

**Chief Executive's Report on Submissions
Received on the Notice of Draft Ministerial
Direction on the Clare County Development Plan
2017-2023**

**Prepared in Accordance with Section 31(8) of the Planning and
Development Act, 2000 (as amended)**

Clare County Council

Áras Contae and Chláir

New Road

Ennis

Co. Clare

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Section 1 Introduction

On 19th December 2016 the Elected Members of Clare County Council, by resolution, adopted the Clare County Development Plan 2017-2023. On 23rd January 2017, in accordance with Section 31(3) of the Planning and Development Act, 2000 (as amended), Clare County Council was issued with a written notification that the Minister for Housing, Planning, Community and Local Government had formed the provisional opinion that:

(i) The Planning Authority has ignored or not taken account of submissions made on the Minister's behalf in February and October 2016, and

(ii) The Clare County Development Plan 2017-2023, as adopted, is not in compliance with the requirements of s.9, s.10, s.12, s.28, s.177V and s.177W of the Planning and Development Act, 2000 (as amended).

Accordingly, the Minister issued a draft Ministerial Direction under Section 31 of the Planning and Development Act, 2000 (as amended). The draft Ministerial Direction requires that the Planning Authority:

(i) Remove written objective TOU7 Ardclonny and accompanying text from Volume 3(c) Killaloe Municipal District Written Statement and Maps; and

(ii) Amend the maps for Killaloe which set out the objectives for Ardclonny by changing the zoning objective for lands currently indicated as TOU7 (tourism) to unzoned.

The Draft Ministerial Direction and the associated Statement of Reasons are contained as Appendix 1 of this report.

As required under Section 31(7) of the Planning and Development Act, 2000 (as amend) the Planning Authority published a notice of the draft direction in a newspaper circulating in the area on 31st January 2017. This notice stated the reasons for the draft direction, locations where the draft direction could be inspected, that written submissions or observations on the draft direction could be made to the Planning Authority between Tuesday 31st January and Monday 13th February (both dates inclusion) and that any such submissions or observations would be taken into consideration by the Minister before he directs the Planning Authority pursuant to Section 31 of the Planning and Development Act, 2000 (as amended).

This Chief Executive's Report forms part of the statutory procedure relating to the Ministerial Direction. This Chief Executive's Report:

- i. Summarises the views of any person who made submissions or observations to the planning authority
- ii. Summarises the views of and recommendations (if any) made by the Elected Members of the Planning Authority
- iii. Makes recommendations in relation to the best manner in which to give effect to the draft direction.

This report is hereby furnished to the Minister for Housing, Planning, Community and Local Government and the Elected Members of Clare County Council in accordance with the timescales and requirements of Section 31(8) of the Planning and Development Act, 2000 (as amended)..

Section 2 Legislative Process

The Minister shall consider the Chief Executive's Report furnished to him in accordance with Section 31(8) of the Planning and Development Act, 2000 (as amended) and will also consider any submissions made by the Elected Members under Section 31(10) of the Act and:

a) Where he believes that no material amendment to the draft direction is required, or that further investigation is not necessary in order to clarify any aspect of the report or submission, he may decide, within 3 weeks of the date of receipt of this report, for stated reason:

(i) To issue the direction with or without proposed amendments, or

(ii) Not to issue the direction

b) Where the Minister believes that:

(i) A material amendment to the direction may be required, or

(ii) Further investigation is order to clarify any aspect of the report furnished under Section 31(8) or submissions made under Section 31(10) of the Act, or

(iii) It is necessary for any other reason

He may, for stated reasons, appoint an inspector to review the draft direction and the Chief Executive's Report, to consult with the Chief Executive and Elected Members of the Planning Authority and possibly any person who made a submission and shall furnish the Minister with a report containing recommendations

Copies of the report shall be made available to the Chief Executive, the Elected Members and any person who made a submission and further submissions on the contents of the inspector's report may be made. The Minister will take any submissions received into consideration before making a final decision in relation to the direction.

The direction issued by the Minister is deemed to have immediate effect and its terms are considered to be incorporated into the plan.

Section 3 Summaries of the Views of Persons who made Submissions or Observations to the Planning Authority

Sub. 001 Fehily, Timoney & Co. on behalf of Mr. James Whelan

Summary of Issues raised in the Submission

This submission is made to support the zoning of the subject sites and purports that the subject lands can be zoned in accordance with the proper planning and sustainable development of the area and in accordance with the Planning and Development Act 2000. The submission reviews and appraises the NIS and SEA prepared for/by Clare County Council in respect of the amendments to the Draft Clare County Development Plan 2017-2023 adopted in December 2016.

