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case Number SU.323676

To whom it may concern,

Please find attached submission in pdf format in respect of Substitute Consent Application by Bord na Mona Energy for and on behalf of Bellair Bog Community Group.

for your consideration

Shane Monaghan (Chairperson)
Bellair, Ballycumber, Tullamore, Offaly. 086-3863356

Conclusion and Request for Refusal

This application for substitute consent cannot lawfully or credibly be granted under Section 177E(2)(b) of the Planning and Development Act 2000. Bord na Móna's unauthorised peat extraction at Lemanaghan Bog was carried out in breach of Irish and EU environmental law, including the Environmental Impact Assessment Directive (2011/92/EU) and the Habitats Directive (92/43/EEC), without the required assessment at the appropriate time.

The remedial Environmental Impact Assessment Report (rEIAR) and Remedial Natura Impact Statement (rNIS) fail to remedy those breaches. Both rely on retrospective and incomplete data, unsupported assumptions, and post-hoc modelling which cannot establish the ecological baseline necessary for proper assessment. This falls short of the standard of scientific certainty under Article 6(3) of the Habitats Directive—"no reasonable scientific doubt"—as set out by the Court of Justice (C-127/02 *Waddenzee*, para. 61), and of the precautionary principle embedded in Irish and EU law.

The remedial Environmental Impact Assessment Report (rEIAR) and Remedial Natura Impact Statement (rNIS) fail to remedy those breaches. Both rely on retrospective and incomplete data, unsupported assumptions, and post-hoc modelling that fails to establish the ecological baseline necessary for proper assessment or to assess the project in its entirety, as required under Article 2(1) of the EIA Directive. This falls short of the standard of scientific certainty under Article 6(3) of the Habitats Directive—"no reasonable scientific doubt"—as set out by the Court of Justice (C-127/02 *Waddenzee*, para. 61), and of the precautionary principle embedded in Irish and EU law.

The application also suffers from serious procedural and administrative failings which undermine transparency, public participation, and enforcement. Specifically, Bord na Móna has:

- *Minimised* the extent of unauthorised development.
 - *Failed* to provide reliable baseline data on biodiversity, hydrology, archaeology, and landscape character.
 - *Ignored* the long-term climate consequences of industrial peat extraction and failed to align with Ireland's Climate Act obligations and EU climate policy.
 - *Offered* speculative mitigation measures with no legal guarantees.
 - Produced rehabilitation plans lacking enforceable timelines or ecological targets.
 - *Downplayed* impacts on protected European sites, habitats, and on the cultural and historic landscape of Lemanaghan; and
- Omitted* the associated grid connection and electrical infrastructure from the project description, thereby unlawfully segmenting the overall project in breach of Article 2(1) of the EIA Directive and established EU case law on project splitting (*Case C-392/96 Commission v Ireland*; *Case C-50/09 Commission v Ireland*).

The omission of connected infrastructure such as the grid connection demonstrates a lack of project completeness and transparency in the environmental assessment process. These failings are compounded by Bord na Móna's repeated reliance on substitute consent applications across the Midlands, which demonstrate a systemic pattern of non-compliance rather than exceptional circumstances. Irish and EU courts have been clear that retrospective consent is permissible only in truly exceptional cases: in *An Taisce v An Bord Pleanála & Ireland* [2020] IESC 39, the Supreme Court held that aspects of Ireland's substitute consent regime were incompatible with EU law because they permitted post-hoc consent too broadly. The Court stressed that retention or substitute consent cannot

Directive and established case law. As the environmental assessment is incomplete and fragmented, the application cannot lawfully be granted Substitute Consent.

Errors in ABP Online Publication

The Board's website misrepresents townland names, including misspellings such as "Castleanmstrong" (correctly *Castlearnstrong*) and "Lemanagh" (correctly *Lemanaghan*). These errors create uncertainty as to the scope of the application and undermine transparency for members of the public who rely on online access.

- **Consequences**

Public participation rights are only effective where the notice is clear, accurate, and accessible. Misidentification of townlands and failure to acknowledge county boundary issues materially prejudice participation and render the application invalid.

Objection Ground 12: Omission of Grid Connection Infrastructure Constitutes Unlawful Project-Splitting

A full review of all application documentation confirms that no grid connection or associated electrical infrastructure has been described, assessed, or illustrated within this Substitute Consent application for Lemanaghan Bog. Neither rEiAR Volume 1, Chapter 4 (Description of Development) nor Chapter 14 (Material Assets) contains any reference to a grid connection, substation, cabling, or power export infrastructure. Likewise, Appendix 4-12 (Site Layout Planning Drawings) shows no grid route or electrical components within the red-line boundary, while Appendix 2-2 (Cumulative List) and the Planning Report make no mention of any such infrastructure. The Remedial Natura Impact Statement also contains no assessment of this element. This confirms that the grid connection component has been omitted in its entirety from both the project description and all related environmental assessments.

Under Article 5(1)(c) and Annex IV of the EIA Directive (2011/92/EU as amended), an Environmental Impact Assessment must include a description of the entire project, including all physical elements and ancillary works necessary for its operation. The omission of an integral component such as the grid connection contravenes this requirement and is inconsistent with well-established jurisprudence. In Case C-392/96 *Commission v Ireland*, the Court of Justice held that projects cannot be artificially divided into parts to avoid full assessment. This principle was reiterated in Case C-142/07 *Ecologistas en Acción-CODA* and has been firmly embedded in Irish case law, including *O'Granna & Ors v An Bord Pleanála* [2014] IEHC 632, where the High Court confirmed that a grid connection is an essential part of a project and must be assessed as such. Similar findings were made in *An Taisce v An Bord Pleanála* [2020] IEHC 406 and *Clarke v An Bord Pleanála* [2021] IEHC 615, which held that project-splitting undermines the integrity of the EIA process.

By omitting any reference to a grid connection in the rEiAR, rNIS, Planning Report, and associated appendices, Bord na Móna has engaged in unlawful project-splitting, failing to describe the entire project contrary to the requirements of the EIA Directive and Section 172 of the Planning and Development Act 2000 (as amended). The absence of this information prevents assessment of potential cumulative and in-combination effects, including those arising from trenching, hydrological disturbance, or habitat fragmentation, and conceals the true extent of the project. This omission therefore constitutes project-splitting in breach of EU and Irish environmental law and renders the rEiAR materially deficient.

Summary: The exclusion of grid connection infrastructure from the rEiAR, rNIS, and all accompanying documentation represents clear and unlawful project-splitting, contrary to the EIA

standing practice, but the law is clear that substitute consent cannot be used to legitimise systemic breaches.

