

# Clare County Development Plan 2017-2023



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Comhairle Contae an Chláir  
Clare County Council

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

## AA Concluding Statement

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## **1.0 Introduction**

### **1.1 Background**

In accordance with the Department of Environment, Heritage and Local Government publication *'Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities (December 2009)'*, a clear and discrete Appropriate Assessment (AA) Conclusion Statement as a distinct section in the written statement of the Plan separate to the SEA Statement is to be prepared by the Planning Authority.

### **1.2 Format of the Statement**

The following format for the AA Statement is recommended:

- Summary of how the findings of the AA were factored into the plan;
- Reasons for choosing the plan as adopted, in light of other reasonable alternatives considered as part of the AA process; and
- A declaration that the Plan as adopted will not have an adverse effect on the integrity of a European site or sites

## **2.0 Summary of how the findings of the AA were factored into the Plan**

Appropriate Assessment (AA) has been fully integrated with the various stages of the Development Plan process in order to ensure that the ecological implications of the Plan do not impact upon any areas designated as European Sites. The Planning Authority carried out a screening exercise of policies and or objectives throughout the Development Plan process. The screening stage of the Clare County Development Plan 2017-2023 identified 76 SACs and 19 SPAs within 15kms of the proposed CDP study area, with 37 SACs and 10 SPAs located within the CDP boundary. These European sites had the potential to be adversely affected by the implementation of the proposed CCDP 2017-2023.

Based on the information provided above and by applying the precautionary principle it was determined that at this stage it was not possible to rule out likely significant impacts on European Sites; and therefore the AA process should proceed to Stage 2 Appropriate Assessment in line with the Department of the Environment guidelines culminating in the preparation of a Natura Impact Report (NIR).

The AA has been completed prior to any decision to authorise, adopt or proceed with the Development Plan. Throughout the finalisation of the Development Plan, the Natura Impact Report (NIR) was revised and up-dated to take on board any new or amended objectives or zonings and

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represents the final screening and assessment of the adopted Clare County Development Plan 2017-2023. This approach enables measures necessary to avoid or mitigate impacts on European Sites to be incorporated into the objectives or detail of the Plan together with the necessary land use zonings before finalisation.

Where there were objectives or land use zonings at draft or proposed amendments stage that were predicted to have adverse effects on the integrity of European Site(s), the AA team recommended either their removal, amendment of the zoning layout, insertion of buffer zones or addition of mitigation measures that would remove the potential for adverse effects on the integrity of European Sites, as deemed applicable.

Scientific assessment has included consideration of the sensitivity of the Qualifying interests to certain impact types, the favourable conservation status of the feature, its status as set down in Article 17 reports and any location specific data that may be relevant and available at this strategic plan level of assessment.

Best scientific knowledge has been represented by data held by NPWS and published as supporting documentation for European sites, Article 17 reports and survey reports and data held by Clare County Council. Much of this data was collated as part of the overall process of preparation of the NIR for the Draft Plan and was again used to inform the assessment of the proposed amendments together with the final Plan. In addition, data sets available through Biodiversity Ireland, EPA EnVision and EDEN databases, NPWS amongst others were again interrogated to inform the assessment of the potential for significant effects on European sites from the proposed amendments.

Baseline data such as lesser horseshoe bat roosts, water quality, invasive species records and other ecological data held by Clare County Council were used in a GIS database to identify geographic sensitivities. Changes over time for various qualifying interests were determined by reference to data at a national scale as local data was often not available.

No zonings or objective are recommended, that when implemented as set out in the Plan (incorporating mitigation measures and in full compliance with the rest of the Plan), would result in adverse effects on integrity of European Sites in terms of their Conservation Objectives except for one relating to the proposed zoning in Ardclonoy, Killaloe from Open Countryside to Tourism (TOU7).

The Elected Members resolved on the 19<sup>th</sup> of December 2016 to zone this 38 acre site in Ardclonoy (13 acres of which lies within the Lower River Shannon SAC) for Tourism against the

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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 Ardclony, Co. Clare for Integrated Tourism”* dated December 2016 was submitted and relied upon by the Members in their decision. The report was reviewed as part of this Appropriate Assessment 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 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.
- 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.
- 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 or discrepancies.

