

File With _____

SECTION 131 FORM

Substitute Consent Application NO: _____

Defer Re O/H ☐Having considered the contents of the submission received 30/9/24 fromNoeleen Kennedy I recommend that section 131 of the Planning and Development Act, 2000~~be~~/not be invoked at this stage for the following reason(s): no new material
planning issues raisedE.O.: Karen HickeyDate: 24/10/24

For further consideration by SEO/SAO

Section 131 not to be invoked at this stage. ☐Section 131 to be invoked – allow 2/4 weeks for reply. ☐

S.E.O.: _____

Date: _____

S.A.O.: _____

Date: _____

M _____

Please prepare SC _____ - Section 131 notice enclosing a copy of the attached submission

to: _____ Task No: _____

Allow 2/3/4 weeks – BP _____

EO: _____

Date: _____

AA: _____

Date: _____

File With _____

CORRESPONDENCE FORM

Substitute Consent Application No: ABP- 320487-24

M _____

Please treat correspondence received on 30/9/24 as follows:

1. Update database with new agent for Applicant/Appellant _____

2. Acknowledge with SC 403. Keep copy of Board's Letter ☐

1. RETURN TO SENDER with SC _____

2. Keep Envelope: ☐3. Keep Copy of Board's letter ☐

Amendments/Comments

~~PAE~~ observation rec'd from
 Noelene Kennedy on behalf of
 DRB Community CLG Case Narr
 Task
 LID 30/9/24

4. Attach to file

(a) R/S ☒(d) Screening ☐(b) GIS Processing ☐(e) Inspectorate ☐(c) Processing ☐RETURN TO EO ☐

	Plans Date Stamped ☐
	Date Stamped Filled in ☐
EO: <u>Karen Hickey</u>	AA: <u>Phil Moore</u>
Date: <u>11/10/24</u>	Date: <u>2.10.24</u>

Anthony McNally

From: Bord
Sent: Monday 30 September 2024 16:28
To: Appeals2
Subject: FW: Ref SU17.320487
Attachments: BnM Sub Con - DRB Community CLG submission - Sept 2024.pdf

From: Daryl Kennedy <kennedyd7@gmail.com>
Sent: Monday, September 30, 2024 4:22 PM
To: Bord <bord@pleanala.ie>
Subject: Ref SU17.320487

Caution: This is an **External Email** and may have malicious content. Please take care when clicking links or opening attachments. When in doubt, contact the ICT Helpdesk.

Dear Sir / Madam, please find attached submission of observations specific to the above referenced application for Substitute Consent.

Best regards.

Noeleen Kennedy

Submission to: An Bord Pleanála, 64 Marlborough St, Dublin 1

Person making the submission: Noeleen Kennedy, Grangemore, Raharney, Co. Westmeath.

Submission made on behalf of: DRB Community CLG

Planning observation date: September 30th 2024

Submission Case reference: SU17.320487 (Substitute Consent – Ballivor Bog Group)

Submission received Date: August 6th 2024

Planning Applicant: Bord na Móna Energy LTD.

Submission points to SU17.320487, to be considered having regard to meeting Exceptional Circumstances:

1. During the period from 1988 to June 2020, for which Bord na Mona Energy Limited, as applicant, seeks Substitute Consent for peat extraction and bog development work within the Ballivor Bog Group at Ballivor, Carranstown, Bracklin, Lisclogher and Lisclogher West Bogs in Counties Meath and Westmeath, the applicant did not have legal ownership of multitudes of tracts of said boglands, nor written consent for their usage, from the legal owners. The land ownership anomalies are evidenced by records in the Land Registry. The Board (ABP) must carefully consider how Substitute Consent could possibly be awarded in such a situation.
2. Meeting the conditions of the Integrated Pollution Control Licence (Ref. P0501-0)1 and in particular condition 10.1.2, the implementation of an agreed cutaway bog rehabilitation plan. Bord na Mona has sought and received government-approved funding of €108m in 2020 towards its peatlands restoration and enhanced rehabilitation plan, also known as Peatlands Climate Action Scheme (PCAS) e.g. rewetting, revegetation, redeveloping wetland and woodland habitats; specifically Ballivor, Carranstown and Bracklyn Bogs are within scope of the restoration scheme (ref. <https://www.gov.ie/en/publication/136a7-bord-na-mona-bog-rehabilitation-scheme/>). The scheme was “expected to be completed by the end of 2025.” To date Bord na Mona has rewetted only the Carranstown bog, while maintaining bog drainage schemes, including silt ponds in other areas of the bog. It is clear that the applicant is attempting, but failing to adhere to its IPC condition 10, contributing to ongoing carbon emissions as the bog dries out. This amounts to a partial rehabilitation plan only.
3. Relating to the point above, this submission draws the inspector’s attention to the draft Ballivor Bog Rehabilitation plan, as already submitted as App 6-6 of EIAR to 2023 Planning Application 316212 to ABP (proposed Ballivor Windfarm). Page 7 of same states that “It is expected that peatland rehabilitation for Ballivor Bog will be carried out alongside or after the proposed windfarm construction.” Making the rehabilitation conditional on planning consent for an industrial windfarm, with its associated significant and negative environmental impacts on the local environment e.g. adding enormous quantities of stone, concrete, steel, electrical wiring, new buildings and car parks, is unacceptable. The

draft rehabilitation plan also states that "Enhanced rehabilitation measures that have been proposed as part of other PCAS projects have NOT been proposed as part of this draft Ballivor Bog rehabilitation plan." It clearly indicates that the applicant is not committed to restore or rehabilitate the boglands as a primary objective, thus failing an exceptionality test.

4. The Exceptionality Test cannot be conditional on, or biased by, future proposed use but on the environmental damage and uses of the past. Considering "the extent to which significant effect on the environment....can be remediated", the Board is requested through this submission to carefully review the flora and fauna of the wider bogland area as reported in the Ballivor Wind Energy application (Ref. ABP 316212) awaiting decision which describes the biodiversity of the area and indicates what a total rehabilitation and restoration of this area can achieve i.e. very significant expansion of the rich biodiversity that has survived in parts of the Applicant site i.e. perfect habitats for the expansion of populations of Marsh Fritillary Butterfly, Curlew, multiple bat species as well as Alluvial forests and Alkaline Fen. Furthermore, the applicant states clearly in their proposed draft Ballivor Bog Rehabilitation plan 2022, as referenced earlier in this submission that "it will still take some time (30-50 years) for naturally functioning wetland and peatland ecosystems to fully re-establish." This timeline is a very clear indication of the level of environmental and ecological damage done to the bogland area.
5. With regards to the European Sites, these boglands are surrounded by the River Boyne and Blackwater SPA. In fact, the distance from the Applicants lands range from immediately adjacent, to a max of 1.1km from the boundary. With this level of proximity and the impact of the decades-long industrial peat extraction across an area of up to 2,400 Hectare, it is virtually certain that there has been a negative impact on key species such as Kingfisher birds, Lamprey Eels, Otter and breeding Salmon. While no comprehensive Biodiversity survey exists from a pre-industrial peat extraction era, in order to establish an environmental baseline for this bogland area, it is abundantly evident that much of the landmass has been destroyed from an ecological perspective and must be allowed to rehabilitate over several decades before carefully considering any future uses.
6. The Board must carefully consider if the time boundary of July 1988, as proposed by the Applicant is justified as a Baseline, given that these boglands and their historical rich and complex ecological states have been developing for several thousand years. This history of environmental destruction and enormous Carbon release (Ref Appendix 10-1 Carbon Calculations) did not commence in 1988. It started in the 1940s and accelerated through the decades facilitated by the development of ever-larger industrial extraction equipment and growing demand for peat products.
7. Chapter 6 of the rEIAR on Biodiversity clearly outlines the richness of species in the area and shows how key Redlist and Annex I species such as Curlew and Corncrake had a confirmed presence in the Applicant site in the 1960's, indicating a habitat suitable for these highly endangered species. Ref. rEIAR 6.3.1.6.1. The loss of habitat and apparent elimination, suggests environmental effects of such significance, that the exceptionality test cannot be met. While the various observations and surveys over many years provide no species population trending, it is clear that the many species were under constant

threat due to the ongoing ecological site destruction and some did not survive e.g. Lapwing, a Red-listed species. It has been established that a population of national significance exists next to the Application site (Ref EIAR of Bracklyn windfarm planning application 311565.) and would likely once have thrived on the current application site.

