

**SUBMISSION TO PROPOSED AMENDMENTS TO
DRAFT CLARE COUNTY DEVELOPMENT PLAN
2023-2029**

Lands at Knockanoura, Tulla Road, Ennis, Co. Clare

Mr. Pat Quinn

Issue: A

Customer Project Number: 6113

Customer Document Number:

Document Sign Off

SUBMISSION TO PROPOSED AMENDMENTS TO DRAFT CLARE COUNTY DEVELOPMENT PLAN 2023-2029

Lands at Knockanoura, Tulla Road, Ennis, Co. Clare

Mr. Pat Quinn
Issue A

File No: 6113

CURRENT ISSUE					
Issue No: A	Date: 21.12.22	Reason for issue: Submission to Proposed Amendments Draft Clare County Development Plan 2023-2029			
Sign Off	Originator	Checker	Reviewer	Approver	Customer Approval (if required)
Print Name	Mandy Coleman	Paddy Coleman		Mandy Coleman	
Signature	Authorised Electronically				
Date	21.12.22	21.12.22		21.12.22	

PREVIOUS ISSUES							
Issue No	Date	Originator	Checker	Reviewer	Approver	Customer	Reason for issue

1.0 INTRODUCTION

P. Coleman & Associates, Architects, Engineers and Planners have been appointed by Mr. Pat Quinn to prepare a submission to the Proposed Amendments to the Draft Clare County Development Plan 2023-2029 with specific reference to the land-use zoning proposed for Ennis town as outlined in the Ennis Municipal District Settlement Plan Volume 3a. Our Client is seeking to remove the proposed 'Utilities' ('UT1') zoning objective proposed on land at Knockanoura, Tulla Road, Ennis.

2.0 BACKGROUND

Our Client lodged a submission to the Draft Clare County Development Plan 2023-2029 regarding an existing vacant site which forms part of the proposed 'OP18' site located on the Tulla Road (See Figure 1 below). This submission, Ref: S2/833, requested that the subject site, which was proposed to be zoned as 'Commercial' and as an 'Opportunity Site' with the specific zoning objective of 'OP18' under the Draft Plan, be rezoned as 'Open Space'. The Chief Executive's recommendation was "No amendment to the Draft Clare County Development Plan 2023-2029 on the basis of this submission".

