

Planning Report

Substitute Consent for
Peat Extraction at Ballivor
Bog Group. Co
Meath/Westmeath





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



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1. INTRODUCTION

MKO were appointed by Bord na Móna Energy Limited, 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 Ballivor Bog Group (Ballivor, Carranstown, Bracklin, Lisclogher and Lisclogher West bogs) located in Counties Meath and Westmeath (the Application Site). This Planning Report is provided to support the application made to An Bord Pleanála (‘the Board’) 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 activities and all ancillary works 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 Chapter 4 of the rEIAR.
- **‘Current Phase’:** the management of the Application Site since June 2020 (June 2020 to present). The Current Phase is described in detail in Chapter 4 of the rEIAR.
- **‘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 4.9** of the rEIAR.

Other terminology used throughout this report is outlined below:

- **‘Application Site’:** Ballivor Bog Group (namely Ballivor, Carranstown, Bracklin, Lisclogher and Lisclogher West bogs).
- **rEIAR:** Remedial Environmental Impact Assessment Report.
- **rNIS:** Remedial Natura Impact Statement
- **CDP:** County Development Plan
- **WMCC:** Westmeath County Council
- **MCC:** Meath County Council

1.1 Site Location and Context

The Application Site Group comprises 5 no. bogs located within Counties Meath and Westmeath. The individual bogs comprising the overall Group are described below and shown in Figure 1. The bogs today are described as follows:

- **Ballivor Bog** has a total area of 638ha, with 82ha therein subject to peat extraction at the point of cessation in June 2020. The bog is currently drained by a series of northwest-southeast orientated drains spaced at approximately 15m intervals. The topography within this bog today ranges from approx. 70 – 79mOD. Bare peat dominates the northeast, east and southeast of the bog. A mix of heath, scrub and pioneer open cutaway habitats can be found in the west, south and in small pockets to the northeast. Pockets of woodland are also found to the southwest.
- **Carranstown Bog** has a total area of 304ha, with 178ha therein subject to peat extraction at the point of cessation in June 2020. The bog predominantly consists of bare peat heath habitat along the western boundary and covering large portions of the east. Scrub, woodland and raised bog remnants can be found in the east also with a small area of fen to the northeast. The topography within this bog today ranges from approx. 68 – 75mOD.
- **Bracklin Bog** has a total area of 772ha, incorporating the Hill of Down area, with 118ha therein subject to peat extraction at the point of cessation in June 2020. Peat extraction was concentrated in a small section in the west of the bog, referred to as Bracklin West. As such,

this section of bog predominantly comprises bare peat habitat. The bog is drained by a series of northeast-southwest orientated drains. As the main part of Bracklin Bog went out of operation in the 1990s, it now comprises heath, scrub, areas of cutover bog, and pioneer open cutaway habitats and pockets of wetlands. The topography within this bog today ranges from approx. 71 – 86mOD.

- **Lisclogher Bog** has a total area of 479ha. Peat extraction ceased across large areas of this bog in 2003 and regeneration is evident throughout. Third party extraction on limited areas continued until June 2020. Areas of remnant bog are located in the north and south of the bog. Pioneer open cutaway habitats dominate in the centre of the bog along with heath, scrub, wetland areas and woodland. The topography of this bog today ranges from approx. 69 – 76mOD. It is drained by a series of east-west orientated drains.
- **Lisclogher-West Bog** has a total area of 228ha and while drainage was inserted, this was never subject to peat extraction. The existing high bog is relatively dry and is drained by a series of northwest-southeast orientated drains. The topography of this bog today ranges from approx. 77 – 82mOD. The bog comprises degraded raised bog, bog woodland and heathland mosaic, scrub and conifer plantation.

Onsite infrastructure still present and functional across the Application Site today includes:

- Surface water drainage system including silt ponds and drainage channels;
- De-mountable rail network including rail lines, at grade rail crossings and ancillary infrastructure;
- Electricity distribution infrastructure;
- Machine passes and site access points; and,
- Guyed wind monitoring mast.

The five bogs cover a total of 2,421 hectares and capture several townlands across two neighbouring counties. A breakdown of the townlands and footprint can be found in Table 1 below.

Table 1. Ballivor Bog Group Townland and spatial footprint breakdown

Bog Reference	County	Townlands - Meath	Townlands - Westmeath	Spatial Footprint (ha)
Ballivor	Meath / Westmeath	Clondalee More, Derryconor, Clonycavan, Robinstown (Killaconnigan E.D.)	Grange More, Riverdale	638
Bracklin (including Hill of Downey)	Westmeath	-N/A	Craddanstown, Bracklin, Killagh, Ballynaskeagh (Ballynaskeagh E.D.), Mucklin	772
Carranstown	Meath / Westmeath	Killaconnigan, Carranstown Little, Carranstown Great	Grange More	304
Lisclogher	Meath / Westmeath	Coolronan	Lisclogher Great, Cockstown, Clonleame, Bracklin Clonmorrill	479
Lisclogher West	Westmeath	-N/A	Bracklin, Ballyhealy or Ballinure, Bolandstown, Martinstown (Ballyhealy E.D.)	228
Total Spatial Footprint: 2,421 ha				

The Application Site is located in a low-lying landscape rural in character. The site topography ranges between 86m above ordnance datum (AOD) at its highest point to approximately 68m AOD at its lowest point. The Application Site measures approximately 9.27km in length from north to south, and approximately 7.0 kilometres from east to west, at its widest point. The boundaries of the individual bogs are mainly defined by hedgerows and laneways. The Application Site is accessed via the R156 Regional Road, which bisects the site, and is within close proximity of the broader public road network including the N52, N51, N4, R161 and several local roads such as L4101, the L4106.

