

Planning Report

Substitute Consent for
Peat Extraction at
Lemanaghan Bog, Co.
Offaly





DOCUMENT DETAILS

Client: **Bord na Móna Energy Limited**

Project Title: **Lemanaghan Substitute Consent Application**

Project Number: **200804-e**

Document Title: **Substitute Consent: Lemanaghan Bog Group Planning Report**

Document File Name: **200804-e Lemanaghan Substitute Consent PL Report F1 11.09.2025**

Prepared By: **MKO
Tuam Road
Galway
Ireland
H91 VW84**



Status	Date	Author(s)	Approved By
Draft	31/07/2025	RD	SMC
Draft	03/09/2025	RD	SMC/EC
Final	10/09/2025	RD	SMC/EC

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1. INTRODUCTION

MKO were appointed by Bord na Móna Energy Ltd, a subsidiary of Bord na Móna plc., hereafter referred to as ‘the Applicant’, to prepare a substitute consent planning application to regularise, without prejudice, the planning status of historical peat extraction works (and all associated bog development works) carried out within the Lemanaghan Bog located in County Offaly (the Application Site). This Planning Report is provided to support the application made to An Coimisiún Pleanála (‘ACP’, ‘the Commission’) under Section 177E of the Planning and Development Act 2000 (as amended) (‘the Act’).

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

- **‘Peat Extraction Phase’:** peat extraction and ancillary activities at the Application Site from July 1988 to the cessation of peat extraction in June of 2020 (July 1988 – June 2020). The Peat Extraction Phase is described in detail in Section(s) 4.4 to 4.7 of Chapter 4.
- **‘Current Phase’:** the management of the Application Site since June 2020 (June 2020 to present). The Current Phase is described in detail in Section 4.9 of Chapter 4.
- **‘Remedial Phase’:** the activities intended to be carried out at the Application Site into the future. The Remedial Phase is described in detail in Section 4.10 of Chapter 4.

Other terminology used throughout this report is outlined below:

- **‘Application Site’:** The area of the Lemanaghan Bog subject of this application.
- **rEIAR:** Remedial Environmental Impact Assessment Report.
- **rNIS:** Remedial Natura Impact Statement
- **CDP:** County Development Plan
- **OCC:** Offaly County Council

1.1 Site Location and Context

The Application Site comprises Lemanaghan Bog, which is part of the Boora Bog Group. The Application Site comprises an area of 1,111 hectares (ha) within which bog drainage works began in 1950 followed by the commencement of peat extraction from 1960. The Application Site is located 3.3km to the northeast of Ferbane, 7.8km southwest of Clara, and 8.7km south of Moate. The Application Site extends across several townlands which are listed below in **Table 1-1**. The Application Site measures approximately 5.5km in length from north to south, and approximately 6.4km from east to west, at its widest point. Grid Reference co-ordinates for the approximate site centre are E216096, N228101. Under the Water Framework Directive (WFD; Directive 2000/60/EC), the site is located within the Upper Shannon (26G) and Lower Shannon (25A) catchments.

The Application Site is connected by rail link to Bellair South Bog to the north and to and to the Blackwater Bog Group to the west. The R436 Regional Road passes along much of the southern boundary. Derrynagun and Curraghalassa bogs are both located south of the road R436. The N62 National Road skirts the extreme western tip of the Application Site. A local road, the L7002, passes through the northern part of the Application Site. The current main access points to the Application Site includes an existing entrance off the N62 National Road and along the R426 into the Lemanaghan Works site in the south of the Application Site. The Application Site is shown below in Figure 1-1 below.

Table 1-1 Townlands within which the Application Site is located.

Bog Name	County	Townlands
Lemanaghan	Offaly	Cooldorragh, Kilnagarnagh, Cappanalsset, Tumbeagh, Killaghintoher, Castlearnstrong, Leabeg, Cornafurrish and Corrabeg, Lemanaghan, Kilnagoolny, Straduff, Lisdermot, Derrica More, Rosfaraghan, Rashinagh, Cor Mor and Cor Beg, and Corbane,
Total Spatial Footprint		1,111 ha

The landcover within the Application Site comprises a mix of bare cutaway peat, re-vegetated peat, degraded blanket bog, wetlands and scrub, low woodland, heath, and remnants of high bog. Today, the topography of the Application Site ranges between 62m above ordnance datum (mOD) at its highest point to 50mOD at its lowest point.

The Application Site has a total area of 1,111 ha, with approximately 699.04ha therein subject to peat extraction at the point of cessation of peat extraction in June 2020. The bog is currently drained by a series of primarily northeast-southwest orientated drains spaced at approximately 15m intervals.

Infrastructure ancillary to peat extraction at present at the Application Site, for which substitute consent is being sought are:

- Surface water drainage system including silt ponds, pump sites, and drainage channels;
- De-mountable rail network including rail lines, at grade rail crossings and ancillary infrastructure
- Welfare facility building and storage containers.

Infrastructure ancillary to peat extraction at present at the Application Site, for which substitute consent is not being sought by virtue of this infrastructure benefitting from a grant of planning consent are:

- Level crossings (OCC Pl. Refs: 85/57, 91/220, 93/182, 93/367);

Other onsite development, which is neither ancillary to peat extraction nor for which substitute consent is not being sought by virtue of this development benefitting from a grant of planning consent is:

- Guyed wind monitoring mast (OCC Pl. Refs: 24/75, 16/341)

The Lemanaghan Works (hereafter 'the Works'), which comprises workshops, offices and welfare facilities such as toilets, a canteen, and staff parking is located adjacent to the Application Site boundary.

The landcover and uses surrounding the Application Site comprises a mixture of forestry, agricultural land, cutover and cutaway peatland, one-off rural housing and small village settlements. Cutaway peatlands are those areas where all commercially viable volumes of peat have been extracted. Cutover peatlands are those areas where peat extraction has occurred, and commercially viable peat volumes remain.

Industrial scale peat extraction subsequently commenced from 1960 and ceased at the Application Site in June 2020. As part of the decommissioning process, the process of transporting remaining peat stockpiles off the bogs commenced following the cessation of peat extraction in June 2020. The final stockpiles were transported from the Application Site in 2024.

