan. At an average household size of 2.5 persons per unit (based on NPF expectation of decrease in household size by 2040), this has the potential to accommodate 19,860 people over the plan-period. At 25 uph the plan would have the potential to deliver up to 6,241 units to accommodate a population of approximately 15,600.

Assuming the same growth rate in population for the county over the next 10-year census period⁸, a population increase of 5,535 to 132,954 can be anticipated for the plan-period. As the core strategy makes provision for a population of 136,650, it can be concluded that the core strategy will comfortably accommodate the growth⁹, without the lands the subject of this Direction.

By contrast, CSO data indicates that, on average, only 343 units have been delivered per annum over the three-year period from 2020 – 2022, inclusive.

The Office, therefore, considers that the above points set out in the CE's Report do not provide an evidence-based justification to warrant an amendment to part 2(a)(i)-(xx) 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)-(xx).

⁸ An additional c.9,224 people to 136,644 in 2032, or 922.4 per annum. On a pro-rata basis, this works out as c.5,535 people over the plan-period, to 132,954.

⁹ However, housing delivery will be the key issue. CSO data indicates that, on average, 343 units were delivered between 2021-2023, inclusive. This is equivalent to the delivery of 2,058 over the 6-year plan period, compared to a target of 5,760 for the plan period. The delivery of this housing target will therefore present a significant challenge for the local authority.

In response to (i) Kilrush R5:

The Office is satisfied that the Chief Executive recommendation in respect of part 2a.(i) Kilrush R5 is appropriate as it would reinstate the zoning objective to that set out in the draft Plan.

The Office acknowledges the public submission made in respect of Kilrush R5, but notes that it did not raise any issue relating directly to the draft Direction in respect of part 2a.(i) Kilrush R5.

In its submission, the SRA stated that the additional land zoned for residential purposes at material alterations stage, as well as the expanded settlement boundaries, are contrary to the principle of compact growth, and that RPO 35 was of note for the draft Direction's statement of reasons.

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), having regard to Kilrush R5 being inconsistent with NPO 3 and RPO 35 compact growth, NPO 6 to regenerate and rejuvenate Kilrush and NPO 18a to support proportionate growth.

In response to (ii) Killaloe R6:

The Chief Executive considers zoning Killaloe R6 to be consistent with NPO 72a-c on the basis that the upgrade to the WWTP in the Killaloe/Ballina area is due for completion in 2025. The Minister will be aware that wastewater infrastructure capacity was not a reason for the inclusion of (ii) Killaloe R6 in the draft Direction. The removal of WWT capacity constraints is welcomed, however, as it will facilitate the development of other, more appropriately located, residential lands in the settlement.

The Chief Executive asserts that there is increased housing demand in Killaloe due to its location, within 6km of the Limerick-Shannon Metropolitan Area (LSMA) as provided for under the RSES for the SRA area and due to the proposed improved roads infrastructure.

Killaloe is an important town at a strategic crossing point on the River Shannon with a new river crossing under construction, however overall management of the growth of Limerick and its wider spatial context has been provided for under the

aforementioned RSES. This was agreed to by all the constituent local authorities, including Clare County Council, in the context of ensuring an appropriately balanced approach between the strategic development of Limerick City, one of the key growth centres under the NPF, and the wider towns and villages.

Killaloe falls outside the LSMA as defined under the RSES and was not designated as a key settlement in the Strategy. A significant land-bank has already been designated in the Plan to support a plan-led approach to the development of Killaloe. Killaloe R6 would add a further c.8ha that would drive a pattern of development for the town that would be inconsistent with NPO 18a to support a sufficient but proportionate level of growth. Without Killaloe R6, the level of zoning for greenfield housing in Killaloe already exceeds the area determined as required by the core strategy by over 6%.

In addition, as noted in the section 31AM(8) Notice Letter issued on 5th April 2023, the lands the subject of Killaloe R6 also fall outside the CSO settlement boundary and would be inconsistent with NPO 3 and RPO 35 in terms of seeking to ensure the compact growth of towns. The inclusion of Killaloe R6 would therefore not support the achievement of the NPF NSO of compact growth. In addition, as noted in the section 31AM(8) Notice Letter, the subject zoning is not sequential and therefore it does not have regard to the policy and objective of the Development Plans Guidelines.

The Chief Executive justifies the retention of the Killaloe R6 on the basis that the proposed River Shannon-Killaloe bypass will provide improved strategic access to Killaloe R6 lands. However, the bypass will result in the subject site becoming less, not better, connected to the centre of the Killaloe. As the existing local road radial route will be interrupted by the bypass, active travel and vehicular routes will be diverted west along the bypass to use the R463, adding c.600m to the journey to the centre of the settlement.

