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Derryhinch, Drumman, Derryarkin,
Ballybeg and Toar Bogs –
Application for Substitute Consent
Planning Report
September 2026



BUILT ON KNOWLEDGE

Document Control Sheet	
Document Reference	12334- Derrygreenagh Substitute Consent- Planning Report
Client:	Bord na Móna Biomass Ltd
Project Reference	12334 - Derrygreenagh Substitute Consent

Rev	Description	Author	Date	Reviewer	Date	Approval	Date
A	Planning Report	LB	09/09/2026	BK	10/09/2026	OF	11/09/2026

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1. INTRODUCTION

This planning report has been prepared to accompany an application for Substitute Consent to An Coimisiún Pleanála (hereafter referred to as ACP) to regularise the planning status of peat extraction and ancillary activities at Toar, Derryarkin, Ballybeg, Drumman and Derryhinch Bogs (hereafter referred to as the 'Application Site').

Bord na Móna Biomass Limited (hereafter referred to as 'the Applicant') is seeking Substitute Consent pursuant to Section 177E of the Planning and Development Act 2000, as amended (hereafter be referred to as the 'Planning Act'), to regularise the planning status of the development carried out at the Application Site.

This application is accompanied by a remedial Environmental Impact Assessment Report ('rEIAR') and Natura Impact Statement ('rNIS'), together with associated supporting documentation. The purpose of this Planning Report is to describe the development subject to the application, outline the relevant legislative and planning policy context, and assess the application having regard to the requirements of the Planning Act and the applicable Substitute Consent provisions.

For the purposes of the rEIAR and rNIS which accompany the application for substitute consent, the Project is described under three distinct phases:

- 'Peat Extraction Phase': peat extraction and ancillary activities at the Application Site from July 1988 to the cessation of peat extraction in June 2020 (July 1988 – June 2020). This Phase is described in Section 4.7 of Chapter 4 of the rEIAR submitted with the Substitute Consent application.
- 'Current Phase': management of the Application Site since June 2020 to the present day. This Phase is described in Section 4.8 of Chapter 4 of the rEIAR submitted with the substitute consent application.
- 'Remedial Phase': the activities proposed to be carried out at the Application Site in the future. This Phase is described in Section 4.9 of Chapter 4 of the rEIAR.

In line with Bord na Móna's vision to assist in achieving a climate neutral Ireland by 2050, it is intended to utilise the Application Site for both peatland rehabilitation and renewable energy infrastructure. BnM have announced their intention to develop a renewable energy development known as the Derrygreenagh Wind and Solar Project ¹at the Application Site. This development will be subject of a separate planning application to An Coimisiún Pleanála. The regularisation, without prejudice, of the planning status of the Application Site via a granting of substitute consent is a critical component to delivering this important future development and crucially ensuring that the lands deliver the maximum climate and environmental benefits possible for the Irish state.

This Planning Report should be read in conjunction with the rEIAR, rNIS and all other documentation submitted as part of the Substitute Consent application.

¹ <https://bnmenergypark.ie/derrygreenagh-wind-and-solar/>

2. SITE LOCATION

The Application Site (see Site Location Map 1 – Appendix 1) consists of five bog units of the Derrygreenagh Bog Group, namely Toar, Derryarkin, Ballybeg, Drumman and Derryhinch Bogs.

The Application Site comprises an area of approximately 2,637 hectares in total and is located south of the M6 motorway across the Counties of Offaly, Westmeath and Meath.

The individual bogs are described as follows:

- Toar Bog measures approximately 400 ha and is located approximately 2 km south of the village Tyrellspass, County Westmeath (at its closest point). The Bog is located entirely in County Westmeath, in the townlands of Rathgarrett, Montrath, Pallasboy, Killavally, Cornaher.
- Derryarkin Bog measures approximately 292 ha and is located approximately 5 km east of Tyrellspass, Co. Westmeath (at its closest point) and approximately 3 km south-southeast of the village Rochfortbridge, Co. Westmeath. The Bog is located on the boundary of Co. Westmeath and Offaly, in the townlands of Derryarkin, Derrygreenagh, Farthingstown, Kiltotan and Collinstown, Rathincuill, Rathgarett and Bunsallagh.
- Ballybeg Bog measures approximately 673 ha and is located approximately 5km south-east of the village Rochfortbridge, and 2 km west of Rhode, County Offaly. Ballybeg Bog is adjoined with the southeastern border of Derryarkin Bog and is located entirely in County Offaly. Ballybeg Bog is in the townlands of Derryarkin, Ballybeg, Derrygreenagh, Derryiron, Coolcor, Clonin, Barrysbrook, Toberdaly and Togher.
- Drumman Bog measures approximately 938 ha and is located east of the R400 and Derryarkin Bog, approximately 2 km east of the village Rochfortbridge and 5 km north of Rhode (at its closest point). Drumman Bog is in the townlands of Farthingstown, Drumman, Derrygreenagh, Konckdrin, Garr, Carrick and Corbetstown.
- Derryhinch Bog measures approximately 334 ha and is located approximately 6 km northeast of the village Rochfortbridge, Co. Westmeath and 6 km southwest of Kinnegad, Co. Westmeath. Derryhinch Bog is in the townlands of Pass of Kilbride, Rattin, Derryhinch and Baltigeer.

A breakdown of the townlands and footprint for each bog can be found in Table 1 below.

Table 1 Townlands for Application Site

County	Townlands
Westmeath	Cornaher, Killavally, Pallasboy, Montrath, Rathgarrett, Rathincuill, Kiltotan and Collinstown, Farthingstown, Drumman, Milltown, Pass of Kilbride, Rattin
Meath	Derryhinch, Baltigeer
Offaly	Bunsallagh, Derryarkin, Derrygreenagh, Knockdrin, Garr, Corbetstown, Carrick, Ballybeg, Croghanhill, Barrysbrook, Togher, Toberdaly, Clonin, Coolcor, Derryiron

2.1 APPLICATION SITE BOUNDARY

The Application Site is defined by the perimeter of Toar, Derryarkin, Ballybeg, Drumman and Derryhinch bogs. Within these bogs are a number of developments not related to peat extraction and ancillary activities, which have been subject to their own planning consent. This includes sand and gravel extraction facilities at Derryarkin and Drumman Bog, consented biomass storage facilities at Drumman and Toar Bogs, and a recently consented Combined Cycle Gas Turbine and Open Cycle Gas Turbine Thermal Power Plant named Derrygreenagh Power.

Any development undertaken prior to the establishment of the formal Irish planning system with the enactment of the Local Government (Planning and Development) Act 1963 at the Application Site are considered exempt for the purposes of planning consent and did not require planning permission as outlined under the Planning and Development Act (1963). Thus, no formal planning applications were required or submitted for these structures.

A full list of the planning consents located within the five bog units have been included within Table 3 of this chapter, section 3.2 Application Site Planning History.

2.2 SUBSTITUTE CONSENT LEGISLATIVE CONTEXT

This application for substitute consent is made pursuant to updates in legislation on Substitute Consent brought in under the Planning and Development, Maritime and Valuation (Amendment) Act 2022. The Planning and Development, Maritime and Valuation (Amendment) Act 2022 (Commencement of Certain Provisions) (No.2) Order 2023 (S.I. 645 of 2023) was signed on 15 December 2023 by Mr. Darragh O'Brien, T.D., Minister for Housing, Local Government and Heritage and came into effect on 16th December 2023.

The Commencement Order and Regulations comprise measures that amend the Act, and related articles in the Planning and Development Regulations 2001 to provide for a streamlined substitute consent process. The amendments follow on from the interim provisions provided for in the Planning and Development and Residential Tendencies Act 2020.

The commencement order commences the relevant provisions in the Planning and Development, Maritime and Valuation (Amendment) Act 2022, which amends the 2000 Act. The measures introduced include provisions which allow for pre-application consultations with the Commission and for a single stage application process which removes the requirement to apply for leave to apply from the Commission.

Peat extraction on all Bord na Móna ('BnM') bogs ceased in 2020 and the company will not be resuming peat extraction at any time in the future. The purpose of this Substitute Consent application is to regularise, without prejudice, the planning status of the Application site.

2.3 PEAT EXTRACTION – EIA AND AA CONTEXT

Prior to 20 September 2012, all industrial scale peat extraction activities were classified as exempted development. The Environment (Miscellaneous Provisions) Act 2011 came into effect on 20 September 2012 which inserted Section 4(4) of the Act. Section 4(4) legislates that development which is typically exempt (e.g., industrial peat extraction pre-2012) is no longer exempt if an Environmental Impact Assessment (EIA) or an Appropriate Assessment (AA) of the development is required. Notwithstanding this provision, the legal planning status of industrial peat extraction remained uncertain and unclear in practice up until September 2019, as summarised below.

Industrial peat extraction was the subject matter of Department-led consultation between 2013 and 2018. Consultation involved relevant stakeholders including, but not limited to the Applicant, the Irish Commercial Peat Producers Association (now Growing Media Ireland), Friends of the Irish Environment Limited and the Environmental Protection Agency (EPA). The Department-led consultation facilitated the involvement of all of the above-named parties in commenting and providing input on proposed regulations which would establish the EPA as the sole authority for managing / regulating industrial-scale peat extraction.

During this period of stakeholder engagement and consultation, the Commission's decision on PL25.RL.2975 (*drainage of boglands and extraction of peat at the Lower Coole, Mayne, County Westmeath*) broadly established the precedent that the drainage of boglands and extraction of peat was development and not exempted development with regard to Section 4(4) of the Act. The Commission's decision on that case was upheld by the High Court under Judicial Review, *Westland Horticulture Limited and Bulrush Horticulture Limited v An Bord Pleanála*

(2013/398/JR – [2018] IEHC 58). Specifically, Mr Justice Meenan found that, as peat extraction involving a new or extended area of 30 hectares or more required EIA, planning permission was required under Section 4(4) of the Act. This decision was then subject to an application for leave to appeal, which was heard in May 2018 and determined on 7th December 2018 that an appeal of Mr Justice Meenan’s judgment would not be allowed.

Please refer to Chapter 2, Section 2.1.1 of the rEIAR for further details on the historic planning legislation relating to peat extraction activities.

2.4 PEAT REGULATIONS (2019)

The ‘Peat Regulations’ were enacted in January 2019, following the above judgment under [2018] IEHC 58, which consisted of two pieces of legislation² that provided for an exemption from planning permission for large scale peat extraction activity (30 ha or over) and the introduction of a regulatory framework (to include both EIA and AA) for these developments to be operated by the EPA within its activity licensing regime. The ‘Peat Regulations’ were subsequently challenged³, and ultimately quashed, by Mr Justice Simons by way of his judgment on 20 September 2019, and the following Order (18 October 2019) on the basis that they were invalid on the grounds that the legislation was inconsistent with the requirements of the EIA Directive and the Habitats Directive, and the use of secondary legislation to give effect to the new licensing regime under the EPA was *ultra vires*. As such, planning permission is now required for commercial peat extraction over 30 hectares and consequently substitute consent is required for relevant peat extraction activities.

2.5 BASELINE ASSESSMENT DATES

This section sets out the relevant environmental baseline that applies to the subject application (including the associated rEIAR and rNIS), having regard to the legislative context pertaining to the site and the historic peat extraction activities.

In the first instance, it is clear that no obligations are imposed by the EIA and Habitats Directives in respect of development which took place before they came into force, i.e. the latest date for transposition of those Directives, 3 July 1988 and 21 May 1994 respectively. Put simply, the Directives do not purport to have retrospective effect.

2.5.1 Relevant Case Law

In this regard, the Court of Justice of the European Union (CJEU) has held that where applications for development consent were lodged prior to the date for transposition of the EIA Directive, the requirements of the Directive do not apply to that consent procedure. This principle was recognised in Case C-431/92, *Commission v Germany* [1995] ECR I-2189, and subsequently affirmed in Case C-81/96, *Burgemeester v Gedeputeerde Staten van Noord-Holland* [1998] ECR I-3923.

² European Union (Environmental Impact Assessment) (Peat Extraction) Regulations 2019, and Planning and Development Act 2000 (Exempted Development) Regulations 2019

³ Friends of the Irish Environment Ltd v Minister for Communications, Environment & Climate Action & Ors. [2019] IEHC 646

The CJEU has adopted a similar approach in relation to the Habitats Directive. In Case C-209-04, *Commission v Austria* [2006] ECR I-2755, and Case C-226/08, *Stadt Papenburg v Germany* [2010] ECR I-131, each of these cases concern development where the date upon which the application for consent was lodged pre-dated the latest for transposition of the Directive or the date upon which the Member State acceded to the Union, i.e. the Directive began to have legal effect in that Member State.

The same principles applies where development was carried out prior to the Directives taking legal effect. In Case C-275-09, *Brussels Hoofdstedelijk Gewest and Others (Brussels Airport) v Vlaamse Gewest* [2011] ECR I-1753, the CJEU considered whether an operating permit for an existing airport constituted a project for the purposes of the EIA Directive. The Court held that, in the absence of works or physical interventions, the operating permit could not be regarded as “construction” and therefore was not deemed a Project within the meaning of the Directive, thus was not subject to EIA requirements.