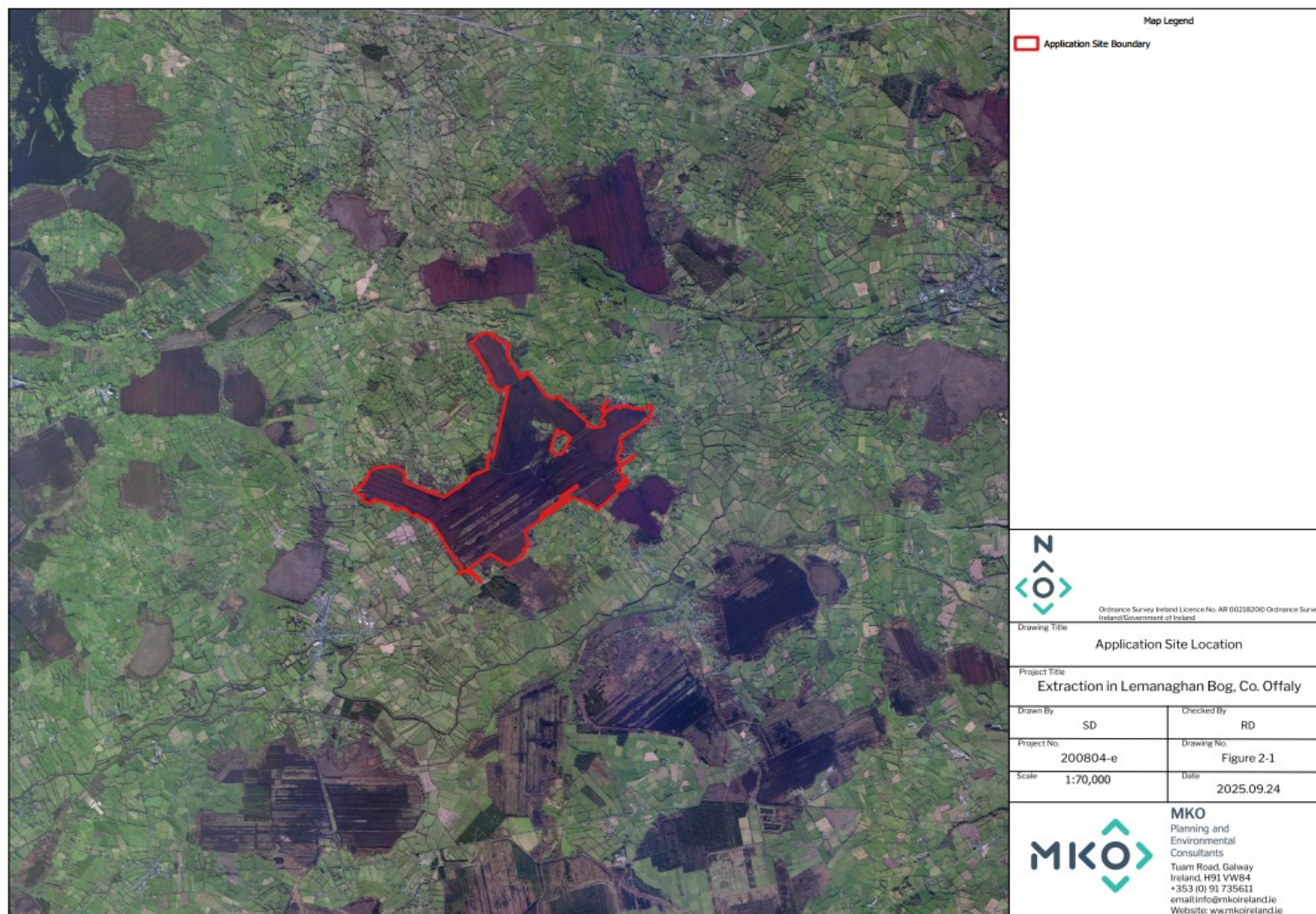


Figure 1-1: Site Location Context

1.2

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

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

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

1.3

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 September 2012 which inserted Section 4(4) of the Act. Section 4(4) legislates that development which is typically exempt (e.g., industrial peat extraction pre-2012) is no longer exempt if an Environmental Impact Assessment (EIA) or an Appropriate Assessment (AA) of the development is required. Notwithstanding this provision, the legal planning status of industrial peat extraction remained uncertain and unclear in practice up until September 2019, as summarised below.

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

During this period of stakeholder engagement and consultation, the Commission's decision on PL25.RL.2975 (*drainage of boglands and extraction of peat at the Lower Coole, Mayne, County Westmeath*) broadly established the precedent that the drainage of boglands and extraction of peat was development and not exempted development with regard to Section 4(4) of the Act. The Commission's decision on that case was upheld by the High Court under Judicial Review, *Westland Horticulture Limited and Bulrush Horticulture Limited v An Bord Pleanála* (2013/398/JR – [2018] IEHC 58). Specifically, Mr Justice Meenan found that, as peat extraction involving a new or extended area of 30 hectares or more required EIA, planning permission was required under Section 4(4) of the Act. This decision was then subject to an application for leave to appeal, which was heard in May 2018 and

determined on 7th December 2018 that an appeal of Mr Justice Meenan's judgment would not be allowed.

Please refer to Section 2.2 of the rEIAR for further details on the historic planning legislation relating to peat extraction activities.

1.4 Peat Regulations (2019)

The 'Peat Regulations' were enacted in January 2019, following the above judgment under [2018] IEHC 58, which consisted of two pieces of 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.

1.5 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 Directives 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 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 von 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 date 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

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

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:

“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 Commission’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 Commission 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 at 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 force³.

1.6

Works for Which Substitute Consent is Being Sought

Peat extraction and ancillary activities undertaken at the Application Site, which comprise the Project for which substitute consent is being sought, and for which the rEIAR and rNIS is prepared, consists of the following:

- *Industrial scale peat extraction (milled peat) at the Application Site from 1988 to June 2020;*

³ ∴ see Case C-142/16, *Commission v Germany*

- *Installation, use and maintenance of surface water drainage infrastructure (drains, silt ponds, pumps) at the Application Site to facilitate peat extraction activity from 1988 to present day;*
- *Provision of a welfare facility building and associated septic tank, 2 no. storage containers;*
- *Use and maintenance of pre-existing railway infrastructure to facilitate peat extraction activity from 1988 to present day;*
- *Control Measures associated with the above, inclusive of the IPC Licence measures (Ref. P0500-01) which commenced from May 2000 onwards to the present day; and,*
- *All associated site development and ancillary works*

2. BACKGROUND

2.1 Development at Lemanaghan Bog

Bog development works (e.g. installation of surface water drainage and transportation infrastructure (i.e. rail line), completion of site clearance and preliminary excavations, etc.) initially began in 1950 within the Application Site during the Second Development Programme. Industrial scale peat extraction subsequently commenced from 1960 to June 2020 for the production of sod and milled peat (with the cessation of sod peat extraction in 1984). Table 2-1 below sets out the operational history of industrial scale peat extraction within the Application Site.