The Office therefore considers Killaloe R6 to be contrary to the *Climate Action Plan 2023*, which includes the implementation of the avoid-shift-improve framework approach to land use transport planning and which recognizes the *National Sustainable Mobility Policy* (2022) (NSMP) as laying the foundations for the required system change in transport to help achieve net-zero emissions by 2050. In this

regard, the Office considers Killaloe R6 to be contrary to the goals of the NSMP, including goal 5 to encourage modal shift; goal 7 to support enhanced permeability; and goal 9 to support compact growth and transport-orientated development through better integrated land use and transport planning.

Accordingly, Killaloe R6 is also contrary to the requirement for objectives to promote sustainable settlement and transport strategies under section 10(2)(n) of the Act, including objective CDP2.15(b) of the Plan, which seeks *‘to reduce reliance on private cars and achieve modal shift to sustainable transportation in conjunction with policies to achieve compact growth and reduce congestion.’*

In its submission, the SRA also stated that the additional land zoned for residential purposes at material alterations stage, as well as the expanded settlement boundaries, are contrary to the principle of compact growth and that RPO 35 was of note for the draft Direction’s statement of reasons.

Following consideration of the submissions and CE’s Report, the Office considers that there is therefore no basis to amend its recommendation in respect of part 2 (a)(ii), having regard to Killaloe R6 being inconsistent with NPO 3, NPO 35 - compact growth, and with NPO 18a to support proportionate growth.

In response to (iii) Mullagh R3:

The Chief Executive submits that Mullagh has adequate water capacity and will have adequate wastewater treatment capacity with the WWTP upgrade nearing completion. The Minister will be aware that WWTP and water supply capacity was not a reason for the inclusion of (iii) Mullagh R3 in the draft Direction.

The Chief Executive has not addressed the WWT network issue pertaining to this site, namely that the network would have to be extended 400m to the site. In its submission on the draft Direction, which generally supports part 2a.(iii) of the draft Direction, UÉ confirms that a significant network extension would be required, potentially requiring third party permissions, to achieve connection to nearest sewer for Mullagh R3.

The Chief Executive considers that Mullagh, unlike many other settlements in West Clare, can cater for growth consistent with NPO 72a-c, to provide much needed

permanent housing, without encouraging a proliferation of development that would be disproportionate in scale.

However, the Mullagh R3 amendment would more than double the area of greenfield residential zoned land, in this rural village, in a haphazard manner, well beyond the broad confines of this rural village. This is inconsistent with NPO 18a, NPO 3 and RPO 35, and undermines the potential to sustainably develop this village, located in a highly scenic and attractive area in West Clare, as it would not focus future development on the established village core. Proceeding along the lines proposed by the planning authority under Mullagh R3 is also inconsistent with RPO 6.

In its submission, the SRA stated that the additional land zoned for residential purposes at material alterations stage, as well as the expanded settlement boundaries, are contrary to the principle of compact growth and that RPO 35 was of note for the draft Direction's statement of reasons.

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)(iii), having regard to Mullagh R3 being inconsistent with NPO 6 regeneration, NPO 3 and RPO 35 - compact growth, and NPO 18a to support proportionate growth.

In response to (iv) Liscannor R3:

The Chief Executive submits that Liscannor WWTP is due for completion in 2023. The Minister will be aware that WWTP capacity was not a reason for the inclusion of (iv) Liscannor R3 in the draft Direction.

The Office noted in the section 31AM(8) notice letter that the planning authority's Serviced Land Assessment determined that the subject land is serviceable, but set out no details to determine whether it is serviceable in all respects over the plan period. The Office, therefore, remains of the view that, as the site was not zoned for residential development in the Clare County Development Plan 2017-2023 and is not serviced, retaining the zoning of the site for agriculture is consistent with the policy and objective for zoning of residential land under the Development Plans Guidelines.

The Chief Executive considers that Liscannor, unlike many other settlements in West Clare, can cater for growth consistent with NPO 72a-c, to provide much needed

permanent housing, without encouraging a proliferation of development that would be disproportionate in scale.

However, a significant land bank of residentially zoned land has already been provided for in Liscannor, consistent with the core strategy. This already provides a number of options for the development of this rural village. Liscannor R3, which seeks to provide further residential zoned lands, would be inconsistent with the core strategy. The core strategy determined the broad land use zoning needs for Liscannor and going beyond this would drive a disproportionate level of growth in Liscannor, inconsistent with NPO 18a. It also has the potential to undermine the appropriate and sustainable development of the central area of Liscannor village as provided for under the core strategy, which would be inconsistent with RPO 6.

In its submission, the SRA stated that the additional land zoned for residential purposes at material alterations stage, as well as the expanded settlement boundaries, are contrary to the principle of compact growth, and that RPO 35 was of note for the draft Direction's statement of reasons.

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)(iv), having regard to Liscannor R3 being inconsistent with NPO 6 regeneration and NPO 18a to support proportionate growth.

