

An Coimisiún Pleanála
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LDG- fee paid 0022864 087118-26
ACP- _____
25 MAR 2026
Fee: € 50 Type: cash
Time: 14.23 By: hand

152 Crann Nua
Portarlinton
Co Laois
R32PP68

23 March 2026

File reference: 324055 Dara Energy

Proposed development of a 9 wind turbines - renewable energy project and 11 OkV on site substation, in the town lands of Cushina, Clonsast Lower and Chevychase or Derrynadarragh near Bracknagh, in County Offaly and the townlands of Aughrim and Derrylea near Monasterevin in County Kildare by Dara Energy

Objection –This application is premature pending the outcome of the decision of An Coimisiún Pleanála regarding the 'Proposed Water Supply Project for the Eastern and Midlands Region in counties of Clare, Limerick, Tipperary, Offaly, Kildare and Dublin,' and the resolution of the Interference Notices I have issued from 2002 to 2026.

I object to the proposed development but not limited to these grounds.

Dear Sir/madam and to who it concerns,

This is a special submission on the 25th anniversary of the first proposal to take surface water from the River Barrow at Scrowland, Athy, County Kildare which was proposed on the 21st November 2001 and 40 years since the introduction of Directive 85/337 EEC

1 It is incumbent on An Coimisiún Pleanála to establish and restore the condition of the Barrow Nore SAC site code 002162.

Amongst the issues to be examined is the damage caused and the destruction of both SACs as a consequence of:

- the failure of the authorities to comply with due process,
- no enforcement,
- No oversight,
- The cumulative effects of previous decisions made by An Bord Pleanála and or An Coimisiún Pleanála for connected developments in the catchments.

2. Navigating and Navigation Rights

I am a Navigation Authority for the purposes of section 21 of the Water Supplies Act of 1942. Section 21 of the Water Supplies Act of 1942 was specifically for the protection of the

navigation which has been in existence for 235 years (approx)¹ and navigation rights on the Barrow which in recent years is now designated but not recognised as an SAC.

3. The loss of water to the Barrow Navigation from the bogs in the midlands has never been considered.

The adjoining cutaway peatlands as well as those in the catchment are subject to an agreement in the form of a Memorandum of Understanding made in 1995 between the Irish state and the European Commission for the benefit of the Barrow Nore SAC site code 002162.

To date all concerned have ignored the Memorandum of Understanding which is now required to restore the loss of water to the Barrow and Boyne Navigations and SACs. This agreement with the commission has not been complied with by the Irish Authorities, but has been concealed from the public since planning permission was granted for Edenderry Powerstation. These bogs, most of which are in the catchment of the river Barrow and Boyne, were supposed to be landscape, planted and flooded. In addition, the bogs were to be made available for tourism and leisure purposes by December 2015.

The bogs in the catchment, are all associated with the Memorandum of Understanding which formed the Barrow Navigation are still an integral part of the depleted navigation and discharge unregulated water since the Act of 1715 Geo 1, when the bogs were drained to form canals and navigations.

Consequently, the current application for these nine wind turbines must now take into account the loss of water to the certified navigation because of these abstractions as direct, indirect and cumulative effects on the Barrow Nore SAC which is also a certified navigation.

The 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 and agreed with NICHOLAS O'DWYER & consultants to Kildare County Council for boat drawdown.

The role of the Water Framework Directive

Coupled with the objective of preventing 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.

The consistent failure of the planning authorities and An Bord Pleanála/ACP to comply with the EIA and Habitats directives has resulted in not only the pollution of, but the loss of water to the inland navigations.

All the water needed for the Canal navigations is vested in the Navigations through Section 68 of the Charter for the Grand & Royal Canals. Section 68 of the Charter for the Royal Canal 1789; 68. "***And be it enacted:...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***

1. While the River was navigable from earlier times, the Barrow Navigation Company was incorporated by charter dated 5 May 1790, to complete the navigation.

compensation as by the said Acts directed, to the proprietors of any mills or bleachgreens were erected before the first day of April, one thousand seven hundred and eighty-nine.'

The Background and context of the connected bogs.

1. A: At 3.2. of the inspector's report, An Bord 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 appears 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 Móna bogs since 1988.

Habitats 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 to be identified above and throughout this submission along with the abstractions and discharges mentioned to date and any yet unknown to me.

I and my company Canalways Ireland Ltd. issued Interference Notice's under section 21 of the Act, in 2002 to Kildare County Council. Although Kildare County Council and now Uisce Éireann are statutorily obliged, they are reluctant to apply to the High Court to have the Interference 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. But Kildare County Council and Irish Water, now Uisce Éireann have adopted a policy of ignoring the Interference Notice and have proceeded to take all the available water for drinking water purposes.