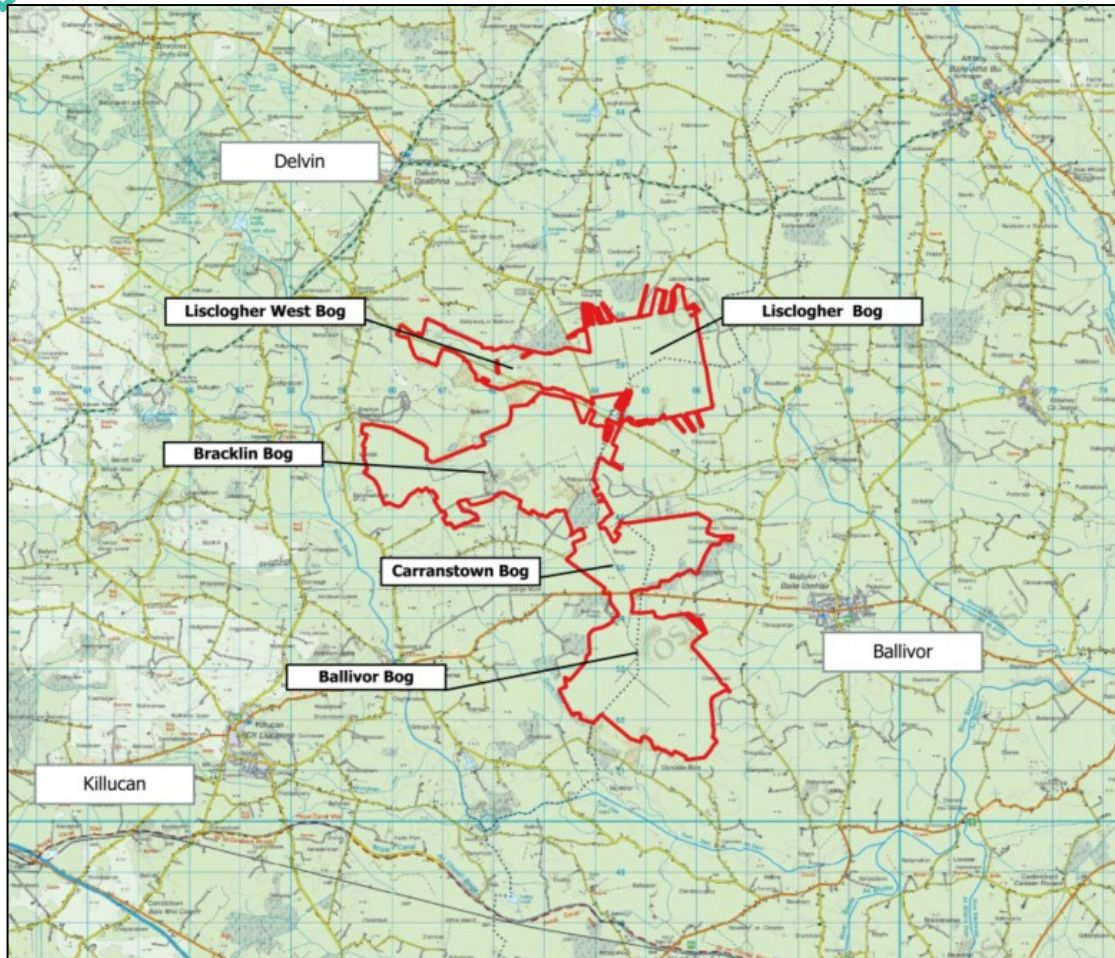


Figure 1. Application Site Location

The Application Site predominantly comprises a series of cut-over bogs which have been subject to industrial scale peat extraction by the applicant from 1953 to June 2020. There are a number of ancillary services and infrastructure associated with the subject peat extraction works within the footprint of the bog group, including:

1. Surface water drainage incorporating silt ponds, drains and pumps since decommissioned;
2. Bord na Móna rail network comprising permanent and temporary track, locomotives, wagons and rail cars.
3. Fixed and mobile fuel tanks;
4. Machine passes;
5. Electricity distribution infrastructure;
6. Welfare facilities (including canteen structures);
7. Work sites and workshops; and
8. Peat storage and loading facilities

It should be noted that, as set out previously above, several of these elements (such as items numbered 5 to 8 above), already enjoy the benefit of having received planning permission. The remaining items were already established at the Bog Group prior to 1988.

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 Board and for a single stage application process which removes the requirement to apply for leave to apply from the Board.

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 Board's decision on PL25.RL.2975 (*drainage of boglands and extraction of peat at the Lower Coole, Mayne, County Westmeath*) broadly established the precedent that the drainage of boglands and extraction of peat was development and not exempted development with regard to Section 4(4) of the Act. The Board's decision on that case was upheld by the High Court under Judicial Review, *Westland Horticulture Limited and Bulrush Horticulture Limited v An Bord Pleanála (2013/398/JR – [2018] IEHC 58)*. Specifically, Mr Justice Meenan found that, as peat extraction involving a new or extended area of 30 hectares or more required EIA, planning permission was required under Section 4(4) of the Act. This decision was then subject to an application for leave to appeal, which was heard in May 2018 and determined on 7th December 2018 that an appeal of Mr Justice Meenan's judgment would not be allowed.

Please refer to Section 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 rEIA 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 van Staten Noord Holland*).

C-209/04, *Commission v Austria*, and C-226/08, *Stadt Papenburg v Germany* make clear that similar considerations apply in relation to the Habitats Directive. Each of these cases concern development where the date upon which the application for consent was lodged pre-dated the latest 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 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)

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

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

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

1988 Baseline

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

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

- Installation of surface water drainage infrastructure at Ballivor Bog Group, specifically at Ballivor, Carranstown, Bracklin, Lisclogher, and Lisclogher West Bogs to facilitate peat extraction activity from 1988 to June 2020;
- Vegetation clearance to facilitate peat extraction activity from 1988 to June 2020;
- Industrial scale peat extraction (milled peat and sod peat/moss), specifically at Ballivor, Carranstown, Bracklin, and Lisclogher Bogs from 1988 to June 2020;
- Use and maintenance of pre-existing ancillary supporting infrastructure and services to facilitate peat extraction and associated activities (e.g., railway infrastructure, fixed fuel tanks, drainage (drains, silt ponds, pumps), machine passes etc.), from 1988 to present day;
- Control Measures associated with the above, inclusive of the IPC Licence measures (Ref. P0501-01) which commenced from April 2000 onwards to the present day;
- All associated site development and ancillary works.

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

It should be noted that certain ancillary infrastructure, such as welfare facilities (incl. canteen structures, work sites and workshops, and peat storage and loading facilities) within the Application Site already have the benefit of planning permission and do not require substitute consent; nonetheless, as part of any substantive future substitute consent application, they are assessed within the relevant remedial Environment Impact Assessment Report (rEIAR) and remedial Natura Impact Statement (rNIS).

Industrial scale peat extraction permanently ceased by the Applicant at the Application Site in June 2020.

2.

BACKGROUND

2.1

Development at Ballivor Bog

Bog development works (e.g. installation of surface water drainage and transportation infrastructure (rail line), construction of passes, routing of electrical power lines, completion of site clearance and preliminary excavations, etc.) initially began in the mid-1940s within the Application Site during the First Development Programme. Industrial scale peat extraction subsequently commenced from 1953 to June 2020 for the production of milled and sod peat under the Second Development Programme. Table 2 below sets out the operational history of industrial scale peat extraction within the Application Site.

