

Appendix C17.01

Legal & Planning Framework: Archaeological, Architectural and Cultural Heritage

ARCHAEOLOGICAL HERITAGE

The *Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023* ('the Act') was enacted on 13th October 2023, with a Commencement Order of some of its elements effective from 31st May 2024. While the Act is now law, it is important to note that most of its provisions will not enter into force until the Minister (DHLGH) has made one or more Commencement Orders per subsections (7) to (13) of section 1 of the Act.

At the time of writing, section 225 and a number of non-heritage related "miscellaneous" provisions in Part 13 of the Act have entered into force as well as section 159 (relating to records and objects) and sections 134, 138, 139, 142 and 147 (relating to underwater cultural heritage).

On 31st May 2024, section 225 came into force. This provides that the Minister (DHLGH) will be required to report to the Oireachtas on the operation of the Act within three years of its enactment and at five-year intervals thereafter. In addition, the first Commencement Order of the new 2023 Act came into effect on 31st May 2024. This includes for the repeal of the Architectural Heritage (National Inventory) and National Monuments (Misc. Provisions) Act 1999, new enforcement measures including fines and prison sentences, strengthening of legal protections in private/company collections, developing guidance and codes of best practice and promotion, and strengthening of the implementation of the World Heritage Convention (1972).

On 30 September 2024, section 159 of the Act came into force. Section 159(2) concerns regulation of notifications to the Minister for 'Possession of Records' created or collected as part of licenced activity, by personal representatives of a deceased person or liquidated companies. In addition, other provisions of section 159 prohibit unauthorised damage to or disposal of said records or objects.

On 12 December 2024, further provisions of the Act came into operation that relate to the protection of underwater cultural heritage (sections 134, 138, 139, 142 and 147) that, in summary, have implications for the law of salvage as it relates to historic wrecks and underwater archaeological objects, and also for Irish citizens (and a range of specified other persons), and vessels operating in international waters if they intend to engage in [intrusive] activities directed at underwater cultural heritage. The provisions also require reporting of discoveries of underwater cultural heritage in international waters and regulate the import into the State of underwater cultural heritage found outside the State.

These new legal provisions are in addition to the existing provisions of section 3 of the National Monuments (Amendment) Act of 1987 which provides protection for all wrecks over 100 years old and underwater archaeological objects situated in the internal waters, territorial seas and Contiguous Zone of Ireland. Section 3 of the *National Monuments (Amendment) Act 1987*, as amended by the section 18 of the *National Monuments (Amendment) Act 1994*, makes specific provision for underwater archaeological objects, including that a person shall not dive on, damage, or generally interfere with, any wreck or archaeological object, except in accordance with a licence issued by the Minister of Department of Housing, Local Government & Heritage (DHLGH) under section 3 (5) of the 1987 Act. Section 3 of the Act of 1987 also provides for the making of Underwater Heritage Orders in respect of wrecks of heritage interest of any date and underwater archaeological objects. Section 3 of the Act of 1987 (and related provisions) will in due course be replaced by provisions of the Act of 2023, but at the time of writing, they remain fully in force.

As no other aspects of the Act have yet entered into force, this means that section 7 of the Act (which provides for the repeal of the National Monuments Acts 1930 to 2014 and related legislation) has not entered into force. Accordingly, the National Monuments Acts 1930 to 2014 (as amended) currently remain fully in force.

The administration of national policy in relation to archaeological heritage management is the responsibility of the National Monuments Service which is currently (April 2025) based in the DHLGH. The *National Monuments Act of 1930-2014*, is (currently) the primary means of ensuring the satisfactory protection of the archaeological resource. They include a number of provisions that are applied to secure the protection of archaeological monuments.

Section 2 of the National Monuments Act, 1930 defines a National Monument as '*a monument or the remains of a monument, the preservation of which is a matter of national importance*'. The State may acquire or assume guardianship of examples through agreement with landowners or under compulsory orders.

Monuments subject to Preservation Orders or Temporary Preservation Orders are also afforded National Monument status.