Strategic Environmental Assessment

The SEA recommends that the Tourism zoning be excluded from all parts of the site as it is not possible to determine a finding of no significant impact. It is submitted that the SEA appears to focus on the conclusions of the Council's NIS and, while giving significant weight to a 2004 proposed development, it does not give any weight to the permitted development on the site for road infrastructure, upgrade to the existing treatment plant, welfare facilities and 3 no. accommodation pods (application p.16/114). It states that it is significant that the SEA does not recognise that there is an existing waste water treatment unit on the site, which has permission to be upgraded, and the fact that the site is also serviced by potable water.

Natura Impact Report (NIR) prepared by Clare County Council

The submission quotes a number of sections from the NIR and in particular highlights text from Section 15.0 (page 74) of the NIR, where the Appropriate Assessment Report submitted with resolution of the Elected Member's resolution on 19th December 2016 is discussed. Clare County Council's Natura Impact Report states:

The report contains and inaccurate and misleading conclusion in relation to the granting of planning permission in 2016 for 3 glamping pods on a portion of the site. The report states that 'By virtue of granting planning permission, the competent authority confirmed that the proposed development and the masterplan would not have a significant impact on any European Site'. The granting of planning permission and the finding of no significant effects by the competent authority related to the content of the planning permission (Planning Ref. 16/114) and not to the content of the masterplan.

It is submitted that the above statement fails to take account of the detailed planning history of this application. The application and masterplan referred to in the NIR relate to planning application 16/114 and a further information request issued in respect of this application required the following:

"The subject site is zoned as the East Clare Local Area Plan 2011-2017 for integrated tourism uses, which could include marina and other complementary uses. The proposal presented has not demonstrated how the development complies with this development objective nor its location requirement at this setting. You are therefore requested to submit a master plan for the overall landholding which places the proposed development in the context of the overall site and demonstrates the future development intention of same. The master plan and current proposal should also consider whether it is intended to have access to the lake and if so in what form, and whether works are required to achieve same."

Fehily, Timoney & Co. submit that an AA Screening Report was also submitted in relation to the application site and the Clare County Council were afforded all reasonable opportunity to exercise the precautionary principle in the immediate context of this application had they concerns about the cumulative impact of the proposed development. On this basis they submit that the conclusions of the Appropriate Assessment appraised by the Elected Members in adopted the Clare County Development Plan 2017-2023 was accurate and informed.

Clare County Council's Natura Impact Report states:

“The report does not contain reference to or an indication that the full scope of the conservation objectives for the relevant European Sites has been used, as appropriate, to inform the scope of the scientific assessment and analysis contained in the report”.

It is submitted that the Appropriate Assessment (Stage 2) appraised by the Elected Members in December 2016 was specific and appropriate to fully inform the scope of the assessment in analysing the proposal for zoning at the lands at Ardclonny. Fehily, Timoney & Co. purport that the above statement failed to take account of the range of conservation objectives appraised for the relevant European sites and lists:

- Section 4.2 sets out the conservation objectives as made available through www.npws.ie
- Table 4.1 sets out the characteristics of the European sites within 15km of the Ardclonny site.
- The AA (Stage 2) was supported by a habitat survey which evaluated the habitats within the site and adjacent to the SAC boundary. A habitat map was also included.
- The results of these surveys indicated that there were no Annex 1 habitats listed as CSIs under any of the European Sites.
- Section 5.2 of the AA (Stage 2) details the qualifying interest of the SAC and assesses the potential impacts on each without the inclusion of mitigation measures.
- Where potential impacts were identified a more detailed assessment of potential impacts was undertaken to assess the full scope of conservation objectives.

Fehily, Timoney & Co. submit that it was found through the Appropriate Assessment (Stage 2) and relevant habitats survey that there are no habitats within the site that are qualifying interest of the SAC. Therefore only indirect impacts to aquatic species can potentially occur.

They submit that the statement contained in Clare County Council's NIR failed to take account of, and meaningfully engage with, the AA (Stage 2) and that the statement set out above is misleading and inaccurate and does not have due regard to the scientific evidence presented.

Clare County Council's Natura Impact Report states:

“The report concludes with a finding of no significant effects based on the following:

- *The incorporation of best practice construction methods*
- *The development of a drainage management plan and the provision of an appropriate buffer between the river and any future development*

Case law of the Court of Justice of the European Union (e.g. case C-258/11) has established that an appropriate assessment cannot have lacunae, and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of a project on the European site(s) concerned. These standards, and best scientific knowledge, should underpin the final assessment and analysis with regard to the conservation objectives and integrity of the site. The decision-making authority (in this case Clare County Council) has obligations to address scientific uncertainties and discrepancies.

Fehily, Timoney & Co. submit that full regard was had to Section 28 Guidelines “Appropriate Assessment of Plans and Projects in Ireland” and Part XAB of the Planning and Development Act, 2000. The AA proposed the proposed zoning of the site at an appropriate level and with the benefit of detailed studies carried out by virtue of recent planning applications (ref: 16/114 and 16/870). The Appropriate Assessment outlined the precise and exact best practice construction methods to be required for the works and also included a non-exhaustive list of guidance documents to include measures for protection of water quality.