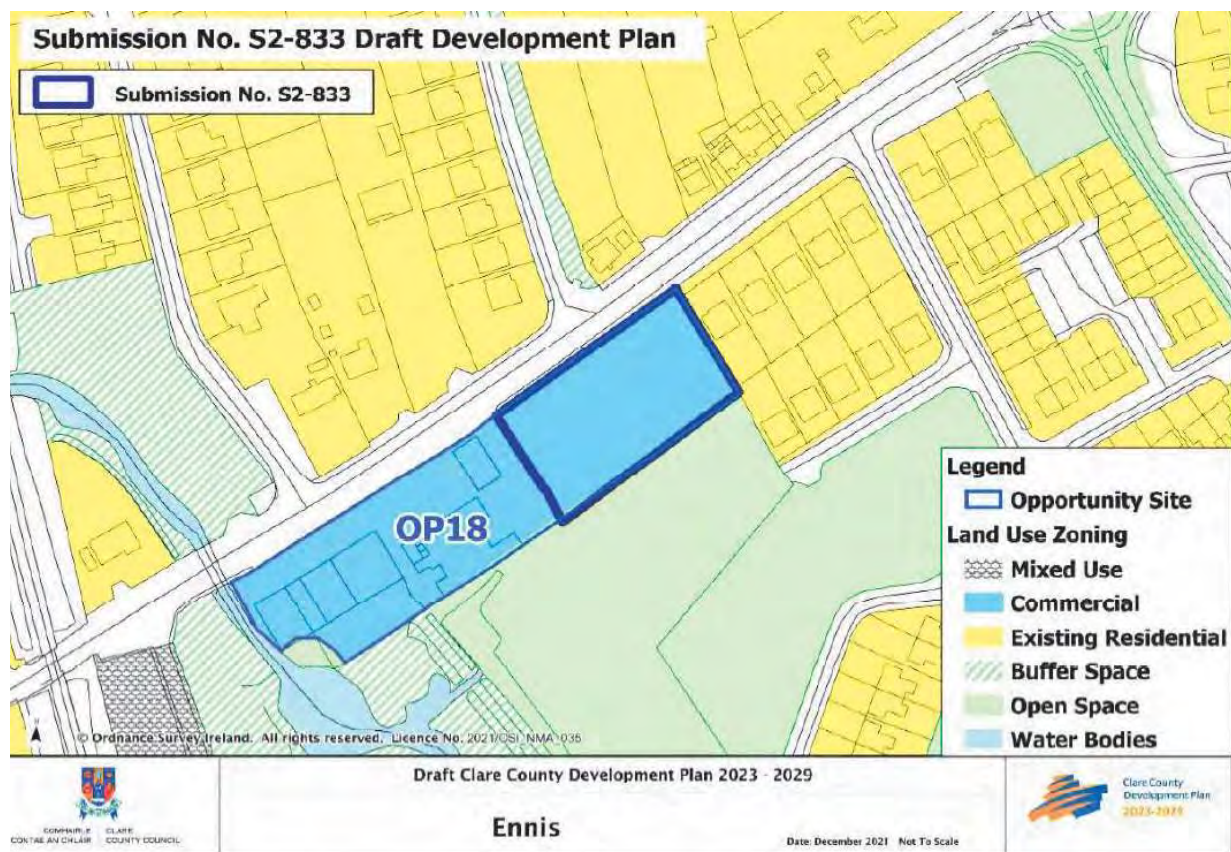


Figure 1 – Subject Site for Submission Ref: S2-833 by Mr. Pat Quinn outlined in Blue

A submission was lodged to Draft Clare County Development Plan 2023-2029 in relation the lands the subject of this submission, by the landowner Mr. Noel Glynn (See Figure 2 below). Submission Ref: S2/700 requested that the proposed ‘Open Space’ zoning of the site, the subject his submission, be rezoned to ‘Commercial’. The Chief Executive’s recommendation was “No amendment to the Draft Clare County Development Plan 2023-2029 on the basis of this submission”.