Table 2-1: Lemanaghan Bog – Operational History

Bog Name	Commencement of Site Preparation Works (vegetation clearance and drainage insertion)	Extraction began	Extraction Ceased
Lemanaghan	1950	1960	June 2020

Bord na Móna records indicate that approx. 904,132 tonnes (sod and milled combined) were extracted from the Application Site for the period 1961 to June 1988 inclusive, as detailed in Chapter 4 of this rEIAR. Extraction of sod peat commenced at the Application Site in 1960 and continued until 1984, and with milled peat extraction commencing in 1984. Further details of estimated peat extraction volumes from 1961 to June 1988 is provided in Section 4.3.3 of Chapter 4 of the rEIAR.

Milled peat extraction continued on the Application Site during the Peat Extraction Phase, and Bord na Móna records indicate that the total volume of peat extracted at the Application Site from 1988 to 2020 is estimated to be 3,351,248 tonnes. Further details of estimated peat extraction volumes for the Peat Extraction Phase are provided in Section 4.6.2 of Chapter 4 of the rEIAR.

Industrial scale peat extraction ceased at the Application Site in June 2020 following the High Court's judgment on *Friends of the Irish Environment Ltd v Minister for Communications, Environment & Climate Action & Ors*. [2019] IEHC 646, as discussed in greater detail below in Section 2.2.3, which set aside the Peat Regulations in their entirety. Peat extraction ceased when it was confirmed that peat extraction could not re-commence prior to An Coimisiún Pleanála's decision on an application for substitute consent, ABP Ref: SU19.307282 (which was ultimately withdrawn by the Applicant on the 14th January 2021). Bord na Móna formally announced in January 2021 that all industrial scale peat extraction on lands within its management would permanently cease in line with its on-going climate action programme and its transition to becoming a climate solutions company.

During the Current Phase, the operations at the Application Site have reduced to decommissioning works, which has to date involved the removal of stockpiled peat which was completed by the end of 2024. Stockpile removal was primarily carried out by rail until 2023, when the remaining stockpiled peat was removed by HGV, which was completed in 2024.

2.2 Site Planning History

There have been a range of planning applications lodged for developments within or adjacent to the red line planning application boundary, not all of which are associated with peat extraction and ancillary activities at the Application Site.

Table 2-2: Planning Applications adjacent to or within the Application Site Boundary

Planning Authority	Pl. Ref.	Description	Planning Authority Decision
Offaly County Council	24/75	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 windfarm development. Previous planning application reference numbers: PL16/341	Granted - 17/09/2024
An Coimisiún Pleanála	313412	Leave to apply for substitute consent for peat extraction and all associated bog development works which forms part of the Boora Bog Group, within Lemanaghan Bog located north east of Ferbane in Co. Offaly	Withdrawn - 15/01/2024
Offaly County Council	16/341	The erection of a guyed wind monitoring mast, with instruments, up to 100m in height. The purpose of the proposed mast is to assess the suitability of the company's adjacent lands for wind farm development	Granted – 09/02/2017
Offaly County Council	06/1812	Construction of a single storey compressor room, extension to the side of an existing light industrial unit, new security fencing and wall to site boundary, on-site vehicle parking, new vehicular entrance, 2 no. vertical advertising signage poles and new company signage to front elevation of light industrial unit.	Granted – 09/05/2007
Offaly County Council	93/367	Temporary level crossing for railway	Granted - 09/11/1993
Offaly County Council	93/182	Railway underbridge	Granted - 09/09/1993
Offaly County Council	91/220	3 No. Level Crossings	Granted - 26/11/1991
Offaly County Council	85/57	Single Line Rail Underpass	Granted - 07/06/1985
Offaly County Council	81/375	Erection of harvester repair bay and ancillary works at Lemanaghan	Granted – 15/01/1982

2.1.1

Previous Substitute Consent Application

The Applicant previously applied to An Coimisiún Pleanála for leave to apply for substitute consent for peat extraction activities within the Boora Bog Group (Bellair N, **Lemanaghan**, Noggusboy, Boora Bog, Galros, Killaun, Derrinboy, Derryclure, Monettia and Killaranny) in Counties Offaly, Laois and Westmeath. The purpose of the application was to regularise (without prejudice) the planning status of ongoing peat extraction carried out after 20th September 2012. The application was lodged on 16th December 2019 and the Commission subsequently granted leave to apply for substitute consent on the 30th of April 2020 (LS19.306246). In allowing the Applicant to apply for substitute consent, the Commission was satisfied that, in light of the size and scale of the peat extraction carried out subsequent to 20th September 2012 within the Boora Bog Group and the proximity of the peatland sites to a number of European sites, an Environmental Impact Assessment (EIA) and an Appropriate Assessment (AA) were required in respect of the development concerned and exceptional circumstances exist to warrant an opportunity to regularise (without prejudice) the development. The decision of An Coimisiún Pleanála was subsequently quashed by the “Ballysax/McQuaid” ruling of the Supreme Court on 1st July 2020.

In the interim the Applicant had progressed and lodged an application for substitute consent for the relevant peat extraction works at Boora Bog Group to An Coimisiún Pleanála (SU19.307282) on the 2nd of June 2020. Subsequent to lodging the substitute consent application, and the aforementioned

“Ballysax/McQuaid” ruling the Applicant formally announced in January 2021 that all industrial scale peat extraction on lands within its management would permanently cease and the application was withdrawn by the Applicant 14th January 2021.

The underlying circumstances of exceptionality have not changed since the Commission granted leave to the Applicant to apply for substitute consent for these peat extraction works in April 2020 (Ref. LS19.306246), nor since the making of an application for substitute consent by the Applicant on lands including the Application Site in June 2020 (Ref. SU19.307282).

2.2

Integrated Pollution Control Licence

The Applicant was granted an Integrated Pollution Control Licence (IPC) Licence (Ref. P0500-01) from the EPA for the Boora Bog Group, of which the Lemanaghan Bog Group is a subset, on the 18th May 2000. The IPC Licence is managed by the Applicant’s Environmental Management Department in Land and Habitats, with one Compliance Officer located in these operational areas who manage the day-to-day compliance requirements.

