

Ronan Megannety

Catherine

From: Peter Scanlon <peterscanlon80@gmail.com>
Sent: Wednesday 18 February 2026 22:34
To: Appeals2
Subject: Submission of Objection – Substitute Consent Application SU19.323676 –
Lemanaghan Bog
Attachments: ACP-323676_25 Observation letter Feb 2025.pdf

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Dear Sir/Madam,

RE: Case Number ACP-323676-25

Please find attached my **formal objection** in respect of Substitute Consent Application **SU19.323676**, concerning historical peat extraction and associated works at **Lemanaghan Bog**, Co. Offaly.

This submission is lodged **within the statutory deadline** indicated on the An Bord Pleanála case webpage and is made pursuant to **Section 177E of the Planning and Development Act 2000 (as amended)**.

My objection outlines:

- Legal inconsistencies with the exceptional substitute consent mechanism;
- Environmental, hydrological, climate-related, and Natura 2000 concerns;
- International best-practice considerations for peatland restoration;
- Social, cultural, and procedural issues relevant to long-standing turf-cutting traditions;
- Reasons why the application should be **refused**.

Attached:

1. **Objection Letter – SU19.323676**

I would be grateful if you could confirm **receipt** of this submission.

Kind Regards

Peter

Re: Substitute Consent Application SU19.323676 – Lemanaghan Bog, Co. Offaly
Section 177E, Planning and Development Act 2000 (as amended)
To: The Secretary, An Coimisiún Pleanála (An Bord Pleanála)

Peter Scanlon BSc

Lemanaghan House, Ballycumber, Co. Offaly, R35 F292

Date: 18 February 2026

Dear Sir / Madam

I am writing to in response to your letter dated 30 January 2026, **Your Case Number ACP-323676-25**.

As stated in your letter and in the interests of Justice here are my additional submissions and observations to request that An Coimisiun Pleanala **Decline and Reject** this application for consent

1) Introduction and standing

I write to lodge a **formal objection** to the granting of **Substitute Consent** for the historical abstraction of peat and associated ancillary works at **Lemanaghan Bog**, Co. Offaly (Case Ref. **SU19.323676**), submitted with a remedial Environmental Impact Assessment Report (rEiAR) and a remedial Natura Impact Statement (rNIS). This application is listed on the Board's public register and due for decision within the statutory window noted on the case page. [pleanala.ie]

This objection is grounded in (i) **Irish planning and environmental law**, notably **Part XA** and **s.177E** of the **Planning and Development Act 2000** as amended; (ii) **EU law requirements** under the **EIA** and **Habitats** Directives as interpreted by the CJEU and Irish courts; (iii) **Ireland's climate and biodiversity policy** for peatlands; and (iv) **international best practice** and ethics regarding the restoration and future management of peatlands. The revised wording and effect of **s.177E P&D Act** (as consolidated) clarify thresholds, documentation required (rEiAR/rNIS), and the Board's duties when considering retrospective regularisation of development, which must be read consistently with EU law. [[revisedact...wreform.ie](https://revisedact.wreform.ie)]

2) Context: what the application seeks to regularise

The applicant seeks to **regularise historic peat extraction and bog development works** at Lemanaghan Bog, part of the Boora group, by way of substitute consent—i.e., a retrospective permission in circumstances where EIA and/or AA should have been carried out. The Board's file and lodged planning documents (including the Planning Report and rAASR) characterise decades of industrial peat extraction and drainage engineering across multiple townlands, with peat volumes reported at least for the period 1994–2020. [pleanala.ie], [pleanala.ie]

In 2023–2024 the legislative and procedural framework for **Substitute Consent** was **streamlined** into a **single-stage** process, and applications previously lodged under the “leave to apply” model were withdrawn and re-submitted (including peat sites). This reform, however, **does not** diminish the Board's obligation to ensure **full compliance with EU law** as articulated by the Irish **Supreme Court** and to maintain rigorous, transparent **public participation** at the initial stage. [mkoireland.ie], [offalyexpress.ie]

3) Legal framework: exceptionalism, nullification of unlawful effects, and limits of substitute consent

(a) EU law supremacy and the limits of retrospective regularisation.