The Court went on to consider whether changes or modifications to the original airport could trigger a requirement for EIA:

“37. If it should prove to be the case that, since the entry into force of Directive 85/337, works or physical interventions which are to be regarded as a project within the meaning of the directive were carried out on the airport site without any assessment of their effects on the environment having been carried out at an earlier stage in the consent procedure, the national court would have to take account of the stage at which the operating permit was granted and ensure that the directive was effective by satisfying itself that such an assessment was carried out at the very least at that stage of the procedure.” (Emphasis added)

This judgement indicates that the ‘project’ which required to be assessed was the works or physical interventions carried out since the coming into force of the EIA Directive. In other words, the carrying out of works to a development which pre-existed the coming into force of the EIA Directive may require assessment, but those works do not trigger a requirement for the original development to be assessed.

A similar approach has been adopted by the Irish Courts. In *Bulrush Horticulture v An Bord Pleanála* [2018] IEHC 58, the High Court rejected the argument that no EIA could be required for ongoing peat extraction activities simply because extraction had commenced prior to the transposition of the EIA Directive or the introduction of Section 4(4) of the Planning and Development Act (as amended). The Court upheld An Bord Pleanála's conclusion that peat extraction activities undertaken following the commencement of Section 4(4) in 2012 required EIA and could not benefit from exempted development status. Importantly, neither the Board nor the Court suggested that the legislative changes operated retrospectively. Rather, development undertaken prior to the relevant legislative changes remained subject to the legal regime applicable at that time.

More generally, the Irish courts have consistently recognised that, while the EIA Directive is intended to have broad application, it cannot be interpreted so as to apply retrospectively or otherwise extend beyond its intended scope. This principle is reflected in judgments including *Kavanagh v An Bord Pleanála* [2020] IEHC 259, *Sweetman v An Bord Pleanála* [2020] IEHC 39 and *O'Sullivan v An Bord Pleanála* [2022] IEHC 117.

2.5.2 +EIA Baseline (1988)

The EIA Directive did not impose any requirement for environmental impact assessment in respect of projects that had commenced or been completed prior to the latest date for its required transposition into Irish law, 3 July 1988. Accordingly, the remedial EIAR assesses peat extraction and ancillary activities from 1988. The environmental baseline for EIA purposes is therefore considered with reference to the condition of the receiving environment from July 1988.

2.5.3 Habitats Directive / Appropriate Assessment Baseline (1994)

The Habitats Directive did not impose any requirement for Appropriate Assessment in respect of projects that had commenced or been completed prior to its required transposition into Irish law, the latest date for which was 10 June 1994. Accordingly, the rNIS assesses the effects of the development from 1994, with the baseline for AA purposes is therefore considered as the receiving environment from June 1994.

3. Description of the Development

The Application Site comprises a total of 2,637 hectares (ha) and comprises five bogs together with associated ancillary infrastructure and access roads.

The development for which Substitute Consent is sought comprises the peat extraction activities and associated ancillary works undertaken at the Application Site, including:

- Industrial scale peat extraction (milled peat);
- Use and maintenance of pre-existing surface water drainage infrastructure (drains, silt ponds, pumps) at the Application Site to facilitate peat extraction activity from 1988 to present day;
- Use and maintenance of pre-existing railway infrastructure to facilitate peat extraction from 1988 to present day;
- Provision of 2 no. vehicular bridges, 2 no. rail bridges and 2 no. gated access points;
- Control Measures associated with the above, inclusive of the IPC Licence measures (Ref. P0501-01) which commenced from 2000 onwards to the present day; and,
- All associated site development and ancillary works.

A number of ancillary services and infrastructure associated with peat extraction activities are located within the Application Site and form part of the development for which Substitute Consent is sought. These include:

- Railway infrastructure located across all bogs within the Application Site;
- Silt ponds and drains, located across all bogs within the Application Site;
- Pumping station, located at Ballybeg Bog.

Several additional structures and facilities associated with peat extraction activities within the Derrygreenagh Bog Group are located outside the Application Site boundary. These include:

- Derrygreenagh Works;
- Works offices;
- Welfare facilities.

As these structures are located outside of the Application Site boundary, they do not form part of the development for which substitute consent is sought. However, they are described in the accompanying application documentation where relevant in order to provide a complete account of the peat extraction activities and associated infrastructure.

A considerable number of peat extraction activities and site preparation works pre-date both the commencement of the formal Irish planning system (i.e., were first carried out prior to establishment of the Planning & Development Act 1963 (which was enacted on 1st October 1964)) as well as the required EIA and Habitats Directive transposition dates in 1988 and 1994, respectively.

Other infrastructure such as workshops and storage facilities were also developed prior to the commencement of the formal planning system, while other ancillary services and infrastructure such as electricity distribution infrastructure, workshops, peat storage and loading facilities are located outside of the Application Site boundary and were previously granted their own respective planning consents, where required.

For a detailed description of the peat extraction activities and associated works that were carried out at the site please refer to Chapter 4 of the rEIAR that accompanies this substitute consent application.

4. Background

4.1 DEVELOPMENT AT THE APPLICATION SITE

The development of the Application Site commenced in the 1950s. Table 2 provides a summary of the operational history of the Application Site.

Table 2: Operational History of the Application Site

Bog Unit	Commencement of Site Preparation Works (vegetation clearance and drainage insertion)	Extraction Commenced	Extraction Ceased
Derryhinch Bog	1950	1958	2017
Drumman Bog	1950	1958	2018
Derryarkin Bog	1950	1958	Between 1988 and 1991
Toar Bog	1950	1958	2018
Ballybeg Bog	1950	1958	2020

Site preparation works including site clearance, installation of surface water drainage and transportation infrastructure (rail line) initially began in 1950 within the Application Site during the First Development Programme. Industrial scale peat extraction subsequently commenced from 1958.

It is estimated that approximately 892,308 tonnes of milled peat was extracted annually at the Application Site between 1958 and July 1988, with deliveries of stockpiled peat to Rhode Power Station and Croghan Briquette Factory occurring from 1960 and 1961, respectively. While Rhode Power Station and Croghan Briquette Factory commenced production of electricity and briquettes in 1960 and 1961 respectively, milled peat extraction started earlier in 1958 to ensure that there was sufficient supply in stockpiles in the event of future bad harvests due to weather.

It is estimated that between the commencement of peat extraction at the Application Site in 1958 and July 1988, approximately 21,551,625 tonnes of milled peat was extracted.

Industrial scale peat extraction paused across the Application Site in 2019 until June 2020 where extraction commenced again for 3 weeks in June before ceasing permanently at the Application Site in June 2020 following the High Court's judgment on Friends of the Irish Environment Ltd v Minister for Communications, Environment & Climate Action & Ors. [2019] IEHC 646, (as discussed in greater detail in Section 2.1.1 of the rEIAR) which set aside the Peat Regulations⁴ in their entirety. Peat extraction ceased when it was confirmed that peat extraction could not re-commence prior to An Bord Pleanála's (now referred to as 'An

⁴ S.I. No. 4/2019 – European Union (Environmental Impact Assessment) (Peat Extraction Regulations 2019)

Coimisiún Pleanála') decision on an application for substitute consent, ABP Ref: SU25M.307278 (which was ultimately withdrawn by the Applicant on the 14th of January 2021). BnM formally announced in January 2021 that all industrial scale peat extraction on lands within its management would permanently cease in line with its on-going climate action programme and its transition to becoming a climate solutions company.

During the Current Phase, the operations at the Application Site have reduced to the removal of stockpiled peat which was completed by October of 2021. Stockpile removal was primarily carried out by rail and lorry to Ballivor Horticultural Works, Derrinlough Briquette Factory, Lough Ree Power Station, West Offaly Power Station, Cúil na Móna Horticultural Works, Edenderry Power Station, and other third-party horticultural peat customers.

For a detailed description of the peat extraction activities that were carried out at the site please refer to Chapter 4 of the remedial EIAR that accompanies this application.

4.2 SITE PLANNING HISTORY

There have been a range of planning applications lodged for developments which are either within the overall footprint of the Application Site, or are adjacent to the Application Site, not all of which are associated with peat extraction and ancillary activities at the Application Site. Table 3 below lists all of the valid applications within or adjacent to the Application Site boundary.

It should be noted that some of the planning applications listed in Table 2 do not have any connection with the licenced peat extraction and ancillary activities undertaken within the Application Site. These developments have been considered within the cumulative assessment carried out as part of the rEIAR and rNI

Table 3: Application Site Planning History

Consenting Authority	Planning Reference	Description of Development	Final Grant Date	Address
ACP	319023	Combined Cycle Gas Turbine and Open Cycle Gas Turbine Thermal Power Plant, Electricity Grid Connection including 2 no. substations, and associated buildings, plant, site works, service and ancillary development.	28/04/2026	Lands within the townlands Knockdrin, Derrygreenagh, Derryarkin, Derryiron, Ballybeg, Coolcor, Barrysbrook, Clonin, Togher and Coole, Co. Offaly
ACP	307278	Application for substitute consent in relation to Peat Extraction at Bogs in the Derrygreenagh Bog Group	Application Withdrawn on 14/01/2021	Bracklin, Co. Westmeath, Carranstown, Co. Meath and Co. Westmeath, Ballivor, Co. Meath and Co. Westmeath, Ballybeg, Co. Offaly
ACP	309112	Retention and continuation of development. Works for an existing biomass facility on a site of 14.34 ha. This site will be operational until 2030.	11/05/2021	Toar, Rathgarrett, Tyrellspass, County Westmeath
Offaly County Council	20/329	Drumman biomass facility. The development is for the storage and seasoning of biomass logs followed by chipping of the seasoned logs on a site area of 29.17ha. The proposed retention development consists of 1) a weighbridge (120 sq.M) and a weighbridge control station (7.75 sq.M). 2) a biomass storage area (6km of linear log storage space equating to 31,320 tonnes of wet logs), 3) a steel post and wire mesh fence with gates at the entrance 4) unpaved access tracks (6km in length) and 5) all ancillary works. The log storage area or log pile is linear with a diameter of c. 4m and up to a height of 4.1m. There is no storage of chipped biomass on site. Planning permission is sought for alterations to improve the existing access off the R400 including 1) surface the site access road approach to the R400 with an appropriate bound material and	10/06/2021	Drumman biomass facility, located within the townlands of Derrygreenagh & Knockdrin, Co. Offaly

		2) provide a stop line and stop sign at the site entrance. Planning permission is sought for the continued operation of this development until 2030		
ACP	306236	Leave to apply for substitute consent for peat extraction	01/05/2020	Derrygreenagh Bog, Bracklin, Co. Westmeath, Carranstown, Co. Meath and Co. Westmeath, Ballivor, Co. Meath and Co. Westmeath, Ballybeg, Co. Offaly
Offaly County Council	18209	Derryarkin Sand and Gravel DAC for the construction of a weighbridge (90m ²) and 2 no. control rooms subject to 5 conditions.	09/08/2018	Derryarkin sand pit, Derrygreenagh, Rhode, Co. Offaly
Offaly County Council	15330	An existing 30m high telecommunications support structure.	02/03/2016	Derrygreenagh, Rhode, Co. Offaly
Offaly County Council	10391	Temporary planning permission (duration 10 years) – application running concurrently with Westmeath County Council planning application 10/4078. Planning permission is sought for permission to upgrade the existing site access, construction of a moto-cross circuit and ancillary infrastructure.	21/04/2011	Derrygreenagh, Rochfortbridge, Co. Offaly
Westmeath County Council	104078	Temporary planning permission (duration 10 years) for construction of moto cross circuit and associated infrastructure.	02/08/2011	Derryarkin, Rochfortbridge, Co. Westmeath
Offaly County Council	051113	Installation of a fixed processing plant for the production of blacktop on a site of 0.875 ha at existing sand and gravel quarry.	26/04/2006	Derrygreenagh, Rhode Co. Westmeath
Offaly County Council	04988	Retention of telecommunications mast	23/09/2004	Derrygreenagh, Co. Westmeath

Offaly County Council	02/172	Construction of an entrance to a sand and gravel extraction facility.	10/06/2002	Derrygreenagh, Co. Offaly
Offaly County Council	011163	Concrete batching plant, block yard, block storage area, site office building, effluent treatment system, ESB substation & bunded fuel storage tanks	16/10/2002	Derrygreenagh, Rhode
Westmeath County Council	01444	Extraction of sands and gravels.	23/01/2002	Derryarkin and Drumman, Co. Offaly and Westmeath
Offaly County Council	1925	An 87.6-hectare extension to the south-west, south and south-east of its existing sand and gravel put (within an application site of 146.1 hectares)	29/04/2019	Derrygreenagh, Knockdrin, Garr and Carrick townlands, Rhode, Co. Offaly
Westmeath County Council	124018	Permission for site access works to allow for the out loading of peat. These works consist of; access works at junction with L-1113 Tyrrellspass to Rathgarrett Road and construction of a new access road to facilitate peat out loading.	11/06/2012	Rathgarrett, Tyrrellspass, Co. Westmeath

4.3 PREVIOUS SUBSTITUTE CONSENT APPLICATION

On the 16th of December 2019, Bord na Móna plc submitted an application to An Bord Pleanála (now known as An Coimisiún Pleanála) seeking leave to apply for substitute consent for peat extraction activities within the Derrygreenagh Bog Group, which included the part of the Application Site (Ref. LS25M.306236). An Coimisiún Pleanála granted leave to apply for substitute consent on the 1st of May 2020. In allowing the Applicant to apply for substitute consent, An Coimisiún Pleanála was satisfied that, in light of the size and scale of the peat extraction carried out subsequent to 20th September 2012 within the Derrygreenagh Bog Group and the proximity of the peatland sites to a number of European sites, an EIA and an AA were required in respect of the development concerned and exceptional circumstances exist to warrant an opportunity to regularise (without prejudice) the development. This decision of An Coimisiún Pleanála was subsequently quashed on 7th May 2021 as a result of the “Ballysax/McQuaid” ruling of the Supreme Court on 1st July 2020.

