

Planning & Environmental Report

Fermoy Weir Remedial Works and Fish Bypass

on behalf of Cork County Council

June 2022



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1. Introduction

This report has been prepared by McCutcheon Halley Planning Consultants and is submitted in support of the proposed development which comprises remediation works to the existing weir in Fermoy, including the reconstruction of breached sections of the weir, and the construction of a new bypass to provide for fish to pass around the existing weir.

As a Natura Impact Statement (NIS) is being prepared as part of the proposed development, this application will be submitted by Cork County Council to An Bord Pleanála under s.177AE of the Planning and Development Act, 2000 (as amended).

When considering a proposal under section 177AE, An Bord Pleanála must have regard to:

- the likely effects on the environment of the proposed development,
- the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the development, and
- the likely significant effects of the proposed development on a European site.

In response to the criteria outlined above, the proposed development was subject to a robust assessment during its design stage and the application to the Board includes a significant amount of supporting material which allows the Board to consider the likely effects on the environment from the proposed development and in our opinion, demonstrates that the proposed development will not have an adverse or negative impact on the receiving environment or the Munster Blackwater Special Area of Conservation (SAC) and is fully in accordance with the proper planning and sustainable development in the area.

The remainder of this report is set out under the following headings:

- Context & Proposed Development
- Planning Policy Context
- Assessment
- Supporting Material
- Conclusion

2. Context & Proposed Development

2.1 Context

Fermoy weir is located centrally in the town of Fermoy in Co. Cork, next to Kent Bridge on the River Blackwater and within the Munster Blackwater Special Area of Conservation (SAC) (002170).

The weir extends from the northern bank of the river on the west side of the bridge, through the second arch of the bridge from the south bank and continues east of the bridge (Figure 1).

The weir is over 200 years old and is listed as a protected structure in the 2009 Fermoy Town Development Plan and the 2022 Cork County Development Plan.¹ The weir is in poor condition generally and has a breach which occurred in 2016, which has led to the erosion and gradual and further deterioration of the weir wall in recent years.



Figure 1: Aerial view of Fermoy weir and Kent Bridge with site location/boundary shown inset (aerial photo courtesy of TJ O'Connor & Associates Consulting Engineers)

2.2 Proposed Development

The proposed development comprises the remediation of the existing weir, including the reconstruction of breached sections of the weir, and the construction of a bypass to provide for fish to pass around the weir. The works can be divided into the following principal elements:

¹ The Cork County Development Plan is at an advanced stage (i.e. the amendments to the draft plan have been adopted) and is due to come in to effect on June 7th 2022.

- Felling of c.30 no. trees on the northern bank to facilitate the bypass;
- Lowering of approximately 100m of the existing masonry river wall;
- Excavation of spoil to facilitate the construction of the bypass and installation of sheet piles and concrete capping beams for the side walls of the bypass channel;
- Placement of gravel and rockfill for the base of the bypass channel and vertically pitched stone to create steps in the bypass channel;
- Restoration of the existing salmon leap including replacement of damaged and missing limestone from side walls and base;
- Removal of part of the existing concrete apron and placement of geotextile fabric;
- Re-profiling of the riverbed and protection works to the existing embankment;
- All ancillary works including temporary diversion and control of flows, tie-ins to the existing structures/river banks, disposal of surplus material etc.

Details of the proposed remediation works are shown on the detailed drawings by TJ O'Connor & Associates Consulting Engineers, including a plan of the proposed remediation works at Drawing 19011-TJOC-PL-XX- DR-C-0060 and Drawing No. 19011- TJOC-PL-XX-DR-C-0053 – see extract in Figure 2 below.