In response to:

- (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 2a;

(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; and

(xviii) Cooraclare LDR6 - i.e. the subject lands revert to VGA from LDR.

The Chief Executive considers it is essential that these lands are zoned to accommodate future growth and to deliver on the investment associated with providing the WWTPs for each settlement. The Chief Executive points out that funding applications have been made 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) for the villages of Broadford and Cooraclare.

The Chief Executive submits that the two WWTPs will be realised within the lifetime of the Plan and believes the inclusion of LDR zoned lands in Broadford and Cooraclare is, therefore, in accordance with the requirements of NPO72a-c.

However, in its submission on the draft Direction, UÉ supports the draft Direction as it relates to Broadford and Cooraclare. UÉ notes that Broadford and Cooraclare are currently unserviced settlements and, as such, considers the recommendation to revert zonings as outlined in the draft Direction to be appropriate and in line with Section 5.3 of the *Draft Water Services Guidelines for Planning Authorities* (2018).

While the Chief Executive states that it is not the intention to encourage a proliferation of development which would detract from the character of the villages or be disproportionate in scale, this is contradicted by the extent of LDR zonings which are significantly disproportionate relative to the scale and rural character of these villages.

It is a matter for the planning authority to advance the case for investment in water services in these villages, in the light of the fact that they have limited water services at present and a level of development provided for under the core strategy, as appropriate to their setting, character and providing for a proportionate level of future development, particularly housing.

However, even in the event of the delivery of the WWTPs for the two settlements, if the full extent of the LDR zonings remained and were developed, the level of such development would be disproportionate to the size of these small villages with limited means of managing same within the context of the provisions of the Plan.

Further, the Chief Executive identifies Broadford, located 10km from the LSMA, as having the potential to serve as a commuter town. This is inconsistent with NPO 2a targeted growth for the cities, with NPO 3 and RPO 35 compact growth and with the requirement for objectives to promote sustainable settlement and transport strategies under 10(2)(n) of the Act, having regard to the *Limerick Shannon Metropolitan Area Transport Strategy* (2022).

Further, the CE's Report notes that there is currently significant risk to human health, including the risk to Castle Lake drinking water abstraction source serving a population of over 25,000, and to the environment, including the Ratty River Cave SAC, the Lower River Shannon SAC, and Fresh Water Pearl Mussel Annex habitats, due to contamination of water courses that flow through Broadford and Cooraclare.

The Office considers the zoning of extensive lands for disproportionate levels of residential development, in advance of the requisite funding, engineering design and development consents needed for WWT facilities is premature and not consistent with an overall strategy for proper planning and sustainable development.

Further, it is inconsistent with NPO 63, which aims to ensure the efficient and sustainable use and development of water services in a manner that supports a

healthy society, economic development requirements and a cleaner environment, and it is also inconsistent NPO 59 to enhance the conservation status and improve the management of protected areas and protected species.

While the CE's Report asserts that the zoning in Broadford and Cooraclare will act as an alternative to one-off housing, the Minister will note that, with the proposed Direction, both settlements will retain significant, but more proportionate, land zoned or otherwise designated (VGAs) to accommodate such residential development. The Office agrees with the principle of proportionate zoning in these villages, as set out in the proposed Direction.

In its submission, the SRA stated that the additional land zoned for residential purposes at material alterations stage, as well as the expanded settlement boundaries, are contrary to the principle of compact growth and that RPO 35 was of note for the draft Direction's statement of reasons.

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)(v)-(xviii), having regard to Broadford LDR1, 2, 4, 5, 6, 7, 8 and 9 and Cooraclare LDR1, 2, 3, 4, 5 and 6 being inconsistent with NPO 18a to support proportionate growth.

In response to (xix) Ballynacally VGA3:

The CE's Report states that it assessed the VGA3 lands at Ballynacally including a site inspection, from which it was made clear that there was a significant difference in levels between the VGA3 lands and the low-lying watercourse located along its southern boundary.

The Chief Executive, having had regard to the said difference in levels and the information contained in Submission S4/023 relating to these lands, which included a hydrology report ('Examination of Flood Risk at Ballynacally Co. Clare'), supports the retention of the VGA3 designation subject to the Minister and the Office being satisfied with the said report, which accompanied the submission. The hydrology report has not been attached to the CE's Report, nor has the Chief Executive provided a summary of the said hydrology report.

The submissions and recommendations by the Office (as well as the section 31AM(8) Notice Letter and proposed draft Direction), in respect of the Ballynacally VGA3 lands, were based on the SFRA carried out by the planning authority and the submissions of the OPW, having regard to *The Planning System and Flood Risk Management Guidelines for Planning Authorities* (2009) (Flood Guidelines) and taking account of the requirements of NPO 57. No plan-making justification test was carried out for Ballynacally VGA3 as per of the said SFRA.