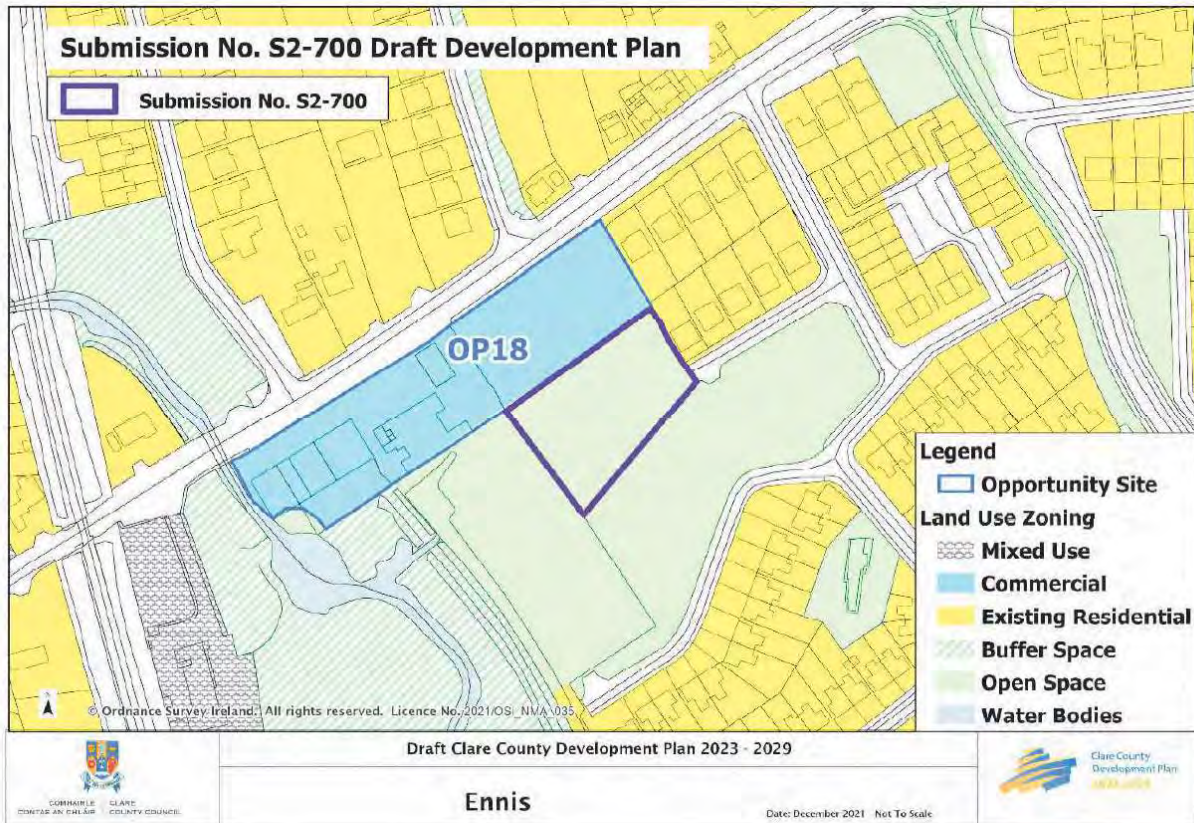


Figure 2 – Subject Site for Submission Ref: S2-700 by Mr. Noel Glynn outlined in Blue

3.0 PROPOSED AMENDMENTS TO THE DRAFT CLARE COUNTY DEVELOPMENT PLAN 2023-2029

We note that the Proposed Amendments to the Draft Plan propose to keep the ‘Commercial’ & ‘OP18’ zoning on the site the subject of our Client’s submission but have also included additional land to the rear of this site and proposed a ‘Utilities’ zoning objective on it with the specific zoning objective of ‘UT1’. This land formed a substantial part of the land the subject of Mr. Glynn’s submission. See Figure 3 below.