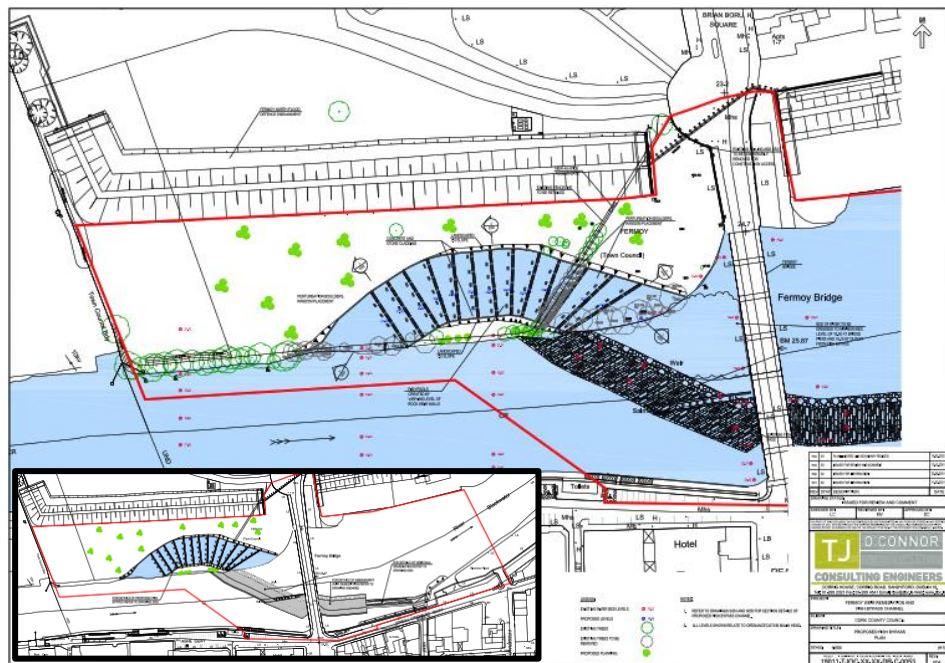


Figure 2: Proposed Weir remediation works from Drawing No. 19011- TJOC-PL-XX-DR-C-0053 by TJ O'Connor & Associates Consulting Engineers (full extent of works shown inset)

3. Planning Policy Context

The proposed development has been guided by a number of plans and Ministerial Guidelines. The main documents are outlined in Sections 3.1 to 3.5 below.

3.1 Architectural Heritage Protection Guidelines

Guidelines issued under Section 28 of the Planning and Development Act 2000 (as amended) require planning authorities (including An Bord Pleanála) to have regard to them in the performance of their functions.

Under Section 52 (1), the Minister is obliged to issue guidelines to planning authorities concerning development objectives:

- a) for protecting structures, or parts of structures, which are of special architectural, historical, archaeological, artistic, cultural, scientific, social, or technical interest, and
- b) for preserving the character of architectural conservation areas.

The *Architectural Heritage Protection Guidelines for Planning Authorities* were formally issued in February 2005 under Section 28 and Section 52 of the Act. Part 1 of these guidelines includes the criteria to be applied when selecting proposed protected structures for inclusion in the Record of Protected Structures. Part 2 of the Guidelines contain supplementary detailed guidance to support planning authorities in their role to protect the architectural heritage when a protected structure is the subject of a development proposal. Given the historical importance of the weir, part 2 of these Guidelines were used to guide and inform the remedial works proposed in this application.

3.2 Appropriate Assessment - Guidelines

The introduction of the Birds Directive in 1979 and the Habitats Directive in 1992 (92/43/EEC) seeks to safeguard the long-term survival of Europe's most valuable and threatened species and habitats. The Directive established the Natura 2000 network of sites of highest biodiversity importance for rare and threatened habitats and species across the EU. In Ireland, the Natura 2000 network of European sites comprises Special Areas of Conservation (SACs), and Special Protection Areas (SPAs).

SACs are selected for the conservation of Annex I habitats and Annex II species and in this instance the proposed development is located within the Blackwater River (Cork/Waterford) SAC (ref. 002170), which is of considerable conservation significance due to the occurrence of good examples of habitats and of populations of plant and animal species that are listed on Annexes I and II of the E.U. Habitats Directive respectively, including the Atlantic Salmon, Twaite Shad and Lamprey.

