S. 37

File With _____

SECTION 131 FORM

Substitute Consent Application NO: 323676.
Defer Re O/H ☐

Having considered the contents of the submission received 21/8/26 from The applicant 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 planning information

E.O.: Catherine Fay **Date:** 26/8/26

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 2/3/4weeks – BP _____

EO: _____ **Date:** _____

AA: _____ **Date:** _____

S. 37

File With _____

CORRESPONDENCE FORM

Substitute Consent Application No: ABP- _____

MR. BURKE

Please treat correspondence received on 21/8/26 (The Applicant by email) **as follows:**

1. Update database with new agent for Applicant/Appellant _____	
2. Acknowledge with SC 20	**1. RETURN TO SENDER with SC** _____
3. Keep copy of Board's Letter ☐	2. Keep Envelope: ☐
	3. Keep Copy of Board's letter ☐

Amendments/Comments
Please issue SC20
UNDER TASK NO: 477087-25.

4. Attach to file	**RETURN TO EO** ☑
(a) R/S ☐ (d) Screening ☐	
(b) GIS Processing ☐ (e) Inspectorate ☐	
(c) Processing ☐	

	Plans Date Stamped ☐
	Date Stamped Filled in ☐
EO: Catherine Fay	**AA:** DBrophy
Date: 24/8/26	**Date:** 24/8/26

John Cannon Catherine

From: Ronan Dunne <rdunne@mkoireland.ie>
Sent: Friday 21 August 2026 12:53
To: Catherine Flynn; Appeals2
Cc: Ellen Costello
Subject: ACP-323676-25: Lemanaghan Substitute Consent - Response to Submissions
Attachments: 2026.08.06_ACP_Submission Response_200804-r Reissue of request.pdf; Lemanaghan Sub Con Submissions Response - F - 2026.08.21 - 200804-e.pdf

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.

Hi Catherine,

I refer the Commission's letter dated the 5th August 2026 (attached for ease of reference), affording the Applicant the opportunity to respond to submissions on the Lemanaghan Substitute Consent application (Ref. ACP-323676-25).

On behalf of the Applicant, Bord na Móna Energy Ltd., please see attached a report with the Applicant's response to submissions.

I trust the above is in order however if you require any further information, please don't hesitate in contacting me.

Best regards,
Ronan

Ronan Dunne
Project Planner

MKO
Tuam Road, Galway, H91 VW84

Offices in Galway and Dublin
mkoireland.ie | +353 (0)91 735 611





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Our Case Number: ACP-323676-25

Your Reference: Bord na Móna Energy Limited

An Coimisiún Pleanála

MKO
Received on
06 AUG 2026
200804-r

MKO
Tuam Road
Galway
H91 VW84

Date: 05 August 2026

Re: Substitute Consent under the provisions of Section 177E of the Planning and Development Act 2000 (as amended) for peat extraction and ancillary works.
A Remedial Natura Impact Statement (r NIS) and a Remedial Environmental Impact Assessment Report (EIAR) was submitted with this application.

Lemanaghan Bog in the townlands of of Cooldorragh, Kilnagarnagh, Cappalalosset, Tumbeagh, Killaghintober, Castleanmstrong, Leabeg, Conafurrish and Corrabeg, Lemanagh, Kilnagoolny, Straduff, Lisdermot, Derrica More, Rosfaraghan, Rashinagh,Cor Mor and Cor Ber and Corbane, Co. Offaly.

Dear Sir / Madam,

I have been asked by An Coimisiún Pleanála to refer to the above-mentioned application for substitute consent.

The Commission is of the opinion that, in the particular circumstances of this application, it is appropriate in the interests of justice to request you to make submissions or observations received (under observations on the Commission's website and on the submissions received from the Health Service Executive, Department of Housing, Local Government and Heritage and Transport Infrastructure Ireland (under submissions on the Commission's website). The submissions and observations are available to view at https://www.pleanala.ie/en-ic/case/323676.

In accordance with section 131 of the Planning and Development Act, 2000, (as amended), you are requested to make any submissions or observations that you may have in relation to this enclosure **on or before 21st August 2026.** The Commission cannot consider comments that are outside the scope of the matter in question. Your submission in response to this notice must be received by the Commission **on or before the date specified above.**

If no submission or observation is received before the end of the specified period, the Commission will proceed to determine the application without further notice to you, in accordance with section 133 of the 2000 Act.

Teil	**Tel**	(01) 858 8100
Glao Áitiúil	**LoCall**	1800 275 175
Láithreán Gréasáin	**Website**	www.pleanala.ie
Ríomhphost	**Email**	communications@pleanala.ie

64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

Please quote the above appeal reference number in any further correspondence.

If you have any queries in the meantime, please contact the undersigned officer of the Commission at appeals@pleanala.ie.

Yours faithfully,

Catherine Flynn
Executive Officer
Direct Line: 01-8737143

SC131 Registered Post

Teil	**Tel**	(01) 858 8100
Glao Áitiúil	**LoCall**	1800 275 175
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Planning and Environmental Consultants

Response to Submissions

Peat Extraction at Lemanaghan Bog, Co. Offaly (ACP Ref. 323676)

DOCUMENT DETAILS

Client:	**Bord na Móna Energy Limited**
Project Title:	**Peat Extraction at Lemanaghan Bog, Co. Offaly (ACP Ref. 323676)**
Project Number:	**200804-e**
Document Title:	**Response to Submissions**
Document File Name:	**Peat Extraction in Lemanaghan Bog Submissions Response**
Prepared By:	**MKO** **Tuam Road** **Galway** **Ireland** **H91 VW84**

Planning and Environmental Consultants

Rev	Status	Date	Author(s)	Approved By
01	Draft	25.07.2026	RD/EC	EC/MC
02	Draft	17.08.2026	RD/EC	EC/MC
03	Final	21/08/2026	RD/EC	EC/MC

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1. INTRODUCTION

MKO have been instructed by Bord na Móna Energy Ltd. ('the Applicant'), to prepare a response to the correspondence issued by An Coimisiún Pleanála ('the Commission') on the 5th August 2026. The correspondence relates to the live application for Substitute Consent before the Commission for consideration (Ref. ACP-323676-25), henceforth the 'Subject Application', which seeks Substitute Consent for peat extraction activities and ancillary works carried out at Lemanaghan Bog (hereafter referred to as the 'Application Site'), located in County Offaly. The Commission's correspondence affords the Applicant the opportunity to respond to submissions/observations on the Subject Application. The Commission's correspondence invited the Applicant to make submission or observation to the Commission on the matters raised by the 21st August 2026.

This response document sets out the Applicant's thematic responses to the submissions/observations.

The application for Substitute Consent included a Remedial Environmental Impact Assessment Report (rEIAR), Remedial Natura Impact Statement (rNIS) and a suite of drawings in support of the Subject Application.

Reference throughout this response to the 'Application Site' relates to the lands which are the subject of the Subject Application.

1.1 Development for which Substitute Consent is Sought

The Subject Application was submitted to the Commission on 12th September 2025, seeking substitute consent under Section 177E of the Planning and Development Act, 2000 (as amended) ('the Act') for the following Development, set out in the public notices as follows:

- *Industrial scale peat extraction (milled peat) at the Application Site from 1988 to June 2020;*
- *Installation, use and maintenance of surface water drainage infrastructure (drains, silt ponds, pumps) at the Application Site to facilitate peat extraction activity from 1988 to present day;*
- *Provision of a welfare facility building and associated septic tank, 2 no. storage containers;*
- *Use and maintenance of pre-existing railway infrastructure to facilitate peat extraction activity from 1988 to present day;*
- *Control Measures associated with the above, inclusive of the IPC Licence measures (Ref. P0500-01) which commenced from May 2000 onwards to the present day; and,*
- *All associated site development and ancillary work*

Activities at the Application Site are managed under an Integrated Pollution Control (IPC) licence (Ref. P0500-01), granted by the Environmental Protection Agency (EPA) in May 2000.

Section 1.1.1 of Chapter 1 of the rEIAR which accompanies the Subject Application, identifies that the rEIAR provides a description of:

1. *The activities employed at the Application Site from 1950 at the onset of preparation works up to July 1988;*
2. ***A description of the baseline environment as of July 1988;***
3. ***A description of peat extraction and ancillary activities at the Application Site from July 1988 to the cessation of peat extraction in June 2020;***
4. ***A description of the management of the Application Site since June of 2020; and,***
5. ***A description of the activities intended to be carried out at the Application Site into the future.***

For the purposes of the rEIAR and rNIS, the items outlined in bold above outline the 'Project' and the Project as is described as comprising different 'phases', which are as follows:

- **'Peat Extraction Phase':** peat extraction and ancillary activities at the Application Site from July 1988 to the cessation of peat extraction in June of 2020 (July 1988 – June 2020). The Peat Extraction Phase is described in detail in Sections 4.4 to 4.8 of Chapter 4 of the rEIAR.
- **'Current Phase':** the management of the Application Site since June 2020 (June 2020 to present). The Current Phase is described in detail in Sections 4.8 to 4.9 of Chapter 4 of the rEIAR.
- **'Remedial Phase':** the activities intended to be carried out at the Application Site into the future. The Remedial Phase is described in detail in Sections 4.10 of Chapter 4 of the rEIAR.