Section 177E(2)(b) of the Planning and Development Act 2000 makes clear that substitute consent may only be granted where doing so does not undermine the objectives of the Environmental Impact Assessment Directive (2011/92/EU) or the Habitats Directive (92/43/EEC). Yet granting substitute consent in this case would do exactly that: it would signal that environmental assessment may be carried out retrospectively as a matter of routine, contrary to EU and Irish law.

The Irish courts have confirmed this principle. In *An Taisce v An Bord Pleanála & Ireland* [2020] IESC 39, the Supreme Court held that substitute consent provisions must be strictly exceptional, finding that Ireland's earlier legislative framework was incompatible with EU law because it permitted post-hoc consent too broadly. The Court stated that "retention permission or substitute consent cannot become the norm; the Directive requires assessment before consent, not afterwards." Similarly, in *Friends of the Irish Environment v An Bord Pleanála* [2022] IEHC 80, the High Court quashed multiple substitute consent permissions for Bord na Móna, holding that the absence of proper public consultation at the initial stage was a fundamental breach of the EIA Directive.

European case law reinforces this position. In *Commission v Ireland* (Case C-215/06), the Court of Justice ruled that Ireland's approach to peat extraction failed to secure compliance with the Directive because "projects likely to have significant effects on the environment must be made subject to an assessment before consent is given." Likewise, in *Commission v Italy* (Case C-304/05), the Court held that allowing widespread use of retrospective regularisation was unlawful, stressing that "systematic reliance on ex post assessments undermines the practical effect of the Directive."

Bord na Móna is not an ordinary private developer. It is a semi-state entity with full awareness of environmental obligations and ample resources to comply. Its repeated failure to seek planning permission before commencing large-scale peat extraction demonstrates a systemic disregard for environmental law. Continued reliance on substitute consent as a "back door" legalisation process undermines not only the preventive function of EIA and AA, but also public confidence in the planning system and the enforcement of environmental rights guaranteed under the Aarhus Convention. As the Aarhus Convention (Article 6(4)) requires, the public must be given the opportunity to participate "when all options are open and effective public participation can take place." That has been denied in this case, where development was carried out for decades without lawful assessment.

What is at stake here is not only the environmental harm caused at Lemanaghan but also the credibility of the substitute consent system itself. If repeated breaches by a semi-state body can be retrospectively authorised, the process becomes a tool for avoidance rather than compliance. That outcome would directly undermine the preventive purpose of EU and Irish planning law and the public's right under the Aarhus Convention to expect timely, lawful, and accountable decision-making.

Summary

The systemic pattern of unauthorised peat extraction by Bord na Móna, coupled with the misuse of substitute consent as a routine workaround, is incompatible with Irish and EU law. Judicial precedent at national and European level confirms that retrospective authorisation must remain strictly exceptional and cannot replace prior assessment. Granting consent here would reward long-standing non-compliance, undermine the preventive purpose of the EIA and Habitats Directives, and breach the Aarhus Convention rights of the public. Substitute consent must therefore be refused.

Objection Ground 11: Defective Publication and Misidentification of Townlands

This application is procedurally flawed due to defective publication and inconsistent identification of the lands concerned.

4. Failure to Align with EU Climate and Biodiversity Obligations

The EU Biodiversity Strategy 2030 states that “carbon-rich ecosystems, such as peatlands, must be strictly protected.” The proposed EU Nature Restoration Law further requires that Member States “rewet and restore drained peatlands” as a binding measure. None of these obligations are reflected in the rEIAR, which instead concludes that “no significant climate impacts are predicted” (Ch. 10, p. 10-19).

Article 191(1) TFEU requires EU environmental policy to be based on the precautionary principle and the principle that preventive action should be taken. By ignoring cumulative carbon losses and ongoing emissions from Lemanaghan, the application is incompatible with these principles and with the requirements of EU law.

5. No Cumulative or Long-Term Climate Assessment

The rEIAR does not consider cumulative carbon impacts across Bord na Móna’s wider network of bogs. It also fails to assess the “legacy” emissions from decades of drainage at Lemanaghan. This omission breaches Article 5(1)(e) of the EIA Directive and Annex IV, which require assessment of “cumulation with other existing or approved projects” and “use of natural resources” and “emission of pollutants.”

6. No Binding Mitigation or Restoration Measures

Although the rEIAR refers to monitoring and restoration, these are non-binding. Chapter 17 states only that “rehabilitation will be considered where feasible” (Ch. 17, p. 17-6). This vague language cannot satisfy the requirement under Regulation 42(9) of the Habitats Regulations that mitigation must remove reasonable scientific doubt, nor the requirement under Section 177E(2)(b) of the Planning and Development Act 2000 that remedial measures adequately address prior breaches.

Summary

The application fails to address the climate impacts of unauthorised peat extraction. It does not quantify emissions, assess cumulative or long-term impacts, or propose enforceable restoration. Instead, it minimises the significance of carbon loss and relies on vague and non-binding commitments. This approach breaches:

- Articles 3 and 5 of the EIA Directive
- The Climate Action and Low Carbon Development (Amendment) Act 2021
- *Friends of the Irish Environment v Government of Ireland* [2020] IESC 49
- The principle of non-regression in EU environmental law
- EU obligations under the Biodiversity Strategy and Green Deal

In the absence of a credible climate assessment or binding restoration plan, substitute consent cannot lawfully be granted.

Objection Ground 10: Systemic Non-Compliance and Judicial Precedent Show Substitute Consent Cannot Be Used as a Routine Workaround

This application cannot be considered in isolation. It forms part of a broader and well-documented pattern whereby Bord na Móna has submitted numerous substitute consent applications across the Midlands for peat extraction carried out without planning permission or environmental assessment. In the rEIAR, the applicant acknowledges that peat extraction has taken place for decades, stating that “commercial peat extraction commenced at the site in the 1950s” (rEIAR Ch. 2, Background) and that substitute consent is now sought only because the operations “did not have the benefit of planning permission” (Non-Technical Summary, Section 1.5). The company presents this as a matter of long-

Objection Ground 9: The Application Fails to Acknowledge the Climate Impacts of Peat Extraction and Is Incompatible with National and EU Climate Law

Peatlands are among the most carbon-rich ecosystems on earth. When left undisturbed, they function as long-term carbon sinks, but when drained and extracted, they become net sources of greenhouse gases. Decades of industrial peat extraction at Lemanaghan have therefore caused ongoing emissions and climate harm. Despite this, Bord na Móna's rEIAR fails to meaningfully assess the climate impacts of the unauthorised development, in breach of both EU and Irish law.

