



An Roinn Cumarsáide,  
Fuinnimh agus Acmhainní Náúúrtha  
Baile Átha Cliath 2.

Department of Communications,  
Energy and Natural Resources,  
Dublin 2.

11 January 2010

Mr. Conor Ryan  
Political Correspondent  
Irish Examiner  
Leinster House  
Dublin 2

**Re: FOI Request Reference: FOI 2009/42**

Dear Mr. Ryan

I wish to refer further to the request you made under the Freedom of Information Acts 1997 and 2003 for records held by this Department. Your request, as revised by letter of 27 November 2009, seeks access to correspondence from July 2006 between the Department, Fermoy Town Council and Fermoy Rowing Club in relation to proposed works to the weir at Fermoy and any associated or relevant briefing or correspondence.

The Department's files on this matter were examined in order to identify relevant material from the period July 2006 to 27 November 2009 and third party consents were secured to the release of the material where necessary.

I have made a final decision to grant your request and a copy of the records along with a schedule detailing the records is attached. If you have any queries in relation to the attached please contact me on 01 6782276.

I should advise you that since your request was made further developments have taken place in relation to the proposed works to Fermoy weir. In this regard, I wish to draw your attention to the attached press-release that issued on the 21 December 2009.

I wish to advise you that you may appeal this decision. In the event that you need to make such an appeal, you can do so by writing to the Freedom of Information Unit, Department of Communications, Energy and Natural Resources, Elm House, Earlsvale Road, Dublin 2. You must make your appeal within 4 weeks of the date of this letter but the making of a later appeal may be permitted in certain circumstances. The review will involve a complete reconsideration of the matter by a more senior member of staff of the Department.

Please note that an application fee for an appeal is currently €75.00. A reduced fee of €25.00 applies if you are covered by a Medical Card.

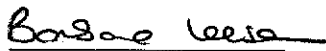
If claiming a reduced application fee, the request must be accompanied by

- The Medical Card registration number
- The name of the issuing Health Board
- Your consent to the verification of these details with that Health Board

Payment should be made by way of bank draft, money postal order or personal cheque made payable to the "Department of Communications, Energy and Natural Resources".

On receipt of the fee you will be advised when you can expect a decision on your appeal and the contact details of the person handling the appeal.

Yours sincerely



Barbara Leeson  
Inland Fisheries Division  
Ph: 01 6782276

Volume ①

FOI Request Reference: Request ID: 2009/42

Schedule of Records: Summary of Decision Making

Requesting correspondence between the Department, Fermoy Town Council and Fermoy Rowing Club in relation to proposed works to the weir at Fermoy and any associated or relevant briefing or correspondence.

| Record No. | Brief Description & Date of Record   | File Ref.      | No. of Pages | Relevant facts | Findings/ conclusions (Public Interest Considerations, (If applicable)) | Grant/refuse/ part-grant | Basis of Refusal: Section of Act | Record edited/Identify deletions |
|------------|--|----------------|--------------|----------------|---|--------------------------|----------------------------------|----------------------------------|
| 1          | Letter of notice under section 116 of the Fisheries (Consolidation) Act 1959 to Fermoy Town Council from Minister of State dated 27 July 2006. | C17/3/53 Vol I | 2.           |                |   | Grant                    |                                  |                                  |
| 2          | Letter acknowledging receipt of notice under section 116 to Minister from Fermoy Town Council dated 8 August 2006.                             | C17/3/53 Vol I | 2.           |                |   | Grant                    |                                  |                                  |
| 3          | Letter clarifying issues pertaining to the section 116 notice issued to Fermoy Town Council from the Department dated 22 August 2006.          | C17/3/53 Vol I | 1.           |                |   | Grant                    |                                  |                                  |
| 4          | Letter outlining the impact of proposed works to the weir on rowing from Irish Amateur Rowing Union dated 22 August 2006.                      | C17/3/53 Vol I | 1.           |                |   | Grant                    |                                  |                                  |
| 5          | Letter of response to Irish Amateur Rowing Union from the Department dated 11 September 2006.  | C17/3/53 Vol I | 2.           |                |   | Grant                    |                                  |                                  |
| 6          | Steering note and briefing material for Minister of State's meeting with Fermoy Rowing Club dated 12 October 2006.                             | C17/3/53 Vol I | 6.           |                |   | Grant                    |                                  |                                  |

|    |  |                   |    |  |  |       |  |  |
|----|--|-------------------|----|--|--|-------|--|--|
| 7. | Joint submission by Fermoy Town Council & Cork County Council regarding Notice under section 116 of the Fisheries (Consolidation) Act 1959 to Minister of State dated 17 October 2006. | C17/3/53<br>Vol I | 1. |  |  | Grant |  |  |
|----|--|-------------------|----|--|--|-------|--|--|



27 July 2006

Ms. Rose Carroll  
Town Clerk  
Fermoy Town Council  
Fermoy Court House  
Fermoy  
CO Cork

**Notice under section 116 of the Fisheries (Consolidation) Act 1959 in relation to  
Fermoy Weir**

Dear Ms. Carroll

In the exercise of the powers conferred on me by section 116 of the Fisheries (Consolidation) Act 1959 (Copy attached) I hereby give notice to Fermoy Town Council to execute the lowering of 80 metres of that part of the Fermoy weir upstream from the town bridge to the maximum extent consistent with retaining sufficient depth for rowing and to install a rock ramp pass in the lowered weir to enable free passage of all migratory species by 8 September 2006.

You will be aware that the EU Commission has received a complaint claiming that the Fermoy Weir is acting as a barrier to migrating salmon and lamprey, which are fish species benefiting from site protection under the Habitats Directive. While the Department of the Environment, Heritage and Local Government has responsibility for transposing and implementing the Habitats Directive, my Department has responsibility for the protections and conservation of the fisheries resources. At a recent meeting with the Commission to discuss this matter, the Commission advised that it would be meeting in September to decide if infringement proceedings should issue against Ireland in this matter. If successful, such proceedings could result in Ireland having to pay very substantial fines.

My Department's Engineering Division has carried out an examination of this matter and in summary found that: -

- The River Blackwater is one of Ireland's most important salmon rivers.
- The Fermoy weir, which is 2.4 metres high, significantly delays the free and uninterrupted migration of salmon and constitutes an effective barrier to the passage of lampreys and allis shad.
- The weir exposes the upstream migration of the common eel to predation risk.

I enclose a copy of the report on this matter for your information.

The Engineering Division has recommended that approximately 80 metres of that part of the Fermoy weir upstream from the town bridge be lowered to the maximum extent consistent with retaining sufficient depth for rowing activities and that a rock ramp fish pass be installed in the lowered weir to enable the free passage of all migratory species. This recommendation is fully supported by the Southern Regional Fisheries Board.

It would be appreciated if you would acknowledge receipt of this letter and provide a timetable for completion of the above mentioned works. All correspondence in this matter should be addressed to Ms. Deirdre DeBrun, Inland Fisheries, Marine Leisure and Research Division.

Yours sincerely,



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John Browne, T.D.,  
Minister for Communications, Marine and Natural Resources.

CC : Ms. Riona NiFhlanghaile, Department of the Environment, Heritage and Local Government

0/1

2

14 Jembre de Ben Baiter  
12/8/06

Frank,

Please find enclosed letter from rose Carroll regarding Fermoy Weir.

Michelle  
Minister of States office

COMHAIRLE BAILE MAINSTIR FEARMUIGHE

FERMOY TOWN COUNCIL

Minister for Communications  
Marine & Natural Resources  
Dublin 2.



Courthouse Road,  
Fermoy, Co. Cork

Tel: 025-31155 / 31201

Fax: 025-82970

e-mail:

[fermoytowncouncil@eircom.net](mailto:fermoytowncouncil@eircom.net)

Re: Notice under section 116 of the Fisheries (Consolidation) Act 1959 in relation to Fermoy Weir

Dear Minister,

I acknowledge receipt of Notice submitted on 28<sup>th</sup> July, 2006 with regard to the above and will be in further contact in due course.

Yours faithfully,

Rose Carroll

Town Clerk

8<sup>th</sup> August, 2006.

FAO MINISTER OF STATE

For Observations \_\_\_\_\_

For Action \_\_\_\_\_

For Follow Up \_\_\_\_\_

For Information \_\_\_\_\_

C.C. \_\_\_\_\_

Date 10.08.2006 \_\_\_\_\_

FORWARDED BY :  
NEILL GUHA  
MINISTER'S OFFICE

Office of the Minister  
Dept. of Communications, Marine  
And Natural Resources

10 AUG 2006

Oifig an Aire  
An Roinn Cumarsáide, Mara  
Agus Achairní Nádúrtha

An Roinn Cumarsáide,  
Mara agus Acmhainní Nádurtha  
Baile Átha Cliath 2.

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3  
Department of Communications,  
Marine and Natural Resources  
Dublin 2.

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Ref: C 17/3/53

22 August 2006

Mr. Michael Cremin  
Acting Town Manger  
Fermoy Town Council  
Fermoy Courthouse  
Fermoy  
Co Cork

Dear Mr. Cremin

I refer to your telephone conversation on 21 August 2006 with Ms. Deirdre de Brún of this office in relation to the Fermoy Weir. As Ms. de Brún explained the letter instructing the Council to carry out the works to the weir was issued as a result of the threat of infringement proceedings by the EU Commission for non compliance with the Habitats Directive.

I wish to advise that the Department is currently awaiting a report from its Engineering Division, which will provide cost estimates and a draft timetable for the carrying out of the required works to the weir. It is intended, once this has been received, to arrange a meeting between the Department and the Town Council in order to agree the best way to proceed with this matter.

I will be in touch in due course to make the necessary arrangements for the meeting.

Yours sincerely

Barbara Leeson  
Inland Fisheries, Marine Leisure and Research Division

Mr Frank Sheridan, 14/6/9

Ms. de Bruin  
B de Bruin  
14/6/06  
Sam,  
I presume this letter is intended  
for Cecil. Can you bring to  
his attention please.  
Thanks,  
SC  
25/8/06

cc Martha Brennan  
Janet Farrell



For Observations  
For Action  
For Follow up  
For Information

C.C.  
Date

Barbara,  
Pl draft reply as  
per John O'Keeffe's  
e-mail - rep to them  
Thanks  
6/9

**IRISH AMATEUR ROWING UNION est 1899**  
Sport HQ Joyce Way Parkwest Business Park Nangor Rd Dublin12  
Tel 01 6251130/6251112 fax 01 6251112

Assistant Secretary  
Dept of Communications, Marine, Natural Resources  
29 - 31 Adelaide Rd  
Dublin 1

22 Aug 2006

**Re: Impact of Clondulane and Fermoy Weirs on Fisheries of the Munster  
Blackwater**

Dear Sir,

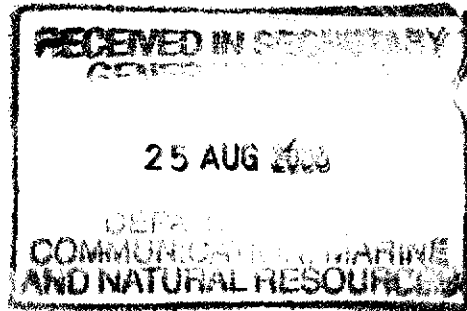
I refer to the above report which was prepared by Mr John O Keeffe, Divisional Engineer of the Dept of Communications, Marine and Natural Resources who are recommending that Clondulane weir be removed completely and that 80 meters of Fermoy weir be lowered.

