



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309377-21

<b>Development</b>	Temporary car and coach park and associated development works, for a period of 7 years, on the former Smithwick's Brewery Site.
<b>Location</b>	St. Canice's Place, Kilkenny
<b>Planning Authority</b>	Kilkenny County Council
<b>Planning Authority Reg. Ref.</b>	20/762
<b>Applicant(s)</b>	Kilkenny Abbey Quarter Development Partnership acting by its General Partner Kilkenny Abbey Quarter Development Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Parties v Grant of Permission
<b>Appellant(s)</b>	1. Gordon Harrison 2. Cllr. Maria Dollard
<b>Observer(s)</b>	None

**Date of Site Inspection**

28.04.2021

**Inspector**

Anthony Kelly

## 1.0 Site Location and Description

- 1.1. The site is located to the south of St. Canice's Place in Kilkenny City between the junction of St. Canice's Place and Vicar Street to the north west and approx. 50 metres south west of St. Francis Bridge.
- 1.2. The site comprises a hard surfaced area between St. Canice's Place and the Breagh River to the south. There is a skate park to the east. The site is quite overgrown and there are piles of rubble, timber and other materials throughout. The Breagh flows into the River Nore approx. 50 metres to the east of the site.
- 1.3. The site has an area of 0.56 hectares (0.61 hectares including the public road where road markings are to be revised).

## 2.0 Proposed Development

- 2.1. Permission is sought for a temporary car and coach park for up to seven years providing 120 no. car parking and 7 no. coach parking spaces.
- 2.2. In addition to standard planning application plans and particulars the application was accompanied by:
  - A 'Stage 2: Appropriate Assessment – Natura Impact Statement' prepared by Malone O'Regan Environmental dated November 2020.
  - An 'Archaeological Impact Assessment' prepared by Archaeological Management Solutions Ltd. dated October 2020.
  - A 'Traffic & Transport Assessment' prepared by Roadplan Consulting dated November 2020.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission was granted by Kilkenny County Council subject to eight conditions relating to, inter alia, a financial contribution, implementation of the mitigation measures contained in the Natura Impact Statement (NIS), submission of a Waste Management Plan, detail of the oil/silt interceptor, a revised site layout plan incorporating some of the issues referenced by Road Design (as set out in Section 3.2.2, below) and conditions recommended by the Architectural Conservation Officer.

### 3.2. Planning Authority Reports

3.2.1. The Planning Report is the basis of the Council's decision. Schedule 1 of the decision states that, having regard to the provisions of the Kilkenny City and Environs Development Plan 2014-2020, the Abbey Quarter Creative Masterplan 2015, the 'general business' zoning objective and the proposed use being temporary in nature, the proposed development, subject to conditions, would not seriously injure the amenities of the area and would be in accordance with the proper planning and sustainable development of the area.

#### 3.2.2. Other Technical Reports

**Area Engineer** – Comments made. Consideration should be given to relocating the vehicular access in an easterly direction.

**Road Design** – No objection in principle. Alterations recommended include a revised internal layout (main access road, footpaths, improved definition to coach parking area), an alternative entrance arrangement giving priority to pedestrians and cyclists, public lighting, and Road Safety Audits. The comment of the Area Engineer is noted, and consideration should be given to requesting clarification for the rationale of the access location.

**Architectural Conservation Officer** – No objection. Conditions recommended.

**Environment Section** – Conditions recommended.

### 3.3. Prescribed Bodies

**Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media** – In relation to nature conservation the department's comments can be summarised as follows:

- Further information is required in relation to the proposed hydrocarbon/silt interceptor system with reference to the conservation objectives of European sites.
- A statement should be provided as to why SuDS were not considered.
- It is recommended consideration be given to the inclusion of measures to enhance biodiversity.

**An Taisce** – An Taisce is very concerned about the proposed development for the following reasons, which can be summarised as follows:

- The Traffic & Transport Assessment is inaccurate and inadequate.
- P.A. Reg. Ref. 20/114 / ABP Reg. Ref. ABP-307494-20 for a car park at 35 John Street was refused by both the Council and the Board on appeal. The reasons for refusal would apply to this application.
- It is implied the development would be contrary to the Kilkenny City Centre Local Area Plan (LAP) 2005 and the Regional Spatial & Economic Strategy (RSES) for the Southern Region.

While consistently opposing the provision of further private car parking in the historic centre, An Taisce would support temporary parking on site for construction workers.

### 3.4. Third Party Observations

Two submissions were received, from Gordon Harrison and Cllr. Maria Dollard. The issues raised are largely covered by the grounds of appeal with the exception of the following:

- An absence of universal parking provision and bicycle parking spaces.
- The current application and that for the Urban Park and Street project should be viewed together and the precautionary principle applied so as to ensure the nearby SAC can be definitively protected to the highest possible standards.

## 4.0 Planning History

4.1.1. There has been no recent relevant planning application on site. A recent Part 8 application on site is referenced throughout the application. This is:

Part 8 04/18 – A Part 8 was approved for a temporary car and coach park. It appears the judicial review was grounded in Appropriate Assessment (AA) Screening. The Council consented to the quashing of the Part 8.

4.1.2. A number of approvals under sections 175 and 177AE, Part 8s and planning applications are also referenced throughout the application documentation. These are:

- ABP Reg. Ref. ABP-307796-20 – This application, submitted by Kilkenny County Council under sections 175 and 177AE of the Planning & Development Act, 2000 (as amended) to the south and east of the site for the construction of a new Urban Park and Urban Street, was approved by the Board in 2021. The proposed development will cover an area of approx. 1.44 hectares. The urban park is located on the northern part of the Abbey Quarter and is centred around the upstanding remains of St. Francis Abbey. The urban street is aligned north-south through the Abbey Quarter, linking Bateman Quay in the south with St. Francis Bridge in the north. The street will be a pedestrian and cyclist dominated shared space, with limited vehicular access.
- A Part 8 was approved for the demolition of the maturation building and provision of 6,200sqm of commercial/office space (the Brewhouse development) approx. 50 metres south of the site. This development is under construction.
- P.A. Reg. Ref. 19/724 / ABP Reg. Ref. PL10.308868 – An application for permission for an extension to the Kilkenny Inn Hotel by way of a four storey plus penthouse building is currently awaiting a decision by the Board. The site is located on the opposite side of St. Canice's Place.
- P.A. Reg. Ref. 20/114 / P.A. Reg. Ref. ABP-307494-20 – Permission was refused in 2020 for a 90 space car park and upgraded entrance at 35 John Street, approx. 400 metres to the south east because it would be contrary to local, regional, and national policy, would encourage the use of the private car

into the city centre area and militate against increasing the modal share of sustainable transport.

