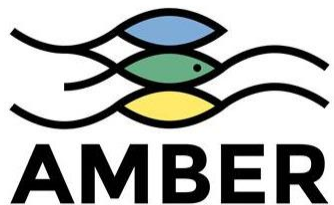


The Legal & Social Implications of Barrier Removal in an Irish Context



Birmingham, September 2017
Inspector Alan Cullagh
Inland Fisheries Ireland



Introduction

Section 1	Legislation & Irish Law
Section 2	Locations & Background
Section 3	Consultation Process (Legal & Social)
Section 4	Planning Stage (Legal & Social)



Legislation

- Irish law (Fisheries Act 1959)
- EU Habitats Directive
- EU Water Framework Directive
- Arterial Drainage Act 1945
- Planning and Development Act 2000



Irish Law

- **1959 Fisheries Consolidation Act**

A series of regulations (115 - 125) relate to natural and artificial barriers and aspects of the management of these.

- **Arterial Drainage Act 1945**

Section 47 and Section 50

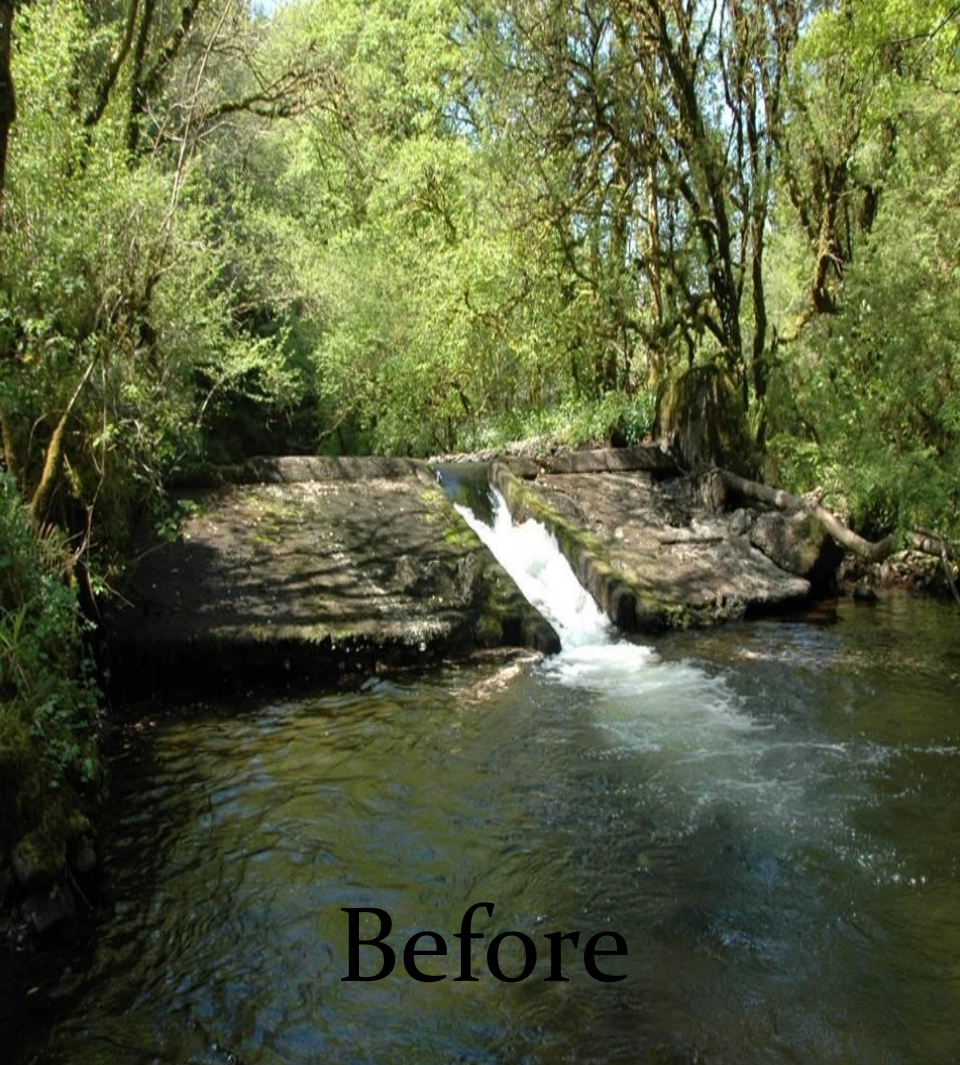
- **Planning and Development Act 2000**

article 5(2)(A) provides an exemption from planning for the construction of fish passes by Inland Fisheries Ireland.