If this recommendation were to be implemented it would have a serious effect on the sport of rowing in Fermoy which incidentally is one of the oldest established clubs in the country. In page 16 of the report Mr O Keeffe agrees that the change to Fermoy weir will have a significant impact on the rowing club activities as residual water depths are unlikely to be sufficient.

On behalf of both Fermoy RC and IARU which is the governing body of the sport of rowing in Ireland we wish to object in the strongest manner to this recommendation from the Dept of Marine and would request a meeting with you as a matter of urgency to discuss the matter further.

Yours Sincerely,

M Corcoran ceo



An Roinn Cumarsáide,  
Mara agus Acmhainní Nádurtha  
Baile Átha Cliath 2.



Department of Communications,  
Marine and Natural Resources  
Dublin 2.

5

11 September 2006

Mr. M Corcoran  
Irish Amateur Rowing Union  
Sport HQ  
Joyce Way  
Parkwest Business Park  
Nangor Road  
Dublin 12

**Re: Impact of Clondulane and Fermoy Weirs on Fisheries of the Munster Blackwater**

Dear Mr. Corcoran

I wish to refer to your letter of 22 August 2006 in relation to the above matter.

In the first instance, I should explain that the situation regarding the Fermoy Weir has arisen due to a warning from the EU Commission that it would institute infringement proceedings against Ireland for non-compliance with the Habitats Directive (Directive 92/43/EEC) because it has been claimed that the Fermoy weir is impeding the free passage of migrating salmon and lamprey, which are both protected species under the Habitats Directive. As a result of this warning, the Department's engineers were requested to examine the weir and report on the situation.

In summary the report found that:-

- The River Blackwater is one of Ireland's most important salmon rivers.
- There are two 2.4 metre high weirs in the Lower Blackwater at Clondulane and Fermoy that significantly delay the free and uninterrupted migration of salmon and constitute an effective barrier to the passage of lampreys and allis shad.
- The weirs expose the upstream migration of the common eel to predation risk.
- The combined weir impoundment, circa 8.5 kilometres in length, constitutes a significant loss of productive habitat for salmon, lamprey and trout.
- Both weirs are no longer used for the purpose for which they were constructed.

The report recognises that complete removal of the weir would have a significant impact on rowing club activities as residual water depths are unlikely to be sufficient in that scenario. In recognition of the constraints imposed by the need to maintain a depth of water for rowing the report recommends: *"To facilitate passage of all migratory species it is recommended that the section of weir upstream of the bridge for a length of about 80 metres be lowered to the maximum extent consistent with retaining sufficient depth for rowing activities"* (Section 18.1 page 17).

The depth to be retained in the river upstream of Fermoy can be discussed with Fermoy Town Council, the weir owners along with issues relating to rowing that may arise from any weir lowering such as rock outcrops, shallows and launching facilities. I understand that there are already rock outcrop and shallow areas in the existing situation. I am advised by our engineers that there is no reason why these and any other obstacles that may arise following weir lowering cannot be removed to the benefit of the rowing club.

I trust that this clarifies the position but if you still feel that a meeting is necessary, I will be happy to arrange one.

Yours sincerely



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Martin Brennan  
Assistant Secretary

*J*  
9  
10  
06

Mr Sheridan,  
Runai Aire Stait.

Re: Meeting between Minister of State and Fermoy Rowing Club.

Please see attached Steering Note and Briefing Material for Minister's meeting with the Fermoy Rowing Club on Thursday 12 October 2006.

*D. de Brún*  
Deirdre de Brún,  
Inland Fisheries, Marine Leisure and Research Division,  
11 October 2006.  
cc Secretary General

Roac Pass part in

no need to *send* the *copy*  
BIB *when*

Mr Kennedy — Kilcenny

Steering Note for Minister of State  
Meeting with Fermoy Rowing Club  
Re: Fermoy Weir  
12 October 2006

Weir Removal  
Water Low - NO  
Water over the weir

FISH PASS

**Background**

- Ireland must carry out works at the Fermoy weir to allow the free passage of migrating fish or face infringement proceedings under the Habitats Directive and possibly substantial fines.

**Recommendation of DCMNR Engineers**

- Approximately 80 metres of that part of the Fermoy weir upstream from the town bridge be lowered to the **maximum extent consistent with retaining sufficient depth for rowing activities** and that a rock ramp fish pass be installed in the lowered weir to enable the free passage of all migratory species.

**Concerns of Fermoy Rowing Club**

- The Rowing Club are concerned that these works will prevent them from rowing on the River Blackwater in this area.

**Clubs concerns can be addressed**

- DCMNR's engineer's report on Fermoy weir recognizes that the **complete** removal of the weir would have a significant impact on rowing club activities as residual water depths are unlikely to be sufficient in that scenario. In recognition of the constraints imposed by the need to maintain a depth of water for rowing the report recommends: *that the section of weir upstream of the bridge for a length of about 80 metres be lowered to the maximum extent consistent with retaining sufficient depth for rowing activities*" (Section 18.1 page 17).
- The depth to be retained in the river upstream of Fermoy will have to be discussed with the rowing club and with Fermoy Town Council.
- Issues relating to rowing that may arise from any weir lowering such as rock outcrops; shallows and launching facilities will have to be addressed. There are rock outcrop and shallow areas in the existing situation. There is no reason why obstacles that may arise following weir lowering cannot be removed to the benefit of the rowing club. Likewise it is open to the Town Council/rowing club to install improved launching facilities to take account of a lowered water level.

3/1/06 KK.

**Briefing Material for Minister of State  
Meeting with Fermoy Rowing Club  
Re: Fermoy Weir  
12 October 2006**

Costings

**Background**

The EU Commission has received a complaint (No. 2004/4328) which contends that the Fermoy Weir on the River Blackwater is acting as a barrier to migrating salmon and lamprey, which are fish species benefiting from site protection under the Habitats Directive. While the Department of the Environment, Heritage and Local Government has responsibility for transposing and implementing the Habitats Directive, DCMNR has responsibility for the protections and conservation of the fisheries resources. While no formal correspondence has been received from the Commission, the issue was raised at package meetings in October 2005 and July 2006. At the most recent meeting DCMNR was advised that the Commission will meet in the Autumn to decide if infringement proceedings should issue against Ireland in relation to this matter. It was indicated that the Commission might not issue proceedings if the Department writes to it setting out proposals to remedy the problem and providing a timetable for the completion of works.

If the European Commission successfully institutes infringement proceedings against Ireland for non-compliance with the Habitats Directive, Ireland would be subject to substantial fines.

The matter has also be the subject of correspondence and discussions between the Southern Regional Fisheries Board and Fermoy Town Council, owners of the weir, because of the adverse impact of the weir on migrating species.

**Report by DCMNR Engineering Section**

Mr. John O'Keeffe of the Department's Engineering Division was requested to examine this issue and he submitted a report in June 2006.

In summary Mr. O'Keeffe found that: -

- The River Blackwater is one of Ireland's most important salmon rivers.
- There are two 2.4 metre high weirs in the Lower Blackwater at Clondulane and Fermoy that significantly delay the free and uninterrupted migration of salmon and constitute an effective barrier to the passage of lampreys and allis shad.
- The weirs expose the upstream migration of the common eel to predation risk.
- The combined weir impoundment, circa 8.5 kilometres in length, constitutes a significant loss of productive habitat for salmon, lamprey and trout.

- Both weirs are no longer used for the purpose that they were constructed.

Mr. O'Keeffe recommended that: -

- Approximately 80 metres of that part of the Fermoy weir upstream from the town bridge be lowered to the **maximum extent consistent with retaining sufficient depth for rowing activities** and that a rock ramp fish pass be installed in the lowered weir to enable the free passage of all migratory species.
- The Clondulane weir be removed completely to allow the free passage of all migratory fish and to restore the 5 km impounded reach to full fishery productivity.

### **Fermoy Weir**

This is an exceptionally long and high weir built diagonally from the left bank upstream of a large road bridge to power mills sited on what is now an island far downstream of the bridge. It no longer functions as a source of power and it appears that the main argument for its continued existence is to impound water to accommodate a rowing club. The weir is also considered a local amenity in the area.

Extended dry weather in previous years has resulted in low water levels and resulted in large number of salmon being unable to negotiate the weir. The salmon have suffered stress and injury in their continued unsuccessful efforts to get over the weir. Repeated jumping on the weir aprons resulted in much loss of ova from female fish with a resultant loss of juvenile salmon to the river. This Southern Regional Fisheries Board (SRFB) has advised that there has not been a problem in practice since 2003/04 because the levels of water has been such that the salmon can get past the weir without difficulty. However, this situation could change this autumn giving rise to further complaints. In addition to the difficulties caused by the weir itself, the problems for the salmon are compounded by the fact that the fish pass is broken.

There are two fish passes in the weir both situated at the upper section of the weir. The main fish pass is a pool and traverse wall type set at a diagonal to the weir spillway. Due to the fish pass being set at a diagonal and to the lack of a protecting upper sidewall to the lower pools the flow out of the fish pass is caught in turbulence created by the weir discharge coming from side on. The second fish pass is a groyne type set about 45 degrees to the weir. It has a poor attractive flow and is not easily located by salmon. Often when it is found by the fish they have difficulty running it due to exhaustion from attempting the other pass or from their earlier efforts ascending the Clondulane weir.

Moreover, the fish pass is unsuitable for the passage of lamprey, which is also a protected species under the Habitats Directive although it is understood that the area in question had not been designated as a special area of conservation for lamprey as yet.

To facilitate the passage of all migratory species it was recommended that remedial works identified by Mr. O'Keeffe be carried out as soon as possible

It had previously been agreed that Fermoy Town Council would raise the height of the weir at the O'Neill Crowley Quay side. However, the Town Councils Consultant Engineer subsequently advised that the structure was not strong enough to allow the weir to be raised as proposed. It is understood that the Council was also of the view that the costs of the remedial works were prohibitive.