## 5.0 Policy Context

### 5.1. Kilkenny City & Environs Development Plan 2014-2020

- 5.1.1. The site is zoned 'General Business' in Figure 3.3 (Zoning Objectives). The site is within a Master Plan Objective boundary (Objective 3C; 'To prepare a master plan and urban design framework for the Smithwick's site and Bateman Quay during the lifetime of the development plan'). An 'Indicative line of Central Access Scheme' is shown along the adjacent public road (St. Canice's Place/St. Francis Bridge).
- 5.1.2. Variation No. 1 of the Plan set out a number of objectives for the masterplan area including Objective 3N – 'To provide for park and walk facilities for car and bus/coach parking at a site or sites in close proximity to the Abbey Creative Quarter Masterplan area to service both the masterplan area and the city centre generally taking into account the mobility management plan for the city'.
- 5.1.3. Variation No. 5 of the Plan relates specifically to Variation No.1 and Objective 3N. The Variation states, as background, that, 'Further to this objective, a detailed Parking Options Report was prepared by the Council in December 2017 to examine this issue. One of the recommendations of this Report is temporary car parking in the Masterplan area. The purpose of the variation is to provide the necessary overarching policy framework to allow for temporary car parking in the Masterplan area notwithstanding the text of the Masterplan in section 4.1.6. An Urban Design Criteria and Development Code was adopted by the Council in January 2018 in line with objective 3K. The Code also addresses parking within the site and supports the use of the area for temporary or meanwhile uses while development proposals are being formulated. In the short term this objective is required to ensure that any potential conflicts between the Masterplan document (Section 4.1.6) and the recommendations of the Urban Design Criteria and the Parking Options Report are clearly resolved and dealt with in a manner that gives certainty in the City and Environs Development Plan'. Objective 3Q was inserted into the Plan itself as follows.

3Q – To provide for temporary car parking (meanwhile uses) as outlined in the Urban Design Code (completed on foot of Objective 3k) and the Parking Options Report (completed on foot of objective 3N) within the Masterplan area.

## **5.2. Urban Design Framework Masterplan for Abbey Creative Quarter (July 2015)**

- 5.2.1. It was the Council's aspiration to provide a new urban mixed-use quarter for the city.
- 5.2.2. The site is included in Character Area 2 (Breagh North (Mills and Industry)). It was used by Diageo as a Marshalling Yard and as a car park. The Masterplan envisages two buildings, Nos. 12 and 13, to be completed on site in Stage 8 (of 9).
- 5.2.3. Section 4.1.6 of the Masterplan is referenced in Variation No. 5 of the City & Environs Development Plan. This section, (Parking/Traffic Management) states 'Within the city centre public car parking is provided both on and off street. Car parking inventories carried out indicate that there are currently approximately 1,400 free or daily rate parking spaces within or on the periphery of the city centre. Typically public car parking within the city centre is reserved for short-term parking, which is subject to a tariff system. Limited new car parking will be provided within the Masterplan area, primarily for loading/unloading and for mobility impaired drivers. Options for the provision of additional off site car parking facilities, within a short walking distance of the Masterplan Area will be considered'.

## **5.3. Abbey Quarter Urban Design Code (January 2018)**

- 5.3.1. The site was included in Area B (of three); 'Brewery', with an overall area of 4.64 hectares. The Code is a bespoke planning document setting out objectives, guidance, and direction. It is complementary and ancillary to the Masterplan providing additional detail for selected aspects of the Masterplan.
- 5.3.2. Section 1.6 (Areas and Priorities) states that 'Considering the potential buildout timeframe for the masterplan area, the use of the area for temporary and meanwhile uses is an opportunity that should be utilised'. Section 1.7 (Temporary Uses) states 'it is considered appropriate and beneficial for the City to allow for temporary and meanwhile uses within the Masterplan area which can fulfil short term needs, while longer-term solutions are being formalised. The Potential uses can include, but are not



limited to fairs, concerts, markets, festival events, temporary car parking, pop up shops etc.’ Section 2.4 (Temporary and meanwhile uses) contains similar guidance.

- 5.3.3. Figure 17 (Building heights) shows two proposed urban blocks on the site subject of the application with indicative building heights of 3-4 storeys. These are described in more detail on Pages 39 and 40 of the Code. Proposed building Block B-12, on Page 39, specifically allows for ‘Temporary or meanwhile uses as per section 2.4 of the code’. Section 2.12 (Movement – Car parking) states that draft recommendations of an ongoing car park study suggest that, inter alia, ‘In the short term undeveloped blocks in the area can provide surface car parking to service development and build connectivity in accordance with the temporary use and phasing strategy outlined in sections 1.6 and 2.4’. Figure 21 (Movement concept) shows ‘Parking – Short Term’ in the location of the two proposed blocks on site.

#### **5.4. Parking Options Assessment for Abbey Creative Quarter (December 2017)**

- 5.4.1. Roadplan Consulting was requested to identify and assess options for the provision of parking facilities to serve the future implementation of the Masterplan and city centre area generally.

#### **5.5. Kilkenny City Centre Local Area Plan (LAP) 2005**

- 5.5.1. Though this Plan has expired, Section 3.4.3 of the Kilkenny City & Environs Development Plan 2014-2020 states that certain provisions, including Section 2 which relates to car parking, will continue to be implemented. Given the more recent policy framework particular to the site area since the LAP was adopted, I do not consider it relevant to this planning application.

#### **5.6. Kilkenny City & County Draft Development Plan 2021-2027**

- 5.6.1. The Abbey Quarter Masterplan is referenced in Section 2.3 (Abbey Quarter Masterplan) of Volume 2. Objective C2A is to continue to implement the Masterplan and Urban Design Code and secure the overall development of the area in accordance with their objectives. On the zoning map the zoning remains ‘General Business’.

## 5.7. Natural Heritage Designations

- 5.7.1. The closest heritage areas are River Barrow and River Nore SAC (Site Code 002162) and River Nore SPA (Site Code 004233) approx. 50 metres to the east of the site.

## 5.8. EIA Screening

- 5.8.1. The relevant class for EIA is Schedule 5, Part 2 (10)(b)(ii) – ‘Construction of a car-park providing more than 400 spaces, other than a car-park provided as part of, and incidental to the primary purpose of, a development.’ The grounds of appeal received from Gordon Harrison considers that the current application cannot be viewed as a ‘standalone’ application and the application, and the Urban Park and Street approval which required an EIAR, should be viewed as a single project for the purposes of EIA. The appellant states the application appears to amount to project-splitting. The applicant’s response states that there are different applicants for both projects, the Urban Park and Street project will not generate traffic that will require car parking facilities, the car parking will facilitate the Brewhouse, there is no direct link between this building and the urban park and the car parking proposed is well below the mandatory Schedule 5 threshold. The applicant states that the planning authority reasonably concluded that it was unlikely the development would have significant effects on the environment having regard to Schedule 7.
- 5.8.2. 120 no. car parking spaces and 7 no. coach parking spaces are proposed. As the relevant threshold of Schedule 5 is not met or exceeded, EIA is not mandatory for this development. Given the number of car parking spaces proposed is only 30% of the relevant threshold I consider it reasonable to exclude the need for environmental impact assessment at preliminary examination stage. While I note the proximity to the River Barrow and River Nore SAC and River Nore SPA, I consider any issues arising from the proximity to these sites can be adequately dealt with under Appropriate Assessment (AA).
- 5.8.3. The proposed development comprises a temporary land use pending the overall development of the site as Phase 8 of the overall nine phase masterplan for the Abbey Quarter. The adjacent Urban Park and Street application was recently approved by the Board and that application was accompanied by an EIAR. The appellant considers that the splitting of the car park from the Urban Park and Street development appears

to amount to project splitting in order to avoid EIA. In my opinion the current application is unrelated to the Urban Park and Street. It has been considered on its own merits and it has been excluded from the need for EIA at preliminary stage. It is a short-term, significantly sub-threshold development proposal which does not form part of the final masterplan development. Blocks 12 and 13 will be considered for EIA as part of the overall development and the threshold of cumulative significance may be an issue at that stage. However, I do not consider that issue is pertinent at this stage for this development. The fact that the site is located within a masterplan area and adjacent to a development which had an EIAR does not mean that any and all further development associated with that masterplan automatically requires EIA or that it would involve project-splitting in order to avoid the need for EIA. Having regard to the nature of the proposed development, I do not consider that project-splitting for the purpose of avoiding EIA has occurred.