1. Peatland Drainage and Carbon Emissions Are Minimised

Chapter 10 of the rEIAR states that “the contribution of the peat extraction site to national greenhouse gas emissions is negligible” (Ch. 10, p. 10-12). It further claims that “the impact of historic peat extraction on climate has been largely superseded by the cessation of production activities” (Ch. 10, p. 10-15). These statements minimise the long-term emissions caused by drainage and degradation of peat soils, which continue to release CO₂ long after active extraction ceases. This omission contradicts Chapter 6 (Biodiversity), which acknowledges that the site contains “areas of degraded raised bog” (Ch. 6, p. 6-17) — habitats recognised by the EU as continuing carbon emitters when drained. By claiming emissions are negligible while elsewhere acknowledging degraded bogs, the rEIAR presents an inconsistent and misleading assessment of climate impact.

2. Absence of Carbon Accounting or Emissions Baseline

The rEIAR does not attempt to quantify the carbon lost from Lemanaghan since the 1950s, nor the current ongoing emissions from drained peat. Instead, Chapter 10 relies on “qualitative assessment” and concludes that “climate impacts are not considered significant” (Ch. 10, p. 10-18). Quantification of greenhouse gas emissions is legally required, not optional. Article 5(1)(d) of the EIA Directive obliges an EIA to describe “the likely significant effects of the project on... climate (for example the nature and magnitude of greenhouse gas emissions).” Without quantification, compliance is impossible. The High Court in *Kelly v An Bord Pleanála* [2014] IEHC 400 confirmed that environmental assessments must be based on reliable and measurable baseline data.

3. Incompatibility with National Climate Law and Policy

The Climate Action and Low Carbon Development (Amendment) Act 2021 requires that “a relevant body shall, in so far as practicable, perform its functions in a manner consistent with the most recent approved carbon budget and sectoral emissions ceiling” (s. 17(2)). Granting substitute consent in the absence of any emissions accounting or mitigation plan would be inconsistent with these statutory obligations.

The Supreme Court in *Friends of the Irish Environment v Government of Ireland* [2020] IESC 49 (the “Climate Case”) underlined that the State must comply with binding climate law and act consistently with statutory plans. To authorise this application in the absence of quantified emissions data or enforceable restoration measures would directly contradict that obligation.

Furthermore, the Climate Action Plan 2024 commits Ireland to restoring at least 77,600 hectares of peatlands by 2050. Yet the rEIAR makes only vague references to “potential rehabilitation measures” (Ch. 17, p. 17-5) and states only that “rehabilitation will be considered where feasible” (Ch. 17, p. 17-6). No enforceable rewetting or restoration plan is provided.

This also breaches the principle of non-regression in climate and environmental law: Ireland cannot lawfully roll back from existing climate and biodiversity obligations by approving an application that ignores ongoing peatland emissions.

- *An Taisce* [2019] IESC 39

On procedural grounds alone — irrespective of the substantive ecological damage — substitute consent must be refused.

2. Breach of Public Participation Rights

The Aarhus Convention (ratified 2012) and Articles 6–7 EIA Directive require timely, accessible information. This application obstructs those rights:

- Key documents are buried in hundreds of pages of appendices.
- Maps lack legends, clarity, and coordinates.
- Cross-references to rehabilitation frameworks in other licensing contexts are not accessible.

This directly undermines Article 6(3) of the EIA Directive, which requires effective public access to information for meaningful participation.

3. Failure to Provide a Complete Planning History

The rEIAR downplays critical facts, including:

- That extraction continued unlawfully despite the Supreme Court in *An Taisce v An Bord Pleanála & Bord na Móna* [2019] IESC 39 confirming planning permission was required.
- Omission of full townland and grid reference coverage.
- No record of enforcement actions taken for historic breaches.

This omission breaches s.172 PDA 2000, which obliges disclosure of full planning history and cumulative effects.

4. Lack of Independent Verification

All assessments were produced by consultants for the applicant, with no independent peer review, verification, or provision for community monitoring. This undermines objectivity and contravenes EPA EIAR Guidelines (2022), which stress independence and rigour in environmental assessment.

5. Contradictory and Inconsistent Information

The application contains conflicting claims:

- Different figures for extraction area — Chapter 2 (Project Background) refers to “c. 1,050 ha of industrial peat production area,” whereas Chapter 6 (Biodiversity) refers to “approximately 940 ha under active extraction.”
- Contradictory habitat classifications — Chapter 6 identifies “areas of degraded raised bog,” while Chapter 10 (Climate) states “peat soils are considered largely exhausted and no longer active sources.”
- Ambiguity on infrastructure — Chapter 8 (Hydrology) describes silt ponds, drains, and pumps as “long established features of the operational landscape,” while Chapter 2 refers to them as “ancillary temporary works.” Their legal status is never clarified.

Summary

The substitute consent application is legally defective due to:

- Non-binding and speculative rehabilitation proposals.
- Breaches of public participation rights under Aarhus and the EIA Directive.
- Omission of planning history contrary to s.172 PDA 2000.
- Lack of independent verification of assessments.
- Contradictory and unreliable data.

These procedural and administrative failures breach:

- s.177E(2)(b) PDA 2000
- Articles 5–7 EIA Directive (2011/92/EU)
- Aarhus Convention
- *Sweetman* [2017] IESC 1

4. No Assessment of Future Visual Change or Restoration Credibility

The LVIA admits that “rehabilitation is addressed separately” (rEIAR, Ch. 12, p. 7) but provides no photomontages or visualisations of the bog’s long-term future. There are no rewetting or topographic restoration targets and no binding commitments to restore natural landscape character.

This omission prevents proper evaluation of the future trajectory of visual and landscape impacts. Under Section 177E(2)(b) of the Planning and Development Act 2000, substitute consent may only be granted where remedial measures adequately address past breaches. The Supreme Court in *Sweetman v An Bord Pleanála* [2017] IESC 1 made clear that vague or non-binding mitigation cannot satisfy EU law.

Fatal Deficiency under the EIA Directive

By excluding cumulative change, severing cultural heritage from landscape, and failing to present enforceable or visualised restoration measures, the LVIA falls short of the minimum content requirements of Article 3 of the EIA Directive (2011/92/EU, as amended). That Article obliges assessment of “the direct and indirect significant effects of a project on the population and human health, biodiversity, land, soil, water, air, climate, material assets, cultural heritage and the landscape, and the interaction between these factors.” Where entire dimensions of assessment are omitted, as here, the Directive has not been complied with. In line with Section 177E(2)(b) of the Planning and Development Act 2000, such a failure means substitute consent cannot lawfully be granted.

Summary

The LVIA in the rEIAR is incomplete and misleading. It downplays the cumulative transformation of Lemanaghan, severs cultural heritage from landscape, restricts receptor analysis to biased viewpoints, and provides no enforceable restoration plan.

By treating a protected cultural and ecological landscape as a degraded industrial site, the assessment fails to meet the requirements of the EIA Directive, the European Landscape Convention, and Irish planning law. The absence of historic baseline analysis, the failure to integrate cultural heritage, and the lack of credible restoration commitments all point to a fundamentally inadequate assessment — reinforcing the case for refusal of substitute consent.

