

Bord na Móna

Derryadd, Derryaroge and Lough Bannow Bogs –
Application for Substitute Consent

Planning Report

March 2025



Derryadd, Derryaroge and Lough Bannow Bogs Substitute Consent Application

Planning Report

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Galway Office Fairgreen House, Fairgreen Road, Galway, H91 AXK8, Ireland. Tel: +353 (0)91 565 211	Dublin Office Block 10-4, Blanchardstown Corporate Park, Dublin 15, D15 X98N, Ireland. Tel: +353 (0)1 803 0406	Castlebar Office Market Square, Castlebar, Mayo, F23 Y427, Ireland. Tel: +353 (0)94 902 1401
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1.0 INTRODUCTION

This planning report has been prepared to accompany an application for substitute consent to An Bord Pleanála to regularise the planning status of historic peat extraction and ancillary activities at Derryaroge, Derryadd and Lough Bannow Bogs (herein referred to as the 'Application Site').

Bord na Móna Energy Ltd (hereafter referred to as 'Bord na Móna' or 'the Applicant') are applying to An Bord Pleanála for Substitute Consent under Section 177E (Application for Substitute Consent) of the Planning and Development Act 2000, as amended, which will hereafter be referred to as the 'Planning Acts'.

In line with the accompanying rEIAR, the project is defined under three different timeframes termed 'phases':

- 'Peat Extraction Phase': peat extraction and all ancillary works at the Application Site from July 1988 to the cessation of peat extraction in July 2019 (July 1988 – July 2019). The Peat Extraction Phase is described in Section 4.7 of Chapter 4 of the rEIAR submitted with the substitute consent application.
- 'Current Phase': the management of the Application Site since July 2019 (July 2019 to present day). The Current Phase is described in Section 4.8 of Chapter 4 of the rEIAR submitted with the substitute consent application.
- 'Remedial Phase': the activities intended to be carried out at the Application Site into the future. The Remedial Phase is described in Section 4.9 of Chapter 4 of the rEIAR submitted with the substitute consent application.

2.0 SITE LOCATION AND CONTEXT

The Application Site (see Site Location Map 1 – Appendix 1) consists of three bogs (Derryaroge, Derryadd and Lough Bannow bogs), located within the Mountdillon Bog Group in Co. Longford. The Application Site comprises an area of approximately 2,243 hectares in total and lies approximately 1 km east of the town of Lanesborough and the R392 Regional Road, which runs from Lanesborough in the north to Ballymahon in the south. The individual bogs comprising the Application Site are described as follows:

- Derryaroge Bog has a total area of 863ha. Site preparation works commenced in Derryaroge Bog in 1949, with peat extraction commencing in 1952, and ceasing in July 2019. The present day topography within the bog ranges from 35 - 45mOD. A mineral island is located on the bog, which is not under ownership of the Applicant and is outside the boundary of the Application Site; it predominantly comprises agricultural grassland. The bog is located within two main sections, which are divided by the mineral island described above, including a western (smaller) section and an eastern section in which the majority of Derryaroge Bog unit is located. There is approximately 4km of rail line to the west of the site which connects the Derryaroge Bog (and the Application Site writ large) with the former Lough Ree Power Station (LRPS) in Lanesborough.
- Derryadd Bog has a total area of 649ha. Site preparation works commenced in Derryadd Bog in 1960, with peat extraction commencing in 1964, and ceasing in July 2019. The bog is currently drained by a series of southeast-northwest orientated drains spaced at approximately 15m intervals. The present day topography within the bog ranges from 39-48mOD. The bog is located within one main block. Two mineral islands (Annaghmore and Annaghbeg) are located centrally within the Application Site; these areas are not within the ownership of Bord na Móna, were never used for peat extraction, and are privately managed for agriculture. A local access road which runs through Bord na Móna

lands connects the mineral islands with a public road to the east of the bog which runs in a north south direction between the N63 National Road and R398 Regional Road. The N63 Longford to Roscommon Road separates Derryadd Bog from Derryaroge Bog located directly to the north.

- Lough Bannow Bog has a total area of 731ha. Site preparation works commenced in Lough Bannow Bog in 1960, with peat extraction commencing in 1964, and ceasing in July 2019. The present-day topography within the bog ranges from 43-58mOD. The site situated approximately 7 km south-east of Lanesborough in County Longford adjacent the R392 Regional Road, which lies to the west of the bog. The R398 Regional Road runs along the northern boundary of the bog while the L1136 Local Access Road (Keenagh road) runs along part of the southern section of the bog. The Royal Canal and Royal Canal Greenway is located approximately 500 m to the east of the bog. Two large mineral islands are located inside the Application Site boundary but are not under Bord na Móna ownership. One of these islands comprises of agricultural grassland, while the other contains of a mix of agricultural lands, woodland and Irish Society for the Prevention of Cruelty to Animals (ISPCA) National Animal Centre buildings. A guyed wind monitoring mast is located on Lough Bannow Bog (Longford Co Co Refs. 1586, 20183 and 23108).