- 5.8.4. In conclusion, having regard to the nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. Any issue arising from proximity to the European sites can be adequately dealt with under Appropriate Assessment. I do not consider the development comprises project-splitting to avoid EIA. The need for environmental impact assessment can, therefore, be excluded at preliminary examination stage.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

Grounds of appeal have been received from Gordon Harrison, 16 St. Luke's Crescent, Dundrum Road, Dublin, D14 DX37 and Cllr. Maria Dollard, Kilkenny County Council. The main points made can be summarised as follows:

#### Gordon Harrison

- The Planner's Report failed to address issues raised in the appellant's submission in sufficient detail and did not address questions around EIA development at all.

- The development description was misleading for the general public as it only said in the Traffic & Transport Assessment that the development would be for a private car park.
- The Traffic & Transport Assessment does not appear to address cumulative impact when traffic related to the other developments on site using the proposed access is taken into consideration. The Abbey Quarter development is not transparent and appears to be an attempt to drive through certain aspects of development under the radar.
- Coach parking is proposed for tour operators. No detail is provided as to relationship with coach operators or who will operate the coach parking. This is considered to be of public benefit and the application should have been a Part 8 application.
- The Abbey Quarter Masterplan allows for temporary uses such as car parking but does not exempt such development from justifying need. Alternative sites or sustainable transport options are not sufficiently addressed.
- A car park was refused under ABP-307494-20 and the reasons for refusal apply to this application.
- The application is premature pending the Local Transport Plan 2021-2027 and a waste of public funds.
- The development does not meet the parking standards of the Kilkenny City & Environs Development Plan 2014-2020 as The Brewhouse, which the proposed car park is to serve, is being marketed as office space. The applicant cannot argue that the Parking Options Assessment recommends a reduced number of parking spaces for the overall Abbey Quarter development on the basis that uses generate demand for parking at different times to office uses as there is no other development at present. The Brewhouse development is not temporary, and a parking allocation will likely be included in any lease agreements.
- The Traffic & Transport Assessment uses TRICS information based on Business Park land use classification rather than offices.

- The Abbey Urban Park and Street application submitted by the Council to the Board is EIA development. The applicant was aware of the need for temporary parking in 2017 following publication of the Parking Options Assessment and Variation No. 5 of the Kilkenny City & Environs Development Plan made temporary parking an element of the overall masterplan. This raises the question why the development was not included in the Urban Park and Street Application. The parking cannot be viewed as a standalone development. They are intrinsically linked via the masterplan and should be viewed as a single project. It is not clear how the meanwhile use has been screened out. The fact it is temporary is irrelevant. It appears to be project-splitting to avoid EIA and is potentially open to legal challenge.

Cllr. Maria Dollard

- A 2017 report has been relied on to demonstrate the need for the car park. The evidence is not clear for this argument as much of the data from private car parks was redacted. These car parks have low occupancy, 60% anecdotally. The appellant queries the need to use public money to compete with private car parks. Workers currently working remotely will not be returning at the scale or frequency as pre-Covid and there is no evidence of an urgent short-term need. The report on which the car park requirement is based is obsolete and is also not in line with the Kilkenny City & Environs Development Plan 2014-2020, the Draft County Development Plan 2021-2021 and the Urban Design Code/Abbey Quarter. There is sufficient car parking in the city.
- The temporary nature of the application is questioned as it is fulfilling a permanent requirement for Brewhouse office workers and possibly the 106 bed Kilkenny Inn application currently with the Board which has no car parking, and this would be nearest. There is already a relationship between the County Council and developer following the transfer of a piece of public land to facilitate development of the hotel. Over time the car park will become a permanent solution to a permanent problem.
- The development is not in the spirit of the Abbey Quarter Masterplan or its stated objectives; Objective No. 7 is specifically referenced. 'Meanwhile uses'

states that this is where a short-term need arises, but no urgent short-term need has been identified.

- The development is premature until the Local Transport Plan referenced in Objective C5A of the Draft County Development Plan has been completed.
- A car park is not in the spirit of the Masterplan for the Abbey Quarter which was developed following a public consultation process or in keeping with the design code. Parts of the public consultation report, the Masterplan and the Urban Design Code are reproduced. In the current circumstances, a car park is the least necessary of the meanwhile uses suggested. Parking for workers in the Abbey Quarter can be met by available parking in close proximity.
- The desire of a majority of citizens was for a more walking/cycling friendly city. This is supported by major policy shifts at government level. Given commitments to reduce carbon emissions another car park is not needed.
- A Part 8 consent was approved in 2018 for a temporary car park for five years at this site. It was subject of judicial review and was withdrawn. The basis for the review still stands. The correct approach would have been to resubmit the Part 8. The need for Part 8 has been avoided by the transferring of the land and it becomes a regular planning application to the Council. There was no mention of a car park at the time of the section 183 vote by councillors. It was not in the interest of fairness to proceed in this way.
- The car park refused at the Lime Works was partly because there is sufficient car parking in Kilkenny and the same logic applies to this application.
- Conditions applied to the permission, in particular Condition 7, require new drawings to be submitted. It is unclear what the concerns are and what the new drawings might look like. A public consultation would have been more appropriate to allow the public to have a clear understanding of the new layouts at this area. The development has to be seen in the context of the overall development of the area.

## 6.2. Applicant Response

The main points made can be summarised as follows:

- Temporary car parking is fully permissible within the Masterplan and there is a need for car parking on an interim basis, pending the progression/completion of the Abbey Quarter development. The applicant, Kilkenny Abbey Quarter Development Partnership Ltd acting by its General Partner Kilkenny Abbey Quarter Development Ltd (KAQDP), was established as a partnership between Kilkenny County Council and the National Treasury Management Agency (NTMA) to develop the Abbey Quarter site. KAQDP has responsibility for the commercial development of certain plots. In addition to being a 50% partner, the Council is primarily responsible for the public realm. The proposal will not undermine the strategic development of the site in any way. In fact, on a temporary basis, it is a critical component of the overall development strategy. The Abbey Quarter is a long term, 10-15 year, project. It is not intended to develop on a speculative basis. In the current City Development Plan 2014-2020 the site is zoned 'general business' and temporary car parking is permissible. The Urban Design Code complements the Masterplan and provides guidance and direction. Stage 1 (site clearance) and Stage 2 (Linear Park and Brewhouse office space) have been progressed. A 1.44 hectare urban park and urban street has been approved by the Board. While the urban park does not have a parking requirement as such, coach parking would facilitate visitors to the park and the wider city area while the Brewhouse would benefit from the current parking proposal in the short term, pending the provision of a longer term strategy. The site is earmarked for commercial/office use in the latter stages and the application will not displace these uses. If not approved, this site will remain unused for at least 5-7 years and there will be no dedicated parking for the Brewhouse. While temporary, it did follow a Parking Options Report (POR) and review of parking requirements which considered options for the location of a future car park to serve the long-term needs of the Abbey Quarter. The POR recommends provision of temporary car parking in the Masterplan area pending completion of the development. Variation No. 5 of the 2014 City & Environs Development Plan provides for temporary car parking on the Abbey Quarter site. The Urban Design Code refers to temporary uses on the Abbey Quarter site, including car parking. The approach is not piecemeal and has been approached in a transparent manner with no ulterior motive other

than to facilitate short-term parking needs and provide an interim parking arrangement. The application would help the Council comply with Objective 3N (park and walk facilities for car and bus/coach parking in close proximity to the Masterplan area) of Variation 1 of the City & Environs Development Plan on a short-term basis. Current Covid restrictions are not relevant to the Council's long-term transport/parking objectives. The applicant fully supports the Council's objectives to encourage a shift to sustainable transport. In terms of current parking requirements, the car park is approx. 30% of the standard for office development. This demonstrates the applicant's willingness to reduce car trips and encourage alternative transport. The Abbey Quarter is based on sustainable transport, but it cannot proceed with zero parking provision. A new bus service introduced to the city in 2019 will serve the Abbey Quarter development.