Table 2 Ballivor Bog Group – Operational History

Bog		Commencement of Site Preparation Works (vegetation clearance and drainage insertion)	Extraction Began	Extraction Ceased
Ballivor		1948	1953	June 2020
Carranstown	Western portion of Carranstown	1974-1987	By 1988* (Western side)	June 2020
	Eastern portion of Carranstown	1974-1987* drainage inserted only 1989-1995* Clearance works	By 1995	June 2020
Bracklin	Main Bracklin Bog area	1950	1957	By 2003
	Western portion of Bracklin	1979-1988, drainage inserted throughout Bracklin West By 1988 vegetation clearance in southern portion only	Between 1985 and 1995* at northern portion of Bracklin West By 1988* at southern portion of Bracklin West	June 2020
Lisclogher		1950	1960	March 2003 for milled peat. Sod peat (third party) was extracted in the northeast until 2020.
Lisclogher-West		Minor works commenced in 1973	N/A	N/A

	Main Drainage installed between 1973 and 1988 Drainage was complete post 1988*		
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*indicated by aerial photography which are included Appendix 4-4 of this EIAR;

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

2.2

Site Planning History

As set out in Tables 3 and 4, there have been a range of planning applications lodged for development within and adjacent to the application site. The first application was submitted in 1972 (Pl Ref. 72/356) outside of the Application Site and the most recent application lodged in 2023 ABP: 316212) within the Application Site.

As listed in Table 3, there have been several planning applications lodged relating to the Ballivor Production Centre (and associated services / infrastructure ancillary to peat extraction activities) over the past few decades.

Table 3. Planning Applications outside of the Application Site Boundary

Planning Ref.	Description	Planning Authority Decision
WMCC Ref. 72/356	Erection of covered loading bay at Ballivor works	Final Grant (18.07.1972)
WMCC Ref. 77/441	Extension to workshop at Ballivor	Final Grant (05.08.1977)
WMCC Ref. 83/382	Bulk loading facility at Grangemore Works, Raharney	Final Grant (15.08.1983)
WMCC Ref. 87/41	Erect Workshop at Grangemore, Raharney	Final Grant (18.09.1987)
WMCC Ref. 88/14	Erect tea centre at Grangemore, Raharney	Final Grant (03.03.1988)
WMCC Ref. 90/554	Extension to storage facilities	Final Grant (13.12.1990)
WMCC Ref. 05/2348	Construct a 10/20 kV ESB substation to service Ballivor Horticulture Factory	Final Grant (30.01.2006)

More recently, there have been 6 no. applications made in relation to meteorological masts, a take-off area for model aircraft and Wind Farm developments and these are set out in Table 4.

Table 4. Planning Applications within the Application Site Boundary

Bog Ref.	Planning Ref.	Description	Planning Authority Decision
Lislogher West	WMCC Ref. 12/2067	Laying two intersecting grass strips, 150m x 7m and 75m x 7m, for use as a take-off and landing area for model aircraft and a grass area, 10m x 30m for car parking	Final Grant (18.06.2013)
Lislogher	WMCC Ref. 15/6135	To erect a guyed wind monitoring mast, with instruments, up to 100m in height	Final Grant (13.10.2015)
Lislogher	WMCC Ref.	Erect a guyed wind monitoring mast with instruments up to 100m in height.	Final Grant (25.01.2017)
Lislogher	WMCC Ref. 21/620	Retention of guyed wind monitoring mast	Final Grant (23.02.2022)

Bog Ref.	Planning Ref.	Description	Planning Authority Decision
Bracklyn	ABP: 311565	Wind Farm Development including 9 turbines and all associated works	ABP Final Grant – 07/07/2022
Ballivor Bog Group	ABP: 316212	Proposed development of 26 wind turbines and associated works	No decision

It should be noted that the above developments listed in Table 4 do not have any connection with the licenced peat extraction activities undertaken within the bog group.

It is important to emphasise that these developments, with the exception of Bracklyn Wind Farm (which has yet to commence development) and Ballivor Wind Farm (which is currently with An Bord Pleanála awaiting a decision) have been constructed and operated in line with their specific conditions of permission and considered compliant within the planning system. As such, it is not intended that these developments are subject to a requirement for substitute consent. However, they are considered within the relevant environmental studies carried out as part of the rEIAR and remedial Natura Impact Statement (rNIS).

It is also noted that the Applicant has never been the subject of any actual or threatened ‘Section 160’ enforcement action from either Meath or Westmeath County Councils in relation to Ballivor Bog Group concerning development undertaken by the Applicant.

2.2.1

Previous Substitute Consent Application

The Applicant previously applied to An Bord Pleanála for leave to apply for substitute consent for peat extraction activities within the Derrygreenagh Bog Group (**Bracklin, Carranstown, Ballivor, Kinnegad and Ballybeg**) in Counties Meath, Offaly 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 Board subsequently granted leave to apply for substitute consent on the 1st of May 2020 (**LS25M.306236**). In allowing the Applicant to apply for substitute consent, the Board was satisfied that, in light of the size and scale of the peat extraction carried out subsequent to 20th September 2012 within the Derrygreenagh Bog Group and the proximity of the peatland sites to a number of European sites, an 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 Bord 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 Derrygreenagh Bog Group to An Bord Pleanála (**SU25M.307278**) 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.

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

2.3

IPC Licence

The Applicant was granted an Integrated Pollution Control Licence (IPC) Licence (Ref. P0501-01) from the EPA for the Derrygreenagh Bog Group, of which the Ballivor Bog Group is a subset, on 26th April

2000 with subsequent amendments to the licence obtained on 27th September 2012, 18th June 2013 and 25th February 2014. The IPC Licence is managed by the Applicant's Environmental Management Department in Land and Habitats, with three Compliance Officers 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, the Applicant is required to maintain an Environmental Management System (EMS) which fulfils the requirements of the licence and any associated objectives / targets relating to use of cleaner technology, cleaner production and the reduction and minimisation of waste. The EMS is required to form part of the Applicant's Annual Environmental Report (AER), which is submitted to the EPA prior to the 31st March of each year. IPC Licence, Annual Environmental Reports 2001-2022 (excluding 2007). (included in Appendix 4-3 of the accompanying rEIAR (2018 to 2022 are publicly available. The most recent AER submitted by Bord na Móna was the AER for 2023 and covers the 2023 calendar year.