It should be noted at this stage, that as part of this decision making process, the status of the Barrow Nore Sure SAC site code 002162 the consequences of previous decisions by the board will have to be taken into consideration because of the surface and groundwater abstractions from within the catchment of the Barrow.

The surface and groundwater abstractions including all the abstractions in the Kildare Water Strategy and from within the catchment of the Barrow is relevant to this application.

In the interest of completeness

On the 25 February 2025, I endorsed the Interference Notice issued by an Taisce on the 20th Day of June 2003 and resubmitted the Interference Notice along with my submission to An

Bord Pleanála, dated 20th June 2003 in regard to the abstraction proposal to take surface water from the River Boyne, termed as the Meath Eastern Regional Water Supply Provisional Order.

A particular point of interest is the fact that An Bord Pleanála granted planning permission (not Development Consent) for the Boyne abstraction without an EIS and an Appropriate Assessment. The jurisprudence now established regarding the proper interpretation of the European Union renders the abstraction and all of the abstractions in the Boyne catchment the same status as the Derrybrien Windfarm, that is, An Coimisiún Pleanála are powerless to adjudicate on a proposal for development consent;

- A similar diagnosis applies to all of the abstractions from the Barrow Catchment; and
- Of course all of the bogs in both catchments receive the same status, (*see below*)
- As does the developments granted planning by both county councils and An Bord Pleanála /An Coimisiún Pleanála which have already been constructed and or in the process of being constructed on the cutaway bogs. **ie, they have no legal status.**
- In case there is any doubt, the same diagnosis applies to all discharges to the Barrow and Boyne catchments. **ie, they have no legal status.**

4. My objection to An Coimisiún Pleanála decision to accept this particular application as a SID.

I am objecting to An Bórd Pleanála / An Coimisiún Pleanála's decision to accept this application for development consent without having a previously agreed overall plan in compliance with the Strategic Environmental Assessment Directive² for energy which should include the present condition of the Barrow Nore SAC site code 002162 and the Boyne and Blackwater SAC site code: 002299, that is, the destruction of both SACs as a consequence of:

- the failure of the authorities to comply with due process,
- no enforcement,
- No oversight,
- Previous decisions made by An Bord Pleanála and or An Coimisiún Pleanála for connected developments in the catchments.
- No Strategic Environmental assessment.

I am also objecting to the application itself and the manner in which an assessment may or may not be carried out and a conclusion reached without full consideration of all the connected developments.

²For a quick synopsis, see STRATEGIC ENVIRONMENTAL ASSESSMENT Directive and Europa; https://environment.ec.europa.eu/law-and-governance/environmental-assessments/strategic-environmental-assessment_en. This directive was due to be implemented in the Member States by July 21, 2004 failure to comply now leads to the current debacle.

A good starting point; EIA Law – the State of the Art - Áine Ryall;
<https://research.ucc.ie/profiles/a.ryall@ucc.ie>.

5. The Memorandum of understanding and the failure to implement the plan for 26,000 hectares of cutaway bog.

The destruction of the Barrow Nore site code and the Boyne SAC site code is completely unnecessary because of Ireland's reluctance to embrace the EIA and Habitats Directives and now the SEA directive. **Alas it is now too late for carrying out SEA because the component projects are contaminated because they don't have the benefit of assessments in compliance with the EIA and Habitats directive's.**

In effect the applicant's alleged entitlement to apply for development consent as part of an overall plan fails because for the present it appears to be contingent on all Bord na Móna neighbouring bogs in the catchments which are being progressed by third parties as part of a renewable energy plan, over which Bord Na Móna can no longer exercise control.

The agreement with the Commission of the European Union, by way of a written Memorandum of Understanding, dated and made in April of 1995, and signed on behalf of the State by the then newly appointed Minister for Energy, Michael Lowry TD, all negotiations having been concluded over the course of the previous two years by the previous FF / Labour Government following on (*if my memory is correct*) Albert Reynolds' triumphant return from Brussels in 1992 with 8.5 Billion Pounds of EU Structural and other Funding.

In 1995 Bord Na Móna relinquished control of 26,000 hectares when the European Commission in the form of a Memorandum of Understanding gave them 26,000,000 million pounds on the understanding that when the last remaining peat was removed from the bogs the bogs were to be landscaped, planted and flooded and made available for tourism and recreational use.

Because the cutaway bogs are connected to and were for the benefit of both SACs a source of water for the Barrow and Boyne Navigations and **Because the status of the cutaway bogs is similar to that of the Derrybrien Windfarm -they have no legal status**. – Therefore, An Coimisiún Pleanála is prohibited from adjudicating/ granting development consent on land which was subject to the EIA process but was not! And thereby renders the application site as untouchable (*see the application for alternative permission in 2019 below*)

The proposed project - Site Description

1.2 Site Description - The Site is located in the jurisdictions of Kildare County Council, Offaly County Council, and Laois County Council,

The site is located on the Derrylea Bog which is connected to Clonsast Bog to the north and Derrycastle Bog to the west. The connectivity of this development (as part of an overall plan to impose wind turbines on our communities) is displayed on page 12 of the Non Technical Summary; A total of 4 no. 110kV substations were identified within 20km of the wind farm which have connection capacity, and these were then considered further as potential grid connections for the proposal. It is important to note that all 3 no. options are either existing substations or are currently under construction:

• Bogtown, • Bracklone , • Cushaling, • Mount Lucas .

