

To : An Cathaoirleach and each Member of Kilkenny County Council

Re: Response by the Acting Chief Executive on the Section 140 Motion, Local Government Act, 2001, in the names of Councillor Breda Gardner, Councillor Kathleen Funchion and Councillor Malcolm Noonan seeking a suspension of all works on the bridge currently under construction as part of the Central Access Scheme.

Under Section 112 of the Local Government Act 2001, as amended, I object to the Section 140 Motion.

The grounds of my objection are;

- The Council will incur a heavy financial loss should the works be suspended. The members are obliged to inform me as to where compensatory funding will be generated or from where funding will be diverted or where savings are to be made to account for such a loss.

If a decision is taken on the proposal, the names of all members present and voting for and against the Decision and those abstaining from voting on the Decision shall be recorded in the minutes of the meeting.

It is important at this point prior to responding to the particulars contained in the motion to state the reasons the Council is progressing the Central Access Scheme and to reiterate, once again, the many benefits associated with the project.

Sustainable town planning lies at the heart of this scheme. The future of Kilkenny City centre depends on good access, strong permeability and proper planning. Proper planning in this context means doing the right thing for Kilkenny and adhering to national planning guidelines. The preferred and clear choice is to develop the city centre rather than opt for a model of out of town development on the edges of the city.

There is simply too much at stake from the perspectives of employment, job creation, educational opportunities, economic, cultural and social development for this scheme not to go ahead as planned. Specifically, benefits have been identified as follows;

1. The bridge , approach roads and cycle ways will facilitate the sustainable development of Kilkenny City Centre and in so doing maintain commercial, economic, social and cultural vitality in the historic core of the city,
2. It will provide access to develop in a sustainable and cost effective manner over 20 acres of brownfield city centre sites, including the former Diageo site. This is critically important for job creation and investment in the City and County.
3. The scheme meets the need to increase permeability within the city and to ease traffic congestion arising from the inadequate Green's Bridge , John's Bridge and adjacent streets and junctions,
4. The scheme is '*integral to the overall transport strategy for Kilkenny*' as set out by An Bord Pleanála in their determination that the Central Access Scheme and Northern Ring Road Extension are complimentary.
5. The scheme provides a safer and more convenient route as an alternative to Green's Bridge and on completion will assist further progress under the Smarter Travel programme. It will also provide better and more efficient routes for public transport and emergency vehicles.
6. The scheme will open up and present new vantage points and viewing areas to national monuments and points of interest heretofore inaccessible to the public.

I now wish to address the motion submitted by Councillors Gardner, Funchion and Noonan under Section 140, Local Government Act 2001 .

In the first instance I strongly reject the notion that the elected members were not properly informed as to the commencement of works or committing the Council to expenditure. Not alone am I satisfied that I have discharged my obligation under Section 138 of the Local Government Act, 2001, but I contend I have well exceeded the threshold of the obligation in so far as I have fully informed the Council of the progress of the scheme regularly since 2007, including commitments to expenditure contained in the past eight Road Works Schemes (2007 to 2014) and in periodic reports and communications to Council as listed in Section 1 below.

With regard to archaeological consents and approvals for further investigations I am satisfied that significant progress was made in the period prior to award of contract. Specifically, I confirm that agreement was made between Kilkenny County Council and An Taisce on May 13th, 2014. In addition, and in accordance with the terms of the agreement with An Taisce, an independent Technical Report was prepared regarding the impact of the new road pavement on archaeological layers at Vicar Street. These developments together with the demeanor and ongoing approach taken by the Department of Arts, Gaeltacht and Heritage reduced significantly any residual risk to the scheme by early June, 2014.

The third point of the Section 140 motion refers to financial considerations at the time of issue of the Letter of Intention on April 16th. I am satisfied there were no concerns as to the financing of the contract. The concern that existed in April 2014 arose in consideration of a financial risk to the Council in the event of an injunction being taken against the works. This risk reduced substantially following agreement with An Taisce.

In the interest of clarity and in order to provide as much factual information as possible I set out below a detailed response under three main headings rebutting the set of charges contained in the motion.

Section 1 deals with demonstration of compliance with Section 138 of the Local Government Act.

Section 2 sets out in summary form how the Council has complied with Ministerial Directions and Consents in relation to archaeology.

Section 3 explains funding and financial matters.

Mise le meas,

John Mulholland.

Acting Chief Executive.