Irish courts have repeatedly held that any mechanism that retrospectively regularises development covered by the EIA/AA Directives must be used **only in exceptional circumstances**, and must not **circumvent** the Directives' purposes or **nullify** public participation rights. The **Supreme Court** struck down portions of Ireland's earlier substitute consent regime for precisely these reasons (in quarry cases advanced by An Taisce), emphasising the necessity of an "exceptionality" test and early public participation. [antaisce.org], [mhc.ie]

In the peat sector specifically, the **High Court** (Simons J.) quashed the 2019 "peat regulations" that attempted to create a **transitional enforcement holiday**, holding them inconsistent with EU EIA and Habitats requirements and unlawful for using secondary legislation to alter primary norms. The Court granted injunctive relief to halt the regulatory workaround and later set the offending measures aside. These holdings underline that **lawful compliance must precede, not follow, extraction**—and that substitute consent cannot sanitize systemic evasion of EIA/AA. [ipcc.ie], [casemine.com]

(b) The current s.177E regime must be read through the EU law lens.

While s.177E allows an application accompanied by an rEIAR and/or rNIS, it does not—and cannot—dilute the exceptional nature of retrospective consent. The Board must refuse where regularisation would **undermine the Directives**, public participation, or the integrity of European sites; and it must consider whether the **unlawful effects have been nullified** and the **environment actually remediated**. Authoritative commentary and legal analyses of the 2023/2024 amendments confirm the streamlining does **not** create an entitlement to regularisation. [revisedact...wreform.ie], [mkoireland.ie]

(c) Contemporary litigation signals ongoing risks of unlawful "build-on-bog" sequencing.

Live and recent cases highlight the principle that developments on lands subjected to **unauthorised peat extraction** requiring EIA should **first be regularised (if ever)** before any new permissions proceed. This principle reflects the **CJEU Wells line** (nullify unlawful effects then remedy harm). The Board must avoid compounding unlawfulness by "rubber-stamping" retrospective consents that **confer planning credit** on past breaches. [friendsof...onment.org], [ocei.ie]

Conclusion on law: Granting substitute consent here would be incompatible with the **exceptional** nature of this remedy in EU law, given (i) the industrial scale and duration; (ii) the systemic failure to assess and mitigate impacts **at source and in time**; and (iii) the serious, ongoing effects on hydrology, biodiversity, water quality, greenhouse gases, and cultural landscape values. [antaisce.org], [ipcc.ie]

4) Environmental impacts and why retrospective regularisation conflicts with sustainable bog management in Ireland

(a) Climate and hydrology:

Degraded, drained peatlands convert from **carbon sinks to major carbon sources**. Ireland's

climate policy acknowledges that **rewetting and rehabilitation** of peatlands is essential to emissions reduction and ecosystem recovery—targets include rehabilitation at landscape scale under the Climate Action Plan and dedicated funding for **Bord na Móna's Peatlands Climate Action Scheme (PCAS)**. Retrospectively forgiving drainage/extraction without first demonstrating **full hydrological recovery** runs counter to these national commitments. [\[gov.ie\]](#), [\[bnmpcas.ie\]](#)

The **IPCC Wetlands guidance** details that drained peat emits CO₂ and N₂O persistently until **water tables are restored**, and that partial measures or delay prolong cumulative emissions. Any decision that regularises historically drained fields while deferring or fragmenting restoration contradicts best available science. [\[ipcc-nggip...iges.or.jp\]](#)

(b) Biodiversity and Natura 2000:

