

File With _____

SECTION 131 FORM

Appeal NO: ACP-323676-25Defer Re O/H ☐

Having considered the contents of the submission dated/ received 27/7/26
from

LAURA DUNNE 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 FlynnDate: 5/8/26

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 BP _____ - Section 131 notice enclosing a copy of the attached
submission

to: _____ Task No: _____

Allow 2/3/4weeks – BP _____

EO: _____

Date: _____

AA: _____

Date: _____

File With _____

CORRESPONDENCE FORM

Appeal No: ACP-323676-25M *r. Burke*Please treat correspondence received on 27/7/26 as follows:

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

2. Acknowledge with ~~SC20~~ SC203. Keep copy of Commission's Letter ☐

1. RETURN TO SENDER with BP _____

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

Amendments/Comments

~~SC131~~ SC131 response from Laura Dunne

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: *Nf*AA: *Lisanne O'Zook*Date: *29/7/26*Date: *30/07/26*

Karen Byrne

From: Laura Finnegan <lrafnngn@yahoo.co.uk>
Sent: Monday 27 July 2026 19:00
To: Appeals2
Subject: Subject: ACP-323676-25 – Observations in Response to Section 131 Invitation
Attachments: ACP-323676-25-Observations-Laura Dunne.docx

You don't often get email from lrafnngn@yahoo.co.uk. [Learn why this is important](#)

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 my observations in response to the Commission's invitation dated 10 July 2026, issued pursuant to section 131 of the Planning and Development Act 2000 (as amended), in respect of Application Reference ACP-323676-25 concerning the substitute consent application for unauthorised peat extraction and associated works at Lemanaghan Bog, County Offaly.

These observations are made in my personal capacity and are entirely independent of any community group or organisation.

If this email has not been directed to the appropriate section, I would be grateful if it could be forwarded to the relevant division dealing with this application.

I would appreciate confirmation of safe receipt of this email and the attached observations.

Yours faithfully,

Laura Dunne

Back Road
Ballycumber
County Offaly
R35 XV84

Email: lrafnngn@yahoo.co.uk
Tel: 087 794 1916

TO:

An Coimisiún Pleanála
64 Marlborough Street
Dublin 1
D01 V902

Re: Personal Observations in Response to the Commission's Invitation dated 10 July 2026

Case Number: ACP-323676-25

Application: Substitute Consent Application by Bord na Móna Energy Ltd – Lemanaghan Bog, County Offaly

Dear Sir / Madam,

I submit the following observations in response to the invitation contained in the Commission's letter dated 10 July 2026, issued pursuant to section 131 of the Planning and Development Act 2000 (as amended).

The invitation requested observations in relation to the following submissions received by the Commission:

- 323676 Response from TII to S131.pdf;
- HSE Response to S131 19.02.26.pdf; and
- 323676-25 -- DAU response S131 25.2.26.pdf.

Accordingly, the observations set out below are confined to those submissions.

Introduction

Substitute consent under Part XA of the Planning and Development Act 2000 (as amended) is an exceptional statutory procedure. It is not concerned with whether future development may be regulated or whether future mitigation measures may be imposed. Rather, the Commission is required to determine, on the basis of the material before it, whether the statutory requirements governing the grant of substitute consent in respect of unauthorised development that has already been carried out have been satisfied.

In reaching that determination, the Commission is required to consider the remedial EIAR together with the submissions and observations properly made in relation to the application and to reach its own reasoned conclusion on the statutory questions arising. The observations which follow are directed to whether the submissions made by the prescribed bodies materially assist the Commission in discharging that statutory function.

Nothing contained within these observations is intended to question the expertise or statutory role of the prescribed bodies. Rather, they examine the relevance of the matters addressed within those submissions to the Commission's present statutory determination, the evidential basis disclosed for the conclusions reached, the reasoning advanced in support

of those conclusions, and the extent to which the submissions materially assist the Commission in discharging its statutory function.

Where a submission proceeds upon assumptions that are not explained, reaches conclusions without disclosing the reasoning upon which those conclusions depend, or addresses matters which arise only in the event that substitute consent is granted, those matters are identified below. This is not because the conclusions of the prescribed bodies are necessarily incorrect, but because the Commission's statutory responsibility is to determine whether the material before it provides a sufficient evidential basis upon which it may lawfully exercise an exceptional statutory power.

Observations in relation to the submission of Transport Infrastructure Ireland (323676 Response from TII to S131.pdf)

Transport Infrastructure Ireland ("TII") is the prescribed body with statutory responsibility for the protection, management and operation of the national road network. There is no issue as to its expertise in matters falling within that remit. The issue before the Commission, however, is not whether the recommendations contained within the TII submission are appropriate from a roads or transport perspective. The issue is whether those recommendations assist the Commission in determining the statutory question arising under Part XA of the Planning and Development Act 2000 (as amended), namely whether the statutory requirements governing the grant of substitute consent in respect of the unauthorised development have been satisfied.