25th August, 2014

Section 1: Demonstration of Compliance with Section 138, Local Government Act 2001 and information flow to the Elected Council

Statutory Plans and Capital programmes

The proposal to provide a Central Access Scheme (CAS), or Inner Relief Road as it was originally called, originates from the late 1970's. In fact the original phase 1 of this scheme was delivered in the late 70's and early 80's with the redevelopment and regeneration of Dean Street. Since 1980 the provision of a central access scheme has been an objective of successive elected Councils (14 in total), be they County or Borough Councils, and also an objective of every County and City Development Plan of which there have been 6 since 1980.

In 2008 both the County and Borough Councils approved the submission of both the Environmental Impact Statement (EIS) and the Compulsory Purchase Order (CPO) to An Bord Pleanála. Subsequently, in 2010 both Councils also approved the submission of a revised EIS and CPO to An Bord Pleanála.

The Capital Programme for the period 2012-2014, in which the Central Access Scheme project is prioritized, was also unanimously approved by the elected members of both Councils in 2013 thereby approving the capital funding for the project.

Road Works Schemes 2007 to 2013

The elected members have been informed each year over the past eight years in relation to funding allocated to the Central Access Scheme under the statutory annual road works scheme. The roadworks schemes have been unanimously approved by the elected members and an aggregated commitment of over €3.8 million has been approved in this period.

January 2014 - County Council Meeting – held on 20th January

A report entitled Update on Road Projects in Co. Kilkenny, January 2014 was presented to the Council. This report contained the following update under the heading Kilkenny Central Access Scheme €10.7 million – *“Archaeological investigations are ongoing under supervision of DoAGH. Tender documents for bridge construction will issue for pricing on 24th Jan. Contract to be awarded in spring with a view towards construction start up in April.”*

February 2014 - Borough Council Meeting – held on 10th February

A report entitled Update on Road Projects in Co. Kilkenny, January 2014 was circulated to the Council at the meeting. This report contained the following update under the heading Kilkenny Central Access Scheme €10.7 million – *“Archaeological investigations are ongoing under supervision of DoAGH. Tender documents for bridge construction will issue for pricing on 24th Jan. Contract to be awarded in spring with a view towards construction start up in April.”*

March 2014 - County Council Meeting – held on 18th March

A report entitled Road Works Scheme 2014 was presented to the County Council. Paragraph 5.0 on page 15 contained the following update under the heading Capital (Development Levy) Expenditure *“Pre-qualification of prospective tenderers was conducted in late 2013 in respect of Kilkenny Central Access Scheme Contract 1. Nine qualified tenderers were identified following this process and a tender competition is now underway with a view to appointing a contractor for Contract 1 in April 2014. Contract 1 will consist of the construction of KCAS River Nore Bridge together with short sections of the Central Access Scheme either side of the new bridge. Contract 1 is funded from local development levy contributions.”* At the meeting it was confirmed that the Road Works Scheme had been discussed at each Electoral Area Meeting. The Scheme was proposed, seconded and unanimously agreed by the County Council.

April 2014 – County Council Meeting – held on 22nd April

At this meeting the County and City Development Plan was adopted unanimously by the County Council. Section 10.4.6 Road Objectives of the City plan contains the following objectives *“10K – Reserve the line of Phase 2 and Phase 3 of the proposed Central Access Scheme free from development and to complete Phase 1 of the Central Access Scheme within the plan period. 10L – To widen the Castlecomer Road to provide for two lanes south bound and one lane north bound carriageway “*

May 2014 – Borough Council Meeting – held on 16th May

At this meeting the County and City Development Plan was adopted unanimously by the Borough Council. Section 10.4.6 Road Objectives of the City plan contains the following objectives *“10K – Reserve the line of Phase 2 and Phase 3 of the proposed Central Access Scheme free from development and to complete Phase 1 of the Central Access Scheme within the plan period. 10L – To widen the Castlecomer Road to provide for two lanes south bound and one lane north bound carriageway “*

June 2014 - Annual County Council Meeting – held on 6th June

Cllr. Pat Millea, Cathaoirleach, stated the following during his address to the newly elected County Council *“I know also that there has been much debate about the question of a new bridge for the city centre of Kilkenny. In the course of the past week, we have met with officials of the Council and reviewed all the aspects of the new bridge and its impact on surrounding communities. I and my party support the development and construction of a new city centre bridge to replace the historic Green’s Bridge and to provide much improved access to the Smithwick’s site. We believe the Greensbridge replacement scheme will add significantly to the employment creation potential of Kilkenny City Centre. This will be achieved through the provision of better physical connectivity on both sides of the river and the provision of new water supply, energy and broadband services to the core city centre commercial and business districts. I understand that meetings have taken place in recent weeks with residents of the Kennyswell Road area of the City. I encourage the Chief Executive and his staff to continue the communication process with the residents and also with affected residents in Stephen Street*

and the Old Callan Road so that an effective Heavy Goods Vehicle management plan can be put in place at an early date.

