Appendix 16.3
Legislation Protecting the Archaeological Heritage Resource

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Protection of Cultural Heritage

The cultural heritage in Ireland is safeguarded through national and international policy designed to secure the protection of the cultural heritage resource to the fullest possible extent (Department of Arts, Heritage, Gaeltacht and the Islands 1999, p.35). This is undertaken in accordance with the provisions of the European Convention on the Protection of the Archaeological Heritage (Valletta Convention), ratified by Ireland in 1997.

The Archaeological Resource

The National Monuments Act 1930 to 2014 and relevant provisions of the National Cultural Institutions Act 1997 are the primary means of ensuring the satisfactory protection of archaeological remains, which includes all man-made structures of whatever form or date except buildings habitually used for ecclesiastical purposes. A National Monument is described as 'a monument or the remains of a monument the preservation of which is a matter of national importance by reason of the historical, architectural, traditional, artistic or archaeological interest attaching thereto' (National Monuments Act 1930 Section 2).

A number of mechanisms under the National Monuments Act are applied to secure the protection of archaeological monuments. These include the Register of Historic Monuments, the Record of Monuments and Places, and the placing of Preservation Orders and Temporary Preservation Orders on endangered sites.

The National Monuments Act 1930, as amended by various acts including but not limited to, the National Monuments (Amendment) Act 1954, the National Monuments (Amendment) Act 1987, the National Monuments (Amendment) Act 1994 and the National Monuments (Amendment) Act 2004 (together the National Monuments Acts) make provision for the protection and preservation of national monuments, archaeological monuments and archaeological objects in Ireland. The description of the existing environment in this chapter takes account of those statutory designations and the chapter takes account of the legislative monitoring and licencing requirements as mitigation.

The Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023 (the 2023 Act) was enacted by the Oireachtas in late 2023 and aims to address a range of structural issues, simplify terminology, as well as provide a single accessible piece of legislation. At the date of writing many sections of the 2023 Act have yet to commence. It is not anticipated that this will result in statutory protection being extended to any potential receptors apart from those already considered in the Cultural Heritage chapter and the chapter already identifies as mitigation the various archaeological investigations and licencing requirements that will come into force when the 2023 Act is commenced. Accordingly, the EIAR conclusions are likely to be unchanged should the 2023 Act commence fully while the application is moving through the planning process.

Ownership and Guardianship of National Monuments

The Minister may acquire national monuments by agreement or by compulsory order. The state or local authority may assume guardianship of any national monument (other than dwellings). The owners of national monuments (other than dwellings) may also appoint the Minister or the local authority as guardian of that monument if the state or local authority agrees. Once the site is in ownership or guardianship of the state, it may not be interfered with without the written consent of the Minister.

Register of Historic Monuments

Section 5 of the 1987 Act requires the Minister to establish and maintain a Register of Historic Monuments. Historic monuments and archaeological areas present on the register are afforded statutory protection under the 1987 Act. Any interference with sites recorded on the register is illegal without the permission of the Minister. Two months' notice in writing is required prior to any work being undertaken on or in the vicinity of a registered monument. The register also includes sites under Preservation Orders and Temporary Preservation Orders. All registered monuments are included in the Record of Monuments and Places.

Preservation Orders and Temporary Preservation Orders

Sites deemed to be in danger of injury or destruction can be allocated Preservation Orders under the 1930 Act. Preservation Orders make any interference with the site illegal. Temporary Preservation Orders can be attached under the 1954 Act. These perform the same function as a Preservation Order but have a time limit of six months, after which the situation must be reviewed. Work may only be undertaken on or in the vicinity of sites under Preservation Orders with the written consent, and at the discretion, of the Minister.

Record of Monuments and Places

Section 12(1) of the 1994 Act requires the Minister for Arts, Heritage, Gaeltacht and the Islands (now the Minister for the Arts, Heritage, Regional, Rural and Gaeltacht Affairs) to establish and maintain a record of monuments and places where the Minister believes that such monuments exist. The record comprises a list of monuments and relevant places and a map/s showing each monument and relevant place in respect of each county in the state. All sites recorded on the Record of Monuments and Places receive statutory protection under the National Monuments Act 1994.

Section 12(3) of the 1994 Act provides that 'where the owner or occupier (other than the Minister for Arts, Heritage, Gaeltacht and the Islands) of a monument or place included in the Record, or any other person, proposes to carry out, or to cause or permit the carrying out of, any work at or in relation to such a monument or place, he or she shall give notice in writing to the Minister of Arts, Heritage, Gaeltacht and the Islands to carry out work and shall not, except in the case of urgent necessity and with the consent of the Minister, commence the work until two months after the giving of notice'.

Under the National Monuments (Amendment) Act 2004, anyone who demolishes or in any way interferes with a recorded site is liable to a fine not exceeding €3,000 or imprisonment for up to six months. On summary conviction and on conviction of indictment, a fine not exceeding €10,000 or imprisonment for up to five years is the penalty. In addition, they are liable for costs for the repair of the damage caused.

