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The Forward Planning, Economic Development and Enterprise Directorate
Limerick City and County Council
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19th August 2022

**RE: SUBMISSION IN RESPECT TO THE DRAFT SECTION 31 – MINISTER'S DRAFT DIRECTION
ON THE LIMERICK DEVELOPMENT PLAN 2022-2028**

Dear Sir/Madam,

HRA PLANNING Chartered Town Planning Consultants DAC has been retained by the O'Mara family to prepare a response to the Ministerial Direction issued to Limerick City and County Council on the Limerick Development Plan 2022 – 2028.

This submission refers specifically to the former 'Shannon Minerals Site' situated between Park Road and Pa Healy Road, Limerick City and seeks to challenge the draft direction of the Minister to change the land use zoning objectives set out in the adopted Limerick Development Plan insofar as it relates to the Shannon Minerals property.

This submission will demonstrate that contrary to the Draft Ministerial Direction, the 'mixed use' land use zoning objective applied to the subject property in the Limerick Development Plan is in fact consistent with the objectives of the National Planning Framework, that it is consistent with the Flood Risk Guidelines for Planning Authorities and the overall strategy for the proper planning and sustainable development of the area such that there is no basis for directing the Local Authority to amend the Limerick Development Plan 2022-2028 insofar as the land use objectives related to this property.



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Preamble

The Draft Ministerial Direction Map' attached with the Section 31 Minister's Draft Direction on the Limerick Development Plan (**'the Section 31 Direction'**), indicates that site 'MA no. 146' relates specifically to Shannon minerals property which had been zoned for 'mixed use' purposes in the recently adopted Limerick Development Plan 2022-2028.

The Section 31 Direction directs the Planning Authority to take a number of steps with regard to the recently published Limerick Development Plan 2022-2028 including a change of landuse zoning to the former Shannon Minerals site as follows:

"MA no. 146 i.e. the subject land reverts to Enterprise and Employment from Mixed Use".

The Shannon Minerals property has been referenced different in the recently adopted Limerick Development Plan as site no. "42" though it relates to the same site area. Thus, for clarification and to avoid confusion, the reference of site "42" shall be used in this observation for convenient reference to the Limerick Development Plan unless referring to matters stated in the Section 31 Direction.

Reasons for the Section 31 Draft Direction

The statement of reasons for the Section 31 Direction (as it applied to the Shannon Minerals property) states that:

*"The Development Plan as made includes significant lands zoned in a manner that is **inconsistent with National Planning Framework National Policy Objective 57, which seeks to avoid inappropriate development in areas at risk of flooding having regard to Ministerial Guidelines issued under Section 28 of the Act, The Planning System and Flood Risk Management, Guidelines for Planning Authorities (2009) ("the Flood Guidelines")**. Significant lands have been zoned in the plan as made without passing the provisions of the sequential approach and plan-making Justification Test detailed in the Flood Guidelines".*

And;

*"**No or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why the lands have been zoned** in such a way and how this approach is consistent with an overall strategy for the proper planning and sustainable development of the area".*

The advice note attached with the Section 31 draft Direction to the Planning Authority, states that the zoning Objective Mixed Use at Pa Healy Road (MA No. 146) (the Shannon minerals property) *"will not come into effect on 29th July 2022"*.

In light of the Section 31 Direction, the material consideration is whether the zoning of the Shannon Minerals property for 'Mixed Use' is or is not, consistent with National Planning Framework National Policy Objective 57, which seeks to avoid inappropriate development in areas at risk of flooding having regard to Ministerial Guidelines issued under Section 28 of the Act, The Planning System and Flood Risk Management, Guidelines for Planning Authorities (2009) (**"the FRA Guidelines"**).

In terms of the; ***“adequacy of reasons relating to the proper planning and sustainable development of the area provided to explain why the lands have been zoned in such a way and how this approach is consistent with an overall strategy for the proper planning and sustainable development of the area”***, I note that the Office of the Planning Regulator stated in its draft (Section 31) Direction to the Minister¹ that:

“The elected members’ reasons [for their direction to zone the land ‘Mixed Use’] indicate that the site “passes the Justification Test”. However there is no Flood Risk Assessment or Plan-Making Justification Test included for these lands”.

However, and contrary to that, it is understood that the motion by the elected members was in fact accompanied by supporting technical information in support of, and justification for the ‘Mixed Use’ zoning of the Shannon Minerals property prepared by this office. That information included a Development Plan (flood risk) Justification Test setting out material planning reasons, and was prepared consistent with the provisions of the Flood Risk Management Guidelines for Planning Authorities, establishing a case for the ‘Mixed Use’ zoning of the property.

MATERIAL CONSIDERATIONS

The material considerations arising from the Section 31 Direction relate to whether the zoning of the property for ‘Mixed Use’: is consistent with the **National Planning Framework Objective 57** and the **Ministerial Guidelines issued under Section 28 of the Act, The Planning System and Flood Risk Management, Guidelines for Planning Authorities (2009)**. This is considered in further detail.

1. The National Planning Framework Policy Objective 57.

Objective 57 of The National Planning Framework (**‘NPF’**) states:

“Enhance water quality and resource management by:

- *Ensuring flood risk management informs place-making by avoiding inappropriate development in areas at risk of flooding in accordance with The Planning System and Flood Risk Management Guidelines for Planning Authorities;*
- *Ensuring that River Basin Management Plan objectives are fully considered throughout the physical planning process;*
- *Integrating sustainable water management solutions, such as Sustainable Urban Drainage (SUDS), nonporous surfacing and green roofs, to create safe places.”*

The intention of, and reference to the application of the Flood Risk management Guidelines in the context of Objective 57 is as stated for the express purpose to *“enhance water quality and resource management”*. Thus, the first consideration must be whether it should be necessary for the Minister to

¹ Letter from OPR to Mr. Peter Burke Minister for Local Government and Planning Department of Housing, Local Government and Heritage ‘Notice Pursuant to section 31AM(8) of the Planning and Development Act 2000 (as amended) – Limerick Development Plan 2022 – 2028’ (15th July 2022) (OPR ref: AD-024-22)

rely upon Objective 57 in respect to the Shannon Minerals Site for the express purpose to “*enhance water quality and resource management*”.

In this regard, I refer to the Limerick Development Plan (Volume 4 Strategic Flood Risk Assessment) (**‘SFRA’**) where the Shannon Minerals property falls under two (flood risk management) justification tests.

The first justification test relates to a wider neighbourhood area - **‘City Centre and Suburbs’** area which acknowledges the ‘Limerick Shannon Metropolitan Area’ being targeted for growth at National and Regional level. The second justification test set out in Section ‘B.1’ of the final SFRA, relates specifically to the subject site and is titled **‘Submission No: LCC-C62-55’**. The latter justification test acknowledges the property as ‘brownfield’ site in its assessment of the submission made on behalf of the property owner in respect to the preparation of the Limerick Development Plan by Limerick City and County Council (**‘LCCC’**).

In both justification tests, there is no reference to the requirement to apply the flood risk management guidelines in respect to the Shannon Minerals property for the purpose related to ‘enhancement of water quality’. Instead, both technical flood risk assessments base their considerations on the potential vulnerability of land use and user - on the supposition that the property (due to its location with Floodzone A and Floodzone B) is not essential for regeneration, and not essential to facilitate expansion of the centre to achieve compact or sustainable growth given the locational characteristics of the property.

Whilst flooding can affect water quality - depending on site and development specific circumstances - it can’t be assumed that water quality issues can or will occur in every instance nor is it considered to have formed the basis of the conclusions of the two justification tests prepared by the Planning Authority for the purpose of the preparation of the Limerick Development Plan. That said, the significance of the Ministerial Guidelines in the zoning of land (and specifically consideration and application of the flood risk management guidelines for planning authorities for that purpose) is not overlooked and is considered in further detail later.

If therefore, the development of the Shannon Minerals property is (as per the provisions of NPF Objective 57) is;

- (i) undertaken in accordance with the flood risk management guidelines, and,
- (ii) given that there is nothing at this time to suggest that the River Basin Management Plan objectives would not be fully considered throughout the physical planning process; and
- (iii) sustainable water management solutions would be considered as part of development proposals...

then there is no basis to suggest that the zoning of the property for Mixed Use would be “*inconsistent with National Planning Framework National Policy Objective 57*” as stated in the Section 31 Direction.

