

152 Crann Nua
Portarlington
Co. Laois

05 07 2020

Secretary
An Bórd Pleanála
64 Marlborough
Dublin 1

Re Objection to the application made by Bord Na Móna Plc for substitute consent for part only of the historic peat removal from bogs in their care and identified below.

Link to application: <http://www.pleanala.ie/lists/oc/SU/>

307284: Bogs in the Kilbery Bog Group: Gilltown, Allen, Prosperous & Kilberry, Tnlands Timahoe Et, Derrycrib, Ballynafagh, Rathconnell, Tinnakil, Kilberry, Boherbaun Upr or Monapheeby, Rathernan, etc. in Co Kildare.

307283: Ballaghurt Bog in the Blackwater Bog Group located in the townlands of Clonlyon Castlequarter, Lackagh More, Clongawny, Carrowkeel, Doon Demesne, Glebe, Clonfinlough, Clonaderg, Lackagh Beg and Derryharney in County Offaly

307282: Bogs in the Boora Bog Group: Bellair North, Lemanaghan, Kilaranny, Noggusboy, etc. in Co Laois. Hall, Clonaltra (King), etc. in Co Westmeath. Lemanaghan, Lumcloon, etc. in Co Offaly.

307281: Mountdillon, Duil na Gun, Co. Westmeath, Milkernagh, Co. Westmeath and Co. Longford and Coolcraff, Co. Longford.

307280: The Coolnacartan Bog in the Cúil na Mona Bog Group located in the townlands of Togher, Ballynamuddagh, Oldtown, Clonboyne, Coolnacartan, Clonaddadoran, Clonkeen, Colt and Cloosecullen in County Laois.

307279: Bogs in the Allen Bog Group: Daingean Derries, Daingean Rathdrum, etc. in Co Kildare. Garrymore, Forest Upper, Forest Lower, etc. in Co Laois. Monasset in Co Westmeath. Gorteenkeel, Ballintogher, etc. in Co Offaly.

307278: Derrygreenagh Bog, Bracklin, Co. Westmeath, Carranstown, Co. Meath and Co. Westmeath, Ballivor, Co. Meath and Co. Westmeath, Ballybeg, Co. Offaly.'

Dear Sir/madam

I am a Navigation Authority for the purposes of section 21 of the Water Supplies Act of 1942 and it is notable that Waterways Ireland a notifiable body with responsibility for maintaining and restoring the Navigations have been deliberately excluded from the decision making process.

It should be noted at this stage, that as part of this process, the status of the surface and groundwater abstractions for which I issued an Interference Notice, in 2002 to Kildare County Council pertaining to the surface and groundwater abstractions from the catchment of The Barrow is relevant to this application, and, to date, for which Kildare County Council are statutorily obliged to apply to the High Court to have the Notice lifted under section 21 (8) of the water Supplies Act 1942 has not occurred and that the Interference Notice has not been overturned by the High Court. The Interference Notice still has the force of law and this issue has to be resolved before An Bord Pleanála can reach a conclusion on the cumulative effects associated with this application.

I am objecting to An Bórd Pleanála's decision to accept the application for substitute consent and I am also objecting to the application itself and the manner in which an assessment may be carried out and a conclusion reached without full consideration of all the connected developments and of the applicant's entitlement to apply for retention of permission on bog over which it can no longer exercise control. On the grounds (but not limited to) Inadequate Notice, Inadequate Application form, Inadequate and or deficient EIS amongst others.

1. The same 'modus operandi', was used to grant planning permission (not development consent) several times for Edenderry Power station, without taking into account the environmental impact of peat extraction from the several bogs, for which this application applies.

I object to the notion that An Bord Pleanála can now revisit previously flawed decisions and correct or legitimise them. The need for EIA which was eventually clarified by the Irish Court's goes back to and beyond O'Nualláin v Dublin Corporation [1999] 4 LR. 137.

In that case Justice Smyth stated at para 14 of his judgement on O'Nualláin that;

"there is an obligation on decision-makers to require the carrying out of an Environmental Impact Statement in accordance with the Directive if a particular project is likely to have significant effects on the environment by virtue of its nature, size and location, notwithstanding the fact that this particular project falls below the threshold established in the 1989 Regulations."

It is equally impossible to absolve the applicant and legitimise the operations of peat removal extending back only to 2012. It implies that the process was correct and 'above board' before 2012, and thereby an attempt to mislead the public. The application may have had some merit if the time period applied from pre-Directive 85/337/EEC from its inception in 1985, subject to the concept of the 'Direct Affect' and Bord na Móna, being a state body.

CJEU in case C-216/18 Commission v Ireland at paragraph 117; 'In accordance with the case-law recalled in paragraph 75 above, in the event of a breach of the obligation to assess the environmental impact, Member States are nevertheless required by EU law to eliminate at least the unlawful consequences of that breach (see, to that effect, judgment of 26 July 2017, Comune di Corridonia and Others, C 196/16 and C 197/16, EU:C:2017:589, paragraph 35);

'35 Under the principle of cooperation in good faith laid down in Article 4 TEU, Member States are nevertheless required to nullify the unlawful consequences of that breach of EU law. The competent national authorities are therefore under an obligation to take all measures necessary, within the sphere of their competence, to remedy the failure to carry out an environmental impact assessment, for example by revoking or suspending consent already granted in order to carry out such an assessment (see, to that effect, judgments of 7 January 2004, Wells, C 201/02, EU:C:2004:12, paragraphs 64 and 65; of 3 July 2008, Commission v Ireland, C 215/06, EU:C:2008:380, paragraph 59; and of 28 February 2012, Inter-Environnement Wallonie and Terre wallonne, C 41/11, EU:C:2012:103, paragraphs 42, 43 and 46).

This submission will prove that neither the various Minister's for Energy, Bord Na Móna nor An Bórd Pleanála have acted 'in good faith' and that the principle of not being allowed to build upon a negative in the finding of the ECJ in case C-91/92 Faccini Doriv Recreb, applies to this application; ... 'It need merely be noted here that, as is clear from the judgment in Marshall, cited above (paragraphs 48 and 49), the case-law on the possibility of relying on directives against State entities is based on the fact that under Article 189 a directive is binding only in relation to 'each Member State to which it is addressed'. **That caselaw seeks to prevent 'the State from taking advantage of its own failure to comply with Community law'**. (para 22)

2. The applicant is not bona fide

At part 8 of the application form it is stated that Bord na Mona PLC is the legal owner or beneficial owner or entity beneficially entitled to be the legal owner of the lands. **This is incorrect;** In 1995 the European Commission secured control over 26,000 ha of cutaway bog when they funded the fuel supply arrangement for the Edenderry Powerstation. The construction and operation of this power plant, burning peat from Irish

boglands was co-funded (€26 million) and permitted by the European Commission in accordance with a Memorandum of Understanding (attached as **appendix 5**) between the Irish Government and the European Commission. Directly arising from this decision of the European Commission to co-fund the power station, peat was permitted to be harvested from an area of bogland extending to 26,000 hectares from specifically designated boglands subject to the proviso that all peat harvesting operations would cease, generally by 31st Dec 2015. (extract of the Memorandum is at Appendix 5.1)

2.1 Edenderry Powerstation

The applicant by making this application has also declared and admitted by their actions or by default that they did not carry out an EIA or an appropriate assessment for the Edenderry Powerstation.

Paragraph 43 and 44 of case C-216/18 clarifies the European Commissions position;

‘43 The Commission submits, however, that Ireland is required to revoke or suspend the consents at issue and carry out an ex post remedial assessment, even if those measures affect the wind farm operator’s vested rights. The possibility for a Member State to rely, in that regard, on the principle of procedural autonomy is, in accordance with the judgment of 17 November 2016, Stadt Wiener Neustadt (C 348/15, EU:C:2016:882, paragraph 40), limited by the principles of effectiveness and equivalence.