### **Observations of the Southern Regional Fisheries Board on Mr. O'Keeffe's Report**

Mr. O'Keeffe's report was copied to the SRFB for observations. The Board has welcomed the report and agrees with the recommendations set out therein. The Board has urged that the recommendations are acted upon as soon as possible but states that "given the window of opportunity to do these works in 2006 is fast closing, it is recommended that the existing fish pass on the Fermoy weir be repaired before September 2006 and that arrangements be put in place to implement the full set of recommendations during 2007".

### **Action taken by Minister of State**

In order to avoid the initiation of infringement proceedings by the EU Commission and in the interests of conserving and protecting our national salmon resource, the Minister exercised his powers under the Fisheries (Consolidation) Act 1959 to issue a legally binding notice to the owners or occupiers of the weir that are impeding the free passage or migration of all fish in a salmon river to carry out the alterations necessary to allow for the free passage of fish. Under the legislation it is an offence to fail to comply with a Ministerial notice. The Minister is also authorised to carry out alterations to dams and to recover the costs from the owners or occupiers as a simple contract debt where an owner or occupier fails to carry out the works in compliance with a Ministerial direction.

### **Rowing Club's concerns**

DCMNR's engineer's report on Fermoy weir recognizes that complete removal of the weir would have a significant impact on rowing club activities as residual water depths are unlikely to be sufficient in that scenario. In recognition of the constraints imposed by the need to maintain a depth of water for rowing the report recommends: "*To facilitate passage of all migratory species it is recommended that the section of weir upstream of the bridge for a length of about 80 metres be lowered to the maximum extent consistent with retaining sufficient depth for rowing activities*" (Section 18.1 page 17).

The depth to be retained in the river upstream of Fermoy will have to be discussed with the rowing club and with Fermoy Town Council. Issues relating to rowing that may arise from any weir lowering such as rock outcrops; shallows and launching facilities will have to be addressed. There are rock outcrop and shallow areas in the existing situation. There is no reason why these and any other obstacles that may arise following weir lowering

cannot be removed to the benefit of the rowing club. Likewise it is open to the Town Council/rowing club to install improved launching facilities to take account of a lowered water level.

DCMNR's engineers assured Mr Steve Donnellan, committee member of Fermoy Rowing Club (on 18/08/06) that the necessary measures could be undertaken to ensure the rowing would be safeguarded. That same assurance can be given to the Irish Amateur Rowing Union.

**Inland Fisheries, Marine Leisure and research Division,  
10 October 2006.**

Submission by <sup>(7)</sup>  
Fermoy T.C. +  
Cork CC to  
Minister of  
State.  
17/10

**Re: Fermoy Weir – Notice under Section 116 of Fisheries  
(Consolidation) Act 1959**

- Notice issued to Fermoy Town Council on 27<sup>th</sup> July, 2006 by Mr John Browne, T.D., Minister of State for Communications Marine and Natural Resources under Section 116 of Fisheries (Consolidation) Act 1959 to execute the lowering of 80metres of that part of Fermoy Weir upstream from the town bridge to the maximum extent consistent with retaining sufficient depth for rowing and to install a rock ramp pass in the lowered weir to enable free passage of al migratory species by 8<sup>th</sup> September 2006.
- Fermoy Town Council acknowledge receipt of this notification on the 8<sup>th</sup> August, 2006.
- Following phone call to the relevant Department further correspondence was received on the 22<sup>nd</sup> August, 2006 from Barbara Leeson, Inland Fisheries, Marine Leisure and Research Division advising that the Department is currently awaiting a report from its Engineering Division, which will provide cost estimates and a draft timetable following which a meeting will be arranged with the Department and the Town Council in order to agree the best way to proceed with this matter.
- Representations received from Irish Amateur Rowing Union on 22<sup>nd</sup> August, 2006 expressing their concerns that in their opinion should proposed works go ahead it would have significant impact on rowing club activities.
- Further representations received from the Munster Branch I.A.R.U. on 7<sup>th</sup> September, 2006 again outlining same issue.

**The Town Council are the occupiers of the Fermoy Weir on the river Blackwater. We were given this Weir in 1988 by a local Solicitor - Eddie Carroll.**

**Main concerns which Fermoy Town Council have with regard to these proposed works are as follows:-**

- As the downstream weir area could result in a stagnant pool this has the potential to create a negative visual impact.
- Impact of activities on Rowing Club should proposed works go ahead
- Financing of proposed Project.
- Any possible claims which may arise against the Council for consequential damages to any property or person arising out of the execution of the proposed works for which the Minister has no liability if he carried out such work.

Section 116 of Fisheries (Consolidation) Act 1959 ensures the Minister would not be liable from any consequential loss or damages to any property or person arising out of the execution of the works by him which would not have been inserted in the Act but for possible claims.

FOI Request Reference: Request ID: 2009/42

Schedule of Records: Summary of Decision Making

Requesting correspondence between the Department, Fermoy Town Council and Fermoy Rowing Club in relation to proposed works to the weir at Fermoy and any associated or relevant briefing or correspondence.

| Record No. | Brief Description & Date of Record   | File Ref.       | No. of Pages | Relevant facts | Findings/ conclusions (Public Interest Considerations, (If applicable)) | Grant/refuse/ part-grant | Basis of Refusal: Section of Act | Record edited/Identify deletions |
|------------|--|-----------------|--------------|----------------|---|--------------------------|----------------------------------|----------------------------------|
| 1          | Letter regarding funding and appointment of consultants from Fermoy Town Council to the Department dated 14 November 2006.   | C17/3/53 Vol II | 1.           |                |   | Grant                    |                                  |                                  |
| 2          | Letter of response clarifying the issues regarding funding and appointment of consultants from the Department to Fermoy Town Council dated 22 November 2006.                 | C17/3/53 Vol II | 1.           |                |   | Grant                    |                                  |                                  |
| 3          | Email in relation to funding for required works to the weir from the Department to Fermoy Town Council dated 7 December 2006.  | C17/3/53 Vol II | 1.           |                |   | Grant                    |                                  |                                  |
| 4          | Letter to National Parks and Wildlife Service dated 14 December 2006 from Fermoy Town Council (copied to the Department) seeking funding for the required works to the weir. | C17/3/53 Vol II | 3.           |                |   | Grant                    |                                  |                                  |
| 5          | Letter dated 28 February 2007 seeking an update on the position regarding appointment of consultants and completion of works from the  | C17/3/53 Vol II | 1.           |                |   | Grant                    |                                  |                                  |

|    |   |                    |    |  |  |  |       |  |
|----|---|--------------------|----|--|--|--|-------|--|
|    | Department to Fermoy Town Council.  |                    |    |  |  |  |       |  |
| 6  | Letter of response from National Parks and Wildlife Services to Fermoy Council clarifying the position regarding the funding dated 15 December 2006 (copied to Department).   | C17/3/53<br>Vol II | 2. |  |  |  | Grant |  |
| 7  | Letter from Fermoy Town Council dated 9 March seeking a response to a request to the Minister of State for funding.   | C17/3/53<br>Vol II | 1. |  |  |  | Grant |  |
| 8  | Letter to Fermoy Town Council dated 8 May 2007 clarifying the Departments position in relation to funding for the required work to the weir and seeking an update in relation to compliance with the section 116 direction. | C17/3/53<br>Vol II | 2. |  |  |  | Grant |  |
| 9  | Note of telephone conversation between the Department and Fermoy Town Council dated 30 May 2007.  | C17/3/53<br>Vol II | 1. |  |  |  | Grant |  |
| 10 | Letter from Fermoy Town Council dated 10 August to Minister for the Environment, Heritage and Local Government (copied to Department) seeking funding for works to the weir.  | C17/3/53<br>Vol II | 3  |  |  |  | Grant |  |
| 11 | Email correspondence between Mr. Flan Groarke and Mr. John O'Keefe dated 10 August 2007 & 20 August 2007 respectively.  | C17/3/53<br>Vol II | 1  |  |  |  | Grant |  |
| 12 | Note of meeting between Department and Fermoy Town Council on 16 August 2007.   | C17/3/53<br>Vol II | 2  |  |  |  | Grant |  |

|    |   |                    |    |  |  |              |  |  |
|----|---|--------------------|----|--|--|--------------|--|--|
| 13 | Email from Mr. John O'Keefe to Ms. Deirdre DeBrun regarding revised design for the rock ramp fish pass at Fernoy dated 7 July 2008. | C17/3/53<br>Vol II | 2. |  |  | <b>Grant</b> |  |  |
| 14 | Map showing revised rock ramp fish pass design to address the concerns by OPW and rowing club prepared by Mr. John O'Keefe.         | C17/3/53<br>Vol II |    |  |  | <b>Grant</b> |  |  |

(1)

COMHAIRLE BAILE MHAÍNISTÍR FHEAR MAÍ  
FERMOY TOWN COUNCIL



Courthouse Road,  
Fermoy, Co. Cork  
Tel: 025-31155 / 31201  
Fax: 025-82970  
e-mail:  
[fermoytowncouncil@eircom.net](mailto:fermoytowncouncil@eircom.net)

Ms Barbara Leeson  
Inland Fisheries, Marine Leisure & Research Division  
Department of Communications, Marine & Natural Resources  
Leeson Lane  
Dublin 2.

✓ BT 15/11/06

**Re: Fermoy Weir**

A Chara,

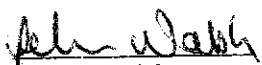
I refer to the above and to notice under Section 116 of the Fisheries Act, 1959 served on Fermoy Town Council.

In order to progress the matter further I would be grateful for the following: -

- a) Confirmation that work required will be fully funded by your Department.
- b) Guidance in relation to the appointment of consultants and confirmation that the cost of same will be borne by the Department.

I look forward to hearing from you. If you have any queries please contact the undersigned.

Is mise le meas,

  
Helen Walsh  
A/Town Clerk  
14<sup>th</sup> November 2006

An Roinn Cumarsáide,  
Mara agus Acmhainní Nádurtha  
Baile Átha Cliath 2.



2  
Department of Communications,  
Marine and Natural Resources  
Dublin 2.

Our Ref: 17/3/53

22 November 2006

Ms Helen Walsh  
A/Town Clerk  
Fermoy Town Council  
Courthouse Road  
Fermoy  
Co Cork

Re: Fermoy Weir

Dear Ms. Walsh

I wish to refer to your letter dated 14 November 2006 in relation to the notice that issued under Section 116 of the Fisheries (Consolidation) Act 1959 in relation to the Fermoy Weir.