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

Table 1: Application Site Townlands and Spatial Footprint Breakdown

Bog	Townlands	Spatial Footprint (Ha)
Derryaroge	Cloonkeel, Ballynakill, Mount Davys, Cloonbrock, Cloonfore, Cloonbony, Kilknacarrow, Derryaroge, Cloonbearla, Rappareehill, and Barnacor.	863
Derryadd	Cloonfiugh, Annaghbeg, Derrygeel, Cloonfore, Derraghan More, Derryshannogue, Corralough, Cloontabeg, Cloontamore, Grillagh, Rappareehill, Annaghmore, and Derryad.	649
Lough Bannow	Derraghan Beg, Corlea, Ards, Derraghan More, Mosstown, Kilmakinlan, Lyneen, Derryoghil, Derryglogher, Cloontabeg, Cloontamore, Derryart, Derrynaskea, and Coolnahinch.	731
Total Red Line Boundary Area		2,243

There are a number of ancillary services and infrastructure associated with the subject peat extraction works within the footprint of the Application Site, including:

- Railway infrastructure (all bogs within the Application Site);
- Internal machine passes/tracks (all bogs within the Application Site);
- Silt ponds and drains (all bogs within the Application Site); and
- Pumping stations (all bogs within the Application Site).

2.1 LEGISLATIVE CONTEXT FOR SUBSTITUTE CONSENT

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 the 15th 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 result of the commencement of this legislation was, inter alia, the allowance for pre-application consultations with the Board, as well as providing for a single stage application process which removes the requirement to apply for leave to apply from the Board. Consequently, the then pending leave to apply application (ABP Ref. LS14.313897) was deemed withdrawn by the Applicant by the Board on 15th January 2024.

The purpose of this current substitute consent application is to regularise, without prejudice, the planning status of the peat extraction and all associated activities completed within the Application Site

2.2 PEAT EXTRACTION – EIA AND AA CONTEXT

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 of 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, 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 Board'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 Board'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 Section 5.2 of the rEIAR for further details on the historic planning legislation relating to peat extraction activities.

2.3 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 legislation¹ that provided for an exemption from planning permission for large scale peat extraction activity (30ha 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 challenged², and ultimately quashed, by Mr Justice Simons by way of his judgment on 20th September 2019, and the following Order (18th 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.

2.4 BASELINE ASSESSMENT DATE

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 Directive in respect of development which took place before they came into force, i.e. the latest date for transposition of those Directives, 3rd July 1988 and 21st May 1994 respectively. Put simply, the Directives do not purport to have retrospective effect.

Relevant Case Law

In this regard, the CJEU has held that where applications for consent for projects were lodged prior to the date for transposition of the EIA Directive, then the requirements of the Directive do not apply (see, for instance, Case C-431/92, *Commission v Germany*, Case C-81/96, *Burgemeester v Gedeputeerde van Staten Noord Holland*).

C-209/04, *Commission v Austria*, and C-226/08, *Stadt Papenburg v Germany* make clear that similar considerations apply in relation to the Habitats Directive. 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.

It seems clear that identical considerations apply in respect of development which has actually taken place before the Directives have legal effect. In Case C-275/09, *Brussels Airport Case*, the CJEU was asked to determine whether a consent to operate an existing airport could be regarded as a project within the meaning of the Directive. The Court made clear that in the absence of any works, the consent could not be regarded as “construction” within the meaning of the Directive and therefore was not subject to its requirements. The Court went on to consider whether changes or modifications to the original airport could trigger a requirement for EIA:

¹ European Union (Environmental Impact Assessment) (Peat Extraction) Regulations 2019, and Planning and Development Act 2000 (Exempted Development) Regulations 2019

² *Friends of the Irish Environment Ltd v Minister for Communications, Environment & Climate Action & Ors.* [2019] IEHC 646

“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)

It appears from the foregoing, that in the view of the CJEU, 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.

In this regard, it is noted that in *Bulrush Horticulture v An Bord Pleanála* [2018] IEHC 58, the High Court rejected an argument that because development had commenced prior to the latest date for transposition, no EIA could be required in relation to ongoing development. It. Therefore, upheld the Board’s conclusion that development *which had taken place since 2012*, was not exempted development as it required EIA. There was no suggestion that all development since commencement required EIA; in fact, the Board had expressly concluded that development up to 2012 was exempted and the High Court concluded that removal of that exemption did not have retrospective effect. Moreover, the Irish courts have consistently emphasised that although the EIA Directive has a broad scope, it cannot be interpreted to artificially extend its scope where it simply does not apply: see, for instance, *Kavanagh v An Bord Pleanála* [2020] IEHC 259, *Sweetman v An Bord Pleanála* [2020] IEHC 39, *O’Sullivan v An Bord Pleanála* [2022] IEHC 117.

1988 Baseline

In the circumstances, the earliest development in respect of which it could be necessary to carry out a retrospective environmental impact assessment or appropriate assessment in order to meet the requirements of EU and domestic law, is development which has taken place since July 1988. The baseline against which the development should be assessed would, if that earliest date was appropriate, be the condition of the relevant lands as that date.

Although no EIA or AA can be required of development which took place prior to the latest date for transposition of the Directives, it is clear that in considering cumulative or in combination effects of development to which the Directives do apply, it is necessary to consider the effects of that development cumulatively or in combination with existing development, even development which took place before the Directives came into force (see Case C-142/16, *Commission v Germany*).

2.5 WORKS FOR WHICH SUBSTITUTE CONSENT ARE BEING SOUGHT

The peat extraction works undertaken at the Application Site, which are subject to this application seeking substitute consent, consist of the following:

- Installation of surface water drainage infrastructure at Derryaroge, Derryadd and Lough Bannow bogs to facilitate peat extraction activity from 1988 to July 2019;
- Vegetation clearance to facilitate peat extraction activity from 1988 to July 2019;
- Industrial scale peat extraction from 1988 to July 2019;

- Use and maintenance of pre-existing ancillary supporting infrastructure and services to facilitate peat extraction and associated activities (e.g. railway infrastructure, fixed fuel tanks, drainage (drains, silt ponds, pumps), machine passes etc.), from 1988 to present day;
- Control Measures associated with the above, inclusive of the IPC Licence measures (Ref. P0503-01) which commenced from May 2000 onwards to the present day;
- All associated site development and ancillary works.