The *National Monuments (Amendment) Act, 1994* made provision for the establishment of the Record of Monuments and Places (RMP) which comprises the known archaeological sites within the State. The RMP, which is based on the earlier Register of Historic Monuments (RHM) and Sites and Monuments Record (SMR), provides county-based lists of all recorded archaeological sites with accompanying maps. All RMP sites receive statutory protection under the *National Monuments Act 1994* and the NMS must be given two months' notice in advance of any work proposed at their locations.

The *County Donegal Development Plan 2024-2030* includes the following relevant policies and objectives in relation to the protection of the archaeological resource:

Archaeology Objective

AYH-O-1

To conserve and protect archaeological heritage, achieve a greater public knowledge and appreciation of archaeology, protect existing access to, and where appropriate provide new access and visitor infrastructure for, such heritage.

Archaeological Policies

AYH-P-1

Conserve and protect all forms of archaeological heritage including:

- i. National Monuments
- ii. Structures on the Record of Historic Monuments (RHM)
- iii. The Record of Monuments and Places (RMP)
- iv. Sites and Monument Record (SMR)
- v. Historic Graveyards and environs
- vi. Historic Towns
- vii. Historic battlefield sites
- viii. Unrecorded archaeology
- ix. Industrial and post-medieval archaeology
- x. Underwater archaeology
- xi. The settings of such heritage

in accordance with the publication Framework and Principles for the Protection of Archaeological Heritage (DoAHGI 1999); and

Conserve and Protect Zones of Archaeological Protection located in Urban areas of Ballyshannon, Donegal Town, Killybegs, Lifford, Ramelton, Rathmullan and St. Johnston as identified in the Record of Monuments and Places including requiring the carrying out of an archaeological assessment prior to the granting of permission and the undertaking of additional archaeological mitigation where required (e.g. more extensive testing, excavation or licensed archaeological monitoring) to inform the planning application or, if appropriate, the imposition of similar archaeological mitigation (more extensive testing, excavation or licensed archaeological monitoring) as conditions of planning.

The policy will be implemented save to the extent necessary to provide for strategic infrastructure projects including, but not restricted to, the TEN-T Priority Route Improvement Project, Donegal the Bridgend to County border project scheme, the Buncrana Inner Relief Road and Greenways, subject to such projects being in accordance with all relevant statutory and regulatory provisions or where no statutory or regulatory provisions apply in so far as the policy provisions can be practicably and reasonably achieved within the context of such projects.

AYH-P-2

Protect existing access to, and facilitate appropriate new public access, informational and visitor infrastructure for, archaeological heritage (including signage, parking, pedestrian access, commemorative memorials, and interpretative facilities) where such development would not be detrimental to the character or setting of said heritage where statutory consent has been obtained from the National Monuments Service and where the development would not otherwise negatively impact on traffic safety, local residential amenities, natural environment or the visual or scenic amenities of the area. This policy will be implemented by the Council in so far as same can be practicably and reasonably achieved within the context of Strategic Infrastructure Projects including, but not restricted to, the TEN-T Priority Route Improvement Project, Donegal, the Bridgend to County border project scheme, the Buncrana Inner Relief Road and Greenways.

AYH-P-3

Ensure that development proposals affecting archaeological heritage sites shall:

- a. Sensitively incorporate archaeological heritage Preserved In Situ in a manner which is compatible with the protection and proper management of such heritage and its setting including adequate safeguards from damage/vandalism and for public safety and suitable informational signage.
- b. Be accompanied by a long-term management plan that incorporates appropriate protections for the heritage site.
- c. Provide appropriate informational signage regarding any archaeological heritage which has been identified and Preserved by Record during the course of construction to an agreed standard with Donegal County Council and the National Monuments Service.

The policy will be implemented save to the extent necessary to provide for strategic infrastructure projects including, but not restricted to, the TEN-T Priority Route Improvement Project, Donegal, the Bridgend to County border project scheme, the Buncrana Inner Relief Road and Greenways subject to such projects being in accordance with all relevant statutory and regulatory provisions or where no statutory or regulatory provision applies in so far as the policy provisions can be practicably and reasonably achieved within the context of such projects.