The Chief Executive has not carried out a revised SFRA, or stage three assessment, to provide an evidence-base to inform their recommendation on the draft Direction, nor has it carried out the plan-making justification test for Ballynacally, as necessary under the Flood Guidelines prior to considering the zoning of land within flood risk zone A/B for vulnerable/highly vulnerable uses.

It should be noted that the more elevated portion of Ballynacally VGA3 will revert to Mixed Use (MU), which the Office agrees is appropriate to this central location of the settlement, while the lower elevations, which have been identified as within flood risk zone A/B by the planning authority's SFRA, will revert to Agriculture.

In its submission, the SRA confirmed that RPO 116 Planning System and Flood Risk Management is of note for the draft Direction's statements of reasons.

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)(xix), having regard to Ballynacally VGA3 being inconsistent with NPO 57 flood risk management and with RPO 116, which requires appropriate land use policies in accordance with the Flood Guidelines, and having regard to the Flood Guidelines.

In response to (xx) Ennis LDR2:

The Office notes and welcomes the recommendation of the CE's Report to implement the draft Direction in respect of Ennis LDR2.

The Office acknowledges the public submission made in respect of Ennis LDR2, which disputes the veracity of the SFRA carried out by Clare County Council in conjunction with the review of the Plan. The flood risk assessment prepared on behalf of the third party has not been attached to the CE's Report, but a brief summary of the said report has been included.

The submissions and recommendations by the Office (as well as the section 31AM(8) Notice Letter and proposed draft Direction) in respect of this Ennis LDR2 were based on the SFRA carried out by the planning authority and the submissions of the OPW (having regard to '*The Planning System and Flood Risk Management Guidelines for Planning Authorities*' (2009), as amended), and taking account of the requirements of NPO 57. The subject lands failed the plan-making justification test carried out as part of the said SFRA. No revised plan-making justification test has been carried out by the planning authority in response to the draft Direction.

In relation to the flood relief scheme for Ennis town, the Office is aware that these lands are not within the defended area of the defences. In addition, under the Flood Guidelines, the presence of flood defences are not taken into account when defining flood risk zones.

In its submission, the SRA confirmed that RPO 116 planning system and flood risk management is of note for the draft Direction's statements of reasons.

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)(xx), having regard to Ennis LDR2 being inconsistent with NPO 57 flood risk management, with RPO 116 which requires appropriate land use policies in accordance with the Flood Guidelines, and having regard to the Flood Guidelines.

Part 2b

In response to part 2b. '*Existing Accesses onto National Secondary Roads*':

The CE's Report considers subsection '*Existing Accesses onto National Secondary Roads*' under '*Exceptional Circumstances*' in section 11.2.9.3 of the Plan is in line with Section 2.6 of the *Spatial Planning and National Roads Guidelines for Planning Authorities* (2012) (National Roads Guidelines), which provides for Exceptional Circumstances in relation to access onto lightly trafficked sections of National Secondary Routes.

The Chief Executive states that a similar policy was included in the Clare County Development Plan 2017-2023, which policy was not the subject of the Ministerial Direction that issued in relation to that plan.

As set out in the section 31AM(8) Notice Letter, section 2.5 of the *Spatial Planning and National Roads Guidelines* (2012) (National Roads Guidelines) requires the plan to include policies to avoid the creation of new accesses and the intensification of existing accesses to national roads where a speed limit greater than 50 kmh applies, in order to maintain and protect the safety, capacity and efficiency of the national road network, consistent with RPO 140 to maintain the strategic capacity and safety of the national road network and to support the achievement of the NPF NSO for enhanced regional accessibility. Section 2.6 of the National Roads Guidelines provides for certain exceptions to the policy approach that can be agreed with TII during the plan review process.

In this regard, the planning authority identified stretches of national roads where a less restrictive approach is to be applied, including:

- N67 Ballyvaughan to Lisdoonvarna;
- N67 short section between the junction with the R483 and the junction with the R484;
- N67 Doonbeg to Kilkee; and
- N67 Kilrush to Killimer.

These sections comprise a significant proportion (c.33%) of the N67 between Ballyvaughan and Killimer. Further, limited direct access is permitted within the 60kmh (transitional zones) on approach to / exit from the towns and villages along national roads. No limits apply other than normal road safety, traffic management and urban design criteria within the 50kmh speed limit. This policy approach is consistent with the guidelines and has been accepted by TII.

Submissions on the draft Direction, including from elected members, have raised concerns that the policy will impact on 47% of the land mass of West Clare, which are served by national secondary roads, N67, N68 and N85.

It is for the planning authority to determine, in consultation with TII as part of the plan-review or plan-variation process, on an evidence-basis, the appropriateness and acceptability of applying exceptions under section 2.6 of the National Roads Guidelines to the national secondary routes in the county. The Office notes that the obligation on the planning authority is to have regard to the Guidelines and the terminology, used below, in respect of the Guidelines is cognisant of this.