Other infrastructure such as workshops, storage and loading 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, and consequently do not form part of this substitute consent application. Nonetheless, they are assessed within the remedial Environmental Impact Assessment Report (rEIAR) and remedial Natura Impact Statement (rNIS).

Industrial scale peat extraction permanently ceased by the Applicant at the Application Site in July 2019.

3.0 BACKGROUND

3.1 DEVELOPMENT AT THE APPLICATION SITE

The development of the Application Site for peat extraction was intrinsically linked to the plans outlined in a government White Paper, which became known as the First Development Programme (further detail on the historical background of Bord na Móna is presented in Section 4.2 below, and in Chapter 5 – Planning Policy of the rEIAR submitted with the substitute consent application). Both the First and Second Development Programmes outlined plans for the initial construction and subsequent expansion of Lanesboro Power Station, which was intended to be fuelled in part by peat from the Application Site. Consequently, in advance of the construction of Lanesboro Power Station, which was commissioned and began firing sod peat from the Application Site in 1958, development began in 1949 at the Application Site to ensure that the site was sufficiently drained, a process which could take a number of years, to facilitate peat extraction. This ensured sufficient stockpiles of peat were available at the point of the commissioning of Lanesboro Power Station, and ensured ongoing continuity of supply to same, thereby bolstering security of electricity supply to the national grid.

Site preparation works (e.g. site clearance, installation of surface water drainage and transportation infrastructure (rail line) etc.) initially began in 1949 within the Application Site during the First Development Programme. Industrial scale peat extraction subsequently commenced from 1952.

Drainage works commenced in 1949 at the Application Site at Derryaroge Bog. The first peat extraction began at the Application Site in 1952 at Derryaroge Bog in the form of sod peat. In 1960, the installation of drainage commenced at both Derryadd and Lough Bannow bogs, with milled peat extraction commencing in those bogs in 1964. Initially, the sod peat which was extracted was used domestically and to supply the Dublin market. The Electricity Supply Board (hereafter ‘the ESB’) commissioned Lanesboro Power Station in 1958, and it was fuelled by peat extracted from the Application Site. The capacity of Lanesboro Power Station was increased following the construction and commissioning of Unit 2 and Unit 3 within the plant in 1966 and 1983 respectively. Lanesboro Power Station was decommissioned in 2004, and replaced by Lough Ree Power Station, which was commissioned in 2004 by the ESB. Lough Ree Power

Station was also fuelled by peat supplied by Bord na Móna, including from the Application Site. Lough Ree Power Station closed at the end of 2020.

Industrial-scale peat extraction ceased at the Application Site in July 2019, and the Applicant formally announced in January 2021 that peat extraction across all its land holdings would permanently cease. As part of the decommissioning process, the process of transporting remaining peat stockpiles off the bogs commenced following the cessation of peat extraction in July 2019. The stockpiles were transported to Lough Ree power station until its closure in 2020 and then to Edenderry Power Station and Derrinlough Briquette Factory. The final stockpiles were transported off the bogs in November 2022.

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 application.

3.2 PLANNING HISTORY OF THE APPLICATION SITE

There have been a number of previous planning applications on the Application Site, including:

Table 2: Planning History within the Site

Register Reference	Description of Development	Year of Decision
Longford Co, Co. Reg. Ref. 08/623	Grant of permission for a wind monitoring mast at Derryaroge. This permission was for a period of five years.	20/03/2009
Longford Co, Co. Reg. Ref. 14/35	Grant of permission for retention of a wind monitoring mast at Derryaroge. This refers to the same mast as permitted under 08/623. This revised permission was granted for a period of 10 years.	05/06/2014
Longford Co, Co. Reg. Ref. 15/86	Grant of permission (dated 25/08/15) for a wind monitoring mast at Derrynaskea (Lough Bannow Bog). This permission was granted for a period of five years.	25/08/2015
ABP Ref. PL14.PC0233	Request to enter into pre-application consultation pursuant to Section 37A of the Planning and Development Act 2000, as amended for a proposed wind farm of 29 wind turbines with an output of 90MW located in various townlands in County Longford. It was determined Strategic Infrastructure Development.	22/06/2018
Longford Co, Co. Reg. Ref. 20/183	Continued use of an existing guyed wind monitoring mast, with instruments, 100m in height for a further period of three years, the purpose of the mast is to assess the suitability of the company's adjacent lands for wind farm development, previous planning application number 15/86.	05/11/2020

ABP Ref. 303592	A 10-year planning permission for the construction of a wind farm comprising 24 no. wind turbines, 1 no. 110kV substation and all related works.	Decision Quashed by High Court on 14/02/2022
Longford Co, Co. Reg. Ref. 22/275	Permission for an underground electrical cable and transformer compound which will connect permitted solar farms within the townlands of Middleton, Ballycore, Treamboy, Newtown, Ballynakill, Bunacloy to the national grid via the proposed transformer compound at Lough Ree Power Station.	19/05/2023
Longford Co, Co. Reg. Ref. 23/108	Continued use of an existing guyed wind monitoring mast, with instruments, 100m in height for a further period of three years. The purpose of the mast is to assess the suitability of the company's adjacent lands for wind farm development. Previous planning application numbers: 15/86 and 20/183 on its lands.	09/01/2024
ABP Ref. 313897	Application for Leave to Apply for Substitute Consent for peat extraction and all associated bog development works.	Withdrawn
ABP Ref. 318974	Request to enter into pre-application consultation for a future substitute consent application pursuant to Section 177E(1A) of the Planning and Development Act 2000, as amended.	Consultation concluded

It is important to emphasise that these developments, where granted, have been constructed and operated in line with their specific conditions of permission and considered compliant within the planning system. As such, it is not intended that these developments are subject to a requirement for substitute consent. However, they are considered within the relevant environmental studies carried out as part of the rEIAR and remedial Natura Impact Statement (rNIS) where necessary.