On page 34 of the Non Technical Summary it, describes the landscape -

“2. Area generally from Cloneygowan to Clonbullogue

This area is characterised by a predominantly flat and in places slightly undulating landscape with a number of significant tracts of peatlands and transitional woodlands and coniferous forestry, in particular in areas around Walsh Island, Bracknagh and Clonbullogue, along with improved agricultural land, large landholdings and a dispersed pattern of rural housing. The extensive tracts of flat peatlands in this area offer potential to accommodate a

wind farm layout with depth, comprising a grid formation giving a better sense of balance and visual cohesion...'

4.7.3 Peatlands³

Peatlands play an important role in helping to protect and restore the natural environment including specifically water quality. The National Peatlands Strategy is the key national plan responsible for the management and conservation of peatlands. It seeks to protect peatland habitat in designated sites, restore where feasible active raised bog and establish the national approach to peatland conservation and exploitation while avoiding further losses of high conservation value peatlands. Water quality objectives and requirements under the WFD and the protection of fauna and flora under the Habitats directive and the Wildlife Acts are also addressed. Specific water quality objectives include:

□ *NPS P 29: Policies and decisions relating to the use of peatlands shall take full consideration of potential impacts on water quality and the attainment by the State of mandatory water quality standards;*

and

□ *NPS A 26: An assessment shall be undertaken of the additional costs of treating drinking water arising from peatlands degradation and options proposed for reducing such costs through appropriate peatlands management.'*

6. Introduction

An Bord Pleanála and or An **Commission Pleanála decided that the proposed development falls within the definition of energy infrastructure** in the Seventh Schedule of the Planning and Development Act 2000, as amended, thereby satisfying the requirements set out in Section 37A(1) of the Act.

The proposed development is also considered to be of strategic importance by Reference to the requirements of Section 37A(2)(a), (b), and (c) of the Planning and Development Act 2000, as amended. An application for permission for the proposed development must therefore be made directly to An Coimisiun Pleanála under Section 37E of the Act.

6.1. in granting permission for the development, the Board **would be in** breach of its obligation under Article 4(1) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000, establishing a framework for Community action in the field of water policy – the Water Framework Directive - to ensure non-deterioration and the achievement of good surface water status when granting approval for a development affecting a surface water body.

7. The need for this development has not been clearly established.

Here we have what is purported to be a Strategic Infrastructure Development which has been proposed by Dara Energy Ltd, in an area not designated as a Strategic Development zone and without any reference to a Strategic Environmental Assessment or having gone through the Strategic Environmental Assessment process.

Strategic Environmental Assessments (SEA) involves assessment of the likely significant environmental effects of plans and programmes prior to their adoption. The SEA Directive (2001/42/EC) was adopted on 27 June 2001 and took effect in Member States on 21 July 2004. **It provides for strategic environmental consideration at an early stage in the decision making process.** and is designed to complement the environmental impact assessment (EIA) process which is **project** based.

³ MDR1665Rp0003 | Third Cycle River Basin Management Plan | F01 | September 2021 rpsgroup.com Page 53

Circular letter SEA 1/08 & NPWS 1/08, dated 15 February 2008, in reference to case 418/04 EC Commission v Ireland, states under the heading, Appropriate Assessment of land use plans; **The ruling among other things clarifies that Ireland has not correctly transposed Article 6(3) and (4) of the Habitats Directive 92/43/EEC by not providing explicitly for an appropriate assessment of land use plans, as opposed to projects** (paras 222-234 of the ruling).

Guidance from the European Commission website states: The report on environmental effects and the results of consultations shall be considered before the plan or programme is adopted. The Directive applies to the following public plans and programmes (as well as their amendments) which have been prepared and/or adopted...;

- Plans and programmes which are prepared for specific sectors (agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning and land use) and which set the framework for development consent of projects under the EIA directive;
- Plans and programmes for which an assessment is required under article 6 and 7 of the Habitats Directive 92/43/EEC...

The environmental report shall contain the following information.