2 “Inconsistency with the Ministerial Guidelines issued under Section 28 of the Act, The Planning System and Flood Risk Management, Guidelines for Planning Authorities (2009)”

The Shannon Minerals property is zoned for ‘Mixed use’ purposes in the Limerick Development Plan where it is the objective of the Council to:

“To provide for a mixture of residential and compatible commercial uses”.

As mentioned earlier, the Section 31 Direction contests that lands have been zoned without passing the provisions of the sequential approach and plan-making Justification Test as prescribed in *The Planning System and Flood Risk Management, Guidelines for Planning Authorities (2009)* (“the **FRA Guidelines**”)

In its consideration of the submission made by the property owner in relation to the preparation of the development plan and the suitability of the site in principle for residential use, the Chief Executive of the Planning Authority concluded in its report (CEO report²) that the site did not pass the Development Plan making justification test due to the location of the site with Flood zones A and B and the residual risk of flooding due to flood defence failure or overtopping.

In order to achieve Compact Growth, that report stated that; **“the Draft Plan takes a City Centre first approach to the spatial development of Limerick City and Environs”** and that there was suitable alternative lands for residential use at lower risk of flooding **“within or adjoining the core of the urban settlement”**.

As previously stated, the Shannon Minerals site formed part of two flood risk assessment justification tests. The first justification test relates to a wider neighbourhood area - ‘**City Centre and Suburbs**’ area which acknowledges the ‘Limerick Shannon Metropolitan Area’ being targeted for growth at National and Regional level.

The second justification test (set out in Section ‘B.1’ of Appendix 1 of the SFRA contained in Volume 4 of the Development Plan) relates specifically to the subject site and is titled ‘**Submission No: LCC-C62-41**’ and acknowledges the subject property as ‘brownfield lands’. More specifically, that justification test concluded that the *“the lands are not essential to facilitate regeneration”* and, *“the lands are not essential to facilitate expansion of the centre of the settlement”* stating that; **“Limerick’s ‘City Centre’ would correspond with the centre of the settlement”**. The site-specific justification test also stated that the lands are not within or adjoining the core of the City Centre, and the delivery of development of these lands is not essential to achieve compact or sustainable growth.

However, prior to the adoption of the Development Plan, as mentioned, the motion by the elected members of LCCC in support of the ‘Mixed Use’ zoning was accompanied by a Development Plan Justification Test prepared on behalf of the property owner. The findings of that Justification Test (prepared on behalf of Shannon Minerals) would agree in principle with the Justification Test prepared for/on behalf of LCCC in the Development Plan preparation specifically in relation to the first principle point of the Justification Test³ that is - that the subject site is situated within the urban settlement of

² DRAFT LIMERICK DEVELOPMENT PLAN 2022-2028 Chief Executive’s Report on Public Consultation Volume 1 Prepared in accordance with Section 12(4) of the Planning and Development Act 2000 (As Amended) 26th November 2021

³ As referenced in The Flood Risk Management Guidelines Box 4.1

Limerick which is targeted for growth under the National Spatial Strategy, regional planning guidelines, statutory plans as defined above or under the Planning Guidelines or Planning Directives provisions of the Planning and Development Act, 2000, as amended. Thereafter the findings of the Justification Tests differ.

Contrary to the Development Plan Justification Test, the Justification Test prepared on behalf of Shannon Minerals (prior to adoption of the Development Plan) stated reasons why the zoning or designation of the lands for 'Mixed Use' is required to achieve the proper planning and sustainable development of the urban settlement and, in particular (as required for the Development Plan Justification Test) that;

- Development of the Shannon Minerals property for 'Mixed Uses' will facilitate regeneration and expansion of the centre of the urban settlement;
- the property comprises significant previously developed and/or under-utilised land;
- the property is adjoining the core of the established and designated urban settlement of Limerick City;
- Development of the property for mixed uses will be essential in achieving compact and sustainable urban growth;
- There are no suitable alternative lands for the particular use or development type, in areas at lower risk of flooding within or adjoining the core of the urban settlement; and that;
- site-specific flood risk assessment has been undertaken which confirms that appropriate flood risk mitigation measures can be applied in any detailed development proposal.

Consequently, the findings of that Justification Test prepared on behalf of Shannon Minerals demonstrated adequate and material reasons, consistent with an overall strategy for proper planning and sustainable development of the area, that the zoning of the Shannon Minerals property for 'Mixed use' could (and does) in fact pass a Development Plan justification test when carried out consistent with the Flood Risk Management Guidelines.

3. Further Considerations

3.1 Material Difference between Justification Tests

The decisive difference - between the Justification Test prepared by LCCC for the preparation of the Development Plan and the Justification Test prepared by the property owner and submitted with the motion by the elected members of LCCC - is the consideration of the locational characteristics of the Shannon Minerals property vis-à-vis proximity to the urban centre.

The Justification Test prepared by LCCC states that the Property was *"not within or adjoining the core of the City Centre"*.

That statement was made in the consideration by LCCC of the Justification Test criteria set out in item **"2(iii)"** under Box 4.1 ('Justification Test for development plans') which poses consideration as to whether to land:

"Is within or adjoining the core of an established designated urban settlement."

However, a proper reading and a reasonable interpretation of the Development Plan Justification Test requirements including the test criteria set out in Box 4.1 of the FRA Guidelines, confirms that test set out under criteria “2(iii)” neither states nor indirectly implies that the term “***within or adjoining the core***”, shall be construed to mean within or immediately adjacent to land that is zoned exclusively as ‘City Centre’ in the manner implied in the LCCC Justification Test.

To consider this further, I refer to the definition of the “*core of an urban settlement*” which is defined in the FRA Guidelines for the express purpose of Justification Test criteria 2(iii) above as:

“Core area of a city, town, or village which acts as a centre for a broad range of employment, retail, community, residential and transport functions”.

Whilst there is no doubt that a city centre zoning can represent and reflect the ‘core of an established designated urban settlement’, the ‘City Centre’ zoning objective does not extend to encompass or represent a spatial area that can be defined as “*adjoining the core*” in addition to actually representing ‘the core’. Therefore, an element of spatial analysis is required in considering whether or not the Shannon Mineral site is ‘*adjoining the core*’.

In the first instance, the spatial and geographical proximity of the Shannon Minerals site to the city centre is clearly evident and illustrated in the Development Plan Justification Test titled Figure 7-2 “*Limerick – North City Centre*” as copied below in figure 1 below. (Shannon Minerals Site identified).