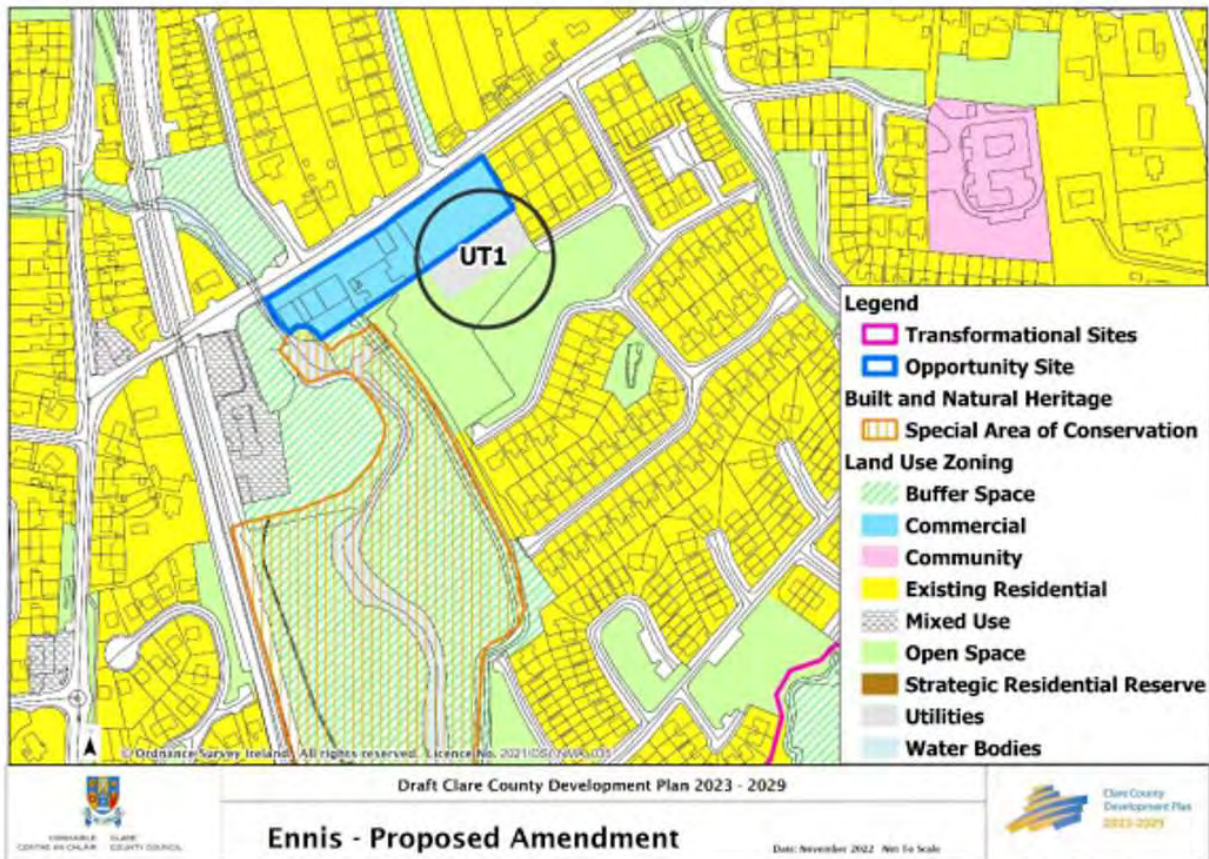


Figure 3 – Proposed ‘Utilities’ zoning as per Proposed Amendment to Draft Clare County Development Plan 2023-2029.

As per the Proposed Draft Clare County Development Plan 2023-2029 the ‘Utilities’ zoning objective states as follows:-

Utilities/Infrastructure Safeguard

It is intended that land zoned ‘utilities’ and ‘infrastructure safeguard’ will be reserved for the existing and future provision of key infrastructural services and the upgrading of existing services and infrastructure relating to road, rail, air, electricity, telecommunications, gas, water and wastewater treatment services.

The specific ‘UT1’ zoning objective proposed states as follows:-

UT1- Rear of OP18

The development of this site should predominately be constructed in a permeable manner. It should use vegetated swales and ditches a Sustainable Urban Drainage system to accept and diffuse runoff from the site. It should be designed to attenuate and infiltrate runoff volume from the surface car park. The design of the swale should have the capacity to cope with a once in 10–30-year rain event.



4.0 REQUESTED AMENDMENT

Remove 'Utilities' 'UT1' zoning objective from the subject site

Our Client strongly objects to the proposed rezoning of the 'Utilities' 'UT1' site. Our Client requests that the proposed 'Utilities' 'UT1' be removed and the 'Open Space' zoning objective, originally proposed in the Draft Plan, be adopted in the final Clare County Development Plan 2023-2029. Our Client's submission is set out below and includes a prepared and separate submission prepared by our Client which is included in the Appendix.

4.1 Insufficient Zoning Objective Description

According to our Client, the wording of the proposed 'UT1' zoning objective is very vague and it is unclear as to what exactly is being proposed on this site or what purpose it is serving. Our Client is of the opinion that this vague wording with no details as to its purpose does not adequately inform the general public as to what is proposed on this site. The proposed rezoning as outlined in the Proposed Amendments to the Draft Plan therefore is insufficient and cannot be accepted as adequately informing the general public as to what is proposed on this site and what purpose it is serving.

We refer to the existing ESB offices and associated car-parking site on the Quin road which is also proposed to be rezoned as 'Utilities' in the Draft Plan. We understand from another zoning submission made to the Draft Plan that the ESB have engaged a local Building Construction firm to secure and construct a commercial unit/building in the Ennis area in close proximity to the motorway. This would provide for the redevelopment of the existing ESB site on the Quin Road which would be very beneficial to any redevelopment of the proposed 'OP14' Clare Marts site, given the close proximity. There is a proposed specific zoning objective on the ESB site which states as follows:-

The lands are located between the railway line Opportunity Site (OP 14) Clare Marts. The Utility zoning is to accommodate the necessary car, coach and bicycle parking that may be required and which would also support the potential redevelopment of OP14 should Cusack Park relocate to this location. The development of these utility zoned lands will require the provision of permeable surfaces given its location within an area of flood risk. In addition, the site would accommodate parking to serve the Town Centre in the form of a Park and Stride which would support the 10- minute town concept.