I note that the Council are also speaking to hauliers, commercial concerns and An Garda Siochana with a view towards putting in place an agreed and enforceable traffic management plan for the area. With regard to Wolfe Tone Street, I am pleased to learn that the Council, on constructing the new bridge, will incorporate sensitive amenity and parking provisions in the final street design”.

June 2014 – Annual Council Meeting held on 6th June

The Capital Budgets for both Kilkenny County Council and Kilkenny Borough Council 2013-2015 were circulated to all elected members at the Annual Meeting on 6th June. Both contained details of the capital provision of €10.7 million provided for the Central Access Scheme and the expenditure profile over the years 2013, 2014, 2015 and beyond.

June 2014 – Invitation to all Elected Members to meet with Director of Services – Issued 13th June

The Director of Services issued invitations to all elected members to meet with him to discuss any concerns that they may have. The invitations were issued in separate emails in party group format based on Fianna Fail, Fine Gael, Sinn Fein, Labour and others (Green Party and Independent). The exact wording of this email is as follows –

“Dear member,

There have been one or two requests from members for information on the above scheme.

To this end I would be more than happy to provide a briefing to party members on all aspects of the scheme and to respond to specific individual questions on a one to one basis. Please revert if you wish to meet me and I will arrange an early date and time.”

June 2014 - Notification by email to all Elected Members – issued 27th June

The Acting Chief Executive issued an email to all elected members on 27th June advising that the Contract would commence on 30th June. An extract from this email is as follows –

Dear Cathaoirleach and Members,

“.....At this point I am to remind members that the tender advertisement issued last December, that tender assessment took place during the spring and that a letter of intention to the successful contractor issued in April. Members should note that that a letter of acceptance forming a contract issued in early June.

The contractor for the Bridge construction, John Craddock Ltd, Kilcullen, Co Kildare will commence mobilization on Monday next, June 30th. The bridge contract does not at this time include any works at 21 or 22 Vicar Street nor at Wolfe Tone Street.”

June 2014 – Contractor commenced on site on 30th June

Section 2: Adherence to Ministerial Directions and Licensing Regime of National Monuments Service

Based on specific recommendations by An Bord Pleanála regarding the Central Access Scheme (CAS), the project archaeologists (Valerie J Keeley Ltd) established a series of archaeological mitigation measures under the guidance of the National Monuments Service (NMS) of the Department of Arts, Heritage and the Gaeltacht (DoAHG). These mitigation measures involved archaeological investigations, the results of which would inform the statutory authorities, thus allowing further requirements and decisions to be made. This is both best practice and standard procedure for large-scale infrastructural projects in Ireland.

In Apr/May 2012 Kilkenny County Council and Valerie J Keeley Ltd submitted an application to the NMS for Ministerial Directions for the CAS, and also individual applications for archaeological excavation licences and associated method statements outlining the proposed archaeological mitigation strategy.

In July 2012 the Minister issued Ministerial Directions (A062) to Kilkenny County Council concerning the CAS, and the NMS issued VJK Ltd archaeological Excavation Registration / Licence numbers. These Ministerial Orders and Excavation Registration / Licence numbers give the Project Archaeologists (VJK Ltd) the authority to carry out pre construction stage architectural heritage building investigations, archaeological test trenching, and construction stage archaeological test trenching and monitoring, including the removal of buildings at No 20-22 Vicar St. Pre construction stage archaeological test trenching commenced in Aug 2012.

During July 2013 the architectural heritage building survey works carried out by Rob Goodbody for VJK Ltd identified some archaeological features. VJK Ltd informed the NMS of the presence of archaeological features, and following discussions the NMS instructed VJK Ltd to carry out further archaeological investigative works, prior to the removal of buildings at No 20-22 Vicar St.

Permission by the NMS to remove the buildings at No 20-22 Vicar is contained with Archaeological Registration / Licence E4437, issued to VJK Ltd in July 2012. This permission still applies, pending the completion of archaeological test trenching, and following instruction from the NMS to proceed with the previously agreed methodology.