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.

3.3 DESCRIPTION OF THE DEVELOPMENT

The Application Site began operations in 1949 with the clearance and drainage of Derryaroge Bog to facilitate sod peat extraction. Sod peat extraction commenced in Derryaroge in 1952. This was followed by the commissioning of the first sod peat power station at Lanesborough in 1958. Drainage at Derryadd and Lough Bannow Bogs to facilitate milled peat extraction commenced in 1960. From 1964 onwards, milled peat was extracted at each of the three bogs, which was the primary extraction method with only a small part of Derryaroge Bog continuing to extract sod peat. Sod peat from Derryaroge supplied Unit 1 (20MW) of the Lanesboro Power Station (LPS), from its opening in 1958. Subsequently, a 40MW Unit 2 and 45MW Unit 3 of

Lanesboro Power Station were commissioned in 1966 and 1983 respectively. Rather than sod peat, Unit 2 and Unit 3 were fired by milled peat, also supplied by Bord na Móna. Unit 1 of Lanesboro Power Station was closed in 1983, with Unit 2 and Unit 3 continuing to operate until 2004 and 2003 respectively. Lough Ree Power Station, a 100MW generating unit, was commissioned in 2004, and ultimately replaced the Lanesboro Power Station. Lanesboro Power Station was demolished in 2007. Lough Ree Power Station was fueled by milled peat from the Application Site prior to cessation of peat extraction in July 2019 and the subsequent closure of the power station in December 2020.

The Application Site comprises an area of approximately 2,210 ha, which consists primarily of cutaway bog, internal roads, railway network, ancillary structures and drainage features. There is an existing wind monitoring mast located within Lough Bannow Bog and a telecommunication mast located within Derryaroge Bog.

The Application site is approximately 12km long in the northwest/southwest direction and is approximately 4km wide, at its widest point, in an east/west direction. The closest settlements to the Application Site are Derraghan village and Lanesborough town located approximately 200m and 500m to the west, respectively. Other towns and villages in the immediate surroundings of the Application Site include Keenagh and Killashee while the main urban centre in the region, Longford Town, is located approximately 9km to the northeast of the Application Site.

The surrounding landscape is a mixture of agricultural land, forestry, and cutaway peatland. The landscape is predominately flat. The most significant feature in the surrounding landscape is 'Bawn Mountain' which is located 8km to the east of Lough Bannow Bog.

In accordance with Condition 10 of the Integrated Pollution Control (IPC) (licence Reg. No. P0504-01), Cutaway Bog Decommissioning and Rehabilitation Plans are currently being developed and implemented as appropriate across each of the three bogs within the Application Site. The key objective of Bord na Móna peatland rehabilitation is environmental stabilisation. The rehabilitation of the bogs will support biodiversity e.g., plants, insects, bird and mammals, and the formation of wetland habitats. In addition, peatland rehabilitation will bring a range of benefits to the local community via improvements in the local landscape and it is also complying with national policies and strategies regarding the reduction of carbon emissions, supporting biodiversity and enhancing water quality. It is anticipated it will take up to 30 years for naturally functioning wetland and peatland ecosystems to fully re-establish.

The peat extraction activities and all ancillary works undertaken at the Application Site, which comprise the development for which Substitute Consent is being sought consists of the following:

- Installation of surface water drainage infrastructure at Mountdillion Bog Group, specifically at Derryadd, Derryaroge and Lough Bannow Bogs to facilitate peat extraction activities from 1988 to July 2019;
- Vegetation clearance to facilitate peat extraction activity from 1988 to July 2019;
- Industrial scale peat extraction (milled peat);
- Use and maintenance of pre-existing ancillary supporting infrastructure and services to facilitate peat extraction (e.g., railway infrastructure, fixed fuel tanks, drainage (drains, silt ponds, pumps), machine passes etc.), from 1988 to July 2019;
- Control Measures associated with the above, inclusive of the IPC Licence measures (Ref. P0504-01) which commenced from 2000 onwards to the present day; and,
- All associated site development and ancillary works.

The peat extraction activities are historic, with a considerable number of activities and site preparation works pre-dating 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 EIA and Habitats Directive transposition dates in 1988 and 1994, respectively. Other infrastructure such as workshops, storage and loading 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.

The workshops and offices at the Mountdillon Works were originally constructed in the early 1960s to support the peat extraction activities of bogs within the Application Site as well as wider afield within the Mountdillon Group of Bogs. Originally, the central Works site for the Mountdillon Bog Group was located at Mountdillon Bog in Co. Roscommon, northwest of the Application Site and across the Shannon River. These works are also referred to as 'Mountdillon Works', owing to their siting at Mountdillon Bog. The now-central Mountdillon Works site, which is adjacent to the Application Site in Co. Longford, became the central works site for the Mountdillon Bog Group when it was constructed in the early 1960s. The original Mountdillon Works located at Mountdillon Bog in Co. Roscommon is still present at that location today and is still used as a smaller satellite works location for machinery repair and material storage for the bog units within the Mountdillon Bog Group to the west of the Shannon River. Other smaller workshops and storage yards which were convenient for the workers on the bogs are also located across the Application Site.

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.