In addition, it is noted that West Clare is served by an extensive network of local and regional roads, to which access is not restricted by the guidelines.

Regarding the submission that capacity and safety issues concerns can be resolved by entrance design solutions, section 2.6 of the National Roads Guidelines are clear in terms of how exceptional circumstances are applied. The planning authority can only designate exceptional circumstances to defined lightly-trafficked sections of national secondary routes, in agreement with TII, where safety issues and considerations can also be adequately addressed, in accordance with the TII publications for road design standards. Entrance design cannot be applied as a standalone solution separately to the agreement with TII under section 2.6 of the National Roads Guidelines.

The CE's Report submits that it is important to apply a less restrictive approach to existing accesses onto national secondary roads. A balance can be struck between the important transport function of national secondary roads and the social and economic development of these areas, to enable farmers with a genuine rural housing need to use existing accesses where no suitable alternative sites are

available with access off a lower-level road. The Chief Executive notes that the numbers of cases of single rural houses where these exceptions apply is extremely low and the net impact, in terms of intensification of existing accesses, would be negligible.

However, the National Roads Guidelines above do not provide for a general exception for consideration of access to national roads for specific classes of development (such as for one-off dwellings), such as that provided for under *'Existing Accesses onto National Secondary Roads'*.

In its submissions on the plan review process and on the draft Direction, TII has confirmed that the subject policy provision does not have regard to the National Roads Guidelines and that TII supports part 2b of the draft Direction.

In its submission on the draft Direction, the SRA confirmed that RPO 140 International Connectivity is of note in respect of the draft Direction's statement of reasons.

Contrary to assertions made in the submissions, the Office is satisfied that part 2b of the draft Direction is not in conflict with Croí Cónaithe, or with RPO 38 and NPO 15, concerning bringing buildings back into use, regeneration or encouraging growth in rural areas. It is further noted that the Plan includes extensive policy provision to encourage and facilitate the growth and regeneration of rural areas.

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 (b), having regard to policy provision for *'Existing Accesses onto National Secondary Roads'* which fails to have adequate regard to the National Roads Guidelines, fails to support the achievement of the NPF NSO to enhance regional accessibility including by *'maintaining 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'*.

Recommendation

In light of the above and for the reasons given in our Notice Letter of 5th April 2023, the Office remains of the view, as set out in the 31(AM)(8) Notice Letter, 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)(a) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act to issue the Direction with minor amendments as per the attached proposed final Direction.

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



**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 and as per Volume 3a of the proposed amendments to the draft Plan dated 28th November 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 nonsequential 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).
- ~~V~~ V 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~~ 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~~ 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. 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 YYYY.



Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

6th July 2023

Mr. Kieran O'Donnell TD

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

BY EMAIL

**Re: Notice Pursuant to section 31AN(4) of the Planning and Development Act
2000 (as amended) – Clare County Development Plan 2023-2029**

A chara,

I am writing further to the correspondence issued by the Office of the Planning Regulator (the Office) on 27th June 2023 regarding the proposed Direction on the Clare County Development Plan 2023-2029.

The correspondence was issued in the context of the statutory duty of the Office pursuant to section 31AN(4) of the *Planning and Development Act 2000*, as amended.

I must advise that it has come our attention that there are corrections required to the proposed Notice Letter issued in conjunction with the proposed Direction. No corrections are required to the proposed Direction.

The required corrections are detailed in the attached appendices, A and B, where **red** indicates text to be inserted and ~~strike through~~ indicates text to be removed.

The corrections concern the figures specified by the Office in relation to the 2022 preliminary census, refugees, housing completions, the core strategy population target and consequential calculations, in addition to the N67. Only minimal corrections of associated text are required.

The corrections relate to the specified paragraphs, pages and tables of the Notice Letter, as follows:

Part 2a – Overall response to part 2a. (Appendix A refers)

Preliminary 2022 census results - ~~127,419~~ **127,938**:

- table 1 - ~~127,419~~ **127,938**; ~~+8,602~~ **+9,121**;
- paragraph 2, p.12 - ~~900~~ **1,400**; ~~almost 4,850~~ **5,360**; ~~1,940~~ **2,144**;
- footnote 8 p.13 - ~~.9,224~~ **9,821**; ~~136,644~~ **137,759**; ~~922.4~~ **982**; and
- paragraph 3 p.13 - ~~5,535~~ **5,893**; ~~132,954~~ **133,831**.

CSO refugees figure – ~~3,147~~ **4,008**:

- paragraph 3 p.12 - ~~3,147~~ **4,008**.

CSO housing completions – ~~343~~ **457**:

- paragraph 4 p.13 - ~~343~~ **457**; and
- footnote 9 p.13 ~~343~~ **457**; and ~~2058~~ **2740**.