In the period between the granting of leave to apply for substitute consent by An Coimisiún Pleanála in 2020 and the quashing of that decision in May 2021, the Applicant lodged an application for substitute consent for the relevant peat extraction works at Derrygreenagh Bog Group (Ref. SU25M.307278) on the 2nd of June 2020. Some lands within the Application Site were subject of that substitute consent application. Subsequent to the aforementioned “Ballysax/McQuaid” ruling the Applicant formally announced in January 2021 that all industrial scale peat extraction on lands within its management would permanently cease and the application for substitute consent was withdrawn by the Applicant 14th January 2021.

On the 23rd of February 2022, Bord na Móna plc applied to the Commission for leave to apply for substitute consent at Derryhinch, Drumman, Derryarkin and Ballybeg Bogs in counties Offaly, Westmeath and Meath (ACP Ref. LS19.315436). Given the enactment of the new legislation (S.I. 645 of 2023 - Planning And Development, Maritime And Valuation (Amendment) Act 2022 (Commencement Of Certain Provisions) (No. 2) Order 2023, which removed the requirement to seek leave to apply for substitute consent from the Commission, this application for leave to apply for Substitute Consent was deemed withdrawn on the 15th January 2024 in accordance with Section 41 of the Planning and Development, Maritime and Valuation (Amendment) Act 2022.

While this current application is different to Ref. LS25M.306236 (and Ref. SU25M.307278) with regard to the lands comprising the Application Site for substitute consent and the background context of this request (having regard to the Applicant’s commitment to the permanent and complete cessation of industrial peat extraction), the underlying circumstances of exceptionality have not changed since the Board granted leave to the Applicant to pursue substitute consent for these peat extraction works in May 2020.

4.4 INTEGRATED POLLUTION CONTROL LICENCE (REF. P0501-01)

Bord na Móna Energy Ltd was granted an IPC Licence (Ref. P0501-01) (the “IPC Licence”) by the Environmental Protection Agency (EPA) for the Derrygreenagh Bog Group, within which the Application Site is located, on 26 April 2000. The EPA issues licences that contain strict

conditions on how an activity must operate so as to protect the environment from pollution that might otherwise arise. The EPA Act, 1992 specifically prohibits the EPA from granting a licence if emissions from an activity would cause pollution⁵.

The IPC Licence regulates Bord na Móna's activities across the Derrygreenagh Bog Group, which includes the Application Site. IPC Licence conditions prescribed by the EPA are intended for protection, and where possible, the improvement of the environment and apply from the time of grant of the licence. The EPA has undertaken Technical Amendments of the IPC Licence, in 2012, 2013 and 2014 for the purpose of aligning the operational conditions of the IPC Licence to the objectives of National and European environmental protection legislation enacted over the lifetime of the licence. The current IPC Licence includes 14 no. conditions relating to operation and monitoring, emissions to water and air, water protection, waste management and bog rehabilitation.

As per Condition 2 (Management of the Activity) of the IPC Licence, Bord na Móna is required to maintain an Environmental Management System (EMS) which fulfils the requirements of the licence and any associated objectives/targets relating to use of cleaner technology, cleaner production and the reduction and minimisation of waste. The EMS is required to form part of Bord na Móna's Annual Environmental Report (AER), which is submitted to the EPA each year. The IPC Licence AERs are included in Appendix 4-4 of the rEIAR submitted with Substitute Consent application.

The EPA's online web facility (<https://leap.epa.ie/>) provides further opportunities for the public to observe records relating to the Bord na Móna's the ongoing licenced operations and associated assessments. The public can also make observations/complaints directly to the EPA in relation to any licenced activities. The most recent AER submitted by the Bord na Móna's was the AER for 2025 and covers the 2025 calendar year.

The EPA regularly audit and inspect compliance with its IPC Licences, these reports are available on the EPA's web portal (<https://leap.epa.ie/>). The EPA conducted a site visit to the Application Site in May 2024, there were no non-compliances recorded during this site visit.

4.5 MITIGATION AND MONITORING MEASURES

As the Application Site is subject to an IPC Licence issued by the EPA, it is important to distinguish between the respective functions of ACP and the EPA regarding environmental mitigation, monitoring and remediation measures.

Section 99F (1) of the Environmental Protection Agency Act (1992), as amended, states:

"Notwithstanding section 34 of the Act of 2000 [Planning Act, or any other provision of that Act], where a licence or revised licence ... has been granted [by the EPA] or is or will be required in relation to an activity, a planning authority or An Bord Pleanála [now ACP] shall not, where it decides to grant a permission under section 34 [or substitute consent, within the meaning of section 177A], of that Act in respect of any development comprising or for the purposes of the activity, subject the permission to conditions which are for the purposes of:

⁵ [Integrated Pollution Control \(IPC\) Licensing | Environmental Protection Agency](#)

(a) controlling emissions from the operation of the activity, including the prevention, elimination, limitation, abatement, or reduction of those emissions, or

(b) controlling emissions related to or following the cessation of the operation of the activity.”

Accordingly, where an activity is subject to a licence granted by the EPA, ACP cannot impose conditions which seek to regulate emissions from that activity, as such matters are addressed through the EPA licensing regime.

However, the Planning and Development Act 2000 (as amended), contains specific provisions in relation to environmental monitoring. Section 177K (2E) provides:

“(a)(iii) subject to paragraph (b), where appropriate, [the Board [ACP] may] specify in the decision measures to monitor the significant adverse effects on the environment of the development (being measures, as regards the types of parameters to be monitored and the duration of the monitoring, that are proportionate to the nature, location and size of the development and the significance of the effects on the environment of the development).

(b) Where the Board decides under subsection (1) to grant substitute consent for the development, it may, if appropriate to avoid duplication of monitoring, and without prejudice to existing monitoring arrangements pursuant to national or European Union legislation (other than the Environmental Impact Assessment Directive) identify such arrangements (or parts thereof as it thinks appropriate in the particular case) to be used for the purpose of paragraph (a)(iii).”

The Planning and Development Act 2000, as amended, therefore enables ACP, where appropriate, to impose monitoring measures in respect of significant adverse environmental effects arising from the development. The legislation also expressly provides for reliance upon existing monitoring arrangements in order to avoid duplication. In this regard, it is noted that extensive environmental monitoring is already undertaken at the Application Site pursuant to IPC Licence Ref. P0501-01.

The conditions that may be imposed by ACP may also include conditions relating to remediation of all or part of the site on which the development the subject of the grant of substitute consent is situated.

In this regard, it should be noted that, irrespective of the outcome of the Substitute Consent application, BnM intends to fully satisfy the requirements of Condition 10 of the IPC Licence Ref. P0501-01. It follows that, should ACP include a condition or conditions relating to remediation of all or part of the Application Site, Bord na Móna will be well placed to comply fully with such conditions.

5. PLANNING POLICY CONTEXT

This section outlines the relevant national, regional and local planning policies with regards to peat extraction and the ongoing management and future use of peatland areas.

A review of the policy documents examined indicates that the historic industrial activities undertaken within the Application Site have generally accorded with the planning policy objectives applicable at the time. Bord na Móna's long-established presence and industrial legacy are recognised as an important component of the area's cultural heritage, having made a significant contribution to the social and economic development of the region, particularly through the provision of employment in rural communities.

The historic County Development Plans assessed in this section demonstrate the importance of peat extraction as a key economic activity and source of employment within the local area. More recent planning policy has evolved in response to national climate action, energy transition and biodiversity objectives. Consequently, contemporary Development Plans increasingly support the rehabilitation and transition of cutaway peatlands, recognising their potential to contribute to renewable energy generation, climate change mitigation, biodiversity enhancement, recreation and amenity development.

5.1 NATIONAL PLANNING POLICY

5.1.1.1 *The National Planning Framework: Project Ireland 2040 First Revision (2025)*

The National Planning Framework (NPF) – First Revision ("NPF") was approved by Government and the Oireachtas in April 2025. The NPF constitutes the State's high-level strategic planning and development framework and guides national, regional and local planning policy to 2040. It is the Government's high-level strategic plan to shape Ireland's development until the year 2040. It establishes a set of national objectives and key principles to inform planning decisions across the State.

The NPF sets out the key goals and objectives for the State, and central to this Substitute Consent application is Section 9 *Climate Transition and the Environment*. Section 9.2 *Resource Efficiency and Transition to a Neutral Carbon Economy* recognises the important role of Ireland's peatlands in climate change mitigation through carbon sequestration and their function in acting as carbon sinks.

The NPF further acknowledges that:

"A careful balance will be required between realising the potential for renewable energy development... and the protection and restoration of nature and cultural heritage in peatlands".

The NPF therefore supports a managed transition of former peat extraction areas and recognises the importance of a Just Transition process for communities and landscapes historically associated with peat production.

The climate and environmental objectives of the NPF relevant to this Substitute Consent application are reflected in a number of National Policy Objectives, including:

- National Policy Objective 66, which seeks to ensure that development takes place within environmental limits and in accordance with environmental and climate legislation;
- National Policy Objective 69, which seeks to integrate climate action into the planning system and support national climate mitigation and adaptation objectives;
- National Policy Objective 70, which promotes renewable energy generation at appropriate locations in support of the transition to a climate-neutral economy;
- National Policy Objective 71, which supports the development and upgrading of electricity grid infrastructure; and
- National Policy Objective 73, which supports the co-location of renewable energy technologies with complementary land uses and opportunities to enhance biodiversity and environmental outcomes.

The Application Site comprises former industrial peat extraction lands which are subject to ongoing environmental management, decommissioning and rehabilitation measures. The accompanying rEIAR and rNIS assess the environmental effects of the peat extraction activities and identify the measures required to avoid, reduce and, where appropriate, remediate environmental effects. In this regard, the development and associated remediation measures are consistent with the overarching objectives of the NPF in relation to climate action, environmental protection, peatland management and the sustainable transition of former peat extraction lands.

While renewable energy development does not form part of the development for which Substitute Consent is sought, the NPF recognises the important role that rehabilitated peatlands and former peat extraction areas can play in supporting the transition to a low-carbon economy, biodiversity enhancement, climate resilience and the sustainable future use of peatland landscapes. In this regard, the Remedial Phase of the Project, as described in the accompanying EIAR, provides for the continued environmental management, decommissioning and rehabilitation of the Application Site and supports the broader strategic objectives of the NPF relating to climate action, environmental protection, Just Transition and the sustainable management of former peat extraction lands.

5.1.1.2 Climate Action Plans

The Climate Action Plan 2021 was the first Climate Action Plan prepared under the Climate Action and Low Carbon Development (Amendment) Act 2021 and established the statutory framework for climate governance, sectoral emissions ceilings and annual climate action planning. The Plan set out initial actions and pathways for decarbonisation across all sectors of the economy.

Climate Action Plans are prepared on a rolling annual basis, with subsequent plans updating and refining earlier actions.

The Climate Action Plan 2024 (CAP24) is the third annual update to Ireland's Climate Action Plan. CAP24 was approved by the Government on 21 May 2024.

CAP24 builds upon CAP23 by refining and updating the measures and actions required to deliver the carbon budgets and sectoral emissions ceilings. The Plan provides a roadmap for achieving Ireland's legally binding commitment to reduce greenhouse gas emissions by 51% by

2030 (relative to 2018 levels) and to achieve climate neutrality by no later than 2050, in accordance with the Climate Action and Low Carbon Development (Amendment) Act 2021.

CAP24 sets out how Ireland can accelerate the delivery of climate actions, placing climate solutions at the centre of social and economic development, while ensuring a just transition for communities affected by the transition away from high-carbon activities, including peat extraction.

Within CAP24, priorities 1, 2 and 3 are of particular relevance to former peat-producing regions. These priorities seek to:

- Support employment and re-skilling opportunities for former peat communities;
- Enable the rehabilitation and restoration of degraded peatlands; and
- Provide smart and sustainable mobility solutions for these communities.

CAP 24 also identifies the EU's Recovery and Resilience Facility, which is a scheme aimed at rehabilitating peatland. CAP24 recognises that, once rehabilitated, peatlands will support peat forming habitats and a mosaic of wetlands, heathlands, and grasslands, native woodlands, while storing significant quantities of carbon, enhancing biodiversity, and contributing to Ireland's carbon neutrality objectives.