- The development description is accurate and there is no lack of information in the planning application submission. There has been no contact between the applicant and developers of the Kilkenny Inn and there is no arrangement in place. Stage 2 of the nine stage Masterplan includes renovation of the Brewhouse. This building requires short-term parking, provided by this application, pending provision of a longer term solution for the overall lands. There was no requirement for the applicant to specify whether it was a public or private car park. Tourism in the city is centred on the Medieval Mile with the Castle at one end and St. Canice's Cathedral at the other. There is currently only one coach parking place at the St. Canice's end with the main bus parking area adjacent to the Castle. There was in excess of 400,000 visitors to the Castle in 2019 with only approx. 60,000 to St. Canice's. Coach parking here will encourage visitors to explore a greater walking catchment. The Council was satisfied that the required documentation provided all relevant information.
- The applicant is entitled to proceed with a Section 34 and not a Part 8 application. The previous Part 8 does not determine the procedural route for this application. As the development requires an NIS it is not possible to proceed with a Part 8. A section 34 application not only affords the same public participation rights as a Part 8, it also allows for a third party appeal which does not apply to Part 8. Therefore, there is no infringement of third party rights. The



Part 8 was approved before it was decided to transfer the site to the applicant. The applicant exercised its option to purchase the site (known as Plot 7) in 2020, triggered by the redevelopment of the Brewhouse. It is KAQDL which is the entity seeking the development, not the Council.

- There is no EIA requirement. The Council is the owner and outright applicant for the Urban Park and Street project, and it will not generate traffic that will require car parking facilities. The car parking proposed primarily caters for the Brewhouse. There is no direct link between the office building and the urban park. They are two separate proposals within an overall masterplan area but are two separate entities. The car park falls well below the relevant EIA threshold. Criteria under Schedule 7 was considered by the planning authority and it was reasonably concluded that it was unlikely the development would have significant effects on the environment.
- The decisions cited in the appeal are irrelevant and do not set a precedent. ABP-307494-20 was for a long-term private car park not associated with any development. It is irrelevant to the consideration of this appeal.

### 6.3. Planning Authority Response

Kilkenny County Council responded to both grounds of appeal. The individual responses can be summarised as follows:

#### Gordon Harrison

- While the Planner's Report does not have an explicit statement that an EIA is not required it is clear that it was considered as it was raised as part of the third party submission in the context of the Abbey Quarter Urban Park. It is not linked to the Urban Park. There is no physical interaction or connection between the park and street and the proposed temporary car park. Access/egress is from St. Francis Bridge St./St. Canice's Place. They are separate and independent developments. The car park is significantly below the threshold for EIA in Part 2 Schedule 5 of the Planning & Development Regulations.
- The application description is not misleading. It describes the nature and extent of the proposed development. The Road Design Section is satisfied that the

road network has sufficient capacity to accommodate any potential traffic utilising the site. The development of the Abbey Quarter has been approached in accordance with the requirements of the City & Environs Development Plan and the Masterplan and Urban Design Code.

- The operation of the car park is a matter for the Abbey Quarter Partnership. It is not a planning issue. Both Part 8 and planning applications have statutory procedures for third party consultation.
- The application does not rely on the parking options report. It is not for the purposes of satisfying car parking demand. Meanwhile uses are considered appropriate in the context of the overall development timeline. Section 1.6 of the Urban Design Code is referenced.
- ABP-307494-20 is not a directly comparable development. That site had no defined long-term development goal and was being targeted at workers in the area.
- Car parking strategy/demand management is part of the brief of the Transport Plan. The proposed car park is not part of the overall management of car parking demand in the city. It is considered in the context of the Urban Design Code.
- Variation No. 5 was introduced to ensure any potential conflicts between Section 4.1.6 of the Masterplan and the recommendations of the Urban Design Criteria and Parking Options Report are resolved in a manner that gives certainty in the City & Environs Development Plan. It ensures a clear policy framework in the Development Plan for the temporary car park use as provided for within the Urban Design Code. It is separate and distinct from the permanent public realm Urban Park and Street project.

Cllr. Maria Dollard

- The Council has not relied on a report to demonstrate a need for temporary parking. The Authority accepts the potential short-term use in the context of the Masterplan and Urban Design Code. The Masterplan provides for the development of individual plots, the Code provides for the form of that development. The completed development objective on this plot is to provide

for continuous frontage in a perimeter block format with a height of 3-4 storeys. The Code states there is potential to accommodate 'meanwhile' uses such as car parking in the short term without compromising medium or long-term objectives and, considering the potential buildout timeframe, meanwhile uses should be utilised. It is in this context the car park is considered acceptable.

- There is no connection in terms of the application for the proposed hotel extension.
- The proposed car park does not fulfil Objective No. 7 which is a wider transport objective likely to be superseded by the Local Transport Plan. That objective is not brought forward in the current Draft City & County Plan.
- The development is aligned to the objectives of the Draft City & County Plan, the Masterplan, Urban Design Code and current City & Environs Plan. It is not considered premature pending the completion of the Local Transport Plan.
- The broader issues of climate change mitigation and modal shift are dealt with in an overarching way in the Draft City & County Plan.
- The basis of the judicial review was grounded in the interpretation of what was considered mitigation. The initial Part 8 proposal had utilised an existing surface water outfall with an existing fuel/oil separator. In this application that is a mitigation that is proposed and having regard to the fact that the site drains to the Breaghagh, and the potential dilution by the Breaghagh and the Nore itself, the extent of the site area, the low risk and low level of potential contaminants plus the alarm system, the Council considers that there is sufficient evidence to demonstrate the proposal will avoid adverse effects on the River Nore SAC and SPA.
- ABP-307494-20 is not a directly comparable development. That site had no defined long-term development goal and was being targeted at workers in the area.
- Condition 7 requires detail to be agreed. It does not relate to any issue of principle. The Road Design Section is satisfied that the road network has sufficient capacity to accommodate any potential traffic utilising the site.

#### 6.4. Observations

None.

#### 6.5. Further Responses

Further responses were received from both the applicant and Cllr. Maria Dollard in response to the Board's decision under section 131 to seek submissions or observations in relation to the planning authority's response. The main issues raised can be summarised as follows:

##### Applicant

- The applicant is in full agreement with and support the points raised in the Council's submission.
- The Council indicated that the applicant is the owner of the site. While there is an agreement in place for the applicant to acquire the site the land transfer has not been formally completed and the Council is the current owner.

##### Cllr. Maria Dollard

- The Council states a temporary car park is not considered in serving any identified demand for car parking for the Abbey Quarter or other potential adjacent uses. In the context of there being no identifiable need, it is surprising that some of the other meanwhile uses should not be considered. A further car park would discourage the use of the new bus routes and sustainable travel modes.
- The response in relation to the hotel extension is unclear.
- No urgent short-term need has been identified. There is ample parking nearby.
- Government policy has changed significantly since the writing of the Draft Development Plan 2021-2027. The environmental damage of the development is very significant. The Council should be leading the way in best practice on reducing carbon emissions. The Minister for Transport recently made clear his views on new surface car parks in urban areas.