44 In addition, it is apparent from the judgment of 14 June 2007, Medipac-Kazantzidis (C 6/05, EU:C:2007:337, paragraph 43) that the wind farm operator is subject to the obligations arising from EU directives since it is a wholly owned subsidiary of an entity controlled by the public authorities.’

2.2 An Bórd Pleanála are obliged to Nullify their decision on Edenderry Powerstation

In this case, joined cases C-196/16 and C-197/16 at paragraph 41 clarifies the position regarding Edenderry powerstation; **‘Furthermore, an assessment carried out after a plant has been constructed and has entered into operation cannot be confined to its future impact on the environment, but must also take into account its environmental impact from the time of its completion.’**

Subsequently, An Bórd Pleanála are obliged to visualise and re-establish their status as and role (as sources of water to the navigations and carbon sinks) of all of the intact raised bogs before drainage occurred. Then the board are obliged to consult with the Commission under Article 6 of the Habitats directive before reaching any conclusions or making decisions.

To nullify the consequences of their decision to grant on appeal of Offaly County Councils decision 98/437 PL 19/107858 for Edenderry Power before attempting to carry out an assessment to facilitate retention of the peat removal for that development. (See bogs below)

3. The Regularisation of the Development

Bord Na Móna are not serious about regularising their predicament because this application only accounts for 20,220 ha (their own figures given in Appendix 1.1 Bog Unit Details 2020). This application only represents 25% of the landholding from which Bord Na Móna have been exploiting the bogs. Consequently, there is little sense in attempting to regularise only 41 bogs.

The regularisation of the development must first identify and separate the 26,000 hectares of the 80,000 ha landholding for which an agreed long term plan has been in place with the European Commission since 1995. The Commission was fully aware when they agreed to fund the peat generation measure contained in the Memorandum of Understanding of 1995 associated with the approval of the building of the powerstation at Edenderry – permission, not development consent. It was granted on appeal of Offaly County Council’s decision on 98/437 that Condition no 3 of an Bórd Pleanála reference PL 19. 107858 which states; ‘3 - The treatment of the boglands from which peat is to be extracted and the future rehabilitation and use of these areas do not come within the scope of this planning application. Reason: In the interest of clarity.’

The Commission's position did not change when they received a copy of An Bórd Pleanála's decision and therefore by design or default, peat removal by Bord Na Móna received an exemption under Article 2.3 of the EIA directive and derogation under Article 6.4 of the Habitats directive.

4. The Application

By design, the cover letter which accompanied the application for the Kilberry Group of Bogs appears to have terminated at 1975. Are we to believe that there has been no plan or that the company and it has been running aimlessly along on its own for the last 45 years? The letter does not explain the draining of intact raised bogs since the phase four ?? programme and is remiss of the development programme to supply Edenderry Powerstation along with West Offaly and Lanesborough powerstations. The cover letter makes no clear reference to the phase during negotiations prior to the agreement of the European Commission in 1995.

Therefore, the application is remiss and in breach of Article 5.1 of the EIA directive which states that; the case of projects which, pursuant to Article 4, must be subjected to an environmental impact assessment in accordance with Articles 5 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV inasmuch as:

5. Breach of Article 5 of the EIA directive

The information provided for in Article 5.2 is the minimum that a developer must provide. A failure to provide this information would mean that the overall environmental impact assessment would be legally flawed. (George Kremlis European Commission 20 10 1998).

Appendix 1 to this submission is a letter dated 16 February 1999 to the EPA accompanying the applications for IPC licence from Mr Donal Wynne of Bord na Móna states that ; *'Bord na Mona owns approximately 80,000 hectares of peatlands located mainly in the Central Plain. These are divided into groups of bogs each of which supplies peat to a Power Station, Briquette Factory or Horticulture Plant. The groups of bogs are discrete units with their own management structure and operate independently of one another under the umbrella of a divisional unit of Bord na Mona. These divisions are soon to become limited liability companies and subsidiaries of Bord na Mona PLC. The peat extraction will then be the responsibility of Bord na Mona Energy Ltd. which will supply peat products to ESB Power Stations and other processing plants owned by separate subsidiary companies of Bord na Mona.*

In most cases these groups of bogs fall within single river catchments with one or two exceptions. It is therefore our intention to apply for licences for each of these groups as outlined below and as shown on the enclosed map.

Blackwater Group, Boora Group, Derrygreenagh Group, Mountdillon Group, Oweninny Group, Allen Group and Littleton Group.

In addition, there will be three "small activity" licences for Kilberry Group, Coolnamona Group, and Attymon Group

With the exception of Littleton, all licences will be for Bord na Mona Energy Ltd. In Littleton's case the company will be Bord na Mona Fuels Ltd.'

(Oweninny, Littleton and the Attymon Groups are not included or referred in this application.)

In the 1980's, Bord Na Móna set out on a new programme to develop their bogs for milled peat as fuel for Energy production. On the strength of favourable indications from the European Commission towards funding Bord Na Móna extended this programme to all the existing worked bogs and to several new bogs. I attach an overview map of the layout of the Various Bog Groups as **appendix 2**.

This map is dated May 1999 and it is clear that Daingean Rathdrum bog and Daingean Derries bog which is North West of Rathdrum beside the Silver River were not drained or included at that time.

It should also be noted that from the attached appendix I .1 Bog Unit Details to the current applications for substitute consent, you will note that intact raised bogs numbered 6, 17, 18, 27 and 28 were drained during and after the approval of the funding for Peat removal by the European Commission in 1995 and all without EIA or

Appropriate Assessment. Therefore, it is quite obvious that Bord Na Mona had no intention of complying with or fulfilling the agreement in the Memorandum of Understanding but would extend and intensify their efforts to gain maximum capital from the arrangement.

6. The Law pertaining to peat extraction in 1998

Both An Bord Pleanála and Bord na Móna were fully aware of the statutory obligations regarding peat removal. The Inspector's report for 98/437 an Bord Pleanála reference PL 19. 107858 (attached as appendix 3) states; 'Peat will be drawn from boglands which have already been developed. **It is part of the agreement attached to an EU Grant that no peat should be extracted from protected areas and similar provisions are also incorporated into the fuel supply agreement with Bord na Mona and under Section 56 of the Turf Development Act 1990,** Bord na Mona will ensure that its activities afford protection for the environment and archaeological heritage...'

The Inspector's Report on the 1998 Grant of Planning Permission for Edenderry Powerstation also states, at page 18 thereof: "Peat extraction is a matter which now requires planning permission where it involves a new or extended area of 50 Hectares or more. If the development of the peat station requires the development of additional bogs, that in itself is likely to require planning permission as undoubtedly the supply of such a major installation will involve mechanised extraction from unit areas of 50 Hectares or more"

The current application confirms that the EIA and Habitats Directives applied to all activities since the inception of the EIA Directive in 1985. This 35-year-old warning was ignored by Bord Na Móna, the EPA and An Bórd Pleanála which is also proof the no exceptional circumstances exist.

7. Bogs missing from the application

7.1 The Allen Group

'The Allen Group consists of a large group of mostly contiguous but some isolated bogs. These bogs lie to the south and west of the western and southern (Barrow Line) branches of Grand Canal, east of Tullamore and north of Portarlington; and are principally located within Counties Offaly, Kildare, with some minor lands extending into Counties Laois and Westmeath.

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Total bog ownership in the Allen Group is c. 21,150 ha, **of which a net 9,200 ha will be developed for milled peat production.** The rest comprises of preserved, worked out, non-commercial, and sod-peat boglands. Approximately 1 Mt (megatonne) p.a. milled peat will be supplied to the new power station, of which 90% will be delivered by bog rail and the remaining 10% by road.'¹

The 9,200 ha referred to confirms Bord Na Móna's intention of developing /draining intact raised bogs in spite of having given an undertaking to the European Commission in 1995 not to open new bogs.