Core strategy population target –~~136,650~~ **134,650**:

- paragraph 3 p.13 - ~~136,650~~ **134,650**.

Part 2b. (Appendix B refers)

N67 – ~~e.33%~~ **c.43%**:

- paragraph 1 p.25 - ~~e.33%~~ **c.43%**.

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.



Niall Cussen

Planning Regulator



Appendix A

Corrections to section Part 2a – Overall response to Part 2a.

- two (2) of which were opposed to part 2a.(v)-(xviii), and one (1), from ÚE, which was in support of part 2a.(v)-(xviii);
 - one (1) submission was received that opposed part 2a.(xix) Ballynacally VGA3;
 - one (1) submission was received that opposed part 2a.(xx) Ennis LDR2;
 - seven (7) submissions were received in respect of, and opposed to, part 2a. generally, but only one (1) of which raises issues relevant to part 2a.;
 - three (3) submissions were received in respect of, and in support of, part 2b, but only one (1), from TII< which raises issues relevant to part 2a; and
 - six (6) submissions were received in respect of, and opposed to, part 2b., but two (2) of which did not raise issues relevant to part 2a.
- As set out in the CE's Report, TII made a submission in support of part 2b of the draft Direction; and UÉ made a submission in support of part 2a.(iii) and (v)-(xviii) of the draft Direction.
 - As set out in the CE's Report, the SRA made a submission in support of the draft Direction and considered the subject zonings to be contrary to the principle of compact growth (RPO 35); RPO 116 to be relevant to points (I) and (III) of the statement of reasons; and RPO 140 to be relevant to point (II) of the statement of reasons.

Part 2a.

Overall response to Part 2a.

The Chief Executive considers that the *Housing Supply Target Methodology for Development Planning, Guidelines for Planning Authorities* (2020) (HST Guidelines), which form the basis for determining the housing supply target in the core strategy, does not take account of the current housing crisis. The Chief Executive considers that the housing supply target included in the core strategy, at 4,500 units, does not reflect the influx of Ukrainian refugees (4,511 persons) and International Protection Migrants (800), and notes that the preliminary 2022 census population for the

county, at 127,938 persons, is 3,460 above ESRI's high migration scenario for the county.

The Chief Executive, therefore, suggests that the actual demand for housing is over and above that accounted for in the *Project Ireland 2040: National Planning Framework* (NPF), *Regional Spatial and Economic Strategy* (RSES) and HST Guidelines and makes the argument that additional lands are required to provide for housing units to cater for the increasing unmet demand over the lifetime of this plan.

On the other hand, and at material alterations stage, the planning authority amended the core strategy to provide for 'additional provision' residential land use zoning on a county wide basis, across almost all tier 1-4 settlements, including Kilrush, Killaloe, Mullagh, Liscannor and Ennis.

The Office accepted this as generally consistent with provisions of the *Development Plans, Guidelines for Planning Authorities* (2022) (the Development Plans Guidelines), which allows for zoning more serviced land than required in order to ensure appropriate supply of new housing. The guidelines set a limit of not greater than 20-25% for additional provision. The revised core strategy provides just in excess of 25% across the county.

In addition, at material alterations stage, the planning authority also amended the core strategy to provide for additional 'unmet demand' on the basis that the preliminary 2022 census figures and the Ukrainian refugee housing crisis, increasing the housing units target by 1,260 to 5,760 units.

The planning authority determined that 215ha of greenfield land was required to accommodate 3,342 units in the top four settlement tiers. However, a larger area of 246ha was so zoned. This area excludes residential (including LDR) zoned lands in Broadford and Cooraclare and extensive Village Growth Areas (VGAs) designations in 46 other unserviced tier 2 large villages and small villages facilitate compact development. It also excludes 1,227 units to be accommodated on zoned brownfield sites. In addition, 758 housing units are proposed to be accommodated in 'unserviced tier 2' settlements, including Broadford and Cooraclare, the other 46 small villages and the open countryside. In total, the core strategy provides for 5,327 units notwithstanding the stated target of 5,760.

The proposed Direction will remove approximately c.19ha¹ of residential zoned land from the top four settlement tiers, reducing the total area to c.227ha. At 35 units per hectare net density, 227ha can accommodate almost 5,960 residential units², although the core strategy estimates a yield of only 3,342 units on greenfield residential lands, in addition to 1,227 units on brownfield land, and 758 units within unserviced settlements and the open countryside.

The potential housing yield from the Plan, excluding the lands subject of the Direction, therefore is in the region of 7,944 units³. This is approximately 76.5% above the HST target of 4,500 units. At a net density of 30 units per hectare, the potential yield would still exceed the HST target by c.57%⁴, dropping to 39%⁵ excess at 25 units per hectare.

