Joint Committee on Public Petitions
Petition No. P00036/18 – “Save Fermoy Weir”

Cork County Council

Opening Statement by Niall Healy, Director of Services, and Kevin Morey, County Engineer

3rd July 2019

Chair, Committee Members, we are pleased to attend this afternoon to discuss the issues relating to Fermoy Weir, and in particular to set out Cork County Council’s commitment to the matter. My name is Niall Healy and I am Director of Services with responsibility for Municipal District Operations and Rural Development. I am joined by my colleague Kevin Morey – Kevin is County Engineer. I will take you through the initial part of this Opening Statement, and will then hand over to Kevin to present the latter part of the Statement.

It is important at the outset to present to you the background to Fermoy Weir, and to outline how matters have evolved over the past 10 years or so.

Background

Starting in December 2009, Fermoy Town Council received Notice under Section 116 of the Fisheries (Consolidation) Act 1959 from the Department of Communications, Energy and Natural Resources (hereafter referred to as DCCAE). The Notice advised of the need for the Town Council to undertake immediate repairs to the fish ladder on the weir in Fermoy in order to reduce the barrier effect of the weir on migratory fish species. Fermoy Town Council engaged with a firm of Consulting Engineers in 2011 to prepare designs for a rock ramp type structure and the reinstatement of the existing fish pass ladder, however agreement was not reached with all parties/stakeholders and the proposed works did not proceed. The Town Council had set aside some limited funding at the time to enable the proposed works to proceed.

Fermoy Weir has proved to be a very contentious issue locally over the past 10 years with many diverse views being offered by local stakeholders in terms of how best to proceed. It is particularly noteworthy that the views of Fermoy Rowing Club differ significantly from the position being adopted by the local Angling Club, DCCAE, & Inland Fisheries Ireland (hereafter referred to as IFI and to whom I’ll refer to later).

Given that agreement was not reached with all parties/stakeholders to proceed with the larger scale works, the Town Council instead went to Part VIII planning stage in December 2012 to carry out the repairs to the existing fish pass ladder only; however during the public consultation process, the IFI lodged a submission to the effect that the proposed works would not be sufficient to meet the requirement of the unhindered passage of migrating fish species in accordance with the relevant Act and Directives. The Elected Members resolved in 2013 to modify the Part VIII proposal to allow temporary repairs to take place while the proposal was reconsidered by the Council. Such temporary repairs were carried out on the fish pass ladder in 2013.
In 2014 the matter progressed further in so far as Fermoy Town Council with the support of its Consulting Engineers prepared drawings for a Fish Bypass Channel and significant structural repairs to the existing weir which would serve as a more permanent solution to the issue. It was estimated that the proposed works would cost in the region of €2.2m (inclusive of VAT), monies which Fermoy Town Council / Cork County Council clearly articulated that it did not have at its disposal. The Council consulted with the DCCAE and IFI in relation to the preliminary drawings and following a number of meetings, agreement in principle was reached in relation to the nature and scope of the proposed works. The matter of funding, however, remained unresolved.

The DCCAE invited Cork County Council to submit a request for Capital Funding for consideration as part of the national budgetary estimates process and this request was submitted by the Council in November 2015. An indicative timeframe for delivery of the works was also discussed should the necessary funding be secured.

In the meantime, the Council committed to pursuing the acquisition of the land required for the construction of the Fish Bypass Channel with the limited financial resources that were available to it. The land acquisition process commenced shortly thereafter and is now substantially complete.

Given that the level of progress in relation to securing capital funding was proving to be particularly challenging and having regard for local concerns in relation to the ever deteriorating state of the weir, which was becoming quite apparent, Cork County Council set out to undertake temporary repair works to the weir in 2016. However, issues around planning compliance, the scope of the works and environmental impacts, proved to be an impediment to these works advancing.

The Council persisted with its efforts to progress the temporary repair works throughout 2017.

During 2017, a series of meetings took place with both the IFI and DCCAE at which Cork County Council questioned the need for, and associated expenditure with, a Fish Bypass Channel particularly having regard to the deteriorating state of the weir. It was becoming ever apparent that IFI & DCCAE were not for turning and their priority was for the unhindered passage of migrating fish species in accordance with the relevant Act and Directives. In this regard, the Council acknowledges and respects the statutory responsibilities that both IFI and DCCAE must have regard to in determining the overall scope of works that are required.

By early 2018 members of the Fermoy Municipal District were growing increasingly frustrated with the lack of any apparent progress on the matter and with the lack of any budgetary commitment from central government to funding for the capital works. They directed the Council Executive’s to issue direct correspondence to a number of relevant Ministers, Government Departments and State Agencies to seek financial assistance as a matter of urgency. The Council made contact with 5 different Government Departments at Ministerial and Secretary General level. These contacts have been outlined in our original submission to the Committee and I do not propose to go through the detail here. There was limited progress made but what did become evident from the feedback received was that the responsibility for the provision of capital funding was proving to be very complex and unclear.
During 2018, in an effort to be proactive and prepared for any funding approval that might be received, the Council set about preparing tender documents for the procurement of a consultant engineering led design team for the project. At this time, the council put forward an offer that should the DCCAE not be in a position to provide full and final assurance regarding the overall capital costs, the Council would be willing to fund 50% of the estimated cost of bringing the project to shovel ready stage (approx €200k inclusive of VAT) on the basis that the remaining 50% of the estimated costs would be funded by the DCCAE. The Council stressed that the works could not progress beyond this point without a commitment to national capital funding support.