The Non Technical Summary for the Allen Group submitted with this application states that; 'Substitute Consent is effectively a form of retrospective consent and is being applied for with the aim of regularising the planning status of historic peat extraction carried out by Bord na Móna on 41 individual bog units.'

But on page 4 of the cover letter attached to this application for the Kilberry Group it states; ' If Bord na Mona are granted Substituted Consent for the Kilberry bog Group, the intention would be to apply for planning

¹IPC no 503 application –Memorandum of Inspector Dr Jonathan Derham 18 November 1999.

permission for the harvesting of peat for the supply of horticulture sod moss² and milled peat products until a viable alternative in terms of quality and scale, to horticultural peat for the professional growing market is identified.’

This means that all of Bord Na Móna bogs has to be re-examined and assessed in this process

7.1a Sod moss production

The Non Technical summary at page 6 (Peat Extraction) describes Sod moss production generally occurred at **the bog margins** within bare peat areas, areas of cutover bog and **areas of high bog**. Appendix 4.1 contains photographs of Sod Moss being carried out on a vast area of what was intact raised bogs. This practice is also being carried out at or near Barnaran Bog and Clonbrown bog by subcontractors to Bord Na Móna over that last 6 or 7 years.

Individual bogs in the Allen Group which are missing from this application.

Mountlucas bog, part of the Allen Bog Group with an area of 1,229 ha.³

Cloncreen Bog, part of the Allen Bog Group with an area of 1,018 ha.

Cavemount bog, part of the Allen Bog Group with an area of 396 ha.

Derrybrennan bog, part of the Allen Bog Group with an area of 30 ha.

Clonbrown bog, part of the Allen Bog Group with an area of ?

Clonsast North bog, part of the Allen Bog Group with an area of 397 ha.

Clonsast South bog, part of the Allen Bog Group with an area of 282 ha.

Lullymore bog, part of the Allen Bog Group with an area of 190 ha. (See Exhibit 8 Richard Griffiths Map 1810)

Timahoe North, part of the Allen Bog Group with an area of 760 ha.

Timahoe south, part of the Allen Bog Group with an area of 1,625 ha.

Killinagh bog, part of the Allen Bog Group with an area of 134 ha.

Ballyboy bog, part of the Allen Bog Group with an area of ,

Ballycon bog, part of the Allen Bog Group with an area of 760 ha.

Derryounce bog is not included (see Peat Supply & EPL below)

Lisclogher bog, part of the Allen Bog Group with an area of 751 ha.

Lullybeg bog, part of the Allen Bog Group with an area of

Derrinboy / Cadamstown bog, Previously known as Cadamstown was a proposed NHA in 1996. Currently supplying West Offaly Powerstation.⁴

² For a practical demonstration /photographs of horticulture sod moss production see document titled the Bogs attached at appendix 2

³ Table 4.3 of EIAR for West Offaly Power 2019

⁴(excavations.ie) ;The 1998 survey concentrated on ten Bord na Móna bogs in the Boora region (over 6849ha in area). Clongawney More, Drinagh West, Drinagh East, Tumduff, Boora East, Boora West, Derrybrat and Monettia are bogs that produce milled peat. Derrinboy and Killaun bogs had only recently been ditched, and there had been no milling in these bogs. Drawing no 8.1h Site Layout shows silt pond no’s 63,64 and 65 as being proposed.’

Attymon Group

'The Blackwater Group consists of the Blackwater and Attymon group of bogs.

The Blackwater group of bogs lies in the Shannon Basin, covers some 9,630 hectares, and stretches over Leinster and into Connaught, taking in four counties: Offaly, Westmeath, Roscommon and Galway. The bog resources within the Blackwater group is used exclusively for the production of milled peat to supply the ESB electricity power station at Shannonbridge.

The Attymon group of bogs are situated in Galway, approximately 8km east of Athenry. About 95% of the area is in the Clarinbridge River catchment which drains to Oranmore bay. The remaining 5% drains to the river Shannon. The cutaway areas (185 ha) are leased to Coillte Teoranta and planted with trees. The remaining original bog (466 ha) is leased to Attymon Peat Co-operative and they produce sod peat.' (EPA inspectors memorandum 19/11/1999)

Toar bog which is part of the Derrygreenagh group and has an area of 445 ha.

Ballybryan bog, West of Edenderry town is also not included,

8. Breach of the Memorandum of Understanding and or the Falsification of the figures.

It should be noted that protected areas in this case includes intact raised bogs which have not been designated as SAC's.

Ballykeane bog

Bog no 20 of appendix 1.1 Bog unit details and part of the Allen Group gives an area of 453 ha but the original Allen Group Silt Pond Data Sheet attached as appendix 4 gives an area of 609 ha. **This means that Ballykeane bog was extended into intact raised bogs over the period since 1995 and a discrepancy of 156 ha.**

Esker bog

Bog no 21 of appendix 1.1 Bog unit details and part of the Allen Group gives an area of 567 ha but the original Allen Group Silt Pond Data Sheet attached as appendix 4 gives an area of 999 ha. **This means that Esker bog was extended into intact raised bogs over the period since 1995 and a discrepancy of 432 ha.**(571 ha is given in Table 4.3 of EIAR for West Offaly Power station 2019.

Garrymore Bog

Bog no 222 of appendix 1.1 Bog unit details and part of the Allen Group gives an area of 308 ha but the original Allen Group Silt Pond Data Sheet attached as appendix 4 gives an area of 430 ha. **This means that Garrymore bog has a discrepancy of 122 ha.**

Glashabaun North,

Bog no 26 of appendix 1.1 Bog unit details and part of the Allen Group gives an area of 506 ha but the original Allen Group Silt Pond Data Sheet attached as appendix 4 gives an area of 423 ha. **This means that Glashabaun North was extended into intact raised bogs over the period since 1995 and a discrepancy of 83 ha.** (I attach as appendix 4.2 Map of Glashabaun bogs)

In the Annual Environment Report 2011 (March 2012) for IPC 503-01 – the Allen Group, at 4.6 Bog Development and Operational Programme, it states;

'There was approximately 55 hectares of **high bog brought into production at Glashabaun North during 2001.** Works extended to screw levelling, ditching and piping. An initial silt pond was constructed which is due for extension during 2012.

Glashabaun South

Similarly, Glashabaun South no 25 of appendix 1.1 Bog unit details and part of the Allen Group gives an area of 561 ha but the original Allen Group Silt Pond Data Sheet gives an area of 346 ha. **This means that Glashabaun South was extended into intact raised bogs over the period since 1995 and a discrepancy of 215 ha.**

Ticknevin bog

Bog number 24 on Appendix 1.1 of Bog Unit details 2020 gives a figure 458 ha but the Allen Group Silt Pond Data Sheet which was submitted with the application for the IPC licence gives a figure of 331 ha. This means that Ticknevin bog was extended by 127 ha into intact raised bogs over the period since 1995.

Codd North or Codd 2 bog

Bog number 27 on Appendix 1.1 of Bog Unit details 2020 gives a figure 312 ha but the Allen Group Silt Pond Data Sheet which was submitted with the application for the IPC licence gives a figure of 255 ha. This means that Codd North bog was extended by 57 ha into intact raised bogs over the period since 1995.

Codd South or Codd 1 bog

Bog number 28 on Appendix 1.1 of Bog Unit details 2020 gives a figure 256 ha but the Allen Group Silt Pond Data Sheet which was submitted with the application for the IPC licence gives a figure of 240 ha. This means that Codd North bog was extended by 16 ha into intact raised bogs over the period since 1995.