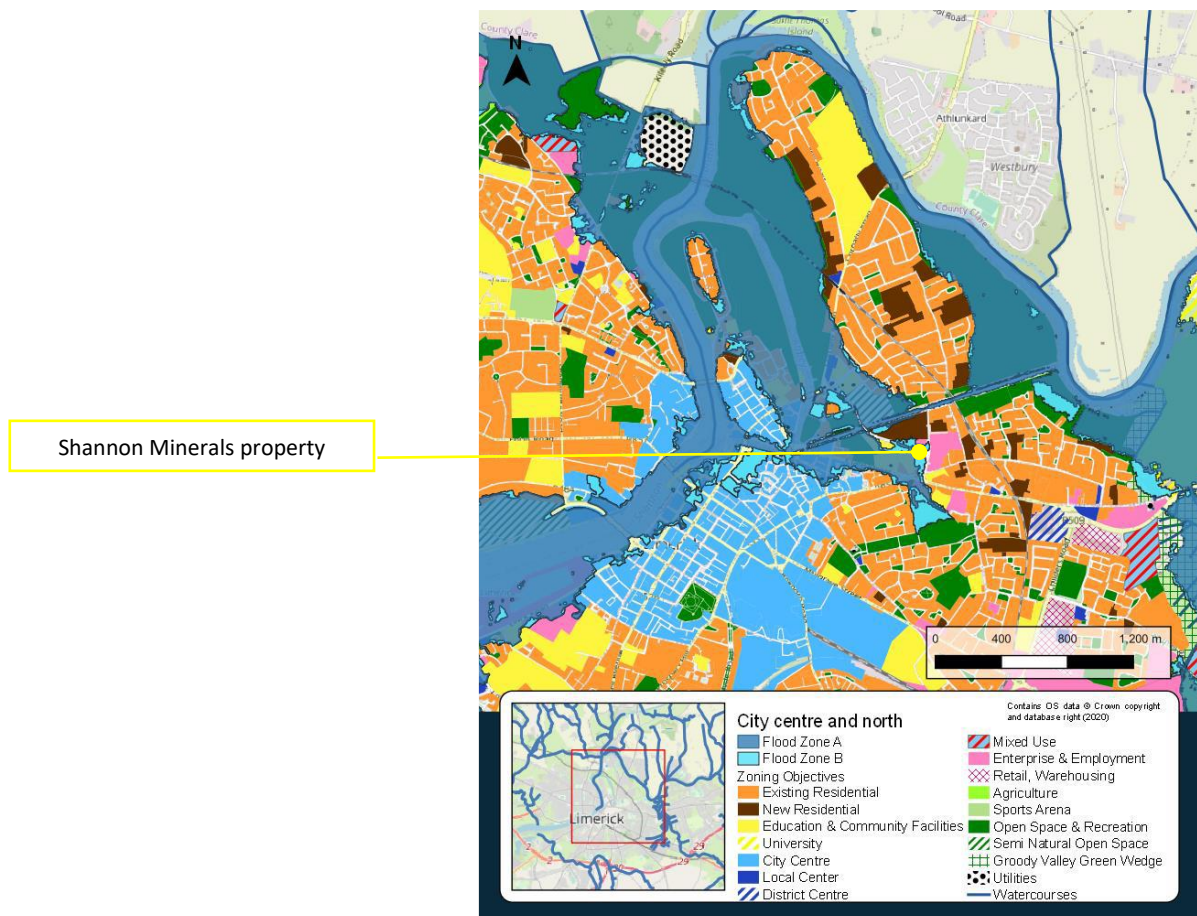


Figure 1 copy of Figure 7-2 of Volume 4 of the Limerick Development Plan (SFRA ‘Limerick – North City Centre’)



Residential Settlement Capacity Audit Study

162 - Shannon Minerals Property (324m)

'City Centre' Zoning Limerick Development Plan 2022 - 2028

Sites 12, 43, 81, 133

Distance in (m) from Limerick City Zoning Boundary

250

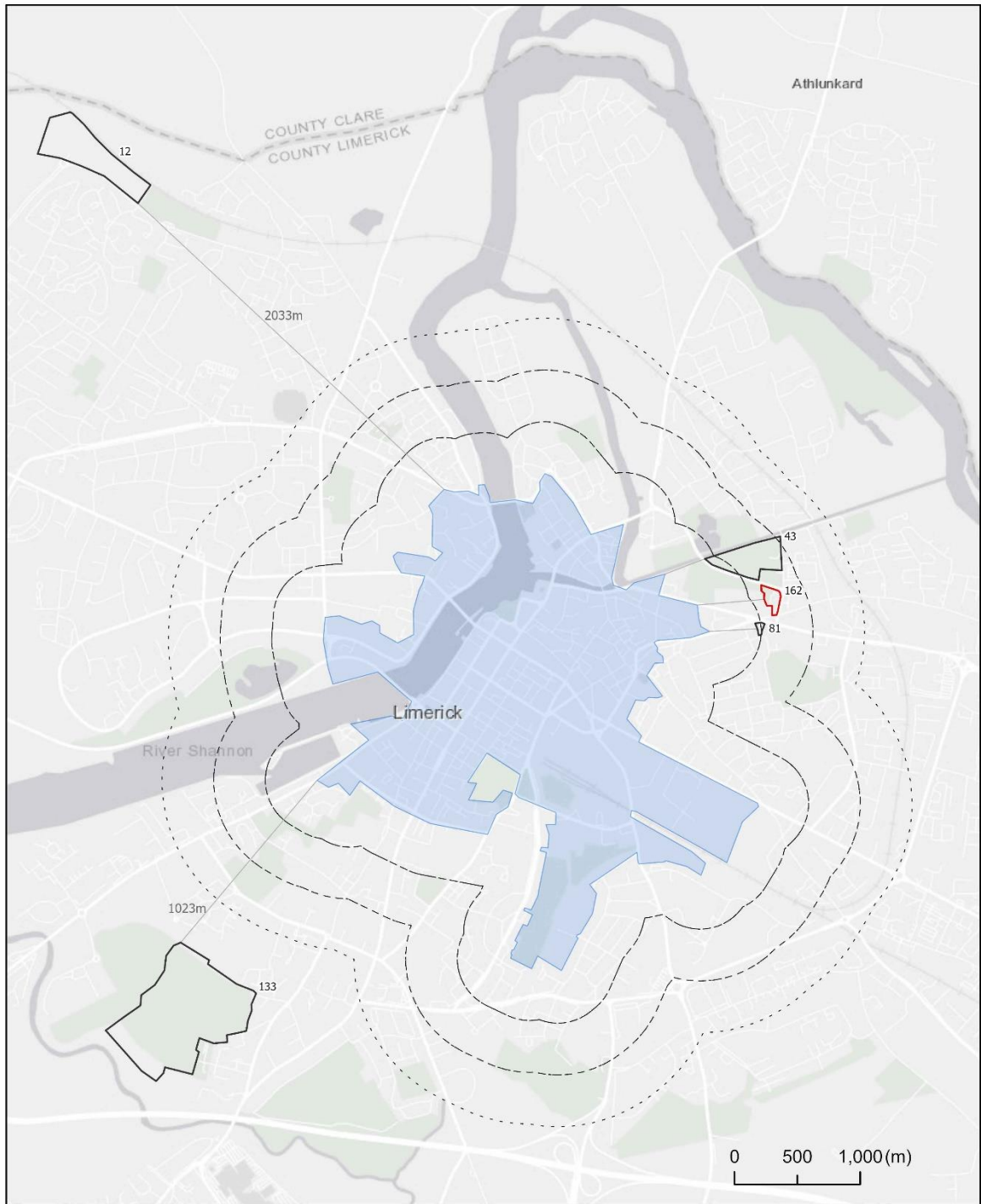
500

750



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Figure 2a Proximity of Shannon Minerals adjoining the core of the urban settlement



Residential Settlement Capacity Audit Study

- 162 - Shannon Minerals Property (324m)
- 'City Centre' Zoning Limerick Development Plan 2022 - 2028
- Sites 12, 43, 81, 133

Distance in (m) from Limerick City Zoning Boundary

- 250
- 500
- 750



Figure 2b Proximity of Shannon Minerals adjoining the core of the urban settlement

The Justification Test prepared on behalf of the property owner⁴, stated that the Shannon Minerals property is situated within 1.5km of the centre of the 'city centre', and further to that, it is 324m from the edge of the 'city centre' landuse zoning as illustrated in Figure 2a and 2b above.

The diverse characteristics of urban landuse activity situated between the edge of the city centre on Clare Street to Park Road (and which encompass 'Pa Healy Road' on which the Shannon Minerals property is situated) represent a transitional area between the 'defined 'city centre' and the outer lying suburban areas of Garryowen, Rhebogue and then Castletroy. This transitional area, by reason of proximity and accessible to the city centre and its urban character and mixed commercial landuses (as demonstrated), can be described as adjacent to the city centre – i.e. *adjoining* the core of the city centre. Beyond this area to the east, toward Rhebogue and Castletroy, the prevailing urban character is definitively different - more residential as it moves away from the city centre and the transitional area adjacent to it. Thus, having regard to the spatial characteristics and prevailing urban character of this area, the Shannon Minerals property is considered to be located within an area adjoining the core of Limerick City centre.

If there is any doubt regarding the reasonableness of this spatial analysis, then I refer to and rely upon other Development Plan justification tests which have been prepared by, or on behalf of the Planning Authority for the Limerick Development Plan. These other justification tests demonstrate beyond any doubt that the Planning Authority has determined lands which are situated even further removed from the 'urban core' that the Shannon Minerals site, as being suitably 'adjoining the core' for the purpose of flood risk assessment.