Objection Ground 8: Procedural and Administrative Failures Render the Application Legally Deficient

Bord na Móna’s substitute consent application suffers from fundamental procedural flaws and administrative omissions which fatally undermine its legality under Irish and EU law. These failures obstruct public participation, prevent transparent assessment, and fail to meet the mandatory standards of environmental governance.

1. Absence of a Legally Binding Rehabilitation Plan

Despite repeated references to “rehabilitation” and “restoration,” no enforceable, site-specific plan is included. Instead, the rEIAR offers only aspirational and conditional statements:

- “Rehabilitation will be carried out where possible, subject to future funding and land use objectives.” (Ch. 2, p. 17)
- “A draft rehabilitation framework has been prepared but site-specific measures will be considered at a later stage.” (Ch. 6, p. 8)

These non-binding assurances do not satisfy s.177E(2)(b) PDA 2000, which requires remedial measures capable of rectifying environmental breaches. As the Supreme Court held in *Sweetman v An Bord Pleanála* [2017] IESC 1, mitigation must be precise and enforceable — not speculative or aspirational.

Objection Ground 7: The Landscape and Visual Impact Assessment (LVIA) Downplays Significant and Cumulative Impacts on a Protected Cultural Landscape

Bord na Móna's rEiAR Chapter 12 (Landscape) attempts to minimise the visual, cultural, and amenity impacts of historic peat extraction and associated infrastructure at Lemanaghan Bog. However, the LVIA is flawed, inadequate, and fails to comply with both legal and planning policy obligations. It does not accurately reflect the scale of past or ongoing landscape transformation, nor does it fully assess the cumulative, historical, or cultural significance of the area in line with EU and national requirements.

1. Failure to Assess Cumulative Landscape Change

Chapter 12 asserts that "the bog landscape is heavily modified and of low sensitivity" and that "there are no significant landscape or visual impacts" (rEiAR, Ch. 12, p. 3). The assessment is confined to the current baseline, ignoring the cumulative and historic transformation caused by peat extraction, including the loss of raised bog microtopography and the construction of "internal bog roads and drains" (Ch. 12, p. 5) and "silt ponds and associated infrastructure" (Ch. 12, p. 7).

This approach avoids any historic landscape analysis despite Lemanaghan's recognised cultural and ecological importance. Such omission conflicts with Article 3 of the EIA Directive, which requires assessment of "cultural heritage and the landscape, and the interaction between these factors." The CJEU in Case C-392/96 *Commission v Ireland* confirmed that Ireland failed to comply with the Directive in relation to peat extraction, particularly by not addressing cumulative impacts.

2. Disregard for Cultural Landscape Significance

The LVIA explicitly excludes cultural heritage, stating: "Cultural heritage is considered separately in Chapter 13" (rEiAR, Ch. 12, p. 2). This artificially severs landscape from heritage, treating Lemanaghan as a generic industrial peatland. Chapter 13 records "488 recorded monuments within the bog, primarily trackways and peatland structures" (Ch. 13, p. 14) and acknowledges "the monastic site of Lemanaghan, associated with St. Manchan, lies in close proximity to the bog" (Ch. 13, p. 8).

By excluding these elements, the LVIA fails to treat Lemanaghan as a cultural landscape, contrary to:

- Article 5 of the European Landscape Convention, which requires landscapes to be recognised as "an essential component of people's surroundings, identity and heritage."
- The National Landscape Strategy for Ireland 2015–2025, which emphasises the cultural dimension of landscapes.
- Section 10(2)(e) of the Planning and Development Act 2000, requiring development plans to protect landscapes of special amenity or heritage interest.

The CJEU has held that cultural and landscape values cannot be excluded from impact assessment: Case C-404/09 *Commission v Spain* required cumulative cultural and landscape effects to be fully assessed.

3. Limited and Biased Visual Receptor Assessment

The LVIA restricts receptors to "local public roads and internal bog routes" and concludes that impacts are "localised and of minimal significance" (rEiAR, Ch. 12, p. 6). Appendix 13-2 (Photographic Record) shows only road-based viewpoints. This excludes consideration of pilgrimage and recreational users of the monastic site, historic trackways, long-distance visual scarring, and seasonal visual variation.

This selective methodology contradicts the EPA's Guidelines on the Information to be Contained in EIA Reports (2022), which emphasise broad receptor inclusion, and the Landscape Institute's GLVIA3 guidance, which requires assessment of how different communities experience landscape.

Irish courts have reinforced this standard: in *Kelly v An Bord Pleanála* [2014] IEHC 400, the High Court held that EIAs require adequate baseline and receptor data to allow meaningful assessment.

2. Reliance on Desktop Assessments and Assumptions

The rNIS substitutes speculation for scientific evidence. It states:

- “Hydrological interactions with nearby SACs are considered unlikely to be significant, based on available information.” (rNIS, Methodology, p. 5).
- “Cumulative effects are not anticipated, as other peatlands are subject to separate licensing and management.” (rNIS, p. 8).

These assertions are unsupported by hydrological modelling, dye-tracing, sediment transport analysis, or hydrochemical monitoring. The applicant simply assumes that drainage had “limited effects,” without data on water flows, peat subsidence, or nutrient loading. Such desk-based assumptions fall short of the standard of scientific rigour demanded by Article 6(3).

3. Cumulative Effects Are Ignored or Minimised

The rNIS treats Lemanaghan in isolation, despite clear hydrological linkages across the Midlands peatland complex. By concluding that “cumulative effects are not anticipated” (rNIS, p. 8), it ignores decades of drainage and peat extraction at other Bord na Móna bogs in the region.

This approach is contrary to established law: in *Case C-404/09 Commission v Spain*, the CJEU held that cumulative impacts must be fully assessed as part of appropriate assessment. By excluding them, the rNIS is fatally deficient.

4. Mitigation Measures Are Vague, Unenforceable, or Post Hoc

The rNIS proposes measures that are neither concrete nor enforceable:

- “Proposed mitigation includes monitoring and participation in Bord na Móna’s Peatlands Climate Action Scheme.” (rNIS, p. 12).
- Yet no thresholds, trigger levels, or binding restoration measures are defined.

Mitigation cannot be based on goodwill or voluntary schemes. The CJEU in *Case C-323/17 People Over Wind* held that mitigation must be specific, proven, and legally secured, not aspirational. Article 6(3) demands strict protection, not vague monitoring promises.

5. Conflict with National and EU Obligations

Granting substitute consent on the basis of this inadequate rNIS would breach:

- Article 6(3) Habitats Directive, which prohibits authorisation where scientific doubt remains.
- Regulation 42(9), S.I. 477/2011: “Consent shall not be given unless it is ascertained that the plan or project shall not adversely affect the integrity of a European site.”
- Section 177V(3), Planning and Development Act 2000: substitute consent must be refused where adverse effects cannot be ruled out.
- Precautionary principle, reaffirmed in *Waddenzee and Sweetman v An Bord Pleanála* [2014] IESC 48: uncertainty requires refusal.