In response to the two issues raised in your correspondence I would advise as follows:

- (a) In accordance with section 116 of the Fisheries (Consolidation) Act 1959, Fermoy Town Council as the occupiers of the weir must arrange for necessary works to be completed. This would include funding of the necessary works and any associated reports. This Department will, of course, support any case made by the Town Council to its parent Department for additional funding to carry out the required works.
- (b) Again, the appointment of consultants to examine this issue is a matter for the Town Council. The Department's Engineering Division will provide observations on the proposed terms of reference for the consultancy and will be available to meet the consultants as part of their deliberations. The cost of the consultancy will have to be borne by the Town Council.

I trust that this clarifies the position and I look forward to hearing from you in due course in relation to the draft terms of reference for the appointment of the consultants.

Yours sincerely

Barbara Leeson  
Inland Fisheries, Marine Leisure and Research Division

**Barbara Leeson**

---

**From:** Barbara Leeson  
**Sent:** 07 December 2006 10:43  
**To:** 'helen.walsh@corkcoco.ie'  
**Cc:** Deirdre DeBrun; 'jim\_kelly@environ.ie'  
**Subject:** Fermoy Weir

Good morning Helen

Our telephone conversation yesterday morning refers.

As I explained the Department of Communications, Marine and Natural Resources (DCMNR) has no budget line from which to provide funding in respect of the required works to the Fermoy Weir.

As you will be aware the works to the weir are to be carried out in order to avoid the initiation of infringement proceedings by the European Commission for non-compliance with the Habitats Directive. DCMNR recently met with the National Parks and Wildlife Services (NPWS) Section of the Department of the Environment, Heritage and Local Government (DOEHLG) to discuss matters relating to the Fermoy weir. NPWS advised that unless a detailed timetable for works can be produced, the Commission will most likely proceed with the infringement proceedings. This will result in substantial fines being imposed on Ireland.

DCMNR explained to the NPWS that while we are not in a position to provide any funding to Fermoy Town Council, we would be fully supportive of any case made to DOEHLG. NPWS advised that it would also be prepared to fully support such a case and advised that Fermoy Town Council should refer any documentation relating to the request for funding to its offices for support. In this regard you should copy any request for funding to Mr. Jim Kelly, National Parks and Wildlife Services, 7 Ely Place, Dublin 2.

Regards

Barbara

**Barbara Leeson**  
**Inland Fisheries, Marine Leisure and Research Division**  
**Department of Communications, Marine and Natural Resources**  
**Leeson Lane**  
**Dublin 2**

**Ph:** 00 353 1 678 2276  
**Fax:** 00 353 1 678 2539  
**E-mail:** [barbara.leeson@dcmnr.gov.ie](mailto:barbara.leeson@dcmnr.gov.ie)  
**Web:** [www.dcmnr.ie](http://www.dcmnr.ie)

COMHAIRLE BAILE MHAÍNISTÍR FHEAR MAÍ  
FERMOY TOWN COUNCIL



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e-mail:  
[fermoytowncouncil@eircom.net](mailto:fermoytowncouncil@eircom.net)

C.C  
Barbara Leeson  
31 15/12/06

Mr. Jim Kelly,  
Department of the Environment, Heritage & Local Government,  
National Parks & Wildlife Service,  
7, Ely Place,  
Dublin 2.

14<sup>th</sup>, December, 2006.

Re: Fermoy Weir.

Dear Jim,

I have been advised by Barbara Leeson from the Inland Fisheries, Marine Leisure and Research Division of the Department of Communications, Marine & Natural Resources that you have had discussions in relation to the problems relating to Fermoy Weir.

As you are now aware Fermoy Town Council was served with a Notice under Section 116 of the Fisheries (Consolidation) Act, 1959. This Notice instructed Fermoy Town Council to lower 80 metres of the Fermoy Weir upstream from the Town Bridge to the maximum extent consistent with retaining sufficient depth for rowing and to install a rock ramp pass in the lowered weir to enable free passage of all migratory species. This order was to be complied with by 8<sup>th</sup> September, 2006 and we were subsequently advised that failure to comply could result in Ireland having to pay very substantial fines to Europe. The Notice was accompanied by a report prepared by the Department

outlining the difficulties that Fermoy Weir poses to migrating fish and also outlined the works required to rectify this problem.

Fermoy Town Council took ownership of the Weir in good faith in 1988 when the Weir was given to us by local Solicitor, Eddie Carroll and at no time was it envisaged that such problems as are apparent now, could present themselves. Whilst the Weir is an asset in many respects to the River and the People of Fermoy, we also acknowledge that its presence is causing considerable difficulty for the safe passage of migratory fish and every effort must be made to rectify the problem and provide a satisfactory solution for all parties concerned.

The Irish Amateur Rowing Union and the Munster and Fermoy Rowing Unions have made significant objections to the lowering of the Fermoy Weir and are very concerned about the future of rowing in Fermoy if the works were to proceed. I am enclosing copies of these objections.

Minister Browne met with deputations from Fermoy Rowing Club and Fermoy Town County Council/Cork County Council in Dublin. Minister Browne subsequently met with all interested parties on 2<sup>nd</sup> November in Fermoy. Indications were given by Minister Browne that the works would be funded by Government. However I have been now been advised by the Inland Fisheries, Marine Leisure and Research Division of the Department of Communications, Marine & Natural Resources that no funding is available from that Department for the carrying out of the required works as the Weir is in the ownership of Fermoy Town Council. At the meeting in Fermoy it was agreed that the Town Council would engage a consultant to carry out a full evaluation of all aspects of the Weir and make detailed recommendations on compliance with the Notice Served under the Fisheries Act, 1959.

I wrote to Barbara Leeson in the Department of Communications, Marine and Natural Resources in November requesting confirmation regarding the funding of the required works and was been advised that any application for funding would have to be made to our parent Department, the Department of the Environment, Heritage & Local Government.

Whilst the urgency of the works is very much appreciated, Fermoy Town Council is not in a position financially to fund the works required. The required works could cost between €250,000 and €400,000 and I am now requesting your Department to give consideration to the full funding of this project. We will, of course, give our full co-operation and assistance to your Department. In particular, I urgently need your commitment to funding the costs of commissioning the consultants Report.

I am enclosing the following documentation for your information:

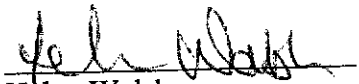
- 1) Notice to Fermoy Town Council under Section 116 of the Fisheries (Consolidation) Act, 1959.
- 2) Report prepared by John O'Keeffe of the Department of Communications, Marine & Natural Resources.
- 3) Letter to Barbara Leeson of the Inland Fisheries, Marine Leisure and Research Division of the Department of Communications, Marine &

Natural Resources seeking confirmation of funding for the works required.

- 4) Letter from Barbara Leeson outlining the Departments position regarding funding.
- 5) Letters of objection received from the Irish Amateur Rowing Club on behalf of the Munster & Fermoy Rowing Clubs.

If you have any queries please contact the undersigned.

Yours sincerely,



Helen Walsh.  
Town Clerk.

C.C. ~~Barbara Leeson, Department of Communications, Marine & Natural Resources.~~

~~Martin Brennan, Assistant Secretary, Department of Communications, Marine & Natural Resources.~~

An Roinn Cumarsáide,  
Mara agus Acmhainní Nádurtha  
Baile Átha Cliath 2.

---



(5)  
Department of Communications,  
Marine and Natural Resources  
Dublin 2.

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28 February 2007

Ms. Helen Walsh  
Town Clerk  
Fermoy Town Council  
Courthouse Road  
Fermoy  
Co Cork

**Re: Fermoy Weir**

Dear Ms. Walsh

I wish to refer to previous correspondence in relation to the Fermoy Weir and the direction which issued to Fermoy Town Council under section 116 of the Fisheries Act 1959.

In previous correspondence you indicated that the Town Council were to appoint consultants to consider this matter.

As previously advised this Department's Engineering Division is available if required to comment on any proposed terms of reference for the appointment of consultants and will also be available to meet with the consultants as part of their deliberations.

It would be appreciated if you would advise of the position with regard to the appointment of consultants and the completion of the required works to the weir.

Yours sincerely

Barbara Leeson  
Inland Fisheries Marine Leisure and Research Division



Regrettably, there is no scope for the required funding to be sourced from the National Parks and Wildlife Service budget

Yours sincerely

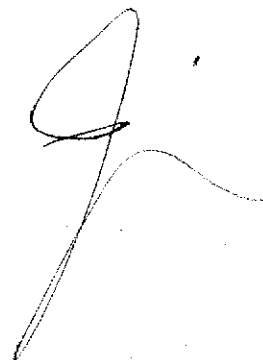
  
Jim Kelly  
Assistant Principal

cc Ms Barbara Leeson ✓  
Department of Communications, Marine  
and natural Resources  
Leeson Lane  
Dublin 2

DA 21/1/06

Barbara

THIS PHD HELP  
CLARIFY MY ROLE



## COMHAIRLE BAILE MHAÍNISTÍR FHEAR MAÍ

## FERMOY TOWN COUNCIL

Babara Leeson  
Inland Fisheries Marine  
Leisure & Research Division  
Department of Communications  
Marine and Natural Resources  
Dublin 2.



Courthouse Road,  
Fermoy, Co. Cork

Tel: 025-31155 / 31201

Fax: 025-82970

e-mail:

[fermoytowncouncil@eircom.net](mailto:fermoytowncouncil@eircom.net)

9<sup>th</sup> March, 2007. *SW 15/3/07.*

**Re: Fermoy Weir**

Dear Ms Leeson,

I wrote to Minister John Brown on the 15<sup>th</sup> December, 2006 regarding funding for the works required on the Weir in Fermoy. In this letter I also outlined the urgency of the matter and Fermoy Town Council's desire to have the issue resolved as soon as possible. To date I have not received any communication from Minister Browne in relation to same.

Should our application for funding for the project and its associated costs be successful Fermoy Town Council would be happy to avail of the services of your Engineering Division in appointing Consultants for the required work.

I will be in touch as soon as the Minister has confirmed the position in relation to same.

Yours sincerely,

Helen Walsh  
A/Town Clerk

Tel: [025] 31155

Fax: [025] 82970

[helen.walsh@corkcoco](mailto:helen.walsh@corkcoco).

An Roinn Cumarsáide,  
Mara agus Acmhainní Nádurtha  
Baile Átha Cliath 2.



Department of Communications,  
Marine and Natural Resources  
Dublin 2.

8

Ref: R004927.2

§ May 2007

Ms. Helen Walsh  
Fermoy Town Council  
Courthouse Road  
Fermoy  
Co Cork

Dear Ms. Walsh

I wish to refer further to your letter dated 26 February 2007 to Minister of State Browne in relation to the Fermoy Weir. Firstly, I would like to apologise for the delay in responding to your correspondence.