- The contents of the plan or programme and its main objectives and links to other relevant plans and programmes;
- The existing environmental situation and its likely development if the plan or programme is not implemented;
- The environmental characteristics of any area likely to be significantly affected by the plan or programme;
- **Any existing environmental problems which are relevant to the plan or programme specifically those relating to zones in the Natura 2000 network.**
- the national, Community or international environmental protection objectives which are relevant to the plan or programme in question;
- the likely significant environmental effects of implementing the plan or programme;
- the measures envisaged to prevent, reduce and offset any significant adverse effects on the environment;
- an outline of the reasons for selecting other alternatives;
- a description of how the assessment was carried out ;
- the envisaged monitoring measures;
 - a non-technical summary of this information

**The proposed site is one of the last remaining wildlife corridors - -
- - give nature a chance!**

7.1.A. 'Any existing environmental problems which are relevant to the plan or programme specifically those relating to zones in the Natura 2000 network.'

Table 1, attached as **appendix 1**, is a brief summary of An Bord Pleanála /An Coimisiún Pleanála's decisions in relation to abstractions from the catchment and their affects /consequences for the Barrow Nore SAC. Table 1 is accurate up to 2009 and I reserve the right to update and add to this list as this case progresses.

7.1.B. What are the consequences of not carrying out an overall assessment, and neither overseeing nor enforcing your decisions since 1998?

7.1.C. What are the Cumulative effects of An Bord Pleanála's decisions directly impacting on the Barrow Nore SAC.

Please Note - Table 1 – Abstractions from the Barrow Catchment - Please note that table 1 is not an exhaustive list but is accurate for the time it was produced accurate up to 2009 but does not include several planning permissions and private abstractions carried out in the catchment since 2001.

Table 1 is a synopsis of the abstractions from within the catchment based on the Barrow the surface water Abstraction from the Barrow Navigation culminating in 140 ML/day – but only 40 ML/day were approved by An Bord Pleanála for the Barrow surface water abstraction proposal)

Given that the starting point for the taking of the water goes back to 1994 and the findings of the Greater Dublin Water Supply Strategic Study (GDWSSS) which found that **any abstraction from the surface of the Barrow would be restricted to time of high flow.**

Ms Angela Ryan of Uisce Éireann, interviewed on RTE 1 by Claire Byrne the 4th January 2024 stated; The water supply and discharge arrangements are very vulnerable and it will be very difficult for new developments to connect to the network.

8. Have we still got a sustainable inland waterway and what about sustainable tourism? Who destroyed it? Who is responsible for the restoration of the navigation and what's the only remedy?

8. A. Waterways Ireland

Waterways Ireland is one of the six all-Ireland North/South implementation bodies established under the Belfast Agreement. Under section 1.4 of the British–Irish Agreement Act 1999 (No.1 of 1999) Waterways Ireland is responsible for the management, **maintenance**, development, and **restoration** of inland navigable waterways and has its principal offices at 2 Sligo Road, Enniskillen, Co. Fermanagh BT74 7JY.

Waterways Ireland has a statutory duty and responsibility for the **management, maintenance, development and restoration** of inland navigable waterways, namely The Grand and Royal canals & the Barrow Navigation.

8. B. The draft of the navigation

Waterways Ireland received notice from Kildare County Council that they should issue an Interference Notice but they did not. This decision not to issue an Interference Notice set the tone and attitude of Waterways Ireland for the next twenty five years and counting with ;

- The full co-operation with Kildare County Council in the construction of the Kildare By-Pass whereby an unauthorized wellfield (identified in the Kildare Water Strategy) was incorporated into the drainage system of the By-pass

resulting in the irreversible destruction of the Curragh Aquifer – the main source of water for the Grand Canal through Pollardstown Fen and ongoing trouble to maintain the navigable depth of the Grand Canal.

- In 2025 the closure of the Barrow Navigation because of the low water, Waterways Ireland refused to remove the annual build up of silt.
- The removal of water from the Boyne at the Boyne aqueduct and pumping it up from Lock no 18 all the way up to lock 25. (*photos taken by me on when produced*)

8. C. The continued use of the Grand Canal as a silt pond and discharge point from Daingean - Rathdrum bog since 1999 to this day. (*correspondence from Duchas Waterways division*).

With reference to Barrow Catchment Assessment Final 2010-2015

At 4.2.4 Extractive industry⁴

◆*Peat*

Peat and peat extraction has been identified as a significant pressure in 12 river water bodies (Figure 13). Excessive sedimentation and elevated nutrient concentrations, notably ammonia, are the significant issues (Figure 14). In Daingean_010, _020 and _030 the siltation is so heavy that the river requires regular dredging to maintain it.

- Instead of maintaining and restoring the draft of the Navigations, Waterways Ireland has cooperated with the introduction of watered down wording for new legislation 'The Heritage Act 2018' Number 15 of 2018 published on [18th July, 2018]. For example ;

'General duty of Waterways Ireland

4. The following section is substituted for section 5 of the Act of 1986:

"General duty of Waterways Ireland

5. (1) Subject to subsection (2) (a) it is the duty of Waterways Ireland to undertake the care, management and maintenance of the canals and other canal property as a public amenity for use by the public for—

- The word restore is omitted in this new wording.