In this regard I refer firstly, to the Justification Test prepared for the 'Enterprise and Employment' zoned **lands at Greenpark**' situated on the Dock Road set out under Section A.1.3 of the SFRA contained in Volume 4 of the Limerick Development Plan. The justification test undertaken for the lands at 'Greenpark' and the landuse zoning objectives applied to it, did as it is obliged to do so, consider the same methodological justification test criteria set out in Box 4.1 of the FRA Guidelines. This includes the test set out in sub section "2(iii)" of Box 4.1 of the FRA Guidelines: "*Is [the lands] within or adjoining the core of an established or designated urban settlement*". In its response to the "2(iii)" test, the SFRA states that; "*the lands are located off of the Dock Road, a designated key employment location, **adjoining the core of the Limerick Shannon Metropolitan Area***". (bold emphasis added). That analysis in the SFRA regarding proximity to the urban core is considered both reasonable and logical by virtue of distance of the Greenpark site to the city centre (as illustrated in Figure 3 below).

However, it is noted that the lands at Greenpark are approximately 2.2km from the 'centre' of the city-centre city, and circa, 1,100m from the edge of the 'City-centre' zoning objective. This is in stark contrast to the Shannon minerals property which is 320m from the edge of the 'City-centre' zoning objective and thus represents a materially different application of the Development Plan Justification Test to the Shannon Minerals property.

⁴ Response to Chief Executives Report on Public Consultation and Motion to Change Landuse Using Zoning in the Draft Plan On behalf of: O'Mara Family – Land at Pa Healy Road (HRA PLANNING January 2022)

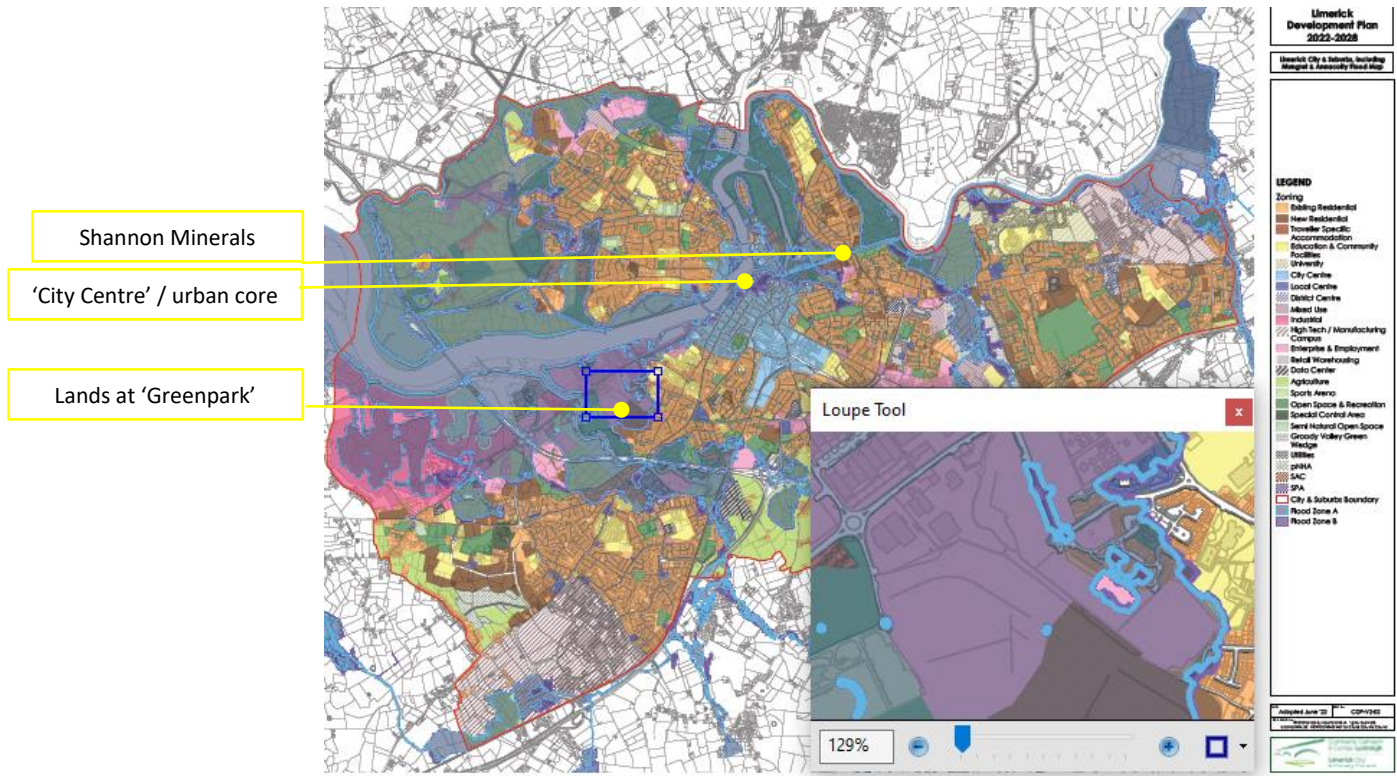


Figure 3 Comparative assessment between lands adjoining the Core (lands at Greenpark)

Secondly, I refer to the Justification Test prepared for the ‘**Enterprise and Employment zoned lands at Dock Road**’ set out under Section A.2.6 of the SFRA contained in Volume 4 of the Limerick Development Plan. The Justification Test undertaken for these lands and the landuse zoning objectives applied to it, did as it is obliged to do so, consider the same methodological justification test criteria set out in Box 4.1 of the FRA Guidelines. This includes the test set out in sub section “2(iii)” of Box 4.1 of the FRA Guidelines: “Is [the lands] within or adjoining the core of an established or designated urban settlement”. In its response to that the “2(iii)” test, the SFRA states that; “*The Dock Road is a designated key employment location adjoining the core of the Limerick Shannon Metropolitan Area, as identified in the RSES*”. This assessment was based on the clear express statement in the Justification Test that; “*These are undeveloped greenfield lands which would consolidate the existing built up area contiguous to the City Centre*”.

However, those lands are as illustrated in Figure 4 below, located on the outer edge of the Dock Road adjoining the Municipal Treatment Plant are situated further from the urban core than the lands at Greenpark and further out from the Shannon Minerals property. The lands are approximately 2.9km from the ‘centre’ of the city-centre city, and circa 2,4km from the edge of the ‘City-centre’ zoning objective. This assessment is in stark contrast to the Shannon minerals property which is 320m from the edge of the ‘City-centre’ zoning objective and thus represents a materially different application of the Development Plan Justification Test to the Shannon Minerals property.