The position in relation to this matter is as follows. In July 2006 a direction issued, under section 116 of the Fisheries (Consolidation) Act 1959, to Fermoy Town Council requiring the Council to execute the lowering of 80 metres of that part of the Fermoy Weir upstream from the town bridge to the maximum extent consistent with retaining sufficient depth for rowing and to install a rock ramp pass in the lowered weir to enable free passage of all migratory species. This work was to have been completed by 8 September 2006.

This direction issued on foot of a complaint received by the EU Commission claiming that the Fermoy Weir is acting as a barrier to migrating salmon and lamprey, which are fish species benefiting from site protection under the Habitats Directive. Failure to address this matter could lead to the initiation by the EU Commission of infringement proceedings against Ireland which could result in Ireland having to pay very substantial fines.

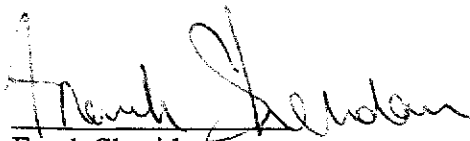
As previously advised, this Department has no budget line from which to fund these works. Fermoy Town Council as the owners and occupiers of the weir must arrange for the necessary works to be completed. This would include the funding of the works and any associated reports. While failure by the Council to undertake the works would cause the Minister to execute his powers under section 116(5)(b) of the Fisheries (Consolidation) Act 1959 to have the works completed, the cost would be recovered in accordance with section 116(6) of the Act from Fermoy Town Council.

I understand that in December 2006 you wrote to the National Parks and Wildlife Services (NPWS) Section of the Department of the Environment, Heritage and Local Government seeking funding for the required works to the weir. I am advised that the NPWS responded to your request on the 15 December and informed the Council that while it was not in a position to provide the funding directly to the Council it would give whatever support it could in confirming to your funding authorities the need for the work and the potential consequences of not doing it. It also recommended that you should proceed with scoping and costing the work involved and that you should seek funding to carry out the work through your normal funding channels.

In previous correspondence you indicated that the Town Council were to appoint consultants to consider matters relating to the weir. This Department has indicated that its engineering services are available if required to comment on any proposed terms of reference for the appointment of consultants and will also be available to meet the consultants as part of their deliberations.

The present position is that the direction issued under section 116 of the Fisheries (Consolidation) Act 1959 still stands and the Town Council should endeavour to put the necessary arrangements in place to comply with the direction as soon as possible. It would be appreciated if you would provide to the undersigned as soon as possible an update on the Town Council's position, including action taken by the Council to date and a timetable for the completion of the works.

Yours sincerely

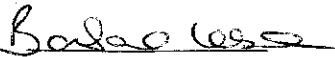
A handwritten signature in black ink, appearing to read 'Frank Sheridan', written over a horizontal line.

Frank Sheridan

Inland Fisheries, Marine Leisure and Research Division

Note of telephone conversation

I spoke to Ms. Margaret Egan, Fermoy Town Council who advised that Ms. Helen Walsh who is dealing with the Fermoy Weir is currently on annual leave. I informed Ms. Egan that the Department had written to Ms. Walsh on 8 May 2007 outlining the position in relation to the funding of the works to the weir. I advised Ms. Egan that representatives from IFMRD and DCMNR's Engineering Division are available to meet the Town Council to discuss the issues surrounding the weir and the Minister's direction to complete remedial works. Ms. Egan undertook to examine the file on the matter, consult with colleagues and revert on the proposed meeting.



Barbara Leeson  
Inland Fisheries, Marine Research Division  
30 May 2007

Comhairle Baile Mhainistir Fhear Mai  
Oifig an Chomhairle, Mhainistir Fhear Mai  
FERMOY TOWN COUNCIL  
COURTHOUSE ROAD, FERMOY  
Tel: 025-31155 / 31201, Fax: 025 82970  
e-mail: fermoytowncouncil@eircom.net



Rose Carroll  
Town Clerk

*Deirdre de B  
ID 3/8/07  
Copy letter  
have today sent to  
Minister Gormley,  
Regards  
John Walsh*

**With Compliments**

# COMHAIRLE BAILE MHAÍNISTÍR FHEAR MAÍ

## FERMOY TOWN COUNCIL

John Gormley, T.D,  
Minister for the Environment, Heritage  
& Local Government,  
Custom House,  
Dublin 1.



**Courthouse Road,  
Fermoy, Co. Cork**

*Tel: 025-31155 / 31201*

*Fax: 025-82970*

*e-mail:*

[fermoytowncouncil@eircom.net](mailto:fermoytowncouncil@eircom.net)

10<sup>th</sup> August, 2007.

Re: Fermoy Weir.

Dear Minister,

The purpose of this letter is to request funding from your Department to carry out works on the Fermoy Weir. Below is a brief history of same which will give you an insight into the difficulties now being faced by Fermoy Town Council.

Fermoy Town Council was served with a Notice under Section 116 of the Fisheries (Consolidation) Act, 1959 which instructed Fermoy Town Council to lower 80 metres of the Fermoy Weir upstream from the Town Bridge to the maximum extent consistent with retaining sufficient depth for rowing and to install a rock ramp pass in the lowered weir to enable free passage of all migratory species. This order was to be complied with by 8<sup>th</sup> September, 2006 and we were subsequently advised that failure to comply could result in Ireland having to pay very substantial fines to Europe. The Notice was accompanied by a report prepared by the Department outlining the difficulties that Fermoy Weir poses to migrating fish and also outlined the works required to rectify this problem.

Fermoy Town Council took ownership of the Weir in good faith in 1988 when the Weir was given to us by local Solicitor, Eddie Carroll and at no time was it envisaged that such problems as are apparent now, could present themselves. Whilst the Weir is an asset in many respects to the River and the People of Fermoy, we also acknowledge that its presence is causing considerable difficulty for the safe passage of migratory fish and every effort must be made to rectify the problem and provide a satisfactory solution for all parties concerned.

The then Minister for Communications, Marine & Natural Resources, Minister John Browne met with deputations from Fermoy Rowing Club and Fermoy Town County

The then Minister for Communications, Marine & Natural Resources, Minister John Browne met with deputations from Fermoy Rowing Club and Fermoy Town County Council/Cork County Council early in 2006. Indications were given by Minister Browne at that time and indeed at a public meeting in Fermoy that all the necessary works would be fully funded by Government. However we have subsequently been advised by the Inland Fisheries, Marine Leisure and Research Division of the Department of Communications, Marine & Natural Resources that no funding is available from that Department for the carrying out of the required works – any application for funding would have to be made to our parent Department, the Department of the Environment, Heritage & Local Government.


Whilst the urgency of the works is very much appreciated, Fermoy Town Council is not in a position financially to fund the works required. The required works will cost in the region of €1 million and I am now requesting your Department to provide the relevant funding for this project.

On the 9<sup>th</sup> August, 2007 officials from Fermoy Town Council met with John O'Keeffe, Deirdre De Brun & Barbara Leeson of the Inland Fisheries Marine Leisure & Research Division. We were advised at this meeting that the possibility of fines from the EU Commission were becoming a very real prospect with fines of up to €20million likely to be incurred.

Fermoy Town Council have given a commitment to at least kick start the process in relation to the engagement of consultants to carry out the necessary studies etc. However, due to severe financial restrictions we will only be in a position to prepare specifications for the studies required by the consultants and seek "expressions of interest" for same. We will not be in a position to proceed to tender stage without the necessary finances. Fermoy Town Council is very aware of the seriousness of the situation and extremely anxious to resolve this matter.

I look forward to a favourable response at your convenience.

Yours sincerely,

  
Helen Walsh.  
A/Town Clerk.

C.C Deirdre De Brun, Inland Fisheries Marine Leisure & Research Division of the  
Department of Communications Marine and Natural Resources.

Mr. Jim Kelly, National Parks & Wildlife Services, Department of the Environment,  
Heritage & Local Government.

11

**Barbara Leeson**

---

**From:** John O Keeffe  
**Sent:** 20 August 2007 11:09  
**To:** 'Flannan Groarke'  
**Cc:** Deirdre DeBrun; Barbara Leeson  
**Subject:** RE: Fermoy weir fish passage

Flannan

It has come to my attention that OPW have already mathematically modelled and surveyed the Fermoy stretch. It might be better therefore to ask OPW or their consultants to carry out the necessary modelling of possible impacts arising from the proposed fish passage alterations to the weir. It would be hard to justify the likely expenditure if all we are doing is replicating what is already in place and can be carried out presumably at much less cost. A meeting with OPW might sort out the issue quickly.

Regards

John O Keeffe

-----Original Message-----

**From:** Flannan Groarke [mailto:Flannan.Groarke@CorkCoCo.ie]  
**Sent:** 10 August 2007 15:27  
**To:** John O Keeffe  
**Subject:**

Re;Fermoy Weir.  
John,this is an initial stab at ad,

Expressions of interest are sought by Fermoy Town Council from Consulting Engineers for a study on the effects of alterations to Weir in Fermoy.

The study outcome should include a hydrographic survey of the River Bed to Castlehyde House and a computer model which can mimic lowering of weir by various amounts.

The study and proposals are need to comply with an EU Habitats Directive which requires the free passage of protected fish species,

Flannan.groarke@corkcoco.ie

**Note of Meeting with Fermoy Town Council to discuss matters relating to Fermoy Weir.**

In attendance:-

Deirdre de Brún )  
Barbara Leeson )  
John O'Keeffe )

DCENR

Frank Cronin )  
Flan Groarke )  
Helen Walsh )  
Keith Jones )

Fermoy Town Council

Date:

16 August 2007

The meeting was held at the request of the Department in an effort to advance matters in relation to the direction which issued last year to Fermoy Town Council (FTC) in accordance with section 116 of the Fisheries (Consolidation) Act 1959 directing that approximately 80 meters of that part of the Fermoy weir upstream from the town bridge be lowered to the maximum extent consistent with retaining sufficient depth for rowing activities and that a rock ramp fish pass be installed in the lowered weir to enable the free passage of all migratory species.

At the outset DCENR outlined the background to the direction to FTC which was on foot of a complaint to the EU Commission contending that the weir is acting as a barrier to the migration of salmon and lamprey and that consequently Ireland is in breach of the Habitats Directive. Under the Habitats Directive, Member States are required to put in place measures to maintain or to restore natural habitats and wild species at a favourable conservation status and to introduce robust protection for those habitats and species. It was explained that failure to remedy this would result in the initiation of infringement proceedings by the EU Commission against Ireland which could result in significant penalties and daily fines which could exceed €20 million. Accordingly, it is imperative that work on the weir is advanced as soon as possible.

FTC outlined the importance of the weir as a local amenity and its value to the long established rowing club in the area. It was pointed out that it may prove difficult to secure support for the works to be undertaken and that the present Town Council will require independent analysis before it will be convinced of the level of works to be undertaken.