2. RESPONSE TO PRESCRIBED BODIES

The following section provides responses to each of the Prescribed Bodies observations made on the Subject Application.

There were 3 no. Prescribed Bodies which made a submission, which are as follows:

- Health Service Executive (HSE)
- Department of Housing, Local Government and Heritage: Development Applications Unit (DAU)
- Transport Infrastructure Ireland (TII)

2.1 HSE

The HSE, through the National Environmental Health Service (NEHS), made observations stating they are satisfied that there are no additional assessments that should be undertaken with regard to likely significant effects on public or environmental health, and identifies that it has no record of any complaints or public-health concerns regarding the operation of the site prior to the cessation of peat extraction in 2020 or since that point. In addition, the NEHS identify that they are of the opinion that there was adequate protection of Public and Environmental Health during the phases of the development and for the final remediation phase.

The NEHS states that in a remedial EIA it is beneficial to obtain the 'lived experiences' of residents in relation to dust and noise, as formal or informal complaints are not the only indicator of community concern. The NEHS recommend that the 'lived experiences' and 3rd party submissions be considered in the decision-making process, and they might not concur with the rEIAR findings.

Response

The Applicant welcomes the observations of the NEHS, and in particular its conclusion that there was adequate protection of public and environmental health during the Project phases including that of the Remedial Phase, and that no additional assessments are required with regard to likely significant effects on public or environmental health.

The effects of the Project on population and human health are assessed in Chapter 5 Population & Human Health of the rEIAR, informed by the specialist assessments of air quality, noise and dust in Chapter 9 Air Quality and Chapter 11 Noise & Vibration. As the NEHS notes, monitoring undertaken under the IPC Licence did not record exceedances of the relevant air-quality thresholds, and there have been no recorded incidents of noise exceedance or noise complaints in relation to the peat extraction and ancillary activities at the Application Site.

As regards the NEHS recommendation concerning the 'lived experiences' of residents, the Applicant agrees that the lived experiences of residents, and the third-party submissions received, should be given due weight in the remedial EIA carried out by the Commission. It is important to note however, as stated by the NEHS in their submission, *'the assessment should consider established land development and use and service provision and activities within communities and not individual members of communities' (emphasis added).* Nonetheless, the lived experience identified in the 5 no. third-party observations on dust, noise and residential amenity are addressed under Section 3.6 below. In summary, the dust, noise, and air-quality effects raised are assessed in Chapters 5, 9 and 11 of the rEIAR, and each finding has been revisited in light of the residents' lived experiences . The effects identified in the rEIAR following the implementation of control measures under IPC Licence, through monitoring, complaints procedure and firefighting measures remain as long term, negative, and imperceptible to slight, and Not Significant.

As regards the effects of land take and purchase on local landowners which have been raised in third party submissions, questions of ownership and turbary are addressed under Section 3.3 below.

Regarding future development, the NEHS states that the future proposed use of the lands is not a consideration in a remedial EIA and would be the subject of a separate consenting process, one that relies upon its own Environmental Impact Assessment and Appropriate Assessment, and public consultation process. The Subject Application does not seek consent for a wind farm or for any separate future use of the Application Site; this is addressed further under Section 3.1 below. Whilst the Subject Application does not seek consent for future use of the Application Site, the rEIAR does assess the Remedial Phase of the Project, i.e activities intended to be carried out at the Application Site into the future and also assesses any potential future land uses on the Application Site in the cumulative impact assessment. In particular, given the lands within the Application Site are also subject to a separate planning application for the proposed Lemanaghan Wind Farm (ACP Ref. PAX19.324161), the Subject Application does assess the potential for cumulative effects between the Project and the proposed Lemanaghan Wind Farm in the rEIAR and rNIS of the Subject Application. Similarly, following the submission of the Subject Application in September 2025, the planning application for the proposed Lemanaghan Wind Farm has been submitted, and assesses the potential for cumulative effects between the Project and the proposed Lemanaghan Wind Farm in the EIAR and NIS.

2.2 DAU

The Department of Housing, Local Government and Heritage, through its Development Applications Unit (DAU), made archaeological observations on the Subject Application. The DAU reviewed the archaeological assessment, i.e Chapter 13 of the rEIAR carried out by Tobar Archaeological Services Ltd, and acknowledge the desk-based archaeological assessment supported by associated field surveys noting that, because of the nature of the substitute consent application, the DAU recommends that no further archaeological assessment is warranted. The DAU concurs with the recommendations in Chapter 13 of the rEIAR and does not have any further archaeological requirements in respect of the Project.

Response

The Applicant welcomes the confirmation from the DAU that it concurs with the recommendations of the archaeological assessment prepared by Tobar Archaeological Services Ltd and has no further archaeological requirements. The archaeological and cultural heritage receiving environment, the assessment of effects and the associated mitigation are addressed in Chapter 13 Cultural Heritage of the rEIAR. The Applicant notes DAU's position that there are no further archaeological assessment requirements, is directly relevant to the third-party observations that call for further archaeological assessment. Third party observations pertaining to archaeology and cultural heritage are addressed in Section 3.5 below.

2.3 TII

Transport Infrastructure Ireland (TII) made observations on traffic and transport related matters, noting the Application Site location and access junctions on the national, regional and local road network.

TII noted site access is facilitated from the N62 and the R436, and advised on a number of points relating to site access and road networks in the vicinity of the site in accordance with the relevant standards and guidelines.

Response

The Applicant notes and welcomes TII's observations. It is relevant to reiterate that the Subject Application seeks substitute consent to regularise the planning status of peat extraction activities and

ancillary works carried out from July 1988, with peat extraction having permanently ceased in June 2020; it does not propose any new development, any new or intensified access to the N62 and R436, or any new works to the national road network.

With regard to the five points raised by TII, the response is provided below:

1. **Intensification of use of existing access on N62:** No intensification of access use is proposed by the Subject Application.
2. **Drainage Infrastructure at existing access on N62:** No intensification of access use is proposed by the Subject Application and no interface with national road drainage infrastructure is proposed.
3. **Damage to pavement of national road (assumed N62 in this instance):** No intensification in the use of the existing access is proposed by the Subject Application.
4. **Use of existing railway infrastructure which underpasses the N62:** No works are proposed by Subject Application to alter the existing railway underpass infrastructure.
5. **Costs Remediation for damage events on national roads and associated assets:** No works are proposed by the Subject Application to the national road network or at site access junctions on the national road network. In any event, the Applicant acknowledges TII's standards.

3. RESPONSE TO THIRD-PARTY OBSERVATIONS

There were 17 no. valid third-party observations received on the application. A further 14 no. third party observations were made following the submission of information to the Commission. Table 3-1 below outlines the common themes identified within the third-party observations and specifies the lead author on the project team responsible for the corresponding response.

Table 3-1 Third Party Observation Themes

Observations Themes	Lead Author	Section
Planning & Legislative Compliance	MKO Planning	3.1
Public Engagement & Consultation	MKO Planning	3.2
Land Ownership & Turbary Rights	MKO Planning	3.3
Environmental & Ecological Impacts	MKO Environment	3.4
Archaeology & Cultural Heritage	Tobar Archaeology	3.5
Residential Amenity & Human Health	MKO Environment	3.6

3.1 Planning & Legislative Compliance

3.1.1 Unauthorised Development, Substitute Consent & Exceptional Circumstances

A number of submissions object that the Applicant seeks substitute consent for historic peat extraction and ancillary development carried out without prior planning permission, EIA or AA, which they say is in breach of Irish and EU law. They contend that substitute consent is a strictly exceptional, remedial mechanism that cannot be used as a workaround for unauthorised development, and that granting it here would reward systemic non-compliance and set a dangerous precedent.

Some submissions question whether the exceptional circumstances, as set out by subsection 177K(1J) of the Act, exist to enable the Commission to grant substitute consent. The principal allegation is that the Applicant knowingly carried out peat extraction activities without the required planning permission.

Response

The Applicant agrees that substitute consent is an exceptional procedure. It has been established by the Court of Justice of the European Union in Case C-215/06 (Commission v Ireland) that substitute consent is permitted only in exceptional cases, and following *An Taisce v An Bord Pleanála* [2020] IESC 39 the Act was amended so that Section 177K(1A) precludes the Commission from granting substitute consent unless satisfied that exceptional circumstances exist. It is submitted that the exceptional circumstances framework, correctly applied, is itself the safeguard the submissions call for. It does not operate as a workaround for unauthorised development and requires the Commission to refuse where the statutory matters are not satisfied. The Applicant considers that exceptional circumstances are satisfied here, as outlined by the Applicant in Section 3 of the Planning Report which accompanies the Subject Application.

The Applicant does not dispute that the peat extraction and ancillary works of the Subject Application were carried out without the benefit of planning permission. This is precisely why an application for substitute consent has been made. Substitute consent under Part XA of the Act is the mechanism provided in Irish planning law, consistent with European law, for the assessment and regularisation of

development where an EIA, a determination as to the need for EIA, or an Appropriate Assessment was required and was not carried out.