Key metrics identified in CAP24 to deliver greenhouse gas abatement in wetlands and peatlands by 2030 include:

1. The rehabilitation of approximately 35,900 ha of peatlands to be rehabilitated as part of the Bord na Móna's Enhanced Decommissioning, Rehabilitation and Restoration Scheme (EDRRS) and LIFE Integrated Project – Peatlands and People, and;
2. The rehabilitation of an additional 30,000 ha of exploited peatlands.

Since 2021, approximately 350 employees have transitioned from working in peat extraction and haulage to operating the EDRRS. In addition, CAP24 continues to support improved peatland data and monitoring, including ongoing funding for enhanced peatland mapping through the rePEAT Project, first advanced under earlier Climate Action Plans.

CAP24 Action number JM/24/4 commits the Government to support the restoration and rehabilitation of degraded peatlands, reflecting the central role of peatland recovery in achieving emissions reductions, biodiversity enhancement and a just transition for affected regions.

The Climate Action Plan 2025 (CAP25), published on 15 April 2025, is the fourth annual update to Ireland's Climate Action Plan and builds upon CAP24 by refining and updating the measures and actions required to deliver the carbon budgets and sectoral emissions ceilings. It should be read in conjunction with CAP24 and reaffirms the need for accelerated climate action, noting that rapid and significant reductions in greenhouse gas emissions are required to meet Ireland's national and international targets.

In the electricity sector, CAP25 continues to support a renewables-led system, including the accelerated deployment of renewable electricity generation and associated infrastructure. It retains key targets, including achieving 80% renewable electricity by 2030 and delivering up to

9 GW of onshore wind, while emphasising the need to address barriers such as planning, consenting and grid constraints and to maintain a strong pipeline of renewable energy projects.

5.2 REGIONAL PLANNING POLICY

5.2.1 Regional Spatial and Economic Strategy for the Eastern and Midlands Region 2019-2031

The Regional Spatial and Economic Strategy ("RSES") for the Eastern and Midland Region came into effect on 28 June 2019 and provides the strategic planning framework for the Region to 2031. The RSES supports the implementation of the National Planning Framework at a regional level and establishes a series of Regional Policy Objectives ("RPOs") to guide sustainable development, climate action, environmental protection and regional economic growth.

Of particular relevance to this application, the RSES recognises the strategic importance of peatlands within the Region and identifies a number of guiding principles that should inform future development and land management within peatland areas. These include:

- Consideration of the contribution of peatlands to climate change mitigation and adaptation, including renewable energy production;
- Protection of habitats and species of environmental significance;
- Consideration of the role of peatlands in an existing or proposed greenway, blueway and peatway networks;
- Recognition of the ecosystem services and tourism potential associated with peatlands; and
- Protection of water quality in the development and management of peatland areas.

The RSES also contains a number of Regional Policy Objectives that are relevant to the Application Site and the ongoing decommissioning and rehabilitation of former peat extraction lands, including:

- RPO 3.7, which requires environmental and sustainability considerations to be integrated into the delivery of sustainable development and climate action objectives, including appropriate site selection having regard to biodiversity, flooding, landscape, cultural heritage and infrastructure constraints;
- RPO 4.84, which supports diversification of the rural economy, including rural enterprise, tourism and renewable energy initiatives that sustain employment opportunities in rural areas;
- RPO 6.9, which supports implementation of Regional Enterprise Plans and seeks to ensure that the Midlands Region is well positioned to respond to the challenges and opportunities associated with the transition to a low-carbon economy;
- RPO 7.35, which supports the identification of Strategic Energy Zones suitable for larger-scale energy generation projects, subject to the appropriate consideration of environmental constraints.

The RSES supports increased deployment of renewable energy across the Region, including wind energy, biomass, solar photovoltaics and solar thermal technologies, at both building and utility scale, where appropriately located and developed in accordance with national and regional policy objectives.

Overall, the RSES supports the sustainable transition of peatland areas and recognises their potential contribution to renewable energy generation, climate action, biodiversity enhancement, ecosystem service provision and rural economic development. The Application Site aligns with these strategic objectives through the ongoing decommissioning and rehabilitation of former peat extraction lands whilst protecting environmental receptors and water quality.

EMRA formally commenced a review of the RSES in 2026 and published a Strategic Issues Paper as part of the pre-draft consultation process. Submissions closed on 22 May 2026 and EMRA has identified this as the first stage in preparing a new RSES for the Region. At the time of writing, the RSES 2019–2031 remains the operative regional planning framework.

5.3 COUNTY DEVELOPMENT PLANS

The Application Site is located within the Counties Offaly, Meath and Westmeath and, accordingly, the relevant County Development Plans (CDP) for each local authority have been assessed.

This section identified the relevant policies objectives of the current CDPs that are relevant to the Application Site and summarises, where available, the approach adopted in previous Development Plans in relation to peat extraction.

As peat extraction activities at the Application Site commenced in 1950, and the earliest available County Development Plan is in 1967 (Offaly County Development Plan 1967) a review of all CDPs has been provided in Chapter 5 of the rEIAR.

A review of the relevant Development Plans demonstrates that activities undertaken at the Application Site have generally been consistent with the planning policy framework applicable at the time. Bord na Móna's industrial presence is recognised as an important component of the cultural heritage and socio-economic development of the wider area.

Historic Development Plans identify peat extraction as a significant source of employment and economic activity within the region, particularly in rural communities. These earlier Development Plans contained policies supporting the continued extraction of peat and the associated economic benefits arising from the industry.

More recent Development Plans reflect the evolving national and regional policy context relating to climate action, renewable energy, biodiversity and sustainable land use.

5.3.1 Offaly County Development Plan 2021 - 2027

The Offaly County Development Plan 2021-2027 came into effect on 22 October 2021 and provides the statutory planning framework for the development and management of lands within the county. The CDP contains a detailed policy framework supporting the transition of industrial peatlands to sustainable after-uses, and recognising their potential contribution to climate action, renewable energy generation, biodiversity enhancement and rural economic development.

The Application Site is not subject to a specific land use zoning designation under the Offaly County Development Plan 2021–2027.

Of particular relevance to the Application Site are the following policies and objectives:

- CAEP 16, which supports the preparation and implementation of a comprehensive after-use framework for industrial peatlands, recognizing the potential after-use for amenity, tourism, biodiversity, climate mitigation and energy development;
- CAEP 19, which requires planning applications on or adjacent to peatlands to demonstrate that development proposals will not adversely affect peatland stability, hydrology, carbon emissions balance and adverse ecological impacts;
- CAEP 20, which supports the implementation of the National Peatlands Strategy 2015 and any subsequent revisions;
- CAEO 06, which seeks to secure European and national funding opportunities to support peatland rehabilitation and transition projects;
- CAEO 07, which seeks to ensure that renewable energy developments do not adversely affect peatland rehabilitation.

Overall, the CDP establishes a clear policy direction recognising the historic role of peatlands while supporting transition to low-carbon, sustainable uses. The policies and objectives of the Plan promote the future use of these lands for renewable energy generation, biodiversity enhancement, climate action and other sustainable land uses, subject to the protection of environmental receptors. In this regard, the policy framework recognises the strategic importance of the lands comprising the Application Site and supports their long-term transition and sustainable management.

5.3.2 Westmeath County Development Plan 2021 – 2027

The Westmeath County Development Plan 2021 – 2027, which came into effect on the 3 May 2021, provides the statutory planning framework for land-use planning within the county. The Plan contains a number of policies that are relevant to the Application Site, particularly in relation to peatland rehabilitation, biodiversity protection, climate action and the transition to a low-carbon economy.

The Application Site is not subject to a specific land use zoning designation under the Westmeath County Development Plan 2021–2027.

Relevant policies include:

- CPO 11.6 / CPO 12.69, which support collaboration between local authorities, Bord na Móna and relevant stakeholders on the delivery of integrated peatland management measures as part of a just transition, including peatland rehabilitation and re wetting initiatives;
- CPO 12.2, which supports implementation of the National Biodiversity Plan, All Ireland Pollinator Plan and National Peatlands Strategy;
- CPO 12.66, which seeks to control peat extraction where significant adverse environmental impacts may arise, having regard to biodiversity protection and climate action objectives; and
- CPO 12.67, which promotes best practice peatland conservation, restoration and educational initiatives, subject to ecological assessment and, where required, Appropriate Assessment.

The CDP identifies the transition to a low carbon and green economy as a core guiding principle for economic development. Westmeath County Council recognises the Green Economy as an area of significant growth potential, supporting employment opportunities linked to research, innovation and clean technologies, in line with national and international climate policy.

Overall, the CDP establishes a positive policy framework for the rehabilitation and sustainable management of peatland areas. The Plan recognises the importance of transitioning former industrial peatlands to environmentally and economically sustainable after-uses, while ensuring the protection and enhancement of biodiversity, ecological networks and other environmental receptors. Accordingly, the policy framework of the CDP supports the long-term transition and management of the Application Site in a manner consistent with climate action, biodiversity and sustainable development objectives.

5.3.3 Meath County Development Plan 2021 – 2027 (as varied)

The Meath County Development Plan 2021 – 2027 came into effect on 3 November 2021 and sets out the strategic planning framework for the development of the County during the plan period. The original Meath CDP has been superseded by the Consolidated Version of the Meath CDP following five variations.

The Application Site is designated as a Rural Area within the Meath CDP. The zoning objective seeks *“to protect and promote in a balanced way, the development of agriculture, forestry and rural-related enterprise, biodiversity, the rural landscape and the built and cultural heritage”*.

The Plan contains a number of policies and objectives relevant to peatland management, biodiversity protection, green infrastructure and renewable energy development.

Relevant policies and objectives include:

- HER POL 55, which recognises the economic, social, environmental and physical value of Green Infrastructure.
- HER OBJ 39, which supports partnerships with relevant stakeholders on a suitable peatland site(s) to demonstrate best practice in peatland conservation, management and restoration, subject to ecological and, where required, Appropriate Assessment.
- INF POL 35, which seeks the reduction of greenhouse gas emissions through energy efficiency measures and renewable energy development in an environmentally acceptable manner.
- INF OBJ 39, which facilitates renewable energy development, including wind energy and bioenergy projects, at suitable locations where such development does not have a negative impact on the surrounding environment, landscape, biodiversity and amenity impacts within the County.

The MCDP recognises the importance of delivering climate action objectives through the protection and enhancement of natural capital, the promotion of sustainable land management practices and the development of renewable energy infrastructure. The Plan supports an integrated approach to environmental protection and sustainable development, including the conservation and rehabilitation of peatland habitats where appropriate.

5.3.4 Historic Planning Policy

In assessing the historical activities carried out at the Application Site between 1988 until 2020, it is appropriate to consider the County Development Plans that were in force during that period. While peat extraction was historically exempt from the requirement to obtain planning permission, the relevant Development Plans provide important context regarding the policy approach to peatland development, economic activity, environmental protection and the future use of peatlands.

5.3.4.1 Offaly County Development Plans 1967 - 2020

The Offaly County Development Plans adopted between 1967 and 2020 demonstrate a gradual evolution in planning policy, from support for a peat based industrial economy towards a broader emphasis on renewable energy, environmental protection, climate action and the sustainable reuse of cutaway peatlands.

The earlier Development Plans (1967–1987) identify peat extraction as a significant component of the county's economic base, with Bord na Móna and the ESB providing substantial employment and supporting the development of rural communities. These Plans generally promoted the continued utilisation of the county's peat resource while acknowledging that peat was a finite resource and that long-term planning would be required to address its eventual depletion.

The Development Plans adopted during the mid-1990s and early 2000s increasingly recognised the need for a managed transition away from peat extraction.

While continuing to acknowledge the importance of peat-related employment and economic activity, the 1995 and 2003–2009 Plans introduced stronger commitments to conservation, biodiversity, and the strategic after-use of cutaway bogs. These lands, largely owned by Bord na Móna (approximately 32,400 hectares), were identified as a major development resource with potential for coordinated reuse, including tourism, amenity, research, and industrial purposes, while avoiding fragmented development.

The 2009–2015 Plan further strengthened this approach by promoting the redevelopment of industrial peatlands and brownfield sites for enterprise and employment, particularly in renewable energy sectors such as wind and biomass. It also emphasised environmental protection, climate obligations, and the integration of biodiversity management strategies for peatlands.

The previous County Development Plan (2014–2020) reflects a clear strategic shift towards sustainability and low-carbon energy. It acknowledges the declining role of peat-fired energy while recognising existing infrastructure and the short- to medium-term contribution of peat. Cutaway bogs are identified as key assets for future development, particularly for renewable energy projects, due to their scale, accessibility, and distance from sensitive receptors. At the same time, the potential for habitat restoration and integration into the county's green infrastructure network is recognised.

Overall, the Offaly County Development Plans demonstrate a consistent progression in policy from a reliance on peat extraction as a driver of economic growth, employment and fuel source towards a more balanced framework focused on renewable energy generation, environmental

stewardship, climate action and the sustainable transition of former industrial peatlands. Throughout this period, the strategic importance of peatlands to the economic, social and environmental development of the county has remained a recurring theme within the planning policy framework.