The EPA regularly audit and inspect compliance with its IPC Licences, these reports are available on the EPA's web portal⁴. The EPA conducted a site visit at Derrygreenagh Bog Group in May 2022 during which the EPA inspected sections of the licenced area and documentation. An extract from this report is outlined below:

"The Agency carried out this site visit as part of the OEE annual site visit programme to evaluate the licensee's compliance with the requirements of the licence. The licensee was found to be in compliance with its Licence in relation to the areas inspected during this site visit"

The EPA did not report any areas of non-compliance by Bord na Móna. There were also no complaints raised on Bord na Móna's licenced activity during the 2023 calendar year. These site visits were conducted as part of the EPA's annual site visit programme to check compliance with licence conditions.

2.3.1

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 Board and the EPA regarding mitigation and monitoring and the conditions that can be imposed by the Board 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

⁴ <https://leap.epa.ie/licence-profile/P0501/compliance>

proportionate to the nature, location and size of the development and the significance of the effects on the environment of the development).

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

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

In this regard, it should be noted that regardless of whether substitute consent is granted by the Board in respect of the Application Site, the Applicant intends to fully satisfy the requirements of Condition 10 of the IPC Licence which is discussed in this Report at section 3.1.5. It follows that should the Board include a condition or conditions relating to remediation of all or part of the site on which the development which is the subject of the grant of substitute consent is situated, the Applicant will be well-placed to comply with those condition(s) to the fullest extent.

2.4

Statutory Planning Policy Context

This section will outline relevant policies from the current Development Plans (Westmeath County Development Plan 2021 – 2027 and Meath County Development Plan 2021 – 2027) which are set out in detail below. Previous 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 2.4.2), the importance of peat extraction as a key source of employment in the local area is highlighted. This employment was considered vital to rural economies such as the village of Ballivor and other local settlements. These historic Development Plans also outline specific policies in support of peat extraction and these are set out in further detail in chapter 2 of the rEIAR. More recent Development Plans have incorporated policies to support the future transition of the peatlands, recognising their potential with respect to meeting both the evolving climate and energy objectives in addition to the ecological and amenity potential of the area.

2.4.1

Current Planning Policy

2.4.1.1

Meath County Development Plan 2021 – 2027

The current Meath County Development Plan 2021-2027 (MCDP) was adopted on 22nd September 2021 and came into effect on 3rd November 2021. It sets out a vision and an overall strategy for the proper planning and sustainable development of County Meath for a six-year period.

MCDP states that the Council acknowledges the potential of peatlands to contribute to tourist, amenity, educational and research purposes and will liaise with the various government and non-government organisations to secure the conservation of the peatland areas.

This overarching aim is supported by **HER OBJ 39** which states:

“To work in partnership with relevant stakeholders on a suitable peatland site(s) to demonstrate best practice in sustainable peatland conservation, management and restoration techniques and to promote their heritage and educational value subject to Ecological Impact Assessment and Appropriate Assessment Screening, as appropriate, having regard to local and residential amenities”

The MCDP also references the benefits associated with the sustainable after-use of peat extraction areas in addition to highlighting the Council's greater recognition of cutaway peatlands and their potential to facilitate various complimentary activities such the generation of renewable energy, diverse ecosystems and places of public amenity.

2.4.1.2

Westmeath County Development Plan 2021– 2027

The Westmeath County Development Plan (2021 – 2027) (WCDP) came into effect on the 3rd May 2021 and provides the strategic framework for land-use planning in the county. Chapter 12 (Natural Heritage and Green Infrastructure) states that Westmeath supports a wide range of habitat types and landscapes including peatlands, which are described as being a characteristic part of the landscape covering about 17,000ha (c. 9% of the footprint of the county).

The Council recognises that peatlands are one of the oldest surviving ecosystems, and furthermore, are considered amongst the most important ecosystems due to their value for biodiversity, regulation of climate as a valuable natural carbon sink, water filtration and supply. Specifically, the WCDP highlights that ‘natural state’ peatlands function as long-term sinks for atmospheric carbon dioxide and are the ‘*most important long-term carbon store in the terrestrial biosphere*’. Given the extent of peatland in Westmeath the WCDP acknowledges that considerable potential exists to use these lands as a resource to mitigate against the impacts of climate change

The WCDP supports the sustainable management of peatlands in order to protect the county’s natural heritage, archaeological and non-renewable resources and contribute to Ireland’s climate action strategy. The following policies support the Council’s aim for the future use of peatlands within the county and are considered particularly relevant to the proposed regularisation of the peat extraction works undertaken within the Application Site.

Climate Action Policy Objectives

- **CPO 11.6** Support collaboration between local authorities, the Bord na Móna Transition Team and relevant stakeholders and the development of partnership approaches to integrated peatland management for a just transition that incorporate any relevant policies and strategies such as the Bord na Móna Biodiversity Plan 2016-2021 and the national Climate Mitigation and Adaptation Plans. This shall include support for the rehabilitation and/or re-wetting of suitable peatland habitats.

Peatlands Policy Objectives

- **CPO 12.69:** Support collaboration between local authorities, the Bord na Móna Transition Team and relevant stakeholders and the development of partnership approaches to integrated peatland management for a just transition that incorporate any relevant policies and strategies such as the Bord na Móna Biodiversity Plan 2016-2021 and the national Climate Mitigation and Adaptation Plans. This shall include support for the rehabilitation and/or re-wetting of suitable peatland habitats.
- **CPO 12.20:** Support the implementation of any relevant recommendations contained in the National Biodiversity Plan, the All Ireland Pollinator Plan and the National Peatlands Strategy.
- **CPO 12.67:** Work in partnership with relevant stakeholders on suitable peatland site(s) to demonstrate best practice in sustainable peatland conservation, management and restoration techniques and to promote their heritage and educational value subject to Ecological Impact Assessment and Appropriate Assessment, where relevant.

As per the MCC CDP, the WMCC CDP also references the transition of peatlands to key areas to facilitate renewable energy developments. Section 10.23.2 of the CDP refers to the RSES for the Eastern and Midland Region and highlights the potential of peatlands for climate change mitigation and renewable energy production:

“With a strong history of energy production and an extensive electricity transmission network in place, the potential exists in such peatland areas for a smooth transition to renewable energy sources. This approach should be informed by the preparation of a Holistic Management Plan that will address the future uses of former industrial peatlands. The preferred locations for large scale energy production, in the form of windfarms, is onto cutover cutaway peatlands in the County, subject to nature conservation and habitat protection requirements being fully addressed.”

CPO 10.145 further emphasises WMCC favourable outlook on the development of peatlands for renewable energy developments:

“To strictly direct large-scale energy production projects, in the form of wind farms, onto cutover cutaway peatlands in the County, subject to environmental, landscape, habitats and wildlife protection requirements being addressed.”