Lodge Bog

Lodge bog number 33 on Appendix 1.1 of Bog Unit details 2020 gives a figure 430 ha but the Allen Group Silt Pond Data Sheet which was submitted with the application for the IPC licence gives a figure of 306 ha. **This means that Lodge bog was extended by 124 ha into intact raised bogs over the period since 1995.**

Barnaran bog

Barnaran bog no 32 on Appendix 1.1 of Bog Unit details 2020 gives a figure 492 ha but the Allen Group Silt Pond Data Sheet which was submitted with the application for the IPC licence gives a figure of 260 ha. **This means that Barnaran bog was extended by 232 ha into intact raised bogs over the period since 1995.**

Commented [M1]:

Commented [M2]:

Blackriver bog

Blackriver bog no 31 on Appendix 1.1 of Bog Unit details 2020 gives a figure 766 ha but the Allen Group Silt Pond Data Sheet which was submitted with the application for the IPC licence gives a figure of 260 ha. **This means that Blackriver bog was extended by 506 ha over the period since 1995.**

Ballydermot south

Ballydermot south no 30 on Appendix 1.1 of Bog Unit details 2020 gives a figure 434 ha but the Allen Group Silt Pond Data Sheet which was submitted with the application for the IPC licence gives a figure of 340 ha. **This means that Ballydermot South was extended by 94 ha into intact raised bogs over the period since 1995.**

Ballydermot North

Ballydermot North no 29 on Appendix 1.1 of Bog Unit details 2020 gives a figure 452 ha but the Allen Group Silt Pond Data Sheet which was submitted with the application for the IPC licence gives a figure of 418 ha. **This means that Ballydermot North was extended by 34 into intact raised bogs over the period since 1995.**

Derrylea bog

Derrylea bog no 23 on Appendix 1.1 of Bog Unit details 2020 gives a figure 656 ha but the Allen Group Silt Pond Data Sheet which was submitted with the application for the IPC licence gives a figure of 430 ha. **This means that Derrylea bog was extended by 226 ha into intact raised bogs over the period since 1995.**

Daingean Derries bog

Bog no 17 on Appendix 1.1 of Bog Unit details 2020 gives a figure 368 ha but the Allen Group Silt Pond Data Sheet which was submitted with the application for the IPC licence gives a figure of 488 ha. This means that Derries bog was

not only drained in breach of the Memorandum of Understanding but was also extended by 210 ha into intact raised bogs over the period since 1995.

Daingean Rathdrum Bog

Bog no 18 on Appendix 1.1 of Bog Unit details 2020 gives a figure 278 ha but the Allen Group Silt Pond Data Sheet which was submitted with the application for the IPC licence gives a figure of 811 ha. This means that Rathdrum bog was not only drained in breach of the Memorandum of Understanding but was also extended by 533 ha into intact raised bogs over the period since 1995.

Boora Group

Belair South, part of the Boora group which has an area of 229 ha.

Cúil na Mona bog Group

Permission to exploit these bogs in the group was attained under false pretences. These bogs were approved by the Commission to supply Edenderry power.

Cúil na Mona bog, which has an area of 200 ha and forms part of the Cúil na Mona bog group is also missing from this application. '4.6 Bog Development and Operational Programme states ; Approximately **200 hectares of bog at Cuil na Mona, which was developed but inactive, was prepared for production for the 2010 season.** Works involved ditching and improved drainage.' This bog was drained the same time as Abbeyleix or Killamuck bog was drained.

Cashel Bog is part of the Cúil na Mona bog Group has an area of 438 ha is also excluded from this application.

Cúil Na Carton bog

Cúil na Carton bog is part of the Cúil na Mona bog Group has an area of 438 ha is included but the Primary use was not agreed to be for Horticulture.

Derrygreenagh Group

Derryhinch Bog which is part of the Derrygreenagh Bog Group and has an area of 336 ha.

Drumman bog, part of the Derrygreenagh Bog Group and has an area of 1,120 ha.

Toar bog, part of the Derrygreenagh Bog Group and has an area of 445 ha.

Coolronan or Lislogher bog, part of the Derrygreenagh Bog Group which has an area of 705 ha.

Derryhinch bog, part of the Derrygreenagh Bog Group which has an area of 336 ha.

Derryarkin bog, part of the Derrygreenagh Bog Group which has an area of 789 ha.

Rossan or Kinnegad Bog. 260 ha. . It once covered an area of at least 330 Ha and today around 260 Ha are currently in production with peat harvested for horticultural purposes.(ref excavations.ie) The 2009 AER states at 4.6 Bog Development and Operational Programme; There was some small scale development at Rossan Bog, **which included the preparation of an area of approximately 35 hectares for inclusion in the 2010 production season.** An additional silt pond site was constructed to service this additional area.'

Carranstown Bog - Ballivor group a subgroup of the Derrygreenagh Group. 310 ha has been supplying Lanesborough Powerstation.

The annual Environmental Report of 2009 for the Derrygreenagh Group states at 4.5 that; 'there was no production in Derryhinch, Drumman and Lislogher Bogs.'

Drawing No 8.1c (May 99) shows drains but no Production on Lislogher and Bracklin Bogs at the southern end of Ballivor bog.

Lislogher Bog. The eastern part of the bog is 705 ha in size.

Bracklin

bog(Ballivor

Group).

Dr

awing No 8.1c (May 99) shows drains but no Production on Liscloher and Bracklin Bogs at the southern end of Ballivor bog.

Coolronan bog was drained but not harvested similar to Abbeyleix /Killamuck bog no harvesting has occurred but the drains remain in place. A wildlife ranger said that the drains are detrimental to the young wildlife such as hares if they fall into them.

Kilberry Group

I attach a Memo from the application to the EPA for IPC licence 1999 as **appendix 4.3**.

Umeras Bog, part of the Kilberry Group which has an area of 198 ha is missing from the application.

From appendix I .1 of the Kilberry Group to the current applications for substitute consent you will note that intact raised bogs numbered 6, 17, 18, 27 and 28 were drained during and after the approval of the funding. The appendix describes the primary Peat End Use as being Horticulture. This again is an example of the breach of the Memorandum of Understanding in that Ummeras bog was approved by the Commission as supplying Edenderry powerstation but in fact it supplied West Offaly powerstation.

Prosperous Bog

Bog number 39 on Appendix 1.1 of Bog Unit details 2020 gives a figure 217 ha. This means that Prosperous bog was an intact raised bog which was drained in 1991 in breach of the Memorandum of Understanding during the period of negotiations with the European Commission prior to 1995.

Schedule 2 submitted with the application for the Kilberry Group: Existing Planning Permissions Kilberry Bog Group confirms that planning permission was granted on the 08/03/2002 for a Peat outloading facility at Ballynafagh Prosperous planning reference 02/349

Conclusion

It is quite obvious from the information provided above that Bord Na Mona had no intention of complying with or fulfilling the agreement in the Memorandum of Understanding ie, to use up the last of the cutaway bogs.

9. Water Framework Directive

As stated above these groups of bogs fall within single river catchments with one or two exceptions. I submit that the Water Framework Directive is not being implemented correctly and it will not be possible to carry out an assessment without taking into account the draft of the individual navigations connected to each of the groups of bogs. I attach as **appendix 9** correspondence dated January 2020 from the EPA which states that **the certified draft of the navigation is not explicitly considered in the implementation of the Water Framework directive and that the surface water quantitative status is not assessed under the Water Framework Directive.**

Because of the continued failure to apply the EIA and Habitats or to take into account the proper requirements for compliance with the Water Framework Directive by An Board Pleanala and or the EPA the direct and indirect effects to be assessed include the loss of water to and the restoration of the draft of the Barrow Navigation. The removal of peat from the catchment in cumulation with other projects and the use of natural resources (bog which contains 94% water in its natural state) and also includes the loss of water from the catchment detailed in Table 1- abstractions Attached as **Appendix 7** from the Barrow Catchment along with the discharges from Local Authorities/ Irish Water discharges from sewage treatment works to the catchment s.

10.

OMEX Report

To support my submission on the condition of the Grand Canal and Barrow Navigation now prevailing I attach an independent report (Komex Report attached as **appendix 5.4**) I commissioned regarding the implementation of the water abstractions contained in the Kildare Water Strategy all of which have been approved by An Bórd Pleanála without assessment or appropriate assessment similar to the Edenderry power station. Consequently the current application for the peat removal from the bogs must now take into account these abstractions as direct, indirect and cumulative effects on the Barrow Nore SAC which is also a certified navigation.