8. C. The WATER ENVIRONMENT (ABSTRACTIONS AND ASSOCIATED IMPOUNDMENTS) ACT 2022.

The intention of this act was to completely repeal the Water Supplies Act of 1942 (But for and Except for section 111 (4) which ironically preserves the complete Act) to facilitate the taking of water from the Canals and Inland Navigation and attempting to cover up the damage already caused since November 2001.

Take Notice that the reluctance of Waterways Ireland to participate in the decision making process and issue an Interference Notice renders Waterways Ireland (now mute) because they have ruled themselves out of the game and is not a navigation authority for protecting the inland navigations.

Because Waterways Ireland did not object to these abstractions when advised to by Kildare County Council that they had 21 days to make up their mind whether or not the abstractions

⁴ Barrow Catchment Assessment Final 2010-2015

would affect the navigation, Waterways Ireland has lost its authority to complain about low water.

Waterways Ireland was statutorily obliged to voice its opinion to Kildare County Council within 21 days from being notified of a proposed surface water abstraction from the River Barrow (*or forever hold its peace*). The opinion under section 21 (4) of the Water Supplies Act of 1942 in the form of a written Interference Notice and a statement of the reasons as to whether or not the proposed abstraction would make the navigation of the river impossible or unreasonably difficult.

Section 21 (2) Nothing in this act shall be construed as entitling a sanitary authority to take water in such a manner, or from such source of water, or of such amount as to make the navigation of any navigable water impossible or unreasonably difficult.

By not objecting to the proposed abstractions within 21 days of being notified, there is no provision or allowance or special powers to allow Waterways Ireland to operate outside of section 21 of the Water Supplies Act of 1942.

B. D. The Boyne supplementing the Royal Canal in 2025.

In 2025 Waterways Ireland resorted to taking water from the Boyne catchment for the maintenance of the Royal Canal.

The refusal to participate in the decision making process left the door open for Kildare County Council and other local authorities to take water at will, including Meath County Council and now Irish Water and or Uisce Eireann.

B. E. A new source of water for the Grand Canal

Rosanna Nolan by letter to me on the 12th of December 2006, Waterways Ireland stated; 'Waterways Ireland has not been advised by any person or body not to ask Kildare County Council to provide a new source of water for the Grand Canal. If a permanent loss of water to the Grand Canal as a result of the Kildare By-Pass is identified, Kildare County Council will be asked to mitigate the loss and to provide a new source of water for the Grand Canal.

There is no excuse for not insisting on Kildare County Council to provide a new source of water for the Grand Canal.

9. The EPA and the draft of the navigation and the implementation of the Water Framework Directive .

I respectively submit (at this stage) that the EPA letter, dated 28th January 2020, regarding the draft of the navigation not being the benchmark to establish the good water quantity status which the respondent is statutorily obliged to restore, would change the perspective on the legal status of each of these developments and the cases I have been involved with in an effort to protect the Navigation.

On further research I carried out on the water supply for the Navigation it includes the loss of an important supply of water from Daingean - Rathdrum Bog which is continuing to contaminate of the Grand Canal.

I refer to the submission of Duchas-Waterways the previous body to Waterways Ireland which had responsibility for the Inland navigation system titled 'submission relating to the application by Bord Na Móna for an Integrated Pollution Control Licence for the Allen Group of bogs' whereon Mr Joe O' Sullivan (for the respondent)

states; 'It is our wish that the Grand Canal should not be exposed to the significant risk of the adverse effects on the ecology and function of the canal which appear to be posed by the emissions from Bord Na Móna production bogs.'

On page 1 of the submission Mr O' Sullivan states; 'When the canal was originally constructed, there were **many other canal supplies or feeders** supplementing the principle feeder. However, many of these supplies have been taken out of use principally due to drainage works or pollution. In some cases, pumps are being currently used to supply sufficient water to maintain the depth of water needed to allow the canal to be navigated. Otherwise, from an engineering perspective, the canal system is predominantly unchanged in the last 200 years.'

13. Daingean - Rathdrum bog is the best documented intact raised bog as being a source of water for the navigation which in this case is the Grand Canal. To me this reflects the power of section 68 of the Charter for the Grand and Royal Canals and is essential when the court is asked to amend my pleadings to include an Order directing that the Memorandum of Understanding referred to above be implemented in full.

10. The Waste assimilative capacity of the Borrow river navigation has not been established or maintained since 2001

10 a. – The Need for this project in preference to alternatives – prioritizing our needs Project Need in the context of National Need – no plan.

While this development is of a type which An Coimisiún Pleanála are obliged to consider, this development is not in keeping with any overall Strategic Environmental Assessment which should have been carried out specifically for Energy or the provision of energy projects. Without a comprehensive plan that covers all aspects of our needs we have nothing.