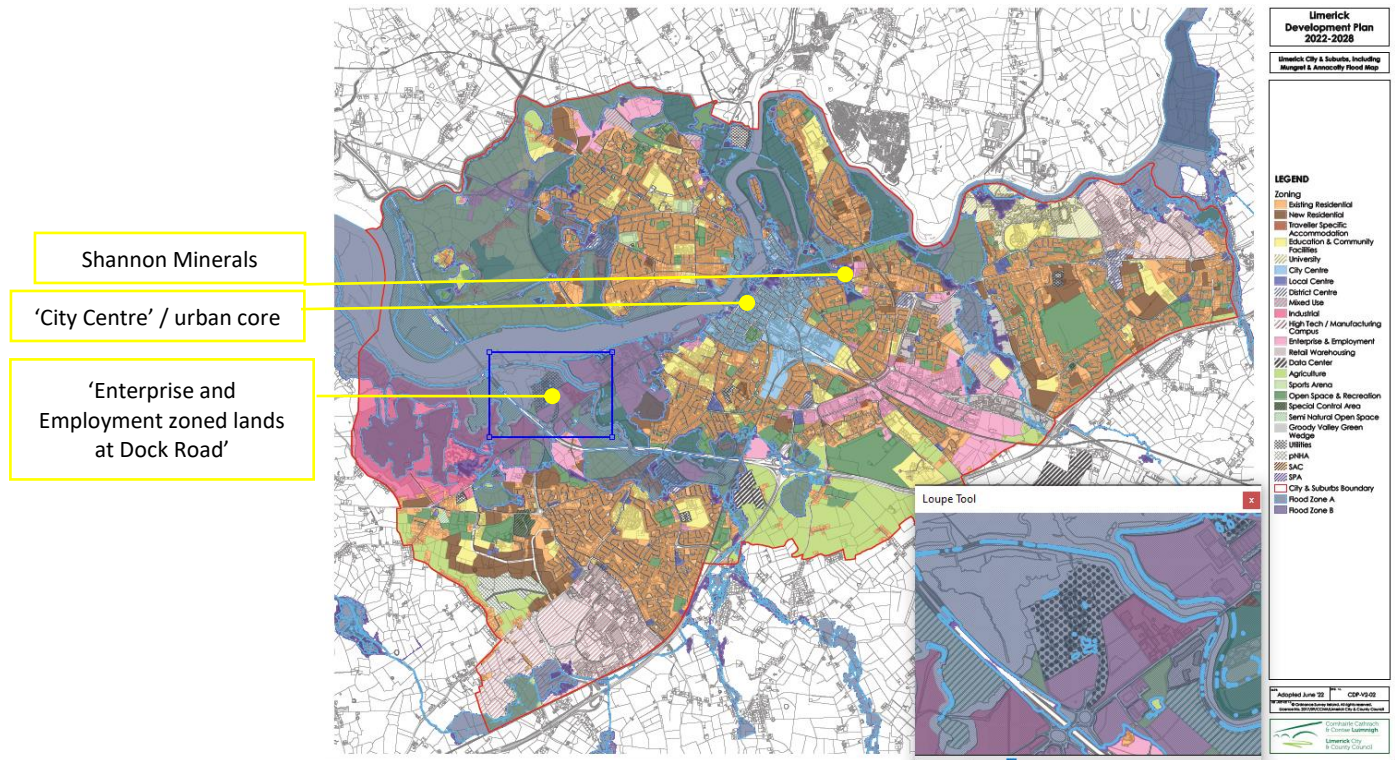


Figure 4 Comparative assessment between lands adjoining the Core ('Enterprise and Employment zoned lands at Dock Road')

Thirdly, I refer to other 'Enterprise and Employment' zoned lands situated to the northwest of the M20/M7/N18 Junction set out in Section A.2.5 of the SFRA contained in Volume 4 of the Limerick Development Plan illustrated in Figure 5 below. In the justification test for those lands, which are situated circa 720m from the edge of the 'city centre' zoning, the assessment stated that the "lands are within or adjoining the core of an established or designated urban settlement".

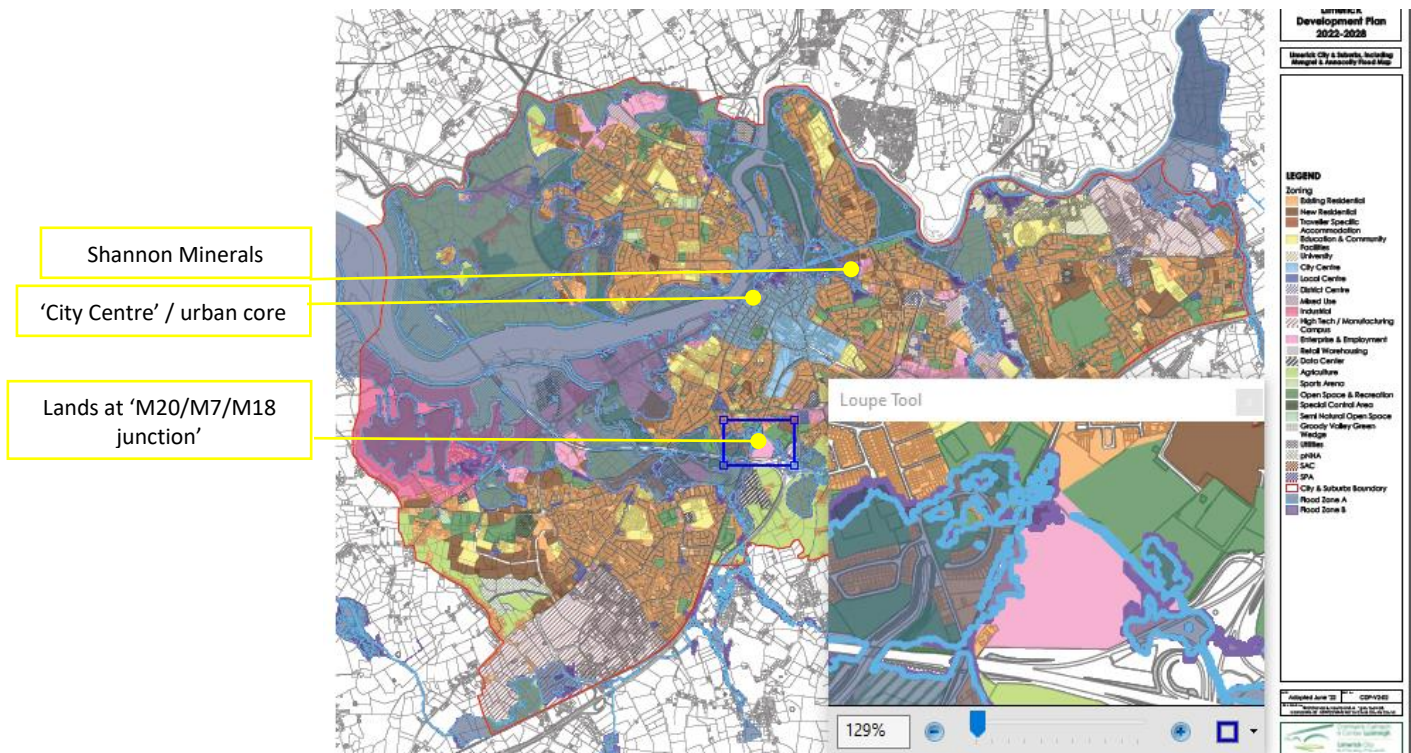


Figure 5 Disparity between locations defined as 'edge of centre' in the Limerick Development Plan

The FRA guidelines doesn't place any different weight value between different landuse zoning types in respect to the consideration as to whether or not they or are not 'within or adjoining the core'. Therefore, there should be equal consideration to the assessment of all sites in respect to their relationship /proximity to the urban core for the purpose of the justification test. However, it is clearly evident that the Justification Tests set out in the SFRA enclosed in the Development Plan in respect to whether lands are 'within or adjoining the core' have not been applied consistently and equally across the assessment of all lands.

This inconsistency in the SFRA is a material consideration and the resulting effect is enormous. The outcome of the SFRA had in the case of the Shannon minerals property, been determinative in the influencing the landuse zoning objectives set out in the draft Development Plan, and has no doubt, informed the basis for the Section 31 Direction at this time.

If the SFRA justification test of the Shannon Minerals property had during the preparation of the Development Plan, been conducted consistently with the approach employed in the justification tests prepared for the 'lands at Greenpark' and, the 'Enterprise and employment zoned lands at Dock Road', and, the 'lands adjacent to the M20/M7/M18' in terms of consideration of proximity to '*within or adjoining the core*' (pursuant to the requirements of Justification Test criteria '2(iii)'), then it is highly probable and logical that the Shannon Minerals property would have passed that Development Plan Justification Test for the same reason those other sites had. Furthermore, the consistent application of the Justification Test across all sites would have resulted in the Shannon Minerals property passing the justification test, exactly for the same reasons presented in the Justification Test prepared for and on behalf of Shannon Minerals.

3.2 Other lands Zoned for Development Uses, in Contrast to the Shannon Minerals Property

The generality of the rationale presented for the 'Mixed Use' zoning, based on the proximity relationship between the Shannon Minerals property and the city centre, was acknowledged but rejected by the OPR in its notice⁵ to the Minister.

In Section 1.10 of that notice (**'MA no.146 Pa Healy Road from Enterprise & Employment to Mixed Use'**) in relation specifically to the zoning of the Shannon Minerals property, the OPR acknowledges that the elected members of LCCC rejected the CE Recommendation to remove the ['Mixed Use'] and stated that *"the reasons given fail to address the substantive issue in the OPR recommendation, that the plan be made without zoning amendment MA no. 146 because that would be inconsistent with National Policy Objective 57 of the National Planning Framework, which seeks to avoid inappropriate development in areas at risk of flooding in accordance with the Ministerial Guidelines issued under Section 28 of the Act, the Flood Guidelines."* (bold emphasis added).