Summary

The applicant’s rNIS is retrospective, assumption-driven, and legally deficient. It admits “no baseline ecological surveys were undertaken prior to peat extraction” and dismisses cumulative effects with no supporting evidence. Its mitigation measures are vague and voluntary, not binding, or enforceable. Under Article 6(3) Habitats Directive, S.I. 477/2011, and Section 177V PDA 2000, consent cannot lawfully be given unless absence of adverse effects is proven beyond reasonable scientific doubt. This threshold is not met. Accordingly, substitute consent must be refused.

"A plan or project... shall be authorised only if it will not adversely affect the integrity of the site concerned. In case of doubt, the precautionary principle shall apply." (Directive 92/43/EEC, Art. 6(3)) In Case C-127/02 Waddenzee, the CJEU ruled that authorisation is only permissible where there are *"complete, precise and definitive findings capable of removing all reasonable scientific doubt."* The Irish Supreme Court in Sweetman v An Bord Pleanála [2014] IESC 48 confirmed that where such certainty is lacking, authorisation must be refused.

Similarly, Articles 3 and 5 of the EIA Directive (2011/92/EU) require that assessment be forward-looking and based on baseline conditions prior to development, not after irreversible impacts have occurred.

Section 177E(2)(b) of the Planning and Development Act 2000 requires that substitute consent can only be granted where remedial measures are capable of addressing the breach. Retrospective surveys and non-binding mitigation cannot undo irreversible impacts such as drainage-induced bog degradation or carbon loss. The CJEU in Case C-461/13 Weser further clarified that projects cannot be authorised where they cause deterioration of water status, a particularly relevant precedent given the acknowledged hydrological impacts of peat extraction at Lemanaghan.

Summary

The applicant's reliance on retrospective surveys, artificial baselines, and unenforceable rehabilitation plans fails to meet the standards of scientific certainty required under Irish and EU law. The contradictions within the rEIAR — simultaneously admitting irreversible loss while downplaying impacts — reinforce the unreliability of the assessment. Substitute consent cannot lawfully be granted on this basis and must be refused.

Objection Ground 6: The Remedial Natura Impact Statement (rNIS) Fails to Meet Legal Standards Under the Habitats Directive

The applicant's Remedial Natura Impact Statement (rNIS) purports to assess the likely significant effects of past peat extraction on nearby European sites. However, the rNIS is legally and scientifically insufficient, and fails to meet the requirements of Article 6(3) of the Habitats Directive (92/43/EEC), as transposed into Irish law under the Planning and Development Act 2000 (as amended) and the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477/2011).

1. Failure to Establish a Robust Ecological Baseline

The rNIS is entirely retrospective and does not contain any credible baseline data from before the unauthorised works took place. The document openly admits:

- *"No baseline ecological surveys were undertaken prior to the commencement of peat extraction."* (rNIS, p. 4).

As a result, the rNIS cannot demonstrate:

- The ecological condition of Raheenmore Bog SAC or Clara Bog SAC prior to peat extraction and drainage.
- Whether changes to hydrological connectivity, runoff patterns, or nutrient loads impacted Annex I habitats (e.g. active raised bogs) or Annex II species such as the marsh fritillary butterfly or otter.

Without pre-disturbance data or long-term monitoring, the rNIS cannot exclude adverse effects on the integrity of these protected sites. This fails the strict test of *"no reasonable scientific doubt"* required by the Court of Justice in *Case C-127/02 Waddenzee*.

"siltation and drainage effects... requiring regular cleaning of settlement ponds."

Meeting records from 1984 noted:

"concerns regarding silt discharge and water management."

The Harkins Report (1991) concluded that:

"drainage of bogs has led to significant hydrological change and adverse ecological impacts on adjoining lands and habitats."

These documents confirm that far from acting in "good faith," the applicant had longstanding knowledge of the environmental consequences of peat extraction, yet continued without planning permission or environmental assessment.

By minimising both the scale and ecological significance of its unauthorised operations, the applicant undermines the very purpose of substitute consent. The Oireachtas made clear that the procedure is not intended as a routine mechanism to regularise unlawful development, but to assess whether breaches of such seriousness require refusal.

Summary

The reliance on IPC licensing, claims of "good faith," and the minimisation of ecological value are contradicted by Bord na Móna's own records and by settled Irish and EU law. Substitute consent cannot lawfully be granted where an applicant has downplayed the scale of unlawful activity and disregarded known environmental harm.

Objection Ground 5: Retrospective Data Is Inherently Unreliable and Cannot Remedy Irreversible Ecological Damage

The substitute consent application rests on retrospective data collection and post-hoc modelling, much of it gathered decades after extraction began. In Chapter 8 of the rEIAR the applicant concedes:

"The baseline conditions of the site were taken as July 1988, coinciding with the transposition of the EIA Directive... extraction activities commenced in the 1950s." (rEIAR, Ch. 8, p. 8-3)

This artificial "baseline" omits more than three decades of unassessed impacts. Likewise, Chapter 6 of the rEIAR acknowledges:

"No contemporaneous baseline ecological surveys were carried out prior to drainage and peat extraction." (rEIAR, Ch. 6, p. 6-2)

The assessments instead rely on recent surveys:

"Site investigations were undertaken in 2021 and 2022, with additional monitoring and sampling events in 2024 and 2025." (rEIAR, Ch. 8, p. 8-4)

and

"Bird and aquatic surveys were carried out in 2022–2023 to inform the current assessment." (rNIS, Methodology, p. 5)

Such data cannot reconstruct lost habitats, long-term biodiversity change, or historic hydrological regimes. Despite this, the rEIAR asserts minimal impacts while at the same time acknowledging that:

"Active raised bog has been lost in many areas of the site, with remaining patches in degraded condition." (rEIAR, Ch. 6; p. 6-15)

The only remedial measure proposed is described as:

"a Draft Bord na Móna Cutaway Bog Decommissioning and Rehabilitation Plan... [which] sets out indicative measures but does not establish binding or legally enforceable targets." (Appendix 4-2, p. 2)

This approach falls short of the standard required by EU and Irish law. Article 6(3) of the Habitats Directive requires that:

- Habitats Directive, Article 6(3):
Any project may only proceed if there is “no reasonable scientific doubt” as to the absence of adverse effects (CJEU, C-127/02 Waddenzee, para. 61).
- Sweetman and Others v An Bord Pleanála (C-258/11):
Confirmed that a project cannot proceed if it risks lasting harm to ecological or cultural features, and that uncertainty cannot be resolved through assumptions.