The TII submission is directed almost exclusively towards matters which arise in the event that substitute consent is granted. It recommends, amongst other matters, that any consent should not result in an intensification of use of the existing direct access to the N62 above "permitted levels of use"; that drainage should not interface with the national road drainage infrastructure; that damage to the national road should be rectified; and that alterations to national road infrastructure assets and development works should be appropriately managed.

The significance of that approach lies in the fact that the submission addresses the regulation of activities following the grant of substitute consent, rather than explaining how those recommendations assist the Commission in determining the statutory question presently before it. The submission does not identify any statutory, planning or policy basis upon which recommendations directed exclusively to future regulation are considered relevant to the Commission's present determination. If such a basis exists, it is not disclosed. Instead, the submission proceeds directly to matters arising after the grant of substitute consent without explaining how those recommendations assist the Commission in determining the antecedent statutory question before it.

That omission is significant. Substitute consent is an exceptional statutory procedure concerned with unauthorised development that has already been carried out. Before any question arises as to the regulation of future activities, the Commission must first determine

whether the statutory requirements governing the grant of substitute consent have been satisfied. The TII submission does not engage with that statutory sequence. Rather, it proceeds upon the premise that the antecedent statutory question has already been answered.

The submission further recommends that any consent granted should not result in "any intensification of use of the existing direct access to the N62, above permitted levels of use." However, the submission identifies no planning permission, statutory consent, condition or other legal instrument from which those "permitted levels of use" are derived. In the context of an application concerning unauthorised development, that omission is material. The recommendation proceeds upon an assumed planning baseline, yet neither the legal source of that baseline nor the evidential basis upon which it has been established is identified.

The absence of that information has important consequences. Without identifying the planning permission, statutory consent or other legal basis from which those "permitted levels of use" are said to arise, the Commission is not placed in a position to understand the planning context against which the recommendation is made or to evaluate its significance. Equally, the submission does not explain why the Commission should attach weight to a recommendation founded upon a planning baseline that is neither identified nor explained.

Nothing in these observations is intended to question the technical expertise of TII or the appropriateness of its recommendations from a national roads perspective. Rather, the issue is whether those recommendations materially assist the Commission in discharging its statutory function under Part XA of the Planning and Development Act 2000 (as amended). It is respectfully submitted that, in determining the weight to be attached to the TII submission, the Commission should have regard not only to the expertise of the prescribed body, but also to the extent to which the submission discloses the reasoning and evidential basis upon which its recommendations are made and explains their relevance to the statutory question presently before the Commission.

Observations in relation to the submission of the Health Service Executive (HSE Response to S131 19.02.26.pdf)

The submission of the National Environmental Health Service ("NEHS") is of particular significance because, unlike the other prescribed body submissions, it expressly identifies the scope of its assessment and the limitations upon which its conclusions are based. Those qualifications are not merely explanatory; they are directly relevant to the weight which can properly be attached to the conclusions reached by the NEHS and to the extent to which those conclusions assist the Commission in determining the present application.

The NEHS states:

The NEHS does not carry out any independent environmental monitoring or validation of any measurements or data reproduced in an rEIAR.

That statement has important evidential implications. It makes clear that the NEHS has not independently verified the environmental information upon which its observations are based. The conclusions reached by the NEHS therefore cannot properly be understood as independent confirmation of the adequacy, completeness or reliability of the environmental information contained within the remedial EIAR. Rather, they represent observations made upon information the accuracy of which the NEHS expressly states it did not independently validate.

This is not a criticism of the role performed by the NEHS. On the contrary, the submission transparently identifies the limits of its assessment. However, that transparency necessarily informs the weight which may properly be attached to the conclusions reached. The Commission's statutory function is to determine whether the statutory requirements governing the grant of substitute consent have been satisfied on the basis of the evidence before it. In discharging that function, the Commission must evaluate the NEHS submission in the context of the qualifications which the NEHS itself has identified. The ultimate conclusions of the NEHS cannot be divorced from the stated limitations upon which those conclusions are expressly based.

The NEHS further states:

It is recognised that rEIA considers existing development and the significance of the effects and not predicted likely significant effects from a proposed development, but it is recommended that the Planning Authority follows the above methodology when considering Public and Environmental Health in their decision making.

That observation reflects an important feature of the substitute consent process. The remedial EIAR is concerned with assessing the environmental effects of unauthorised development that has already occurred. It follows that the relevance of any prescribed body submission must likewise be assessed by reference to whether it assists the Commission in evaluating the environmental effects of the existing unauthorised development, rather than matters which may arise in connection with any future development proposal.