K

11.

he Draft of the Barrow Navigation

The draft of the Barrow Navigation is defined in Article 14, of SI No 247 of 1988, the Canals Act (Bye-laws) 1988 which defines the Maximum dimensions of boats which are allowed to navigate on the Grand Canal and Barrow Navigation as being 1.2 meters. An additional 300mm is required by Waterways Ireland for boat drawdown.

Coupled with the objective of preventing a deterioration in the habitats contained in the Habitats Directive 92/43/EEC as amended there is also an obligation to restore the draft of the Barrow Navigation under the Water Framework Directive 2000/60 EC.

All the water needed for the navigation is vested in the Navigation through Section 68 of the Charter for the Grand & Royal Canals. (Appendix 10) Section 68 of the Charter for the Royal Canal 1789; 68.-“*And be it enacted, that soon as any subscribers to any of the said undertakings shall be constituted and created into a body corporate, they shall be, and stand vested with, and shall hold and enjoy all and singular the like powers, privileges advantages and authorities in all things, for the purposes of carrying on the said navigations and off branches, as were before the passing of this Act vested in the Corporation for promoting and carrying on an Inland Navigation in Ireland., by virtue of the several Acts of Parliament heretofore passed in this kingdom, relative to and concerning Inland Navigation, and as are now vested by law in the Company of undertakers of the Grand Canal, for the purpose of enabling them to carry on the said Canal ; and also the like powers as were by the said Acts heretofore vested in the said Corporation for promoting and carrying on an Inland Navigation in Ireland, and as are now vested in the said Company of Undertakers of the Grand Canal, to enable them to summon juries for valuing any lands, houses, gardens, tenements and hereditaments (gardens, orchards, yards, lawns, walled deer-parks, and planted avenues accepted) as may be necessary for completing the said works, and for making such wharfs, quays, storehouses, market houses, locks, basons and docks, and other conveniences, as may be judged by such subscribers and undertakers when incorporated respectively, proper for the said works; and also all such lands as may be necessary for the making of banks, and towing-paths for the aforesaid Navigations and that the said subscribers and undertakers when incorporated respectively, may be enabled to hold such lands, houses, tenements hereditaments , as they shall so purchase; and further that such subscribers and undertakers when incorporated shall be vested with like powers, to make, turn, and draw into the said navigations and off branches, the waters of all such rivers, rivulets, lakes and brooks, as may be necessary for carrying on the aforesaid works, first making compensation as by the said Acts directed, to the proprietors of any mills or bleach greens were erected before the first day of April, one thousand seven hundred and eighty nine.*’

T

12.

abitats Directive

With reference to Article 6.4 of the Habitats directive the raised bogs habitat was connected to and necessary for the Barrow Nore SAC and there is now a requirement to obtain a derogation from the Commission under Article 16 of the Habitats directive for all of the bogs in and omitted from the proposal identified above and throughout this submission along with the abstractions and discharges mentioned to date and any yet unknown to me.

H

13. ackground and context

B

1. A

At

3.2. of the inspectors report An Bórd Pleanála 306247-19 Referral case it states;

PL25.RL.2975 - The Board decided, in April 2013, that the drainage of boglands and extraction of peat at the Lower Coole, Mayne, County Westmeath after the 20th September 2012, was development and not exempted development, having regard to the introduction of section 4(4) of the Planning and Development Act, as inserted section 17 of the Environment (Miscellaneous Provisions) Act, 2011, **and on the grounds that the development requires an environmental impact assessment and appropriate assessment**. The referral was the subject of a Judicial Review (2013/398/JR) and on 8th February 2018 the High Court upheld the Board's decision [2018] IEHC 58.'

The Board appear to have conveniently forgotten about their decision in the Killamuck or Abbeyleix bog case 11 RF 1078 in 2002, whereby; 'in exercise of the powers conferred on it by Section 5 of the Local Government (Planning and Development) Act, 1963, hereby decides that the works at Killamuck Bog, Abbeyleix, County Laois **are not exempted development**. Consequently the words 'the drainage of boglands and extraction of peat at the Lower Coole, Mayne, County Westmeath after the 20th September 2012' in this case applies to the Bord Na Mona bogs since 1988.

14. he legislation

T

I attach as **appendix 1 a** and extract of the application to the EPA for IPC licence 502-01 where Bord Na Móna are laying down the law to the EPA who now have to deal with their past failures.

Para 4.0 of the inspectors report for 306247 Legislative Context pronounces;

4.1. Requirement for planning permission; 'Section 4(4) of the Planning and Development Act, 2000 (as amended) requires that development which is exempt by virtue of certain sections of the act or the exempted development regulations, shall not be exempted development if an EIA or AA is required. This section was inserted by S.17 of the Environment (Miscellaneous Provisions) Act 2011, and came into effect on the 20th September 2012.'

Previous to this; the planning and development regulations 2001 – 2013 applied to this application which states at 3.3; "peat extraction" include any related drainage of bogland;

And in particular Part 3 **Peat extraction** CLASS 17 applies to this application;

Peat extraction in a new or extended area of less than 10 hectares, **or**

(b) Peat extraction in a new or extended area of 10 hectares or more, where the drainage of the bogland commenced prior to the coming into of these Regulations.

Previous to this; PART IV of Statutory Instrument SI. 349 of 1989 applied to this development ;

'PART IV ENVIRONMENTAL IMPACT ASSESSMENT OF CERTAIN DEVELOPMENT BY STATE AUTHORITIES; '23 Environmental impact assessment of certain development by State authorities .23. (1) (a) A State authority shall, before undertaking any development of a specified under Article 24 of these Regulations, or any development which would be of such a class but for not exceeding a quantity, area or limit specified in relation to such class and which in the view of the State authority would be likely to have significant effects on the environment prepare a statement of the likely effects on the environment (hereinafter referred to as an "environmental impact statement") of the proposed development.

In the knowledge that there has been no real change to the assessment process since the finding of the CJEU in case C-50/09 Commission v Ireland

and I restate the situation which was conveyed to the European Commission in 1995;

Paragraph '2.1.3.4 of the Memorandum of Understanding at ; Environmental (EIS) states; As part of the necessary planning and environment requirements, both at Irish and EU levels, the developer submitted an Environmental Impact Statement to the Environmental Protection Agency May 1999. Edenderry Power Ltd received the Integrated Pollution Control (IPC) Licence in July 1999 in accordance with Section 85(2) c Environmental Protection Agency Act 1992. A copy of the IPC Licence is held on file in the Department of Public Enterprise.' **Again, I restate that by making this application the applicant has conceded that although EIA has been a mandatory requirement since 1998 three years after the commencement of the EIA Directive 85/337/EEC and Appropriate assessment has been required since 1992. No EIA or appropriate assessment was ever carried out for the Edenderry Powerstation. Consequently, no real exceptional circumstances exist.**

The applicant was in full knowledge (as was and still is their legal advisers Arthur Cox & Co) of its obligations to comply with the various directives because of their Statutory obligations under Section 56 of the Turf Development Act 1990; Bord na Mona will ensure that its activities afford protection for the environment and archaeological heritage and have chosen to resist compliance at all cost. In this case the applicant and their advisers have run out of road.

The applicant has benefited from the advice to continue the position of non-compliance following on from the case C-392/96 against Ireland project splitting and for failing to consider cumulative or in combination effects for which the Irish authorities enacted SI 93/1999.

15.

assessment process & IPC Licence

Splitting the

SI 93/1999 : European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1999 which came into operation on 1 July 1999 (for a three month period) and imposed an obligation to apply for planning permission and carry out an EIA for peat extraction.⁵

The applications for all the IPC licences were made in or about the 9th of June 1999 but the EPA ignored the obligation to carry out EIA under SI 93/1999 regulations. I refer to and submit as appendix 7 an extract (page 11 of 40) the application form for IPC no 502 on page 11 where Bord na Mona (and which was accepted by the EPA) were under the impression that: 'Bog development and peat production was and are developments exempt from planning permission by virtue of Sections 4(1)(a) and 2(1) of the Local Government (Planning and Development) Act 1963.