The question of whether exceptional circumstances exist is addressed in detail in Section 3 of the Planning Report submitted with the Subject Application. The assessment considers each of the statutory matters set out in section 177K(1J) of the Act and demonstrates why the exceptional circumstances test is satisfied in this case. As set out there, the peat extraction benefited from exempted development status until September 2012. The legal position regarding the application of Section 4(4) of the Act to peat extraction then remained materially ambiguous between September 2012 and September 2019, during which period live planning and legal cases were being determined and culminating in the 2019 Peatland Regulations (which had sought to clarify the position of peat extraction in relation to planning obligations) being quashed by the High Court.

The Applicant previously applied to the Commission for leave to apply for substitute consent for peat extraction activities. The purpose of the application was to regularise (without prejudice) the planning status of ongoing peat extraction carried out after 20th September 2012. The application was lodged on 16th December 2019 and the Commission subsequently granted leave to apply for substitute consent on the 30th of April 2020 (LS19.306246). However, the decision of the Commission was subsequently quashed by the "Ballysax/McQuaid" ruling of the Supreme Court on 1st July 2020.

In the interim the Applicant had progressed and lodged an application for substitute consent for the relevant peat extraction works at Boora Bog Group to An Coimisiún Pleanála (SU19.307282) on the 2nd of June 2020. Subsequent to lodging the substitute consent application, and the aforementioned "Ballysax/McQuaid" ruling the Applicant formally announced in January 2021 that all industrial scale peat extraction on lands within its management would permanently cease and the application was withdrawn by the Applicant on 14th January 2021.

Having regard to these factors, which are described in further detail in Section 3 of the Planning Report, it is submitted that the Applicant reasonably believed the development was not unauthorised.

3.1.2 IPC Licence

One submission alleges that the control measures associated with peat extraction (silt ponds, drainage systems, etc) lie outside of the jurisdiction of An Coimisiún Pleanála and with the EPA instead under IPC licence. Another submission contends that the Applicant has relied on the IPC licence to minimise the extent and impact of the unauthorised development.

Response

The relationship between the IPC licensing regime and the planning system is addressed in Section 2.2 of the Planning Report accompanying the Subject Application. These are distinct regulatory regimes and it is well established that certain developments require both planning permission and an IPC licence. The existence of an IPC licence neither negates the requirement for planning permission, nor is it relied upon by the Applicant to regularise the planning status of the development, as demonstrated by the Applicant voluntarily and dutifully moving to prepare an application for substitute consent in respect of the activities which have been regulated by IPC Licence for nearly three decades.

As outlined in the Planning Report, the IPC licence regulated the environmental operation of the peat extraction activities under the supervision of the EPA. The application for substitute consent separately addresses the planning status of the peat extraction works and is accompanied by a comprehensive rEIAR and rNIS. Section 2.2.1 of the Planning Report also explains the statutory distinction between the respective roles of ACP and the EPA when it comes to control, mitigation and monitoring measures, noting that while the Commission may impose planning conditions where appropriate, the control of emissions and operational environmental management remains a matter for the EPA under

the IPC licensing regime. The Applicant has not relied on the IPC licence to minimise or justify the planning issues arising from the Subject Application.

The existence of the IPC Licence is relevant to the exceptional circumstances test, in particular to the Applicant's reasonable belief and to the environmental regulation of the site, which is addressed in Section 3 of the Planning Report.

The substitute consent application seeks to regularise the planning status of the Application Site in order to comply with planning legislation. The Applicant continues to demonstrate compliance with the IPC licence through the various conditions and audit requirements.

3.1.3 Future Wind Farm Development

Several submissions raise concerns regarding the proposal to develop a wind farm on the Application Site, arguing that approval of substitute consent would enable or set a precedent for the wind farm. One submission queries the legality of reference to the proposed wind farm in the Subject Application.

Response

The Subject Application does not seek permission for a wind farm, or for any separate future uses on the Application Site. The Subject Application seeks substitute consent for peat extraction and ancillary works only. The proposed Lemanaghan Wind Farm is a separate development that is the subject of its own planning application, EIAR and NIS and is before the Commission for determination.

For the purposes of the rEIAR, the 'Project' differs from the development for which substitute consent is sought. Under Article 1(2) of the EIA Directive, 'project' means:

> *"- the execution of construction works or of other installations or schemes,*
> *- other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources."*

The 'Project' is defined in Section 1.1 above and is set out in Section 1.1.1 of Chapter 1 of the rEIAR which accompanies the Subject Application, and the rEIAR defines the development as a project comprising of different 'phases'. The Project formed part of an overall development at the Application Site which commenced many years prior to July 1988. As such, to facilitate as complete an assessment as is possible of the project since July 1988, a description of the development pre-1988 is included in this rEIAR (see Section 4.3 in Chapter 4).

A description of the activities intended to be carried out at the Application Site into the future as part of the Project is described under the 'Remedial Phase' in the rEIAR (see Section 4.10 of Chapter 4). This is to allow for the remedial impact assessment to be carried out. The activities in the Remedial Phase are cumulatively assessed with the proposed Lemanaghan Wind Farm .

3.1.4 Project Splitting

A number of submissions state that project splitting has occurred due to the fact that there is no description within the application of electricity infrastructure or a grid connection route. It is asserted that this omission breaches Article 5(1)(c) and Annex IV of the EIA Directive (2011/92/EU as amended).

Response

Electricity generation did not occur on the Application Site. During the Peat Extraction Phase, peat from the Application Site was delivered to power stations for electricity generation, as described in

Chapter 4 of the rEIAR. As there is no electricity generation infrastructure or a grid connection route connected to the Application Site, project splitting has not occurred.

3.1.5 Procedural Deficiencies

A number of submissions raise issues regarding the perceived procedural deficiencies. These include:

- The adequacy of the rehabilitation plan
- Defects on the public notice, townland names and notice validity
- Inconsistencies between the application form, drawings and site conditions
- Industrial rail network and welfare building is inadequately described
- Absence of Seveso screening,
- Inaccuracies in the planning history

It is asserted that these deficiencies breach the Planning and Development Act 2000, the Planning and Development Regulations 2001, the EIA Directive (2011/92/EU as amended) and the Aarhus Convention.

Response

As demonstrated in the response below, it is submitted that there are no procedural deficiencies in the Subject Application documentation. The Applicant has prepared and submitted the Subject Application in accordance with the requirements of the Planning and Development Act 2000, the Planning and Development Regulations 2001, the EIA Directive (2011/92/EU as amended) and the Aarhus Convention.

The adequacy of the rehabilitation plan

The Remedial Phase and Cutaway Bog Decommissioning and Rehabilitation Plan are described in Section 4.10 of the rEIAR. The Application Site remains subject to the IPC Licence, under which rehabilitation is addressed through Condition 10. It should be noted that regardless of whether substitute consent is granted by the Commission in respect of the Application Site, the Applicant intends to fully satisfy the requirements of Condition 10 of the IPC Licence. Should the Commission include a condition or conditions relating to remediation of all or part of the Application Site on which the development which is the subject of the grant of substitute consent is situated, the Applicant will be well-placed to comply with those condition(s) to the fullest extent.

Defects on the public notice, townland names and notice validity

The Applicant is satisfied that the statutory public notices comply with the requirements of the Planning and Development Regulations 2001, as amended ('the Regulations') and correctly identify the townlands within which the Application Site is located. Any variance in townland spellings appearing on An Coimisiún Pleanála's website or in a summary does not affect the validity of the statutory notices themselves, in which the townlands are correctly stated. As regards the dates of the Site Notice and Newspaper Notice, the Applicant wishes to clarify that apparent twelve-month discrepancy on the application form arose from a typographical error, and the notices were in fact erected on the date specified on the site notice, the 12th September 2025.

Inconsistencies between the application form, drawings and site conditions

The Applicant wishes to confirm that the existing gross floor area (welfare facility building + storage containers) amounts to 78.4 sq.m as stated on the application form. Section 4.6.4.3 of EIAR describes the welfare facility as '*approx. 52m²*'. There is no discrepancy here as alleged in the submissions.

It should be noted that the Application Site is undergoing decommissioning under the conditions of its IPC licence. Temporary moveable objects associated with the Application Site's decommissioning, such as a waste skip, do not form part of the Subject Application.

In relation to the illegal dumping highlighted in the submissions and the alleged inaccuracy of the response to the question '*Are you aware of previous uses of the site e.g. dumping or quarrying?*' on the application form (Question 14). The Applicant wishes to confirm that this answer is correct and that dumping has never been a land use on the Application Site. Sporadic cases of illegal dumping and materials on the Application Site associated with peat extraction activities do not constitute a land use.

In relation to flooding on the Application Site, the Applicant recognises that due to the peatland nature of the Application Site, water may pool on the Application Site during particular times of the year. However, as identified in Section 8.4.5 of Chapter 8 of the rEIAR and in Appendix 8-1, no recurring or historic flood incidents were identified within the Application Site from the OPW's Past Flood Events Map. It was in this context, that Section 14 of the application form states that the site has not been the subject of a flood event.