The archaeological mitigation measures for the CAS were devised with regard to the National Monuments Acts (1930-2004), Frameworks and Principles for the Protection of the Archaeological Heritage (Government of Ireland 1999), Policy and Guidelines on Archaeological Excavation (Government of Ireland 1999), and the Code of Practice between the National Roads Authority and the Department of Arts, Heritage, Gaeltacht and the Islands (now Arts, Heritage and Gaeltacht) 2000. The archaeological measures have been carried out by VJK Ltd in accordance with the Ministerial Directions (A062), the Archaeological Excavation Registration / Licences and associated Method Statements, and the instructions of the NMS.

It is common practice with regard to large scale infrastructural projects that some archaeological mitigation measures continue to be active during construction works. This often occurs because of access issues, land use issues, and / or legal disputes.

The construction works currently taking place at the River Nore do not compromise the Vicar St archaeological works, and have no bearing or influence on the outcome of the archaeological works to be completed at No 20-22 Vicar St.

The archaeological works at No 20-22 Vicar St are being carried out under Excavation Registration / Licence E4437 issued by the NMS. The archaeological works at the River Nore are being carried out under Excavation Registration / Licence E4434 issued by the NMS. The NMS treat each Excavation Registration / License separately.

In the period of time between issue of the Letter of Intent (16/4/2014) and the Letter of Acceptance (10/06/2014) Kilkenny County Council reached agreement with An Taisce (*copy of agreement dated 13th May attached*) in relation to certain matters concerning the CAS. An independent peer review of the design of the road pavement in so far as it related to the avoidance of compression of submerged archaeological layers was also prepared and forwarded to the DoAGH on 30th May, 2014. There were therefore no residual concerns for Kilkenny County Council at the time of the award of contract.

Section 3: Central Access Scheme Project - Funding Summary

The estimated cost of the central access scheme project is €10.7m. This project was included in the capital budgets dating back over a number of years. The project was included in the most recent capital budget adopted by both Kilkenny County Council and Kilkenny Borough Council in May 2013. A copy of this capital budget was provided to members at the Annual Council meeting held on June 6th.

The total expenditure incurred to date is €3.7m associated with the planning, design and construction elements of the project. Expenditure has been incurred since the mid eighties and includes;

- Compulsory purchases of land and property in 1988,
- Structural Bridge design and detailed site investigations in 1985
- Route and bridge options report in 2006
- Two Environmental Impact Statements
- Applications to An Bord Pleanala under the Strategic Infrastructure Act
- Archaeological and Building History investigations
- Traffic modelling, ecological and hydrological surveys
- Public Consultation
- Site investigations in 2012 and detailed design of infrastructure
- Compulsory purchase of lands and residential property in 2012 and 2013

The cost of the current contract for the bridge and associated works is €4.138m plus vat. The funding for these elements since 2001 has come from Department grants (€800k) and development contributions from both Kilkenny County Council and Kilkenny Borough Council. The historical costs and the costs of bridge construction are fully funded.

The estimated cost to complete the construction of the project of €2.3m (22%) will be funded from future development contributions and if necessary some bank borrowings.

Kilkenny County Council has current bank borrowings of €2.1m excluding the mortgage debt and the water services debt which is being transferred to Irish Water. These borrowings will be paid off by the end of 2016 bar €20k. This means that Kilkenny County Council has the capacity to borrow funds if required for the capital programme. Accordingly Kilkenny County Council has funds already in place for almost 80% of the estimated cost of the project and will have funding secured for the remainder of the scheme prior to entering into contracts or direct works for completion.

It is important to note that the cost of any additional claims that may arise as a result of the current bridge protests will have to be funded from the Revenue Account as these costs have not been budgeted for in the capital program.

Appendix 1

The following table provides a chronological record of all interactions between Valerie J. Keeley Ltd., Archaeological Consultants acting on behalf of Kilkenny County Council and the National Monuments Service of Department of Arts, Heritage and the Gaeltacht in relation to the houses on Vicar Street, Kilkenny.