Again, I restate that by making this application the applicant has conceded that although EIA has been a mandatory requirement since 1998 three years after the commencement of the EIA Directive 85/337/EEC and Appropriate assessment has been required since 1992. No EIA or appropriate assessment was ever carried out for the Edenderry Powerstation.

Subsequently, in reaching their decision the Board and the EPA are obliged to assess and establish the permanent and temporary loss of water to the Grand and Royal Canals The Barrow, Boyne and Shannon Navigations by the removal of the peat which constituted 95% water. This water was and is connected to the canals and for the benefit of the various connected SAC's which have benefited by the waterways being designated and Certified Navigations.

The Board and the EPA are also obliged to revisit previous decisions for the same and similar failure in decisions taken by the Board for failure to implement the EIA and Habitats Directives in relation to surface and groundwater abstractions in Counties Meath, Kildare, Laois and Offaly is further proof of an incompetent Authority. In Particular: CW 0502, ED 2019, ED2020, ED2021, ED2023 EC2011, EC2012, CW0501. The Board and the EPA are also obliged to reconsider all connected developments in each of the catchments.

You should note that the current predicament is further compounded for the Board and the EPA in that the status of the abstractions identified in table 1 at appendix 7 has not been resolved or gone away because the Interference Notices I issued in 2002 has not been lifted by the High Court rendering it impossible to validate or ignore or not include the surface and groundwater abstractions in this assessment for which the same formula and regime of non compliance with the EIA, A. A. or S. E. A. directives has been applied.

⁵SI 92 of 1999 Local Government (Planning and Development Act) Regulations which was signed on 14th Day of April 1999 also applies.

In addition, Article 6.4 of the Habitats directive 92/43/EC as amended is a mandatory obligation to get the approval of the European Commission.

16.

arbon emissions

In this time of Climate crisis, it is deplorable that No account has been taken of the emissions released by the drying, harvesting or the burning of peat and that the applicant is not willing to produce the correct figures.

Edenderry Power produces 992,000 tonnes of Co2 per annum

(P.65 of EIS for 98/437 states that at full load, giving an output of 118 MW to the ESB grid, the EPL Power Plant will discharge 124 tonnes/hr of carbon dioxide. This gives a ratio of 1.05 tonnes CO2/MWh EIS for EPL at 55 page 65 1st para. The proposed EPL Power Plant running at 100% load for 8000 hours/annum will discharge 0.99 million tonnes of CO2, a figure which amounts only to 0.03% of the EU 1990 emissions. (4th para))

The Non Technical Summary (NTS) at page 7 states; 'Data on quantities and uses of harvested peat was not available for each bog unit for the period 1985 – 1991 and was limited for the period 1992 to 2001 where horticultural peat was not included and limited for the period 1992 to 2012 where off-site usage destinations were not available.'

The applicant has the relevant information but is not prepared to submit it for fear that their under declaration will be found out. I attach as **appendix 7.3** peat production reports which includes the bogs that were designated to supply Edenderry Powerstation under false pretence. In essence Bord Na Móna extended the derogation and exemption and turned a blind eye to having to apply the EIA and Habitats directive to all of its bogs (until now) and opened new bogs all in breach of the Memorandum of Understanding.

In doing so they under declared the Carbon Emissions from its activities. When examined Appendix 7 proves that the 185 tonnes of production per hectare declared in the EIS for Edenderry Power is an under estimation and the real production potential identified in appendix 7. The more real figure of 348 tonnes per ha is reached when you consider the actual production figures given in appendix. This multiplier effect translates to an equivalent landholding 1,420,488 ha. The Carbal report commissioned by Bord Na Móna describes and quantifies the degradation of peat is attached as **appendix 9**.

Part 2.3 of the EIS submitted for Edenderry power states that;

The production tonnage of milled peat taken at 185 tonnes/net hectare/annum at 50% to 55% moisture content, gives total production resource of 27.5 million tonnes approximately. This figure is based on the acreage and not the actual output. Peat harvesting was carried out 7 days per week with several harvests being carried out each day almost on a continuous basis.

See the actual production figures attached at appendix 7 and in addition to peat removal before this period see appendix 7.1 'Figures on Peat production from 1946 to 1995'

16.1 Carbon Emissions and the CARBAL Report

Link to the full CARBAL report; <https://www.ucd.ie/ferg/Research/Projects/CARBAL.html>

In 1999 Bord na Móna initiated and funded what is called the CARBAL project to investigate carbon dioxide (CO2) and methane (CH4) exchange in a number of potential after uses for industrial cutaway peatlands. These were;

- (1) commercial Sitka spruce afforestation,
- (2) natural regeneration to birch/willow woodland and
- (3) wetland creation.

C

The main findings of CARBAL:

'From the results of this study, it is clear that ranges of management options are required in order to both minimise losses of C from the cutaway and maximise uptake.

1. Prior to the cessation of peat harvesting, a clear coherent after use plan with regard to C should be in place for each cutaway peatland.

2. For wetland creation, it is essential that the water table be maintained close to the surface throughout the year in order to minimise persistent losses of CO₂ from both the bare peat surfaces and vegetation communities. As aerobic decomposition occurs up to 10,000 times faster than anaerobic decomposition, a high water table will have the dual effect of reducing CO₂ emissions and will also promote recolonisation by appropriate wetland vegetation and, over time, may lead to the return of the CO₂ sink function. However, high water tables combined with the return of wetland vegetation may also to the annual C balance, is to reach a point where the losses of CH₄ are offset by CO₂ uptake.'

3. Management of the naturally regenerated woodlands may result in higher rates of C uptake than in unmanaged stands.'

Therefore, the CARBAL report has to be fully implemented on all of the boglands.

Page 65 of the EIS provided for the original application for Edenderry powerstation discusses the Memorandum of Understanding and our commitment to Kyoto; 'As part of the EU negotiations in advance of the Kyoto convention, the Irish declared an energy policy to limit total emissions of the main greenhouse gases in the year 2010 to 15% above 1990 levels.

A Memorandum of Understanding, which set out the conditions for the provision by the EU of 26 million ECU grant-aid towards the Power Plant, was signed by the Minister and the EU Commissioner for Regional Policy in April 1995. The Memorandum sets out a schedule for the decline in CO₂ emissions from peat Power Plants up to the year 2023. The schedule shows that CO₂ emissions from peat Power Plants will peak in 2003 at 3.5 million tonnes, reduce to 2.09 million tonnes in 2010, and to 1.65 million tonnes in 2020.'

It should be noted that no account has been taken of the emissions from peat harvesting and unfortunately, this time round any grant of permission not development consent cannot avail of derogations from reducing our CO₂ emissions.

17. The Bogs

T

& Edenderry Power

In the context of the Edenderry powerstation the operation of the plant is contingent on the fuel being supplied originally from three groups of bogs, (1)the Kilberry Group of Bogs which acquired their IPC licence reference 506 in 1999, (2) from the Cúil Na Mona Group (IPC 507) and (3) the Ballivor group of bogs which are part of the Derrygreenagh group IPC reference 501.

The original permission was granted for 8 specified bogs named Allen, Gilltown, Kilberry and Umeras in County Kildare, from bogs named; Cashel, Cúil Na Mona and Cool Na Cartan in County Laois (IPC 507) along with a bog named Ballymoe in County Westmeath. (Map no 1)⁶see Figure 1 of the original EIS for EPL Attached as **appendix 6**(please note that I believe that Ballynoe is a misspelling of Ballivor)

⁶ The map titled Figure 1 is from the original EIS identifies the approved bogs which accompanies and is part of the Memorandum of Understanding which was signed by Minister for Transport, Energy, and Communications, Michael Lowry on the 12th of April 1995.