8. Chapter 6 of the rEIAR references the observation of the Annex I species Hen Harrier, identified on the site during the 2010's, indicating suitability for the species. Taking into account the Government's recent issuance of a Hen Harrier Threat Response Plan (as launched by the Minister for Housing Local Government and Heritage, which "focuses on the three key pressures and threats arising from the agricultural, forestry and wind energy development sectors.", it behoves An Bord Pleanála to ensure that the outcome of this Substitute Consent is for full restoration of the boglands, sterilised from further development, until restoration has been achieved.
9. Similarly relating to the point immediately above, it is of significant interest to note that Field surveys conducted on one section of the Applicant site (Ballivor-Clondalee Bog, 2011 & 2012, as referenced in the 2022 Bog Rehabilitation Plan), does not indicate the presence of the Marsh Fritillary Butterfly, yet after just 3 years of environmental rest, since the cessation of extraction activities in 2020, this rare butterfly (Ireland's only legally protected insect) was observed in this bog. Ref. report of Butterfly expert Jesmond Harding as submitted to ABP in response to planning application 316212. This observation clearly shows the slow reversal of the environmental damage caused by Industrial peat extraction and need for full restoration of the environment before and consideration for substitute consent could be made.
10. Appendix 4-4 of the application shows Aerial maps covering the years from 1973 to 2020. It is regrettable that the aerial picture of lowest resolution is for 1988, the proposed Baseline year. This prevents a reasonable visual comparative assessment of the changing landscape through the years. Aerial photographs from the 1980's of a resolution similar or better than the 1973 pictures must be provided.
11. rEIAR Landscape and Visual Section 12.1.2.2 deals with Peat Extraction Phase 1988 to 2020. Specific to Lisclougher West bog, it states the following: "The majority of the bog was neither drained nor subject to peat extraction in the 1988 baseline, except for a small area in the southern section of the bog that was drained, but not subject to peat extraction. Drainage was complete in 1995 but the bog was never subject to industrial peat extraction." This submission draws the ABP Inspector's attention to the Westmeath Wetland Survey Final Report as published 8th June 2021 by Westmeath County Council (available at www.westmeathculture.ie > Heritage Research & Reports) and specifically Page 32 onwards as a vivid description of the Bog as found in 2020, including Annex 1 Bog Woodland and Annex 1 Transition Mire. The report's Conservation recommendation is to "Restore hydrology; Consider NHA Designation". This submission specifically requests that any consideration of Substitute Consent can only be done with the prime objective of full restoration of the bogs, insofar as that's physically possible, given the removal of almost 4 million tonnes of peat over the decades. Ref Appendix 10-1.
12. A point of query on the Substitute Consent Application Form, as submitted: in Form No. 7 requiring the applicant to state planning reference..." details, the Application for a

Windfarm (ABP.311565) is referenced, although not understood to be within the footprint of this Substitute Consent application. Is this a disingenuous attempt to suggest that An Bord Pleanála has already granted planning consent for a development, ahead of Substitute Consent?

13. In the case of the European Commission vs Ireland, July 2008, Ref C-215/06, relating to the Derrybrien Windfarm environmental catastrophe and specifically: No assessment of the environmental effects of projects within the scope of Directive 85/337/EEC — Regularisation after the event not permissible where an EIA or AA would have been required, is it not the case that the applicant would have known at that time that planning consent and associated EIA was required for the ongoing industrial level peat extraction, up to exceeding 100,000 tonnes p.a.?

Submitted by: Noeleen Kennedy, Director DRB Community CLG