The NEHS also states:

It is the understanding of the NEHS that future proposed use of a development applying for Substitute Consent is not a consideration in a Remedial EIA. In this regard, any future planning application for proposed development will be referred to the HSE for observations on the likely significant effects on Public and Environmental Health. It is the understanding of the NEHS that this will be a separate process independent of the Substitute Consent application.

That distinction is significant. It recognises that the statutory purpose of the present process is confined to the assessment of existing unauthorised development and that any future proposal must be considered through a separate statutory planning process. It reinforces the principle that the Commission's present task is not to determine the acceptability of future development, but to determine whether the statutory requirements governing substitute consent have been satisfied in respect of development that has already taken place.

The NEHS further observes:

NEHS Comments: In remedial EIA it is beneficial to obtain 'lived experiences' of residents who have lived through the lifetime of the development with regard to dust and noise. Formal or informal complaints are not the only indicator of community concerns or impacts during the lifetime of a development.

This is an important observation. It recognises that, in the context of a remedial environmental assessment, the lived experiences of those who have observed the operation of the development over time may constitute relevant environmental evidence. Equally significant is the NEHS's acknowledgement that the absence of formal or informal complaints cannot be treated as the sole indicator of whether environmental or public health impacts have occurred. That observation recognises the inherent limitations of relying solely upon recorded complaints when assessing the effects of development retrospectively.

The importance which the NEHS attaches to public participation is further demonstrated by the HSE's earlier scoping advice, reproduced in Chapter 5 of the remedial EIAR:

The HSE further emphasized the importance of public consultation, stating that the rEIAR should address legitimate concerns and clearly demonstrate how public input informed the decision-making process.

That recommendation is noteworthy because it goes beyond encouraging public consultation as a procedural exercise. It expressly recommends that the remedial EIAR should demonstrate how public input informed the assessment itself. However, while Chapter 5 describes the Population and Human Health assessment as a desk-based assessment drawing upon published datasets, census information, mapping and technical guidance, it is not apparent how the recommendation that public input should inform the decision-making process has been reflected in the completed assessment. Nor is it apparent how the lived experiences of local residents, which the NEHS itself identifies as beneficial in a remedial EIA, informed the methodology or conclusions of the Population and Human Health assessment.

The NEHS finally states:

The lived experiences and 3rd Party submissions may not concur with the reports in the rEIAR and should be considered and given due weight during the decision-making process.

This is, perhaps, the most significant observation contained within the submission. It is an express acknowledgement by the NEHS that third-party submissions and the lived experiences of local residents may legitimately differ from the conclusions contained within the remedial EIAR. Importantly, the NEHS does not suggest that such differences diminish the evidential value of those submissions. On the contrary, it recommends that they "should be considered and given due weight during the decision-making process."

The significance of that recommendation extends beyond public participation. It recognises that the Commission's evidential record is not confined to the remedial EIAR or the observations of prescribed bodies. Rather, it encompasses all relevant information properly

before the Commission, including evidence derived from the lived experiences of those who have observed the development over its lifetime. In the context of a substitute consent application, where the assessment is necessarily retrospective, such evidence may assume particular significance.

The NEHS ultimately concludes that there was adequate protection of Public and Environmental Health during the relevant phases of the development. However, that conclusion cannot properly be read in isolation. It is expressly qualified by the NEHS's acknowledgement that it did not independently validate the environmental information reproduced within the remedial EIAR, by its recognition of the importance of lived experience in a remedial environmental assessment, and by its recommendation that third-party submissions should be considered and given due weight during the Commission's decision-making process. It is therefore respectfully submitted that the Commission should evaluate the NEHS submission as a whole, giving appropriate weight not only to its conclusions but also to the express qualifications and recommendations which the NEHS itself considered necessary to identify.

Observations in relation to the submission of the Development Applications Unit (323676-25 -- DAU response S131 25.2.26.pdf)

The submission of the Development Applications Unit ("DAU") is notably different from those of the other prescribed bodies. Unlike the submissions of Transport Infrastructure Ireland and the National Environmental Health Service, which explain the basis upon which their observations are made, the DAU submission records its concurrence with the recommendations contained within the Archaeological Assessment but does not disclose the reasoning upon which that concurrence is based.

The DAU states:

The Department has reviewed the Archaeological Assessment Report that was submitted with the application.

The Archaeological Assessment was carried out by Tobar Archaeological Services Ltd, and includes the results of a Desk-based Archaeological Impact Assessment and associated Field Survey. Because of the nature of the proposed substitute consent application the Assessment recommends that no further archaeological assessment is warranted.

The Department concurs with the recommendations in the Report and does not have any further archaeological requirements in respect of the proposed development.