- Traffic management in the area is in a state of flux. Until the Traffic Management Plan has been prepared it is difficult to tell if the area can manage the traffic generated.

## 7.0 Assessment

The main issues are those raised in the grounds of appeal and the Planning Report and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- The Proposed Development in the Context of the Policy Framework
- Precedent – ABP Reg. Ref. ABP-307494-20
- Site Layout and Access
- Part 8
- EIA Screening

### 7.1. The Proposed Development in the Context of the Policy Framework

- 7.1.1. The appellants raise issues such as no justification for the development, the lack of consideration of alternative locations, the development is premature pending the Local Transport Plan and that the development is not in the spirit of the Masterplan.
- 7.1.2. Car parking is referenced in a high-level, broad manner in the National Planning Framework. References in the RSES are similarly at a relatively high-level. However, the more localised plans and documents are directly applicable to the application.
- 7.1.3. I consider that the policy documents that relate specifically to the proposed development i.e. the City & Environs Development Plan 2014-2020, the Masterplan and the Urban Design Code provide a solid planning basis for the development of a short-term car park at this location. The Urban Design Code, in Sections 1.6, 1.7 and 2.4, states that, considering the buildout timeframe for the masterplan area, the use of the area for temporary and meanwhile uses, which includes car parking, is an opportunity that should be utilised. The Code also states it is appropriate and beneficial

for the City to allow for temporary and meanwhile uses within the Masterplan area which can fulfil short term needs, while longer-term solutions are being formalised. The applicant has identified that workers at the Brewhouse office development, which is under construction, will be the short-term occupant of the car parking while coach operators will occupy the coach spaces which would help draw visitors to areas of the city other than the Castle. Figure 21 shows 'Parking – Short Term' in the location of proposed Blocks 12 and 13, and the more detailed design code for Block 12 specifically allows for temporary or meanwhile uses.

7.1.4. In addition, Variation No. 5 of the City & Environs Development Plan 2014-220 stated that one of the options of the Parking Options Report is temporary parking in the Masterplan area and Variation No. 5 was adopted 'to provide the necessary overarching policy framework to allow for temporary car parking in the Masterplan area notwithstanding the text of the Masterplan in section 4.1.6'. The Variation introduced Objective 3Q into the City & Environs Development Plan 2014-2020 which states, 'To provide for temporary car parking (meanwhile uses) as outlined in the Urban Design Code (completed on foot of Objective 3k) and the Parking Options Report (completed on foot of objective 3N) within the Masterplan area'. I consider the proposed development is appropriate on its own merits and is not premature pending any forthcoming Local Transport Plan.

7.1.5. Having regard to the foregoing, it is clear that the principle of the development of a temporary car and coach park at this location is supported by the provisions of the Kilkenny City & Environs Development Plan 2014-2020 and the Urban Design Code for the Masterplan.

## 7.2. **Precedent – ABP Reg. Ref. ABP-307494-20**

7.2.1. The appellants refer to a recent planning application for a car park in the city which was refused by both the County Council and the Board on appeal. The appellants consider the same issues apply to this application.

7.2.2. Permission was sought under 20/114 for permission for a 90 no. space car park adjacent to the existing Wolfe Tone Street Car Park. The application was refused by Kilkenny County Council because it was deemed premature pending the new Kilkenny City & Environs Development Plan and the Transport Plan for Kilkenny City. The

application was refused by the Board on appeal because it would be contrary to local, regional, and national policy, would encourage the use of the private car into the city centre area and would militate against increasing the modal share of sustainable transport.

- 7.2.3. Each planning application is assessed on its own merits on a case by case basis. I consider that there are fundamental differences between that application and the current application. In the current application the local policy framework context, as set out by the Kilkenny City & Environs Development Plan 2014-2020, the Abbey Quarter Masterplan and the Urban Design Code, explicitly supports short-term, temporary car parking on this site. There are robust plans for the development of two blocks on this site in Stage 8 of the nine stage Masterplan. In the interim, the site will be used as car parking for the Brewhouse office building and for coach parking. While both applications relate to car parking, there are significant, material differences in their assessment under the applicable policy frameworks.
- 7.2.4. I do not consider the two applications are directly comparable, and the decision made under 20/114 / ABP-307494-20 does not set a precedent for this application.

### **7.3. Site Layout and Access**

- 7.3.1. The grounds of appeal refer to Condition 7 of the planning authority's decision and the requirement for new drawings and a number of other, related issues are also mentioned.
- 7.3.2. Condition 7 of the planning authority's decision incorporates six separate subsections. Notwithstanding, I do not consider the condition would fundamentally alter the development as applied for. The applicant did not submit any compliance drawing(s) to illustrate how the condition would be addressed. The condition is based on the planning authority's Road Design Section report.
- Subsection (a) requires a revised site layout showing the main access road directly accessing the parking on the eastern side of the site. The submitted layout showed the main internal access delineated directly to the south east corner with all car parking spaces to the east of the site located off one access point approx. 40 metres from the site entrance. I consider the condition to be reasonable.

- Subsection (b) requires an alternative entrance layout maintaining pedestrian and cycling priority and this is appropriate.
- Subsection (c) relates to certain discontinuities in pedestrian desire lines. Revisions to pedestrian facilities is required and this is reasonable.
- Subsection (d) requires improved definition to the coach parking area and provision of a turning area for vehicles in the event the car park is full. I consider this amendment is appropriate.
- A public lighting design is required by subsection (e) and I consider this to be appropriate. The alteration to the site layout required under (a) will also affect subsections (c), (d) and (e). The public lighting design will also be required to be cognisant of the habitats and species along the River Breagagh boundary as set out in Section 8.0 of this report.
- The final subsection, subsection (f), requires the exact location of the site entrance to be agreed with the planning authority prior to the commencement of development. This may relate to an issue raised in the Area Engineer's report where it was suggested that the vehicular entrance could be moved further to the east in order to improve traffic movement at the Vicar St./Dean St. junction to the west. The Road Design report considered the applicant could be asked to clarify the rationale for the access location chosen. I consider that the vehicular entrance location set out in the application should be the location permitted. Altering the entrance location at this stage would be a significant alteration to the application as applied for, it would be relocated to a position outside the planning application's red line site boundary, and it would be much closer to the urban street linking to St. Francis Bridge approved under ABP-307796-20 with no consideration having been given to any potential traffic conflicts.

7.3.3. Given the solid basis for the temporary car park in the relevant planning framework and the general content of both the planning authority's Area Engineer and Road Design Section reports, I consider that the road network in the vicinity has adequate capacity to cater for the proposed development. The car parking standards are not a consideration in this application. The car park is not proposed as ancillary to any specific development, therefore there are no standards to be applied. The Brewhouse



development was permitted on its own merits and the proposed car park will facilitate some car parking on a short-term basis only. A longer term parking strategy for Abbey Quarter will be required. In the potential event of a further application for the ongoing use of the car park at the expiration of this permission, if granted, it would be assessed on its merits at that time. I do not consider that the specific internal operation of the overall car park is a matter relevant to the planning process e.g. who will operate the coach parking.

- 7.3.4. In conclusion, I consider that the proposed development is acceptable in terms of traffic impact, though a revised site layout plan should be required similar to Condition 7 applied by the planning authority. The vehicular entrance location should be maintained in its current position and the capacity should be capped at 120 no. car and 7 no. coach parking spaces, as applied for.