Guidelines on *Appropriate Assessment of Plans and Projects in Ireland* was published by the Department of Environment, Heritage and Local Government (DEHLG) in 2009 and updated in 2010. The OPR also issued a Practice Note (PN01)² in relation to 'Appropriate Assessment Screening for Development Management' in March 2021, which provides information and guidance on screening for appropriate assessment during the planning application process.

One of the measures which protects these areas is the requirement that every project must undergo an assessment of its implications for any European site before consent for the project is given. Consent for the project can only be given after determining that it will not adversely affect the integrity of the site(s) concerned in view of the conservation objectives of that site.

In order to determine if an appropriate assessment is required, a screening process must be carried out for all applications for planning permission. This screening exercise was carried out for the proposed works by Dixon Brosnan who determined that a Natura Impact Statement (NIS) be carried out – see Section 4.3.

3.3 Environmental Impact Assessment Guidelines

The "*Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment*", (DoPHLG, 2018), refer to Schedule 7 and 7A of the Planning and Development Regulations in the context of screening for sub-threshold developments.

Schedule 7 of the Planning and Development Regulations 2001 to 2020 sets out criteria for determining whether development listed in Schedule 5 Part 2 should be subject to an Environmental Impact Assessment.

Schedule 7A includes the requirement that information to be provided by the applicant for purposes of screening sub-threshold development for EIA should take into account, where relevant, the criteria set out in Schedule 7 (refer to Section 4.4 of this report and the enclosed determination by Cork County Council dated 31/03/2022 that EIA is not required).

3.4 Fermoy Town Development Plan 2009-2015

The subject site is situated within the former Fermoy Town Council boundary where the provisions of the Fermoy Town Development Plan 2009-2015 continue to apply up until the date that the 2022 Cork County Development Plan comes into effect (i.e. June 7th 2022).

² Practice Notes do not have the status of Ministerial Guidelines under Section 28 of the Planning and Development Act 2000, as amended and are issued for general information purposes only, in accordance with the OPR's statutory remit to engage in education, training and research activities.

In the Town Development Plan, the northern portion of the site is zoned O-07³ and O-06⁴ Open space, where the lands are to be reserved for open space/agricultural use.