DCENR advised that the removal of the weir in its entirety would be the optimum solution but in recognition of its amenity value and the rowing club's reliance on it, remedial works were recommended instead. It was agreed that it will be important to carefully manage the public relations associated with this project and to engage with the rowing club and local community early on in the process. DCENR undertook to engage with the local rowing club in an effort to alleviate their concerns. The message must be conveyed that the works to the weir will not curtail the rowing club at all in terms of its activities. It was suggested that consideration be given to the holding of a public meeting.

FTC advised that there are concerns that lowering the weir by the levels proposed by the Department would affect the speed of flow of the river and negatively impact the rowing clubs activities. FTC suggested the independent consultants be retained to scope the works and to produce a computer model of 1 km of the river which would visually demonstrate the impact of the proposed works on the weir. As part of their deliberations the consultants should also be instructed to examine options for lowering the weir by varying lengths.

DCENR advised that there should be no difficulties in assessing the impact on the speed of flow which can be done by mathematical calculations and pointed out the run of salmon would have similar requirements to the rowing club in terms of depth and velocity. The Department wishes to ensure that there is a balance between the cost and effectiveness of the works whilst retaining sufficient facilities for the rowing club.

FTC pointed out that the OPW flood relief scheme is due to commence in Fermoy in January and is likely to cause a lot of disruption in the town. It was suggested that the works to the weir be delayed until after this project has been completed. DCENR offered to discuss with OPW the possibility of coinciding the works to the weir with the flood relief scheme in an effort to keep disruption to a minimum.

FTC advised that it has no prospect whatsoever of securing the funding required to complete the works. It was agreed that DCENR would write to the Departments of Finance and Environment supporting the Town Council's case for additional funding to complete the works and highlighting the seriousness of non-compliance with the EU Commission requirements and the levels of penalties and fines likely to be imposed.

All parties were in agreement that action needed to be taken as soon as possible in order to put events in train to comply with the EU Commission requirements. It was agreed that arrangements would be put in place to:

- engage consultants to scope the works and produce the necessary visual models;
- brief the rowing club in advance of the initiation of the tender process;
- liaison with OPW in terms of work to be undertaken and the possibility of co-ordinating it with the flood relief scheme;
- contact with DOE and DOF in efforts to secure funding of the work.



Barbara Leeson

Inland Fisheries and Marine Research Division

21 August 2007

Barb Leeson

From: Deirdre DeBrun  
Sent: 08 July 2008 09:39  
To: Frank Sheridan; Barbara Leeson; Marion Foley  
Subject: FW: Fermoy fish pass

FYI

-----Original Message-----

From: O'Keeffe, Johnny (Fisheries) [mailto:Johnny.O'Keeffe@agriculture.gov.ie]  
Sent: 07 July 2008 17:33  
To: Deirdre DeBrun  
Cc: alancullagh@eircom.ie  
Subject: Fermoy fish pass

Deirdre

I have not heard further from Cork Co Council or Fermoy Town Council regarding the report on the proposed fish pass at Fermoy Weir. I am not aware that they have completed any study and at this stage it looks very likely that they are only heel dragging. I have had a meeting with engineers from OPW, Mungret as they had contacted me with concerns that the rock ramp fish pass as shown in my report might interfere with flood discharge through the bridge. You are already aware that the Fermoy Rowing Club has raised concerns about the effect of lowering the weir on their rowing activities. In the light of the above I have looked again at the rock ramp design and I am now submitting a revised design that should satisfy both OPW's flood concerns and those of the rowing club and obviate the need for a study by the town council which I regard as a waste of public money. I am forwarding you hard copies of the preliminary fish pass revised design by post.

What is now proposed is a 62 metre long and 36 metre wide rock ramp fish pass commencing at a point about 16 metres upstream of the Bridge. This fish pass will extend through the present weir as far upstream as the upper limit of the existing diagonal weir. Because part of the fish pass will extend beyond the weir it will require the construction of a 46 metre long partition wall in the channel upstream of the weir. However this will not extend upstream beyond the point where the existing weir meets the river bank.

The weir level in the 36 metre wide fish pass will be lowered by 300mm (1 foot). Otherwise the existing weir crest level remains as is with the exception of a section of the weir's downstream end which is about 100-150mm lower than the main crest level. This is at present creating an undesirable attraction flow for fish but they cannot ascend at that point. It is proposed to raise the crest level to normal weir level over this section to prevent this section acting as a counter attraction for fish.

The proposed drop in weir crest height over the 36 metre wide rock ramp pass (60 metres of diagonal weir length) will result in an actual water level drop at the weir of about 150mm (6 inches) in drought flow conditions. In normal summer flow conditions the effect of the fish pass on water levels will be negligible. This should alleviate the concerns of the rowing club.

Fish Pass Design

The fish pass is to be a rock ramp of gradient 1 in 38 with internal pools of 5 metre length and 150mm drop between pools. This fish pass is designed to provide an attraction flow for salmon to quickly locate it and ascend without difficulty or delay. In lower flows it should enable all migratory fish in the Blackwater river including trout, lamprey, shad and young eels

to ascend because of its very low gradient and low turbulence. For the purposes of avoiding flood charge complications it will extend in part above the existing weir but this has the advantage of making it easier for fish to locate the fish pass entrance as it will not extend below the weir.

To advance this project I suggest you copy OPW and Fermoy Town Council with the preliminary drawings of the revised proposal for their views. I have already discussed the revised proposal with Alan Cullagh, Development Officer, Southern Regional Fisheries Board. He has suggested that funding should be sought from the new salmon licence fund. He is also in touch with OPW regarding the possibility of OPW engineers constructing the fish pass as they have already constructed the Lacken Weir rock ramp fish pass project. I have not been able to complete an estimate of cost as yet and I will be on annual leave from today until 6 August. I have asked our design office to finalise the estimate and will have it on my return.

Regards

John O Keeffe

Department of Agriculture, Fisheries and Food

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An Roinn Talmhaíochta, Iascaigh agus Bia

Tá an t-eolais san ríomhphost seo, agus in aon ceangláin leis, faoi phribhléid agus faoi rún agus le h-agmaigh an seolaí amháin. D'fhéadfadh ábhar an seoladh seo bheith faoi phribhléid profisiúnta nó dlíthiúil. Mura tusa an seolaí a bhí beartaithe leis an ríomhphost seo a fháil, tá cosc air, nó aon chuid de, a úsáid, a chóipeál, nó a scaoileadh. Má tháinig sé chugat de bharr dearmad, téigh i dteagmháil leis an seoltóir agus scríos an t-ábhar ó do ríomhaire le do thoil.



Department of  
**Agriculture,  
Fisheries and Food**  
An Roinn  
**Talmhaíochta,  
Iascaigh agus Bia**

*Deirdre de Brún*  
Deirdre de Brún  
Inland Fisheries Division  
Department of Communications, Energy and Natural Resources  
29 -31 Adelaide Road  
Dublin 2

9 July 2008

Deirdre,

Please find enclosed five copies of a preliminary proposal of a rock ramp fish pass for the River Blackwater at Fermoy, Co Cork as promised in John O Keeffe's email of the 7 July.

*John O'Keefe*

*Map on inside  
cover to be  
copied  
(pass by engineer  
in person later)*

Barry Mc Donald M.Eng. M.I.E.I.

FOI Request Reference: Request ID: 2009/42

Schedule of Records: Summary of Decision Making

Requesting correspondence between the Department, Fermoy Town Council and Fermoy Rowing Club in relation to proposed works to the weir at Fermoy and any associated or relevant briefing or correspondence.

| Record No. | Brief Description & Date of Record  | File Ref.           | No. of Pages | Relevant facts | Findings/ conclusions (Public Interest Considerations, (If applicable)) | Grant/refuse/ part-grant | Basis of Refusal: Section of Act   | Record edited/Identify deletions |
|------------|---|---------------------|--------------|----------------|---|--------------------------|--|----------------------------------|
| 1          | Letter from Department to Fermoy Town Council dated 15 August 2008 regarding revised design for rock ramp fish pass.                                      | C17/3/53<br>Vol III | 2            |                |   | Grant                    |  |                                  |
| 2          | Letter from Department to Fermoy Rowing Club dated 15 August 2008 regarding revised design for rock ramp fish pass.                                       | C17/3/53<br>Vol III | 2            |                |   | Grant                    |  |                                  |
| 3          | Email on the estimated cost for the construction of the fish pass from Mr. John O' Keeffe Department of Agriculture Fisheries and Food to the Department. | C17/3/53<br>Vol III | 1            |                |   | Part Grant               | Parts of document have been deleted as they are withheld under section 27 of the Freedom of Information Act 1997 |                                  |
| 4          | Emails between Fermoy Town Council and Department dated 5 September 2008 in relation to revised proposal for fish pass.                                   | C17/3/53<br>Vol III | 1            |                |   | Grant                    |  |                                  |

|    |   |                     |   |  |  |  |       |  |  |
|----|---|---------------------|---|--|--|--|-------|--|--|
| 5  | Emails between Department and Mr. John O' Keeffe dated 5 September 2008 and 9 September 2008 respectively.  | C17/3/53<br>Vol III | 2 |  |  |  | Grant |  |  |
| 6  | Report of meeting of 2 October 2008 with Fermoy Town Council regarding completion of remedial works to the weir.  | C17/3/53<br>Vol III | 3 |  |  |  | Grant |  |  |
| 7  | Report of meeting of 21 October 2008 with Fermoy Town Council Executive regarding various issues relating to the proposed works to the weir.  | C17/3/53<br>Vol III | 4 |  |  |  | Grant |  |  |
| 8  | Email dated 23 October 2008 from the Department to Fermoy Town Council requesting them to furnish details of a proposed public consultation process.  | C17/3/53<br>Vol III | 1 |  |  |  | Grant |  |  |
| 9  | Email dated 23 October 2008 from Department to Fermoy Rowing Club requesting the rowing club's engineer to meet with Mr. John O' Keeffe in advance of the proposed public consultation process. Copy of report of meeting with Fermoy Town Council of 2 October 2008 is attached. | C17/3/53<br>Vol III | 4 |  |  |  | Grant |  |  |
| 10 | Email from Rowing Club dated 23 October 2008 confirming that a meeting will be scheduled between engineering advisors.  | C17/3/53<br>Vol III | 2 |  |  |  | Grant |  |  |
| 11 | Email from Department to Fermoy Town Council dated 23 October 2008 requesting information regarding the status of the weir as a protected structure.  | C17/3/53<br>Vol III | 1 |  |  |  | Grant |  |  |

|    |  |                     |   |  |  |  |       |  |  |
|----|--|---------------------|---|--|--|--|-------|--|--|
| 12 | Email from Department to Fermoy Rowing Club dated 24 October 2008 providing a report of meeting between the Department and members of the Rowing Club on 22 October 2008.. | C17/3/53<br>Vol III | 3 |  |  |  | Grant |  |  |
| 13 | Letter and enclosure regarding the status of the weir from Fermoy Town Council to the Department dated 23 October 2008   | C17/3/53<br>Vol III | 3 |  |  |  | Grant |  |  |
| 14 | Email from Department to Fermoy Town Council dated 28 October 2008 concerning public consultation.   | C17/3/53<br>Vol III | 1 |  |  |  | Grant |  |  |
| 15 | Emails between Fermoy Town Council and Department dated 23, 28 and 30 October 2008 respectively.   | C17/3/53<br>Vol III | 1 |  |  |  | Grant |  |  |



An Roinn Cumarsáide,  
Fuinnimh agus Acmhainní Náúúrtha  
Baile Átha Cliath 2.