Industrial rail network and welfare building is inadequately described/ assessed

The rail infrastructure is accurately described on the site notice development description, is shown on the site layout plans and a drawing section detail is provided. Railway infrastructure is described in detail in the rEIAR in Section 4.2.3.5 and is assessed as part of the Project throughout. The assertion that the rail network has not been adequately described, mapped or environmentally assessed is incorrect.

As stated in Section 4.2.4 of Chapter 4, water consumption across the Application Site is primarily at the Lemanaghan Works for domestic use. The water supply at Lemanaghan Works and the welfare facility building is from the local mains water supply. With regards to the septic tank, as stated in Section 4.2.4 of Chapter 4, wastewater from the welfare facility is discharged to an on-site septic tank with the effluent discharged to a percolation system through peat before penetrating to ground. The septic tank is inspected bi-annually and de-sludged as required by a licensed waste permit holder to ensure the treatment system is working optimally.

Absence of Seveso screening

The Seveso III Directive (2012/18/EU) is transposed into Irish law by the Chemicals Act (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2015 (S.I. No. 209 of 2015) (the 'COMAH Regulations'). The Regulations apply to "establishments" where dangerous substances, as listed in Annex I to the Directive (transposed at Schedule 1 to the COMAH Regulations), are present, or are liable to be present, in quantities equal to or exceeding the qualifying thresholds set out in Schedule 1.

Peat extraction on the Application Site has ceased. In any event, peat extraction, as an activity, is not listed in Annex I to the Seveso III Directive. The COMAH Regulations are triggered solely by the presence of specified dangerous substances (or categories of substances, such as those classified as flammable, oxidising, or toxic) on site in quantities meeting or exceeding the lower-tier or upper-tier thresholds. The Application does not meet or exceed any of these thresholds.

As the Project does not qualify as a new COMAH/Seveso establishment and is not located within the consultation distance of any existing notified establishment, the statutory precondition for referral to the HSA under the Regulations does not arise.

Inaccuracies in the planning history/ site history

As stated in Section 2.2.1 of the rEIAR, the planning history provided includes all planning applications which are either within the overall footprint of the Application Site, or are adjacent to the Application

Site, not all of which are associated with peat extraction and ancillary activities at the Application Site. This includes planning applications unrelated to the Applicant and peat extraction but where the red line boundary of the planning application overlaps with the red line boundary of the Subject Application, such is the case of Offaly County Council Ref: 06/1812.

3.2 Public Engagement & Consultation

Some submissions raise concerns regarding the absence of meaningful public engagement, both historically (local communities, landowners and rights holders said to have been excluded from decisions affecting their environment, heritage and livelihoods, with no communication between 1988 and 2024 while residents dealt with impacts related to peat extraction) and in relation to this application (community notification letter dated 'September 2025' said not to have been delivered until 14 October 2025). Observers invoke the EIA Directive and the Aarhus Convention and request meaningful consultation in all future bogland matters.

Response

The substitute consent process itself includes a statutory public participation process. The Subject Application was the subject of the required public notices and the rEIAR and rNIS were placed on public display, affording all members of the public the opportunity to make submissions and observations, as these observers have done, and the concerns raised are addressed in this response. Historically, the activities were subject to public participation under the EPA's IPC licensing framework (newspaper and site notices, notification of the local authorities, and public display in 1999-2000), and the EPA's public portal continues to provide a facility for the public to participate in licensed activities on the site, and facilitate the making of observations and complaints.

As regards the delivery date of the community notification letter, the Applicant notes that the statutory site and newspaper notices were published and erected in advance of the application in accordance with the Regulations, and it is those statutory notices, rather than any courtesy community letter, that govern the public participation period.

The requests for meaningful future consultation are noted by the Applicant. Any future development is subject to its own consenting and public-participation process.

3.3 Land Ownership & Turbary Rights

3.3.1 Legal Interest and Owner Consent

Some submissions contend that the Applicant has not demonstrated sufficient legal interest to make an application for substitute consent for lands within red line planning application boundary.

Response

The application for substitute consent has been made under Section 177E of the Act. Section 177E, 1B specifies that:

> *" ...an application for substitute consent may be made by:*
>
> *(a)* ***a person who has carried out the development*** *referred to in subsection (1), or*
>
> *(b) the owner or occupier of the land on which the development has been carried out."*

(emphasis added)

A person who has carried out the development making an application for planning consent is unlike the position for other permission applications but is an express option in the Act.

3.3.2 Turbary and Land Rights

Submissions from turbary rights holders and community groups contend that recognised turbary rights subsist over lands within Lemanaghan Bog and that rights holders were neither consulted nor informed about the application.

Response

Third party extraction on turbary plots within the Application Site is acknowledged in Section 4.6.3 of the rEIAR. Access to turbary plots within the Application Site will not be affected by this application for Substitute Consent. The Applicant, Bord na Mona Energy Ltd, holds the title of the land. As outlined in Section 3.2 above, there has been and continues to be opportunity for public participation regarding activities on the site via the IPC Licence processes, and also as part of this application for substitute consent.

The lands referenced at Derrynagun/Dernagun Bog are outside the red line planning application boundary and therefore do not form part of the substitute consent application.

3.3.3 Further Submissions on the Information Submitted to the Commission

On 25th November 2025, the Applicant submitted further information to the Commission in response to its request dated 5th November 2025. The further information comprised a letter from Bord na Móna Energy Limited and associated map confirming its freehold and beneficial ownership of the relevant lands.

The Commission subsequently afforded those who had made submissions on the Subject Application an opportunity to make a further submission. The Commission requested that any such submission was to be confined to the further information submitted by the Applicant. A number of the further submissions repeated matters already raised in their original submissions, along with observations on other aspects of the Subject Application. Those matters which do not relate to documents furnished to the Commission by the Applicant on the 25th of November, fall outside the scope of the Commission's invitation and therefore are not responded to in this section. They have, in any event, already been addressed in the relevant sections of this report and are not repeated here. The concerns arising from the additional submissions are listed below.

- The status and purpose of the landowner letter,
- The absence of the identification of land registry folios, deeds and parcel schedules,
- Article 22 of the Regulations and the requirement for third-party consent.

Response

Status and purpose of the landowner letter

The landowner letter was submitted in direct response to the Commission's request and confirms that Bord na Móna Energy Limited is the freehold and beneficial owner of the lands delineated by the blue line on Drawing No. BNM-PG-24-21-93. The Applicant confirms that the information contained in that letter is accurate.

Land Registry folios and other land title documentation

Some submissions contend that the landowner letter should have been accompanied by Land Registry folios, deeds, instruments of transfer, a parcel-by-parcel ownership schedule, evidence of compulsory-purchase compensation and maps of all registered or alleged burdens.

Section 3.3.1 identifies who is statutorily entitled to make an application for substitute consent. Additional title documents are not required in order to make a substitute consent application, and no such material was requested by the Commission. It should be noted that the planning process is not a mechanism for determining claims to title or assertions concerning registration, compulsory acquisition, payment of compensation, prescriptive rights or beneficial ownership.

Article 22 of the Regulations and third-party consent

A number of submissions rely on Article 22 of the Regulations as establishing that written consent must be obtained from each landowner within the Application Site.

This does not take account of the specific statutory planning framework governing substitute-consent applications. Article 22 forms part of the general permission regulations applicable to planning applications made under Section 34 of the Act. The entitlement to make an application for substitute consent is expressly governed by section 177E(1B) of the Act, as addressed in Section 3.3.1.

3.4 Environmental & Ecological Impacts

3.4.1 Retrospective Assessment Data Deficiency

A number of submissions contend the use of a 1988 baseline when extraction commenced in the 1950s and identify that the rEIAR is omitting three decades of unassessed impacts. Submissions raise concerns that no contemporaneous baseline surveys were carried out before drainage/extraction; and that recent monitoring cannot reconstruct historic conditions.

Response

The permissibility and adequacy of retrospective assessment is addressed under Section 3.1 and in Section 3 of the Planning Report: substitute consent is the statutory mechanism for the assessment of historical development, and the rEIAR/rNIS assess the environmental effects in full. The selection of the 1988 baseline for the rEIAR and 1994 for the rNIS reflects the required transposition dates of the EIA Directive and Habitats Directive into Irish law, respectively. As clarified in Section 4.1 in Chapter 4 of the rEIAR, irrespective of the 1988 baseline for the rEIAR, a detailed description of development that took place prior to the 1988 baseline is provided for completness. Section 4.3 describes initial site development, drainage installation and peat extraction that took place pre EIA-Directive which enabled as complete an assessment as possible in the rEIAR and rNIS.

There are 25 no. listed information sources listed in Section 4.1.2 in Chapter 4 of the rEIAR which have been utilised to provide as comprehensive a description as possible of activities that took place on the Application Site from 1950 to present day, and into the Remedial Phase. Each impact assessment details the desk-based sources, monitoring records and field survey across the relevant periods, and rehabilitation plans, that have been utilised to facilitate a comprehensive assessment of the Peat Extraction Phase, the Current Phase and Remedial Phase. In addition, each impact assessment chapter addresses the cumulative effects of initial site development and extraction up until 1988, and the Peat Extraction Phase to enable a comprehensive assessment of the historical peat extraction in full.