No exemption or agreement was sought or granted from the European Commission to supply Lanesborough or West Offaly power stations from Ballivor bogs or from Umeras and or Mountlucas. There is no functional interdependence between them and both powerstations now have the same status as the Edenderry station ie they are without legal EIA, A. A. and STRATEGIC ENVIRONMENTAL ASSESSMENT and have no rightful legal status or protection because 'the environmental effects of extracting the peat fuel source for the thermal power plant were not properly assessed for the purposes of the EIA Directive.' (see para 73 of the White judgement An Taisce v An Bórd Pleanala [2014 No. 38 J.R.)

Justice White ruled that EIA has to be carried out on the peat extraction, this means that the statute of limitations does not apply to direct and indirect effects of a development which has not been assessed or received either an exemption or derogation.

This scenario also applies to and includes both groundwater and surface water abstractions (identified in Table 1 appendix 7) from the catchment and all the IPC licensed local authority discharges from sewage works into the catchment.

In addition, I quote from para 3 of a Letter from Mr Liam Cashman of the European Commission dated 12th January 2005 ... **'the fact that it points to a relationship between component projects is a relevant factor for implementing the Directive in relation to those projects , especially if the individual projects are serving the same strategic needs and drawing from the same or inter-connected water resources.'**

17.1 Peat Supply and Edenderry Power

The supply of peat for the new Power Plant from bogs 1 to 8 was mentioned in the original EIS and Memo of Understanding as being all to be by road haulage. The original EIS mentions these at Figure 1 (page 5 of the traffic impact assessment) and at page 279 of the EIS as:

- | | |
|----------------------------|----|
| 1. | |
| len, County Kildare, | Al |
| 2. | |
| ltown, County Kildare, | Gi |
| 3. | |
| lberry, County Kildare, | Ki |
| 4. | |
| meras, County Kildare, | U |
| 5. | |
| shel County Laois | Ca |
| 6. | |
| ool Na Mona county Laois | C |
| 7. | |
| ool Na Cartan county Laois | C |

8.

Ba

Wicklow County Meath

Part 2.3.9 of the Original EIS for 98/437 (from page 22 to 27 **appendix 6.1**) "All the bogs designated to supply the Power Plant, are located in Counties Kildare, Laois, Offaly and Meath. About 75% of the general area is in the river Barrow catchment and the remaining 25% in the River Boyne catchment. Some of the bogs were in sod fuel production for several years and the remainder in milled fuel peat production in 1998. **All the former sod peat bogs are being developed for milled peat**, and the peat depth remaining for production in all the designated bogs varies from about 3.5m to 1.0 m, **except Daingean which will be about 5.5 m.**

All the vegetation has been removed from the surface of these bogs except small unproductive fringe areas where scrub and vegetation remain.

The production tonnage of milled peat taken at 185 tonnes/net hectare/annum at 50% to 55% moisture content, gives total production resource of 27.5 million tonnes approximately. **There are other bogs in the Derrvgreenagh group which will become available in the coming years i.e. Ballybog, Cavemount, Clonsast, Drumman, Derryhinch and Toar.** Also, the total production area of Ballycon, Mountlucas, Ballykeane and Clonad give an additional net production area of 1500 hectares and a total milled peat resource at 50% to 55% moisture content of 4 million tonnes. This gives a total production resource of 31.5 million tonnes all inter-connected by railway.

Existing Bord na Mona Horticultural bogs in Counties Laois, Kildare, Offaly, Meath and Westmeath will become available for milled peat production in the coming years. Estimate net production area is 3200 hectares, giving a total resource of milled fuel peat at 50% to 55% moisture content of 13 million tonnes. Requirements of peat for the new Power Plant from those bogs will all be by road haulage."

Clonsast bog's

'Clonsast is Bord na Mona's (BnM) oldest established larger type bog. It consists of six smaller bogs,

- Garryhinch, Derryounce, Derrylea, Clonsast main bog, North bog and the Bulge

The whole group of bogs is situated close to Portarlinton and has a gross area of 10,700 acres. Over 200,000 tons of sod peat are produced in these bogs annually but supplies are becoming exhausted. Production will progressively reduce from now onwards and by 1994 it will be down to an estimated 34,000 tons annually.⁷

(A Map of Clonsast bog is attached as **appendix 4.4**)

Derryounce bog in the Allen group has 50 ha which is not included in this application.

See the attached map at **appendix 4.1** map showing a large area of bog south of Derryounce bog currently being exploited for approximately six years by subcontractors to Bord Na M6na.

The exact **acreage** for each bog is not at hand at present.

Please find attached map of Clonsast and Bulge bogs at **Appendix 4.2**

The intention to harvest these bogs for the Edenderry plant is now clear from the EIS extracts above. But the European Commission did not sanction the removal of peat from these bogs to supply or extend the life of the Edenderry Powerstation or to supply Lanesborough or West Offaly.

⁷(ref Clonsast Social Survey Dec 1977)

18.

T

he Direct Affect and the Memorandum of Understanding

Having regard to the fact that An Bord Pleanála is a wholly owned and controlled State Body, all Bord members are appointed by the Minister for the Environment. An Bord Pleanála is also subject to the concept of 'Direct Affect' of the Memorandum of Understanding of November of 1994. Accordingly, An Bord Pleanála is not empowered to even consider an Application for Development Consent for a peat powered power station without the prior consent of the Commission of the European Union, as evidenced by an amendment to the Memorandum of Understanding of 1995 and agreed upon both by Ireland and the Commission of the EU. There is no such prior Consent for the making of the application, and there is no prior Consent to the embarking upon the extension of the life of the power station and a peat burning facility.

Page 14 of the inspector's report for 98/437 states that; '**It is part of the agreement attached to an EU Grant that no peat should be extracted from protected areas** and similar provisions are also incorporated into the fuel supply agreement with Bord na Mona and under Section 56 of the Turf Development Act 1990, Bord na Mona will ensure that its activities afford protection for the environment and archaeological heritage.'

19.

W

ater Supply for the Grand Canal and Ongoing pollution

The Ballymullen supply to the Grand Canal from the intact Daingean Rathdrum bog was an important supply and it has become even more important since the destruction of the main source of water for the canal by the method of construction of the Kildare By-Pass chose and approved by the European Commission.

As **appendix 2.1** I attach the correspondence between Dúchas and Bord Na Móna which this summary can explain what has been allowed to continue unabated since Daingean Rathdrum & Daingean Derries bogs were drained in 1995;

'Both Bord Na Mona's emission points enter an outfall known locally as the Ballymullen Supply. This supply discharges to one of the longest single level sections ' of canal in Ireland, approximately 19.5 miles long. This section of the canal acts a perfect large settlement lagoon, and consequently almost all suspended solids entering the canal system will eventually settle in the canal. Our calculations and estimates, based on the information supplied by Bord Na Mona as part of their licence application, indicates that under current best practice approximately 1,500m³ to 2,000m³ of peat sludge will enter the canal annually, (assuming peat sludge is 98% water). This is equivalent to completely filling the canal with silt for an average of approximately 100m per year. This quantity of peat sludge will eventually cause serious reductions of the canal navigation channel in the short term.'

This is an example of the direct and indirect effects on Navigation of the bogs in their natural state the run off (and the sponge effect of the raised bog) being channelled to the Grand Canal. This pattern can be applied to all the bogs in the catchments of the Royal Canal, the Barrow, Boyne and Shannon Navigations which have been drained/developed and harvested by Bord Na Móna.

Photographs of the discharge point are included in the attached document titled bogsconcerned with the Application for Substitute consent. (At **Appendix 2.2**)

20.

