

# **SCREENING STATEMENT**

IN SUPPORT OF THE

## **APPROPRIATE ASSESSMENT**

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OF THE

## **ABBAY QUARTER URBAN DESIGN CODE**

**NOVEMBER 2017**

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# 1 INTRODUCTION

## 1.1 BACKGROUND

This document presents the Stage 1 Screening in support of the Appropriate Assessment of the for Abbey Quarter Masterplan Urban Design Code, Kilkenny, in accordance with the requirements of Article 6(3) of the EU Habitats Directive.. Appropriate Assessment is required under the Habitats Directive to assess the impact of plans or policies on Natura sites.

## 1.2 LEGISLATIVE CONTEXT

The Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora, better known as “The Habitats Directive”, provides legal protection for habitats and species of European importance. Articles 3 to 9 provide the legislative means to protect habitats and species of Community interest through the establishment and conservation of an EU-wide network of sites known as Natura 2000. These are Special Areas of Conservation (cSACs) designated under the Habitats Directive and Special Protection Areas (SPAs) designated under the Conservation of Wild Birds Directive (79/409/ECC).

Articles 6(3) and 6(4) of the Habitats Directive set out the decision-making tests for plans and projects likely to affect Natura 2000 sites (Annex 1.1). Article 6(3) establishes the requirement for Appropriate Assessment (AA):

*“Any plan or project not directly connected with or necessary to the management of the [Natura 2000] site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subjected appropriate assessment of its implications for the site in view of the site’s conservation objectives. In light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.”*

*If, in spite of a negative assessment of the implications for the [Natura 2000] site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, Member States shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted. Where the site concerned hosts a priority natural habitat type and/or a priority species the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.”*

This legislation is implemented in the Republic of Ireland by the European Communities (Birds and Natural Habitats) Regulations 2011. These new regulations consolidate the European Communities (Natural Habitats) Regulations 1997 to 2005 and the European Communities (Birds and Natural Habitats)(Control of Recreational Activities) Regulations 2010, as well as addressing transposition failures identified in the CJEU judgements.

### 1.3 STAGES OF APPROPRIATE ASSESSMENT

This Natura Impact Statement has been prepared in accordance with the following guidance:

- *Appropriate Assessment of Plans and Projects in Ireland. Guidance for Planning Authorities.* Department of the Environment, Heritage and Local Government, 2009.
- *Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC,* European Commission Environment DG, 2000.
- *Managing Natura 2000 sites: The Provisions of Article 6 of the Habitats Directive 92/43/EEC:* European Commission, 2000

As set out in these guidance documents, AA comprises up to four stages:

#### **Stage One: Screening**

The process which identifies the likely impacts upon a Natura 2000 site of a project or plan, either alone or in combination with other projects or plans, and considers whether these impacts are likely to be significant.

#### **Stage Two: Appropriate Assessment**

The consideration of the impact on the integrity of the Natura 2000 site of the project or plan, either alone or in combination with other projects or plans, with respect to the site's structure and function and its conservation objectives. Additionally, where there are adverse impacts, an assessment of the potential mitigation of those impacts.

#### **Stage Three: Assessment of Alternative Solutions**

The process which examines alternative ways of achieving the objectives of the project or plan that avoid adverse impacts on the integrity of the Natura 2000 site.

#### **Stage Four: Assessment where no alternative solutions exist and where adverse impacts remain**

An assessment of compensatory measures where, in the light of an assessment of imperative reasons of overriding public interest (IROPI), it is deemed that the project or plan should proceed.

The Habitats Directive promotes a hierarchy of avoidance, mitigation and compensatory measures. Firstly, the plan should aim to avoid any impacts on Natura 2000 sites by identifying possible effects early in the plan-making process and altering the plan or project in order to avoid such impacts. Secondly, mitigation measures should be applied, if necessary, during the AA process to the point where no adverse impacts on the site(s) remain. If significant effects on the site(s) are likely, and no further practicable mitigation is possible, the Plan or project may not proceed unless for imperative reasons of overriding public interest (IROPI test) under Article 6(4) of the Habitats Directive, in which case compensation measures are required for any remaining adverse effect(s).

This report documents the first of these stages. It's conclusion that significant impacts on Natura 2000 sites are unlikely means that further AA stages are not required.