Summary

The applicant’s own documentation confirms that peat extraction at Lemanaghan occurred without monitoring, without licences, and in a landscape of exceptional archaeological importance. Irreversible losses — bog bodies, trackways, artefacts — cannot be recovered. Retrospective assessment cannot repair such damage, meaning the application fails the legal thresholds of the National Monuments Acts, the EIA Directive, the Habitats Directive, and Section 177E(2)(b) of the Planning and Development Act 2000.

Substitute consent must therefore be refused.

Objection Ground 4: The Applicant Minimises the Extent and Impact of Unauthorised Development

In Section 1.5 of the Non-Technical Summary, Bord na Móna assert:

“The peat extraction activities were carried out in good faith under IPC licensing and in line with established practice.” (NTS, Sec. 1.5)

This claim is both legally irrelevant and factually misleading. An IPC licence under the Environmental Protection Agency Act never removed the statutory obligation to obtain planning permission where required, particularly where the Environmental Impact Assessment (EIA) Directive or Habitats Directive applied.

The Supreme Court has been unequivocal on this point. In *An Taisce v An Bord Pleanála & Bord na Móna* [2019] IESC 39, the Court held that an IPC licence:

“...does not remove or replace the need for planning permission.”

Similarly, the Court of Justice of the EU in *Case C-215/06 Commission v Ireland* found that Ireland had failed to ensure peat extraction projects were subject to prior EIA, expressly rejecting reliance on parallel licensing systems.

Section 177E(2)(b) of the Planning and Development Act 2000 makes clear that substitute consent may only be granted where doing so does not circumvent the objectives of EU environmental law. To accept this application based on alleged “good faith” would reward deliberate or negligent avoidance of both EIA and Appropriate Assessment, contrary to the precautionary principle set out in Article 191(2) TFEU and the rights to effective public participation under Articles 6 and 7 of the Aarhus Convention (1998).

The applicant also seeks to downplay the extent of unauthorised development. Chapter 6 of the rEIAR states that the site is:

“dominated by habitats of low ecological value,” (rEIAR, Ch. 6, p. 6-10)

yet in the same section acknowledges the presence of Annex I habitats — including “*degraded raised bogs still capable of natural regeneration*” and “*active raised bogs*” — as well as bird and mammal species afforded protection under the Birds Directive (2009/147/EC) and Habitats Directive (92/43/EEC). No contemporaneous baseline studies were undertaken prior to drainage and extraction, and reliance on recent surveys cannot reconstruct decades of ecological loss.

Furthermore, Bord na Móna’s own internal reports demonstrate they were long aware of adverse effects. The Silt Committee Interim Report (1976) referred to:

appendices (13-1 to 13-6) confirm that the area is of exceptional archaeological and cultural significance, including a high density of recorded monuments and proximity to the early medieval ecclesiastical complex associated with St. Manchan.

Appendix 13-3 acknowledges:

"The study area lies within a rich archaeological landscape which includes numerous recorded monuments, some of which are of early medieval date, and the ecclesiastical complex at Lemanaghan."

Chapter 13 itself states:

"Lemanaghan is of particular cultural significance due to the association with St. Manchan and the monastic settlement, a National Monument of considerable importance." (rEIAR, Chapter 13, Section 13.2.1)

Despite this acknowledged significance, Bord na Móna carried out decades of industrial peat extraction without archaeological survey, monitoring, or prior consent. This is explicitly admitted in the rEIAR: *"Much of the peat production activity was historically carried out prior to the development of standardised archaeological monitoring protocols."* (rEIAR, Chapter 13, Section 13.3.1)

There is no evidence in the rEIAR or its appendices that archaeological licences or consents were obtained under the National Monuments Acts 1930–2004, nor that any archaeological excavation, test trenching, or monitoring was undertaken before or during extraction works.

Appendix 13-3 further notes the likelihood of unrecorded features:

"Bog bodies and other artefacts have been found elsewhere in Irish raised bogs. While none have been recorded in Lemanaghan to date, this may reflect a lack of investigation rather than absence."

This strongly suggests that archaeological material may already have been destroyed during unauthorised peat extraction, including trackways, tools, or preserved human remains — all of which represent irreplaceable cultural heritage.

Appendix 13-5, *Bord na Móna's Archaeological Code of Practice*, makes clear that procedures were only introduced long after industrial peat extraction began:

"This Code of Practice provides guidelines for archaeological management in Bord na Móna's continuing operations."

This is future-facing and does not demonstrate past compliance. Appendix 13-6, *Ancient Objects in Irish Bogs and Farmlands*, further highlights that Bord na Móna has long been aware of the archaeological richness of peatlands:

"Irish bogs have yielded a wide array of archaeological material... including wooden trackways, tools, bronze and iron weapons, and preserved human remains."

Yet the rEIAR contains no credible plan for remediation or recovery at Lemanaghan.

Legal Framework Breached

- National Monuments (Amendment) Act 1994, Section 12(1):
"A person shall not... interfere with, damage or carry out work at or in relation to a monument... except under and in accordance with a licence."
No such licences are recorded here.
- EIA Directive (2011/92/EU), Article 3:
Requires assessment of impacts on "material assets and cultural heritage" *before* development proceeds.
- Planning and Development Act 2000, Section 177E(2)(b):
Substitute consent may only be granted where remedial measures can address environmental damage. This is impossible where heritage has already been irreversibly lost.

“Hydrological impacts on nearby designated sites cannot be ruled out with certainty” (Appendix 8-2, p. 17).

These are not minor omissions but critical failings that undermine the legality of the assessment. Without valid pre-drainage or contemporaneous monitoring data, it is impossible to establish the scale of hydrological change, the effects on hydrochemistry, or the extent of connectivity with downstream designated habitats such as Raheenmore Bog SAC.

The EPA’s *Draft Guidelines on the Information to be Contained in EIARs* (2017) require that: *“The baseline description shall include the present and likely future state of the environment in the absence of the proposed development... with sufficient detail to enable the potential significant effects to be clearly assessed.”*

That standard has not been met.

Legal Requirements Not Met

Article 3 of the EIA Directive (2011/92/EU, as amended) requires assessment of “the direct and indirect significant effects of a project on... water, biodiversity, and the interaction between these factors.” Similarly, Article 5(1)(d) requires an EIA to describe “the likely significant effects of the project on the environment... resulting from the use of natural resources, in particular land, soil, water and biodiversity.”

At the national level, Section 172 of the Planning and Development Act 2000 requires that an EIA be carried out before consent is given for development. In this case, extraction proceeded without assessment, and retrospective analysis cannot satisfy this legal obligation.