#### 7.4. **Part 8**

- 7.4.1. A Part 8 consent was approved in 2018 but was subject to a judicial review and the Council consented to its quashing. Cllr. Dollard considers the correct approach would have been to resubmit the Part 8 and it is not in the interest of fairness to proceed this way and deny the public a say.
- 7.4.2. A Part 8 development relates to development carried out by a local authority. The applicant in this case is not a local authority. In addition, as noted in the applicant response, a 'Part 8' development which involves a Natura Impact Statement requires approval by the Board under section 177AE of the Planning & Development Act, 2000 (as amended) for approval. Notwithstanding, a planning application was made by the limited partnership, not by Kilkenny County Council, and I consider it is a matter for the County Council/applicant to make an application for development consent in whichever legitimate manner it wishes. I do not consider any member of the public has been disenfranchised by the making of a planning application.
- 7.4.3. I do not consider there is any issue or concern with the applicant making a planning application and not a Part 8/section 177AE application by the County Council.

## 7.5. EIA Screening

- 7.5.1. The grounds of appeal consider that, as the proposed development was not included in the Urban Park and Street application, it appears to amount to project-splitting in order to avoid EIA.
- 7.5.2. This issue has been addressed in Section 5.8, above. Having regard to the nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. Any issue arising from proximity to the European sites can be adequately dealt with under Appropriate Assessment. I do not consider the development comprises project-splitting to avoid EIA. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 8.0 Appropriate Assessment (AA)

### Compliance with Article 6(3) of the Habitats Directive

- 8.1. The requirements of Article 6(3) of the Habitats Directive, as related to screening the need for appropriate assessment of a project under Part XAB, Section 177U of the Planning and Development Act, 2000 (as amended) are considered fully in this section.

### Background to the Application

- 8.2. The applicant has submitted a 'Stage 2: Appropriate Assessment – Natura Impact Statement' document, prepared by Malone O'Regan Environmental and dated November 2020, as part of the planning application. The document is a combined AA Stage 1 and Stage 2 document.
- 8.3. The report assesses the potential adverse effects, if any, for the proposed temporary development on nearby sites with European conservation designations. The purpose of the assessment was to determine the appropriateness, or otherwise, of the proposed development in the context of the conservation objectives of such sites.
- 8.4. The Stage 1 Screening conclusion was that certain habitats and species of the River Barrow and River Nore SAC and River Nore SPA were screened in, in that it was

concluded that they are likely to be affected by the proposed development if no mitigation measures were applied. The document concluded that progression to Stage 2 was required.

- 8.5. Having reviewed the documents and submissions, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

#### Screening for Appropriate Assessment – Test of likely significant effects

- 8.6. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development would have any possible interaction that would be likely to have significant effects on a European Site(s).

- 8.7. The proposed development is examined in relation to any possible interaction with European sites designated Special Areas of Conservation (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European site.

#### Brief description of the development

- 8.8. The applicant provides a description of the project on Page 8 (Section 3.3) of the submitted document. In summary, the development comprises a temporary 120 no. car and 7 no. coach park. Temporary development works will include:

- Construction of the car park with a bound bituminous surface over the existing concrete slab,
- Temporary access from St. Canice's Place,
- Levelling works prior to resurfacing,
- Timber fencing along the boundary,
- Public lighting, road markings, signage
- Additional drainage works and the replacement of the existing petrol interceptor on the existing outfall to the River Breaghagh.

- 8.9. The development site is described on Page 7 of the submitted document as comprising a concrete slab and macadam surface. The site description is expanded upon in Section 5.3 (Habitat Survey).
- 8.10. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:
- Construction related pollution/potential impairment of water quality,
  - Habitat loss/fragmentation
  - Habitat disturbance/species disturbance
  - Potential spread of invasive species

Submissions and Observations

- 8.11. A previous Part 8 application on this site was subject of a judicial review grounded in AA issues. This has been briefly referenced in one of the grounds of appeal.

European Sites

- 8.12. The closest European sites are River Barrow and River Nore SAC (Site Code 002162) and River Nore SPA (Site Code 004233) located approx. 50 metres to the east of the site.
- 8.13. A summary of European sites that occur within the possible zone of influence of the development are presented in the table below. There are no other European sites within 15km of the site. Having regard to the scale of the proposed development; the separation distances involved; and the absence of identified pathways; I do not consider that any other European Sites fall within the possible zone of influence.

**Summary of European Sites within a possible zone of influence of the development**

European Site (Code)	List of Qualifying Interest/Special Conservation Interest	Distance from proposed development (km)	Connections (source, pathway, receptor)	Considered further in screening (Y/N)

<p>River Barrow and River Nore SAC (002162)</p>	<p>Estuaries [1130]  Mudflats and sandflats not covered by seawater at low tide [1140]  Reefs [1170]  Salicornia and other annuals colonising mud and sand [1310]  Atlantic salt meadows [1330]  Mediterranean salt meadows [1410]  Water courses of plain to montane levels with the Ranunculus fluitans and Callitriche-Batrachion vegetation [3260]  European dry heaths [4030]  Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]  Petrifying springs with tufa formation [7220]  Old sessile oak woods with Ilex and Blechnum</p>	<p>Approx. 0.05</p>	<p>Hydrological and Proximity</p>	<p>Y</p>
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	<p>in the British Isles [91A0]</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior [91E0]</p> <p>Desmoulin's Whorl Snail [1016]</p> <p>Freshwater Peal Mussel [1029]</p> <p>White-clawed Crayfish [1092]</p> <p>Sea Lamprey [1095]</p> <p>Brook Lamprey [1096]</p> <p>River Lamprey [1099]</p> <p>Twaite Shad [1103]</p> <p>Salmon [1106]</p> <p>Otter [1355]</p> <p>Killarney Fern [1421]</p> <p>Nore Pearl Mussel [1990]</p>			
River Nore SPA (004233)	Kingfisher [A229]	Approx. 0.05	Hydrological and Proximity	Y

#### Identification of likely effects

8.14. Section 6 (Stage 1 Screening: Identification of Potential Adverse Effects) of the submitted document sets out the identification of the types of threats to the integrity of the Natura 2000 sites that may arise. A number of qualifying interests were examined

and dismissed due to the very low risk associated with them e.g. the absence of estuaries, mudflats and sandflats, salt meadows and other habitats in the vicinity and the distances to them. Other species were also screened out i.e. Freshwater Pearl Mussel, Thwaite Shad, Nore Pearl Mussel, Desmoulins's Whorl Snail and Killarney Fern because of the absence of these species within 2km of the boundary of the site and the lack of suitable habitat in the vicinity as concluded by aquatic surveys. The Stage 1 Screening document considers it highly unlikely the works will have any significant negative impact on these species either during the construction or operational phases. The document also states that these species are not known to occur within the River Nore downstream of the River Breagagh tributary and can therefore be screened out with no further assessment required.

8.15. Section 6 also sets out the details considered as to why remaining habitats and species of qualifying interest were 'screened in'. The rationale for this is based on results from the desk study, literature search and field survey results. In relation to field survey results, the document details a field survey carried out on 14.09.2020 to establish baseline conditions on site, an otter and kingfisher survey carried out on 20.03.2020, and an aquatic survey carried out on 07.08.2019.