The submission therefore records the Department's conclusion but does not explain how that conclusion was reached. It does not identify the matters considered by the Department, explain why it accepted the conclusions of the Archaeological Assessment or engage with the evidential limitations acknowledged within that assessment. The result is that the

Commission is informed of the Department's conclusion, but not of the reasoning which underpins it.

That distinction is important. The issue is not whether the Department was entitled to concur with the Archaeological Assessment. It plainly was. Rather, the issue is the extent to which the submission assists the Commission in understanding why that concurrence was reached and the weight which may properly be attached to it in the context of the Commission's own statutory determination.

The absence of any accompanying analysis is particularly significant when the Archaeological Assessment itself is considered.

Chapter 13 acknowledges:

There is no photographic evidence available from 1988 to review the baseline conditions of the bogs on the ground.

It further states:

Peatland surveys at the Application Site commenced in 1993 therefore resulting in a lack of information on archaeological finds and features therein from 1988 to 1993.

These statements acknowledge limitations in the archaeological baseline against which the effects of historic peat extraction are assessed. However, the DAU submission does not explain why those acknowledged limitations do not affect its concurrence with the recommendation that no further archaeological assessment is warranted. If the Department considered those limitations to be immaterial, the basis for reaching that conclusion is not identified.

The Archaeological Assessment also records that:

Regarding archaeological heritage, a scoping request was sent to the Department of Housing, Local Government and Heritage on the 30th August 2022 and again on the 21st June 2024 with a follow up sent on the 20th September 2024. No response has been received to date.

It therefore appears that the Department did not provide observations during the scoping stage which informed the preparation of the Archaeological Assessment. While the Department was under no obligation to respond, the subsequent concurrence with the completed assessment is not accompanied by any explanation as to why the acknowledged evidential limitations identified within that assessment did not warrant further archaeological investigation or additional archaeological requirements.

The archaeological sensitivity of the application site is also apparent from the applicant's own documentation.

Chapter 13 records:

A total of 488 recorded monuments are located within the Application Site boundary.

It further records:

During that survey a total of 470 sightings of archaeological material were made that were subsequently included in the Sites and Monuments Record (SMR).

Appendix 13-3 similarly records:

There are 470 known sightings of archaeological material in the Lemanaghan substitute consent application area. Twenty-eight archaeological sites were excavated within the application area as part of the Peatland Excavations Programme 1999–2000. There are 47 archaeological objects known from the substitute consent area that have been removed to the National Museum of Ireland.

Against that evidential background, the absence of any explanation accompanying the DAU's concurrence assumes particular significance. The archaeological resource identified within the applicant's own documentation is extensive, while the same documentation also acknowledges limitations in the archaeological baseline. Yet the DAU submission does not explain why those matters do not affect its conclusion that no further archaeological assessment is warranted.

Nothing in these observations is intended to suggest that the Department's concurrence is incorrect. Rather, it is respectfully submitted that the Commission's statutory responsibility is to reach its own determination on the basis of the material before it. In determining the weight to be attached to the DAU submission, the Commission should have regard not only to the Department's expertise but also to the extent to which the submission discloses the reasoning and evidential basis underpinning its concurrence with the Archaeological Assessment.

Concluding Submissions

The observations set out above are not intended to challenge the expertise or statutory role of the prescribed bodies consulted by the Commission. Rather, they are directed to the evidential and analytical value of the submissions made in response to the Commission's invitation and the extent to which those submissions assist the Commission in discharging its statutory responsibilities under Part XA of the Planning and Development Act 2000 (as amended).

The Commission's function is not to determine whether the prescribed bodies support or oppose the application. Nor is it to determine whether the recommendations contained within those submissions may be appropriate if substitute consent is ultimately granted. The Commission's statutory function is to determine whether the statutory requirements governing the grant of substitute consent have been satisfied on the basis of the material properly before it.

Taken collectively, the prescribed body submissions illustrate the importance of distinguishing between technical conclusions and the reasoning upon which those conclusions are based. It is that reasoning, together with the relevance of each submission to the statutory question before the Commission, which ultimately informs the weight that may properly be attached to the observations received.

Substitute consent is an exceptional statutory procedure. It follows that the Commission must be satisfied that the material before it provides a sufficient evidential basis upon which to exercise that exceptional statutory power. That responsibility ultimately rests with the Commission itself and cannot be displaced by the existence of observations from prescribed bodies, however valuable those observations may be within their respective areas of expertise.

It is therefore respectfully submitted that the prescribed body submissions should be evaluated in the context of the statutory question before the Commission, the reasoning disclosed in support of the conclusions reached, and the evidential basis upon which those conclusions rest. Those considerations are central to determining the weight properly to be attached to the submissions and, ultimately, to the Commission's determination of the present application.

For the foregoing reasons, I respectfully request that the Commission take these observations into account when determining this application for substitute consent.

Yours faithfully,

Laura Dunne