In addition to this, under the European Communities (Environmental Impact Assessment) Regulations 1989, Environmental Impact Assessment Reports (EIAR) are required for various classes and sizes of development project to assess the impact development will have on the existing environment, which includes the cultural, archaeological and built heritage resources. These document's recommendations are typically incorporated into the conditions under which the development must proceed and thus offer an additional layer of protection for monuments which have not been listed on the RMP.

The Planning and Development Act 2024

Under planning legislation, each local authority is obliged to draw up a Development Plan setting out their aims and policies with regard to the growth of the area over a five-year period. They cover a range of issues including archaeology and built heritage, setting out their policies and objectives with regard to the protection and enhancement of both. These policies can

vary from county to county. The Planning and Development Act 2024 recognises that proper planning and sustainable development includes the protection of the archaeological heritage. Conditions relating to archaeology may be attached to individual planning permissions.

Clare County Development Plan 2023-2029

CDP16.8

a) To safeguard sites, features and objects of archaeological interest generally;

b) To secure the preservation (i.e. preservation in situ or in exceptional cases preservation by record) of all archaeological monuments included in the Record of Monuments and Places as established under Section 12 of the National Monuments (Amendment) Act, 1994, and of sites, features and objects of archaeological and historical interest generally;

c) In securing such preservation, to have regard to the advice and recommendations of the Department of the Culture, Heritage and the Gaeltacht;

d) To have regard to the government publication Framework and Principles for the Protection of the Archaeological Heritage 1999 in relation to protecting sites, features and objects of archaeological interest; and

e) To advocate for greater financial assistance for the maintenance and improvement of features of archaeological interests in County Clare.

CDP16.9

To protect and preserve archaeological sites discovered since the publication of the Record of Monuments and Places.

CDP16.10

To protect the Zones of Archaeological Potential located within both urban and rural areas as identified in the Record of Monuments and Places.

CDP16.11

To ensure that decisions relating to development (including infrastructure associated with broadband, telecommunications, renewable energy, major road/ rail infrastructure, flood relief schemes and other services) which may have implications for Recorded Archaeological | Architectural, Archaeological and Cultural Heritage Monuments/Sites, Zones of Archaeological Potential or undiscovered archaeology, are informed by an appropriate level of archaeological investigation undertaken by qualified persons and the case of flood relief schemes have regard to archaeological Guidelines for Flood Relief Schemes (DHLGH and OPW2022).

CDP16.12

To support the Climate Change Sectoral Adaptation Plan for Built and Archaeological Heritage 2019, as published by the Department of Culture, Heritage and the Gaeltacht and any subsequent guidance or plans for dealing with climate change and archaeological heritage.

The Council shall seek to:

a) Promote awareness and the appropriate adaptation of Ireland's built and archaeological heritage to deal with the effects of climate change;

b) Identify the built and archaeological heritage in Local Authority ownership and areas at risk from climate change including, but not necessarily restricted to, the Record of Monuments and Places, Protected Structures and architectural conservation areas designated in the Development Plan;

c) Undertake climate change vulnerability assessments for the historic structures and sites in its area, subject to resources and funding;

d) Develop disaster risk reduction policies addressing direct and indirect risks to the built and archaeological heritage in its area;

e) Develop resilience and adaptation strategies for the built and archaeological heritage in its area;

f) Develop the skills capacity within the Local Authority to address adaptation / mitigation / emergency management issues affecting historic structures and sites in order to avoid inadvertent loss or damage in the course of climate change adaptation or mitigation works.

CDP16.12

a) To raise awareness of and improve practice in relation to archaeology in County Clare; and

b) To promote the care and conservation of historic graveyards throughout the county. Within the lifetime of the Plan it is an objective to prepare conservation plans for a number of historical church and graveyard sites, with the objective of identifying necessary works required to address the decay of the fabric of the sites.

CDP16.13

a) To protect, preserve and promote the archaeological value of underwater archaeological sites in rivers, lakes, coastal, marine, intertidal and sub tidal environments; and

b) To support the further exploration of the underwater archaeology of County Clare, including the San Marcos project, and any subsequent projects that may arise during the lifetime of this Plan.

CDP16.14

(a) To conserve and enhance its cultural identity and enable access to both culturally distinct areas and facilities for cultural experiences;

(b) To advocate for investment in infrastructure and initiatives that develop the role of arts, heritage and culture and employment opportunities in these sectors in County Clare including funding streams outlined in 'Project Ireland 2040 Investing in our Culture, Language and Heritage 20182027';

(c) To assist in the delivery of actions under arts, heritage and cultural strategies in the county;

(d) To ensure that decisions relating to investment in arts, cultural and heritage infrastructure / facilities are informed by an appropriate level of environmental assessment; and

(e) To develop a vibrant cultural and creative sector in County Clare as a key enabler of enterprise growth, innovation, regeneration, place-making and community development, health and wellbeing and support measures under Culture 2025, Creative Ireland Strategy 2017-2022 and the Action Plan for Rural Development.

CDP16.18

To support and facilitate the gathering, recording, preservation and promotion of folklore and oral cultural heritage in the county and to work closely with groups such as Cuimhneamh an Chláir to realise their objectives.