I submit that the need for a sustainable water supply and a sustainable navigable inland waterways network is far greater in the National Need context than the need for more wind farms.

10. b. – No public participation in the preparation of a plan specifically for energy.

This development is not part of a National Plan but is a connected development within the BORD NA MÓNA plan and the Eddy O'Connor-led plan to enforce 4,500 turbines across the region on the individual communities.

**11. Site Selection at para 3.3 of the Non-Technical Summary -
3.3 Site Selection**

Accompanied by a wind atlas which identifies the spacing and location of these turbines;
<https://maps.seai.ie/apps/WindAtlas/>

This project appears to be a mopping up exercise for the speculators or fill in the checker board with windfarms.

Not enough public participation - At para 5.4 Public Consultation page 40 of the Non-Technical Summary

The public was not offered the real alternative which has already agreed with the European Commission in 1995, that is, the Memorandum of Understanding for the 26,000 hectares of cutaway bogs.

Some stakeholders proposed that the project be developed as a Solar Farm instead, which they said would get community support.

On Ecology, it was asserted by local people that there are at least two curlews nesting in the area. People asked if the project could improve the biodiversity of the site for wildlife, rewet the bogland and create an eco-park centred on renewable energy generation.

12. No real alternatives considered or put forward for consideration.

On page 40 of the Non Technical Summary – 6.1 Land use it states;
'The proposed wind farm site contains a number of habitats that are of ecological importance including treelines to the west of the site, woodland to the south-west and lowland rivers within the Cushina River. The proposed wind farm site also has designation for a number of fauna on site which include records of hare, a moderate-high value of Irish bat species, otter associated with the Cushina River and a number of identified badger setts within the site. The proposed site also has a number of river catchments located within the proposed site including the River Barrow Watercourse, River Figile Watercourse and the River Cushina Watercourse which are all dominated by coarse fish species.'

Key ecological receptors (KERs) identified include the Cushina River (a lowland river habitat), bog woodland, hedgerows, treelines, and protected species such as bats, badger, and otter. The River Barrow and River Nore SAC were found to be within the zone of likely impact due to hydrological connectivity. The Grand Canal pNHA was found to be within the zone of likely impact due to the potential for the Grand Canal pNHA and the Proposed Development site to be used by the same population of Otters.

Potential impacts include habitat loss, disturbance during construction, and operational risks such as bat collisions. However, the project has been designed to avoid sensitive habitats and species, and a comprehensive suite of mitigation measures has been incorporated to ensure protection and enhancement of biodiversity.'

13. The Memorandum of Understanding.

An Bord Pleanála/ An Coimisiún Pleanála are in full knowledge of this agreement with the European Commission in 1995.

Bord Na Móna is determined not to implement the agreement that was made between Ireland and the European Commission in 1995 whereby Bord Na Móna received £26,000,000 for 26,000 hectares of cutaway bogs. It was agreed with the European Commission that these bogs which were designated as supplying Edenderry Powerstation were to be landscaped, planted, flooded and made available for tourism and amenity use. I believe that the flooding of the bogs is essential for all sorts of reasons, in particular to restore the navigable debt of the Barrow and Boyne Navigations which will enhance tourism in the whole region.

14. The cutaway bogs and the Water Supplies Act of 1942.

Section 1 of the Water Supplies Act of 1942; 'the expression "source of water" means any lake, river, stream, well, or spring; the expression "ancillary operations" means

any of the following operations, that is to say, the embanking, damming, dredging, deepening, widening, straightening, diverting, altering the level of, or otherwise affecting a source of water or any lake, pond, river, canal, or other water connected directly or indirectly with a source of water;

The now cutaway Bogs were and still are a source of water for both the Barrow and the Boyne navigation and are protected under the Water Supplies Act of 1942.

The cumulative loss of water to the Barrow and Boyne Navigation from the bogs in the midlands has never been considered.

15. Where it all has been allowed to go wrong.

An Bord Pleanála / An Coimisiún Pleanála had no authority to allow the applicant Bord Na Móna to withdraw the applications to retain the cutaway bogs and not assess/ establish the damage that was being caused for the last 100 years by removing the peat.

On the 14 September 2021, I made a submission to An Bord Pleanála regarding an application made by Bord Na Móna Plc. for substitute consent for part only of the historic peat removal from bogs in their care reference no's 307278, 307279, 307280, 307281, 307282, 307283, 307284

On the 2 June 2020 Bord Na Móna made applications ABP-307279-20, ABP-307280-20, ABP-307281-20, ABP-307282-20 and ABP-307283-20 for substitute consent.

Following on from that, on the 3 February 2021, An Bord Pleanála wrote to me regarding the decision of the applicant Bord Na Móna to withdraw case numbers ABP-307279-20, ABP-307280-20, ABP-307281-20, ABP-307282-20 and ABP-307283-20.