Lemanaghan sits within a **dense network of SACs/SPAs** and sensitive raised bog systems across the Midlands, with documented **hydrological connectivity** and species/habitat sensitivities set out in rNIS materials and NPWS objectives. Retrospective EIAR/AA cannot recreate the **ex ante alternatives assessment** or the **avoidance hierarchy** required before works commence; adverse effects on site integrity may have already occurred and cannot be assumed remediable. [\[pleanala.ie\]](#), [\[npws.ie\]](#)

(c) Water quality and flood regulation:

Scientific and policy consensus (and the State's own PCAS materials) recognises **rewetting** as a nature-based solution that **attenuates runoff** and improves **water quality**. By contrast, legacy drainage fields and residual tip-heads perpetuate **suspended solids**, dissolved organic carbon, and altered hydrographs. Regularising the past without a binding, funded, and independently audited **rehabilitation outcome** risks locking-in ongoing water impacts. [\[bnmpcas.ie\]](#), [\[bnmpcas.ie\]](#)

(d) Turf Cutting on Lemanaghan Bog – Local Context

Lemanaghan Bog has long been used by local families for **turf cutting as a source of domestic fuel** for family homes. This practice forms part of the *lived experience* of the area and remains well known locally. For many households, turf has historically provided — and in some cases continues to provide — an important means of home heating. Turf cutting has also been a shared family and community activity, passed down through generations, and is closely linked to a sense of place, self-sufficiency, and connection to the land.

While turf cutting is now regulated and subject to change, it continues to be recognised at State level as a **long-established domestic and cultural practice** requiring management and accommodation rather than simple assumption of non-existence.

Publicly Observable Evidence of Turf Cutting Activity

Attached to these observations are screenshots from publicly available **Google satellite imagery** of Lemanaghan Bog.

These images show **long, narrow, linear peat-cutting patterns**, aligned and repeated across the bog surface, which are consistent with traditional turf cutting practices. The persistence of these patterns over time indicates **repeated and organised use** of the bog for peat extraction, rather than isolated or incidental disturbance.

This imagery is submitted for illustrative and corroborative purposes only. It demonstrates that turf cutting on Lemanaghan Bog is not an abstract or theoretical issue, but a **visible and historically embedded land use**.

Procedural Concern Arising from the Further Information

Against this background, I respectfully query whether the interests of families who cut turf on Lemanaghan Bog have been adequately considered in the applicant's **further information**. The further information relies on a generalised "**Landowner Letter of Consent**" asserting freehold and beneficial ownership of the application lands. However, it does not:

- identify areas historically or currently used for turf cutting;
- map or schedule any turbary plots;
- identify turbary rights-holders; or
- explain how such interests — where they exist — were considered or reconciled before asserting exclusive ownership.

Given the long-standing and publicly observable use of the bog for turf cutting, the absence of any such identification raises a legitimate procedural question as to whether **all third-party interests** capable of being affected have been adequately addressed.

Relevance to Legal Interest and Standing

These observations do not suggest that turbary rights necessarily subsist over any particular parcel of land within the application boundary.

They do, however, highlight that **turf cutting by local families is a recognised and visible land-use practice** associated with Lemanaghan Bog. In that context, it is reasonable to ask whether the maps and ownership letter submitted by the applicant sufficiently demonstrate that such interests — where present — have been **identified and taken into account** for the purposes of **Article 22** and **Section 177E**.

Conclusion

Lemanaghan Bog has long played an important role in supporting local households through turf cutting, and this use remains evident on the ground and in publicly available imagery. Where an applicant seeks to invoke the **exceptional substitute consent jurisdiction** under Section 177E and relies on an assertion of **exclusive ownership**, it is appropriate that the Commission be satisfied that the existence of such long-established local land-use interests has been **properly considered and procedurally addressed**.