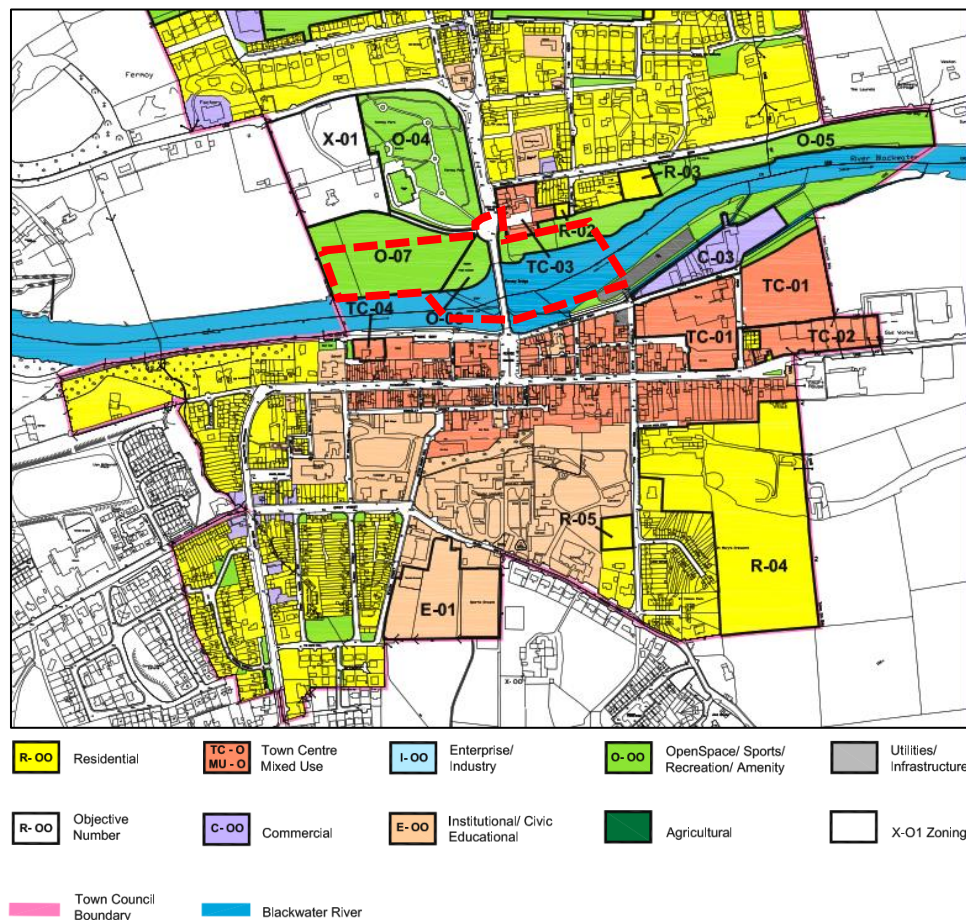


Figure 3: Extract from the 2010 Fermoy Town Development Plan – Site outlined in dashed red line.

In the Town Development Plan, the weir and adjoining limestone quay wall are included in the record of protected structures (Reg. No. 02 - River Blackwater - Weir and Limestone Quay Wall – see Figure 4). It is an objective of the Plan (section 4.5.11) to seek the identification and protection of all structures within the town that are of special architectural, historical,

³ The specific objective for the O-07 lands is that they are “reserved for agricultural use recognising the constraints of the Candidate Special Area of Conservation status, the OPW flood defence works, its flood plain function, its amenity riverside amenity setting and having regard to the proposed riverside walk marked on Map 2 The flood defence works will implement in full the mitigation measures described in Sections 6.0 and 7.0 of the Environmental Impact Statement (Michael Punch and Partners, 2005) and development of the riverside walk will be subject to Article 6 Appropriate Assessment of the potential for negative impacts on the Conservation Objectives of the Blackwater River (Cork / Waterford) cSAC.

⁴ The specific objective for the O-06 lands is that they are reserved for agricultural use.

archaeological, artistic, cultural, scientific, social or technical interest, including structures listed in the Record of Protected Structures.

It is also an objective of the plan (Section 4.5.12) to have regard to the protection of the context of heritage structures and to take into consideration the context of such structures in considering proposals for development in their vicinity.