The Clare County Council Natura Impact Report states:

The issue of invasive species which have been recorded at this location as documented in the SEA Environmental Report and the potential for further proliferation through increased marine related activities (in particular Zebra Mussels) and its effects on water quality have not been addressed.

Fehily, Timoney & Co. submits that the NIR was concerned with the zoning of lands at Ardcloney and included a list of potential operations/activities/developments that could occur within the site. However, as the exact nature of future development was not known, a mitigation measure was included to ensure that subsequent specific development proposals at this site would be subject to Stage 1 Screen for Appropriate Assessment and if required, subsequent stages in the Appropriate Assessment process.

In relation to invasive species, they submit that an additional mitigation measure for future development could be included to ensure that biosecurity measures are adhered to. It is submitted that the Clare County Council assessment in this regard is not based on precise and definitive findings as the potential for future development is not yet known or measureable.

Fehily, Timoney & Co. state that the Council's SEA is concerned that the zoning of the site is not compatible with the policies and objectives of the adopted County Development Plan. It makes these assumptions based on a previous proposal for the site in 2004 and does not reference the permitted development on the site (ref. 16/144) nor does it reference the Appropriate Assessments or the Natura Impact Assessment carried out as part of the planning permission/application. It also does not recognise that there is an existing waste water treatment plant on the site which has permission for its upgrade.

Clare County Council Natura Impact Report states:

No assessment or regard for the Lough Derg SPA Qualifying Interests and Special Conservation Interest Species has been undertaken. The SPA was screened out based on the distance from the proposed zoning with no direct connectivity. It does not take into consideration the potential for indirect effects to roosting/feeding through disturbance both during construction and operation. The NIS does not address the occurrence of SPA SCI species in the vicinity of the proposed zoning and the in-direct knock on effect through potential for increased recreational and marine leisure activities. The operational phase arising from any such zoning has the potential to cause disturbance of both wintering and breeding birds.

Fehily, Timoney & Co. submit that in relation to indirect impacts on the SCIs within Lough Derg SPA, development at the lands in Ardcloney are not likely to have a disturbance effect during construction or operation due to the distance between Ardcloney and the SPA (approx 4.5km) and that roosting and feeding within the SPA would not be affected. The SCIs prime habitat within the SPA would not be impacted by the proposed zoning of lands.

Fehily, Timoney & Co. acknowledge that SCIs are likely to present within the wider Shannon system; however, particularly noisy activities such as piling are not likely to be required during future development at the Ardcloney lands which could cause disturbance and in addition, a mitigation measure was stipulated in the NIS that a buffer will be maintained between the river and any new development on the lands; and the extent of this buffer will be dependent on the scale and type of development proposed.

In terms of activities such as boating and water-based recreational activities, it is submitted that these may increase if the lands at Ardcloney are developed but the scale of this is unknown at this stage and, for this reason, a mitigation measure was stipulated in the NIS to ensure that all developments will be subject to Stage 1 Screening for Appropriate Assessment and, if required, subsequent stages of Appropriate Assessment.

Clare County Council's Natura Impact Report states:

The content of the resolution and accompanying documentation does not change the findings of the appropriate assessment of the CDP 2017-2023 or the assessment of likely environmental effects contained in the Addendum to the Environmental Assessment (September 2016). Tourism related facilities are not suitable proposals for this location and the Tourism zoning should be removed from all parts of this site as it is not possible to determine a finding of no significant effects.

It is submitted that, in assessing the likely significant effects, the matrix in Clare County Council's Natura Impact Report states:

Amend the Tourism zoning boundary to remove all of the SAC lands on the eastern half of the site (lands east of the drainage channel running through the site) and also allowing for a buffer zone between the Tourism zoning boundary and the SAC boundary ca.25m

Furthermore they note that the matrix recommends to:

Remove the reference to the potential 'Marina' development at this site as this would not be suitable at this location, especially in view of the proposed amended zoning boundary

It is submitted that this text clearly confirms that lands outside the SAC are not likely to have a significant impact on the environment.

Notwithstanding the above, and if in agreement with the Minister, they submit that their client (the landowner) is willing to have the lands that are located within the SAC removed from the Tourism zoning in the County Development Plan. A map of the proposed revised zoning has also been submitted and it is noted that the removal of the lands from the SAC will also remove the reference to marina development in the zoning objective.

Conclusions

The submission concludes that the Natura Impact Statement undertaken for the site has established scientifically, and in accordance with regulatory requirements, that the removal of the SAC from the tourism zoning at Ardclony, together with the removal of the reference to 'marina development', but retention of the tourism zoning objective on the remaining lands at this site would not cause any likely significant effect on the conservation objectives of the SAC.