Department of Communications,  
Energy and Natural Resources,  
Dublin 2.

15 August 2008

Mr. Ray Owens  
Town Clerk  
Fermoy Town Council  
Courthouse Road  
Fermoy  
Co Cork

**Re: Fermoy Weir**

Dear Mr. Owens

I wish to refer to previous correspondence and discussions regarding remedial works required to the Fermoy Weir in order to ensure compliance with the Habitats Directive. I am now writing to update you in relation to the present position regarding this matter.

As you will be aware this issue arose in the first place because a complaint was made to the European Commission's Directorate General for the Environment which contends that salmon can not pass the Fermoy weir and are being injured in their attempts to migrate for spawning purposes. The Habitats Directive regulates certain environmental matters and imposes stringent measures for the protection of protected species and special areas of conservation. Salmon and lamprey are protected species and the River Blackwater is in a special area of conservation. In view of this, and under the possibility that the European Commission would issue infringement proceedings against Ireland, the then Minister of State requested the Department's Engineering Division to investigate the matter. On foot of the engineers report, a direction issued under section 116 of the Fisheries (Consolidation) Act 1959 requiring the Fermoy Town Council to take the measures necessary to allow the passage of migratory fish subject to retaining sufficient depth of water for the Fermoy Rowing Club to continue with its activities.

The Department is now considering the attached proposals for the works to be undertaken to the weir and is in discussions regarding same with OPW personnel. The attached design was developed to ensure that sufficient depth is retained to facilitate the activities of the rowing club whilst taking account of OPW requirements in relation to their drainage scheme. A description of the revised design is set out in Appendix I to this letter.

I will keep you updated of the outcome of discussions between the Department and OPW in relation to this matter. In the meantime, should you have any observations in relation to the revised proposals you might let me know as soon as possible.

Yours sincerely

Deirdre de Brún  
Inland Fisheries Division

**Appendix 1**  
**Fermoy Weir**  
Revised design

What is now proposed is a 62 metre long and 36 metre wide rock ramp fish pass commencing at a point about 16 metres upstream of the Bridge. This fish pass will extend through the present weir as far upstream as the upper limit of the existing diagonal weir. Because part of the fish pass will extend beyond the weir it will require the construction of a 46 metre long partition wall in the channel upstream of the weir. However this will not extend upstream beyond the point where the existing weir meets the river bank.

The weir level in the 36 metre wide fish pass will be lowered by 300mm (1 foot). Otherwise the existing weir crest level remains as is with the exception of a section of the weir's downstream end which is about 100-150mm lower than the main crest level. This is at present creating an undesirable attraction flow for fish but they cannot ascend at that point. It is proposed to raise the crest level to normal weir level over this section to prevent this section acting as a counter attraction for fish.

The proposed drop in weir crest height over the 36 metre wide rock ramp pass (60 metres of diagonal weir length) will result in an actual water level drop at the weir of about 150mm (6 inches) in drought flow conditions. In normal summer flow conditions the effect of the fish pass on water levels will be negligible. This should alleviate the concerns of the rowing club.

Fish Pass Design

The fish pass is to be a rock ramp of gradient 1 in 38 with internal pools of 5 metre length and 150mm drop between pools. This fish pass is designed to provide an attraction flow for salmon to quickly locate it and ascend without difficulty or delay. In lower flows it should enable all migratory fish in the Blackwater river including trout, lamprey, shad and young eels to ascend because of its very low gradient and low turbulence. For the purposes of avoiding flood discharge complications it will extend in part above the existing weir but this has the advantage of making it easier for fish to locate the fish pass entrance as it will not extend below the weir.



An Roinn Cumarsáide,  
Fuinnimh agus Acmhainní Náúúrtha  
Baile Átha Cliath 2.

2

Department of Communications,  
Energy and Natural Resources,  
Dublin 2.

15 August 2008

Mr. Paul Kavanagh  
Chairman  
Fermoy Rowing Club  
Balmace  
Fermoy  
Co Cork

**Re: Fermoy Weir**

Dear Mr. Kavanagh

I am writing to update you in relation to the present position regarding remedial works required to the Fermoy Weir in order to ensure compliance with the Habitats Directive.

As you will be aware this issue arose in the first place because a complaint was made to the European Commission's Directorate General for the Environment which contends that salmon can not pass the Fermoy weir and are being injured in their attempts to migrate for spawning purposes. The Habitats Directive regulates certain environmental matters and imposes stringent measures for the protection of protected species and special areas of conservation. Salmon and lamprey are protected species and the River Blackwater is in a special area of conservation. In view of this, and under the possibility that the European Commission would issue infringement proceedings against Ireland, the then Minister of State requested the Department's Engineering Division to investigate the matter. On foot of the engineers report, a direction issued under section 116 of the Fisheries (Consolidation) Act 1959 requiring the Fermoy Town Council to take the measures necessary to allow the passage of migratory fish subject to retaining sufficient depth of water for the Fermoy Rowing Club to continue with its activities.

A direction also issued to the owners of the Clondulane Weir directing that the weir be removed in its entirety. The reason that a direction to remove the Fermoy Weir did not issue is due to the social and recreational value of the weir, and specifically the presence of the rowing club in the area.

The Department is now considering the attached proposals for the works to be undertaken to the weir and is in discussions regarding same with OPW personnel. The attached design was developed to ensure that sufficient depth is retained to facilitate the activities of the rowing club whilst taking account of OPW requirements in relation to their drainage scheme. A description of the revised design is set out in Appendix I to this letter.

Should you have any observations in relation to the revised proposals you might let me know as soon as possible.

Yours sincerely

Deirdre de Brún  
Inland Fisheries Division

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Barbara Leeson

From: O'Keeffe, Johnny (Fisheries) [Johnny.O'Keeffe@agriculture.gov.ie]  
Sent: 21 August 2008 16:31  
To: Barbara Leeson  
Subject: Proposed Fermoy weir fish pass

Barbara

The estimated cost for the construction of the 62m by 36m rock ramp type fish pass at Fermoy weir is [REDACTED]. This figure includes a sum of [REDACTED] for the raising of part of the weir crest downstream of the bridge. I have based the estimate on the assumption that the works will be incorporated into an OPW contract for the flood protection scheme thereby saving on establishment and overhead costs. If the fish pass construction is separated from the flood relief scheme it would be advisable to add 20% extra to the cost estimate.

Regards

John O'Keeffe  
Divisional Engineer, DAFF

Department of Agriculture, Fisheries and Food

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An Roinn Talmhaíochta, Iascaigh agus Bia

Tá an t-eolais san ríomhphost seo, agus in aon ceangláin leis, faoi phribhléid agus faoi rún agus le h-agaigh an seolaí amháin. D'fhéadfadh ábhar an seoladh seo bheith faoi phribhléid profisiúnta nó dlíthiúil. Mura tusa an seolaí a bhí beartaithe leis an ríomhphost seo a fháil, tá cosc air, nó aon chuid de, a úsáid, a chóipeál, nó a scaoileadh. Má tháinig sé chugat de bharr dearmad, téigh i dteagmháil leis an seoltóir agus scríos an t-ábhar ó do ríomhaire le do thoil.

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**Barbara Leeson**

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**From:** Deirdre DeBrun  
**Sent:** 05 September 2008 14:01  
**To:** Barbara Leeson; Frank Sheridan  
**Subject:** FW: Fermoy Weir

FYI

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**From:** Ray Owens [mailto:Ray.Owens@CorkCoCo.ie]  
**Sent:** 05 September 2008 13:28  
**To:** Deirdre DeBrun  
**Subject:** RE: Fermoy Weir

Dear Ms de Brun

The concerns the Council have relate to how these works would be carried out. Who would be the executing authority? What is the cost? Who will be responsible for the cost? Has any thought been given to preparing a computerised model of the proposal? Can the anticipated likely effects of the proposal in terms of the drop in water levels etc be proved to everyone's satisfaction most especially to the Rowing Club? For all of the above reasons we consider that a meeting would be in everyone's best interests

Ray Owens

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**From:** Deirdre DeBrun [mailto:Deirdre.DeBrun@dcenr.gov.ie]  
**Sent:** 05 September 2008 13:01  
**To:** Ray Owens  
**Cc:** Barbara Leeson  
**Subject:** RE: Fermoy Weir

Dear Mr Owens,

I would be grateful if you would give me an indication of the Town Manager's concerns so that I can arrange for appropriate people to attend the meeting. We may consider traveling to Fermoy as 1<sup>st</sup> October is some time away.

Yours sincerely,

Deirdre de Brún

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**From:** Ray Owens [mailto:Ray.Owens@CorkCoCo.ie]  
**Sent:** 05 September 2008 11:47  
**To:** Deirdre DeBrun  
**Subject:** Re: Fermoy Weir

Dear Ms de Brun

I refer to you letter and enclosures of 15 August on the matter of draft proposals for Fermoy Weir. I have discussed this matter with the Town Manager and his view is that the proposals raise a number of significant issues for the Town Council. To this end he proposes that a meeting be arranged to explore this matter further. The meeting can be held here in Fermoy or in Dublin if suitable. If it is in Dublin he has asked me to say that he will be in Dublin on Wednesday 1 October if that is convenient for you

Ray Owens  
Town Clerk

5

**Barbara Leeson**

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**From:** O'Keefe, Johnny (Fisheries) [Johnny.O'Keefe@agriculture.gov.ie]  
**Sent:** 09 September 2008 15:22  
**To:** Barbara Leeson  
**Subject:** RE: Fermoy Weir

Barbara

I will be available to attend the meeting. There is no difficulty in showing that the fish pass proposals will not impact on the rowing club. It is not necessary to do any computer modelling as simple weir discharge calculations will give water levels. I will send you a copy of the discharge calculations and assumptions and you can forward these to the town council before the proposed meeting for their perusal. I have given you the estimated cost but is based on an OPW involvement in the scheme. If OPW will undertake the fish pass construction it would be important that they attend the meeting also. Have you any reply from OPW in this regard. Separately OPW's flood design section will have to give their approval for the weir modifications also. This will have to be forthcoming before the proposed meeting.