AYH-P-4

Ensure that historic graveyards in the ownership or care of the Council are managed and maintained in accordance with legislation, appropriate/best conservation standards, in consultation with the National Monuments Service and the Department of Housing Local Government and Heritage.

ARCHITECTURAL HERITAGE

Protection of architectural heritage is provided for through a range of legal instruments that include the *Heritage Act (1995)*, and the *Planning and Development Act (2000)*. The *Heritage Act (1995)* (as amended) defines architectural heritage as including:

'...all structures, buildings, traditional and designed, and groups of buildings including streetscapes and urban vistas, which are of historical, archaeological, artistic, engineering, scientific, social or technical interest, together with their setting, attendant grounds, fixtures, fittings and contents.'

The National Inventory of Architectural Heritage (NIAH) was established to record architectural heritage structures within the State and to advise local authorities in relation to structures of architectural heritage significance within their administrative areas. The conservation principles of care and protection of architectural heritage and the facilitation of the listing of significant buildings of architectural merit are set out in Part IV of the *Planning and Development Act (2000)*.

This requires Local Authorities to maintain a Record of Protected Structures (RPS) of structures with special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest, to be included in City/County Development Plans. In addition, Local Authorities must provide for the preservation of townscapes etc. through designation of Architectural Conservation Areas (ACAs). Any changes that materially affect the character of a protected structure require planning permission.

The *County Donegal Development Plan 2024-2030* presents a number of policies and objectives to ensure the protection of the architectural heritage resource within the County and these include:

Architectural Heritage Objectives

AH-O-1

Conserve, manage, protect and enhance the architectural heritage of Donegal namely Protected Structures, Architectural Conservation Areas, NIAH structures, designed landscapes and historic gardens, vernacular, historic building stock industrial and maritime built heritage, character and setting of such structures.

AH-O-2

Promote the sustainable and sensitive re-use of the existing built heritage as a positive response to climate change, and promote the circular economy and climate mitigation and adaptation through proper maintenance, repair and appropriate retrofitting, adaptive re-use and regeneration employing best conservation practice. This objective will be pursued on a collaborative and integrated basis in partnership with all relevant stakeholders and through all available funding mechanisms.

AH-O-3

Protect all structures and parts of structures on the Record of Protected Structures and to extend the RPS where appropriate.

AH-O-4

Preserve the special character of the Ardara, Ballyshannon, Buncrana, Bundoran, Letterkenny, Ramelton, Raphoe, and Moville Architectural Conservation Areas as identified on Maps 11.2 – 11.9 inclusive.

Architectural Heritage Policies

AH-P-1

Seek to ensure best conservation practice through the application of the Guiding Principles of Architectural Conservation as referenced above, where appropriate including in relation to RPS, NIAH, and Vernacular structures and within ACAs. In this regard, the use of specialist conservation professionals, conservation plans and crafts persons shall be encouraged.

AH-P-2

Protect traditional shopfronts and signage and where required and appropriate, ensure new shopfronts are of a high-quality architectural design.

AH-P-2A

- Promote the maintenance and appropriate re-use of the existing buildings stock of buildings with architectural merit as a more sustainable option to their demolition and replacement.
- Ensure that measures to upgrade the energy efficiency of protected structures and traditionally built historic structures are sensitive to traditional construction methods, employ best practice and use appropriate materials and methods that will not have a detrimental impact on the material, functioning or character of the building.

AH-P-2B

Preserve, protect and enhance the special built character and functions of the 'Heritage Towns' of Ardara, Ballyshannon, Merville, Ramelton and Raphoe.

AH-P-3

- a. Protect all structures or parts of structures on the RPS to include protection of the curtilage, attendant grounds; and,
- b. Require that development proposals directly affecting structures on the RPS are appropriate in terms of architectural treatment, character, scale, and form to the existing protected structure and not detrimental to the special character and integrity of the protected structure and its setting save to the extent necessary to provide for strategic infrastructure projects including but not restricted to, the TEN-T Priority Route Improvement Project, Donegal, the Bridgend to County border project scheme, the Buncrana Inner Relief Road and Greenways, subject to such projects being in accordance with all relevant statutory and regulatory provisions.