It is very clear from the wording of this specific zoning objective as to what is being proposed on this site and what purpose it is serving unlike the wording of the 'UT1' zoning objective.

Our interpretation of the 'UT1' zoning objective is that it is to provide for surface car-parking and allow the surface water disposal from same to discharge to SUDS systems such as swales and drains. This interpretation is based on the wording "..... development of this site should predominately be constructed in a permeable manner " and the reference to "surface car park" . Given that this site is directly adjacent to the 'OP18' site, we are assuming that the provision of a surface car-park on the 'UT1' site is to facilitate parking which would be required with any development and/or redevelopment of the proposed 'OP18' site. This assumption is also based on the following:-



- (i) in the Proposed Amendments to the Environmental Assessments Volume 10a&b of the Proposed Amendments to the Draft Plan, there is a reference to Submission No. S2/700 regarding the 'OP18' & 'Utilities' site assessment. Submission Ref: S2/700 relates to Mr. Noel Glynn's submission whereby he requested that the site outlined in Figure 2 above be included in the 'OP18' 'Commercial' and 'Opportunity Site' zoning.
- (ii) The Strategic Flood Risk Assessment - Volume 10c of the Proposed Amendments to the Draft Plan have assessed the 'OP18' and 'UT1' sites together.
- (iii) In the Ennis Municipal District Plan – Volume 3a of the Proposed Amendments to the Draft Plan the 'OP18' and 'UT1' specific zoning objectives have been grouped together.

Note the remainder of this submission as been prepared based on the above interpretation.

4.2 Contrary to Zoning Objective

The provision of surface car-parking and surface water discharge on the 'UT1' site to facilitate private commercial development on an adjoining site is inconsistent with the 'Utilities' zoning objective which clearly states that land zoned for this use *will be reserved for the existing and future provision of key infrastructural services and the upgrading of existing services and infrastructure relating to road, rail, air, electricity, telecommunications, gas, water and wastewater treatment services.* The 'UT1' zoning objective does not state that the development of this site is to provide for key infrastructural services.

We note the 'Utilities' zoning objective is proposed in the Draft Plan to apply to the following sites within the Ennis Municipal Settlement Plan boundary:-

- Existing Clarecastle Treatment Plant and adjoining lands in the ownership of Irish Water (IW) and Clare County Council (CCC)
- Existing attenuation area off Clareabbey Roundabout in the ownership of CCC
- Existing ESB offices and car-park at Quin Road in the ownership of ESB
- Existing Clonroadmore Treatment Plant and adjoining lands in the ownership of IW
- Existing ESB Station at Knockaderry, Roslevan in the ownership of the Minister for Industry & Commerce
- Existing ESB Station at Tooreen, Tulla Road in the ownership of ESB
- Existing Ennis Water Treatment Plant at Drumcliff in the ownership of IW
- Existing ESB Sub-Station at St. Flannan's Drive, Clonroadmore – only partly registered in the name of ESB
- TII Attenuation lands at Keelty and Clareen Roundabout West of N85 in the ownership of CCC
- IW Sewage Pumping Station at Kildysart Road/Ballybeg Road, Clarecastle in the ownership of IW

All of these sites are existing public infrastructure sites in state or semi-state ownership. There are no other sites with the Ennis Municipal Settlement Plan boundary where the 'Utilities' zoning objective is proposed to be zoned to facilitate a private commercial development.



Our Client is of the opinion that the misapplication of the 'Utilities' zoning objective to this site can actually be viewed as misinforming the general public as to what exactly is proposed on this site given the purpose of the 'Utilities' zoning objective to this site which is to provide for key infrastructural services. A reasonable member of the public would certainly not expect that the provision of the 'Utilities' zoning on this site is actually to facilitate car-parking requirements associated with a private commercial development.

4.3 Extension of 'Commercial' 'OP18' zoning

It is our Client's opinion that the proposed 'UT1' zoning objective is in effect an extension of the 'Commercial' zoning designation of the 'OP18' into the 'UT1' lands. The provision of a surface car park on the 'UT1' site will allow for the full footprint of the 'OP18' site and in particular the vacant portion of this site, which was the subject of our Client's submission, to be used as commercial floor space with the car-parking requirement associated with same now being facilitated on the 'UT1' site. This in essence this is an indirect extension of the commercial area associated with 'OP18' for the benefit of a more intense use of a commercial development on the 'OP18' site.