Failure to Demonstrate No Adverse Effect on European Sites

The accompanying rNIS contains no hydrological modelling, no quantitative evidence of connectivity, and admits to data gaps. It therefore cannot demonstrate compliance with Article 6(3) of the Habitats Directive (92/43/EEC), which requires that consent may only be granted if it can be established “*beyond reasonable scientific doubt*” that no adverse effect will occur.

This principle was affirmed in *Kelly v An Bord Pleanála* [2014] IEHC 400, where the High Court held that mitigation or post-facto reasoning cannot substitute for robust prior analysis in cases involving sensitive hydrology.

Policy Context

Peatlands are recognised as climate-critical and hydrologically sensitive ecosystems. As the EU Biodiversity Strategy (2020) notes:

“Peatlands store twice as much carbon as all the world’s forests combined. Their drainage releases massive greenhouse gas emissions.”

Yet the rEIAR makes no meaningful attempt to quantify long-term water level changes, cumulative drainage effects, or risks of ongoing subsidence and nutrient runoff.

Summary

The applicant’s own documentation admits to an absence of baseline data, reliance on assumptions, and unresolved uncertainty regarding impacts on designated sites. This renders the hydrological assessment incapable of meeting the requirements of Section 177E(2)(b) of the Planning and Development Act 2000, Article 3 and 5 of the EIA Directive, and Article 6(3) of the Habitats Directive.

On this basis, substitute consent must be refused.

Objection Ground 3: Irreversible Damage to Cultural Heritage and Failure to Comply with Legal Protections

Bord na Móna’s substitute consent application fails to adequately address the cultural heritage impacts of unauthorised peat extraction at Lemanaghan Bog. Chapter 13 of the rEIAR and its associated

will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects." (para 61)

- In *C-323/17 People Over Wind*, the Court ruled:
"Mitigation measures cannot be taken into account at the screening stage, which must be based solely on objective scientific information." (para 40)
- In *C-258/11 Sweetman*, the Court confirmed:
"A plan or project must not cause lasting harm to the ecological characteristics of a site. The absence of sufficient data or speculative reasoning cannot support a conclusion of no adverse effect." (para 44)

The reliance on retrospective, post-damage surveys cannot satisfy these standards.

4. Retrospective Assessment is Legally Insufficient

Section 177U(1) of the Planning and Development Act 2000 requires appropriate assessment to be:
"Based on the best scientific knowledge in the field."

By relying on data gathered only after habitats were already destroyed, the rEiAR fails this requirement. Retrospective surveys cannot reconstruct lost biodiversity. Again, Article 6(3) of the Habitats Directive applies: authorisation cannot lawfully be granted where surveys are retrospective and reasonable scientific doubt remains.

Summary

The biodiversity assessment in the rEiAR is incomplete, retrospective, and legally deficient. It relies on surveys carried out long after damage occurred, fails to assess impacts on protected bat species, admits habitats were already destroyed, and provides no valid baseline for analysis.

It therefore fails to satisfy:

- Section 177E(2)(b) of the Planning and Development Act 2000 (as amended)
- Article 3 and 5 of the EIA Directive (2011/92/EU)
- Article 6(3) and 12 of the Habitats Directive (92/43/EEC)

Under established case law (*Waddenzee*, *People Over Wind*, *Sweetman*), substitute consent cannot lawfully be granted where scientific certainty is absent. The precautionary principle must apply, and this application must be refused.

Objection Ground 2: Inadequate Hydrological Assessment and Irreversible Environmental Harm

Chapter 8 of the rEiAR acknowledges that "site drainage" has occurred across Lemanaghan Bog, with "extensive drainage measures" noted throughout the development (rEiAR, Chapter 8, p. 8-5). Appendix 8-2 (Water Framework Directive Assessment) similarly states that "drainage channels have been present on site for decades" (Appendix 8-2, p. 12). Despite these admissions, the hydrological assessment remains retrospective, assumption-based, and unsupported by baseline data gathered prior to drainage or peat extraction.

Appendix 8-2 itself concedes the fundamental data gaps that render the assessment speculative:

"No pre-drainage baseline data exists for water levels, hydrochemistry, or flow regimes" (Appendix 8-2, p. 10).

"Assessment relies on assumptions regarding historical drainage patterns and available aerial imagery" (Appendix 8-2, p. 12).

"There are significant data gaps due to the absence of contemporaneous monitoring" (Appendix 8-2, p. 14).

the Habitats Directive (92/43/EEC), Article 6(3), requires that projects proceed only where there is no reasonable scientific doubt as to their effects, applying the precautionary principle in cases of uncertainty.

EPA Guidelines (2017, updated 2022) further stress that “multiple surveys over appropriate seasons and times of day are necessary to account for variations in species presence and activity.” The single-phase, retrospective surveys presented here cannot meet these standards and fail to provide the robust, legally required baseline against which ecological impacts must be assessed.

2. Inadequate Bat Assessment

Appendix 6-2 (Bat Survey Report) states:

“No roosting bats were recorded within the Application Site; however, several artificial and natural roosting features occur within the wider area.” (Appendix 6-2, p. 5)

While the report acknowledges roost potential nearby, no systematic roost mapping or long-term monitoring was undertaken. Surveys were confined to the period after peat extraction had already ceased, meaning any historic displacement, roost loss, or disturbance during decades of drainage and extraction was not assessed.

All bat species in Ireland are strictly protected under Annex IV of the Habitats Directive (92/43/EEC). Article 12 requires Member States to prohibit:

- “Deliberate capture or killing of specimens” (Art. 12(1)(a))
- “Deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration” (Art. 12(1)(b))
- “Deterioration or destruction of breeding sites or resting places” (Art. 12(1)(d))

These provisions are transposed into Irish law under the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477/2011). Without comprehensive roost surveys, seasonal monitoring, or retrospective evidence of habitat loss, compliance with these strict protections cannot be demonstrated.

The absence of systematic roost mapping or evidence regarding past impacts means the rEiAR cannot lawfully exclude adverse effects. Again, Article 6(3) of the Habitats Directive applies: projects may only be authorised where there is no reasonable scientific doubt as to their effects on protected species. That threshold has not been met.

3. Absence of a Valid Ecological Baseline

Chapter 6 of the rEiAR concedes:

“The habitats within the site have been heavily modified due to historic peat extraction activity and drainage regimes.” (rEiAR, Ch. 6, p. 6-10)

This amounts to an admission that ecological baselines were destroyed before any surveys took place. Without baseline data, it is impossible to quantify habitat loss, species displacement, or long-term biodiversity impacts.

The EIA Directive (2011/92/EU), Article 3, requires assessment of:

“...the direct and indirect significant effects of a project on biodiversity with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC.”

Case law confirms that certainty cannot be achieved in the absence of baseline data:

- In *C-127/02 Waddenzee*, the Court of Justice held:
“Authorisation may be given only when the competent authorities have made certain that it

and drainage activities at Lemanaghan Bog during periods when planning permission and EIA were legally required.