AH-P-4

- a. Extend the Record of Protected Structures in order to provide a comprehensive schedule for the protection of structures of special importance in the County during the lifetime of the Plan; and
- b. Identify structures for inclusion in the Record of Protected Structures based on the criteria set out in the Architectural Heritage Protection, Guidelines for Planning Authorities (2011), the NIAH and Ministerial recommendations.

AH-P-5

Any proposed development that includes proposed works to an RPS structure shall, where appropriate, provide for the works affecting the Structure to be carried out in the first phase of the development to prevent endangerment, abandonment and/or dereliction of the structure.

AH-P-6

- a. Protect and enhance the special character of ACAs to include traditional building stock, material finishes, spaces, streetscape, shopfronts, landscape and settings therein.
- b. Protect all buildings, structures, groups of structures, sites, landscapes and all other features considered to be intrinsic elements to the special character of an ACA from unsympathetic demolition or alteration.
- c. Ensure appropriate and sensitive reuse and rehabilitation of buildings and sites, secure appropriate infill and new development, and require high quality architectural design within and adjacent to ACAs.
- d. Protect traditional shopfronts in ACAs and ensure new shopfronts are of a high quality architectural design.

- e. Ensure all new signage, lighting, advertising and utilities within ACAs are designed, constructed and located in such a manner as not to detract from the character of the ACA.
- f. Protect and reuse historic street finishes, furniture and features which contribute to the character of ACAs and associated areas of public realm.

AH-P-7

Protect NIAH structures by requiring that development of structures on the NIAH including the curtilage, attendant grounds and setting of the structure are appropriate in terms of architectural treatment, character, scale, and form, and is not detrimental to the special character and integrity of the structure and its setting, save to the extent necessary to provide for strategic infrastructure projects including but not restricted to the TEN-T Priority Route Improvement Project, Donegal, the Bridgend to County border project scheme, the Buncrana Inner Relief Road and Greenways. This policy will be implemented by the Council in so far as same can be practicably and reasonably achieved within the context of said projects.

AH-P-8

Ensure high quality architectural design of all new development relating to or which may impact on NIAH structures (and their setting) save to the extent necessary to provide for strategic infrastructure projects including but not restricted to the TEN-T Priority Route Improvement Project, Donegal, the Bridgend to County border project scheme, the Buncrana Inner Relief Road and Greenways. This policy will be implemented by the Council in so far as same can be practicably and reasonably achieved within the context of said projects.

AH-P-9

Seek to protect, conserve and preserve vernacular structures, historic building stock and enhance the established character, forms, material features, and settings of vernacular buildings and historic building stock that are considered to be intrinsic elements of the character of a place, save to the extent necessary to provide for strategic infrastructure projects including, but not restricted to, the TEN-T Priority Route Improvement Project, Donegal, the Bridgend to County border project scheme, the Buncrana Inner Relief Road and Greenways, including:

- a. Vernacular and traditional style farmhouse buildings including Clachans and local authority labourer's cottages.
- b. Vernacular buildings, groupings of buildings on Donegal's Islands.
- c. Historic thatch structures as a key component of the built heritage of the county.
- d. Historic Building Stock such as traditionally stone built buildings.

This policy will be implemented by the Council in so far as same can be practicably and reasonably achieved within the context of said projects.

AH-P-10

Seek to ensure that conversions or extensions to vernacular buildings and the provision of new adjoining buildings/traditional historic building stock shall be of a scale and form that complements the existing building and ensures that the distinctiveness and character of the vernacular form is retained and respected.

CULTURAL HERITAGE

In December 2015 Ireland ratified the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage. Intangible cultural heritage '*refers to the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity*'.

Ireland's obligations under the 2003 Convention include establishing a *National Inventory for Intangible Cultural Heritage* to protect, promote and celebrate Irish living cultural heritage practices, customs, crafts and traditions. Successful applicants to the National Inventory may also consider seeking nomination by the State for inscription on the UNESCO Representative List of the Intangible Cultural Heritage of Humanity, to which the State is entitled to make one nomination every year. *Irish National Folklore Collection*: transcribed material from the National Folklore Collection archive has been digitised and published on www.duchas.ie, which also publishes relevant images the Photographic Collection. The foundational collection - the *Irish Folklore Commission Collection 1935-1970* - was inscribed into the UNESCO *Memory of the World Register* (2017) in recognition of its 'world significance' and 'outstanding universal value to culture'. Similarly, Uilleann Piping (2017, Hurling (2018), Irish Harping (2019), Falconry, a living human heritage (2021) and the Art of dry stone construction, knowledge and techniques (2024) have been inscribed on the UNESCO Representative List of the Intangible Cultural Heritage of Humanity (as at 2025).

