

Appendix A.13.8

Legislative Framework
Protecting the
Archaeological 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, 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.

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 Environment, Heritage and Local Government) 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. All recorded monuments on the proposed development site are represented on the accompanying maps.

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 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 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 impact 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 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 2000

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 2000 recognises that proper planning and sustainable development includes the protection of the archaeological heritage. Conditions relating to archaeology may be attached to individual planning permission.

Galway City Development Plan 2017-2023

Policy 8.5 Archaeology

Protect the archaeological heritage of the city.

Ensure that proposed development within the designated city centre Zone of Archaeological Potential is not detrimental to the character of an archaeological site or its setting.

Have regard to the archaeological recommendations of the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs on any planning applications.

Endorse the sustainable use of archaeological heritage as an educational and cultural resource and promote public awareness of the archaeological heritage of the city.

Require the surveying, recording or excavation of archaeological heritage during the development process where appropriate.

Seek the preservation in-situ or, at a minimum, preservation by record of archaeological sites/monuments included in the Record of Monuments and Places.

Ensure that any development proposals with potential to impact on archaeological heritage includes for an archaeological assessment. This includes within terrestrial, riverine, inter-tidal and sub-tidal environments.

Promote the protection of the varied industrial heritage of the city and encourage greater appreciation and public awareness of this heritage.

Galway County Development Plan 2015-2021

Policy ARC 1 – Legislative Context

It is the policy of Galway County Council to support and promote the conservation and appropriate management and enhancement of the County's archaeological heritage within the plan area. Galway County Council will ensure the implementation of the legislative, statutory and policy provisions relevant to the conservation of the archaeological heritage.

Policy ARC 2 – Archaeological Sites

Seek to promote awareness of and access to archaeological sites in the County where appropriate.

Policy ARC 3 – Consultation

Consult with the National Monuments Service of the Department of Arts, Heritage and the Gaeltacht in relation to proposed developments adjoining archaeological sites.

Policy ARC 4 – Management of Archaeological Sites and Monuments

Support the preservation, conservation and management of archaeological sites and monuments, together with the settings of these monuments.

Policy ARC 5 – Archaeological Heritage

Ensure the protection and sympathetic enhancement of archaeological heritage in the plan area, in particular by implementing the relevant provisions of the Planning and Development Act, 2000 (as amended), The National Monuments Act, 1930 (as amended), and The National Policy on Town Defences, 2008 (Department of the Environment, Heritage and Local Government).

Policy ARC 6 – Archaeological Landscapes

To facilitate where possible the identification of important archaeological landscapes in the County.

Objective ARC 1 – Protection of Archaeological Sites

Protect archaeological sites and monuments their settings and visual amenity and archaeological objects and underwater archaeological sites that are listed in the Record of Monuments and Places, in the ownership/guardianship of the State, or that are subject of Preservation Orders or have been registered in the Register of Historic Monuments and seek to protect important archaeological landscapes.

Objective ARC 2 – Development Management

All planning applications for new development, redevelopment, any ground works, refurbishment, and restoration, etc. within areas of archaeological potential or within close proximity to Recorded Monuments or within the historic towns of County Galway (Ardrahan, Athenry, Dunmore, Eyrecourt, Loughrea and Tuam) will take account of the archaeological heritage of the area and the need for archaeological mitigation.

Objective ARC 3 – Protection of New Archaeological Sites

Protect and preserve archaeological sites, which have been identified subsequent to the publication of the Record of Monuments and Places.

Objective ARC 4 – Burial Grounds

Protect the burial grounds, identified in the Record of Monuments and Places, in co-operation with the National Monuments Service of the Department of Arts, Heritage and the Gaeltacht. Encourage the local community to manage burial grounds in accordance with best conservation and heritage principles.

Objective ARC 5 – Battlefield Sites

Protect the Battle of Aughrim site and other battlefield sites and their settings. Refer all planning applications within the battlefield sites and their environs to the National Monuments Service of the Department of Arts, Heritage and the Gaeltacht for their consideration.

Objective ARC 6 – Underwater Archaeological Sites

To protect and preserve the underwater archaeological sites in rivers, lakes, intertidal and sub-tidal locations.

Objective ARC 7 – Recorded Monuments

Ensure that any development in the immediate vicinity of a Recorded Monument is sensitively designed and sited and does not detract from the monument or its visual amenity.