As per Condition 2 (Management of the Activity) of the IPC Licence, Bord na Móna is required to maintain an Environmental Management System (EMS) which fulfils the requirements of the licence and any associated objectives / targets relating to use of cleaner technology, cleaner production and the reduction and minimisation of waste. The EMS is required to form part of the Annual Environmental Report (AER), which details Bord na Móna’s annual record of compliance with the terms of its licence, which is generally submitted to the EPA prior to 31st of March of each year. All AERs 2001-2024 can be found in Appendix 4-3 of the rEIAR (2018 to 2024 are available to view on the EPA’s web portal⁴ and have been submitted in compliance with the conditions set out within IPC Licence P0500-01. The EPA’s online web facility provides further opportunities for the public to observe records relating to the on-going 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 Bord na Móna was the AER for 2024 and covers the 2024 calendar year.

The EPA regularly audit and inspect compliance with its IPC Licences. The EPA most recently conducted a site visit at Boora Bog Group in April 2025 during which the EPA evaluated the licensee’s compliance with the requirements of the licence, with the resulting report arising from this site visit available on the EPA’s web portal. These site visits are conducted as part of the EPA’s annual site visit programme to check compliance with licence conditions. The most recent non-compliance at the Boora Bog Group was reported by the EPA on the 26th June 2024 regarding exceedances of emission limit values for suspended solids in Drinagh Bog (located approximately 8km from the Application Site).

According to the EPA Leap Database⁵, no incidents or contamination events have been recorded at the Application Site. Across all water monitoring parameters recorded since 2000 (COD, pH, Ammonia, Ortho-phosphate, Suspended Solids), the Application Site has achieved a compliance rate of between 88% and 100% (see section 8.4.6.2.2 of the EIAR for further detail). Dust monitoring in accordance with the IPC licence was conducted at 3 no. locations in the Boora Bog Group (DM-01 Clongawney, DM-02 Pollagh & DM-03 Derryclure) which can be considered representative of the Application Site as it is likely that dust emissions were similar due to the similar nature of activities. Across all 3 no. monitoring locations, there were a total of 9 no. exceedances reported over the period 2001 – 2020 inclusive. No dust monitoring was carried out in the Boora Bog Group from 2021 – 2024 due to the cessation of peat extraction in June 2020.

An Exit Audit was conducted by the EPA at Lemanaghan Bog on the 16th of April 2014. The scope of the audit was to addresses the state of compliance with the IPC Licence and any outstanding issues. The assessment focussed on two areas located outside of the Application Site boundary, within the

⁴ Annual Environmental Reports 2018-2024 available at: <https://leap.epa.ie/licence-profile/P0500>

⁵ EPA Compliance records available at: <https://leap.epa.ie/licence-profile/P0500/compliance>

Lemanaghan Works area. The Licensee was considering requesting a technical amendment of the IPC Licence to amend the IPC Licence boundary to exclude these areas from the IPC Licence. The EPA's Exit Audit concluded that activities which were taking place in these areas at the time of the audit were not causing contamination and that there was no contamination onsite from previous activities. A request for a technical amendment to the IPC Licence to change the IPC boundary was not subsequently made by the Licensee to the EPA, and the IPC Licence boundary remains unchanged from the initial IPC Licence boundary as granted by the EPA in May 2000.

2.2.1

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 Commission and the EPA regarding mitigation and monitoring and the conditions that can be imposed by the Commission on the grant 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 Commission 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 Commission in respect of the Application Site, the Applicant intends to fully satisfy the requirements of Condition 10 of the IPC Licence which is discussed in this Report at section 3.1.5. It follows that should the Commission 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.

2.3

Statutory Planning Policy Context

This section will outline relevant policies from the current Offaly County Development Plan 2021 - 2027 which is set out in detail below. Previous County Development Plans are also summarised for context, where available, with regards to their policies relating to peat extraction.

From an 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 2.3.2 below), the importance of peat extraction as a key source of employment in the local area is highlighted. This employment was considered vital to the rural economy of County Offaly. These historic Development Plans also outline specific policies in support of peat extraction. 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.

2.3.1

Current Planning Policy

2.3.1.1

Offaly County Development Plan 2021 - 2027

The Offaly County Development Plan 2021-2027 was adopted on 10th September 2021 and came into effect 22nd October 2021. The Plan outlines the overall strategy from proper planning and sustainable development as well as a land use plan for the County over a 6-year period. This Development Plan is informed by the National Planning Framework, Regional Spatial and Economic Strategy and Section 28 Guidelines and is accompanied by:

- Appropriate Assessment (AA) Screening Report and Natura Impact Report (NIR)
- Strategic Environmental Assessment (SEA)
- Strategic Flood Risk Assessment (SFRA)
- Record of Protected Structures (RPS)
- Housing Strategy including a Housing Need Demand Assessment (HNDA)
- Wind Energy Strategy

The Strategic Vision for the Plan is:

'To create a sustainable and competitive county that supports the health and wellbeing of our people and places, from urban to rural, with access to employment opportunities supported by high quality housing and physical, social and community infrastructure for all, in a climate resilient manner and with respect for our biodiversity.'

Chapter 3 of the CDP outlines the aims and objectives regarding Climate Action and Energy. The Global, European, National and Regional guidelines are briefly examined in relation to climate change adaptation and mitigation. The strategic aim of the chapter is:

'To achieve a transition to an economically competitive, low carbon climate resilient and environmentally sustainable county, through reducing the need to travel, promoting sustainable settlement patterns and modes of transport, and by reducing the use of non-renewable resources, whilst recognising the role of natural capital and ecosystem services in achieving this.'

The phasing out of peat-fired electricity generation is discussed in Section 3.4.1 of the CDP, a transition away from carbon intensive energy sources is stated as having an impact on employment and communities in the County of Offaly and the wider midlands region of Ireland. Bog restoration and

rehabilitation as well as retraining and reskilling of workers are mentioned within this transition. The extensive peatlands are stated within the chapter as having:

‘considerable potential to accommodate the needs of the emerging and early deployment technologies for renewable energy and future energy storage on a regional scale such as data centres and battery energy storage’

The policies concerning peatlands in the Offaly County Development Plan 2021-2027 is as follows:

- **CAEP-16** *It is Council policy to support the preparation of a comprehensive after use framework plan for the industrial peatlands and associated workshops, office buildings and industrial sites in the midlands and adjacent parts of the north west and southern regions, which meets the environmental, economic and social needs of communities in these areas, and also demonstrating leadership in climate change mitigation and land stewardship. The Council recognises that the industrial peatlands in the midlands are a significant resource will transition to after uses ranging from amenity, tourism, biodiversity services, ‘wild areas’, flood management, climate mitigation, energy development, industry, education, conservation and many more.*
- **CAEP-17** *It is Council policy to investigate the potential for a Green Energy Hub on peatlands in the county and facilitate it if possible.*
- **CAEP-18** *It is Council policy to investigate the feasibility of an energy park with educational and amenity facilities relating to any future development of renewable energy projects of significant scale that comes forward over the lifetime of this Plan. Any development of renewable energy on cutaway bog will be required to provide increased opportunities for amenity access and educational facilities.*
- **CAEP-19** *It is Council policy that planning applications for development on or immediately adjacent to peatlands shall be accompanied by assessments considering the following issues where relevant; peatland stability, hydrology, carbon emissions balance and ecological impact assessment.*
- **CAEP-20** *It is Council policy to support the implementation of any relevant recommendations contained in the National Peatlands Strategy 2015 and any subsequent revisions.*
- **CAEO-06** *It is an objective of the Council to source E.U. and national funding to support projects which assist the transition of the industrial peatlands to sustainable after uses.*
- **CAEO-07** *It is an objective of the Council to ensure that renewable energy projects located on peatlands or in close proximity to peatlands do not negatively impact on any rehabilitation measures including enhanced rehabilitation measures (i.e. drain blocking and rewetting).*

2.3.2 Historic Planning Policy

Historic County Development Plans have been examined where available to better understand the local policy context surrounding peat extraction and related activities during the period for which substitute consent is being sought.

2.3.2.1 Offaly County Development Plan 2009-2015

The Offaly County Development Plan 2009-2015 was adopted on January 19th 2009, replacing the Offaly County Development Plan 2003-2009. Policies related to the historical activities at the Application Site are noted below. At the time of the writing of the 2009-2025 CDP, ‘after use’ of cut

away bogs and alternative development of cutaway bogs are being considered in the future planning and sustainable development of the county.

➤ **Chapter 3: Overall Strategy**

‘The Council intends to facilitate proposals for employment generation and services improvement in this part of the county. One important action in this regard is to work closely with Bord na Mona to investigate and facilitate (where appropriate on planning grounds) the re-use and alternative development of cutaway bogs within its ownership for development which will give an employment and economic boost to the county’

➤ **Chapter 6: Employment, Economy & Enterprise**

The 32,400 ha of peatlands within the ownership of Bord na Mona are highlighted and identified as potential sites for industrial/business type generation, in particular wind/biomass energy generation. Section 6.4 acknowledges and is in favour of re-development of disused sites such as former ESB power stations and Bord na Mona works. P06-11 states: *It is Council policy to actively encourage the redevelopment of brownfield sites for enterprise and employment creation throughout the county, in particular, disused sites which were formerly ESB plants and Bord na Mona works.*

➤ **Chapter 10 Rural Development**

P10-15: It is Council policy to support the development of the peatlands within the county for appropriate alternative uses, subject to environmental considerations and nature designations.

➤ **Chapter 12: Environment**

The CDP recognises the commitment to the National Climate Change Strategy and seeks to facilitate measures which reduce emissions of greenhouse gases in accordance with the Kyoto Agreement. The CDP also commits to implementing ‘relevant EU and Irish Legislation pertaining to the environment’ (P12-08). *The CDP also commits to co-operating with the EPA in regard to any licencing arrangements for scheduled industries in County Offaly in accordance with the provisions of the Environmental Protection Agency Act 1992 (P12-09).*

➤ **Chapter 15: Natural Heritage**

The CDP notes that peatlands comprise the main topographical feature of the landscape in Offaly and the heritage value associated with them. As such the CDP commits to protecting areas of bogland in line with existing designations. As such the CDP sets an objective to prepare a biodiversity management strategy for Offaly’s peatlands in co-operation with Bord na Móna and other relevant authorities.

➤ **Chapter 16 Landscape and Amenities**

The preservation of landscape, views and amenities as well as places of natural beauty within the county is set out as a role of the Local Authority. To that effect the Local Authority will ensure that development respects and enhances the appearance and character of existing local landscape. The Landscape Character assessment identifies cut away bog as a moderately sensitive landscape. Lough Boora has been developed as a ‘prototype’ parkland area and the CDP reiterates the need to plan for the future use of large areas of cut-away bog within County Offaly. Table 16.4 states that some cut away bog landscapes may be appropriate for sensitively designed and located development including renewable energy and/or industrial use.

2.3.2.2 Offaly County Development Plan 2003-2009

The Offaly County Development Plan 2003- 2009 was examined with regard to the Application Site and the following extract from the CDP considered of relevance to the Application Site:

'The CDP recognises boglands as a major natural and archaeological resource. The development of this resource and its critical role in employment is also noted. The Council aimed to continue to promote and facilitate the conservation of a representative sample of peatlands and looked to co-operate with Dúchas and the Irish Peatland Conservation Council to have a Bog Conservation Study undertaken the remaining peat resources of County Offaly.'

Plan for After-use of Industrial Peatlands (Cutaway Bogs)

'The Council will seek the formulation of a comprehensive integrated landuse plan for the future development and utilisation of the large areas of cutaway bog, which now exists in the county. In addition, the plan should cater for development of further areas of cutaway bog, which will arise over the next thirty years as turf/peat production comes to an end of the county's industrial boglands. There are 32,000 hectares (80,000) of peatland in Bord na Móna ownership in County Offaly. Because of the significant area of land involved, it is important to avoid piecemeal or unco-ordinated use/development of this major resource.'

2.3.2.3 **Offaly County Development Plan 1995**

The Offaly County Development Plan of 1995 recognised the importance of the raised boglands as a major natural resource within the county. The importance of the development of peatlands for employment is clear. The CDP notes a major change in employment over the previous 10 years, owing to job losses at Bord na Móna. The Council state that it is an aim of the CDP to continue to support the development of peatlands for peat production:

'The development of the County's peat resources will be promoted and facilitated.'

However, the CDP also recognises the importance of the conservation and preservation of peatland habitats along with the potential for other peatland uses, such as tourism, amenity, educational and research purposes. The Council set a goal to secure at least 4% of the county's original peatland area for conservation.

While the continued industrialisation of peatland was supported, the Council acknowledged the need to develop a plan for the county's peatland when turf/peat production comes to an end. The 1995 CDP states:

'The council will seek the formulation of a comprehensive integrated land use plan for the future development and utilization of the large areas of cutaway bog which now exist in the county. In addition, the plan should cater for development of the further areas of cutaway bog which will arise over the next 30 years as turf/peat production comes to an end on the County's industrial boglands. There are 32,400 hectares (80,000 acres) of peatland in Bord na Móna ownership in County Offaly. Because of the significant area of land involved; it is important to avoid piecemeal or uncoordinated use/development of this major resource.'