In conclusion, both the MCC CDP and WMCC CDP support transitioning peatlands for renewable energy. Section 10.23.2 of the CDP highlights the potential of peatlands for climate change mitigation and renewable energy, recommending cutover and cutaway peatlands for wind farms, guided by a Holistic Management Plan and subject to environmental protections. CPO 10.145 reinforces this approach, emphasising large-scale energy projects on these peatlands with strict adherence to environmental and wildlife protection standards. The significance given to peatlands and their role within the preservation of biodiversity and ecosystem services is again in line with the Applicant's own understanding and vision for the Application Site and supports the regularisation of previous peat extraction activities.

2.4.2 Historic Planning Policy

Historic County Development Plans and Local area 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.

2.4.2.1 Westmeath County Development Plan 1986

The Westmeath CDP 1986 was examined with regard to the Application Site.

The CDP states the following in relation to employment:

“4,700 people were employed in the extractive and agriculture sectors in 1984. This was 23% of the total employed population of Westmeath (20,390). There was a 9.4% decrease in workers from 1979 when there were 5,200 employees in the sector.”

Boglands

“The council recognise the importance of boglands as a major natural resource being raw material for power generation and peat production and also constituting an important amenity resource. It is the policy of the council to encourage the continued development of these areas while at the same time preserving the ecological balance in recognised areas of scientific interest.”

The above extract outlines clear support for the development of boglands in the County at the time of writing. Consideration for the preservation of bogland for potential future uses is also demonstrated.

2.4.2.2 Westmeath County Development Plan 1994

The Westmeath CDP 1994 was examined with regard to the Application Site and the following extract from the CDP is considered of relevance to the Application Site.

Bogland Development

“The council recognises the importance of boglands as a major natural resource being raw material for power generation and peat production and also constituting an important amenity resource. The Council will consult with Bord na Móna, Teagasc and other appropriate bodies to ensure that the productive development of the bogland is carried out in such a way as not to prejudice amenity potential. In particular, the Council shall co-operate with all interested parties in furthering the preservation of Scraw and Gariskil Bogs which are rated of international importance. In cases where bog development is likely to adversely affect public

roads, charges will be levied on developers to defray the improvement/maintenance of such roads.”

The extract above indicates that WMCC recognised the importance of peatlands as a natural resource for energy production and employment. Furthermore it highlights the desires of the council to maintain the bogs as much as possible to ensure future uses in the post peat production stage are possible.

2.4.2.3 Westmeath County Development Plan 2002–2008

The 2002-2008 Development Plan was adopted by the Council at a meeting held on the 15th of April 2002 and would have come into effect 4 weeks later.

The CDP outlines the following policies in relation to extractive industries:

“The Council recognises the importance of extractive industry in the economic life of the County, and importance as a valuable source of employment in parts of the County.”

This policy highlights the favourable outlook of the Council on the economic importance of extractive industries in the County at the time. This industry provided both employment and economic benefits to the county.

“The Council will facilitate the exploitation of the County's natural resources where there is proven need for a certain mineral/aggregate.”

The policy above demonstrates that the Council were in favour of the extraction of peat at the Application Site as peat was considered an important source of energy and fuel at the time of writing this CDP.

Bogs

The CDP states the following in relation to bogs.

“The importance of bogs has been communicated more widely to the general public, in recent years, nowadays it is generally recognised that bogs contain a unique record of our past and that they are important habitats with some of the oldest communities dating back more than 10,000 years.”

“Raised bogs dominate the type found in County Westmeath and are the most important remaining in Europe and probably the most extensive of their type in the world. The Council will work with statutory and other agencies to ensure the level of protection afforded is adequate.”

“The Council recognises the importance of bogland as a major natural resource of rare material which is secondary to their importance for heritage and amenity value, The Council will liaise with governmental and non-governmental organisations to ensure that the productive development of bogland is carried out in such a way as not to prejudice amenity potential.”

2.4.2.4 Westmeath County Development Plan 2008–2014

The 2008-2014 Development Plan was adopted on the 25th of Jan 2008 and came into effect on the 25th of Feb 2008. Contents of the plan relevant to the Application Site include:

- **O-EH19:** *To plan and prepare for the future use of large industrial bog sites when peat harvesting finishes and to encourage a balanced approach to the redevelopment of cutaway bogs. There is potential for habitat creation such as woodlands, grasslands, and wetlands.*

There is also potential for amenity value with development of parklands and economic uses such as agricultural grasslands, forestry and wind energy.

- **P-EH32:** *Within the next 20–30 years large areas of peatland will be exhausted and provide tracts of land that have potential for agriculture, habitat and amenity. The Council, in consultation with relevant agencies, will explore future potential of cut away peatlands that may offer opportunities for habitat creation or amenity and recreation areas such as community woodlands or parklands.*
- **P-EH33** *The occurrence of extensive cutaway peatland offers opportunities for siting of windfarms.*

2.4.2.5 Westmeath County Development Plan 2014 – 2020

The Westmeath County Development Plan 2014–2020, effective from February 18, 2014, though now expired, outlined several strategic aims relevant to the Application Site. These included supporting rural areas and the countryside in sustaining the rural economy, recognising their roles in agriculture, forestry, energy production, tourism, recreation, and emerging rural enterprises. The Plan also emphasised promoting the renewable energy sector's growth and development within the county. Some policies and objectives of note are outlined below:

- **P-PTL4:** *To plan and prepare for the future sustainable and environmentally sensitive use of large industrial bog sites when peat harvesting finishes and to encourage a balanced approach to the redevelopment of cutaway bogs, including habitat creation, in conjunction with adjacent Local Authorities. This plan will have regard to both National and Regional frameworks with regard to the future use of peatlands, including cutaway bogs.*
- **P-PTL5:** *To exercise control of peat extraction, both individually and cumulatively, which would have significant impacts on the environment.*
- **O-PTL5:** *To work in partnership with relevant stakeholders on suitable peatland site(s) to demonstrate best practice in sustainable peatland conservation, management and restoration techniques and to promote their heritage and educational value subject to Ecological Impact Assessment and Appropriate Assessment, as appropriate.*
- **P-EN5:** *To support the sustainable development of the infrastructure required to assist the Midland Region in the delivery of renewable energy, particularly in the context of the need to make a transition from peat to renewable energy.*

2.4.2.6 Ballivor Development Plan 1993

The dedicated chapter on Ballivor in the Meath CDP – Local Plans for Towns and Villages 1981 was reviewed to provide context to the surrounding area of Application Site and its impact on the receiving environment at the time.

Employment and Industry

“Before the arrival of the electronics factory which provides good male and female job opportunities in manufacturing industry, employment was mainly to be found in the nearby Bord na Mona Bog, in agriculture and in the service sector.”