The core strategy and associated land use zoning objectives determined by the planning authority, which had regard to the HST Guidelines and to the Development Plans Guidelines, have already built in a very significant level of flexibility to account for the higher than anticipated growth rate (or "increasing unmet demand" as referred to in the CE's Report), which has arisen largely from the recent inward migration into the county. The Office fully supports this practical application of the planning policy context in the particular circumstances faced the Council.

The Office is satisfied that lands the subject of the draft Direction are not required to supplement the flexibility already provided through the core strategy, as made. Further, the Chief Executive has not set out any evidence-based calculations to demonstrate that revised housing targets are required in the light of the preliminary CSO census data for 2022, or that would justify the consequential requirement for the land use zoning objectives subject of the draft Direction.

The Office notes that the HST figures, which informed the core strategy, were determined based on the ESRI 50:50 scenario. This scenario departs somewhat from the RSES transitional population projections for the county for 2026 and for 2031. From table 1, it can be seen that the ESRI 50:50 scenario is between 2,722

¹ This excludes Ballynacally VGA designation, which falls outside of the top 4 tiers.

² 227ha * 0.75 * 35uph = 5,958.75 units.

³ 5,959 + 1,227 + 758 = 7,944 units.

⁴ 5,108 + 1,227 + 758 = 7,092 units.

⁵ 4,256 + 1,277 + 758 = 6,291 units.

and 3,922 less than the RSES projection range for 2022 (as determined on a pro-rata basis). It can also be seen that ESRI 50:50 scenario is between 7,497 and 10,097 less than the RSES projections range for 2029 (as determined on a pro-rata basis).

	2016	Pro-rata increase to 2022 (based on RSES target for 2026)	Total - end 2022	Pro-rata increase to 2029 (based on RSES target for 2031)	Total - end 2029
RSES	119,000	+6,300- +7,500	125,300- 126,500	13,000 – 15,600	132,000 – 134,600
ESRI 50:50		+3,578	122,578	+5,503	124,503
Census	118,817	+8,602 +9,121	127,419 127,938		

Table 1: Comparison of RSES, ESRI and preliminary 2020 census results for County Clare.

Further, the preliminary results of the 2022 census indicate that the actual population growth of the county exceeds the upper RSES population projection range by more than ~~900~~ **1,400** and is almost ~~4,850~~ **5,360** in excess of the ESRI 50:50 scenario, which is equivalent to ~~1,940~~ **2,144** dwelling units⁶.

Based on CSO data, which indicates there were ~~3,147~~ **4,008** Ukrainian Refugees in County Clare on 11th December 2022⁷, the level of growth is largely, but not completely, explained by the accommodation of refugees. Having regard to the CE's Report, which states that there are now 5,311 refugees and asylum seekers (comprising 4,511 Ukrainian Refugees and 800 International Protection Migrants), it

⁶ Based on 2.5 persons per household occupancy rate, as per NPF 2040 projection.

⁷ <https://www.cso.ie/en/releasesandpublications/np/p-aui/arrivalsfromukraineinirelandseries8/>.

is evident that this cohort forms a significant element of the county's population growth.

While the core strategy has a housing target of 5,760 housing units (albeit the yield from zoning in the core strategy table is indicated as being based on 5,327 units), the Office estimates that up to 7,944 units can be accommodated by the plan. At an average household size of 2.5 persons per unit (based on NPF expectation of decrease in household size by 2040), this has the potential to accommodate 19,860 people over the plan-period. At 25 uph the plan would have the potential to deliver up to 6,241 units to accommodate a population of approximately 15,600.

Assuming the same growth rate in population for the county over the next 10-year census period⁸, a population increase of ~~5,535~~ 5,893 to ~~132,954~~ 133,831 can be anticipated for the plan-period. As the core strategy makes provision for a population of ~~136,650~~ 134,650, it can be concluded that the core strategy will comfortably accommodate the growth⁹, without the lands the subject of this Direction.

By contrast, CSO data indicates that, on average, only ~~343~~ 457 units have been delivered per annum over the three-year period from 2020 – 2022, inclusive.

The Office, therefore, considers that the above points set out in the CE's Report do not provide an evidence-based justification to warrant an amendment to part 2(a)(i)-(xx) 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)-(xx).

⁸ An additional c.~~9,224~~ 9,821 people to ~~136,644~~ 137,759 in 2032, or ~~922.4~~ 982 per annum. On a pro-rata basis, this works out as c.~~5,535~~ 5,893 people over the plan-period, to ~~132,954~~ 133,831.

⁹ However, housing delivery will be the key issue. CSO data indicates that, on average, ~~343~~ 457 units were delivered between 2021-2023, inclusive. This is equivalent to the delivery of ~~2,058~~ 2,740 over the 6-year plan period, compared to a target of 5,760 for the plan period. The delivery of this housing target will therefore present a significant challenge for the local authority.