2.3.2.4 **Offaly County Development Plan 1987**

The Offaly County Development Plan 1987 recognised the significance of peatlands and peat production as an employment opportunity County Offaly. At the time of publication, over 50% of the industrial jobs in the county were provided by the joint activities of Bord na Móna and the ESB as follows:

"Over half the industrial jobs in County Offaly are provided by the joint activities of Bord na Mona and the E.S.B. Of the total 2,800 jobs provided by the two, 2,200 are provided in the seven Bord na Mona works and 600 in the three E.S.B Stations. This does not include Bord na Mona seasonal work which amounts to approximately 800 jobs every year. Many of the rural communities in the County are heavily dependent on peat-based employment. On a county-

wide basis it is estimated that approximately 12,000, or one-fifth of the total population are directly dependent on this type of employment.”

The 1987 CDP also recognized the heavy dependence on the peat industry and that “*peat resources are running out will be major causes for concern in the coming years*”. With this in mind, it was anticipated that the OCC would need to cooperate with other agencies to identify new initiatives and an overall employment strategy for County Offaly.

2.3.2.5 Offaly County Development Plan 1967

The Offaly County Development Plan of 1967 details the significance of peatlands and peat production to the County Offaly. At the time of publication, 60% of the total production of Bord na Móna was attributable to peat extraction on peatlands located in County Offaly. The Boora bog group, of which the Application Site is a part, was identified as the largest, at approximately 20,000 acres and an annual production of 1,000,000 tons of milled peat and 40,000 tons of sod peat. The supply of milled peat from the Boora bog group fuelled the ESB power station at Ferbane supplied the briquette factory at Derrinlough. Sod peat production at Lemanaghan is noted as being for private sale.

The importance of the industrial employment associated with Bord na Móna and peat production is highlighted. The 1967 CDP states:

‘Turf production, since the event of the Turf Development Board Ltd. in 1934 and its successor, Bord na Móna, in 1946, has become of vital importance. In fact it can be regarded as second only to agriculture in the county’s employment structure.’

Records within the CDP show that, at the time, there was a total of 1,791 people working in the turf production industry, which represented 9.1% of total employment in the county.

While there is a clear optimism for the continued expansion of peat production operations and employment growth in the county, the CDP sounds a note of caution. The 1967 CDP estimated that the bogs of Offaly would be nearing the end of their commercial peat production lives by the turn of the century. The CDP expresses the need to expand research into the potential future uses of peatlands, in particular, future uses which would provide alternative employment opportunities, especially to the towns of Ferbane, Kilcormac, Rhode, and Shannonbridge.

2.3.3 Planning Policy Conclusion

The historic development plans for County Offaly highlight the Application Site’s significance as an industrial employment hub and the importance industrial peat extraction for economic growth in the county. This importance was notably emphasised in the CDP 1967, which underscored that industries like peat extraction were crucial for reducing unemployment caused by increased agricultural mechanisation. In more recent OCC CDP’s, there has been a shift in focus from exploiting peatlands for fuel purposes to policies directed at conserving peatland areas following peat extraction to allow for future uses at the bogs. This is evident in the OCC CDPs from 1995 onwards. These plans also identified future uses for bogs, such as tourism and wind energy infrastructure, underscoring the ongoing desire to maintain and expand employment in these economically vital areas.

Therefore, it can be concluded that OCC have outlined clear support of peat extraction for energy production at the Application Site within the CDP’s examined. These CDP’s demonstrate supportive policies during the time of peat extraction and outline policies which show the desire of OCC to preserve the peatland for future uses, such as renewable energy developments.

3.

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 test⁶.

In considering whether exceptional circumstances exist, subsection 177K(1J) of the Act sets out the matters which must be considered by the Commission, 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;*
- (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(1J) of the Act as headings to aid the Commission’s consideration of this case.

3.1

(a) Whether the 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, 2 and 4 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 commencing as early as 1960 within the Application Site.

⁶ *Planning and Development and Residential Tenancies, Bill 2020 (December 2020)*

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 2 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, protection 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 the 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 at 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 Sites within the boundary of the Application Site. The nearest Designated Site, Ferbane Bog SAC, is located approximately 1.2km from the Application Site boundary. Other protected habitats in the vicinity of the site are set out below.

Table 3-1: Designated Sites in the vicinity of the Application Site

Designated Site	Distance from Application Site (km)
Ferbane Bog SAC [000575]	1.2km
Clara Bog SAC [000572]	3.1km
Moyclare Bog SAC [000581]	4.9km
Pilgrim's Road Esker SAC [001776]	7.7km
Mongan Bog SAC [000580]	8.4km
Fin Lough (Offaly) SAC [000576]	8.5km
River Shannon Callows SAC [000216]	8.7km
Crosswood Bog SAC [002337]	9.9km
Carn Park Bog SAC [002336]	10.1km
Charleville Wood SAC [000571]	12.6km
Lough Derg, North-east Shore SAC [002241]	33.6km
Mongan Bog SPA [004017]	8.6km
Middle Shannon Callows SPA [004096]	8.7km
Lough Ree SPA [004064]	15.2km
River Suck Callows SPA [004097]	15.7km
Lough Derg (Shannon) SPA [004058]	33.6km

The following sections outline how Bord na Móna undertook the responsibility to ensure that the environmental impacts arising from the production 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 1950, with site clearance and drainage at Lemanaghan Bog. Draining the surface water from the bogs over a period of years is the essential precursor 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 rEIR, drainage works first commenced at the Application Site in 1950. The earliest available aerial imagery dating from 1973 shows the Application Site to be subject to sod peat extraction with areas of bog neither subject to drainage nor peat extraction in the north, northeast and south of the site. Aerial imagery shows that by 1988 the full extent of the Application Site was drained, cleared and subject to milled peat extraction. Therefore, all drainage works 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 nuisances 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 Lemanaghan Bog, surveys should be carried out and silt pond locations selected. Further details of measures control water pollution are contained in Chapter 4 of the rEIR. 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 peat extraction activity on the receiving environment as much as possible.

The positive effect of this is evidenced on page 2 the EPA Inspector's Report (19/11/1999) of Bord na Móna's IPC licence application, which states the following:

"An examination of a select number of the discharges during the peak and off-peak peat harvesting season was carried out as part of the application process. Sampling was carried out on 24 & 31 March 1999 and repeated on 27 August 1999. The initial survey was considered baseline as neither ditching nor harvesting processes were taking place at the time. The study was subsequently extended to undertake measurements during the production season. Some of the ponds were de-silted after the initial sampling event and sampling on the second occasion was preceded by a wet weather period.