5.3.4.2 Westmeath County Development Plan 1986 – 2020

The Westmeath County Development Plans adopted from 1986 to 2020 illustrate a similar evolution in planning policy in relation to peatlands and cutaway bogs within the County. Earlier plans generally supported peat extraction as a key driver of employment, energy production, and economic development. Peatlands were recognised as major natural resources, central to the county's industrial base, with policies encouraging their continued development while acknowledging, in a limited way, the need to protect ecological balance and amenity value.

By the 1990s and early 2000s, planning policy demonstrated an increasing awareness of the ecological, archaeological, cultural and landscape value of peatlands. While support for peat-related economic activity remained evident, greater emphasis was placed on mitigating environmental impacts and protecting sensitive habitats and heritage resources.

From the 2008–2014 Development Plan onwards, policy increasingly recognised the finite nature of peat resources and the need for a managed transition towards alternative land and energy use. This included a stronger emphasis on protecting biodiversity, controlling the environmental impacts of peat extraction, and planning for the after-use of cutaway bogs. The Plan identified significant opportunities for alternative land uses, such as habitat creation, recreation, agriculture, forestry, and particularly renewable energy development, with cutaway peatlands seen as suitable locations for renewable energy infrastructure.

The previous County Development Plan (2014–2020) reflects a pronounced policy shift toward sustainability and decarbonisation. The Plan supports the growth of renewable energy, the transition away from peat-based energy, and the environmentally sensitive after-use of industrial peatlands. At the same time, it emphasises the protection of peatlands for their ecological, cultural, and landscape value, as well as the conservation of industrial heritage associated with peat extraction.

Overall, the progression of historic Westmeath CDP policies demonstrates a transition from resource exploitation toward environmental protection, renewable energy generation, and sustainable rural development. Nevertheless, the Plans consistently acknowledge the important historical contribution of the peat industry to the county's economy and communities.

5.3.4.3 Meath County Development Plan 1994 – 2019

The evolution of the Meath County Development Plans between 1994 and 2019 similarly demonstrates a clear shift in policy priorities relevant to the Application Site.

The 1994 Development Plan strongly supported industrial development and rural employment, recognising peat extraction as an important economic activity, particularly at Derrygreenagh Bog, while acknowledging the need to protect environmentally sensitive areas.

By 2001, the Plan continued to accept peat extraction as an established land use but introduced greater emphasis on environmental control, landscape character, and visual sensitivity.

Landscape classification identified the site within areas generally capable of accommodating development, including extractive activities and wind energy projects.

The 2007–2013 Plan placed increased emphasis on heritage and landscape protection, particularly in sensitive or designated areas. It emphasised the need to avoid visually intrusive developments and safeguard peatlands of ecological and archaeological value, while still supporting sustainable rural development.

The 2013–2019 Development Plan reflects a transitional phase in planning policy, characterised by stronger alignment to national climate and energy policy objectives. It promoted renewable energy, particularly onshore wind, and acknowledged the declining role of peat as a fuel source. Enhanced policies for peatland conservation reflect a growing emphasis on environmental sustainability, greenhouse gas reduction, and the long-term management of natural resources.

Overall, the Meath County Development Plans demonstrate a progression from recognising peat extraction as an established component of the rural economy towards a policy framework centred on climate action, renewable energy generation, peatland conservation and sustainable land management. This evolution reflects broader national and regional policy trends and supports the transition of former peat extraction lands towards environmentally sustainable and economically productive after-uses.

6. EXCEPTIONAL CIRCUMSTANCES

It has been established by the Court of Justice of the European Union (CJEU) in Case C-215/06 Commission v. Ireland, that the retrospective regularisation of development through what is now known as the substitute consent process can arise only in exceptional circumstances.

Subsequently, in *An Taisce v. An Bord Pleanála* [2020] I.E.S.C. 39, the Supreme Court found that Sections 177C(2)(a) and 177D(1)(a) of the Planning and Development Act 2000 (as amended) were inconsistent with the requirements of the EIA Directive, as interpreted by the Court of Justice, insofar as they did not adequately provide for the assessment of whether exceptional circumstances existed. The legislation has since been amended and now requires An Coimisiún Pleanála to undertake an assessment of whether exceptional circumstances exist before substitute consent may be granted.

In considering whether exceptional circumstances exist, subsection 177K(J1) of the Act requires the Commission to have regard to the following matters:

- (a) whether the regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;*
- (b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;*
- (c) whether 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 been substantially impaired;*
- (d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;*
- (e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;*
- (f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;*
- (g) such other matters as the Board considers relevant.*

Having regard to the above, the following sections examine each of the statutory criteria in turn and demonstrate why exceptional circumstances exist in relation to the Application Site. The assessment is structured by reference to the matters set out in section 177K(J1) of the Act in order to assist the Commission in its consideration of the application for substitute consent.

6.1 (A) WHETHER REGULARISATION OF THE DEVELOPMENT CONCERNED WOULD CIRCUMVENT THE PURPOSE AND OBJECTIVES OF THE EIA DIRECTIVE OR THE HABITATS DIRECTIVE

In the first instance, it is worth re-iterating at this point (and as detailed in Chapters 1, 4 and 5 of the remedial EIAR) that industrial-scale peat extraction was on-going within the Application Site

prior to 1988, before the transposition of the EIA Directive and Habitats Directive in Ireland, with peat extraction activities commencing as early as 1950 for individual bogs within the Application Site.

Furthermore, peat extraction benefited from exempted development status up until the 20th September 2012 when the Environment (Miscellaneous Provisions) Act 2011 was enacted, and Section 4(4) was inserted within the Act (refer to Chapter 5 of the remedial EIAR for further details on the legislative background to peat extraction). In this regard, it is submitted that the regularisation of the development concerned would not circumvent the purpose or objectives of the EIA or Habitats Directive, given that the Oireachtas clearly legislated for the subject works to be exempted from the requirement to obtain planning permission.

The purpose and objectives of the 1985 EIA Directive (85/337/EEC) are discussed in its preamble as set out below:

- *“...preventing the creation of pollution or nuisances at source; rather than subsequently trying to counteract their effects; whereas they affirm the need to take effects on the environment into account at the earliest possible stage in all the technical planning and decision-making processes...”*
- *“...take account of concerns to protect human health, to contribute by means of a better environment to the quality of life, to ensure maintenance of the diversity of species and to maintain the reproductive cap...”*

6.1.1 2011 EIA Directive

Neither the codified 2011 EIA Directive (2011/92/EU) nor the 2014 amendment to the EIA Directive (2014/52/EU) state any specific purpose or objectives in their preambles.

The 2011 codified Directive emphasises the precautionary principle in relation to environmental protection. *“Pursuant to Article 191 of the Treaty on the Functioning of the European Union, Union policy on the environment is based on the precautionary principle and on the principles that preventative action should be taken, that environmental damage should, as a priority, be rectified at source and that the polluter should pay. Effects on the environment should be taken into account at the earliest possible stage in all the technical planning and decision-making processes”* (paragraph (2) (2011/92/EU)).

Paragraph (14) of the Preamble states that *“the effects of a project on the environment should be assessed in order to take account of concerns to protect human health, to contribute by means of a better environment to the quality of life, to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the ecosystem as a basic resource for life”*.

6.1.2 1992 Habitats Directive

The purpose and objectives of the Habitats Directive (92/43/EEC) are contained in its preamble, as follows:

- *Whereas the preservation and improvement of the quality of the environment, including the conservation of natural habitats and of wild fauna and flora, are an essential objective of general interest pursued by the Community, as stated in Article 130r of the Treaty;*
- *The main aim of this Directive being to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements, this Directive makes a*

contribution to the general objective of sustainable development; whereas the maintenance of such biodiversity may in certain cases require the maintenance, or indeed the encouragement, of human activities;

- *In European territory of the Member States, natural habitats are continuing to deteriorate and an increasing number of wild species are seriously threatened; whereas given that the threatened habitats and species form part of the Community's natural heritage and the threats to them are often of a transboundary nature, it is necessary to take measures to Community level in order to conserve them; Whereas, in view of the threats to certain types of natural habitat and certain species, it is necessary to define them as having priority in order to favour the early implementation of measures to conserve them;*
- *In order to ensure the restoration or maintenance of natural habitats and species of Community interest at a favourable conservation status, it is necessary to designate special areas of conservation.*

There are no designated habitats within the boundary of the Application Site.

The nearest SACs are Raheenmore Bog SAC (Site Code: 000582) and Split Hills and Long Hill Esker SAC (Site Code: 001831), located approximately 1.3 km southwest and 1.4 km west of the Application Site, respectively. The nearest SPA is Lough Ennell SPA (Site Code: 004044), located approximately 7.8 km west of the Application Site. Other European sites within 15 km include Mount Hevey Bog SAC (002342), Lough Ennell SAC (000685), River Boyne and River Blackwater SAC (002299), Wooddown Bog SAC (002205), Charleville Wood SAC (000571), Clara Bog SAC (000572), The Long Derries, Edenderry SAC (000925), Lough Ennell SPA (004044) and River Boyne and River Blackwater SPA (004232).

The following sections outline how the Applicant undertook the responsibility to ensure that the environmental impacts arising from the extraction activity at the Application Site was as minimal as possible in the absence of regulatory responsibilities and guidance.

6.1.3 Drainage

Peat extraction activities began at the Application Site in 1950, with the commencement of site clearance and the installation of drainage. Draining the surface water from the bogs over a period of years is the essential pre-cursor to peat extraction. The consequence of drainage is dehydration of surface vegetation and changes to the chemistry of surface water resulting in a fundamental change to the nature of the habitats that existed prior to drainage. As drainage took place over a number of years (typically 4-7 years), the changes to habitats within the bogs would also have taken place within that timeframe prior to peat extraction, allowing time for resident species to relocate. These changes occurred on all bogs in the Application Site. As set out in Chapter 4 of the remedial EIAR, all drainage infrastructure took place prior to 1988. Therefore, the vast majority of drainage took place prior to the EIA and Habitats Directive being transposed into Irish Law.

6.1.4 Silt Committees

As detailed above, the central purpose of the 1985 EIA Directive is preventing the creation of pollution or nuisance at source. Until 1977 and the introduction of the Water Pollution Act there was no statutory regulation of water pollution in Ireland. While there was no legal obligation on the Applicant to treat surface water run-off from the bogs under the Water Pollution Act (1977)

or various fisheries acts, company policy dictated that all bog effluents should be of an acceptable standard.

During the 1970s the Applicant revised its surface water drainage arrangements and developed a program to control all effluent arising from the drainage of the sites. The impetus for increased controls on silt run-off from the bogs was company policy on pollution control and public concern with water quality. The primary control measure was the installation of silt ponds to address the levels of the suspended solids.

In October 1975, the Applicant established Silt Committees for all of its bog groups to study the benefits and feasibility of removing silt from bog effluent. It was concluded that at milled peat bogs such as the Application Site, surveys should be carried out and silt ponds locations selected. Further details of measures control water pollution are contained in Chapter 4 of the remedial EIAR. These measures were introduced to prevent the deterioration of water quality as a result of production activity at the Application Site. These measures which were introduced by the Applicant in the absence of any regulatory requirements demonstrates the Applicant's historic commitments to reduce the impacts of their extraction activity on the receiving environment as much as possible.

The outcome of the Silt Committee studies was the provision of silt ponds and revised drainage on all bogs in order to reduce the discharge of silt into streams and watercourses. The concentration levels of effluent discharge were set at 100 mg/l suspended solid. This concentration level was based on a decision by An Coimisiún Pleanála on the licensing of effluent discharge from Littleton Briquette Factory. In summary, the efforts and commitments of the Applicant prevented the deterioration of water quality as a result of extraction activity where possible, helping to prevent pollution in line with the purpose and objectives of the 1985 EIA Directive and 1992 Habitats Directive.

6.1.5 Exempted Development

As outlined above, before 20 September 2012, industrial-scale peat extraction activities were considered exempted development. The Environmental (Miscellaneous Provisions) Act 2011, effective from 20 September 2012, added Section 4(4) to the Act, which states that such activities are no longer exempt if they require an Environmental Impact Assessment (EIA) or an Appropriate Assessment (AA). However, as a robust remedial EIAR and remedial NIS has been carried for the subject works, the granting of substitute consent would not circumvent the purpose and objectives of the EIA and Habitats Directive.

6.1.6 IPC Licence

As discussed in detail under Section 4.4 (IPC Licence) of this Report, the Applicant's IPC Licence includes the requirements to prepare and implement an Environmental Management System (EMS) to reduce and improve environmental emissions through mitigation measures and established best practice and achieve compliance with emission limit values (as regulated by, and agreed with, the EPA). The subject activities undertaken within the Application Site have been reviewed and audited by the competent authority (EPA) and no significant adverse impacts to the receiving environment, including European Designated Sites, have been identified throughout the Applicant's operating regime under this licence.

6.1.7 Summary

The Applicant has fulfilled all statutory and legislative requirements in terms of planning and environmental protection, as outlined above, throughout the decades of peat extraction. In fact, the Applicant went beyond its statutory obligations by setting up Silt Committee across its network of bogs in 1975 and introducing silt control measures to all bog surface water discharges.

