

**Joint Committee on Public Petitions, 3 July 2019**

**Joint Opening Statement of**

**The Department of Communications, Climate Action and Environment  
And  
Inland Fisheries Ireland**

Chairperson, Deputies, Senators on behalf of the Department and our Agency Inland Fisheries Ireland we appreciate the opportunity to come before you to clarify the role of the Department and IFI in relation to the weir in Fermoy and also to address any questions you may have.

The Department and IFI have worked very closely together to support Cork County Council with the fisheries related element of its responsibilities and therefore we are setting out a joint opening statement in order to facilitate efficient use of the Committee's time.

We would like to extend the apologies of the IFI Chief Executive Officer, Dr. Ciaran Byrne who is currently out of the country on annual leave as is the IFI Regional Director for the South West, Mr. Sean Long both of whom would be very familiar with the issue of fish passage at Fermoy. However, I am pleased to be accompanied by IFI's Head of Operations, Dr Greg Forde.

It is important to clarify for the Committee that the conflation of two distinct issues has led to significant confusion and at the outset both the Department and IFI would wish to assist the Committee's understanding of the issues in play.

The substantive issue is the repairs or restoration works required to Fermoy weir. The works required are entirely a matter for Cork County Council and are not a fisheries matter for the Department or IFI.

The fundamental issue in this regard is that Cork County Council is the authority entirely responsible for carrying out and funding works to the weir in Fermoy as the Council is the owner of the infrastructure. Local Authorities are under the remit of the Department of Housing, Planning and Local Government (DHPLG).

DCCAIE or IFI have no remit in the carrying out or funding of the required repair works. Our responsibilities and those of IFI are entirely of a regulatory and advisory nature in relation to the inland fisheries resource. In that regard, and in order to assist the Committee, the focus of our evidence today is necessarily on the ancillary issue of fish passage as the main issue of repairs/works to the weir is not within the Department's or IFI's remit. That matter may only be adequately should be addressed by submissions to the Committee by Cork County Council and DHPLG.

In relation to funding, the Council has previously advised the Department and IFI that it had received a response to its request for funding from its parent Department (DHCLG) indicating that the permanent works could be progressed in the context of the River basin programme of DHPLG.

It is understood that in order to accommodate the Fermoy Rowing Club and other Community interests, the removal of the weir was not recommended i.e. the optimal solution proposed is to lower the weir and build a new fish pass. Our regulatory role is to support and advise the Council on the issue of incorporating fish passage into whatever works it seeks to undertake in order that such works would comply with the Habitats Directive and avoid EU proceedings, and potential large fines.

It is also understood that Fermoy Town Council (now Cork County Council) originally agreed the repair works would be undertaken by OPW as part of the Fermoy Flood Relief Scheme, and would be paid for by the Council. However the Council did not proceed with repair works as part of the Flood Relief Scheme, but rather advised DCCAE that the works on the ancillary fish pass solution were included as part of the tender process for Phase II of the Flood Relief Works. The Council then advised that as tender prices received were in excess of what was originally envisaged, they were proceeding with the Flood Relief Works but would be investigating the procedures for retendering separately for the fish pass.

It is understood that there have been two opportunities to complete the permanent works under past flood relief schemes operated by OPW but they were not availed of.

Despite repeated clarification from DCCAE and from IFI as regards our advisory and regulatory roles and responsibilities there is continuing inaccurate conflation of the overall issue of works required to the weir, which rest with the Council, and the need to include the attendant issue of compliance with fish passage requirements under EU legislation.

### **Ancillary issue - Fish Passage**

So what is our involvement - an important but entirely ancillary matter to whatever reinstatement or repair works are necessary under the remit of the Council, is that fish passage is ensured in order that the outcome of such works by the Council complies with the requirements of EU environmental legislation, most notably the Habitats Directive under which a number of fish species are protected.

An important aspect of the ancillary issue is that a complaint was made to the European Commission that the weir in Fermoy prevented the free passage of protected species (Salmon and Lamprey) under the Habitats Directive in a special area of conservation (SAC). The Commission indicated that it would institute infringement proceedings.

This complaint, reference no. 2004/4328 was made anonymously and it is understood was first raised in the minutes of 'Package Meeting' between the Department of Arts Heritage and the Gaeltacht and the European Commission in October 2005'. This complaint does not relate to the issue of the repairs required to the weir.

In April 2006 a reply issued to the European Commission Director General from the Department as the regulatory authority for inland fisheries advising that Fermoy Town Council (now Cork County Council) are the owners of the weir. As a result, the Commission subsequently advised that they would hold off issuing infringement proceedings on foot of proposals by the Council to permanently remedy the ancillary fish passage issue problem and a detailed timetable for completion of works by the Council.