Inspection of the ponds showed evidence of significant silt build-up within certain ponds. This has been directly attributed to production operations that took place on the associated peatlands during June-August. Examination of the analytical results indicate close correlation between incidence of elevated Total Suspended Solids and visual evidence of significant silt build-up.

Typical characteristics were: BOD <2mg/l; TSS <5-120mg/l COD <120mg/l; Nitrate (as N) <1.5 mg/l; Ammonia (as N) <8mg/l and Orthophosphate (as P) <0.5mg/l."

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 Coimisiún Pleanála on the licencing 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 production 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 outlined in Section 1.3 above, before 20th September 2012, industrial-scale peat extraction activities were considered exempted development. The Environment (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

As discussed in detail under Section 2.2 (IPC Licence) of this Report, the Applicant's IPC Licence includes the requirements to prepare and implement an Environmental Management System 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 Committees 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 & Habitats Directive. It is also submitted that the regularisation of the works would not circumvent these same purposes and objectives, given that a robust rEIAR & 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 & 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.

3.2 (b) Whether the applicant has or could reasonably have had a belief that the development was not unauthorised

Historic National Energy Policy

The Turf Development Board Ltd, the precursor to Bord na Móna, was created in 1934 with the task of peatland development following earlier governmental commitments in the early 1930s to support private turf production, establish standards for density and moisture content, fix prices and organise distribution. The Turf (Use and Development) Act was subsequently passed by the Dáil in 1936. One of the more significant provisions of the 1936 Act was Section 22(1) which gave the Minister power to

acquire land required for the Turf Development Board's operations (e.g. *'production, the preparation for sale, or the storage of turf, or any purpose ancillary to such production, preparation, or storage'*) by compulsory purchase.

The utilisation of peat as an indigenous fuel resource, as facilitated by the 1936 Act, came into prominence during the 2nd World War as a consequence of depleted coal reserves within the UK. The 2nd World War highlighted the risks of over-reliance on imported fuel resources within the Irish State; and in 1944, the Turf Development Board was instructed to prepare a comprehensive development programme (later called the 'First Development Programme') to implement industrial scale peat production across the state. Bord na Móna was established as a statutory authority responsible for the *'development of the nation's peat resources'* under the Turf Development Act 1946. 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

Bord na Móna began implementing its First Development Programme, as referred to above, in 1946, which included the commencement of bog development works across peatlands within its management. The purpose of these bog development works was to ensure that the necessary infrastructure was in place to facilitate subsequent peat extraction and production activities.

The increasing demand for electricity in the post-war period indicated that peat production processes would need to be further enhanced and expanded upon to adequately meet national demand. The Turf Development Act 1950, which came into effect in July 1950, contained provisions for the expansion of Bord na Móna activity and the initiation of the Second Development Programme (Second Post-War Plan). During the lifetime of the Second Development Programme (c. 1950 – 1970) bog development works and industrial scale peat extraction commenced. In 1959, Bord na Móna was notified by the Electricity Supply Board (ESB) that the capacity of a proposed peat-burning power station⁷ at Rhode, Co. Offaly was to be increased from 40MW to 80MW.

In the context of the Application Site, Lemanaghan Bog was first drained in 1950 and bog development works pertaining to drainage, buildings, railways, power lines, stores and were commenced under the Second Development Programme.

The growing need for resources by the country's electricity generating stations, and the latter 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. Against this backdrop, the Turf Development Act 1975 was passed by the Dáil in August 1975 which gave legislative effect to Bord na Móna's Third Development Programme.

The Third Development Programme resulted in the purchasing of c. 30,000 additional hectares of peatland to increase national peat production. As described above, major bog development works were required to bring these additional lands into production with drainage and development works (e.g. construction of railways underpasses, bridges and level crossings) underway on c. 17,000 hectares of the 30,000 hectares purchased by 1980. The majority of these works related to the extension of its existing operations and the expansion of horticultural peat production.

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

⁷ Rhode Power Station, Co. Offaly: Commissioned in 1960 and decommissioned in 2003

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.

Industrial scale peat extraction ceased within Lemanaghan Bog in June 2020 following the High Court's judgment on *Friends of the Irish Environment Ltd v Minister for Communications, Environment & Climate Action & Ors. [2019] IEHC 646* (discussed in greater detail in Section 2.1.3 of the rEIAR accompanying this planning application). The High Court set aside the Peat Regulations⁸ 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 1960 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 & Development Act (2000)⁹,

"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.

⁸ S.I. No. 4/2019 – European Union (Environmental Impact Assessment) (Peat Extraction Regulations 2019)

⁹ 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 1.3 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 21 January 2002. As mentioned previously, drainage at Lemanaghan Bog had commenced in the 1950.

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 dates of the EIA Directive and Habitats Directive in 1988 and 1994, respectively, with peat extraction commencing in 1960 within the Application Site. 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 Coimisiún 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 the Boora Bog Group (including Lemanaghan Bog) with the intention of continuing said works into the future.
- The Applicant lodged an application for substitute consent for the relevant peat extraction works to the Commission (SU19.307282) on 2nd June 2020. Peat extraction ceased (prior to July 2020) when it was confirmed that peat extraction could not re-commence prior to the Commission’s decision on SU19.307282.
- The Applicant formally announced in January 2021 that all industrial scale peat extraction on lands within its management would permanently cease. As such, SU19.307282 was withdrawn by the Applicant on 14th January 2021 due to changes in the operational requirements of the bog group.

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. P0500-01) 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. 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.

3.3

(c) Whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an EIA or an AA and to provide for public participation in such an assessment has been substantially impaired

The Applicant has been engaged in peat extraction in the Application Site since 1960 and has operated under its IPC Licence (Ref. P0500-01) since 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;
- Offaly County Council and Westmeath County Council (letters dated 31st May 1999) to be notified; 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 na 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 website¹⁰) 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 P0500-01, as well as any reports of non-compliance, incidents, contamination events, and licence audits carried out by the EPA, are also available for public review via the EPA's web portal (<https://leap.epa.ie/licence-profile/P0500/compliance>). 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 rEIA 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.

3.4

(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 1960. 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

The Ferbane Bog SAC (Site Code: 000575) is the nearest European Designated site to the Application Site located approximately 1.2km southwest of the Application Site. The second nearest European

¹⁰ <https://www.epa.ie/who-we-are/contact-us/>

Designated Site is the Clara Bog SAC (Site Code: 000572 approximately 3.1km east of the Application Site. The nearest NHA is the Clonydonn Bog NHA, located approximately 2.7km to the northwest. The drainage system supporting the Application Site discharges to a local tributary system, part of which feeds into the Brosna River. The River Brosna flows into the River Shannon approximately 14.5 km southwest of the site. The Brosna River and River Shannon form part of the River Shannon Callows SAC (Site Code: 000216) and Middle Shannon Callows SPA (Site Code: 004096) and thus hydrological connectivity exists.