Following an open call for Expressions of Interest and the appointment of an Expert Advisory Committee on Intangible Cultural Heritage, in July 2019 the Minister for Culture, Heritage and the Gaeltacht approved the inscription of thirty cultural heritage elements on Ireland's permanent National Inventory (see <https://nationalinventoryich.chg.gov.ie/national-inventory/> Accessed 23.04.2025).

The Department accepts Expressions of Interest for the National Inventory of Intangible Cultural Heritage on an ongoing basis, with the goals of acknowledging, safeguarding and promoting Ireland's living culture through official State recognition. Of direct relevance to County Donegal is the cultural heritage practices and traditions of *Marcanna na Talamh* and *Turas Cholm Cille*. The use of landmarks, or *Marcanna na Talamh*, is practiced across the world on islands and ensure fishers and other sea going people can safely navigate their environment, find fishing gear and preferred fishing spots. The community of Gleann Cholm Cille and its environs commemorate *Turas Cholm Cille* annually on June 9th, the feast day of St Colm Cille. *An Turas* (the pilgrimage) is practised by the pilgrim visiting each *Turas* standing stone, while reciting a prescribed set of prayers and traditionally circumambulating each station three times, barefoot. The fifteen stations comprise cross-slabs, stone crosses, a holy well, church site and megalithic tombs. Some sites predate the Christian era and were incorporated into Christian religious practises from the 5th century onwards.

Other intangible cultural heritage elements relevant county Donegal in general terms include Uilleann Piping, Hurling, Irish Harping, Irish Traditional Music, Falconry, Dry Stone Walling, Basketmaking, Sea Currach Making, Letterpress Printing and Floating Heritage.

In January 2020, the Minister of Culture, Heritage and the Gaeltacht published Ireland's first national cultural framework, *Culture 2025 – A National Cultural Policy Framework to 2025*. Culture 2025 sets the direction for Government policy across the cultural sector, including the arts, the Irish language and the creative, heritage and audio-visual sectors (see <https://www.chg.gov.ie/app/uploads/2020/01/culture-2025.pdf>).

The *County Donegal Development Plan 2024-2030* makes reference to the value of natural cultural heritage items such as trees, stone walls and hedgerows and states 'traditional field boundaries such as stone walls, hedgerows, tree lines, banks and ditches contribute to the regional character of rural landscapes in County Donegal and reflect historical landownership and farming practises that reinforce our sense of place'. Such boundaries can also take the form of townland, parish and barony boundaries in their respective physical form within the cultural heritage landscape, all of which have medieval origins.

The *County Donegal Development Plan 2024-2030* presents a number of policies and objectives to ensure the protection of the natural heritage resource which has relevance to cultural heritage within the County including:

L-P-3

To safeguard the scenic context, cultural landscape significance, recreational/tourism amenities, and environmental amenities of the County's coastline from inappropriate development, save for strategic infrastructure provision of overriding regional or national public interest.

This policy will be implemented by the Council in so far as same can be practicably and reasonably achieved within the context of Strategic Infrastructure Projects including, but not restricted to, the TEN-T Priority Route Improvement Project, Donegal, the Bridgend to County border project scheme, the Buncrana Inner Relief Road and Greenways.

The Ballybofey-Stranorlar Local Area Plan included in the *County Donegal Development Plan 2024-2030* also has a number of policies and objectives of relevance in particular with reference to the *Drumboe Castle and Environs Masterplan Area*.

Objectives

BS-RCNH-O-3

To protect, enhance, and, where appropriate, sustainably develop key natural heritage assets in Ballybofey/Stranorlar including: Drumboe Woods and Environs area, the River Finn Corridor and areas of rural local environment within the hinterland of Ballybofey/Stranorlar.