An Bord Pleanála / An Coimisiún Pleanála, having previously decided that an EIA was required to establish the damage caused to the Barrow Navigation SAC, by the removal of the peat and the sponge effect which supplied water to the navigations over the summer months, overstepped **its authority** and has no discretion to allow Bord Na Móna to withdraw their applications when it already decided that an EIA was required.

When An Bord Pleanála / An Coimisiún Pleanála made the decision that an EIA and an Appropriate Assessment were required, there was no going back or reeling out of it by Bord Na Móna and consequently the decision of the board to allow a withdrawal of the application is **Ultra Vires** the powers of An Bord Pleanála / An Coimisiún Pleanála.

I believe that a Strategic Environmental Impact Assessment is also required to establish the damage caused by the removal of the peat over the last 100 years or so.

15. 1. In addition to and previous to this debacle.

In their direction on application ABP-306247 at paragraph (b) the Board declared 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 term to be used.

I refer to; para 3.2. of the inspector's report [An Bórd Pleanála 306247-19] - A Referral case which 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 appears 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.

In the interests of completeness and the Duchas submission^s to the EPA in 1999 regarding an application by BNM for IPC licence to discharge bog water to the Grand Canal at Daingean Rathdrum bogs.

'It is our wish that the Grand Canal should not be exposed to the significant risk of the adverse effects on the ecology and function of the canal which appear to be posed by the emissions from Bord Na Mona production bogs.'

The well drafted objection had No affect, the water from Daingean Rathdrum Bog was allowed to discharge to the Grand Canal whereby the canal acts as a settling pond and allows the peat silt to settle and fill the canal with silt. I discovered this silt mound myself when I was navigating from Shannon Harbour to Rathangan in 2007 which pollution continues.

Substitute consent for peat removal – reference A B P -306241-19

Development: Application for leave to apply for substitute consent under section 177C of the Planning and Development Act 2000, (as amended) to regularise the planning status of Bord na Móna historic peat extraction (and ancillary works) on the milled peat production bogs. Allen Bog Group located in Counties Offaly, Westmeath, Laois and Kildare.

On the 28 April 2020 An Bord Pleanála granted leave to Bord Na Móna to apply for substitute consent generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions.

⁵This detailed Duchas submission makes interesting reading when you consider the polluted black water currently passing through Tullamore in the Grand Canal.

The reasons in the Order given were (**and still are**);

'Having regard to section 177D of the Planning and Development Act 2000, as inserted by section 57 of the Planning and Development (Amendment) Act 2010 and to the size and scale of the peat harvesting area which was carried out subsequent to the 20th day of September, 2012 and to the proximity of the location of the peatland development to a number of European Sites.

The Board is satisfied that:

(a) An environmental impact assessment and an appropriate assessment were required in respect of the development concerned, and ...

(b) Exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

In this regard, the Board considered that –

- The regularisation of the development concerned would not circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;
 - The applicant had, or could reasonably have had, a belief that the development was not unauthorised;
 - The ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment, and to provide for public participation in such an assessment, has not been substantially impaired;
 - The actual or likely significant effects on the environment or adverse effects on the integrity of a European site, if any, resulting from the carrying out of the development, could likely be substantially remediated; and
 - The applicant has not otherwise carried out any unauthorised development.
-
- The Board found that planning permission was required for the historic removal of the Peat.

On the 2 June 2020 Bord Na Móna made applications ABP-307279-20, ABP-307280-20, ABP-307281-20, ABP-307282-20 and ABP-307283-20 for substitute consent.

Following on from that, on the 3 February 2021 An Bord Pleanála wrote to me regarding the decision of the applicant Bord Na Móna to withdraw case numbers ABP-307279-20, ABP-307280-20, ABP-307281-20, ABP-307282-20 and ABP-307283-20.

An Bord Pleanála / An Coimisiún Pleanála having decided that EIA was required to establish the damage caused to the SAC by the cutover bogs **over-stepped their authority** when they allowed Bord Na Móna to withdraw their application. I submit that when An Bord Pleanála / An Coimisiún Pleanála made the decision that an EIA and an appropriate assessment was required there is no going back or reeling out of it by Bord Na Móna and consequently the decision of the board to allow a withdrawal of the application is *Ultra Vires* the powers of An Bord Pleanála / An Coimisiún Pleanála.

Signed electronically for and on behalf of Michael Hoey

Michael Hoey

Twelve Abstractions above the Weir at Athy in the upper reaches and in catchment of the river Barrow with No assessment, Appropriate assessment, or Strategic Environmental Assessment and only one Official Proposal under the Water Supplies Act of 1942 which is now inoperable and unsustainable.