Who will fund the construction and who will be responsible for its maintenance? Legally it would appear to be the responsibility of the town council as they are the weir owners but the cost does not appear to be within the ability of the town council and it may fall to others to fund the works. I estimate the construction should take about ten weeks in favourable river flow. Water levels may be lower than normal for the period of construction.

Regards

John

-----Original Message-----

**From:** Barbara Leeson [mailto:Barbara.Leeson@dcenr.gov.ie]  
**Sent:** 05 September 2008 15:13  
**To:** O'Keefe, Johnny (Fisheries)  
**Subject:** Fermoy Weir

John

Please see attached e-mails received this morning from Fermoy Town Council in relation to the revised proposals for remedial works to the weir.

We would be grateful for your advice in relation to the attached.

It would also be appreciated if you would advise if you will be available to attend a meeting with the town council to discuss this matter further. Also, do you think a representative from OPW should be invited to attend ?

Regards

Barbara

**Barbara Leeson**  
**Inland Fisheries Division**  
**Department of Communications, Energy and**  
**Natural Resources**  
**29/31 Adelaide Road**  
**Dublin 2**

**Ph: 00353 1 6782276**  
**Fax: 00353 1 6782539**  
**E-mail: [barbara.leeson@dcenr.gov.ie](mailto:barbara.leeson@dcenr.gov.ie)**  
**Web: [www.dcenr.ie](http://www.dcenr.ie)**

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Department of Agriculture, Fisheries and Food

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An Roinn Talmhaíochta, Iascaigh agus Bia

Tá an t-eolais san ríomhphost seo, agus in aon ceanglán leis, faoi phribhléid agus faoi rún agus le h-aghaidh an seolai amháin. D'fhéadfadh ábhar an seoladh seo bheith faoi phribhléid profisiúnta nó dlíthiúl. Mura tusa an seolai a bhí beartaithe leis an ríomhphost seo a fháil, té cosc air, nó aon chuid de, a úsáid, a chóipeál, nó a scaoileadh. Má tháinig sé chugat de bharr dearmad, téigh i dteagmháil leis an seoltóir agus scríob an t-ábhar ó do ríomhaire le do thoil.

Note of Meeting with Fermoy Town Council regarding completion of remedial works to Fermoy Weir

|                |                                 |                       |
|----------------|---------------------------------|-----------------------|
| In attendance: | Deirdre de Brún, Barbara Leeson | (DCENR)               |
|                | John O'Keeffe                   | (DAFF)                |
|                | Tom Sherlock, John Kelly,       | (OPW)                 |
|                | Yvonne Jackson, Michael Collins |                       |
|                | Ezra MacManamon                 |                       |
|                | Brian Sheerin, Alan Cullagh     | (SRFB)                |
|                | Tom Stritch, Ray Owens          | (Fermoy Town Council) |
|                | Flan Groarke                    | (Cork Co Co)          |

Date: 2 October 2008

**Background**

The meeting was held to discuss the remedial works required to Fermoy weir to facilitate the free passage of fish.

The European Commission has indicated that it will initiate infringement proceedings against Ireland for non compliance with the Habitats Directive if it does not address a complaint received by the EU Commission which contends that the Fermoy weir is acting as a barrier to the migration of salmon and lamprey on the River Blackwater. Failure to address this complaint could result in substantial fines accruing against Ireland on a daily basis. In the circumstances, Fermoy Town Council has been directed, in accordance with section 116 of the Fisheries (Consolidation) Act 1959, to carry out remedial works and install a rock ramp fish pass on the Fermoy Weir.

A meeting between the Department and Town Council took place in August 2007 to discuss this matter. At that meeting, Fermoy Town Council indicated that it did not have the resources necessary to fund the required works. It was agreed that approaches would be made to the Department of the Environment, Heritage and Local Government (DOEHLG), as the parent Department of Fermoy Town Council, to request funding for the completion of the works. At that meeting it was also agreed that further technical studies would be incorporated into the project so as to ensure that there would be no impact on the activities of the Fermoy Rowing Club.

**Fermoy Town Council Position**

Mr. Strict advised there has been substantial opposition in the town to the works proposed. In particular, deputations from the rowing club have twice met with the Council and maintain that any amendment to the weir will negatively impact on the activities of the rowing club. There is also strong local objection to any amendment which will have a visual impact on the weir. Furthermore, issues have been raised by the County archaeologists in relation to the site. Concerns were also expressed about the status of the weir and bridge as protected structures or a National monument.

The Town Council advised that these objections were conveyed to the then Minister of State, John Browne TD, at a public meeting held in August 2006. The Town Council was of the understanding that the position following that meeting was that consultants would be appointed to examine all factors relating to the works required to the weir and that the funding would be forthcoming for this study.

The Town Council expressed its view that it cannot support the efforts to complete the works unless there is a public consultation to bring all stakeholders on board and are concerned about the environmental impacts of the proposed works. The Town Council also expressed concerns that the further technical studies previously agreed will not now take place.

### **DCENR Present Position**

Ms. de Brún advised that efforts to secure funding from the DOEHLG have been unsuccessful. An opportunity has now arisen to possibly have the works undertaken by the contractor undertaking the flood relief scheme proposed by the Office of Public Works (OPW) but there is only a limited window of opportunity to achieve this. The question of funding the works is still to be determined. Ms. de Brún pointed out that it is the Department's understanding that no commitment was given in 2006 by the then Minister of State to provide funding for further technical studies.

In terms of fish passage, the optimum solution is the removal of the weir in its entirety but due to the presence of the rowing club and amenity value of the weir, remedial works and the installation of a fish pass is proposed. The EU Commission are likely to issue a Reasoned Opinion against Ireland in the very near future if progress cannot be demonstrated. Failure to complete the works is not an option. Accordingly, there will have to be some level of compromise in order to advance the matter.

Mr O Keeffe advised that he has produced an amended proposal for fish pass facilities which will remove any flood implications and should alleviate the concerns of the Rowing Club. He advised that in low summer flow the maximum drawdown would be 6.5 inches which, given the surveyed depth of water upstream, should not impact on the activities of the Rowing Club. A consequence of the fish pass construction is that the weir will dry out for longer periods than it does at the moment and consideration should be given to mitigating measures to offset this visual impact.

In terms of further modelling and studies Mr O Keeffe advised that the predicted water level drawdown resulting from the proposed modifications to the weir can be determined by standard weir discharge calculations. These calculations have been carried out and the results can be made available to any interested party. It is the Department's view that it would be a misuse of public funds to spend circa €30,000 on studies, when the data is already available, particularly in the current economic climate.

Ms. de Brún reminded the Council that under the Fisheries (Consolidation) Act 1959 the Minister has the power to enter the site and execute the required works and to recover the cost of same from the owners of the weir as a simple contract debt.

## **OPW Position**

Mr. Sherlock advised that the OPW has been approached by DCENR and requested to consider facilitating the completion of the remedial works to the weir alongside the works to be completed under the proposed flood relief scheme. The works will not form part of the flood relief scheme but may be undertaken as a separate project by the contractor undertaking the flood relief scheme. In principle, the OPW has no objection to undertaking these works, subject to the matter of funding being resolved. In order to facilitate this approach, outstanding matters relating to planning, archaeological matters and the status of the structures will have to be resolved by early November. Subject to all matters being resolved, the OPW would carry out the works as agents of either the Department or the Town Council. It was acknowledged that a deficit exists in selling the proposals to stakeholders but efforts must commence immediately at securing buy-in from all parties if there is to be any chance of completing the works as part of the OPW scheme.

## **Next Steps**

- Determine how the funding is to be provided for the works (DCENR)
- Establish the status of the Fermoy Weir and Bridge vis-à-vis protected structure/monument status (DCENR)
- Establish the planning procedures required to undertake the proposed works (Fermoy Town Council)
- DCENR/DAFF to meet Fermoy Rowing Club to discuss proposed works (Mr. Flan Groarke to arrange)
- Establish County Archaeologists concerns (Fermoy Town Council)
- DCENR/DAFF to meet Fermoy Town Council in advance of next meeting to explain issues surrounding the Habitats Directive and works involved (Fermoy Town Council to arrange).
- A copy of the latest drawings produced by Mr. John O'Keeffe is to be circulated to all interested parties.

**Barbara Leeson**  
**Inland Fisheries Division**  
**07 October 2008**

**Report of Meeting with Fermoy Town Council in relation to proposed works to Fermoy Weir.**

In attendance: Deirdre de Brun, Barbara Leeson & Marion Foley (DCENR)  
John O' Keeffe (DAFF)  
Brian Sheerin, Alan Mc Cullagh (SRFB)  
Tom Stritch, Ray Owens (Fermoy Town Council Executive)  
Members of the Town Council  
Members of Fermoy Rowing Club  
Members of the Press

Date: 21 October 2008

The Town Council outlined its position with regard to the proposed works to the weir. The Mayor said that the proposed remedial works to the weir will impact on the entire community and for this reason a public consultation process would be required in order to ensure that the community would buy into the process.

Ms. Deirdre de Brun, on behalf of the Department, outlined the issues surrounding the remedial work which are required to the weir in order to comply with the Habitats Directive. The weir is acting as a barrier to the migration of salmon, lamprey, eels and allis shad and for this reason Ireland is in breach of the Habitats Directive which obliges Member States to protect and conserve the environment and provides for a strict system of species protection, which includes salmon and its habitats. Failure to carry out the remedial work will result in the initiation of infringement proceedings by the EU which will result in significant monetary penalties being imposed on Ireland. While the optimal solution to ensure the free passage of fish is the complete removal of the weir, in recognition of the impact this will have on the Rowing Club and the amenity value of the weir to the town, the remedial works were recommended instead.

**Funding**

The Department has now secured the necessary funding for the remedial works and the OPW have agreed to arrange to have the works carried out alongside the Flood Relief Scheme. The OPW expect to sign the contracts mid November and given the tight time frame it is imperative that a decision to proceed with the remedial works be made prior to then. If the works are not included in this project and are to be undertaken as a stand alone project the cost of the works will be significantly higher. Given that this is a very real opportunity to comply with the Habitats Directive, thereby avoiding significant penalties, the Town Council were urged to facilitate these works.

**Protected Structures and National Monuments & Planning Issues**

The Department advised that it has examined the relevant legislation in relation to Protected Structures, National Monuments and the various Planning Issues in light of concerns raised by the Town Council executives at the last meeting.