- However this exemption is revoked under **Part 5 Section 17** of [No. 20.] *Environment (Miscellaneous Provisions)* [2011.] Act 2011.
- Section 17 (4) provides that “(4) Notwithstanding paragraphs (a), (i), (ia) and (l) of
- subsection (1) and any regulations under subsection (2),
- development shall not be exempted development if an
- environmental impact assessment or an appropriate assessment
- of the development is required.
- <http://www.environ.ie/en/Legislation/Environment/Miscellaneous/FileDownload,27716,en.pdf>
- **Therefore if the changes to the barrier requires an appropriate assessment or EIA then planning permission is required.**





Before



After





Before

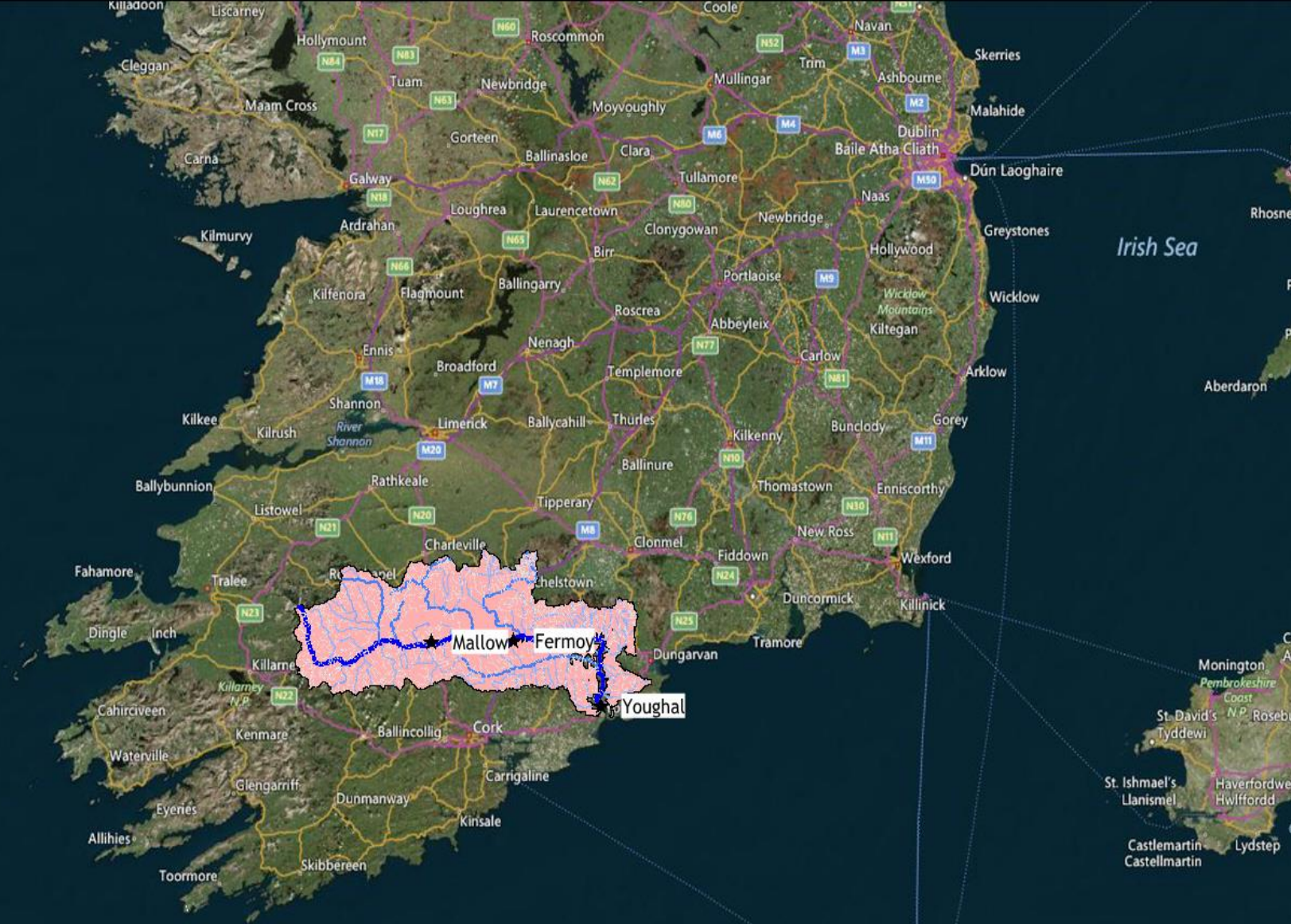


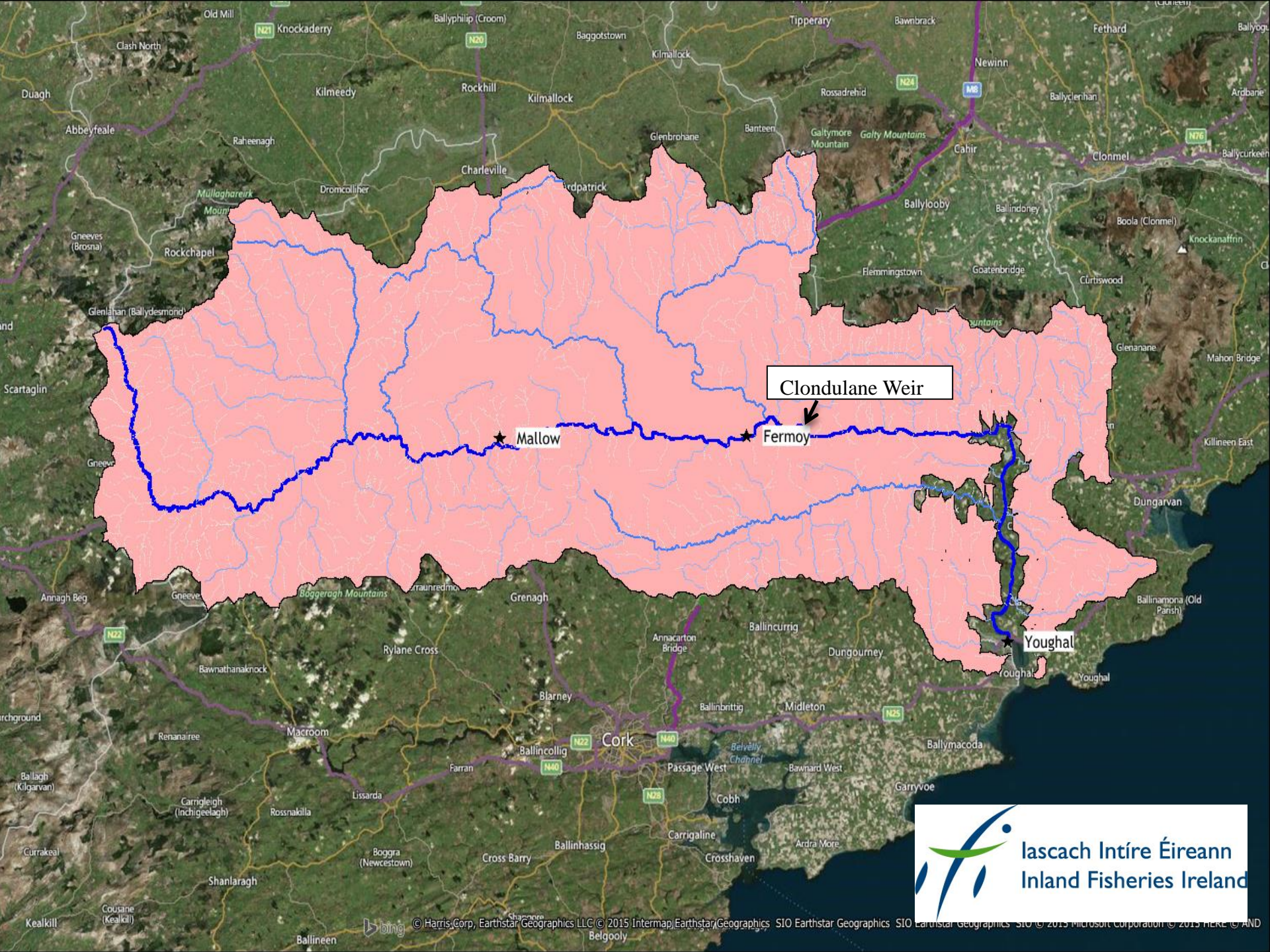
After





Clondulane Weir





Clondulane Weir

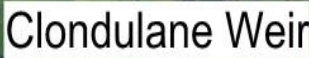


Mallow

Fermoy

Youghal





Reasons for work

- **River Blackwater Special Area of Conservation**
- **Concerns were Expressed re: Fermoy and Clondulane weirs (2002)**
- **Department Investigations and Reports (2005)**
- **Bypass for Fermoy and Removal of Clondulane**
- **Ministerial Order (2006)**



Ministerial Order 2006



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



Department of Communications,
Marine and Natural Resources
Dublin 2.

27 July 2006

Mr. Michael Penruddock
Lismore Castle
Lismore
Co. Waterford

Clondulane Weir

Dear Mr. Penruddock

I am writing to you in your capacity as agent for the Duke of Devonshire in relation to the Clondulane Weir, which I understand is in the ownership of the Duke of Devonshire.

In the exercise of the powers conferred on me by section 117 of the Fisheries (Consolidation) Act 1959 (Copy attached), I hereby give notice to the Duke of Devonshire to arrange for the complete removal of the weir by the 31 December 2006.

The Department's Engineering Division has recently carried out an examination of both the Clondulane and Fermoy weirs and in summary 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.

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

In terms of the Clondulane Weir, the Engineering Division has recommended its complete removal. 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 relation to this matter should be addressed to Ms. Deirdre DeBrún of the Department.