3.4 HISTORICAL PEAT EXTRACTION LICENSING, COMPLIANCE AND REGULATION

The Applicant was granted an IPC Licence (Ref. P0504-01) by the EPA for the Mountdillon Bog Group, within which the Application Site is located, on the 9th of May 2000. The IPC Licence is managed by the Applicant's Environmental Management Department in Land and Habitats, with a Compliance Officer located in these operational areas who manages the day-to-day compliance requirements.

The IPC Licence (Ref. P0504-01) (the "IPC Licence") regulates Bord na Móna's activities across the entire Mountdillon Bog Group, which includes the lands the subject of this application. IPC Licence conditions prescribed by the EPA are intended for the 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 contains 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, the Applicant 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 the Applicant's Annual Environmental Report (AER), which is submitted to the EPA by the 31st of March of each year. 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 Applicant'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 Applicant was the AER for 2023 and covers the 2023 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 the Application Site in September 2021, there were no non compliances recorded during this site visit.

3.5 MITIGATION AND MONITORING MEASURES

As the site is subject to an IPC Licence from the EPA, it is worth noting here the delineation between the Board and the EPA regarding mitigation and monitoring and the condition that can be imposed by the Board on the grand of substitute consent.

Section 99F (1) of the EPA Act states as follows:

"Notwithstanding section 34 of the [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 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:

(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."

However, the Planning and Development Act 2000 (as amended) does include the following provisions in relation to the monitoring of emissions at Section 177K (2E):

"(a)(iii) subject to paragraph (b), where appropriate, [the Board 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 conditions that may be imposed by the Board may also include a condition or 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 regardless of whether substitute consent is granted by the Board in respect of the Application Site, the Applicant intends to fully satisfy the requirements of Condition 10 of the IPC Licence. It follows that should the Board include a condition or conditions relating to remediation of all or part of the site on which the development which is the subject of the grant of substitute consent is situated, the Applicant will be well-placed to comply with those condition(s) to the fullest extent.

3.6 STATUTORY PLANNING POLICY CONTEXT

This section will outline relevant policies from the current Longford County Development Plan 2021-2027 and summarise previous Development Plans for context, where available, with regards to their policies relating to peat extraction.

From examination of the policies contained in the documents detailed, it is clear that the industrial activities on the Application Site have generally aligned with local planning policy through time. Bord na Móna's industrial legacy is acknowledged as a significant element of the landscape's cultural heritage and a vital contributor to the rural economy. In the historic Development Plans in particular (refer to Section 3.7.2), the importance of peat extraction as a key source of employment in the local area is highlighted. This employment was considered vital to rural economies such as the town of Lanesborough and other local settlements. These historic Development Plans also outline specific policies in support of peat extraction and these are set out in further detail in Chapter 5 of the rEIAR. More recent Development Plans have incorporated policies to support the future transition of the peatlands, recognising their potential with respect to meeting both the evolving climate and energy objectives in addition to the ecological and amenity potential of the area.

3.6.1 Longford County Development Plan 2021-2027

The Longford CDP 2021 – 2027 came in effect in November 2021 and sets out a number of policies that are relevant to the Application Site lands:

- CPO 10.43 - Support enhanced access to state, semi-state and private lands such as Bord na Móna bogs, forests, waterways, together with National Monuments and Historic Properties, for recreation and tourism purposes. Access should be planned and managed in a sustainable manner that protects heritage, environmental sensitivities, ecological corridors, and the ability of local infrastructure to support increased tourism.
- CPO10.44 - Continue to engage with the Waterways Ireland, NPWS, Coillte, ESB, Bord na Móna and other stakeholders and agencies with regard to tourism related uses of Lough Ree, forests, cut-away peatlands, restored bogs and related infrastructure and support the development of greenways/peatways and blueways at appropriate locations.
- CPO12.53 - Work with relevant agencies such as the Eastern and Midland Regional Assembly, Bord na Mona, NPWS, Coillte and adjacent local authorities to prepare an after-use framework plan for the peatlands and related infrastructure, to provide for the future sustainable and environmentally sensitive use of large industrial peatlands sites when peat harvesting finished.
- CPO12.54 - Support the National Peatlands Strategy and the implementation of the National Raised Bog Special Area of Conservation Management Plan 2017-2022 and

restoration works which will be both a positive conservation measure and help to reduce carbon loss in the County.

- CPO12.55 - Designated, and non-designated peatlands may be subject to the requirements of the planning code, Environmental Impact Assessment Directive (EIA screening and EIA where applicable) and the requirements of the Habitats Directive. Planning permission will be required where the area impacted by works relating to the drainage or reclamation of a wetland exceeds 0.1 hectares or where such works may have a significant effect on the environment. Such planning applications will need to be supported by an Appropriate Assessment and/or Environmental Impact Assessment where necessary.
- CPO14.32 - Identify appropriate areas for development.
- CPO14.34 - Seek to identify opportunity to collaborate and/or partner with Bord na Mona.

The CDP does not explicitly address substitute consent in relation to historical peat extraction, or any other activities. However, the policy objectives listed above highlight the Council's desire to support future sustainable use and access to peatlands across the county and, in particular, the future development of the lands within the Application Site for wind energy as per CPO 5.152 and Appendix 2 to the CDP.

3.6.2 Historic Planning Policy

In respect of historical activities carried out at the Application Site between 1988 until 2019, it is prudent to consider historical county development plans which would have been in force at that time.

From the outset it should be noted that as peat extraction has long been exempt from the requirement to obtain planning permission, historical local policy does not refer to the activity of extracting peat in itself, but instead recognises the broader community wide benefits of peat extraction such as employment, rural development and the provision of the supply of electricity.