It cannot be the case that the carrying out of exempted development in accordance with planning legislation at the time the works were carried out, would circumvent the purpose and objectives of the EIA and Habitats Directives. It is also submitted that the regularisation of the works would not circumvent these same purposes and objectives, given that a robust remedial EIAR and remedial NIS has been carried out, the Applicant has ceased all peat extraction activity and is committed to rehabilitating the Application Site.

A full remedial EIAR and remedial NIS accompany this application for substitute consent which provide a comprehensive assessment of the subject works in accordance with the EIA and Habitats Directives. Based on the foregoing it is apparent that regularisation of historic peat extraction would not circumvent the purpose and objectives of the EIA and Habitats Directives.

6.2 (B) WHETHER THE APPLICANT HAD OR COULD REASONABLY HAVE HAD A BELIEF THAT THE DEVELOPMENT WAS NOT AUTHORISED

6.2.1 Historic National Energy Policy

Following the Second World War, there the Irish State was keen to continue to develop indigenous fuel resources to increase national energy security, particularly in the event that imported fuels were ever scarce again. The TDB were asked of the Government to devise a programme to develop the country's bogs. The initial result of this was the transformation of the TDB into 'Bord na Móna', which was established as a statutory authority responsible for the 'development of the nation's peat resources' under the Turf Development Act 1946 ('the 1946 Act'). The functions of the Applicant, as per Section 17(1) of the Act, are as follows:

- To produce and market turf and turf products;
- To foster the production and use of turf and turf products;
- To acquire bogs and other lands;
- To manage, develop and work bogs and other lands vested in the Board ['Bord na Móna']; and,
- Generally to do all such other things as arise out of, or are consequential upon, the duties mentioned in the preceding paragraphs of this section.

At this time, the Government issued a White Paper which set out a comprehensive plan for the development of the country's peat resources by mechanical methods, and which would also consequently reduce the country's reliance on imported fuel, while also providing substantial employment. This White Paper later became known as the First Development Programme. The principal proposals of the First Development Programme were as follows:

- The development of 24 no. bogs for peat extraction;
- The improvement of Lullymore Briquette Factory;

- The erection of a peat moss litter factory at Kilberry;
- The establishment of a Government-funded peat research station; and,
- The building of Portarlinton, Allenwood, and Lanesboro peat-fired power stations.

The First Development Programme also outlined policies which underpinned the Government's commitment to developing the national peat resource for energy production, namely that new projects for the production of electricity were to be based on the use of turf, that all public or state-assisted housing in turf-producing areas were to have appliances suitable for burning turf, that all institutions built by local authorities were to have boilers capable of burning turf, and that any factories in turf-producing areas receiving government grants would be obliged to install turf-burning equipment.

By 1946, the Applicant employed 5,138 workers, and several bogs were either in development or already in production.

In 1947, the Applicant proposed to the Government the doubling of the output of the ongoing First Development Programme. The proposal was well-received and resulted in the enactment of the Turf Development Act 1950 ('the 1950 Act'), effective from July 26th, 1950, which empowered the Applicant to broaden its scope of operations. This legislation marked the beginning of the Second Development Programme. Plans were made for expanding activities to achieve a capacity of two million tonnes of machine sod turf annually as well as the construction of five additional power stations at Ferbane, Rhode, and Shannonbridge Co. Offaly, Bellacorick, Co. Mayo, and Unit 2 of Lanesboro Power Station, Co. Longford. Furthermore, under Section 5(1) of the 1950 Act, the Applicant was granted the authority to build housing for its permanent workforce. Nine housing schemes, totalling 582 houses, were proposed to the Minister of Industry and Commerce for approval, with site development work commencing in 1951.

In the early 1950s, discussions between the Applicant and the Electricity Supply Board ('ESB') focused on expanding turf usage for electricity generation. They also considered the potential of milled peat as a boiler fuel for power stations. By 1952, the Applicant began supplying peat to the ESB's Allenwood station and identified suitable bogs for further development. In subsequent years, milled peat production started in the Boora bogs to fuel the planned Ferbane and Lanesboro stations. Additionally, briquette factories were constructed, and horticultural endeavours expanded.

The Second Development Programme resulted in a significant increase in peat production output with 15 no. bogs coming into production between 1955 and 1959. Notably, the Applicant prepared for the construction of a milled peat power station in Bellacorick, Co. Mayo, and development continued for the Shannonbridge station. Significant investments were also made in infrastructure, such as railways and roads within bog areas, as well as machinery development, to improve the efficiency and safety of peat extraction and transportation. By the late 1960s, the Applicant's operations had significantly increased, supplying seven ESB power stations. The company was also running three briquette factories and two horticultural peat factories, and the area of bogs allocated for energy, fuel, and horticultural peat production had notably expanded.

The growing need for resources to supply the country's peat-fired power stations, and the later oil crisis emerging in the 1970s, highlighted the importance of indigenous fuel resources, and furthermore, the Applicant's role in supporting the provision of a robust power system. Peat

emerged as a cost-effective alternative to other fuels during this period of hardship, prompting the government to request investments from the Applicant. In response, the Turf Development Act of August 1975 increased the company's capital borrowings to £60 million, facilitating the implementation of the Third Development Programme. This programme involved purchasing approximately 30,000 additional hectares of land and investing £164 million, including plans for expanding peat generating capacity and constructing new briquette factories.

By 1980, significant progress had been made in drainage and development works on about 17,000 hectares of the acquired land. The majority of these works related to the extension of its existing operations and the expansion of horticultural peat production. For example, growing demand for packaged sod peat in polythene bags led to a bagging plant being constructed and commissioned at the Ballivor Works between 1969-70. The Applicant became a vital contributor to Ireland's social and economic landscape, employing approximately 7,000 workers at its peak. Major civil works were carried out to extend the railway network and associated infrastructure, supporting the expansion of operations and horticultural peat production.

However, despite the increased utilisation of peat, the Third Development Programme faced financial challenges as it relied on high oil prices, which did not materialise. Additionally, the emergence of natural gas from Kinsale in 1979 and the Private Turf Development Act of 1981 led to shifts in consumer preferences towards more efficient fuels and encouraged private development of smaller bogs. Consequently, the Applicant's market share decreased, leading to the decision to construct only one new briquette factory in Littleton, Co. Tipperary.

Following the completion of the Third Development Programme in the late 1980s and in response to a changing domestic and international market regarding, but not limited to, the availability of alternative fuels (i.e. oil and natural gas), private peat production as facilitated by the Private Turf Development Act 1981 and rising production costs, the Applicant undertook a significant review of its operations, assets and standard procedures in order to both remain viable and continue to develop the nation's natural peat resources.

A key outcome arising from this review process was the commitment to secure the continued use of peat within Ireland's energy mix. In June 1993, a feasibility study for a proposed peat-fired generator ('Europeat 1' - Edenderry Power Plant⁶) at Edenderry, Co. Offaly was submitted to the Minister for Transport, Energy and Communications, and in April 1995, an agreement was reached with the European Commission on the provision of financial support for the proposed 120MW power plant. The Ballydermot Bog Group and Derrygreenagh Bog Group were identified as the primary supply bogs for the power plant. Construction of the Edenderry Power Station was commenced in January 1999 and was commissioned for operation in December 2000.

Industrial scale peat extraction ceased within the Application Site in July 2020 following the High Court's judgment on *Friends of the Irish Environment Ltd v Minister for Communications, Environment & Climate Action & Ors.* [2019] IEHC 646 (discussed in greater detail in Section

⁶ *Edenderry Power Plant (Offaly County Council Reference 98/437) – 3rd Party Appeal (P.L19.107858): Grant of Permission with revised conditions (dated 24th December 1998)*

2.1.3 of the remedial EIAR accompanying this planning application). The High Court set aside the Peat Regulations⁷ in their entirety.

It is clear from the foregoing that peat extraction has been an integral part of national energy policy and security of national energy supply since at least 1934. The Applicant was established to source and supply domestic fuel for use by households and in electricity generation. Therefore, the extraction of peat at the Application Site since 1950 has been in accordance with national energy related policy and legislation.

6.2.2 Planning Legislation

Peat extraction activities, which fell within the definition of ‘agriculture’ with regard to turbary, were classified as exempted development under Section 4(1)(a) of the Local Government (Planning and Development) Act 1963.

Class 17, (Part 3 Schedule 2) of the Planning and Development Regulations (2001) restricted the exempted development status by inclusion of the following:

Class 17 (Part 3, Schedule 2)

- a. 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 force of these Regulations

This exemption was amended in 2005 by the Planning and Development Regulations 2005 making it conditional on not being subject to an EIA.

The provisions of Class 17 remained relevant to peat extraction activity until the enactment of the Environmental (Miscellaneous Provisions) Act (2011) on 20th September 2012, which inserted Section 4(4) into the Planning and Development Act (2000)⁸,

“Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection(2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.”

As mentioned previously, prior to 20th September 2012, all industrial scale peat extraction activities were classified as exempted development. The Environment (Miscellaneous Provisions) Act 2011 came into effect on the 20th September 2012 which inserted Section 4(4) of the Act. Section 4(4) legislates that development which is typically exempt (e.g., industrial peat extraction pre-2012) is no longer exempt if an Environmental Impact Assessment (EIA) or an Appropriate Assessment (AA) of the development is required. Notwithstanding this provision, the legal planning status of commercial peat extraction remained uncertain and unclear in practice up until September 2019.

⁷ S.I. No. 4/2019 – European Union (Environmental Impact Assessment) (Peat Extraction Regulations 2019)

⁸ Section 4(4) did not apply to development “completed not later than 12 months after such commencement”

With regard to Class 17 of the Planning & Development Regulations (2001) and Section 4(4) of the Planning & Development Act (2000) it is important to highlight the observations of Justice Simons in his judgment on the 'Peat Regulations' ([2019] IEHC 646 - 20th September 2019) (see section 2.3 of this Report),

“One of the curious features of the approach initially taken to peat extraction under domestic legislation is that a distinction had been drawn between existing peat extraction, and peat extraction involving “new or extended” areas. Although not stated in express terms, the assumption underlying the legislation seems to have been that existing peat extraction did not have to comply with the EIA Directive. In order to benefit from this special treatment under domestic law, all that was necessary was that the drainage of the bogland had commenced prior to the coming into force of the relevant parts of the Planning and Development Regulations 2001 on 21 January 2002. Thus, it was not necessary even that the peat extraction had commenced prior to the implementation date for the EIA Directive on 27 June 1988”.

The observation of Mr Justice Simons on the interpretation of previous planning law for peat extraction activities is insightful as he states that the assumption underlying the legislation appeared to be that existing peat extraction did not have to comply with the EIA Directive as long as the drainage of the bogland had commenced prior to the coming into force of the relevant parts of the Planning and Development Regulations 2001 on 21st January 2002. As mentioned previously, drainage at the Application Site had commenced in the late 1940s.

The application of Section 4(4) of the Act, to on-going peat extraction was subsequently challenged in 2013 by Westland Horticulture Limited and Bulrush Horticulture Limited (Westland Horticulture Limited and Bulrush Horticulture Limited v An Bord Pleanála (2013/398/JR – [2018] IEHC 58). The applicants for judicial review in that case argued that the extraction of peat was a ‘use’, rather than works, and therefore, the development / works required to facilitate this use would have been completed ‘not later than 12 months after such commencement’ and peat extraction (as a use) should continue to be exempted development. This argument was ultimately rejected by Mr. Justice Meenan in his judgment (February 2018) in which he held that peat extraction was both works and use and, as peat extraction involving a new or extended area of 30 hectares or more required Environmental Impact Assessment as per Schedule 5, Part 2, Class 2a of the Planning & Development Regulations (2001), planning permission was required. As discussed above, this decision was then subject to an application for leave to appeal, which was refused on 7th December 2018.

As referred to in Section 1.1 of this Report, between 2013 and December 2018 peat industry representatives and environmental groups were engaged in extensive consultation, with Government Departments and State bodies on regulations pertaining to large-scale peat extraction - the European Union (Peat Extraction) Regulations. The peat extraction industry anticipated that a new statutory regime would be put in place which would assist in clarifying the planning status of on-going peat extraction activities across the country. In January 2019, the ‘Peat Regulations’ were published, however, the legislation would ultimately be quashed by Mr Justice Simons on the 20th September 2019 (Friends of the Irish Environment Ltd. -v- Minister for Communications & ors [2019] IEHC 646).

Mr Justice Simons found that “first, the form of regularisation procedure provided for under the amended legislation is inconsistent with the EIA Directive and the Habitats Directive. Whereas a Member State does enjoy a limited discretion to make provision for the regularisation of development projects which have been carried out in breach of the requirements of either or both of the EU Directives, the amended legislation exceeds this discretion”. Secondly, the use of secondary legislation to amend primary legislation was impermissible.