Yours sincerely

John Browne TD
Minister of State at the Department of Communications,
Marine and Natural Resources





High Court Agreement



THE HIGH COURT

RECORD NO: 2006 No. 1252 JR

BETWEEN:

LISMORE REALTY LIMITED

and

LISMORE TRUST LIMITED

APPLICANTS

AND

THE MINISTER FOR COMMUNICATIONS, MARINE AND NATURAL RESOURCES

RESPONDENT

SETTLEMENT AGREEMENT

The parties hereby agree to settle the above-captioned proceedings on the terms set out below and for good and valuable consideration (receipt of which is hereby acknowledged by each party to the other):

1. The judicial review proceedings will be discontinued by Lismore Realty Ltd and Lismore Trust Ltd, and all parties consent to an order striking out the proceedings with no order for costs.
2. Each party to the proceeding will bear their own costs.
3. Lismore Realty Ltd. and Lismore Trust Ltd. expressly acknowledge that the Minister may remove the weir pursuant to section 117 of the Fisheries (Consolidation) Act 1959. In that regard Lismore Realty Ltd and Lismore Trust Ltd will facilitate the Minister and his servants or agents in carrying out the necessary works to remove the weir.

Conditions attached to legal agreement

- **No Objection By Owners To Planning Permission**
- **Must Provide Access**
- **Pay All Reasonable Costs**



Requirements for Planning Permission

- Topographical Survey
- Appropriate Assessment
- Architectural Heritage Survey
- Archaeological Assessment Survey
- Hydrology Assessment
- Hydraulic Assessment
- Flood Risk Assessment Survey (modelling)
- Geomorphological Assessment



Requirements for Planning Permission

- Underwater Archaeological Survey
- Environmental Assessment Survey (NIS)
- Margaritifera Survey
- Electrofishing Survey
- SNIFFER Survey

(Socio-economic???)



Consultation Process

- Consultation & Discussions With Anglers, Landowners, Weir owners, Fishery owners
- Removal (Decommissioning)
- Planning Application



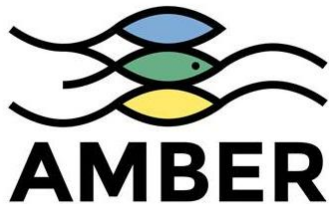
Options for Decommissioning the Weir

Option 1

Removal of a Section of the Weir

Option 2

Removal of the Entire Weir



Clondulane Weir (Option 1)



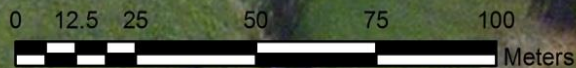
Remove Complete Weir

Text

Alan Cullagh

Inland Fisheries Ireland

April 2015



Clondulane Weir (Option 2)

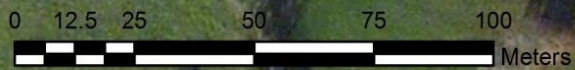


Partial Rermoval of Weir

Alan Cullagh

Inland Fisheries Ireland

April 2015



Public Consultations

**Landowners Owners (upstream & downstream)
Fisheries (upstream & downstream)
(Compensation)**

7 public meetings (Approx. 300 attendees)

Questions:

- **contaminated silt?**
- **historical value?**
- **flooding?**
- **why?**





Access to the Site

- All Access Routes to the Site are Privately Owned
- No Access will be Available Within the Channel





Access Route

Planning Stage

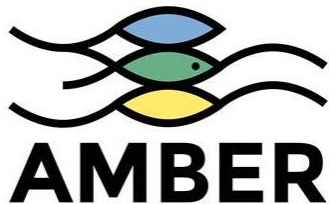
Summary of Assessments

STUDY	PREFERRED OPTION
Appropriate Assessment	Option 2
Architectural Heritage	Option 2
Archaeological Assessment	Negligible difference between options
Geomorphological Study	Negligible difference between options
Hydrology	Negligible differences between options
Health & Safety	Option 2



Costs

To Ensure Value For Money all Aspects of the Project Will be Tendered in Accordance with Public Procurement Procedures



Health & Safety

Under health and safety legislation
to Ensure the Highest Standard of Health &
Safety all work will be monitored by IFI

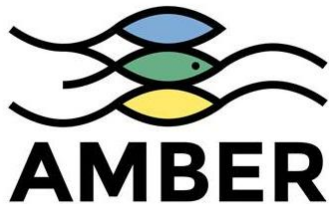
A Project Supervisor Design Phase will be
appointed (PSDP)

A Project Supervisor Construction Stage will be
appointed (PSCS)



Long Term Monitoring

It is anticipated that a three year
Environmental Monitoring Programme will
be undertaken as part of this project
A film crew will be employed to record the
various stages of the work



Thank you. Any questions?