Section 8 of the Longford County Development Plan 1990 acknowledges the role of peatlands in agriculture and rural development, specifically, recognising the planned reduction in peat harvesting as resulting in a *"loss of off-farm employments"* which *"will have serious consequences for the viability of many rural communities in the hinterland of the bogs"*. It further states that *"the maintenance of rural communities i.e. both farmers and other rural dwellers will be largely influenced by the future uses of cut-over bogs particularly in relation to the employment generation potential of their uses"* (p. 48).

From the perspective of electricity generation, the Longford County Development Plan 2009 – 2015 sought to support the development of the Lough Ree Power Station by stating that:

"Adequate electricity supply is essential to ensuring the socio-economic growth of the County and ensuring adequate opportunity for investment that may be dependent on bulk energy use..... Accordingly, the Council's policy is as follows:

EC 1: *To facilitate the provision, upgrading and maintenance of electricity infrastructure within the County subject to meeting the relevant development management standards."*

It also acknowledged the transition to renewable energy sources and potential for development of same on bogs within the county:

ENV 17: *The Council shall investigate the potential uses of cutaway bogs in the County and shall particularly consider the development of sustainable and renewable energy projects. Proposals to flood these areas shall be discouraged.*

The same CDP set out a number of policies for future use of the peatlands including:

AGR 4: *It is the policy of the Council, in accordance with the relevant Government agencies, to investigate the development of suitable areas of underutilised land, such as cutaway/cutover bog for the growing of biomass/biofuels for the renewable energy industry. The use of cutaway/cutover bog shall be considered for the development of renewable energies. This shall be carried out in consultation with the National Parks and Wildlife Service in order to ensure the protection of areas with a high heritage value. The Council shall support the preparation of a holistic plan for the development of industrial peatlands at a regional scale that promotes economic development, tourism, rural diversification, environmental protection and natural and cultural heritage awareness.*

In respect of tourism, the Longford CDP 2015 – 2021 described plans for the Mid Shannon Wilderness Park, stating “*The Council also now proposes to work with Bord na Móna to consider a future use of the bogs as they are worked out and re-habilitated over the next 10/20 years. It is envisaged that portions of the bogs will be re-habilitated as natural biodiversity locations thus providing Longford with potentially large areas of natural amenity with tourism potential*”.

It also stated “*As Bord na Móna completes its rehabilitation work on the bogs it may be possible for existing local communities, and Longford County Council to take responsibility for portions of the cutaway bogs. This will not conflict with any future intention of Bord na Móna and its potential future use of the bogs. The amenity use of the rehabilitated bogs can be compatible with any future use for the bogs such as renewable energy projects*”.

These extracts outline Longford Council’s vision for the peatlands as peat extraction activities were wound down, which occurred at the Application Site in 2019.

4.0 EXCEPTIONAL CIRCUMSTANCES

It has been established by the Court of Justice of the European Union in Case C-215/06 (Commission v. Ireland), that what is now “substitute consent” can only be permitted in exceptional cases. The judgment of the Supreme Court in *An Taisce v. An Bord Pleanála* [2020] I.E.S.C. 39 found that Sections 177C(2)(a) and 177D(1)(a) of the Act were inconsistent with the EIA Directive, as interpreted by the Court of Justice, in that they failed to provide adequately for the exceptionality test as demanded by that Court. The provisions of the Act have now been amended to make adequate provision for the exceptionality test.³

In considering whether exceptional circumstances exist, subsection 177K(J1) of the Act sets out the matters which must be considered by the Board, viz.:

(a) whether 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;

³ *Planning and Development and Residential Tenancies, Bill 2020 (December 2020)*

(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 section sets out in detail how the exceptional circumstances criteria have been complied with for the subject application. These are set out below, using the above matters under 177K(J1) of the Act as headings to aid the Board's consideration of this case.

4.1 (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 rEIAR) 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 1949 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 rEIAR 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..."*

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”*.

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 designated sites are Lough Ree SPA and SAC approximately 2.5km west of Derryaroge Bog, Ballykenny-Fisherstown Bog SPA approximately 4.5km north of Derryaroge Bog and Lough Bawn proposed Natural Heritage Area (pNHA) along the south-east margins of Lough Bannow Bog. Lough Bannow pNHA is also located close to the western boundaries of Derryaroge and Derryadd Bogs.

The following sections outline how Bord na Móna 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.

Drainage

Peat extraction activities began at the Application Site in 1949, with the commencement of site clearance and the installation of drainage at Derryaroge bog. 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 rEIAR, 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.

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 Bord na Móna 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 Bord na Móna 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 Bord na Móna 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 rEIAR. 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 Bord na Móna in the absence of any regulatory requirements demonstrates Bord na Móna'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 100mg/l suspended solid. This concentration level was based on a decision by An Bord Pleanála on the licensing of effluent discharge from Littleton Briquette Factory. In summary, the efforts and commitments of Bord na Móna 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.

Exempted Development

As outline in Section 2.2 above, before 20th September 2012, industrial-scale peat extraction activities were considered exempted development. The Environmental (Miscellaneous Provisions) Act 2011, effective from 20th 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 rEIAR and rNIS 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.

IPC Licence

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.

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, Bord na Móna 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 rEIAR and rNIS has been carried out, the Applicant has ceased all peat extraction activity and is committed to rehabilitating the Application Site.

A full rEIAR and rNIS 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.

4.2 (B) Whether the applicant had or could reasonably have had a belief that the development was not authorised

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 Bord na Móna, 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, Bord na Móna employed 5,138 workers, and several bogs were either in development or already in production.