It is submitted that the site has the benefit of planning permission for the development of an integrated tourism development and also benefits from existing services and existing farm buildings which are appropriate for adaptation to tourism use. Fehily, Timoney & Co. indicate that extensive ecological surveys have been carried out on the subject site and in the last year it has been subject to two Appropriate Assessment screenings in respect of planning application 16/411 and 16/870. The complete site in the ownership of Mr. Whelan has been subject to two Natura Impact Statements; one in respect of a masterplan for the site and one in relation to the zoning of the site for tourism development. They also note that neither NPWS nor An Taisce have raised concerns regarding the zoning of the site or regarding the development of the site through the planning application process.

Based on this information, they conclude that the zoning of the subject site, with the exclusion of the area within the SAC, as per the recommendation in the Natura Impact Report, will not have a significant negative effect on the integrity of the SAC.

Section 4 Summary of the Views and Recommendation of the Elected Members

Sub. 002 Elected Members of Clare County Council

Summary of Views and Recommendations contained in the Submission

In the making of the Clare County Development Plan 2011-2017, the Elected Members considered all documentation, the merits of such a development to East Clare and the need for integrated tourism products in the Killaloe area and decided that this was a suitable site for integrated tourism development. It was considered the matters relating to the SAC should be properly dealt with in the context of a future planning application. The Minister did not object.

In the making of the Clare County Development Plan 2017-2023, the Elected Members considered:

- The parameters and characterisation of the site
- Its suitability for integrated tourism zoning
- The current need for such development in the Killaloe area
- Whether any developments carried out in the Killaloe area would benefit, or indeed require the proposed tourism development
- The Minister's submissions in February 2016 and October 2016
- The Appropriate Assessment in December 2016
- The planning permission granted on a small portion of the site in 2016

Wishing to respect the environment and the Habitats Directive and having regard to the Senior Planners advice and their legal and other obligations, the Elected Members decided it would be appropriate to zone the portion of the site that is outside the SAC. However the members were advised by the Senior Planner that this option was not open to the Members at that juncture in the statutory process of making the County Development Plan.

Having considered:

- The need and desire to promote tourism as the main driver of economic development in the Killaloe area
- The new Shannon Crossing that will give quicker and easier access to Killaloe and East Clare
- The enhanced attractiveness of Killaloe as a result of the Tobbermuragh and Bane Field development by Clare County Council
- The new sports facilities at Clarisford and the GAA fields
- The future upgrading of the road network around Killaloe

The Elected Members decided that the subject site should be zoned and that any matters relating to the SAC should be properly dealt with in the context of any future planning application.

The below-listed Elected Members, having considered all the documentation and information available at this time, recommend that the portion of the site T0U7 at Ardcloony, Killaloe which is outside the Lower River Shannon SAC, be zoned for tourism purposes, having regard to the supporting reasons outlined above.

Submission signed by the following Elected Members	
Cllr. Tony O' Brien	Cllr. Michael Begley
Cllr. Pat Burke	Cllr. Joe Cooney
Cllr. Pay Hayes	Cllr. Alan O' Callaghan
Cllr. P.J. Ryan	Cllr. John Crowe
Cllr. Pat McMahon	Cllr. Ann Norton
Cllr. James Breen	Cllr. Mary Howard
Cllr. Tom McNamara	Cllr. Claire Colleran Molloy
Cllr. Paul Murphy	Cllr. Bill Chambers
Cllr. Bill Slattery	Cllr. Michael Hillary
Cllr. Gabriel Keating	Cllr. P.J. Kelly
Cllr. Richard Nagle	

Section 5 Recommendations in relation to the Best Manner to give Effect to the Draft Decision

I have had regard to the draft direction issued by the Minister for Housing, Planning, Community and Local Government, dated 23rd January 2017, the submission received, the views and recommendations of the Elected Members and the proper planning and sustainable development of the area. It is my recommendation that the best manner in which to give effect to the draft direction is for the Minister to issue the direction, without amendments, in accordance with Section 31(11)(a)(i) of the Planning and Development Act, 2000 (as amended). My recommendation is based on the following reasons and considerations:

Likely Significant Effects in accordance with the Habitats Directive and the Birds and Natural Habitats Regulations

The zoning lies partially within a European site (Lower River Shannon cSAC) and therefore has the potential for direct and indirect disturbance on the Lower River Shannon cSAC and Lough Derg SPA Qualifying Interest (QI) features and Special Conservation Interest (SCI) species. Habitat loss, visual and/or noise disturbance, water quality impacts, direct and in-direct effects on Qualifying Interest features through loss of or interference with resting, breeding or foraging areas together with habitat fragmentation are all potential significant effects on the cSAC.