8.16. Tables 6.1, 6.2 and 6.3 sets out the screening rationales as to why certain habitats (water courses of plain to montane levels ...) and species (otter, all lamprey species, salmon, white-clawed crayfish and kingfisher) were screened in. Impacts can be summarised as follows:

- Water courses of plain to montane levels ... - Effects associated with pollution during construction may result in a decrease in water quality. As this habitat is present downstream of the site there is potential in the event of a major pollution event for it to be adversely impacted.
- Otter – There are otters in close proximity to the site. Threats include a decrease in water quality associated with pollution, noise disturbance and light disturbance at operational stage.
- All lamprey species, salmon and white-clawed crayfish – These species are present within the Nore catchment, with juvenile lamprey confirmed in the river. There is potential for adverse impacts on these highly sensitive species should

pollutants enter the watercourse during construction. A decrease in water quality is the main threat.

- Kingfisher – Possible threats to kingfishers, which are known to occur in the area and use the main Nore river channel, is a decrease in water quality (impact on food source) during the construction phase and noise disturbance. Though it is unlikely that habitats in the site itself are of significant importance in terms of nesting, there is potential for localised adverse impact during construction, in commuting and foraging activity in the vicinity.

8.17. Significant works have recently been undertaken to St. Francis' Bridge and the skateboard park to the east of the site. Works are ongoing to the Brewhouse building and approval has been granted for an urban park and street adjacent to the east and south of the Breaghagh. All of these developments went through the appropriate assessment process.

#### Mitigation Measures

8.18. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

#### Screening Determination

8.19. **Significant effects cannot be excluded, and Appropriate Assessment required.**

The proposed development was considered in light of the requirements of Section 177U of the Planning & Development Act, 2000 (as amended). Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually (or in combination with other plans or projects) could have a significant effect on European Site Nos. 002162 and 004233, in view of the sites' Conservation Objectives, and AA (and submission of a NIS) is therefore required.

#### **Appropriate Assessment (AA)**

8.20. The requirements of Article 6(3) as related to appropriate assessment of a project under Part XAB, sections 177U and 177V of the Planning & Development Act, 2000 (as amended) are considered fully in this section. The areas addressed in this section are as follows:

- Compliance with Article 6(3) of the EU Habitats Directive



- Screening the need for appropriate assessment
- The Natura Impact Statement and associated documents
- Appropriate assessment of implications of the proposed development on the integrity of each European site.

#### Compliance with Article 6(3) of the EU Habitats Directive

- 8.21. The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given.
- 8.22. The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

#### Screening Determination

- 8.23. Following the screening process, it has been determined that AA is required as it cannot be excluded on the basis of objective information that the proposed development of the temporary car and coach park, individually or in combination with other plans or projects, will have a significant effect on the following European sites i.e. there is the *possibility* of significant effect:
- River Barrow and River Nore SAC (Site Code 002162)
  - River Nore SPA (Site Code 004233)

#### Natura Impact Statement

- 8.24. The application included a 'Stage 2: Appropriate Assessment – Nature Impact Statement' prepared by Malone O'Regan Environmental, dated November 2020, which examines and assesses potential adverse effects of the proposed development on the two identified European sites.

- 8.25. The NIS document assesses the potential adverse effects of the proposed development on nearby sites with European conservation designations. Section 1.2 (Regulatory Context) of the document sets out the national and European legislation that it was prepared in accordance with.
- 8.26. The document itself combines both Stage 1 Screening and Stage 2 AA. The desk based study involved consulting the National Parks & Wildlife Service (NPWS) website, the National Biodiversity Data Centre (NBDC) website and the EPA website. Otter survey work undertaken for the Urban Park and Street development was reviewed and relevant information included. A field survey was carried out on 14.09.2020 to establish baseline conditions and habitats and also included an otter survey on adjacent sections of the Breagagh and Nore. Specialist aquatic surveys were undertaken on 07.08.2019 in sections of the Breagagh and Nore downstream of the site as part of the Urban Park project. A kingfisher survey was also carried out on 20.03.2020.
- 8.27. These surveys noted that the site is primarily covered in concrete slabs. Callitrichio-Batrachion vegetation was the only designated habitat identified in the aquatic survey in the Nore downstream of the site. An infected and moribund white-clawed crayfish and juvenile lamprey were identified in the Nore with two Atlantic salmon parr in the Breagagh. There was no freshwater pearl mussel, and the site is 30km upstream of the nearest record of Thwaite Shad. Though there are suitable nursery and spawning areas for salmon in the Nore downstream, no such area was identified in the vicinity of the site. Otter spraints and footprints were identified along the bank of the Nore adjacent to the site and the area has the potential to support foraging and commuting otters. Kingfishers were recorded on the survey on 20.03.20 but evidence of breeding kingfisher or suitable nest sites within the site boundary were not identified. The concrete and stone wall channels along the Breagagh are suboptimal for nesting kingfishers but there is some suitable commuting and foraging habitat.
- 8.28. The conclusion of the document states that 'It is considered reasonable to conclude that the proposed development will not result in any adverse effects on the basis that the specific mitigation measures will be implemented. Specifically, the proposed construction works will be undertaken to avoid impairment of water quality'. The conclusion also states 'It can be concluded that the proposed development and all associated site works, alone or in-combination with other projects, will not adversely

affect the integrity, and conservation status of any of the qualifying interests of the River Barrow and River Nore SAC and the River Nore SPA or any other Natura 2000 sites’.

8.29. Having reviewed the documents, I am satisfied that the information allows for a complete assessment of any adverse effects of the development, on the conservation objectives of the following European sites alone, or in combination with other plans and projects:

- River Barrow and River Nore SAC (Site Code 002162)
- River Nore SPA (Site Code 004233).

#### Appropriate assessment of implications of the proposed development

8.30. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites using the best scientific knowledge in the field. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

#### European Sites

8.31. The two sites subject to AA are River Barrow and River Nore SAC and River Nore SPA. A description of these sites and their Conservation and Qualifying Interests/Special Conservation Interests, including any relevant attributes and targets for these sites, are set out in the NIS, and summarised in Section 8.13 of this report as part of my assessment.

8.32. The main aspects of the proposed development that could adversely affect the conservation objectives of the European sites, as set out in Section 7 of the submitted document (Stage 2: Assessment of Potential Adverse Impacts) are:

- Loss of, or disturbance to, habitats or species.
- Potential impairment of water quality.
- Potential noise disturbance.
- Potential light disturbance.

- 8.33. River Barrow and River Nore SAC – Though no works will take place within the River Nore, there is potential for works in the absence of mitigation measures to temporarily disturb designated species and habitats. In relation to otters, it can be assumed, given the historical industrial use of the site and its city centre location, that otters are habituated to levels of human activity. Nonetheless, mitigation measures will be put in place such as a pre-construction survey to check for otter holts, appropriate measures to prevent ingress, no construction outside daylight and the Ecological Clerk of Works (ECoW) will be contacted if unidentified burrows are found.
- 8.34. Pollutants from the site e.g. suspended solids, cementitious material, silt, dust, hydrocarbons, could adversely affect water quality and subsequently habitats or species within the SAC. Impact on water quality could directly affect otter and fish by impacting on their food supply. The submitted document does not consider pollutants will impact water quality based on the localised nature of the proposed works, utilisation of the existing bridge and drainage system, installation of a new oil interceptor with a silt trap and alarm ‘and most notably there will be no in-river works’. Nonetheless, mitigation measures will be put in place to ensure water quality is protected and best practice guidelines will be followed. A list of 22 no. mitigation measures is set out on Pages 36 and 37 such as all works undertaken in accordance with an approved Construction Environmental Management Plan, bunding of all oil, drip trays to retain oil leaks, procedures and contingencies to deal with emergency accidents or spills, use of biodegradable chemicals where possible etc. Visual monitoring of the Breaghagh and Nore will be carried out by the ECoW. During the operational phase run-off will be collected in a closed drainage system before passing through oil interceptors/silt trap with an alarm before discharge to the Breaghagh.
- 8.35. The hours of construction works will be limited to 07.00 to 19.00 Monday to Friday and 09.00 to 16.00 on Saturdays, limiting noise effects on crepuscular species such as otter. However, as noted previously, otter will be habituated to high levels of human activity and given the availability of suitable habitats in the wider area, should otter be temporarily disrupted they will move to a suitable site elsewhere. Noise is not expected to adversely affect these species though a number of mitigation measures are proposed to ensure there are no adverse effects due to noise emission e.g. minimisation of idling vehicles, plant and vehicles fitted with effective exhaust silencers, ancillary plant will be placed behind existing physical barriers. During the

operational phase, the primary noise generation will be vehicular with vehicles remaining stationary and switched off for the majority of their time on site. It can be concluded there will be no adverse effects from noise emissions.