However, it is understood that informal contact has been made recently by the European Commission with the Department of Arts, Heritage and the Gaeltacht seeking an update as regards matters relating to the ancillary matter of fish passage at Fermoy weir.

It is important to reiterate that the repairs required to Fermoy weir are one matter which is entirely for the Local Authority. The role of DCCAIE and IFI relates solely to the ancillary matter and ensuring that whatever works are undertaken by Cork County Council comply with the requirements of the EU Habitats Directive as regards fish passage and to assume any a role in the repair/works issue would be at variance with our regulatory and advisory functions.

There has been ongoing liaison between my Department, IFI and the Council in relation to the permanent solution to the ancillary fish passage issue and the Council's responsibilities therein. IFI's and the Department's role in this matter is entirely regulatory and advisory and specifically includes advising how any works proposed by, and to be undertaken by, the Council can be consistent with fisheries and environmental obligations. Compliance with the EU Habitats Directive is the key issue.

Following a full range of consultation and liaison, Engineering Advisors for the Council and DCCAIE agreed (mid-2014) the essential details of the ancillary fish passage solution (a bypass channel) to meet the regulatory requirements. The Department and IFI have consistently stated that we remain committed to assisting the Council with this element of any proposed works by way of technical advice in line with our regulatory function.

As DCCAE and IFI were satisfied that the by-pass channel proposal meets the requirement of the Habitats Directive, in July 2014 the then Minister of State agreed to vary the Ministerial Order to effect satisfactory fish passage, originally issued in 2009, to reflect the agreed plan to resolve fish passage issues in Fermoy and to satisfy the requirements of the Habitats Directive and instructing the Council, in the context of its works at Fermoy weir to construct a bypass channel 'at the earliest possible time'.

The local IFI Regional Director engaged regularly with the Council since July 2016 in an attempt to progress the project. In the absence of any progress, the IFI Regional Director and Senior Officials of the Department met with the Council on Wednesday 29 November 2017. The Council advised that it is engaged in land acquisition to facilitate the fish passage element. The Council also confirmed that once that is complete the Council intend to start the Part VIII planning process at which stage the project will "come before the elected representatives for approval"

Council Officials also undertook to provide an indicative timeline on the Council's proposals for the permanent works. It was also undertaken to provide an update on the status of the significant processes undertaken previously, which included surveys, public consultation and design of a bypass channel.

In December 2017 the Council issued a request seeking funding assistance from a number of Government Departments and DCCAE replied to the Council's letter on 11 January 2018.

DCCAE's response reiterated the advice given to the Council at the meeting in November 2017, and in all previous engagements, that the Department has no voted funds for such works and that, as the regulatory authority for the fisheries sector, the appropriate course of action is to provide technical advice to infrastructure owners, in this case Cork County Council, in their efforts to ensure compliance of their infrastructure with appropriate legislation, in particular the EU Habitats Directive. The Department and IFI, acting in their regulatory capacity, have consistently offered to support a funding application to the appropriate Government Department.

In that regard, DCCAE and IFI have sought to progress matters with the Council in relation to the ancillary fish passage issue but it is understood that the main issue of repairs/works to the existing weir remains to be progressed by the Council.

In October 2018, the then Minister of State met separately with local public representatives, County Councillor and Council officials and local stakeholders groups. The Minister again outlined the Department's and IFI's regulatory and advisory role in relation to the important EU Habitats Directive element of the Councils proposals.

He was advised by the Council of its commitment to the works, estimated projected costings and an updated timeline. The then Minister of State gave his commitment, with the assistance of local TDs, to support any bid made by or on behalf of the Council for central funding being made to the relevant Government Department.

The recently appointed Minister of State (Sean Canney TD) has followed up on his predecessor's actions and recently wrote to the Minister and Minister of State at the Department of Housing, Planning & Local Government, the Minister for Public Expenditure & Reform, and local TD's who attended the meeting in October. This was done to assist the Council in relation to repairs/works to the weir despite that fact that DCCAE has no role in that regard but also in the aspiration that the ancillary fish passage issue might be addressed in parallel.

Minister Canney has also reiterated DCCAE's and IFI's responsibilities are to advise the Council on how a legally compliant fish passage solution can be incorporated into their works and also, in the context of fisheries and habitats issues, that DCCAE and IFI will continue support any bid the Council makes for central funding to the appropriate Government Department.

**Denis Maher, Principal, Inland Fisheries Division, DCCAE.**

**Dr Greg Forde, Head of Operations, Inland Fisheries Ireland.**