Given the zoning relates to tourism which may result in an integrated development encompassing leisure and recreational facilities, potentially for a marina type use there is potential for disturbance to habitats/species during construction and in operation from noise, lighting and increased boat/leisure related traffic. This could include the potential for disturbance to resting/breeding/foraging sites of Otters together with impacts on QI fish species habitat (at various lifecycle stages) or the potential loss of SAC habitats or habitats (both terrestrial and freshwater) on which SAC QI species depend.

There is also potential for disturbance to Lough Derg SPA SCI species utilising the area for roosting/feeding during construction and operation.

The Elected Members resolved on the 19th of December 2016 to zone this 38 acre site in Ardclonny (13 acres of which lies within the Lower River Shannon cSAC) for Tourism against the recommendation of the Chief Executive and the Department of Housing, Planning, Community and Local Government. As part of the resolution submitted by the Killaloe Municipal District Elected Members a previously unseen report entitled *"Appropriate Assessment (Stage 2) of the Zoning of Lands at Ardclonny, Co. Clare for Integrated Tourism"* dated December 2016 was submitted and relied upon by the Members in their decision. Albeit without prejudice my consideration that this report, that the Members relied upon was not subject to public consultation, in the interests of completeness and to assist the Minister in his consideration, the report was reviewed as part of this Section 31 process post-adoption of the Plan in light of the specific reference to same in the resolution of the members and the following was concluded upon;

- The report contains an inaccurate and misleading conclusion in relation to the granting of planning permission in 2016 for 3 Glamping Pods on a portion of this site. The report states that *'By virtue of granting planning permission, the competent authority confirmed that the proposed development and the masterplan would not have a significant impact on any European Site'*. The granting of planning permission for this minor development outside the SAC and the finding of no significant effects by the competent authority related only to the content of the planning application (Planning Ref. 16/114) and not to content of the Masterplan. As pointed out by Fehily Timoney in their submission a further information request issued in respect of this application required the submission of a Masterplan however, as the planning permission related solely to the Glamping pods and related infrastructure the finding of no significant impact on a European site also only related to this specific application and not to any future intended development which may arise from the Masterplan of the site. Please also refer to my further response below in relation to submissions received from the then Department of Arts, Heritage and the Gaeltacht.
- The report does not contain reference to or an indication that the full scope of the conservation objectives for the relevant European sites has been used, as appropriate, to inform the scope of the scientific assessment and analysis contained in the report.

- In particular there is no reference or indication that each of the individual conservation objectives of relevance have been addressed in particular in relation to the Lower River Shannon cSAC which has site specific conservation objectives meaning that the analysis should include reference to the relevant attributes, targets and notes contained in the NPWS supporting documents. Section 4.2 and Table 4.1 of the 'Appropriate Assessment (Stage 2) Report' lists and refers to the Conservation Objectives. It does not provide a detailed assessment of how the proposed development or zoning would impact on the ability of the qualifying interests to meet the targets of the various attributes as documented in the Conservation Objectives.
- The report concludes with a finding of no significant effects based on the following;
 - The incorporation of best practice construction methods
 - The development of a drainage management plan and the provision of an appropriate buffer between the river and any future development

The Local Authority contends that this is not a satisfactory conclusion having regard to the following critical points.

- I. Case law of the Court of Justice of the European Union (e.g. case C-258/11) has established that an appropriate assessment cannot have lacunae, and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of a project on the European site(s) concerned. These standards, and best scientific knowledge, should underpin the final assessment and analysis with regard to the conservation objectives and integrity of the site. The decision-making authority (in this case Clare County Council) has obligations to address scientific uncertainties or discrepancies. As such, the inclusion of an 'appropriate' buffer as opposed to a defined buffer with proven scientific certainty of its efficacy leaves a considerable *lacuna* in the assessment.
- II. The NIS clearly indicates (albeit in the absence of a dedicated survey) the potential presence of Sea and River Lamprey and the known presence of Atlantic Salmon at this location. The removal of potential effects is based on adherence to Best Practice Guidance and to three generic mitigation measures. It does not address the potential loss of valuable riparian zone at this location through for example marina development given this section of the river is highly important for migration of fish species.
- III. No assessment or regard for the Lough Derg SPA Qualifying Interests and Special Conservation Interest Species has been undertaken. The SPA was screened out based on the distance from the proposed zoning with no direct connectivity. It does not take into consideration the potential for in-direct effects to roosting/feeding through disturbance both during construction and operation. The NIS does not address the occurrence of SPA SCI species in the vicinity of the proposed zoning and the in-direct knock on effect through potential for increased recreational and marine leisure activities. The operational phase arising from any such zoning has the potential to cause disturbance of both wintering and breeding birds. Fehily Timoney in their submission on behalf of James Whelan make the point that *"particularly noisy activities such as piling are not likely to be required during future development at the Ardclony lands which could cause disturbance and in addition, a mitigation measure was stipulated in the NIS that a buffer will be maintained between the river and any new development on the lands"*. This statement is at odds with the further point made by Fehily Timoney whereby they state *"In terms of activities such as boating and water-based recreational activities, these may increase if the lands at Ardclony are developed but the scale of this is unknown at this stage"*. It is not possible to say with certainty that piling (or indeed any other construction method or feature such as dredging, placing of mooring structures – fixed or floating, placement of navigational devices etc) will not take place as a result of the zoning of the site for tourism at this strategic plan level. Therefore, where the possibility of potential significant effects has been identified, in line with the precautionary principle, it is unacceptable to fail to

undertake appropriate assessment as is the case in relation to the Lough Derg SPA which was not carried out within the Appropriate Assessment (Stage 2)¹ as submitted by the members as part of their resolution on the 19th of December 2016.