This thus brings further consideration of other lands which have been zoned for development use (including vulnerable) under the Limerick Development Plan which are subject also to potential flood risk but, which have passed the Development Management Justification Test and are equal distance or further removed from the urban core than the Shannon Minerals property.

⁵ Notice Pursuant to section 31AM(8) of the Planning and Development Act 2000 (as amended) – Limerick Development Plan 2022 – 2028 Office of Planning Regulator, 15th July 2022).

These properties are set out in Table 1 of the Limerick Development Plan Settlement Capacity Audit⁶ as and referenced and discussed as follows;

- Site No. 12
- Site No. 42
- Site No. 81
- Site No. 133

Site 12 (Moyross)

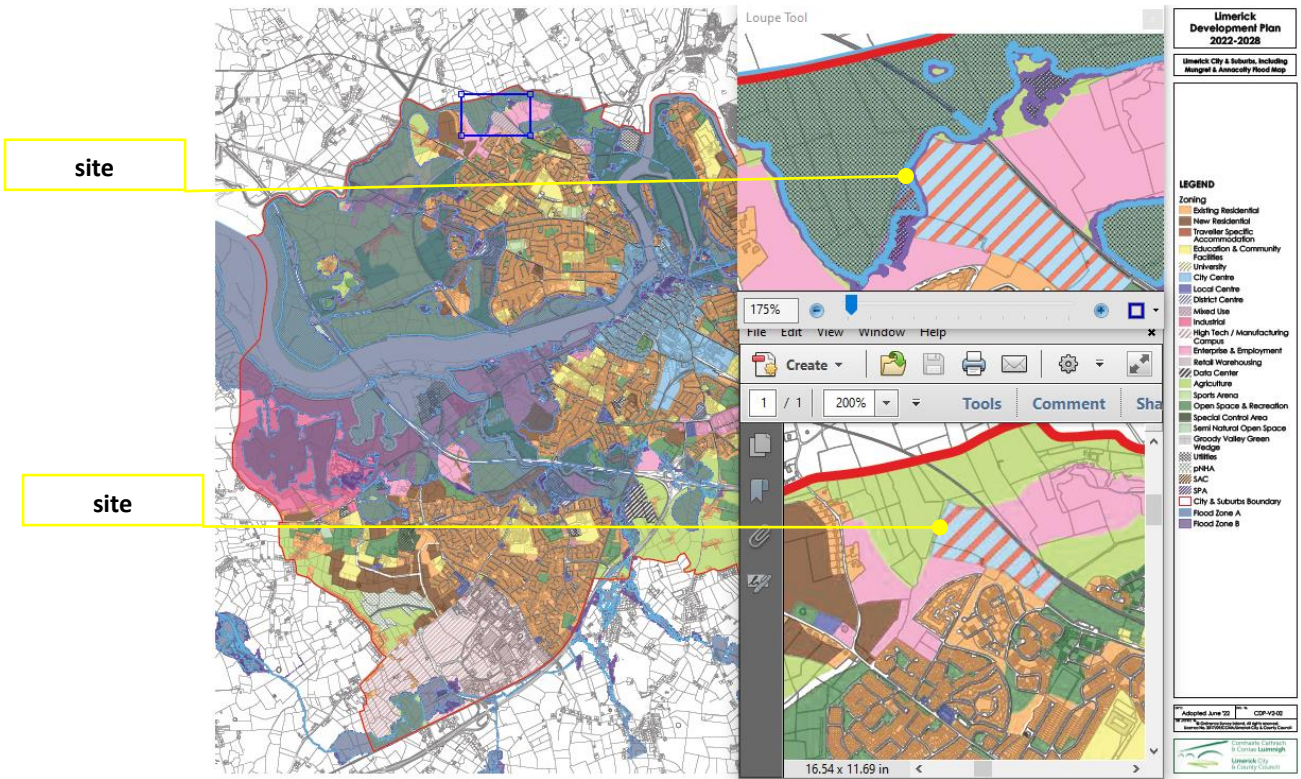


Figure 6. Site 12 showing landuse zoning and flood risk areas

This 'greenfield' property measuring circa 9.4ha in area is situated in the northern extremity of Limerick City Suburbs and is zoned 'Mixed Use' in the Limerick Development Plan. Portions of the property are located within Floodzone A and B (as illustrated in the figure 6 above) and the Residential capacity audit states that this site is a 'regeneration area'.

Given the substantial clearance of this urban area, and reversion of much of the land to 'greenfield', the parts of the property which are subject to flood risk, should be subject to the same extent and type of flood risk as any other greenfield site within the urban area. The property is substantially removed from the core. (Refer to figure 2a and 2b for distances). Pursuant to the provisions of Circular PL2/2014⁷ in relation to "Regeneration Areas" the planning authority is obliged to 'specify the nature and design of structural and not-structural flood risk management

⁶ Limerick Development Plan Volume 2a Level 1 - Limerick City and Suburbs (in Limerick), Mungret and Annacotty Settlement Capacity Audit; Zoning Map; Density and Residential Capacity Audit Map; Flood Map; Transport Map
⁷ Circular PL2/2014 (I) Use of OPW Flood Mapping in assessing planning applications and (II) Clarification of advise contained in the 2009 DECLG Guidelines for planning authorities – 'The Planning System and Flood Risk Management' (DEOCLG 2014)

measures required prior to future development in such areas to ensure that flood hazard and risk to the area and other locations will not be increased or, if practicable, will be reduced..”

The strategic Flood Risk Assessment (SFRA) carried out in respect to this area (‘Caherdavin/Moyross’)⁸ states that “where there is existing residential zoning within Flood Zone A or B, new development should be limited to minor development only (Section 5.28 of the Planning Guidelines) with no new, major development permitted within this area”.

The adopted ‘Mixed Use’ zoning applicable to parts of this site is not consistent with the recommendation of the SFRA, the FRA Guidelines or the Development Plan guidelines for Planning Authorities (considered later) in respect to sequential selection of zoned land with priority to sites closer to the urban core to support compact growth. Furthermore, it is noted that the inclusion of this property in the Development Plan for ‘Mixed Use’ has not been subject to Development Plan Justification Test.

Site No. 42 Clare Street (adjacent to Shannon Minerals Site)