In summary, the use of a 1988 baseline does not disregard the earlier decades of activity which pre-date this time, nor does it preclude their assessment as appropriate in the rEIAR. The cumulative effects

assessment detailed in each rEIAR impact chapter and rNIS for the pre-1988 and pre-1994 period respectively with the Peat Extraction Phase, assess the effects of the historical development in full rather than in part. The historical activity has been comprehensively characterised and assessed, using the best scientific knowledge available and in accordance with best-practice guidance. The specific ecological and hydrological baseline concerns are addressed in turn in Sections 3.4.2 and 3.4.3 below.

3.4.2 Ecological Baseline Deficiency

A number of submissions raise concerns about the ecological baseline, particularly in relation to bats and birds, suggesting that the baseline presented is deficient and relies on retrospective data. In addition, concerns are raised that habitats were heavily modified prior to surveys, making historic habitat loss impossible to quantify

Response

The biodiversity of the Application Site is assessed in Chapter 6 Biodiversity of the rEIAR and, in respect of European Sites, in the rNIS. The ecological impact assessment in the rEIAR is supported by desk studies that establish the 1988 ecological baseline and describe the receiving environment for the duration of the Peat Extraction Phase, Current and Remedial Phases, and by Ecological Walkover results spanning 2011 to 2025.

As detailed in Section 6.3.3, data provided in the rEIAR on the ecology of Application Site through desk studies and field surveys have helped inform the 1988 baseline, as well as the current ecology baseline of the Application Site. Using the 1988 baseline and the additional information detailed in Chapter 6, Table 6-16 identifies all receptors from all three phases of the Project (Peat Extraction Phase, Current Phase, and Remedial Phase) and assigns them an ecological importance in accordance with best practice guidance. This table also provides the rationale for this determination and identifies the habitats and species that are Key Ecological Receptors (KERs). The likely significant effects on receptors identified as KERs are thus assessed in the rEIAR.

The submissions focus on individual appendices in isolation stating that the ecological baseline is deficient and retrospective. Clarity on how the birds, bats and habitat survey effort supports the detailed desktop studies utilised to establish the 1988 baseline and description of the receiving environment is addressed below.

From an ornithological perspective, Bird Atlas records for certain periods ranging 1968-2011 are utilised to contextualise breeding and wintering bird species over time, and data from the periods spanning the 1980s are used to characterise the 1988 baseline. Bird Atlas records from 1988 onwards are used to describe the receiving environment over the Peat Extraction Phase (Section 6.3.1.6.1). In addition to the desk study on Bird Atlas records, Bird Surveys undertaken at the site by BnM from 2014 to 2020, and Bird Surveys undertaken at the site for Lemanaghan Wind Farm (included as Appendix 6-4 and referred to in the submission) from 2020-2025 are also utilised to provide a description of the receiving environment during the Peat Extraction, Current and Remedial Phases. One submission identified the presence of Whooper Swan in their submission identified in flooded peat fields which is consistent with the ornithological survey results detailed in Appendix 6-4.

From a bats perspective, NBDC and Bat records are utilised to contextualise and characterise the 1988 baseline (Section 6.3.1.7.4 & 6.3.1.7.5) and describe the receiving environment during the Peat Extraction, Current and Remedial Phases. In addition to this desk study, Appendix 6-2 is a record of the bat survey effort which was undertaken at the site as part of data collection for Lemanaghan Wind Farm in 2024, and supplemented by survey results from 2021, and are also utilised to provide a description of the receiving environment during the Peat Extraction, Current and Remedial Phases. In addition, Table 6-16 describes the suitability of foraging and commuting habitats on the Application Site for bats at the 1988 baseline, what would have been present prior to extraction, and from peatland rehabilitation.

From a habitat loss perspective, Section 6.3 establishes the ecological 1988 baseline clarifying that the Application Site would have comprised predominantly of bare peat where large sections of the bogs had been drained and vegetation removed, acknowledging the fact that drainage and milled peat extraction was underway prior to this point in time. Section 6.7. details the assessment of cumulative effects arising from the Peat Extraction Phase, and the original drainage and cutting of the acrotelm at the Application Site from 1950 to July 1988. It is identified that this would have resulted in a profound negative effect on the raised bog habitat (and associated marginal habitats such as fen and bog woodland) that was present, particularly in the earlier years when the majority of the drainage of the Application Site was undertaken. As is evident, the impact of historic habitat loss has been comprehensively assessed in the rEIAR.

In summary, the ecological baseline is not deficient. The 1988 baseline and the description of the receiving environment across the Peat Extraction, Current and Remedial Phases are established through a combination of desk study – Bird Atlas records from 1968–2011, and NBDC and bat records – and field survey, with the appendices identified in the submissions forming one part of that wider evidence base rather than the whole of it. The suggestion that historic habitat loss cannot be quantified is addressed directly by the cumulative effects assessment. The ecological receiving environment has been characterised, and the effects of the historical development comprehensively assessed, using the best scientific knowledge available and in accordance with best-practice guidance.

3.4.3 Hydrological Baseline Deficiency

Submissions contend the hydrological assessment is retrospective and assumption-based, conceding no pre-drainage baseline data on water levels, hydrochemistry or flow regimes, and reliance on assumptions and aerial imagery.

Response

The hydrology and hydrogeology of the Application Site, and the effects of the drainage and peat extraction, are assessed in Chapter 8 Hydrology & Hydrogeology of the rEIAR, and its supporting appendices. The absence of pre-drainage monitoring data is a feature of the remedial context – drainage was first installed on the site in the 1950s. As is clarified in Section 3.4.1 above, a description of activities pre-1988 are provided to facilitate an assessment of the cumulative effects of initial site development, drainage installation and peat extraction prior to the 1988 baseline. Section 8.6.5.1 addresses this, identifying the profound negative effect on the bog hydrogeological regime and clarifies that the cumulative effect on downstream surface water quality and flow volumes is not considered to be significant given the control measures being implemented by the Applicant.

The hydrological and hydrogeological 1988 baseline, and receiving environment during the Peat Extraction, Current and Remedial Phases is informed by available records, monitoring and aerial imagery. The desk study is informed by 17 no. data sources which are listed in Section 8.2.1 and clarification is provided throughout Section 8.4 on the time periods from whence data is available, using professional judgement to ascertain conditions at the baseline year of 1988. In addition, the monitoring and site investigation data captured on the Application Site that spans 2021 to 2025 is also supplemented by recent and historic site-specific data including Lidar data and water quality monitoring from 2000 to 2024 in compliance with the IPC Licence requirements.

In summary, the hydrological assessment is neither deficient nor unsupported by data. The absence of pre-drainage monitoring reflects the remedial context and, as with the ecological baseline, the pre-1988 activities are described to facilitate the cumulative assessment of initial site development, drainage and extraction. The 1988 baseline and the description of the receiving environment across the Peat Extraction, Current and Remedial Phases are established through desk study, site surveys, and monitoring. The hydrological and hydrogeological receiving environment has been characterised, and the effects of the historical development assessed, using the best scientific knowledge available and in accordance with best-practice guidance.

3.4.4 Water Quality

Submissions raise ongoing and historical pollution of the River Brosna and Lemanaghan Brook from peat extraction and drainage identifying elevated temperature discharges, ammonia, silt and nutrient run-off, citing WFD data showing Brosna and Lemanaghan waterbodies at 'Moderate' status and 'At Risk', with peat among the significant pressures.

Response

Water quality is assessed in Chapter 8 Hydrology & Hydrogeology of the rEIAR, with the Water Framework Directive assessment at Appendix 8-2, and the relevant catchment and WFD status data are factored into the baseline. Hydro Environmental Services (HES) completed site inspections, walkover surveys, drainage mapping, and baseline monitoring/sampling at the Application Site as part of the rEIAR and to inform the proposed Lemanaghan Wind Farm planning application. Section 8.4.6 specifically addresses surface water quality detailing EPA Biological Q-Rating Monitoring results, monitoring carried out by the Applicant pre-2000 and from 2000 onwards under IPC Licence, and from HES water quality monitoring which informed the impact assessment across the Peat Extraction, Current and Remedial Phases in Section 8.6.2.

In particular, Section 8.6.3.2.1 addresses the effect on surface water quality during the Peat Extraction Phase identifying that '*residual effect is a moderate, long-term, negative and indirect likely effect on downstream surface water quality and is Not Significant.'*

The effect of WFD Status of Surface water bodies is addressed in Section 8.6.3.1.8 and is supported by a WFD Compliance Assessment in Appendix 8-2, stating

> *'No receiving surface waterbodies (Boor_020, Brosna_100, Brosna_110 or Lemanaghan_010 SWBs) have ever been assigned 'Poor' status'*
>
> *The receiving SWBs have all ranged from 'Moderate' to 'Good' status across the 3 no. WFD cycles. The effect on SWB status is not likely to be significant. The drainage systems were designed to reduce runoff to greenfield runoff rates while the IPC Licence controls also ensured high quality runoff from the site.*
>
> *Therefore, we consider that there has been an insignificant, short-term, negative and indirect effect on downstream surface waterbody status and no residual effect on groundwater body status, and is Not Significant.'*

In summary, the receiving waterbodies have been assigned 'Moderate' status and 'At Risk' and the assessment, supported by the WFD Compliance Assessment and by monitoring concludes that the residual effect on surface-water quality and status is Not Significant during the Peat Extraction Phase, the site's drainage design and IPC Licence controls having limited runoff and maintained water quality throughout.

