

APPENDIX 15.3

LEGISLATION PROTECTING THE ARCHAEOLOGICAL RESOURCE

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, 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 2023* 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 2023). 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 .

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 to Minister or the local authority as guardian of that monument if 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 Department of Housing, Local Government and Heritage) 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 2023. All recorded monuments on the proposed development site are represented on the accompanying maps.

Section 12(3) of the repealed 1994 Act provides that 'where the owner or occupier (other than the Minister for the Department of Housing, Local Government and Heritage) 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 the Department of Housing, Local Government and Heritage) to carry out work and shall not, except in case of urgent necessity and with the consent of the Minister, commence the work until two months after giving of notice.

Under the repealed 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 6 months. On summary conviction and on conviction of indictment, a fine not exceeding €10,000 or imprisonment for up to 5 years is the penalty. In addition, they are liable for the costs for the repair of the damage caused.

In addition to this, under the *European Communities (Environmental Impact Assessment) Regulations 1989*, Environmental Impact Statements (EIS) are required for various classes and sizes of development project to assess the effect the proposed 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 proposed development may proceed, and thus offer an additional layer of protection for monuments which have not been listed on the RMP.

The Planning and Development Act 2000 (as amended)

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 six-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 2000 (as amended) 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.

Heritage Ireland 2030

The three key themes to this document are: Communities and Heritage; Leadership and Heritage; and Heritage Partnerships.

Theme 1: Communities and Heritage:

- Enhance support for local authorities, County/City Heritage Forums and the Heritage Council, and others working in community heritage engagement;
- Improve the involvement of young people in understanding, caring for and celebrating their heritage and biodiversity;
- Enhance recognition and support for the owners of heritage assets and for key work by communities, volunteers and individual practitioners in preserving Ireland's heritage;
- Support research into the long-term sustained public engagement with heritage across the country including supporting initiatives such as National Heritage Week, World Wetlands Day and National Biodiversity Week;
- Enhance physical and digital access to heritage in public and private ownership;
- Improved access for all to archives, artefacts, museum collections and other heritage records;
- Support the contemporary presentation and interpretation of heritage, including through better use of technology;
- Strengthen measures to acknowledge and protect local heritage, including the heritage of minority communities;
- Integrate the role of heritage in place-making, economic development and sustainable tourism into all relevant strategies;
- Foster opportunities and training for community partners to be directly involved in the care and stewardship of our national heritage.

Theme 2: Leadership and Heritage:

- Integrate heritage protection and heritage strategy considerations into the work of national, local and regional government and agencies;
- Create an effective and coordinated policy, regulatory framework and governance structure that supports an integrated approach to the protection, preservation, conservation and sustainable use of heritage;
- Ensure the conservation and presentation of our national heritage estate is appropriately resourced through increased capital investment over the lifetime of this plan, to departments, OPW, local authorities and other stakeholders;
- Develop a national programme for monitoring and evaluating the value of heritage;
- Develop a national research agenda for heritage;
- Identify improved measures to assess impacts on heritage, and support monitoring mechanisms;
- Take better care of our built, natural and cultural heritage through increased investment, at a local and national level;

- Invest in heritage skills training, continuous professional development and apprenticeships, increasing professional capacity and new education and training opportunities;
- Identify opportunities for, and realise the potential of, heritage-led economic regeneration and sustainable business and tourism development;
- Improve use of digital technology to inform evidence-based decision making in heritage and to make information on heritage accessible and available to all;
- Address heritage crime through education and the strengthening of regulation and prosecution;
- Support Ireland's continued adherence to, and ratification of regulation and prosecution;
- Support engagement with partners in Northern Ireland, the United Kingdom and EU and with relevant legislation and programmes;
- Promote and development best-practice standards and guidelines for heritage conservation and management

Theme 3: Heritage Partnerships:

- Support Government and local authorities to work effectively together to protect, manage and promote our heritage;
- Build strong partnerships with the OPW, local authorities, public bodies, departments, agencies and other stakeholders to achieve excellence in the management and maintenance of Ireland's heritage;
- Work to expand and develop existing Local Authority partnerships on a cross-border and all-island basis to deliver a more connected approach to heritage;
- Ensure adequate resourcing of the heritage sector;
- Strengthen support for the work of the Heritage Council in the implementation of partnership strategies;
- Improve coordination with private property owners, farmers, the private sector, the National Cultural Institutions, NGOs, local communities and volunteers in the management, protection and maintenance of our heritage;
- Invest in innovation in heritage research, conservation, management and interpretation;
- Increase support for the development of professional standards in heritage management in collaboration with the Heritage Council and professional bodies;
- Build partnerships and links between government and education institutes, the National Cultural Institutions, businesses and others;
- Provide high-quality heritage information, guidance and advice as a resource for stakeholders, visitors, researchers and the general public;
- Identify funding paths for heritage in public and private ownership;
- Grow collaboration with students and the education sector to cultivate the next generation of heritage professionals and partnerships

Clare Development Plan 2023-2029

It is an objective of Clare County Council to:

Built Heritage

CDP16.1: Architectural Heritage –

- a) To ensure the protection of the architectural heritage of County Clare through the identification of Protected Structures, the designation of Architectural Conservation Areas, the safeguarding of historic gardens, and the recognition of structures and elements that contribute positively to the vernacular and industrial heritage of the county;
- b) to ensure that the archaeological and architectural heritage of the county is not damaged either through direct destruction or by unsympathetic developments; and
- c) to support and promote architectural vernacular skills training and facilities in the county.