L

egal Status of the development

European Environmental Law is not based on precedent and development consent cannot be cobbled together and dished out piecemeal or at will. If a development has been carried out without the benefit of an assessment or an appropriate assessment having been carried out it is not possible to grant **permission** for either a portion (in this case 8 years) as is claimed since the activity occurred. It is impossible to grant Development Consent and therefore the development is without legal status and is not entitled to any legal protection.

Other than that, I would like to congratulate the Board and its advisers for contributing to this debacle. I suspect that the source of the trouble and destruction of the environment caused by the failure of the Irish authorities to carry out one assessment in 27 years is traced back to advice received from MR Conor Skehan who promoted himself as EIS ltd who stated in relation to Screening;

‘Screening is a crucial issue because of the divergences of views which can exist on the same topic. An authoritative statement on the need to avoid unnecessary EIA will be included together with advice on the existence of other forms of appropriate evaluation.’

Harrington v An Bórd Pleanála

Justice Hedigan in his judgement in *Harrington v An Bord Pleanála* [2010] IEHC 428 at 7.6 to 7.7 stated;

“...It is clear from the cases of *Westwood Club Ltd v. An Bord Pleanála* [2010] IEHC 16 and *Quinlan v. An Bord Pleanála* [2009] IEHC 228, that the Board was obliged to take into account the legal status of the underlying development. To do otherwise would be to view the proposal out of context; moreover its decision as to what was or was not in context was a matter of planning expertise and therefore something with which, save for exceptional circumstances, the court should not be involved.

7.7 It seems clear that An Bord Pleanála can and indeed should take into account all relevant factors known to exist within the context of the application made, including the planning history of the site. It is not possible to accept that the planning status of the quarry was not a relevant factor to take into account. It clearly was. The fact it had been registered did not transmute this unauthorized base metal into the gold of authorization. I accept the submission of the respondents in this regard that its approach is in line with Article 9 (i) (viii) of the Planning and Development Regulations 2001 that unauthorized developments, even if immune, should not be extended and facilitated by the planning code. It was well within Bord Pleanála’s jurisdiction to decide that this application would facilitate unauthorised development and upon that basis to refuse to authorize it.”

21.

unding & the Memorandum of Understanding.

When the Commission approved and granted the funding of €26 million for the peat generation measure which is detailed at para 2.1 of the Memorandum of Understanding (which at that time constituted development consent) the Commission were in full knowledge of Condition no 3 of the permission granted for the powerstation reference no 98/437 granted on appeal to An Bord Pleanála reference PL 19. 107858 to Edenderry Power (attached) which states;

‘3. The treatment of the boglands from which peat is to be extracted and the future rehabilitation and use of these areas do not come within the scope of this planning application.

Reason: In the interest of clarity. ’

The problem is further exacerbated by the fact that Bord Na Mona drained new intact raised bog contrary to that stated to Mr Liam Cashman of the Commission 24th September 1998 (attached as **appendix 5.3** which are elaborated on in this submission and also in **appendix 2.2**)

From **appendix I .1** to the current applications for substitute consent you will note that intact raised bogs numbered 6, 17, 18, 27 and 28 were drained during and after the approval of the funding. Therefore it is quite obvious that Bord Na Mona had no intention of complying with or fulfilling the agreement in the Memorandum of Understanding which triggers the return of the funding mechanism contained in the Memorandum.

‘THE IMPACT OF REMOVING THE PEAT FROM THE EAST MIDLAND BOGSON THE FUTURE LANDSCAPE’

Includes the ‘Vision of the Future Landscape’ which was submitted to and accepted by An Bórd Pleanála in 1998 was also sent to and apparently approved by the European Commission. (attached as **appendix 5.2**)

'As is evidenced from all the foregoing the future landscape of the industrial peatlands serving the new power station, will be one of variety, where open areas of grassland will be surrounded by hardwood and coniferous forestry and interspersed with lakes and wetlands. **Some of the bog units are substantial depressions where it will be possible to put in significant areas of relatively deep water which could be suitable for a range of water-based sports and leisure pursuits. The peatland areas in West Kildare will be within relatively easy commuting distance of the greater Dublin area. With water-based activity as the core amenity then the extension of all the ancillary amenities becomes possible.**

Planning for this Vision

The opening up of the myriad of future possibilities can only be unlocked by the removal of the remaining peat cover. Within a timeframe of 20 years the first significant areas will emerge. In the meantime infrastructural development plans should take into account the potential leisure amenity that will be available on the greater Dublin areas doorstep.'

This vision agreed with the Commission can only occur with the full implementation of the Memorandum of Understanding and the application of the CARBAL report.

22.

Summary

Paragraph 7.8 of the inspector's report for Edenderry power states:

'7.8 Planning Authority – [Offaly County Council. Response to AnTaisce]: The Council confirms that biomass schemes are being considered for cutaway boglands. The impact of peat extraction will be the same with or without this peat burning station. If the Barrow Hydrograph is affected, it will be of a beneficial effect as extraction will allow for increased water storage in new lakes and wetlands.'

In their direction on application ABP-306247 at (b) the Board declare that exceptional circumstances exist to permit the retention and continued use of the bogs. I contend that no legitimate circumstances exist to facilitate the continued use. The use of the word exceptional is a misconstruction of the word and the word unacceptable is the correct reaction.

Bord Na Móna was given an opportunity in 1995 to get their act together and prepare for a low Carbon economy, but they have failed to implement their own agreed plan with the European Commission (despite getting a concession under the Kyoto Protocol, through the Memorandum of Understanding). They reneged on the Memorandum of Understanding and opened up new bogs. Paragraph 5.9 of the original EIS submitted for Edenderry powerstation states that **'The peatlands which will be used to provide fuel peat for the new power station have all been developed (drained) for at least a decade-** many have actually been in production for decades.' The Peat Harvesting plan referred to in the cover letter to the current application confirms that they took advantage of being the only country in Europe to receive funding from the European Commission towards the harvesting of Peat. It is my understanding that the Commission were led to believe that Bord Na Móna was only going to remove the last of the remaining peat in cutaway bogs.

Bord Na Móna has capitalised on and abused its unique position. It has expanded to supply 30 countries while destroying the environment for everyone else (knowing that peat would degrade and release its captured CO2 and methane emissions around the world). These countries should be part of the assessment process. In addition, Bord Na Móna plans to continue denying the people of the midlands a once in several millennia to benefit from the long-term plan for the cutaway bogs.

Bord Na Móna claims that it wants to continue supplying Edenderry Power Ltd., until 2023. From my own knowledge and from the documentation submitted, it can be gleaned that the stock of peat to supply Edenderry Power Ltd. was always three to five years ahead of requirements. This arrangement formed part of the fuel supply agreement with Edenderry Power Ltd. This also explains why new bogs were drained in the period leading up to the agreement with the Commission in 1995.

Commented [M3]:

This debacle is entirely its own doing and this submission proves that Bord Na Móna had no intention to address their obligations under Section 56 of the Turf Development Act 1990. I have proven that Bord Na Móna have resisted regulation of their operation until now and they have also consistently refused to stop polluting the Grand Canal by contaminating the Ballymullen supply at Daingean. It is a prime example of the cavalier attitude of a state body's attitude towards European Directives since their inception.

In his judgement in the case of *Leen V. Aer Rianta* [2003] IEHC 101 (31 July 2003) Judge William McKechnie stated at paragraph 39: 'The consequences for Aer Rianta as a company, if this airport should have to close as a result of court order, are not in my judgment the determining issue. Any such consequences would be entirely its own fault.'

Subsequently, in compliance with the above judgement we urge An Bord Pleanála, having consulted the European Commission (guardians of the European Treaties and final decision-makers under Article 6.4 of the Habitats directive to which this application is restricted) to issue a draft direction to Bord Na Móna to cease all of its peat related activities on the bogs submitted with this application and those which have been deliberately omitted.

The only just transition is the full implementation of, the Polluter Pays Principle, the Memorandum of Understanding, along with the full application of the CARBAL report to the remainder of the bogs.

Yours Sincerely

Michael Hoey