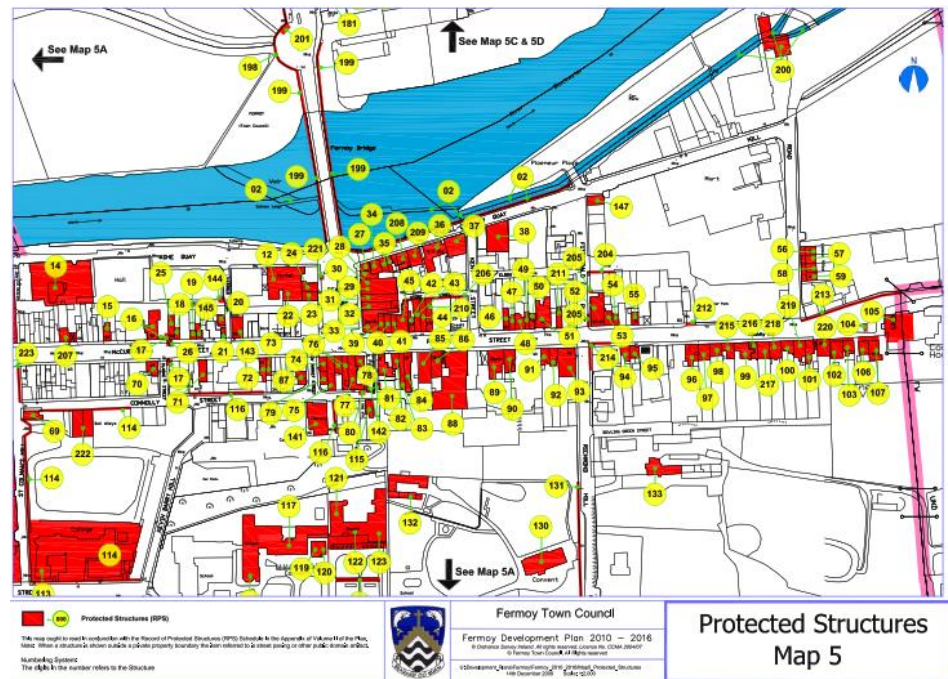


Figure 4: Extract from the 2010 Fermoy Town Development Plan – record of Protected Structures.

In relation to natural heritage, the plan (p.51) states that *"it is an objective to protect Fisheries including those listed in Annex II of the Habitats Directive and other protected species such as salmon, lamprey species (Brook Lamprey, River Lamprey and Sea Lamprey) and freshwater pearl mussel."* It is also a stated objective of the plan to promote the well-being and life-cycle of protected aquatic species within its area of control.

In relation to natura sites, it is an objective of the plan (Section 5.1.4) to *"maintain the conservation value of the River Blackwater (Cork / Waterford) cSAC and the Blackwater Callows SPA during the lifetime of this plan and to ensure an Appropriate Habitat's Directive Assessment is carried out where development projects are likely to have significant effects on this European site whether within or outside the boundary of the European Site."*

3.5 Cork County Development Plan 2022-2028

The 2022-2028 Cork County Development Plan (CDP) is due to come into effect from June 7th 2022.⁵ In the 2022 CDP, Fermoy is designated as a 'Ring Town' where the strategic aim is to provide a better balance of development throughout the Greater Cork Ring Area, and to fulfil its economic potential as a quality urban centre providing employment, shopping, services and public transport for their rural hinterland so that it can become the location of choice for most people especially those with an urban employment focus.

The vision for Fermoy over the lifetime of the plan (Section 1.4.1, Volume 3) is to *"increase the population of the town in line with the targets established in the Core Strategy chapter; optimise employment opportunities having regard to the location of the town adjacent to the M8; manage development in order to support the strengthening and rejuvenation of the retail function of the town; ensure all new development respects the significant built heritage of the town and its setting on the River Blackwater, and to deliver an enhanced natural and built environment and range of facilities to make the town a more attractive place to live."*

In the 2022 CDP, the northern portion of the site is zoned as 'Green Infrastructure' (specific objective FY-GC-05⁶), where it is an objective (GI 14-1) to create an integrated and coherent green infrastructure for the County by encouraging the retention of substantial networks of green space in urban, urban fringe and the wider countryside to serve the needs of communities now and in the future including the need to adapt to climate change and to develop a green infrastructure network to ensure the conservation and enhancement of biodiversity, including the protection of Natura 2000 European Sites, the provision of accessible parks, open spaces and recreational facilities (particularly within settlements), the sustainable management of water, the maintenance of landscape character and the protection and enhancement of architectural and archaeological heritage.

Objective GI 14-1d) specifically recognises rivers and streams (and their wider riparian corridors) as one of the natural foundations for multi-functional green and blue infrastructure corridors and seeks to strengthen ecological linkages which watercourses have with other water dependent habitats as well as with hedges/treelines, woodland and scrub in the wider landscape.