In 1947, Bord na Móna 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 Bord na Móna 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, Bord na Móna 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 Bord na Móna 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, Bord na Móna 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, Bord na Móna prepared for the construction of a milled peat power station in Bellacorrick, 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, Bord na Móna'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, Bord na Móna'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 Bord na Móna. 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. Bord na Móna 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, Bord na Móna'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, Bord na Móna 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 Plant⁴) 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.

⁴ *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)*

Industrial scale peat extraction ceased within the Application Site in July 2019 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 2.1.3 of the rEIAR accompanying this planning application). The High Court set aside the Peat Regulations⁵ 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. Bord na Móna 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 1949 has been in accordance with national energy related policy and legislation.

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 Environment (Miscellaneous Provisions) Act (2011) on 20th September 2012, which inserted Section 4(4) into the Planning and Development Act (2000)⁶,

"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.

⁵ S.I. No. 4/2019 – European Union (Environmental Impact Assessment) (Peat Extraction Regulations 2019)

⁶ 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 (refer to Section 2.2 of this Report). 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, the Applicant had proceeded with industrial scale peat extraction in line with the conditions of its IPC licence. On foot of the [2019] IEHC 646, the Applicant 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 (December 2019) for the relevant works within a portion of the it's landbank with the intention of continuing said works into the future.
- The Applicant formally announced in January 2021 that all industrial scale peat extraction on lands within its management would permanently cease.

In summary, the peat extraction works carried out by the Applicant to September 2012 at the Application Site benefited from exempted development status. On receipt of its IPC Licence (Ref. P0504-01) in May 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 July

2019). 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.

4.3 (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

The Applicant has been engaged in peat extraction activities at the Application Site since 1949 and has operated under its IPC Licence (Ref. P0504-01) since 9th May 2000. As part of the initial licensing application process in 1999, there was public participation under the statutory publication and notification framework set out 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 (i.e. Longford County and Roscommon 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, the Applicant is permitted to carry out the extraction of peat in the course of business which involved an area exceeding 50 hectares. The extant IPC Licence contains 14 no. 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 the Applicant to ensure licence compliance as well as regulatory oversight and enforcement by the EPA. The Applicant has also been audited and inspected, in relation to compliance with the conditions of its IPC Licences by the EPA (as the competent authority). The Applicant is required to submit an Annual Environmental Report (AER) to the EPA each year (prior to the 31st March), which details the Applicant's annual record of compliance with the terms of its Licence.

In February 2012, a Code of Practice between the Department of Arts, Heritage and the Gaeltacht, the National Museum of Ireland and the Applicant was published. The purpose of this Code was to provide a framework within existing legislation, policy and practice to enable the Applicant to progress with its programme of peat extraction within the framework of Government strategy, whilst carrying out archaeological mitigation in line with the principles and actions agreed by all parties.

Furthermore, the Applicant has actively consulted with a number of relevant agencies, authorities and affected parties, as identified by the Applicant and the EPA, in relation to the work carried out on its peatlands. Consultees have included, but are not limited to, the following:

- EPA;
- National Parks and Wildlife Service (Local, Regional and National levels);
- Inland Fisheries Ireland;
- Applicable County Councils;
- Heritage Council;

- Coillte;
- An Taisce;
- Irish Peatland Conservation Council;
- Irish Wildlife Trust;
- BirdWatch Ireland;
- Butterfly Conservation Ireland;
- Fáilte Ireland;
- Midlands Regional Planning Authority;
- Waterways Ireland.

Bord na Móna produce periodic Biodiversity Action Plans for which open engagement was carried out annually with a range of stakeholders at the annual Bord an Móna Biodiversity Action Plan review days between 2010-2018. The most recent Biodiversity Action Plan was launched by Bord na Móna in 2016 with the Biodiversity Action Plan review day being held in May 2018. Prior to that, A Biodiversity Action Plan was in place for the period 2010 – 2015.

It should also be noted that the EPA (via their website⁷) provides the necessary contact information to individuals to allow for the submission of any observations or complaints associated with the Applicant's licensed operations. The Applicant's AERs, submitted in compliance with the conditions set out within IPC Licence P0504-01, as well as any licence audits carried out by the EPA, are also available for public review via the EPA's web portal. This facility provides further opportunities for the public to participate within the on-going management of the Applicant's licensed operations and associated assessments.

As outlined previously a rEIAR and rNIS is submitted with this application for substitute consent, which both facilitate further public participation on the regularisation of the subject activities together with the statutory public consultation process associated with the substitute consent application. As such, there has been no impairment on the ability to carry out an EIA or AA or to provide for public participation in those assessments.

4.4 (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 1949 for individual bogs within the group. 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 production has historically had the potential to result in the following impacts:

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

⁷ <https://www.epa.ie/who-we-are/contact-us/>

The nearest designated sites are Lough Ree SPA (Site Code 0004064) and Lough Ree SAC (Site Code 0000440) approximately 2.5km west of Derryaroge Bog, Ballykenny-Fisherstown Bog SPA (Site Code 0004101) approximately 4.5km north of Derryaroge Bog and Lough Bawn proposed Natural Heritage Area (pNHA, Site Code 0000449) along the south-east margins of Lough Bannow Bog. Lough Bannow pNHA is also located close to the western boundaries of Derryaroge and Derryadd Bogs.