CDP16.2: Record of Protected Structures –

- a) To protect, as set out in the Record of Protected Structures, all structures which are of special architectural, historical, archaeological, artistic, cultural, scientific, social, or technical interest; and
- b) to review the Record of Protected Structures periodically and add structures of special interest as appropriate, including significant elements of industrial, maritime or vernacular heritage and any twentieth century structures of merit.

CDP16.8: Sites, Features and Objects of Archaeological Interest

- 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 Gaeltacht;
- d) To have regard to the government publication Framework and Principles for the Protection 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: Newly Discovered Archaeological Sites – To protect and preserve archaeological sites discovered since the publication of the Record of Monuments and places.

CDP16.11: Archaeology and Infrastructure Schemes – To ensure that decision 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 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: Climate Change Sectoral Adaptation Plan for Built and Archaeological Heritage

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To support the Climate Change Sectoral Adaptation Plan for Built and Archaeological Heritage 2019, as published by the Department of Culture, Heritage and 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 source of climate change adaptation or mitigation works.

CDP16.12: Raising Archaeological Awareness –

- 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.

CDP16.14: Art, Heritage, Cultural and Creative Sectors -

- 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 roles 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 2018-2027';
- 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 environment 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.

Archaeological Heritage

Policies relating to archaeological heritage include:

CDP16.3: Industrial Heritage – To protect and preserve buildings and features of industrial heritage such as mills, bridges, lighthouses and harbours, amongst others. Proposals for refurbishment works to, or redevelopment/conversion of, these sites will be subject to a full architectural and archaeological assessment together with an ecological assessment with respect to the presence of protected species.

CDP16.4: Revitalisation of Vernacular Heritage

- a) To seek the retention, appreciation and appropriate revitalisation of the vernacular heritage of County Clare, in towns, villages and rural areas, by discouraging the replacement of good quality vernacular buildings with modern structures and by protecting vernacular buildings where they contribute to the character of an area or settlement and/or where they are rare examples of a structure type;
- b) To support the proposals to refurbish vernacular structures that are in a sub-standard or derelict condition, provided that:
 - i. Appropriate traditional building materials and methods are used to carry out repairs to the historic fabric;

- ii. Proposals for extensions to vernacular structures are reflective and proportionate to the existing building and do not erode the setting and design qualities of the original structure which make it attractive; and
 - iii. Direction for the design is taken from the historic building stock of the area, though it can be expressed in contemporary architectural language;
- c) To ensure that visitor pressures from tourism associated with built and cultural heritage do not impact negatively on the capacity of local services (including water, waste water) or facilities such as car parking.

CDP16.7: Maintenance and Improvement of Architectural Heritage –

- a) To advocate for greater financial assistance, including the Built Heritage Investment Scheme and the Historic Structures Fund, for the maintenance and improvement of architectural heritage in County Clare;
- b) To support community initiatives and projects regarding preservation, presentation and access to archaeological heritage and underwater cultural heritage, provided such are compatible with appropriate conservation policies and standards, having regard to the guidance and advice of the Department of Housing, Local Government and Heritage;
- c) To provide advice and guidance to community groups, owners and occupiers with regards to the maintenance and repair of buildings and structures of architectural heritage importance and to promote initiatives by the Council, the Heritage Council, local communities, heritage property owners and other stakeholders pursuing the maintenance and improvement of the architectural heritage; and
- d) To undertake a risk assessment of the Archaeological and Architectural Heritage and Cultural Assets in the county to assess the vulnerability and the risk to the historical environment from the impacts of climate change and to help build resilience to these important assets.

CDP16.15: Museums, Heritage and Cultural Centres –

- a) To facilitate further development of an extensions to museum, heritage centres and archives across the county;
- b) To ensure that the County Museum's collections and associated information are accessible to the public;
- c) To promote a wider appreciation and understanding of the unique natural, cultural and archaeological heritage of the County;
- d) To recognise and support the role of private and community facilities in making heritage artefacts and information available to the public; and

- e) To support the development of a network of community arts and cultural hubs.

CDP16.16: Genealogy – To support the on-going collection of information of genealogical interest in the county and to make such data available in multiple formats to facilitate genealogical research.

CDP16.17: Linguistic Heritage –

- a) To provide for the linguistic and cultural heritage of the county through the provision of support for organisations involved in the continued promotion and preservation of the Irish language and culture and the normalising of the use of Irish;
- b) To work in a positive and encouraging way to create and maintain a bilingual environment in the county, and to ensure the availability of opportunities for the use of spoken and written Irish; and
- c) To support the implementation of the Language Plan for the Irish Language Network in Ennis

CDP16.18: Folklore and Oral Cultural Heritage – 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.