During the period between 20th September 2012 – 20th September 2019 planning law concerning industrial scale peat extraction activities and the requirement for planning permission and EIA / AA has been ambiguous. The Applicant operated the bogs in accordance with Planning and Development legislation of the time in the belief that the development was authorised and was exempt from a requirement for planning consent. Between 2000 until the present day, the Applicant has held an IPC licence and operated in accordance with EPA requirements. The judgment of Mr Justice Simons on the 20th September 2019 on [2019] IEHC 646 ultimately provided the certainty required by the Applicant, and the peat extraction industry, to fully understand the planning status of peat extraction in Ireland. On foot of this decision, the Applicant ceased all industrial scale peat extraction activities on boglands within its ownership, including the Application Site.

The Applicant acted at all times in accordance with planning legislation and national policy. All facilitating and ancillary works associated with peat extraction were subject to applications for planning consent as required. The Applicant has also fulfilled their requirements under Part IV of the EPA Act (1992) (as amended).

In summary, the following are considered to be the key points that demonstrate how the Applicant could reasonably have had a belief that the development was not unauthorised:

- Industrial-scale peat extraction was on-going within the Application Site prior to 1988, before the required transposition of the 1988 EIA directive and 1994 Habitats Directive, with peat extraction commencing as early as 1953 for individual bogs within the group. These works benefited from exemption up until 20th September 2012 when the Environment (Miscellaneous Provisions) Act 2011 was enacted, and Section 4(4) was inserted within the Act.
- Peat extraction was supported by Government Policy, and fundamental to ensuring a secure supply of energy generation since the First Development Program.
- The implications of Section 4(4) on the peat extraction industry remained ambiguous between 2012 and 2019 as planning cases on peat extraction and EIA/AA were considered and tested within both the planning system (An Bord Pleanála Ref. PL25.RL.2975) and legal system ((Westland Horticulture Limited and Bulrush Horticulture Limited v An Bord Pleanála (2013/398/JR – [2018] IEHC 58)).
- The ‘Peatland Regulations’ (January 2019) which attempted to provide further clarity on this issue (e.g. exemption from planning permission for large scale peat extraction activity (30ha or over) were ultimately quashed by the High Court ([2019] IEHC 646 - September 2019) on the grounds that the legislation was inconsistent with the requirements of the EIA Directive and the Habitats Directive.
- In the interim, Bord na Móna had proceeded with industrial scale peat extraction in line with the conditions of its IPC licence. On foot of the [2019] IEHC 646, Bord na Móna ceased peat extraction on boglands within its management, including the Application

Site, and dutifully proceeded to prepare and lodge an application seeking leave to apply for substitute consent in December 2019 for the relevant works within a portion of the it's landbank, including part of the Application Site, with the intention of continuing said works into the future. Following the grant of leave to apply for substitute consent, in 2020, Bord na Móna plc submitted an application for substitute consent (ACP Ref. SU25M.307278).

- The Applicant formally announced in January 2021 that all industrial scale peat extraction on lands within its management would permanently cease, and as such SU25M.307278 was withdrawn.

In summary, the peat extraction works carried out by the Applicant up to September 2012 at the Application Site benefited from exempted development status. On receipt of its IPC Licence (Ref. P0501-01) in April 2000, the Applicant undertook the subject works in line with the conditions of its licence, as regulated by the EPA. The application of Section 4(4) of the Planning and Development Act (as amended) to peat extraction activities remained ambiguous between September 2012 and September 2019 (peat extraction ceased on the Application Site in June 2020). During this period, live planning cases were being considered within both the planning and legal systems relating to peat extraction; concurrent to this, the Applicant maintained operations in line with its IPC Licence. The Applicant continues to comply with these conditions and requirements subsequent to the permanent cessation of peat extraction within the Application Site in 2020.

It is apparent from the foregoing that the Applicant acted reasonably in believing that the development was not unauthorised.

6.3 (C) WHETHER THE ABILITY TO CARRY OUT AN ASSESSMENT OF THE ENVIRONMENTAL IMPACTS OF THE DEVELOPMENT FOR THE PURPOSE OF AN EIA OR AA AND TO PROVIDE FOR PUBLIC PARTICIPATION IN SUCH AN ASSESSMENT HAS BEEN SUBSTANTIALLY IMPAIRED

Bord na Móna has been engaged in peat extraction activities at the Application Site since 1950 and has operated under an IPC Licence (Ref. P0501-01) since April 2000. As part of the original licensing process in 1999, Bord na Móna was required to comply with extensive statutory publication, notification and public consultation procedures prescribed under the Environmental Protection Agency Act 1992.

The public participation process required:

- A newspaper notice to be published;
- A site notice to be erected;
- Notification to be issued to the planning authority in whose functional area the activity is located, namely Offaly County, West Meath and Meath County Councils); and
- The application to be placed on public display at the EPA's offices from the date of receipt of the application until 2 months after the licence was granted.

Pursuant to this licence, Bord na Móna is permitted to carry out the extraction of peat in the course of business which involved an area exceeding 50 hectares. The IPC Licence contains

conditions relating to operation and monitoring, emissions to water and air, water protection, waste management and bog rehabilitation. The licence sets emission limit values which are subject to ongoing monitoring by Bord na Móna to ensure licence compliance as well as regulatory oversight and enforcement by the EPA. Bord na Móna has also been audited and inspected, in relation to compliance with the conditions of its IPC Licences by the EPA. The Applicant's AERs, submitted in compliance with the conditions set out within IPC Licence P0501-01, as well as any reports of non-compliance, incidents, contamination events, and licence audits carried out by the EPA, are also available for public review via the EPA's web portal (<https://leap.epa.ie/licence-profile/P0501/compliance>). This facility provides further opportunities for the public to participate within the on-going management of the Applicant's licensed operations.

In addition to EPA oversight, Bord na Móna has engaged on an ongoing basis with a broad range of statutory consultees, environmental organisations, stakeholders and interested parties in relation to peatland management environmental protection, biodiversity enhancement, decommissioning and rehabilitation measures. Such engagement has included consultation with the EPA, National Parks and Wildlife Service, Inland Fisheries Ireland, local authorities, the Heritage Council, Coillte, An Taisce, the Irish Peatland Conservation Council, Bird Watch Ireland, Waterways Ireland and other stakeholders.

Bord na Móna has also prepared and implemented Biodiversity Action Plans across its peatland estate and facilitated stakeholder engagement through annual Biodiversity Action Plan review events. These initiatives provided further opportunities for consultation and information sharing in relation to the environmental management of the peatlands.

The availability of extensive environmental monitoring data, compliance records, ecological information, hydrological data and historical operational records has enabled the preparation of a comprehensive rEIAR and rNIS in support of this application. The environmental effects of the peat extraction activities remain capable of detailed assessment and evaluation by An Coimisiún Pleanála.

Furthermore, the substitute consent process itself provides for public participation through statutory public notices, public inspection of the application documentation, including the rEIAR and rNIS, and the opportunity for interested parties to make submissions and observations to the Commission.

Having regard to the extensive environmental information available, the long-standing environmental regulation of the Application Site by the EPA, the ongoing engagement with statutory bodies and stakeholders, the preparation of a comprehensive rEIAR and rNIS, and the public consultation procedures associated with the substitute consent process, it is submitted that there has been no substantial impairment to the ability to carry out an Environmental Impact Assessment or Appropriate Assessment of the development, or to provide for public participation in those assessments. Accordingly, the criterion set out in section 177K(J1)(c) of the Act is satisfied.

6.4 (D) THE ACTUAL OR LIKELY SIGNIFICANT EFFECTS ON THE ENVIRONMENT OR ADVERSE EFFECTS ON THE INTEGRITY OF A EUROPEAN SITE RESULTING FROM THE CARRYING OUT OR CONTINUATION OF THE DEVELOPMENT

Industrial-scale peat extraction was on-going within the Application Site prior to 1988, with peat extraction commencing as early as 1958 for individual bogs within the Application Site. The bog development works and industrial scale peat extraction activities have over the decades elicited a direct change in habitat composition within and adjacent to areas of production and in areas of ancillary activity. This habitat change resulted from, inter alia, localised changes in hydrology associated with land drainage and from direct removal of vegetation and peat from the production areas. In terms of the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out of the subject peat extraction activities and associated site development work, it is noted that peat extraction has historically had the potential to result in the following impacts:

- Habitat change;
- Change in Water Quality;
- Change in Hydrological Regime;
- Disturbance to Species.

The Application Site does not contain any designated European sites. A total of 11 European sites, comprising nine SACs and two SPAs, are located within 15 km of the Application Site. The nearest European sites are Raheenmore Bog SAC (Site Code: 000582) and Split Hills and Long Hill Esker SAC (Site Code: 001831), located approximately 1.3 km southwest and 1.4 km west of the Application Site, respectively. Other European sites within the wider surrounding area include Mount Hevey Bog SAC (Site Code: 002342), Lough Ennell SAC (Site Code: 000685), River Boyne and River Blackwater SAC (Site Code: 002299), Wooddown Bog SAC (Site Code: 002205), Charleville Wood SAC (Site Code: 000571), Clara Bog SAC (Site Code: 000572), The Long Derries, Edenderry SAC (Site Code: 000925), Lough Ennell SPA (Site Code: 004044) and River Boyne and River Blackwater SPA (Site Code: 004232). These European sites have been considered as part of the Appropriate Assessment process and are assessed in detail within the remedial Natura Impact Statement, where relevant.

With regard to national designations, no NHAs or pNHAs occur within the Application Site. However, a number of nationally designated sites occur within the wider surrounding area, including the Grand Canal pNHA, which lies approximately 0.7km to the south of the Application Site..

The environmental effects arising from the peat extraction activities have been comprehensively assessed within the rEIAR and rNIS submitted with this application. These documents evaluate the actual and likely significant effects of the development on environmental receptors, including biodiversity, water quality, hydrology, landscape, cultural heritage and material assets, as well as potential effects on European sites.

The Application Site has also operated under EPA regulation through IPC Licence P0501-01 since April 2000. Throughout this period, peat extraction activities were subject to environmental monitoring, emission controls, reporting requirements and regulatory oversight. Environmental management measures, including drainage controls, silt management measures,

settlement ponds and water quality monitoring programmes, were implemented and continuously reviewed as part of Bord na Móna's environmental management framework.

Having regard to the findings of the rEIAR and rNIS, it is submitted that the actual and likely significant environmental effects of the development have been comprehensively identified, assessed and presented to the Commission. Furthermore, the rNIS concludes that, either alone or in combination with other plans or projects, the development does not give rise to adverse effects on the integrity of any European site, having regard to its conservation objectives.

Accordingly, the Commission is in a position to fully assess the actual and likely environmental effects arising from the Peat Extraction, Current and Remedial Phase and to determine the substitute consent application on the basis of a robust environmental evidence base.

6.5 (E) THE EXTENT TO WHICH SIGNIFICANT EFFECTS ON THE ENVIRONMENT OR ADVERSE EFFECTS ON THE INTEGRITY OF A EUROPEAN SITE CAN BE REMEDIATED

The Application Site was operated by Bord na Móna under IPC Licence (Ref. P0501-01) between during the period of active peat extraction from May 2000 until the cessation of peat extraction in June 2020 and continues to operate in accordance with the conditions of that licence. The licence remains in force and will continue to regulate activities at the Application Site until such a time as the licence surrendered.

The IPC licensing regime provides a comprehensive framework for the protection and improvement of environmental quality and has evolved over time to reflect developments in national and European environmental legislation. The licence has been subject to a number of Technical Amendments, including amendments introduced to align the licence with the provisions of the *European Communities Environmental Objectives (Surface Water) Regulations, 2009*, the *Waste Management (Management of Waste from the Extractive Industries) Regulations*, and the *European Communities Environmental Objectives (Groundwater) Regulations, 2009*.

While the conditions prescribed under the licence in relation to water quality are to address 'current' environmental effects of peat extraction, they have been prescribed with regard to the objectives of the surface water regulations to 'maintain' or 'restore' the water quality to the defined 'Good Status'. The following amendments included under Technical Amendment (A) provide useful insight on the robust monitoring system required by the EPA for the protection of local hydrology:

- *6.2: The licensee shall, by the 1st February 2013, submit for agreement by the Agency a revised proposal for a surface water discharge monitoring programme. This programme shall have regard to the following:*
 - *The current status of each bogland (virgin, under development, operational or worked out);*
 - *The sensitivity of the receiving water;*
 - *The relevant River Basin Management Plan;*
 - *The nature, magnitude and variability of the discharges;*
 - *The reliability of the silt ponds control measures; and*
 - *The status of the silt pond upgrade programme*

The revised surface water discharge monitoring location programme shall ensure that a representative selection of all surface water emission points from boglands within the licensed area is monitored annually and that all emission points are monitored at least once every five years. Surface water emission points shall be monitored as set out in Schedule I(ii) Monitoring of Emissions to Water of this licence.

- **6.13:** *The licensee shall trend the monitoring results for total ammonia and determine any statistically significant relationship that exists between the results and the current status of each bogland (virgin, under development, operational or worked out), rainfall, silt pond control measures or other factors. The licensee shall report annually as part of the AER on the trends and on any statistically significant relationship identified.*

Importantly, Condition 10 of IPC Licence P0501-01 requires Bord na Móna to decommission and remove any infrastructure, material or substance that may give rise to environmental pollution and to implement an agreed rehabilitation plan for the cutaway bogs. These obligations provide a clear regulatory mechanism for the remediation of the Application Site.