It is important to again emphasise that the Applicant has operated within the remit of its IPC Licence since May 2000, which sets out specific monitoring regimes, standards for avoiding and mitigating impacts to local hydrology and emission limit values on water emissions, and 100% compliance on water emissions has recently been achieved for 2023. As mentioned previously, Bord na Móna went beyond its statutory obligations by setting up Silt Control Committees in 1975 in accordance with company policy on emissions and pollution control. The network of silt ponds and drainage controls established during that time and the limits on suspended solid concentrations to 100mg/l mitigating any potential impacts on nearby SACs and SPAs resulting from peat extraction. The success of these measures is evidenced in the EPA Inspector's Report on Bord na Móna's IPC licence application which states that water samples were in the most part of good quality.

It is of note that these monitoring procedures precede the date of designation of the Lough Ree SPA, Lough Ree SAC, and Ballykenny-Fisherstown Bog SPA. As such, measures have been put in place and have been evolving and improving responsively to monitoring output (e.g. Environmental Monitoring System) and EPA enforcement for the protection of water quality since the time of the IPC licensing.

An rEIAR and rNIS are produced as part of this substitute application which provide robust assessments of the significant effects on the environment and European sites. These reports present a detailed assessment of the actual and likely significant effects on the environment and on designated European sites arising from the now completed peat production at Application Site.

4.5 (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 operated in accordance with the Applicant's IPC Licence (Ref. P0504-01) between during the period of active peat extraction (i.e. May 2000 and July 2019) and continues to comply with the conditions of the licence, and will continue to comply with the conditions of licence until such a time as the licence surrendered. The taking of effect of the licence predates the designation of the Lough Ree SPA and SAC in 2003.

Licence conditions prescribed by the EPA are intended for the 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 licence in 2012, 2013 and 2014 for the purpose of aligning the operational conditions of the licence to the objectives of National and European environmental protection legislation enacted over the lifetime of the licence. For example, the licence was subject to a Technical Amendment (A) in 2012 for the purpose of the European Communities Environmental Objectives (Surface Water) 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.*

Under Condition 10 of the IPC Licence (Ref. P0504-01), the Applicant is required to complete the following:

- *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*

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.

4.6 (F) Whether the applicant has compiled with previous planning permissions granted or as previously carried out unauthorised development

The Applicant is the second largest landowner in the state with c. 80,000 hectares within its management, mainly across the midlands of Ireland. Within this overall landholding, the Applicant has in excess of 250 no. separate planning permissions for a variety of developments, from renewable energy installations (wind farms, battery energy storage systems etc.) to rail level crossings and other support infrastructure for various commercial operations. It should also be noted that the Applicant has been in existence since 1946, and as planning regulations were first introduced in 1963, some of their developments were constructed prior to the introduction of the planning regulations.

The Applicant has never been the subject of any actual or threatened 'Section 160' enforcement action from Longford County Council in relation to Application Site concerning development undertaken by the Applicant.

4.7 (G) Such other matters as the board considers relevant

As noted previously within this report, the Applicant formally announced in January 2021 that all industrial scale peat extraction on lands within its management would permanently cease, and therefore, the above matters referenced are now even more pertinent in the context of the Application Site.

There is very little ambiguity remaining with regard to the climate change emergency occurring both within Ireland and at a broader global scale. The Climate Status Report for Ireland 2023 similarly 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, 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 (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.

5.0 CONCLUSION

This Planning Report has been prepared in support of an application for substitute consent made by Bord na Móna Energy Ltd. in order to regularise, without prejudice, the planning status of historic peat extraction (and all associated bog development works) carried out within the Application Site (Derryaroge, Derryadd and Lough Bannow Bogs) located in County Longford.

This application for substitute consent is made pursuant to updates to the legislation around substitute consent which allows for a single stage application process and removes the need for leave to apply from the Board.

In this regard, Section 177K(1A) of the Act requires that in any given case the Board must be satisfied that exceptional circumstances exist that would justify the grant of substitute consent. This report, and the supplementary documentation that form part of this application, set out the specific circumstances underpinning the Applicant's case which, in our opinion, demonstrates the required exceptionality to permit the Applicant an opportunity to regularise the subject peat extraction completed at the Application Site by substitute consent. This opinion is based on a number of key considerations, summarised as follows:

- 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, Bord na Móna went beyond its statutory obligations by setting up Silt Committees across its network of bogs in 1975 and introducing silt control measures to all bog surface water discharges.
- The peat extraction works at the Application Site, carried out by the Applicant until September 2012, were exempt from development status. Upon receiving IPC Licence P0504-01 in May 2000, the Applicant conducted works per the licence conditions regulated by the EPA. The application of Section 4(4) of the Act to peat extraction activities was ambiguous between September 2012 and September 2019. During this

time, ongoing planning and legal cases were being considered, and the Applicant continued operations in line with its IPC Licence.

- An rEIAR and rNIS are submitted with this substitute consent application, facilitating further public participation in the regularisation of the activities and the statutory public consultation process. Thus, the ability to conduct an EIA or AA and ensure public participation in those assessments remains unaffected.
- Since May 2000, the Applicant has operated under its IPC Licence, meeting strict monitoring standards. Notably, the Applicant achieved 100% compliance with water emission limits as recently as 2023. Bord na Móna's proactive measures, such as the establishment of Silt Control Committees in 1975, have effectively mitigated potential impacts on nearby areas.
- 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 Applicant has never been the subject of any actual or threatened 'Section 160' enforcement action from either Longford County Council in relation to the Application Site concerning development undertaken by the Applicant.
- The Cutaway Bog Decommissioning and Rehabilitation Plans outlined as part of this application are compatible and can be integrated with the development of the Application Site for future uses to benefit both the climate and the economy.

With regard to the above, it is submitted that exceptional circumstances do exist with regard to the works carried out at Application Site.

As such, it is respectfully requested that the Board grant substitute consent for the subject works.

Appendix 1: Site Location Map