## 2 ASSESSMENT CRITERIA

### 2.1 DESCRIPTION OF THE ABBEY QUARTER MASTERPLAN

The former Smithwicks Brewery is located on the banks of the River Nore, in the centre of Kilkenny City. The Brewery, which had been in operation for 300 years on the site, was closed by Diageo in 2013, having decided to centralise beer production at its St James's Gate Brewery in Dublin. A decision was made by the elected members of the Kilkenny local Authorities (Kilkenny County Council and Kilkenny Borough Council) in early 2012 to purchase the site of the Brewery from Diageo. The site was purchased with a view to job creation and the provision of public amenity areas on the site and a Masterplan for development of the area was produced.

The overall vision for the Abbey Quarter as set out in the Abbey Quarter Masterplan is: "To plan the area as a seamless complement to the medieval city as an inclusive place for an intergenerational community to work, live, visit and play with St. Francis Abbey at its core. The regeneration of the area will focus on embracing the sites' natural, cultural and built heritage, whilst maximising the benefits of the rivers Nore and Breagagh, providing for a broad range of uses, sustaining growth in employment, 3rd and 4th level education and advancing economic activity in a sustainable and energy efficient fashion where innovation can flourish. The area will be a permeable expansion of the city for pedestrians and cyclists where smarter travel principles will apply throughout."

The Masterplan sets out the following objectives, which are fundamental to achieving the vision:

- Integration of former Smithwick's Brewery site and riverside into the medieval city;
- Redevelop and regenerate the former Smithwick's Brewery site as a modern, vibrant and permeable complement to the medieval core of Kilkenny City which will consolidate the city's role as a regional hub;
- Creation of a quayside quarter which addresses the River Nore;
- Establishment of a mixed use Quarter which enhances the Life of the City in Economic, Commercial and Social Terms;
- Development of Kilkenny as a location for Creative Industries, Research and Development, Incubation Clusters, University Faculties & Cultural Institutions;
- Establishment of 'Green City' Kilkenny as a model for Irish and European cities and communities; and
- Allow for the Government 'Smarter Travel' initiative published in 2009 and the 'Mobility Management Plan' adopted for Kilkenny City.

The Masterplan document has been approved by Kilkenny County Council by way of Resolution. Variation No. 1 to the City Development Plan includes high level objectives for the Masterplan area and provides for the placing of the Masterplan on a statutory footing by way of a separate and subsequent Variation to the Kilkenny City & Environs Development Plan 2014-2020. The Masterplan was subject to Appropriate Assessment under the Habitats Directive and a Natura Impact Report was published in 2015

## **2.2 THE PROPOSED CODE**

The Code is a non-statutory supplementary document to the Abbey Quarter Masterplan (2016). The Masterplan itself is a non-statutory document. The main components of the Masterplan are included as a Variation of the Kilkenny City and Environs Development Plan. The Code is required to align with the Masterplan and as such no material change to the urban structure, block structure, building scale or open spaces included the Masterplan is proposed. The Code provides additional detail for the Masterplan around mix of land uses, the approach to blocks and buildings and the main objectives and activities for public spaces in the area. Key urban spaces (e.g. Riverside Garden) and buildings (e.g. the Mayfair and Brewhouse) have already been, or are, the subject of Part 8 planning and environmental assessment processes..

## 2.3 DESCRIPTION OF THE NATURA 2000 SITES

This section of the screening process describes the European sites within 15 km of the Abbey Quarter. A distance of 15 km is currently recommended in the DoE document Guidance for Planning Authorities and as a precautionary measure, to ensure that all potentially affected European sites are included in the screening process. Table 2.1 below lists the European sites that occur within 15 km of the Abbey Quarter.

Three European sites have been identified within 15 km of the Strategy area; the River Barrow and River Nore cSAC (NPWS Site Code: 002162), the River Nore SPA (NPWS Site Code: 004233) and Thomastown Quarry (NPWS Site Code: 002252). The qualifying features for each site have been obtained through a review of information pertaining to each site available from the NPWS website. Information regarding the main threats to European sites was derived from a variety of sources:

- Ireland's Article 17 Report to the European Commission "Status of EU Protected Habitats and Species in Ireland" (NPWS, 2013).
- Site Synopses.
- NATURA 2000 Standard Data Forms.

Since the conservation management objectives for the European sites focus on maintaining the favourable conservation status of the qualifying interests of each site, the Screening process concentrated on assessing the potential implications of the Strategy against the qualifying interests of each site.