3.4.5 Appropriate Assessment / rNIS Deficiency

Submissions contend the remedial Natura Impact Statement fails Article 6(3) standards: that it admits no baseline ecological surveys were undertaken before extraction, so cannot demonstrate the prior condition of Raheenmore Bog Special Areas of Conservation (SAC) or Clara Bog SAC or whether hydrological/nutrient changes affected Annex I habitats (active raised bog) or Annex II species (marsh fritillary, otter); that it relies on desktop assumptions; and that it fails to assess cumulative effects or provide binding mitigation.

Response

Section 3 of the remedial Appropriate Assessment Screening Report (rAASR) included as Appendix 1 of the rNIS details the identification and assessment of European Sites within the Likely Zone of Influence of the Project.

Section 3.1 details the methodology used to establish which European Sites are within the Likely Zone of Influence of the Project identifying that:

- '*All European Sites that could potentially be affected were identified using a source-pathway - receptor model. To provide context for the assessment, European Sites surrounding the Application Site are shown on Figure 3-1.'* and;
- '*Sites that were further away from the Application Site were also considered and, in this case, no complete source-pathway-receptor chain for significant effect was identified for any other European Site.'* and;
- *'Where potential pathways for Significant Effect such as habitat or hydrological connectivity are identified, the site is included within the Likely Zone of Influence.'*

Section 3.2 details an assessment of the potential for significant effects on the European Sites within the Likely Zone of Influence and identifies pathways by which impacts are likely to have occurred or may occur due to past, current and/or future activities within the Application Site. (Table 3-1 in the rAASR). A total of 11 no. SACs and 5 no. Special Protection Areas (SPAs) were assessed. All European Sites that are within the Likely Zone of Influence are 'screened in' following the precautionary principle and assessed further within the rNIS. A potential pathway for direct and indirect effects on 2 no. European Sites as a result of the Project was identified: River Shannon Callows SAC and the Middle Shannon Callows SPA.

In the case of Raheenmore Bog SAC, this European Site is presented on Figure 3-1 and was considered when identifying the European Sites in the Likely Zone of Influence. Given the distance from the Application Site, no complete source-pathway-receptor chain was identified between the Project and Raheenmore Bog SAC and it was not considered further.

In the case of Clara Bog SAC, this European Site is assessed in Table 3-1 where it is identified that '*No pathway for direct effects was identified as this European Site lies entirely outside of and >3km from the Application Site. The potential for the Project to result in indirect effects on this European Site was considered. No identified connectivity or pathway for significant effects on the site or the terrestrially based habitats for which the site is designated was identified. Taking the above into consideration as well as the distance between the Application Site and this site, no potential for indirect effects was identified.'*

Raheenmore Bog SAC and Clara Bog SAC, referred to in the submissions, were considered at the Likely Zone of Influence identification stage and at screening stage, and were screened out, as no source–pathway–receptor connection to those sites exists i.e there is no hydrological or habitat connectivity between Raheenmore Bog SAC and Clara Bog SAC ,and the Application Site.

As regards the screened-in European Sites, the rNIS examines each Qualifying Interest and Special Conservation Interest – including the relevant Annex I habitats and Annex II species, such as otter – against the conservation objectives of those sites, and determines whether a complete source–pathway–receptor chain exists by which an adverse effect could arise. Where such a pathway could not be excluded, the feature was carried forward for full assessment on a precautionary basis. The suggestion that the rNIS rests on desktop assumptions does not reflect the basis of the assessment. The source–pathway–receptor analysis is founded on objective information, including the hydrological and hydrogeological assessment in Chapter 8, the biodiversity assessment in Chapter 6, and the water-quality monitoring undertaken at the Application Site outfalls from 2000 to 2024 under the IPC Licence and by HES, which provides a record of the quality of water discharging from the site towards the receiving European Sites over the relevant period. The absence of pre-extraction survey data is a

feature of the remedial context, addressed under Sections 3.4.1 to 3.4.3 above; it does not render the assessment assumption-based.

The contention that the assessment is undermined by the absence of pre-extraction baseline surveys reflects the same point raised in relation to the ecological and hydrological baselines, and is addressed under Sections 3.4.1 to 3.4.3 above. The cumulative and in-combination effects of the Project, including with the proposed rehabilitation and other plans and projects, are assessed in the rNIS, and the effects of the Remedial Phase are considered.

As regards mitigation, the conclusion of the rNIS does not rely on mitigation to reach a finding of no adverse effect on the integrity of any European Sites: the assessment concludes that adverse effects can be excluded on the basis of the nature of the Project and the controls already in place under the IPC Licence, rather than through mitigation proposed for the purpose of the Appropriate Assessment. As identified in Section 7.4 in the rNIS:

> *'Following an examination, evaluation and analysis, in light of best scientific knowledge and the conservation objectives of the European Sites, and, on the basis of objective information, it can be concluded that the peat extraction and ancillary activities at the Application Site and the implementation of the proposed Rehabilitation Plan for the Application Site have not and will not have a residual adverse effect on the integrity of any European Site, either alone or in combination with other plans or projects during the Peat Extraction Phase, Current Phase and Remedial Phase.'*

In summary, the rNIS meets the requirements of Article 6(3): the European Sites capable of being affected have been correctly identified through screening and assessed against their conservation objectives; and the assessment is founded on the ecological and hydrological evidence base as clarified.

3.4.6 Peatland, Carbon and Climate

A number of submissions raise concerns about the effect of drainage and extraction in converting peatlands from sinks to sources, citing national and EU climate law and offering emissions factors for degrading peatlands in Ireland. In addition, one submission contends the findings in the climate assessment as 'negligible' and that there is no carbon accounting or emissions baseline.

Response

Chapter 10 of the rEIAR: Climate describes and assesses the residual direct and indirect climate impacts of peat extraction and ancillary activities, at the Application Site. Section 10.2 details the methodology and associated emissions factors utilised to estimate greenhouse gas emissions associated with the Peat Extraction, Current and Remedial Phases. Section 10.4 presents the calculations and quantification of the greenhouse gas emissions, and Section 10.6.1 identifies that the removal of the carbon store of the Application Site and the subsequent release of CO_2 from peat extraction and ancillary activities during the Peat Extraction Phase is considered long-term, direct, negative and Significant.

As is evident, consideration has been given to the loss of carbon store arising from peat extraction, greenhouse gas emissions have been quantified and the impact assessment identifies a significant negative effect due to peat extraction. In addition, Section 10.8 addresses the cumulative effect of the drainage works and extraction that took place prior to the 1988 baseline with the Peat Extraction Phase and identifies a significant negative cumulative effect.

The primary focus of the Remedial Phase is re-wetting the bogs to restore the carbon-store function and promote the carbon-sink potential of the land - the very outcome the submissions advocate. Section 10.4.4 details the application of the IUCN UK Peatland Programme 'Peatland Code' methodology to the area of rehabilitation and estimates CO_2 reductions which will have a long-term, neutral and not

significant effect. It is identified that the Remedial Phase complies with existing and emerging policy requirements and is in line to achieve Ireland's trajectory towards net zero.

Far from a finding of negligible impact, the climate assessment quantifies the emissions and identifies a significant negative effect from the loss of the carbon store, while the Remedial Phase is directed at restoring the land's carbon-sink function in line with Ireland's net zero trajectory.

3.4.7 Flooding

One submission raises concern over flooding of adjacent lands during the rehabilitation of the bog and refutes the statement in the Draft Bord na Mona Cutaway Bog Decommissioning and Rehabilitation Plan included as Appendix 4-2 of the rEIAR that it is anticipated that the blocking of drains and re-wetting of cutaway peatlands will not have any flooding impacts on adjacent land.

Response

It is a requirement of '*Condition 10 Cutaway Bog Rehabilitation*' of the IPC Licence that following the decommissioning of use of all or part of its bogs, Bord na Móna, prepares (to the satisfaction of the EPA) and implements a Cutaway Bog Rehabilitation Plan. Bord na Móna has produced a Draft Cutaway Bog Decommissioning and Rehabilitation Plan for the Application Site, and it is the intention of Bord na Móna to rehabilitate the bog in a phased approach under IPC Licence, which will be agreed with the EPA prior to commencement.

The purpose of the re-wetting works as detailed in Appendix 4-2 is to raise the water table within the Application Site towards a naturally functioning peatland and will be restricted to within the footprint of the proposed rehabilitation area. This will be achieved through passive, graded measures – drain-blocking with peat dams and outfall modification, with water levels managed by overflow pipes so as to maintain water levels close to the peat surface and to avoid the creation of large waterbodies.