Objective GI 14-1 f) and g) seeks a net gain in green infrastructure through the protection and enhancement of existing assets and through the provision of new green infrastructure and to seek to increase investment in green infrastructure provision and maintenance by accessing relevant EU funding

⁵ Please note that the extracts/material included in this report is based on the most up to date information available from the Council.

⁶ The specific objective for the FY-GC-05 lands is to support the implementation of the Fermoy Traffic Management Study and the Fermoy Walking and Cycling Strategy set out in Active Travel Towns.

mechanisms and national funding opportunities including tourism related funding.

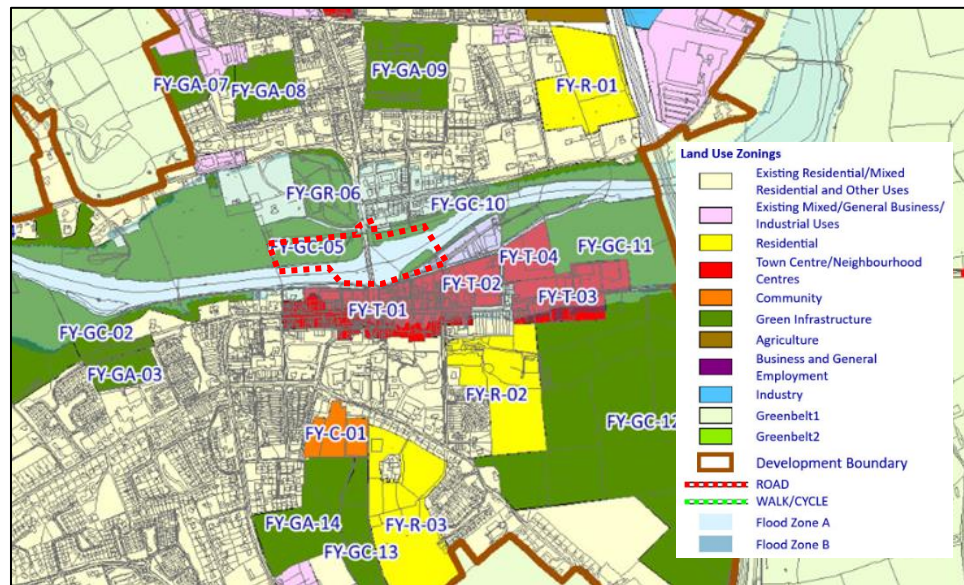


Figure 5: Extract from the 2022 Fermoy Town Development Plan – Site outlined in dashed red line.

In relation to natural heritage, objective BE 15-2a) of the CDP states that it is an objective to protect all natural heritage sites which are designated or proposed for designation under European legislation, National legislation and International Agreements and maintain and where possible enhance appropriate ecological linkages between these designations (including Special Areas of Conservation).

In the 2022 CDP, the weir and adjoining limestone quay wall are included in the record of protected structures (Reg. No. 02068: Weir and Limestone Quay Wall, River Blackwater). It is an objective of the Plan (HE 16-11: Record of Protected Structures) to *"seek the protection of all structures within the County, which are of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest"* and to *"ensure the protection of all structures (or parts of structures) contained in the Record of Protected Structures"* (Objective HE 16-11d).

Objective HE 16-11i) of the CDP states that in the event of a planning application being granted for development within the curtilage of a protected structure, that the repair of a protected structure is prioritised in the first instance i.e. the proposed works to the protected structure should occur, where appropriate, in the first phase of the development to prevent endangerment, abandonment and dereliction of the structure.

Section 1.4.55 (Volume 3) of the CDP specifically states that the Fermoy Weir has deteriorated in recent years and that Cork County Council are working with other stake holders to address this issue and that the final design solution *"will provide for free passage of migrating fish."*

4. Assessment

4.1 Compliance with Planning Policy

The proposed development involves remedial works to an existing weir which is a protected structure, but currently in poor condition and the provision of a fish by-pass, which will provide for free passage of migrating fish, including fish which are protected species such as Salmon, Twaite Shad and Lamprey.