Appendix B

Corrections to section Part 2b.

Part 2b

In response to part 2b. '*Existing Accesses onto National Secondary Roads*':

The CE's Report considers subsection '*Existing Accesses onto National Secondary Roads*' under '*Exceptional Circumstances*' in section 11.2.9.3 of the Plan is in line with Section 2.6 of the *Spatial Planning and National Roads Guidelines for Planning Authorities* (2012) (National Roads Guidelines), which provides for Exceptional Circumstances in relation to access onto lightly trafficked sections of National Secondary Routes.

The Chief Executive states that a similar policy was included in the Clare County Development Plan 2017-2023, which policy was not the subject of the Ministerial Direction that issued in relation to that plan.

As set out in the section 31AM(8) Notice Letter, section 2.5 of the *Spatial Planning and National Roads Guidelines* (2012) (National Roads Guidelines) requires the plan to include policies to avoid the creation of new accesses and the intensification of existing accesses to national roads where a speed limit greater than 50 kmh applies, in order to maintain and protect the safety, capacity and efficiency of the national road network, consistent with RPO 140 to maintain the strategic capacity and safety of the national road network and to support the achievement of the NPF NSO for enhanced regional accessibility. Section 2.6 of the National Roads Guidelines provides for certain exceptions to the policy approach that can be agreed with TII during the plan review process.

In this regard, the planning authority identified stretches of national roads where a less restrictive approach is to be applied, including:

- N67 Ballyvaughan to Lisdoonvarna;
- N67 short section between the junction with the R483 and the junction with the R484;
- N67 Doonbeg to Kilkee; and
- N67 Kilrush to Killimer.

These sections comprise a significant proportion (~~c.33%~~ **c.43%**) of the N67 between Ballyvaughan and Killimer. Further, limited direct access is permitted within the 60kmh (transitional zones) on approach to / exit from the towns and villages along national roads. No limits apply other than normal road safety, traffic management and urban design criteria within the 50kmh speed limit. This policy approach is consistent with the guidelines and has been accepted by TII.

Submissions on the draft Direction, including from elected members, have raised concerns that the policy will impact on 47% of the land mass of West Clare, which are served by national secondary roads, N67, N68 and N85.

It is for the planning authority to determine, in consultation with TII as part of the plan-review or plan-variation process, on an evidence-basis, the appropriateness and acceptability of applying exceptions under section 2.6 of the National Roads Guidelines to the national secondary routes in the county. The Office notes that the obligation on the planning authority is to have regard to the Guidelines and the terminology, used below, in respect of the Guidelines is cognisant of this.

In addition, it is noted that West Clare is served by an extensive network of local and regional roads, to which access is not restricted by the guidelines.

Regarding the submission that capacity and safety issues concerns can be resolved by entrance design solutions, section 2.6 of the National Roads Guidelines are clear in terms of how exceptional circumstances are applied. The planning authority can only designate exceptional circumstances to defined lightly-trafficked sections of national secondary routes, in agreement with TII, where safety issues and considerations can also be adequately addressed, in accordance with the TII publications for road design standards. Entrance design cannot be applied as a standalone solution separately to the agreement with TII under section 2.6 of the National Roads Guidelines.

The CE's Report submits that it is important to apply a less restrictive approach to existing accesses onto national secondary roads. A balance can be struck between the important transport function of national secondary roads and the social and economic development of these areas, to enable farmers with a genuine rural housing need to use existing accesses where no suitable alternative sites are

available with access off a lower-level road. The Chief Executive notes that the numbers of cases of single rural houses where these exceptions apply is extremely low and the net impact, in terms of intensification of existing accesses, would be negligible.

However, the National Roads Guidelines above do not provide for a general exception for consideration of access to national roads for specific classes of development (such as for one-off dwellings), such as that provided for under *'Existing Accesses onto National Secondary Roads'*.

In its submissions on the plan review process and on the draft Direction, TII has confirmed that the subject policy provision does not have regard to the National Roads Guidelines and that TII supports part 2b of the draft Direction.

In its submission on the draft Direction, the SRA confirmed that RPO 140 International Connectivity is of note in respect of the draft Direction's statement of reasons.

Contrary to assertions made in the submissions, the Office is satisfied that part 2b of the draft Direction is not in conflict with Croí Cónaithe, or with RPO 38 and NPO 15, concerning bringing buildings back into use, regeneration or encouraging growth in rural areas. It is further noted that the Plan includes extensive policy provision to encourage and facilitate the growth and regeneration of rural areas.

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 (b), having regard to policy provision for *'Existing Accesses onto National Secondary Roads'* which fails to have adequate regard to the National Roads Guidelines, fails to support the achievement of the NPF NSO to enhance regional accessibility including by *'maintaining 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'*.