## 2.4 QUALIFYING INTERESTS (QIS) AND SPECIAL CONSERVATION INTERESTS (SCIS)

Relevant cSAC sites are selected for a range of different habitats and species listed on Annex I and Annex II of the habitats directive, known as Qualifying Interests (QIs). Relevant SPA sites listed have been selected for the protection of endangered species of wild birds. Each SPA has been selected for one or a combination of the following:

- Listed rare and vulnerable species (as listed on Annex I of EU Birds Directive 2009/147/EC);
- Regularly occurring migratory species, such as ducks, geese, and waders;
- Wetlands, especially those of international importance, which attract large numbers of migratory birds each year.

The features for which SPAs have been selected are referred to as Special Conservation Interests (SCIs). Those QIs and SCIs for which sites are selected are presented in Table 2.1.



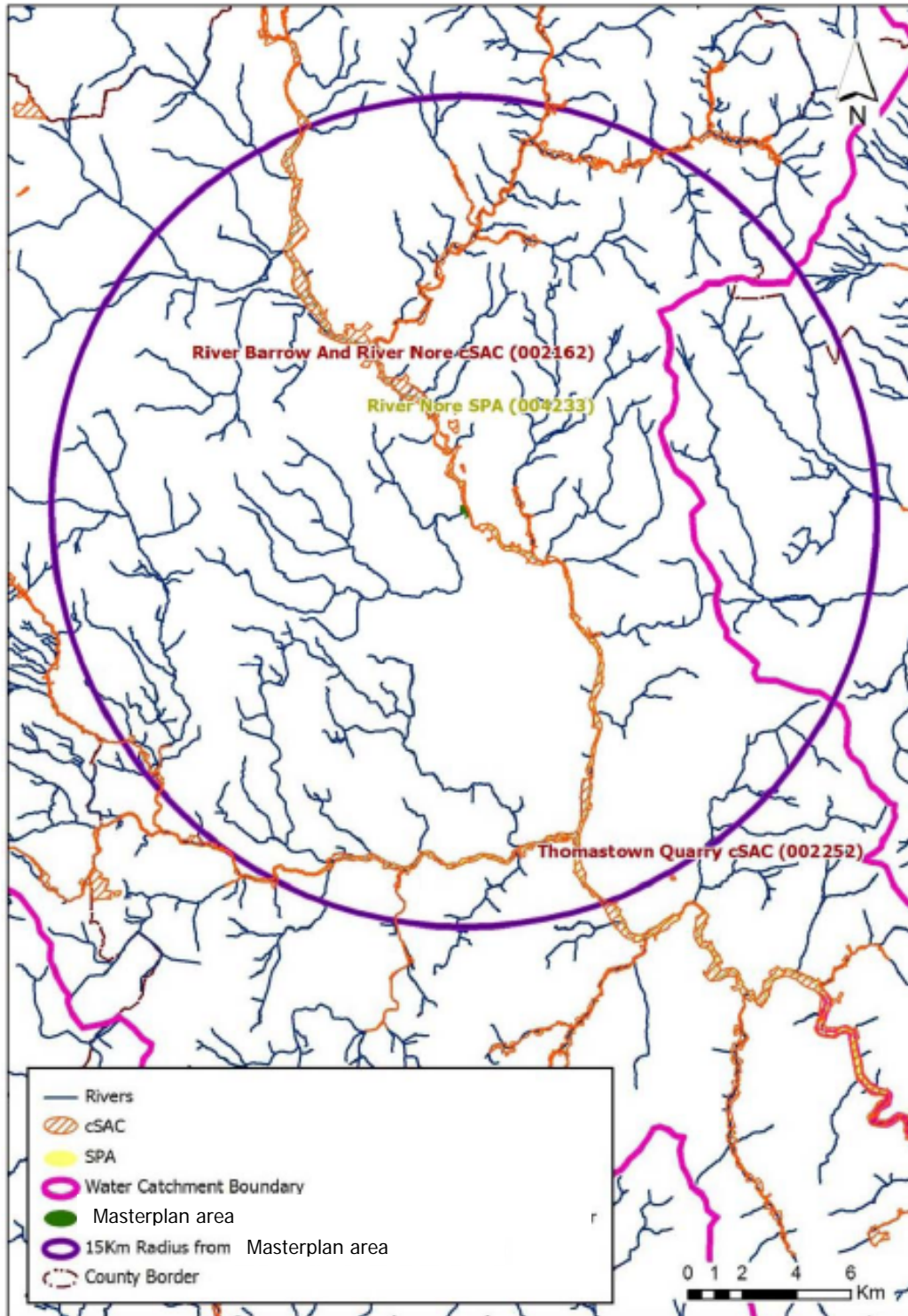


Figure 2.1 European Sites within 15 km of the Masterplan Area

Table 2.1 European sites within 15 km of lands referred to by the Abbey Quarter Urban Design Code