(e) Cultural landscape and social values:

Lemanaghan's **heritage landscape** (monastic precinct, pilgrim routes, toponyms) has recognised conservation significance; the Heritage Council's conservation plan stresses vulnerability to land-use change and the need for protection and authentic community participation. The substitute consent approach cannot substitute for the structured, forward-looking spatial planning needed to safeguard cultural landscapes. [offaly.ie]

5) International best practice: restoration first, comprehensive rewetting, and primacy of conservation

Global and European guidelines set **clear expectations**:

- The **Ramsar Global Guidelines for Peatland Rewetting and Restoration** emphasise that **anything less than comprehensive rewetting results in continued carbon**

emissions, and that restoration **cannot** fully recover values already lost—hence the **primacy of conservation** and precaution. [[ramсар.org](#)], [[globalland...sforum.org](#)]

- The **IUCN/UN Decade** best-practice overview similarly frames peatland restoration as a high-impact, cost-effective **nature-based climate solution**, stressing **hydrological coherence** at landscape scale and robust baselining before any after-use. [[decadeonre...ration.org](#)]
- The **IUCN UK Peatland Programme** notes that successful restoration begins with **reversing drainage**, re-establishing **high, stable water tables**, and only then considering compatible after-uses—based on **baseline mapping** of hydrology/topography and with avoidance of further disturbance to historic environment features. [[iucn-uk-pe...gramme.org](#)]

By these standards, the Board should **decline** to legitimise a historic extraction footprint through substitute consent and instead require **front-loaded, verified restoration** commitments that deliver **ecological function** before any consideration of after-use. Regularisation that precedes or supplants restoration contradicts international best practice. [[ramсар.org](#)], [[iucn-uk-pe...gramme.org](#)]

6) Case studies and jurisprudence: peat extraction, back-filling with “regularisation,” and public participation

- **FIE v. Ministers (2019)**—the Court condemned attempts to create a **legal limbo** for large-scale peat extraction; the State’s transitional “enforcement holiday” was unlawful. This is directly instructive against any **after-the-fact** absolution where the EIA/AA should have been done **up-front**. [[ipcc.ie](#)], [[lexology.com](#)]
- **An Taisce quarry substitute consent cases (Supreme Court 2020)**—the Court restored the “**exceptional circumstances**” threshold and public participation at the earliest stage; this limits the Board’s ability to **routinise** substitute consent for long-running extraction. [[antaisce.org](#)], [[mhc.ie](#)]
- **OCEI 2024 decision**—access to environmental information litigation shows intense scrutiny around **Bord na Móna peat regularisation** and supports the need for full transparency and public participation in any remedial process. [[ocei.ie](#)]
- **Current litigation over building on cutaway bogs** (e.g., wind projects) reiterates the principle that **unlawful extraction footprints** must be **regularised or remediated first**—you cannot lawfully **stack** new development on the back of **unassessed** historic impacts. [[friendsoft...onment.org](#)]

Taken together, these cases warn strongly against **using substitute consent as a de facto retention** for vast landscapes of past extraction. The **proper remedy** in EU law is **nullification of unlawful effects** and **restoration**, not retrospective blessing. [[antaisce.org](#)], [[ipcc.ie](#)]

7) Ireland’s own policy trajectory: rehabilitation and rewetting, not retrospective leniency

Government policy and the **PCAS** programme aim to **rewet and rehabilitate** tens of thousands of hectares of former industrial bogs, precisely to **reduce greenhouse gas emissions**, recover

biodiversity, improve water quality, and enable **just transition** pathways for communities. **Bord na Móna's** published rehabilitation plans for **Lemanaghan (2024/2025)** describe objectives of **environmental stabilisation, re-wetting** and setting the bog on a trajectory toward **naturally functioning peatland**—a direction fundamentally at odds with **retrospective validation** of the extraction phase. [\[bnmpcas.ie\]](#), [\[bnm.ie\]](#)

The **Public Policy** research community underscores the urgency: peatlands **must be wet** to deliver climate and biodiversity functions; policy should be **stronger and more coherent**, and oriented toward **protection and restoration** rather than permissive regularisation of legacy damage. [\[publicpolicy.ie\]](#)

8) Ethical, social and intergenerational considerations

(a) Morality and rule-of-law.