It is submitted that the proposed development will make a very positive contribution to the amenity and natural/built heritage of the town and is fully compliant with the objectives of the 2005 *Architectural Heritage Protection Guidelines for Planning Authorities*, the Fermoy Town Development Plan 2009-2015 and the Cork County Development Plan 2022-2028, in that it will:

- Ensure the remediation, restoration and long-term viability of an important protected structure in the town (Fermoy Weir and Limestone Quay Wall) in accordance with objectives HE 16-11 of the 2022 CDP and section 4.5.11 of the 2009 Town Development Plan;
- Arrest and address the deterioration of Fermoy Weir and provide for the “free passage of migrating fish” in accordance with Section 1.4.55 (Volume 3) of the 2022 CDP;
- Ensure that the repair and protection of the protected structure/Fermoy Weir is prioritised in the proposed development to prevent endangerment, abandonment and dereliction of the structure (Objective HE 16-11i) of the 2022 CDP;
- Improve the ecological, environmental and visual amenities of the town and make it a more attractive place to live (Section 1.4.1, Volume 3, of the 2022 CDP);
- Ensure the conservation and enhancement of biodiversity of the River Blackwater SAC by significantly improving the spawning/habitat for Salmon and other species (Objectives GI 14-1d) and BE 15-2a) of the 2022 CDP and section 5.1.4 of the Fermoy Town Plan;
- Protect and enhance the fisheries environment of the river including those species listed in Annex II of the Habitats Directive, including the habitat and spawning environment of Salmon, Twaite Shad and Lamprey (p.51 of the Fermoy Town Plan);
- Enhance and add to the ‘Green Infrastructure’, of the town in accordance with objective GI 14-1 of the 2022 CDP;
- Provide a “net gain” in green infrastructure through the protection and enhancement of an existing asset (Fermoy Weir) and through the provision of new green infrastructure (i.e. fish bypass) in accordance with objectives GI 14-1 f) and GI 14-1 g) of the 2022 CDP.

It is submitted that the proposed development is fully compliant with the objectives of the 2005 *Architectural Heritage Protection Guidelines for Planning Authorities*, the Fermoy Town Development Plan 2009-2015 and the Cork County Development Plan 2022-2028; will ensure the long-term viability

of an important protected structure in the town; and will make a very positive contribution to the amenity and natural/built heritage of the town.

4.2 Built Heritage

As outlined in Section 2 of this report, the weir is listed as a protected structure in the 2009 Fermoy Town Development Plan and the 2022 Cork County Development Plan, however it is currently in poor condition and has deteriorated significantly in recent years.

The proposed development comprises the remediation of the existing weir, including reconstruction of breached sections of the weir. As outlined in the Archaeological Impact Assessment by Mizen Archaeology, the proposed works to weir upstream of the bridge will restore the character/appearance of the weir and will have a significant positive impact on the structure, and the visual amenity and cultural heritage of the area. The reconstruction of the damaged weir will also alleviate damage to the 19th century bridge.

The removal of the ad-hoc modern repairs to the fish pass will also help restore the character/appearance of the weir and although it will not be restored completely to its original design, the preservation of its sidewalls will retain the substance of its original form and will have a positive impact on the structure and the cultural heritage of the area.

As part of the submission to the Board, photomontages and a Landscape and Visual Impact Assessment (LVIA) was undertaken by Doyle + O'Troithigh Landscape Architects, which demonstrates that the proposed development will have a positive visual impact on the area – see Figures 6 and 7.



Figure 6: Photomontage of proposed Weir remedial works (upstream of Kent Bridge) by Doyle + O'Troithigh Landscape Architects



Figure 7: Photomontage of proposed Weir remedial works (downstream of Kent Bridge) by Doyle + O'Troithigh Landscape Architects

4.3 Natural Heritage/Appropriate Assessment

As elements of the proposed development were identified that may potentially impact on the qualifying interests of the conservation objectives of the Blackwater River (Cork/Waterford) SAC, a Natura Impact Statement (NIS) has been prepared by Dixon Brosnan.