4.4 Contrary to Chief Executives Recommendation

We note from the Chief Executives Report on Mr. Noel Glynn's Submission Ref: S2/700 to the Draft Plan that no amendment was proposed to the 'Open Space' zoning objective on the subject site with the response to Mr. Noel Glynn's Submission stating as follows:-

The zoning of additional lands for Commercial use, adjacent to the existing commercial zoned site would lead to a cluster of such development, distant from the town centre and would be disproportionate to the scale of the surrounding neighbourhood and in particular having regard to the proximity of the established Roslevan neighbourhood centre. Additional commercial zoning at this location may cause a traffic hazard and be contrary to the proper planning and sustainable development, not only for the Tulla Road, Roslevan neighbourhood, but also of the wider Plan area. Therefore, I am not in favour of the requested change to the zoning objective on this land.

Given that the Chief Executive recommend no change to the proposed rezoning request, we presume that this proposed change to rezone part of the site the subject of Submission Ref: S2/700 to 'UT1' has come about as a result of a motion passed by the Elected Members. Our understanding of when the Elected Members decide not to accept the advice/recommendations set out in the Chief Executive's Report, there is an obligation on the Elected Members to identify whatever reasons motivated their decision to amend the plan contrary to the Chief Executive's recommendation. We found no evidence of any reasons to support a decision to overturn the Chief Executives recommendation on changing the zoning objective for this site which in our Client's opinion is effectively providing for additional commercial zoning.

4.5 Unauthorised Status of the Site

The 'UT1' site is part of a larger block of land (See Figure 3 below) which contains unauthorised development. We refer to the decision of a Section 5 Referral Ref: **RL03.307625** where An Bord Pleanála decided that groundworks undertaken, including importation and deposition of fill material to create a hardstanding area and the raising of ground levels from 2013 onwards is development and is not exempted development. There is currently an open Unauthorised Development File Ref: UD15-30, in relation to the works the subject of the Section 5 Referral (RL03.RL3611) on these lands.

No change in zoning to allow for any form of development, particularly development to facilitate a more intense private commercial development on adjoining lands, should be permitted given the unauthorised status of the proposed 'UT1' site.

We note there is no application to regularise the unauthorised development on the 'UT1' site. It is considered that the owner of the proposed 'UT1' site should not be permitted to benefit from a zoning objective which would, essentially facilitate additional commercial use on the 'OP18' site. This would further compound the unauthorised activities on the site and would be contrary to the proper planning and development of the area.



Figure 3 – Lands the subject of Section 5 Referral - RL03.307625

4.6 Flood Risk

The 'UT1' site is located within Flood Zone A as noted in the Proposed Amendments to Environmental Assessment Report Volume 10a&b of the Proposed Amendments to the Draft Plan and in the Proposed Amendments to the Strategic Flood Risk Assessment in Volume 10c of the Proposed Amendments to the Draft Plan. Given the extent of unauthorised infilling of the 'UT1' site and adjacent lands which has resulted in an increase in the levels versus adjacent properties including our Client's, our Client has serious concerns regarding any risk of flooding to his property and adjoining residential properties from any form of development to take place on the 'UT1' site. This concern was also expressed in the Proposed Amendments to Environmental Assessment Report.

5.0 CONCLUSION

Our Client submits that the Council have failed to adequately inform the general public regarding the proposed 'UT1' zoning based on the vague and unclear wording proposed. In addition, the proposal is a misapplication of the 'Utilities' zoning objective and therefore the general public can be seen to have been misinformed in relation to this proposed rezoning which is in effect providing an indirect extension of the 'Commercial' 'OP18' site.

The proposed rezoning is an indirect way of providing for additional commercial activity on the 'OP18' site and in particular the vacant part of this site, through the misuse of a zoning objective

Our Client strongly urges the Council to not adopt this proposed change in the final Clare County Development Plan 2023-2029.