Granting substitute consent on this scale risks signalling that **decades of non-compliance** can be wiped clean ex post. This undermines **public trust**, penalises compliant actors, and **erodes the rule-of-law**—a point made forcefully in the courts when striking down regulatory end-runs around the EIA/AA regime. [\[ipcc.ie\]](#), [\[antaisce.org\]](#)

(b) Community participation and Aarhus principles.

Communities around Lemanaghan have voiced concerns that consultation about the bog's future has too often occurred **after** plans are fully formed. **Aarhus** standards require participation **at the earliest stage**. Retrospective consent mechanisms compress or displace that participation, particularly where **historic impacts** are at issue. [\[wind-watch.org\]](#), [\[m.koreland.ie\]](#)

(c) Intergenerational equity and climate justice.

Reuters' long-form reporting captures the national tension between tradition and climate action on peatlands. Yet the science is unequivocal: continued **delay** in full rewetting inflates cumulative emissions and **passes costs to future generations**. The Board must favour decisions that **lower Ireland's future climate liabilities** and **restore ecosystem services** now. [\[reuters.com\]](#), [\[ipcc-nggip.iges.or.jp\]](#)

9) Specific defects and risks in SU19.323676 (from the public file)

1. **Scale and duration** of unassessed impacts: The applicant's own rAASR/rEIAR materials indicate continuous extraction and drainage over multiple decades and townlands—far beyond a “technical breach.” The longer and larger the impact, the **less credible** it is that ex post documentation can **reconstruct meaningful alternatives assessment or avoidance measures**. [\[pleanala.ie\]](#), [\[pleanala.ie\]](#)
2. **Hydrological coherence** not assured: International guidance warns against partial or piecemeal rewetting; anything less than **comprehensive hydrological restoration** leads to ongoing emissions and ecological risk. Regularising the extraction phase without a **completed, independently verified** hydrological recovery is contrary to Ramsar/IUCN best practice. [\[ramsar.org\]](#), [\[iucn-uk-pe...gramme.org\]](#)
3. **Policy contradiction** with PCAS: The State is funding and directing **enhanced rehabilitation**; a consent that **legitimises** the extraction phase is inconsistent with the

“**conservation first**” principle and risks confusing compliance signals. [\[bnmpcas.ie\]](#), [\[gov.ie\]](#)

4. **Natura 2000 risk** and cumulative effects: The rNIS screening acknowledges proximity to multiple SACs/SPAs; given chronic drainage legacy, the precautionary principle should prevail unless **beyond reasonable scientific doubt** adverse effects can be excluded. Retrospective documentation cannot reverse **decades** of altered hydrology. [\[pleanala.ie\]](#), [\[npws.ie\]](#)

10) Relief sought – why the Board must refuse substitute consent

Having regard to **s.177E** (as amended), the **EIA** and **Habitats** Directives and the **case law** cited, the Board should **decline** to grant substitute consent for SU19.323676 because:

- The application does **not** meet the **exceptional circumstances** threshold consistent with EU jurisprudence; granting would **circumvent** the Directives’ preventive design and **reward** systemic non-compliance. [\[antaisce.org\]](#)
- The **unlawful effects** of extraction have not been **nullified**, nor has the applicant demonstrated **fully implemented** and **effective** remediation that restores ecological function and hydrological regimes **before** any regularisation is considered. [\[ipcc.ie\]](#), [\[ipcc-nggip...iges.or.jp\]](#)
- Granting consent would conflict with **national policy** to **rewet and rehabilitate** peatlands under PCAS/Climate Action Plan and with **international best practice** (Ramsar/IUCN) that gives **primacy to conservation** and **comprehensive rewetting** prior to any new land use. [\[bnmpcas.ie\]](#), [\[ramsar.org\]](#)

Recommended decision: REFUSE SUBSTITUTE CONSENT for SU19.323676.