Fehily Timoney in analysing the conclusions of the Clare County Development Plan 2017-2023 NIR and the Addendum to the Environmental Reports conclude and propose that the lands outside of the SAC are not likely to have a significant impact on the environment and propose the removal of the tourism zoning within the SAC together with the removal of the reference to 'Marina' development in the zoning objective. The submission made by the elected members in response to the Ministerial Direction also requests that the area of land within the SAC is removed from the zoning. For the purposes of Article 6(3) of the Habitats Directive, an assessment does not, strictly speaking, need to look beyond the Plan proposed to address alternative solutions and mitigation measures however there are a range of benefits in doing so. In particular, an examination of possible alternative solutions and mitigation measures may make it possible to ascertain that, in light of such solutions or mitigation measures, the Plan will not adversely affect the integrity of the site. Alternatives have already been addressed throughout the process of preparing the Clare County Development Plan 2017-2023 and were utilised to remove the potential for significant effects on European sites located within the study area. Through the utilisation of an evidenced based sustainable approach to site selection for zoning within each of the settlements, the most appropriate locations were identified within each zoning category. Within the settlement of Killaloe six other parcels of land have been identified as being suitable for tourism zoning and meet the requirements in terms of sustainable development. These sites should be developed first before other sites, outside of the settlement boundary, are looked at.

Contrary to the point made by Fehily Timoney in relation to neither the NPWS or An Taisce having raised concerns regarding the zoning of the site or regarding the development of the site through the planning application process both did in fact raise concerns in relation to P16/114 and P16/870 which included the following issues;

- Water and Waste Water Management in compliance with the required standards.
- Visual Impact
- Road Traffic
- Any future proposals in relation to the Masterplan shall consider the effect the increased activity on and beside the river may have on the local waterfowl population.
- To prove on scientific grounds that their development does not negatively impact on the SAC/SPA
- Critically in response to the initial consultation on P16/114 in March 2016 the Department of Arts, Heritage and the Gaeltacht (NPWS) in addition to raising issues on existing waste water treatment made the following observation in relation to the site which forms the subject of this Chief Executives Report;

Clare County Council should also make the applicant aware that receipt of any permission for this development does not confer the right nor enhance the chances of developing riverside leisure facilities such as marines, walkways, jetty's, pier's etc. Any further developments within or adjoining the European Site will have to be screened fully for Appropriate Assessment and will require either Ministerial consent or Planning Permission.

¹ Note; The Appropriate Assessment is the final stage in the assessment process which is undertaken by the competent authority. The correct reference should be to the preparation of the Natura Impact Statement as prepared by the consultants. Any reference to "stages" is incorrect and relates to the guidance as opposed to the correct terminology as set out in the legislation.

In light of recent changes to legislation it is no longer sufficient to say that protective policies or objectives included in parts of the plan will counteract potential significant or adverse effects of development of sites within the plan area. Strategic examination and analysis are required at the plan level as the basis for considering the effects alone or in combination with other plans and projects on European sites in view of their conservation objectives. Clare County Council as the competent authority must have sufficient information to screen out the potential for significant effects or otherwise zoning which leads to this significant effect cannot be accommodated. The tourism zoning should be removed from all parts of this site as it is not possible to determine a finding of no significant effects.

Assessment against Strategic Environmental Objectives (SEOs) (See Appendix 2 for a full list of SEO and their corresponding codes as referenced below)

Any development at this location is in direct conflict with SEO B2 as approximately half of the site is within the Lower River Shannon cSAC and does not achieve the conservation objectives for the site. With regard to biodiversity and SEO B1, B2 & B3 the EIA associated with planning application P04-2597 which recorded Otters at this site together with existing records from NPWS and the 'Appropriate Assessment (Stage 2) Report' as submitted by the elected members which recognizes the importance of this location for Otters, this species is protected under the cSAC designation and therefore is in conflict with B1, B2 & B3.