Date	Details
Dec 2011	An Bord Pleanála approves EIS for KCAS
Mar 2012	Archaeological Consultants (VJK) discussed appropriate archaeological mitigation strategy with National Monuments Service (NMS)
Apr-May 2012	VJK submitted licence applications and method statements to NMS. Kilkenny Co Co submitted application for Ministerial Directions to NMS.
July 2012	Ministerial Directions (AO62) issued, and NMS issued excavation registrations/ licences (E4432, E4434, E4435, E4436, E4437) and survey registration/ licence (S0115)
Aug 2012	VJK commenced archaeological test trenching at Wolfe Tone St (E4432) and Vicar St / St. Canices Place (E4436). These areas had been previously identified by VJK as potential archaeological sites. Previously unknown archaeology was identified at Vicar St / St. Canices Place junction under the existing road. No archaeology was identified at Wolfe Tone St (E4432)
Sept 2012	VJK conducts archaeological test trenching at Diageo Ltd Brewery Kilkenny (E4435). Some 18th-19th century archaeology was identified.
Sep-Nov 2012	Rob Goodbody Historic Building Consultant (RG) carries out Architectural Heritage Survey of buildings at No. 20-22 Vicar St under Survey (S115) issued from NMS.
Feb 2013	VJK and RG conducted Measured and Drawn Survey of buildings at No. 20-22 Vicar St (S115).
Mar 2013	RG submits Interim report (S115) to NMS outlining findings of architectural survey carried out to date.
Apr / May 2013	NMS requested plaster to be removed from southern gable walls (inner and external) of 22 Vicar St.
June 2013	NMS requested information on possible famine graveyard at Wolfe Tone St.
June 2013	VJK send NMS information on possible famine graveyard at Wolfe Tone St.
July 2013	VJK and RG commenced removal of plaster from southern gable wall of No 22 Vicar St under Survey (S115) and archaeological licence (E4434).
July 2013	NMS attend site works at 20-22 Vicar St and review removal of plaster from walls of 21-22 Vicar St.
July 2013	NMS requested that render/plaster is removed from the walls of No 21-22 Vicar St. Further instructed that test trenching was not to take place at 21-22 Vicar St prior to the submission of a report on the render/plaster removal.
Aug 2013	VJK and RG commenced removal of render/plaster from walls of No 21-22 Vicar St.

Nov 2013	VJK and RG submitted Interim Survey Report on 20-22 Vicar St (S115), Preliminary Archaeological Testing Reports (E4432, E4435, E4436).
Nov 2013	NMS issue permission to proceed with test trenching at 20-22 Vicar St (E4437), and request further test trenches are conducted at 20-22 Vicar St.
Dec 2013	VJK commenced archaeological testing at 22 Vicar St (E4437)
Jan 2014	VJK submit summary report detailing archaeological testing at 20-22 Vicar St (E4437).
Feb 2014	NMS attended site works at 20-22 Vicar St. NMS instructed VJK to submit Interim report detailing works carried out to date, prior to completing test trench in Diageo carpark to south of 22 Vicar St.
April 2014	VJK and RG submitted Interim reports to NMS outlining findings of Building Survey (S115) and Archaeological Test Trenching (E4437) for 20-22 Vicar St to NMS for review.
July 2014	VJK commence archaeological monitoring (E4434) of ground disturbance works for bridge over River Nore.
July 2014	NMS issue request to VJK for further information regarding Interim Report E4437 submitted in April 2014.
Aug 2014	VJK submit revised Interim Report E4437 to NMS.

Appendix 2

An Taisce & Kilkenny County Council announce points of agreement and points of disagreement – 13th May 2014

In continuation of the professional dialogue that took place in Kilkenny last week, An Taisce - The National Trust for Ireland, and Kilkenny County Council agreed today agreed the following points at a meeting:

An Taisce and Kilkenny County Council will work together on Green Schools Travel.

An Taisce and Kilkenny Co Co will work together on carbon footprinting on the Diageo site as well as sharing experiences on low-energy lighting.

With regard to No. 22 Vicar St, Kilkenny, the County Council will retain the Renaissance gable wall. An independent report will be undertaken to ensure no compression can take place under any future road. Furthermore, no services (e.g. piping, ducting) will in future years be placed into the undisturbed archaeological layers under the proposed road.

Excavations will continue south of the gable of No. 22 Vicar St with discussions to continue in a colloquial approach after the dig is complete.

As Kilkenny Co Co takes possession of the Diageo site, there will be more extensive excavations to interpret the Renaissance house at Vicar St and determine its full extent.

Further discussions will continue regarding archaeology and a colloquial approach will also be adopted for St Francis Abbey on the Diageo site.

Both An Taisce and Kilkenny Co Co agreed that the format of the colloquium approach is a positive public policy instrument for policy formulation, project development and project management.

Kilkenny Co Co and An Taisce will meet again when new reports are available to continue the dialogue.

Kilkenny Co Co maintains the view that the proposed bridge should be constructed. An Taisce does not agree with the proposed river crossing as it is currently planned. Both parties agreed to respect each other differences on this point.