- **10.1** *Following termination of use or involvement of all or part of the site in the licensed activity, the licensee shall:*
 - **10.1.1** *Decommission, render safe or remove for disposal/recovery, any soil, subsoils, buildings, plant or equipment, or any waste, materials or substances or other matter contained therein or thereon, that may result in environmental pollution.*
 - **10.1.2** *Implement the agreed cutaway bog rehabilitation plan (refer Condition 10.2).*
- 10.2** *Cutaway Bog Rehabilitation Plan:*
 - 10.2.1** *The licensee shall prepare, to the satisfaction of the Agency, a fully detailed and costed plan for permanent rehabilitation of the cutaway boglands within the licensed area. This plan shall be submitted to the Agency for agreement within eighteen months of the date of grant of this licence.*
 - 10.2.2** *The plan shall be reviewed every two years and proposed amendments thereto notified to the Agency for agreement as part of the AER. No amendments may be implemented without the written agreement of the Agency.*
- **10.3** *The Rehabilitation Plan shall include as a minimum, the following:*
 - **10.3.1** *A scope statement for the plan; to include outcome of consultations with relevant Agencies, Authorities and affected parties (to be identified by the licensee).*
 - **10.3.2** *The criteria which define the successful rehabilitation of the activity or part thereof, which ensures minimum impact to the environment.*
 - **10.3.3** *A programme to achieve the stated criteria.*
 - **10.3.4** *Where relevant, a test programme to demonstrate the successful implementation of the rehabilitation plan.*
 - **10.3.5** *A programme for aftercare and maintenance.*
- **10.4** *A final validation report to include a certificate of completion for the Rehabilitation Plan, for all or part of the site as necessary, shall be submitted to the Agency within six months of execution of the plan. The licensee shall carry out such tests, investigations or submit certification, as requested by the Agency, to confirm that there is no continuing risk to the environment.*

The discharge of Condition 10 will facilitate rehabilitation of the Application Site in conjunction with any parallel future uses (such as wind energy infrastructure). Accordingly, it is anticipated that significant effects on the environment can be remediated.

The remedial EIAR and remedial NIS submitted with this application assess the environmental effects associated with peat extraction and ancillary activities undertaken at the Application Site, together with subsequent decommissioning, site management and proposed rehabilitation measures. The assessments conclude that are capable of being managed, mitigated and, where appropriate, remediated through the implementation of ongoing decommissioning and rehabilitation measures and compliance with the requirements of the IPC.

Furthermore, the remedial NIS concludes, on the basis of objective scientific information and having regard to the conservation objectives of European sites, that the peat extraction

activities and associated works undertaken at the Application Site have not adversely affected the integrity of any European site, either alone or in combination with other plans or projects. Accordingly, the criterion set out in Section 177K(1)(e) of the Planning and Development Act 2000 (as amended) is satisfied.

Accordingly, it is submitted that any significant effects on the environment arising from the peat extraction activities are capable of remediation through the Cutaway Bog Decommissioning and Rehabilitation Plans. Furthermore, having regard to the findings of the rNIS, no adverse effects on the integrity of any European site have been identified. Therefore, the criterion set out in section 177K(J1)(e) of the Act is satisfied.

6.6 (F) WHETHER BORD NA MÓNA HAS COMPILED WITH PREVIOUS PLANNING PERMISSIONS GRANTED OR HAS PREVIOUSLY CARRIED OUT UNAUTHORISED DEVELOPMENT

Bord na Móna is the one of the State's largest landowners, managing 80,000 hectares of land throughout Ireland. Within this overall landholding, Bord na Móna has obtained and implemented a significant number of planning permissions for a wide range of developments, including renewable energy projects, electricity infrastructure, rail crossings, industrial facilities, environmental improvement works and associated ancillary development.

Bord na Móna has a long-established history of engagement with the planning system and has demonstrated a consistent commitment to securing planning permission for developments where such consent was required. Bord na Móna currently operates a substantial portfolio of permitted developments and has complied with the conditions attached to those permissions through the implementation of environmental management, monitoring and reporting measures, where required.

It is also relevant to note that Bord na Móna was established in 1946, predating the introduction of the modern planning code under the Local Government (Planning and Development) Act 1963. Consequently, certain elements of Bord na Móna's historic infrastructure and operations were established prior to the introduction of statutory planning controls.

In relation to the Application Site, peat extraction activities were undertaken on the basis that they benefited from exempted development status under the prevailing legislative framework. As outlined in the preceding sections, Bord na Móna held the belief that the development was not unauthorised. Bord na Móna also operated the Application Site under IPC Licence P0501-01 and remained subject to ongoing environmental regulation and oversight by the Environmental Protection Agency.

Furthermore, Bord na Móna has never been the subject of any actual or threatened proceedings under section 160 of the Planning and Development Act 2000 (as amended) by Offaly County Council, Westmeath County Council or Meath County Council in respect of peat extraction activities carried out within the Application Site.

Following clarification of the legal position arising from the judgment in *Friends of the Irish Environment Ltd. v Minister for Communications, Climate Action and Environment & Ors.* [2019] IEHC 646, Bord na Móna dutifully ceased industrial-scale peat extraction within the Application Site and voluntarily commenced the substitute consent process without prejudice.

Having regard to the foregoing, it is submitted that Bord na Móna has a strong record of compliance with the planning system, has sought planning permission where required, and has not demonstrated a pattern of carrying out unauthorised development in relation to peat extraction. The circumstances giving rise to this application arose in the context of a complex and evolving legislative framework relating to peat extraction rather than any deliberate attempt to avoid the requirements of the planning legislation. Accordingly, the criterion set out in section 177K(J1)(f) of the Act is satisfied.

6.7 G) SUCH OTHER MATTERS AS THE BOARD CONSIDERS RELEVANT

As outlined previously, Bord na Móna formally announced in January 2021 that all industrial-scale peat extraction on lands within its management would permanently cease. Consequently, the substitute consent application relates to historic peat extraction which ceased in June 2020, and ongoing and proposed decommissioning and rehabilitation activities as part of the Current and Remedial Phase.

The Climate Status Report for Ireland 2023 reflects on clear and distinct impacts arising from climate change effects within an Irish context. The reduction of emissions is a key proponent of the enacted Climate Action and Low Carbon Development (Amendment) Act 2021 ('the Climate Act'), which aims to achieve a climate neutral economy by no later than 2050, and a 51% reduction in greenhouse gas emissions by 2030. These objectives have been translated into the Climate Action Plan 2024/2025 (CAP), which sets out an ambitious course of action over the coming years to ensure that Ireland achieves its legally binding target of net-zero greenhouse gas emissions no later than 2050, and a reduction of 51% (including from Land Use, Land Use Change and Forestry - LULUCF) over the period 2018 to 2030. The rehabilitation of the Application Site can contribute to carbon sequestration and the reduction of carbon emissions associated with land use in line with the CAP.

Additionally, Section 15(1) of the Climate Act requires relevant bodies to, in so far as practicable, perform their functions in a manner consistent with:

- (a) the most recent approved climate action plan,*
- (b) the most recent approved national long term climate action strategy,*
- (c) the most recent approved national adaptation framework and approved sectoral adaptation plans,*
- (d) the furtherance of the national climate objective, and*
- (e) the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State.*

This requirement of relevant bodies has been subject to scrutiny in the Irish legal system, with the Supreme Court delivering judgment in *Coolglass Wind Farm Limited v An Coimisiún Pleanála* [2026] IESC 5 on 4th February 2026.

It is considered that should the Commission grant substitute consent in respect of peat extraction and ancillary activities at the Application Site, they would be acting in a manner consistent with plans, policies and objectives as defined in Section 15(1) of the Climate Act. Industrial peat extraction ceased at the Application Site in 2020. Since that time, a programme of decommissioning and rehabilitation works has been implemented in line with Bord na Móna's

IPC Licence. The key objective of these measures is achieving environmental stability. This will also benefit biodiversity and water (e.g. water quality and catchment management).

The Application Site is an important natural asset and has the potential to play a strategic role in meeting national climate action targets, which have become all the more significant in light of the Climate Act, the Climate Action Plan 2025, the Climate Change Performance Index 2025, and the Change Advisory Council's Annual Report 2025. These reports provide an updated assessment of both global climate change and climate change in the context of Ireland and identify the increasingly discernible impacts climate change is having on both the environment and society. In line with Bord na Móna's vision to assist in achieving a climate neutral Ireland by 2050, it is intended to utilise the Application Site for both peatland rehabilitation and renewable energy infrastructure. The regularisation, without prejudice, of the planning status of the Application Site via a granting of substitute consent is a critical component to delivering this important future development and crucially ensuring that the lands deliver the maximum climate and environmental benefits possible for the Irish state.

7. CONCLUSION

This Planning Report has been prepared in support of an application for substitute consent made by Bord na Móna Energy in respect of peat extraction activities and associated works undertaken within the Application Site comprising Toar, Derryarkin, Ballybeg, Drumman and Derryhinch Bogs, located within Counties Offaly, West Meath and Meath.

For the purposes of the rEIAR and rNIS, the Project is described under three distinct phases:

- ‘Peat Extraction Phase’: peat extraction and all ancillary works at the Application Site from July 1988 to the cessation of peat extraction in June 2020 (July 1988 – June 2020). This Phase is described in Section 4.7 of Chapter 4 of the rEIAR submitted with the Substitute Consent application.
- ‘Current Phase’: management of the Application Site since June 2020 to the present day. This Phase is described in Section 4.8 of Chapter 4 of the rEIAR submitted with the substitute consent application.
- ‘Remedial Phase’: the activities proposed to be carried out at the Application Site in the future. This Phase is described in Section 4.9 of Chapter 4 of the rEIAR.

The Planning Report has examined the statutory planning framework applicable to the Application Site, including national, regional and local planning policy, the historic planning policy context applicable during the period of peat extraction, and the legislative provisions governing substitute consent applications under the Planning and Development Act 2000 (as amended).

The assessment demonstrates that the peat extraction activities undertaken within the Application Site were consistent with national energy policy and aligned with the planning policy framework in place during the operational life of the bogs. Historic Development Plans recognised the significant contribution of peat extraction to employment, rural development and national energy security, whilst more recent policy has increasingly focused on peatland rehabilitation, climate action, biodiversity enhancement, renewable energy development and the sustainable transition of former industrial peatlands.

The Application Site has been subject to extensive environmental regulation and monitoring throughout much of its operational life through IPC Licence P0501-01, issued by the Environmental Protection Agency. Environmental management measures, monitoring programmes and rehabilitation obligations have been implemented over many years to avoid, minimise and remediate environmental effects associated with peat extraction activities.

A comprehensive rEIAR and rNIS accompany this application and provide a robust assessment of the actual and likely significant effects of the historic development on the environment and on European sites. These assessments demonstrate that the environmental effects of the peat extraction activities can be fully assessed by An Coimisiún Pleanála and that the substitute consent process facilitates meaningful public participation in that assessment.

This report has also considered the exceptional circumstances test set out under section 177K(J1) of the Planning and Development Act 2000 (as amended). Having regard to the historical legislative framework governing peat extraction, the long-standing exempted development provisions applicable to peat extraction activities, the considerable legal and regulatory uncertainty that existed in relation to the planning status of ongoing peat extraction

between 2012 and 2019, Bord na Móna's operation under EPA regulation and oversight, and the cessation of industrial-scale peat extraction activities in 2020, it is submitted that exceptional circumstances exist which justify the granting of substitute consent.

Furthermore, Bord na Móna permanently ceased industrial-scale peat extraction activities in January 2021 across the entire Bord na Móna landholding and has since focused on the rehabilitation and long-term management of its peatland assets. The rehabilitation measures proposed and being implemented across the Application Site will contribute to the sustainable transition of former industrial peatlands and support wider climate action, biodiversity and environmental objectives.

Considering the following:

- Planning policy framework applicable to the Application Site;
- Findings of the rEIAR and rNIS;
- Ongoing rehabilitation of the Application Site;
- Absence of any impediment to undertaking EIA or AA;
- the ability to remediate environmental effects through existing rehabilitation measures and EPA licence requirements; and
- the exceptional circumstances identified in this report,

this Planning Report demonstrates that the requirements of the Planning and Development Act 2000 (as amended) have been satisfied and that a justification exists for the grant of substitute consent for the peat extraction activities and associated bog development works undertaken within the Application Site.

Accordingly, the Applicant respectfully requests that An Coimisiún Pleanála grant substitute consent for the development the subject of this application.

Appendix 1 SITE LOCATION MAP



Legend

Application Site Boundary

01.53 Kilometers

Spatial Reference

Datum: IRENET95

EPSG: 2157

Copyrights:

Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community,

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10/09/2026

First issue

S.P

B.K

Rev

Date

Description

By

Chkd.

Client:

Project:

Derrygreenagh Substitute Consent

Title:

Figure 1-1:
Site Location Map

Scale @ A3:

1:80,000

Prepared by:

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Map Ref:

Draft:

12334-024-P.App.BO-OSM-TOB-A

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