11) Positive pathway and conditions for any future approach (without prejudice)

Without prejudice to the above refusal, if the Board considers any alternative procedural steps, they should require, **as a precondition, a fully funded, independently monitored, and time-bound restoration plan** for the entire affected hydrological unit(s), aligned with **PCAS** and **Ramsar** guidance, including:

1. **Comprehensive rewetting** (not partial), with audited **water table targets**, drain blocking across all functional sub-catchments, and **GHG flux monitoring** consistent with IPCC wetlands methods; [\[ipcc-nggip...iges.or.jp\]](#), [\[ramsar.org\]](#)
2. **Biodiversity recovery metrics** and **no-net-loss** → **net gain** trajectory against NPWS conservation objectives for relevant raised bog habitats and species; [\[npws.ie\]](#)
3. **Water quality** controls with independent monitoring of **SS, DOC**, and nutrients at outfalls to receiving waters; [\[bnmpcas.ie\]](#)
4. **Aarhus-compliant** community participation starting **now**, not after decisions are taken, including co-design of access, heritage interpretation and livelihoods (just transition); [\[wind-watch.org\]](#), [\[mkoireland.ie\]](#)

5. A binding prohibition on any **new development** on the cutaway until the site has achieved **verified ecological stabilisation** and **AA-compatible** conditions.
[\[friendsoft...onment.org\]](#)
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12) Concluding statement

Substitute consent is not a moral or legal blank cheque. In the specific circumstances of **Lemanaghan Bog**, where extraction was industrial in scale and persisted for decades without contemporaneous assessment, to grant substitute consent now would **contradict EU law**, **undermine Ireland's climate and biodiversity policy**, **offend international best practice**, and **erode public trust** in environmental governance. The only course that aligns with law, science, and ethics is to **refuse** SU19.323676 and to prioritise **full restoration** with genuine **community participation**.

Yours faithfully,

Peter Scanlon

Peter Scanlon

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Annex – Key references (non-exhaustive)

- **An Bord Pleanála case file** for SU19.323676 (Lemanaghan Bog), including rEIAR/rNIS and Planning Report. [\[pleanala.ie\]](#), [\[pleanala.ie\]](#), [\[pleanala.ie\]](#)
- **Planning and Development Act 2000**, s.177E (as revised). [\[revisedact...wrebrm.ie\]](#)
- **Amendments to Substitute Consent (2023/2024)** – professional overview. [\[mkoireland.ie\]](#)
- **Offaly Express** reporting on withdrawal/re-submission under new regime. [\[offalyexpress.ie\]](#)
- **Supreme Court**—quarry substitute consent (exceptionality and participation). [\[antaisce.org\]](#)
- **High Court (2019)**—FIE v. Ministers, peat regulations struck down; interlocutory stay. [\[ipcc.ie\]](#), [\[lexology.com\]](#)
- **OCEI (2024)**—AIE appeal on peat removal/SC status with ABP. [\[ocei.ie\]](#)
- **FIE (2025)**—Powergen substitute consent litigation on “build-on-bogs.” [\[friendsoft...onment.org\]](#)
- **Climate Action Plan / gov.ie**—peatlands rehabilitation and targets. [\[gov.ie\]](#)
- **Bord na Móna**—PCAS programme and **Lemanaghan Rehabilitation Plan (2024)**. [\[bnmpcas.ie\]](#), [\[bnmpcas.ie\]](#)

- **Ramsar**—Global guidelines for peatland rewetting and restoration. [ramsar.org], [globalland...sforum.org]
- **IUCN / UN Decade**—Best practice book on peatland restoration and climate mitigation. [decadeonre...ration.org]
- **IUCN UK Peatland Programme**—restoration principles and baselining. [iucn-uk-pe...gramme.org]
- **IPCC 2006 GL—Wetlands chapter**—emissions from drained peatlands and rewetting benefits. [ipcc-nggip...iges.or.jp]
- **Heritage Council**—Lemanaghan Conservation Plan. [offaly.ie]
- **Reuters (2025)**—national reporting on climate/peatland tensions. [reuters.com]