Site Code	Site Name	Qualifying Interests	Threats to Site Integrity
002162	River Barrow and River Nore cSAC	Annex I Habitats [1130] Estuaries [1140] Tidal Mudflats and Sandflats [1310] Salicornia mud [1320] Spartina swards [1330] Atlantic salt meadows [1410] Mediterranean salt meadows [3260] Floating River Vegetation [4030] Dry Heath [6430] Hydrophilous Tall Herb [7220] Petrifying Springs [91A0] Old Oak Woodlands [91E0] Residual Alluvial Forests Annex II Species [1016] Desmoulin's Whorl snail (Vertigo moulinsiana) [1029] Freshwater pearl mussel (Margaritifera margaritifera) [1092] Whiteclawed crayfish (Austropotamobius pallipes)	The principle threats to the River Barrow and River Nore cSAC are pollution caused by increased fertiliser application, sewage and industrial waste. Species for which the site is designated are highly susceptible to siltation and pollution of water courses. Proposed developments in the vicinity of the cSAC may give rise to siltation and runoff of pollutants. The river has also been designated for its population of otter, a species vulnerable to the felling of mixed wood and scrub. Otters may become displaced due to disturbance in proximity to the cSAC.

		<p>[1095] Sea lamprey (Petromyzon marinus)</p> <p>[1096] Brook lamprey (Lampetra planeri)</p> <p>[1099] River lamprey (Lampetra fluviatilis)</p> <p>[1102] Allis shad (Alosa alosa)</p> <p>[1103] Twaité shad (Alosa fallax fallax)</p> <p>[1106] Salmon (Salmo salar)</p> <p>[1421] Killarney fern (Trichomanes speciosum)</p> <p>[1990] Pearl mussel (Margaritifera durrovensis)</p> <p>[1355] Otter (Lutra lutra)</p>	
002252	Thomastown Quarry cSAC	[7220] Petrifying springs	Two threats were ranked as having a high negative impact for this site; K04.01: competition (flora), and A04.03 abandonment of pastoral systems, lack of grazing, both of which impacts are caused inside the site. One external threat was recorded; E01, Urbanised areas, human habitation. A proposed road scheme adjacent to this site poses the threat of direct habitat loss and indirect hydrological impacts. No other threats are known to this site.
004233	River Nore SPA	[A229] Kingfisher (Alcedo atthis)	Two threats ranked as having a medium negative impact were recorded for this site; J.0201: landfill, land reclamation, drying out, and D.0301 pressures from port areas. The site is also susceptible to alterations in hydrology and disturbance. The site is of national importance for its Kingfisher population. Kingfisher are likely to be vulnerable to disturbance effects of development works in proximity of the site. Any loss or disturbance to bankside habitat could also impact on the breeding population.

## 2.5 OTHER PLANS WHICH MAY LEAD TO CUMULATIVE IMPACTS ON NATURA SITES

Article 6(3) of the Habitats Directive requires an assessment of a plan or project to consider other plans or programmes that might, in combination with the plan or project, have the potential to adversely impact upon European sites. Table 2-3 below lists the plans or programmes that may interact with the Abbey Quarter Urban Code to cause in-combination effects to European sites.

It should be noted that the Abbey Quarter Masterplan has already been subject to Appropriate Assessment and the resulting Natura Impact Report contains mitigation measures to ensure that no significant impacts will arise from the implementation of the Masterplan. Cumulative Impacts were originally assessed as part of that NIR

The Urban Code will not result in a material change to the Masterplan. Overall, this will not result in any further negative impacts over and above those previously identified in the NIR of the Masterplan