Table 1. - 1 cubic metre = 1000 litres or 1 ML = 1.30795062 cubic yards

County Council	Year of activation	Planning ref	Location	Type of abstraction	Volume per day	Totals	Water supplies Act applied	EIS submitted	EIA or APP ROP RIA THE ASS ESS MENT	% of dry weather flow	Remarks
Kildare	2007	PW 2001	Scrowland Athy	Surface water	40 ML/day	40	yes	Yes	No	1/3. and the max If ordinary	Abstraction commenced on the 10 th of July 2013.
	2006	ED 2021	Hybla	Groundwater	3.2	3.2	No	No	No	River	An alternative to the Barrow Abstraction. Carried out in vicinity of two dumps one of which is a historic County Council dump
	2006	ED 2019	Rathangan	Groundwater	5	5	No	No	No		An alternative to the Barrow Abstraction.
		EC 2012	Robertstown	Groundwater	5	5	No	Yes	No		An alternative to the Barrow Abstraction. In progress /inadequate EIS
		ED 2020	Johnstown Bridge	Groundwater	3.75	3.75	No	No	No		An alternative to the Barrow Abstraction. In progress
	2001-2005	ED 2023	Kildare town wellfield	Groundwater – main supply to Grand Canal / Barrow	Reduction from 95 to 17ML/D ¹	78	No	No	No		Transpired to be one of the alternatives to the Barrow Abstraction causing untold irreversible damage
Laois	2003	EC 2009	Portlaoise improvement scheme	Groundwater	20	20	No	Yes	No		Carried out and Laois CC used the same consultants as Kildare CC
	1980's		Portarlington	Borehole at Lough					No		The borehole at Lough pumps approximately

¹ "The average hydraulic conductivity of 53 m/d obtained from the pump tests." Oxford Geotechnical Report on the By-Pass 1993 amended 13 07 2015 to include the inspectors summary (exhibit MH 4 (a) at tab 7.

Twelve Abstractions above the Weir at Athy in the upper reaches and in catchment of the river Barrow with No assessment, Appropriate assessment, or Strategic Environmental Assessment and only one Official Proposal under the Water Supplies Act of 1942 which is now inoperable and unsustainable.

1992	Portarlinton Water supply improvement scheme	surface abstraction increased (see letter 17 th Jan 2002) MH	4,380	yes for the 1992 abstraction	No	600 m ³ directly to the network (the same consultants as Kildare and Laois County Councils			
2003		Groundwater 6 production wells	5.812 ²	1992 only	No	2003 improvement / increase in abstraction rate carried out under part 8 of LGPD Regs 2001 No application to increase or extend under the Water Supplies Act.			
2009 ³	Portlaoise & Mountmellick Water Supply Scheme			Water Supplies Act not applied	EIS submitted	construction of 10 new wells, 12 kms. of new watermains, new reservoirs at Emo, Straboe, and Acragar and extended capacity at Kilminchy Water Treatment Plant. The Scheme is designed to cater for the projected water supply demand for the next 20 years resulting in a doubling of water supply capacity for Mountmellick.			
Offaly	1998	98/493	New power station ⁴ at Clonbullogue	Surface water	5.760 Exact figures are unknown at present	5.76	No	Yes but not in compliance with Article 3	See p.34 of EIS The Maximum abstraction rate and the means of doing so have been agreed with the Southern Fisheries Board Who have no role in the Water Supplies Act
		PL 19/107858	Same/ new power station	Groundwater	unknown		No	See main proposal	Local people had to sink new or deeper wells.

² Nicholas O'Dwyer & Co - Portarlinton Water Supply Improvement Scheme- Design Review Report – Revision D- April 2003.

³ Portlaoise is constrained to the east and northeast by the Portlaoise Aquifer Protection Zone, which provides the public water supply for the greater Portlaoise and Mountmellick area.

⁴ Note on Edenderry 98/493 'The pump flow rates are based on the permitted abstraction volume of one third of the DWF, which equates to 240m³/hr. All components of the water abstraction facility are being designed in consultation with the relevant statutory authorities. The water is mainly required to replace evaporative losses from the cooling towers at EPL's Power Plant.' NB. "River water quality will not be effected by the water abstraction facility. The only discharges to the river from the facility will be rain water run-off."

Twelve Abstractions above the Weir at Athy in the upper reaches and in catchment of the river Barrow with No assessment, Appropriate assessment, or Strategic Environmental Assessment and only one Official Proposal under the Water Supplies Act of 1942 which is now inoperable and unsustainable.

2006	PL 19/EL 2053	Rhode	Groundwater	10.5	10.5	No	Yes	No	Work in progress
				Total	182				
					MLD				

The Cumulative effects have not been considered. The previous (table 1) estimated the volume of 129.2 IM/D which represents over three times the maximum allowable if the Barrow was a normal river and not a navigation.

The EIS submitted for the Barrow abstraction does not include the abstractions at Portlaoise or Clonbullogue and none of the assessments are in compliance with Article 3 of the EIA directive and all the projects are without legal status.