Appendix 8-1 is a site-specific Flood Risk Assessment prepared by HES, identifying that '*Topography within the Application Site is relatively flat with an elevation range of between approximately 50 and 62mOD with gentle slopes in some locations. Along many of the bog boundaries, a 1-2m high peat headland exists which is a remnant of the original bog. These headlands and in some areas remnant peat banks create a boundary berm, forming a basin effect within the former peat extraction area*' (Section 3.1.4 of Appendix 8-1). The FRA concludes that '*The Cutaway Bog Decommissioning and Rehabilitation Plan for the Application Site can be categorised as a "Water Compatible Development" and a justification test is not therefore required. The Cutaway Bog Decommissioning and Rehabilitation Plan is designed to improve the hydrological regime within the Application Site and these measures will reduce flood risk in the vicinity and downstream of the Application Site*' (Section 6 of Appendix 8-1).

As detailed in Section 6.1 of the Draft Bord na Mona Cutaway Bog Decommissioning and Rehabilitation Plan, one of the key constraints identified is the surrounding landscape and neighbours and that '*no active rehabilitation management is carried out that could knowingly impact surrounding lands*'. The cutaway bog decommissioning and rehabilitation plan that will be agreed with the EPA for implementation and will include the exact locations of the drains to be blocked and bunds to be constructed, and will have due consideration of the surrounding landscape and neighbours. These details will be based on the existing habitats present and the topography of the Application Site which will be informed by contemporary site surveys. This level of detail will only be available and will be included in the final Cutaway Bog Decommissioning and Rehabilitation Plan for Lemanaghan Bog once the Application Site has been fully decommissioned, and will be subject to agreement with the EPA. As detailed in Section 4.10.1.1.2 in Chapter 4 of the rEIAR, '*a programme of monitoring will be implemented to validate the efficacy of the rehabilitation measures in achieving environmental stabilisation. Monitoring will initially involve quarterly monitoring assessments of the site to determine the general status of the site, the condition of the silt ponds, assess the condition of the rehabilitation*

work, monitoring of any potential impacts on neighbours' land, general land security, boundary management, dumping and littering'.

In summary, the Draft Bord na Mona Cutaway Bog Decommissioning and Rehabilitation Plan has been assessed by the site-specific Flood Risk Assessment as reducing flood risk in the vicinity and downstream of the Application Site, and its implementation, agreed with the EPA, will be monitored for any impact on neighbouring lands.

3.4.8 Waste

Some submissions object that Bord na Móna has left rubbish and plastic from former stockpiles throughout the Application Site since peat extraction ceased, and submit that this reflects a failure to maintain and clean up the land.

Response

Waste on the Application Site is addressed as a material asset in Chapter 14 of the rEIAR and as identified in Section 14.4 '*Since 2000, the Application Site has been operating under IPC Licence control which requires all hazardous and non-hazardous materials to be disposed of appropriately by licenced waste management operators. Likewise, details pertaining to waste (types, volume, name and address of licenced waste removal contractor, volumes recycled and reused), are recorded in AERs and submitted to the EPA annually and included in Appendix 4-3 of the rEIAR. Over the past few decades, activity decreased at the Boora Bog Group (in which the Application Site is located) and as a consequence of the cessation of peat extraction activity in 2020 and removal of remaining infrastructure, the volume of waste produced has increased. This increase in waste production is expected to fall during the Current Phase and Remedial Phases due to limited activities occurring at the Application Site, therefore an overall residual effect of a long term not significant negative is considered for waste management at the Application Site.*'

Accordingly, the litter and waste materials identified in submissions are likely a result of peat stockpiling already identified for removal under EPA Licence and as part of decommissioning activities, as detailed in Table 4-3 in Chapter 4 of the rEIAR. The Applicant has committed to continuing compliance with conditions outlined in the IPC Licence during the Remedial Phase, where applicable.

As identified in Section 3.4.7 above, monitoring of the rehabilitation measures will determine the general status of dumping and littering on a quarterly basis under IPC Licence.

3.5 Archaeology & Cultural Heritage

Some submissions emphasise the archaeological and cultural significance of Lemanaghan Bog due to the number of recorded monuments and toghers within the bog, and the presence of the early medieval ecclesiastical complex associated with St Manchan and St Mella's Cell. Observers contend that decades of extraction proceeded without adequate archaeological consent.

Submissions also express concerns regarding the Landscape and Visual Impact Assessment (LVIA) (Chapter 12) and how it interacts with the cultural heritage assessment in Chapter 13 of the rEIAR. The observers disagree with the sensitivity classification of the Application Site in the LVIA, treating the bog as 'heavily modified and of low sensitivity' and suggest that the assessment is confined to an assessment to the current baseline and ignoring the cumulative historic transformation, and by artificially severing the assessment of landscape from cultural heritage.

A number of submissions raise concern that the Lemanaghan Conservation Plan 2007, jointly prepared by the Heritage Council, Offaly County Council and the local community, must be recognised as the governing policy framework for the landscape, and that, although non-statutory, it is a relevant local

policy to which regard must be had. Observers acknowledge the compliance measures evident in the application.

Response

The Applicant notes that the DAU concurs with the recommendations of the archaeological assessment prepared by Tobar Archaeological Services Ltd and has no further archaeological requirements (see Section 2.2 of this report)

The Applicant does not dispute the archaeological significance of the Application Site. That significance, and the exceptional preservation capacity of the peatland environment, are expressly recognised in Chapter 13 Cultural Heritage of the rEIAR, prepared by Tobar Archaeological Services Ltd.

The Application Site has been the subject of a substantial body of survey and investigation which is detailed in Appendix 13-3. These investigations include the Irish Archaeological Wetland Unit Peatland Surveys in 1993-4, Lemanaghan assessment and mitigation survey in 1998, the Peatland Excavations Programme in 1999-2000 and a number of field inspections undertaken by IAC Archaeology and Tobar from 2020 to 2025. The desk-based studies supplement and report on these various investigations and survey efforts and it is stated that there are a total of 488 recorded monuments located within the Application Site boundary all of which are described in detail in Section 13.3. Section 13.3.4 also details the archaeological investigations and the St Manchan and St Mella's Cell.

Section 13.4.2.3 addresses the direct impact of the Peat Extraction Phase on these recorded monuments stating:

> *'The Peat Extraction Phase has the potential to have had a direct, significant, negative and permanent effect on unrecorded sub-surface sites. This is particularly the case between 1988 and 1993 prior to the Archaeological Survey of Ireland peatland surveys. Prior to 1993 it is possible that the Peat Extraction Phase had a direct, significant, negative and permanent effect on unrecorded sub-surface archaeological sites.*
>
> *This negative effect was mitigated, however, by the Peatland Surveys 1993-4 and any associated excavations which were carried out as part of the mitigation phase of that work. Subsequently, the introduction of the 2012 Code of Practice served as a mitigatory factor in the discovery of archaeological finds and features as well as their recording and excavation where required. In this regard it is considered that that residual effects on archaeological finds and features from 1993 to 2020 were direct negative Slight to Moderate and permanent while residual effects between 1988 and 1993 may have been direct negative Moderate to Significant and permanent.'*

It is evident from the foregoing that the archaeological and cultural heritage significance of the Application Site, and the effects of the historical peat extraction upon it, have not been understated: Chapter 13 records the full extent of survey and investigation effort, expressly identifies the potential for direct, significant, negative and permanent effects on the archaeological resource — including on unrecorded sub-surface sites in the period before the 1993–4 surveys — and characterises the residual effects without understatement.

As detailed in Section 3.4.1 above, initial site development, drainage installation and peat extraction from 1950 onward at the Application Site are expressly described in Section 4.3 and drawn on throughout the assessment. Section 13.7 details the assessment of cumulative effects arising from the Peat Extraction Phase and the pre 1988 activities. It is identified that:

> '*the pre 1988 drainage, shrinkage, compression and the extraction of peat could have had permanent and profound negative cultural heritage effects should sub-surface finds and features exist in areas which were subject to peat extraction and ancillary activities. This is*

particularly the case between 1988 and 1993 when fewer archaeological investigations and surveys had taken place. When considered cumulatively with activities which took place between 1950 and 1988, there is potential for increased cumulative direct negative effects to sub-surface archaeology if present within the Application Site.'

In addition the landscape and visual effects of the Project are assessed in Chapter 12 Landscape of the rEIAR and Section 12.6.1 identifies that the greatest landscape and visual effects at the Application Site occurred prior to the baseline in 1988 stating:

'the removal of peat throughout the Peat Extraction Phase changed the physical fabric of the landscape by removing material and altering the topographical profile of the landform year on year, resulting in negative direct landscape effects of 'Slight' significance for most of the Application Site. 'Significant' landscape effects occurred in an area to the north of the Application Site during the Peat Extraction Phase. Therefore, there is a cumulative direct landscape effect with peat extraction occurring in these areas prior to the 1988 baseline.'

As is evident, the impact of initial site development, drainage and peat extraction pre-1988 has been comprehensively assessed in the archaeological and landscape assessments of the rEIAR.

The landscape and visual assessment identifies that the most sensitive visual receptors likely to have most visibility of the Application Site are local residents who live in close proximity to the Application Site. As identified in Section 12.5.2, there is very limited visibility into the Application Site from sensitive visual receptors or any designated scenic amenity receptors, with only some residential receptors having instances of open visibility into the Application Site. This is in agreement with the statement in Section 13.2.5 which details the standardised approach is utilised for the assessment of effects on visual setting (indirect effects) according to types of monuments and cultural heritage assets which may have varying degrees of sensitivity. Since peat extraction and ancillary activities (clearance of vegetation, drainage, peat extraction and ancillary activities) were confined to the surface of the peat and sub-surface, this activity type is not considered to be capable of having wider landscape negative effects on setting on cultural heritage (i.e. indirect effects).