Policies

BS-RCNH-P-1

Facilitate development proposals which accord with the proposals in the Drumboe Wood and Environs Feasibility Study including:

- a. The site specific opportunities identified in said study.
- b. The entrance and linkages identified therein.

BS-RCNH-P-2

Facilitate development proposals within the Drumboe Castle and Environs Masterplan Area in accordance with the following planning criteria:

1. Castle Gardens
Facilitate proposals for biodiversity enhancement, passive and active recreational use and/or interpretative facilities which accord with the Options for this area in the Drumboe Woods and Environs Feasibility or similar alternative proposals.
2. Active Open Space, Recreation, Amenity and Tourism Zoning
Facilitate active recreational, amenity and tourism related developments proposals including outdoor pursuit centre, bike hire, walkway, cycleway, picnic areas, and ancillary small-scale retail development (e.g. café, craft shop, fishing tackle), which:
 - Respect the character of the area and does not detract from the unique recreational, historical, cultural, and social value of the area.
 - Can be sensitively integrated into the host landscape.
 - Are of the highest architectural quality particularly having regard to scale and the quality of materials.

- Retain and incorporate existing site boundaries save where it is necessary to remove same for traffic safety/access reasons and include a detailed landscaping scheme.
 - Include a detailed landscaping scheme.
3. Passive Open Space, Recreation, Amenity And Tourism Zoning Facilitate passive recreational developments including walkways, seating, and signage, which do not compromise the character of the area.
 4. Historical and Cultural Heritage Area Zoning Safeguard the existing built, archaeological, and cultural heritage of this area in accordance with the built and archaeological policies of the wider development plan.
 5. Graveyard and Graveyard Extension Zoning Protect the use of this land as an existing graveyard and provide for a graveyard extension.
 6. Heavily Wooded Zone Safeguard the existing woodland and facilitate limited proposals for passive recreational use.
 7. Established Development Zone Conserve and enhance the quality and character of these established areas and ensure the protection of residential amenity therein.
 8. Walkways/Cycleways:
 - a) Protect and enhance existing walkways/cycleways.
 - b) Reserve the identified routes for, and facilitate the development of new, walkways/cycleways.
 9. Individual Trees, Field Boundaries Historic and Stone Walls Protect the individual tree, field boundaries, historic walls and stone walls identified on the masterplan map save where a justifiable case is provided for their removal.
 10. Roads: Ensure that any road improvements are or a sensitive/subtle design and retain the character and amenity value of the area.

BS-RCNH-P-5

- a. Support and facilitate the reuse/development of historic railway corridors in the plan area as recreational and/or tourism linkages/greenways.
- b. Require such proposals to provide appropriate access and parking infrastructure at start/end points of said corridors or demonstrate that such infrastructure is already available within close proximity to said points.
- c. Protect the existing lines of mature trees along the route of historic railway corridors save where their removal is essential for the re-use of the corridors as recreational/tourism/active transport infrastructure.

The *County Donegal Heritage Plan 2023-2030* includes several goals and objectives, one of which has direct relevance:

Strategic Goal 5: Commission research and gather heritage data

Our sense of place is informed by an understanding of our heritage. Responsible policy development and decision-making requires a strong evidence base. Commissioning research and gathering heritage data will contribute to our knowledge base and a better understanding of our heritage assets.

- 5.1. To develop databases on heritage resources in the county to provide evidence and to inform decision-making.

- 5.2. To commission surveys and studies of overlooked or hidden aspects of our county's heritage and landscape.
- 5.3. To commission a time-use survey to map the range and value of the voluntary investment in heritage.
- 5.4. To develop in-house Geographical Information Systems capacity to make heritage information collected accessible to decisionmakers and to the public.
- 5.5. To commission an audit of archaeological, built and natural heritage assets at risk in coastal environments and to assess their vulnerability from the impacts of climate change.
- 5.6. To pilot initiatives between heritage and folklore, culture, language, oral history and intangible heritage.
- 5.7. To investigate the establishment of literary and music heritage trails to highlight the material heritage associated with these traditions.