A key meeting took place in Fermoy on 16th October 2018. Council Officials, together with members of the Fermoy Municipal District, met with Minister Sean Kyne to explore the best approach to expedite works. Representatives from the DCCAE, IFI and local community stakeholders also attended this meeting. The meeting was followed by direct correspondence from the Council to Minister Bruton on 17th October and 30th November 2018 and the Council awaits a response.

A positive response was received from Minister Eoghan Murphy by way of letter from the Ministers office dated 12 April 2019 wherein the Council was pleased to note, and I quote:

“Under the River Basin Management Plan for Ireland 2018 – 2021 that the Minister launched in April 2018, this department is providing funding to Inland Fisheries Ireland to examine river barriers nationally in the context of their impact on migratory fish species. This will form the basis of a prioritised restoration programme to be implemented during the period 2022 to 2027. There is a possibility that the Fermoy Weir may fit within this long term programme when priorities are agreed.”

SAVE Fermoy Weir

The issue has emerged as a clear priority for the people of Fermoy, particularly the urgent need for repairs to the now badly eroded weir structure. This has been articulated very forcibly by the Elected members of Fermoy Municipal District and other public representatives, as well as the statement issued by SAVE Fermoy Weir in recent weeks. There is a real concern that failure to carry out urgent necessary repairs could result in further significant damage to the already weakened weir structure, thereby resulting in a situation where it may not be possible to safeguard the structure.

Representatives from Fermoy Municipal District and Cork County Council Senior Management met with representatives of SAVE Fermoy Weir on the 13th May 2019. An extensive discussion took place at which both sides openly detailed the challenges that were faced. A meeting note with respect to same has been attached to our original submission.

The meeting noted that any works to the weir are complicated by the following matters:

a. The fact that the weir is a protected structure
b. The statutory consents that are required, combined with the narrow available timeframe for carrying out works in a river of this nature.
Cork County Council clearly stated that it is not in a position to carry out repair works without the necessary consents being in place. Failure by the Council to obtain the necessary consents would leave the Council in a situation whereby it would be potentially exposed to legal action.

At this stage, I will hand over to Kevin to conclude the presentation of the statement.

**Statutory Consents**

As Niall mentioned, there are a range of statutory consents which Cork County Council is obliged to secure in order to carry out any works with respect to the weir. We have received advice from our own internal Planning Department, our archaeologist and the Office of Public Works regarding statutory consents and have been advised that temporary interventions would require the same level of consents as permanent works.

Any weir repair works being carried out by the local authority would require an application to An Bord Pleanala under section 177AE of the Planning and Development Act 2000 (as amended). Our flood projects team has consulted with OPW and advises that any works to the weir – either permanent or temporary – would require both a Section 47 consent and a Section 9 consent under the Arterial Draining Act.

In addition, we would need to consult fully with IFI regarding any in-river works to ensure that any proposals would not be detrimental to fish life, passage and habitats.

We are also advised that, given proximity of the weir to Fermoy Bridge, approval will also be required from Transport Infrastructure Ireland (TII).

**Current Proposals for Permanent Reinstatement**

In August 2018, following an extended period of drought, Cork County Council saw the opportunity to get an updated condition survey and a full topographical survey of the weir carried out. Cork County Council commissioned these surveys and an associated report on repair works at a cost of €24,600.

The report prepared on foot of these surveys set out estimated costs and timelines for rehabilitation of the existing weir as well as for the provision of a new fish bypass in accordance with the requirements of IFI. The report estimated that from the date of appointment of consultants, the process of securing planning and other statutory consents and developing a detailed design and specification would take approximately 18 months.

This timescale would not be materially different if permission was only sought for the weir reinstatement and so it would be prudent to include the proposed bypass in the application process to avoid significant time impacts at a later stage.
Estimated Costings

The cost to bring us to construction tender stage was estimated at c. €300,000 for the weir repair only and c. €400,000 for the weir and fish bypass combined. These figures were inclusive of VAT.

The estimated costs (inclusive of VAT) for the construction stage were as follows:

Repairs to Weir and Fish ladder: €1.34M
Construction of New Fish Bypass: €1.7M

These estimates were provisional and in order to get accurate costs we would need to complete detailed design and go to tender. Construction works could take up to 18 months to completion depending on seasonal restrictions on in-stream works relative to the contract award date.