APPENDIX

Submission of Patrick Quinn

Re: Proposed Rezoning UT1

1. I am a neighbouring resident of the lands which are proposed to be rezoned UT1. I object to same.
2. The proposed rezoning has the capacity to affect my rights, those of the residents of Castlerock and the wider public generally. All of us concerned citizens of Ennis East and beyond, are entitled to be satisfied that any decision to rezone as proposed is lawfully made.
3. The procedures by which this rezoning has come to be proposed fail to comply with the most basic requirements of natural and constitutional justice and fairness, as they do not permit of an effective opportunity for the public to transparently examine the basis for what actually is really being proposed here, or to participate in the making of appropriate representations on the issue in any effective, or informed way.
4. On any objective assessment of the situation, having regard to the dearth of underlying information publicly available on the issue, there has to be a real concern that the manner by which this rezoning has come to be proposed, might give rise to a public perception of the process being used improperly, as opposed to in accordance with the public interest, having regard to the proper application of the principles of planning and development law.
5. It is of significance that the proposed rezoning is contrary to the recommendation of the Chief Executive and concerns land which is outside of and beyond of what is encompassed by OP 18. It does not form part of the "*opportunity site.*"
6. An Bord Pleanála has determined that an unauthorized development has been carried out on these lands which are the subject matter of this proposed rezoning That unauthorised development continues as of the date hereof. The unauthorized status of such development has never been remedied by the person responsible for same. Enforcement action has never been progressed by the planning authority against the person responsible for such unauthorized development.
7. In all of the circumstances pertaining to these lands throughout the past eight years, the planning authority really ought to be asking itself now, what would any reasonably intelligent person, having no particular experience in law or town planning, make of the manner by which this proposed rezoning has therefore come to be made ?
8. No proper legal and lawful evidential framework exists with respect to this remnant of land, as to warrant such rezoning as is now proposed, especially having regard to the manner by which such proposal has been conceived by some unidentified individual(s) for whatever (publicly unascertainable) reasons and which are otherwise than in accordance with the recommendation of the Chief Executive of the planning authority.
9. Specific criteria or facts regarding the precise nuts and bolts of this proposal are required to be established here. That is not just my say so. No less an authority than the former Chief Justice, Mr. Frank Clarke initially so determined over ten years ago, in a case that occasioned



Dublin City Council a very considerable amount of money, significant adverse publicity and tremendous embarrassment.

10. Contrary to the content of the amendments to the Draft Plan, the land now proposed to be zoned UT1 is not zoned for commercial use. There are no existing uses on the “*UTI*” land apart from the unauthorized use that was made of it for infilling.
11. In this instance, there is insufficiency of information publicly available as would allow one to reasonably assess the lawfulness of the measure that has been/is being proposed.
12. In any event, there is an absence of evidence of the planning and sustainable development need for such a zoning in the area concerned. Even if there was a demonstrative need, there is no ascertainable or justifiable basis evidencing why such zoning is required for this specific land, when one has regard to its location and configuration, over, above and apart from all of the other land available elsewhere in eastern Ennis.
13. Furthermore, as regards the information that is actually available concerning what is proposed to be included in proposed amendments to the Draft Plan concerning “*UTI*,” there is no identifiable or evidential basis whatsoever for the reference to, or characterization of “*surface car park*” therein, or how such reference/characterization could possibly accord with what is encompassed by the utility zoning objective as defined. Such unfortunately is quite indicative of legally irrelevant considerations being at play here and has all the hallmarks of an approach by a decision-maker with an unlawfully fixed prior conclusion in mind with respect to accommodating and facilitating an envisaged future planning application concerning neighbouring lands, whereas such is a matter that instead ought properly to be open to effective public submission and impartial evaluation.
14. In this instance, the rezoning proposed, addresses itself to very specific private interests and is very far along the spectrum of being an individual decision confined to particular land in individual ownership.
15. I respectfully submit that any responsible planning authority acting lawfully in the proper discharge of its statutory functions with regard to the development plan process and in considering and applying the principles of proper planning and sustainable development, would not accede to this rezoning in the circumstances now pertaining.

Dated the 16th day of December 2022