The current application for Substitute Consent under Section 177E of the Planning and Development Act 2000 (as amended) does not and cannot authorise new or ongoing development. Substitute Consent is a retrospective mechanism designed solely to regularise past unauthorised development where a full and credible environmental assessment can demonstrate no continuing significant adverse effects. It cannot be used to excuse or legalise continued environmental harm or to circumvent the requirement for prior consent under the EIA and Habitats Directives.

Bord na Móna's own documentation (Appendix 4-3: AERs 2000–2024 and Appendix 4-4: Aerial Imagery 1984–2020) confirms that peat extraction and associated drainage works continued across the 2000s and 2010s—well after consent was legally required. Extraction also continued beyond 2019, when all exemptions were removed. These activities were therefore carried out unlawfully, without the necessary EIA, Appropriate Assessment, or planning permission. The current Substitute Consent application seeks to retrospectively authorise almost two decades of unauthorised industrial activity, contrary to Article 2(1) and Article 3 of the EIA Directive and to Section 177K(2)(b) of the Planning and Development Act 2000 (as amended), which precludes the granting of Substitute Consent where the environmental damage caused cannot be adequately assessed or mitigated.

Accordingly, we submit the following grounds in support of our objection to the granting of substitute consent in this case:

Objection Ground 1: Biodiversity Assessment is Retrospective, Incomplete, and Legally Deficient

Chapter 6 of the Remedial Environmental Impact Assessment Report (rEIAR) concludes:

“The proposed development has not resulted in significant adverse effects on habitats or species of conservation concern.” (rEIAR, Ch. 6, p. 6-32)

This conclusion is not supported by the evidence presented. The biodiversity assessment is retrospective, incomplete, and fails to satisfy Irish and EU legal requirements.

1. Bird Survey Timing, Adequacy, and Species Coverage

Appendix 6-4 (Bird Survey Report) confirms that bird surveys were only undertaken between October 2020 and March 2022, long after industrial peat extraction had ceased. These surveys recorded species such as meadow pipit, skylark, reed bunting, willow warbler, stonechat, lapwing, snipe, golden plover, mute swan, whooper swan, teal, and mallard. While some of these species are of conservation concern (e.g. skylark, lapwing, golden plover, reed bunting, whooper swan), the report concludes that “no significant adverse effects” occurred.

This conclusion is legally and scientifically unsound. The surveys reflect only the current, degraded state of the bog and cannot reconstruct historic populations of bog-specialist species such as curlew, redshank, or hen harrier, which may have been displaced or lost entirely during decades of unauthorised peat extraction. Without pre-extraction or contemporaneous monitoring, the true baseline for avian biodiversity has been lost.

The EIA Directive (2011/92/EU), Article 5(1)(c), requires that an EIAR include “the data required to identify and assess the main effects which the project is likely to have on the environment.” Similarly,

To: An Coimisiún Pleanála

Re: Objection to Substitute Consent Application – Case SU19.323676

Lemanaghan Bog in the townlands of Cooldorrageh, Kilnagarnagh, Cappanalosset, Tumbleagh, Killaghintoher, Castlearmstrong, Leabeg, Cornafurrish and Corrabeg, Lemanaghan, Kilnagoolny, Straduff, Lisdermot, Derrica More, Rosfaraghan, Rashinagh, Cor Mor and Cor Beg and Corbane, Co. Offaly.

Dear Sir/Madam,

Introduction

We, the Bellair Bog Community Group, hereby object to the application by Bord na Móna Energy Limited for Substitute Consent (Case Ref: SU19.323676) concerning unauthorised peat extraction and ancillary works across the townlands of Cooldorrageh, Kilnagarnagh, Cappanalosset, Tumbleagh, Killaghintoher, Castlearmstrong, Leabeg, Cornafurrish, Corrabeg, Lemanaghan, Kilnagoolny, Straduff, Lisdermot, Derrica More, Rosfaraghan, Rashinagh, Cor Mor, Cor Beg, and Corbane, Co. Offaly.

Review of the Non-Technical Summary of the Remedial Environmental Impact Assessment Report (rEiAR) confirms that Bord na Móna is seeking retrospective authorisation for works carried out without prior planning consent, without environmental assessment, and without public consultation, in direct conflict with Irish and EU law.

Under Section 177E(2) of the Planning and Development Act 2000 (as amended), An Coimisiún Pleanála may only grant substitute consent if it is satisfied that:

- The development was carried out in breach of environmental law; and
- A remedial Environmental Impact Assessment (rEiA) and/or Natura Impact Statement (rNIS) is capable of remedying that breach; and
- The application does not undermine EU environmental law, including Directive 2011/92/EU (EiA Directive) and Directive 92/43/EEC (Habitats Directive).

While it is acknowledged that the development was indeed carried out in breach of environmental law (Point 1) — a precondition for substitute consent to be considered — this application fails to meet the remaining statutory thresholds. In particular:

- The remedial EiA and rNIS cannot adequately address or remedy the environmental harm or compensate for the lack of timely assessment (Point 2); and
- Granting substitute consent in this case would undermine the intent and effectiveness of EU environmental law (Point 3).

Under both Irish and European law, industrial peat extraction has required planning permission and Environmental Impact Assessment (EiA) since the introduction of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001), which implemented the EiA Directive (2011/92/EU, as amended). All remaining exemptions for peat extraction were removed by S.I. No. 4 of 2019, meaning that from 25 January 2019, all peat extraction — regardless of scale — required formal planning consent. Despite this, Bord na Móna continued extensive extraction

become the norm; assessment must take place before consent, not afterwards. Likewise, in *Friends of the Irish Environment v An Bord Pleanála* [2022] IEHC 80, the High Court quashed substitute consents for failures in public participation. Approving this application would directly contradict those judicial findings and place Ireland at renewed risk of infringement proceedings under Articles 258–260 TFEU.

Granting consent in this case would reward decades of unlawful activity, undermine the objectives of the EIA and Habitats Directives, erode public confidence in the planning system, and set a dangerous precedent that environmental safeguards can be circumvented through retrospective applications. The principle of environmental non-regression also applies: Ireland is bound to avoid rolling back existing environmental protection and to maintain (and progressively improve) standards. This application represents not only a regression, but an attempt to normalise unauthorised environmental degradation.

For these reasons - legal, scientific, ecological, cultural, climate, procedural, and project-completeness-related - we respectfully urge An Coimisiún Pleanála to refuse this application in its entirety, thereby upholding the integrity of Ireland's environmental law, planning system, and obligations under EU and international law.

Yours faithfully,

For and on behalf of The Bellair Bog Community Group Ltd.

Signed: Shane Monaghan

Shane Monaghan

Chairperson

The Bellair Bog Community Group Ltd.