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 River Shannon Callows SAC (2002) and succeed the designation of the Middle Shannon Callows SPA (1996). 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.

A rEIAR and a 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 extraction at Application Site.

It has been demonstrated earlier in this report that 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.

3.5

(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. P0500-01) between May 2000 and June 2020 with regard to industrial scale peat extraction and continues to comply with the conditions of the licence (e.g. emission management (air / water)) in the absence of direct peat extraction activities. The implementation of the licence predates the designation of the River Shannon Callows SAC in 2002. The Middle Shannon Callows SPA was designated prior to the Applicant's IPC licence in 1996.

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 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, and specifically to bring into the compliance the

Licence with the provisions of the *European Communities Environmental Objectives (Surface Water) Regulations, 2009*, the *Waste Management (Management of Waste from the Extractive Industries) Regulations*, and the *European Communities Environmental Objectives (Groundwater) Regulations, 2009*.

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

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

The revised surface water discharge monitoring location programme shall ensure that a representative selection of all surface water emission points from boglands within the licensed area is monitored annually and that all emission points are monitored at least once every five years. Surface water emission points shall be monitored as set out in Schedule 1(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. P0500-01), 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.

3.6

(f) Whether the applicant has complied with previous planning permissions granted or has previously carried out an 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 and 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 Offaly County Council concerning development undertaken by the Applicant at the Application Site.

3.7

(g) Such other matters as the Commission considers relevant

While this is a matter for the Commission to consider in relation to each substitute consent application, we note that, on review of the previous leave for substitute consent (LS19.306246), the Commission's Inspector acknowledged the opportunities associated with the potential future-uses of these bogs once production ceased, under Section 7.8 of their report, noting that,

"The applicant states that bogs that cease production will be rehabilitated and put to other uses. An application for substitute consent would provide for a full assessment of the environmental and ecological effects of the development carried out since September 2012, an opportunity to remediate any past adverse impacts, and a means to rehabilitate the site in the future."

As noted previously within this report, the Applicant formally announced in June 2020 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. Met Éireann's Annual Climate Statement 2024¹¹ reflects on clear and distinct impacts arising from climate change effects within an Irish context. The average annual air temperature for Ireland in 2024 was 10.72 °C, which is 1.17°C above the 1961-1990 long-term average (LTA) or 0.55°C above the most recent 1991-2020 LTA. Ireland's overall warming trend continues in line with the global warming trend.

¹¹ Met Éireann 2024 Annual Climate Statement (January 2025), Available at: <https://www.met.ie/ga/annual-climate-statement-for-2024>

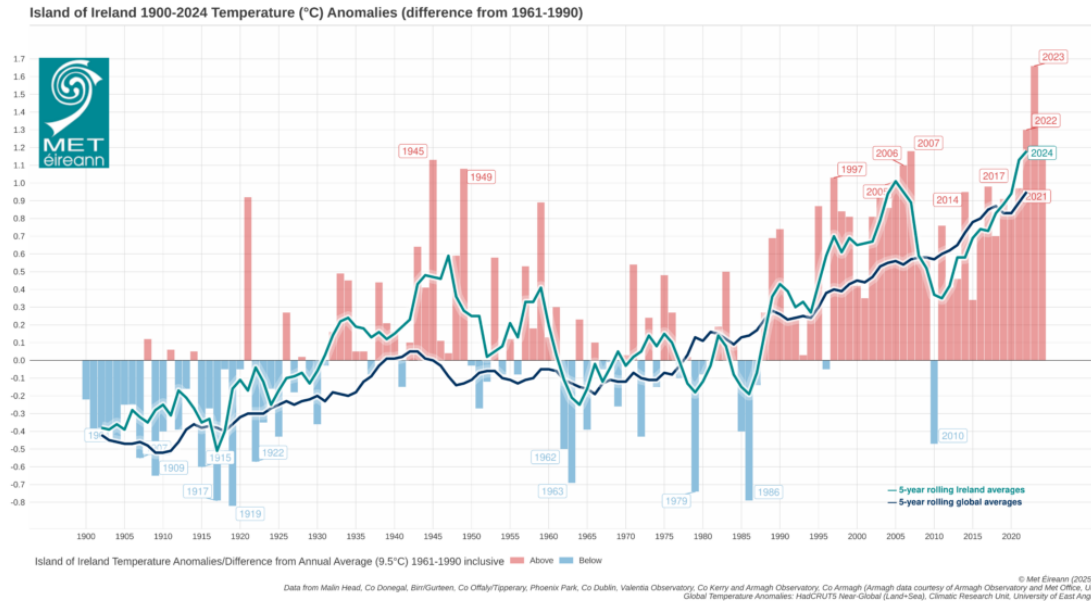


Figure 3-1: Island of Ireland annual average temperature anomalies (1961-1990 Long-Term Average) 1900 to 2024 (Source: Met Éireann)

The reduction of emissions is a key proponent of the enacted Climate Action and Low Carbon Development Act 2015, as amended, 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 2025 (CAP), which sets out an ambitious course of action over the coming years to ensure that Ireland achieves its legally binding target of net-zero greenhouse gas emissions no later than 2050, and a reduction of 51% (including from Land Use, Land Use Change and Forestry - LULUCF) over the period 2018 to 2030. The rehabilitation of the Application Site can contribute to carbon sequestration and the reduction of carbon emissions associated with land use in line with the CAP.

CONCLUSION

This Planning Report has been prepared in support of an application for substitute consent made by Bord na Móna Energy Limited in order to regularise, without prejudice, the planning status of historic peat extraction and ancillary works carried out within the Application Site located in County Offaly.

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 Commission.

In this regard, Section 177K(1A)(a) of the Act requires that in any given case An Coimisiún Pleanála 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, without prejudice, 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 P0500-01 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. No incidents or contamination events have been recorded at the Application Site. Across all water monitoring parameters recorded since 2000 (COD, pH, Ammonia, Ortho-phosphate, Suspended Solids), the Application Site has achieved a rate of compliance of between 88% and 100% between 2000-2024. 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 Offaly County Council in relation to Application Site concerning development undertaken by the Applicant.
- The Draft Cutaway Bog Decommissioning and Rehabilitation Plan outlined as part of this application is 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 An Coimisiún Pleanála grant substitute consent for the subject works.