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- 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.
  - 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.
  - 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.
  - 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.

### **Assessment of the likely environmental effect**

The content of the resolution and accompanying documentation does not change the findings of the Appropriate Assessment of the Clare 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”.

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### 3.0 Reasons for choosing the Plan as adopted, in light of other reasonable alternatives considered as part of the AA process

#### Consideration of Alternative Strategies

Alternative strategies that were considered are as outlined below. Each alternative was considered in terms of environmental parameters including for impacts on biodiversity and the natural environment, including habitats sites.

The development and assessment of alternatives is a legal requirement under the SEA Directive and Regulations. Article 5(1) of the SEA Directive and 13E(1) of the Planning Development (Strategic Environmental Assessment) Regulations 2004 (as amended 2011) requires that the Planning Authority considers within the Environmental Report:

- **Reasonable** alternatives taking into account the objectives and the geographical scope of the plan or programme;
- The alternatives are **identified, described** and **evaluated**;
- An outline of the **reasons** for selecting the alternatives dealt with;
- A **description of how the assessment was undertaken** including any difficulties (such as technical deficiencies or lack of know-how encountered in compiling the required information.

Alternatives should not be retrospectively considered but they should be developed as the SEA and plan develops.

**Option 1: Amend settlement hierarchy and review growth in fewer areas in line with infrastructural provisions and outside of high risk areas e.g. flooding, protected areas, areas susceptible to issues arising from climate change.**

This alternative is to amend the number of settlements within the plan area, reducing the number of smaller settlements, and targeting growth in a fewer number of locations where appropriate infrastructure is already in place. This would see a smaller number of existing settlements prioritised for development. Designated areas (European Sites, Groundwater Protection Zones etc.) would be subject to appropriate environmental protection measures in line with the regulatory framework. Rural development policies would support agriculture, forestry, renewable energy and tourism

**Option Two: Dispersed Settlement led approach (Unrestricted settlement)**

This scenario envisages growth of all settlements within the County with heavy emphasis on accommodating housing within all settlements. Other than Ennis and other large towns (such as Shannon and Kilrush) there would be no hierarchy and growth would be envisaged in all settlements). Designated areas (European Sites, Groundwater Protection zones etc.) would be

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subject to appropriate environmental protection measures in line with the regulatory framework. As per Option 1, rural development policies would support agriculture, forestry, renewable energy and tourism.

This option is in effect an unrestricted option.

### **Option Three: Strategic Planning Approach/Balanced Approach**

This scenario is a planned sustainable development approach to planning in the County. Development will be focused within zoned and serviced areas. This scenario plans for the strengthening of rural villages and residential development into designated settlements. Appropriate environmental protection measures will be implemented for designated areas. In this scenario particular rural development activities would be more strategic and certain areas identified to support tourism and renewable energy.

### **Option Four: Employment led growth**

This scenario looks at employment-led growth which focuses development in key locations where employment growth is more likely to be delivered and differed from previous Plan strategies which spread growth based on the size and scale of the settlement in accordance with the core strategy. The scenario focused on key variations to the 2011- 2017 CDP which included the focus of economic development in the Shannon Estuary and its hinterland identified through the SIFP and the identification of a key infrastructural safeguard in the Limerick Northern Distributor Route which seeks to open up access to UL and the National Technology Park in Limerick for employment and education. In addition the identification of potential sources of employment outside the settlement boundary for example at junction 12 in Ennis which was identified as a key employment opportunity.

### **Option 5: Strategic Planning for Sustainable Growth**

This scenario involves strategic planning taking into account all new and improved policies. Planning authorities and those interacting with the planning process have, in the past few years, had to address a wide range of new policy and legislative requirements. These guidelines, up-dates to Directives and subsequent regulations are designed at ensuring all growth and development is carried out in a sustainable fashion.