The nature, scope and extent of these capital works will require funding to be made available by Government at a national level. In October 2018, I wrote to Minister Eoghan Murphy setting out the above estimated costs and seeking support funding initially for consultancy costs to bring the project through statutory consents and detailed design. I also highlighted that the council had no funding source for construction costs. A copy of this letter and supporting documentation has been included in the submission. This letter was referred on to the office of Minister Richard Bruton in the Department of Communications, Climate Action and Environment.

Consultancy Services for Design Works

In recent months, Cork County Council advertised a tender for consultancy services for Fermoy Weir and Fish Bypass. A tender assessment process has taken place and the 30 day appeal window for unsuccessful bidders will end in mid July. The emerging tender cost for statutory consents and detailed design is in the order of €350,000.

You will note that Cork County Council committed to funding 50% of the overall costs associated with the design works on the basis that Government would fund the remaining balance. We are pleased to report that, following further lobbying, further progress has been made in recent weeks with regard to same. Minister Murphy’s office has stated that, and I quote:

“In relation to Fermoy Weir, the funding of the maintenance and repair of Weirs in general, including this Weir, would appear to be a matter for the Office of Public Works and/or Inland Fisheries Ireland and the Minister for Housing, Planning and Local Government has no function in this area and consequently has no specific funding line for such projects.

However, in view of the strategic importance of this project to Cork County Council, on the basis that the appropriate body provide the substantive funding required for the consultancy to bring the project through statutory approval and detailed design and in due course to deliver the substantive project in partnership with Cork County Council, the Minister is prepared to make a contribution in support of the initial consultancy element."
On that basis, the Minister would be prepared to make a once off exceptional payment to Cork County Council from the Local Government Fund in respect of the expenses to be incurred by Cork County Council in performing its functions in terms of social, community and economic development in County Cork in the pursuance of this project.”

This is a significant and positive development and the Council is pleased to report that the Minister has committed to co-funding the design consultancy costs involved. Written confirmation of the sum involved has been requested and is awaited.

**Updated Indicative Timeline**

Based on the foregoing, and upon receipt of confirmation of the necessary co-funding from the Department to the design consultancy costs, the following represents a best case timeframe for implementation of the overall works:

- Summer 2019 – design consultant appointed and design works commence (18 months)
- End Q4 2020 – design works completed, planning approval secured
- Q1 2021 – tender process commences for procurement of a contractor
- Q2-Q4 2021 – works commence and are underway.

It should be noted that the above is an indicative timeline and is, inter alia, dependent on a range of factors almost all of which are outside of the direct control of Cork County Council. These dependencies include:

- Securing the necessary capital funding of c €3.5m from central government
- No unforeseen or unanticipated issues arising with respect to the planning process (An Bord Pleanala), environmental impact assessment, statutory consents, on the ground construction works etc

**Temporary Boom Proposal**

Cork County Council has not seen any detailed technical proposal for the installation of a temporary boom arrangement. However from what has been outlined to date we would not expect that a boom would achieve the objective of raising levels upstream. This would require a full-depth barrier which would need to be anchored in some way. Such a barrier would obstruct fish and significantly alter flows with unpredictable impacts on the weir. This would also require statutory consents as detailed above. This was conveyed by Niall and myself at a meeting held with stakeholders on 13th May, 2019.

**Council Response to SAVE Fermoy Weir Statement and Committee on Public Petitions**

In response to the SAVE the Fermoy Weir statement and proceedings arising from Committee on Public Petitions the Council requested that a number of points and clarifications be noted, including the fact that:

- There was no technical input into the Save Fermoy Weir statement submitted.
- There was no technical person present at their meeting with this committee
• There was no ecological input into the statement submitted.

• There was no ecological person present at the meeting of this committee

• There was no technical assessment of the feasibility of the temporary boom proposal

There were a number of inaccuracies also. For example:

• It is not correct to state that no repair works were carried out to the weir in recent times. Temporary repairs were carried out on the fish pass ladder in 2013. The Council again sought to undertake further temporary repair works throughout 2016 and 2017; however issues around planning compliance, the scope of the works and environmental impacts, proved to be an impediment to these works advancing.

• The layout drawings that were developed were initial indicative drawings only and were not appropriate to share publicly as they may have been misleading as to the final design solution and location of same. The Council is happy to share these indicative drawings with the Committee on Public Petitions on the understanding that these will be treated as indicative only and not for publication. The Council is seeking to appoint Consulting Engineers in order that detailed design layout drawings can be developed and it would be premature and ill advised to share any drawings publicly until this process is complete.

• It is not correct to state that a request for a meeting with Senior Council Management was not facilitated. A request was made for a meeting and a time and date was offered which did not suit, an alternative date was then proposed and the meeting took place on this date i.e. 13th May, 2019.

**Conclusion**

To conclude, we would like to reassure the Committee that Cork County Council is fully committed, funding permitted, to the refurbishment of the Fermoy weir and the actions taken by the Council outlined in this statement clearly demonstrate this.

The Council fully supports and encourages any complementary efforts that are being made to lobby for political support in securing the necessary capital funding that will enable the works to proceed in an expeditious manner.

Thank you and we look forward to our discussion.