It fails to meet SEO B4 as the Water Framework Directive identifies Lough Derg as a provisional Heavily Modified Waterbody with an Ecological Potential Class of Moderate. Any future development at this location must meet the requirements of the WFD and transposing regulations. Physical modifications to the shoreline at this location on Lough Derg could affect the natural sediment processes and biodiversity therefore failing to meet the requirements of the Water Framework Directive and the achievement of "Moderate Ecological Potential" as required under the WFD. It is also a nutrient sensitive lake as identified under the EPA Register of Protected Areas and therefore any future use at this location which could potentially negatively affect this designation as a sensitive area under the Urban Waste Water Treatment Directive (91/271/EEC) does not meet the requirements of B4, W2, and W4.

The EIA associated with planning application P04-2597 identified the presence of zebra mussels adjacent to the site with the potential for further proliferation through increased marine related activities (in particular Zebra Mussels) and its effects on water quality conflicts with B5.

A fish hatchery established since 1958 at Parteen Dam is reliant on this section of the river for the migration of fish species. Any development in this area would have a potential negative impact on the riparian zone. Any development (both construction and operational phases) may cause large scale surface and sub surface disturbance and would cause significant direct short to long term negative impacts on the aquatic ecosystems and water quality which includes siltation and nutrient loading. This would likely result in damage or even loss of habitats for aquatic species, including lamprey and Atlantic Salmon for which the cSAC is designated. This is in conflict with W1 & W2.

Fehily, Timoney & Co. on behalf of Mr. James Whelan raise a number of points in relation to the material assets of the site. The location of the site approximately 4km from Killaloe on a greenfield site does not represent sustainable development and is in conflict with C3 in increasing car dependency, C2 in increasing emissions of greenhouse gases and WW1 as there is no current infrastructure in terms of connection to public sewer network to ensure the treatment of wastewater meets EU requirements prior to discharge at this sensitive location. The planning permission associated with P16/114 does not include for a sufficiently sized Waste Water Treatment Unit on this site for any further associated zoning which would ultimately lead to an increase in the load reaching it. The permission which was granted for 3 no. Glamping pods included for a connection to a waste water treatment system with a population equivalent of 6. This is not sufficient to remove the risk of potential effects on the environment at a strategic level for the zoning of such a large portion of land.

Given its location along the shores of Lough Derg, in an area with no other similar developments or residential housing it will also negatively impact on the landscape quality from both shores of the lake due to its inappropriate siting as per L2.

Balanced and Sustainable Development

The subject lands are located approximately 2.8km south of the settlement boundary of Killaloe. The site adjoins the R463 Regional Route and there are neither footpaths nor public lighting connecting the site to the town of Killaloe. There is also no hard shoulder on the road linking the site to the town, negating against safe pedestrian or cycle connectivity between future development on the subject lands and the services in the nearby settlement.

There are significant lands in the town of Killaloe, totalling 37.52 hectares, zoned for Tourism uses. This reflects the importance of tourism activity to the economy of Killaloe and the wider East Clare area. The zoned lands within the settlement boundary facilitate tourism-related activity and development in locations close to existing infrastructure, services and amenities, allowing the industry to progress in a sequential and sustainable manner. There is no identified need to zone a further 14.1 hectares of land for tourism uses at and unserviced site in Ardclony. The subject lands are disconnected from the settlement structure in the area, are isolated from services and amenities in the town of Killaloe and set an undesirable precedent for ad-hoc zoning and piecemeal zoning in rural areas of the county.

It is neither desirable nor necessary to zone lands for tourism development at Ardclony.

Environmental Considerations

In the past, (East Clare Local Area Plan 2011-2017), the site which is the subject of this Ministerial Direction was zoned for tourism. However, the requirements and restrictions of the Habitats Directive and its transposing legislation of the European Communities (Birds and Natural Habitats) Regulations, 2011 ('2011 Regulations') have increased and have become more onerous for sites which are in, or are adjacent to, European Sites. Regulation 27 of the 2011 Regulations sets out the general duties of 'public authorities' [Habitats Directive Article 6] which includes Local Authorities, An Bord Pleanála, Ministers of Government, etc. Where a public authority has or exercises functions, including consent functions, it must exercise these functions in compliance with or so as to secure compliance with the directives and Regulations. It must also take appropriate steps to avoid European sites deterioration of habitats or significant disturbance of species. Equally they should strive to avoid pollution or deterioration of habitats (for birds) outside European sites.

Sustainable development means ensuring that all development (which arises through zoning of lands) is sustainable in economic, social and environmental terms. The zoning of this site is on isolated unserviced land which will lead to unsustainable patterns of development and is not in keeping with national planning guidelines. The zoning for tourism at this site does not represent a sustainable location in terms of development, is not within the settlement area and, "as the crow flies" is situated c.3.7km south of Killaloe, 2.9km to the west of Birdhill, and 2.9km north of O'Briensbridge.