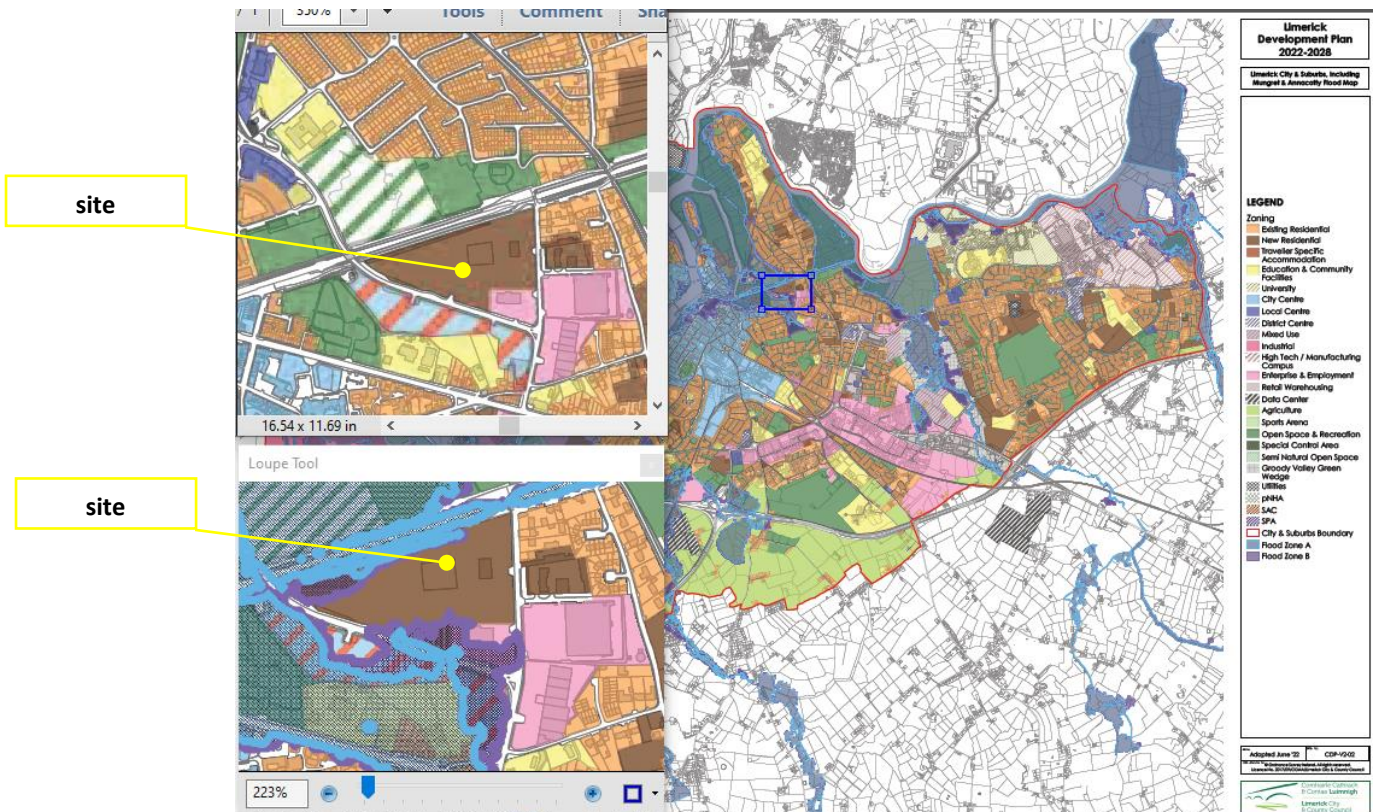


Figure 7. Site 42 showing landuse zoning and flood risk areas

Site 42 is a brownfield site situated adjacent, to the north of the Shannon Minerals property on the northern (opposite) side of Pa Healy Road (refer to figure 2a and 2b for proximity). Whilst the entire site is zoned ‘New Residential’ parts of that site (along northern and southern

⁸ Limerick Development Plan, Volume 4 Strategic Flood Risk Assessment, Section 7.3

extremities) are situated within Flood Zone A and B. No Development Plan justification test is included in the Limerick Development Plan.

Site 81 New Residential at Clare Street/Dublin Road

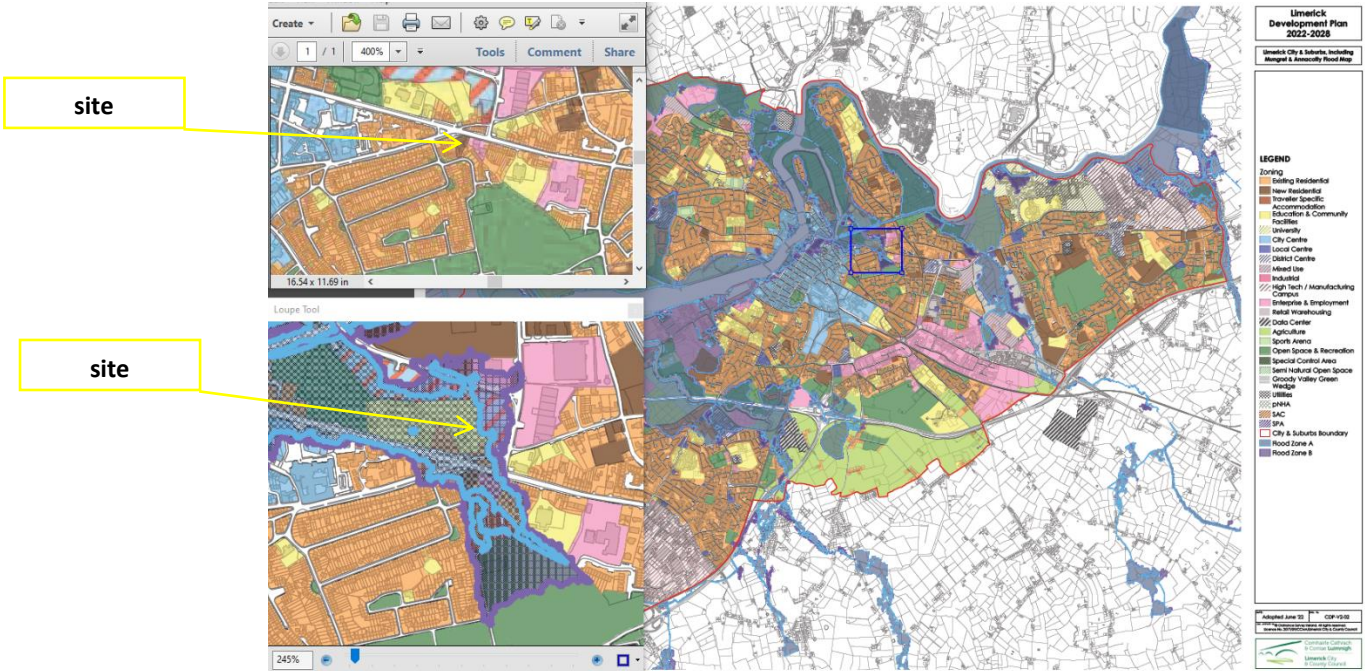


Figure 8. Site 81 showing landuse zoning and flood risk areas

Site No. 81 (0.156ha) is a brownfield site situated at the intersection of Clare Street, Dublin Road and Pennywell Road. The site is located within Flood Zone A and B and zoned ‘New Residential’ in the adopted Development Plan with anticipated density range of 100+ units per hectare and is a comparably equal distance from the city centre and from the edge of the ‘city centre’ landuse zoning as the Shannon Minerals property (refer to figure 2a and 2b for distances). Furthermore, Site 81 is situated on the edge of this (same) transitional area between the central core of the city, and the outlying suburbs of Rhebogue/Garryowen. The ‘Limerick City and Suburbs Residential Capacity Audit’ (Limerick Development Plan Volume 2a) includes a comment (by the Planning Authority in respect to Site No. 81) that “*Site flood mitigation/design required*”. That statement indicates clearly, an opportunity and a requirement to address the inherent flood risk posed by its location in the area of flood risk during detailed planning application stage. No Flood Risk justification test is included in the Limerick Development Plan for this site.