### **Other Sub Options and prioritised development strategies**

During the course of development of the County Development Plan and through round table discussions between both the Planning and Environmental Assessment teams, discussions took place in relation to the identification of a series of Opportunity Sites within towns and villages across the county. A strategic approach to the best use of these sites as a means to facilitate redevelopment which would make a significant positive contribution to the settlement was identified. These Opportunity Sites are existing sites which would represent a sustainable reuse and long term significant contribution to the overall appearance and amenity in the area together with the potential to create employment opportunities within the settlement. This strategy was brought forward in the following settlements;

- Ennis

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- Kilrush
  - Ennistymon
  - Lahinch
  - Scarriff/Tuamgraney
  - Killaloe
  - Kilkee
  - Lisdoonvarna
  - Tulla
  - Newmarket-on-Fergus
  - Sixmilebridge

### Preferred Option

Following an assessment and evaluation of the alternatives set out in this chapter together with round table discussions between the plan making and environmental teams the preferred way forward in relation to the future land-use plan for the County is a combination of **Option 3 (Strategic Planning Approach/Balanced Approach)** and **Options 5 (Strategic Planning for Sustainable Growth)**. Both options contain similarities in terms of preparing the Clare County Development Plan 2017-2023 with a defined plan area, within which the settlement hierarchy will be defined in line with the requirements of the core strategy. Areas of environmental sensitivity, including designated sites and natural flood plains located within or adjacent to the settlement areas will be included and zoned accordingly for their protection within the settlement boundary and others will be within the Plan boundary, as will areas at risk of flooding (defined as Flood Risk Zones A, B and C). This strategic planning approach aligns more closely with European and National Policy and regulation, directs development to serviced lands, focuses on town centres for service provision and supports Ennis as a 'hub' town and Shannon as a 'gateway'. The settlement hierarchy remains on an evidence base and with the responsibility for the provision and management of water services (water supply and wastewater but excluding storm/surface water other than where sewage has been combined with surface water) being transferred to Irish Water they are committed to providing a strategic treatment capacity to facilitate the core (residential) strategies identified in this county development plan, subject to the availability of funding and environmental constraints. This alternative, in favouring strategic planning, which is carried out in a sustainable manner also aligns with Volume 7 (SIFP) of the CDP. The SIFP identifies the nature of development, economic growth and employment that can be sustainably accommodated within the Shannon Estuary which is a key feature of the Development Plan area. The SIFP in its process sought to;

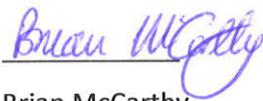
- Facilitate the long term conservation of the Shannon Estuary as an entire ecosystem whilst enabling the development of a broad range of appropriate activities in a sustainable manner
- Encourage, facilitate and promote a balanced approach to harnessing the Estuary's growth potential
- Ensuring careful protection, management and enhancement of the area's natural resources
- Deliver a coordinated, sustainable and innovative approach to the optimisation of the estuarine resource through the continued proactive involvement of all key stakeholders

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The preparation of the Environmental Sensitivity Map also fed into the assessment of alternatives through highlighting the overall vulnerability of the county using different indicators which served to inform the development and ultimate selection of the preferred option.

#### 4.0 A declaration that the Plan as adopted will not have an adverse effect on the integrity of a European site or sites

The Natura Impact Report recorded the decisions that were taken during the preparation of the Clare County Development Plan 2017-2023. It determined that, assuming the successful implementation of the Objectives in the Written Statement, compliance with the Municipal District Settlement Plans and application of the mitigation measures provided in Table C2 of the NIR, there will be no adverse effects on the integrity of European Sites in isolation or in combination with other Plans and Projects acting in the same area. However, based on the resolution by the Elected Members to zone lands at Ardclonny for Tourism against the recommendation of the Chief Executive and the Department Housing, Planning, Community and Local Government and taking into consideration the previously unseen reports entitled “*Appropriate Assessment (Stage 2) of the Zoning of Lands at Ardclonny, Co. Clare for Integrated Tourism*” dated December 2016 and documents submitted as part of the members resolution of the 19<sup>th</sup> December 2016 it cannot be concluded that there will be no adverse effects on the integrity of the Lower River Shannon cSAC specifically and therefore the Plan contravenes Article 6(3) of the Habitats Directive.



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