The Applicant acknowledges the Lemanaghan Conservation Plan 2007 (hereafter referred to as 'the Plan') and the significance of the heritage landscape it describes.

Of particular relevance to the Application Site is the reference made in the Plan to the extensive surveys and excavation undertaken at Lemanaghan Bog in 1993 which not only informs the baseline and remedial impact assessment on cultural heritage in the rEIAR but also showcases the engagement and support BnM have had in informing the archaeological record of Lemanaghan Bog for example, through its funding of the Irish Archaeological Wetland Unit Peatland Surveys in 1993-4. Page 22 of the Plan states, *'Since 1993, Bord na Móna, in consultation with Dúchas, has funded a programme of survey and excavation in the bog. It is as a result of this programme that the extent of the trackway network around Lemanaghan island has come to light'.* A record of the substantial body of survey and investigation at Lemanaghan Bog has been produced by BnM and is detailed in Appendix 13-3 of the rEIAR which supports in fostering a greater understanding of the historical significance of Lemanaghan Bog.

In addition, page 52 of the Plan identifies that '*Large tracts of Lemanaghan Bog, adjacent to the upland area, are currently being worked by Bord na Móna, and this will continue to be the case for approximately 20 years. There are no established walking routes across the bogs, which are potentially hazardous in terms of working machinery, deep drainage ditches, and the general instability of the bog surface. In the summer months, opening the bogs to the public also poses the threat of fire. Without the provision of a designated boardwalk/track, it would be unsafe to allow visitors to walk across the bog.'* The very purpose of the Subject Application is to regularise, without prejudice, the planning status of the Application Site to facilitate appropriate future uses of these lands in compliance with the requirements of the planning system. While any such future use is a separate matter assessed on its own merits and not an aspect of the Subject Application, Section 4.11.1 of the rEIAR describes a potential

future use on the Application Site - the proposed Lemanaghan Wind Farm (ACP Ref. PAX19.324161), which includes for amenity pathways that will connect the existing historical pathways in the Application Site and provide signage detailing the history and significance of Lemanaghan Bog. This is consistent with the objectives of the Plan and as such, the regularisation of the planning status of the Application Site, i.e the purpose of the Subject Application, is aligned with Policy 10 of the Plan: "*Establish improvements to the area's infrastructure which will increase visitor safety and facilitate an appropriate increase in visitor numbers.*"

The archaeological and cultural heritage receiving environment, and the effects of the Project upon it, are assessed in Chapter 12 and Chapter 13 Cultural Heritage of the rEIAR. As identified in submissions, the Conservation Plan is non-statutory; while it is not part of the statutory development plan framework, the Applicant has had regard to local heritage policy, and the assessment in Chapters 12 and 13 is consistent with its objectives. The Plan's central aim – the transition of the landscape from industrial extraction towards conservation, restoration and appropriate future use – is reflected in the Remedial Phase and Rehabilitation Plan assessed in the rEIAR.

In summary, the archaeological, landscape and cultural heritage significance of the Application Site has been comprehensively surveyed, recorded and assessed in Chapters 12 and 13 of the rEIAR; the effects of peat extraction – including the potential cumulative effects on sub-surface archaeology in the period before the 1993–4 surveys – have been identified without understatement; and the relevant heritage policy context has been taken into account. The DAU, as the prescribed archaeological authority, has confirmed it requires no further archaeological assessment (Section 2.2).

3.6 Residential Amenity & Human Health

3.6.1 Human Health – Dust, Noise and Smoke Damage

Residents describe sustained dust from the milling operations: one household at Tumbeagh for 25 years reports constant dust throughout the milling season over more than 24 years, causing damage inside and outside the home; another long-term resident of Lemanaghan describes closing windows against high dust levels in summer, visible dust circulating from the machines, and heavy deposition on sills, furniture, cars and rooftops, with unavoidable inhalation. Three submissions describe serious bog fires (recalled as 2011 and 2012) in which ignited peat stockpiles produced smoke that affected homes and animals.

Response

The Applicant acknowledges the 5 no. third-party submissions that identify residents' accounts of dust during the milling season, noise from peat extraction activities and smoke from bog fires.

In order to contextualise residents' lived experiences, it is important to note that as identified in Figure 5-1 in Chapter 5 of the rEIAR, there are approximately 1,700 sensitive receptors (dwellings and commercial) within 5km of the Application Site, of that approximately 300 are within 2km of the Application Site, and the Peat Extraction Phase spanned a 32-year period. Across that extended period and that substantial receptor population and with the Application Site operating under the control measures, monitoring and complaints procedures of the IPC Licence, the rEIAR found no significant residual effects. The individual experiences described in the submissions are nonetheless acknowledged and are considered against each relevant finding below.

Dust and air quality are assessed in Chapter 9 of the rEIAR: Air Quality, which supports the assessment of human health in Chapter 5 of the rEIAR: Population and Human Health. The Applicant agrees with the observation of the NEHS in Section 2.1, that the residents 'lived experiences' should be given due weight in the assessment. As detailed in Section 5.6.2.6.1, in light of the control measures in place at that time, in particular the instruments of the IPC Licence, the residual effect is identified as '*it is*

considered that dust emissions from the peat extraction and ancillary activities had a localised long-term, negative imperceptible impact on air quality, and is Not Significant'. In light of the lived experiences identified in submissions, the rEIAR description of effects is considered again. The duration identified as long term remains the same, the residents' experiences are in their very essence localised given the local lived experience identified, and the quality of effect remains negative. The description of effect is still considered imperceptible and the residual effect finding is considered appropriate given the implementation of control measures which facilitated monitoring and complaints procedure to address experienced exceedances.

Noise and Vibration are assessed in Chapter 11 of the rEIAR, which supports the assessment of Human Health in Chapter 5. As detailed in Section 5.6.2.6.3, the residual effect is identified as *'Ongoing peat extraction and ancillary activities during the Peat Extraction Phase resulted in a long term, not significant, negative residual effect on noise, and is Not Significant'.* This is supported by the technical assessment in Chapter 11, which, applying daytime noise limit set under Condition 8.1 of the IPC Licence, describes the residual effect at the nearest noise-sensitive locations during the Peat Extraction Phase as negative, not significant and long-term (Sections 11.6.3.1 and 11.6.4.1). The Application Site has operated under the IPC Licence noise limit since 2000, and there have been no incidents of noise exceedance or noise-related complaints at the site since the onset of the IPC Licence requirements in 2000. Consistent with this, the NEHS, having considered Chapter 11, noted its conclusion and had no additional observations to make (Section 2.1). In light of the lived experiences identified in submissions, the rEIAR description of effects is considered again; the finding is considered appropriate given the operation of the site within the IPC Licence noise limit throughout the relevant period and the monitoring and complaints procedure available to address any exceedance.

In addition, the vulnerability to natural disasters from a human health perspective is addressed in Section 5.5.5 where the types of natural disasters that could occur at the Application Site are identified as bog fires, landslides and flooding events. Section 5.6.2.6.5 acknowledges the bog fires that occurred at Lemanaghan and Bellair bogs which are recorded in the Annual Environmental Reports (Appendix 4-1 of the rEIAR) and identifies the residual effect '*ongoing peat extraction and ancillary activities during the Peat Extraction Phase resulted in a long term, slight, negative residual effect on human health and those residing in the surrounding landscape due to the potential for natural disasters at the Application Site, and is Not Significant'.* In light of the lived experiences identified in submissions, the rEIAR description of effects is considered again. The duration identified as long term remains the same, the residents' experiences are in their very essence localised given the local lived experience identified, and the quality of effect remains negative. The description of effect is still considered slight and the pre-mitigation impact assessment finding is considered appropriate given and the implementation of control measures which facilitated monitoring and complaints procedure to address experienced exceedances, and the implementation of fire-fighting procedures for bog fire events.

In summary, the dust, noise, air-quality effects raised are assessed in Chapters 5, 9 and 11 of the rEIAR, and each finding has been revisited in light of the residents' lived experiences; the effects remain, on the evidence and with the IPC Licence controls, monitoring, complaints procedure and firefighting measures in place, long term, negative, and imperceptible to slight.

4. CONCLUSION

This response document has been prepared to address submissions made in respect of planning application reference ACP Ref. 323676 regarding the Subject Application.

It is reiterated here that a robust rEIAR and rNIS were completed and accompanied the planning application for the Subject Application, and this is demonstrated by the fact that detail from the rEIAR and rNIS has been reproduced and/or referenced in this document in order to respond to the observations made. The information provided within this document is confined to the issues raised within the observations received by the Commission and there is no additional information provided that would be considered 'significant' or 'material' in the meaning of the legislation in place.

The information provided in this document constitutes a full and robust response to the matters raised and we trust that this allows the Commission to progress with their assessment of the Subject Application.