- 8.36. Construction will be limited to daylight hours so there will be no lighting at that stage. A lighting strategy has been prepared for the operational phase to reduce potential adverse effects on crepuscular and nocturnal species. (This may be altered as a result of the lighting design for the revised car parking layout). The strategy avoids excessive lighting and ensuring spillage onto the rivers does not exceed 1 lux. Cited measures will be taken into consideration where lighting is essential for safety and security reasons. Following installation, the ECoW will check lighting patterns and lux levels along site boundaries.
- 8.37. Following the AA and the consideration of mitigation measures, I am able to ascertain with confidence that the project would not adversely affect the integrity of River Barrow and River Nore SAC in view of the Conservation Objectives of this site. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.
- 8.38. River Nore SPA – On-site habitats and habitats in the vicinity are not suitable breeding habitat for kingfisher though foraging and commuting occurs along the Breagagh. There may be a minor loss of feeding habitat as birds move away from disturbance during construction. However, the range of kingfisher territory can range to 5km and there are other suitable habitats within the wider area. The area is an urban environment with a history of human activity on site so kingfishers in this section of the SPA are habituated to this and are unlikely to be significantly disturbed.
- 8.39. Pollutants from the site could adversely affect water quality and subsequently the kingfisher by impacting food supply. Potential impairment of water quality has been addressed in Section 8.34 of this assessment.
- 8.40. The hours of construction works will be limited as set out in Section 8.35. As noted, kingfisher will be habituated to high levels of human activity and given the availability of suitable habitats in the wider area, should kingfisher be temporarily disrupted they will move to a suitable site elsewhere. Though noise is not expected to adversely affect kingfisher, a number of mitigation measures are proposed to ensure there are no adverse effects due to noise emission. Some of these are set out under Section 8.35.

During the operational phase, the primary noise generation will be vehicular with vehicles switched off for the majority of their time on site.

- 8.41. Lighting issues associated with the development are set out in Section 8.36.
- 8.42. Following the AA and the consideration of mitigation measures, I am able to ascertain with confidence that the project would not adversely affect the integrity of River Nore SPA in view of the Conservation Objectives of this site. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.
- 8.43. Invasive Species – There is a stand of Japanese knotweed in the north west of the site. A Japanese Knotweed Management Plan has been developed to remediate this on behalf of the Council/Kilkenny Abbey Quarter Development Ltd. There are two options: excavation and off-site disposal or herbicide treatment.
- 8.44. Analysis of 'In-Combination' Effects – The Riverside Garden Project and Brewhouse construction projects are ongoing. The document also notes the redevelopment of the Mayfair Building approx. 20 metres to the south east of the site on the opposite side of the Breaghagh. There is potential for 'in-combination' adverse effects. However, in 2015 a Natura Impact Report was prepared for the Masterplan and as part of the Masterplan all plans and projects will be subjected to AA and therefore each project assessed for potential adverse effects to the Natura 2000 sites. The three mentioned developments were subjected to AA which concluded that there would be no adverse impacts on the Natura 2000 sites. As these projects will not result in adverse effects and mitigation measures and best practice guidelines will be implemented in the development subject to this application the document concludes that there will not be any significant in-combination contribution by the project to possible adverse effects on the SAC or SPA.

#### **Appropriate Assessment Conclusion**

- 8.45. The planning application for a temporary car and coach park for a seven-year period has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning & Development Act, 2000 (as amended).
- 8.46. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on River Barrow and River Nore SAC

and River Nore SPA. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites in light of their conservation objectives.

8.47. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects, would not adversely affect the integrity of the European site numbers 002162 and 004233.

8.48. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects.

8.49. The conclusion is based on:

- A full and detailed assessment of all aspects of the proposed project including mitigation measures.
- Detailed assessment of the in combination effects with other plans and projects.
- No reasonable scientific doubt as to the absence of adverse effects on the integrity of River Barrow and River Nore SAC and River Nore SPA.

## 9.0 Recommendation

I recommend that planning permission should be granted subject to conditions, for the reasons and considerations as set out below.

## 10.0 Reasons and Considerations

Having regard to the provisions of the Kilkenny City & Environs Development Plan 2014-2020 and to the documents prepared for the future redevelopment of the area of which the site forms part, i.e. Urban Design Framework Masterplan for Abbey Creative Quarter (July 2015) and Abbey Quarter Urban Design Code (January 2018), and to the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed temporary development would be acceptable in terms of zoning and land use and would not seriously injure

the amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. (i) All mitigation measures contained in the Stage 2: Appropriate Assessment – Natura Impact Statement submitted by the applicant shall be carried out.  
(ii) Prior to commencement of development, detail of the proposed oil/silt interceptor with alarm shall be agreed in writing with the planning authority. The interceptor system shall be installed before any other works.

**Reason:** In the interest of the protection of the River Barrow and River Nore Special Area of Conservation (Site Code 002162) and River Nore Special Protection Area (Site Code 004233).

3. Prior to commencement of development a revised site layout plan shall be submitted for the written agreement of the planning authority showing:
  - (i) The main vehicular access road directly accessing the car parking area with internal junctions modified accordingly.
  - (ii) Entrance detail which maintains the footpath and cycle track giving priority to pedestrians and cyclists.



- (iii) Internal footpaths/pedestrian walkways from the parking areas to the main access and the proposed pedestrian access in the north west corner.
- (iv) Appropriate definition to the coach parking area.
- (v) Provision for vehicles to turn around and exit in the event the car park is fully occupied.
- (vi) A minimum of 10% of all communal car parking spaces shall be provided with functioning electric vehicle (EV) charging stations/points.
- (vii) An appropriate number of disabled parking spaces and bicycle parking spaces.

The vehicular entrance shall be in the position shown on the plans and particulars lodged with the planning application and the capacity of the car park shall not exceed 120 no. cars and 7 no. coaches.

**Reason:** In the interests of traffic, pedestrian and cyclist safety and sustainable transport.

- 4. Lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interests of amenity and public safety.

- 5. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

**Reason:** In the interest of sustainable waste management.

6. (i) All mitigation measures contained in the Archaeological Impact Assessment submitted by the applicant shall be carried out.  
(ii) The boundary treatment in front of the Bull Inn ruin shall be similar to that proposed along the eastern boundary.  
(iii) Prior to commencement of development a strategy for vibration monitoring on the Bull Inn and the nearby masonry gable shall be drawn up and executed.

**Reason:** In order to conserve the archaeological heritage of the site, to allow views of the Bull Inn building to be retained and to secure the preservation and protection of any remains that may exist within the site

7. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Anthony Kelly  
Planning Inspector  
06.05.2021