Table 2.2 Plans & Projects Likely to Cause In-Combination Effects

Plan	Purpose	Interactions
(Draft) National Planning Framework	Policy document which aims to direct the national growth.	No risk of likely significant in-combination effects will result over and above those previously identified in the NIR of the Masterplan.
Regional Planning Guidelines for the South-East Region 2010 – 2022.	Policy document which aims to direct the future growth of the South-east Area over the medium to long term and works to implement the strategic planning framework set out in the National Spatial Strategy (NSS)	No risk of likely significant in-combination effects will result over and above those previously identified in the NIR of the Masterplan
Kilkenny City and Environs Development Plan 2014 - 2020 Kilkenny County Development Plan 2014-2020 Carlow County Development Plan 2015 - 2021 Laois County Development	Overall strategies for the proper planning and sustainable development of the administrative area of the relevant Local Authorities.	No risk of likely significant in-combination effects will result over and above those previously identified in the NIR of the Masterplan

<p>Plan 2012-2018 North Tipperary County Development Plan 2010 - 2016 South Tipperary County Development Plan 2009 - 2015 Waterford County Development Plan 2011 - 2017 Waterford City Development Plan 2013 - 2019 Wexford County Development Plan 2013 - 2019</p>		
<p>Central Access Scheme Kilkenny City</p>	<p>The Central Access Scheme for Kilkenny consists on a linkage road between St Candice's Place on the west of the city to the Castlecomer Road on the east. The Scheme will require the development of a bridge over the River Nore.</p>	<p>No risk of likely significant in-combination effects will result over and above those previously identified in the NIR of the Masterplan</p>

## 2.6 DIRECT, INDIRECT OR SECONDARY IMPACTS

As part of this screening those features of the proposed Code that have the potential to impact on features and conservation objectives of the Natura sites were assessed. European Commission Environment DG document *“Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC”* outlines the types of impacts that may affect Natura 2000 sites. These include impacts from the following activities:

- Land take
- Resource Requirements (Drinking Water Abstraction Etc.)
- Emissions (Disposal to Land, Water or Air)
- Excavation Requirements
- Transportation Requirements
- Duration of Construction, Operation, Decommissioning

In addition, the Guidance document outlines the following likely changes that may occur at a designated site, which may result in impacts on the integrity and function of that site:

- Reduction of Habitat Area
- Disturbance to Key Species
- Habitat or Species Fragmentation
- Reduction in Species Density

- Changes in Key Indicators of Conservation Value (Water Quality Etc.)
- Climate Change

It should be noted that the Abbey Quarter Masterplan has already been subject to Appropriate Assessment and the resulting Natura Impact Report contains mitigation measures to ensure that no significant impacts will arise from the implementation of the Masterplan.

In addition, the plan itself has integrated policy and objectives which serve to protect the integrity of the Natura 2000 network of sites. As such, this screening relates only to the Code and does not revisit other aspects of current Masterplan policy or the current NIR for the Masterplan.

The proposed Code is required to align with the Masterplan and as such no material change to the urban structure, block structure, building scale or open spaces included the Masterplan is proposed. Overall, this will not result in any further negative impacts over and above those previously identified in the NIR of the Masterplan.

#### **2.6.1 Land take**

The proposed Code will not lead to any further landtake or loss of habitat over and above that which has previously been assessed. The proposed Code will not have a significant impact on the Natura 2000 network in this respect.

#### **2.6.2 Resource Requirements (Drinking Water Abstraction Etc.)**

The proposed Code will not lead to any increased resource requirements over and above those which have previously been assessed. The proposed variation will not have a significant impact on the Natura 2000 network in this respect.

#### **2.6.3 Emissions (Disposal to Land, Water or Air)**

No direct or indirect emissions to water will occur in relation to any future implementation of this Code.

#### **2.6.4 Excavation Requirements**

No increased excavation requirements will occur in relation to any future implementation of this Code, over and above those previously assessed. The proposed Code will not have a significant impact on the Natura 2000 network in this respect.

#### **2.6.5 Transportation Requirements**

There will be no increased transportation requirements as a result of this Code. The proposed Code will not have a significant impact on the Natura 2000 network in this respect.

### **2.6.6 Duration of Construction, Operation, Decommissioning**

Implementation of the proposed Code will not result in any additional construction works over and above those previously assessed. It is not likely that the duration of construction or operation phases will impact significantly on the Natura 2000 network.

### **2.6.7 Reduction of Habitat Area**

Implementation of the proposed Code will not result in the loss or reduction of any habitats for which any site is designated. The Code will not have a significant impact on the Natura 2000 network in this respect.

### **2.6.8 Disturbance to Key Species**

Implementation of the proposed Code will not result in the disturbance of any species for which the identified Natura 2000 sites have been designated. The proposed Code will not have a significant impact on the Natura 2000 network in this respect.