Industry

“The recently established electronics factory and Bord na Mona are the main sources of industrial employment in the area. As the population and more people become available to take up industrial jobs, the County Council will facilitate the establishment of additional industry.”

The above statements highlight the importance of the Ballivor bog as an employment hub for the local population of Ballivor Village at the time.

2.4.2.7 **Meath County Development Plan 1994**

The 1994 Meath CDP was examined for policies and information relating to Ballivor, the rural economy and peatland management. The following information is considered relevant to the Application Site.

Industrial Development:

The Planning Authority supports developing and expanding existing industries and establishing new ones at suitable locations to reduce unemployment. While most new enterprises are expected in development centers with services, rural areas are also considered for industrial expansion, balancing locational requirements with tourism and amenity interests.

Employment Importance:

MCC recognised Ballivor Bog as an important employer. Due to the decline in agricultural employment, future job opportunities were needed from industrial and service sectors. Peat extraction activities at the Application Site helped reduce unemployment through increased mechanisation.

Commercial Development:

MCC acknowledges the economic and employment significance of industrial and commercial development, aiming to support such activities and reinforce designated development centres. This underscores the positive view on employment associated with Ballivor Bog.

Mining and Extractive Industries:

Extractive industries, including peat extraction, contribute significantly to the county's economic development and employment.

Peat Extraction:

The development of peat resources is promoted, with consideration for preserving significant sites like Lough Shesk. Potential future uses for bogs, such as tourism, are also highlighted, emphasising Ballivor Bog's importance as a current and future employment resource.

2.4.2.8 **Meath County Development Plan 2000 (Draft)**

The draft Meath CDP 2000 was examined as the final published version of the plan could not be sourced. The CDP outlines the following in relation to Ballivor and peatlands.

Employment

- *“The NEC electronics component factory in Ballivor is a major employer within the village and additional employment is provided in the nearby Bord na Mona peat works”*

It is clear that MCC recognised the importance of Ballivor bog as a major source of employment in the Ballivor area. This allowed for the rates of unemployment being low locally.

Landscape Sensitivity

Characteristics	Sensitivities
<i>Areas VQ10: Bogland Areas</i>	<i>These areas are by virtue of their insular qualities are not sensitive to development such as masts, wind</i>

<p><i>These areas, primarily to the west of Ballivor and Bohermeen are relatively isolated visually and functionally. They are difficult to penetrate and in the case of the Ballivor bog, are working peat extraction centres.</i></p>	<p><i>energy complexes and cut away bog uses such as major afforestation.</i></p>
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The landscape assessment of MCC of the Ballivor bog would indicate that although the employment of people in peat extraction locally was important, they also had a view of potential future uses of the bog for infrastructure such as “wind energy complexes”.

2.4.2.9 Meath County Development Plan 2013-2019

The Meath County Development Plan 2013-2019 was adopted on 17th December 2012 and came into effect on 22nd January 2013.

The CDP outlines the following policies and objectives in relation to peatlands:

- **NH POL 11:** *To seek to ensure that peatland areas which are designated (or proposed for designation) as NHAs, SACs or SPAs are conserved for their ecological, archaeological, cultural and educational significance.*
- **NH OBJ 4:** *To work in partnership with relevant stakeholders on a suitable peatland site(s) to demonstrate best practice in sustainable peatland conservation, management and restoration techniques and to promote their heritage and educational value subject to Ecological Impact Assessment and Appropriate Assessment Screening as appropriate.*

These policies and objectives suggest that peat extraction as a fuel source is nearing its conclusion, coinciding with the production period at the Application Site. The CDP highlights numerous potential future uses for the Application Site once production ceases.

2.4.2.10 Meath County Development Plan 2007-2013

The Meath County Development Plan 2007-2013 was adopted on 2nd March 2007 and came into effect on Thurs 22nd March 2007. The relevant policies and objectives are outlined below:

Peatlands

- **HER POL 18:** *To ensure that peatland areas which are designated (or proposed for designation) as NHAs or SACs are conserved and managed appropriately to conserve their ecological, archaeological, cultural and educational significance.*
- **HER POL 55** *To protect archaeological sites, monuments (including their setting), underwater archaeology and peatlands, and objects within the jurisdiction of Meath County Council, including those that are listed in the Record of Monuments and Places or newly discovered sub-surface archaeological remains.*

2.4.3 Planning Policy Conclusion

The historic development plans for County Meath highlight the Application Site's significance as an industrial employment hub and the importance of industrial peat extraction and the growth of rural towns. This importance was notably emphasised in the MCC CDP 1994, which underscored that industries like peat extraction were crucial for reducing unemployment caused by increased agricultural mechanisation. A key theme throughout these plans were policies directed at conserving peatland areas following peat extraction to allow for future uses at the bogs. This is evident in the WMCC CDPs from 1986 and 1994. 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 both MCC and WMCC 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 the councils to preserve the peatland for future uses. In more recent CDP's such as the WMCC and MCC CDP 2021 – 2027, they focused on the transition of peatland areas to key development areas for renewable energy infrastructure which would facilitate the continuation of peatlands as key energy producing areas for the country albeit in a more sustainable manner.

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 test⁵.

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

(a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;

(b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;

(c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;

(d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;

(e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;

(f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;

(g) such other matters as the Board considers relevant.

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

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 1953 for individual bogs within the Application Site.

⁵ *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 habitats within the boundary of the Application Site. The River Boyne and River Blackwater SPA is located 230m east of the site boundary. Other protected habitats within 15km of the site are set out below.

Table 5. Designations within 15km of the Application Site

Mount Hevey Bog SAC [002342]	3.3 km South-West
Girley (Drewstown) Bog SAC [002203]	9.9 km North-East
Wooddown Bog SAC [002205]	10.3 km West
Lough Lene SAC [002121]	10.6 km North-West
Lough Bane and Lough Glass SAC [002120]	11.7 km North-West
White Lough, Ben Loughs and Lough Doo SAC [001810]	13.4 km North-West

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 1948, with site clearance and drainage at Ballivor bog. Draining the surface water from the bogs over a period of years is the essential pre-cursor to peat extraction. The consequence of drainage is dehydration of surface vegetation and changes to the chemistry of surface water resulting in a fundamental change to the nature of the habitats that existed prior to drainage. As drainage took place over a number of years (typically 4 – 7 years), the changes to habitats within the bogs would also have taken place within that timeframe prior to peat extraction, allowing time for resident species to relocate. These changes occurred on all bogs in the Application Site. As set out in Chapter 4 of the rEIAR, all drainage infrastructure, with the exception of drainage at Lisclogher West bog (where drainage concluded post 1988), took place prior to 1988. Therefore, the vast majority of drainage took place prior to the EIA and Habitats Directive being transposed into Irish law.