Site No. 133 Limerick Racecourse Site

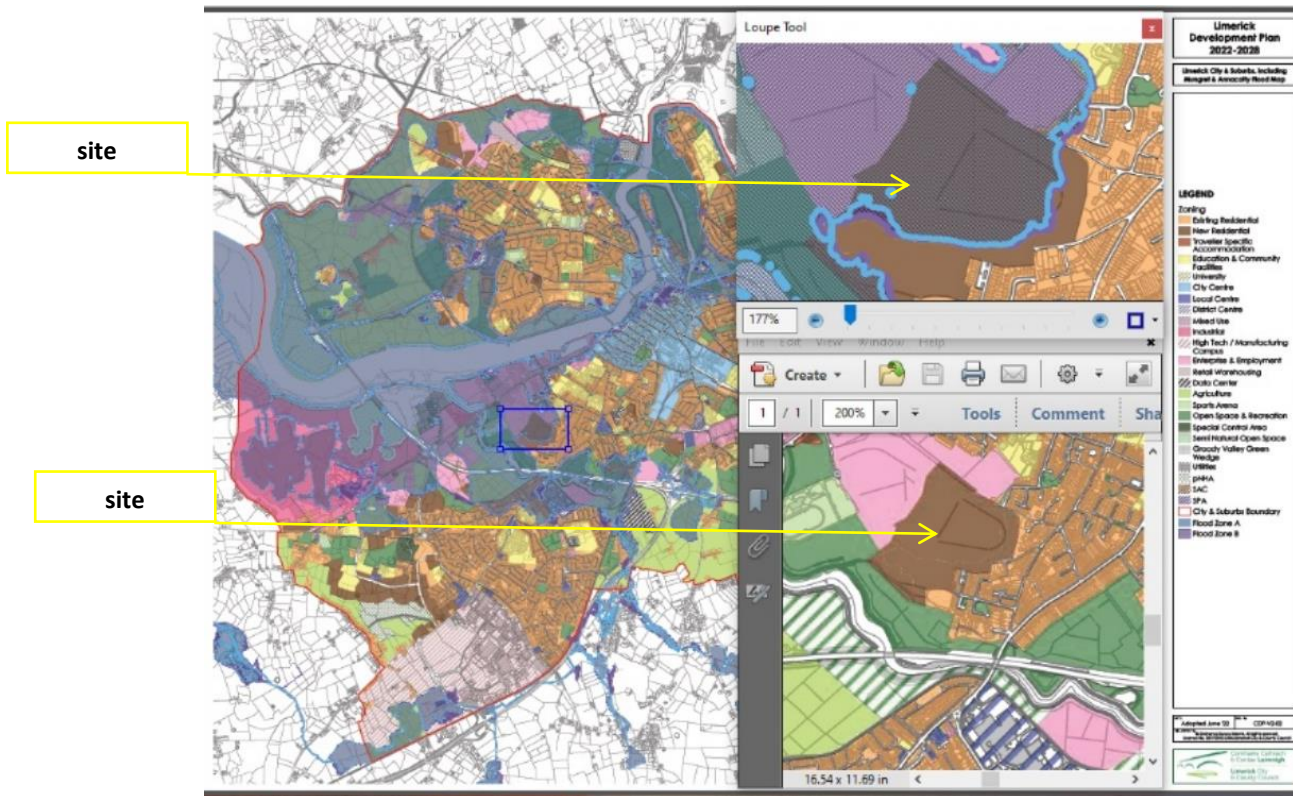


Figure 9. Site 133 showing landuse zoning and flood risk areas

The Limerick racecourse site is a greenfield site (19.55) situated to the southwest of Limerick City centre between the commercial area of the Dock Road (to its north), and the residential suburb of South Circular Road (to its south east). (refer to figure 2a and 2b for location and distances). The site is located within Flood Zone A and B and zoned 'New Residential' in the adopted Development Plan with anticipated density range of 45+ units per hectare. It is in excess of 1km from the edge of the 'City Centre' landuse zoning, it does not form part of the city centre nor does it adjoin it. Whilst planning permission has been granted on this site, there is no guarantee that the development will be constructed during the life of the development plan such that warrants the application of a residential landuse zoning objective within Flood Zone A and B. No Development Plan Justification Test in respect to Site No.133 is included in the Development Plan. The 'Limerick City and Suburbs Residential Capacity Audit' (Limerick Development Plan Volume 2a) includes a comment (by the Planning Authority in respect to Site No. 81) that "*Site flood mitigation/design required*" suggesting clearly an opportunity and requirement to address the inherent flood risk posed by its location in the area of flood risk during the detailed planning application stage. (This site has been challenged also in the Section 31 Direction).

These four properties demonstrate that; land has been zoned in the Limerick Development Plan within Flood Zones A and B for potentially vulnerable landuses including 'Mixed Uses' and 'Residential' uses; and that, those properties are generally equally distance, or, greater distance from the urban core than the Shannon Minerals Site. The approach taken in the Limerick Development Plan in those instances as would apply to the 'Mixed Use' zoning objectives on the Shannon minerals property, has generally been; recognition of the potential for flood risk, and then to mitigate that flood risk by way of design and

site-specific flood risk assessment – both of which would occur at the detailed planning application and ‘Development Management’ stage. Planning permission in respect to development on all sites (including Shannon Minerals) is dependent upon satisfying those Development Management criteria. Such an approach is considered reasonable, practical and sufficiently responsive to the NPF Objective 57 and the precautionary approach adopted in the Flood Risk Management Guidelines.

From consideration of these other zoned lands, the consequential effects arising from the Section 31 Direction to change the landuse zoning of the Shannon Minerals site from ‘Mixed Use’ to ‘Enterprise and Employment’ would be; to present inconsistencies in the application of landuse zoning provisions throughout the Limerick Development Plan area; to apply NPF Objective 57 inconsistently in the Limerick Development Plan, and to result in an inconsistent and defective application of the FRA Guidelines for the purpose of the preparation of the Development Plan for the reasons set out earlier.

3.3 Consideration of The ‘Development Plan Guidelines’

The Development Plan Guidelines for Planning Authorities (Department of Housing, Local Government and Heritage, 2022) constitute Ministerial Guidelines under Section 28 of the Planning and Development Act 2000, as amended (the Planning Act), and set out national policies and objectives for the preparation, making, variation and implementation of development plans.

Section 6.2.3 of those guidelines (‘Sequential Approach to Zoning of Residential Development’) states that;

*“It is a policy and objective of these Guidelines that planning authorities **adopt a sequential approach when zoning lands for development, whereby the most spatially centrally located development sites in settlements are prioritized for new development first, with more spatially peripherally located development sites being zoned subsequently**”.* (bold emphasis added).

In making that policy and objective, those guidelines state that in undertaking the zoning function for new residential development at individual settlement scale, it is recommended that planning authorities adopt a sequential approach which reflects the compact growth, utilisation of existing infrastructure and town regeneration national policy objectives of the NPF, further developing the Tiered Approach. The basis of this approach, as stated in the guidelines is that;

“In many cases, undeveloped lands and sites have been left idle, even though they may be centrally located with good access and availability of services infrastructure to enable development. This pattern of development has contributed to the decline of town centres and has resulted in a neglected appearance to many towns and other urban areas”.

The corollary of these Development Plan guidelines is that when comparing land like-for-like in terms of potential flood risk and intended landuse function, sites closer to the urban core should be prioritised over sites which are further removed from the urban core. The application of this approach would thus indicate that the Shannon Minerals site should be of equitable or preferable suitability for ‘Mixed use’ landuse activities than many other sites which are also subject to flood risk (Site Nos, 12, 81, 43 and 133 for instance referenced earlier) due to the locational proximity adjoining the core.

4.0 SUMMARY OBSERVATIONS

For the reasons set out above, it is considered that the zoning of the Shannon Minerals property for 'Mixed Use' development would not be inconsistent with the with the National Planning Framework National Policy Objective 57, and would not be inconsistent with *Ministerial Guidelines issued under Section 28 of the Act, The Planning System and Flood Risk Management, Guidelines for Planning Authorities (2009) ("the Flood Guidelines")* given that; the Development Plan justification test contained in the Limerick Development Plan failed to take account the generality of the location of the property 'adjoining the urban core' as it is required to do so; and given that site-specific flood mitigation measures could be considered in the detailed development design of the Shannon Minerals property which could mitigate against flood risk to this site and adjoining lands subject to a Development Management Justification Test carried out at the planning application stage.

Moreover, it is respectfully submitted that the Section 31 Direction; (i) fails to take into account that the SFRA contained in the Limerick Development Plan has applied an inconsistent approach in its Strategic Flood Risk Assessment resulting in (for no material reason) the Shannon Minerals property failing the Development Plan justification test when other sites further removed from the urban centre than the Shannon Minerals property have passed the Development Plan justification test; and (ii) has disregard the findings of the Justification Test prepared on behalf of Shannon Minerals and submitted with the Motion made by the elected members of the Council which presents the case that the zoning of the subject site for 'Mixed Use' would pass the Development Plan Justification Test.

The Shannon Minerals property, by reason of its central location adjoining the urban core is considered an appropriate and preferential location for urban development which supports and facilitates compact urban growth when taking action of the Ministerial Guidelines – Development Plan Guidelines for Planning Authorities (2022) which advocates the sequential approach to the zoning of lands for development where the most spatially centrally located development sites in settlements are prioritised for new development first, over more spatially peripheral locations – albeit subject to compliance with the Development Management flood risk assessment at the planning application stage.

The recommendation of the Section 31 Direction to change the zoned from 'Mixed Use' to 'Enterprise and Employment' would give rise to an inconsistent application in the Limerick Development Plan to the NPF Objective 57 and to the *Flood Risk Management, Guidelines for Planning Authorities (2009)* given that other sites have been zoned in the Limerick Development Plan for flood risk vulnerable uses and which contain various degrees of flood risk, and which are further removed from the urban core but which have been considered suitable for development under the NPF objective and the Ministerial Flood Risk Guidelines.

For these material reasons, it is respectfully requested that the Shannon Minerals property referenced as "MA no. 146" in the Section 31 Direction, retains the 'Mixed Use' zoning objective.

Yours sincerely,



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Director HRA | PLANNING