Appendix 1 – Draft Ministerial Direction and Statement of Reasons

Appendix 2 – Strategic Environmental Objectives

Parameter	Strategic Environmental Objective
Population (inc. Human Health and Quality of Life)	P1 – Protect, enhance and improve people’s quality of life based on high quality residential, community, educational, working and recreational environments and on sustainable travel patterns.
	P2 - To protect human health from hazards or nuisances arising from incompatible land uses/developments.
	P3 - Provision of green spaces for amenity and recreational uses.
Biodiversity, Flora and Fauna	B1 – Protect, conserve, enhance where possible and avoid loss of diversity and integrity of the broad range of habitats, species and wildlife corridors.
	B2 – To achieve the conservation objectives of European Sites (SACs and SPAs) and other sites of nature conservation.
	B3 - Conserve and protect other sites of nature conservation including NHAs, pNHAs, National Parks, Nature Reserves, Wildfowl Sanctuaries as well as protected species outside these areas as covered by the Wildlife Act.
	B4 - Meet the requirements of the Water Framework Directive and the Shannon River Basin Management Plan/National River Basin Management Plan
	B5 – To minimise and, where possible, eliminate threats to bio-diversity including invasive species.
	B6 - Promote green infrastructure networks, including riparian zones and wildlife corridors.
Soil & Geology	S1 – To maximise the sustainable re-use of the existing built environment, derelict, disused and infill sites (brownfield sites), rather than greenfield sites.
	S2 – Minimise the excavation and movement of soils within site works
	S3 – Minimise the consumption of non-renewable deposits on site.
	S4 - Minimise the amount of waste to landfill from site.
	S5 - Conserve, protect and avoid loss of diversity and integrity of designated habitats, geological features, species or their sustaining resources in designated ecological sites.
Water	W1 – Protect and enhance the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystem (quality, level, flow).
	W2 – Maintain or improve the quality of surface water and groundwater (including estuarine) to status objectives as set out in the Water Framework Directive (WFD), the Shannon River Basin Management Plan and POMS.
	W3 – Implement appropriate sustainable drainage systems (SuDS) in the County.
	W4 – Reduce the impact of polluting substances to all waters and

	<p>prevent pollution and contamination of ground water by adhering to aquifer protection plans and to maintain and improve the quality of drinking water supplies.</p> <p>W5 - Promote sustainable water use and water conservation in the plan area and to maintain and improve the quality of drinking water supplies.</p> <p>W6 –Protect flood plains and areas of flood risk from development through avoidance, mitigation and adaptation measures.</p> <p>W7 – To promote a responsible attitude to recreation and amenity use of water in relation to water quality and disturbance to species and to prevent pollution and contamination of designated bathing waters.</p>
Air/Noise/Climate	<p>C1 – Minimise all forms of air pollution and maintain/improve ambient air quality.</p> <p>C2– Minimise emissions of greenhouse gases and contribute to a reduction and avoidance of human-induced global climate change.</p> <p>C3 - Reduce car dependency within the plan area by way of an integrated approach to sustainable urban transport (SUMP).</p>
Material Assets	
Transport	<p>T1 – Maximise sustainable modes of transport and encourage use of walkways/cycle paths as alternative routes to school, work, and shops.</p> <p>T2 - Provide for ease of movement for all road users and to promote development patterns that protect and enhance road safety.</p>
Waste	<p>WA1 – Implement the waste pyramid and encourage reuse/recycling of material wherever possible.</p>
Water Supply	<p>WS1 - To ensure adequate and clean drinking water supplies.</p> <p>WS2 - Improve efficiency in distribution of potable water to the population through pipe rehabilitation and to promote water conservation and sustainable water usage for long-term protection of available water resources.</p>
Waste Water	<p>WW1 - To ensure that all zoned lands (existing and proposed) are connected to the public sewer network ensuring treatment of wastewater which meet EU requirements prior to discharge.</p> <p>WW2 - Reduce the dependency on individual proprietary wastewater treatment facilities and ensure the highest standards possible in existing and future wastewater treatment facilities.</p>
Renewable Energy	<p>RE1 - Reduce waste of energy, promote use of renewable energy sources and support energy conservation initiatives across all sectors including the development of low carbon business practices and buildings.</p>
Cultural Heritage	<p>CH1 – Protect and conserve the cultural heritage including the built environment and settings; archaeological (recorded and unrecorded monuments), architectural (Protected Structures, Architectural Conservation Areas, vernacular buildings, materials and urban fabric) and manmade landscape features (e.g. field walls, footpaths, gate piers etc.).</p>

	CH2 – To protect, conserve and enhance local folklore, traditions and placenames within the Plan area.
	CH3 – To ensure the restoration and re-use of existing uninhabited and derelict structures where possible opposed to demolition and new build (to promote sustainability and reduce landfill).
Landscape	Ensure no significant disruption of historic/cultural landscapes and features through objectives of the County Development Plan.
	No significant visual impact from development.
	Ensure no significant disruption of high landscape values.