Silt Committees

As detailed above, the central purpose of the 1985 EIA Directive is preventing the creation of pollution or 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 Ballivor Bog Group, surveys should be carried out and silt pond locations selected. Further

details of measures control water pollution are contained in Chapter 4 of the rEIAR. These measures were introduced to prevent the deterioration of water quality as a result of production activity at the Application Site. These measures which were introduced by Bord na Móna in the absence of any regulatory requirements demonstrates Bord na Móna's historic commitments to reduce the impacts of their production activity on the receiving environment as much as possible.

The positive effect of this is evidenced on page 3 the EPA Inspector's Report (22/11/1999) of Bord na Móna's IPC licence application, which states the following:

"Sampling was undertaken at a select number of sensitive discharges, pre-harvesting (April 1999), and the results suggested that the quality of these discharges was for the most part good. Typical characteristics were: pH 5 to 9; BOD <4mg/l; TSS <30mg/l; COD <111mg/l; Nitrate (as N) <2.2 mg/l; Ammoniacal-N <3mg/l and Orthophosphate <0.5mg/l. Sampling was repeated at the same sites during harvesting (August 1999). Total suspended solids was slightly elevated at one site (45 mg/l), and Ammoniacal-N was elevated at another (5.6 mg/l), but otherwise the quality of discharges was similar to pre-harvesting."

The outcome of the Silt Committee studies was the provision of silt ponds and revised drainage on all bogs in order to reduce the discharge of silt into streams and watercourses. The concentration levels of effluent discharge were set at 100mg/l suspended solid. This concentration level was based on a decision by An Bord Pleanála on the 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 2.3 (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 rEIA & rNIS has been carried out, the Applicant has ceased all peat extraction activity and is committed to rehabilitating the application site.

A full rEIA 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, 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 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 (First Post War Plan / First Development Programme), as referred to above, in 1946, which included the commencement of bog development works across peatlands within its management, such as the Ballivor Bog Group. 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.

In the context of the Application Site, Ballivor Bog was first drained in 1948 and bog development works pertaining to drainage, buildings, railways, power lines, stores and were commenced under the First Development Programme.

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 station⁶ at Rhode, Co. Offaly was to be increased from 40MW to 80MW.

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. For example, growing demand for packaged sod peat in polythene bags led to a bagging plant being constructed and commissioned at the Ballivor Works between 1969-70. Horticultural peat production within the Application Site was further augmented by the operation of a peat moss supply plant at the Ballivor Works in 1985, which would dispatch peat in a bulk system by compressing the peat into shipping containers for delivery to the horticulture industry overseas.

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

A key outcome arising from this review process was the commitment to secure the continued use of peat within Ireland's energy mix. In June 1993, a feasibility study for a proposed peat-fired generator ('Europeat 1' - Edenderry Power Plant⁷) at Edenderry, Co. Offaly was submitted to the Minister for Transport, Energy and Communications, and in April 1995, an agreement was reached with the European Commission on the provision of financial support for the proposed 120MW power plant. The Ballydermot Bog Group and Derrygreenagh Bog Group were identified as the primary supply bogs for the power plant. Construction of the Edenderry Power Station was commenced in January 1999 and was commissioned for operation in December 2000.

Industrial scale peat extraction ceased within Ballivor, Bracklin West and Carranstown Bogs in September 2019 following the High Court's judgment on *Friends of the Irish Environment Ltd v Minister for Communications, Environment & Climate Action & Ors. [2019] IEHC 646* (discussed in greater detail in Section 2.1.3 of the rEIAR accompanying this planning application). The High Court set aside the Peat 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 1953 has been in accordance with national energy related policy and legislation.

⁶ Rhode Power Station, Co. Offaly: Commissioned in 1960 and decommissioned in 2003

⁷ Edenderry Power Plant (Offaly County Council Reference 98/437) – 3rd Party Appeal (PL19.107858): Grant of Permission with revised conditions (dated 24th December 1998)

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

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.

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

⁹ Section 4(4) did not apply to development “completed not later than 12 months after such commencement

Development Regulations 2001 on 21 January 2002. As mentioned previously, drainage at Ballivor Bog had commenced in the 1940s through to the 1990s.

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

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

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

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

The Applicant acted at all times in accordance with planning legislation and national policy. All facilitating and ancillary works associated with peat extraction were subject to applications for planning consent as required (refer to Section 2.2 of this Report). The Applicant has also fulfilled their requirements under Part IV of the EPA Act (1992) (as amended).

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

- Industrial-scale peat extraction was on-going within the Application Site prior to 1988, before the required transposition of the 1988 EIA directive and 1994 Habitats Directive, with peat extraction commencing as early as 1953 for individual bogs within the group. These works benefited from exemption up until 20th September 2012 when the Environment (Miscellaneous Provisions) Act 2011 was enacted, and Section 4(4) was inserted within the Act.

- Peat extraction was supported by Government Policy, and fundamental to ensuring a secure supply of energy generation since the First Development Program.
- The implications of Section 4(4) on the peat extraction industry remained ambiguous between 2012 and 2019 as planning cases on peat extraction and EIA/AA were considered and tested within both the planning system (An Bord Pleanála Ref. PL25.RL.2975) and legal system ((Westland Horticulture Limited and Bulrush Horticulture Limited v An Bord Pleanála (2013/398/JR – [2018] IEHC 58)).
- The ‘Peatland Regulations’ (January 2019) which attempted to provide further clarity on this issue (e.g. exemption from planning permission for large scale peat extraction activity (30ha or over) were ultimately quashed by the High Court ([2019] IEHC 646 - September 2019) on the grounds that the legislation was inconsistent with the requirements of the EIA Directive and the Habitats Directive.
- In the interim, the Applicant had proceeded with industrial scale peat extraction in line with the conditions of its IPC licence. On foot of the [2019] IEHC 646, the Applicant ceased peat extraction on boglands within its management, including the Application Site, and dutifully proceeded to prepare and lodge an application seeking leave to apply for substitute consent (December 2019) for the relevant works within a portion of the Derrygreenagh Bog Group (including Ballivor, Bracklin and Carranstown Bogs) 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 Board (SU25M.307278) on 2nd June 2020. Subsequent to lodging the substitute consent application, peat extraction temporarily re-commenced between the 11th June 2020 and 30th June 2020 (c. 2/3 weeks). Peat extraction ceased (prior to July 2020) when it was confirmed that peat extraction could not re-commence prior to the Board’s decision on SU25M.307278.
- The Applicant formally announced in January 2021 that all industrial scale peat extraction on lands within its management would permanently cease. As such, SU25M.307278 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. P0501-01) in April 2000, the Applicant undertook the subject works in line with the conditions of its licence, as regulated by the EPA. The application of Section 4(4) of the Planning and Development Act (as amended) to peat extraction activities remained ambiguous between September 2012 and September 2019. 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 1953 and has operated under its IPC Licence (Ref. P0501-01) since 26th April 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;
- Westmeath County Council (letter dated 31 May 1999) and Meath County Council (letter dated 31 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 an Móna Biodiversity Action Plan review days between 2010-2018. The most recent Biodiversity Action Plan was launched by Bord na Móna in 2016 with the Biodiversity Action Plan review day being held in May 2018. Prior to that, A Biodiversity Action Plan was in place for the period 2010 – 2015.