The NIS concludes that with the incorporation of proposed mitigation measures to protect the receiving environment, these measures will be sufficient to prevent any adverse impacts on the integrity of the Blackwater River (Cork/Waterford) SAC.

Furthermore and in accordance with the advice/direction from the Department of Culture, Heritage and the Gaeltacht (dated 28th February, 2020), the repair of the Fermoy weir will allow upstream access to Salmon and other important species including Twaite Shad and Lamprey.

It is therefore considered that there will be no adverse impacts, either alone or in combination with other plans and projects, on the integrity of the Blackwater River (Cork/Waterford) SAC as a result of the proposed development and overall, the proposed development will have a positive impact on the natural heritage of this section of the Blackwater River.

4.4 Environmental Assessment

EIA requirements in Ireland have their legislative basis in EC Council Directive 85/337/EEC (as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC), codified and replaced by Directive 2011/92/EU of the European Parliament and the Council and subsequently amended by Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment.

Section 176A of the Planning & Development Act 2000 requires that an application for screening for Environmental Impact Assessment (EIA) shall be submitted to the planning authority.

As part of the proposed development, an EIA Screening has been prepared by TJ O'Connor & Associates Consulting Engineers on behalf of the applicant, Cork County Council, to assist An Bord Pleanála in their determination of whether an EIAR is required or not.

The *"Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment"*, (DoPHLG, 2018), provide further guidance in relation to EIA screening and refer to Schedule 7 and 7A of the Planning and Development Regulations in the context of screening for sub-threshold developments.

As outlined in the EIA screening by TJ O'Connor & Associates Consulting Engineers, the project is not of a class listed in Project Types 1 to 14 in Schedule 5 Part 2, therefore there is no requirement to proceed to consider the criteria in Schedule 7.

Notwithstanding the fact that an EIAR has not been submitted with the application (refer to enclosed determination by Cork County Council dated 31/03/2022 that EIA is not required), it is important to note that a significant amount of environmental assessment and material has been prepared and submitted to enable the Board to conduct a robust environmental appraisal of the proposed development, including a Landscape & Visual Impact Assessment; Invasive Species Management Plan; Environmental Monitoring Plan; Outline Construction Management Plan; and Parent Construction Environmental Management Plan.

Where necessary these plans include measures to mitigate any environmental or other impacts from the proposed development both during the construction and operational phase of the development and demonstrate that the proposed development will not have a negative or adverse environmental impact on the area.

5. Supporting Material

A comprehensive list of supporting material has been prepared in support of the proposed development including, inter alia, the following material:

- Detailed drawings and sections of the proposed works;
- Engineering Report/Drawings;
- Landscape & Visual Impact Assessment;
- Flood Risk Assessment;
- Underwater Archaeological Impact Assessment;
- Environmental Impact Assessment Screening;
- Natura Impact Statement;
- Invasive Species Management Plan;
- Environmental Monitoring Plan;
- Environmental Incident Response Plan;
- Traffic Management Plan;
- Waste Management Plan;
- Outline Construction Management Plan.

6. Conclusion

The proposed development will ensure the long-term viability of an important protected structure in the town and will make a very positive contribution to the amenity and natural/built heritage of the town.

The proposed development was subject to a robust assessment during its design stage and is fully compliant with the objectives of the Fermoy Town Development Plan 2009-2015 and the Cork County Development Plan 2022-2028, and is fully in accordance with the proper planning and sustainable development in the area.

The application to the Board includes a significant amount of supporting material which allows the Board to consider the likely impacts from the proposed development including potential effects on the environment and Blackwater SAC, and in our opinion, demonstrates that the proposed development will not have an adverse or negative impact on the receiving environment or the Blackwater SAC.