### **2.6.9 Habitat or Species Fragmentation**

Habitat and species fragmentation can occur through the breaking up of habitats resulting in interference with existing ecological units or when construction introduces a barrier to the free movement of species from one habitat to another. Implementation of the proposed Code will not result in fragmentation of habitats or populations of species for which any Natura site is designated.

### **2.6.10 Reduction in Species Density**

As outlined in Sections 2.6.7 and 2.6.9, there will be no loss of habitat or fragmentation of populations of species that would result in the reduction in species density of any protected species. The proposed Code will not have a significant impact on the Natura 2000 network in this respect.

### **2.6.11 Changes in Key Indicators of Conservation Value (Water Quality Etc.)**

The proposed Code will not have a significant impact on the Natura 2000 network through changes to ground and surface water quality.

### **2.6.12 Climate Change**

The proposed Code will not significantly impact Climate Change.

## 2.7 ELEMENTS OF THE CODE WHERE THE IMPACTS ARE LIKELY TO BE SIGNIFICANT

As outlined in **Section 2.6**, no direct or indirect impacts on the Natura 2000 network of sites will arise from the proposed Code. Therefore, no element of the proposed Code will have a significant impact on the Natura 2000 network of sites.

## 2.8 SCREENING OF SITES

The impacts above are now examined in relation to the qualifying interests of each European site as set out in Table 2.1. Sites are screened out based on one or a combination of the following criteria:

- where it can be shown that there are no hydrological links between activities permitted under the Urban Code and the site to be screened;
- where the site is located at such a distance from the plan area that impacts are not foreseen;
- where it is that known threats or vulnerabilities at a site cannot be linked to potential impacts that may arise from implementation of the Urban Code.

There are three Natura 2000 sites within 15km of the plan area. The qualifying interests and threats to the site integrity are referred to in assessing the likely direct, indirect or secondary impacts or likely changes to the sites.

### River Barrow/River Nore cSAC (002162) –

The main threats to the site and current damaging activities include high inputs of nutrients into the river system from agricultural runoff and private sewage plants, overgrazing within the woodland areas and invasion by non native species. The water quality of the site remains vulnerable. However, potential threats to water quality are not anticipated having regard to the provisions of the Masterplan and Urban Code. The RPGs identified water quality and waste water treatment as being the pressure topic for this cSAC. It found that the provisions of Waste Water Discharge (Authorisation) Regulations SI no. 684 of 2007 and application of Departmental Circular letter PD7/09, in combination with the provisions of Irish Water Investment Programme would be sufficient mitigation, as they control projects which may impact on the cSAC.

### River Nore SPA (site code 4233)

Two threats ranked as having a medium negative impact were recorded for this site; J.0201: landfill, land reclamation, drying out, and D.0301 pressures from port areas. The site is also susceptible to alterations in hydrology and disturbance. The site is of national importance for its Kingfisher population. Kingfisher are likely to be vulnerable to disturbance effects of development works in proximity of the site. Any loss or disturbance to bankside habitat could also impact on the breeding population.



Thomastown Quarry SAC (site code 2252)

This site is designated for Petrifying springs. The threats recorded are mainly inside the site; competition (flora), and abandonment of pastoral systems, lack of grazing. The external threat is urbanisation and human habitation.

As previously stated the Abbey Quarter Masterplan has already been subject to Appropriate Assessment and mitigation measures have been incorporated into the Plan. The Urban Code will not result in a material change to the Masterplan, therefore negative impacts occurring to any of the above three sites are not anticipated.

## **2.9 CONCLUSIONS OF STAGE 1**

The likely impacts that may arise from the implementation of the Code have been examined in the context of a number of factors that could potentially affect the integrity of the Natura 2000 network. On the basis of the findings of this Screening for Appropriate Assessment, it is concluded that the Code will not have any significant impacts on the Natura 2000 network of sites due its restricted nature and the protective policies incorporated in the Masterplan. No further assessment is required.

### **3 REFERENCES**

Appropriate Assessment of Plans and Projects in Ireland. Guidance for Planning Authorities. Department of the Environment, Heritage and Local Government, 2009.

Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC, European Commission Environment DG, 2000.

Managing Natura 2000 sites: The Provisions of Article 6 of the Habitats Directive 92/43/EEC: European Commission, 2000.