

**DIRECTION IN THE MATTER OF SECTION 31
OF THE PLANNING AND DEVELOPMENT ACT 2000
(AS AMENDED BY S.21 OF THE PLANNING AND DEVELOPMENT
(AMENDMENT) ACT 2010)**

CLARE COUNTY DEVELOPMENT PLAN DIRECTION 2017

“Development Plan” means the Clare County Development Plan 2017-2023

“The Minister” means the Minister for Housing, Planning, Community and Local Government

“The Planning Authority” means Clare County Council

WHEREAS the Minister is, for the reasons set out in the Statement of Reasons hereto, of the Opinion that

- (i) Clare County Council in making the Clare County Development Plan 2017-2023 has ignored or has not taken sufficient account of the submissions made by the Minister for the Environment, Community and Local Government in February 2016 and the Minister in October 2016,

and

- (ii) the Clare County Development Plan 2016-2022 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).

NOW, THEREFORE in exercise of the powers conferred on him by s.31 of the Planning and Development Act 2000 (as amended), the Minister hereby directs as follows:

- (1) This Direction may be cited as the Planning and Development (Clare County Development Plan 2017-2023) Direction 2017.

(2) The County Council Clare County is hereby directed to take the following steps with regard to the Clare County Development Plan 2017-2023 (“the Development Plan”).

(i) Remove written objective TOU7 Ardclony and accompanying text, page 19, from Volume 3C: Killaloe Municipal District – Written Statement and Maps – Interim Version;

and

(ii) Amend the maps for Killaloe which set out the objectives for Ardclony by changing the zoning objective for lands currently indicated as “TOU7” (tourism) to un-zoned.

For ease of reference a copy of the map indicating “TOU7” is attached as Appendix 1 to this Direction.

The effect of this amendment will be that the zoning objective for the lands will revert to the zoning objective as per the plan/map included in the Draft Clare County Development Plan 2017-2023 published in December 2015.

For ease of reference a copy of this map is attached as Appendix 2 to this Direction.

STATEMENT OF REASONS

1. The planning authority was advised in a written submission made on behalf of the Minister on 12 October 2016 under section 12 of the Planning & Development Act 2000, as amended, to reconsider material amendment TOU7 as it was in clear breach of Part XAB Planning and Development Act 2000 (as amended) (ss. 177V and 177W) and Section 28 guidelines on Appropriate Assessment of Plans and Projects in Ireland (December 2009). The written submission of the Minister requested the planning authority to remove this proposed tourism zoning (Ref: Killaloe, Ardclony No.5 TOU7) and revert the lands to their status under the Draft Plan (December 2015).
2. The planning authority has ignored, or has not taken sufficient account of the aforesaid submission of the Minister and has proceeded to adopt the impugned material amendment TOU7 and zoning objective. In doing so the planning authority has failed to comply with the procedures required to ensure that the plan it has adopted is a plan which does not have adverse impacts on the integrity of a Special Area of Conservation, the Lower River Shannon SAC. Further, in doing so it has relied on an improper consideration, namely a report dated December 2016 which purports to be an appropriate assessment, and which was not submitted to public consultation, in preference to the submissions made by the Minister.
3. The Clare County Development Plan 2017-2023 is not in compliance with legislative requirements in sections 9, 10, 12, 28, 177V and 177W of the Planning & Development Act 2000 as amended.
4. In adopting the impugned material amendment TOU7 the planning authority has adopted a zoning objective which is inconsistent with the protection required for a SAC and has failed to ensure the Development Plan is consistent with national plans, policies and strategies of the Minister related to proper planning and sustainable development.
5. The impugned material amendment TOU7 is in breach of the objectives in the Development Plan with respect to the conservation and protection of the environment and the protection of European sites, in particular the Lower River Shannon SAC.
6. In making the Development Plan and adopting the impugned material alteration TOU7 the planning authority failed to restrict itself to considering the proper planning and sustainable development of the area to which the plan relates, the statutory obligations upon itself and the relevant policies and objectives of the Minister and the Government including in particular the protection of the Lower River Shannon SAC. Further, in doing

so it has relied on an improper consideration, namely a report dated December 2016 which purports to be an appropriate assessment, and which was not submitted to public consultation, in preference to the submissions made by the Minister.

7. The Clare County Development Plan 2017-2023 is not consistent with relevant guidelines to planning authorities issued under Section 28 of the Planning & Development Act, 2000, specifically -
 - a. Appropriate Assessment of Plans and Projects in Ireland (December 2009); and
 - b. The Strategic Environmental Assessment Guidelines (November 2004)
8. The Development Plan, by reason of the adoption of the impugned material amendment TOU7, includes a zoning objective for the relevant lands which would allow for a use, namely tourism use, in circumstances where it is not certain (“no reasonable scientific doubt”) that such a use will not adversely affect the integrity of a European site, namely the Lower River Shannon SAC. This does not comply with the provisions of s.177V of the Planning and Development Act 2000 (as amended) and is in breach of the requirements of Article 6 of the EU Habitats Directive.
9. In making the Development Plan and adopting the impugned material alteration TOU7 the planning authority failed to have due regard to the natura impact report prepared on September 2016 on the material amendments to the Development Plan, the submission of the Minister and the recommendation of the CEO. Further in doing so it has relied on an improper consideration, namely a report dated December 2016 which purports to be an appropriate assessment, and which was not submitted to public consultation, in preference to the submissions made by the Minister.
10. The decision to zone the relevant lands for tourism was made in breach of the requirement of s.177V of the Planning and Development Act 2000 (as amended). In particular, the decision was made in the absence of a determination that the County Development Plan shall not adversely affect the integrity of a European site. The Appropriate Assessment Natura Impact Report carried on behalf of the Planning Authority indicated that the Lands should not be subject to a zoning objective for tourism.
11. The Development Plan insofar as it has adopted material amendment TOU7, does not set out any or any adequate reasons for the zoning objective of tourism in respect of the relevant lands and/or for its decision on the purported appropriate assessment of the impact of the said zoning on the Lower River Shannon SAC in contravention of s. 12 and s 177V.

12. The Competent Authority has concluded that zoning objective Killaloe, Ardclony TOU7 contravenes Article 6(3) of the Habitats Directive and that it cannot be concluded that there will be no adverse effects on the integrity of the Lower River Shannon SAC. No alternative solutions have been put forward and in the absence of such the procedures in S.177W (Imperative reasons of over-riding public interest) of the Planning and Development Act 2000 (as amended) would need to be carried out on the proposed zoning of these lands within the County Development Plan. This has not occurred and therefore does not comply with the provisions of s.177W of the Planning and Development Act 2000 (as amended).

GIVEN under my hand,

Simon Coveney
Minister for the Housing, Planning,
Community and Local Government

this 28th day of March 2017