It should also be noted that the EPA (via their 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 P0501-01, as well as any licence audits carried out by the EPA, are also available for public review via the EPA's web portal. This facility provides further opportunities for the public to participate within the on-going management of the Applicant's licensed operations and associated assessments. It should be highlighted, in this regard, that there were no non-compliance issues reported in the AERs or EPA Audits on peat extraction activities within the Application Site between 2000-2023 nor have there been any open compliance investigations with the EPA since 2022/2023 regarding the Applicant's IPC Licence (Ref. P0501-01).

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

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 1953 for individual bogs within the group. The bog development works and industrial scale peat extraction activities have over the decades elicited a direct change in habitat composition within and adjacent to areas of production and in areas of ancillary activity. This habitat change resulted from, inter alia, localised changes in hydrology associated with land drainage and from direct removal of vegetation and peat from the production areas. In terms of the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out of the subject peat extraction activities and associated site development work, it is noted that peat production has historically had the potential to result in the following impacts:

- Habitat Change
- Change in Water Quality
- Change in Hydrological Regime
- Disturbance to Species

The River Boyne and Blackwater SAC (Site Code: 002299) and SPA (Site Code: 004232) is the nearest European Designated site to the Application Site and runs in a north to south direction approximately 600m from the eastern boundary and approximately 1km from the western boundary of the site. It also runs in an east to west direction approximately 1.1km south of the site. It should be noted that a small portion (approximately 250m) of the site boundary of Lisclogher Bog is located adjacent to the SAC / SPA in the northeast. Irrespective of the physical separation distance, the drainage system supporting the Application Site discharges to a local tributary system which feeds into the River Boyne and River Blackwater SAC and SPA thus hydrological connectivity exists.

It is important to again emphasise that the Applicant has operated within the remit of its IPC Licence since April 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

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

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 Boyne and River Blackwater SAC. 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 production 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. P0501-01) between April 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 Boyne and River Blackwater SAC and SPA in 2003.

Licence conditions prescribed by the EPA are intended for the protection, and where possible, the improvement of the environment and apply from the time of grant of the licence. The EPA has undertaken Technical Amendments of the licence in 2012, 2013 and 2014 for the purpose of aligning the operational conditions of the licence to the objectives of National and European environmental protection legislation enacted over the lifetime of the licence. For example, the licence was subject to a Technical Amendment (A) in 2012 for the purpose of the *European Communities Environmental Objectives (Surface Water) Regulations, 2009*.

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

- **6.2:** *The licensee shall, by the 1st February 2013, submit for agreement by the Agency a revised proposal for a surface water discharge monitoring programme. This programme shall have regard to the following:*

- The current status of each bogland (virgin, under development, operational or worked out);
- The sensitivity of the receiving water;
- The relevant River Basin Management Plan;
- The nature, magnitude and variability of the discharges;
- The reliability of the silt ponds control measures; and
- The status of the silt pond upgrade programme

The revised surface water discharge monitoring location programme shall ensure that a representative selection of all surface water emission points from boglands within the licensed area is monitored annually and that all emission points are monitored at least once every five years. Surface water emission points shall be monitored as set out in Schedule 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. P0501-01), 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 either Meath or Westmeath County Councils in relation to Application Site concerning development undertaken by the Applicant.

(g) Such other matters as the Board considers relevant

While this is a matter for the Board to consider in relation to each substitute consent application, we note that, on review of the previous leave for substitute consent (LS25M.306236), the Board'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. The Climate Status Report for Ireland 2023 similarly reflects on clear and distinct impacts arising from climate change effects within an Irish context. The reduction of emissions is a key proponent of the enacted Climate Action and Low Carbon Development (Amendment) Act 2021, which aims to achieve a climate neutral economy by no later than 2050, and a 51% reduction in greenhouse gas emissions by 2030. These objectives have been translated into the Climate Action Plan 2024 (CAP), which sets out an ambitious course of action over the coming years to ensure that Ireland achieves its legally binding target of net-zero greenhouse gas emissions no later than 2050, and a reduction of 51% (including from Land Use, Land Use Change and Forestry - LULUCF) over the period 2018 to 2030. The rehabilitation of the Application Site can contribute to carbon sequestration and the reduction of carbon emissions associated with land use in line with the CAP.

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 all associated bog development works) carried out within the Ballivor Bog Group (Ballivor, Carranstown, Bracklin, Lisclogher and Lisclogher West bogs) located in Counties Meath and Westmeath.

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

In this regard, Section 177K(J1) of the Act requires that in any given case the Board must be satisfied that exceptional circumstances exist that would justify the grant of substitute consent. This report, and the supplementary documentation that form part of this application, set out the specific circumstances underpinning the Applicant's case which, in our opinion, demonstrates the required exceptionality to permit the Applicant an opportunity to regularise, without prejudice, the subject peat extraction completed at Ballivor Bog Group 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 P0501-01 in April 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 April 2000, the Applicant has operated under its IPC Licence, meeting strict monitoring standards. Notably, the Applicant achieved 100% compliance with water emission limits in as recently as 2023. Bord na Móna's proactive measures, such as the establishment of Silt Control Committees in 1975, have effectively mitigated potential impacts on nearby areas.
- The discharge of Condition 10 will facilitate rehabilitation of the Application Site in conjunction with any parallel future uses (such as wind energy infrastructure). Accordingly, it is anticipated that significant effects on the environment can be remediated.
- The Applicant has never been the subject of any actual or threatened 'Section 160' enforcement action from either Meath or Westmeath County Councils in relation to Ballivor Bog Group concerning development undertaken by the Applicant.
- The Cutaway Bog Decommissioning and Rehabilitation plans outlined as part of this application are compatible and can be integrated with the development of the Application Site for future uses to benefit both the climate and the economy.

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

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

